

**STATE OF VERMONT
PROFESSIONALLY RESPONSIBILITY PROGRAM**

In re: Stuart Jay Robinson
PRB File No. 2020-007

PETITION OF MISCONDUCT

In accordance with a finding of probable cause dated November 30, 2020, Special Disciplinary Counsel formally charges Stuart Jay Robinson (Respondent) with the following violations pursuant to A.O. 9, Rule 11(D)(1)(b) as set forth below.

NOTICE TO RESPONDENT: This is a formal Petition of Misconduct. Pursuant to A.O. 9, Rule 11(D)(3), you are required to file an Answer within 20 days addressed to the Professional Responsibility Program, 109 State St., Montpelier, VT 05609, with copy to Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

Complainant Richie Berger and Respondent Stuart Jay Robinson are both attorneys licensed to practice law in the State of Vermont.

Attached hereto as Exhibit A is documentation from Bar Counsel Michael Kennedy outlining the complaint from Attorney Berger.

Attached hereto as Exhibit B is the initial response to the complaint from Attorney Robinson.

Attached hereto as Exhibit C is *Defendant Vern Backus, MD's Motion to Dismiss Under V.R.C.P. 12(b)(6)*, dated June 10, 2019.

Attached hereto as Exhibit D is *Plaintiff Cheryl J. Brown [sic] Motion In Response Opposition to Defendant Verne Backus, MD's Motion to Dismiss*

Under V.R.C.P. 12(b)(6) and Supporting Memorandum and Exhibits and Request for a Hearing, dated June 21, 2019.

Attached hereto as Exhibit E is *Defendant Verne Backus, MD's Reply in Support of His Motion to Dismiss*, dated July 2, 2019.

Attached hereto as Exhibit F is Judge Helen M. Toor's *Entry Regarding Motion*, Docket No. 441-5-19 Cncv, dated July 8, 2019.

Count 1 of 1

On or about March 18, 2019, Stuart Jay Robinson, a licensed Vermont attorney, presented, participated in presenting, or threatened to present criminal charges in order to obtain an advantage in a civil matter; to wit: in a letter threatening civil litigation against Verne Backus, MD, and sent to Dr. Backus, the Respondent threatened to present criminal charges, in violation of Vermont Rule of Professional Conduct 4.5. ("A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter.").

Facts Alleged in Support of Petition

1. The Respondent was admitted to practice law in Vermont in 2008.
2. The Respondent maintains a solo practice in Williston, Vermont.
3. On or about March 18, 2019, the Respondent sent a "demand letter" to Dr. Backus.
4. Dr. Backus had performed an independent medical exam (IME) on Ms. Brown as part of a civil suit wherein Ms. Brown had sued the State of Vermont for alleged injuries she received after colliding with a Vermont State Police Cruiser.

5. The civil suit resulted in a trial wherein the jury found that the State Trooper was liable, but that there were zero resulting damages. The civil suit was upheld on appeal before the Vermont Supreme Court in the matter of *Brown v. State*, 2018 VT 1.
6. In his letter of March 18, 2019, the Respondent alleged as follows: That Dr. Backus committed perjury by altering Ms. Brown's medical records without her consent. The Respondent claimed that the perjury resulted from Dr. Backus testifying at trial that there was a dog in the State Trooper's cruiser and that according to the Respondent Ms. Brown had never claimed that there was a dog in the back of the Trooper's cruiser.
7. In his letter of March 18, 2019, the Respondent also claimed that Ms. Brown had failed to give informed consent to Dr. Backus, both in respect to the alleged right of Ms. Brown to refuse the independent medical examination by Dr. Backus and did not give informed consent in respect to Ms. Brown's allegation that Dr. Backus had changed her medical records to include the presence of a dog in the Trooper's cruiser.
8. After making the above-referenced allegations, the Respondent then proceeded to state in the same letter that:

Those Assistant Attorney Generals [sic] have potentially violated 13 V.S.A. § 2902 by getting you to lie for them. Before you actually testified, as they requested, it was an attempt to get you to lie under oath violating 13 V.S.A. § 2903. Your false swearing under oath violates 13 V.S.A. § 2904.

Finally, 13 V.S.A. § 2901 carries a maximum penalty of not more than 15 years and a fine of not more than \$10,000. The attempt to suborn Perjury, which you could have rejected by saying your Hippocratic Oath as a physician, prohibits you from harming others... 'Do no harm' ... The point of including this material is to

share with you that it was not just lack of informed consent of a deceitful medical IME, and an unauthorized medical records change, **but rather violating your witness Oath by knowingly falsely testifying before a jury.** (Emphasis added).

9. In the very next series of paragraphs in the March 18, 2019 letter to Dr.

Backus, the Respondent stated:

Your conduct in essence was entry into a conspiracy with the Assistant Attorneys' [sic] General did get you to lie for them in order to save the State money, which is know as Subordination [sic] of Perjury. Before you agreed to lie for them, the conduct of the Attorney General's Office was an attempt to suborn perjury. Once you did in fact lie under Oath it raised to the level of subordination [sic] of perjury.

How can you put a price for the intense mental distress, mental anguish [sic] pain and suffering for conduct that actually made Cheryl Brown physically ill, and requiring medical attention?

Cheryl Brown is **going to give you the opportunity that you never gave to her, by having you send this claim to you [sic] carrier for a Pre-Litigation Non-Binding Settlement of \$1.25 million dollars.** [Emphasis in part added and in part original]. It will avoid a law suit [sic], in which you will be required to testify about your conduct regarding both the lack of informed consent issues and potential violations of the Criminal Statute below [sic] involving perjury. Additionally, I anticipate in calling [sic] the Assistant Attorney's [sic] General and anyone else connected with that Office who participated directly or indirectly in attempting to suborn or in this case actually suborn your perjured testimony.

Collaterally there is obstruction of justice by your conduct and the umbrella of witness tampering and suborning perjury by the Attorney General's trial team an anyone playing a role in developing the Backus' [sic] strategy.

10. As set forth above, in his letter of March 18, 2019, sent to Dr. Backus, a third party, the Respondent claimed that Assistant Attorneys General Jon T. Alexander and Bartholomew Gengler engaged in subornation of perjury

and an attempt to suborn perjury, as well as witness tampering. This is a false statement.

11. Respondent also made similar false statements to the Vermont Attorney General's Office and the Vermont Board of Medical Practice. In his letter of November 29, 2017, sent to Attorney General T. J. Donovan, the Respondent stated:

Defense Counsel [the AAGs] in partnership with the Defendant's Medical Expert, Dr. Verne Backus did knowingly and deliberately prepare for Dr. Backus's testimony false and perjurious medical records and history.... This alleged potential perjury was a deliberate act by the Attorney General's Office to intentionally mislead the Court and the Jury at Ms. Brown's expense (emphasis removed).

12. On or about January 24, 2018, Ms. Brown filed a disciplinary complaint against Attorney General William Sorrell, Attorney General T.J. Donovan, Assistant Attorney General Jon Alexander and Assistant Attorney General Bart Gengler. Ms. Brown stated that AG Sorrell and AAG Alexander engaged in a criminal "cover-up"; "lies and deceit"; "falsification/fraud of my medical release"; "perjury [sic] Obstruction of Justice, medical record falsification"; and "[t]he most troubling thing... is the extent to which the State of Vermont would use lies, deceit, illegal personal intrusion and perjury to win at my expense" regarding the motor vehicle accident with the Trooper referenced above. The Respondent was copied on Ms. Brown's PRB Complaint.
13. On or about January 30, 2018, Deputy Attorney General Joshua Diamond responded to Mr. Robinson and responding to Mr. Robinson's letter of November 29, 2017, stated in part:

After examination of this matter, we have found no examples of any professional conduct, ethical violations, false statements, misrepresentations or legal errors or [sic] by AAGs Alexander and Gengler. Our review reveals that AAGs Alexander and Gengler conducted themselves with the highest professionalism, civility, and respect at all times during the litigation. Furthermore, these AAGs represented the State of Vermont and Office of the Attorney General with the competence, integrity and exemplary character that is expected and required of their positions. It is also noted that the Vermont Supreme Court recently denied your appeal from the trial court's decisions in this case that gives rise to your allegations, rejecting the assertion that any errors occurred during the trial or pre-trial proceedings, confirming that "both parties were afforded a fair trial," and affirming the jury's verdict below.

Accordingly, the Attorney General's Office has concluded that there is no merit to the allegations raised in your letter. We now consider this matter closed.

14. On or about January 31, 2018, Bar Counsel Michael Kennedy responded to Ms. Brown and stated as follows:

[N]othing that you have submitted or that I reviewed provides even a hint of evidence that the Respondents may have violated the Rules of Professional Conduct.... The record is devoid of credible evidence that supports your allegations... And, that is the essence of your complaint: that but for criminal and professional misconduct, you would have prevailed in your lawsuit. In fact, the record reveals otherwise.

- 14a. On or about June 10, 2019 Attorney Richie Berger filed a Motion to Dismiss in the matter of *Brown v. Backus*, Docket No. 441-5-19 Cncv. Exhibit C.
- 14b. On or about June 21, 2019, the Respondent filed a response to the Motion to Dismiss, stating in part as follows, "Clearly Cheryl J. Brown, the Plaintiff was a victim of a ruthless scheme by the Defendant and State of Vermont with one goal, take whatever steps are necessary to keep Dr.

Backus as the Examiner in her Case. Even if it meant, deliberately withholding critical information from the Plaintiff.” Exhibit D.

- 14c. On or about July 2, 2019 Attorney Berger filed a reply Motion, citing *Brown v. State*, 2018 VT 1. Exhibit E.
- 14d. Attorney Berger cited part of *Brown v. State*, 2018 VT 1, ¶ 26 in his July 2, 2019 filing. The entire paragraph states as follows (citations omitted and emphasis added):

Further, to be entitled to a mistrial, the party requesting it must show she has been prejudiced. Brown claims prejudice but does not put forth any basis to support the claim. The dog could not testify and thus is different from an undisclosed witness. **Brown asserts the State deliberately withheld the information concerning the presence of the dog in Denis's vehicle, but she does not show any discovery response that was incorrect.** Although she might have learned of the dog had she deposed Denis, she did not take his deposition. She further alleges the State's independent medical examiner presented false evidence about how he learned about the dog, but she does not show why the medical examiner's information about the dog was material to his medical examination. **There is nothing to support her assertions that evidence about the dog was deliberately withheld, was falsified, or prejudiced her in any way.**

- 14e. It is significant that the Vermont Supreme Court held that there was nothing to in the record that indicated that information was deliberately withheld or falsified. The permissible inference is that the Vermont Supreme Court’s holding, bolters the position set forth herein that the Respondent was engaged in knowingly making a false statement of material fact to a third party. The false statements being the statements made about the Assistant Attorneys General and Dr. Backus. This will

ultimately be an issue of credibility for the hearing panel to determine. However, for purposes of probable cause, the Probable Cause Panel now has the positions of the AAGs; the positions of their supervisors (“we have found no examples of any professional conduct, ethical violations, false statements, misrepresentations or legal errors”; the position of Dr. Backus (set forth on pages 4 and 5 of Exhibit C); and the position of Bar Counsel (“[t]he record is devoid of credible evidence that supports your allegations”); all of which are contrary to the position of the Respondent.

- 14f. On or about July 8, 2019, Judge Helen M. Toor, in an entry order, granted Dr. Backus’s Motion to Dismiss in *Brown v. Backus*, Docket No. 441-5-19 Cncv, stating, [t]he complaint fails to state any valid legal claim.”
15. On or about August 30, 2019, the Undersigned wrote to the Respondent and stated as follows:

In your correspondence dated August 8, 2019, your response to Bar Counsel Kennedy’s July 16, 2019 request (enclosed for reference), addressed to Disciplinary Counsel Katz, you stated at the top of the second page, “[s]ince you are going to be reviewing the Medical Negligence Case, the only thing at this point in time I am comfortable with to [sic] providing to you, are the public documents filed in the Case (Index #1,3,4,10-15).” Presumably this is because at the time you were concerned that Attorney Katz continued to be associated with the Vermont Attorney General’s Office. Attorney Katz corrected this misconception in an email to you dated August 9, 2019. In addition as stated above, I have taken over the matter from Disciplinary Counsel Katz.

Please provide your complete file and complete answers to the questions posed by Bar Counsel Kennedy’s July 16, 2019 letter to me on or before September 30, 2019. Please note that it is my obligation to remind you that pursuant to Vermont Administrative Order 9, Rule 7(D), “Discipline may be imposed for any of the following... [f]ailure to furnish information to or respond to a

request from disciplinary counsel... without reasonable grounds for doing so.”

16. On or about September 5, 2019, the Respondent’s administrative assistant Cheryl Brown wrote to the Undersigned, stating:

Dear Mr. Edward G. Adrian, Esq., Special Disciplinary Counsel,

Stuart received your letter dated 8/30/2019, while he was in the hospital from 8/30/2019 to 9/2/2019. This email is to notify you that Stuart is out on a Medical Cardiac Recuperative Leave from 8/30/2019 for a 20 day period. He has been advised by his doctors that he should not be working during this time. Stuart will respond to your letter after he has been cleared to return to work.

If you have any questions or concerns please contact me.

Sincerely,

SJR-Cheryl Brown (POA)

17. On or about September 23, 2019, the Respondent wrote to the Undersigned, stating:

Dear Mr. Edward Adrian, Esq.,

I have advised Ms. Brown that she should not be receiving any communications from you or your Office directly.

Attached find letters from my healthcare providers, which are self explanatory and have me out of work through October 19, 2019, subject to reassessment.

L’Shanah Tova, Happy New Year 5780.

Sincerely,

Rabbi Stuart Jay Robinson, Esq.

18. On or about September 24, 2019, the Undersigned wrote to the Respondent, stating:

Dear Attorney Robinson:

Your medical leave is not applicable to this investigation. It was specific to one limited instance. As a professional courtesy, I am postponing your interview, as well as Ms. Brown's until you receive a medical release. However you have an obligation to notify your clients of your inability to work on their cases for two months and you also have an obligation to respond and cooperate with my reasonable request pursuant to A.O. 9, Rule 7(D). It should not take a minimum of physical effort to send me a list of your clients and the notice that was provided to them. Refusal to cooperate may result in an additional charge upon a finding of probable cause by a hearing panel.

19. On or about September 24, 2019, the Respondent responded to the

Undersigned, stating:

Dear Attorney Adrian,

In response to your request regarding the obligation to notify my Clients that I am out of work and cannot work on their cases for 2 months, has been communicated to my Client per my earlier email to you today. All Courts and Counsel have been notified per the Rules. I have sent out the same documentation that you received to all parties and Courts. **My only Client at this time is a Pro Bono Case for Ms. Cheryl Brown in her Appeal to the Vermont Supreme Court.** I am not refusing to cooperate, as I have provided you with the information that you have requested yesterday and again today, which has been supplied. Ms. Brown as you know works for me along with being my POA she is also my Administrative Assistant, and medical point of contact and is aware by receiving copies of the Filings that I was originally out of work on August 30, 2019 with an extension until 10/19/2019.

I am at a loss because no Complaints or Charges have been supplied to me.

The Rules require that an written Complaint has to be sent to the Attorney. I have not received any written Complaints to date, only a letter from Mr. Kennedy, Esq. and Ms. Katz, Esq. and our limited written communications. The first time that I have been aware that there are "charges" in your last email to me. Please provide me the probable cause of all Allegations/Charges/Complaints as well as the specific facts as to each. There will be a response upon my medical release to return to work.

Sincerely,

Rabbi Stuart Jay Robinson, Esq.

(Emphasis added).

20. On or about October 21, 2019, the Undersigned wrote to the Respondent, stating:

Dear Attorney Robinson:

As set forth below you asked until October 19, 2019 in order to respond to my inquires. It is now October 21, 2019 and I have not heard back from you. I need to move this matter along. Can you please inform me of your status and your plans for responding?

21. On or about October 21, 2019, the Respondent responded to the Undersigned, stating:

Dear Attorney Adrian,

This is in response to your earlier email that I received today, October 21, 2019.

Today and tomorrow concludes the Jewish Holiday of Sukkot. I will be back in my Office on Wednesday. The date that I was released to go back to work was on my Sabbath (October 19, 2019) and part of the Jewish Holiday which ends sundown tomorrow. (10-13-2019 thru 10-22-2019)

I am responding to your letter of August 30, 2019 as I am released back to work. Responding without having a formal Complaint or specific details as to any violations of the Rules of Professional Conduct is not consistent with the Rules, under the section of Complaint Procedures #9.

Bar Counsel's Office in Montpelier received a large file containing the information on Brown v Backus as well as other material requested. This was based on a letter from Mr. Kennedy, without any formal executed Complaint.

My records reflect that I do not have an executed Complaint from the Office of Bar Counsel. I have the right to know who is making allegations and what those allegations are specifically. I requested a copy of this document on September 24, 2019. It should have come with Mr. Kennedy's original letter, which is not a complaint.

At this point, I have complied with Vermont Administrative Order 9 Rule 7 (D), by providing the information available to date. Upon my filing of the Appeal you will be provided an electric copy. As you know this case is pending before the Supreme Court of Vermont.

The Appellant's Brief and Printed Case will be filed on or before November 8, 2019.

Attached find the copy of the Granted Extension of time to File the Appellant's Brief and Printed Case by the Vermont Supreme Court to be filed no later than November 8, 2019.

Sincerely,

Rabbi Stuart Jay Robinson, Esq.

22. The Undersigned replied again on October 21, 2019, stating:

Attorney Robinson,

I've been aware of when the Jewish Holidays fall since completing my first year of Hebrew School at the age of 5.

In your correspondence of August 8, 2019 you specifically stated that you would not be providing full answers and would only be providing documents that were "public."

In my correspondence of August 30, 2019 I requested you complete your answers and provide all records requested.

My understanding is that when you returned from your medical leave, you will be providing answers to all the questions and all the documents (including the non-public ones). In fact in your correspondence of September 22, 2019 you stated that based on health reasons, "I will need to extend the due date of my supplemental response to you." Therefore, you committed to providing a supplemental answer as requested in my correspondence of August 30, 2019.

If you are now refusing to comply with the request that I made in my August 30, 2019 letter to you, I will proceed accordingly.

Sincerely,

Ed Adrian

(Emphasis added).

23. On or about October 23, 2019 the Respondent replied, stating:

Attorney Adrian,

On August the 30th, 2019 I was in UVM Medical Center for an emergency cath that kept me in UVM Medical center for Labor Day Weekend. This heart event kept me from work for the next 50 days, until October 19, 2019.

Upon my return back to work, after 50 days, since Michael Kennedy's non specific letter mentioned *Brown v. State*, I reviewed my files on *Brown v. State*. My Client on her own sent Michael Kennedy at Jud.prpcomplaints@vermont.gov multiple emails with attachments on January 9, 2018, which included the Appellant's Brief, Printed Case with an index, the 3 day Trial Transcript, and her deposition in *Brown v. State* on January 26, 2018 for her confidential Complaint. On January 24, 2018 an she sent another email directly to Michael.Kennedy@Vermont.gov including an attachment entitled Index to Exhibits of Supplemental Documents, also as part of her confidential Complaint. Your Office or Bar Counsel's Office is in possession of these documents.

I have complied with your document request see above. So we are clear, the documents that you will be receiving from me will be the Appellant Brief and the Printed Case from *Brown v. Backus*, which is due on or before November 8, 2019.

Since there have been no responses from your Office and Bar Counsel through your Office for months, to have the Complaint with the specific allegations furnished to me, I feel the file should be sealed and this matter closed and dismissed without further action.

Sincerely,

Rabbi Stuart Jay Robinson, Esq.

24. On or about November 14, 2019, the Respondent provided the Undersigned with a copy of the Appellant's Brief to the Vermont Supreme Court in the matter of *Brown v. Backus*, Docket No. 2019-261.
25. On or about November 27, 2019, the Respondent informed the Undersigned that:

I was admitted on Wednesday November 20, 2019 and am still an inpatient at UVM Medical Center. It is anticipated that I will be going directly to an inpatient rehabilitation facility upon discharge from UVM Medical Center. The length of time as an inpatient in a rehabilitation facility is to be determined. Upon discharge from rehab and a medical clearance from my doctors, I will keep you informed.

Thank you for your cooperation.
Sincerely,

Stuart Jay Robinson

26. Concerned about the impact of the Respondent's health concerns on his clients, the Undersigned inquired on or about November 27, 2019, as follows:

Dear Attorney Robinson:

I am sorry to hear about your latest health problems. Can you please confirm that your only client remains Cheryl Brown? It might just be easier and healthier for you if we can reach some kind of agreement without having to continue the investigation and potential litigation. I am open to that discussion.

A Happy and Healthy Thanksgiving to you and yours.

Thank you,
Ed Adrian

27. On or about November 27, 2019 the Respondent, through Cheryl Brown, responded as follows:

Dear Attorney Adrian,

I am still awaiting a copy of the written Complaint. I am confirming Cheryl is my only client currently. At this point I don't have a Complaint to base an agreement on and maintain the position stated to you in my earlier correspondence.

What is the charge against me and /or what is / are the specific "threats" of new charges from your prior correspondence, which were unnecessary, since compliance is a non issue?

The Appellants Brief and Printed Case in Brown v. Backus was electronically sent to you and I trust you received it as promised.

I have been continually cooperative in supplying answers to your questions without having a copy of a written Complaint.

I am writing you with the help of my administrative assistant at my bedside along with the previous email updating you as to my medical status.

Until I am released from care, and I update you with that fact with a clearance from my physicians, I will not be able to correspond further.

You will be advised when I am released to return to work.

Happy Thanksgiving.

Sincerely,
Stuart/cb

28. On or about February 20, 2020 the Respondent sent the following correspondence to the Undersigned and Bar Counsel Michael Kennedy:

Dear Mr. Kennedy, Esq., and Mr. Adrian, Esq.,

As promised in my continuing cooperation since first being contacted, I am forwarding electronically the Appellant's Reply Brief in Brown v. Backus. The Printed Case in the Original Appellant's Brief is also utilized in the Reply Brief. I again renew my request to be supplied the name of the source of the "alleged" Complainant, and a copy of the Complaint

This matter is on the Rocket Docket of the Vermont Supreme Court, scheduled for a Hearing on March 18, 2020 at 9:30 a.m. in Montpelier.

Due to my health complications of Cardiac Diastolic Heart Failure with Cardio Renal Syndrome, it required a hospitalization at UVMHC from 11/20/2019 thru 12/2/2019. I was then transferred to Birchwood Terrace Rehabilitation Center and discharged on 12/17/2019. My PCP- Dr. Stephen Baad then issued a medical leave of absence thru January 6, 2020, at which time I returned to work part- time.

Any further information on the Extension Process Orders that you

may require, are in the File at the Vermont Supreme Court and are self-explanatory.

Sincerely,
Rabbi Stuart Jay Robinson, Esq.

29. Between November 27, 2020 and February 20, 2020, the Respondent never informed the Undersigned that he had returned to work as of January 6, 2020, on a part-time basis.

30. On or about February 24, 2020 Bar Counsel Kennedy responded to Respondent as follows:

Rabbi Robinson:

I have attached copies of the referral letters that I sent you last July. **The first two paragraphs clearly explain the genesis of the investigation into your conduct.**

Please direct all correspondence to Attorney Adrian. I have no role in the investigation. As such, this reply is not to be construed as an agreement with your statement that you have cooperated with Attorney Adrian's investigation. (Emphasis added).

31. On or about March 20, 2020, the Vermont Supreme Court issued its decision in the matter of *Brown v. Backus*, Docket No. 2019-261, affirming the decision of the trial court and dismissing the case against Dr. Verne Backus. Of note is the Vermont Supreme Court's rejection of the position advanced by the Respondent that Superior Court Judge Helen Toor should have recused herself from the case below because of some bias or prejudice.

32. The Respondent moved for reargument before the Vermont Supreme Court on behalf of his sole client Cheryl Brown, on or about April 3, 2020.

33. On or about April 8, 2020, the Vermont Supreme Court denied the Respondent's request to reargue the matter.
34. On or about September 5, 2019, the Undersigned requested an interview with Cheryl Brown, the Respondent's legal assistant and client in the case of *Brown v. Backus*. On or about September 6, 2019, Ms. Brown responded with the list of questions for the Undersigned, demanding answers. Ms. Brown also indicated that she would only agree to be interviewed if she was allowed to bring her mother to the interview and the Respondent who would be representing her as her attorney, in the very proceeding where the Respondent was being investigated.
35. On or about September 6, 2019, Cheryl Brown responded to the Undersigned as follows (punctuation, emphasis, spelling and grammar in original):

Dear Mr. Adrian, Esq.,

I have passed on your good wishes to Stuart. If he needs more time to respond to your request for additional information due to his current health status, I will keep you informed.

I feel that this Complaint against Stuart is unwarranted and is an attempt to prevent me from pursuing my legitimate cause of action against Dr. Backus for Medical Negligence and Lack of Informed Consent. In my opinion this Complaint filed against Stuart should be Dismissed without further action. This this in my view a retaliatory attempt to put a cloud over pending litigation in which the Defendant has no defense. He participated, and failed to disclose when requested twice to keep his background information from me. Why? Because he would be rejected and lose \$10,000.00 plus other financial considerations. I am done being a victim. The injuries sustained in the accident have negatively changed my quality of life forever, because I am left with permanent injuries that I have to live with. As you read further in this email to the PRB, I want my answers to my questions that I have raised, as it is only fair as those who have deceived and other wise acted

inappropriately through their lies and deception need to be held accountable to me as the victim of the hit and run. All that I asked for was the truth and for justice and I haven't been able to say that this has been the Case in either of my Case or before the PRB up to this point.

I am puzzled as to why I am being requested to come in for an interview, which is going to be recorded, while my Case is pending before the Vermont Supreme Court? In the event that further litigation is necessary, I cannot risk compromising my Case. Anything that I share with you in this letter is a matter of public record. I need my questions answered before we go forward with the interview you requested of me. For more details see the Complaint I filed in both ***Brown v. State*** and ***Brown v. Backus***, which the PRB referenced in Stuart's letter.

There is a concern that needs to be addressed by your Office. I would like to know who gave the permission to break the confidentiality of my Complaint from ***Brown v. State*** by referencing and linking it in the current matter pertaining to ***Brown v. Backus?*** This raises a trust issue for me with the Office of Professional Responsibility Board. I am entitled to know who breached my confidentiality and what the the PRB plans to do about it, because it is unacceptable to me.

In my view since the PRB linked both of my Cases together, they are recognizing that I was the victim of a hit and run accident backed up by the 911 tapes and transcripts, where there were no other passengers in either vehicle backed by the Vermont Uniform Crash Report backed up further by the Supplemental Narrative and most importantly in addition to the property damage my vehicle suffered while stopped in traffic, my injuries became permanent. The treatment was intense and exceeded \$40,000.00 so my carrier without my input had 3 intermittent Independent Medical Examinations to confirm both the services were usual and customary as well as the fees for their services were also usual and customary. Dr. Backus was brought in to do an Independent Medical Examination which I have challenged. This included as you know, in the Pre-Trial Rulings by Judge Toor, which changed the character of my Case.

Instead of all of the providers and witnesses testifying to the hit and run, and 911 tapes which were included in my medical questionnaires including the description of my accident of 5/16/2012, the Court prohibited any reference to the hit and run, the Incident Reports, and no tickets being issued to the other driver, whose identity was determined by my call giving his license

number, when he left the scene without exchanging information and asking me if I needed help.

The link between these two Cases is simple. It is Dr. Backus.

I want to make it clear that I am not going to have whoever linked these Cases together mischaracterize facts which are all backed by documents and Trial testimony. Not only was I a victim of being handled by Law Enforcement to protect a Vermont State Trooper, but I feel that I was victimized by the PRB.

I was unsuccessful upon discovering that Dr. Backus performed an I.M.E on me in 11/2008, in getting him disqualified as the State's Medical Expert. This is different in that Brown v. Backus has named him as the physician in a Medical Negligence suit for Lack of Disclosure that would have enabled me to make decision on whether or not I wanted Dr. Backus to be the Examining Physician for the I.M.E. That one event in my view took away "Independent" based on his work history and denied me an I.M.E. His was not authorized because of the deceit and willful non-disclosure by the Office of the Attorney General and Dr. Backus. The State of Vermont knew that Dr. Backus had performed an I.M.E. on me in 11/2008. It can be reasonable inferred that they had his profile information on file and illegally violated my rights to medical privacy (HIPAA and HI TECH Act) and tried to cover it up by getting me to falsify or back date my medical release, as the original expired in November of 2015. Dr. Backus testified that he and the Office of the Attorney General reviewed my medical records in the late winter early spring of 2016, which was 6 months after the expiration date of my medical records authorization. The Attorney General's Office executed the Defendant's Expert Witness Contract 31387 on 5/11/2016. Dr. Backus executed his contract with the State on 5/12/2016. My exam was the following day. There was no contract in place when my rights to my medical protected records were breached. Dr. Backus only admitted to the time breach on cross examination by my attorney.

Brown v. State was a Person Injury Motor Vehicle Negligence Case. ***Brown v. Backus*** is a Medical Negligence Malpractice Case- Lack of Informed Consent, against Dr. Backus for his failure to comply with the requirements of a patient requesting written information prior to my exam on two separate occasions. I was denied until seven (7) weeks after my exam on 6/17/2016 (DOE 5/13/2016) the background information which would have shown an overwhelming bias for the State and Defendant insurance

carriers, which would have caused me to reject him as the examiner on the grounds of conflict of financial interest (\$10,000.00 from the State to Dr, Backus) and bias to the State which prevented me from getting the objective I.M.E. that I was entitled to.

On the day of the exam 5/13/2016 after ignoring the written requests sent to the Assistant Attorney General's Office, per their instructions, on 4/28/2016 and 5/9/2016, Dr. Backus made the decision not to disclose the information that was requested by me. Had Dr. Backus disclosed that information along with the fact that he had examined me in a previous Defendant I.M.E. for a motor vehicle accident in 11/2008 (***Brown v. Kearns DOA 1/27/2007***) to me and my mother before the evaluation and advised me that I had the right not to go forward but to leave, we would have left without having the evaluation and examination.

First if the Supreme Court determines that the standards of reasonableness were not met for "an Independent Medical Examination" the Medical Negligence Claim for the Lack of Informed Consent will go to a Jury.

Second, if the Jury determines that Dr. Backus and the State of Vermont knowingly withheld timely requested pre-exam information in writing, which would have resulted in the rejection of Dr. Backus, then his entire participation including his testimony and his I.M.E. in both cases would be stricken and in fact, I would be entitled to a New Trial on ***Brown v. State.***

In fairness to me before any conclusions are drawn by the PRB, I want to present to you why it was impossible for the PRB to say nothing was done wrong in ***Brown v. State*** when all of the documentary evidence supported my position in my Complaint.

I am not refusing or declining an interview with you at your Office, however I will be bringing my mother as a chaperone and Stuart as my Attorney (when he is released from his medical leave and returns to work).

Finally I do not want this interview recorded, unless you have the equipment present to make a simultaneously live recorded tape for me, so that we are both on the same page.

Currently I will share with you that my 94 year old father in law (who lives out of town) is in a very delicate medical status in which the family has been put on notice to be available if his condition worsens. For my family we are taking things a day at a time. Thank-you for your understanding and I look forward to your

response to my concerns.

Sincerely,

Cheryl J. Brown

36. On or about September 6, 2019, the Undersigned responded to Ms. Brown, indicating in part that:

[You] do have the right to bring an attorney of your choosing to the interview. I will let Attorney Robinson determine if it is appropriate for him to represent you in this proceeding. You are welcome to bring a recording device if you so wish. You will not be able to bring anyone except an attorney.

I am willing to wait for Attorney Robinson to return to practice if it does not take too much time, otherwise you will need to secure alternative counsel. If we cannot agree on your interview voluntarily, then I have the ability to request a subpoena to compel your attendance.

37. On or about September 22, 2019, the Respondent advised the Undersigned, "I will be representing Ms. Cheryl Brown, and look forward to the answers of the question that Ms. Brown has asked of the Professional Review Board."

38. On or about September 23, 2019, the Respondent informed the Undersigned as follows:

Dear Attorney Robinson:

Thank you for letting me know that you will be representing Cheryl Brown. I will not have contact with her; I will not copy her on my emails to you (I've removed her from this chain); and I expect you will notify her that if she attempts to contact me I will not respond.

On or before this Friday 9/27 (and before the Days of Awe commence), please provide me with: 1) an explanation from your physician(s) as to why your current condition prevents you from responding to my requests; and 2) a signed HIPPA release allowing me to discuss your medical condition with your physician(s).

Thank you in advance for your assistance.

39. The Respondent has repeatedly delayed these proceedings as set forth above. The Respondent has refused to make Cheryl Brown available for an interview. The Respondent has failed to provide the Undersigned with the requested information. The Respondent failed to alert the Undersigned that his medical condition had resolved in a timely manner. The Respondent has failed to cooperate with the Undersigned as Special Disciplinary Counsel. As of the date of this Affidavit, the Respondent has not contacted the Undersigned or scheduled an interview for himself or his legal assistant.

CONCLUSION

By engaging in the above alleged behaviors, the Respondent has presented, participated in presenting, or threatened to present criminal charges in order to obtain an advantage in a civil matter; in violation of Vermont Rule of Professional Conduct 4.5.

Dated at Burlington, Vermont this 11th day of December, 2020.



Edward G. Adrian
Special Disciplinary Counsel