

Maine Regulatory Fairness Board  
Morning Session  
Thursday, May 27<sup>th</sup>, 2010

Eliot Stanley: Well, good morning and welcome to our hearing. This is the Maine Regulatory Fairness Board and we're having our first public hearing of the calendar year 2010. My name is Eliot Stanley, I'm the Chair of the board. The hearing is now in session. Before we begin taking information, I would like to spend a few minutes to introduce the board members who are here, explain the purpose of the board and go over some basic ground rules for the hearing.

On my far right is Ed Philips of Winthrop. Ed's been a member of the Commission since its inception in 2006, so he had a previous three-year term before the present one in which he was reappointed by the Governor. And then to his immediate right is our deputy chairman, Linda Snyder of Auburn, and to my immediate right is Marie Emerson of Addison. To my left is Van Perry of Readfield. Did I pronounce that correctly?

Van Perry: Yes.

ES: Readfield. And he is - alright so we'll be getting into more of the substance as we go along here. I would like to say to our board members to be sure to turn on your microphone when you're speaking, with the button up here so that our tape recording can connect with that. And to any of you who are going to be appearing at the desk here, also make sure that that microphone is turned on with the button in front of it. The purpose of this board is to hold hearings to gather input from the public and to report to the Legislature and the Governor, at least annually, on regulatory and statutory changes necessary to enhance the states business climate. The board is especially interested in hearing from businesses or individuals that feel that they have been unfairly impacted by state rules and laws governing their business, or have suggestions as to how laws and regulations can be made more effective or less burdensome. We are interested in hearing what is working as well as what is not working. The role of this board is advisory. We cannot take direct action. It is our job to hear the concerns of Maine's businesses and to make recommendations to the Legislature and the Governor on how to improve Maine's regulatory environment. A sign up sheet has been placed by the end of this table, or by the entrance over that way; we ask everyone present to please sign in. You can do that now if you have not done it already. And we will ask anyone who does speak in the course of the hearing, either from the floor or as a witness to state your name and address and the business or organization that you represent, if any, and then to make your statement. Regarding witnesses who will be appearing at the desk, after you have finished, please stay at the desk for questions from the board. Board members may wish to ask questions for clarification and to improve their understanding of the nature of the regulatory problem you are facing. Please provide the board with written copies of your testimony, if at all possible. And that could be subsequent to today, or if you brought it with you that would be fine. Then

there are some additional protocols for public hearing that I want to review with you.

We want to hear from everyone who wishes to speak. If a large number of people request to be heard, we may have to limit the amount of time allotted to each person who wants to speak. You may present additional written materials with your statement or submit additional written comments. Please address your statement or questions to the board at all times. Each speaker is asked to present his or her information to the board. The board members may ask questions for clarifications and insight. Others present do not have permission to speak until called upon by the board presiding officer. Keeping the process orderly will help all to hear what is being said. The presiding chair reserves the right to have a disruptive person removed from the room by security, should that be necessary. Please be specific and concise. Limit your remarks to information pertinent to the issue or issues before the board. If you know the name or number of the rule of law, or regulations are addressing, please identify it for the board. Offer specific ideas about how the problem you see could be resolved. Try to focus on recommended changes in law or regulation to address your particular concern. If necessary, you may provide names of particular state officials or employees, who were not, in your view, fair or just in their treatment of you or your business. Please be courteous. We understand that when someone is affected by a state action or regulation which they believe has been or is being harmful to them or their business, it can become an emotional issue. We are here to listen and be of as much assistance as we can. As noted, we are an advisory board. We cannot change laws, rules or regulations by ourselves, nor can we discipline officials or employees. We can and do make recommendations each year to the Governor and Legislature. If you have questions or comments for any witness or presenter, please be aware that no one appearing before this board is required to answer questions or comments from the floor. Further, presenters who wish to be excused at the conclusion of their statements and any questions from the board will be excused without prejudice. These proceedings are public and are being recorded. The Freedom of Information Act and other state open meeting laws apply to the proceedings of this board and any documents or statements it receives, either spoken or in writing, become public record. You are advised to avoid providing sensitive information you may not wish to disclose to the public or to your business competitors if applicable.

Inasmuch as we are running a little ahead of schedule at this moment, I'll just say if there are any questions from the floor at this point, pertinent to what I've just gone over, please feel free to pose them and I will try to answer them off-hand, right now, if there are any problems or questions before we call our first presenter.

[Diane Denk, public member of the Board of Dental Examiners (BDE), introduces herself and asks to be added to the agenda to speak with the DBE this afternoon.]

ES: Any other questions or - Oh, I wanted to mention one other thing here, it's kind of a correction in our agenda. Those of you who picked up an agenda -- we had told Dr. Aldilaimi that she would be given forty-five minutes beginning at 10:45 and there's a misprint in our agenda so that she has, she and the other dentist that will be appearing with her, if that's still the intention, will have from 10:45 till 11:30 at which time we would have questions and discussion and we would break for lunch at 12 noon and then resume at 1:00. Does everybody follow that? Okay, I'm sorry for the misprint on that but it made it appear that Dr. Aldilaimi was given only 15 minutes. We'll probably go over these ground rules at the beginning of the afternoon session, just to make sure the people that are in the room at that point, who were not here in the beginning, will here the protocols for the meeting. At this point then, I'm going to go ahead and get started. I'm going to ask Mr. Joseph Benedetto if he's in the room to come and take a chair at the desk and [pause] we will introduce him and here is statement. Is he here?

Joseph Benedetto: Yes I'm here.

ES: Okay, Doctor, come on up and have a seat.

JB: I came from Calais and made a slight wrong turn. [??]

ES: That's fine, if you want to, that's perfectly all right. Thank you. Try to speak into that microphone, or turn it so you will be on. Would you first - well, let me go ahead and introduce you, then I'm going to ask you to briefly characterize what these materials are you brought in. Dr. Benedetto is a 68-year-old retired dentist who resides in Calais, Maine. He is a native of Philadelphia; he attended Temple Dental School, graduated in 1968. He has served as an Honorably Discharged dentist in the U.S. Air Force, U.S. Army as a civilian contract dentist. He also had a private practice in Philadelphia for twenty-five years. Since his arrival in Maine in December of 2002, he has worked as a salaried general dentist for a number of non-profit dental facilities, including the Passamaquoddy Tribe in Princeton, the Eastport Dental Center, Lubec Dental Facility and Kennebec Valley Dental Collation in Waterville. His employment at for-profit facilities has included working as a salaried employee at New England Denture Center as well as at Aspen Dental in Waterville. Now, at this point I'll turn the floor over to Dr. Benedetto. If you want to continue with further introductory material, feel free and then after you finish that, if you would, just address the nature of the material that you brought in this morning.

JB: Well, I think I'd first rather address what this is.

ES: Okay, okay.

JB: You have in those packets there, well, number one a transcript of a Dental Board meeting on February 6, 2009. There are some highlighted areas in there that I will reference as I speak a little later. There is also a blank document there that's called a "Waiver of Objections to Further Proceedings before the Board". This is the

document that is presented to a dentist or other health care professional when they walk into the informal hearing. This comes as a surprise document that is given to the dentist or other professional. In other words, it's an unexpected document that they ask you to sign on the spot, even though it says you can consult with an attorney. If you come with no attorney - well - anyway, there's also a "Consent for Oral Surgery and Anesthesia" that I had a patient sign that clearly indicates on there precisely what she agreed to. In addition there's a three-page document here, it's stapled together and what it consists of is a complaint letter that was given, hand-given, to the Assistant Attorney General at a subsequent meeting about a week or two after my informal hearing, I handed this to the Assistant Attorney General.

ES: Is that the document that says "Aspen" at the top?

JB: Yes, right. Complaints about them that I had that I felt that the Dental Board needed to address relative to the conduct of individual dentists and the corporate identity called Aspen. And then finally you will see a letter in there addressed to the Executive Secretary of the board in which, it's self-explanatory, but it requests certain documents that I didn't receive when I requested them. Okay, so -

ES: Let me just say one other thing: Ed Philips of our board is going to be our lead questioner, Dr. Benedetto. He's been familiarizing himself with the files and materials, and I think most of us also read good portions of that transcript and the various emails and so on.

JB: The transcript that I just referred to?

ES: No. Well, I don't know if it's included in the material that's already been given to us by the Dental Board.

JB: No, that isn't. That's why I brought it for you.

ES: But Ed Philips will be your primary questioner. So, proceed and we'd like you to state - well, you've got a little more time now so you can go until 10:45 if you need that much time, and we'll have some questions I'm sure from the board.

JB: Okay. Good morning, everyone, and I want to thank you for extending an invitation to me. I was really looking forward to this. First off I should tell you why I'm here. I'm here because I'm currently retired now, and I feel that I can speak very freely about the flaws in the regulatory process, relative to handling dental complaints. Unfortunately there's an atmosphere of fear, of retribution that pervades the dental profession here in this state, because of the fact that dentists are afraid that if they speak up and say this needs to be changed or that needs to be changed that if they ever have the misfortune of going before the Dental Board they feel that it could spell disaster for them and I think before the end of the day you'll understand why they have those feelings. So that's why I'm here. I have nothing to gain by this. I just drove three hours to come here, I'm retired. I have nothing to

gain. But when I see something that's so flawed as this, I just can't walk away from my colleagues. I've met some really wonderful, talented dentists and they have really suffered, as I have. The psychological impact, the professional impact, the economic impact that all of this has had on them and me, although I'm at a point in my life where that doesn't matter so much to me. But what matters to me is justice. And that's why I'm here. Okay, so, anyway - thanks again, and you can imagine that the topics that we are going to be discussing today are really very highly charged to say the least.

The State Board of Dentistry here in Maine and in many states wields tremendous power over licensed professionals. Their job is to protect the general public from individuals who pose a threat to the general public. Now, I'd like to think of myself as a reasonable person who takes, or took, my job seriously. No dentist that I know of goes to his or her office in the morning with the intention of harming a patient. I was taught at my father's knee in his grocery store to treat people with respect if you expect the same in return, no matter what profession you choose in life. I did have plans on practicing dentistry until my 70th birthday; that is, another two years from now. But I recently decided to retire as a result to retire after a huge increase in my malpractice insurance rate, and this hike in my rate has its roots in a single incident which occurred in Aspen Dental Office in Waterville. I was the managing clinical director there and I had treated a rude and troublesome denture patient for about six months before this incident. One day she crossed over the boundary of disrespectful behavior toward me. And as a dentist with forty-plus years of experience in dealing with the public I had bitten my tongue on many occasions during this six-month treatment. On this day, however, she crossed the line and I had reached my limit of endurance. I explained to her that we treat the public but we are not public servants that you can trample on. Her disrespect was rewarded with a dose of her own come-uppance and in retrospect, both of us could probably have chosen our words more carefully, but we humans do have some frailties. In short I told her that she was a P.I.A. [clears throat], since the day she walked into our facility. Naturally she took offense to that, as I would have too. She wrote a letter of complaint to the State Board, accusing me of unprofessional conduct. I told the board in the letter that the patient was disrespectful and troublesome in our office. I figured the board would slap me on the wrist, give me a verbal reprimand and that would be the end of it. I felt no need to be represented by an attorney at my innocuous-sounding informal conference, but boy was I wrong. The board requested a copy of the patient record, and I complied, in spite of the fact that her complaint did not involve anything clinical.

The patient was invited to sit in on the informal conference. During the conference I apologized to the patient, after my brief explanation of what transpired on that fateful day. I expected the patient would be dismissed following that discussion. But to my astonishment, my absolute astonishment and shock, the board proceeded with her there to dissect the copy of her dental chart. I was humiliated in her presence with insinuations and allegations that were either trivial or unsubstantiated. It was a surrealistic experience for me. I was drawn-and-quartered

by the board and I saw my forty-one-year dental career taking a big nosedive. The patient of course enjoyed every minute of the conference. It planted a bee in her bonnet to file a lawsuit. And just as I anticipated she didn't waste any time in filing a frivolous and unwarranted malpractice lawsuit, simply because of the insinuations that the board made at that meeting in her presence. There's a copy of a letter in your folder that I sent to the board - the one that you asked me about before. It expresses my disenchantment with the manner in which I was treated, especially so in front of the patient. What started out as a spat between doctor and patient turned into a catastrophe. Shortly thereafter I decided that this state was much too hostile in its dealings with even the most trivial complaints and I thought it best to simply retire since I anticipated an increase in my malpractice premium now that I was tagged by the state of Maine as being some kind of deviant dentist. Shortly thereafter my rate went up nearly tenfold as a result of the board's actions. So now, I'm a co-defendant with Aspen Dental in a pending malpractice lawsuit for a \$175,000 and I full well intend to have it dismissed since it's based entirely on invalid issues, maliciously raised by the members of the board at the informal conference. If the board wanted to discuss my notations, or lack thereof on the chart, if they felt the need to discuss my clinical judgment or my treatment planning, the patient should not have been made privy to that conversation, especially since her complaint was only about my unprofessional conduct.

My contention is quite simply that the lawsuit, my premature retirement, this meeting here today, was and is precipitated by a rogue State Board. The action taken by the board is now recorded on the National Practitioner Databank, which is designed to provide feedback to the public, state boards and malpractice carriers about stains if you will on one's license to practice across the United States, so thus the escalation in my malpractice rates. Predictably, the state of Pennsylvania, where I'm also licensed, wanted an explanation of what happened there in Maine. Since I desired to retire from practice, I voluntarily relinquished my license to practice in Pennsylvania, since I had no intentions of going back there anyway. But, I continued to maintain my license here in Maine for another two years, in spite of the fact that I will likely never return to practice, that is if things don't change.

My case, you'll discover today when you hear from some of my colleagues, is mild compared to the stories you'll hear from them. That's sad. The board probably feels that I was treated fairly since they called all the shots. I ask you though, if you had spent the better part of your life honing your dental skills and then had an experience like me, would you not feel embittered by this type of treatment? The action taken by them is tantamount to being pulled over by a police officer for a burned-out taillight and then being charged with murder by that same police officer. The board seems to forget that we're not a bunch of corner loungers who purchased our dental education in a crackerjack box somewhere - [stumbled over words] - thank you. We worked hard and long to get a dental education. It's very upsetting, to say the least, to be treated in this fashion. Especially by a group of your peers, in a state that has a dentist shortage. At the end of the day, here's my punishment: I was required to take a course, to attend a course in risk management and patient record-

keeping, because of minor omissions on the chart. Nothing to do with her treatment. I was also required to attend a virtually non-existent course in treatment planning. They just don't exist. Treatment planning is a vast subject and there's no books or course - or, no, there's one book, I found the book, but there's no CE course, Continuing Education Course on Treatment Planning. And that was recommended, mandated I mean, because the complaint officer, and others on the board felt that the treatment rendered was inappropriate. In fact, the patient requested the treatment, signed a document - that you have, that approved the treatment and then proceeded with the treatment ten days later, and this after having been treated by yet another dentist who was working with me at the same facility - he was never - she (she was a female) was never questioned, and she was never questioned by the board regarding the plaintiff's treatment. A copy of the signed "Consent to Treatment" form as I alluded to has been distributed to you. I was also to attend, required to attend, a course in handling difficult patients. I guess presumably because the board felt that I needed to build further on my forty-plus years of prior experience in this regard. The fact that I had endured her rudeness for six months didn't count for anything - in other words, I was pushed to the limit. I have a very long fuse. Lastly I was required to take a course in denture construction, because the complaint officer felt that I had used an impression material that he felt was outside of the Standard of Care.

I'm going to speak at length on the Standard of Care and what that means to physicians and dentists. Anyway, later I'll explain a little bit more about that slippery concept. Ultimately the board deleted this requirement, but only after I met with the AAG, the Assistant Attorney General, privately about a week or two later, and pointed out to him that one of their own board members routinely uses the same or similar materials as the materials I used to take that woman's impressions for the dentures. So in actuality it really doesn't matter what material is used for the impressions, but the complaint officer, in his innate wisdom, declared unequivocally that I violated the Standard of Care. Not a single other member of the board, there are dentists on the board, challenged that ridiculous concept. You also learn that this occurs frequently at board meetings. It's a kind of herd mentality that dominates there. I felt it. At this same private meeting with the AAG, it's worth noting that besides asking that the denture course be removed, that I also wanted to file a three-page letter of complaint about irregularities and violations that were occurring at Aspen Dental; you have the copy. The AAG asked me if I was prepared to fully cooperate with the prosecution of these claims that I had made. And I said to him "You have my cooperation 100%, you have my word on that." I don't take it lightly when I make complaints like that. Despite several inquires over nearly a year's time from that date, I have yet to hear from the board regarding my letter of complaint. The Executive Secretary told me nearly a year later, not too long ago, that she was completely unaware of any complaint filled by me. I asked her, "Well what were those three pages that I gave?" She said "Well, Dr. Benedetto, if you want to file a complaint, you have to use one of our forms." I said, "Well, the AAG didn't tell me that." That one surely he should have told me. Instead I just waited. Excuse me, I got lost here for a second.

I was also required to take a course in denture construction – oh, I read that, sorry about that.

I've also supplied you with a copy of a transcript from the board meeting, which followed my informal conference by about a month. In other words, the board meets every month, a month later they met and I - presumably so they could address my request/demand that that denture course be taken off. Okay, so it was at this meeting that the AAG was to bring to the attention of the board members that I wanted the denture construction course deleted because it would certainly prove embarrassing to the board, or at least one of its members, for me to disclose that one of their own board members uses the same or similar impression material as I did. So, I've highlighted the portion of the transcript that indicates what I just said. So I should also point out that that transcript that you have, my attorney had to force the AAG to provide me with this written transcript, since the audiotape that they provided me is of such poor quality. So they record their board meetings, as we're doing here, and I asked for a transcript of the February 6, 2009 meeting of the board. They sent it to me and it's like, you've got to be kidding, you can't understand this. So I was told by the secretary, "Well, we don't get many requests for that." I bet they don't, because everybody's afraid to challenge any decision that's made there. So anyway, I said "It's unacceptable, I'm sorry, I need a transcript, I need a written transcript." I requested that and as I was saying, it's worth noting that my attorney had to force the AAG to give me the written transcript.

ES: Just let me ask a quick question. Is your attorney here today with you?

JB: No, he had no plans on coming here today.

ES: Okay.

JB: Jeez, he's as scared as all the rest of us. I'm serious. I'm sorry. This is my swan song to dentistry. I'm not going any further with dentistry. I'm not going any further with this State Board. I need to tell you what's going on in this state. His explanation is if I came and bore witness to what you and your colleagues have to say I'd never win another case in front of the State Board again. That's crazy, but it's right. So, getting back to the Executive Secretary: I said "I want a written transcript, please." It took her a while to get it. Took a phone call from my attorney to get it. The AAG said to my attorney, "we don't owe Dr. Benedetto a transcript." And my attorney said, this is off the script here, okay - you see I get pretty agitated about this, don't I? I'm sorry. And he said to the Assistant Attorney General, "if I need to force you legally to give Dr. Benedetto a transcript, I will. He's entitled to it. Now, if you force me, I will take legal action to get it." I got it, you have it. So when you read the transcript, you also see a reference to a board member to my quote, it's highlighted there. "To my cooperating with us on a large investigation in quite a good manner." That's highlight number two. Now, I've got to tell you, I've never gotten any acknowledgement of my participation in any investigation. How could I

be participating in an investigation in "quite a good manner" if nobody ever told me about the investigation? That's just plain common sense. I brushed it aside. Basically it's a way of deleting the requirement - they use this as a way of deleting the requirement for the denture construction course while saving face for the complaint officer for his erroneous statement about my alleged violation of the Standard of Care for taking denture impressions. You've got to connect the dots there. They're looking out for one another, folks. It's called CYA, where I come from. I'm sorry. I've highlighted, yet another highlight, number one in the transcript, which is equally as deceptive since it totally misrepresents what I told the AAG at our meeting. Lastly, take note of highlight number four. I find that very puzzling. It's the complaint officer's comment there. He makes reference to stepping on an egg. And I think, connecting the dots again, that the implied message there is that they better cover their tracks relative to his rush to judgment about my violation of the Standard of Care, because it was not a violation of the Standard of Care. That's not what Standard of Care is all about. I'll tell you later what it is.

So, it's no wonder that there was reluctance on the part of the AAG to provide me with this transcript. He knew I was on to something. I watch Cops, too. Sorry, you've got to have a little humor here because this is a really serious subject. Anyway, back to my punishment at the informal conference. It was also intimated that I might have an anger management issue in my life. This was a killer. This action was provoked when the complaint officer saw my face and ears turn red as I was critiqued in the patient's presence. Under the circumstances, I thought I acted pretty civilly. It's not easy to sit there and watch your career careening out of control, especially in front of an already hostile complainant. Luckily one of the board members mercifully reeled the rest of the board members in a bit and stated that he did not feel that I required an anger management program. He stated that the board should not "necessarily jump to that conclusion". You'll learn from my colleagues later on in my testimony that this is a skill that this State Board has developed to a science: that is, jumping to unwarranted conclusions. It's one of their specialties here in Augusta. Truly. Ask yourself what dentist in his or her right mind would want to come to this state if they knew how ill-mannered and downright nasty this board is. In my mind that's the source of the shortage of dentists. Maine is the laughing stock of dentistry. Anyway, if you're getting the vision that this experience was like the Salem Witch Trials or the Jim Crowe law at work, you have a pretty accurate picture of how I felt. Unfair and excessive punishment was the plot du jour that day. So, I'm here today with other courageous and like-minded dental colleagues who feel drawn to tell you their horror stories. In most cases they were treated worse than me. You'll be shocked by the level of prosecutorial misconduct that we feel this board is guilty of. The potent combination of malevolent posturing and misconduct has ruined or seriously damaged the professional lives of too many dentists here in Maine. As I told you earlier, my professional life is all but done and any changes to the regulations will have no impact on me, so I'm trying to make it better for these folks. I have no ulterior motives, it's strictly altruism, okay. Nobody should have to go through this kind of torment. I have to tell you that I'm married to a wonderful woman, and this plague has been over our house for about a year and a

half, and I tell you I have felt like I have a good case of Post Traumatic Stress Syndrome. I lay in bed at night and I replay that informal, that innocuous sounding informal conference, it was a nightmare. I break into sweats and I think to myself, that was so unjust the way I was treated. And it affects how you feel about life in general. And my wife and I, we have a wonderful relationship, she's the blond over there, but I found myself kind of reeling out of control after a while. And it's like, whoa, Joe, you got to put the brakes on. She's the good guy here. They're the bad guys. When I realized that, I kind of put this in a little bit better perspective, but I still suffer from it. After today, it's over for me. I'm going to leave it to you folks to do good by these people, okay? So, my personal opinion, based on my discussions with respected members of the dental community is that many more dentists would be here today to testify were it not for the simple fact that they fear retribution by the board. I can't tell you how many arms I tried twisting. How many creative scenarios I came - I'll give them masks, I told them "I'll buy you masks so you won't be identified, you know, in case the media comes. You don't want to be..." they wouldn't do it. I get it, I get it. So - many of these people fear that these board members are the top dogs and the licensees are just fire hydrants. That's the way I felt that day. I give credit to those here today who speak on behalf of dentists who are very fearful to speak out. And I want to thank you all for coming. These are brave souls. Me, I don't care, I'm finished. I half expected to get a bullet coming through my head coming across the hairline. They don't want to hear this. That's okay, I've lived a great life. Just make it quick.

Just two days ago I received an email from a board member, who I had a cordial relationship with, and he claims that "the current board members comprise the best, most conscious board we have ever had in the state of Maine." Yikes. If this is the best board we have, what would the worst one look like. At the last meeting of the State Board, I approached a member of the board and asked him why he misrepresented my legitimate motive for requesting the deletion of the course in denture construction. He asked me abruptly, "What's your point?" I tried explaining that I thought he was covering up the wrongful declaration made by the complaint officer made at my informal conference. You recall that he alleged that I had violated the Standard of Care again. He abruptly walked away from me after saying "This conversation is over." He was acting like a general in the military. I'm not going to talk about this with you. Worse, he approached my attorney and told my attorney that I would be arrested by police if I ever approached him again. Folks, what's going on in this state? Are they so full and pregnant with power that they feel they can do, say, anything, and do anything?

ES: And what was the date of that particular -

JB: It was last Friday.

ES: Just this immediate past Friday?

JB: Yeah. And I'll tell you why I went to that State Board: because there was another dentist there who was having an informal conference who was accused of the same thing as me - unprofessional conduct. And I wanted to see what limbs of the tree they hung him from. Well, he wasn't hung. It was just kind of a little technicality that saved him, and he brought a lawyer. Gee, I wish I had. Anyway. So anyway, I mentioned about the concept within the profession of the Standard of Care. Here's a concise definition. "It's the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would exercise. If the person's actions do not meet the Standard of Care then his or her acts fail to meet the duty of care which all people supposedly have toward one another. Failure to meet the standard is negligence and any damages resulting there from may be claimed in a lawsuit by the injured party. The problem is that the standard is often a subjective issue upon which reasonable - *reasonable*-- people can differ." So note in that definition that the word "reasonable" appeared twice. It is precisely that quality that is frequently, not occasionally, frequently missing in the profession's dealings with the current State Board. No level of reasonableness. It's gang warfare. A violation of the Standard of Care is akin to the charge of disorderly conduct used by police to arrest a person just to get them off the street while they're making up their mind what else they're going to charge them with. So it's kind of a catch-all. By the way I'm interested in becoming a police officer now. Believe it or not go from dentistry to a police officer? Crazy. This phrase, the Standard of Care, is often bandied about by board members. It's a catch-all, it's a net. It's a wide-sweeping net. You will hear that theme on numerous occasions today from my other colleagues. Like I said, it's a catch-all phrase and it's a subjective posturing by a board member. In my case, for instance, the complaint officer declared that I violated the Standard of Care. Not even the AAG objected or asked for verification of that and the charge obviously stuck. Boy did it stick. That's not Due Process, sorry. That's vigilantism. On a very personal level - and this I really hope you listen to carefully - on a very personal level, I have a really sick feeling about all of this in my soul. Something tragic is going to occur in this state if something doesn't change. These regulations have to be changed, cause they're messing with people's lives, their livelihoods, their pride, their families, their standing in the community. Dentists are kind of independent, we're not [??] you know, we're kind of independent thinking people and we enjoy the respect of the community. And when you're, especially at the end of your career that's been a nice career and then it ends on this. Oh, what happened, Dr. Benedetto? Oh, it's not even worth going into, okay. Anyway, the stress is on dentists with these types of - with this type of conduct on a State Board level is really high. When the spirit of regulations governing the profession is that widely distorted. When trivial issues are addressed by a board with unnecessary rancor, combine these issues with a weak economy - we know we've got that. And the spirit of discontent that's now rampant in this country, take this all together and you have the potential for a disaster. There was one a couple of weeks ago. A physician was a - this is a sham peer review by the way is what we're talking about - a physician was murdered because he was in front of a sham peer review and he was pretty ticked off, he shot the guy, killed him. I hope it never happens here in Maine, but it will, it will, someday. Many of the complaints before the board are either frivolous or too minor

to even warrant any action and they have had no negative impact on the patient, even disgruntled employees of the dentist can use the complaint process to sinister ends. One of my colleagues will tell you about that. Really, let's ask ourselves, what useful purpose is served by the vilification of a dentist in the presence of a patient? What virtue is there in that? So what if the dentist forgot to document something of an inconsequential nature. So what if I forgot to put that I used 1.5cc Carbocain 1 to 100? The patient walked out alive. I'm not saying keep sloppy records. One of the points I was trying to make during this fiasco was, wait a minute, wait a minute, you don't know what it's like working at Aspen. They're the General Motors of dentistry, if you know anything about it. I was seeing up to fifty patients a day. It's like jeez, I barely had time to go to the bathroom. As a matter of fact I didn't even have a private office. I complained about that. In order for me to make a private phone call I had to go into the bathroom. Don't get me started on Aspen, that's another subject altogether. Okay, so, as I said, so what if you forgot something of an inconsequential nature. So what that I didn't write down that I took the impression in Alginate, you know? Nobody's perfect, especially when you're working at a very heavily scheduled office. But when a board, when a dental board violates common decency and common sense, who ultimately pays the price for this ridiculous behavior? The answer's obvious, you lose dentists. So long. I'm not practicing anymore, I don't need it. And the public suffers. Do we need to take a break? Because this is heady stuff, isn't it? I mean I have more to - I don't want you to be bored, because I'm not just going to sit here and bellyache.

ES: I'd like to have some questions from the board, if anyone needs to be excused for a minute or two for the bathroom or something we can certainly accommodate that.

JB: Like I said, I'm not just here to complain. I have a list of recommendations. I'm not a lawyer, I don't know if they're legal.

ES: We certainly want to have those from you as well, but I'd also like to ask Ed Philips to ask a couple of questions or whatever he wants to do and then we'll come back and we would like to receive your recommendations for the record and possibly have time for you to go through them verbally with us.

JB: Sure, okay, great.

ES: Ed, be sure to turn on your microphone down there.

Ed Philips: 'Morning, Doctor.

JB: Morning.

EP: I find you a spirited soul, I like that.

JB: Well let me tell you- may I say something about that?

EP: Certainly.

JB: Okay. Most dentists when they're judged by this board, they put their tail between their legs and they say, "Jeez, what an experience that was" and they pay their fine or whatever, and they just chalk it up to experience and walk away. That's not my style, that's just not my style. Like I said, I'm here because I feel that I'm in a very good position to help the profession because, I frankly don't care what they think about me anymore.

EP: Thank you.

JB: And I'm not practicing, so, I promise not to kill anybody - a patient I mean.

EP: You gave us a lot of interesting reading, I wished I'd had it earlier. The young lady from the Dental Board also gave us a lot of interesting reading, again I'd wished I'd had it earlier. One of the things at the stakeholders' meetings was that the comments that everything is presented in writing and it's hard to digest it all and I certainly will agree with that, if Commissioner Head is here that there has to be a different way. There's so much reading and trying to digest it. However, there are some things in what the young lady from the Dental Board sent me that do concern me. There seem to be some people, board members in those hearings, that did not participate in voting, which usually, I'm a member of several boards, which usually means you have a conflict of interest. If you have a conflict of interest, you're not supposed to take part in the discussions or sit as a member of the board. And I'm curious, did those people have a conflict of interest, did they sit in the discussions and did they take part as a member of the board but refrain from voting?

JB: So far as I recall the denturist member of the board recused himself and up until a couple of days ago I was under the impression that he recused himself because of the fact that I had worked for him at New England Denture Center.

EP: Which could create a conflict of interest.

JB: Could.

EP: Okay.

JB: As I recall, he wasn't even there. You know, he left the room, but I don't recall. But he had no vote.

EP: As I went down through the information it also appeared that you and the board had reached a Consent Agreement of sorts and I was kind of curious, did you sign a Consent Agreement?

JB: I didn't sign it until after the denture course was deleted.

EP: So the copy I got after the denture course was deleted did not have your signature on it.

JB: No I did sign it. I mean here's the - can I say this? Because this is also important.

EP: Sure.

JB: There's only two ways of being tried, if you will, you go to an informal consent, informal conference and they list what it is that you've done wrong that you agree to and then you take your punishment or if you don't agree with - if you won't sign the Consent Agreement then you go to an adjudicatory hearing. But you're going to be tried again by the same characters that crucified you in the previous meeting. So that's why I signed the Consent Agreement, it's like jeez, I don't stand a snowball's chance in hell. Look how violent they were, how vile. Full of vitriol they were at the informal conference. How can I possibly expect them to treat me nicer, so I just said yeah, okay, sign it.

EP: Is it - you did appear in front of BRED Committee to support the bill that I asked to be introduced, 1608 is it Eliot? Which would take that adjudicatory hearing away from the boards and make the board prosecute that in front of a neutral party. Is it your feeling, one of your recommendations that we do stuff in a different manner when you get to the adjudicatory portion?

JB: Different with a capital D. Yes.

EP: With a more -

JB: Yes.

EP: In a more constitutional manner than in my mind presently exists.

JB: Yes, in plain English, it's rigged, now.

EP: Well, I sit on boards, and I sat on boards that have fired people and such and I know that the mind is made up ahead if we ordered the administrators to generate the case, so I know stuff like that happens.

JB: And the real irony, and I spoke to my lawyer about this last night, and I hope I'm not getting him in trouble by saying - you know, giving his legal opinion on this, but he says here in Maine the way it is, is the AAG sits in on the informal conference and then it's the same AAG that sits in on the adjudicatory hearing so he has all the knowledge of what went before and it's like, no, another lawyer should be there at the adjudicatory hearing.

EP: That was brought up at the stakeholders' meeting also.

JB: I mean that's crazy.

EP: So I think perhaps Commissioner Head is well aware of that as we're trying to develop better procedures for things like this.

JB: And when asked why that is the custom here, the response was, well, that's the way it's always been. Like oh, okay.

EP: Anybody else have questions? Oops, let me shut it off.

ES: I think if we might go back and have you run, since we don't have an unlimited amount of time, why don't you run through the recommendations that you brought, and we'll get those into the record and if there are other questions from our members we'll use the rest of our time on that.

JB: Sure. Okay. First create a new board structure, especially regarding the complaint division and create a complaint committee comprised of an odd number of persons. That committee would meet with complainants in a separate meeting, apart from a board meeting, to interview the complainant under oath. That's another issue here, people can complain with impunity, and in my case and in many cases the complainant is given more credence than the dentist. It's like, whoa! Wait a minute. Just because they say it doesn't make it true. So I think what needs to be is you have to have a separate complaint board, not a biased, if you will, complaint officer who might even have a personal relationship with that person. Frankly I had that feeling, that this complainant knew somebody on the board. I can't understand why else they'd been so vicious with me. I mean - they dated or something, I don't know, I don't mean to be flip about it but really, they really had it in for me, phew. So this meeting would be transcribed and available for publication and dispersal for all members of the board, the defendant and the defendant's attorney, should the case go to an informal conference or an adjudicatory hearing. Just as in depositions the complainant should be made to understand that their statements, no, their notarized statements, for instance, will be a matter of record. That any false or misleading statements or accusations if found to be untrue and or unsubstantiated, render that complainant potentially liable in a civil or criminal court of law. They just can't be let off the hook just because they impugn some dentist's integrity and then just walk away while the dentist's career now lies in question. Again, the majority of the members of the complaint committee must be in agreement that the complainant's case has some substance and that there is probable cause for further investigation.

Because currently, too much time is taken up by these trivial complaints that come up. Record in writing, and clear audio, any and all discussions of the board while in any type of session. For instance, the informal conference, nothing's recorded. So whatever I say here today they can say, well no, that's not the way it happened. But

if it was recorded I could play it for you. You understand why I'm saying what I'm saying. The venom was flowing that day, but it's their word against my word - who are you going to believe? Follow Due Process, in all proceedings, regardless of who files the charges or complaints. Prohibit the AAG and board members from acting in a manner that violates the licensee's constitutional right to Due Process. In my opinion as I said earlier, the patient's complaints are given more credence by the current board. Just because they say it's true, don't make it true. If a licensee has a complaint filed against him or her - and this is important, this is what happened to me - if the licensee has a complaint against him or her for a non-clinically related issue prohibit the board from using the patient's clinical record to pursue unrelated charges, like poor documentation, didn't dot your i's, didn't cross your t's. She complained about unprofessional conduct, okay, I was guilty, I'm sorry, goodbye -it went to an extreme, an extreme. Mandate that the board minutes be made public within the date of the hearing. They're months behind in posting the minutes, and they only post two years of minutes, they should post a minimum of five historical years of minutes. Provide licensees with another alternate source of recourse in the event they feel they've been misjudged or mistreated by the board. In other words, final action of the board, except in most egregious cases, should be withheld until that matter is resolved. I mean they come in like the Gestapo police. Under no circumstances, except the bonafide emergency, you've got the murdering dentist, a drunk dentist, a druggie dentist, who's killing patients - yeah, pull them off the street, that's the way that should be. But others, give them a break. Let them explain their case. Allow licensees the right to report improper conduct during the investigation of that professional activity; one of my colleagues here will go into that further. Refer the matter in other words to an independent higher authority but not the AG's office. Choose board members a bit differently than they are currently chosen, and make tenures shorter. They're in there too long. When a member of the board recuses himself or herself from a matter before the board, the record should show the precise reason they have recused themselves. Mr. Philips you mentioned that, okay, and I think that's right. Why are you recusing yourself? Mandate that the board provide a copy of the report that they intend to send to the National Practitioners Database, in other words, so when all the dust settles, the dentist signs the agreement and so on and so forth, then a report is generated by the State Board that goes to the National Practitioners Database and it has on there an explanation of what went on in brief, and it may not be accurate, so it should be mandated that the board, before submission to the National Practitioners Database, that they provide a copy of that for the licensee's review. I mean you can't do anything - my lawyer told me you can't do anything during the thirty days following the signing of the consent form, I believe. Anyway, there's a thirty-day window of opportunity during which the licensee should at least be told this is what the report to the National Practitioners Database is going to read like. And this way he or she can at least prepare for the possibility to challenge that and say, "whoa, wait a minute, that's not what the story is about. Don't put that on the National Practitioner Database." In actuality that's something that the National Practitioner Database website recommends that state boards do. They recommend. And - this is a controversial one, and that is - I'll just read this verbatim, at least one state that I

know of, California, has framed its statute as to allow aggrieved physicians or dentists the opportunity to prove that the peer review to which they were subject was in fact carried out for improper purposes, that is for purposes unrelated to assuring quality care for patients or patient safety. These statutes allow that a peer review can be found in court to be improper due to bad faith or malaise. In which case the peer reviewers' immunities from civil liability fall by the wayside. I looked into that. I felt so egregiously violated that I wanted to file legal action against individuals on the board, as well as the board in general. It's like, wait a minute, I'm not going to take that. But you can't, they're immune, that's not right.

EP: Are they immune or are they indemnified by the state?

JB: I'm not sure what the legal word is for that.

EP: We'll have some witnesses later in the day that we might want to discuss this

-

JB: I'd be interested in knowing, you know, why, how they're protected. But I thought to myself, no, you've got enough problems, let's just leave that one alone, you know. Provide licensees with complete transparency and familiarity with the current system that the board uses to address complaints. Specifically, don't present a frightened dentist with a document, you know, five minutes before he goes into the hearing, the informal conference, here read this and sign it. No. That should be mailed to you, before you get there, so that you can have your lawyer review it. It's like, should I sign it? So, no surprises, in any case. So, that's it. I'm going to - I'd like to read one more thing and then you can do what you'd like. I'm a big movie buff and there's one movie that I really, really - it's really one of the top of the - one of the movies that's at the top of my list and it's called Bonfire of the Vanities. Anybody ever seen it? It's a morality play. So, I'm going to read a couple of lines from it that really mean something to me. The setting is a court of law where a black judge made an unpopular decision allowing a falsely accused man to walk free. The audience in the courtroom screamed for the judge's hide, chanting repeatedly that the judge was a racist. The judge turned on his heels and directly faced the angry, crowded courtroom and said in a quite subdued manner, "You dare call me a racist? I say unto you, what does it matter the color of a man's skin if witnesses perjure themselves? If a prosecutor enlists the perjurers? When a District Attorney throws a man to the mob for political gain? And men of God take the prime cuts? Is that justice? I'll tell you what justice is," he said, "Justice is the law. And the law is man's feeble attempt to set down the principles of decency. Decency. And decency is not a deal, it isn't an angle, or a contract or a hustle, decency is simply what your grandmother taught you, it's in your bones. Now go home" he said. "Go home and be decent people. That's all we want."

ES: Are there other members of our board - Linda Snyder?

Linda Snyder: Dr. Benedetto, thank you for your testimony. I am struck by one area, which is that you were ostensibly being disciplined for being rude to a patient, but your charts or files were essentially shredded, not physically. I don't know of any other organization or board that does that. I know that in social services, Medicaid agencies, that if an employee is disciplined then that employee is disciplined without going into every chart and looking at how they've done things. As a realtor, a state licensed realtor, if I were rude to one of my clients and they complained I would doubt that the state real estate board would go into my charts to make sure that I had looked at, you know, written everything down properly and filled things in the right time frames or whatever, and certainly in courts of law, my understanding is that you can't be - they can't dredge up old things that aren't relevant to the current case. So I'm really kind of struck by that and it seems to me that there should be some form of training to prevent that from happening in the future. However, I'm also concerned with what sounded like you minimizing not writing things down that belong in the charts. If you had said, well, so what I didn't write it down, I was really busy - and that's the way it came across. And it would be very easy for somebody to say, he doesn't really care. He came across that way to me. If you had said "Yeah, I didn't write the amount, the milliliters" (or whatever) "down in the client's chart, and I wish I could have but we were so pressured" - that's a different take on it and it shows some personal responsibility instead of -

JB: Well I did say that, I did say that. I was just throwing that out as a broad general statement that if the patient walked out alive, you know, what relevance does it have? Do you know what I'm saying? You can nitpick any dental record. You can nitpick any dental record and you'll find errors on there, and so all I was trying to communicate was so what, something is missing. If it's not relevant to the situation at hand, why dig it up.

LS: As I said, I have a concern about going into a chart and nitpicking a chart when the issue is behavioral, but I also have a concern about not - it's a different issue, so.

JB: When you're seeing fifty patients a day that you have no control over, trying to write detailed reports - I complained - I was the squeaky wheel.

LS: Thank you.

JB: I guess you figured that out, I'm really the squeaky wheel here on the planet Earth when it comes to the world of dentistry and when I worked at Aspen, I was complaining all the time. It's like, you know, I can't provide these patients with quality care.

LS: I'm fine. Thank you. I'm done. You're not understanding me.

ES: Beth Shissler, another of our board members came in after we started, so I'd like to introduce her and let her ask a question if she wants to.

Beth Shissler: Good morning Dr. Benedetto.

JB: Good morning.

BS: I want to apologize for coming in after you began. I meant no disrespect or to minimize the importance of your issues, so thank you for coming in. You clearly have a lot of supporters here today, which says a lot about you and the seriousness of the issue. I wanted to make sure that I didn't misunderstand your last recommendation, because I think it's important. You're last recommendation was that the issue should be sent to you in correspondence in advance of your coming in to your informal hearing. Am I to understand that that did not happen? That you had no written -

JB: No, no, something was sent to me, but what I'm saying is here I was sitting out in the hallway, the AAG comes out with a document that I had never seen before and he says, "Here, before you go in you'll have to read this and sign it." And if you read it, it's in the folder there, it's like it says you can consult with an attorney. Now, if you refuse to sign that, well, they're going to have the informal conference anyway, but as I understand it you just sit there and listen.

BS: But the first time that you were aware of the context of that document, in pieces or entirety were right there when you walked in.

JB: Right there. Umhm.

BS: Thank you.

ES: Emerson.

Marie Emerson: Thanks, Doctor, for coming in today. I agree with what was earlier said. Your charge was really based on inter-personal competencies, it had nothing to do with your technical skills and your technical competencies and I can't understand why the two are mixed up and how the board would come to - bring any of that forward. And I guess the other questions in my mind - first I want to thank you for coming from a city of six-million people to a state of one-million people. And I think sometimes we express ourselves differently in different areas. Coming from the city I think people think you're a little brash, but I understand and I love your humor and a lot of people don't always get that, so.

JB: No, you're right. You're absolutely right. It has gotten me in some trouble.

ME: I think about when you go through school and you get your dental license and you have to take your test and you become certified through the American Dental Association and their Code of Ethics and all the things, they must have a

board as well. You keep referring to the National Practice Database, I imagine that's under their - the American Dental Association's umbrella?

JB: No, I don't think so, I think that's the Federal Agency that basically keeps track of dentists, so if you're convicted of a crime or - I mean a lawyer could answer that question better than I can, but it's a way of tracking the license or activity for a given dentist. It's completely separate from the state government, it's a federal thing.

ME: And then the Association of Dentists has their own set of rules, and I guess you have to keep up with courses and - to keep your certification from them.

JB: Well that's a state regulated thing. So for instance in the State of Maine, the State of Pennsylvania, they all have their own requirements as to what you're expected to - what courses you're expected to attend in order to keep your license.

ME: And they're all different?

JB: Yes.

ME: There's not - I was thinking -

JB: There's no uniformity.

ME: I was thinking perhaps there was a uniform code at the top. Because I keep thinking about the Standard of Care, and Standard of Care is usually based on outcomes and are pretty - very objective. Very, very objective. And where we get into these grey areas, the subjective areas about the emotional part of the interpersonal competency and behaviors, totally different, and I guess what I was seeking was a standard - a general standard at a national level, because there is a national practice database, which we all know in today's communication can destroy a reputation very quickly with computers, so that concerned me. And this whole unrelated piece, these crossing each other, I don't understand how a board - so I guess my next question is why. Why do you think it happened? Why do you think it's happened to other people? Is it a good old boys club? What's going on here? That's really -

JB: That sounds familiar. Yeah, absolutely, it is.

ME: I want to know, I guess I really want to know what you think it is. Or is it professional jealousy, is it financial? What is it? What's it about?

JB: You know something, I was asked that question by a reporter, because I - I called him on the phone relative to a spot that he put on TV about putting a new dental school in the state of Maine and how it's going to help alleviate the shortage of dentists. Well, that really triggered something in me and I called WABI and I said

that I'd like to speak to the reporter and I said, "Listen, you don't know me, I don't know you, but I've been practicing for forty-something years and I'm a practicing dentist in Maine." I said, "That's not the problem. If you put a dental school in here, you're going to slap the tax payer, you're going to slap more of a burden on the tax payers, dental students are going to come in, they're going to get their education and then when they see what the board is like - it's like hey, signora, we're out of here. So you gotta be nuts to come to this state."

ME: It's unfortunate. It's unfortunate for the public.

JB: It is, it is. For instance, you know, I'm retired, there's only two other dentists in Calais now and one of them is ready to retire. When he goes, that's it. So trying to attract people here - at first I thought that it was just the weather or the remoteness or something or other that was keeping people away, and I'm sure that plays some factors, you know, has some relevance to it. But, honestly, if I had known then, what I know now, I would never have come to Maine to practice. As a matter of fact, when I first came I used to hear dentists complain - I heard of one dentist who was writing a book about his experience with the state board, and I thought, "I'm from Philadelphia," - I'm a skeptical person so I thought - "ah, he's just bellyaching" you know, I didn't pay any attention to it. I want to read his book.

ES: We're going to have to move on to our next witness.

JB: Yeah, yeah, sure.

ES: Doctor, we thank you very much for your statement. And stick around we - at the end of the next group we may have time to have a little group discussion there at the conclusion. So, I'll now introduce Dr. Denise Nadeau or Aldilaimi.

Denise Nadeau: Nadeau, I'm here. Before I speak, Dr. Krista Nordlander has a quick statement to make on her own behalf and for Dr. Chris Pagopoulous [SP] as well.

ES: Alright, well now I had her as appearing with you. Is she going to come up to the desk with you?

DN: No, she can come up before me.

ES: Dr. Nordlander. Alright. Well, Dr. Nordlander, why don't you come ahead then and say - would you say a little bit about your background. I know you are a dentist also and that you're living in Massachusetts currently.

Krista Nordlander: Correct.

ES: So we'll go on to her and you make your statement and whatever you want to say and then we'll go back to Dr. Nadeau.

KN: Okay. My name is Krista Nordlander. I'm a former Maine dentist. I was forced out of the state in 2003. And I have a statement which is from an email I wrote to Representative Smith back in January which I'd like to read. "Dear Ms. Smith: I want to join the group of Disciplined Dentists from Maine who are supporting your bill to restrict the powers of the Maine Board of Dental Examiners. I have just read Dr. Nadeau's email to you, which she forwarded to me, and I concur with her statements. I incurred the wrath of the Maine Board of Dental Examiners in early 2002. I had spent months in 2001 searching for a new location for my general dental practice as there were numerous issues with the old location in downtown Portland. I finally had found a facility that I had liked and was having it evaluated by MedDent for potential office layouts prior to signing a lease. Then I heard from a friend and colleague, Dr. Denise Theriault, that she was planning to enter into a partnership with Dr. Stephen Morse and move her practice to his office on Brighton Ave. She was very excited about this and told me they had been discussing partnership for quite sometime and knew they would work well together. She offered me her current office since she knew I was looking for a new location. After much deliberation I decided to take up her offer, but did not get a written agreement. I began to work on a very part time basis in her office on Canco [SP] Road in October of 2001. I no longer had my old office downtown and was just waiting for her to vacate, which she told me she planned to do about the end of the year. This was 2001. However, in early December I inquired how the plans to build out the space for her equipment on the new office on Brighton Ave were going and found out they weren't going anywhere. Her demeanor was also becoming very different and she seemed testy with me at times, even though I could only work in her office about one day a week, only when she wasn't scheduled to be there. Then in very early January of 2002 she dropped a bombshell on me, writing me a nasty letter ordering me to move out, claiming I hadn't paid rent. This was completely untrue and the rent she expected me to be paying was completely ridiculous considering how little I was there and that I had very restricted use of the office. It was more than I would be paying once she vacated and could use the entire office, but I paid her nonetheless even though I knew she was cheating me and by then the other office facility I'd been interested in was no longer available. I also was going to have to spend many, many more hours beginning my process of finding my new office location all over again; in the meantime, having no facility in which to see my patients. She, of course, was not going to be compensating me whatsoever for this. So I was very hurt and devastated by this turn of events as I was very excited about this new office location and ramping up my practice there once she left, but this all came crashing down because she had decided against the partnership and to this day I do not know why. I suspect because Dr. Gordon, whom Dr. Morse was working with, had decided not to retire and Dr. Theriault probably didn't like that. But my agreement was with Dr. Theriault, and I was naturally very upset with how she had sabotaged my business plans. I had had little income in 2001 due to my months of searching for my new location, but had been very much looking forward to having that behind me, only to be put in very dire circumstances by her refusal to keep our agreement. I also had no income whatsoever and was unable to see any of my patients because I had no

facility until I could find another. I began working part-time at the Center for Community Dental Health in late March, this was 2002, just to have a little income to live on. But I wasn't paid very much and most of that went for business expenses, not my living costs. So I was quite shocked when the Maine Board of Dental Examiners came after me claiming that I presumably had psychiatric problems because I was blaming others for my problems. There wasn't the slightest shred of compassion or understanding for the unfortunate circumstances I had been placed in. And I'm positive this was because Dr. Theriault had recently been appointed one of the seven board members and they wanted to cover up her actions. I have a lot of correspondence which shows their complete disregard for the truth or doing anything to properly investigate what had happened between Dr. Theriault and myself. They also claimed that I had abandoned a patient, when in fact I was unable to see any of my patients because I had no facility until I could find and equip one. Dr. Theriault had knowingly forced me into this position yet nothing was done to her at all. The board revoked my license as of July 1, 2002. This put an end to my part time work in CCDH and I had to stop looking for a new facility for my practice. I tried to get legal help, but there appear to be very few attorneys who deal in the area of professional licensure and I also had no ability to pay. I also wrote letters to Governor King, later to Governor Baldacci, to the Department of Professional Regulation, and others trying to get help for my plight. None of them seemed at all interested in doing anything to investigate the board. It was much later that I began hearing about other practitioners who had been similarly dealt with and although our particular cases have differences, the bottom line is that we are not receiving Due Process. As with Dr. Nadeau, I was obliged to get psychiatric evaluations done at my own expense, even though I had no income and was struggling to survive. I only had one hearing with the board, in April of 2003, this was one month after I'd been forced to sell my condo and get out of my state. I'd put most of my belongings in storage and went to my parents house on Cape Cod since I had no place else to go and no job. I probably shouldn't have even bothered with it since it was an exercise in futility. The board very obviously wanted to ignore anything I said in person or that was in any of my previous letters. The so-called findings of fact that I received from this hearing is riddled with lies and conveniently ignores anything that I said or that supported my statements. I agree with Dr. Nadeau and others about the abusive treatment of licensees by the Maine Board of Dental Examiners. It has more in common with a Soviet Show Trial than an objective democratic proceeding. I believe, as do others, that our basic constitutional rights have been trampled on. If they decided that a licensee needs to be gotten rid of, it's very easy for them to do it. And as Dr. Nadeau has mentioned, in other cases, even when there is proof of wrong-doing, other licensees go unpunished because they are board members, or were, or cronies of someone on the board. I also have a letter I wrote to the board back in 1996 regarding a hygienist who had worked for the dentist I bought my practice from. She had been performing examinations on patients, for which they were charged for many years. This was against the statutes, but the board merely sent the letter of concern and did not discipline her. Another area of concern is allowing patient or former employee complaints to be taken as fact without any evidence. This ignores the possibility that these complaints are made to in some way

get even with the dentist for some presumed slight. These complaints are able to be brought at no cost to the patient or employee but the practitioner is put in the difficult position of having to defend themselves and often incurring large expenses to do so. There is also an incentive for the board to rule against the licensee because then they force the licensee to pay all the costs for their so-called hearings. So this system is very much stacked against the licensee, unless they are buddies with board members who can get them off the hook. I only had one hearing in April 2003, for which I was charged almost \$2000. After that I decided that it wasn't even worth trying to get justice. I was also reported by the board to the National Practitioner Databank as a Disciplined Practitioner, which I disputed but it remains as a black mark on me. I have suffered enormously from the actions of the Maine Board of Dental Examiners, both financially and emotionally. I know that there are many others that feel the same way and we think it's about time that the state rein in the extensive powers of the Maine Board of Dental Examiners and make the system more transparent and fair. The fact is that we have made major sacrifices to get our educations. Beyond the high costs there are also many years of effort that are not compensated. I was thirty-one when I finished dental school with nothing but debt. I needed to start making a living, but instead I have been left with a destroyed business and years of little or no income and a damaged reputation. All for no legitimate reason. When I tell others my story they are aghast. As Dr. Nadeau mentioned, I also grew up being told that my country was just and that everyone was innocent until proven guilty. Well, that's not the reality. Without Due Process and with no checks and balances on the power of the licensing board, the licensees are very unlikely to have a fair and objective ruling. Those that bring false charges against licensees, meanwhile, suffer no penalty, nor do board members. As dentists, we are expected to give patients extensive information about their oral condition and various treatments available and all pros and cons. This is called "informed consent". It's time that petitioners are given such knowledge about the improper disciplinary actions of state licensing boards so that we can decide to practice elsewhere. It's also not in the best interest of the public which is losing good practitioners who are being crucified for trivial reasons or no reason at all. I have extensive documentation about my involvement with the Maine Board of Examiners and efforts to do something to make the licensing system fair. I don't know much about this bill but I agree that Maine will be better off if something is done to curb their powers."

ES: Thank you, Dr. Nordlander.

KN: I have another statement I can read if there's time, from Dr. Pagopoulous.

ES: Is it brief or is it something that -

KN: It's a little over five pages.

ES: Would you consider submitting it to the record for the hearing so we can move on to the next witness?

KN: Sure.

ES: Now, I would like to ask you one quick question. Is the - is this doctor that you named, Denise Theriault, is she the current president of the Maine Board of Dental Examiners?

KN: Yes, she is.

ES: And did she at any time rule on any of the disciplinary proceedings affecting you? Was she a member of the board when your case came up?

KN: Yes, she was.

ES: Did she recuse herself in anyway?

KN: I believe she did. But I still feel that there was a lot of bias because she was a member of the board.

ES: Alright, does anyone else on our board want to address a question to this witness while she's here? We have another person who's going to be coming up shortly. Yeah, Van, Van Perry.

VP: I just was wondering about - we heard a certain list of recommendations from Dr. Benedetto and I was just wondering if you could add to any of that as far as any of his recommendations that you would agree with, or you could -

KN: I totally agree, there needs to be a lot more transparency and there needs to be some Due Process for practitioners because we can't defend ourselves. We're put in a position where what we say is ignored by the board. And I have a lot of documentation that shows that. They're - they completely put nothing that I said into the findings of fact.

VP: Okay.

KN: And I think they need to be held accountable for doing that.

VP: So if we were to take his list of recommendations they would be - could you add to that list or do you pretty much feel that he covered the list of what he -

KN: I don't recall everything he said, but I agree. And I was also reported to the National Practitioner Databank and that's really unfair to do, because I'm now in Massachusetts, I had to go through a lengthy process to defend myself in Massachusetts, only because of what the Maine Board did to me. And I had to go through extensive psychiatric evaluations, costing me thousands of dollars for no legitimate reason. It's a shame what they're doing to people.

VP: Okay, thank you.

ES: Do you have extra copies of the additional materials that you mentioned that are evidentiary in terms of your own case, as well as the statement that we're not having you read at this point, that you could leave with us, or could submit to us?

KN: I have a few things, I don't have copies of everything because I wasn't an invited speaker, so I didn't really know that I'd have that -

ES: Well, what I'd like you to do at some point is like you to talk to our staff director, Mr. Tom Merrill, and make arrangements for you to send some materials in to him for our use in reviewing the whole case.

KN: Okay.

ES: Thank you very much for your statement. Our next presenter is Dr. Denise Nadeau. Graduated from the University of Maine Dental Assisting Program, 1986. She worked as a dental assistant for five years and as an instructor at the University of Maine Dental Health Program, as a dental health assisting instructor before deciding to move to Maryland and work toward her goal of attending dental school. In 1993, she was accepted by the University of Maryland, Baltimore college of Dental Surgery and began her first year there at the age of thirty-three as a "non-traditional student". She graduated four years later at the age of thirty-seven. She has worked as a general dentist in private practice in Maryland and at a non-profit in Waterville, Maine. She opened a private practice in Waterville in early 2006. Dr. Nadeau also was a volunteer at the University of Maine Dental Health Programs in the Dental Hygiene Clinic and on the board of the Advisory Committee for the same dental health programs where she volunteered and had graduated from in 1986. So, Dr. Nadeau we're glad to have you and we'll turn the floor over to you.

DN: Thank you. I'd like to start off by saying that this is my first time speaking in public, I'm very nervous, I'm not a public speaker and I'm not poetic person. I've given you two handouts here. The first one is the list of - I'll call it exhibits because with my experience now with the dental board, I've had a total of eight days of adjudicatory hearings and two appeals. So what I'm providing to you is - some of it is copies from the transcripts, some of it is documents that I provided to the board, which they never looked at. They sat in a box in the corner and others are - Karen Packard who is the investigator for the board, those are her handwritten notes, and my attorney subpoenaed them during the hearings and so I had them with me. And I'm just going to read what I wrote so that I'm not nervous. I grew up in Maine in a male-dominated, chauvinistic environment. I was often told by my abusive father how stupid I was and that I would never be anything. I lacked self-confidence and I was easily intimidated and often bullied as a child and adolescent. After attending the dental assisting program at the University of Maine, graduating at the top of my class and achieving almost perfect score on the dental assistant National Board

Exam I realized that I was not stupid. I worked for five years as a dental assistant with a wonderful dentist who allowed me and encouraged me to grow. That experience helped me to gain self-confidence. I decided that I would go to dental school. It was a big decision for me. I didn't have anyone in my family, any other family members or friends who were in the dental profession, but while working as a dental assistant I realized that I loved dentistry and I wanted to be able to learn to do more. I moved to Maryland to finish my pre-requisites and went to undergraduate college there. I became a resident of the state before applying to dental school. I also worked as a surgical dental assistant. I visited the dental school often, spoke with the Dean of Admissions who instructed me on exactly what to do to be accepted. I maintained contact with that dean and his staff and I did exactly what they had advised me to do. During my dental school applicant interview I was asked if it would bother me that I was much older than the other students. My answer to that was that it never occurred to me to think about my age. I was pursuing my dreams. I graduated from dental school when I was 37 years old. That was in 1997. I was also asked what I would do if I were not accepted into the program that year, because there were 1500 applicants for 100 slots. They knew that Maryland was the only dental school that I applied to. I told them that if I was not accepted that year I would enroll for another semester of classes and I would try again the following year. And I was accepted on the first try. During my first year in dental school I broke my ankle and I was in a cast for two months. I was living in an apartment with my five-year-old son about thirty miles from the dental school. I worked part-time and attended school full-time. When I broke my ankle I couldn't drive and I had to take the train into the inner city and walk several blocks on crutches to the dental school. And it sounds like the story of walking in the snow in Maine - it was impossible for me to continue to work with a cast on my leg, so I had to quit working at that time. As a result I lost the income that I had used to pay for my living expenses, no one supported me during college and dental school, I lived off of student loans and my modest income from working as a dental assistant. When I could no longer pay for my apartment, my car, my food for myself and my son, I moved into an apartment in the inner city with four other students in Baltimore. I gave up my car and my son went to live with his father outside of the city. Eventually I worked again, part-time as a surgical dental assistant with an oral surgery head and neck cancer clinic affiliated with the university. During my final year in dental school I contracted spinal meningitis and missed several weeks of the clinic while recovering. I had jaw surgery in 2001 and it resulted in a non-union, the bone didn't heal correctly, so I have chronic sinus disease from that and I have something called tri-dental neuralgia, which is damage to the nerve and occasional [??]. I was told that the meningitis was a result of the sinus disease. My point in providing these details is to show that I've had difficult times in the past and I've excelled against odds. I didn't let my broken ankle, my illness, my lack of finances, or my insecurities prevent me from obtaining what I had set out to accomplish and that was to become a dentist. Now I'm in a different situation. I've had setbacks to my career, which I've worked to sacrifice to obtain. I didn't quit before and I'm certainly not quitting now. I've been subjected to and witnessed injustices and violations of my civil and human rights. This was caused in part by the Maine Board of Dental

Examiners. I would not say that every member has abused the privilege that's been given to them. There were some that I felt were fair, but they were overruled. Many of them, though, have abused the power that's been given to them. Beginning with the AAG, his investigator Karen Packard and complaint officer, Dr. Denise Theriault. They worked together during the investigative phase. It continued when my license was suspended without ever asking me if allegations were true. I was accused of using too much anesthesia and of trying to extract the wrong tooth. This was reported to Karen Packard by disgruntled staff. It was later determined that I did not use too much anesthesia and the patient testified that I had poked the wrong tooth because we were talking about extracting two teeth, but that I did not try to extract it. She said I poked it the same as when I was testing the other one to see if it was numb. This has continued now over the past almost three and a half years. My license was suspended on March 16, 2007. I've had six adjudicatory hearings, I have told you more days than that but the first set of hearings was three-days long, and two appeals. Normally if there's a complaint against a dentist there would be an informal conference scheduled. I was never offered an informal conference. I was forced automatically into having adjudicatory hearings which resulted in several hearings and probably over sixty-five hours of hearing time total. The first adjudicatory hearing was on May 18th. I was instructed to be there at 8:00. The hearing began at 9. It continued until 1:30 the next morning, that's sixteen hours. At times I witnessed some of the board members sleeping, head tilted back and mouth wide open. Dr. Cohen got up at one point to wake up another board member who was sound asleep. I think that it's inhumane to hold a single hearing that lasts sixteen hours into early the next morning. Who can think or remember anything after sitting for sixteen hours, or while sleeping? Who is able to adequately function, especially to perform a duty such as sitting in judgment of another, when that person's career or life is at stake? The first sixteen-hour day was filled with only a portion of Assistant Attorney General Dennis Smith's witnesses. The hearing continued two more full days. I had witnesses who came to testify in my defense who were sent away without ever being able to testify. The investigator Karen Packard, and the complaint officer, Denise Theriault, sat with Assistant Attorney General Dennis Smith. As Dr. Hagan so accurately described, they worked in concert to conduct the hearing in what I would describe as a three-ring circus. Karen Packard jumped up and left the room several times when their witnesses testified. I find this to be very distracting and unnerving. One time I whispered something to my attorney, I was shocked about something that I had heard, and the Assistant Attorney General, Dennis Smith told the hearing officer, Jim Smith, to tell my attorney to tell me to be quiet. The witness sat sequestered also during that sixteen hours. The hearing was continued on June 22 and June 23. Dr. Cohen commented that he hoped that the hearing would not go as long as it had the first day, that was way too long as far as he was concerned. I would estimate the total number, in just the first three days, to be fifty hours of hearing time. Most of the state's witnesses had conflicting stories; some had been caught outright lying, including the patient and his wife who filed the original complaint against me. Although some had committed perjury, their testimonies were still used to make their case against me. It was surreal and it was a nightmare. The three days of hearings included catered

meals for the board. It was set up like a social function. During the hearing the board decided when they would take their breaks for lunch. I didn't feel like eating because I felt a sick pit in my stomach, and I'd been crying, but I did want something to drink. I went to the kitchen to get a diet soda and I asked if there was one there and I was told that there was one and it was being held for someone else. I later learned that I was the one being charged for those catered meals, the costs are carried over to the licensee who's being lynched. I'd like to go back and explain how I found myself in this situation. I moved to Maine in 2003, my husband was looking for a medical residency program and I convinced him, unwillingly, to come to my home state. I knew of the shortage of dentists and I had a strong desire to help. I worked at CDC, a non-profit clinic in Waterville for two and a half years. Her clinic was not owned by anyone and was run by an absent board of directors. The two people who were really in charge were the office manager and the hygienist who had both been there since around the time that the clinic first opened. When I first started there I was told that they were not able to pay the staff's salary because they didn't have much money in the bank. By the time I left they had at least two savings accounts for over \$100,000 in there. I included - and I'm not sure if it's confidential or not, so it's for you there, but that's the Community Dental Center and it was handed out at a meeting, but that's some of their bank statements there on the first three pages. I was disenchanted in CDC though. There were problems with gossip and back-biting that made the environment a very negative one. The office manager also had no managerial skills, she had been a dental assistant in the past, she often left in the middle of the day when she had problems with her son skipping school or other behavioral problems, or if she was upset she didn't come in at all. She also joined in the staff in gossiping, calling other dental offices to share the latest gossip, playing on the computers and going on mid-day shopping excursions while on the clock. I have problems with that and I complained. I complained to a few of the members of their board. There's a portion in there of the distinct order, page looks like - it says finding of facts at the top - this is the first distinct order I was given by the Maine Dental Board. It says, "Dr. Nadeau shared CDC practice with part-time dentist who has subsequently left the practice. She was assisted in the practice by at least three individuals who were either dental assistants or hygienists. These individuals apparently engaged in inappropriate gossip which involved Dr. Nadeau. Dr. Nadeau expressed her concerns to the Executive Director to the CDC who terminated the employment of two employees and reprimanded the third. Since Dr. Nadeau left the CDC practice in October 2005 no other dental personnel have been terminated." Now there was some other problems in that office, it wasn't only because I complained, but Dr. Hagan was one to point out that I must have had some sort of a problem and held my authority over the staff in that office and I was the cause for them to be fired. I never knew that you couldn't complain about problems in an office in order to make it better, to improve the conditions, but that's what they're implying here. The staff was one problem, another that I was aware of was that there were a number of patients, or people in pain, that were refused treatment because they were not patients of record. I often answered the telephone when I was working at CDC when there was no staff in the office. If the person calling was in pain, I explained that they could be seen that day, if they were willing to come in and

sit until I could work them into the schedule. The staff got upset with me and I was instructed to stop putting extra patients on the schedule. There were too many problems in that office, and I won't get into it all today, but I'll just say that I left on bad terms in February 2006. I opened my private practice Emergency Dental Services, a walk-in, first come, first serve type of model in Waterville in early 2006. Although I could have opened any type of practice I wanted to I chose that model because when I was working at Community Dental Center I noticed that there were a lot of people who were not having their pain problems taken care of. I was also frequently contacted by the local emergency room, at the hospital in Waterville, and I occasionally treated patients there. I went in after hours and saw some patients that couldn't wait and they had no other dentist to go to. I knew that because of the lack of access to dental care treatment to MaineCare patients that they were the ones that usually ended up in dental rooms - in emergency rooms with dental problems. They were routinely told that they had infections, even when there was not one present and given antibiotics and pain medication. The emergency room is not trained or equipped to deal with dental emergencies. I was also aware that medical residents at the Maine Dartmouth Family Practice Residency Program were learning to extract teeth and were regularly scheduling patients to go to the regular doctor's office to have teeth extracted, not a dental office. Student physicians in Maine are being trained to pull teeth. In my opinion that's like going to the dentist to have an appendectomy. I saw a patient in my office once who had an extraction done by a student physician. He came to me because he had severe postoperative pain and he couldn't get anyone else to see him. He also couldn't open his mouth. I took an X-ray and discovered that more than half of his upper jawbone was missing, from the back up to here, on one side. That was the result from having a single tooth extracted by a student, a physician doctor. The supporting bone to his sinus was also gone. I called an oral surgeon in Bangor to see if I could send the patient to him and I was told that he really couldn't do anything. That oral surgeon was a member of the dental board. He told me to send the patient to the VA hospital, which is what I instructed the patient to do. How was that injured man protected by the board that claims to protect the public? Where is the protection in allowing untrained physicians to extract teeth without proper training? I understand the intent in training physicians to extract teeth because of the lack-of-access problem, but to me it's like putting a band aid over a broken bone. I purchased my condo in mid-January 2006 and began renovating and installing equipment. It was a pretty expensive investment. Before my doors were officially opened I had patients showing up for treatment. I searched for qualified staff to work with me and I offered the dental assisting position to a few certified dental assistants who I knew. They decided to stay where they were. One of them was interested but then was offered more money by her employer and she decided to stay with him. I ended up hiring untrained staff, and that was probably the first and one of my biggest mistakes. I set aside time to train them and brought in textbooks from my dental assisting days and from dental assisting courses I had taught. I knew from my past as a dental assistant that many assistants were trained off the street. My new staff was excited and eager to learn, so I believed that things would be all right. When we officially opened the doors in April 2006 it was like a bargain basement sale at Macy's. People swarmed in and we

were overwhelmed. I wasn't expecting to be that busy that soon. My policy was to see and to try to treat everyone that showed up. After the first month of working from 9 a.m. to about 8 or 9 p.m., I decided that I needed to reevaluate the situation and make some changes. Even with the changes though we continued to be swamped every day. Because of the office policy of being a walk-in, first come first serve, patients would often arrive at the door at 7 in the morning, two hours before we opened the door. The other doctors in the building approached me and complained about the patients who were waiting in the hallway outside of the door. It seems that often the patients were sitting on the floor, laying across the floor blocking the way so that people couldn't go to other offices in the building. I told them I don't really know what to do. You know, they're lining up, they're outside of the door every day. There was even fighting on a daily basis in my office between patients about who was going to be seen first. As an example to illustrate just how busy we were, my production in the eight months that my office was open was \$800,000 - just a couple of dollars short of \$800,000. However since most of the patients I saw, about 98%, were MaineCare recipients, I was only reimbursed less than half of that and there's still an outstanding \$20,000 that's owed to me and I have resubmitted the claim seven times. I noticed some behavioral problems with my staff and talked to them about those. I tried giving verbal warnings, individually and to have meetings with the entire staff, but nothing seemed to help and I wasn't able to devote as much time as I would liked to have, or should have, because of the constant onslaught of patients during the day and because we were exhausted at the end of the day. One employee I had, JS, who caused the most distress to me, acted like she was training to become a dentist. She took my textbooks that I kept in my office for their use into her treatment room to discuss treatment with patients. I told her that she couldn't do that and she said, "Then what am I supposed to do when they ask me?" and I told her that "you need to tell them to talk to me." I gave her several verbal warnings about this. She would also ask questions in front of the patients that seemed like she thought I was doing something wrong. For example she would say "Why are you doing that?" or "What are you doing it that way for?" and she'd say that in front of the patients and I'd notice the patients getting wide-eyed and I had to tell the patients that she's just learning and that is the way that she acts and she'd say, "Oh, I'm sorry". So I warned her to stop doing that and eventually I told her just don't ask any questions with anyone in the room, save your questions till outside of the room. She also brought her personal problems to the office. She walked around the office screaming into her cell phone and arguing with someone in a way that everyone in the office could hear her. One time she was yelling into her phone and I was in another room with a patient and I could hear her. I went to her and she had a broom in her hand while she was on the phone. After she got off I told her that I don't want her talking on the phone while she's in the office working. And she said "I'm still working while I'm on my phone." She somehow thought that as long as she swept the floor while she was yelling into her phone it was justified. She was receiving disability along with state aid and when she started to work with me we had to determine how much she could earn in order to not lose her benefits. At forty hours a week she could earn \$10 an hour. So I met with the entire staff and decided that I would pay them all for forty hours a week as long as they maintained

a thirty-six-hour week - hours worked. JS began to take more and more time off. I paid her for the missed time for a while but I began to notice that the other staff was starting to do the same thing. They would take time off and expect to be paid for forty hours. I met with them and told them, as a group, that if they did not work thirty-six hours then I'd only pay them for the hours that they actually worked. This didn't go over well with JS. She decided that she wanted to go on a date whale-watching during scheduled time and I told her that if she wasn't in the office she wasn't going to be paid for that time. When she received her paycheck she was really upset about it. She contacted me by email and told me that I was cutting her money. And she sent me - this was in September of 2006 - she sent me an email that concluded with "I would rather have you as a friend and dentist than be employed and not." She began to insist that she wanted all of her dental work done immediately because she wanted to get braces. I told her to wait until the scheduled family days that we had set up so that we could treat all the staff and their families. Then she started to tell me that she had pain. She wanted me to cancel my patients and see her instead. And she started to tell the staff that I was ignoring her. I often witnessed her standing in the hallway in the mirror with her head cocked back looking in the mirror to see what else she could find. She followed me around the office and even into the treatment rooms with the patients there, telling me that I was ignoring her pain and I didn't care about her. She said I have MaineCare and my MaineCare will pay just like theirs does. I did address her concerns, but not enough in her opinion. Every day when I arrived at work she met me at the door to start the day off complaining by telling me that she couldn't sleep, can't eat, and she followed me around all day telling me she wanted a root canal. This went on for months. Eventually I gave in starting a root canal for her thinking that maybe she was in pain - although I didn't want to do the root canals for her, but no other endodontist would take MaineCare so it was either me or she was like that. I started her root canal and I put a cotton with the vapors of the medication on it and I put a temporary filling there. Well, she started to tell me that I was poisoning her from the medication that was on the cotton. I tried to reassure her that it was only the vapors on the cotton and that it's routinely used and that it would not poison her. She said that the medicine was all she could taste. So I removed that and I replaced it with one that had nothing on it and put the temporary filling back in. Every day for the remainder of the week she told me that she couldn't eat, she had bad breath, she couldn't keep the tooth clean and she accused me of wanting me to have her lose her tooth. And she said that she has a new boyfriend who could smell her bad breath. I did finish the root canal and I did put a filling there. But the complaints didn't stop with that. One of my staff informed me that she was planning to take X-rays to a dental convention that I had arranged to take the staff to in October. She was planning to solicit opinions from other dentists there, and she told the staff that I was trying to make her lose her tooth and that I wanted her to lose her tooth. She admitted that she was planning to take the X-ray in order to approach dentists at the convention and she told me that she thought they would have clinics set up there. I told her that there were no clinics there and that she couldn't just walk up to people that are attending the classes. My office manager, SH, told me that she would advise giving SH, sorry JS, written warnings since the verbal ones did not work. That was

October 12, 2006. My office manager sent me the email saying "I feel this is necessary given JS's personality." I've put this email in here if you'd like to look at it." That night, SH and I talked several times while she worked on the written warnings. The next day I arrived at the office and asked JS to come to the break room while the office manager and I talked to her. I attempted to talk to her about the reasons why I was giving her the written warnings and she got very upset and denied that she did anything wrong and that she did not deserve these warnings. She compared her work to the work of the other staff members, which she usually did, and she refused to sign the warnings. She wrote, "I do not agree with the above and I quit because I seem to be bothering Dr. Nadeau." That was October 13. She quit and filed for unemployment the next day according to the unemployment agency's records and a telephone conversation that I had with them. In her complaint to the unemployment investigator - I included her, the written report from the unemployment office in here, it's the section that has written pages if you'd like to read it later on you can. The first page is her complaint about me, why she quit the job.

ES: Is this the person that accused you of assaulting her at some point?

DN: Yes. I'm getting to that right now.

ES: Okay. I thought that's where you were going, but go ahead.

DN: Yes. In her complaint to the unemployment investigator she said that I intentionally tried to make her lose her tooth, that I tried to make her sign papers that were untrue and that she said that I gave a patient a lap dance and that I warmed the syringe between the legs in front of a patient. Now, I need to warn you that some of the things that you'll hear is really disgusting and it makes me feel sick to even have to re-write it. She sent an email to my office manager the day following, after she quit, on the 14th. That email is in here also. She concluded the email by saying "Denise gets what she deserves with Matt for trusting him, and not me. I'll miss working there, I miss you a lot already." In her testimony at the unemployment hearing JS said that she was prepared to have a physical fight with me and she said "we're all going to go to the ER" the day of the written warnings. A week later she filed a complaint with the Maine Board of Dental Examiners accusing me of the same that she had as an unemployment complaint, but she added that I sexually assaulted her. The sexual assault accusation came from an office lunch gathering in mid-August. It was the end of our work week and the office was closed and the building was closed. We had worked through lunch so I offered to buy lunch for everyone. And other times if we worked through lunch I offered to take them out - we worked through lunch a lot so I took them out for lunch as a way of thanking them for staying and working. That day I had to leave early, I had some plans in the afternoon, so I talked about bringing lunch into the office. JS informed me that she had a date who was sitting in his car outside of his office and she asked if he could have lunch with us and I said "yes". She was the first one done working so she offered to go pick up the lunch, that way she could go out with her date and talk to

him while they were going out, while the rest of us finished up. She returned and they put the food out - I was still in the patient treatment room, so I'm not really sure about all the details. There was also alcohol there and I didn't say anything about it. When we ate outside I bought them a drink with their meal if they wanted a drink. Allowing alcohol into my office was my biggest mistake. Even if it were after-hours that's something I wish I could take back, and I can't take it back. JS asked me if I wanted to try something called a "body shot". I didn't know what a body shot was. So she began to explain it to me. She laid a blanket on the floor that we used to cover cold patients because of the air conditioning and she signaled me to sit on it and she began to describe that I would lay down and have alcohol put on my bellybutton and I said I don't need to do that and I got up. And as I got up my telephone rang and I went to answer it, it was my son, and I spoke with him for a bit. When I returned everyone was eating. I did not learn that they had actually done body shots until the following Monday when they were joking that JS had done it with her date. In JS's complaint to the Maine Board of Dental Examiners, she accused me and my male assistant MA of pushing her onto chairs in the back of the staff room and then onto the floor and ripping off her shirt and bra. She said that there was another time in the waiting room where we pushed her down to the floor and ripped off her shirt and bra, again, exactly like the first time, only this time she accused me of putting salt on her breast and then having the male assistant lick it off. There was more description than that, I won't put it in. She had accused me of many other things as well. I thought to myself, "Well, they'll see that she's lying and that will be it." That was far from it. What happened over the next few months was a catastrophe. I had been notified some months earlier about another complaint by a former patient's wife. I was accused of not informing before getting a root canal. I called Karen Packard to schedule an appointment to meet with her. She gave me a subpoena to talk to her and a list of names to supply her with contact information for patients I had seen in the month of October. She also asked for a copy of our schedule for that certain period in October and we talked for a while. When we returned the rest of the staff had been looking for the information listed in the subpoena and there was one patient that was not in our system and we had no record of him ever being in the office. His initials are RT. At that point I still had faith in the system. I received a summary report from the board and read the ridiculous accusations that were written. Not only was my staff interviewed but also the staff at CDC where I had previously worked. Remember I didn't leave there on good terms. I couldn't believe what I was reading about myself. I showed my staff what Ms. Packard had written about their statements and they told me that they were inaccurate. I was beginning to get the feeling that this was not going to be good. I was especially upset about a couple of statements that Ms. Packard had included in her summary report to the board. One was that she had completely discredited one of my dental assistants who worked with me there. AS was one of the best dental assistants I had worked with since coming to Maine. I had even asked her to come work with me in my office. Ms. Packard wrote that she did not find her particularly credible or helpful. I was wondering why she would write something in her report like that. I would never consider AS to be not credible. The top portion - I have the note in here from Ms. Packard, it looks like this. On the top it's handwritten, that's

Ms. Packard's handwritten note. On the bottom is the summary report to the board, that portion that refers to AS. In the lower right corner in the handwritten portion she wrote "Not really helpful". In the summary report that she provided to the board she wrote, "Investigator's note: I did not find this witness particularly credible or helpful." I thought the investigators were supposed to be impartial. Another thing was a statement about me, saying, "The FBI came in three times looking for her and asked her about Al Qaeda, her phone calls to Egypt", and in parentheses she wrote "The doctor's Muslim". I thought, "What the heck is that all about? What does that have to do with anything?" Not only was the report was full of lies, but now she's informing the board that I'm Muslim. Why should they care? Does "Muslim" mean that I work with Al Qaeda? Does it imply that I'm a terrorist? My attorney subpoenaed Ms. Packard's handwritten notes on the first day of my adjudicatory hearing. I was quite surprised to find what was contained within them. There are notes that she omitted from her summary reports that were completely contrary or contradicted to the things that she included in her reports that made me look bad. They were, they contradicted what she was trying to prove, which was that I had violated the Dental Practice Act.

At this point I'd like to show you a page from Attorney General Janet Mill's website, it's the next page. It says "Civil Rights Enforcement". I put that there because when you click on it, it takes you to the next page. And I put an arrow there under "Clues that indicate bias motivation". It says, "The perception of the victim or witness that the person or person's property was selected because of the victim's race, color, religion, ancestry, national origin, gender, physical or mental disability or sexual orientation." Below it, it says "Written or spoken comments indicating a bias." The next few pages are the exhibits that I am going to be referring to. The first one is that summary report from Karen Packard, Assistant Attorney General Dennis Smith and Dr. Denise Theriault, since they work in concert. That's where it says the FBI came in three times looking for her and questioning her about Al Qaeda and her phone calls to Egypt, the doctor is Muslim. There are a lot of other entertaining things on there too. The second page is an exhibit, it's a copy from Ms. Packard's handwritten notes. At the very bottom, close to the bottom I put an arrow there, it says, "Her husband's Iraqi family at her house." The next exhibit, do you see what I'm talking about? Okay. The next exhibit is from Karen Packard's handwritten notes, again, at the bottom it says, "Tell you, FBI was at the other office". So she was questioning the staff at my private practice, Emergency Dental Services, asking them if I talked to them about the FBI at the other place, where this first accusation came from about the FBI looking for me because I'm working with Al Qaeda. The next three pages are from Karen Packard's testimony. My attorney subpoenaed her as a witness to ask her some questions. If you go to, on the bottom right corner you'll notice it says "page 221"? Okay. Line 15: Ms. Packard says, "I'm quoting from my report, page 78, number 14, letter K." She stated that the FBI came three times looking for "her", referring to "Dr. Nadeau", and questioned "her" about Al Qaeda and her phone calls to Egypt. Then in parentheses: "The doctor is Muslim." I'm going to just - there are three pages here so I'm just going to skim through some places that I've underlined that I'll read to you. So my attorney asked her, "So you wrote that in your hand

because Tamara Holmes told you to?" She said, "Tamara Holmes made that statement". He said, "But I thought we agreed that statements that were contained in your report relate only to possible violations of the Dental Practice Act?" She said "That's true." My attorney said, "Alright, tell me, where in the Dental Practice Act is there a violation, even if the statement was true, that it relates to dental practices." She said, "This is a summary of my interview and this information is passed onto the complaint officer and to Mr. Smith. They make the determination if there is a violation of the Dental Practice Act, or a question of violation. And then the board makes the final decision in that case. I don't make a decision as to whether or not there's a violation of the Dental Practice Act." He said, "But you're making judgments on what to put in your interview reports and not. I mean, that's established here." She said, "That's correct. And I also include in the reports things that are out of the ordinary. I guess being Muslim is out of the ordinary in Maine." "Did you follow up with the FBI on this?" She said, "I did not follow up personally with the FBI, no." He asked her, "Who instructed you to do a follow-up on page 78, 14K?" She said, "I was not instructed to do a follow-up as far as I know on that particular item other than let me say there was a follow-up question to other witnesses who worked in that same practice, but I did not make any contact with the FBI." My attorney said, "Where? Where does it appear in your notes, other than there, where did you verify that what Tamara Holmes was saying was absolutely, categorically false?" AAG Dennis Smith said, "Objection. That wasn't what the question was before Ms. Packard, about whether or not she verified whether or not this allegation was false. She indicated that she took that information and she inquired of the other staff about whether or not they had heard or seen something similar. I would object to the form of the question." My attorney, Mr. Franko said, "I withdraw the question. I'm going to ask the witness to identify the responses of other staff members at that inquiry." The hearing officer, Mr. Jim Smith, said, "Did anyone substantiate it?" Ms. Packard said, "Can I ask a question of council?" The hearing officer: "No". She said, "That's fine". Hearing Officer Smith: "Are you aware of any substantiation, Mr. Franko?" Mr. Franko: "No." Dennis Smith said, "Well, besides the testimony of witnesses during this hearing." So he was answering for Ms. Packard. And by the way, there was no testimony, I've read through all the transcripts, there was no testimony except for a question asked of Tamara Holmes. Karen Packard then said, "It's when Charlene Walker testified to this board at last session." That's not true. Go to page 225, which is the lower right-hand box. It says "Dr. Higgins". Dr. Higgins says, "So, again, I'm asking the question for the record. Having some experience, I know the answers, but it's important for me to get it on the record. When you're assigned an investigation by the complaint officer in concert with the AAG, you did indicate that you are doing so as a result of the complaint that alleged violation of the Dental Practice Act, is that true?" Ms. Packard said, "That's correct." He said, "Is there any reason in the world why you would include information that is not pertinent to a violation of the Dental Practice Act?" Ms. Packard: "Not to my knowledge." Dr. Higgins: "Is there any reason why the board doesn't expect all of its licensees to be doing good things for a certain number of patients?" Ms. Packard: "That's what the board expects." Dr. Higgins: "So you wouldn't necessarily - it wouldn't necessarily occur that things that are positive that had no bearing on

whether or not there was a violation of the Dental Practice Act would not be included in your report?" Ms. Packard answered, "That's correct." Well, I'd like to say that what is omitted is information that would have shown that other people were lying. For example, when this Tamara Holmes accused me of doing two root canals for her and she said that she had to go to have them re-done, actually there was one root canal that I finished and one root canal that was unfinished. She went to a doctor who was a member of the board of directors at that Community Dental Center. He completed a root canal that I started. So, in Ms. Packard's summary report to the Dental Board, she wrote that Tamara "had two root canals that had to be re-done", but when she interviewed, when Ms. Packard interviewed the dentist, he said that Tamara came to him to complete a root canal that I had started. Ms. Packard never put that in her notes that Dr. P put - had told her that she only had a root canal completed, that it was not two re-treated, however, that's what went in the notes. Dr. Higgins: "In referring to the interview with Tamara Holmes in regard to any alleged contact by the FBI would you have included that in your report as to a reason to substantiate the state of mind of the licensee or to support the state of mind of the licensee?" So there trying to make it like it's my state of mind by being Muslim, or the other allegations about the FBI. Ms. Packard said, "I believed to support that there may be something amiss." Dr. Higgins: "And in your opinion, having interviewed all of these witnesses and folks, did you feel that in the end this was a non-starter?" Ms. Packard: "I do not have any reason to believe that I could do anything further with that information other than to pass it on to the complaint officer and to the Assistant Attorney General." Then why did it end up in the summary report to the board?

ES: About how much more do you have, Doctor?

DN: I can give you -

ES: We're getting a little tight on time.

DN: Okay, I have a lot to say. I have a lot of details about how the woman who accused me of assaulting her had a completely different story when she went to the unemployment hearing. The Assistant Attorney General received a copy of the transcripts from that unemployment hearing, which he withheld from the board. My attorney mentioned to him, it's in the transcripts, I have it in here, mentioned to him, "I noticed you have a copy of the unemployment transcript." The Assistant Attorney General said "I wasn't offering it", and it sat in the box, like I mentioned, was never looked at. I'll read something to you.

ES: Let me say, if there's material that could be submitted to us I'd - Van Perry of our board has sort of briefed himself of the paperwork concerning your testimony and I'd like to get him to ask a question or two here before we -

DN: I've supplied some, I have volumes and boxes. Okay, and I've put together bound notebooks with everything organized.

ES: Right.

DN: I've had nothing to do for the past three and a half years but sit and read through this information. There's one thing - I wrote a note, I can't remember who asked Dr. Benedetto a question about looking at - having allegations and then having them go to look for other allegations in patient charts, in my case, my license was suspended on March 16th, I was supposed to have a hearing in April that was postponed to May because I had to change attorneys, my insurance company finally said they would pay for one, but they wouldn't pay for the one who I had retained so we had to postpone it, and plus I think my attorney had to be out of town or something. So anyways, the first day of hearing a lot of their witnesses were lying and were caught lying and Dr. Higgins confronted one of them actually. And after that, Assistant Attorney General Dennis Smith and Dr. Denise Theriault and Karen Packard went to Community Dental Center where I had worked three years before that, or two years before that, to look through patient charts to look for anything, which they presented the last day, the third day of the first set of hearings, to try to use against me. They had X-rays that had the wrong dates written on them, they had patients' charts that included several patients mixed together in one chart, and my attorney objected to that. He said, there's lack of Due Process, there's no fairness. And Dr. Denise Theriault was planning to be their expert witness in that case, although she was the complaint officer against me. So I really have a lot to say and I won't take your time with it now, I'm free anytime anyone would like to talk to me.

ES: We appreciate your statement and -

DN: Thank you. Oh, can I just read this one last thing, because I said that they didn't look at my evidence?

ES: Okay, alright.

DN: This was when JS was asked to see - was asked if she was provided a copy of the signed, written warning. Dr. Higgins said, "You brought this up a couple of times" he was asking about the warning and she, my attorney - he was asking if they have a copy of that - my attorney said "We have them", and Dennis Smith said "They're in the exhibits", and Dr. Higgins said, "In State's exhibits?"

ES: Alright, Van, would you like to ask her any questions?

VP: Sure, thank you for coming before us. I - actually a lot of my questions you've already answered, so, I mostly was just looking at the final conclusions that they came to in their, I think it's the final findings basically and then the conclusions of law. And when they found you - basically what I could find out, there's three findings. Essentially, incompetence to practice in the practice of dentistry, unprofessional conduct by violating a standard of professional behavior, and then the third one was basically a list of several violations of the, as you referred to, the

Maine Dental Practice Act rule. And then it goes on to basically list a series of things that they've decided, that they essentially decided to do as far as -- have you have a psychiatric evaluation.

DN: I've had two.

VP: ...take several courses, and then pay a couple of different fines and be placed on probation for a period of five years. And then there was the finding of incompetence with the, I think - I'm not a doctor - but endodontics, is that how you say that?

DN: Right.

VP: And you had to take some courses with regards to that. Now, have all those things been done or I guess what I'm trying to understand is where we are now, as far as like, where you are now and then my follow-up to that is essentially what would you expect from us, for you to be able to move forward? I mean where do you go from here?

DN: Where I am now is, the findings of endodontics, that was that last portion that I was telling you about where they went to the other office where I had worked, they also, some witnesses who I brought in to talk about some of the accusations, like doing lap dances or things like that, because they were named by the person who accused me of doing those, which is the same woman who accused me of sexually assaulting her, which by the way she said I have power people from Iraq after her and I have a power circle praying for evil things to happen to her and her family. There are - really there's a lot of things exactly like that that she said about me.

VP: So to move forward from here what is your expectation of a solution?

DN: I would like to see some changes made. Dr. Benedetto had a list of suggestions and he and I talked about those suggestions so we kind of worked on that together. I would like to see a separate committee to handle complaints and to verify if those complaints are by people who have secondary gain. Disgruntled employees, patients who don't want to pay their bill. Things like that. Sometimes patients come in with a chip on their shoulder and they just want to come in and argue with you, you know? So have a separate committee to first screen the complaints to see if it's a valid complaint or not. But I also feel, and I wrote this in the letter to the board, I feel that if someone makes a complaint against you that they should be as responsible for the cost. I'm now charged with \$18,700 that I have to pay to the board for having to have all these hearings. From what I understand it's close to \$30,000 but they were gracious enough to have dismissed half of that. I paid them \$1500 for the violation of sexually assaulting JS. So I think that there should be some sort of a system where the complaint is first screened before it - not by an investigator because this investigator needs to go, okay. I called to find out and I got

an email to find out what are her qualifications. She's a dental hygienist and she has no training in being an investigator other than what Assistant Attorney General Dennis Smith has given to her in a three-hour course.

VP: Sorry to interrupt you - Which specific person is that that you're referring to?

DN: Karen Packard.

VP: Karen Packard, okay.

DN: I have all of her handwritten notes and I've compared them all to the summary of reports.

ES: Van, let me just interject here. One other thing you wrote us in one of your communications: "In Maryland, where I held a license, the Dental Board members are elected by the licensees."

DN: That's correct.

ES: "They have a five year term. This in my opinion is a much fairer system because if the board members are elected by the licensees which it represents and disciplines there is less of a chance of bias and abuse."

DN: That's right, I agree with that.

ES: Do you have, would you elaborate on that at all or is that essentially what you had to say on that subject?

DN: That's what I have to say. Really I've thought about this and nothing else since I first found out about the accusations and my license was suspended. So, it's not like I'm trying to say "Oh, everyone needs to be disciplined", I just think that there needs to be a better system. I wish that it didn't happen to me. I've been destroyed. I've lost everything. My office, I'm not allowed to work in my own office anymore. I have to work under the supervision of another dentist, who the board approves, and to date, six have not been approved. I was allowed to work for one and I had some problems, so I didn't stay there. But it's been almost three-and-a-half years and I worked a total of seven months. I lost my license, I lost my offices, I owe a lot of money, I have bill collectors calling me all the time and I'm not working now. I had an offer recently and the Dental Board didn't like that person because he spoke his mind about his opinion about the system, so they didn't think that he was a good supervisor for me and they denied that job, too. So that means I'm still sitting and not working. I had to give my car back. I have probably about \$10. But I have tons of debt including \$98,000 still in student loans. It's not right, it's not right. I don't know what the answers are, but I'm glad that someone is investigating it and trying to find out what should be done and trying to fix the system, because the people of Maine are not benefiting from this either. You know. Dentists don't want to come here and

if I can I tell people don't come here, it's dangerous here. If you want to keep your career don't come here. I've spoken with about twenty-five dentists who have been through this.

ES: Van, do you have anything else?

VP: No, I think that's fine for now.

ES: Now, I'd like to ask the -

BS: I have one quick question.

ES: Okay, Beth Shissler, excuse me, yeah.

BS: Thank you for your testimony. It sounds like a really long, long process.

DN: It gets longer.

BS: You feel that. I just have a quick question on something that you breezed by that I think is really - is important to the process here. Why do you think you were given no informal hearing? You weren't given one, right?

DN: I was not. No, my license was suspended -

BS: Did your attorney question that?

DN: This whole process has been so confusing to me. I don't know what's been questioned, what hasn't been questioned. I've been forced to sit and shut up. I haven't been allowed to ask any questions or say anything.

BS: That's fine. And my next question was, did your attorney object while you were in the sixteen-hour, in the middle of the night, road show?

DN: I don't think he had a choice.

BS: What do you think the repercussions would have been to - in your opinion, and I know you don't know the answer, to say, "We've had enough for today, can we reconvene on another day?" Was there a feeling - is that just unacceptable?

DN: I was just so scared at that time. You know, I, I don't know. And I don't think that he had an option. It's up to the Assistant Attorney General who was running the show.

BS: Sure, sure. Okay, thank you.

ES: I'd like to ask Linda -

LS: Are you familiar with the concept Occam's Razor?

DN: No.

LS: It basically says that if given two possible answers or choices that the simplest one is usually probably true. So on the one hand we have a crazed dentist with all kinds of bizarre and over-the-top behaviors, on the other hand we have a disgruntled unhappy, confused, whatever, employee. Occam's Razor would suggest that you go with the most simple explanation which is a bad employee, rather than all this other more bizarre over the top kinds of stuff. That would be the way that I would look at things if I was doing the investigation.

DN: To me it was like smoke and mirrors. Every couple of - whatever, another smoke bomb is thrown and things are confused and we're just trying to catch up. Does that make sense to you?

LS: Yeah

ES: Let's have the witnesses who already appeared, Dr. Benedetto and Dr. Nordlander, if you'd come back up to the desk, and does either of you have anything that you want to add to what's just been said or take some questions from the floor?

DN: Can I say one more thing? I've read the Dental Board website pages many, many, many times. There are other dentists there who have disciplinary actions against them. There's one in particular I'd like to point out. It's Dr. EA. Dr. EA extracted on a child a permanent front tooth. She has a two-year probation and she has to take a course in identifying teeth. Where's the equal justice here? She pulls out the wrong tooth on a kid, not even, she doesn't even have to pay for an implant to have that tooth replaced. I don't get it. And I have heard doctors - who and it's also not reported on the Dental Board website closed resolution cases.

ES: Dr. Benedetto, do you have any final comments you want to make very quickly?

JB: Yeah. Interestingly, you'll never be without a job in the state of Maine. I mean, they need dentists so badly. So I've helped set up another dental facility that's ready to roll in Princeton Maine. It's the St. Croix Medical Center and they're just waiting for federal funding and they're hoping that I would come out of retirement and work there. Dr. Nadeau needs the job a heck of a lot more than me, but look at the bind that the board has put her in. I would gladly be her "supervising dentist", she doesn't need any supervision any more than I do. But ask yourself, honestly, do you think that the Dental Board would find me to be an acceptable supervising dentist? Hell, no. I think they'd sooner hire the devil than hire me as her supervising dentist Do you understand the problem here?

ES: Alright, sir, let's go to the floor. There's a gentleman in the back who has a comment. Would you identify yourself?

Robert Turner: I'm - I was a dentist from Fairfield they've taken my license away. I was not given an informal hearing either, consent hearing. And I believe the reason why is because if you go to judiciary hearing then they've got to advertise it in the paper, the newspaper shows that you, prints it in the paper pages, Robert Turner's got to come to this hearing because he's incompetent okay, or whatever they want to say. And if they go to an informal consent hearing then the public never hears about it. What they do to you if they don't like you, then boom that's right where you go. 95% of them go through an informal consent hearing, I never had one, and the other 5% the reason is because it's published in the paper. That's my opinion.

ES: That's an interesting point. Any other comments from the floor - well, Dr. Nadeau, yeah?

DN: I would like to say something about adjudicatory hearings. I asked Dr. Benedetto to ask the board a question for me, I have a feeling about what the answer is about this. I wanted to know how many adjudicatory hearings have been held over the past five years. And, of those, how many have been dismissed, do you understand what I'm saying? Dismissed once they've heard the complaints and the evidence and all of that. None? Okay, once the licensee is found in violation the costs go to that licensee, do you understand what I'm saying?

ES: We have some data that has been submitted by the Dental Board.

DN: I looked at that, and it's not accurate.

ES: They will be coming up later in the day to talk so we might have some questions for them. Are there any other comments or questions from the floor at this point that we would entertain? If not I think we're going to take an adjournment for lunch and we'll resume at 1:00 with some business, witnesses and then at 2:00 we'll have a panel coming up that will continue on the same, the general area of Due Process, aspects of Due Process and state licensing.

DN: Thank you.

ES: Thank you very much, Doctor.

DN: I have a lot more to say.

ES: We know that and we appreciate - we know that you've been through a lot. We're appreciative of your time. Alright, we'll stand adjourned then until 1p.m. and then pick up at that time.

Maine Regulatory Fairness Board  
Afternoon Session  
Thursday, May 27<sup>th</sup>, 2010

ES: In the interest of trying to stay on schedule we'll get started for the afternoon. I want to first introduce the members of the board. At the far end, Ed Philips of Winthrop, Linda Snyder of Auburn who's the Deputy Chair, Beth Shissler of Portland and Marie Emerson of Addison, Van Perry of Readfield and our staff assistant is Tom Merrill of the State Planning Office. He's running the recording over there. And we will - I don't think we need to repeat all of the front information that we did this morning at this point. We might go back over it prior to the other panels coming up. But at this point I'll turn this over to Beth Shissler to introduce our guest for the opening of this afternoon's session. Beth?

BS: Good afternoon, next, our next representatives are Lisa Martin and Chip Roche of the Manufactures Association of Maine. Lisa is the Executive Director of Maine Manufacturers Association, she's been on board there for ten years and they currently have 354 members representing 142 manufacturers and most importantly to me is 15,887 employees in the state of Maine in the manufacturing sector. Chip, serving as Vice Chair of the Manufacturers Association, soon stepping into the role of Chair in November, is also owner and President of NewFab, but his career extends from R & D to Product Development, Manufacturing Expertise for small start ups to companies selling off. So I think together they bring a great value to this board as far as establishing what possible hurdles there are in this state to manufacturing in the state of Maine. So if I can invite you both to the podium.

So, my understanding is that you have gone to your members that you represent and done a poll of possible hurdles and obstacles in manufacturers in the state of Maine and I'm wondering if you can tell us a little more about your group and the survey itself and then we'll kind of get into the findings.

Lisa Martin: Sure. Thank you, Beth and it's a pleasure to be here, I've been at this table before and the Manufacturers Association of course is a statewide manufacturing industry trade association. We represent as Beth indicated, about 350, growing everyday, so about 354 today, representing businesses, affiliates and student members state wide. We offer a number of different programs and services to our industry members, obviously to assist those companies adding valued services that help them to grow and prosper, retain and grow employment and job creation, etcetera. We do a number of different things and one of the things, and Beth is aware of this as well, that we don't really ever do anything unless we ask the industry members. And one of the things that we had continued to hear, or we continue to hear, are issues around regulatory - often somebody will contact me and will say "There's a bill in and we're working on this and this. Where do your members stand?" We'll send the information out, solicit the feedback from them and

then turn that over and bring that forth. We have recently put out a survey on regulatory issues for our members, and I want to be clear that it wasn't to illicit sort of complaining type of responses, but tell us where really some of the gaps are in terms of your knowledge, the education that potentially could be necessary for your companies. A couple of things and Chip will get into it a little bit more, but, we looked at, there's a fairly low compliance rate, from some of the questions we asked. One of the very clear things is that there is a major lack of understanding of what these companies need to do in order to be complaint. One of the interesting statistics of just our membership, 86% of those members that we have are less than 50 and of those 86% just about 50% are less than 10 employees, which really prompts us to know that they very unlikely have people within their organizations that have the expertise to be able to comply on regulatory labor, environment and those types of things. Overall, in the State of Maine there are approximately 62,000 people who are employed in manufacturing around the state and we again represent just about 16,000 of those in our particular association. And this industry also puts out a little over 11% of the state GDP for manufacturing. I think, is that an okay overview?

BS: That's great, thank you. In terms of the findings of your group, what, could you tell us what the biggest issues you found were, in terms, I guess gaps as you define, which is a much better term, gaps in regulatory awareness or issues to running a business in this state, in terms of manufacturing.

Chip Roche: I think I'll address a little of that and also tell you a little story about my experiences. The basic gap is that too many small companies, and not just manufacturing companies just simply do not have the resources or expertise to know what they have to comply with and even if they know, to put a system in place to actually comply with many, many regulations. In my background, I came out of much larger companies. I worked for Thermal Electron, which is a large public company, \$4.5 billion, I worked for them up until 2000. I worked for MG Industries and the company I was in was actually a 300 - or actually the division of MG Industries I was in was a division that was 350 people. I was in charge of manufacturing at this place. And I had two people in a 350-person company who were tasked to focus on regulatory compliance. Major issues are health and safety, which is OSHA and then EPA, Environmental, EPA and DEP type things. Now, granted, the issues in a larger company are larger than the issues in a small company. But, many of the issues are exactly the same, many of the compliance issues. In 2004 I left that environment and I bought Northeast Welding and Fabrications, or NewFab as we call it, in Auburn. We've been as high as about 28 people, currently were about 20 -22 people. The biggest thing I - the biggest change I recognize in coming to NewFab is how few resources I had after I got there. I am absolutely knowledgeable enough to know I have to comply with a number of things but I'm also knowledgeable to know that I just can't. I am actually working - I'm going to use Health and Safety and OSHA as an example this afternoon, but before I go there another issue I want to talk about is that as companies grow they go through significant changes along with way. The companies up to maybe the 30-50

employee are basically run by one person. It's a small company it doesn't have a lot of specialization in their management group. Once they get passed that a company will start to hire more people to specialize in certain tasks in a company. Around 100 people, maybe a little more, you get human Resource departments and things like that. And around that 100 person range you also start getting people who are tasked exclusively to regulatory issues. Maybe that's 75 in company A and 150 in company B, but it's in that range. What I found is that our members, as Lisa has talked about, are generally small. Half our members are under ten people and in looking at the results of the survey, I see 21%, around 20% of our members are aware of the regulatory issues that they have to comply with and I'm certain that it's not any higher than that who are actually compliant. Now, sitting back and thinking about that, that's an abysmal stat in terms of employee health and safety and in terms of environmental issues it's a potential for a disaster on many fronts. I know that NewFab is not complaint. I know now that, although I'm working toward OSHA compliance on this point, and I'm working with Safety Works, I'm not going to be there for a while. And so OSHA fines are just a cost of doing business. The OSHA people have come in twice since I've owned NewFab. They've cited me twice since I've owned NewFab. I've paid the fines twice. If they're right now then they'll find problems, they'll cite me and I'll pay the fines. It's just how it is. So then we have this situation and many people will tell you, and their right, that there are organizations out there to help small companies comply, and they'll talk about Safety Works. Safety Works is actually part of Maine D.O.L. or funded by Maine D.O.L. and they're there to help small companies comply with safety and health issues. I signed up with them and they come in and they do a survey. Basically they come - I was expecting them to come back and say do this, this, this and this and I'll be fine on this front and we'll move to the next front. Instead they came back and basically said that we want you to put in place a health and safety management system on the model of say an ISO9000 quality management system. And those are great ideas. I actually implemented an ISO9000 quality system, with a lot of help, at a previous employer. But in doing that, saying this is what we want you to do is one thing and then having a company then sit down and say okay, here's how we do it is a very different thing. And I'll give you an example. I worked on first how to comply with noise exposure and the Safety Works people came in here, monitored our employees, told us a couple of areas where our exposure level exceeded maximums and said okay, we need a hearing conservation program, and they referred me to OSHA's website and there's literally thousands of listings there and I had to sort through them and ask a bunch of people and blah, blah, blah. It took me probably I'll say 100 hours over a couple of months to really boil it all down to a hearing conservation program that we have since implemented at NewFab and although I'm happy of this and proud of it, basically I came through that experience saying why did I have to reinvent the wheel. I've talked to my Safety Works representative about that and I've talked to my MEMIC representative about that and both of them say basically the same thing. That we want the programs to be yours not ours. And I say, well that's great but I'm quite sure that most of the companies in our membership is not, are not going to have the time or resources to spend however many hours on however many programs that they'll have to have in their company in order to be OSHA complaint.

That doesn't even address any other compliance issues. One of the biggest things I find I would complain about, in terms of any regulatory requirements are things that take up my time. I simply don't have enough time to address everything. And in times that you come into work and have to decide on whether you going to try to go out and find the next order to try and keep everybody busy or work on this, it's usually a pretty easy decision on what you have to do. You basically have no choice. So I'm not here to talk about any real individual issues, I'm here to talk about how to improve the level of compliance in small companies and particularly in our case, manufacturing companies in Maine. And my belief is that the way to do that is to go out and find best practices. Go out and find programs that other companies have implemented, or that people like Safety Works or OSHA have seen implemented in other companies. Compile these into a program that is run by industry organizations that basically can take these programs addressing individual regulations and take them to companies and say here's how you do what you need to do. Change the names, train the people, teach them what the program is all about and get them into compliance. This is something that I think is a way to short circuit the current progress or lack of in many, many small companies that simply don't have the resources. My recommendation on that is that I want to see the Manufacturers Association of Maine and other industry associations come up with a compliance service internal to their association that would be offered to their membership. I'd like to think that a higher level of compliance is a win, win for everybody. The enforcement agencies win, the - in the case of employee health and safety the worker's comp insurance members win, the employees win, the companies win. And I would think that if that truly is a win, win that some how or other we could get organizations like Safety Works who are already funded to assist compliance to help fund industry associations to help them assist their members in compliance. Safety Works has a very good program called the, I want to say the Star Program.

LM: The Volunteer?

CR: No, that's OSHA. Safety Works has a recognition program for companies that achieve their standards, and I'm involved in that. And I would like to see every one of our members achieve that standard, including myself. I don't see it happening under the current organizational structure out there. And I think we could positively affect that if we had a better program internal to the association. I'll mention one more thing about Safety Works. Every time I got cited by OSHA, they offer a deal, they'll only charge you 85% of the fines if you entered the Safety Works program. The first time it happened I went around and talked to other company owners they knew and they basically told me, don't do it. They're heavy handed and if you don't do exactly what they want they'll go to OSHA. So I didn't do it. This happened twice. Then I turned around and I said that is really a losing strategy in that you have to get into the program, and I did, but the point I'm making is that even organizations that are helping companies, if they're perceived as being part of an enforcement organization or reporting to an enforcement organization are threatening and I think that it will be better served if industry organizations worked on this service. So, that's our idea. I don't know how to achieve this yet. But, Lisa told me that she

was coming up here and I said that it's a perfect forum to air this idea and see if there's a way that we can work together to make it happen.

BS: Thank you for that. I just have a question. So you're not actually opposing any of the regulations from OSHA of the EPA, you're acknowledging that hitting these standards is tough to do in a state of small business, is that correct?

CR: I'm not opposing anything at all.

BS: And, but if you could make a recommendation to our board, am I hearing that you know, to recommend a separation between any enforcement agency and the regulatory agencies would be one recommendation, whether it's through your organization or otherwise?

CR: Yes.

LM: But to work in partnership of course with DEP and DOL, those covering agencies are vital obviously to what we would want to and need to accomplish for our members, such as, this is the DE – this is their environmental workbook and if you go through this, and I look at this when I was meeting and it says do you have form 16429?

CR: What?

LM: I'm like what? Okay, well there's a correlating some where in there, it's really to assist those companies in a small automotive body shop, the likeliness of them having everything in place as required is very, very difficult. Same with the regulations. And what we gleaned from the survey, people were not opposed, in a couple of instances, workers comp, they had some feedback regarding that in a couple of things, but I think for the most part companies are not against, they just feel like there's a lot of it and they can not and don't have the resources and the in house to be able to comply and there's a fear factor that if they don't they could get caught and that could close them. So it really runs through that. We would like to be really proactive in assisting the companies to maintain and to be at that compliance level.

BS: So our mission as a board here is to become aware of, in some cases, become aware of regulatory issues that are obstacles to doing business in the state of Maine. What would be our take away from your session as a recommendation that we could make to be your eyes and ears.

CR: I would recommend that in a compliance assistant effort that are run by the state that the interface with small businesses ought to be through industry representation rather than state or government employees. So I hope that's addressing your question.

BS: Yes.

CR: In my estimation I think that how we work on the health and safety is that we have Safety Works do exactly what they do. Come in and examine, come back and make recommendation and then someone at the industry organization level goes in and says, here's how you implement your responses to those recommendations and give it a step by step - by the numbers - avoiding having that business owner or operator having to go through all the work and all the documents and finding all the forms necessary to write a program and be in compliance.

BS: Great. Any other questions from the board?

Marie Emerson: I have a couple of comments. I understand what your saying and I think it's a problem because a lot of small companies just won't grow. They won't grow because of the extra regulations that will be placed upon them from OSHA. We have a family equipment company and it's that situation with OSHA. They don't want to grow because once they grow it will be a problem with more rules and regulations. I think - I'm going to put it the way I see it. I think the government gives and I think the government takes. This morning we saw a situation where the government takes. In this case the government gives. It gives wonderful things like Safety Works to work with small companies and the Department of Economic Development that helps to streamline all kinds of things to help small businesses organize. For instance a restaurant has to go through ten different agencies in order to open up. And they'll kind of streamline it. So what you're asking is to help streamline what the government gives, rather than being a policing, be more of an educating business. Like if you had a template say that could be applied for all these small businesses and they could fill in the blanks it would be much easier for them to compile, and I understand what your saying. So your asking the government that is already giving with 100's of economic development agencies throughout our state that is paid for by tax-payer money, to be more in tune with what actually the industry needs. And I think that's what I'm hearing.

CR: I say that we'd like to see what the government is providing be modified to be far more effective. Far more successful.

ME: Right.

CR: I mean we can't - the responses we saw are about 21% of the employed members, knowing what they have to comply with and therefore being in compliance as a maximum number is just abysmal and we just want to make it more effective and get that to 80% or larger. And also, we talked about another thing that you just touched on. As companies grow, other regulations become applicable to them. We talked about a holistic approach for members where if you obtained five members and all of a sudden these rules apply to you. If you obtain 25 or 50 we'd like to monitor that and say to them "Okay at 25 here's what you've got to do. Bing, pang pow. Make them aware of the regulations that now apply. And then say here's

how we do it. Bing, pang, pow and help them comply out of the gate instead of having them grow past those application levels of employment and have them find out through an enforcement action.

Linda Snyder: I have a couple of questions. My husbands worked in manufacturing all of his life and he's working in manufacturing right now. And it never fails to amaze him when a company will not do something for \$300 that will save a \$100,000. It's penny wise and pound foolish and I just heard you say that it's a cost of doing business in some respects because you can't comply with - do the OSHA stuff ahead of time so you just pay the fines, but then you have to implement the stuff anyway.

CR: No. That's not true.

LS: So OSHA comes and fines you and you don't implement it but you pay the fines? I'm confused.

CR: OSHA comes and fines you; I had a fine for an outlet on the wall - not an outlet, a receptacle on the wall in the back of a machine that did not have a label on it saying it was powering that machine. So we put a label on that thing saying that that outlet is powering this machine. That is very different then developing a complaint health and safety program. So we fixed the immediate issues that they fine you on, the cord on the floor. A favorite one is the grinder tong is more than a quarter of an inch away from the wheel. You adjust that grinder tong. You pick the cord up from the floor. It doesn't change anything with respect to your health and safety compliance program. It doesn't do anything and the next time they come in they find that that fire extinguisher hadn't had it's monthly employee inspection or -

LS: So your saying that the risk is not that - the risk and benefit ratio is not - it's worth it to not put in a complete system because what your going to end up paying out is not as significant as the cost of developing one.

CR: I would say this, that most of the company owners that I know who are in this situation A are not aware that - aren't aware of the compliance issues that they are ignoring and B don't know how to create a compliance program if they are aware. So, you know, somebody may come in and say that you have to clean up that dripping oil on the floor. They may not even be aware of a rule or regulation that they're out of compliance with. So it's an awareness program and then it's an understanding of how to get from A to B program. It's hard, and many people don't have the time to stop and say, well okay, what's this all about and what do I have to do? They just keep trying to survive every day. Especially a ten-person company, they just don't have the ability to do that.

LS: I can certainly understand that, I was in social services and I had a company that grew from one employee to over 200 and it's a very, very regulated industry and you had to learn as you were going along, really, really quickly. But it was a

whole lot easier to learn ahead of the curve and fix it prior to them coming in and giving you a bunch of grief.

CR: But I'll bet at the ten-person level that the learning was all retroactive and at the 100-person level it turned proactive.

LS: It certainly was, yes.

CR: Well what we want to do is get proactive at the ten-person level and let those companies grow to the twenty and 50 and 100 person level, rather than wait until they can afford to be proactive.

LS: Thank you.

ES: Ed did you want to say something?

EP: Your probably asking for something more like Efficiency Maine than your talking about now, where they actually come in and audit you and come back with recommendations and cost. A lot of this, I feel, belong up to your association though. I sit and hear in hearings on licensing contractors and the contractors association is getting very proactive on offering different training courses to contractors. So, yeah, I think the state could do better by - I always think education is better than hitting somebody over the head. In Maine we love our police powers more than anything else I think, and we need revenue. But your association itself really needs to come up with some of these programs. But I would go back and you folks do have some affect on these different groups. And this is, that safety program and the Department of Labor, then I'd get the Commissioner and say, as an association and say we would like to see a change in this, where it's an audit program that comes back with recommendations. Cause I know, I ran a small business, and trying to keep up is not easy. But if somebody'd come in and said "Ed you got to do this," then you'd probably cuss under your breath at the cost to something, but you had something concrete to do right then and there. If there's time to get through the day, if your lucky to get the books done, to spend all night on the internet trying to find information on how to keep somebody's hearing at the 2000 decibel level or the 2000 cycle level from deteriorating, it just doesn't happen.

CR: Just doesn't happen.

EP: So I think it is part of you but I also think you ought to go to the Department of Labor as an association and suggest a change in the structure of what they do.

LM: We had started preliminary meetings for DEP and Department of Labor to talk about the concept and we met with Senator Collins and some of the staff and so we're really being proactive on that. I think in terms of our discussions here today, one of the things that, when there are regulatory bills that are introduced, we are

well aware of those and we become very active in the legislative process on some of those regulatory - such as the Stewardship Bill and other things. So you know, in Beth's question about anything very specific, we didn't want today to really say well we don't like this and this and this. If we don't like it we do work the legislative process and utilize this board, now that we've been here for the first time, had the opportunity to address those in the future, if necessary.

Beth Shissler: And this is a perfect avenue to do that for specific bills, but, I think there are two good points here. First of all 80% of the manufactures in the state of Maine, from your definition, that aren't aware of the regulatory issues and/or violations and the 20% that's left may not have the bandwidth to do it. So my take away from your session is that our recommendation is that there needs to be a lot more industry level working relationship, at the industry level in terms of understanding and enforcement. So, that's why take away for what you guys have presented today. Anyone else on the board?

ES: Yes, I'd like to just make a couple of comments. One is in your survey that you sent us, which was quite interesting to me in many respects, I liked the conclusions offered under Category 15 where you've - you had apparently quite a difference of view there. The first statement is, "I feel that the State of Maine regulations that impact our business are both necessary and implemented fairly." And then the next statement below that is "Without getting specific it is my opinion Augusta is trying very hard to drive every last business out of Maine." [chuckling] So we can see that reflected in some of the numbers too.

LS: That would be fairly typical of our industry member's perspectives. I-

ES: Yeah, apparently so. Now, the other thing was when I had a business, we had an OSHA, a state OSHA kind of pre-audit, which I think you've been talking about in so many words. This was maybe 20 years ago. They came to our laboratory and they had their testing equipment for sound particularly. And they told us that certain equipment was too loud and that we would get in trouble with federal OSHA if we didn't do something about it. And so we said, well what do we do? And they said go to LL Bean and buy a set of earphones and put them on your employees who are running this equipment. It's about a \$20 solution to what could have been a several thousand-dollar fine. Now that's what I call real technical assistance from the government and I appreciated that a great deal. I think they also mentioned the plan, but I don't think there was as much emphasis on that at that time as there may be nowadays.

CR: Yeah, nowadays the first thing they're going to ask for is your paperwork, and then your training records and then they're going to go and talk about implantation of earplugs and other mitigation. You have to have the plan in place. You actually have to submit it for approval.

ES: Right, so they've raised - they've ratcheted up that level of requirement. But I think that it was helpful that the State of Maine was doing that at the Labor Department level and saying, "We're not going to report what we see and notice in your place of business. We're not going to report it to the Feds." I think a lot of small business operators, owners would be nervous about that.

CR: Actually they do.

ES: They do that now?

CR: The, I don't know how it's actually worded but they come in and make recommendations and they give you a period of time to remediate and if not done, then apparently they are reported to OSHA. Not - I'll make another comment is, in order to get into this, is it called the Smart program, that the Safety Works runs, they offer you a 12-month period in which OSHA will not come in and audit you. So I applied for it and they asked me to send them a bunch of information, including our OSHA 300 log. And then I wait, nothing happens, I call them up in about three months and I say, "Well how come I didn't get my approval?" "Well your accident rate is higher than the industry average of your sic code." And so I said, "Well, wouldn't that indicate that I am the type of company that you want to work with?" I said "I've had a 0 accident rate then you probably shouldn't waste your time on me." "Well we can't submit an applicant if they're too high an accident rate." I'm sure that there's a good reason that I don't understand. But our approach would be that we would want to help you no matter what your accident rate is.

ES: Is your company engaged in the composites industry in some way?

CR: No, we are a metal fabrication company.

ES: Metal fabrication, all right.

LM: We have a number of members [??]

ES: Yeah, I know you do. All right, if there are any other questions with this panel, with none, we'll thank you and turn to another business witness and appreciate very much your presentations.

LM: Thank you.

ES: And that's Mr. Jim McGregor, Director of Government Affairs for the Maine Merchants Association. Mr. McGregor, are you in the room?

Jim McGregor: I am

ES: Would you come to the desk and by way of a brief introduction I can say that Mr. McGregor is the director of Government Affairs for Maine Merchants

Association. He for some years was the Director of Public Affairs for Bath Iron Works, Maine's largest private employer. Prior to that he was administrative assistant to the late Governor James Longley and many other interesting and honorific activities prior to that. But, we're glad to have you and thank you very much for coming in. We can give you about 15 minutes if that's okay.

JM: I'm passing out a copy of my remarks. Chairman Stanly and members of the Maine Regulatory Fairness Board, as he said my name is Jim McGregor and I'll be here today on behalf of the Maine Merchants Association a state wide non profit trade association representing over 400 businesses in Maine, from large chains to small independent retailers. It was established in 1933 and serves as the voice of merchants in Maine and concentrates on the development of a strong retail environment. I've been in and around Maine State Government for more than three decades as a journalist, Chief of Staff to a former governor, lobbyist for a major employer and lately as Director of Government Affairs for the Maine Merchants Association. During that time I have come to be known in some circles as a free enterprise fanatic. I'm not sure the characteristic has always been intended as a compliment but I have come to accept the label with a degree of pride. In any event, I have been an outspoken critic of excessive government regulation and until the final days of the 2010 Maine Legislature I had felt that I had seen it all. Then along came Legislative Document 1779 and 1565, prior to the final action on these two bills, Maine Merchants Association and other business groups were prepared to give lawmakers in this particular session high marks for being sensitive to the troubling economic times and easing up on regulatory bills. But in the final analysis some lawmakers could not resist the regulatory itch that has seemed to plague the legislature for many years. Even for a state with a reputation for sometimes over regulating LD 1779 we felt established a new and not necessarily positive standard of regulation in Maine. It mandated a business sector to stop a practice it had not started and had no plans to being. LD 1779 was an after deadline surprise that prohibits merchants from applying a surcharge to debit card transactions. A complex bill backed by the credit card industry and filled in several states. It injected Maine into the middle of a debit credit card business fight where it did not need to be. Unfortunately the bill was presented as a simple consumer protection step. Maine Merchants met with Governor Baldacci and legislative leaders of both parties cautioning them that the legislature would be taking sides in a business positioning struggle between highly competitive debit and credit cards and that any attempt to level the playing field between the two financial giants should be included in an examination of the entire fee and charges structure. The state leaders were also informed that the state leaders were also informed that there was federal legislation pending and lawsuits that could provide forums for that detailed examination of the issue. With a near unanimous vote from the majority party in the legislature held 1779 was enacted and signed into law by Governor Baldacci. He did concede that Maine Merchants Association had raised some legitimate concerns and directed Superintendent Lloyd LaFountain of the Bureau of Financial Institutions to assemble a stakeholder group to study the debit card fee issue. We feel this step should have been taken prior to the legislative action. Federal legislation has moved

forward and several of the states have enacted or our considering more reasonable legislation. We hope the rash action by the majority of the Maine Legislature will not once again place Maine out of step with other states and the federal law. We have met with Superintendent Lafontaine initially and we feel he is committed to understanding the issue and trying to see that everyone gets a fair hearing. LD1779 was considered and enacted in the second regular session of the 124th Maine Legislature. A short session supposedly devoted to Merchants Legislation. If it was as its sponsor suggested simple consumer protection legislation, why was it an after deadline submission. Also the situation it posed to address had been in place for several years and if that suddenly made it an emergency why could the corrective legislation not have been submitted earlier in the session to allow proper examination. The submission of after deadline emergency legislation has been a bone of contention in all my years in and around the state house and I would suspect that it would remain so. It does seem however that submission of LD1779 stretched the criteria and added to the confusion.

LD1565 drew the attention and concern of Maine Merchants Association and others in the business lobby not because of the timing of its submission, but for the precedents many of feel it sets. Indeed LD1565 was lobbied and discussed long and hard, first by special departmental task force assembled by the governor, then by the labor committee and the full legislature. In a nutshell the enacted version gives the Executive Director of the Maine Workers Compensation Board authority to shut down a worksite the agency head believes is using a misclassified independent contractor. At one point during it's legislative journey the shutdown threat could have been extended to all businesses and industries in the state, but was finally amended to apply only to construction sites. Still, Maine merchants and others felt the new law established a dangerous precedent and sent a message that the state is indeed unfriendly to business. Perhaps there's nothing this board can or should recommend that would unduly limit legislation such as LD1779 that can be considered in the session, but we would invite the board to take a look at the process that led to passage of LD1565, the Business Shutdown Authorization, not for the purpose of hampering the process, but perhaps to expand it.

More than a year prior to the legislative debate on LD1565, Governor Baldacci had established a joint enforcement task force on employee misclassification, which included top officials from the Departments of Labor, Professionally financial services, The Attorney Generals Office, the Workers Comp Board, Maine Revenue Service, the Department of transportation and the Governor's office. The task force held agenda driven meetings, conducted research, appointed subcommittees and eventually issued a final report that addressed the use of so called misclassified independent contractors. That final report supported enactment of LD1565 and outline several of the steps being implicated by the task force to keep the long debated independent contractor matter on the front burner. It continues to meet to oversee implementation of the new law. At times during the debate during the shutdown legislation it appeared that this was the only legislative issue being addressed in the entire legislative session. One could not help thinking that all the

time and energy was being used to police existing workers instead of exploring ways to create new jobs. One however had to admire the grassroots work of this cabinet level taskforce in framing the debate.

While Maine Merchants Association and others in the business community do not necessarily agree with the administration's stance on independent contractors, the individual steps being taken on the Worksite Shutdown Authority they have been tremendously impressed with the work of the taskforce and the organized effort it has displayed. I recently remarked that in all my years at the state house in various capacities I had never seen an administration devote that much time and attention to a single purpose goal or to assemble such a broad and diverse group of state leaders to focus on a single problem. My suggestion to the Regulator Fairness Board is that it recommend to the current Chief Executive and to the next governor that they assemble the same sort of cabinet level taskforce to find ways to review and possibly limit undue regulation and to make Maine more attractive to visitors. As an aside, I had a meeting earlier today, the Board of Directors of Maine Merchants Association, unanimously endorsed to come sit and the request. One constant criticism of the Governor's joint Enforcement Task for Employee Misclassification was that it was by its very nature pro regulation and that it did not include members of the private business sector. A suggestion that private business be included on the taskforce in the future did not receive a warm reception at the latest meeting of the Governors group. So we feel the designation of a separate Cabinet team that would be appropriate and beneficial. We do not suggest competing panels but feel the state should benefit from the collective thinking and expertise of top state officials from all areas of government. Maine Merchants would be willing to work with this board to further define that concept, if there should be an interest. In any event, I appreciate the opportunity to vent frustrations on a couple of issues while they're still fresh on my mind. Thank you.

ES: Questions?

LS: The misclassifications of workers - you're saying that most - an awful lot of businesses don't understand the differences between and employee and an independent contractor. So your saying that this law says that if somebody inadvertently, probably not willfully, but inadvertently hired somebody as an independent contractor when by law, or the IRS standards or whatever, should be an employee, that the worksite, all the employees are shut down?

JM: They could shut down the work site. In fairness, there is some appeal. There's an appeals process, but they can go and shut down the worksite.

LS: That's ridiculous. In 1989, now this is a long time ago, the State of Maine put out an RFP for somebody to be what they called a liaison between the consumers and mental health system. Families and the clients and central office. And I responded to that RFP and I became the person who was the independent contractor for the State of Maine, and I was required to have a desk in central office,

I was required to have certain hours. All these things that absolutely are employee status, not independent - of course that's 20 years ago. But the state of Maine itself at that point implemented something that was illegal. It's kind of funny that.

JM: It's an issue that's debated every year and there's always a discussion "Well, what is an independent contractor?" and I think the Governor kind of got fed up hearing about it and assembled this taskforce, this cabinet level task force to say "Okay, take a serious look at this - take a serious look at that issue. And that's what they did, and it's not unlike being on a football team and getting kicked. You hate to get beat but if the people who beat you were really good, it eases the pain. But I think that's what happened. I don't necessarily endorse what they came up with and certainly didn't support the legislation but you have to stand back and admire the process that they came to do it. It could be very effective.

EP: I believe that that whole thing and the reason that it was all government people involved is purely revenue driven. Workman's Comp wants to get more, although that's normally through an insurance company. Unemployment particularly, and all of those things. I think those are purely revenue driven. It's very - unfortunately most people who are independent contractors probably aren't under the IRS rules, what are there, 24 -

LS: 21

EP: 21 criteria you have to meet in order to be an independent contractor.

LS: Not all 21. There are 21 different tests, you don't have to meet all 21 of them.

EP: You don't have to meet all 21? I was going to say, I hope not. Cause I'm an independent contractor delivering packages ten days a month, but I have to deliver them at a certain time on a certain day. Yet one of those steps, I believe is you can run your business to your advantage and decide when your going to do it and such. The building trades are the biggest. Father, son friends of mine are builders and the father is his own contractor and the sons his own contractor. Yet the son pays his father, so, but that's always been the way in Maine, and if you take that away building costs and everything else are going to go sky high.

JM: In Maine it's always been part of the Maine tradition.

EP: I'm an independent contractor; I'm going to work for myself.

JM: ...temper people that sort of thing, so it kind of goes against the grain. But - I just had never seen that concept - I had never seen an administration apply that sort of spotlight and attention on a single problem and it seemed to be affective to get Worker's Comp, Department of Labor, Revenue Services, Attorney General's office in the same room and -

EP: Yeah, but - the reason he got them all together was he needed more revenue.

JM: The revenue has always been part of that discussion, to in effect force independent contractors on employee roles for the purposes of unemployment and worker's comp. But there was some discussion in some of the task force meetings this year of possibly enhancing state revenues further by getting more people, more income tax out of it and some other taxes. So it was to degree revenue driven.

ES: Are there any other questions or comments from the Board?

ME: I have a question.

ES: Marie?

ME: On this LD1779, I'm not sure that I understand it. It's a complex bill backed by the credit card companies, so people now - people before, retailers, were charging for the use of the debit card?

JM: What frustrated me was the bill said that retailers or merchants cannot apply a surcharge to debit card transactions. We can't now. We're prohibited by contracts from doing it and no one knew of any indication - there's a big fight in DC right now over this whole issue of what people pay on credit cards, interchange fees, swipe fees, all of this kind of stuff and we enacted in the final days of the session as a simple consumer protection thing, when indeed it is a very, very complex issue that's being considered at several levels.

LM: And it's very expensive to merchants too, very expensive.

JM: It is. We didn't go in saying debit cards are good, credit cards are bad, that wasn't the issue. Maybe there no hero's at all there. But you can't understand that problem unless you address that whole fee system, which is what we had recommended and which was not done.

LM: I know a lot of retailers have stopped using credit cards all together because every time they swipe they pay, and then there's a percentage, an initial per swipe and then there's a percentage per swipe, then there's a monthly fee on top of that. So if somebody comes in and say charges a dollar soda pop it ends up costing the retailer money to process that sale.

JM: I just simply thought it deserved more attention then an after deadline late session submission as a consumer credit protection when it was a very, very complex issue.

ME: Thank you, thank you for bringing it forward.

ES: If nothing further, Mr. McGregor, thank you very much for your statement and coming in today.

JM: Appreciate you - thank you.

ES: We'll give it every consideration.

BS: And thank you as well for your very concise recommendations to the board for our actions. It's helpful.

JM: I appreciate your attention to it, thank you.

ES: Now, we're about to move along on our next part of the program and this is to be a panel discussion on Due Process and state licensing board systems. I'd like to ask Commissioner Anne Head of the Department of Professional Regulatory Affairs to come forward. There she is, also Assistant Attorney General Andrew Black, from the Attorney General's Office, Kenneth Lehman, Esquire, from the firm of Bernstein Shur, excuse me, and Dave McConnell from Perkins Thompson, is that correct? And you'll have to probably swing that microphone around a little bit as necessary for each of you to get into the recording that's being made. I just want to briefly repeat for this afternoon session the - some things I said earlier today to wit, that this is an advisory board. We make recommendations to the Legislature and the Governor. We do not take direct action. It is our job to hear the concerns of Maine businesses and individuals and to make recommendations to the legislature and the Governor on how to improve Maine's regulatory environment. We want to hear from anyone who wishes to speak. If there's a large number for that after this panel is completed, then we would have to probably allot some time if that should be the case. You may also submit additional written materials, this applies to the witnesses as well as to the public. Please address your statements, or questions to the board. The board members may want to ask questions for clarifications, etcetera. Others present do not have permission to speak until called upon by the board presiding officer. Keeping the process orderly will help all to hear what is being said. The presiding chair reserves the right to have a disruptive person or persons removed from the room by security should that be necessary.

We hope you will focus on recommended changes in law or regulation to address your particular concern and we understand that when someone is affected by a state action or regulation, which they believe has been or is being harmful to them or their business, it can become an emotional issue. We are here to listen and to be of as much assistance as possible. We cannot change laws, regulations, etcetera by ourselves, nor can we discipline officials or employees. We can however make recommendations each year to the Governor and Legislator. So with those ground rules in mind, I'll start this panel off asking Commissioner Head if she would lead off and give us I guess whatever you want to say, of course, but I think if you could bring us up to date a little bit on the status of what happened with LD1608 and now

with the resolve and what is being done about that under your direction, that would probably be a good point of departure for this discussion. Commissioner Head.

Anne Head: Thank you Chair Stanley. My name is Anne Head, I serve as Commissioner for Department of Professional and Financial Regulation. The Department includes five agencies, including the Bureau of Insurance, the Bureau of Financial Institutions, the Bureau of Consumer Credit Protection, the Office of Securities and I'm also the Director of the Office of Licensing and Registration. OLR as we refer to it is the home of 37 licensing programs. The Department also has an affiliated relationship with six external or affiliated licensing programs. The Commissioner does not have direct authority over those six programs, but works collaboratively with their executive staffs. During the course of the last Legislative Session, a bill, LD1608 was introduced and considered by the Business Research and Economic Development Committee. The Bill would have changed the way professionals, who are licensed by the State - it would have changed the adjudicatory hearing process from having groups of licensing board members appointed by the governor who now take final agency action in different kinds of disciplinary issues. Those decisions would then be made under this bill, by a single administrative law judge or judges. There was a great deal of discussion by the legislative committee of the bill and it's consequences as a result of those discussions, the committee opted, instead of adopting the bill or allowing it to move forward, directed that the stakeholders that were interested in how this bill was going forward should get together and talk about some of the issues that were raised during the hearing, the Legislative Hearing part of this. That meeting did occur, it was the Committee's preference for the Commissioner to Chair that meeting. It was what I would call a good review on the surface of many issues that play into how licensed professionals are governed, disciplined and the other aspects associated with professional licensure at the state level. As a result of that, the committee adopted a resolve, which is basically direction to an entity or a person to take certain actions. Or gives direction to that individual. In this case, the resolve directed the Commissioner of my department to convene an organized group of stakeholders to continue to discuss the issues raised by 1608, in particular the Commissioner is directed to study the need for change in the complaint resolution process in agencies within and external to the Department of Professional and Financial Regulation. Those meetings have started, we've had one stakeholder group meeting. Certain issues were discussed there and it was the wish of the group to establish a sub-committee of members of the private bar and state officials including Andrew Black, Supervising Attorney - Assistant Attorney General for Licensing Programs, to come together to discuss some issues in detail. With the purpose of creating a document that could be taken back to the large group for a more focused discussion of some serious issues that we all wanted to talk about. So our first small group meeting was held this week, the notes from that meeting will be finalized and given to the larger group. So it's not a group that will meet more than once a month, in my view, given time constraints of everybody involved, and it is my impression, and I'm speaking only for myself, that everyone involved in the large group discussions and the small group are talking candidly, openly and in good faith to see

if we can come to consensus on some changes that would benefit the public of Maine and all the participants. So that's my assessment of where we stand today.

The report of this stakeholder group will be put together toward the end of the summer and that is that report announcing or explaining the process to the Legislative Committee will be submitted to the BRED Committee on or before February 15, 2011. So we've been given a good amount of time to go through this. It would be an understatement to say that these are complex issues involving many licensing programs, and that we, I think, as a group feel it's necessary to move cautiously and discuss how certain proposals effect the whole group of licensing programs. Just as a final note, what we've ascertained is that there are many different ways to structure the complaint resolution process and the adjudicatory hearing process, so we are going to be diligently working on that and because the Chair and Mr. Philips are a part of that group, I expect full participation from your Board and that you will serve as the reporter back to this group.

ES: We appreciate that. Now, I'll turn - and to say anyone else on the panel who wishes to comment or further, or respond in some way to what she may have said, feel free to do so at this point - within the panel, any other comments or reactions? I had one question, for example, you mentioned that you were going to give a report to BRED Committee. Would you foresee possibly a draft bill that would in fact be proposed to replace LD1608? I know the resolve just basically calls for a study, but do you have the flexibility to propose draft legislation at the end of the process that would -

AH: I would not want to pre-judge the process. I am simply the reporter to the committee. We each have our own, everybody in the stakeholder group certainly has their own views. And I wouldn't want to predict one way or the other. I'm certainly open to whatever the group decides should be recommended to the Red Committee.

ES: Okay. Any other comments or reactions within the panel to anything? Or do you want to open up some other area? Ken, you?

Ken Lehman: Well, Mr. Stanley, I appreciate your invitation to be here. Let me just, to you and the other members of your committee tell you my background, which may help inform - can you hear me okay Mr. Philips? Okay - I don't know if that's picking me up -

ES: Swing that mic around.

KL: That's probably just fine if I'm not. [Shuffling of mic etcetera] By way of background, I was graduated from law school in '81 and practiced for the next five years in New York and saw the light and came to Maine invited by then Attorney General Tierney to come into the office and work with the Medical Licensing Boards as one of my primary responsibilities within the Attorney General's office. For the

next six-years I had a number of responsibilities, all within the area of your inquiry today. As council to, as prosecutor for, as investigator - it was the '80's - in some regards for the boards - I handled all of the work for medicine, Osteopathic medicine for a number of years. I did dental, the Board of Dentistry, psychology, social work, substance abuse councilors, it goes on a ways longer. But that gives you an idea. And for six-years I handled all of the array of work that was needed out of the Attorney Generals Office, including the prosecutions and the appellate work of those cases. Since 1992 I've been at Bernstein Shur and I primary - my primary focus of my practice is defending licensees before all of the various health licensure boards, is my primary focus. Medicine, osteopathic medicine, dentistry, psychology, social work, substance abuse, nursing home administrator - if it's got health care as a bent I've done it, probably on both sides at one point or another. And I've been doing that consistently since 1992 as the Chair now of the Practice Group at Bernstein Shur, I do have a CD if you would like it at some point. I'd like to start out by recalling an event, which is useful perhaps to these events, to your inquiries. When I was with the Attorney General's Office and handling the presentation of an adjudicatory hearing involving a licensee, at that point we had a former or a then prosecutor from the Soviet Union who was there and it was during the end of the era of the Soviet Union and the crumbling of the country into smaller republics, this gentleman was from Estonia and he was a prosecutor. And he was assigned to our officer for a period of about four-months, primarily working with the Criminal Division, but also episodically with others of us to see how we do our work. And he that day, go permission to sit with me at Counsel Table and sat with me as I handled the presentation of a case as an Assistant AG involving the Medical Board. About four hours into the case, and it was proceeding - I don't even remember what the case was about, he leans over to me in a heavy Russian Estonian accent and said "I don't understand all this Due Process bull' he said something after that, but you get the gist. He says "In the Soviet Union, first we take away his party card, and then we say no more license. Two minutes at most." It was an interesting discussion that we had a few hours later when the hearing ended about what the processes were that were pursued, why they were pursued, what was done prior to the case ever getting to a hearing and how it was we did what we did and why we did it in the US, and with a prime focus on Due Process. And I know that's a large part of sort of the focal point of how you are approaching this, and I hope that as you have questions or issues arise I might be able to be a resource to you, recognizing the following as a primary premise that may be different than others who would appear before you today, earlier on this panel or subsequently.

Having worked in defense of these cases as the primary bread and butter of my law practice and doing this a great deal. I do believe that the current system of having professionals regulate professionals is the right system. I think it is correct they have, in my opinion, the ability to judge the merits of a case on both sides of the equation. Sometimes I like it a lot and sometimes I don't like. But there is a judgment that comes into play that is integral to the process at several different points, either in a license application or in the course of issues being raised, by a patient, by another physician, by a hospital, by another entity, by a hygienist of a dentist, by any

number of circumstances. The boards as they are currently comprised, I believe, do a good job. And that includes the fact that there is number of lay people on each of these boards bringing to the boards some input of "Look, you're not listening to how the member of public who's made this complaint is saying this." But what's interesting is that rarely has to be said, in my experience, on both sides of the equation. Remember really my vast experience for the last 17 years is defending these cases. They do help ground, they do help attune the professional members, but there is a learned experience that coalesces a board into a board. Sometimes you have a wooden, a bad penny in any group who shouldn't be on a board. They are often then, hopefully taken off of a board because they are not listening, they're not attuned, they're focused elsewhere, they're not present in whatever way you want them. But I think by way the only introductory statement I would say is that, with respect to the effort of this committee and 1608, I do believe that the system as it's currently constituted is in the right place and that there are a number of things that the process in which you and Mr. Stanley and Mr. Philips are involved and otherwise to work on the system, to bring about hopefully a more just fairer way of doing things, however you want to describe that, can be accomplished within the existing system, and I think that that could be the most effective thing for the people of Maine and for the licensees who are regulated by these boards.

ES: Are you on the subcommittee with the Commissioner on this?

KL: I am, it was a vigorous and interesting discussion on a lot of interesting issues yesterday. And I'm doing that - I'm trying to practice law as well. But, yes.

ES: Good, well we're taking big chunks of your time, I know, for all these boards and things. Attorney General Black, would you like to make a comment at this point, one way or another?

Andrew Black: Certainly, I guess I'll drag this over here, hopefully you can [shuffling of mic]. First I want to thank you for inviting us here, thank you for putting together actually this panel, which Ken and Dave are often times on the other side of the table from me and we litigate both of us vigorously, all of us, but I have an enormous amount of respect for both these practitioners and they do a great service and justice for their clients.

My name is Andrew Black, I'm the Assistant Attorney General and I'm also the Division Chief for what's the Professional Financial Regulation Division within the Attorney General's office, and that includes the attorney's who represent the various licensing boards and so those folks report to me. I work on an almost day-to-day basis with Anne on various issues, but that's where I fit into the picture. I'm here today to help you better understand the complaint process and to understand the impacts and any changes that you might want to consider changing, what those are, here to answer whatever questions you want to have in regard to those issues. I was also here this morning and I heard some of the testimony by various dentists and so forth who were out there, and I got the sense, and I want to sort of clear something

up in terms of the process and the role and what's actually going to be happening this afternoon at 3:00 as well. I got the sense that some of these folks envisioned that this was a process to sort of re-try their cases, and that expectation I think is a bit misplaced. And as the board knows, this is not a proper forum for re-trying a case, the board doesn't have the capability or authority to do that kind of thing. So I just want to make it clear that that's not the capacity that I will be here today, nor will the members of the dental board and Assistant Attorney General Smith who will be with them this afternoon. That's not the capacity that we're here to discuss those prior cases. In fact the appropriate forum for addressing what I heard was probably most if not all the issues that were raised this morning is really in the court system through the appeal process and all of those individuals had the opportunity, full opportunity to appeal those items and get those addressed in a proper forum. Along those lines, just so there's no unintended expectations, is that the Dental Board members, nor will I, be answering any questions pertaining to allegations of board misconduct and so forth that might have been raised this morning or about any of the individual complaints. That would be inappropriate for them to do so. Similar to a judge who has decided a case doesn't speak about the case afterward and address the issues of why he or she may have done one thing or another. As I understand it, those dental board members have provided this board with copies of the official documents, decisions, Consent Agreements and so forth that may have been involved in those cases. The board is perfectly willing to discuss the meaning of those decisions, the process that was involved, but not answering questions as to why they made such and such decisions, how did they make this credibility determination, why did they believe this person and not that, those questions would be out of balance and they won't be answering those types of questions. But they will provide the board with an enormous amount of information about the dental board, about the complaint process, and they'll also be able to answer the questions about the proposals. There was some of the dentists that testified had a list of proposals and so forth, the board should feel free to ask those panelists any questions about those proposals and how those might impact things and so forth, so don't hesitate to do that.

I will address one issue that seem to come up over and over and there seemed to be some, again, an expectation that the board would or wouldn't do something, and that was with regard to investigating ancillary matters. There seemed to be a concern about, for instance, a complaint by a complainant is raised and then the board might address another issue. That is not unusual at all. And the reason is, is that what happens in terms of investigation, a complete investigation is done, or attempted to be done. Often times your complainant, whose not a lawyer typically and doesn't know, and often times doesn't really know what they're complaining about other than they think something's wrong or they had a bad outcome or so on and so forth. They don't know how to address the real issues that might be at hand. Through the investigation process sometimes other information, evidence, turns up that indicates that there's a potential violation. And the board has a duty to protect the public and the board has a duty not to turn a blind eye to evidence that comes up indicating a violation of law. That's why boards and I would say that this is probably

universal across the licensing boards, they have a duty to look at that. Again, you go look at something and you find a smoking gun, you can't just say "Well, that's not what this particular complainant raised, I can't look at that." No, they have a duty to protect the public and look into those issues. Just so it's clear that that is a fully legitimate and an expectations and one that's imposed upon by the legislature to do that.

Another, an interesting comment that came up this morning was that someone - I can't remember exactly who it was, said that, I guess it was the first dentist this morning said "I'm not a public servant that you can trample on." Well, I guess that's us. We're the public servants that you can trample on, so we do encourage you to ask us the questions and so forth with the processes. I'd also like to talk about the role of the AAG and because there seemed to be some concerns about that AAG doing things that might have been inappropriate and so forth, and there seemed to be, at least from the complaints this morning, a certain amount of animosity directed toward a particular AAG. Well, let me tell you that any animosity that's directed to a particular AAG in my division, should be directed to me, because the AAG's, Assistant Attorney Generals in my division do what I ask them to do. They're under my direction, my responsibility, my authority, so any of the anger, animosity that may be directed to someone else, it goes right here. I'm the person.

ES: Let me just ask on that point, have you had occasion to rotate your AAG's from one board to another, have you ever had a situation where you ever decided for whatever reasons that perhaps it would be a good idea to have a different AAG and a different board for a period of time or permanently?

AB: Yes.

ES: You have?

AB: Yes.

ES: What would be the factors that might bring you to reach that conclusion?

AB: It could be a number of different things. Typically it would be a situation where there's been a conflict perhaps. Let's say an Assistant Attorney General represents the plumbing board and there's a complaint filed against a plumber who's their plumber, who just fixed their toilet or whatever. Potentially we have a business relationship between those two. Typically that would be, we'd get another - or someone - a complaint filed against their doctor. They're not going to be the investigating prosecuting attorney in that particular matter. If in my mind I think the Assistant Attorney General is not doing something appropriate, for instance is not being aggressive enough on a particular, or doing something for whatever reason I consider inappropriate I might move that attorney off the board. We also deal with issues, resource issues, people coming in or out, different specialties of attorneys

and so forth, we might reallocate or recourses and move boards around for that reason.

ES: How many AAG's do you have under your direction and your division of the Attorney General's Office?

AB: Counting myself there's nine.

ES: Nine?

AB: Yes. Now, not all of those represent licensing boards. WE have other clients aside from the licensing boards. And I think it's - probably if you took the numbers and some work part time in that area, there's probably a total of six attorney's full time attorneys or people representing the various licensing boards, five to six. And just let me finish up, just on the role of the Assistant Attorney General, is that the AAG is not a decision maker in the process. In other words, all decisions in terms of whether to dismiss a case, whether to set it for trial, whatever the Consent Agreement that's being set up for hearing, whether the Consent Agreement is going to be offered, what the particular provisions of the Consent Agreement are and the terms and so forth, all of those decisions are made by the boards themselves. The Assistant Attorney General acts as a legal advisory to the board and in that capacity typically advises the folks who might comprise the complaint committee, in other words, the complaint officer, the investigator, so forth, helps them conduct that investigation and then ultimately is the individual who would prosecute a case before the board. But in none of those roles does the AAG make a decision that effects the rights of the individual. Those decisions are made by the board.

ES: On that point, isn't that roughly comparable to the role of say a District Attorney in dealing with a Grand Jury? In other words the Jury makes the decision, but the DA has they like to say, can get an indictment from a ham sandwich. Is that in fact a different situation here where the AAG is not steering the proceedings pretty affectively toward a given conclusion?

AB: Those are two extremely different situations. In the case of a district attorney who is prosecuting a case or getting an indictment as you say, that district attorney represents the State of Maine prosecuting of that particular case, and is a true party to the preceding and does make decisions in terms of the prosecutorial discretion we've heard that, what cases are going to go forward to - before the Grand Jury or whether or not to dismiss a case or not. That lies within that prosecutor. That's not the case with an AAG who represents a licensing board. In the first instance, whether a complaint is filed or not that comes from - typically from outside, it could come from within the board or something, but whether a complainant exists or not is something that happens outside the control of the Assistant Attorney General. The Assistant Attorney General does not have the ability to dismiss a case. Every complaint that is filed will get presented to the board. And it depends on the board how that's handled. In some cases there are AG's that would

present those cases. The more common situation is where the complaint officer at the board presents the case. But the complaint officer does a neutral presentation of the facts to the board. In other words saying, "Your complainant is saying this, your licensee has responded to the complaint. The licensee says this. Here are the investigation materials. Here's the evidence that's been uncovered. Here are the potential violations that might be out there based on the evidence and here are the options that the board has to consider and to go forward with." But it's not the AG who's trying to color that, or even the Complaint Officer who's trying to color that. It's to be a neutral presentation to the board and the board decides should this - in the first instance does the board dismiss the complaint or does it go forward to a hearing. And that's the real decision that the board makes. In between there, there could be some decisions, well do we set up for hearing and offer a Consent Agreement, again a decision made by the board. Do we set it for hearing but offer an informal conference to the individual? Those are all decisions that are made by the board. Does that answer your question?

ES: Yeah. Is there another question for him while he's - Linda?

LS: I guess I'm stuck on something you said many sentences and paragraphs ago. "Often times people who make a complaint don't know what they're complaining about." So if I complain that my dentist has been rude to me, really I'm complaining that he's given me too much medication, or he hasn't done something correctly in my file or chart or something like that, is that what your saying? I'm really kind of stuck on that because I thought that was kind of an indictment on the intelligence level of people.

AB: No, sometimes if - if you understood it that way I certainly mis-communicated that. It's not an indictment of the complainant. You'll see it more complex situations and - where an individual where - maybe in a pharmacy situation where they somehow got the wrong medication, but they may not understand fully how they got the wrong medication and they'll complain "I got the wrong medication." Well, there might be a lot of issues leading up to why that person got the wrong medication that the complainant is completely unaware of.

LS: Except that the issue we were talking about this morning was somebody who was rude and what was pulled in was all sorts of unrelated information and activities, so I'm really stuck on this. This is bothering me a lot.

AB: Yeah, here's - again, I'm not going to address that particular issue, I'm not familiar with all the facts in that case and again whether or not the allegations that were made this morning or not, I'm not going to comment on the credibility or accuracy of those.

LS: I understand that, yeah.

AB: But, taken as a hypothetical, how could a board get off on something else? Well, when a complaint comes in when it involves a patient and a practitioner, typical first step of the investigation is to look at what their relationship is and how it is presented through the records of that practitioner. Standard procedure, get the records on it. Look at the records, see how that impacts the situation, because it could. Let's take a rudeness situation, there may be something in those records that can explain other avenues of that. In the course of that if there are issues that arise, for instance, improper record keeping techniques, you know, improper records or so forth, the board can't simply say, "We're going to ignore that, let it go away" just because the complainant didn't raise it. Again the boards duty is not to simply address complaints, it's to protect the public and if it sees something in there, a violation of any sort of procedure, it's got to take appropriate action to make sure that there's correction to that. That's it duty, to protect the public. If the board might- you know, I've done instances where the board said, "Geez, look at this, I can't believe - we've asked for these records and look at this. It's ridiculous, it's horrible." They don't want - they're not looking for work, but they can't ignore it when it appears. And they have to address those issue, and it's a good thing they do.

ES: I need to ask Mr. McConnell to say if he would like to get in on this since we haven't called on him yet. Dave McConnell?

David McConnell: Sure, thank you. Thank you to the Chair and to the Board for having me here today. And I'll try to keep my remarks brief. Like Ken, I am a private, member of the Bar and I represent licensees in front of a variety of boards and like Ken, my impression is that the system for the most part works pretty well and that the people that are involved in the system, from the staff to the AAG's to the board members themselves are doing - are well meaning people who are doing their best to try and do justice for the people of Maine. Having said that, like any system, there is room for improvement, I think. And a couple of the changes that we've or possible changes that we've been discussing in the stakeholder meeting and subcommittee meeting that Commissioner Head was describing, a couple of those changes that are near and dear to my heart are two that I'll just touch on briefly. The first would be a proposal to divide the functions of the AAG from the advisory role on the one hand to the prosecutorial role on the other if you will. And the issue there is that the same person that the board is looking to, sort of month to month in the regular course for advise on what the law is, when a complaint is presented, whether or not they've presented the complaint, they're there as a resource to field questions from the board and ultimately it is, in my view, would be a better - would not only appear to licensees and to complainants, I think, to be more fair if you had a different AAG handling the actual prosecution if it went to a hearing.

But, sort of along those same lines, the second issue, that I'd like - a change that I'd like to see made, is the division of boards into what I describe as kind of the Grand Jury panel and then the trial jury panel because the difficulty that you face as a licensee is that the group that has decided that there's probable cause for a violation and perhaps recommended a consent judgment, if that consent judgment is rejected,

which the board thought was reasonable, you've got a real uphill battle as the licensee if your then going to appear in front of essentially the same group of people and try to change their minds about that. And I think that a more appropriate system would be to affectively divide the groups so that one portion of the board would hear the complaints in the initial process, make a recommendation as to how those would be disposed of, and then in the event that a complaint does go to hearing it would be a fresh board, a fresh set of ears to take a look at the evidence. So again, those are just a couple of ideas that I'd like to see potentially implemented to improve the system.

ES: Thank you. Any other comments from within the panel on that or other things? Mr. Lehman?

KL: Thank you. There was a pretty good discussion on this very issue yesterday and I would hope that this can be discussed and hashed through about how to make it work so that it does not cause a huge fiscal impact on the system, can be effective in accomplishing the goals that Mr. McConnell spoke about. There are many other things that ought to be considered and I would urge need to be considered and really discussed from multiple different perspectives so that recommendations can ultimately come to the boards, to the Attorney Generals Office, to Commissioner Head, to you, to the legislature about ways that may need to be changed - things that may need to be changed to both create a more just system and process and to ensure that the licensees and the public, who may be complainants, also preserve that to be occurring, because it's not by any means all about perceptions. There are ways it can be changed and discussions that need to occur to make these things happen right. Some of the things would need to be changed legislatively because they come directly out of laws because the past several years there was a law passed, by way of example, that the costs of an adjudicatory hearing and the investigative process shall be born by a licensee as long as that licensee is found to have violated the law. And I would suggest to you that yes, these boards which are self funding and need to perpetuate their activities and their efforts as licensing and disciplinary bodies need to be able to replenish the pot, would be the argument after they've gone through an investigation, accrued costs, had a hearing and otherwise, such that one licensee has presumably caused through those costs attributable to that individual for those costs to be accrued. However, the other side of the equation is, does that put the licensee of the perspective of thinking, "well, there may be 15 charges against me and one of them will surely come in the wrong side of the equation, because fiscally there's a downside to a board if there were not to conclude that." Now, I'm not going to tell you this happens, because I can't - I will not - and pretend that there is this case or that case to which I can point, but I think it is incredible to think that we would fund a system that skews the result in a way such as that. And I will tell you it is one of the considerations that I have and that Mr. McConnell and I have talked about his discussing with clients as we consider the potential settlement of a case, is that if you got to hearing you might win. You might win on all counts or you might win on a number of them, and lose on something else. But if you were to lose on that one count, the board may, lawfully, pursuant to this

statute assess costs, and those costs can be substantial. And if there were stenographers there, because a record is to be kept, that is a monumental cost. The cost of just having the stenographer present, even if no appeal is to be taken. So there are many things to look at and there may be countervailing arguments that you would hear as to why this is necessary in order to keep the boards sufficiently solvent so that they can afford experts, so they can afford to press the matters of the day. But there's the other side of the equation of is that really fair, and is that the right way for our system to cause costs to be assessed.

ES: Commissioner, I'll get back to you in just a second, I want to just interject something. We had a letter from John Patterson who was a former AG, you all know. Not a letter that just came in, it's been around for a while. He said in this, and I just want to see, is this true, he says "Under current Maine law for MRSA152 Section 9, Sub 9, the Maine District Court has concurrent jurisdiction with all licensing agencies to hear complaints by an agency against a license, asserting that the licensee violated the particular licensing statute or regulations. That means that a board can either initiate a complaint and then act as the fact finder, as outlined above, or the agency can file that complaint in the Maine District Court. In the later case the licensee has all the rights of discovery afforded by the rules of civil procedure, gets ample time to prepare and most importantly has a right to have all the evidence heard by an independent judicial officer. The court also provides the court reporter. The problem is that no agency ever uses that procedural option, preferring instead to act as a fact finder itself and creating all the problems..." that he had previously discussed which are familiar. Now is that law still on the books? Does anybody know that it's been repealed or changed?

AB: My understanding that is a possibility and a board could choose to go that route with the AG prosecuting the case. But it's an incredibly - it's much slower, much more costly, and ultimately boards have that option if they choose.

ES: Do you think a licensee could have that option, to request that procedure?

AB: Right now the licensee does not.

ES: Does not have that ability.

AB: Does not.

KL: I agree with Andrew's answers, in fact have been involved in a case where a case was sent to District Court and defended that side. But it's not the licensee's option because that is in control of the board.

ES: Alright. Commissioner, did you want to come in on something?

AH: Yes I did, not on that issue though, so if you want to go ahead on that.

ES: Not on that. So does anybody else out there have a comment on that question or about that point that John Patterson made? John, or Ed Philips, excuse me.

EP: As they say in AA the first thing to solving a problem is that you've got to admit you've got a problem. I guess we're sort of admitting we've got a problem, so that's a positive step. It is interesting that in the case of going to the District Court that the person accused doesn't have that opportunity and I think that's a gross violation of their civil rights. It's a gross violation of justice and that may be the solution to 1608 is to just change that law to allow the licensee also to have the opportunity to go to court. I do have a couple of questions. You have hearing officers involved in these hearings? Somebody runs the hearing?

DM: Yes.

EP: Where do the hearing officers come from?

DM: Again, I apologize for this microphone. Where do hearing officers come from?

EP: Yes.

DM: Hearing officers and Andy maybe you can better answer this, are hired by the boards. And particularly, specifically I believe it's by the Department of Professional Financial Regulation, hires them and then they work for the boards.

EP: So there wouldn't be any difference in hiring a hearing officer then hiring what we called for in 1608?

DM: No, there's a huge difference.

EP: Why? Somebody - they don't work for nothing do they?

DM: No they don't, but 1608 calls for the hiring of - it does several things. One is Administrative Law Judges.

EP: That's correct, a hearing officer can be an Administrative Law Judge, can't he? He or she, or they?

DM: Yes. There's a completely different authority between the two. The hearing officer that acts in a board proceeding is not a decision maker, okay, the hearing officer just regulates the proceedings. A trained attorney familiar with litigation, with hearings or so forth, makes evidentiary rulings, procedural rulings, typical helps the board in it's deliberation process, regulates the entire process and typically drafts the decision at the end, pursuant to the directives of the board. A hearing officer that's ALJ, I think is the term that's used in the 1608, is an individual who makes all the decisions him or herself and the difference there, and this goes to the point that Ken was making is that 1608 removes the professionals from the

decision making process and the fundamental construct that we operate under right now is that professionals are the ones that are hearing complaints against people in that profession. And 1608 stands that on it's head, some people prefer it for whatever reason, but it is a fundamental cede change to what we do now. And at least the advocates of the system we have now, and I believe that includes Ken, the system in terms of professionals on the boards is that professionals can understand complaints and it's important to remember that it's close to 50% on some boards it's more than 50% of the complaints actually get dismissed. And they typically get dismissed because professionals understand when there is a meritless complaint. Or they understand the particular issues. And I can say as an attorney sometimes, I'm often surprised, I see a complaint and I say "wow that looks like something that is a professional violation." And then you hear the professionals talk about it and discuss it, that understand the standards that are in their practicing profession every day. And you say "Oh, okay, now I get it." and we tend to think about it in certain boards - and we've heard a lot about the dental board today, but there's a lot of different boards out there and very different ones. I mean there's trade boards, the electricians and the plumbers and so forth. I mean I'll hear complaints about these things and I don't know a heck of a lot about plumbing or electricity, I don't know if any of you folks do, but you'll hear these things and go "Boy, they've got a good complaint there." and then you hear the electricians talk about it and say "no, no, no here's why. And here's why you need to make these decisions and so forth" other complaints that I think are completely merciless they'll say "No, that's a problem. That's dangerous. We're playing with electricity here and that's - you've got to - you play by this set of rules and these codes and so forth" So it's not just dentists out there that follow these rules and there's a lot of other hard working professions and they are very intricate. So what I'm saying, whether it's good or bad, the rationale behind having professionals take care of these situations and handle these complaints is that they are the ones that best understand it and are probably can most quickly dismiss those complaints that have no merit at all.

EP: To a point I agree with you. Right to the point that the board has decided to prosecute. The board makes a decision, yes it is a valid complaint, no it's not a valid complaint and such. But once the board decides to prosecute it should be done the same as if you decided I committed murder. You decided I committed murder you're not going to be the judge, your not going to be the jury and your not going to be the sentencing person. You have to present a case to a neutral party and convenience that neutral party that I committed murder and I think the same things with the boards. If you can't convince a neutral party, if you can't get your act together and convince a neutral party that this person sinned then I think it's wrong. Because at the point you decided to prosecute, you have decided that person is guilty. Now right up to the point you decided to prosecute you could say the case, the complaint has no validity or you could say it's a minor complaint, let's sit down and work out something. But the point you say this is a major case and if we decide that persons guilty it's going to affect their livelihood, their reputation, their everything, that needs to be done in a legal manner, the same as any other justice prosecution. And that's what's missing and that's what's wrong. And I have coffee with a lot of people

and I have coffee with some retired dentists and they have their comments about your board, and I respect them as such, and I have coffee with electricians and I served on some electricians examining things and such and I know what goes on, so, at the point of prosecution it needs to be in front of a neutral party.

KL: You know, Mr. Philips, I'm used to not agreeing at all with Mr. Black on things and I don't totally agree with him he's said here today. But I want to remark in the following sense. The one distinction that I would make as a defense council in the information that you presented just now is that there absolutely is an issue that arises that when a board has decided that when there's cause to proceed to a hearing whether or not they have decided one is guilty of the offenses charged. It is my hope sincerely, as we talked in the small group the other day and at the stakeholders meeting that the roles will be separated so that there will be a panel of the board that's appropriately comprised and constituted to do that Grand Jury charging function. But the reason why I advocated before that it's reasonable to consider continuing with this process of having professionals do the judging is that one, there is a value, especially if the roles can be flipped, that you won't have the same people sitting there. That will deal with one of the primary concerns you dealt with, going forward. But I would speak to what you spoke about in the context of if a cause is found to proceed to a hearing, with respect, I do not believe that the boards have found someone already to be guilty and that all we're doing now is finishing this case off. I find that there is often a very different scope of review and I'm not sure that I can boast to winning more of those cases when the case occurs then I lose, but I win my fair share of those cases after the board has voted to send it to hearing. Where after a hearing they will look at the evidence, hear all the evidence and say "dismissed" and they'll go through it. One case in particular that I did before the social work board years ago, 64 counts against a social worker that they decided to go forward on four-days of hearing. After four-days of hearing they went through each of those counts and found it "dismissed" on each of those counts. I believe that that is an important distinction, whether or not they've found someone as guilty or whether there's cause to proceed. I do believe that the suggestion that Mr. McConnell made and that we've been talking in the stakeholders group of potentially seeing if the panels could be divided would help cure your concern. But I did want to speak to it as well that boards do give defense verdicts so to speak, and it's about 50-50 in my opinion as you walk in. And I don't walk in thinking the case had been pre-judged, because I don't find that to be the case. There is a lot of evidence that they have and that they've received and you have to deal with getting beyond that. And maybe your suggestion of giving a licensee the opportunity to select the alternative of a District Court case and a case before the district court might help further cure the potential of someone feeling that they can't get a fair shake. Here's a neutral place to be. But I don't think the system is broken, of having licensees judge the licenses.

ES: We're going to have to wrap it up here. Commissioner, did you have a final word that you wanted to say?

AH: Yes, thank you. We're all here at these tables coming from a different place. These gentlemen represent licensees; it's very understandable they want the absolute best chance for their clients. I understand, I get that. Andrew and I come from a different perspective, and that is we're hired to protect the public. The Legislative Committee is here with the same goal. The calls that I get on a daily basis are from complainants. They'd say, "What happened to my complaint. It was so important to me and the board dismissed it. What happened?" So I don't think that the public is really aware about the scope of authority of a state licensing board. They don't look at the statute to see what actions and what conduct is violative of state law. They just know that they were hurt and they want somebody to listen to them. So there's a very uncomfortable place where we're all trying to get to a result. It has to be balanced, not in favor of once side or the other. But on a historical note, the process that we're talking about today developed over time and it's for public citizens to have a place to come and state their complaints. A process that is close to them that they can access without hiring attorneys. Some do a lot of what we see don't. Where a set of professionals with public members as their collaborative partners look at a set of facts and make a decision, so against that backdrop, this is not intended to be like the judicial system in it's structure. So I think what we're talking about is very important but we all have our opinions on what the goal is and who will protect it.

ES: Point well taken. Now I want to turn for a few minutes, we're running a little bit over, but I want to give the public the floor, people on the floor the opportunity to stand up and pose a question if you wish to this panel. As has been pointed out previously, they're not obliged to answer if they choose not to, but they -

BS: I have a couple of questions I'd like to ask at some point too.

ES: All right, well our member Beth Shissler wants to ask something first.

BS: I'll be quick, but I think it may speak to some of the questions that may arise. And actually Attorney General Black, I think that you started this hearing with a pertinent fact, is that we're not here to retry cases. That's not our gig, thankfully, because I haven't been exposed to any of this before today. So, grateful on both sides for that. But I think that there was a general feeling that we heard this morning, and thank you for coming to that this morning, it's important that you took the time to do that, that there is no appeal system. We have folks that have actually left this state because they felt like it was the end of the road for their professional services in Maine. So if you could just take a moment and explain what that appeal process would look like for someone. And I think Attorney McConnell, that you probably got to that when you said a suggestion of separating the groups when it got to that point would be helpful. So if you could just address that, that's my first question. Since I only have the mic for a few seconds I'll also address, there was a point that I'd like to get back to at some point that there may be some financial incentive for a negative outcome, and I'd like to kind of understand what the limits are on the financial side are and that we did hear some suggestion this morning - and realize we heard one

side of a couple of particular cases, and that's not our job to get into those cases, but to look at the process as a whole and see if we can go back and make suggestions. But, suggestions of gross catering bills, and what might be excessive catering bills, just to return back to these people, that hurt them. So that's kind of a question for me. And then the process of, my third question is what is the process of when there's an informal hearing and when it goes right to the formal meeting. Because there is some mis-understanding and the group of folks that came in today, that some are entitled to an informal hearing, some were not. And I just think it's good to clear that up as long as we're all here. So starting with the appeal process, please.

AB: I agree, and I can actually address several of those issues. I think they're all very good questions. First, the appeal process. As you know, the complaint is filed, the individual as the ability to respond to that complaint, at some point the complaint is presented - presentations done to the board whether they decide whether or not to sit for hearing or not. Let's say it goes through the hearing process. At a hearing with Due Process protections they can be represented by an attorney if they choose. People who appear there, they testify, testify and do so under oath. The licensee can enter evidence into that proceeding. The licensee can cross-examine any witnesses that are brought forward and the hearings recording and so forth. And the licensee can object at any point to any Due Processes that may occur. Now, and if there's an objection raised at any point in the hearing, the hearing officer will address that particular objection and be able to rule on it in the first instance. That ruling may not go in favor of the licensee, it could go in favor, but if it doesn't, that objection is preserved for the record, in other words preserved for appeal. So after the hearings over, if there's - whatever objections are made in the process, or allegations, those can be basis for an appeal to the superior court. After a final agency action, the individual has the right to appeal that case to the Superior Court for review. Some licensees do that, some don't. But in that process they could raise all those same issues. We think there was board bias, we think that there was improper, ill conduct, maybe a ruling against us here when they should have ruled for us. The hearing was too long and we objected to that and they continued on with those. Something along those - all those issues can be raised. And that's the forum that the individual gets to address those concerns, at the superior court and they can appeal that on to the law court.

BS: And do you think that that next part of that appeal process is made known to everyone at the outcome, because as your saying yes, the folks behind you are shaking their heads no. And you can't see behind you but I'll share that. So maybe an informal recommendation might be that that is a very clear understanding at the end of any process.

AB: Most decisions I would say probably most hearings [??] to do so. But again there's a [??] to what degree its communicated up front that they have the right to appeal that, I believe it is -

BS: But it may just be that the feeling is that it's stacked a little, that's where the separation comes in.

AB: What do you mean that it's stacked a little.

BS: That it's prejudged. Not my feeling, the consensus of the group is that, by the time it gets to that point, it had been kind of prejudged ahead of them and that's why the separation may be a good suggestion.

AB: [??] And it may be. [??] I'm not going to advocate one side or the other.

BS: Nor are we, by the way.

AB: As Assistant Attorney General operates under [??] that that AG's [??] I will say this, is that process has been reviewed by the Supreme Court of the United States and has been upheld as constitutional and it's not an unusual process at all at Administrative Hearings. In other words, where you have a body that hears the presentation of the complaint or at least makes the initial determination if it goes to hearing and then it's the same body that actually adjudicates the hearing. This is not an uncommon practice across the country and the Supreme Court has addressed this and said this is constitutional.

ES: Can you site that case for us, do you happen to know it off hand? With Rowe V. Larkin?

AB: Yes, I don't know the actual cite.

ES: Do you know the year of it?

AB: [??] it's an older case.

ES: Older case, okay. I think Ken Lehman wants to make a point.

KL: On the appellate issue let me just say that the courts will give substantial difference to the decision of the administrative agency, that the standard of review means that - is literally - there's a material error of law or the lack of substantial evidence in the record to support the decision. And the bottom line is that that means that difference is being given to the board and if one does flip a decision it goes on remand usually - back to the same board. So the reality is, what I tell my clients on the front end is win the case on the front side. And the appellate rights are spelled out in the decisions. I don't know when I've seen a decision or a cover letter with a decision that does not give an individual, my clients, the knowledge of Here are your appellate rights. Setting the statute.

BS: Great, thank you.

AB: It's in the decision every time. I think her question was, is it upfront when making a decision, and I don't know if it is or not.

BS: My question was, was it understood. Which is neither -

AB: [??] decision it's understood, it's clearly spelled out and that's a statutory requirement in the decision the appellate rights are laid out for the individual.

KL: I've got that statute if you want.

AB: We'll get to that in a second, but the other issue, just on the deference to the court, or to the board. There's deference given to the board when it's finding the facts. Any issues or violations of law though, those are reviewed [??] by the court. So it's not deference on all issues, but on issues of finding the facts -

Another issue you've raised, talk about the financial piece later - but you asked about the informal conference, why some get the informal conference and others just go to the formal hearing. The informal conference is a tool that's been given to the board that they can use to resolve complaints short of going to a hearing. There's pluses and minuses to it and some situations lend themselves to using that informal conference, others do not. What happens in an informal conference is the intention is for there to be dialogue between the board and the licensee so they can discuss some of the particular issues. It works very well in situations where the facts may not be in dispute, there's no testimony in this, there's no witnesses other than the individual licensee who appears. There's no ability to cross-examine because you don't have any witnesses out there. So it's very tough to make credibility determinations. But the facts aren't in dispute and it's only an issue about whether or not this violated the Standard of Care. That's really a good situation to use for an informal conference. If it's a situation where it's a he said, she said, that's not good for an informal conference. That really needs to be decided based on all the evidence where the board can actually make conclusions and findings of fact. Because there not in the position to do that at an informal conference. There's no witnesses testifying and so some particular complaints are good for that and some aren't. Does that help you understand why the board may offer it to some and not to others?

BS: Yes, it answers the question, but there is no formal policy or procedure that the public or licensees would know as to when they're appropriate to have or not. Not everyone - what I'm hearing is it's not necessary to have one and what I felt this morning is folks felt like they should have been entitled to one and they weren't. And so I'm wondering if there is a policy or procedure that's laid out or clear to understand for people that could be in this situation as to when an informal hearing happens versus going right to the next step.

AB: No there's no specific one size fits all set of standards and it's really up to the discretion of the board that can understand hey is this going to get the resolve. But if you can imagine if there's any sort of factual, real factual [??] out there, you're not

going to get anywhere at an informal conference and you're going to blow three or four hours spinning your wheels and these are volunteers on the board. And they're volunteering their time so efficiency's obviously is something that's concerned. Ken you've experienced these informal conferences, I don't know if you have a different take on that or -

KL: There's no right to an informal conference. My different take on Mr. Black's is that I believe that they could be valuable in a lot of circumstances to enable the board to get to the bottom line much easier but you'll always have to remember that's going to be balanced then if it does not result in closure of the case, either by dismissal, which sometimes is the result of an informal conference, or by a recommended discipline that the board talks about in context with that particular licensee - if it does not result then where does the case go if the only alternative is the adjudicatory hearing before the same individuals. And that's why there's the waiver that the Attorney General's Office has prepared for a licensee to say if I want the informal conference I have to understand and agree that I will not challenge the composition of the panel, and I guess I'll own the responsibility for that, I drafted that many, many years ago when I was in that role, because if an informal conference is going to be accepted by a licensee the bottom line is it would otherwise say that the board could not do its adjudicatory business. I have counseled clients on this, and some clients have chosen not to do an informal conference. Many clients far more prefer to do an informal conference feeling that they have an hour with the board, they can explain why the issues that are perceived should be dismissed and that very often is the result. So there can be value to the process, but there's not a right.

BS: If a licensee and or their attorney requests an informal conference and the board hasn't suggested one, is that a possibility.

AB: Absolutely.

BS: Okay.

ES: Okay, I think we're going to have to tell this panel that if they are willing to stay for a few more minutes I'd like to ask the public if there are any people that would like to state a brief question or comment, to do so and the people are on the panel are free to respond, or not, or whatever they wish to do, or if they want to be excused at this point they can be. So, questions? Dr.?

JB: Hypothetical situation where I'm a person walking into office B, I have an appointment with this dental office, they take me in, they take x-rays, they sit me down in the dental chair, the doctor comes along and starts to do his exam and I have a perception that he's treating me rudely. Now, the first question I have is, am I a patient in that practice?

KL: If you're in that chair I don't see why there's a question.

BS: I'm not clear on your question.

JB: Would you answer it for me please?

KL: [??] in your hypothetical, be positive, I certainly would see you in the chair, you're a patient.

JB: I'm a patient there.

KL: The second you cross the threshold you are that role.

JB: Okay, and so, if I don't like his attitude and he was rude to me and I then filed a complaint to the State Board that he was rude and unprofessional to me and that the dentist was called in - what responsibility does that dentist have to that person, even though he never treated that patient, that person? What should be written on that chart?

KL: It seems like you want to get an opinion on a narrow hypothetical.

JB: No, this is not hypothetical. Last Friday it happened.

KL: I'm very comfortable answering your questions in any context, except you need to understand that I'm working with what I view as a hypothetical. Mr. McConnell may be one to - but the point is you document whatever interactions you have. That's typically what happens within the health professions. Including a patient if a patient got up and walked out.

JB: All right, Okay, so if that dentist didn't do that, if he didn't write that on the chart, would that be below the Standard of Care?

KL: That's not for me to decide. You've got to realize, I will advise you outside, but under very different dynamic than advising you, on a hypothetical, I don't even know how you are, sir. In the context of what you're presenting I could certainly argue your case, in all candor, that is that there's no violation of the Standard of Care, given the hypothetical that you presented.

JB: There wasn't, is that what you just said, there wasn't a violation of the Standard of Care?

KL: I was trying to be more careful in saying I could argue your case, sir, I don't quite know where this is coming from, but what I'm saying is that I would not be comfortable giving an opinion, I don't know if Mr. McConnell would, on a narrow set of circumstances without more detail. I would meet with the client and probe the circumstances to learn what happened in more detail before [??] on whether I felt it that it met the Standard of Care or failed, and that's just your -

JB: If he didn't write anything, and we have judged that that patient is a patient of his, if his note taking was not correct, complete, precise, should that dentist not be disciplined? Because he wasn't.

KL: You can tell I don't duck tough answers, tough answers and I don't really know -

JB: Your ducking them, I'm sorry

KL: I'm sorry?

JB: I feel your ducking them. You're giving me the [??] speech.

KL: Well, I apologize for -

ES: Well -

JB: Well, anyway, my point is he was dismissed, he was let go with a friendly reminder that if that ever happens he should write in the chart everything that happened. I went in - the only reason I went to that board meeting was because I was accused of the very same thing.

ES: Dr. Benedetto was a witness this morning, so he's already appeared in this proceeding today, but - so he's talking from his own frame of reference here.

JB: I don't think either of us should be prosecuted.

KL: The point I was trying to make Mr. Stanley was that if a client came to me in that setting I would really want to probe what happened, the circumstances. If I were representing that person before the dental board I would want to be darn sure that we presented in detail what happened, and the circumstances, in detail and it's not on a narrow set of circumstances that anything happens.

JB: Well that's in your opinion. The job of the board is to protect the interest of the public, pretty clear. And if the patient files a complaint that says the dentist was rude, nobody's ever been killed from a rude statement or a rude person, and your saying - what I hear you saying is that you have a right to look at that record to protect that patient - from what.

KL: Dr. that's not what I said, let me be clear -

JB: No you didn't say it, it was -

KL: One second, I defended physicians, dentists and other where a staff member was rude in their office, on the Captain of the Ship theory that the licensing boards

go after the licensee on the Captain of the Ship theory, that the Captain needs to pay attention to their ship, and which way it's going. So I'm trying in all candor to be respectful of your questions and to tell you that the circumstances and what happened, what led up to what you said, there's any number of circumstances where I tell clients throw that person out of your practice, given the behavior of rudeness that that person did, and make sure that you don't leave them abandoned with unfinished care in the middle of it and sometimes you have to grit your teeth, not to make a dental pun and to deal with whatever might be in the midst of care, but that you've got an array of [??] obligations and commitments to the patient population. One thing that is [??] at times is that everything a licensee does is fair game for all of these licensing boards, from spitting on the street to being rude and that's part of the burden that I bear being an attorney as well, is that - is the responsibility of our behaviors. And I do expect that the licensing boards who are comprised as we've discussed, already with both professionals and lay people, will listen to the circumstances in full.

ES: Okay, Joe, I think we're going to have to point it up and with our thanks - did you want to make another comment Ken?

AB: I wanted to make one comment if I could, I was not prepared in answering questions [??] I instructed the members of the dental board not to answer questions because this is not the proper forum. [??] more than willing to answer questions given the constraints we talked about earlier from the board members but not the public

ES: We understand that. There was one other comment in the back then, sir? Go ahead.

Robert Turner: [??] laws relating to dentistry and dental hygiene. No matter where you look in here it says [??] unprofessional conduct and may result in disciplinary action of the licensee. Everything is "may". Who decides what may is?

ES: Does anyone wish to respond to that question?

KL: [??] Mr. McConnell let me turn to you - that's [??] stuff.

DM: May means that it's the discretion of the board whether or not a violation occurred.

KL: May is better than shall. Shall means it has to happen; I'd rather that not occur.

RT: Just a minute, it says here, "If you've already violated" -[??] and may result in disciplinary action of the licensee. You've already violated

DM: So it's discretionary to the board, and it's the same - it's a similar answer and I may not have artfully worded it before but it's to the discretion of the board as to whether or not to impose disciplinary action.

ES: And we have another gentleman standing over here. Did you want to say something sir?

Mike King: My name is Mike King and I have a few questions I guess. The first one is who decides which complaints are going to be accepted? Well I'll give you an example. My wife is a dentist, and she was working with Dr. Harold Gerish [SP], he had a dental complaint against him. He simply told me to send a patient refund check, which I did. The patient sent a letter back, which the board had a copy of, basically saying that she also wanted compensation for Dr. Gerish's attitude. Sadly Dr. Gerish had Leukemia and passed away shortly after. The board turned around and filed the same complaint with Dr. [??], which became [??] insurance. It was later on dismissed but she never even had a conference hearing - who decides who falls in that -

KL: Any complaint that comes from any of the licensing boards by statute, any letter, email or otherwise, as long as it's signed and not anonymous is deemed to be a complaint. And the board lacks - all these boards lack any discretion or independent judgment, whether it constitutes a complaint - it simply get administratively turned around and it becomes a complaint. They send it out within 60 days of the statute or they can independently investigate it. But it is a complaint whenever anything comes in. Even ones that I've seen of "My doctors making choke every time I eat because he's sending me mental telepathy which is doing this." It doesn't take much to respond and say I'm about this poor persons complaint. But the problem is there's no independent discretionary judgment to say something does not constitute a complaint by any of these boards administratively.

MK: But somebody is deciding which one of these is being processed. The point is that I could go home today and write three complaints against somebody I compete with and this person would lose their insurance, if the board would process the complaints. I know in someplace like California for example, they have a panel that will screen complaints and will decide which ones are valid and which ones aren't. There just doesn't seem to be that in the State of Maine.

DM: Well I think there may be that - there's a distinction between which complaints are dismissed in the initial screening versus which of the complaints are processed. And what I think Mr. Lehman was saying is that anytime something comes in, whether it be by email or otherwise, that's not anonymous, that's processed hat's investigated and that will be presented to the licensing board. Whether or not they choose to dismiss it at that initial presentation, that's a separate issue.

MK: Somebody choose to send a complaint against my wife when she'd never seen the patient and we're award of that.

KL: Mr. King's right, there can be a significant impact on one's insurability and other sequeli that can happen from just the sheer volume of complaints that you have to report them. Having in the past two years having a complaint against you.

ES: Commissioner did you have another point?

AH: I hesitate to make any comment at this point because clearly there is a focus and question. I want to say in general terms that the boards that I'm responsible for, the only time that we would not process a complaint from a consumer or outside agency is if the complaint - is complaining of activity over which non of our entities has jurisdiction under the law. In that situation we try to re-direct it to a state agency that has jurisdiction. It still noted, but it is not directed to a particular licensing board. Otherwise, boards make those decisions.

ES: Okay, well, I think we're going to have to wrap it up and ask for our next panel to be seated. We thank you very much, it was an excellent discussion, and thank you all for your time. And now we'll ask the representatives of the dental board to come up and be seated if you would. Now, lets see here, can we go - start at this end and identify yourselves if you would be kind enough to do so for the record.

Denise Theriault: Hi, my name is Denise Theriault and I am the current chair.

ES: All right.

Philip Higgins: My name is Philip Higgins and I'm the current vice-president of the Dental Board.

ES: All right.

DD: My name is Diane Denk and I'm the public member on the board.

Dennis Smith: My name is Dennis Smith the Assistant Attorney General from the Attorney General's Office and I'm currently assigned to the dental board.

ES: Now, what has happened to Teneale Johnson?

DT: She's here.

ES: I thought you were going to be up here too.

Teneale Johnson: If you have questions for me I'd be happy to answer them.

ES: Alright, so your at least your in the room and -

TJ: I'm in the room.

ES: Okay, alright, now, we've received some materials from you and I might start by saying that one of the comments that was made this morning by some of our morning witnesses was that, how Maine was becoming a terrible place for dentistry and that dentists were probably not going to choose to come here. This graph that you've provided to us suggests, at least in a very general way, that dentistry is on the increase in the state and dentists are coming. Is that - if you go back a little further, this looks like a roughly a ten-year bar here. Was dentistry more popular or less so before, or do you consider that there's been a growth in the profession and that as far as you know there's not any particular discussion being made by prospective dentists not to come to Maine?

DT: There's a shortage of dentists in every state in this country. But as you can see, and I'm going to speak more on this, that graph shows the number of licenses the board has licensed over a ten-year period and it has almost doubled if you look back over that time and what we're doing to -

ES: Alright, let me say first off, our apologizes to all of you for having kept you waiting, we hoped to stay on scheduled, but you could see that this high level panel that we had before that had to be questioned at greater length, so we'll take extra time with you if you want it at the end of your hour. Now, why don't I just say that if some of you who kind of do have opening comments or statements you'd like to make, why don't you go ahead and we'll start with you Doctor?

DT: I think [??] I wanted to start out in regards to the question that you had as far as when the board choose directly to the adjudicatory hearing. [??] may go - [??] the board may choose to go directly to an adjudicatory hearing when we feel -

ES: Excuse me just a second. We need to get that microphone over closer to you because there are some problems about people being able to hear in the back if you could speak more to that.

DT: The board would choose or make the decisions of going directly to an adjudicatory hearing when we feel the public is in imminent danger and in that instance the board actually suspends the license and then according to statute we have I believe it is 30 days, maybe 60 days, but I believe it's 30 days to hold an adjudicatory hearing. So I wanted you to understand when we go from a complaint that has come in directly to a hearing.

Good afternoon Mr. Stanley and members of the Regulatory Fairness Board. My name is Denise Theriault I'm the chair of the dental board. I have practiced the specialty of periodontology and implantology for 19 years. I was born and raised in Northern Maine and fell in love with dentistry at the age of 15 when I was offered a job as a dental assistant for the local dentist. It was on the job training. Upon graduating from high school I attended Bangor Community College where I completed the dental hygiene program. I practiced as a dental hygienist full time

while attending UMO and obtained my Bachelors Degree, which I needed to attend dental school. I graduated from Boston University with a dental degree in 1989 and completed a residency program at [??] College in [??]. I came back to Maine to practice with a passion for dentistry. In 2002 I received an unsolicited offer from then Governor Angus King to be appointed to the board. At that time I had limited exposure to what the board actually did. I had been granted two licenses by the board, one for dental hygiene and one for dentistry. I thought that my unique background of working in [??] in a dental office, gave me a valuable asset as a board member and therefore I accepted Governor Kings nomination. We as board members are sworn in by a [??] Justice and taken oath to support the Constitution of the United States and the State of Maine. And to faithfully discharge to the best of our abilities the duties incumbent on a board member according to the Constitution of the United States and the Laws of the State of Maine. So what are the duties of the Dental Board? The Board's primary responsibility is to protect the health and the lives of the citizens of Maine. The board performs these duties by licensing qualified individuals to practice dentistry, dental hygiene, denturism, dental radiography and our newest licensee the expanded function dental assistant. The board also makes rules that it deems necessary to protect the public and investigates all complaints and all cases of non-compliance or violations of the law relating to the specific licenses within the field of dentistry. Most complaints are found to be frivolous and are dismissed. But when appropriate and dictated by statute the board will enforce discipline and in egregious circumstances may revoke a license.

The board understands its role in addressing the access to care problem here in Maine and has eased the licensing requirements while still holding to the standard of licensing only qualified individuals. Last year the board submitted a bill to the legislature to establish a dental license for which allows residents to practice with the dental residency program and the goal of the dental residency program is to provide further training at the dental school while at the same time providing much needed dental care to our citizens. The Penobscot Community Dental Center in Bangor is one such program that although is in the first year is proving to be a success. The hope is that dental residents will grow to love the community in which they are spending a year training and will stay in Maine and practice once they complete the residency program. The board is also working closely with the Associate Dean of the new dental school targeted to open in 2012 to establish laws to allow the faculty, the students and the dental school to function within the laws of Maine. I am pleased to inform that these licensing efforts on behalf of the board, along with the efforts of the Maine Dental Association, have had a positive impact on the shortage of dentists in Maine. I present to you the chart that shows almost a 50% increase in the number of dental licenses issued by the board over the last seven years.

The Dental Board is comprised of nine members. There are five dentists, two dental hygienist, one denturist and one public member. I am proud to be a member of the dental board and to work with these highly qualified dedicated individuals. Each and every board member spends hours preparing and investigating prior to making

a decision. They do not make frivolous decisions and they take their responsibility of protecting the public seriously. Can the complaint process be improved? Yes. I think we can all agree that there's room for improvement. It is important however that the complaint process remain under the guidance of dentists, who are the experts. This is especially important when there is a practice issue. Who, other than the dentist has the expertise to determine when, for instance, the root canal that was performed on your tooth, Mr. Stanley, was performed adequately and under the Standard of Care?

On behalf of the board I would like to thank you for the opportunity to provide you with the background information about how the board functions and to offer our assistance as you evaluate the complaint process for regulatory boards.

Two other members of the dental board would like the opportunity to testify as well today. Our public member Ms. Diane Denk and Dr. Philip Higgins the Boards vice president, who will explain in detail to you the complaint process. Thank you.

ES: Thank you. Luckily I haven't had a root canal yet. Dr. Higgins, yes.

PH: Thank you community members, thank you for the opportunity to discuss this. I've been charged to go over the complaint process, from our standpoint. I think you heard it from some of the licensee's standpoints. But let me begin by giving you just a short background myself. I too am a Maine resident. I was born and raised in Bangor, Ms. Shissler my grandfather graduated in 1906 from Jonesport high school, took his first train ride from Machias to Bangor and I don't think he ever went back.

BS: We have no trains anymore.

PH: I was educated at the University of Maine, also in Orono and I did my dental training at Tufts University in Boston. In 1979 knowing I wanted to come back to Maine, I took a residency program at Maine Medical Center in Portland and since then, for the past 30 years I've been practicing general dentistry serving families in Camden and Rockport, Maine. Lets talk a little about the complaint process. First of all, I'd like to point out that the board is required to follow the rules laid down by the Administrative Procedures Act. Contrary to what some folks may believe, the APA was not designed or modified by the present board or any other board. It is strictly the vehicle that were are charged to function with. I believe all boards are required to follow the APA, and we are provided with the Assistant Attorney General to make sure that we stay within the bounds of the Administrative Procedures Act. Being lawyers it is very easy for us to be tempted to step outside of that, but our AAG has been very diligent to make sure that we don't. In the past we've had previous commissioners who have not been terribly interested in having us be involved and making recommendations, and that's one thing that I'd like to commend Commissioner Head for is that she's been very good listening to what suggestions we might have, and this is kind of a new thing for us. So we're kind of feeling our way through making suggestions on the process. I'd like to speak just for

a moment about the [??] because there've been some questions about that. While, Maine, geographically is a very large state, while professionally it's a very small state. We license approximately 600 active [??] actively practicing dentists and over a 30-year dental career you can be sure that you sometimes cross paths with many of those folks.

We've been instructed very diligently by our AAG that we recues ourselves in any situation where we feel we can not be fair and just in weighing the evidence of the case. Or if we have specifically, obviously, a business partner or if we'd had business with a person, obviously those things take place. It's been my experience that board members recues themselves more often then they need to, when there's even a question in their mind, they are more likely to recues themselves of the case then not. My personal experience has been whenever a licensee from my immediate area, my town has had a complaint, I recues myself. Even though I may feel that I may be fair, I'd like to separate myself from that and not necessarily have an appearance of a conflict of interest. So, let me get into the complaint process. I think you've gotten some statistics on complaints in the State of Maine. And I also think you've heard AAG Black indicate that on average licensing boards in the state dismiss about 50% of their cases with no discipline. 50% of them. In putting together the information for this meeting, it became very clear to us that 75% of the complaints brought to the Maine Board of Dental Examiners are dismissed without discipline. That was actually quite a surprise to us. So, we are less likely to discipline licensees than many other boards in the state. Maybe we should be missing that point. Complaints come to the board in a number of different ways. The vast majority of the complaints, and this is information that's provided to you too, come from patients or parents of patients. The next number of complaints that get generated are actually board generated. The board has the ability to generate a complaint on its own. And the vast majority of those complaints are in response to unfulfilled Consent Agreements. Someone who had signed a Consent Agreement with the board on a previous complaint and has failed to uphold their end of the bargain. The board can't take any further action unless a new complaint is generated. Another way that the board generates a complaint is that if we get information from an outside source. For example we've had information from law enforcement agencies about perhaps impropriety of some of our licensees and their patients. And clearly the board wants to look into those. We cannot investigate anything unless a complaint has been filed. When a complaint comes in, the very first thing that happens is it's logged in and it's given a complaint number. And from that moment on, in any public meeting the complainants referred to by its number. We take great pains to discuss the name of the licensee or the name of the complainant. And until if ever, that becomes public knowledge [??]. The licensee then receives a copy of the complaint and is given a 30-day period of time to respond to the complaint and also to provide all pertinent records, that are spelled out in the letter that goes to exactly what the board is looking for. And I think that's important. They're also able to provide any supporting documentation they wish. The next step is the complainant, after the 30-day period of time, the person making the complaint receives a copy of the response of the licenses. They're given ten days to make a rebuttal to the board. We're representing

the public and we're making sure we're trying to do this in a transparent fashion. After that ten-day period when the board has the response and the rebuttal, often times complainants don't take the opportunity to rebut. The only people involved in the complaint at this time are the complaint officer whose been assigned to the complaint when it's registered, the AAG, the Executive Secretary of the Dental Board and the investigator of the Dental Board and we will have a - I'm talking now as if I was the complaint officer - we will have a conference call and discuss the merits or lack of merits of the case. And different complaint officers have different styles. For example, my preference is to contact the complainant and the licensee myself. Some other board members who might be complaint officers may not feel as comfortable doing that and then they ask the investigator to do that for them. Our investigator is a woman who's trained as a registered dental hygienist and also trained in appropriate investigative techniques and she's very professional. The whole Dental Board doesn't see the complaint until one week before it's next scheduled meeting. So in our board book there's all of the information that's been collected. It would be then my responsibility at that board meeting to present the case as complaint officer to the entire board. And I think Mr. Black mentioned earlier, it's presented, as this is the complaint, this is the response, this was the rebuttal, this is some of the information that we have gathered in our preliminary investigation. And the board then deliberates to decide does this constitute a violation of Dental Practice Act in anyway shape or form. We just can't frivolously say, "yeah I really don't like what I heard on this", we have to be able to go to the Dental Practice Act and pick a section of it where there is a violation. And at that particular point and time the board has the opportunity to do several things. it may dismiss the complaint, it may dismiss the complaint with a letter of guidance, which is not discipline, but rather something for example; "We notice that your record keeping is not appropriate. We'd like to have you bring that up to Standard of Care." Or it could opt to invite the licensee for an informal conference. Heard a lot about the informal conference. Personally if I were the subject of the complaint I would welcome an informal conference. It would be an opportunity to go into a meeting with my peers and to discuss on a professional level what happened, in my view, and they could ask me questions and maybe we will agree and maybe we won't agree. The interesting thing about this informal conference is they all occur in Executive Session unless the licensee chooses to make it public. It's their option to make it public. Informal conferences in Executive Session are designed so that you can have a frank discussion between the licensee and the board and there is no recording and no transcript of that and the licensee understands that anything discussed in the Informal Conference and Executive Session cannot be used in any further proceedings. It's all spelled out to them before going into Executive Session. Once and a while we have a licensee that wants to have their complaint reviewed in a public session and we honor that. And those are recorded for the record. Anything that we do in public has to be recorded for the record. Licensees are allowed to bring an attorney with them, that's spelled out for them. They're sent this waiver of objection form with their notice of their informal conference. The only time they are presented with a waiver of objection form at that meeting is when they have not returned it or signed it. We will not have an informal conference without a signed waiver of objection. If someone decides

that they don't want to sign it, and that has happened before, we cannot have the informal conference and then we have the opportunity to decide if whether we're going to set for a hearing. It isn't necessarily automatically - the board has to discuss that. Following the informal conference the board then makes - the complaint officer may then make the recommendation to the board, and the board may vote on it. And that recommendation may be to dismiss the complaint, dismiss the complaint with guidance again, or to offer a Consent Agreement. That's not an uncommon occurrence. Once the Consent Agreement has been crafted by the AAG, under the direction of the Board, the Board tells him what they want in that Consent Agreement, the licensee has 30 days to decide if they're going to sign it and they have 30 days to review that with an attorney if they chose. If they sign that then we expect that Consent Agreement to be fulfilled. If they choose not to sign that then the board has to make a decision whether or not we're going to schedule an adjudicatory hearing - and you understood how the adjudicatory hearing works, and I would be remiss in telling you that I have more than - at some point every board member has expressed some uneasiness about being the people that hear the adjudicatory hearing, and we've been informed by our AAG that we don't have the right to re-write the Administrative Procedures Act. We are to show up for an adjudicatory hearing, we bring no previous materials with us, we are to listen to the testimony, we may take notes and anything that we discuss in deciding that adjudicatory hearing case has to come from the information that's been presented. We better be able to document that it came from there, because, I've never sat on a hearing where the licensee wasn't represented by counsel, and counsel would certainly be very unhappy if they felt that wasn't the case.

If the, at the conclusion of the adjudicatory hearing, the board may issue a Decision of Order it may dismiss the complaint. But it may issue a Decision of Order and the decision of order is the explanation of the findings of fact at the hearing that there were violations of the Dental Practice Act. And it does stipulate a discipline if the board so deems it and that is not something that the licensee has the opportunity to agree to sign or not. That is just what it says it is, a Decision of Order. They're remedy from there if they choose to take that is to appeal that to court, Superior Court, and we have licensee's who have done that and we have licensees who - I can think of one that's prevailed, but on an interesting, it would be an interesting one to discuss sometime.

That's pretty much the process and as you can see it's a very disciplined approach, it's cumbersome in terms of times sometimes, the complaints that we get from patients, what happened to my complaint, and why isn't something being done about it and complaints we get from licensees are - it takes way too long to dismiss frivolous complaints and what I would say to you is that if you, as a patient and a citizen of the state feel that you have been aggrieved by something that a licensed dentist has done, it's not frivolous to them. And the board has to make sure that they cross all the t's, dot all the i's and take the time so that we can at the end of the day say that we have provided the kind of appropriate process and complaint process so that we can stand by our decisions in a comfortable manner. And I can assure you

that we have licensees that are not happy with us and we have citizens of the State of Maine who are not happy with us. Sometimes when half the people are upset with you and half the people aren't, sometimes that's a good indication that you're doing a good job. So, I'm available to answer questions of the complaint process.

ES: I had just a couple of questions here at this point. Commissioner Head provided us with some general statistics on the number of cases resolved in all of the boards under her jurisdiction, not including the dental board, over the last five years, alright. 4,440 cases were resolved, 40% were dismissed and you said 75%. Do you happen to know off hand what the total number of cases resolved would be for the dental board? That would be a figure we'd like to have. Also, she gave us the percent of cases resulting in license suspension in her jurisdiction .03%, so by my math that would mean that 133 licenses were suspended over five years, not including Maine Dental. And then the percent of cases resulting in license revocation, she gave us .027% which would be 120 cases over a five year period. I'm just interested in comparing that data with your - now I know you sent us some stuff within the last few days that might include that information in one way or another, but -

PH: I think the two [??] but I made some notes on my own copy. This - we go back, I'm going back five years on this.

ES: Yeah. That would be comparable to the time period that she chose.

PH: In five years we've closed 316, 315 I think is the newest number. We've closed 217 without disciplinary action, which is about 70% I think - I may have overstated that.

ES: So that's the figure that you had said 75, but it's in that area.

LS: I can give you the exact percentage because I've gone down through them. For 2000 to 2003 the cases closed each year, the percentage of those that are coded disciplinary action were 12%, 10%, 14%, 15%. The beginning of 2004 it was 33%, 25, 27, and 28, 26 and 25. There was a substantial increase between 2003 and 2004 and this continued as a pattern, and I'm not sure what happened between 2003 and 2004 that suddenly you have double the number of cases that are closed with disciplinary action.

PH: I'm not sure that I can answer that either except that I would continue to point out that that's still way below the average for all the other boards.

LS: It's still a pattern that I'd like to know the answer to it. And it almost has a corollary with the sudden increase in the number of dentists in the state which is kind of bizarre as well. But at the same time the total number of new cases, is, you know there's got to be an [??] - there's not a real major change in that, so it's not like

it there was a huge increase in the number of cases either. So there's something that doesn't sit well there, it doesn't make sense to me.

PH: One thing [??] that's very interesting is that the composition of the board changes almost yearly in that there's a member or two that rotate off and last years board is a different board than this years from composition, I don't know if that's an explanation for it. Next years board will be different. We're losing two members this year and so I don't know -

LS: There is still the fact that it suddenly changed, you have suddenly double the number of disciplinary cases that cases have been coded disciplinary action than you have in years past. Something is different.

DT: I can't answer that for you, but I've often surmised that computers are very popular and very increasingly accessible making it very available to the public during that time and so the access to the complaint process by the public may be the reason that you see the increase.

EP: May I ask something? I've been sitting on this board for four years. I've been through enumerable hearings. Commissioner Head has a massive amount of boards under her. Never been a person from Commissioner Head's board in here complaining about any problems with regulation or disciplinary. There are a number of adjunct boards, or allied boards, only one person from one other allied board and he didn't come to this meeting he came to the BRED Committee on a hearing. Yet, I have yet to go through a hearing in four years that there hasn't been a complaint about the Dental Board. And that does bother me. It bothers me seriously that there seems to be a board in the State of Maine that's a very important board and I think serves a very important function that we have a massive, massive amount of complaints about. And it really needs to be investigated beyond our levels.

We've had this massive surge in complaints and massive surge compared to all other boards and adjudicatory hearings and disciplines and everything else. And that you know - I'm an old man of 72 years old who, I've lived a lot of different lives and I like to see people treated fairly, honestly and fairly. And I just have the feeling, and I've talked to other dentists who are retired and such who have some comments about you. They really are kind of derogatory, not too complimentary, so I think you folks really need to sit down and have a self-examination and say what's going on. And maybe it's not all your problem. I'm not blaming all of you - totally - I'm blaming the process number one, I'm blaming the AAG's office some because I believe there's not a separation there and if I were a lawyer and I worked in the AG's office, usually people work in the AG's office to build a reputation then they go off to private practice to make money. So I think some of that goes on too. But lets put this to bed, please.

PH: I've never been afraid of the heat, and I won't change the way I do things as a board member because of it. That would be a violation of the oath I took. One thing I

would ask this board, if I deviate from the script just a little bit, you've been presented with quite a lot of information today. you're being presented with public information on certain cases. Before you make any decisions, I implore you take the time to read them because you will put yourselves in our shoes, and in the shoes of the people who have made complaints, and if you do that then I'll be very happy to accept any recommendation that comes out of this board.

EP: I'm not judging whether your right or wrong. I'm judging how people were treated. That's how I'm judging. I'm judging the process and I don't think the process is fair and honest.

LS: If I could just interject. There was a period of time a few years ago over a five year period when I spent about \$25,000 out of pocket on my mouth, I had a rebuilt jaw, I had an implant, I had braces in my late 40's, just a lot of money. And I probably saw 12-15 different dentists, orthodontists, orthodontists - whatever all these things are, because you know, you transfer to all these different places. At one point during that I went to see a local orthodontist I think he was. And I had been to him before, my daughter had been to him, but I was having problems, something went screwy in the communication and there was some confusion with the appointment or whatever, and like I said, I'd been there several times with my daughter and myself. And I went in and I said You know it really bugs me that something - and I don't remember it because it's been awhile ago - it really bugs me that there's been some communication problems with your office staff. And he said, I don't want to treat you. I said, "What?" he said, "Your complaining about me." and I said "No, I'm not complaining about you." I said "I'm expressing some concerns about the - " and he said, "I refuse to treat you. You exactly the sort of person who will sue me." And he refused to treat me, he threw me out of his office, I went up the street, I was the CEO of a large company at the time, I went up the street to my office and called the Dental Board and said "I just want you guys to know that this guy threw me out of his office. He refused to treat me because I had a complaint about his office staff and some confusion." And they said, "Well, do you want to file a formal complaint?" I said "No, no." And I got some paperwork in the mail, and I didn't file a formal complaint, but within about three months he was out of business. Now, I have no idea whether there was cause and effect there or not, I really don't. I know it was the only time I ever complained. I know I've never sued anybody in my life, including the tenants who skipped out owing me \$4,200. I wasn't going to sue him, but it all kind of leaves you with a bad feeling and I -

PH: I'm sorry I didn't understand your connection between -

LS: I don't know.

PH: What are you implying - I don't understand the connection between you calling the board and him going out of business.

LS: I don't know, I'm just saying that, I stated that I don't know that there's cause and effect there. I do know that it's odd that within just a very short period of time, given everything else that we've been hearing, that suddenly he was gone. I don't know. Maybe - who knows - I'm just throwing that out there for what it's worth and I'll shut up now.

BS: Hey, I have a question Dr. Higgins, just in regard - I want to get back to the procedure because it really does seem like you have a very disciplined procedure on how you go about all these complaints. And actually it's been really helpful to hear that, and kind of thinking it would have been helpful to hear you first thing in the morning. But, with all the procedure that you have for everything, is it unusual that you have a disciplinary hearing that went 16 hours? Is that a fluke? Yeah, and since that point is there any kind of recommendation to the system that could be taken into place and you know - I'm sure it was a rarity and I don't want to discuss the specific case, but in general any kind of hearing 16 hours without a refreshment for all the people involved just seems inadequate at best to the system. Particularly when that party's paying for it. So I'm just wonder if there's any learning that can be taken place from that example moving forward. And really, I'm not discussing the particular case - just learning -

Dennis Smith: The answer to that is yes. Yes there is learning in the process.

BS: Great

DS: Let me say this, that there's always communication between the AAG and by the way I don't determine how long the hearing goes. The AAG does not say "We'll be here till midnight." The decision is made by the hearing officer [??] during that particular hearing. And input is sought from the impact on the witnesses that I might have. The input is sought on the attorney representing the licensee and the impact it might have on their witnesses that are there. Sometimes if we actually have witnesses taken out of order who can't come back again. So - I'm in the middle of putting on my case, a defense witness might come in and say I can't come in the next day, so we'll agree to put that person on out of order and so - I guess all I can tell you in that process there's always input for the licensee, for the licensee's attorney and primarily mostly for the witnesses that are going to be there and that are sometimes at the board meetings testifying.

BS: Well, at the point where the board is sleeping it seems excessive and a good example to learn something. Figure out how to better the process, which we all need, again, we're learning how to better our process today while we're here. So -

ES: So you're not disputing though the allegation, the fact that there was a 16-hour hearing.

DS: No [??]

ES: Because I know that you have sent us the file on that case.

DS: My recollection is at several points during that hearing the hearing officer stopped the proceedings and asked both the board, the AAG and the plaintiff's attorney if they wanted to continue. That's his responsibility to do that. As Mr. Black pointed out earlier if the attorney says "I'm too tired, I can't function, my client can no longer listen and can not assist me in doing this." [??] points out there's a board member falling asleep. We need to terminate these proceedings. There's an opportunity to put that on the record, and if that's not done it's not going to be preserved and so an allegation of somebody falling asleep that's not put in the record, there's no evidence to support that.

BS: It just seems a little unnecessary and common sense to me. For God sake, 16 hours and if people are asleep it might be time for someone to shut the lights off and call it a day. And that - in my opinion is an unnecessary use of our time here today. I mean, lets learn from it and go on really. That should never even be brought to us.

DS: I just want to make the point though that in that process, the licensee and their attorney, they all have input.

BS: But they - the reflection comes back to the board. So it's a learning example for your board. The reflection wasn't on the licensee to speak up, the reflection was all right, who had the common sense here to call an end to that. You're absolutely right, and I agree with you that everyone probably did have the opportunity but nobody said Oh that poor board, that's not just the way it works.

ES: The chair wants to just take a second and ask the witness from this morning who made that statement - do you hear anything stated here on this subject, by this panel that you dispute? You do? I'm not going to ask you to go into detail now, but we would like to have a written statement from you pertinent to what you've heard and where, in which ways, in what ways do you find these statements not in accordance with your recollection, alright?

BS: [??] Just because it was not on the record [??].

ES: Very good. Now, I'm not going to be able to open it up to general floor and discussion, but I just wanted to - I think since we got on that specific point. Sorry sir I'll have to -

BS: And I only got on the point because you really do have such a good discipline process that it was just - that really came across to us clearly today, so it did seem a little bit out of fashion with the rest of the process and that's why it stuck in my head, so thank you.

ES: Marie, you want to ask a question?

ME: I just want to say that I have all the respect in the world for dentistry and it's profession. In 1965 and 1966 I had the opportunity to serve as a dental assistant at the United States Coast Guard base and it was assembly line dentistry and it scared me. It's difficult stressful work, and so you have my respect and - for all of your hard work. I want to ask Dr. Higgins about the complaint process. One concern I have, I guess, is when you do your fact finding, how far do you drill down, and how far back to you go? I mean we heard today - it seems to me - and is it always equally the same with every client. Do you drill down on every single person and go three, four five years back into their history, and offices, and research that much?

PH: To answer that, the only information that we received from that office on that complaint is the records and information dealing with the patient - so if for example, the complaint was about an improperly done root canal that record is brought to the board for that particular patient. At that point of the discussion, before there's been any finding, that is the only record that we look at. Now, if the board feels that there has been a violation of the Standard of Care, involving endodontic or root canal treatment, in it's Consent Agreement it may write that the licensee will be required to submit the next five or ten cases that they do, so that we can monitor the licensees improvement in the areas that we identified. So the any time that we go beyond that one record would be to validate follow up after a finding of a violation of the Standard of Care.

ME: We heard today, in two different cases that the research and the fact finding going back were not relevant to the complaint - going way back, so I'm just saying - that's the kind of stuff we were hearing, and I just wonder how far back does - I just wonder - I think about it as being stopped by the police for a broken tail light and then being searched, my car, and then my home maybe being searched after that. I don't know how far it goes back and if it's always the same. If it's the same for everybody then I guess I'm okay with it. But if it's different for different people then I wonder.

PH: The only way I think I can answer that without getting into specific cases would be - and I think Mr. Black summed it up, sometimes in reviewing the records we do see something that really does attract us, and usually it has to do with medications, particularly local anesthetics, as their being used or misused and those are things that we feel have a direct safety factor on a patient. Patients can actually be harmed by specific practices and that may not have been the focus of the complaint, but it is something that is obviously of use to the majority of the board members, a significant issue that needs to be addressed. We do feel it's our responsibility to address safety issues for the public. That's part of our charge. And we do not mine the records for additional - but when something stands out we cannot ignore that.

ES: I wanted to go on, okay, Van, I want to get to our other witnesses if that's all right.

VP: Just a quick question, we were talking [silence]

PH: [??] The boards can have complaint officers, that those complaint officers can be members of the board and that the board can conduct initial reviews and that the board [??]. So this is all in law, the board doesn't create law -

VP: No I understand that. It just doesn't seem to be a problem with other boards other than the Dental Board. So we don't - at least we don't hear about it. So I guess, I'm not trying to pick on you,

DT: We're here to make the process better as well.

VP: That's my point, is that if you know that the system has a problem, why hasn't something been done about it before this.

PH: I have an opinion on that.

VP: Okay.

PH: And I alluded to it earlier, that previous administrations have made it quite clear that they do not want the board to be an active participant in changing, in change. And the board has been instructed that you are to follow the Administrative Procedures Act and we do. That's the law that we function under the dental practice. I think it's been a refreshing change that I've mentioned earlier that in the last few years we've had that gag order if you will, lifted from us. The only thing that the Commissioner has asked of us, and [??], is to keep her in the loop. It certainly wouldn't be appropriate for her to be surprised by an action of this board may take. Now, at the board level I think we find a huge consensus for change. I don't know that we've agreed on a change yet. Dr. Theriault talks about a subcommittee on the front end, personally I prefer a sub committee on the adjudicatory hearing end, because I think that the entire board reviewing the complaints up in till that informal conferences is more important and the other smaller group that could hear the adjudicatory hearing. Either way, I'm sure we could live with that change. But I assure you, this is an issue we have all wrestled with.

VP: Cause we're - obviously we don't have the authority to make changes, but we have the authority to recommend change and I think we're trying to get to the point of where do we need to make changes. so -

PH: I think that's very - something's going to come out of 1608 and I think it's going - and if were carefully about it I think it's going to be a good thing.

ES: I wanted to give the floor to Ms. Denk, is it Dr. Denk, are you a dentist also?

DD: No, I'm not.

ES: Your not. Okay, I just wanted to make sure we -

DD: But I have great respect for the profession.

ES: You are the public - or a public member of the board, right? The only public member? Alright.

DD: Ladies and gentlemen of the board, I appreciate your time today. I know it's gotten quite late and - My name is Diane Denk I have a prepared statement I would like to read from. I have served for the past two and a half years on the Maine Board of Dental Examiners as it's public member. This position in other states is often called a public advocate, or a consumer member. I am here today to explain what I do on the board and how our board functions in handling complains brought against dental professionals.

Three years ago my dentist and his wife, the orthodontist, asked me if they could submit my name to Governor Baldacci in consideration for the position as public member on the board. I was taken aback because I have no background in dentistry. They explained that the board is comprised of five dentists, two hygienist and one denturist, who lend the technical expertise necessary. As the ninth member of board it would be my job to represent 1.3 million citizens of Maine to ensure that they are being properly serviced by the licensed dental professionals of this state. in spite of having no background in dentistry, I do have two masters degrees, one in business and one in education, 30 years in business experience, including serving as a vice president of a securities firm in Chicago and teaching special education to students with physical, behavioral or learning disabilities at the middle and high school level for over ten years. My current position is that of teaching suspended students at town hall. So believe it or not, I look more forward to coming here than going to see my students today. I also have more than 40 years of volunteer work. This include chairing the board of a woman's homeless shelter, serving as a hospice volunteer, collecting and delivering food for York County shelters and tutoring in the Kennebunk school system among other things.

Each month the board and the secretary transmits a board book, which I now load onto my laptop. The monthly book may range from 500 to 1400 pages. I then read and carefully sift through the materials provided. These include applications for licensure or renewal, documentation in support of changing rules or laws and complaints brought against dental professionals by their patients, as well as the entire patients file. Each of us gives careful consideration to both what the complainant and to what the professional have to say. Complaints may be as serious as having the wrong tooth extracted to a lesser charge of having been rudely treated by staff. As intense as having on going severe pain to wanting a refund of less than \$100. I make no determinations or final decisions until after I have heard the complaint officer present the facts and listen to the input of the members of my board and ask some questions of my own. I can honestly say that what I lack in dental expertise I more than make up for in my ability to hone in on the important

issues to see if there have been violations of the dental practice act or if the complaint should be dismissed. I am told by my fellow board members that in my two and a half years I have become a valuable addition. They feel I am a very fair-minded person who gives consideration to both the complainant who has made the charges as well as to the professional who is accused of wrong doing, since each is a citizen of Maine, I believe that is the job to which I have been charged. In many cases I agree with my fellow board members. Occasionally I register my voice of consent. In many instances I have convinced them that in my non-expert opinion has merit. We often dismiss complaints for which we feel the facts simply do not substantiate the allegations. Sometimes we find there are indeed infractions and a licensee is brought back to meet with the board, make a statement and to answer questions before a determination is made. Every opinion and decision is given thoughtfully and carefully. Ours is not a country club board which does drive by business quickly or over scrumptious lunches with large stipends.

Our 1400 page board books take hours and hours of reading, note taking and Talmudic study. There is not a single member of our board who enters the room with a personal agenda, a grievance to settle or less than a 100% open mind. Our meal breaks are often eating on the fly over our computers while we continue our business. We meet each month on a Friday and deliberate from 8 am and go until late in the evening or even into the weekend until the job is done. I'm extremely proud to serve with people who care so deeply about serving the members of the public and about guarantying fairness in their own profession. Our only agenda is to see that patients voice and complaints are properly heard, that dental professionals have a fair hearing, that frivolous or unsubstantiated claims are dismissed and that each professional that is not operating at the highest standard is given appropriate corrective measures or remediation. The complainants or professional members may not always get the answers they want or the decisions for which they hope, but in my opinion just is proudly and honorably served by our nine members. Each member is employed and takes time from his or her job in order to serve on the board. The dental profession is better served for the work we do. I for one, feel confident that our board is doing the job we are intending to do. We are not the bad guys, we are not rouge, we have no vitriol, and again we have no agenda. We can't make everyone happy, but I cannot tell you how proud I am to serve among such good professionals who really care about making this a great profession. I have a mouth load of implants that could send your children to college. So when I work among these people, I really have a respect for the education and they amount of time and effort that goes into being a really good dentist. Thank you for your time and attention.

ES: Thank you very much. We are also not a country club board and we do not eat catered meals, as much as we would like those fringe benefits I'm sure. The - I guess that we would then say now - Mr. Smith your not expecting to make a separate statement, is that correct? You're just advising the board? Okay. I'll just go to our group here and see if there's any questions? Mr. Philips?

EP: A couple of things. One is I was kind of surprised to hear you make a statement that something good might come out of 1608. You're about the only person whose ever said that, so that makes me feel a little better.

PH: Well if I could temper that a little bit, I wasn't crazy about the original wording. A couple of things have changed and [??] and that may be a good thing.

EP: You'll have to realize that the wording got rewordsmithed by some group here in the state who are wordsmith bills - I wasn't totally happy with all the wording, but that's beside the point. When you talked about having a separate group look at the complaints in advance at the stakeholders meeting the lady from the Nurses Association, you might want to talk to her, they seem to have their act together on that. Where they do meet in advance and part of the board is a special sub committee that goes over complaints and rapidly disposes of some and recommends the rest go forward, with all the information, to the full board. Because if you get a lot of complaints and you send everything to the full board, all the information, you sure do cut down a lot of trees, so you might talk to them. And I don't have a vendetta against you, I'm with you, I want to see a better process is all. I am making no judgment of innocence or guilt or anything else. I just think the process is flawed. We need to fix the process. Cause I just - I got shot at a few times at Vietnam, I spent 12 and a half years in the Army and I don't hear well from standing side of cannons, so today when they were talking about hearing protection I wonder what you can do to the artillery to protect your hearing, but I'm a firm believer in treating people fairly and honestly. I sit on a number of committees on my town and such and people don't always get treated fairly and honestly and the public, I don't know what you do if you dismiss complaint - do you notify the complainant of what happened? That's so critically important that they think that somebody paid attention to the complaint and you sent them a letter or something said, we have investigated and we have decided yes or no or this course of action.

DT: Exactly what happens, a letter goes to the licensee who the complaint was filed against and a letter goes to the complainant as well.

EP: Okay, that's critically important.

DT: It is.

EP: Then that's it for me. Thank you.

ES: Okay Linda, do you have any questions?

LS: Ms. Denk, your obviously very well spoken. I know that you said that you have been on the board for two and a half years, it looks like of the four dentists that are here today you were not on the board when Dr. Wheelender was disciplined, nor when Dr. Turner was disciplined, nor when Denise Nadeau began her process and Joe when was yours?

JB: January of last year.

LS: Okay so you were on the board during his. So I'm just making a statement that the people who seem to be most affected are people who are here who have the most concerns were prior to your tenure on the board. I thought I'd point that out.

ES: Okay, Beth, question?

BS: Just kind of a final statement from my point. Such a hardworking board and such a hardworking job and it's great that its - its very clear that it's the job to protect the people. Just - and that came across very clear today. But what didn't come across, from my standpoint is that our dentists are our people and their part of the community and that - I feel like there's no one to - in some cases, and at least what I've heard today - that their not always represented as well. So I just, my comment, my feeling of what came across today is that it's your job to represent the people but everybody's our people in this state. 1.3 million is all of us.

DD: And I believe in my statement I did say that we - they are part of our citizens and I do know, because I have spent a fair amount of time in other industries, and I do know that there are people out there that can be very litigious and very frivolous and sometimes people can't be made happy. And in other cases there are people who have been at the receiving end of some problems.

BS: Well, thanks for concluding with that because it hadn't come across, so thank you.

ES: Marie, do you want to say anything further? Dr. Higgins, you speak of the Administrative Procedures Act, now one reason we got involved in this whole question to begin with, as you know, the APA from 1977 until the mid 80's or thereabouts was essentially the same approach that LD1608 came back to when we introduced that bill. So from our point of view the protections of the original APA are important and they have been gradually moved away from, corroded, eroded, whatever you want to say, and yet you have, I'm sure you have read LD1608 if not the original APA, maybe both, so it's important to know that, although I'm not saying your operating outside the law as it currently exists, because you are operating within the law as it currently exists, but there's a lot of dissatisfaction with the state of the law as it exists, and I do believe Mr. Black and Mr. Smith when they say were here to work with the law that exists, we're not trying to create a law that - we're working with the system as it now exists. But we also are concerned. We have a little larger framework, which is to look at the history, the APA, the fact that for some reason after ten years it just kind of dribbled away and now we have a much different system. And we're not satisfied with that from the point of view of this board, we're not satisfied. So I'm glad to hear, in your statement and that of a number of other people here with this board and with others that have been here, that there is a lot of thought going on now about how could we revisit this whole

thing and maybe make it a more better, and more fair system for everybody. And without finding fault as to what is being done now, except in a way we have to criticize what is being done now because we can see some of the effects of that. So I - if you have any further or final comment feel free, otherwise we're prepared to excuse you with our appreciation and -

LS: One more thing. When you get done, I want to -

ES: You want to make another statement Linda?

LS: Years ago I worked with clients who had serious mental illnesses and I was a social worker, and they would come to me and they would complain about the staff person, or that staff person and they would say, this person hates me, this person makes my life miserable. And I would always say no social worker, no staff person wakes up in the morning saying I'm going to put the screws to my clients today. We don't believe, I don't think that there's anybody on this board who believes that about the dental board either. I think the belief is that there is a mis-guidedness perhaps in the way things are going about, just like there is with mental health workers, like there is with almost anybody out there who's been in a profession for a period of times, gets institutionalized or bureaucrat - bureaucratized - that you get tunnel vision and we hope that - I think that's what were hoping is that we can help break through that tunnel vision.

ES: I would like to say that we had agreed earlier with the Dental Board witnesses that you're free to be excused at this point. You've finished your panel so with our appreciation you are excused. If you want to stay and accept the slings and arrows of outrageous fate, we, I think, we have some people in the office to come at you, but I think it's your option. If you'd like to be excused your welcome to go and -

PH: One thing I would say is that I think we're always available and if you have questions or concerns, we want to hear about them and we'll try to answer them to the best of our ability.

ES: Great. We very much appreciate your appearance, all of you today, and so - we'll - they are excused, then we will have any final comments from the floor, from anybody in the room who wants to say something about what's gone on here today. But I don't - as I said, we agreed because of the fact that the dental board people, thank you, have a sensitive statutory area in which they operate we would not subject them to questions from the floor. Now, we have this gentleman back here that's been waiting awhile. Sir?

RT: Yes, I just heard Dr. Higgins say that he had never been to an [??] without represented by counsel [??]. [something about being represented by counsel]

ES: You are Dr. Turner, right?

RT: The other one is that you go directly to the adjudicatory hearing after immediate danger to the public. I did not get offered, I practiced for 16 months after an OUI and I was never offered an informal hearing, I was given nothing. I had to ask for an adjudicatory hearing. So they didn't, they did nothing, [??] so all of these procedures they say they went through, they never did -

ES: Dr. Turner what is your first name?

RT: Robert.

ES: And you are a resident where?

RT: Skowhegan, Maine.

ES: Skowhegan. Alright, I just wanted to make sure that we had that in for our transcript - because this will be in the transcript so I wanted to double check it. We won't have any response to that from the MBDE witnesses as we mentioned, but at least we'll have your comment in the record.

RT: Okay, thank you.

ES: Anybody else? Well, I want to go back to Denise first - she's been -

DN: I'm just curious about how long Mr. Smith has been the counsel investigator and prosecutor for the board, and how that correlates with that change in the [??].

ES: We will have to determine that, I don't believe we have the answer and I don't want to put Mr. Black on the spot about that. He may or may not know the answer to that. All I can say is it's a good question and it's something I'll incorporate in our deliberation. Dr. Benedetto?

JB: [??] on an interesting conversation with my attorney and he said something that really kind of surprised me. In essence he said, "Hey stupid, you should have called me first, before you went to the informal conference," he says "I could have saved you a lot of trouble." I said "Yeah, but I was lulled into thinking informal, it's Maine, we're just going to chitchat," don't do it again, because it didn't happen that way. But he said, also, he says his clients that he tells the board right up front, he, the attorney tells the board right up front, "we are only going to talk about this and nothing else" and he said to me basically, and I wished that I could have gotten the answer from them, that if it's just a patient report that I was rude and unprofessional then he could have stipulated in an agreement with the board that that's all we're talking about and we're not going to look in anybody else's record. I said "and that's legal?" He says "I do it all the time." I wish I had known that.

ES: Well thank you for that. [...inaudible recording...] All right if there are no further comments, well, Denise?

DN: I have just one paragraph to read. This is in regards to the information that I talked about the past office that I had worked at, they went to that office, Mr. Smith and the investigator went to that office to look for more information. This is what my attorney commented in [?]. There's a chain of custody issue here too. I mean seriously, I mean, she hasn't been at that office for three years, so who knows who these have been handled by and whether or not they've been changed [?].

ES: All right, we'll, if there are no further comments we'll -

DN: Just a quick comment.

ES: All right, Doctor.

DN: I know that some of us here today and some others that are not here have been accused of having psychiatric problems, and this is a very common [?] and they insist that you go and have a psychiatric exam. You can go and pay thousands of dollars for it and if it says that your fine they'll dispute it and say no you have to go and have another exam. So basically they're looking for someone to say that there's something wrong with you. And I don't understand why -

ES: Do they have a particular clinic or psychiatrist that they tell you that you should see?

DN: Yes.

ES: So that person is already, in a sense, kind of-

DN: In my case I went to the finest psychiatric institute in the country at Massachusetts General Hospital, paid somebody \$350 an hour had a full exam done and they didn't like it. So then I was supposed to go to somebody else. And my lawyer told me that I could go to this particular office. So this seems like a way that they can be saying, well, lets keep looking until somebody says something bad about her.

ES: Dr. Turner you have another comment.

RT: They sent me to [?] Program and I had to go through, and they do say that, you've got to have an evaluation. You get your evaluation, [?] and they don't like, well we don't want this -okay well, who do you want me to see? I want you to see so and so, and they say no we don't want to see you and so it goes around and around and around and then when you come back saying there's nothing wrong with me, you don't need therapy, there's not - then they say, you still need therapy.

DN: Well, you know this is typical of the mental health system because somebody expresses legitimate anger and that's a sign of their illness, whereas you or I it

would be a sign - so lack of compliance is also considered to be an indication of illness and I feel that's a little bit cynical but I was in that system for a long time.

ES: All right, we're going to have to close her down. Thank you all very much, appreciate your time and so -