

CASE NO. 48258-4-II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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NARINDER M. DUGGAL, M.D.,

Appellant,

v.

MEDICAL QUALITY ASSURANCE COMMISSION, DEPARTMENT  
OF HEALTH, STATE OF WASHINGTON,

Respondent.

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**BRIEF OF APPELLANT NARINDER M. DUGGAL**

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## I. INTRODUCTION

After fourteen years of university-level education and over 20 years of professional practice, Narinder M. Duggal M.D. is at the highest level of certification in internal medicine, pharmacology and therapeutics. He is Board Certified with the American College of Physicians in internal medicine and a Fellow of the Royal College of Physicians and Surgeons of Canada, a Clinical Pharmacy Specialist, and a Clinical Associate Professor at the University of Washington. He has additional qualifications in Addiction Medicine. He is also Board Certified as a Psychiatric Pharmacist, Hypertension Specialist, Lipid Medicine Specialist and Geriatric Pharmacy and noted for his expertise in various areas of medicine and pharmaceutical sciences. Please see Dr. Duggal's *Curriculum Vitae* which is attached to this brief as Appendix A.

On November 28, 2012, the State of Washington Medical Quality Assurance Commission ("State" or "Commission") issued a statement of charges against Dr. Duggal alleging unprofessional conduct. Dr. Duggal responded by denying all allegations against him and requested an adjudicative proceeding. On April 23, 2013, the Commission amended its statement of charges against Dr. Duggal, adding two additional patients. Again, Dr. Duggal responded by denying all allegations against him and requested an adjudicative hearing.

On April 30, 2013, and without a hearing, the Commission's Presiding Officer John F. Kuntz signed an ex parte order which summarily suspended Dr. Duggal's license to practice medicine pending further Commission review.

An adjudicative hearing was scheduled for January 27 – February 3, 2014.

On January 6, 2014, three weeks prior to the adjudicative hearing, Dr. Duggal learned that his counsel, Carol Sue Janes and Amy Forbis, had failed to undertake any discovery in the administrative action relating to the allegations against him. Additionally, Dr. Duggal's counsel had failed to provide the complete file to him and failed to prepare for the hearing.

Faced with incompetent counsel, Dr. Duggal attempted to mitigate the problem by retaining new counsel. A Notice of Withdrawal and Substitution of Counsel was filed on January 6, 2014, replacing his prior counsel with Thomas Olmstead.

The parties had a prehearing conference on January 7, 2014. Dr. Duggal's new counsel, Thomas Olmstead, sought a short 120-day continuance based on the fact that he had not seen the discovery and wanted the opportunity to become familiar with the case and the voluminous administrative record. The Presiding Officer issued Prehearing Order No. 3, denying the motion for a short continuance, and

rescheduled the pretrial conference to January 8, 2014, one day later, in order to allow time for counsel to confer as to who would be representing Dr. Duggal at the adjudicative hearing. In Order No. 3, the Presiding Officer erroneously based his decision on WAC 246-14-090(2) and the 180 day guideline time period indicated in that regulation and essentially determined that the Commission's scheduling convenience was more important than Dr. Duggal's medical license, a constitutionally protected property right.

The Presiding Officer convened a prehearing conference on January 8, 2014, and again denied Dr. Duggal's motion to continue the hearing date on the purported ground that Dr. Duggal's decision to replace his incompetent counsel three weeks before the adjudicative hearing was not good cause. The Presiding Officer confirmed that the adjudicative hearing would proceed on January 27 -31, 2014.

On January 15, 2014, faced with the denial of his motion for continuance and, on the verge of the adjudicative hearing with new counsel who had not reviewed the voluminous file (impossible to prepare for a trial and defense on such short notice) and who could not identify any witnesses or exhibits because he was new to the matter and unfamiliar with the case facts, and while under extreme stress and duress because his career and livelihood was at stake, and feeling like he had no other

options, in this untenable situation, Dr. Duggal signed the non-binding and tentative settlement order (prepared by the State) which was titled Stipulated Findings of Fact, Conclusions of Law and Agreed Order (“proposed Order”), which, by its terms, was non-binding up to the point where the Commission accepted and signed the proposed settlement. Prior to that time, and at the time Dr. Duggal signed the proposed Order, it was non-binding on its face.

On January 16, 2014, the State/Commission’s attorney, Larry Berg, confirmed the non-binding nature of the proposed Order, characterizing it on two occasions as “tentative.”

Less than two weeks after signing the proposed Order, and two weeks before the Commission considered it, Dr. Duggal withdrew his consent to the proposed Order and requested a hearing on the merits by sending a letter to the Commission dated January 28, 2014. In the letter, Dr. Duggal requested a full review of his case and a reopening of the case for a review of his medical license. In his letter to the Commission, Dr. Duggal detailed the basis for withdrawing his consent, explaining, in part “I was in extreme distress and agony at the forced volunteer surrender of my medical license on January 16, 2014 at 10:30 a.m.” Dr. Duggal also explained that he did not have the complete file, and his prior attorney did not provide it to him, and he did not have the full information and

disclosure, he did not believe he had a choice but to surrender his license as the situation was untenable for his new attorney to prepare for a defense. After he had been provided with the file, and reviewed it, he believed that the “allegations are defensible.” At the time Dr. Duggal withdrew his consent, the State/Commission’s attorney had not yet signed the proposed Order.

On February 5, 2014, and without a hearing, and despite the non-binding nature of the proposed Order, and the fact that the State’s attorney had characterized the proposed Order as “tentative,” the Presiding Officer, Frank Lockhart, unilaterally refused to allow Dr. Duggal to withdraw his consent to the proposed Order, issuing Prehearing Order No. 5, Order Denying Respondent’s Motion to Withdraw Stipulation. The record indicates that the Commission then signed the proposed Order on February 13, 2014, revoking Dr. Duggal’s medical license for all time, the ultimate professional and career incarceration and sanction, without even an adjudicative hearing.

A Superior Court proceeding followed where the court essentially affirmed Order Nos. 3 and 5 under an arbitrary and capricious standard without considering the Presiding Officer and Commission’s misinterpretation of the law relating to both orders and ignoring the violation of Dr. Duggal’s Constitutional rights.

It should be noted that while the State continues to pursue Dr. Duggal on the charges levied in the proposed Order relating to four prior patients, Superior Courts have exonerated Dr. Duggal of any civil liability as to two of the patients when the Superior Courts dismissed with prejudice their medical malpractice lawsuits (without any settlement payment) and narrowed a medical malpractice lawsuit brought by a third patient, finding the patient had spoliated evidence related to the patient's stash of thousands of pills in Ziploc baggies (not provided by Dr. Duggal). The fourth patient did not bring a lawsuit. These dismissals are part of the Superior Court's Clerk's Papers and are substantial evidence to undermine the State's case in this matter.

While Dr. Duggal has already and largely been cleared of any wrong-doing by Superior Courts in civil actions, the State continues to pursue Dr. Duggal in what can only be described a "form over substance" lynching.

Having been largely cleared of any wrong-doing by Superior Courts relating to the same issues in dispute before the Commission, and while the State should dismiss the charges, Dr. Duggal seeks to at least be allowed to proceed with an adjudicative hearing before the Commission and requests that the proposed Order be vacated and for Dr. Duggal to be allowed to have an adjudicative hearing before the Commission.

## II. ASSIGNMENTS OF ERROR<sup>1</sup>

1. By the Presiding Officer entering Order No. 5, and by the Commission entering the proposed Order despite Dr. Duggal withdrawing his consent to the proposed Order, the Presiding Officer and Commission violated Dr. Duggal's constitutional due process rights by refusing to allow an adjudicative hearing when they determined Dr. Duggal could not withdraw his consent (Order No. 5) to the proposed Order:

- (a) The Presiding Officer and the Commission misinterpreted the law, where on its face, the proposed Order was not binding until the Commission accepted and signed it, and therefore, under elementary contract law, Dr. Duggal could withdraw his consent before the Commission acted on the proposed Order.
- (b) The Presiding Officer (and Commission) misinterpreted the law and violated Dr. Duggal's constitutional rights (due process and equal protection) in how the proposed Order was applied when he found that Dr. Duggal's initial consent to the proposed Order was an irrevocable admission to the allegations in the charge under WAC 246-

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<sup>1</sup> By the Superior Court denying Dr. Duggal's Petition for Judicial Review and Dr. Duggal's Motion for Reconsideration, the Superior Court's errors are the same as the Presiding Officer and Commission's errors.

11-270(d) and (e) and “[e]ven if the stipulation were not presented to the Commission at the February 13, 2014 meeting, it could still be used at hearing as an admission by [Dr. Duggal] of unprofessional conduct under WAC 246-11-270(e).” Order No. 5 and the proposed Order violate Dr. Duggal’s constitutional rights in how the Order is applied because the Presiding Officer essentially asserts that the proposed Order was binding on Dr. Duggal but not binding on the State, violating Dr. Duggal’s constitutional due process rights and equal protection rights.

2. Order No. 5 and the proposed Order are not supported by evidence that is substantial when viewed in light of the whole record before the Court, which includes the agency record for judicial review and supplemented by any additional evidence received by the court, including Superior Court dismissals of civil medical malpractice lawsuits against Dr. Duggal brought by the same administrative claimants and the Superior Court’s spoliation finding against one of the administrative claimants in the civil lawsuit. The dismissals, and spoliation finding, were based on a lower burden of proof, preponderance of the evidence, compared to the State’s evidentiary burden, clear and convincing evidence.

3. By entering Order No. 5, and finding that Dr. Duggal could

not withdraw his consent relating to the proposed Order (even though the proposed Order was not binding on its face), and refusing to allow Dr. Duggal to have a hearing on the merits, the Presiding Officer was arbitrary or capricious for all the reasons stated above.

4. By refusing Dr. Duggal's request for a short continuance, the Presiding Officer misinterpreted the law when he entered Order No. 3, citing WAC 246-14-090(2) and the 180 day time period set forth in that regulation as a basis for denying Dr. Duggal's request for a short continuance so that his new attorney could become familiar with the voluminous administrative record, (a) because the 180 time period is only a guideline, (b) the regulation contemplates continuances, and (c) the proceeding had already been pending since November 28, 2012, beyond the 180 time period, and using the 180 time period as a reason for not granting a short continuance lacked merit especially since Dr. Duggal's license was already suspended and therefore, there was no prejudice to anybody relating to the continuance.

5. The Presiding Officer was arbitrary or capricious by entering Order No. 3 when he denied Dr. Duggal's request for a short continuance when he found that Dr. Duggal had not established good cause and in light of the prior "effort undertaken to arrange for a Commission Panel to be available for a six-day hearing." In light of the

unrebutted evidence that Dr. Duggal's prior counsel was not prepared for the adjudicative hearing, and Dr. Duggal had to change counsel, the Presiding Officer decided that the Commission's schedule and convenience were more important than Dr. Duggal's substantial and constitutionally protected property rights, career and livelihood. Also, Dr. Duggal's license was already suspended and therefore, there was no prejudice to anybody relating to a continuance.

### **III. STATEMENT OF THE CASE**

#### **A. Proceedings before the State of Washington Medical Quality Assurance Commission.**

On November 28, 2012, the State of Washington Medical Quality Assurance Commission ("MQAC" or "Commission") issued a Statement of Charges against Dr. Duggal alleging Unprofessional Conduct pursuant to RCW 18.130.180(1)(4)(7)(24), sexual misconduct pursuant to WAC 246-919-630, and abuse pursuant to WAC 246-919-640 with regard to six of his patients. AR at 1-45.

On December 7, 2012, Attorney Amy T. Forbis entered a notice of appearance on behalf of Dr. Duggal. AR at 47.

On January 31, 2013, Dr. Duggal responded to the statement of charges denying all of the allegations against him and requesting an adjudicative proceeding and an opportunity for settlement. AR at 67-73.

On March 19, 2013, the Department of Health Adjudicative Service Unit issued a scheduling order setting a hearing for August 19-23, 2013. AR at 85-88.

On April 23, 2013, the Commission amended its statement of charges against Dr. Duggal to include allegations of unprofessional misconduct on two additional patients alleging violations of RCW 18.130.180(1)(4)(7)(24), WAC 246-919-630 and WAC 246-919-640. AR at 111-155.

On April 30, 2013, and without a hearing, MQAC Presiding Officer John F. Kuntz signed an ex parte order which summarily suspended Dr. Duggal's license to practice medicine pending further Commission review. AR at 104-110.

On May 21, 2013, Dr. Duggal responded to the amended statement of charges again denying all of the allegations against him and requesting an adjudicative proceeding and an opportunity for settlement. AR at 624-632.

A new amended scheduling order and notice of hearing was signed on June 12, 2013, setting an adjudicative hearing for January 27 – February 3, 2014. AR at 674-77.

On January 6, 2014, three weeks prior to the adjudicative hearing counsel for Dr. Duggal, Carol Sue Janes, Esq. and Amy Forbis, filed a

Notice of Withdrawal and Substitution of Counsel by Thomas Olmstead.  
AR at 3665-3672.

At the time that Janes and Forbis withdrew as counsel for Dr. Duggal, it is undisputed (no evidence in the administrative record proving otherwise) that they had failed to undertake any discovery in this administrative case against Dr. Duggal.

The following day the Presiding officer Frank Lockhart, Health Law Judge convened a prehearing conference on January 7, 2014, pursuant to RCW 18.130.095(3) and WAC 246-11-390. At that prehearing conference Dr. Duggal's Attorney Thomas Olmstead motioned for a 120-day continuance based on the fact that he had not seen the discovery and wanted the opportunity to become familiar with the case and the voluminous administrative record. *See AP 3673; see also AP 3714-15* which provides more explanation for the continuance request.

The Presiding Officer issued Prehearing Order No. 3, denying the motion for a short continuance, and rescheduled the pretrial conference to January 8, 2014, one day later, in order to allow time for counsel to confer as to who would be representing Dr. Duggal at the adjudicative hearing. AR at 3673-74. In Order No. 3, the Presiding Officer erroneously based his decision on WAC 246-14-090(2) and the 180 day guideline time period indicated in that regulation and essentially determined that the

Commission's scheduling convenience was more important than Dr. Duggal's medical license, a constitutionally protected property right. *See*, AR 3673-74.

The Presiding Officer convened a prehearing conference on January 8, 2014 and again denied Dr. Duggal's attorney's motion to continue the hearing date on grounds that Dr. Duggal's counsel's decision to substitute in for Dr. Duggal's prior attorney three weeks before the adjudicative hearing was not good cause. AR at 3682.

The Department issued a Notice of Hearing dated January 13, 2014, affirming the adjudicative hearing to take place on January 27 -31, 2014. AR at 3684-87.

On January 15, 2014, with the denial of his continuance and, facing the untenable situation of being on the verge of an adjudicative hearing with unprepared and uninformed new counsel who had not reviewed the voluminous file and who could not identify witnesses or exhibits because he was new to the matter and unfamiliar with the case facts, and while under extreme stress and duress because his career and livelihood was at stake, and feeling like he had no other options, Dr. Duggal signed the proposed Order that had been prepared by the State. *See*, AP 3689-3710.

At the time Dr. Duggal signed the proposed Order, it was non-binding on its face. *E.g.*, ¶1.8 (“This Agreed Order is not binding unless it is accepted and signed by the Commission”), AP 3690, CP 17; ¶1.9 (“If the Commission accepts this Agreed Order . . .”), AP 3690, CP 17; ¶1.11 (“If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation”), AP 3690, CP 17; ¶4.3 (“**Effective Date.** The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail”)(bold and underlined emphasis in original), AP 3708, CP 35; ¶7 [changed to ¶6 after Dr. Duggal had signed] (“I understand that I will receive a signed copy if the Commission accepts this Agreed Order”), AP 3709, CP 36.

Further evidencing the non-binding nature of the proposed Order, on January 16, 2014, Larry Berg, Staff Attorney for the Commission, filed with the Adjudicative Services Unit a memorandum attaching the proposed Order. AR 3688-3710. In his memorandum, the Commission’s attorney characterizes the proposed Order stating, “case has been *tentatively* settled according to the terms set forth in the attached” proposed Order. AR 3688 (emphasis added).

Further evidencing the non-binding nature of the proposed Order, after Dr. Duggal and his counsel signed it, the State made revisions on the

signature page on the version submitted to the Commission. Compare the version signed by Dr. Duggal and his counsel, CP 36-37, with the version submitted by the State to the Commission, AP 3709-10. Additionally, the version submitted to the Commission by the State was not signed by the State, further evidencing the non-binding nature of the proposed Order.

*Id.*

Then, again, on January 16, 2014, Mr. Berg submitted an updated memorandum to the Adjudicative Services Unit notifying that the Commission had a scheduling conflict and was unable to consider the proposed Order, requesting rescheduling the Commission meeting to February 13, 2014. AR at 3711. In this memorandum, Mr. Berg reiterates that “case has been *tentatively* settled according to the terms set forth in the attached” proposed Order. AP 3712 (emphasis added).

Further evidencing the non-binding nature of the proposed Order, the Presiding Officer granted the State’s request to continue the meeting, and in the Order, the Presiding Officer refers to the “proposed” Order in four places. AP 3712. The Presiding Officer also struck the hearing but noted that “[i]f the Commission approves” the proposed Order, the status conference will be stricken. *Id.* (emphasis added). This also evidences the non-binding nature of the proposed Order at that time.

Then, less than two weeks after signing the proposed Order, and two weeks before the Commission had considered it, Dr. Duggal withdrew his consent to the proposed Order and requested a hearing on the merits by sending a letter to the Commission dated January 28, 2014. AR 3714-15. In the letter, Dr. Duggal requested a full review of his case and a reopening of the case for a review of his medical license. *Id.*

The Presiding Officer interpreted this letter to be a Motion to Withdraw Stipulation. AR at 3718. In his letter to the Commission, Dr. Duggal detailed the basis for withdrawing his consent, explaining, in part “I was in extreme distress and agony at the forced volunteer surrender of my medical license on January 16, 2014 at 10:30 a.m.” AR at 3714 (emphasis added). Dr. Duggal also explained that he did not have the complete evidence file until he changed counsel and only 96 hours before signing the proposed Order. *Id.* Dr. Duggal further explained that because he was not provided access to the record by his prior counsel, he was not aware of numerous discrepancies contained in it. *Id.* Dr. Duggal also noted that he was led to believe by his prior counsel that the Commission would revoke his medical license anyway, , but having reviewed the file after the fact, the factors Dr. Duggal uncovered led him to believe there was enough evidence to dispute the allegations against him. *See id.* Dr. Duggal also noted that just prior to the time he signed the

proposed Order, his new counsel was not familiar enough with the case to be able to identify witnesses and exhibits for the upcoming adjudicative hearing, and requested a continuance which was denied by the Presiding Officer. *See id.* at 3714-15. At that time, Dr. Duggal's new counsel had not yet even received the case file from Dr. Duggal's prior counsel. *Id.* Dr. Duggal also noted that even the State's attorney, Larry Berg, acknowledged that it was highly unusual for the respondent's attorney (referring to the prior attorney) not to take any depositions. *Id.* at 3715. Dr. Duggal further noted that his prior counsel had failed to conduct any discovery in the administrative action, did not interview any witnesses and failed to prepare for any hearings. *Id.* Dr. Duggal argued that "I was not adequately represented by Ms. Janes [prior counsel] for six months, it seems all she did was stock pile the documents presented to her by the Department of Health." *Id.*

There is no evidence in the administrative record that the State's attorney signed the proposed Order before Dr. Duggal withdrew his consent on January 28, 2014. *See, e.g.,* AP 3710.

On February 5, 2014, and without a hearing, Presiding Officer, Frank Lockhart unilaterally issued Prehearing Order No. 5 [*sic*], Order

Denying Respondent's Motion to Withdraw Stipulation.<sup>2</sup> AR at 3716-3721.<sup>3</sup>

On February 13, 2014, Dr. Duggal's new attorney Thomas Olmstead filed a request for clarification dated February 7, 2014, relating to Order No. 5. AR at 3727- 31.

On the day the Commission was to meet to consider the proposed Order (even though Dr. Duggal had already withdrawn his consent to it), Dr. Duggal's new attorney, Thomas Olmstead, went to the Commission and attempted to reiterate that Dr. Duggal had previously withdrawn his consent to the proposed Order, but Attorney Olmstead was prohibited from speaking on Dr. Duggal's behalf. CP 123 (¶48).

The record indicates that the Commission signed the proposed Order (with the State's revisions that were made after Dr. Duggal and his counsel had signed it) on February 13, 2014. AR at 3755.

### **B. Proceedings before the Superior Court**

On February 24, 2014, Dr. Duggal filed a Petition for Judicial Review relating to MQAC's Prehearing Order Nos. 3 and 5. CP 4-7.

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<sup>2</sup> The Administrative Record indicates that there are two Prehearing Order Nos. 5, for the purpose of Petitioner's Appeal, any reference henceforth is in regard to Prehearing Order No. 5 dated February 5, 2014.

<sup>3</sup> Notwithstanding the fact that the impact of the proposed Order could lead to the State taking away Dr. Duggal's livelihood, his medical license, his substantial property and liberty interests, apparently Presiding Officer did not have the time to sign the order, and instead, had a different judge sign it on his behalf.

On October 9, 2015, the Superior Court issued Order Denying Petition for Review. CP 1-2. Essentially, the Superior Court found that the Presiding Officer was not arbitrary and capricious with respect to Orders No. 3 (denying continuance) and Order No. 5 (rejecting Dr. Duggal's withdrawal of consent relating to the proposed Order). *See* Verbatim Report of Proceedings dated October 9, 2015 at 32:3-39:19. The Superior Court did not analyze the issues relating to the Presiding Officer's misinterpretation of contract law and misinterpretation of under WAC 246-11-270(d) and (e) relating to Dr. Duggal's purported "admission" (for reasons discussed below, Dr. Duggal denies he ever admitted the allegations against him in the proposed Order) and the misinterpretation of the law under WAC 246-14-090 relating to the continuance request, and the Constitutional violation issues. *See, id.*

On October 19, 2015, Dr. Duggal filed a motion for reconsideration. CP 113-147. The Court denied the motion. *See* Verbatim Report of Proceedings dated December 4, 2015 12:15-20:24.

**C. Superior Courts have already dismissed with prejudice parallel medical malpractice lawsuits brought by two of the administrative claimants, substantially undermined the lawsuit brought by a third Claimant because the Claimant spoliated evidence, and the fourth claimant did not file a lawsuit.**

Under a lower burden of proof, by a preponderance of the evidence, the Superior Court dismissed with prejudice Patient A's claims

and medical malpractice lawsuit. *See* Superior Court orders dated March 24, 2015 (CP 139-143), September 22, 2015 (CP 135-137), and October 14, 2015 (CP 129-130). No settlement was paid. *See, id.*

Similarly, the Superior Court dismissed with prejudice Patient D's medical malpractice lawsuit. *See* Superior Court order dated on June 19, 2015 (CP 132-133). No settlement was paid. *See, id.*

The Superior Court imposed a spoliation sanction against Patient C for his failure to produce crucial evidence in his medical malpractice lawsuit. *See* Superior Court order dated December 12, 2014 (CP 145-147).

The Superior Court accepted the foregoing orders as part of its record for the Court of Appeals to consider. *See* Verbatim Report of Proceedings dated December 4, 2015 at 17:12-18.

Patient H did not bring a civil lawsuit.

#### **IV. ARGUMENT**

##### **A. Standard of Review**

In reviewing an agency's order and the Superior Court's decision below, the Court of Appeals sits in the same position as the Superior Court and applies the review standards set forth in the Washington Administrative Procedures Act, chapter 34.05 RCW. *Serres v. Washington Dep't of Ret. Sys.*, 163 Wn. App. 569, 580, 261 P.3d 173, 179

(2011). In reviewing administrative action, “this court sits in the same position as the superior court, applying the standards of the WAPA directly to the record before the agency.” *Tapper v. Employment Sec. Dep't*, 122 Wash.2d 397, 402, 858 P.2d 494 (1993).

The Appellate Court applies a substantial evidence standard to an agency's findings of fact but reviews de novo its conclusions of law. *Premera v. Kreidler*, 133 Wn. App. 23, 31, 131 P.3d 930 (2006).

In addition to Constitutional authority, the Court may also grant Dr. Duggal relief from an agency order under RCW 35.05.570(3) if the Court determines that “(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied; . . . (c) [t]he agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; d) [t]he agency has erroneously interpreted or applied the law; (e) [t]he order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter; (f) [t]he agency has not decided all issues requiring resolution by the agency; . . . or (i) [t]he order is arbitrary or capricious.

**B. By the Presiding Officer entering Order No. 5, and by the Commission entering the proposed Order despite Dr. Duggal withdrawing his consent to the proposed Order, the Presiding Officer and Commission violated Dr. Duggal's constitutional due process rights by refusing to allow an adjudicative hearing when they determined Dr. Duggal could not withdraw his consent to the proposed Order.**

When the Presiding Officer refused to allow Dr. Duggal to withdraw his consent to the proposed Order, and when the Commission entered the proposed Order despite Dr. Duggal having withdrawn his consent, thereby refusing to allow Dr. Duggal to have a hearing on the merits, the Presiding Officer and Commission erroneously deprived Dr. Duggal of his due process right to an adjudicative hearing.

**1. Dr. Duggal's due process rights relate to his Constitutionally-protected property and liberty interests in his medical license and profession.**

The Due Process Clause of the Fourteenth Amendment to the United States Constitution precludes states from depriving any person of "life, liberty, or property, without due process of law." *Nguyen v. State, Dep't of Health Med. Quality Assurance Comm'n*, 144 Wn. 2d 516, 522, 29 P.3d 689, 691 (2001).

In *Nguyen*, the Washington Supreme Court held that a medical license is both a liberty interest and a property interest. *Id.*, citing *Wash. State Med. Disciplinary Bd. v. Johnston*, 99 Wash.2d 466, 474, 663 P.2d 457 (1983) (applying due process analysis to medical disciplinary hearings

because they “deprive individuals of ‘liberty’ or ‘property’ interests”); *Ritter v. Bd. of Comm'rs of Adams County Pub. Hosp. Dist. No. 1*, 96 Wn.2d 503, 510-11, 637 P.2d 940 (1981); *Painter v. Abels*, 998 P.2d 931, 940 (Wyo.2000) (“[P]ersons have a basic liberty interest in pursuing vocations”); *Johnson v. Bd. of Governors*, 913 P.2d 1339, 1345 (Okla.1996) (holding a professional license is a constitutionally protected interest in property).

Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interest within the meaning of due process clauses of the fifth and fourteenth amendments to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

Additionally, the Washington Supreme Court has held that the interest of a professional medical license is “profound” and deserving of a higher standard of proof, “clear and convincing,” when being considered for restriction or revocation by an adjudicative body. *Nguyen v. Dep't of Health*, 144 Wn.2d at 527-534. In holding that a higher standard of proof was warranted in the revocation of a professional medical license, the Supreme Court reasoned:

Prior to the creation of the Commission, this court noted a medical disciplinary authority performs the special function of “protecting

(a) the public, and (b) the standing of the medical profession in the eyes of the public.

However it is difficult to see how either of these goals is furthered by the Commission's employing a low standard of proof which results in a greater number of erroneous license revocations than would occur if it, at no additional cost or burden, applied a higher standard. It makes little sense to contend either the health of the public or its confidence in the medical profession is bolstered by the erroneous de-licensure of qualified physicians. The public is ultimately dependent upon the provision of a physician's services, not their elimination.

*Nguyen*, 144 Wn.2d at 533. (Internal citations omitted).

Consistent with the interest of a professional medical license being profound and deserving of a higher standard of proof, clear and convincing, when being considered for restriction or revocation by an adjudicative body, the Washington Supreme Court has also held that disciplinary charges, such as the charges levied against Dr. Duggal, are quasi-criminal in nature. *In re Revocation of License of Kindschi*, 52 Wn.2d 8, 319 P.2d 824 (1958). “A professional license revocation proceeding has been determined to be 'quasi-criminal' in nature and, accordingly, entitled to the protections of due process.” *Johnston*, 99 Wn.2d at 474, 663 P.2d 457 (1983).

Due process requires notice and an opportunity to be heard “at a meaningful time and in a meaningful manner.” *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 216, 143 P.3d 571 (2006) (internal quotation

marks omitted) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)). In *Groppi v. Leslie*, 404 U.S. 496, 502-03, 30 L. Ed. 2d 632, 92 S. Ct. 582 (1972), the Court stated that: “[r]easonable notice of a charge and an opportunity to be heard in defense before punishment is imposed are “basic in our system of jurisprudence.” The specific dictates of due process generally require consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. at 335. The essence of due process is notice and the opportunity to be heard. *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 58 L. Ed. 1363 (1914).

The due process is essentially Dr. Duggal’s right to an adjudicative hearing. RCW 34.05.449(2) provides, in part: “To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence...” Dr. Duggal has a due process right to defend against the allegations in the

Amended Statement of Charges by presenting evidence at a hearing. Similarly, the Uniform Disciplinary Act RCW 18.130 establishes the licensure and disciplinary procedures for all health care professionals in Washington. It provides a broad array of due process guarantees for professionals subject to discipline including a right to a hearing. RCW 18.130.050(3).

**2. On its face, the proposed Order was not binding and Dr. Duggal could withdraw his consent before the Commission acted on the proposed Order.**

After two motions for a continuance were denied, and facing the untenable prospect of proceeding to an adjudicative hearing without prepared and informed counsel, Dr. Duggal signed the State-prepared proposed Order on January 15, 2014. At the time Dr. Duggal signed the proposed Order (which was drafted by the State), it was non-binding on its face. *E.g.*, ¶1.8 (“This Agreed Order is not binding unless it is accepted and signed by the Commission”), AP 3690, CP 17; ¶1.9 (“If the Commission accepts this Agreed Order . . .”), AP 3690, CP 17; ¶1.11 (“If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation”), AP 3690, CP 17; ¶4.3 (“**Effective Date.** The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail”)(bold and

underlined emphasis in original), AP 3780, CP 35; ¶6 (“I understand that I will receive a signed copy if the Commission accepts this Agreed Order”), AP 3709, CP 36.

Further evidencing the non-binding nature of the proposed Order, on January 16, 2014, Larry Berg, Staff Attorney for the Commission, filed with the Adjudicative Services Unit a memorandum attaching the proposed Order. AR 3688-3710. In his memorandum, the Commission’s attorney characterizes the non-binding nature of the proposed Order stating, “case has been *tentatively* settled according to the terms set forth in the attached” proposed Order. AR 3688 (emphasis added).

Then, again, on January 16, 2014, Mr. Berg submitted an updated memorandum to the Adjudicative Services Unit notifying that MQAC had a scheduling conflict and was unable to consider acceptance of the proposed Order, requesting rescheduling this meeting to February 13, 2014. AR at 3711. In this memorandum, Mr. Berg reiterates that “case has been *tentatively* settled according to the terms set forth in the attached” proposed Order. AP 3712.

Further evidencing the non-binding nature of the proposed Order, after Dr. Duggal and his counsel signed it, the State made revisions on the signature page on the version submitted to the Commission. Compare the

version signed by Dr. Duggal and his counsel, CP 36-37, with the version submitted by the State to the Commission, AP 3709-10.

Additionally, the version submitted to the Commission by the State was not signed by the State's attorney. AP 3688-3710. This proves that neither the State's counsel nor the Commission had accepted the proposed Order at that time.

Then, less than two weeks after signing the proposed Order, and two weeks before the Commission considered it, Dr. Duggal withdrew his consent to the proposed Order and requested a hearing on the merits by sending a letter to the Commission dated January 28, 2014. AR 3714-15. In the letter, Dr. Duggal requested a full review of his case and a reopening of the case for a review of his medical license. *Id.* The Presiding Officer interpreted this letter to be a Motion to Withdraw Stipulation. AR at 3718. In his letter to the Commission, Dr. Duggal detailed the basis for withdrawing his consent, explaining, in part "I was in extreme distress and agony at the forced volunteer surrender of my medical license on January 16, 2014 at 10:30 a.m." AR at 3714. Dr. Duggal also explained that he did not have the complete file, and his prior attorney did not provide it to him, and he did not have full information and disclosure, he did not believe he had a choice but to surrender his license.

*Id.* After he had been provided with the file, and reviewed it, he believed that the “allegations are defensible.” *Id.*

Up to the very last moment of the acceptance by the Commission of the proposed order, Dr. Duggal had the Constitutional right to proceed to an adjudicative hearing. Before the Commission accepted and signed the proposed Order, Dr. Duggal in effect said, in no uncertain terms, “I want a hearing, I want to go to trial.”

The proposed Order clearly and explicitly states that the order is not binding until after the Commission approves and signs it. The Commission was granted a continuance to reschedule the hearing to approve the proposed Order. This legal action indicates the proposed Order was not binding until it was approved and signed by the commission and the judge. The very request for the Commission to require and subsequently be granted a continuance is a legal procedure evidencing that the proposed Order was not binding until the Commission accepted and signed it.

While Dr. Duggal’s January 28, 2014 letter was a notice that he had withdrawn his consent, the Presiding Officer recognized Dr. Duggal’s letter as a motion to withdraw his consent. The spirit of the letter is recognized by the Presiding Officer as Dr. Duggal’s intent on not moving forward with the surrender of his medical license. The Commission

treated Dr. Duggal's clear withdrawal of consent as a motion to withdraw and denied him that Constitutional right.

By refusing to allow Dr. Duggal to withdraw his consent, and by arguing that the proposed Order was binding on Dr. Duggal at the moment he signed it, the State is attempting to alter the terms of the proposed Order. That is, the State ignores the plain terms of the proposed Order -- that it is not binding until the Commission accepts and signs it. Dr. Duggal withdrew his consent before the proposed Order became binding on him.

It is the duty of the Court to declare the meaning of what is written, and not what was intended to be written. *Berg v. Hudesman*, 115 Wn. 2d 657, 669, 801 P.2d 222, 230 (1990), citing *J.W. Seavey Hop Corp. v. Pollock*, 20 Wn.2d 337, 348–49, 147 P.2d 310 (1944).

Here, the proposed Order clearly states in different paragraphs that it is *not binding*. Black's Law Dictionary defines a "binding agreement" as "[a] contract which is enforceable . . . ." Appendix B to Appellant's Brief. Here, if or until the Commissioner accepted and signed the proposed Order, it was not enforceable.

Moreover, even the Commission characterized the proposed Order as only "tentative" when its attorney, Larry Berg, filed with the Adjudicative Services Unit a memorandum attaching the proposed Order.

AR 3688-3710. In his memorandum, the Commission's attorney characterizes the proposed Order stating, "[t]his case has been *tentatively* settled according to the terms set forth in the attached" proposed Order. AR 3688 (emphasis added). The American Heritage Dictionary of the English Language (5<sup>th</sup> Ed. 2011) defines tentative as "[n]ot fully worked out, concluded, or agreed on; provisional." Appendix C to Appellant's Brief. Similarly, the online Merriam-Webster dictionary defines "tentative" as "not definite : still able to be changed," "not fully worked out or developed" and "hesitant, uncertain." Appendix D to Appellant's Brief.

Then, again, on January 16, 2014, Mr. Berg submitted an updated memorandum to the Adjudicative Services Unit notifying that MQAC had a scheduling conflict and was unable to consider acceptance of the proposed Order, requesting rescheduling this meeting to February 13, 2014. AR at 3711. In this updated memorandum, Mr. Berg reiterates that "[t]his case has been *tentatively* settled according to the terms set forth in the attached" proposed Order. AP 3712 (emphasis added). The Presiding Officer granted the State's request to continue the meeting, and in the Order, the Presiding Officer refers to the "proposed" Order in four places. AP 3712. The Presiding Officer also struck the hearing but noted that "[i]f the Commission approves" the proposed Order, the status conference

will be stricken. AP 3712. This further evidence that everybody recognized the non-binding and tentative nature of the proposed Order.

Moreover, further evidence of the non-binding and tentative nature of the proposed Order, after Dr. Duggal and his counsel signed it, the State made revisions on the signature page on the version submitted to the Commission. Compare the version signed by Dr. Duggal and his counsel, CP 36-37, with the version submitted by the State to the Commission, AP 3709-10. Additionally, the version submitted to the Commission by the State was not signed by the State. *Id.*

Despite the fact that at the time Dr. Duggal withdrew his consent to the proposed Order, (1) it was non-binding by its terms, (2) even the Commission's attorney had characterized it as only "tentative," (3) the State/Commission's attorney had not even signed it, (4) the version submitted to the Commission had been revised after Dr. Duggal signed it, and (5) and the Presiding Officer recognized on four occasions the "proposed" nature of it, the State/Commission now argues that prior to the Commission approving and signing the proposed Order, it was binding on Dr. Duggal but not binding on the State/Commission. Nowhere do the terms of the proposed Order make this distinction.

In essence, the State now attempts to change the terms of the proposed Order. If the State had wanted to express such a new term in the

proposed Order, that the proposed Order was binding on Dr. Duggal and that he could not withdraw his consent, it could have added that language to the proposed Order. But it did not. Nowhere in the proposed Order is there a prohibition against Dr. Duggal withdrawing his consent while the proposed Order was non-binding and only tentative.

Finally, the State drafted the proposed Order. At most, if there is some possible way to strain the terms of the proposed Order to somehow give the terms the meaning now advocated by the State, that the proposed Order was binding on Dr. Duggal even though the terms of the proposed Order indicate otherwise, then, at a minimum, whether or not the proposed Order was binding on Dr. Duggal is ambiguous. Since the State drafted the proposed Order, it should be construed against the drafter, the State. *King v. Rice*, 146 Wn. App. 662, 671, 191 P.3d 946, 951 (2008) (“Extrinsic evidence may be considered regardless of whether the contract terms are ambiguous. While extrinsic evidence may not modify or contradict a written contract in the absence of fraud, accident, or mistake, we may use it to clarify the meaning of words employed in the contract. This is the case even when there is an integration clause, as long as the court uses the extrinsic evidence to explain undefined contract terms, not to modify, vary, or contradict terms of the written contract. If extrinsic evidence does not resolve the ambiguity, the contract will be construed against the

drafter.”).

Here, the extrinsic evidence, the conduct of the parties, all supports that the proposed Order was tentative and non-binding and that Dr. Duggal could withdraw his consent prior to the Commission acting on it. First, Dr. Duggal withdrew his consent indicating that he thought he could withdraw his consent based on his interpretation of the terms of the proposed Order. Second, the Commission’s own attorney acknowledged the non-binding nature of the proposed Order describing it as “tentative.” Third, even after Dr. Duggal and his counsel signed the proposed Order, the State revised it and submitted the revised version to the Commission. Fourth, at the time Dr. Duggal withdrew his consent, the State’s attorney had not even signed the proposed Order. Fifth, the Presiding Officer noted the “proposed” nature of the proposed Order in four different places in her order continuing the meeting where the Commission would consider the proposed Order and acknowledged that the Commission may not accept it. Sixth, Attorney Olmstead was prohibited from speaking on the day the Commission considered the proposed Order to reiterate and emphasize that Dr. Duggal had withdrawn his consent to it.

But, if by some strained interpretation the proposed Order is ambiguous as to whether it was non-binding at the time Dr. Duggal withdrew his consent and as to whether Dr. Duggal could withdraw his

consent, because the State/Commission drafted the proposed Order, then the proposed Order should be construed against the State, the drafter, and Dr. Duggal should have been allowed to withdraw his consent.

Finally, there is no law or WAC provision or any term in the proposed Order that prohibits Dr. Duggal from withdrawing his consent prior to the Commission acting on it.

**3. The Presiding Officer and Commission misinterpreted the law and violated Dr. Duggal's constitutional rights (due process and equal protection) in how the proposed Order was applied pursuant to Order No. 5.**

**a) Dr. Duggal's initial consent to the proposed Order was NOT an irrevocable admission to the allegations in the charge under WAC 246-11-270(d) and (e).**

The Presiding Officer erroneously based Order No. 5 on WAC 246-11-270(1)(d)(i) and (e) when he found that the Dr. Duggal had admitted the allegations against him when he signed the proposed Order, citing WAC 246-11-270(1)(d)(i) and (e). This regulation states in part:

A respondent may respond to an *initiating document* by filing an application for an adjudicative proceeding or by waiving the opportunity for adjudicative proceeding.

(1) If the respondent wishes to file an application for an adjudicative proceeding:

\* \* \*

(d) The application for adjudicative proceeding shall contain a *response to the initiating documents*, indicating whether each charge is admitted, denied or not contested,

and responses shall be subject to the following conditions:

(i) Once admitted or not contested, an allegation may not be denied; and

(ii) An allegation denied or not contested may later be admitted.

(e) When an allegation is admitted or not contested, it shall be conclusively deemed to be true for all further proceedings. No proof of the allegation need be submitted.

WAC 246-11-270(1)(d)(i) and (e) (emphasis added). On its face, this regulation relates to a respondent's initial response to a charge, not to subsequent settlement talks. Dr. Duggal responded to the charges, denied the allegations, and requested an adjudicative hearing.

Additionally, and notwithstanding the non-binding and tentative nature of the proposed Order, the Presiding Officer misinterpreted the proposed Order when he found that Dr. Duggal admitted the allegations against him. The non-binding (and tentative) proposed Order only states "Respondent and the Commission acknowledges that the evidence is sufficient to justify the following findings, . . . ." Proposed Order at ¶2, AP 3690. Essentially, at most, and putting aside that the proposed Order was non-binding and tentative, the proposed Order reflected what would be akin to an Alford Plea. *In re Cross*, 178 Wn.2d 519, 521, 309 P.3d 1186, 1187 (2013) ("In an *Alford* plea, the accused technically does not acknowledge guilt but concedes there is sufficient evidence to support a

conviction. A judge may accept such a plea only if it is made voluntarily, competently, with an understanding of the nature of the charge and the consequences of the plea, and when the judge is satisfied that there is a factual basis for the plea.”).

**b) Dr. Duggal’s initial consent to the proposed Order could not be later used against Dr. Duggal as an admission.**

The Presiding Officer also erroneously found that notwithstanding the withdrawal of consent issue, “[e]ven if the stipulation were not presented to the Commission at the February 13, 2014 meeting, it could still be used at hearing as an admission by [Dr. Duggal] of unprofessional conduct under WAC 246-11-270(e).”

Notwithstanding that the proposed Order is not an admission of allegations in the charge, Order No. 5 and the proposed Order violate Dr. Duggal’s constitutional rights in how the proposed Order is applied because the Presiding Officer essentially asserts in Order No. 5 that, regardless of the Commission’s action on the proposed Order, the proposed Order is binding on Dr. Duggal but not binding on the State. Such an unfair interpretation further violates Dr. Duggal’s constitutional due process rights and equal protection rights.

**4. Notwithstanding the foregoing, to the extent that the proposed Order can be construed as akin to an “Alford plea” in this quasi-criminal proceeding, at a minimum, Dr. Duggal should be allowed to withdraw the “plea.”**

The proposed Order in this quasi-criminal proceeding is akin to an Alford plea agreement in a criminal matter. A court should grant leave to withdraw a plea “whenever it appears that the withdrawal is necessary to correct a manifest injustice.” *State v. Marshall*, 144 Wn.2d 266, 280-81, 27 P.3d 192 (2001). (quoting CrR 4.2(f)).

Because of the quasi criminal nature of this case Dr. Duggal should be allowed to change his mind. In accord, a criminal defendant who has been offered a plea bargain by the State can agree to accept a deal may then turn around at the plea hearing prior to its approval by the court and opt for a trial. A plea agreement is like a contract and is analyzed according to contract principles. *State v. Sledge*, 133 Wn.2d 828, 838-39, 947 P.2d 1199 (1997). Just like in this case where the Commission could reject the proposed Order at its whim, a plea offer is not binding until acceptance since “the State can revoke a plea proposal offered to a defendant up until the time the defendant enters a plea or had some act in detrimental reliance on the State's proposal.” *State v. Budge*, 125 Wn. App. 341, 347, 104 P.3d 714 (2005). *See also*, CrR 4.2 which provides:

Withdrawal of Plea. The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the

withdrawal is necessary to correct a manifest injustice. If the defendant pleads guilty pursuant to a plea agreement and the court later determines under RCW 9.94A.090 that the agreement is not consistent with (1) the interests of justice or (2) the prosecuting standards set forth in RCW 9.94A.430-.460, the court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered.

Additionally, in the context of a guilty plea in a criminal case, “(A) plea of guilty shall not be accepted unless made voluntarily after proper advice and with full understanding of the consequences” and [i]n order for the waiver of constitutional rights implicit in a guilty plea to meet the requirements of the due process clause, the plea must constitute an intentional relinquishment or abandonment of a known right or privilege. *State v. Holsworth*, 93 Wn.2d 148, 156, 607 P.2d 845, 849 (1980)(citations omitted). In the context of the proposed Order, it was not binding on its face at the time Dr. Duggal withdrew his consent and even the State’s attorney acknowledged it was only tentative. Certainly, there is no evidence in the record that Dr. Duggal’s counsel, Tom Olmstead, ever advised Dr. Duggal that by signing the proposed Order, it was final as to Dr. Duggal. That is because, on its face, the proposed Order was not binding at the time Dr. Duggal signed it.

Because of the substantial constitutional rights and substantial quasi-criminal consequences involved, to the extent the proposed Order is deemed to have been final as to Dr. Duggal despite the actual language of

the proposed Order that said it was not binding and despite the State's understanding that the proposed Order was only tentative, and the Presiding officer recognizing on four occasions (AP 3712) that it was a "proposed" order, Dr. Duggal's initial consent could not have been "an intentional relinquishment or abandonment of a known right or privilege" given the confusion around whether or not the proposed Order is/was "final" at the time Dr. Duggal withdrew his consent.

Given that the Commission has attempted to impose the ultimate and permanent sanction against Dr. Duggal, an extreme sanction and deprivation, taking away his medical license for life, the proceeding is more criminal than civil. The punishment assessed against Dr. Duggal amounts to professional and career incarceration. Because Dr. Duggal has already been largely exonerated by Superior Courts relating to the disputed issues before the Commission, the interest of justice requires that Dr. Duggal be granted an adjudicative hearing on the merits and not lose everything he has worked his entire life for by way of surrender when the terms of the proposed Order clearly prove that it was non-binding at the time Dr. Duggal withdrew his consent.

**C. Order No. 5 and the proposed Order are not supported by evidence that is substantial when viewed in light of the whole record before the Court.**

In an attempt to make its case against Dr. Duggal, the State relies

on four former patients of Dr. Duggal. Three out of the four patients sued Dr. Duggal for medical malpractice and sought money from Dr. Duggal relating to the disputes at issue. These patients have had every financial incentive to exploit the State's process for their own money benefit.

Under a lower burden of proof, by a preponderance of the evidence, the Superior Court has already dismissed with prejudice Patient A's claims and ultimately the civil lawsuit. *See* Superior Court orders dated March 24, 2015 (CP 139-143), September 22, 2015 (CP 135-137), and October 14, 2015 (CP 129-130). The Superior Court also dismissed with prejudice Patient D's civil lawsuit. *See* Superior Court order dated on June 19, 2015 (CP 132-133).

The Superior Court imposed a spoliation sanction against Patient C for his failure to produce crucial evidence in his civil suit. *See* Superior Court order dated December 12, 2014 (CP 145-147).

Patient H did not bring a civil lawsuit.

Based on the foregoing, the disputed issues before the Commission have already and largely been resolved in Dr. Duggal's favor. The State's continued pursuit of Dr. Duggal demonstrates a form over substance strategy by the State. Justice dictates that Dr. Duggal be allowed to return to his vocation and career as a practicing doctor who helps his patients. For almost 20 years, Dr. Duggal has practiced medicine without incident

(besides the State's current witch-hunt which is based on money-seeking patients). And Superior Courts have already found that the two of the patients' claims for money are without merit and have severely limited the third patient's claims.

**D. By refusing Dr. Duggal's request for a short continuance, the Presiding Officer misinterpreted the law and was arbitrary and capricious.**

**1. WAC 246-14-090(2) does not limit the administrative proceeding to 180 days.**

When the Presiding Officer entered Order No. 3 denying Dr. Duggal's first request for a short continuance so that his new attorney could become familiar with the voluminous administrative record, the Presiding Officer cited WAC 246-14-090(2) and the 180 day time period set forth in that regulation as a basis for denying Dr. Duggal's request. The Presiding Officer misinterpreted the law.

WAC 246-14-090 states in part:

(1) Procedures for adjudication of statements of charges are contained in chapters 246-10 and 246-11 WAC. Those rules provide for twenty days to file an answer, with a sixty-day extension for good cause, and thirty days to issue a scheduling order. They also provide for continuances.

(2) The basic time period for settlement, discovery, and commencement of hearing is one hundred eighty days or less, to be set in the scheduling order.

WAC 246-14-090(1) expressly contemplates continuances.

Additionally, while it does not appear that any appellate case has addressed this regulation, based on the language of this particular regulation, the 180-day time period set forth in WAC 246-14-090(2) is only a guideline -- “[t]he basic time period.”

This interpretation that the 180-day time period is only a guideline is supported by the Commission’s own conduct in this proceeding. This proceeding was commenced on November 28, 2012, and the hearing, scheduled for January 27, 2014, beyond the 180 time period. Even if the time period is measured from the State’s amended charges, which were filed on April 23, 2013, the time between the amended charges and the hearing was beyond the 180-day guideline.

**2. The Presiding Officer was arbitrary or capricious when he denied Dr. Duggal’s request for a short continuance.**

Dr. Duggal seeks judicial review of the Prehearing Order No. 3 denying him a continuance to allow his new attorney to obtain and review the MQAC record from his previous attorney. The Presiding Officer found that Dr. Duggal had not shown good cause for needing a continuance. The Presiding Officer also denied Dr. Duggal’s request for a short continuance because of the prior “effort undertaken to arrange for a Commission Panel to be available for a six-day hearing.” AP 3674. That is, the Presiding Officer decided that the Commission’s schedule and

convenience were more important than Dr. Duggal's substantial and constitutionally protected property and liberty rights, his career and livelihood. Also, Dr. Duggal's license was already suspended and therefore, there was no prejudice to anybody relating to a continuance.

WAC 246-11-380(3) provides continuances may be granted by the presiding officer for good cause. *See also* WAC 20-08-090. There is no standard for good cause set out in the WAC and the good cause standard required in the trial court should be applied to Dr. Duggal's request for a continuance. There is no mechanical test for determining when the denial of a continuance violates due process, inhibits a defense, or conceivably projects a different result. *State v. Eller*, 84 Wn.2d 90, 96, 524 P.2d 242 (1974). Instead, the determination is made on a case-by-case basis. *Id.* at 96.

The Court reviews denial of a continuance request for a manifest abuse of discretion. *Doyle v. Lee*, 166 Wn. App. 397, 403-04, 272 P.3d 256 (2012). A continuance to conduct discovery must be supported by a showing of due diligence. *Bramall v. Wales*, 29 Wn. App. 390, 393, 628 P.2d 511 (1981).

The Presiding Officer denied the continuance on the basis that the voluntary changing of attorneys is not, *per se* good cause for a continuance. AR at 3717.

Here Dr. Duggal did exercise due diligence. He was not aware that there were no depositions taken in the administrative case until only 96 hours prior to a scheduled administrative hearing. AR at 3714. Also, Dr. Duggal did not see all of the evidence against him because the Department did not present its amended Witness and Exhibit list until October 9, 2013 AR at 819-823. Much of the discovery was not turned over by the Department until only three months prior to Dr. Duggal's original counsel withdrawing. This would explain why Dr. Duggal was not afforded an opportunity to depose witnesses as he stated in his motion to withdraw.

Additionally, lack of diligence on his previous attorney's part should not be attributable to Dr. Duggal. It was no fault of Dr. Duggal that his prior attorneys did not prepare any defense. Also, arguably, it appears from the record that it was not entirely his previous attorney's fault for not receiving all the discovery evidence until three months prior to the hearing. This tactic by the Department hindered the defense in developing its rebuttal evidence.

Furthermore, nobody would have been prejudiced by a short continuance. Dr. Duggal's medical license had already been suspended. Also, at most, in rescheduling the adjudicative hearing, merely checking the schedules of the panel members and counsel would have been required in selecting a new date. When the Presiding Officer determined that the

prior “effort undertaken to arrange for a Commission Panel to be available for a six-day hearing” justified denying the continuance, the Presiding Officer offered no explanation as to the “prior effort.”

Additionally, while the Presiding Officer refused to continue the hearing, it appears that the State and Commission had a side-agreement (without a motion or hearing) to continue the date that the Commission would consider the proposed Agreement. AP 3711.

Faced with prior attorneys who were unprepared, and on the eve of the adjudicative hearing, Dr. Duggal moved for a continuance on the basis that his new attorney had not yet been provided the file from his previous attorney and there was a prehearing conference scheduled the following day in which he would be required to identify witnesses and exhibit lists. AR at 3714-15. A continuance was in order to prevent any prejudice from occurring by denying Dr. Duggal the opportunity to “respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.” RCW 34.05.449(2).

Dr. Duggal’s prior attorney withdrew on January 6, 2014 the day before the prehearing conference was scheduled. AR at 3665-3672. The following day at the Prehearing conference Dr. Duggal’s attorney was requested to present witness and exhibit lists. It was impossible for new counsel to make any determination as to what evidence would be supplied

in Dr. Duggal's defense as counsel had not obtained the record yet. Had the Presiding Officer granted Dr. Duggal's request for a continuance, his new attorney would have been able to review the discovery and make a determination that the relinquishment of his medical license was not in his best interest and/or prepare his defense for an adjudicative hearing. It was not until Dr. Duggal did receive the record in its entirety that he was able to make a reasonable determination that the allegations against him were "defensible." AR at 3714.

If the Presiding Officer had granted a continuance the result of the proceedings would have likely been different. Dr. Duggal would have elected an administrative hearing. Instead, without having seen any of the recent information against him, including reports by the State's expert witness doctors, he initially felt forced to relinquish his license. *Id.* at 3714-15. The withdrawal of his consent relating to the proposed Order is in itself evidence that had Dr. Duggal been granted a continuance he would not have elected to have relinquished his medical license. The withdrawal of this consent is an indication that "the result of the proceedings would have likely been different had the continuance been granted." *See State v. Tatum*, 74 Wn. App. 81, 86, 871 P.2d 1123, (citing *Eller*, 84 Wn.2d at 95-96, 524 P.2d 242), review denied, 125 Wn.2d 1002, 886 P.2d 1134 (1994). Once Dr. Duggal reviewed the record he

understood that the charges against him would not hold water and he elected to engage in an administrative hearing. Hence, had the Presiding Officer granted Dr. Duggal a continuance the proceedings would have been substantially different.

Courts in other contexts have construed the term “good cause” to require a showing of some external impediment that did not result from a self-created hardship that would prevent a party from complying with statutory requirements. *State v. Tomal*, 133 Wn.2d 985, 989, 948 P.2d 833 (1997). As previously stated, there is nothing in the administrative record that shows Dr. Duggal personally created the impediment requiring a continuance.

It was unreasonable that the Presiding Officer did not grant Dr. Duggal a short continuance to allow his new attorney to obtain the file and advise whether it was in Dr. Duggal’s best interest to settle with the Department to relinquish his medical license permanently.

Dr. Duggal also had a right to question whether there was a basis for the Department to impose such extreme disciplinary sanctions based on the alleged conduct. The law regarding summary suspensions of a medical license is clear – a summary suspension should not be granted unless: 1) there is an immediate danger to the public health and safety, and 2) there is no less restrictive remedy available to alleviate the immediate

danger to the public health and safety. RCW 18.130.135(1)(4); RCW 34.05.479(1)(2) WAC 246-11-300; WAC 246-11-320(2); *Janaszak v. State*, 173 Wn. App. 703, 733, 297 P.3d 723, 722 (2013). Dr. Duggal had a right to be advised that those remedies included restriction, limitation of practice, remedial education, monitoring by an approved supervisor, censure, reprimand, or conditions of probation. RCW 18.130.160. Relinquishment of his license was not the only remedy available to the Commission and Dr. Duggal. Dr. Duggal has a liberty interest at stake and a continuance was in order to allow him to get proper legal advice regarding his substantial Constitutional rights and interests.

The Presiding Officer was arbitrary and capricious in denying Dr. Duggal the right to review the record and prepare a defense prior to making a fundamental decision effecting his life and liberty which is at stake.

## **V. CONCLUSION**

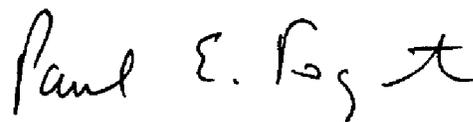
Dr. Duggal faces a life-long professional incarceration by being stripped of his medical license based on a proposed Order that was non-binding and tentative at the time he withdrew his consent. Moreover, the untenable circumstances leading up to the proposed Order arose from the denial of a continuance, a continuance Dr. Duggal needed so that he could be represented by prepared and competent counsel when faced with the

loss of his medical career, a career he had worked his entire adult life to achieve. A continuance would have prejudiced nobody because Dr. Duggal's license had already been suspended pending the outcome of the proceeding.

Having been largely cleared of any wrong-doing by Superior Courts relating to the same issues in dispute before the Commission, and having withdrawn his consent to an admittedly non-binding and tentative proposed Order, and while the State should dismiss the charges, Dr. Duggal seeks at least to be allowed to proceed with an adjudicative hearing before the Commission so that he can defend himself. Anything less is a manifest injustice, a Constitutional violation of Dr. Duggal's rights, a violation that goes against the fundamental fabric of our society's laws. Dr. Duggal requests that the proposed Order be vacated and that the matter be remanded back to the Commission for an adjudicative hearing so that the truth can be heard and to avoid a manifest injustice.

Respectfully submitted this 18<sup>th</sup> day of February, 2016.

FOGARTY LAW GROUP PLLC

A handwritten signature in black ink that reads "Paul E. Fogarty". The signature is written in a cursive style with a stylized "F" and "G".

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Paul E. Fogarty, WSBA No. 26929

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2016, I caused to be served a true and correct copy of **BRIEF OF APPELLANT NARINDER M. DUGGAL** by messenger and email to the following:

Kristin G Brewer  
Office of the Attorney General  
1125 Washington Street SE  
Olympia, WA 98504-0100  
EMAIL: [kristinb@atg.wa.gov](mailto:kristinb@atg.wa.gov)

s/Kiyomi Mathews  
Kiyomi Mathews, Paralegal

## APPENDICES

1. Dr. Narinder M. Duggal's Curriculum Vitae.
2. Excerpt from Black's Law Dictionary relating to the definition of "binding agreement."
3. Excerpt from American Heritage Dictionary of the English Language relating to the definition of "tentative."
4. Excerpt from Merriam-Webster Dictionary relating to the definition of "tentative."

# **APPENDIX A**



### Speaker Biography

#### **Narinder M. Duggal, B.Sc. (Pharm), CGP, BCPP, CDE, MD, FRCPC, FASCP**

Clinical Associate Professor, School of Pharmacy - University of Washington, Seattle, WA  
Medical Director, Liberty Bay Internal Medicine  
Attending Physician, Harrison Memorial Hospital  
Medicine/Clinical Pharmacology Consultant – Hospice of Kitsap County  
Medical Director – Liberty Shores/Harbor House Alzheimer’s Care  
Certified Diabetic Educator  
American Society of Hypertension - Certified Clinical Hypertension Specialist  
Adjunct Faculty – Vascular Biology Working Group  
Regional Faculty – Coalition for the Advancement of Cardiovascular Health (COACH)  
Hospitalist – South Sound Inpatient Physicians  
Fellow – Royal College of Physicians of Canada  
Diplomat – American Board of Internal Medicine  
Member – American Pain Society  
Board Member – Washington Academy of Pain  
Certified Lipid Specialist– National Lipid Association  
Diplomate – American Board of Clinical Lipidology  
Editorial Advisory Board – Prescribers Letter – Pharmacists Letter  
Editorial Consultant – Natural Medicine Comprehensive Database  
Scientific Advisory Board Member – Nutraceutical Laboratories, Inc.  
Member of the Council of Healthcare Advisors  
Certified Geriatric Pharmacist  
Board Certified Psychiatric Pharmacist  
Master Psychopharmacology – Neuroscience Education Institute  
Fellow – American Society of Consulting Pharmacists  
Consultant Pharmacist– Phoenix House Drug and & Alcohol Rehab, Kamloops, B.C  
Founder – Peninsula Bone Club  
Founder – Kitsap Geriatric Journal Club  
Advisory Board – Foundation Care Management  
Community Member - National Sleep Foundation  
Medical Consultation Advisor – Bionorica, USA  
Medical Advisor –Everest College  
Certified Medtronic Diabetes Pump Trainer

Narinder M. Duggal, MD received his medical degree from University of British Columbia School of Medicine. He completed his internship and residency in Internal Medicine at St. Paul’s Hospital, Vancouver Health and Sciences Center, Vancouver, British Columbia. He received clinical pharmacy specialty training at Royal Inland Hospital in Kamloops, British Columbia. He is board certified in Internal Medicine and a Fellow of the Royal College of Physicians of Canada. He is also a clinical pharmacy specialist.

Dr. Duggal is currently Medical Director of Liberty Bay Internal Medicine in Poulsbo, WA and Attending Physician at Harrison Memorial Hospital in Bremerton. He is a Clinical Associate Professor, School of Pharmacy at the University of Washington in Seattle. He is currently Medical Pharmacological Consultant of Hospice of Kitsap County and Board member of Cardiac and Pulmonary Rehabilitation Institute.

Dr. Duggal has spoken extensively on various aspects of clinical drug therapy. The rational use of drugs in clinical practice is a common theme in his presentations. He has been a pharmacology medical consultant to the College of Pharmacist of British Columbia and the Government of British Columbia.

Dr. Duggal has given lectures on general medical topics to the public in order to better educate individuals about their health and thereby empower patients to take a proactive position in their well being. Dr. Duggal has spoken internationally and has given over 800 presentations on topics ranging from: drug therapy, pharmacodynamics, evidence-based medicine, internal medicine, pharmacy, and computers in medicine and disease management.

**Disclosure Statement**

Consultant/Grants/Spokes Bureau/Research:  
Bristol-Myers Squibb Company, Parke-Davis, Pfizer, Inc., GlaxoSmithKline Pharmaceuticals, Proctor and Gamble, Aventis Pharmaceuticals, AstraZeneca, Eli Lilly and Co., Novartis Pharmaceuticals, Roche Pharmaceuticals, Seattle Pharmaceuticals, Purdue Pharma, Takeda America Pharmaceutical, Wyeth-Axelos, Sanofi Pharma, Biomerica LLC

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Fax: (360) 779-9971  
Email: [ninkim@aol.com](mailto:ninkim@aol.com)

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**CURRICULUM VITAE**

**EDUCATION**

**Internal Medicine**

University of British Columbia – Vancouver General Hospital Vancouver, BC  
Canada

*Qualifications:*

*Diplomat of American Board of Internal Medicine*

Completed August 1997

*Fellow of Royal College of Physicians (Canada)*

Completed November 1998

Electives

General Internal Medicine, Emergency Medicine, Pediatrics, Orthopedics,  
Hematology, Nephrology, Physical Medicine and Rehab, Gastroenterology,  
Dermatology, Neurology, Psychiatry, Rheumatology, Oncology, Respiriology,  
AIDS Medicine, Pharmacology and Therapeutics, and Rural Medicine, Intensive  
Care and Cardiac Critical Care.

***Medical Procedures:***

Competency in Invasive Medical Procedures – Intubation, Lumbar Puncture,  
thoracentesis, arthrocentesis, Bone Marrow Examination, Radial Artery  
Cannulation, Central Venous Access (jugular, subclavian, femoral), Chest tubes.

*Qualifications:*

*Advanced Trauma Life Support (ATLS)*

*Advanced Cardiac Life Support (ACLS)*

**Medical Doctorate**

University of British Columbia, Vancouver, BC  
Graduated 1994

*Qualifications*

*Licentiates of the Medical Council of Canada*

Electives:

Intensive Care Medicine, General Medicine, Anesthesia Hematology, Medical  
Oncology, Radiation Oncology, Emergency Medicine, General Surgery, ENT Surgery, General Medicine  
Vascular Surgery (Kamloops, BC), Urology Surgery (Kamloops, BC), Orthopedic Trauma, Orthopedic  
Surgery.

**Clinical Pharmacy  
Specialist**

Hospital Pharmacy Residency Program  
Royal Inland Hospital, Kamloops, BC  
Graduated July 1989

*Qualifications*

*Residency Diploma Clinical Pharmacy Specialist*

**Pharmaceutical  
Sciences**

University of British Columbia, Vancouver, BC  
Graduated May 1988

*Qualifications*

*Bachelors of Science in Pharmaceutical Science*

## **PROFESSIONAL EXPERIENCE**

### *Medical Director*

Liberty Bay Internal Medicine  
Poulsbo, Washington.  
1998 – Present

#### Responsibilities:

- Internal medicine, pharmacology practice. Focus on acute, geriatric and ambulatory medicine.

### *Clinical Associate Professor*

Faculty of Pharmacy  
University of Washington  
1999 – Present

#### Responsibilities:

- Preceptorship of PharmD Students  
- Ambulatory, geriatric and acute care medicine  
- Focus on the Pharmacodynamics of drug therapy.

### *Clinical Medical Associated*

St. Paul's Hospital  
Vancouver, BC  
1995-1998

#### Responsibilities

- Medical History – physical examinations of patients with advanced AIDS.  
- Acute management of medical and infectious complications.

### *Clinical Pharmacist*

Royal Inland Hospital  
Kamloops, BC  
1988-90

#### Responsibilities:

- Distributions services, IV admixtures, chemotherapy unit dose, work flow analysis.  
- Outpatient counseling.  
- Pharmacy and therapeutics committee  
- Therapeutic drug monitoring.  
- Coordinator of in service pharmacology rounds.  
- Pharmacy resident trainer

### *Consultant Pharmacist*

Kipp Mallory Pharmacy  
Kamloops, BC  
1993 – Present

#### Responsibilities

- Consultant pharmacist and educational coordinator of educational seminars on current drug therapy topics.

### *Community Pharmacist*

Pharmasave  
Kamloops, BC  
1988-1994

#### Responsibilities

- Supervision and training of front store staff  
- Monitoring and control of front store inventory.  
- Operated computerized dispensary and drug alert system.  
- Teaching pharmacy students  
- Drug utilization reviews for long term care homes.  
- Pharmacology in services to allied health professionals.

## **COMMUNITY SERVICE**

- Coordinator of Diabetes Awareness Day – North Kitsap Medical Center and Appletree Pharmacy (1999 – Present)
- Coordinator Osteoporosis Awareness Day – North Kitsap Medical Center and Appletree Pharmacy (1999 – Present)
- Board Member – Cardiac and Pulmonary Rehabilitation Institute (Capri) Bremerton, WA (1999-Present)
- Medical/Pharmacology Consultant, Hospice Society of Kitsap County (1999 – Present)
- Medical/Pharmacology Advisor, Drug Advisory Committee – College of Pharmacists of British Columbia (1997-99)
- Medical/Pharmacy Consultant – Kipp Mallery Pharmacy, Kamloops, British Columbia (1994-Present)
- Representative, Presidents Advisory Committee for Concerns of the Handicapped (1986-88)
- Event Organizer, Labatt's 24 Hour Relay – Lion's Club (1985-87)
- Chairperson, Rick Hansen "Man in Motion" Fund Raising Committee (1986)
- Member, Big Brothers of Canada (1983-87)
- Coordinator, Variety Club Telethon (1985-87)
- Coordinator, Vancouver Food Bank – UBC Site (1985-87)
- Chairperson, United Way Fund Raising Drive – UBC Site (1985)
- Manager, House Operations – Fraternity of Phi Gamma Delta (1986)
- Commissioner, Special Projects, Student Administrative Commission (1986-87)
- Commission, Club's Day, Student Administrative Commission (1985-86)
- Organizer, Songfest Charity Music Variety Show (1984-86)
- Coordinator, Charity Supports – Science Undergraduate Society (1984)
- Treasurer, Alma Mater Society Budget Committee (1985)
- Volunteer Coach, Physically Challenged Students YMCA (1994)
- Volunteer Tutor, Mentally Challenged Students (1981-82)

## **AWARDS**

### **Medicine**

Internal Medicine Case Presentation “Grand Rounds Award – Histoplasmosis” (1994)  
“...award for case presentation in internal medicine.”

Carroll Howe Corkum Bursary (1992)  
“...academic and personal qualities of merit...”

Imhah Bursary (1991)  
“...sound academic standing...”

General UBC Bursary

### **Pharmaceutical Sciences**

Resident Award Clinical Pharmacy (1989)  
“...clinical pharmacy competence and community health service...”

Stanley Pharmaceutical – Novopharm Scholarship (1988)  
“...good academic standing...”

The Phi Gamma Delta Education Foundation Undergraduate Achievement Memorial Award (1985)  
“...scholarship achievement in health sciences...”

Rotary International Leadership Award (1984)  
“...promising student leader with ability...”

### **Community and School**

Alma Mater Society Community Service Award (1986)  
“...outstanding community service to the University of British Columbia...”

Phi Gamma Delta Service Award (1983)  
“...dedication to community, school, and fraternity...”

Ranjit Mutti Memorial Scholarship (1983)  
“...academic excellence, community service and athletic ability...”

National Honor Roll Society Award (1979-83)  
“...honor standing for 5 consecutive years...”

New Westminster Rugby Scholarship (1983)  
“...excellence in rugby and scholastic achievement...”

New Westminster Home and School (PTA) Council Citizenship Award (1983)  
“...merit award community service...”

New Westminster Home and School Association Citizenship Prize (1983)  
“...outstanding school and citizen service...”

Principal’s Award (1983)  
“...dedication to school and community...”

(Awards cont...)

NWSS – Gold Pin of Service

“...distinguished recognition for community and school service...”

Athletic Letterman Award (1983)

“...athletic performance...”

## **STUDENT ACTIVITIES**

### Faculty of Medicine

Member, Graduation Committee (1994)  
Vice President – Medicine Class of 1994 (1992-93)  
Member, Medical Ball Committee (1992)  
Chairperson, Medical Skits Night (1992-93)  
Student Representative, Medical Textbook Evaluation – Mosby Books (1990-94)

### Faculty of Pharmacy

Chairperson, Geriatric Awareness Week (1989)  
Lecture Presentation, UBC Open House (1987)  
Event Coordinator, Pharmacy Professional Development Week (1987)

## **RESEARCH**

Maclean Fortier Drug Utilization Survey  
Retrospective Data Evaluation and Collection Study on Antibiotic Evaluation and Utilization  
Chrono Study on Hypertension  
IMS Health Antibiotic Survey  
Tequin Antibiotic Study

## PUBLICATIONS

- 1993            Health Watch – Kamloops This Week  
- Contributor to the city paper on issues in medicine.
- 1988-90        New Drug Therapy... the bottom line  
- Author and cofounder – a monthly newsletter for physicians of the Thompson Nicola region of BC
- Drug Digest  
- Editor and founder – a monthly column in the hospital newsletter on timely articles on drug therapy
- Pharmacists Choice – Kamloops This Week  
- Editor and founder – column in local city paper on drug therapy.
- 1988-90        House Operations Manual – Phi Gamma Delta  
- Author of a step-by-step guide on accommodation management.
- 1987            Club's Day Operations Manual – Alma Mater Society  
- Author of a guide to organization of club events at UBC

## PRESENTATIONS

2000

- ***Smoking Cessation therapy – A Pharmacological Approach***  
Keynote speaker to North Kitsap Dental Group, Poulsbo, Washington
- ***New Developments in the Treatment of Hyperlipidemia***  
Keynote speaker to Family Physicians, Internists, and Cardiologists, Bremerton, Washington
- ***Professional Wellness Health for Dentists***  
Keynote speaker to Langley Dental Society, Langley, BC
- ***Obesity in America – The New Epidemic***  
Community presentation to patients in North Kitsap
- ***The COX-2 Inhibitors – A Pharmacological Approach to Pain Control***  
Keynote Speaker to Physicians, Nurse Practitioners and Physicians Assistants
- ***Reaching Blood Pressure Targets – Challenges and New Strategies***  
Speaker to physicians, Seattle, Washington
- ***Congestive Heart Failure Update – A Pharmacological Approach***  
Pharmacist Update, Kamloops, BC
- ***Evidence Based Medicine – Clinical Implications of The HOPE Trial***  
Speaker to physicians on the critical analysis of the HOPE Trial – Bremerton, Tacoma, Puyallup, Poulsbo, Washington
- ***Cardiovascular Risk Prevention – Evidence Based Medicine Approach to Patient Care***  
Keynote Speaker to Northwoods Lodge Allied Health Professionals, Silverdale, Washington
- ***Women’s Health Update – Depression Treatment in the New Millennium***  
Guest Speaker Dr. Zapata’s Office – Obstetrics and Gynecology, Bremerton, Washington
- ***Depression Treatment in the Elderly***  
Keynote speaker to Martha & Mary Allied Health Professionals, Poulsbo, Washington
- ***Who wants to be a Lipidologist? Trivia Game***  
Developed Trivia Game on Lipid Medicine for physicians, Shelton, Washington
- ***Who wants to be a “Cyclo-oxygenaseologist”? Trivia Game***  
Developed Trivia Game on Cox-2 Inhibitors for physicians, Tacoma, Washington
- ***Hypertension Update – Combination Drug therapy – “the rule not the exception”***  
Keynote speaker to pharmacist, Olympia, Washington
- ***Pathway to Control: Pairing Mechanism with Treatment in Type 2 diabetes – A New Comprehensive Treatment Option***  
Keynote speaker to physicians and Allied Health Professionals, Kitsap County, Washington.
- ***Recognizing and Treating Chronic Non-malignant Pain – “A Clinical Pharmacological Approach”***  
Medical Grand Rounds – Mason General Hospital, Shelton, Washington
- ***Diabetes Care in the New Millennium***  
Community discussion Port Gamble Tribe, Hansville, Washington
- ***The Role of Angiotensin Receptor Blockers and Ace-inhibitors in the Treatment of Hypertension***  
Keynote speaker to Olympic Peninsula Pharmacy Association, Silverdale, Washington
- ***Managing Cardiovascular Risks in Clinical Practice***  
Keynote speaker to physicians and allied health professionals, Seattle, Washington
- ***Update in Gastrointestinal Medicine – Care and Therapeutic Management in the New Millennium***  
Northwoods Lodge Nursing Continuing Education, Silverdale, Washington.

(Presentations cont...)

- ***New Westminster Secondary School “Graduation 2000”***  
Guest Speaker – Class of 2000 Address, New Westminster, BC
- ***Dental Drug therapy Update 2000- Pain control/Anticoagulation***  
Kitsap Dental Society, Bremerton, Washington
- ***Osteoporosis Update – Prevention and Treatment***  
Panel Moderator Kingston Medical Center Town Meeting, Kingston, Washington
- ***Osteoporosis 2000 Update – A Pharmacological Approach to Patient Care***  
Keynote speaker to physicians and allied care professionals, Ocean Shores, Washington
- ***The Role of Cholinergic Therapy in the Treatment of Alzheimer's Disease and other Dementias***  
Oregon Society of Consultant Pharmacist, Portland, Oregon
- ***Hypertension Update 2000***  
Community Pharmacist Society of Pierce County, Fife, Washington
- ***Diabetes Care in the Elderly***  
Keynote speaker for Providers Breakfast Liberty Shores Care Home, Poulsbo, Washington
- ***Alzheimer's Update – A pharmacological approach***  
Keynote Speaker Harbor House Care Home, Poulsbo, Washington
- ***Alzheimer's Disease and Dementia with Lewy Body – Recognition and Treatment***  
Guest Speaker – Martha & Mary care home, Poulsbo, Washington
- ***Clinical Perspectives of Cardiovascular Risk Reduction***  
Community presentation to North Kitsap Medical Center, Poulsbo, Washington
- ***Management of Chronic pain in the Elderly***  
Keynote speaker to community pharmacist, Langley, BC
- ***Ambulatory Antibiotic Therapy – “Bugs and Drugs”***  
Speaker to community pharmacist and nurses, Poulsbo, Washington

1999

- ***HIV, Hepatitis and Oral Medicine Update – Dental Mechanics of British Columbia Conference***  
Keynote speaker to dental mechanics, Langley, BC
- ***Antibiotic Update and an Evidenced Based Approach to the Treatment of Upper Respiratory Infections***  
Keynote speaker to physicians and allied health professionals, Port Townsend, Washington.
- ***Effective Communication Skills – Using Power Point in Medical Presentations***  
Speaker to physicians on utilizing Power Point in presentations, Seattle, Washington
- ***Allergy Update 1999 and a review of Cytochrom P450 Drug Interactions***  
Keynote speaker Kitsap Peninsula Pharmacist Association, Silverdale, Washington
- ***Moans, Groans and How to Prevent Broken Bones***  
Speaker to residents and allied health professionals at Country Meadows Assisted Living, Silverdale, Washington
- ***Medicines for Type 2 Diabetes – Port Gamble S’Klallam Tribe, Living Well with Diabetes Conference.***  
Keynote speaker on drug therapy and pharmacology of diabetes, Hansville, Washington
- ***Newer Therapeutic Approaches in Cardiovascular Disease***  
Peninsula Family Medicine, Gig Harbor, Washington
- ***Overview of Anti-Depressant Medications – A Pharmacodynamic Approach***  
Keynote speaker for Kitsap County Chapter of Medical Assistants, Bremerton, Washington
- ***Cardiovascular Risk Factor Recognition and Treatment – Longevity Made Simple Capri***  
Capri – Heart and Lung institute, Poulsbo and Port Orchard, Washington

(Presentations cont...)

- ***Current Understanding and Future Pharmacological Concepts in Osteoporosis Management***  
Keynote speaker to Osteoporosis Foundation and Allied Health Professionals – Harrison Memorial Hospital, Bremerton, Washington.
  - ***Pharmacological Options in Smoking Cessation and the Dentist Role***  
Speaker to dental staff on drug therapy options in smoking cessation, Poulsbo, Washington.
  - ***Controlling Cardiac Risk Factors – Longevity Made Simple***  
Speaker to retirement community, Port Ludlow, Washington
  - ***Hypertension Update and the Role of Angiotensin Receptor Blockers – A Pharmacological Approach***  
Keynote speaker at Kitsap Peninsula Pharmacist Associate, Silverdale, Washington
  - ***The Diabetic Patient “New Insights into the Management of Blood sugars and Lipids”***  
Co-moderator on a case based discussion on patient management to physicians, Seattle, Washington
  - ***Pharmacological Use of Herbs in Medicine – Fact or Fiction***  
Keynote speaker to community pharmacist, Kamloops, BC
  - ***Pain Management...a Pharmacological Approach***  
Keynote speaker to Hospice of Kitsap County Continuing Education Seminar, Silverdale, Washington
  - ***Dementia Care in the New Millennium – National Alzheimer’s Awareness Month***  
Speaker Liberty Shores/Harbor House Alzheimer’s Community, Poulsbo, Washington
  - ***Get the Low Down – A Public Education Seminar on Cholesterol and Cardiac Risk Factors***  
Seminars in Silverdale, Port Ludlow and Poulsbo, WITH A
  - ***Top 10 Herbal Medications – Safety, Efficacy, and Clinical Recommendations***  
Dental Technician Seminar, Langley, BC
  - ***The Mysterious Gland in Your Neck – Update on Hypo/Hyperthyroidism***  
Northwoods Lodge/Country Meadows, Silverdale, Washington
  - ***HIV/Hepatitis Transmission Update***  
Kitsap County Dental Assistants/Hygienist Society, Silverdale, WITH A
  - ***ACP – ASIM Panel Discussion Herbal Toxicity Case Presentation***  
**ACP – ASIM 1999 Washington Chapter Scientific Meeting**  
Faculty lecturer, Seattle, Washington
  - ***Healthcare for Dental Health Professional***  
Kitsap County Dental Society, Silverdale, Washington
  - ***Diabetes Update – Taking Control of Your Health***  
Diabetes Awareness Day – North Kitsap Medical Center, Poulsbo, Washington
  - ***Update on Treatment of Urinary Tract Infections***  
Long-term care nurses, Pine Grove Lodge, Kamloops, BC
  - ***Pharmacological Management of Sleep***  
Treatment update to community pharmacist, Tacoma, Washington
- 1998
- ***Evidenced Based Medicine – Approach to Pneumonia***  
Keynote speaker to physicians in Merritt, BC
  - ***A Pharmacological Approach to Headache Therapy***  
Evidenced Based Medicine Seminar, St. Paul’s, Hospital, Vancouver, BC
  - ***The Physician and the Drug Police – Physician and Pharmacist Relationship***  
Keynote speaker to community pharmacist, Kamloops, BC
  - ***Evidenced Based Medicine – Approach to Antibiotic Therapy***  
Keynote speaker to Pharmacist in Kelowna, BC

(Presentations cont...)

- ***Current Management of Angina***  
Keynote speaker to Nurses and Pharmacist, Kamloops, BC
  - ***Pharmacological Approaches to Treatment of Allergic Rhinitis***  
Keynote speaker to Nurses and Pharmacist, Kamloops, BC
  - ***Pharmacotherapeutics and Pharmacodynamic Antibiotic Update***  
Keynote speaker to Pharmacist in the Thompson-Nicola Region, BC
  - ***Antibiotic Update***  
***Alzheimer's Management and Cognitive Stabilizing Medications***  
Keynote speaker for Family Physicians, Pharmacists and Nurses, Merritt, BC
  - ***Drugs, Alcohol, Smoking and You***  
Speaker to students at West Minster Secondary School, BC
  - ***Update in Managing Depression in the Elderly***  
Speaker to long term care nurses, Kamloops, BC
  - ***Outpatient Management of DVT and Pharmacological Review of LMWH***  
Drug review to medical interns, St. Paul's Hospital, Vancouver, B.C
  - ***Pharmacokinetic Clinical Pearls for the Non-Pharmacist***  
Medical Grand Rounds – St. Paul's Hospital, Vancouver, BC
  - ***Drug therapy Update – Clinically Relevant Side Effects & Drug Interactions***  
Medical Interns drug review seminar, Vancouver Health Science Center, BC
  - ***Current Concepts in Antibiotic Therapy in Pneumonia, Bronchitis, and Sinusitis***  
Medical interns drug review seminar, St. Paul's Hospital, Vancouver, BC
  - ***Histoplasmosis – Case Review: Medical Grand Rounds***  
St. Paul's Hospital, Vancouver BC
- 1996
- ***Thyroid Storm – Case Review: Medical Grand Rounds***  
Vancouver Health Science Center, Vancouver, BC
- 1995
- ***Antibiotic Update***  
***Pain Management – Medical Pearls***  
***Case Studies: Managing Hypertensive Patients with Concomitant Disorders***  
Medical Student Interns, St. Paul's Hospital, Vancouver, B.C
- 1993
- ***Osteoporosis – Medical and Therapeutic Implications***  
Guest Lecturer for nursing staff – Pine Grove Lodge, Kamloops, BC
- 1990
- ***Rational Use of Drugs***  
Co-lecturer, Pine Grove Lodge, Kamloops, BC
  - ***Drugs and the Elderly***  
Co-lecturer through the City of Kamloops Recreation and Culture Division
  - ***Over the Counter Medication – their proper uses and selection***  
Co-lecturer through the City of Kamloops Recreation and Culture Division
  - ***Pharmacokinetic Monitoring of Aminoglycosides***  
Lecturer to staff pharmacist, Royal Inland Hospital, Kamloops, BC
- 1989
- ***Cholesterol and You***  
**Pharmacy Technicians Conference 1989**  
Keynote speaker, Kamloops, BC
  - ***Anabolic Steroids...the facts***  
Guest speaker – Kamloops School Board, Kamloops, BC
  - ***Medication Use in the Elderly***  
Keynote speaker to Critical Care Nurses at Royal Inland Hospital, Kamloops, BC

(Presentations cont...)

**1988**

- *Endocrinology and the Birth Control Pill*  
Guest Speaker – Kamloops School Board, Kamloops, BC

## **AFFILIATIONS**

Medical/Pharmacological Consultant – Hospice of Kitsap County  
Board Member – Capri Heart and Lung Institute  
Member, Vascular Biology Working Group  
Staff Internist, Harrison Memorial Hospital  
Clinical Associate, Faculty of Pharmacy, University of Washington  
Fellow, Royal College of Physicians of Canada  
Member, American College of Physicians – American Society of Internal Medicine  
Medical Representative, College of Pharmacists of BC  
Member, British Columbia Medical Association  
Member, Toastmasters International  
Member, Canadian Society of Hospital Pharmacist  
Member, British Columbia Pharmacy Association  
Member, Big Brother of Canada  
Member, Phi Gamma Delta Fraternity

## **EDUCATION PRECEPTOR**

- PharmD Students – University of Washington – Clinical Associate Professor, Faculty of Pharmacy, Seattle, Washington
- Medical Interns – University of British Columbia, Faculty of Medicine, Vancouver, British Columbia
- Certified Medical Assistants – Olympic College, Bremerton, Washington
- Student Career Choices – North Kitsap High School, Poulsbo, Washington

### **Pharmaceutical Industry Preceptorship:**

Hypertension Review – Novartis Pharmaceutical  
Diabetes Insight – Takeda America Pharmaceutical  
Hypertension Update – AstraZeneca  
Cholesterol, Hypertension, and Diabetes Insights – Pfizer, inc.

### **Consultant, Lecture/Speaker's Bureau, Advisory Board:**

Parke-Davis, Pfizer, Inc., Hoechst Marion Roussel, AstraZeneca, Jones Pharma, Bristol-Meyer Squibb, Novartis Pharmaceuticals, Eli Lilly and Co., Merck Pharmaceutical Co., Roche Pharmaceuticals, Searle Pharmaceuticals, Purdue Pharma, SmithKline Beecham, Takeda Pharmaceutical, Wyeth-Ayerst.

## **PERSONAL INTEREST**

Languages: English, Hindi

Travel: Southern United States, Eastern Canada, United Kingdom, and India

Sports/Leisure: Swimming, weight conditioning, marathon running, volleyball, basketball, rugby, football, hiking, water skiing, landscaping, cooking.

**REFERENCES:** Available on request

# **APPENDIX B**

BLACK'S  
LAW  
DICTIONARY

WITH PRONUNCIATIONS

SIXTH EDITION



Centennial Edition (1891-1991)

# BLACK'S LAW DICTIONARY®

Definitions of the Terms and Phrases of  
American and English Jurisprudence,  
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

**SIXTH EDITION**

**BY**

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WEST PUBLISHING CO.

1990

**Billing cycle.** Period of time in which creditors regularly submit bills to customers or debtors; *e.g.* 30 days.

**Bill of address.** *See* Address.

**Bill of attainder.** *See* Attainder; Bill (*Criminal law*).

**Bill of indemnity.** A law under which a public official is protected from liability in performance of his official acts including his failure to take his official oath. An initial pleading by which the plaintiff seeks to require another (*e.g.*, insurance company) to discharge his liability to a third person.

In English law, an act of parliament, passed every session until 1869, but discontinued in and after that year, as having been rendered unnecessary by the passing of the promissory oaths act, 1868, for the relief of those who had unwittingly or unavoidably neglected to take the necessary oaths, etc., required for the purpose of qualifying them to hold their respective offices.

**Bill of lading.** Document evidencing receipt of goods for shipment issued by person engaged in business of transporting or forwarding goods and it includes airbill. U.C.C. § 1-201(6). An instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. It is receipt for goods, contract for their carriage, and is documentary evidence of title to goods. *Schwalb v. Erie R. Co.*, 161 Misc. 743, 293 N.Y.S. 842, 846.

**Bills in a set.** A series of bills of lading each bearing a number and providing that a certain bill is valid only if goods have not been delivered against another bill. U.C.C. § 7-304.

**Clean bill.** One which contains nothing in the margin qualifying the words of the bill of lading itself. *Bank of America Nat. Trust & Sav. Ass'n v. Liberty Nat. Bank & Trust Co. of Oklahoma City*, D.C.Okla., 116 F.Supp. 233, 238, 239.

**Common law.** In common law, the written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight. A written memorandum, given by the person in command of a merchant vessel, acknowledging the receipt on board the ship of certain specified goods, in good order or "apparent good order," which he undertakes, in consideration of the payment of freight, to deliver in like good order (dangers of the sea excepted) at a designated place to the consignee therein named or to his assigns.

**Foul bill.** Bill of lading containing notation that goods received by carrier were defective.

**Negotiable bill.** One which by its terms calls for goods to be delivered to bearer or to order of named persons, or where recognized in overseas trade, if it runs to named persons or assigns. U.C.C. § 7-104(1)(a)(b).

**Non-negotiable bill.** Document of title in which goods are consigned to named persons. U.C.C. § 7-104(2).

**Ocean bill.** A negotiable bill of lading used in shipment by water.

**On board bill.** Bill of lading which shows that loading has been completed.

**Order bill.** One in which it is stated that goods are consigned to order of any person named therein. *See Negotiable bill, above*; also, Order bill of lading.

**Overseas bill.** Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment. U.C.C. § 2-323(1).

**Straight bill.** A nonnegotiable bill of lading that specifies a consignee to whom the goods are to be delivered—the carrier is contractually obligated to deliver the goods to that person only.

**Through bill.** One by which a railroad contracts to transport over its own line for a certain distance carloads of merchandise or stock, there to deliver the same to its connecting lines to be transported to the place of destination at a fixed rate per carload for the whole distance. Embodies undertaking to be performed in part by persons acting as agents for issuer. U.C.C. § 7-302.

**Bill of lading acts.** The principal acts governing bills of lading are Article 7 of the Uniform Commercial Code, the Federal Bills of Lading Act (49 U.S.C.A. §§ 81-124), and the Carmack Amendment to the Interstate Commerce Act (49 U.S.C.A. § 20(11)). *See also* Harter Act.

**Bill of mortality.** A written statement or account of the number of deaths which have occurred in a certain district within a given time.

**Bill of pains and penalties.** Statutory provision for punishment without judicial determination of guilt similar to bill of attainder except that punishment is less severe. Prohibited by U.S.Const., Art. I, § 9, cl. 3 (Congress), § 10 (States).

**Bill of rights.** First ten Amendments to U.S. Constitution providing for individual rights, freedoms, and protections (*see* Appendix, *infra*). *See also* Bill; Patient's Bill of Rights.

**Bill quia timet** /bil kwayə timət/. *See* Quia timet.

**Bi-metallic.** Pertaining to, or consisting of, two metals used as money at a fixed relative value.

**Bi-metallism.** The legalized use of two metals in the currency of a country at a fixed relative value *e.g.* copper and silver.

**Bind.** To obligate; to bring or place under definite duties or legal obligations, particularly by a bond or covenant. To affect one in a constraining or compulsory manner with a contract or a judgment. So long as a contract, an adjudication, or a legal relation remains in force and virtue, and continues to impose duties or obligations, it is said to be "binding." A man is *bound*

by his contract or promise, by a judgment or decree against him, by his bond or covenant, by an estoppel, etc.

**Binder.** A written memorandum of the important terms of contract of insurance which gives temporary protection to insured pending investigation of risk by insurance company or until a formal policy is issued. *Turner v. Worth Ins. Co.*, 106 Ariz. 132, 472 P.2d 1, 2. A receipt for earnest money or a deposit paid to secure the right to purchase real estate at terms that have been agreed upon by both buyer and seller. *See also* Binding receipt; Cover note.

**Binding agreement.** A contract which is enforceable such as an offer to buy or sell when person to whom it is made accepts it and communicates his acceptance. *McAden v. Craig*, 222 N.C. 497, 24 S.E.2d 1, 3. *See* Contract.

**Binding authority.** Sources of law that must be taken into account by a judge in deciding a case; for example, statutes or decisions by a higher court of the same state on point. *See* Precedent.

**Binding jury instruction.** One in which jury is told that if they find certain conditions to be true, they should find for plaintiff or defendant, as case might be. *Scott-Burr Stores Corporation v. Foster*, 197 Ark. 232, 122 S.W.2d 165, 169. *See* Jury instructions (*Mandatory instruction*).

**Binding over.** The act by which a court or magistrate requires a person to enter into a recognizance or furnish bail to appear for trial, to keep the peace, to attend as a witness, etc. Also describes act of lower court in transferring case to higher court or to grand jury after a finding of probable cause to believe that defendant committed crime.

**Binding receipt or slip.** Term refers to a limited acceptance of an application for insurance given by an authorized agent pending the ascertainment of the company's willingness to assume the burden of the proposed risk, the effect of which is to protect the applicant until the company acts upon the application, and, if it declines to accept the burden, the binding effect of the slip ceases eo instante. *See* Binder.

**Bind out.** To place one under a legal obligation to serve another; as to *bind out* an apprentice.

**Bind over.** *See* Binding over.

**Bipartite** /bäypärtayt/. Consisting of, or divisible into, two parts. A term in conveyancing descriptive of an instrument in two parts, and executed by both parties.

**Birretum** /bärétam/ **birretus** /bärétas/. A cap or coif used formerly in England by judges and serjeants at law.

**Birth.** The act of being born or wholly brought into separate existence.

**Birth certificate.** A formal document which certifies as to the date and place of one's birth and a recitation of his or her parentage, as issued by an official in charge of

such records. Furnishing of such is often required to prove one's age. *See* Birth record.

**Birth control.** Prevention of conception. Term which embraces all forms of contraception.

**Birth record.** Official statistical data concerning dates and places of persons' birth, as well as parentage, kept by local government officials. *See* Birth certificate.

**Bis /bis/.** Lat. Twice.

**Bisaile** (also **besaile**, **besayel**, **besaiel**, **besayle**) /biséyl/. The father of one's grandfather or grandmother.

**Bi-scot.** In old English law, a fine imposed for not repairing banks, ditches, and causeways.

**Bis dat qui cito dat** /bis dät kwáy sáytow dät/. He pays twice who pays promptly.

**Bishop.** An ecclesiastical dignitary, being the chief of the clergy within his diocese, subject to the archbishop of the province in which his diocese is situated.

**Bishopric** /bishəprik/. In ecclesiastical law, the diocese of a bishop, or the circuit in which he has jurisdiction; the office of a bishop. 1 Bl.Comm. 377-382.

**Bishop's court.** In English law, an ecclesiastical court, held in the cathedral of each diocese, the judge whereof is the bishop's chancellor, who judges by the civil canon law; and, if the diocese be large, he has his commissaries in remote parts, who hold consistory courts, for matters limited to them by their commission.

**Bis idem exigi bona fides non patitur; et in satisfactionibus non permittitur amplius fieri quam semel factum est** /bis äydäm égzájay bównə fáydiz nön páetətər; èt in sätəsáfəksihiyównəbəs nön pərmítətər ämplyəəs fáyərày kwàm séməl fáktəm èst/. Good faith does not suffer the same thing to be demanded twice; and in making satisfaction [for a debt or demand] it is not allowed to be done more than once.

**Bissextile** /bäysékstayl/. The day which is added every fourth year (leap-year) to the month of February, in order to make the year agree with the course of the sun.

**Biting rule.** When first taker of conveyed property under writing submitted for construction is initially conveyed a fee title, it is then incompetent and invalid to modify, qualify, or reduce thereafter the apparent fee title of the first taker so as to reduce it to a life estate, and any gift over after death of first taker is void.

**Bivens action.** Name for type of action (derived from *Bivens v. Six Unknown Named Defendants*, 403 U.S. 388, 91 S.Ct. 1999) for damages to vindicate constitutional right when federal government official has violated such right. Action is available if no equally effective remedy is available, no explicit congressional declaration precludes recovery, and no "special factors counsel hesitation." *Rauschenberg v. Williamson*, C.A.Ga., 785 F.2d 985, 987.

**Black acre and white acre.** Fictitious names used by the old writers to distinguish one parcel of land from

# **APPENDIX C**

*The*  
AMERICAN  
HERITAGE®

DICTIONARY  
OF THE  
ENGLISH  
LANGUAGE

*of the*  
English  
Language



FIFTH  
EDITION

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*Library of Congress Cataloging-in-Publication Data*

The American Heritage dictionary of the English language. -- 5th ed.  
p. cm.

Previous ed.: 2000.

ISBN 978-0-547-04101-8

1. English language--Dictionaries.

PE1628.A623 2011

423--dc22

2011004777

*Manufactured in the United States of America*

1 2 3 4 5 6 7 8 9 10-QGV-15 14 13 12 11

Latin, third person sing. present indicative of *tenēre*, to hold; see **ten-** in App. I.]

**ten-gal-lon hat** (tĕn'gāl'an) *n.* A cowboy hat, especially one with a high rounded crown. [Perhaps < Spanish *galón*, braid, galloon, galloon (wrapped in rows above the brim) < French *galon*; see **GALLOON**.]

**ten-ge** (tĕn-gĕŋ') *n., pl. tenge* See table at **CURRENCY**. [Kazakh; akin to terms for coins in other Turkic languages such as Turkmen *tenňi*, subunit of currency; ultimately akin to Sanskrit *tanika*, a stamped coin, and Persian *tanga*, a gold or copper coin.]

**Teng Hsiao-ping** (tŭng' shyow'pĭng', dŭng') See **Deng Xiaoping**.

**te-ni-a** (tĕ'nĕ-ə) *n.* Variant of **taenia**.

**ten-ner** (tĕn'nĕr) *n.* 1. *Informal* A ten-dollar bill. 2. *Chiefly British* A ten-pound note.

**Ten-nes-see** (tĕn'nĕ-sĕ', tĕn'nĕ-sĕ') *Abbr.* **TN** or **Tenn.** A state of the southeast United States. It was admitted as the 16th state in 1796. Visited by the Spanish in 1540, the region was explored by Daniel Boone in 1769 and became part of the United States in 1783. The short-lived state of Franklin (1784–1788) formed the basis for the Territory of the United States South of the River Ohio (1790) and the later state of Tennessee. Nashville is the capital and Memphis the largest city. —**Ten-nes-se'an** *adj. & n.*

**Tennessee River** A river of the southeast United States rising in eastern Tennessee and flowing about 1,045 km (650 mi) through northern Alabama, western Tennessee, and western Kentucky to the Ohio River.

**Tennessee walking horse** *n.* A saddle horse of a breed developed in Tennessee, having a light build and noted for its smooth gaits. Also called *Tennessee walker*.

**Ten-niel** (tĕn'nyal), Sir **John** 1820–1914. British cartoonist and illustrator of Lewis Carroll's *Alice's Adventures in Wonderland* (1865).

**ten-nis** (tĕn'nĭs) *n.* 1. A game played with rackets and a light ball by two players or two pairs of players on a rectangular court divided by a net. The players must hit the ball over the net and into a marked area on the other side for play to continue. Also called *lawn tennis*. 2. Court tennis. [Middle English *tenetz*, *tenyes*, court tennis < Anglo-Norman *tenetz* and Old French *tenez*, pl. imperative of *tenir*, to hold < Latin *tenēre*; see **DETAIN**.]

**tennis bracelet** *n.* A bracelet containing many small gemstones, such as diamonds, that are set and linked one after the other into a narrow chain.

**tennis elbow** *n.* A painful inflammation of the tissue surrounding the outer side of the elbow, caused by strain from playing tennis and other sports.

**tennis shoe** *n.* 1. A low-cut shoe designed for playing tennis, typically having a rubber sole. 2. See **sneaker** (sense 2).

**Ten-ny-son** (tĕn'nĭ-sŏn), **Alfred** First Baron Tennyson. Known as Alfred, Lord Tennyson. 1809–1892. British poet whose works, including *In Memoriam* (1850) and "The Charge of the Light Brigade" (1854), reflect Victorian sentiments and aesthetics. He was appointed poet laureate in 1850. —**Ten-ny-so-ni-an** (-sŏ'nĕ-ən) *adj.*

**teno-** *pref.* Tendon: *tenotomy*. [< Greek *tenōn*, tendon; see **ten-** in App. I.]

**Te-noch-ti-tlān** (tĕ-nŏch'tĕ-tlān') An ancient Aztec capital on the site of present-day Mexico City. Founded c. 1325, it was destroyed by the Spanish in 1521.

**ten-on** (tĕn'ŏn) *n.* A projection on the end of a piece of wood shaped for insertion into a mortise to make a joint. ♦ *tr.v.* **-oned, -on-ing, -ons** 1. To provide with a tenon. 2. To join with a tenon. [Middle English < Old French < *tenir*, to hold < Latin *tenēre*; see **ten-** in App. I.]

**ten-or** (tĕn'ŏr) *n.* 1. The general course or character of something: "She would coast tonight, segue early into the Q&A, let the audience dictate the tenor of the event" (Anita Shreve). See **Synonyms** at **tenacity**. 2. The word, phrase, or subject with which the vehicle of a metaphor is identified, as *life* in "Life's but a walking shadow" (Shakespeare). 3. The general meaning; the purport or drift: *the tenor of her remarks; the tenor of your message*. 4. *Music a.* The highest natural adult male voice. *b.* One who sings this part. *c.* An instrument that sounds within this range. *d.* A vocal or instrumental part written within this range. [Middle English < Anglo-Norman < Latin, uninterrupted course < *tenēre*, to hold, continue; see **ten-** in App. I.]

**tenor clef** *n. Music* The C clef positioned to indicate that the fourth line from the bottom of a staff represents the pitch of middle C.

**te-nor-rha-phy** (tĕ-nŏr'ə-fĕ) *n., pl. -phies* The surgical uniting of divided tendons with sutures. [**TENO-** + Greek *raphē*, suture (< *rhaptein*, to sew); see **WER-** in App. I] + **-y**.]

**ten-o-syn-o-vi-tis** (tĕn'ŏ-sĭn'ə-vĭ'tis) *n.* Inflammation of a tendon sheath.

**te-not-o-my** (tĕ-nŏt'ə-mĕ) *n., pl. -mies* Surgical cutting or division of a tendon.

**ten-pen-ny nail** (tĕn'pĕn'ĕ, -pə-nĕ) *n.* A nail 3 inches (7.6 centimeters) long. [From its original price per hundred.]

**ten-pin** (tĕn'pĭn') *n.* 1. One of the bottle-shaped pins used in bowling. 2. *tentpins* (*used with a sing. verb*) See **bowling** (sense 1a).

**ten-pound-er** (tĕn'poun'dŏr) *n.* A ladyfish, especially *Elops machnata* or *E. saurus*.

**ten-rec** (tĕn'rĕk') also **tan-rec** (tān'rĕ) *n.* Any of various insectivorous often nocturnal mammals of the family Tenrecidae of Madagascar and parts of central Africa. [French < Malagasy *tandraka*.]

**TENS** (tĕnz) *n.* A technique used to relieve pain in an injured or diseased part of the body in which electrodes applied to the skin deliver intermittent stimulation to surface nerves, blocking the transmission of pain signals. [*t*(*r*anscutaneous) *e*(lectrical) *n*(erve) *s*(timulation).]

**Ten-sas River** (tĕn'sŏ') A river, about 400 km (250 mi) long, of northeast Louisiana flowing south to the Ouachita River.

**tense**<sup>1</sup> (tĕns) *adj.* **ten-ser, tens-est** 1. Tightly stretched; taut. See **Synonyms** at **stiff, tight**. 2a. In a state of nervous tension or mental strain: *was very tense before the exam*. *b.* Causing or characterized by nervous tension or mental strain: *a tense standoff between border patrols*. 3. *Linguistics* Enunciated with taut muscles, as the sound (ē) in *keen*. ♦ *tr. & intr.v.* **tensed, tens-ing, tens-es** To make or become tense. [Latin *tensus*, past participle of *tendere*, to stretch; see **ten-** in App. I.] —**tense-ly** *adv.* —**tense-ness** *n.*

**tense**<sup>2</sup> (tĕns) *n.* 1. A property of verbs in which the time of the action or state, as well as its continuance or completion, is indicated or expressed. 2. A category or set of verb forms that indicate or express the time, such as past, present, or future, of the action or state. [Middle English *tens* < Old French, time < Latin *tempus*.]

**ten-sile** (tĕn'sal, -sĭl') *adj.* 1. Of or relating to tension. 2. Capable of being stretched or extended; ductile. [New Latin *tēnsilis* < Latin *tensus*, stretched out; see **TENSE**<sup>1</sup>.] —**ten-sil'i-ty** (tĕn-sĭl'i-tĕ) *n.*

**tensile strength** *n. Abbr.* **TS** The resistance of a material to a force tending to tear it apart, measured as the maximum tension the material can withstand without tearing.

**ten-sim-e-ter** (tĕn-sĭm'i-tĕr) *n.* An apparatus for measuring differences in vapor pressure. [**TENSIO**(ON) + **-METER**.]

**ten-si-om-e-ter** (tĕn'sĕ-ŏm'i-tĕr) *n.* 1. An instrument for measuring tensile strength. 2. An instrument used to measure the surface tension of a liquid. [**TENSIO**(N) + **-METER**.] —**ten-si-ŏ-mĕ'tric** (-ə-mĕ'trĭk) *adj.* —**ten-si-ŏ-mĕ'try** *n.*

**ten-sion** (tĕn'shŏn) *n.* 1a. The act or process of stretching something tight. *b.* The condition of so being stretched; tautness. 2a. A force tending to stretch or elongate something. *b.* A measure of such a force: *a tension on the cable of 50 pounds*. 3a. Mental, emotional, or nervous strain: *working under great tension to make a deadline*. *b.* Barely controlled hostility or a strained relationship between people or groups: *the dangerous tension between opposing military powers*. 4. A balanced relation between strongly opposing elements: "the continuing, and essential, tension between two of the three branches of government, judicial and legislative" (Haynes Johnson). 5. The interplay of conflicting elements in a piece of literature, especially a poem. 6. A device for regulating tautness, especially a device that controls the tautness of thread on a sewing machine or loom. 7. *Electricity* Voltage or potential; electromotive force. ♦ *tr.v.* **-sioned, -sion-ing, -sions** To subject to tension; tighten. [Latin *tēnsiō*, *tēnsiōn-*, a stretching out < *tensus*, past participle of *tendere*, to stretch; see **TENSE**<sup>1</sup>.] —**ten-sion-al** *adj.*

**ten-si-ty** (tĕn'si-tĕ) *n., pl. -ties* The state of being tense; tenseness.

**tense-ive** (tĕn'sĭv) *adj.* 1. Of or causing tension. 2. *Physiology* Giving or causing the sensation of stretching or tension.

**ten-sor** (tĕn'sŏr, -sŏr') *n.* 1. *Anatomy* A muscle that stretches or tightens a body part. 2. *Mathematics* A set of quantities that obey certain transformation laws relating the bases in one generalized coordinate system to those of another and involving partial derivative sums. Vectors are simple tensors. [New Latin *tēnsor* < Latin *tensus*, past participle of *tendere*, to stretch; see **TENSE**<sup>1</sup>.] —**ten-so'r-i-al** (-sŏr'ĕ-əl) *adj.*

**ten-speed** (tĕn'spĕd') *n.* A bicycle that can be pedaled in ten different gears.

**ten-strike** (tĕn'strĭk') *n.* 1. *Sports* A strike in bowling. 2. *Informal* A remarkably successful stroke or act.

**tent**<sup>1</sup> (tĕnt) *n.* 1. A portable shelter made of fabric or other material stretched over a supporting framework of poles and usually stabilized or secured to the ground with cords and stakes. 2. Something resembling such a portable shelter in construction or outline: "her hair a dark tent, her face a thin triangle" (Anne Tyler). ♦ *v.* **tent-ed, tent-ing, tents** —*intr.* To camp in a tent. —*tr.* 1. To form a tent over. 2. To supply with or put up in tents. [Middle English < Old French *tente* < Vulgar Latin \**tēndita* < feminine past participle of Latin *tendere*, to stretch out; see **ten-** in App. I.]

**tent**<sup>2</sup> (tĕnt) *n.* A small cylindrical plug of lint or gauze used to keep open or probe a wound or an orifice. ♦ *tr.v.* **tent-ed, tent-ing, tents** To keep (a wound or orifice) open with such a plug. [Middle English *tente* < Old French < *tenter*, to probe < Latin *tentāre*, to feel, try; see **TENTATIVE**.]

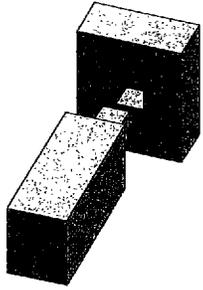
**tent**<sup>3</sup> (tĕnt) *tr.v.* **tent-ed, tent-ing, tents** *Scots* 1. To pay heed to. 2. To attend; wait on. [Middle English *tenten* < *tent*, attention, short for *attent* < Old French *attente* < Vulgar Latin \**attendita* < feminine past participle of Latin *attendere*, to wait on; see **ATTEND**.]

**ten-ta-cle** (tĕn'tə-kəl) *n.* 1. *Zoology a.* An elongated flexible unsegmented extension, as one of those surrounding the mouth of a sea anemone, used for feeling, grasping, or locomotion. *b.* One of these structures in a cephalopod, typically being retractile and having a club-like end usually with suckers or hooks, in contrast to an arm, which is nonretractile and typically has suckers along the underside. 2. *Botany* One of the sensitive hairs on the leaves of certain insectivorous plants, such as a sundew. 3. A similar part or extension, especially with respect to the ability to grasp or stretch: *an espionage network with far-reaching tentacles*. [New Latin *tentāculum* < Latin *tentāre*, to feel, try; see **TENTATIVE**.] —**ten-tac'u-lar** (-tāk'yə-lər) *adj.*

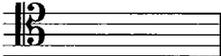
**ten-ta-cled** (tĕn'tə-kald) *adj.* Provided with or having tentacles.

**tent-age** (tĕn'tĭj) *n.* A group or supply of tents.

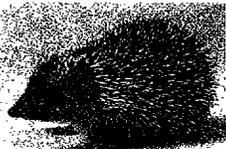
**ten-ta-tive** (tĕn'tə-tĭv) *adj.* 1. Not fully worked out, concluded, or agreed on; provisional: *tentative plans*. 2. Indicating a lack of confidence or certainty; hesitant: *tentative steps toward the podium*. [Medieval Latin *tentātīvus* < Latin *tentātus*, past participle of *tentāre*, to try, variant of *temptāre*.] —**ten'ta-tive-ly** *adv.* —**ten'ta-tive-ness** *n.*



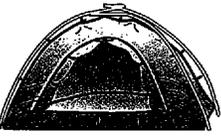
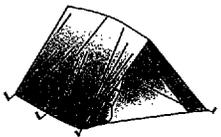
tenon



tenor clef



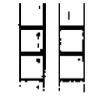
tenrec  
lesser hedgehog tenrec  
*Echinops telfairi*



tent<sup>1</sup>

top to bottom: A-frame, dome, and cabin tents

# **APPENDIX D**



Word Game  
Obscure Units of  
Measurement Quiz

Video  
Live! They're There, They're Their  
rtheirt!



Trend Watch  
Extable



List  
Words From the  
Campaign Trail

## I Hate Social Security

Born before 1969? You can get an extra \$4,098 monthly with this



# tentative

ˈtɛntə-tɪv, -tɪv-ē, -tɪv-ē-lee, -tɪv-ē-lee-lee

### Simple Definition of TENTATIVE

- 1 : not done with confidence : uncertain and hesitant
- 2 : not definite : still able to be changed

### Full Definition of TENTATIVE

- 1 : not fully worked out or developed : tentative plans
- 2 : **HESITANT**, **UNCERTAIN** : a tentative smile

- tentative noun
- ten-ta-tive-ly adverb
- ten-ta-tive-ness noun

See tentative defined for English-language learners

See tentative defined for kids

### Examples of TENTATIVE

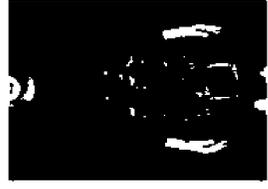
She had a tentative smile. The Midwesterner had a tentative smile. The tentative smile was a

WORD OF THE DAY  
FEBRUARY 17, 2016

## nimrod

a hunter or an distorter

See the full definition of nimrod in Merriam-Webster's Online Dictionary  
SUBSCRIBE



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tentage  
tentation

## tentative

tent bed  
tent caterpillar

**FOGARTY LAW GROUP PLLC**

**February 18, 2016 - 11:18 AM**

**Transmittal Letter**

Document Uploaded: 3-482584-Appellant's Brief.pdf

Case Name: Duggal v. Medical Quality Assurance Commission, et al.

Court of Appeals Case Number: 48258-4

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

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