



# BOARD ON PROFESSIONAL RESPONSIBILITY

November 17, 2014

Eric L. Yaffe  
*Chair*

Robert C. Bernius  
*Vice Chair*

John F. Barker  
Patricia G. Butler  
Jason E. Carter  
Mary Lou Soller  
Billie LaVerne Smith  
Thomas R. Bundy  
John C. Peirce  
*Board Members*

Elizabeth J. Branda  
*Executive Attorney*

James T. Phalen  
*Deputy Executive Attorney*

John Hnatio, EdD, PhD  
Chief Science Officer  
FoodQuestTQ LLC  
4720 Hayward Road  
Frederick, MD 21702

Re: Berkley/Hnatio, 2014-U223  
Dickinson/Hnatio, 2014-U223

Dear Dr. Hnatio:

I am in receipt of your October 9, 2014 complaint submitted to the Chair of the Board on Professional Responsibility concerning the Office of Bar Counsel's disposition of the above-referenced matters. The complaint was referred to me as the Board's Vice Chair, because Mr. Yaffe has recused himself. I am also in receipt of your November 1, 2014 letter complaining about the Board's handling of your October 9 complaint.

Before turning to the substance of your October 9 complaint, I must address the allegation in your November 1 letter, that the Board referred your complaint to Bar Counsel for its consideration. That did not occur. You informed Bar Counsel of your complaint by sending a copy of your October 9 letter to Deputy Bar Counsel Elizabeth J. Herman, Esquire. It appears that Bar Counsel Wallace E. Shipp, Jr., Esquire, responded to that letter on October 16, 2014. Mr. Shipp's letter reflects Bar Counsel's response to your October 9 letter. Mr. Shipp's letter does not reflect the Board's response, which is contained herein. As such, there is no basis for you to accuse the Board of "a direct and actual conflict of interest in the manner in which this matter was managed by the Board." There is no such conflict.

Turning to the merits, my review of Bar Counsel's decision is limited to the consideration of material in Bar Counsel's investigative file and to a determination of whether, based on that information, Bar Counsel's decision was fair and comported with D.C. Bar R. XI. Based on that review, it appears that Bar Counsel did not have an opportunity to examine the report you prepared for the FBI (which you provided to the Board) or the supporting exhibits, before deciding not to open a formal investigation of your complaint. At your direction, the Board has not shared that letter with Bar Counsel, and will not share that information with Bar Counsel.

John Hnatio, EdD, PhD

November 17, 2014

Page Two

Notwithstanding the contents of Mr. Shipp's October 16 letter, I understand that Bar Counsel has re-opened its review of your complaint. In connection with that review, I recommend that you provide Bar Counsel with all information relevant to your complaint, including, but not limited to the report you prepared for the FBI and supporting exhibits. I make this recommendation to you because Bar Counsel is charged with investigating allegations of attorney misconduct. *See* D.C. Bar R. XI, § 6(a)(2) (authorizing Bar Counsel to investigate matters of alleged attorney misconduct).

Finally, you expressed a concern that members of the Office of Bar Counsel may have colluded with attorneys from the Office of General Counsel at the Department of Health and Human Services and the Office of Chief Counsel of the Food and Drug Administration. My review of Bar Counsel's file revealed no evidence of any such collusion, and I see no reason why Bar Counsel should not be provided with whatever materials you believe bear on your complaint regarding Mr. Berkley and Ms. Dickinson. Of course, you will decide what to provide to Bar Counsel, and you are not required to provide any additional information.

Sincerely,

*Robert C. Bernius*  
*by permission*  
Robert C. Bernius *EOJB*  
Vice Chair

cc: Hon. Eric T. Washington  
Wallace E. Shipp, Jr., Esquire

Mr. Robert C. Bernius  
Vice Chairman  
District of Columbia Board on Professional Responsibility  
430 E Street, N.W. (Suite 138)  
Washington, DC 20001



November 21, 2014

REF: Berkley/Hnatio, 2014-U223  
Dickinson/Hnatio, 2014-U223

Dear Mr. Bernius:

Thank-you for very much for your letter of November 17, 2014.

We disagree with your conclusion that no direct and actual conflict of interest has occurred in this matter. When Mr. Yaffe referred our complaint directly back to the D.C. Office of Bar Counsel after our specific request for an independent review he did, in fact, act to create a direct and actual conflict of interest.

Moreover, we are not at all surprised that you could find no evidence in the files of the Office of D.C. Bar Counsel memorializing communications with attorneys at the Department of Health and Human Services (DHHS) and the Food and Drug Administration (FDA). Improper back channel communications that constitute a conflict of interest are seldom documented by the persons guilty of the wrongdoing in the first place. In most cases, the truth can only be ferreted out by a thorough investigation by an independent authority.

Lastly, we no longer share your confidence in the integrity of the D.C. Office of Bar Counsel to objectively do their job. For this reason, we are reluctant to release any further information to them without the consent of Chief Judge Washington. To this end, we will be contacting Chief Judge Washington to ask for his concurrence before we release any further information to the Office of the D.C. Bar Counsel. Thank-you.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'John Hnatio', is written over a faint, larger version of the same signature.

John Hnatio, EdD, PhD  
Chief Science Officer

cc:

The Honorable Eric T. Washington  
Mr. Wallace E. Shipp, Esq.  
Mr. Eric Yaffe, Esq.