

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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GERHARD WITTE, M.D.,

Plaintiff,

v.

OPINION AND  
ORDER

03-C-0438-C

WISCONSIN DEPARTMENT OF CORRECTIONS,  
STEVEN B. CASPERSON, individually and in his  
official capacity, KENNETH R. MORGAN,  
individually and in his official capacity, JAMES  
GREER, individually and in his official capacity,  
DAVID E. BURNETT, M.D., individually and in his  
official capacity, EARL K. KIELLEY, individually  
and in his official capacity, SHERIDAN D. ASH,  
KIMBERLY K. RUSSELL, SUSAN L. NYGREN,  
JEAN K. CARLSON, LINDA A. MORGAN, and  
JAMES P. CONTE, JR.,

Defendants.  
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This is a civil action for monetary and injunctive relief brought pursuant to Wis. Stat. 895.65 and 42 U.S.C. § 1983. Plaintiff Gerhard Witte claims that defendants Wisconsin Department of Corrections, Steven Casperson, Kenneth Morgan, James Greer, David Burnett, Earl Kielley, Sheridan Ash, Kimberly Russell, Susan Nygren, Jean Carlson, Linda Morgan and James Conte conspired to constructively terminate him in violation of (1) his

right to free speech under the First Amendment of the United States Constitution; (2) his right to free speech under Art. I, § 3 of the Wisconsin State Constitution; (3) his right to due process under the Fourteenth Amendment of the United States Constitution; and (4) Wisconsin's whistle blower law, Wis. Stat. § 895.65(2). Jurisdiction is present. 28 U.S.C. §§ 1331 and 1367.

Now before the court are defendants' motion for summary judgment and six motions to strike. In their motion for summary judgment, defendants indicate that they seek judgment on "plaintiff's claims" without identifying those claims particularly. In their supporting brief, defendants put forth reasons why they are entitled to judgment on plaintiff's free speech and whistle blower claims but do not mention plaintiff's due process claim. Plaintiff did not mention his due process claim in responding to defendants' motion and none of the parties has informed the court that the claim has been settled. A party moving for summary judgment bears an initial burden to inform the court of the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Although defendants have moved for summary judgment with respect to all of plaintiff's claims in a technical sense, they have not met the triggering burden set out in Celotex with respect to plaintiff's due process claim. Accordingly, defendants' motion will be denied with respect to that claim.

Defendants' motion for summary judgment will be granted with respect to all of plaintiff's other claims. Although some of plaintiff's speech touched on matters of public

concern, his employer's interest in maintaining harmony and discipline in the workplace outweighs plaintiff's interest in his speech. Accordingly, plaintiff's speech was not protected under either the Constitution of the United States or that of the state of Wisconsin. Plaintiff's claim under the Wisconsin whistle blower statute must fail because that statute protects only speech that is constitutionally protected.

Defendants' motions to strike will be denied as either moot or unnecessary for the reasons explained below. Before turning to these motions, I note that it is helpful to the court if this type of piecemeal evidentiary objection to individual paragraphs, sentences and even clauses is placed directly in the response to the corresponding proposed finding of fact rather than raised as a separate motion to strike. For the most part, I will treat these objections as if they had been raised in that manner. Few of the evidentiary disputes raised in these five motions merit discussion. For example, defendant has objected to a number of statements on hearsay grounds and plaintiff has responded that the statements were not offered for the truth of the matter asserted but instead to show the effect on the listener. In almost every instance, the state of mind of listener is irrelevant.

Defendants have moved to strike paragraphs 8, 9, 10, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 43, 46, 48, 57, 59, 60,63, 65, 70, 71, 73, 74 and 76 and portions of paragraphs 19, 38, 41, 42, 50, 62, 72 and 75 for failure to comply with Fed. R. Evid. 1002, which provides that with some exceptions, a party may prove the content of a

writing only by producing the original document. In his affidavit, plaintiff recited portions of his many of his letters without citing or attaching copies of the originals. However, as plaintiff notes, defendants submitted all the documents that he described in the challenged paragraphs. In proposing facts regarding the content of these documents, plaintiff cited defendants' properly submitted copies as well as his own affidavit. With plaintiff's proposed facts adequately supported by defendants' evidentiary submissions, I will disregard plaintiff's reference to these paragraphs and deny defendants' motion with respect to them as unnecessary.

Defendants have also moved to strike portions of paragraphs 19 and 52 on hearsay grounds. In paragraph 19, plaintiff stated, "As I returned to the work place, I learned that Cedric J. Tate, R.N., a valued nurse who was an important assistant to me, on the basis of the manner in which he was treated by Ash in my absence, had decided to leave his employ at RCI effective October 25, 1999." Plaintiff contends that the statement is not hearsay because it is not being used for the truth of the matter asserted but instead to show that he believed this to be true when he wrote a particular letter about it. Defendants do not argue that plaintiff did not believe in the truth of what he wrote. It is immaterial what the purpose was for which plaintiff seeks to admit this evidence. In paragraph 52, plaintiff testified that a reporter from The Milwaukee Journal-Sentinel had told plaintiff that she might be interested in running a story about the health care provision at the Racine facility. Plaintiff

argues that he has submitted this statement only to explain why he signed a release allowing the reporter to obtain documentary evidence. Plaintiff's reason for signing this release is not at issue. Again, because these statements are either hearsay or immaterial, I will disregard plaintiff's reliance on them in his proposed findings of fact and deny defendants' motion with respect to them as unnecessary.

Next, defendants request that the court strike paragraphs 5, 6, 7, 11, 12, 13, 38, 39, 43, 44, 49, 51, 53, 58, 60, 64, 66, 68, 69, 72, 73, 74, 77, 78, 79, 80 and 81 for lack of personal knowledge. The problem is not so much lack of personal knowledge as plaintiff's attempt to lay out his contentions in his affidavit. See, e.g., Witte Aff., dkt. # 24, ¶¶ 11 (defendant Morgan was "grossly negligent" and exhibited "deliberate indifference" to health care of inmates); 39 (defendants' action was concerted); 43 (failure to respond to request for clarification was knowing act of censure); 49 and 58 (evidence at hearing supported conclusion that plaintiff should have been cleared of charges); 51 (defendants' concern about plaintiff's performance was "patently false pretext"); 66 (plaintiff's grievances about co-workers were "meritorious"), 68 (mediator abandoned pretense of neutrality and "conspired" with other defendants to cause harm to plaintiff); 72, 74 and 78 (defendants had to have known that allegations against plaintiff between 1999 and present were false and they intentionally conspired to retaliate against plaintiff for exercising his right to free speech); 79 (all disciplinary meetings, interviews and hearings were pretextual); 80 (no reasonable

person could have been expected to endure the grueling conditions of employment to which defendants subjected plaintiff); 81 (defendants Casperson and Morgan acted with reckless disregard to violations of plaintiff's constitutional right to free speech). These arguments are not properly the subject of proposed findings of fact.

In many of the other challenged paragraphs, plaintiff has testified about other persons' intentions and motivations. See, e.g., Witte Aff., dkt. # 24, ¶¶ 38 (allegation against plaintiff was made for purpose of harassing him); 53 (defendants' representation to doctor examining plaintiff made with the intention of skewing results of testing); 64 (defendants Conte and Russell engaged in series of actions intended to undermine and sabotage plaintiff); 68 (mediator intended to harm plaintiff); 73 (memorandum was intended to intimidate plaintiff). Plaintiff has not set out facts showing that his opinions about the intentions and motivations of others are anything more than intuition or speculation. Witnesses may not testify about "flights of fancy, speculations, hunches, intuitions, or rumors." Visser v. Packer Engineering Association, 924 F. 2d 655, 659 (7th Cir. 1991).

Although plaintiff has littered his affidavit with these argumentative and inadmissible assertions, many of the relevant paragraphs also contain valid information about which plaintiff is competent to testify. As a typical example of such an intermingled assertion, in paragraph 64, plaintiff states that defendant Russell complained that plaintiff was not seeing

enough inmates and that she did so for the purpose of undermining plaintiff. Witte Aff., dkt. #24, ¶ 64. Although plaintiff's beliefs about defendant Russell's motivations are speculation, he may assert the fact that she submitted a complaint against him. Because most of the relevant paragraphs are mixed, I will not strike them. However, I will not use any portions of plaintiff's proposed findings of fact to the extent that they rely on the inadmissible aspects of plaintiff's affidavit.

Finally, defendants have moved to strike paragraphs 78 and 79 on the ground that plaintiff's averments therein are inconsistent with his prior testimony. In these paragraphs, plaintiff stated as follows:

78. From 1999 to present, all of Defendant's allegations of wrongdoing or substandard performance on my part have been false. Defendant had to have known them to be baseless and false. The allegations and accusations had to have been made by Defendants for the purpose of completing their conspiracy to harm me by depriving me of my reputation and employment and by harassing and retaliating against me for exercising my right to freedom of speech on matters I believe to be of extreme public importance, Defendants' baseless statements and actions had to have been for the purpose of retaliating against me for my outspoken concern about substandard care of inmates, even though shortly before the end of Secretary Litscher's term in office and before the advent of Casperson to his position of power, Secretary Litscher had called me personally to compliment me on my ability as a physician and to express the hope that I would continue on "as long as [I] like."

79. All purported interviews, meetings and hearings conducted by Defendants from 1999 to the present regarding alleged

disciplinary problems or wrongful behavior on my part in fact were shams. No such meeting, interview or hearing had the slightest appearance of being for the true purpose of investigating facts, determining the truth, or fairly or justly imposing discipline. It was just plain obvious that they were for the purpose of presenting the false pretense that I was being treated fairly.

Regardless of any conflict with prior testimony, the only portion of these paragraphs that is not an impermissible conclusion of law is the averment that Litscher called plaintiff and complimented him on his ability as a physician. (Defendants do not argue that plaintiff's earlier testimony suggested that Litscher had not called him or complimented his abilities as a physician.) In considering plaintiff's proposed findings of fact, I will disregard these paragraphs with that limited exception, making it unnecessary to strike them.

Defendants have moved also to strike portions of the affidavits of Margaret Meier, William Zachary, David Lasker and Peter Lausten and the entirety of David Lasker's supplemental affidavit. It is not necessary to resolve the parties' evidentiary dispute as to the admissibility of most of these paragraphs; most are not relevant to the issue whether plaintiff's statements are protected speech. For example, many of these paragraphs contain the opinions of other health care unit staff regarding defendant Ash's managerial skills, see, e.g., Meier Aff., dkt. #27, ¶¶ 16-23; Zachary Aff., dkt. # 25, ¶¶1-6. The relevant issue is not the accuracy of plaintiff's opinion but whether plaintiff addressed a matter of public concern when he wrote to bureau officials alleging that she lacked adequate skills, see McGreal v.



Ostrov, 368 F.3d 657, 673 (7th Cir. 2004) (truth or falsity of statement “not normally relevant to the question whether the issue was a matter of public concern”), and if so, whether his employer had an overriding interest in preventing workplace disruption and maintaining discipline. For the same reason, the testimony of Meier, Zachary and Lausten that plaintiff was a good doctor and initially well-liked before he began writing letters is not relevant to the First Amendment issue. See Meier Aff., dkt. # 27, ¶ 15; Zachary Aff., dkt. # 25, ¶ 7, Lausten Aff., dkt. # 26, ¶ 8.

In moving to strike exhibit A of the affidavit of David Lasker, defendants argue that the exhibit, which contains transcript testimony of Bonnie Loker, does not satisfy the unavailable declarant standard of Fed. R. Evid. 804 and therefore, is inadmissible hearsay. Approximately three weeks after defendants filed this motion, plaintiff submitted a supplemental affidavit of David Lasker to show that the previous testimony had been sworn. Defendants moved to strike the supplemental affidavit, arguing that it was filed late. Plaintiff cites to this transcript to support proposed findings that could show that he was treated differently from other employees who had been crude but had not been subjected to a disciplinary hearing. This disparate treatment could show that defendants’ real reason for subjecting plaintiff to a disciplinary hearing was his speech and not his telling of a crude joke. However, because I conclude that plaintiff’s speech is not protected under the First Amendment, it is immaterial whether plaintiff was treated adversely because of it.

Accordingly, Lasker's assertions are irrelevant and defendants' motions will be denied as unnecessary. (Paragraph 10 of the Zachary affidavit is also irrelevant on the grounds that it deals only with whether plaintiff was retaliated against for his speech.)

The at-issue portions of the affidavit of Peter Lausten are also irrelevant. In paragraph six, Lausten alleges that plaintiff was concerned about the level of health care that inmates were being provided at the facility; however, the relevant issue for First Amendment purposes is whether this concern motivated plaintiff to write his letters. Similarly, in paragraph seven, Lausten indicates that plaintiff was concerned about the department's handling of the situation but does not indicate that this concern motivated plaintiff's actions. Paragraph eight contains a legal conclusion (plaintiff would not have been deliberately indifferent to inmate health care needs) that will not be considered; the remainder of the paragraph, which indicates that Lausten thought plaintiff was a good doctor, is not relevant. Finally, the last sentence of paragraph nine will not be struck. In this sentence, Lausten asserts that in his personal observation, plaintiff acted "in a very professional manner and was intent upon performing his work as a medical doctor with excellence." This statement is relevant to the issue whether it was reasonable for plaintiff's employer to believe that plaintiff's behavior was disruptive. Contrary to defendants' assertion, a determination of "professionalism" is not one that only an expert is qualified to make. Moreover, Lausten satisfies the personal knowledge requirement: he spent nearly half

his working time providing dental care at the correctional institution where plaintiff was employed and stated that he consulted with plaintiff approximately once every week or two between 1998 through 2000. Last, this statement is not conclusory; certainly, it is no more conclusory than defendant Casperson's testimony that he found plaintiff to be "disruptive."

One final note before turning to the facts. In responding to defendants' proposed findings of fact regarding the content of the letters that plaintiff sent to various officers of the Wisconsin Department of Corrections, plaintiff objected to defendants' descriptions on the grounds that they were incomplete and misleading in their failure to describe some other aspect of the letter adequately. Plt.'s Resp. to Dfts.' PFOF, dkt. #30, ¶¶ 17, 18, 25, 31, 36, 52, 53, 55, 56, 58, 59, 62, 63, 64, 69, 70, 73, 75, 81, 82, 84, 86, 88, 89, 95, 99, 100, 107, 108, 110, 112, 114, 115, 119, 167, 171, 173, 182, 185, and 187. Most of these documents are the acts of speech on which plaintiff's free speech and whistle blowing claims are premised. Whether speech is protected under the First Amendment depends heavily on its content and context. In order to insure that passages are not read out of context or subject to a biased or incomplete summarization, I will attach the full text of these documents. In a few instances, plaintiff's objection was that defendants' description was misleading because it failed to mention some particular fact. See Plt.'s Resp. to Dfts.' PFOF, dkt. #30, ¶¶ 62, 63, 64, 75, 82, 95, 107, 108, 112, 114, 115, 119, 167, 173, 185 and 187. In those instances, I have added the fact that the plaintiff thought was missing instead of attaching

and incorporating the underlying document. I have considered the full text of these documents in reaching the conclusion that plaintiff's speech was not protected.

#### UNDISPUTED FACTS

Plaintiff Gerhard Witte, M.D., is an adult resident of Wisconsin. Defendant Department of Corrections is an agency of the state of Wisconsin. At all relevant times, defendant Steven B. Casperson was employed by the Department of Corrections as Administrator of the Division of Adult Institutions; defendant Kenneth R. Morgan was employed as Warden, Racine Correctional Institution; James Greer was Director of the department's Bureau of Health Services; David E. Burnett, M.D., was employed as Medical Director of the Bureau of Health Services as plaintiff's immediate supervisor; defendant Earl K. Kielley was employed as Employment Relations Chief of the Bureau of Personnel and Human Services; defendant Susan Nygren was a registered nurse at Racine Correctional Institution; defendant Jean K. Carlson was a nurse practitioner at Racine Correctional Institution; and defendant Linda A. Morgan was a housing unit manager at Racine Correctional Institution. Between October 1998 and February 2000, defendant Sheridan D. Ash was employed as Health Services Unit manager at Racine Correctional Institution. She was replaced by defendant Kimberly K. Russell. From early 2001 to approximately May 2003, defendant James P. Conte, Jr. was a security officer at Racine Correctional Institution,

stationed in the Health Services Unit.

On March 31, 1997, plaintiff was hired by defendant Department of Corrections to provide medical services to inmates. At no time was he ever a supervisor of the Health Services Unit (HSU) managers or any other employee within the unit. He had an excellent working relationship with the HSU managers and staff from the time he was hired until October 1, 1998, when defendant Department of Corrections hired defendant Ash to be the unit manager. Plaintiff believed that after defendant Ash arrived, her action had an adverse effect upon the workplace environment and patient care.

A. Plaintiff's Letters of Complaint about Defendant Ash

On February 23, 1999, plaintiff wrote a letter to Dr. George Daley, the medical director of the Department of Corrections Bureau of Health Service, in which he voiced his concern that defendant Ash was negatively affecting the working environment in the health services unit. Exh. 1. Plaintiff sent a similar letter to defendant Kenneth Morgan that same day, Exh. 2, and sent a copy to Chris Ellerd, the security director at the Racine facility. Plaintiff wrote a third letter to defendant Ash, directing her to “see to it that my orders are carried out” and complaining that she was interfering with his practice of medicine, and sent copies of the letter to defendant Morgan, Daley and Ellerd.

Three days later, plaintiff wrote another letter to defendant Ash, advising her of a

“near catastrophe” caused when she directed unit nurses to contact the on-call physician instead of plaintiff regarding a certain inmate’s health problems. He suggested that she spend less time trying to get rid of him and more time supporting the unit mission to care for inmates and called her “insubordinate” for arguing with one of his medical orders. Plaintiff sent copies of this letter to Daley and defendant Morgan.

On February 28, 1999, plaintiff wrote another letter to defendant Morgan, saying that he had overheard defendant Ash telling other unit staff that she was “going after Doc” and directing one of them to go through plaintiff’s desk. Plaintiff ended his letter by offering to help investigate the matter and requesting that he not be required to speak with defendant Ash unless a third party was present. Plaintiff sent copies of this letter to Daley and Ellerd. On March 1, 1999, plaintiff sent a letter to defendant Ash, informing her that he would speak to her only in the presence of a third party.

On March 2, 1999, plaintiff wrote to defendant Morgan about a meeting he had had with Daley to discuss the work environment in the health services unit. Plaintiff stated that he regretted not having had an opportunity to speak with Morgan about his working relationship with defendant Ash first. In addition, he noted that at the February 19 staff meeting, defendant Ash had threatened to charge one of the nurses with insubordination unless she agreed to write “defamatory” statements about plaintiff. On March 19, 1999, plaintiff wrote a letter to defendant Ash, complaining that she was failing to get segregation

inmates in to see him. He stated that he believed that defendant Ash was failing “to respond to the legitimate concerns of the institution, in this case, the timely delivery of medical care to our segregation population.” Plaintiff sent copies of this letter to Daley and defendant Morgan. Two days later, plaintiff sent a letter to defendant Morgan, in which he stressed his observation that defendant Ash was dividing unit staff and his belief that she was driving some of the nurses away. Exh. 3.

Some time prior to March 24, 1999, Daley advised plaintiff to stop writing letters to defendant Morgan regarding the work environment in the health services unit. Pursuant to this advice, plaintiff sent a letter to defendant Morgan on March 24, 1999, saying that he would stop sending Morgan letters about the situation. That same day, plaintiff wrote to defendant Ash to inform her that one of the unit employees was considering leaving. Plaintiff urged defendant Ash to do what she could to retain him. He sent a copy of this letter to Daley.

On May 5, 1999, plaintiff and six other employees in the health services unit wrote to defendant Morgan, informing him that the environment in the unit was hostile and that it was affecting patient care. Defendant Morgan held a meeting with the unit staff to discuss the problem on May 17, 1999. Later that day, plaintiff wrote another letter to defendant Morgan in which he criticized her “shoot the messenger” reaction to two incident reports that had recently been submitted to her from nurses in the unit. Exh. 4. On May 20, 1999,

plaintiff sent a memo to his union representative, Mark Simons, seeking assistance in obtaining a copy of the work environment investigation report from Daley. Simons prepared a grievance on behalf of plaintiff but plaintiff never submitted it.

On July 5, 1999, plaintiff wrote again to defendant Morgan, informing him that nurse practitioner Margie Meier had taken a medical leave of absence, that defendant Ash was responsible for Meier's medical condition and that plaintiff considered Morgan to be ultimately responsible. Exh. 5. In addition, plaintiff listed other employees that he considered to be excellent nurses and expressed his concern that they too might leave soon. Finally, plaintiff stated that he was discontinuing his practice of receiving evening calls about his patients because it was outside his job duties.

On August 5, 1999, defendant Ash filed a complaint against plaintiff in which she alleged that he had told her that he had just used a particular finger to conduct a rectal exam and then placed it in the opening of her can of soda. On August 17, Sharon Zunker, the director of the Bureau of Health Services, notified plaintiff that an investigative interview would be held two days later. On the day of the hearing, plaintiff personally delivered a written statement to defendant Morgan, responding to defendant Ash's allegations. In the statement, plaintiff denied that the incident had ever occurred and said that he considered her claims to be slanderous and defamatory. In addition, plaintiff sent defendant Morgan a separate memo, which he also sent to Daley and Zunker, stating that he believed defendant



Ash was mentally unstable and requested that defendant Morgan take action to insure the safety of the unit staff.

#### B. Plaintiff's First Medical Leave of Absence

On the morning of August 19, Zunker called plaintiff to inform him that he would not be allowed to use an intermediary to communicate with Ash as he had requested. In addition, Zunker told plaintiff that a mandatory mediation session would be held in Madison, Wisconsin, and that plaintiff could be subject to disciplinary charges if no progress was made. At the conclusion of this conversation, plaintiff called Daley to discuss the matter. Plaintiff then called Zunker back and informed her that Daley thought that it would be a bad idea for plaintiff to attend the mediation session. Zunker told plaintiff that she was Daley's boss and that plaintiff would follow her order that he attend the mediation.

After this second conversation with Zunker, plaintiff stated that he would not be able to see a patient because he was in emotional distress. Later that day, he had lunch with Dr. Fred Will, a psychiatrist at the Racine facility, and then left work to go home for the remainder of the day. When he got home, plaintiff called defendant Morgan to inform him that the situation was making him ill. On August 21, 1999, plaintiff told his physician, Dr. DiNapoli, that he was feeling physically and mentally ill because of the job conditions. Dr. DiNapoli recommended that plaintiff take an immediate leave of absence from his job. The

following day, plaintiff wrote defendant Morgan a three-page memo, detailing what plaintiff characterized as Ash's "harassment" of him and saying that he believed she was out to get him.

On August 23, 1999, plaintiff called defendant Morgan and the secretary of the health services unit, to tell them that he would be taking a medical leave of absence. Later that morning, Zunker called plaintiff to inform him that she needed a medical leave statement from his physician. In addition, Zunker wrote Daley, informing him of plaintiff's reasons for believing that he needed a medical leave of absence. Plaintiff met with Dr. DiNapoli two days later. He gave Dr. DiNapoli a written "Statement of Health" in which he described defendant Ash's "unrelenting harassment" and the effect he believed it had on his mental and physical well-being. He sent a copy of this "Statement of Health" to defendant Morgan. After an investigation, defendant Ash's claim that plaintiff had placed a contaminated finger in her soda can was dismissed as unfounded.

On October 8, 1999, Dr. DiNapoli authorized plaintiff to return to work. On October 10, plaintiff sent a statement to Jon Litscher, Secretary of the Wisconsin Department of Corrections, regarding his working relationship with defendant Ash. Exh. 6. Plaintiff denied defendant Ash's allegation that he placed a contaminated finger near the opening of her soda can, professed his commitment to his job and the Department of Corrections, expressed the depth of his contempt for defendant Ash and stated that he was

unable to work “[a]fter realizing that the warden and the DOC were deliberately endangering my professional ‘safety.’” In addition, plaintiff stated that he thought that Zunker had implied that he was the problem by stating that the disciplinary hearing would likely be a case of “he said, she said.” Also on October 10, plaintiff sent another letter to defendant Morgan and mailed copies to Litscher, Zunker and Daley. Exh. 7. Plaintiff returned to work the following day.

### C. Plaintiff’s Return from First Leave of Absence

On October 11, 1999, the same day that he returned to work, plaintiff wrote another letter to defendant Morgan, complaining about the work environment and warning that another nurse would leave shortly because of the conditions. Exh. 8. Three days later, plaintiff sent a similar letter to Litscher. Exh. 9.

On November 17, 1999, plaintiff sent Litscher a statement he had prepared for a meeting with defendant Ash, Zunker and possibly a mediator. In this statement, plaintiff alleged that defendant Ash had been responsible for pushing employees out of the health services unit. He described her as an “unrepentant pathological liar” and asserted that her earlier allegations against him were entirely untrue. In addition, plaintiff addressed the insufficient staffing in the unit and stated that “our inmates’ constitutional right to adequate medical care is being systematically ignored.” Finally, plaintiff informed Litscher that he had

retained counsel and intended to sue defendant Ash.

Four days later, plaintiff wrote Litscher to say that he was “profoundly disappointed that [Litscher] declined to respond to [plaintiff’s] letter of October 14.” Exh. 10. He asserted that defendant Ash was responsible for nurses leaving the unit and that inmate health care had been jeopardized as a result of the staff shortage. Plaintiff said that defendant Morgan had been negligent and that “[i]nstead of management doing its job, I have had to hire a private attorney to demand the employee oversight that is a mandated responsibility of the warden.” In concluding this letter, plaintiff asserted that “since I have received no response from your office on this, my conclusion must be that you endorse the same deliberate indifference demonstrated by the warden.”

On November 28, plaintiff sent a letter to defendant Morgan questioning the ability of the unit staff to perform all necessary work and told defendant Morgan “If this were your hospital, you would lose your accreditation in an instant.” Exh. 11.

On December 16, 1999, Litscher wrote plaintiff, assuring him that his complaints were being taken seriously, that the department was actively recruiting additional staff and that staff shortages were plaguing the entire corrections field.

On December 21, 1999, plaintiff filed an incident report with the facility’s security department and defendant Morgan, alleging that he had had a verbal confrontation with defendant Ash in which she had questioned his medical competence. Dick Verhagen,

Administrator of the Division of Adult Institutions, replied to this complaint by informing plaintiff that no action would be taken on the alleged confrontation.

Defendant Morgan wrote plaintiff a note to ask about a complaint he had received from an inmate alleging that he had not received a pair of boots that the health services unit should have ordered on December 13, 1999. In addition, defendant Morgan inquired about another inmate's repeated requests to be seen in the health services unit for heart problems. On December 22, plaintiff responded to this note, saying that he had ordered the boots, would make another notation in the inmate's chart requesting them and was arranging for an appointment for the inmate with the heart troubles. He added that short-staffing was the cause of the delay. Plaintiff told defendant Morgan to direct any questions about why the boots had not been ordered earlier to defendant Ash and asserted that her incompetence was responsible for the staffing problem.

On December 22, 1999, defendant Morgan sent plaintiff a note, asking him to see an inmate at the request of the inmate's family. Plaintiff responded that he had given the inmate a comprehensive physical exam and ordered a battery of tests on him on November 20, 1999 that showed that everything appeared normal except a low blood count. In addition, plaintiff stated that he believed the inmate had "cancer phobia." Plaintiff instructed the unit secretary to type the note. Defendant Ash returned the form to plaintiff after noting on it that the secretary did not have time to type it up and that it was already

legible. Before forwarding the note to defendant Morgan, plaintiff wrote in the margin that he wanted the note typed so that it could be sent to the parents.

The following day, plaintiff sent a memo to defendant Ash, scolding her for failing to follow his orders and causing the loss of three staff members. Plaintiff wrote, "Every failure to follow my orders affects inmate safety, and I will not tolerate that any more than would the Nursing Board." Plaintiff sent copies of this memo to Zunker, Daley and defendant Morgan. Later that same day, plaintiff sent defendant Ash a second memo, accusing her of violating her nursing license by changing treatment plans. He added that he would not have any direct contact with her because of her slanderous statements and that he was in the process of suing her "to the full limits of the law."

On December 28, 1999, Zunker sent plaintiff a "Job Instruction," informing him that he was required to communicate verbally with all staff members and could not insist on other staff members being present when he spoke with defendant Ash. Zunker informed plaintiff that restricting communications "will adversely affect the delivery of health care to inmates at [the Racine Correctional Institution]. It also creates a hostile work environment in the unit." On January 3, 2000, plaintiff wrote on the bottom of Zunker's memo that he would comply with her directive and he sent a copy of this note to her by facsimile.

On December 30, 1999, plaintiff filed an incident report, alleging that defendant Ash had refused to have unit staff make a phone call to find out when Daley was scheduled to

be at the Racine Correctional Institution. On January 2, 2000, plaintiff sent a letter to defendant Morgan in which he said that he was in the process of suing him, defendant Ash and Litscher and that other unit employees would file similar lawsuits in the future. Exh. 12. In addition, plaintiff made a number of requests, including termination of defendant Ash, \$900 in attorney fees and the equivalent of his annual salary as non-taxable damages for the stress he has endured.

That same day, plaintiff wrote Litscher a letter that starts, “unfortunately, the HSU staff, my professional colleagues, my union and my attorney all disagree with you when you say that the DOC took action in response to the concerns of nearly the entire HSU staff at RCI.” Exh. 13. Later in the letter, plaintiff asserted that “[t]he time for feel-good psychobabble as delivered in our mediation conference has long passed.” Plaintiff said that pursuant to Litscher’s earlier suggestion that plaintiff do what he could to be a positive influence on the unit, he would request that defendant Morgan terminate defendant Ash. At the time plaintiff wrote these letters, he had consulted an attorney but not yet retained one for the purpose of bringing a lawsuit against Litscher and defendants Ash and Morgan.

At some point, plaintiff learned that Ellerd had conducted an official investigation of defendant Ash. On January 5, 2000, plaintiff sent a memo to Zunker, asking her to “safeguard” the investigation report. That same day, Ellerd told plaintiff that he would keep the copy of the investigative report in his office safe. Plaintiff sent a memo to Ellerd,

confirming this conversation, and sent a copy of the memo to Litscher. The following day, plaintiff wrote to defendant Morgan, Litscher, Zunker and Daley, asserting that the quality of health care services at the facility had declined since defendant Ash began working there. He provided three examples of inmates who had waited months either to be seen or to receive medication and said also that he was stopped regularly by inmates who were not getting care or medication. Plaintiff emphasized the dangers of the staff shortages to inmate safety and noted that defendant Ash had failed to carry out three direct orders from him in the past month. He concluded by questioning the recipients' failure to terminate defendant Ash.

At some point in late 1999 or early 2000, plaintiff called Verhagen, alleging that defendants Ash and Linda Morgan had forced an inmate to complain about inadequate care from plaintiff. Verhagen said that he would investigate the matter.

#### D. January 7, 2000 Meeting

On January 7, plaintiff attended a meeting with Zunker and assistant warden Gene Dobberstein, defendant Ash, her witness and plaintiff's union representative, at which plaintiff got the impression that Zunker and Dobberstein believed that the problems in the health services unit were his fault. Plaintiff attempted to raise the issue of inadequate flu shots but Zunker and Dobberstein did not seem to think the issue was relevant to the one



at hand. The purpose of the meeting was to discuss the working relationship between plaintiff and defendant Ash. On January 25, 2000, Dobberstein ordered plaintiff and defendant Ash to submit weekly progress reports.

After the January 7 meeting, plaintiff sent Litscher a short memo that stated in full:

Am I required under federal law to report the problem of neglect of inmate health care to the United States Justice Department? I have no desire to place my medical license at risk. I will act only on your specific instructions. Please send your response to me by certified mail so I may verify its receipt for you.

Th same day, plaintiff sent a memo to Zunker, Daley and the head of the central pharmacy in which he wrote, “Due to the failure of [defendant Ash] to fully implement flu vaccination of high risk inmates, I request the authority to utilize the new class of neuraminidase inhibitors to be used promptly at the earliest sign of illness in the above risk group.”

On January 24, 2000, Litscher sent plaintiff a letter, requesting specific information on the substandard medical care at the Racine facility that plaintiff had alleged in his earlier letters. In addition, Litscher requested that all future discussion on the matter be conducted by their respective legal counsel.

Plaintiff submitted his first progress report to defendant Morgan on January 31, 2000. He detailed his mental and physical state during the previous week and chronicled all of his contacts with defendant Ash. Plaintiff sent a copy of this report to Zunker with a cover letter, saying that he was compiling a list of specific examples of inadequate health care

and requesting that Zunker provide examples of specific things plaintiff had done to generate staff dissatisfaction with defendant Ash. On February 1, 2000, defendant Morgan instructed plaintiff and defendant Ash to conduct a daily meeting shortly after they both arrived at work.

At plaintiff's request, Cecilia Hutcherson-Smith, a staff nurse who had transferred from the Racine Correctional Institution, submitted a statement to plaintiff on February 5, 2000, in which she described her experiences while working at the Racine facility. Exh. 15. Hutcherson-Smith stated that she had "never found [plaintiff] to be unapproachable, ill tempered or slam things on the floor or make loud ridiculous demands towards anyone."

On February 6, plaintiff submitted his second progress report to Zunker and defendant Morgan, reporting that he had had little contact with defendant Ash but that he was suffering from chest pain and sleeplessness. In addition, he said that he had been willing to have daily meetings with defendant Ash, but that she had failed to call him into the meetings that they were supposed to have together. Plaintiff concluded that he would remain working despite his illness because of his loyalty to the Department of Corrections.

#### E. Defendant Ash Leaves the Health Services Unit

Some time in February 2000, defendant Ash took a medical leave of absence from her

job and never returned. Plaintiff was not disciplined at any time during defendant Ash's tenure. Also some time that month, Litscher held a meeting in his office with Verhagen, Zunker, defendant Morgan, Doug Swanson and plaintiff, at which Litscher said that he would investigate defendant Morgan's handling of defendant Ash's situation.

On March 7, 2000, plaintiff wrote to Litscher, saying among other things, "Also, quite frankly, it is not my duty to fight my superiors to insure adequate staffing and adequate delivery of health care to our inmates. This is the warden's responsibility, but ultimately yours, and it fell into my hands by default." Exh. 16.

On March 13, 2000, plaintiff wrote Litscher, Verhagen and Zunker, stating that the constitutionally and state mandated level of inmate care could not be provided because defendant Morgan had condoned and tolerated the continued presence of defendant Ash. Exh. 17. Plaintiff made "non-negotiable" demands for investigations of defendants Ash and Morgan. In addition, he said that he would "deliver all the documentation that I have regarding inmate health issues," if the state would show its good will by restoring several weeks of sick leave, placing a letter attesting to plaintiff's superior performance as an employee in his personnel file and providing plaintiff with a statement promising that he would never be transferred out of the Racine facility. Plaintiff outlined the types of problems that his documentation would show. Three days later, plaintiff sent a letter to Verhagen, thanking him and Litscher for investigating claims against Ash. He reiterated his

complaints against her and sent copies to Zunker and Daley.

On May 10, 2000, plaintiff sent Litscher another letter, saying that he had not heard anything about the investigation of defendant Morgan's treatment of complaints against defendant Ash that Litscher had promised at the meeting in February. Exh. 18. Plaintiff complained of defendant Morgan's "gross incompetence" which "shows more than simple medical neglect; it is gross and deliberate indifference to his responsibility to safeguard the health of the inmates entrusted to his care." Defendant Ash cleaned out her office in June of 2000, after which Litscher called plaintiff and said that he knew plaintiff was a good doctor and he wanted plaintiff to stay on at the Racine facility. Plaintiff did not write any letters between May 10 and October 26, 2000.

#### F. Disciplinary Actions

On October 26, 2000, plaintiff wrote to defendant Morgan, asking to be heard on the selection of the defendant Ash's replacement. He never sent the letter because he learned shortly after writing it that defendant Russell had been hired to fill the position. Exh. 19. On January 17, 2001, plaintiff wrote defendant Morgan, praising him for improved staffing and for selecting defendant Russell as the new unit manager and saying that staff morale was the highest that he had seen since he began working at the Racine facility.

Two days later, defendant Russell sent an email to Zunker and Daley, advising them

that plaintiff had violated a rule by notifying an inmate's family that the inmate had been taken to a facility at the University of Wisconsin. On January 25, plaintiff sent Zunker a letter, apologizing for speaking with the inmate's father and explaining that he had not told the inmate's father when his son would be taken to the university facility. Approximately one week later, Daley informed plaintiff that a formal investigation would be held. On February 6, 2001, plaintiff sent Ellerd another note, admitting that he had made a mistake and confirming that he had not previously been aware that he should not have spoken with the inmate's father. Exh. 20.

Plaintiff sent Litscher a four-page letter about the investigation, describing the immense stress he had endured as a result of working with defendant Ash, saying that defendant Morgan had been deliberately indifferent and should be held accountable and noting that he found it ironic that he was to "undergo an inquisition of no serious consequence, while my very silence has served to protect the warden, his deputy and the DOC." Exh. 21. On February 9, 2001, deputy warden Dobberstein notified plaintiff that the investigation had been cancelled. Zunker confirmed the cancellation three days later. She also told plaintiff that she would discuss his February 6 letter to Litscher later.

On April 18, 2001, plaintiff and other health services unit staff sent a letter to the Department of Corrections in which they referred to a recent death at Taycheedah, a women's prison run by the Wisconsin Department of Corrections. They expressed concern

that the nurse-to-offender ratio was very high at the Racine facility, just as it had been at Taycheedah.

On June 6, 2001, plaintiff told a joke regarding Dolly Parton's breast size to one of the staff nurses who told plaintiff that she did not appreciate that type of humor and later complained about the incident. An investigation was held, but it yielded no evidence that any of the nurses had said that they did not want to hear the joke until after plaintiff had told it.

On June 15, 2001, plaintiff was notified that he was required to attend an investigatory interview scheduled for June, 18, 2003, regarding his possible violation of a work rule prohibiting "intimidating, interfering with, harassing, [including sexual or racial harassment] demeaning, or using abusive language in dealing with others." Plaintiff sent a fax in response, requesting that the interview be rescheduled for a time when his union representative would be able to attend. On June 18, plaintiff wrote Litscher, expressing his frustration at being subject to an investigation and explaining his reasons for suspecting that he is being retaliated against for his earlier complaints regarding defendants Ash and Morgan. Exh. 22. At the meeting, plaintiff and his union representative were told that the panel members would not recommend any action.

Plaintiff took a medical leave of absence from June 18, 2001 through June 26, 2001. When he returned, he solicited statements of staff support from the unit staff; several staff

members agreed to sign a letter attesting to his good character and professional demeanor. At first, he solicited these statements during work hours until Zunker informed him that doing so was a form of harassment. In addition, she advised him in a written memo not to discuss the investigation or related issues with unit staff. Zunker sent a copy of this memo to Swanson, plaintiff's union representative and defendants Morgan, Casperson and Russell. On June 27, 2001, plaintiff sent a handwritten note to Zunker, asking whether he was permitted to solicit support statements during his time off and contending that it would infringe both his and other staff member's First Amendment right to free speech if he were not. When Zunker did not respond to this memo, plaintiff began to circulate requests for support statements in sealed envelopes marked "Open at home."

On June 29, plaintiff was notified of an investigative interview scheduled for July 2, concerning his telling "dirty jokes" and pursuing staff statements of support after being directed to stop. That same day, plaintiff sent a memo to Zunker, requesting separation from employees who had accused him of "sexual misconduct." In addition, he wrote to defendant Russell, advising her that he did not want to have unsupervised contact with his accusers unless Zunker directed him in writing to do so. The investigatory meeting was held on July 2, 2001. The group discussed how plaintiff had (1) called nurses "girls"; (2) used calipers to measure a nurse's body fat on December 4, 2000 (plaintiff had used calipers on one nurse who did not object and attempted to use it on other nurses who did); (3) told a

Dolly Parton joke to female staff; and (4) continued to solicit support statements despite having received a written directive to stop.

On July 16, 2001, plaintiff was notified of a pre-disciplinary interview scheduled for July 25, concerning potential violations of work rules, one prohibiting insubordination and a second banning intimidation and harassment. On July 17, plaintiff wrote to Litscher, noting the problem of staff shortages, the potential ramifications for inmate care and his belief that he was being harassed and retaliated against for writing about the staff shortages and other problems with defendant Ash. Exh. 23.

On the advice of his doctor, plaintiff took another medical leave of absence from July 18 through July 23, 2001. On the day he returned, plaintiff submitted an incident report to Zunker, alleging that an inmate had suffered serious medical neglect because the inmate had not received the medications he needed as a result of the staff shortages.

#### H. Disciplinary Suspension

On July 25, 2001, plaintiff attended a pre-disciplinary meeting at which he was advised that the Department of Corrections had decided to take disciplinary action against him. Plaintiff denied all the allegations that had been made against him except for having told the joke about Dolly Parton. Defendant Casperson notified plaintiff in writing on July 31, 2001, that he was being suspended without pay pending an independent medical



examination because of concerns about his ability to practice medicine safely. While plaintiff was in the office of the independent examiner, he saw correspondence sent by defendants Casperson and Burnett that contained statements that plaintiff thought were false or misleading. Plaintiff was given a neuro-behavioral evaluation and functional brain imaging test, neither of which resulted in a diagnosis. Between August 13 and November 6, 2001, defendant Burnett sought applications to fill several vacant physician positions available in the Department of Corrections.

In August 2001, plaintiff sent a letter with attached materials to a reporter at The Milwaukee Journal-Sentinel. Plaintiff stated that the Department of Corrections had established a level of chronic understaffing at the Racine facility that “far outstrip[ped] that at any other prison in the state.” In addition, plaintiff alleged that the department was corrupt and retaliating against him. Plaintiff is not aware that any reporter has ever published a story based on his allegations.

On January 10, 2002, while still under suspension, plaintiff was notified both by telephone and in writing that he was to attend an investigatory interview four days later to discuss possible rule violations in his care and treatment of six inmates. Plaintiff wrote to both Zunker and defendant Burnett, demanding to know the names of his accusers and the specific allegations against him. A pre-disciplinary meeting was held two days after the investigatory meeting.

## I. Termination

On January 23, 2002, defendant Burnett informed plaintiff in writing that a pre-termination meeting was scheduled for January 25. He attached a proposed termination letter. At the meeting, defendant Casperson provided plaintiff with a letter notifying him of the termination of his employment with the Department of Corrections for numerous work rule violations, problems with communicating with patients and medical error. Plaintiff asserted that defendant Burnett had no evidence of substandard medical care and that the termination was part of a campaign of harassment and retaliation for the letters he had written to Litscher regarding the understaffing. Plaintiff believes that defendants Russell and Nygren were at least partly responsible for the charges regarding sexually explicit jokes and harassment of female coworkers but he does not know this.

Shortly after this meeting, plaintiff called his state legislator, Sheldon Wasserman, regarding the health care that was being provided to inmates at the Racine facility and the reactions to plaintiff's letters on the issue. In addition, plaintiff filed a grievance with his union about the termination. On January 28, 2002, the Wisconsin Federation of Teachers filed a grievance on behalf of plaintiff, protesting his discharge as being without just cause and demanding full reinstatement and backpay for all lost wages and benefits. This grievance was denied and the matter moved to arbitration.

## J. Reinstatement

On August 6 and October 8, 2002, arbitrator Edward Krinsky held hearings involving the State of Wisconsin, the Department of Corrections, the Racine Correctional Institution, Wisconsin Physician and Dentist Association, Local 4893, the Wisconsin and American Federation of Teachers, and the AFL-CIO to determine whether there was just cause for plaintiff's termination, as required in a collective bargaining agreement. On January 31, 2003, Krinsky determined that the Department of Corrections did not have just cause to terminate plaintiff. However, Krinsky noted that his decision should not be construed as an endorsement of plaintiff's behavior and attitude; he noted that he found plaintiff's demeanor at the hearing to be overbearing and arrogant. In addition, Krinsky found that the department had just cause for its discipline of plaintiff and that it was warranted in issuing plaintiff warnings or reprimands. Because he had concluded that the department had no just cause for plaintiff's termination, Krinsky ordered the department to reinstate plaintiff and make him whole for the pay and contractual benefits he would have received had he not been terminated.

On February 19, 2003, plaintiff received a letter from the Wisconsin Department of Regulation and Licensing's enforcement division advising him that defendant Burnett had lodged a complaint against him but that a screening panel had decided not to investigate the complaint further.

Plaintiff returned to his position on February 24, 2003. That same day, plaintiff received a letter from defendants Greer and Burnett, directing him to (1) cease inappropriate behaviors while interacting with employees; (2) follow appropriate lines of communication regarding employment concerns he might have; (3) prepare written medical orders, records and progress notes properly. Plaintiff met with defendants Greer and Burnett to discuss the directives in the letter. Also on his first day back at the Racine facility, plaintiff received three letters of reprimand for the following violations: (1) his failure to follow a written directive of June 27, 2001, ordering him to stop soliciting staff to sign a petition; (2) his failure to evaluate a lab report regarding an inmate's coumadin level properly; and (3) his note to an inmate on June 4, 2001, discouraging the inmate from seeking treatment at the health services unit.

#### K. Deteriorating Relationship with Defendant Russell

On March 4, 2003, plaintiff sent an internal memo to defendant Conte, directing him to have patients in the waiting room to be seen at 8 a.m. and 1 p.m. Exh. 24. Plaintiff sent a similar memo to defendant Russell, complaining that there were no inmates ready to see him that afternoon and saying that he had left her a voice mail message about the situation; he sent a copy of this memo to defendant Burnett as well. Shortly thereafter, plaintiff received an unsigned note, advising him to seek out the charge nurse if he had an urgent

problem and saying that voice mail is not as reliable because a person may not be available to answer such messages immediately.

On March 6, 2003, plaintiff filed a six-page complaint with the Wisconsin Department of Regulation and Licensing, Nursing Licensing Board, alleging unprofessional conduct by defendants Russell and Morgan. On March 10, 2003, defendant Burnett visited the Racine facility and requested plaintiff's attendance at a "supervisor's meeting." Also that day, plaintiff received written notice of an investigatory meeting scheduled for March 14, concerning his possible violations of rule number four (prohibiting "negligence in performing assigned duties") and rule number thirteen (barring "intimidating, interfering with, harassing [including sexual or racial harassment], demeaning or using abusive language in dealing with others") while counseling an inmate regarding his medical care.

On March 11, 2003, plaintiff sent another internal memo to defendant Conte, directing him to have patients ready to be seen at all times. Plaintiff sent a copy of this memo to defendant Russell. Plaintiff believes that defendant Conte was trying deliberately to perform his job poorly. That same day, plaintiff received a memo from defendant Burnett, advising him of certain work expectations that defendant Burnett believed would help the unit staff function better as a team. Defendant Burnett sent copies of this memo to deputy warden Pam Wallace and defendants Greer and Russell.

On March 13, 2003, plaintiff sent defendant Russell an internal memo, advising her

that he wanted to see all inmates the day after a visit to the emergency room and that all reports should be in an inmate's chart when that inmate is seen. Plaintiff wrote that he had not been advised of one inmate's serious medical condition until five days after the inmate had been seen in an emergency room. The following day, plaintiff sent defendant Russell three more internal memos. In one, plaintiff advised her that defendant Burnett had approved him to begin work at 7:30 a.m. on Wednesdays and that he would spend the time between 7:30-8:00 a.m. reviewing lab reports. (Defendant Burnett later told defendant Russell that he had not approved plaintiff's earlier start time and that plaintiff would have to discuss his start time with Russell because she was responsible for administrative organization and function of the health services unit.) In another, plaintiff complained that inmates were not always ready to be seen when he was prepared to see them. In the third, plaintiff said that there were some lab slips that had been placed on his desk instead of in an inmate's file.

On March 16, 2003, plaintiff filed three incident reports against defendant Russell alleging mismanagement. Plaintiff sent copies of these reports to defendant Greer. Defendant Greer and nursing coordinator Kathleen Berkley responded to plaintiff's incident reports on March 27, stating that inmates received adequate medical care. Copies of this response were sent to defendants Burnett and Russell.

Plaintiff sent a note to defendant Burnett on April 29, 2003, regarding problems that

he saw with the system for obtaining medications for inmates.

On June 9, 2003, plaintiff submitted a letter of complaint to the enforcement division of the Department of Regulation and Licensing, alleging unprofessional conduct by defendant Russell and others under her supervision at the Racine facility. Exh. 25. Three days later, plaintiff called defendant Carlson, a nurse practitioner, into an examining room to observe his examination of an inmate's testicle. The nurse later filed a complaint because she found the incident to be humiliating. Plaintiff had not intended it to be humiliating and does not think that defendant Carlson actually found it to be. He suspects but does not know that defendant Carlson was aware of his complaints against defendant Russell.

On June 13, 2003, defendants Kielley and Burnett conducted a hearing to investigate the threat plaintiff had made to defendant Russell about filing a letter of complaint with the state nursing board. During the meeting, defendants Kielley and Burnett questioned plaintiff about the four hours of work that he had missed that morning. Five days later, plaintiff received a letter of reprimand for violating a work rule prohibiting intimidation and harassment for threatening defendant Russell with a complaint to the nursing board.

On July 11, 2003, plaintiff was notified of a pre-disciplinary meeting scheduled for July 15, 2003, concerning possible violations of rules prohibiting negligence, intimidation and harassment. The notice stated that the incident with defendant Carlson on June 12 would be discussed. As a result of the meeting, plaintiff was given a letter of reprimand and

advised that further violation of work rules could result in a full week suspension without pay or other discipline, including possible termination. Also on July 15, defendant Burnett sent plaintiff a letter, advising him of expectations of quality performance and interpersonal behavior. Exh. 26.

#### L. Plaintiff's Final Leave of Absence

On July 31, 2003, plaintiff was notified that a pre-disciplinary hearing was scheduled for the following day for possible violations of a rule prohibiting insubordination and failure to carry out assignments or instructions. The charges involved pertained to his unsigned progress notes and orders, placing staff names in inmate charts, delay in seeing patients and locking the exam room door while seeing inmates. That same day, Dr. Kwang Soo, a psychiatrist, wrote a letter stating that plaintiff was ill and would not be able to work as of August 1.

At the August 1 meeting, which was attended by Swanson and defendants Burnett and Kielley, plaintiff accepted an offer to adjourn the meeting after one hour because of the stress he was experiencing. When he accepted this offer, plaintiff believed that everyone present had agreed that the problems stemmed from problems with his memory and that they had agreed to a new approach to the problem. Also on August 1, Dr. DiNapoli recommended that plaintiff be placed on a medical leave of absence. One week later,



plaintiff wrote to Diane Reinen and defendant Burnett, advising them that he would be leaving on a protracted medical leave of absence. Plaintiff remains on this medical leave.

Defendant Casperson has recommended that plaintiff's employment be terminated. He made this decision after reviewing a recommendation from Zunker that plaintiff be given written reprimands for calling the nurses "girls," for making comments about their weight and for failing to follow a direct order to stop soliciting staff statements of support. In addition, he considered the recommendation of defendant Burnett, who was plaintiff's direct supervisor and had written a number of progress reports stating that plaintiff was not meeting all performance expectations. Defendant Casperson believed that plaintiff's behavior was disruptive and that the use of progressive discipline would not be effective. He thought that plaintiff was not willing to engage other professional people respectfully. Some of plaintiff's co-workers believed that plaintiff acted very professionally.

Plaintiff has never written a letter or article for publication regarding his alleged concerns about the health care of inmates at the Racine facility or presented his opinions at any public forum or hearing, on any television or radio program or on the internet. Plaintiff did not make any of the letters he had written to officials in the Department of Corrections available to any elected officials or any media source with the exception of The Milwaukee Journal-Sentinel. Plaintiff has never brought his concerns about understaffing at the Racine facility's health care unit to the Wisconsin governor's office, any Wisconsin State Senate

committee or any federal official. In 2002, after his formal termination, plaintiff presented his concerns to a Wisconsin State Assemblyman.

## OPINION

### A. First Amendment Retaliation

“[P]ublic employees do not relinquish all rights to free speech under the First Amendment, even when that speech relates to their employment.” Hulbert v. Wilhelm, 120 F.3d 648, 650 (7th Cir. 1997) (citing Connick v. Myers, 461 U.S. 138 (1983)). The First Amendment provides public employees with limited protection when their employer retaliates against them for engaging in expressive conduct. Abrams v. Walker, 307 F.3d 650, 654 (7th Cir. 2002); Hulbert, 120 F.3d at 650. A retaliatory act is actionable under § 1983 even if it would have been proper had it been taken for other reasons. Howland v. Kilquist, 833 F.2d 639, 644 (7th Cir. 1987). The threshold question for a retaliation claim under the First Amendment is whether the employee engaged in protected speech. Patton v. Indianapolis School Board, 276 F.3d 334, 340 (7th Cir. 2002). This is a question of law to be decided by the court. Taylor v. Carmouche, 214 F.3d 788, 792 (7th Cir. 2000); Kokkinis v. Ivkovich, 185 F.3d 840, 843 (7th Cir. 1999). Because the parties have considered plaintiff’s letters collectively rather than individually, I will do so also.

## 1. Public concern

In the employment context, the determination whether speech is constitutionally protected is governed by the analytical framework set out in Pickering v. Board of Education, 391 U.S. 563 (1968), and Connick, 461 U.S. 138, under which an employee must first show that he engaged in speech that is a matter of public concern. Williams v. Seniff, 342 F.3d 774, 782 (7th Cir. 2003); McGreal, 368 F.3d at 672. Speech is a matter of public concern if it relates to a “political, social, or other concern to the community, rather than merely a personal grievance of interest only to the employee.” Gustafson v. Jones, 290 F.3d 895, 907 (7th Cir. 2002). A court must consider the content, form and context of the speech, id. at 906-07, though content is the most important factor. Kuchenreuther v. City of Milwaukee, 221 F.3d 967, 974 (7th Cir. 2000), “The speaker's motivation and choice of forum are [also] important because, absent those factors, every employment dispute involving a public agency could be considered a matter of public concern.” Wright v. Illinois Dept. of Children and Family Services, 40 F.3d 1492, 1501 (7th Cir. 1994) (quoting Barkoo v. Melby, 901 F.2d 613, 618 (7th Cir. 1990)).

Defendants do not contend that the shortage of nurses at the Racine facility was not a matter of public concern; in several of his letters, plaintiff suggested that the staffing problems jeopardized the ability of the unit staff to provide medical care that would satisfy the minimal standard of care mandated by the Eighth Amendment. Instead, they argue that

plaintiff's speech does not meet the public concern standard because he made his statements in order to "further his own interests, [] express his dislike and displeasure with management and his co-workers; [] control those he worked with, [] achieve personal benefits, []continue interpersonal fights that he had with his co-workers and drag more people into those fights." Dfts.' Br., dkt #12, at 8.

Plaintiff's correspondence strongly suggests that he was motivated by his desire to gain advantage in interpersonal conflicts with some of his coworkers, defendants Ash, Morgan and Russell in particular, and that his references to inmate health care were incidental. Most of his letters are dedicated to questioning the competence and intentions of these co-workers. In many instances, plaintiff uses harsh language to express his indignation. Furthermore, a number of the letters never mention the issue of adequate inmate health care. Exhs. 1-6, 9 and 10. In those that do, plaintiff mentions the adequacy of health care services at the Racine facility only in passing and in the context of faulting his co-workers for any shortcomings. Exhs. 7-8, 11-14, 16-18. Plaintiff notes the serious nature of the nursing shortage problem and yet recommends as a solution termination of nurses with whom he does not get along.

Considerations of context do not help plaintiff. Plaintiff sent most of his letters shortly after he had had some conflict with one of his co-workers or had been accused of wrongdoing himself. Furthermore, he stopped writing from May 10 through October 26,

2000, a time frame approximating the time between defendant Ash's departure and defendant Russell's hire.

Although the issue of an employee's motivation is highly probative, the court of appeals has held that speech does not fall outside the scope of public concern unless the employee's *only* motive is to further a purely private interest. Gustafson, 290 F.3d at 908; see also Spiegla v. Hull, 371 F.3d 928, 939 (7th Cir. 2004) (criticizing district court because it "improperly elevated motivation to a litmus test and thereby undervalued the important content of [the plaintiff's] speech"). The court has stressed the word "only" because, "while speech that is only motivated by private concerns may not be protected, '[a] personal aspect contained within the motive of the speaker does not necessarily remove the speech from the scope of public concern.'" Gustafson, 290 F.3d at 908 (quoting Greer v. Amesqua, 212 F.3d 358, 371 (7th Cir. 2000)). "Wrongdoing may often be revealed to the proper authorities only by those who have some personal stake in exposing wrongdoing." Breuer v. Hart, 909 F.2d 1035, 1039 (7th Cir. 1990).

Although plaintiff's personal grievances predominate in a number of instances, he did make a number of references to the detrimental impact that his co-workers and the shortage of nurses could have on the provision of adequate health care services. Plaintiff would face a substantial hurdle in convincing a jury of his sincerity, especially when he conditioned turning over information about specific shortcomings on having certain of his personal

demands met, such as the restoration of some of his sick leave, having a letter placed in his personnel file acknowledging that he has been a superior employee and receiving a statement promising him that he would not be transferred from the Racine facility. Exh. #17. However, construing the evidence in the light most favorable to plaintiff, I cannot say that he was motivated *solely* by personal concerns. Despite the obvious animosity plaintiff felt toward a number of his co-workers, “an employee’s speech on matters that might otherwise be protected cannot lose protection solely as a result of a history of animosity.” Wainscott, 315 F.3d at 850; see also Gazarkiewicz v. Town of Kingsford Heights, Indiana, 359 F.3d 933, 943 (7th Cir. 2004).

## 2. Pickering balancing

Although plaintiff squeaks by the “public concern” requirement, his case fails when it is subjected to Pickering balancing. This balancing weighs an employee’s interest as a citizen in commenting on matters of public concern against the state’s interest as an employer in providing public services efficiently and effectively. Delgado v. Jones, 282 F.3d 511, 517 (7th Cir. 2002). A Pickering analysis is a fact-specific inquiry into the following related factors:

- (1) whether the speech would create problems in maintaining discipline or harmony among co-workers;
- (2) whether the employment relationship is one in which personal loyalty and

confidence are necessary; (3) whether the speech impeded the employee's ability to perform her responsibilities; (4) the time, place, and manner of the speech; (5) the context within which the underlying dispute arose; (6) whether the matter was one on which debate was vital to informed decision-making; and (7) whether the speaker should be regarded as a member of the general public.

Gustafson, 290 F.3d at 909. “[T]he manner and means of the employee’s protestation are [also] key considerations in balancing the employer's and employee’s interests under Pickering.” Greer, 212 F.3d at 371.

First, plaintiff’s constitutional interest in his letters is narrow given the predominantly personal nature of their content. Connick, 461 U.S. at 150; Zaky v. United States Veterans Admin., 793 F.2d 832, 838 (7th Cir. 1986). Moreover, an employee has less interest in speech that imparts little new information. Greer, 212 F.3d at 372. To the extent that the letters were addressing matters of inmate health care, plaintiff provided little new information and placed a number of conditions on his production of evidence to support his often conclusory assertions of inadequate health care services. His letters were directed at the same small group of persons. Thus, each of his subsequent letters relaying the same issues is of diminishing constitutional magnitude; the recipients were made aware of plaintiff’s concerns in his initial letters. For example, Litscher sent plaintiff a letter on December 19, 1999, in which he stated that he was aware of the nursing shortage and was working to cure it. Nonetheless, plaintiff wrote Litscher again on January 2, 2000, January

6, 2000, January 7, 2000, March 7, 2000, March 13, 2000, May 10, 2000 and July 17, 2001, repeating much of what he had said in his earlier correspondence.

Defendants argue that they had a substantial interest in maintaining discipline and harmonious relationships between the health services unit staff and that plaintiff's frequent letters of complaint were disruptive of both of these objectives. In support of this argument, they analogize this case to Sullivan v. Ramirez, 360 F.3d 692 (7th Cir. 2004). In Sullivan, the plaintiff and another state employee started keeping track of their co-workers' office time on state-issued calendars and kept them in the plaintiff's desk. The court concluded that the time entries were "speech" and that documentation of time abuses touched upon a matter of public concern. However, it concluded that Sullivan's interest in keeping track of her co-workers' office time was outweighed by the government's interest in preventing the inter-office tension and distraction of the office's focus on its mission. In so concluding, the court reasoned that the office had a uniform system of timekeeping; plaintiff had not been directed to supplement or supplant that system; and that "[i]t is this gratuitous assumption of an unofficial managerial role—despite the decision of management that such activity would be disruptive—that renders [plaintiff's] action beyond constitutional protection." Id. at 702.

Plaintiff attempts to distinguish Sullivan by arguing that the court found that the plaintiff did not know about her co-workers' hourly expectations or leave requests and therefore, could not have determined whether the employees' office time was appropriate,



whereas in this case, “[plaintiff] knew full well what he was talking about.” The thrust of the court’s observation in Sullivan was to show that the plaintiff’s co-workers had good reason to be defensive about the note-taking, particularly because there had been a recent anonymous false allegation of time abuse in that office. Id. at 701-02 (“Ms. Sullivan and Ms. Blanco were not privy to other employees' work schedules or requests for leave. They merely tracked work behavior they found aberrant without any knowledge as to whether that behavior was consistent with the individual employee's time requirements or leave requests. Such activity certainly has the potential to cause co-worker distrust and the deterioration of working relationships.”)

It takes little imagination to believe that many of plaintiff’s co-workers would have been defensive about many of his comments and offended by them. He accused defendants Ash and Russell repeatedly of being manipulative, incompetent and even professionally unqualified. He filed incident reports against them and complained to the state nursing board about defendant Russell. In addition, he wrote to defendant Morgan more than once, accusing him of violating inmates’ constitutional rights to adequate medical health care on the ground that he had not fired defendant Ash. Plaintiff wrote to Litscher and accused him of deliberate indifference on the ground that Litscher had not sent plaintiff a response to one of his earlier letters. Many of plaintiff’s letters contain thinly veiled threats to bring lawsuits if certain persons were not fired, investigations not made or documents not made available.

Public employees have a protected right to bring lawsuits against their employer but this protection does not extend to using threats of lawsuits as leverage for their managerial demands.

Plaintiff's general assertion that he "knew full well what he was talking about" is of little practical assistance; plaintiff claimed to know how courts would rule in hypothetical cases and what decisions the state nursing board would make and he drew conclusions that people had joined conspiracies against him from their failure to fire people whom he had previously stated ought to be fired. To say the least, such statements are speculative.

I agree with defendants that the general holding in Sullivan is analogous to the extent that it holds that it is reasonable to anticipate that one co-worker's self-elevation to a managerial role over his co-workers is likely to engender resentment and tense working relationships. In large measure, plaintiff's letters appear to be an attempt to exercise managerial authority over his co-workers by coercing those with actual oversight and decision making authority.

Plaintiff argues that McGreal v. Ostroy, 368 F.3d 657 (7th Cir. 2004) is more analogous. In McGreal, a police officer reported the dropping of charges against the son of a city prosecutor in a neighboring city, missing reports from a file about the partial ownership of a local bar by a convicted felon and rumors he had heard to the effect that the mayor was receiving political contributions from a company that manufactured poker

machines and in exchange, was permitting the use of the machines for gambling. Subsequently, the officer was forced to submit to a psychological evaluation to determine whether he was fit for duty.

The court held that the plaintiff's interest in his speech was substantial; "[e]ffective police work would be hopelessly compromised if supervisors could retaliate against police officers for communicating *factual details* that bear on the department's ability to conduct an objective investigation." *Id.* at 679 (emphasis added). It noted also that "[t]he interest of the employee in speaking out to uncover *government malfeasance* has often been held to outweigh the interest of the employer in maintaining harmony in the workplace." *Id.* at 680 (emphasis added) (citing Jefferson v. Ambroz, 90 F.3d 1291, 1298 (7th Cir. 1996)). By contrast, plaintiff's letters contain little specific detail and as mentioned above, in one of his communications, he placed conditions on providing the department with detail about alleged inadequate health care at the facility.

Many of plaintiff's letters contain language suggestive of government "malfeasance" but much of this language is hyperbole. An employee cannot elevate the constitutional import of his speech simply by giving it labels that far outstrip its content. Speech revealing indifference to inmate health care has substantial weight but when the point of the speech is the prison officials' failure to terminate a nurse at the insistence of one of her co-workers or bureau officials' failure to respond to all of plaintiff's letters, the speech is far less a matter

of concern to the public. See Exhs. 6, 7 and 10. Similarly, there is a public interest component to speech regarding a nurse's failure to follow and thereby jeopardizing inmate health, but when the "failure" at issue was sending an internal memo that is handwritten rather than typed, the speech will not be accorded protection simply because plaintiff characterizes the shortcoming as one that jeopardizes inmate health.

In McGreal, the court found that it was disputed whether defendants actually believed that plaintiff's comments were potentially disruptive to the department's operations. In doing so, the court distinguished its earlier holdings in Kokkinis, 185 F.3d at 846-847 and Jefferson, 90 F.3d at 1294-97, on the ground that in those cases, "there was no evidence that the employers did not genuinely believe the employee's statements were extremely damaging to agencies involved and to their relationships with other government entities." McGreal, 368 F.3d at 679. In McGreal, the evidence showed that no action was taken against an officer whose actions were arguably more disruptive than plaintiffs (the officer had threatened his co-workers with a revolver and repeatedly attempted to break into a female co-worker's home). The court also reasoned that the department's assertion of "potential disruption" was questionable where nearly a year had passed without disruption.

Plaintiff argues that "[t]he amount of time that the HSU functioned with both Witte and Ash present is a demonstration that the administration's alleged concern about cohesion is a *post hoc* justification." Plt.'s Br., dkt. #28, at 17. The HSU functioned, but it was far

from placid; plaintiff and defendant Ash refused to speak without a third party present, plaintiff refused to participate in mediation and characterized suggestions that the two attempt to get along as “psychobabble” and defendant Ash eventually took a stress-related leave of absence and never returned. Plaintiff stated expressly that his working relationship with the warden had been destroyed by the controversy over defendant Ash in one of his letters. Exh. 12 (“when this is over, we will be able to restore the working relationships we had prior to Ms. Ash’s arrival”).

These facts are the exact opposite of those in McGreal, where it was the lack of disruption that was relevant to show that the defendants’ concern of potential workplace disturbance was questionable. Id. at 676 (“so much time had passed that a reasonable jury could find that their stated fear of ‘potential’ disruption was pretextual because Woods and Snooks surely knew by then that any danger of disruption had passed”). In this case, the danger of disruption had not passed but instead was confirmed. The dismal working relationship between plaintiff and defendant Ash gives credence to the legitimacy of defendants’ asserted concern that similar problems were likely to follow plaintiff’s more recent letters alleging similar inadequacies of the newest nurse manager and his expressed desire not to work with unit staff who complained about him.

Plaintiff makes a general statement that “the disharmony and loyalty among co-workers was affected by [defendant] Ash’s or other defendant’s actions, not [plaintiff’s].

[Plaintiff] was attempting to fix the problem.” First, this assertion is difficult to reconcile with the undisputed fact that plaintiff wrote several letters stating that he refused to work alone with defendant Ash, that he found it absurd that he and defendant Ash should attempt mediation, that he would not participate, that the time for an apology had passed, that he would be satisfied by nothing short of her termination and that he did not want to work with other employees who had lodged complaints against him. Such statements are hardly suggestive of an attempt to resolve tense working conditions. Moreover, plaintiff described his own series of letters as a “confrontation,” Exh. 7, and characterizes his campaign as “fight[ing] [his] superiors,” Exh. 16.

Even if I were to assume that plaintiff believed earnestly that his communications were an attempt to “fix” the hostile atmosphere in the office, the relevant issue is not plaintiff’s beliefs but those of his employer. McGreal, 368 F.3d at 680 (“key is whether employer was acting on the facts as the employer reasonably found them to be”). See also Kokkinis, 185 F.3d at 845-46 (when close working relationships are essential, deference to employer judgment is appropriate). In light of the foregoing, it was reasonable for defendants to conclude that plaintiff’s actions were disruptive. Plaintiff cannot create a material issue of fact by making an unsubstantiated assertion that the disruption was everyone’s fault but his. Cleveland v. Porca Co., 38 F.3d 289, 295 (7th Cir. 1994) (“Statements of ‘beliefs’ or ‘opinions’ are insufficient to create a genuine issue of material fact.”); Drake v. Minnesota

Min. & Mfg. Co., 134 F.3d 878, 887 (7th Cir. 1998) (Rule 56 demands more than bald assertions of general truths). Cf. McGreal, 368 F.3d 677-81 (material issue of fact about sincerity of concern where plaintiff pointed to evidence of disparate treatment and of peaceful passage of time).

Finally, both sides contend that considerations of context weigh in their favor. Defendants analogize the circumstances in this case to the conditions of “increasing distrust and hostility” found to weigh against the plaintiff in Kokkinis, 185 F.3d at 846. They note the hostile nature of plaintiff’s relationship with defendant Ash, his charged remarks about defendant Morgan’s competence and good intentions and his increasingly negative relationship with defendant Russell and several of the other nurses in the health services unit. Plaintiff does not dispute that these various relationships were tense but notes that an employee’s position under Pickering is stronger where he has raised his complaints with the appropriate authorities. He asserts that he made every attempt to present his issues up the chain of command. Plaintiff’s statement of the law is correct; however, the facts do not show that he directed his complaints to the appropriate authorities. In fact, plaintiff failed to comply with express directions about where to direct his concerns. On March 24, 1999, Daley instructed plaintiff to direct his complaints to Daley and not defendant Morgan. On January 24, 2000, Litscher asked that future dialogue be conducted between their respective lawyers, yet plaintiff continued to send correspondence to both defendant Morgan and

Litscher after these dates. To the extent plaintiff is accorded some benefit for not airing the department's dirty laundry in public, it is diminished by his failure to follow internal routing requirements.

Although the First Amendment may provide some protection when a public employee voices his opinions about personnel decisions, it does not give that employee a right to make managerial demands or to tell co-workers and superiors that they are incompetent for not adopting his perspective. Notwithstanding plaintiff's apparent conviction about the correctness of his opinions, the First Amendment "does not require a public office to be run as a roundtable for employee complaints over internal office affairs." Connick, 461 U.S. at 149. Defendants have an interest in maintaining harmonious working environment, which is necessary for the efficient provision of health services. This interest overrides plaintiff's narrow interest in making generally cursory statements regarding the already known nurse shortage. Plaintiff's speech is not protected by the First Amendment. Accordingly, it is not necessary to reach the issue of the employer's motivation for its adverse actions. Williams, 342 F.3d at 782.

#### B. Wisconsin Constitution

Article 1, section 3 of the Wisconsin State Constitution provides in relevant part that "[e]very person may freely speak, write and publish his sentiments on all subjects, being



responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press.” As defendants note and plaintiff does not dispute, the Wisconsin Supreme Court construes the protections of Art. 1, § 3 as co-extensive with the guarantees of the First Amendment of the United States Constitution. County of Kenosha v. C & S Management, Inc., 223 Wis. 2d 373, 388, 588 N.W.2d 236, 244 (1999) (“Despite the differences in their language, we have heretofore found no differences in the freedom of speech guarantees provided by the First Amendment and Article I, § 3.”); Lawson v. Housing Authority, 270 Wis. 269, 274, 70 N.W.2d 605, 608 (1955). See also Schultz v. City of Cumberland, 195 Wis. 2d 554, 561, 536 N.W.2d 192, 194 (Ct. App. 1995). Therefore, the conclusions I have reached concerning plaintiff's federal First Amendment claim are equally applicable to his state constitutional claim.

### C. Wisconsin Whistle Blower Law

Wis. Stat. §895.65 provides certain public employees with a cause of action “against his or her employer or employer's agent, including this state, if the employer or employer's agent retaliates, by engaging in a disciplinary action against the employee because the employee exercised his or her rights under the first amendment to the U.S. constitution or article I, section 3, of the Wisconsin constitution by lawfully disclosing information or because the employer or employer’s agent believes the employee so exercised his or her

rights.” Wis. Stat. § 895.65(2) (emphasis added). As defendants note, plaintiff cannot succeed on his whistle blower claim unless his speech is protected under the federal or state constitution. Id. See also Hutson v. State of Wisconsin Personnel Comm., 2003 WI 97, ¶ 37, 263 Wis. 2d 612, 665 N.W. 2d 212 (although Wisconsin's whistle blower statutes are to be liberally construed, “only certain disclosures made a particular way and regarding a subject matter covered in the statute will qualify for protection”). Because I have concluded that plaintiff’s speech is not protected by the federal or state constitution, I will grant defendants’ motion for summary judgment on plaintiff’s whistle blower claim.

#### ORDER

IT IS ORDERED that

1. The motion for summary judgment of defendants Wisconsin Department of Corrections, Steven Casperson, Kenneth Morgan, James Greer, David Burnett, Earl Kielley, Sheridan Ash, Kimberly Russell, Susan Nygren, Jean Carlson, Linda Morgan and James Conte is GRANTED with respect to plaintiff Gerhard Witte’s claims under the First Amendment of the United States Constitution, Art. 1, § 3 of the Wisconsin States Constitution and Wis. Stat. 895.65 and DENIED with respect to plaintiff’s due process claim.

2. Defendants’ motions to strike portions of the affidavit of Margaret Meier, Gerhard

Witte, William Zachary, Peter Lausten, David Lasker and the supplemental affidavit of David Lasker will be DENIED as unnecessary.

3. Plaintiff is to advise the court and defendants in writing no later than September 29, 2004, whether he intend to pursue his due process claim and, if so, set forth in detail the nature of his alleged property interest and what process he believes he was due.

Entered this 17th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge

Gerhard Witte, M.D.  
DOC Physician  
Racine Correctional Institution  
Sturtevant, WI 53177-0900  
February 23, 1999

Dear Dr. Daley,

It is with a large measure of regret that I feel it necessary to write this letter. I have some grave concerns about Ms. Sheridan Ash and her ability to function well within our prison HSU. She appears to be intelligent but has demonstrated certain behaviors that I believe will make it difficult for her to work well with others. She quite obviously has a very high opinion of herself, but apparently finds it necessary to continually find fault with those with whom she works. This faultfinding is not only directed at specific deficiencies but becomes global in its nature. Within days of her arrival at the HSU she was already questioning Mr. Ellerd's actions, saying that his "meddling interference would not be tolerated". Some time later she referred to Courtney Greeley as being the most "worthless" nursing manager she ever met, and said she felt Jim LaBelle was "useless". With a few sentences she managed to denigrate three peers with records of long term service to the DOC whom I have respected for their intelligent approach to their jobs and interpersonal skills.

She regularly engages in staff splitting. She has said negative things to me about nearly every staff nurse and it therefore comes as no surprise that she has had negative things to say about me as well. Her interactions with me constantly take on an authoritarian, pedantic, and punitive tone. Recently, after taking a lunch with Mr. Greeley and Mr. LaBelle at which we discussed coverage at RYOCF during Dr. Steliga's absence, she found fit to write me a critical note indicating that she had corrected my time sheet and contacted Mr. Cohen, even though she observed that I spent an extra 45 minutes that same day in the HSU to make up for my time away from RCI. Rather than talk to me first she apparently sought to embarrass me by talking to my superiors suggesting that I was cheating the state with my time sheet. A call by me to Mr. Cohen put things into their proper perspective. In fact he said that I did not need to make up time for a working business lunch. I should also add that I have told RYOCF to call me routinely any time they have a medical concern in Dr. Steliga's absence, and this they have done, and Mr. Greeley expressed his gratitude for that coverage at the lunch. Mr. LaBelle has also been contacting me for medical advice on prisoners in his facilities when he does not have a doctor available. (Ms. Ash felt that she should have been informed about what was discussed at the meeting.)

Ms. Ash has also found fit to complain about what I do in my office in the time between seeing one patient and waiting for the next. There has never been a patient that needed to be "squeezed" into the schedule who wasn't seen

Ex. 1

immediately. I work in my office the whole day and never take a "scheduled break". Yet, apparently this is not enough for Ms. Ash. On a recent day, apparently feeling I was not productive enough, she called up the next day's nurse "sick call" to be seen by me. I have no objection to seeing anyone, but I believe this says mountains about her approach and mentality. Her behavior is petty and demeaning. Apparently this strikes the same tone among the other staff who have referred to Ms. Ash as being "two-faced" and "a back stabber". These are terms which I have never heard used by the nursing staff in relation to Mr. Greeley or Mr. LaBelle, and they certainly never used terms such as "worthless" and "useless". I find it remarkable that Ms. Ash is able to feign a cordial relationship with Misters Ellerd, Greeley, and LaBelle

One of our employees, nurse Cecilia, whom I value very highly for her conscientiousness and competency, has decided to take a position at RYOCF, in part because she doesn't want to work under Ms. Ash. On the other hand, I believe the whole HSU nursing staff can recognize my conscientiousness and competence. I am available to them at all times for immediate consultations on any issue of patient care. I feel the HSU works more smoothly when I permit myself to be interrupted because resolving the nurse's question permits them to immediately move on to other matters. I often stay after 4 P.M. to handle matters that may otherwise need to be sent out of the institution, and I do this without amending my time sheet and taking compensatory time off. For this reason I consider her behavior regarding my luncheon meeting to have been so puerile. I have been taking off-duty calls from the HSU since my employment in April 1997, even though I am not obligated under contract to do so. I have always felt that I can make a better judgment on "my RCI patients" than another on-call DOC physician who, although highly competent, may not be able to assess a patient unfamiliar to him as well as I. I have been in private practice since 1975 and taking telephone calls has always been a routine part of patient care. Thus taking telephone calls from RCI at home has never been a burden. I have made myself available to serve the DOC any way I can, going to other institutions for special projects, and more recently, trying to help with physician staffing at JCI. The nursing service there has expressed their gratitude for this assistance. I have also been taking telephone calls from JCI while working at RCI to discuss urgent medical conditions. Everything I have done in my DOC activities has been done with the intent of bringing credit to the department and building staff competence in their work. When I do find it necessary to correct them medically I always try to do so in a constructive fashion. I have never met any nurse who rose to the management level and deserved the label of "worthless" and "useless". Think of how incompetent DOC Central Office would be if they promoted people of such substandard quality.

Recently after being told by Ms. Ash that I was not seeing as many patients as were being seen at other HSUs I told her that I saw many patients with the nurses and never took credit for the time spent. I stated that I would begin to add

the names of these patients to my patient list if in the course of seeing them I made a medical entry into the chart, because at that point I was in fact taking responsibility for the care of that patient. Some days later Ms. Ash found it necessary to ask nurse Cecilia if I had really seen the patients I had written down. Cecilia's response was that of course I did, and "why don't you ask him?" (or for that matter, look at the chart). What a sad working relationship this has become when Ms. Ash implies to a co-worker that I am dishonest. At other times she has voiced questions in what I consider to be an inappropriate fashion about the drugs and therapies that I employ. Initially I viewed some of these questions as an intellectual exercise, but I now see them as a power struggle.

Finally, and very seriously, I believe Ms. Ash doesn't understand the mission of the HSU. She and I are here to support Security in safely separating these inmates from society. It is not our job to carve out territories and to be in competition with Security. I told warden Morgan when I arrived that I realized what my duty was to the institution and I believe that he and Mr. Ellerd realize that every medical decision I make is based on what is good for the inmate within the confines of overriding security issues. Unlike Ms. Ash, who finds Mr. Ellerd "meddlesome", I have felt that every contact I have had with him, has shown him to be a thoughtful and reasonable man with legitimate concerns about the way we do things. His recent letter about our resuscitative efforts on the female officer who died raised appropriate concerns which we will need to address. He deserves to have his concerns addressed in a similarly appropriate, thoughtful and reasonable fashion. I find Ms. Ash's outburst to me about Mr. Ellerd's "meddling" to be thoroughly unprofessional and indicative of the fact that she doesn't seem to realize for whom she is working. Ms. Ash may have had some good ideas about inmate care and has made a few positive procedural changes, but her behavior is bad for staff morale and I believe that in balance her presence at the HSU is a detriment. In 25 years I have never met a manager with such a destructive personality. I may have been lucky but I choose to believe that after having met very competent people in the DOC from Ms. Zunker down to unit managers at Oak Hill, JCI, and RYOCF that Ms. Ash is the glaring exception. Unfortunately I believe that she has a character flaw which she will be unable to change.

I view the prospect of continuing to work with someone who thinks so highly of herself and so little of her colleagues with considerable reservations. However I value my job, thoroughly enjoy the medical complexities, my contact with security staff, and my interactions with my HSU associates. Not only do I genuinely like them as individuals but I respect their individual competencies, something which deep in her heart Ms. Ash apparently does not. I have grown to distrust Ms. Ash and I can not conceive of this ever changing. I told Dr. Daly when I was hired at RCI that it was my intention to make this HSU the best medical HSU in the DOC. I hereby wish to state to him, as well as to the administrative staff at RCI, that this is still my intention and that I will make every effort to see that I work to the best of my ability within the framework that I am given. The past

which involved closely working with Misters Greeley and LaBelle was a sheer joy. If Ms. Ash is to remain a part of the future, I promise that I will try to make the best of this unpleasant situation. I can survive Ms. Ash. I plan to serve the DOC for at least another ten years. The mission of the institution will take precedence over personal differences.

Sincerely

(dictated, not signed)

*Sent by Fax on 2/23/99*

Gerhard Witte, M.D.,  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177  
February 23, 1999

Kenneth Morgan, Warden  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177

Dear Mr. Morgan,

Please find attached a copy of a letter that I sent to Dr. Daley on 2/22/99.

I am afraid that any kind of cordial working relationship between Ms. Ash and myself is at an end. From the time of her arrival at RCI I have tried my best to afford her a successful transition into her new job. I had every reason to think that she would be as capable as her two predecessors. My expectations have been sorely disappointed. I have grown tired of her overdeveloped sense of self-importance and endless game playing. Every encounter takes on the kind of childish competition that is best left in the nursery. I find her to be devious, intellectually dishonest, and thoroughly unpleasant to work with. I don't know what her "problem" is and quite frankly I don't care. I don't plan to invest a second of my time in trying to cure it.

I shall continue to do my job in the professional fashion with which I have done everything in medicine over the last 30 years. I have earned the respect of my supervisor Dr. Daley who assigns the medical responsibilities of his office for all of the state's HSUs to me when he goes on vacation. Nurse practitioner Margie Meier and I have an excellent working relationship and the two of us form the core of the medical care at RCI. We are the only licensed prescribing practitioners in the institution. Likewise Misters LaBelle and Greeley have been around long enough to recognize a good doctor when they see one and realize that their administrations flourish when they help the physician to do his job well. I would hope that my contribution to RCI's Health Service would also be as evident to you and your security staff. These include nearly two years of error free medical practice, and general inmate satisfaction with me because I am competent, concerned, and fair. I have been touched by how often these men will extend a hand in gratitude on leaving the office because they realize that I have genuine concern for them. You also will notice the infrequency with which inmates need to leave RCI for emergency medical care. There have also been a minimum of frivolous law suits

Ex. 2



and ICIs because most of these men realize that I practice good medicine. I bring to my position a background of the highest quality medical care, training in the best institutions and a 20 years clinical faculty position at the Medical College of Wisconsin. The only mistake that I have in my medical career was selling my 22 year old private practice to a group that subsequently downsized me out of my job. That misfortune led to the good fortune of my employment at RCI. Just as in the prison I have never had a malpractice judgment against me. I hope to follow my first job of 22 years with my last job at RCI of at least 10 years. My memory is not good enough to recall all of the jobs that Ms. Ash has held and left. However in Ms. Ash I now find an officious HSU manager who is trying to tell me what to do in the care of your institution's patients. My patience with her is at an end. As I said in the letter to Dr. Daley, the few changes that she has made are not worth the disruption to morale in the HSU. I will be informing Ms. Ash that I will not tolerate any further intrusions into my medical practice which clearly are outside the realm of her duties (copy of letter enclosed). In these two letters I believe you will see all the signs of someone who is truly and sincerely committed to RCI and to you.

I hope you will give these letters your thoughtful consideration. Please feel free to call me, Dr. Daley, Mr. LaBelle, Mr. Greeley, or Margie Meier.

~~dictated, not signed~~

Delivered 2/23/99

cc: Dr. Daley, Mr. Ellerd

February 26, 1999

To Ms. Ash

Subject: Nurse Triage

From: Dr. Witte

On 2/24/1999 a near catastrophe was averted. Nurse Janet called me at 6:30 P.M. at my home indicating that inmate Robert L. Williams # 148115 was being seen in the HSU. According to Nurse Janet he had complained of severe vomiting for 3 days, sending daily blue notes, and having security staff call in an effort to be seen by the doctor. Instead, on each occasion the nurse (or nurses?) stated that he had the respiratory flu ( there is currently an epidemic of type B influenza in the institution) and that he would not be seen. After making use of nurse Janet's excellent clinical skills, I was able to diagnose diabetic ketoacidosis. The patient was admitted to the hospital in a critical state and is still under treatment. Your apparent response was to "shoot the messenger" by telling the nurses that they are no longer to call me, but rather the D.O.C. physician on call. This is an interesting turnaround, since you yourself have called me at home with clinical questions in the past.

I remind you that you are responsible for the behavior of your staff. I have reviewed and amended nursing treatment guidelines. Under no circumstances do three days of vomiting justify a diagnosis of the respiratory flu.

Through the nursing grapevine (which is in full flourish since you have been manager) I have been warned that you are "out to get Dr. Witte and Margie". Subsequent to writing you my last memo regarding the inmate with the eye injury, I discovered from Margie that you had threatened her with insubordination when she continued to press to get the inmate sent to a local ophthalmologist. I have talked to Dr. Daley; he says that I have absolute authority regarding medical diagnosis and consultation requirements. It was you who were insubordinate by arguing with Margie (my delegate) and me.

May I suggest you spend less time trying to get rid of Margie and me, and more time supporting us in our mission to take care of the inmates.

*Gerhard Witte, MD*

cc: Dr. Daley, Mr. Morgan

Gerhard Witte, M.D.,  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177  
March 21, 1999

Dear Mr. Morgan,

I believe that Mr. Ellerd is nearly finished with his investigation and according to Ms. Zunker he will be informing me of his findings. The "grapevine" suggests that you are "considering retaining Ms. Ash". I would respectfully submit that this would not be in the best interest of the HSU or the institution. I believe that you still do not know the extend of staff dissatisfaction with Ms. Ash. The staff is severely split between those who cannot stand her and openly ridicule her and those who are afraid of her and willing to do her bidding regardless of what they may think personally (for fear of charges of insubordination as already shown in cases involving nurse Cecilia and nurse practitioner Margie). As a result of this staff splitting I have been severely professionally disabled. The HSU staff doesn't know to whom to give their support in the ongoing struggle between Ms. Ash and myself and the duty to care for the inmates is caught in the middle. Ms. Ash knows full well of my total lack of trust in her abilities as a manager, her medical judgment, and her personal integrity. When I say that I would no more trust her than trust a rattlesnake, I am expressing an opinion based on experience and not emotion. During a continued tenure at RCI she would have no choice but to attempt to further split the institution, both inside and outside the HSU, in an effort to shore up her eroding base of support. Many staff members have told me privately that they have never experienced such an unpleasant working environment. This goes far beyond the usual carping that occurs when people work together. The dental department has told me that they will no longer speak to Ms. Ash without a third party present and they also tell me that some of the security staff is acting in a similar fashion. As I have already written you, given her slanderous statement that I threatened her, I will never again talk to her alone.

We have already lost a good nurse in Cecilia. Nurse Harvey who I find to be exceptionally bright, capable and with wide ranging skills, is looking for work elsewhere. He will be very difficult to replace. Our program assistant Deb is reportedly looking for work elsewhere. This manager is driving away good staff people. In the case of Deb, she has repeatedly stated that she is in urgent need of an assistant. Any good manager would have been pounding on your door in an effort to see that we don't lose this excellent employee. Our previous program assistant Peggy was equally conscientious and left for RYOCF because the job was impossible to do alone. Both of these employees have worked under a workload that is at 150% of what would be reasonable. This job in particular needs to be

Ex. 3

staffed by the very best employees that the state can find. To drive away a second excellent employee is unconscionable. I suspect that more is demanded of our HSU staff employees than anyone else within the DOC. At present our staff is down 2.5 FTE from its normal staffing of 6 FTE nurses. It is beyond my ability to understand why one would want to retain a manager of this kind in this volatile environment.

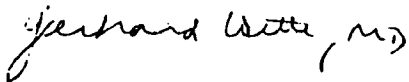
At a recent meeting, attended by your wife, Ms. Ash complimented the staff for the "good reports" she was receiving from various outside agencies. Quite frankly this is a testament to the ability of the staff to work in spite of Ms. Ash's presence and not because of it.

Dr. Will who is probably the brightest psychiatrist I have ever met professionally has his own insights into Ms. Ash's destructive behavior. I urge you to contact him. He has the appropriate professional distance necessary to make an objective analysis.

However as I have already stated to you in a previous letter, I have no intention of being driven away from this job by Ms. Ash. I am certain of my ability to survive the unpleasant prospect of working with her but I have serious reservations about damage being done to the staff and the institution.

To close, just a few more examples:

- 1) Ms. Ash seems to be unable to set up a system by which I can see segregation inmates in an expeditious fashion (see attached letter)
- 2) Nurse practitioner Margie has pointed out some serious deficiencies in nurse Johns nursing practice. I have already confronted him with falsifying medical data and Margie has noticed the same. In addition he practices skills that are outside of his license. When Margie recently brought this to Ms. Ash's attention, she dismissed the complaints in what Margie and I considered a cavalier fashion. In addition, all of the staff considers it to be outrageous that she is authorizing overtime for nurse John when it is universally held that he does not put in a "full day's work" under normal conditions. I view this as a desperate attempt at favoritism because nurses John and Carol seem supportive of her.



Gerhard Witte, M.D.

cc: Dr. Daley

**Subject: Meeting with Warden Morgan - May 17, 1999  
to Discuss Staff Morale**

**Question: Which is the real Ms. Ashe - is it the 1998 model or is it the all  
new for 1999 model?**

Is it the 98 model who drove away a good nurse in Cecelia, who has engaged in constant staff splitting, who spoke negatively of nearly every nurse in the HSU as well as Mr. Greely, Mr. Labelle and Mr. Ellerd? The manager who conspired with nurse John and Carol to get me fired, with the additional threat "there would be other changes (meaning NP Margie)? Is it the manager who ordered one of her nurses to rifle through my desk? Is it the manager who caused me intense emotional distress, and has had an excellent staff NP in tears on too many occasions?

or

Is it the new and improved 1999 model, pleasant to all, solicitous of my every need, saying "Doctor, let me do this for you" etc.?

I have my serious doubts - Ms. Ash is in her probationary period. Her behavior has outraged every professional person I have talked to. I have talked to a few attorneys who say I have grounds for a lawsuit against the State for Ms. Ashe's behavior. However, I have no intention at this point of suing anyone in Corrections. I would simply ask for supportive staff that will help Margie and me to carry out our mission of caring for the inmate population.

Within the first few days of my arrival I heard negative talk about one staff nurse who shall remain unnamed; a nurse who I was told was lazy, took way to much time with certain tasks, disappeared from the unit for longer periods, and on and on. I was a little surprised by this outburst, but decided to make my own observations. To my sorrow I found that there were in fact justified criticisms to which I would add incorrect data entry into charts. Margie in particular has noted these deficiencies which impact on my ability to deliver good medical care, and has transmitted this to the 99 model Ms. Ashe. Her response was to "stop writing incident reports", under threats of being ordered to do work outside of her job description to "gain empathy". Nurse Margie is obviously concerned that in trying to do her job well, that she will have bad PPD's.

When pharmacy assistant Terry sent an incident report detailing major violations by this same individual in regards to medication prescribing to Ms. Ashe, she was rewarded by having that same nurse monitor her workday. In addition this staff person had been authorized overtime, even though it is clear that this has a demoralizing effect on staff that puts a full 8 hours of work into an 8 hour day.

Ex. 4

I consider Terry to be a highly competent and thoroughly conscientious employee. However the implication is clear - threats to one of the two nurses who support Ms. Ashe will result in immediate reprisal.

I predicted this in my letters to the warden. Ms. Ashe has demonstrated a propensity to "shoot the messenger" (please recall the incident involving staff failure to report a seriously ill inmate with diabetic ketoacidosis that Janet and I were finally able to diagnose correctly, after which Ms. Ashe told the nurses that they were no longer to call me). I do not believe that Ms. Ashe will be able to function in a responsible fashion because of the immense hole that she has created with her previous behavior. She could not be trusted before and she cannot be trusted now.

Why she is being retained is a mystery to my colleagues, my union and me. I do not believe that the warden would tolerate a deputy warden who conspired to get rid of him and who continues to polarize staff against him.

To summarize, Ms Ashe is bad for the HSU; she is pretty universally distrusted, save for the support of her 2 nurse confidants, with whom she incidentally segregates herself at length during the day. Staff is fearful to do their jobs for fear of reprisal. This form of chronic stress has and will continue to affect the physical and emotional well-being of the staff. I am especially worried about NP Margie. She is my right hand in the HSU even though "we are not joined at the hip" as Ms. Ashe has derisively said. We complement each other beautifully. She is excellent at time consuming minor surgical procedures and taking care of the institution's asthmatics, which frees me up for many other duties. In fact she has given multiple lectures to DOC medical staff on the subject of asthma to enthusiastic reviews. Yet the stress of dealing with Ms. Ashe is bringing her close to quitting her job. The DOC has recently lost one NP. Another has just requested that I write her a letter of recommendation for private employment. The simple reason is that the state does not pay a competitive wage. This leaves only four NPs in the state and neither the state nor I can afford to lose Margie.

At this point the "compassionate" thing to do would be to let Ms. Ashe find work elsewhere. If she is able to learn anything from this experience maybe she can make a go of it as a manager somewhere. If she remains I have no choice but to file a union grievance.

Gerhard Witte

Gerhard Witte, M.D.,  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177  
July 5, 1999

Dear Ken,

As of 6/30/99, Margie Meier has begun a medical leave of absence. I warned you repeatedly that this would happen. Ms. Ash has made good on one-half of her threat which you have documented in your investigation. she has not been successful "in getting Doc", but her promise that "there will be other changes around here", which the staff all recognized to be a thinly veiled threat to get rid of Margie, has had fruition. When a woman in Mrs. Meier's personal circumstances decides to take a medical leave, it should tell you something about the hostile environment that you permit to exist by Ms. Ash's presence. Mrs. Meier is currently the only breadwinner in her family. Her husband is an unemployed newly trained police officer who is actively looking for work. There is no other source of income for the family. To my knowledge, they have no savings to fall back on.

I was impressed at how quickly you acted to fire two seg officers who did not do their jobs and lied. Your morale letter to the staff was moving in its call for harmony, trust, and good will. I will tell you very hostly that most of the HSU staff doesn't understand why you have made such a glaring exception for Ms. Ash.

The performance of my duties to the inmate population is entirely under the review of Dr. Daley. None the less, even though you are not my boss, I owe you my loyalty, and part of this is to tell you the truth as I see it. When I arrived in April 1997, the institution had about 1300 inmates, 5.5 FTE day nurses, 2 FTE night nurses, and 1.5 FTE program assistants. We now have about 1500 inmates, 3 FTE day nurses, 1.5 FTE night nurses, and 1 FTE program assistant. This represents a drop from 8.5 to 5.5 FTE while the institution population has grown by another 200 inmates. I have repeatedly told you, as a loyal co-worker, that the staff was continually undermanned, and that mistakes were inevitable. Cedric Tate was recently caught in the catch 22 position. He was alone on the \_\_\_ on the evening shift, with really more work than 1 individual can handle alone. He was called about an inmate who was notorious in his malingering. I had seen the inmate a few days earlier and described in detail the differences between his

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complaints and the objective findings. With more work to do than time allotted, Cedric decided (correctly in his mind) not to go see the inmate in seg. Unfortunately, the inmate died suddenly. A post mortem --- drug screening failed to show a cause of death. Certainly there was no sign of medical neglect by any member of the HSU staff. People do die suddenly and unexpectedly all the time, and more so those such as Mr. who have abused their health.

As regards the staffing, the buck does stop with you. It is on your watch that one good nurse asked for a transfer, and another, probably the best nurse practitioner in the system has taken a medical leave of absence.

Since my flurry of letters to you Ms. Ash has attacked the behavior of the optometrists, assistant, and the newest member of the dental service.

I need to further inform you, that I am fully engaged at work. I see 18 to 25 patients per day, in addition to all the other chart/consult/drug reviews that only I can handle. The productive output of Mrs. Meier will not be replaced. You will inevitably see more inmate movements to local ERs. I have five RCI and you my fullest loyalty. Under Mr. Greeley and Mr. Labelle there was a much greater feeling of team spirit.

There are a few other excellent employees that you should be aware of. Deborah, our program assistant took over a job that her highly respected and well liked predecessor gave up because even for someone as conscientious as she, the work was too much (and she had a 1/2 time assistant - though not very useful - as well). Deb has spoken often of quitting. Harvey Morgan is an outstanding individual - highly intelligent, extremely energetic, and very competent. He does the work of 1.5 to 2.0 people. Janet Fry is a competent senior nurse who is well respected by the inmates. Then there is Cedric Tate, who has grown greatly in his nursing maturity over the last 2 years. The stress of the recent investigation was visible to me. Cedric is actively looking for work elsewhere. Carol is a very competent nurse as well, although with little tolerance of any additional duties. John Dunham needs no further discussion.

I will continue to do my job to the best of my; ability. I already work without pause throughout the day. I can do no more. Because of my loyalty to the HSU I have take all the evening and night calls for my patients at RCI. I know I have been the only doctor in the system to do this. I did it because the regular doctor for a patient is able to better evaluate a nurse's telephone call, and can save many unnecessary ER visits. Effective immediately I am stopping this practice which is outside my job description, and without question inmate movements to the local ERs will increase.

I trusted you when you said you would give this whole business with Mss. Ash your thoughtful attention. I also trusted you when you stated at your meeting with the staff that a mediator would start immediately. There is really nothing else to say.



Statement:

"Thou shalt not bear false witness" from the Ten Commandments, Old Testament - inmate Bible.

As regards the latest charges made against me by Ms. Ash, suggesting that I touched her soda can with the same finger with which I had just done a rectal exam, I respond categorically that these charges are thoroughly ludicrous and a total fabrication, but what is most disturbing is that Ms. Ash feels sufficiently emboldened by her superiors as to float such a childish and thoroughly transparent lie. Ms. Ash has been overheard telling nurse John that "the warden is 100% behind me". I have shown the letter from Ms. Zunker detailing the charges to members of the HSU and officer staffs, and the reactions have ranged from horror to contempt to derisive laughter. Ms. Ash is recognized by everyone in the HSU staff to be a pathological liar, an "ex-p5ych" nurse who enjoys playing mind games. Look back at my earliest letters when I predicted the future she would build and talk to the security staff: she has no love there either.

My conduct as a DOC physician is highly regarded according to my superior Dr. Daley, my previous HSU managers, and the manager at JCI (see attachment). At Dr. Daley's and the DOC's request I have volunteered for numerous extra duties, serving on various committees and traveling 400 miles every other week to JCI to help an institution that needs physician coverage. My work load at RCI however continues to accumulate in my absence and I am working as hard as I can to stay abreast. I have often stayed hours over my time because my conscience will not permit a job half done.

Since Ms. Ash drove Mrs. Meier into a medical leave of absence, I have increased my daily patient load to 25 - 30 a day. I have loved my work enough to continue to take calls at home because I thought this would improve my care of RCI's inmates. The HSU staff has been very grateful for this continuity of care, and it has saved many unnecessary ER visits. I have acted as best I could to be a healing voice to the inevitable tensions that arise in an HSU and I have been known as a peace maker throughout my life.

I am really a quite uncomplicated man. I have spent my life taking care of the ill and with the greatest diligence and devotion. I have practiced medicine with an aim to search for truth at the center of my existence. Without "truth" there can be no healing because science does not tolerate lies. The computer axiom: garbage in, garbage out is a coarsely stated simile, but states that the doctor who cares for a patient needs to search for the truth to make the right diagnosis. I have abhorred lying in my own personal life and I have not been good at handling devious people, certainly not at all pathologic liars of the ilk of Ms. Ash. I do not believe that you will find evidence or a single lie that I have told while at RCI. What I have written

Ex. 6

about Ms. Ash is the unvarnished truth. Yet you will find that by talking to the staff at the HSU that Ms. Ash's view of the truth is whatever she wants it to be.

Ms. Ash is one of the most vile and contemptible people I have ever met. It has been impossible to fully hide my feelings from the HSU staff, even though I have tried for the sake of productive work. Since her initial slanderous charges that I am physically and verbally abusive, I have pleaded with the warden and Ms. Zunker to permit me to have a third party present when I deal with Ms. Ash. Instead I was told that I was "disruptive, and bad for morale". I told Dr. Daley that this would leave me vulnerable to more outlandish charges in the future. He saw the predicament but said "nobody will believe her". It is now apparent that he was mistaken. Since making my request, I have assiduously avoided as much contact with Ms. Ash as I could. I have never gone to her office. All contacts with Ms. Ash initiated by me have been made in the form of memos placed into her box. I shudder when she enters my office and insist on the door being left open. None the less, because the DOC had not taken measures to protect me from being further slandered, I must now put up with this latest charge. The reputation that I have spent a lifetime building is being destroyed as the DOC looks on - saying that I am the problem in this conflict.

The defining moment in this horribly handled situation came when I was called by Ms. Zunker on Thursday 8/19, indicating that I would have to attend another mediation session; one in which I would have to promise to try to get along with someone who had just slandered me again! I called Dr. Daley who agreed with me that this made no sense prior to a hearing on Ms. Ash's latest charge. I informed Ms. Zunker of this and she said: "Dr. Daley may be your boss, but I am his and I am ordering him to tell you to come to the meeting on Monday August 23", and he did so tell me.

The environment in the HSU has become so toxic, and my personal and professional existence so compromised that I can no longer do my job. After Ms. Zunker's comment on Friday, "This will probably end up being a case of 'You said, she said' ", she implied again that I was the problem. I was dumbstruck. After realizing that the warden and the DOC were deliberately endangering my professional "safety", I found myself unable to concentrate on my work. I sat there unable to say a ~word to my last inmate patient who was wondering what was the matter with me. I then had lunch with Dr. Will and we talked at length about my situation. At 1:30 PM I left the institution because of sickness. On Saturday, August 21, I contacted my internist Dr. Kevin DiNapoli who immediately ordered me to take a medical leave of absence. I have suffered serious emotional and physical distress from this ongoing abuse, but this is not the proper forum for detailing this. Dr. DiNapoli and a mental health professional that I plan to consult for a severe traumatic stress syndrome will tell me when I can return to work. I hold the DOC and Warden Morgan responsible for failure to exercise proper judgment in hiring Ms. Ash, as well as failing to properly supervise her once that obvious violations of commonly accepted work rules had occurred. The result has been a

continuing violation of my civil right to a safe work place. I have literally endured all that my health can handle. In essence the DOC is engaged in constructively terminating my job.

At our first mediation meeting Warden Morgan said he did not like things written down. Considering the deplorable way he has handled this situation, I can understand his words. On the other hand I have documented meticulously the nature of the work environment and all events leading to this point. Other HSU staff has bombarded the warden and his assistant, Mr. Doberstein, with oral and written comments. The warden and Ms. Zunker have been given every possible warning and they have acted with total and deliberate indifference.

Ms. Ash threatened after barely a month in her position to "get the doctor" (and Mrs. Meier) . Every statement made by Ms. Ash since that point must be viewed from this perspective. She has succeeded in violating multiple DOC codes of conduct. These offenses should have been detailed in the RCI investigation. Should they be lost or incomplete, one should know that I am aware of the full content of these depositions from the individuals themselves. New depositions can be easily obtained. The warden has denied me the opportunity to see the results of the investigation. I know that in the case of my deposition I was not given the opportunity to read it to check for accuracy. I understand that Cedric Tate is now on her hit list. She was a major force behind seeing that Mr. Tate was given a suspension, when the DOC death committee found no violation on his part in the death of an inmate. I am appalled at this treatment of a superior nurse who has worked in a chronically undermanned position. I have informed the warden repeatedly of unsafe staffing levels. Like Mrs. Meier and myself, Mr. Tate probably won't get any help from the administration. Ms. Ash may feel that she can play games with Mrs. Meier and Mr. Tate, but I will not let myself be manipulated that way.

I have withheld filing my union grievance out of respect for Dr. Daley's request to do so. By nature I have never been confrontational. Unfortunately this highly honorable man is in no position to help me now. For that reason I am now filing a grievance with my union. I have made every effort to go through the proper chain of command.

A final note: this whole regrettable situation shows that the decision to put the HSUs in the hands of the wardens was a terrible mistake. This is the opinion of every doctor I have talked to who works for the DOC. My understanding is that the lobbying against this change by Dr. Daley, our very capable physician leader, was unheeded. The State of Minnesota returned to centralized health care, at the same time as Wisconsin decided to change a well functioning system. It is sad that the inmates I have cared for at RCI have been treated better than I.

*John d. Latta*

8/22/99

Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
October 10, 1999

Dear Mr. Morgan,

Effective 10/11/1999 I am returning to RCI. You will recall that within days of my arrival on March 31, 1997 I called you on the phone and pledged you my loyalty and my promise to try to make the HSU function to the highest DOC standards, and in all honesty I believe that Margie Meier and I have truly accomplished this goal. However, for inexplicable reasons you have not responded in kind. Your handling of the Ash situation has left everyone with whom I have discussed it in a state of utter bewilderment, to put it mildly. Personally, I have attempted to consider every possible charitable reason which would explain your documented indifference to the numerous complaints emanating from nearly the entire HSU staff. What is most disturbing is that Ms. Ash had enough confidence in your support (she was overheard saying: "The warden is 100% behind me."), as to file her latest charge. Because of the insistence from you and Ms. Zunker that I must carry on institutional business with Ms. Ash without the presence of a third party I am going to be vulnerable to as many additional charges as she sees fit to make. You should also know that you have been generating a host of rumors in the institution purporting to explain your favorable behavior towards Ms. Ash. I will not dignify them by enumerating them here.

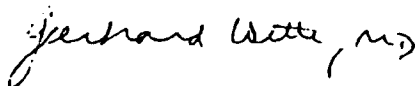
While Ms. Ash has functioned under your direct supervision, she has driven away Nurse Cecelia Hutcherson, NP Margie Meier, and the doctor. Her behavior towards Cedric Tate has caused him to look for work elsewhere, and Janet Frey has indicated her intention to leave if Mr. Tate does. Ms. Ash continues to harass the dental department. Your deliberate indifference indicates that you don't care a whim about the wholesale departure of your excellent HSU staff, and the number one question is: WHY????. As a result of Ms. Ash's unconscionable behavior, I have suffered considerable physical and emotional distress. I was unable to continue work and left the HSU on 8/23, 1999. I have needed the care of my personal physician and a mental health physician to deal with the consequences of this absurd job stress. I have engaged legal counsel to charge Ms. Ash with willful slander and I hold you totally responsible for her behavior. You cannot plead ignorance to Ms. Ash's traumatic effect on the welfare of the HSU in general, and on Margie Meier and myself in particular.

In the past I listened in shock as you described Ms. Ash's behavior as "simply a different management style". I have immense trouble accepting lying and slander as characteristics of an acceptable alternative management style.

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In closing I want to reiterate a statement made in an earlier letter that I intended to remain at RCI despite Ms. Ash's behavior. However I plan on litigation against Ms. Ash regardless of whether she remains a state employee or is fired. Like you I have a dependant child to look after. What a shame that you have decided to align yourself with an unrepentant pathological liar, against someone who for a year and a half highly respected you as an individual and as a leader and gave you his full support. I am still willing to be convinced that you have been "fooled" by her. It is entirely up to you whether I will be able to continue the cordial and respectful working relationship that I thought we initially had. I gain no pleasure whatsoever from this confrontation. This is not a test of wills but rather a fight to protect my professional integrity, my job, my health, and to undo a major wrong in the course of a constructive termination of Margie's employment by Ms. Ash. In all honesty in a 35year professional career I have never seen such a mess. I have tried to encourage Margie to think about returning to RCI. She has suffered enormously from the standpoints of her mental, physical and financial health. Her request for income continuation has been denied. I would hope you would be sensitive to these issues, given your own recent health concerns. Any settlement of this issue must include a restoration of Ms. Meier's lost income and the time I have been forced out of work. My last attempt at resolving this issue in house will be by placing all my documentation in Mr. Litscher's hands with the request that he enlist the help of his internal affairs and legal departments. I think we would all agree that a legal opinion by the DOC raised before going into litigation would be preferable for all parties concerned. A basic medical axiom since the time of Hippocrates is that prevention is preferable to cure. I do not envy the job of a DOC attorney required to defend against the complaints of the HSU staff.

Please believe me when I repeat that I have no intention of letting this pathetic woman drive Margie and me from our jobs.



Gerhard Witte, M.D.

cc.: Mr. Jon Litscher, Ms. Zunker, Dr. Daley.

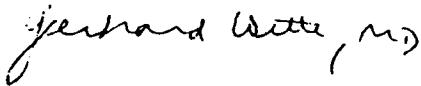
Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
October 11, 1999

Dear Mr. Morgan,

It seems that Ms. Ash works quicker than I thought. Despite my efforts to convince Cedric to ignore her pathologic behavior he found that he could no longer stand the stress and will leave the HSU on 10/25/1999. Again, shame on Ms. Ash but more so shame on RCI management for letting another good employee be lost by the HSU.

I can't help but comment on the surreal experience of having you walk by my office today, smile at me and say "Nice to have you back". Your words say one thing but your actions say something entirely different.

As I have said it is with profound regret that I see no recourse other than to ask for a review by Mr. Litscher. He has the reputation of being a fair man.



Gerhard Witte, M.D.

Ex. 8

Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
October 14, 1999

Jon E. Litscher, Secretary  
State of Wisconsin  
Department of Corrections  
149 E. Wilson St.  
P.O. Box 7925  
Madison, WI 53707-7925

Dear Mr. Litscher,

I have been the HSU physician at RCI since March 31, 1997. Prior to that I had concluded a 22 year practice in internal medicine and infectious diseases as well as a clinical professorship at the Medical College of Wisconsin. I have loved my work at RCI and have made every effort to serve the DOC to the best of my ability. This has included following through on every request that the DOC has made of me involving work outside of my institution. An example of what I consider to be going beyond the call of my duty is the fact that I have traveled 200 miles nearly every two weeks for the last year to staff the HSU at JCI.

I have reached a point where I can do nothing else than share the following situation with you. The HSU at RCI has a manager by the name of Sheridan Ash. After only six weeks of her physical presence in the HSU she held a meeting involving a limited number of her staff for the purpose of outlining a strategy of getting me fired. Since that time she has also been involved in an unending series of actions that have lead to the departure of several highly qualified employees at the HSU. I have attempted to document Ms. Ash's behavior to the warden Ken Morgan and to Dr. Daley. Dr. Daley as well as nearly every member of the professional community that I have talked to, including doctors, dentists, and HSU managers at numerous other facilities, feel that Ms. Ash should have been fired in February '99, when her destructive behavior first became evident. I talked to warden Morgan today, 10/14/1999, at 1P.M. and made my final attempt at having him realize that his opinion of Ms. Ash is shared by essentially no one else. He stated that it his intention to retain her, claiming there are "two sides to every story". I agree with his statement in principle, but with an entirely different conclusion. On the one hand it is proven that Ms. Ash is a pathologic liar who recently slandered me in a most damaging fashion, and on the other hand there is no evidence that anything that I have said is untrue.

My enclosed documentation will show that the warden has acted with total indifference to the behavior of Ms. Ash in spite of the attempts of nearly the entire HSU staff to inform him of what was happening. The staff is prepared to state

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that he had no interest or time for their complaints. The initial investigation which I requested commenced only after Dr. Daley personally visited the warden and insisted on the same. This investigation which Dr. Daley has seen (the warden said that I was not permitted to look at the investigation, nor do I believe that any staff member deposed by Mr. Ellerd was given the opportunity of reviewing their statements for accuracy) cleared me of any improper conduct which would justify initial action against me. I asked the warden if he believed that I would be capable of taking a finger which I had in an inmate's rectum and then touching the rim of her soda can with it. If he finds this claim as preposterous as every person who knows me, then he must of necessity conclude that anything else that Ms. Ash has said about me must be viewed with great caution. Contrary to what you may believe the prison medical staff comprises many highly competent and dedicated physicians. As a group we are appalled by these claims of inappropriate behavior that have come raining down upon us. Nearly each one of the physicians and dentists has had a punitive action taken against him, and in nearly every case the State's position has been found without merit. The morale among us has been negatively affected. The result has been that many of these same physicians who had gladly volunteered to do work for the DOC outside their institutions, refuse to be of any additional help to the DOC. Dr. Elsa Horn's case was particularly malignant. This excellent physician was hounded by the state until she was completely cleared of any wrongdoing which should have been evident to anyone at first sight. She and I talked yesterday at the physician's meeting about the fact that both of us, who have treated our jobs with the highest degree of conscientiousness, see little appreciation for our efforts. This situation is so pernicious that I believe it is a subject that you should pursue. You may find it of value to come to a doctor-dentist meeting to hear the complaints firsthand. There are a number of superior HSU managers who make it a joy for their physicians to work in their units. They include Courtney Greeley of RYOCF, Jim LaBelle (previous RCI manager and now head of the centers) and Judy Nordahl, manager at JCI. There are to be sure other excellent people I don't know, but there are also some who are extremely unpleasant to work with. Part of the problem arises when nurses are asked to supervise physicians. Some nurses clearly lack the knowledge and tact to handle this delicate relationship appropriately.

My record of correspondence to the warden is detailed in the enclosed materials. I urge you to conduct an internal affairs investigation of what I, Dr. Daley, and the HSU staff consider to be a totally inappropriate handling of this situation by the warden. The most charitable thing that I can say in the warden's defense is that he has been gullible in accepting Ms. Ash's statements. The tragic loss of Mrs. Margie Meier, the devoted nurse practitioner at RCI, who spent countless hours of unpaid overtime in the service of her inmate population, and the additional departures of Cecelia Hutcheson and Cedric Tate, both competent nurses, as well as the imminent departure of Janet Frey, the senior nurse in the



unit, should speak volumes about Ms. Ash's poisonous management style. Three of these four individuals have had longer records of service at RCI than I.

I have been in touch with four attorneys who indicated that I have sufficient documentation to justify a highly damaging suit against Ms. Ash and the warden. In the interest of the institution and myself I would suggest that you have your legal department review these materials in their entirety. I have little interest in pursuing this even though there might be hundreds of thousands of dollars at stake. I would be satisfied with Ms. Ash's firing and a statement by her that she lied regarding the alleged incident with her soda can. I would then promise not to proceed with a civil suit. Ms. Ash is reaching the end of her probationary period and can be fired without need for justification. (This is however only days away.) Should the DOC think it best to shove this all under the rug by reassigning Ms. Ash, then I would be sorely tempted to pursue my civil suit against Ms. Ash and Warden Morgan. In good conscience I have a duty to see that this woman is not able to inflict herself on anyone else in state government.

I am going on a brief vacation to visit my daughter on the east coast. I shall return to work on October 25 and will be willing to cooperate fully with any investigation. I can assure you of the total cooperation of the HSU staff as well. We are all boiling mad.

My final suggestion is that you seek counsel of Dr. George Daley, the physician director of DOC. Dr. Daley has had a long and distinguished record as a surgeon and administrator. He is among the most effective leaders that I have ever met. He is able to effectively see both the management and the physician side of many issues, and able to speak with salomonic wisdom. His ability to implement policies that favorably affect both groups makes him a valuable and trusted broker of solutions. He states with pride that under his administration he has a group of doctors working so efficiently that no private organization can come in from the outside and do the same job at anywhere near the present cost. He also has strong opinions about the mistake of putting the HSUs under the management of the wardens. Dr. Daley will have the courage and honesty to forthrightly answer any questions that you may have.

Respectfully

Gerhard Witte, M.D

- 946

Sent to LITSCHER  
11/21/99

- CERTIFIED  
RECEIPT 11/24

Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
November 21, 1999

*John*  
*Johnson*  
ANSWER

Jon E. Litscher, Secretary  
State of Wisconsin  
Department of Corrections  
149 E. Wilson St.  
P.O. Box 7925  
Madison, WI 53707-7925

Dear Mr. Litscher,

I am profoundly disappointed that you have declined to respond to my letter of October 14, in which I requested that you order an independent investigation of HSU Manager Ms. Sheridan Ash's behavior at RCI and the deplorable response of the warden to my concerns and those of the beleaguered HSU staff at RCI. If there is any doubt in your mind that Ms. Ash is a pathological liar who has systematically smeared me professionally, then the attached letter by JCI HSU Manager Judy Nordahl should prove my point emphatically. The warden's behavior has left the HSU staff frustrated and extremely angry. Three of the staff have been driven from their jobs and a fourth is close to leaving. The attached Statement describes the steadily deteriorating staffing at RCI. The warden is negligent in failing to provide the HSU with staffing sufficient to provide the inmates with the level of medical care mandated by the Federal Government. I have documented medical orders that have not been signed for over six weeks. This is but the tip of an iceberg of medical work left undone. The case of Cedric Tate is an example of how the HSU manager and the warden punished a good nurse who, while on duty alone because of inadequate staffing, had to make a decision on how to best use his limited time.

It is simply incredible that the highest level of DOC management continues to refuse to involve itself in this situation. As a result I have had to endure relentless defamation of character and malicious slander. Instead of management doing its job, I have had to hire a private attorney to demand the employee oversight that is a mandated responsibility of the warden. Since he has failed to act on his own it is the responsibility of his superiors to see that he does so. Federal Express will verify that the documents that I sent to you on October 14 were received in your office. I will assume you have read them and forwarded them to your legal department as I requested. Since I have received no response from your office on this, my conclusion must be that you endorse the same deliberate indifference demonstrated by the warden. This

Ex. 10

situation is intolerable and leaves me no choice but to proceed with my attorney. The longer the State waits the higher my attorney fees will be, which I will undoubtedly eventually recover, and the lower will sink the morale of the HSU and the physician community that serves the DOC. As I stated in my previous letter to you I feel sorry for the state's attorney who must defend this incompetent and malignant woman.

Sincerely

Gerhard Witte, M.D.

Attachments: (2) letter from Judy Nordahl to Dr. Daley  
statement prepared (but not delivered) for my hearing before  
Ms. Zunker on Nov. 18, 1999

Gerhard Witte, M.D.,  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177  
November 28, 1999

Dear Mr. Morgan,

I have already informed Mr. Litscher about the staffing shortages in our HSU, and it is out of regard for your position that I send you this letter. Since you have hired Ms. Ash and been her immediate supervisor, the following personnel have left or needed stress leave: Nurses Cecelia Hutcherson (left for RYOCF); N.P Margie Meier (still unable to work - remains on sick leave); Nurse Cedric Tate (left for Southern Oaks), Nurse Janet Frey (since Ash's arrival has reduced to half time and spent the last week on stress leave on the advice of her doctor). That makes four competent nurses who have left because of Ms. Ash's managerial incompetence and malevolence. Sonya Carter has been hired and should prove to be a good nurse, but she has a considerable learning curve to travel before she attains the proficiency of the nurses who have been forced out. During the last week we have had only one nurse on the A.M. and P.M. shifts, a situation which is courting disaster! Our current personnel roster stands at four and one half nurses (nurse John Dunham, nurse Carol Lundquist, nurse Harvey Morgan, nurse Sonya Carter, and, when she returns, nurse Janet Frey (half time). In addition there is pharmacy tech Terry Reyer. A few days ago I witnessed the noble behavior of Ms. Reyer who stayed overtime because the short staffing prevented all of the inmates medications from going out to the units. This occurred in spite of the fact that Ms. Ash had recently had Ms. Reyer in a disciplinary hearing, which apparently is the first one she has had in her 20+ year professional career. Harvey Morgan, who is the ultimate conscientious nurse, will burn himself out if he continues at the current tempo. Not only is this situation stressful and potentially harmful to the employees health, it is also a setting that at any time could result in serious injury to an inmate. We should have at least four additional nurses which would still not get us to the inmate/nurse ratio I have seen at RYOCF and JCI.

In spite of the efforts of nearly the whole HSU staff to inform you of conditions in the HSU, you have permitted this reduction in staff to take place. The remaining staff faces two choices: 1) try to do all the work but in a superficial fashion, or 2) perform each task correctly and then realize that every day a good deal of work will not get done. The staff and I have seen how Ms. Ash and you treated Cedric Tate who was caught in exactly this Catch-22 situation. For this reason the staff recognizes that in order to protect their professional integrity they must choose option 2). This means that we will clearly not be able to deliver the

Ex. 11

services mandated by the Federal Government, i.e. the inmates' constitutional right to adequate healthcare. The care currently provided by our reduced staff is clearly substandard. I have documented nursing orders not signed by a doctor for over six weeks, medications that haven't gone out to the inmates, because orders were not processed in a timely fashion, and days on which no sick call was held because of inadequate staffing. If this were your hospital, you would lose your accreditation in an instant. As for me, I continue to honor the pledge I made to you within days of my arrival, that I would serve the institution to the best of my ability. However I take no responsibility for inmates that the nurses are unable to triage to me appropriately.

I have heard from one of the nurses that Ms. Ash is being placed in charge of hiring new nurses. This situation must be as surreal to you as it is to our staff inasmuch as this woman has been driving away good nurses faster than you can hire them. Quite frankly I don't know why any good nurse would want a job at RCI after seeing the understaffing and the low morale.

Since it is by your choice that you administer the HSU, the responsibility for any error of omission by an overburdened nursing staff must rest largely with you. In my first letter to you in February 1999 I outlined to you exactly this scenario involving staff loss and ongoing defamation of my character and professional competence. You have elected not to share with me why Ms. Ash continues to enjoy your full support. The fact that my attorney is preparing a suit against Ms. Ash does not prevent me from conscientiously informing you of these risky staffing shortages. In a lifetime of medicine I have tried to give thorough and competent patient care. I do not want to see any inmate come to harm as a result of inadequate nursing.

Gerhard Witte, M.D.

cc: Dr. Daley, Ms. Zunker

*handwritten addendum:*

*11/29 - I have heard today that Sonya, our new hire is thinking of leaving because of Ash. Today we have one nurse who needs to do a double shift . no other available staff . why doesn't anybody in central office care?*

Gerhard Witte, M.D.,  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177  
January 2, 2000

Dear Mr. Morgan,

It is the start of a new year and a time to take stock. This has probably been one of the most trying and discouraging years of my life. I have always taken great pride in what I do, and yet I have been forced to watch you dismantle our excellent HSU, bringing our staff down to a level where you have seriously endangered the health of the inmates entrusted to your care. My esteemed co-worker and good friend Margie Meier sits at home, unemployed and in dire financial straits because of the stress which you forced her to endure. Two excellent black employees left the HSU and a third excellent black nurse has had similar thoughts of leaving. I have tried to be your friend by doing my job in a way that reflected well on you, the institution, and the DOC. Nonetheless you have decided to close your eyes and ears to the pleas of your HSU staff. The whole institution is aware of the situation and this has caused many to question your competence. And for what have you put a lifetime of good work on the line: for a pathetic woman with a serious character disorder that prevents her from working with others and who has a willingness to lie, to destroy whatever is in her path.

At a recent Christmas party given by the dental department the following interchange was related to me. Harvey left the dental party and went into the HSU where Ms. Ash was seated. Harvey asked her if she was going into the dental unit to participate in the festivities. She answered " They don't want me, they all hate me". Well, she was correct! No one doubts that she has fully earned this sentiment. Earlier in the year you were overheard "yelling at Ms. Ash" in your office: " They can't all be wrong!" You were only partly right - we weren't wrong at all. Then came the recent episode where Ms. Ash attempted to change a treatment strategy worked out between Dr. Ripani, myself, and our staffs. After filing the incident report, (which Mr. Ellerd indicated he had not received as of December 30th, 1999) she was overheard saying "I am not worried, the warden will believe me". To all of this I can only say: "Ken, what in the world are you doing?" The last time we talked on the phone you said that you had 100% confidence in Ms. Ash. Is this really still the case?

You are aware of the suit which I am in the process of initiating against Ms. Ash, you and your supervisor. This will shortly be followed by suits by other HSU employees. You have forced us to resort to a legal remedy to ensure that we are

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afforded a decent and safe work environment. There is not a chance in the world that Ms. Ash will be around here by the end of the year. Your "full" support of this woman who has slandered my personal and professional conduct will not be enough to keep her in her job. Everyone will agree that Ms. Ash "simply has a different management style" (your words), but not in the way your words were meant to convey.

My request of the DOC is simple:

1) Fire Ms. Ash. My documentation and that of Mr. Ellerd gives you all the facts that you need.

2) Request Margie Meier to return to her position as nurse practitioner. She is one of the most thoroughly decent, honest, and caring people that I have met in a lifetime of medical practice. She did not deserve to be treated in the way she has been, nor to be "constructively terminated" from her job.

3) Restore to me the sick days that I have had to take in order to protect my health.

4) Pay my attorney fees, about \$ 900.- at present, but rising rapidly.

5) Pay me the equivalent of a years wages in non-taxable damages for the absurd stress that I have had to endure. Since June 1999 the DOC has no longer paid Mrs. Meier's wages and during this time I have expanded my practice to cover for her absence. A simple apology might have worked in April, but is no longer sufficient.

The longer this matter draws out, the worse will be the atmosphere in the HSU and the DOC physician community at large, the larger my legal bills and the greater my anger at being treated like this.

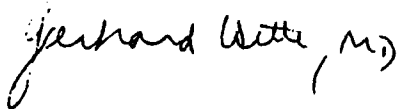
I feel that when this is over we will be able to restore the working relationship we had prior to Ms. Ash's arrival. I have always had the impression that you were an intelligent and competent leader, and with all my heart I still want to believe that. I promise that I will carry no lingering ill will. We all make mistakes and need to correct them.

You will soon be needing to hire a new HSU manager. I strongly recommend that you again consider Cedric Tate. He has all the skills necessary to make a first rate manager. He is highly intelligent, very conscientious and thoroughly competent in his work. I have queried the staff with the exception of nurses Carol and John and all feel exactly as I do. They feel he would make an excellent supervisor. I am sure that he will not tolerate substandard work by anyone in the unit, as has unfortunately not been demonstrated by Ms. Ash.

Please do not draw this out any longer. It is quite obvious that Ms. Zunker is receiving direction from the legal department in how to respond to my attorney. The eventual outcome will be the same. Please think of the further damage that

this situation does to your credibility with our HSU and the officer staff who have little difficulty seeing Ms. Ash for what she is. I request that you consult with your superiors and let us sit down with my union steward or attorney or both, and settle this matter expeditiously.

I hope that it won't be too long before we can put all of this behind us and move forward to care for our inmates, as Margie, I, and a decently staffed HSU would want to.

A handwritten signature in cursive script that reads "Gerhard Witte, M.D.".

Gerhard Witte, M.D.

attachment: letter to Litscher

cc: Mr. Litscher, Mr. Verhagen, Ms. Zunker, Dr. Daley



Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
January 2, 2000

Jon E. Litscher, Secretary  
State of Wisconsin  
Department of Corrections  
149 E. Wilson St.  
P.O. Box 7925  
Madison, WI 53707-7925

Dear Mr. Litscher,

I am in receipt of your letter from December 16, 1999. Unfortunately the HSU staff, my professional colleagues, my union, and my attorney all disagree with you when you say that the DOC took action in response to the concerns of nearly the entire HSU staff at RCI. The DOC action, (actually deliberate inaction) you referred to consisted of a hands-off approach while the warden Mr. Morgan in essence destroyed the ability to function of his HSU. The fruits of the action you speak of are shown in the health record of an inmate who wrote seventeen requests for medical care of his heart condition over a three month period. It was only after he wrote to the warden that I was made aware of his problem and I saw him immediately. His condition was sufficiently severe to warrant an immediate referral to the cardiologist at the UW Hospital. His is but one example of hundreds in which inmates requested medical care and had these requests ignored because of a depleted HSU staff.

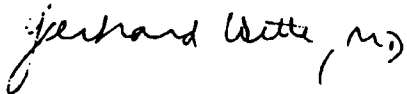
In your letter you use words such as "quest for improvement", "positive interactions", "positive work relations", "harmony", "tolerance of different viewpoints" etc. We seem to be talking past each other as the words I am using include "professional and personal defamation", "criminal conspiracy", and "managerial incompetence", and this does not begin to address the issue of the DOC's failure to insure that the HSU is able to carry out its mission of competent inmate care. You have one lawsuit on your hands and two others are shortly forthcoming. The time for feel-good psychobabble as delivered in our mediation conference has long passed. You are correct when you state that the time has come to "resolve the situations that lead to an uncomfortable work environment".

I know good medical care when I see it. I have provided quality medical care of a 30 year period and have a spotless personal and professional record, free of malpractice suits. I have made inquiries about Ms. Ash's work at her last job and suffice it to say that my lawyer found the information highly incriminating. There is no question in my mind that the inmates have received substandard medical care over the last many months, with the full knowledge of warden Morgan. The only

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positive thing that has emerged since my letter to you is that this woman has finally begun to do some hands-on work in the nursing station, thereby taking some of the pressure off the nurses. This is however too little and too late. I take your closing statement to heart in which you suggest that I do what I can "to be a positive influence on my surroundings and to aid others in bringing harmony to the workplace". I will do so by asking the warden to do what every competent professional has said he should have done in February, and that is to fire this divisive, malignant and incompetent woman.

This whole situation has affected my physical and emotional well-being. It has caused a terrific drain of strength which really should have been available for the care of my inmate population. Do you really want to have three lawsuits going on while you continue to defend this warden and his manager. I suggest that your legal department meet with me and my attorney and bring this whole issue to a rapid conclusion. Please refer to the letter I wrote to the warden outlining what I consider to be an equitable resolution of this problem. If you are truly interested in the effective operation of our HSU, then you will see to it that we are all rid of this unnecessary distraction as soon as possible. I have said hundreds of times that I love my work at RCI and the other institutions that I have worked at per the request of the DOC. I enjoy my professional colleagues and nurses at RCI; I consider them, with one exception, to be competent and conscientious employees who similarly held a high regard for their employer until this unfortunate situation with Ms. Ash developed.



Gerhard Witte, M.D.

attachment: letter to warden Morgan

cc: Mr. Verhagen, Ms. Zunker, Dr. Daley, Mr. Morgan

Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
January 6, 2000

Jon E. Litscher, Secretary  
Ken Morgan, Warden  
Sharon Zunker, Director  
George Daley, M.D.

Quotes directed to graduating physicians of Temple University, class of 1964:

1) *At a time when few things are called by their right names, when it is against the spirit of the times even to hint that an act may entail consequences, you are going to join a profession in which you will be paid for telling men the truth.*

Rudyard Kipling

2) *The physician who bringeth love and charity to the sick, if he be good and kind and learned and skilled, none can be better than he.*

Savonarola

3) *To overcome difficulties is to experience the full delight of existence.*

Schopenhauer

Nuremberg trials 1946: The physician must put his duty to humanity above his duty to the state.

Federal law: Physicians are legally obligated by the Federal Government to report cases of child, spouse and elder abuse. Inmates have a constitutional right to healthcare and it is the doctor's duty to report situations involving inmate neglect.

I have made every effort over the last ten months to document the steadily deteriorating health delivery system at RCI. I have tried to work within the system and I will continue to try to impress upon the Central Office the seriousness of the situation.

Mr. Litscher and upper management should ask these questions of the warden:

1) Is the healthcare of the inmates better since Ms. Ash has arrived?

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- 2) Has the morale and readiness of the HSU staff (which arguably already has the highest job demands and stress in the prison) been improved?
- 3) Should the warden be held responsible for the changes that have been made by his manager in whom he has 100% confidence (as repeatedly stated)?

To help answer these questions the following examples:  
To question 1):

I will give only three of hundreds of possible examples. Two involve my ability to see an inmate and one the follow-through on a medical order.

Example 1: (see attachment 1/[REDACTED]) Inmate with severe heart disease and worsening symptoms writes 17 blue notes over a period of three months in an attempt to see me. Finally he talks to the warden and I see the inmate within 24 hrs. An urgent referral to the UW Hospital is made.

Example 2: (attachment 2/[REDACTED]): Inmate has been at RCI since late September. He has sent in 15 blue notes to be seen and get his blood pressure medication. When he asks his sergeant in the unit why he is not being seen, he is told "They are backed up in the HSU". Why does the sergeant know this and not the warden?

Example 3: (attachment 3/[REDACTED]): Request for medication renewal. Two drugs which are used as a primary prevention strategy for hypertension and stroke are 1-2 months late in being filled. (There have been numerous worse examples)

Over the last two months I have had literally hundreds of inmates stop me as I walk through the halls, saying that no one is responding to their request for medical care and/or medication. I have finally begun to suggest that they write the warden or ICIs.

To question 2): Staffing

Three well qualified and prison experienced nurses left as a result of being either unwilling or unable to tolerate Ms. Ash's harassment. ("alternative management style"/warden). Nurse Tate, with nurse Frey, ran a competent evening 3-11PM shift which served the institution well. Ms. Ash decided to move these two nurses to the day shift which was perceived by many in the HSU as well as myself as clear cut harassment. Shortly thereafter Mr. Tate left. We now have only a single nurse staying till 9 PM who is clearly unable to do the work previously done by two nurses staying till 11 PM. Mr. Tate had regularly done the "chronic list" which selected out inmates with special needs, for example flu shots. With Mr. Tate's departure this process was severely impaired with the result that many high risk inmates did not get their state mandated flu shots. We are now in the middle of a major flu epidemic and I am finding inmates who are considered to be at high risk of death from viral pneumonia who have not been immunized. I am not ruling out the possibility of a death and this would have to be attributed to the

incompetence of the HSU manager. In previous years flu immunization programs ran flawlessly under Mr. Tate's direction. We had no high risk pneumonia hospitalizations or deaths.

Conclusions: We have lost Mrs. Meier, an NP with four years experience (She indicated her intention to return if Ms. Ash leaves). Mr. Tate (5 years experience at RCI) is gone. He also might return on the same condition. Mrs. Hutcheson (1 year experience, and showing signs of becoming an excellent prison nurse) is gone. In their places we have 2 ½ FTE nurses, only one of which has had previous prison experience. One of the three has already voiced her intention to leave because of Ms. Ash. From nurse Lundquist it has been heard that Ms. Ash plans to get rid of Mrs. Frey, a nurse with seven years experience. There is no medical merit whatsoever in removing this excellent nurse. It appears that Ms. Ash will attempt to drive away anybody who does not like her, regardless of their professional abilities.

For the first time in my life I am embarrassed by the inferior medical care being administered by a group in which I work. What do I get in return for ten months efforts at documenting this relentlessly deteriorating medical delivery system, but a letter from Ms. Zunker telling me that I am causing a "hostile environment" by trying to stay away from Ms. Ash in spite of the fact that she attempted to slander me. Her charge was considered to be ludicrous by everyone in the institution except the warden.

To question 3): Can the warden and the DOC really be proud of this situation? This is for you to answer.

Finally, on three occasions in the last few months, Ms. Ash has failed to carry through on a direct medical order from me. The last example involved her attempt to change a laboriously generated treatment plan that came from a cooperative effort between the dental department, Dr. Ripani, the head of the DOC dental unit, and myself. Reports of these incidents are being sent to the Wisconsin nursing licensing board.

A few final questions:

1) Mr. Morgan, you direct this prison with absolute authority. This is a position of ultimate trust as your supervisors "sign off" on anything you do. My request for an independent evaluation of Ms. Ash's behavior has been ignored. The founders of our political system have cautioned against the dangers of absolute power.

2) Ms. Zunker, what have you been doing to respond to these observations of inmate neglect?

3) Are there any other HSU in the system in a similar level of chaos?

4) Why did we change a system that seemed to serve us so well through the end of 1998? Why would anyone place the management of a medical service in the hands of someone without medical knowledge? Also, I have been informed

that the wardens have also wanted to hire and fire the doctors. Dr. Daley lobbied strongly against both of these changes. One would think that a doctor who runs a huge and successful independent practice association at St. Joseph's Hospital would have been listened to more seriously.

5) I don't recall any problems of this kind during the time that Ms. Zunker oversaw the HSUs. If she had been in charge she might well have listened to Dr. Daley's advice in February that Ms. Ash be fired immediately, and this whole sorry state of affairs could have been prevented.

*Gerhard Witte, M.D.*

Gerhard Witte, M.D.

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<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Received by <i>Please Print Clearly</i> <i>JAN 13 2000</i> B. Date of Delivery</p> <p><i>Jonathan Jensen</i> C. Signature</p> <p><input checked="" type="checkbox"/> JONATHAN JENSEN <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p><i>Jon Litshert</i>  <i>PO Box 7925</i>  <i>149 E. WALSON</i>  <i>KADISSA, WI 53707-7925</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Copy from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p><i>2324-252-120</i></p>

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129 a

1130 South Main St.  
Racine, WI 53403

February 5, 2000

TO WHOM IT MAY CONCERN:

My name is Cecilia Hutcherson-Smith. I was employed at Racine Correctional Institute from October 13, 1997 to February 26, 1999.

On February 19, 1999, the Health Service Manager, Sheridan Ash, called a meeting. The people present at the meeting were Terry Reyer, John Dunham, Carol Lundquist, and myself. Ms. Ash stated that Margie Meier would be excluded and Harvey Morgan who was currently off of the unit would be filled in later with details of our meeting. Dr. Witte was out of the institution for lunch. The meeting was opened up by Sheridan Ash saying, "I've decided to go after Dr. Witte. After much careful thought, of course, because I'm not sure I will have the backing of Administration. He personally threatened me." Ms. Ash stated that she needed our help by documenting anything we see Dr. Witte doing wrong, making note of any outrageous or unreasonable requests, and notifying her immediately of any of his demands so that she could document them on the computer and fill out an incident report. Carol Lundquist asked, "What kind of things would we report?" Ms. Ash stated, "Dr. Witte doesn't realize and has difficulty accepting me as his boss. He dropped a stack of charts on the floor for me to pick up because his cart wasn't outside of his office door. I am not his personal slave." John Dunham stated, "I look through his desk checking for things he may have left out or be doing wrong. I'll keep checking and let you know if I see anything." Ms. Ash asked us not to mention anything to Margie Meier or Dr. Witte.

On several occasions, Ms. Ash checked the appointment book regarding inmate's scheduled to see Dr. Witte because she stated that he had been falsifying his counts by listing more people than actually seen. I explained to Ms. Ash that he includes anyone that the Nurse Practitioner or I ask him to assess or evaluate. Ms. Ash requested that I check this daily and report to her directly. I informed her that due to the fact that I am the only nurse completing Sick Call, I would be unable to perform that duty unless John or Carol assisted with Sick call. Each time Ms. Ash made the same request, I gave her the same response.

On February 26, 1999, Ms. Ash requested that I fill out an incident report regarding the day Dr. Witte upset me so badly and we had an argument. I informed Ms. Ash that Dr. Witte and I did not have an argument and I verbalized my concerns to him at that time and in my view everything had been cleared between us since that day. Ms. Ash stated,

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-2-

"I'm disappointed to hear you say that Cecilia. The main reason I took on Dr. Witte was solely based on you. You were so upset that day and this puts me in a bind so as your supervisor I must insist that you write this letter. You make sure you put in there how demanding and degrading he acted towards you. I want that incident report on my desk before you leave. Insubordination is not a good thing to transfer on your record to RYOCF with you." I never told Ms. Ash any of the things she insisted that I write regarding Dr. Witte. After consulting with my previous manager by telephone, Courtney Greeley, I decided what to do. I went to Warden Morgan regarding the meeting Ms. Ash called in regards to Dr. Witte, the untrue accusations she wanted me to write in an incident report, and her threats of disciplinary actions if I didn't complete her requests. Warden Morgan stated, "Sheridan Ash has already called me and informed me of the whole story. I do not need to hear anything from you regarding the meeting or anything else. As far as I'm concerned, you are employed at RYOCF and will start on Monday and Sheridan Ash will be back at that time. So do not worry about anything and enjoy your transfer." I thanked him for his time and returned to my unit.

I worked in Exam Room #2 next to Dr. Witte the entire time I was employed at RCI. I never found him to be unapproachable, ill tempered, or slam things on the floor or make loud ridiculous demands towards anyone. I did witness Dr. Witte make it clear to the nursing staff and HSU Manager that labs that are STAT mean just that, clarify flu-like symptoms vs. Ketoacidosis, and lab results are to be reviewed in a timely fashion because too many critical lab values are being missed. He also made it clear that he is the Medical Director of this unit and he needs to be made aware of incidents that the Nursing Staff are unsure of or feel that are not within the scope of their medical training.

Sincerely,

Cecilia Hutcherson-Smith  
Registered Nurse



Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
March 7, 2000

Jon E. Litscher, Secretary  
State of Wisconsin  
Department of Corrections  
149 E. Wilson St.  
P.O. Box 7925  
Madison, WI 53707-7925

Dear Mr. Litscher,

Please do not interpret my failure to send Mr. Verhagen the material that I promised, as an indication that I will not move further along on my charges of gross incompetence on the part of the warden and his HSU manager Sheridan Ash. I have needed the last month to recover my emotional equilibrium. For the first time in nearly a year I am able to sleep well again, and have experienced a significant improvement in my posttraumatic stress disorder (PTSD) symptoms. Also, quite frankly, it is not my duty to fight my superiors to insure adequate staffing and adequate delivery of healthcare to our inmates. This is the warden's responsibility, but ultimately yours, and it fell into my hands by default. The DOC recently suspended two nurses at Taycheedah because they were a half hour late in seeing an inmate who then died. What should happen to DOC management that has been aware of the mess at RCI and did nothing for more than six months. Your letter questions whether I am including Ms. Zunker in my charge of incompetence. I have never felt Ms. Zunker to be anything other than a competent administrator. Whether she should or could have done anything is a matter for her conscience. None of my physician colleagues can understand the decision to put all health care personnel except the doctors, into the hands of the wardens, who have no medical training at all. The consequences of this policy change are reflected in a warden at Taycheedah who, according to the press, reportedly told her guards to call the captain on call to screen inmates' medical complaints, and a warden at RCI who watches a disturbed manager wreak havoc on a short staffed but still functioning HSU, driving it to the point where he endangers the health of inmates under his charge.

Quite frankly after dealing with this situation for the last year I have lost my trust in Mr. Morgan's competence to oversee the management of our HSU, and I am understandably uncomfortable with the thought of your office doing an independent investigation of this matter after such a protracted and painful delay.

I have heard today that Ms. Ash will be returning to RCI, because a nurse stated to me "her photo is again at the gatehouse". The warden, in the week after

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Ms. Ash's departure, reportedly had said: "Ms. Ash is on six weeks of stress leave and will be back." Should this be true, I will interpret it as a sign that the DOC has no interest in the management problems at RCI and plans a whitewash of the entire affair. At this point I will move my documentation directly to the involved committees in the Assembly and Senate and, based on their advice, to take this issue into the public arena involving the Madison and Milwaukee newspapers. I am not the "bad guy" in this affair. I have done everything I can to be a conscientious health care provider at RCI. I have gone out of my way to volunteer for extra duty in an effort to serve my employer and my supervisor Dr. Daley. Everything that I have done has been with the intention to bring credit to my unit, RCI, and the DOC in general. However I have been forced to stand by and watch the destruction of the professional lives of three good employees and watch a fourth become physically ill. During this time I have endured physical and emotional distress rising out of constant harassment and malicious slander. Mrs. Meier's constitution was not as strong as mine and she has been forced to terminate her employment. The state has constructively terminated Mrs. Meier's employment by failing to provide safety of her work environment. Her departure will pose an immense loss for me and the inmates.

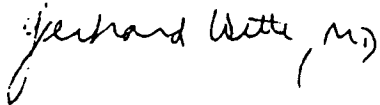
I have a few conditions for proceeding with the DOC's independent investigation:

- 1) Ms. Ash is not to return to RCI. The inmates and HSU staff have suffered enough at the hands of this impaired, mean spirited and totally dishonest woman.
- 2) I want to review the results of the independent investigation with Dr. Daley, my supervisor, my union representative Doug Swanson, and if I deem it necessary, an independent physician on the Milwaukee County Medical Society Ethics Committee, to verify that my charges have been given a fair hearing.
- 3) The investigation must include an evaluation of the warden's "unholy alliance" with Ms. Ash and his direct role in the deterioration of health care delivery in the HSU.
- 4) It must include a review of all the investigations performed by RCI security regarding Ms. Ash's behavior, and why the warden chose to ignore nearly everyone's counsel except his own. Was this a case of deliberate indifference (incompetence) or was there more involved? I have indicated to the warden that there are two charges made by HSU staff charging Ms. Ash with suborning perjury in an effort to discredit HSU staff. His standard response to all of these examples of Ms. Ash's totally reprehensible behavior was "It's just her different management style." Finally what is it about the relationship between Ms. Ash and the warden which caused her to state in front of witnesses that "the warden will believe me" when she defamed my professional and personal character by alleging that I put a rectally contaminated finger on her open soda can.

- 5) I want the assurance that I will suffer no retribution at the hands of the DOC or RCI because of my efforts to protect the health and welfare of the inmate population and the HSU staff.

Please respond promptly. I am ready to mail the evidence you requested if you agree to the conditions stated above. It is my duty as a physician to document this medical neglect. I will not compromise my professional integrity. It is for you to decide whether this should be aired internally or publicly.

Sincerely

Handwritten signature of Gerhard Witte, MD.

cc: Ms. Zunker, Dr. Daley, Doug Swanson

Gerhard Witte, M.D.,  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177  
March 13, 2000

Dear Mr. Litscher, Mr. Verhagen, Ms. Zunker,

When I came to RCI in April 1997 I told Dr. Daley that I would try to make this institution the best in the system. According to what Dr. Daley has told me, Margie Meier and I were successful. I have maintained a high quality of medical care within an HMO model, and if you ask the inmates they will tell you that they have been grateful for my efforts. Within a few days of my arrival I called warden Morgan and said that it was my aim to support him in every way that I could. I said that I realized the overriding importance of his security issues and wanted to provide medical care within that framework. I further stated that at the age of 59, I had no territorial aims. I was not there to carve out an empire and argue with security. He said he that he was gratified to hear my attitude. How have I been treated in return? I was attacked by a manager within six weeks of her arrival on the unit with a statement to the nursing staff that she was out to get rid of the doctor and NP (she was partially successful - the NP quit). I still have not heard a statement from the warden that she was acting without his approval. She subsequently attempted to suborn perjury from two nurses in an effort to discredit nurse Cedric Tate and me. In one case, she threatened the nurse with disciplinary action for not lying. Within the very recent past she "forced" (inmate's word) an inmate to write a letter to Ms. Zunker regarding his medical care. In the course of this she told the inmate that I was incompetent, among other things. She has spread slander of this nature to others within RCI and JCI. Finally, and for this I hold the warden responsible, she had the confidence to charge me with having taken a feces stained finger and touched her open soda can. This repulsive behavior is totally out of character with anything that I have done in my lifetime and will eventually be proven legally to have been highly improbable to have occurred under any circumstances. By condoning behavior of this kind, and tolerating the continued presence of this malignant pathological liar Mr. Morgan has demoralized and decimated his staff, driving away an outstanding NP and two highly qualified nurses. As a result the level of care mandated by the Constitution of the United States and the State of Wisconsin - DOC could no longer be provided. Nearly every staff member has personally complained to the warden and his assistant, and finally these complaints have gone forward to your office.

You should ask yourself the following question: would you have been better served if I and the nurses had said nothing and someone had died as a result of the warden's mismanagement? I think the answer to that question is obvious.

Ex. 17

At this point the damage can be contained through a conscientious in-house investigation. I have no desire to harm my employer by going outside the DOC. Lord knows that my written documentation over the last year has indicated a conscientious effort on my part to get resolution within the DOC. However, if no other option remains open to me I guarantee that I will take this matter to the legislature.

I would like to state again as I stated to you in my last letter: I have been and will continue to be a loyal and competent employee of the DOC. However as a physician I must be mindful that I am ethically bound to care for my patients, and this responsibility takes precedence over all others.

"I am not the problem", but I am committed to being part of the solution. Mr. Litscher said on the phone the other day that he knew that I was a good employee, and that he shared my desire that I continue here at RCI for as long as I could. This is the first time that I have heard such a comment from anybody in the management level other than Dr. Daley. A few things that you may not know about me: I have practiced medicine for 35 years. During that time I have earned the respect of my patients and colleagues for my conscientious, compassionate and competent care of the ill. Unlike Ms. Ash I have not changed my job every few years. I came to Milwaukee in 1975 and was with the same group of internists until 1997, two years after I sold my practice to another group. My professional record is spotless. I suspect that Ms. Zunker will be able to say that RCI has one of the lowest if not the lowest number of inmate complaints that end up at her desk. Not one of the few complaints that have been lodged against me have produced any evidence of substandard medical care. Nonetheless, Ms. Ash has repeatedly interfered in my medical duties. In so doing she has violated her nursing license. I have written the warden incident reports on multiple occasions and he has refused to act on them. Instead, the staff and I have been forced to sit through sensitivity meetings with a DOC mediator, listening to so much psychobabble while the warden and his mediator tried to force the staff to work with a thoroughly unqualified manager. The warden has seen fit to rubberstamp frivolous charges by Ms. Ash regarding other staff. In one case the use of the computer in the HSU by a dental technician, who Ash wanted to get rid of, was said to be a "serious" offense. Yet I have seen no action whatever on the part of the warden to control Ms. Ash's multiple breaches of conduct.

I have two non-negotiable demands:

- 1) There must be a full outside investigation of Ms. Ash. I believe that when completed this will provide the basis for her dismissal from state service.
- 2) The warden's behavior throughout Ms. Ash's tenure at RCI must be investigated. He has recklessly endangered the welfare of his staff and inmates by failing to make the most basic effort to understand the harm Ms. Ash was causing.

You should know that I will be filing documents to the nursing board to see that Ms. Ash loses her nursing license in the State of Wisconsin. I am continuing with my suit against Ms. Ash for malicious slander and willful character defamation. I have already spent \$ 900.- in attorney's fees and have incurred hundreds of dollars of as yet unpaid bills from a mental health professional who has helped me with my post-traumatic stress syndrome. I have used up most of my sick leave during a seven week stress leave ordered by my physician. This was absolutely necessary to protect my mental and physical health. The adverse consequences of Ms. Ash's behavior will be verified by my two doctors.

As a sign of goodwill from the state I would like the following done immediately:

- 1) Restoration of my sick leave. With the exception of three days that I have taken for my chronic back pain (degenerative disc disease and arthritis) all the other leave since February 1999 has been induced by the warden and Ms. Ash.
- 2) A letter from Ms. Zunker should be placed in my personnel file acknowledging that I have been a superior employee (refer to document which lists things that I have for the DOC), which Dr. Daley has already documented in my outstanding PPD's.
- 3) A statement that I will not be involuntarily transferred out of RCI, now or at any time in the future.

In return I will deliver all the documentation that I have regarding inmate health issues to Mr. Verhagen . These include, but are not limited to:

- 1) Staffing levels which at one point fell to single nurse coverage of two shifts. If that nurse had been unavailable there would have been no nurse in the institution.
- 2) Failure to do sick call for up to a week at a time.
- 3) The accumulation of hundreds of inmate requests for medical care and medicines which could not be processed due to a lack of staff. Any one of these could have resulted in a death. The state should consider itself extremely lucky that this did not occur.
- 4) An inmate with serious heart disease who placed 15 requests for medical care to the HSU over a three month period and who was only seen after he contacted the warden. (He was referred to the UW cardiology department on an emergency basis.) However this was not the end of this inmate's medical misadventures in the HSU.
- 5) An inmate who requested for three months that he see the doctor for medications for his hypertension (he had come from another institution).

- 6) Laboratory work getting to me several months late, delaying appropriate medical care.
- 7) Failure to complete the flu immunization program, including shots for a number of high risk asthma patients. This year's influenza outbreak has been associated with an increase of influenza associated pneumonia deaths. At this point I should make reference to the heavy-handed and intimidating behavior of assistant warden Dobberstein when, at a meeting called expressly to threaten Ms. Ash and myself with transfers out of RCI, he refused to let me bring up this issue of inadequate immunizations. He seemed to be only interested in following the warden's order to discipline us. At this point I briefly considered doing nothing further and letting Mr. Dobberstein deal with the resultant death of an inmate. But my medical ethics prevailed.
- 8) Failure to do intake on arrival to RCI. As a result an inmate who was found to be hypothyroid at another institution went six months before I saw his chart, made the diagnosis and started the correct treatment.
- 9) Failure to be able to staff a nurse's blood pressure clinic (I do not have the time to recheck every inmates borderline blood pressure reading).
- 10) Daily, on entering the building, inmates stopped me on my way up to my office asking me why they were not getting their medicines or being scheduled to see me. After listening to this for months I finally began to tell them to write ICIs and the warden.
- 11) In addition there must be hundreds of examples of medical care not given because nurse triage of the complaints was never made.

I am understandably concerned about the possibility of retaliation against me for having been an advocate for the health of the inmates as well as that of the HSU staff. My attorney has suggested that I file a whistle blower suit because that would protect me against retaliation. In this setting it is an act of good faith on my part to agree to an independent internal investigation of the warden and Ms. Ash. I do insist though that I will be permitted to examine these investigations with my supervisor (if Dr. Daley feels that this is appropriate for him to do so inasmuch as he is also a member of management), my union representative and if necessary, a member of the Medical Ethics Committee of the Milwaukee County Medical Society.

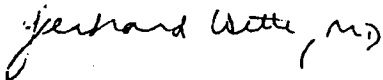
During his telephone call to me Mr. Litscher expressed the desire that I find a way to work with the warden. I wrote the warden a long time ago that I was not one to hold a grudge. I believe he has made some serious mistakes, but "to err is human and to forgive divine". I would hope that our relationship could be a partnership dedicated to the joint needs of security of the institution and healthcare for the inmates. During the year and a half before Ms. Ash's arrival I liked and respected the warden. I believe I can do so again in the future.

Lastly I believe that Mr. Litscher needs to meet with the medical staff from the other institutions to inform himself that the problems arising out of having the HSUs under the control of the wardens are not limited to RCI and TCI. How many more examples of this kind will it take to realize that Dr. Daley was correct when he lobbied so strongly against decentralizing health care in the DOC?

I also hope that he would look into the climate of confrontation that exists between the doctors and the nurses at many HSUs. It appears after my discussions with our union head Dr. Jim Thorpe that the state has initiated punitive actions against many of the doctors and dentists in the DOC. The results have been invariably that these professionals have been cleared of any wrongdoing, but the process has caused distrust and an unwillingness on the part of the doctors to "help out" the DOC when special needs arise. At this very point in time, it appears that Dr. Dasgupta and Dr. Springs are both being investigated. I have high respect of the medical competency of each of them. Dr. Springs deserves supplemental combat pay and sainthood for working in Taycheedah and not a reprimand. Dr. Wong considers himself lucky to have left there. A few people have already made the following statement to me, one which I consider in bad taste but which does reflect the grim and black humor of the staff at RCI. They have said that "Ms. Ash and warden Krenke deserve each other". I do not know warden Krenke but I feel strongly that no one could have done enough in life to deserve Ms. Ash.

My attorney and I also insist on some additional restitution from the state for the outrageous behavior of Ms. Ash and the warden's acquiescence. The time for a simple apology from Mr. Litscher regarding the abuse heaped on Mrs. Meier and myself has long since passed.

Respectfully

A handwritten signature in cursive script that reads "Gerhard Witte, M.D." with a small flourish at the end.

Gerhard Witte, M.D.



Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
May 10, 2000

Jon E. Litscher, Secretary  
State of Wisconsin  
Department of Corrections  
149 E. Wilson St.  
P.O. Box 7925  
Madison, WI 53707-7925

Dear Mr. Litscher,

It has been some three months since you sent Mr. Verhagen and Ms. Zunker to meet with Warden Morgan, Doug Swanson, my union rep, and myself. At that meeting Mr. Verhagen promised to investigate the warden's handling of the Ash affair. He also stated that Ms. Zunker would be putting a letter of commendation into my personnel file indicating the extent to which I have gone well beyond my job description in an effort to serve the DOC and my inmate patients. To date I have heard nothing other than that Ms. Ash is on stress leave and no one knows when she may return to RCI. As a result of your investigation you should have incontrovertible evidence of the following:

1) Ash decided after one month of work in the HSU that she would remove NP Meier and myself from our jobs.

2) She attempted to suborn perjury from two staff members in an effort to discredit others on the staff: Mrs. Hutcherson was asked to make false defamatory statements against me and Mrs. Carter was asked to lie about nurse Cedric Tate (this statement was confirmed by direct communication between nurse Carter and Ms. Zunker at the time of one of her visits to RCI). Both nurse Hutcherson and Tate left in disgust. Janet Frey, an excellent nurse in her upper sixties, who had been working full time, decided to go to half time because of Ms. Ash.

3) She attempted to enlist the assistance of Dr. Fred Will, our LTE psychiatrist in making negative statements about my competence. He declined and in fact has made multiple very complimentary statements about the quality of my medical care. In addition he told me to tell warden Morgan that he would be happy to discuss Ms. Ash's obvious character disorder with him, but the warden showed no interest.

4) When being unable to attack my medical competence, she decided to attack my personal integrity by claiming I placed a feces stained finger on her soda can. This was premeditated malicious slander, delivered with the full knowledge that the statement was a total fabrication.

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5) She did in fact get nurse Meier to go on extended sick leave in June, and me to go on stress leave in August on the urgent advice of my personal physician. A psychiatrist that I also consulted diagnosed a severe post-traumatic stress syndrome.

6) Finally in January, shortly before her departure from RCI she "forced" (inmate's word) to write a defamatory letter to Ms. Zunker, asking him to claim that he was getting inadequate medical care. Ms. Ash said to him that I was an "incompetent asshole" and that it was "his duty to help get rid of me". It is of concern to me that Ms. Ash decided to seek out an inmate in the housing unit managed by Linda Morgan, the warden's wife. The inmate said that he was acutely aware of the friendship of Ms. Ash and Mrs. Morgan, saying that Ash was frequently in the unit talking to her. After detailing all of this to me the inmate stated that he in fact felt that I was doing everything for him that could be done.

7) Through all of this Ms. Ash and the warden depleted the operating capability of the unit by the loss of the NP and 2.5 FTE nursing staff. Mrs. Carter was hired in July leaving a net loss of 2.5 positions without giving additional weight to the fact that one of these was my excellent NP colleague. These staff reductions took place in a unit which was already recognized to be understaffed by Ms. Zunker and Mrs. Berkley before the first departure.

8) The operational capability of the HSU was severely impacted. Sick call was suspended for a week at a time, inmate requests for medical care and drugs, collected by the hundreds, went unanswered. Laboratory and X-ray reports were months late getting entered into the charts for my review, ICIs were filed with the warden regarding inadequate medical care, and I was bombarded daily by inmates sitting along the hallway leading to my workstation asking me why they were not getting their medical care, to which I finally responded that they should write the warden directly. The low point was reached in December when nurse Dunham needed to do a double shift because he was the only nurse available in the institution. At the time when Taycheedah was dealing with an asthmatic's death, RCI did not have enough staff to complete it's flu immunization program directed at high risk patients.

9) Through all of this the warden did nothing. He can not plead ignorance as nearly every member of the staff repeatedly told him what was happening in the unit. I now question my long held charitable, but simple-minded, conclusion that he was not in some way involved in Ms. Ash's ongoing behavior. I understand that the warden was a social worker prior to advancing to this position. This is particularly deplorable as he has had special training in character disorders. Ms. Ash said again and again on the unit that she "wasn't worried and that the warden supported her 100%". My sense after multiple discussions with the warden was that this was indeed the case.

10) I will remind you that I have sent multiple registered letters to DOC central office and you detailing the effects of warden Morgan and Ash on the HSU. The lack of concern was evidenced by the way in which central office decided to

handle this situation. Ms. Ash and I were forced into sensitivity meetings, in the course of which my physical and emotional health deteriorated significantly. In one of my last letters to the warden I stated that it was unlikely that Ms. Ash would survive to the start of the new year (I was off by one month). There is simply no way that this pathological liar could have continued in her role as manager unless she had "owned the business", and her behavior suggested that she thought she did.

11) The warden's behavior represented gross incompetence. I have heard that Dr. Springs was given a disciplinary hearing because she swore out loud while sitting alone in her office. What would be the appropriate punishment for this warden and what is the responsibility of central office who did nothing to reign in his errant and arrogant behavior when repeatedly informed about the effect that his management had on the inmate's constitutional right to medical care. The warden's behavior shows more than simple medical neglect, it is gross and deliberate indifference to his responsibility to safeguard the health of the inmates entrusted to his care.

12) I believe that the data that I am sending you has potentially explosive political implications because this "apparent" indifference reaches the highest levels at the central office. I use the term "indifference" advisedly. Whereas a politically motivated outsider would see this as indifferent behavior, I believe it is the result of excessive authority in the hands of the wardens without appropriate accountability. I have repeatedly said that I have no desire to harm my employer. Every action on my part has spoken of the highest loyalty to my profession and state service. What was done between February and December when two nurses were quickly hired, filling 1.5 FTE positions? The answer is: mediation and sensitivity sessions between a characterologically disturbed manager and a demoralized staff. To date I have not received a copy of the letter which Mr. Verhagen promised would be put into my personnel file. The warden has already written me a note stating that I am "very good at what I do", and you, Mr. Litscher, called me personally to say that you realized that I was a "good doctor" and that you "wanted me to stay on as long as I wanted". Ms. Ash apparently continues to sit at home as a state employee. You have at hand all the data your legal department needs to dismiss her. Mr. Verhagen asked in the presence of the warden if I could continue to work with him. The answer is a categorical yes. However can I ever give him the unreserved trust that I did when I arrived. Unfortunately I must answer that with a qualified no, not at this time. The warden has made no attempt to apologize to me, now that all of this has come to light; in fact, he recently told Ms. Zunker that I was late getting to work even though I have never worked less than the required forty hours per week and usually considerably more.

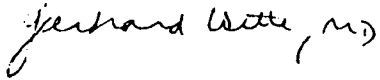
I do have a few positive concrete suggestions:

1) Make the half-time nursing position of nurse Kim Russell into a full time position. She and nurse Nygren are outstanding employees.

- 2) Nurse Tate and Russell are both interested in the manager position at RCI and I think they are both very well qualified.
- 3) Hire at least two additional nurses.
- 4) Encourage NP Meier to return to RCI. She and I worked extremely well together and I believe she would return.
- 5) Do not inflict Ms. Ash on any other facility in the state of Wisconsin.

It is only through the grace of God that an inmate fatality did not occur at RCI as a result of the warden's and Ms. Ash's collective behavior. The attached documentation shows just how lucky RCI and the DOC have been.

Sincerely



Gerhard Witte, M.D.

NOTE:

THIS LETTER NOT SENT BECAUSE ON 1-7/00, I RECEIVED LETTER  
KIM RUSSEN GOT THE JOB AS HSN MANAGER

Gerhard Witte, M.D.  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177  
October 26, 2000

Dear Ken,

I am writing you because of my concern that as the physician at RCI I appear to have no input into the selection of an HSN manager with whom I will need to work closely in the years to come. I believe that I am justified to be fearful of a process that permitted a woman as impaired as Ms. Ash to be hired. I talked to a high level employee at the Milwaukee Mental Health Complex who, speaking on condition of anonymity, said that Ms. Ash left her position there shortly before being fired. Yet, through what must have been a consummate interview of style over substance, she was hired at RCI.

The chaos in the prison medical system has been well described in the recent articles in the Milwaukee Journal. The relationship between doctors and nurse managers is strained at many institutions. At others there are dysfunctional relationships between doctors and nurse practitioners because of thoroughly misguided intentions of making them professional equals. Then there are the confrontations between security and the nursing staff at other institutions, all thoroughly described in the Journal articles. It is sad that the DOC appears to be unable to solve these personnel problems. I think that you and Chris Ellerd both know that I have gone out of my way to see that security concerns take precedence over any medical decision except that which endangers the life of the inmate. You should be also fully aware of my efforts to encourage staff harmony.

The result of Ms. Ash's tenure at RCI was that we lost two excellent nurses and an absolutely superb NP in Margie Meier. Mr. Verhagen made a really quite remarkable statement at a meeting involving Ms. Ash, Ms. Zunker, Mr. Dobberstein, and myself, when he said "people come and go" as if to say that the state had no interest whatever in keeping good employees. You have been in the prison system far longer than I and you surely have also heard the cynical statement made by many employees that the DOC sees to it that "they lose the good employees and they keep the bad". In the case of Mrs. Meier the institution in essence forced her out of work because of an intolerable working environment. The result of Mrs. Meier's departure has been an enormous increase in my stress level while trying to do both the job of the doctor and the NP since June 1999. A national organization of

Ex. 19

prison management has recommended a total of no more than 1000 inmates per doctor. At RCI we have 1500 and in addition we have a unique extra load because a sizable percentage of this population involves a rapid turnover of ATR inmates who demand full medical evaluations when they see the doctor for the first time. In essence we have been understaffed at 40-50% of the necessary level when considering the NP vacancy.

Within a day of my arrival in April 1997 I pledged you my total loyalty in making the RCI HSU the best in the penal system in Wisconsin, and in spite of my Ash experience I still stand behind that promise. I think it is time to hire someone from within RCI. In the case of Cedric Tate, I have known him for 3 1/2 years, and I have known Kim Russell for one year. Any negative information that you have about Cedric Tate came from a profoundly impaired nurse manager. I was saddened to see the disciplinary action taken against him at Ms. Ash's urging. Because of her profound incompetence Mr. Tate was required to work alone in a position that required two full time nurses. His disciplining is analogous to that of a soldier who is asked to fight on two fronts of a battlefield, who acts with courage and skill on one front and then is court-martialed because he doesn't have the time to do the same on the second front. Mr. Tate is a man who requires no affirmative action quota system to justify his hire. He may be young and short on experience by Ash's standards, yet I am confident that he would mature rapidly in this job as well as he has already demonstrated to me with his general nursing skills.

Kim Russell is a nurse with considerably more extensive clinical experience who has demonstrated excellent judgment. I believe her interpersonal skills would make her an effective manager. If length of experience is the overriding consideration, then she would be the preferred choice. Both of these individuals know who the weak members of the nursing staff are and will not tolerate substandard care as was the case of Ms. Ash in dealing with one nurse in particular.

Ken, I have always felt that you are a decent human being who made a terrible error in judgment, as a consequence of which I have suffered severe physical and emotional pain. In the vernacular, "I feel you owe me one". Please give my observations some weight. I believe that my long term experience with these two candidates is at the least equal to the DOC interview process if not superior. As I have told you before, I have no interest in building an empire in the HSU. I am totally there to serve your interests. I would hope that this is clear to you and that you would give me either of these candidates as a manager with whom I know that I can work harmoniously and effectively.

Sincerely

*Richard Watta*

Addendum:

Gerhard Witte, M.D.,  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177  
February 6, 2001

Chris Ellerd  
Director of Security, RCI

Dear Mr. Ellerd,

re: Gerald Saffold #374841

On February 2 Dr. Daley informed me that I was to be the subject of and investigation regarding my having talked to inmate Saffold's father. Kim's incident report correctly stated that I did not realize that I was not permitted to talk to an inmate's family regarding his health. I of course have understood that I am not to divulge the nature of an inmate's movement outside the institution. I have talked to the security unit at UW Hospital and verified that there were no family contacts until many days after his arrival there. This reinforces my recollection that I did not state when the inmate was going to UW. It certainly was not my intention to do so.

The inmate returned from UW on 2/4/01 after what has been the most prolonged hospitalization of any inmate that I sent to UW to date. When on 1/24/01 I initially talked to Dr. Updike, a senior staff physician in the UW hypertension department, he thought it unlikely that my diagnosis was correct. As is turned out however, I did in fact diagnose a medical rarity, a condition that I have never before seen in 30 years of medical practice, a hormone producing tumor of the adrenal gland. This diagnosis, which had escaped all of his previous doctors, has permitted the administration of correct medication and his blood pressure is now normal. I felt it imperative to do everything in my power to get the patient to UW immediately. I realize in retrospect that although my motive was appropriate, I should have had this call, innocuous as it was, go through the HSU manager or security.

*Gerhard Witte, M.D.*

Ex. 20

Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260

February 6, ~~2000~~  
2001

Jon E. Litscher, Secretary  
State of Wisconsin  
Department of Corrections  
149 E. Wilson St.  
P.O. Box 7925  
Madison, WI 53707-7925

Dear Mr. Litscher,

Dr. George Daley, my supervisor, was directed to come to RCI on 2/2/01 to inform me that I was to undergo a formal investigation of an action which I detailed in a letter dictated from notes made one half hour after a meeting with HSU manager Russell and lieutenant Loman. My behavior was driven by a sincere concern for the welfare of my patient whose severe hypertension was the worst I had seen in 30 years of practice, and I believe I acted to safeguard the security of the prisoner and the institution. As noted in the letter to Mr. Ellerd, my diagnosis of the inmate has been confirmed as a very rare disease, and he is finally receiving the correct treatment (see attached letter to Mr. Ellerd). The timing of this investigation is conspicuous for its lack of sensitivity as I had just worked numerous hours of overtime over the preceding weeks at the request of the HSU manager.

The incompetence of warden Morgan dealing with the previous HSU manager Sheridan Ash, a mentally impaired woman who drove away three members of an already depleted staff, resulting in dangerous understaffing and serious incidents of medical neglect of legitimate inmate health issues, has been thoroughly detailed to you in previous letters. She was eventually let go, but not before having had a serious deleterious effect on my health and causing the constructive termination of Margie Meier, a superb NP. Mrs. Meier recently wrote a letter requesting reinstatement to her position and the warden has refused that request.

In June of 2000 I developed a motor neuron disease, which is a variant of Lou Gehrig's disease. I have been terrified because I know all too well the consequences of this illness. It is invariably fatal. My disease has plateaued for the moment, but I find that I need extra rest, and I notice that stress causes a marked

Ex. 21



increase in my muscle irritability. It is the opinion of a forensic neuro-psychiatrist that this disease has been significantly aggravated, if not necessarily caused by the stress of the previous year and a half. Although Ms. Ash left in February, I was continually told that she would be returning by June. This was particularly stressful for me, and as I stated, the illness appeared suddenly in June.

At the meeting I had with Mr. Verhagen I indicated that I had detailed information of medical neglect of our inmate population at RCI. I sincerely believe that the Taycheedah issue pales by comparison to the events at RCI, because they involve a protracted period of deliberate indifference by the warden and his superiors. One might charitably say that this is due to the desire of the DOC not to interfere with the warden, but the consequences of deliberate medical neglect remain. I have had a lifetime record of loyalty to those with whom I work. I have been reluctant to share this information with anyone on the outside. However this latest decision to put me in front of a institution inquiry smacks of retaliation and vindictiveness. Anyone reading the attached letter to Mr. Ellerd would recognize that at worst I had made an innocent mistake. I have flashbacks of warden Morgan's outrageous insistence that I attend a sensitivity meeting with Ash with the intent of forcing me to work with her only three days after she had slandered me, claiming that I had stuck a feces stained finger on her soda can.

Security staff that I consider friends speaking on condition of anonymity, have stated that I have made enemies at RCI. I would ask you again who the true enemy is here. Is it a doctor who has tried to protect the institution and the DOC from damage done by a warden who by his behavior indicated that he didn't care a whit about the health of the inmates entrusted to his care, or the warden that placed the doctor in that position? I would include Mr. Dobberstein in the charge of dereliction of duty, as he sat and listened for hours to complaints by the staff of inmate of understaffing and inmate neglect and did nothing. He had a duty to defend the inmates against the deliberate neglect of his superior. It was only through a monumental effort on my part to constantly triage patients and see those unable to be seen by a depleted nursing staff, that a catastrophe of the kind seen at Taycheedah did not happen at RCI. I was gratified by your telephone call when you said, you "understood the situation" here and assured me that you wanted me to stay at RCI as long as I wanted to work. To date I have not received an apology from the warden, much less his thanks for helping him to avoid significant damage to his career, as has happened to the previous warden at Taycheedah. I have also not received a letter commending my efforts on behalf of the DOC that was promised to me by Mr. Verhagen. That letter was to describe my efforts to be a superior employee. I believe that you and I can reasonably agree that I am not required to sacrifice my health, my reputation and very livelihood by caving under the tremendous pressure applied by an incompetent warden.

I sit here writing this letter realizing that I am to undergo an inquisition for an event of no serious consequence, while my very silence has served to protect the

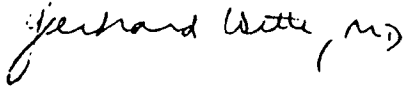
warden, his deputy, and the DOC. The deputy warden who is to chair this inquiry, is the same one who forced me to attend multiple meetings with Ms. Ash.

Mr. Casperson was present at our last physician's meeting and spoke very eloquently about the fact that the DOC values its physicians and respects their commitment to providing medical care under very difficult circumstances. Nonetheless those very physicians sat there with smoldering ire because many had been the victims of totally unfounded accusations from the DOC. Many of the doctors have indicated to me that they would not lift a finger to help the DOC out of any difficulty. It is the feeling of all of the doctors that much of the current poisonous atmosphere is due to the decision to put health care under the control of the wardens, who are not trained for such a responsibility. Can you honestly say that you would want to practice medicine under the RCI or previous Taycheedah warden? Nonetheless, my record has indicated an unfailing loyalty to my employer and his mission. Mr. Casperson has his work cut out for him if he intends to improve physician morale.

I reiterate that my statement of the warden's incompetence refers only to his dealings with the medical unit. I sincerely doubt that Ms. Zunker, for whom I have great respect, would have handled the situation at RCI as has this warden. My transgression here at RCI in regard to this latest issue arises from my efforts to protect the inmates and the institution. I recall your attention to deputy Dobberstein's words "we can't afford a bad outcome" (letter to Ellerd). I now need to deal with a chronic disease with an uncertain prognosis and ongoing stress here at RCI. My patience is at an absolute end. I can not remain silent any longer. If the warden insists on putting me through a formal inquiry on this matter, I intend to contact the appropriate committees in Madison and the press in both Madison and Milwaukee. I have finally begun to ask myself the question that my colleagues have put to me repeatedly: "Why don't you go public with this information?" I fear that by not doing so, I am placing myself at risk at this stage for continued harassment by the warden and retribution by the DOC. It is an act of good faith to ask you to broker a solution here, because I would have permanent legal protection from retaliation with a whistle blower action. I insist on letters as per the enclosed formats, and that these are entered into my personnel file with copies sent to me. Anything less than this response to my request would mean that the DOC really doesn't care what I have to say. In that event, on the day that I get my announcement of my disciplinary investigation, I will send all my documentation to the aforementioned parties. On the other hand, once that I receive these letters I will send my complete file to Mr. Verhagen. I will expect that an independent investigation is undertaken and that if my charges support everything that I have stated, that letters of reprimand are entered into Mr. Morgan's and Mr. Dobberstein's personnel file. Mr. Morgan at one of his early meetings with the staff to discuss the Ash affair stated: "I don't like to write anything down on paper." Having worked under his administration for almost 4 years I can now see

why. On the other hand, doctors have long been taught that they need to write everything down, and I have.

Sincerely

A handwritten signature in cursive script that reads "Gerhard Witte, M.D.".

Gerhard Witte, M.D.

attachments: letter to Mr. Ellerd  
format letter DOC  
format letter warden

cc: Ms. Zunker, Dr. Daley

copy of this fax to follow by certified mail.

Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
T (414) 964-4837  
F (414) 964-2004  
June 18, 2001

Jon E. Litscher, Secretary  
State of Wisconsin  
Department of Corrections  
149 E. Wilson St.  
P.O. Box 7925  
Madison, WI 53707-7925

Dear Mr. Litscher,

On Friday, June 15 2001, I was informed by telephone by Annette Schubert that I am to be the subject of *another* formal investigation, the second within the last few months. From the complaint that was faxed to me, I only know that it involves DOC work rule #13. I was told that the investigation would take place on Monday, June 18. I immediately attempted to contact my union representative, only to discover that he was out of the office for the day. I relayed this to Mrs. Schubert, and she told me to call him on Monday morning and see that he was there four hours later. I found this to be an unreasonable demand suggesting as it did an effort to coax me into a meeting without representation. I have no idea as to what this complaint involves but I see it as another example of personal harassment. As you well know our HSU is chronically understaffed and the stress level is extraordinary. The whole staff recently sent you a letter dealing with shortages in the HSU. I have heard indirectly that the departmental response was "why can't the manager control her employees?" In fact manager Russell is extraordinarily conscientious and competent. Unlike Ms. Ash she has regularly worked at the side of the nurses doing whatever needed to be done. She is now contemplating having only a single shift because of insufficient staff. Our new hire NP left after a month because the state's wage was \$ 14,000 less than the identical county position. He told me on multiple occasions how much he enjoyed our collaboration. Our excellent previous NP Margie Meier has reapplied for her position after an extensive medical leave prompted by the constructive termination of her job. Our senior nurse in terms of service and an absolutely superb clinician is changing locations. Nearly every other nurse in the unit is talking of leaving

Ex. 22

because the workload exceeds even the most conscientious attempt to handle it and the perception is clear that if something goes wrong the nurse will be punished. Tempers are short and staff are exquisitely sensitive to the slightest irritation. I feel that I am the only individual on the unit who does not permit his emotions to get in the way of his job. Because I recognize the immense stress I quietly accept the frequent rude word or failure to follow a medical order because soon thereafter I get an apology and the job gets done. Nurse manager Russell told us in her first meeting that she wanted the staff to address all concerns among each other first. I have done this but have felt that in spite of the most tactful approach the observations are not always well accepted. I don't know if a comment of a corrective nature made by me triggered this complaint. I thought that I had a highly respectful and cordial working relationship with all the HSU staff, however this latest episode taking place in our highly stressed HSU indicates that one can never assume that. I do see that from this point forward I will never say another critical word, leaving this to manager Russell. Obviously the other party in this complaint decided not to address me directly first, and instead I am facing another demeaning and degrading institutional review. I have never in my life been accused of any kind of harassment such as listed in rule 13, and at age 63 I am not about to start.

In a previous letter to you I asked you "who the enemy was". I have done the best that I can to bring credit to myself and the state as noted in before. In return I spent a year and a half suffering under the most morally corrupt and incompetent human being I have ever met. Warden Morgan can be reasonably expected to have either known or should have known this. Throughout Ash's service nearly every member of the HSU medical and dental departments either wrote or talked to him. In spite of this he displayed a reckless disregard for his duties as supervisor of the HSU. He can thank his lucky stars and my devotion to my job that there was not an inmate death which would have caused serious repercussions like those at Taycheedah. I don't know if you can imagine what it is like to attempt to practice good medicine while being hampered by a decimated medical staff and a vicious Ms. Ash.

To say that the year and a half dealing with Ms. Ash took a significant toll on my mental and physical health is not an overstatement.

Then we had the recent Saffold episode in which I was ordered to participate in an investigation instead of recognition for the effective way with which I diagnosed and treated the patient's unusual condition. I would have expected that the security director come up to my office and informally discuss any concerns that he had, professional to professional. I have had many contacts with Mr. Ellerd and have frequently expressed to him my desire to practice medicine within the regulations of prison security. You must appreciate my frame of mind. I had sat through a number of meetings in which I was being pressured to work with Ms. Ash under threat of being transferred out of the institution, while management

stubbornly refused to listen to my quality of care concerns. Among the many possible examples of this the following three episodes come especially to mind:

1) a meeting ordered with Ms. Ash in which we were told we needed to work with each other a day after she claimed that I had placed my feces stained finger on her soda can.

2) A meeting with Ash, Dobberstein and Zunker in which I was forcefully told to shut up, when because on an expected community-wide influenza outbreak I stated that we lacked the staffing to immunize our high risk patients, many of whom were in such fragile health that there was a real risk of death.

3) Ash's last desperate attempt at discrediting me involved involve suborning perjury from an inmate residing on the unit of the warden's wife. Ms. Ash in essence threatened him into writing a defamatory letter about me to Ms. Zunker. When I called him up to see why his previous level of satisfaction with my treatment had deteriorated to the point that he had to write to Ms. Zunker, he admitted that he had felt coerced into writing the letter. He has given me a signed statement which mirrors a statement given an investigating officer who interviewed him at the demand Mr. Verhagen. He stated that he was afraid of retaliation from the warden's wife because he thought that she and Ash were friends. During her whole tenure at RCI Ms Ash was overheard several times to say " I am not worried, the warden is 100% behind me" at a time when few others seemed unable to see her for what she was. On the day that I commenced me stress leave I called the warden from home again listing all of the problems and I asked him if Ms. Ash still enjoyed his full support, and he said yes. ✓

It should come as no surprise that at this stage I am highly suspicious of any punitive action against me. I feel that the warden has backed me against a wall. I think of these last two investigations and wonder at this rate how many more I can expect to receive in future years. Because of this I asked Mr. Verhagen, who you sent to RCI for the Ash investigation, to draft a letter of commendation to be placed into my personal file, detailing the many responsibilities I took over beyond my duties at RCI. Mr. Verhagen stated that he would be delighted to do this and Ms. Zunker would draft the letter. When I talked to her about this a few months ago at the time of the ████████ investigation, I was dismayed to hear from her that she didn't recall any such discussion.

Please do not accept the following as a threat in any way. I have only a few options open to me. I must try to safeguard my responsibility to my patients and the security of my job and family. I have extensive evidence of what I consider to be improper behavior by the warden and failure, in spite of numerous efforts on my part, to have the central office recognize the consequences of their neglect of inmate health. Please be certain that I have documentation to support my statements. At this stage I sense ongoing retaliation in spite of the fact that my silence has protected the warden and the DOC. I have the option of continuing to keep silent and sit on the edge of my chair waiting for the next investigation, or

follow my conscience and open this matter to public scrutiny. My oath of integrity as a physician would command me to do the latter.

I have the following suggestions regarding a solution to this matter:

1) The letter of commendation already promised by Mr. Verhagen should be written, entered in to my personnel file and a certified copy of the entire file should be sent to me. I would like the statement to include specific reference to my tireless efforts to inform everyone about the real and potential problems caused by the Ash-engendered reduction in staff.

2) A letter of apology from the warden with his guarantee that he will seek a collaborative effort with me in the provision of the best possible health care of the inmates, and his guarantee that I will suffer no harassment for efforts that I made and must continue to make to be a responsible physician. Further that he will do whatever he can to help me serve him well as has been my intention since my arrival.

3) The promise that I will have an open line to the DOC management in the event that I perceive the no harassment promise is broken.

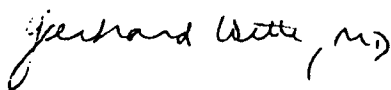
In the absence of this I see no other option to protect myself other than move forward with a whistleblower action, because I feel that this would give me better protection from future harassment. I repeat that this is not a threat but rather an existential reality for me.

I close by saying that my doctor has recommended that I take a medical leave.

I have never talked to you personally but I enjoyed your speeches at various meetings. The last thing I want to do is to harm you professionally. I recall with gratitude your call to me last spring when you said you knew I was a good doctor trying to do a good job for the DOC and that you wanted me to continue as long as I wanted.

I can be reached at home at the telephone numbers listed above.

Sincerely



Gerhard Witte, M.D.

cc: Governor McCallum (*was not sent*)

A copy of this letter will be forwarded via registered mail.

[7/23/01 *To date no response from anyone at DOC*]

Gerhard Witte, M.D.  
4622 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
July 17, 2001

Jon E. Litscher, Secretary  
State of Wisconsin  
Department of Corrections  
149 E. Wilson St.  
P.O. Box 7925  
Madison, WI 53707-7925

Dear Mr. Litscher,

It is out of loyalty to my employer and my patients that I find it necessary to write you this latest letter. I must again warn the central office that the level of nursing staff at RCI has fallen to a dangerous level. Today we had two experienced nurses and an LTE nurse available to cover a sixteen-hour shift. Sick call needed to be suspended again. Not since Ms. Ash's tenure has staffing been so inadequate. For the last two months, I have often seen inmates in the halls; who have stopped me to ask why they are not receiving their medications, being seen by either the nurses, myself, or the nurse practitioner. In fact, the last NP left after only one month because he had received a financial package that was over \$10,000 better than that offered by RCI. He wrote me a kind letter stating that he was sorry not to be able to continue our professional relationship. The previous excellent NP, Margie Meier, was wrongfully forced into resigning her position; when Ms. Ash later left, Mrs. Meier applied for reinstatement but was refused. The warden decided to leave the unit understaffed from June of 1999 until now, save the one month mentioned above. I simply do not understand the warden's unwillingness to adequately staff the HSU, and the failure of upper-level management to see that he does. Every other institution that I know is sufficiently staffed. RCI currently has four and one-half regularly staffed nurses and one LTE for a total of 1500 inmates. Taycheedah has two NPs, eight RNs, one LTE-RN, and one LPN for 600 inmates. Taycheedah is able to staff the institution 24/7 with three eight-hour shifts, whereas RCI is unable to staff more than a total of ten hours per day. The staffing ratio at Taycheedah is 50 inmates per nurse, while at RCI it is currently a shocking 350 inmates per nurse.

The situation at RCI is a disaster waiting to happen. Instead of supporting a conscientious and competent doctor, the prison and central office continue with their harassment and retaliation against me for pointing out RCI's critical understaffing and Ms. Ash's gross misconduct. The collective HSU staff at RCI has already written you a letter about the dangerous state of affairs, and asking for help. I have heard from HSU manager Russell that she has already made every possible effort to warn Mr. Casperson of this situation. She is working overtime without the hope of getting comp time off, because the HSU cannot do without her.

In spite of the enormous stress under which I am being asked to perform at the moment, I continue to provide the highest level of care. As I have stated before, however, I can accept no responsibility for medical failures that result from the HSU's inability to triage patients to me, or because I cannot do the work of both an NP and physician.

I close by restating that I am deeply committed to the care of my patients, and hope that this matter of understaffing can be speedily remedied.

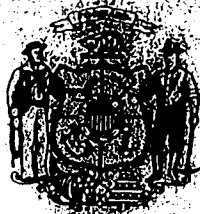
Sincerely,

Ex. 23

Gerhard Witte, M.D.



MEMO



TO  
OFFICE  
CONT

State of Wisconsin  
Department of Corrections

FROM  
G WITTE  
MEMO DATE  
3/4/03

- Per your request
- For your information
- For your comment
- Take action

PLEASE HAVE AN INMATE IN THE  
WAITING ROOM READY TO BE SEEN AT 8 AM  
AND 1 PM. HAVE ANOTHER INMATE AVAILABLE  
AS SOON AS I HAVE FINISHED WITH THE FIRST  
TELL INMATE WAITING THAT DUE TO COMPLEXITY OF  
PROBLEM, WAIT TIME COULD BE 15 TO 45 MINUTES  
PLEASE COORDINATE WITH M BR RUSSELL

COPY  
RUSSELL  
DOC-1146(07/99)

IT IS TOTALLY UNACCEPTABLE TO HAVE NO PATIENT  
FOR ME TO SEE

MEMO



TO  
KIM

State of Wisconsin  
Department of Corrections

FROM  
WITTE  
MEMO DATE  
3/4/03

- Per your request
- For your information
- For your comment
- Take action

I RETURNED YESTERDAY AT 2:30 AFTER  
FINISHING MY SECURITY TRAINING. I SAW  
MANY FLAGGED CHARTS IN MR JOSEPH'S ROOM. I  
SAW NONE IN MINE. I LEFT A MESSAGE ON  
YOUR VOICE MAIL SAYING I HAD NOTHING TO DO  
AT 3 PM. THE FLAGGED CHARTS WERE PUT IN MY OFFICE  
I STAYED TILL 10:20 AND DID 16.  
TODAY I AM AT MY DESK HAVE 9  
BUT NO INMATES. I HAVE TALKED TO TO  
CONT MULTIPLE TIMES DURING THE LAST

Ex. 24

03 NUR 149

Gerhard Witte, M.D.  
4822 N. Wilshire Rd.  
Milwaukee, WI 53211-1260  
June 9, 2003  
Phone (414) 964-4837  
Fax (414) 964-2004

State of Wisconsin  
Department of Regulation and Licensing  
Division of Enforcement  
1400 E. Washington Ave  
Madison, WI 53703-3041

re: 1) Unprofessional conduct by Ms. Kim Russell, nurse manager,  
and others under her charge at the Racine Correctional Institution

Gentlemen:

I was the physician in charge of 1400 inmates at the Racine Correctional Institution (RCI) from 3/31/97 to 7/31/01. During this time, I repeatedly appealed to the warden at RCI and his superiors in Madison to improve nursing staffing and quality of care. In all of my years in medical practice I have never seen medical care delivered to such a low level because of the deliberate behavior of the warden in depleting his nursing staff, and a Central Office that seemed to be either powerless or disinterested in compelling him to change his behavior.

The case involves a patient with a prosthetic heart valve replacement who required prolonged anticoagulation. He entered RCI on 4/25/01, and was continued on the dose of Coumadin ordered by his cardiologist on the outside. I ordered a PT/INR to be done on this patient on 5/9/01. The test was drawn on 5/11, two days after I had wanted it done. An attempt was made by the lab to call the critical lab value to the HSU on that evening, however no one answered the telephone. That report was then faxed on the morning of 5/12/01. Subsequently on the same morning another call was made to Ms. Russell, the HSU manager, informing her of the critical value. She neither made the required nursing entry into the chart nor contacted the physician on call, which violated both written DOC policy and general nursing practice in responding to a critical lab value. In so doing, she exposed the inmate to three additional days of Coumadin at an excessive dose, thereby placing him at risk of a serious hemorrhage and even death. I first saw the lab report indicating a PT/INR of 7.3 on Monday, 5/14/01. At this point I ordered the next two days of Coumadin withheld and the daily dose then reduced to

Ex. 25

7.5mg/day which was less than his 7.5 - 9mg range on the outside. On 5/23 another PT/INR was drawn and was still too high (6.2). I ordered a further withholding of two days of Coumadin and then a dose reduction to 5mg/day as well as another PT/INR to be drawn on 6/2/01. During this time I had not been seeing the patient inasmuch as he was not bleeding when I initially saw him on 4/25/01. I had instructed him at the time of his first visit to let the HSU know if he was having any untoward side effects from his medication. On 5/29 I saw the patient in the office for the second time. He stated that he had been experiencing a period of prolonged bleeding into his skin and that he had made numerous requests for medical attention by sending "blue slips" to the HSU. (A "blue slip" is a handwritten note on an official form which is the only method by which an inmate can request medical attention.) He received no response to any of these requests. He did relay, however, that over the previous week the ecchymoses had begun to clear, consistent with my falling Coumadin dose. Had I known that he was bleeding I would have immediately ordered Vitamin K. As it was I followed standard medical practice which consisted of skipping two days of Coumadin followed by a significant drug reduction and more frequent PT/INR tests. At the conclusion of my 5/29 examination I ordered the inmate to return on 6/5, three days after the PT/INR already scheduled for 6/2. I did not get to see the inmate on 6/5, and the lab test was not done on 6/2. In fact the lab work was done on 6/12, and then failed to be entered into the chart and given to me until 7/3, a full month after the test had been ordered. At this time the PT/INR was in the sub-therapeutic range. However, I decided to await the result of the next scheduled laboratory draw, due 5 days later on 7/8. This test was also not performed (in fact, a whole month went by until the following monthly test was done).

To summarize: These are the gross nursing errors in this single case.

- 1) Office visits scheduled up to three weeks later than ordered.
- 2) Lab tests either done late or not at all and then lost in the office with up to a one month delay in getting a medical report into the chart and to me.
- 3) The absolutely egregious behavior of an HSU manager who takes the report of a critical lab value and does absolutely nothing with it, thereby placing the patient at high risk of serious bleeding or death because his dose is not immediately reduced.
- 4) Recurrent requests for medical care detailing serious bleeding that not even a first year nursing student would ignore.
- 5) All of these together placing a patient at great risk of a catastrophic medical complication from over-anticoagulation.

Ms. Russell bears full responsibility for the nursing care delivered to this inmate. It was under her direct supervision that the five above noted abuses occurred. She failed in her supervisory duty which was to ensure that my medical orders were carried out. She also contributed significantly to the complications

that this patient suffered due to her failure to promptly report to me the dangerously abnormal laboratory value. I have submitted this data to Mr. Greer, the head of the Bureau of Health Services of the Department of Corrections and the Medical Director, Dr. David Burnett. They have decided not to pursue this matter.

You should know that the Department of Corrections fired me because of my "medical mismanagement" of this case. I reviewed my management with a university based hematologist and he found my medical management to be entirely appropriate. An arbitrator found that this case as well others brought forth by the State did not justify this action and I was fully reinstated. To date the only action that the State has taken has been to reprimand me for not realizing that my medical orders had been ignored.

This is but the first in a large number of cases that I will be submitting, detailing nursing care under the direction of Mgr. Russell.

*Richard White, MD*

**Jim Doyle**  
Governor

**Matthew J. Frank**  
Secretary



**State of Wisconsin**  
**Department of Corrections**

Mailing Address  
Bureau of Health Serv  
3099 E. Washington A  
Post Office Box 7925  
Madison, WI 53707-7  
Telephone (608) 240-5  
Fax (608) 240-3

July 11, 2003

To: Gerhard Witte, MD

From: David Burnett, MD

Subject: **Predisciplinary Meeting**

This is to serve as notice that you have the right to participate in a predisciplinary meeting. This meeting will take place at the Wisconsin Federation of Teachers Office, 1334 Applegate Road, Madison, WI on:

**Date: 7/15/03**

**Time: To immediately follow the previously scheduled meeting at 9:00 AM**

The purpose of this meeting is to discuss possible violations of work rules #4 and #13. These work rules prohibit the following:

- #4 Negligence in performance of assigned duties
- #13 Intimidating, interfering with, harassing (including sexual or racial harassment), demeaning, or using abusive language in dealing with others.

Specifically, we wish to discuss your interactions with Jean Carlson, RCJ Nurse Practitioner, on June 12, 2003 in which you humiliated her in front of an inmate and the events which led up to that incident.

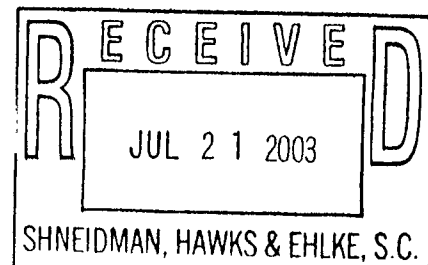
Discipline may be taken as a result of the meeting.

You are entitled to union representation at this meeting. Your union representative, Doug Swanson will be present. You have the right to a brief period of time upon request prior to the meeting to consult with the union representative. This interview is confidential. Informing others (excluding the union) about the content of this meeting may result in further discipline.

Cc: WPDA  
File:

Delivered to employee on 7/11/03 by *Smallick*

Ex. 26



**Jim Doyle**  
Governor

**Matthew J. Frank**  
Secretary



**State of Wisconsin**  
**Department of Corrections**

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Mailing Address  
Bureau of Health Serv  
3099 E. Washington A  
Post Office Box 7925  
Madison, WI 53707-7  
Telephone (608) 240-5  
Fax (608) 240-3

July 11, 2003

To: Gerhard Witte, MD

From: David Burnett, MD

Subject: **Predisciplinary Meeting on July 15, 2003**

Additional detail regarding the incident on June 12, 2003 includes the following:

On June 12, you came into the nurse practitioner's office and asked her to come and see an interesting case. She came to your exam room and you introduced her to the inmate and told the inmate that you wanted her to examine him. You then told the inmate to drop his pants and expose a part of his anatomy which he did. This occurred after you had been told two days earlier by the nurse practitioner that the practice at RCI is for male practitioners to perform rectal and genital exams due to the potential for abuse of the situation by the inmate. You indicated to her that you understood that and would remember that.

Cc: WPDA

File: Delivered to employee on 7/14/03 by Wallace

**Jim Doyle**  
Governor

**Matthew J. Frank**  
Secretary



**Mailing Address**  
Bureau of Health Services  
3099 E. Washington Ave.  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 240-5120  
Fax (608) 240-3311

## State of Wisconsin Department of Corrections

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July 15, 2003

To: Gerhard Witte, MD

From: David E. Burnett, MD, MMM  
Medical Director

Re: Job Instructions

The following are work expectations that you are expected to meet.

- Quality of work performance:
  1. The inmate medical record is to be used for that inmate's medical information and to communicate appropriate orders. You are not to communicate inappropriate opinions regarding events in the HSU, to point out alleged mistakes or editorialize over Class III denials. You are to communicate clinical facts based on the encounter and necessary orders. Errors are to be reported by incident report to supervisory staff including the HSU Manager.
  2. Do not add on orders when an order has already been taken off as that may get missed by staff.
  3. Use unit meetings to teach staff regarding clinical cases.
  4. Do not wait around for staff to find everything immediately, move on to another task or patient.
  5. You are not to photocopy medical records and remove them from the HSU. Photocopying should be done by clerical staff. ECG originals are to be placed in the chart.
  6. Personal phone calls are to be made only in an emergency or urgent matters.
  7. No personal notes are to be taken at work.
- Interpersonal behavior:
  1. Do not stand over staff and violate their personal space.
  2. When holding conversations on the phone or with other staff members send the inmate out of your room.

These are in addition to the work expectations that you were given on March 11, 2003.

Cc: James Greer, BHS Director  
Kim Russell, HSM  
Pam Wallace, Deputy Warden

## Quality of Work Performance

7/8/03 - 7/14/03 trial period  
review every 7-10 days

Date	Inmate	Description of Problematic Performance	Comment
7/8/09		<p>Dr. Witte asked the HSU officer to call for inmates. Segregation inmate Morton was called to the HSU with an escort. I noted that the inmate had been in the waiting room as I passed the area more than one time. We do not hold escorted inmates in our waiting room. I asked the HSU officer how long the wait had been and I was told it had been almost 40 minutes. As I was walking towards Dr. Wittes office he walked past me and approached the escort officer and inmate and told them that he would not be able to see them and they could return to the unit. I then noted that Dr. Witte had been seeing inmate Moran during this time, from 242 to 404. Morans issue being "a growth on his upper buttock".</p> <p>Dr. Witte asked Jerri Spang, HIT for an extra cart. She told him that they were all being used. He then turned to Harvey and asked him for a cart and says "I can't work if I don't have another cart to set my finished charts on". He then stood in the nurses station. Dr. Joseph must have heard him and brought him a cart that he had.</p>	<p>We do not hold segregation inmates in the waiting room. Dr. Witte knew the inmate was here to see him and did not make an effort to see him in a timely manner. This causes serious security issues. The inmate he was seeing for 2 hours, Moran, was not an urgent issue that required 2 hours of time while a segregation inmate sat in the waiting room.</p>
7/9/03		<p>Dr. Witte saw inmate Sharp (who had been to the ER 7/8) for 2 hours. Was behind from the beginning of the day. Had only seen 2 inmates by 10:5am. Several inmates left because they did not want to sit in the waiting room for that period of time.</p>	<p>This happens on a daily basis and creates atmosphere and security issues in the waiting area.</p>
7/9/03		<p>Returned the 6 Hep C charts and the memo that Sue Nygren had written for him requesting orders for continuing treatment. He called her and left a voice message on her phone asking her to write a progress note that they were</p>	<p>This again indicates that he will not interface or work collaboratively with Sue Nygren. It further demonstrates that he is not familiar enough with the protocol to order the lab work and vaccinations without seeing the inmate</p>



		Hep C patients so he would know what he was dealing with and then schedule the inmates to see him.	for every step of the process per the protocol.. There are no openings in his schedule for several weeks as he sees only approx. 10 of 15 scheduled patients a day...the overflow going to Friday.
7/9/03	12:30 Machado, Angelo	Had not stopped seeing inmates to meet with Ms. Nygren and I. Yet had left Ms. Nygren another voicemail asking for the status of a Class III. Wrote Sue Nygrens Name in an inmate chart.	Dr. Witte was told not to write staff members names in the charts. Speaking directly with a staff member is much more productive than leaving voicemail.
7/11/03	Kennedy, James	The morning began with trying to get an order written/filled for the inmate who Dr. Witte had sent out via rescue squad 7/10 "for an MT". Inmate was returned with a diagnosis of pneumonia and a prescription for Levaguin 500mg a day for 8 days. This chart was given to the MD to see the order so that he could determine the need for Levaguin vs. an equivalent that we have in stock, as Levaguin is a non-formulary antibiotic. (Pam Wallace had been up to the HSU to give Dr. Witte some paperwork). Dr. Witte became irritable and so much so that even Harvey Morgan who does Dr. Wittes orders on a regular basis commented on it. Dr. Witte became demanding of the reports from St. Marys regarding inmate Kennedy and Harvey had been trying to get them since early in the day. The inmate had not been called to the HSU because we still didn't have the records or a decision on the medication. When Dr. Witte was asked by Harvey what he was going to do about the antibiotics, Dr. Witte said "Let Kim Russell the Manager figure it out". Harvey came to me, I signed off the order and faxed it to Central Pharmacy. Central Pharmacy sent back the sheet that prompts the physician that the medication is non-formulary and suggested Cipro as an alternative. Dr. Witte was standing in the nurses station asking Harvey where this inmates chart was with the reports from St. Marys at the same time the sheet came off the fax machine. I handed it to him and he said "What is this"? I explained the Class III	The staff working in the HSU should not have to be subjected to trying to explain processes such as acquiring non-formulary medication from a prescriber who becomes angry when they do tell him. It should not have to go so far as involving Mike Bouschon in Central Pharmacy by Dr. Witte who is angry and feels everything is "unacceptable".

	10:30	<p><del>I went to tell Dr. Witte that the Levaguin would be here this day from Central Pharmacy and Sue Nygren was in his office with the Hep C orders. He was asking her what orders he should write regarding the Ribavirin for a particular inmate and I heard Sue say, "I can't tell you what to write as far as an order for that". He asked her "What should I do" as his tone became more terse with each question.</del></p>	<p>Dr. Witte does not appear to understand the process that is needed to evaluate and treat the Hep C patients. Sue Nygren can not do each chart with him on an individual basis.</p>
7/11/03		<p>and Class II issue as Levaguin is a non-formulary and that pharmacy was suggesting Cipro. Dr. Witte said "That is unacceptable", took the fax and went into his office. I went to my office and called Mike Bouschon in Central Pharmacy and at that moment Dr. Witte came into my office and handed me the fax from Central Pharmacy and said "You won't get caught in the middle of this again" and walked out. Mike Bouschon said that Dr. Witte had called him and had been rather out of line and upset and I said that I really didn't know what to do at this point as Dr. Witte is not understanding the process of getting a non-formulary drug nor willing to substitute a suggested equivalent. It was decided to send the requested Levaguin back to RCI via a transportation officer who was going up to Dodge and coming back to RCI this day.</p>	<p style="text-align: right;">NURSING LEARN</p>

**Interpersonal Behavior**

Date	Issue	Comment
7/8/09	After Dr. Witte left for the day I went into his office to get the cart with the charts left on it and noted a strong smell of body odor.	This does not make the HSU environment pleasant.
7/9/03	Wore the same clothes and started the day with the same body odor as I had noted the previous day.	This does not make the HSU environment pleasant
7/9/03	At 11am I asked Dr. Witte to meet with Sue Nygren and	

	<p>myself to discuss the Hep C charts as well as the continued confusion and questions he has with the Class III process. In the meantime he left her another voice mail message inquiring about an inmates upcoming UW appointment.</p>	
<p>7/9/03 3:45</p>	<p>I went to Dr. Wittes office and said "Sue and I will be meeting with you at 8am to discuss the Hep C and ClassIII issues and to clarify the process and procedures.</p>	
<p>7/10/03 8am</p>	<p>Dr. Witte was wearing the same clothes and the body odor was very noticeable. Sue and I met with him in his office to again go over the process for both Hep C and ClassIII and UW Appts. Dr. Witte clearly does not understand that we have any data bases that allow the tracking of and prompt the next step in the protocol for Hep C. It would be possible for him to write orders for the Hep A &amp; B vaccinations and the next lab such as PCR needed before he sees them or before they go to UW for the next appt. He asked how this was handled here and Sue Nygren said that she keeps current with the data base and discusses the cases with Dr. Joseph. She then will write the appropriate order for him to counter sign. She asked him if he would be comfortable with that. Dr. Witte stated "I'd like for you to do that for me". Sue Nygren expressed her concerns that there had been little collaborating in the past and she was not entirely comfortable writing an order. Dr. Witte said "It isn't a valid order until I co-sign it so this will be fine". Sue Nygren then agreed to try this system. Sue then went back to the charts he had returned to her, put the data base print outs in them and wrote the orders for him to sign. We then moved on to the issue of the Class III regarding 1) are they approved and 2) has the appt. been made. I again stated that when the ClassIII approval comes back to us, Sue has it in her possession for a period of time to enter into the computer and to then call UW or fax them for the appointment. Then the Class III goes into the chart with a black flag for him to sign thus notifying him that the approval has come. If it has been</p>	<p>This does not make the HSU environment pleasant</p>

	<p>denied because it needs more information regarding criteria it goes to him ASAP to facilitate the process. Class III's that have been denied go into the chart with a black flag for informational purposes.</p> <p>After all this explanation Dr. Witte said "How do I know if an appointment has been made"? I replied, until the actual appointment date is given to us by UW we don't have anything to write on the appointment sheet in the front of the chart.</p> <p>Often it takes over a month for an appointment.</p> <p>He began talking about appointments requested by UW in 2 weeks that end up taking longer being unacceptable. At this point we ended the conversation as it was not addressing the issues that we had intended.</p>	

Jim Doyle  
governor



Matthew J. Frank  
Secretary

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## State of Wisconsin Department of Corrections

June 18, 2003

Gerhard Witte, MD  
4622 Wilshire Road  
Milwaukee, WI 53211

Dear Doctor Witte:

This is a letter of reprimand issued to you as a result of your violating the following DOC Work Rule which applies to all department staff:

#13 which prohibits intimidating, interfering with, harassing (including sexual or racial harassment), demeaning, or using abusive language in dealing with others.

This action is necessitated by the fact that on May 21, 2003 you stated that you were holding on to documents involving patient care related to the coumadin case of May 2001 and that you would use the documents against HSU Manager Kim Russell's nursing license if you are disciplined by the Employer in the future. This threat was not handled in a professional manner. The threat was made in the presence of Kim Russell, Pam Wallace, Earl Kielley, Doug Swanson and Dr. David Burnett. You made these statements despite being counseled previously on March 26, 2003 by your supervisor, Dr. David Burnett, regarding making threatening statements.

Further violation of DOC Work Rules will result in progressively more severe discipline up to and including termination of your state employment.

A review of your personnel file indicates that you have had no other formal discipline within the last twelve month period of time.

Should you believe this action was not taken for just cause, you may file a grievance in accordance with IV of the WPDA Collective Bargaining Agreement.

Sincerely,

Steven Casperson, Administrator  
Division of Adult Institutions

cc: Doug Swanson, WPDA  
P File  
DOC BPHR  
Dr. Burnett  
Greer/File  
Office of Diversity

Some Background re nurse practitioner - Jean Carlson:

- 1) She was a nurse for 15 years - washing male genitalia and inserting urinary catheters
- 2) NP training includes knowledge of male anatomy  
It is ludicrous to say "I was humiliated and embarrassed" by ;looking at a severely swollen scrotum  
Female doctors do examinations on male inmates with a male in attendance. The NP functions independently as a doctor would.  
The change by the NP is in itself harassing as it has not merit, yet is being used by the DOC to discipline me again.

The NP is in daily close contact with Mgr. Russell and Nurse Nygren. I tried to gain her confidence by sharing medical cases. Prior to this case we had discussed many more than 10 other cases. Each time I asked solicitously:

"Is this of value to you - do you like the way I am handling the discussion - should I tell you the diagnosis first or ask you to tell me (which situation are you more comfortable with)?

This charge comes as a complete surprise to me. Weeks earlier, I asked her if our relationship was satisfactory, and she said yes.

The Medical Director had told me early on that I needed to teach the staff. After this case, he now says I am to stop case review, but rather teach at monthly rounds.