

Exhibit 38



[HOME](#)

Glenn Hagele

Obviously upset because some of these emails were released to a lawyer, Glenn Hagele (usaeyes.org, complicatedeyes.org, crsqa) has now added me to his hit list of "malcontents".

For what? Exposing him in his attempts to extort money? Defamation? Ruining his good name (hell, he does enough of that on his own with his postings)?

Patient advocacy I'm sure, does not involve harassment and deception of one's own board of trustees...

Hagele first contacted me looking for information about Brent Hanson, then asking to remove any links to Hanson's websites...

Jan 05, 2006

Date: Thu, 5 Jan 2006 16:06:38 -0800 (PST)
From: "LASIKsucks4u" <lasiksucks4u@yahoo.com>
Subject: Re: Brent Hanson
To: glenn.hagele@usaeyes.org

glenn,

i will call you after i consult an attorney. now is not a good time.

dom

Jan 05, 2006

Date: Thu, 5 Jan 2006 18:39:08 -0800 (PST)
From: "LASIKsucks4u" <lasiksucks4u@yahoo.com>
Subject: RE: Brent Hanson
To: glenn.hagele@usaeyes.org

you neglected to mention berchadsky. you 'settled' with him as well? whatever happened with the doctors responding?

i found the lawsuit filed with new york regarding sollaway, and have changrd my site accordingly. the name was not hypynated.

dom

May 28, 2006 (1)

From: dom morgan [mailto:talkaboutfda@yahoo.com] Sent: Sunday, May 28, 2006 7:22 PM To: info@usaeyes.org; Durrie, Daniel, MD; docholladay@docholladay.com; idaho@fiifa.com; jphermanod@aol.com; strongvision@urmc.rochester.edu; randy@themagnumgroup.com; jamestownsend@ardennet.com; glenn.hagele@usaeyes.org Subject: glenn hagele

Dear Dr. Durrie,

I am writing to determine whether yourself and other members of the CRSQA board are aware that Glenn Hagele is apparently pursuing a campaign of harassment and intimidation of damaged LASIK patients. Mr. Hagele's actions are performed in the capacity of Executive Director of CRSQA. As you are no doubt aware, the law treats for-profit and nonprofit corporations differently. The Executive Director of a nonprofit operates at the discretion and approval of his Board, whereas the CEO of a for-profit can operate more autonomously. Accordingly, the actions of the Executive Director of a nonprofit can expose the board members to considerable liability.

You need to know that among patients damaged by LASIK, Mr. Hagele is seen, not as the industry's apologist--a position that might be expected and tolerated--but as the industry's hitman. What may or may not have begun as an isolated conflict between Mr. Hagele and various personalities who frequent the alt-LASIK newsgroup has boiled over into a conflagration that now has the attention of the entire casualty community. When Mr. Hagele attacks patients, it is seen as the industry attacking patients. When Mr. Hagele attempts to silence damaged patients, it is seen as the industry trying to silence patients.

People want to know how much the CRSQA board knows about Mr. Hagele's actions. They want to know whether CRSQA endorses those actions. Mr. Hagele only makes angry patients angier, thereby increasing the potential to corrupt the end result that good doctors of integrity should share: Providing adequate and proper rehab care to those whose lives have been damaged by refractive surgery.

You may wish to consider the correspondence attached, as well as postings in the alt-LASIK newsgroup. In fact, the CRSQA Board of Directors may wish to start its own investigation of Mr. Hagele's actions, and you and other doctors of integrity may wish to reconsider your affiliation with CRSQA. Whatever the actions of damaged patients (people whose lives have been destroyed can be expected to take offense), the CRSQA Executive Director must be held to a higher standard. Mr. Hagele is not honoring that standard.

Please let me know whether you and the Board are aware of Mr. Hagele's conduct in these matters.

Sincerely,

Exhibit 39

Dom Morgan

May 28, 2006 (2)

Subject: RE: glenn hagele
Date: Sun, 28 May 2006 23:42:39 -0500
From: "Durrie, Daniel, MD" <ddurrie@durrievision.com>
To: "dom morgan" <talkaboutfda@yahoo.com>

Dom, thanks for your note. Glenn is taking these actions on his own and he is not representing CRSQA in any office capacity in his disagreements with Mr. Hanson. . I agree that all of this legal action is getting in the way of helping patients which is the only reason that I am involved. I would be glad to talk with you about this. Would you be available to discuss it? - DSD

Exhibit 40

May 29, 2006 (3)

Date: Mon, 29 May 2006 11:08:40 -0700 (PDT)
From: "dom morgan" <talkaboutfda@yahoo.com>
Subject: further correspondence
To: ddurrie@durrievision.com

Dr. Durrie,

Much thanks for your kind note and offer of discussion. Since you and I last corresponded, I received a message from Mr. Hagele, which I've pasted in at the bottom of this email. The note contains a number of assumptions which I frankly do not understand. For example, the note states that, "Those who participate in your efforts will be assured that no further action will be taken against them until our board meets, and each will directly benefit from any resolution that is found. Those who do not participate in your group will not receive such benefit," and concludes by saying that " The ball is in your court, Dom."

Let me be clear: I have no group, and therefore no political agenda. I am legally blind and have no court and no ball. I do find it curious, however, that your email explicitly states that Mr. Hagele is acting on his own behalf, independent of CRSQA, while Mr. Hagele indicates, as quoted above, that action will be taken based on the proceedings of the board, of which you are a member.

Statements like these from Mr. Hagele are exactly why the casualty community believes that CRSQA speaks on behalf of the refractive surgery industry. I claim no deep understanding of the law, but I can say with certainty that these are the kinds of contradictions that lawyers find interesting. Specifically, Mr. Hagele's message begs the question: "How much does the board know about Mr. Hagele actions?" and "When did the board have knowledge of these actions?" and "What kind of correspondence, email or otherwise, might exist between Mr. Hagele and the members of the board that might be subject to subpoena? What else might be established based on those communications?"

As noted, I have no group, I represent no one, and I speak only for myself. However, I must agree with Mr. Hagele that a legal showdown between the refractive surgery industry and the casualty community is brewing, and like Mr. Hagele, I do not believe that it can be stopped. Nor is that showdown likely to be limited to CRSQA versus Hanson or CRSQA versus Keller, as Mr. Hagele might have you believe. Matters have progressed far beyond that, and are concerned with the general tenor of Mr. Hagele's attitude and communications, not only as a representative of CRSQA, but of the entire refractive surgery industry. Mr Hagele's heavy-handedness and legal maneuverings (see the quote above) play directly into the darkest fears of damaged patients, fears that they have been manipulated by a greedy industry for whom politics is more important than healing. People want justice.

You and the other board members of CRSQA are also subject to this manipulation: The fact that Mr. Hagele indicates he has an organization behind him lays an inescapable liability directly on yourself and other members of the board.

In closing, let me say that I will not reply to Mr. Hagele. I choose not to respond to the manipulation implicit in his email. Moreover, I do not believe that a long-term resolution of the tensions between the casualty community and the refractive surgery industry is possible where Mr. Hagele is free to frame the issues and set the agenda for discussion. I don't know anyone who believes that Mr. Hagele really wants to help patients. Instead, I recognize that the power behind CRSQA ultimately lies with the doctors, and I believe that it is time that the doctors and patients come together to discuss our collective future. No

middleman is necessary. In fact, I would go so far as to say that much of the tension between the refractive surgery industry and the casualty community would evaporate if Mr. Hagele were dismissed from his position as Executive Director. That would certainly provide unassailable proof that Mr. Hagele's actions were conducted on his own, without the approval of the CRSQA board.

I look forward to our discussion. Evenings are definitely best for me. I will let you set the time and date.

Sincerely,

Dom Morgan

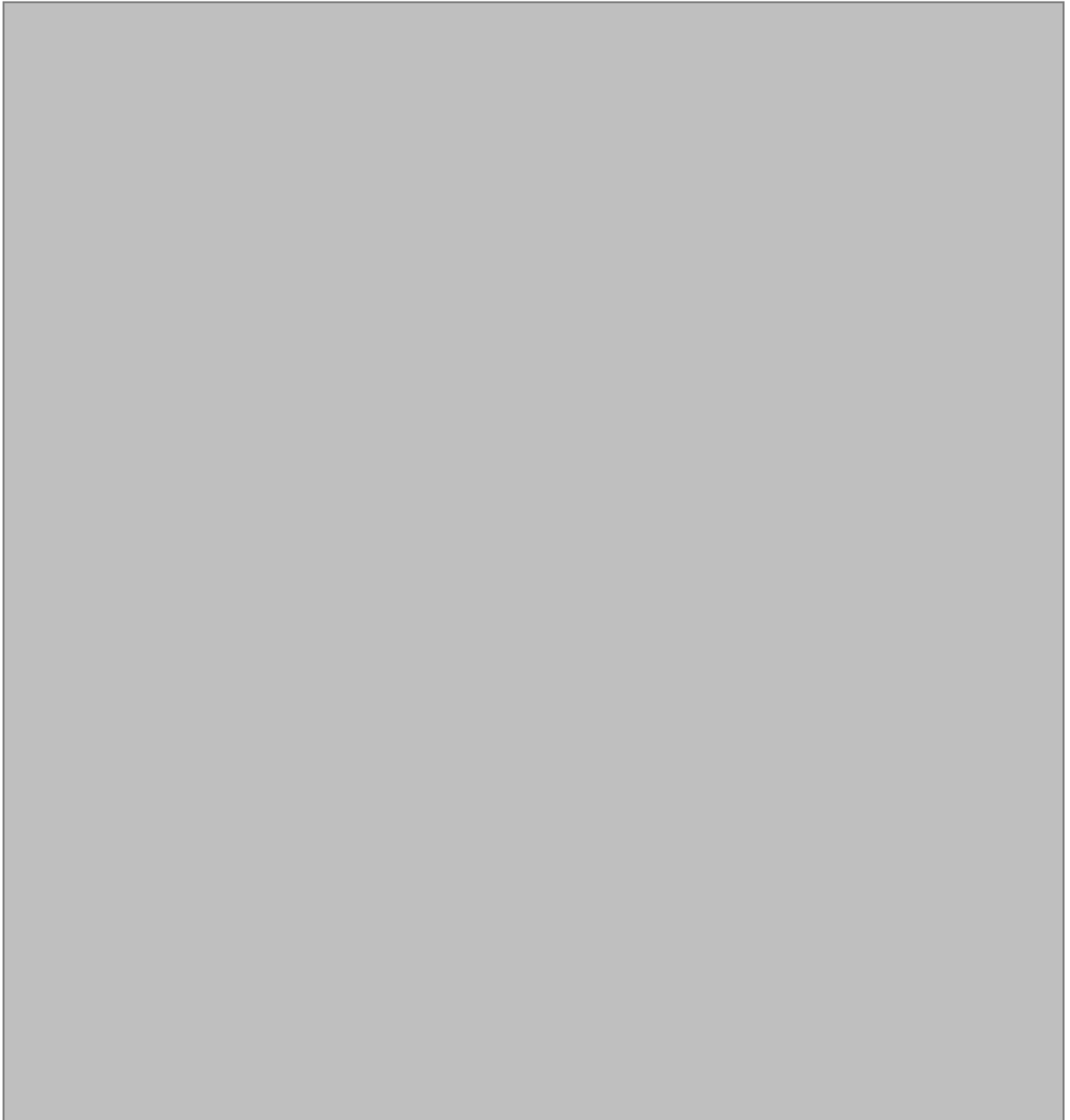
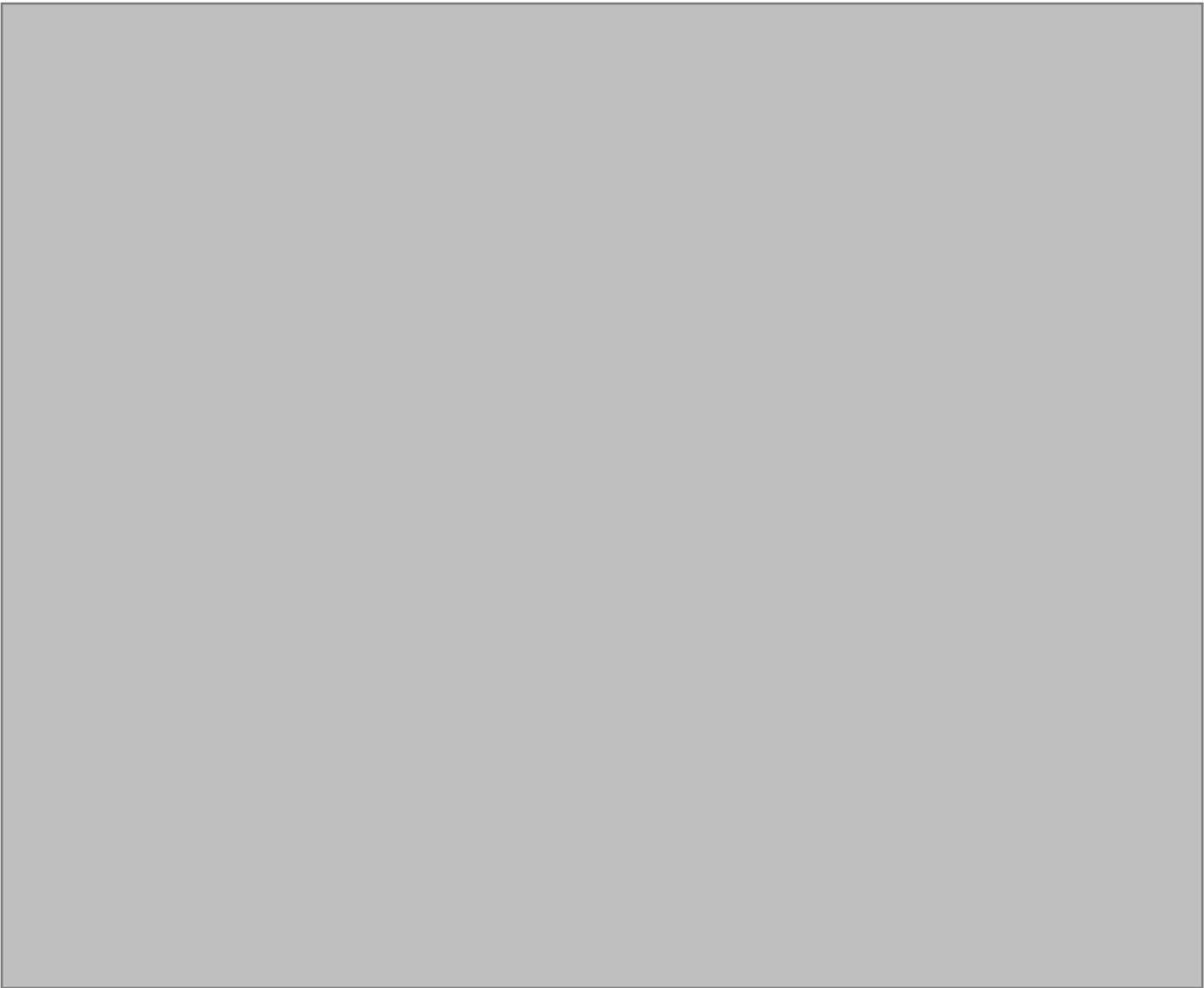


Exhibit 41



May 29, 2006 (5)

From: "Durrie, Daniel, MD" <ddurrie@durrievision.com>

To: "dom morgan" <talkaboutfda@yahoo.com>

Subject: RE: my apologies

Date: Mon, 29 May 2006 22:19:56 -0500

Dom, that is fine. Glenn has been doing all of this on his own without board approval. I have notified Glenn that I have resigned from the board. I just want to help patients. Keep in touch. - DSD



Exhibit 42

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2008 OCT -9 AM 10:41
NO. 07-CVS-019854

WAKE COUNTY, C.S.C.

GLENN HAGELE,

Plaintiff,

BY _____

v.

LAURANELL BURCH, aka NELL BURCH,

Defendant.

AFFIDAVIT OF
ROBERT BUFFINGTON, OD

Robert Buffington, OD, being first duly sworn upon oath, deposes and says:

1. I submit this Affidavit of Robert Buffington, OD to describe policy and acts of the governing Board of Trustees of the Council for Refractive Surgery Quality Assurance (USA*E*yes) with regard to the defendant in this action, Lauranell Burch (Burch).
2. This affidavit is based on my personal knowledge except where otherwise indicated.
3. I am a resident of California.
4. I am not and have never been a resident of North Carolina.
5. USA*E*yes is a nonprofit patient advocacy organization.
6. USA*E*yes is recognized by the state of California as a nonprofit organization, (Exhibit 1).
7. USA*E*yes is recognized by the US Internal Revenue Service (IRS) as a nonprofit organization, (Exhibit 2).

8. As part of its nonprofit public benefit service, USAEyes provides vision correction surgery information (Lasik, etc.) to interested parties.
9. USAEyes provides vision correction surgery information through its websites <http://www.USAEyes.org>, and <http://www.ComplicatedEyes.org>, through telecommunications, specifically via the toll free telephone number 1-800-USA-EYES (1-800-872-3937), and through various other forms of communications including email and non-affiliated Internet bulletin boards, chat rooms, and blogs.
10. USAEyes evaluates and certifies vision correction patient outcomes of doctors who submit to the organization's evaluation process.
11. USAEyes is governed by a multi-member Board of Trustees.
12. I have served as a member-elect and member of the USAEyes governing Board of Trustees of since April 2006.
13. I am the current vice-chairperson of the USAEyes Board of Trustees.
14. Glenn Hagele, plaintiff in this action, is a member of the USAEyes Board of Trustees.
15. The USAEyes Executive Director is responsible to carry out the day-to-day operations of the organization, guided by the policies and goals set by the governing Board of Trustees.
16. Glenn Hagele is the current USAEyes Executive Director.
17. I first became aware of Burch on May 31, 2006 by a correspondence with the subject line "Threatening behavior by (USAEyes) executive" Burch sent to members of the USAEyes Board of Trustees and surgeons certified by USAEyes, (Exhibit 3). *Note: Private information has been redacted from Exhibit.*

18. The May 31, 2006 Burch correspondence included allegedly defamatory statements about USAEyes and the USAEyes Executive Director.
19. The USAEyes Executive Director requested an opinion from counsel regarding correspondence from Burch and others who appeared to be acting in concert, collectively referred to as "AngrySpammers".
20. Whether or not USAEyes should litigate against AngrySpammers was discussed in a teleconference meeting of the USAEyes Board of Trustees held July 17, 2006.
21. During the July 17, 2006 teleconference, the USAEyes Board of Trustees decided that USAEyes would not litigate against Burch or any other AngrySpammers at that time.
22. Summary minutes of the July 17, 2006 teleconference of the USAEyes Board of Trustees includes the following relevant entry:

"Although legal opinion from [corporate counsel] indicates (USAEyes) has clear grounds to litigate against the individuals who flooded board members and certified surgeons with 'AngrySpam', (USAEyes) should not exercise litigation at this time. Glenn Hagele has filed personal and separate defamation litigation against the leader of the AngrySpammers[†], however (USAEyes) should not join him as a co-plaintiff or directly finance Glenn's litigation. (USAEyes) should not provide a loan to Glenn Hagele to finance his litigation against AngrySpammers."

[†] This reference refers to civil litigation Hagele v. Hanson in California Superior Court, Sacramento County, against Brent Hanson, Burch's former housemate.

23. The USAEyes Board of Trustees has not subsequently considered or authorized litigation against Burch.
24. The USAEyes Board of Trustees has not advised or instructed Glenn Hagele to seek personal litigation against Burch.
25. On August 28, 2006 I received from Glenn Hagele an email notice that Burch, an employee of the National Institute of Environment Health Sciences, an institute of the National Institutes of Health (NIH), was distributing a document called "The Lasik Report", (Exhibit 5). This email notice was sent to all USAEyes certified surgeons and included the following:

"Your patients will probably be exposed to this document, or will know others who have read at least portions of it. Don't be surprised if some of the distorted conclusions propogated by Ms. Burch seep into conversations with patients. Knowing the content of "The Lasik Report" will surely better prepare you to respond to its contents."

The distribution of this information by USAEyes Executive Director Glenn Hagele is consistent with the USAEyes goal to provide information about Lasik to interested parties.

26. I first became aware of Glenn Hagele's personal litigation against Burch on December 10, 2007 when he notified the USAEyes Board of Trustees of his personal litigation via email, (Exhibit 6). *Note: Private information has been redacted.*
27. I had no prior knowledge of Glenn Hagele's intent to personally litigate against Burch.

28. The USA*Eyes* Board of Trustees has not authorized use of its funds for Glenn Hagele's personal litigation against Burch.
29. In his notification to the USA*Eyes* Board of Trustees of his personal litigation against Burch, (Exhibit 6), Glenn Hagele affirmed that no USA*Eyes* funds have been used in his personal litigation.
30. In his notification to the USA*Eyes* Board of Trustees of his personal litigation against Burch, (Exhibit 6), Glenn Hagele affirmed that USA*Eyes* was not involved in his personal litigation as a plaintiff or otherwise.
31. Upon information and belief, since 2003 Glenn Hagele has owned the Internet domain GlennHagele.com.
32. Upon information and belief, the USA*Eyes* Board of Trustees has not authorized Glenn Hagele as Executive Director of USA*Eyes* to purchase, own, or fund the Internet domain GlennHagele.com.
33. Glenn Hagele has affirmed to the USA*Eyes* Board of Trustees that no USA*Eyes* funds have been used to purchase, own, or fund the Internet domain GlennHagele.com.
34. Upon information and belief, Glenn Hagele publishes a personal website at <http://www.GlennHagele.com>.
35. Upon information and belief, the USA*Eyes* Board of Trustees has not authorized Glenn Hagele as Executive Director of USA*Eyes* to purchase, own, or fund the website published at <http://www.GlennHagele.com>.

- 36. Glenn Hagele has affirmed to the USAEyes Board of Trustees that no USAEyes funds have been used to purchase, own, or fund the website published at <http://www.GlennHagele.com>.
- 37. The information published at <http://www.GlennHagele.com> is not endorsed by, provided by, or otherwise affiliated with USAEyes.
- 38. Burch has never been my patient.
- 39. I have no recollection of ever meeting Burch.

This the 30 day of September 2008.

By: Robert Buffington
Robert Buffington, OD

Sworn to and subscribed before me
this 30 day of September 2008.

Julia Diles
Notary Public Signature
Julia Diles
Notary Public Name

My Commission Expires:

July 17, 2009

