



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN  
ATTORNEY GENERAL

Raymond P. Taffora  
Deputy Attorney General

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

Christopher J. Blythe  
Assistant Attorney General  
blythecj@doj.state.wi.us  
608/266-0180  
FAX 608/267-2223

March 25, 2008

The Honorable Michael Nowakowski  
Circuit Court Judge, Br. 13  
Dane County Courthouse  
215 South Hamilton Street, Room 5109  
Madison, WI 53703-3289

Re: *Wisconsin Medical Society, Inc. v. Michael L. Morgan, et al.*  
Case No. 07-CV-4035

Dear Judge Nowakowski:

Enclosed for filing please find defendants' Answer to Amended Complaint in the above-referenced matter. A copy is being mailed this date to opposing counsel.

Please contact me with any questions.

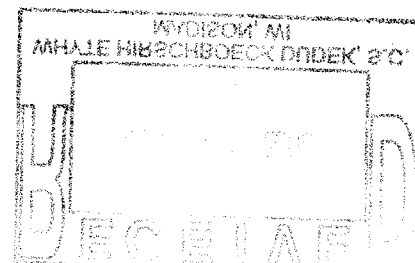
Sincerely,

Christopher J. Blythe  
Assistant Attorney General

CJB:ajw

Enclosure

c: Thomas M. Pyper



---

WISCONSIN MEDICAL  
SOCIETY, INC.,

Plaintiff,

v.

Case No. 07-CV-4035

MICHAEL L. MORGAN, in his  
official capacity as Secretary of  
the Wisconsin Department of  
Administration,

Defendant.

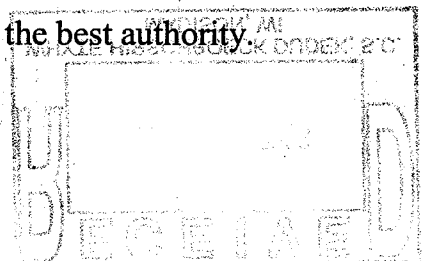
---

**ANSWER TO AMENDED COMPLAINT**

---

Defendant Michael L. Morgan, in his official capacity as Secretary of the Wisconsin Department of Administration, by his counsel, Attorney General J.B. Van Hollen and Assistant Attorneys General Christopher J. Blythe, Charlotte Gibson, John S. Greene, and F. Thomas Creeron, III, pursuant to Wis. Stat. § 802.06(1), hereby answers the Amended Complaint in this action as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first three sentences of paragraph 1, and denies the allegations of the fourth sentence of paragraph 1, in that they are legal arguments to which no response is required here and about which relevant law is the best authority.



2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2.

3. Defendant admits the allegations of paragraph 3.

4. Answering paragraph 4, defendant admits that the Fund was created in 1975 and that from 1975-2003 the Fund was known as the Wisconsin Patients Compensation Fund. As to the remaining allegations, defendant states that the cited statutory provisions speak for themselves, and that no response is required.

5. Answering paragraph 5, defendant states that the Legislature's findings contained in the cited statutory provisions speak for themselves, and that no response is required; further, denies to the extent this paragraph suggests that the two purposes cited are the sole reasons for the Fund's existence.

6. Answering paragraph 6, defendant states that the cited statutory provisions speak for themselves, and that no response is required. Defendant denies that the allegations accurately reflect the cited statutes.

7. Defendant admits the allegations of paragraph 7.

8. Defendant admits generally the allegations of paragraph 8, but denies any implication that participation in the Fund is voluntary, or in the nature of a contract.

9. Answering paragraph 9, defendant states that the cited statutory provision speaks for itself, and that no response is required, but denies any implication that participation in the Fund is voluntary, or in the nature of a contract.

10. Defendant admits the allegations of paragraph 10.

11. Defendant admits the allegations of paragraph 11.

12. Answering paragraph 12, defendant states that the cited statutory provision speaks for itself, so that no response is required, and denies any implication that the statute limits the Legislature's ability to transfer public monies among funds.

13. Answering paragraph 13, defendant admits that the Fund has been operated on an accrual basis since 1980 and that loss liabilities take into account future investment returns; denies that health care providers are assessed fees sufficient to cover estimated loss liabilities; affirmatively alleges that the Board can and has approved assessments deviating from that methodology; and denies that liabilities have always been defined as estimated medical malpractice occurrences in that year.

14. Answering paragraph 14, defendant denies; defendant affirmatively alleges that accrual accounting attempts to measure the outstanding liabilities of the Fund, were the Legislature to discontinue it.

15. Answering paragraph 15, defendant admits the allegations in the first sentence; admits that the Fund is currently collecting fees in an amount less than the amount being paid out for claims and expenses, but is without knowledge or information sufficient to form a belief as to the truth of the allegation as to the rationale alleged by the plaintiff; admits the allegations in the third sentence as to practices in 2006 but is without information as to other time periods; and denies the allegations of the fourth sentence.

16. Defendant admits the allegations of paragraph 16.

17. Defendant admits the allegations of paragraph 17.

18. Answering paragraph 18, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence, and admits that the second and third sentences accurately quote the Legislative Audit Bureau report.

19. Answering paragraph 19, defendant is without knowledge or information as to the type or degree of “confidence” that providers, patients, and consumers have in the Fund’s reliability, and as to the “benefit” any such confidence provides.

20. Answering paragraph 20, defendant states that the cited statutory provision speaks for itself, so that no response is required; defendant denies that the Fund has ever been “inviolable” as plaintiff asserts, and denies any implication that the statute limits the Legislature’s ability to transfer public monies among funds.

21. Answering paragraph 21, defendant denies that the Fund has ever been “inviolable” as plaintiff asserts and denies any implication that the statute limits the Legislature’s ability to transfer public monies among funds. As to the remaining allegations, defendant states that the cited statutory provision speaks for itself, so that no response is required.

22. Answering paragraph 22, defendant admits that this was one of the objectives identified by the Wisconsin Supreme Court in *Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125, 284 Wis. 2d 573, 701 N.W.2d 440; defendant affirmatively alleges that the court identified additional objectives.

23. Defendant denies the allegations of paragraph 23.

24. Answering paragraph 24, defendant states that the cited statutory provision speaks for itself, so that no response is required.

25. Answering paragraph 25, defendant admits that the MATF is used to pay for these programs and affirmatively alleges that plaintiffs' list is not a complete list of the programs funded by the MATF.

26. Answering paragraph 26, defendant admits; defendant affirmatively alleges that the Legislature has additional objectives for the Fund to which the MATF relates.

27. Defendant denies that James Johnston had the authority to "direct" Stephen Censky to perform the referenced transfer. Defendant admits that Stephen Censky implemented the referenced transfer on October 29, 2007.

28. Defendant admits the allegations of paragraph 28.

29. Defendant admits the allegations of paragraph 29.

30. Defendant admits that on November 30, 2007, he forwarded the referenced report to the Senate and Assembly Chief Clerks, pursuant to Wis. Stat. § 20.002(11)(f). Answering the allegations of the second sentence of paragraph 30, defendant admits that the referenced reallocation was made pursuant to state law under the defendant's authority. Answering the allegations of the third sentence of paragraph 30, defendant denies that he is charging the Fund interest, but admits that the referenced interest is being charged or will be charged pursuant to state law under the defendant's authority.

31. Defendant admits the allegations of paragraph 31.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation.

34. Defendant denies the allegations of paragraph 34.

35. Answering paragraph 35, defendant admits that he received the referenced notice, and denies any remaining allegations to the extent that they are conclusions of law to which no response is required.

36. Answering paragraph 36, defendant realleges and incorporates by reference his answers to paragraphs 1 through 35.

37. Answering paragraph 37, defendant states that the cited constitutional provision speaks for itself and that no response is required.

38. Answering paragraph 38, defendant states that the cited constitutional provision speaks for itself and that no response is required.

39. Defendant denies the allegations of paragraph 39, which consist of legal arguments to which no response is required.

40. Defendant denies the allegations of paragraph 40, which consist of legal arguments to which no response is required.

41. Defendant denies the allegations of paragraph 41, which consist of legal arguments to which no response is required.

42. Defendant denies the allegations of paragraph 42, which consist of legal arguments to which no response is required.

43. Defendant admits that the MATF has a valid public purpose, and denies the remaining allegations of paragraph 43, which consist of legal arguments to which no response is required.

44. Defendant denies the allegations of paragraph 44, which consist of legal arguments to which no response is required.

45. Defendant denies the allegations of paragraph 45, which consist of legal arguments to which no response is required.

46. Answering paragraph 46, defendant realleges and incorporates by reference his answers to paragraphs 1 through 35.

47. Answering paragraph 47, defendant states that the cited constitutional provision speaks for itself and that no response is required.

48. Answering paragraph 48, defendant states that the cited constitutional provision speaks for itself and that no response is required.

49. Answering paragraph 49, defendant denies that the State provides coverage “in exchange” for assessments paid by health care providers, and denies that the providers’ compliance with the statute is in the nature of a contract. Defendant affirmatively alleges that health care providers pay mandatory assessments under a statutory scheme.

50. Answering paragraph 50, defendant states that the cited statute speaks for itself and that no answer is required. Defendant denies any implication that the statute limits the Legislature’s ability to transfer public monies among funds.

51. Answering paragraph 51, defendant states that the cited statute speaks for itself and that no answer is required. Defendant denies any implication that the statute limits the Legislature's ability to transfer public monies among funds.

52. Answering paragraph 52, defendant states that the cited statute speaks for itself and that no answer is required. Defendant denies any implication that the statute limits the Legislature's ability to transfer public monies among funds.

53. Defendant denies the allegations of paragraph 53.

54. Defendant denies the allegations of paragraph 54.

55. Defendant denies the allegations of paragraph 55.

56. Defendant denies the allegations of paragraph 56.

57. Defendant denies the allegations of paragraph 57.

58. Defendant denies the allegations of paragraph 58, which consist of legal arguments to which no response is required.

59. Answering paragraph 59, defendant realleges and incorporates by reference his answers to paragraphs 1 through 35.

60. Answering paragraph 60, defendant states that the cited constitutional provision speaks for itself and that no response is required.

61. Answering paragraph 61, defendant states that plaintiffs assert conclusions of law to which no response is required.

62. Answering paragraph 62, defendant states that plaintiffs assert conclusions of law to which no response is required.

63. Answering paragraph 63, defendant states that plaintiffs assert conclusions of law to which no response is required.

64. Defendant denies the allegations of paragraph 64.

65. Defendant denies the allegations of paragraph 65.

66. Answering paragraph 66, defendant states that plaintiffs assert conclusions of law to which no response is required.

67. Defendant denies the allegations of paragraph 67, which consist of legal arguments to which no response is required.

68. Answering paragraph 68, defendant realleges and incorporates by reference his answers to paragraphs 1 through 35.

69. Answering paragraph 69, defendant states that the cited constitutional provision speaks for itself and that no response is required.

70. Answering paragraph 70, defendant states that plaintiffs assert conclusions of law to which no answer is required.

71. Defendant denies the allegations of paragraph 71.

72. Defendant denies the allegations of paragraph 72.

73. Answering paragraph 73, defendant denies that the Act constitutes a tax, that it creates classifications of taxed groups, and that the purpose asserted in the paragraph is the sole purpose of the Fund.

74. Answering paragraph 74, defendant denies that the allegation describes all the purposes of the Fund, that the Act creates tax classifications, that the Act is a tax and that the Act lacks a legitimate governmental interest.

75. Defendant denies the allegations of paragraph 75.

76. Defendant denies the allegations of paragraph 76.

77. Defendant denies the allegations of paragraph 77.

78. Answering paragraph 78, defendant denies that the allegation describes all the purposes of the Fund and that the Act creates the classifications plaintiffs assume.

79. Answering paragraph 79, defendant denies that the allegation describes all the purposes of the Act, that the Act creates tax classifications, that the Act is a tax and that the Act lacks a legitimate governmental interest.

80. Defendant denies the allegations of paragraph 80, which consist of legal arguments to which no response is required.

81. Answering paragraph 81, defendant realleges and incorporates by reference his answers to paragraphs 1 through 35.

82. Answering paragraph 82, defendant states that the paragraph states conclusions of law to which no answer is required.

83. Defendant denies the allegations of paragraph 83.

84. Answering paragraph 84, defendant denies that the Act creates the classifications asserted in the complaint and denies that the purpose asserted in the paragraph is the sole purpose of the Fund.

85. Answering paragraph 85, defendant denies that the allegation describes all the purposes of the Act and that the Act creates the referenced classifications. Defendant denies the remaining allegations of the paragraph.

86. Defendant denies the allegations of paragraph 86.

87. Defendant denies the allegations of paragraph 87.

88. Answering paragraph 88, defendant denies the existence of the class implied by the paragraph, and therefore denies the allegations.

89. Answering paragraph 89, defendant denies that the allegation describes all the purposes of the Act, that the Act creates the classifications as alleged, and denies all remaining allegations of the paragraph.

90. Answering paragraph 90, defendant denies the existence of the classes implied by the paragraph and denies all remaining allegations of the paragraph, which consist of legal arguments to which no response is required.

91. Answering paragraph 91, defendant realleges and incorporates by reference his answers to paragraphs 1 through 35.

92. Answering paragraph 92, defendant states that the cited statutory provisions speak for themselves, so that no response is required.

93. Answering paragraph 93, defendant states that the cited statutory provision speaks for itself, so that no response is required, and denies all remaining allegations.

94. Answering paragraph 94, defendant states that the cited statutory provision speaks for itself, so that no response is required, and denies any implication that the statute limits the Legislature's ability to transfer public monies among funds.

95. Defendant denies the allegations of paragraph 95.

96. Defendant denies the allegations of paragraph 96.

97. Answering paragraph 97, defendant realleges and incorporates by reference his answers to paragraphs 1 through 58 and paragraphs 68 through 90.

98. Defendant denies the allegations of paragraph 98.

99. Defendant denies the allegations of paragraph 99.

100. Defendant denies the allegations of paragraph 100.

101. Answering paragraph 101, defendant realleges and incorporates by reference his answers to paragraphs 1 through 100.

102. Defendant denies the allegations of paragraph 102.

#### AFFIRMATIVE DEFENSES

Plaintiffs' claims, in whole or in part, are barred by the following affirmative defenses:

1. Sovereign immunity;
2. Failure to state a claim upon which relief can be granted;
3. Lack of standing;
4. Lack of ripeness; and
5. Separation of powers.

WHEREFORE, the defendant demands judgment dismissing the complaint and for such further relief as the court finds just and proper.

Dated this 25th day of March 2008.

Respectfully submitted,

J.B. VAN HOLLEN  
Attorney General



CHRISTOPHER J. BLYTHE  
Assistant Attorney General  
State Bar #1026147

CHARLOTTE GIBSON  
Assistant Attorney General  
State Bar #1038845

JOHN S. GREENE  
Assistant Attorney General  
State Bar #1002897

F. THOMAS CREERON III  
Assistant Attorney General  
State Bar #1017280

Attorneys for Defendant

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-0180 (CJB)  
(608) 266-7656 (CG)  
(608) 266-3936 (JSG)  
(608) 266-8549 (FTC)