

EXHIBIT 1

BOSTON GLOBE ARTICLE

The Boston Globe

Metro

ADRIAN WALKER

Jason Davis case a missed opportunity for Mass.



By [Adrian Walker](#) | GLOBE COLUMNIST MARCH 10, 2014

From his retirement home in Pennsylvania, Frank Davis has watched the Joshua Messier case unfold with keen interest and painful familiarity.

Messier is the young man who died while being restrained by guards at Bridgewater State Hospital in 2009. Governor Deval Patrick has called the death “disgusting” and has disciplined several officials deemed responsible.

CONTINUE READING BELOW ▼

But before the death of Messier, there was the beating of Jason Davis, Frank Davis's son. He, too was a mental patient at a Massachusetts state hospital — in his case, Westborough State Hospital. He suffered a beating at the hands of guards, in 1993.

Davis wasn't killed during his beating. But it was, his father says, a tragic turning point in a life that ended too early a decade later. The Davis family is still waiting for the justice that courts say it is owed.

Related

- [3/2: Correction chief, staff rebuked in patient death](#)
- [2/16: A death in restraints after 'standard procedure'](#)

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Jason Davis was 28 at the time of his assault. He had been diagnosed with schizophrenia and bipolar disorder and had been in and out of mental hospitals since he was 17. He had been committed to Westborough for threatening to kill his father.

The string of events that led to his assault, as outlined in multiple court decisions, began harmlessly enough.

On Aug. 12, 1993, Davis and a fellow patient slipped out of the hospital — it was not a locked facility — and headed for a nearby liquor store. Davis's father believes he was disappointed because his birthday had come and gone two days earlier with no visitors.

The two men were in the woods near the hospital drinking beer and wine coolers when a State Police officer assigned to the hospital tracked them down and took them back to the hospital, turning them over to hospital officials without incident.

The men were placed in separate “restraint” rooms when a couple of guards began to taunt Davis, according to court documents.

In the room at this point were six guards, the nurse, and Davis, who became increasingly agitated. He kicked at one of the guards, missing him. At least four guards then held him down while one, Phillip Bragg, did most, if not all, of the punching, and the nurse cheered them on, according to court documents. Bragg was later fired.

The State Police officer who had returned Davis to the hospital broke up the beating, which started when he was out of the room.

“There was blood all over the place,” said attorney Christopher Perry, who represented Davis in his successful lawsuit. “At trial, one of the defendants said [Davis] looked like a fighter looks like when he comes out of the ring.”

Davis sued the state employees responsible for his assault, winning a string of judgments in state and federal court between 1998 and 2001. The state's attorney general, Tom Reilly, attempted to appeal the state's losses to the US Supreme Court. The high court in 2002 refused to hear the state's appeal, effectively upholding the decision of the First Circuit Court of Appeals.

The award was divided into seven parts, one for each of the state employees found culpable in the beating. They were sued individually, because the state itself could not be sued under the applicable federal civil rights law.

With accrued interest, the judgment now stands at \$2,085,000, according to Perry, but Davis's family has seen almost none of it. The defendants have maintained in court documents that they cannot afford to pay the judgment.

Given that the beating happened while Davis was in state care the obvious solution is for the state to pay the judgment. But a measure that would have done just that, sponsored by Representative John Rogers, a Norwood Democrat, was removed from a supplemental budget appropriation a couple of weeks ago.

"In my mind, the liability of the Commonwealth has always been crystal-clear," Rogers said last week.

Oddly, the state chose, years ago, to pay a small part of the judgment — a \$177,000 verdict against one of the guards — while appealing on behalf of the other defendants. Why it has resisted paying the other awards has never been clear, said Rogers, who took up this cause a decade ago, while serving as chairman of the House Ways and Means Committee.

Perry said the case has become something of a landmark — cited, by his count, in 167 other federal decisions. Still, the awards have never been funded.

"It is ironic that the state will pay verdicts for harm that is accidentally occasioned but it will not pay verdicts from harm which results from an intent to hurt our mentally ill — the most voiceless, vulnerable, and defenseless members of our society," Perry said.

Jason Davis recovered from his beating physically. He was transferred to Bridgewater State Hospital after the incident and taken off his psychiatric medications. He left state care the moment he was legally free to do so, and refused further hospitalization. He died in 2004 from alcohol poisoning. His mother died five months later.

"It all affected my family considerably," William Davis said Sunday.

Besides being an avoidable tragedy, the case of Jason Davis was a missed opportunity. It might have been an early chance to establish and rigorously enforce standards of conduct for caring for mentally ill patients. It might have taught the state a lesson. It might not be too much to think it might even have saved a life.

"The Davis case should have sent a loud, clear message to the Commonwealth, which would have avoided Joshua Messier's death entirely," Perry argues.

Rogers said the Legislature can still address the issue before the session ends later this year, and he hopes to persuade his colleagues to do the right thing.

Meanwhile, Frank Davis lives with a hollow legal victory. "The state should have been held accountable for all this stuff and they weren't," Davis said. "They were held accountable in court, but what kind of accountability is it when there are no consequences?"

Adrian Walker is a Globe columnist. He can be reached at walker@globe.com. Follow him on Twitter [@Adrian_Walker](https://twitter.com/Adrian_Walker).

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EXHIBIT 2
CRIMINAL RECORDS



Commonwealth of Massachusetts

WORCESTER, SS.

Superior Court Department of the Trial Court, holden at Worcester, within and for the County of Worcester, for the transaction of criminal business, on the first Monday of July in the year of our Lord one thousand nine hundred and eighty-seven The Jurats for the Commonwealth aforesaid, on their Oath Present

THAT Philip E. Bragg

of Worcester in said County of Worcester, on the seventh day of November in the year of our Lord one thousand nine hundred and eighty-six at Worcester in said County of Worcester, being armed with a dangerous weapon, to wit: a firearm, did assault Gerald Dennison, with intent to murder him.

A true bill,

Handwritten signature of Foreman

Handwritten signature of Asst. District Attorney

true copy by photostatic process.

Test: Karen A. Zona Ass't. Clerk

COMMONWEALTH VS. PHIL BRAGG
OF WORCESTER

843111

COMMONWEALTH
OF
MASSACHUSETTS
WORCESTER, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

Offense: ARMED ASSAULT WITH INTENT TO MURDER

Place: Worcester

Surety and amount:

Counsel: John Buckley, 339 Main Street, Worcester, 7/24/87

Justice disposing of case: Travers, J.

Date	Case No.	Disposition
1987 - July 13	1	INDICTMENT
14		Summons - return day 7/28/87
24		Plea Not Guilty - released on personal recognizance
		Conference and Report date - 8/19/87 (J. Donohue, J.)
Nov. 30	2	Pretrial Conference Report filed and Approved (Mulkern, J.)
1988 - Jan. 29		Dismissed (Travers, J.)

CF 5M
A true copy of photostatic process
Attest: *Karen A. Zona*
Asst. Clerk

TE 90 p. 2

Commonwealth of Massachusetts

3

WORCESTER, SS.

Superior Court Department of the Trial Court, holden at Worcester,
within and for the County of Worcester, for the transaction of criminal business, on
the first Monday of July
in the year of our Lord one thousand nine hundred and eighty-seven

The Jurors for the Commonwealth aforesaid, on their Oath Present

THAT Philip E. Bragg

of Worcester in said County of Worcester,
on the seventh day of November in the year of our Lord
one thousand nine hundred and eighty-six, at Worcester
in said County of Worcester,
did assault and beat Gerald Dennison, by means of a dangerous weapon
to wit: a firearm.

A true bill,

A. J. Donaldson
Asst. District Attorney.

Timothy Keenan
Foreman.

• true copy by photostatic process.

lost: Karen a zona
Asst. Clerk

TE 90 p. 3

COMMONWEALTH VS. PH . BRAGG
OF WORCESTER

COMMONWEALTH
OF
MASSACHUSETTS
WORCESTER, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

Offense: ASSAULT AND BATTERY BY MEANS OF A DANGEROUS WEAPON
Place: Worcester

Surety and amount:

Counsel: John Buckley, 339 Main Street, Worcester, 7/24/87

Justice disposing of case: Travers, J.

1987 - July 13	1	INDICTMENT
14		Summons - return day 7/28/87
24		Plea Not Guilty
Nov. 30		Conference and Report date - 8/19/87 (J. Donohue, J.)
		Pre-trial Conference Report filed and Approved (Mulkern, J.) (See Mo. #2 in case #87 1318)
1988 - Jan. 29		Retract Plea of Not Guilty
		Plea Guilty
		Sentence: 10 yrs. M.C.I. Concord, Court requests defendant to serve 1 year, balance suspended, Placed on Probation 2 yrs., with special conditions: defendant receive AA and Drug Evaluation and Treatment under Supervision of Prob. Dept. (Travers, J.)
		Victim/Witness fee \$25.00 to be paid while incarcerated
		Mittimus issued

A true copy by photostatic process.
Att. *Karen A. Zora*
Assy. Clerk

DEPARTMENT OF MENTAL HEALTH

APPLICATION FOR EMPLOYMENT

The Department of Mental Health is an Affirmative Action/Equal Opportunity Employer. Minorities, women, those disabled, and Vietnam Era Veterans are encouraged to apply.

PLEASE PRINT OR TYPE

Date of Application: 1-27-88 Date available to begin employment with DMH: 1-27-88

Title of Position for which you are applying: M.H.W.

PERSONAL DATA

Name BRAGG Phillip Edward Social Security No. 015-34-4201
(Last) (First) (Middle)

Present Address 8 Massachusetts Rd. Worcester MA 01604
(No.) (Street) (City) (State) (Zip)

Telephone No. (508) 756-3371

Would you work Full-time Part-time

Shift desired Day Evening Night Days off desired: _____

Person (and relationship) to be notified in case of accident or emergency: Mrs. MARION BREEN (Mum)

Telephone No: () 756-3371

call anytime

EDUCATION

EDUCATION	NAME AND LOCATION	MAJOR	DID YOU GRADUATE? If yes, what year	DEGREE EARNED
High School	<u>Soyed High School</u>	<u>College prep</u>	<u>YES</u>	<u>NINE</u>
College	<u>WORC. MASS</u>			
Graduate School				
Business or Trade				

OTHER TRAINING OR SKILLS:
 List office machines, computers, word processors, and/or special courses, etc. in which you have knowledge.

NONE

LANGUAGES:
 List any languages other than English, in which you are proficient

Language	Speak	Read	Write
<u>NONE</u>			

Optional
 Disclosure of the following information is entirely voluntary and will be used to ensure compliance with Civil Rights Statutes and for Affirmative Action Purposes.

Sex Male Female

Ethnic Status Caucasian Black American Native Hispanic Asian Other

If you wish to identify yourself as a Vietnam-Era Veteran or as disabled for Affirmative Action purposes, please use Attachment 1.

TF91 12

2

EMPLOYMENT HISTORY

List in order, starting with most recent; attach additional pages if necessary.
 (If you have previously been employed by DMH or a DMH vendor agency, detail the information below.)

Dates From To	Name, Address, and Telephone No. of Employer	Salary and Title	Supervisor's Name
12/27/88	DPW. CITY of WORC. ICEASE WORC ST. 7991488	Start: \$225 WK Finish: \$430 WK	MR. Kevin Daley 7991488

Describe the work you did:
 RAN BACKHOE AND OPERATED EQUIPMENT.

Reason for leaving: Resigned - To complete court sentence

Dates From To	Name, Address, and Telephone No. of Employer	Salary and Title	Supervisor's Name
		Start: \$ _____ Finish: \$ _____	

Describe the work you did:

Reason for leaving:

Dates From To	Name, Address, and Telephone No. of Employer	Salary and Title	Supervisor's Name
		Start: \$ _____ Finish: \$ _____	

Describe the work you did:

Reason for leaving:

Have you taken a Civil Service Exam? YES NO If yes, date: _____
 Are you on a current Civil Service List? YES NO If yes, Position Title: _____

LABORER-TRUCK DRIVER
 DPW, WORC.

List any awards, certificates, commendations, or licenses acquired during prior employment:
 CLASS II TRUCK - BACKHOE LIC.

BACKGROUND INFORMATION

- You need not disclose the content of a court record that has been sealed. If you have a pardoned court record, attach a copy of it to this application. If the answer to any of the following questions is yes, please attach a separate sheet with appropriate information. Being employed by Mr. Mampone Robert Jenkins et al

No Yes 1. Have you, since your 17th birthday, been convicted of a felony (such as: larceny, embezzlement, theft)?

No Yes 2. Have you been convicted of a misdemeanor within the five years preceding the date of this application? (If the conviction was your first for any of the following offenses, you should answer "NO": Drunkenness, Simple Assault, Speeding, Minor Traffic Violations, Affray, or Disturbance of the Peace.)
 NOTE: If the answer to Question 2 is YES, you must report all convictions that occurred before and during the five-year period. Attach a sheet with: date, court, offense, and disposition.

No Yes 3. Are there any charges pending against you?

Applicant's Certification and Agreement
 I, hereby, certify that the facts set forth in the above employment application are true and complete. I understand that if employed, false statements on this application shall be considered sufficient cause for dismissal.

Signature

[Handwritten Signature]

TE91 p. 2

Commonwealth of Massachusetts

WORCESTER, SS.

At the Superior Court, holden at

Worcester,

within and for the County of Worcester, for the transaction of criminal business, on the

Second Monday of July

in the year of our Lord one thousand nine hundred and seventy-nine

The Jurors for the Commonwealth aforesaid, on their Oath Present

THAT

Paul M. Rennie

of Worcester in said County of Worcester, on the third day of May in the year of our Lord one thousand nine hundred and seventy-nine . at Worcester in said County of Worcester, did assault and beat Dean Domiano by means of a dangerous weapon, to wit: a metal pipe.

A true bill,

Edgerton J. Kinstone Foreman.

Robert W. Toole District Attorney.

A true copy by photostatic process.

Attest: Karen A. Zona Asst. Clerk

1

TE 117 P.1

NO. 88929

COMMONWEALTH VS. PAUL M. KENNIE,

WORCESTER

COMMONWEALTH
OF
MASSACHUSETTS
WORCESTER, SS.
SUPERIOR COURT
CRIMINAL
DOCKET

Offense: ASSAULT AND BATTERY BY MEANS OF A DANGEROUS WEAPON

Surety and amount: Place: WORC.

Counsel: Milton Raphaelson, esq.

Louis P. Aloise, Asst. D.A.

Justice disposing of case: O'Conor, J.

1979-July 11 1 Indictment

Summons - return day 7/27/79.

27 pl. not guilty

Aug. 8 retr., pl. guilty

sentence, 1 yr. House of Correction.--credit 15 days.

mittimus issued. - returned 8/16/79

CP 5M

A true copy by photostatic process.

Attest:

Asst. Clerk

Karen A. Zorn

TE 119 p. 2

2

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Commonwealth of Massachusetts

WORCESTER, SS.

At the Superior Court, holden at Worcester, within and for the County of Worcester, for the transaction of criminal business, on the Second Monday of July in the year of our Lord one thousand nine hundred and seventy-nine

The Jurors for the Commonwealth aforesaid, on their Oath Present

THAT Paul M. Rennie

of Worcester in said County of Worcester, on the third day of May in the year of our Lord one thousand nine hundred and seventy-nine, at Worcester in said County of Worcester,

did assault Dean Domiano by means of a dangerous weapon, to wit: a metal pipe with intent to rob him, and thereby did rob and steal from the person of said Dean Domiano

~~the sum of ten dollars and no part thereof~~
~~and~~ ~~the sum of~~

keys and Motor Vehicle

of the value of more than one hundred dollars of the property of Dean Domiano.

A true bill,

Edgerton L. Curtis Foreman.

Robert W. Toule District Attorney.

A true copy by photostatic process.

Attest: Karen A. Zona Asst. Clerk

3

TE 1170.3

88931

Commonwealth of Massachusetts

46

WORCESTER, SS.

At the Superior Court, holden at

Worcester,

within and for the County of Worcester, for the transaction of criminal business, on the

Second Monday of July

in the year of our Lord one thousand nine hundred and seventy-nine

The Jurors for the Commonwealth aforesaid, on their Oath Present

THAT

Paul M. Rennie

of Worcester in said County of Worcester,
on the eighth day of May in the year of our Lord
one thousand nine hundred and seventy-nine, at Worcester
in said County of Worcester,

did assault Eric Bergman, by means of a dangerous weapon, to wit: a pistol
with intent to rob him, and thereby did rob and steal from the person of said Eric Bergman

~~money of the amount and of the value in all of~~

~~dollars and~~

~~cents and~~

money

of the value of less than one hundred dollars

of the property of Eric Bergman.

A true bill,

Edgerton J. Linton
Foreman.

Robert W. Toule
Asst. District Attorney.

A true copy by photostatic process.

Attest: *Karena Zona*
Asst. Clerk

5

RE 117 P. 5

No 88931

COMMONWEALTH VS. PAUL M. RENNIE, WORCESTER,

Offense: ARMED ROBBERY
Place: WORC.
Surety and amount: Raymer T. Rennie, 451 Lake Avenue, Worcester, Mass. \$1,000 cash
Counsel: Milton Repheelson, esq.
Louis P. Aloise, Asst. D.A.
Justice disposing of case: O'Connor, J.

Table with 2 columns: Date, Description. Row 1: 1979-July 11, 1, Indictment filed. Row 2: 27, Summons - return day 7/27/79. Row 3: Aug. 8, pl. not guilty. Row 4: retr., pl. guilty. Row 5: probation 2 yrs.; Recogs. \$100. with probation officer. ; To take effect from and after sentence imposed on 88932.

COMMONWEALTH OF MASSACHUSETTS WORCESTER, ss. SUPERIOR COURT CRIMINAL DOCKET

6

CP 54

Attest: Karen A. Zorn, Asst. Clerk

Handwritten signature: Karen A. Zorn

TF 117 D. 10

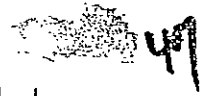


EXHIBIT 3
DEATH CERTIFICATE



The Commonwealth of Massachusetts
MEDICAL EXAMINER'S CERTIFICATE OF DEATH
REGISTRY OF VITAL RECORDS AND STATISTICS

2009-10441

555

OCME CASE NUMBER

REGISTERED NUMBER

STATE USE ONLY

1 DECEDENT - NAME FIRST MIDDLE LAST Joshua K. Messier			2 SEX Male	3 DATE OF DEATH (Mo., Day, Yr.) May 4, 2009
4a PLACE OF DEATH (City/Town) Brockton		4b COUNTY OF DEATH Plymouth	4c HOSPITAL OR OTHER INSTITUTION - Name (If not in other, give street and number) Brockton Hospital	
5 PLACE OF DEATH (Check only one) Hospital <input type="checkbox"/> Outpatient <input type="checkbox"/> DOA <input checked="" type="checkbox"/> Other: <input type="checkbox"/> Nursing Home <input type="checkbox"/> Residence <input type="checkbox"/> Other (specify):			6 SOCIAL SECURITY NUMBER 019-66-2722	7 IF US WAR VETERAN Specify War
8a WAS DECEDENT OF HISPANIC ORIGIN? (If yes, specify) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes:		8b RACE (specify) White	9 DECEDENT'S EDUCATION (highest grade completed) Elem-Sec (9-12) 12 College (1-4, 5+)	
10a AGE - Last Birthday (Yrs) 23	b UNDER 1 YEAR HRS DAYS	c UNDER 1 DAY HRS MIN	10d DATE OF BIRTH (Mo., Day, Yr.) July 16, 1985	11 BIRTHPLACE (City and State or Foreign Country) Worcester, Massachusetts
12 MARRIED, NEVER MARRIED, WIDOWED OR DIVORCED Never Married	13 LAST SPOUSE (full name at birth or adoption) None	14a USUAL OCCUPATION (Prior, if retired) Attendant	14b TYPE OF BUSINESS/INDUSTRY Country Club	
15a RESIDENCE - No. and Street, City/Town, County, State/Country 78 North Sturbridge Road, Charlton, Worcester CO., Massachusetts		15b Zip Code 01507		
16 FATHER - full name at birth or adoption Kevin Messier		17 STATE OF BIRTH (if not in US, name country) New York	18 MOTHER - full name at birth or adoption Lisa Brown	19 STATE OF BIRTH (if not in US, name country) Massachusetts
20 INFORMANT'S NAME Lisa Jaskulka-Messier		21 MAILING ADDRESS 78 North Sturbridge Rd. Charlton MA 01507		22 RELATIONSHIP Mother
23 METHOD OF IMMEDIATE DISPOSITION <input type="checkbox"/> Burial <input checked="" type="checkbox"/> Cremation <input type="checkbox"/> Entombment <input type="checkbox"/> Removal from State <input type="checkbox"/> Donation <input type="checkbox"/> Other:		24 FUNERAL SERVICE LICENSEE OR OTHER DESIGNEE Kevin L. Mercadante		25 LICENSE # 5985
26a PLACE OF DISPOSITION (Name of cemetery, crematory, or other) Rural Crematory		26b LOCATION (City/Town/State) Worcester, Massachusetts		
27 DATE OF DISPOSITION (Mo., Day, Yr.) May 22, 2009		28a/b NAME AND ADDRESS OF FACILITY OR OTHER DESIGNEE Mercadante Funeral Hm, 370 Plantation St. Worcester MA 01601		
29 PART I - CAUSE OF DEATH - SEQUENTIALLY LIST IMMEDIATE CAUSE THEN ANTECEDENT CAUSES THEN UNDERLYING CAUSE				APPX INTERVAL
a Immediate Cause CARDIOPULMONARY ARREST DURING PHYSICAL RESTRAINT,				
b Due to WITH BLUNT IMPACT OF HEAD AND COMPRESSION OF CHEST,				
c Due to WHILE IN AGITATED STATE				MINUTES
d Due to				
30 PART II - OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH				31 AUTOPSY? <input type="checkbox"/> Yes <input type="checkbox"/> No Yes
34 MANNER OF DEATH <input type="checkbox"/> Natural <input type="checkbox"/> Accident <input checked="" type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input type="checkbox"/> Could not be determined <input type="checkbox"/> Pending investigation		35a DATE OF INJURY May 04, 2009	35b TIME OF INJURY UNKNOWN AM PM	35c INJURY AT WORK? <input type="checkbox"/> Yes <input type="checkbox"/> No NO
35d DESCRIBE HOW INJURY OCCURRED RESTRAINED BY CORRECTION OFFICERS DURING AGITATED STATE		35e PLACE OF INJURY (Type) JAIL/PSYCHIATRIC HOSPITAL		
		35f LOCATION/ADDRESS OF INJURY 20 ADMINISTRATION ROAD, BRIDGEWATER, MA		
36 MEDICAL EXAMINER CERTIFICATION		37c APPX TIME OF DEATH 10:26 PM	37d DATE PRONOUNCED May 04, 2009	
		38 LICENSE # 230737	37e TIME PRONOUNCED 10:26 PM AM PM	
(Name and Address) MINDY J. HULL, M.D., 720 ALBANY STREET, BOSTON, MA 02118		37f DATE SIGNED February 03, 2010		
37a On the basis of examination and/or investigation in my opinion death occurred at the time, date, and place and due to the cause(s) stated. (Signature)				
40a RN/PA/NP PRONOUNCEMENT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	40b IF YES, DATE	40c IF YES, TIME AM PM	40d NAME OF PRONOUNCER TITLE <input type="checkbox"/> RN <input type="checkbox"/> PA <input type="checkbox"/> NP	
41 DATE BURIAL PERMIT ISSUED May 19, 2009		42 RECEIVED IN CITY/TOWN OF Brockton		43 DATE OF RECORD May 22, 2009
BURIAL AGENT SIGNATURE S/Ellen Silva		CLERK'S SIGNATURE <i>Anthony J. Zeoli</i>		

I certify that I am the City Clerk of Brockton, MA and I have Custody of Records of Births, Marriages and Deaths required by law to be kept in My office, I certify that the above is a true copy from said records.
WITNESS MY HAND AND SEAL OF THE CITY OF BROCKTON THIS 24th DAY OF JULY 2014

Anthony J. Zeoli
ANTHONY J. ZEOLI, CITY CLERK

EXHIBIT 4

GOVERNOR BAKER LETTER



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE GOVERNOR

STATE HOUSE • ROOM 271
BOSTON, MASSACHUSETTS 02133
TEL: (617) 725-4030 • FAX: (617) 727-8290

GOVERNOR'S LEGAL OFFICE

LON F. POVICH
CHIEF LEGAL COUNSEL

CATHY M. JUDD-STEIN
DEPUTY CHIEF LEGAL COUNSEL

BENJAMIN A. GOLDBERGER
DEPUTY LEGAL COUNSEL

MICHAEL A. KANEH
DEPUTY LEGAL COUNSEL

JOHN M. STEPHAN
DEPUTY LEGAL COUNSEL

SHARON SHELFER CASEY
DEPUTY LEGAL COUNSEL

January 19, 2016

Christopher M. Perry
Law Offices of Brendan J. Perry
& Associates, P.C.
P.O. Box 6938
Holliston, MA 01746

Dear Attorney Perry:

I am writing to respond to your December 4, 2015 letter to Governor Baker concerning unpaid judgments owed by six former Department of Mental Health employees to the estate of your client, Jason Davis. We have looked into the history of this matter. In 1998, a jury found the former employees liable under State and Federal law of intentionally depriving Mr. Davis of his civil rights and awarded Mr. Davis \$100,000 in compensation for his injuries and imposed substantial punitive damages in addition. The Commonwealth itself was not a defendant in the case, and our review does not indicate that the Commonwealth was ever found negligent in supervising the former employees. It appears that in 2014 Governor Patrick twice acted to prevent the Commonwealth from paying a substantial portion of these judgments.

As you know, by law the Commonwealth is prohibited from paying judgments owed by State employees who have been found to have violated a person's civil rights by acting outside the scope of their duties and in a grossly negligent, willful, or malicious manner. See G. L. c. 258, § 9. In effect, the law makes the State responsible only for acts that an employee undertakes on behalf of the State itself and not for acts that the employee undertakes on his or her own bad motives and outside the employee's responsibilities to the State. The rule is essentially the same for private employers and is intended to ensure that employees do not believe themselves free to act unlawfully without fear of personal consequences. Consequently, unless the Legislature acts to explicitly override this general prohibition and appropriate funds for these outstanding judgments, the Commonwealth is unable to pay any part of these awards. We are not aware of any currently pending legislation that would do this.

As the facts of your client's case demonstrate, the legal rule that controls here unfortunately cannot guarantee that an employee found liable for his or her own bad acts will be able to pay whatever judgment a court may award. It would be open to the

Legislature to determine based on all of the facts that the outcome in this case warrants suspending the statutory prohibition on paying judgments entered against individual State employees. The Governor would consider whatever the Legislature might choose to enact in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael A. Kaneb", with a long horizontal line extending to the right from the end of the signature.

Michael A. Kaneb
Deputy Legal Counsel