

**OFFICE OF BAR COUNSEL**  
THE BOARD ON PROFESSIONAL RESPONSIBILITY  
DISTRICT OF COLUMBIA COURT OF APPEALS

515 5<sup>th</sup> Street, NW  
Building A, Room 117  
Washington, D.C. 20001  
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Date: September 3, 2008

A. Your Name: Dr. James E. Enstrom

Address: University of California, Box 951772  
Los Angeles, CA 90095-1772  
Business Telephone: (310) 825-2048

B. Attorney Complained Of:

Name: Sharon Y. Eubanks  
Address: Holland & Knight, 2099 Pennsylvania Avenue, N.W., Suite 100  
Washington, D.C. 20006  
Telephone No.: (202) 457-7013 Attorney's D.C. Bar No.: 420147

C. Have you filed a complaint about this matter anywhere else? If yes, please give details.

Yes. I sent an August 14, 2008 letter to Eubanks' current employer, but since my complaint deals with Eubanks' conduct prior to this employer, I am hereby filing my first full complaint with the Office of Bar Counsel.

D. Do you have a written retainer agreement with the attorney? If yes, please attach copy.  
No.

E. Where applicable, state the name of the court where the underlying case was filed, and the case name and number.

United States District Court for the District of Columbia  
United States of America vs. Philip Morris et al. Civil Action No. 99-CV-02496 (GK)

F. Do you have other documents that are relevant? If yes, please provide copies.

In addition to the Details of Complaint, the following documents are included:

- 1) October 10, 2007 Enstrom *Epidemiologic Perspectives & Innovations* paper
- 2) Pages 821-830 Defaming Enstrom in July 2004 US DOJ Findings of Fact
- 3) Pages 609-615 Defaming Enstrom in August 2005 US DOJ Findings of Fact
- 4) March 29, 2007 Eubanks Letter to UC Regent Richard Blum Regarding Tobacco
- 5) May 4, 2007 *Chronicle of Higher Education* Advertisement Signed by Eubanks
- 6) October 16, 2007 UC Provost Hume Letter to US DOJ Supporting Enstrom

## G. DETAILS OF COMPLAINT:

Every attorney admitted to the practice of law in the District of Columbia must adhere to the ethical standards set forth in the Rules of Professional Conduct. I have substantial documented evidence alleging that Sharon Y. Eubanks, a D.C. Bar member, has not adhered to these standards. During 2000-2005 Eubanks was the lead counsel for the U. S. Department of Justice (US DOJ) tobacco litigation case, USA vs. Philip Morris et al. 99-CV-02496 (GK), as is noted on the webpage of her current employer, Holland & Knight. During 2003-2007 she made numerous defamatory statements regarding me and my research in connection with this case. Thus, I request that the Office of Bar Counsel investigate my allegations of professional misconduct, particularly regarding dishonesty, deceit, and behaving improperly before a court.

### **Background Regarding Attack by Eubanks on Enstrom**

I am a highly qualified UCLA epidemiologist and I have always conducted my scientific research with honesty and integrity. I received my Ph.D. at Stanford University in 1970 under the direction of a Nobel Laureate; I have been a UCLA faculty member since 1976; I have been a Fellow of the American College of Epidemiology since 1981; I have been listed in *Who's Who in America* since 1990 because of my epidemiologic accomplishments; and I have been President, Scientific Integrity Institute in Los Angeles since 2005.

On May 17, 2003, Dr. Geoffrey C. Kabat and I published a major epidemiologic paper in the *British Medical Journal (BMJ)* that found no relationship between environmental tobacco smoke (ETS) and tobacco-related disease mortality. This was an important paper that contradicted the agenda of Eubanks. In preparing her case against the tobacco industry, Eubanks advanced the notion that there existed an undisputed causal relationship between ETS and mortality. However, my findings showed this relationship was very weak and still uncertain, particularly within the United States. In an effort to discredit both me and my research, she undertook a long-term *ad hominem* attack campaign based on the fact that my research was partially funded by the tobacco industry.

Moreover, she undertook this campaign after Kabat and I had explicitly refuted claims made during mid 2003 about supposed tobacco industry influence on our *BMJ* paper. We published an August 30, 2003 *BMJ* Letter to the Editor containing the following statement: "We want to make clear that the tobacco industry played no part in our paper other than providing the final portion of the funding. The tobacco industry never saw any version of our paper before it was published, never attempted to influence the writing of the paper in any way, and did not even know the paper was being published until it became public. In addition, we have never testified on behalf of the tobacco industry, never owned any stock in the tobacco industry, never been employees of the tobacco industry, and would never have accepted tobacco industry funds if there had been any other way to conduct this study."

Eubanks ignored our unequivocal disclosure statement and the fact that no errors have ever been identified in our paper and proceeded to engage in alleged professional misconduct toward me during 2003-2007. Below I summarize six specific examples. Complete details are contained in my October 10, 2007 *Epidemiologic Perspectives & Innovations* paper (<http://www.epi-perspectives.com/content/4/1/11> and <http://www.scientificintegrityinstitute.org/EPI101007E.pdf>) and in other documents posted on my Scientific Integrity Institute website ([www.scientificintegrityinstitute.org](http://www.scientificintegrityinstitute.org)).

### **1) Libelous Characterization in July 2004 US DOJ Findings of Fact and August 2004 Factual Memorandum on Witnesses Prepared by Eubanks**

A review of the U.S. tobacco litigation records back to its origin in 1999 indicates that Eubanks made no reference to me prior to May 17, 2003. However, after this date she began the process of inserting me into the litigation and portraying me as a major scientific operative of the tobacco industry. In the July 2004 Final Proposed Findings of Fact, Eubanks devoted ten pages to grossly mischaracterizing me as a “long term paid scientist” “whose relationship with the tobacco industry dates as far back as 1975” (pages 821-830). Also, the August 2004 Factual Memorandum on Witnesses and Other Individuals falsely describes me as an “RJR and Philip Morris consultant, approx 1975-2003.” In actuality, I have never been a tobacco industry consultant. The funding I have received from the tobacco industry in recent years has only been used to conduct high quality epidemiologic research. In addition, throughout my 35-year epidemiologic career I have consistently published evidence on the health benefits of being a nonsmoker. Eubanks deliberately misrepresented my background without ever directly contacting me or those most familiar with my distinguished epidemiologic career. Indeed, she never even notified me of the statements made about me before or during the trial, which took place from September 2004 through June 2005 in front of U.S. District Court Judge Gladys Kessler.

### **2) Greater Libelous Characterization in August 2005 US DOJ Final Proposed Findings of Fact Prepared by Eubanks**

I first learned of my insertion into the U.S. tobacco trial shortly after it ended in June 2005, when to my surprise items began appearing on the Internet that referenced my involvement. On two separate occasions in July 2005, I called the US DOJ Tobacco Litigation Team and left messages asking for Eubanks and other team members to correct the erroneous statements that were made about me during the trial. No one ever responded to my requests and, according to a newspaper account, Eubanks dismissed my requests as “naïve and ridiculous demands.” She then proceeded to make ever more libelous statements about my research.

In the August 2005 Final Proposed Findings of Fact, seven pages were devoted to my research in the section entitled “Cooking the Books: The Manufacture of False Science to Support the Industry Position on ETS” (pages 609-615). Libelous mischaracterizations include citing the Enstrom/Kabat study as an “example of scientific fraud” (page 493) and as “yet another self-serving, unreliable, and scientifically

questionable product of the industry's unabated effort to attack the scientific consensus on passive smoking" (page 609). In addition, Eubanks' key US DOJ witness, Jonathan M. Samet, M.D., Chair, Johns Hopkins University Department of Epidemiology, made several false statements about my research. An example of a false statement is finding 1105: "Dr. Samet testified at trial that Enstrom's evidence was weak and that in any event, his conclusions were not supported by the evidence" (page 614).

Eubanks' misrepresentations obviously influenced Judge Kessler, who ruled in favor of the USA on August 17, 2006. In reaching her decision, Judge Kessler relied heavily on the August 2005 Findings of Fact and on the testimony of US DOJ witness Samet (see pages 1232-1234 of her decision). To illustrate Kessler's reliance on the Findings of Fact, note finding 1023: "Several projects managed by Defendants as part of their worldwide ETS program illustrate how Defendant's attack on the scientific and medical consensus was at best a contamination of the scientific literature and at worst a scientific fraud." (page 589). This statement was reworded as Kessler decision finding 3731: "Several projects managed by Defendants as part of their worldwide ETS program illustrate the degree to which Defendants closely supervised and, when necessary, altered the research on the question of ETS and disease." (page 1364).

### **3) March 29, 2007 Letter to UC Regents Chairman Richard Blum Signed by Eubanks**

The August 17, 2006 Kessler decision was used to bring the issue of my *BMJ* paper and all tobacco-funded research at the University of California (UC) before the UC Board of Regents from September 2006 through September 2007. In January 2007 the Regents proposed a ban on tobacco industry funding at UC. Eubanks played a major role in this effort, although she was no longer a member of the US DOJ and had no connection with UC. On March 22, 2007 the UC Provost wrote an unequivocal letter to the American Cancer Society that cleared me of the baseless accusations of "scientific misconduct" that ACS had made to the UC Regents in connection with my tobacco funding, my use of an ACS database, and my *BMJ* paper. Although there was nothing wrong with my research, Eubanks co-authored a four-page March 29, 2007 letter to UC Regents Chairman Richard Blum advocating a tobacco funding ban. The letter was co-signed by recently fired UCSF Dean David Kessler, but the extensive legal terminology throughout the letter indicates that Eubanks was the primary author. The letter states: "the determination by a neutral fact finder [Judge Kessler], who made her findings of conspiratorial conduct objectively on a full and fair record, provide a compelling rationale for the Regents to decline money from these [tobacco] companies." However, Judge Kessler obviously did not have a full and fair record because of Eubanks misrepresented the evidence and I had no opportunity to refute the false claims made about my research. Also, Eubanks' letter did not disclose the fact that the entire Kessler decision was stayed October 31, 2006, pending appeal to the U.S. Court of Appeals. This letter represents advocacy by Eubanks designed to change UC research funding policy and to interfere with my UC academic freedom to conduct important epidemiologic research using tobacco industry funding.

#### **4) May 4, 2007 Chronicle of Higher Education Advertisement to UC Regents Signed by Eubanks**

In order to fully defend my research and my funding at UCLA, I made detailed submissions to the UC Regents and the UC Academic Senate during January through April 2007. Also, on April 5, 2007 I talked personally with Eubanks and asked for her assistance in clearing my name. She offered me no assistance and instead continued her unwarranted campaign against me. In particular, she signed a two page May 4, 2007 *Chronicle of Higher Education* advertisement, "Why do the University of California Regents still cash checks from tobacco racketeers?" The ad is worded in a way to defame me and my research without using my name (I am specifically named in other documents).

For instance, the fourth paragraph of the ad states "To make vivid how Big Tobacco co-opted World-class research institutions for its disinformation and legal defense strategies, the Court cited the misuse of American Cancer Society data by a non-faculty researcher at UCLA, which got \$525,000 from the tobacco industry." This sentence is highly libelous because I did not "misuse" ACS data, did not participate in a "disinformation" strategy, and have been on the UCLA faculty since 1976. The ad was specifically written and timed to influence a key May 9, 2007 Academic Senate vote on the tobacco funding ban proposed by the Regents. I have information from a reliable source that Eubanks was personally involved with sending this ad to UC Regents and UC Academic Senate members. In spite of the ad, the Academic Senate members stood strongly for academic freedom at UC and voted 44 to 5 against the ban advocated in the ad. The ad is still prominently posted on the Internet more than one year after this vote, in order to keep up the attack on tobacco industry funding at UC.

#### **5) July 18, 2007 Eubanks Testimony before UC Regents Regarding US DOJ Tobacco Litigation and Tobacco Industry Funding at UC**

Given the overwhelming Academic Senate vote against the ban and the substantial written evidence in my appeals to the Academic Senate and to the Regents, on May 15, 2007 Regent Blum promised me five minutes in July 2007 to verbally defend my research and my funding before the UC Regents. A few days before the Regents meeting, which took place in Santa Barbara on July 18, 2007, I was pulled from the program. Instead, Eubanks was allowed to speak for over 20 minutes about the US DOJ tobacco trial and tobacco industry funding at UC. Eubanks recited many of the points made in her March 29, 2007 letter. For instance, she stated that Judge Kessler was a "neutral fact finder, a federal judge, who made her findings of conspiratorial conduct objectively" based on "a full and fair record." However, the record was not full and fair and it entirely misrepresented my tobacco funded research at UC. UC Academic Senate Chair John Oakley eloquently responded to Eubanks and strongly defended the academic freedom that has made UC one of the world's greatest educational institutions. He noted that UC is not mentioned in the Kessler decision in any way other than the reference to my *BMJ* study, a totally valid study. Also, he pointed out that the entire Kessler decision has been stayed since October 31, 2006,

pending appeal before the U.S. Court of Appeals of the D.C. Circuit. He noted that the stay would not have been granted unless there was a good chance that the Kessler decision would be overturned upon appeal.

**6) October 16, 2007 Hume Letter to US DOJ and Removal of Enstrom and UC from November 19, 2007 US DOJ Appeal Brief**

The UC Academic Senate and UC Office of the President have fully supported me. The UC Provost wrote a strong October 16, 2007 letter to the US DOJ stating that I have done nothing wrong and providing documentation of specific errors in the Kessler decision regarding my research. Since she relied on the Findings of Facts, Kessler made several inaccurate statements about “The 2003 Enstrom/Kabat Study” in her findings 3781-3792 on pages 1380-1383. The November 19, 2007 US DOJ appeal brief to the Court of Appeals makes no mention of me, my research, or UC. This letter also includes a copy of the March 22, 2007 letter from the UC Provost that cleared me of the baseless accusations of “scientific misconduct” that had been made by the ACS to the UC Regents in connection with my research. I have been vindicated in all respects regarding Eubanks’ libelous claims. Furthermore, since the publication of my 2003 *BMJ* paper, other prominent epidemiologists and evidence support my conclusion that the relationship between ETS and mortality is weak and inconclusive.

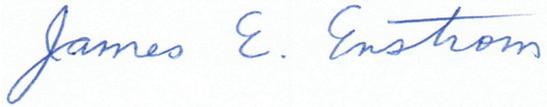
**Conclusions**

Eubanks’ entire four-year campaign to discredit me and my ETS findings and to interfere with my research funding at UCLA has failed. Her campaign has involved totally unwarranted and libelous charges made in several forums. She has made no effort to correct the record or apologize for her actions. She abused her position as a US DOJ attorney for purpose of anti-tobacco advocacy and misused US DOJ resources to disrupt the career of an honest scientist. This entire episode has damaged my professional reputation, detracted from my ability to conduct new epidemiologic research, hurt my ability to get additional grant funding, and brought bad publicity to UC. However, UC academic freedom and my UCLA faculty position have been preserved and I hope to eventually recover from the unethical and libelous actions of Eubanks. However, she should be held accountable for those actions that are in violation of the Rules of Professional Conduct. I have full documentation regarding the six examples described above and have attached six documents containing key evidence. I request that you carefully review my complaint and take appropriate action regarding Eubanks.

The Undersigned hereby certifies to the Office of Bar Counsel that the statements in the foregoing Complaint are true and correct to the best of my knowledge.

Thank you very much for your consideration in this important matter.

Sincerely yours,



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