

IN AND BEFORE THE OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE AND SUPERVISION
STATE OF OKLAHOMA

FILED

JUN 11 2010

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)
STEVEN CONSTANTINE ANAGNOST, M.D.,)

Case No. 09-10-3861

LICENSE NO. 21194)

Defendant.)

APPLICATION TO DETERMINE EMERGENCY

Plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision ("State"), seeks to have an emergency declared to enable the Secretary of the Board to conduct an emergency suspension hearing against Defendant, Steven Constantine Anagnost, M.D., Oklahoma medical license number 21194, as authorized under 59 Okla. Stat. §503.1 and 75 Okla. Stat. §314. In support of this application, the State submits the following:

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.* (the "Act"). Under Section 503.1 of the Act, the Secretary of the Board may determine that "an emergency exists for which the immediate suspension of a license is imperative for the public health, safety and welfare."
2. Defendant, Steven Constantine Anagnost, M.D., holds Oklahoma license no. 21194, and is authorized to practice as a physician and surgeon in the State of Oklahoma.
3. The evidence reflects the following:

PATIENT DHM

- a. On or about March 6, 2009, Defendant performed surgery on Patient DHM. According to his Operative Report, he performed Lumbar Hemilaminectomies at L2-L3 and L3-L4 with decompression of the Dura and neural elements. Patient DHM continued to suffer problems with her back and sought treatment with David Fell, M.D.

b. Dr. Fell subsequently conducted surgery on Patient DHM and upon examining the previous surgery of Defendant, concluded that **Defendant did not operate on the L2-L3 level as represented in his Operative Report** and that the Patient still had herniated disc material at L2-L3. Dr. Fell additionally concluded that although not reflected in Defendant's Operative Report, Defendant had operated at the L4-L5 level and that the nerve roots were damaged from Defendant's previous surgery at the L4-L5 level. Dr. Fell concluded that Defendant operated at the wrong levels and damaged the nerve root, but did not disclose his mistake and additional surgery to the patient.

PATIENT PLM

a. On or about September 12, 2007, Defendant performed surgery on Patient PLM. According to his Operative Report, he performed Lumbar Hemilaminectomies at L4-L5 and L5-S1 with medial facetectomies or foraminotomies at both levels on the right as well as the left though minimally undermining along the left side. The preoperative MRI obtained by Defendant identified the left side at L4-L5 as more severe than the right. The patient continued to suffer problems with her back and sought treatment with Frank Tomecek, M.D.

b. Dr. Tomecek subsequently performed surgery on Patient PLM and upon examining the previous surgery of Defendant, concluded that **Defendant did not operate on the left at L4-L5 as represented in his Operative Report**. Additionally, Dr. Tomecek found very little evidence the Defendant performed any surgery on L5-S1 on either side. Dr. Tomecek concluded that Defendant did not perform the surgeries as represented in his Operative Report and did not disclose this information to the patient.

PATIENT GMM

a. On or about January 5, 2004, Defendant performed surgery on Patient GMM. According to his Operative Report, he performed Bilateral Hemilaminectomies with bilateral medial facetectomies and bilateral foraminotomies with discectomy at L3-L4 for complete decompression of the spinal cord and neural elements secondary to spinal stenosis. Defendant also represented in his Operative Report that he performed Bilateral Hemilaminectomies with bilateral medial facetectomies and bilateral foraminotomies at L4-L5 for complete decompression of the spinal cord and neural elements secondary to spinal stenosis. The patient continued to suffer problems with her back and sought treatment with Frank Tomecek, M.D.

b. Dr. Tomecek subsequently performed surgery on Patient GMM and upon examining the new MRI and the previous surgery of Defendant, concluded that Defendant performed **only** a hemilaminectomy and discectomy at L3-L4 on the left side, and that **he did not perform the hemilaminectomy at L3-L4 on the right side, did not perform bilateral medial facetectomies at L3-L4, nor did he perform bilateral hemilaminectomies and bilateral medial facetectomies and foraminotomies at L4-L5. He additionally did not perform a discectomy at L4-L5 as represented in his Operative Report.** Dr. Tomecek concluded that Defendant did not perform all of the surgeries noted in the Operative Report, and that the lack of decompression at L4-L5 and the decompression only on the left side at L3-L4 led to the patient's ongoing symptoms and need for a second operation.

PATIENT LSM

a. On or about February 28, 2007, Defendant performed surgery on Patient LSM. According to the Operative Report, he performed Bilateral hemilaminectomies at L3-L4, with medial facetectomies and foraminotomies bilaterally at L3-L4 and L4-L5. The patient continued to suffer problems with his back and sought treatment with Frank Tomecek, M.D.

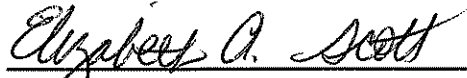
b. Dr. Tomecek subsequently performed surgery on Patient LSM and upon examining the new MRI, as well as the previous MRI and surgery by Defendant, concluded that Defendant performed **only** a minimal right L4 laminotomy, and that **he did not perform surgery on the left side at L4-L5, nor did he perform any surgery at L3-L4 as represented in his Operative Report.** Dr. Tomecek concluded that Defendant did not perform all of the surgeries noted in the Operative Report, and that his failure to do so necessitated a second surgery for Patient LSM.

4. The State is basing its application for emergency upon the magnitude of the charges against the Defendant and the volume of the patients who either have obtained or are still obtaining surgery by Defendant, and are being subjected to harm or potential harm by Defendant's failure to perform the procedures that he has represented that he has performed.

5. The magnitude of the charges against the Defendant and the volume of the patients who either have obtained or are still obtaining surgery by Defendant, and are being subjected to harm or potential harm by Defendant's failure to perform the procedures that he has represented that he has performed, justify an emergency suspension hearing to protect the public health, safety and welfare.

WHEREFORE, the State respectfully requests that an emergency be declared, that an emergency suspension hearing be conducted by the Secretary and that the Secretary suspend Defendant's license until a hearing before the Board *en banc*.

Respectfully submitted,



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ATTORNEY FOR THE STATE

OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION