

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

FILED

JUN 18 2010

STATE OF OKLAHOMA )  
EX REL. THE OKLAHOMA BOARD )  
OF MEDICAL LICENSURE )  
AND SUPERVISION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
STEVEN CONSTANTINE ANAGNOST, M.D., )  
LICENSE NO. 21194, )  
 )  
Defendant. )

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 09-10-3861

COMPLAINT

COMES NOW the Plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), by and through its attorney, Elizabeth A. Scott, Assistant Attorney General, and for its Complaint against the Defendant, Steven Constantine Anagnost, M.D., alleges and states as follows:

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.*
2. Defendant, Steven Constantine Anagnost, M.D., holds Oklahoma license no. 21194 and practices as an orthopedic surgeon in Tulsa, Oklahoma.

PATIENT DHM

3. 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.
4. 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

5. 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.

6. 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

7. 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.

8. 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

9. 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.

10. 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.

#### PATIENT LPM

11. On or about November 14, 2005, Defendant performed surgery on Patient LPM. According to the Operative Report, he performed Bilateral Laminectomies with bilateral medial facetectomies and bilateral foraminotomies at L3-L4 and L4-L5 for complete decompression of dura and neural elements. The patient continued to suffer problems with her back and sought treatment with Christopher Covington, M.D.

11. Dr. Covington subsequently performed surgery on Patient LPM and upon examining her spine during surgery as well as x-rays taken before his surgery, concluded that Defendant performed **only** a minimal decompression on the left side at L4-L5 and on the right side at L4, and that **he did not perform surgery on the right side at L4-L5, nor did he perform any surgery at L3-L4 as represented in his Operative Report.** Dr. Covington 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 LPM.

#### OVERBILLING OF MEDICARE

12. Beginning April 1, 2005 and continuing through May 15, 2006, Defendant performed surgeries at Hillcrest Medical Center in Tulsa, Oklahoma. Hillcrest is considered a "teaching hospital" under Medicare rules since it allows residents to complete rotations in its facility. According to Medicare rules, a physician may utilize and bill for the use of a physician assistant who assists in surgery in non-teaching hospitals. However, in a teaching hospital, the physician may **not** bill for the physician assistant unless no qualified resident is available to assist in the surgery.

13. During this period of time, Defendant utilized physician assistants during his surgeries at Hillcrest and billed Medicare for their services even though residents were present and assisting in the surgeries. Defendant accomplished this by not mentioning the residents in his Operative Reports.

14. When the residents completed their rotations at Hillcrest and were asked to account for all surgeries where they had assisted, the residency program learned that when Defendant had billed Medicare, he had not documented that the residents had assisted him in

surgeries. By not recognizing the presence of the residents, Defendant was able to wrongfully obtain reimbursement for the services of his physician assistant.

15. Upon learning that Medicare had been improperly billed for physician assistant services by Defendant, he agreed to reimburse Medicare for all overbillings in the total amount of \$30,085.47.

16. Defendant is guilty of unprofessional conduct in that he:

A. Engaged in conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. §509(8) and OAC 435:10-7-4(11).

B. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. §509(13) and OAC 435:10-7-4(39).

C. Failed to maintain an office record for each patient which accurately reflects the evaluation, treatment and medical necessity of treatment of the patient in violation of 59 O.S. §509(18).

D. Engaged in gross or repeated negligence in the practice of medicine and surgery in violation of OAC 435:10-7-4(15).

E. Engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).

F. Used a false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).

G. Obtained any fee by fraud, deceit, or misrepresentation, including fees from Medicare, Medicaid, or insurance in violation of OAC 435:10-7-4(28).

H. Directly or indirectly gave or received any fee, commission, rebate, or other compensation for professional services not actually and personally rendered in violation of OAC 435:10-7-4(30).

I. Abused the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship in violation of OAC 435:10-7-4(44).

*Conclusion*

WHEREFORE, the Plaintiff respectfully requests that the Board conduct a hearing, and, upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including suspension or revocation and any other appropriate action with respect to Defendant's medical license, and an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,



---

Elizabeth A. Scott (OBA #12470)  
Assistant Attorney General  
State of Oklahoma  
101 N.E. 51<sup>st</sup> Street  
Oklahoma City, OK 73105  
Attorney for the Plaintiff