

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

STATE OF OKLAHOMA, *ex rel.*)
OKLAHOMA STATE BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
DENNIS RIVERO, M.D.,)
LICENSE NO. MD 25366,)
)
Defendant,)
)
and)
)
BRAD STAHLHEBER, D.O.,)
)
Interested Party.)

FILED

JUL 12 2022

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 14-12-5090
Supreme Court Case No. 118,033

ORDER

Motions of the parties hereto were considered in the above styled and numbered cause before the Oklahoma State Board of Medical Licensure and Supervision (“Board”), at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma 73105, pursuant to notice given as required by law and the rules of the Board.

The parties were represented by counsel as follows:

- Thomas Schneider, Deputy General Counsel to the Attorney General, for the State (Plaintiff);
- Michael Smith, McAfee & Taft, P.C., for Dennis Rivero, M.D., (Defendant);
and
- Stan Koop, Goolsby Proctor Heefner & Gibbs, P.C., for Brad Stahlheber, D.O., (Brad Stahlheber)

The parties agreed the matters to be determined are Dr. Dennis Rivero’s Application to Enforce Oklahoma Supreme Court Order and Application to Release Initial Report of Misconduct, as well as Dr. Brad Stahlheber’s Application for Additional Relief from Stipulated Protective Order.

On January 20, 2022, the Board denied the Application to Release Initial Report of Misconduct. Thereafter, at the January 20th meeting, the Board tabled decisions on Dr.

Dennis Rivero's Application to Enforce Oklahoma Supreme Court Order and Dr. Brad Stahlheber's Application for Additional Relief from Stipulated Protective Order pending receipt of proposed Findings of Fact and Conclusion of Law to be presented by counsel for the parties at the March 10, 2022 meeting.

On February 22, 2022, an Order was entered granting the parties' Joint Motion to Continue thereby continuing the matter to the May 12, 2022 meeting. At the May 12, 2022 meeting, a motion was made, seconded, and passed to bring the decisions on the aforesaid Applications off the table.

This Order memorializes the rulings made at the January and May 2022 meetings. The Board, having considered the Oklahoma Supreme Court's Order of June 2, 2021, as well as the filed written documents of the Parties, as well as the arguments of all counsel, by clear and convincing evidence finds, concludes, and orders as follows:

Findings of Fact

1. On June 2, 2021, the Oklahoma Supreme Court rendered its decision in *State v. Oklahoma State Bd. of Med. Licensure & Supervision v. Rivero* 2021 OK 31, 489 P.3d 36. Mandate issued on June 30, 2021.
2. On November 9, 2021, Dr. Rivero filed a proper Application to Enforce the Oklahoma Supreme Court's Order with the Board as required by the Oklahoma Supreme Court in its Order, as well as an Application to Release Initial Report of Misconduct, asserting the non-privileged nature of the report.
3. On December 15, 2021, Dr. Stahlheber filed a response to Defendant's Application to Enforce Oklahoma Supreme Court Order and Application for Additional Relief from Stipulated Protective Order and proposed redactions to two (2) depositions.
4. At the January hearing and in his Application to Enforce the Oklahoma Supreme Court's Order, Dr. Rivero identified the extent to which any of the three (3) documents noted in the Oklahoma Supreme Court Order (Motion for Summary Judgment and two depositions) contained patient information, financial information, health and medical information, or information required to be confidential as a matter of law and proposed redactions.
5. Dr. Stahlheber adopts the redactions of Dr. Rivero to the three documents and proposed other redactions to the two (2) depositions only.
6. The State of Oklahoma ex rel. Board adopts the redactions of Dr. Rivero and takes no position to Dr. Stahlheber's proposed redactions to the three documents.
7. The State of Oklahoma ex rel. Board and Dr. Stahlheber object to the release of the Initial Report of Misconduct as privileged and confidential.
8. Redactions to the depositions depend on the legal conclusions herein as to the nature of the Initial Report of Misconduct and its privileged and/or confidential nature.
9. The parties agreed to the release and use of the telephone transcript of Dr. Rivero.
10. Any Finding of Fact herein that is more properly a Conclusion of Law is deemed adopted as a Conclusion of Law.

Conclusions of Law

11. Dr. Rivero has satisfied the requirements of the Oklahoma Supreme Court Opinion upon remand, as noted in the Opinion.
12. The Board should modify the Stipulated Protective Order filed in this matter to allow Dr. Rivero and Dr. Stahlheber access to use the particular properly-redacted documents in other proceedings, in accordance with the Supreme Court's Opinion. The redactions are as noted in Exhibit "1" attached and incorporated herein.
13. The Initial Report of Misconduct is a privileged and/or confidential document and therefore not discoverable by Dr. Rivero.
14. Any Conclusion of Law herein that is more properly a Finding of Fact is deemed adopted as a Finding of Fact.

ORDER

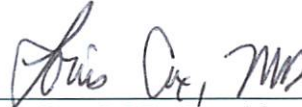
15. The Application to Enforce the Oklahoma Supreme Court Order of Dr. Rivero is **GRANTED**.
16. The Application to Release Initial Report of Misconduct of Dr. Rivero is **DENIED**.
17. The Application for Additional Relief from Stipulated Protective Order of Dr. Stahlheber is **GRANTED**.
18. The Stipulated Protective Order filed in this matter is **MODIFIED** to allow Dr. Rivero and Dr. Stahlheber access to and use of the particular properly-redacted documents (See Exhibit "1") in other proceedings in accordance with the Supreme Court's Opinion, as well as the telephone transcript of Dr. Rivero.
19. A copy of this Order shall be provided to Defendant as soon as it is processed.

This Order is subject to review and approval by the Oklahoma Attorney General, and this Order shall become final upon completion of the review by the Oklahoma Attorney General unless disapproved, in which case this Order shall be null and void.

Dated this 12th day of July, 2022.



Billy H. Stout, M.D., Board Secretary
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION



Louis Cox, M.D., President
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Certificate of Service

This is to certify that on the 13th day of July, 2022, a true and correct copy of this Order was transmitted as specified, postage prepaid, to the following:

U.S. First Class Mail, and E-Mail

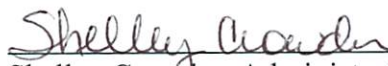
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Shelley Crowder, Administrative Assistant



JOHN M. O'CONNOR
ATTORNEY GENERAL

FILED

JUN 27 2022

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

June 23, 2022

Billy H. Stout, M.D., Board Secretary
State Board of Medical Licensure and Supervision
101 N.E. 51st Street
Oklahoma City, OK 73105

Dear Dr. Stout:

This office has received your request for a written Attorney General Opinion regarding action that the State Board of Medical Licensure and Supervision intends to take in case 14-12-5090. The Board intends to grant Defendant's Application to Enforce the Oklahoma Supreme Court Order and Defendant's Application for Additional Relief from Stipulated Protective Order. The proposed action does not have anticompetitive effects and is not subject to Attorney General review under Executive Order 2019-17.

A handwritten signature in cursive script that reads "Julie Pittman".

JULIE PITTMAN
GENERAL COUNSEL

OPVEON

— COURT REPORTING & LEGAL VIDEO —

Transcript of the Testimony of
Brad Stahlheber, D.O.
Volume I, Taken On 8/31/2016

In the Matter of

**State Of Oklahoma, ex rel. Oklahoma State
Board Of Medical Licensure And Supervision
v. Dennis Rivero, M.D., License No. MD
25366**

Case No. 14-12-5090

Reported by
Kara Rowell

Defendant's Ex. 1

Opveon Reporting, LLC 1437 S. Boulder Ave., Suite 170, Tulsa, OK 74119
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IN AND BEFORE THE OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE AND SUPERVISION
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.)	
OKLAHOMA STATE BOARD OF MEDICAL)	
LICENSURE AND SUPERVISION,)	
)	
Plaintiff,)	Case No. 14-12-5090
)	
vs.)	
)	
DENNIS RIVERO, M.D.,)	
LICENSE NO. MD 25366,)	
)	
Defendant.)	

VIDEOTAPED AND ORAL DEPOSITION OF

BRAD STAHLHEBER, D.O.

TAKEN ON BEHALF OF

THE DEFENDANT

IN TULSA, OKLAHOMA

ON AUGUST 31, 2016

REPORTED BY: KARA L. ROWELL, CSR
 OPVEON REPORTING
 1437 SOUTH BOULDER AVENUE, SUITE 170
 TULSA, OKLAHOMA 74119
 (918) 359-8900

1 Videotaped and oral deposition of BRAD STAHLHEBER,
2 D.O., produced as a witness at the instance of the
3 Defendant on August 31, 2016, from 10:51 a.m. to 1:04
4 p.m., at DOERNER, SAUNDERS, DANIEL & ANDERSON, Two West
5 Second Street, Suite 700, Tulsa, Oklahoma, pursuant to
6 the Oklahoma Rules of Civil Procedure and the provisions
7 stated on the record or attached therein.

8

* * * * *

9

A P P E A R A N C E S

10

FOR THE PLAINTIFF:

11

MR. JOE ASHBAKER
Assistant Attorney General
Oklahoma Board of Medical Licensure & Supervision
101 N.E. 51st Street
Oklahoma City, Oklahoma 73105
(405) 962-1417

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13

14

15

FOR THE DEFENDANT:

16

MS. LINDA G. SCOGGINS
MS. KAYLEE P. DAVIS-MADDY
Doerner, Saunders, Daniel & Anderson
105 North Hudson Avenue, Suite 1000
Oklahoma City, Oklahoma 73102
(405) 319-3500

17

18

19

FOR THE WITNESS:

20

MR. ANDREW HARRISON
Attorney at Law
2448 East 81st Street, Suite 4550
Tulsa, Oklahoma 74137
(918) 430-4572

21

22

23

ALSO PRESENT:

24

MR. JASON WIETHOLTER, VIDEOGRAPHER

25

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are now on the
3 record for the deposition of Dr. Brad Stahlheber. Today
4 is August 31st, 2016. The time is approximately 10:51
5 a.m. Would counsel please identify themselves for the
6 record.

7 MS. SCOGGINS: I'm Linda Scoggins and this
8 is Kaylee Maddy, and we represent Dr. Dennis Rivero.

9 MR. ASHBAKER: I'm Assistant Attorney
10 General Joe Ashbaker. I am a prosecutor at the Medical
11 Board, and I am here representing the State.

12 MR. HARRISON: My name is Andrew Harrison.
13 I represent Dr. Brad Stahlheber.

14 THE VIDEOGRAPHER: Thank you. The witness
15 may be sworn in.

16 (Witness was sworn by the reporter)

17 MR. ASHBAKER: Linda, before we start, I
18 want to make an objection, if I could.

19 MS. SCOGGINS: Uh-huh.

20 MR. ASHBAKER: Okay. I'm going to object
21 to this witness on the grounds of relevance, and I don't
22 believe he was at any of the things that Dr. Rivero was
23 charged with. So I'm going to object to that in
24 advance. I am going to be making objections to the
25 various questions that I'm anticipating to make, if it

1 has anything do with something he's not charged with or
2 anything that he wasn't present for once I -- I'm
3 assuming you're going to ask him if he was present --
4 once he determines that. At some point, you may want to
5 allow me to have a standing objection, which I'll be
6 glad to do. I know I've seen some lawyers over the
7 years just refuse to do that. I don't want to waste --
8 I don't want to make this a six-hour thing if it's not
9 going to be that long. So when you want me to do that,
10 you just let me know what standing objection you'll give
11 me and I'll be more than willing to do that.

12 MS. SCOGGINS: Yeah. Yeah, because unlike
13 objecting on the grounds of privilege or something like
14 that, I think you can, a standing objection is fine.

15 MR. ASHBAKER: I agree. And, like I said,
16 if you want me to do it a couple of times and then
17 announce that I can have that --

18 MS. SCOGGINS: Yeah.

19 MR. ASHBAKER: -- I'll be more than
20 willing to take it.

21 MS. SCOGGINS: Okay. All right. Then
22 I'll begin.

23

24

25 (No omissions)

1 BRAD STAHLHEBER, D.O.,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MS. SCOGGINS:

5 Q. I guess, Dr. Stahlheber, you heard me announce
6 myself as Linda Scoggins, and I represent Dr. Dennis
7 Rivero.

8 A. Yes.

9 Q. And have you had your deposition taken before?

10 A. No.

11 Q. Well, you know, one thing I want to tell you is
12 if at any time you need a break, please tell me because
13 we don't want to -- this is not an endurance test or
14 anything like that.

15 A. Okay.

16 Q. Also, if you don't understand a question that I
17 ask you, which I can be pretty incoherent at times,
18 well, tell me, and I'll try to restate the questions so
19 that you do understand.

20 A. Okay.

21 Q. Because I don't -- you know, later I don't want
22 you saying, well, that's not what you asked. All right?

23 A. Okay.

24 Q. And there was one other thing. I think that's
25 it as we go forward.

1 First of all, I'm going to ask you about
2 just your background, to get background information
3 about you, which is typical in a deposition, and ask you
4 about your education starting with college.

5 A. Okay.

6 Q. Where did you go to college?

7 A. I went to undergraduate at University of
8 Science & Arts of Oklahoma, four years there, got a
9 Bachelor of Science. And then three years after
10 graduation, I went to Oklahoma State University Medical
11 School.

12 Q. Was that in Tulsa?

13 A. Yes.

14 Q. Okay. And what year was this when you started
15 medical school?

16 A. 2000.

17 Q. And how long were you in medical school?

18 A. Four years.

19 Q. And then do you go into a residency? Is that
20 the normal process?

21 A. Yeah, four years.

22 Q. Okay. A four-year residency?

23 A. As well, yes.

24 Q. And so where did you do your residency?

25 A. Formerly Tulsa Regional Medical Center, OSU

1 Medical Center now.

2 Q. Okay. And it's still there as OSU --

3 A. Yes.

4 Q. -- Medical Center, isn't it? And as I
5 understand, you are an osteopathic physician, right?

6 A. Correct.

7 Q. Okay. Where did you -- where have you been
8 employed? And I guess we should start as a resident. I
9 assume you were employed?

10 A. Uh-huh.

11 Q. What other work have you done as a doctor? And
12 let's start with the time while you were a resident, in
13 case you did any kind of ER work or something like that
14 on the side. Where have you been employed?

15 A. As a resident, I was pretty much full time at
16 OSU Medical Center.

17 Q. Okay.

18 A. And then after graduation from residency, I was
19 at Saint Francis South for about eight months and then
20 Muskogee for six years, and now I've been at St. John
21 for a little over a year now. I did some locums work,
22 some temporary work at a plastic surgery center in
23 downtown -- or down in south Tulsa, and I was at
24 Hillcrest a little bit.

25 Q. So where do you have privileges right now?

1 A. St. John.

2 Q. No surgery center or anything like that?

3 A. No.

4 Q. Are you employed by St. John's or are you part
5 of a -- are you employed by a group that contracts with
6 St. John's?

7 A. I'm employed by St. John's Anesthesia Services
8 which is contracted by the hospital.

9 Q. Okay.

10 A. How many anesthesiologists are in that group?

11 A. There's a bunch of them. I don't know the
12 exact number. I would say it's probably 30 to 40, a
13 bunch of them.

14 Q. Okay. And I assume because it's called St.
15 John's Anesthesia Services that it's all for work done
16 at St. John's; is that correct?

17 A. Correct. The St. John's system, which also
18 includes Broken Arrow, Sapulpa and Owasso.

19 Q. Okay. So what year did you -- let's go back to
20 Muskogee. What year did you start at Muskogee?

21 A. It was March 2009.

22 Q. At that time, were you part of a group or
23 employed by the hospital?

24 A. I was independent. We were all independent.

25 Q. Okay. And you said you were there six years?

1 A. Yes.

2 Q. So 2015?

3 A. Yes, July 2015.

4 Q. Why did you leave?

5 A. For this -- for a closer job. I've lived in
6 Jenks the entire time, so I was driving an hour to work
7 for six years.

8 Q. Okay.

9 A. This is a much better drive.

10 Q. And while you were at -- you started out being
11 independent in Muskogee. Did that ever change?

12 A. 2012, NorthStar Anesthesia took the anesthesia
13 contract and I became employed by NorthStar.

14 Q. And where was NorthStar based?

15 A. Arlington, Texas.

16 Q. How many anesthesiologists did they contract
17 with in Muskogee or have in that group in Muskogee?

18 A. I would say there were about seven of us and
19 four CRNA's. Some of the docs were part time.

20 Q. And how long were you with NorthStar?

21 A. Would have been three years.

22 Q. And what occurred at the end of three years?

23 A. I left to go to St. John.

24 Q. Okay.

25 A. Yeah.

1 Q. Was Muskogee hospital run by Eastar part of the
2 time you were there?

3 A. I believe it was 2012 that -- also that the
4 merger happened. Then it became Eastar.

5 Q. Then what?

6 A. That's when it became Eastar.

7 Q. Okay. At any time while you were at Muskogee
8 hospital -- and I'm just going to refer to it as
9 Muskogee. We'll understand it's the one now that's
10 called, I think, Eastar Muskogee or Eastar Medical
11 Center in Muskogee.

12 A. Uh-huh.

13 Q. At any time while you were there, did you ever
14 have your privileges suspended or revoked or any action
15 against your privileges?

16 A. No.

17 MR. ASHBAKER: Objection, relevance.

18 MR. HARRISON: You can answer. Go ahead
19 and answer.

20 A. No.

21 Q. (BY MS. SCOGGINS) Did you ever have any
22 complaints made against you within the hospital system?

23 MR. ASHBAKER: Objection, relevance.

24 MR. HARRISON: You can answer.

25 A. Patient based, patient related?

1 Q. (BY MS. SCOGGINS) We'll start there. Patient
2 based, yes.

3 A. Not to my knowledge.

4 Q. How about other physician based?

5 MR. ASHBAKER: Same objection.

6 MR. HARRISON: Go ahead and answer.

7 A. Not to my knowledge.

8 Q. (BY MS. SCOGGINS) Did you ever file complaints
9 against anyone else while you were at the hospital?

10 MR. ASHBAKER: Objection, relevance.

11 Q. (BY MS. SCOGGINS) With the hospital.

12 A. No.

13 Q. Did you ever file a complaint regarding the
14 hospital anywhere else, such as any of its regulatory
15 agencies whatsoever?

16 MR. ASHBAKER: Objection, relevance.

17 MR. HARRISON: You can answer. Unless I
18 tell you not to answer based on privilege, you can
19 answer.

20 A. Okay. Could you repeat that?

21 Q. (BY MS. SCOGGINS) Yeah. Did you ever -- while
22 you were at Muskogee, did you ever file any kind of a
23 complaint against the hospital with any state or federal
24 agency that has some kind of regulatory control over the
25 hospital, such as the Department of Health?

1 A. No.

2 Q. Are you aware of what a sentinel event is?

3 A. Yes.

4 Q. What's your understanding of a sentinel event?

5 MR. HARRISON: Object as to form. You can
6 answer.

7 A. A sentinel event is a major negative outcome in
8 a procedure, such as wrong-site surgery, wrong
9 medication that causes an untoward event.

10 Q. (BY MS. SCOGGINS) Okay. And the surgery
11 that's at issue in the case brought by the Medical Board
12 against Dr. Rivero was a wrong-site surgery. Is that
13 your understanding?

14 A. Yes.

15 Q. And do you know if that was reported?

16 MR. ASHBAKER: Objection, relevance.

17 Q. (BY MS. SCOGGINS) By the hospital.

18 A. Reported --

19 MR. HARRISON: Yeah, unless I tell you not
20 to answer, you can just go ahead and answer.

21 A. Reported to whom?

22 Q. (BY MS. SCOGGINS) Huh?

23 A. Reported to whom?

24 Q. Do you know, would the hospital be required to
25 report a sentinel incident?

1 MR. HARRISON: Object to form. Go ahead.

2 A. I would assume so.

3 MR. HARRISON: Don't assume,
4 Dr. Stahlheber. If you don't know the answer, "I don't
5 know" is the answer.

6 A. I don't know.

7 Q. (BY MS. SCOGGINS) Do you know if that hospital
8 in Muskogee is what's referred to as approved by the
9 Joint Commission or certified by JCAHO or the Joint
10 Commission?

11 A. Yes.

12 Q. Okay. Do you know if the hospital had to
13 report -- do you have personal knowledge that the
14 hospital reported that sentinel incident to the Joint
15 Commission?

16 MR. ASHBAKER: Objection, relevance.

17 A. I do not.

18 Q. (BY MS. SCOGGINS) Do you know if that was
19 required --

20 MR. HARRISON: Object to --

21 Q. -- for the hospital to report?

22 MR. ASHBAKER: Objection, relevance.

23 MR. HARRISON: Object as to form. You can
24 answer.

25 A. I do not.

1 Q. (BY MS. SCOGGINS) To your knowledge, was there
2 an internal investigation at Muskogee hospital regarding
3 this sentinel incident?

4 A. Not to my knowledge.

5 Q. You were never asked any questions?

6 A. No.

7 Q. How are the departments set up at hospitals?
8 Often surgery and anesthesiology are separate, but
9 sometimes anesthesiology is one of the departments that
10 kind of comes within surgery. How was the organization
11 at Muskogee hospital while you were there?

12 A. Anesthesiology is a department within surgery.

13 Q. Okay.

14 A. We handle the cases as the cases come.

15 Q. And would you have -- attend department
16 meetings where -- surgical department meetings?

17 A. Yes.

18 Q. How often do those occur?

19 A. Depends on the particular meeting.

20 Q. On the average?

21 A. Monthly.

22 Q. Dr. Stahlheber, in this case I took the --
23 well, before I even get there, I want to show you the
24 copy -- yeah.

25 MR. HARRISON: Would you like some water,

1 Ms. Scoggins?

2 MS. SCOGGINS: This should do.

3 (Exhibit Number 1 marked)

4 Q. (BY MS. SCOGGINS) Doctor, I've handed you a
5 copy of the Verified Complaint against Dr. Rivero in
6 relation to this wrong-site surgery. Have you ever seen
7 this before?

8 A. Yes.

9 Q. When did you see it?

10 A. Maybe three months ago.

11 Q. And did someone give you a copy?

12 A. Yes.

13 Q. Who was that?

14 A. The Board investigator.

15 Q. Is that Jana Lane?

16 A. Yes.

17 Q. And did she give that to you at your place of
18 work here in Tulsa?

19 A. No.

20 Q. Do you recall how she gave it to you, whether
21 it was by mail or in person?

22 MR. ASHBAKER: Objection, relevance.

23 A. By mail.

24 Q. (BY MS. SCOGGINS) Had you requested a copy or
25 did she offer it, initiate the offer?

1 MR. ASHBAKER: Objection, relevance.

2 A. I had requested follow-up as to the original
3 complaint.

4 Q. When you filed -- now, Ms. Lane testified in a
5 deposition that it was your complaint against Dr. Rivero
6 that is the underlying -- this verified complaint filed
7 by the Board.

8 A. Uh-huh.

9 Q. So I'm going to -- did you file that complaint
10 via computer? I know they have a complaint apparatus on
11 file.

12 A. Yes.

13 MR. ASHBAKER: Objection, relevance.

14 MR. HARRISON: Object as to form. Go
15 ahead and answer.

16 Q. (BY MS. SCOGGINS) And do you recall when you
17 filed it?

18 MR. ASHBAKER: Objection, relevance.

19 A. Early 2014.

20 Q. (BY MS. SCOGGINS) Do you recall what you
21 stated in that complaint, what your -- what you
22 complained about?

23 MR. ASHBAKER: Objection, relevance.

24 A. I had made the complaint that this wrong-site
25 surgery sentinel event had not gone through peer review

1 at that point.

2

Q. (BY MS. SCOGGINS) As of January of 2014?

3 A. Yes.

4 Q. How did you know that?

5 A. Because I'm on the -- I sit on the peer review
6 committee. I was the chief of anesthesia -- the
7 anesthesia department.

8 Q. Okay. Have you ever asked anybody at the
9 hospital about that?

10 MR. ASHBAKER: Objection, relevance.

11 A. I believe it was brought up during a meeting at
12 one point and nobody really knew why.

13 Q. (BY MS. SCOGGINS) During what meeting?

14 A. Peer review.

15 Q. Was there a peer review committee?

16 A. Yes.

17 Q. And who made up the peer review committee?

18 A. Oh, gosh. Well, physicians, some surgeons,
19 mostly surgeons, myself, some from other disciplines,
20 internal medicine.

21 Q. Everyone with -- all of them have privileges at
22 the hospital, correct?

23 A. Yes.

24 Q. And was there a process in the hospital's
25 bylaws for how a peer review incident -- what would

1 occur?

2 MR. ASHBAKER: Objection, relevance.

3 A. Yes.

4 Q. (BY MS. SCOGGINS) Were you chair of the peer
5 review committee?

6 A. I was not chair.

7 Q. Just a member?

8 A. Yes.

9 Q. And were the members from each department of
10 the hospital? Was each department represented?

11 A. That I don't know.

12 Q. Were you on the peer review committee by virtue
13 of being, at that time, chair of the anesthesia group?

14 A. Yes.

15 Q. Other than in your complaint saying that it had
16 not been investigated, what else do you recall about
17 that complaint?

18 MR. ASHBAKER: Objection, relevance.

19 MS. SCOGGINS: And we can have a standing
20 objection.

21 MR. ASHBAKER: Outstanding.

22 MS. SCOGGINS: Okay.

23 Q. (BY MS. SCOGGINS) Go ahead, yeah.

24 A. Sorry. Could you repeat it?

25 Q. Yes, sure. In January of 2014, you filed a

1 complaint at the Board. Did you do it on a regular
2 computer form? I believe you testified that you did.

3 A. I did.

③ 4 Q. And you said that you complained because there
5 had not been peer review, the incident had not been peer
6 reviewed?

7 A. Correct.

④ 8 Q. Do you recall any other complaints at that
9 time?

10 A. I had had a -- now, the original incident with
11 the wrong-site surgery was not my case.

⑤ 12 Q. Okay.

13 A. Ten days after this incident, I had had a case
14 with Dr. Rivero where I went to interview the patient
15 and the patient had no idea who Dr. Rivero even was, and
16 she was scheduled for surgery. She had had -- I believe
17 it was metastatic brain cancer, had inoperable brain
18 lesions, severe dementia. The family spoke on her
19 behalf, and they had never met Dr. Rivero. And I went
20 to interview her and take her to surgery, and they were
21 furious because they didn't even know she was having
22 surgery.

⑥ 23 Q. What kind of surgery was it?

24 A. It was a hip, total hip, for a hip fracture.

⑦ 25 Q. For a hip fracture?

1 A. Yes. She had fallen out of bed.

8

2 Q. Okay. And do you know if that incident was
3 peer reviewed at the hospital?

4 A. Well, now, I don't know, no. It was my opinion
5 at that time that Dr. Rivero should have, in my opinion,
6 been more vigilant about which site surgery was going to
7 be operated on, seeing how ten days prior there had been
8 a sentinel event.

9

9 Q. Well, on that ten days prior, did you bring up
10 the fact that a patient had said that Dr. Rivero had not
11 spoken with her? Did you bring that up with Dr. Rivero?

12 A. Yes.

10

13 Q. What did he say?

14 A. He didn't seem concerned. He said just bring
15 the patient to the operating suite and we'll figure it
16 out then.

11

17 Q. And did you report that to the hospital?

18 A. No, I don't believe so. No.

12

19 Q. To your knowledge, was there a procedure for
20 reporting incidents? And I'm not talking about just
21 sentinel incidents but reporting any complaints a
22 physician, a staff member might have within the
23 hospital.

24 A. No.

25 Q. Who was the administrator of the hospital -- I

1 guess this occurred in 2013, and then you filed a
2 complaint 2014; is that correct?

3 A. Yes.

4 Q. Who was the administrator at the hospital then
5 or CEO?

6 A. The CEO would have been Tony Young.

7 Q. And he's still CEO there, correct?

8 A. Yes.

9 Q. Who was the -- chief of staff at the hospital
10 in January of 2014?

11 A. Dwayne Atwell, I believe.

12 Q. Was he on the peer review committee?

13 A. Yes.

14 Q. And what is Dwayne Atwell's specialty?

15 A. Ear, nose and throat surgeon.

16 Q. And how long had he been chief of staff?

17 A. I don't know.

18 Q. But for some time?

19 A. Yes.

20 Q. Is there -- was there also a chief medical
21 officer in the hierarchy of the medical staff?

22 A. Yes, Jay Gregory.

23 Q. And Dr. Gregory, what is his specialty?

24 A. General surgery.

25 Q. Do you know if he was on the peer review

1 committee?

2 A. Yes.

3 Q. When there is a peer review, are the specifics
4 or the contents of that peer review, are they
5 confidential?

6 A. Yes.

7 Q. Were you ever -- did you ever have an incident
8 that was peer reviewed while you were at the hospital?

9 MR. ASHBAKER: Object as to form.

10 MR. HARRISON: Go ahead.

11 A. No.

12 Q. (BY MS. SCOGGINS) Do you recall taking part in
13 any peer review process of any other physician while you
14 were on that committee?

15 A. Yes.

16 Q. And how would something come up in the peer
17 review committee? How would it be determined that it
18 was going to be reviewed?

19 A. Well, there are varying levels of infractions,
20 I guess you could say, and some of it would be
21 documentation errors, some would be -- all the way up to
22 sentinel events. Those were selected by the hospital
23 and presented to the peer review committee as such.

24 Q. Did the hospital have the ability or -- well,
25 I'll start with that. Did the hospital have the ability

1 to form ad hoc committees to do investigations?

2 A. Yes.

3 Q. And were you aware of any of those while you
4 were on the peer review committee?

5 A. No.

6 Q. Do you know if the chief of staff could,
7 perhaps along with the chief medical officer, ask for an
8 ad hoc committee?

9 A. I don't know.

10 Q. Do you know if an ad hoc committee was formed
11 in connection with this sentinel event of the wrong-site
12 surgery?

13 A. I don't know.

14 Q. Did you ever ask anyone?

15 A. We had just spoken about it in peer review,
16 just in the general sense in peer review, and no one
17 seemed to know.

18 Q. And how long were you on the peer review
19 committee?

20 A. Three years.

21 Q. What is the beginning and end of that period?

22 A. It's 2012 to 2015.

23 Q. Was the -- so the wrong-site surgery was
24 brought up in peer review committee, just the fact that
25 it occurred?

1 A. There was general knowledge of it, not
2 formally.

3 Q. How many times was it brought up in the ad hoc
4 -- I mean, in the peer review committee?

5 A. I don't recall.

6 Q. Once or more than once?

7 A. Probably more than once.

8 Q. Do you actually remember that it was more than
9 once or --

10 A. Yes.

11 Q. And was that after you had complained to the
12 Board?

13 A. No.

14 Q. Did anything occur within the hospital, to your
15 knowledge, regarding the wrong-site surgery after you
16 complained to the Board?

17 A. Such as?

18 Q. Any -- was it mentioned again in the peer
19 review committee? Was any peer review done after you
20 complained to the Board that no peer review had been
21 done?

22 A. Okay. Dr. Rivero was the chief of surgery
23 during this time. Peer review -- actual formal peer
24 review of this case did not occur until after he had
25 stepped down and Dr. Rick Reutlinger had become chief.

1 And this is, like, a significant time later. I don't
2 recall the exact time period.

3 Q. So eventually there was a formal peer review of
4 this incident?

5 A. Eventually.

6 Q. Do you recall when that occurred?

7 A. No.

8 Q. What was Dr. Reutlinger's position or
9 specialty?

10 A. General surgery.

13

11 Q. Do you recall anything else in your initial
12 complaint filed with the Board, other than complaining
13 that no peer review had occurred?

14 A. No.

15 Q. If you'll read paragraph -- look at paragraph
16 3, I'm not going to ask you to read it verbatim. But if
17 you'll look at paragraph 3 of the Verified Complaint
18 that I've marked as Exhibit 1 to the deposition --

19 A. Uh-huh.

14

20 Q. -- where it states that in January of 2014 they
21 received a complaint alleging Defendant is generally a
22 disruptive physician, did you make a complaint that Dr.
23 Rivero was generally a disruptive physician?

24 MR. HARRISON: Object as to form. Go
25 ahead.

1 A. Well, my understanding of the situation of this
2 case had been that there was a wrong-site surgery
3 performed and that he had paid out of pocket to the
4 patient.

15

5 Q. (BY MS. SCOGGINS) Now, but you knew this in
6 January of 2014?

7 A. If that's when I filed my original complaint,
8 then yes.

16

9 Q. Okay.

10 MR. HARRISON: Did you finish your answer,
11 Dr. Stahlheber? Go ahead.

12 A. And that, in my opinion, disrupts the -- is
13 disruptive. It disrupts the flow of surgery. It's not
14 in practice with what we would normally do in that
15 situation.

17

16 Q. (BY MS. SCOGGINS) So the wrong-site surgery,
17 in your view, is disruptive?

18 A. Yes.

19 Q. Did you -- prior to filing the complaint with
20 the Board, did you talk to any of the other staff
21 members that had been assisting with that surgery, such
22 as scrub techs, nurse, other anesthesia person? Did you
23 speak with any of them about it?

24 A. Yes.

25 Q. Who did you talk to?

1 A. There was a CRNA that was in the room at the
2 time, and then an attending anesthesiologist.

3 Q. Who was the CRNA?

4 A. Brian Stephens, I believe.

5 Q. And was he actually the one that administered
6 the anesthesia?

7 A. Yes.

8 Q. Did every CRNA have to have a supervising
9 anesthesiologist?

10 A. Yes.

11 Q. And would they be present every time the CRNA
12 gave anesthesia to a patient?

13 A. They would be readily available.

14 Q. Not direct supervision but indirect
15 supervision, perhaps?

16 A. Yes.

17 Q. Okay. Who was the anesthesiologist that was
18 indirectly supervising Brian Stephens?

19 A. I don't recall.

20 Q. And at that time there were -- I'm not going to
21 hold you to an exact number, but I think you testified
22 approximately seven anesthesiologists in that group?

23 A. Yes.

24 Q. And what did Brian Stephens say about the
25 event?

1 A. He said that a time-out was performed,
2 everybody was in agreement with the time-out, including
3 Dr. Rivero, and then the surgery was started, and it was
4 later discovered that that was the wrong site.

5 **Q. Did he tell you any details about when it was**
6 **discovered?**

7 A. He had said that Dr. Rivero made the incision,
8 and then he discovered that it was the wrong site; and
9 then he was very angry, and he said that they needed to
10 stop the surgery and he was going to go out and talk to
11 the family.

12 **Q. And is that all that Brian Stephens told you**
13 **about the incident, or did he tell you more?**

14 A. That's it.

15 **Q. That's it?**

16 A. Yes.

17 **Q. And do you recall what his supervising**
18 **anesthesiologist told you?**

19 A. No.

20 **Q. And this was all -- these conversations were**
21 **all before you filed the complaint at the Board?**

22 A. Yes.

23 **Q. Were those the only two individuals you spoke**
24 **to?**

25 A. No.

1 Q. Okay. Who else?

2 A. I also talked to Gina Davis, who was the
3 circulating nurse.

4 Q. And what did Ms. Davis have to say?

5 A. That she had said the same thing that -- pretty
6 much that happened within the OR.

7 Q. Same thing that Brian Stephens said, basically?

8 A. Uh-huh. Yes.

9 Q. Would it be fair to say that those associated
10 with this incident were all upset about it?

11 A. Of course, yes.

12 Q. Including Dr. Rivero?

13 A. Yes.

14 Q. Did you talk to anyone else other than -- we've
15 got three now. Anyone else?

16 A. No.

17 Q. If you look at paragraph 4 of Exhibit 1, it
18 says that the complainant added that Defendant,

19 Dr. Rivero, placed the bulk of the blame for the
20 wrong-site surgery on the operating room staff, just
21 that first sentence. Did you put that in your
22 complaint?

23 A. Yes.

24 Q. And what caused you to put that in your
25 complaint?

18

19

1 MR. HARRISON: Object as to form. Go
2 ahead.

3 A. Gina Davis had said that she had overheard
4 Dr. Rivero tell the family this, the family of the
5 patient.

20

6 Q. (BY MS. SCOGGINS) Told them what?

7 A. That it was our fault, that it was the
8 operating room staff's fault that we didn't stop him
9 from operating on the wrong site.

21

10 Q. So he didn't say anything directly to Gina
11 Davis, to your knowledge?

12 A. Not directly to her, no.

13 Q. Was there also a scrub tech or two in the
14 operating room?

15 A. Yes.

16 Q. Did you talk to them?

17 A. No.

18 Q. Do you know if Gina Davis heard the entire
19 conversation between the patient's family and
20 Dr. Rivero?

21 A. I don't know.

22 Q. You did not hear it, is that correct, any
23 conversation between Rivero and the patient or patient's
24 family?

25 A. Correct.

1 Q. Do you know of anyone else that overheard what
2 he said during that conversation?

3 A. I don't know.

4 MR. HARRISON: Can we take a short break?

5 MS. SCOGGINS: Sure.

6 THE VIDEOGRAPHER: We're off the record.

7 The time is approximately 11:32 a.m.

8 (Recess from 11:32 a.m. to 12:03 p.m.)

9 THE VIDEOGRAPHER: We are back on the
10 record. The time is approximately 12:03 p.m.

11 Q. (BY MS. SCOGGINS) Dr. Stahlheber, we were
12 talking about after the wrong-site surgery or the
13 incision was made that Dr. Rivero had done. Would you
14 be surprised if I told you now that Gina Davis tells me
15 that Dr. Rivero blamed no one?

16 A. Would I be surprised at that?

17 Q. Uh-huh.

18 A. Yes.

19 Q. What if that's what also Brian Stephens told
20 me?

21 A. Yes.

22 Q. Did you ever talk to Brian Stephens about that?

23 A. Yes, I believe so.

24 Q. And did he -- what did he say about that?

25 A. About that specifically?

1 Q. Uh-huh, about that specifically.

2 A. I don't recall what he said.

3 Q. Did anyone say that Dr. Rivero blamed me or

4 blamed us for the wrong-site surgery? Did any of them

5 -- not what they overheard. But did anybody that you

6 talked to about the surgery say that he blamed --

7 A. Mentioned them specifically?

8 Q. Uh-huh.

9 A. No.

10 Q. Okay. Did you talk to Steven Foust [sic]?

11 A. Steven Foust?

12 Q. Scrub tech.

13 A. Fouch?

14 Q. Oh, Fouch? Okay. He says he's been there 30

15 years, so.

16 A. Yeah, Fouch.

17 Q. Okay. And did you ever talk to him about the

18 wrong-site surgery?

19 A. Yes.

20 Q. When did you talk to him?

21 A. Around the time that it occurred.

22 Q. And what did he say?

23 A. He just had said that it occurred.

24 Q. Did he say whose fault it was?

25 A. No.

1 Q. What about Deanna Jenkins? Do you know who
2 that is?

3 A. Yes.

4 Q. Did you talk to her after the surgery?

5 A. No.

6 Q. After you filed your complaint with the Board,
7 what was the next thing you heard from the Board?

8 A. I was contacted by Jana Lane, Board
9 investigator. It had been a number of months.

10 Q. Okay. And what did Jana want to know or what
11 did she ask you?

12 A. Just more specific information.

13 Q. Do you recall what you told her during that
14 conversation?

15 A. Yes.

16 Q. What did you tell her?

17 A. I just kind of expanded upon what I had stated
18 in the original complaint, and that was pretty much it.

19 Q. And by expanding on it, you said you complained
20 about there being no peer review?

21 A. Yes.

22 Q. Did you still believe that there had been no
23 peer review?

24 MR. HARRISON: Object as to form. Go
25 ahead.

1 A. I don't recall the time line on it.

2 Q. (BY MS. SCOGGINS) When did you learn that
3 there had been an investigation, internal?

4 A. Internal?

5 Q. Uh-huh.

6 A. I don't recall. It was whenever Rick
7 Reutlinger took over as chief of surgery, which whenever
8 that was.

9 Q. That's when you learned about it?

10 A. Yes.

11 Q. Was it over at that point, the investigation?

12 A. I don't know.

22 13 Q. You mentioned also -- I believe you mentioned
14 that you told Ms. Lane about a lawsuit; is that correct?

15 A. A lawsuit?

23 16 Q. Lawsuit. That a lawsuit had been filed or that
17 Dr. Rivero had paid money out of his own pocket.

18 A. Correct.

24 19 Q. Was that in your complaint, in your written
20 complaint?

21 A. Yes.

25 22 Q. Okay. Did you understand anything -- do you
23 know when that lawsuit was filed?

24 A. My understanding at that time was that there
25 wasn't a lawsuit that was filed, that a cash settlement

1 Q. Uh-huh, about that specifically.

2 A. I don't recall what he said.

3 Q. Did anyone say that Dr. Rivero blamed me or
4 blamed us for the wrong-site surgery? Did any of them
5 -- not what they overheard. But did anybody that you
6 talked to about the surgery say that he blamed --

7 A. Mentioned them specifically?

8 Q. Uh-huh.

9 A. No.

10 Q. Okay. Did you talk to Steven Foust [sic]?

11 A. Steven Foust?

12 Q. Scrub tech.

13 A. Fouch?

14 Q. Oh, Fouch? Okay. He says he's been there 30
15 years, so.

16 A. Yeah, Fouch.

17 Q. Okay. And did you ever talk to him about the
18 wrong-site surgery?

19 A. Yes.

20 Q. When did you talk to him?

21 A. Around the time that it occurred.

22 Q. And what did he say?

23 A. He just had said that it occurred.

24 Q. Did he say whose fault it was?

25 A. No.

1 had been paid outside of the legal system.

2 Q. Okay. Did anyone else pay?

3 A. I don't know.

4 Q. You don't know if the hospital paid?

5 A. I don't know.

6 Q. You were served with a subpoena for this
7 deposition?

8 A. Correct.

9 Q. I should have asked this at the beginning.

10 A. Yes.

11 Q. I'll give you a copy there.

12 (Exhibit Number 2 marked)

13 Q. It's marked as Exhibit 2. Does that appear to
14 be a copy of the subpoena you received?

15 A. Yes.

16 Q. It has attached to it documents you were asked
17 to bring, if you look on page 4.

18 A. Yes.

19 Q. Did you have any documents responsive to this
20 request?

21 A. No.

22 Q. When you expanded on what you had said in the
23 written complaint, did you expand on what Gina Davis had
24 told you that she overheard?

25 A. Yes.

26

28

1 Q. What did you say about that to Ms. Lane?

2 A. That it had been overheard that Dr. Rivero had
3 blamed the staff.

29

4 Q. And did Jana Lane ask you about each of the
5 items listed in your complaint? In other words, it was
6 a wrong-site surgery?

7 A. Yes.

30

8 Q. Had not been peer reviewed?

9 A. Yes.

31

10 Q. By that time, what did you -- did you and Jana
11 Lane discuss the lack of peer review?

12 A. Yes.

32

13 Q. What did you tell her about that?

14 A. That it was a sentinel event that hadn't been
15 peer reviewed through the hospital at the time that I
16 made the complaint.

17 Q. And you knew it had been by the time that you
18 talked to her?

19 A. Yes.

20 Q. Did you tell her that?

21 A. I don't recall.

33

22 Q. When she called you back from the complaint,
23 did you complain about anything else in connection with
24 Dr. Rivero?

25 A. Yes.

29

1 Q. And what was that?

2 A. There had been a 15-year-old patient that was
3 admitted at the hospital for compartment syndrome, had a
4 tib-fib fracture, lower leg fracture, was admitted for
5 suspected compartment syndrome. And this was my case.
6 Whenever we had operated, on the following Monday the
7 patient had significant compartment syndromes, was given
8 a bilateral fasciotomy and transported to St. John's
9 Medical Center.

34

10 Q. Do you know what happened after he was
11 transported?

12 MR. ASHBAKER: And I'm going to object to
13 relevance and could -- just a standing objection on
14 everything --

15 MS. SCOGGINS: Yes.

16 MR. ASHBAKER: -- with respect to that
17 surgery.

18 MS. SCOGGINS: Okay.

25

19 Q. (BY MS. SCOGGINS) Do you know if -- do you
20 know what happened after the patient was transferred?

21 A. I don't know.

22 Q. Have you ever filed complaints against any
23 other physician?

24 A. No.

25 Q. Neither at the hospital level or at the Board

1 level?

2 A. No.

3 Q. And I may have asked you this. But you never
4 told Dr. Rivero that you had filed that complaint
5 against him?

6 A. No.

7 Q. Did you discuss with Ms. Lane her investigation
8 of the facts of your initial complaint when she called
9 back? Do you know if she had done anything?

10 A. I don't believe that she had. I don't know.

11 Q. Have you ever been sued for negligence or
12 malpractice?

13 MR. HARRISON: Objection, form. Go ahead.

14 MR. ASHBAKER: Objection, relevance.

15 A. No.

16 Q. (BY MS. SCOGGINS) I'm going to hand you a copy
17 of a petition, but I'm not going to make this an
18 exhibit, named you as a defendant. Did you know
19 anything about that case?

20 A. It's news to me. No.

21 Q. And there's no evidence -- and I'll represent
22 to you there's no evidence in the records that it was
23 ever served on you.

24 A. No, I've never seen that.

25 Q. Okay. Those other doctors, out of curiosity,

1 were they surgeons or -- or what?

2 A. Clorinda Robles is an anesthesiologist. Ladd
3 Atkins is a surgeon.

4 Q. Okay.

5 (Brief discussion off the record)

6 Q. (BY MS. SCOGGINS) Do you recall Shelly Johnson
7 Sawyer, the plaintiff in the suit that was filed in
8 2013?

9 A. No.

10 Q. Do you have knowledge if the Board investigated
11 all three of the complaints you filed against
12 Dr. Rivero?

13 MR. ASHBAKER: Objection, relevance.

14 MR. HARRISON: Object as to form. Go
15 ahead.

16 A. I don't know.

17 Q. (BY MS. SCOGGINS) Did Ms. Lane ever ask you
18 about -- well, first, did she ever ask you if you were
19 present during this surgery?

20 A. During the wrong-site surgery?

21 Q. Yes.

22 A. Yes.

23 Q. And I assume you told her no?

24 A. Yes.

25 Q. Did she ask who was present?

1 A. Yes.

2 Q. And did you know who was present?

3 A. Yes.

4 Q. And so you gave her those names?

5 A. Yes.

6 Q. That occurred in November of 2013, I believe,
7 the wrong-site surgery?

8 A. Uh-huh.

9 Q. Did -- at that time the hospital did have -- in
10 the surgery department, did have a time-out procedure;
11 is that correct?

12 A. Yes.

13 Q. After that occurred, did Dr. Rivero institute
14 even further procedures to ensure there was no
15 wrong-site surgery?

16 MR. HARRISON: Object as to form. Go
17 ahead.

18 A. The time-out procedure was revised. I don't
19 know if he was the reason for it.

20 Q. (BY MS. SCOGGINS) How was it revised?

21 MR. HARRISON: Same objection. Go ahead.

22 A. Just more specific, just made more specific.

23 Q. (BY MS. SCOGGINS) Okay. Was it still just
24 communication between the people in the surgery suite?

25 A. Yes, and writing.

1 Q. And, as a matter of fact, did he start -- all
2 of them start having checkmarks to check when they
3 performed certain things, such as the draping and the --
4 and things, such as that, that they did not have before?

5 MR. HARRISON: Object to the form --

6 MR. ASHBAKER: Objection, leading.

7 Q. (BY MS. SCOGGINS) And, I'm sorry, because I
8 went at it a roundabout way. Did you ever see any
9 checkmarks or things that were required by the people
10 participating with Dr. Rivero before a surgery after the
11 wrong-site surgery occurred?

12 A. Yes.

13 Q. And that had not been required prior to this
14 wrong-site surgery, correct?

15 MR. HARRISON: Object as to form. Go
16 ahead.

17 A. I don't recall.

18 Q. (BY MS. SCOGGINS) You don't recall seeing it
19 before then?

20 A. Yes, but not in every procedure.

21 Q. Okay. Well, if the people -- if Gina Davis
22 testified that Dr. Rivero added to the procedures the
23 hospital already had, would you have any reason to doubt
24 her testimony?

25 A. No.

1 Q. Did you and Dr. Rivero ever butt heads, so to
2 speak, regarding any of your meetings?

3 MR. HARRISON: Object as to form. Go
4 ahead.

5 A. Not directly.

6 Q. (BY MS. SCOGGINS) Okay. Indirectly?

7 A. Yes.

8 Q. Okay. And I'm using that term "butt heads"
9 because that was the term used by Jana Lane in
10 testifying.

11 A. Okay.

36

12 Q. Did you tell her about butting heads with
13 Dr. Rivero?

14 A. I told her that we had disagreed on some issues
15 previously.

37

16 Q. Okay. And what were those issues?

17 A. It was -- usually it was timeliness of surgery,
18 turnover times.

19 Q. Why is that important?

20 A. For efficiency in the surgery department.

21 Q. And by efficiency, you mean you can get more
22 done within a couple of hours or whatever, right?

23 A. Yes.

24 Q. Did the surgeon, Dr. Gregory, did you ever
25 complain to him or about his timeliness in surgery?

1 A. Did I ever complain to Dr. Gregory about
2 Dr. Gregory's own timeliness?

3 **Q. Yes.**

4 A. No.

5 **Q. Did you complain to anyone else in the hospital
6 about Dr. Gregory's own -- the time he was taking in
7 surgery?**

8 A. No.

9 **Q. And other than complaining to the Board about
10 Dr. Rivero and why you butted heads, did you ever
11 mention any other specific names or specific individuals
12 that you thought were not timely in their surgeries?**

13 A. No.

14 **Q. Was Dr. Rivero the only surgeon at Muskogee
15 hospital that you had that complaint about?**

16 A. Well, his gripe was against us, anesthesia --
17 that anesthesia took too long between surgeries,
18 turnover times.

19 **Q. Okay. And how could the -- explain what his
20 complaint was a little more thoroughly.**

21 A. Just that we were taking too long to get the
22 next surgery on the table.

23 **Q. Okay.**

24 A. That we were wasting time between cases.

25 **Q. And so was that discussed in a committee**

1 meeting?

2 A. Yes, department of surgery.

3 Q. Would it be typical to discuss complaints and
4 issues that different doctors are having in a department
5 meeting?

6 A. Yes.

7 Q. And without asking you what they were, there
8 were other times that people would have complaints or
9 issues that were brought up during those meetings?

10 A. Yes.

11 Q. Other than Dr. Rivero?

12 A. Yes.

13 (Exhibit Number 3 marked)

14 Q. Dr. Stahlheber, I've handed you Exhibit 3,
15 Deposition Exhibit 3, which I'll represent to you to be
16 the Plaintiff, meaning the Board's, preliminary exhibit
17 and witness list in their case against Dr. Rivero. Do
18 you see that?

19 A. Yes.

20 Q. And questions of Board counsel and of Board
21 investigator, it was revealed that you are Witness
22 Number 3.

23 A. Okay.

24 Q. Had anyone told you you're going to be a
25 witness at the hearing?

1 A. No.

2 Q. They say proposed testimony; the conduct of
3 Defendant as a surgeon. What -- are you talking about
4 his conduct in relation to the wrong-site surgery?

5 A. Yes.

6 Q. Anything else?

7 A. No.

8 Q. Reputation of Defendant within the hospital.
9 Did you discuss that with Ms. Lane?

10 A. I don't know.

11 Q. Do you remember discussing it with her?

12 A. As far as like with other surgeons and other
13 peers?

14 Q. Well, you'll notice it says: Reputation of
15 Defendant within the hospital staff and Defendant's
16 peers.

17 So let's start with the -- we'll assume
18 that the hospital staff means medical staff. What about
19 his reputation -- did you talk about his reputation
20 within the medical staff with Ms. Lane?

21 A. I don't recall.

22 Q. You don't recall talking about it at all?

23 A. Not in that respect.

24 Q. Okay. Did you ever discuss his reputation
25 among his -- the hospital staff with Ms. Lane?

1 A. I don't recall. I mean, I can't really speak
2 upon his reputation to the -- with others.

3 Q. Do you have an opinion about Dr. Rivero's
4 reputation among his peers?

5 A. I wouldn't know. I assume it's good.

6 Q. Okay. How about with the medical -- with the
7 staff, like the surgery staff? I'm not talking -- now,
8 hospital staff. Do you know -- do you have any
9 knowledge of his reputation among the staff, such as
10 scrub techs and people like that, nurses?

11 A. No.

12 Q. Did you inform the hospital that you had filed
13 a complaint against Dr. Rivero at the Board?

14 A. No.

15 Q. Did you tell Dr. Rivero that you filed a
16 complaint at the Board?

17 MR. ASHBAKER: Objection, asked and
18 answered.

19 A. I had already answered no to that.

20 Q. (BY MS. SCOGGINS) Okay. I have a pretty good
21 memory, but not that good.

22 A. That's all right.

23 Q. Earlier when you were mentioning CRNA's, we
24 talked about that they would have a supervising
25 anesthesiologist. Were those assigned by person? In

1 other words, Dr. Stahlheber, you're supervising Joe and
2 Mary. Or would it just be on a case-by-case basis?

3 A. By person.

4 Q. By person. So who were you supervising in late
5 2013?

6 A. Oh, well, it just depended on the day.

7 Q. Oh, okay.

8 A. By person, depending on the day, and we all
9 kind of shared that role.

10 Q. Okay. And you already testified, I believe,
11 that there was another anesthesiologist that was
12 supervising Brian Stephens at the time of the wrong-site
13 surgery; is that correct?

14 A. Yes, yes.

15 (Exhibit Number 4 marked)

28
16 Q. Doctor, I've handed you information that is at
17 the osteopathic license board, licensing board, in your
18 board file.

19 A. Uh-huh.

30
20 Q. And if you'll look at page 5 of 6, it appears
21 in your response to Number 9 that you disclosed and
22 explained an arrest that you've had; is that correct?

23 MR. ASHBAKER: I'm going to object to
24 relevance.

25 MR. HARRISON: Object as to form. I also

1 want to note for the record that this information is
2 subject to an order of expungement out of Tulsa County
3 District Court. Go ahead and answer.

4 A. Yes.

40
5 Q. (BY MS. SCOGGINS) Okay. And, actually, that's
6 what I was going to ask you next.

7 MR. HARRISON: Yes, ma'am.

41
8 Q. (BY MS. SCOGGINS) So did -- this was an arrest
9 for a misdemeanor, correct?

10 A. Yes.

11 MR. ASHBAKER: I'm just going to note for
12 the record it is my understanding -- we've actually
13 researched this part of law pretty recently. I don't
14 know how it applies to private entities. I know we are
15 not allowed to ask questions about these. I throw that
16 out there for what it's worth. Once something's been
17 expunged, it's been expunged. You do with that what you
18 will. I won't be asking any questions with regard to
19 that, and I'm going to object to any questions that
20 you're going to ask about it as both relevance and I
21 think it's improper and I -- that's all I've got to say
22 about it.

23 MS. SCOGGINS: Well -- yeah.

42
24 Q. (BY MS. SCOGGINS) So is it your understanding
25 that that -- when I asked you if your record was

1 expunged, was there a -- was it actually dismissed
2 against you or do you know?

3 A. Yes.

4 (43)

4 Q. How long did it take to get that done from the
5 time you were arrested? Do you remember?

6 A. I don't.

7 (44)

7 Q. Now, if you'll look up at Number 2, it says
8 that you were suspended. Your answer was: I was
9 suspended from practice at Muskogee hospital from April
10 17 to May 2, 2009, and it says see below.

11 Does that refresh your recollection about
12 being suspended?

13 A. Yes.

14 MR. HARRISON: Object -- object as to
15 form.

16 (45)

16 Q. (BY MS. SCOGGINS) And when it says see below,
17 was the suspension in connection with your arrest?

18 MR. HARRISON: Same objection.

19 MR. ASHBAKER: Same objection.

20 A. Yes.

21 (46)

21 Q. (BY MS. SCOGGINS) Okay.

22 A. I was reinstated with back pay after the
23 suspension.

24 Q. Okay. After Ms. Lane called you, you said it
25 was a few months, and she called you regarding the

1 complaint. She asked you questions about your complaint
2 and you expanded; is that correct?

3 A. Yes.

4 Q. Do you recall talking to her again after that?

5 A. Yes. I just contacted her to ask about the
6 status.

7 Q. Okay. Do you recall when that was?

8 A. No.

9 Q. Was it months after she contacted you?

10 A. Yes.

11 Q. And if you'll look back at that list of
12 witnesses, Gina Davis is listed. Do you trust Gina
13 Davis' credibility?

14 MR. HARRISON: Object as to form. Go
15 ahead.

16 A. Yes.

17 Q. (BY MS. SCOGGINS) Does an anesthesiologist,
18 when they're in the surgery suite, do they have to rely
19 upon the judgment of a circulating nurse for some
20 things?

21 A. Yes.

22 Q. So did you rely on Gina Davis on occasion?

23 A. Yes.

24 Q. So you trusted her judgment?

25 A. Yes.

1 Q. Okay. The next person listed there is Brian
2 Stephens, CR -- I think that probably should be --

3 A. CRNA.

4 Q. "A," yeah. Did you trust Brian Stephens'
5 judgment?

6 A. Yes.

7 Q. Did you ever supervise him?

8 A. Yes.

9 Q. Ever any problems with Brian Stephens, between
10 the two of you?

11 A. No.

12 Q. Deanna Jenkins, a scrub tech. Did you ever
13 work on cases where she was a scrub tech?

14 A. Yes.

15 Q. Did you trust her judgment as a scrub tech?

16 A. Yes.

17 Q. Do you think Deanna Jenkins would be a credible
18 witness?

19 A. I don't know.

20 Q. How about Brian Stephens? Did you find him to
21 be trustworthy?

22 A. Yes.

23 Q. Okay. On the second page of that exhibit, they
24 list Steven Fouch. That's the one I called the wrong
25 name a while ago.

1 A. Yes.

2 Q. Did you ever work on cases where he was
3 involved as a scrub tech?

4 A. Yes.

5 Q. Okay. Did you trust his judgment as a scrub
6 tech?

7 A. Yes.

8 Q. Okay. Ever have any reason to doubt his
9 credibility?

10 A. No.

11 Q. And with Deanna Jenkins, you said no, that you
12 don't have any knowledge. So I guess I'll ask you this.
13 Do you have any reason to doubt her credibility, Deanna
14 Jenkins?

15 A. No.

16 Q. In addition to bylaws at Muskogee hospital, did
17 they have policies and procedures regarding fair
18 hearings and peer review, to your knowledge?

19 A. I don't know.

20 Q. You don't remember?

21 A. No.

22 Q. You mean, yes, you don't remember?

23 A. Correct. I do not remember.

24 MS. SCOGGINS: I'm going to take a break,
25 and we might be able to judge the length of time left,

1 okay?

2 MR. HARRISON: Okay.

3 THE VIDEOGRAPHER: Off the record. The
4 time is approximately 12:40 p.m.

5 (Recess from 12:40 p.m. to 12:50 p.m.)

6 THE VIDEOGRAPHER: We are back on the
7 record. The time is approximately 12:50 p.m.

8 Q. (BY MS. SCOGGINS) Dr. Stahlheber, I want to
9 just make sure I'm clear on things about your -- when
10 Jana Lane called you back after you filed your
11 complaint. You stated that your number one complaint,
12 in that written one, was that they had done no peer
13 review of the wrong-site surgery.

14 A. Yes.

15 Q. Did you discuss that with -- that portion of
16 your complaint with Ms. Lane when she called you back?

17 A. Yes.

18 Q. What did you tell her?

19 A. That at the time I made the complaint it had
20 been several months, several months had passed, and we
21 hadn't formally discussed that sentinel event in peer
22 review.

23 Q. Did you tell her it had been discussed since
24 then?

25 A. I don't recall.

1 Q. Do you recall if that part of your complaint
2 even was an issue in that telephone conversation?

3 A. I don't think it was.

4 Q. Did -- you stated previously that you also
5 complained that you thought the wrong-site surgery
6 itself was disruptive --

7 A. Yes.

8 Q. -- is that correct? Did you expand on that?

9 A. No.

10 Q. The third thing that you mention was about that
11 you -- the settlement, or we'll call it the payment by
12 Dr. Rivero.

13 A. Yes.

14 Q. Did you have any more knowledge about that when
15 you talked to her when she called you back?

16 A. No, just the knowledge in my initial complaint.

17 Q. And I believe you testified a while ago you had
18 -- you did not know that the hospital also paid money to
19 the plaintiff or the patient?

20 A. I don't know that.

21 Q. Okay. Who told you that Dr. Rivero did?

22 A. I can't recall exactly.

23 Q. Was it someone who worked in the hospital?

24 A. Yes.

25 Q. Do you recall if it was a doctor?

1 A. I don't recall.

2 Q. And you did not know or don't recall if there
3 was a procedure for filing complaints within the
4 hospital; is that correct? I just want to make sure I
5 got that correct.

6 A. Correct.

7 Q. Do you know if there's one where you're working
8 now?

9 A. I believe there is, yes.

10 Q. Did you ever speak with Dr. Atwell about the
11 results or about anything he did as chief of staff with
12 regard to this wrong-site surgery?

13 A. No.

14 Q. Can you think of anything else that Ms. Lane
15 asked you when she called you back during that
16 conversation?

17 A. No.

18 Q. And the only thing you had to add was about the
19 compartment syndrome; is that correct?

20 A. Yes.

21 Q. Do you know if that was investigated by the
22 Board?

23 A. I don't know.

24 Q. Did you, being chair of the anesthesia
25 department, and Dr. Rivero, being chair of the surgery

1 department, overlap?

2 A. Yes.

3 Q. Do you know by how much?

4 A. No, I don't know.

5 Q. How long would one be a chair of a department?

6 A. I don't know. I don't think there was a
7 specific -- like a time period.

8 Q. Okay. Sometimes there are terms.

9 A. Right.

10 Q. You know, like a one-year or two-year term. Do
11 you recall if that's the way it was at Muskogee?

12 A. I don't recall.

13 Q. Have you ever heard of any other wrong-site
14 surgery in any of the hospitals where you've worked?

15 MR. HARRISON: Object as to form. Go
16 ahead.

17 A. I've heard that they've occurred.

18 Q. (BY MS. SCOGGINS) Okay. But you haven't been
19 involved in them?

20 A. No.

21 Q. Okay. Have you ever been the anesthesiologist
22 in a case where you recognized negligence in the
23 surgical procedure?

24 MR. ASHBAKER: Objection, relevance.

25 MR. HARRISON: Object as to form.

1 A. No.

2 Q. (BY MS. SCOGGINS) When you said you had heard
3 about other wrong-site surgeries, were those prior to
4 your time at a hospital or had they just occurred or
5 what?

6 MR. ASHBAKER: Same objection.

7 MR. HARRISON: Same objection.

8 A. Just word of mouth at different hospitals, you
9 know.

10 Q. (BY MS. SCOGGINS) Is there any other reason,
11 other than what you've testified to today, that you
12 would consider the conduct of Dr. Rivero as
13 unprofessional?

14 A. No.

15 MS. SCOGGINS: Dr. Stahlheber, that's all
16 I have. Now he has an opportunity to ask you questions.

17 MR. ASHBAKER: Very briefly.

18 THE WITNESS: Sure.

19 MR. ASHBAKER: Very briefly, I promise.

20 EXAMINATION

21 BY MR. ASHBAKER:

22 Q. It would be a true statement that you don't
23 know and are not privy to how Jana Lane conducted this
24 investigation, correct?

25 A. Correct.

1 Q. You weren't party to that after you made the
2 complaint?

3 A. Correct.

4 Q. So You don't know what steps she did or didn't
5 take?

6 A. Correct.

7 Q. Okay. There's been some discussion about you
8 and Dr. Rivero butting heads.

9 A. Yes.

10 Q. And I'm only using that term because that's a
11 term that's been bantered about here.

12 A. Yes.

13 Q. You didn't make this complaint because you
14 butted heads with him; is that correct?

15 A. No, I did not, correct.

16 Q. You wouldn't do that; is that correct?

17 A. Correct.

18 Q. Now, are you aware that he has admitted to
19 doing a wrong-site surgery in this case?

20 A. Yes.

21 Q. In fact, isn't it correct that it's never been
22 a question as to whether a wrong-site surgery took place
23 in this case, correct?

24 A. Correct, yeah.

25 Q. Admitted it as soon as it happened?

1 A. Yes.

2 Q. Now, briefly, this defense Exhibit Number 3,
3 Plaintiff's Preliminary Witness and Exhibit List, before
4 today, have you seen that?

5 A. No.

6 Q. Did you write it?

7 A. No.

8 Q. Do you know who wrote it?

9 A. No.

10 Q. Did you have any input into it?

11 A. No.

12 Q. Just so you're aware, I wrote it. Did I ever
13 discuss this with you before I wrote it?

14 A. No.

15 Q. Or before today?

16 A. No.

17 Q. Have you and I ever discussed this document;
18 did Jana Lane ever discuss this document with you?

19 A. No.

20 Q. Did anybody ever discuss this document with you
21 before today?

22 A. No.

23 Q. Now, on this was a list of individuals, and
24 Ms. Scoggins asked you if you knew each of them, for
25 example, Gina Davis, for example. Do you recall that?

1 A. Yes.

2 Q. And she said something to the effect of did you
3 have any reason to doubt her credibility; is that
4 correct?

5 A. Correct.

6 Q. Have you ever known any of these people to be
7 involved in a case like the one we're dealing with now?

8 A. Not to my knowledge, no.

9 Q. So you are unaware of whether any of these
10 people have ever been involved in a wrong-site surgery
11 before?

12 A. Correct.

13 Q. Are you aware if any of them have ever had a
14 surgery or a doctor that they worked for in trouble for
15 anything?

16 A. I don't know.

17 Q. Okay. And it would not have been a correct
18 interpretation of your testimony that these people were
19 never wrong. That is not what you meant to say,
20 correct?

21 A. Correct.

22 Q. You just said you trust their credibility, but
23 you're not suggesting they're never incorrect?

24 A. Correct, yes.

25 MR. ASHBAKER: That's all I have. Thank

1 you.

2 MR. HARRISON: I have no questions for the
3 witness, Ms. Scoggins.

4 MS. SCOGGINS: I'll follow up on something
5 just to make certain.

6 FURTHER EXAMINATION

7 BY MS. SCOGGINS:

8 Q. You had never talked to anyone at the Board
9 other than Jana Lane, is that correct, do you remember,
10 on this case?

11 A. That is correct.

12 Q. Okay. Have you met Mr. Ashbaker before today?

13 A. No, not before today.

14 Q. Or talked to him before today?

15 A. No.

16 MS. SCOGGINS: Okay. You have the right
17 to read --

18 MR. HARRISON: We'll read and sign.

19 MR. ASHBAKER: Wait.

20 MR. HARRISON: Oh, I'm sorry.

21 MR. ASHBAKER: I do want to say one thing.
22 I think maybe I want to clarify something you just
23 asked.

24 FURTHER EXAMINATION

25 BY MR. ASHBAKER:

1 Q. You and I spoke on the phone the other day. Do
2 you recall that?

3 A. Oh, yeah, last week, yeah. We had not met --
4 MR. ASHBAKER: And if you like, I'll go
5 into that or you can.

6 MS. SCOGGINS: No, that's okay.

7 Q. (BY MR. ASHBAKER) You and I talked about you
8 showing up today; is that correct?

9 A. Yes.

10 Q. And you had asked whether you needed an
11 attorney or not. Do you recall that?

12 A. Yes.

13 Q. And do you recall what I said about that?

14 A. Said that I really didn't need one. You said
15 that you were not my attorney.

16 Q. Right. Do you recall that I told you I
17 couldn't -- and correct me if I say something that's
18 incorrect with respect to this. I want you to say that
19 that's not correct, okay?

20 A. Yeah.

21 Q. Do you recall that I told you I couldn't tell
22 you whether you should get an attorney or not?

23 A. Yes.

24 Q. But that you were entitled to have one here.
25 Do you recall that?

1 A. That's correct.

2 Q. Do you recall my telling you to tell the truth?

3 A. Yes.

4 Q. Did I tell you anything other than those
5 things?

6 A. No.

7 MR. ASHBAKER: That's all I've got.

8 MR. HARRISON: We'll read and sign. Thank
9 you.

10 THE VIDEOGRAPHER: This concludes our
11 deposition. We're now off the record. The time is
12 approximately 1:04 p.m.

13 (Proceedings concluded at 1:04 p.m.)

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1	CHANGES AND SIGNATURE			
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1 I, BRAD STAHLHEBER, D.O., have read the foregoing
2 deposition and affix my signature that same is true and
3 correct, except as noted above.

4

5

6

BRAD STAHLHEBER, D.O.

7

8

9

STATE OF)

10

COUNTY OF)

11

12

Before me , Notary Public, on

13

this day personally appeared BRAD STAHLHEBER, D.O.,

14

known to me (or proved to me under oath or through

15

) (description of identity card or

16

other document) to be the person whose name is

17

subscribed to the foregoing instrument and acknowledged

18

to me that they executed the same for the purposes and

19

consideration therein expressed.

20

Given under my hand and seal of office this

21

day of _____, 2016.

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NOTARY PUBLIC IN AND FOR
THE STATE OF

25

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

STATE OF OKLAHOMA, ex rel. OKLAHOMA STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION,

Plaintiff,

v.

DENNIS RIVERO, M.D., LICENSE NO. MD 25366,

Defendant.

FILED FEB 22 2016 OKLAHOMA STATE BOARD OF MEDICAL LICENSURE & SUPERVISION

Case No. 14-12-5090

VERIFIED COMPLAINT

The State of Oklahoma, ex rel. Oklahoma State Board of Medical Licensure and Supervision ("Board"), alleges and states as follows for its Complaint against Dennis Rivero, M.D. ("Defendant"):

- 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 holds Oklahoma medical license number 25366. The acts and omissions complained of herein were made while Defendant was acting as a physician pursuant to his medical license conferred upon him by the State of Oklahoma. Such acts and omissions occurred within the physical territory of the State of Oklahoma.

I. ALLEGATIONS OF PROFESSIONAL MISCONDUCT

- 3. On January 22, 2014, the Board received a complaint alleging Defendant is generally a disruptive physician and that he performed a wrong-site surgery for an ankle fusion on November 18, 2013.
4. The complainant added that Defendant placed the bulk of the blame for the wrong-site surgery on the operating room staff. Defendant later confirmed having such an opinion in an interview.
5. On December 17, 2014, Investigator Jana Lane contacted the complainant to discuss the allegations. Investigator Lane was informed that Defendant paid a settlement directly to

EXHIBIT Exhibit "1" B. Stahlheber 8-31-16

Verified Complaint; 14-12-5090 Dennis Rivero, M.D., #25366

DEFENSE HEARING EXHIBIT 91

- the Patient. This payment was not made by Defendant's medical malpractice insurance carrier.
6. On December 17, 2014, Investigator Lane faxed a subpoena to Defendant for the relevant patient's record. The subpoenaed records were received on December 29, 2014.
 7. The records indicated that the right ankle was the surgery site. The medical records further reflect that the patient was prepped and draped by the operating room team in standard fashion. It indicates that a time out was called in which Defendant and four other people allegedly participated.
 8. The patient records state that Defendant made a lateral incision, performed an osteotomy of the fibula, divided anterior ligaments and reflected the fibular posteriorly to visualize the joint surfaces. Debridement of the joint was started by removing an osteophyte. It was only at that point that Defendant realized his mistake when he notices that the ankle joint had no "advanced osteoarthritis" and that he was operating on the wrong ankle.
 9. On December 23, 2014, Investigator Lane conducted a phone interview with Defendant. Defendant admitted that he conducted a wrong-site surgery on the patient in question and that he settled the case and paid the patient using his own money.
 10. Subsequently, Defendant admitted that he was not present for the "time out" and instead relied on others to ensure that the correct site was being operated on.
 11. Defendant settled a civil suit in the District Court in and for Muskogee County, Case number CJ-2013-00537 on or about March 27, 2014, at which time it was dismissed. That suit was filed against Defendant by the patient in the instant matter.
 12. On September 27, 2014, Defendant filed an Application for Renewal of Oklahoma License with the Board. On that application he answered "No" to the question "Have you had any adverse judgment, settlement, or award against you arising from a professional liability claim?" That answer was false.

II. VIOLATIONS

13. Based on the foregoing, the Defendant is guilty of professional misconduct as follows:
 - a. Failure to provide a proper and safe medical facility setting and qualified assistive personnel for a recognized medical act, including but not limited to an initial in-person patient examination, office surgery, diagnostic service or any other medical procedure or treatment in violation of 59 O.S. 2011, § 509(20) and Okla. Admin. Code § 435:10-7-4(41);
 - b. Gross or repeated negligence in the practice of medicine and surgery in violation of Okla. Admin. Code § 435:10-7-4(15);

- c. Fraud or misrepresentation in applying for procuring a medical license or in connection with applying for or procuring periodic re-registration of a medical license in violation of Okla. Admin. Code § 435:10-7-4(8);
- d. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine in violation of Okla. Admin. Code § 435:10-7-4(19); and
- e. Any adverse judgment, award, or settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section in violation of Okla. Admin. Code 435:10-7-4(34).

III. CONCLUSION

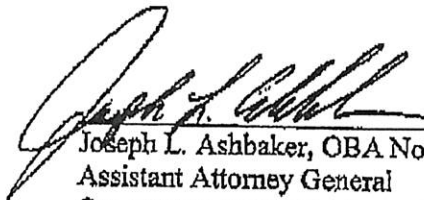
Given the foregoing, the undersigned requests the Board conduct a hearing, and, upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including suspension or revocation and any other appropriate action with respect to the Defendant's professional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

I do hereby certify that the above and foregoing is a true copy of the original

Verified Complaint

now on file in my office.

Witness my hand and Official Seal of the Oklahoma State Board of Medical Licensure and Supervision this 22nd day February 2016 Shelley Crowder


Joseph L. Ashbaker, OBA No. 19395
Assistant Attorney General

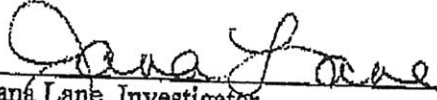
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION
101 N.E. 51st Street
Oklahoma City, Oklahoma 73105
405/962.1400
405/962.1499 – Facsimile

VERIFICATION

I, Jana Lane, under penalty of perjury, under the laws of the State of Oklahoma, state as follows:

1. I have read the above Complaint regarding the Defendant, Dennis Rivero, M.D.;
and

2. The factual statements contained therein are true and correct to the best of my knowledge and belief.



Jana Lane, Investigator
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Date: 02-22-2016

Oklahoma City, OK
Place of Execution

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

STATE OF OKLAHOMA, *ex rel.*)
OKLAHOMA STATE BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
DENNIS RIVERO, M.D.,)
LICENSE NO. MD 25366,)
)
Defendant.)

Case No. 14-12-5090

DEPOSITION SUBPOENA DUCES TECUM

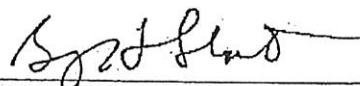
TO: Brad Stahlheber, D.O.
1923 S. Utica Avenue
Tulsa, OK 74104

YOU ARE HEREBY COMMANDED, pursuant to Oklahoma Administrative Code 435:3-3-16, to attend and give your deposition at the offices of Doerner, Saunders, Daniel & Anderson, Two West Second Street, Suite 700, Tulsa, OK 74103-3117, in the above-captioned matter on August ~~30~~³¹, 2016 at 10:30 a.m. You are to appear at the time designated and not leave until your deposition is completed or with leave of the Board, and to further bring with you the documents listed on the attached Exhibit A.

HEREOF FAIL NOT UNDER PENALTY OF LAW.

IN WITNESS WHEREOF, I have hereunto set my hand and issued this subpoena on this 19th day of August, 2016.




BILLY H. STOUT, MD
OKLAHOMA BOARD OF MEDICAL
LICENSURE AND SUPERVISION

DEFENSE HEARING EXHIBIT
Exhibit "1" 9J

EXHIBIT
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B. Stahlheber 8-31-16

CERTIFICATE OF SERVICE

This is to verify that a true and correct copy of this Deposition Subpoena Duces Tecum was served upon counsel for the Oklahoma State Board of Medical Licensure and Supervision at the address below on the 23 day of August, 2016.

Joseph L. Ashbaker
Assistant Attorney General
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION
101 N.E. 51st Street
Oklahoma City, OK 73105
Attorney for Plaintiff

Kyle P. Maddy for Linda Scoggins,
Linda G. Scoggins, OBA #8013
DOERNER, SAUNDERS, DANIEL
& ANDERSON, L.L.P. #31534
105 North Hudson Avenue, Suite 1000
Oklahoma City, Oklahoma 73102
Telephone: (405) 319-3500
Facsimile: (405) 319-3519
ATTORNEY FOR DEFENDANT

3916412v1

I do hereby certify that the above and foregoing is a true copy of the original
Deposition Subpoena Duces Tecum

now on file in my office.

Witness my hand and Official Seal of
the Oklahoma State Board of Medical
Licensure and Supervision this 19th day
August 2016 Shelley Clowds

Exhibit A

I. Definitions.

The following definitions shall govern the interpretation of this Deposition Subpoena Duces Tecum and any responses thereto:

1. The term "Board," as used herein, is defined as the Oklahoma State Board of Medical Licensure and Supervision.
2. The term "document," as used herein, is used in its customary broad sense and shall mean any kind of printed, recorded, written, graphic or photographic matter (including tape recordings), however printed, produced, reproduced, coded or stored, of any kind or description, whether sent or received or not, including originals, drafts, copies, non-identical copies or reproductions, summaries, reports, data compilations and tabulations, whether stored by mechanical, photographic, computer or electronic means (including electronic data storage media of all types, information or documentation from hard drives, electronic mail [e-mail], etc.).

The term "document" shall also include, without limitation, the following: any writing, drawing, graph, chart, plat, map, photograph, motion picture film, phonograph record, tape and video recording, computerized or any other records or data compilations from which information can be obtained.

The term "document" shall also include, without limitation, each note, memorandum, letter, facsimile, electronic mail, other communications, work papers, minutes, book, diary, forecast, blueprints, index, microfilm, account, opinion, appraisal, brochure, pamphlet, circular, telegram, release, article, analysis, transcript, agreement, deposit slip, bank statement, check, front and back, check stub, receipt, stock certificate, bond, bond coupon statement, confirmation, magnetic tape data sheet, data processing card or disk, computer diskette and any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced and any other document or writing of whatever description, including, but not limited to, any information contained in any computer although not yet printed.

3. The terms "refer" or "relate to" shall be construed to mean concerned with, showing or indicating knowledge of, dealing with, commenting upon, describing, summarizing, analyzing, explaining, detailing, outlining, defining, interpreting or pertaining to that subject. When used in connection with a document, "relating to" or "which relate to" means, in addition to the foregoing definition, any document constituting or comprising that subject, and any document identifying, referring to, dealing with, commenting upon, describing, summarizing, analyzing, explaining, detailing, outlining, defining, interpreting or pertaining to that subject.
4. The term "communication" shall mean any oral, written, mechanical, electronic or other transmission of words, symbols, numbers or depictions to a person, entity, file or

repository of data or information, including without limitation "documents" as herein defined, correspondence, memoranda, telephone conversations, or notes, recordings, transcriptions of meetings or of telephone conversations, e-mail, electronically-transmitted documents, messages or the like, and any other document that recorded or reflected such communication.

II. Documents to be produced.

1. Any and all documents in your possession that relate or refer to your proposed testimony at the Board hearing on this matter.

2. Any and all documents in your possession that relate or refer to Dr. Dennis Rivero in any manner.

3. Any and all document in your possession that were written, submitted, or otherwise provided by you (or someone on your behalf) to the Board or any of its representatives.

4. Any and all document in your possession that were written, submitted, or otherwise provided by the Board or any of its representatives to you (or someone on your behalf).

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

STATE OF OKLAHOMA, *ex rel.*)
 OKLAHOMA STATE BOARD)
 OF MEDICAL LICENSURE)
 AND SUPERVISION,)
)
 Plaintiff,)
)
 v.)
)
 DENNIS RIVERO, M.D.,)
 LICENSE NO. MD 25366,)
)
 Defendant.)

Case No. 14-12-5090

PLAINTIFF'S PRELIMINARY WITNESS AND EXHIBIT LIST

The State of Oklahoma, *ex rel.* the Oklahoma State Board of Medical Licensure and Supervision ("Board"), respectfully submits its Preliminary Witness and Exhibit List as follows:

Plaintiff's Witnesses

	<u>Witness</u>	<u>Proposed Testimony</u>
1.	Jana Lane, Medical Board Investigator c/o undersigned counsel	Facts and circumstances surrounding Defendant's misconduct as outlined in the Verified Complaint.
2.	Defendant	
3.	B.S.L.	The conduct of Defendant as a surgeon and reputation of Defendant within the hospital staff and Defendant's peers.
4.	T.P.L., Patient	Facts and circumstances surrounding Defendant's misconduct known to the witness.
5.	Gina Davis, R.N. Eaststar Health System	General conduct of Defendant and staff during relevant times related to the incident and Defendant's reputation within the hospital staff.
6.	Brian Stephens, C.R.N.S. Eaststar Health Systems	General conduct of Defendant and staff during relevant times related to the incident and Defendant's reputation within the hospital staff.
7.	Deanna Jenkins, Scrub Tech Eaststar Health Systems	General conduct of Defendant and staff during relevant times related to the incident.

RECEIVE

EXHIBIT
 3
 D. Stahlheber
 8-31-16

DEFENSE HEARING EXHIBIT
 Exhibit "1"
 9K

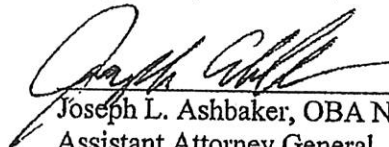
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 Doerner Saunders
 Daniel & Anderson, I

		and Defendant's reputation within the hospital staff.
8.	Steven Foutch, Scrub Tech Eaststar Health Systems	General conduct of Defendant and staff during relevant times related to the incident and Defendant's reputation within the hospital staff.
9.	Any defense witness.	

Plaintiff's Exhibits

1.	Verified Complaint, <i>State, ex rel. Okla. Brd. of Med. Lic. and Supv. v. Dennis Rivero, M.D.</i> Case No. 14-12-5090
2.	Defendant's licensing file
3.	Medical Record of T.P.L.
4.	Letter from Defendant to Robyn Hall dated January 2, 2015
5.	Email from Defendant to Investigator Lane dated December 30, 2014
6.	Defendant's License Renewal Application dated September 27, 2014
7.	Any exhibit presented by Defendant, and not objected to by Plaintiff.

Respectfully submitted,



 Joseph L. Ashbaker, OBA No. 19395
 Assistant Attorney General

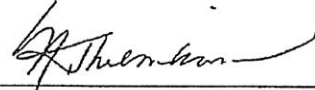
OKLAHOMA STATE BOARD OF MEDICAL
 LICENSURE AND SUPERVISION
 101 N.E. 51st Street
 Oklahoma City, Oklahoma 73105
 405/962.1400
 405/962.1499 – Facsimile

Certificate of Service

This is to certify that on the 18th day of April, 2016, Plaintiff's Preliminary Witness and Exhibit List was sent by U.S. first-class mail, postage prepaid, to the following:

Linda Scoggins
DOERNER, SAUNDERS, DANIEL
& ANDERSON, L.L.P.
105 North Hudson Avenue, Suite 500
Oklahoma City, Oklahoma 73102
Telephone: (405) 319-3500
Facsimile: (405) 319-3509
lscoggins@dnda.com

Counsel for Defendant



Nancy Thiemann, Legal Secretary

Renewal Information

Renewal: 2009 - 2010
Receipt Number: 1048218
Receipt Date: 06/27/2009

Licensee: Brad W. Stahlheber
License Number: 4334
NPI Number: 1104085711
License Type: In-State
Renewal Status: Approved

Personal Information

First Name Last Name
Brad W. Stahlheber

Date of Birth:
[REDACTED]

Med School: Graduation Date:
OSU-COM 2004

Email Address
[REDACTED]

Practice Address

Must be a physical address.

Address:
2900 N Main St

City: State: Zip Code:
Muskogee OK 74401

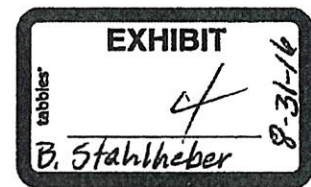
Phone: Fax: Practice International:
(ex. XXXXXXXXXX) (ex. XXXXXXXXXX)
918-687-7777

Preferred Mailing Address:

Preferred Mailing Address
Home

Address:
[REDACTED]

City: State: Zip Code:
[REDACTED]



Home Address

Must be a physical address.

Address:

City: State: Zip Code:

Home Phone: Home Fax: Home Cell:

Home International:

Professional Standards Questionnaire

1. Within the last twelve (12) months, was a professional liability lawsuit filed against you? No

2. Within the last twelve (12) months, was disciplinary action taken against you by any medical training program, hospital, managed care organization, group practice or other setting? Yes

Explanation:

I was suspended from practice at Muskogee Community Hospital from April 17-May 2, 2009. See below.

3. Within the last twelve (12) months, did you resign while under investigation; or were your privileges or contract not renewed in lieu of termination or firing? No

4. Within the last twelve (12) months, was board disciplinary action taken against you - or pending - affecting your license in another state? No

5. Within the last twelve (12) months, did you suffer personal illness or injury that adversely affects your ability to practice osteopathic medicine? No

6. Within the last twelve (12) months, did you enter or complete a treatment program for substance abuse? No

7. Within the last twelve (12) months, were you charged with or convicted of a DUI or DWI? No

8. Within the last twelve (12) months, were your DEA/OBNDD permits revoked, suspended, fined or restricted? No

9. Within the last twelve (12) months, were you convicted, indicted, arrested or charged with a felony or other crime? Pleas of guilty, non-fault, nolo contendere or other such plea for alleged criminal activity shall be deemed a conviction. Yes

Explanation:

On April 16, 2009 I was arrested and charged with misdemeanor possession of anabolic steroids. In short, I had a prescription for Anavar, a weak anabolic steroid, for the treatment of Osgood-Schlatter's disease which occurred during powerlifting. My insurance stopped paying for it, citing high cost, so I ordered some over the internet. I was investigated by OBNDD for simply having a prescription for a steroid in the first place and they raided my apartment without a warrant in January 2008 and found what I had ordered on the internet. They coerced me into saying it was for "cosmetic purposes" by threatening to deny me of my OBNDD# unless I signed a statement saying that was what the prescription was for because they wanted to build a case against the doctor that prescribed it to me. The misdemeanor charges are still pending. I will gladly provide a more detailed explanation upon request.

Invoice Summary

License Types	Amount Due
In-State Renewal	\$225.00
Processing Fee	\$7.00
Total:	\$232.00

I, Brad W. Stahlheber, have to the best of my knowledge, complied with the laws and rules regulating the osteopathic profession. By clicking submit, I am stating that the information I have entered in this application is true and correct.

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

STATE OF OKLAHOMA, ex rel. OKLAHOMA))
STATE BOARD OF MEDICAL LICENSURE))
AND SUPERVISION,))
))
Plaintiff,))
))
vs.) No. 14-12-5090)
))
DENNIS RIVERO, M.D., LICENSE))
NO. MD 25366))
))
Defendant.))

** CONFIDENTIAL **

DEPOSITION OF JANA ROCHELLE LANE
TAKEN ON BEHALF OF THE DEFENDANT
IN OKLAHOMA CITY, OKLAHOMA
ON AUGUST 16, 2016

REPORTED BY: KAREN B. JOHNSON, CSR

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A P P E A R A N C E S

For the Plaintiff:

**Joe Ashbaker
Assistant Attorney General
101 Northeast 51st Street
Oklahoma City, Oklahoma 73105
jashbaker@okmedicalboard.org**

For the Defendant:

**Linda Scoggins
Kaylee Maddy
Doerner, Saunders,
Daniel & Anderson
105 North Hudson, Suite 500
Oklahoma City, Oklahoma 73102
lscoggins@dsda.com**

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that the deposition of JANA ROCHELLE LANE may be taken on behalf of the Defendant on the 16th of AUGUST, 2016, in OKLAHOMA CITY, Oklahoma, by Karen B. Johnson, Certified Shorthand Reporter for the State of Oklahoma, taken pursuant to agreement.

IT IS FURTHER STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that all objections, except as to the form of the question and the responsiveness of the answer, are reserved until the time of trial, at which time they may be made with the same force and effect as if made at the time of the taking of this deposition.

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JANA ROCHELLE LANE,
after having been first duly sworn at 2:00 p.m.
deposes and says in reply to the questions
propounded as follows, to wit:

DIRECT EXAMINATION

BY MS. SCOGGINS:

Q Could you state your full name for the
record, please?

A It is Jana Rochelle Lane.

Q What's your position at the Medical
Licensure Board?

A I am an investigator.

Q How long have you worked here?

A In October it will be ten years.

Q And what is your educational training?

A I'm a registered nurse, been a registered
nurse since 2000, I'm also a certified law
enforcement officer since the spring of 2008.

Q Okay. I know you have to go to nursing
school to become a registered nurse, what do you do
to become a certified law enforcement?

A They sent me through CLEET, which is the
Council on Law Enforcement Education and Training in
Ada, it's a three-month, I believe it was three
months that I was in Ada.

1 Q Okay.

2 A For -- so I'm a certified peace officer
3 for the State of Oklahoma.

4 Q All right. And so is that three months on
5 a five days a week basis?

6 A It is actually four -- four -- Monday --
7 it was Tuesday through Friday seven -- it was 10
8 hours a day, 40 hours a week.

9 Q At the end of that, do you have to take a
10 test or anything?

11 A Yes.

12 Q So you have to pass the test, kind of like
13 you have to take a nursing test, too?

14 A Yes. And you have to continue education
15 every year as well.

16 Q For the law enforcement part?

17 A Law enforcement, yes.

18 Q Okay. Where did you work as an RN before
19 you came to work at the board?

20 A Only a few places, I started out at OU
21 Medical Center, I don't even know if that's what
22 it's called anymore, it was when it was different
23 from Presby, and I was a labor nurse for a year
24 there, from 2000, 2001. Then I went to Edmond
25 Renaissance as a labor nurse from 2001 till they

1 closed in 2005. And then they reopened up as a
2 bariatric hospital, same location in Edmond, and I
3 still actually work there every Sunday as a med/surg
4 nurse, I take care of patients postoperatively.

5 Q All right. Well, we're here today on the
6 case of the State of Oklahoma, the board, versus
7 Dennis Rivero, M.D., and as I understand it, you
8 were the investigator assigned to this case; is that
9 correct?

10 A Yes, that is correct.

11 Q And how does -- who decides who's going to
12 investigate a case?

13 A My supervisor, Robert Duvall, is the one
14 that assigns cases to investigators, and it really
15 depends on our caseload and when they come in, I
16 mean, I can't exactly explain how he does each one,
17 but he'll have a pile of them and he'll just assign
18 them out to.

19 Q And do you have an understanding of how
20 this case came into Mr. Duvall?

21 A We received it via -- not e-mail, a --
22 they can go online, they can file it online
23 electronically.

24 Q Okay.

25 A It came.

1 Q So someone filed a complaint against
2 Dr. Rivero?

3 A Online, yes.

4 Q And I noticed in the verified complaint
5 that was filed in this case, it says that that --
6 and that's a different kind of complaint, too.

7 A I know.

8 Q That says that came in on January 22,
9 2014?

10 A The first one that came in was November
11 18th of '13.

12 Q Okay. In the board complaint --

13 A Uh-huh.

14 Q -- it says that the surgery was November
15 18, 2013.

16 A That's correct. Yes, I thought you asked
17 when that's -- if that's when the complaint came in.

18 Q I did ask when the complaint came in.

19 A Okay. I'm sorry.

20 Q That's okay.

21 A Yes, the surgery I do have as November
22 18th of '13.

23 Q Okay. And then it was a couple of months
24 after that that a complaint actually came in?

25 A Yes.

1 Q Okay. And you think it came in through
2 e-file?

3 A Yes.

4 Q When did you get it from Mr. Duvall?

5 A I don't have that on my notes here. I
6 would say --

7 Q Do you have a chronology in front of
8 you --

9 A Yes, yes.

10 Q -- to help you?

11 A Uh-huh, I do.

12 Q Could we get a copy of it because it would
13 help us, too?

14 MR. ASHBAKER: Sure, yeah.

15 THE WITNESS: I didn't write down when I
16 actually received the case, I'm sorry.

17 Q (By Ms. Scoggins) Well, what was the
18 first action you took on the case?

19 A The first action was that I -- it actually
20 sat at my desk, I'm not going to lie, I was busy,
21 and it did not take priority, and it was assigned to
22 me in, I believe, spring of '14 and on December 17th
23 of '14, I finally called the complaining party.

24 Q Okay. And was that a Mr. --
25 Dr. Stahlheber?

1 A Yes, I have it as Stahl -- Stahlheger,
2 H-E-G-E-R, Stahlheger.

3 Q I think we have it as H-E-B-E-R.

4 A Okay.

5 Q But I'm not sure which it is. All right.
6 So you called that doctor; right?

7 A I did.

8 MR. ASHBAKER: I'll tell you.

9 Q (By Ms. Scoggins) Where did you -- where
10 were you when you called and where was he?

11 A I believe I was in my office and I called
12 him on his cell phone or the number he left on the
13 complaint.

14 Q Okay. Do you recall what time of the day
15 it was?

16 A Huh-uh.

17 Q Do you have a date of the day -- it was
18 December 17th?

19 A I do, December 17th, yes.

20 Q Of 2014?

21 A Yes, ma'am.

22 ① Q And did you record that conversation?

23 A No.

24 ② Q What did Dr. Stahlheber -- tell me how you
25 approach generally and when you call someone who's

1 been a complainant, let's start there.

2 A Okay. I did call him and I was
3 embarrassed because of the time that had passed, I
4 don't like, you know, eight months passing or
5 whatever, and I called and I remember first
6 apologizing that it took me so long to get in touch
7 with him. And then he said that he was glad I
8 called because he had an additional concern about
9 the doctor, and that's when he told me his concerns
10 on a patient, that had compartment
11 syndrome and he talked about his concerns with that.

12 Q Okay. And do you know when the
13 compartment syndrome case had come up?

14 A I think it was fairly recent from that
15 time, so maybe, and I'm just guessing, October
16 maybe, within a couple months of my call.

17 Q Was Dr. Stahlheber working at Muskogee
18 Hospital and I'm going to -- I think it's called
19 Eastar now, but I'm just going to refer to Muskogee
20 Hospital.

21 A That's fine, I do, too.

22 Q Was he working at Muskogee Hospital when
23 you talked to him?

24 A I believe he was, yes.

25 Q Okay.

1 A Because I had talked to him another time
2 after and he was -- that's when I found out he was
3 no longer working there.

4 Q Okay. Let's go to that first conversation
5 and he said he was glad you called because he told
6 you about the [redacted] case?

7 A Uh-huh.

8 Q And then so where did it go -- where did
9 the conversation go from there?

10 A I just took the information down on
11 [redacted] because he had -- his first complaint was
12 the information on the [redacted] and then a
13 [redacted], he had given us two concerns on
14 the first one, and they were pretty -- I mean, I
15 didn't have any questions about that because he was
16 detailed in his complaint, and then on the [redacted]
17 [redacted], he gave me details about that one and that's
18 what the main focus was on.

19 Q The details about the first complaint and
20 about the complaint, you said there was a [redacted]
21 also, in that first one?

22 A Uh-huh, a [redacted], which was the wrong
23 site surgery, and a [redacted] -- [redacted]

24 And she was a elderly woman,
25 according to the complaining party, she was an

1 elderly woman that came in for a hip surgery and his
2 concern was that the doctor, Dr. Rivero, only saw
3 her -- hadn't met her preoperatively, only saw her
4 the day of surgery when he went in there and talked
5 to her right before the surgery. And so his concern
6 was that he didn't know, really, the history of the
7 patient, and he didn't know if -- the
8 anesthesiologist, the complaining party, didn't know
9 if the patient was safe or healthy enough to have
10 the surgery and all of that, so that was his concern
11 on that patient.

12 Q So he gave you the information about just
13 what he saw that day?

14 A Yeah.

15 Q Did you ever look at the records of that
16 particular patient?

17 A I received them, yes.

18 Q Where did you -- how did you get those?

19 A I subpoenaed Eastar Muskogee Hospital on
20 December 17th of '14, the same day that I talked to
21 Dr. Stahlheber.

22 Q Okay.

23 A And I actually requested all three,

24 , and{

25 Q And did the hospital provide the charts on

1 all three?

2 A They did, uh-huh, I received them on 12-29
3 of '14.

4 Q Did you subpoena any individual doctor
5 records on any of these patients from Dr. Rivero?

6 A His clinic?

7 Q Yes.

8 A I don't believe so.

9 (3) Q What did Dr. Stahlheber say about the
10 case? And tell me, first of all, what was in
11 the complaint about the case.

12 A Yeah, because we didn't really -- we
13 really didn't discuss it on the phone, because,
14 again, he did write it in such detail on the
15 original complaint and it was that it was a wrong
16 site surgery and I believe that he said he blamed --
17 he wouldn't take the blame, that he blamed most of
18 it on the operating staff or the staff there, so
19 that was -- I mean, it was pretty much, you know --
20 not much to it, he cut on the wrong site and that he
21 said, well, the operative people had done it,
22 according to the complaining party.

23 Q And was the complaining party -- now, he's
24 an anesthesiologist; is that correct?

25 A Yes.

1 Q Do you know if he was the anesthesiology
2 on the _____ case?

3 A I don't believe he was.

4 Q How about on the _____ case?

5 A I think he might have been, and, you know,
6 I haven't looked at her records in forever, but I
7 think he might have been because of the way that he
8 reported it, that he went in and talked to the
9 patient and that's usually what anesthesiologists
10 do, they go in and talk to the patient
11 preoperatively, so I think he was the one on that
12 case, but I can't say for sure.

13 Q How about _____, I mean, not _____, I'm
14 sorry, but the compartment?

15 A _____ -- it's _____, it's a
16 boy.

17 Q Okay.

18 A I don't -- I don't -- I don't remember. I
19 don't recall on that one.

20 Q Okay.

21 A But we do have the records, I mean. But
22 it wasn't in the complaint, so.

23 Q Okay. Because even that one was an oral
24 complaint to you?

25 A Yes, that one was an oral complaint to me.

1 Q That was -- and and were
2 both written?

3 A Correct.

4 Q Do you all keep those written complaints?

5 A Yes.

6 Q Do you produce them?

7 A Never have.

8 MR. ASHBAKER: No.

9 Q (By Ms. Scoggins) So on December 17th,
10 you've received basically three complaints, two
11 written and one oral from Stahlheber?

12 A Actually it was January 22nd of '14 that
13 he did the --

14 Q He did the written ones?

15 A Right.

16 Q But you called him then December 17th?

17 A I began my investigation officially, yes.

18 Q December 17th?

19 A Yes.

20 Q Now, but, of course, when he -- I guess in
21 January, just so we're straight, in January of
22 2013 -- January of 2014, when he had called, I mean,
23 when he had filed the e-file deal, when he did
24 that --

25 A Yes.

1 Q -- he mentioned Thompson and Pierce?

2 A Correct.

3 Q And we know that Pierce, the operation
4 took place on November 18, 2013?

5 A Correct.

6 Q Do you know when the Thompson procedure
7 took place?

8 A I looked over it today and I believe it
9 was on Thanksgiving of that year, so it would have
10 been the end of November of '13. Because he said it
11 was right after the Tony Pierce.

12 Q And then the Angelico Owens, did I hear
13 you right, say you thought that was in October?

14 A Maybe October'ish.

15 Q Of 2014?

16 A Correct.

17 Q Other than calling a -- is that what you
18 usually do, call a complaining party?

19 A Depending on their location, yes.

20 Q Okay. And if they're close by, do you go
21 see them?

22 A Sometimes.

23 Q Okay. Is there any normal procedure that
24 you follow, I mean, you said you call them or
25 contact them and is there any normal thing that you

1 do, I mean, do you ever check up on the complaining
2 party?

3 A Sometimes. It really all depends if --
4 sometimes I can get a case done really fast,
5 sometimes it's really easy and I work it and I call
6 the complaining party and I just get it done really
7 quick and move on.

8 Other times, the reason why I did call
9 Dr. Stahlheber or heger, is because I -- I honestly
10 felt bad that it took so long and I called to say --
11 because we never sent a closed letter or any update
12 whatsoever because it was just sitting on my desk,
13 and so I called him to say, I apologize for taking
14 so long, I'm going to start looking into this case,
15 you know, was this all -- did this all happen at
16 Muskogee Regional and all that stuff.

17 Q Okay.

18 A And so that's when he told me about
19 Angelico, so that's why I did it that way, there's
20 no actually procedure that we follow, it's just a
21 case-by-case basis.

22 Q All right. Did you have any more
23 conversation with him that day about the Tony Pierce
24 case?

25 A Not that I recall.

1 Q Okay.

2 A Other than that, you know.

3 Q Apologizing?

4 A Yeah, and saying, okay, so Tony Pierce,
5 wrong site surgery, and I just kind of summarized
6 what he had filed online.

7 Q And your recollection is that he said that
8 Dr. Rivero blamed others primarily or not totally?

9 A Right, blamed a lot of it on the operative
10 staff.

11 Q A lot of it on the staff?

12 A Yeah.

13 Q Okay. So you got the files in on 12 --
14 charts in on 12-29. Between the time you called
15 Stahlheber and the time you received the subpoenaed
16 charts, did you do any other work on this case?

17 A I talked to Dr. Rivero on December 23rd of
18 '14, so that was between those two dates.

19 Q And did you ask him about one of those
20 cases first, to your memory, do you remember?

21 A That's why I have this, my transcribed
22 phone conversation, because we did -- I believe I
23 talked to him about every single one of them, I
24 think, at some point in the conversation. But I
25 think it started on Angelico Owens is who we talked

1 about the majority of the time first.

2 Q Okay.

3 A Again, I hadn't received the records, I'm
4 not a doctor, I didn't, you know, I didn't know
5 which was more important, which was less important,
6 but I just know that to me, the boy almost losing
7 his leg, you know, that's the one I talked mostly
8 about because that was the most recent one, and the
9 one that just -- I mean, he was still like having
10 operations at the time, I believe, Angelico Owens,
11 in December of '14.

12 Q Well, did you decide not to bring a
13 complaint about Angelico Owens?

14 A I don't decide that.

15 Q Was it decided at the board not to bring a
16 complaint on that case?

17 A Board staff.

18 Q Did you send the chart out to be reviewed
19 by someone else?

20 A We did not send it out to an outside
21 expert.

22 Q Was it reviewed by Dr. Frische?

23 A Yes.

24 Q And it was after that review that you
25 decided not to file any kind of action related to

1 the Owens situation?

2 A They did, yes.

3 Q And how about Thompson?

4 A Again, all three of them were reviewed by
5 Dr. Frische and Dr. Frische decided not to prosecute
6 on that.

7 Q All right. Was it Dr. Frische that
8 decided to prosecute on Pierce?

9 A It was -- when I say it's a group setting,
10 the attorneys are there, Lyle's there, Dr. Frische's
11 there, Dr. Frische is the one that reviews the
12 charts, but he summarizes them and it's a group
13 consensus, so it's not a one-person thing, so I
14 don't mean to say Dr. Frische decided or did not
15 decide, it's a group consensus.

16 Q Dr. Frische is an orthopedic surgeon;
17 right?

18 A Yes, he is, or was. He's not practicing,
19 right.

20 Q He was also on the board many times?

21 A Yes.

22 Q Well, let's go back to your conversation
23 then with --

24 A Dr. Rivero.

25 Q -- Dr. Rivero. That was December 23,

1 2014?

2 A Yes.

3 Q You started out talking about the Owens
4 case?

5 A Yes.

6 Q And did he explain to you what had
7 happened in the Owens case?

8 A Yes, he did.

9 Q Later did you give -- I know that you
10 recorded and have a transcription of that phone
11 call, that part of the phone call?

12 A Yes.

13 Q Well, and did you give that to the
14 reviewers as well, did they have -- did they know
15 what Dr. Rivero had said about the Owens case?

16 A Yes, they had a copy of it as well.

17 Q Okay. And did what Dr. Rivero say about
18 the Owens case, did that appear to be basically the
19 same as you could find in the chart?

20 A I didn't review the chart.

21 Q Okay. Did you ever hear anyone say, well,
22 he misrepresented anything in that case or --

23 A I believe Dr. Frische said it was more of
24 a malpractice case.

25 Q And not one that you'd bring a complaint

1 on?

2 A Correct.

3 Q A board complaint on?

4 A Correct. Yes.

5 Q Now, as I recall, and I haven't reviewed
6 that chart, either, but as I recall, the leg that
7 had that occur, it was saved, it was not amputated;
8 is that correct?

9 A I believe you are correct, yes.

10 Q Do you know or have any personal knowledge
11 of how often a compartment syndrome occurs?

12 A No clue.

13 Q Do you have any personal knowledge of what
14 causes it to occur?

15 A The way I believe or that it's been
16 explained to me is that fluid builds up in a joint,
17 and it's usually the knee, and then if it builds up
18 enough, it cuts off circulation to the lower portion
19 of the body and if it's cut off long enough, then
20 goes without blood supply, then it could -- you
21 could lose it.

22 Q So is that something that has to be
23 watched for in many orthopedic surgeries, I mean, to
24 make sure?

25 A Yeah, I think compartment syndrome, I

1 mean, yeah, checking the blood flow to the lower
2 extremities and seeing the color and stuff like
3 that.

4 Q Okay.

5 A Being assessed, yes, definitely.

6 Q Did you talk about the Thompson case next?

7 A If you don't mind, I'll just look and see.

8 Q Sure, take your time.

9 A Dr. Rivero is quite wordy, so we talked
10 about it for a while. This is when I start talking
11 about malpractice, still talking about compartment
12 syndrome on Page 13. We go talking about the
13 compartment syndrome to -- I think we start talking
14 about being sued after that, and that's on Page 15
15 of 26, we just start talking, he's talking about the
16 compartment syndrome and then, yeah, he's talking
17 about here's a kid who I'd seen the next day and
18 he's fine the second day, he seems to be the same,
19 so we're talking about Angelico, and then I go to,
20 "Well, let me ask you this, have you had any past
21 civil litigation where somebody sued you for
22 malpractice," so that's where we went from there.

23 Q Okay.

24 A Not the Thompson case.

25 Q All right. And so that's what triggered

1 the discussion of Pierce?

2 A The malpractice, yes.

3 Q When you asked if anybody had sued. Did
4 you know he had been sued at that point?

5 A I had ran a national practitioner database
6 and nothing came up and I had done that, I believe,
7 prior to talking to -- I usually do a Google search
8 and a PNP check and OSCN to look at malpractices and
9 stuff prior to actually getting into the case, I do
10 my history first. And I think I had looked it up
11 and there was -- and it said it was dismissed, so
12 when I talked to Dr. Stahlheber, he is the one that
13 told me that Dr. Rivero had paid out of pocket,
14 because I said, well, I didn't see anything on the
15 database, and that's when he said, well, the
16 hospital paid some, he believed, and Dr. Rivero did,
17 so that's the only knowledge that I had about it was
18 hearsay.

19 Q So you'd had another conversation with
20 Stahlheber between the 17th and the 23rd?

21 A No, it must have been on the 17th, because
22 that's when I called him and just talked about --

23 Q The case generally?

24 A Yes, uh-huh.

25 (4) Q Did Stahlheber tell you what he had paid

1 out of pocket?

2 A I believe he did, 30,000, I think
3 Stahlheber knew.

4 Q Did Stahlheber tell you if anyone else had
5 paid?

6 A He said the hospital had paid 70,000, I
7 believe.

8 Q Do you know when the case had been
9 dismissed, and by that I mean, chronologically on
10 what date?

11 A March 27th of '14, according to ODCR, it
12 just said "dismissed with prejudice." So after
13 talking to Dr. Stahlheber and him telling me that,
14 running national practitioner database showing
15 nothing, talking to Dr. Stahlheber and him saying he
16 did pay out of pocket, and looking at ODCR and
17 seeing that it had come to a head, dismissed without
18 or with prejudice, I don't -- I'm bad at legal
19 terms, so I don't even know what that means, I just
20 know that it was end.

21 Q It was gone?

22 A Uh-huh. Then either -- in my opinion,
23 either the doctor didn't pay anything or he paid out
24 of pocket because if they pay out of pocket, then
25 PLICO won't report them and it doesn't go on the

1 database and so that's why I began to ask him about
2 lawsuits and payouts.

3 Q Okay. And what did Dr. Rivero tell you
4 about the lawsuit and the payout?

5 A It was kind of -- I didn't understand him
6 when he was talking about Albuquerque, and there's a
7 couple of paragraphs about that on Page 14 and 15,
8 he was saying how they do it differently in
9 Albuquerque, but then I asked him if -- still
10 talking about that. Okay. Then he says he came to
11 Oklahoma and he said he was sued by a patient, wrong
12 site surgery, and this is on Page 15, he wasn't
13 really injured because we didn't proceed with the
14 surgery and the hospital acknowledged two-thirds of
15 liability and it was settled, it was confidential
16 and what have you and he dropped it, and it was the
17 end of it.

18 And so I was asking him, you know, well --
19 but then I was telling him, but, okay, you settled
20 it, but on the renewal that you fill out, it says,
21 have you been sued or something and he starts
22 saying, well, I guess I didn't understand the
23 question, I'm not exactly sure how it's worded, but
24 then he did end up saying right there on Page 16, I
25 said, "I mean, so how much did you end up paying

1 that individual," and he said 30,000 and that the
2 hospital paid 70,000.

3 Q Okay. Did you tell Dr. Rivero during that
4 conversation that, in your opinion, he should have
5 answered the question yes?

6 A I believe so, yes.

7 Q Okay. And is it your understanding that
8 within days that he gave a full explanation of that
9 case to the person at the licensure board who
10 receives those?

11 A Yes, I talked to him on December 23rd. On
12 December 30th, he sent me an e-mail stating that it
13 was clear that he misunderstood the question, and
14 then on January 1, Robin Hall, the head of licensing
15 at the time, received a letter from him stating the
16 same thing, but more detailed.

17 Q Okay. Did you have an opportunity to
18 review what he sent to Robin Hall?

19 A Yes, a long time ago, uh-huh, I read it.

20 Q Do you think -- did you only review that
21 once when it came in?

22 A Yes.

23 Q Okay. So that would have been in January
24 of 2015?

25 A Yes.

1 Q So it's your -- according to the
2 transcript, the case, the actual district court case
3 or the malpractice case came up in the conversation
4 prior to talking about what occurred on that day; is
5 that right?

6 A Prior to talking about the wrong site
7 surgery case, yes, I think so.

8 Q And what did he -- Dr. Rivero tell you
9 about the -- strike that.

10 Did you ask him to explain the wrong site
11 surgery?

12 A I believe I did.

13 Q Okay. Ask him to go into any detail?

14 A Either I asked him or he just did.

15 Q And the transcript, and we also have an
16 audio of that, will it show everything you asked him
17 on that date?

18 A Uh-huh.

19 Q Okay.

20 A It says right here on Page 16 out of 26,
21 after he said "I paid 30 and the hospital paid 70,"
22 he started talking about it and I said, "I was going
23 to ask for you to explain why," about, you know, the
24 payout and stuff, and that's when he started talking
25 about the -- what happened during the wrong site

1 surgery and that's on Page 16 at the bottom.

2 Q Did you ask him about blaming the hospital
3 as Stahlheber had written in his complaint?

4 A I don't think I asked him directly, I
5 think he just said it, if I recall correctly.

6 Q Said that they --

7 A Uh-huh, he says right here, "You know, you
8 know, you talk about getting tripped, you know, like
9 getting, you know, getting screwed, I was screwed,
10 you know, I" -- and I said "Why?" And he said,
11 "Excuse me?" And I said, "I was going to ask for
12 you to explain why."

13 And then he starts talking about how he
14 puts his initials on the site and it says, "I don't
15 know why, how or who or what they were thinking, but
16 they go ahead and they select the other leg, it was
17 an ankle surgery, it was a fusion, they select the
18 other leg, they prep it, they drape it, it's all
19 covered, and I was reviewing something for the
20 surgery. I come in there apparently, you know,
21 everybody said, yes, there was a timeout, you know,
22 okay, we're doing the correct site and all that, and
23 I think they asked the scrub tech and he's a very
24 experienced guy and he felt really bad about it,
25 too, because he's been around a long time." And so

1 he's just saying that they draped the wrong side.

2 And, again, it says --

3 Q So is it correct to summarize that
4 Dr. Rivero took the position that this would not
5 have happened had the prep team, surgery team draped
6 the right ankle?

7 A Yes, I believe so, I would say that's
8 correct.

9 Q Do you know what happens in a timeout?

10 A It's been a very, very long time since
11 I've had one, since I've actually been a part of
12 one, but I know the basics.

13 Q Do you know, for example, before a
14 surgery, is there a certain time that they conduct a
15 timeout?

16 A As far as I know, the doctor goes in and
17 actually talks to the patient while they're in the
18 preop room while they're awake, and they both agree
19 that this is the site we're going to operate on, the
20 consent is written and it says which side. There's
21 a pen that's just for marking skin that the doctor
22 uses and that he puts his initials or whatever that
23 he does on it, and so while the patient's awake and
24 the doctor agrees and the consent is signed by the
25 physician, okay, we all agree.

1 Then the doctor goes away, the patient's
2 taken into surgery, the patient is prepped by the
3 surgical team, and then right before incision,
4 that's, I believe, when they do a timeout.

5 Q Okay.

6 A And the timeout are -- I mean, it's --
7 it's -- the policy is the same, I mean, I think
8 there's policy for everybody, it's a general thing,
9 right, like every hospital follows, a timeout is a
10 timeout.

11 Q Okay. Seems like it -- would a lay person
12 call that kind of a last check?

13 A Yes, yeah, preflight, yes.

14 Q But everything's already been draped then?

15 A I believe so, yes.

16 Q After you discussed what occurred on that
17 day, did you go on to another -- to the Thompson
18 case?

19 A I wish I had this on the computer, so I
20 could do find. Just looking through here, I'm not
21 seeing her name. It's mostly more about settlements
22 and -- yeah, I don't see her name, it's mostly
23 malpractice and settlements after that.

24 Q How many pages do you have over there?

25 A I have 26.

1 Q Okay. Is that all of the conversation --

2 A Yes.

3 Q -- on that date?

4 A Yes.

5 Q Do you know why the hospital paid 70,000
6 of \$100,000 settlement and Dr. Rivero paid 30,000?

7 A According to Dr. Rivero is all I know why
8 and he said that the hospital did take partial
9 blame.

10 Q More --

11 A Yeah, and so they paid out their part and
12 then he paid out his.

13 Q All right.

14 A But I did not verify it with the hospital
15 or anything like that, it's just what Dr. Rivero
16 told me.

17 Q Well, after that conversation, what was
18 the next thing that happened in this case?

19 A We received the medical records on
20 December 29th and then I told you on the 30th, he
21 sent me an e-mail saying he misunderstood the
22 question, and then on the 1st, he sent Robin Hall
23 the letter to go in his public file. Then on
24 January 8th, we actually received medical records
25 from St. John's and that's where the Angelico Owens

1 was transferred, that was the compartment syndrome
2 one.

3 Q Okay. And you received those records
4 January 8th?

5 A Uh-huh, from St. John's, and they were
6 extremely large, I think over 1,000 pages. And then
7 on March 19th, Dr. Frische, the charts were given to
8 him to review, and then after his review and the
9 group discussion, a C and C was served on February
10 24th of '16.

11 Q And when was the group discussion again?

12 A I don't know the exact date, it was
13 sometime between Dr. Frische reviewing it and when
14 the C and C was served.

15 Q Did you talk to Dr. Stahlheber again?

16 A Yes, I talked to him one time after the C
17 and C was served.

18 (5) Q And what occurred to make you talk to him?

19 A I think he either called me for an update,
20 on the case or I called him to ask if it was okay
21 that we released his name, it was one of them that
22 we got in touch, but it was after the complaint was
23 filed and that was -- he said that that was fine,
24 that it wasn't any -- I mean, that they had gotten
25 in yelling matches before and, you know, it -- he

1 didn't care if his name was used.

2 (6) Q Did Stahlheber -- other than saying he had
3 gotten in yelling matches, did he talk about any
4 other conflicts he had had with Dr. Rivero?

5 A Yes, and I think that was actually in the
6 first one and he just said -- he just said that I
7 think he was the head of anesthesiology and Rivero
8 was the head of surgery or something like that, and
9 that they had butted heads multiple times before and
10 it wasn't a secret that they didn't, quote,
11 necessarily like each other or get along very well.

12 (7) Q Okay. Did -- I'm sure Stahlheber didn't
13 tell you about any of the butting heads with anyone
14 else, did he?

15 A Huh-uh.

16 (8) Q Was Stahlheber still at Muskogee when you
17 told him about the service of the complaint?

18 A No.

19 (9) Q But you said he called you?

20 A No. I said I can't remember if he called
21 me for an update or if I called him to ask if it was
22 okay that we released his name as the complaining
23 party.

24 Q Okay. Do you recall how you found him?

25 A His cell phone.

1 Q Okay.

2 A I assumed he still worked at Eastar at
3 Muskogee, that's when he said I don't work there
4 anymore.

5 Q Do you know what caused him to leave
6 Muskogee Hospital?

7 A I don't.

8 Q Did you do any research on Dr. Stahlheber?

9 A I did not.

10 (10) Q Do you know he was arrested for possession
11 of anabolic steroids?

12 A No, I didn't know that.

13 Q In Paragraph 6 of the complaint, I just
14 want to clarify something, it says that on December
15 17 investigator -- of 2014, "Investigator Lane faxed
16 a subpoena to defendant for the relevant patient's
17 record," and then the subpoenaed records were
18 received on December 29th, like you said, but
19 actually you faxed the subpoena to the hospital;
20 right?

21 A Correct, Eastar.

22 Q Okay. It also says in Paragraph 7 -- you
23 want to read that last sentence to me, Paragraph 7?

24 A "It indicates that a timeout was called in
25 which defendant and four other people allegedly

1 participated."

2 Q Okay.

3 A Can I read the first part, I don't know
4 what it indicates is. "The records indicated that
5 the right ankle was the surgery site. The medical
6 records further reflect that the patient was prepped
7 and draped by the operating room team in a standard
8 fashion. It indicates that a timeout was called in
9 which defendant and four other people allegedly
10 participated." Okay.

11 Q And does that -- when you read Paragraph
12 7, does the information there, is that what you
13 found in the records when you reviewed them?

14 A Yeah, read the last sentence to me one
15 more time, would you?

16 Q Yeah. You can read it again.

17 A Thank you. "A timeout was called in which
18 defendant and four other people allegedly
19 participated." And that is in the medical record.
20 I remember there was confusion on the medical
21 record, Joe and I actually sat down and tried to
22 figure out, there wasn't an exact timeout form that
23 I would have expected or wanted to see, that's how I
24 remember doing it before e-records where you
25 actually filled it out in pen.

1 And we did go over it trying to figure out
2 exactly who was in the timeout and who wasn't. So
3 it was a little confusing, but it does say it
4 indicates that a timeout was called in which
5 defendant and four people allegedly participated.

6 Q The word "allegedly" was put in there
7 because you were confused about the records?

8 A I believe so, yeah.

9 Q Did it also show in the records who the
10 other people were in the timeout?

11 A No, I was confused about that as well.

12 Q And these are all e-records, electronic
13 records?

14 A Yes, yes.

15 Q You said you and Joe and I'm -- you're --
16 that's Mr. Ashbaker, your attorney?

17 A Yes.

18 Q Went over the records, was this after
19 Dr. Frische had reviewed the records?

20 A Yes.

21 Q Was it in conferring prior to the
22 complaint being drafted, the board complaint?

23 MR. ASHBAKER: Could you -- I just didn't
24 hear the first part of the question, I'm sorry, I
25 didn't hear you.

1 Q (By Ms. Scoggins) Was it between the time
2 Dr. Frische reviewed the records and the time that
3 the board complaint was prepared?

4 A I believe so, yes. I don't have it
5 written down, but to best of my recollection, yes.

6 Q Okay. Why were you -- there were a lot of
7 things that occurred and I guess I'm wondering why
8 you question the timeout portion of the records,
9 what caused you to question that?

10 A Because in our conversation on the phone,
11 on two different occasions, he said something to the
12 effect that he was not present for it, so I was
13 trying to verify that in the medical records. There
14 were two things, I believe, in the medical records,
15 one was his operative note that he dictated and it
16 said he and -- I think it said four other people
17 participated in the timeout. And there was also on
18 the EMR, electronic medical record, something that
19 actually said timeout, but again, it's -- it's so
20 confusing of who was actually present that I
21 couldn't -- I couldn't understand it. So we had the
22 preop note saying he was there, dictated by him, he
23 said twice in our conversation that he wasn't, and
24 then --

25 Q Did he say definitively that he was not

1 there or did he say he did not remember?

2 A Can I see the part that you -- do you have
3 the part that is tabbed? Yeah, those two.

4 MR. ASHBAKER: If you don't mind.

5 MS. SCOGGINS: Sure, to refresh her
6 recollection.

7 MR. ASHBAKER: Yeah.

8 MS. SCOGGINS: If you just refer us to the
9 page number.

10 THE WITNESS: I will.

11 MR. ASHBAKER: You have -- if I could
12 just -- I'll state on the record, what she's looking
13 at is just my highlighted and tabbed version of what
14 she's already looking at and what you already have.
15 It is just a transcript that I tabbed a couple spots
16 and I highlighted. It's what she's been reading off
17 of it and is what I gave you.

18 THE WITNESS: It's just saving time.

19 MR. ASHBAKER: You certainly can look at
20 it if you want, but that's all it is. I don't even
21 think I've written on it.

22 Q (By Ms. Scoggins) Would you tell us where
23 it is?

24 A Sure. It's the paragraph at the bottom of
25 Page 16 and I began reading this to you earlier, I

1 asked to explain why he was screwed, per his words,
2 and he said, "Well, because here's what happens,
3 okay, the history and physical is in the chart, it's
4 correct, it's accurate, it's complete. The consent
5 is in the chart, it's correct, it's accurate, it's
6 complete. I show up in the morning, I sign the
7 patient's site, I put my initials on his -- his
8 correct site, which was the right side, and they
9 take him back to surgery. And they -- they -- the
10 team, the nurse, there were five people in there,
11 okay, I don't know why, how or who or what they were
12 thinking, but they go ahead and they select the
13 other leg. It was an ankle surgery, it was a
14 fusion, they select the other leg. They prep it,
15 they drape it, it's all covered, and I was reviewing
16 something for the surgery, I come in there,
17 apparently, you know, the -- everybody says, yes
18 there was a timeout, you know."

19 Q Now, that's -- and obviously this is a
20 recording of an oral conversation?

21 A Correct.

22 Q And, you know, have you seen those tests
23 about where you put a comma and how it can totally
24 change the meaning?

25 A Yes, yes.

1 Q I mean, I could see that where he said
2 apparently, you know, the -- everybody said, yes
3 there was a timeout, if it said, yes, there was a
4 timeout, you know, okay, I mean, it would read
5 differently, you agree, I mean, according to
6 punctuation?

7 A Yes, I know punctuation can change --

8 Q Who transcribed the phone call?

9 A SpeakWrite. We send it out. It's at the
10 very end, it actually says it on there, right there
11 at the very, very last, who did it and what date.

12 Q All right. So we got at the bottom, 16 of
13 26?

14 A Yes.

15 Q Is there any other place it
16 specifically -- where he refers --

17 A Yeah.

18 Q And you interpreted this as him saying
19 that he was not in the timeout?

20 A Yes. It's on Page 18 of 26. And it's the
21 first large paragraph. Dr. Rivero says, "But, you
22 know, but look at it, look at it from my standpoint,
23 it's like imagine like, you know, you were a -- um,
24 whatever, I don't know, you know, a sniper and, you
25 know, you count on all those people and you tell

1 them, okay, this is where we're going, this is what
2 we're going to -- or this is what we're doing, this
3 is, you know, whatever, and then five people set you
4 up. And if there was, in fact, a timeout, okay, it
5 means that five people stood there while somebody
6 read and said we're operating on the right ankle as
7 we were about to make an incision on the left ankle,
8 but, you know, but even worse than that is like who
9 the hell decided to prep his left ankle, the
10 signature was on the right side."

11 Q So that sounds to me like a hypothetical,
12 talking about a sniper, an airplane pilot, and then
13 whatever, I mean, I can't tell if he's really
14 talking about this instance or just this is what
15 normally happens.

16 MR. ASHBAKER: Object to the form.

17 Q (By Ms. Scoggins) Can you tell for sure?

18 A All I know is that -- I mean, this was the
19 only surgery we were talking about.

20 Q Okay. So that's where -- that's the part
21 of that paragraph where you think that you
22 interpreted that a certain way? Go ahead
23 and read -- and you don't have to read it in the
24 record, you can just read it to yourself.

25 A Okay. Yes, I take it as five people set

1 him up like five people did the timeout and prepared
2 it and was ready to go and then he came in and
3 operated on the wrong one. That's how I interpret
4 it.

5 Q Okay.

6 A Because, again, it says, "And if there
7 was, in fact, a timeout, okay, it means that five
8 people stood there while somebody read, and if there
9 was, in fact, a timeout, okay."

10 Q It didn't say if there had been a timeout;
11 right?

12 A Right. Or on that timeout or at that
13 timeout or anything like that, yeah.

14 Q Do you know whose responsibility it is to
15 document a timeout?

16 A I believe it's the nurse's, the
17 circulating nurse.

18 Q Circulating nurse?

19 A Uh-huh.

20 Q Did you ever talk to a circulating nurse?

21 A No.

22 Q Did you ever talk to any surgical techs?

23 A No.

24 Q Did you ever talk to the anesthesiologist
25 or nurse anesthetist that was assigned to this

1 particular case?

2 A No.

3 Q Do you have personal knowledge that there
4 was an investigation of what occurred by the
5 hospital?

6 A On the wrong site surgery?

7 Q Uh-huh.

8 A I think I was told that they investigated
9 it because it was a sentinel event, but I don't have
10 any paperwork or anything like that.

11 Q You remember who told you?

12 A It might have been Dr. Rivero.

13 Q Okay. And if he did, it would be
14 somewhere in the transcript; is that correct?

15 A Yeah.

16 Q Okay. Is that the only conversation you
17 ever had with him?

18 A Yes, yes, besides I left him a voicemail,
19 he left me a voicemail and then we talked when I
20 served him the complaint citation.

21 MR. ASHBAKER: Linda, I don't want to rush
22 you, I need to use the rest room.

23 MS. SCOGGINS: Recess. We'll -- go ahead
24 and break right now.

25 (Break taken from 2:55 to 3:07)

1 Q (By Ms. Scoggins) Where was
2 Dr. Stahlheber when you talked to him after the
3 citation had been served?

4 A I don't -- I don't recall.

5 Q Okay. So you don't know where he works
6 now?

7 A I didn't -- huh-uh, I don't recall even
8 asking him, I just know he was no longer at Eastar.

9 Q Okay.

10 A And he is a D.O., by the way, so we don't
11 license him.

12 Q Yeah. In Paragraph 3, while we're on
13 Stahlheber, of the complaint, it says that you
14 received a complaint alleging defendant is generally
15 a disruptive physician?

16 A Yes.

17 Q And that he performed a wrong site
18 surgery?

19 A Yes.

20 Q What did it say about him -- is that the
21 only place you ever heard he was a disruptive
22 physician?

23 A Yes.

24 Q And what was disruptive, I mean, how
25 did --

1 A He explained it that -- I read it earlier
2 today, that Dr. Rivero would come late to operative
3 times or operation times, something to the effect
4 because it took them longer than expected,
5 Dr. Stahlheber just pretty much said he was angry,
6 didn't take any blame for himself and was
7 disruptive.

8 Q Did Stahlheber use the word "disruptive"?

9 A I don't recall.

10 Q Do you think that if two doctors on a
11 staff are butting heads, that that's automatically a
12 disruptive physician?

13 A I think one would easily call another one
14 one, yes.

15 Q One call the other one?

16 A Yes, uh-huh.

17 Q But it wouldn't -- if they're butting
18 heads, it wouldn't necessarily be true; right?

19 A That's true, uh-huh. That was the
20 allegation.

21 Q Okay. Got you. On that allegation, I
22 know you followed up getting the charts and talking
23 to Rivero about the surgery, on the allegation of
24 disruptive, did you investigate it?

25 A No.

1 Q Do you know if the anesthesiology fell
2 under the surgery department at the Muskogee
3 Hospital?

4 A I don't know.

5 Q I think I'd asked you about the
6 investigation conducted by someone other than the
7 board or the hospital, an internal investigation, do
8 you know who conducted that investigation or you
9 said you thought one had occurred?

10 A Uh-huh.

11 Q Okay.

12 A I believe Dr. Rivero told me.

13 Q And who would have done that?

14 A Usually it's like quality assurance, I
15 believe.

16 Q Within the hospital?

17 A Yeah, internal.

18 Q Okay. Do you know if any outside group or
19 organization did an investigation?

20 A I don't know.

21 Q Okay.

22 A I don't know if the record was sent out
23 for review, I don't know, I don't know anything
24 about an internal one, other than I believe one was
25 conducted.

1 Q Do you know if a wrong site surgery has to
2 be reported to any federal or state agency?

3 A I believe it does as a sentinel event, I
4 believe that has to be reported somewhere.

5 Q Do you know where it has to be reported?

6 A No, I don't.

7 Q Okay. So after you spoke with Dr. Rivero,
8 did you ever -- did you speak -- I think we've gone
9 over the nurse that -- the circulating nurse, you
10 never spoke with her or anyone on the surgical team?

11 A In the surgical team, correct.

12 Q How about the risk manager at the
13 hospital?

14 A I talked to two people at the hospital,
15 one was the medical record, the supervisor of
16 medical records, I don't know that individual's
17 name, that was just in my notes, that I had talked
18 to -- I believe it was a her, and then I talked
19 to -- do you remember the quality assurance,
20 executive quality assurance, maybe, he was an RN,
21 BSN.

22 The reason that I talked to those two
23 people was simply because I called, I called medical
24 records first and I wanted -- I just told them flat
25 out, I cannot read from the EMR who was present in

1 the timeout, and I said, could you please review the
2 record and provide that information to me. And I
3 didn't hear back and so I made another call, and I
4 believe it was to the -- and I can get you the name
5 or Joe can, it was a gentleman that was like quality
6 assurance or something and asked him the same thing,
7 and he e-mailed me the list. He wanted me to
8 provide the subpoena that we did to give him
9 permission, so I e-mailed the subpoena that I had
10 asked for the records, and then he replied back that
11 the people that were in the timeout. And then I
12 replied back to him, thank you, that the woman in
13 medical records had called and gave me the same
14 information.

15 Q And did he tell you which people or
16 just -- what did he say?

17 A He had five people listed and it did not
18 include Dr. Rivero.

19 Q Okay. And do you have that e-mail?

20 A Yes.

21 Q Okay. And do you know if that person's
22 still employed at the hospital?

23 A I don't know, that was March of this year.

24 Q So after you filed the citation?

25 A Uh-huh.

1 MS. SCOGGINS: Can we get a copy of that
2 e-mail?

3 MR. ASHBAKER: Uh-huh, sure.

4 MS. SCOGGINS: Make a note of that, so Joe
5 doesn't forget.

6 THE WITNESS: Yeah, because it was -- I
7 think it says the lady I talked to in medical
8 records and also has his name and his credentials,
9 too.

10 Q (By Ms. Scoggins) Okay. Does it give the
11 name of the five people or their positions?

12 A Both.

13 MR. ASHBAKER: In fact, Linda --

14 THE WITNESS: I have the second one that I
15 printed out that I responded again.

16 MR. ASHBAKER: If you'll hang tight when
17 we're done, we'll give it to you before you leave.

18 MS. SCOGGINS: Okay.

19 Q (By Ms. Scoggins) Any other conversations
20 with anyone from the hospital?

21 A No, not that I recall.

22 Q Usually, this is after a complaint is
23 filed, but not always, when co-workers or
24 supervisors send in letters concerning the
25 allegations in a complaint, do you get those or --

1 after the complaint's filed or do they go to the
2 attorney?

3 A What complaint, the original when it first
4 comes in to the agency?

5 Q No, I'm talking about after one --

6 A The official complaint?

7 Q Uh-huh.

8 A Okay. Now, ask it again now, sorry.

9 Q After an official complaint is filed, if
10 letters of support or something come in from
11 co-workers or supervisors or whatever, about the
12 person named in the formal complaint, do those go to
13 you or do they go to the attorney or to someone
14 else?

15 A It depends on who they are addressed to,
16 but I didn't receive any.

17 Q Okay. And no one ever showed you any?

18 A I don't believe so. There are cases that
19 I can think of where doctors actually, you know,
20 tell them who to write to in support of them and
21 they say, attention, Robert Duvall, Jana Lane and
22 stuff like that, and we get a lot of those, but I
23 didn't receive any on this case.

24 Q Okay.

25 A And after I turn a case in, it's usually

1 legal's, I mean, I completed my investigation.

2 Q Unless you receive something directly?

3 A Right. And then I'll turn it over to
4 legal, right.

5 Q Did you ever ask for an -- or get an
6 explanation of why they -- somebody draped the ankle
7 that had Dr. Rivero's initials on it?

8 A I was like -- the other ankle?

9 Q The other one, the other ankle, yes, the
10 other ankle.

11 A No.

12 Q So you never asked anyone why that
13 occurred?

14 A No, no.

15 Q You never talked to the patient?

16 A No.

17 Q The patient was not the one that filed the
18 complaint?

19 A Correct.

20 Q Were you aware that the patient had asked
21 Dr. Rivero to do the surgery on the proper ankle
22 afterwards?

23 A Dr. Rivero did tell me in our conversation
24 that he continued to treat the patient after the
25 wrong site surgery.

1 Q Do you know if he -- if the right site was
2 ever operated on?

3 A I think, and I'm not sure, but I think
4 Dr. Rivero said another physician did the ankle that
5 was originally supposed to be operated on.

6 Q Do you know if Dr. Rivero had ever treated
7 the patient prior to the wrong site surgery?

8 A Yes, I believe it was a long-term patient.

9 Q Okay. Do you know what he had done for
10 him in the past?

11 A No.

12 Q You had told us about Dr. Rivero e-mailing
13 you about who to send, I think, the explanation of
14 how he misinterpreted the question. Did he ever
15 talk to you about that again or leave you any
16 voicemail messages?

17 A Looking over the file today, I saw that
18 there were some voicemail messages to and from each
19 other, but it didn't -- I didn't listen to them and
20 I didn't say, it just said voicemail to Dr. Rivero
21 or voicemail from Dr. Rivero, I didn't listen to
22 them.

23 Q One of the persons listed on a preliminary
24 witness list prepared by counsel is Gina Davis.

25 A That would be the circulating nurse.

1 Q Okay. And did you ever talk to her?

2 A No.

3 Q Are you aware that she wrote a letter
4 concerning the wrong site surgery and the events of
5 that day?

6 A No, huh-uh.

7 Q Another person listed is Brian Stephens,
8 do you know who Brian Stephens is?

9 A He was one of the surgical team, I
10 believe, one on the surgical team.

11 Q Ever talk to him?

12 A No.

13 Q Do you know why he's listed as a witness?

14 A I believe in case we decided we needed to
15 call them. I mean, I'm answering for counsel.

16 Q Okay. You didn't list him, okay?

17 A No.

18 Q And didn't talk to him?

19 A No.

20 Q Deana or Dena Jenkins is listed, do you
21 know who that person is?

22 A I believe she's -- all the surgical team
23 are listed on there, I believe she's a member of the
24 surgical team.

25 Q Last one listed is Steven Foutch.

1 A Yes, he -- I remember him being on the
2 surgical team, but I did not speak with him.

3 Q The person you spoke to who was from
4 quality assurance that gave you the names, did that
5 person also talk to you about any internal review?

6 A I don't believe so, no, because I wasn't
7 asking about that, I simply called to tell them it
8 was not clear to me who was present in the timeout.

9 Q Okay.

10 A And that was all that was addressed.
11 (Defendant's Exhibit Number 1 marked for
12 identification and made part of the
13 record)

14 Q (By Ms. Scoggins) Going to hand you
15 what's been marked as Defendant's Exhibit 1 and ask
16 if you've ever seen --

17 A The first time I saw this was this
18 morning, actually.

19 Q Okay. And so it was not in the medical
20 record, there was no picture of the ankle in the
21 medical record?

22 A When I get the medical record, it goes to
23 a girl that organizes it, then goes to Frische, if I
24 went through it, I don't recall seeing this picture.

25 Q Okay.

1 A Until, again, this morning. I remember
2 him -- he sent me pictures, I think, of the
3 compartment syndrome, but this one, I don't recall
4 seeing until again this morning.

5 Q I may be repeating myself on this, but did
6 you talk to anyone else about the allegation by
7 Stahlheber that Dr. Rivero was disruptive?

8 A Not that I recall.

9 Q Did you even ask Dr. Rivero about it?

10 A No.

11 Q Did you ask Dr. Rivero anything about
12 Dr. Stahlheber?

13 A No, not that I recall.

14 Q Okay.

15 MS. SCOGGINS: Take a break

16 (Break taken from 3:26 to 3:53)

17 Q (By Ms. Scoggins) Back on the record.
18 First thing I would like to ask is the transcript,
19 you have a copy of it?

20 A I do.

21 Q Does that appear -- and it says 1 of 26
22 pages; right?

23 A Uh-huh.

24 Q Does that appear to start at the beginning
25 of the phone conversation?

1 A No, I believe I hit record after maybe a
2 couple of minutes.

3 Q Okay.

4 A I did not hit record at the very
5 beginning.

6 Q All right. Also, during the first part of
7 the deposition, I asked you about persons at the
8 hospital with whom you've spoken.

9 A Uh-huh.

10 Q And you said a QA person, it looks like
11 Nathan Lawrence; is that correct?

12 A Yeah. Now that I produced the e-mail,
13 yes.

14 Q We will mark this as Exhibit 2.

15 (Defendant's Exhibit Number 2 marked for
16 identification and made part of the
17 record)

18 Q (By Ms. Scoggins) During the first part
19 of the deposition you said you spoke to someone in
20 quality assurance at the hospital, but couldn't
21 recall his name and that he had sent you an e-mail
22 and I asked for -- if you could retrieve a copy,
23 which you did, and is that what you have in front of
24 you now?

25 A It is.

1 Q Okay. Now, that -- do you have the e-mail
2 that shows what you asked him?

3 A I don't, and I was looking over that today
4 in looking at my notes and what I had done was in my
5 personal notes, I had just written on March 28th of
6 '16 that I called Eastar to verify who was in
7 timeout, that was in my notes.

8 Q So that's all you have is that --

9 A In my notes, yes. And then I had this
10 e-mail and I remember calling medical records, I
11 didn't get a response, so I called until I found
12 somebody higher who would help me and that would be
13 the next date, March 29th, and why it doesn't show
14 the subpoena was attached to this, I mean, I do have
15 the first e-mail on the same date and time where the
16 subpoena was attached to this.

17 Q So there was actually a subpoena attached
18 to this?

19 A Yes, yes.

20 Q Okay.

21 A And then I sent that on the 29th and he
22 replied on the 30th, and then I replied again the
23 following day, thanking him and saying that
24 Josephine with medical records called me with the
25 same information.

1 Q All right. So --

2 A But, no, it does not say on there that I
3 was asking who was in the timeout, it doesn't say on
4 the e-mail, but in my notes, it says, "Called Eastar
5 to verify who was in timeout."

6 Q Do -- does the board keep copies of
7 subpoenas in the board file?

8 A Yes.

9 Q Okay. So I could get a copy of that
10 subpoena then?

11 A Yes.

12 Q Then I'd asked for a copy of the subpoena.

13 A Okay. There's one on the top of -- well,
14 it's crossed out the other names.

15 MR. ASHBAKER: I have one, I can get you
16 one today, as a matter of fact.

17 Q (By Ms. Scoggins) One of the names on
18 Defendant's Exhibit 2 that I've not seen before,
19 other than Nathan Lawrence, is Ben Stryker?

20 A Uh-huh.

21 Q Is that -- says health care rep staff?

22 A Uh-huh.

23 Q Who is that, do you know?

24 A I don't.

25 Q I wonder if that's somebody who was with

1 the company called Stryker.

2 A I don't know, it's weird the way it's
3 written, Ben - Stryker. I don't know if --

4 Q So you just don't know?

5 A Huh-uh.

6 Q So you never had a chance to follow up on
7 that?

8 A No.

9 Q Okay.

10 (Defendant's Exhibit Number 3 marked for
11 identification and made part of the
12 record)

13 MS. SCOGGINS: Mark this one 3, 4 and 5.

14 (Defendant's Exhibit Number 4 and 5 marked
15 for identification and made part of the
16 record)

17 MS. SCOGGINS: 6 and 7.

18 (Defendant's Exhibit Number 6 and 7 marked
19 for identification and made part of the
20 record)

21 Q (By Ms. Scoggins) I've handed you what's
22 been marked as Defendant's Exhibit 3 through 7, and
23 I just want to confirm what you've -- you've
24 testified that you've never seen any correspondence
25 to the board regarding Dr. Rivero, and I want to go

1 through these quickly and see if you've seen them
2 before.

3 A Okay.

4 Q Exhibit 3 appears to be signed by a Shelly
5 Edgmon from Three Rivers Surgical Care, had you ever
6 seen that letter before?

7 A No, I haven't.

8 Q Okay. Exhibit 4 is dated March 15th,
9 2016, signed by Chad Wetz, director of risk
10 management at Eastar, have you seen that before?

11 A I have not.

12 Q Did you ever speak with Chad Wetz?

13 A Not that I recall, no.

14 Q Okay. Would you have a note of it if you
15 had?

16 A I would think so, yeah, I'm pretty good at
17 notes.

18 Q The next is Exhibit 5 and it's from
19 Muskogee Institute of Foot and Ankle Surgery, and
20 it's to the medical board, dated March 25, 2016,
21 have you ever seen this letter?

22 A No.

23 Q Then the next one's Exhibit 6, I believe
24 that's a March 18 letter to the board from
25 Dr. Atwell, chair of the department of surgery,

1 current chair of department of surgery, have you
2 ever seen that exhibit before?

3 A No, I haven't.

4 Q And you've never spoken with any of the
5 people that have signed these exhibits?

6 A No, not that I recall any of them.

7 Q Okay. And then Exhibit 7 is signed by a
8 Gina Davis, Steve Foutch and Deana Jenkins or Dena
9 Jenkins.

10 A Which I recognize as the surgical team,
11 but I never spoke with them and I've never seen this
12 letter.

13 Q All right.

14 (Defendant's Exhibit Number 8 marked for
15 identification and made part of the
16 record)

17 Q (By Ms. Scoggins) Now going to hand you
18 what's been marked as Defendant's Exhibit 8 and ask
19 if you could identify that for the record, please?

20 A Yes, this is my -- I made this today in
21 reference to the timeline on this case.

22 Q All right. Is this while you were
23 reviewing things in preparation for your deposition?

24 A Yes.

25 Q What else did you -- well, tell me what

1 you reviewed in preparation for the deposition.

2 A I reviewed the complaint and the timeline,
3 my investigative report, and briefly the transcript
4 of the phone conversation, not much of it, just if I
5 referred to it in my investigative report, I kind of
6 looked at that page and saw -- I didn't read it
7 front to back, but I just reviewed it.

8 Q All right. And did you say you made this
9 timeline today or it was already there?

10 A No, I made it today.

11 Q Okay. Was there any other timeline in
12 your investigative report or anything?

13 A No.

14 Q Okay.

15 A No, we have -- we just have a database
16 that we keep entries in.

17 Q Dates?

18 A Yeah, dates, like requested records and,
19 you know, that's how I recall how -- you know, I
20 would not ever remember these dates --

21 Q Okay.

22 A -- had I not had a timeline to look at.

23 Q And your investigative report, was that
24 prepared by you?

25 A Yes.

1 Q And to whom does that go?

2 A It's internal.

3 Q And does it normally go to Mr. Kelsey?

4 A It doesn't normally go to him, it normally
5 goes to Dr. Frische, along with the medical records,
6 and he reviews all of it and then we all discuss it
7 in the staff group that we talked about that
8 decides.

9 Q When you try to reach a consensus?

10 A Right.

11 Q And that is done before you file the
12 formal complaint?

13 A Yes.

14 Q How often does Dr. Frische come to the
15 board?

16 A Usually every Wednesday.

17 Q You mentioned earlier that Stahlheber is a
18 D.O.?

19 A Yes.

20 Q Did you check his records at the
21 osteopathic board?

22 A I think I looked him up, but I don't
23 recall there being anything, any like -- just like
24 our website, you know, it says no disciplinary
25 action, I think I looked him up on that.

1 Q Okay. Did you Google him?

2 A I don't think so, no.

3 Q Okay.

4 A I think I probably looked him up on the
5 D.O. board to refer to his D.O. number because I
6 would put it in my IV report.

7 MS. SCOGGINS: I think that's all I have.
8 You want to read and sign before it's of record, you
9 want to read the deposition?

10 MR. ASHBAKER: Sure.

11 (Deposition adjourned at 4:06 p.m.)

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J U R A T P A G E

I, JANA ROCHELLE LANE, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcript of my testimony so given at said time and place, except for the corrections noted.

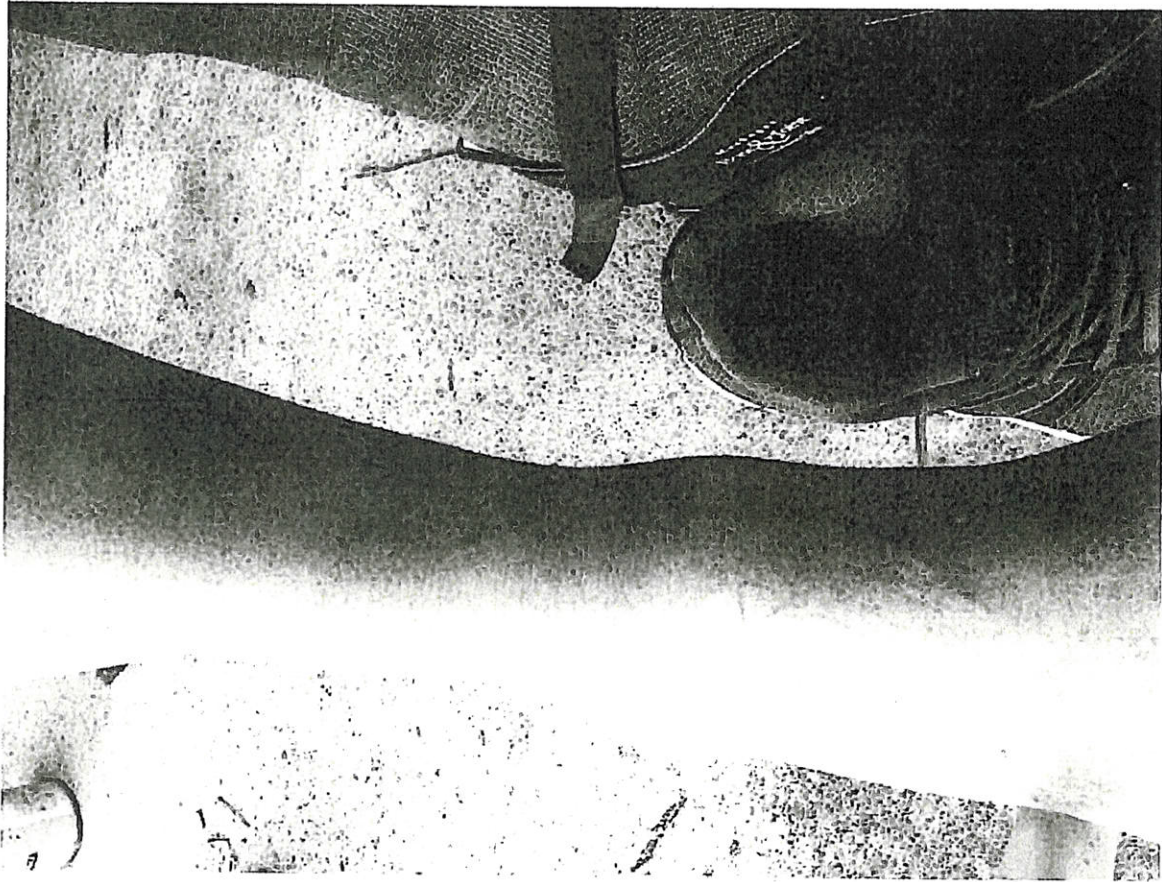
JANA ROCHELLE LANE

Subscribed and sworn to before me, the undersigned Notary Public in and for the State of Oklahoma, by said witness _____, on this the ____ day of _____, 2016.

Notary Public

My Commission Expires: _____

KBJ

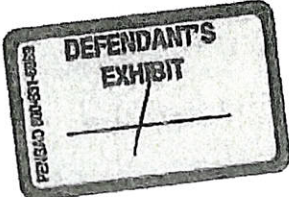


DEFENSE HEARING EXHIBIT
9A

{00273271}

2

Exhibit "1"



Jana Lane

From: Jana Lane
Sent: Thursday, March 31, 2016 10:38 AM
To: 'Nathan.Lawrence@capellahealth.com'
Subject: RE: Dr. Rivero

Thank you. Josephine with medical records called me with the information as well. ☺ Jana

From: Nathan.Lawrence@capellahealth.com [mailto:Nathan.Lawrence@capellahealth.com]
Sent: Wednesday, March 30, 2016 1:30 PM
To: Jana Lane
Subject: RE: Dr. Rivero

Please accept my apology for the delay. The requested information is as follows:

Anesthesiologist: Brian Stephens, CRNA

Circulator/ RN Staff: Gina Davis, RN

Scrub/ Tech Staff: Deanna Jenkins
Stephen Fouch

Healthcare Rep Staff: Ben-Stryker

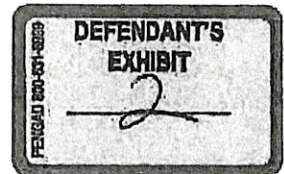
Please let me know if I may be of further assistance.

Nathan Lawrence, BSN, RN
Chief Quality Officer
EASTAR Health System
O: 918-684-3440
www.EASTARhealth.com

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From: Jana Lane [mailto:jlane@okmedicalboard.org]
Sent: Tuesday, March 29, 2016 3:24 PM
To: Lawrence Nathan
Subject: Dr. Rivero

Jana Lane
Investigator for the Oklahoma State
Board of Medical Licensure and Supervision
(405) 962-1400 ext 105



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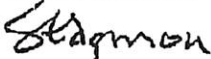
THREE RIVERS SURGICAL CARE
an affiliate of **SCA**

Oklahoma State Medical Board,

March 2, 2016

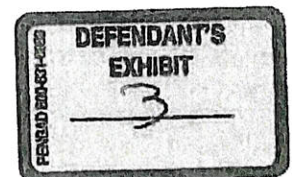
I am writing this letter at the request of Dr. Dennis Rivero, M.D. Dr. Rivero has practiced at our facility, Three Rivers Surgical Care, since 2012. He is in good standing and has had no discipline issues and no trends regarding credentialing. Dr. Rivero has a good working rapport with all teammates and has not had any behavior issues practicing in our facility. We find Dr. Rivero to be pleasant to work with and to have a good bedside manner. Thank you for your time.

Kind Regards,



Shelly R. Edgmon
Administrator
Three Rivers Surgical Care

Cc: Dr. Jack E Weaver, MD



3800 West Okmulgee

Muskogee, OK 74401

918-682-9899

threeriverssurgicalcare.com

DEFENSE HEARING EXHIBIT

9C

Exhibit "1"



EAST CAMPUS
2900 North Main Street
Muskogee, OK 74401
918-687-7777

MAIN CAMPUS
300 Rockefeller Drive
Muskogee, OK 74401
918-662-5501

March 15, 2016

To: Oklahoma State Medical Board

To Whom This May Concern:

I am the Director of Risk Management / Facility Ethics and Compliance Officer at EASTAR Health System. In my capacity I am responsible for the investigations of certain sentinel events including a wrong site surgical incision on a patient by Dennis Rivero, MD, on November 18, 2013. I am writing this letter to the Board in support of and at the Request of Dr. Rivero.

In an out of court confidential settlement made with the patient, our institution accepted 70% of the liability for the error, as the positioning of the patient was conducted by members of the hospital staff. Dr. Rivero did not initiate the error in any way, but he accepted 30% of the liability for his failure to identify the error during the time out process. Dr. Rivero noted the error after making the incision, and was able to reverse course without causing major harm to the patient. He also willingly participated in the disclosure of the error to the patient.

During the investigation, Dr. Rivero cooperated openly and actively with me the staff involved and hospital management and offered valid suggestions to our action plan. Furthermore, as the Ethics and Compliance Officer for the medical system, I receive ethics complaints regarding hostile work behavior and disruptive behavior not only regarding employees but physicians and allied health professionals. I have not received a complaint regarding Dr. Rivero as being engaged any unprofessional or disruptive behavior since he joined our medical staff.

Thank you for your attention. I am available if you have any further questions about this unfortunate event.

Sincerely,

Ched Wetz, Director
Risk Management / Facility Ethics and Compliance
918-684-2559



DEFENSE HEARING EXHIBIT
9D

Exhibit "1"

MUSKOGEE INSTITUTE OF FOOT AND ANKLE SURGERY



March 25, 2016

To: Oklahoma State Medical Board

From: Kevin Dux, DPM, Active Medical Staff, Eastar Hospital System

RE: Complaint against Dennis Rivero, MD

I am writing this letter of support for Dennis Rivero, MD, at his request, in response to a complaint filed against him in regard to a wrong site incision performed on a patient (T. P.) at this institution on November 18, 2013.

In 2014, Dr. Rivero was continuing to follow the patient in question after the incorrect ankle surgery, and he informed me of the event and mentioned that the patient would require ankle surgery on the correct ankle at some point in the future. Dr. Rivero asked me if I would agree to accept the patient in referral, to which I agreed. For many months after the incorrect ankle was operated on, Dr. Rivero continued to follow the patient, and even after the legal settlement with the patient, to my knowledge they maintained a cordial professional relationship during all this time. Eventually, the patient asked Dr. Rivero to perform the correct ankle operation. As Dr. Rivero explained to me, he did not feel comfortable doing another surgery on this patient due to the emotional trauma of his error, so he then referred the patient to me as we had previously agreed. Dr. Rivero then transferred the patient to my care. Although the patient wanted to have the surgery done, and I agreed to perform the surgery, he asked that the operation be delayed until 2015, as it was not an emergency.

In 2015, I performed an ankle arthrodesis on this patient, without complication, and he has done well, considering that he has an underlying inflammatory arthritis problem that affects multiple joints in his body and both feet. At his last visit with me, he was walking independently and the two total knee surgeries previously performed by Dr. Rivero appeared to be functioning satisfactorily allowing him walk without assistive devices.

It is my opinion that the patient did not suffer any permanent harm to his ankle from the incorrect ankle surgical approach performed by Dr. Rivero, other than the residual scar. It is not apparent to me that the incorrect ankle surgery will have any long term negative effect on this patient. To date, as I have followed the patient, he has not had any additional surgery on the ankle that was operated on incorrectly. Given the underlying inflammatory arthritis this patient suffers, and the arthritic changes he has as a consequence of his underlying idiopathic illness, it is difficult to predict how this will progress in the future in this unfortunate young man.

Thank you for your attention, and I am available for any further questions or information I can offer.

Kevin Dux, DPM

A handwritten signature in black ink, appearing to read "Kevin Dux".



EAST CAMPUS
2900 North Main Street
Muskogee, OK 74401
918-687-7777

MAIN CAMPUS
300 Rockefeller Drive
Muskogee, OK 74401
918-682-5501

March 18, 2016

To: Oklahoma State Medical Board
From: Dwayne Atwell, MD, Chair, Department of Surgery, Former President of the Medical Staff, 2011-2015, EASTAR Health System, Muskogee, OK
RE: Complaint against Dennis Rivero, MD

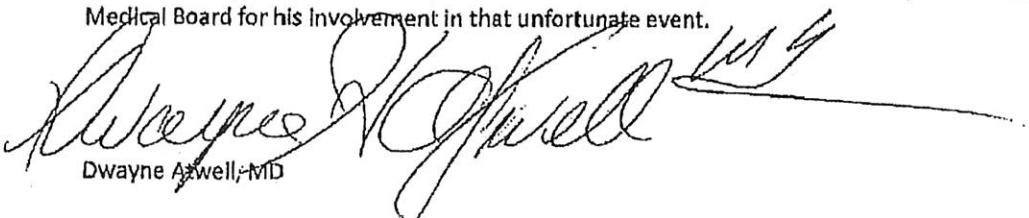
I am writing this letter of support for Dennis Rivero, MD, at his request, in response to a complaint filed against him in regard to a wrong site incision performed on a patient at this institution on November 18, 2013.

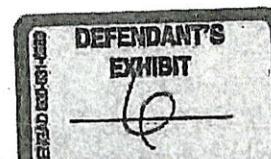
As the President of the Medical staff at that time, I was involved along with other members of the Medical Executive Committee, in the review of that unfortunate error that occurred at our institution. As such, I am aware of the events surrounding that matter.

At no time has Dr. Rivero engaged in unprofessional conduct or disruptive behavior at our institution. While Dr. Rivero did not violate any policy that could have precipitated the error, he did fail to correct the error during the time-out process, along with four other hospital employees in the operating room, before making the incision. Fortunately, he corrected the error before the patient suffered any major irreversible harm, and closed the incision without any additional complications to the patient.

Dr. Rivero cooperated fully with the Internal investigation and review of that case. Dr. Rivero has been and remains in good standing as an active member of the Physician staff at our institution since 2009. On the positive side he has strengthened the time-out process with additional safeguards to ensure that such an error never occurs again.

Dr. Rivero deeply regrets his error, and I would ask that he NOT be sanctioned by the Oklahoma State Medical Board for his involvement in that unfortunate event.


Dwayne Atwell, MD



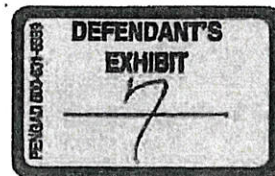
DEFENSE HEARING EXHIBIT
9F

March 18, 2016

To: Oklahoma State Medical Board

From: Members of the Operating Room Staff, Eastar Health System

RE: Complaint against Dennis Rivero, MD



We the undersigned three individuals, are employees of Eastar Health System and work in the Operating Room. We are writing this letter of support for Dennis Rivero, MD, in regard to a complaint filed against him for a wrong site incision on a patient at Eastar Hospital in Muskogee, OK on November 18, 2013.

All three of us were present in the operating room suite at the time of this unfortunate event, and participated with the presence of Dr. Rivero in the required Time Out process, which failed to identify the error, which led to a wrong site surgical incision on the patient.

Dr. Rivero did indeed interview the patient before the operative procedure in the preoperative holding area, and did in fact personally place his initials on the correct site to be operated on, but regrettably, the hospital team, of which we were members, incorrectly selected, prepped, and draped the wrong extremity before Dr. Rivero arrived to the operating room. It is an accepted standard practice for the hospital team to prep and drape the extremity before the surgeon arrives.

When Dr. Rivero arrived, his initials were covered by the sterile drapes, and they could not be seen by anyone. The required Time-Out process was carried out in the presence of Dr. Rivero and the four other members of the operating team before making the incision, and most unfortunately, the fact that surgery was about to be performed on the wrong extremity was not noticed or objected to by any of the individuals present, including ourselves. The fifth individual, the Anesthetist present at the time, later moved to another state to work and has been unable to participate in the preparation of this letter.

Dr. Rivero did not do anything to precipitate or initiate the event in question. He had correctly scheduled the correct surgical site; correctly identified the operative site on the executed consent form; correctly described the operative site in his History and Physical report in the chart; correctly interviewed the patient and marked the correct operative site; and correctly ordered an X-ray that morning of the correct operative site which was on display on the monitors in the operating room. In summary, nothing Dr. Rivero did or failed to do, contributed to initiating the subsequent error, except for his failure along with ours to identify the error before he made the incision during the time out process.

It was Dr. Rivero alone who noted the error after he made the incision, and while he was visibly upset, he conducted himself professionally in taking appropriate steps to reverse course and close the incision before performing the planned operative procedure. As a result of his corrective steps, it is our understanding that the patient did not suffer any major or irreversible harm, other than the unnecessary postoperative pain and the resulting scar.

All three of us have worked with Dr. Rivero for approximately seven years since his arrival to this hospital in 2009, and continue to enjoy working with him to this date. Dr. Rivero has never exhibited any

[Handwritten signature]
S. J. O.

disruptive or unprofessional conduct at any time that we have worked with him, including on that unfortunate date of the wrong site incision on November 18, 2013.

To this date we continue to enjoy working with Dr. Rivero, and all of us maintain cordial relations among ourselves and with Dr. Rivero. We reject any accusation that Dr. Rivero is considered "generally disruptive" as stated in the anonymous complaint against him.

To his credit, Dr. Rivero has strengthened the time out process by requiring additional steps to ensure that this unfortunate error never happens again. We continue to respect Dr. Rivero as a competent Orthopedic Surgeon who is an asset to our hospital and our community in Muskogee, and we regret our involvement in that unfortunate event.

Thank you for your attention, and we ask that Dr. Rivero, who we know suffered greatly over this matter, not be sanctioned by the Oklahoma State Medical Board for his error.

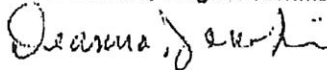
Gina Davis, RN



Steve Foutch, Surgical Technician



Deana Jenkins, Surgical Technician



11-18-13	wrong site surgery on
01-22-14	Dr Stahlber filed 40 re:
03-27-14	op dismissed & prejudice.
09-27-14	"No" have you ever had any adverse judgement, settlement or award against you arising from a professional liability claim?
12-17-14	Called Dr Stahlberger. 40 re: (Compartments)
12-17-14	Subpoena to Easter: St Johns
12-23-14	Talked to Dr Rivers on phone
12-29-14	Rec'd mls for Eaststar
12-30-14	Sent me e-mail stating now clear he misunderstood
01-02-15	Sent letter to Robyn Hall
01-08-15	Rec'd mls from St Johns
03-19-15	Dr Frische reviewed
02-24-16	C&C served
03-28-16	Called Eaststar to verify who was in time-out

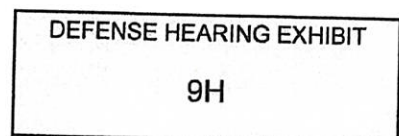
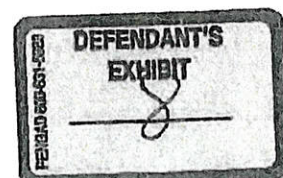


Exhibit "1"

Additional Relief from Stipulated Protective Order

<u>Witness</u>	<u>Deposition Citation</u>	<u>Redaction Status</u>
Dr. Stahlheber	P. 17 – L. 20-25	REDACT
Dr. Stahlheber	P. 18 – L. 1-3	REDACT
Dr. Stahlheber	P. 26 – L. 11-14	REDACT
Dr. Stahlheber	P. 30 – L. 17-25; P. 31 – L. 1-12	REDACT
Dr. Stahlheber	P. 35 – L. 13-25; P. 36 – L. 1	REDACT
Jana Lane	P. 10 – L. 22-25; P. 11 – L. 1-11	REDACT
Jana Lane	P. 14 – L. 9-22	REDACT
Jana Lane	P. 25 – L. 25	WITHDRAWN
Dr. Stahlheber	P. 48 – L. 16-25; P. 49 – L. 1-25; P. 50 – L. 1-23	REDACT
Jana Lane	P. 36 – L. 10-12	REDACT