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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY
DEC 12 2014
TIM RHODES
COURT CLERK
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STEVEN C. ANAGNOST, M.D.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CJ-2013-6140
	)	
OKLAHOMA SPINE AND BRAIN INSTITUTE, LLP;	)	
TULSA SPINE & SPECIALTY HOSPITAL, L.L.C.;	)	
CLINT BAIRD, M.D.;	)	
CHRIS M. BOXELL, LLC;	)	
CHRISTOPHER M. BOXELL, M.D.;	)	
DAVID A. FELL, M.D.;	)	
FRANK J. TOMECEK, M.D., P.L.C.;	)	
FRANK J. TOMECEK, M.D.;	)	
STATE OF OKLAHOMA, ex rel. OKLAHOMA MEDICAL LICENSURE AND SUPERVISION BOARD;	)	
LYLE KELSEY;	)	
ERIC FRISCHE, M.D.;	)	
GAYLA JANKE;	)	
GARY L. BROOKS;	)	
S. RANDALL SULLIVAN; and	)	
DANIEL B. GRAVES,	)	
	)	
Defendants.	)	

AMENDED PETITION

Plaintiff Steven C. Anagnost, M.D. hereby submits his Amended Petition against the Defendants. In support hereof, Dr. Anagnost alleges and states:

PARTIES

1. Plaintiff **Steven C. Anagnost, M.D.** ("Dr. Anagnost" or "Plaintiff") is a citizen and resident of Tulsa County, State of Oklahoma. Dr. Anagnost is licensed by the Oklahoma State Board of Medical Licensure and Supervision as a doctor of medicine and is a spine surgeon whose practice focuses on minimally invasive spine surgery.

2. Upon information and belief, Defendant **Clinton Baird, M.D.** ("Baird") is a citizen and resident of Tulsa County, State of Oklahoma. Upon information and belief, Baird is

licensed by the Oklahoma State Board of Medical Licensure and Supervision as a doctor of medicine and is a neurosurgeons whose practice is focused on spine surgery in Tulsa County, State of Oklahoma.

3. Upon information and belief, Defendant **Chris M. Boxell, L.L.C.** ("Boxell LLC") is a citizen of and has its principal place of business in Tulsa County, State of Oklahoma. It is registered to do business in this state with the Office of the Oklahoma Secretary of State. At all relevant times herein, the acts or omissions of Christopher G. Boxell, M.D. are also the acts or omissions of Boxell LLC as its employee and/or agent.

4. Upon information and belief, Defendant **Christopher G. Boxell, M.D.** ("Boxell") is a citizen and resident of Tulsa County, State of Oklahoma. Upon information and belief, Boxell, is licensed by the Oklahoma State Board of Medical Licensure and Supervision as a doctor of medicine and is a neurosurgeon whose practice is focused on spine surgery in Tulsa County, State of Oklahoma.

5. Upon information and belief, Defendant **David A. Fell, M.D.** ("Fell") is a citizen and resident of Tulsa County, State of Oklahoma. Upon information and belief, Fell is licensed by the Oklahoma State Board of Medical Licensure and Supervision as a doctor of medicine and is a neurosurgeon whose practice is focused on spine surgery in Tulsa County, State of Oklahoma.

6. Upon information and belief, **Frank J. Tomecek, M.D., P.L.C.** ("Tomecek PLC") is a citizen of and has its principal place of business in Tulsa County, State of Oklahoma. It is registered to do business in this state with the Office of the Oklahoma Secretary of State. At all relevant times herein, the acts or omission of Frank J. Tomecek, M.D. are also the acts or omissions of Tomecek PLC as its employee and/or agent.

7. Upon information and belief, **Frank J. Tomecek, M.D.** ("Tomecek") is a citizen and resident of Tulsa County, State of Oklahoma. Upon information and belief, Tomecek is

licensed by the Oklahoma State Board of Medical Licensure and Supervision as a doctor of medicine and is a neurosurgeon whose practice is focused on spine surgery in Tulsa County, State of Oklahoma.

8. Upon information and belief, Defendant **Oklahoma Spine and Brain Institute, LLP** ("OSBI") is a citizen of and has its principal place of business in Tulsa County, State of Oklahoma. It is registered to do business in this state with the Office of the Oklahoma Secretary of State. OSBI is formally known as Oklahoma Spine & Brain Institute, P.C., which was formed in June of 1970. Upon information and belief, Defendant OSBI is a single specialty private practice group, focusing on neurosurgical care. At all relevant times herein, the acts or omission of its shareholders, partners, employees and/or agents are also the acts or omissions of OSBI.

9. Upon information and belief, Baird and Tomecek (among others) are currently members and/or shareholders of OSBI, and Boxell is a former member or shareholder of OSBI, and their acts or omissions constitute the acts or omissions of OSBI as its employees and/or agents at all relevant times herein.

10. Upon information and belief, Defendant **Tulsa Spine & Specialty Hospital, L.L.C.** ("TSSH") is a citizen of and has its principal place of business in Tulsa County, State of Oklahoma. It is registered to do business in this state with the Office of the Oklahoma Secretary of State. Upon information and belief, TSSH is a hospital that was founded in December of 2002 and provides Surgical Services, Diagnostic Imaging, and Pain Management Services. At all relevant times herein, the acts or omission of its shareholders, partners, employees and/or agents are also the acts or omissions of TSSH. Upon information and belief, TSSH was formed primarily by members and/or shareholders of OSBI.[1] Additionally, OSBI exercises sufficient control, either contractually and/or actually, over TSSH so as to be held financially liable

[1] Steven E. Gaede, M.D. ("Gaede") is the President of OSBI and the Chairman of the Board for TSSH. Gaede is or has been a member and/or shareholder of OSBI and TSSH, and his acts or omissions constitute the acts or omissions of OSBI and TSSH at all relevant times herein.

through the principles of, among other things, either negligence, contract and/or vicarious liability, and respondeat superior.

11. Upon information and belief, Defendants Baird, Boxell, Fell, and Tomecek are or have been members and/or shareholders of TSSH, and their acts or omissions constitute the acts or omissions of TSSH as its employees and/or agents at all relevant times herein.

12. Defendant, **State of Oklahoma ex rel., Oklahoma Medical Licensure and Supervision Board** ("Board"), is located in Oklahoma County, State of Oklahoma. The Board is an agency of the State of Oklahoma created in accordance with the provisions of the Oklahoma Sunset Law pursuant to 59 O.S. §481. The Board consists of seven (7) appointed members (hereinafter referred to as "Board Members"). The Board employs staff including Defendant Kelsey, Defendant Frische, Defendant Janke, and others (hereinafter collectively referred to as "Board Staff"). The Board Members and/or the Board Staff also employ contract employees to prosecute cases on behalf of the Board.

13. Upon information and belief, Defendant **Lyle Kelsey** ("Kelsey") is a citizen and resident of Oklahoma County, State of Oklahoma. Defendant Kelsey was the Executive Director of the Defendant Board at all times relevant herein.

14. Upon information and belief, Defendant **Eric Frische, M.D.** ("Frische") is a citizen and resident of Comanche County, State of Oklahoma. Defendant Frische, M.D. was the Medical Director for the Defendant Board at all times relevant herein.

15. Upon information and belief, Defendant **Gayla Janke** (MacClenney) ("Janke") is a citizen of Canadian County, State of Oklahoma. Defendant Janke was the Investigator of the Defendant Board at all relevant times herein.

16. Upon information and belief, Defendant **Gary L. Brooks** ("Brooks") is a citizen and resident of Oklahoma County, State of Oklahoma. Defendant Brooks is an attorney

practicing law in the state of Oklahoma and was a Board Member for the Defendant Board at certain times relevant herein.

17. Upon information and belief, Defendant **S. Randall Sullivan** ("Sullivan") is a citizen and resident of Oklahoma County, State of Oklahoma. Defendant Sullivan is an attorney practicing law in the State of Oklahoma and was one of the prosecutors for the Defendant Board at certain times relevant herein.

18. Upon information and belief, **Daniel B. Graves** ("Graves") is a citizen and resident of Tulsa County, State of Oklahoma. Defendant Graves is an attorney practicing law in the State of Oklahoma and was hired by the Board to be a special prosecutor against Dr. Anagnost after the termination of Defendant Sullivan and acted as such at certain times relevant herein.

JURISDICTION AND VENUE

19. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 18 above and further alleges and states as follows:

20. This Court has jurisdiction and venue over this lawsuit in that some part of the acts and/or events giving rise to Plaintiff's claims occurred in Oklahoma County, State of Oklahoma, pursuant to 12 O.S. §134.

21. Pursuant to the Oklahoma Tort Claims Act, 51 O.S. §151, et seq., notice of claims was received by the State of Oklahoma on or about August 13, 2014.

22. Plaintiff's notice of claims was properly filed and adequately documented pursuant to 51 O.S. §151, et seq.

23. The State of Oklahoma denied Plaintiff's claims by letter dated November 10, 2014.

24. Plaintiff has exhausted the requirements of the Oklahoma Tort Claims Act as it related to the Defendant Board.

FACTS

25. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 24 above and further alleges and states as follows:

THE BOARD AND ITS AUTHORITY

26. At all times relevant herein the Board has the authority to revoke a licensee's license for unprofessional conduct. O.A.C. §435:10-7-4 and 59 O.S. §509.

27. At all times relevant herein the Board shall promulgate rules describing acts of unprofessional or unethical conduct and may take disciplinary action for unprofessional or unethical conduct as deemed appropriate based upon the merits of each case and as set out by rule. 50 O.S. §509.1(D)(1) & (2).

28. At all times relevant herein the State of Oklahoma, through the Attorney General, acts as prosecutor of all such actions before the Board, which sits as a trial body.[2] 59 O.S. §505.

29. At all times relevant herein the Board is given quasi-judicial powers while sitting for the purposes of revoking a license or imposing disciplinary actions. 59 O.S. §513(A).

30. At all times relevant herein "The constitutional guaranty of due process of law applies to administrative as well as judicial proceedings where such proceedings are quasi-judicial in nature. The due process clauses of the State and Federal Constitution afford protection against arbitrary and unreasonable administrative actions." *Wolfenbarger v. Hennessee*, 1974 OK 38, ¶12, 520 P.2d 809 (citations omitted).

31. The Oklahoma Supreme Court has consistently recognized "where it is necessary to procure a license in order to carry on a chosen profession or business, the power to revoke a

[2] Rule 3.7 of the Oklahoma Rules of Professional Conduct generally prohibit an attorney from acting as an advocate and witness in the same proceeding.

license, once granted, and thus destroy in a measure the means of livelihood, is penal and therefore should be strictly construed." *Johnson v. Bd. Of Gov. of Registered Dentists*, 1996 OK 41, ¶19, 913 P.2d 1339 (emphasis added).

32. Ensuring proper due process and an unbiased, neutral hearing in matters concerning the revocation of a professional license is a matter of prime concern for the Oklahoma Supreme Court. For example, in *Bowen v. State of Oklahoma, ex rel. Oklahoma Real Estate Appraiser Board*, 2011 OK 86, 270 P.3d 133, this Court held:

> Independence and impartiality are required of the courts. Although we have not addressed the precise circumstances presented here, we have previously examined a licensing board's responsibility to provide a licensee, not only with a neutral and impartial proceeding but also a proceeding which *appears* neutral and impartial. (Citations omitted)

The Court also noted substantial interest one has in a professional license, stating that:

1) the possible loss of a constitutionally protected property right, the loss of a livelihood, and the loss of a professional reputation are greater than monetary losses;

2) there is high risk when an agency seeks to revoke a professional license and revocation proceedings have the agency acting as investigator, prosecutor, and decision maker; and

3) the risk is increased where a competitor of the defendant serves as the investigator and makes prosecutorial recommendations to the Board.

Bowen, supra, at ¶19. Thus, the essential lesson is that the appearance of impartiality is as important as the actual impartiality or a conflict of interest. It is further emphasized in *Bowen* that:

> ...the question is not whether one personally **believes** herself or himself to be unprejudiced, unbiased, and impartial, the question is whether the circumstances are of such nature to cause doubt as to his or her partiality, bias, or prejudice.

Bowen, supra, at ¶21. *Johnson v. Bd. Of Gov. of Registered Dentists, supra,* at ¶32.

BACKGROUND

33. The Tulsa, Oklahoma, area is one of the most saturated spine surgery marketplaces in the United States on a *per capita* basis.

34. In the 1990s, spine surgery in the Tulsa area was primarily performed at three hospitals: St. Francis Medical Center, St. John Medical Center and Hillcrest Medical Center ("Hillcrest").

35. In 1999, Dr. Anagnost, joined The Orthopaedic Center ("TOC"), a general orthopedic group in Tulsa, Oklahoma, where he specialized in minimally invasive spine surgery. The group practiced primarily at Hillcrest at this time.

36. In the early 2000s, Defendant TSSH was formed, and physicians from Defendant OSBI, who previously practiced primarily at St. John, obtained clinical privileges there. St. John reacted negatively and began employing spine surgeons in-house and phasing out the surgeons from OSBI, who ultimately transferred a portion of their practice to Hillcrest.

37. Spine surgeons with privileges at Defendant TSSH have used it as the location to perform higher-paying, privately-insured spine surgeries, while performing lower-paying Medicare/Medicaid and self-paying (*i.e.*, basically no-pay) surgeries first at St. John and later at Hillcrest.

38. In approximately 2004 or 2005, Dr. Anagnost was invited to become a member of or shareholder in Defendant TSSH, but he declined.

39. In 2009 Dr. Anagnost left TOC and co-founded a new practice, the Tulsa Spine and Orthopedic Institute – Minimally Invasive Surgical Specialists. The Tulsa Spine and Orthopedic Institute is also located in Tulsa and practices primarily at Hillcrest.

40. From approximately 2003 until 2012 Dr. Anagnost and his partner performed the majority of the spine surgeries at Hillcrest, despite the physicians from OSBI also practicing there.

41. Dr. Anagnost and his partner were also receiving the vast majority of spine surgery referrals from other physicians in the Hillcrest system, despite the physicians from OSBI also practicing there.

42. TSSH is financially dependent upon the surgeries that are performed there by its members, which, in large part, consists of OSBI members and/or shareholders and Dr. Fell who is not a member of OSBI, but is a shareholder in TSSH.

43. A February 12, 2013 report by Michael Lapolla analyzed statistical data regarding Dr. Anagnost's practice and found that Dr. Anagnost's practice demonstrates complication rates better than the national average and better than those of Dr. Anagnost's peers, including the Defendant neurosurgeons. [See Michael Lapolla's Statistical Report attached hereto as Exhibit "1"].

MINIMALLY INVASIVE SPINE SURGERY V. OPEN SPINE SURGERY

44. Minimally Invasive Spinal Surgery ("MISS") is a highly specialized form of spinal surgery that allows for the treatment of most spinal disorders through tissue and muscle sparing techniques that result in faster operative and recovery times and improved outcome compared to traditional open spinal surgical techniques.

45. MISS is performed through much smaller incisions, often less than one (1) inch, which is designed to help the patient by lessening pain, blood loss, and operative time.

46. MISS is frequently performed as an outpatient procedure and is a less lucrative process for providers of spine surgery services (physicians or facilities) than open spine surgery.

47. MISS is very well accepted by the major spine societies such as NASS (The North American Spine Society), AAOS (The American Academy of Orthopedic Surgeons), and AANS (The American Association of Neurologic Surgeons).

48. Dr. Anagnost studied the MISS techniques during his Orthopedic Residency at the University of Louisville School of Medicine and then in his Spinal Fellowship at the Spine Institute for Special Surgery at The Norton Leatherman Spine Center in Louisville, Kentucky.

49. Dr. Anagnost has focused his medical practice on MISS for his patients and believes passionately in its benefits.

50. The Defendants Baird, Boxell, Fell, and Tomecek ("Defendant Neurosurgeons") practice neurosurgery using open spine surgery techniques in the great majority of their cases.

51. Open spine surgery is a much more expensive procedure for patients and is much more physically invasive with a much longer hospital stay and recovery time than MISS procedures.

52. Open spine surgery, on a per-procedure basis, is a very lucrative procedure for providers of spine surgery services, whether physicians or facilities, like TSSH.

DEFENDANT NEUROSURGEONS INSTIGATED THE BOARD ACTION AGAINST DR. ANAGNOST

53. The Defendants Fell, Tomecek, and Boxell, along with other TSSH and OSBI members, caused the Board to commence an investigation against Dr. Anagnost. Their purpose was to exclude Dr. Anagnost from the spinal surgery market in Tulsa, and more specifically, from the Hillcrest system.

54. As detailed more specifically below, the Defendant Neurosurgeons conspired to submit numerous unsubstantiated verbal and written complaints to the Board regarding Dr. Anagnost's care and treatment of multiple patients.

55. In 2014, Plaintiff discovered additional information regarding the role of the Defendant Neurosurgeons, as well as their groups, in instigating and contributing to the Board's investigation and prosecution of Plaintiff.

56. In January of 2010 Defendant Janke received a call from Terry Woodbeck, CEO of Defendant TSSH. Mr. Woodbeck informed her that seven neurosurgeons (Dr. Anagnost's competitors) were willing to talk to the Board about Dr. Anagnost and that he would act as the liaison.

57. Later in January or early February, Defendants Baird, Boxell, and Tomecek attended a meeting at the Southern Hills Marriott in Tulsa, Oklahoma, with Defendant Janke.[3] The purpose of the meeting was an effort to focus on finding bad outcomes, complications, unhappy patients, and anything negative relating to Dr. Anagnost's care and treatment of patients.

58. As a result of this meeting the Board received complaints and other information in the form of "subsequent treating physician reports" from Defendant Tomecek and Defendant Fell on the four (4) patients (DHM, PLM, GMM, and LSM) which would later form the basis of the Board's Application to Determine Emergency served on Dr. Anagnost on June 11, 2010. These "subsequent treating physician reports" were authored by Defendant Tomecek and Defendant Fell between March 25, 2010 and April 2, 2010.

59. As a result of Defendant Neurosurgeons' deliberately erroneous complaints, the Board began its investigation of Dr. Anagnost. The Board's investigation relied solely upon the willingness of members of OSBI and/or TSSH to testify against Dr. Anagnost. This approach was inherently biased and unfair to Dr. Anagnost because these physicians are his direct

[3] Dr. Anagnost first discovered the meeting, which had been kept secret from him, during the deposition of Tomecek on November 9, 2012, taken in the Board Action.

competitors and stood to gain financially and/or personally in, among other things, the revocation of Dr. Anagnost's Oklahoma medical license.

60. Specifically, Tomecek and Fell sent the Board Staff complaints regarding four (4) patients of Dr. Anagnost that the Board seized upon in an effort to summarily suspend Dr. Anagnost's medical license on a so called "emergency basis". Neither the Defendant Neurosurgeons nor the Board Staff conducted any investigation into the validity of the cases of the four (4) patients; they did not review any radiologic films; and they did not seek the expert opinion of a non-competitor spine surgeon. In short, the Board was more than willing to take the word of two of Dr. Anagnost's competitors in its effort to suspend his medical license on an "emergency basis".

THE EMERGENCY HEARING

61. On June 11, 2010, the Board served Dr. Anagnost with an Application to Determine Emergency and a Citation making allegations of fraud for not having actually performed certain spinal surgeries on patients DHM, PLM, GMM, and LSM and seeking to suspend Dr. Anagnost's license to practice medicine in Oklahoma.[4] [See Application to Determine Emergency filed June 11, 2010, attached hereto as Exhibit "2"]. These are the same four (4) patients Defendants Fell (DHM) and Tomecek (PLM, GHM, and LSM) reported to the Board. [See ¶ 58 above].

62. The Emergency Hearing was authorized by the Board's Secretary, Dr. Zumwalt. However, on information and belief, Dr. Zumwalt did not obtain the required concurrence of the Board President prior to authorizing the Citation for the Emergency Hearing.

[4] The "emergency" complaint related to patient surgeries that had occurred, in some instances, as far back as five (5) or six (6) years earlier.

63. Through the collaborative effort and orchestration of the Defendants, the Emergency Hearing was noticed and conducted in such a fashion as to damage Dr. Anagnost and deprive him of due process and equal protection of the law -- and was part of a pattern that would extend throughout the Board investigation and proceeding. The allegations contained in the Board's Complaint against Dr. Anagnost concerned the same four (4) patients (DHM, PLM, GMM, LSM) that Fell and Tomecek reported to the Board, and were grounded in "fraud" -- i.e., that Dr. Anagnost claimed to have performed surgery he had not, in fact, performed on such patients.

64. The Emergency Hearing occurred on June 18, 2010. Dr. Anagnost first learned that such a hearing would occur on approximately June 11, 2010 -- only seven (7) days before it occurred. The patient records that the Board intended to rely on to suspend Dr. Anagnost's license were not furnished to him until approximately forty-eight (48) hours before the Emergency Hearing began, thus inevitably undermining Dr. Anagnost's ability to defend himself.

65. The only two (2) witnesses the Board presented were Defendants Tomecek and Fell, Dr. Anagnost's competitors. These competitors knew the date of the Emergency Hearing at least ten (10) to fourteen (14) days before it occurred.[5] [See relevant portion of the June 2010 Board hearing transcript testimony of Fell at p. 31 l. 25 - p. 32 l. 2, and Tomecek at p. 70 l. 16-21, Exhibit "3"].

66. Just minutes prior to the start of the June 18, 2010 Emergency Hearing the Board served Dr. Anagnost with an additional Complaint that had been filed that morning which

[5] Defendants Tomecek and Fell traveled to Oklahoma City, Oklahoma, from Tulsa, Oklahoma, to testify against Dr. Anagnost in the Board Action on June 18, 2010.

contained similar allegations related to an additional patient identified as LPM (the "Initial Complaint").[6] [See Initial Complaint filed June 18, 2010, attached hereto as Exhibit "4"].

67. At the Emergency Hearing, in response to Dr. Anagnost's objection concerning notice, the Board took the position that it had full authority to provide no notice whatsoever to Dr. Anagnost and that he was lucky to have received notice before the day of the hearing:

> ... there is no specific notice requirement for emergency hearing. We gave him seven days because we thought we should give him some notice of it. Theoretically I could file a complaint today and say we are going to have a hearing later today if I choose to. We didn't do that, we gave him some notice.

[See 2010 Transcript, Ex. 3, Pg. 9, L. 9-15].

68. At the Emergency Hearing, the Board announced that the sole issue was whether an emergency existed. Moreover, though the Board expressly recognized that the accusations against Dr. Anagnost *did not* provide a proper basis for an emergency hearing under the Rules that governed its own conduct, it simply announced it would proceed, anyway.

> DR. ZUMWALT: I certainly agree with you, that any allegation of fraud is not proper to approach at an emergency hearing since it doesn't really -- it pertains certainly to a doctor's ability, his honesty and his right to have a license in Oklahoma, but it does not pertain to an emergency hearing as to whether there is a risk to the public health and safety.

[See 2010 Transcript Ex. 3, Pg. 19, L. 3-9].

69. Thus, though the Board admitted that it had no jurisdiction to do so, it insisted on going forward, along with and in reliance on Defendants Fell and Tomecek, with a proceeding that threatened Dr. Anagnost's license to practice medicine.

70. Having expressly recognized that there was no proper emergency upon which to predicate an emergency hearing, the Board nonetheless denied Dr. Anagnost's Motion for

[6] Upon information and belief, Christopher G. Covington, M.D. ("Covington") was also willing to assist the Board in offering opinions critical of Dr. Anagnost related to patient LPM. Covington is or has been a member and/or shareholder of OSBI and TSSH, and his acts or omissions constitute the acts or omissions of OSBI and TSSH at all relevant times herein.

Continuance -- which was based upon inadequate notice and the need for preparation to meet the Board's charges. The Board denied Dr. Anagnost's Motion for Continuance claiming that, for emergency hearings, no more notice was required.

71. At the hearing, the Board called only two (2) witnesses to testify against Dr. Anagnost (Defendants Fell and Tomecek), both of who are fierce competitors of Dr. Anagnost (*i.e.*, persons with a financial interest in seeing Dr. Anagnost lose his medical license).[7]

72. At the conclusion of the Board's case-in-chief, Dr. Anagnost moved for a dismissal based upon the Board's failure to meet its burden of proof.

73. The Board has an obligation to establish its case by clear and convincing evidence. Notwithstanding this fact, Dr. Zumwalt denied Dr. Anagnost's motion, stating that Dr. Anagnost needed to put on "evidence that shows that [the Board's] allegations are not true[.]" [See Hearing Transcript, Ex. "3" at p. 133].

74. During Dr. Anagnost's presentation of his defense it became obvious that Defendants Fell and Tomecek were flat wrong in their views that Dr. Anagnost had not performed the surgeries at issue and, at that point, the Board prosecutor asked for a recess. Upon her return from the recess, the Board prosecutor announced that she had conferred and "talked in good conscience" with Defendant Frische, the expert medical advisor for the Board, and stated that after listening to Dr. Anagnost's testimony, she elected to "withdraw [the] application for emergency suspension based upon the evidence submitted." [See Hearing Transcript, Ex. "3" at p. 225-226].

[7] Defendants Fell and Tomecek testified against Dr. Anagnost without ever having reviewed Dr. Anagnost's intraoperative films or many significant portions of the medical records on the subject patients.

75. Although the Board prosecutor withdrew the Application to Determine Emergency, which the prosecutor admitted she could not prove, the Board did not withdraw or otherwise dismiss the Initial Complaint.[8]

THE BOARD'S ATTEMPT TO AMBUSH DR. ANAGNOST

76. Dr. Anagnost subsequently learned that the Board had been secretly investigating him for some time prior to the Emergency Hearing and that the late notice it provided him of the investigation and the Emergency Hearing was an attempt to disadvantage him in the process by catching him "off guard".

77. Dr. Anagnost learned that the Board had served a subpoena *duces tecum* on Hillcrest for his patients' medical records on or about January 19, 2010 -- six (6) months before the Emergency Hearing. The Board never notified Dr. Anagnost of the subpoena as required by the Board's own regulations and the Oklahoma Discovery Code.

78. Moreover, well before the Emergency Hearing the Board requested that all six (6) members of Defendant Tomecek's practice group (Defendants OSBI and/or TSSH), Defendant Fell's practice group (TSSH), and other spine surgery practice groups in the Tulsa area pull and review every patient file where Dr. Anagnost had previously treated one of their patients to look for bad outcomes. Dr. Tomecek's practice group reviewed "somewhere in the neighborhood of 150" such patient files looking for bad outcomes. [See deposition of Tomecek at p. 28 l. 14-15, Exhibit "5"]. Dr. Anagnost was not given notice of this request.

79. In contrast, the Board's prosecutor and the Board's witnesses, Defendants Fell and Tomecek (Dr. Anagnost's direct competitors), not only brought the complaints to the Board, but had nearly six (6) months' notice of the investigation and contemplated charges

[8] There is no record that the Board entertained or passed a motion to institute the Initial Complaint against Dr. Anagnost.

against Dr. Anagnost which provided ample time to prepare their attack against Dr. Anagnost in a concerted and deliberate effort to cause the Board to suspend Dr. Anagnost's medical license.

80. The Board's medical director, Dr. Eric Frische, explained to Defendant Kelsey and Assistant Attorney General Elizabeth Scott that the Board's intentions at the Emergency Hearing on June 18, 2010, were to "catch him [Dr. Anagnost] off guard". Specifically, in an email dated June 20, 2012 from Defendant Frische to Defendant Kelsey and Assistant Attorney General Elizabeth Scott, Defendant Frische states:

> I think it's fair to say that all of us were surprised that our "expert's" testimony didn't hold up once Dr. Anagnost presented his defense. The flaw with our experts was that they didn't' appear to have expertise with the MISS. That fact doesn't prove that the doctor is doing things properly, it only demonstrates that we should have prepared differently and had we done so, I doubt we would have pushed for an emergency suspension hearing.
>
> * * *
>
> There are specific things we could have and should have done.
>
> * * *
>
> First of all, we should have interviewed the doctor. *I think we felt that we wanted to catch him off guard*, but clearly he wasn't. [Emphasis added].
>
> * * *
>
> In future cases like this one, we might consider an interview with multiple interviewers and do so on the record and probably in our Board office where we can record the interview. *That should be adequate to catch doctors off guard.* [Emphasis added].

[See Anagnost Affidavit, Ex. 6, ¶ 21; and Smith Affidavit, Ex. 7, ¶ 7].

THE BOARD DIGS-IN

81. As a result of its loss at the Emergency Hearing, the Board adopted a win-at-all-costs attitude towards its investigation and prosecution of Dr. Anagnost - despite the fact that the Board (by the Board staff's own admission) had no credible evidence implicating Dr. Anagnost for improper conduct.

82. Defendant Brooks, a high profile plaintiff's medical malpractice attorney, was a Board Member during relevant times that the Board was investigating and prosecuting Dr. Anagnost. He was also, at the same time, representing two separate plaintiffs in medical malpractice cases against Dr. Anagnost. Dr. Anagnost was aware of this, but was assured by the Board that Mr. Brooks had no involvement or influence in the Board's investigation and prosecution against him. Dr. Anagnost relied on the Board's representations regarding Defendant Brooks. Dr. Anagnost learned in April of 2014 when reviewing the Board file at the OBA, that the Board's representations concerning Defendant Brooks were false. Soon after Dr. Anagnost prevailed at the Emergency Hearing, Defendant Brooks began coordinating and working with Defendant Janke on the review of patient files and other information gathered as part of the investigation against Dr. Anagnost. Specifically, on March 18, 2010, an email from Defendant Janke states: "Mr. Brooks has met with investigator and received and provided medical records, deposition, transcripts, radiology films, and other evidence belonging to the patient." Moreover, documents show that Defendant Janke (the Board's Investigator) was in contact with Defendant Brooks on more than eight (8) occasions following the Emergency Hearing wherein they discussed the Anagnost investigation and/or shared documents regarding the same. [See Anagnost Affidavit, Ex. 6, ¶ 16; Smith Affidavit, Ex. 7, ¶ 3; and Vaughn Affidavit, Ex. 8, ¶ 6(d)].

83. In December of 2010, the Board hired Defendant Sullivan as a special prosecutor to represent it in the disciplinary action against Plaintiff. Defendant Sullivan, another local plaintiff's medical malpractice attorney, was representing two separate plaintiffs in medical negligence cases against Dr. Anagnost at the time. The Board did not make Dr. Anagnost aware of Defendant Sullivan's involvement as investigator and special prosecutor of his disciplinary action. Dr. Anagnost did not know that Sullivan was hired as a special prosecutor working

against him until April of 2014 when he reviewed documents at the OBA. [See Anagnost Affidavit, Ex. 6, ¶ 17; and Smith Affidavit, Ex. 7, ¶ 4].

SOLICITING EVIDENCE FROM COMPETITORS AND THE PLAINTIFF'S BAR – THE ECHO CHAMBER

84. In December of 2010 Defendant Janke recognized that the Board was only receiving complaints from Dr. Anagnost's competitors, and not his patients. Her note states: "It should be noted that other than Defendant Tomecek, there have been no additional complaints since the Emergency Hearing."[9] [See Anagnost Affidavit, Ex. 6, ¶ 25].

85. Moreover, on May 5, 2011, Defendant Janke received an email from Karen Callahan, an attorney representing Hillcrest. Hillcrest had been performing quarterly peer reviews on Dr. Anagnost as a result of the Board's disciplinary proceedings against him. In the email, Ms. Callahan reported that the Hospital's second quarterly peer review came back showing appropriate care by Dr. Anagnost.[10] Specifically, Ms. Callahan states:

> "I wanted you to know that the second quarterly external peer review report came back today from our external reviewer in Florida and all cases reviewed were good with findings of appropriate judgment, appropriate technique and appropriate care of the surgical patient."

[See Anagnost Affidavit, Ex. 6, ¶ 18].

86. Also on May 5, 2011, and presumably in response to the peer review results reported by Ms. Callahan, Defendant Sullivan conceded the lack of credible evidence against Dr. Anagnost and wrote an email to Defendant Janke, stating: "We may have hit a dead end, but we should meet at least one more time to discuss any more strategies." [See Anagnost Affidavit, Ex. 6, ¶ 19].

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[9] None of the complaints about the patients which formed the basis of the Board's Application to Determine Emergency or the Board's Initial Complaint came from patients. They all came from Dr. Anagnost's competitors.

[10] Ms. Callahan had previously reported to Defendant Janke that the first quarterly peer review done on Dr. Anagnost "came back very positive from the external reviewer."

87. Thus, in the fall of 2011 the Board began actively soliciting patient complaints against Dr. Anagnost from his competitors and plaintiff's lawyers.

88. The Board's conduct in seeking complaints against Dr. Anagnost to support its failing case created an echo chamber in which: (1) medical malpractice lawyers used the board to service their own agenda by pressuring the Board to take action to bolster their civil lawsuits; (2) the competitor doctors used the Board to service their agenda to remove a competitor; and (3) the Board was able to generate more solicited claims against Dr. Anagnost in an effort to bolster its case. This created a feeding frenzy between these three interests.

89. In October of 2011 Defendant OSBI's office manager, Deborah Wood had the following email exchange with Defendant Janke:

> Wood: "Can you give me an update on the investigation on Dr. Anagnost? Our group has come across another horrific case that we are working on getting all the information to you. There is a lot of concern as this continues to occur. Would it be beneficial for you or someone from the Medical Board to meet with some of my physicians to discuss..."
>
> Janke: "It would be helpful to receive additional complaints, either from the patient, or the doctor reporting the patient's incident. The most effective way to submit a complaint is in writing addressed to my attention."

[See Anagnost Affidavit, Ex. 6, ¶ 26; and Smith Affidavit, Ex. 7, ¶ 6].

90. On October 28, 2011, Defendant Janke emailed Defendant Tomecek wherein she attached the Board Complaint Form and informed Defendant Tomecek how important it is to have the clients of the local Plaintiff's law firm that he was working for as an expert against Dr. Anagnost (Sneed Lang), fill out the attached Complaint Forms and submit them to the Board. Specifically, the email states:

> "It is important to Dr. Anagnost's case that all 25 of the patients whose case is with the Sneed Lang Firm (and any other patient you know of that has been injured) fill out the attached Complaint Form, and send it back to the Medical Board. **The more Complaints we have the better.** Talk to you soon, Gayla" [Emphasis Added].

[See Anagnost Affidavit, Ex. 6, ¶ 27].

91. On November 14, 2011, Defendant Janke received another email from Defendant Tomecek which states:

> I am reviewing yet another malpractice case from the Sneed, Lang, Herrold law firm against Dr. Anagnost... Willful negligence was practiced in this case by Dr. Anagnost... Please feel free to contact me if I can be of further assistance on this case. I must say that I am disappointed and very concerned by the repetitive continuances and lack of action by the board in this serious matter.

[See Anagnost Affidavit, Ex. 6, ¶ 31].

92. In addition to soliciting the efforts of Dr. Anagnost's competitors, the Board also readily accepted influence and pressure from Plaintiff's attorneys that it knew stood to gain from an adverse Board ruling against Dr. Anagnost.

93. On December 8, 2011, Defendant Janke reported being blasted by a Plaintiff's attorney from Tulsa that had a medical negligence case against Dr. Anagnost. Defendant Janke writes:

> While discussing the case she blasted me hard about the Board's lack of action against Dr. Anagnost. She said things like, "The doctors that are helping us and helping you are ready to do anything we need to do to help the Board with this case... Why aren't you using a private medical malpractice attorney on this case? There are numerous OKC attorneys qualified to handle this. We have never seen anything like this!
>
> Dr. Tomecek is also sending information on a frequent basis.
>
> Are we still planning to file an amended Complaint? I am feeling the HEAT from Tulsa.

[See Anagnost Affidavit, Ex. 6, ¶ 38].

94. In January of 2012 the Board worked with Plaintiff's firms to collect multiple complaint forms from clients against Dr. Anagnost. [See Anagnost Affidavit, Ex. 6, ¶ 32].

95. Less than two months later, on February 1, 2012, the Board contracted with Defendant Graves, a Plaintiff's attorney from Tulsa to act as the Special Prosecutor in the

Anagnost disciplinary Proceeding before the Board. The Contract allows Defendant Graves to bill at $250 per hour with payment not to exceed $100,000. The contract was later amended to be capped at $350,000. At the time Defendant Graves was awarded the contract, he was acting as the Plaintiff's attorney in a medical malpractice lawsuit against Dr. Anagnost's practice.

EVIDENCE THAT THE BOARD WAS ENCOURAGING COMPETITORS TO USE OTHER AVENUES TO HARM DR. ANAGNOST'S BUSINESS

96. Evidence suggests that the Board encouraged Dr. Anagnost's competitors to take action against him at hospitals where he was privileged to practice. This is shown in the November 28, 2011 email from Defendant Frische to Defendant Janke and Defendant Kelsey, which states:

> "If what the doctor [Frank Tomecek, M.D.] is reporting to us is true then I hope he is also forwarding the same information to the credentials committee or the chief of staff at the hospital. If you do so in a confidential letter and say something to the effect that his purpose is there to be legitimate peer-reviewed and I believe he is protected. You might want to contact a lawyer for the wording." [Emphasis added].

[See Anagnost Affidavit, Ex. 6, ¶ 36].

97. Evidence suggests that the Board also encouraged plaintiff's lawyers to take action against Dr. Anagnost at hospitals where he had privileges. This is exemplified in a December 8, 2011 email from Defendant Kelsey to AAG Elizabeth Scott, Defendant Janke, Defendant Frische, and Stephen Washbourne in response to an accusatory email from a member of the Plaintiff's bar whom the Board was communicating with:

> "Now that I have your attention…I agree and she needs to be castigated for trying to second guess our process and work on getting him [Anagnost] kicked off the Tulsa hospital staffs…" [Emphasis added].

[See Anagnost Affidavit, Ex. 6, ¶ 37].

COMPETITORS' ACTIONS FOLLOWING THE EMERGENCY HEARING

98. Despite the fact that Tomecek's and Fell's testimony was thoroughly impeached at the Emergency Hearing, both were surprisingly disappointed in the outcome. [See deposition of Tomecek at p. 26 l. 18-25 and at p. 27 l. 21-25, Exhibit "5"].

99. Defendant Tomecek shared his disappointment with everyone in his group who was asked to be involved with this process at this time, including Dr. Boxell. [See deposition of Tomecek at p. 28 l. 1-7, Exhibit "4"].

100. Between March 25, 2010 to November 28, 2011 (approximately 20 months) Defendants Tomecek, Fell, Baird and Boxell contacted the Board about Dr. Anagnost no less than fifteen (15) times.

101. Apparently there was no limit to the lengths Defendant Tomecek was willing to go in his quest to see that Dr. Anagnost's license was revoked by the Board. These communications include emails such as the email below sent by Defendant Tomecek to the Board on October 28, 201, wherein he states:

> I have been retained as an expert witness by the Sneed, Lang and Herrold law firm in Tulsa. They have 25 cases of malpractice many of which haven't even been formally filed yet against Dr. Anagnost... This willful negligence and deceit in documentation is a medical atrocity that should not be allowed to continue... I am willing to testify again if that is required to bring this case to the appropriate conclusion.

[See Anagnost Affidavit, Ex. 6, ¶ 30].

102. Tomecek followed that email with another one approximately two weeks later, on November 14, 2011, wherein he tells the Board:

> I am reviewing yet another malpractice case from the Sneed, Lang, Herrold law firm against Dr. Anagnost... Willful negligence was practiced in this case by Dr. Anagnost... Please feel free to contact me if I can be of further assistance on this case. I must say that I am disappointed and very concerned by the repetitive continuances and lack of action by the board in this serious matter.

[See Anagnost Affidavit, Ex. 6, ¶ 31].

103. As of January 21, 2013, Defendant Tomecek was "working as Plaintiffs' expert witness" for the same local Plaintiff's firm (Sneed Lang) to testify in at least ten (10) lawsuits Snead Lang had filed against Dr. Anagnost.[11] [See Letter dated January 21, 2013, attached hereto as Exhibit "9"].

104. On April 29, 2013, Dr. Anagnost discovered through a deposition in one of the civil cases that Defendant Baird told a patient's family to look up the numerous lawsuits on file on the internet against Dr. Anagnost (lawsuits that had been generated by the Neurosurgeon Defendants and the plaintiff's lawyers they were working with) and made it clear to them that he did not like Dr. Anagnost and would not send his worst enemy to him as a patient.[12] All of this had the effect of generating additional civil lawsuits and claims at the Board, which achieved the ends of the Plaintiffs' malpractice lawyers, the Board, and the Neurosurgery Defendants.

105. In August of 2013, Dr. Anagnost discovered for the first time that Defendant Boxell emailed a complaint to the Board regarding Dr. Anagnost's patient POM on or about January 12, 2011, wherein he states in part, "I have encountered another case where it appears a sham surgery was performed by Dr. Anagnost...I performed a large spinal reconstructive surgery on this patient and found no evidence that Dr. Anagnost had done anything other than a skin incision." [See Boxell email, Exhibit "10"]. This was a false and uninformed complaint similar to those complaints by Defendants Tomecek and Fell that failed at the Emergency Hearing.

THE BOARD'S DELAYS AND THE AMENDED COMPLAINT

106. During the eighteen (18) month period following the Emergency Hearing, while the Board was ignoring conflicts-of-interest, conspiring with Dr. Anagnost's competitors and

[11] Rarely will an Oklahoma physician agree to testify against another Oklahoma physician in a medical malpractice case.

[12] This deposition was taken in the case of *John Burckhalter et al. v. Steven G. Anagnost, M.D., et al.*, Case No. CJ-2011-5014, DC Tulsa County.

Plaintiff's lawyers, the Board continued to pursue its win-at-all-costs agenda. During this time Dr. Anagnost was not allowed a hearing to defend his practice and reputation despite the Board's repeated re-publication of alleged wrongdoing on its website. One can only conclude that this delay was because there was no credible evidence against him to support the Board's case.

107. The Board was initially scheduled to hear the case against Dr. Anagnost on July 22, 2010. This hearing was improperly continued by an order entered on August 13, 2010 by Board Staff and not the Board Members, as required by law. Thereafter, additional orders granting continuances in the same improper way were entered on October 8, 2010, November 19, 2010, January 21, 2011, June 3, 2011, September 30, 2011, November 18, 2011, and January 20, 2012. **Each** of these continuances was apparently obtained by the Board's staff without a written motion requesting the continuance and without any involvement of the Board Members. These procedures violated legal requirements designed to protect physicians in Dr. Anagnost's position.

108. On July 27, 2012, over two (2) years after the filing of the Initial Complaint, the Board filed an Amended Complaint against Dr. Anagnost. The Amended Complaint contained allegations not only as to the four (4) original patients that were the subject of the Emergency Hearing, but also an additional nineteen (19) patients.[13] (See First Amended Complaint, attached hereto as Exhibit "11.")

109. Over fifty percent (50%) of the nineteen (19) new cases alleged in the Amended Complaint involved surgeries that took place over four (4) years prior to the filing, and only two (2) related to procedures taking place within last two (2) years prior to the filing. All of the patients identified in the Amended Complaint were gathered by the Board from Dr. Anagnost's

[13] Another example of how the Defendants were promoting the Board Action is found at paragraph number 22 of the First Amended Complaint wherein the Board adopted Baird's opinion contained in his October 21, 2011, letter that Dr. Anagnost "caused Patient BOM to suffer a catastrophic iatrogenic surgical injury."

competitors and Plaintiff's attorneys who had civil medical negligence cases against Dr. Anagnost – all of whom stood to gain financially from Dr. Anagnost's destruction.[14]

BOARD MEMBERS WERE RECEIVING INFORMATION AND FORMING BIAS BEFORE A HEARING

110. Dr. Anagnost learned from documents reviewed while meeting with the OBA that Board members were inappropriately receiving information and forming biases against him before being afforded a hearing (other than the failed Emergency Hearing). [See Smith Affidavit, Ex. "7", ¶ 5]. This is evidenced by the following exchange between Defendant Kelsey and Board Member Chuck Skillings found in an email dated January 14, 2013:

> Board Member Skillings: "I don't want to appear as an antagonist but I believe based on the information that we have already been given that the public is at genuine risk if this physician continues to practice." [Emphasis added].
>
> Defendant Kelsey: "I understand your position on delays very well and I think we have been generous with them. With Anagnost it is a case of serious patient safety..." [Emphasis added].

[See Anagnost Affidavit, Ex. "6", ¶ 35, and Vaughn Affidavit, Ex. "8", ¶ 6(e)].

THE BOARD ENJOYED WATCHING DR. ANAGNOST LOSE HIS LIVELIHOOD

111. When viewing documents at the OBA in April of 2014, Dr. Anagnost and his counsel learned that Board's Executive Director (Defendant Kelsey), Medical Director (Defendant Frische) and Investigator (Defendant Janke) took pleasure in hearing how their actions were costing Dr. Anagnost his livelihood, as seen in this January 25, 2012 email:

> Janke: "Dr. a paid $75,000 out-of-pocket on 2 cases... Peer review concluded last night... Dr. Anagnost told Dr. Landgarden that his career is finished and he would have to practice in Brazil...he was seen clearing a computer and loading several boxes from his clinic last night. Surgeries and clinic canceled for two weeks at the present time – telling patients there is a family emergency... More results coming (stay tuned)"
>
> Frishe: "so this is another neurosurgeon who will implode?"

[14] All of the physicians referenced in the First Amended Complaint are shareholder, members, employees, and/or servants of OSBI and/or TSSH. The acts or omissions of these physicians are the acts or omission of OSBI and/or TSSH.

Janke: "Hopefully !!!!!!!!!!!!!!!!!! I shouldn't say that"

Kelsey: "it may be that we have to be a forceful part of this doctor and his license. We need to take advantage of our C&C and get it on the docket to move."

Frische: "AGREED! When do we get peer review material? If he is folding he may not go through the fair hearing process."

[See Anagnost Affidavit, Ex. "6", ¶ 22; Smith Affidavit, Ex. "7", ¶ 8; and Vaughn Affidavit, Ex. "8", ¶ 6(c)].

ATTEMPT TO ENJOIN THE BOARD

112. On November 15, 2012, Dr. Anagnost filed his Application for Original Jurisdiction and Petition for Writ of Prohibition in which he requested the Supreme Court of the State of Oklahoma to accept original jurisdiction to enjoin the Board Proceeding.

113. On February 25, 2013, four (4) of the nine (9) Justices of the Supreme Court issued Dissents [Exhibits "11" and "12" hereto] from the Supreme Court's *procedural decision* to decline to assume original jurisdiction to review Dr. Anagnost's request for a writ of prohibition from that Court. Though the Dissents do not reach all of the significant violations that will be presented to this Court (the most egregious of which were unknown at the time) they do describe several of the grounds that Dr. Anagnost pleads herein. For instance, in his Dissent, Justice Watt stated:

> ¶1 From all of the documents, exhibits, affidavits, and pleadings presented, I have grave concerns that the petitioner [Dr. Anagnost] has failed to receive even the minimal due process required under our state and federal constitutions. [Ex. "11", ¶ 1.]
>
> ¶2 The failure to inform the petitioner [Dr. Anagnost] of the Hillcrest subpoena that was issued more than six months previous; numerous ex parte continuances obtained by the respondents, again without notice to the petitioner; the attempt to extend authority to the Trial Examiner to hear evidence beyond that authorized by the O.A.C.; and several possible conflicts of interest among members of the respondent's 'trial team' all warrant assumption of original jurisdiction by this court. [Ex. "11", ¶ 2.]

114. Justice Kauger (with whom Justices Reif, Gurich, and Watt joined) expressed, among other things, the potential for irreparable injury created by the Board Proceeding against Dr. Anagnost:

> ...this Court has held that an independent action is permitted where, as here, the judicial review of an agency decision after the fact will fail to provide an adequate remedy.

[Ex. "13", ¶. 1.]

> Further, as this Court has previously held that revocation of a professional license is not the sort of injury that can be corrected on appeal, the time to deal with these possible violations is now, rather than later.

[Ex. "13", ¶11.]

115. The Justices also commented on the extraordinary and harmful effects where, as here, an administrative Board unduly delays adjudication:

> A two year delay between the filing of the initial complaint against Dr. Anagnost and the hearing on that complaint, due to continuances by the Board, is unseemly given that the purpose of the Board is to protect the public. The only real effect of these delays appears to be continually publishing allegations of fraud, negligence, and incompetence without having determined any factual basis to support the allegations for over two years.

[Ex. "13", ¶ 8].

116. The Dissent by four (4) of the Justices also noted several circumstances concerning the Board Proceeding that may "at least give rise to the appearance of a conflict of interest," and discussed the legal significance of such an appearance:

> The essential lesson is that the appearance of impartiality is as important as the actual impartiality or a conflict of interest. We further emphasized, in *Bowen* [2011 OK 86, 270 P.3d 133] that:
>
> ...the question is not whether one personally **believes** herself or himself to be unprejudiced, unbiased, and impartial, the question is whether the circumstances are of such nature to cause doubt as to his or her partiality, bias, or prejudice.

[Ex. "13", ¶ 4, emphasis in original].

117. Following the Supreme Court's denial of original jurisdiction, the Board's violations multiplied and became even more egregious. For example, July 23, 2013, the Board filed its First Amended Complaint [Corrected], wherein it re-alleged the same wrongdoing against Dr. Anagnost in its concerted and relentless effort fueled by the Defendants to strip Dr. Anagnost of his Oklahoma medical license. [See First Amended Complaint [Corrected], attached hereto as Exhibit "14"].

118. On July 24, 2013, Dr. Anagnost filed his Petition for Injunctive and Declaratory Relief in Oklahoma County, State of Oklahoma. [See *Steven C. Anagnost, M.D. v. Oklahoma Board of Medical Licensure and Supervision*, Case No. CJ-2013-4141, assigned to Judge Bryan Dixon].

CONSENT ORDER, SETTLEMENT AGREEMENT AND RELEASE

119. On September 12, 2013, less than two (2) months after Dr. Anagnost filed his Petition for Injunctive and Declaratory Relief, the Board, by and through the Oklahoma Attorney General's office, entered into a Consent Order with Dr. Anagnost.

120. After three (3) years of investigating Dr. Anagnost and after filing a thirty-one (31) page Amended Complaint against him in the Board Action alleging that he engaged in incompetence, fraud, and/or negligence in the care and treatment of twenty-three (23) patients, the Board, by and through the Oklahoma Attorney General's Office entered a Consent Order, settling the Board's claims against Dr. Anagnost and allowing him to keep his license to practice medicine in Oklahoma.

121. The Consent Order required Dr. Anagnost to do the following:

a. Demonstrate completion of eight (8) continuing medical education credit hours in Physician Billing Practices and an additional eight (8) credits in Physician Record Keeping;

b. Pay a fine of $10,000.00 for the claims of failure to report settlements to the Board in 2010 and 2011; and

c. To pay costs of the Board's proceeding as agreed to by the parties.[15]

[See Consent Order attached hereto as Exhibit "15"].

122. Contemporaneous with the execution of the Consent Order, the Board obtained a Settlement Agreement and Release ("Release") from Dr. Anagnost. The Release, executed on September 12, 2013, purports to resolve all claims, contentions and issues between the Board and Dr. Anagnost. [See Release, attached hereto as Exhibit "16"].

123. Subsequent to Dr. Anagnost signing of the Release, the Oklahoma Bar Association ("OBA") instigated an investigation of various attorneys in connection with the Board's investigation and prosecution of him. Certain of the files from the Board related to its investigation and prosecution of Dr. Anagnost were apparently obtained by the OBA via subpoena.

124. Dr. Anagnost was asked to appear before the OBA on or about April 14 and 15, 2014, to answer questions as part of the OBA's investigation. He attended the meetings, along with his attorneys from McAfee Taft, Barry L. Smith, Christina Vaughn, and Richard Hix. [See Anagnost Affidavit, Ex. "6", ¶ 14].

125. At the April 14 and 15 meetings with the OBA, Dr. Anagnost along with his attorneys, were shown certain documents from his Board files. The documents revealed that the Board investigation and prosecution was not fair and impartial and that the Release and Consent Order were procured by fraud, misrepresentations and coercion. [See Affidavits of Barry L. Smith and Christine Vaughn, attached as Exhibits "7" and "8", respectively]. Dr. Anagnost and his counsel also observed information contrary to representations made by the State during the

[15] Dr. Anagnost was required to pay the Board $100,000.00 as "costs" of the Board proceeding.

pendency of the dispute between Dr. Anagnost and the Board. [See Smith Affidavit, Ex. 7, ¶ 2]. Had Dr. Anagnost known the information about the Board's investigation and prosecution contained in the documents shown to him by the OBA, he would not have signed the Consent Order or the Release dated September 12, 2013. [See Anagnost Affidavit, Ex. "6", ¶ 15].

126. The information currently known that was unknown to Dr. Anagnost at the time he signed the release, reveals that the Board did not conduct (in appearance or in fact) a fair and impartial investigation; conspired with his competitors to manufacture claims against him; did not have credible evidence to support its claims against him; did not preclude or protect him from obvious conflicts of interest of its Board members or specially retained prosecutors; and biased its Board Members with improper disclosure of staff and investigatory communications. These actions establish the malicious and unlawful nature of the Board's investigation of Dr. Anagnost and defy any rational which could characterize the investigation as being fair and impartial. [See Anagnost Affidavit, Ex. "6"; Smith Affidavit, Ex. "7"; and Vaughn Affidavit, Ex. "8"].

FIRST CAUSE OF ACTION

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS AND/OR ECONOMIC ADVANTAGE

127. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 126 above and further alleges and states as follows:

128. Dr. Anagnost maintained various business relationships which include, but is not limited to: (1) his patients who sought and received medical treatment related to Dr. Anagnost's specialty, spine surgery; (2) the hospitals where he was credentialed; (3) his professional liability insurance carrier; (4) third party health insurance carriers; and (5) the many physicians who

referred their patients to him for spinal surgery. The Defendants intentionally interfered with these relationships and prospective business advantages.

129. As a result of, among other things, the Defendants tortious bad faith conduct, Dr. Anagnost's good name and reputation in the medical community have been irreparably harmed, his business income damaged as a result of Defendants' conduct specified above, and, finally, his doctor/patient relationship has been forever damaged by Defendants' premeditated and intentional interference as set forth herein, necessitating this specific claim for relief.

130. In addition, the above-described conduct of Defendants rises to the level of willful, wanton, heinous, grossly negligent, or reckless conduct for which they should be punished by an award to Dr. Anagnost of exemplary and punitive damages in an amount sufficient, taking into consideration the assets and worth of Defendants, to render the consequences of their conduct an example to themselves and others. In this regard, and under the specific facts of this case, Defendants are liable for both Category I and Category II punitive damages, as described in 23 O.S. §9.1. Under Category I, Defendants plainly acted in reckless disregard of the rights of others, thereby entitling Dr. Anagnost to a potential jury award in the amount equal to the actual damages awarded by the jury for Defendants' intentional conduct. Defendants are also liable for Category II punitive damages because they acted intentionally and with malice toward others. Accordingly, Dr. Anagnost seeks punitive damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) including, but not limited to, the increased financial benefit derived by Defendants, because Defendants' acts or omissions were made with the intent to cause harm and/or were in reckless disregard and of Dr. Anagnost's rights. Plaintiff reserves his right to seek Category III punitive damages as additional information becomes known.

WHEREFORE, premises considered, Dr. Anagnost prays for actual and punitive damages against each Defendant in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00), attorney fees, costs, and any other relief this Court deems just and appropriate.

SECOND CAUSE OF ACTION

ABUSE OF PROCESS

131. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 130 above and further alleges and states as follows:

132. Defendants Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves ("Board Defendants") improperly used their position or association with the Board as described above, which amounts to an abuse of the legal system. This resulted in grave harm to, among other things, Dr. Anagnost's reputation and medical practice.

133. The information to support the abuse of process claims against the Board Defendants is "newly discovery evidence" because it had not been made available to Dr. Anagnost prior to April of 2014 which, even then was only made available on a limited basis through the OBA's active investigation and has not been reviewed by undersigned counsel of record in this case. [See Anagnost Affidavit, Ex "6", ¶ 14-15].

134. The elements of an abuse of process claim are "(1) the improper use of the court's process (2) primarily for an ulterior or improper purpose (3) with resulting damage to the plaintiff asserting the misuse." *Greenberg v. Wolfberg*, 1994 OK 147, ¶22, 890 P.2d 895, 905. "The party who asserts the abuse-of-process claim is *not required* to prove (1) the underlying action was brought *without probable cause* or (2) that he/she prevailed in that proceeding. Neither is it necessary that the action, in which the abuse is alleged to have occurred, be concluded." *Id.*

135. The Board Defendants abused the Board process in the following ways, which include, but are not limited to:

(A) Their willful failure to notify Dr. Anagnost of subpoenas to third parties, in violation of 59 Okla. Stat. § 504 and the Oklahoma Discovery Code.

(B) Unilaterally seeking and obtaining extensions of the Board Hearing against Dr. Anagnost without providing Dr. Anagnost an opportunity to be heard on the issue.

(C) Willfully using the unilaterally obtained extension of the hearings for the improper purpose of damaging Dr. Anagnost's professional career.

(D) Willfully failing to disclose exculpatory evidence to Dr. Anagnost during the board procedure.

(E) Willfully concealing from Dr. Anagnost the existence of Defendant Sullivan as a special prosecutor in his case and his conflict of interest.

(F) Willfully misrepresenting Defendant Brook's role at the Board relating to Dr. Anagnost's proceeding, when in fact he was knee deep in the investigation reviewing records and sharing information with the Board's investigator.

(G) Willfully failing to protect Dr. Anagnost from the conflicts of interest presented by Defendant's Sullivan and Brooks.

(H) The Board Staff's willful sharing of information with the Board Members in an effort to bias the Board members prior to a hearing on the merits.

(I) The Board's failure to advise Dr. Anagnost that one or more Board Members had already concluded his guilt prior to any hearing on the merits of his case.

(J) The Board's willful misuse of the Emergency Hearing process after acknowledging that the reason for which Dr. Anagnost was there (an allegation of fraud) was not a proper purpose for an Emergency Hearing.

(K) Upon information and belief, Defendants Brooks, Sullivan and/or Graves willfully abused the Board's process as it relates to Dr. Anagnost, as well as other doctors who have been investigated by the Board, resulting in their own personal financial benefit.

136. As a result of the Board Defendants' willful, intentional and improper use of the Board's process, Dr. Anagnost has been damaged.

137. In addition, the above-described conduct of Defendants rises to the level of willful, wanton, heinous, grossly negligent, or reckless conduct for which they should be punished by an award to Dr. Anagnost of exemplary and punitive damages in an amount sufficient, taking into consideration the assets and worth of Defendants, to render the consequences of their conduct an example to themselves and others. In this regard, and under the specific facts of this case, Defendants are liable for both Category I and Category II punitive damages, as described in 23 O.S. §9.1. Under Category I, Defendants plainly acted in reckless disregard of the rights of others, thereby entitling Dr. Anagnost to a potential jury award in the amount equal to the actual damages awarded by the jury for Defendants' abusive conduct. Defendants are also liable for Category II punitive damages because they acted intentionally and with malice toward others. Accordingly, Dr. Anagnost seeks punitive damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) including, but not limited to, the increased financial benefit derived by Defendants, because Defendants' acts or omissions were made with the intent to cause harm and/or were in reckless disregard and of Dr. Anagnost's rights. Plaintiff reserves his right to seek Category III punitive damages as additional information becomes known.

WHEREFORE, premises considered, Dr. Anagnost prays for actual and punitive damages against each of the Board Defendants in an amount in excess of Seventy-Five Thousand

Dollars ($75,000.00), attorney fees, costs, and any other relief this Court deems just and appropriate.

THIRD CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

138. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 137 above and further alleges and states as follows:

139. Defendants' intentional acts or omissions as set forth herein constitute actions totally intolerable in a civilized society, and Dr. Anagnost seeks actual damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) for the emotional pain and suffering he has incurred.

140. In addition, the above-described conduct of Defendants rises to the level of willful, wanton, heinous, grossly negligent, or reckless conduct for which they should be punished by an award to Dr. Anagnost of exemplary and punitive damages in an amount sufficient, taking into consideration the assets and worth of Defendants, to render the consequences of their conduct an example to themselves and others. In this regard, and under the specific facts of this case, Defendants are liable for both Category I and Category II punitive damages, as described in 23 O.S. §9.1. Under Category I, Defendants plainly acted in reckless disregard of the rights of others, thereby entitling Dr. Anagnost to a potential jury award in the amount equal to the actual damages awarded by the jury for Defendants' intentional conduct. Defendants are also liable for Category II punitive damages because they acted intentionally and with malice toward others. Accordingly, Dr. Anagnost seeks punitive damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) including, but not limited to, the increased financial benefit derived by Defendants, because Defendants' acts or omissions were made with the intent to cause harm and/or were in reckless disregard and of Dr. Anagnost's

rights. Plaintiff reserves his right to seek Category III punitive damages as additional information becomes known.

WHEREFORE, premises considered, Dr. Anagnost prays for actual and punitive damages against each Defendant in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00), attorney fees, costs, and any other relief this Court deems just and appropriate.

FOURTH CAUSE OF ACTION

NEGLIGENCE

141. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 140 above, as if more fully stated out herein, and would further allege and state as follows:

142. Defendants OSBI, TSSH, Baird, Boxell, LLC, Boxell, Fell, Tomecek, P.L.C., and Tomecek, acted negligently in the manner and substance of the medical opinions they offered related to Dr. Anagnost's care and treatment of patients because said opinions failed to meet the requisite standard of care.[16] These Defendants did not understand or have expertise in MISS procedures or treatments but nonetheless offered opinions that Dr. Anagnost's procedures and treatments were fraudulent and/or beneath the standard of care. These Defendants were negligent in arriving at these opinions.

143. The Defendants OSBI, TSSH, Baird, Boxell, LLC, Boxell, Fell, Tomecek, P.L.C., and Tomecek, owed Dr. Anagnost a duty to meet the requisite standard of care when arriving at such opinions when it was foreseeable that such negligence would result in damage to the Dr. Anagnost.

[16] Plaintiff's earlier claim for negligence against these Defendants was dismissed by the Court on January 17, 2014, (file-stamped February 7, 2014) in response to Defendants' Motion to Dismiss. However, Plaintiff has substantially amended and revised this cause of action herein.

144. The Defendants Fell and Tomecek, owed Dr. Anagnost a duty to meet the requisite standard of care when they represented themselves as experts in MISS procedures, including the reading of radiological films from MISS procedures, when it was foreseeable that such negligence would result in damage to Dr. Anagnost.

145. The Defendants OSBI, TSSH, Baird, Boxell, LLC, Boxell, Fell, Tomecek, P.L.C., and Tomecek, owed Dr. Anagnost a duty to meet the requisite standard of care when arriving at opinions about Dr. Anagnost that was later shared with patients and plaintiff's malpractice lawyers when it was foreseeable that such negligence would result in damage to Dr. Anagnost.

146. The Defendants Sullivan and Brooks owed a personal duty to Dr. Anagnost not to use the information they learned about him at the Board for their personal gain. Moreover, it was foreseeable that Sullivan and Brooks gaining access to this confidential investigative information and using it against Dr. Anagnost in lawsuits would unfairly damage Dr. Anagnost.[17] These Defendants, while acting outside of their official duties as investigator and Board Member, negligently and/or intentionally gained access to confidential investigatory documents for their own personal gain.

147. Defendant Graves, who was a contractor for the Board, had a duty to fairly and honestly investigate Dr. Anagnost's disciplinary proceeding before the Board. Any departure from this duty by Defendant Graves would foreseeably damage Dr. Anagnost. Instead of

[17] This foreseeability was made clear by then Oklahoma State Senator Scott Pruitt (elected the Attorney General of Oklahoma in November, 2010) who in June of 2003 criticized Defendant Brooks' appointment to the Board and stated, "The appointment of Gary Brooks or, for that matter, any trial lawyer who makes his living suing doctors to the medical licensure board creates an outrageous, unacceptable conflict of interest." In the same article then Lt. Governor Marry Fallin stated that *"[T]he appointment of ...lawyer Gary Brooks to the OSMBLS [Board]...is like appointing a fox to oversee the henhouse."* (See article attached hereto as Exhibit "16", Killackey, Jim, "Attorney's post on medical board draws criticism Having malpractice lawyer on panel benefits patients, governor counters," Daily Oklahoman, published June 24, 2003; http://newsok.com/attorneys-post-on-medical-board-draws-criticismbrhaving-malpractice-lawyer-on-panel-benefits-patients-governor-counters/article/1934604). [Emphasis added].

observing these basic duties of fairness and honesty, Defendant Graves negligently and or intentionally investigated Dr. Anagnost, including the intentional manipulation of evidence against Dr. Anagnost. Further, his investigative pursuit of Dr. Anagnost was so overzealous as to violate any reasonable standard for conduct of a lawyer hired by the Board to investigate a subject doctor. This included intentionally ignoring exculpatory evidence and the continued pursuit of Dr. Anagnost without any credible evidence of wrongdoing by Dr. Anagnost for his personal gain which upon information and belief involved payments to Defendant Graves from the Board in the amount of $550,000 or more.

148. As a direct and proximate result of the negligence of the Defendants, Dr. Anagnost has been damaged.

149. Dr. Anagnost's damages were caused by the negligence of Defendants and he in no way contributed to them.

150. In addition, should the Court and Jury find that the above-described conduct of Defendants rises to the level of willful, wanton, heinous, grossly negligent, or reckless conduct for which they should be punished by an award to Dr. Anagnost of exemplary and punitive damages in an amount sufficient, taking into consideration the assets and worth of Defendants, to render the consequences of their conduct an example to themselves and others. In this regard, and under the specific facts of this case, Defendants are liable for both Category I and Category II punitive damages, as described in 23 O.S. §9.1. Under Category I, Defendants plainly acted in reckless disregard of the rights of others, thereby entitling Dr. Anagnost to a potential jury award in the amount equal to the actual damages awarded by the jury for Defendants' negligent conduct. Defendants are also liable for Category II punitive damages because they acted intentionally and with malice toward others. Accordingly, Dr. Anagnost seeks punitive damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00), including, but not

limited to, the increased financial benefit derived by Defendants, because Defendants' acts or omissions were made with the intent to cause harm and/or were in reckless disregard and of Dr. Anagnost's rights. Plaintiff reserves his right to seek Category III punitive damages as additional information becomes known.

WHEREFORE, premises considered, Dr. Anagnost prays for actual and punitive damages against each Defendant in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00), attorney fees, costs, and any other relief this Court deems just and appropriate.

FIFTH CAUSE OF ACTION

DEFAMATION (SLANDER AND/OR SLANDER *PER SE*) – AGAINST DEFENDANT BAIRD

151. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 150 above and further alleges and states as follows:

152. Slander is defined, at 12 O.S. §1442, as "a false and unprivileged publication, other than libel," that imputes criminal activity to a person; "[t]ends directly to injure him" in his business or profession; or that "by natural consequences, causes actual damage." Slander involves publication of defamatory matter by means of spoken words, gestures, or communication by means other than written or printed words. *See Sturgeon v. Retherford Publications, Inc.*, 1999 OK CIV APP 78, ¶13, 987 P.2d 1218 citing Restatement (Second) of Torts, §568(2) (1977).

153. On April 29, 2013, the Dr. Anagnost discovered that Baird had made, among others, the following false, unprivileged communications imputing criminal activity about Dr. Anagnost when he told a patient's family:[18]

[18] This deposition was taken in the case of *John Burckhalter et al. v. Steven G. Anagnost, M.D., et al.*, Case No. CJ-2011-5014, DC Tulsa County.

(a) To look up the numerous lawsuits on file on the internet against Dr. Anagnost;

(b) Indicated to them that he was a "bad doctor who hurt people";

(c) He "indicated that he would not send any of his patients to see Dr. Anagnost and that he was not a very good doctor"; and

(d) Made it clear to them that he did not like Dr. Anagnost and "wouldn't send his worst enemy to go and see Dr. Anagost."

154. Upon information and belief, the Defendants, both individually and collectively, have communicated and continue to communicate false and/or malicious and unprivileged materials and statements that have directly injured Dr. Anagnost, and he reserves the right to conduct discovery and seek the admissibility of said evidence and/or further plead allegations.

155. The verbal communications or statements by Defendant Baird contained materially false allegations against Dr. Anagnost.

156. These false allegations were made in bad faith, with malice, and with an ulterior and illicit purpose.

157. As a direct and proximate result of the Defendants' communicating or making the false statements, Dr. Anagnost has been damaged in an amount to be proved at trial in excess of Seventy-Five Thousand Dollars ($75,000.00).

158. In addition, the above-described conduct of Defendants rises to the level of willful, wanton, heinous, grossly negligent, or reckless conduct for which they should be punished by an award to Dr. Anagnost of exemplary and punitive damages in an amount sufficient, taking into consideration the assets and worth of Defendants, to render the consequences of their conduct an example to themselves and others. In this regard, and under the specific facts of this case, Defendants are liable for both Category I and Category II punitive

damages, as described in 23 O.S. §9.1. Under Category I, Defendants plainly acted in reckless disregard of the rights of others, thereby entitling Dr. Anagnost to a potential jury award in the amount equal to the actual damages awarded by the jury for Defendants' defamatory conduct. Defendants are also liable for Category II punitive damages because they acted intentionally and with malice toward others. Accordingly, Dr. Anagnost seeks punitive damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) because Defendants' acts or omissions were made with the intent to cause harm and/or were in reckless disregard and of Dr. Anagnost's rights. Plaintiff reserves the right to seek Category III punitive damages as additional information becomes known.

WHEREFORE, premises considered, Dr. Anagnost prays for actual and punitive damages against each Defendant in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00), attorney fees, costs, and any other relief this Court deems just and appropriate.

SIXTH CAUSE OF ACTION

CLAIM FOR RELIEF AGAINST DEFENDANTS STATE OF OKLAHOMA, EX REL. THE OKLAHOMA BOARD OF MEDICAL LICENSURE AND SUPERVISION, LYLE KELSEY, ERIC FRISCHE, M.D., GAYLA JANKE, RANDY SULLIVAN, GARY L. BROOKS, AND DAN GRAVES FOR VIOLATIONS OF PLAINTIFF'S RIGHTS UNDER THE OKLAHOMA CONSTITUTION (OKLAHOMA CONSTITUTION CLAIM)

159. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 158 above and further alleges and states as follows:

160. Defendants Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves as Board employees and/or contractors are charged with being required to follow the Board's policies, procedures, regulations, statutes, ordinances and customs, the laws of the State of Oklahoma, and the Oklahoma Constitution.

161. These Defendants, as public officers, were required to take, and presumably did take the Oklahoma Constitutional Oath, in which they agreed to support, obey and defend the

Constitution of the United States and the Constitution of the State of Oklahoma and they would not knowingly receive, directly, or indirectly, any money or valuable thing for the performance or nonperformance of any act or duty pertaining to their office, other than the compensation allowed by law. Each was required to swear or affirm to faithfully discharge these duties to the best of their ability.

162. Defendants Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves willfully violated Dr. Anagnost's statutory and Constitutional rights that were clearly established at the time of the violation.

163. Defendants Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves each, as any reasonable person in their position would, knew that they were obligated to afford all rights provided by Oklahoma law and the Oklahoma Constitution to Dr. Anagnost in the Board investigation and proceedings against him. These Defendants willfully violated several of Dr. Anagnost's Constitutional and statutory rights all as set forth below. These violations were both procedural and substantive.

164. Defendants Board Kelsey, Frische, Janke, Sullivan, Brooks, and Graves also willfully violated various known constitutional and statutory rights of Dr. Anagnost during the Board investigation and proceeding against him. These Constitutional and statutory rights include, but are not limited to his inherent rights as prohibited by Art. 2, §2 (Inherent rights) [19], Art. 2, §9 (Excessive bail or fines – Cruel or unusual punishment), Art. 2 §30 (Unreasonable searches or seizures), Art. 2 §7 (Due process of law), Art. 2 §23 (Private Property – Taking or damaging for private use) and/or Art. 2 §6 (Speedy and certain remedy) of the Oklahoma Constitution, the

[19] All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry.

administrative codes governing the Board, the Oklahoma Discovery Code, Oklahoma's Open Meetings Act, Oklahoma's Open Records Act and Oklahoma Common Law.

165. For example, Dr. Anagnost's medical license is a constitutionally protected property interest which must be awarded due process. *See* Okla. Const. Art. 2 §7, and *Johnson v. Board of Governors or Registered Dentists*, 1996 OK 41, 913 P.2d 1339, 1345. Dr. Anagnost's right to due process concerning his medical license was clearly established at all relevant times herein. These Defendants knew or reasonably should have known of Dr. Anagnost's right to due process in matters concerning his medical license at all relevant times herein, but violated his constitutional right to due process, both procedurally and substantively.

166. Defendants Kelsey, Frische, Janke, Sullivan, Brooks, and Graves at relevant times material hereto were acting within their scopes of employment or contract at the Board and in concert and under color of state law, policy, custom, or usage. At all materials times herein, the acts of these employees and/or contractors were fairly and naturally incident to the Board's business and were done while these employees and/or contractors were engaged upon the Board's business. This is the case even if these Defendants acted mistakenly or ill-advisedly with a view towards the furtherance of the Board's interest or from some impulse of emotion which naturally grew out of or is incident to their attempt to perform the Board's interest. *Bosh v. Cherokee County Building Authority*, 2013 OK 9, ¶ 12, 305 P.3d 994, 999.

167. Defendant Board was directly obligated to afford all rights provided by the Oklahoma Constitution to Dr. Anagnost in the Board investigation and proceedings against him. The Board, however, caused constitutional violations through decisions it officially adopted and promulgated through its Officers and Board Members, and processes it encouraged, permitted to exist, or employed. The Board is therefore subject to direct liability for the constitutional violations it caused.

168. The specific ways in which these Defendants willfully violated Dr. Anagnost's statutory and State Constitutional rights, include, but are not limited to, the following:

(a) Willfully failing to notify Dr. Anagnost of subpoenas to third parties, in violation of 59 Okla. Stat. § 504 and the Oklahoma Discovery Code;

(b) Willfully failing to provide Dr. Anagnost adequate time to prepare for the Board's efforts to suspend his medical license on an "emergency basis";

(c) Willfully misusing the Emergency Hearing process after acknowledging that the reason for which Dr. Anagnost was there (an allegation of fraud) was not a proper purpose for an Emergency Hearing;

(d) Willfully and unilaterally seeking and obtaining extensions of the Board Hearing against Dr. Anagnost without providing Dr. Anagnost an opportunity to be heard on the issue;

(e) Willfully using the unilaterally obtained extension of the Board hearings for the improper purpose of damaging Dr. Anagnost's professional career;

(f) Willfully abusing the Board's process as it relates to Dr. Anagnost, for personal financial gain;

(g) Willfully concealing from Dr. Anagnost the existence of Defendant Sullivan as a special prosecutor in his case and the conflict of interest that it created;

(h) Willfully misrepresenting that Defendant Brook's had no role at the Board relating to Dr. Anagnost's proceeding, when in fact he was knee deep in the investigation reviewing records and sharing information with the Board's investigator;

(i) Willfully failing to protect Dr. Anagnost from the conflicts of interest presented by Defendant's Sullivan and Brooks;

(j) Willfully sharing information with Board members in an effort to bias the Board members prior to a hearing on the merits;

(k) Willfully failing to advise Dr. Anagnost that one or more Board Members had already concluded his guilt prior to any hearing on the merits of his case;

(l) Willfully failing to adequately investigate the allegations of wrongdoing by Dr. Anagnost and ignoring uncontroverted medical evidence that did not substantiate any misconduct by Dr. Anagnost;

(m) Willfully conspiring with Plaintiff's competitors to investigate and prosecute, discipline, and/or revoke Dr. Anagnost's medical license despite the

uncontroverted medical evidence that the Board could not carry its burden of proof against Dr. Anagnost;

(n) Willfully creating, contriving, manufacturing, fabricating, and thereby relying upon false medical evidence without scientific basis;

(o) Willfully participating in the wrongful prosecution of Dr. Anagnost for personal and/or financial gain;

(p) Willfully violating the Oklahoma Open Meeting Act, 25 O.S. §301 et seq.;

(q) Willfully violating the Oklahoma Open Records Act, 51 O.S. §24A.5 et seq.;

(r) Willfully concealing and/or withholding exculpatory evidence or information favorable to Dr. Anagnost;

(s) Willfully disregarding exculpatory evidence or information favorable to Dr. Anagnost;

(t) Willfully maintaining partiality, bias, or prejudice against Dr. Anagnost;

(u) Willfully conducting proceeding and investigations that it knew were not neutral and or partial;

(v) Not affording protection to Dr. Anagnost against arbitrary and unreasonable administrative actions;

(w) Wrongfully causing Dr. Anagnost to enter into a Consent Order without probable cause and due process; and

(x) Wrongfully causing Dr. Anagnost to enter into a Settlement Agreement without probable cause and due process;

(y) Board Members meting individually with other members outside of a public meeting to obtain a consensus on an item(s) of business in violation of the Oklahoma Open Meetings Act;

(z) The Board Staff repeatedly failed to place on the Board's agenda their intent to go into executive session on specific individual matters, including those of Dr. Anagnost.

(aa) Threatening Dr. Anagnost with a procedure wherein the Board's legal advisor would act as the hearing examiner and would hear all the evidence outside the presence of the Board Members. The hearing officer would then summarize the evidence and present it to the Board Members. The Board was required to consider all the testimony presented, not a trial examiner's abbreviated summary, which, of course, deprives the Board Members of listening to the actual witnesses,

judging their credibility and demeanor and deprives the Board Members of their ability to fairly decide the issues surrounding Dr. Anagnost. 59 Okla. Stat. § 506.

169. The conduct of these Defendants (Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves) occurred while acting incidental to and done in furtherance of the business of the Board and was objectively unreasonable in light of clearly established law at the time it took place.

170. As a direct and proximate result of Defendants' (Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves) violations of Board policies and procedures and/or state-mandated policies and procedures and the laws of the State of Oklahoma, Dr. Anagnost's inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of his own industry pursuant to Oklahoma Constitutional Art. 2, §2 (Inherent rights), has been violated, as described herein.

171. As a direct and proximate result of Defendants' (Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves) violations of Board policies and procedures and/or state-mandated policies and procedures and the laws of the State of Oklahoma, Dr. Anagnost's right to not be subjected to excessive fines, or cruel or unusual punishment inflected pursuant to Art. 2, §9 (Excessive bail or fines – Cruel or unusual punishment) has been violated. For example, the Defendants, while acting incidental to and done in furtherance of the business of the Board, subjected Dr. Anagnost to excessive fines, and cruel or unusual punishment which is evidenced by the September 12, 2013, Consent Order and Settlement Agreement.

172. As a direct and proximate result of Defendants' (Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves) violations of Board policies and procedures and/or state-mandated policies and procedures and the laws of the State of Oklahoma, Dr. Anagnost's right to be secure in his person against unreasonable searches or seizures pursuant to Oklahoma Constitutional Art. 2 §30 (Unreasonable searches or seizures) has been violated. For example, the Defendants, while acting incidental to and done in furtherance of the business of the Board, used unlawful and

excessive force against the Plaintiff by unreasonably searching and/or seizing Dr. Anagnost's person (i.e., his license to practice medicine).

173. As a direct and proximate result of Defendants' (Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves) violations of Board policies and procedures and/or state-mandated policies and procedures and the laws of the State of Oklahoma, Dr. Anagnost's Oklahoma Constitutional rights to not be deprived of life and/or liberty without due process pursuant to Art. 2 §7 of the Oklahoma Constitution was violated. For example, the Defendants have a duty to disclose all information known to them, to not withhold exculpatory evidence, to not fabricate evidence, and not violate the Oklahoma Open Meeting Act, 25 O.S. §301 et seq. and the Oklahoma Open Records Act, 51 O.S. §24A.5 et seq.

174. As a direct and proximate result of Defendants' (Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves) violations of Board policies and procedures and/or state-mandated policies and procedures and the laws of the State of Oklahoma, Dr. Anagnost's Oklahoma Constitutional rights to not be deprived of life and/or liberty without due process pursuant to Art. 2 §6 of the Oklahoma Constitution was violated, as set forth herein.

175. As a direct and proximate result of Defendants' (Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves) violations of Board policies and procedures and/or state-mandated policies and procedures and the laws of the State of Oklahoma, Dr. Anagnost's Oklahoma Constitutional rights to not be deprived of life and/or liberty without due process pursuant to Art. 2 §23 of the Oklahoma Constitution was violated, as set forth herein.

176. Defendants, while acting in concert, violated Dr. Anagnost's Oklahoma Constitutional rights (both procedural and substantive), directly and proximately caused Dr. Anagnost to endure severe and permanent mental pain and suffering and emotional distress, and he has been damaged in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00).

The Oklahoma Governmental Tort Claims Act does not limit the monetary recovery from these defendants in any way. To do otherwise would render the constitution protections afforded the citizens of this State ineffective and a nullity. *Bosh* at ¶ 23. The nature of the Defendants' conduct may justify the submission of the issue of punitive damages to the jury in order to punish the Defendants and to deter the Defendants and others similarly situated from engaging in like conduct in the future.

SEVENTH CAUSE OF ACTION

CLAIM FOR RELIEF AGAINST DEFENDANT STATE OF OKLAHOMA, EX REL., THE OKLAHOMA BOARD OF MEDICAL LICENSURE AND SUPERVISION - INJUNCTIVE, AND/OR EQUITABLE RELIEF AS TO THE CONSENT ORDER AND RELEASE

177. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 176 above and further alleges and states as follows:

178. Based on undue influence, coercion, intimidation, and the fraudulent deceitful conduct of the Board and its functionaries, and otherwise unlawful acts or omissions committed by the Defendants, Dr. Anagnost seeks a judicial determination: (1) setting aside the September 12, 2013, Consent Order and Release between the Board and Dr. Anagnost; and (2) if the Consent Order is set aside by this Court, to dismiss with prejudice any further Board investigation and prosecution of Dr. Anagnost as the Board's process against him is so tainted by bias, unfairness, and the absence of due process that Dr. Anagnost cannot obtain a fair and impartial adjudication before the Board.

179. The Consent Order and the Release are contracts. As with any contract, the Consent Order and Release may be set aside if they were induced or procured by undue influence, coercion, intimidation, and fraud, as they were here, and must be deemed void.

180. The factual basis to support Dr. Anagnost's claim that the Consent Order and Release were obtained by undue influence, coercion, intimidation, and fraud or otherwise

unlawful acts or omissions committed by the Defendants is set forth herein. At the time Dr. Anagnost entered into the Consent Order and Release he believed that he could not get a fair hearing given the conduct of the Board to date and it was the only way he was going to be able to maintain his medical license, at least before this Board.

181. In June of 2003, then Oklahoma State Senator Scott Pruitt (elected the Attorney General of Oklahoma in November, 2010) criticized Defendant Brooks' appointment to the Board and stated, "The appointment of Gary Brooks or, for that matter, any trial lawyer who makes his living suing doctors to the medical licensure board creates an outrageous, unacceptable conflict of interest." In the same article then Lt. Governor Marry Fallin stated that "[T]he appointment of ...lawyer Gary Brooks to the OSMBLS [Board]...is like appointing a fox to oversee the henhouse." (See article attached hereto as Exhibit "16", Killackey, Jim, "Attorney's post on medical board draws criticism Having malpractice lawyer on panel benefits patients, governor counters," Daily Oklahoman, published June 24, 2003; http://newsok.com/attorneys-post-on-medical-board-draws-criticismbrhaving-malpractice-lawyer-on-panel-benefits-patients-governor-counters/article/1934604). Despite this belief, at all times relevant herein, the Oklahoma Attorney General's office was aware of and acquiesced in the wrongful acts or omissions being perpetrated by the Defendants and intentionally prevented or concealed the full disclosure of said wrongdoing to Dr. Anagnost and others. See paragraphs 1 - 180, above and Exhibits 6, 7, and 8, attached hereto.

182. Upon information and belief, as of September 12, 2013, the Oklahoma Attorney General's office was aware of some or all of the evidence supporting the fraudulent, deceitful or otherwise unlawful conduct alleged herein, and knowingly conspired, acquiesced, or induced Dr. Anagnost to enter into the Consent Order and Release between the Board and Dr. Anagnost so it could, among other things, obtain the Release from Dr. Anagnost to dismiss his Petition for

Injunctive and Declaratory Relief filed in Oklahoma County, State of Oklahoma, in the case of *Steven C. Anagnost, M.D. v. Oklahoma Board of Medical Licensure and Supervision*, Case No. CJ-2013-4141.

183. By and through Defendants' fraud and/or deceit, Defendants intended to induce Dr. Anagnost to act in a manner to his detriment.

184. Defendants' misrepresentations and omissions as discussed herein were made with knowledge of their falsity and were made willfully and made with the intent to deceive Dr. Anagnost to the betterment of the Defendants.

185. Dr. Anagnost justifiably and reasonably relied on Defendants' omissions and representations and suffered damages as a proximate result of such actions.

186. Dr. Anagnost would not have agreed to enter into the September 12, 2013, Consent Order and Release had it not been for fraud, deceit, undue influence, and coercion of the Defendants.

187. Moreover, the Board held a position of authority over Dr. Anagnost and used this authority to gain a grossly oppressive and unfair advantage over Dr. Anagnost's necessity of his livelihood and distress of the potential loss of his livelihood. This undue influence wrongfully caused Dr. Anagnost to enter into the Consent Order and Release, when he would not have otherwise done so.

188. As a result of Defendants' false and fraudulent omissions and misrepresentations, undue influence, coercion and other wrongful conduct, the Plaintiff has incurred damages, including, but not limited to, financial or economic harm, emotional distress, frustration, and/or embarrassment.

EIGHTH CAUSE OF ACTION

CLAIM AGAINST ALL DEFENDANTS FOR COMMON LAW CIVIL CONSPIRACY

189. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 188 above and his Petition filed November 7, 2013, as if more fully stated herein, and would further allege and state as follows:

190. All Defendants conspired to commit unlawful acts or commit lawful acts by unlawful means for an independently unlawful purpose or use an independently unlawful means. The *acts* complained of and the *means employed* by the Defendants were not lawful or otherwise constitutionally protected. *Brock v. Thompson*, 1997 OK 127, 948 P.2d 279, ¶39.

191. The factual basis to support Plaintiff's claim for civil conspiracy committed by the Defendants is set forth herein, which includes, the Defendant Neurosurgeons, OSBI, and TSSH conspired among themselves to achieve the purpose of their conspiracy which was to unlawfully remove Dr. Anagnost as an Oklahoma licensed physician. At some later point, the Board joined the conspiracy by assisting the original conspirators in their goal of removing Dr. Anagnost as an Oklahoma licensed physician. In furtherance of this conspiracy the Defendants committed the unlawful acts set forth in this Amended Petition.

192. As a direct and proximate result of the aforesaid acts of common law civil conspiracy, the Dr. Anagnost has been damaged in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00).

NINTH CAUSE OF ACTION

FRAUD/DECEIT

193. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 192 above and further alleges and states as follows:

194. Dr. Anagnost hereby asserts a claim for Fraud/Deceit against the Defendants Kelsey, Frische, Janke, Sullivan, Brooks, and Graves.

195. That the Defendants Board, Kelsey, Frische, Janke, Sullivan, Brooks, and Graves improperly used their position or association with the Board, as described herein, which amounts to an abuse of the legal system. This resulted in grave harm to, among other things, Dr. Anagnost's reputation and medical practice.

196. The factual basis to support Dr. Anagnost's claim for fraudulent, deceitful or otherwise unlawful acts or omissions committed by the Defendants is set forth herein and also in the affidavits of Dr. Anagnost, Mr. Smith and Ms. Vaughn which are attached hereto as Exhibits 6, 7 and 8, respectively.

197. By and through Defendants' fraud and/or deceit, Defendants Kelsey, Frische, Janke, Sullivan, Brooks, and Graves intended to induce Dr. Anagnost to act in a manner to his detriment.

198. Dr. Anagnost justifiably and reasonably relied on Defendants Kelsey's, Frische's, Janke's, Sullivan's, Brooks', and Graves' omissions and representations and suffered damages as a proximate result of such actions.

199. Dr. Anagnost would not have agreed to enter into the September 12, 2013, Consent Order and Release had it not been for fraudulent, deceitful or otherwise unlawful conduct of the Defendants.

200. As a result of Defendants Board, Kelsey's, Frische's, Janke's, Sullivan's, Brooks', and Graves' false and fraudulent omissions and misrepresentations, Dr. Anagnost has incurred damages, including, but not limited to, financial or economic harm, emotional distress, frustration, and/or embarrassment.

201. Defendants Kelsey's, Frische's, Janke's, Sullivan's, Brooks', and Graves' misrepresentations and omissions were made with knowledge of their falsity and were made willfully and made with the intent to deceive Dr. Anagnost to the betterment of the Defendants, both financial and otherwise, entitling Dr. Anagnost to an award for punitive damages.

TENTH CAUSE OF ACTION

CLAIM FOR RELIEF AGAINST DEFENDANT STATE OF OKLAHOMA, EX REL., THE OKLAHOMA BOARD OF MEDICAL LICENSURE AND SUPERVISION - INJUNCTIVE, AND/OR EQUITABLE RELIEF AS TO FUTURE CONDUCT

202. Dr. Anagnost adopts and incorporates herein paragraphs 1 through 201 above and further alleges and states as follows:

203. This Board advertises and takes great pride in the fact that they have been one of the most aggressive medical licensure boards in the United States in taking disciplinary action against doctors. This would perhaps be acceptable if this Board did not do so at the expense of violating the respondent doctors' procedural and substantive due process rights all as set forth in this Amended Petition.

204. This Board has repeatedly disregarded Oklahoma doctors' constitutional rights and exhibited utter indifference to the substantive and procedural due process rights of Oklahoma doctors.

205. Due to the Board's pervasive violations of State Constitutional rights, as outlined above, Dr. Anagnost requests this Court enter a permanent injunction against the Board as follows:

a) Enjoining the Board from further violations of the Oklahoma Open Meeting Laws;

b) Enjoining the Board from continuing to allow conflicts of interests among its staff, board members and contractors, as outlined in this Amended Petition;

c) Enjoining the repeated violation of the rights of respondent doctors by month after month publishing the "alleged" misconduct of a respondent physician without timely pursuing a final hearing or other resolution;

d) Enjoin the release of confidential investigatory information about respondent doctors to the press and/or lawyers that have not entered appearances in the disciplinary proceeding, and others;

e) Enjoin the constant efforts by the Board to unconstitutionally reverse the burden of proof from the Board's investigators and prosecutors to the respondent doctors;

f) Enjoin efforts by the Board and its legal advisors to permit its legal advisors to hear the evidence relating to a respondent doctor's case instead of the Board members personally hearing all the evidence, as required;

g) Enjoin the Board from soliciting claims and complaints from lawyers and competitors of the respondent doctor;

h) Enjoin the Board from delegating to its staff the duty to initiate a complaint against a respondent doctor;

i) Enjoin the Board from issuing subpoenas in a respondent doctor's case without notice to the respondent doctor as required by 59 Okla. Stat.§ 504;

j) Enjoin Board members from receiving information about a respondent doctor outside of a Board hearing when and where such evidence is to be exclusively received;

k) Enjoin the Board from allowing a respondent's competitors to be the sole evidence upon which the Board relies in its attempts to revoke a respondent doctors' medical license;

l) Enjoin the Board's members and its investigators and other agents from assisting medical malpractice plaintiff's lawyers in their civil cases against doctors who are the subject of a Board proceeding;

m) Enjoin the Board from coercing settlements and releases from respondent doctors when the Board knows that the respondent doctors are afraid and intimidated that if they don't go along with the settlement agreements and releases that they will continue to be pursued by the Board, even without supporting evidence;

n) Enjoin the Board from fraudulently inducing respondent doctors from entering into release of the Board and Consent Orders by intentionally deceiving the respondent doctors, such as Dr. Anagnost regarding vital facts that respondent doctors should be aware of at the time of any release of the Board or the entry of any Consent order; moreover, the Board should be enjoined from intentionally omitting materials facts, hiding and failing to disclose documents and other under-handed practices to induce respondent doctors to sign releases of the Board and Consent Orders;.

o) Enjoin the Board from intentionally providing inadequate notice to respondent doctors of emergency and other hearings, designed to revoke or suspend a doctor's medical licenses;

p) Mandatorily require the Board to provider each and every respondent doctor with all exculpatory or favorable evidence the Board has, discovers or should request regarding the respondent doctor and the matters at issue.

WHEREFORE, Dr. Anagnost seeks judgment against each Defendant based on the causes of actions set forth above in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) for actual or compensatory damages and seeks punitive damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00), injunctive and equitable relief (as set

forth herein) attorney fees, court costs, and for such other and further relief as to which the Court determines Dr. Anagnost is entitled.

The Plaintiff reserves the right to further amend or plead his causes of action against the named Defendants and/or to name additional parties upon the discovery of additional evidence.

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JURY TRIAL DEMANDED
ATTORNEY LIEN CLAIMED

CERTIFICATE OF SERVICE

On this 12th day of December, 2014, a true and correct copy of the within and foregoing was served upon the following via U.S. Mail:

Walter D. Haskins, Esq. Rachael Hughes, Esq. Meredith Lindaman, Esq. Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco 525 South Main, Suite 1500 Tulsa, Oklahoma 74103-4524	Hinton Walters 100 N. Broadway Ave., Ste. 2730 Oklahoma City, OK 73102
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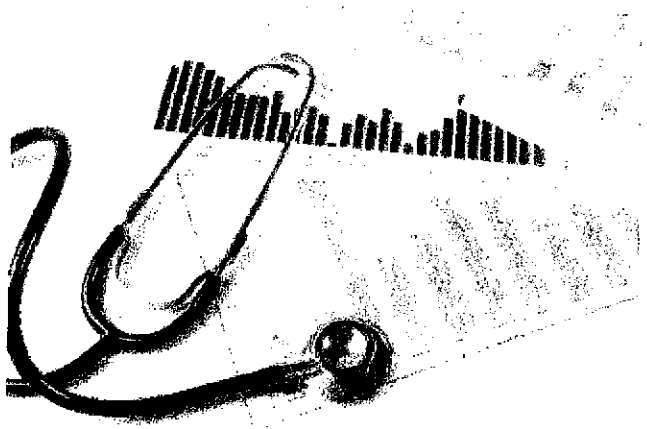
JASON A. RYAN

SPINE SURGERY

CLINICAL METRICS

This is a report examining the elements of clinical competence in spinal surgery. It employs statistical analysis routines and peer-reviewed literature. It presents absolute and rate data for complications, morbidity, length of hospital stays, cost of surgical procedures, hospital readmissions and post-surgical recovery.



EXHIBIT
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INTRODUCTION

PURPOSE

This report is to be used as a tool to fairly evaluate the complex assertions concerning the surgical practice of Steven Anagnost, MD. This analysis will present data that creates a clinical and practical context for the Board to consider each clinical complaint.

The data examines a host of quality metrics associated with Dr. Anagnost's practice over time. The data is from independent third parties and peer reviewed professional publications.

REPORT AUTHOR

Mr. Michael Lapolla prepared this report and analysis. He is an experienced Oklahoma-based health care administrator and health policy researcher.

He has held responsible positions in Oklahoma health care administration, health policy research, medical education and graduate public health education for 37 years. From 1987 – 2003 he was Oklahoma's only full-time health services and policy researcher. During 2003 – 2010 he taught health policy research at the University of Oklahoma College of Public Health while continuing health services and policy research.

As such, his experience is not limited to biostatistics. He is a researcher who is educated and experienced in using statistics and statistical routines as analytical and evaluative tools.

Mr. Lapolla is a graduate of West Point and earned a Master's in Health Care Administration at Trinity University (San Antonio). He served 18 years with the University of Oklahoma Colleges of Medicine and Public Health; and 10 years with the OSU Center for Health Sciences. From 1987-2003 he established Oklahoma's first Center for Health Policy Research at the Oklahoma Medical Research Foundation. In that role Mr. Lapolla worked with the Oklahoma State Board of Medical Licensure and Supervision to produce the state's most comprehensive physician manpower studies.

Mr. Lapolla has produced over 100 public policy studies and statistical analyses in Oklahoma. He has served public agencies including the State Insurance Department, State Department of Health, State Department of Mental Health and Substance Abuse Services, Oklahoma Health Care Authority, University of Oklahoma and Oklahoma State University.

He has also provided consultant work for major foundations in Oklahoma.

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SUMMARY

Steven Anagnost, MD has maintained a surgical practice in the Tulsa region since 1999. The State Board of Medical Licensure has alleged 13 counts of clinical incompetence & incapacity to practice medicine.

This analysis is to examine Dr. Anagnost's practice outcomes compared to national standards, local peer surgeons and published peer-reviewed studies. The foundation of this analysis will be the 2005 - 2009 time period, extended when appropriate and practical.

- Dr. Anagnost has consistently delivered significantly lower morbidity and complication rates as well as much lower lengths of hospital stay and associated surgical costs.
- Dr. Anagnost was instrumental in organizing, establishing and performing surgery in the Oklahoma Spine and Orthopedic Institute (OSOI) at Hillcrest Medical Center, a major spinal surgery service. The OSOI has received the highest award possible from Health Grades (top 10% nationally) for 2011, 2012 and 2013.
- Dr. Anagnost has produced lower complication rates and better outcomes than the peer-reviewed literature has established as standard and expected.

EXCELLENCE

Dr. Anagnost has been a major contributor to very low surgery complication rates resulting in Hillcrest being deemed a nationally "top 10%" hospital for multiple and consecutive years. Hillcrest is one of only four hospitals in Oklahoma to earn this designation.

PERFORMANCE

Dr. Anagnost's patients clearly experienced significantly fewer complications, shorter hospital stays, less morbidity, and lower costs than both the national standard and local peer surgeons. These data demonstrate that Dr. Anagnost is practicing at a high level compared to both local and national peers.

Dr. Anagnost's patients clearly experienced significantly fewer complications than the national standard for every one of the 17 quarters from the third quarter of 2005 through the third quarter of 2009. These data demonstrate that Dr. Anagnost is practicing at a very high level compared to national peers, and that his performance is not only consistent but also improving.

When the outcomes of his most frequently performed procedures are measured, Dr. Anagnost's patients clearly experienced much less morbidity and fewer complications than the risk and severity adjusted national comparison group.

The data indicates that Dr. Anagnost's patients experienced outcomes that were significantly superior to the national standard.

Dr. Anagnost's readmission rates for both the same and different diagnoses are far lower than the rates of his local peer surgeons.

RESEARCH

New Neurological Deficits: Dr. Anagnost's surgeries have produced risk and severity adjusted complication rates superior to national and local peer surgeons. The data in this section demonstrate the complications experienced by his patients are well within the expected parameters established by the cited peer-reviewed publications.

Reoperation Rates: The need for a second spinal surgery is not proof of a failed initial procedure. Patients should be informed that the likelihood of reoperation following a lumbar spine operation is substantial.

Cauda Equina Syndrome: If Dr. Anagnost performed 467 lumbar cases per year or 3,736 over an 8-year span. Given six cases, the complication incidence rate would be a computed 16 per 1,000 ... or 0.16%. The literature is stating that an incidence rate of 0.10% - 0.20% of CES post lumbar surgery should be expected.

Cage Migration: The movement of hardware is expected and cannot be eliminated. The insertion of hardware during lumbar surgery carries known risk.

Lumbar Stenosis: Risk will significantly increase with age. Evaluations of surgical outcomes must factor age as a consequential factor in immediate and long-term success. Major complications occur at higher frequency in the elderly. These include death, cardiac and respiratory complications, and neurologic deficit.

Adult Spinal Deformity and Complications: Complications will occur related to spinal surgery. These procedures are not without risk. It is noted that 13% of all patients over 70 will experience delirium.

Spine Surgery Risks and Complications: Complications will occur related to spinal surgery. These procedures are not without risk. The "odds" of a reoperation are 1:10 while the odds of infection are 1:50

Mortality Rates in Surgery: Deaths will occur related to spinal surgery. These procedures are not without risk.

CONCLUSION

The quality metrics data, applied literature review, and information in this report indicate that Dr. Anagnost is a skilled practitioner who produces impressive clinical outcomes. Contemporary health policy is struggling to attain better outcomes at lower costs using fewer resources. This data indicates that Dr. Anagnost is clearly a skilled surgeon who delivers these results to the Tulsa and Eastern Oklahoma communities.

Respectfully submitted,

Michael Lapolla

Spine Surgery at Hillcrest Medical Center

EXCELLENCE

Health Grades Spine Surgery Excellence Award™

2013, 2012, 2011: The Spine Surgery Excellence Award recognizes hospitals for superior outcomes in back and neck surgery with or without spinal fusion. These hospitals are in the top 10% of U.S. hospitals with the lowest spine surgery complication rates.

SPINE SURGERY EXCELLENCE

Purpose

The Health Grades award system is a method of comparing the effectiveness of hospitals nationwide. The system evaluates and recognizes hospitals performing spinal surgery. A hospital receiving the Spine Surgery Excellence Award is one that is in the top 10% of hospitals with the lowest spine surgery complication rates.

Dr. Anagnost was instrumental in the development, operation and outcomes (Table 3) of the Oklahoma Spine and Orthopedic Institute at Hillcrest Medical Center in Tulsa. To the extent that the Institute earns Health Grades Excellence awards (Table 4), those outcomes must be associated with Dr. Anagnost.

Data

Clearly Hillcrest in Tulsa has the highest quality services per Health Grades; and clearly Dr. Anagnost (26%) and his partner, Dr. Greg Wilson, (28%) account for more than half (54%) of the surgeries.

"Hospital ratings reports for specific procedures and diagnoses are compiled primarily from Medicare claim data, and include all hospitals that are Medicare participants. Some critics insist that medical records should be used instead of claim records that do not include factors that affect patient outcomes. Ratings are updated yearly, but data is two years old before Medicare releases it. Therefore, the 2011 ratings are derived using data from 2007 to 2009." [14]

Table 3

Spinal Surgeries - Hillcrest Spine and Orthopedic Institute [15]

(* 2012 is January – September)

	Spinal Surgery Volumes				Percentages			
	Anagnost	**Wilson**	**Others**	**Total**	**Anagnost**	**Wilson**	**Others**	**Total**
2007	82	90	167	339	24%	27%	49%	100%
2008	313	342	249	904	35%	38%	28%	100%
2009	295	387	412	1,094	27%	35%	38%	100%
2010	230	237	557	1,024	22%	23%	54%	100%
2011	289	192	458	939	31%	20%	49%	100%
2012*	85	173	437	695	12%	25%	63%	100%
Total	**1,294**	**1,421**	**2,280**	**4,995**	**26%**	**28%**	**46%**	**100%**

Table 4

Health Grades Ratings of Tulsa Hospitals [16]

Back & Neck Surgery (Except Spinal Fusion) Complication Rates

Category	Stars	Actual	Predicted	Cases
Tulsa Spine & Specialty Hospital	5	2.9%	13.1%	519
Hillcrest Medical Center	**5**	**6.9%**	**14.5%**	**145**
Saint Francis Hospital	5	8.6%	14.8%	362
Saint John Medical Center	3	14.3%	15.3%	196
Oklahoma Surgical Hospital	NL	NL	NL	NL

Back & Neck Surgery (Spinal Fusion) Complication Rates

Category	Stars	Actual	Predicted	Cases
Oklahoma Surgical Hospital	5	5.6%	20.6%	216
Hillcrest Medical Center	**5**	**6.3%**	**14.3%**	**333**
Tulsa Spine & Specialty Hospital	5	9.1%	17.9%	375
Saint John Medical Center	3	18.8%	19.5%	271
Saint Francis Hospital	3	20.3%	21.8%	261

Discussion

This data shows that the expected complication rate for Hillcrest for lumbar and cervical fusion is much lower than expected and has attracted national recognition.

Dr. Anagnost and his surgical partner, Dr. Wilson, have accounted for 54% of the spine surgeries at Hillcrest Medical Center. Hillcrest is a multi-year recipient of the national Health Grades Spine Surgery Excellence Award (www.healthgrades.com). There are two award categories: (1) spinal fusion rates – and (2) all except spinal fusion. There are only two hospitals in Tulsa that are recipients of awards in both categories. They are Hillcrest Medical Center and Tulsa Spine & Specialty Hospital. There are only two other hospitals in Oklahoma who are recipients. They are Oklahoma Spine Hospital (OKC) and Comanche County Memorial Hospital (Lawton).

Consider that the metropolitan areas of Denver, Saint Louis and Kansas City have a total of three – with one in each metro area. Additionally, the major metropolitan areas of Texas have a total of eight designated hospitals - Dallas/Fort Worth (2), Houston (4), El Paso (2) and San Antonio (0).

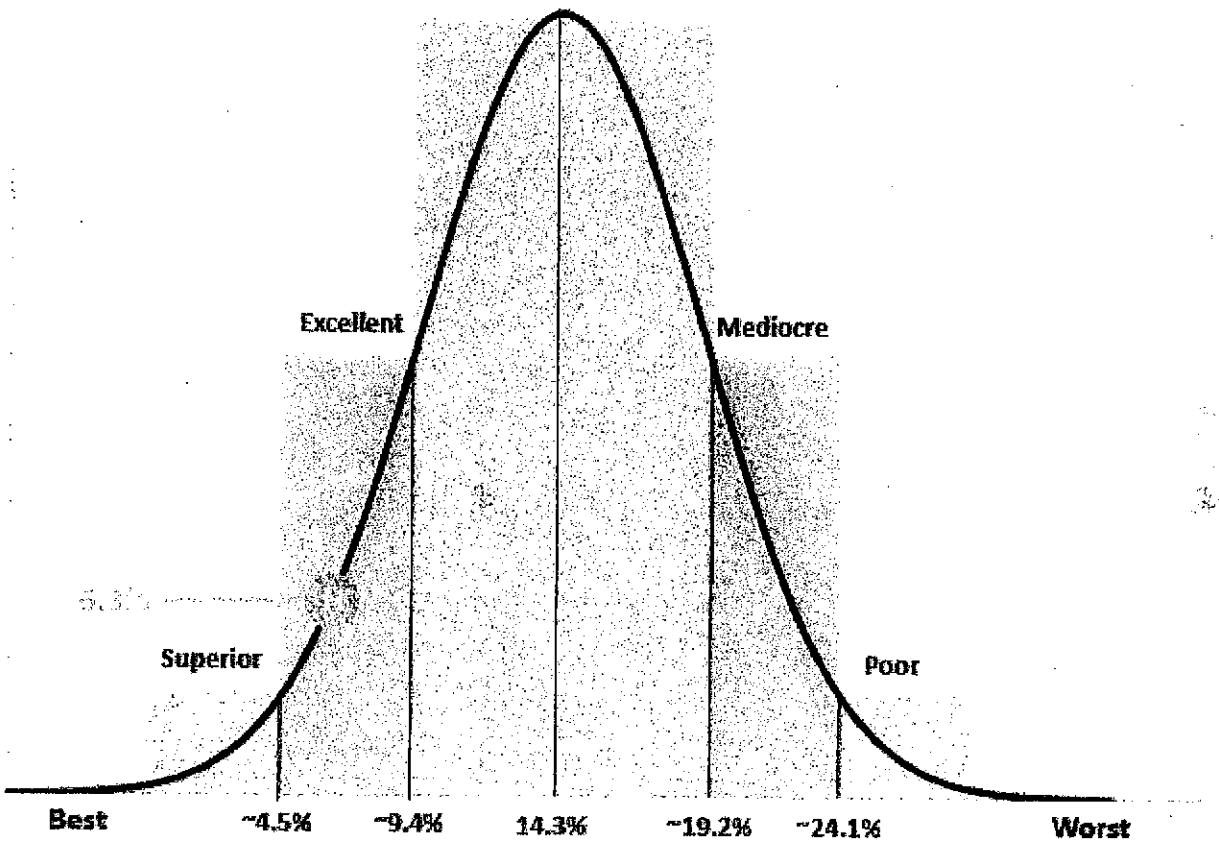
Conclusion

Dr. Anagnost has been a major contributor to very low surgery complication rates resulting in Hillcrest being deemed a nationally "top 10%" hospital for multiple and consecutive years. Hillcrest of one of four hospitals in Oklahoma to achieve this designation.

Figure 4

COMPLICATION RATES

Oklahoma Spine and Orthopedic Institute (Hillcrest)



The chart above is a graphic depiction of a normal distribution of complication rates for spine surgeons simulating the Hillcrest Spine Center practice as reported by Health Grades. The large dot represents the reported complication rate of 6.3%. That rate is between one and two standard deviations better than the national norm – which means the rate is certainly statistically much better than the national average. Given that Dr. Anagnost provided a disproportionate share of the surgeries, surely his practice could not display a trend of incompetence and incapacity. Source: Health Grades website (www.healthgrades.com).

Steven Anagnost, MD, Orthopedic Surgeon

PERFORMANCE

2005 - 2009
QUALITY PERFORMANCE METRICS
HILLCREST MEDICAL CENTER

Purpose

The most objective and relevant data available are the quality measures captured, processed and reported by the Quality Management Department of the Hillcrest Medical Center in Tulsa. The most available and relevant data covers the period 2005 – 2009 and is supplemented by 2010 data. These data are most descriptive of the measured outcomes of Dr. Anagnost's surgical practice.

Data

The data in Table 5 (below) was abstracted from the Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009. The table compares Dr. Anagnost to standardized national physicians and eight peer surgeons at Hillcrest Medical Center. Figure 5 (next page) is a graphical depiction. The metrics used are morbidity, complications, length of hospital stay and costs. See the Chart section for additional graphics depicting the data.

Table 5

Quality Metrics Jan 2005 – Jul 2009

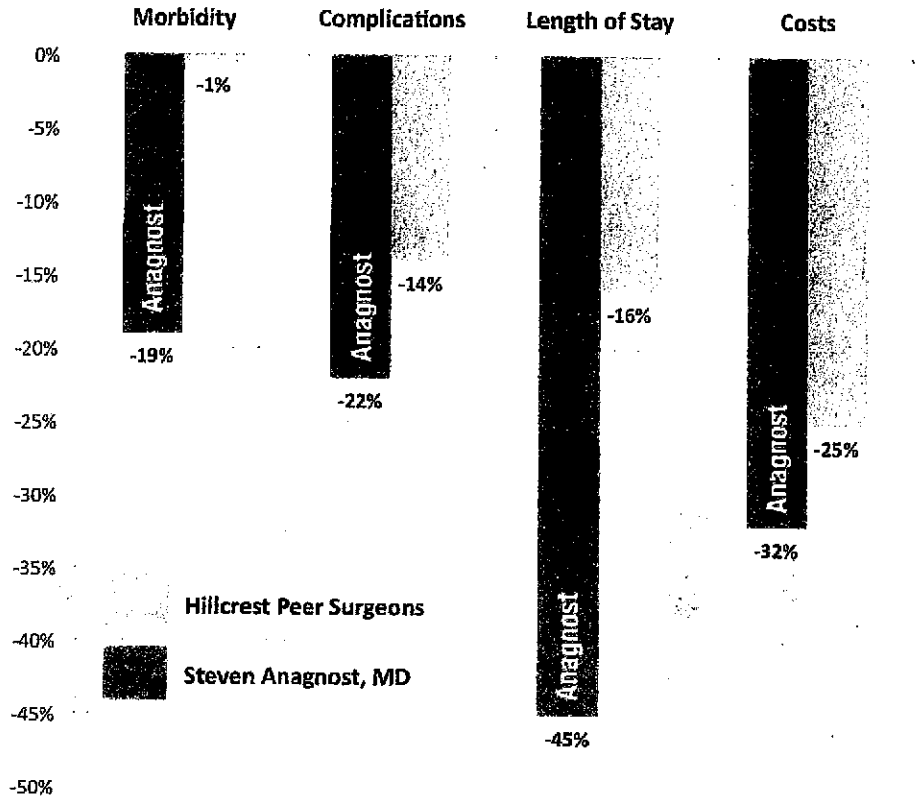
Steven Anagnost, MD and Hillcrest Peer Surgeons Compared to National Benchmarks [17]

Anagnost	Cases	Actual	Expected	Difference	Pct Difference
Morbidity	1,939	1.4%	1.6%	-0.3	-19%
Complications	1,939	13.6%	17.4%	-3.8	** -22%
Geometric LOS (Days)	1,979	1.2	2.2	-1.0	** -45%
Geometric Cost	1,980	$8,238	$12,147	-$3,909	** -32%
Local Peer Surgeons	**Cases**	**Actual**	**Expected**	**Difference**	**Pct Difference**
Morbidity	2,854	6.2%	6.2%	0.0	0%
Complications	2,854	18.6%	21.7%	-3.1	** -14%
Geometric LOS (Days)	2,919	2.1	2.5	-0.4	** -16%
Geometric Cost	2,918	$8,510	$11,366	-$2,856	** -25%

See Charts 2 A-B, 3A-B, 4A-B and 5A-B (In the Statistical Chart section later in this analysis) for depiction of normal distribution curves. ***Note 1:*** *The expected values are calculated per a nationalized standard practice as determined by the Premier Quality Manager database representing approximately 700 hospitals. * Statistically significant at 75% confidence level ** Statistically significant at 95% confidence level.* ***Note 2:*** *Morbidity Rate is the percentage of patients who develop at least one morbid complication during hospitalization. Complication Rate is the measure of the percentage of patients who have ANY complication (ie at least one complication) regardless of the associated morbidity. Complications are defined as events that occur after admission to the facility. The presence of complications does not necessarily indicate negligence or therapeutic misadventure.* ***Note 3:*** *All data are completely risk adjusted and severity adjusted.* ***Note 4:*** *Geometric costs and LOS data adjusted for outliers.* ***Local Peers:*** *Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.*

Figure 5

Quality Metrics Jan 2005 – Jul 2009
Steven Anagnost, MD and Hillcrest Peer Surgeons
Compared to National Benchmarks [18]



Note 1: *See Charts 2B, 3B, 4B and 5B for depiction of normal distribution curves.* ***Note 2:*** *These inpatient cases are fully adjusted for risk, severity to insure valid comparative data.* ***Note 3:*** *The data were analyzed per the Premier Quality Manager database per contract with the Hillcrest Medical Center.* ***Note 4:*** *Local Peers: Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.*

Discussion

Dr. Anagnost is compared to a standardized physician group as determined by the Premier Quality Manager database representing approximately 700 hospitals. Data for this standardized group of peers is labeled "expected" in the reports.

Dr. Anagnost is also compared to 8 other Hillcrest surgeons (Drs. Baird, Covington, Gaede, Main, Min, Sherburne, Tomacek and Wilson). Data for this local group of peers is also displayed. All data is fully adjusted for risk and severity to insure valid comparative data.

- Dr. Anagnost's patients experienced five-year morbidity rates 19% better than both the national rate and his peer physicians.
- Dr. Anagnost's patients experienced five-year complication rates lower than his peer surgeons and 22% below the national average. Both were statistically significant at a 95% confidence level.
- Dr. Anagnost's patients experienced lengths of hospital stay 45% better than the national standard. The length of stay for the local peer group was 16% below the national standard. Both were statistically significant at a 95% confidence level.
- The observed peer group costs for hospitalization are 25% less than the national norm while Dr. Anagnost was 32% lower than that standard. Both were statistically significant at a 95% confidence level.

Conclusion

Dr. Anagnost's patients clearly experienced significantly fewer complications, shorter hospital stays, less morbidity, and lower costs than both the national standard and local peer surgeons.

These data demonstrate that Dr. Anagnost's 2005-2009 surgical practice was providing his patients with superior outcomes compared to national standards and local peer physicians.

2005 – 2009
SURGICAL COMPLICATION PERCENTAGE BY QUARTER

Purpose

A physician who has exhibited a "pattern of repeated negligence and demonstrates an incompetence to practice surgery" would produce poor outcome metrics such as complications from surgery. A "pattern" would be an observable trend over time. An examination of quarterly complication rates over a period of five years would array 20 data points that would visually define a trend or pattern.

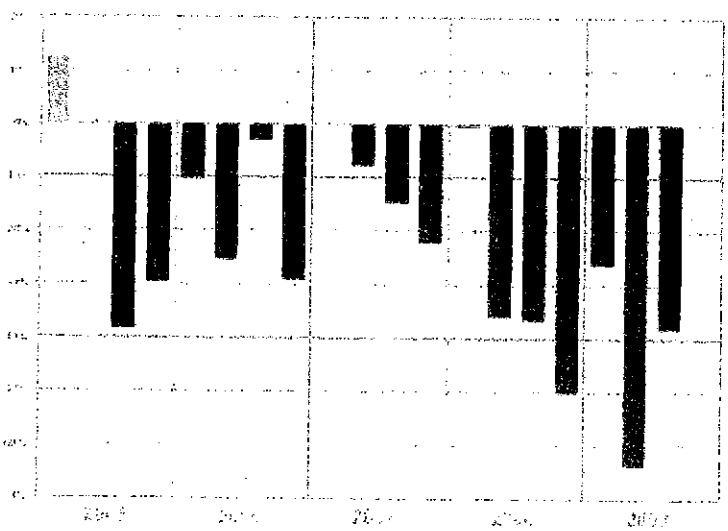
Data

The most objective and relevant documentation available that provides insight are the quality measures captured, processed and reported by the Quality Management Department of the hospital. The most available and relevant data covers the period 2005 – 2009 and is supplemented by 2010 data.

Figure 6

Steven Anagnost, MD

Complications Percentage, Deviation from Expected, by Qtr, Jan05-Sep09 [19]



The expected values are calculated per a nationalized standard practice as determined by the Premier Quality Manager database representing approximately 700 hospitals. Complication Rate is the measure of the percentage of patients who have ANY complication (ie at least one complication) regardless of the associated morbidity. Complications are defined as events that occur after admission to the facility. The presence of complications does not necessarily indicate negligence or therapeutic misadventure.

Figure 6 Data				
	Actual	Expected	Diff	Pct Diff
1Q05	19.6%	17.4%	2.2%	13%
2Q05	16.4%	16.3%	0.1%	1%
3Q05	9.5%	15.4%	-5.9%	-38%
4Q05	11.9%	16.9%	-5.0%	-30%
1Q06	14.7%	16.4%	-1.7%	-10%
2Q06	11.7%	15.7%	-4.0%	-25%
3Q06	16.5%	17.0%	-0.5%	-3%
4Q06	9.7%	13.7%	-4.0%	-29%
1Q07	15.2%	15.2%	0.0%	0%
2Q07	18.7%	20.3%	-1.6%	-8%
3Q07	15.4%	18.1%	-2.7%	-15%
4Q07	13.9%	17.9%	-4.0%	-22%
1Q08	14.8%	14.9%	-0.1%	-1%
2Q08	10.3%	16.1%	-5.8%	-36%
3Q08	12.6%	19.9%	-7.3%	-37%
4Q08	10.3%	20.7%	-10.4%	-50%
1Q09	15.1%	20.5%	-5.4%	-26%
2Q09	7.1%	19.6%	-12.5%	-64%
3Q09	13.1%	21.2%	-8.1%	-38%

Discussion

The clinical complaints against Dr. Anagnost occurred during the period of 2005-2009. The chart below depicts Dr. Anagnost's "complications deviation percentage for the expected outcomes" for procedures he performed. This comparison group is a "standard practice" as computed by the Premier Quality Database of 700 hospitals used by Hillcrest. The data is displayed by quarter.

- It indicates that Dr. Anagnost performed much better than the national standard in 17 of the 19 quarters of the report. In 11 of the 19 quarters, Dr. Anagnost's complication deviation was more than 20% better than "expected". In 2008-2009, he exceeded expectations by more than 30% in 5 of 7 quarters.
- The quality of outcomes increased after the establishment of the Hillcrest Spine Surgery Institute. These data show a marked and consistent – and strengthening trend – for Dr. Anagnost's patients to experience fewer complications than "expected".

Conclusion

Dr. Anagnost's patients clearly experienced significantly fewer complications than the national standard for each of 17 consecutive quarters July 2005-September 2009. These data indicate that Dr. Anagnost is practicing at a superior level compared to national peers.

2005 – 2009
OUTCOMES FOR MAJOR PROCEDURES

Purpose

It is helpful if an examination of clinical outcomes focuses upon the specific surgical procedures that would form the majority of a physician's practice. In this section, the outcomes of these procedures performed by Dr. Anagnost are compared to those that are "expected" in a standard and normalized practice.

Data

Hillcrest Medical Center (Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009) provided morbidity and complication rate data for Dr. Anagnost. It depicts his five-year performance for the four procedures listed below in Table 6.

Table 6

Steven Anagnost, MD

Outcome Comparison Deviation from Expected, Five Years Aggregated [20]

	Percentage Point Deviation	
Major Procedures	**Morbidity**	**Complications**
Fusion or Refusion of 2-3 Vertebrae (8162)	-0.4	-5.2
Insertion of Interbody Spinal Fusion Device (8451)	-0.4	-5.8
Excision of Intervertebral Disc (8051)	-0.5	-4.4
Lumbar & Lumbarsacral Fusion Posterior Tech (8108)	-0.5	-10.8

	Est. Percentage Deviation	
Major Procedures	**Morbidity**	**Complications**
Fusion or Refusion of 2-3 Vertebrae (8162)	-25%	-33%
Insertion of Interbody Spinal Fusion Device (8451)	-31%	-25%
Excision of Intervertebral Disc (8051)	-31%	-62%
Lumbar & Lumbarsacral Fusion Posterior Tech (8108)	-19%	-12%

Note 1: *The expected values are calculated per a nationalized standard practice as determined by the Premier Quality Manager database representing approximately 700 hospitals.* ***Note 2:*** *Morbidity Rate is the percentage of patients who develop at least one morbid complication during hospitalization. Complication Rate is the measure of the percentage of patients who have ANY complication (ie at least one complication) regardless of the associated morbidity. Complications are defined as events that occur after admission to the facility. The presence of complications does not necessarily indicate negligence or therapeutic misadventure.* ***Note 3:*** *All data are completely risk adjusted and severity adjusted.* ***Note 4:*** *Geometric costs and LOS data adjusted for outliers.*

Discussion

This comparison group is a "standard practice" as computed by the Premier Quality Database of 700 hospitals used by Hillcrest. All morbidity data was statistically significant at 75% confidence level. All complications data was statistically significant at 95% confidence level.

The Table 6 depicts Dr. Anagnost's reported percentage point deviation for the top five procedures he performed during this period. The actual morbidity and complication rate for each procedure were not immediately available – and Hillcrest has changed vendors since this report so retrieval is unlikely.

However we do know that the national average morbidity rate for all spinal surgeries is 1.6% and the national average complication rate is 17.4% (see Table 5). Applying these rates to the percentage point deviations will show that Dr. Anagnost's patients experienced rates much superior to the national expected rates. The estimates are displayed on Table 6 on the preceding page.

They range from 12% - 62% better than the national standard.

Conclusion

The four listed procedures are those most commonly performed by Dr. Anagnost. When the outcomes of his most frequently performed procedures are measured, Dr. Anagnost's patients clearly experienced much less morbidity and fewer complications than the risk and severity adjusted national comparison group.

These data demonstrate that Dr. Anagnost's 2005-2009 surgical practice was providing his patients with superior outcomes compared to national standards.

2005 – 2009
HOSPITAL READMISSIONS

Purpose

A significant quality indicator is the frequency in which a surgical patient is readmitted to the hospital within 30 days. It is thought that this metric globally encompasses surgical skill as well as patient education and compliance.

Data

The table below provides hospital readmission data for Dr. Anagnost, and his eight peer surgeons at Hillcrest Medical. The time period is 2005-2009 and 2010 displayed separately.

Table 7
Hospital Readmission Rates
Steven Anagnost, MD Compared to Local Peers [21]

2005 - 2009	Same Diagnosis	Different Diagnosis	Overall
Dr. Anagnost	0.8%	4.8%	5.6%
Local Peer Group	1.3%	5.8%	7.1%
Anagnost Variance	**-38%**	**-17%**	**- 21%**

Jan – Dec 2010	Same Diagnosis	Different Diagnosis	Overall
Dr. Anagnost	0.8%	2.0%	2.8%
Local Peer Group	1.3%	6.4%	7.7%
Anagnost Variance	**-38%**	**-69%**	**- 64%**

Local Peers: Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.

Discussion

The 2005-2009 readmission rate for Dr. Anagnost's patients is 38% lower that his local surgical peers for the same diagnosis and 17% below peers for a different diagnosis; for 2010, the rates are -38% and -69% respectively.

Conclusion

Dr. Anagnost's readmission rates for both the same and different diagnoses are far lower than the rates of his local peer surgeons. These data demonstrate that Dr. Anagnost's 2005-2009 surgical practice was providing his patients with significantly lower readmission rates when compared local peer physicians.

2009
QUALITY PERFORMANCE METRICS
HILLCREST MEDICAL CENTER

Purpose

The most objective and relevant data available are the quality measures captured, processed and reported by the Quality Management Department of the Hillcrest Medical Center in Tulsa. This section displays 2009 data. These data are most descriptive of the measured outcomes of Dr. Anagnost's surgical practice for 2009.

Data

The data in Table 8 (below) was abstracted from the Hillcrest Healthcare System Physician Quality Measures Report for January - December 2009. The table compares Dr. Anagnost to standardized national physicians and eight peer surgeons at Hillcrest Medical Center. Statistical Charts 6A and 6B are graphical depictions (see Chart section). The metrics used are morbidity, complications, length of hospital stay and costs.

Table 8

Quality Metrics 2009

Steven Anagnost, MD Compared to National Benchmarks and Local Peers [22]

Anagnost	Cases	Actual	Expected	Difference	Pct Difference
Morbidity	287	0.8%	1.7%	-0.9	* -53%
Complications	287	11.6%	18.1%	-6.6	** -36%
Geometric LOS (Days)	295	1.2	2.2	-1.1	** -50%
Geometric Costs	295	$13,794	$16,026	-$2,232	*-14%
Local Peer Surgeons	**Cases**	**Actual**	**Expected**	**Difference**	**Pct Difference**
Morbidity	737	1.4%	1.8%	-0.4	-22%
Complications	737	8.2%	17.3%	-9.1	** -53%
Geometric LOS (Days)	751	1.5	2.2	-0.7	** -32%
Geometric Costs	751	$12,110	$13,600	-$1,490	** -11%

See Statistical Charts 6A-B for depiction of normal distribution curves. Same notes at Table 5 apply here.
Local Peers: Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.

Discussion

Dr. Anagnost is compared to a standardized physician group as determined by the Premier Quality Manager database representing approximately 700 hospitals. Data for this standardized group of peers is labeled "Expected" in the reports.

Dr. Anagnost is also compared to 8 other Hillcrest surgeons (Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson). Data for this local group of peers is displayed. All data is fully adjusted for risk and severity to insure valid comparative data.

- Dr. Anagnost's patients experienced a 2009 morbidity rate that was 53% better than the national average. His local peers were 22% lower.
- Dr. Anagnost's patients experienced a 2009 complication rates that were 36% lower than the national average. His peer surgeons were 53% below. Both were statistically significant at a 95% confidence level.
- Dr. Anagnost's patients experienced lengths of hospital stay 50% better than the national standard. The length of stay for the local peer group was 32% below the national standard. Both were statistically significant at a 95% confidence level.
- Dr. Anagnost's patients experienced costs for hospitalization 14% less than the national norm while local peers were 11% lower. Both were statistically significant at a 95% confidence level.

Conclusion

Dr. Anagnost's patients clearly experienced fewer complications, shorter hospital stays, less morbidity, and lower costs the national standard. These differences are statistically significant at a high level.

These data demonstrate that Dr. Anagnost's 2009 surgical practice was providing his patients with superior outcomes compared to national standards and local peer physicians.

2010
QUALITY PERFORMANCE METRICS
HILLCREST MEDICAL CENTER

Purpose

The most objective and relevant data available are the quality measures captured, processed and reported by the Quality Management Department of the Hillcrest Medical Center in Tulsa. This section displays 2010 data. These data are most descriptive of the measured outcomes of Dr. Anagnost's surgical practice for 2010.

Data

The data in Table 9 (below) was abstracted from the Hillcrest Healthcare System Physician Quality Measures Report for January - December 2010. The table compares Dr. Anagnost to standardized national physicians and eight peer surgeons at Hillcrest Medical Center. Statistical Charts 7A and 7B are graphical depictions (see Chart section). The metrics used are morbidity, complications, length of hospital stay and costs.

Table 9

Quality Metrics 2010

Steven Anagnost, MD Compared to National Benchmarks and Local Peers [23]

Anagnost	Cases	Actual	Expected	Difference	Pct Difference
Morbidity	255	0.7%	1.6%	-0.9	-56%
Complications	255	15.2%	17.4%	-2.2	* -13%
Geometric LOS (Days)	255	1.1	1.9	-1.1	** -58%
Geometric Costs	255	$10,853	$12,489	$1,637	** -13%

Local Peer Surgeons	Cases	Actual	Expected	Difference	Pct Difference
Morbidity	298	5.0%	4.4%	0.6	14%
Complications	297	13.8%	20.6%	-6.9	** -33%
Geometric LOS (Days)	306	1.6	2.2	-0.6	** -27%
Geometric Costs	309	$12,165	$13,538	-$1,373	** -10%

See Statistical Charts 7A-B for depiction of normal distribution curves. Same notes at Table 5 apply here.
Local Peers: Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.

Discussion

Dr. Anagnost is compared to a standardized physician group as determined by the Premier Quality Manager database representing approximately 700 hospitals. Data for this standardized group of peers is labeled "Expected" in the reports.

Dr. Anagnost is also compared to 8 other Hillcrest surgeons (Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson). Data for this local group of peers is displayed. All data is fully adjusted for risk and severity to insure valid comparative data.

- Dr. Anagnost's patients experienced a 2010 morbidity rate that was 56% better than the national average. His local peers were 14% higher than expected.
- Dr. Anagnost's patients experienced a 2010 complication rate that was 13% lower than the national average. His peer surgeons were 33% below.
- Dr. Anagnost's patients experienced lengths of hospital stay 58% better than the national standard. The length of stay for the local peer group was 27% below the national standard. Both were statistically significant at a 95% confidence level.
- Dr. Anagnost's patients experienced costs for hospitalization 13% less than the national norm while local peers were 10% lower. Both were statistically significant at a 95% confidence level.

Conclusion

Dr. Anagnost's patients clearly experienced fewer complications, shorter hospital stays, less morbidity, and lower costs the national standard. These differences are statistically significant at a high level.

These data demonstrate that Dr. Anagnost's 2010 surgical practice was providing his patients with superior outcomes compared to national standards and local peer physicians.

PEER REVIEWED LITERATURE

RESEARCH

NEW NEUROLOGICAL DEFICITS

Purpose

Almost all serious complications of spine surgery will be a form of "new neurological deficit". The definitive study of these NNDs has been work done by several research groups for the Scoliosis Research Society Morbidity and Mortality Committee. The study cited below was a review of over 108,000 spine surgeries. It serves as a landmark study in this discipline.

Literature Citations

- Our data demonstrate that, even among skilled spinal deformity surgeons, new neurological deficits are inherent potential complications of spine surgery. These data provide general benchmark rates for NND with spine surgery as a basis for patient counseling and for ongoing efforts to improve safety of care ... [24]

- "Results: Of the 108,419 cases reported, NND was documented for 1,064 (1%) ... revision cases had a 41% higher rate of NND (1.25%) compared with primary cares (0.895; P,.0001) ... the rate of NND for cases with implants was more than twice that for cases without implants (1.15% vs. 0.52% respectively, P<0.0001) ... the respective percentages of no recovery, partial, and complete recovery for NND were 4.7%, 46.8% and 47.1%. respectively." [25]

- " ...17% of lumbar fusion patients developed transient neurologic complications and 7.5% experienced permanent neurologic complications. " [26]

- " ... overall rate of mortality within 60 days of surgery was 1.8 per 1,000 patients (1.8%) [27]

Data

The following tables were abstracted and/or developed using data tables in the cited article.

Table 10

New Neurological Deficits in Adults by Primary Diagnosis

Primary Diagnosis	Number	Nerve Root	CE/Spinal Cord	Total
Degenerative Disease	46,434	195	70	265
Scoliosis	5,801	88	19	107
Spondylolisthesis	10,529	102	12	114
Other	19,318	110	87	197
Total	**82,082**	**495**	**188**	**683**

Primary Diagnosis	Number	Nerve Root	CE/Spinal Cord	Total
Degenerative Disease	46,434	0.42%	0.15%	0.57%
Scoliosis	5,801	1.52%	0.33%	1.84%
Spondylolisthesis	10,529	0.97%	0.11%	1.08%
Other	19,318	0.57%	0.45%	1.02%
Total	**82,082**	**0.60%**	**0.23%**	**0.83%**

Table 11

Projections for Steven Anagnost, MD
Cumulative Expected New Neurological Deficits

All Surgeries (700)	*Ann Rate	After 5 Years	After 8 Years	After 10 Years
Nerve Root	0.60%	21	34	42
Cauda Equina/Spinal Cord	0.23%	8	13	16
Total	**0.83%**	29	47	58

Table 12

Projections for Steven Anagnost, MD
Cumulative Expected Complications for Lumbar Fusion Procedures

Lumbar Fusion (233)	**Ann Rate	After 5 Years	After 8 Years	After 10 Years
Transient Complications	**17.5%**	201	326	408
Permanent Complications	**7.5%**	86	140	175

Discussion (Tables 10-12)

The tables above depict the expected new neurological deficits. It uses a conservative estimate of Dr. Anagnost's practice volume (700 surgeries per year). Given the annual rates, one would expect a cumulative 29, 47 and 58 NNDs over periods of five, eight and ten years respectively. Additionally, the literature indicates that his annual volume of lumbar fusion surgeries would yield 86, 140 and 175 "permanent complications" over periods of five, eight and ten years respectively. The data table indicates that sometimes complications occur despite the best skill and attention of the surgeon.

Table 13

New Neurological Deficits in Adults with Primary Diagnosis of Degenerative Disease

Spinal Region/ Diagnosis	Number	Nerve Root	CE/Spinal Cord	Total
Spondylotic Radiculopathy	949	10	1	11
Spinal Stenosis	12,270	58	19	77
Postlaminectomy Syndrome	573	2	1	3
Degenerative Disc Disease	7,213	31	5	36
Disc Herniation	12,694	44	4	48
Other	211	0	0	0
Total	**33,910**	**145**	**30**	**175**

Primary Diagnosis	Number	Nerve Root	CE/Spinal Cord	Total
Spondylotic Radiculopathy	949	1.05%	0.11%	1.16%
Spinal Stenosis	12,270	0.47%	0.16%	0.63%
Postlaminectomy Syndrome	573	0.35%	0.17%	0.52%
Degenerative Disc Disease	7,213	0.43%	0.07%	0.50%
Disc Herniation	12,694	0.35%	0.03%	0.38%
Other	211	0.00%	0.00%	0.00%
Total	**33,910**	**0.43%**	**0.09%**	**0.52%**

Table 14

New Neurological Deficits in Adults with Primary Diagnosis of Scoliosis

Scoliosis	Number	Nerve Root	CE/Spinal Cord	Total
Degenerative	2,533	54	9	63
Idiopathic	2,488	29	7	36
Other	780	5	3	8
Total	**5,801**	**88**	**19**	**107**

Scoliosis	Number	Nerve Root	CE/Spinal Cord	Total
Degenerative	2,533	2.13%	0.36%	2.49%
Idiopathic	2,488	1.17%	0.28%	1.45%
Other	780	0.64%	0.38%	1.03%
Total	**5,801**	**1.52%**	**0.33%**	**1.84%**

Discussion (Tables NND 13-14)

These tables are offered for reference and to be used in any clinical discussion concerning scoliosis or degenerative disease.

Table 15

Charts of Recovery Rates

New Neurological Deficits Associated With Spinal Surgery

Spinal Issues	Nerve Root	Cauda Equina	Spinal Cord
Number	655	73	291
None	4.7%	9.6%	10.6%
Partial	46.8%	45.2%	43.0%
Complete	**47.1%**	**45.2%**	**45.7%**

Scoliosis	Nerve Root	Cauda Equina	Spinal Cord
Number	172	8	129
None	1.7%	25.0%	6.1%
Partial	45.3%	37.5%	36.6%
Complete	**52.9%**	**37.5%**	**57.3%**

Lumbar Degeneration	Nerve Root	Cauda Equina	Spinal Cord
Number	142	25	0
None	7.0%	16.0%	0.0%
Partial	51.0%	32.0%	75.0%
Complete	**42.0%**	**52.0%**	**25.0%**

Table 16

New Neurological Deficit Rate by Technique

Technique	Number	Nerve Root	CE/Spinal Cord	Total
Minimally Invasive	14,301	43	17	60
Traditional Surgery	94,115	619	350	969

Technique	Number	Nerve Root	CE/Spinal Cord	Total
Minimally Invasive	**14,301**	**0.30%**	**0.12%**	**0.42%**
Traditional Surgery	94,115	0.66%	0.37%	1.03%

Discussion (Tables NND 15-16)

The likelihood of a perfect outcome and full recovery hover around 50% (Table 15) depending upon the diagnosis and NND.

The tables above demonstrate the patient benefit and improved clinical outcomes of minimally invasive surgical techniques (Table 16). A small percentage of contemporary spinal surgeons will make extensive use of minimally invasive techniques. The data in this study indicate MIS being used on only 13% of the reported cases. The overall NND rate for MIS is less than half of the traditional surgical techniques.

Key Facts

- Surgical procedures have inherent risks of complications. New neurologic deficit is among the most concerning of complications associated with spinal surgery. Outcomes range from complete recovery to permanent deficit.

- New neurologic deficit rates vary depending upon the type of spinal procedure performed. The data compiled throughout the literature, clearly demonstrates that "even among skilled spinal surgeons, new neurologic deficits are inherent potential complications of spine surgery" [28].

- Revision cases show a 41% higher rate than primary cases.

- The rate of new neurologic deficit for cases with implants is more than twice that for cases without implants.

- Every patient and their pathology, as well as other medical comorbidities, play a major role in final outcomes of spinal surgery. Even with the care of the most skilled surgeons, the complications of post op neurologic deficit can and will occur.

Conclusion

Dr. Anagnost's surgeries have produced risk and severity adjusted complication rates superior to national and local peer surgeons. The data in this section demonstrate that the complications experienced by his patients are well within the expected parameters established by the cited peer-reviewed publications.

FAILED BACK SURGERY SYNDROME [29]

The following is an excerpt of a professionally peer-reviewed article.

Failed back surgery syndrome (also called FBSS, or failed back syndrome) is a misnomer, as it is not actually a syndrome - it is a very generalized term that is often used to describe the condition of patients who have not had a successful result with back surgery or spine surgery and have experienced continued pain after surgery. There is no equivalent term for failed back surgery syndrome in any other type of surgery (e.g. there is no failed cardiac surgery syndrome, failed knee surgery syndrome, etc.).

There are many reasons that a back surgery may or may not work, and even with the best surgeon and for the best indications, spine surgery is no more than 95% predictive of a successful result.

Reasons for Failed Back Surgery and Pain after Surgery

Spine surgery is basically able to accomplish only two things: decompress a nerve root that is pinched, or stabilize a painful joint.

Unfortunately, back surgery or spine surgery cannot literally cut out a patient's pain. It is only able to change anatomy, and an anatomical lesion (injury) that is a probable cause of back pain must be identified prior to rather than after back surgery or spine surgery.

By far the number one reason back surgeries are not effective and some patients experience continued pain after surgery is because the lesion that was operated on is not in fact the cause of the patient's pain.

Predictability of Pain after Surgery

Some types of back surgery are far more predictable in terms of alleviating a patient's symptoms than others. For instance:

A discectomy (or microdiscectomy) for a lumbar disc herniation that is causing leg pain is a very predictable operation. However, a discectomy for a lumbar disc herniation that is causing lower back pain is far less likely to be successful.

A spine fusion for spinal instability (e.g. spondylolisthesis) is a relatively predictable operation. However, a fusion surgery for multi-level lumbar degenerative disc disease is far less likely to be successful in reducing a patient's pain after surgery.

Therefore, the best way to avoid a spine surgery that leads to an unsuccessful result is to stick to operations that have a high degree of success and to make sure that an anatomic lesion that is amenable to surgical correction is identified preoperatively.

REOPERATION RATES

Purpose

Reoperation rates are important in this case as there are several allegations of having to reoperate on Dr. Anagnost's patients.

Literature Citation

- "Patients ... had a 19% cumulative incidence of reoperation during the subsequent 11 years. Patients with spondylolisthesis had a lower cumulative incidence of reoperation after fusion surgery than after decompression alone (17.1% *vs.* 28.0%, *P* >0.002). For other diagnoses combined, the cumulative incidence of reoperation was higher following fusion than following decompression alone (21.5% *vs.* 18.8%, *P* <0.008)". [30]

- "Patients should be informed that the likelihood of reoperation following a lumbar spine operation is substantial. For spondylolisthesis, reoperation is less likely following fusion than following decompression alone. For other degenerative spine conditions, the cumulative incidence of reoperation is higher or unimproved after a fusion procedure compared to decompression alone." [31]

- A 340,000 patient review showed a 7% readmission rate after cervical and lumbar spinal procedures. [32]

Data

The article cited above offers a series of charts showing the reoperation rates over a ten-year period. They are at Table 18. The Table 17, immediately below, summarizes those charts into a tabular graphic for simplicity of discussion.

Table 17

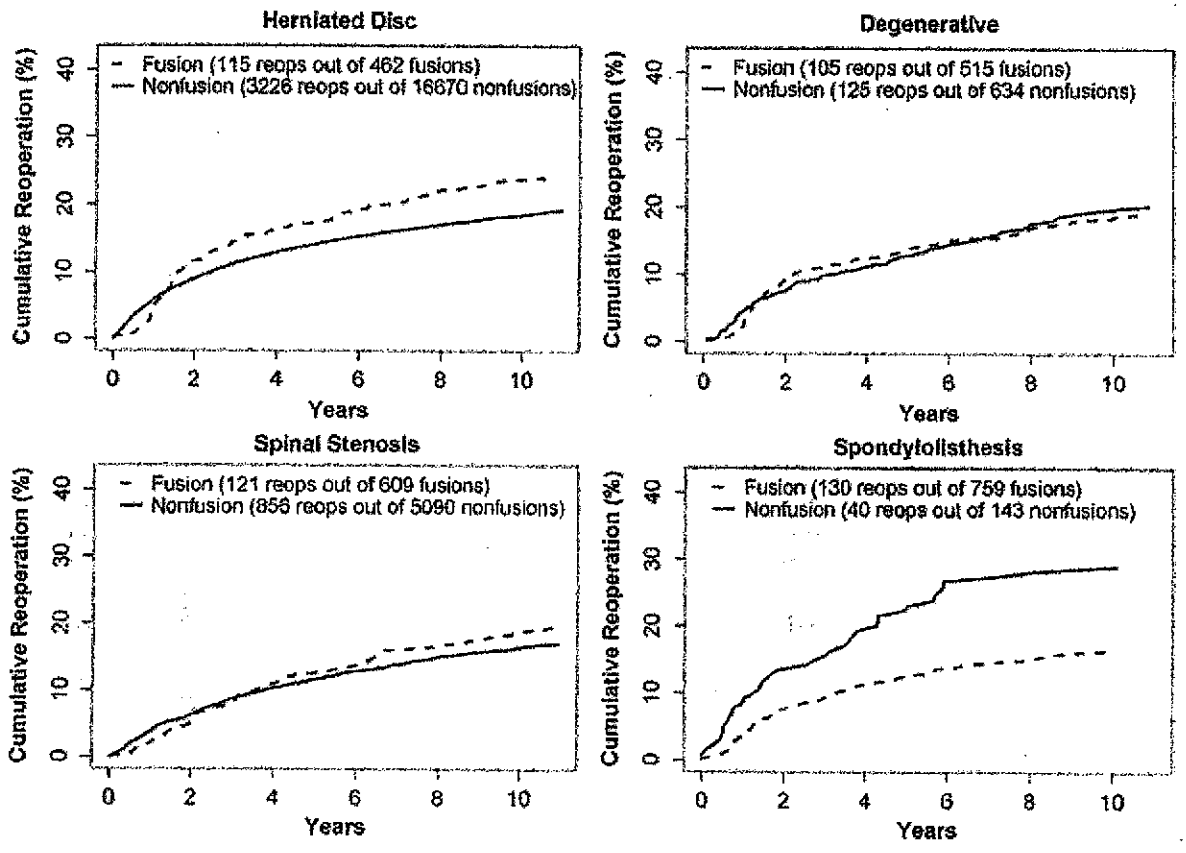
Overall Reoperation Rates Following Lumbar Spine Surgery

Source Visual Inspection of Table 18

	Within One Year		Within Five Years		After Ten+ Years	
	Fusion	Non-Fusion	Fusion	Non-Fusion	Fusion	Non-Fusion
Herniated Disc	8%	8%	18%	15%	25%	19%
Degenerative	5%	5%	11%	11%	20%	20%
Spinal Stenosis	5%	5%	10%	10%	20%	17%
Spondylolisthesis	4%	10%	11%	22%	17%	28%

Table 18

Reoperation Rates Following Lumbar Spine Surgery and the Influence of Spinal Fusion Procedures [33]



Discussion

A repeat operation is a not an automatic signal that the initial surgery was not successful. Most studies show that the most spinal improvement comes in the first 3 months after surgery. The rates for one, five and ten years post-surgery depends upon the initial procedure performed. Fusion surgery itself carries increased risk of complications, but also an increased risk of additional surgery. Hardware pain, hardware failure, and hardware migration all can cause the need for an additional surgery.

Conclusion

Patients should be informed that the likelihood of reoperation following a lumbar spine operation is substantial. The need for a second spinal surgery is not, in and of itself, an indication of a failed initial procedure.

CAUDA EQUINA SYNDROME

Purpose

Several of the cases under review refer to cauda equina – or cauda equina syndrome. Given the multiple mentions of CES, it is helpful to offer a focused discussion on what it is, risks involved, and the complex interactions of pre-op, post-op and body systems interactions with this delicate component of the spinal system.

Literature Citations

- "Post surgical incidence of Cauda Equina Syndrome (CES) is 0.10 – 0.20%." [34]

- "The incidence of CES as a complication of lumbar disc surgery has been reported to be 0.2%. It occurred in 2.5% of the series reported by Kostuik et al in 1986 ... three cases herein reported observed in a series of 86 patients (3.5%) operated on in the same period, in which a definite diagnosis of central lumbar stenosis was made by myelography and/or CT scan and surgical findings." [35]

- The following excerpts are from the same article in the SPINE Journal: [36]

    - "The perioperative risk for spinal cord ischemia from surgical repair of thoracoabdominal aneurysms has been estimated to occur at a rate of 5% to 21% and may result in significant patient morbidity."

    - "Preexisting spinal stenosis may be a risk factor among patients undergoing extremity surgery, as has been seen among patient suffering acute intraoperative paraplegia after correction of severe thoracic kyphosis. Paralysis has even been seen as a result of conversion disorder."

    - "Injury during positioning may occur in any patient with an unstable spinal column..."

    - "There were no episodes of hypotension or vascular insufficiency."

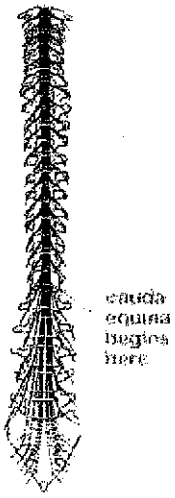
    - "Each of the 3 patients with intraoperative spinal cord injury, preexisting spinal stenosis was identified as a common underlying condition."

    - "When encountered in combination with vascular insufficiency, transient ischemia, or positional malalignment of the spine during surgery of an extremity, indirect cord or cauda equina injury may occur."

    - "While spinal cord monitoring might be of benefit in the lower extremity surgery among patients with recognized cervical disease, it is not a cost effective measure to use

routinely in extremity procedures and could not provide meaningful data for patients with lumbar canal stenosis."

- "In one patient, intraoperative paraplegia occurred after routine shoulder arthroscopy. A second patient underwent elective bilateral total hip replacement and awoke with neurologic deficits in both lower extremities, then went on to develop an acute cauda equina syndrome. The third patient developed a central cord syndrome following an otherwise uncomplicated total hip replacement ... all patients had preexisting spinal stenosis at the level of neural injury."



- The following excerpts are from the same article in the SPINE Journal, 2003: [37]

  - "It is well known that laminectomies may induce transient or permanent cauda equina adhesions, for which there is no treatment other than prevention."

  - "This study showed that cauda equina adhesions occurred 24 hours after laminectomy, irrespective of the extend of laminectomy, and that the duration of adhesions depended on the extent of laminectomy. Both singe and double level laminectomy groups showed a significant recovery of adhesions at each laminectomy level 3 weeks after laminectomy, whereas triple level laminectomies did not show a recovery three weeks after the laminectomy. Thus the extent of the laminectomy is related to the delay in resolution of cauda equina adhesions."

  - "This study suggests that it is very important to limit the extent of laminectomy as much as possible to prevent the development of adhesions, suggesting a risk in multiple level laminectomy."

Information

The information below is elementary but should aid in evaluative discussions. It is written in a style and tense targeted to a website reader.[38]

"Overview: Cauda equine syndrome is a rare disorder that usually is a surgical emergency. In patients with cauda equina syndrome, something compresses on the spinal nerve roots. You may need fast treatment to prevent lasting damage leading to incontinence and possibly permanent paralysis of the legs. CES affects a bundle of nerve roots called cauda equina (Latin for horse's tail). These nerves are located at the lower end of the spinal cord in the lumbar spine. They send and receive messages to and from your legs, feet, and pelvic organs."

"Causes: These are the most common causes of cauda equina syndrome: (1) a severe ruptured disk in the lumbar area (the most common cause) (2) narrowing of the spinal canal (stenosis) (3) a spinal lesion or tumor (4) a spinal infection, inflammation, hemorrhage, or fracture (5) a complication from a severe lumbar spine injury such as a car crash, fall, gunshot, or stabbing and (6) a birth defect such as an abnormal connection between blood vessels (arteriovenous malformation)."

"Symptoms: It may be hard to diagnose cauda equina syndrome. Symptoms vary and may come on slowly. They also mimic other conditions. Symptoms are: (1) Severe low back pain. (2) Pain, numbness, or weakness in one or both legs that causes you to stumble or have trouble getting up from a chair. (3) Loss of or altered sensations in your legs, buttocks, inner thighs, backs of your legs, or feet that is severe or gets worse and worse. You may experience this as trouble feeling anything in the areas of your body that would sit in a saddle (called saddle anesthesia). (4) Recent problem with bladder or bowel function, such as trouble eliminating urine or waste (retention) or trouble holding it (incontinence). (5) Sexual dysfunction that has come on suddenly."

"Even with treatment, you may not retrieve full function. It depends on how much damage has occurred. If surgery is successful, you may continue to recover bladder and bowel function over a period of years. If permanent damage has occurred, surgery cannot always repair it. Cauda equina syndrome is chronic. One will need to learn ways to adapt to changes in the body's functioning."

Discussion

A complete discussion of cauda equina related issues requires a disciplined discussion between two or more surgeons experienced in complex spinal issues. This section is offering relevant literature citations to promote a beginning of that discussion.

Conclusion

- It is estimated that Dr. Anagnost performed 700 cases per year at both Hillcrest and SouthCrest. About two-thirds of his cases involve the lumbar region. The range of assertions and observations being considered is eight years, and it is presumed that all of Dr. Anagnost's cases were subject to review. The Board alleges a cauda equina related event (some of which are disputed as an incorrect assessment) in six cases. Even if they were all legitimate CE cases, the number is within the expected range described by the literature.

- If Dr. Anagnost performed 467 lumbar cases per year or 3,736 over an 8-year span. Given six cases, the complication incidence rate would be a computed 16 per 1,000 ... or 0.16%. The literature is indicating that an incidence rate of 0.10 - 0.20% of CES post lumbar surgery should be expected.

CAGE MIGRATION

Purpose

Several of the cases under review refer to "cage migration" or the movement of hardware surgically inserted. This section briefly covers risks involved, and expected outcomes.

Literature Citations

- Cage Migration: "An 8% rate of cage migration was found in the current study, and 4 of 7 (57%) cases with cage migration received revision surgery. Several factors may contribute to the cage migration, including lack of posterior instrumentation and total facetectomy. Revision surgery for cage migration was technically challenging". [39]
- Cage Migration: "There were 9 cases of cage retropulsion, and it developed within two months after surgery in all cases". Five patients had lower back pain or leg pain". (Analysis of 1,070 cases). [40]
- Complications: "A total of 240 patients underwent posterior lumbar interbody fusion for nonisthmic spondylolisthesis." ... "A total of 90 (37.5%) patients experienced complications; 41 (17%) experienced transient neurological complications; and 18 (7.5%) experienced neurological complications." [41]

Discussion

The literature shows a high rate of expected complications (37.5%), most related to transient or permanent neurological complication. The use of interbody cages and bone graft has become a fundamental element of lumbar fusion procedures. The cage is necessary to help restore and maintain the height and alignment of the anterior column of the spine. Without cages, lumbar fusions are left to heal in their degenerated, collapsed state, rather than the correct alignment and height. As with any device inserted into the body, there is an inherent rate of failure, or in this case "migration". As with any orthopedic implant, there is a race between the bone healing, and the device failing. This is true for long bone fractures, joint replacements, and lumbar fusions. There is a known range of outcomes for cage migration in the spinal literature from 2.5 to 8%.

Conclusion

The movement of hardware is expected and cannot be eliminated. The insertion of hardware during lumbar surgery carries known risks.

LUMBAR STENOSIS

Purpose

Several of the cases under review refer to patients with lumbar stenosis. This section briefly covers risks involved, and expected outcomes.

Literature Citation

- "Between January 1984 – January 1995, 170 patients underwent surgery for Lumbar stenosis (86), lumbar stenosis and herniated disk (61), or lateral recess stenosis (23). The success rates are per the table below: " [42]

Table 19
Lumbar Stenosis Success Rates at Intervals

	6 wks	6 mos	12 mos	1-11 yrs
Lumbar Stenosis	88.1%	86.7%	69.6%	70.8%
Lumbar Stenosis/Herniated Disc	80.0%	77.6%	77.2%	66.6%
Lateral Recess Stenosis	58.7%	63.6%	65.2%	63.6%

Discussion

Lumbar spinal stenosis is a disease of aging. Spinal stenosis of the elderly involves almost every part of the lumbar anatomy. As the population ages, spinal stenosis is becoming a significant and common element of a spine surgeon's practice. The disease becomes steadily debilitating to these elderly with pain, weakness and decreased walking distance and ability.

Conclusion

Risk will significantly increase with age. Evaluations of surgical outcomes must factor age as a consequential factor in immediate and long-term success.

LUMBAR STENOSIS AND AGE

Purpose

Several of the cases in question may refer to aged patients with lumbar stenosis. This section briefly covers risks involved, and expected outcomes.

Literature Citations

- "The authors reviewed the records of 65 patients (70 operations) with lumbar spinal stenosis who were at least 75 years of age at the time of surgery. Seven patients (10%) experienced one or more serious postoperative complication which included wound infection, septicemia, small bowel obstruction, stroke, myocardial infarction, gastrointestinal bleeding and pulmonary embolus." [43]
- "We combined major medical complications and 30-day mortality to represent life-threatening complications." The associated table is abstracted below: [44]

Table 20
Major Medical Complications
Surgery for Lumbar Stenosis, Patients Over 65, 2007
(cohort of 32,152 patients)

Age	Cardiopulmonary	Wound	30-Day Mortality
66-70	2.5%	1.1%	0.3%
71-74	2.8%	1.2%	0.3%
75-79	3.3%	1.4%	0.4%
80+	3.6%	1.2%	0.6%
Overall	**3.1%**	**1.2%**	**0.4%**

Procedure	Cardiopulmonary	Wound	30-Day Mortality
Decompression	2.1%	0.9%	0.3%
Simple Fusion	4.7%	1.6%	0.5%
Complex Fusion	5.2%	2.2%	0.6%
Overall	**3.1%**	**1.2%**	**0.4%**

Conclusion

Major complications occur at higher frequency in the elderly. These include death, cardiac and respiratory complications, and neurologic deficit.

ADULT SPINAL DEFORMITY AND COMPLICATIONS

Purpose

Many of the cases in question require an understanding of known complications and their frequency.

Literature Citation

- "Urinary tract infections are the most frequently seen complication. Additionally, pulmonary complications are the most common life threatening complication. Medical complications are a frequent occurrence in adult deformity spinal surgery. "
  See table below: [45]

Table 21
Rates of Complications by Type

Complication	Incidence
Pulmonary abnormalities	64%
Pulmonary embolism and DVT	.03 to 14%
Urinary tract infection	9%
Par/quadriplegia/paresis	.41 – 1.25%
Delirium (Patients > 70)	13%

Discussion

There are two key and relevant observations. The first is that pulmonary and other complications are inherent in spinal surgery among adult population. The second is that delirium is not uncommon (13% rate) in populations over 70 years of age.

Conclusion

Complications will occur related to spinal surgery. These procedures are not without risk. It is noted that 13% of all patients over 70 will experience delirium.

SPINE SURGERY RISKS AND COMPLICATIONS

Purpose

Many of the cases in question require an understanding of known risk.

Literature Citation [46]

- The authors "searched MEDLINE, the Cochrane database of systemic reviews and personal libraries for articles reporting complications of the surgical treatment of spinal diseases with particular reference to the most commonly treated conditions."
- "The product was a two-page A4 sheet, with the front page outlining information applicable to spinal surgery and the back page detailing all common risks."

Table 22
Combined Percentage Risks
Spine Surgery Risks and Complications

Category	Cervical	Lumbar	Combined	Odds
Reoperation	6.2%	10.5%	10.4%	1:10
Dural Tear	1.2%	7.0%	5.0%	1:20
Nerve Injury	-	3.1%	3.1%	1:30
Infection	0.6%	2.8%	1.9%	1:50

Discussion

This table reiterates the fact that risks are inherent in competent spinal surgery. The national "odds" indicate a 1 in 10 chance of a reoperation being necessary. The need for a reoperation, in and of itself, is not proof of incompetence. Therefore need for reoperation, within limits, does not constitute a pattern or trend of incompetence.

Conclusion

Complications will occur related to spinal surgery. These procedures are not without risk. The "odds" of a reoperation are 1:10 while the odds of infection are 1:50.

MORTALITY RATES IN SPINE SURGERY

Purpose

Evaluators must accept that death is an infrequent and unfortunate outcome of spine surgery.

Literature Citation

- "A total of 197 mortalities were reported among 108,419 patients (1.8 deaths per 1,000 patients). Mortality rates varied on the basis of diagnosis ranging from 0.9 per 1,000 patients for degenerative conditions and spondylolisthesis to 5.7 per 1,000 for patients with spine fractures. The most common causes of death were respiratory/pulmonary causes, cardiac causes, sepsis, stroke, and interoperative blood loss. Mortality rates increased with age, ranging from 0.9 per 1,000 to 34.3 per 1,000 for patients aged 20-39 and 90+ years old, respectively." [47]

Table 23
Mortality Rates
Spine Surgery Risks and Complications

Diagnosis (Adults)	Cases	Deaths	Rate/1,000
Degenerative Disease	46,434	44	1.0
Cervical	11,674	19	1.6
Lumbar	33,910	21	0.6
Scoliosis	5,801	20	3.5
Neuromuscular	292	4	13.7
Degenerative	2,533	8	3.2
Idiopathic	2,488	7	2.8
Spondylolisthesis	10,529	10	1.0
Fracture	6,025	37	6.1
Kyphosis	2,012	13	6.5
Other	11,089	39	3.5
Grand Total	**82,082**	**163**	**2.0**

Discussion

This table reiterates the fact that risks are inherent in competent spinal surgery. It appears that a death rate from lumbar surgery would be .6 per 1,000 cases. At 500 cases per year, a death every five years is not unexpected.

Conclusion

Deaths will occur related to spinal surgery. These procedures are not without risk.

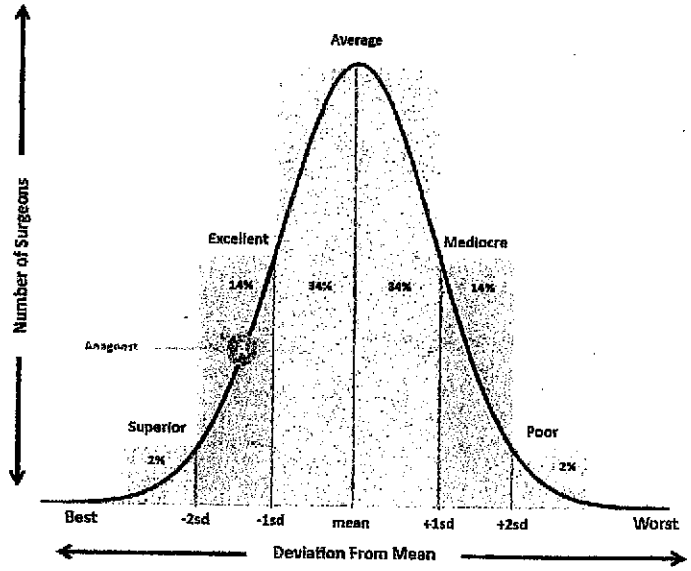
STATISTICAL ANALYSIS

CHARTS

Example Statistical Chart 1A

DEVIATION FROM MEAN

Graphical Depiction of Actual Variance from National Average

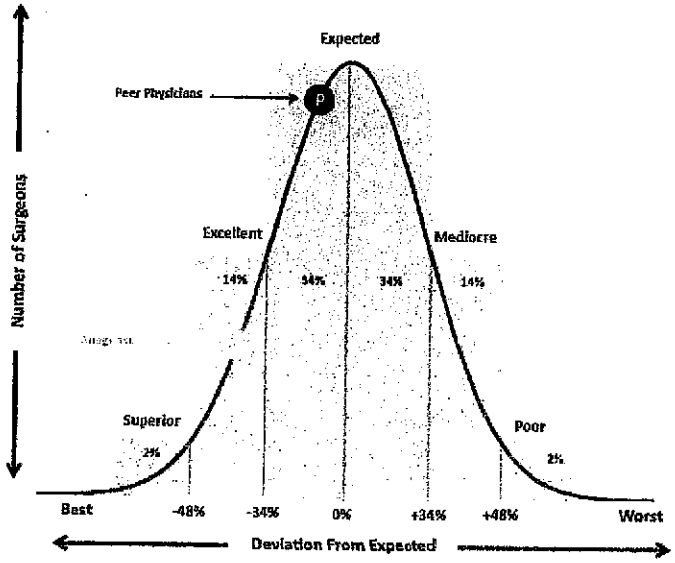


This chart allows the outcomes produced by Dr. Anagnost to be compared to national norms in a fully risk and severity adjusted manner. To the extent that outcomes are less or greater than the average value, they are plotted on the curve line and the horizontal axis.

Example Statistical Chart 1B

DEVIATION FROM EXPECTED

Graphical Depiction of Percent Variations from Expected

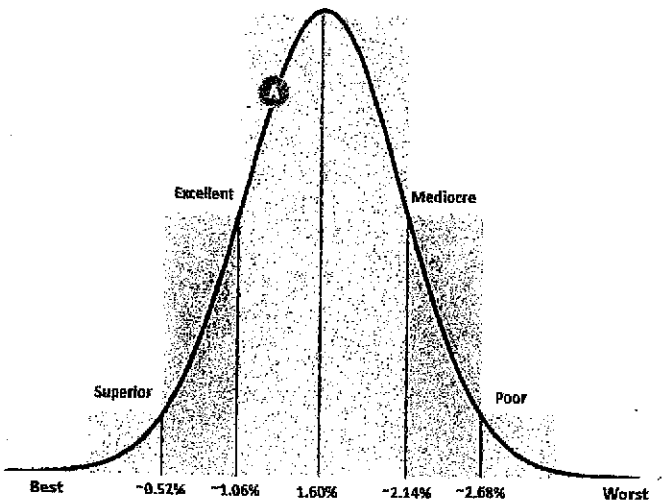


This chart allows the outcomes produced by Dr. Anagnost to be compared to other surgeons at Hillcrest Medical Center (local Peers) in a fully risk and severity adjusted manner. To the extent that outcomes are less or greater than the "expected" (average) value, they are plotted on the curve line and the horizontal axis.

Statistical Chart 2A

MORBIDITY RATES

Absolute Deviation from National Average, Steven Anagnost, MD, 2005 – 2009

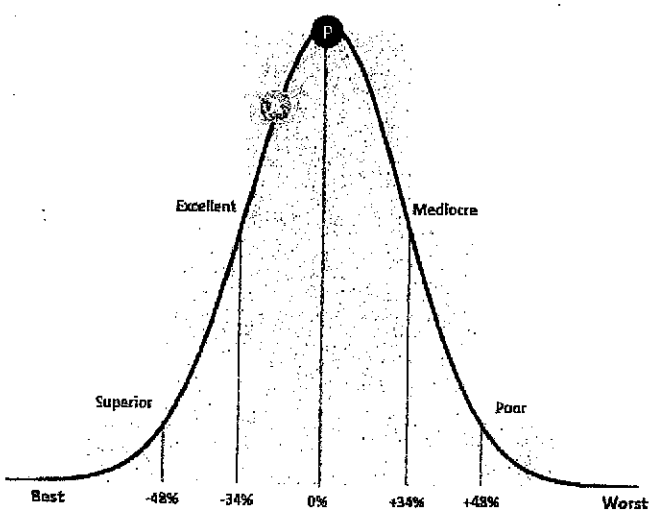


Statistical Significance: Not listed. All data are fully risk and severity adjusted.
Value for Dr. Anagnost is per red marker. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009.

Statistical Chart 2B

MORBIDITY RATES

Percent Deviation from Expected, Steven Anagnost, MD and Hillcrest Peer Surgeons, 2005 - 2009

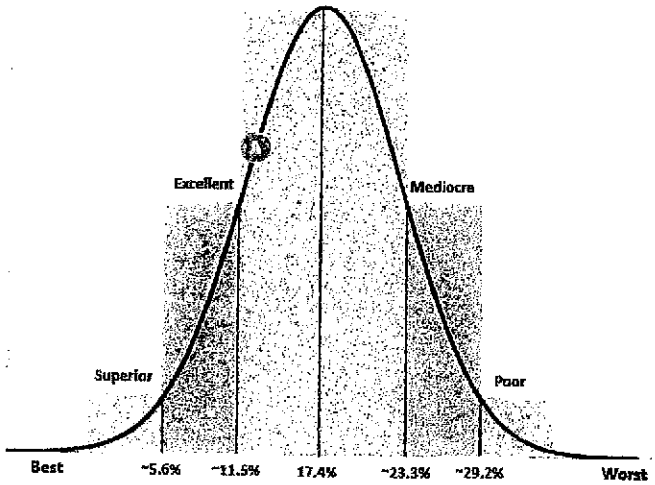


Statistical Significance: Not listed. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker; black marker for peer physicians. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009. Local peer surgeons: Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.

Statistical Chart 3A

COMPLICATION RATES

Absolute Deviation from National Average, Steven Anagnost, MD, 2005 – 2009

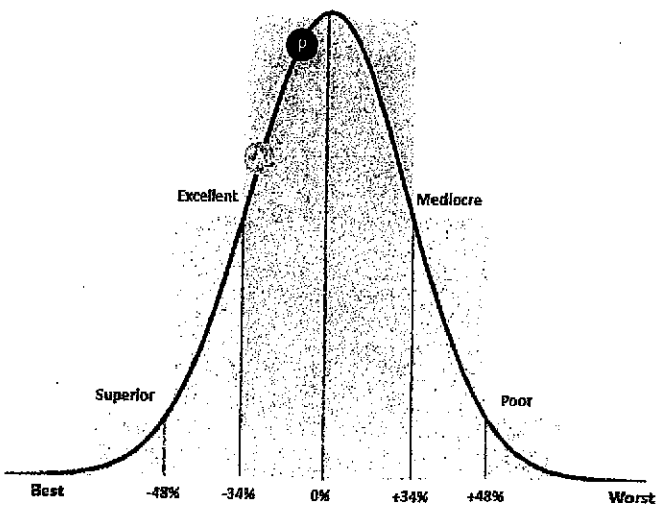


Statistical Significance: Significant at 95% confidence level. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009.

Statistical Chart 3B

COMPLICATION RATES

Percent Deviation from Expected, Steven Anagnost, MD and Hillcrest Peer Surgeons, 2005 - 2009

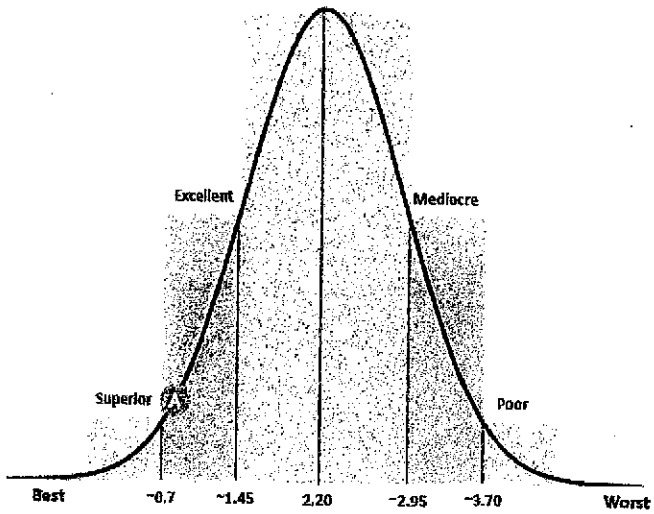


Statistical Significance: Significant at 95% confidence level. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker; black marker for peer physicians. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009. Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.

Statistical Chart 4A

LENGTH OF HOSPITAL STAY

Absolute Deviation from National Average, Steven Anagnost, MD, 2005 – 2009

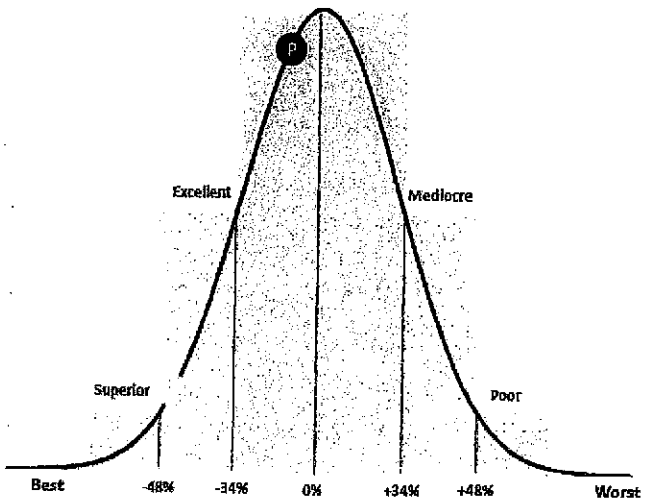


Statistical Significance: Significant at 95% confidence level. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009.

Statistical Chart 4B

LENGTH OF HOSPITAL STAY

Percent Deviation from Expected, Steven Anagnost, MD and Hillcrest Peer Surgeons, 2005 - 2009

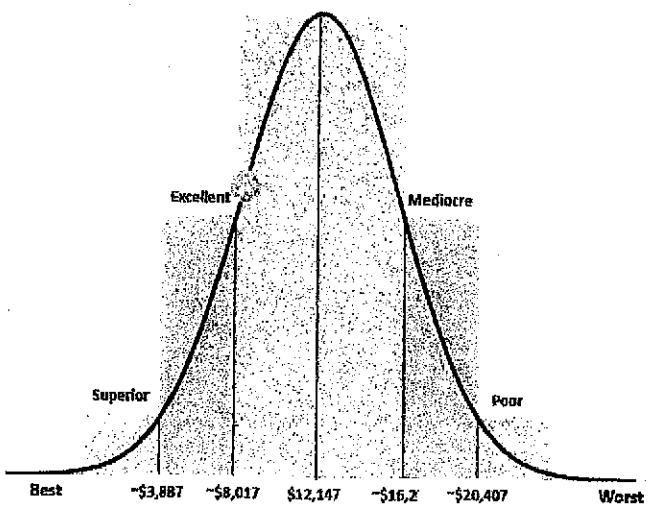


Statistical Significance: Significant at 95% confidence level. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker; black marker for peer physicians. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009. Local peer surgeons: Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.

Statistical Chart 5A

COSTS OF SURGICAL PROCEDURES

Absolute Deviation from National Average, Steven Anagnost, MD, 2005 – 2009

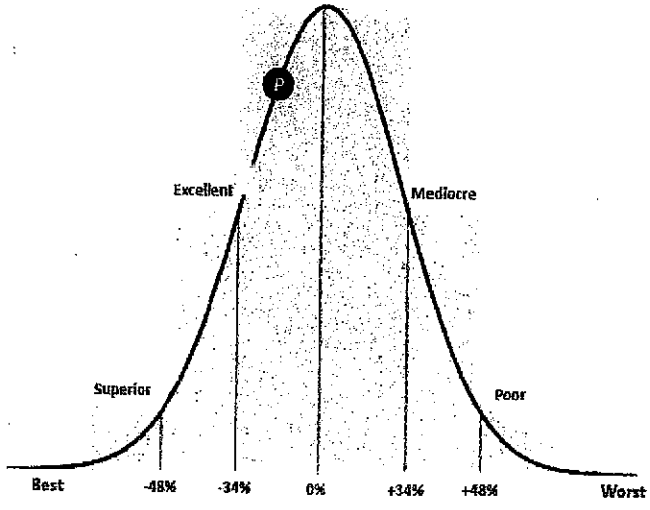


Statistical Significance: Significant at 95% confidence level. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009.

Statistical Chart 5B

COSTS OF SURGICAL PROCEDURES

Percent Deviation from Expected, Steven Anagnost, MD and Hillcrest Peer Surgeons, 2005 - 2009

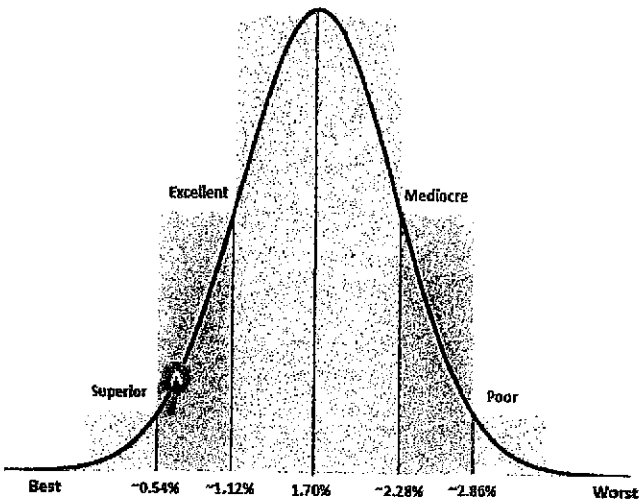


Statistical Significance: Significant at 95% confidence level. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker; black marker for peer physicians. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009. Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.

Statistical Chart 6A

MORBIDITY RATES 2009

Absolute Deviation from National Average, Steven Anagnost, MD, 2009

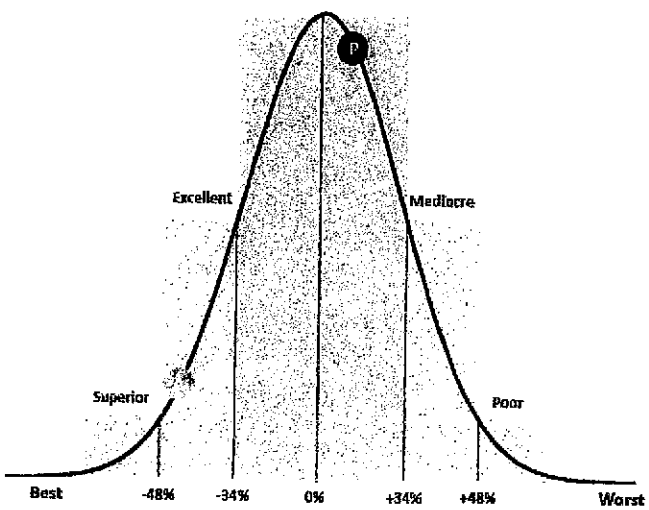


Statistical Significance: Significant at 75% confidence level. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker. Source: Hillcrest Healthcare System Physician Quality Measures Report for January - December 2009

Statistical Chart 6B

MORBIDITY RATES 2009

Percent Deviation from Expected, Steven Anagnost, MD and Hillcrest Peer Surgeons, 2009

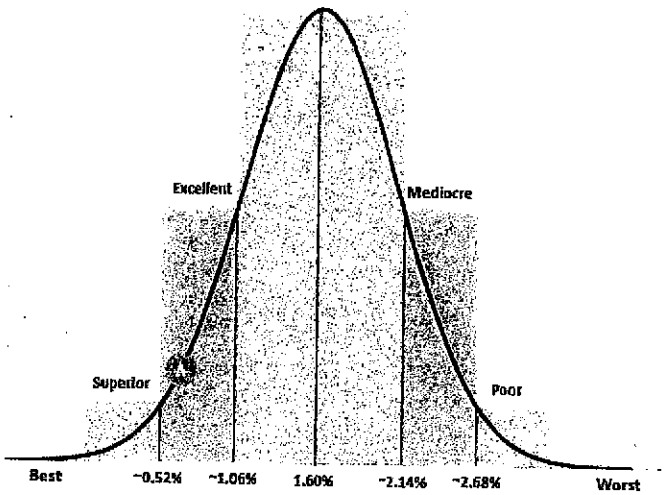


Statistical Significance: Significant at 95% confidence level. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker; black marker for peer physicians. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009. Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.

Statistical Chart 7A

MORBIDITY RATES 2010

Absolute Deviation from National Average, Steven Anagnost, MD, 2010

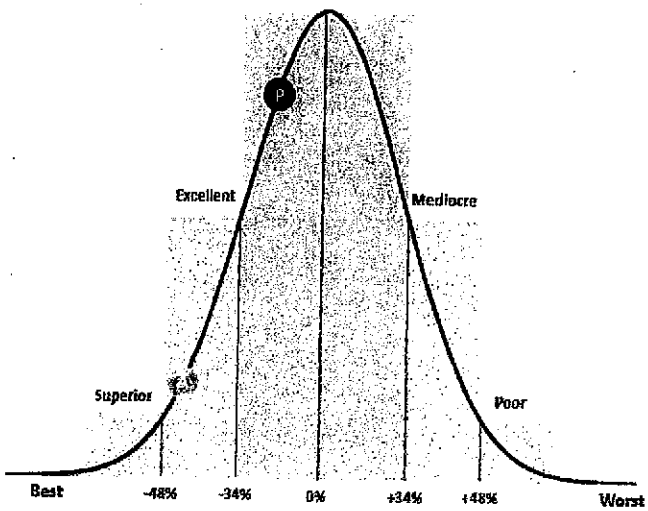


Statistical Significance: Not listed. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker. Source: Hillcrest Healthcare System Physician Quality Measures Report for January - December 2010.

Statistical Chart 7B

MORBIDITY RATES 2010

Percent Deviation from Expected, Steven Anagnost, MD and Hillcrest Peer Surgeons, 2010



Statistical Significance: Not listed. All data are fully risk and severity adjusted. Value for Dr. Anagnost is per red marker; black marker for peer physicians. Source: Hillcrest Healthcare System Physician Quality Measures Report for January 2005- July 2009. Drs. Baird, Covington, Gaede, Main, Min, Sherburn, Tomacek and Wilson.

CROSS REFERENCE TABLE

The worksheet below is for the use of any person charged with assessing formal complaints as referenced in this report. The cross-reference will fast track the reviewer to relevant clinical data and peer-reviewed literature explanations.

COMPLAINT SUMMARY AND CROSS REFERENCE					
Complaint	**Competence**	**Negligence**	**Integrity**	**Settlement**	**Report Cross Reference**
1	•	•		•	Pages
2	•	•	•		Pages
3	•	•	•		Pages
4	•	•			Pages
5	•	•			Pages
6	•	•	•		Pages
7	•	•			Pages
8	•	•			Pages
9	•	•			Pages
10	•	•		•	Pages
11	•	•		•	Pages
12	•	•		•	Pages
13	•	•	•	•	Pages

END NOTES

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[2] Lapolla, M. Online search of the Oklahoma Board of Medical Licensure and Supervision public data base, December 2012 (www.okmedicalboard.org).

[3] Lapolla, M. Online access of the website of the American Association of Neurological Surgeons (www.aans.org/Patient%20Information/Conditions%20and%20Treatments/Minimally%20Invasive%20Spine%20Surgery%20MIS.aspx). Or access www.aans.org; access Patient Information; access "Click here to view Conditions and Treatments", then access "Minimally Invasive Spine Surgery MIS". January 2012.

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[17] Hillcrest Healthcare Systems, Quality Management Division. *Physician Quality Measures Report for January 2005- July 2009*. December 2012.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Quality Management Division, Hillcrest Healthcare Systems. December 2012. *"Physician Quality Measures Report for January - December 2009"*.

[23] Quality Management Division, Hillcrest Healthcare Systems. December 2012. *"Physician Quality Measures Report for January - December 2010"*.

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

FILED

JUN 17 2010

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA EX REL. THE OKLAHOMA BOARD OF MEDICAL LICENSURE AND SUPERVISION,	)	
Plaintiff,	)	
v.	)	Case No. 09-10-3861
STEVEN CONSTANTINE ANAGNOST, M.D.,	D	
LICENSE NO. 21194	)	
Defendant.	)	

APPLICATION TO DETERMINE EMERGENCY

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

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.* (the "Act"). Under Section 503.1 of the Act, the Secretary of the Board may determine that "an emergency exists for which the immediate suspension of a license is imperative for the public health, safety and welfare."

2. Defendant, Steven Constantine Anagnost, M.D., holds Oklahoma license no. 21194, and is authorized to practice as a physician and surgeon in the State of Oklahoma.

3. The evidence reflects the following:

PATIENT DHM

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

585-1444

EXHIBIT
tabbies
2

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

PATIENT PLM

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

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

PATIENT GMM

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

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

PATIENT LSM

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

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

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

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

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

Respectfully submitted,

Elizabeth A. Scott

Elizabeth A. Scott (OBA #12470)
Assistant Attorney General, State of Oklahoma
101 N.E. 51st Street
Oklahoma City, OK 73105

ATTORNEY FOR THE STATE

OKLAHOMA STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION

I do hereby certify that the above and foregoing is a true copy of the original Application Determine Emergency now on file in my office.
Witness my hand and Official Seal of the Oklahoma State Board of Medical Licensure and Supervision this 11th Day June 2010 Janet Swindle

STATE OF OKLAHOMA

OKLAHOMA BOARD OF MEDICAL
LICENSURE AND SUPERVISION
VS.
STEVEN CONSTANTINE ANAGNOST

PROCEEDINGS HELD ON JUNE 18, 2010
IN OKLAHOMA CITY, OKLAHOMA AT 9:00 A.M.

APPEARANCES:
On behalf of the STATE OF OKLAHOMA:
Elizabeth Scott
ASSISTANT ATTORNEY GENERAL
101 Northeast 51st Street
Oklahoma City, Oklahoma 73105
405.962.1400

On behalf of DR. STEVEN ANAGNOST:
Phil R. Richards
Amanda Stevens
RICHARDS & CONNOR
525 South Main, 12th Floor
Tulsa, Oklahoma 74103
918.585.2394

HEARING OFFICERS: Gerald C. Zumwalt, M.D.
Judge Emily Kaye Lonian

REPORTED BY: Laura L. Robertson, CSR, RPR

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DEFENDANT'S EXHIBITS

concerns?

A. Yes.

Q. And it was not until April that you wrote your letter of complaint?

A. Yes.

Q. And was it at the request of some representative of the state board that you wrote that letter?

A. Yes.

Q. And who requested that?

A. I think it was Gayla McClenney.

Q. The investigator?

A. The investigator.

Q. And --

A. I think I was sent a letter. Well, obviously I was answering questions in this letter.

Q. Yes, sir.

A. So I was sent a letter and asked to answer these questions.

Q. All right. So sometime between perhaps December of 2009 and April of 2004 you -- I'm sorry, 2010 you received a letter from Ms. McClenney asking specific questions and requesting that you respond?

A. Yes.

Q. And when were you first advised that this

hearing was to be held today?

A. Ten to 14 days ago.

Q. So about two weeks, thereabouts?

A. Yes, at the most.

Q. When were you -- was it at that time that you were advised that an application for an emergency suspension would be filed against Dr. Anagnost or had you known that that was going to be done previously?

A. I was just told this is an emergency hearing. I wasn't told anything about an application.

Q. All right. Were you told at some time prior to that that some type of complaint would be filed against Dr. Anagnost by the state?

A. I don't remember if I was told or I was just informed that the board was concerned and was investigating.

Q. All right. Now, Doctor, have you ever performed a spinal surgery on the wrong level?

A. Yes.

Q. Has that occurred more than once?

A. Undoubtedly.

Q. Have you ever made an error in your dictation of a operative report?

A. Yes.

Q. Have you ever had a bad outcome from a

I pretty much about a week ago was when I found out the exact date, and I did not know until coming here this morning exactly what cases were going to be discussed.

Q. All right. So if I understand correctly, probably in January of this year you first spoke to someone from the state board about the three cases that we are discussing today, as well as maybe some others; correct?

A. That's correct.

Q. And in March of this year, you were asked to respond or write a -- I guess you were given some questions to answer and you wrote a letter to, I believe Ms. McClenney, about these three cases?

A. That's correct.

Q. And then a couple of weeks ago you were notified that there would likely be a hearing held today, or some hearing held sometime in the future on an emergency basis; correct?

A. That's correct, sometime in the future on an emergency basis, that's correct.

Q. Doctor, have you ever performed a surgery on the wrong level of the spine?

A. No.

Q. Have you ever made an error in a operative

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

FILED
JUN 18 2010
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA EX REL. THE OKLAHOMA BOARD OF MEDICAL LICENSURE AND SUPERVISION, Plaintiff, vs. STEVEN CONSTANTINE ANAGNOST, M.D., LICENSE NO. 21194, Defendant.	Case No. 09-10-3861

COMPLAINT

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

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.*

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

PATIENT DHM

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

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

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the wrong levels and damaged the nerve root, but did not disclose his mistake and additional surgery to the patient.

PATIENT PLM

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

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

PATIENT GMM

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

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

PATIENT LSM

9. On or about February 28, 2007, Defendant performed surgery on Patient LSM. According to the Operative Report, he performed Bilateral hemilaminectomies at L3-L4, with

medial facetectomies and foraminotomies bilaterally at L3-L4 and L4-L5. The patient continued to suffer problems with his back and sought treatment with Frank Tomecek, M.D.

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

PATIENT LPM

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

11. Dr. Covington subsequently performed surgery on Patient LPM and upon examining her spine during surgery as well as x-rays taken before his surgery, concluded that Defendant performed **only** a minimal decompression on the left side at L4-L5 and on the right side at L4, and that **he did not perform surgery on the right side at L4-L5, nor did he perform any surgery at L3-L4 as represented in his Operative Report.** Dr. Covington concluded that Defendant did not perform all of the surgeries noted in the Operative Report, and 5sexzthat his failure to do so necessitated a second surgery for Patient LPM.

OVERBILLING OF MEDICARE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Respectfully submitted,

Elizabeth A. Scott

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

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

FILED
JUN 18 2010
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA EX REL. THE OKLAHOMA BOARD OF MEDICAL LICENSURE AND SUPERVISION, Plaintiff, v. STEVEN CONSTANTINE ANAGNOST, M.D., LICENSE NO. 21194 Defendant.	)	Case No. 09-10-3861

CITATION

YOU ARE HEREBY NOTIFIED that on the 18 th day of June, 2010, a sworn Complaint was filed with the undersigned Secretary of the Oklahoma State Board of Medical Licensure and Supervision, State of Oklahoma, charging you with violations of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act at 59 Okla. Stat. §509(8), (13) and (18), and OAC 435:10-7-4 (11), (15), (18), (19), (28), (30), (39) and (44). A copy of the Complaint is attached hereto and made a part thereof.

On July 22, 2010, the Board will be in regular session at 9:00 o'clock a.m., at its offices located at 101 N.E. 51st Street, Oklahoma City, Oklahoma, at which time your Complaint will be considered by the Board, and a hearing will be held pursuant to the Oklahoma Administrative Procedures Act, 75 Okla. Stat. §309, *et seq.*, as amended.

If the Board decides, after considering all the testimony and evidence, that you are guilty as charged, your license to practice as a physician within the State of Oklahoma may be suspended or revoked or other disciplinary action may be taken by the Board as authorized by law, including the assessment of costs and attorney's fees for this action as provided by law.

Under the laws of the State of Oklahoma, you are required to file your written Answer under oath with the Secretary of the Board within twenty (20) days after the Citation is served upon you. Unless your Answer is so filed, you will be considered in default, and the Board may accept the allegations set forth in the complaint as true at the hearing of the complaint. If the charges are deemed sufficient by the Board, your license to practice as a physician in the State of Oklahoma may be suspended or revoked.

THEREFORE, you are cited to appear at the hearing. If you are not present in person, you may be present through your attorney.

DATED this 17 day of June, 2010 at 3 p.m. o'clock.

GERALD C. ZUMWALT, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

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,	)	
-vs-	)	Case No. 09/10/3861
STEVEN C. ANAGNOST MEDICAL LICENSE #21194,	)	
Defendant.	)	

****

VOLUME I OF THE DEPOSITION OF DR. FRANK TOMECEK, taken on behalf of the Defendant in the above styled and numbered cause, taken on the 9th day of November, 2012, in Tulsa, Oklahoma before me, Dalene Lawrence, a Certified Shorthand Reporter duly certified under and by virtue of the laws of the State of Oklahoma, pursuant to the stipulations hereinafter set forth.

****

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF:	MR. DANIEL B. GRAVES Graves McLain 1437 S. Boulder, Ste. 1010 Tulsa, OK 74119
FOR THE DEFENDANT:	MR. BARRY SMITH MS. CHRISTINA VAUGHN McAfee & Taft 1717 South Boulder Tulsa, OK 74119
FOR THE WITNESS:	MS. TERESA MEINDERS BURKETT MS. KATHRYN S. BURNETT Conner & Winters 4000 One Williams Center Tulsa, OK 74103
ALSO PRESENT:	DR. STEVEN ANAGNOST MR. SEAN McKEE

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very much, unfortunately. But that's pretty much the only thing I've looked at.

Q Pretty much? Does that mean there's something else?

A I also, since I had those names, I looked a little bit at my own records on the patients. Because all of those patients, I had been a subsequent treating physician.

Q As you sit here right now, do you recall the names of the patients?

A At this exact moment, no. I probably would, one or two of them would come to me if I wasn't on the spot. But I mean, I will remember the name if you bring it up.

Q Okay. We'll do that later. From your review of the transcript, are there any changes or clarifications you feel you need to make about your testimony?

A I might if a question is asked. But at this moment, I don't have anything that I can think of just jumping out at me.

Q When you reviewed the transcript, did you also review Dr. Fell's testimony?

A No. Now, Dr. Fell's testimony, some of it was on the end of one page or part of one page and mine was another. So I kind of looked at that. But really, I have very little knowledge of what Dr. Fell's opinion was. I know a little bit about it but it would be, you know, mostly kind

of guesswork. I wouldn't want to really make any opinion on Dr. Fell's case.

Q Did you talk to Dr. Fell about the case?

A I have not talked to Dr. Fell about any of this stuff pretty much since the time around the hearing, the emergency hearing, in Oklahoma City. I really have talked very little to Dr. Fell. I mean, we run into each other at the hospital every once in a while. He's not in my group, of course.

Q He's at Saint Francis. Correct?

A Yes. He does have ownership and privileges at the Tulsa Spine and Specialty Hospital. He does, he actually is the Chief of Staff of the hospital at Tulsa Spine and Specialty. And we run into each other now and again. But we don't talk much about -- certainly about this. We occasionally talk about, you know, just totally non-medically related topics or the hospital itself.

Q Did you review the letters that you wrote to the Board in this case?

A I know I've reviewed them. And I actually may have briefly glanced at those, as well. But I didn't really study them very closely.

Q I think you said that you may have looked at some of the patient records. Is that correct?

A That's correct.

that hearing?

A My understanding is the outcome is that there was -- well, really, it's just that there was nothing done to affect Dr. Anagnost's licensure status. That's the best that I understand. It was not affected as a basis of that hearing.

Q What was your understanding of the purpose of that hearing?

A My understanding of the purpose of the hearing was that his license could be suspended if the Board felt that he violated whatever codes of conduct that they felt were being discussed in regards to his practice pattern.

Q Prior to the hearing, who all associated with the Board of Medical Licensure did you talk to?

A I talked again to Gayla. And then there was a doctor on the Board. I, you know, I cannot recall his name. And those are the only two, I believe, that I talked to on the Board.

Q That doctor is someone you spoke to prior to the hearing?

A I believe so.

Q Was his name Zumwalt?

A I honestly -- the name rings a bell, but I really don't remember. I know it's very embarrassing but I don't remember.

testify on what causes that I was involved in and what I saw -- and that's basically what I did. So I had no idea what the result of the hearing was going to be. But I knew that was a possible outcome.

Q Was it your opinion that Dr. Anagnost should have had his license suspended?

A I don't know that I can make an opinion like that. All I can say is, I really, of the cases that I have seen, I believe many of them are grossly negligent and beneath the standard of care and somewhat unethical on many levels. But I certainly don't feel I have the power to give an opinion. I leave that up to people who are in that position. I don't feel I can make a statement on that.

Q Well, your opinion may not be binding but that doesn't mean you can't form one. So do you have an opinion, just to yourself, that he should lose his license?

MR. GRAVES: Object to the form.

A Do I have an opinion of whether his license should be taken away or not, or suspended?

Q Yes.

A Yes, I think his license should be taken away. Absolutely.

Q So were you disappointed in the outcome of that June 2010 hearing?

A Yes.

Q And did you share your disappointment with anyone associated with the Board?

A Yes, I have. Gayla. She's the only other person. I've only talked to this other doctor one time. But I've certainly communicated a couple of times with Gayla. Not for quite some time, but early on, after this hearing, I know I communicated a couple of times with her.

Q What did you tell her?

A I just thought that not enough had been done and we had a continuing threat to our medical community.

Q What was Gayla's response?

A Basically they had done all they could, basically, at that time.

Q Was it your understanding that the Board was going to continue looking for cases to prosecute against Dr. Anagnost?

A I came to that understanding over time. But at the time early on after this hearing, I didn't know; I thought the matter was over early on after the hearing. I thought the matter was pretty much over.

Q Did you share your disappointment with Dr. Fell?

A Yes.

Q What was Dr. Fell's response?

A He was also disappointed with the outcome.

Q Did you share your disappointment in the outcome of that hearing with anyone besides Gayla and Dr. Fell?

MR. GRAVES: Object to the form.

A Well, everyone in my group was asked to be involved with this process at the time. That included at that time Dr. Boxell -- I can't remember -- who left our group subsequent to that. And I can't remember if Dr. Malone was still with our group or not. And I can't remember if he reviewed any cases or submitted any cases. But Gayla had asked our group to collect all the cases at that time where we had subsequently treated Dr. Anagnost's patients. And I believe I gave an opinion in the transcript of the number of those cases. But it was somewhere in the neighborhood of 150 cases that our group had seen subsequent to Dr. Anagnost's treatment. And everyone in the group before that time, before all those cases were collected -- and this was done partly by our office manager, Deborah Wood; she collected the cases because we had a computer program and our records are electronic and we were able to type in a key word and pull up all these cases. Before that time, I really had no idea of the fact that my partners were seeing a lot of the same sorts of things I was seeing. After that, we talked occasionally but not very much about some of these patients, not using names or anything, but just outcomes and What would you do

Q Did you and Dr. Boxell talk about your concerns regarding Dr. Anagnost or any concerns regarding Dr. Anagnost?

MR. GRAVES: Object to the form.

A Yes. We have.

Q Did Dr. Boxell ever recommend that you speak to Plaintiff's attorneys about those concerns?

A No. We really didn't talk about attorneys when we discussed cases.

Q Did Dr. Boxell make any suggestions to you about what should be done?

A I know Dr. Boxell at that time was very convinced that there was a threat to the medical community and that Dr. Anagnost really shouldn't be practicing. But I do not recall us discussing anything about ways and means of how to accomplish that. To me, you have to be able to police your peers in this environment that we're in for the safety of the patient. And the biggest part of that right now falls to the onus or the responsibility of the hospitals where the doctor has privileges. And Dr. Anagnost is an orthopedic surgeon. And at least in a peer review in the hospital where I'm familiar with how you can affect someone's practice in that format, in that forum, not being in his department, and not being able to directly peer review him, or give opinions to the hospital, I really wasn't familiar with the format of

A Definitely. Yes.
Q Why do you say "definitely"?
A Well, I used to be a part-owner of that company. The Stark laws changed the situation and I can't own the company in the Tulsa area. The company also has branches in San Antonio and Tallahassee, Florida, and I still have some ownership in those branches. It's a neuro-monitoring company for spinal surgery primarily but can also be used in brain surgery.
Q Does any of your practice today still consist of brain surgery?
A Yes. About 5 percent or so maybe. I would say definitely less than 10 percent.
Q Were there any of your colleagues that seemed more concerned than others or that were particularly concerned about Dr. Anagnost?
A Every one of them was very concerned. Every one of my partners was very concerned.
Q So you all were having discussions, or had been having discussions, about Dr. Anagnost for the past six years and your concerns about him?
MR. GRAVES: Object to the form.
A I'd say on and off, that's pretty accurate.
Q Were any solutions ever proposed by any of your colleagues?

A I don't like sitting here answering questions for several hours -- about anybody, for that matter -- in this forum. It's just not pleasant. I'd rather play golf.

Q But certainly you took, well, you apparently felt a responsibility to the Board to do what you did. Is that correct?

A That's definitely correct.

Q You took it very seriously?

A Yes.

Q Do you think in the course of that process you were fair to Dr. Anagnost?

A I hope so.

Q Do you think that he deserves fairness?

A Yes.

Q Does he deserve to have unbiased witnesses?

A Everyone does.

Q Do you have a bias towards Dr. Anagnost?

A No.

Q Well, do you believe that he acts unethically?

A Yes.

Q Do you believe he acts with gross incompetence?

A I don't think he's incompetent. I think he knows what he's doing.

Q So you think what he does, he does

intentionally?

A That's correct.

Q That doesn't create in you a bias?

A Well, it just is an opinion. I don't know that I have a bias. If I see a patient of his that has a wonderful outcome, I'm certainly not biased about that situation. But if I see a person who has had a devastating injury and it's been basically ignored and not treated properly, I just can't turn a blind eye to that. It's just not safe for this community. It's not good for patients. It's not good for quality of care. It's not going to be good for our national registry when we have one when the federal government is trying to tell us who can and who cannot do what and where and whenever.

Q When you refer to a case with devastating injury, was there one in particular you had in mind?

A I don't remember the patient's name -- but I have several examples, yes.

Q Were those ones brought to the Board by you?

A No. Not all of them. But most of them have been cases that I've seen through Mr. Stidham.

Q How many of those cases with Mr. Stidham were ones where you were the subsequent treating physician?

A Oh, maybe a third to a half. I can't say for sure.

AFFIDAVIT of
Steven C. Anagnost MD

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, STEVEN C. ANAGNOST MD, being of legal age and first duly sworn, state of my own personal knowledge and information:

1. That I make this affidavit based upon my own personal knowledge and information. The matters set forth herein are true and correct to the best of my personal knowledge and information. If called upon to testify under oath, I would testify in conformity with this affidavit regarding its subject matter.

2. I am a board certified orthopedic surgeon specializing in minimally invasive spine surgery. I have practiced in Tulsa, Oklahoma since 1999, and I am currently a member and co-owner of the Spine and Orthopedic Institute – Minimally Invasive Surgical Specialists located in Tulsa.

3. I have been the subject of investigation and disciplinary proceedings before the Oklahoma Board of Medical Licensure and Supervision ("Board"). An abbreviated and limited background of the Board proceedings against me is set forth herein for the limited purpose of providing context for the description of certain documents which have been shown to me by the Oklahoma Bar Association ("OBA").

4. I am uncertain of exactly when the Board began its investigation of me. I was not aware of any such investigation until June 11, 2010, when the Board served me with an Application to Determine Emergency and a Citation, making allegations of fraud regarding four (4) patients and seeking to suspend my medical license.

EXHIBIT
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5. The emergency hearing was conducted before the Board seven (7) days later, on June 18, 2010. On the morning of the emergency hearing (June 18) I was served with the Board's Initial Complaint which included allegations of wrongdoing related to an additional patient.

6. At the Emergency Hearing, the Board prosecutor presented her case-in-chief and I began presenting my defense. During the presentation of my defense, the Board prosecutor suddenly stopped the hearing and withdrew the application for emergency suspension based on the evidence submitted. The prosecutor told me that she and Board Medical Advisor, Dr. Eric Frische, "talked in good conscience", and decided then to withdraw the emergency suspension. I was told "nothing will be done as a result of the hearing today."

7. Although the prosecutor withdrew the application for emergency suspension, the Board did not withdraw its initial Complaint.

8. Over the course of the next two years, the Board took no action to resolve its prosecution of the Initial Complaint and did not provide me the opportunity to defend my reputation and practice. During this time period, the Board repeatedly continued my case without input or request from me.

9. On July 27, 2012 (more than two years after filing the Initial Complaint) the Board filed an Amended Complaint containing allegations of wrongful conduct related to twenty-three (23) patients, five (5) of which were the same patients included in the Initial Complaint.

10. On November 15, 2012, I filed an Application for Original Jurisdiction and Petition for Writ of Prohibition requesting the Oklahoma Supreme Court to accept original jurisdiction and enjoin the Board proceeding.

11. The Application to Assume Original Jurisdiction was declined and on July 24, 2013, I filed a Petition for Injunctive and Declaratory Relief in Oklahoma County, State of Oklahoma. [See *Steven C. Anagnost, M.D. v. Oklahoma Board of Medical Licensure and Supervision*, Case No. CJ-2013-4141].

12. On September 12, 2013, I signed a Consent Order resolving the Board action against me. On September 12, 2013 I also singed a Settlement Agreement and Release ("Release") to which both I and the Board are parties.

13. Subsequent to my signing of the Release, the OBA instigated an investigation of various attorneys in connection with the Board's investigation and prosecution of me. Certain of the files from the Board related to its investigation and prosecution of me were apparently obtained by the OBA via subpoena.[1]

14. I was asked to appear before the OBA on or about April 14 and 15, 2014, to answer questions as part of the OBA's investigation. I attended the meetings, along with my attorneys from McAfee Taft, Barry L. Smith, Christina Vaughn, and Richard Hix.

15. I, along with my attorneys, was shown certain documents from my Board files while at the April 14 and 15 meetings at the OBA. I do not know if we were shown all the documents constituting the files of the Board relating to its investigation and prosecution of me. The documents I was shown from my Board files reveal that the

[1] Although my counsel and I requested my files from the Board in the underlying disciplinary proceedings, these requests were denied by the Board.

Board investigation and prosecution was not fair and impartial. Had I known the information about the Board's investigation and prosecution of me which was contained in the documents I was shown by the OBA, I would have never signed the Consent Order dated September 12, 2013, or the Settlement Agreement and Release also dated September 12, 2013. The purpose of this affidavit is to describe and detail some of the documents (and information contained therein) which we were shown to me by the OBA, and concealed from me by the Board.

The Conflicts of Interests of the Board and Special Prosecutor

16. Oklahoma City attorney Gary Brooks was a voting Board member with respect to the Board's investigation and prosecution of me while he was concurrently representing two separate plaintiffs in medical negligence cases against me. Although we were aware that Mr. Brooks sat on the Board, we were repeatedly and continually assured by the Board that Mr. Brooks had no involvement or influence in the Board's investigation and prosecution of me. Documents shown to me at the OBA make clear that, despite the Board's assurances to the contrary, Mr. Brooks was involved and had influence in the Board's investigation and prosecution of me. These documents include:

A. An email from Board Investigator (and employee) Gayla Janke dated March 18, 2010, stating: "Mr. Brooks has met with investigator and reviewed and provided medical records deposition transcripts radiology films and other evidence belonging to the patient."

B. A note from Board Investigator Gayla Janke dated October 28, 2010, stating: "a staff meeting was held with Gary Brooks on fraudulent op report and billing."

C. A note from Board Investigator Gayla Janke dated September 3, 2010, stating: "a meeting was planned with Gary Brooks"

D. A note from Board Investigator Gayla Janke dated January 19 and 26, 2011, stating: "Message left for Gary Brooks to send documents on James Tucker."

E. Notes from Board Investigator Gayla Janke dated January 18 and 26, 2010 stating: "spoke with attorney Gary Brooks."

F. A note from Board Investigator Gayla Janke dated January 26, 2011, stating: "Have talked with Gary Brooks and he will provide documents. Have also talked with attorney Scott Hawkins, he will also provide documents on some cases in his office, one that has settled, one that is ready to settle and a new case"

G. A note from Board Investigator Gayla Janke dated March 30, 2011, stating: "received 7 boxes of medical records on patient Jack Tucker from attorney Gary Brooks." Jack Tucker was one of the Plaintiff's that Mr. Brooks represented in a civil action against me.

H. An email from Karen Callahan, attorney for Hillcrest Hospital in Tulsa, dated May 24, 2011, informing the Board of Gary Brook's conflict of interest.

I. A note from Board Investigator Gayla Janke dated September 22, 2011, stating: "meeting held with Gary Brooks to decipher which cases were settled vs. which cases were falsely reported as settled on OSCN."

J. A note from Board Investigator Gayla Janke dated October 21, 2011, stating: "complaints were received from 2 patients (Tucker and Stevens)." Tucker and Stevens are the two Plaintiffs that Mr. Brooks represented in civil matters against me.

K. A Note from Board Investigator Gayla Janke stating: "complaint origination" of patient DSM as "reported by Gary Brooks."

L. An Email from the Board Special Prosecutor, Daniel Graves dated February 29, 2012, stating: "I have contacted attorneys Richard Shallcross, Steve Stidham, Jennifer DeAngelis and Monty Lair. I have previously spoken with Gary Brooks."

17. In addition to Mr. Brooks, the Board hired a special prosecutor to handle my disciplinary action who had two civil medical negligence cases pending against me. The Board did not disclose to me that it hired a special prosecutor, attorney S. Randall Sullivan, as part of its investigation against me and I did not become aware of his

presence until I was shown documents by the OBA.[2] At all times that Mr. Sullivan acting as special prosecutor against me, he was also representing two separate plaintiffs, Paula Gunn and Ivan Morris, in civil medical negligence lawsuits against me.[3] The documents I was shown at the OBA which reflect Mr. Sullivan's involvement include the following:

A. A note from Gayla Janke to Assistant Attorney General Elizebeth Scott dated December 1, 2010, stating: "a meeting was conducted with Randy Sullivan. Mr. Sullivan will represent the State in this case."

B. A note from Gayla Janke to Lyle Kelsey, and Eric Frische, M.D. dated January 27, 2011, stating: "discussed with Randy Sullivan interviewing Drs in Tulsa who are willing to testify."

C. A note from Gayla Janke dated February 16, 2011, stating: "One hour meeting with Gayla Janke, Stephen Washburn, Lyle Kelsey, Eric Frische, AAG Libby Scott, and Randy Sullivan questioning why there are no payouts one the NPDB. Research being conducted."

D. A note from Gayla Janke dated February 18, 2011, stating: "...CD Rom on the Box case and OSCN on the Box case to Randy Sullivan."

F. A note from Gayla Janke dated March 28, 2011, stating: "Continue waiting on Randy's report."

G. A note from Gayla Janke dated May 5, 2011, stating: "Randy Sullivan conveyed via email that we may have hit a dead end."

H. A video deposition transcript of plaintiff Paula Gunn dated May 26, 2011, stating: "Video deposition of Paula Gunn with Mr. Randall Sullivan present "on behalf of the plaintiff"."

The Board Ignored Evidence In My Favor

18. On May 5, 2011, Gayla Janke received an email from Karen Callahan, an attorney representing Hillcrest Healthcare System ("Hillcrest"). Hillcrest had been performing quarterly peer reviews on me as a result of the Board's disciplinary

[2] At some point the role of special prosecutor in my case changed from Mr. Sullivan to Daniel Graves, a Tulsa attorney that specializes in prosecuting civil medical negligence cases against doctors. I am uncertain when this occurred, but until reviewing the documents at the OBA, the only special prosecutor that I was aware of was Mr. Graves.

[3] CITE THE CASES

proceedings against me. In the email, Ms. Callahan reported that the Hospital's second quarterly peer review came back showing my care to be appropriate care.[4] Specifically, Ms. Callahan states:

> "I wanted you to know that the second quarterly external peer review report came back today from our external reviewer in Florida and all cases reviewed were good with findings of appropriate judgment, appropriate technique and appropriate care of the surgical patient."

19. Also on May 5, 2011, and presumably in response to the peer review results reported by Ms. Callahan, Randy Sullivan acknowledged the lack of credible evidence against me and wrote an email to Ms. Janke, stating: "We may have hit a dead end, but we should meet at least one more time to discuss any more strategies."

Improper Motives and Actions of the Board Contrary to Fairness and Impartiality

20. The documents I reviewed from my Board file at the OBA make clear that the Board would stop at nothing to obtain evidence sufficient to take my license, destroy my career and harm me personally.

21. The Board's medical director Dr. Eric Frische explained to the Board's Executive Director Lyle Kelsey and Assistant Attorney General Elizabeth Scott, that the Board's intentions at the emergency hearing on June 18, 2010, were to trap me and "catch him [me] off guard". Specifically, in an email dated June 20, 2012 from Dr. Frische to those listed above, Dr. Frische states:

> "I think it's fair to say that all of us were surprised that our "expert's" testimony didn't hold up once Dr. Anagnost presented his defense. The flaw with our experts was that they didn't' appear to have expertise with the MISS [minimally invasive spine surgery]. That fact doesn't prove that the doctor is doing things properly, it only demonstrates that we should have prepared differently and had we done so, I doubt we would have pushed for an emergency suspension hearing."

[4] Ms. Callahan had previously reported to Gayla Janke that the first quarterly peer review done regarding my care "came back very positive from the external reviewer."

* * *

"There are specific things we could have and should have done."

* * *

"First of all, we should have interviewed the doctor. *I think we felt that we wanted to catch him off guard*, but clearly he wasn't." {Emphasis added].

* * *

"In future cases like this one, we might consider an interview with multiple interviews and do so on the record and probably in our Board office where we can record the interview. *That should be adequate to catch doctors off guard*.". [Emphasis added].

22. The Board expressed delight at the prospect that it was causing me to "implode" and was forcing me to "fold", as clearly shown in the January 25, 2012 emails between Executive Director Lyle Kelsey, Board Investigator Gayla Janke, and Board Medical Advisor, Dr. Eric Frische below:

Gayla Janke: "Dr. a paid $75,000 out-of-pocket on 2 cases... Peer review concluded last night... Dr. Anagnost told Dr. Landgarden that his career is finished and he would have to practice in Brazil...he was seen clearing a computer and loading several boxes from his clinic last night. Surgeries and clinic canceled for two weeks at the present time – telling patients there is a family emergency... More results coming (stay tuned)"

Dr. Frishe: "so this is another neurosurgeon who will implode?"

Gayla Janke: "Hopefully !!!!!!!!!!!!!!!!!! I shouldn't say that"

Lyle Kelsey: "it may be that we have to be a forceful part of this doctor and his license. We need to take advantage of our C&C and get it on the docket to move."

Dr. Frische: "AGREED! When do we get peer review material? If he is folding he may not go through the fair hearing process."

23. The Board spent inordinate amount of state taxpayer money, to viscously attack me for four (4) years. This is evidenced in the following invoices and contracts.

A. Attorney Dan Graves contracted by Board for **$200,000** for 2012.

B. Attorney Dan Graves contracted by Board for **$350,000** for 2013

C. Attorney Neil Van Dalsem contracted by Board for **$20,000** for 2013

D. Dr. Kern Singh contracted by Board for **$100,000** for 2012

E. Dr. Kern Singh contracted by Board for **$100,000** for 2013

F. Dr. Kern Singh deposition and prep for **$24,000** May 10, 2013

G. Attorney Emily Kae Lonian ALJ was also paid an undisclosed sum by the Board.

The Board's Work With My Competitors and Plaintiff's Lawyers to Generate Evidence Against Me:

24. In May of 2010 Gayla Janke received a call from Terry Woodbeck, CEO of Defendant TSSH. Mr. Woodbeck informed her that seven neurosurgeons were willing to talk to the Board about me and that he would be the liaison.

25. In December of 2010 Gayla Janke recognized that the Board was only receiving complaints from my competitors and not the patients. Her note states: "It should be noted that other than Dr. Tomecek, there have been no additional complaints [against Dr. Anagnost] since the Emergency Hearing."

26. The Board therefore began actively soliciting complaints against me from my competitors and plaintiff's lawyers, as demonstrated in the following email exchange between Oklahoma Spine & Brain Institute, LLP's office manager, Deborah Wood, and Board Investigator Gayla Janke that occurred in October of 2011:

> Wood: "Can you give me an update on the investigation on Dr. Anagnost? Our group has come across another horrific case that we are working on getting all the information to you. There is a lot of concern as this continues to occur. Would it be beneficial for you or someone from the Medical Board to meet with some of my physicians to discuss..."
>
> Janke: "It would be helpful to receive additional complaints, either from the patient, or the doctor reporting the patient's incident. The most

effective way to submit a complaint is in writing addressed to my attention."

27. On October 28, 2011, Gayla Janke exchanged emails with Dr. Tomecek, again trying to drum-up evidence against me:

> Tomecek: "I have been retained as an expert witness by the Sneed, Lang and Herrold law firm in Tulsa. They have 25 cases of malpractice many of which haven't even been formally filed yet against Dr. Anagnost... This willful negligence and deceit in documentation is a medical atrocity that should not be allowed to continue... I am willing to testify again if that is required to bring this case to the appropriate conclusion."
>
> Janke: "It is important to Dr. Anagnost's case that all 25 of the patients whose case is with the Sneed Lang Firm (and any other patient you know of that has been injured) fill out the attached Complaint Form and send it back to the Medical Board. The more Complaints we have the better."

28. Moreover, on the October 28, 2011, Board Investigator Gayla Janke emailed Dr. Tomecek (one of my competitors) wherein she attaches the Board Complaint Form and tells Dr. Tomecek how important it is to have the clients of the local Plaintiff's law firm that he was working for as an expert against me (Sneed Lang), fill out the attached Complaint Forms against me and submit them to the Board. Specifically, the email states:

> "It is important to Dr. Anagnost's case that all 25 of the patients whose case is with the Sneed Lang Firm (and any other patient you know of that has been injured) fill out the attached Complaint Form, and send it back to the Medical Board. **The more Complaints we have the better.** Talk to you soon, Gayla" [Emphasis Added].

29. Between March 25, 2010 to November 28, 2011 (approximately 20 months) Drs. Tomecek, Fell, Baird and Boxell contacted the Board with complaints about me no less than fifteen (15) times.

30. These communications include emails such as the below email sent by Dr. Tomecek to the Board on October 28, 2011 wherein he states:

> I have been retained as an expert witness by the Sneed, Lang and Herrold law firm in Tulsa. They have 25 cases of malpractice many of which haven't even been formally filed yet against Dr. Anagnost... This willful negligence and deceit in documentation is a medical atrocity that should not be allowed to continue... I am willing to testify again if that is required to bring this case to the appropriate conclusion.

31. Dr. Tomecek followed that email with another one approximately two weeks later, on November 14, 2011, wherein he tells the Board:

> I am reviewing yet another malpractice case from the Sneed, Lang, Herrold law firm against Dr. Anagnost... Willful negligence was practiced in this case by Dr. Anagnost... Please feel free to contact me if I can be of further assistance on this case. I must say that I am disappointed and very concerned by the repetitive continuances and lack of action by the board in this serious matter.

32. In January of 2012 the Board worked with the Sneed Lang firm to collect multiple complaint forms from Sneed Lang's clients against me.

Bias At The Board:

33. The Board's members were knowingly and openly biased against me before any trial had ever occurred. The Board repeatedly denied this fact to me and my counsel.

34. The Board's bias is shown in documents I viewed at the OBA, including emails from Board Members, Sullivan, and Executive Director, Lyle Kelsey wherein they both accuse Oklahoma State Representative Richard Morrissette of bribery, after Representative Morrissette openly criticizes the Board for its actions against me in a speech on the House floor on October 21, 2013. In his speech, Representative Morrissette was openly critical of the Board's treatment of me. Representative

Morrissette recommended an audit of the Board and need for more oversight of unregulated state agencies, including the Board. Representative Morrissette's speech was published local and nationally. The Board responded with a flurry of emails, including an email from Board member Dr. Andy Sullivan to Executive Director Lyle Kelsey dated October 23, 2013 at 7:30 a.m., states:

> "Hang tight I'm behind you 100%. We have to believe that right will triumph over evil we just may have to help it along. Hopefully John [Wiggins] can straighten it out. If not we may have to reach out to some friends. I'm ready to help in any way I can. I await any news."

Email from Board Member, Dr. Andy Sullivan to Executive Director, Lyle Kelsey dated October 23, 2013, at 9:47 p.m.:

> "There was not a word in the Tulsa World. Hopefully they looked into it and realized he's a blowhard. It made me mad as a wet hen. We work hard to TRY and keep the public safe and you run an efficient board that is self-supporting. Taking cheap shots from a sleeve [sic] who is on the take from someone should not have to be tolerated. It's a shame we can't tell it like it is. Andy Sullivan"

35. The following emails further support the fact that Board members were receiving information and were biased against me before my case ever went to hearing:

A. Lyle Kelsey email to Board member Chuck Skillings dated January 14, 2013, at 2:02 p.m. which states: "I understand your position on delays very well and I think we have been generous with them. With Anagnost it is a case of serious patient safety..." [Emphasis added].

B. Email from Board member Chuck Skillings to Executive Director Lyle Kelsey dated January 14, 2013 at 8:54 a.m., which states: "I don't want to appear as an antagonist but I believe based on the information that we have already been given that the public is at genuine risk if this physician continues to practice." [Emphasis added].

C. Email exchange between Executive Director of the Medical Board, Lyle Kelsey, and every member of the Board, dated February 5 to March 4, 2013 at 3:18 p.m., which states:

> Kelsey: "The ruling from the OK Sup Court..." and attached the ruling and dissents."

Board Member Dr. Hank Ross: "Wow ! That changes the playing field. Hank"

Board Member Dr. Andy Sullivan: "Is he still able to practice?"

Kelsey: "Yes, but no hospital privileges. Apparently he is doing some pain management with lumbar injections in a surgical center http://www.spine-ortho.com/index.asp?id=1 .....Lyle

Board Member Dr. Bill Kinsinger: "OH Boy," "Wow, so does that mean the special meeting is off?"

Kelsey (March 2, 2013 at 11:14 a.m.): "The Oklahoma Supreme Court rules in favor of the Oklahoma Medical Board and the use of John Wiggins as Trial Examiner!"

Trial Examiner John Wiggins (March 4, 2013 at 2:45 p.m.): "Please remember we are in a public meeting on the record unless we are in executive session. Please do not discuss substantive issues or your personal frustrations about the time this case has been around while we are in an open meeting! This case is contentious and it is very important that your public meeting comments be restricted at this point to again scheduling a hearing."

Encouraging My Competitors and Plaintiff's Lawyers to Harm My Business

36. It appears from documents I reviewed that the Board was likely encouraging my competitors to take action against me at hospitals wherein I was privileged to practice. This is shown in the November 28, 2011 email from Dr. Frische to Board Investigator Gayla Janke and Executive Director Lyle Kelsey, which states:

> "If what the doctor [Frank Tomecek, M.D.] is reporting to us is true then I hope he is also forwarding the same information to the credentials committee or the chief of staff at the hospital. If you do so in a confidential letter and say something to the effect that his purpose is there to be legitimate peer-reviewed and I believe he is protected. You might want to contact a lawyer for the wording."

37. It appeared that the Board also encouraged plaintiff's lawyers to take action against me at hospitals wherein I was privileged. this is further exemplified in a

December 8, 2011 email from Board Executive Director Lyle Kelsey to AAG Elizebeth Scott, Gayla Janke, Dr. Eric Frische, and Stephen Washbourne in response to an accusatory email from a member of the Plaintiff's bar who the Board was communicating with:

> "Now that I have your attention...I agree and she needs to be castigated for trying to second guess our process and work on getting him [Anagnost] kicked off the Tulsa hospital staffs..."

Sharing Information With Plaintiff Attorneys and The Public

38. The Board continually denied to me and my counsel that it had any communication with the medical malpractice bar during its investigation of me. However, I was shown documents from the Board's file by the OBA which show that the Board knowingly and willingly worked hand-in-hand with the medical malpractice plaintiff's bar, and competing Tulsa spinal surgeons who did not specialize in minimally invasive spine surgery, in a conspiratorial effort to ruin my reputation and forcibly take my medical license from me. This is proven by multiple emails and correspondence as shown below:

> A. Email from Board Investigator Gayla Janke to Executive Director Lyle Kelsey, Medical Director Dr. Frische, AAG Libby Scott, and Stephen Washburn dated December 8, 2011 at 9:44 a.m. which states:
>
> "**Tulsa attorney Jennifer DeAngelis called** this week in follow-up to medical negligence case against Dr. Anagnost she had referred. While discussing the case, she blasted me hard about the board's lack of action against Dr. Anagnost. She said things like "**the doctors that are helping us and helping you are ready to do anything we need to do to help the board with this case. We will get the patients to talk to you.** Why isn't the fraud and deceit being investigated? Why are you using a private medical malpractice attorney on this case? They are numerous Oklahoma City attorneys qualified to handle this. We have never seen anything like this!"

"Dr. Tomecek is also sending information on a frequent basis. Are we still planning to file an amended complaint? **I am feeling the HEAT from Tulsa.** Gayla" [Emphasis added].

B. Medical Director, Dr. Frische responded to the above email (to Libby Scott, Lyle Kelsey, Gayla) by email dated December 8, 2011 at 1:50 p.m., stating:

"Perhaps it might be a good idea to inform Miss DeAngelis and we already had her "experts" testify at emergency hearing and it was apparent that they were not doing the same type of surgery. I doubt any of these doctors would have prevailed in a civil suit either as they were easily impeached. Show us some settlements!"

39. More evidence of the Board's coordination with the medical malpractice plaintiff's bar is found in the Board's special prosecutor, Daniel Graves' email to Executive director Lyle Kelsey dated February 29, 2012

"I have contacted attorneys Richard Shallcross, Steve Stidham, Jennifer DeAngelis and Monty Lair. I have previously spoken with Gary Brooks. I also had phone conversations with Drs. Sherbern and Tomecek regarding instances of apparent malpractice."

40. The Board knew its coordination with Plaintiff's attorneys was wrong, as is evidenced by an email sent from the Board's legal advisor, John Wiggins to the Board's Executive Director Lyle Kelsey, titled: "Lessons learned from Anagnost" and dated September 13, 2013, wherein Mr. Wiggins states: "....the Board prosecutor is to have no discussion with attorneys in the community (i.e. plaintiff attorneys) about pending Board investigations of cases."

41. Within a month of Mr. Wiggins email, additional evidence of the Board's coordination and sharing of information with Plaintiff's counsel emerges (together with evidence that they tried to cover up such sharing), in an email from AAG Marissa Lane to Lyle Kelsey, Regi Varghese, Shelley Crowder, Barbara Smith, dated October 10, 2013 at 3:12 p.m. which states:

"As discussed, I contacted Richard Shallcross (plaintiff attorney suing Dr. Anagnost) and asked him to return or delete deposition files that were provided to him. Evidently Gayla Janke had sent him the Anagnost deposition transcripts this summer as a pdf file. By email, I have requested that he delete those files and shred or return the Dr. Singh deposition."

Providing Portions of My File To The Public

42. Documents reviewed by me at the OBA revealed that during the pendency of the Board's investigation of me, the Board was sharing information from my Board file with the public. One example of this is an email exchange between Karen Larson of Channel 2 News KJRH in Tulsa and Executive director Lyle Kelsey dated May 1, 2013, which states:

From Larson: "Lyle, thank you for your response and the documents. Will you please tell me when Dr. Anagnost took leave of absence? And when is a full hearing scheduled? I have seen his name on multiple agendas then noted multiple rescheduling. I've requested the next agenda from Ms. Plant Karen"

From Kelsey: "I do not know the exact date of his leave of absence as that was a decision between the hospital and him. The reason we included his name and the names of other cases under announcements is not because it is required but was my idea to "help" keep track of them for our purposes... Which after 15 years may not have been the wisest suggestion because it raises more confusion than help."

Further sayeth not.

Steven C. Anagnost MD

Subscribed and sworn to before me this 12th day of September, 2014.

Notary Public

My Commission Expires:
5-30-2018
(SEAL)

CAROL CASON NOTARY PUBLIC TULSA COUNTY, OKLAHOMA

#14006926

STATE OF OKLAHOMA)

) ss.

COUNTY OF TULSA)

AFFIDAVIT OF BARRY L. SMITH

1. My name is Barry L. Smith. I was counsel of record for Dr. Steven Constantine Anagnost ("Dr. Anagnost") in the matter of *State Board of Oklahoma ex rel. The Oklahoma Board of Medical Licensure and Supervision vs. Steven Constantine Anagnost, M.D.* (Case No. 09-10-3861) as well as in *Steven C. Anagnost, M.D. vs. Oklahoma Board of Medical Licensure and Supervision* (Case No. CJ-2013-4141).

2. After the Board matter and the District Court litigation had resolved, I reviewed documents as a potential witness in another matter. Those documents were from the Board file and regarded the State's prosecution of Dr. Anagnost. I saw documents containing information that was not provided to Dr. Anagnost and that, in some instances, was contrary to representations made by the State during the pendency of the Anagnost matters.

3. Gary Brooks was a member of the Oklahoma Board of Medical Licensure from May 2003 – July 2011. While serving as a public member of the Board, Brooks also filed and prosecuted at least two separate actions against Dr. Anagnost. I saw documents indicating that Brooks, while serving as a Board Member, apparently used Board resources and worked with State personnel on his private cases and the State cases.

4. After the resolution of the Anagnost matters referenced in paragraph 1, I learned that attorney Randy Sullivan had been hired either by the Attorney General's Office or by the Board directly to represent the State in its investigation and prosecution of Dr. Anagnost.

EXHIBIT 7

I saw documents indicating that, while acting on behalf of the State, attorney Sullivan also filed and maintained a lawsuit against Dr. Anagnost.

5. I saw documents indicating that members of the Board were having active discussions about the Dr. Anagnost case before any evidence had been presented to the Board and that their minds already had been made up to find him guilty of something. I saw an e-mail from Board counsel cautioning Board Members to limit their discussions about Dr. Anagnost to executive sessions. I do not believe any executive sessions to discuss Dr. Anagnost had ever been posted as an agenda item during that time.

6. I saw documents indicating that the Board investigator was working with Plaintiff's attorneys who were suing Dr. Anagnost; this included apparent solicitations to file more complaints with the Board against Dr. Anagnost.

7. I saw documents from Dr. Eric Frishe, the Board's medical advisor, indicating the State's desire to trap Dr. Anagnost and "catch" Dr. Anagnost and other doctors "off guard".

8. I saw e-mail exchanges between Board staff discussing the effect of the Board's activities on Dr. Anagnost's practice --- seemingly rejoicing in the fact that they were destroying his reputation --- all without having presented any evidence at a hearing before the Board.

9. I saw documents indicating that the state employees were maintaining a checklist of harm being done to Dr. Anagnost and his practice by virtue of the Board allegation --- I do not believe the items on the checklist were legitimate objectives any State entity or were consistent with the State's regulatory scheme. Items included possibly causing Dr. Anagnost to "implode" and destroying his reputation to the extent Dr. Anagnost felt he would have to move to Brazil.

10. I saw documents which I believe indicate the Board's internal doubts about the actual merits of their case against Dr. Anagnost, including an e-mail from Dr. Frische to the effect that, after having reviewed the State's expert deposition, the State could not meet its burden of proof in many of the allegations made against Dr. Anagnost.

Executed this 12th day of September, 2014.

Barry L. Smith

SWORN TO and SUBSCRIBED before me by Barry L. Smith on the 12th of September, of 2014.

CHEE HER
Notary Public
State of Oklahoma
Commission # 12006706 Expires 07/17/16

Notary Public in and for the State of Oklahoma

AFFIDAVIT OF CHRISTINA M. VAUGHN

State of Oklahoma)
) ss.
County of Tula)

Pursuant to 12 Okla. Stat. § 426, Christina M. Vaughn, of lawful age, states as follows:

1. My name is Christina M. Vaughn. I am an attorney with the firm of McAfee & Taft. I, along with other members of my firm, was counsel of record for Dr. Steven Constantine Anagnost ("Dr. Anagnost") in the matter of *State Board of Oklahoma ex rel. The Oklahoma Board of Medical Licensure and Supervision vs. Steven Constantine Anagnost, M.D.* (Case No. 09-10-3861) ("Board Action") as well as in *Steven C. Anagnost, M.D. vs. Oklahoma Board of Medical Licensure and Supervision* (Case No. CJ-2013-4141) ("District Court Litigation").

2. The matters stated herein are based on my personal knowledge gained from firsthand experience and review of records described below.

3. After the Board Action and the District Court Litigation had resolved, I reviewed documents, which I believe were part of the Medical Board's file related to Dr. Anagnost and the Board Action, as a potential witness in another matter. I saw documents containing information that was not provided to Dr. Anagnost during the Board Action or the District Court Litigation and that, in some instances, was contrary to representations made by the State during the pendency of those matters.

4. Among other things, the documents contained correspondence by and between numerous individuals including, but not limited to: OBMLS Executive Director Lyle Kelsey ("Kelsey"), OBMLS Investigator Gayla Janke ("Janke"), OBMLS Medical Advisor Eric Frishe ("Frishe"), OBMLS Board Advisor Jon Wiggins ("Wiggins"), OBMLS board members Gary Brooks ("Brooks"), Chuck Skillings ("Skillings") and Dr. Sullivan, OBMLS "Special

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Prosecutor" Dan Graves ("Graves"), attorney Jennifer DeAngelis, Oklahoma Assistant Attorney General Elizabeth Scott ("AAG Scott"), OBMLS attorney Randy Sullivan, and several Tulsa surgeons including, David Fell, M.D., Frank Tomecek, M.D., Clinton Baird, M.D., and Christoper Boxell, M.D.

5. In particular, I recall reviewing:

   a. An email from AAG Scott stating that the Board could not go forward with an amended complaint until the Board had an expert witness who could testify that Dr. Anagnost's conduct was fraudulent or dangerous.

   b. An email from AAG Scott stating that there was no unprofessional conduct they could "pin on" Dr. Anagnost at that time.

   c. A string of emails between Frishe, Janke, and Kelsey where Frishe asks if Dr. Anangost will "implode," to which Janke responds "Hopefully!!!!!" Mr. Kelsey responds that the Board may have to play a forceful role against Dr. Anagnost and his license. Frishe then agrees.

   d. Correspondence from Graves to Kelsey indicating that Graves had spoken with Board member Gary Brooks regarding Dr. Anangost.

   e. Emails between Kelsey and Board member Chuck Skillings indicating Skillings' belief that Dr. Anagnost was a risk to the public.

   f. An email from Karen Callahan expressing concern over the apparent conflict of interest presented by Board member Brooks being involved in the Board's investigation/prosecution of Dr. Anagnost whilst also representing plaintiffs in medical malpractice cases against Dr. Anagnost.

g. A "lessons learned" memorandum from Wiggins to Kelsey detailing a number of errors made by the Board in its investigation and prosecution of Dr. Anagnost.

h. An email from Frishe to Kelsey reporting that Oklahoma Assistant Attorney General Dixon asked Graves not to throw the Oklahoma Attorney General under the bus.

i. An email from OBMLS employee Varghese to Frishe regarding an angry email from Dr. Boxell to the Board regarding the Consent Order in the Anagnost matter in which Varghese suggests that Frishe should "whisper 'call Dan Graves'" to Dr. Boxell.

j. An email from Board member Dr. Andy Sullivan regarding the resolution of the Anagnost matter stating that "right will triumph over evil" but that the Board may have to "help it along" and "reach out to some friends" to do that.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Christina M. Vaughn

Subscribed and sworn to before me this 12 day of September, 2014.

AMY DEATHERAGE NOTARY # 07009149 EXP. 09/20/15 PUBLIC STATE OF OKLAHOMA

Notary Public

My Commission expires:

9-20-15

Commission No. 07009149

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ATTORNEYS AND COUNSELORS AT LAW

Writer:
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Attorney

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rwarzynski@sneedlang.com

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(918) 794-3974

January 21, 2013

Via Email and First Class Mail
Steven W. Simcoe, Esq.
Sean H. McKee, Esq.
BEST & SHARP
Williams Center Tower I
One West Third Street, Suite 900
Tulsa, Oklahoma 74103

Re: *Leroy Raymond Harless and Connie Harless v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2009-8369

Re: *Alyson King v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2009-8358

Re: *Vicki Lane v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2011-6747

Re: *David W. McClary v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2012-170

Re: *Linda Molinard v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2009-03270

Re: *Teresa Robey and Robert Robey v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2009-8364

Re: *Jesse Sanders and Lisa Sanders v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2009-6913

Re: *Richard Smith and Sherry Smith v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2012-3450

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Re: *Lee Wallace v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2007-3734

Re: *Mark A. Wiltshire and Jan Wiltshire v. Steven C. Anagnost, M.D., et al.*, Tulsa County District Court Case No.: CJ-2009-8365

Dear Counsel:

Frank J. Tomecek, Jr., M.D., will be working as Plaintiffs' expert witness in the above listed cases.

Thank you for your assistance with this matter.

Sincerely,

SNEED LANG PC

Richard E. Warzynski

/srp