



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
 OKLAHOMA COUNTY

AUG 25 2015

STEVEN C. ANAGNOST, M.D.,)
)
 Plaintiff,)
)
 v.)
)
 OKLAHOMA SPINE AND BRAIN INSTITUTE, LLP;)
 et al.)

TIM RHODES
 COURT CLERK
 31

Case No. CJ-2013-6140

**DEFENDANT LYLE KELSEY'S OBJECTION TO PLAINTIFF'S MOTION
 TO RECONSIDER JUDGE PRINCE'S MAY 30, 2014 RULING**

Defendant Lyle Kelsey respectfully adopts the arguments and authorities of the Board in its Response and Objection to Plaintiff's Motion to Reconsider, filed by the Board on August 18, 2015. In addition, Mr. Kelsey presents the following objection to Plaintiff's motion to reconsider Judge Prince's May 30, 2014 ruling.

This action has been transferred to the Honorable Roger Stuart from Judge Parrish, who recused herself, and Judge Prince, who recused himself. Due to the timing of these recusals, Judge Stuart is being thrown into a case which has been hotly contested and has a large number of motions already pending.

As with every document filed with this Court, the Plaintiff's motion to reconsider begins with a statement of the case which argues vehemently that Plaintiff has been persecuted, and continues with the Plaintiff's version of the facts leading up to this point. Dr. Anagnost's entire claim is based upon allegations that he lost hospital privileges, and became unable to obtain malpractice insurance and/or payor contracts with insurance companies, and that his medical practice in Tulsa collapsed solely due to "unscrupulous and unlawful attempts by the Defendants

to purge him from the medical profession.” Motion to Reconsider Judge Prince’s May 30, 2014 Ruling, p. 1.

Plaintiff represents that he was “defrauded” into entering into a Consent Order and Settlement Agreement, because he allegedly would never have entered into the Consent Order and Settlement Agreement had he known that the Board “did not conduct ... 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.” Plaintiff’s Motion to Reconsider Judge Prince’s May 30, 2014 Ruling, p. 11. Plaintiff chooses to disregard critical facts – Plaintiff made allegations in his pleadings before he entered into the Consent Order and Settlement Agreement that the Board sought to discipline him without sufficient evidence, did not conduct a fair and impartial investigation, was biased, worked with his competitors, and engaged in conflicts of interest. Because Plaintiff entered into the Settlement Agreement with knowledge that he had or might have claims or defenses based upon the alleged bias of the Board and other related issues, the Settlement Agreement is binding and Plaintiff’s effort to re-litigate issues as to which he entered into a Settlement Agreement should fail.

The “Background” section of Plaintiff’s Motion to Reconsider Judge Prince’s May 30, 2014 Ruling is clearly intended to cause the Court to be sympathetic to what Plaintiff views as his persecuted plight. Much of it is completely irrelevant to the issue before the Court on this motion. However, in order to give the Court a more balanced view of the case now before him, Defendant Kelsey will provide background as well.

I. BACKGROUND

1. On June 11, 2010, the Board of Medical Licensure & Supervision (Medical Board or Board) served upon Plaintiff an application to determine emergency and a citation (See Plaintiff's Second Amended Petition, filed herein, ¶ 61).¹

2. On November 15, 2012, Plaintiff commenced a proceeding in the Oklahoma Supreme Court against the Oklahoma Board of Medical Licensure & Supervision.

3. On July 24, 2013, Plaintiff commenced an action in the District Court for Oklahoma County, Oklahoma, as Cause No. CJ-2013-4141.

4. On September 12, 2013, Dr. Anagnost signed a Consent Order resolving the Board action against him. On September 12, 2013, he also signed a Settlement Agreement and Release.

5. On November 7, 2013, the instant action was filed. Initially, the action was filed against physicians and the entities with which they were associated.

6. In December, 2013 the Oklahoma Bar Association served upon the Medical Board a subpoena for documents, including the Board's investigatory file in connection with bar complaints filed earlier by Plaintiff against undisclosed attorneys who opposed him in the Medical Board disciplinary hearing. Responsive documents were produced by the Board through the Attorney General under the explicit understanding they would remain confidential. The responsive documents were produced in February and March, 2014.

7. Plaintiff served a subpoena upon the Medical Board on December 23, 2014 for substantial portions of the Medical Board's investigatory file from the Board's disciplinary proceeding against the Plaintiff.

¹ Plaintiff has been sued in a number of medical malpractice actions, and according to public records available on OSCN, at least nineteen of these cases were resolved through the malpractice plaintiff's settlement with Dr. Anagnost.

8. Plaintiff moved to compel compliance with its subpoena to the Medical Board on March 31, 2014.

9. Also on March 31, 2014 Plaintiff filed a subpoena on the Oklahoma Bar Association for documents produced by the Attorney General on behalf of the Medical Board and served that subpoena on the OBA the next day, on April 1, 2014.

10. The Oklahoma Bar Association moved to quash the subpoena on April 4, 2014.

11. In spite of the fact that the grievances submitted the OBA, and the investigations arising therefrom are confidential and the results shall not be made public until authorized by the Supreme Court, on April 14 or 15, 2014, the OBA made those materials available to Plaintiff and attorneys who were at the time representing Plaintiff, Barry Smith, Richard Hix, and Christina Vaughn. Exhibit 1, Farribow letter to Rupert, dated April 22, 2015. One or more representatives of the OBA instructed Plaintiff and his then counsel that Plaintiff and his then counsel could review the materials, but that Plaintiff and his then counsel could not make any copies or remove any materials.

12. On April 16 or 17, 2014, Plaintiff called the OBA and advised that he had taken some of the documents he had reviewed from the OBA investigatory file. Exhibit 1, Farribow letter. The materials included copies of the Oklahoma Board and Medical Licensure & Supervision file which had been subpoenaed, including privileged and confidential communications. On April 18, Plaintiff appeared and claimed to be returning what he had taken and claimed that he had not copied or downloaded any of the information. When Plaintiff returned what he had taken, it included not just paper documents, but also a disk with the Oklahoma Board of Medical Licensure & Supervision logo labeled "Anagnost Litigation Hold January 18, 2014."

13. Ms. Maddox called counsel, Charles Weddle, shortly after April 18, 2014, and advised him that his client had called stating that he had taken a CD disk and paper copies of documents from the OBA investigatory file, that he claimed he had returned what he had taken, and she expressed concern that Plaintiff Anagnost might have copied, contrary to his representations, what he had taken. Exhibit 1, Farribow letter.

14. On April 21, 2014, about a week after Plaintiff purloined the Medical Board's records from the lawful possession of the OBA, the Plaintiff moved to compel performance of the subpoena it had served on the Oklahoma Bar Association.

15. On May 30, 2014, this Court conducted a hearing on Plaintiff's Motion to Compel Performance of a Subpoena to the Oklahoma Bar Association to obtain its investigatory file, and Plaintiff's Motion to Compel a Subpoena Directed to the Oklahoma Board of Medical Licensure & Supervision to obtain its file. Both motions were denied. Exhibit 2, Transcript excerpts, pp. 15, 67-68. Plaintiff's counsel, Charles Weddle was present at this hearing and did not disclose to the Court that Dr. Anagnost had viewed the documents of the Oklahoma Board of Medical Licensure & Supervision or the investigatory file of the OBA, or that Plaintiff Anagnost had taken or copied what he had removed from the OBA file.

16. On September 12, 2014 Plaintiff Anagnost and his attorneys Barry Smith and Christina Vaughn each executed affidavits recounting documents they reviewed at the OBA, including emails protected by the Attorney client privilege. *See*, Anagnost affidavit (Amended Petition Exhibit 6), ¶¶ 16(L), 17(A), (C), 19, 21, 35(C)(Wiggins email), 37, 38(A), (B), 40, 41 and Vaughn affidavit (Amended Petition Exhibit 8), ¶¶ 4, 5(a), (b), (d), (g). These affidavits were attached to and incorporated in Plaintiff's Amended Petition, and serve as the basis for Plaintiff's "fraud" theory of rescission of the Settlement Agreement and Release. Whatever attorney drafted these affidavits knew he or she was disclosing improper access to attorney client

communications of the Board and its employees, as must every attorney representing Plaintiff pursuant to the Amended Petition.

17. On October 9, 2014 several of Plaintiffs' counsel met with Ms. Maddox of the OBA to discuss the situation. They disclosed that Plaintiff "had downloaded the content of the disc before he returned the disc to you." Exhibit 3, Patrick Ryan letter to Maddox, dated October 15, 2014. Ms. Maddox responded to Mr. Ryan's letter the next day, October 16, 2014. Exhibit 4, Maddox letter to Ryan, dated October 16, 2014. Mr. Ryan apparently concluded the exchange of letters on October 20, 2014. Exhibit 5, Patrick Ryan letter to Maddox, dated October 20, 2014.

18. On December 12, 2014, Dr. Anagnost filed his amended petition which alleged that the Settlement Agreement and Release should be set aside because he discovered information when reviewing the Board's file at the Oklahoma Bar Association after entering into the Settlement Agreement and Release, that had he known such information, he would not have entered into the Settlement Agreement and Release. The "newly discovered" information was the same or nearly the same as the allegations which Dr. Anagnost made in his action filed July 24, 2013, prior to executing the Settlement Agreement and Release.

19. The *Red Dirt Report*, an Oklahoma City-based internet news site, has produced a series of online articles favorable to Plaintiff that mention by date and content emails and memos that were part of the Medical Board's file subpoenaed by the OBA. On June 25, 2015 the *Red Dirt Report* claims, "Many of the documents in the OBA file were obtained by *Red Dirt Report* in 2014 and published in a series of stories that chronicled the actions taken by the medical board as a result of unsubstantiated verbal and written complaints against Anagnost." Exhibit 6. OBA-sourced Board memos and emails, including emails between Executive Director Lyle Kelsey and Board counsel, appeared in *Red Dirt Report* pieces dated December 23, 2014, December 31,

2014, January 14, 2015 (attached to Plaintiff's July 13, 2015 Supplement to his Motion for Leave to Permit Use of the OBA documents as Exhibit 4). No other plausible source for these Board emails and memos beside Plaintiff suggests itself.

20. On March 18, 2015 Mr. Weddle transmitted to all other counsel in this case three disks of information, including one labeled "BOARD-MORRISSETTE 00001-04441." This disc purported to be "a copy of information I received from Representative Richard Morrisette, State Representative House District 92, in response to my request for information in his possession regarding Dr. Steven C. Anagnost." Exhibit 7, Weddle letter to counsel dated March 18, 2015. At least part of the 4441 pages of information on "BOARD-MORRISSETTE 00001-04441" were items originating in the Board's investigatory file subpoenaed from the Board by the OBA. Neither the Board nor the OBA produced this information to Representative Morrisette, so the likely the direct or indirect source of these documents is the Plaintiff. However, Plaintiff's counsel did not explain how Representative Morrisette got custody of the contents of the disk "BOARD-MORRISSETTE 00001-04441," or how Plaintiff's counsel *knew* the Representative had that material. *Crucially, while Plaintiff's counsel state they have not looked at the documents stolen by Plaintiff from the OBA, they make no representation that they have not reviewed some of the same documents they received from Representative Morrisette.*

II. JUDGE PRINCE'S MAY 30, 2014, RULING IS IN ACCORD WITH OKLAHOMA LAW BECAUSE THE BOARD'S INVESTIGATORY FILE ON DR. ANAGNOST IS CONFIDENTIAL AND PRIVILEGED, THE PRIVILEGE HAS NOT BEEN WAIVED, AND THE BOARD IS NOT ESTOPPED FROM CLAIMING THAT THE FILE IS CONFIDENTIAL.

A. The Board's investigatory file is, by law, confidential and not subject to discovery.

Anagnost relies upon *Bd. of Medical Licensure v. Migliaccio*, 1996 OK CIV APP 37, 917 P.2d 483 to assert that all records of the Board of Medical Licensure are open records. As Anagnost acknowledges, *Migliaccio* was overruled in *Oklahoma Public Employees Ass'n v.*

Oklahoma Office of Personnel Management, 2011 OK 68, 267 P.3d 838. However, even without this negative treatment, *Migliaccio* is not applicable to the facts before the Court in the case at bar. In *Migliaccio*, there were no “investigatory files.” The complaint was filed with the Board of Medical Licensure and Supervision (“Board”) because *Migliaccio* had been convicted in federal court of conspiracy to defraud and mail fraud in a criminal case which alleged obtaining money from the Civilian Health and Medical Program of the Uniformed Services by filing fraudulent claims. Pursuant to Oklahoma statutes, conviction of a felony or commission of any act which is a violation of the criminal laws of Oklahoma when such act is connected with the practice of medicine is unprofessional conduct. *Migliaccio* stipulated to the facts in the complaint filed with the Board – those facts being that he was convicted of a felony and found guilty of an act which is a violation of the criminal laws of Oklahoma when such act is connected with the practice of medicine. There was no need for an investigation, as the facts were a matter of record in the federal court. Eventually, the Tenth Circuit Court of Appeals reversed all but one count against *Migliaccio* and the remaining count was dismissed on motion of the United States Attorney.

Migliaccio sought to have his record with the Board expunged. The Court found no authority “for Board to expunge records of disciplinary action taken. To the contrary, the Legislature had mandated that such records be preserved and maintained.” *Id.* at ¶ 10. Specifically, the Court noted that statutes required that the Board’s secretary preserve a record of all “proceedings in hearings pertaining to unprofessional conduct,” “reports of disciplinary action imposed by Board,” and minutes of Board’s meetings be open to public inspection. *Id.* at ¶ 11.

The Court of Civil Appeals stated in *Migliaccio*, “[U]nless there is an express statutory exception, records created by a public body after receipt of a complaint must be open to public

access and review.” *Id.* at ¶ 9. Plaintiff overlooks the fact that there is indeed an express statutory exception for investigatory reports and files:

Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.

51 O.S. § 24A.12 - Confidential Litigation Files and Investigatory Reports.

Moreover, Judge Prince correctly denied Plaintiff’s attempt to subpoena this investigative file based upon two administrative rules. The first rule states:

Records of the Board which are subject to a permissive or mandatory privilege of confidentiality shall not be released to the public; provided that the Secretary of the Board or the Executive Director of the Board may, upon request, allow records subject to a permissive privilege of confidentiality to be open for public review and copying. It is the policy of the Board to maintain as confidential all patient records held by the Board in any file, pursuant to 12 O.S. § 2503, to every extent possible under law. *It is the position and determination of the Board that investigative files of the Board are confidential under the Open Records Act.*

OAC 435:1-1-3(f). Method of operations (emphasis added). The other rule states:

During the conduct of any investigation, the investigative staff shall take all proper and necessary action to ensure the confidentiality of investigative files, in accordance with the Oklahoma Open Records Act, 51 O.S.1991, §§ 24a.1 **et seq.** In particular, staff shall take all necessary action to ensure patient files obtained by the agency during an investigation shall not be disclosed to the public.

OAC 435:3-3-2. Confidentiality during investigations. The Court found public policy required these provisions should be interpreted broadly. *See*, Exhibit 2, Transcript excerpts, pp. 67-68.

The Open Records Act is mentioned in the rule above, but not explicitly mentioned in the Court’s ruling, and states regarding investigatory records:

Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.

51 O.S. § 24A.12 - Confidential Litigation Files and Investigatory Reports.

Judge Prince correctly sustained the OBA's Motion to Quash Plaintiff's subpoena for the documents produced by the Attorney General on behalf of the Medical Board. Exhibit 2, Transcript excerpts, pp. 15. That motion was based upon the Rules Governing Disciplinary Proceedings. Rule 5.7 states, in pertinent part:

Investigations by the General Counsel and the Commission shall be confidential, and the results thereof shall not be made public until authorized by the Supreme Court or as provided in Rule 6.1.

Rule 5.8 states, in pertinent part:

The files and records in disciplinary investigations shall be kept private and confidential except that the Commission, the Professional Responsibility Tribunal or the General Counsel shall be permitted to provide relevant information contained in such files and records to the following: [provisions not applicable to the present case].

Thus, the Court correctly ruled that the Medical Board's investigative file is confidential and not subject to subpoena whether it is in the Medical Board's possession or, pursuant to regulatory subpoena, in the possession of the OBA.

What Anagnost seeks is the confidential investigatory files of the Board. By express statutory exception and administrative rules, these are not subject to disclosure, unlike the "proceedings in hearings pertaining to unprofessional conduct," "reports of disciplinary action imposed by Board," and minutes of Board's meetings at issue in *Migliaccio*. The records sought by Anagnost are by law, confidential and are not subject to disclosure.

B. The Board and Lyle Kelsey are not judicially estopped from claiming that the Board file is confidential.

The Plaintiff argues that the Board is judicially estopped from claiming that the Board file is confidential. The first problem is that, as explained above, the files at issue in *Migliaccio* are not of the same nature as the files at issue in the case at bar. Since the issue in *Migliaccio*

was not the same as the issue in this case, there could be no estoppel, even if estoppel would otherwise be appropriate.

The Plaintiff relies upon *Queen v. TA Operating, LLC*, 734 F.3d 1081(10th Cir. 2013), without disclosing any of the facts of that case to the Court. In *Queen*, the plaintiffs, Richard and Susan Queen, filed an action against TA for personal injuries allegedly incurred when Richard Queen fell in a parking lot. Queen then filed for Chapter 7 bankruptcy. Queen did not disclose the pending lawsuit against TA. TA became aware of the bankruptcy and brought the lawsuit to the attention of the bankruptcy court. Queen amended the bankruptcy schedule and provided an estimated value of the legal claim against TA, and indicated that any recovery would be exempt. As a result, the bankruptcy court handled the Queen bankruptcy as a no-asset bankruptcy and Queen received a discharge. “By providing a significantly lower estimated value to the bankruptcy court that they asserted was entirely exempt, while their position in the district court placed a much higher value on the lawsuit and indicated that it would not be entirely exempt, the Queens took a clearly inconsistent position in the bankruptcy court.” *Id.* at 1090. In *Queen*, Mr. and Ms. Queen took a position regarding a *factual claim* against TA and then changed their position regarding a *factual claim* against TA.

The Court in *Panama Processes, S.A. v. Cities Services Co.*, 1990 OK 66, 796 P.2d 276 explained judicial estoppel as follows:

Even if it were properly before us, the judicial estoppel doctrine could not be invoked as a bar to Cities' defense. While Oklahoma jurisprudence recognizes this form of preclusion bar, it is applied only to prevent advancement of inconsistent positions vis-a-vis matters of fact. *It does not prevent a party from asserting a legal theory contrary to one advanced earlier in litigation. Consequently, a change of position with respect to a pure matter of law ordinarily will not work an estoppel*, particularly where the party was unsuccessful in pressing its earlier contrary position.

Id. at ¶ , 796 P.2d at 286 (footnotes omitted, emphasis added). The alleged changed position that the Plaintiff here complains about is a claimed change in a legal theory. It is not a change

regarding a matter of fact. Therefore, pursuant to *Panama Processes*, the judicial doctrine does not apply in this instance.

Moreover, as the Court in *Bank of Wichita v. Ledford*, 2006 OK 73, 151 P.3d 103 stated:

Oklahoma jurisprudence recognizes the doctrine of judicial estoppel, which provides that a party who has knowingly assumed a particular position dealing with matters *of fact* is estopped from assuming an inconsistent position to the detriment of the adverse party. The doctrine applies to inconsistent positions assumed in the course of the same judicial proceeding or in subsequent proceedings *where the parties and questions are identical*. . . . *It does not prevent a party from asserting a legal theory contrary to one advanced earlier in litigation.*

Id. at ¶ 23, 151 P.3d at 112 (footnotes omitted, emphasis added). *See also Capshaw v. Gulf Ins. Co.*, 2005 OK 5, 107 P.3d 595 (“Oklahoma recognizes the legal doctrine of judicial estoppel. This doctrine provides a party who knowingly assumed a particular position dealing with matters of fact is estopped from assuming an inconsistent position to the prejudice of the adverse party. This rule ordinarily applies to inconsistent positions assumed in the course of the same judicial proceeding or in subsequent proceedings where the parties and questions are identical.”) Dr. Anagnost is asserting that the Board is estopped from asserting a different legal position than a legal position asserted in litigation in which the parties were different and the questions were different. Judicial estoppel does not apply in such circumstances – when the alleged change in position is not regarding a matter of fact, but rather regarding a legal position, and where the parties and questions are different. Further, Lyle Kelsey, the Executive Director of the Board, has never personally been a party in any case taking a position the same as, or contrary to, that taken by the Board in *Migliaccio*.

Finally, regarding the issue of estoppel, generally, “Estoppel is generally not available against the government in any case so as to protect a public policy or interest.” *Tice v. Pennington*, 2001 OK CIV APP 95, ¶ 16, 30 P.3d 1164, 1168. There is an exception when interposing estoppel against the state would further some public policy or interest. *Id. See also,*

In the Matter of Tax Protest of Wal Mart Stores, Inc., v. Oklahoma Tax Commission, 1991 OK CIV APP 73, 817 P.2d 1281 (“The actual issue becomes whether some prevailing public interest requires an exception to the general rule precluding the use of estoppel against the government?”); *Burdick v. Ind. Sch. Dist. No 52 of Oklahoma County*, 1985 OK 49, 702 P.2d 48 (“some stronger, more compelling policy or interest must be advanced before estoppel could be invoked against either the state or a public agency”). However, imposing an estoppel regarding a legal position could never further a public policy or interest. Such an estoppel would hold the state or state entity to an incorrect legal position, if the state entity took an incorrect legal position in the past. It furthers public policy and public interest for the Court to uphold the correct legal position.

This is not an appropriate case for the application of judicial estoppel, especially against Lyle Kelsey. Even if it were, as to the Board, estoppel against the state would not apply regarding a legal position. Public policy and interest requires that the proper legal principles be applied.

C. The Board did not waive its claim of privilege.

Upon receipt of a subpoena from the Oklahoma Bar Association, the Board produced its file on Dr. Anagnost. Plaintiff tries to argue that the Board waived its privileges or legal confidentiality by sending its investigatory file to the OBA under assurances its confidentiality will be maintained. However, the statute governing attorney client privilege plainly states otherwise. It states:

F. Disclosure of a communication or information meeting the requirements of an attorney-client privilege as set forth in this section or the work-product doctrine to a governmental office, agency or political subdivision in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of the privilege or protection in favor of nongovernmental persons or entities.

12 O.S. § 2502(F). It is beyond dispute in this case that the OBA was exercising its regulatory, investigative, or enforcement authority regarding attorneys who had some role in the disciplinary case against Plaintiff before the Board. Using that authority, the OBA subpoenaed the Board's investigative file, leaving the Board's claims of privilege intact.

The Plaintiff makes reference to articles carried in the Red Dirt Report which allege that the Board released confidential investigatory files to third parties. However, the Plaintiff has failed to produce anything that is not rank hearsay regarding this issue, and further, a brief review of the Red Dirt Report will reveal that it appears to be acting as Plaintiff's propaganda arm in his war against the Board, Defendant Kelsey, and others. Neither the Board nor Mr. Kelsey ever released the subject documents to the *Red Dirt Report*, and Plaintiff himself is likely the source, directly or indirectly, of purloined documents in possession of the *Red Dirt Report*.

There has been no waiver.

CONCLUSION

The investigational file of the Board is confidential and privileged. Neither the Board nor Mr. Kelsey are estopped from claiming that the investigational file is confidential and privileged. The Board did not waive its right to claim that the investigational file is confidential and privileged, nor did Mr. Kelsey. Judge Prince's original ruling was correct should not be vacated or modified.

Respectfully submitted,



Robert A. Nance, OBA #6581
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
528 NW 12th Street
Oklahoma City, OK 73103
Telephone: (405) 843-9909
Facsimile: (405) 842-2913
Email: rnance@riggsabney.com

-AND-

Stephanie L. Theban, OBA No. 10362
502 West Sixth Street
Frisco Building
Tulsa, OK 74119
Telephone: (918) 587-3161
Facsimile: (918) 587-9708
Email: stheban@riggsabney.com

ATTORNEYS FOR LYLE KELSEY

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2015, a true and correct copy of the foregoing instrument was mailed, postage paid, to:

Joe E. White, Jr.
Charles C. Weddle III
WHITE & WEDDLE, P.C.
630 NE 63rd Street
Oklahoma City, Oklahoma 73105
Attorneys for Plaintiff
Steven C. Anagnost, M.D.

Patrick M. Ryan
Phillip G. Whaley
Jason A. Ryan
RYAN WHALEY COLDIRON SHANDY PLLC
900 Robinson Renaissance
119 North Robinson
Oklahoma City, Oklahoma 73120
Attorneys for Plaintiff
Steven C. Anagnost, M.D.

Walter D. Haskins
Meredith Lindaman
ATKINSON, HASKINS, NELLIS,
BRITTINGHAM, GLADD & FIASCO
525 South Main, Suite 1500
Tulsa, Oklahoma 74103-4524
Attorneys for Defendants
Frank J. Tomacek, M.D., P.L.C. and
Frank J. Tomacek

Hinton Walters
R. Gene Stanley
Gary A. Rife
RIFE WALTERS STANLEY &
NATARAJAN, LLP
1017 NW 6th Street
Oklahoma City, OK 73106-7202
Attorneys for Defendants
Oklahoma Spine and Brain Institute, LLP;
Clint Baird, M.D.; Chris M. Boxell, LLC;
and Christopher M. Boxell, M.D.

Michael P. Atkinson
Jennifer R. Annis
Rachel A. Hubner
ATKINSON, HASKINS, NELLIS
BRITTINGHAM, GLADD & FIASCO
525 S. Main, Suite 1500
Tulsa, OK 74103
Attorneys for Defendant
David A. Fell, M.D.

James K. Secrest, II
Jeff Mixon
SECRET, HILL, BUTLER & SECRET
7134 S. Yale, Suite 900
Tulsa, OK 74136
Attorneys for Defendant
Tulsa Spine & Specialty Hospital, L.L.C.

Tom W. Gruber
Lewis T. LeNaire
Gregory T. Metcalfe
GABLEGOTWALS
One Leadership Square, 15th Floor
Oklahoma City, OK 73102-7101
Attorneys for Defendants
Eric Frishe, M.D. and Gayla Janke

George S. Corbyn, Jr.
Amy J. Pierce
CORBYN HAMPTON, PLLC
One Leadership Square
211 N. Robinson, Suite 1910
Oklahoma City, OK 73102
Attorneys for Defendant
Daniel B. Graves

Richard C. Ford
CROWE & DUNLEVY, P.C.
324 N. Robinson Avenue, Suite 100
Oklahoma City, OK 73102
Attorney for Defendant
Gary L. Brooks


Kindanne C. Jones
Assistant Attorney General for the
State of Oklahoma
313 NE 21st Street
Oklahoma City, OK 73105
Attorneys for Defendant
State of Oklahoma, ex rel.
Oklahoma Board of Medical
Licensure and Supervision

Charles F. Alden, III
210 Park Avenue, Suite 2550
Oklahoma City, OK 73102
Attorney for Defendant
S. Randall Sullivan

Henry A. Meyer, III
MEYER & LEONARD PLLC
100 Park Avenue, Suite 500
Oklahoma City, OK 73102
Attorney for Defendant
Gary L. Brooks

Drew Neville
Ryan S. Wilson
Kurt M. Rupert
HARTZOG CONGER CASON & NEVILLE
1600 Bank of Oklahoma Plaza
201 Robert S. Kerry Ave.
Oklahoma City, OK 73102
Attorneys for Defendant
State of Oklahoma, ex rel. Oklahoma Board
of Medical Licensure and Supervision

William D. Pettigrew
Kelsie J. Lewis
NOLAND PETTIGREW & LEWIS, P.C.
8101 S. Walker Avenue, Suite F
Oklahoma City, OK 73139
Attorney for Defendant
Gary L. Brooks


Robert A. Nance

OKLAHOMA BAR ASSOCIATION

22 April 2015

Mr. Kurt Rupert
Hartzog, Conger, Cason and Neville
201 Robert S. Kerr Avenue
1600 Bank of Oklahoma Plaza
Oklahoma City, OK 73102-4216

Dear Mr. Rupert:

I am in receipt of your letter dated April 2, 2015. In response, please be advised of the following:

The Office of the General Counsel of the Oklahoma Bar Association ("OBA") did not voluntarily release any subpoenaed information that was produced pursuant to the *subpoena duces tecum* issued by the Professional Responsibility Commission on December 31, 2013 regarding our investigation of a grievance filed by Dr. Steven Anagnost. The OBA has held and maintained the documents and the compact discs that were received from the OBMLS as a part of our **confidential** investigative file and has never released, produced, or reproduced these documents for any person, party, or entity.

The OBA is aware, however, that some documents and a compact disc ("CD") were removed from the Office of the General Counsel during our interviews of Dr. Anagnost and his attorneys, Barry Smith, Christina Vaughn, and Richard Hix on either April 14th and 15th of 2014. Said interviews were conducted by Assistant General Counsel Debbie Maddox and OBA Investigator Tanner Condley.

As part of our investigation of and to evaluate Dr. Anagnost's grievance, the OBA needed Dr. Anagnost and his lawyers to review some of the subpoenaed documents. **Prior to this meeting, it was made clear that none of the documents could be produced to anyone since all OBA investigations are confidential.**

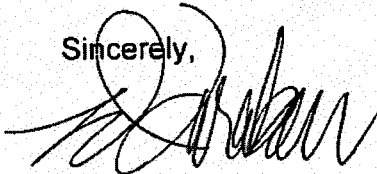
After the witness interviews and document reviews were concluded, Ms. Maddox received a telephone call from Dr. Anagnost on either April 16 or 17, 2014 wherein he advised that he had accidentally taken some of the documents he had reviewed during the meeting and that he wanted to return them in person on Friday, April 18, 2014. On April 18, 2014 at approximately 8:20 a.m., Dr. Anagnost delivered a file folder to the OBA that contained 12 emails, two memoranda, and copies of administrative rules and medical board statutes that had been in the OBA's conference room during the interviews. This file folder also contained a compact disc ("CD") that was labeled "Anagnost Litigation Hold, January 28, 2014." Said disc was marked with the OBMLS logo. Ms. Maddox and Investigator Condley were unaware until that time that Dr. Anagnost had also taken a CD with him.

Since April 18, 2014, the file delivered by Dr. Anagnost to the OBA, including its contents, has been maintained in the exact form in which it was produced to the OBA. Within three or four days of the return of these documents, Ms. Maddox contacted Attorney Charles Weddle and informed him that Dr. Anagnost had taken and returned a CD, along with some other documents, from the April 14 and 15 interviews at the OBA. During this conversation, Ms. Maddox expressed her concern that Dr. Anagnost could have downloaded the CD to his computer and reminded Mr. Weddle that all of the OBA's documents were confidential and could not be used for any purposes.

This letter is responsive to specific questions posed in your April 2, 2015 correspondence. Since receiving your letter, however, the OBA has learned that on April 17, 2015, counsel for Dr. Anagnost filed another pleading addressing, to some degree, the concerns your office has expressed about the handling of the OBMLS documents in Oklahoma County District Court Case # CJ-13-6140.

Please be advised that the OBA is reviewing this recent filing and is in the process of determining what documents or information, if any, should be produced in response thereto. Although we are aware that time is of the essence in responding to your inquiry, we respectfully submit that an additional ten (10) business days is needed in order for us to review this matter and make a determination as to what additional action or response, if any, is necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "Loraine D. Farabow". The signature is written in a cursive style with a large initial "L" and "D".

Loraine D. Farabow
First Assistant General Counsel

1 was produced by the state AG to the bar, as it
2 relates to Dr. Anagnost's Board file, which the
3 State produced without objection and without a
4 Protective Order. So, there is a --

5 THE COURT: So, does that -- does that --
6 in any event, the Bar Association has a defense
7 to producing its file. In essence, **you're**
8 **arguing a waiver against the Board of Medical**
9 **Licensure?**

10 MR. WEDDLE: **That's right.** I mean, it
11 really highlights the waiver on the part of the
12 Board, as it relates to producing the
13 information to the Oklahoma Bar Association.

14 Obviously, if the Court rules that we're
15 entitled -- Dr. Anagnost is entitled to his own
16 personal file through the A.G, then the issue
17 as it relates to O.B.A. would be moot.

18 THE COURT: Okay. **I'm going to sustain the**
19 **OBA's Motion to Quash.**

20 MS. MADDOX: Okay. Thank you, Judge.

21 THE COURT: All right. All right. We'll
22 hear the Motion to Compel. Who wants to argue
23 on that for the Plaintiff?

24 MR. RYAN: I will, Your Honor.

25 THE COURT: All right, Mr. Ryan.

1 question in my mind this morning as I'm getting
2 ready. I wondered, you know, if everything that
3 the Defendants say is true in their defense, if
4 everything Mr. Haskins -- if you really
5 believed everything he stood before this Court
6 and said, everything that has happened to Dr.
7 Anagnost has happened on -- because of his
8 techniques, or because of his own doing, don't
9 you think that doctor Dr. Anagnost would be in
10 here trying to prevent the Defendants from
11 getting the information? Don't you think that
12 the Defendants would want this information to
13 be public if everything that they are telling
14 this Court, they truly believed? That's all I
15 have.

16 THE COURT: All right. This the ruling of
17 the Court. **I'm going to deny the Motion to**
18 **Compel based on the language of the Oklahoma**
19 **Administrative Code that's cited in the OSMIL's**
20 **Response brief. I'm not making the ruling on**
21 **litigation privilege in Title 12, Section 1443.**
22 **is it 3? Point 3.** I want Mr. Ryan -- I want
23 you to give a copy as requested of the document
24 you produced in open court to defense counsel
25 if they request it. I'm not requiring you to

1 make that a matter of an exhibit, I mean, it's
2 your call, whether you want to put it into the
3 record. You've chosen not to, but counsel on
4 the other side is entitled to see what you do
5 present to the court during a hearing.

6 **Anything else I need to do with respect to your**
7 **Motion, Mr. Ryan?**

8 MR. RYAN: No, Your Honor.

9 THE COURT: Okay. Anything else from the
10 defense?

11 MR. STANLEY: No, Your Honor.

12 THE COURT: You do not need to present the
13 Supplemental Brief? I'm not certain what that
14 language meant, but I'm not hinging my ruling
15 on it. **I'm hinging my ruling on the**
16 **Administrative Code that I was critical about**
17 **in the context of your Order of your argument;**
18 **but I think public policy requires me to**
19 **interpret it broadly.** And until an appropriate
20 opinion comes down from the State Supreme
21 Court, that's what I'm going to do.

22 (Record closed.)

23
24
25

RECEIVED

OCT 16 2014

Office of the General Counsel
Oklahoma Bar Association

RYAN WHALEY COLDIRON SHANDY

A Professional Limited Liability Company
Attorneys and Counselors at Law

900 ROBINSON RENAISSANCE
119 NORTH ROBINSON AVENUE
OKLAHOMA CITY, OKLAHOMA 73102
TELEPHONE: (405) 239-6040
FACSIMILE: (405) 239-6766
www.ryanwhaley.com

PATRICK M. RYAN
PRYAN@RYANWHALEY.COM

October 15, 2014

Debbie Maddox
Assistant General Counsel
Oklahoma Bar Association
1901 N. Lincoln Blvd.
P.O. Box 53036
Oklahoma City, OK 73152

Re: Dr. Steven Anagnost

Dear Debbie,

It is our understanding from Dr. Anagnost, Barry Smith and you that the OBA allowed Dr. Anagnost and his McAfee lawyers to review documents the OBA received from the Oklahoma Medical Board for several days in April of 2014. Dr. Anagnost and his McAfee lawyers were allowed to take notes on any documents reviewed. It is our understanding that this review was limited to only those documents produced to the OBA by the Oklahoma Medical Board and did not include any documents relating to any OBA investigation of Oklahoma lawyers.

We learned a couple weeks ago that Dr. Anagnost downloaded documents contained on a disc he took from the OBA in April of 2014. Upon learning this, we contacted you and met in your office on October 9, 2014. We informed you that Dr. Anagnost had downloaded the content of the disc before he returned the disc to you, and offered an opportunity for the OBA to "claw" the documents back by having a forensic expert (retained at our expense) erase the documents from Dr. Anagnost's computer in your presence and have Dr. Anagnost return to you any hard documents that had been generated from the downloaded documents (if any) and provide his sworn assurance that no remaining documents from the disc or from the OBA remain in his possession in any form. You informed me the following day that the OBA does not want the documents back and did not want to be involved in any IT analysis of Dr. Anagnost's computer.

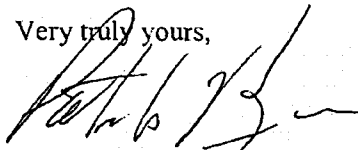
EXHIBIT 3

Letter to Debbie Maddox
October 15, 2014
Page 2

As you know, Dr. Anagnost has been served with document requests from certain defendants in his civil lawsuit. While we have not reviewed these documents, we believe that they are likely responsive to defendants' requests. Given the OBA's position that it does not want the documents returned and is not interested in being involved in the purge of the documents from Dr. Anagnost's computer, we believe that we have an obligation to review the documents and produce any responsive documents in Dr. Anagnost's possession to the defendants.

We appreciate your agreement to meet with us last week and if I have misunderstood the OBA's position in any way, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick M. Ryan", written over a horizontal line.

PATRICK M. RYAN
For the Firm

PMR/dem



OKLAHOMA BAR ASSOCIATION

Office of the General Counsel

16 October 2014

Patrick M. Ryan
Ryan Whaley Coldiron Shandy
900 North Robinson Avenue
Oklahoma City, Oklahoma 73102

Re: Dr. Steven Anagnost

Dear Mr. Ryan:

I am in receipt of your letter of October 15, 2014. After reviewing the correspondence I would like to make a few clarifications and corrections of the events at issue:

1. In September of 2014 (mistake in original, should read 2013), Dr. Steven Anagnost filed two grievances with the Office of the General Counsel of the Oklahoma Bar Association. In turn, this office opened a confidential, formal investigation. As part of that confidential investigation, the Office of the General Counsel subpoenaed relevant records from the Oklahoma Board of Medical Licensure and Supervision (OBMLS). Records pursuant to the December 2013 *subpoena duces tecum* were produced to the OBA in February and March of 2014.
2. In an effort to further investigate the complaints filed by Dr. Anagnost, the Office of the General Counsel invited Dr. Anagnost and his lawyers in the administrative proceedings, (Mr. Barry Smith, Ms. Christina Vaughn and Mr. Richard Hix) to come and review some of the documents. The Office of the General Counsel needed their input to clarify the factual issues presented by the complaints and ongoing investigation.
3. Consequently, on April 14 and 15, 2014, Dr. Anagnost and his lawyers appeared at the Office of the General Counsel and reviewed a portion of the documents we had in our possession. Dr. Anagnost and Barry Smith were present on both of these dates and Richard Hix and Christina Vaughn were present for portions of those days.

4. Before this meeting, the Office of the General Counsel explained that while we needed Dr. Anagnost and his lawyers to review some of these documents as part of our investigation, it was made clear that none of these documents could be produced to anyone since all OBA investigations are confidential.
5. During the document review meeting, either I was present in the conference room and/or the case investigator, Tanner Condley, was present at all times. This meeting was a necessary step in the OBA investigation to determine whether there were any rule violations of the Oklahoma Rules of Professional Conduct as alleged by Dr. Anagnost's complaints.
6. After this document review, I received a phone call from Dr. Anagnost on either April 16 or 17, 2014, saying that he had accidentally gotten some of the documents he was reviewing mixed in with his legal pad and that he would like to return them in person on Friday, April 18, 2014. On that morning, at 8:20 a.m., Dr. Anagnost delivered a file folder that contained 12 emails and 2 memoranda and copies of the administrative rules and medical board statutes that were in the conference room during the document review. This file folder also contained a compact disc ("CD") entitled "Anagnost Litigation Hold, January 28, 2014." This disc is marked with the OBMLS logo. This was the first time I was aware that a CD was also taken by Dr. Anagnost.
7. Since April 18, 2014, the returned file has been maintained in the form it was returned to the OBA. At that time, the OBA accepted the representations of Dr. Anagnost that he had not copied or downloaded any of the materials for his own purposes.
8. On October 9, 2014, at 10:30 a.m., you, along with Jason Ryan and Charles Weddle, came to the Oklahoma Bar Center for a meeting requested by Jason Ryan two days prior. During that meeting, the Office of the General Counsel learned, for the first time, that Dr. Anagnost had downloaded the CD and copied the emails/memoranda before he returned them to the OBA on April 18, 2014. We also learned that he is still in possession of these documents. Feb 18 2014
9. During that same meeting, you suggested that the Office of the General Counsel join in a process whereby Dr. Anagnost would have an IT expert delete all of these documents from his computer so that we could witness the deletion. You also offered to return the documents on Dr. Anagnost's computer to us.

10. In response to that suggestion, I explained that those documents and the CD had been returned to our possession on April 18, 2014, and I was unsure of what this process would achieve. I then explained that I would like to think about the issues raised in the meeting and that I would get back to you within a couple of days.
11. During this same meeting, you informed me that you were contemplating this process because discovery requests were pending in a civil matter filed by Dr. Anagnost in the Oklahoma County District Court, Case No. CJ-2013-6140, and that truthful answers would require you to divulge that Dr. Anagnost took a CD and other documents from the Office of the General Counsel, without permission, and then downloaded the contents of the disc to his personal computer.
12. After discussing your proposal with members of the Office of the General Counsel and doing some legal research, I called you on Friday, October 10, 2014 and declined to take part in the procedure you suggested. I explained that because the discovery requests and the investigative documents taken by Dr. Anagnost were relevant to the civil action filed in Oklahoma County District Court, the OBA was in no position to take part in the removal or possible destruction of those documents. I explained that this matter was one to be determined by the assigned district judge. The OBA has no jurisdiction in any civil matter and the OBA would never presume to involve itself in state district court proceedings. I then offered to send you some of my legal research on the legal and ethical handling of stolen documents. I shared that my research suggested the documents may need to be turned over to the district court. After our phone conversation ended, I emailed you some of the research I had reviewed.

In your letter of October 15, 2014, you suggest that the OBA does not want the investigative documents taken by Dr. Anagnost returned. That was not my statement to you. I explained that it was my understanding that all of those documents were previously returned to the OBA. If you believe otherwise, then I would like to know if there are documents that have not been returned to us. However, by expressing my interest in knowing if Dr. Anagnost is still in possession of documents taken from the OBA, I am not suggesting that you should review the documents to provide me with an answer. I believe that your use or review of the documents in question is an issue exclusively for the district court. It should be noted, that all of the compact discs the OBA received pursuant to our subpoena duces tecum were downloaded and maintained on office computers. Consequently, we have never been without any of the discovery originally produced to us.

In the same letter, you state that because the OBA "is not interested in being involved in the purge of the documents on Dr. Anagnost's computer, we believe that we have an obligation to review the documents and produce any responsive documents in Dr.

Anagnost's possession to the defendants." As I stated on the phone, the OBA has no authority to take part in any document purging or destruction in a civil matter filed in the Oklahoma County District Court. The OBA matter is still in the investigative phase of proceedings, whereas the Oklahoma County civil matter is involved in active litigation and statutory discovery proceedings. All questions of document handling are for the district court and not for the OBA.

The OBA's unwillingness to take part in any document destruction, purging or production which impacts the pending civil matter is not intended as advice to handle this matter on your own without input from the district court. The OBA is simply unwilling to become involved in any civil matter where we are not a party. Any obligation you may have to review and/or produce the stolen documents to the opposing parties in the pending civil lawsuit is not a matter for the Office of the General Counsel.

The Office of the General Counsel does not provide ethics advice to any person, party or litigants. If you are seeking an informal ethics opinion then you should contact Mr. Travis Pickens, the OBA Ethics Counsel, for assistance. Nothing I have said to you or discussed with you can be taken as ethics advice or recommending some particular course of action in your representation of Dr. Steven Anagnost.

Sincerely,

A handwritten signature in black ink that reads "Debbie Maddox". The signature is written in a cursive style with a large, looped initial "D".

Debbie Maddox
Assistant General Counsel

RYAN WHALEY COLDIRON SHANDY

A Professional Limited Liability Company
Attorneys and Counselors at Law

900 ROBINSON RENAISSANCE
119 NORTH ROBINSON AVENUE
OKLAHOMA CITY, OKLAHOMA 73102
TELEPHONE: (405) 239-6700
FACSIMILE: (405) 239-6706
www.ryanwhaley.com

PATRICK M. RYAN
PRYAN@RYANWHALEY.COM

October 20, 2014

Debbie Maddox
Assistant General Counsel
Oklahoma Bar Association
1901 N. Lincoln Blvd.
P.O. Box 53036
Oklahoma City, OK 73152

Re: Dr. Steven Anagnost

Dear Debbie,

I have received your letter dated October 16, 2014. We are keenly aware of our ethical responsibilities.

We never intended any type of document destruction by our suggestion that the contents of the disc on Dr. Anagnost's computer be deleted to the OBA's satisfaction and that if he had any paper documents for the OBA's files they would be immediately returned. I thought we made clear in our meeting of October 9, 2014 that we are only trying to help the Bar keep its files preserved. We would like nothing better than to expose to the public these documents. Neither our firm nor White & Weddle have reviewed any of the documents at issue.

These documents are always going to be available for anyone's inspection should a court rule that either the Oklahoma Medical Board or the OBA is required to produce them in litigation or otherwise. Certainly, we believe these documents will ultimately be provided to us in the litigation.

We did not understand that you were providing any ethical advice and I appreciated your sending the materials you sent following our meeting. Should you wish to discuss this further, please call me as I don't intend to further address all of the statements in your letter.

Best wishes.



Pat

PMR/dem

EXHIBIT 5

Advertise with us!

Like

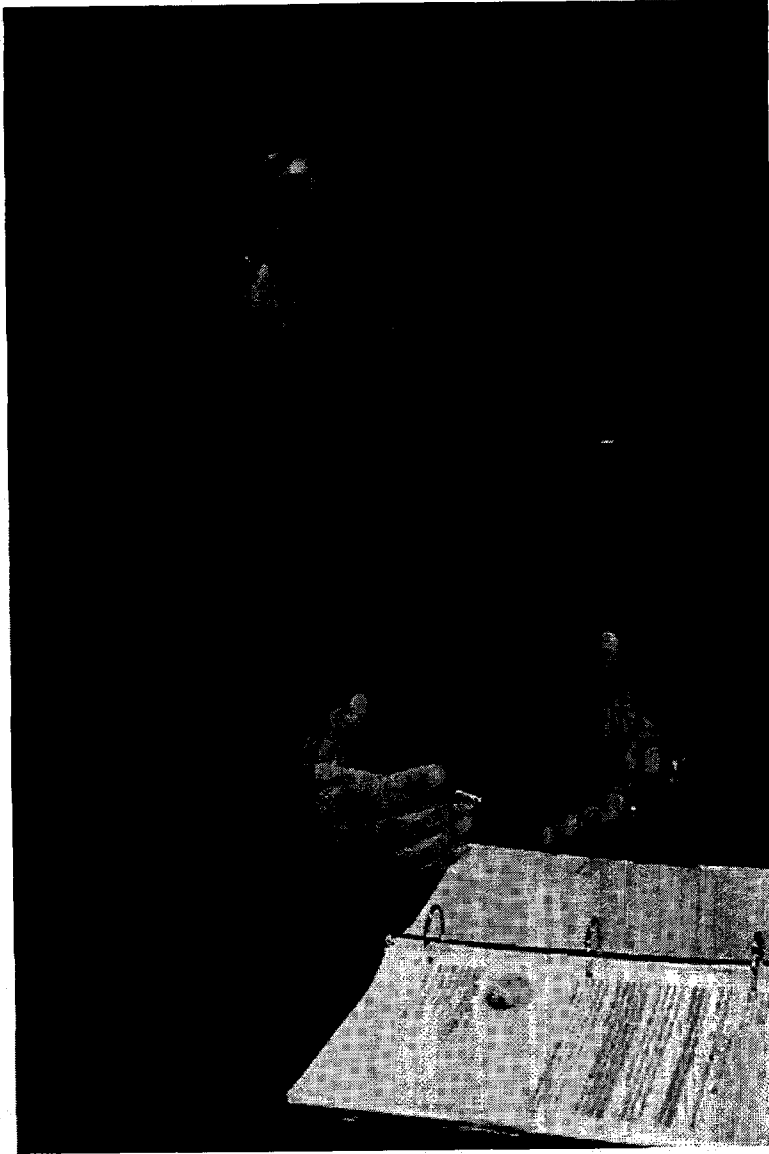
Follow

*All the dirt, news, culture and commentary
for Oklahoma's second century.*

To search, type and hit enter.

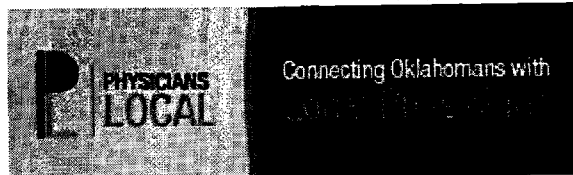
Main Menu

Tulsa doctors want damaging information kept out of trial



Sarah Hussain / Red Dirt Report

Dr. Steven Anagnost during his "Red Dirt Report" 2014 interview.



TIM FARLEY | JUNE 25, 2015

CATEGORY: MEDICAL LICENSING BOARD CRISIS

Anagnost claims he was invited to view confidential files

OKLAHOMA CITY – A group of Tulsa doctors are trying to prevent damaging emails and other critical information from being used as part of a lawsuit filed against them by competing spinal surgeon Steven Anagnost.

The doctors claim Anagnost, also of Tulsa, obtained the information illegally during a meeting at the Oklahoma Bar Association and should not be allowed as evidence when the trial begins. No trial date has been set in the case against the four physicians, three medical malpractice attorneys and two officials with the Oklahoma Medical Licensure and Supervision Board, including Executive Director Lyle Kelsey.

Anagnost countered that he and his attorneys at the time were invited to the OBA office to review documents and answer questions in connection with an investigation involving three medical malpractice attorneys with direct connections to the medical board. The probe reportedly centers on conflicts of interest and allegations the attorneys used confidential information from complaints filed against Anagnost in later lawsuits. The three attorneys - Gary L. Brooks, Randy Sullivan and Daniel B. Graves – are listed as plaintiffs in Anagnost's lawsuit filed in Oklahoma County District Court.

At the time the complaints were filed, Brooks was a medical board member and Sullivan served as a prosecutor for the board. Graves was hired as a special prosecutor during the board's inquiry into the complaints against Anagnost.

Two of the Tulsa doctors – Clinton Baird and Chris Boxell – claim in a court document filed earlier in June that the OBA files were obtained from the medical board under subpoena. The court filing also states the board file is confidential and privileged information regarding Anagnost and the investigation surrounding his medical practice.

Anagnost and his attorneys attempted to obtain the board file against him with a subpoena filed with the OBA. However, a judge ruled the OBA was not obligated to publicly disclose the file because it is confidential. The doctors allege in the same court filing that Anagnost reportedly took a compact disk and paper copies of documents from the OBA investigative file, but later returned all of the materials.

No ruling has been made in connection with the damaging emails and if they will be admitted as evidence during the trial.

Many of the documents in the OBA file were obtained by *Red Dirt Report* in 2014 and published in a series of stories that chronicled the actions taken by the medical board as a result of unsubstantiated verbal and written complaints against Anagnost. The doctor has always maintained his medical license and continues to practice in northeast Oklahoma.

The complaints led to an emergency hearing held June 11, 2010, but the hearing ended because then-Assistant Attorney General and medical board legal counsel Libby Scott admitted she could

not prove the state's case against him. However, the board did not withdraw or dismiss the initial complaint. Instead, the case against Anagnost remained on the board's public website until 2014, leaving the impression that he was still under investigation.

Some of the emails the competing doctors want excluded as evidence involve communications about the emergency hearing and how board members should prepare for similar proceedings in the future.

A June 20, 2010 memo obtained by *Red Dirt Report* shows the board's medical advisor, Dr. Eric Frische, tried to explain to board members why the state dismissed the complaint against Anagnost.

"I think we felt that we wanted to catch him off guard but clearly he wasn't," Frische wrote. "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."

Frische, a defendant in Anagnost's lawsuit, also wrote in the memo that he and other board members were "surprised that our experts' 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 minimally invasive spine surgery."

The experts were identified as Dr. Frank Tomecek and Dr. David Fell, who both were at that time major investors in Tulsa Spine & Specialty Hospital. Neither Tomecek nor Fell had ever performed minimally invasive spine surgery. Tomecek, Fell and the hospital are listed as defendants in Anagnost's lawsuit.

Anagnost claims in his lawsuit filed in 2013 that the defendants conspired to take away his medical license after he rejected an offer to join their medical practice and invest in their privately-owned Tulsa Spine & Specialty Hospital.

Damaging documentation

Another example of damaging emails in the OBA file involve then-medical board investigator Gayla Janke writing to Tomecek in October 2011, urging him to round up as many complaints as possible against Anagnost.

"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," she wrote.

About 18 months after the emergency hearing, it became clear that the medical board was still pursuing a case against Anagnost. An internal email obtained by *Red Dirt Report* shows Janke corresponded with medical board Executive Director Kelsey, Scott and Frische detailing a telephone call she had with Tulsa medical malpractice attorney Jennifer DeAngelis.

"She (DeAngelis) 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,'" Janke wrote.

About an hour later on Dec. 8, 2011, Kelsey wrote in an email to Scott, "Why don't the doctors get the hospital(s) to do something against his privileges if they are so aghast."

In a separate email to Scott on the same day, Kelsey wrote, "She (DeAngelis) needs to be castigated for trying to second guess our process and work on getting him (Anagnost) kicked off the Tulsa hospital staffs."

On Oct. 29, 2013, Kelsey sent a letter to OBA attorney Debbie Maddox on behalf of medical malpractice attorney Brooks.

"At some point, Mr. Brooks disclosed to me that he had a pending case against Steven C. Anagnost and would not participate in any matter involving a hearing concerning him," Kelsey wrote.

However, other documents obtained by *Red Dirt Report* demonstrates that Brooks met with medical board investigators, attended staff meetings and orchestrated meetings to determine which former Anagnost patients should sue the doctor.

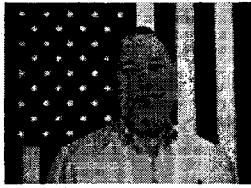
In one report dated March 18, 2010, Janke wrote, "Mr. Brooks has met with investigator and reviewed and provided medical records, deposition transcripts, radiology films and other evidence belonging to the patient."

Anagnost has claimed in previous interviews that the medical board, with the knowledge of the Attorney General's office, maintained public and secret files on Anagnost.

None of the attorneys involved in the lawsuit filed by Anagnost wanted to comment for this story because of the pending litigation.

ENJOY THIS? PLEASE SHARE IT!

84	19	0	0	0
GOOGLEPLUS			REDDIT	



Tim Farley

Tim Farley is an award-winning journalist with more than 30 years of experience, including... read more

Read more by this author

0 Comments

Red Dirt Report

Login ▾

♥ Recommend

🔗 Share

Sort by Newest ▾



Start the discussion...

Be the first to comment.

AROUND THE WEB

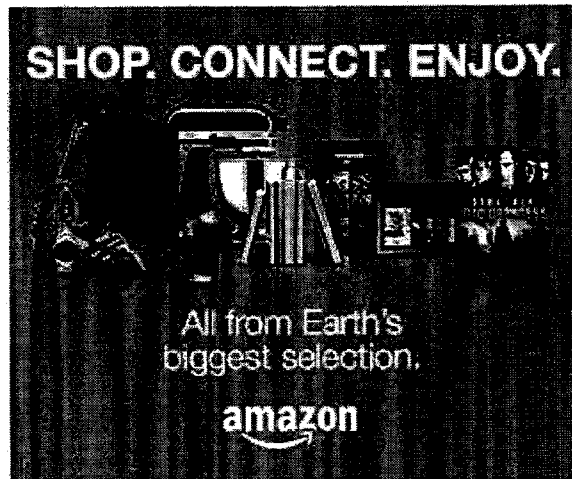
WHAT'S THIS?

Motor Guides

5 Discontinued Cars that we Really Miss - Bring them back!

Answers.com

7 Cartoon Voices You'd Never Know Belong to Celebs



YOU MIGHT ALSO LIKE



State medical board seeks records from popular radio talk show host
July 22, 2015



State medical board's prosecution policies remain under scrutiny
April 23, 2015



Medical board reform bill halted by lobbyist pressure, legislative leaders
March 12, 2015



Medical board actions against Anagnost need criminal investigation, attorney says
March 4, 2015

POLL

ALL POLLS RESULTS

Are you glad to see diplomatic relations between the U.S. and Cuba restored after 54 years?

- Yes
- No
- Not sure / Don't know

Vote

LATEST TWEETS

Tweets

Follow



Red Dirt Report

34m

@reddirtreportOK

A pretty clear #freedomofspeech issue involving @mitchelltalks and Okla. Med. Li Board
 reddirtreport.com/medical-licens...
 @Poynter @SoonerPolitics
 Show Summary



Red Dirt Report

54m

@reddirtreportOK

Check out what @LouisFowler is writing about!
 reddirtreport.com/rdr-originals/...
 Expand



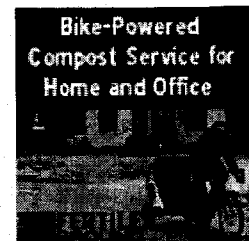
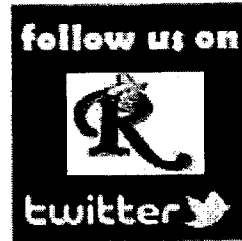
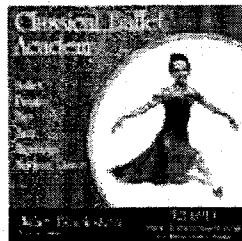
Red Dirt Report

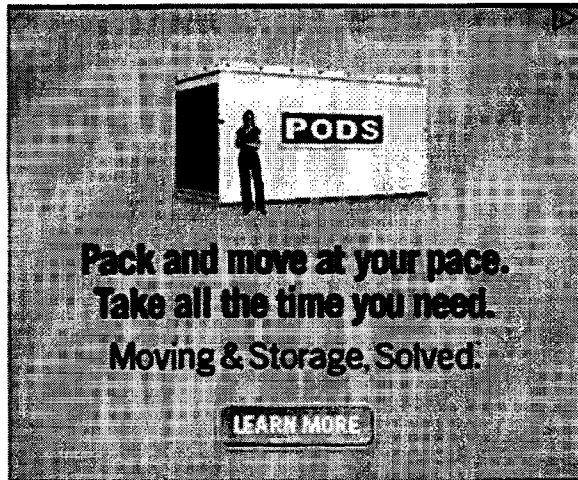
2h

@reddirtreportOK

Be sure to follow us on #Periscope! You never know
 what we'll let you all in on! #RDRsOnIt

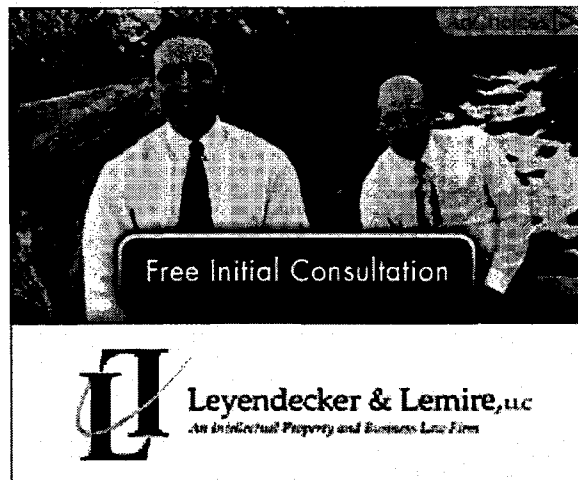
Tweet to @reddirtreportOK





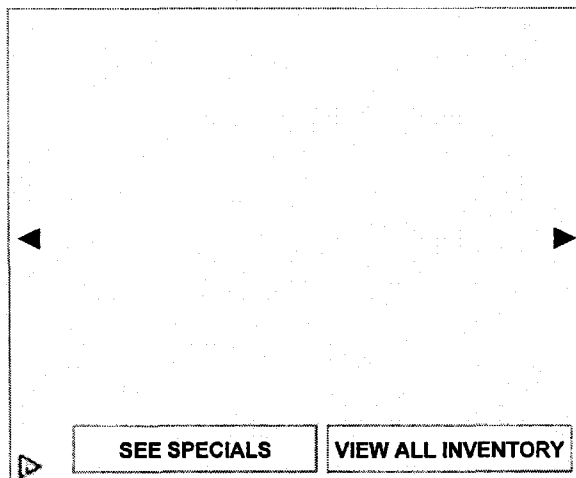
**Pack and move at your pace.
Take all the time you need.
Moving & Storage. Solved.**

[LEARN MORE](#)



Free Initial Consultation

L Leyendecker & Lemire, LLC
An Intellectual Property and Business Law Firm



◀ ▶

[SEE SPECIALS](#) [VIEW ALL INVENTORY](#)

OUR REPORTS

- Home
- RDR Originals
- Red Dirt News
- Red Dirt Politics
- Election Central
- Prairie Opinions
- Around the World
- OkieLeaks
- Okie Ed
- Dust Devil Dreams
- Sweet Crude
- Rusty's Film
- Rusty's Music
- Rusty's Reads
- Red Dirt Grit
- Oklahoma Mysteries
- Slice O' Life
- Rusty's Free Time
- Rusty's Eats
- Small Town Matters
- Five & Dime

RED DIRT REPORT

- Home
- About
- Advertising
- Wire Service
- Links
- Jobs
- Contact Us

STAY IN TOUCH

Signup for our newsletter!
Bookmark us on your phone!

ABOUT RED DIRT REPORT

Red Dirt Report was launched July 4, 2007 as an independent news website covering all manner of news, culture, entertainment and lifestyle stories that affect and interest Oklahoma readers and readers outside of our state. Our mission is to educate, promote civic engagement and discourse on public policy, government and politics. Our

experienced journalists provided balanced in-depth coverage of news stories that affect Oklahomans. Our opinion/editorial stories come from a wide range of political view points. We carry out our mission by reporting, writing, and posting news and information. [read more](#)

Member of the Oklahoma Press Association

Member of Investigative Reporters & Editors

Member of Diversity Business Association

Member of Uptown 23rd

Rotary Club of Bricktown OKC

Keep it Local OK

Copyright 2007-2015 Red Dirt Report, a division of West Marie Media | Terms of Use
built by aremInteractive

WHITE & WEDDLE, P.C.
LAWYERS
630 N.E. 63rd Street
OKLAHOMA CITY, OKLAHOMA 73105
405-858-8899
FACSIMILE 405-858-8844

Charles C. Weddle III
charles@whiteandweddle.com

March 18, 2015

Walter D. Haskins, Esq.
Rachael F. Hughes, Esq.
Meredith D. Lindaman, Esq.
Atkinson, Haskins, Nellis, Brittingham,
Gladd & Fiasco
525 South Main, Suite 1500
Tulsa, OK 74103-4524
*[Attorneys for Defendant,
Frank J. Tomecek, M.D., P.L.C. and
Frank J. Tomecek, M.D.]*

Jack L. "Drew" Neville, Jr., Esq.
Ryan S. Wilson, Esq.
Kurt M. Rupert, Esq.
Hartzog Conger Cason & Neville
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, OK 73102
*[Attorneys for Defendant,
State of Oklahoma, ex rel. Oklahoma
Board of Medical Licensure and
Supervision]*

Michael P. Atkinson, Esq.
Jennifer R. Annis, Esq.
Atkinson Haskins Nellis Brittingham
Gladd & Fiasco
525 South Main, Suite 1500
Tulsa, OK 74103
*[Attorneys for Defendant,
David A. Fell, M.D.]*

James K. Secrest II, Esq.
Edward J. Main, Esq.
Jeffrey L. Mixon, Esq.
Secrest, Hill, Butler & Secrest
7134 S. Yale, Suite 900
Tulsa, OK 74136
*[Attorneys for Defendant,
Oklahoma Spine and Brain Institute, LLP]*

EXHIBIT 7

Hilton H. Walters, Esq.
R. Gene Stanley, Esq.
Rife Walters Stanley & Natarajan, LLP
1017 N.W. 6th Street
Oklahoma City, OK 73106
*[Attorneys for Defendants,
Oklahoma Spine and Brain Institute, LLP,
Clinton Baird, M.D., Chris M. Boxell,
LLC; and Christopher M. Boxell, M.D.]*

Charles F. Alden III, Esq.
210 Park Avenue, Suite 2550
Oklahoma City, OK 73102
*[Attorney for Defendant,
S. Randall Sullivan]*

George S. Corbyn, Jr., Esq.
Amy J. Pierce, Esq.
Corbyn Hampton, PLLC
One Leadership Square
211 N. Robinson, Suite 1910
Oklahoma City, OK 73102
*[Attorneys for Defendant,
Daniel B. Graves]*

Robert A. Nance, Esq.
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
528 N.W. 12th Street
Oklahoma City, OK 73103
*[Attorney for Defendant,
Lyle Kelsey]*

Thomas W. Gruber, Esq.
Gregor T. Metcalfe, Esq.
Lewis T. LeNaire, Esq.
GableGotwals
One Leadership Square, 15th Floor
211 N. Robinson
Oklahoma City, OK 73102
*[Attorneys for Defendants,
Erick Frische, M.D. and Gayla Janke]*

Stephanie L. Theban, Esq.
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
Frisco Building
502 W. Sixth Street
Tulsa, OK 74119
*[Attorney for Defendant,
Lyle Kelsey]*

Henry A. Meyer III, Esq.
Meyer & Leonard, PLLC
116 E. Sheridan, Suite 207
Oklahoma City, OK 73104
*[Attorney for Defendant,
Gary L. Brooks]*

Richard C. Ford, Esq.
Crowe & Dunlevy
324 N. Robinson, Suite 100
Oklahoma City, OK 73102
*[Attorney for Defendant,
Gary L. Brooks]*

Re: No. CJ-2013-6140 DC Okla. Co.
Steven C. Anagnost, M.D. vs.
Oklahoma Spine and Brain Institute, LLP, et al.

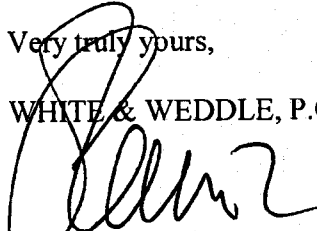
Dear Counsel:

The purpose of this letter is to provide the parties with a copy of the information I received from Representative Richard Morrisette, State Representative House District 92, in response to my request for information in his possession regarding Dr. Steven C. Anagnost. Enclosed herewith are three (3) discs labeled: Anagnost Pleadings; Anagnost Public File as of 10-31-14; and Board – Morrisette (containing documents branded BOARD – MORRISSETTE 00001 – 04441). Lastly, this production is made pursuant to the Oklahoma Discovery Code.

Thank you for your time and attention.

Very truly yours,

WHITE & WEDDLE, P.C.



Charles C. Weddle III

CCW/jdp
Enclosures

cc: Jason A. Ryan, Esq.
Phillip G. Whaley, Esq.
Patrick M. Ryan, Esq.
Ryan Whaley Coldiron Shandy PLLC
900 Robinson Renaissance
119 N. Robinson
Oklahoma City, OK 73102

