

IN THE CIRCUIT COURT OF THE 15<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Case No. 2006-CA-002832-XXXX-MB

AA

MARC E. BROCKMAN,

Plaintiff,

v.

UNIVERSITY OF MIAMI d/b/a BASCOM  
PALMER EYE INSTITUTE and d/b/a BASCOM  
PALMER OF THE BEACHES and DR. CARMEN  
PULIAFITO,

Defendants.

FILED  
07 JAN 12 PM 12:12  
PALM BEACH COUNTY FL  
CIRCUIT CIVIL 8

**APPENDIX IN SUPPORT OF DEFENDANT  
UNIVERSITY OF MIAMI'S MOTION FOR SUMMARY JUDGMENT**

Defendant, UNIVERSITY OF MIAMI, by and through undersigned counsel, hereby files this Appendix in Support of its Motion for Summary Judgment containing the following documents:

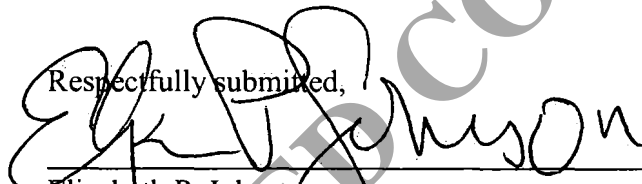
1. Excerpts from transcript of Deposition of Marc Brockman deposition taken on August 11 and November 17, 2006;
2. Transcript of Deposition of Dr. Yunhee Lee taken on May 9, 2005, in connection with *Marc E. Brockman v. The University of Miami-Bascom Palmer Eye Institute*, Case No. 05-09281, State of Florida Division of Administrative Hearings;<sup>1</sup>
3. Affidavit of Dr. John G. Clarkson dated January 4, 2007;
4. Affidavit of Dr. Laurence B. Gardner dated December 11, 2006;

<sup>1</sup>The Court may take judicial notice of Dr. Lee's deposition pursuant to Fla. R. Evid. §90.202.

36

5. Affidavit of Dr. Scott W. Cousins dated September 13, 2006;
6. Affidavit of Dr. David S. Greenfield dated November 1, 2006;
7. Affidavit of Dr. Paul B. Greenberg dated September 26, 2006; and
8. Affidavit of Coreen A. Rodgers dated January 5, 2007.
9. Letter dated April 23, 2003 regarding Marc Brockman's lay-off.

Respectfully submitted,

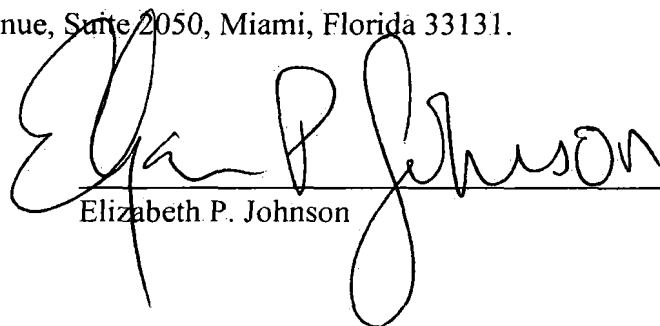


Elizabeth P. Johnson  
Florida Bar No. 920990  
Timothy O. Schranck  
Florida Bar No. 0702331

FOWLER WHITE BURNETT P.A.  
Espirito Santo Plaza, 14th Floor  
1395 Brickell Avenue  
Miami, Florida 33131-3302  
Telephone: (305) 789-9200  
Facsimile: (305) 789-9201

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 11 day of January, 2007 to Alan C. Espy, Esq., Law Offices of Alan C. Espy, P.A., 3300 PGA Boulevard, Ste. 630, Palm Beach Gardens, Florida 33410, and Jane Moscovitz, Esq., Moscovitz, Moscovitz & Magolnick, PA, 1111 Brickell Avenue, Suite 2050, Miami, Florida 33131.



Elizabeth P. Johnson

[rim] WA70305\APPDIX98--Summary Judgment Motion.EPJ

 RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO. 2006-CA-002832-XXXX-MB

MARC E. BROCKMAN,  
Plaintiff,

-vs-

UNIVERSITY OF MIAMI d/b/a BASCOM  
PALMER EYE INSTITUTE and d/b/a  
BASCOM PALMER OF THE BEACHES and  
DR. CARMEN PULIAFITO,

Defendants.

VIDEOTAPED DEPOSITION

OF

MARC E. BROCKMAN

777 South Flagler Drive  
West Palm Beach, Florida

Friday, August 11, 2006  
10:45 a.m. - 3:55 p.m.

NOT A CERTIFIED COPY

<p style="text-align: right;">14</p> <p>1 that Dr. Puliafito had agreed to a 10- to 12-percent 2 increase in your salary?</p> <p>3 A. I don't know the date.</p> <p>4 Q. Do you know the approximate time?</p> <p>5 A. No. I would be assuming that most of the 6 pay increases were -- pay increases were normally done 7 June the 1st. So that it would have had to have been 8 somewhere between February to May of 2002.</p> <p>9 Q. But you're assuming that?</p> <p>10 A. Yes. Just because I just know that 11 increases came in June. And that's when I recognized 12 after June that I hadn't received the full increase that 13 we had discussed.</p> <p>14 Q. Let's just start around 2000, and tell us 15 what your duties were at Bascom Palmer.</p> <p>16 A. Well, I was Director of Clinical Services 17 was my title. Director of Clinical Services of the Palm 18 Beach Gardens facility. That basically meant doing 19 anything that was necessary to keep the clinic running.</p> <p>20 My main responsibilities were, basically, I 21 had clinical responsibilities for seeing patients, that 22 was about 50 percent of my job. So I saw patients 23 independently and billed for that. Then the other 50 24 percent was administrative. Of that, I basically was 25 responsible for the entire technical staff. Which at the</p>	<p style="text-align: right;">16</p> <p>1 to be able to be seen within an hour.</p> <p>2 So, I would have to sit down with the 3 doctor, find out how many patients they'd like to see, 4 find out what that mix would like to be, and try to 5 create a template which is basically a time line, 8:00 a 6 new patient, 8:15 follow up, 8:20 -- to try to make sure 7 that that doctor's schedule would flow within the entire 8 facility. Not just for him, so he wasn't backing up, so 9 that I had technical staff available for all of the 10 doctors. Because the technical staff weren't assigned to 11 one specific doctor. We had, the technical staff was 12 usually anywhere from two to six doctors maybe in the 13 office at once. And I had to have enough staffing to 14 cover them, because we didn't have an increase in tech's 15 during those days when we had a higher load of doctors. 16 So we tried to create a template, which is just a 17 timeline of patient appointments, so that it could flow 18 within the system well.</p> <p>19 Q. You told us that your title was Director of 20 Clinical Services; do I have that right?</p> <p>21 A. Yes.</p> <p>22 Q. When did you get that title?</p> <p>23 A. I don't know.</p> <p>24 Q. Did you have it in the year 2000?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">15</p> <p>1 time, I would say probably I'll estimate, it was around 2 14 individuals.</p> <p>3 I was responsible for doing all their 4 evaluations, for doing all their pay recommendations, for 5 doing any grievance, any mediation. For approving 6 vacation schedules, setting schedules for the technicians 7 on a daily basis. I set the doctors' schedules, it would 8 come up to our office. I would basically make the 9 template for their patient loads. When a new doctor 10 would come on, I would actually create a template for 11 them for seeing patients in our facility. I would assign 12 rooms to them, to try to coordinate all the rooms so we 13 had doctors and enough technical staff to support the 14 doctor.</p> <p>15 Repaired equipment. Um, approved any new 16 purchases for equipment. Um, was in on meetings for 17 planning a long-range development in the office.</p> <p>18 I'm sure there is more, I just -- I did a 19 lot of things.</p> <p>20 Q. What do you mean, create a template?</p> <p>21 A. When a new doctor would come on, basically, 22 we would ask the doctor how many patients they would like 23 to see. And of that, you know, we usually had a mix of 24 new patients and follow-up patients. And so there was 25 only a certain number of patients that would be feasible</p>	<p style="text-align: right;">17</p> <p>1 Q. And how did you get it?</p> <p>2 A. At the time, the Chairman, Dr. Richard 3 Parrish, and the Medical Director of our facility, Dr. Tom 4 Heigel, when I sat down with them, basically that's the 5 title we came up with when we basically created the job 6 description.</p> <p>7 Q. Was there a written job description?</p> <p>8 A. At the time there was.</p> <p>9 Q. At what time?</p> <p>10 A. When we sat down and had the position which 11 would have been, and I'm going to guess, it was around 12 1998 to '9. That's a guess.</p> <p>13 Q. Was that an official University of Miami 14 job title?</p> <p>15 A. I don't know. I think my official job 16 title through the University of Miami was Director 17 Level 4. I don't think that they gave out titles like 18 that, but that's what we were on paper, that's what it 19 was, Director of Clinical Services. If you look at our 20 flow chart for Bascom Palmer. That's what you'll see as 21 my job position.</p> <p>22 Q. What does Director Level 4 mean?</p> <p>23 A. It's just the way they distinguish, you 24 know, the -- I guess the, you know, different director 25 levels. I don't know how they classify them within the</p>

38

1 A. Was agitated regarding the fact that this  
 2 laser system was non-functioning. He requested that  
 3 myself and Nicky Duhamel, who was the administrator of  
 4 the office, immediately drop everything that we were  
 5 doing and see him in the clinic.  
 6 So, we both basically went into the clinic  
 7 where he was. At the time he, basically, was very, very  
 8 loud, very, very vocal regarding his displeasure. I  
 9 don't remember the exact words that were said. This was  
 10 basically directly in front of patients and in front of  
 11 staff.  
 12 We, I think it was at Nicky's insistence,  
 13 we basically moved ourselves into the room adjacent to  
 14 where we were, which is the laser room. At that time he  
 15 continued basically in a loud, yelling voice at us,  
 16 basically about how this was ridiculous, and how this was  
 17 unprofessional, and, you know, basically chastising both  
 18 of us regarding the situation.  
 19 At some point in this whole thing he ended  
 20 up grabbing me by the collar of my lab jacket. Basically,  
 21 pulling me up on my toes, basically, by my lab jacket,  
 22 and was cussing and yelling at me in the face. And I  
 23 don't know how long, you know, I was in that position.  
 24 All I remember is that it was at some point Ms. Duhamel  
 25 was standing there, and she basically gasped. And he and

39

1 I both looked at her, and she was like -- she -- total  
 2 disbelief that he was doing this. And he kind of looked  
 3 back at me, and shook a second, and he pushed me off and  
 4 then walked out of the room.  
 5 Q. How long had that new laser been there and  
 6 not been hooked up?  
 7 A. I don't know the exact date. I would say  
 8 probably a week.  
 9 Q. So you had no laser during that time?  
 10 A. No.  
 11 Q. I'm sorry. That was such a poorly phrased  
 12 question that I don't know what your answer means.  
 13 Was there a laser available for use on  
 14 patients during that week?  
 15 A. No.  
 16 Q. How long had it been that there was no  
 17 laser available for patients?  
 18 A. I don't remember when the laser was first  
 19 determined not to be functioning correctly.  
 20 Q. But it was probably some period of time  
 21 before the new one arrived, correct?  
 22 A. Yes. But we had, in the interim, I had  
 23 made arrangements to have a loaner one placed in our  
 24 office.  
 25 Q. There was a loaner in the office?

40

1 A. Yeah. At one point we had a loaner. In  
 2 fact, we had either one or two different loaners that I  
 3 had made arrangements to bring in.  
 4 Q. But during the period, the immediate week  
 5 before April 4th, 2002, was there a functioning laser in  
 6 the clinic?  
 7 A. That specific type of laser, no.  
 8 Q. And what is that specific type of laser  
 9 used for?  
 10 A. Retina treatments.  
 11 Q. When you say "retina treatments," is that --  
 12 what sorts of retina treatments?  
 13 A. Diabetes. Um, bulimia of the retina,  
 14 retinopathy.  
 15 Q. So that's a piece of equipment that's used  
 16 to treat people with disease, correct?  
 17 A. Um-hum.  
 18 MR. ESPY: Yes?  
 19 BY MS. MOSCOWITZ:  
 20 Q. I'm sorry, yes?  
 21 A. Yes.  
 22 Q. Not for improving vision?  
 23 A. That's kind of one in the same.  
 24 Q. I'm sorry. Not for the idea that I go in  
 25 for a Lasik and don't have to wear spectacles anymore?

41

1 A. Yes.  
 2 Q. This is actually for patient care for  
 3 patient with disease?  
 4 A. Yes.  
 5 Q. Whose job was it to get that piece of  
 6 equipment hooked up?  
 7 A. We hired an electrician.  
 8 Q. No. Who was it that was in charge of  
 9 making sure that the electrician came and hooked up that  
 10 piece of equipment?  
 11 A. I don't think there was anybody  
 12 specifically. I would say if there was probably someone  
 13 clinically it would be myself, because I was responsible  
 14 for clinical duties. But the arrangements for the  
 15 electrician had to be made through the University,  
 16 because it was -- had to get a PO for approval to have  
 17 somebody outside come in and actually do the work.  
 18 Q. Who was responsible for filing the PO that  
 19 would have to be filed to -- PO meaning -- let me go back  
 20 and drop back.  
 21 When you say a PO had to be filed, what  
 22 you're saying is that in order to authorize the  
 23 expenditure, a purchase order had to be filed with the  
 24 University so that money could be spent, correct?  
 25 A. That's the normal realm. I don't know if

42

1 that's what happened in this one, though. But that would  
2 be, yes. The normal would be, you would have to get  
3 approval for the work to be done, and approved through  
4 the University.

5 Q. And as the Director of Clinical Services  
6 for that facility, was that your job to make sure that  
7 the PO got filed so that the electrician could come out  
8 and install the equipment that was needed for patient  
9 care?

10 A. No.

11 Q. Whose job was it?

12 A. That would have been either the  
13 administrator's job or the Medical Director's job.

14 Q. You told us when we were asking your duties  
15 as the Director of Clinical Services, that some of the  
16 things you did were -- included repairing equipment and  
17 approving purchases for equipment. But you've -- it's  
18 now you're carving out this laser out of those bag of  
19 responsibilities?

20 A. Clinical responsibilities, approving, you  
21 know, clinical -- different -- I'm sorry if you're  
22 misinterpreting it.

23 Basically, if we need equipment, I make  
24 recommendations on the equipment. Anything that's  
25 approved, goes through the administrative staff and the

43

1 Medical Director. So, I don't purchase equipment  
2 personally, I can't. That's not -- that's not within my  
3 job -- that's not within my job description.

4 Q. And it was not within your job description  
5 to make sure that equipment needed for patient care was  
6 in proper working order?

7 A. That was within my job description.

8 Q. Now, you told us that you were on one side  
9 of the clinic when Dr. Puliafito arrived from where he  
10 was, and you told us that, apparently, Dr. Puliafito was  
11 agitated that the equipment was not functioning.

12 Do you remember telling us that a moment ago?

13 A. Yes.

14 Q. Who told you that?

15 A. I believe that was Rose Anthony.

16 Q. What exactly did Rose Anthony tell you  
17 about what Dr. Puliafito did and said when he arrived  
18 that day?

19 A. I, I didn't say anything about what he did  
20 and said. They just basically told me that I was needed  
21 immediately in the office, that Dr. Puliafito was very  
22 mad and throwing a tantrum in the clinic, and I needed to  
23 get there immediately.

24 Q. Who called you?

25 A. Rose Anthony.

44

1 Q. And why is it you that she called?

2 A. Because he's who -- I'm the one he wanted  
3 to be there to yell at. He also called for Nicky  
4 Duhamel, also. We are the -- we're the two people that  
5 basically were the ones that basically ran the daily  
6 activities of the office, try to make sure everything  
7 flowed.

8 Q. What staff was there when -- I mean, you  
9 next told us that you went over to the side of the  
10 clinic, and can you tell us where, where you then saw  
11 Dr. Puliafito, and he was expressing his displeasure. Do  
12 you remember telling us that a second ago?

13 A. Um-hum.

14 Q. Where was that?

15 A. That was within the actual clinical patient  
16 care area.

17 Q. Who was present?

18 A. To the best of my recollection, I know that  
19 Ms. Rose Anthony was there, Ms. Nicky Duhamel was there,  
20 and myself. And there may have been other people that  
21 were, you know, around that were patients there.  
22 Dr. Puliafito, of course, himself.

23 Q. Where is the laser room?

24 A. It is in the corner of the clinical patient  
25 care area. It was directly next to the rooms that

45

1 Dr. Puliafito uses to see patients. It was directly in  
2 front of the Tech station. So there's -- essentially,  
3 the clinic basically has patient seating, and it has  
4 doctor rooms. And it sits right at the -- kind of the  
5 apex of the corner of all the rooms.

6 Q. Did you -- when you all went into that  
7 room, was the door left open or shut?

8 A. No, we closed it.

9 That was the purpose for going into the  
10 room, was to get out of the main waiting area with the  
11 patients.

12 Q. Do you know whether somebody inside the --  
13 outside that laser room, could hear what was going on  
14 inside?

15 A. I don't know.

16 Q. Well, you said that Dr. Puliafito was  
17 yelling. Was it very loud?

18 A. It was definitely above a normal  
19 conversation voice, yes. Was he screaming? Not at the  
20 top of his lungs, but he was yelling.

21 Q. Well, let's figure out how we define the  
22 difference between screaming and yelling.

23 Screaming is louder than yelling?

24 A. In my definition, yes.

25 Q. Well, no, that's what we need is your

46

1 definition, because it's your testimony that we have and  
 2 I don't care whether that's the way other people would do  
 3 it, I just need to know how you do it.  
 4 So screaming is louder than yelling, and  
 5 yelling is louder than talking; is that right?  
 6 A. Absolutely.  
 7 Q. And Dr. Puliafito was not screaming?  
 8 A. No.  
 9 Q. He was yelling?  
 10 A. Yes.  
 11 Q. Okay. Did he utter profanities?  
 12 A. Yes.  
 13 Q. What did he say?  
 14 A. I don't recall exact terminology, or exact  
 15 wording, but I know that he used the F word several  
 16 times. And once when he was six inches from my face.  
 17 Q. Well, how did he use it? Did he say the  
 18 F'ing equipment or the F'ing what?  
 19 A. I don't know the exact -- you know, I'm  
 20 sorry, I don't.  
 21 Q. Other than the F word, were there any other  
 22 profanities that you recall?  
 23 A. No.  
 24 Q. Tell me exactly what you recall him saying  
 25 when you are in the laser room.

47

1 A. I don't have a great recollection of a lot  
 2 of it. It kind of, just all kind of blurred together.  
 3 I remember when he was in my face saying  
 4 something regarding it was fucking ridiculous, that this  
 5 was unacceptable. That, that he was going to get a  
 6 fucking new laser out of this, you know, and he -- and I  
 7 remember before he left, he wanted to make sure that we  
 8 got the, got the laser rep on the phone, he wanted her  
 9 there in the clinic today, he wanted to talk to her  
 10 directly. And that's when, that's -- that's all I really  
 11 recall of exact type of stuff. I know there was -- it  
 12 went on longer, but I just don't know what else was said.  
 13 I just, you know, it's hard to recall.  
 14 Q. You were wearing a lab coat?  
 15 A. Yes.  
 16 Q. Is that like this kind of white three-quarter  
 17 coat --  
 18 A. Um-hum.  
 19 Q. -- that the doctor's wear?  
 20 A. Yeah, it's standard for all doctors, yeah.  
 21 Q. Is it given to you by Bascom Palmer?  
 22 A. Yes.  
 23 Q. It has like a Bascom Palmer insignia on it?  
 24 A. It has a eye logo and then your name  
 25 underneath it.

48

1 Q. And it buttons up the front?  
 2 A. Um-hum.  
 3 Q. And you had it buttoned?  
 4 A. Um-hum.  
 5 I'm sorry, yes.  
 6 Q. Oh, sorry.  
 7 And it's, it's made like a shirt, so it has  
 8 lapels and a collar?  
 9 A. Yeah. It's like -- it's just like a suit  
 10 jacket. It has lapels that come down off of it.  
 11 Q. Well, it's cut like a suit jacket, but it's  
 12 not -- it's just like one layer of whatever, cotton or  
 13 polyester or something like that --  
 14 A. Correct.  
 15 Q. -- right?  
 16 A. Correct.  
 17 Q. And tell us, or maybe show us on your  
 18 jacket since we're on a video, where you say Dr. Puliafito  
 19 had his hands on that lab coat?  
 20 A. He grabbed me by both sides of the collars,  
 21 and pulled them in, under my chin, like that. And I was  
 22 actually up on my tip toes. He pulled me up and into his  
 23 face.  
 24 Q. Did that obstruct your breathing in any  
 25 way?

49

1 A. I don't think I breathed at all during that  
 2 moment.  
 3 Q. So you don't know?  
 4 A. Oh, yes, it did.  
 5 Q. What do you mean?  
 6 A. Oh, I mean, he had his -- he had his hands  
 7 up tight -- you know, my collar was pulled against my  
 8 neck, and he has his hands underneath on my neck. So he  
 9 had pulled it tight around my neck, almost like a noose,  
 10 and he had his hands seated underneath. He had me  
 11 pulled, he grabbed them -- grabbed his hands, pulled them  
 12 in, and underneath. So his knuckles were underneath, in  
 13 my neck.  
 14 Q. This is all from your lapels?  
 15 A. Yes.  
 16 From the -- when I say "lapel." I say, the  
 17 collar. He grabbed the collar, which is part -- I'd like  
 18 to classify, I guess, as the same, lapel and collar all  
 19 in one. So it's like a -- the, you know, it's the part  
 20 around, you know --  
 21 Q. Did you have any injuries as a result of  
 22 this incident?  
 23 A. No.  
 24 Q. Bruises?  
 25 A. I didn't look, but I don't believe so.



50

1 Q. Did anyone tell you they saw a bruise on  
2 you?  
3 A. I don't know if they'd be able to, because  
4 we all wore shirts and jackets, but nobody did.  
5 Q. Well, I'm sorry. What you just showed us  
6 was something up above where any shirt would be.  
7 A. Well, but the collar comes around here,  
8 also. So, no, there was no bruising in that area that  
9 someone commented to me about.  
10 Q. You never saw any bruising?  
11 A. No.  
12 Q. How about any red marks?  
13 A. I, I didn't look.  
14 Q. Did anyone tell you, "oh, my gosh. There  
15 are red marks on you"?  
16 A. I don't recall.  
17 Q. How long do you estimate that the episode,  
18 and I'm defining it now just as the time of any alleged  
19 physical contact there was between you and Dr. Puliafito,  
20 how long did that take?  
21 A. I'd say -- in just a best guess, between 10  
22 and 20 seconds.  
23 Q. And during that time that he has hold of  
24 you, these 10 to 20 seconds, is that the exact time that  
25 he said, "this is fucking ridiculous, it's unacceptable.

51

1 I'm going to get a new laser"?  
2 A. Yes.  
3 Q. Did he -- was he also saying during that  
4 time of physical contact, that he wanted the laser rep on  
5 the phone and wanted her there that day?  
6 A. I don't recall that. I know that, you  
7 know, there was the, that this was F'ing ridiculous, all  
8 that was in my face. But I don't recall after he  
9 released me, I think it was after he released me that  
10 he -- before he stormed out of the room, that he demanded  
11 that we get her here immediately.  
12 Q. Okay. So allegedly he has his hands on you  
13 and says something, then he let's you go, and he says, "I  
14 want the laser rep on the phone, and I want her here  
15 today"?  
16 A. Yes.  
17 Q. And you did that?  
18 A. Oh, yes.  
19 Q. And how soon after that did you have a  
20 working laser?  
21 A. I don't know. I think it was still a  
22 couple of days before the part arrived, or it might have  
23 been the next day that -- you know, the part was on its  
24 way. Basically, they had recognized that they had failed  
25 to send us the part. The laser has two ways you can hook

52

1 it up. It has a single phase and there's a three phase  
2 way. And they failed to send us the part that would have  
3 allowed us to hook it up to the electrical system. I had  
4 come in on a Sunday, with the electrician, to hook it up.  
5 And that's when he recognized that it was not there. So,  
6 we had that part on order from the manufacturer immediately.  
7 Q. You came in on a Sunday to let the  
8 electrician in and be there while he hooked it up?  
9 A. Saturday or Sunday, it was a weekend.  
10 Q. When was the part ordered after that?  
11 A. I would say Monday morning.  
12 Q. How did you go about ordering that part?  
13 A. I don't recall. But I would say probably  
14 that we end up calling the rep and telling them that they  
15 were missing the part that was supposed to be with the  
16 laser.  
17 Q. Do you recall who called the rep?  
18 A. No.  
19 Q. Did you tell somebody to call the rep?  
20 A. I don't recall.  
21 Q. Did you call the rep?  
22 A. I don't recall.  
23 Q. You were the one who knew the part was  
24 missing of the staff members at the clinic, right?  
25 A. Yes.

53

1 Q. So you had somehow, to communicate with  
2 somebody, that that part needed to be gotten, right?  
3 A. Yes.  
4 Q. What time of day did this alleged incident  
5 take place?  
6 A. It was in the morning, I don't know exact  
7 time, though.  
8 Q. What did you do after then?  
9 A. I, I don't have a great recollection. I  
10 know that we had got the -- Bobbie, the representative  
11 from Luminesce there, we ended up having a meeting with  
12 Dr. Puliafito, Bobbie, Nicky and myself at one point.  
13 Q. Bobbie is the rep?  
14 A. She is -- yeah she was the laser sales rep.  
15 I know I had, also, in that afternoon I had, um, some  
16 research duties that I was doing, and I had to meet with  
17 a representative from the research company. I don't -- I  
18 don't know the exact details of the entire day.  
19 Q. You had a meeting with -- does Bobbie --  
20 can you do better for us on her name?  
21 A. I don't remember her last name.  
22 Q. So be it.  
23 But you had a meeting with Bobbie, the  
24 laser rep, Dr. Puliafito and who else?  
25 A. And Nicky Duhamel was there.

54

1 Q. And when approximately was that?

2 A. I'd say it would have been about 1:00 in

3 the afternoon. It was, it was, I believe, it was after

4 lunch or at least somewhere in the afternoon.

5 Q. What happened at that meeting?

6 A. Um, Dr. Puliafito, basically, um, again,

7 had a screaming fit. Insulted the rep on many occasions

8 over their incompetency. It was one of the most

9 embarrassing meetings I've ever been on. In fact, I had

10 to apologize to the rep afterwards for the behavior of

11 the Chairman.

12 He finished up the meeting by telling her

13 that he didn't know why he was speaking with her, she was

14 basically just a sales rep, and demanded that they get to

15 the president, or whoever was the regional director; I

16 forget who it was. That he get out there, you know, and

17 that he doesn't want to deal with her and talk to her

18 because she was beneath her -- I don't know the exact

19 wording, but that's the gist of what was said. And then

20 he got up and left while she was trying to apologize and

21 explain, he just walked out on her.

22 Q. What was her explanation?

23 A. I don't remember. I don't remember.

24 Q. Did you go out to lunch that day?

25 A. Oh, no.

55

1 Q. Do you usually go out to lunch?

2 A. No.

3 Q. You left at normal time?

4 A. Yes. To the best of my recollection, yes.

5 Q. Did you tell anyone that day about this

6 alleged incident?

7 A. Yes. I had spoke to, um, you know, of

8 course, Nicky and I spoke regarding it. She suggested

9 that I speak to Gaby directly that day who is

10 administrator, and I couldn't. And so she had spoke to

11 Gaby either that day or the next.

12 Um, I know that I had mentioned it to the

13 representative for my drug company study, um, Bill, um,

14 Bryant. You know, because he asked what was wrong, he

15 could see I was physically shaken that day.

16 Q. What did you tell him?

17 A. Told him that I was assaulted.

18 Q. Did you give any detail?

19 A. Very brief. I think I was just still a

20 little bit in shock.

21 Q. Who else did you tell on April 4th, 2002

22 about this alleged incident?

23 A. I don't think I told anybody else on that

24 day other than my wife.

25 Q. What did you tell your wife?

56

1 A. I told her the, all of the details of how

2 Dr. Puliafito was in the office, um, he was, you know, he

3 was basically cussing at us, and had assaulted me, um,

4 had verbally abused and demeaned the rep from the

5 company, um, it was basically just threw, um, pretty much

6 a fit.

7 Q. And so did you -- let's see.

8 Did you ever make a formal report to the

9 University about this alleged incident?

10 A. Yes, I did.

11 Q. When?

12 A. I don't recall the date that I did a verbal

13 to my supervisors. I spoke to both Kressly and to Mike

14 Grimmett regarding the incident. I did file a formal,

15 written grievance regarding it after speaking with both

16 the Dean at the medical school, the head of the EOC, and

17 the head of Faculty Affairs. The formal complaint was,

18 was officially filed in August.

19 Q. 2002?

20 A. Yes.

21 Q. Why then?

22 A. Just because I had gone through the other

23 channels, had sought the advice, went to the Dean to find

24 out what to do. The Dean had me -- recommended that I

25 then speak to either the EOC, or to the Faculty Affairs.

57

1 I had previously had to speak to the EOC

2 personnel regarding another incident with Dr. Puliafito

3 before that, so I felt more comfortable with them. I had

4 to travel to Miami to meet with them, and after I met

5 with them, they decided that it wasn't under their realm,

6 it didn't fall under the EOC, that it should be Faculty

7 Affairs. They put me over to Faculty Affairs, I spoke to

8 him on the phone. And then, you know what, I think I

9 even met with the Faculty Affairs before all that finally

10 got to the point of filing a written grievance.

11 Q. You had reported another incident with

12 Dr. Puliafito to the University?

13 A. No. The University -- well, yes, I did. I

14 guess I reported the -- in December of '01, Nicky Duhamel

15 and myself met with the Dean of the medical school, John

16 Clarkson, to report that she had been receiving sexual

17 harassment from the Chairman, Dr. Puliafito. That I had

18 been verbally abused by him, and that I had been

19 threatened by him and intimidated. The, specifically the

20 incident with the Faculty meeting. We met with him in

21 confidence at that point, um --

22 Q. Let me just interrupt one second --

23 A. Go ahead.

24 Q. -- and I want you to go back to that --

25 A. Okay.

58

1 Q. -- but I just want to clarify.  
2 So your report of what had happened to you  
3 was based on that faculty meeting in September '01 that  
4 you told us about a little while ago?  
5 A. Plus, other stuff that continued to occur  
6 up to that point in December, yes.  
7 Q. All right. Well, we'll turn to that in a  
8 second.  
9 Right. So, you were telling us the  
10 process. You met with Dean Clarkson?  
11 A. I met with Dean Clarkson. Dean Clarkson  
12 had acknowledged that the University was aware that he  
13 had behavioral and em -- the anger problems before they  
14 hired him.  
15 MR. ESPY: Who are you talking about?  
16 THE WITNESS: That Dr. Puliafito had these  
17 problems.  
18 MS. JOHNSON: You know what, Alan, she  
19 should follow up with the questions.  
20 THE WITNESS: And that he had assured them  
21 that this was a thing of the past, that, um, he  
22 was going to look into it personally, and then in  
23 December -- I'm sorry. In January, a Wilhema  
24 Black and Gloria Hines from the EOC were asked to  
25 meet with Ms. Duhamel and myself regarding the

59

1 complaint of sexual harassment made in Miami  
2 against Dr. Puliafito, and they were following up  
3 on the information regarding the sexual harassment  
4 up in the Palm Beach office. So they had a  
5 complaint from Miami, they were following up on  
6 other complaints, and that was one of them.  
7 BY MS. MOSCOWITZ:  
8 Q. They discussed with you that they had other  
9 complaints against Dr. Puliafito?  
10 A. Yes. That they had, basically, have been  
11 asked to speak with us, because there was a complaint  
12 filed and they were asked to investigate all avenues.  
13 Q. Okay. Now --  
14 A. So they wanted --  
15 Q. I'm sorry. You were saying?  
16 A. No, no, that's all right. We'll clarify  
17 that later.  
18 Q. I'm sorry. I should have asked before.  
19 You told your wife the night of April 4th, 2002, what  
20 allegedly happened that day between you and Dr. Puliafito,  
21 right?  
22 A. Yes.  
23 Q. What was her reaction to that?  
24 A. She was pretty well shocked that this type  
25 of thing would occur at a university. I think that, you

60

1 know, she -- you know, just was dismayed, you know, that,  
2 that this, you know, that someone has such a high degree  
3 of education and professionalism could act in this  
4 behavior.  
5 Q. Did she suggest maybe this wasn't the best  
6 job for you?  
7 A. No.  
8 Q. By the way, did you take any time off from  
9 work as a result of this incident?  
10 A. No. I was recommended, actually, not to  
11 when I had spoke to both the EOC and to the Faculty  
12 Affairs person, you know, when I had -- I had wanted to  
13 take time off to avoid Dr. Puliafito's further clinical  
14 days, and they told me I should not take those days off.  
15 I was going to take the day when he was in the clinic, so  
16 I would not be there.  
17 Q. When did you first have that discussion  
18 with them?  
19 A. I had numerous discussions with Sally  
20 Phillips who was EOC, um, Employee -- EAC, I'm sorry.  
21 Employee Assistance -- I apologize. EAP, it's Employee  
22 Assistance Programs.  
23 Q. But that wasn't the question.  
24 The question is when you first spoke to any  
25 one of them?

61

1 A. I don't recall a date.  
2 Q. Was it the same week this incident  
3 occurred?  
4 A. The assault incident?  
5 Q. Yes.  
6 A. No, it was from much before that.  
7 Q. No, but that wasn't my question at all.  
8 My question was, did you take off any time  
9 from work following this alleged incident?  
10 A. I answered that, no.  
11 Q. Okay. That day you told your wife and the  
12 guy that you had some -- were doing something regarding a  
13 drug study he had, right?  
14 A. Yes.  
15 Q. Who were the next people that you told  
16 about this alleged incident? And I don't just mean  
17 university people, I mean anybody.  
18 A. I can't recall, you know, what the exact,  
19 you know, um, dates of persons that were told. The list  
20 is very long of persons.  
21 Q. Well, I'll tell you what. If we can't get  
22 them in order, so be it. But tell us who's on that list.  
23 A. Well, within the University itself, you had  
24 Sally Phillips, from the EAP. You have Dr. Mike Grimmert,  
25 you have Dr. Scott Cousins, you have Dr. Paul Greenberg,

66

1 Dr. Kadingo knows that I had a deposition, he didn't  
2 know -- I didn't tell him why.  
3 Q. Did I ask you whether you went to any  
4 doctors, or any form of healthcare -- let me start over  
5 and say, did you go to any healthcare professional as a  
6 result of this alleged assault?  
7 A. No.  
8 Q. You told us that there was a trustee of the  
9 University that you told about the alleged assault; who  
10 is that?  
11 A. He was actually carbon copied on a letter  
12 that was sent to Dean Clarkson.  
13 Q. And who is it?  
14 A. Joel Glaser, G-L-A-S-E-R.  
15 Q. And is he somebody that you know personally?  
16 A. I don't remember how I got his name. I  
17 remember that I was, somewhere along the line I was told  
18 his name, you know, and that, you know, he may be  
19 receptive to assisting in trying to remedy the situation.  
20 Q. Who told you that?  
21 A. I don't remember.  
22 Q. When you say "remedying the situation,"  
23 what is it that you saw as a remedy to the situation when  
24 you made your grievance?  
25 A. At the time I made my grievance, basically,

67

1 I expected the University to fire Dr. Puliafito for his  
2 actions. I didn't make that demand on them, but that's  
3 what I thought would occur because of what we had seen  
4 previously with other employees, and the nature of what  
5 had happened, and terminations that had happened before  
6 that.  
7 Q. How is Nicole Duhamel currently employed?  
8 A. She is -- I don't know the exact title.  
9 She works for a large anesthesiology practice. She runs  
10 all their billing and collections department.  
11 Q. When is the last time you spoke with her?  
12 A. I believe last Thursday.  
13 Q. What did you guys talk about?  
14 A. It was her 40th birthday.  
15 Q. I don't hear you.  
16 A. It was her 40th birthday. Basically,  
17 birthday dinner.  
18 Q. Did you speak about this case?  
19 A. Basically, just -- I had mentioned to her  
20 that I had received the deposition, that we basically  
21 would be going into -- into deposition. That I had  
22 received initially, um, you know, settlement offer from  
23 the University, and that we were looking into that.  
24 Q. How often do you speak with her?  
25 A. Twice a month.

68

1 Q. Do you still see her?  
2 A. Yes.  
3 Q. Are your families' friends?  
4 A. Yes.  
5 Q. Did you ever report this matter to anybody  
6 in law enforcement?  
7 A. Yes.  
8 Q. When was that?  
9 A. March 31st, 2003.  
10 Q. Now, that's only four days short of a full  
11 year after it happened, right?  
12 A. Um-hum.  
13 MR. ESPY: Yes?  
14 THE WITNESS: Yes.  
15 BY MS. MOSCOWITZ:  
16 Q. Why then?  
17 A. Because I had physically exhausted every  
18 avenue that I could pursue with the University, and I was  
19 stonewalled and called a liar, and at that point I  
20 basically said, this is ridiculous. The University has  
21 policies that they weren't adhering to. They broke their  
22 own policies all the way along the whole way.  
23 The first thing that they ask you to do is  
24 have it dealt with internally, and they failed. They  
25 failed to provide any relief, any protection, and at that

69

1 point I said, I am going to file this.  
2 Q. There was nothing that prevented you from  
3 filing a complaint with the law enforcement, with law  
4 enforcement authorities before March 31st, 2003, was  
5 there?  
6 A. University policy is to avoid that first.  
7 They ask you to -- any problems to deal with in their  
8 policy manual is to deal with it internally. But, no,  
9 there is nothing. I could have filed at any point. But  
10 that's not the University's recommendation, and that's  
11 not what they teach you.  
12 Q. What exactly made you go at that time to  
13 law enforcement?  
14 A. It's twofold. It was a frustration with  
15 the University's stonewalling, um, and failure to act on  
16 this.  
17 The second was the sequence of events where  
18 I was being removed from my job position, essentially.  
19 They were taking away, um, job duties. They were  
20 neglecting my job. They were going behind my back and  
21 meeting and doing things. And, basically, I thought it  
22 would afford some semblance of job protection. Didn't  
23 figure the University would, would, uh, would want to  
24 fire somebody that had an active, ongoing investigation.  
25 Q. I'm sorry. Say that again.

70

1 A. I didn't figure that the University would,  
2 would want to fire somebody if there was an ongoing  
3 investigation.  
4 Q. So going to the police was a form of job  
5 protection?  
6 A. It's twofold. It's basically, primarily  
7 the frustration that I couldn't get anybody to listen to  
8 me. And then, yes, to say, hey, listen, you know what?  
9 This, this is getting out of hand. I'm being stripped of  
10 job duties. And I think I need something to protect  
11 myself.  
12 Q. Tell us about the job duties that were  
13 taken away from you.  
14 A. There was nothing formally taken away.  
15 They just basically circumvented my job position.  
16 Q. Well, you keep saying "they." And I don't  
17 know what that means then.  
18 A. Okay.  
19 Q. Who is "they," and what did they do?  
20 A. In the chain of command, the first in the  
21 top of the line is Dr. Puliafito. Beneath him, there's a  
22 Medical Director for the Palm Beach facility, and there's  
23 an administrator for the University of Miami Bascom  
24 Palmer. University of Miami Bascom Palmer has a woman,  
25 Corrine Rogers, who was appointed by the Chairman

71

1 himself. And then the Medical Director, Dr. Yunhee Lee  
2 who was appointed by the Chairman himself, again,  
3 Dr. Puliafito, just came into position in January.  
4 Right after January, Ms. Duhamel left her  
5 position with the University voluntarily. And after that  
6 point, I had absolutely no support administratively.  
7 Um, the -- all of the technical functions that I had  
8 performed before then, the approval of vacations, the  
9 assignment of duties within the clinic were basically  
10 circumvented around me, and they went to one of the  
11 technicians to do that.  
12 Q. Well, when you say circumvented around you,  
13 who did what?  
14 A. Ms. Corrine Rogers.  
15 Q. What did she do?  
16 A. They also brought in a, the consultant,  
17 Ms. Ilene Knopping, who also a personal friend of  
18 Dr. Puliafito's. And they basically -- if they had  
19 meetings regarding clinical matters, they would not tell  
20 me them. They would not tell me there was a meeting. I  
21 was not consulted regarding any changes in the clinics,  
22 regarding the technical issues. I mean, that was done by  
23 Ilene Knopping, Corrine Rogers. To a lesser part, Yunhee  
24 Lee.  
25 Q. Do you have any evidence that Dr. Puliafito

72

1 caused Ilene Knopping, Corrine Rogers or Yunhee Lee to do  
2 anything to quote-unquote circumvent your job  
3 responsibilities?  
4 A. No direct evidence.  
5 Q. Do you think there's something illegitimate  
6 about Dr. Puliafito hiring people that he has prior  
7 experience and confident with and confidence in?  
8 A. No, I think he can hire whoever he feels is  
9 competent. I think, though, that in regards to Yunhee  
10 Lee, that the placement of Yunhee Lee was inappropriate  
11 because we had people that -- she was already hired. He  
12 moved her up into the Medical Director position, whereas  
13 there were people that were more senior within the office  
14 that should have at least been, you know, put in that  
15 position preceding that. But I think that was simply a  
16 move so that he could feel he could control the office.  
17 Q. And do you have any evidence that that was  
18 a move so that he could control the office?  
19 A. No direct evidence.  
20 Q. And do you think Yunhee Lee was unqualified  
21 to become the Medical Director?  
22 A. I think that she has great qualifications.  
23 No, I think she is a qualified candidate. She didn't  
24 have the seniority within the University, though, that's  
25 what made me question that decision.

73

1 Q. And when you say you question that  
2 decision, did you relay that questioning to anyone?  
3 A. No.  
4 Q. And who is it that you felt had the  
5 seniority to get that position?  
6 A. There were three people that were more  
7 senior within the office. You had Dr. Craig Skolnick,  
8 you had -- actually, four people. Dr. Paul Greenberg,  
9 Dr. Scott Cousins, Dr. David Greenfield, and then there  
10 were innumerable people from Miami that might have taken  
11 it. There was one doctor that had desired to come to  
12 Palm Beach but wasn't allowed to. And the name escapes  
13 me right now. I want to say it's Ventura, but I can't  
14 recall, I apologize.  
15 Q. So were you offended by the fact that  
16 Yunhee Lee received that position as opposed to the other  
17 doctors who had more seniority?  
18 A. Not at all. I worked directly with Yunhee  
19 Lee, I respect her very much.  
20 Q. So when you say that you thought that the  
21 more senior people should have gotten that position, was  
22 that a matter that you discussed in the office?  
23 A. No. It was just a personal observation,  
24 personal opinion.  
25 Q. Okay. So you went to the police. Did you

1 actually drive to the police station? How did that --  
 2 A. Yes.  
 3 Q. Tell us -- give us the mechanics of that.  
 4 A. Um, basically, um, my wife and I went to,  
 5 went to the police station.  
 6 Q. Where?  
 7 A. Palm Beach Gardens. Met with an officer,  
 8 um, relayed the story to him, you know, regarding what  
 9 had happened. He took a report and, basically, filed a  
 10 report then with the, you know, the department.  
 11 Q. What then happened?  
 12 A. Um, I don't know, actually. At what point,  
 13 at some point I got a, a letter that they were  
 14 investigating it. That -- and that it was sent on to the  
 15 Attorney General's Office. And the Attorney General's  
 16 Office had sent me a letter after that saying they  
 17 decided that they were not going to pursue it, because of  
 18 the time lag in between the incident to when it occurred,  
 19 and because, you know, he had no prior record of any  
 20 problems. So, they just, they dropped the case.  
 21 Q. When did you first become aware that your  
 22 position might be in jeopardy? I don't mean just your  
 23 duties, I mean your whole job.  
 24 A. September 2001.  
 25 Q. No, no, no. You were -- there was a

1 reduction in force, there were a number of people who  
 2 were let go April 23rd, 2003. When did you first learn  
 3 that you were -- that that was about to happen?  
 4 A. April 23rd, 2003.  
 5 Q. That was the first word you got?  
 6 A. Yes.  
 7 Q. You didn't have any idea before that, that  
 8 you might be terminated?  
 9 A. None at all.  
 10 Q. Had you met with Ileen Knopping, if that's  
 11 her name?  
 12 A. We had several meetings. In what respect  
 13 is your question?  
 14 Q. Well, did you understand what her position --  
 15 what did you understand her position was? What did you  
 16 understand she was doing in your clinic?  
 17 A. She initially was hired as a consultant to  
 18 make recommendations on patient flow and increasing  
 19 productivity. So she had done several reports on how to  
 20 make the office run more efficiently. At the point when  
 21 Ms. Duhamel voluntarily left, my understanding was her  
 22 job was to take over Ms. Duhamel's duties until someone  
 23 could be hired to replace her.  
 24 Q. Did you at any point understand that she  
 25 was undertaking a study to determine how costs could be

1 cut in your facility?  
 2 A. I don't know that I was ever in on any  
 3 meetings. Again, this is where -- this is where a lot of  
 4 the frustration come up, is that, you know, it was --  
 5 there -- I think I became aware that she was there to  
 6 make recommendations after that, January 2003. But I was  
 7 never in on any of the meetings, and that kind of upset  
 8 me that, here I was the director of all the clinical  
 9 services, 16 personnel, and I wasn't being consulted  
 10 regarding any of that. And, in fact, they met with every  
 11 one of the personnel, but they left me out of those  
 12 meetings. They had a human resources person drive up  
 13 from Miami to meet with Ilene and to call in each  
 14 individual person to go over their job description. I  
 15 was absent from every one of those meetings.  
 16 Q. Was there a -- I'm sorry. Go ahead.  
 17 A. I was going to say, they simply just failed  
 18 to include me in what I consider to be one of the primary  
 19 job duties I have, you know, which is personnel.  
 20 Q. Did they meet with you regarding your  
 21 duties?  
 22 A. They did at one point, it was very brief.  
 23 I know that Yunhee Lee had met at one point with myself  
 24 regarding job duties. Just, just basically inquiring as  
 25 to what duties I performed. There was nothing more, you

1 know, as far as what expectation for my duties were,  
 2 though. In fact, I wasn't even sure that that was, you  
 3 know, something that she was in charge of, because my  
 4 understanding, again, that she was taking over  
 5 Ms. Duhamel's position. And Ms. Duhamel's position and  
 6 mine were completely separate. I was in clinical, she  
 7 was administrative, there was no overlap in us as far as,  
 8 you know, she wasn't above me and I wasn't below her in  
 9 the chain of command. The person directly responsible to  
 10 myself was Dr. Yunhee Lee.  
 11 Q. You reported directly to Dr. Lee?  
 12 A. Yes.  
 13 Q. Do you have any training in management?  
 14 A. Yes.  
 15 Q. What is that?  
 16 A. The University basically sent me to  
 17 administrative supervision training when I first joined  
 18 the University.  
 19 Q. What kind of course was that?  
 20 A. The name of the course was "Fundamentals of  
 21 Supervision." There were actually several courses that  
 22 they had me go to at that point, I want to say like three  
 23 or four. But there was one main one, the university --  
 24 the University one, it had a big binder with it, and you  
 25 had to learn all of the protocols and policies and how to

90

1 Q. What's that?  
2 A. This is the written part of what I had  
3 wrote at the Palm Beach Garden County -- the police  
4 department. This is my written account.  
5 Q. You gave it -- you wrote that on the date  
6 that it bears?  
7 A. Yes.  
8 Q. And what date is that?  
9 A. March 31st, 2003.  
10 Q. Let me show you now deposition Exhibit 3.  
11 (Defendant's Brockman Exhibit No. 3, Simple  
12 Battery Statement dated March 31, 2003, was marked for  
13 Identification.)  
14 BY MS. MOSCOWITZ:  
15 Q. Do you recognize that document?  
16 A. No.  
17 Q. In reviewing deposition one and  
18 deposition -- deposition Exhibit 1 and 2, and I'd like  
19 you -- ask you to take your time and take a look at both  
20 those exhibits, and tell us if they truly and accurately  
21 reflect what you told the police officer when you made  
22 your report to the Palm Beach Gardens Police.  
23 A. Yeah. In fact, I think that there was more  
24 said, but this is a synopsis of the officer's report.  
25 Q. What more was said that's not in the

91

1 report?  
2 A. There was -- basically, I had relayed to  
3 him that part of the reason for not coming forth sooner  
4 was basically fear of retaliation and loss of job. And,  
5 you know, it doesn't reflect it in here.  
6 I'm sure that there was probably some more  
7 delving into the exact nature of what was said during the  
8 altercation, but I, you know I, again, I don't have  
9 any -- a perfect recollection for the exact words that  
10 were said to the officer.  
11 Q. Is there anything inaccurate in those  
12 reports?  
13 A. Well, I think that he just kind of made a  
14 preliminary judgment by saying Mr. Brockman sustained no  
15 injury from the incident. That wasn't stated to him,  
16 that was a judgment on his effect. Other than that, I  
17 think it's fairly reflective of the interaction with the  
18 officer.  
19 Q. On what basis did he make that judgment?  
20 A. I can't report for how he made that  
21 judgment.  
22 Q. What did you tell him about any injuries  
23 you may have sustained as a result of the incident?  
24 A. I don't recall. I don't believe that, you  
25 know, we got into much into that. I believe he asked me

92

1 if I had sought medical care afterwards and I told him,  
2 no.  
3 Q. Well, is it your contention that you do  
4 have injuries as a result of this alleged incident?  
5 A. Define "injury."  
6 Q. Well, actually, you brought it up. So I  
7 guess I'm curious to know --  
8 A. No, you asked I'm paraphrasing.  
9 Q. No, I asked what was wrong in the report  
10 and you said, "well, he made a judgment that I had no  
11 injuries." So, I want to know if you thought you had  
12 injuries.  
13 A. Well, I think there were absolutely  
14 emotional injury was sustained in this, absolutely. You  
15 know, and there was intimidation, you know, I -- you  
16 know, I was choked. Um, there was a physical component  
17 to it. Was it a long-term, sustained injury, no, not a  
18 physical long-term injury.  
19 Q. Was it an emotional long-term injury?  
20 A. Oh, absolutely.  
21 Q. Of what sort?  
22 A. Oh, I had, um, I had panic attacks. I had  
23 insomnia. I had fear, um, you know, many, many  
24 psychological things.  
25 Q. And was that over a certain period of time?

93

1 A. Uh, yeah. I would think that basically  
2 that as I've come to grips with the whole situation over  
3 the last several years, it's been able to, you know,  
4 gradually dissipate.  
5 Q. Are you still suffering any residual  
6 effects at this point?  
7 A. Prior to reviewing all of this for the  
8 depositions, I would say that I felt pretty well back to  
9 normal. But, you know, and having to dredge it all up,  
10 it's kind of created some nights of non-sleep again and  
11 some same feelings.  
12 Q. Aside from the recent reliving of these  
13 events, do you have any other lingering problems caused  
14 by this alleged assault?  
15 A. No.  
16 Q. At the time, did that emotional injury  
17 prevent you from becoming employed?  
18 A. No.  
19 Q. Did it have any effect on your relationship  
20 with your family?  
21 A. Absolutely.  
22 Q. In what way?  
23 A. My relationship with my wife was  
24 exceptionally strained at the time. I was very short, I  
25 was very withdrawn, um --

162

1 panic attacks?  
 2 A. No.  
 3 Q. Okay.  
 4 A. I'm not a high utilizer of doctors.  
 5 Q. Okay. But you think you've had two or  
 6 three since you've left -- since you've left the  
 7 University?  
 8 A. Yeah.  
 9 Q. Okay. You talked about supervising the  
 10 optical technicians -- is that the correct phrase?  
 11 A. Ophthalmic.  
 12 Q. Say it again.  
 13 A. Ophthalmic technicians.  
 14 Q. Thank you very much.  
 15 But you did not have any authority to hire,  
 16 fire people at the clinic --  
 17 A. I did.  
 18 Q. -- you could recommend, I suppose.  
 19 A. No, I was the one --  
 20 Q. You unilaterally hired and fired people?  
 21 A. Um, I don't think there was ever any  
 22 unilateral in the University. The University doesn't  
 23 work that way.  
 24 Q. Correct.  
 25 A. Was the final decision me to myself? Yes

163

1 I made the recommendation and it was, it was basically  
 2 then approved through human resources. But nothing is  
 3 unilateral --  
 4 Q. Correct.  
 5 A. -- it has to be approved for funding, you  
 6 know --  
 7 Q. Human Resources has to approve all  
 8 termination decisions; do they not?  
 9 A. And hiring.  
 10 Q. Yeah. And did you ever recommend that  
 11 anybody ever get fired?  
 12 A. Yes.  
 13 Q. And how many?  
 14 A. Two.  
 15 Q. For what reasons?  
 16 A. Actually, um, the first was a gentleman,  
 17 Ed. And, I don't remember his last name. Um,  
 18 recommended that he be terminated because he was  
 19 confrontational with patients and staff. He was still  
 20 nearing his probationary period, he was aggressive. He  
 21 um, there was several personnel that approached me that  
 22 basically said that they felt intimidated by him --  
 23 Q. Um-hum.  
 24 A. -- that he basically just -- they didn't  
 25 feel they could work with him.

164

1 Q. His last name wasn't Byrd, was it?  
 2 A. Yes, Byrd.  
 3 Q. Didn't he file an EEOC charge about this?  
 4 A. Yes, he did.  
 5 Q. Yeah. He's African American, I believe.  
 6 A. Yup.  
 7 Q. So was he saying in fact that the  
 8 termination was discriminatory?  
 9 A. That's what he claimed.  
 10 Q. Yeah. No, I'm not assuming that it was.  
 11 But I -- he claimed that it was discriminatory, correct?  
 12 A. Yes.  
 13 Q. And in fact that --  
 14 A. He claimed sexual harassment.  
 15 Q. Oh, really? By whom?  
 16 A. Not in race.  
 17 Q. By you?  
 18 A. By the female employees that worked with  
 19 him.  
 20 Q. Okay. But the reason for your  
 21 recommendation is you felt he was too confrontational  
 22 with patients --  
 23 A. Yes.  
 24 Q. -- I think and with staff?  
 25 A. We had several patients complain directly

165

1 to us. We had staff complain directly to us.  
 2 Q. And am I -- I think I am correct that  
 3 Mr. Roy Hines from, and you kept referring to the EOC,  
 4 but I think you meant the University's Office of Equal  
 5 Opportunity where Mr. Hines and Wilhema Black were.  
 6 believe those two individuals, or at least Mr. Hines came  
 7 to the West Palm Beach to investigate that complaint --  
 8 A. Yes, they did.  
 9 Q. -- did they not?  
 10 MR. ESPY: Investigate the Byrd complaint?  
 11 MS. JOHNSON: Excuse me. Thank you.  
 12 THE WITNESS: Yes.  
 13 BY MS. JOHNSON:  
 14 Q. The Byrd complaint?  
 15 A. Yes.  
 16 Q. Okay. And met with you and got your  
 17 reasons for the termination, etcetera?  
 18 A. Yes.  
 19 Q. Okay. And there weren't any  
 20 recriminations, I mean, I think, basically the University  
 21 agreed that the recommendation was correct?  
 22 A. Yes.  
 23 Q. Now, you said there were two people. Who  
 24 else?  
 25 A. I had recommended that a Debbie Lauks be



166

1 terminated at one point, also.  
2 Q. Who is Debbie -- well, give me her job  
3 title, what she did.  
4 A. She was an ophthalmic technician, and a  
5 photographer.  
6 Q. And why did you recommend that she be  
7 fired?  
8 A. We had had, um, pattern of complaints from  
9 employees against her, that she was, again,  
10 confrontational, that she was difficult to work with,  
11 these were noted and investigated. Culminated with her  
12 tempting to get certification for photographer, she  
13 basically did what's called a fluorescence angiography  
14 without a doctor's being present or recommending it,  
15 which is a medical procedure that she's not allowed under  
16 law to do and we could have been financial liable for.  
17 And so I recommended she be terminated because she was  
18 performing medical care without being a physician.  
19 Q. And Human Resources, I assume, approved of  
20 the recommendation?  
21 A. I took that to Dr. Puliafito directly.  
22 Q. Oh, okay. And what time period are we?  
23 A. I can look it up, I don't remember the  
24 dates.  
25 Q. No, it's all right. I mean, was it --

167

1 Well, let me just give a frame of  
2 reference. Dr. Puliafito started in about July of 2001;  
3 do you know what year?  
4 A. I don't.  
5 Q. Okay. Was it before or after the assault  
6 episode?  
7 A. Before.  
8 Q. Okay. Was it before or after the  
9 September 2001 meeting?  
10 A. After.  
11 Q. Okay. And what was Dr. Puliafito's  
12 reaction to this?  
13 A. He was very upset about it. He thought  
14 that I was doing a very poor job in handling it. He used  
15 the F word several times to tell me this was F'ing  
16 unacceptable again. This is not the F'ing way we should  
17 handle it. That his modus operandi of handling  
18 situations like this was to make the person so miserable  
19 they would quit. And he recommended that then nothing be  
20 done. I took the complaint that I had filed with him and  
21 I tore it up and threw it away.  
22 Q. So are you saying she was never fired?  
23 A. She was subsequently terminated later on,  
24 and I don't recall the reasons why that was. But she was --  
25 Q. Was that based on your recommendation?

168

1 A. In part myself and Ms. Duhamel for later  
2 on, but I don't remember exactly why at that time she was  
3 terminated.  
4 Q. So at some point you did make the  
5 recommendation, though, that she be fired, again. And  
6 she was?  
7 A. No, I apologize. No, she wasn't terminated,  
8 she voluntarily quit --  
9 Q. Okay.  
10 A. -- after that.  
11 Q. Shortly after that?  
12 A. I don't remember, I think it was several  
13 months.  
14 Q. Okay. Did you communicate to her what  
15 Dr. Puliafito had said about her?  
16 A. No.  
17 Q. Okay. All right. You have asserted a  
18 claim of negligent hiring against the University of  
19 Miami. So I kind of want to walk through the factual  
20 basis for the claim.  
21 A. Good.  
22 Q. Okay. It's my understanding that this is  
23 based upon your contention that the University knew at  
24 the time that they hired Dr. Puliafito that he had a  
25 history of what you call a violent temper and outrageous

169

1 behavior at Tufts; is that correct?  
2 A. Um-hum.  
3 Q. And I want to know --  
4 MR. ESPY: Yes?  
5 THE WITNESS: Yes.  
6 BY MS. MOSCOWITZ:  
7 Q. Okay. First of all are you -- is your  
8 knowledge, your facts based solely upon whatever he did  
9 at Tufts, or is there some other academic institution  
10 involved?  
11 A. I don't know which academic institutions  
12 are involved. I just know that personnel that were with  
13 the University said this is a pattern of behavior that he  
14 has had in the past.  
15 And I don't -- I can't say exactly whether  
16 it was Tufts or elsewhere.  
17 Q. Okay. Have you or anyone on your behalf  
18 ever talked to anybody at Tufts about Dr. Puliafito and  
19 his behavior, or anything -- any bad incidents that  
20 occurred while he was there?  
21 A. No.  
22 Q. Okay. Now, you testified earlier that some  
23 unidentified person told you that Dr. Puliafito had hit  
24 someone at Tufts, or assaulted, or grabbed somebody at  
25 Tufts; if you could explain that more to me.

170

1 A. You know I -- it wasn't, it wasn't hitting.  
2 It was -- I, I gathered that it was kind of the same type  
3 of incident that had happened with myself, that he had  
4 grabbed somebody --  
5 Q. Well, let's get really specific.  
6 You said that it was some unidentified  
7 person, you can't remember who told you this --  
8 A. Correct.  
9 Q. -- correct?  
10 And I believe you also testified you can't  
11 recall if that person had personal knowledge of the  
12 incident?  
13 A. Correct.  
14 Q. I mean, other than passing on a rumor --  
15 A. Correct.  
16 Q. -- is that right?  
17 A. Correct.  
18 Q. All right. Your recollection is that this  
19 person, whoever it is, said what, about something  
20 Dr. Puliafito had done?  
21 A. Was that he had also had the same thing  
22 occur at Tufts where he had a physical altercation with  
23 an employer, or a doctor.  
24 Q. Do you recall that the words "physical  
25 altercation" were actually used by this unidentified

171

1 person?  
2 A. I don't recall that specific word. But I  
3 know that they -- what was said was that they had -- that  
4 he had either grabbed somebody, that -- yes. That they  
5 indicated that it was a physical altercation, it wasn't  
6 just verbal.  
7 Q. Okay.  
8 A. That it was beyond a verbal --  
9 Q. But you can't recall the specifics of what  
10 that physical altercation was?  
11 A. No, I cannot.  
12 Q. Okay. And I assume, since you can't  
13 remember who told you this, that you do not know whether  
14 that information was passed onto a member of the Search  
15 Committee at the time they were hiring Dr. Puliafito?  
16 A. I do not. I do know that there were  
17 several faculty that told me that during the Faculty  
18 meeting in which they were discussing his employment,  
19 that it was brought up, that he had a history of violent  
20 behavior.  
21 Q. And let's talk about that for a minute.  
22 A. Um-hum.  
23 Q. I want to understand exactly the sources of  
24 your knowledge that the Search Committee was aware of any  
25 prior bad incidents involving Dr. Puliafito at Tufts,

172

1 okay?  
2 But before we get into that, do you have  
3 any knowledge, or facts, as to whether Dr. Puliafito has  
4 ever been fired or disciplined at Tufts or any other  
5 academic institution, or any other employer?  
6 A. I do not personally.  
7 Q. Okay. Criminal history, civil assault  
8 lawsuits against him, do you have any personal knowledge  
9 about that?  
10 A. I don't have any knowledge.  
11 Q. Okay. So let's go back to my question.  
12 Okay. Who -- I know that you had a  
13 conversation with Dean Clarkson in December of '01 and  
14 we'll talk about that in a minute.  
15 But putting that aside, what other people,  
16 and then you can tell me specifically what they said,  
17 have relayed to you information that made you think that  
18 the Search Committee was aware that Dr. Puliafito had  
19 engaged in some bad incidents while at Tufts before being  
20 hired?  
21 A. I had information from Scott Cousins.  
22 Q. Was he on the Search Committee?  
23 A. I don't know if he's on the Search Committee.  
24 Q. Okay.  
25 A. He was part of the Faculty. These were

173

1 openly discussed in faculty meetings is what my  
2 understanding was. That his, his recommendation as being  
3 for chairman, they were openly discussing whether they  
4 should hire him in a faculty meeting.  
5 Q. Well, and the department would -- faculty  
6 members would naturally discuss that.  
7 A. Yes.  
8 Q. You're not a member of the Faculty, am I  
9 correct?  
10 A. No.  
11 Q. Yeah.  
12 Okay. Scott Cousins, who is a faculty  
13 member. Who else?  
14 A. David Greenfield.  
15 Q. Uh-huh. Who else?  
16 A. David Tse, T-S-E.  
17 Q. T-S-E.  
18 A. Yeah.  
19 Q. Okay.  
20 A. That was it.  
21 Q. Okay.  
22 A. And then, of course, John Clarkson but  
23 you're going to separate out that.  
24 Q. And I understood that, and I --  
25 A. Yeah.

174

1 Q. -- we'll talk about that.  
2 A. Yeah.  
3 Q. All right. Do you know who made the final  
4 decision to hire Dr. Puliafito, or kind of what the  
5 process is?  
6 A. I don't. I would assume it would be the  
7 Dean, Dr. Clarkson.  
8 Q. But you don't know for sure?  
9 A. No.  
10 Q. Okay. And you did understand of course  
11 there's a Search Committee to hire him --  
12 A. Yes.  
13 Q. -- of course.  
14 A. Where they had interviewed several.  
15 Q. Right, indeed.  
16 And the Chair of the Search Committee, did  
17 you know who that was?  
18 A. I don't know who that is.  
19 Q. And if you don't know who that is, I assume  
20 you did not have a conversation with the Chair of the  
21 Search Committee about their findings or what they  
22 discussed?  
23 A. No, I did not.  
24 Q. Okay. You don't know whether Scott  
25 Cousins, David Greenfield, or David -- am I going to say

175

1 this right -- Tse?  
2 A. Yes, Tse.  
3 Q. Thank you.  
4 Whether any of these three people were  
5 actually on the Search Committee --  
6 A. No, I did not.  
7 Q. -- is that correct?  
8 Okay. Now, why don't we start with Scott  
9 Cousins. If you will talk to me about your conversations  
10 with him, about hiring Dr. Puliafito?  
11 A. Um, it's a little bit still fuzzy as to who  
12 said what. So I hate to attribute any conversation to  
13 one person, because I don't recall. All I know is that I  
14 had spoken independently --  
15 Q. You know you talked to these three  
16 people --  
17 A. Yes, I had spoken to them independently.  
18 Q. But I'm clear what you talked to them  
19 about?  
20 A. Correct. I know that I had been relayed  
21 from them, that it was discussed openly in the Faculty  
22 meeting, that he had some behavioral problems that, there  
23 were some concerns --  
24 Q. At Tufts?  
25 A. There were concerns with the Search

176

1 Committee during this, this -- that they, basically,  
2 whether they should hire him --  
3 Q. Um-hum.  
4 A. --because of his behavior at Tufts. And  
5 that, you know --  
6 Q. Right.  
7 These three faculty members independently  
8 told you this --  
9 A. Again, I don't know what was specifically  
10 said from each --  
11 Q. -- or did they tell you this, or did they  
12 tell somebody else this?  
13 A. No, no. They told to me specifically, but  
14 I can't, again, attribute the exact wordings to each one,  
15 I'm sorry.  
16 Q. And I understood your testimony to be that.  
17 Okay. But they are relaying conversations  
18 they had, or that was being held at faculty meetings,  
19 correct?  
20 A. Correct.  
21 Q. So they in fact may have been relaying  
22 comments that were made by other people at the Faculty  
23 meeting; is that correct?  
24 A. Correct.  
25 Q. Okay. In any of those conversations with

177

1 Dr. Cousins, Greenfield, and Tse, or Dr. Clarkson, did  
2 any of those people tell you that he had assaulted, or  
3 hit, or struck, or been physically violent with any  
4 employee at Tufts, other than the one unidentified  
5 employee conversation where you told me about?  
6 A. Well, these guys may have been within that  
7 group of unidentified person. Like I said --  
8 Q. Fair enough.  
9 A. -- I don't remember who specifically told  
10 me that information.  
11 Q. Other than that conversation you have  
12 already testified about --  
13 A. Uh-huh.  
14 Q. -- are there any other comments,  
15 conversations, or statements made by any these four  
16 people that they had heard that Dr. Puliafito had been  
17 physically violent with anyone at Tufts?  
18 A. No, I don't believe there is other, other  
19 than the one.  
20 Q. Okay. The nature of these conversations  
21 with these four people then is that it was their  
22 understanding that the Search Committee had concerns  
23 about past behavioral problems with Dr. Puliafito; is  
24 that correct?  
25 A. I don't know if it was a Search Committee

178

1 that had the concerns --  
2 Q. Okay.  
3 A. -- but the Faculty had the concerns, and  
4 brought them to the Search Committee.  
5 Q. Okay. All right. If you could try a  
6 little harder maybe to be more specific about -- and I  
7 understand you're having trouble differentiating what  
8 Dr. Cousins, Dr. Greenfield, and Dr. Tse said. But  
9 without differentiating what they told you, can you  
10 recall specifically what the -- the specific nature of  
11 the concerns. I mean, he had a bad temper?  
12 A. Yes. The concern was --  
13 Q. Okay.  
14 A. -- that he had a bad temper, that, you  
15 know, he was abusive.  
16 Q. They'd heard that he had a bad temper?  
17 A. Yeah, I don't know if any of them had  
18 specifically ever saw incidences, but, yes.  
19 Q. Right. Because we're talking about hiring  
20 issues?  
21 A. Correct. But some of them, you know, had  
22 worked with him in the past.  
23 Q. Okay.  
24 A. So they may have seen specific instances --  
25 Q. Right.

179

1 A. -- you know, like Dr. Lee, who I spoke  
2 with, she and Dr. Greenberg were the two that basically  
3 had made note of the FM club with him. So they had seen  
4 personally --  
5 Q. So you would actually add Dr. Lee to this  
6 list?  
7 A. She wasn't --  
8 MR. ESPY: She's talking now about the --  
9 THE WITNESS: -- she wasn't there during the  
10 Search Committee, so I wouldn't add her to that.  
11 BY MS. JOHNSON:  
12 Q. Correct. Good point.  
13 Dr. Lee came in sometime after Dr. Puliafito  
14 was hired. In fact, I think he brought her down from  
15 Tufts --  
16 A. Correct.  
17 Q. -- did he not?  
18 A. Correct.  
19 Q. All right. So these faculty members are  
20 relaying to you that they had concerns that Dr. Puliafito  
21 had temper issues at Tufts?  
22 A. Yes.  
23 Q. Beyond the temper, bad temper issues, what  
24 else?  
25 A. That physical violence again.

180

1 Q. Well, that's the one unidentified person --  
2 A. Okay. We're going to leave that one off  
3 then. Okay.  
4 Q. -- who told you, they might not have  
5 personal knowledge, but they had heard that he had been  
6 physical with some person?  
7 A. That's the main crux of the two. Was, you  
8 know, that he was, he was abusive, verbally abusive,  
9 profanity. I know the person you haven't even heard on  
10 this list is a, is a McCuhen.  
11 Dr. McCuhen had told me one time --  
12 Q. Okay.  
13 A. -- that, you know, that's just him. You  
14 know, as a -- you know, he, in regard to his cursing,  
15 obscenities, that's his -- that's him. That's just the  
16 way he is.  
17 Q. Do you ever use profanity?  
18 A. Yes.  
19 Q. In the workplace?  
20 A. Never.  
21 Q. Never?  
22 A. No.  
23 Q. McCuhen -- but you would not add Dr. McCuhen  
24 to the list of people who relayed through pre-hire  
25 information?

181

1 A. No, no. Again, no.  
2 Q. Okay. Why don't we talk a little more  
3 specifically about this conversation with Dean Clarkson.  
4 A. Okay.  
5 Q. It's my recollection that you and Nicky  
6 Duhamel met with Dean Clarkson when he came up to the  
7 West Palm Beach clinic in December 2001; is that correct?  
8 A. Correct.  
9 Q. And Dr. Clarkson is there because he's also  
10 an ophthalmologist, and he was up there to do some work,  
11 I assume see some patients?  
12 A. Correct.  
13 Q. But you need to take some time out of his  
14 day to discuss your concerns about Dr. Puliafito?  
15 A. Correct.  
16 Q. Did you find Dr. Clarkson receptive to you,  
17 hostile?  
18 A. No, I would've said he was receptive.  
19 Q. I find him a very kind person, but maybe  
20 that wasn't your --  
21 A. No, at that time he was very receptive.  
22 Q. -- your experience.  
23 A. You know, I, at that time, had many  
24 interactions with Dr. Clarkson. I did his glasses, I was  
25 the doctor that examined him for glasses.

268

1           When you left the University, I think you  
2 were making about \$89,000 in salary, does that sound  
3 right?  
4       A. Yes.  
5       Q. Do you know what the other optometrists in  
6 Miami were making?  
7       A. No.  
8       Q. Do you have any idea?  
9       A. No.  
10       MS. JOHNSON: Would you like to see it?  
11       MR. ESPY: Yeah. I'm sorry.  
12       MS. JOHNSON: That's okay. You've seen  
13 it before.  
14       MR. ESPY: Oh, okay. I do recognize  
15 that.  
16       Q. I'm showing you Exhibit 9, which is your  
17 termination letter dated April 23, 2003. Do you  
18 recognize that document?  
19       A. Yes.  
20       (Thereupon, Letter, 4-23-03 was marked as  
21 Defendant's Exhibit 9 for Identification.)  
22       Q. Were you given it by hand at a meeting with  
23 University employees?  
24       A. Yes.  
25       Q. It wasn't mailed to you is what I'm asking.

269

1           Okay. We talked a little bit about  
2 payment. I want to walk through that for a minute.  
3 It says in this letter you would be paid accrued  
4 vacation.  
5       Were you in fact paid your accrued vacation  
6 in your last paycheck?  
7       A. Yes.  
8       Q. Do you recall how much that was?  
9       A. No.  
10       Q. And it says in here that pursuant to  
11 University policy, you were receiving two months pay  
12 in lieu of notice, i.e. severance.  
13       Were you in fact paid two months pay?  
14       A. Sorry, can I read this real quick a second?  
15       Q. Absolutely. Take your time.  
16       A. I actually don't believe I was handed this  
17 one. I think this was mailed to me.  
18       Q. Okay.  
19       A. There were two different ones. This isn't  
20 my termination letter. This came afterwards.  
21       Q. There are two letters actually so let's  
22 talk about that for a minute.  
23       A. No. This is not the one that was handed to  
24 me --  
25       Q. Okay.

270

1       A. -- at the time of termination. This is the  
2 one that was mailed later on.  
3       Q. All right. Take a look at that.  
4       Let me just ask you a few questions however  
5 about Exhibit 9. Let me go back to my original  
6 question was were you paid two months pay in lieu of  
7 notice?  
8       A. I don't recall exactly the amount at the  
9 time I was paid for, but I was paid for my -- I was  
10 paid something for the fact that I was let go  
11 immediately without any notification.  
12       Q. And when you say "let go immediately," you  
13 mean your last day of work was April 23rd --  
14       A. Correct.  
15       Q. -- 2003?  
16       A. Correct. University policy is that if you  
17 terminate a person and you have to give them  
18 notification of a certain amount depending on the time  
19 span they were there. If you don't, if they don't  
20 work out that, you have to pay them for that time.  
21       Q. Right. And the amount of payments depended  
22 on how much -- how long you had been at the  
23 University, is that correct?  
24       A. Yes.  
25       Q. And I mean you're not disputing the fact

271

1 that you were paid the appropriate notice period, are  
2 you?  
3       A. No.  
4       Q. Okay. Thank you.  
5       Let me show you, I'm marking as Exhibit 10  
6 a letter dated April 30th, 2003 and this letter has  
7 your home address on it whereas there is no address on  
8 Exhibit 9 so I'm hoping that will refresh your  
9 recollection about which letter was given to you at  
10 the termination meeting.  
11       So let me show you the two letters and you  
12 tell me if that helps you recollect which letter was  
13 handed to you at a meeting with University employees  
14 on April 23rd?  
15       A. Neither.  
16       (Thereupon, Letter, 4-30-03 was marked as  
17 Defendant's Exhibit 10 for Identification.)  
18       Q. Neither letter was given to you?  
19       A. Correct.  
20       Q. Okay. So you weren't given any letters?  
21       A. I was. The one in front of you with my  
22 signature on it. The one you just picked up.  
23       Q. What do you mean one just picked up?  
24       Well, look at exhibit --  
25       A. That one there.

272

1 Q. This letter?

2 A. Yes.

3 Q. Okay. Let's mark this.

4 A. Unless I'm misreading that. I apologize if

5 I misread --

6 Q. No, no. Absolutely. This is very helpful.

7 Thank you very much.

8 I'm showing you Exhibit 11, which I believe

9 is identical to Exhibit 9, am I correct?

10 A. I apologize they are.

11 (Thereupon, Letter, 4-23-03 was marked as

12 Defendant's Exhibit 11 for Identification.)

13 Q. With the exception of the fact that you are

14 correct, there is a handwritten note at the top of the

15 page which I believe is your signature?

16 A. Yes.

17 Q. Is that right?

18 A. Yes.

19 Q. So in fact Exhibit 9 and 11 are identical

20 letters except that you have acknowledged receipt, I

21 guess, of Exhibit 11?

22 A. I apologize.

23 Q. That's all right.

24 A. I am absolutely incorrect from before.

25 Q. Okay.

273

1 A. This is the same exact letter, yes.

2 Q. Okay.

3 A. I saw you holding that one with my

4 signature on it. I thought it was a different letter

5 completely because I didn't recall this. I guess when

6 I was there I didn't read it well because of what was

7 occurring. I just didn't remember it.

8 Q. Let's backup a little bit. There was, in

9 fact, a meeting that was held April 23rd?

10 A. Yes.

11 Q. 2003?

12 A. Yes.

13 Q. Okay. And the two people whose signatures

14 on are on these letters, Coreen Rodgers and Dr. Lee

15 they were present at this meeting?

16 A. Yes, along with I believe a third person

17 was there.

18 Q. Okay. Who was that?

19 A. I don't remember her name. Human resources

20 person I believe was there also.

21 Q. I can throw out some names which might help

22 you refresh your recollection.

23 Was it Gloria Lasso?

24 A. Yes.

25 Q. Okay. There you go. It was not Kelly

274

1 Ensanares?

2 A. No.

3 Q. Gloria Lasso?

4 A. Yes.

5 Q. Okay. And she represented the fact she was

6 from human resources?

7 A. She didn't say anything.

8 Q. Okay. How long did that meeting last?

9 A. Five, ten minutes.

10 Q. Okay. Who called the meeting?

11 A. Yunhee Lee.

12 Q. Called you to set up the meeting?

13 A. Yes.

14 Q. Okay. On the phone?

15 A. No, she was in clinic that day. She came

16 to me in the middle of seeing patients and asked me if

17 after I finished if I could meet with her.

18 Q. Did she tell you why?

19 A. No.

20 Q. Did you suspect why?

21 A. I didn't at the time. But after four

22 people came to me and told me they were terminated I

23 suspected why.

24 Q. Prior to your meeting then with Ms. Lee,

25 Ms. Lasso and Dr. Lee -- Ms. Rodgers, Ms. Lasso and

275

1 Dr. Lee, prior to that meeting you had already been

2 told by some others that they had also been laid off?

3 A. Yes.

4 Q. Okay. We'll talk about that in a minute.

5 Okay, where was the meeting held?

6 A. It was in Dr. Lee's office at the Palm

7 Beach Gardens facility.

8 Q. And tell me what was said at the meeting?

9 A. I believe Dr. Lee was the only one that

10 spoke. She told me that they had basically had to

11 make some budgetary constraints and they were sorry

12 that they were going to be, you know, downsizing my

13 position or letting me off. I don't remember the

14 terminology at all. I just remember that she spoke

15 and told me, you know, that I was being let go.

16 Q. Did she tell you she was sorry about it?

17 A. Yes.

18 Q. Did she appear to be sorry about it? What

19 was her demeanor?

20 A. She's a genuinely concerned person, so she

21 was genuinely, you know, not happy with doing it.

22 Q. Okay. And you said Ms. Lasso didn't say

23 anything?

24 A. I was just thinking about that. I can't

25 remember whether she did or not. Because I remember

1 that she gave me two boxes to take stuff with, so I'm  
2 sure that I spoke with her briefly either before or  
3 after, but I can't remember any substance of the  
4 conversations.

5 Q. And what about Coreen Rodgers? Did she say  
6 anything during the meeting?

7 A. I can't recall her saying anything.

8 Q. Did you ask any questions?

9 A. No, I did not.

10 Q. Did you say anything during the meeting?

11 A. No.

12 Q. Nothing? Absolutely nothing?

13 A. Nothing.

14 Q. Okay. We had talked a little bit --

15 A. Can I.

16 Q. Yes, go ahead.

17 A. That's to the best of my recollection. I  
18 mean if I said anything it was very short. It was,  
19 you know, probably just disappointed or something.  
20 But there was no conversation. I basically asked them  
21 where they wanted me to sign and that was it.

22 Because I had already heard this was the  
23 process that, you know, these people -- every one of  
24 the people that had been let go had come to me one  
25 right after the next after the next to tell me that

1 She would schedule patients, talk to them on the  
2 phones.

3 Q. Okay. And they were all laid off like you  
4 were on the last -- on April 23rd?

5 A. Yes.

6 Q. Okay. When -- did they come to you as a  
7 group or individually?

8 A. Individually.

9 Q. Okay.

10 A. Individually.

11 Q. And tell me what they said to you?

12 A. Basically that they had met with Dr. Lee  
13 and that they had been terminated.

14 Q. Okay. Did they say anything else?

15 A. They may have but I was seeing patients at  
16 the time and I was trying to, you know, continue to  
17 finish my day.

18 Q. Okay. Were you shocked by that?

19 A. I was absolutely shocked.

20 Q. Okay. So you had no idea that there might  
21 be some sort of reorganization going on at the West  
22 Palm Beach clinic?

23 A. I knew that they were planning a  
24 reorganization because we were adding two consultants,  
25 but they had never come to me and told me that they

1 this is what was happening.

2 Q. Let's talk about that for a minute. I  
3 don't have a paper clip but may I borrow your binder  
4 clip because I'm going to do a composite exhibit.

5 There were several other people you just  
6 alluded to who were also laid off on that day, is that  
7 right?

8 A. Yes.

9 Q. And I've got Suzanne Cohen, James Crowell  
10 and Nicholas Riley?

11 A. Yes.

12 Q. Was there someone else?

13 A. Joan Crownover.

14 Q. So four all together?

15 A. Yes.

16 Q. All right. If you could tell me what those  
17 four people did?

18 A. James Crownover or excuse me Crowell and  
19 Nick Riehle worked in the optical center. Suzanne  
20 Cohen worked in medical records. And Joan Crownover  
21 worked, I believe at the time she was working in LASIK  
22 surgery.

23 Q. When you say "working in LASIK surgery,"  
24 what specifically did she do?

25 A. She was kind of like a reception person.

1 had planned on terminating any employees or that there  
2 was any intent of, you know, making changes in that  
3 respect.

4 And since, you know, a lot of those  
5 patients -- a lot of those people I was with when they  
6 were hired, I was surprised that my position wasn't  
7 involved in any decision making with any of it.

8 Q. But if the decision has been made to  
9 eliminate your position, why would you be consulted  
10 about people who were reporting to you?

11 A. Well, I wasn't. I mean afterwards in  
12 hindsight. But as I was the person that was still  
13 responsible for clinicals, you know, running the  
14 clinic, I was pretty shocked that I hadn't been  
15 consulted anywhere along the lines before that.

16 Q. Except that if the decision had been made  
17 by your superiors that your position would be  
18 eliminated, it would sort of make sense that you  
19 wouldn't be consulted about whether particular people  
20 reporting to you should be --

21 A. Why not?

22 Q. -- let go?

23 I'm just asking you if you think that's  
24 reasonable?

25 A. I think that if I were still the clinical

280

1 director, which was my position until the time I was  
 2 terminated, that I would have input in whatever  
 3 happens. And I think that being there for almost  
 4 seven years, a lot more time than Yunhee Lee, a lot  
 5 more time than Coreen Rodgers, that I had more  
 6 experience than the entire group of people that made  
 7 the decision, that they would have at least wanted  
 8 some input into what our thoughts were as far as the  
 9 direction. I don't think it's unreasonable.

10 Q. Coreen Rodgers is the, at the time in April  
 11 of '03, was the Assistant Chair, is that correct? Is  
 12 that her job title?

13 A. I don't know what her job title is to be  
 14 honest.

15 Q. You don't?

16 A. No.

17 Q. Okay. You understood that she was the top  
 18 administrator for the department, did you not?

19 A. Yes. But she only rarely ever came to Palm  
 20 Beach. She had nothing -- she never oversaw any daily  
 21 operations of Palm Beach whatsoever. She was one --  
 22 almost 100 percent exclusively in Miami. She would  
 23 come up maybe once a month at the most.

24 Q. Are you questioning her competence?

25 A. No. I'm saying that she on a daily basis

281

1 wasn't running the facility. The facility was managed  
 2 locally.

3 Q. Yes, but Coreen Rodgers had ultimate  
 4 administrative responsibility for the facility, did  
 5 she not?

6 A. I don't know.

7 Q. Yeah.

8 A. You sure?

9 Q. You obviously aren't sure so that's what  
 10 I'm trying to figure out.

11 A. Well, you're responding that's why I'm  
 12 saying. You know if you're sure she does. I don't  
 13 know --

14 MR. ESPY: She's not here to answer  
 15 questions though, Mark.

16 THE WITNESS: No, but she answered  
 17 that. That's why.

18 MR. ESPY: Okay.

19 Q. Of those four other people who were laid  
 20 off, had any of them been assaulted or had their  
 21 lapels grabbed by Dr. Puliafito?

22 A. No.

23 Q. Had any of them filed complaints or  
 24 grievances against Dr. Puliafito?

25 A. Not to my knowledge.

282

1 Q. Okay. And since you weren't consulted  
 2 about these layoff decisions, I assume you don't know  
 3 why the decision was made to lay them off?

4 A. Correct.

5 Q. And do you, in fact, know whether any of  
 6 them were replaced?

7 A. Yes.

8 Q. Okay.

9 A. Suzanne Cohen was replaced immediately by  
 10 somebody from the University of Miami. James Crowell  
 11 was rehired for a different position immediately  
 12 within the University.

13 Q. Let me slow you down for just a second.  
 14 Suzanne Cohen was replaced by someone in Miami?

15 A. From medical records that had come up to  
 16 replace her position, yes.

17 Q. Okay. And who was that?

18 A. I don't know a name.

19 Q. Okay. And go ahead.

20 A. James Crowell was immediately rehired for a  
 21 different position.

22 Q. What was the different position?

23 A. He was hired to do, I want to call it  
 24 ancillary testing. Basically he worked within the  
 25 photography department.

283

1 Joan Crownover was offered a position  
 2 immediately at the front desk.

3 Q. Which she took?

4 A. I believe she subsequently declined it.

5 Q. Okay. Do you have any information though  
 6 that those positions that they had, for example, an  
 7 optical services, whereas the LASIK surgery  
 8 receptionist were in fact, those positions were filled  
 9 by other people? You're just saying they were offered  
 10 different jobs?

11 A. They basically yes, they hired them back to  
 12 different positions.

13 Q. Okay. What about Nick Riehle?

14 A. Nick Riehle, I don't believe he was offered  
 15 anything to the best of my knowledge.

16 Q. And none of those four people filed  
 17 lawsuits as a result of their layoffs?

18 A. I do not know.

19 Q. Have you ever talked to Dr. Puliafito about  
 20 your layoff or the reasons why?

21 A. Never.

22 Q. Okay. After you were advised by Dr. Lee in  
 23 that meeting on April 23rd about your layoff, did you  
 24 contact anybody at the University to inquire about the  
 25 reason for the layoff?



1 A. No.  
 2 Q. Do you know whether the West Palm Beach  
 3 clinic currently has a clinical director, which I  
 4 believe you said was your title when you left?  
 5 A. I do not know.  
 6 Q. And do you know who has assumed the  
 7 administrative responsibilities that you had?  
 8 A. They have been spread out, my understanding  
 9 is over multiple people.  
 10 Q. And whose told you that?  
 11 A. Craig Skolnick, who is a doctor there,  
 12 Marsha Mulholland, who is considered the lead  
 13 technician there. Many of the other technicians that  
 14 still work there every once in a while we've met and  
 15 you know, gone out after work.  
 16 Q. And they have advised you that the  
 17 different administrative functions that you had have  
 18 been spread out to different people, is that correct?  
 19 A. Correct.  
 20 Q. After you had this meeting with Dr. Lee,  
 21 what did you do? I mean that day.  
 22 A. That day?  
 23 Q. Did you pack up your stuff and leave? Did  
 24 you finish your day? What did you do?  
 25 A. This was probably 6:00.

1 Q. So I'm assuming you left?  
 2 A. Yes. Gloria had two boxes there. I packed  
 3 up my personal belongings that I could take at that  
 4 point and I left. They made arrangements for me to  
 5 come back on the weekend to get the rest of my stuff.  
 6 Q. Okay. And then a couple of days later, am  
 7 I correct then you received in the mail what's been  
 8 marked as Exhibit 10?  
 9 A. Yes.  
 10 Q. Okay. Now you understood from these  
 11 letters that you were eligible for rehire as a result  
 12 of the layoff?  
 13 A. Yes.  
 14 Q. And --  
 15 A. And I did contact the University basically.  
 16 Q. Yes, I was going to ask you that and I have  
 17 some E-mails I'll show you. Tell me about those  
 18 contacts.  
 19 A. I can't recall who I contacted. They had  
 20 some name on something that I received that said  
 21 contact this person and I did.  
 22 Q. Uh-huh.  
 23 A. I had also had gone on the web periodically  
 24 to look to see if there were any job openings or  
 25 anything else I qualified for.

1 Q. And let me stop you right there. Did you  
 2 find anything on the web site with respect to  
 3 positions for which you were qualified?  
 4 A. No.  
 5 Q. Okay. Did you ever contact any of the  
 6 optometrists down in Miami to find out if there were  
 7 any openings there?  
 8 A. In Miami itself?  
 9 Q. Yeah.  
 10 A. I spoke with a Mark Dunbar. I don't think  
 11 I asked specifically, you know, if they had an opening  
 12 in Miami. But I think that he is the one that gave me  
 13 the name for Alejandro Espailat. So he would have  
 14 told me if they had an opening.  
 15 Q. Okay.  
 16 A. I was on very good terms with all the  
 17 optometrists down there, so they would have called me  
 18 if there had been something available.  
 19 Q. But you didn't specifically call one of  
 20 them to see if there was an opening in Miami?  
 21 A. I can't recall, specifically calling him  
 22 for that reason, no.  
 23 Q. Exhibit 14 looks like a E-mail you sent on  
 24 May 12, 2003 to Gloria Lasso, who we discussed was the  
 25 HR liaison to the department. If you could kind of

1 tell me what you were talking to her about there?  
 2 A. This is basically in regard to a -- on the  
 3 form here.  
 4 Q. Excuse me a second. I have mismarked this  
 5 and I am now going to mark it Exhibit 12. My  
 6 apologies. Let me clarify the record, excuse me.  
 7 A. Go ahead.  
 8 Q. My mistake. I marked as Exhibit 12,  
 9 remarked, an E-mail from Dr. Brockman to Gloria Lasso  
 10 dated May 12, 2003. Go ahead.  
 11 A. This was in response to the April 30th  
 12 letter that I received that it said you're eligible  
 13 for rehiring to positions for which you qualify  
 14 through training and education.  
 15 University also has a policy whereby if a  
 16 position comes up within a year they will notify you  
 17 of that position, and I could be rehired within a  
 18 year. So this was basically to see how to get my name  
 19 onto the list so that it was automatically they would  
 20 send me the information instead of myself having to  
 21 continually look for if a job opened.  
 22 (Thereupon, E-mail, 5-12-03 was marked as  
 23 Defendant's Exhibit 12 for Identification.)  
 24 Q. But they explained to you that you have to  
 25 apply for open positions, is that right?

304

1 for just a second. We had talked in your first  
2 deposition about the fact that human resources needs  
3 to approve hires and terminations. That is your  
4 understanding isn't it?  
5 A. Yes.  
6 Q. And apart from human resources approving  
7 all terminations, do you to this day know who made the  
8 ultimate decision to lay you and the other four people  
9 off?  
10 A. No. I think the decisions were made  
11 differentially for mine versus the other four though.  
12 Q. Because of the position that you had?  
13 A. Yes. And because it was never mentioned at  
14 any of the consultant reports preceding that as far as  
15 any recommendations regarding my position.  
16 MR. ESPY: Can we take a short break?  
17 MS. JOHNSON: We may. Thank you. This  
18 is a good time to do that.  
19 THE VIDEOGRAPHER: We're going to go  
20 off the record at 11:27 on November 17th, 2006.  
21 We are now off the record.  
22 (Recess in Proceedings.)  
23 We're back on the record with the  
24 continuation of the deposition of Dr. Marc  
25 Brockman taken by Elizabeth Johnson in the

305

1 matter of Dr. Marc Brocman, plaintiff, versus  
2 University of Miami and Dr. Carmen Puliafito,  
3 defendants. We're back on the record.  
4 Q. Doctor Brockman, you testified you were not  
5 aware of what the budget deficit was at the West Palm  
6 Beach clinic in the Summer of 2002. Were you aware of  
7 prior years deficits?  
8 A. I was aware that there were deficits. It  
9 was never discussed any numbers or anything regarding  
10 them.  
11 Q. And I assume you would agree with me that  
12 the chair of the Department of Ophthalmology bears  
13 ultimate responsibility for making sure his department  
14 doesn't run as a deficit?  
15 A. Correct.  
16 Q. I mean that would be important to the dean  
17 of the medical school, don't you think?  
18 A. Yes.  
19 Q. Particularly when the medical school is  
20 having its own financial issues generally, would you  
21 agree with me?  
22 A. Yes.  
23 Q. Now I've marked as Exhibit 15 a memo from  
24 Pointed Communications. It's dated Friday, April 11,  
25 2003. It's addressed to Yunhee Lee and Coreen Rodgers

306

1 and it's from Ilene Knopping. Show it to your  
2 attorney first and then I'll show it to you.  
3 When was the first time you saw that memo?  
4 A. I don't recall a date. This was -- I did  
5 not see this until the State investigation, which was  
6 conducted after I was terminated.  
7 (Thereupon, Memo, 4-11-03 was marked as  
8 Defendant's Exhibit 15 for Identification.)  
9 Q. All right. So we can clarify the time  
10 period. This memorandum, Exhibit 15, was not shared  
11 with you prior to your termination?  
12 A. Correct.  
13 Q. Okay. So you saw it about a year later in  
14 connection with the charge you filed of retaliation  
15 with the State agency, is that correct?  
16 A. Correct.  
17 Q. All right. Did you read it when you -- I  
18 mean you've read this before, have you not?  
19 A. Yes.  
20 Q. Okay. And if I could direct your attention  
21 to page 3 under the heading "Staffing" the fourth  
22 paragraph down, if you could read that paragraph into  
23 the record?  
24 A. I'm sorry, where do you want me to start?  
25 Q. You're on page 3?

307

1 A. Yes.  
2 Q. Under "Staffing."  
3 A. So starting from the beginning?  
4 Q. Of the fourth paragraph under "Staffing"  
5 which starts, "A major staffing inefficiency."  
6 A. Sure. "A major staffing inefficiency is  
7 how the practice is using optometrist Marc Brockman as  
8 a technician and clinical manager. More than half of  
9 his time is spent serving as a technician and on  
10 issues not related to patient care, functions that can  
11 be more appropriately done by others at lower cost to  
12 the practice. Currently the optometric patient volume  
13 does not require a full-time optometrist."  
14 Q. Can you stop right there. Let me just ask  
15 you this question. I think you testified in the last  
16 deposition that you probably spent 50 percent of your  
17 day on administrative-type duties, is that correct?  
18 A. I'd say probably 40 percent but -- yeah  
19 40 percent. It was two and a half days at minimum of  
20 clinic with emergencies on the other days too. So  
21 about 40/60.  
22 Q. I'm sorry. Your estimate is that  
23 60 percent of the time you were seeing paying  
24 patients?  
25 A. It's in that 50 to 60 range. You know

308

1 again I don't know the exact, you know, amount but  
2 yes. It varied depending upon whether we had  
3 emergencies and if I had to do other staffing stuff.  
4 Q. Okay. So it is correct that approximately  
5 half, sometimes 60 percent of your time, was devoted  
6 to paying patients, is that correct?  
7 A. Correct.  
8 Q. And so when she says in the next paragraph  
9 "On most days, Dr. Brockman's patient schedule is not  
10 at or near capacity," that is a correct statement?  
11 A. I don't know what she's defining as  
12 capacity.  
13 Q. Well, I'm assuming what she means is you  
14 could be seeing patients every minute of your work  
15 day. Wouldn't that be a reasonable assumption?  
16 A. If that's what we're defining as capacity.  
17 Q. Okay. So you weren't, obviously, seeing  
18 paying patients every minute of your work day?  
19 A. On the patient days I would see -- I was  
20 scheduled, you know, patients but I can't say that I  
21 was scheduled a full eight hours. I don't think any  
22 doctor would schedule eight hours. There was a time  
23 when they had lunch and there was time when they  
24 basically stopped towards the end of the day.  
25 Q. But Dr. Brockman you just testified that

309

1 you spent 50 -- 40 to 50 percent of your time on  
2 administrative duties not seeing paying patients, is  
3 that correct?  
4 A. Yes, yes.  
5 Q. All right. When is the first time you met  
6 Ms. Knopping? I don't mean the date. Just  
7 approximate time period.  
8 A. 2002 when she first presented as a  
9 consultant.  
10 Q. Okay. She come introduce herself to you?  
11 A. I'm sure she did. I don't recall the exact  
12 meeting.  
13 Q. I mean did she explain to you she had been  
14 hired as a consultant or somebody else explained to  
15 you that that was happening?  
16 A. I suspect that it was probably explained to  
17 me that they were bringing in a consultant and then  
18 she just showed up one day.  
19 Q. Was it your understanding that Dr.  
20 Puliafito had retained her?  
21 A. I don't know that I ever knew at the  
22 beginning. I'm sorry, I don't know. I just know that  
23 we hired a consultant.  
24 Q. And what did you understand or did somebody  
25 explain to you what the purpose of her being retained

310

1 was?  
2 A. The purpose originally was for her to take  
3 a look at the offices, to make suggestions on  
4 increasing efficiency.  
5 Q. And you know this why?  
6 A. Because that's what we were basically  
7 looking at the time. That's what I was told. I just  
8 remember, you know, that she was looking at ways that  
9 we could facilitate patient care through the facility,  
10 make patient interaction better at the front desk  
11 office, make the phones more efficient, you know, just  
12 kind of streamline what we do.  
13 Q. And hopefully address that deficit?  
14 A. No. It wasn't addressed in that first  
15 meeting.  
16 Q. Well, how do you know that?  
17 A. Because she gave us a report.  
18 Q. But you don't know that Dr. Puliafito  
19 didn't sit Ms. Knopping down and say, "I'm concerned  
20 about the deficit, look at it," do you?  
21 A. I don't know that that was ever said.  
22 Q. You have no idea what her --  
23 A. But it was not presented in her report from  
24 her visit.  
25 Q. But I'm asking you, do you have any

311

1 personal knowledge as to what her mission was or what  
2 her project was that she was given by Dr. Puliafito?  
3 A. In her statement on her report she was  
4 there to efficiency. Was she told something other  
5 than that? I do not know.  
6 Q. Because you've already told us you didn't  
7 even know that the clinic was operating at this  
8 enormous deficit in 2002, is that correct?  
9 A. Correct.  
10 Q. And there is nothing wrong with  
11 Dr. Puliafito hiring a outside consultant to look at  
12 efficiency issues like that, is there?  
13 A. Nothing wrong at all.  
14 Q. Okay. And certainly nothing wrong with  
15 Dr. Puliafito hiring an outside consultant in the face  
16 of serious budget deficits to give him some  
17 recommendations about what to do?  
18 MR. ESPY: Object to the  
19 characterization. You can answer.  
20 Q. Is there anything wrong with Dr. Puliafito  
21 doing that?  
22 A. No.  
23 Q. Okay. Had you met Ilene Knopping before  
24 2002 or know anything about her background?  
25 A. No.

320

1 why -- I assume what you're saying is you think that's  
 2 incorrect?  
 3 A. No. It was never looked at. As far as I  
 4 know when we spoke, we had a deposition with Yuhnee  
 5 Lee. Yuhnee Lee was unaware of any analysis ever of  
 6 my collection versus my pay. There was never  
 7 presented by Ilene Knopping or Coreen Rodgers ever an  
 8 analysis stating that I was losing money to the  
 9 University.  
 10 Q. But you don't know for a fact whether  
 11 Coreen Rodgers did that analysis?  
 12 A. I would have thought that Yuhnee Lee would  
 13 have told us during the deposition that she hadn't  
 14 received something since she was the person that was  
 15 in charge of my termination for that particular  
 16 reason. Coreen would have presented, you know, Yuhnee  
 17 with that information if she had indeed even looked at  
 18 that information.  
 19 Q. But do you know for a fact whether Coreen  
 20 Rodgers ever looked at that analysis?  
 21 A. I do not know for a fact. I have never  
 22 received any information that she has though. There  
 23 has never been any reports ever filed anywhere that  
 24 I've been privy to.  
 25 Q. So you don't know whether it was done or

321

1 not?  
 2 A. Again, there has never been anything  
 3 brought by the University in any of this that says it  
 4 has been. And I thought it would have been presented  
 5 to the State as proof of their justification for  
 6 termination when the State did a full investigation.  
 7 Q. But you don't know for a fact whether it  
 8 was ever done?  
 9 A. I don't believe it ever was.  
 10 Q. But you don't know one way or another?  
 11 A. No, I do not.  
 12 Q. Now --  
 13 A. I believe withholding that information  
 14 though from the State would have been a misguided, f  
 15 they had it.  
 16 Q. Am I correct, apart from the faculty  
 17 members, you were the highest paid individual at the  
 18 West Palm Beach clinic?  
 19 A. Yes.  
 20 Q. And in fact do you know what the other --  
 21 I mean I assume you know what your reports were  
 22 making?  
 23 A. What I was making?  
 24 Q. No. What the people who reported to you  
 25 were making?

322

1 A. You mean the technicians?  
 2 Q. Uh-huh.  
 3 A. I knew approximately.  
 4 Q. Did you know what the optical manager was  
 5 making?  
 6 A. I believe I knew at one point before he was  
 7 hired, 42,000. And he got pay increases, he probably  
 8 was somewhere in the 45 to 50,000 range.  
 9 Q. Who is Charles Pappas?  
 10 A. He is an optometrist at the University of  
 11 Miami in Miami. I don't know what his actual title  
 12 is. He has changed positions several times.  
 13 Q. He came to visit the Palm Beach clinic in  
 14 April of '03 before you were laid off, is that  
 15 correct?  
 16 A. Yes.  
 17 Q. And did he meet with you as part of that  
 18 visit?  
 19 A. Yes. I took time off basically to take him  
 20 around the clinic, to show him areas that I thought  
 21 were areas of concern, discuss with him basically  
 22 recommendations that I had for things that we should  
 23 be improving upon.  
 24 Q. What were things that you thought he was  
 25 concerned about?

323

1 A. Basically part of the things he was looking  
 2 at was the technician efficiency, was how quickly we  
 3 were getting patients in and out, how many patients  
 4 each doctor could see as a result of the technician  
 5 efficiency. So, you know, how much volume of patients  
 6 that we could provide through the clinic facilities,  
 7 utilization of the rooms and technicians.  
 8 Q. Did he ask you about your patient volume?  
 9 Was that one of the things he was asking you about?  
 10 A. No.  
 11 Q. Do you know whether he examined that as  
 12 part of his review?  
 13 A. I do not.  
 14 Q. Did he tell you who had asked him to go up  
 15 and look at the -- analyze the optometrist utilization  
 16 up at the West Palm Beach clinic?  
 17 A. He didn't say that he was there for that  
 18 reason.  
 19 Q. Let me ask if he told you what the purpose  
 20 of his visit was?  
 21 A. No.  
 22 Q. Okay. I marked as Exhibit 16, it's a  
 23 couple of E-mails with an attachment. The first  
 24 E-mail is dated April 7, 2003 to Coreen Rodgers from  
 25 Vianca Gause on behalf of Charles Pappas.

340

1 Q. -- for patients?  
2 A. -- had administrative duties, correct. I  
3 only was booked to see patients two and a half days.  
4 That's all I had scheduled to see patients. The other  
5 time was scheduled for administrative duties.  
6 Q. Uh-huh. And was that under your  
7 instruction?  
8 A. No. That's basically I started at a  
9 hundred percent administrative and I had worked up to  
10 that much that far.  
11 Q. Now who -- well, whose booking the patients  
12 for you? Some receptionist or scheduler?  
13 A. Yes.  
14 Q. Okay. Are you instructing the scheduler  
15 I'm only to see patients two and a half days a week?  
16 A. There is nobody that instructs them.  
17 Basically that's a decision made between myself and  
18 the medical director as to how much we can try to  
19 balance the duties I was doing.  
20 I had started off with zero clinical duties  
21 when I first started at Bascom Palmer as far as I saw  
22 no patients on my own. I was basically running the  
23 full facility, assisting the technicians, working on  
24 patients for other doctors. I was the first  
25 optometrist to start billing within the University of

341

1 Miami for patient care.  
2 Q. But you're saying that at least you,  
3 together with Dr. Grimmert I guess, were instructing  
4 the scheduler that you were only to see patients two  
5 and a half days a week?  
6 A. Yeah. We set the schedule for all doctors.  
7 Q. Okay. Continue with your list of reasons  
8 why you think the April '02 assault is related to your  
9 layoff?  
10 A. Again, I'm saying respect. You know, good  
11 employee. Productivity was up from the year before.  
12 I was looking to expand even more. Like I said  
13 previously there was never, ever in this reason of  
14 budgetary constraints any analysis ever performed.  
15 Whether or not I was making the University money, how  
16 much money, you know, was coming in versus going out.  
17 Q. You don't know that for a fact?  
18 A. The State did a thorough investigation. If  
19 the University had had that information, I would be  
20 absolutely confident they would have provided that  
21 information to the State at some point. Because that  
22 was their justification for letting me go. If they  
23 didn't provide that information to the State and I  
24 didn't see any of it ever, then they are covering up  
25 something.

342

1 Q. Covering up what?  
2 A. That's what I'm saying. If they had it, it  
3 would have been presented.  
4 Q. You don't know for a fact whether Coreen  
5 Rodgers, who is in charge of the finances and the  
6 budget, ever did an analysis to either Ilene  
7 Knopping --  
8 A. The State --  
9 Q. -- or anybody -- I'm asking you a question.  
10 A. Go ahead.  
11 Q. Do you have any facts that Coreen Rodgers  
12 never did an analysis of whether what your collections  
13 were, what your billings were and what your financial  
14 contribution was to the clinic?  
15 A. I do not. But all of that information was  
16 requested. If that was not provided, again, then I  
17 want to know where it is. Why would they not provide  
18 that information as justification for what was done?  
19 There is no reason why if it was done why it would not  
20 be provided to the State. So I have to conclude it  
21 was never done since they never provided anything to  
22 the State.  
23 Q. Okay. What are your other reasons to link  
24 your complaints about the assault in April of '02 to  
25 your layoff a year later?

343

1 A. Police -- basically my police -- I filed my  
2 police report with the Gardens Police Department just  
3 three weeks prior to being laid off.  
4 Q. Yes and you testified earlier that you did  
5 that in the hopes of keeping your job as I recall?  
6 A. No, I hoped basically that that was being  
7 done, No. 1 is so that I could get resolution to this  
8 and as secondary basically to say, "Hey listen, you  
9 know, you guys I have this investigation going on that  
10 there maybe some measure of protection to my position  
11 by doing so too."  
12 Q. Do you have any facts that Dr. Puliafito  
13 was aware of the fact that you had filed a police  
14 report?  
15 A. I believe he was contacted by the police  
16 officer. I don't know when. At least they told me  
17 they would be contacting him directly.  
18 Q. They would be or they had?  
19 A. Well, at the time it was filed they would  
20 be.  
21 Q. Okay. So you don't have any facts that  
22 they, in fact, ever contacted him?  
23 A. I never spoke to Dr. Puliafito regarding  
24 it.  
25 Q. No, not to Dr. Puliafito, to the Palm Beach

1 know, it's unreasonable to say that if there are  
2 things going on that they are investigating, you know.  
3 Now if they want to come back to me later  
4 on and say, "Do you wish to file a grievance," such as  
5 I did and open myself up, then I guess that's a  
6 different story.

7 Q. Which you did.

8 A. But I was assured by Myron or even when I  
9 filed that, Dr. Rosenthal, that they could take that  
10 grievance in the context of other stuff and they  
11 basically could protect us. That was said from the  
12 beginning.

13 If he told me at the beginning that there  
14 was absolutely no way they could assure us, they had  
15 to use my name, I probably would have thought twice  
16 about actually doing anything.

17 Q. Well, let's follow up on that. Would you  
18 have made the same complaints if you had been told  
19 that those complaints and the identity of what the  
20 source of those complaints would have been shared with  
21 Dr. Puliafito?

22 A. I don't know. I would have thought a long  
23 and hard about it, because I would have realized that  
24 you know, that my job would have been hanging at that  
25 point.

1 Q. Your job would have been hanging?

2 A. Yes. I had no doubt that Dr. Puliafito is  
3 very much a retaliatory type of person. That if he  
4 had found out, he would have fired me. He would have  
5 found a reason to fire me.

6 Q. And all of this budgetary issue is bull?

7 A. I think it comes as a convenient excuse.

8 Q. You think there is nothing to it?

9 A. I think it's a convenient excuse.

10 Q. I'm asking you do you think there are any  
11 facts that support the budgetary and financial reasons  
12 why your position was eliminated?

13 A. My specific one, no.

14 Q. Even though you haven't been replaced.  
15 There is no clinical director now at the West Palm  
16 Beach clinic, correct?

17 A. I'm very aware of that. But it's not that  
18 it hasn't been recommended that they hire an  
19 optometrist. It's been discussed openly.

20 Q. Hiring an optometrist is different than  
21 having an administrative director that spends  
22 50 percent of their time doing administrative work,  
23 no?

24 A. Not very different than the two  
25 optometrists doing it down in Miami. They didn't --

1 Q. How --

2 A. -- either one of those.

3 Q. How do you know that the West Palm Beach  
4 clinic is discussing hiring another optometrist?

5 A. Hearsay.

6 Q. Well, it isn't hearsay. Obviously someone  
7 is telling you that. Is that Dr. Skolnick?

8 A. Don't know.

9 Q. You don't know?

10 A. I don't recall who would be --

11 Q. You do recall. I can tell Dr. Brockman you  
12 know damn well who told you that.

13 MR. ESPY: That's argumentative. He  
14 said he didn't.

15 MS. JOHNSON: No, he obviously does  
16 recall. And I want to know if people --

17 MR. ESPY: You can't abuse him.

18 MS. JOHNSON: I can ask him this  
19 question.

20 Q. Is Dr. Skolnick, either through his wife,  
21 Ms. Duhamel or through him directly, is he telling you  
22 information about business decisions that are being  
23 made at West Palm Beach clinic?

24 A. I would say no.

25 Q. You would say no. I don't know what kind

1 of answer that is.

2 A. Because I don't know what, you know, is a  
3 business decision that they make internally versus  
4 idle chatter in the hallways.

5 Q. Did Dr. Skolnick call you and have a  
6 conversation with you? Did he tell you that the  
7 clinic was considering hiring an optometrist?

8 A. No.

9 Q. Who told you that?

10 A. Not that they are concerned that they  
11 need --

12 Q. Somebody told you this information. Who  
13 did --

14 A. That they need an optometrist.

15 Q. Who told you that information?

16 A. That would be probably Dr. Skolnick.

17 Q. Aha.

18 A. But that's different than that they are  
19 thinking of hiring an optometrist. They have sent me  
20 patients, I've been sent patients by Dr. Greenfield,  
21 by Dr. Grimmett and by Dr. Skolnick, because they  
22 don't have an optometrist. They have referred  
23 patients to me.

24 Q. That's great. Aren't you grateful?

25 A. I'm asking them, "Why are you referring

1 afterwards, I went right up to my supervisors and  
 2 said, "These things are occurring. This is wrong."  
 3 Q. Did you and Nicky Duhamel go to Bible  
 4 studies together?  
 5 A. No.  
 6 Q. Were you part of any religious groups?  
 7 A. She and I together?  
 8 Q. Uh-huh.  
 9 A. No.  
 10 Q. Separately that you're aware of that she  
 11 was involved in any kind of Bible studies?  
 12 A. Oh, I don't have a clue what her  
 13 affiliation is religiously.  
 14 Q. When was the first time you reported the  
 15 incident on April 4th, 2002 to someone in human  
 16 resources?  
 17 A. In human resources? Human resources would  
 18 probably be either June or July.  
 19 Q. Of 2002?  
 20 A. Yes. Because preceding human resources I  
 21 had spoken to my two supervisors, to Dr. Clarkson and  
 22 to the EEOC and to Sally Phillips at human -- at  
 23 our --  
 24 Q. Well, you're not reporting it to EAP. I  
 25 mean she doesn't have any supervisory role over the

1 chair.  
 2 A. No, no. None of those people.  
 3 Q. She's a psychologist?  
 4 A. Not a single one of those patient -- people  
 5 other than the chairman had supervisory role over  
 6 the --  
 7 Q. Well, except for Dean Clarkson?  
 8 A. Yeah, he was the only one.  
 9 Q. All right. Well, let's talk about that for  
 10 a minute.  
 11 When did you tell Dean Clarkson about the  
 12 incident that occurred April 4th, 2002?  
 13 A. I don't recall a meeting date. I want to  
 14 say June, but I'm not positive.  
 15 Q. Okay.  
 16 A. I know that there is a -- one of these  
 17 incident reports outlining --  
 18 Q. Okay.  
 19 A. -- this has that on it also.  
 20 Q. All right. Well, I tell you what. I have  
 21 one from July which I'll give you in a minute, and you  
 22 can tell me whether that's the meeting you recall.  
 23 But let me just go through the sequence first.  
 24 The first person you reported it to who had  
 25 supervisory responsibility over Dr. Puliafito was Dean

1 Clarkson?  
 2 A. Correct.  
 3 Q. And that happened, we'll confirm it in a  
 4 minute, but in the Summer of 2002?  
 5 A. Correct.  
 6 Q. And then at some point thereafter obviously  
 7 you filed a more formal complaint with the office of  
 8 faculty affairs with Dr. Rosenthal, is that right?  
 9 A. Correct. He advised me to take it up with  
 10 either one of the other. He said -- he had mentioned  
 11 both names. He had mentioned -- Dr. Clarkson had  
 12 mentioned the EEOC, which was Ms. Black and Hines  
 13 Q. You don't really mean the EEOC. You mean  
 14 the Office of Equality Administration. I'm correcting  
 15 you only because the EEOC is a governmental agency --  
 16 A. Okay.  
 17 Q. -- and you don't mean that.  
 18 You do mean the University --  
 19 A. I mean whatever the University's?  
 20 Q. -- internal EEO if you will office?  
 21 A. Yes.  
 22 Q. Is that what you mean?  
 23 A. Yes, yes.  
 24 Q. Okay.  
 25 A. So he had mentioned both of those.

1 Q. "He," Dean Clarkson?  
 2 A. Dr. Clarkson had mentioned this.  
 3 Q. That's okay.  
 4 A. And Wilhemmena Black and Hines and Myron  
 5 Rosenthal. And since I had previous experience with  
 6 Ms. Black and Hines, that's who I went to first.  
 7 Q. And when you say "previous experience," of  
 8 course, you mean the February '02 meeting where they  
 9 were at least investigating the EEOC charge by that  
 10 other employee in addition to asking you questions  
 11 about the Chair's inappropriate behavior?  
 12 A. Correct.  
 13 Q. Now I'm going to mark as Exhibit 27 a  
 14 meeting report dated July 18th, 2002. It says,  
 15 "Present: John Clarkson, Nicky Duhamel and Marc  
 16 Brockman."  
 17 Is Exhibit 27 something you prepared?  
 18 A. Yes.  
 19 (Thereupon, Meeting Report was marked  
 20 as Defendant's Exhibit 27 for Identification.)  
 21 Q. Okay. And you prepared it on that day or  
 22 shortly thereafter?  
 23 A. Yes.  
 24 Q. Did Ms. Duhamel have any input in this  
 25 memo?

400

1 A. No.

2 Q. Now it says you met with Dr. Clarkson. Had

3 you scheduled a meeting with him or was he just coming

4 up to West Palm Beach clinic to see patients and you

5 asked to speak to him?

6 A. I don't recall a hundred percent. I want

7 to say that No. 1 it was in West Palm. So he was

8 absolutely coming up to see patients. But I don't

9 think that this was pre -- I believe that I asked for

10 the meeting when he was there.

11 Q. Okay. So he wasn't prepared for this. It

12 wasn't on his schedule, none of that, is that correct?

13 A. No. I knew that he was coming up so I

14 waited to speak with him when he came up because I

15 considered at least that, you know, again we had

16 spoken in confidence once before. I considered that,

17 you know, that we could speak with him in confidence

18 and he could advise me what to do on this matter.

19 Q. Okay. It looks like part of the

20 discussion -- well in the middle of your memo you say,

21 "In response to our concerns, Dr. Clarkson suggested

22 we sit down in his office."

23 Does that mean the first part of the

24 conversation is happening in the hall?

25 A. I don't recall. You know it kind of

401

1 implies that but I don't exactly recall. There was a

2 break room and right adjacent to the break room was a

3 conference room. And I'm assuming that's what we had

4 met in, but I don't recall the nature of where we had

5 the meeting.

6 Q. How long did the meeting last?

7 A. Just a guess again, 20 minutes.

8 MR. ESPY: Could we go off just a

9 second please?

10 THE VIDEOGRAPHER: We're going to go

11 off the record. The time is now 2:26 p.m. One

12 second please.

13 (Recess in Proceedings.)

14 We're back on the record at 2:27 p.m.

15 on November 17th, 2006.

16 Q. Dr. Brockman, does this memo dated July 18,

17 2002, does it refresh your recollection about the

18 first time you told Dean Clarkson about the April

19 episode?

20 A. I'm sorry. Can you restate it again?

21 Q. Okay. I'll back up, which I'm happy to do.

22 You told me that the first person you told

23 in position of supervisory responsibility to Carmen

24 Puliafito was the Dean?

25 A. Yes.

402

1 Q. You told me it was sometime in the Summer

2 of 2002?

3 A. Yes.

4 Q. Now I don't see a reference in this memo

5 dated July 18th, 2002 to the grabbing episode. So my

6 question is do you recall when you told the Dean about

7 the grabbing episode that had occurred in April?

8 A. I do not. I thought about that also and I

9 wasn't sure whether or not I specifically told him on

10 this incident that I had been assaulted.

11 Q. Are you sure you told Dean Clarkson about

12 it or was the first time that you reported it to

13 somebody either higher level or in a position at HR

14 about it, was that when you filed your formal

15 grievance?

16 A. You know like I said, I was thinking about

17 that afterwards because I was trying to recall that

18 meeting with him and I'm not certain. I'm not certain

19 that I specifically outlined that because I was very

20 embarrassed at the time to even be bringing it up to

21 him.

22 Q. Because you're quite specific about issues

23 that you brought up at this July 18th meeting, would

24 you agree?

25 A. Yes.

403

1 Q. Okay. And you have not included in here

2 anything about the incident in April, correct?

3 A. I know that it was discussed --

4 Q. No, no, sorry. Let me finish.

5 There is nothing in this memo about the

6 April incident, correct?

7 A. In the memo, no.

8 Q. Okay. Is it possible that the first

9 time --

10 A. I'm sorry can I just --

11 Q. You may.

12 A. -- take one look at it again just to make

13 sure --

14 Q. Of course. Oh no, no. Absolutely.

15 A. I kind of am sorry I answered before I

16 actually went through the whole thing.

17 Q. Absolutely. Please go ahead and read it.

18 A. Okay, I'm sorry. Go ahead and ask your

19 question again.

20 Q. I'm stating the obvious. You haven't

21 mentioned the assault in this memo?

22 A. Correct.

23 Q. So you can not recall whether you mentioned

24 it at this July 18th meeting, correct?

25 A. I can't but to be in frank honesty, the



404

1 best I can recall is that I didn't specifically state  
2 assault in there because I know that like I said I was  
3 very embarrassed at the time. I know I alluded to the  
4 fact that there was still a pattern of behavior  
5 occurring and it had escalated, because I remember  
6 saying escalated to him.  
7 Q. But did you -- do you recall specifically  
8 telling the Dean in July 18 of 2002 that Dr. Carmen  
9 Puliafito grabbed you by the lapels and lifted you up  
10 in his face and screamed at you?  
11 A. No, I don't specifically remember saying  
12 that.  
13 Q. And do you think it's possible that the  
14 first time you reported this to someone higher than  
15 Dr. Puliafito is when you filed your formal grievance  
16 in August of 2002 with Dr. Rosenthal?  
17 A. I don't recall, but I would say yes it is  
18 possible.  
19 Q. Okay. Now the list of five concerns that  
20 you have. I'm not trying to question the sincerity of  
21 your concerns, but am I not correct these are  
22 managerial decisions that the Chair certainly, right  
23 or wrong, has the right to make?  
24 For example, saying "I don't want Gaby  
25 Kressly to be an administrator anymore?"

405

1 A. Oh absolutely.  
2 Q. I mean you may have liked her, but  
3 obviously the Chair didn't.  
4 A. I'm not saying that -- I didn't say one way  
5 or the other. I said, you know, we discussed  
6 basically, you know, like I said the insensitive and  
7 abrupt removal of her. I think that, you know, a  
8 person that's been there for 35 years, you know, had  
9 deserved a little bit better than what she did as far  
10 as that particular --  
11 Q. But I bet you haven't seen every E-mail or  
12 are you privy to every single conflict that she had  
13 with the senior administration about their concerns  
14 about how she was running the West Palm Beach clinic  
15 right or wrong?  
16 A. No, no I haven't seen any of them.  
17 Absolutely --  
18 Q. I'm not taking sides here.  
19 A. And Ms. Kressly would not have expressed  
20 those regardless either way and obviously  
21 Dr. Puliafito doesn't express that either.  
22 Q. That's right. So you don't really know  
23 what was happening between Gaby Kressly and senior  
24 administration?  
25 A. No. Like I said, he has the right to make

406

1 the decision he wants. But again, you know, we can  
2 also express our concerns over the direction in which  
3 the department is going. I think it's appropriate for  
4 administrative people to question whether or not we  
5 are on the right track and whether or not we can  
6 contribute to the direction it's going.  
7 Q. But ultimately it's not your decision to  
8 make?  
9 A. It's not my decision, no. But that's what  
10 you have administrators for is that input.  
11 Q. The reference in No. 2 to an unqualified  
12 person as senior department administrator, is that  
13 Coreen Rodgers?  
14 A. Yes.  
15 Q. Uh-huh. And what makes you think she's  
16 unqualified?  
17 A. At the time that the job position was  
18 listed as a master's of education or greater and she  
19 did not have a master's of education at the time she  
20 was hired. That's the job description she had filled.  
21 Q. And that's the only reason you didn't think  
22 she was qualified?  
23 A. Sure. If you have a job description that  
24 requires you to have a master's degree and you don't  
25 have a master's degree, you're not qualified.

407

1 Q. Do you have any idea what her performance  
2 evaluations look like?  
3 A. No.  
4 Q. What her supervisors think of her?  
5 A. No.  
6 Q. Okay. So she's unqualified for the job  
7 because she didn't have this advanced degree?  
8 A. Yes. Just like myself. If I'm hired for a  
9 medical, you know, office, I can't fulfill because I  
10 don't have a medical degree, you know. They wouldn't  
11 hire me to do surgery.  
12 Q. But obviously her -- well Dr. Puliafito  
13 obviously promoted her.  
14 A. Yeah. She had no background though in  
15 administration. Her background was in business and  
16 finance.  
17 Q. You don't think that's a helpful  
18 qualification to being an assistant Chair and running  
19 the operation?  
20 A. This is an administrator of all of the  
21 facilities. That's great for a CPA running a billing  
22 office, but this is the entire facility. I mean you  
23 should at least have some personnel experiences, maybe  
24 HR experience, something. You know, at least have the  
25 minimum qualification, which is a master's degree.



RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CASE NO. 05-0928

MARC E. BROCKMAN,  
Petitioner,

vs.

THE UNIVERSITY OF MIAMI-  
BASCOM PALMER EYE INSTITUTE,  
Defendant.

----- X

DEPOSITION  
OF  
YUNHEE LEE, M.D.

Espirito Santo Plaza  
1395 Brickell Avenue, 14th Floor  
Miami, Florida

Monday, May 9, 2005  
8:10 a.m. - 10:00 a.m.

NOT A CERTIFIED COPY

<p style="text-align: right;">Page 14</p> <p>1 responsibilities for the facility?  2 MR. EPSY: Fiscal, f-i-s-c-a-l?  3 Q. Yes.  4 A. Yes. It is my role to oversee that. It's  5 not my -- it's not my primary responsibility, but I'm  6 supposed to oversee that, as well.  7 Q. Prior to the time that you became the  8 interim medical director in February of 2003, did you  9 have any understanding as a member of the faculty as to  10 the financial condition of the Palm Beach Gardens  11 facility?  12 A. Yes.  13 Q. And what was your understanding prior to the  14 time you became interim medical director?  15 A. We were having increasing financial  16 difficulty that we were -- that a deficit was growing.  17 Q. How did you come to this understanding?  18 A. It was announced at the faculty meetings.  19 Q. So it would be at faculty meetings that you  20 would attend, there would be some discussion regarding  21 the financial condition of the facility?  22 A. Correct.  23 Q. Do you recall approximately what the deficit  24 was that you referenced earlier?  25 A. Well, by the end of May 2002, it was</p>	<p style="text-align: right;">Page 16</p> <p>1 were there any additional financial constraints that you  2 learned about the facility would have to face?  3 A. Yes.  4 Q. Could you describe them for me, please.  5 A. Well, we get a dean's tax rebate every year.  6 And that year because of financial difficulties that  7 were being felt throughout the entire University of  8 Miami, we were told we would not get that rebate.  9 Q. Can you explain for me, please, what the  10 dean's tax rebate is.  11 A. Right. So every center that is part of the  12 University of Miami has to pay tax. And that money goes  13 to helping, you know, run programs. And it's just, it's  14 basically a form of moneys to support administration and  15 activities.  16 The dean, knowing that we were a fledgling  17 satellite, knowing that we didn't necessarily get to  18 benefit from some of the things that, say, a program or  19 center that was on campus would benefit from, they would  20 give us back that money as a rebate.  21 Q. And in 2003 you were not going to receive  22 that rebate?  23 A. Correct.  24 Q. Do you recall what sort of amount, the  25 magnitude of that financial decision?</p>
<p style="text-align: right;">Page 15</p> <p>1 approximately \$700,000.  2 Q. At the time you became the interim medical  3 director, do you recall having any discussions with  4 Dr. Puliafito regarding the financial situation of Palm  5 Beach Gardens facility?  6 A. Yes. That it was still in -- still not  7 doing well.  8 Q. Did Dr. Puliafito give you any directions or  9 instructions with regard to the financial condition at  10 the facility?  11 A. When I first took on the role of medical  12 director, no; just to step in and give the center some  13 leadership.  14 Q. Okay. At some point did you have a  15 conversation with Dr. Puliafito regarding the financial  16 condition of the facility?  17 A. Yes.  18 Q. Okay. Do you recall approximately when that  19 was?  20 A. It was something -- it was an ongoing  21 dialogue that was occurring over the entire year. So it  22 wasn't as if when I first took on the responsibility  23 that we had just a specific meeting for that.  24 Q. In the period between February of 2003, when  25 you became interim medical director, and April of 2003,</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes. It was going to be somewhere between  2 200 to 300,000.  3 Q. Were there any other financial conditions  4 that you were facing between February and April of 2003?  5 A. Yes. There was an announcement that the  6 State of Florida would be increasing their malpractice  7 insurance rates for physicians, and it was anticipated  8 that that also would be a sizable additional cost.  9 Q. As a result of -- Well, let me ask you:  10 Were there any other peculiar, if you will, financial  11 constraints between February and April of 2003?  12 A. Those were the two big ones.  13 Q. Okay. As a result of those two big ones,  14 and I believe you said an ongoing deficit situation, did  15 at any time you receive any instructions from  16 Dr. Puliafito regarding the budget at the Palm Beach  17 Gardens facility?  18 A. Yes. Once we became aware of those two  19 additional financial burdens, Dr. Puliafito told me that  20 I needed to cut our budget.  21 Q. And did he suggest to you a specific amount?  22 A. He said that given that we weren't going to  23 get the dean's tax rebate, that he thought that I would  24 eliminate at least \$200,000 from our operating budget.  25 Q. And this operating budget, could you tell me</p>

Page 22	Page 24
<p>1 decision was reached regarding how to balance the budget 2 at the Palm Beach Gardens facility? 3 A. We -- When we looked at the budget 4 everything -- The center was being operated in such a 5 lean fashion, there were not a lot of places to make 6 cuts to accomplish the cut that we needed to make. 7 And so, really, our biggest cost was 8 personnel. So we made the decision that we needed to 9 cut personnel to accomplish the \$200,000 savings. 10 Q. And who was involved in this decision to lay 11 individuals off at Palm Beach Gardens? 12 A. Myself, Ilene Knopping, Coreen Rodgers. We 13 had Kelly Insignares from Human Resources that was 14 ultimately a help to us, too. 15 Q. Okay. So the decision, the layoff decision 16 was reviewed by the Human Resources department? 17 A. Yes. 18 Q. Was Dr. Brockman involved as one of the 19 individuals who was laid off? 20 A. Yes. 21 Q. Were there other individuals who were laid 22 off? 23 A. Yes. 24 Q. Do you recall approximately how many? 25 A. A total of five positions had to be</p>	<p>1 that because we were losing too much money. 2 So there were two positions that were 3 eliminated and that was outsourced. We let an outside 4 group come in and run the optical shop and be 5 responsible for it. 6 Q. And do you recall approximately what date 7 these layoffs occurred? 8 A. Yes. It was towards the end of April 2003. 9 (Thereupon, Letter dated April 23, 2003 was 10 marked as Respondent's Exhibit 3 for 11 identification.) 12 Q. Doctor, I have handed to you what I have 13 marked as Respondent's 3. 14 Do you recognize that document? 15 A. Yes. 16 Q. Can you identify it for the record, please. 17 A. This was a letter that was created and given 18 to each person as we, you know, ended their position. 19 Q. Okay. And is this letter dated? 20 A. Yes. It's dated April 23, 2003. 21 Q. And is this a letter for Dr. Brockman? 22 A. This is, yes. 23 Q. Okay. And is that your signature that 24 appears at the bottom right-hand part of the page? 25 A. Yes.</p>
<p>1 eliminated. 2 Q. I believe you testified earlier that one of 3 the biggest area for cost savings that you had were 4 labor costs, personnel costs; correct? 5 A. Correct. 6 Q. Do you recall of the staff salaries at the 7 Palm Beach Gardens facility in April of 2003 who the 8 highest paid staff person was? 9 A. Yes. It was Dr. Brockman. 10 Q. And do you recall who the second highest 11 paid person was? 12 A. We had a gentleman that was responsible for 13 the optical shop, Nick Riehle. So he was maybe the 14 second highest. 15 Q. What happened to Mr. Riehle's position? 16 A. It, too, was eliminated. 17 Q. And what happened to the optician -- I'm 18 saying that -- 19 A. Optometry? 20 Q. -- shop -- 21 A. The optical shop. 22 Q. The optical shop. I'm sorry. 23 A. Actually, there were two positions that had 24 to be eliminated because we essentially closed the 25 optical shop. We no -- We decided we could not operate</p>	<p>1 Q. Is the information contained in this letter 2 true and accurate? 3 A. Yes. 4 Q. All right. At the time was the Department 5 of Ophthalmology reevaluating the structure in the 6 future direction of the Palm Beach site? 7 A. Yes. 8 Q. Was the department facing budgetary 9 constraints? 10 A. Yes. 11 Q. Is that the reason the position of Associate 12 Director 4 was eliminated? 13 A. Yes. 14 Q. Did at any time Dr. Puliafito ever instruct 15 you or tell you to find a way to get a rid of 16 Dr. Brockman? 17 A. No. 18 Q. At any time did Dr. Puliafito even suggest 19 to you any way that you had -- that Dr. Brockman's 20 employment should be terminated? 21 A. No. 22 Q. Who assumed Dr. Brockman's duties after he 23 was laid off? 24 A. Basically, all the things that Dr. Brockman 25 did, we had to distribute them amongst the people that</p>

<p style="text-align: right;">Page 26</p> <p>1 remained. So some went to technicians, some of his 2 roles went to technicians and other to physicians. 3 Q. Do you have a full-time optometrist today at 4 the Palm Beach Gardens facility? 5 A. No. 6 Q. How are those services being provided? 7 A. We have one optometrist who comes up two 8 Fridays a month. And she -- The only thing that we 9 really need the skills of an optometrist to do, we ask 10 her to do those things. Otherwise, the physicians do 11 all the other things and some of the technicians help 12 out, as well. 13 Q. And, if you know, how are her services paid 14 for? 15 A. The Palm Beach Gardens satellite pays for 16 her services. 17 Q. Okay. And who do you pay? 18 A. I have to pay basically Anne Bates -- I 19 mean, it's just the hospital side of the University of 20 Miami. 21 Q. Okay. You bring up an important distinction 22 there. 23 Is there a different between the Anne Bates 24 hospital side and the Palm Beach Gardens facility for 25 the purposes of budgeting and financial operations?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Now, am I correct in understanding that the 2 sole reason that Dr. Brockman's employment at Bascom 3 Palmer was terminated was due to budgetary constraints? 4 A. Budgetary constraints. 5 Q. That's the only reason? 6 A. That's the only reason. 7 Q. Okay. Was there anything about the quality 8 of the work he was doing in any way, shape or form that 9 contributed to his termination? 10 A. No. He was doing an excellent job. 11 Q. Okay. Now, the other people that were 12 terminated on the same day, one of whom I think you 13 mentioned already, was Nicholas Riehle, R-i-e-h-l-e? 14 A. Uh-huh. 15 Q. Is that right? 16 A. That's correct. 17 Q. And he ran the -- 18 A. Optical shop. 19 Q. -- the optical shop. 20 And what he was doing prior to that date, 21 how did the -- how did Bascom Palmer substitute that 22 after Nicholas Riehle was let go? 23 A. We decided to eliminate the optical shop 24 from our responsibility, and we let somebody who runs 25 optical shops come in and rent that space and run their</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Yes. The Anne Bates Eye Hospital is -- 2 basically it belongs to the University of Miami. And 3 the University of Miami is responsible, you know, for 4 that side of things. 5 And there is the Department of 6 Ophthalmology, which is essentially a separate entity, 7 and that's what Palm Beach Gardens satellite falls 8 under. 9 Our mothership down in Miami actually is -- 10 has two components; one that is from the University of 11 Miami, that is the hospital side, and then there is the 12 Department of Ophthalmology side. So, every -- all the 13 operations down there, you know, they basically get paid 14 for by -- paid for by two different centers. 15 MR. SCHRANCK: I have no further questions. 16 CROSS-EXAMINATION 17 BY MR. EPSY: 18 Q. Dr. Lee, at the time Dr. Brockman was 19 terminated, and I think you have marked the letter, 20 right, April 23, 2003 was the effective date. 21 A. Yes. 22 Q. There were how many other people, four other 23 people that were terminated on the same day; is that 24 right? 25 A. That's correct.</p>	<p style="text-align: right;">Page 29</p> <p>1 own optical shop. So we outsourced it. 2 Q. Okay. To whom, do you recall? 3 A. It's the same group that does the optical 4 services down in Miami. 5 Q. Okay. You don't recall the name off the top 6 of your head? 7 A. I just know the fellow who works in there 8 because I always go to him. And his name is Andy. 9 Q. Okay. Nicholas Riehle wasn't reassigned or 10 given any other further -- other option within the 11 University? 12 A. No, no. He was allowed to -- basically once 13 we decided to eliminate that as being our 14 responsibility, we actually opened -- opened things up 15 and basically made the announcement that we would be 16 considering, you know, all vendors and all bids. 17 And so he was encouraged to come and put in 18 a bid for essentially opening up an optical shop of his 19 own and operating it there. 20 Q. Did he do that? 21 A. He did not comment. 22 Q. James Crowell was one of the people 23 terminated? 24 A. Yes. 25 Q. What position did James Crowell have?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. The year prior.</p> <p>2 Q. Was that only the Gardens facility?</p> <p>3 A. That's only the Gardens facility.</p> <p>4 You asked me if there was a deadline. And</p> <p>5 the answer is that there wasn't a deadline, per se, but</p> <p>6 the fiscal year ends May 31st. And whatever, however</p> <p>7 the books close, you know, whatever, I guess,</p> <p>8 ramifications occur for being hugely over our budget,</p> <p>9 you know, we get sort of assessed on the basis of that.</p> <p>10 Q. Okay. What was the budget for in the year</p> <p>11 prior during which this deficit was run, what was the</p> <p>12 annual operating budget for the Gardens facility?</p> <p>13 A. I'm just pulling a number. I can't remember</p> <p>14 exactly. Something like 3, 3-1/2 million dollars.</p> <p>15 Q. Okay. And that was the budgeted amount and</p> <p>16 the facility actually incurred expense of about \$700,000</p> <p>17 more than the budgeted amount?</p> <p>18 A. We basically didn't collect revenue to cover</p> <p>19 our expenses. We were short by about \$700,000.</p> <p>20 Q. Okay. I got it now.</p> <p>21 In addition to that, in the spring of 2003</p> <p>22 you were faced with the prospect of losing the dean's</p> <p>23 tax rebate.</p> <p>24 A. Correct.</p> <p>25 Q. And that was another 2 to 300,000?</p>	<p style="text-align: right;">Page 52</p> <p>1 May 31st of any fiscal year, whatever deficit we have,</p> <p>2 that slate gets wiped clean. And basically the</p> <p>3 remainder of the Department of Ophthalmology, you know,</p> <p>4 basically has to somehow absorb that.</p> <p>5 So basically we do start clean June 1. So</p> <p>6 but basically, even with a clean slate, we were going</p> <p>7 further and further into deficit. And I cannot remember</p> <p>8 the exact amount that we were in deficit already by the</p> <p>9 time I was asked to assume the position of medical</p> <p>10 director, but I think it was perhaps even something like</p> <p>11 400,000. So we would be looking at a repeat of the year</p> <p>12 prior.</p> <p>13 Q. And was the operating budget being cut</p> <p>14 further for the following year?</p> <p>15 A. Well, the cuts that were made were going to</p> <p>16 basically go into the following year.</p> <p>17 Q. But that was it, the five people. There</p> <p>18 were no other cuts, if I understood you before, that you</p> <p>19 were making to the operating budget other than</p> <p>20 eliminating these positions?</p> <p>21 A. You know, we were doing other things, too.</p> <p>22 We were trying to make our situation more efficient.</p> <p>23 And then, in addition, you know, where we</p> <p>24 were losing money, we were actually not collecting what</p> <p>25 we needed to be collecting. In other words, some of the</p>
<p style="text-align: right;">Page 51</p> <p>1 A. Correct.</p> <p>2 Q. And, additionally, there was the prospect of</p> <p>3 increased malpractice coverage.</p> <p>4 A. Correct.</p> <p>5 Q. Do the physicians employed by the University</p> <p>6 of Miami pay any of their own malpractice coverage, or</p> <p>7 is it all paid by the University?</p> <p>8 A. It's all paid for by the University.</p> <p>9 Q. And what type of a budget item or budget</p> <p>10 increase was that projected to be up in the Gardens</p> <p>11 facility?</p> <p>12 A. I cannot recall a number.</p> <p>13 Q. Would it have been more than a hundred</p> <p>14 thousand dollars?</p> <p>15 A. More than a hundred thousand dollars.</p> <p>16 Q. So to bring this discussion sort of full</p> <p>17 circle, if you will, we have got an operating deficit</p> <p>18 the year before of 700,000, loss of this tax rebate of 2</p> <p>19 to 300,000, and something greater than \$100,000 increase</p> <p>20 in malpractice coverage.</p> <p>21 So if you add all of that up together, it's</p> <p>22 more than a million dollars in either deficit or</p> <p>23 increased expenses. You were only asked, though, to</p> <p>24 reduce the budget by 200,000.</p> <p>25 A. At the end of every fiscal year, come</p>	<p style="text-align: right;">Page 53</p> <p>1 bills that were generated from patient visits weren't</p> <p>2 being submitted and the collections weren't properly</p> <p>3 being collected.</p> <p>4 And so we were instituting changes in how we</p> <p>5 did that to make us more efficient and better able to</p> <p>6 collect revenue.</p> <p>7 Q. Did Dr. Grimmert resign as the medical</p> <p>8 director in January of '03 at the Gardens facility?</p> <p>9 A. I recall him resigning, I think at the end</p> <p>10 of December, and I think effective January 1.</p> <p>11 Q. And what were his reasons, if you know, for</p> <p>12 that resignation?</p> <p>13 A. I never talked to him about it. But I think</p> <p>14 he was experiencing a great deal of pressure over the</p> <p>15 center's performance.</p> <p>16 Q. All right. Was he -- Had he been involved</p> <p>17 at all, to your knowledge, with any of the complaints</p> <p>18 that Nicola DuHumel had made against Dr. Puliafito?</p> <p>19 A. I don't know.</p> <p>20 Q. Were you aware or are you aware today of any</p> <p>21 of the complaints she made against him at any time?</p> <p>22 A. I had heard about it.</p> <p>23 Q. When did you first become aware of those</p> <p>24 complaints?</p> <p>25 A. I can't remember the exact time.</p>



RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY



IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2006-CA-002832 XXXX MB

MARC E. BROCKMAN,

Plaintiff,

v.

DR. CARMEN PULIAFITO and  
UNIVERSITY OF MIAMI d/b/a  
BASCOM PALMER EYE  
INSTITUTE and d/b/a BASCOM  
PALMER OF THE PALM  
BEACHES,

Defendants.

**AFFIDAVIT OF DR. JOHN G. CLARKSON**

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

)  
)  
)

:SS

BEFORE ME, the undersigned authority personally appeared Dr. John G. Clarkson, who, after being duly sworn, deposes and says:

1. I am currently employed by the University of Miami. I am the Dean Emeritus of the University of Miami Miller School of Medicine and a Professor in the Department of Ophthalmology. I make this affidavit based upon my personal knowledge.

2. From 1995 , until I voluntarily relinquished my position in 2005, in order to accept the position of Executive Director of the American Board of Ophthalmology, I held the position of Dean of the School of Medicine at the University of Miami. In or about 2000, I appointed a search committee to identify a qualified candidate for the position of Chair of the Department of Ophthalmology and the Director of the Bascom Palmer Eye Institute. I also appointed Dr. Laurence B. Gardner, the-then Chair of the Department of Medicine, to Chair the Search Committee. After reviewing a number of candidates, the Search Committee recommended that the University hire Dr. Carmen A. Puliafito, who was then the Chair of the Department of Ophthalmology at the Tufts University School of Medicine and the Director of the New England Eye Center. Upon receipt of this recommendation, I contacted the Dean of the School of Medicine at Tufts, as well as other leading ophthalmologists who were acquainted with Dr. Puliafito, all of whom supported the recommendation. After consultation with the faculty members of the Department of Ophthalmology, I approved the hire of Dr. Puliafito as Chair of the Department of Ophthalmology.

3. Dr. Puliafito was hired by the University in July of 2001. Prior to his hire in 2001, I had never worked with Dr. Puliafito.

4. I am acquainted with the Plaintiff Dr. Marc Brockman. I never told Dr. Brockman that I had knowledge that Dr. Puliafito had assaulted or had any physical altercations with anyone while Dr. Puliafito was employed by Tufts, or any other prior employer, nor do I have any personal knowledge of such conduct. Prior to Dr. Puliafito's hire, I did not have any personal knowledge of any incidents involving Dr. Puliafito while he was employed by Tufts, or any previous employer, that would have led me to believe that Dr. Puliafito was unfit for his job or that he would ever physically assault an employee.

  
\_\_\_\_\_  
DR. JOHN G. CLARKSON

SWORN TO AND SUBSCRIBED before me, this 4<sup>th</sup> day of January, 2007,  
by Dr. John G. Clarkson, who is personally known to me  or who has produced  
\_\_\_\_\_ as identification.

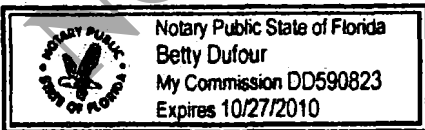
My Commission Expires:

  
\_\_\_\_\_

NOTARY PUBLIC, State of FLORIDA

At Large

Printed Name: BETTY DUFOUR





RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2006-CA-002832 XXXX MB

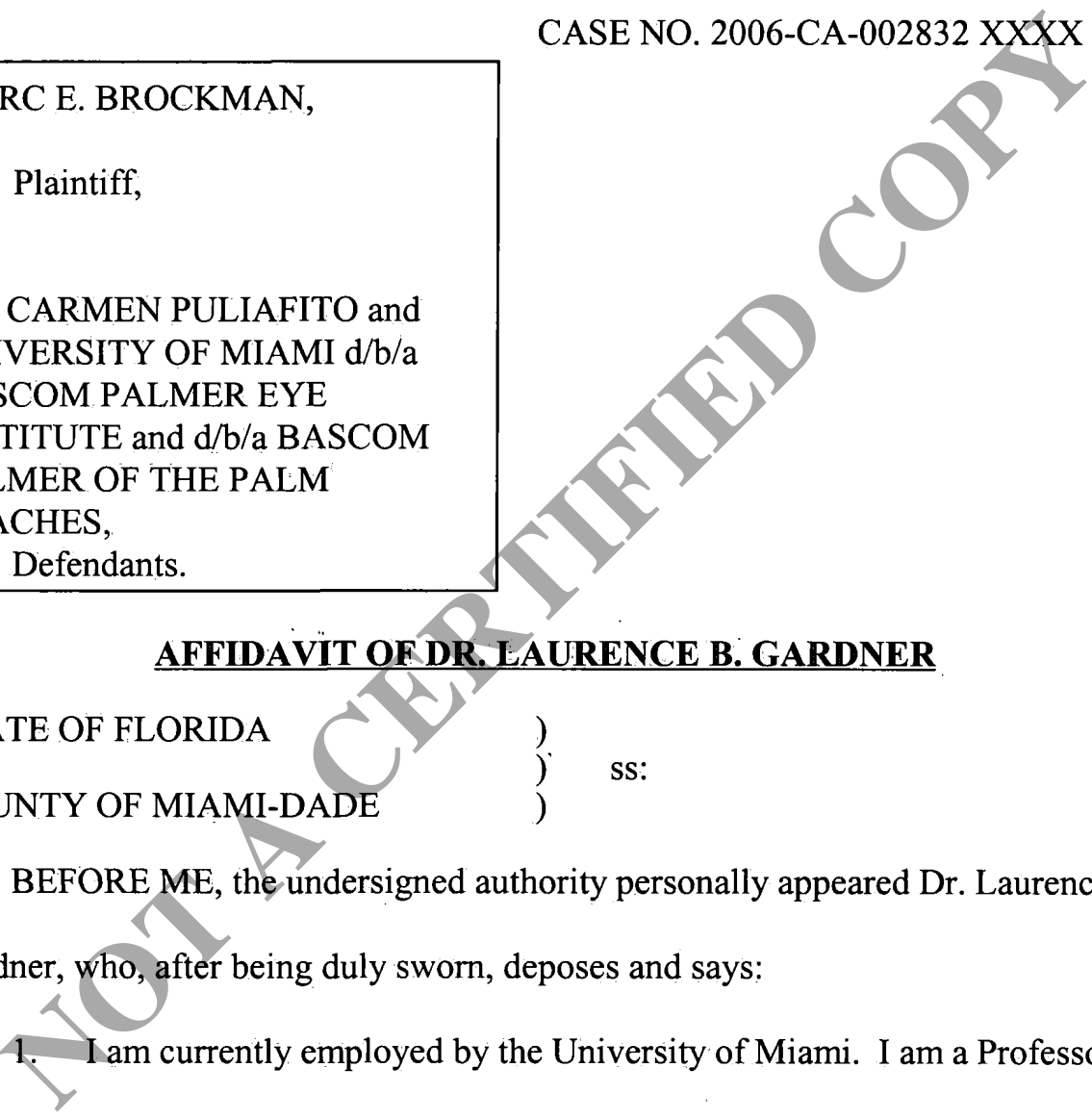
MARC E. BROCKMAN,  
  
Plaintiff,  
  
v.  
  
DR. CARMEN PULIAFITO and  
UNIVERSITY OF MIAMI d/b/a  
BASCOM PALMER EYE  
INSTITUTE and d/b/a BASCOM  
PALMER OF THE PALM  
BEACHES,  
Defendants.

**AFFIDAVIT OF DR. LAURENCE B. GARDNER**

STATE OF FLORIDA                    )  
                                                  )  
COUNTY OF MIAMI-DADE            )     ss:

BEFORE ME, the undersigned authority personally appeared Dr. Laurence B. Gardner, who, after being duly sworn, deposes and says:

1. I am currently employed by the University of Miami. I am a Professor in the Department of Medicine and the Executive Dean for Education and Policy of the Miller School of Medicine. From July of 1994 until June of 2006, I served as the



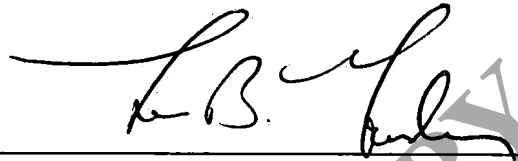
Chair of the Department of Medicine. I make this affidavit based upon my personal knowledge.

2. In or about 2000, Dr. John Clarkson, who was then the Dean of the School of Medicine appointed a search committee to identify a qualified candidate for the position of Chair of the Department of Ophthalmology and the Director of the Bascom Palmer Eye Institute, and appointed me as its Chair. After reviewing a number of candidates, the Search Committee unanimously recommended that the University hire Dr. Carmen A. Puliafito, who was then the Chair of the Department of Ophthalmology at the Tufts University School of Medicine in Boston and founding Director of the New England Eye Center, and Ophthalmologist-in-Chief at the New England Medical Center. This recommendation was forwarded to Dean Clarkson, who approved the recommendation.

3. Dr. Puliafito was hired by the University in July of 2001. Prior to his hire in 2001, I had never worked with Dr. Puliafito.

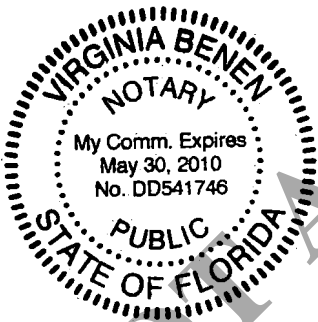
4. Prior to Dr. Puliafito's hire, the Search Committee spoke to a number of Dr. Puliafito's professional colleagues. Prior to his hire, and thereafter, I had no knowledge that Dr. Puliafito had assaulted or had any physical altercations with anyone while Dr. Puliafito was employed by Tufts, or by any other prior employer. I also do not have any knowledge of any incidents involving Dr. Puliafito while he

was employed by Tufts, or by any previous employer, that would have led me to believe that Dr. Puliafito was unfit for his job or that he would ever physically assault anyone.



DR. LAURENCE B. GARDNER

SWORN TO AND SUBSCRIBED before me this 11 day of December, 2006 by DR. LAURENCE B. GARDNER,  who is personally known to me or  who has produced \_\_\_\_\_ as identification.



Virginia Benen  
Notary Public, STATE OF FLORIDA

Print Name: VIRGINIA BENEN

My Commission Expires: MAY 30, 2010



RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY



IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2006-CA-002832 XXXX MB

MARC E. BROCKMAN,

Plaintiff,

v.

DR. CARMEN PULIAFITO and  
UNIVERSITY OF MIAMI d/b/a  
BASCOM PALMER EYE  
INSTITUTE and d/b/a BASCOM  
PALMER OF THE PALM  
BEACHES,

Defendants.

AFFIDAVIT OF DR. SCOTT W. COUSINS

STATE OF NORTH CAROLINA     )  
                                                  )     :SS  
COUNTY OF DURHAM            )

BEFORE ME, the undersigned authority personally appeared Dr. Scott W. Cousins, who, after being duly sworn, deposes and says:

1. I am currently employed as the Robert Macheimer Professor of Ophthalmology and Immunology at the Duke University Department of

Ophthalmology in Durham, North Carolina. I also serve as the Director of the Duke Center for Macular Diseases at the Duke Eye Center. I make this affidavit based upon my personal knowledge.

2. From approximately July 1, 1989, until my voluntary resignation on June 30, 2005, I was employed as a faculty member of the University of Miami's Department of Ophthalmology. I am acquainted with Dr. Carmen Puliafito, as I was a faculty member when Dr. Puliafito was hired in July of 2001 as the Chair of the Department of Ophthalmology for the University of Miami. I have never been employed at the Tufts University School of Medicine, and, prior to his hire in 2001, I had never worked with Dr. Puliafito. In addition, I did not serve on the University's search committee that was appointed to find a new chair of the Department of Ophthalmology, and which ultimately recommended that Dr. Puliafito be offered that position.

3. I am acquainted with the Plaintiff Dr. Marc Brockman. I never told Dr. Brockman while I was employed at UM, or at any other time, that I was aware of any prior complaints (including, but not limited to, complaints of violence or physical altercations) made by employees at Tufts about Dr. Puliafito, nor do I have any personal knowledge of same.

4. In addition, I never advised anyone on the University's search committee or Dr. John Clarkson, the-then Dean of the University's School of Medicine at the

time Dr. Puliafito was hired, that I had knowledge that Dr. Puliafito had assaulted or had any physical altercations with anyone at Tufts University.

Scott Cousins  
DR. SCOTT W. COUSINS

SWORN TO AND SUBSCRIBED before me, this 13<sup>th</sup> day of September, 2006, by Dr. Scott W. Cousins, who is personally known to me or who has produced NC. drivers license as identification.

My Commission Expires: November 02, 2007

NOTARY PUBLIC, State of North  
Carolina  
At Large

Printed Name: Kathleen V Barbee  
Kathleen V Barbee

NOT A CERTIFIED COPY



RECYCLED PAPER .



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2006-CA-002832 XXXX MB

MARC E. BROCKMAN,

Plaintiff,

v.

DR. CARMEN PULIAFITO and  
UNIVERSITY OF MIAMI d/b/a  
BASCOM PALMER EYE  
INSTITUTE and d/b/a BASCOM  
PALMER OF THE PALM  
BEACHES,

Defendants.

**AFFIDAVIT OF DR. DAVID S. GREENFIELD**

STATE OF FLORIDA

)

COUNTY OF PALM BEACH

)

:SS

BEFORE ME, the undersigned authority personally appeared Dr. David S. Greenfield, who, after being duly sworn, deposes and says:

1. I am currently employed as a Professor of Ophthalmology in Department of Ophthalmology at the University of Miami. I have been employed as a faculty member at the University since the fall of 1997. I work at the Palm Beach Gardens

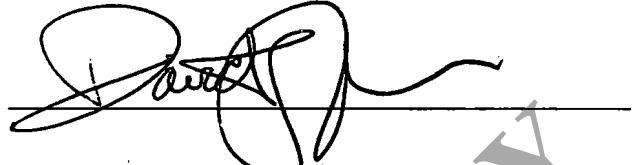
Satellite office of the Bascom Palmer Institute. I make this affidavit based upon my personal knowledge.

2. I am acquainted with Dr. Carmen Puliafito, as he is the current Chair of the Department of Ophthalmology for the University of Miami. In addition, I was employed as a resident physician at the Tufts University School of Medicine from 1991 to 1994, when Dr. Puliafito was the Chair of the Department of Ophthalmology at Tufts. I did not serve on the University of Miami's search committee that was appointed to find a new chair of the Department of Ophthalmology, and which ultimately recommended that Dr. Puliafito be offered that position.

3. I am acquainted with the Plaintiff Dr. Marc Brockman. I never told Dr. Brockman while I was employed at the University, or at any other time, that I was aware of any prior complaints of violence or physical altercations made by employees at Tufts about Dr. Puliafito, nor do I have any personal knowledge of same.

4. In addition, I never advised anyone on the University's search committee, or Dr. John Clarkson, the-then Dean of the University's School of Medicine at the time Dr. Puliafito was hired, that I had knowledge that Dr. Puliafito had assaulted or

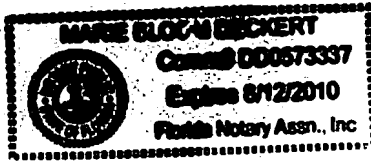
had any physical altercations with anyone at Tufts University.

  
DR. DAVID S. GREENFIELD

SWORN TO AND SUBSCRIBED before me, this 1st day of November, 2006,  
by Dr. David S. Greenfield, who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

My Commission Expires:

Marie Bloom Deckert



NOTARY PUBLIC, State of Fla.

At Large

Printed Name: Marie Bloom  
Deckert

NOT A CERTIFIED COPY

2006 Nov 11 11:11 AM



RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY





2. From approximately July of 2001, until my voluntary resignation in 2003, I was a faculty member in the Department of Ophthalmology at the University of Miami. I am acquainted with Dr. Carmen Puliafito, as I served as a fellow in the Department of Ophthalmology at the Tufts University School of Medicine, from 2000 until 2001, when Dr. Puliafito served as the chair of the Department. When Dr. Puliafito received an offer to become the Chief of the Department of Ophthalmology at the University of Miami, he asked me if I would like to join the faculty at UM, and I agreed.

3. I am acquainted with the Plaintiff Dr. Marc. Brockman. I never told Dr. Brockman while I was employed at UM, or at any other time, that I was aware of any prior complaints (including, but not limited to, complaints of physical violence or physical altercations) made by employees at Tufts about Dr. Puliafito.

4. In addition, I was never contacted by, nor have I ever spoken to, anyone on the University of Miami search committee that recommended an offer of employment to Dr. Puliafito about any matter involving Dr. Puliafito.

  
DR. PAUL B. GREENBERG

SWORN TO AND SUBSCRIBED before me, this 26 day of September, 2006,  
by Dr. Paul B. Greenberg, who is personally known to me  or who has produced  
\_\_\_\_\_ as identification.

My Commission Expires:

8/7/2009

NOTARY PUBLIC, State of R.I.

At Large

Printed Name: Sally Martone



NOT A CERTIFIED COPY



RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2006-CA-002832 XXXX MB

MARC E. BROCKMAN,

Plaintiff,

v.

DR. CARMEN PULIAFITO and  
UNIVERSITY OF MIAMI d/b/a  
BASCOM PALMER EYE  
INSTITUTE and d/b/a BASCOM  
PALMER OF THE PALM  
BEACHES,

Defendants.

**AFFIDAVIT OF COREEN A. RODGERS**

STATE OF FLORIDA )

COUNTY OF MIAMI-DADE )

ss:

BEFORE ME, the undersigned authority personally appeared Coreen A. Rodgers, who, after being duly sworn, deposes and says:

1. I am currently employed by the University of Miami as the Senior Clinical Administrator/Assistant Chair of the Department of Ophthalmology ("Department") in the University's Miller School of Medicine. Prior to January of 2002, I held the position of Director of Fiscal Affairs for the Department. In December of 2000, I

received my Masters in Business Administration degree from the University's School of Business, and I am also a Certified Public Accountant. I make this affidavit based upon my personal knowledge and/or a review of records maintained by the University in the ordinary course of business.

2. Since 1996, Bascom-Palmer Eye Institute has operated a clinic located in Palm Beach Gardens, Florida ("the Clinic"). Physicians employed by the Department of Ophthalmology treat patients at the Clinic and, until April of 2003, the Department employed an optometrist at the Clinic.

3. As of the end of May 31, 2002, the Clinic was operating at approximately a \$626,000.00 deficit. In October of 2002, the Clinic was operating at an approximate cumulative deficit for fiscal year 2003 of \$290,000.00. By the end of January of 2003, the deficit had grown to approximately \$365,000.00 for the fiscal year 2003, which ended on May 31, 2003.

4. During the summer of 2002, the Department hired consultants to assist in the transition to a new scheduling and billing system for the Clinic. In or about January of 2003, the Department hired Ilene Knopping, of Pointed Communications, who are health care management consultants, to be the interim administrative manager of the Clinic and to assist in the review and evaluation of Clinic operations. As part of her duties, she conducted an analysis of the staffing and operations of the

Clinic, which noted the areas where there was overstaffing and areas where there was a lack of specialized staffing. One of the recommendations Ms. Knopping made was that "the optometric patient volume does not require a full time optometrist." (A copy of Ms. Knopping's April 11, 2003 report is attached hereto as Exhibit A.)

5. In connection with her job as the interim administrative manager, and as part of an overall analysis of the Clinic operations, in the spring of 2003, Ms. Knopping and Medical Human Resources met with the Clinic staff to review their job description and determine what their actual duties were.

6. In addition, as part of the analysis of Clinic operations, I asked Dr. Charles Pappas, the Director of Patient Clinical Services for the Anne Bates Leach Eye Hospital, to visit the Clinic and report on the clinical operations. In the report Dr. Pappas submitted to me, he concluded that Dr. Brockman should be considered for layoff. (A copy of Dr. Pappas's April, 2003 report is attached hereto as Exhibit B.)

7. In early 2003, the Department of Ophthalmology was advised that it would not be receiving a tax rebate in the amount of \$200,000.00 to \$300,000.00. In early 2003, the Department also learned, together with the rest of the Medical School, that its malpractice premiums would be significantly increased.

8. On April 1, 2003, Tom Fitzpatrick, the Chief Financial Officer for the School of Medicine, sent an Email message to all departments, informing them that

they needed to make final adjustments to their budgets by April 9, 2003. (A copy of this Email is attached hereto as Exhibit C.)

9. In or about early 2003, based upon the Department's financial concerns, Dr. Carmen Puliafito, the Chair of the Department, directed Dr. Yunhee Lee, the Medical Director of the Clinic, and me to cut at least \$200,000.00 from the Clinic's annual budget. Dr. Puliafito did not tell us how to implement this budget cut.

10. In the spring of 2003, Dr. Brockman was the highest paid non-physician at the Clinic. He was only seeing paying patients approximately 50% of his working time, and the collections on his patients did not cover his salary and benefits and other supporting costs. In or about the Spring of 2003, I performed an analysis of Dr. Brockman's billing and collections and concluded that he represented a net loss to the Department. (A copy of the financial analysis performed by me is attached hereto as Exhibit D.)

11. Based upon the input from these various consultants, together with the economic factors, Dr. Lee, together with my input and that of Ms. Knopping, made the recommendation to lay off five individuals at the Clinic, effective April 23, 2003. One of those five individuals was Marc Brockman. In addition to the lay-offs, the decision was made to close the optical shop and outsource the function to a third party vendor. The lay off recommendations were forwarded to Medical Human



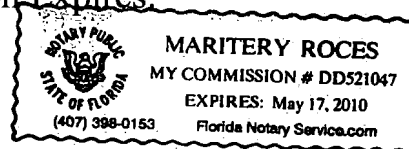
Resources, as is required by University policy, and approved. Pursuant to University policy, all of these individuals were eligible for rehire. One rehire was Jimmy Crowell, who was rehired as an imaging technician, at the same salary he had been earning in his previous position. This was an open position that needed to be filled. Another individual who was rehired was Joan Crownover who was offered a position as a Patient Clinical Associate/Patient Scheduler Lead, at the same \$13 per hour salary she was earning prior to her lay off. However, Ms. Crownover resigned in May of 2003, and she was not replaced. Notwithstanding the rehire of Mr. Crowell, the net savings to the Clinic of these cost-cutting measures was approximately \$200,000.00 per year.

12. Dr. Brockman has not been replaced and his administrative duties were redistributed to existing personnel at the Clinic.

*Coreen A. Rodgers*  
\_\_\_\_\_  
COREEN A. RODGERS

SWORN TO AND SUBSCRIBED before me this 5<sup>th</sup> day of January 2007 by COREEN A. RODGERS,  who is personally known to me or  who has produced \_\_\_\_\_ as identification.

*Maritery Rocas*  
\_\_\_\_\_  
Notary Public, STATE OF Florida  
Print Name: Maritery Rocas  
My Commission Expires: \_\_\_\_\_





RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY



**Date:** Friday April 11, 2003  
**To:** Yunhee Lee, MD, Medical Director, Bascom Palmer Eye Institute of the Palm Beaches  
Coreen Rogers, Administrator, Bascom Palmer Eye Institute  
**From:** Ilene C. Knopping  
**Subject:** BPEI of the Palm Beaches Reorganization

---

Yunhee, Coreen:

It has been my pleasure to be involved in the management and oversight of the Bascom Palmer Eye Institute of the Palm Beaches over the past eight weeks. Your selection of Ana Camacho, a seasoned UM manager, to assume the management role at Palm Beach, is an excellent one.

I understood when I took this assignment there were several operational challenges and some strategic decisions pending. I had consulted last summer on service expansion, space utilization, physician scheduling, and operational improvements. I knew that the Palm Beach management change would present an opportunity to look critically at the overall structure of the practice, including: updating all job descriptions (some of which had not been modified in six years), reviewing of positions, making recommendations for changes, and creating a new organizational chart.

Over the past eight weeks, we worked aggressively to identify areas that need to be improved and changed. During this same period, several significant operational and fiscal challenges emerged:

- front desk functions had just been reorganized to comply with a UM internal audit
- HIPPA compliance was rolling out throughout the University
- new fiscal constraints were imposed as the School of Medicine faced increasing malpractice costs and declining reimbursement
- Bascom Palmer began migrating to the UMMG IDX scheduling and registration system (going live as of June 1, 2003)

Our initiatives and the special projects have brought us a flow of resources from Bascom Palmer, UM and from outside vendors. While they have come to our assistance on particular projects, we have benefited greatly from their timely and thoughtful analyses helping us rapidly review the overall situation.

There clearly needs to be some restructuring at Palm Beach. Below I have summarized my findings and recommendations to date. These are based on my working part-time (3-days per week) on site over the past two months. I've also drawn from the input of other Bascom Palmer, UMiami, and outside consultants who have visited and provided analyses of the practice over this same period.

### **GENERAL FINDINGS**

There needs to be a ground-up effort to write clear policies and procedures for every part of the practice. Right now, this is completely lacking. Most of the work is conducted on a "he said/she said, I should do it this way" basis. Few employees have clear expectations of standards and performance.

In addition, the practice requires a clear mission statement, to be communicated with full authority from the highest level. We need to reset the staff's approach to patient service and accommodation. In my opinion the previous administration, and some of the faculty still at the site did/do not put patients first. Before I arrived, patients were sent away if they arrived late for their appointment, arrived on the wrong day, or if they walked in without an appointment for a matter that they perceived to be urgent. Already we have taken steps to reeducate the staff and do some customer service training. This is an ongoing task that requires leadership through example.

## **FINDINGS & RECOMMENDATIONS BY AREA**

### **Medical Records**

More dedicated staffing is needed, a person with formal HIM training should be in charge of this important area, and clear policies and procedures need to be put in place. Medical records has been under performing due to many factors including sheer volume of work, the staff resource not having any formal HIM background, and the lack of training.

The area, currently staffed by one employee is grossly disorganized, far behind in loose paper filing and record requests. Customer service to internal and external customers is poor. Missing records have been having a very negative impact on delivery of patient care, and even when a record has been available, papers corresponding to the record often were not included in the file. Other staff at the Palm Beach facility are spending significant time each day in the record area hunting for records and loose papers. This is inefficient and slows down workflow throughout the practice.

Chantal Goulbourne, the director of HIM at ABLEH, and her staff have spent a number of days in the Palm Beach record area stabilizing the situation and analyzing the staffing. It is Chantal's conclusion, and I agree from first hand observation and involvement, that the record area needs to be staffed by two full-time employees at least one of whom has formal HIM training. The argument for this change is further enhanced by the implementation of the new HIPPA guidelines that change the way the entire Palm Beach staff is allowed to interface with Medical Records and the additional role of the HIM staff as HIPPA deputies.

### **Phone System/Phone Agents (Operators)**

The telephone system needs to be upgraded to reflect the six-year growth of the practice. Staffing should remain at the current level.

- Equipment – National Communications, the new UM vendor who we met with on March 12th validated what we believed to be the root cause of many of our telephone issues. The current system is grossly inadequate to handle our volume of calls and our current line needs. Many calls do not get fed into the practice but instead ring busy because we do not have the ports to accommodate them. An upgrade of the system is vital to serve our customers. It is impossible to measure how much business is/has been left on the table because of this system. Nationwide has provided BP with a quote and plan to meet our needs now and going forward. I recommend you purchase the system upgrade as soon as possible. I also recommend that the practice invest in call monitoring software to analyze call volume and disposition, and also to have the ability to monitor calls. Note, this monitoring system is being considered by the University and may become available to the practice through a more cost effective means.
- Agents – we all have questioned whether this position required one or more staff. Currently, there are two FTEs, although one of the staff is on medical leave. We have been struggling to cover for the absence. I believe that the practice's need requires the two FTEs. These people are responsible for scheduling, thorough insurance verification, and all calls that require routing. According to Evy Ortega, pre-registration manager for BPEI, who spent two days on site recently, the practice needs two agents to answer that phone and register patients properly. The practice can expect measurable improvement if this function is performed properly. I expect better smoother/faster patient check-in, and more accurate information gathering for billing which should translate into more timely payments and increased revenue. In Kathy McGuire's Status Report of March 27, 2003, these points are also outlined in more detail. McGuire is the Beacon Partners consultant who spent two days on-site last month.

### **Front Desk**

This vital unit has received a lot of scrutiny and attention, and changes are underway. In addition, this group is being further challenged with implementing changes related to HIPPA. For the time being, I suggest maintaining the current staffing level, and planning a review for the fall, after the IDX appointment and registration system is in place and other changes settle in.

Meanwhile, we need to document policies and procedures for this group, as with other units. And, we need to focus on the many training issues identified by Kathy McGuire. The issues she raised were what I expected, based on the short time many of this staff have been with the practice, the recent transition to segregation of duties, and the fact that even those staff with a longer service history never clearly had the expectations of their job performance outlined for them.

### **Technical/Photography**

This is the area that needs our most immediate attention including major restructuring of workflow, physical space, staff coverage, and determination of appropriate staff levels.

Charles Pappas, OD, the director of clinical services for BPEI, was on-site for a day and a half earlier this month, many of his observations mirror my own. In addition he was able to validate that the technicians throughput is similar to work volume in Miami, averaging approximately 20 patients per day, per technician.

### **Workflow & Physical Space**

As soon as possible, we need to address the workflow and physical space issues related to the technical staff. The technician workstation is located outside the clinic, wasting a lot of time walking around the clinic to get to the station. During his visit, Dr. Pappas roughly calculated that we could get as much as 6.5 hours of additional productive time per day from our team of technicians if this situation was corrected.

With Dr. Pappas, we identified an idea for incorporating a technical workstation into the current waiting area. I would recommend we proceed with conceptual drawings for this area as soon as possible.

### **Staffing**

While it appears that the practice has many ophthalmic technicians (there are 11 listed), the majority of these perform other technical functions that make them unavailable for patient work-ups. For example, two of the technicians are trained as photographers. Every day, one of these technicians is assigned to photography, and on the busiest days, two from the pool work in this capacity. When LASIK surgery is performed, two technicians assist the surgeon.

There needs to be a great deal more cross training within this pool of staff. In fact, Marcia Mulholland, the lead technician, and I already have identified the staff to be cross trained, and have started the process. In addition, many functions have limited back-up, bringing the ability to perform certain functions to a stop if someone is on vacation or out sick. I have recommended that each function have a minimum of three staff people who can proficiently perform the job. (Note: We also need to clarify Marcia's role, and allow her time to manage as well as being a working technician.)

Efforts also need to be made to adjust physician schedules and work days to more evenly distribute the work load throughout the days and week. Marcia and I, just this past week, have written a list of ideas that I plan to begin pursuing to help us achieve this goal.

A major staffing inefficiency is how the practice is using Optometrist Marc Brockman as a technician and clinical manager. More than half his time is spent serving as a technician and on issues not related to patient care — functions that can be more appropriately done by others at a lower cost to the practice. Currently, the optometric patient volume does not require a full-time optometrist.

On most days, Dr. Brockman's patient schedule is not at or near capacity. He performs many different and important functions within the center. However, some of these can be absorbed by other positions

such as the practice manager and medical director. Others functions can be performed by a qualified technician at approximately one-third of an optometric salary.

I recommend the practice consider employing a part-time optometrist who would focus purely in an optometrist role supporting the LASIK practice, performing evaluations and post-op care and directly generating revenue by seeing his/her own patients during scheduled work hours. Further, I suggest hiring a part-time technician to assume the two to three days of technical support that Dr. Brockman has been giving to the technical pool.

### ***Optical Shop***

You should consider outsourcing the Palm Beach Optical Shop to an outside vendor, as we discussed last week with Dr. Pappas (also included in his visit summary). Your budget projections for FY 03 and FY 04 show the Optical Shop at a near break-even mark. Traditionally, Optical Shops within Ophthalmic practices generate a positive revenue stream. Bascom Palmer should no longer take the risk for this service. It should consider outsourcing this to a vendor who assumes all the risk. Meanwhile, you can structure a deal that charges rent for the space and optical displays, and provides the opportunity to transfer/sell the current stock to the vendor ensuring a positive revenue stream.

It is my understanding that in Miami, Bascom Palmer has chosen not to be in the Optical Business. I suggest exploring the arrangements the hospital has with the vendor there and consider having that vendor be a bidder for Palm Beach. You might consider offering Nick Riehle, your current Optician, the opportunity to bid on the contract. Nick is a seasoned professional, a former optical business owner in New York, well liked and received by patients and staff. Currently there is no structured incentive for him to sell any glasses or low vision aids.

### ***Surgical Coordination***

I suggest a desk audit be conducted through the UM HR department to determine if two people are needed at Palm Beaches for surgical coordination.

Right now, the practice has two staff:

- Char Lea Mostoller is the surgical coordinator for Palm Beach physician surgeries at Jupiter Hospital and ABLEH. She also functions in a lead capacity at the front desk until the lead person comes into work. In addition, her job description states that she is in charge of all insurance verification, a function she is performing for surgical patients only.
- Joan Crownover is the LASIK Coordinator. LASIK volume is low so she too has multiple functions such as coordinating refractive and other clinics that run out of the refractive area, and backing up the front desk function.

I cannot suggest eliminating or reorganizing this position at this time because the fledgling LASIK service needs resources in place to give it the time and opportunity to be successful. However, further analysis of these two positions will be appropriate to determine if two people are working to capacity.



RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY

Charles Pappas  
P.B. Site Visit  
4/1 - 4/2/03

**Rodgers, Coreen A**

---

**From:** Gause, Vianca on behalf of Pappas, Charles, O.D.  
**Sent:** Monday, April 07, 2003 3:25 PM  
**To:** Rodgers, Coreen A  
**Subject:** RE: thank you

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged



BPEI Miami  
orkload Comparison



Palm Beach Site  
Visit (April 1...



Questions.Commen  
ts.Recommendat...

**Charles Pappas, OD, FAAO**  
**Director, Patient Clinic Services**  
**Bascom Palmer Eye Institute/Anne Bates Leach Eye Hospital**  
**University of Miami**  
**900 NW 17<sup>th</sup> Street**  
**Miami, FL 33136**  
**☎ 305-326-6132**  
**📠 305-326-6417**  
**✉ cpappas@bpei.med.miami.edu**

-----Original Message-----

**From:** Rodgers, Coreen A  
**Sent:** Monday, April 07, 2003 9:37 AM  
**To:** Pappas, Charles, O.D.  
**Subject:** RE: thank you

Thanks so much, that's fantastic!

Have a great day,  
Coreen

-----Original Message-----

**From:** Gause, Vianca **On Behalf Of** Pappas, Charles, O.D.  
**Sent:** Monday, April 07, 2003 9:21 AM  
**To:** Rodgers, Coreen A  
**Subject:** RE: thank you

I thoroughly enjoyed the opportunity to observe the clinic operation and the time we spent together. I did compile the data into a report while I was out and Vianca is typing it this morning. You will receive it before the day ends.

Charles

-----Original Message-----

**From:** Rodgers, Coreen A  
**Sent:** Thursday, April 03, 2003 8:25 PM  
**To:** Pappas, Charles, O.D.



**Subject:** thank you

Hi Dr. Pappas,

We were so delighted you could join us in Palm Beach, and found your input to be so helpful and meaningful. Thank you for taking the time to come up, join us for dinner, and to document your analysis so thoroughly.

Ilene and I are working on restructuring in Palm Beach, and as you know budgets are looming (actually, past due) and we have a real challenge on our hands. We hoped to really begin documenting our plans next Tuesday. If it is possible for you to forward your summary, evaluation and suggestions to us in an email or memo by Monday evening, it would be very useful to us. Any and all suggestions are welcome.

Thank you again for your time and I enjoyed working with you! I look forward to working with you more,

Coreen

NOT A CERTIFIED COPY

## QUESTIONS/COMMENTS/RECOMMENDATIONS

1. Clarify command and reporting lines
  - Who checks OT arrivals/start time, adjusts sick calls, daily adjustments, controls lunch breaks and offers early leave for volunteers for no lunch on busy middays?
  - Clarify Dr. Brockman's role and value to facility
    1. New manager and lead technician will assume his supervisory responsibilities.
    2. There is no optometric training or educational component to support at the facility
    3. There is limited need for primary care services
    4. Triage and gonioscopy functions could be rendered by the ophthalmologists
    5. LVC may benefit by an optometrist, but, volume is too low to justify
    6. Therefore, consider layoff at this time, unless he is generating a substantial financial contribution which is unlikely given his small patient volume.
  - Clarify Marcia Mulholland's role
  - Role of VF tech (topography, cultures) – on 4-2 sitting in doorway (poor appearance) of VF room serving as coordinator much of day; consider upgrading training to serve as limited ophthalmic tech (interim hx, va, ta, dilate) to support general operation on days when VFs are lightly scheduled
2. Too much walking 4-1 due to location of chart holding room; easily lose 1-2 minutes per pt = 1 minute x 186 pts (4-1) = 3 hours or 2 minutes x 186 pts (4-2) = 6 hours of lost time or almost 1 FTE considering peak work hours for OTs are 8:00 AM to 3:00 PM (7 hrs minus ½ hour for lunch = 6.5 hours)
3. Clinic coordinators remote from chart holding room, therefore are unaware of how many charts waiting and for which doctor. Therefore, cannot assist in directing work flow and cannot advise patients of wait time before being called by OT.
4. Need to create effective back waiting room work station to replace chart room; holds charts for day, schedules, lensometers, other minor equipment, staffed by coordinators with printer notification of patient arrivals to eliminate issues #2, 3.
5. Technicians currently work at reasonable productive level considering front loaded morning (4-1) – 13.4 pts/OT AM vs 6.8 pts/OT and (4-2) 11.6 AM vs 8.6 PM. Absences and vacations would compromise operation at this level of staffing.
  - Consider decompressing AM by staggering busier schedule, start times to 7:30 AM along with some tech start times; maybe 4 OTs depending schedules of the day
  - Look at M-F volume levels to see if some schedules can be moved to another less busy day
  - Move busy schedules to days when VFs usually lightly scheduled and use VF tech for f-u exams
  - Reconsider LVC schedule time, different day or PM same day.
6. Reevaluate LVC support.
  - (4-1) – 1 pt scheduled (0.5% of workload) consumed 2 OTs (19%) of technical resources in addition to having a dedicated coordinator.

- Patient scheduled at 9:00 AM did not have surgery until 10:30. Evaluate use of personnel during this time. Would seem one OT could have assisted general clinic operation during this time when patients were waiting for OT.
  - Could coordinator assist general clinic by use of portable phone for LVÇ calls.
7. Limited use of back seating area; patients were standing midday, 4-1, in front seating area.
  8. Back area poorly monitored and faculty out of sight of coordinators
  9. Role of study coordinator (Cousins)??
  10. Reevaluate options to meet HIPAA standards for charts outside doctor's door, specifically, Dr. Rosenfeld pulling charts from boxes on chairs outside his exam room. Lacks professional appearance.
  11. Optical volume appeared low considering space allowance. Since profit is marginal or negative considering space, remove or reduce size and contract out service to guarantee positive cash contribution. Consider a satellite Miami Ocean Labs site.
  12. Visiting Miami technician ranked workload a 6 on a scale of 1-10, 10 being most difficult when comparing to her Miami – BPEI workload.

NOT A CERTIFIED COPY

**Palm Beach Site Visit (4-1, 2-'03)  
Charles Pappas, OD**

Patients Scheduled							
4-1-03				4-2-03			
Faculty	Volume			Faculty	Volume		
	AM	PM	TOTAL		AM	PM	TOTAL
Skolnick	24	15	39	Smiddy	34	24	58
Greenfield	35	15	50	Grimmett	22	16	38
Cousins	22	16	38	Skolnick	22	16	38
Lee	-	10	10	Lee	16	13	29
Rosenfeld	33	16	49	Greenberg	19	15	34
<b>Faculty Total</b>	<b>114</b>	<b>72</b>	<b>186</b>	<b>Faculty Total</b>	<b>113</b>	<b>84</b>	<b>197</b>
Other Services				Other Services			
Brockman <sup>1</sup>	2	3	5	Brockman	9	10	19
LVC (Lee)	1 (surg)	2 (eval)	3	Pre-op	1	1	2
VF	10	6	16	VF	2	1	3
<b>Total</b>	<b>127</b>	<b>83</b>	<b>210</b>	<b>Total</b>	<b>125</b>	<b>96</b>	<b>221</b>

<sup>1</sup>Reduced schedule to cover triage patients, RKS patients, faculty patient gonioscopy and faculty patient work-ups

Staffing Levels/Workloads						
4-1-03				4-2-03		
	Staffing	Patients	Pts/OT	Staffing	Patients	Pts/OT
AM	8.5 <sup>1</sup>	114	13.4	9.75 <sup>2</sup>	113	11.6
AM	9.5 <sup>3</sup>	114	12.0	NA	NA	NA
PM	10.5 <sup>4</sup>	72	6.8	9.75 <sup>2</sup>	84	8.6
PM	11.5 <sup>3</sup>	72	6.3	NA	NA	NA
AM PM		186	20.2 <sup>5</sup>	AM PM	197	20.2
AM PM		186	18.3 <sup>3,5</sup>	NA	NA	NA

<sup>1</sup> Normal full staffing level

<sup>2</sup> Reduced 0.25 for pre-op patient care

<sup>3</sup> Normal staffing level increased by OT from Miami

<sup>4</sup> Normal PM staffing level increased by two OTs from LVC

<sup>5</sup> Workload for OTs working AM/PM (P.B. OTs)

BPEI – Miami Workload Comparisons			
Faculty	Patients	No. OTs	Pts/OT
Scott	73	3	24.3 <sup>1</sup>
Dubovy	40	2	20
Smiddy	74	4	18

<sup>1</sup>Required additional staff support to manage volume during course of day

Registration – OT Interface								
Time	4-1-03				4-2-03			
	OTs waiting for Med Record	Charts waiting for OT	Charts <sup>1</sup> /OT	People <sup>2</sup> in Regis. Line	OTs Waiting for Med Record	Charts Waiting for OT	Charts <sup>1</sup> /OT	People <sup>2</sup> in Regis. Line
8:00	-	-	-	-	0	2	0.2	2
8:15	-	-	-	-	0	2	0.2	2
8:30	-	-	-	-	0	2	0.2	2
8:40	0	0	0	9	-	-	-	-
8:45	-	-	-	-	0	5	0.5	1
9:00	4 <sup>3</sup>	0	0	13	0	4	0.4	8
9:10	0	5	0.5	5	-	-	-	-
9:15	0	11	1.2	0	-	-	-	-
9:30	-	-	-	-	0	9	0.95	0
9:35	0	7	0.7	2	-	-	-	-
9:45	-	-	-	-	0	12	1.2	6
10:12	0	9	0.95	6	-	-	-	-
10:20	0	13	1.4	0	-	-	-	-
10:45	-	-	-	-	0	10	1.0	4
11:00	0	21	2.2	0	0	10	1.0	9
11:15	-	-	-	-	0	12	1.2	13
11:35	0	9	0.95	0	-	-	-	-
12:00	0	2	0.2	0	-	-	-	-
2:00	0	1 <sup>4</sup>	0.1	0	-	-	-	-
2:30	0	6	0.5	0	-	-	-	-

<sup>1</sup> Indirect measure of time patient waiting for OT call; estimate 1 chart = 20 minutes

<sup>2</sup> Estimate 2 people in line = 1 patient

<sup>3</sup> 2-5 minutes before charts available to OT from registration; registration staff reduced

<sup>4</sup> At 2:00 PM, 33 patients on schedule to arrive = 33 patients/10.5 OTs, or 3 patients/OT, at 20 minutes per patient could have ended day for work-ups at 3:00 PM

 RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY

**Dr. Brockman**  
**Cost/Collection Summary Report**  
**FY02/03**

**Salary Calculation:**

	Base Salary	Bonus	Total Salary	CFB Rate	CFB Cost	Total Salary Cost
FY2002	\$ 84,376	\$ 500	\$ 84,876	27.80%	\$ 23,596	\$ 108,472
FY2003	\$ 89,438	\$ -	\$ 89,438	25.50%	\$ 22,807	\$ 112,245

Fiscal Year	# Invoices	Gross Charges	Payments/Collections *	Actual Cost of Employee	Net Loss to the Dept **
FY2002	2045	\$ 183,361	\$ 71,511	\$ 108,472	\$ (36,961)
FY2003	2219	\$ 231,920	\$ 90,343	\$ 112,245	\$ (21,902)

**Notes:**

\* FY2002 collections/payments are estimated based on FY2003 real collection ratio. The old system has archived the data

\*\* The cost of the employee is the salary and CFB only. In addition to the salary/CFB cost the department also paid:

- Billing Activities
- Administrative Support (HR, Management, Risk Management, etc.)
- Tech cost (had 1 full time technician assigned to support)
- Rent and Utilities

**CURRENT OPOMETRIC COVERAGE IN PALM BEACH**

Dr. Perez Blanco, Mari Carem currently visits Palm Beach 2 times per month:

Her activities include:

- Sees only Refractive (Lasik) patients
- On Average sees 3-4 patients per visit
- Most visits are post-op refractive follow-up
- We are adding a RKS schedule for her to start seeing Lasik patients as pre-screening/eligibility
- All visits being done are non-billable and generate no revenue and/or charges

NOT A CERTIFIED COPY



RECYCLED PAPER



TO REORDER CALL 954-846-9399

NOT A CERTIFIED COPY



P.O. Box 016880  
Miami, FL 33101

April 23, 2003

Marc E. Brockman  
Department of Ophthalmology

*MacBl*  
4-23-03

Dear Mr. Brockman:

As you know, the University of Miami, Department of Ophthalmology has been re-evaluating the structure and future direction of the Palm Beach site. In addition, the Department is facing additional budgetary constraints. As a result of these issues, your position as Associate Director IV will be eliminated. I regret to inform you that you will be placed on layoff status effective immediately. Any accrued vacation will be paid to you in your last paycheck.

This letter provides you with the written notification as required by the University policies and procedures as set forth in the Administrative/Professional employee manual. You will receive 2 months pay in lieu of notice in your final paycheck.

It is our hope that by working with the Office of Faculty/Professional Affairs that you can find suitable options for other employment. We expect that you will receive a letter from Human Resources outlining rehiring options and a letter from the Benefits Administration Office on benefit options. If you do not receive these letters, we urge you to contact these offices.

Please return all University of Miami property (such as access cards and keys) to Ms. Gloria Lasso today in order to expedite the clearance of your final check.

We assure you that your services to the University of Miami are greatly appreciated. We have enjoyed working with you and hope that you will succeed in all future endeavors and use this opportunity to maximize your future potential and success. Please feel free to call the Office of Faculty/Professional Affairs to discuss this situation and any questions you may have about these changes.

Sincerely,

*Coreen Rodgers*  
Coreen Rodgers  
Sr. Administrator

*Yunhee Lee MD*  
Dr. Yunhee Lee  
Interim Medical Director

Cc: Faculty/Professional Affairs