HEARING BEFORE: ROBERT G. LAWSON

DATE: May 28, 2015
TIME: 8:30 a.m. (Vol. 2)
PLACE: University of Kentucky
Charles 7. Mattingly, Jr. Building
900 South Limestone
Lexington, Kentucky 40536

APPEARANCES:

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ATTORNEYS FOR PAUL KEEARNEY, M.D.

WITNESSES:

Davy Jones:
Colloquy: 4-10
Examination by Mr. Pafunda: 10-37
Examination by Mr. Beauman: 37-41
Examination by Ms. Hansen: 41-42
Examination by Ms. Tannock: 42-44
Examination by Mr. Beauman: 44-45
Examination by Mr. Pafunda: 44-45

Hollie Swansons:
Colloquy: 45-46
Examination by Mr. Pafunda: 46-47

Janet Branham:
Colloquy: 47
Examination by Mr. Pafunda: 47-50
Examination by Mr. Beauman: 51-52
Examination by Ms. Hansen: 52-54

Rolando Berger:
Colloquy: 54
Examination by Mr. Pafunda: 54-60
Examination by Mr. Beauman: 60-63
Examination by Mr. Pafunda: 63-64

Jessica Johnston:
Colloquy: 64
Examination by Mr. Pafunda: 64-69
Examination by Mr. Beauman: 70
Examination by Mr. Pafunda: 70
Examination by Mr. Beauman: 71
Examination by Mr. Pafunda: 72-73

Andy Moore:
Colloquy: 73
Examination by Mr. Pafunda: 73-77

Paul Kearney:
Colloquy: 78
Examination by Ms. Hansen: 79-94
Examination by Mr. Beauman: 94

Examination by Ms. Tannock: 95
Examination by Mr. Williams: 95-97
Examination by Ms. Hansen: 97-104
Examination by Mr. Pafunda: 104-109

Examination by Ms. Hansen: 110-117
Examination by Mr. Pafunda: 117-152
Examination by Mr. Beauman: 152-163
Examination by Mr. Pafunda: 164-165

CONTINUED ON NEXT PAGE.

EXHIBIT INDEX

Exhibit No. 2 E-mails 35
Exhibit No. 3 Evaluations of Paul Kearney 146
Exhibit No. 4 E-mail 259

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PROFESSOR LAWSON: I will state for the record that this is the second day of the hearing involving the professional review action against Dr. Kearney.

The same people who were here yesterday are present today and we are proceeding with the production of evidence by Dr. Kearney.

And our first witness is?

MR. PAFUNDA: Before we start, Professor Lawson --

PROFESSOR LAWSON: Yes.

MR. PAFUNDA: We've got a housekeeping problem.

PROFESSOR LAWSON: Speak up, I'm sorry.

MR. PAFUNDA: I've got a housekeeping problem with respect to two witnesses, anesthesiologists, who this morning, Mr. Beauman was kind enough to tell me that they're apparently, according to the chairman or division chief, they cannot attend this morning because they're completely tied up in the OR.

Is that correct, Bryan?
MR. BEAUMAN: Yes, that's what we were told.

MR. PAFUNDA: So, for lack of a better expression, I don't know what to do at this point with respect to those witnesses.

PROFESSOR LAWSON: Can they appear this afternoon?

MR. PAFUNDA: One tentatively after 3.

PAUL KEARNEY: After 3. I mean, they have a busy -- they're swamped. They got hit -- hammered last night. They had to call people in, so they're down people.

PROFESSOR LAWSON: Well, I mean, I don't know exactly what to do about that.

MR. PAFUNDA: I don't know what to do either. That's why I threw it --

PROFESSOR LAWSON: Under the rules, you can present testimony in writing.

MR. PAFUNDA: Well --

PROFESSOR LAWSON: So, I mean, could you do that?

MR. PAFUNDA: Well, I don't know.

And the panel and Dr. Kearney are more familiar with this than I am. No. 1, if they are jammed up this morning, how am I going to get it in writing from them?

PROFESSOR LAWSON: Well, I mean, it wouldn't necessarily have to be by the end of the hearing, I mean. Now, you know, if we're going to have closing arguments, you'd have to make it without the closing arguments, and maybe you all could agree what they're going to say, because, I mean, if we have to go into next week, I mean, does that create a problem for you?

MS. HANSEN: To go into next week, you mean for us to be here?

PROFESSOR LAWSON: Or tomorrow? I mean, is that possible?

MS. HANSEN: Huge problems.

MR. PAFUNDA: What about tomorrow?

MR. WILLIAMS: Yeah, tomorrow is school.

MS. HANSEN: I'm in clinic all day.

MS. TANNOCK: I'm on call.

PROFESSOR LAWSON: There's the problem with it.

MR. PAFUNDA: No, I know, that's why we'll hit with it this morning.

PROFESSOR LAWSON: Well, let's proceed with what we've got, and we'll just have to deal with it, you know, as we -- as we have to face it and I think -- we'll just have to see.

MR. PAFUNDA: Well, one of my suggestions, and I don't know if this -- because you're going to want to be present to counter anything they may have to say; correct?

MR. BEAUMAN: Sure.

MR. PAFUNDA: I'll just throw this out. Maybe the availability of the deposition, I'm here to take a deposition and then the panel could have that -- that could be submitted to the panel at -- along with their written briefs, so on and so forth.

MR. BEAUMAN: We take a short testimony and then send that to them.

MR. PAFUNDA: But then I don't know if the panel would have questions. You know, it's...

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fair enough.

MR. SALSBOREY: Sounds good.

PROFESSOR LAWSON: So we might have a
deposition, might not need to do it.

MR. PAFUNDA: That's correct.

PROFESSOR LAWSON: You could submit
written statements.

MR. PAFUNDA: Correct.

PROFESSOR LAWSON: But if that would
occur after the closing arguments and the
closing of the proceeding, it would go to
the panel before they deliberate; right?

MR. PAFUNDA: If the panel comes to
the conclusion that it's not necessary, that
takes it right off the table.

PROFESSOR LAWSON: All right. Let's
proceed then with Mr. Jones.

Mr. Jones, we are requiring all of
the witnesses who testify to affirm that
they'll testify accurately and truthfully,
and so on behalf of the panel, I'll ask if
you will commit to do that in your
testimony?

THE WITNESS: Yes.

PROFESSOR LAWSON: Proceed.

MR. PAFUNDA: Thank you.

EXAMINATION

By Mr. Pafunda:

Q Would you state your name for the
record, please?

A Davy Jones.

Q And, Dr. Jones, briefly outline your
CV for us and what you do here at the University.

A I'm a professor of toxicology in the
Department of Toxicology and Cancer Biology. I've
been a faculty member at the University since
1982.

Q And I take it from your response
that you're a tenured faculty member?

A I'm a?

Q Tenured faculty --

A Tenured faculty member, yes.

Q Let's step back for a moment to
April 14th of last year. Were you on the faculty
council?

A Yes.

Q And did you attend a meeting --

A Yes.

Q -- of the faculty council?

A Yes.

MR. PAFUNDA: Correct.

PROFESSOR LAWSON: That's correct.

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council?

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Q -- of the faculty council?

A Yes.

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1 an election of the Practice Plan Committee.
2 Q And to sum up what you've just stated, the Practice Plan Committee serves a watchdog function with respect to the budget for the College of Medicine?
3 A The budget and other aspects of the operation of the practice plans.
4 Q And the Practice Plan Committee and the particular regulation went into effect in 2009?
5 A Yes.
6 Q And the members of the Practice Plan Committee were to be elected?
7 A Yes.
8 Q By whom?
9 A The members of the practice plan.
10 Q All right.
11 A The College of Medicine members of the practice plan would be voting.
12 Q And that would be UK Healthcare; correct?
13 A Yes.
14 Q And through your investigation as a faculty council member, you learned as of the fall of 2013 to January, 2014 what about the Practice Plan Committee? No. 1, did it exist? No. 2, had any members been elected to it?
15 A Over the obfuscating efforts to hide the fact by the administration, which it took me a series of using the force of external open records law to pierce it, it turns out the required Practice Plan Committee -- the elected Practice Plan Committee required by the regulation did not exist.
16 Q All right. And had members been elected to it?
17 A No. From 2009 up through the -- that fall, there had never been an election of members to that committee.
18 Q In fact, the addendum, and I don't want to go too deep into the weeds, but the addendum that was posted by the University in July of 2009 revealed who was supposed to be on that Practice Plan Committee -- or who was on it?
19 A Well, what -- what had -- by administrative fiat what had happened was there was a page that was signed by Dean Perman at the time, I believe, provost Subbasswamy and EVPHA Karpf in which at the part of the College of Medicine addendum where it's -- it has AN/DOR Reporting & Video Technologies, Inc.
20 Q And that?
21 A His was one of the three signatures, yes.
22 Q All right.
23 Q Now, you mentioned KMSF. That stands for Kentucky Medical Services Foundation; correct?
24 A Yes.
25 Q And it's a separate corporate entity; correct?
26 A Yes.
27 Q Which is responsible briefly for collecting the billings from the University --
28 A Yes.
29 Q -- generated by the University, and then those funds are then in turn distributed to the University faculty?
30 A It comes back to the faculty for dispersal, and the practice plan has the features that control how that back disbursement happens.
31 Q So whoever is in control of the Practice Plan Committee that oversees that actually controls the flow of funds?
32 A Well, the College of Medicine AN/DOR Reporting & Video Technologies, Inc.
Practice Plan Committee is advisory, but it's there as a watchdog to finger and draw attention and have impact supposedly, and being a committee of itself, its recommendation has to be addressed rather than six out of umpteen members opinions being diluted over there at this non-UK entity called the Board of Directors of KMSF. It's supposed to be an academic College of Medicine committee whose recommendation stands as its own and has to be addressed and that didn't exist.

Q Now to bring this into focus, you had a January of 2014 faculty council meeting; correct?

A Yes.

Q And what was the purpose of that meeting, and what was the subject matter that was discussed?

A I reviewed for the faculty council this information that I -- Dr. Kearney was also instrumental in garnering this information as well -- the information that we had gathered about the hopes that existed with respect to the College of Medicine Practice Plan Committee.

Q And at that council meeting you presented what I would call a very lengthy PowerPoint explaining it to the council members?

A Yes.

Q And you mentioned earlier here, you just touched upon it, that your efforts to uncover this information about the Practice Plan Committee was -- your word was obfuscated?

A Yes.

Q Break it down into plain street talk.

A Well --

PROFESSOR LAWSON: Excuse me just a second.

Mr. Pafunda, this has got to be relevant to this hearing in order for it to be admissible under the bylaws. Are you going -- are you going to show that relevance here?

A MR. PAFUNDA: Yeah, I'm drawing the background picture, but I'll jump ahead if you want me to.

PROFESSOR LAWSON: Proceed, but it has to be relevant.

MR. PAFUNDA: No, I'll jump ahead.

All right.

PROFESSOR LAWSON: And in addition to
1 procedures, how do they do that?
2 Q But to get to the point, did
3 Dr. Kearney and Dr. Karpf have a confrontation in
4 which Dr. Karpf threatened to fire Dr. Kearney?
5 A Oh, yeah. In response to
6 Dr. Kearney challenging Dr. Karpf, well, you know,
7 if faculty wanted to get the process, you know,
8 back where it's supposed to be, how do they do
9 that? Dr. Karpf's answer was to look straight at
10 Dr. Kearney and go, "If faculty don't like how
11 things are being run here, they can leave
12 (indicating)."
13 I took that to mean, man, he just
14 threatened Paul Kearney's career. And immediately
15 as I thought that, the chair of the faculty
16 council, Hollie Swanson there, said, "Is that a
17 threat?"
18 So I knew my impression had been
19 confirmed.
20 Q So you and Dr. Swanson were under
21 the impression that that was a threat to
22 Dr. Kearney at that point?
23 A Yes.
24 Q All right. Moving forward, did you
25 know that disciplinary actions had been undertaken

1 have to connect this up to the decision that
2 was made by Dr. Zachman, Dr. Boulanger or
3 the Medical Staff Executive Committee. Now,
4 you know, if this happened out there and
5 it's not connected to them, it's hard to see
6 any relevance to this proceeding.
7 MR. PAFUNDA: Well, I beg to differ
8 on this count: No. 1, you've got a temporal
9 connection. Within a few months after this
10 threat by Dr. Karpf, you've got disciplinary
11 actions undertaken against Dr. Kearney
12 within a very short period of time.
13 PROFESSOR LAWSON: By the executive
14 committee?
15 MR. PAFUNDA: No, by Dr. Boulanger.
16 PROFESSOR LAWSON: But he -- his
17 recommendation went through the executive
18 committee --
19 MR. PAFUNDA: That's correct.
20 PROFESSOR LAWSON: -- and the
21 executive committee -- well, just a second.
22 MR. PAFUNDA: Okay.
23 PROFESSOR LAWSON: Do you have a
24 specific evidentiary link between this event
25 and either Dr. Zachman, Dr. Boulanger, or

. in September of that same year against
2 Dr. Kearney?
3 A Dr. Kearney -- I had contacted
4 Dr. Kearney about something and had learned from
5 him that something was afoot.
6 Q All right. And I take it you've
7 tracked on your own what's been going on with
8 Dr. Kearney; is that correct?
9 A Yeah, I've tried to keep my finger
10 on it, yes.
11 Q And keeping your finger on it, have
12 you during the course of that, on your own without
13 any prompting from us or anyone else, have you --
14 have you done any open records requests?
15 A Yes.
16 Q And what have you learned from your
17 open records request with respect to Dr. Kearney's
18 position or his ability to access his position as
19 a tenured professor?
20 A It's my --
21 MR. BEAUMAN: Mr. Lawson, I'm not
22 sure what relevance this has.
23 PROFESSOR LAWSON: I've got the same
24 problem.
25 Mr. Pafund, I think you're going to

06/05/2015 07:34:29 AM Page 21 to 24 of 299
That's my point.

I understand your point that I may be attempting to confuse the issue, but, as I stated in my opening, this disciplinary action has been taken against Dr. Kearney in retaliation for his disclosure of an administrative violation. I will not go much further in that regard.

PROFESSOR LAWSON: I'm not going to let you because I don't see your evidence --

MR. PAFUNDA: That --

PROFESSOR LAWSON: -- of the connection between this event and the matters that are before this committee right now (indicating). You don't have any evidence --

MR. PAFUNDA: Yes, I do. I beg to differ. The evidence can be completely sustained by the temporal connection when it happened and the Sixth Circuit's rule that if it's happened within six months, that establishes the causal connection.

PROFESSOR LAWSON: Well, I'm going to rule against you on that, sir.

MR. PAFUNDA: All right.

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Q Now, that regulation provides again, Dr. Jones, for what with respect to the personnel file?

A That there's only one standard -- there's only one personnel file, that the person's records go into one official file. You know, a chair can have duplicate copies of things, but there's only one official file. All of the evaluation reports, documents related to professional function are to go into that file and unsolicited things that get in there that are not standard, like the annual merit evaluation, the distribution, ad hoc things that get in there, the person is to be notified so that they can make a written rebuttal to that document and that goes back to 1992.

Q And let me ask you this, is there any way that these documents that are placed in a personnel file are supposed to be time stamped or authenticated when they're put in or when maybe they're removed from a file?

A I'm not aware of a regulation that says it per se like that.

Q These files, according to the regulations, are they to be maintained and be confidential?

A The standard personnel file is confidential. I mean, it says so in the regulation, yes.

(Off the record.)

Q Are you familiar with the regulations as they're applicable to a tenured professor?

A You mean like for the procedures and regulation for promotion and tenure; is that what you -- yes.

Q And likewise for the removal of a tenured professor?

A Yes.

Q And you were aware of the fact that Dr. Kearney was -- when his clinical privileges were suspended was ordered off campus?

A Yes.

Q Did you know that the locks on his doors had been changed?

A I had been informed -- I had learned of that indirectly, yes.

MR. SALSBERY: First of all, I don't know what relevance this has to the MSEC review.

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I'm going.

PROFESSOR LAWSON: I see where you're going. I'm going to give you just -- I'll give you a little room to go there, and then I'm closing the door on this, because in my judgment, this matter is not relevant to this. And if it is relevant, if it has minimal relevance, you're creating a collateral issue here that does nothing other than to confuse the dispute for these people, and so I'm going to stop you.

MR. PAFUNDA: All right.

PROFESSOR LAWSON: Go ahead, you can have -- you can --

MR. PAFUNDA: Thank you.

PROFESSOR LAWSON: I'm giving you a little leeway. I'm trying my best to be as liberal as I can with you, Mr. Pafunda --

MR. PAFUNDA: I understand.

PROFESSOR LAWSON: -- in presenting information on his behalf, but at some point I've got to draw the line.

MR. PAFUNDA: I understand.

Q Back to your open records request.

You have materials here with you today?

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I. And subsequent correspondence reporting or attesting that the directive had been performed, and I've received the University's official response to that.

Q And what did you learn from the University's official response?

A That on January 26th, at 8:15 in the morning, Theresa Crocker, who I believe is legal counsel in the College of Medicine office, is writing to somebody high up in IT, "Kevin, at 11:00 today, and not before, please suspend access to e-mail for Paul Kearney. Please also preserve and copy this e-mail account and provide the copy to Eric so he can post it to my server. Can you set the account to remain active even though access to it is denied? We may want to check and see what e-mails are received on that account in the future."

PAUL KEARNEY: Not relevant? I'm sorry.

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MR. PAFUNDA: That's okay, you and I can argue.

Q So we've got is somebody at the University who's informed Dr. Kearney that his e-mail account is shut down, but at the same time is monitoring that e-mail account; is that correct?

A Well, this doesn't inform

Dr. Kearney.

Q All right.

A This is legal counsel office, College of Medicine, contacting IT to set this up. And at 11:26 later that morning, IT is writing back, "This has been processed. Carbon copy Bill Thro."

Q General counsel for the University?

A Yeah.

MR. PAFUNDA: At this time I would like to mark those, if that's all right with Dr. Jones, as Defendant's Exhibit --

PROFESSOR LAWSON: These are not in your book?

MR. PAFUNDA: No, they are not.

THE WITNESS: I just got this yesterday.

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Practice Plan Committee members, but, in fact, the addendum specifically states that the Practice Plan Committee are the elected members of the KMSF board; correct?

Q That's exactly what it says, yes.

A Yes.

Q And I think the physicians in the room likely know this, there are at-large members elected to the KMSF board; correct?

A Yeah, there is an external body that has particular charge and functions in which they elect persons to that external body that's not part of the College of Medicine.

Q So the answer to my question is yes?

A What was your question?

Q My question is, there are six at-large members elected to the KMSF board?

A Yes, there are.

Q And those at-large members of the KMSF board form the College of Medicine Practice Plan Committee?

A Those three signatures assert that.

Q No, sir, I'm talking about the 2009 College of Medicine practice plan addendum?

A MR. PAFUNDA: Why don't you just show it to him?

Q MR. PAFUNDA: We had been over this at your deposition.

A Yes.

Q On Page 2 -- I can point it to you.

A Get my glasses.

Q Sure.

"The Practice Plan Committee consists of all elected members of the KMSF board"?

A Yes, that has been typed in there.

Q Well, six pages have been typed in there --

A Yes.

Q -- Is that right, Dr. Jones?

A Yes.

Q So this is the College of Medicine practice plan addendum?

A The three signatures at the end of it attest that that is the addendum, yes.

Q Are you telling this panel this is not the 2009 --

A Oh, the University would represent AN/DOR Reporting & Video Technologies, Inc.

06/05/2015 07:34:29 AM Page 37 to 40 of 299
The July of 2009 addendum that you were just shown, if counsel could show that to you again.

MR. WILLIAMS: What does the 2009 addendum have to do with the relevance about what the medical staff --

PROFESSOR LAWSON: Mr. Chairman of the Committee, it has nothing to do with the issues before you, and we're bringing this to an end right now.

MR. PAFUNDA. Okay.

PROFESSOR LAWSON: Thank you, Mr. Jones.

Do you all have any questions?

EXAMINATION

By Ms. Hansen:

Q I have two questions.

I want to know -- you said the personnel file was confidential. What does that mean?

A Only authorized eyes can get to it, and there's a provision --

Q I get that.

Who's authorized, the chairman, the person --

A Yes.

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Q: What portions?
A: I can give some examples.
Q: Please.
A: CV, distribution of effort; tenured peer review letters would not be.

PROFESSOR LAWSON: That's the end of it.
Q: Please.
A: CV, distribution of effort; tenured peer review letters would not be.

PROFESSOR LAWSON: That's the end of it.
Q: Would disciplinary actions --
A: CV, distribution of effort; tenured peer review letters would not be.

PROFESSOR LAWSON: Mr. Pafunda, I have to end this because, I mean, we've veered way off the course, and we're going to get back on the course.

Dr. Jones, thank you for your testimony.

THE WITNESS: Okay. MR. BEAUMAN: Thank you, Doctor.

PAUL KEARNEY: David, will you tell Hollie to come in?

DAVY JONES: Okay.

PROFESSOR LAWSON: What's the name of this witness, Mr. Pafunda?

MR. PAFUNDA: Dr. Swanson,

Dr. Hollie Swanson.

(Off the record.)

PROFESSOR LAWSON: Dr. Swanson, all of the people who have testified before the AN/DOR Reporting & Video Technologies, Inc.

panel here are asked to affirm that they will testify accurately and truthfully.

Will you commit to do that in your testimony?

THE WITNESS: Yes, I will.

PROFESSOR LAWSON: Proceed, Mr. Pafunda.

EXAMINATION

By Mr. Pafunda:

Q: Would you state your name for the record, please?
A: Hollie Swanson.

PROFESSOR LAWSON: Speak up, please.
Q: Dr. Swanson, what is your position here at the University?
A: I'm a professor in the Department of Pharmacology and Nutritional Sciences.

Q: And on April 14th, 2014, did you attend a meeting with the administration?
A: Yes, I did.

Q: And that was over the Practice Plan Committee?
A: Yes, it was.

Q: And if you would, tell the panel, was Dr. Kearney threatened in that meeting?

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06/05/2015 07:34:29 AM Page 45 to 48 of 299 12 of 109 sheets
No, sir, I haven't. And then, you know, if patients decline during the day, he would come in and we would do procedures. That sort of thing.

In your opinion, did he have a good working relationship with the nurses?

Oh, yes, we all love Dr. Kearney.

You just beamed up there. Can you give us some examples?

Dr. Kearney was always respectful and kind to the nurses, but he puts a flare of humor in it. So it always made it nice when he came in the unit because you knew not only were you going to be well supported in the care of your patient, but it was also going to be, you know, in an enjoyable way.

Now, and I take it you also to a large degree have a personal relationship with Dr. Kearney?

Not outside the hospital.

No, no, I don't have anything further.

So you work with a lot of nurses; right?

Yes.

If you will, just tell the panel about the, of May, and was just --

And that was Dr. Kearney?

I only remember seeing a resident when I rolled in. After that point I knew I could relax, but I didn't -- I did not see Dr. Kearney that night, no.

That's all I have.

THE WITNESS: Okay.

PROFESSOR LAWSON: Anything else?

MR. PAFUNDA: I'm finished.

By Ms. Hansen:

So you work with a lot of nurses; right?

Yes -- yes, but in my unit, we're staffed between five and six, seven, so that was my family. I didn't really work much outside of the unit, but.

But over a long period of time with Dr. Kearney, you say he has humor?

Yes.

And that he -- so are there -- is there a certain segment of nurses who might not like that humor or feel offended by that humor?

Yeah, I think, sure, it's probably personality. But in my --

Even if they don't file a complaint, were there certain nurses who didn't want to be around Dr. Kearney or work with him --

No.

-- because of that?

No. In fact, in my unit, we loved

MR. PAFUNDA: I only remember seeing a resident when I rolled in. After that point I knew I could relax, but I didn't -- I did not see Dr. Kearney that night, no.

MR. PAFUNDA: That's all I have.
1 Dr. Kearney. I think as a critical care nurse, 
2 with the group that I worked with, we all have 
3 very strong personalities and we just clicked well 
4 with him and him with us. We always enjoyed when 
5 he came in with us. And, you know, he could be 
6 gruff. He's Dr. Kearney. That's just 
7 Dr. Kearney, but it was always in a nice way and 
8 almost -- and I don't mean this to sound a little 
9 bit strange -- almost in a fatherly way also. You 
10 know, we all looked up to him and respected him. 
11 Q Do you have nursing students in your 
12 unit? 
13 A Yes, we did. 
14 Q And how did the students do with 
15 Dr. Kearney? 
16 A I'm thinking back. It's been a few 
17 years. Fine. I didn't -- I don't think anybody 
18 complained, but I think also with the environment, 
19 when we had the nursing students and they could 
20 see how much we respected him and enjoyed 
21 interaction with him, you know, I think that they 
22 picked up on that. I don't remember anybody being 
23 intimidated or upset by him. 

---

1 Dr. Kearney. I think as a critical care nurse, 
2 with the group that I worked with, we all have 
3 very strong personalities and we just clicked well 
4 with him and him with us. We always enjoyed when 
5 he came in with us. And, you know, he could be 
6 gruff. He's Dr. Kearney. That's just 
7 Dr. Kearney, but it was always in a nice way and 
8 almost -- and I don't mean this to sound a little 
9 bit strange -- almost in a fatherly way also. You 
10 know, we all looked up to him and respected him. 
11 Q Do you have nursing students in your 
12 unit? 
13 A Yes, we did. 
14 Q And how did the students do with 
15 Dr. Kearney? 
16 A I'm thinking back. It's been a few 
17 years. Fine. I didn't -- I don't think anybody 
18 complained, but I think also with the environment, 
19 when we had the nursing students and they could 
20 see how much we respected him and enjoyed 
21 interaction with him, you know, I think that they 
22 picked up on that. I don't remember anybody being 
23 intimidated or upset by him. 

---

1 to be more precise, as to whom and in what 
2 circumstances and what have you, but, yeah, if you 
3 mean coarse language by saying "shit" when 
4 something breaks, yeah. 
5 Q And is it a common practice? 
6 A Well, I have never met a physician 
7 that doesn't, but I'm sure that there's -- there 
8 might be somebody who doesn't. 
9 Q But on the tag end of your answer, 
10 you also said it depends on the context. And 
11 would you explain to the panel what you mean by 
12 that? 
13 A Well, you know, if it is using the 
14 language to address individuals and people 
15 directly to them, no, I never do. So I will never 
16 call someone a name or describe someone or argue 
17 with someone subordinate, superior or equal, 
18 patient, family and talk to them. But using an 
19 expression of frustration when an instrument 
20 breaks or if something doesn't work and using a 
21 four-letter word, yeah, that's very common under 
22 very stressful situations. 
23 Q And in that situation, is it the 
24 stress of the situation that triggers that kind of 
25 language? 

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A I mean, you're probably not aware of that you are even doing it. Let me give you an example of what I'm talking about.

Probably about three or four years ago, we had a young kid, about 16 years old, poisoned, loss of airway, and we're trying to intubate him, he's vomiting and aspirating, about to code, and they gave me three endoscopes in a row, and all three had bad lights and didn't work. By the time I got the third one and the kid is about to die, you know, I said something like, "This piece of shit. Do you have one that works?"

Q All right. Let me ask you this, is this somehow a coping mechanism?

A It is. It depends on what you do, but if you use it on a regular basis, as the example I gave you, these are extremely high stress situations for everybody involved, so it is -- you know, it's like when you hit your finger or your thumb with a hammer, you may say a four-letter word and usually your kid is right next to you and you go, "I shouldn't have said that," but it's not really a voluntary thing. It's a very normal, human reaction to do that. So that is very common. As I said, I've been doing this for 40 years, and the people that actually do these things, I've seen essentially everybody, including people that I never thought would say that, in a moment of frustration.

But again, as I said, not directly to a person or an individual or whatever, but just as an expression, like when you say the F-word when you hit your thumb with a hammer, it just -- you're not calling anybody anything. You just hit your finger and you do that. That's very common.

Q Even though the panel has indicated this morning they know about this, I'm going to go there anyhow, are you familiar with Versed?

A Yes.

Q All right. And if it's administered to a patient say in a dosage of 8 milligrams, are they going to be conscious, unconscious?

A The average person, no.

Q Are they going to experience any extent of amnesia?

A Yes. They have both retrograde and antegrade amnesia.

Q And I understand the panel knows about it, but just for the record, what are those two conditions?
unusually high dose, but I don't know what it was
given for. So we don't use that kind of high dose
routinely to achieve this effect.
Q It may have been that amount of

A I don't know. It could be a mistake
and someone gave him too much. I mean, I don't
know why that dose was given. All I can say is
that's not the usual dose used, so I don't know
why it was used.
Q Right.
A And in addition to not examining

Q you haven't reviewed his charts to see
what happened during his procedure and inpatient
time at the University, have you?
A No.
Q You're not testifying to this panel
that he cannot have any recollection?
A Oh, I don't know who he is or what
we're talking about, no. I just answered a
question.
Q Now, I think you did a good job of
explaining the difference between cursing out of
frustration during a procedure as compared to
directing profanity or negative comments at
another staff member?
A Yeah.
Q For example, you might say -- pardon
me -- the word shit because the light on the
endoscope is not working?
A Uh-huh.
Q But you certainly would not believe
it's appropriate to tell the staff person who
handed you the endoscope that she was a moron,
would you?
A No, I probably wouldn't say that.
Q And because it would be
inappropriate to talk to one of your fellow staff
members that way, wouldn't it?
A Yeah, I would not use language
directly to insult or attack a person. I mean,
with malice, but again, it's contractual. I mean,
you may use an expression with a friend, but
everybody knows you're joking and you're not
meaning it. But no, I would never here or outside
on the street, I would not use language to attack
a person. I mean, I guess if I could provoke me
enough I would do that. It would take quite a bit
of provocation.
Q But in the context that you spoke

Q Were you aware of the fact that

A Yeah, I actually do know that, and
because I do know that, I use him extensively to
train my fellows.
Q For the record, may I ask you?
A Yeah.

Q That's especially true because part
of your role here, as many others in the room, is
in a teaching capacity, being an example for the
physicians in training; right?
A Uh-huh.
Q MR. BEAMUNA: That's all of the
questions that I have.
A Thank you, Dr. Berger.

EXAMINATION

By Mr. Pafunda:

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Q Yes.
A Yes.

Q Would you speak
up, please?
A In what capacity?
Q I'm a registered nurse in trauma
ICU.

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1 Q And how long have you been a registered nurse in trauma?
2 A About four and a half years.
3 Q During the course of that time period, have you had occasion to work with a
4 patient? Yes.
5 Q And would you tell the panel your experiences with _____ where that occurred, and so on?
6 A It occurred in the unit. I can list the bed. It was ____, which is probably not important. I would just describe it as, you know, a very frustrating circumstance, mostly because a patient that critical, especially in the family interactions, it's hard to grasp the idea of recovery when the likelihood situation, mostly because a patient that critical, their own, and that's a new feeling considering they haven't done that for a period of time. So that was, you know, one vivid conversation I remember having, is we are going to make this vent setting, the patient is going to look anxious, the patient is going to look restless, the patient is probably going to sweat. These are all common things. Our goal is to make his lungs stronger. And I can remember one point her saying, "I understand," but when that time came, you know, to see a mom see her son in that kind of state is hard, so that's typically when the complaints happened, when mom would see her son in a state of, you know, anxiousness, which is a very normal state to be in when you're trying to separate a patient from the ventilator. That's typically when we saw kind of negative interactions.

Q And while you attended to _____ did at any time his mother voice to you any complaints about Dr. Kearney?
A Never.
Q And your attendance to ____ extended over what period of time, while he was only in the ICU?
A Yes.
Q And I take it that was before he was ______ is that correct, to the best of your recollection?
A Yes.
Q Now, you've worked with Dr. Kearney?
A Yes.
Q Is he professional?
A I would say yes.
Q Does he use profane language?
A I have heard him use profane language, but that's only in -- you know, around the nurses, around the residents, around his

The nature or extent of those complaints were?
A Mostly not understanding the plan of care for the day and the aspects, you know, of the nurse providing care to the patient, different -- other providers not providing care for the patient, just not understanding that what we were doing was trying to get him better.
Q Were you able to get through?
A You know, I don't think so. I know that she filed complaints. I don't know if they were on me personally, but I know she went to customer service during my time of taking care with the patient. Mostly complaints of, you know, we weren't doing, you know, A, B, C or D. Though we were doing A, B, C or D.
Q And that was complaints against the nurses?
A Correct.
Q And when you say "she," again, for the record, that was _____ the mother?
A Yes.
Q And did you interact with her directly as a nurse, try to explain it to her?
A Daily.
Q Can you give us some examples of

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EXAMINATION

By Mr. Beauman:

Q Hi, Ms. Johnston, Bryan Beauman.

A Just a couple of questions.

Q Dr. Kearney never directed a profane or demeaning statement directly at you, did he?

A Oh, he probably cussed at me a couple of times, but only in aspects of just being Dr. Kearney, and I've had a lot of people cuss at me, so.

Q Well, how so? What did he say to you that -- directed at you?

A Nothing directly personally, just in a normal conversation. So correct, not directed.

Q We all may, or some of us may, at times use profanity when we're speaking kind of as an adjective, I guess. What I'm getting at is, you would agree with me, wouldn't you, that you would take offense if someone called you an idiot or a moron?

A Probably not considering the field that I work in, no.

Q You think it's appropriate?

A I do not think it's appropriate.

EXAMINATION

By Ms. Hansen:

Q So you take care of a lot of very sick patients; right?

A Uh-huh.

Q So you know that communication with families is sometimes hard. Why do you think in this particular instance with [REDACTED] it was so hard?

A She is not a rare case at all by any means. If you were to ask me or any other -- I can speak very confidently -- any of the nurses I work with in that unit, what we experienced with [REDACTED] is the majority of our population.

EXAMINATION

By Mr. Pafunda:

Q You put in there, and it's been addressed over the last day or so, that a lot of people do it, a lot of attending physicians and so on?

A Uh-huh.

Q What about nurses?

A Nurses have very, very foul language.

Q I know it's hard to quantify, but just from the tone of your answer, are you saying that the nurses have used foul language more than the attending physicians?

A I'm around nurses more. We see our attendings, you know, a couple of times during the day. I'm surrounded by nurses 12 hours, so in my arena, I would say yes, because I'm around them more.

MR. PAFUNDA: That's all.

PROFESSOR LAWSON: Thank you.

MR. PAFUNDA: Wait.

PROFESSOR LAWSON: I'm sorry.

MS. HANSEN: That's okay.

CONTINUED EXAMINATION

By Mr. Pafunda:

Q You think she's an outlier?

A No.

CONTINUED EXAMINATION

Mr. Beauman: I've heard a lot of people use profane language.

Q Have you taken offense to it?

A Never.

Q And why not?

A You know, this is -- well, I consider myself a Type A person. You know, most nurses you work with in ICU are Type A, tough skin. You make decisions quick. You don't really take anything personal because everyone's actions -- no one really cares, to be honest. You just take care of the patient and do your best job at it. So I, you know, never got offended. Tough skin, I guess.

Q You're actually -- you have a Ph.D.

A I just got my DNP. It's similar to a Ph.D. except for it's clinical practice research, so I'm a nurse practitioner. I just have my doctorate on top of that.

Q And your future plans are?

A I will be working with a cardiology group in Louisville out of Norton.

MR. PAFUNDA: That's all.

PROFESSOR LAWSON: Mr. Beauman.
It's a community-based program.

It's growing. There's one in Louisville now and it's spreading across the country. And again, it's community based. When I first started, I practiced mainly at Saint Joe. I didn't want it to just be a Saint Joe thing. I wanted it to be Saint Joe, Central Baptist, the University, the whole community involved.

Q How did you build that up,

Dr. Moore?

A It was actually a slow process. I had actually been thinking about it for 20 years, made a couple of attempts to getting it up and just didn't have the skills. You know, couldn't grant right, needed a lawyer, needed an accountant. Until I could get that team around me, that's when it all sort of came together in September.

Q And Dr. Kearney participates in the program?

A Absolutely. He's one -- he's one of the first people we were able to get from the University of Kentucky to do it, and he's consistently been there.

Q And has he brought students and residents over?

A Oh, absolutely, and we've always felt that's part of our program and our mission as well, to the spirit of giving back to the community was important, so we have high school students, premed students, medical students, residents as part of the program to teach them that, you know, as they move along and they get these special skills, that they need to give them back to the community.

Q And does he hold a position with Surgery on Sunday?

A He's actually the chair. Right now he's the chair of our board.

Q In your opinion, is it important for him to be able to function with Surgery on Sunday?

A Absolutely.

Q And that is not only the skill as a surgeon, correct, but also as a recruiting ability?

A His recruiting ability, his leadership.

Q In your opinion, you've been around him, I guess, on Sundays, so to speak --

A Sure, sure.

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Q -- is he professional?
A Yes.

Q Any complaints about the way he does his work or his behavior?
A No.

Q As this service expands, I take it across Kentucky, is the membership growing, the service membership?
A I think to a certain degree, yeah. I mean, actually, Obama Care has put a little kink into our thing because you couldn't have health care and we're having to sort of change the rules so we can reach out to people that are actually now have insurance that are underinsured, and so it's sort of changed the dynamics of what we're doing a little bit and it's -- we're sort of fighting through that now, and Dr. Kearney is part of that.

Q Absent that looming situation, though, the function of the service it provides to the community is expanding?
A Yes.

MR PAFUNDA. That's all I have.

MR. BEAUMAN: I don't have any, Dr. Moore.

PROFESSOR LAWSON: Thank you, Dr. Moore.

PAUL KEARNEY: Thanks, Andy.

MR. PAFUNDA: In order to expedite this and take it out of the lawyer mode so much, I'd make a suggestion that if the panel has questions for Dr. Kearney, maybe the panel would want to address those now and we might be able to wrap this up.

MR. BEAUMAN: That's a good idea.

MR. PAFUNDA: I was just thinking about that in terms of --

MR. SALSABURY: That seems good.

MR. PAFUNDA: Rather than lawyers on lawyers.

PROFESSOR LAWSON: I'm sure they're going to have questions.

MR. PAFUNDA: But I thought that they might want to start out without it. I don't know if that is inappropriate or not.

MR. SALSABURY: It's okay with us.

MR. BEAUMAN: It's okay.

PROFESSOR LAWSON: Dr. Kearney, as you know, we're requiring everybody to affirm they'll testify accurately and truthfully.

Q 2000?
A Yes. And --

Q What do they do in that? What is an anger management course?
A MR. PAFUNDA: That's a great question.

A You know, I can't even -- I can't even explain it to you. The only thing I came out of there knowing was there was nothing wrong with me. I can tell you that. And I distinctly remember the gentleman talking to me and saying, look, you know, anger, sadness, happiness, depression, those are all part of life. Those are all part of emotions and some people have more than others. And, you know, he asked me -- he asked me, you know, "How long have you been this way -- that's what he asked me. He said, How long have you been the way you are?" And I said, "First grade, since first grade, since my first recollection of being alive."

Honest to God, that's the way I've been. That's me. And it has never been an impediment to my progression or to my career. So, you know, there were a few things they gave me and -- you know, I mean, I'm in a highly stressful situation.
business and, you know, you guys don’t probably remember, but there were only three of us and for a couple of years there were only two of us doing trauma, and we might take care of 60, 70 patients in the hospital, 20 of them or so in the ICU, and we have a team of residents taking care of these people. We have emergencies coming in all of the time. We’ve got traumas coming in. We’ve got crap going on in the ICU, patients, you know, going down. You’ve got other specialties in the operating room calling you to ask you for help.

It can be a highly stressful lifestyle.

And, you know, I adapt pretty well if you think about it. I mean, I’ve seen hundreds and -- hundreds of thousands of patients over my 27 years, hundreds of thousands. And, you know, what do I have, seven -- six, seven things that Bryan put on the timeline over 27 years of clinical practice.

And, you know, we all say or do things that we sometimes regret and have to apologize for. But I’ve always looked at it, and this is important, that the patient’s life and safety are sacrosanct in there. That, you know, if you said something to somebody, you go AN/DOR Reporting & Video Technologies, Inc.

. apologize for it later, but patient care came first, first, and that’s always been my sort of mantra to the residents as well. I say, you know, this is about helping people and caring for them in the worst of circumstances, and it’s always patient care first.

So, you know, I’ve -- you know, most people will tell you that I’m way better now than I’ve ever been. That’s what they’ll tell you. I was tough, and I was raised by a physician. I trained with some of the best surgeons in the country. And I can tell you this, I’m a pansy compared to those guys. And, you know, it’s in the culture of surgery. We do highly stressful work. You can kill a patient like that. Like that you can kill them, and it’s over before you know it, thousands of a second. Your decision-making, make or break. You know, we internalize that. We -- you know, sometimes we internalize it. Sometimes we take it home.

Sometimes we take it out on our colleagues.

Sometimes we take it out on our spouses.

Sometimes you go to the gym for four hours.

Sometimes you walk around the block a hundred times, you know, to decompress. All right.

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Northeast and they just don’t understand you down here.

And I said -- because he was from the Northeast. And I said, "Well, I don’t know if -- I don’t know if I agree with you there, but certainly most people have done well under my tutelage and under my care, and most of them are quite complimentary."

You’re always going to have a few detractors. And I remember one of my mentors used to say to me, "Show me somebody that everybody likes and I’ll show you somebody that stands for nothing."

I always thought that was an interesting quote.

So I think that I did significantly well after 2010. I really did. And I’ll tell you this, I also think, and this is going to sound conspiratorial to all of you, but I think that there was a willful -- a willful attempt on the part of certain people in hospital administration to take me down because they didn’t really like me. Some of them really didn’t like me personally. And I’ll tell you this, it’s important to remember that if you look at the AN/DOR Reporting & Video Technologies, Inc.
context of my complaints, most of my complaints
occur in the context of patient care in a high
stress environment, the operating room. And I can
walk you through examples of each and every one if
you want. I mean, I can go back and regale you
with everything.

I think that, without sounding too
crass, one of the things that bothered me the most
about this little package of stuff that
Susan McDowell came with was that it was cherry
picked from an otherwise pretty good curriculum
vitae and personnel file. They were cherry
picked. And there were a few things that bothered
me. One is, with the exception of the 2012
complaint, I was never told any of these things
were going to be in my personnel file, and I
didn’t know they were there until we requested my
personnel file when they asked me to take a paid
leave. That’s when we found all of these
documents floating through my personnel file.

Q  Had you ever asked to look at your
personnel file before?
A  No, I mean, why -- do you look at
your yours?
Q  No, I don’t, no.

And that night in the operating
room, and I remember it clearly, we had three
traumas -- well, I was closing a huge case, a big
thoracoabdominal case where I’ve got to put all
the organs back after the spine guy’s work, I’ve
got a trauma emergency coming in and I’ve got
another emergency to do, and I simply asked the
nurse at the desk to help us.

And she said, "I can’t leave my
post."

So I said, "All right."
So I went down to the emergency room
to look at the trauma that was coming up. I got
the chief residents settled in another room. I
called my partner to come in and help me. And
when I got back to the OR desk, she’s shopping
online on her computer. Now, I’m tired. I’m

stressed. I got a lot of stuff I’ve got to
coordinate, I yelled at her. I would bet that
every one of you would have raised your voice. I
would bet.

In 2010, when they asked me to take
this anger management course, I had complained
about anesthesia services being less than
satisfactory. I had a retired University
professor who was sick with acute cholecystitis
and, you know, you can have patients who have
acute cholecystitis and they’re going to be okay,
just put them on antibiotics. This guy looked
sick to me, and I have a lot of clinical
experience, and I put him on the OR schedule, and
delay, delay, delay, delay, delay.
And I was home sleeping, and I said,
just call me when we’re ready to go. And you
know, the nurse at the desk called me, and I said,
you know, would you really want this -- you know,
delayed me again. I said, "If this was your
father, would you be angry about it, if it was
your father"?

The next day I complained about
anesthesia services and Bernard Boulanger sends my
letter to anesthesia, and the next thing you know,
I'm getting rung up for unprofessional behavior.

Really, that's what happened. That's what happened.

So I -- I, you know, I'm not being picked on, believe me. Obviously I wouldn't be

where I was -- where I am, I should say, but that

basically is -- I could explain each of those

incidents to you in detail.

Q I'm going to speed up to the

incident with

A Yeah.

Q Let's start in the endoscopy suite.

It sounds like a procedure gone a little bad, right, you get control of it, but the whole idea

of calling a fucking quad, I mean, how did all -- explain to me how all of that --

A Yeah, it's totally contrived. It

is. I did call him a dumb ass. We put him in the

room. The residents medicated him. I said how

much has he had? They gave me the number, 50, I

think, in two.

Q And it's typical that the residents
do this, that you don't have anesthesia, Safari,
or anything like?

A It depends. Sometimes for a

complicated case where you -- where you have to

probe the patient and, you know, it's really going
to be dangerous, yes, you would get anesthesia
involved. I didn't think that this -- this was a

pretty straightforward case. I didn't think there

would be issues with him.

I have trainees, remember. I had a

junior guy on a guy who had just been

laid, I had another trainee doing the
gastric part, and I'm sort of watching everybody.

I have to watch the patient. I have to watch the

nurses. I have to watch his vital signs. I have
to make sure the and I've got to

make sure they're on target

and I have to make sure he's

adequately sedated.

So he had had 50 and two, and I

said, well, you know, "Try and see if you can...25

with 50 and two," and the kid bucked, and -- but he couldn't move, and this allegation

that somebody laid on him, well, that's crazy.

And the nurses jumped on his arms and I said,

"Ladies, he's quadriplegic. Just gentle restraint

is all you need on this gentleman."

We don't restrain people up there.

In other words, we don't lash them down. Those
days are long gone. We don't do that anymore. So
they can move, and people who are sedated can

interact with you. They actually can. They can
talk to you and they'll have no recollection.

So we tried to

and the hand of the operating
resident -- or was close to his finger. That's --
this kid is So a real risk
to my resident. So I said something I shouldn't

have said. I said, "Hey, dumb ass."

Now, I shouldn't have said it, but I

said it, but once it's out there, you can't take
it back, right. It got his attention, and we

sedated him effectively after that. It took 6

milligrams to put him out.

Q So a total of 6, or 6 in addition to

the two?

A Well, we gave him 6 and he was gone.

I mean gone. Now, I've done thousands of these

He was gone. Eyes closed, out. All

right. And I can tell you that those nurses in

there or that resident certainly don't have the

qualifications to say sedation -- in fact, I got

scared when he -- when I knocked him out, I was

now worried. You have a tetraplegic patient who's

relying just on his diaphragm to breathe remember.

There's no intercostal muscles, no accessory
muscles, and he's got a trach in place, and, you
know, that resident goes down the wrong hole, he

could pop that trach out and all of a sudden I've

got -- I've got a life-threatening emergency in

what is otherwise a simple

Now, with assistance, the kid got

the and the rest of the procedure went

smooth, actually. Took us maybe 12 minutes,

maybe. And as a routine, and Ross Strong is here,

he's watching, he's over my shoulder, he says,

"You want me to help?"

I said, "No, no, we're all right.

We're all right."

You know, I'm trying to -- you know,

it's always a line -- as you know, it's always a

line, when do you intervene as an attending? How

far do you let them go, right? And that's a foggy

line as to when you back out.

Now, if you ask me in retrospect, I

would tell you I should have intervened sooner,

but I let it go. Dr. Peterson tried to put the

utterly horrible, I mean just...
<table>
<thead>
<tr>
<th>Q</th>
<th>He tried two attempts?</th>
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<tbody>
<tr>
<td>A</td>
<td>Yeah, and it was just absolutely -- then the poor kid comes flailing up, arms flying, everybody jumps on him. I said, &quot;Stop it. Just don't do that.&quot;</td>
</tr>
<tr>
<td>A</td>
<td>I gave him 2 milligrams quickly. I said, &quot;Ross, take the scope from Justin.&quot; Ross got the [redacted]. We finished. We were done.</td>
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<tr>
<td>Q</td>
<td>So did Ross do both the first and the second?</td>
</tr>
<tr>
<td>A</td>
<td>He had to help him the first time, too.</td>
</tr>
<tr>
<td>Q</td>
<td>He helped him the first time?</td>
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<tr>
<td>A</td>
<td>Well, he helped him [redacted] and then I said back away, yeah. Ross was there.</td>
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**EXAMINATION**

**By Ms. Tannock:**

**Q** Were you asked to resign from that position as associate chief of staff in 2000?

**A** No. I resigned. Didn't want to do it anymore. I did it for about a year and it was -- it's just not -- it's not me. I'm not an administrator, don't have -- I don't have the -- I don't want to sit in meetings all day shuffling papers. I couldn't do it. I just said, I'm done. I've had it.

**PROFESSOR LAWSON:** Dr. Williams?

**MR. WILLIAMS:** A couple of things.

**EXAMINATION**

**By Mr. Williams:**

**Q** What was the reasoning for you going from internship at Gainesville two years, at Thomas Jefferson and then heading to South Florida?

**A** Yeah, well, believe it or not, believe it or not, I started out as an otolaryngologist. That was my -- that was my career path. And in those days you had to -- in those days you had to do -- it was different. It

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And this concept that I called him a fucking quad in a derogatory manner to his face is absolute fiction. It's fiction.

**Q** Would you have said it to a resident potentially sort of on the periphery?

**A** Never. It would have been in a closed space well away from everybody else, and I would not have used it in a derogatory manner ever, ever. I don't. You've heard a lot about me, oh, he's derogatory, no. You know, half the time, and when you get into tough situations, half the time -- no, I'd say more than that -- you really don't -- you heard Rolando Berger say it, sometimes you don't even know what you're saying. You're just focused on that patient, tunnel vision. You're going for the patient. That's it. That's your total focus. Everybody else is in the periphery -- you know, and you might -- you know, if you need something, you might say something to somebody that's not nice. You might. You just have to apologize for it later. You say, look, I'm sorry. I mean, I don't know what I said, but I apologize for it.

**PROFESSOR LAWSON:** Dr. Tannock, any questions?
**Doctor of Science?**

**A** Yes.

**Q** When is that, because you didn’t have that listed in your education?

**A** Yeah, it’s in there. It’s an honorary degree. I received an honorary degree from Providence College, my Alma mater, in 2012. It’s a career service award. I mean, it’s a -- it was a great honor to get a Doctor of Science from your undergraduate school. That’s pretty impressive. I was impressed.

**Q** You should be. That’s impressive.

**A** Yeah.

**PROFESSOR LAWSON:** Any further questions, Dr. Williams?

**MR. WILLIAMS:** No, I think she asked them.

**PROFESSOR LAWSON:** I think we’ll go back then to Mr. Pafunda and let you start, let you question your client.

**MR. PAFUNDA:** I will.

**MR. WILLIAMS:** She’s got one more.

**MR. HANSEN:** I have one more.

**PAUL KEARNEY:** Yes, Wendy.

CONTINUED EXAMINATION

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**By Ms. Hansen:**

**Q** Do you think you have a problem with staff and anger?

**A** No, you heard them.

**Q** No, I did, but, I mean, do you think you have it?

**A** No

**Q** Okay.

**A** -- I don’t.

These are stressful situations, right. They’re stressful situations.

**Q** I get all of that.

**A** So, you know, and you heard Andrew articulate it well yesterday. If you look on average across the United States on trauma guys, trauma surgeons, most of them burn out about 15 -- about 15 years. Most of them are burning out about 15. The ICU nurses are actually even higher. You know, it’s about five years for ICU nurses. We burn out -- you know, it just depends on how you flame out a little bit. You know, some of us flame out differently than others.

I always said to myself, if I was a danger to anyone, I’d quit. And, you know, I’m 61, so, you know, my role already on the trauma AN/DOR Reporting & Video Technologies, Inc.

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**1** kind of stuff.

**2** Do I have a little bit PTSD? Maybe.

**3** I might, I might. I’ve certainly never been diagnosed with that, but, you know, I’m a little burned out. There’s no question about that. You do this for 30 years, it will burn you out.

**Q** You’re 30 years into it now? I haven’t counted.

**A** 27 I have, but if you count my fellowship, it’s almost 30 years. 30 years is a long time to be doing what I’m doing. I still enjoy it. And I still enjoy parts of it. And I still have teaching to give. And I still -- I’m a value to the medical students. You know, they love me. I don’t know why, but they do. They think I’m --

**Q** I would say most. There’s certainly a letter in here, complaints from a medical student; right?

**A** One medical student in a class of 150.

**Q** No, I get it. But I don’t know if that one is just one or represents more than that.

**A** It’s hard to know.

**25** A Well, let’s go back to that lecture, AN/DOR Reporting & Video Technologies, Inc.
Mr. Pafunda: It's actually an audiotape.

A Oh, yeah, it's not a video. It's audio. They have the whole audio of the lecture, and at the end of the lecture, I got a -- well, the only thing I can tell you is in the room they stood up and clapped. On the audio, you only hear them applauding. But they stood up and clapped for me. And, you know, that was a compliment. I took it as a compliment. It was only later that I learned of this -- this --

Q Complaint?

A -- yeah -- this letter.

It was never in my personnel file, by the way.

Q So looking towards the future, like AN/DOR Reporting & Video Technologies, Inc.

If you could choose what you do in the next five years here at UK, what would you do? I mean, how would you do clinical work, teaching work? I'm just curious.

A Well, you know, I don't want to give you the enemy too much information. I don't think you're the enemy, by the way.

Q No, we're not.

MR. PAFUNDA: Let... I'll tell you, Wendy, and -- because you're going to -- and I'm not saying anything about your age, but you're going to face this as well. You have to decide when and how you exit. Right.

Q Right.

A And this is difficult for doctors; right?

Q Right.

A Because as my old man said, and it was a hilarious line, you know, he parroted General MacArthur who said, you know, "Old soldiers don't die. They just fade away," right.

And my old man said, "Old doctors don't fade away. They just die."

Now think about that for just a second.

Q Little scary.

A Yeah. And so I can't do the intense work any more. In other words, with the same frequency. Believe me, we used to do two weeks at a time on that service, and at the end of the service, you'd have to sleep like two days to get over it.

Now, my exit strategy was to take very little service time, maybe a week every two months. I would take the service and/or critical care about a week every two months just to relieve the other guys, vacation, meetings, and then do mostly just sort of a cottage industry clinical practice and focus my efforts on Surgery on Sunday, which I love to do. I really love that, and it's a great program and it's great to bring the medical students and residents over there and teach them about altruism and kindness and all of the things they need to know about being a doctor, what it's like to be a doctor, and how hard it can be.

And then, you know, gradually pare my time down. You know, the University has a very nice plan. You can go 80/20, 50/50, and, you AN/DOR Reporting & Video Technologies, Inc.

I know, I would be done. That was my exit strategy until, you know, this.

PROFESSOR LAWSON: Mr. Pafunda, I think we need to get back to you directing your examination of him so they can cross.

CONTINUED EXAMINATION

By Mr. Pafunda:

Q Be more specific, because that hangs in the air, when you say exit plan, you're talking in terms of generalities?

A Well, you can't work forever.

Q Well --

A Well, okay. You can work forever.

My dad worked until he was 75, but he had nine kids, so he had an economic reason to keep working.

Q But I think the tenor of the question and really what's on the table is, would your focus be more in the teaching arena?

A Yeah. Oh, yeah. No, my value is teaching and experience. And the other night, as an example, I know that I'm not supposed to talk to staff, but they called me because they had a vena cava filter perforating through the vena cava and into the duodenum, and they said, "What in the AN/DOR Reporting & Video Technologies, Inc.
hell do we do with this? What do we do?"
1 So, you know, nobody had seen it or knew what to do with it. I'd seen it. I knew what to do with it. So I have a huge resource value to the institution in terms of my technical skills and my judgment in terms of critically ill patients. And I'll give another example. We didn't bring elective case sometime this past summer, I can't remember exactly, and I was doing a simple case, hernia or something, and I get this panicked call from the room across the way on the other side of the new OR, and it said, "Procter needs you right away. He can't wait. He needs you right now."
2 And I go into this Class IV Mongolian goat herding event, people screaming. You know, trans -- people bringing transfusion things in, ten anesthesia guys screaming at one other, "His pressure is 30, his pressure is 30. We're going to lose him."
3 It was a young kid, little young kid, shot in the abdomen, and Levi goes, "This is -- well, might as well use his language -- he goes, "This is fucked up," is what he said to me.
4 And he goes, "I have no idea where this blood is coming from. And I need your help."
5 And, you know, everybody in the room was panicked. I mean, they were freaking out, and I just went in, stuck my hand in this pile of blood that was just gushing out of his retroperitoneum, and I put my finger in the hole and stopped it. And I go, "Okay. Now, let's get some control."
6 So with my finger in the hole, Levi did all of the work and we saved that kid, 18. We saved him. And, you know, that's what I do.
7 Q Yesterday I threw out a number, but let's look at it terms of math, you've had over the 27 years how many staff, patient, resident interactions in terms of empirical data or just putting a number on it, would you say?
8 A I can't even -- I mean, it's got to be over half a million, maybe a million in terms of actual encounters with -- well, let's give you an example. The week where this happened, I had 70, seven zero, inpatients, 70. I saw each and every one, all 70. I talked to every single one and their families. The residents
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before you get into that.

Now, let's just talk about the
discipline that was meted out to me, and I
want to say this in my own words from my own
heart. Okay.

They asked me to take a paid leave
on September 5th after this "investigation."
All right. They asked me to take a paid leave. They didn't tell me it was voluntary. They say they told me, but they
didn't tell me. They basically shoved the
documentary --- Cliff Iler, Bernie Boulanger,
shoved a paper across the desk at me and
said, "You're not to come to the medical
campus. We'll call you."

Continued Examination
By Ms. Hansen:

Q Did they tell you why?
A Yeah, they said it was over this
incident, patient incident. And in the
quote of Bernie Boulanger -- here is his quote,
"Hey, this one has legs."

All right. So I knew immediately
that they were going to throw me under the bus.
I've got some history with Bernie and we can --
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Bernie Boulanger and I'll elaborate on that.
So they ban me from medical campus
and ban me from talking to my colleagues and
staff.

Q Do you know what it meant at the
time, kind of voluntary?
A No, they said it would be voluntary
until the investigation was over. I knew there
was something up, so I retained an attorney.
And I'm going to tell you this in
all seriousness, and I want each of you to listen
carefully, we met, my attorney and I, we met with
Mr. Iler and Mr. Thro in a meeting -- am I allowed
to tell them this?

Q Did you say Bill Thro?
A Yes, Bill Thro.

THE WITNESS: Am I allowed to say
this, Bernie, or not?

MR. PAFUNDA: Yeah. I'll stop you
when I want to stop you, if it gets into
confidential stuff.

Q So Mr. Thro said the following to
me, "In the minutes of the Medical Executive
Committee meeting, we offered Dr. Kearney a
generous severance package and he declined."
AN/DOR Reporting & Video Technologies, Inc.

Mr. Thro said to me in front of Mr. Iler, was
"You negotiate a buyout and sign this
confidentiality agreement or we're going to ruin
your career."

Huh? We're going to destroy you
basically is what he said. The confidentiality
agreement, they wanted me to write letters to
donors, and I want you to know why --

MR. BEAUMAN: Professor Lawson --
A And I want you to know why they
wanted me write letters to donors.

PROFESSOR LAWSON: Excuse me just a
second.

MR. BEAUMAN: This is getting into
negotiations between the parties which
doesn't need to be discussed.

THE WITNESS: I think it does,
Bryan.

MR. BEAUMAN: Well, I know, but I'm
stating my objection.

PROFESSOR LAWSON: No, your objection
is what, on the basis of some kind of
agreement, settlement agreement?

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residents tell me that when they're tired of hearing from me.

They wanted me to write letters to donors who had withheld donations based on my disciplinary action. They wanted me to write letters to those donors and say that it was okay for you to give money now. Dr. Kearney was okay was all of this. I wasn't okay with it, no.

Q  Do you know how many donors there were?

A  I don't know, but I know it was a seven-figure number.

So when they suspended my privileges, and I'm just going to move forward, when they suspended my privileges, and this is important, they wrote in the minutes that I was a substantial danger to patients and staff. I've been here for 27 years, a substantial danger to patients and staff. They came up and they locked my office door, shut my e-mail off, took my computer. Then sat the staff down -- sat my staff down in my office that I work with, and I can give you the names of the people that did it and where they got the authority to do it, and said,

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"Dr. Kearney is hostile and potentially dangerous, and if you see him, you need to contact us or UK campus police."

And they banned me from campus as well. And then would not allow me to talk to any of my colleagues, any of them. And then you heard from Davy Jones, and I think it's important, that they then channeled my e-mail traffic to the legal office after disabling my access to my own e-mail at the University. Now, I'm sure they have the authority to do that, but Mr. Thro was involved as well, as you heard in the CC on the e-mail that he was involved. All right.

I could have brought 500 people in here today, or I could have brought a thousand people to speak on my behalf, some of them involved with these incidents, some of them not.

I'll tell you this: Many of them had been intimidated in one form or fashion, and they were scared to come. You heard J.R. yesterday, he had a warning from Zwischenberger not to get involved. The secretaries would have come and told you what they said to them, but they said, "We have no protection. They could fire us in a second."

The CRNA's who work with me in the AN/DOR Reporting & Video Technologies, Inc.
THE WITNESS: She asked about --

Bernie.

MS. HANSEN: Well, I didn’t ask about verbal abuse from --

THE WITNESS: I took liberty. I'm sorry, Wendy.

MS. HANSEN: Yes, you did. But --

PROFESSOR LAWSON: I think we need to try to focus on the issues that are before this panel.

MR. PAFUNDA: If I may engage you.

PROFESSOR LAWSON: Go ahead.

MR. PAFUNDA: The issue is whether the punishment is unreasonable or unfounded or not substantiated by evidence. And if you want to, just on a technical avenue for the record, if it's unreasonable, you can look at the old adage two wrongs don't make a right. However, in this context whether it's unreasonable, it's a question of whether two wrongs are disciplined in a different fashion. So I think that's the point Dr. Kearney was getting at. You know, here I am for let's call it abusive language, and yet we have all of this activity going on across the board, call it a culture or whatever, of abusive language.

Now, does that make you an easy target for disciplinary action?

THE WITNESS: Sure it does.

MR. PAFUNDA: Is the disciplinary action taken in this case unreasonable? And I just want to make that comment for the record.

PROFESSOR LAWSON: You can do that. You can make your argument on that, Mr. Pafunda. All I'm saying is, there's a limit to how far we can go on this, and I believe with respect to this doctor that he's talking about, I believe we've gone too far.

THE WITNESS: All right. That's fine. I didn't want to say anything about him, actually, but he was pretty -- his comments yesterday were, you know -- you know, he was the one that did the interview, and I think if you would have asked -- we didn't ask -- but I'll tell you this, she would have said how many times does the Chief Medical Officer and two attorneys come to interview a patient; right? You know what she would tell you, never. So why this time? Right. Why?

PROFESSOR LAWSON: Mr. Pafunda, proceed with your questioning.

CONTINUED EXAMINATION

By Mr. Pafunda:

Q The document in front of you, it bullet points --

MR. PAFUNDA: Do you have it, Bryan?

THE WITNESS: Yeah, it's the one that -- it's the package.

MR. BEAUMAN: It's in the package.

THE WITNESS: Yeah, it's the package that Iler put together for the Med Executive Committee.

MR. BEAUMAN: No, I think what you're talking about -- this is actually the investigative report.

MR. PAFUNDA: Yes, that's correct.

THE WITNESS: Yes.

Q If you would -- that bullet points down the catalog of actions that are underpinning

---Page Break---

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---Page Break---

Baby is dead. Ultrasound, baby was dead. I mean, which happens, baby was dead. And the OB saw her and said, well, you know -- and she was bleeding. She had vaginal hemorrhage at that point. She had vaginal bleeding. So they saw her, the residents, not the attending, the residents saw her, and then basically went to bed. And the girl bled all night, bled all night. And by morning, respiratory distress. They were inducing her now.
We had to intubate her. That could have all happened with[redacted] but she bled all night. We were giving her blood all night, transfusions. There was absolutely no reason for any of that. That should have been stopped. She bled like hell. And I said to the residents, "I don’t want any of you to get the impression that this is the right way to take care of a patient because it’s not."

And I said something directly to Dr. Milligan, and he didn’t like what I said, and he writes this letter to Byron. So I wrote a response, which -- and you don’t have it, which is very eloquent and detailed exactly about Class III hemorrhagic shock, hypotension, organ failure. He’s not expert in that. He’s an OB/GYN. This is my field. That girl almost died, almost died, and it was totally unnecessary, patient care.

Q Next bullet point.
A Which one?
Q Comes right after that.

PROFESSOR LAWSON: He’s talking about __________ I think.

MR. PAFUNDA: Thank you.

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A Yeah, that’s all related to that incident in the operating room. They’re all related to one thing, __________. They’re all related to one incident in the operating room. And Bryan mentioned the letters yesterday by __________. I apologized to all of those people. I was in an operating room where I normally wouldn’t be, and I’ll tell you why, but the most important thing is there were no derogatory comments or harsh statements made to any of those staff members in there. They were actually fighting amongst themselves.

I was asked by __________, who’s no longer here -- __________ brother-in-law was dying of a __________ and he had a metastasis in his back that had led to collapse of vertebra and a lot of pain and some neurologic symptoms. They asked me to do the anterior exposure so that they could put an interbody fusion in to try and palliate for him. It was a huge operation, big thoracoabdominal operation. We had to open the chest, abdomen, take the diaphragm down, spleen, liver, kidney, everything has to be moved out of the way. It’s very bloody because tumors bleed like hell. It was a long case. Took me not too long to get it open, but the neurosurgeons came in and did the interbody fusion, and then I had to come back and close, and like most neurosurgeons, everything was bleeding, so I spent probably an hour trying to stop all of the hemorrhage around the metastatic disease and the retroperitoneum. And, you know, they were very grateful, that family, that I did that for him, because it was sort of a reach, you know, and I apologized to all of those people, and I worked with them and alongside them until they retired amicably, and I never had any problems with any of them again.

I actually helped __________ He had a medical problem and I took care of him, __________

Q Let me ask you --
A I trained their__________ in medical school. She spoke very highly of me.

Go ahead.
Q Let me ask you, is the fact that you apologized to them and worked alongside of them, is that somewhere documented in your personnel file?
A Yeah, I wrote apology letters, but, __________

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A Perman?

Q Yeah.

A Yeah, I already told them about that. That was when the girl was online shopping, three emergencies. Patient care. It was patient care.

MR. WILLIAMS: One thing, though, about this incident, he actually references something before, where he said he has zero tolerance. Why was this a follow up? Seems like this is more of a follow up, referencing a prior incident, too.

THE WITNESS: There was no prior incident. I don't know what the hell he's talking about.

MS. HANSEN: I agree with you, it does state that in Perman's letter.

THE WITNESS: Yeah. Well, you know, not only did I --

(Off the record.)

THE WITNESS: I apologize. I'm pretty passionate about this issue, as you might imagine. Let's just say that Jay and I had a volatile relationship.

Q But the question on the table from AN/DOR Reporting & Video Technologies, Inc.

the panel is the letter itself says Dr. Perman is referring to a previous Incident?

A Yeah, I don't know what he's referring to. If there was one, I don't know about it.

Q Well --

A And --

MR. BEAUMAN: Page 60.

MS. HANSEN: At least to a previous discussion that he had with you about --

THE WITNESS: Oh, yeah, well, we had some heated discussions, yeah.

MR. WILLIAMS: Why?

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THE WITNESS: That's correct, yeah.

You're saying that you never received this letter on January 7th, 2009? Again, patient care, nurse at the front desk. It's interesting, I spoke to me about their "investigation." I don't know what number it is in your book.

THE WITNESS: Not until I looked in my personnel file. It was in my personnel file. PROFESSOR LAWSON: I think that letter was not addressed to him. THE WITNESS: I don't know if it was or not, but.

PROFESSOR LAWSON: It was signed by those four physicians.

THE WITNESS: And a nurse. MS. HANSEN: And a nurse.

AN/DOR Reporting & Video Technologies, Inc.

THE WITNESS: And a nurse. PROFESSOR LAWSON: Three physicians and a nurse.

MR. PAFUNDA: Three physicians and Colleen Swartz, I believe.

THE WITNESS: Yeah.

PROFESSOR LAWSON: I don't think it was addressed to Dr. Kearney.

THE WITNESS: Yeah, it wasn't. I had never seen it. That's why I'm telling all of you, you need to look in your personnel files. All of you. You'd be surprised what's in there.

A Next incident, if you go down. Q Of 2010, it is a pure patient care incident. Again, patient care, complaint. This is interesting, I complained about the anesthesia services, legitimate complaints. They actually made changes after my complaints. The next thing I know, I'm being accused of unprofessional behavior. They actually have the story wrong. They claim that I abused -- verbally abused a nurse at the front desk. Untrue. It was completely untrue. Not only that, they never spoke to me about their "investigation."

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Paragraph 1, did you at that time enter into a voluntarily remedial action on February 17, 2010? A No.

Q Okay.

A I did not. Also, we've already been through this, I did not resign as the chief of the trauma service. And I did not take a 21-day -- or 28-day paid leave. I mean, that's just fiction. The whole thing is fiction.

MR. WILLIAMS: But in 2010 you mentioned you did go to an anger management course?

THE WITNESS: Yes, later, yeah. But this draft document is totally out of line.

None of that happened. Not any of those items in there happened.

MR. WILLIAMS: But just ignoring the draft document for a second, you in 2010 went to an anger management course, and I'm guessing that was based on this February 5th, 2010 letter that you signed?

THE WITNESS: Yes.

MR. WILLIAMS: Can you tell me a little bit about the 2010 letter? I'm guessing that was in follow-up?
that my behavior -- actually, my behavior
usually is about patient safety. It's about
patient care, patient safety, timeliness of
patient care. That's usually when I'm
complaining. And I can complain
to discrete vociferously about it, because it's what I
care about, patients.

PROFESSOR LAWSON: Mr. Pafunda, could
we try to stay on track a little bit and
move on?

MS. HANSEN: I want to clarify one
thing.

THE WITNESS: Yeah, Wendy.

MS. HANSEN: So the
Dean Perman letter, who made the complaint
for that -- what -- it's not clear to me,
but it is a complaint about --

THE WITNESS: Mae Jo Mastin-Biddle.

MS. HANSEN: -- you have this
outburst of expletives and --

THE WITNESS: Mae Jo Mastin-Biddle.

She's on our witness list if you want to
talk to her.

MS. HANSEN: So she made the
complaint about you and the expletives?

THE WITNESS: Yeah, Wendy.

MS. HANSEN: And yet at that time,
she found what you said offensive and it
makes its way up to Dr. Perman?

THE WITNESS: Well, it was a
high-stress environment that we were in.
There were, you know -- you know, when you
get into those situations -- like I said,
you get into the situations and you're
trying to dole out your resources, you know,
we say things to one another that we don't
always -- I mean, believe me, she complained
about me, but I'll tell you some of the
stuff she hurled at me was equally not nice,

THE WITNESS: Yes.

MS. HANSEN: And she is a --

THE WITNESS: OR nurse. And she's
probably sitting right out there if you want
to talk to her, but I thought you were
tired.

MR. PAFUNDA: I think she is out
there.

THE WITNESS: She is out there.

Q And she's continued to work with you
since?

A Loves me.

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we say things to one another that we don't
always -- I mean, believe me, she complained
about me, but I'll tell you some of the
stuff she hurled at me was equally not nice,

THE WITNESS: Yeah, Wendy.

MS. HANSEN: And yet at that time,
she found what you said offensive and it
makes its way up to Dr. Perman?

THE WITNESS: Well, it was a
high-stress environment that we were in.
There were, you know -- you know, when you
get into those situations -- like I said,
you get into the situations and you're
trying to dole out your resources, you know,
we say things to one another that we don't
always -- I mean, believe me, she complained
about me, but I'll tell you some of the
stuff she hurled at me was equally not nice,
but I didn’t write her up because I don’t write you up in those high-stress situations, I really don’t, because I realize how stressful they can be. I understand that.

Q  Move on to the next bullet point.

A  '12?

Q  Please.

A  Yeah, so '12 is very interesting.

This is a very interesting one, because -- and I think it’s important for all of you to understand the -- what’s going on here.

I get a call from a -- one of the people I know down in hospital administration who knows me very well, known me a long time, and that person said to me, "Hey, Paul, I want you to know that they had a meeting, hospital counsel," Ruth Booher at the time, Boulanger, my chairman, "and I have been instructed to go and dig up as many OR patient -- OR nursing complaints on you as I can find."

Dig them up, yeah.

So I called my chairman, and I said, "What’s going on," and he said, "I don’t know anything about it."

THE WITNESS: Yeah, so '12 is very interesting.

THE WITNESS: This was during a time out; right?

THE WITNESS: Yeah.

THE WITNESS: Move on to the next bullet point.

THE WITNESS: Yeah. So -- and again, this is patient care, and I think this is important. I’m in an operating room with a morbidly obese lady who is trying to die. I mean, actively dying, blood pressure 40, a belly full of dead gut, and it smells, as you know, like -- I mean, until you’ve smelled it once, you don’t really get it, you know. When we opened that belly, it was nasty. The anesthesia guy was screaming at me, "Make this quick. Her blood pressure is 40. I don’t know if we can keep her alive."

THE WITNESS: She’s not making any urine. We’re having trouble ventilating her. And my scrub nurse goes down, Vanessa Connor. Very
good scrub nurse. She got sick, and it just
so happened that my circulator was a rookie,
brand new, and I have no scrub nurse. So
I -- I am literally ten feet from

And Vanessa -- while I'm saying that
ten feet. She has the
ability to scrub. I said, "[redacted], come in
here until Vanessa stops puking."

She's puking right there.

Puking in her gown and everything.

She's like, "Dr. Kearney, I'm almost
ready. I've just got to keep puking."

She is puking, and I said, "[redacted]
come in there."

I get nobody for about, I don't know, ten, 12 minutes. I got anesthesia --
it's more than that. It's about 15 -- I've
got anesthesia screaming at me, "She's
dying."

I'm handing instruments to a
resident because I got nobody else to do it.

I'm like grabbing them off the table, and I
ask the circulator to get something, and
she's so inexperienced she doesn't know

| 1 | MR. PAFUNDA, doesn't Iler refer to Dr. Zwischenberger? |
| 2 | MR. PAFUNDA: I think we're going to |
| 3 | find that out today. |
| 4 | PROFESSOR LAWSON: We got him called. |
| 5 | I mean, that's the way you could read the |
| 6 | letter, couldn't you? |
| 7 | THE WITNESS: Yes. |
| 8 | MR. PAFUNDA: That's the way the |
| 9 | letter appears to be drafted, but as you |
| 10 | just pointed -- |
| 11 | PROFESSOR LAWSON: The only |
| 12 | difference in that one is -- with the one |
| 13 | that he signed is -- that he signs as |
| 14 | completed, it's got one line on it. |
| 15 | THE WITNESS: No, there's more than |
| 16 | one line. There's something about |
| 17 | [redacted] up top, too. That was not |
| 18 | true also that I edited. |
| 19 | PROFESSOR LAWSON: That's been taken |
| 20 | out. You edited -- did you edit this one |
| 21 | right here? |
| 22 | THE WITNESS: I edited the unsigned |
| 23 | document, and the one I signed is materially |
| 24 | different in more than one paragraph, if you |
| 25 | AN/DOR Reporting & Video Technologies, Inc. |
read the whole thing, than the other one.
It is. And, more importantly, that signed
document was not in my confidential
personnel file. That did not show up until
mediation in January of 2015. That's when
it shows up. So where was that letter?

MS. HANSEN: So this letter is
written by Cliff Iler --

THE WITNESS: Huh?

MS. HANSEN: This letter is written
by Cliff Iler, even though it comes from Dr.
Zwischenberger?

THE WITNESS: Yeah. Well, you heard
Dr. Zachman say that yesterday, didn't you?
The lawyers wrote that suspension letter and
then Zachman signed it.

PROFESSOR LAWSON: There's nothing
out of the ordinary in that regard.

MS. HANSEN: Yeah.

THE WITNESS: Not really.

MS. HANSEN: It's standard.

THE WITNESS: Yeah, that's pretty --

Q What is out of the ordinary in that
regard is that the signed document, the written
reprimand, was not produced when I secured your

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personnel file, was it?

A That's correct, it wasn't in there.

Q In fact, it wasn't produced until
some months later; is that correct?

A That's correct.

MS. HANSEN: So could it simply not
be that there's a draft in here and no one
bothered to put the final one in and that --

THE WITNESS: No, that never
occurred, Wendy.

MS. HANSEN: Pardon?

THE WITNESS: That never occurred.

MS. HANSEN: What never occurred?

THE WITNESS: The draft document.

MS. HANSEN: This draft document?

MR. PAFUNDA: I think you're speaking
at cross purposes.

THE WITNESS: Oh, I'm sorry. I'm
sorry. Ask Mr. Pafunda. I'm confused now.

Go ahead.

MS. HANSEN: So we have two
documents that don't match. One is signed
that you read. It sounds like you had a
chance to edit the original. And couldn't
this simply be the original that somehow,

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MR. PAFUNDA: Not with me, no.
That's their copy.

PROFESSOR LAWSON: This is the copy right here that I have kept, so you gave it to me.

MR. PAFUNDA: No, that's fine. What I'm saying is, the court reporter for the record I would label it as Exhibit No. 3 collective exhibit.

PROFESSOR LAWSON: That's fine. But the hearing panel will have this for consideration as they deliberate.

MR. PAFUNDA: All right.

Q Is there anything else in there?
Well, let's address that just briefly. You're looking at the documents that Dr. McDowell had?
A Yes, sir.
Q And we've kind of beat it to death, but those were apparently culled from your personnel file?
A Yes.
Q And I also believe in that notebook, the panel already has it, there's certain letters of recommendation that have been filed on your behalf concerning your promotion to a tenured professor?

A That's correct.
Q Are there any of those letters that you'd like to highlight to the panel or single out?
A Well, there's letters in there from J. David Richardson, who is over in Louisville. He's the president of the American College of Surgeons. There's -- Ward O. Griffen, who's still alive, wrote me a letter. Emery Wilson.
Q Former dean?
A Yes. Jeff Young, Chief of Trauma at the University of Virginia. Andy Peitzman, Chief of Trauma at the University of Pittsburgh.
Q And just out of curiosity, these letters of recommendation, they come from all over --
A Yeah.
Q -- from several states; is that standard procedure --
A Yes.
Q -- with respect to promotion?
A Yeah, to professor you have to have national -- regional and national recognition -- you have to have national recognition to be promoted...

1 to a full...
Q And is there anything unique about surgery in that regard that would be different, say, from other specialties?
A No, I don't think so. I think the promotion to us, Regular Title Series, are all the same regardless of specialty.
Q Now, recently were you elected to a position here at the University of Kentucky?
A Yeah. Actually I was unanimously -- well, not unanimously, but by overwhelming majority elected to the University Center Health Care Council.
Q And that health care council does what?
A Well, they oversee the -- and represent the faculty of the Medical Center in the whole senate.
Q And who votes?
A Well, all of the clinical faculty vote for me -- well, they can vote for me.
Q When did this happen?
A About two weeks ago, I think, or three weeks ago. I'm also on the final ballot as a member of the University Senate, not just on the...

Health Care subcommittee, but that vote is not complete yet.
Q So the present vote on the health care council, your colleagues are behind you, they want you on the council?
A Yes, sir.
MR. PAFUNDA. That's all I have.

EXAMINATION

By Mr. Beauman:
Q Just a few questions, Dr. Kearney.
We went through the litany of the prior issues. I think we left a couple out, but I'm not sure there's really any dispute about them. On the incident, which was May of 2012, it's the "Hey bitch comment," I think you agreed that you did make that comment?
A No, no, I don't recall making it, actually. But it would not -- as I said, it would be something I might say, so it's possible. And so I can't -- I can't refute or affirm. I just don't remember.
Q But I will say this about I love [redacted] and she does scrub for me every once in a while, but [redacted] is probably not built for the operating room. She tends to be a little...
Before that incident that she didn’t like to be talked to like that.

A Oh, yeah, and I apologized to her. I said, "I won’t do that to you. I really won’t."

Q I mean, I like... She came to my roast. She’s come to parties at my house. I mean, I like her. She’s a sweet person. She really is. But she’s -- like I said, she gets upset easily.

You really wouldn’t. You wouldn’t believe it. And,  you can’t take back is if you harm a patient or...
Q Well, would you at least agree with me that comments like the ones you’ve admitted to violate the University’s behavioral standards in patient care?
A Yes. Okay. And so if we took the behavioral standards in patient care that we all signed, okay, and we held everybody to that behavioral standard -- there is actually stuff in there about your handwriting. You could get suspended for not having good handwriting, all right, or not washing your hands. Now, I would suspend somebody for not washing their hands. Now, I would let’s just say you were taking language, derogatory language, as a reason and we went over to suspend somebody for not having good handwriting, patient harm. But if you were to take language -- let’s just say you were taking language, derogatory language, as a reason and we went over to that medical center and we rang up everybody for foul language, you’d have about 50 employees left over there.
Q Well, and let’s go to the reprimand in December -- dated December 12 of 2012.
A Yeah.
Q You testified to this a little bit, but originally this was slated to be a voluntary remediation; right?
A No.
Q It wasn’t changed to a --
A There was no remediation for the 2012 incident, none.
Q So your testimony is that you did not insist on it being changed to a reprimand?
A What? I’m not getting --
Q Was the original proposal for discipline a voluntarily remediation to you in 2012?
A No, there was no discipline associated with that event, none. They didn’t ask me to do voluntary remediation. They didn’t ask me to do counseling. They didn’t ask me to do anything.
Q Well, I believe the reprimand is discipline, so when --
A Is discipline? What would it be, don’t do it again?
Q Well, you agreed, in fact, if we look at the last page, I mean, you agreed to not engage in unprofessional conduct with other UK personnel?
A So let’s define unprofessional AN/DOR Reporting & Video Technologies, Inc.
incidents that you were written up for --

A  Yeah.

Q  -- correct?

A  No.

Q  And it's your testimony that none of
your conduct --

A  Seven.

Q  -- in the

A  -- by the way, not nine, seven.

Q  This is three.

A  All right.

Q  But none of your conduct in the

A  matter in your opinion violated this

Q  reprimand; is that your testimony?

A  Correct.

Q  So calling a dumb ass, in

A  your opinion, is not unprofessional conduct?

Q  No, I apologized to him. You know,

A  there is --

Q  Well, if it's not unprofessional,

A  why did you apologize?

Q  Hey, Bry, let me explain something
to you. There's not a person in this room,

A  physician, and I can get a thousand surgeons in
here, who has not raised their voice with a

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patient on occasion. And he, he, when

I called him a dumb ass, was potentially harming
himself and potentially harming the resident, and
when that happens, I have to intervene. Now, was

a dumb ass a good choice of words, no, probably not,
but if you look at that entire procedure, and it
didn't go as smoothly as it could of because it's
a teaching moment, and I probably let it go a
little bit longer than I should, that was
placed safely and carefully in that guy and he got
out of that endoscopy suite with no complications.

That is my ultimate goal.

And, like I said, we all say or do
things we regret. We can apologize. I could not
apologize to his mother if I killed him in the
endoscopy suite, or he coded. All right. And
believe me, that has happened up there, and
patients die from complications. Nothing is
simple.

Q  Let me just wrap up with this,

A  Dr. Kearney: You agree that the purpose of the
2012, 2013 reprimand was to correct your behavior
and prevent it from occurring in the future?

Q  You don't --

A  No, I don't agree with that.

Q  You don't --
the only patient complaint that ever rose to any level was __________?

A Correct.

Q Over 27 years?

A That's correct.

Q And with respect to the punishment that's been doled out here, your clinical privileges, have you been reported to a databank?

A Yeah, they did report me.

Q All right. They also reported you to the Kentucky Medical Licensure Board?

A Yes, they did.

MS. HANSEN: I'm sorry, did you say yes to the Kentucky one?

THE WITNESS: KBML.

MS. HANSEN: So they did --

MR. SALSBUREY: It's required.

THE WITNESS: No, let me --

MR. PAFUNDA: Go ahead.

A No, it's not required. It is -- they -- it's only required if the suspension is upheld. So the fact that they reported me immediately after the suspension, and they reported me very quickly after the suspension, would seem to indicate that it's a done deal. Why would they report me so early, because the law actually states that the reporting to the databank only has to occur after all appeal processes have been exhausted. Yet they chose, individuals involved, chose to report me sooner. That's what the law states. They can do it, but -- they can once I'm suspended, do it, but the law states it's only mandatory if I've exhausted all of my appeal processes and that the decision is final, then they're obligated. Then it's an obligation to report it.

PROFESSOR LAWSON: Mr. Pafunda, are you finished?

MR. PAFUNDA: Just give me a minute.

Q So I take it if you start to do it by numbers, the million documents that are in your file should be removed in terms of consideration for disciplinary action; is that correct?

A No disciplinary action there.

Q No, I'm not saying there was a disciplinary. I'm just saying, they've been presented as part of some pattern that would warrant disciplinary action, they should be removed?

THE WITNESS: No.

PROFESSOR LAWSON: That's all I have.

PROFESSOR LAWSON: It's a quarter to 12. You've finished your case now. You don't have any more witnesses, do you?

MR. PAFUNDA: I want to confer with my client before I make that announcement.

(Off the record.)

PROFESSOR LAWSON: Could you give her your name, please?

THE WITNESS: Julie Hudson.

PROFESSOR LAWSON: Ms. Hudson, everyone who is testifying here today is being asked to affirm that they'll testify accurately and truthfully to the hearing.

PROFESSOR LAWSON: All right. They can do it, but -- they can present as part of some pattern that would warrant disciplinary action, they should be removed?

THE WITNESS: Julie Hudson.

PROFESSOR LAWSON: Ms. Hudson, everyone who is testifying here today is being asked to affirm that they'll testify accurately and truthfully to the hearing.

THE WITNESS: Julie Hudson.

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THE WITNESS: Julie Hudson.

PROFESSOR LAWSON: Ms. Hudson, everyone who is testifying here today is being asked to affirm that they'll testify accurately and truthfully to the hearing.

THE WITNESS: Julie Hudson.
I'll talk about the major operating room, not Good Sam, but the major operating room in terms of culture, tension?

A Uh-huh. I would say for the most part, it was as I expected it to be for the size and breadth of services.

Q So not big surprises in coming here?

A Huh-uh.

Q And where had you been before?

A Well, I spent one year across town at Saint Joe main. And prior to that I was in Champaign-Urbana in Illinois for nine years there.

Q Was that a major academic trauma --

A It was a Level 1 trauma.

Q Was it?

A Uh-huh. It was Level 1 trauma and we ran 20 rooms. The operating room services were a lot larger than the rest of the hospital, but definitely Level 1, 24/7 operation, and then I learned my OR nursing in Wichita, Kansas. So I worked in Level 1 trauma when I was out there as a staff nurse and started my leadership career out there.

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Q Did you find the culture of UK's sort of major operating room that different than what you had seen in the past?

A As far as the OR staff?

Q Yes.

A They --

Q Let's talk about nursing staff.

A Talk about nursing staff. About what I expected. It just needed a little more structure. They were a little -- hadn't had a lot of leadership and a lot of direction, so they just needed some structure around them. Things like what I call kind of social justice things. Like if you clock in late, you get recognized for it.

You know, if you have too many absences, you get a reprimand. I mean, things like that that needed to be done.

Q What about what you might call the professional relationship between the staff and the surgeons?

A Uh-huh.

Q Would you call it functional? Would you call it team like? Would you call it hostile?

A I mean, there's -- how would you describe it?

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1 education manager and I did them all.

Q In doing so now, looking at the relationship between the staff and the surgeons, are there a lot of complaints? And I'm just trying to understand sort of the culture and the relationship better from their side.

A Yes, there are some, and I'll tell you, Dr. Hansen, a lot of what happens in this operating room, as are others, nurses and techs tend to settle into a service that they feel more comfortable with. So when they initially come, there might be surgeons who they don't get along well with, their personalities just don't mesh well, so they find a service where they're more comfortable. So they kind of self select out if they're uncomfortable.

A Would it be common for there to be, I don't want to call it arguments, but for people to ask not to work with certain surgeons?

Q Uh-huh.

Q That is common?

A Uh-huh.

MR. SALSBUREY: I'm sorry, can you just make sure you give a verbal yes or no for the record. It's hard to take down.

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THE WITNESS: Oh, okay. Yes.

Q: So it would be common for --
A: It would be not uncommon.

MS. TANNOCK: Any one surgeon more than another?

THE WITNESS: I am trying to think about this. There are a few. There -- it's not just one. There would be maybe a handful.

MS. TANNOCK: A handful of surgeons where?

THE WITNESS: It takes a little longer to find a match with someone they feel like they can work with and staff who feel like they can work. It's really just -- it's really a match.

MS. TANNOCK: And is Dr. Kearney one of them?

THE WITNESS: Yes.

Q: What would be the -- let me ask you, why would Dr. Kearney be one of them? What would they say.

A: What I have heard from staff are -- the word that they feel intimidated or that their contribution isn't valued. It's difficult to provide the best care in that -- in that setting.

THE WITNESS:...
Q And residents and surgeons?
A Residents and surgeons, I would say it's kind of a different standard with the amount of language and the way they -- it might be more -- it's often more personal. The profanity is directed more toward persons than a situation.
Q Certainly plenty of situational as well. 
A CONTINUED EXAMINATION

By Ms. Hansen:
Q Do you get many complaints then as a supervisor that don't go through -- what do we call it when you type everything on line?
A The occurrence report system.
Q Yes, the report system. So do you get many complaints about people come to you --
A Uh-huh.
Q -- complaining about surgeons' behaviors?
A Particularly early on when I first got here, so, yes, we get those at times.
Q How do you judge or chose to pursue a complaint or not?
A Well, if a complaint comes in writing to me, I really don't have a choice. You know, I need to make sure it's escalated to the AN/DOR Reporting & Video Technologies, Inc.
Q And then, how do you determine if it needs to go. If someone comes to me verbal -- just without a written and they want to talk about it, and sometimes we'll just role play about what the situation was and what was said, what was meant, how they could respond and then we talk about what else we want to do with it.
A If there are employees who might not want to work with Dr. Kearney, are there also employees that choose to work with him and feel loyal to his team? 
Q Oh, yes. I would say yes.
A Professor Lawson: Dr. Williams, do you have any questions?

EXAMINATION

By Mr. Williams:
Q So has there been a particular volume of complaints from employees coming in to talk to you about issues in the last two years, specific to certain surgeons? So, in other words, certain surgeons keep popping up in these conversations? In other words, so as an example, you could say these five surgeons, it's not uncommon to have techs or nurses come in my office and say, you know, there are issues in the OR?

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only been here a little while, you still are, for
lack of a better expression, from my perspective,
you're still gathering information; correct?
A I'm not -- not so much, and again,
it's -- I also have a dual role in that I also
served as the nursing director for the Chandler
operating room because I didn't have a person in
that role until very recently.
Q As director your duties were?
A To supervise the staff and supervise
daily operations of the recovery room and the
operating room at Chandler.
Q If I'm not mistaken, yesterday I
believe the nurse, and I don't have the name right
at hand, said that the nurses used profane
language even more than the doctors?
A I don't know that -- did you have an
operating room nurse here yesterday?
Q Yes -- no, she was actually an ICU
nurse.
A So that's different. That's
different.
Q You have to explain to me.
A So operating room nurses and
intensive care nurses work in different arenas,
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and they have different set of competencies and
skills. As an inten -- just socially. So as an
intensive care nurse, you work with other nurses
all of the time taking care of the patients, and
when you're -- because I've been both. And when
you're an operating room nurse, your daily
assignment is more of a team. So I would spend
all day as a circulator, if I were an operating
room nurse, in a room with a surgeon and a
resident and anesthesia personnel and a surge tech
and myself, so you spend all day in a room, if you
would, in the operative -- like in that manner.
An intensive care nurse is more
taking care of a patient, one of many out and
about with physicians rounding through.
Q Does that help?
A No. And I don't really know what
I'm trying to get at other than I was shocked when
the nurse said nurses use profanity and it's
really rampant, for lack of a better word.
A The other piece about the intensive
care nurses is that when you're an operating room
nurse, you could be in a room with a surgeon for
your entire shift with a surgical team. So
operating room nurses and techs and surgeons spend
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large amounts of time, many, many hours together,
just the two of them. Whereas if you're an
intensive care nurse, your physicians will come
orth and give orders or come through and check
patients, but you're not in a room with them for
maybe an entire shift.
Q What I'm trying to -- no, what I'm
trying to understand is the nursing culture that
accompanies the profanity that these nurses use,
other than explain to me as an operating room
situation, there has to be a culture there, does
there not?
A Yes. Uh-huh.
Q I'm trying to put it -- what is the
culture?
A I -- well, as I talked with -- as I
spoke with Dr. Hansen, when I answered
Dr. Hansen's question, that profanity is not
unusual, generally not directed at another person
or to berate or to injure another person.
Q I understand that.
A It might be more situational. But,
like I said, not to the level of things you
wouldn't want your grandmother to hear you say,
but not to the level of something like, you know,
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George Carlin or Chris Rock, where it's completely
disgusting and full of innuendo.
Q Am I correct in stating it's a
coping mechanism?
A Uh-huh, yes. Much like, you know, a
good example is Mash. You know, that people are
used to a popular TV show. There was some gallows
humor that -- and it's a coping mechanism. But we
still have to work as a team, and it doesn't help
to tear a team member down like calling them
something awful.
MR. PAFUNDA: That's all.
EXAMINATION
By Mr. Williams:
Q Has there been any formal team
training of the surgical teams here that you're
aware of?
A Not that I'm aware of. I know there
hasn't in the last two years. I mean team,
like --
Q Like team steps or any of those
programs or crew resource management training?
A Not specifically, although we do use
elements of that in our annual training and when
we bring something new --
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1 Q For the nurses, but there's not been a surgeon, nurse team training program applied here?
2 A No, not that I'm aware of. PROFESSOR LAWSON: Mr. Salsburey.
3 MR. SALSBUREY: Yes, sir. EXAMINATION
4 By Mr. Salsburey:
5 Q Ms. Hudson, you talked about and you've been asked about cursing among the OR nurses here and that it does go on.
6 A Uh-huh. Q And that it is something that happens. That being said, is cursing, is it appropriate in the OR?
7 A I would say no, nor necessary, but. Q And, in fact, if I heard you described -- you handle evaluations for nurses in the OR; correct?
8 A I did last year, yes. Q There is, in fact, a level of accountability about interpersonal behavior that you expect of your nurses, isn't there?
9 A Yes. Q You had talked about nurses might self select out, as you said it, of the surgery rotation; correct?
10 A Yes. Q Have they been thin-skinned nurses?
11 A No. Q You had a bit of a discussion I think a few times here about kind of drawing a distinction between profanity that's situational, and profanity that is directed at someone. And you had made mention or hinted at receiving perhaps not formal but complaints nonetheless about trauma surgeons, including Dr. Kearney, and you had testified that nurses in that context talked about being intimidated by Dr. Kearney. So my question is, in the world of situational expression versus directed expression, would it be fair to say that the complaints you've received about Dr. Kearney are really more the directive kind rather than the situational kind?
12 A That was my experience. AN/DOR Reporting & Video Technologies, Inc.
13 Q Your understanding?
14 A My understanding. Q When a nurse gets humiliated or intimidated or embarrassed by their surgeon, can that have an affect on patient care?
15 A Absolutely, absolutely. In fact, one of the things that I like to use, it just really brings it all home, is I had a nurse who used to tell me, we used to tell a certain surgeon, you know, Dr. Surgeon, when you scream at me like that, it sucks the smart right out of me.
16 Q We're not talking about a surgeon at UK, though?
17 A No, no, in my prior experience. Q In your prior experience?
18 A So that's the affect that it has. It just -- when you're humiliated, you can't think, and you can't take good care of your patient because you're -- it's just all gone.
19 MR. SALSBUREY: That's all of the questions that I have, Professor.
20 PROFESSOR LAWSON: Mr. Pafunda, do you all have any more questions?
21 MR. PAFUNDA: I don't have any.
22 PROFESSOR LAWSON: Thank you very much.

(Off the record.)

PROFESSOR LAWSON: I'm Robert Lawson, and I'm the presiding officer of this hearing, and we've gone through testimony coming from both sides, from Dr. Kearney, form the University. And there have been certain questions raised about matters rounded in letters that you have mentioned. And so they asked for you to be called as a witness, called by these two (indicating).

Now, what I'm going to do is to outline the things that they would like for you to speak to, and then they'll have question about it, and then the two sides will be able to ask you questions after that. Okay.

Now, what I've got to do is to you like we have all other witnesses, and that is, everyone who has been brought in here has been asked to affirm that they'll testify accurately and truthfully in their testimony before the panel.

Will you commit to do that?

THE WITNESS: Yes, sir. AN/DOR Reporting & Video Technologies, Inc.
PROFESSOR LAWSON: Now, these things right here, these are documents that are
going to be involved with the questioning of
you. And there are things -- this is a
letter that you signed right here. This is
one written to you asking about that. And
then there are these two documents over here
involving this reprimand. There's two.
There's one unsigned and one signed. So
they're here for you if you want to look at
them.

Now, here is generally what the
panel would like for you to speak to: In
this January 7, 2009 letter, which was
signed by you, Dr. McGrath, Colleen Swartz,
and Dr. DePriest, could you inform the panel
about specifics of the aggressive and
humiliating behavior of Dr. Kearney that
you -- that are described there in that
letter, who complained, did this letter ever
go to Dr. Kearney, and did anything flow
from the letter?

MR. SALSBURY: You see the letter --
PROFESSOR LAWSON: Are these four
included here?

THE WITNESS: Of course.

Well, this is January of 2009, so
that's five and a half, six and a half years
ago, I don't know, so I don't remember.

PROFESSOR LAWSON: Speak up, please.

THE WITNESS: I'm not familiar with
the letter.

PROFESSOR LAWSON: You are not
familiar?

THE WITNESS: I am now. I've now
reviewed it.

PROFESSOR LAWSON: Okay.

THE WITNESS: I started as chair in
May of 2007, and when I hit the door, I was
handed a file that was about that thick
(indicating) of past experiences with
Dr. Kearney. I elected not to review it
because I thought it was only fair to look
at him with fresh eyes and to respect him as
a colleague that I had heard that he was.
And so everything that I did from the time I
started as chair was direct experience on my
part.

I personally never had any direct
negative interactions with Paul as far as

PROFESSOR LAWSON: Our interpersonal relationship because we
always got along well as surgeons. But I
was the chair and I was constantly -- not
constantly -- I received complaints from
medical students, from residents, from
nurses, from other colleagues, and I was
also filtered the complaints through the
CMO's office, which in this case was
Dr. DePriest, so it got to a point to where
there had been multiple discussions and
multiple attempts in getting Paul to alter
his behavior, and we felt like we were --
that we were being unsuccessful. I thought
I was being unsuccessful. Pat thought he
was being unsuccessful, and Paul did, too.

So this letter was written to
request funding to allow Paul to be --
Paul Kearney to be able to go and get
professional intervention because I'm a
surgeon and I felt like I had exhausted my
counseling, cajoling efforts. And that's
what this was. This was a plea to be able
to come up with the funding to be able to
send him off to be able to get serious
professional intervention. And we didn't

THE WITNESS: I can't recall any specific
incidences because they were in the form of
complaints by colleagues and staff, and I
don't feel comfortable trying to recall
something seven years ago that would have
led to this one -- one incident that led to
this letter. It was a cumulation of issues
and my inability to effect change.

PROFESSOR LAWSON: Did this letter
ever go to Dr. Kearney? It's not addressed
to him. He's not listed as one of the
addressees. Did it ever go to him?

THE WITNESS: I don't have
independent recall of the letter going to
Paul. This letter was drafted in order to
justify the plea for the time and the
expense. This was not a rep -- that wasn't
the purpose of this letter, if you read it.
The letter was written in order to justify the expenditure and the investment that we felt was necessary in order to effect a behavioral change.

PROFESSOR LAWSON: Do you have --
THE WITNESS: I can't recall ever sitting with Paul and going over the letter. Now, the content, of course, was explained to him because that was the -- that was the basis for which we were recommending intervention.

PROFESSOR LAWSON: Do you have any questions about this?
MS. TANNOCK: Did the funding get approved, and did Dr. Kearney go to professional intervention?

THE WITNESS: Yes, the funding was approved. We explored all of the available options for this level of professional intervention, which is serious. You don't take a high-level functioning surgeon and alter behavior without going to top professionals. That was our goal. So I recall Paul and I looked into several places that we thought were suitable and we met with Paul and discussed it at length. And Paul was receptive to the idea. He recognized the need, or at least my recollection is he recognized the need. He recognized that what we had been doing so far wasn't working, and the problem was that he had a daughter -- as you know, for a long period of time and then she passed away, and he was a single parent of a teenage daughter and he felt uncomfortable leaving her, and we thought -- we felt pretty sympathetic toward that. I mean, it made sense to us. As much as we wanted to see Paul's behavior modified, we also didn't want to interrupt his personal or his family life. So it entered into a series of discussions of how we could effect behavioral change, which is what we were after.

This wasn't a punishment. This was an attempt at behavioral change, how we could effect a behavioral change that would be -- really be effective and yet not disrupt his personal life or his daughter's parenting.

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words or cuss words. And cuss words to the atmosphere are actually still pretty common. I'd like to fix it. I'd like to say I'd fixed even myself, but I think many of us still cuss to the atmosphere. Paul had a way of cussing directly at people and making them feel personally responsible for whatever was happening in terms of the patient's outcomes or care or complications or difficult situations. He would personalise it. And we have a culture of surgical resident and students that actually like it. They think it's macho and they really -- they respond well to it. And back in the day, when many of us were trained, including Paul, that was the norm. And it was a way of toughening you up and making you more able to take difficult situations. But as training situations and the cultures evolved, there is a subset, perhaps even a majority, of student and residents that don't react well to that, and coworkers, they don't react positively to that environment. In fact, as time has evolved, nurses, students, residents, coworkers tend to be so offended by that type of behavior that they don't perform well or they shut down or they can't perform their duties. So it's been a moving target over the last 40 years that I've been in practice. And I can say that the last ten years that that pendulum has swung rapidly.

PROFESSOR LAWSON: Anything else from you all on that level?

MS. HANSEN: One last thing. Do you remember having a discussion with Pat and Paul and Colleen about this?

THE WITNESS: Oh, yeah. Sure. We talked about a lot. All of us at -- all four of the people on that letter, at least from my perception, were Paul advocates. They all wanted to see Paul do better. They all wanted to see Paul change the behaviors so that he could be the surgeon that we all knew him to be. There was no question that he was an accomplished surgeon. The question was whether he could interact with coworkers and students and residents and nurses and colleagues in a way that would allow optimum patient care, good outcomes.

PROFESSOR LAWSON: I want to move to a letter of February 5, 2010. It's the next one.

This is a letter to you from Dr. Kearney. What complaints were behind this letter and Dr. Kearney's agreement to take a remediation course.

MR. PAFUNDA: That date again?


MR. PAFUNDA: If I may, Professor, I think the date on the first letter that Dr. Zwischenberger was speaking about is an incorrect date. It shouldn't be January 7th, 2009, however that got on there.

PROFESSOR LAWSON: That's in -- I'm using their exhibits.

MR. PAFUNDA: I know that. I'm just stating it for the record.

PROFESSOR LAWSON: Okay. Well, do you think the date is that significant?

MR. PAFUNDA: Yes.

PROFESSOR LAWSON: The letter is signed here by the four. Well, you can ask AN/ador Reporting & Video Technologies, Inc.

him about that.

MR. PAFUNDA: All right.

PROFESSOR LAWSON: Now, this letter right here, wanted you to reflect on the complaints that were behind that letter and Dr. Kearney's agreement to take a remediation course. That's a letter from him to you.

THE WITNESS: Right. I don't have an independent recall of the exact incident that led to this. Much of these -- many of these complaints were not explosions. They were constant -- I mean, there were a lot of complaints that would happen in a sequential manner from students and residents and faculty and nurses. And the ones that hit the radar, the ones that were investigated, were the huge ones. But there were sort of an ongoing number of complaints. It was the chronicity of the problem, and at this point it was decided that the efforts from the previous letter needed further attention.

PROFESSOR LAWSON: So you can't answer the question which they have and which I've asked you is, that you can't AN/ador Reporting & Video Technologies, Inc.
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As a supportive chair to have complaints that we were trying to address and behaviors we were trying to modify while at the same time supporting an active, productive faculty member. So I personally never felt like it was my role to be an investigator. I would hear complaints. I would find out the validity of these complaints, and at that point, I would try to adjudicate them or try to counsel the situation. If it got beyond my ability, then it would go to other people, like Paul or Rick or other outside -- and, in fact, in many ways I felt conflicted, because I didn’t think I was totally unbiased in being able to judge all of these circumstances, because often they involved nursing or they involved a resident, either -- it may have not been in our department. It may have been in your department, and I didn’t always feel qualified to step outside my department and be a -- judge it in an unbiased manner.

So this is a letter from Paul to me suggesting what he thinks could happen after talking to Dr. Lofgren.

Anania of the investigation.

There was a slight change that was made in the unsigned document until you got to the signed document.

The overview was when I was made aware of the circumstances that arose with these series of events, I felt like they were out of my league. I wasn’t there. I didn’t actually directly witness the event. So I sought help and I called Cliff. And I said, "Cliff, I’m hearing allegations that sound serious. I wasn’t there. I think it’s out of my venue," and asked Cliff to get involved. So Cliff Iler, who is the hospital attorney, did all of the interviews and all of the investigation.

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I independently talked to Paul to see what I needed to know and he didn't deny these events. He said, "Yeah, they happened, but it all depends on how you interpret them."

And I didn't go any further than that. I got this letter from Cliff and we met --

PROFESSOR LAWSON: You're talking about he drafted the document for you?

THE WITNESS: Cliff drafted the document for me in order to be able to communicate what the findings were to Paul, because he felt like he was an unbiased, objective observer and someone who could elicit the information from the different parties. At any rate he did that, and this was the first version that was given to me. And then we had a meeting with Paul, and Paul said the wording didn't sit well with him on some of the descriptions and some of the circumstances, and he wanted it amended.

So he asked Cliff to amend it, and since I wasn't a primary observer on any of the events, I told -- I agreed that Cliff should probably amend it if he could -- if his interpretation of the interviews matched what Paul's revisions requests were. Paul requested the revisions, and I said to Cliff, "If you can find it in the range of what you learned during your interviews to make these amendments, then that's okay with me," so that's what he did.

PROFESSOR LAWSON: You have questions, panel, to him with respect to these documents?

MR. WILLIAMS: What then happened to this document, because we don't have anything subsequent to this?

THE WITNESS: Excuse me?

MR. WILLIAMS: What then happened to this document?

MR. SALSBUREY: Are you in May?

MR. WILLIAMS: No, I'm in the wrong place.

MR. SALSBUREY: He's talking about the December of 2012.

PROFESSOR LAWSON: It got executed.

Any other questions about it?

MR. WILLIAMS: No.
Q: But other than that, all of his evaluations were excellent and had no negative comments about his behavior; is that correct?
A: I don't know.
Q: The evaluations are in the blue book.
A: I'll be glad to review them.
Q: Please, they're right there.
PROFESSOR LAWSON: Are they toward the back of this?
MR. PAFUNDA: Pardon me? I didn't hear you.
PROFESSOR LAWSON: Are they toward the back of this?
MR. PAFUNDA: No, they're right in the front, and there should be an index right there in the first page, I believe.
THE WITNESS: Do you want me to review all of them before I speak?
Q: No. You said you wanted to review them. I was giving you the opportunity to review them, Doctor.
A: So 2007 was before I got here. To put this in perspective, the performance evaluation, the form that we use is based on a number of categories. In fact, there's two full pages -- and let me just put it in perspective. Two, four, six, eight, ten, 12, 14, 16, 18, 20, 22 --
(Off the record.)
A: So there's 56 different boxes of metrics of performance that are measurable.
Q: Those 56 boxes are boiled down, are they not, into a total numerical statement as to performance?
A: Yeah, but I thought I was answering your question. There's 56 boxes in which we give an assignment of a numeric performance. There is no box on here regarding counseling or trying to alter a physician's behavior, but I did make an independent comment that I had to write in, "Needs to adopt to the new governance at UK. Counseling is ongoing for this unique, talented individual."
So even in 2009 evaluation regarding the year 2008, it was well -- it was recognized that he was an outstanding surgeon who had behavioral issues that we were trying to work on counseling. So that's it. That's the point, is there's that many different boxes of objective measurement, but the one that was subjective, I

1 had -- I added.
Q: Now, with respect to your subjective, if you go back to the objective one, the rating, what rating was he given in the ER?
A: I couldn't hear you.
Q: What was his performance evaluation total overall rating?
A: 4.8 on a 5 scale, I think it is.
Q: Were there attached to that evaluation, other than the comments you just made, were there attached comments with respect to his professionalism and his teaching?
A: I don't see them in here. Am I missing something?
Q: No, I'm just asking you if there were.
A: I don't see them in this document.
Q: If you go to the next year. When I say the next year, the next year up.
A: Okay, the next year.
Q: And the year you have?
A: Excuse me?
Q: What year do you have?
Q: And the evaluation then totaled

1 what, Doctor?
A: We didn't have a final number on this one. We had the different categories. We had 4.8, 4, 3.6, 4.8 for quality of instruction. 4 for service administration. 3.6 for research and scholarly activity. I didn't make any additional comments.
Q: And these performance evaluations are signed off by whom?
A: The division chief, Pat McGrath, and myself after review with Pat.
Q: Does the Dean sign off also?
A: I think that's where they go. I don't see them at that point.
Q: If you will, fast forward to his 2014 evaluation.
PROFESSOR LAWSON: 2013 I believe is the only one on here.
MR. PAFUNDA: I was looking at the date it was signed. Excuse me.
Q: Do you have it?
A: I have the one that's before me. I don't have the detailed one, but I've got the -- I've got the overall distribution of effort and how we've broken down the different categories.
Q And the total overall rating was?
A On here it's 4.88.
Q And there's an evaluator's narrative in there, is there not?
A Correct.
Q And the narrative reads, would you read it into the record, please?
A Sure.
Q "Continues to be an outstanding surgeon/educator. Valuable resource for younger surgeons."
A That's not my handwriting. It would have probably been Dr. McGrath.
Q Okay.
A I don't see his signature there.
Q So as of 2013, for that calendar year, we have an outstanding surgeon, educator and valuable resource for younger surgeons, and I take it the younger surgeon portion refers to the residents; is that correct?
A Not necessarily. Paul is one of our senior experienced surgeons. Younger faculty, could have been referring to them, too.
Q Isn't that the same year in which he won the Richard Schwartz Award?
A Very well may have been the same year. He did win that award.
Q Yes, he did.
A And that award was for what outstanding performance?
Q The Richard Schwartz Award was a special award for education that was created in the department. Richard Schwartz was kind of a legend in our department for educational innovation and accomplishment, and when he passed away in an untimely early death from an illness, we created this award to recognize surgeons who went above and beyond in teaching.
Q And I take it that first surgeon was Dr. Kearney; is that correct?
A He won it.
Q THE WITNESS: Were you the first?
A I don't remember -- I don't independently recall if he was the first, but I do know he won it.
PAUL KEARNEY: Yes, I won it.
Q So to bring it full circle in a way, the job performance evaluations deal with his -- only with his skills as a surgeon and as a
Q And who made the comments?
A I don't remember -- I don't know if he did.
Q THE WITNESS: -- recall of saying that, and I wouldn't know if he did.
A MR. PAFUNDA: That's the only question I've got for the witness.
Q PROFESSOR LAWSON: It's up to you now to cross.

EXAMINATION

By Mr. Salsbury:
Q Dr. Zwischenberger, Dr. Kearney did, in fact, refuse to sign this calendar year 2012 evaluation, didn't he?
A Is that documented?
Q It would be in the folder.
A PROFESSOR LAWSON: 2012 would be -- it doesn't seem to be in there.
Q MR. SALSUBERY: May I approach?
A PROFESSOR LAWSON: Sure.
Q 2/12 is not in here.
A MR. WILLIAMS: Page 67. See that black one?
Q MR. SALSUBERY: Oh.
A THE WITNESS: Here we go.
Q So I can give you a copy also

THE WITNESS: Sure. I have no independent --
A MR. PAFUNDA: He said he didn't recall.
Q THE WITNESS: -- recall of saying
A PROFESSOR LAWSON: May not be.
Q PROFESSOR LAWSON: Well, I'm going to give him a little leeway on this.
A MR. PAFUNDA: That's the only question I've got for the witness.
Q PROFESSOR LAWSON: Did you answer it?
without -- thank you, Dr. Williams -- without the sticky note over it.

A Yeah.

Q He did, in fact, refuse to sign; correct?

A Correct. You want me to read the evaluation?

Q What's in the narrative -- well, first of all, do you know whose handwriting that is down in the evaluator's narrative?

A Yeah, that would be McGrath.

Q And then on the loose copy that I gave you, there's a sticky -- what appears to be a sticky note over that?

A Right.

Q But it's the same evaluation; correct?

A Correct.

Q And is that your signature there on the sticky note?

A No.

Q Do you know who wrote that?

A That would have been my assistant.

I set up a number of sessions to talk to Paul about this and he wouldn't sign it.

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Q But it's Dr. McGrath's handwriting in the narrative there?

A Right, it looks like it to me. I...

Q We talked a lot about training residents today.

A Uh-huh.

Q With training residents, wouldn't you agree that it's important to train residents not just on technical and procedural skills but also on professionalism?

A Yeah, we have entire expectations on professionalism as well as behavioral codes and a number of standards by which we try to live.

Q And isn't one of the ways that we train our residents here at the University of Kentucky by example?

A Yes.

MR. SALSBUREY: That's all of the questions I have, Professor.

PROFESSOR LAWSON: Do you all have any more?

MS. TANNOCK: I have one more question. On Page 67, there's two different handwritings. One says "Outstanding surgeon" and then there's another one that says, "Has had some issues with staff with allegations of unprofessional behavior."

Which handwriting is Dr. McGrath?

THE WITNESS: I can't tell exactly which ones are which. I didn't -- that's not my handwriting.

MS. TANNOCK: To me it looks like there's two different handwriting on this.

MR. PAFUNDA: I didn't pick up, you said "That's not my handwriting," do you mean in total it's not your handwriting?

THE WITNESS: I didn't write this evaluation. Dr. McGrath did, and I went over it, and -- but it documents the fact that we had issues with unprofessional behavior.

PROFESSOR LAWSON: Any other questions?

CONTINUED EXAMINATION

By Mr. Pafunda:

Q I just want to clear up my own question. The "Evaluator's Narrative," the evaluator, was the evaluator you?

A The evaluator in this case would be the division chief, Dr. McGrath.

Q Right.

A And then I go over them and either modify or agree.

Q Walk with me a minute slowly. To follow up my question, there appears to be two different handwritings in the evaluator's narrative. Neither one of those handwritings is yours; is that correct?

A That is correct.

Q The one that is placed over on the front page, that's your assistant's -- your assistant wrote Dr. Zwischenberger's signature; is that correct?

A Yeah -- well, that's not my signature. That is a note that he refused to sign.

Q No, I know that.

A It was written by my assistant.

Q That was written by your assistant and signed off in your name by your assistant?

A That's not my signature. It was written by my assistant. That's clear to me. The assistant wrote that whole memo.

Q And signed your name off on it? AN/DOR Reporting & Video Technologies, Inc.
### EXAMINATION

**By Ms. Tannock:**

Q Since you've made chair, and I know you don't know the specifics, but as I try to get ahold of the nature of the complaints and the volume of complaints, did most of the complaints come from staff? By that I mean nurses. Did they come from the OR? Were they coming from the ER in that area where Dr. Kearney was clinically working, or were they otherwise? Were they ever from patients?

A They -- so to answer your question, they came from everywhere. They came from staff. They came from nurses. They came from anesthesiologists. They came from colleagues, residents, students. They were so commonplace.

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[Text continues with a question about Dr. Kearney's behavior and the chair's role in addressing issues.]
talking about patient care when you knew that
weeks or months earlier you had a behavioral
discussion. So I would say our relationship grew
apart because of that, and it was awkward for me.

My perception of his abilities of a
surgeon never changed. My perception of his
ability to educate -- he was a very unique
educator and he was very well received by a large
number of students and residents. To this day I
would say a majority of the students and residents
truly admire his style and learn from him. But
there was a growing minority, as culture changes
time evolved, that would go from a few
complaints to actually a very substantial number
of students and residents complaining about his
abusive style.

PROFESSOR LAWSON: Any other
questions?

MR. WILLIAMS: One quick thing.

EXAMINATION

By Mr. Williams:

Q Some of this investigation was conducted by Bernie Boulanger. He took a lead
role in interviewing patients and so forth?

A Correct.

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Q Can you talk a little bit about
their role, Bernie Boulanger and Dr. Kearney?

MR. SALSBURY: Are you talking about
with respect to [redacted]?

MR. WILLIAMS: Correct.

A Their role or relationship?

Q Their relationship and interactions
over the years that you've been the chair?

A That's a different question.

Q Start with relationship, I guess,
their interactions and so forth.

A Well, you're asking me specifically
about Bernie Boulanger?

Q And Paul.

A It was complex. When I first hit
the door in 2007, they already had a history.
Paul was the leader of the trauma team and he had
a style that was different than Bernie's. And
from what I understood, he and Bernie had
personality conflicts over how to handle patients
and how to handle situations, that I was aware of.
Bernie stopped being a trauma
surgeon -- or started moving away from being a
trauma surgeon pretty quickly after I came here,
and so the interactions were fewer and the
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that doesn't seem to have specific follow-up,
completion, et cetera.

PROFESSOR LAWSON: That's the only
thing in here, and it's called a draft.

A No, I'm trying to -- I'm trying to
get the chronology. I'm seeing this for the first
time. This is May, 2010, and when was this one
with Iler?

MR. SALSBURY: December of 2012.


MR. BEAUMAN: The chronological
context in this, if you flip back to
Page 61, you'll see the memo from you,
McGrath, DePriest, Swartz and Dr. Kearney's
letter to you in February.

A Yes, okay. This is -- okay. Right.

So we drafted this letter looking for backing to
do this. And then Dr. Lofgren got involved and
Lofgren asked us to move forward with this
remediation plan. Now, this took a long time. We
kept evaluating different -- for over a year, as
you can see, a year and a half, we were exploring
different counseling options and we were exploring
different places that would be acceptable to Paul,
and then he would look into them and he'd say,

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"No, that won't work for me."

And that went on for a long time. I
mean, again, this was a friendly, counseling-type
situation where we were trying to effect change on
the fly and trying to get him to agree to go to
have this done.

And, as I recall, it -- the -- after
a long period of time of evaluating different
programs and Betty Ford and all the different ones
that are out there, as well as exploring different
options that he wanted to pursue, he decided to
accept some -- a decrease in responsibility, and
then the end result of all of this was he got the
psychiatrist to work with.

This wasn't a one-time deal that
happened and then it was over. This took place
over years.

PROFESSOR LAWSON: Mr. Pafunda, do
you have any questions?

MR. PAFUNDA: Yes, I have a couple.

If I can approach the doc?

EXAMINATION

By Mr. Pafunda:

Q Would you read this into the record,

please?

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Kentucky College of Medicine. Not only is he a superb physician, he is also a trusted colleague whose opinions are valued by others. Secondly, he is an excellent teacher who has gained the respect of his students. And, finally, Dr. Kearney clearly has the ability to direct and organize problem-solving committees such as the Denials Committee.

I vigorously support Dr. Kearney's application for promotion to Professor, Regular Title Series, with tenure at the University of Kentucky College of Medicine. Furthermore, I highly recommend him for this position. If I can provide further information regarding my interaction with Dr. Kearney, please feel free to contact me."

Signed, "Paul D. DePriest, Associate Professor, Division of Gynecologic Oncology, Vice Chairman, Department of Ob/Gyn."

Thank you.

PROFESSOR LAWSON: Do you want it back?

MR. PAFUNDA: Yes, I do. Thank you.

Q Now, you said his duties were decreased. What duties were decreased?

A Well, he was the chief -- let me see if I recall his titles. He was Director of Trauma Services.

Q And when did he step down from trauma services and how long did he step down for?

A I don't have the exact date. We -- it was --

Q But no question in your mind that he stepped down from that position? You're the chairman.

A Well, there's a number of titles associated with what Dr. Kearney did. There's academic titles. There's administrative titles and then there's educational titles.

Q Let's stop with the fiction. Look at the draft letter. Did Dr. Kearney ever step down from that position?

A It may be a simple question, but there's not a simple answer. It's because we have academic titles, we have administrative titles and we have educational titles, so there -- we also had to orchestrate a replacement for him, and we had to go through a period of time where with Paul's experience we wanted to bring on two

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1 Q I'm not asking you that, how much he was gone. I'm asking you was he gone? Did he take a leave of absence?

A I don't specifically recall.

Q That draft document, you would agree with me that the one he placed in his file, and it's called the draft document, he never stepped down from the position that's described in that draft document; isn't that correct?

A I can't recall. Did he take a 28-day leave of absence?

Q Huh? I think he did. Again, the trauma service runs by assigned rotations, and, as I recall, he took some time away. I don't -- I didn't run a clock on how much he was gone.

AN/DOR Reporting & Video Technologies, Inc.
PROFESSOR LAWSON: The panel has got it and they can look at it. I think we need to move on, Mr. Pafunda.

MR. PAFUNDA: I’ve moved on. I’m done.

PROFESSOR LAWSON: You all finished?

EXAMINATION

By Mr. Salsbury:

Q On Page 75 of your binder, going back very quickly, Dr. Zwischenberger, to the December, 2012 reprimand, just got done talking about the 2012 evaluation, do you see numerical item No. 2 on that?

A Yes.

Q Can you read that, please, for the panel?

A December 12, 2012, Item 2. "Your 2012 performance evaluation will reflect that these incidents occurred and that you have faced discipline as a result."

Q And whose signature is at the bottom of that page?

A Paul’s. Paul Kearney.

MR. SALSBUREY: That’s all of the questions that I have.

AN/DOR Reporting & Video Technologies, Inc.

CONTINUED EXAMINATION

By Mr. Pafunda:

Q And what discipline occurred; what discipline?

A I thought we had an action plan here. Well, there’s item 1 through 6. Do you want me to read them?

Q No, they’ve already been read. The question is, what discipline other than the items listed as 1 through 6 on paper?

PROFESSOR LAWSON: If you don’t know, that’s an answer.

THE WITNESS: I understand.

A If you’re asking me if we did what’s on the paper, the answer if yes. If you’re asking me if we did something additional, the answer is no.

MR. PAFUNDA: Thank you. That’s all I have.

PROFESSOR LAWSON: Thank you very much.

THE WITNESS: Yes, sir.

(Off the record.)

PROFESSOR LAWSON: I’ve explained to AN/DOR Reporting & Video Technologies, Inc.
Margaret Pisacano, and you were involved.

THE WITNESS: I was there.

PROFESSOR LAWSON: Now, questions.

1. Margaret Pisacano, and you were involved.
2. THE WITNESS: I was there.
3. PROFESSOR LAWSON: Now, questions.
4. Any participation, anything occur or that you observed that would suggest exaggeration by the patient's mother in the event?
5. Anything here or anywhere casting doubt upon the report of these individuals, of the events involving them and Dr. Kearney?

Now, the third one are questions have been raised by various witnesses, particularly the resident witnesses, about an e-mail or other directive to surgery residents about contact with Dr. Kearney.

Is there anything that you can tell a panel about this matter about its purpose?

And then the last one, they want to know your connection to the written reprimand document from Dr. Zwischenberger to Paul Kearney, dated December 12, 2012, any reason why there was a slightly different unsigned copy in his file? Do you know what brought about the slight change in the document?

And now if you would -- if you would speak to the incident to start with, and then they can ask their questions about that.

THE WITNESS: So that's a lot of questions you just asked me. I may have to ask you to kind of start over. Maybe I can give you the context in which came up. That would be a good place to start.

PROFESSOR LAWSON: Fine.

THE WITNESS: So came up in the middle of the investigation and discussions with Dr. Kearney. She was not originally part of it. I was asked -- she was doing an internship through surgery, and pursuant to this internship, she was required after she was done to work a year in -- at UK, and if she didn't work that period of time, she had to pay back, you know, a pro rata amount of money, because it cost money to train her, and she would work here and kind of work off that cost.

So she left before her year was up. And so I was contacted to basically send a demand letter that, you know, you left. You could take this matter.

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<table>
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<th>Page 245</th>
<th>Page 246</th>
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<td>put it in the file.</td>
<td>PROFESSOR LAWSON: If you all will</td>
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<td>get it to me, I will be sure it gets into</td>
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<td>MR. PAFUNDA:</td>
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<td>Thank you, I</td>
<td>appreciate that.</td>
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<td>THE WITNESS:</td>
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<td>Just so I understand,</td>
<td>someone taking notes on what I'm getting?</td>
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<td>MR. SALSUBY:</td>
<td>MR. SALSUBY:</td>
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<td>I've got it.</td>
<td>THE WITNESS:</td>
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<td>I'm getting the</td>
<td>letters that I sent to her?</td>
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<td>dates of her employment, and I'm trying to</td>
<td>MR. SALSUBY:</td>
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<td>find out if there's any job description that</td>
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<td>MR. SALSUBY:</td>
<td>Good Sam, you know, UK, Good Sam. I'm not</td>
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<td>Yes.</td>
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<td>And this would</td>
<td>MR. SALSUBY:</td>
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<td>describe when she was working here in</td>
<td>We'll look for it.</td>
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<td>relationship to the reprimand?</td>
<td>I'm sure you'll --</td>
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<td>THE WITNESS:</td>
<td>I'll find it.</td>
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<td>Yeah, it would describe</td>
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<td>that's as much as I can answer on that</td>
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<td>The other two things that I have here is there anything in</td>
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<td>this letter or any e-mail or anything else</td>
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<td>the statements in her letter to you? And</td>
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<td>anything other than the e-mails?</td>
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<td>Do you all have</td>
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<td>any questions about this subject right here?</td>
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**EXAMINATION**

By Ms. Hansen:

Q Do you know if she ever filed a complaint before she left?

A I don't believe she had.

Q Secondly, you know, a lot of nurses kind of stop one job and they transition to another. So they transfer from OB and surgery, they go to medicine. They do that all of the time. And would she have had that option, if she didn't like the OR?

A I don't know.

Q And my last question, do you have to write many of these letters? Is it common to default on an internship?

A It's the third one I've done since I've been here. So yes, it is -- I wouldn't say it's common, but it's happened. The two times before was a different department, different type of internship, but it has happened.

EXAMINATION

PROFESSOR LAWSON: Dr. Hansen, in the record, in the e-mails, there's an answer -- there I think is an answer to your first question. She said she didn't report this default on an internship?

MS. HANSEN: Because she was --

PROFESSOR LAWSON: She did not report the event to anybody. That's in the e-mail that she sent to Ms. Bender. Do you all have any other questions on this subject?

MS. TANNOCK: (Indicating no.)

PROFESSOR LAWSON: Committee, do you have any other questions on this subject?

Is it okay if we go through all of them and then you all can ask your questions?

MR. PAFUNDA: Do whatever you want.

PROFESSOR LAWSON: Let's do it that way.

Now the second one had to do with the interview of an ill patient and the mother that occurred by Dr. Boulanger in the presence of [BLANK] and Margaret Pisacano. Tell them about that and your role in that.

THE WITNESS: What exactly did they want to know?

MR. PAFUNDA: They wanted to know, Mr. Iler, if there was anything to suggest, I think, during the course of the interview if [BLANK] or his mother were exaggerating? Is that --

THE WITNESS: Is that the question?

MS. TANNOCK: That's one of the questions.

THE WITNESS: No, I mean -- I mean, we were there. We asked [BLANK] for his firsthand event because he was the only one who was there at the time these events occurred. He described the one event that occurred in his hospital room. I think that was on [BLANK] And then he described the occurrences that happened in the endo suite. And there was nothing from him at that time that suggested that he was exaggerating.

PROFESSOR LAWSON: Now, [BLANK] was present; right?

THE WITNESS: I mean, she may have been. I distinctly remember Dr. Boulanger and Margaret being there. [BLANK] may have been there. I don't remember, but I'm not saying she wasn't.

PROFESSOR LAWSON: The record of the investigation done for the executive committee indicates that she was there.

THE WITNESS: Then I'll defer to that record. I just don't -- I mean, it's been several months. I just don't have a specific memory of her, but I'm not saying she wasn't there.

PROFESSOR LAWSON: She suggested in her description of this event while you were there that the description of it by the mother and the -- and the patient had grown from what she had heard the day before. And that's the reason why the question arises as to whether or not there was anything here that occurred that you observed, either here or maybe afterwards with respect to anything else, that would cast doubt upon the reports that were made by these two people to the doctor?

THE WITNESS: Not to my recollection.

PROFESSOR LAWSON: Do you all have any questions on that?

MR. WILLIAMS: Did you speak directly with [BLANK] about her prior two interviews?
THE WITNESS: No.

Margaret Pisacano -- I'm sorry. Go ahead.

MR. WILLIAMS: Did you speak with her?

THE WITNESS: No. Margaret Pisacano had the prior communication with her.

MR. WILLIAMS: Did you speak with Margaret about her prior communications with [redacted]?

THE WITNESS: Margaret shared some of that information with me, yes.

MR. WILLIAMS: And what information did she share?

THE WITNESS: I'll have to refer -- I mean, I have it documented. I'm going to have to refer to it; is that okay?

PROFESSOR LAWSON: Have you got it with you?

THE WITNESS: I do.

PROFESSOR LAWSON: You can refresh your memory.

THE WITNESS: According to --

MR. PAFUNDA: Well, wait, do I get to see a copy of that, too?

MR. SALSIBURY: Is this September 11th?

THE WITNESS: Yes.

MR. SALSIBURY: Okay.

(Handing.)

MR. PAFUNDA: Thank you.

MR. SALSIBURY: Yes, sir.

PROFESSOR LAWSON: Now, that's not in the record; right?

MR. SALSIBURY: Not yet.

THE WITNESS: According to my memo, dated September 11th, 2014, there was an initial complaint to customer service and [redacted] had subsequent communications with Margaret Pisacano, which Margaret summarized in an e-mail. Would you like me to read what Margaret said about those communications?

MS. TANNOCK: Yes.

THE WITNESS: It says, "More information from [redacted] This [redacted] patient is a recent quad following an MVA. Has a prior history of [redacted] and [redacted]. The patient and his mother were assured he would be given sedation for the procedure. He was frightened about"

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PROFESSOR LAWSON: Any other questions about it?

EXAMINATION

By Ms. Hansen:

Q When did you first learn about this incident?

A I believe it was on -- can I look at my calendar.

MR. PAFUNDA: Yes.

---

MS. HANSEN: Of course.

A I believe on September 10th -- I mean, on September 3rd. Hold on, that's the wrong date. It was on September 4th, because we met with the patient and his mom on September 5th. I know I met with him the next day.

Q And you did this because you were trying to understand better kind of the importance or the significance of the situation?

A I did what?

Q You met with [redacted] on September 4th?

A Yes, I met with him to get the factual details about his complaints.

Q Do you often do that, Cliff? Do you often go into patients' rooms and interview them?

A Define often.

Q Do you do it every six months?

A Probably not. I've done it more than once since I've been here. It depends on the nature of the complaint. In this case I was asked to investigate this matter, and so it made sense to me to start with the patient.

Q I'm a little curious why you and not Margaret?
A: Margaret was there, too, at the beginning.

Q: I'm understanding how it works. I can call Margaret for every patient complaint?

A: Well, this was a patient complaint about a faculty member, and I generally handle employee and faculty issues on this side of campus for the legal office.

Q: So because it was specifically about a physician, that's why you got so involved?

A: That -- yeah, I mean, I handle on this side of campus employee -- legal employee issues, legal faculty related issues. I believe that's why I was involved in this case.

PROFESSOR LAWSON: You didn't say who asked you to investigate it.

MS. HANSEN: Who asked you?

THE WITNESS: Dr. Boulanger.

PROFESSOR LAWSON: We'll let you all have your questions of him in a minute.

MR. PAFUNDA: Did you have something?

You were asking him a question about --

PROFESSOR LAWSON: Well, let me do these other two things here, actually, and then you can ask about all of them.

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Questions have been raised about an e-mail or other directive to surgery residents about contact with Dr. Kearney.

Is there anything that you can tell the panel about this matter, about its purpose?

THE WITNESS: The e-mail itself?

Which e-mail are we talking about?

PROFESSOR LAWSON: Or the directive?

I mean, several residents testified here about having gotten an e-mail telling them not to talk to him.

THE WITNESS: Oh, that never happened.

MR. PAFUNDA: I don't know that they couched it that way but I've --

PROFESSOR LAWSON: Have you got the e-mail?

MR. PAFUNDA: Yes, I do.

PROFESSOR LAWSON: Let him look at the e-mail.

MR. PAFUNDA: Do you want to take a look at it, Bryan, or --

MR. SALSFBURY: You can give it to him.

PROFESSOR LAWSON: You can speak to
to meet with him, and I would like to
attend, although that was ultimately their
discretion.

But in no way did I ever try to
dissuade anyone from talking with

Mr. Pafunda. He and I had conversations
about who he could talk to, because of legal
reasons there are certain people who are
employed by the University that he can't
contact without going through me. We agreed
that the residents were not, I guess, you
could say out of bounds, and knowing that he
was likely going to be contacting residents,
I requested Dr. McDowell to send that
e-mail.

PROFESSOR LAWSON: Any other
questions about it?

MS. TANNOCK: No, thank you. That
cleared something up, because we heard a
slightly different version of that from one
of the previous witnesses.

PROFESSOR LAWSON: Now, the last
thing was any connection that you might have
had to the written reprimand document from
Dr. Zwischenberger to Paul Kearney, dated
December 12, 2012. And then there's been
questions raised about modification of it,
any reason why there was a slightly
different unsigned copy in the file? Do you
know what brought about the slight change in
the document?

MR. SALSBOUREY: Cliff, the signed
and unsigned are on Pages 70 through 75.

THE WITNESS: No, I'm good. Okay.

So this occurred -- so can I give a little
background as to how I got involved?

PROFESSOR LAWSON: Yes.

THE WITNESS: So this occurred back
in I think 2012. There were three
complaints that came in kind of close in
time, although I think not all of them had
occurred right about that time, some of them
may have been a little older, and they
involved complaints by staff against
Dr. Kearney. Our office was asked to
investigate the complaints. Now originally
Ruth Booher, one of our former attorneys,
was going to handle the investigation, but
there was a request made that she not handle
the investigation. I don't know if that was
request was by Dr. Kearney or by the
department, but there was a request made
that she not handle the investigation, and I
was asked to do it in her place. I was -- I
guess I had been here a little while by
then, but I was still the newest person on
the staff and had no prior involvement with
Dr. Kearney.

So I investigated by interviewing
the witnesses involved, and based on
investigation created the document that you
all saw. I made a draft. The plan
initially was to handle the matter under
Chapter 8 of the Bylaws, voluntary
remediation. Dr. Kearney preferred there be
a written reprimand and so we went that
direction. The changes are essentially a
back and forth between me and him. I have
the e-mail, if you all would like to see it,
that shows, you know, that the changes that
you all saw were ultimately changes,
revisions he requested.

Is that something you all want to
see?

MS. HANSEN: E-mails?

THE WITNESS: The e-mails and the
redline version of the document that had his
proposed changes.

MR. SALSBOUREY: Is this what you're
talking about?

THE WITNESS: Let's see here. Yeah,
that's the e-mail -- no, actually, I have --
let me see what you've got there. Oh, yeah,
that's me forwarding it to you.

MR. SALSBOUREY: I've got an
attachment as well.

THE WITNESS: Yeah, but let me give
you the redline version so it's easier for
the user to see. So let's just use my
e-mail so it doesn't confuse them because
you're on that one. Here is a copy of the
e-mail. Can I read what I wrote to him?

PROFESSOR LAWSON: What you wrote to?

THE WITNESS: Dr. Kearney.

PROFESSOR LAWSON: Now, did
Dr. Kearney have counsel in this or --
THE WITNESS: No, he handled this on
his own.

PROFESSOR LAWSON: Yes, read it.

THE WITNESS: So on December 19th,
2012, I wrote, "I've reviewed your comments," so he had made some prior comments, "and made redline revisions to the written reprimand. 

Please review the changes and let me know if you have any additional comments." And then he wrote back a little bit later that day, "Not bad, a few more changes. I thought no e-mail."

I'm not sure why he said that, but in any event, so here is the e-mail where he and I are going back and forth about this document, and here is the document that shows his redline changes. Okay. So I have copies I think for everybody.

PROFESSOR LAWSON: I'll add this as your Exhibit No. 1, which would be in addition to that file.

THE WITNESS: I have one for everybody over there. Does that have three?

MR. SALSUBREY: Yes.

THE WITNESS: So the reason for the back and forth between myself and Dr. Kearney is that we were asking him to sign this document. Okay. And so he was being asked to agree to the content of the ultimate written reprimand. And so -- and this is not uncommon. This is not unique to him. I've done the same with other faculty members where either through voluntary remediation or written reprimand, there's been some discussion about the content before the physician or the faculty member is willing to sign off on it. And so that is the reason that there are different versions of the document in existence and, you know, why the draft found its way into his personnel file and not the final version I cannot speak to. I will say that because Dr. Zwischenberger was part of the process, he would have received a copy of the draft and it's possible that it was just inadvertently put in there. You know, when we produced the personnel file to Mr. Pafunda, he recognized that he had an unsigned version and I sent him the executed version.

MR. PAFUNDA: That wasn't until a couple of months later, after -- in January.

THE WITNESS: I'll tell you when it AN/DOR Reporting & Video Technologies, Inc. was. Hold on. I've got that too. So let's see here.

MR. PAFUNDA: I think it was January.

THE WITNESS: Let's see here. Yes, but there was no, you know, ill intent. It was merely an oversight, and I didn't know the document was in the personnel file until he pointed it out to me. I mean the unsigned document was not -- the signed document was not in the personnel file until he pointed it out to me, and he did. I mean, I have the e-mail if you would like that, that I sent it to him.

PROFESSOR LAWSON: Did you make the changes that Dr. Kearney requested?

THE WITNESS: Yes, I mean, ultimately we usually agreed on the final version that was signed.

PROFESSOR LAWSON: Do you all have any other questions? Okay. Now, that's all that --

MR. PAFUNDA: I have some questions.

PROFESSOR LAWSON: I'm going to let you ask your questions. I just want to let them know that was -- AN/DOR Reporting & Video Technologies, Inc.
know the difference. Does summarily suspended mean you're fired?

THE WITNESS: No.

MS. HANSEN: It doesn't?

THE WITNESS: No.

So let me give you some context to help you understand why one was an agreed administrative leave and the other was a summary suspension.

Do we have the memo that has the administrative leave?

MR. SALSBOUREY: It's in their file.

MS. HANSEN: Do you have that number?

MR. BEAUMAN: Tab 4.

THE WITNESS: So when I was asked to investigate this, you know, it became very clear that there were some serious allegations going on and there was a -- normally with a staff, you just -- you suspend them pending investigation. Well, we didn't have a right just to tell Dr. Kearney absent doing something under the bylaws, unless he agreed to it, we couldn't do it. So we sat down and we reached an agreement that he would go on administrative leave at that point and on September 5th, 2014.

And the reason we did it that way is if as soon as we take action under the bylaws, it's going to end up showing up on his permanent record with the national practitioner data base. And so we agreed to an administrative leave because at that point it's something that's agreed to, it's voluntary, it's not an official action under the bylaws, so I would have time to investigate, interview witnesses, and do all of those things. All right.

So, you know, if he would have said no, I'm not going to agree to that, then Dr. Boulanger would have to decide, okay, am I going to summarily suspend him based on what I know right now. And so the reason to do the administrative leave was essentially to give us an opportunity to do an investigation without, you know, putting a black mark on his record under the bylaws. And so the summary suspension came along after, you know, there were attempts to give us an opportunity to do an investigation without, you know, putting a black mark on his record under the bylaws.

Those attempts failed. And, therefore, at that point, he was summarily suspended officially under the bylaws and everything went from there.

Does that answer your question?

MS. HANSEN: So in a tenured professor, okay, and if you are summarily suspended, what actions are taken?

PROFESSOR LAWSON: That's what triggers this procedure right here. There has to be an investigation.

MR. PAFUNDA: I think the doctor's question is tenured professor --

MS. HANSEN: Tenured professor.

MR. PAFUNDA: -- as opposed to clinical --

PROFESSOR LAWSON: There's an investigation that is done after his suspension, has to be done promptly, 14 days, and then that investigation is what you've got in your file under that 7 tab, and that goes to the Medical Staff Executive Committee and the result of that is the professional review action that we're dealing with here.

MS. HANSEN: Well, when you are summarily suspended, are you off campus? Is your e-mail -- can you not have access to anything as a tenured professor?

THE WITNESS: So I can tell you in this case the answer was that was done. It's never -- this is the only time it's ever happened in my tenure here at UK, so there's not a -- I don't have another one to say. I can tell you that in this case those actions were taken.

MS. HANSEN: I understand that, and I just wondered if that was -- maybe other people have been summarily suspended?

THE WITNESS: Not to my knowledge.

Not since I've been here.

MS. HANSEN: How about on campus?

THE WITNESS: Well, they're not -- campus isn't under the bylaws. This is only for clinical faculty.

MR. BEAUMAN: I think the question being is there a difference in suspension of clinical --

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MR. SALSBOUREY: Versus tenured?

THE WITNESS: I don't know currently there is a -- and I don't know the answer to this question. I don't know that currently there is a mechanism of suspension for a campus faculty member. I don't know. I don't deal with faculty. I'm not on that side of campus. The only faculty I deal with regularly are on this side and there -- although there are some Ph.D., you know, scientists I deal with. Mostly it's clinical people.

PROFESSOR LAWSON: It's not a common occurrence. I think I can -- I'll be here 50 years. I think I can only remember two faculty members removed. One of them was convicted of a crime. And I can't remember what the other was, so it doesn't happen all of the time.

MS. HANSEN: I'm trying to distinguish a little bit between clinical responsibilities and academic responsibilities. So summarily dismissed, everything was wiped away, not just clinical privileges, and that was my question?

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PROFESSOR LAWSON: Anything else?

THE WITNESS: I mean, I don't know that I can answer the question. This is the only one that's ever happened since I've been here.

MR. PAFUNDA: I think, Mr. Iler, it may help the panel, didn't General Counsel Thro recently in response to a Davy Jones' open records request about Dr. Kearney's tenured position issue a statement that, in fact, he's tenured and that's not an issue in this? In other words -- are you aware of that e-mail?

THE WITNESS: I have recollection that he sent out something. I don't remember it being specific about -- I'd have to see the e-mail to comment on it.

MR. BEAUMAN: I think what your point is is that Dr. Kearney's tenure is not before this panel.

THE WITNESS: Oh, no, it's not, no. That's a separate --

MR. PAFUNDA: And as a matter of fact, his tenured position doesn't even fall under the medical staff bylaws. Tenured position is a whole different matter. Then the question becomes, which you and I had some conversation and addressed just briefly, you know, this is impacting a tenured professor who doesn't have access to campus, staff, residents or students, and he didn't, as you just pointed out to the panel.

THE WITNESS: So yeah, there's a separate process if the University -- after this is said and done -- let's -- I'm going to hypothetically say, let's say you affirm the decision of the MSEC. There would have to be a separate process followed to take any action on his tenure.

Does that help?

MS. TANNOCK: Can I just clarify?

So a tenured professor has many roles, one of which is clinical service, if they're a clinical person. There is research. There's teaching, et cetera.

Does the summary suspension block all of those activities or just the clinical practice? Would it block his teaching? Would it block research? Would it block AN/DOR Reporting & Video Technologies, Inc.
and I believe it was Fred Zachman -- Dr. Fred
Zachman acting as president, in their
conclusory paragraphs removed in both instances
Dr. Kearney from campus and from any contact with
residents, staff or students; correct?

A I'm reading it.

MR. PAFUNDA: He's got it.

THE WITNESS: Yes. Do you want me to
read it?

Q You can answer the question, read
it, whichever way you want.

A It says, "During your suspension,
you shall not be present on University campus
unless you or a member of your family is in need
of medical services. In addition, you shall have
no contact with patients, faculty, residents,
medical students or staff. Any communications you
have with the University should be made by your
attorney through the University's Office of Legal
Counsel."

Q So de facto, a tenured professor was
effectively removed from campus?

A Yes.

Q And in the bylaws under Article 9,
which spell out the powers of the Medical Staff
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Executive Committee, there's nothing spelled out
in those bylaws where the Medical Staff Executive
Committee can author or punish a tenured professor
by removing a tenured professor from campus, to
state the obvious?

A Do the bylaws specifically say they
can do that?

Q And your answer is?

A Not to my recollection.

Q Thank you.

The 2012 written reprimand, either
the signed one or the unsigned one, on the first
page, the conclusory sentence --

MR. BEAUMAN: What page?

MR. PAFUNDA: The first page.

MR. SALSBOURG: Of?

Q The written reprimand of 2012, we've
talked about the edited and Mr. Iler has already
mentioned redlining, so on and so forth. Have you
got a conclusory paragraph in the last sentence?

A Yes, Page 73 of UK's exhibits.

Q In there, it used the first person
pronoun, "I find [redacted] credible," who is
the first person?

A Me (indicating).

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Glen White, so if she tried to copy what Glen White did, it's just a typo.
Q Because under any set of circumstances, [redacted] would not have been in the endoscopy suite; is that correct?
A No, she would not.

Q Because under any set of circumstances, [redacted] would not have been in the endoscopy suite; is that correct?
A No, she would not.

Q And No. 2, when [redacted] gave his statement during the course of the investigation about comments Dr. Kearney allegedly made in his room, he never said that his mother was in the room?
A was not in the room.

Q To bring it full circle, so it's a typo?
A That's what I -- I mean, I can't say what it is. It's speculation.

Q But just based on those facts?
A Yeah.

Q Did you at any time have anybody during the course of the investigation, did you cause them to check out [redacted]'s medical records?
A I don't think I asked anybody to.

Q But those medical records would have contained, if not completely, they would have contained notes as to who attended to him, who was present in certain procedures, so on and so forth, who was attending to him during the course of his ICU stay, so on and so forth?
A His medical records are a reflection of his care received here.

Q Yeah, but you also have nurses make notations "I was here, did this," so on and so forth; correct?
A Correct.

Q So that would have been a pathway to witnesses who may have heard or not heard, who may have been, to use a stronger word, exculpatory in terms of Dr. Kearney, provided favorable testimony for Dr. Kearney?
A I'm not sure I understand your question.

Q It would have led to a broader range of witnesses who attended to [redacted] during this day?
A I asked and got the names of the people who were in the endo suite and I interviewed them.

Q But you did not interview Dr. Ross Strong?
A I did not interview Dr. Strong because the witness I did interview said he came in at the end of the procedure.

Q So based on that, you just jumped to the conclusion he was in the endo --
MR. SALSBURY: Object to the form; overruled.

PROFESSOR LAWSON: Overruled.
MR. PAFUNDA: I'll withdraw it anyhow as a favor.

Q That's all I have, Mr. Iler. Thank you.

EXAMINATION
By Mr. Salsburey:

Q Mr. Iler, Dr. Kearney was summarily suspended on January 26th of this year; correct?
A Correct.

Q Isn't it true that by that time, in fact, months before that time, Dr. DeBeer had already removed him from teaching in the classroom; correct?
A To my knowledge, that is correct.

MR. SALSBURY: That's all of the questions that I have.

PROFESSOR LAWSON: Do you all have anymore?
A I do have one more.

I apologize.

CONTINUED EXAMINATION
By Mr. Salsburey:

Q You interviewed a number of witnesses in the fall of 2014 regarding [redacted], correct?
A I did.

Q And one of those witnesses is Justin Peterson; correct?
A That is correct.

Q And in your report that we've been reviewing today, you spoke directly with Dr. Peterson; correct?
A We met, yes.

Q And in your report of September 11, 2014, the 2014 report, you included an account of what he told you; correct?
A I did.

Q Can you tell us or read into the [redacted]?
A record on Page 5 of your report exactly what
Dr. Peterson told you that Dr. Kearney had said to
exactly

Dr. Peterson stated the first time

A
Justin Peterson, M.D., PGY2, surgery
resident. He was responsible for advancing the
at the beginning of the procedure on

"Dr. Peterson stated the first time

the was inserted, resisted, and he was given more Versed. He stated that he
and other personnel in the room used an
appropriate level of restraint to prevent

from interfering with the.

Before the patient received the additional Versed, he said, 'Put me to

's sleep,' to which Dr. Kearney

responded, 'We don't put
people to

sleep

for

things like this you fucking idiot.'

"Once the the Versed kicked in and was

out for the. Although resisted with

-- when the he did not request that

the procedure as a whole be stopped. The first

performed by a medical

student was not successful. Dr. Kearney cussed at

the residents and Dr. Cox stepped in to place the

successfully.

Based on Dr. Peterson's experience

with Dr. Kearney, he said that this was an

above-average tantrum for Dr. Kearney. He also

said that during the end of the procedure,
Ross Strong, the PGY5 -- Ross Strong, M.D., a PGY5
surgery resident, stepped in when the

to check on the placement of the

Dr. Strong stepped in because Dr. Peterson could
not get the. When asked why

Dr. Peterson -- when asked why, Dr. Peterson said

it was because the patient's abdominal muscles

were tense and because his stomach anatomy was

atypical."

MR. SALSUBURY: Thank you.
PROFESSOR LAWSON: Is that it?

EXAMINATION

By Mr. Pafunda:

Q Oh, one other thing.
If you don't mind, Mr. Iler, would

you sent me the written reprimand that was signed
off by Dr. Kearney? I think it was in your --

A Oh, when I sent it to you?

Q Yeah.

A January 28th.

MR. PAFUNDA: Thank you.
MS. HANSEN: One last question -- are
you done?

MR. PAFUNDA: Yes.

MS. HANSEN: So we heard from
someone else that when Dr. Zwischenberger
has a problem with Dr. Kearney, he often
goes to you as opposed to the CMO. Do you
find that to be true?

THE WITNESS: He has come to me on a
couple of occasions. I can't say whether he
does it instead of going to Dr. Boulanger.
I don't know what his motivation --

MS. HANSEN: You haven't had a
discussion about why that would be?

THE WITNESS: He has come to me on a
couple of occasions regarding Dr. Kearney,
and that's all I can say. But again, I do
handle the faculty issues on this side of

campus, so that would not be unusual.

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PROFESSOR LAWSON: Is that it for
you?

MR. PAFUNDA: Yes.

MR. SALSUBURY: Yes, sir.

MR. BEAUMAN: I just want to thank
everybody for their time.

MR. PAFUNDA: I have some
rebuttal testimony?

PROFESSOR LAWSON: You have some
rebuttal testimony?

MR. PAFUNDA: Yes, I do.

PROFESSOR LAWSON: All right.

THE WITNESS: Am I excused?

PROFESSOR LAWSON: You are excused.

This is Dr. Kearney.

THE WITNESS: Paul Kearney again. I

apologize for coming back. My apologies.

PROFESSOR LAWSON: It's okay. You

remember your oath, so I don't need to redo
it again.

You can proceed, Mr. Pafunda.

EXAMINATION

By Mr. Pafunda:

Q Ready?

A I'm ready. You go ahead.

Q You were present while


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Golden Apples in there. That's why I hooded the students in there. That's why I got the Richard Schwartz Award. That's why I got three resident teaching awards. Okay. I -- I mean, I think you have to understand that that's just -- Zwisch -- I mean, you know, I don't know what to say about Zwisch except he's out of touch.

MR. SALSburyEY: Professor Lawson, I think this is kind of going beyond rebuttal.

PROFESSOR LAWSON: I'll give him a little leeway here.

THE WITNESS: No, I think it's important for the panel. I do. They're my colleagues, and they need to know what's honest and what's not honest.

Go ahead, I'm done with that one.

Let it go.

Q Turn now to the written reprimand that you signed. You just heard Mr. Iler state that he didn't send that to me that you signed. You just heard Mr. Iler state that he didn't send that to me until January 28th. Do you recall when we asked for your personnel file, and when we asked for it --

A End of September.

Q We asked for any and all personnel files, did we not?

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A That's right.

Q And that was not in there, was it?

A No, it was not in there.

Q The only one that was in there was the unsigned one?

A That is correct.

Q That's when I threw a fit about it; right?

MR. SALSburyEY: Objection. I don't know how he can answer that question.

MR. PAFUNdA: You might want him to.

PROFESSOR LAWSON: He's withdrawn that question.

THE WITNESS: Okay. Thank you.

Well -- yeah.

MR. PAFUNdA: I thank you.

PROFESSOR LAWSON: Do you have anymore questions?

MR. PAFUNdA: No.

Is there anything you want to add, Dr. Kearney?

PROFESSOR LAWSON: You don't have any?

MR. BEAUMAn: No, we're done.

THE WITNESS: I think the only thing

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You asked me before and I had time to think about it, and I was already going to plan on taking a six-month sabbatical because I want to spend more time with my daughter. She's home and I'd like to spend time with her while she's here, while I still have her and she's still young and she still thinks I'm dad and not a nutcase.

Those are all very human things that we all feel. That's all I have to say.

PROFESSOR LAWSON: Thank you very much.

That concludes our hearing.

And you're going to get a transcript from her within a week, we hope.

MR. SALSBURY: Yes.

PROFESSOR LAWSON: And you're going to file your written closing statements with each other?

MR. PAFUNDA: Within ten days of receiving that.

PROFESSOR LAWSON: Within ten days of receiving that. And then this panel will make its decision within 20 days of that.

MR. PAFUNDA: Who do we send the briefs to?

MR. SALSBURY: I think we're supposed to send them to Cliff so he can distribute them.

PROFESSOR LAWSON: I think that would be the best thing to do, send them to him and he can get them to me and them. Now, if you're going to send them by e-mail, you've got my e-mail address, you can send one to me that way.

MR. SALSBURY: Thank you, Professor.

MR. PAFUNDA: Thanks.

(Time noted: 3:00 p.m.)