

1 REPORTER'S RECORD  
2 VOLUME 2 of 5 VOLUMES  
3 TRIAL COURT CAUSE NO. 5612  
4  
5 THE STATE OF TEXAS ) IN THE DISTRICT COURT  
6  
7 VS. ) ANDREWS COUNTY, TEXAS  
8  
9  
10 ANNE MARIE MITCHELL ) 109TH JUDICIAL DISTRICT  
11  
12 \*\*\*\*\*  
13  
14 TRANSCRIPT OF PROCEEDINGS  
15 \*\*\*\*\*  
16  
17  
18 On the 9th day of February, 2010, the  
19 following proceedings came on to be heard in the  
20 above-entitled and numbered cause before the Honorable  
21 James L. Rex, Judge Presiding, held in Andrews, Andrews  
22 County, Texas:  
23 Proceedings reported by computerized  
24 stenotype machine.  
25

1 APPEARANCES:  
2  
3 FOR THE STATE:  
4 MR. SCOTT TIDWELL  
5 Winkler County Attorney  
6 SBOT NO. 20020730  
7 P.O. Box 1040  
8 Kermit, Texas 79745  
9 Phone: (432) 586-6036  
10  
11 FOR THE DEFENDANT:  
12 MR. JOHN H. COOK  
13 Cook & Cantacuzene  
14 SBOT NO. 04735700  
15 203 W. Wall Street, Suite 603  
16 Midland, Texas 79701  
17 Phone: (432) 640-0464  
18  
19 MR. BRIAN CARNEY  
20 Attorney at Law  
21 SBOT NO. 03832275  
22 1202 W. Texas Avenue  
23 Midland, Texas 79701  
24 Phone: (432) 686-8300  
25

CHRONOLOGICAL INDEX				
VOLUME 2 - PROCEEDINGS OF FEBRUARY 9, 2010				
	Voir			
STATE'S WITNESSES	Direct	Cross	Dire	Vol
Kenneth Winton, D.O.	8	9		2
Sharla Herrera, R.N.	10	12		2
Tommy Smith	14	16		2
Kerri Carter	17		2	
Holly Denny, R.N.	18	20		2
Peggy Armstrong, R.N.	21	23		2
	24	2		
Donna Paehl, R.N.	25			2
Kenneth Winton, D.O.	27			2
Charlene Beauchamp	29	38		2
	44	2		
Rolando Arafles, M.D.	46	92		2
	181	184	2	
Holly Denny, R.N.	192	196		2
	208	212	2	
	215	217	2	
Robert L. Roberts	219	252		2
Court Adjourned -----				303
Reporter's Certificate -----				304

ALPHABETICAL WITNESS INDEX				
	Voir			
WITNESSES	Direct	Cross	Dire	Volume
Rolando Arafles, M.D.	46	92		2
	181	184	2	
Peggy Armstrong, R.N.	21	23		2
	24	2		
Charlene Beauchamp	29	38		2
	44	2		
Kerri Carter	17		2	
Holly Denny, R.N.	18	20		2
	192	196	2	
	208	212	2	
	215	217	2	
Sharla Herrera, R.N.	10	12		2
Donna Paehl, R.N.	25			2
Robert L. Roberts	219	252		2
Tommy Smith	14	16		2
Kenneth Winton, D.O.	8	9		2
	27	2		

EXHIBIT INDEX

1					
2					
3					
4	STATE'S	PAGE	PAGE		
5	<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>RECD.</u>	<u>VOL.</u>
6	4	4-15-09 Letter	183	183	2
7					
8					
9					
10					
11	DEFENDANT'S	PAGE	PAGE		
12	<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>RECD.</u>	<u>VOL.</u>
13	1	Consent Agreement and Order	153	153	2
14	2	9-26-08 Letter	172	172	2
15	3	Roberts Letter	263	263	2
16	4	5-11-09 Letter	263	263	2
17					
18					
19					
20					
21					
22					
23					
24					
25					

08:39AM

08:40AM

08:40AM

08:40AM

08:40AM

1 out so many times, we'd ask the court to not allow

2 Mr. Tidwell to use any statements of the Defendant that

3 were not properly noticed to us under the discovery

4 order and under the requests at pretrial.

5 THE COURT: Overruled.

6 Anything else?

7 MR. TIDWELL: No, sir.

8 THE COURT: Get your witnesses in here.

9 If y'all will raise your right hand.

10 (WITNESSES SWORN)

11 THE COURT: The rule of witnesses has been

12 invoked. That means you can't listen to the testimony

13 of the other witnesses. You can't talk to anybody about

14 your testimony except the lawyers, and you have to do

15 that outside the presence of anyone else.

16 Who is your first witness?

17 MR. TIDWELL: We'll just start with

18 Dr. Winton since he's on the end.

19 THE COURT: Doctor, if you will just come

20 up here.

21 The rest of you can just have a seat and

22 be available as quickly as we can get you.

23 Go ahead.

24 MR. TIDWELL: Thank you.

1 February 9, 2010

2 8:37 a.m.

3 THE COURT: Ready to proceed with the

4 hearing outside the presence of the jury?

08:37AM 5 MR. TIDWELL: We are, Your Honor.

6 Should we bring everyone in and let them

7 be sworn and invoke the rule --

8 THE COURT: Sure, sure.

9 MR. COOK: Judge, may we approach the

08:37AM 10 bench before we get started?

11 THE COURT: Yes.

12 MR. COOK: Everything that he's seeking to

13 admit through these witnesses are statements of the

14 Defendant, Your Honor. We have been asking for these

08:38AM 15 things for seven months, okay? And he's saying that

16 they weren't available.

17 But, judge, the harm that this is -- can

18 we anticipate through pretrials there may be people

19 coming in saying bad things, yes. But the harm to the

08:38AM 20 Defendant is we now have to on the fly try to put these

21 things in context. And we were denied the ability to

22 research them, investigate them, and prepare, you know,

23 the defense for each one of these statements.

24 And I believe that because they are

08:38AM 25 statements from the Defendant, because we did seek them

1 KENNETH WINTON, D.O.,

2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. TIDWELL:

08:40AM 5 Q. Are you Dr. Winton, one of the physicians who

6 practices in Kermit?

7 A. Yes, I am.

8 Q. We're going to do this real quick, so --

9 outside the presence of the jury.

08:41AM 10 Were you ever present when Anne Mitchell

11 made direct statements from her to you derogatory to

12 Dr. Arafles?

13 A. Yes, I was.

14 Q. On how many occasions?

08:41AM 15 A. At least two.

16 Q. Okay. And what were, as best you remember, the

17 statements she made out of her mouth?

18 A. There was two occasions when she came to my

19 office wanting to talk about patient charts. She was

08:41AM 20 quite adamant about his practice of medicine, but it

21 seemed that she certainly was more adamant about

22 personal vendettas than the actual patient charts.

23 Q. Okay. Do you remember the words she said?

24 A. Offhand I really don't, other than the fact

08:41AM 25 that she was quite adamant about his practice of

1 **medicine and that one way or another she was going to**  
2 **have him gone.**

3 **Q.** Did you interpret her concerns as legitimate  
4 patient care concerns?

08:42AM 5 **A.** **She had patient care concerns, but there was**  
6 **also some personal concerns that she had.**

7 **Q.** Okay.

8 **MR. TIDWELL:** Pass the witness, Your  
9 Honor.

08:42AM 10 **MR. COOK:** No questions.

11 **THE COURT:** Can I ask a question?

12 **MR. COOK:** Please do, Your Honor.

13 **THE COURT:** When, when did this happen?

14 **THE WITNESS:** Roughly I'm going to say

08:42AM 15 sometime midsummer, early summer, of last year.

16 **MR. COOK:** Judge, I just have a

17 question --

18 **THE COURT:** Go ahead.

19 **MR. COOK:** -- if I may follow up.

08:42AM 20 **THE COURT:** Sure.

21

22 **CROSS-EXAMINATION**

23 **BY MR. COOK:**

24 **Q.** When were you approached by law enforcement for

08:42AM 25 your statement for this information?

1 **A.** **About a week ago.**

2 **Q.** About a week ago? Thank you, Doctor.

3 **A.** **You're welcome.**

4 **Q.** Oh, and just to clarify the question that the  
5 judge asked you, which summer?

08:42AM 6 **A.** **Oh, the summer -- last summer.**

7 **Q.** Last summer of 2009?

8 **A.** **Yes, sir.**

9 **THE COURT:** Anything else from either  
10 side?

08:43AM 11 **MR. TIDWELL:** No, sir.

12 **THE COURT:** You can step down. Thank you,  
13 Doctor.

14 **THE WITNESS:** Thank you.

08:43AM 15 **THE COURT:** Go ahead.

16

17 **SHARLA HERRERA, R.N.,**

18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. TIDWELL:**

21 **Q.** Would you tell the judge your name please,  
22 ma'am.

23 **A.** **Sharla Herrera.**

24 **Q.** And you're a nurse at the Winkler Memorial

08:43AM 25 Hospital?

1 **A.** **Yes.**

2 **Q.** Just very briefly I want to ask you, were you  
3 ever -- did you ever have a conversation directly with  
4 Anne Mitchell when Anne Mitchell made disparaging or  
5 derogatory comments about Dr. Arafiles?

08:43AM 6 **A.** **Yes.**

7 **Q.** Do you remember about when this -- did it occur  
8 once or more than once?

9 **A.** **On a couple of occasions.**

08:44AM 10 **Q.** Okay. Do you remember about when those were?

11 **A.** **Probably -- no, I couldn't tell you exactly,**  
12 **no.**

13 **Q.** Okay. When is the first time that you and I  
14 discussed these?

08:44AM 15 **A.** **Monday -- this last week.**

16 **Q.** Last Friday?

17 **A.** **Yes.**

18 **Q.** Okay. What statements did you directly hear  
19 Anne Mitchell say that were derogatory about

08:44AM 20 Dr. Arafiles?

21 **A.** **Well, she just come into the break room and**  
22 **called me in there and asked me how things were going in**  
23 **the ER. I was unaware of what was going on. And I said**  
24 **fine, you know, what do you mean. And she said, you**  
25 **know, if he does anything unusual or anything I want you**

08:44AM

1 **to call me, I want you to let me know immediately. And**  
2 **I said okay, how come. And she said because we are**  
3 **going to get rid of him.**

4 **Q.** Okay. Had that -- had a comment like that ever  
5 been made by another doctor from her to you?

08:44AM 6 **A.** **No.**

7 **Q.** Did you think -- did you take it as unusual?

8 **A.** **Yes.**

9 **Q.** Okay. Have you ever heard -- did she make any  
10 other comments?

08:45AM 11 **A.** **No.**

12 **Q.** Okay. Thank you.

13 **MR. TIDWELL:** Pass the witness.

14

08:45AM 15 **CROSS-EXAMINATION**

16 **BY MR. COOK:**

17 **Q.** Ma'am, did you ever tell -- were you  
18 interviewed by the sheriff --

19 **A.** **Yes.**

08:45AM 20 **Q.** -- in this case?

21 **And was that interview confined to the**  
22 **rulings and regulations of the hospital in reporting**  
23 **concerns about the doctor?**

24 **In other words, when the sheriff came and**  
25 **talked to you, wasn't it about the rules and regulations**

08:45AM

1 of the hospital?

2 **A. I'm not understanding your question.**

3 **Q.** Okay. When did the sheriff come to talk to  
4 you?

08:45AM 5 **A.** Six months ago, I'm not sure, I can't remember  
6 exactly when.

7 **Q.** Did you give a written statement?

8 **A.** No.

9 **Q.** Okay.

08:45AM 10 **MR. COOK:** One moment please.

11 **Q.** (By Mr. Cook) And you say that Anne said we're  
12 going to get rid of her?

13 **A.** We're going to get rid of him.

14 **Q.** Okay. Who is we?

08:46AM 15 **A.** I don't know.

16 **Q.** And is it your testimony under oath that you  
17 never had a concern, under oath, ma'am?

18 **A.** A concern?

19 **Q.** Of Dr. Arafiles' medical practice in the  
20 emergency room.

21 **A.** I -- personally, no.

22 **Q.** Okay. When -- when did Anne say these things  
23 that you say she says?

24 **A.** The month or the day or --

08:46AM 25 **Q.** Yeah, the best you can remember.

1 **A.** I don't remember. It was probably a year and a  
2 half ago, longer, I'm not sure.

3 **Q.** Okay.

4 **MR. COOK:** Thank you.

08:46AM 5 **THE COURT:** You can step down. Thank you.

6 Call your next witness.

7 Go ahead.

8

9 TOMMY SMITH,

08:47AM 10 having been first duly sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. TIDWELL:**

13 **Q.** Would you tell the judge your name please, sir.

14 **A.** Tommy Smith.

08:47AM 15 **Q.** And are you a former county commissioner in  
16 Winkler County?

17 **A.** Yes, I am.

18 **Q.** For a limited purpose this morning I need to  
19 ask you, were you ever -- did you ever personally hear

08:47AM 20 Anne Mitchell make derogatory statements about  
21 Dr. Arafiles?

22 **A.** Yes, I did.

23 **Q.** Do you remember about when this occurred?

24 **A.** Well, roughly I -- I think probably in April,

08:48AM 25 probably in maybe the last part of April.

1 **They -- what -- they were still -- they**

2 **were having the golf scrambles. And Robert Roberts was**  
3 **in my office that morning after the scrambles, and I**  
4 **asked him if he played in the scramble that Wednesday**  
5 **night. And he said he certainly did.**

08:48AM

6 **And I asked him who he played with. He**

7 **said he played with Dr. A. Well, I didn't know who**

8 **Dr. A was, and I asked him who was -- who he was talking**

9 **about, and he said Dr. Arafiles. And he said I**

08:48AM

10 **certainly like him, he's a really nice guy. He said we**

11 **had a lot of fun playing golf together. And I knew**

12 **Dr. Arafiles had just moved to Kermit, you know.**

13 **And Anne Mitchell was in my office that**

14 **morning. She had come to see Robbie Wolf about getting**

08:48AM

15 **a grant for Wink fire department. And when Robert**

16 **Roberts had made the statement that he was playing with**

17 **Dr. A, well, Anne Mitchell at this time said that he's**

18 **not a medical doctor, he's a witch doctor.**

19 **And I thought that was very strange**

08:49AM

20 **because this doctor had just moved to Kermit. And that**

21 **basically was what she said that day.**

22 **Q.** Okay. Thank you.

23 **MR. TIDWELL:** Pass the witness, Your

24 Honor.

08:49AM

25

1 **CROSS-EXAMINATION**

2 **BY MR. COOK:**

3 **Q.** When was this said, sir?

4 **A.** Pardon me?

08:49AM

5 **Q.** When was this said?

6 **A.** When was the day?

7 **Q.** Yeah, when was this statement made?

8 **A.** It was after a scramble, a Wednesday night  
9 **scramble. It's sometimes in probably April.**

08:49AM

10 **Q.** Of 2009?

11 **A.** No, it'd be 2008.

12 **Q.** Okay. Did you ever give a written statement  
13 about this statement to law enforcement?

14 **A.** A written statement?

08:50AM

15 **Q.** Yes, sir.

16 **A.** No, sir.

17 **Q.** When is the first time you told anybody in law  
18 enforcement or the prosecution about this statement?

19 **A.** Robert Roberts asked me if I remembered that  
20 **statement, and I did remember it.**

08:50AM

21 **Q.** And when did he ask you that, last week?

22 **A.** No, it's been further -- well, it -- no, it's  
23 **been further than that back.**

24 **Q.** Two weeks?

08:50AM

25 **A.** Maybe, I don't know.

1 Q. Two weeks ago?  
 2 A. **It could be.**  
 3 Q. You have hearing difficulty, don't you, sir?  
 4 Would it help me if I speak louder?  
 08:50AM 5 A. **It sure does.**  
 6 Q. Okay. Okay. Thank you, sir.  
 7 A. **Yes.**  
 8 MR. COOK: I have no further questions.  
 9 MR. TIDWELL: Nothing further, Your Honor.  
 08:50AM 10 THE COURT: You can step down.  
 11 MR. TIDWELL: Kerri Carter.  
 12 THE COURT: Go ahead.  
 13 MR. TIDWELL: Thank you.  
 14  
 15 KERRI CARTER,  
 16 having been first duly sworn, testified as follows:  
 17 DIRECT EXAMINATION  
 18 BY MR. TIDWELL:  
 19 Q. Is your name Kerri Carter and are you a nurse  
 08:51AM 20 at the Winkler County hospital?  
 21 A. **Yes, sir.**  
 22 Q. We're going to try to just run something  
 23 through real quick this morning.  
 24 Do you know Anne Mitchell?  
 08:51AM 25 A. **Yes, sir.**

1 Q. You've worked with her for a long time?  
 2 A. **Yes, sir.**  
 3 Q. Were you ever present where you and she where  
 4 she -- where Ms. Mitchell made direct comments out of  
 08:51AM 5 her mouth derogatory toward Dr. Arafiles?  
 6 A. **No, sir.**  
 7 Q. Okay. You never heard her say anything like  
 8 that?  
 9 A. **No, not from her mouth.**  
 08:51AM 10 Q. Okay. Thank you.  
 11 MR. TIDWELL: Pass the witness, Your  
 12 Honor.  
 13 THE COURT: Anything?  
 14 MR. COOK: No.  
 08:51AM 15 THE COURT: You can step down. Thank you.  
 16 MR. TIDWELL: Holly Denny.  
 17 THE COURT: Go ahead.  
 18  
 19 HOLLY DENNY, R.N.,  
 08:52AM 20 having been first duly sworn, testified as follows:  
 21 DIRECT EXAMINATION  
 22 BY MR. TIDWELL:  
 23 Q. Are you Holly Denny?  
 24 A. **Yes.**  
 08:52AM 25 Q. Are you a nurse at the Kermit hospital?

1 A. **Yes.**  
 2 Q. Are you in charge of the emergency room? Is  
 3 that --  
 4 A. **On my shift, yes.**  
 08:52AM 5 Q. Okay. Real quickly this morning I just need to  
 6 know were you ever present, you and Anne Mitchell  
 7 present together, when Ms. Mitchell directly from her  
 8 mouth made derogatory comments about Dr. Arafiles?  
 9 A. **What do you mean by derogatory?**  
 08:53AM 10 Q. Anything like he's not a doctor, he's a witch  
 11 doctor, I'm going to get him, I'm going to get him out  
 12 of here, anything like that.  
 13 A. **She never said she was going to get him in**  
 14 **front of me.**  
 08:53AM 15 Q. Okay. Did she ever say anything like that?  
 16 A. **She just asked questions about him, but she**  
 17 **never directly said I'm going to get him.**  
 18 Q. Okay. Did she ever indicate that there would  
 19 be a time limit on him being there?  
 08:53AM 20 A. **She just asked me questions about him.**  
 21 Q. Okay. What kind of questions?  
 22 A. **About patients, the questions she had about the**  
 23 **care they had received, about how he was doing in the**  
 24 **ER, stuff like that.**  
 08:53AM 25 Q. Okay. Did she ever talk to you about similar

1 concerns with any other doctor?  
 2 A. **No.**  
 3 Q. Okay. Did it seem odd that she was interested  
 4 in this Dr. Arafiles?  
 08:53AM 5 A. **Not at first, but as it went on there was a lot**  
 6 **of questions about him.**  
 7 Q. Okay. Just kept on and kept on?  
 8 A. **Yeah, there was several questions.**  
 9 Q. Okay. Thank you.  
 08:54AM 10 MR. TIDWELL: Pass the witness, Your  
 11 Honor.  
 12  
 13 CROSS-EXAMINATION  
 14 BY MR. COOK:  
 08:54AM 15 Q. Ms. Denny, do you remember a 10-year-old boy  
 16 who presented to the ER with abdominal pain to the lower  
 17 right quarter, nausea and vomiting?  
 18 A. **You'd have to --**  
 19 THE COURT: Do y'all want to approach.  
 08:54AM 20 (AT BENCH, OFF THE RECORD)  
 21 THE COURT: You can step down. Thank you.  
 22 THE WITNESS: Okay.  
 23 MR. TIDWELL: Peggy.  
 24 THE COURT: Right up here.  
 08:55AM 25 THE WITNESS: Thank you.

1 THE COURT: Go ahead.

2

3 PEGGY ARMSTRONG, R.N.,

4 having been first duly sworn, testified as follows:

08:55AM

DIRECT EXAMINATION

6 BY MR. TIDWELL:

7 Q. Are you Peggy Armstrong?

8 A. Yes, sir.

9 Q. And are you a nurse at the Kermit hospital?

08:55AM

10 A. Yes, sir, I am.

11 Q. What is your position now? Are you just a  
12 floor nurse or do you have another position?

13 A. I have another position. I'm the director of  
14 performance improvement.

08:55AM

15 Q. Okay. Do you know Anne Mitchell?

16 A. Yes, sir, I do.

17 Q. Worked with her for a long time?

18 A. Several years.

19 Q. Okay. Were you ever -- did you ever have a

08:55AM

20 direct conversation with Anne Mitchell where she made  
21 any derogatory or unkind comments about Dr. Arafiles?

22 A. Yes, sir, I was.

23 Q. Now how many times?

24 A. Multiple times.

08:56AM

25 Q. Okay. Do you remember kind of what time period

22

1 these were in, or were they over a long time period?

2 A. It was a short time period, I would say  
3 probably about two months, two to three months.

4 Q. Okay. About how long ago was this period?

08:56AM

5 A. It was the latter part of last year, maybe the  
6 first part of this year.

7 Q. Okay. The latter part of '08, into the first  
8 part of '09?

9 A. Yes, sir.

08:56AM

10 Q. Okay. What comments, as best you can remember  
11 all of them, what comments did she make?

12 A. One of the comments that sticks in my mind more  
13 than anything is we was leaving a board meeting one  
14 night and she said we need to get rid of that S.O.B.,

08:56AM

15 and said the words, did not say, you know, we need --  
16 well, she said we need to get rid of that son of a  
17 bitch.

18 Q. Okay. What other comments have you heard her  
19 make?

08:57AM

20 A. Multiple similar comments about him, about his  
21 practice.

22 Q. Okay. Did it appear to you -- were you  
23 around -- did you have interaction with Ms. Mitchell  
24 when Dr. Arafiles first started at the hospital?

08:57AM

25 A. Yes, sir.

1 Q. Did it appear when he started that she had

2 formed an opinion about him when he first came?

3 MR. COOK: That's speculation, judge.

4 THE COURT: Yeah, and that's not relevant

08:57AM

5 to what we're talking about.

6 MR. TIDWELL: Okay. Pass the witness,  
7 Your Honor.

8

9

CROSS-EXAMINATION

08:57AM

10 BY MR. COOK:

11 Q. Ms. Armstrong, when did -- when did the sheriff  
12 come to talk to you about this?

13 A. I don't even remember the exact time. It's --

14 Q. How long ago?

08:57AM

15 A. I don't even recall, maybe two or three months  
16 ago.

17 Q. Okay. Did you give a written statement about  
18 this evidence?

19 A. Did I give a written statement?

08:58AM

20 Q. Yes.

21 A. I gave a verbal statement.

22 Q. Okay. And that was two months ago?

23 A. Two or three months ago, I don't remember the  
24 exact time.

08:58AM

25 Q. Your job title has changed since last year; is

24

1 that correct?

2 A. Yes, sir, it has.

3 Q. Okay. Do you remember Dr. Arafiles inserting a  
4 needle into a lady's toe who dropped a turkey on it?

08:58AM

5 A. Yes, sir, I do.

6 Q. You intervened in that case, didn't you?

7 A. Yes, sir, I did.

8 Q. Did you report that to the board?

9 A. I reported it to Vicki Galle and to Anne

08:58AM

10 Mitchell. Anne was the director of compliance at that  
11 time. I did not direct it to the board, no, I did not.

12 Q. Okay. And you understand you have an  
13 independent duty to the citizens of this state when you  
14 took your license to make reports of substandard care?

08:58AM

15 A. Yes, sir, I do.

16 Q. Okay. And you did not report it to the board  
17 or any oversight agency other than the internal -- other  
18 than the internal policies of the hospital; is that  
19 correct?

08:59AM

20 A. I took it to the internal, yes, sir, I did.

21 MR. COOK: Thank you, ma'am.

22 THE WITNESS: Uh-huh.

23

24

REDIRECT EXAMINATION

08:59AM

25 BY MR. TIDWELL:

1 Q. Did you ever make a determination of your own  
2 that that was substandard care?

3 THE COURT: That's not within the ambit of  
4 what we're doing on this here.

08:59AM 5 MR. TIDWELL: Okay. Thank you, judge.  
6 That's all I have.

7 THE COURT: Anything else?

8 MR. COOK: No.

9 THE COURT: You can step down.

09:00AM 10 MR. TIDWELL: Donna Paehl.

11 THE COURT: Go ahead.

12  
13 DONNA PAEHL, R.N.,

14 having been first duly sworn, testified as follows:

09:00AM 15 DIRECT EXAMINATION

16 BY MR. TIDWELL:

17 Q. Are you Donna Paehl?

18 A. Yes, sir.

09:00AM 19 Q. And are you employed by the Winkler County  
20 hospital?

21 A. Yes, sir.

22 Q. Are you the director of nurses?

23 A. Yes, sir.

09:00AM 24 Q. And that's a relatively new job for you; is  
25 that right?

1 A. Yes, sir.

2 Q. Okay. Previous -- did you take that middle of  
3 summer or so last year?

4 A. Yes, sir.

09:00AM 5 Q. Okay. Prior to that what were you doing?

6 A. I was the assistant director of nurses and the  
7 ER supervisor.

8 Q. Okay. And who is the ER supervisor now?

9 A. I am.

09:00AM 10 Q. Okay. Have you ever been in a conversation, a  
11 direct, one-on-one conversation, or have you ever heard  
12 directly Anne Mitchell say anything derogatory or make  
13 derogatory comments toward Dr. Arafles?

09:00AM 14 A. The only thing that I've ever heard her say  
15 derogatory was this has got to stop.

16 Q. Okay. Did you know -- what do you think was  
17 meant by that?

18 A. It was in reference to some incidents that had  
19 happened in the ER.

09:01AM 20 Q. Okay. Were there -- were there three incidents  
21 of little minor surgical procedures that were done?

22 A. Yes, sir.

23 Q. And in our particular little hospital we're  
24 not --

09:01AM 25 THE COURT: Is that the only things that

1 you heard?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. Anything else?

4 MR. TIDWELL: No, sir.

09:01AM 5 THE COURT: Okay. You can step down.

6 THE WITNESS: Thank you.

7 MR. TIDWELL: That's everyone on this  
8 issue, Your Honor.

9 There is one lady, Your Honor, but she  
09:01AM 10 became ill yesterday evening and is contagious. And  
11 Brian and I talked last night and I told him I wasn't  
12 going to bring her if she's sick and contagious.

13 MR. COOK: Judge, we'd renew our objection  
14 to these that they are extraneous, number one, but even  
09:01AM 15 more importantly that we have requested since July for  
16 statements of the Defendant and that we've never been  
17 provided them. And we would request that the court not  
18 permit these statements before the jury.

19 No notice it's extraneous, no notice it's  
09:02AM 20 statements of Defense, but we believe we properly  
21 requested them.

22 THE COURT: Y'all want to approach please.

23 (AT BENCH, OFF THE RECORD)

24

25

KENNETH WINTON, D.O.,

1 having been previously sworn, testified further as  
2 follows:

3 EXAMINATION

4 BY THE COURT:

09:06AM 5 Q. Dr. Winton, you previously gave testimony  
6 concerning some statements that were allegedly made by  
7 the Defendant in this case. When were those statements  
8 made?

9 You previously said midsummer. Of what  
09:06AM 10 year were those statements made?

11 A. It was right after -- let's see. I got there  
12 in April. So it had to have been 2008.

13 THE COURT: Thank you. You can step down.

14 The testimony of Dr. Winton, Ms. Herrera,  
09:07AM 15 Mr. Smith, and Ms. Armstrong will be allowed. The other  
16 witnesses' testimony will not be allowed.

17 MR. CARNEY: Would you give us that list  
18 again please.

19 THE COURT: Dr. Winton, Ms. Herrera,  
09:07AM 20 Mr. Smith, and Ms. Armstrong.

21 Ready to proceed?

22 MR. TIDWELL: I'm ready, judge.

23 THE COURT: Okay.

24 MR. TIDWELL: Go get my first witness?

09:08AM 25 THE COURT: Yes.

1 Bring in the jury.  
 2 (JURY PRESENT)  
 3 THE COURT: Good morning, ladies and  
 4 gentlemen.  
 09:16AM 5 Call your first witness please.  
 6 MR. TIDWELL: I call Charlene Beauchamp,  
 7 Your Honor.  
 8 THE COURT: You were sworn yesterday,  
 9 correct?  
 09:16AM 10 THE WITNESS: Yes, sir.  
 11 THE COURT: Go okay. Go ahead.  
 12  
 13 CHARLENE BEAUCHAMP,  
 14 having been first duly sworn, testified as follows:  
 09:16AM 15 DIRECT EXAMINATION  
 16 BY MR. TIDWELL:  
 17 Q. Would you tell the ladies and gentlemen of the  
 18 jury your name please, ma'am?  
 19 A. **Charlene Beauchamp.**  
 09:16AM 20 Q. And how are you employed?  
 21 A. **I'm employed now as the I.T. director for**  
 22 **Winkler County.**  
 23 Q. Okay. What's an I.T. director do?  
 24 A. **Information technology, I work on the computers**  
 09:17AM 25 **and deal with any of the electronic stuff in the**

1 **hospital and courthouse.**  
 2 Q. Okay. So you don't work just at the hospital;  
 3 you work in the courthouse, also?  
 4 A. **The courthouse, sheriff's office, any of the**  
 09:17AM 5 **computers that belong to the county.**  
 6 Q. Okay. Do you -- were you called on at some  
 7 point in time to get some information about some  
 8 computers involving this investigation?  
 9 A. **Yes, I was.**  
 09:17AM 10 Q. Who first contacted you?  
 11 A. **The sheriff, Robert Roberts.**  
 12 Q. And were you at some point contacted by Officer  
 13 Swanson?  
 14 A. **Yes.**  
 09:17AM 15 Q. Okay. What information -- what was your role  
 16 going to be?  
 17 A. **I was first contacted for serial numbers off of**  
 18 **the computers at the Homeland Security office and two**  
 19 **computers that were in the hospital, one of them in Anne**  
 09:17AM 20 **Mitchell's office and one of them in Vicki Galle's**  
 21 **office.**  
 22 Q. Okay. And why would you know what the serial  
 23 numbers were?  
 24 A. **I had them on inventory.**  
 09:18AM 25 Q. Okay. And tell me what the Homeland Security

1 office is.  
 2 A. **It is located in the community center across**  
 3 **the street from the courthouse.**  
 4 Q. And what is the Homeland Security office?  
 09:18AM 5 A. **She does several things for the county. She**  
 6 **does grant writing, emergency management. I'm not**  
 7 **really sure what all she does.**  
 8 Q. Okay. And who is she?  
 9 A. **Anne Mitchell.**  
 09:18AM 10 Q. And is this the same Anne Mitchell that's  
 11 seated at counsel table to my right?  
 12 A. **Yes, it is.**  
 13 Q. At -- so you provided the serial numbers. What  
 14 did you do after that? Were you called on to do  
 09:18AM 15 anything else?  
 16 A. **Yes. I went with Officer Swanson when he**  
 17 **seized the computers and disks and stuff from the**  
 18 **offices. I disconnected the computers, loaded the**  
 19 **computers in the sheriff's department car, made sure**  
 09:18AM 20 **that they were secure, and then unloaded them at the**  
 21 **sheriff's office.**  
 22 MR. COOK: And, judge, just for purposes  
 23 of the record, we need to renew our objection and would  
 24 ask for a continuing objection as to -- on the grounds  
 09:19AM 25 that we believe that this search warrant is illegal for

1 the reasons previously stated.  
 2 THE COURT: The objection is overruled.  
 3 Again, inasmuch as I can grant that, I  
 4 grant it. And feel free if you feel the need to have to  
 09:19AM 5 do that for the record, no problem.  
 6 MR. COOK: Thank you, Your Honor.  
 7 Q. (By Mr. Tidwell) So you were in charge of  
 8 unplugging the computers so it was all done like  
 9 computers ought to be done?  
 09:19AM 10 A. **Yes.**  
 11 Q. Okay. They were taken to the sheriff's office.  
 12 Did you do anything after that?  
 13 A. **Yes. The next morning I was asked to search**  
 14 **the three computers for any documents concerning**  
 09:19AM 15 **Dr. Arafiles.**  
 16 Q. Okay. And did you perform a search?  
 17 A. **Yes, I did.**  
 18 Q. Based on your knowledge, training, experience,  
 19 do you know how to search through files on a computer to  
 09:19AM 20 find something like this?  
 21 A. **Yes.**  
 22 Q. And these computers that you were searching all  
 23 belonged to the county?  
 24 A. **Yes, they do.**  
 09:20AM 25 Q. Okay. And did you locate any documents?



1 **A. I did on the Homeland Security computer that**  
 2 **was located -- that computer had -- was located across**  
 3 **the street from the courthouse in the community center.**  
 4 **Q. Okay. If you'll look I believe right up there**  
 09:20AM 5 **in front of you there is a little packet -- there is a**  
 6 **packet of written materials and then there is a little**  
 7 **envelope that contains a CD and a little flash drive**  
 8 **thingy?**  
 9 **A. Yes.**  
 09:20AM 10 **Q. Do you recognize those items?**  
 11 **A. Yes. The printouts are the ones that I did of**  
 12 **the computer that shows the --**  
 13 **Q. Okay. Would you look through those to tell me**  
 14 **whether or not those are the actual printouts that you**  
 09:20AM 15 **took from the computer and turned over to the sheriff.**  
 16 **A. Yes, they are.**  
 17 **Q. Okay. And if you would look at the disk that's**  
 18 **in the little envelope, can you tell me what it is?**  
 19 **A. That's the disk that I made of the image of the**  
 09:21AM 20 **documents that was on the Homeland Security computer.**  
 21 **Q. So just because I'm not all that great a**  
 22 **computer person, the written documents that you have are**  
 23 **also on the CD, they're just in electronic form on the**  
 24 **CD?**  
 09:21AM 25 **A. Yes, they are.**

1 **Q. Okay. And what's that other little black**  
 2 **thingy in there?**  
 3 **A. It's a little flash disk. A couple of the**  
 4 **documents are temp files. Anytime that you write a**  
 09:21AM 5 **document on your computer, it saves parts of the**  
 6 **document, auto saves them in a temporary file. And the**  
 7 **temp files wouldn't record onto the CD, so I saved them**  
 8 **on a flash drive.**  
 9 **Q. Okay. In the printed out documents, are**  
 09:21AM 10 **there -- there appears to be a sort of a final draft of**  
 11 **something dated April 7th; is that correct?**  
 12 **A. Yes.**  
 13 **Q. And does it also appear that there are previous**  
 14 **versions of that?**  
 09:21AM 15 **A. Yes. Those right there are the temp file**  
 16 **printouts.**  
 17 **Q. Okay. And are these true and accurate copies**  
 18 **of the exact information that you retrieved off of this**  
 19 **computer that was in the Homeland Security office?**  
 09:22AM 20 **A. Yes, they are.**  
 21 **MR. TIDWELL: Your Honor, I believe we**  
 22 **previously have, but just in case, we offer --**  
 23 **Q. (By Mr. Tidwell) The paper is marked State's**  
 24 **Exhibit?**  
 09:22AM 25 **A. 2.**

1 **MR. TIDWELL: We'd offer State's 2.**  
 2 **Q. (By Mr. Tidwell) And the CD is marked State's?**  
 3 **A. 1.**  
 4 **MR. TIDWELL: State's 1 and 2, Your Honor.**  
 09:22AM 5 **MR. COOK: And, judge, we object. And I**  
 6 **think they're already in evidence --**  
 7 **THE COURT: They've already been admitted.**  
 8 **Number 3 is not.**  
 9 **MR. COOK: And for purposes of the record,**  
 09:22AM 10 **we object to this entire line of questioning.**  
 11 **THE COURT: Overruled.**  
 12 **Go ahead.**  
 13 **Q. (By Mr. Tidwell) Did you have any further**  
 14 **involvement in the investigation looking for documents**  
 09:22AM 15 **or documentary type evidence?**  
 16 **A. No.**  
 17 **Q. Okay. You -- when you're doing your work, you**  
 18 **said part is at the courthouse, part at the hospital,**  
 19 **did you work with Anne Mitchell from time to time?**  
 09:22AM 20 **A. Yes, I did.**  
 21 **Q. Have you been called on to do a lot of computer**  
 22 **work for her?**  
 23 **A. No more than anybody else, but, yes, I have**  
 24 **worked on the computers at the Homeland Security office**  
 09:23AM 25 **several times. I was the original person that set it up**

1 **many years ago.**  
 2 **Q. Okay. Ms. Beauchamp, did you ever directly**  
 3 **hear Ms. Mitchell make any derogatory comments about**  
 4 **Dr. Arafiles?**  
 09:23AM 5 **A. Yes, I have several times.**  
 6 **Q. Okay. Do you remember about when these**  
 7 **comments happened?**  
 8 **MR. COOK: And, judge, we'd object. We**  
 9 **believe it's irrelevant, and we also put in for the**  
 09:23AM 10 **other reasons about extraneous and for the discovery**  
 11 **violations on statements of Defendant --**  
 12 **THE COURT: Overruled.**  
 13 **MR. COOK: -- we'd object.**  
 14 **Q. (By Mr. Tidwell) Do you remember about when**  
 09:23AM 15 **these statements were made to you?**  
 16 **A. I remember one of the specific dates because it**  
 17 **was a date after my child had been injured at school,**  
 18 **and it was on April 30th of 2008.**  
 19 **Q. And what statement did Ms. Mitchell make?**  
 09:23AM 20 **A. The conversation involved -- because I had**  
 21 **taken my child to Monahans hospital for stitches. And**  
 22 **after I had came back to work the next day I was talking**  
 23 **to the administrator, Stan Wiley, and Dr. Arafiles was**  
 24 **present.**  
 09:24AM 25 **And I had -- Anne Mitchell had heard me**

1 tell them that I had taken the eight-year-old to -- or  
2 seven-year-old at that time -- six-year-old, sorry, I've  
3 got to go backwards, the six-year-old at that time to  
4 Monahans for stitches because one of the nurses said  
09:24AM 5 that we didn't have anybody that could stitch a mouth on  
6 the inside of the mouth at the hospital at that time.

7 Dr. Arafiles had told me that he was  
8 qualified to do stitches inside of the mouth and that he  
9 could have done it. Anne told me later, later on, about  
09:24AM 10 10, 15 minutes later, not to trust that doctor, that he  
11 was not a good doctor, that she didn't trust him as far  
12 as doing any type of medical care, and that she didn't  
13 like him, that she would make sure that he didn't last  
14 there.

09:24AM 15 MR. COOK: And, judge, just for purposes  
16 of the record again, we'd -- I just want to make sure  
17 that we have a continuing objection for the grounds  
18 stated previously on all these statements.

19 THE COURT: Inasmuch as I'm able to do  
09:25AM 20 that, I grant the continuing objection.

21 MR. COOK: Thank you, Your Honor.  
22 Q. (By Mr. Tidwell) Were there other occasions  
23 when Ms. Mitchell made statements about Dr. Arafiles?  
24 A. Yes.

09:25AM 25 Q. What was the next occasion?

1 A. I'm not really sure on dates. It was, you  
2 know, after June of 2008. I was very busy with the move  
3 to the new hospital.  
4 But there were many other occasions during  
09:25AM 5 those times between the two -- June 2008 up until the  
6 time that she was terminated that she had made comments  
7 about Dr. Arafiles.

8 MR. COOK: And, judge, we'd ask that that  
9 be stricken from the record. There is no information in  
09:25AM 10 that, sometime during the year something was said. We'd  
11 object.

12 THE COURT: Approach.

13 (AT BENCH, OFF THE RECORD)

14 THE COURT: Sustained.

09:26AM 15 MR. COOK: Thank you, Your Honor.

16 Q. (By Mr. Tidwell) And, Ms. Beauchamp, other  
17 than what you've already told us about, have you had any  
18 other direct involvement with anything to do with this  
19 case?

09:26AM 20 A. No.

21 Q. Okay. Thank you.

22 MR. TIDWELL: Pass the witness, Your  
23 Honor.

09:26AM 24  
25 CROSS-EXAMINATION

1 BY MR. COOK:

2 Q. Good morning, Ms. Beauchamp. My name is John  
3 Cook, and I'm representing Anne Mitchell. And we have  
4 not met before, have we?

09:26AM 5 A. I don't believe so.

6 Q. Okay. You work in the courthouse quite a bit,  
7 don't you?

8 A. Yes, I do.

9 Q. Okay. And you've known Anne for a long time,  
09:27AM 10 haven't you?

11 A. Yes, I've worked for the county for 10 years.

12 Q. Okay. When Anne made this statement that you  
13 say she made to you, do you think she had a concern  
14 about this doctor's care?

09:27AM 15 A. I don't know, I did not really know  
16 Dr. Arafiles at that time.

17 Q. Well, you've come to learn about him since  
18 then, haven't you?

19 A. Yes.

09:27AM 20 Q. Okay. In fact, you had a problem with a  
21 grandchild and Dr. Arafiles, didn't you?

22 A. Yes, I did.

23 Q. Okay. And you went around that courthouse and  
24 you told a lot of people about your opinion of

09:27AM 25 Dr. Arafiles, didn't you?

1 A. Not -- I was talking -- I talked to Anne on the  
2 phone about it, and I talked to the judge.

3 Q. Did you talk to anybody else that you can  
4 remember?

09:27AM 5 A. I do not know.

6 THE COURT: Would the attorneys approach  
7 please.

8 (AT BENCH, OFF THE RECORD)

9 A. Judge Leck.

09:28AM 10 Q. Judge Bonnie Leck.

11 And you made complaints to Judge Bonnie  
12 Leck yourself about Dr. Arafiles, didn't you?

13 A. Yes. And then the next day it was discovered  
14 that that right there was -- that Dr. Arafiles had been  
09:28AM 15 under a lot of stress because of --

16 Q. So it's okay to make mistakes when you're under  
17 stress with your grandchildren?

18 A. No. My complaint was certainly (sic) about if  
19 the doctors are working in the emergency room and they  
20 are also working in the clinic and they are called to  
21 the emergency room, they need to stop what they are  
22 doing and call another doctor to take care of the child.

23 Q. Have you ever said that the courthouse over  
24 there in Kermit has ears?

09:28AM 25 A. Oh, yes.

1 Q. Okay. You -- you know Cheryl Wright?  
 2 A. **Charlene.**  
 3 Q. Charlene Wright?  
 4 A. **Cheryl Wright.**  
 09:29AM 5 Q. Cheryl, excuse me, I'm sorry. Do you know her?  
 6 A. **Yes.**  
 7 Q. Okay. Do you remember talking to her about  
 8 your feelings about Dr. Arafiles?  
 9 A. **About that same specific case, yes.**  
 09:29AM 10 Q. And at that time you were very upset, weren't  
 11 you?  
 12 A. **Yes. It was a very small child.**  
 13 Q. Okay.  
 14 A. **He was a year old.**  
 09:29AM 15 Q. All right. And have you taken your  
 16 grandchildren back to see Dr. Arafiles since then?  
 17 A. **Yes, I have.**  
 18 Q. Okay. Now you made a report on the search of  
 19 the county computers and all your knowledge of this  
 09:29AM 20 case, didn't you?  
 21 A. **Yes.**  
 22 Q. Okay. And that report was made on May 20,  
 23 2009, was it not?  
 24 A. **Yes.**  
 09:29AM 25 Q. Okay. And I don't see anywhere in your report

1 any information about any statements that Anne made.  
 2 A. **That was not the reason why that I made the**  
 3 **report. The report pertained to the search of the**  
 4 **computers.**  
 09:30AM 5 Q. Okay. Well, since that time have you made a  
 6 written statement about this evidence?  
 7 A. **No, I have not.**  
 8 Q. Okay. And truth be told, when was the first  
 9 time that you were asked by law enforcement or the  
 09:30AM 10 prosecution about those statements?  
 11 A. **A few weeks ago.**  
 12 Q. Two weeks ago.  
 13 And you were asked by Mr. Tidwell about  
 14 those two weeks ago?  
 09:30AM 15 A. **Yes.**  
 16 Q. And that's the first time you relayed them to  
 17 anybody in law enforcement?  
 18 A. **I might have mentioned them to Sheriff Roberts.**  
 19 Q. Okay. Now Dr. Arafiles told you he could do  
 09:30AM 20 this type of stitch for that other incident you were  
 21 talking about, right?  
 22 A. **With the six-year-old, yes.**  
 23 Q. Are you aware that he has no surgical  
 24 privileges at that hospital?  
 09:31AM 25 A. **Giving emergency room stitches, does that**

1 **pertain to surgical?**

2 Q. Answer my question, ma'am. Are you aware that  
 3 he has no surgical privileges at that hospital? That's  
 4 the --  
 09:31AM 5 A. **At the time I did not know.**  
 6 Q. Okay. And the one thing I want to make very  
 7 clear to this jury, tell this jury, do you know for a  
 8 fact that Anne had no concern for patient safety when  
 9 she was talking about Arafiles or do you know that she  
 09:31AM 10 did have concern for patient safety?  
 11 A. **I do not know.**  
 12 MR. COOK: A moment to confer with  
 13 co-counsel?  
 14 THE COURT: Sure.  
 09:31AM 15 Q. (By Mr. Cook) And when you made the statements  
 16 in the courthouse to Cheryl and others, you had concern  
 17 about patient safety and Dr. Arafiles --  
 18 A. **When I talked --**  
 19 Q. -- at the time you made those statements,  
 09:31AM 20 right?  
 21 A. **When I talked to Cheryl it was at Steve**  
 22 **Taliaferro's office.**  
 23 Q. Okay. Well, wherever.  
 24 You had concerns about patient safety and  
 09:32AM 25 Dr. Arafiles when you made those statements, didn't you?

1 A. **I had concern about the protocol on them going**  
 2 **to the emergency room, yes, I did have concerns.**  
 3 MR. COOK: Pass the witness, Your Honor.  
 4  
 09:32AM 5 REDIRECT EXAMINATION  
 6 BY MR. TIDWELL:  
 7 Q. Just to clear my mind up for me, the --  
 8 where -- did you have the one-year-old over at the  
 9 clinic?  
 09:32AM 10 A. **Yes.**  
 11 Q. And did something happen where the doctor got  
 12 called from the clinic to the emergency room?  
 13 A. **Yes.**  
 14 Q. And did that -- was there anybody left in the  
 09:32AM 15 clinic then to see the one-year-old?  
 16 A. **I -- we stayed, and another doctor did see him.**  
 17 **But I was upset because Dr. Arafiles told us that we**  
 18 **were finished and gave us a prescription without really**  
 19 **examining the baby because he was called to the**  
 09:32AM 20 **emergency room.**  
 21 Q. Okay. And so your complaint is -- was that he  
 22 had to leave the clinic to go to the emergency room?  
 23 A. **My complaint was that he gave us a**  
 24 **prescription, did not examine the baby, and left without**  
 09:33AM 25 **telling us I've got to go, I need to have another doctor**

1 **examine the baby.**  
 2 **Q.** Okay. And another doctor did?  
 3 **A.** Yes.  
 4 **Q.** Okay. Was it one of the other doctors or one  
 09:33AM 5 of the nurse practitioners?  
 6 **A.** It was a nurse practitioner, Brandi Goss.  
 7 **Q.** Okay. Over in the clinic in Kermit there is  
 8 doctors and then there is nurse practitioners, right?  
 9 **A.** Yes, there are.  
 09:33AM 10 **Q.** And you go and you kind of see who is there and  
 11 see who you pick from that's there that day?  
 12 **A.** Yes.  
 13 **Q.** Okay.  
 14 Okay. Thank you.  
 09:33AM 15 **MR. TIDWELL:** Pass the witness, Your  
 16 Honor.  
 17 **MR. COOK:** Nothing further, Your Honor.  
 18 **THE COURT:** You can step down.  
 19 Call your next witness.  
 09:33AM 20 **MR. TIDWELL:** I call Dr. Arafiles.  
 21 **THE COURT:** Right up here, sir.  
 22 You were sworn yesterday, correct?  
 23 **THE WITNESS:** Yes, sir.  
 24 **THE COURT:** Have a seat.  
 09:34AM 25 Go ahead, counsel.

1  
 2 **ROLANDO ARAFILES, M.D.,**  
 3 having been first duly sworn, testified as follows:  
 4 **DIRECT EXAMINATION**  
 09:34AM 5 **BY MR. TIDWELL:**  
 6 **Q.** Would you tell the jury your name please, sir.  
 7 **A.** I am Dr. Rolando Arafiles.  
 8 **Q.** And you live in Kermit?  
 9 **A.** Yes, sir.  
 09:34AM 10 **Q.** Do you practice in Kermit?  
 11 **A.** Yes, sir.  
 12 **Q.** Do you practice from time to time in other  
 13 places?  
 14 **A.** Yes, sir.  
 09:34AM 15 **Q.** Do you practice in emergency rooms in other  
 16 places?  
 17 **A.** Yes, sir.  
 18 **Q.** Is it fairly common for doctors that do  
 19 emergency room type work to kind of go around from place  
 09:34AM 20 to place wherever somebody is needed?  
 21 **A.** Yes, sir.  
 22 **Q.** Do they -- is there a term for that? Do they  
 23 call it fill in or --  
 24 **A.** They call it locum tenens.  
 09:35AM 25 **Q.** Okay.

1 **A.** Some call it doctor work.  
 2 **Q.** Okay. How long -- when did you come to Kermit?  
 3 **A.** I came to Kermit -- I think -- the first time  
 4 you mean? Are you talking about --  
 09:35AM 5 **Q.** To practice.  
 6 **A.** To practice? I came to practice in Kermit I  
 7 think February -- after February 14th when I -- after I  
 8 met Mr. Wiley.  
 9 **Q.** Okay. And who is Mr. Wiley?  
 09:35AM 10 **A.** Mr. Wiley is the hospital administrator.  
 11 **Q.** Okay. Did you -- were you recruited to come to  
 12 Kermit by Mr. Wiley?  
 13 **A.** Yes, sir.  
 14 **Q.** Okay. At the time you were recruited to come,  
 09:35AM 15 where were you living?  
 16 **A.** I was living in Victoria, Texas.  
 17 **Q.** Okay. And how did Mr. Wiley -- how did you and  
 18 Mr. Wiley hook up knowing that you might want to come  
 19 and he might want you to come?  
 09:35AM 20 **A.** I was working for another company in central  
 21 Texas. And Dr. Gumato, who practices in Crane, was I  
 22 think approached initially by Mr. Wiley. And she called  
 23 me up and she said why don't you not come and check this  
 24 opportunity out. So he gave me -- she gave me the  
 09:35AM 25 number of Mr. Wiley. I called him up.

1 **And coincidentally that -- there was a**  
 2 **weekend that the company that I worked for asked me to**  
 3 **cover in Monahans. And when I -- when I was assigned in**  
 4 **Monahans, I immediately called Mr. Wiley and told him**  
 09:36AM 5 **that I will be around and if he wants, you know, we**  
 6 **could meet and we could talk.**  
 7 **So I think it was a Sunday evening he and**  
 8 **his wife came and we talked. He proposed -- he gave me**  
 9 **the proposed opportunity.**  
 09:37AM 10 **MR. COOK:** And, judge, I -- that's a great  
 11 story, but what's the relevance? I object.  
 12 **THE COURT:** Question and answer please.  
 13 **Q.** (By Mr. Tidwell) Okay. Eventually did you  
 14 make the decision to come to Kermit and practice?  
 09:37AM 15 **A.** Yes, sir.  
 16 **Q.** Okay. Let's go ahead get something out of the  
 17 way. When you were in Victoria, were you a doctor that  
 18 was supervising physician assistants in a weight loss  
 19 clinic?  
 09:37AM 20 **A.** Yes, sir.  
 21 **Q.** And because of some of those things were you  
 22 reprimanded by the Texas Medical Board?  
 23 **A.** Yes, sir.  
 24 **Q.** What did the Texas Medical Board reprimand you  
 09:37AM 25 for?

1 A. I was -- I was reprimanded by the Texas Medical  
2 Board for lack of supervision of P.A.s that were running  
3 the clinic. It just so happened that I was the medical  
4 director of that clinic when some -- when another doctor  
09:38AM 5 who was doing bariatric surgery filed a complaint  
6 against me --  
7 Q. Okay.  
8 A. -- as a competition.  
9 Q. Okay. And as a result of the incident with the  
09:38AM 10 Texas Medical Board, the reprimand was what?  
11 A. The reprimand consisted of -- number one was I  
12 was supposed to come up with a thousand dollars for  
13 administrative fee.  
14 Q. Okay.  
09:38AM 15 A. And then I was placed on a restriction not to  
16 supervise any nurse practitioner or any P.A. or any  
17 surgical assistant for three years.  
18 Q. Okay.  
19 A. Aside from that I was also told to do 20 extra  
09:38AM 20 CMEs on certain topics that the board would allow me to  
21 do extra CMEs on. That is continuing medical education  
22 credits.  
23 Q. Okay. And does that three-year period, does  
24 that end here pretty quickly?  
09:39AM 25 A. Yes, sir. It's -- I'll be completing my --

1 I'll be completing that I think this year, April of this  
2 year.  
3 Q. In April just a couple of months from now?  
4 A. Yes, sir.  
09:39AM 5 Q. And have you satisfied all the requirements  
6 that they put on you, you've paid the administrative  
7 penalty and done the extra continuing medical education?  
8 A. Yes, sir.  
9 Q. Okay. And as far as you know from -- you're  
09:39AM 10 off the hook then with them?  
11 A. Not yet, sir.  
12 Q. Okay.  
13 A. I got a letter from my compliance officer  
14 and -- informing me that he received all of the CMEs.  
09:39AM 15 And I think I even did more. I had -- I was supposed to  
16 do 20. I did 21.  
17 And he also gave me a copy of the receipt  
18 of the thousand dollars that I paid. And he said we  
19 were just to wait until April 13 of 2010 and he will  
09:40AM 20 prepare a letter to the Texas Medical Board and then the  
21 Texas Medical Board will prepare a letter that I am off  
22 that order.  
23 Q. Okay. When you first came to Kermit, did you  
24 make Mr. Wiley aware that you couldn't supervise  
09:40AM 25 physician assistants?

1 A. Absolutely, sir.  
2 Q. Okay.  
3 A. I --  
4 Q. Since you've been in Kermit, do physician  
09:40AM 5 assistants practice in Kermit?  
6 A. No, sir.  
7 Q. Have you had any need to supervise a  
8 physician's assistant?  
9 A. No need, sir.  
09:40AM 10 Q. Okay. At some point, doctor, did you decide to  
11 go and make a complaint in this case to law enforcement?  
12 A. Are you referring to --  
13 Q. The sheriff.  
14 A. Yes, sir.  
09:41AM 15 Q. Okay. What caused you to feel like you needed  
16 to go make a criminal complaint?  
17 A. When I -- when I got that three-year contract  
18 to work in Kermit, I was told by Mr. Wiley -- oh, sir,  
19 no, let's back up a little bit.  
09:41AM 20 Before I got my contract I worked -- he  
21 wanted me to try to work some weekends in the emergency,  
22 and that was I think from February to March, until I --  
23 until the effective date of my contract, which I think  
24 is on the 13th of April. And so I work.  
09:41AM 25 And when the date came for the

1 effectiveness of my -- effective date of my contract he  
2 told me to work, you know --  
3 MR. COOK: Judge, we're going to object to  
4 hearsay.  
09:42AM 5 THE COURT: Sustained.  
6 MR. COOK: Mr. Wiley is available. He can  
7 testify to that.  
8 THE COURT: Sustained.  
9 Q. (By Mr. Tidwell) You did come to work in  
09:42AM 10 Kermit?  
11 A. Yes, sir.  
12 Q. Did you buy a house in Kermit?  
13 A. Yes, sir, because that was, according to  
14 Mr. Wiley, that was the requirement of the hospital  
09:42AM 15 board.  
16 Q. Okay. At some point did you approach the  
17 sheriff or another law enforcement officer in Kermit to  
18 make a complaint?  
19 A. Yes, sir.  
09:42AM 20 Q. And why?  
21 A. I made a complaint because about -- when was  
22 that?  
23 I received a letter from the Texas Medical  
24 Board informing me that I was supposed to produce 10  
09:42AM 25 charts. And these 10 charts were based on an anonymous

1 complaint.

2 And I -- I was -- you know, I was kind of  
3 wondering on what could have incited this complaint  
4 because as far as I know none of my patients had any  
5 complaint against me or made any insinuation that they  
6 were not satisfied with their care.

7 Q. Okay. Let me stop you just a moment.

8 Let me show you -- is that -- does that  
9 document mean anything to you?

10 A. Yes. This is a copy --

11 THE COURT: Is that marked?

12 MR. TIDWELL: No, sir, not yet.

13 THE COURT: Okay. It probably needs to  
14 be, if we're going to refer to it in the testimony, it  
15 probably needs to be marked.

16 MR. COOK: Your Honor, I do believe it'll  
17 go into evidence, but that document does have some  
18 patient identifying information and I'd ask before it  
19 goes into evidence that we redact it.

20 THE COURT: Absolutely. I just -- but for  
21 purposes of the record, I think that we need to refer to  
22 it as an exhibit number.

23 Q. (By Mr. Tidwell) Doctor, if you would kindly  
24 hand that to the court reporter please.

25 Okay. Doctor, does that letter -- is it

1 marked State's Exhibit 4?

2 A. Yes.

3 Q. Is this a true and correct copy of the letter  
4 that you received from the Texas Medical Board?

5 A. Yes, sir.

6 Q. When is it dated?

7 A. It's dated April 15th.

8 Q. Okay. Does that -- when you received that  
9 letter, did it upset you?

10 A. Yes, sir.

11 Q. Why would it upset you?

12 A. Because this -- an investigation like this  
13 would affect, number one, my finances. I'll again have  
14 to hire a lawyer to help me deal up this -- deal with  
15 this case.

16 Number two, it would compromise my ability  
17 to be able to participate in supervising a nurse  
18 practitioner. And when I got my active status to work  
19 in the hospital, I told them that that was a very  
20 important aspect of my being able to participate fully  
21 in supervising a nurse practitioner because the other  
22 physician who was there was, what I heard, was going to  
23 leave.

24 Q. Okay. As a doctor, is the Texas Medical Board  
25 your oversight board?

1 A. Yes, sir.

2 Q. Are they the ones -- and as a lawyer it would  
3 be the State bar of Texas to me. They're the ones that  
4 can take away my license to practice law if I do  
5 something wrong.

6 A. Yes, sir.

7 Q. And as a doctor, is the Texas Medical Board the  
8 same group to you?

9 A. Yes, sir.

10 Q. So getting a complaint from your supervisory  
11 board, is that upsetting?

12 A. Yes, sir.

13 Q. It potentially is career ending?

14 A. Yes, sir.

15 Q. Okay. Shortly after receiving this, did you  
16 approach law enforcement to make your complaint?

17 A. No, sir. The first person I had to -- that I  
18 had to approach was Mr. Wiley.

19 Q. Okay. And --

20 A. And I was -- because I need some help because  
21 this -- these charts are not in my possession.

22 Q. Okay. And let's make sure. There are -- on  
23 the copy of the letter I've given you, there are patient  
24 names and on the dates of birth on there, right?

25 A. Yes, sir.

1 Q. Please don't say a name or a date of birth.

2 A. Yes, sir.

3 Q. And we will black all that out.

4 A. Yes, sir.

5 Q. Why did you need help obtaining the charts?

6 A. First of all, sir, these patients are not --  
7 all these charts are not in my personal -- are not in my  
8 personal custody.

9 And if there is any complaint against me,  
10 I have to immediately inform Mr. Wiley because he's the  
11 administrator of the hospital. And this would adversely  
12 affect my ability to work in this -- in the facility if  
13 these complaints are indeed true.

14 Q. Okay. And as a result of receiving this  
15 letter, are you required to send some information back  
16 to the Texas Medical Board?

17 A. Yes, sir. So what I did was I had the -- I  
18 asked him if he could make copies of these charts and  
19 give them to me so I could review them.

20 Q. Okay. And these are charts that you were  
21 directly involved in, in the patients' care?

22 A. Yes, sir.

23 Q. Okay. And did you receive the charts and make  
24 your response back to the medical board?

25 A. Yes, sir.

1 Q. And you had a pretty quick window of time that  
2 you had to make your response back, 30 days?

3 A. Yes, yes, sir.

4 Q. And did you make your response within the  
09:48AM 5 medical board's time guidelines?

6 A. Yes, sir.

7 Aside from that, sir, I had to also call  
8 up -- I had to also call up my malpractice carrier.

9 Q. Okay. And do you have to -- is that something  
09:48AM 10 that is a nice phone call to make or an upsetting phone  
11 call?

12 A. It's a very upsetting phone call to make, sir.

13 Q. Okay. And so did you provide a response to the  
14 Texas Medical Board within the time guidelines set forth  
09:48AM 15 in their letter?

16 A. Yes, sir.

17 Q. And that -- you got that letter in April of  
18 '08?

19 A. Yes, sir.

09:48AM 20 Q. Responded within 30 days, correct?

21 A. Earlier than 30 days, sir.

22 Q. Okay. And here we are February 9th of 2010.  
23 Have you gotten anything back from the Texas Medical  
24 Board?

09:49AM 25 A. A letter, sir.

1 Q. Saying what?

2 A. That I'm still under investigation and it's  
3 still active.

4 Q. Okay. The day you went to make your complaint  
09:49AM 5 to law enforcement, who did you go complain to?

6 A. I went to -- I went to the sheriff.

7 Q. Okay. Why the sheriff?

8 A. I went to the sheriff because I felt that there  
9 was some malice behind this complaint.

09:49AM 10 Q. Okay. Why did you think there was malice  
11 behind it?

12 A. There were certain things that were happening  
13 at the hospital.

14 Q. Okay. Directed at you?

09:49AM 15 A. Yes, sir.

16 Q. By anyone in particular?

17 A. By Anne Mitchell and Vicki Galle.

18 Q. Okay.

19 A. And also Dr. Pham.

09:50AM 20 Q. Okay. And when you went to the sheriff, at  
21 that time were you and the sheriff what you would call  
22 friends?

23 A. I met him in one of my -- our golf games in --  
24 when he was -- I joined his -- I joined him in one of  
09:50AM 25 the scrambles.

1 Q. Okay.

2 A. And after that we just met casually. I --  
3 he -- I kind of treated him in the emergency room when  
4 he had a heart attack.

09:50AM 5 Q. Okay. Did you relate to law enforcement that  
6 you thought you were the victim of something wrong?

7 A. Yes, sir.

8 Q. Did you turn over this letter from the Texas  
9 Medical Board to the sheriff?

09:50AM 10 A. Yes, sir.

11 Q. Did you ask him to conduct an investigation?

12 A. Yes, sir.

13 Q. And do you know if he conducted one?

14 A. He did, sir.

09:51AM 15 Q. Okay. Doctor, if you would look at -- up there  
16 right in front of you on the little rail there is a  
17 document marked State's Exhibit 2. It's just a packet  
18 of pages there.

19 A. Yes, this one.

09:51AM 20 Q. If you'll retrieve that. And if you'll look in  
21 that packet and find the document that at the top  
22 left-hand corner is dated April 7, 2009.

23 A. April 7th.

24 Top left?

09:51AM 25 Q. Yes, sir.

1 A. Yes.

2 MR. TIDWELL: Let me approach, Your Honor,  
3 just to make sure we're looking at the right document.

4 A. Thank you.

09:52AM 5 Q. Have you ever seen this document before,  
6 doctor?

7 A. No, sir.

8 Q. Okay. I want to ask you some questions.

9 MR. COOK: And, judge, again, just for the  
09:52AM 10 purpose of the record, we're objecting to this as a  
11 privileged document and we don't believe that he should  
12 be questioned on it at this time.

13 THE COURT: Overruled.

14 Go ahead.

09:52AM 15 Q. (By Mr. Tidwell) Before I -- there -- I need  
16 to ask you --

17 THE WITNESS: Thank you, judge.

18 Q. (By Mr. Tidwell) -- a couple of things before  
19 I go I guess.

09:52AM 20 In a hospital, are all of the doctors --  
21 do all of y'all get together from time to time and  
22 consider issues that affect the doctors and the  
23 hospital?

24 A. That's what the intent is.

09:53AM 25 Q. Okay. What is that, what do you call that

1 group?

2 **A. We -- they -- that was -- that's when we do a**

3 **monthly meeting called the medical staff.**

4 **Q. Okay. And the medical staff includes all of**

09:53AM 5 **the doctors, at the time it included the nurse**

6 **practitioners from the clinic; is that correct?**

7 **A. No, sir.**

8 **Q. Okay.**

9 **A. It just was the doctors and Vicki Galle and**

09:53AM 10 **Anne Mitchell.**

11 **Q. Okay.**

12 **A. And sometimes the D.O.N., the D.O.N. if they**

13 **were present.**

14 **Q. Okay. And in Kermit at the time back in April,**

09:53AM 15 **May, June of '08, it was you, Dr. Winton, and Dr. Pham**

16 **on the medical staff. Also there's a dentist --**

17 **A. Yes.**

18 **Q. -- in town, Dr. Graves?**

19 **A. Dr. Graves.**

09:53AM 20 **Q. He's on the medical staff?**

21 **A. Yes, sir.**

22 **Q. Is there any -- was there anyone else that was**

23 **on the actual -- on the medical staff?**

24 **A. No, sir. There was just four of us.**

09:53AM 25 **Q. Okay. At some point did the medical staff, you**

1 **review the chart.**

2 **Q. Okay. And at some point if the doctors that**

3 **are not involved in the care review the chart and**

4 **believe it needs further review, in Kermit, under the**

09:55AM 5 **system, is there a place for the chart to go be**

6 **reviewed?**

7 **A. Yes, sir.**

8 **Q. Does the hospital have a contract, it's called**

9 **the Archie review, a contract with Texas A&M?**

09:55AM 10 **A. Yes, sir.**

11 **Q. And are charts routinely sent out, just**

12 **routinely sent out, for review by the A&M system?**

13 **A. Yes, sir.**

14 **Q. And every month do some of your charts go out**

09:56AM 15 **for review?**

16 **A. Yes, sir.**

17 **Q. And the other physicians as well?**

18 **A. Yes, sir.**

19 **Q. And those are just pulled randomly?**

09:56AM 20 **A. That was the assumption before.**

21 **Q. Okay.**

22 **A. But that was not done.**

23 **Q. Okay. Is it --**

24 **A. It was --**

09:56AM 25 **Q. -- being done now?**

1 being there as a member of the medical staff, did y'all

2 discuss a need to have internal review of any potential

3 issue with a chart or a physician?

4 **A. Yes, sir.**

09:54AM 5 **Q. Have you practiced in other hospitals and**

6 **facilities?**

7 **A. Yes, sir.**

8 **Q. In the other hospitals and facilities that you**

9 **practiced in, do they have similar policies for internal**

09:54AM 10 **review of medical issues?**

11 **A. Yes, sir.**

12 **Q. If -- and a hypothetical, if something bad**

13 **happens at the hospital in Kermit and one of the doctors**

14 **does something wrong, cuts off somebody's leg and is not**

09:54AM 15 **supposed to, there is only a couple of -- a few doctors**

16 **in Kermit, right?**

17 **A. Yes, sir.**

18 **Q. Would it be fair to have that issue reviewed**

19 **just by the guys in Kermit?**

09:54AM 20 **A. I think the cutting of the legs is too -- is a**

21 **very far advanced care. Maybe you could just say**

22 **diarrhea or dehydration. And if somebody -- if a doctor**

23 **would maybe -- perceived -- if there is a perceived**

24 **violation or deficiency in the care, the doctors -- the**

09:55AM 25 **doctors who are -- who was not involved in the care can**

1 **A. It's being done now after Ms. Galle was fired.**

2 **Q. Okay. So random charts go out for review every**

3 **month.**

4 **And if -- let's say a chart came to the**

09:56AM 5 **medical staff that another physician was involved in and**

6 **you were one of the ones that looked at it and thought,**

7 **well, maybe we need another opinion, could you ask for**

8 **that chart to go out for review, also?**

9 **A. Yes, sir.**

09:56AM 10 **Q. And -- okay. Do you believe that internal**

11 **review of the medical issues at the hospital is designed**

12 **to prohibit the reporting of any concern to a board or a**

13 **agency?**

14 **MR. COOK: And, judge, I'm going to**

09:57AM 15 **object. I don't know if he's been offered as an expert**

16 **on the law and the policies of this hospital.**

17 **THE COURT: What was the question again?**

18 **Q. (By Mr. Tidwell) Doctor, do you believe that**

19 **this internal self-review process is set up to prohibit**

09:57AM 20 **the reporting of any concerns to any board or agency?**

21 **A. No, sir. Actually it is --**

22 **MR. COOK: Judge, we have an objection**

23 **before the --**

24 **THE COURT: Sustained.**

09:57AM 25 **Go ahead.**



1 Q. (By Mr. Tidwell) If a medical issue is going  
2 to be reviewed, is it important to you that all of the  
3 people that are involved in the particular incident have  
4 an opportunity to put their input into what they were  
09:57AM 5 involved with on the table?  
6 A. Yes, sir. I believe it's very important that  
7 whoever had been involved in the care has to have their  
8 input because this is what you call a peer review.  
9 Q. Okay.  
09:58AM 10 A. And a peer review is a review of charts that  
11 are done by another doctor on the -- with the same  
12 specialty level.  
13 And the thing there is that the intention  
14 of a peer review is for the education of the whole  
09:58AM 15 staff. It involves the doctors, the nurses, and  
16 everybody who are involved. It's the education. It's  
17 not something to be used to punish a doctor.  
18 Q. Okay.  
19 A. And when you start punishing doctors, that  
09:58AM 20 becomes a sham peer review.  
21 Q. Okay. In medical staff, y'all meet once a  
22 month; is that right?  
23 A. Yes, sir.  
24 Q. And do y'all routinely discuss medical issues?  
09:58AM 25 A. Yes, sir.

1 Q. If Dr. A -- or, I'm sorry, because you're --  
2 you've been referred to as Dr. A. If Dr. Z has an  
3 opinion about something and Dr. X has an opinion about  
4 something, is that a good time for them to discuss it?  
09:59AM 5 A. Of course.  
6 Q. Okay.  
7 A. Absolutely.  
8 Q. And is that one of the purposes of medical  
9 staff meetings?  
09:59AM 10 A. Yes, sir. I hope it was.  
11 Q. Okay. Look down for me to the fifth paragraph  
12 in that April 7th document.  
13 Have you seen that, read it?  
14 A. Yes, sir.  
09:59AM 15 Q. Okay. Read that paragraph please.  
16 A. Patients that are seen in the clinic by  
17 Dr. Arafles are later e-mailed and encouraged to buy  
18 herbal medicine that he sells. His medicines are not  
19 sold in the clinic.  
09:59AM 20 Q. Okay. Are -- do you promote a nutritional  
21 supplement for some of your patients?  
22 A. Yes, sir.  
23 Q. What's it called?  
24 A. It's called Zrii.  
10:00AM 25 Q. Okay. Would you, just for the court reporter,

1 would you spell that for her.  
2 A. It's spelled as Z, as in zebra, R, as in Romeo,  
3 I, as in India, I, as in India.  
4 Q. Okay. And what is Zrii?  
10:00AM 5 A. Zrii is nutritional supplement that is  
6 available in the liquid form. It has been designed by a  
7 company called Zrii. And it was -- it is based on  
8 ayurvedic formulation, which is the kind of practice in  
9 India, and it has been known to be very effective in  
10:00AM 10 treating and encouraging the body's well-being.  
11 Q. Okay. What are the common ingredients in Zrii?  
12 A. The common ingredients in Zrii are mostly  
13 spices, like turmeric and ginger. And from ayurvedic  
14 literature and those that practice ayurvedic medicine,  
10:01AM 15 they found that these are very potent  
16 anti-inflammatories, especially the ginger.  
17 And other -- it also -- like turmeric is a  
18 spice. And lately you might have been hearing about it  
19 in the newspaper. Its active component is called  
10:01AM 20 curcumin. And they have found that curcumin is a very  
21 potent anti-inflammatory.  
22 And it's available for -- it's available  
23 and being used now for people with arthritis and have  
24 even come up with some studies that it also helps with  
10:02AM 25 people -- preventing people from having Alzheimer's.

1 Q. Okay.  
2 A. Aside from that, it also has other adaptogens,  
3 like jujube and all of those. Those are other  
4 botanicals that have been incorporated there in that  
10:02AM 5 nutritional drink.  
6 Q. Does it have juices, fruit juice in it?  
7 A. Yes, sir. It has about six or 10 different  
8 juices just to improve the taste because some of the  
9 botanicals are bitter.  
10:02AM 10 Like, for example, the main ingredient of  
11 this drink is called Amalaki. It's a berry that has --  
12 that's grown in India, and it -- they harvest it at a  
13 certain time of the year when the nutrients are at its  
14 highest potency. Eaten by itself, it's very bitter --  
10:03AM 15 no, very sour.  
16 So what they have done is that they use  
17 this other common juices that are available here in the  
18 United States to improve the taste.  
19 Q. Okay. And do you encourage patients to drink  
10:03AM 20 fruit juices and things?  
21 A. Yes, sir.  
22 Actually I am big in encouraging patients  
23 to start living a healthy lifestyle. I always -- you  
24 know, I talk to them about changing their diet, making  
10:03AM 25 better choices of the kind of foods that they eat,

1 drinking more water, try considering starting on  
 2 exercise.  
 3 I talk to people about improving the way  
 4 they breathe because I -- 80 percent of you guys here in  
 10:03AM 5 this court only just breathe on the top of your lungs.  
 6 I teach them how to do deep breathing and diaphragmatic  
 7 breathing, which is a way of controlling stress.  
 8 And this is part of a family practice.  
 9 This is part of what a family practice doctor should be  
 10:04AM 10 talking about with their patients.  
 11 Q. Okay. And do you encourage patients to buy  
 12 herbal medicines that you sell?  
 13 A. I have never sold any herbal medicines.  
 14 Q. Okay. And do most of the people that drink  
 10:04AM 15 Zrii, do they -- how do they get it?  
 16 A. They buy it from the Internet.  
 17 Q. Okay. In December of 2008 and into January of  
 18 2009 -- well, let me back up. As of let's say November  
 19 of 2008, doctors and hospitals have certain designations  
 10:04AM 20 on their staff privileges. Am I right about that?  
 21 A. Yes, sir.  
 22 Q. When you first go to a facility do you start  
 23 off -- you don't start with full active staff  
 24 privileges, do you?  
 10:05AM 25 A. No, sir. I was given temporary I guess.

1 Q. Okay. Is that common at the other facilities  
 2 you've been at?  
 3 A. Yes, sir. It's a kind of period of, you know,  
 4 observing how the doctor works before they give him an  
 10:05AM 5 active staff.  
 6 Q. Okay. In December '08 and into January '09,  
 7 were you given full medical active staff privileges at  
 8 the Kermit hospital?  
 9 A. Yes, sir.  
 10:05AM 10 Q. Okay. And at the time that happened, the --  
 11 and who grants you medical staff privileges?  
 12 A. I believe it's the -- I believe it's the  
 13 hospital board by recommendation of the medical staff  
 14 and hospital administrator.  
 10:05AM 15 Q. Okay. So the other doctors have to recommend  
 16 you for privileges?  
 17 A. In a way.  
 18 Q. Okay. And at the time you got that, you still  
 19 had the restriction on your license that you couldn't  
 10:06AM 20 supervise physician assistants?  
 21 A. Yes, sir.  
 22 Q. And was that discussed?  
 23 A. Yes, sir. And as a matter of fact, I requested  
 24 Dr. Pham, who is the chief of staff, if he could just  
 10:06AM 25 please make -- write a letter that it was very important

1 that -- because I already have met all my requirements  
 2 for the last two years, if they could just maybe give  
 3 like a little allowance for them to have that -- have  
 4 that restriction expire earlier.  
 10:06AM 5 Q. Okay. And did Dr. Pham write that letter for  
 6 you?  
 7 A. I believe he had.  
 8 Q. Okay. Look at, doctor, if you would, look at  
 9 the second page of that April 7th letter, the second  
 10:07AM 10 paragraph, and just read that first before we go on.  
 11 A. The first paragraph on top?  
 12 Q. No, the second paragraph.  
 13 MR. COOK: And, judge, a continuing  
 14 objection to the contents of this letter --  
 10:07AM 15 THE COURT: Overruled.  
 16 MR. COOK: -- for the reasons previously  
 17 stated. Thank you.  
 18 THE COURT: Overruled.  
 19 Q. (By Mr. Tidwell) Have you had a chance to read  
 10:07AM 20 it?  
 21 A. Dr. Pham, is it --  
 22 Q. Okay.  
 23 A. -- starting with that?  
 24 Q. Yeah, it starts with Dr. Pham.  
 10:07AM 25 A. Okay. Dr. Pham, chief of staff, presented his

1 concerns to the board of control at their December  
 2 meeting. His report consisted of documentation and case  
 3 review as well as current standard of care.  
 4 Q. Okay. Keep going.  
 10:07AM 5 A. Due to the economic climate --  
 6 Q. No. Finish that paragraph.  
 7 A. Oh. His report consisted of documentation and  
 8 case review as well as current standards of care.  
 9 Am I --  
 10:08AM 10 Q. Well, let me look just to make sure we're --  
 11 A. Are we on the same page?  
 12 Q. Okay. Let me go past that. Evidently our  
 13 documents aren't matching up. And we'll get to that in  
 14 a moment.  
 10:08AM 15 Was there ever a time when you were  
 16 requested to go to a patient's home and do a procedure?  
 17 A. Yes, sir.  
 18 Q. Who requested you do the procedure?  
 19 A. The nursing at the home healthcare.  
 10:09AM 20 Q. Okay. And what procedure did they need you to  
 21 do?  
 22 A. They were wanting me to evaluate the heel of a  
 23 patient that was bedridden for a pressure ulcer.  
 24 Q. Okay. And if a doctor evaluates a heel,  
 10:09AM 25 what -- I mean, what does that consist of, looking at it

1 or washing it and cleaning it or what?

2 **A. Basically I'm the only doctor in Kermit that**  
3 **does the home visits. And so the home health contacted**  
4 **my clinic and my nurse and asked me if I could go**  
5 **evaluate a heel ulcer, a pressure ulcer on the heel, of**  
6 **a patient of mine that had terminal M.S. and was -- it**  
7 **was very difficult for her to be brought to the**  
8 **emergency room.**

9 **Q. Okay.**

10 **A. And so I went to the house of the patient and**  
11 **evaluated, and I found out that there was a dead skin on**  
12 **the heel. And I thought it would be best to debride**  
13 **that dead skin so that they would be able to get, you**  
14 **know, get in and put medications there so that it would**  
15 **start to heal.**

16 **Q. Okay. Did you do that?**

17 **A. No, sir, because what I did was I asked the**  
18 **nursing home if they had any -- sorry, if they have any**  
19 **equipment or any supplies. And according to them that**  
20 **they didn't have.**

21 **So I called up the emergency room to see**  
22 **if they could put some supplies together. And then at**  
23 **the same time I also called Mr. Wiley, and we had this**  
24 **conversation with Mr. Wiley. And he said you know you**  
25 **can't --**

1 **MR. COOK: Objection, hearsay --**

2 **THE COURT: Sustained.**

3 **MR. COOK: -- as to what Mr. Wiley said.**

4 **THE COURT: Sustained.**

5 **Q. (By Mr. Tidwell) As a result of your --**

6 **A. Okay.**

7 **Q. Wait --**

8 **A. Okay, sorry.**

9 **Q. -- let me ask you a question.**

10 **As a result of your inquiry, was -- were**  
11 **you encouraged or discouraged to perform the procedure?**

12 **A. In the end what I was told is there was no**  
13 **liability coverage --**

14 **MR. COOK: Objection as to what he was**  
15 **told --**

16 **THE COURT: Sustained.**

17 **MR. COOK: -- as hearsay, Your Honor.**

18 **THE COURT: Sustained.**

19 **Q. (By Mr. Tidwell) Did you do the procedure at**  
20 **the patient's home?**

21 **A. No, sir.**

22 **Q. You didn't go to the hospital and steal**  
23 **supplies and carry them to the patient's home?**

24 **A. Of course not, sir.**

25 **Q. Okay. I want to go back to when you made your**

1 **report to the sheriff. When you went in to tell him**  
2 **that you felt like you were being harassed, did you --**  
3 **would you characterize it as you went in to the sheriff**  
4 **and begged for help?**

5 **A. Yes, sir.**

6 **Q. Okay. Would you -- did you tell the sheriff**  
7 **that he would not be your friend anymore if you didn't**  
8 **stop -- if he didn't stop this?**

9 **A. Of course not.**

10 **Q. Okay. At the time you made the complaint, were**  
11 **you and the sheriff real good friends?**

12 **A. I don't know about -- I knew the sheriff. We**  
13 **played together. We run into each other. He was my**  
14 **patient. He comes to see me. His whole family comes to**  
15 **see me.**

16 **Q. Okay. A small town?**

17 **A. Yes, sir.**

18 **Q. Okay. When you made the complaint to the law**  
19 **enforcement officers, to the sheriff, did you believe**  
20 **that you had been wronged?**

21 **A. Absolutely, sir.**

22 **Q. And were you asking for their help to**  
23 **investigate to see if something had been done wrong?**

24 **A. Yes, sir.**

25 **Q. Okay. Are you still practicing in Kermit?**

1 **A. Yes, sir.**

2 **Q. Practicing in Kermit, do you just work at the**  
3 **clinic or just at the emergency room or both?**

4 **A. All of the above.**

5 **Q. Okay. Do you do a lot of shifts over at the**  
6 **emergency room at the hospital?**

7 **MR. COOK: Objection for relevance, judge.**

8 **THE COURT: How is this relevant?**

9 **MR. TIDWELL: Well, Mr. -- I'm sorry,**

10 **judge. Mr. Cook made a comment in opening statement**  
11 **that Dr. Arafles is an all-star biller. I'd like to**  
12 **see if he works shifts or more shifts than other**  
13 **doctors.**

14 **THE COURT: Go ahead.**

15 **Q. (By Mr. Tidwell) Do you work a lot of shifts**  
16 **at the emergency room?**

17 **A. Yes, sir.**

18 **Q. Do you kind of prefer to work over there rather**  
19 **than the clinic?**

20 **A. No, sir.**

21 **Q. Okay. Does Dr. Pham, has he indicated to you**  
22 **that he prefers to work the clinic rather than the**  
23 **emergency room?**

24 **MR. COOK: Objection as to --**

25 **A. No, sir.**

1 MR. COOK: -- relevance and hearsay.  
 2 THE COURT: Sustained.  
 3 Q. (By Mr. Tidwell) Do you work the shifts in the  
 4 emergency room that the hospital asks you to work?  
 10:13AM 5 A. Yes, sir.  
 6 Q. And that includes weekends, holidays, all sorts  
 7 of things, doesn't it?  
 8 A. Yes, sir.  
 9 Q. Okay. Do you remember taking care of a young  
 10 fellow that had stomach problems?  
 10:14AM 11 A. Yes, sir.  
 12 Q. When you took care of him, what did you do  
 13 initially? And make sure we don't use any names or  
 14 anything that would identify him.  
 10:14AM 15 MR. COOK: And, judge, could we have a  
 16 little more specificity. I bet you there has been quite  
 17 a few people come down to the emergency room with  
 18 stomach problems. Or are we talking about the  
 19 appendicitis case that --  
 10:14AM 20 MR. TIDWELL: Yes.  
 21 MR. COOK: -- is the subject of this  
 22 complaint?  
 23 MR. TIDWELL: Yes.  
 24 MR. COOK: Okay.  
 10:14AM 25 THE COURT: Go ahead.

1 Q. (By Mr. Tidwell) When that young fellow came  
 2 in, did you treat him?  
 3 A. Yes, sir.  
 4 Q. Did you order testing?  
 10:14AM 5 A. Yes, sir.  
 6 Q. Did you order a CT scan?  
 7 A. Yes, sir.  
 8 Q. Okay. Tell us what a CT scan does.  
 9 A. A CT scan is an advanced form of x-ray. It  
 10 gives you the capability of -- they call it slices,  
 11 where as the body passes through that x-ray machine it  
 12 takes pictures of the specific area that it is exposed  
 13 to.  
 14 And with the litigious (sic) environment  
 10:15AM 15 that we are now, we have to be -- you know, a lot of the  
 16 doctors, especially when you just have abdominal pain,  
 17 that's one of the tests that you could use to try to  
 18 differentiate on what could be causing the pain in the  
 19 abdomen of a patient, of a person.  
 10:15AM 20 Q. Did this young man come in about 1:30 in the  
 21 afternoon?  
 22 A. Yes, sir.  
 23 Q. And he was given lab tests, he was given some  
 24 treatments?  
 10:15AM 25 A. Yes, sir.

1 Q. And eventually, about 4:15, he was discharged  
 2 to go home?  
 3 A. It was like this, sir --  
 4 Q. Let me ask questions, and --  
 10:16AM 5 A. Yes, sir.  
 6 Q. -- you just answer them.  
 7 Was he discharged to go home about 4:15?  
 8 A. Yes, sir.  
 9 Q. At that time, had you received back the results  
 10 of the CT scan?  
 10:16AM 11 A. No, sir.  
 12 Q. Did those results come in about 5:00?  
 13 A. Yes, sir.  
 14 Q. And what did those results show?  
 10:16AM 15 A. It showed that the patient had acute  
 16 appendicitis.  
 17 Q. Okay. What did you do then?  
 18 A. Could I explain?  
 19 Q. Yes, please.  
 10:16AM 20 A. Okay. Those were the early days of when  
 21 hospital just newly opened, and the T line that  
 22 transmitted pictures from our CT scan to Nighthawk,  
 23 which reads our x-rays in Australia, wasn't at its  
 24 tiptop. So we were having a lot of problems with the  
 10:16AM 25 turnabout or, you know, the results get -- us getting

1 the results from the people who read the x-rays.  
 2 And it was already taking too long. And  
 3 the boy was sleepy. So we -- I asked the mother if they  
 4 were just living close to the hospital, and she said  
 10:17AM 5 yes, they were --  
 6 MR. COOK: We would object to hearsay,  
 7 judge.  
 8 THE COURT: Sustained.  
 9 Q. (By Mr. Tidwell) Did you inquire from the  
 10 mother that they lived in close proximity to the  
 10:17AM 11 hospital?  
 12 MR. COOK: That's the same objection,  
 13 judge. He's just looking for a different way to get it  
 14 in.  
 10:17AM 15 THE COURT: Sustained.  
 16 Q. (By Mr. Tidwell) Okay. Did you let the boy go  
 17 home?  
 18 A. Yes, I let the boy go home with the -- with  
 19 understanding with the mother that as soon as we got the  
 10:17AM 20 results of the CT scan, then we would call them, we  
 21 would call them back, so that we would have a  
 22 confirmation of our diagnosis and that would be the --  
 23 that would be the, what do you call this now, the reason  
 24 why we would be transferring the babe, the child, to  
 10:18AM 25 another hospital that would give higher level of care.

1 Q. Okay. At the time the young man went home, had  
2 you made the diagnosis of appendicitis?  
3 A. **It was just a presumptive diagnosis.**  
4 Q. Okay. And when you got the CT results back,  
10:18AM 5 did that further indicate to you that he might have  
6 appendix problems?  
7 A. **Of course. That's the definite diagnosis. So**  
8 **immediately we called them back and made preparations**  
9 **for the patient to be transferred to a hospital that**  
10:18AM 10 **could give that higher care.**  
11 Q. Okay. Is it routine -- do we ever keep a  
12 patient with appendicitis in the hospital in Kermit?  
13 A. **If everything was ideal, that patient would**  
14 **have been transferred immediately.**  
10:18AM 15 Q. Okay. So we don't keep appendix patients in  
16 the hospital in Kermit?  
17 A. **No, sir.**  
18 Q. Those require them to be transferred to either  
19 Andrews or Odessa or Midland or to a bigger hospital?  
10:18AM 20 A. **Or to Lubbock, sir.**  
21 Q. Okay. And so when you started making  
22 arrangements to transfer, is it -- can you just send him  
23 out the door and say good luck to you?  
24 A. **No, sir. We have to do the paperwork and**  
10:19AM 25 **then --**

1 Q. Okay. Do you have to make sure wherever he is  
2 going has a doctor that will accept him?  
3 A. **Of course, sir. You can't transfer a patient**  
4 **without an accepting doctor.**  
10:19AM 5 Q. Okay. And did you undertake to get all these  
6 steps done, find an accepting doctor and an accepting  
7 facility and then get him transferred?  
8 A. **Oh, definitely, immediately.**  
9 Q. Okay. Because he needed to go --  
10:19AM 10 A. **Yes, sir.**  
11 Q. -- to another facility?  
12 A. **Yes, sir.**  
13 Q. Okay. Doctor, back in September of '08, you've  
14 been criticized for doing three little minor surgical  
10:19AM 15 procedures in the ER. We've kind of -- and we're not  
16 intending to make fun of patients, or we're not  
17 intending to make fun of anyone, but we've sort of among  
18 ourselves agreed to call them the person with the turkey  
19 toe, the person dropped a frozen turkey on their toe and  
10:20AM 20 broke their toe, okay?  
21 So we have the person with the turkey on  
22 their toe. We have the man that had the rubber splint  
23 attached to his broken finger. And we have the man that  
24 had the skin graft. If I say those three things, the  
10:20AM 25 turkey on the toe, the rubber on the finger, and the

1 skin graft, do you know what patients I'm talking about?  
2 A. **Yes, sir.**  
3 Q. Okay. You've been criticized for doing those  
4 three minor surgical procedures in the emergency room in  
10:20AM 5 Kermit --  
6 A. **Yes, sir.**  
7 Q. -- correct?  
8 Have you done those similar procedures in  
9 other facilities you've worked in?  
10:20AM 10 MR. COOK: And, judge, that's irrelevant.  
11 He's not privileged --  
12 THE COURT: Sustained.  
13 MR. COOK: -- to do surgery --  
14 THE COURT: Sustained.  
10:20AM 15 MR. COOK: -- and an emergency room is not  
16 operating rooms.  
17 Q. (By Mr. Tidwell) Doctor, do you have training  
18 in surgery?  
19 A. **Yes, sir.**  
10:20AM 20 Q. And did you have training in surgery in your  
21 medical school?  
22 A. **Yes, sir.**  
23 MR. COOK: Your Honor, can I take him on  
24 voir dire for qualifications if that's where we're  
10:21AM 25 going?

1 THE COURT: Approach.  
2 (AT BENCH, OFF THE RECORD)  
3 Q. (By Mr. Tidwell) Doctor, do you have -- did  
4 you receive in medical school training in surgery?  
10:21AM 5 A. **Yes, sir.**  
6 Q. When a doctor does something called a  
7 residency, what does that mean?  
8 A. **It is being like an apprentice.**  
9 Q. Is it training over and above your four years  
10:22AM 10 of medical school?  
11 A. **Yes, sir.**  
12 Q. Do doctors routinely do residencies in certain  
13 areas of medicine?  
14 A. **Yes, sir.**  
10:22AM 15 Q. Did you do a residency in surgery?  
16 A. **Yes, sir.**  
17 Q. Have you ever held a position at any healthcare  
18 facility as -- in a surgical fashion?  
19 A. **Are you referring to my country of origin or**  
10:22AM 20 **are you referring to the states?**  
21 Q. Well, anywhere you've practiced medicine.  
22 A. **Yes, sir.**  
23 Q. And what position have you held in the past?  
24 A. **I was the department of head of surgery in a**  
10:22AM 25 **provincial hospital in South Cotabato, and that's in the**

1 **Philippines.**

2 Q. Okay. Are you board certified in America -- if  
3 a -- doctors get board certified in certain areas of  
4 medicine; is that right?

10:22AM 5 A. Yes, sir.

6 Q. Lawyers can choose to be board certified in  
7 estate planning law?

8 A. Yes, sir.

9 Q. And we study, we go take a test, and we get  
10 board certified --

10:23AM 11 MR. COOK: And, judge, we'd object to -- I  
12 don't hear a question.

13 MR. TIDWELL: I'm getting there.

14 THE COURT: Question and answer. Go  
15 ahead.

16 Q. (By Mr. Tidwell) Do doctors do similar things  
17 in certain areas of medicine?

18 A. Yes, sir.

19 Q. And are you board certified as a surgeon?

10:23AM 20 A. No, sir --

21 Q. Have you ever --

22 A. -- here in the states.

23 Q. Not in the states.

24 Have you ever sought to be?

10:23AM 25 A. No, sir.

1 Q. Okay. Are you board certified in any area of  
2 specialty?

3 A. I am board certified by the American Board of  
4 Clinical Metal Toxicology.

10:23AM 5 Q. Okay. Is it necessary -- do doctors have to be  
6 board certified in one area or more?

7 A. Not necessarily.

8 Q. Okay. When you began working in Kermit, were  
9 you ever instructed or were you informed as part of your  
10 medical privileges what procedures could and could not  
11 be done in the emergency room?

10:23AM 12 A. No, sir.

13 Q. And then you did these three minor surgical  
14 procedures?

10:24AM 15 A. Yes, sir.

16 Q. And after that, was there a discussion in the  
17 medical staff that we're not supposed to do those three  
18 kind of little procedures in our hospital?

19 A. No, sir.

10:24AM 20 Q. Okay. At some point did you -- were you  
21 informed by Ms. Mitchell that we're not supposed to do  
22 those procedures in the hospital?

23 A. Yes, sir.

24 Q. Okay. She sent you a letter and said we can't  
25 do that here?

10:24AM

1 A. Yes, sir.

2 Q. She didn't tell you in the letter, did she,  
3 that they couldn't be done in other facilities?

4 A. No, sir.

10:24AM 5 Q. And she didn't tell you in the letter, did she,  
6 that anything you did was improper medical care?

7 A. No, sir.

8 Q. It's just we're not supposed to do those in  
9 Kermit?

10:24AM 10 A. Yes, sir.

11 Q. And after you got that, did you ever do another  
12 procedure like that in Kermit until today?

13 A. No, sir.

14 Q. Okay.

10:25AM 15 THE COURT: Let's take a 15-minute recess.

16 Please keep in mind the instructions I gave you earlier.

17 Feel free to move outside the jury room, but be back in  
18 the jury room in 15 minutes.

19 Also, for those of you who are present as

10:25AM 20 spectators, be aware that the jury may be moving outside

21 the jury room and may be out in the hallway. So keep

22 that in mind in the discussions that you have and the

23 things that you say.

24 (JURY NOT PRESENT)

10:45AM 25 (A recess was taken from 10:25 to 10:45.)

1 THE COURT: Is everybody ready? Bring  
2 them in.

3 (JURY PRESENT)

4 THE COURT: Ready to proceed?

10:45AM 5 MR. TIDWELL: Ready, judge.

6 THE COURT: Go ahead.

7 Q. (By Mr. Tidwell) Doctor, just a couple more  
8 questions. In order to practice in Texas, you have to  
9 be licensed in Texas, right?

10:46AM 10 A. Yes, sir.

11 Q. And if you want to go to New Mexico, you have  
12 to seek licensure there?

13 A. Yes, sir.

14 Q. Were you licensed at one point in New York?

10:46AM 15 A. Yes, sir.

16 Q. Was that -- did you practice in New York years  
17 ago?

18 A. That's where I did my family practice training,  
19 sir.

10:46AM 20 Q. Okay. And about what years was that?

21 A. 1994 I think to 1998.

22 Q. Okay. And so were you licensed to practice  
23 medicine in New York?

24 A. Yes, sir.

10:46AM 25 Q. Did you leave New York in about 1998?

1 A. Yes, sir.  
 2 Q. And come -- and where did you go?  
 3 A. I came to Victoria, Texas.  
 4 Q. Okay. In 2009, did you still have a license to  
 10:46AM 5 practice medicine in New York?  
 6 A. I thought I didn't have a license anymore  
 7 because I didn't renew my license ever since I started  
 8 practicing here in Texas.  
 9 Q. Okay. And when the Texas Medical Board  
 10:47AM 10 reprimanded you for the physician's assistant issue,  
 11 eventually did those documents make their way to New  
 12 York?  
 13 A. Yes, sir.  
 14 Q. And did you receive documents from the  
 10:47AM 15 governing body in New York indicating that they were  
 16 going to impose some sort of reprimand?  
 17 A. Yes, sir.  
 18 Q. In fact, would it have been the exact same  
 19 reprimand Texas gave you?  
 10:47AM 20 A. Yes, sir.  
 21 Q. Did you ever -- do you -- did you at the time  
 22 intend to go back to New York and practice medicine?  
 23 A. No, sir.  
 24 Q. Were you given an option just to go ahead and  
 10:47AM 25 get rid of your New York license?

1 A. Yes, sir.  
 2 Q. And did you do that?  
 3 A. Yes, sir.  
 4 Q. Have you been banned from the practice of  
 10:47AM 5 medicine for life in New York?  
 6 A. No, sir.  
 7 Q. In order to practice though, you're going to  
 8 have to go back and apply for privileges and -- just  
 9 like if you wanted to go to California?  
 10:47AM 10 A. Yes, sir.  
 11 Q. Okay. Your -- when did you come to the -- you  
 12 said you were raised in the Philippines; is that right?  
 13 A. Yes, sir.  
 14 Q. When did you come to the United States?  
 10:48AM 15 A. June 13 of 1993.  
 16 Q. Okay. When you went to the sheriff to make  
 17 your complaint about harassment, did you think you knew  
 18 where this harassment was coming from?  
 19 A. No, sir. The reason I went to the sheriff was  
 10:48AM 20 I was not sure whether this was a legitimate complaint  
 21 from those 10 patients or it was just part of the  
 22 harassment I was having in the hospital.  
 23 Q. Okay. And did you -- who else do you think you  
 24 could have gone to to report this harassment?  
 10:48AM 25 A. I have gone several times to the judge. I

1 have --  
 2 Q. Oh, okay. Which judge?  
 3 A. Judge Bonnie Leck.  
 4 Q. Okay. And who is she?  
 10:48AM 5 A. She's the county judge, and she's the judge who  
 6 oversees the hospital.  
 7 Q. Okay.  
 8 A. I went several times to her and I said  
 9 what's -- what's going on, I came here to work, I  
 10:48AM 10 came -- I bought a house here, I'm living here, I'm the  
 11 only doctor that's a resident here in this community,  
 12 and why am I being treated this way.  
 13 Q. Okay. And had you ever gotten much  
 14 satisfaction --  
 10:49AM 15 A. All they said, yeah, fine, we will take care of  
 16 it, we will take care of it.  
 17 I went to the president of the hospital  
 18 board, and the same thing, I -- we will take care of it.  
 19 MR. COOK: Judge, and we're going to  
 10:49AM 20 object to the hearsay. I mean --  
 21 THE COURT: Sustained.  
 22 MR. COOK: -- Judge Leck is going to  
 23 testify, so we --  
 24 THE COURT: Sustained.  
 10:49AM 25 MR. COOK: -- can talk to her about that.

1 Q. (By Mr. Tidwell) Okay. Doctor, at the time  
 2 you went to the sheriff, did you know anyone else that  
 3 you could go to to make a complaint?  
 4 A. No, sir.  
 10:49AM 5 Q. Okay. Thank you.  
 6 MR. TIDWELL: Pass the witness, Your  
 7 Honor.  
 8 THE COURT: Counsel.  
 9  
 10:49AM 10 CROSS-EXAMINATION  
 11 BY MR. COOK:  
 12 Q. Dr. Arafles, my name is John Cook. Good  
 13 morning.  
 14 A. Good morning.  
 10:49AM 15 Q. Okay. You didn't have the benefit of being  
 16 educated in this country as a child, did you?  
 17 A. No, sir.  
 18 Q. Okay. You were educated in the Philippines; is  
 19 that correct?  
 10:50AM 20 A. Yes, sir.  
 21 Q. Okay. And the Constitution of the United  
 22 States -- excuse me. There is something bothering the  
 23 chair.  
 24 The Constitution of the United States is  
 10:50AM 25 not something that was just pounded and ingrained in you

1 from your youth, was it?

2 **A. Not of the United States, sir, but of the**  
3 **Philippines.**

10:50AM

4 **Q.** Okay. Does the Philippines believe in  
5 something called freedom of speech?

6 **A. Definitely, sir.**

7 **Q.** Do you believe in freedom of speech?

8 **A. Yes, sir.**

10:50AM

9 **Q.** Do you believe that people should be able to  
10 speak their mind and their opinion without threat of  
11 harassment and punishment?

12 **A. Yes, sir.**

13 **Q.** Do you believe that all members of this state  
14 have a right to speak -- to transmit speech to the Texas

10:50AM

15 Medical Board if they have a concern about a physician?

16 **A. Yes, sir.**

17 **Q.** Every person in this courtroom has that right?

18 **THE COURT:** Can we hang on just a second.

10:51AM

19 I'm hearing phone sounds. If anyone was not present  
20 earlier, I want to be very clear the phones need to be  
21 turned off, not silent mode, not airplane mode, turned  
22 off. So please help me with that and cooperate so I  
23 don't have to have the bailiff confiscate the phones.

24 **Thank you.**

10:51AM

25 **Go ahead.**

1 **MR. COOK:** You're welcome, Your Honor.

2 **Q.** (By Mr. Cook) All right. So you believe in  
3 freedom of speech?

10:51AM

4 **A. Definitely, sir.**

5 **Q.** You believe that anybody in the state of Texas  
6 has a right to complain about a physician that they  
7 think is engaging in questionable practices?

8 **A. Yes, sir.**

10:51AM

9 **Q.** Okay. And are you also aware that nurses are  
10 under a professional obligation and in some cases a duty  
11 where they have to report?

12 **A. Yes, sir, in good faith.**

13 **Q.** That's right, in good faith. And what is the  
14 definition of reporting to the Texas Medical Board in  
15 good faith? Do you know what that is?

10:51AM

16 **A. Can you rephrase what you are trying to say?**

17 **Q.** What is the definition of good faith when a  
18 report is made to the Texas Medical Board? They have  
19 specifically outlined it. What is it?

10:52AM

20 **A. I don't know, sir.**

21 **Q.** You don't know.

22 **Would it surprise you that it has nothing**  
23 **to do about personalities?**

24 **A. Probably.**

10:52AM

25 **Q.** Probably?

1 Do you know what a standard of care is,  
2 sir?

3 **A. Yes, sir.**

10:52AM

4 **Q.** Is the standard of care something that you can  
5 move around depending on how well you like a nurse?  
6 Does the standard of care change based on the  
7 personality between the nurse and the doctor?

8 **A. No, sir.**

9 **Q.** It does not.

10:52AM

10 **Would you agree with me that the standard**  
11 **of care really belongs to us, it's what we expect to**  
12 **receive when we are treated?**

13 **A. Yes, sir.**

14 **Q.** Okay. And would you agree with me that if

10:52AM

15 somebody has a reasonable belief that the standard of  
16 care has been breached they have a right under the First  
17 Amendment and under the laws of this state to voice that  
18 concern?

19 **A. Yes, sir.**

10:53AM

20 **Q.** And that's not harassment, is it?

21 **A. Again, if it's not done in good faith, it is**  
22 **harassment.**

23 **Q.** If they reasonably believe that you, you, have  
24 violated a patient's standard of care, what they think

10:53AM

25 about you personally is irrelevant; isn't that true?

1 **A. I don't know, sir.**

2 **Q.** You don't know.

3 **If they reasonably believe that you were**  
4 **practicing substandard medicine, they have a right and**  
5 **in some circumstances a legal duty and obligation to**  
6 **report you, don't they?**

10:53AM

7 **A. No, sir. I think you might have to define what**  
8 **you mean by standard of care.**

9 **Q.** Well, why don't you tell the ladies and the  
10 gentlemen of the jury what a minimum standard of care is  
11 as it's defined by the Medical Practices Act. Tell  
12 them.

10:53AM

13 **You don't even know, do you?**

14 **MR. TIDWELL:** To the extent, Your Honor,  
15 it's asking for a legal conclusion, it's asking a  
16 nonlawyer a legal conclusion.

10:54AM

17 **THE COURT:** Overruled.

18 **MR. TIDWELL:** He may be able to explain as  
19 a -- from a physician's standpoint what the standard of  
20 care is.

10:54AM

21 **THE COURT:** Go ahead.

22 **Q.** (By Mr. Cook) I'll give you that break. If --  
23 doctor, I want to be fair here. I want you to be able  
24 to speak your feelings here. And if I ask you a  
25 question that you don't understand, that confuses you,



1 please ask me to rephrase it because I want to make sure  
2 this testimony is very clear to these 12 ladies and  
3 gentlemen. Fair enough?

4 **A. Yes, sir.**

10:54AM 5 **Q.** Okay. What is, in the medical profession, what  
6 is a standard of care?

7 **A. The standard of care is the quality of care**  
8 **that the doctor gives to the patient. And the minimum**  
9 **requirement is that the patient -- the doctor has to do**  
10 **a very good physical -- a very good history, a physical**  
11 **examination, appropriate tests that are needed to make**  
12 **at least diagnosis, and then the management that is**  
13 **appropriate for that case.**

14 **If the case needs to be -- if the case is**  
15 **above what the doctor -- what the capacity of the**  
16 **facility is capable of giving, then we transfer the --**  
17 **the patient has to be transferred to another facility**  
18 **that can give that higher kind of care.**

19 **Q.** That's your definition?

10:55AM 20 Okay. Let's take it a couple of steps  
21 back. You were educated in the Philippines, a sovereign  
22 nation that has very close ties to the United States  
23 historically, correct?

24 **A. Yes, sir.**

10:56AM 25 **Q.** Okay. I am not familiar with how youngsters go

1 through school in the Philippines, so excuse me for  
2 that. But do you go up to a level of high school?

3 **A. Yes, sir.**

4 **Q.** Okay. And did you do that?

10:56AM 5 **A. Yes, sir.**

6 **Q.** And then did you go to college?

7 **A. Yes, sir.**

8 **Q.** What was your -- what did you study in college?

9 **A. You mean my major?**

10:56AM 10 **Q.** Yes, sir.

11 **A. I finished a Bachelor of Science in general**  
12 **science in preparation for premed.**

13 **Q.** Okay. And how many years of school did you do  
14 in college?

10:56AM 15 **A. Three, three years and three summers.**

16 **Q.** Three years and three summers, so you got  
17 through a little early because you worked the summers?

18 **A. Yes, sir.**

19 **Q.** Okay. And then you applied for and were  
20 granted admission to a medical school, I believe it was  
21 the University of Quezon?

22 **A. No, sir.**

23 **Q.** What was your medical school?

24 **A. It was the University of the East, Ramon**  
10:56AM 25 **Magsaysay Memorial Medical Center, in Quezon City.**

1 **Q.** Okay. And how many years course of study did  
2 you do there?

3 **A. I did a five-year course, sir.**

4 **Q.** Okay. Did you receive a license in the  
10:57AM 5 Philippines to practice medicine?

6 **A. Yes, sir.**

7 **Q.** Okay. Then it's my understanding you went to  
8 the state of New York -- to the State University of New  
9 York and did an internship and residency, didn't you?

10:57AM 10 **A. Yes, sir.**

11 **Q.** Okay. And in the internship you guys kind of  
12 make rounds through all the different types of things in  
13 a hospital. For instance, you might do partly geriatric  
14 rounds, you might do an emergency room round, you might  
15 do surgery rounds, stuff like that; is that correct?

16 **A. You are correct, sir.**

17 **Q.** Okay. And it's to expose you to all the  
18 different areas of medicine for two reasons; number one,  
19 to see what interests you, but the other thing is so you  
20 have some knowledge of all these different areas of  
10:57AM 21 medicine. Would you agree with me?

22 **A. The second one, the second reason, sir, is**  
23 **right.**

24 **Q.** Okay. The -- and then at the completion of  
10:57AM 25 your internship you would do a residency in one

1 specialty; is that correct?

2 **A. No, sir. That's -- there -- that's a specialty**  
3 **residency already, sir.**

4 **Q.** Okay. What -- was there one area of study for  
10:58AM 5 your residency or was it just more of this general  
6 learning as much as you could?

7 **A. Our -- the specialty that I got into, sir, was**  
8 **family medicine --**

9 **Q.** Okay.

10:58AM 10 **A. -- and family practice.**

11 **Q.** Okay. You didn't -- you weren't specialized in  
12 residency in surgery, were you, sir?

13 **A. No, sir.**

14 **Q.** Okay. And then after completing your  
10:58AM 15 residency, you got hired in Victoria; is that right?

16 **A. No, sir.**

17 **Q.** All right. Where did you go to work there?

18 **A. I worked in New York.**

19 **Q.** Okay. And how many years did you work, sir?

10:58AM 20 **A. I got hired by a family practice group and**  
21 **worked there for six months.**

22 **Q.** Okay. And then --

23 **A. And then I got an offer to pick up a practice**  
24 **in Victoria, Texas, and be moved down to --**

10:59AM 25 **Q.** And what year was that, sir?

1 A. **I think it was about 1984?**  
 2 Q. Okay.  
 3 A. **Right after my residency.**  
 4 Q. Okay. And the whole time you were in Victoria,  
 10:59AM 5 were you working at what has been called in this trial  
 6 the weight loss clinic?  
 7 A. **No, sir.**  
 8 Q. When did you go to work for the weight loss  
 9 clinic?  
 10:59AM 10 A. **After I closed my practice.**  
 11 Q. What year was that, sir?  
 12 A. **I think that was in 2004.**  
 13 Q. Okay. And when -- and you were discharged from  
 14 that position, were you not?  
 11:00AM 15 A. **Could you -- I don't understand what you're**  
 16 **asking.**  
 17 Q. Did you quit or did you get fired?  
 18 A. **From?**  
 19 Q. The weight loss clinic.  
 11:00AM 20 A. **I resigned.**  
 21 Q. Okay. Resigned in lieu of getting fired?  
 22 A. **No.**  
 23 Q. Okay. Your testimony to this jury is basically  
 24 what happened down there is some other doctor was  
 11:00AM 25 jealous of you and he filed a complaint on you, right?

1 A. **That's what I found out later, sir.**  
 2 Q. Okay. But the Texas Medical Board is equipped  
 3 with other physicians to do what we call oversight.  
 4 Would you agree with me?  
 11:00AM 5 A. **Yes, sir.**  
 6 Q. Okay. In the practice of medicine, do you  
 7 believe peer review is important?  
 8 A. **Yes, sir.**  
 9 Q. Why?  
 11:00AM 10 A. **Because it gives the chance to whoever -- it**  
 11 **gives a chance to review if your standard of care is up**  
 12 **to par. It also gives you a chance to educate the**  
 13 **people who are doing the peer review themselves and the**  
 14 **doctors who is being peer reviewed.**  
 11:01AM 15 Q. Do you do peer review -- strike that. Let's  
 16 put it this way. Peer review is not really designed to  
 17 get you in trouble; isn't that correct?  
 18 A. **You're absolutely correct, sir.**  
 19 Q. Peer review is designed to learn from past  
 11:01AM 20 mistakes?  
 21 A. **Yes, sir.**  
 22 Q. Standards of care that you're required to  
 23 follow, would you agree with me that they have been  
 24 written in blood, we have learned from them from past  
 11:01AM 25 mistakes?

1 A. **Describing as written in blood, sir, is to --**  
 2 **is not accurate.**  
 3 Q. Well, it's not accurate that if you pick up a  
 4 piece of paper and read the medical guidelines, I know  
 11:01AM 5 they're not written in blood, but --  
 6 And maybe this is my fault, maybe this is  
 7 a cultural thing. Mistakes are made in hospitals.  
 8 Doctors, nurses, radiologists, anybody involved in the  
 9 medical profession can make mistakes?  
 11:02AM 10 A. **Yes, sir.**  
 11 Q. And those mistakes can have fatal consequences  
 12 to us citizens, can't they?  
 13 A. **Yes, sir.**  
 14 Q. And that's what I mean they're written in  
 11:02AM 15 blood. When we make a mistake and somebody is hurt, we  
 16 learn from it so we don't do it again.  
 17 A. **Yes, sir.**  
 18 Q. And do you think that is important in medicine?  
 19 A. **Yes, sir.**  
 11:02AM 20 Q. And do you think it is important in medicine  
 21 for professionals to be able to raise concerns about the  
 22 standard of care with each other?  
 23 A. **Yes, sir.**  
 24 Q. And do you think it is the -- when you accepted  
 11:02AM 25 your license in the state of Texas, you agreed to be

1 bound by certain professional responsibilities and  
 2 obligations, did you not?  
 3 A. **Yes, sir.**  
 4 Q. And one of those professional responsibilities  
 11:02AM 5 and obligations was to cooperate in peer review  
 6 processes, isn't it?  
 7 A. **Yes, sir.**  
 8 Q. Okay. And the Texas Medical Board is the  
 9 proper place for people, for us citizens, if we have a  
 11:03AM 10 concern about a physician's practice, to relay that  
 11 concern; isn't that true?  
 12 A. **Yes, sir, if you were involved in that error or**  
 13 **whatever.**  
 14 Q. Okay. And if you didn't do anything wrong, if  
 11:03AM 15 you didn't do anything wrong, there is nothing to fear;  
 16 isn't that true?  
 17 A. **Yes, sir.**  
 18 Q. Okay. You were hired here in Kermit in 2008 --  
 19 A. **Yes, sir.**  
 11:03AM 20 Q. -- is that correct, sir?  
 21 And you are very, very well compensated by  
 22 the taxpayers of Winkler County, are you not?  
 23 A. **I don't know, sir.**  
 24 Q. Well, your contract is for in excess of  
 11:03AM 25 \$200,000.00 a year, isn't it?

1 **A. That's what's stated in the contract.**

2 **Q.** Okay. That's pretty good, pretty good  
3 compensation. Would you agree?

4 Yes or no?

11:04AM 5 **A. Yes.**

6 **Q.** Okay. And you have -- you have an obligation  
7 to the citizens of Winkler County, don't you?

8 **A. Definitely.**

9 **Q.** You have an obligation to the -- your

11:04AM 10 coworkers, don't you?

11 **A. Yes, sir.**

12 **Q.** You have a professional obligation and  
13 responsibility to other licensed medical providers,  
14 don't you?

11:04AM 15 **A. Yes, sir.**

16 **Q.** Okay. If you make mistakes, a lot more people  
17 than just you can get in trouble; isn't that true?

18 **A. Yes, sir.**

19 **Q.** Okay. Can you show me any documentation that

11:05AM 20 at anytime you filed any official complaints against

21 Anne Mitchell?

22 The question is, can you show me

23 documentation that you filed an official complaint

24 against Anne Mitchell?

11:05AM 25 **A. None, sir.**

1 **Q.** Okay. And you've never filed any police  
2 reports against Anne Mitchell other than this one right  
3 here, have you?

4 **A. None, sir.**

11:05AM 5 **Q.** Okay. Anne Mitchell was the compliance officer  
6 of the hospital; is that correct?

7 **A. Yes, sir.**

8 **Q.** Are you aware that a compliance officer has  
9 specific responsibilities not only to the facility, to  
10 coemployees, and to the general public?

11:05AM 11 **A. Yes, sir.**

12 **Q.** And one of the things that got you guys off to  
13 a bad start was she refused to sign off on your  
14 credentialing file, didn't she?

11:05AM 15 **A. I have no knowledge of that, sir.**

16 **Q.** Well, let's go back. Your contract for  
17 employment requires you to not have any restrictions on  
18 your license, doesn't it, your contract for employment?

19 Would you like to see it? I have it.

11:06AM 20 You can answer the question or I can show  
21 it to you.

22 The court reporter can't take that down,

23 sir. I'm sorry. I need a verbal response.

24 **A. Yes, sir.**

11:06AM 25 **Q.** And that, the answer yes, sir, is your contract

1 requires you to have an unrestricted license, correct?

2 **A. Yes, sir.**

3 **Q.** The hospital bylaws in effect at the time of  
4 your hiring prohibited the hiring of anybody with a

11:06AM 5 restricted license; isn't that true?

6 **A. Yes, sir.**

7 **Q.** Okay. And you were hired?

8 **A. Yes, sir.**

9 **Q.** And then the deal was made, you know,

11:06AM 10 Dr. Arafles could -- we think is going to do some good

11 stuff for us and we want to bring him to Kermit, why

12 don't we put him on a provisional status, even though he

13 doesn't meet the qualifications of the bylaws, we're

14 going to give him a job and make him provisional; isn't

11:07AM 15 that correct?

16 **A. I don't -- I'm not privy to that -- I'm not  
17 privy to that decision, sir.**

18 **Q.** Okay. Are you privy to the decisions and the  
19 discussions that were going on when you were seeking

11:07AM 20 full staff privileges?

21 **A. No, sir.**

22 **Q.** Okay. But as we sit here today, you still do  
23 not have a clear license, do you?

24 **A. No, sir.**

11:07AM 25 **Q.** And are you aware, sir, that Ms. Mitchell

1 refused to sign off on your credentialing file because  
2 of that restriction?

3 **A. No, sir.**

4 **Q.** Okay. As a compliance officer who must follow  
5 the rules, correct?

11:07AM 6 **A. Yes, sir.**

7 **Q.** It would have been wrong for her to sign off on  
8 your credentials with your restricted license because it  
9 violated your contract and it violated the bylaws of the  
10 hospital; isn't that true?

11:08AM 11 **A. Yes, sir.**

12 **Q.** And are you telling me that was not a source of  
13 friction between you and Ms. Mitchell?

14 **A. No, sir.**

11:08AM 15 **Q.** Okay. When you got the complaint, you got  
16 worried, didn't you?

17 **A. Yes, sir.**

18 **Q.** Why?

19 **A. Because it would again -- I -- you know, first  
20 of all, I didn't know what the complaint would be. I  
21 don't have all that money to keep hiring lawyers.**

11:08AM 22 **Q.** Well, you make 200,000 a year, I mean.

23 Do you have insurance?

24 **A. I have my malpractice insurance.**

11:09AM 25 **Q.** And don't -- isn't one of the covenants with

1 your malpractice carrier that if there is allegations  
 2 and complaints they provide counsel for you anyways?  
 3 **A. Some have.**  
 4 **Q.** Okay. So you don't have enough money.  
 11:09AM 5 All right. What was your rear -- excuse  
 6 me, doctor. What was your real fear about this  
 7 complaint?  
 8 **A. My real fear of that -- of this complaint was**  
 9 **that this was again another way wherein I would -- it**  
 11:09AM 10 **would make me very difficult to be able to continue on**  
 11 **working at this facility.**  
 12 **Q.** Well, let's get honest, doctor. Your real fear  
 13 is it made you very nervous that you would ever be able  
 14 to practice medicine in this state again; isn't that  
 11:09AM 15 true?  
 16 **A. No, sir.**  
 17 **Q.** You told this jury a few minutes ago if you  
 18 didn't do anything wrong you got nothing to fear from a  
 19 complaint going to the medical board. But you were  
 11:09AM 20 afraid of this complaint, weren't you?  
 21 **A. No, sir.**  
 22 **Q.** Okay. I'm going to ask you this right now and  
 23 then we're going to go through this, but I want to know  
 24 under oath, do you believe that you provided the minimum  
 11:10AM 25 standard of care in the -- what we're calling the skin

1 graft case, the turkey toe, the appendicitis, and the  
 2 rubber finger?  
 3 **A. Yes, sir.**  
 4 **Q.** Okay. So you have nothing to fear from this  
 11:10AM 5 complaint, do you, because in your mind you didn't make  
 6 any mistakes, right?  
 7 **A. No.**  
 8 **Q.** Okay. So it's all somebody else's fault again;  
 9 is that right, sir?  
 11:10AM 10 **A. No, sir.**  
 11 **Q.** No?  
 12 **A. No.**  
 13 **Q.** I mean, Victoria, that wasn't your fault, was  
 14 it?  
 11:10AM 15 **A. No, sir.**  
 16 **Q.** Okay. And what happened in these cases, that's  
 17 not your fault either, is it?  
 18 **A. No, sir.**  
 19 **Q.** This is all -- it has nothing to do with  
 11:10AM 20 medicine, it's all a personal vendetta, right? Is that  
 21 your testimony, sir?  
 22 **A. No, sir.**  
 23 **Q.** It does have something to do about medicine,  
 24 doesn't it?  
 11:11AM 25 Doesn't it? This complaint has something

1 to do about your practices, doesn't it?  
 2 **A. No, sir.**  
 3 **Q.** It does not?  
 4 **A. No.**  
 11:11AM 5 **Q.** Okay. You knew -- did you know that Anne has  
 6 been a registered nurse for over 20 years and worked in  
 7 that facility for over 20 years?  
 8 **A. No, sir.**  
 9 **Q.** Anne Mitchell was very highly regarded for her  
 11:11AM 10 competence as a nurse, was she not, in that facility?  
 11 **A. I don't know, sir.**  
 12 **Q.** You don't know?  
 13 Are compliance officers generally the  
 14 first person -- the first job you get as a registered  
 11:11AM 15 nurse or do you earn that position?  
 16 **A. I don't know, sir, I'm not the nurse.**  
 17 **Q.** Okay. Well, are nurses lesser people to you?  
 18 **A. No. They are as important as a doctor.**  
 19 **Q.** Nurses are essential --  
 11:11AM 20 **A. Yes, sir.**  
 21 **Q.** -- to quality care?  
 22 **A. I agree with you, sir.**  
 23 **Q.** Nurses have a duty to intervene when doctors  
 24 may be making a mistake?  
 11:12AM 25 **A. Yes, sir, I agree with you, sir.**

1 **Q.** And that's happened to you in the past?  
 2 **A. I agree with you, sir, that's true.**  
 3 **Q.** All right. And nurses have intervened in your  
 4 care before?  
 11:12AM 5 **A. I agree with you, sir, that's true.**  
 6 **Q.** And we want that because we -- what's the  
 7 bottom line is patient safety and quality care. Would  
 8 you agree with me?  
 9 **A. Yes, sir.**  
 11:12AM 10 **Q.** Did you notice in that letter that -- the  
 11 complaint, that quite a bit of it doesn't even have to  
 12 do with you?  
 13 **A. I don't know, sir.**  
 14 **MR. TIDWELL:** Could we --  
 11:12AM 15 **MR. COOK:** May I approach?  
 16 **A. I don't know, sir.**  
 17 **MR. COOK:** May I approach the witness?  
 18 **MR. TIDWELL:** If we could --  
 19 **A. Could you --**  
 11:12AM 20 **MR. TIDWELL:** -- clarify. We've used --  
 21 we've got the term complaint, judge, and we've got --  
 22 there is probably a couple of complaints. We might need  
 23 to be a little more specific about which complaint.  
 24 Could --  
 11:12AM 25 **Q.** (By Mr. Cook) In the complaint that was sent

1 to the Texas Medical Board, did you notice that there is  
 2 stuff in there that doesn't even concern you?  
 3 **A. I don't know, sir.**  
 4 MR. COOK: May I approach the witness,  
 11:13AM 5 Your Honor?  
 6 THE COURT: Yes. The attorneys, again,  
 7 have permanent permission to approach --  
 8 MR. COOK: Thank you.  
 9 THE COURT: -- all of the witnesses.  
 11:13AM 10 MR. COOK: Thank you, thank you.  
 11 **Q. (By Mr. Cook) Now that's the letter you need**  
 12 **to be concerned about.**  
 13 We're on the same page now, right?  
 14 What was Ms. Mitchell's primary concern?  
 11:13AM 15 What's number one on the hit list on that  
 16 piece of paper?  
 17 **A. The current administration, with approval of**  
 18 **the medical, is this what you want to -- me to read?**  
 19 **Q. Yes, sir.**  
 11:13AM 20 **A. The current administration, with approval of**  
 21 **the medical staff and board of control has approved a**  
 22 **policy of self-review --**  
 23 **Q. Okay.**  
 24 **A. -- which prohibits reporting of any concerns to**  
 11:13AM 25 **any board/agency without their being notified of the**

114

1 **intent of the report.**  
 2 **Q. Okay. Do you think that if somebody perceived**  
 3 **that, that that would be an important thing to bring to**  
 4 **the attention of the medical board?**  
 11:14AM 5 **A. It all depends, sir.**  
 6 **Q. Depends on what?**  
 7 **A. It all depends if this -- if the report was**  
 8 **made as -- is a legitimate report made by a patient that**  
 9 **has been injured.**  
 11:14AM 10 **Q. No, no, no, sir. Reports to the medical board**  
 11 **do not have to be made by a patient solely.**  
 12 MR. TIDWELL: Objection, Your Honor.  
 13 Mr. Cook is not a witness; he's testifying.  
 14 THE COURT: Rephrase.  
 11:14AM 15 MR. COOK: Thank you, Your Honor.  
 16 **Q. (By Mr. Cook) Reports to the medical board**  
 17 **don't have to come from patients, do they?**  
 18 **A. Yes, sir.**  
 19 **Q. They do have to come from patients?**  
 11:15AM 20 **A. Yes, sir.**  
 21 **Q. Whenever a patient is treated at the -- at your**  
 22 **facility, and I imagine at any facility in this country,**  
 23 **they have to sign a consent to treatment, don't they?**  
 24 **A. Yes, sir.**  
 11:15AM 25 **Q. And in that consent to treatment they consent**

1 for their -- they consent to have their medical files  
 2 sent to oversight without any notification, don't they?  
 3 **A. No, sir.**  
 4 MR. TIDWELL: I object, Your Honor. This  
 11:15AM 5 may -- is calling for a legal conclusion, and it's  
 6 asking for something out of the document that's not in  
 7 evidence.  
 8 MR. COOK: May I approach?  
 9 THE COURT: Yes.  
 11:15AM 10 **Q. (By Mr. Cook) Do you recognize this document,**  
 11 **without saying patient names or anything, but you've**  
 12 **seen that form many, many times?**  
 13 **You've never seen this form before?**  
 14 **A. I do, but --**  
 11:15AM 15 **Q. What is the name of this form?**  
 16 **A. General conditions for admission and treatment.**  
 17 **Q. And what is the -- what does it say under**  
 18 **consent for use and disclosure of information?**  
 19 **It's long. You want me to point you**  
 11:16AM 20 **out --**  
 21 **A. Consent for the use and disclosure of**  
 22 **information.**  
 23 **Q. To any person or corporation which is or may be**  
 24 **liable under a contract to the hospital.**  
 11:16AM 25 **And then we go down because it's got a**

116

1 bunch -- a lawyer wrote it, so it's way too long, right?  
 2 And it talks about that they consent -- I understand  
 3 that personal information will be used and disclosed for  
 4 the purpose of treatment, payment, and health oversight  
 11:16AM 5 activities; isn't that true? Did you see it?  
 6 **A. Yes, sir.**  
 7 **Q. Isn't that true?**  
 8 **A. Yes, sir.**  
 9 **Q. The patient consents when they get treated that**  
 11:16AM 10 **their files can be used --**  
 11 **A. But that's for the insurance, sir.**  
 12 **Q. No, it's not for just insurance, sir. We will**  
 13 **argue about that later.**  
 14 **The second thing is the Texas Medical**  
 11:16AM 15 **Board is part of our government, it's part of the State**  
 16 **of Texas' government, isn't it?**  
 17 **A. Yes, sir.**  
 18 **Q. And they are HIPAA exempt, aren't they? Is**  
 19 **that your understanding?**  
 11:17AM 20 **A. I don't know.**  
 21 **Q. They -- there is no requirement in the law for**  
 22 **patient consent to a HIPAA exempt agency?**  
 23 **A. I don't know, sir.**  
 24 **Q. You don't know?**  
 11:17AM 25 **A. I'm not the lawyer.**

1 Q. Okay. Well, let me ask you this, doctor. If  
 2 anytime a staff member raised a concern about your  
 3 standard of care, are you saying that you want them to  
 4 go and inform a patient of that concern before any type  
 11:17AM 5 of peer review occurs?  
 6 A. I'm not saying that, sir.  
 7 Q. Well, you just said that you have to have  
 8 patient consent to file a complaint to this jury, right?  
 9 A. Could you please rephrase what you are trying  
 11:17AM 10 to ask? I'm getting confused what you are trying to do.  
 11 Q. Fair enough. Do you want as a matter of  
 12 practice when a staff member has a concern about the  
 13 care that you are giving that the first step is done --  
 14 to be done is to notify the patient that there is a  
 11:18AM 15 concern, do you really want that?  
 16 A. I don't know what you are driving at, sir.  
 17 Q. Do you want -- Nurse Able from the emergency  
 18 room says I think Dr. Arafles messed up. Okay. You  
 19 say no, I didn't, right? They send it for peer review  
 11:18AM 20 to see what happened, right?  
 21 Correct?  
 22 I need a verbal response, sir.  
 23 A. No.  
 24 Q. That's not correct?  
 11:18AM 25 A. There is a chain -- there is a chain of ways --

1 there is a chain -- there is a chain of procedures that  
 2 a chart has to go through --  
 3 Q. Right --  
 4 A. -- okay?  
 11:18AM 5 Q. -- and if it --  
 6 A. And it's done --  
 7 THE COURT: One at a time.  
 8 MR. COOK: My fault, judge, my fault, my  
 9 fault.  
 11:18AM 10 THE COURT: Let him finish and then --  
 11 MR. COOK: It's my fault.  
 12 THE COURT: Let him finish the question.  
 13 So one at a time.  
 14 Thank you.  
 11:19AM 15 THE WITNESS: Can I speak now?  
 16 THE COURT: Go ahead.  
 17 A. Okay. There is a chain of procedure in this  
 18 facility on how supposedly perceived errors are done.  
 19 And all that the utility and the  
 11:19AM 20 compliance officers are supposed to be able to pick up,  
 21 if the care of the patient met the requirements, if it's  
 22 admission, it has met the requirements for admission, or  
 23 if it is a -- if it's a patient seen in the emergency,  
 24 the requirements that -- of the -- you know, of the  
 11:19AM 25 facility of the care of the patient in that -- in

1 whatever section the patient is; if you are referred to  
 2 the emergency room, did they do the proper  
 3 documentation, did they have -- did they have good  
 4 history, did the nurses write the notes that are, you  
 11:19AM 5 know, about the care, was it well documented.  
 6 And if those error -- if there are some  
 7 deficiencies seen, then the -- that chart is -- maybe if  
 8 it was with the nurses, it goes to the D.O.N., the  
 9 D.O.N. reviews it. And then if it's really something  
 11:20AM 10 that affects the care, then the nurse is called in and  
 11 maybe counseled.  
 12 If it's with a doctor, then the doctor's  
 13 attention should be called. And that has been done many  
 14 times with me.  
 11:20AM 15 I have worked in other hospitals, and if  
 16 they think that there is -- there is not enough  
 17 information there or that the criteria was not met, then  
 18 they send a copy of the chart to me and ask me to  
 19 explain, and so I explain and then I send it back to  
 11:20AM 20 them, and that's -- most of the time that's the end of  
 21 it.  
 22 Q. Doctor, you're talking about one of the  
 23 functions of a compliance officer, and that's to make  
 24 sure the paperwork is done right, correct?  
 11:20AM 25 A. Exactly.

1 Q. But another function of the compliance officer  
 2 is that -- to make sure that minimum standards of  
 3 care --  
 4 I brought you some water.  
 11:20AM 5 A. Oh, thank you, sir.  
 6 Q. I didn't know you had some there.  
 7 A. Thank you, thank you very much.  
 8 Q. To make sure that minimum standards of care are  
 9 being followed; isn't that correct?  
 11:21AM 10 A. Yes, sir.  
 11 Q. And not only that, but every licensed  
 12 professional in the healthcare industry, if they have  
 13 knowledge of substandard care, they have a duty to bring  
 14 that to the attention of the proper authorities; isn't  
 11:21AM 15 that true?  
 16 A. Yes, sir.  
 17 Q. Okay. And they can face liability for failing  
 18 to do that duty, can't they?  
 19 A. I don't know, sir. I'm --  
 11:21AM 20 Q. Okay.  
 21 A. That's out of my scope, sir.  
 22 Q. Fair enough.  
 23 A. I just know how to take care of patients.  
 24 Somebody else's bill. And that's what my contract was  
 11:21AM 25 for, just to take care of patients.

1 Q. You got a letter from the Texas Medical Board  
 2 in April saying, hey, somebody filed a complaint on you?  
 3 A. Yes, sir.  
 4 Q. You didn't know who filed it?  
 11:21AM 5 A. No, sir.  
 6 Q. You didn't care who filed it, you wanted them  
 7 prosecuted?  
 8 A. No, sir.  
 9 Q. Then why did you file harass -- you went to the  
 11:21AM 10 sheriff's office when you brought the complaint,  
 11 according to the testimony already from Mr. Swanson, is  
 12 you came to the sheriff's office and said I want to file  
 13 a complaint of harassment when you brought that letter.  
 14 Is that the truth?  
 11:22AM 15 A. What I didn't know because the complaint is  
 16 anonymous, and I just wanted to make sure that this was  
 17 a legitimate complaint of 10 people, imagine that, 10  
 18 people complaining against you, or was this part of what  
 19 was going on in the hospital.  
 11:22AM 20 Q. Anytime a physician receives a report of a  
 21 complaint, you're not told who made the complaint  
 22 because that information is confidential under law;  
 23 isn't that true?  
 24 A. Yes, sir.  
 11:22AM 25 Q. Okay. And then you found out later that the

1 complaint was filed anonymously, correct?  
 2 A. I already knew it was anonymous. There is  
 3 no -- when I got the thing, it was anonymous.  
 4 Q. I know. All of those are anonymous. They  
 11:23AM 5 don't tell you who is filing the complaint when you get  
 6 one.  
 7 A. Exactly, sir.  
 8 Q. So you wanted to know who turned you in?  
 9 A. No. I wanted to know whether the complaint was  
 11:23AM 10 legitimate or was this still a part of the harassment I  
 11 was getting in the hospital.  
 12 Q. Let me ask you this question. If a nurse has  
 13 concerns about the way you practice medicine, is that  
 14 harassment?  
 11:23AM 15 A. Yes, sir, if that nurse has never worked with  
 16 me.  
 17 Q. Okay. Well, let's take Ms. Warren, because you  
 18 know she filed a complaint against you. In fact, half  
 19 those patients on that list came from her, right?  
 11:23AM 20 A. I don't know, sir. I didn't -- I'm not privy  
 21 to that information. I just learned about this as  
 22 you --  
 23 Q. What do you mean you don't --  
 24 A. I didn't know, sir, please, I didn't know.  
 11:23AM 25 Q. Well, let's --

1 A. I didn't know whoever complained against me.  
 2 Q. You didn't know when you received the letter,  
 3 but you found out pretty soon afterwards who filed those  
 4 letters, didn't you?  
 11:23AM 5 A. No.  
 6 Q. You're friends with the sheriff?  
 7 A. Yes.  
 8 Q. You go in and you tell him find out who filed  
 9 this complaint on me, it's harassment, right?  
 11:24AM 10 A. No.  
 11 Q. You didn't?  
 12 A. Again, I want to insist, I want to make it  
 13 clear before this jury is that I wanted to make sure  
 14 that these 10 complaints were legitimate, because 10  
 11:24AM 15 people complained against me, I must be a very bad  
 16 doctor.  
 17 Q. Okay. But that's what the Texas Medical Board  
 18 is for. Why did you go to the county sheriff?  
 19 A. I went to the county sheriff because I wanted  
 11:24AM 20 to know whether this was still part of the harassment I  
 21 was receiving in that hospital.  
 22 Q. Why are you afraid to go before the Texas  
 23 Medical Board on those 10 files?  
 24 A. I am not afraid to go if these were legitimate  
 11:24AM 25 complaints. They are very easy to --

1 Q. Okay.  
 2 A. They are very, very easy to explain.  
 3 Q. 10-year-old Hispanic male woke up, right lower  
 4 quadrant pain, with nausea and vomiting. Patient unable  
 11:24AM 5 to keep anything down.  
 6 You discharged him from your care before  
 7 you ruled out appendicitis, didn't you?  
 8 Didn't you?  
 9 A. I had already a presumptive diagnosis of  
 11:25AM 10 appendicitis. It took a little -- it took a long time  
 11 for the results to come in.  
 12 Q. Appendicitis didn't just start 20 years ago.  
 13 It's been around forever.  
 14 A. I know. I used to be a surgeon.  
 11:25AM 15 Q. People have diagnosed appendicitis for  
 16 centuries.  
 17 A. Yes, sir, yes, sir.  
 18 Q. Without CAT scans.  
 19 Any layperson on the street knows if  
 11:25AM 20 you're hurting right here and you're throwing up let's  
 21 make sure it's not appendicitis. Would you agree with  
 22 me?  
 23 And what did you first diagnose that young  
 24 man with anyways, doctor? Do you even remember?  
 11:25AM 25 Tell the ladies and gentlemen of the jury

1 what megacolon is. You want to see the chart?  
 2 Tell the ladies and gentlemen of the jury  
 3 what megacolon is. Tell the ladies and gentlemen of the  
 4 jury how many 10-year-old children in your lifetime  
 11:26AM 5 you've seen with it.  
 6 MR. TIDWELL: Your Honor, I'll just have  
 7 to object it's argumentative and theatrical.  
 8 Q. (By Mr. Cook) Doctor, did you --  
 9 THE COURT: Ask the question and allow  
 11:26AM 10 time for an answer.  
 11 MR. COOK: Thank you.  
 12 THE COURT: The purpose is to provide  
 13 information for the jury so they can make a decision on  
 14 the case.  
 11:26AM 15 Go ahead.  
 16 You can answer the question.  
 17 Q. (By Mr. Cook) Your preliminary diagnosis was  
 18 megacolon; is that correct?  
 19 A. Yes, sir.  
 11:26AM 20 Q. Okay. What is megacolon?  
 21 A. Megacolon is a condition where the reflexes  
 22 that allows your intestines to go into peristalsis, that  
 23 means that wavy movement so that it can push the stools  
 24 down to the rectum, is absent.  
 11:26AM 25 And when I saw this patient, on the x-rays

1 I saw that the intestines were very much enlarged, so I  
 2 then thought that that was the condition that the  
 3 patient have.  
 4 I have -- in my -- I could just refer to  
 11:27AM 5 my experience in the Philippines is I have handled 10,  
 6 20 patients like this in my country. And I -- you know,  
 7 based on that background, I thought the patient had this  
 8 condition and -- however, I was still -- I was still  
 9 thinking that I needed that CT scan to give me a firmer  
 11:27AM 10 diagnosis of what really was going on.  
 11 And because of, again, we had technical  
 12 difficulties, I said, you know, for the sake of the boy,  
 13 because he already was very tired waiting and he was  
 14 sleepy, I said -- I told -- I asked the mom if they  
 11:27AM 15 could just bring him home first and as soon as we get  
 16 that -- the result and I could confirm my diagnosis we  
 17 will transfer him right away.  
 18 And the nurses that was working with me  
 19 agreed to that, agreed to, you know, having the patient  
 11:28AM 20 discharged. The mother was very much aware because they  
 21 were just living close by. And that's -- that was what  
 22 happened.  
 23 So as soon as we got the CT scan,  
 24 immediately we started doing all the calls, calling them  
 11:28AM 25 back, calling an ambulance and sending the patient to --

1 I don't know where he was transferred, but we had all of  
 2 those done immediately. And, you know --  
 3 Q. You diagnosed megacolon preliminary and you  
 4 treated megacolon, didn't you?  
 11:28AM 5 A. Yes, sir.  
 6 Q. You gave that young man three enemas, or you  
 7 had the nurses give that young man three enemas, didn't  
 8 you?  
 9 A. Yes, sir.  
 11:28AM 10 Q. I bet you that felt good --  
 11 A. The patient --  
 12 Q. -- with an inflamed appendix to get three  
 13 enemas. Do you -- did that young man experience pain?  
 14 A. No, sir. The patient I believe was -- felt  
 11:29AM 15 much better.  
 16 Q. Okay. Now you say that -- well, first of all,  
 17 doctor, would it be reasonable for another healthcare  
 18 professional to question whether or not releasing a  
 19 child with an inflamed appendix from your care and  
 11:29AM 20 sending him home, if that has a standard of care issue?  
 21 MR. TIDWELL: I object, Your Honor. That  
 22 assumes facts not in issue.  
 23 THE COURT: Go ahead.  
 24 You can answer.  
 11:29AM 25 THE WITNESS: Could he rephrase, judge?

1 Q. (By Mr. Cook) Would it be reasonable for  
 2 another medical person who knew that you discharged a  
 3 child with appendicitis without ruling out the  
 4 appendicitis, would it be reasonable for them to  
 11:29AM 5 question whether that is a medical issue that should be  
 6 reviewed? How about that, is that easy enough?  
 7 A. Yeah.  
 8 Q. Is that fair enough?  
 9 A. Yeah, that's fair enough.  
 11:29AM 10 Q. Okay. And you say you don't have the CAT scan  
 11 report.  
 12 But my dad is a doctor, and he told me  
 13 something. He says, John, if it's not written down, it  
 14 didn't happen.  
 11:30AM 15 You guys write down everything, don't you?  
 16 In fact, you write down what time the CAT scan gets back  
 17 to the ER, don't you? Look through that file and tell  
 18 me what time the CAT scan report that diagnosed  
 19 appendicitis was received in the emergency room and then  
 11:30AM 20 kindly tell the jury what time you discharged that young  
 21 man.  
 22 A. The report arrived at October 9.  
 23 Q. What time?  
 24 A. Of 15.  
 11:30AM 25 Q. 3:00 in the --



1 A. **That's 3:30 something.**  
 2 Q. 3:30. What time --  
 3 A. **Yeah, 3:30:06.**  
 4 Q. What time did you discharge him, doctor?  
 11:31AM 5 1610, 40 minutes later; isn't that true?  
 6 A. **It says here -- there is a 1715 that was**  
 7 **erased, and then there is a 1615.**  
 8 Q. Either one. He was discharged at least  
 9 30 minutes after the CAT scan report came back; isn't  
 11:31AM 10 that true, doctor?  
 11 Yes or no?  
 12 A. **That's how it appears here, sir.**  
 13 Q. Okay. Is that a legitimate medical concern of  
 14 discharging a child before you even look at the results  
 11:32AM 15 of the test that you ordered and charged his family for?  
 16 A. **That's how it appears, sir.**  
 17 Q. Okay. And appendicitis can kill you if it's  
 18 not treated; isn't that true?  
 19 A. **Not true.**  
 11:32AM 20 Q. A ruptured appendix left untreated, no big  
 21 deal?  
 22 A. **Who says it's -- who said it's ruptured?**  
 23 Q. You discharged him --  
 24 A. **Who said it's ruptured, sir?**  
 11:32AM 25 Q. I'm not saying it's ruptured, but --

1 A. **Let's do it by the facts, sir.**  
 2 THE COURT: One at a time --  
 3 THE WITNESS: I'm sorry.  
 4 THE COURT: -- one at a time.  
 11:32AM 5 Go ahead.  
 6 Q. (By Mr. Cook) Well, let me ask you this,  
 7 doctor. When you have an inflamed appendix, how often  
 8 do you just give somebody a pill and say, hey, don't  
 9 worry about it?  
 11:32AM 10 A. **It all depends on where the obstruction in the**  
 11 **appendix is, sir.**  
 12 Q. Surgery removes the appendix, right?  
 13 A. **Yes, sir.**  
 14 Q. What are the chances that if somebody has an  
 11:33AM 15 inflamed appendix that's making them throw up, that  
 16 hurts as bad as that young boy was hurting that day,  
 17 what is the chance that left untreated that appendix  
 18 would rupture?  
 19 A. **That I couldn't predict, sir.**  
 11:33AM 20 Q. You couldn't predict?  
 21 A. **No, sir.**  
 22 Q. Small?  
 23 A. **No, sir.**  
 24 Q. Small chance it'd happen?  
 11:33AM 25 A. **No, sir.**

1 Q. Medium chance it'd happen? I --  
 2 A. **I'm not God, sir.**  
 3 Q. Excuse me?  
 4 THE COURT: One at a time, guys.  
 11:33AM 5 Go ahead.  
 6 Q. (By Mr. Cook) What is -- well, let me -- I'll  
 7 strike that. If you can't predict that, that's cool.  
 8 To somebody with an inflamed appendix, do  
 9 you worry about that appendix rupturing?  
 11:33AM 10 A. **Yes, sir.**  
 11 Q. And what would happen to that young man if he  
 12 had gone home and that appendix ruptured, what would  
 13 have happened to him?  
 14 A. **Several things, sir.**  
 11:33AM 15 Q. Starting at the worst, death?  
 16 A. **No, sir.**  
 17 Q. Okay. Dr. Arafles, in the case of the  
 18 appendix boy, you screwed up, didn't you?  
 19 A. **No, sir.**  
 11:34AM 20 Q. So this is Anne Mitchell's fault?  
 21 A. **No, sir.**  
 22 Q. This is not something that the Texas Medical  
 23 Board would be interested in at all, so you have nothing  
 24 to worry about this file with them, do you?  
 11:34AM 25 A. **I don't know, sir.**

1 Q. Uh-huh, yes, you do.  
 2 A. **No, sir.**  
 3 Q. Let's talk about --  
 4 MR. TIDWELL: Your Honor, could we  
 11:34AM 5 instruct Mr. Cook to stop the sidebar comments?  
 6 THE COURT: All attorneys are instructed  
 7 to do that.  
 8 MR. COOK: He's right. I'm sorry.  
 9 THE COURT: Again, we're here to provide  
 11:34AM 10 information for the jury to assist them in deciding this  
 11 case. Let's keep that in mind.  
 12 Go ahead.  
 13 Q. (By Mr. Cook) And just for purposes of the  
 14 record, appendix boy's parents consented to the  
 11:34AM 15 transmission of this document for oversight purposes,  
 16 didn't they?  
 17 A. **I don't know, sir.**  
 18 Q. It's in the consent, we've already gone through  
 19 it.  
 11:34AM 20 A. **I don't know, sir.**  
 21 Q. Okay. Let's talk about your masterpiece. Did  
 22 you ever call -- did you ever call the skin graft your  
 23 masterpiece to other staff members?  
 24 A. **No.**  
 11:35AM 25 Q. You were pretty proud of it at the time,

1 weren't you?

2 A. Yes, sir.

3 Q. Okay. Do you have surgical privileges at

4 Winkler County hospital?

11:35AM 5 A. **Winkler County is not a surgical facility.**

6 Q. The question is simple, sir. Do you have -- do

7 you possess surgical privileges at Winkler County

8 hospital?

9 A. No, sir.

11:35AM 10 Q. Have you ever had surgical privileges anywhere?

11 A. No, sir.

12 Q. You're not a surgeon, are you?

13 A. I don't claim to be one, sir.

14 Q. Okay. Surgeries generally are not done in the

11:35AM 15 emergency room, are they?

16 A. That's not true, sir.

17 Q. Okay. So you say I'm wrong?

18 A. Yes, sir.

19 Q. All right. Surgeries should be done in a

11:36AM 20 sterile operating room, shouldn't they?

21 A. Not all the time, sir.

22 Q. Tell the jury how old this man was.

23 A. 74, sir.

24 Q. 74 years old.

11:36AM 25 Tell the jury what his underlying medical

1 condition was, not his injury, not the trauma, what --

2 his patient history.

3 A. He had diabetes. He had hypertension. He had

4 coronary artery disease. He had hyperlipidemia. He had

11:36AM 5 hypertensive coronary vascular disease.

6 Q. Okay. That's enough.

7 The diabetes, you have a 74-year-old man

8 with diabetes and a wound.

9 A. Yes, sir.

11:36AM 10 Q. As a physician, that alone causes you concern,

11 doesn't it?

12 A. Of course, sir.

13 Q. Diabetics have trouble healing?

14 A. That's not true, sir.

11:36AM 15 Q. That's not true?

16 A. Yes, sir. You -- give me a --

17 Q. We all have family members who --

18 Your testimony under oath as a medical

19 doctor is diabetics do not have trouble healing?

11:37AM 20 A. Yes, sir, they heal, they heal as well as

21 anybody else.

22 Q. Okay.

23 THE COURT: Y'all want to approach please.

24 A. This is becoming --

11:37AM 25 (AT BENCH, OFF THE RECORD)

1 THE COURT: Ladies and gentlemen, I'm

2 hearing sounds from the audience, and that's

3 inappropriate. And if you have to do that, then I'm

4 going to ask you to go outside.

11:38AM 5 Again, we're having a trial here. It's

6 not entertainment, it's -- and you're here as

7 spectators, and we welcome you. But nothing that

8 happens here requires any kind of audience response, and

9 I'm going to ask you not to do that because I don't want

11:38AM 10 to have to have people leave. I want everybody to be

11 here that wants to be here.

12 Does everybody understand?

13 Thank you.

14 Go ahead, counsel, sorry to interrupt.

11:38AM 15 Q. (By Mr. Cook) The skin graft man came to your

16 emergency with one wound, emergency room with one wound

17 on his hand; isn't that true?

18 A. You're right, sir.

19 Q. Okay. And you cut off a portion of his

11:38AM 20 abdomen, didn't you?

21 A. No, sir.

22 Q. Well, do you recognize that drawing, doctor?

23 A. Yes, sir.

24 Q. Who made that drawing?

11:39AM 25 A. Me, sir.

1 Q. What is the bottom part of that drawing

2 supposed to represent?

3 A. Skin, sir.

4 Q. And where did that skin come from, sir?

11:39AM 5 A. From his abdomen, sir.

6 Q. Did it fall off?

7 A. No, sir.

8 Q. Did you cut it off?

9 A. Yes, sir.

11:39AM 10 Q. How deep do you have to cut skin off to take it

11 off to try to skin graft?

12 A. Under -- just under the fat and under the skin.

13 Q. Subdural, or not dural --

14 A. No, sir.

11:39AM 15 Q. -- subderma.

16 A. Dermal, sir.

17 Q. Yeah. I'm a lawyer, okay.

18 You had to cut off a portion of his

19 abdomen to try your thing?

11:39AM 20 A. No, sir. It's not my thing, sir.

21 Q. Okay. Would you agree with me that this

22 gentleman left the emergency room with twice as many

23 wounds as he came in with?

24 A. No, sir.

11:39AM 25 Q. Okay. And your skin graft -- oh, and you told

1 him to put ozonated -- or is --

2 A. No, sir.

3 Q. Is it oxygenated or ozonated olive oil on it?

4 A. No, sir.

11:39AM 5 Q. Okay. What did you tell him to rub on it?

6 What did you go out to your car and get?

7 A. That's -- you are mixed up, sir.

8 Q. Okay. I may be.

9 A. You are definitely mixed up, sir.

11:40AM 10 Q. How successful was your skin graft?

11 A. Very successful, sir.

12 Q. Very successful.

13 A week later how successful was it?

14 A. Very successful, sir.

11:40AM 15 Q. Okay.

16 A. Could you -- would you allow me to explain why  
17 I say successful?

18 Q. Please.

19 A. Okay. That gentleman had almost all the skin

11:40AM 20 on the top of his finger removed. I hope -- you know, I

21 only wish they had brought the skin, but they left it.

22 He tried to -- he tried to grab something under his

23 lawnmower that was running, and he got that skinned off.

24 Now what I was trying to do was I was

11:40AM 25 trying to preserve the function of his hand. Could you

1 imagine how much his grip with if he has the thumb  
2 sticking out? And the ability to be able to maintain  
3 this motion is very important. So I explained it to  
4 him.

11:41AM 5 And being a diabetic, I said if this -- if  
6 we just leave this open and the wound just would heal by  
7 itself, you will have a big scar and that thumb might be  
8 sticking out. So I explained to him that by doing the  
9 graft I would be able to protect the tendon.

11:41AM 10 If you look at your hands, jury, and you  
11 hold it this way, there is that little tendon there.  
12 And that's a very important tendon in the function of  
13 grip.

14 And so what I told him that we -- what I  
11:41AM 15 could do is I could get a piece of skin, cover that to  
16 protect the tendon, because that's a very important  
17 function. And I said the graft may take or may not  
18 take, but what we want to accomplish is that we want to  
19 maintain that grip.

11:41AM 20 And he said -- I told him that the way you  
21 could take care of that is to use -- you know, is to use  
22 just saline, it's a salt solution, just to keep that --  
23 keep that graft moist so that it would -- at least it  
24 would live.

11:42AM 25 The first week he came to see me the graft

1 was okay. And then I said you just continue doing what  
2 you were doing. And what -- I don't know what happened,  
3 but when he came back to see me again, part of the graft  
4 was dead.

11:42AM 5 But what I was very happy about was that  
6 he was -- he was still able to have his grip and there  
7 was no infection at all. So I accomplished what I  
8 wanted to do.

9 And as the graft dies and falls off, the  
11:42AM 10 good -- the naked skin or the skin that is around would  
11 start growing back, so I would not have that scar that  
12 would pull his thumb up. And that was why I say that  
13 graft was very successful.

14 It was not a plastic surgery like what the  
11:42AM 15 lawyer is -- the lawyer was insinuating. It's not a  
16 plastic surgery, but it was intended to maintain that  
17 function of grip and I think that that's what I  
18 accomplished.

19 Q. Dr. Arafles, you don't have surgical  
11:43AM 20 privileges. You performed a surgical procedure in the  
21 emergency room, did you not?

22 A. Yes, sir.

23 Q. Dr. Pham had to intervene on this patient and  
24 refer him out to a surgeon, didn't he?

11:43AM 25 A. That was an interference in the care of my

1 patient, sir.

2 Q. Okay. So that's Dr. Pham's fault?

3 A. I don't know, sir. I'm not blaming him, sir.

4 Q. So -- well, let's get down to -- let's just get  
11:43AM 5 down to the issue in the case here. You have no concern  
6 about the Texas Medical Board reviewing this file  
7 either, do you?

8 A. I don't know, sir.

9 Q. Okay. Let's talk about turkey toe. Do you  
11:43AM 10 know what I'm talking about --

11 A. Yes, sir.

12 Q. -- the lady who dropped a frozen turkey on her  
13 toe?

14 Are you an orthopedic surgeon?

11:44AM 15 A. No, sir.

16 Q. Did you put a needle in the bone of her toe?

17 A. No, sir.

18 Q. Where did you put the needle?

19 A. The -- what do you call this? The way I  
11:44AM 20 managed that case was I did what you call a cerclage.  
21 It's putting a suture around what -- around the broken  
22 tip in order to be able to reduce the bits of bone that  
23 was fractured at the tip of the toe.

24 Now the intent there, again, the intent  
11:44AM 25 there was to make sure that the bones are close -- are

1 reduced, that's a term, and that would prevent bleeding.  
 2 **Aside from that, it also would help with the pain.**  
 3 Q. Okay.  
 4 A. **And that was what I was -- that was what I --**  
 11:44AM 5 **that's what I accomplished.**  
 6 Q. Do you think, doctor, maybe you should have  
 7 referred her to an orthopod instead?  
 8 A. **Maybe so.**  
 9 Q. That procedure was so outrageous even the  
 11:45AM 10 nurses there made you stop and undo it and take that  
 11 needle out, didn't they?  
 12 A. **No, sir.**  
 13 Q. What is a K wire?  
 14 A. **Come again?**  
 11:45AM 15 Q. What is a K wire?  
 16 Have you ever heard the term K wire? K  
 17 has got some long medical term for it. Have you ever  
 18 heard that?  
 19 A. **Yes, sir.**  
 11:46AM 20 Q. Okay. Wouldn't that have been the  
 21 appropriate --  
 22 A. **Yes, sir.**  
 23 Q. That would have -- and you didn't have one, did  
 24 you?  
 11:46AM 25 A. **No, sir.**

1 Q. So you used a needle.  
 2 And the purpose -- you wanted -- look,  
 3 doctor, I believe you when you say you were trying to  
 4 help people, I do believe that, okay? And I know that  
 11:46AM 5 you -- I know you have helped lots of people, okay?  
 6 But in this case here you shouldn't have  
 7 done that procedure in that emergency room, should you?  
 8 A. **I would do the same, sir. But that time I was**  
 9 **not aware that those were not allowed to be done there.**  
 11:46AM 10 Q. Okay.  
 11 A. **I have done it in other hospitals, and nobody**  
 12 **has complained.**  
 13 Q. Please explain this one. That's what I'm  
 14 calling the rubber fingertip.  
 11:46AM 15 A. **Oh. Would you allow me to explain?**  
 16 Q. Doctor, I want you to explain, yes.  
 17 A. **Okay. Thank you, sir.**  
 18 **Okay. Next to your sight, touch and**  
 19 **feelings are very important sensation. And I would like**  
 11:47AM 20 **you to -- I'd like to run through the scenario.**  
 21 Q. Make it as brief as you can, doc. We've got a  
 22 lot of other witnesses.  
 23 Why did you sew -- where did the piece --  
 24 let's -- actually, let me retract that question.  
 11:47AM 25 Doctor, what did you sew on the end of

1 this guy's finger?  
 2 A. **I thought you were allowing me to explain.**  
 3 Q. Well, I've decided I don't want to anymore.  
 4 What did you sew onto the end of his  
 11:47AM 5 finger?  
 6 A. **I sewed a piece of plastic to protect --**  
 7 Q. You sewed a piece of plastic?  
 8 A. **Yes, sir.**  
 9 Q. Where did you get the plastic from?  
 11:47AM 10 A. **I got the plastic from a suturing kit. It was**  
 11 **sterile.**  
 12 Q. Okay. And what part of the suturing kit did  
 13 the plastic come from?  
 14 A. **It's the -- it's used to protect the scissors**  
 11:48AM 15 **in the suturing kit.**  
 16 Q. Okay. It's not made to be sutured onto a human  
 17 being, is it, sir?  
 18 A. **No, I didn't suture it to the -- I didn't**  
 19 **suture it. I just used it as a support to help**  
 11:48AM 20 **stabilize the fractures -- the fracture on the tip of**  
 21 **that -- of the finger.**  
 22 **And aside from that, like what I was**  
 23 **telling you, the sensation on the tip of the finger is**  
 24 **very important. And if you put a -- if you put like**  
 11:48AM 25 **again what I was calling a cerclage, a suture around to**

1 **hold those pieces of bones in place --**  
 2 MR. COOK: Judge, can I interrupt him? I  
 3 would object to nonresponsive.  
 4 THE COURT: Just answer as directly as you  
 11:48AM 5 can. If there are other things to be brought out, then  
 6 Mr. Tidwell will have a chance to question you again.  
 7 Go ahead.  
 8 Q. (By Mr. Cook) Look at your chart, doctor. Did  
 9 you suture that thing from the packaging onto his  
 11:48AM 10 finger?  
 11 A. **Yes, sir.**  
 12 Q. Thank you.  
 13 So you're not worried about the medical  
 14 board knowing about that either, are you?  
 11:49AM 15 You've got nothing to fear, right, nothing  
 16 to fear, right?  
 17 A. **Are you bantering, sir?**  
 18 Q. Excuse me?  
 19 A. **Are you bantering me?**  
 11:49AM 20 Q. No. I'm asking you a question.  
 21 You're not worried about the medical board  
 22 having this file either, are you?  
 23 A. **No, sir.**  
 24 Q. Doctor, Z-R-I-I, how much does it cost, a  
 11:49AM 25 bottle, how much does a bottle cost?

1 **A. I don't know anymore, sir.**  
 2 **Q.** You don't know -- how -- well, the last time  
 3 you knew how much a bottle cost, how much did it cost?  
 4 **A. I don't know anymore.**  
 11:49AM 5 **Q.** \$40.00?  
 6 **A. Probably.**  
 7 **Q.** For a bottle about that size?  
 8 **A. No, sir.**  
 9 **Q.** A little bit bigger?  
 11:49AM 10 **A. Probably, sir.**  
 11 **Q.** The main ingredient is concentrated white grape  
 12 juice, correct?  
 13 **A. No, sir.**  
 14 **Q.** What is the main -- what is the biggest  
 11:50AM 15 ingredient in it?  
 16 **A. It's called Amalaki, sir.**  
 17 **Q.** Oh, okay. What percentage of the fluid in that  
 18 bottle is Amalaki?  
 19 **A. I don't know, sir.**  
 11:50AM 20 **Q.** You don't know.  
 21 **A. Because it's proprietary. I'm not privy to**  
 22 **that information, sir.**  
 23 **Q.** Whoa, whoa, whoa, whoa, whoa, whoa, whoa.  
 24 You're a doctor. You are required by ethics to know  
 11:50AM 25 what you're putting in people's bodies, aren't you?

1 **A. Yes, sir.**  
 2 **Q.** Show me a -- I sent you a subpoena asking for  
 3 those ingredients, and the reason you didn't bring them  
 4 is because you don't know because they won't tell you,  
 11:50AM 5 right?  
 6 **Correct?**  
 7 **A. You're probably correct, sir.**  
 8 **Q.** Okay. And the Zrii corporation is one of these  
 9 networking things, in other words, I start selling it  
 11:50AM 10 and then I get people to distribute it for me and I  
 11 build that up and eventually I make a bunch of money  
 12 because everybody else is selling it, right?  
 13 **A. Yes, sir.**  
 14 **Q.** And you jumped into it big time in the  
 11:51AM 15 beginning, you wanted to be -- you wanted to build your  
 16 network, right?  
 17 **A. Yes, sir.**  
 18 **Q.** And you invited staff to the Pizza Hut for  
 19 presentations, didn't you?  
 11:51AM 20 **A. Yes, sir.**  
 21 **Q.** And you even got the sheriff to sign up to  
 22 be -- or either the sheriff or the sheriff's wife, I'm  
 23 not clear on that, to be one of your distributors,  
 24 didn't you?  
 11:51AM 25 **A. Yes, sir.**

1 **Q.** And you even had the sheriff go into nursing  
 2 homes to talk about how wonderful this is, didn't you?  
 3 **A. No, sir.**  
 4 **Q.** You never asked the sheriff to go speak to --  
 11:51AM 5 in nursing homes?  
 6 **A. No, sir. I'm not aware of that, sir.**  
 7 **Q.** Okay. Did you ever ask him to speak to groups?  
 8 **A. No, sir.**  
 9 **Q.** No?  
 11:51AM 10 **Okay.** Are you aware that the American  
 11 Medical Association and the Texas Medical Association  
 12 has ethical guidelines for doctors who are selling  
 13 products to their patients?  
 14 **A. Yes, sir.**  
 11:52AM 15 **Q.** And is it your testimony, and I'm going to pull  
 16 them out right now, that you complied with those ethical  
 17 requirements?  
 18 **Did you comply with the ethical**  
 19 **requirements that you're aware of in selling products to**  
 11:52AM 20 **a patient?**  
 21 **No.** Is that you shook your head no?  
 22 **A. I'm not aware of what you're talking about,**  
 23 **sir.**  
 24 **Q.** E-8.062, Sale of Non-Health-Related Goods From  
 11:52AM 25 Physicians' Offices. Why don't you review that

1 document. It's your ethical responsibility.  
 2 **MR. COOK:** Would you like a copy,  
 3 **Mr. Tidwell?**  
 4 **MR. TIDWELL:** Sure.  
 11:53AM 5 **A. Okay.**  
 6 **Q.** At a minimum -- well, do you want a chance to  
 7 review that?  
 8 **A. Can I comment, sir?**  
 9 **Q.** I'll ask you a question in a minute. Just tell  
 11:53AM 10 me when you're ready for my question.  
 11 **A. Yes, sir.**  
 12 **Q.** Are you ready for my question?  
 13 **A. Yes, sir.**  
 14 **Q.** What clinical studies did you consult, clinical  
 11:53AM 15 studies, did you consult to realize the benefits, the  
 16 counterindications, of Zrii?  
 17 **A. None, sir.**  
 18 **Q.** Thank you, sir.  
 19 **How about ozonated olive oil, what is**  
 11:53AM 20 **that, sir?**  
 21 **A. That's a way of delivering oxygen using an**  
 22 **ointment.**  
 23 **Q.** Do you buy yours from the Wolfe Clinic?  
 24 **A. No, sir.**  
 11:53AM 25 **Q.** Does the one that you give to patients contain

1 the warning that it is illegal to use for medical care  
 2 in some states, please consult your local ordinances?  
 3 **A. Yes, sir.**  
 4 **Q.** I asked you for clinical studies on that. What  
 11:54AM 5 did you bring me?  
 6 **A. I didn't -- I was not aware that I was supposed**  
 7 **to bring clinical studies, sir. I was --**  
 8 **Q.** Excuse me?  
 9 **A. I was not aware that I was supposed to bring**  
 11:54AM 10 **clinical studies. I was just told to get -- to bring**  
 11 **the contents.**  
 12 **Q.** Okay. Let me ask you this, sir. Is it FDA  
 13 approved?  
 14 **A. No, sir.**  
 11:54AM 15 **Q.** Are you aware of clinical, and you and I know  
 16 what we're talking about clinical studies, are you aware  
 17 of clinical study on ozonated olive oil?  
 18 **A. Yes, sir.**  
 19 **Q.** Why have some states said it's illegal,  
 11:54AM 20 illegal, to prescribe it?  
 21 **A. I don't know, sir.**  
 22 **Q.** Okay.  
 23 **A. I'm not aware of any prohibitions.**  
 24 **Q.** Who is your lawyer?  
 11:55AM 25 **A. I have no lawyer.**

1 **Q.** Who do you consult for legal questions -- or  
 2 let me ask you this. Who have you been consulting for  
 3 the last year for legal questions?  
 4 **A. Scott.**  
 11:55AM 5 **Q.** Scott Tidwell.  
 6 **A. I thought I was a witness, sir.**  
 7 **THE COURT:** Just respond to the questions.  
 8 **THE WITNESS:** Oh, sorry.  
 9 **THE COURT:** Go ahead.  
 11:55AM 10 **Q.** (By Mr. Cook) No, sir. You're the  
 11 complainant. You're the one that got this lady thrown  
 12 in jail. You're the one that got this lady fired,  
 13 aren't you?  
 14 **THE COURT:** Approach.  
 11:56AM 15 **(AT BENCH, OFF THE RECORD)**  
 16 **THE COURT:** We're going to take a lunch  
 17 break now. We're at one of those good stopping places.  
 18 If you'll be back in the jury room at 1:15, we'll try to  
 19 start promptly at that time.  
 11:56AM 20 One thing I'm going to do, I'm going to  
 21 ask everybody to wait in here and let you guys leave  
 22 without wading through the crowd, and then I'll let  
 23 everybody else go. Keep in mind the instructions that  
 24 I've given you earlier. See you at 1:15.  
 11:57AM 25 **(JURY NOT PRESENT)**

1 (A recess was taken from 11:57 to 1:16.)  
 2 **(JURY PRESENT)**  
 3 **THE COURT:** Welcome back, ladies and  
 4 gentlemen. Let the record reflect that we're starting  
 01:16PM 5 three minutes early. That probably won't happen again.  
 6 When everybody is ready to go, I'm more than happy to  
 7 start.  
 8 **Counsel.**  
 9 **MR. COOK:** With the court's permission.  
 01:16PM 10 **Thank you, Your Honor.**  
 11 **Q.** (By Mr. Cook) Dr. Arafles, before I get into  
 12 it, I want to clear something up. And I told this jury  
 13 in opening statement that you were banned from practice  
 14 in the state of New York for your life, and I was wrong.  
 01:16PM 15 And I want to clear that up and tell them what actually  
 16 happened up there, so --  
 17 **A. Thank you, sir.**  
 18 **Q.** -- with your permission?  
 19 **A. Thank you, sir.**  
 01:16PM 20 **Q.** Okay. You entered into a consent agreement and  
 21 order, did you not, with the State of New York?  
 22 **A. Yes, sir.**  
 23 **Q.** And I'm showing you a copy of that.  
 24 **A. Yes, sir.**  
 01:17PM 25 **Q.** Okay. And that, to be fair, was not something

1 that arose because of your practice in New York?  
 2 **A. No, sir.**  
 3 **Q.** This was all part of the Victoria deal, right?  
 4 **A. Yes, sir.**  
 01:17PM 5 **Q.** Okay. And in that, the State of New York never  
 6 banned you from practicing for life, did they?  
 7 **A. No, sir.**  
 8 **Q.** Okay. But you agreed to, as part of the  
 9 settlement offer in the State of New York, to never  
 01:17PM 10 activate your registration to practice medicine in New  
 11 York state or seek to reapply for a license to practice  
 12 in medicine for New York state; isn't that correct?  
 13 **A. That's very correct, sir.**  
 14 **Q.** Okay. And that's different from being banned?  
 01:17PM 15 **A. Yes, sir.**  
 16 **Q.** You just agreed that I'm done with New York?  
 17 **A. Yes, sir.**  
 18 **Q.** Okay. Is that fair enough?  
 19 **A. Very fair, sir. And thank you very much --**  
 01:17PM 20 **Q.** You're welcome --  
 21 **A. -- for clearing that up.**  
 22 **MR. COOK:** Your Honor, I have the consent  
 23 agreement and order.  
 24 **Q.** (By Mr. Cook) And, doctor, you do recognize  
 01:18PM 25 that piece of paper, do you not, sir?

1 A. Yes, sir.

2 Q. And is that a -- does that appear to be a true  
3 and correct copy of the consent and an agreed order that  
4 you entered into with the State of New York?

01:18PM

5 A. Yes, sir.

6 MR. COOK: And, Your Honor, we'd move for  
7 admission Defendant's 1, which is the consent and  
8 agreement order between Rolando German Arafiles and  
9 the --

01:18PM

10 (Defendant's Exhibit No. 1 offered)

11 MR. TIDWELL: No objection.

12 THE COURT: Admitted.

13 (Defendant's Exhibit No. 1 received)

14 Q. (By Mr. Cook) Okay. Dr. Arafiles, in

01:19PM

15 September of 2008, did Anne Mitchell write you a letter  
16 expressing her concerns about some of these supplements  
17 or medicine, I don't know what the correct term is, that  
18 you were recommending for patients?

19 A. She sent me a letter of deferred things, sir.

01:19PM

20 Q. Well, let me get a copy out of that and then  
21 I'll move back to that while they're doing that.

22 Do you believe that registered nurses do  
23 have a duty both ethically and legally to report to the  
24 appropriate licensing board a healthcare practitioner

01:20PM

25 that they have reasonable cause to believe has exposed a

1 patient to a substantial risk of harm?

2 A. Yes, sir.

3 Q. And, doctor, I noticed something. I noticed it  
4 this morning and now. Every -- not every time, but many  
5 times when I ask you a question, before you answer it,  
6 you look out into the audience. Is there somebody that  
7 you're looking for to get permission to speak from?

01:20PM

8 A. No, sir.

9 Q. So you agree with that?

01:20PM

10 A. Yes, sir.

11 Q. And do you think that's good for medicine as a  
12 whole to have that system in place?

13 A. It all depends, sir.

14 Q. It all depends.

01:20PM

15 If it's used properly. I --

16 A. Yes, sir.

17 Q. Your allegation is it hasn't been used  
18 properly, right?

19 A. Yes, sir.

01:21PM

20 Q. Okay. If it's used properly, do you believe  
21 it's a good thing?

22 A. It's a wonderful thing, sir.

23 Q. Okay. And do you dispute the fact that Anne  
24 Mitchell and Vickilyn Galle are registered nurses?

01:21PM

25 A. No, sir.

1 Q. Do you dispute the fact that they both had  
2 ethical and legal duties to report to the appropriate  
3 licensing board a practitioner that they had reasonable  
4 cause, and I'm not saying you right now, but a  
5 practitioner that they had reasonable cause to believe  
6 exposed a patient to substantial risk of harm?

01:21PM

7 A. If that was true, sir, that's true.

8 Q. If they believed that?

9 A. Yes, sir.

01:21PM

10 Q. In fact, you support their right to do that, do  
11 you not?

12 A. Of course, sir.

13 Q. How long after you received the -- the letter  
14 is dated April 15th, the letter from the board to you,  
15 sir. When did you receive it?

01:22PM

16 A. I don't remember anymore the day, but I think  
17 it was about two or three days after they send that  
18 letter.

19 Q. Okay. How long after you received the letter  
20 did you wait to go and see the sheriff?

01:22PM

21 A. I don't remember, sir.

22 Q. Was it the same day you received it?

23 A. Probably, sir, I don't know, I don't remember  
24 anymore.

01:22PM

25 Q. Okay. And you gave a copy of that letter to

1 the sheriff, didn't you?

2 A. Yes, sir.

3 Q. When did the sheriff tell you that it was Anne  
4 and Vicki who reported you to the Texas Medical Board?

01:22PM

5 A. I don't remember the day, sir.

6 Q. Was it -- was it before they were arrested?

7 A. I don't -- I don't know, sir, I don't remember.

8 Q. Do you have -- and to be fair, you and  
9 Sheriff Roberts have a lot of conversations, social  
10 conversations, you talk to each other a bunch, right?

01:23PM

11 I'll back up. That wasn't a good  
12 question, that's my fault.

13 You and the sheriff are friends?

14 A. Yes, sir.

01:23PM

15 Q. Do you and the sheriff as friends talk to each  
16 other about all sorts of different things?

17 A. Not as often, sir.

18 Q. Excuse me?

19 A. Not as often --

01:23PM

20 Q. Okay.

21 A. -- as you are insinuating.

22 Q. Well, I don't want to insinuate. If I'm wrong,  
23 tell me I'm wrong, I'm good with that.

24 A. Okay.

01:23PM

25 Q. But I guess what I was trying to say is, is it

1 the fact that you don't remember when you talked to the  
2 sheriff because you talk to the sheriff so much that  
3 it -- you know, if I go talk -- bad question again,  
4 sorry.

01:23PM 5 You talk to the sheriff so much that you  
6 can't really pinpoint a date. Would you -- is that  
7 fair?

8 **A. That's -- no, sir.**

9 **Q.** Okay. You know, if I went in to report  
01:24PM 10 something to a sheriff, since I don't talk to sheriffs a  
11 lot, it'd probably be easier for me to remember when I  
12 went in, okay?

13 But you have contact outside the office  
14 with the sheriff, at the hospital with the sheriff, at  
01:24PM 15 the sheriff's office with the sheriff, don't you?

16 **A. Not that often, sir.**

17 **Q.** Okay. Well, I'll move on to something  
18 different.

19 You knew that Anne and Vicki were both  
01:24PM 20 employees of Winkler County hospital, didn't you?

21 **A. Yes, sir.**

22 **Q.** You knew other physicians had complained about  
23 your care, didn't you?

24 **A. I don't know, sir.**

01:24PM 25 **Q.** Dr. Pham? Had Dr. Pham ever approached you?

1 **A. No, sir.**

2 **Q.** No, sir?

3 And you do know that Dr. Pham is under a  
4 subpoena and going to testify here?

01:24PM 5 **A. He can testify anything, sir.**

6 **Q.** Okay. But you're not aware -- or you deny that  
7 Dr. Pham ever contacted you about some of these cases?

8 **A. What cases are we talking about?**

9 **Q.** Well, let's just limit it to the six here. Did  
01:25PM 10 Dr. Pham ever discuss these with you?

11 **A. Which of the six, sir, are you talking about?**

12 **Q.** Turkey toe, appendix boy, skin graft --

13 **A. No, sir.**

14 **Q.** -- rubber finger, and then -- and actually it's  
01:25PM 15 five, isn't it?

16 **A. No, sir.**

17 **Q.** No?

18 **A. No.**

19 **Q.** You deny that? Okay.

01:25PM 20 He's your chief of staff, he's your boss,  
21 right?

22 **A. No, sir.**

23 **Q.** He's your medical supervisor?

24 **A. No, sir.**

01:25PM 25 **Q.** Is he the chief of staff?

1 **A. He is, sir.**

2 **Q.** Did you ever work in Crane County?

3 **A. Yes, sir.**

4 **Q.** What did you do down there?

01:25PM 5 **A. I did the same thing I'm doing in Kermit, sir.**

6 **Q.** Okay. And did you sell vitamins and  
7 supplements down there, also?

8 **A. No, sir.**

9 **Q.** Okay. Did you ever have a contract with the  
01:25PM 10 Crane hospital?

11 **A. Yes, sir.**

12 **Q.** Do you still continue to have a contract with  
13 the Crane hospital?

14 **A. No, sir.**

01:25PM 15 **Q.** Okay. Your contract was not renewed, was it,  
16 with Crane?

17 **A. No, sir. I resigned.**

18 **Q.** Okay. Did you ask patients for their e-mail  
19 addresses?

01:26PM 20 **A. Yes, sir.**

21 **Q.** Why?

22 **A. To share with them information, sir.**

23 **Q.** To sell stuff to them, right?

24 **A. To share information, sir.**

01:26PM 25 **Q.** Okay. But as part of that information you were

1 selling, wouldn't you agree with me that there was some  
2 marketing going on?

3 **A. It might appear that way, sir.**

4 **Q.** Okay. Fair enough, fair enough.

01:26PM 5 Did you ever e-mail patients with  
6 literature and recommendations to buy Z-R-I-I, Zrii? Is  
7 that how you say it, Zrii?

8 **A. Zrii, sir.**

9 **Q.** Okay. Did you ever e-mail patients with  
01:26PM 10 literature and invitations to purchase Z-R-I -- Zrii?

11 **A. Yes, sir.**

12 **Q.** Okay. In April of 2009, did you ask somebody  
13 at the Winkler County Memorial Hospital to print out the  
14 addresses and phone numbers of 10 patients?

01:27PM 15 Did you ask for the printouts of the 10  
16 patients that -- whose names appeared on the complaint  
17 letter that you received?

18 **A. I don't know what you are -- I don't know what  
19 you are alluding to, sir.**

01:27PM 20 **Q.** Well, I'm looking for you to answer this  
21 question, sir. Did you -- when you got -- and maybe  
22 it's -- maybe, again, it might be my fault that you  
23 don't understand me, and I apologize.

24 You received the letter from the Texas

01:27PM 25 Medical Board, correct?



1 A. Yes, sir.  
 2 Q. Did you have somebody in the hospital after you  
 3 received that information to print out the home -- a  
 4 sheet with the home address and telephone number of  
 01:28PM 5 these patients?  
 6 A. No, sir. I knew better than that.  
 7 Q. Okay. Why did you know better than that?  
 8 A. I have an experience already with the medical  
 9 board.  
 01:28PM 10 Q. Okay. So you did not give the sheriff the home  
 11 address and phone numbers of those patients?  
 12 A. Of course not, sir.  
 13 Q. Thank you.  
 14 Were you aware that the sheriff somehow  
 01:28PM 15 came into possession of their home addresses and phone  
 16 numbers?  
 17 A. I don't know, sir.  
 18 Q. You weren't aware of that?  
 19 A. No.  
 01:28PM 20 Q. Were you aware that the sheriff went to each  
 21 one of those patients' residence and asked them if they  
 22 filed the complaint against you?  
 23 A. I don't know, sir, what he does.  
 24 Q. Okay. The question is, did you know --  
 01:29PM 25 A. No.

1 Q. -- that he went and talked to every one of the  
 2 patients?  
 3 A. No, just --  
 4 Q. When you found out that Anne and Vicki had  
 01:29PM 5 filed that report on you, did it make you mad?  
 6 A. No.  
 7 Q. You weren't angry?  
 8 Did you ever consult with Mr. Tidwell  
 9 about suing them for slander?  
 01:29PM 10 A. I don't remember.  
 11 Q. You support their discharge from employment,  
 12 don't you, because of this, you're in agreement with  
 13 that, aren't you?  
 14 A. I don't know, sir, what -- if that's the -- you  
 01:29PM 15 know, if that's what they get for violating whatever,  
 16 whatever policies the hospital has, then I have nothing  
 17 to do with that, sir.  
 18 Q. Okay. Would you want to work with these nurses  
 19 again?  
 01:29PM 20 A. I've never worked with them, sir.  
 21 Q. Well, you've worked in the same administration  
 22 with them?  
 23 A. No, sir.  
 24 Q. In your opinion, you don't think that they  
 01:30PM 25 should be rehired and put back in their old positions,

1 do you?  
 2 A. That's not my decision to make, sir.  
 3 Q. Okay. But that's not my question. I'm not  
 4 asking you to make a decision.  
 01:30PM 5 In your opinion, do you think they should  
 6 be rehired and reinstated?  
 7 A. I don't know, sir.  
 8 Q. Okay. Now you talk about peer review and  
 9 Archie. Can you tell the ladies and gentlemen of the  
 01:30PM 10 jury what Archie is?  
 11 A. Archie?  
 12 Q. The Texas A&M thing. Are you familiar with  
 13 that?  
 14 A. Oh. The Texas A&M review -- are you --  
 01:30PM 15 Q. The Archie program.  
 16 A. The Archie program?  
 17 Q. Yes.  
 18 A. I'm not really very familiar with that, sir.  
 19 Q. Okay. Do you have any knowledge if Mr. Wiley  
 01:31PM 20 stopped the peer review by outside agencies in '0 --  
 21 about August of '08?  
 22 A. I'm not aware of that, sir.  
 23 Q. Okay. Now the weight loss clinic in Victoria  
 24 is one place you worked down there, but is it true that  
 01:31PM 25 you also worked in a hospital in Victoria, had

1 privileges at a hospital?  
 2 A. Wait. Are you -- at the same time I was  
 3 working -- are you insinuating --  
 4 Q. Back when you lived in Victoria.  
 01:31PM 5 A. Okay.  
 6 Q. Okay. Did you have privileges at the local  
 7 hospital?  
 8 A. Yes, sir.  
 9 Q. And you were -- did you have a contract with  
 01:31PM 10 them?  
 11 A. No, sir.  
 12 Q. Okay. Did you have problems at that hospital  
 13 with medical questions?  
 14 A. No, sir.  
 01:32PM 15 Q. Okay. Did you have any issues with nurses  
 16 reporting you --  
 17 A. No, sir.  
 18 Q. -- at the hospital, not the clinic, the  
 19 hospital?  
 01:32PM 20 A. No, sir.  
 21 Q. Okay. You say that your general practice is  
 22 family practice; is that correct, sir?  
 23 A. Yes, sir.  
 24 Q. Have you ever taken the exam to be board  
 01:32PM 25 certified?

1 A. **Yes, sir.**  
 2 Q. But you're not board certified?  
 3 A. **No, sir.**  
 4 Q. Now we took a lunch break. And I know this is  
 01:32PM 5 not pleasant, sir, but during your lunch break, did you  
 6 consult with anybody about your testimony?  
 7 A. **No, sir.**  
 8 Q. Did you consult with Mr. Tidwell over lunch  
 9 about your testimony?  
 01:32PM 10 A. **Over lunch?**  
 11 Q. Yeah, just like 20 minutes ago.  
 12 A. **I thought --**  
 13 Q. Yes or no?  
 14 A. **Yes.**  
 01:33PM 15 Q. Who helped you prepare to testify here today at  
 16 the trial?  
 17 A. **Myself, sir.**  
 18 Q. Okay. Did you have any assistance from anybody  
 19 else?  
 01:33PM 20 A. **No, sir.**  
 21 Q. Were you interviewed by the prosecution to get  
 22 you ready for trial?  
 23 An easy question --  
 24 A. **No.**  
 01:33PM 25 Q. -- did y'all sit down and say, hey, he might

1 ask you this --  
 2 A. **No, sir.**  
 3 Q. -- let's talk --  
 4 No?  
 01:33PM 5 Have you ever told Sheriff Roberts that  
 6 you saved his life?  
 7 A. **No, sir. That was not my statement, sir.**  
 8 Q. Okay. What was your statement?  
 9 A. **Nothing.**  
 01:33PM 10 Q. Nothing? Okay.  
 11 After --  
 12 A. **We don't get credit.**  
 13 Q. Excuse me? I didn't hear you.  
 14 A. **I'm sorry. I don't take credit for it, sir.**  
 01:34PM 15 Q. Team effort?  
 16 A. **Come again?**  
 17 Q. That was a team effort, wasn't it, his heart  
 18 attack and the care he received, a team saved his life?  
 19 A. **Are you referring to -- what are you referring**  
 01:34PM 20 **to, sir?**  
 21 Q. Sheriff Roberts had a myocardial infarction,  
 22 didn't he?  
 23 A. **Yes, sir.**  
 24 Q. Which is a heart attack?  
 01:34PM 25 A. **Yes, sir.**

1 Q. He presented himself to the emergency room  
 2 department at Winkler County hospital, didn't he?  
 3 A. **Yes, sir.**  
 4 Q. And he was assisted by a team --  
 01:34PM 5 A. **Oh, okay. Yes, yes, sir. I didn't --**  
 6 Q. Okay. And he's very, very grateful.  
 7 And had you all not intervened, the  
 8 outcome of that would have been fatal for him, wouldn't  
 9 it?  
 01:34PM 10 A. **Yes, sir.**  
 11 Q. Okay. And he's very, very grateful for that  
 12 obviously. Would you agree with me?  
 13 A. **Yes, sir.**  
 14 Q. Okay. After these ladies were indicted, did  
 01:35PM 15 you have a conversation with Judge Bonnie Leck about  
 16 Anne?  
 17 A. **I don't remember, sir.**  
 18 Q. Do you remember demanding to know from the  
 19 judge why the judge would not fire her from her Homeland  
 01:35PM 20 Security position?  
 21 A. **No, sir.**  
 22 Q. You deny that you ever had that conversation?  
 23 A. **No, sir.**  
 24 Q. You don't deny that?  
 01:35PM 25 A. **I didn't have -- I didn't have that**

1 **conversation.**  
 2 Q. Okay. So you deny you ever had that  
 3 conversation?  
 4 A. **Yes, sir.**  
 01:35PM 5 Q. Okay. Just making the record straight.  
 6 Now a couple of weeks ago there was a guy  
 7 running around Kermit by the name of Kevin Sack. Did  
 8 you meet with him?  
 9 A. **No, sir.**  
 01:35PM 10 **Are you -- I'm sorry.**  
 11 Q. The New York Times reporter.  
 12 A. **Yes, okay.**  
 13 Q. Did you meet with him?  
 14 A. **No, sir.**  
 01:35PM 15 Q. Well, you spoke with him briefly, right?  
 16 A. **He called me on the phone, sir.**  
 17 Q. Okay. Did you know you were quoted in the New  
 18 York Times on Sunday?  
 19 A. **No, sir.**  
 01:36PM 20 MR. COOK: A moment, judge, sorry. We've  
 21 got some of these entries here.  
 22 Q. (By Mr. Cook) New York Times, Sunday,  
 23 February 7, 2010.  
 24 A. **Yes, sir.**  
 01:37PM 25 Q. The front page refers us to a story on page

1 A-14.  
2 And there is a picture obviously about  
3 this case, correct?

4 A. It looks like it, sir.

01:37PM 5 Q. Okay. And then the story rocks and rolls on  
6 through that page to page 24, where there is a picture  
7 of Sheriff Roberts, correct?

8 A. Oh, yes, sir.

01:37PM 9 Q. Okay. And you were mentioned by name,  
10 Dr. Arafiles. No doubt that we're talking about you?

11 A. Yes, sir.

12 Q. Okay. And you're quoted in here.

13 A. It's administrator I guess, sir.

14 Q. Excuse me, sir?

01:37PM 15 A. It says there the hospital administrator said.

16 Q. Oh, no, no. I know. No, he's quoted, too.

17 A. I don't know how he would quote me.

18 Q. Read -- would you read starting with  
19 Dr. Arafiles, 47, to the end of that paragraph for the  
01:38PM 20 jury please.

21 A. Dr. Arafiles, 47, which is the wrong age.

22 Q. Excuse me?

23 A. It's the wrong age, sir.

24 Q. Well --

01:38PM 25 A. So that's not -- this might not be me.

1 Q. Oh, he's talking about a different  
2 Dr. Arafiles?

3 A. Yes, sir.

01:38PM 4 Q. There must be a bunch of them that throw nurses  
5 in jail in this country, huh?

6 Keep reading.

7 A. Who attended medical school in his native  
8 Philippines and trained in Baltimore and Buffalo, said  
9 his lawyer had advised him not to talk. I have been  
01:38PM 10 brutalized and abused, he said, I am the victim of this  
11 case, and that is all I can say.

12 Q. Okay. Did you tell Kevin Sack that?

13 A. Yes, sir.

14 Q. Let's talk about that. Are you more brutalized  
01:39PM 15 and abused than the man who came into the emergency room  
16 with one wound and left with two?

17 A. Yes, sir.

18 Q. You are.  
19 Are you more brutalized and abused than  
01:39PM 20 the child with appendicitis who suffered three enemas?

21 A. Yes, sir.

22 MR. TIDWELL: Your Honor, this is just  
23 badgering, and it's not relevant at all to --

24 MR. COOK: It is relevant, judge. I want  
01:39PM 25 to see the way he feels about this.

1 THE COURT: Sustained.

2 MR. COOK: Okay.

3 Q. (By Mr. Cook) Well, how have you suffered?

4 MR. TIDWELL: It's the same question, Your

01:39PM 5 Honor, and it's the same objection.

6 THE COURT: Sustained.

7 MR. COOK: Judge, part of this case is

8 this man says it was done for harassment, to annoy and

9 harm him. I would like to get into how it's harmed him.

01:41PM 10 THE COURT: I will have the jury go to the  
11 jury room.

12 (JURY NOT PRESENT)

13 (AT BENCH, OFF THE RECORD)

14 THE COURT: Bring them back.

01:43PM 15 (JURY PRESENT)

16 THE COURT: Go ahead, Mr. Cook.

17 Q. (By Mr. Cook) And I actually -- I'm going to

18 backtrack a little bit because I forgot something. But,

19 doctor, you remember I asked you if you received a

01:43PM 20 letter in September of 2008 from Ms. Mitchell about  
21 treatments and procedures and standard of care?

22 I'll show you what I've marked as

23 Defendant's Exhibit 2. Do you recognize that, sir?

24 A. Yes, sir.

01:44PM 25 Q. Okay. And in that letter, what is Ms. Mitchell

1 asking you to do?

2 MR. TIDWELL: And, Your Honor, I'll object

3 that the best evidence of what the letter asks is the

4 letter itself, and it can be admitted. It's in English,

01:44PM 5 plain purposes.

6 MR. COOK: I'll offer it for admission.

7 (Defendant's Exhibit No. 2 offered)

8 THE COURT: Admitted.

9 (Defendant's Exhibit No. 2 received)

01:44PM 10 Q. (By Mr. Cook) Would you read the second  
11 paragraph to the jury please, and the third paragraph --

12 well, and if you want to read the whole letter, that's

13 fine, but what I'm interested is in the second and third

14 paragraph. Would you read that to the jury please, sir.

01:45PM 15 A. All procedures or treatment must meet the  
16 approved standard of care and be evidence based. The  
17 treatment of care can be -- can then be presented to  
18 active medical staff for the required approval before it  
19 can become part of the care regimen used by the medical  
01:45PM 20 staff and patient care staff.

21 Medications used by the physicians and

22 allied healthcare must have been approved by the

23 regulating agency, example, FDA, and have the necessary

24 documentation indicating dose, benefits, possible

01:45PM 25 adverse effects, drug adverse interactions. If there is

1 a medication that you would like to add to the  
2 formulary, you are welcome to present that to the  
3 pharmacist along with the necessary documentation.

01:45PM

4 Q. Okay. Do you think that's harassment, that  
5 letter?

6 A. No, sir.

7 Q. Okay. In fact, it's a pretty reasonable  
8 request, isn't it?

9 A. Yes, sir.

01:46PM

10 Q. Okay. Since you received that letter in  
11 September of 2008, how many of your, I don't like the  
12 term alternative, I like the term complementary  
13 medicines, okay, how many of your complementary  
14 medicines have you submitted with documentation to the  
15 pharmacy for approval?

16 A. What are you referring to, sir?

17 Q. In medicine, are you familiar with the term  
18 complementary medicine?

19 A. It means a lot of different things, sir --

01:46PM

20 Q. Well, let's use the definition --

21 A. -- to different people.

22 Q. Let's use the definition I found in the AMA.

23 Alternative medicine rejects modern, what

24 I think you call mainstream medicine, and it can be some

01:46PM

25 really wacky stuff, okay?

1 But the AMA recognizes that there are  
2 things that are not prescription medicines that are  
3 beneficial to our health. Would you agree to that?

4 A. Yes, sir.

01:46PM

5 Q. Okay. The easiest example I can think of is  
6 orange juice. Somebody needs vitamin C, you can drink  
7 orange juice, right?

8 Is that correct?

9 A. No, sir.

01:47PM

10 Q. Okay. If there is something that is not FDA  
11 controlled that you believe is beneficial in treating  
12 somebody, the AMA calls that a complementary medicine?

13 A. Probably, sir.

14 Q. Okay. And that's when -- what we talked about

01:47PM

15 earlier this morning about how you provide  
16 documentation, you know, peer review articles, stuff  
17 like that?

18 A. Yes, sir.

19 Q. Okay. So my question is, since you received

01:47PM

20 that letter in September of 2008, have you submitted any  
21 complementary medicines to the pharmacy with  
22 documentation so you could be approved for prescribing  
23 them to your patients?

24 A. I didn't have to, sir.

01:47PM

25 Q. What -- it's a yes or no, sir. Have you

1 submitted any medicines to --

2 A. No, I didn't have to, sir.

3 Q. Okay. Now another thing I need to clear up is

4 I believe I asked you a moment ago if you knew that the

01:48PM

5 sheriff had contacted the patients requesting if they

6 filed the complaint, and you told me no. Is that

7 correct?

8 A. Yes, sir.

9 Q. Okay. Do you remember the, and I don't want

01:48PM

10 you to say the name, but do you remember the name of the

11 lady who dropped a frozen turkey on her toe? Don't say

12 the name please, but do you remember her?

13 A. Yes, sir.

14 Q. Is it true that she called you and told you

01:48PM

15 that the sheriff had visited her, asked about this

16 matter, and that she wanted to make sure you knew that

17 she's not the one who reported you?

18 A. I don't remember, sir.

19 Q. Okay. You stated three reasons in direct

01:49PM

20 examination how this harmed you. Do you remember those

21 three reasons?

22 A. Yes.

23 Q. One of them was it would compromise your

24 ability to supervise. Is that correct?

01:49PM

25 A. Yes, sir.

1 Q. If you did nothing wrong, how would it  
2 compromise you?

3 A. What do you mean?

4 Q. If you did nothing wrong, how would you be

01:49PM

5 compromised?

6 A. The thing there, sir, is that I don't know how  
7 the Texas Medical Board will interpret any of those  
8 charts.

9 And I know from their policy that if you

01:49PM

10 have, you know, a series of complaints and a series of  
11 disciplinary actions on you, then your license will get  
12 either suspended, you get -- you go under supervision  
13 from somebody else, or they -- or you could lose your  
14 license. And that was only my concern.

15 But I -- this is just my concern, but I

16 don't think that is something that the medical board  
17 will even consider.

18 Q. But the medical board offers you what we call

19 due process, correct? It gives you a -- they ask you to

01:50PM

20 respond to these?

21 A. Yes, sir.

22 Q. They asked for your side of the story?

23 A. No, sir. They just asked me to review the  
24 charts and give a medical summary of those charts.

01:50PM

25 Q. Okay. But the system is designed not to

1 automatically assume every complaint gets a sanction.  
 2 Would you agree with me on that?  
 3 **A. I don't know, sir.**  
 4 **Q.** Okay. You're asked to respond with the charts  
 01:50PM 5 and also your own, I think that's already in evidence,  
 6 with --  
 7 The letter in evidence says within a  
 8 30-day period the board must determine if there is a  
 9 violation of the Medical Practices Act, right?  
 01:51PM 10 **A. Yes, sir.**  
 11 **Q.** And that's the law?  
 12 **A. Yes, sir.**  
 13 **Q.** Indicating which warrants -- and indicating  
 14 which warrants an official investigation, or if the  
 01:51PM 15 complaint should be closed without being filed as with  
 16 an investigation --  
 17 **A. Yes, sir.**  
 18 **Q.** -- is that correct?  
 19 Then they gave you your general guidelines  
 01:51PM 20 that they say you violated, okay? And it says as a part  
 21 of your response you are encouraged to include any  
 22 records or document you believe are relevant, right?  
 23 **A. Yes, sir.**  
 24 **Q.** So you can submit things to them for them to  
 01:51PM 25 consider when they're looking at this, right?

1 **A. Yes, sir.**  
 2 **Q.** If you provide a complete copy of your office  
 3 records, please complete this affidavit, blah, blah. We  
 4 don't need that.  
 01:51PM 5 It says the TMB is HIPAA exempt, which  
 6 means you can legally provide protected health  
 7 information without patient consent, correct?  
 8 **A. Yes, sir.**  
 9 **Q.** And it asks you to please forward your response  
 01:52PM 10 and documentation within --  
 11 **A. 30 days.**  
 12 **Q.** -- 30 days?  
 13 **A. Yes, sir.**  
 14 **Q.** Okay. So they give you a chance to get your  
 01:52PM 15 side in even before they determine whether or not to  
 16 launch a full-blown investigation, right?  
 17 **A. Yes, sir.**  
 18 **Q.** Okay. And did you do that?  
 19 **A. Yes, sir.**  
 01:52PM 20 **Q.** Okay. And now the case has not been  
 21 discharged, in other words, this case is still ongoing,  
 22 correct?  
 23 **A. That's what they tell me, sir, in their little**  
 24 **letters they give me every three months.**  
 01:52PM 25 **Q.** Okay. And when they make a determination, if

1 you are not happy with that determination, you can go  
 2 have a hearing on it, can't you? You can have a trial  
 3 about these complaints to try to protect your medical  
 4 license, can't you?  
 01:52PM 5 **A. I guess so, sir.**  
 6 **Q.** Okay. And if you're not happy with the panel  
 7 hearing, you can even appeal that to the district court  
 8 and have a full-blown legal trial to try to show that  
 9 you're in the right?  
 01:53PM 10 **A. I wish that was true, sir.**  
 11 **Q.** Well, that is the law, sir. You don't believe  
 12 that's true?  
 13 Okay. You're -- you will be afforded due  
 14 process, correct?  
 01:53PM 15 **A. I wish I would be, sir.**  
 16 **Q.** Okay. And what that means is if you didn't do  
 17 anything wrong, you should be okay, right?  
 18 **A. You're right, sir.**  
 19 **Q.** You've told this jury that you think nurses  
 01:53PM 20 should be able to report concerns to the medical board?  
 21 **A. Yes, sir.**  
 22 **Q.** You've told this jury that you can get a full,  
 23 fair hearing about their concerns?  
 24 **A. That is what I said I hope that will happen,**  
 01:53PM 25 **sir.**

1 **Q.** Okay. You've told this jury if you've done  
 2 nothing wrong, you have nothing to fear, correct?  
 3 **A. Correct, sir.**  
 4 **Q.** Thinking back on this, isn't it true that that  
 01:54PM 5 letter did not harm you?  
 6 **A. That's not true, sir.**  
 7 **Q.** Are you telling this jury that that letter  
 8 harmed you because you fear the Texas Medical Board is  
 9 going to impose sanctions against you?  
 01:54PM 10 **A. Yes, sir.**  
 11 **Q.** And you know they're going to impose sanctions  
 12 against you because you know you fell below the minimum  
 13 standard of care in at least one of these cases?  
 14 **A. I don't know that, sir. They are the ones to**  
 01:54PM 15 **make that determination, not me.**  
 16 **Q.** But your suspicion is they will make that  
 17 determination?  
 18 **A. I don't know, sir. I had my lawyer review the**  
 19 **charts also, sir.**  
 01:54PM 20 **Q.** What lawyer?  
 21 **A. My malpractice lawyer, sir.**  
 22 **Q.** Okay. And that's different than Mr. Tidwell or  
 23 is it Mr. Tidwell?  
 24 **A. No, sir.**  
 01:55PM 25 **MR. COOK: A moment to confer with**

1 co-counsel, Your Honor.

2 THE COURT: Sure.

3 Q. (By Mr. Cook) Dr. Arafles, thank you.

4 MR. COOK: Your Honor, I pass the witness.

01:56PM 5 THE COURT: Anything else, Mr. Tidwell?

6 MR. TIDWELL: Just a couple of questions,  
7 Your Honor.

8

9 REDIRECT EXAMINATION

01:56PM 10 BY MR. TIDWELL:

11 Q. Doctor, do all people that have diabetes -- is

12 it fair to say that a diabetic, to use that term, does

13 that apply to everything with every person that has

14 diabetes or are there a lot of different variables in

01:56PM 15 diabetes?

16 A. Yes, sir.

17 Q. Some is very minor, some is very major?

18 A. Yes, sir.

19 Q. Do all people that have diabetes, even slight,

01:56PM 20 do they heal poorly?

21 A. It all depends, sir. If they take good care of

22 themselves, take their medications, watch the kind of

23 food that they eat, have an exercise program, they would

24 heal as well as anybody else.

01:56PM 25 If they, you know, just leave themselves

1 alone, don't take their medications, have their sugar

2 sky-high, they won't heal, sir.

3 Q. Okay. Do people without diabetes all heal the

4 same way?

01:57PM 5 A. No, sir.

6 Q. If somebody has a wound or something and they

7 take real good care of it and they eat right and watch

8 after it, are they going to heal good usually?

9 A. Yes, sir.

01:57PM 10 Q. But if they don't look after it and ignore it,

11 are they going to heal poorly?

12 A. Yes, sir.

13 Q. Okay. You received -- the State's Exhibit 5 is

14 a copy of the letter you received from the State medical

01:57PM 15 board, and that's a true and correct copy of the letter

16 that you received; is that correct?

17 A. Are you referring to this?

18 Q. Yes.

19 A. Yes, sir.

01:57PM 20 MR. TIDWELL: Your Honor, we'll move to

21 admit State's 5. And as we discussed previously, we'll

22 have a 5-A.

23 MR. COOK: Your Honor, with the redaction

24 of the HIPAA protected information, and I'd just point

01:57PM 25 out that there is a second page to that letter but all

1 it says is sincerely, the Texas Medical Board, so we

2 have no objections to its admission.

3 THE COURT: Okay. With that exception?

4 MR. TIDWELL: Yes, sir.

01:58PM 5 THE COURT: It's admitted. I'm going to

6 ask that it not be presented to the jury until such time

7 as those pieces of information are redacted.

8 MR. TIDWELL: We'll do that at the first

9 break, Your Honor.

01:58PM 10 THE COURT: Okay.

11 (DISCUSSION OFF THE RECORD)

12 MR. TIDWELL: We would correct the number

13 of the exhibit to be 5.

14 THE COURT: Well, it's been previously

01:58PM 15 marked as Exhibit 4.

16 MR. TIDWELL: Okay. Then we'll offer 4.

17 And we'll offer the same thing, we'll offer a redacted

18 version at the break, and with the stipulation that it

19 had a signature on the back.

01:58PM 20 (State's Exhibit No. 4 offered)

21 MR. COOK: Without objection, Your Honor.

22 THE COURT: Admitted.

23 (State's Exhibit No. 4 received)

24 Q. (By Mr. Tidwell) And, doctor, that letter was

01:58PM 25 dated April of 2008?

1 A. It's April 15th, sir.

2 Q. 2000?

3 A. 2009.

4 Q. 2009.

01:59PM 5 And here we are almost 10 months later,

6 and you've not gotten any sanctions at all based on this

7 letter from the Texas Medical Board?

8 MR. COOK: Judge, I --

9 A. No, sir.

01:59PM 10 MR. COOK: May I approach the bench?

11 THE COURT: Sure.

12 (AT BENCH, OFF THE RECORD)

13 MR. TIDWELL: Pass the witness, Your

14 Honor.

02:01PM 15

16 RECROSS-EXAMINATION

17 BY MR. COOK:

18 Q. Let's be very clear about this, Dr. Arafles.

19 Are you telling these people over here that it's your

02:01PM 20 belief that the Texas Medical Board is done with their

21 investigation and no sanctions will result to you?

22 A. No, sir. All that I'm telling is that as of

23 now no action has been done on this letter that they've

24 sent me.

02:01PM 25 Q. Okay. You continue to remain employed by

1 Winkler County, correct?  
 2 **A. Correct, sir.**  
 3 **Q.** And in fact, you've had a change of employment;  
 4 isn't that true? You are no longer a provisionally --  
 02:01PM 5 you have no longer been provisionally granted privileges  
 6 to practice at the Winkler County hospital, you now have  
 7 full privileges; is that correct?  
 8 **A. That's correct, sir.**  
 9 **Q.** Have you been notified of additional complaints  
 02:02PM 10 that have been filed against you within the last  
 11 six months?  
 12 **A. I don't -- the last six months?**  
 13 **Q.** Since August.  
 14 Have you been notified that there have  
 02:02PM 15 been additional complaints filed against you?  
 16 **A. I don't know if it's six months, but I got**  
 17 **again another letter on one, on one chart. So I don't**  
 18 **know if it's part of this or something else.**  
 19 **Q.** Okay. But there has been an additional  
 02:02PM 20 complaint, you got another letter?  
 21 **A. Yes, from -- for another chart.**  
 22 **Q.** Okay. Do you think it's just as likely that  
 23 the Texas Medical Board will do nothing to you as it is  
 24 that they will do something to you?  
 02:03PM 25 **MR. TIDWELL: Objection --**

1 **A. I don't --**  
 2 **MR. TIDWELL: -- that's complete**  
 3 **supposition on his part. He has no idea, he's not in**  
 4 **control of that.**  
 02:03PM 5 **THE COURT: Sustained.**  
 6 **MR. COOK: I think he's right.**  
 7 **Q. (By Mr. Cook) You don't know what's going to**  
 8 **happen, do you?**  
 9 **A. No, sir.**  
 02:03PM 10 **Q.** Then how can you tell this jury that you were  
 11 harmed?  
 12 **A. The harm has been in different ways, sir, not**  
 13 **only with the Texas Medical Board.**  
 14 **Q.** So as a physician, you don't think you should  
 02:03PM 15 be peer reviewed. Is that what you're telling them?  
 16 **A. No, sir.**  
 17 **Q.** You think that a request to be peer reviewed  
 18 for what you do to patients is harassment?  
 19 **A. Again, it all depends on the intentions, sir,**  
 02:03PM 20 **and --**  
 21 **Q.** No, I'm not talking about this case.  
 22 Do you think that a request for your work  
 23 to be peer reviewed is harassment?  
 24 **A. No, sir.**  
 02:04PM 25 **Q.** Do you think that a request to have this peer

1 review harms you?  
 2 **A. What are you talking --**  
 3 **Q.** A request to have --  
 4 **A. Could you rephrase, could you rephrase please,**  
 02:04PM 5 **sir.**  
 6 **Q.** Yes, I can, yes, I can. And thank you for  
 7 asking.  
 8 Do you think that somebody requesting the  
 9 way that you're practicing medicine in specific cases  
 02:04PM 10 harms you?  
 11 **A. Again, it depends, sir, it depends.**  
 12 **Q.** It depends.  
 13 And, yeah, it does depend, it depends on  
 14 whether or not you made a mistake and did something  
 02:04PM 15 wrong, doesn't it?  
 16 **A. No. It depends on the intent of that review,**  
 17 **sir.**  
 18 **Q.** Excuse me?  
 19 **A. It depends on the intent of that review. Could**  
 02:04PM 20 **I explain?**  
 21 **Q.** Well, I think I know where you're going.  
 22 Do you -- are you saying that you're  
 23 worried that the people who are going to do the review,  
 24 other doctors, are not going to make a decision based on  
 02:05PM 25 the facts contained within the chart but are going to

1 make a decision based on personality?  
 2 **A. I -- I think you are asking a hypothetical**  
 3 **thing. I'd like -- you know, could you just please ask**  
 4 **something that's more factual.**  
 02:05PM 5 **THE WITNESS: Can I explain, sir?**  
 6 **Q. (By Mr. Cook) One moment please, doctor.**  
 7 **THE COURT: No. You have to answer the**  
 8 **questions directly.**  
 9 Go ahead.  
 02:05PM 10 **Q. (By Mr. Cook) In this particular case now,**  
 11 **let's go back and let's get rid of the hypothetical, in**  
 12 **this particular case, with knowledge of the six files**  
 13 **that has been sent to the Texas Medical Board, you**  
 14 **believe you did nothing wrong, correct?**  
 02:06PM 15 **A. Yes, sir.**  
 16 **Q.** Then isn't it also your belief that the Texas  
 17 Medical Board will agree with you?  
 18 **A. I don't know, sir.**  
 19 **Q.** But the truth of the matter is review --  
 02:06PM 20 sending these files out for oversight alone does not  
 21 harm you; isn't that true?  
 22 **A. I don't know, sir.**  
 23 **Q.** Beating a dead horse.  
 24 You're still employed?  
 02:06PM 25 You're still employed?

1 A. I've answered that twice already, sir.

2 Q. Okay. Fair enough.

3 You haven't been arrested for any -- for  
4 reporting them?

02:06PM 5 A. What are you insinuating, sir?

6 Q. Well, you've said you're the victim, right?

7 A. It appears like, sir.

8 Q. It appears like it?

9 You realize because of your criminal  
02:07PM 10 complaint they were fired from their job?

11 MR. TIDWELL: I object, Your Honor. He's  
12 already said he had nothing to do with that, and he's  
13 not the one that hires and fires.

14 THE COURT: Sustained.

02:07PM 15 Q. (By Mr. Cook) Thank you, doctor.

16 MR. COOK: Pass the witness.

17 MR. TIDWELL: No further questions, Your  
18 Honor.

19 THE COURT: You can step down.

02:07PM 20 THE WITNESS: Thank you, sir.

21 THE COURT: Call your next witness.

22 MR. CARNEY: Can we have him remain under  
23 subpoena, Your Honor?

02:07PM 24 THE COURT: Sure. I mean, I haven't  
25 released anybody so far from the rule. They're all --

1 MR. COOK: We understand --

2 THE COURT: You're not released from the  
3 rule or --

4 MR. COOK: And, judge, we do understand  
02:07PM 5 that he's 33 percent of the medical force at Winkler  
6 County. And as long as he can be on two-hour notice, I  
7 would not have any objection to him --

8 THE COURT: Approach.

9 (AT BENCH, OFF THE RECORD)

02:08PM 10 THE COURT: You can step down.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Next witness.

13 MR. TIDWELL: Sheriff Roberts.

02:08PM 14 MR. COOK: Your Honor, may I use the  
15 restroom very quickly?

16 THE COURT: Okay. We'll take a  
17 five-minute recess. It'll be 10 minutes, so we'll just  
18 make it 10 minutes.

19 (JURY NOT PRESENT)

02:09PM 20 (A recess was taken from 2:09 to 2:21.)

21 MR. COOK: Your Honor, based upon  
22 counsel's question that the Texas Medical Board -- based  
23 upon the counsel's question that the Texas Medical Board  
24 has not sanctioned him, we believe that opens the door  
02:21PM 25 to pierce the confidentiality of the ongoing

1 investigation of the Texas Medical -- of the

2 investigator from the Texas Medical Board. Under the  
3 law, an ongoing investigation is confidential.

4 We are petitioning the court to authorize

02:22PM 5 the investigator to testify about the nature of the  
6 ongoing investigation, and we're asking for this under  
7 the confrontation clause of the United States in Article  
8 1, Section 9.

9 And we're also asking for it because we

02:22PM 10 believe that the question and answer as presented left a  
11 false impression with the jury that we must clear up.

12 THE COURT: And your request is denied.

13 MR. TIDWELL: Your Honor, I have an issue.

14 One of the questions that Mr. Cook asked Dr. Arafiles

02:22PM 15 directly, and I wrote it down word for word, is Anne  
16 Mitchell highly regarded as a nurse in the facility.

17 And the doctor said I don't know.

18 Well, I have a witness I would like to ask

02:23PM 19 that question of. And Mr. Cook has opened the door now  
20 by introducing it in front of the jury. And I would  
21 like to put a short witness on to ask that question.

22 THE COURT: Your request is denied, also.

23 MR. TIDWELL: Okay. I'm going to call

02:23PM 24 that witness because she's real short. And I'll need to  
25 make a bill, but we'll do that whenever it's convenient

1 for the court.

2 THE COURT: Okay. Do you want --

3 MR. TIDWELL: I can make the bill right

4 now, I can get her in here and do that right now. It's  
02:23PM 5 one question, it's 30 seconds.

6 MR. COOK: What's the purpose of a bill?

7 I mean, if he wins, he doesn't need a bill, and if he  
8 loses, there is no appeal.

9 THE COURT: That was my question.

02:23PM 10 MR. COOK: Thank you.

11 THE COURT: You're just faster than me.

12 MR. TIDWELL: Okay. I'm trying to protect  
13 the record. I may not need to.

14 THE COURT: Well --

02:25PM 15 (AT BENCH, OFF THE RECORD)

16 (JURY PRESENT)

17 THE COURT: Call your next witness please.

18 MR. TIDWELL: Thank you, judge. We'll

19 call Holly Denny.

02:26PM 20 And I apologize, judge. Obviously this  
21 isn't Sheriff Roberts, but she was quick, so --

22

23 HOLLY DENNY, R.N.,

24 having been first duly sworn, testified as follows:

25 DIRECT EXAMINATION



1 BY MR. TIDWELL:  
 2 Q. Would you tell the ladies and gentlemen of the  
 3 jury your name please, ma'am.  
 4 A. **Holly Denny.**  
 02:26PM 5 Q. And, Ms. Denny, how are you employed?  
 6 A. **I'm a registered nurse in the emergency room at**  
 7 **Winkler County Memorial, charge nurse.**  
 8 Q. And when you're on duty, are you in charge of  
 9 the emergency room?  
 02:26PM 10 A. **Yes, sir.**  
 11 Q. Do you routinely provide patient care in the  
 12 emergency room?  
 13 A. **Yes, sir.**  
 14 Q. As part of providing care in the emergency  
 02:26PM 15 room, are you required from time to time to make  
 16 notations on patients' charts?  
 17 A. **Yes, sir.**  
 18 Q. We have a chart of a young boy that had  
 19 appendicitis.  
 02:27PM 20 A. **Uh-huh.**  
 21 Q. We're not using his name. We're just saying  
 22 young boy with appendicitis.  
 23 A. **Yes, sir.**  
 24 Q. Would you just look at that record and tell me  
 02:27PM 25 whether any of your notes appear in that record.

1 A. **Yes, sir, they do.**  
 2 Q. Can you tell from looking at the nursing notes  
 3 in this record what time this young man was discharged  
 4 to go home?  
 02:27PM 5 A. **At 1615.**  
 6 Q. And is there a note at 1615 in the nurses  
 7 record?  
 8 A. **Yes.**  
 9 Q. Would you read it please.  
 02:27PM 10 A. **Verbal and written instructions and handout**  
 11 **given to patient, and script. Parent voiced**  
 12 **understanding. Patient and family ambulated from ER in**  
 13 **stable condition. Zero distress noted.**  
 14 Q. Okay. And were you the nurse on duty that day?  
 02:27PM 15 A. **Yes, sir, I was.**  
 16 Q. And did you make that note?  
 17 A. **Yes, sir.**  
 18 Q. At the time you made that note and this young  
 19 man was discharged, had you received back the CAT scan  
 02:27PM 20 report yet?  
 21 A. **No, sir.**  
 22 Q. Did you later receive the CAT scan report?  
 23 A. **Yes, sir.**  
 24 Q. At what time?  
 02:28PM 25 A. **1700 it states.**

1 Q. Is that 45 minutes later?  
 2 A. **Yes, sir.**  
 3 Q. And what note did you put in the record at that  
 4 point?  
 02:28PM 5 A. **I put CT report back. Seen by Dr. Arafles.**  
 6 **Instructed to phone and have patient return to ER.**  
 7 **Phoned family and informed family of CT report and need**  
 8 **to return to the ER. Parent voiced understanding.**  
 9 Q. Okay. And do you remember this patient?  
 02:28PM 10 A. **I vaguely remember him, yes.**  
 11 Q. Okay. Do you remember the patient and his  
 12 mother returning to the emergency room?  
 13 A. **Yes, they did come back.**  
 14 Q. And was a process instituted to transfer them  
 02:28PM 15 as quickly as possible to another medical facility?  
 16 A. **Yes, sir.**  
 17 Q. Did y'all try to get an ambulance to transfer  
 18 them?  
 19 A. **Yes.**  
 02:28PM 20 Q. And did you wait a while on an ambulance?  
 21 A. **Do you have the other -- I need to look at the**  
 22 **other record. I -- this has been a long time ago.**  
 23 **It says we sent him by private vehicle.**  
 24 **And I only have part of the notes here. The back of the**  
 02:29PM 25 **note is not here.**

1 Q. Okay. Do you have any recollection that the  
 2 ambulance was delayed because they were out on a fire?  
 3 A. **I'm sure they were delayed. I couldn't say why**  
 4 **without the record in front of me.**  
 02:29PM 5 Q. Does -- in the process of transferring a  
 6 patient to another facility, does getting that  
 7 accomplished take a little while?  
 8 A. **At times it does.**  
 9 Q. Okay.  
 02:29PM 10 A. **It --**  
 11 Q. Do you have to have another facility that will  
 12 accept the patient?  
 13 A. **Yes, sir. You have to call and you have to**  
 14 **find a facility that has the means to accept that**  
 02:29PM 15 **patient.**  
 16 Q. And did y'all undertake to make sure that was  
 17 available?  
 18 A. **Yes, sir.**  
 19 Q. And was the patient sent to another facility?  
 02:30PM 20 A. **Yes, sir.**  
 21 Q. Okay. Thank you.  
 22 MR. TIDWELL: Pass the witness, Your  
 23 Honor.  
 24  
 02:30PM 25 CROSS-EXAMINATION

1 BY MR. COOK:

2 Q. The same kiddo, right, ma'am?

3 A. Yes, sir.

4 Q. And what is that document I just handed you,

02:30PM 5 ma'am?

6 A. **It's the CT report, probably from Medical**  
7 **Center Hospital.**

8 Q. Okay. And down on the bottom it says what time  
9 the scan is available to be read, doesn't it?

02:30PM 10 A. **It was electronically signed at 1526.**

11 Q. Okay. That's -- may I see that please.

12 A. Yes, sir.

13 Q. Well, what it says is time report available.

14 A. **Oh, at the bottom one?**

02:31PM 15 Q. 1530.

16 A. Yes, sir.

17 Q. Had Dr. Arafles wanted to, he could have  
18 accessed this before he discharged that young man,  
19 couldn't he?

02:31PM 20 A. **At that time the radiology department was**  
21 **bringing us the reports. So they brought it to us when**  
22 **they received it.**

23 Q. Now you don't need a CT to diagnose  
24 appendicitis, do you?

02:31PM 25 A. **I'm not a doctor.**

1 Q. Okay. The truth of the matter is this doctor  
2 discharged a young man with appendicitis without ruling  
3 out appendicitis; true or not true?

02:31PM 4 A. **He did the CT -- the CT I figure to rule out**  
5 **the appendicitis.**

6 Q. He never ruled it out before he discharged him,  
7 did he, ma'am?

8 A. **I don't know. I haven't -- I mean, the front**  
9 **of the note -- can I see the front of the note again**  
10 **please.**

11 **It looks like he diagnosed him with**  
12 **abdominal pain, an impacted stool, and colitis, and a**  
13 **megacolon.**

14 Q. Misdiagnosed him and sent him home, right,  
02:32PM 15 ma'am?

16 A. **I'm not a doctor.**

17 Q. Yes or no, ma'am?

18 MR. TIDWELL: That's asked and answered,  
19 Your Honor. He's asking her to make a conclusion she  
02:32PM 20 said she's not qualified to --

21 A. **I can't make that conclusion. I'm a nurse.**  
22 **I'm not a physician.**

23 Q. Do you think he properly -- do you think based  
24 on your knowledge of the CT scan and the entire file in  
02:32PM 25 this case that the doctor properly diagnosed that young

1 man with -- what was the term you used?

2 A. **Colitis is what that says.**

3 Q. Do you think that was a proper -- based on your  
4 knowledge, your training, your experience, your review

02:32PM 5 of this chart and the CT scan, do you believe that was  
6 the proper diagnosis in this case?

7 MR. TIDWELL: Objection, Your Honor.

8 She's already said she can't answer that and the  
9 answer --

02:33PM 10 THE COURT: Sustained.

11 Q. (By Mr. Cook) You make -- you are trained to  
12 make observations as a nurse, are you -- is that  
13 correct?

14 A. Yes, sir, I am.

02:33PM 15 Q. Okay. Did that boy have appendicitis?

16 MR. TIDWELL: Objection, Your Honor.

17 She's already said she --

18 A. **I'm not a doctor.**

19 MR. TIDWELL: -- is not a doctor and can't  
02:33PM 20 make a diagnosis.

21 THE COURT: Go ahead.

22 Q. (By Mr. Cook) Did that young man have  
23 appendicitis?

24 A. **According to that report he did.**

02:33PM 25 Q. Was that man discharged from your facility

1 prior to being diagnosed with appendicitis?

2 A. **He was discharged prior to receiving the**  
3 **report, yes, sir, he was.**

02:33PM 4 Q. He was diagnosed with something different than  
5 appendicitis, wasn't he?

6 A. Yes, sir, according to that record he was.

7 Q. As a medical professional, do you believe that  
8 meets the standard of care?

02:34PM 9 A. **I believe that all patients should receive good**  
10 **care. I believe that you should have all the**  
11 **information on a patient.**

12 MR. COOK: Objection as nonresponsive,  
13 Your Honor.

02:34PM 14 Q. (By Mr. Cook) Would you please answer my  
15 question.

16 MR. TIDWELL: Objection, Your Honor. I  
17 think she tried to answer it.

18 MR. COOK: No, she didn't.

19 THE COURT: Sustained.

02:34PM 20 Q. (By Mr. Cook) Do you believe --

21 MR. COOK: Actually, ma'am, can you read  
22 back my question just so I get it right.

23 THE REPORTER: "As a medical professional,  
24 do you believe that meets the standard of care?"

02:34PM 25 Q. (By Mr. Cook) Yes or no, ma'am?

1 MR. TIDWELL: The same objection, Your  
 2 Honor. It's already been sustained.  
 3 THE COURT: Sustained.  
 4 Q. (By Mr. Cook) Are you under ethical,  
 02:34PM 5 professional, and legal responsibilities to report  
 6 substandard care?  
 7 A. Yes, sir.  
 8 Q. If you reasonably believe it?  
 9 A. Yes, sir.  
 02:35PM 10 Q. Okay. You don't have -- you don't even have to  
 11 be right, but if you believe it, your duty kicks in; is  
 12 that correct?  
 13 A. Yes, sir. The patient's safety should always  
 14 come first.  
 02:35PM 15 Q. Patient safety should always come first.  
 16 Do you think it is important for nurses to  
 17 feel like they can address concerns about doctors' care  
 18 through proper channels?  
 19 A. Yes, through proper channels, I do believe  
 02:35PM 20 that.  
 21 Q. And would you agree with me that when you  
 22 signed your oath, took your oath to be an R.N. --  
 23 A. Uh-huh.  
 24 Q. -- the number one thing is do no -- just like  
 02:35PM 25 the Hippocratic oath, do no harm, right?

1 A. Yes.  
 2 Q. And that you owe an overriding duty to the  
 3 patient?  
 4 A. Yes.  
 02:35PM 5 Q. A duty that is greater than your duty to the  
 6 hospital?  
 7 A. Yes. Your patient should always come first.  
 8 Q. A duty that is greater than the duty you owe to  
 9 your doctor?  
 02:35PM 10 A. Yes.  
 11 Q. Do you take that duty seriously?  
 12 A. Yes, I do. I believe in patient safety.  
 13 Q. Do you believe nurses should go to prison for  
 14 reporting concerns about doctors?  
 02:35PM 15 A. I believe nurses have the right to report a  
 16 concern if they follow through the proper channels.  
 17 Nurses need to protect their patients followed through  
 18 the proper channels.  
 19 Q. Not just nurses, but any member of the public  
 02:36PM 20 has a right to report a concern --  
 21 A. Yes, sir.  
 22 Q. -- to the medical board, correct?  
 23 A. You can go to the medical board web site and do  
 24 that.  
 02:36PM 25 Q. Okay. Nurses have a higher duty?

1 A. Yes, they do.  
 2 MR. COOK: A moment to confer with  
 3 co-counsel.  
 4 THE COURT: Sure.  
 02:36PM 5 Q. (By Mr. Cook) You are very familiar with  
 6 charts, correct?  
 7 A. Yes, sir.  
 8 Q. Does this appear to be the chart of that young  
 9 man?  
 02:37PM 10 A. It has his name on it.  
 11 Q. From that incident, correct, from the incident  
 12 where he had --  
 13 A. From the -- yes. This has the back page, but  
 14 the other one didn't have the back page, so --  
 02:37PM 15 Q. Does that appear to be the chart?  
 16 A. Yes, sir.  
 17 Q. In your discharge instructions, are they --  
 18 A. This is the transfer chart you gave me, sir.  
 19 Q. Okay.  
 02:37PM 20 A. Do you need this one back?  
 21 Q. I tore that off the back.  
 22 A. Okay.  
 23 Q. Is that better?  
 24 A. Yes, sir. Thank you.  
 02:37PM 25 Q. You're welcome.

1 In -- are you -- have you familiarized  
 2 yourself?  
 3 A. You wanted me to go to the discharge  
 4 instructions, right?  
 02:38PM 5 Q. I want to -- well, let me ask you this  
 6 question, see if you can find it.  
 7 A. Okay.  
 8 Q. Can you find in that chart where Dr. Arafles  
 9 or any member of the staff at Winkler Memorial Hospital  
 02:38PM 10 said this patient was discharged pending CT results?  
 11 A. Huh-uh. No, sir, I don't see anything to that  
 12 effect in this chart.  
 13 Q. He discharged him to a fiber and water diet,  
 14 add yogurt and something I can't read to diet, consult  
 02:39PM 15 with a GI pedia specialist, correct?  
 16 A. Yes, sir, that's what it says here.  
 17 Q. If your child had appendicitis, would you be  
 18 concerned if a doctor discharged him with that diagnosis  
 19 and those orders?  
 02:39PM 20 A. Yes.  
 21 Q. And you'd be concerned because that falls below  
 22 the standard of care, correct?  
 23 A. I would be concerned about my child if he had  
 24 an appendicitis.  
 02:39PM 25 Q. You would be concerned because as a mom you

1 expect your child to get at least minimum care?  
 2 **A. Yes, I do.**  
 3 **Q.** In fact, you really want him to get better than  
 4 the minimum standard?  
 02:40PM 5 **A. I want that for any patient.**  
 6 **Q.** I -- ma'am, I believe that.  
 7 **A. I do.**  
 8 **Q.** I know you do, I know you go.  
 9 And so my question again, do you believe  
 02:40PM 10 that that represents giving that young man the standard  
 11 of care?  
 12 **A. I believe with the information he had at the**  
 13 **time he diagnosed it by looking at the CT himself.**  
 14 **Q.** He discharged him without clearing  
 02:40PM 15 appendicitis. Do you agree?  
 16 **A. Yes.**  
 17 **Q.** Do you believe that the standard of care  
 18 requires when a person presents to the emergency room  
 19 with lower right quadrant abdominal pain, nausea and  
 02:40PM 20 vomiting, that you should -- the standard of care would  
 21 require you to eliminate appendicitis as a possible  
 22 cause?  
 23 **A. Yes, we look for appendicitis, anyone who**  
 24 **complains of right lower quadrant pain. It's the first**  
 02:41PM 25 **thing that comes to your mind.**

1 **Q.** And before he discharged him, he didn't clear  
 2 it, and he still discharged him, correct?  
 3 **A. He did not have the report back. It had not**  
 4 **been read by a radiologist. He had read it himself.**  
 02:41PM 5 **Q.** How long have human beings had appendicitis?  
 6 **A. Forever.**  
 7 **Q.** How long has there been CTs?  
 8 **A. For quite a while.**  
 9 **Q.** How much do CT scans cost, do you know?  
 02:41PM 10 **A. It depends on where you go. Sometimes they're**  
 11 **2,500, sometimes they're 5,000.**  
 12 **Q.** CT scans are not necessary to diagnose  
 13 appendicitis, are they, they hadn't been for hundreds of  
 14 years?  
 02:41PM 15 **A. A lot of your older doctors, no, they don't use**  
 16 **them. A lot of the newer doctors, yes, they do CTs to**  
 17 **diagnose the appendicitises.**  
 18 **Q.** But you don't have to have it to make that  
 19 diagnosis, do you?  
 02:41PM 20 **A. You can rule it out with it.**  
 21 **Q.** Nurse Denny, anytime somebody is hurting right  
 22 here, and it's been persistent and going on all day,  
 23 nausea and vomiting onset, what's the first thing that  
 24 pops in your mind anyways?  
 02:42PM 25 **A. Appendicitis.**

1 **Q.** And it wasn't cleared?  
 2 **A. Check for rebound tenderness and appendicitis.**  
 3 **Q.** Yeah.  
 4 Do you believe that young man received the  
 02:42PM 5 minimum standard of care at the moment he was discharged  
 6 from Winkler County hospital to go home on a fiber and  
 7 water diet, honestly, honestly, do you believe that?  
 8 **A. I believe the doctor treated him with the**  
 9 **information that he had at the time. That's what I**  
 02:42PM 10 **believe.**  
 11 **Q.** Do you believe it would be horrible for a nurse  
 12 to be concerned about that chart and to forward that to  
 13 the Texas Medical Board?  
 14 Let me strike that and rephrase that  
 02:43PM 15 because that might not have been the best question.  
 16 Do you believe a reasonable nurse could  
 17 believe that that -- what -- the information in that  
 18 chart contained questionable medical practices?  
 19 **A. I could see that chart going for review to the**  
 02:43PM 20 **medical staff. I could see that chart going for -- but**  
 21 **all transfers should go to a medical staff review.**  
 22 **Q.** You don't want to answer that question, do you?  
 23 MR. TIDWELL: Objection, Your Honor.  
 24 That's badgering --  
 02:43PM 25 **A. I just answered it.**

1 MR. TIDWELL: -- she did try to answer --  
 2 THE COURT: Sustained.  
 3 **Q.** (By Mr. Cook) Yes or no, Nurse Denny, did that  
 4 young man prior to being discharged, or at the time he  
 02:44PM 5 was discharged, had that young man received the standard  
 6 of care that you would want your own child to receive?  
 7 MR. TIDWELL: Objection, Your Honor.  
 8 She's answered that three times now.  
 9 THE COURT: Sustained.  
 02:44PM 10 MR. COOK: Thank you. Pass the witness.  
 11  
 12 REDIRECT EXAMINATION  
 13 BY MR. TIDWELL:  
 14 **Q.** Ma'am, you said that there are procedures in  
 02:44PM 15 place if something is going to be reported?  
 16 **A. Yes, sir.**  
 17 **Q.** And you're aware that the hospital in Kermit  
 18 has procedures if charts need to be reviewed?  
 19 **A. Yes, sir.**  
 02:44PM 20 **Q.** One of those procedures you mentioned just a  
 21 moment ago on transfers is they ought to go to the  
 22 medical staff, the doctors' group, for review?  
 23 **A. Uh-huh.**  
 24 **Q.** Is that correct?  
 02:44PM 25 **A. They're reviewed by the quality assurance nurse**

1 and made sure that everything was done appropriately.  
2 If not, then they are forwarded on to the medical staff,  
3 yes, sir.

02:44PM

4 Q. And medical staff review is one of the  
5 procedures at the hospital?

6 A. Yes, sir.

7 Q. There is a whole list of procedures at the  
8 hospital that a chart is supposed to go through before  
9 it's sent for outside review; is that right?

02:45PM

10 A. Yes, sir.

11 Q. And one of the steps of outside review is to go  
12 to the A&M system for review?

13 A. Yes, sir.

02:45PM

14 Q. Are you aware that this chart went to A&M, was  
15 reviewed and sent back with no notations?

16 A. No, sir, I would not be aware of that.

17 Q. Okay. You don't know whether it happened or  
18 not?

19 A. No, sir, I would not.

02:45PM

20 Q. Do you believe that the system that is  
21 currently in -- you're a nurse?

22 A. Yes, sir.

23 Q. Do you consider yourself to be a reasonable  
24 nurse?

02:45PM

25 A. Yes, I do.

1 Q. Do you consider yourself to be a good nurse?

2 A. Yes, I do.

3 Q. Do you believe that the system that is in place  
4 at the hospital for step by step review of charts is an  
5 appropriate system?

02:45PM

6 A. Yes, sir. I report it to my immediate  
7 supervisor who then forwards it on through the proper  
8 channels.

9 Q. Is there anything about the system that is  
10 currently in place as a nurse that you feel like is an  
11 attempt to chill or thwart or diminish your ability to  
12 report care up the chain of command?

02:45PM

13 A. Not that --

14 MR. COOK: And, judge, we're going to  
15 object. Currently in place, I don't think that applies  
16 in this case and is irrelevant.

02:46PM

17 THE COURT: Sustained.

18 Q. (By Mr. Tidwell) At the time this particular  
19 chart -- at the time the particular appendix case was  
20 done, were there procedures for reviewing charts up the  
21 line?

02:46PM

22 A. The procedures that I was aware of was to  
23 report it to my immediate supervisor who then forwarded  
24 it on to Anne and Vicki, and they went over the charts.  
25 And then it was taken to medical staff or wherever it

02:46PM

1 went from there. But I reported it to my immediate  
2 supervisors.

3 Q. And are those basically the same steps that are  
4 in place today?

02:46PM

5 A. Yes, sir.

6 Q. Is there anything about those old steps being  
7 in place that you believe diminished your ability to  
8 report questionable care up the line?

9 A. No, it hasn't really changed. I report to my  
10 immediate supervisor.

02:46PM

11 Q. And is one of the reasons behind reporting it  
12 up the chain so that everyone that has something to do  
13 with the case can come and review it and make sure all  
14 the information is on the table?

02:47PM

15 A. Yes, sir.

16 Q. And is that a good thing?

17 A. Yes, sir.

18 Q. Does that prohibit one person from seeing one  
19 little piece of something and not having any clue about  
20 the rest of what went on from going off and making a  
21 wrong report?

02:47PM

22 A. Yes, sir.

23 Q. Because you wouldn't want a healthcare  
24 professional to be reported unless all the facts were on  
25 the table, would you?

02:47PM

1 A. That's correct.

2 Q. And you believe the system at the hospital, the  
3 old system and the new system, accomplishes that?

4 A. Yes, sir.

02:47PM

5 Q. Thank you.

MR. TIDWELL: Pass the witness.

6

7

8

RECROSS-EXAMINATION

9 BY MR. COOK:

02:47PM

10 Q. You reported this case to your supervisor?

11 A. No, sir, I did not.

12 Q. Okay. You don't know how medical staff handled  
13 any of the complaints --

14 A. No, sir, I don't.

02:47PM

15 Q. Okay. You're not involved in that situation?

16 A. No, sir, I --

17 Q. You don't know how Mr. Wiley -- the  
18 instructions he was giving Anne or Vicki, do you?

19 A. No, sir, I do not.

02:47PM

20 Q. And you do know what your duties are as a  
21 nurse, don't you?

22 A. Yes, sir.

23 Q. Would you agree that the -- that you have a  
24 nurse-patient relationship that exists when you begin  
25 working with a person?

02:48PM

1 A. Yes, sir.  
 2 Q. Would you agree that that creates a duty with  
 3 you that you owe directly to the patient?  
 4 A. Yes, sir.  
 02:48PM 5 Q. And would you agree that neither facility  
 6 policies nor physician orders supersede that duty?  
 7 A. Yes, sir.  
 8 Q. Would you agree that if somebody who held a  
 9 nursing license felt that this was serious enough that  
 02:48PM 10 it needed to be reviewed by the Texas Medical Board,  
 11 that nurse should be allowed to do it, to refer it?  
 12 A. It needs to go through the proper channels.  
 13 Q. No, it doesn't. Your duty supersedes --  
 14 MR. TIDWELL: Objection, Your Honor. It's  
 02:48PM 15 again badgering and arguing --  
 16 THE COURT: Sustained.  
 17 Q. (By Mr. Cook) Your duty supersedes the  
 18 facility or the physician, right?  
 19 A. I would feel that if -- once it had gone  
 02:48PM 20 through those proper channels if someone -- if something  
 21 was not done about what I felt was a bad care of a  
 22 patient, then I would have no choice but to report that  
 23 there was bad care going on --  
 24 Q. Right. And --  
 02:48PM 25 A. -- not per se to say that particular patient,

1 but to notify them that there was something going on.  
 2 Q. But as a nurse, you have a right and a duty in  
 3 some circumstances to make those reports regardless of  
 4 what the facility is doing or says?  
 02:49PM 5 A. Anyone can go to the Texas Medical Board site  
 6 and report a physician, anyone.  
 7 Q. But some of you, you folks that have this  
 8 license, the law requires you to, doesn't it?  
 9 A. Yes. We are supposed to keep our patients  
 02:49PM 10 safe.  
 11 Q. And the Texas Medical Board, or the Board of  
 12 Nursing, because you could be reported --  
 13 A. Yes, sir.  
 14 Q. -- correct, for unethical behavior?  
 02:49PM 15 A. Yes, sir, we can.  
 16 Q. And you can be reported if you know of  
 17 substandard care and you don't do something about it,  
 18 you have an ethical problem, correct?  
 19 A. Yes, sir. That's why we report.  
 02:49PM 20 Q. Okay. And if you're doing good nursing and  
 21 somebody makes a frivolous report on you, you know the  
 22 Board of Nursing is going to review that with other  
 23 professionals and not just say, oh, a report, she's in  
 24 trouble, right?  
 02:49PM 25 A. I would hope so.

1 Q. Okay. And --  
 2 Okay. All transfers go to quality and  
 3 improvement, went to --  
 4 A. Yes, sir.  
 02:50PM 5 Q. -- Vicki?  
 6 A. Yes, sir.  
 7 Q. Okay.  
 8 A. I believe to Anne was who they went to.  
 9 Q. And isn't it true that if there were problems  
 02:50PM 10 with that transfer, then they had to go to medical  
 11 staff?  
 12 A. Yes, that was my understanding.  
 13 Q. Okay. And in this case, isn't it true that as  
 14 a transfer case it went to Q and I first and then to  
 02:50PM 15 compliance?  
 16 A. I -- I would figure, yes.  
 17 Q. Okay. And if there was a problem with charts,  
 18 Anne would frequently call and ask questions of nurses?  
 19 A. Yes, she would ask us what had occurred, you  
 02:50PM 20 know, what was the delay in transfer, so forth.  
 21 Q. Okay.  
 22 Thank you, ma'am.  
 23  
 24 REDIRECT EXAMINATION  
 02:50PM 25 BY MR. TIDWELL:

1 Q. From your review of this chart, was Anne  
 2 Mitchell at all involved in the actual hands-on nursing  
 3 care of this patient --  
 4 MR. COOK: And I'm going to object, judge.  
 02:50PM 5 Anne Mitchell is not a hands-on nurse anymore. She was  
 6 promoted out of that into compliance.  
 7 THE COURT: Okay. So what's the  
 8 objection?  
 9 MR. COOK: The objection is this is  
 02:51PM 10 completely irrelevant, and it's also -- I object to the  
 11 form of that question.  
 12 THE COURT: How is it relevant,  
 13 Mr. Tidwell?  
 14 MR. TIDWELL: He's made quite an issue,  
 02:51PM 15 Your Honor, about whether this chart should have been  
 16 reported. I'd like to ask the nurse that was actually  
 17 involved in the patient care did she report this chart  
 18 as a nurse.  
 19 MR. COOK: Then ask that question.  
 02:51PM 20 THE COURT: Sustained, as to the question  
 21 that was asked.  
 22 Q. (By Mr. Tidwell) Okay. Ma'am, you are the  
 23 actual nurse that was involved in the care of this boy  
 24 with the appendicitis?  
 02:51PM 25 A. Yes, sir, I was.

1 Q. Did you see any reason, as a good, reasonable,  
2 qualified nurse, to report this chart up the chain for  
3 improper medical care?  
4 A. At the time, no, because we've had to call  
02:51PM 5 people back, you know, before when we didn't have a CT  
6 report or an x-ray report because the T1 line was down  
7 and the physician would read the report and we would  
8 discharge the patient.  
9 So I felt we called him back immediately  
02:52PM 10 and arranged his transfer and got him to the proper  
11 medical care.

12 Q. Okay. And are you aware of any bad outcome  
13 with this patient?

14 A. I wouldn't know what happened with him after he  
02:52PM 15 left our facility. No one tells us that.

16 Q. Okay. Thank you.

17 MR. TIDWELL: Pass the witness, Your  
18 Honor.

02:52PM 19  
20 RE CROSS-EXAMINATION

21 BY MR. COOK:

22 Q. As a nurse, when you have knowledge of  
23 substandard care, whether you were hands on or not, you  
24 still have a duty to report, do you not?

02:52PM 25 A. If you feel that there is a problem, I believe

1 you should intervene.

2 Q. And the way that y'all had that set up over  
3 there at Winkler with the compliance officer, as you  
4 said, you report to your next supervisor --

02:52PM 5 A. Yes.

6 Q. -- and then it goes on?

7 A. Yes, sir.

8 Q. Okay. And a compliance officer makes things --  
9 makes sure things are being complied with. Would you  
02:52PM 10 agree with me?

11 And if a -- I need a verbal.

12 A. Oh, I'm sorry. Yes.

13 Q. Okay. And if as a nurse and a compliance  
14 officer you had a reasonable belief that substandard  
02:53PM 15 care resulted, at that time you also would have a duty  
16 to report even if you didn't have hands-on care, isn't  
17 that true, under your ethics?

18 A. As a nurse, if you feel something is  
19 inappropriate, that's your feeling on something and --  
02:53PM 20 you do what your feeling tells you.

21 Q. Was Anne Mitchell a nurse?

22 A. Yes, she holds a nursing license, yes.

23 Q. And reasonable minds -- you may not think this  
24 is unreasonable, but reasonable minds can disagree?

02:53PM 25 A. Yes.

1 Q. Would you agree?

2 A. Yes. People can see things from all different  
3 avenues.

4 MR. COOK: Thank you, ma'am.

02:53PM 5 MR. TIDWELL: No further questions of this  
6 witness, Your Honor.

7 THE COURT: You can step down.

8 Call your next witness.

9 MR. TIDWELL: Call Sheriff Roberts.

02:54PM 10 MR. COOK: Your Honor, we would not object  
11 to Ms. Denny being released from subpoena.

12 THE COURT: She's excused. I'll rely on  
13 you to let her know.

14 Go ahead.

15 MR. TIDWELL: Thank you.

16

17 ROBERT L. ROBERTS,

18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

02:54PM 20 BY MR. TIDWELL:

21 Q. Would you tell the ladies and gentlemen of the  
22 jury your name please, sir.

23 A. Robert L. Roberts.

24 Q. And how are you employed please, sir?

02:54PM 25 A. I'm the sheriff of Winkler County.

1 Q. How long have you been the sheriff of Winkler  
2 County?

3 A. 18 years.

4 Q. And prior to being the elected sheriff, were  
02:54PM 5 you a deputy sheriff?

6 A. I was a deputy for -- I've been with the  
7 sheriff's department for 24 years.

8 Q. In Kermit?

9 A. In Kermit, Texas.

02:54PM 10 Q. How long have you lived in Kermit?

11 A. Probably 45 years total.

12 Q. Okay. Do you know a lot of the folks in  
13 Kermit?

14 A. I know a lot of people in Kermit.

02:55PM 15 Q. Okay. Are you familiar -- back in February of  
16 2008, were you familiar with Dr. Arafiles?

17 A. In February?

18 Q. February of 2008.

19 A. I don't believe so. I may have been.

02:55PM 20 Q. After -- shortly after, in March or April of  
21 2008, were you introduced to Dr. Arafiles?

22 A. The hospital administrator brought Dr. Arafiles  
23 to my office in towards the end of April of 2008, yes,  
24 sir.

02:55PM 25 Q. Is it common for the hospital administrator to

1 bring new doctors out to the sheriff's office?  
 2 **A. Since Mr. Wiley has become the administrator**  
 3 **and we've got a new doctor, he's always brought them out**  
 4 **to my office. They treat all my inmates at the**  
 02:56PM 5 **facility, and he likes to introduce us.**  
 6 **Q. Okay. That way everybody knows everybody?**  
 7 **A. Everybody knows everybody.**  
 8 **Q. Okay. And did Mr. Wiley bring Dr. Arafiles out**  
 9 **and introduce him to you and your staff?**  
 02:56PM 10 **A. Yes, sir, he did.**  
 11 **Q. Did y'all have a visit in your office?**  
 12 **A. Yes, sir.**  
 13 **Q. Did Dr. Arafiles notice something in your**  
 14 **office?**  
 02:56PM 15 **A. Yes, sir.**  
 16 **Q. What did he notice?**  
 17 **A. I have a golf ball sitting on my desk. And he**  
 18 **asked if I played golf, and I said yes, me and my wife**  
 19 **play golf in couples' tournaments around west Texas.**  
 02:56PM 20 **And he said he had just taken up the game and wanted to**  
 21 **know if he could play with us sometime, and I said sure,**  
 22 **you know, I'd love to have you come out and play.**  
 23 **Q. Okay. Would you explain for us, in the spring,**  
 24 **in the mid April springtime of the year, what are the**  
 02:56PM 25 **Wednesday night scrambles?**

1 **A. In -- at the Winkler County golf course on**  
 2 **Wednesday night during the summer months before the time**  
 3 **change we have a -- what they call a Wednesday night**  
 4 **scramble. It's everybody has teams. They're six- or**  
 02:56PM 5 **seven-man teams, or person teams. You play nine holes**  
 6 **of golf and then you eat hamburgers after. It's just a**  
 7 **social, a little social that they have every Wednesday.**  
 8 **Q. And have you played in those for a long time?**  
 9 **A. Yes, sir, I have, several years.**  
 02:57PM 10 **Q. And do you have a little -- kind of a fairly**  
 11 **common group that you play with?**  
 12 **A. We have a team that we always try to put**  
 13 **together from the sheriff's department. It includes**  
 14 **jailers and sheriffs and wives, and we all play together**  
 02:57PM 15 **every Wednesday.**  
 16 **Q. And sometimes you're not real particular who**  
 17 **you let on the team, are you?**  
 18 **A. No, sir.**  
 19 **Q. You'd let a lawyer on there if he wanted to**  
 02:57PM 20 **play golf, wouldn't you?**  
 21 **A. Occasionally we've done that, yes.**  
 22 **Q. Okay. And you'd let a bad golfing lawyer play**  
 23 **on the team, wouldn't you?**  
 24 **A. Unfortunately, yes, we've done that a time or**  
 02:57PM 25 **two.**

1 **Q. Okay. Well, I wasn't all that bad, so -- but**  
 2 **thanks for letting me play.**  
 3 **After meeting Dr. Arafiles, did you invite**  
 4 **him to come play with this group on Wednesday night?**  
 02:57PM 5 **A. The very next Wednesday after I met him Stan**  
 6 **Wiley called my office and asked if Dr. Arafiles could**  
 7 **play golf with us on that Wednesday night, and I said**  
 8 **sure, send him on out, we'll make a place for him on the**  
 9 **team.**  
 02:57PM 10 **Q. And did he come play?**  
 11 **A. Yes, sir, he played with us. We played nine**  
 12 **holes, and he ate a hamburger after it was over. And we**  
 13 **had a really good time. He's not any better golfer than**  
 14 **anybody else, but he was really fun to be around.**  
 02:58PM 15 **Q. Okay. The next day -- back in the spring of**  
 16 **2008, from time to time would you go to the courthouse**  
 17 **in the middle of the morning and visit with some folks?**  
 18 **A. Yes, sir, at -- back before they moved all the**  
 19 **commissioners around on the second floor of the Winkler**  
 02:58PM 20 **County courthouse they had their own office. And it was**  
 21 **a routine, 9:00 morning bull session. There may be one**  
 22 **or two people up there; there may be half a dozen up**  
 23 **there. And they'd just go drink a cup of coffee, talk**  
 24 **about current events, solve the world's problems, and**  
 02:58PM 25 **disperse.**

1 **Q. And all kinds of people would come to this?**  
 2 **A. Oh, yes, sir, anybody came.**  
 3 **Q. Coaches?**  
 4 **A. Coaches, people off the street, oil field --**  
 02:59PM 5 **Q. Lawyers?**  
 6 **A. -- law enforcements, lawyers, juvenile**  
 7 **officers, judges. You know, that -- I think we've had**  
 8 **just about everybody in there a time or two.**  
 9 **Q. Okay. The Thursday after the Wednesday night**  
 02:59PM 10 **scramble when you played golf with Dr. Arafiles, did you**  
 11 **go to the courthouse --**  
 12 **A. Yes, sir.**  
 13 **Q. -- at that time?**  
 14 **A. I went to the bull session. And I was speaking**  
 02:59PM 15 **with Tommy Smith, a commissioner at the time, when**  
 16 **Ms. Mitchell walked in.**  
 17 **Q. Okay. Was it common from time to time for**  
 18 **Ms. Mitchell to come in?**  
 19 **A. Oh, she was -- she was there quite frequently**  
 02:59PM 20 **when she had business, or sometimes she'd just be**  
 21 **walking down the hall and stop in.**  
 22 **Q. Okay. And what happened when she came in?**  
 23 **A. I, for conversation purposes, mentioned the**  
 24 **fact that I had played golf with the new doctor last**  
 02:59PM 25 **night.**



1 MR. COOK: And, judge, just for purposes  
2 of the record, we're going to object because we know  
3 what the sheriff is going to say, again, a statement of  
4 the Defendant we did not get notice to, we believe it's  
02:59PM 5 extraneous, and we'd ask the court not to permit it.  
6 THE COURT: Overruled.  
7 Go ahead.  
8 Q. (By Mr. Tidwell) Continue please, sir.  
9 A. To make conversation, I stated to Ms. Mitchell  
03:00PM 10 that I played golf with the new doctor last night and we  
11 had a really good time, he seemed like a real pleasant  
12 guy, he's real funny, he was a joy to be around, and I  
13 hope he stayed.  
14 And she became very agitated really quick  
03:00PM 15 and told me he's not a doctor, he's a witch doctor, he  
16 shouldn't be here, I don't know what the administrator  
17 was thinking when he hired this guy, he's bad for the  
18 county, he needs to go, he's going to get us sued. And  
19 she just went on a rant.  
03:00PM 20 And I advised her, I said look, I don't  
21 know what kind of doctor he is, I just met him, but he  
22 was fun to be around and I think he would be good for  
23 the community. And that was basically the end of the  
24 conversation.  
03:00PM 25 Q. Okay. And did she leave?

1 A. I believe shortly after that she left. She was  
2 doing some business with Commissioner Wolf.  
3 Q. Okay. After that day occurred, did you have  
4 some more occasions to -- did Dr. Arafiles come play  
03:00PM 5 golf again?  
6 A. I've played golf one more time with  
7 Dr. Arafiles since he's been there.  
8 Q. Okay. From then until today one more time?  
9 A. From then until today. I've played with him  
03:01PM 10 twice since he's been in Kermit.  
11 Q. Okay. And was that a Wednesday night scramble?  
12 A. Yes, sir, it was.  
13 Q. Okay. At some point toward the end of April of  
14 2008, did Dr. Arafiles come to your office to make a  
03:01PM 15 complaint?  
16 A. Yes, sir, he did.  
17 Q. And what was the substance of the complaint?  
18 A. He felt that he was being harassed. He got a  
19 letter from the Texas Medical Board, stated that he was  
03:01PM 20 under investigation for mistreatment and bad treatment  
21 of 10 different individuals that were listed on this  
22 letter.  
23 And he advised me that these same cases  
24 had been brought up several months prior to this at a  
03:01PM 25 board meeting of the physicians, had been addressed and

1 done away with. And he felt that any further  
2 communication concerning these 10 individuals and this  
3 complaint was strictly harassment because it was all  
4 said and done, had been done in the past.  
03:02PM 5 Q. He indicated it had been previously dealt with  
6 by the medical staff of the hospital and the hospital  
7 board?  
8 A. Yes, sir.  
9 Q. Had been reviewed?  
03:02PM 10 A. Yes, sir.  
11 Q. Okay. Did he give you a copy of the letter  
12 that he received?  
13 A. Yes, sir. I told Dr. Arafiles that I would  
14 look at the letter, I would look at the complaint, and I  
03:02PM 15 would do an investigation, and if any laws had been  
16 violated I would take the appropriate action.  
17 And I advised him that I would need -- the  
18 letter had -- the letter, if you read it, in its text  
19 insinuates that the 10 people that are on this letter  
03:02PM 20 that are listed filed a complaint of bad practice  
21 against him.  
22 So I advised him that I would look into  
23 it, I would investigate it, and that if something was  
24 wrong there I would pursue it, but that I would need  
03:02PM 25 addresses or contact numbers of these 10 people so that

1 I could interview them.  
2 Q. Okay. Do you think it's your job to  
3 investigate reported activities to you?  
4 A. That's what I'm elected for. That's what I  
03:03PM 5 swear to when I take my oath of office. I have people  
6 that come in and out of the office daily. That's our  
7 job, that's what we do, we investigate complaints.  
8 I had a complaint from a citizen, just  
9 like any other citizen.  
03:03PM 10 Q. Normally do you assign investigations down to  
11 junior officers?  
12 A. Yes, sir.  
13 Q. Okay. Did you do that in this case?  
14 A. No, sir, I did not.  
03:03PM 15 Q. Can you tell the jury why.  
16 A. Well, for a couple of reasons. One of the  
17 reasons is I know that this conflict had been going on  
18 between Dr. Arafiles and some of the staff at the  
19 hospital for quite some time. We had had an open board  
03:03PM 20 meeting back in December of '08 concerning these same  
21 allegations. And it was quite controversial at the  
22 time.  
23 I personally am serving my last term. I'm  
24 going to retire after this term. My chief deputy has  
03:04PM 25 political aspirations to take my place when I leave.

1 And my chief investigator's mother works at the hospital  
2 and has worked at the hospital for 20 years.

3 And I didn't know the pulse of the  
4 hospital. I didn't know -- I didn't want to cause any  
03:04PM 5 problems for anybody. I felt if there would be any  
6 problems come up out of this or arise out of this, I'd  
7 take care of it.

8 Q. And so you felt like your shoulders are the  
9 ones it should fall on?

03:04PM 10 A. I felt like it was my obligation.

11 Q. Okay. And so did you begin to conduct an  
12 investigation?

13 A. Yes, sir, I did.

14 Q. Was Investigator Swanson correct when he said  
03:04PM 15 doing an investigation is like fitting pieces of a  
16 puzzle together?

17 A. Yes, sir, it is.

18 Q. When you start off on an investigation, do you  
19 have all your pieces in your puzzle yet?

03:04PM 20 A. When you start an investigation, all you have  
21 is a complaint. When we take a complaint, especially on  
22 a complaint such as harassment, and it's -- that's not  
23 an uncommon complaint. You have harassment between  
24 neighbors, harassment between ex-husbands and wives.

03:04PM 25 You have harassment between ex-family members.

1 It's always one side of the story that you  
2 receive. Sometime it's validated and sometimes it's  
3 not.

4 Your first course of action in such an  
03:05PM 5 investigation would be to find out whether or not the  
6 allegations made by the person you've talked to are  
7 warranted, do they hold water, is there actually a  
8 complaint here, has he actually been harassed. And  
9 that's where I started.

03:05PM 10 Q. Okay. What did you undertake to do?

11 A. Well, the first thing I felt I needed to do was  
12 talk to the 10 people that were listed on the complaint  
13 as having filed a complaint against this doctor with the  
14 Texas Medical Board.

03:05PM 15 Q. Why did you think that was important?

16 A. That was the very first place to start. If one  
17 of those people had actually complained, then the  
18 investigation was over because the complaint was  
19 warranted and there would be no harassment.

03:05PM 20 Q. Okay. So did you go out to contact the 10  
21 people?

22 A. Yes, sir, I did.

23 Q. Did you make contact eventually with every one  
24 of the 10?

03:05PM 25 A. I made contact with everybody that was listed

1 on the Texas Medical Board letter to Dr. Arafiles that  
2 had allegedly filed a complaint against him.

3 Q. As a result of your investigation, were you  
4 able to make any determinations?

03:06PM 5 A. As a result of the investigation, it was my  
6 determination that nobody had filed a complaint, no one  
7 wished to file a complaint, no one was contacted to file  
8 a complaint on their behalf, and they had no idea how  
9 their name was used in a complaint against the doctor.

03:06PM 10 Q. In fact, some of those patients have voiced  
11 concerns that --

12 MR. COOK: Objection.

13 MR. CARNEY: Objection.

14 MR. COOK: Are we going to have an  
03:06PM 15 out-of-court statement? Hearsay.

16 THE COURT: If the objection is hearsay,  
17 sustained.

18 Q. (By Mr. Tidwell) Where did your -- and where  
19 did your investigation -- it proceeded forward?

03:06PM 20 A. Yes, sir.

21 Q. So you weren't able to determine that one of  
22 the 10 had a problem --

23 A. Actually --

24 Q. -- so it just stopped?

03:06PM 25 A. Actually, with my investigation concluded with

1 the 10 individuals, none of those people had a  
2 complaint.

3 Q. Okay. Did you go out and kick down somebody's  
4 door or threaten them or harass them and say I'm going  
03:07PM 5 to tell you what you're going to say?

6 A. No, sir. As I said earlier, when Dr. Arafiles  
7 gave me the letter and I read the letter, I told him  
8 that I would need addresses and contact numbers of these  
9 individuals to speak to them personally.

03:07PM 10 The next day or maybe that evening --

11 anyway, the next day for sure in the morning I had the  
12 10 names and the 10 addresses on my desk. Sometime  
13 during the day when I was out somebody had brought them  
14 in. I don't know if Dr. Arafiles brought them back, I  
03:07PM 15 don't know if somebody from his office brought them  
16 back, but somebody brought them and left them on my  
17 desk.

18 Knowing what they were and what they were  
19 related to, I didn't ask any questions, I just started  
03:07PM 20 the investigation.

21 Q. Okay. Did you go out and ask any of these  
22 people to reveal what their medical condition or  
23 treatment had been?

24 A. The standard phrase that I gave to the people  
03:08PM 25 when I contacted them about the investigation, of course

1 I told them who I was, I was Sheriff Roberts, I was  
2 conducting an investigation on complaints filed on  
3 Dr. Arafiles with the Texas Medical Board. I asked them  
4 if I could ask them some questions about it, and they  
5 would -- every one of them agreed and let me in.

03:08PM

6 I told them I didn't want to know anything  
7 about their medical history, I just wanted to know if  
8 they had a complaint against the doctor. Everybody I  
9 talked to invited me in, sat me down, told me why they  
10 went to see the doctor, told me they did not have a  
11 complaint against the doctor.

03:08PM

12 Q. And so where did the investigation go from  
13 there?

14 A. Well, from that point in time, I knew that it  
15 was none of the 10 that had filed a complaint that were  
16 listed on the letter.

03:08PM

17 So I had to have someone who had access to  
18 medical records from both the rural health clinic and  
19 the hospital, because hospital and health clinic numbers  
20 were used for the files of the patients that they sent  
21 to the medical board.

03:09PM

22 Q. And those file numbers are different in the two  
23 facilities?

24 A. Yes, sir.

03:09PM

25 Q. Okay. So what were you trying to ascertain?

1 A. Who had access to both sets of these records.  
2 So I went to the hospital administrator and I asked if I  
3 could speak to records, that I needed to know who had  
4 access by computer to these sets of records.

03:09PM

5 And I went and spoke with Melanie Adams,  
6 who is the records keeper for the hospital, and she gave  
7 me a list of 21 different people who had access to both  
8 sets of records by computer.

9 Q. Was one of your concerns at this time that  
10 perhaps someone who should not have accessed the records  
11 may have actually accessed them?

03:09PM

12 MR. COOK: And, judge, I'm going to object  
13 to leading.

14 THE COURT: Don't lead.

03:09PM

15 Go ahead.

16 Q. (By Mr. Tidwell) Did you have any concerns  
17 about improper access of records?

18 A. Actually I felt that if someone had accessed  
19 these records and had sent this report in to the medical  
20 board without the consent of the patients involved that  
21 there may be some criminal activity involved, yes.

03:09PM

22 Q. Did you personally ever receive or view these  
23 patients' medical records?

24 A. I've never seen these medical records.

03:10PM

25 Q. And so you had a list of 20 some people. What

1 happened next?

2 A. I had prior to going to the hospital a few days  
3 to when I start the investigation contacted the Texas  
4 Medical Board and asked them if I could get a copy of  
5 the complaint that was filed against Dr. Arafiles. They  
6 said that I could if I sent them a request in writing,  
7 which I did. And I received that actual letter from the  
8 Texas Medical Board.

03:10PM

9 Q. Okay. And so the Texas Medical Board sent you  
10 a copy of what they had received?

11 A. Yes, sir, they did.

12 Q. And in the letter that Dr. Arafiles gave you,  
13 the initial starting letter, did it indicate that the  
14 report to the medical board was made anonymously?

03:10PM

15 A. No, sir, it did not. But when I spoke with the  
16 investigator, Pam Crocker, with the Texas Medical Board,  
17 she said she had an anonymous complaint.

18 Q. Okay. And once you received the complaint from  
19 the medical board, did you verify that it was still an  
20 anonymous complaint?

03:11PM

21 A. Yes, sir, it was an anonymous complaint.

22 Q. Was there anything about the complaint that  
23 helped you in your investigation here?

24 A. Well, in the body of the letter, the person  
25 that wrote the letter described themselves as a

03:11PM

1 50-year-old female who had worked for the hospital for  
2 20 years. With the 21 names that I had, that narrowed  
3 it down to two people.

4 Q. Okay. And who were those two people?

5 A. Vickilyn Galle and Anne Mitchell.

03:11PM

6 Q. Okay. And what happened from there?

7 A. The next couple of days I set up interviews to  
8 speak with Anne and Vicki at the hospital concerning  
9 rules and regulations for reporting bad medical practice  
10 or complaints against a doctor or facility complaints.

03:11PM

11 Q. Prior to starting all this, did you have any  
12 idea what the rules in the hospital were about reporting  
13 things up the chain of command?

14 A. Yes, sir. I had checked with the  
15 administrator, Stan Wiley, and he told me what the rules  
16 were for reporting bad medical practice.

03:12PM

17 Q. Okay. Prior to Dr. Arafiles bringing this  
18 complaint to you, had -- did you have any earthly idea  
19 of what those rules were?

20 A. I had no idea. I've learned a lot more about  
21 hospitals in the last year and a half than I ever wanted  
22 to learn, as a result of this.

03:12PM

23 Q. And so did you speak with Ms. Mitchell and  
24 Ms. Galle about the rules and regulations?

25 A. Yes, sir, I did.

03:12PM

1 Q. Okay. And what occurred at that discussion?  
 2 A. The rules for reporting at the hospital are to  
 3 follow the chain of command. You always report up to  
 4 your supervisor. If you're not satisfied with the  
 03:12PM 5 result of your complaint to your supervisor, it goes  
 6 above to the next supervisor.

7 The eventual outcome of a complaint, if  
 8 you're not satisfied with the results that you get from  
 9 wherever you've taken it, is the hospital board, the  
 03:13PM 10 board of review for the hospital, and the administrator.

11 Q. Okay. Did -- and the Ms. Mitchell that you  
 12 talked to, is this the same Ms. Mitchell that's seated  
 13 over here at the table?

14 A. It's Anne Mitchell.  
 03:13PM 15 MR. TIDWELL: May the record reflect the  
 16 sheriff has identified the Defendant?

17 THE COURT: So reflect.  
 18 Q. (By Mr. Tidwell) And did Ms. Mitchell indicate  
 19 that she had a good grasp of the rules?

03:13PM 20 A. I asked Ms. Mitchell the reporting procedures,  
 21 and she explained them explicitly, follow the chain of  
 22 command. She was very vague on who she would report to.  
 23 She said she didn't actually have a supervisor in all  
 24 incidents.

03:13PM 25 I then asked her about what the hospital

1 called the Mitchell rule, and she said the Mitchell rule  
 2 did not apply to her, it applied only to physicians.  
 3 Q. Okay. What is the Mitchell rule?  
 4 A. The Mitchell rule, according to the  
 03:13PM 5 administrator, was a rule that the physicians board and  
 6 the hospital board passed probably a year prior to this  
 7 because a complaint was made erroneously to the medical  
 8 board regarding a Dr. Young that could have been handled  
 9 inside the hospital and actually was an invalid  
 03:14PM 10 complaint and stirred up a bunch of problems.

11 The Mitchell rule basically states if you  
 12 have any complaint that you -- and you're an employee of  
 13 the hospital --

14 MR. CARNEY: Your Honor, I'm going to  
 03:14PM 15 object as to hearsay on this. We don't know where it's  
 16 coming from.

17 THE COURT: Sustained.  
 18 Q. (By Mr. Tidwell) Did Ms. Mitchell herself  
 19 explain this rule to you?

03:14PM 20 A. Yes, sir.

21 Q. And what -- how did she explain it?

22 A. She explained that it was a --  
 23 MR. CARNEY: I object as to hearsay,  
 24 judge. How is this an admission and how is this related  
 03:14PM 25 to anything?

1 MR. TIDWELL: This is a statement right  
 2 out of the Defendant's mouth, Your Honor. It's not  
 3 hearsay.

4 THE COURT: Okay. Approach.  
 03:14PM 5 (AT BENCH, OFF THE RECORD)

6 THE COURT: The Defense objection as to  
 7 relevance is sustained.

8 Q. (By Mr. Tidwell) How did your -- sheriff, how  
 9 did your investigation proceed from there?

03:16PM 10 A. As a result of that investigation, I determined  
 11 that Ms. Mitchell did not believe that the --

12 MR. CARNEY: Objection, Your Honor --

13 A. -- rules to the hospital --

14 MR. CARNEY: Your Honor, objection. This  
 03:16PM 15 is the same line of questioning that we just objected to  
 16 as being irrelevant and hearsay. And he's trying to get  
 17 it in without -- knowing what our objection is and what  
 18 the ruling is.

19 THE COURT: Sustained.

03:16PM 20 MR. COOK: And we'd also object to his  
 21 speculation on what she believed.

22 MR. TIDWELL: Well, Your Honor --

23 THE COURT: Y'all want to approach again.

24 (AT BENCH, OFF THE RECORD)

03:17PM 25 Q. (By Mr. Tidwell) Okay. Without discussing

1 whether or not Ms. Mitchell made any statement about the  
 2 rules applying to her, how did the investigation proceed  
 3 forward from there?

4 A. When we got through talking about the rules and  
 03:17PM 5 regulations of the hospital, I advised Ms. Mitchell that  
 6 I needed to ask her some questions about a criminal  
 7 matter I was investigating regarding a harassment charge  
 8 or complaint brought by Dr. Arafles. At this point in  
 9 time I read her her Miranda rights.

03:17PM 10 Q. Okay.

11 MR. COOK: Your Honor, before the next  
 12 question, may we approach the bench?

13 THE COURT: Yes.

14 (AT BENCH, OFF THE RECORD)

03:18PM 15 THE COURT: The grounds for your objection  
 16 is?

17 MR. COOK: Well, it was kind of a  
 18 preliminary objection. And since I really don't want to  
 19 state that --

03:18PM 20 THE COURT: All right.

21 MR. COOK: I believe the court reporter  
 22 got my objection when we were at the bench, didn't you?

23 No?

24 THE COURT: You understand the court's  
 03:18PM 25 instructions as to what you can and can't ask?

1 MR. TIDWELL: Absolutely.  
 2 THE COURT: Okay. All right.  
 3 Q. (By Mr. Tidwell) Okay. Forget -- the  
 4 discussion of that day with Ms. Mitchell is now over,  
 03:18PM 5 nothing else.  
 6 Move forward to tell us where we went from  
 7 there.  
 8 A. After we talked to Ms. Mitchell, we  
 9 interviewed -- or prior to Ms. Mitchell, we interviewed  
 03:19PM 10 Galle. After we interviewed Galle, we interviewed  
 11 Ms. Mitchell. Then we interviewed all the nurses that  
 12 were on staff on duty on the floor that day concerning  
 13 rules and regulations and reporting procedures of the  
 14 hospital.  
 03:19PM 15 Q. Did the nurses at the hospital appear to  
 16 understand or be able to articulate to you, who is a  
 17 person without healthcare background, enough about the  
 18 rules where you could understand what they were?  
 19 A. All of the nurses that I interviewed, as a  
 03:19PM 20 result of the interview, the investigation concluded  
 21 that they all knew the reporting procedures of the  
 22 hospital. They explained the reporting procedures of  
 23 the hospital to me thoroughly. They said that these  
 24 reporting procedures are learned in medical --  
 03:19PM 25 MR. COOK: I object to this, judge.

1 A. -- in nursing school.  
 2 MR. COOK: What they say to him is  
 3 hearsay.  
 4 THE COURT: Sustained.  
 03:19PM 5 Q. (By Mr. Tidwell) Did it -- as a result of your  
 6 investigation, were you able to determine whether or not  
 7 the nurses that you talked to understood the rules of  
 8 the hospital?  
 9 A. As a result of my investigation --  
 03:20PM 10 MR. COOK: Judge, that's speculation.  
 11 He's asking what the nurses understand. We'd object.  
 12 THE COURT: Sustained.  
 13 Q. (By Mr. Tidwell) Was there enough of an  
 14 explanation to you about the rules where you could  
 03:20PM 15 understand the rules?  
 16 A. I am confident that I understand the reporting  
 17 procedures for bad medical practice at the Winkler  
 18 County Memorial Hospital.  
 19 Q. Okay. And that's not as a result of you going  
 03:20PM 20 to nursing school or doctor school or anything like  
 21 that?  
 22 A. No, sir.  
 23 Q. Okay. Where did the investigation go from  
 24 there?  
 03:20PM 25 A. After we left the hospital we went to your

1 office to brief you and update you on the progress of  
 2 the investigation, Deputy Swanson and I.  
 3 Q. Okay.  
 4 A. At that point in time it was agreed that we  
 03:20PM 5 probably needed a search warrant to seize the computers  
 6 that were utilized by Galle and Mitchell that belonged  
 7 to Winkler County.  
 8 Q. And where would those computers have been  
 9 located?  
 03:21PM 10 A. We had two sets of computers that were located  
 11 at the hospital, and we had another computer that was  
 12 located at the Homeland Security office, which is  
 13 approximately 10 blocks from the hospital.  
 14 Q. Okay. Is it sort of -- is it in the community  
 03:21PM 15 center?  
 16 A. Yes, sir.  
 17 Q. Across from the courthouse sort of?  
 18 A. Yes, sir.  
 19 Q. Okay. Did you, as the sheriff, did you direct  
 03:21PM 20 your chief investigator, Mr. Swanson, to proceed forward  
 21 with obtaining a warrant?  
 22 A. Yes, sir, I -- I advised Mr. Swanson to obtain  
 23 a search warrant, seize the computers, and take care of  
 24 it.  
 03:21PM 25 Q. And as a part of that did you direct that

1 Mr. Swanson seek the assistance of the county I.T.  
 2 person to help retrieve the computer data?  
 3 A. Yes, sir. I called Charlene Beauchamp, the  
 4 I.T. person, the computer specialist with the county,  
 03:21PM 5 because I am computer illiterate, I know nothing about  
 6 computers. And I felt that if we needed to retrieve any  
 7 information from a computer or even disconnect a  
 8 computer without damaging it that we probably needed her  
 9 there.  
 03:22PM 10 Q. Okay. And did she offer to assist?  
 11 A. Yes, sir, she did. And she met Deputy Swanson  
 12 at my office.  
 13 Q. Okay. And was the search warrant carried out?  
 14 A. Yes, sir, the search warrant was executed and  
 03:22PM 15 the computers were seized.  
 16 Q. As a result of carrying out the search warrant,  
 17 was any documentary evidence obtained?  
 18 MR. COOK: And, judge, I have to, for  
 19 purposes of the record --  
 03:22PM 20 THE COURT: I understand.  
 21 MR. COOK: -- I need to renew all the  
 22 previous objections on this evidence.  
 23 THE COURT: Overruled.  
 24 MR. COOK: Thank you, Your Honor.  
 03:22PM 25 Q. (By Mr. Tidwell) As a result of executing the

1 search warrant, was any documentary evidence obtained?  
 2 **A. Yes, sir. Charlene Beauchamp, the I.T.**  
 3 **specialist, advised me that she had found copies of the**  
 4 **letter that I had received from the Texas Medical Board**  
 03:22PM 5 **on Anne Mitchell's computer at the Homeland Security**  
 6 **office.**

7 **Q. Not on any of the hospital computers?**

8 **A. No, sir, they were not on the hospital**  
 9 **computers at all.**

03:22PM 10 **Q. Okay. And where did we go from there?**

11 **A. From that point in time we proceeded with**  
 12 **evidence to present to a grand jury and went for the --**  
 13 **and obtained a grand jury indictment on Anne Mitchell**  
 14 **and Vickilyn Galle.**

03:23PM 15 **Q. And were -- was Ms. Mitchell arrested?**

16 **A. Yes, sir.**

17 **Q. And processed just like any other person that**  
 18 **an indictment has been returned on?**

19 **A. Yes, sir. They both turned themselves in to**  
 03:23PM 20 **the sheriff's office.**

21 **Q. Okay. Is that pretty much the involvement**  
 22 **you've had with this case?**

23 **A. Yes, sir, pretty much.**

24 **Q. Okay. Sheriff, was anything done in this case**  
 03:23PM 25 **that is not done by your office in any criminal**

1 investigation?

2 **A. This was a standard investigation, conducted**  
 3 **just as any other investigation by my department.**

4 **Q. Okay. Tell us what Zrii is.**

03:24PM 5 **A. Zrii is a nutritional supplement, a vitamin**  
 6 **supplement, that Dr. Arafiles introduced me and my wife**  
 7 **to one day when we were at the -- actually the first day**  
 8 **that we played golf with him.**

9 **Q. Did you try some?**

03:24PM 10 **A. Yes, sir. I tried it, I liked it, and I'm**  
 11 **still taking it and my wife is still taking it today.**

12 **Q. Okay. How do you order it?**

13 **A. You order it by computer.**

14 **Q. Is that about -- is that about as far as you**  
 03:24PM 15 **can go on that?**

16 **A. That's as far as I can tell you about that.**

17 **Q. How do you get your Zrii at your house?**

18 **A. My Zrii is ordered by my wife by computer when**  
 19 **we run out.**

03:24PM 20 **Q. Okay. So yours -- your wife is your Zrii**  
 21 **supplier?**

22 **A. She's my supplier.**

23 **Q. Okay. And that's because she can order**  
 24 **something on a computer and you can't?**

03:24PM 25 **A. Yes, sir.**

1 **Q. Okay. And did you ever go to Dr. Arafiles'**  
 2 **office at the clinic to buy Zrii?**

3 **A. No, sir.**

4 **Q. Was it available to be bought there like over**  
 03:25PM 5 **the counter?**

6 **A. No, sir.**

7 **I attended two -- I believe two seminars**  
 8 **that he put on. He put on one at the Methodist church.**

9 **The first one I went to -- well, actually three. He put**  
 03:25PM 10 **on one at the Pizza Hut, and he put on one at the Kermit**  
 11 **High School. And I went to those seminars. And that's**  
 12 **where we originally signed up to become users.**

13 **And for a brief period of time I was a**  
 14 **distributor, but I'm not a salesman, so we couldn't sell**  
 03:25PM 15 **it, so I just use it.**

16 **Q. Is one of the advantages to being a**  
 17 **distributor -- in all fairness, Zrii is kind of like**  
 18 **Amway?**

19 **A. Zrii is set up as a marketing product that's**  
 03:25PM 20 **set up basically like Amway. If you become a**  
 21 **distributor of Zrii and you sell Zrii, you get your**  
 22 **product at a discount price rather than full market**  
 23 **price. The more you sell, the less it costs you.**

24 **Q. So -- and if you sold enough, you might get**  
 03:25PM 25 **yours free one day?**

1 **A. Right. If you sold a lot of it, you could**  
 2 **probably make a living at it.**

3 **Q. Okay. Are you and Dr. Arafiles friends?**

4 **A. Yes, sir, we are.**

03:26PM 5 **Q. Okay. Do you feel comfortable discussing your**  
 6 **medical problems that came up that Dr. Arafiles assisted**  
 7 **you with?**

8 **A. Yes, sir.**

9 **Q. Okay. What problem did you have?**

03:26PM 10 **A. Back in August, August 8th of last year, I had**  
 11 **a heart attack.**

12 **Q. Of '09 or '08?**

13 **A. 8-8 of '08.**

14 **Q. Okay.**

03:26PM 15 **A. I had a heart attack. I was at my house alone.**  
 16 **I drove myself to the ER and went inside the ER. And I**  
 17 **knew what was happening, and they immediately realized**  
 18 **what was happening. And Dr. A treated me. And I was**  
 19 **subsequently -- to make a long story short, they**  
 03:26PM 20 **airlifted me to Midland, they did surgery, and now I'm**  
 21 **fine.**

22 **My cardiologist asked me when it was all**  
 23 **done --**

24 **MR. COOK: And I'm going to object to any**  
 03:27PM 25 **hearsay, what his cardiologist says, Your Honor.**

1 THE COURT: Sustained.  
 2 Q. (By Mr. Tidwell) Did Dr. Arafiles ever tell  
 3 you I saved your life?  
 4 A. **No, sir, he did not.**  
 03:27PM 5 Q. Okay. Do you think he did?  
 6 A. **Yes, sir, I do.**  
 7 Q. Okay. Do you believe you got good medical  
 8 care?  
 9 A. **I believe I got excellent medical care. I**  
 03:27PM 10 **believe if it wasn't for Dr. Arafiles I wouldn't be**  
 11 **here.**  
 12 Q. Okay. And have you continued to go to him when  
 13 you need a doctor?  
 14 A. **Yes, sir.**  
 03:27PM 15 Q. And you've gone to other people in Kermit  
 16 before, haven't you?  
 17 A. **Yes, sir.**  
 18 Q. Okay. Do you think as a patient you have a  
 19 right to pick whatever doctor you want?  
 03:27PM 20 A. **I believe that's what makes America work. If**  
 21 **you have a doctor and you like, you go to that doctor;**  
 22 **if you don't like a doctor, you don't go to that doctor.**  
 23 **You know, I've picked and choosed all my life. Some**  
 24 **doctors I've liked and I didn't -- I kept going to them.**  
 03:27PM 25 **Some doctors I didn't like, and I chose not to go back**

1 to them.  
 2 Dr. A is a doctor that I like and I trust.  
 3 And I go to him, my wife goes to him, and I have several  
 4 grandchildren that go to him.  
 03:28PM 5 Q. Okay.  
 6 A. **He's our -- basically our family doctor.**  
 7 Q. When Dr. Arafiles came to you to make his  
 8 complaint, would you characterize it as he came in  
 9 begging for your help?  
 03:28PM 10 A. **No, sir.**  
 11 Q. Okay. Did Dr. Arafiles tell you if you didn't  
 12 do something to stop them he would not be your friend?  
 13 A. **No, sir.**  
 03:28PM 14 Q. Okay. So if somebody told this jury that,  
 15 that's wrong?  
 16 A. **That's a boldface lie if they told this jury**  
 17 **that.**  
 18 Q. Okay. And only two people in the room when  
 19 Dr. Arafiles presented the complaint, you and him?  
 03:28PM 20 A. **Dr. Arafiles walked in my office. I was**  
 21 **sitting behind my desk alone. There was nobody else in**  
 22 **my office. He said I think I've been harassed, I'm**  
 23 **being harassed, and he explained what I explained to the**  
 24 **jury.**  
 03:28PM 25 Q. Okay. Thank you.

1 MR. TIDWELL: Pass the witness, Your  
 2 Honor.  
 3 MR. COOK: It's going to be lengthy,  
 4 judge. You want to take a break?  
 03:29PM 5 THE COURT: Y'all approach please.  
 6 (AT BENCH, OFF THE RECORD)  
 7 THE COURT: We're going to take a  
 8 15-minute break. Feel free to move outside the jury  
 9 room. Keep in mind the instructions I gave you earlier.  
 03:31PM 10 And you can use my restroom if you need to.  
 11 (JURY NOT PRESENT)  
 12 THE COURT: I have before me the redacted  
 13 copy of the State's Exhibit 4, and it is a photocopy of  
 14 the original. Is there any objection to that being  
 03:32PM 15 entered as an exhibit in that form?  
 16 MR. COOK: No, Your Honor.  
 17 MR. TIDWELL: No, sir. And I thought we  
 18 might have to enter them both, but I see no reason to  
 19 enter the one with the patients' names at all, even for  
 03:33PM 20 the appellate record.  
 21 THE COURT: Okay.  
 22 (A recess was taken from 3:33 to 3:48.)  
 23 THE COURT: Bring in the jury.  
 24 (JURY PRESENT)  
 03:48PM 25 THE COURT: Go ahead, counsel.

1 MR. COOK: Thank you, Your Honor.  
 2  
 3 CROSS-EXAMINATION  
 4 BY MR. COOK:  
 03:48PM 5 Q. Good afternoon, sheriff.  
 6 A. **How are you?**  
 7 Q. I'm doing well. How are you, sir?  
 8 A. **Good.**  
 9 Q. I'm John Cook. We've met I believe one time in  
 03:49PM 10 the past. I have some questions for you, sir.  
 11 When I joined the United States Navy, I  
 12 took an oath of office, and what that -- part of that  
 13 oath of office was I swore to protect and defend the  
 14 Constitution of the United States against all enemies,  
 03:49PM 15 foreign and domestic.  
 16 When you took an oath of office to be  
 17 sheriff, did you take a similar oath?  
 18 A. **Yes, sir.**  
 19 Q. You are sworn to uphold the Constitution of the  
 03:49PM 20 United States, are you not, sir?  
 21 A. **Yes, sir.**  
 22 Q. Do you believe in the Constitution of the  
 23 United States?  
 24 A. **Yes, sir.**  
 03:49PM 25 Q. Do you believe that our rights that are

1 preserved in the Constitution of the United States are  
2 rights that are not given to us by government but belong  
3 to us because they have been given to us by our creator?

4 A. Yes.

03:49PM 5 Q. Do you believe that people should have freedom  
6 to speak their minds, sir?

7 A. Yes.

8 Q. Would you defend a person's right to speak  
9 their mind, sir?

03:50PM 10 A. Yes.

11 Q. Do you believe that certain people not only  
12 have a right to speak but they must speak in some  
13 circumstances, they have a duty?

14 A. Yes.

03:50PM 15 Q. Would you fight for another citizen's right to  
16 speak?

17 A. Yes.

18 Q. If it was being infringed?

19 A. Yes, sir.

03:50PM 20 Q. Why do you feel Anne Mitchell's speech to the  
21 Texas Medical Board deserves punishment, sir?

22 A. Why do I feel that?

23 Q. Yes, sir.

24 A. Because I feel that the speech that she made to

03:50PM 25 the medical board or the outcry that she made to the

1 medical board was not made in good faith to serve a  
2 purpose of which it was intended. I feel it was  
3 intended to serve her own purpose, which was to harm or  
4 defraud the doctor.

03:51PM 5 Q. If the doctor had done nothing wrong, sir, he  
6 had nothing to fear; is that correct?

7 A. The charges that she alleged to the medical  
8 board had already been expunged and taken care of and  
9 dealt with through the hospital.

03:51PM 10 Q. Are you aware of the law of the State of Texas  
11 when it comes to a nurse's duty to report concerns to  
12 the medical board and the Board of Nursing, sir?

13 A. Somewhat, yes.

03:51PM 14 Q. Are you aware that a nurse takes an oath just  
15 as you took an oath, and that part of that oath requires  
16 that nurse to be a patient advocate?

17 A. If you say that I believe it.

18 Q. It makes sense, doesn't it?

19 A. Yes.

03:51PM 20 Q. And are you aware that under the laws of the  
21 State of Texas when a nurse takes an oath, they are  
22 bound by ethical reasons, ethical laws, and by the Board  
23 of Nursing that they must report unsafe practices?

24 A. Yes, sir, I believe that.

03:52PM 25 Q. And are you aware that under the law of the

1 State of Texas that neither facility policies nor

2 physician orders supersedes the duty to report?

3 A. If you say so I believe that.

4 Q. Okay. And if that is the law, sir, then would

03:52PM 5 you agree with me that whether or not she followed the  
6 in-house procedures doesn't matter?

7 A. Are we speaking specifically in this case?

8 Q. Yes, sir.

9 A. No, I do not.

03:52PM 10 Q. So the law applies to everybody except Anne  
11 Mitchell in this case?

12 A. No, sir, that's not what I said. I said in  
13 this case what she did I feel violated the law.

14 Q. You were not party to the discussions that Anne  
03:52PM 15 had with administration, medical staff, and her concerns  
16 about Dr. Arafiles' practice, were you, sir?

17 A. No, sir.

18 Q. Can you tell me, sir, what disciplinary  
19 sanction Dr. Arafiles suffered from Winkler County

03:53PM 20 hospital?  
21 A. I believe that he was reprimanded in the  
22 meeting.

23 Q. You believe or you know, sir?

24 A. I believe.

03:53PM 25 Q. Do you have any personal knowledge of any

1 discipline to Dr. Arafiles?

2 A. I have a -- or had a copy of the minutes of  
3 that meeting.

4 Q. And in that minutes -- in those minutes, to

03:53PM 5 your memory, did they mention anything about suspension  
6 of privileges?

7 A. Not to my knowledge, no.

8 Q. Did they mention anything as to a monetary  
9 fine?

03:53PM 10 A. No, sir.

11 Q. Did they mention anything about the need to get  
12 continuing medical education?

13 A. I believe they advised him to contact  
14 Ms. Mitchell, and Ms. Mitchell wrote him a letter  
03:53PM 15 concerning what he could and could not do in the ER.

16 Q. Sheriff, are you aware that the -- strike that.

17 You tell -- you've told this jury that you  
18 went and you learned all about these hospital  
19 procedures.

03:54PM 20 A. I don't know everything about the hospital  
21 procedures. What I said was I've learned a whole lot  
22 more about the hospital procedures than I ever wanted  
23 to.

24 Q. Me, too.

03:54PM 25 Were you aware that under the hospital



1 bylaws Dr. Arafiles should never have been hired?  
 2 **A. No, sir.**  
 3 **Q.** Were you aware that the hospital bylaws contain  
 4 a clause that says a physician that has a restricted  
 03:54PM 5 license is not eligible for employment in the Winkler  
 6 hospital system?  
 7 **A. No, sir, I'm not aware of that.**  
 8 **Q.** Were you aware that Ms. Anne Mitchell had  
 9 responsibility not only to the facility, the patients,  
 03:54PM 10 and the staff to make sure that the bylaws were complied  
 11 with?  
 12 **A. I can agree with that.**  
 13 **Q.** Were you aware that Ms. Mitchell refused to  
 14 sign Dr. Arafiles' credentialing certificate because he  
 03:55PM 15 had a restricted license from the Texas Medical Board?  
 16 **A. No, I'm not aware of that.**  
 17 **Q.** Were you aware that Dr. Arafiles knew that  
 18 Ms. Mitchell refused to violate her duty to the hospital  
 19 when she would not sign that?  
 03:55PM 20 **A. I'm not aware of that.**  
 21 **Q.** Were you aware of the four meetings from  
 22 September, October, November, and December where these  
 23 issues were attempted to be raised with the board of  
 24 control and were shut down by the administration and the  
 03:55PM 25 hospital?

1 **MR. COOK:** Nonresponsive.  
 2 **MR. TIDWELL:** If he could finish his  
 3 answer first, Your Honor, and then see if it's  
 4 responsive.  
 03:57PM 5 **THE COURT:** No, answer as directly as you  
 6 can. And if there is explanation that needs to be made,  
 7 Mr. Tidwell will have a chance to question you and  
 8 explain things.  
 9 **THE WITNESS:** Okay.  
 03:57PM 10 **THE COURT:** Go ahead.  
 11 **A. May I have the question again?**  
 12 **Q.** Yes, yes, sir. And just to be fair, because I  
 13 want to make sure everything -- I don't want to trick  
 14 you, sheriff, okay? If there is a question I ask you  
 03:57PM 15 that you don't understand, I would appreciate it if you  
 16 ask me to repeat it or rephrase it.  
 17 **A. Okay.**  
 18 **Q.** Okay. And if I state something that you  
 19 believe that's not true. We just want the jury to get  
 03:57PM 20 the truth, okay?  
 21 On August 5, 2009, you were unaware that  
 22 there had been more than one complaint filed against  
 23 Dr. Arafiles?  
 24 **A. Yes.**  
 03:57PM 25 **Q.** Despite the fact that the Texas Medical Board

1 **A. I'm not aware of that.**  
 2 **Q.** Do you feel like you did a complete  
 3 investigation --  
 4 **A. I feel --**  
 03:55PM 5 **Q.** Let me finish my --  
 6 **A. -- I am very --**  
 7 **Q.** Let me finish my question, sir, okay? Do you  
 8 feel that you did a complete investigation before  
 9 seeking a felony indictment against Anne Mitchell?  
 03:56PM 10 **A. I feel very confident that we did.**  
 11 **Q.** Do you remember testifying in August of 2008 in  
 12 a pretrial hearing in the Kermit courthouse?  
 13 **A. August of 2008?**  
 14 **Q.** 2009, I'm sorry, August 5, 2009.  
 03:56PM 15 **A. Yes, sir, I remember the hearing.**  
 16 **Q.** Okay. This was how many months after you had  
 17 Anne Mitchell arrested?  
 18 **A. Five months, four months.**  
 19 **Q.** No, sir, just two. June 17th --  
 03:56PM 20 **A. Okay.**  
 21 **Q.** -- my daughter's birthday.  
 22 Okay. So two months after she was  
 23 arrested, would you agree with me you didn't even know  
 24 there was more than one complaint against Dr. Arafiles?  
 03:56PM 25 **A. When I contacted the Texas Medical Board --**

1 sent you both complaints, right?  
 2 **A. They sent me one complaint.**  
 3 **Q.** Do you remember receiving a subpoena from me,  
 4 sir, or from Mr. Carney, asking you to bring to that  
 03:58PM 5 hearing your file?  
 6 **A. I believe so.**  
 7 **Q.** Do you remember that contained within that file  
 8 was a letter written by a Ms. Naomi Warren, and she was  
 9 complaining about five patients?  
 03:58PM 10 **A. There were actually two letters in there**  
 11 **written by Naomi Warren, or with Naomi Warren's**  
 12 **signature at the bottom of the page.**  
 13 **Q.** Correct. There was a letter that was really an  
 14 outline of what she wanted to say to the board of  
 03:58PM 15 directors of the hospital that you obtained a copy of,  
 16 or a statement she made to the board of directors,  
 17 correct?  
 18 **A. That was included with what the Texas Medical**  
 19 **Board sent me, yes.**  
 03:58PM 20 **Q.** And there was a letter written by Ms. Naomi  
 21 Warren complaining about five cases, correct?  
 22 **A. There was a letter with Ms. Naomi Warren's**  
 23 **signature at the bottom, yes.**  
 24 **Q.** And in that letter, did Ms. Naomi Warren give  
 03:59PM 25 patient initials and medical concerns in detail?

1 **A. I believe so. You may refresh my memory.**  
 2 **Q.** Well, in evidence, sir, is the letter that was  
 3 written -- or was written by Ms. Mitchell, correct?  
 4 **A. Correct.**  
 03:59PM 5 **Q.** Did you ever read that?  
 6 **A. Yes.**  
 7 **Q.** Before you had her indicted?  
 8 **A. Yes.**  
 9 **Q.** Did you ever count the number of files that she  
 03:59PM 10 asked them to look at?  
 11 **A. Yes.**  
 12 **Q.** How many?  
 13 **A. There's five, six.**  
 14 **Q.** Why did you interview all 10 people?  
 03:59PM 15 **A. Because they were included in the back part of**  
 16 **this same complaint.**  
 17 **Q.** In August, on August 5th, sir, isn't it true  
 18 that you were under the impression that all 10 of the  
 19 patients referred were referred by Ms. Anne Mitchell?  
 04:00PM 20 **A. Yes, sir.**  
 21 **Q.** And you were wrong about that, weren't you?  
 22 **A. I do not know that.**  
 23 **Q.** Well, were all five or all 10 patients a  
 24 product of Ms. Mitchell's paper?  
 04:00PM 25 **A. All 10 patients were included in the report**

1 **that I received from the Texas Medical Board.**  
 2 **Q.** Did you interview Ms. Naomi Warren when the  
 3 Texas Medical Board sent you her complaint?  
 4 **A. No.**  
 04:00PM 5 **Q.** Excuse me?  
 6 **A. No.**  
 7 **Q.** Why not?  
 8 **A. I didn't feel it necessary.**  
 9 **Q.** Did you represent to the Texas Medical Board  
 04:00PM 10 that you were investigating one of their license  
 11 holders?  
 12 **A. No, sir, I did not.**  
 13 **Q.** Is this a copy of the letter you sent to the  
 14 Texas Medical Board, sir?  
 04:01PM 15 **A. Yes.**  
 16 **Q.** May I see that please.  
 17 And in this letter you are saying you are  
 18 doing a complaint or you are doing an investigation of  
 19 harassment and misuse of government information,  
 04:01PM 20 correct?  
 21 **A. Right.**  
 22 **Q.** Regarding Dr. Arafles?  
 23 **A. Right.**  
 24 **Q.** And they sent you, because of that, they sent  
 04:01PM 25 you the complaint letters?

1 **A. Yes, sir.**  
 2 **MR. COOK:** Your Honor, we'd move for  
 3 admission of Defendant's Exhibit Number 3.  
 4 (Defendant's Exhibit No. 3 offered)  
 04:01PM 5 **MR. TIDWELL:** No objection, Your Honor.  
 6 **THE COURT:** Admitted.  
 7 (Defendant's Exhibit No. 3 received)  
 8 **Q.** (By Mr. Cook) And when they sent you back  
 9 those complaints, sir, is it not true that they sent you  
 04:02PM 10 a cover letter?  
 11 Did they send you a cover letter?  
 12 **A. Yes, sir, I believe so.**  
 13 **Q.** I'm going to hand you a copy of the letter that  
 14 you provided us at that pretrial hearing. Can you tell  
 04:02PM 15 the ladies and gentlemen of the jury if that's the  
 16 letter you received from the Texas Medical Board?  
 17 **A. Yes, sir, this is it.**  
 18 **MR. COOK:** Your Honor, I'm marking this as  
 19 Defendant's Exhibit 4, the letter from the Texas Medical  
 04:03PM 20 Board to Robert L. Roberts, dated May 11, 2009. And  
 21 we'd move for its admission.  
 22 (Defendant's Exhibit No. 4 offered)  
 23 **MR. TIDWELL:** No objection.  
 24 **THE COURT:** It's admitted.  
 04:03PM 25 (Defendant's Exhibit No. 4 received)

1 **Q.** (By Mr. Cook) Sheriff, you're going to need  
 2 that for a second.  
 3 This letter tells you that the information  
 4 you're receiving is confidential, correct?  
 04:03PM 5 **A. Yes, sir.**  
 6 **Q.** And it's confidential because of Section  
 7 164.007(c) of the Texas Occupations Code; is that  
 8 correct?  
 9 **A. Yes, sir.**  
 04:03PM 10 **Q.** Would you agree with me that the Texas  
 11 Occupation Code is the law of the State of Texas?  
 12 **A. I believe so, yes.**  
 13 **Q.** And that your duty as a peace officer is to  
 14 uphold that law just as much as you would uphold any  
 04:03PM 15 other law?  
 16 **A. Yes, sir.**  
 17 **Q.** And did you read Section 164.007 of the Texas  
 18 Occupation Code?  
 19 **A. No, sir.**  
 04:03PM 20 **Q.** Did you know that a complaint is supposed to be  
 21 confidential?  
 22 **A. Yes, sir.**  
 23 **Q.** Did you know that it is privileged?  
 24 **A. From this information here, yes, I did.**  
 04:04PM 25 **Q.** And did you know that you're not even supposed

1 to seek the discovery of it, sir?

2 A. No, sir, I did not know that.

3 Q. Let me read to you the code.

4 MR. COOK: We have generated so much

04:04PM 5 paperwork. Find me that. I'll move on if you can find

6 me --

7 Oh, never mind.

8 I'm going to move on and let him find that

9 instead of wasting time here on that.

04:05PM 10 Q. (By Mr. Cook) What jurisdiction do you have to  
11 investigate medical standard of care issues?

12 A. Did I investigate medical standard of care?

13 Q. No, that's not the question. I said, what

14 jurisdiction do you have, sir, to do so?

04:05PM 15 A. I don't investigate medical standard of care.

16 Q. In fact, in this case you didn't care whether

17 the information that was provided in Ms. Mitchell's

18 letter was factual and correct or was made up, did you?

19 A. Say that again.

04:05PM 20 Q. Did you care whether or not the information in

21 Ms. Mitchell's letter to the board was factual and

22 correct?

23 A. It had no relevance to the charges that -- of

24 harassment that we were pursuing, no.

04:05PM 25 Q. In your opinion it didn't?

1 A. No.

2 Q. So if a nurse tells the truth to the medical

3 board and it upsets a doctor, you think that person

4 should go to jail?

04:06PM 5 A. No, that's not what I said.

6 Q. How could Dr. Arafiles be harmed by the medical

7 board being notified to look at certain cases?

8 A. First off, he's given 14 days from the date

9 they receive the letter or issue the letter for him to

04:06PM 10 respond.

11 Q. 30 days, sir.

12 A. 14 days to respond, according to his letter.

13 Q. The letter is in evidence, sir.

14 MR. TIDWELL: Your Honor, if Mr. Cook

04:06PM 15 could look at paragraph two, I think it'll satisfy the

16 inquiry.

17 Q. (By Mr. Cook) Okay. 14 days to respond to

18 this complaint, 30 days to -- there is two dates on

19 there, isn't there?

04:06PM 20 A. Thank you very much.

21 Q. You're welcome, sir.

22 Okay. So are you saying that he's harmed

23 because he has to respond?

24 A. I'm saying that to make a response he must take

04:07PM 25 time off from his practice, he must answer this in a

1 timely fashion, he -- which evidently will cost him

2 money. He has to contact his attorney, which will cost

3 him money, to respond to any complaint from the Texas

4 Medical Board, yes.

04:07PM 5 Q. Part of the obligations we assume as

6 professionals is if there is a complaint made --

7 complaints made against us as part of our ethical duty

8 we respond to those complaints; isn't that right, sir?

9 A. I agree with that.

04:07PM 10 Q. And that's part of the job description, that

11 comes along with the job, doesn't it?

12 A. Yes, sir, on a good faith complaint, yes, sir,  
13 it does.

14 Q. What is the -- did you ever research what good

04:07PM 15 faith in filing a medical complaint entails and what the

16 Supreme Court has said it entails?

17 A. I believe I know what a good faith complaint  
18 is.

19 Q. Okay. Well, let me read you what the Supreme

04:07PM 20 Court of the State of Texas says it is, okay?

21 MR. TIDWELL: Your Honor, he's asking the

22 sheriff for a legal conclusion, and the sheriff is not a

23 lawyer. And a court --

24 THE COURT: I'm not sure what the question

04:08PM 25 is at this point.

1 MR. TIDWELL: The court will instruct the

2 jury on the proper law in the case, not the sheriff or

3 counsel.

4 THE COURT: Y'all want to approach.

04:08PM 5 (AT BENCH, OFF THE RECORD)

6 Q. (By Mr. Cook) You know, I need to -- I put in

7 the letter that you received from the Texas Medical

8 Board and Examiners, didn't I, sir?

9 A. Yes, sir.

04:10PM 10 Q. I'm going to jump back to that because I lost

11 my train of thought.

12 The final paragraph on the first page, did

13 you read that when you received those complaints?

14 A. Yes, sir.

04:10PM 15 Q. It is our understanding that your agency is a

16 bona fide law enforcement agency. You guys --

17 A. Are we on Exhibit 4?

18 Q. Yes, sir.

19 A. Yes, sir.

04:10PM 20 Q. So the first thing they say is they understand

21 that you are a bona fide law enforcement agency. And

22 you've got no argument with that, do you, sir?

23 A. No, sir, I do not.

24 Q. And is conducting a criminal investigation of a

04:11PM 25 license holder of the Texas Medical Board?

1 A. Yes, sir.  
 2 Q. What license holder of the Texas Medical Board  
 3 were you investigating at that time?  
 4 A. A complaint filed by Dr. Arafiles.  
 04:11PM 5 Q. What license holder were you doing a criminal  
 6 investigation on? Arafiles is the complainant. What  
 7 doctor were you investigating?  
 8 A. I was investigating a complaint filed by  
 9 Dr. Arafiles concerning his medical license.  
 04:11PM 10 Q. Okay. But in this paragraph, it's saying that  
 11 at least they understand that you're investigating a  
 12 doctor, right?  
 13 A. Well, that may be a conflict of what I believe  
 14 and what you believe to interpret this as.  
 04:11PM 15 Q. And is conducting a criminal investigation of a  
 16 license holder of the Texas Medical Board. It's pretty  
 17 clear, isn't it?  
 18 A. It is to me.  
 19 Q. It is also our understanding that your agency  
 04:12PM 20 is authorized and agrees to maintain the confidentiality  
 21 of this information as required by Section 164.007(h) of  
 22 the Texas Occupation Codes, right?  
 23 A. Correct.  
 24 Q. If we are incorrect in any of these  
 04:12PM 25 understandings, please advise us immediately. The Texas

1 Medical Board is not authorized to provide confidential  
 2 information unless these assumptions are correct, right?  
 3 A. Correct.  
 4 Q. Their assumption was you were investigating a  
 04:12PM 5 doctor?  
 6 A. And my assumption is I'm investigating a  
 7 complaint by a doctor who is a member of the Texas  
 8 Medical Board.  
 9 Q. But the Texas Medical Board was asking you if  
 04:12PM 10 that's what you were doing and telling you if that's not  
 11 what you were doing you can't have the complaints.  
 12 A. I believe I'm entitled to them.  
 13 Q. Did you ever tell the Texas Medical Board you  
 14 were investigating Dr. Arafiles?  
 04:13PM 15 A. No.  
 16 Q. Did you ever tell any of these patients whom  
 17 you went to that you were doing an investigation for the  
 18 Texas Medical Board?  
 19 A. No.  
 04:13PM 20 Q. Why did you feel that the Texas Medical  
 21 Board -- well, let me ask you this. Do you believe the  
 22 proper law enforcement agency to investigate physician  
 23 complaints is the Texas Medical Board?  
 24 A. Ask me that again.  
 04:13PM 25 Q. Do you believe that the proper agency to

1 investigate complaints against a physician is the Texas  
 2 Medical Board?  
 3 A. In this case, with the investigation that I  
 4 observed from the Texas Medical Board, no, I don't.  
 04:14PM 5 Q. Okay. Were you aware that an investigation had  
 6 started before Anne Mitchell's letter was sent?  
 7 A. No, I wasn't aware of that.  
 8 Q. Do you believe that any of the actions that you  
 9 took impacted the investigation that was going on with  
 04:14PM 10 the Texas Medical Board and obstructed their ability to  
 11 investigate it fully?  
 12 A. Absolutely not.  
 13 Q. I'm fascinated, sir, why you think if somebody  
 14 told the Texas Medical Board the truth you believe they  
 04:14PM 15 committed a crime.  
 16 A. May I explain to you?  
 17 Q. Yes, sir, you may.  
 18 A. I feel that this complaint was filed in bad  
 19 faith for several reasons.  
 04:15PM 20 The first reason is that the person, your  
 21 client, was sworn by oath to report bad medical practice  
 22 by a physician that she became aware of, whether she  
 23 became aware of it in person or it was reported to her,  
 24 I think we'd probably both agree on that.  
 04:15PM 25 I think it was reported in an untimely

1 manner to the Texas Medical Board. If she was concerned  
 2 about it, it was her duty to report, I feel she should  
 3 have reported it immediately to the Texas Medical Board.  
 4 I also feel like if it's my duty to  
 04:15PM 5 report, I'm a sworn officer of the nursing board or the  
 6 nurses association and it's my duty to report, I'm also  
 7 employed by the hospital to report bad medical practice,  
 8 I wouldn't be ashamed not to sign my name to a bad  
 9 report.  
 04:15PM 10 I also feel that if I was an employee of  
 11 the hospital, I had a duty to follow the rules of the  
 12 hospital, which say that I can report to the medical  
 13 board if I follow these steps and let them know that I'm  
 14 going to report to the medical board.  
 04:16PM 15 That's why I feel this is in bad faith.  
 16 Q. Okay. Did you give an interview in July of '09  
 17 to the Fort Worth Star-Telegram?  
 18 A. I don't believe so.  
 19 Q. Well, you're quoted in there, sir, and you said  
 04:16PM 20 three things.  
 21 A. What did I say?  
 22 Q. You said that didn't follow the procedures of  
 23 the hospital, correct? I mean, you feel that way,  
 24 right?  
 04:16PM 25 A. That's the way I feel.

1 Q. Okay. That it was an anonymous complaint?  
 2 A. **I think that's a problem, yes.**  
 3 Q. Okay. And that it is -- the third thing was  
 4 that you believed it was designed to cause harm to  
 04:16PM 5 Dr. Arafiles?  
 6 A. **Yes, sir, I believe that, also. That makes**  
 7 **four things.**  
 8 Q. Okay. Let's talk about that. Were you aware  
 9 that the Texas -- that the Medical Practice Act  
 04:16PM 10 authorizes anonymous complaints?  
 11 A. **No, sir, I believe they authorize anonymous**  
 12 **complaints. Lots of agencies --**  
 13 Q. Okay.  
 14 A. **-- authorize anonymous complaints.**  
 04:17PM 15 Q. Because they want to receive complaints, right?  
 16 A. **Yes.**  
 17 Q. Okay. Were you aware that the senior  
 18 investigator assigned to this case had advised  
 19 Ms. Mitchell to send the complaint in anonymously?  
 04:17PM 20 A. **No, sir.**  
 21 MR. TIDWELL: Objection, hearsay, Your  
 22 Honor.  
 23 THE COURT: Sustained.  
 24 MR. COOK: And, judge, I'm just asking if  
 04:17PM 25 he was aware of it.

1 MR. TIDWELL: Well, it's still eliciting  
 2 hearsay.  
 3 THE COURT: Sustained.  
 4 Q. (By Mr. Cook) Okay. And you've already  
 04:17PM 5 testified you weren't aware of the three or four  
 6 meetings that these issues were attempted to be raised  
 7 in the hospital, were you?  
 8 A. **No, sir.**  
 9 Q. So you have no knowledge as to whether or not  
 04:17PM 10 Ms. Mitchell felt like she had tried her best to do it  
 11 in-house and nothing was being done, right?  
 12 A. **I wasn't aware of any meetings, no.**  
 13 Q. Okay. Why did you ask the patients whether  
 14 they consented -- oh, that was actually that other  
 04:18PM 15 thing, the patients hadn't consented to having their  
 16 files sent off?  
 17 A. **Right.**  
 18 Q. Okay. Why did you even care about that?  
 19 A. **I feel like if anybody knew that they had**  
 04:18PM 20 **received bad medical care, it would be the person who**  
 21 **received the bad medical care, and it would be of their**  
 22 **concern, their major primary concern.**  
 23 **And if I was going to file a complaint on**  
 24 **their behalf, I would at least contact these people and**  
 04:18PM 25 **let them know that I felt like you got bad medical care,**

1 **can I use your name to report to the Texas Medical**  
 2 **Board.**  
 3 Q. But that's not the law, is it, sir?  
 4 A. **That's not what happened, no.**  
 04:18PM 5 Q. That's not the law, is it, sir?  
 6 A. **No, it's not, they don't have to --**  
 7 Q. Do you really --  
 8 A. **-- have their consent.**  
 9 Q. -- believe that the Winkler County hospital --  
 04:18PM 10 THE REPORTER: Wait.  
 11 MR. COOK: Oh, I'm sorry.  
 12 THE COURT: One at a time, guys.  
 13 Q. (By Mr. Cook) Do you really believe that the  
 14 hospital wants -- if there is a concern that somebody  
 04:18PM 15 got bad medical care that the first thing we ought to do  
 16 is tell the patient?  
 17 A. **Say that again.**  
 18 Q. Do you really believe the hospital ought to  
 19 tell the patient as soon as a concern of medical care  
 04:19PM 20 arises?  
 21 A. **Right.**  
 22 Q. You believe that?  
 23 A. **Yes, I do.**  
 24 Q. Don't you think -- what's the next -- as soon  
 04:19PM 25 as the patient hangs up the phone from that phone call,

1 what's the next phone call they're likely to make?  
 2 A. **I have no idea.**  
 3 Q. Are you aware that in each one of these cases  
 4 the patients did consent to have the records sent for  
 04:19PM 5 oversight?  
 6 A. **No, sir, I'm not.**  
 7 Q. I'm going to show you a general conditions of  
 8 admission and treatment that's present in every file in  
 9 this case. And I'm going to direct you, sir -- I  
 04:19PM 10 understand that personal information, can you read that,  
 11 sir.  
 12 A. **I understand that personal information will be**  
 13 **used and disclosed for purposes of treatment, payment,**  
 14 **and health oversight activities.**  
 04:19PM 15 Q. Okay. They've already agreed to let their  
 16 medical records be used for oversight, correct?  
 17 A. **According to that, yes.**  
 18 Q. Okay. And the Texas Medical Board provides  
 19 oversight to physicians, does it not, sir?  
 04:20PM 20 A. **I believe so, I believe you're correct.**  
 21 Q. Okay. So your concern that the patient didn't  
 22 consent is really unfounded. Wouldn't you agree with  
 23 me?  
 24 A. **No, sir, I sure wouldn't.**  
 04:20PM 25 Q. Even though the fact that they've already

1 consented, even though the fact that HIPAA does not  
2 require their consent?  
3 **A. I would -- I would dare say, if I'm allowed to**  
4 **speak, that you could bring 10 patients in here who**  
04:20PM 5 **allegedly signed those forms and they don't know what**  
6 **they signed.**  
7 **Q. Well, that's their responsibility, isn't it,**  
8 **sheriff?**  
9 **A. Yes, sir, I believe so.**  
04:20PM 10 **Q. Where is the exhibit with the letter that Anne**  
11 **sent?**  
12 **Okay.**  
13 **A. Is that it?**  
14 **Q. Thank you, sir.**  
04:20PM 15 **Sheriff, what was Anne's first concern to**  
16 **the medical board? And Vicki's. They sent it together,**  
17 **right?**  
18 **A. I believe so. You told us that.**  
19 **The current administration with approval**  
04:21PM 20 **of the medical staff and board of control has approved a**  
21 **policy of self-review which prohibits reporting of any**  
22 **concerns to any board agency without their being**  
23 **notified of intent to report.**  
24 **Q. Do you know why the facility changed the rules**  
04:21PM 25 **of reporting?**

1 **A. I believe that's the Mitchell rule.**  
2 **Q. Well, we've never heard of the Mitchell rule.**  
3 **But are you -- you are speaking about what**  
4 **happened to Dr. Young, right?**  
04:21PM 5 **A. Yes, sir.**  
6 **Q. And you believe that it was all a**  
7 **misunderstanding, right, sir?**  
8 **A. I believe what I was told by the administrator,**  
9 **yes.**  
04:21PM 10 **Q. Okay. Did you ever investigate the actual**  
11 **results of that and why Dr. Young was sanctioned?**  
12 **A. No, sir.**  
13 **Q. Did you realize that the Texas Medical Board**  
14 **after full investigation and hearing concluded that he**  
04:21PM 15 **abandoned patients?**  
16 **A. No, sir, I'm not aware of that.**  
17 **Q. And that that caused -- that investigation**  
18 **caused a lot of extra work down at that hospital, didn't**  
19 **it?**  
04:22PM 20 **A. I'm not aware of that.**  
21 **Q. But you are aware that Dr. Young was**  
22 **sanctioned?**  
23 **A. No, I'm not.**  
24 **Q. We've talked about this nurses duty, sir. Do**  
04:22PM 25 **you understand that the duty to the nurse stems from the**

1 **privilege granted to her by the State of Texas in**  
2 **licensing her?**  
3 **A. Yes, sir.**  
4 **Q. And do you understand that a hospital cannot**  
04:22PM 5 **relieve that duty by policy or order?**  
6 **A. I can believe that.**  
7 **Q. Therefore, if a nurse reasonably believes that**  
8 **substandard care has been performed, she does not have**  
9 **to follow hospital procedures if she's required to**  
04:23PM 10 **report that. Would you agree with me?**  
11 **A. Not entirely, no.**  
12 **Q. Well, if her duty stems from her licensing, and**  
13 **her duty is to the State of Texas, and it cannot be**  
14 **relieved by hospital policy or physician order, what do**  
04:23PM 15 **you disagree about?**  
16 **A. I believe it's -- I believe that it is her duty**  
17 **to report bad medical care. I believe if her facility**  
18 **that she's employed by provides them an avenue to report**  
19 **that, that should be done first and foremost,**  
04:23PM 20 **immediately, upon notification that bad medical care has**  
21 **occurred.**  
22 **Q. Do local rules trump state law, sir?**  
23 **A. No, sir.**  
24 **Q. Okay. This is -- do you disagree with me that**  
04:23PM 25 **it is the state law that her duty comes from her**

1 **licensing?**  
2 **A. Yes, sir.**  
3 **Q. You disagree with that?**  
4 **A. No.**  
04:24PM 5 **Q. Do you disagree with me that it cannot be**  
6 **relieved by hospital policy or physician order --**  
7 **A. Correct.**  
8 **Q. -- seeing as it comes from the licensing?**  
9 **A. Correct.**  
04:24PM 10 **Q. Any member of the public may report a physician**  
11 **if they in good faith believe that there is questionable**  
12 **care?**  
13 **A. I believe that wholeheartedly.**  
14 **Q. Okay. And a nurse is a member of the public?**  
04:24PM 15 **A. Yes, they are.**  
16 **Q. Okay. In Anne's letter -- so her first concern**  
17 **is she's concerned that the policy that the hospital has**  
18 **established is wrong, and she wants them to look at it,**  
19 **right?**  
04:24PM 20 **A. You're asking me to assume something she**  
21 **thinks?**  
22 **Q. No. It's written right in front of you, isn't**  
23 **it, sir?**  
24 **A. Where are you?**  
04:25PM 25 **Q. The first letter.**

1 A. Right here --

2 Q. Yeah.

3 A. -- correct?

4 Q. Yeah.

04:25PM 5 A. She says as a patient advocate and registered  
6 nurse it is my duty and responsibility to --

7 Q. No, no, no, no. Two paragraphs up, the current  
8 administration.

9 A. Oh, that's the one we just read.

04:25PM 10 Q. Yeah.

11 A. Yes, I agree with this.

12 Q. Okay. She had a concern about that policy, and  
13 she was raising that with the medical board, wasn't she?

14 A. I believe she's making a statement, yes.

04:25PM 15 MR. COOK: Your Honor, I need to approach  
16 on the State's motion in limine.

17 (AT BENCH, OFF THE RECORD)

18 THE COURT: I'm going to -- you guys  
19 retire to the jury room, stay in there. We should be  
04:26PM 20 right back with you.

21 (JURY NOT PRESENT)

22 MR. COOK: Judge, since the jury has been  
23 retired, can I turn the legal argument over to  
24 Mr. Carney?

04:27PM 25 MR. CARNEY: Judge, there was an

1 investigation done by the Texas Department of Health  
2 with regard to allegations, several of which were about  
3 Dr. Arafles or about the hospital. It was done by the  
4 Department of Health. It was an in-depth investigation  
04:27PM 5 done by one of their agencies, one of their  
6 investigators.

7 A report was issued regarding that the --  
8 among other things, that the -- there was a finding made  
9 that their hospital policy violated state law.

04:27PM 10 It was done by an executive arm of the  
11 study -- an executive branch of the State, sorry. And  
12 as such, it is an admission against the State. Just  
13 like any other part of the State, if something like a  
14 police report or anything else, that is deemed to be  
04:28PM 15 held against the State.

16 I think it's admissible to show and also  
17 impeach Sheriff Roberts with to show that another  
18 authority found that, in fact a supervisory authority,  
19 found that that was against the law and against the  
04:28PM 20 rules.

21 THE COURT: What was against the law?

22 MR. CARNEY: The hospital's policy that  
23 they had -- the nurses had to report to the hospital  
24 first before they could go to the Texas Medical Board.

04:28PM 25 THE COURT: And how is that relevant?

1 MR. CARNEY: It's relevant -- well, the  
2 whole discussion has been have they had a duty to do  
3 that, and Sheriff Roberts said I don't think they do, I  
4 think they've got to follow that rule. He said that one  
04:28PM 5 of the reasons this is an offense is because they have  
6 to follow the rule first.

7 THE COURT: And how is that relevant?

8 MR. CARNEY: Well, it's an ultimate issue  
9 of fact, Your Honor, as to whether or not this is  
04:28PM 10 harassment. And the jury can base their opinion --

11 THE COURT: No, what I'm saying is what  
12 Sheriff Roberts thinks about why this is an offense, why  
13 is that relevant?

14 MR. CARNEY: Well, I think it's relevant  
04:29PM 15 because that's the charging instrument. And he  
16 testified he's the one that took this to the grand jury,  
17 he's the one that investigated this crime, and that  
18 based upon his opinions on what the law was is how he  
19 charged it. I think it is relevant.

04:29PM 20 THE COURT: The subjective statement of  
21 the witness as to whether an element of the offense  
22 occurred is relevant?

23 MR. CARNEY: Well, I think it's relevant,  
24 and I think it's also relevant for impeachment if that's  
04:29PM 25 his subjective statement.

1 MR. COOK: Judge, I think that the  
2 standard that we're going to ask the court to employ is  
3 that a nurse may or -- may and sometimes has to report  
4 any substandard care if they have a reasonable belief of  
04:29PM 5 patient harm.

6 Everything contained within that letter is  
7 true, and that's where it's getting -- is she has  
8 concerns. They're honest, good faith concerns. They  
9 haven't been corrected. So she took it outside of the  
04:29PM 10 facility to get some help.

11 That's the gist of the whole thing is they  
12 did have a policy which prevented self-reporting. That  
13 policy cannot trump the law of the State of Texas or the  
14 obligations under the nurses' own ethical requirements.

04:30PM 15 THE COURT: What I'm getting at is I'm not  
16 sure how that's going to be an issue in the case.

17 MR. COOK: Because one of the things he's  
18 told this jury is he arrested these people, had them  
19 indicted, is because they did not go through the  
04:30PM 20 hospital policy before they went to the Texas state  
21 medical board. So he's saying they committed a crime  
22 because they refused to follow the illegal policy.

23 THE COURT: Okay. And how is that  
24 relevant?

04:30PM 25 MR. COOK: It's relevant to -- to his --

1 this gentleman's idea what good faith and bad faith is.  
 2 He used that as an ingredient --  
 3 THE COURT: That's what I'm saying, I --  
 4 MR. COOK: Well, I guess --  
 04:30PM 5 THE COURT: -- whether or not --  
 6 MR. COOK: I'm sorry.  
 7 THE COURT: -- whether or not -- what  
 8 Sheriff Roberts thinks about --  
 9 MR. COOK: Well, because he's testifying  
 04:30PM 10 that it's bad faith.  
 11 THE COURT: Okay.  
 12 MR. COOK: And he's saying the reason it's  
 13 bad faith is because they didn't report to the hospital.  
 14 THE COURT: Let me -- here is a local  
 04:30PM 15 rule. When I'm talking --  
 16 MR. COOK: Yes, Your Honor.  
 17 THE COURT: -- let me finish, because I'm  
 18 asking you guys for help, and that's what I'm doing  
 19 here.  
 04:30PM 20 What I'm saying is it's --  
 21 Sheriff Roberts' opinion about what proves the case is  
 22 irrelevant.  
 23 MR. COOK: No, it's not, judge.  
 24 Sheriff Roberts has told this jury that he did this  
 04:31PM 25 because he believes that these ladies acted in bad

1 faith, okay? I think I'm entitled to go into the  
 2 underlying reason for that belief and examine that. And  
 3 that's all this is.  
 4 THE COURT: No, what I'm saying is that  
 04:31PM 5 opinion that was elicited from him is irrelevant.  
 6 MR. CARNEY: Your Honor --  
 7 THE COURT: I mean, you can elicit an  
 8 irrelevant opinion and then try to impeach him on it and  
 9 I --  
 04:31PM 10 MR. COOK: We didn't elicit it. I believe  
 11 in direct examination he said the reason he went after  
 12 her was because it was bad faith.  
 13 THE COURT: Regardless of who elicited  
 14 it --  
 04:31PM 15 MR. COOK: Judge, I'll tell you what, if  
 16 we could have as part of the jury charge that the  
 17 sheriff's opinion as to whether this was good faith or  
 18 bad faith is irrelevant, then --  
 19 THE COURT: Nobody objected, and that's  
 04:31PM 20 the problem.  
 21 MR. CARNEY: I think -- may I say  
 22 something?  
 23 THE COURT: Yes.  
 24 MR. CARNEY: I think that the issue is --  
 04:32PM 25 THE COURT: When I pause, you can presume

1 that I'm done.  
 2 MR. CARNEY: Well, I did that a minute ago  
 3 and kind of interrupted you, so I'm trying not to do  
 4 that. I'm sorry.  
 04:32PM 5 The issue is the intent. And of course if  
 6 the -- the charge I think needs to discuss, you know,  
 7 they did this with the intent to harm.  
 8 However, I think the good faith issue that  
 9 we discussed yesterday with the judge off the record is  
 04:32PM 10 if there is good faith, how is there intent to harm. I  
 11 think there is a good faith element that's going to have  
 12 to be included in the charge under existing case law  
 13 regarding what is good faith.  
 14 THE COURT: Yeah, I suspect there will be  
 04:32PM 15 some instructions in that regard.  
 16 But what I'm saying is, any witnesses --  
 17 that's why the court is surprised at this one, how much  
 18 we've had about the witnesses about why do you think  
 19 this case is proven. It's irrelevant, it doesn't  
 04:32PM 20 matter.  
 21 MR. COOK: Judge, I think --  
 22 THE COURT: It really doesn't matter.  
 23 MR. CARNEY: Okay. Let me go back to our  
 24 offer outside the irrelevance issue. This is -- I can  
 04:33PM 25 show the court that this is from the Texas Department of

1 the State Health Services written to Mr. Wiley.  
 2 I think that with Mr. -- with this being  
 3 from a State agency, I think it's an admission. I think  
 4 it's an admission against interest with regard to  
 04:33PM 5 whether or not there was --  
 6 First of all, there is an issue as to what  
 7 type of conduct was conducted. Secondly, I think there  
 8 is also an admission with regard to the reporting  
 9 itself, and that issue is then with the intent to harm,  
 04:33PM 10 and that -- how their reports are supposed to be  
 11 conducted and that the hospital was thwarting their  
 12 ability to make a proper report.  
 13 THE COURT: I don't understand that.  
 14 MR. COOK: Judge, let me take a stab at  
 04:34PM 15 it. The sheriff is saying the reason this is a crime is  
 16 because they did this in bad faith. In other words,  
 17 nothing else is wrong, it's just that they did it in bad  
 18 faith.  
 19 And then he said it is in bad faith  
 04:34PM 20 because the patients didn't consent, that they didn't  
 21 get permission from the hospital or didn't follow the  
 22 hospital regulations at the time, okay, and that --  
 23 What was the third one, sheriff? Patients  
 24 didn't consent, violated hospital procedure, and --  
 04:34PM 25 THE WITNESS: It wasn't done in a timely



1 manner.  
 2 MR. COOK: Wasn't done in a timely manner.  
 3 MR. CARNEY: And then with intent to harm.  
 4 THE COURT: Yeah, now go through it.  
 04:34PM 5 MR. COOK: Okay. So right now the jury is  
 6 left with the impression that that's -- you know, that's  
 7 right.  
 8 And the problem is the hospital policy was  
 9 deemed by the Department of Health to be illegal and  
 04:34PM 10 that nurses can report and the state law of the State of  
 11 Texas is that nurses have a right and then sometimes a  
 12 duty to report anytime they want to as long as it's done  
 13 in good faith.  
 14 Then here is the rub. The good faith is  
 04:35PM 15 specifically defined as a -- having a reasonable belief  
 16 that there is conduct that is illegal.  
 17 And then the conduct that we say is  
 18 illegal is the conduct that falls below the standard of  
 19 care which is required by law under the Texas medical  
 04:35PM 20 code, okay, and that they have a reasonable belief that  
 21 patients could be harmed in the future.  
 22 And if those two things happen, (a), it's  
 23 good faith, (b), it triggers the duty to report. And  
 24 that's what's happening in this case.  
 04:35PM 25 And to say it's bad faith because they

1 reasons --  
 2 MR. CARNEY: I think that --  
 3 MR. COOK: Correct the gentleman for -- we  
 4 do, we want to show that he was incorrect in his reasons  
 04:37PM 5 for assuming that this was done in bad faith.  
 6 THE COURT: Well, how is that different  
 7 from any other irrelevant testimony?  
 8 MR. COOK: Because I don't think --  
 9 THE COURT: It just doesn't matter that he  
 04:37PM 10 thinks it's such a great hospital and they're doing a  
 11 fantastic job, and here's why I think that. And do you  
 12 think that that opens the door for you to bring in any  
 13 reprimand or any finding by any State agency as to  
 14 substandard conduct on the part of the hospital?  
 04:37PM 15 MR. CARNEY: I think it --  
 16 THE COURT: I don't think it does, and I  
 17 don't think you do either.  
 18 MR. CARNEY: I think it prompts extra  
 19 questions a lot of times, like did you know.  
 04:37PM 20 But the whole point of us approaching is  
 21 there is a motion in limine that the State filed with  
 22 regard to this, and I think that, you know, with  
 23 those -- with regard to that, I think potentially that  
 24 he -- there is also the issue of have you heard or did  
 04:37PM 25 you know questions regarding this report.

1 didn't follow the hospital policy is irrelevant. To say  
 2 it's --  
 3 THE COURT: Absolutely.  
 4 MR. COOK: To say it's bad faith to say  
 04:35PM 5 that she didn't like the doctor is irrelevant. To say  
 6 that it is bad faith because they didn't get the patient  
 7 consent is not only irrelevant but is clearly wrong  
 8 under HIPAA and under the consent that the patients have  
 9 signed.  
 04:36PM 10 THE COURT: You're absolutely right, those  
 11 things that were testified to are irrelevant.  
 12 But I don't think either side can allow  
 13 testimony -- irrelevant testimony to be admitted into  
 14 evidence and then, you know, try to get in --  
 04:36PM 15 MR. COOK: We're trying to explain to the  
 16 jury how these ladies went from being concerned nurses  
 17 to accused felons. And the way that happened is that  
 18 man right there made a determination that it was done in  
 19 bad faith. His determination used the wrong law. He  
 04:36PM 20 was incorrect in making that determination.  
 21 That's what we're trying to show the jury,  
 22 because once we've done that, they've done nothing  
 23 wrong.  
 24 THE COURT: Okay. Well, I thought your --  
 04:36PM 25 you wanted to show that he was incorrect in his

1 I think the report is admitting on its own  
 2 there is an admission against interest, there is an  
 3 admission against the State, because it was generated by  
 4 a division of the State, and that they're -- just like  
 04:36PM 5 the prosecution is bound by everything the State does  
 6 whether or not they know about it or not unfortunately  
 7 sometimes.  
 8 I think that the State is an admission,  
 9 and I think that it's admissible because of that. But I  
 04:36PM 10 also --  
 11 THE COURT: And it's against the interest  
 12 of who?  
 13 MR. CARNEY: Against the interest of the  
 14 hospital, against the interest of law enforcement. I  
 04:36PM 15 mean, I think it's --  
 16 THE COURT: Is the hospital a party to  
 17 this?  
 18 MR. CARNEY: The hospital -- it's an  
 19 admission against law enforcement. I mean, this Texas  
 04:36PM 20 Medical Board and these -- and the Texas Department of  
 21 Health and Safety Services I believe are both classified  
 22 as law enforcement agencies by statute.  
 23 MR. COOK: And the hospital -- remember,  
 24 we're here because they're alleging that the hospital  
 04:36PM 25 was a government run hospital and therefore Ms. Mitchell

1 is a public servant. So, yes, the hospital is a part of  
2 the government.

3 THE COURT: And your request is what?

04:38PM 4 MR. COOK: My request is to be able to go  
5 into this admission by the Department of Health Services  
6 about the policy, number one.

7 And I would also like -- there is a  
8 finding here, judge, that I think is critical to this  
9 case and actually can solve this case. And I would also  
04:39PM 10 like to go into the finding by the Department of Health  
11 who investigated the complaint and the underlying stuff  
12 in it that the -- that it was filed in good faith.

13 THE COURT: Okay.

14 MR. COOK: Okay?

04:39PM 15 THE COURT: And that what was filed in  
16 good faith?

17 MR. COOK: The complaint was filed --

18 THE COURT: Now which complaint?

19 MR. COOK: The --

04:39PM 20 THE COURT: Okay. Then we've already  
21 talked about this, right?

22 MR. COOK: The -- hold on. I'll -- let  
23 me --

04:39PM 24 Based on review of patient records,  
25 facility documentation, letter from the Texas Medical

1 Board, staff interviews, on 6-1-09 the hospital fired  
2 two employees for reporting in good faith to the State  
3 regulatory agency a violation of the practices of a  
4 physician.

04:39PM 5 THE COURT: Is --

6 MR. COOK: And, you know, judge, here is  
7 the rub. We have the State of Texas coming in here  
8 today and saying these ladies ought to be deprived of  
9 their liberty because they did something in bad faith.  
04:40PM 10 And then we have the State of Texas coming in and saying  
11 they did it in good faith.

12 THE COURT: Well, that's -- well, you guys  
13 have talked a lot about more things than are in the  
14 indictment. And that's kind of the issue that we have  
04:40PM 15 here as far as narrowing things down as to issues that  
16 are going to be -- the jury is going to be hearing.

17 MR. COOK: I understand, judge. We would  
18 also have the responsibility to make our --

04:40PM 19 MR. CARNEY: Judge, I think we have a bad  
20 charging instrument to start with, and it's hard to  
21 determine -- I mean, there is nothing in there to say  
22 what report was made to harm, harass.

23 THE COURT: That's not an issue.

04:40PM 24 MR. CARNEY: Well, it will be when we  
25 charge it. That's what I'm saying.

1 THE COURT: That's not going to be -- I'm  
2 not worried about that.

3 MR. COOK: Judge, I think it's even

04:40PM 4 really, really simpler than that, okay? You have this  
5 man saying these ladies deserve to be prosecuted because  
6 they did something in bad faith.

7 And you have another executive agency who  
8 has researched the exact same thing, who has made  
9 findings and conclusions and issued a report that is  
04:41PM 10 public record that says it was done in good faith.

11 I don't -- I believe it is a fundamental  
12 due process violation for the government on one hand to  
13 say in this situation in this courtroom it's bad faith,  
14 but outside of that it's good faith.

04:41PM 15 THE COURT: No, because, number one, it's  
16 two different things. You know, it's the same issue  
17 that we were talking about earlier as far as the bad  
18 faith issue.

19 I mean, it is -- you know, we -- I think  
04:41PM 20 we have used bad faith in terms of the general  
21 manuscript meaning, number one, and you have used the  
22 term bad faith as defined in the statute.

23 MR. COOK: Good faith.

24 THE COURT: Good faith.

04:41PM 25 But there is --

1 MR. COOK: But I mean, let's look at what  
2 is the action, okay, when you -- let's go back into the  
3 mens rea, actus reus. What is the actus reus in this  
4 criminal prosecution is transmitting, okay, for a  
04:42PM 5 nongovernmental purpose, okay, that letter, right?  
6 Okay. What is the mens rea, okay, that  
7 nongovernmental purpose, and they're alleging it was  
8 done to harm because it was filed in bad faith. We have  
9 a right to attack that.

04:42PM 10 THE COURT: No, it's -- it depend -- you  
11 know, you're -- again, it's two different things.  
12 You're talking about bad faith in the sense of your  
13 finding, statutory bad -- or good faith, and then bad  
14 faith that -- as it's used during the course of the  
04:42PM 15 trial in questioning all the witnesses.

16 MR. CARNEY: Your Honor --

17 THE COURT: There is no indication --  
18 nobody has asked any of the witnesses like what do you  
19 mean by bad faith or good faith.

04:43PM 20 MR. COOK: Well, judge, I think we just  
21 did that. If you recall the testimony, I asked him why  
22 he believed it was bad faith.

23 And I think, sheriff, we've got four now,  
24 right, four reasons?

04:43PM 25 And I'm entitled to point out to the jury

1 I believe that his reasoning under this bad faith is  
 2 incorrect.  
 3 MR. CARNEY: Every witness has said we  
 4 think it's okay to do this if you do it in good faith,  
 04:43PM 5 right?  
 6 MR. COOK: Right.  
 7 MR. CARNEY: Every witness has said that.  
 8 THE COURT: Yeah. What I'm saying is when  
 9 every witness said it, it's completely irrelevant --  
 04:43PM 10 MR. CARNEY: Well, I think --  
 11 THE COURT: -- it's completely irrelevant.  
 12 MR. CARNEY: Well, if the intent to  
 13 harm --  
 14 THE COURT: It's objectionable. And all  
 04:43PM 15 the time in criminal cases somebody, well, not all the  
 16 time because people don't usually ask it, do you believe  
 17 that Mr. Smith committed this burglary, yes, I do, and  
 18 that's objectionable.  
 19 MR. CARNEY: The charging instrument says  
 04:44PM 20 it is done with the intent to harm. I think that the --  
 21 it's clear -- I mean, they're trying to prove intent  
 22 circumstantially.  
 23 They're trying to show that the intent was  
 24 based on it was anonymous, the intent was done that it  
 04:44PM 25 was filed late, the intent was done in order to commit

1 this crime because they didn't follow the hospital --  
 2 THE COURT: Who is saying that?  
 3 MR. CARNEY: Well, the State is --  
 4 THE COURT: No --  
 04:44PM 5 MR. CARNEY: -- the sheriff is.  
 6 THE COURT: -- the sheriff is.  
 7 MR. CARNEY: Well, the State is. It's the  
 8 State's case.  
 9 THE COURT: What the witness --  
 04:44PM 10 MR. COOK: But he swore --  
 11 THE COURT: As I mentioned before, you can  
 12 have a case in which the victim comes in and testifies I  
 13 don't think that he's guilty of the offense that he's  
 14 charged with and I wish he wasn't being prosecuted, and  
 04:44PM 15 if the facts -- if the testimony of the witnesses prove  
 16 that the elements of the offense in the indictment are  
 17 true, that's irrelevant. The subjective opinion of a  
 18 witness as to what the facts prove in the case is  
 19 irrelevant.  
 04:45PM 20 MR. CARNEY: Well, judge, let me ask you  
 21 this question. Do you think that we've heard any  
 22 evidence of intent so far?  
 23 THE COURT: So far?  
 24 Well, yes, I do.  
 04:45PM 25 MR. CARNEY: Well, then that element of

1 intent has come circumstantially I guess, right? I  
 2 mean, we haven't heard anybody say they told me they  
 3 intended to file a complaint.  
 4 And so I think that because of that, that  
 04:45PM 5 the intent that has -- that is trying to be inferred to  
 6 the clients, to our client, I think gives the right to  
 7 be impeached by the fact that we have someone that has  
 8 found that there was no bad intent.  
 9 I mean, there is an intent, I mean, you've  
 04:45PM 10 got to show -- you know, as opposed to the intentional  
 11 conduct just as much as innocent conduct in another  
 12 case.  
 13 You know, there is just as much of a  
 14 possibility that this is caused by someone who is doing  
 04:45PM 15 it in good faith and this other person -- if you have --  
 16 for example, let's talk about a car wreck for lack of a  
 17 better -- or a manslaughter case, I don't know,  
 18 something that has some -- aggravated assault --  
 19 THE COURT: How much more do you have with  
 04:46PM 20 him?  
 21 MR. COOK: I've got quite a bunch. Do you  
 22 want to take this up later? Although I do want to use  
 23 this. We think this report comes in. It's an admission  
 24 by the State of Texas. This is not only a witness but  
 04:46PM 25 he's also acting by authority with the State of Texas --

1 THE COURT: Well, yeah, my -- as far as it  
 2 being an admission, that's not an issue with me, I  
 3 understand what you're talking about there.  
 4 But I'm just -- and it's really not  
 04:46PM 5 that -- and maybe I'm just not getting it, but I still  
 6 don't like the fact that, you know, you ask irrelevant  
 7 questions and then impeach the witness with the  
 8 irrelevant questions, I mean --  
 9 MR. CARNEY: Well, I guess it's not  
 04:47PM 10 irrelevant if it's in.  
 11 MR. COOK: Well, and, judge, I don't know  
 12 if going into the underlying reasons why law enforcement  
 13 felt that a crime had been committed is irrelevant.  
 14 THE COURT: Sure, it is, sure, it is.  
 04:47PM 15 MR. COOK: The facts that were available  
 16 to the law enforcement --  
 17 THE COURT: That's not what -- that's --  
 18 you know, it's the opinion of the officer --  
 19 MR. COOK: But for the sheriff's belief  
 04:47PM 20 that this was bad faith these ladies wouldn't have been  
 21 arrested, okay? But for the fact that the sheriff was  
 22 incorrect in his assumptions of what made bad faith  
 23 these ladies wouldn't be arrested.  
 24 THE COURT: Yeah, yeah, it's like I was  
 04:47PM 25 saying, you could disagree with that one.

1 And how much more do you have? I'm trying  
 2 to decide whether to do this tomorrow or --  
 3 MR. COOK: I'd like to keep going. I'll  
 4 tell you what, we can -- I've got a little more stuff  
 04:47PM 5 that we can do and bring the sheriff back tomorrow if  
 6 you want to.  
 7 THE COURT: No.  
 8 MR. COOK: I'll try not to beat a dead  
 9 horse, I promise you that, judge.  
 04:48PM 10 THE COURT: I'm still not -- I'm not  
 11 impressed.  
 12 MR. CARNEY: He is giving his opinion as a  
 13 law enforcement officer as to why he thinks this is an  
 14 intent issue. I think we're entitled to use the  
 04:48PM 15 admission by the State and say did you know that this  
 16 was investigated by somebody else and found to be in  
 17 good faith.  
 18 MR. COOK: How about if we get rid of the  
 19 talking about that -- let's get rid of talking about  
 04:48PM 20 whether this was good or bad, that was good or bad,  
 21 whether the skin graft was good or bad, and I'll just go  
 22 straight to the conclusion, if the Department of Health  
 23 investigated the accusation, or Department of Health,  
 24 and we won't even put the whole report in at this time,  
 04:48PM 25 made the following conclusion.

1 THE COURT: You raised your hand.  
 2 MR. TIDWELL: So let's use this person's  
 3 irrelevant testimony to substitute for the opinion of  
 4 the jury. That's as irrelevant as what you've already  
 04:49PM 5 said is irrelevant coming out of -- this is just one  
 6 person, one witness.  
 7 MR. COOK: This isn't one person, judge.  
 8 This is issued on authority of the executive branch of  
 9 the State of Texas. This is the Department of State  
 04:49PM 10 Health Services' conclusion. And if he thinks it's  
 11 irrelevant and if he thinks it's wrong, he has subpoena  
 12 power.  
 13 THE COURT: The executive branch of the  
 14 State government in Austin, the district attorney's  
 04:49PM 15 office in --  
 16 MR. COOK: That's why it's also a party  
 17 admission, judge.  
 18 THE COURT: Well, I don't have a problem  
 19 with that.  
 04:49PM 20 You know, my issue is that I'm not sure  
 21 also, again this is because of the complications of this  
 22 case, that --  
 23 MR. COOK: Can I talk about this finding  
 24 of good faith with the sheriff?  
 04:50PM 25 THE COURT: Yeah, if you talk about that,

1 how much is that going to --  
 2 MR. COOK: Oh, that's going to take two,  
 3 three questions depending on how he answers.  
 4 THE COURT: Okay. And the rest of his  
 04:50PM 5 testimony?  
 6 MR. COOK: Oh, 45 minutes.  
 7 THE COURT: You still get done tomorrow  
 8 morning?  
 9 MR. TIDWELL: I hope so, judge.  
 04:50PM 10 THE COURT: And what do you guys have  
 11 left?  
 12 MR. COOK: We've got nine witnesses.  
 13 THE COURT: Okay. Bring in the jury.  
 14 (JURY PRESENT)  
 04:51PM 15 THE COURT: Ladies and gentlemen, we're  
 16 going to recess until 9:00 in the morning. Please keep  
 17 in mind the instructions that I gave you earlier.  
 18 I'm going to ask everybody to remain in  
 19 the courtroom until the jury has had a chance to leave.  
 04:51PM 20 And, deputy, would you make sure that that takes place.  
 21 Thank you. You're free to go.  
 22 Everybody else remain in the courtroom  
 23 until they have a chance to leave.  
 24 (JURY NOT PRESENT)  
 25 (COURT ADJOURNED)

1 REPORTER'S CERTIFICATE  
 2 THE STATE OF TEXAS )  
 3 )  
 4 COUNTY OF ANDREWS )  
 5 )  
 6 I, Kelly Allen, Official Court Reporter in  
 7 and for the 109th District Court of Andrews County,  
 8 State of Texas, do hereby certify that the above and  
 9 foregoing contains a true and correct transcription of  
 10 all portions of evidence and other proceedings requested  
 11 in writing by counsel for the parties to be included in  
 12 this volume of the Reporter's Record in the above-styled  
 13 and numbered cause, all of which occurred in open court  
 14 or in chambers and were reported by me.  
 15 I further certify that this Reporter's  
 16 Record of the proceedings truly and correctly reflects  
 17 the exhibits, if any, offered by the respective parties.  
 18 I further certify that the total cost for  
 19 the preparation of this Reporter's Record is \$ \_\_\_\_\_  
 20 and will be paid by Mr. Brian Carney, Attorney for  
 21 Defendant.  
 22 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day  
 23 of \_\_\_\_\_, 2010.  
 24  
 25  
 Kelly Allen, CSR  
 Official Court Reporter  
 109th District Court  
 Andrews County, Texas  
 Andrews County Courthouse, Room 201  
 Andrews, Texas 79714  
 Phone: (432) 524-1480  
 CSR No. 1618  
 Expiration: 12/31/10