

1 REPORTER'S RECORD
2 VOLUME 3 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 10th 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

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1 record that we're trying to offer with regard to whether
2 or not it goes to the purpose of -- for which the
3 offense was committed, the good faith portion on the
4 last page of the document, and how that showed that it
09:06AM 5 was made in good faith.
6 And we had that discussion with regard to
7 whether or not it was made in good faith, and that was
8 our offer. That's why I wanted to be sure I clarify
9 that.
09:07AM 10 And also, of course, I think as we
11 discussed yesterday off the record that we made the
12 offer of this record, one, as an admission by the State,
13 as a State agency, that it was made by the State
14 Department of Health and Human Services, and as such an
09:07AM 15 executive branch and a subdivision of the State, and it
16 is an admission against interest, and that's why we
17 offered it.
18 THE COURT: Okay. And it's also my
19 understanding that you have also requested that you be
09:07AM 20 allowed to simply cross-examine witnesses concerning
21 parts of that, and I've also denied that request. Is
22 that -- I want to make sure that's on the record, too,
23 because I don't think either one of you said that. Is
24 that correct?
09:07AM 25 MR. COOK: And obviously, judge, if a

1 February 10, 2010
2 9:05 a.m.
3 THE COURT: Y'all want to approach please.
4 (AT BENCH, OFF THE RECORD)
09:05AM 5 MR. COOK: Your Honor, we would offer into
6 evidence what we have marked as Defendant's R-1, which
7 is a copy of the Department of Texas Health --
8 Department of Health's report of the survey that was
9 conducted at Winkler County hospital in September of
09:06AM 10 2009, and the results and the findings of that survey.
11 (Defendant's Exhibit No. R-1 offered)
12 THE COURT: And objection?
13 MR. TIDWELL: The State objects that that
14 document is irrelevant and conclusory and invades the
09:06AM 15 province of the jury.
16 MR. CARNEY: The item is being --
17 THE COURT: Okay. And that's overruled,
18 or it's -- your request to --
19 MR. CARNEY: Can I make part of the
09:06AM 20 record, Your Honor?
21 THE COURT: What, argument?
22 MR. CARNEY: No, I'm just going to
23 argue -- Your Honor, we had a protracted discussion
24 yesterday off the record with the court and Mr. Tidwell
09:06AM 25 about this document regarding a specific portion of the

1 witness opens the door, we can jump through it.
2 THE COURT: Yeah, and the same thing, just
3 come up and ask.
4 MR. CARNEY: Your Honor, we've had several
09:08AM 5 bench conferences during the course of the trial, none
6 of them on the record. Could I request that bench
7 conferences be on the record?
8 THE COURT: At such time as there is
9 something that needs to be on the record, you can ask
09:08AM 10 and I'll do it, but -- you know, I don't want to deny
11 somebody something that is a part of the record,
12 objections or things that need to be preserved for the
13 record, but just ask when you want to do that.
14 Generally, you know, I don't make the
09:08AM 15 bench conferences a part of the record. But, you know,
16 if it's situations where there is an objection or
17 something that needs to be on the record, well, I do
18 that, so make your request at the time.
19 MR. CARNEY: You want me to make the
09:08AM 20 request before we approach, when you ask us to approach?
21 THE COURT: Yeah, well, yeah, you can do
22 that.
23 So everybody is ready to go?
24 MR. TIDWELL: Yes, sir.
09:08AM 25 MR. COOK: Roberts is on the stand, and

1 I'm in the middle of cross.

2 THE COURT: Okay. Oh, one other thing, I
3 received a note from the bailiff from Mr. Tyler, a
4 juror, that says, I was drinking coffee with my sister
09:09AM 5 and she said that she had seen the county attorney at
6 the murder trial for my sister. I said I could not talk
7 about the case, so that was that. And in all honesty, I
8 do not even remember him, but I felt it was my duty to
9 bring it to the attention of the court.

09:09AM 10 MR. TIDWELL: I have no idea what they're
11 even talking about.

12 THE COURT: And I don't know whether it's
13 you county attorney or the county attorney here or --

14 MR. TIDWELL: Yeah, it could be John.

09:09AM 15 THE COURT: -- I don't know. But anyway,
16 when I get a communication like this, do y'all want that
17 put in the record?

18 MR. CARNEY: Yes, please.

19 THE COURT: Okay. I think it should be.

09:09AM 20 MR. COOK: And, judge, for purposes of the
21 record, just to make sure it's clear, we are now
22 offering Defendant's R-1 as an offer of proof.

23 THE COURT: Okay. And it's admitted for
24 that purpose.

09:09AM 25 (Defendant's Exhibit No. R-1 received)

1 MR. COOK: Thank you.

2 THE COURT: Bring in the jury.

3 (JURY PRESENT)

4 THE COURT: Good morning, ladies and
09:11AM 5 gentlemen.

6 Go ahead, counsel.

7 MR. COOK: Thank you, Your Honor.

8 CROSS-EXAMINATION RESUMED

9 BY MR. COOK:

09:11AM 10 Q. Good morning, sheriff.

11 A. **Good morning.**

12 Q. How are you today, sir?

13 A. **Fine.**

14 Q. Did you have an opportunity to discuss your
09:11AM 15 testimony with anybody last night?

16 A. **I spoke with my attorney.**

17 Q. Who is your attorney?

18 A. **Scott Tidwell.**

19 Q. When did you first have the discussion with
09:11AM 20 either your attorney or other members of law enforcement
21 about the nurse -- noose -- nurses duty to report?

22 A. **I would guess sometime during the start of this
23 investigation.**

24 Q. Do you remember ever having a conversation on a
09:12AM 25 nurses duty to report to the Texas Medical Board certain

1 issues?

2 A. **I believe we discussed that, yes.**

3 Q. Who is we?

4 A. **Me and Mr. Tidwell.**

09:12AM 5 Q. And did you understand that they had a right to
6 make a report?

7 A. **Yes, sir.**

8 Q. Who drafted the affidavit for search warrant?

9 A. **I believe Mr. Swanson and Mr. Tidwell.**

09:12AM 10 Q. Were you present when it was drafted?

11 A. **No, sir.**

12 Q. Were you ever investigating Dr. Rolando
13 Arafiles?

14 A. **Yes, sir.**

09:12AM 15 Q. You were investigating him as a suspect?

16 A. **Anytime we have an harassment complaint or a
17 complaint, we call them he-said she-said complaints,
18 that come into the office, there's always two sides to a
19 story. To make sure that the complaint that you have
20 received is credible, both parties are actually under
21 investigation.**

09:13AM 22 Q. Okay. And so in investigating Dr. Arafiles,
23 did you at anytime investigate what he had done to these
24 patients?

09:13AM 25 A. **Yes, sir.**

1 Q. And do you believe that he provided quality
2 medical care in every instance?

3 A. **I haven't seen --**

4 MR. TIDWELL: I object, Your Honor. This
09:13AM 5 witness is not qualified to speak on those issues.

6 THE COURT: Sustained.

7 MR. COOK: Okay. Fair enough.

8 Q. (By Mr. Cook) In investigating what he had
9 done to these patients, did you consult anybody who has
09:13AM 10 knowledge of emergency room practices or medicine?

11 A. **No, sir.**

12 Q. When you investigated what he had done to these
13 patients, who did you discuss that with?

14 A. **The patients themselves.**

09:14AM 15 Q. You discussed their private medical information
16 with them, did you not, sir?

17 A. **They volunteered their private information when
18 I asked them if they had a complaint against
19 Dr. Arafiles.**

09:14AM 20 Q. They volunteered -- okay.
21 Were any of the patients -- did any of the
22 patients hold degrees as medical doctors?

23 A. **I don't know that.**

24 Q. You don't know if any of the patients have ever
09:14AM 25 received any type of medical training, do you?

1 A. I believe one of the patients was a nurse.

2 Q. You believe that?

3 A. Yes, sir.

09:14AM

4 Q. Did you talk to her about duty to report the
5 standard of care?

6 A. No, sir.

7 Q. Did you ever have anybody with any type of
8 medical expertise advise you as to whether or not these
9 are the proper type of subjects for the medical board to
10 be concerned with?

09:15AM

11 MR. TIDWELL: I'm going to object to this
12 line of questioning, Your Honor. There is five elements
13 in this case. This question has nothing to do with
14 relevance to any of the five elements.

09:15AM

15 THE COURT: What's the question again?
16 Restate it.

17 MR. COOK: If he ever consulted with
18 anybody who has medical knowledge as to whether or not
19 there was any validity to the concerns that Ms. Mitchell
20 expressed to the Texas Medical Board.

09:15AM

21 THE COURT: Go ahead. Overruled.

22 Q. (By Mr. Cook) Did you hear the question, sir?

23 A. Yes, sir.

24 Q. Would you answer it please, sir.

09:15AM

25 A. Did I consult any medical person --

1 Q. Anybody who has -- yes, any medical person
2 about the validity of the concerns that Ms. Mitchell was
3 raising with the Texas Medical Board.

4 A. No, sir.

09:15AM

5 Q. Do you agree with me that forwarding complaints
6 of questionable medical practices to the Texas Medical
7 Board is a governmental purpose?

8 A. I agree that it can be.

9 Q. Do you agree with me that the Texas Medical
10 Board is an executive agency of the State of Texas?

09:16AM

11 A. Yes, sir, I agree with that.

12 Q. Do you agree with me that the State of -- that
13 the Texas Medical Board has been charged by statute with
14 oversight of physicians' practices?

09:16AM

15 A. Yes, sir, I agree with that.

16 Q. Do you believe that it is proper for concerned
17 citizens, healthcare professionals, to relay to the
18 Texas Medical Board those concerns of questionable
19 medical practices?

09:16AM

20 A. Yes, sir, I believe that.

21 Q. And in doing so, do you believe that that is a
22 function of government?

23 A. Yes, sir, I believe it is.

24 Q. Government makes law, government enforces law,
25 government also has a role to oversee their practices

09:16AM

1 and the law. Would you agree with me there?

2 A. Yes, sir.

3 Q. I believe you have a copy of the search warrant
4 in front of you. It's marked as prosecution's

09:17AM

5 exhibit --

6 MR. COOK: -- is it --

7 MR. TIDWELL: I think it's in the
8 affidavit itself.

9 MR. COOK: Okay.

09:17AM

10 Q. (By Mr. Cook) Have you seen this document
11 before, sir?

12 A. Yes, sir.

13 Q. Would you identify that document, sir?

14 A. I believe this is the search warrant that was
15 used to seize the computers.

09:17AM

16 Q. And your earlier -- did you have any
17 involvement in the drafting of that document?

18 A. No, sir.

19 Q. Did you have any involvement in discussing the
20 facts that should go into that document prior to its
21 being drafted?

09:18AM

22 A. No, sir.

23 Q. You are aware of what the law requires as a
24 minimum for a search warrant to be valid, are you not,
25 sir?

09:18AM

1 A. Yes, sir, I believe so.

2 Q. Is it true it must state articulable facts?

3 A. Yes, sir.

4 Q. Rehashing the name of a statute is not an
5 articulable fact. Would you agree with me?

09:18AM

6 A. No, sir.

7 MR. TIDWELL: I'm going to object, Your
8 Honor. The court has already passed on this issue.
9 This invades the court's province to rule on matters of
10 evidence.

09:18AM

11 MR. COOK: Judge, the law of the State of
12 Texas allows us to raise search issues with the jury.

13 THE COURT: Approach.

14 MR. CARNEY: Can we have this on the
15 record, Your Honor?

09:18AM

16 THE COURT: Yeah. Let's have the jury go
17 out. Stay in the jury room.

18 (JURY NOT PRESENT)

19 THE COURT: Go ahead.

09:19AM

20 MR. COOK: Judge, the --

21 THE COURT: I'm sorry. Thank you.

22 MR. COOK: Judge, we have a right to raise
23 our concerns about the quality of the search and whether
24 or not the way that evidence was obtained was obtained
25 legally. We have had a ruling from the court and -- but

09:19AM

1 that does not preclude us from raising this matter from
2 the jury and seeking an instruction in the jury charge
3 that they are to disregard any evidence that was
4 obtained through it illegally.

09:19AM 5 And so what I would like to do is put on
6 the record the facts of this search warrant and then ask
7 the jury to consider whether or not the evidence that
8 was obtained from it should be considered in the
9 deliberations.

09:19AM 10 MR. TIDWELL: Your Honor, this still
11 invades the province of the court. The court rules on
12 matters of evidence, and the court rules on the
13 admissibility of evidence, and the court rules on
14 matters of law. You have appropriately handled this
09:20AM 15 matter already. And I don't believe the jury will be
16 answering a question one way or another that bypasses
17 your function.

18 THE COURT: My understanding, even on
19 occasions, and I may be confusing consideration of
09:20AM 20 search warrants based on -- when it's before the court
21 and before the jury, but I know that in circumstances in
22 which the court considers the validity of the search
23 warrant, especially on the four corners of the
24 document --

09:20AM 25 MR. COOK: Correct.

1 THE COURT: -- and so other than that,
2 what evidence -- what are you proposing to be offered?

3 MR. CARNEY: May I?

4 THE COURT: No, one at a time.

09:20AM 5 MR. COOK: Judge, okay, the evidence that
6 we are seeking to offer is to have the sheriff identify
7 the articulable facts that are present within the four
8 corners of that document, not the conclusions, not the
9 broad summary statements, but the particular facts that
09:21AM 10 they had in their possession when they went to that J.P.
11 and said we have probable cause to believe a crime has
12 been -- occurred.

13 THE COURT: Okay. And your objection to
14 that is?

09:21AM 15 MR. TIDWELL: They're -- it's in the four
16 corners of the document, it -- what's there is there.

17 THE COURT: Okay.

18 MR. COOK: Judge, the -- you know, another
19 one of the complications in this case is that what they
09:21AM 20 sought to obtain was deemed under the law as highly
21 confidential. And our argument has been all along that
22 since the law granted it this what I called super
23 privileged status where it not only is it not supposed
24 to be used, but it's not supposed to be even discovered.

09:21AM 25 I want to get into whether the facts on

1 that search warrant that we feel -- that this sheriff
2 feels were sufficient to establish probable cause,
3 number one, and sufficient for him to believe he needed
4 to breach that privilege that the State of Texas has
09:22AM 5 made into its law.

6 THE COURT: Well, number one, the issue of
7 whether the materials have some super privileged status
8 is a legal issue.

9 Even in circumstances in which search
09:22AM 10 warrant issues are submitted to the jury, that's done
11 when there are factual issues in regard to the search
12 warrant, not a legal issue. So even if there is a
13 search issue presented to the jury, it's not going to be
14 a legal issue, which is the circumstance that you're
09:22AM 15 talking about.

16 MR. COOK: But what I'm trying to get
17 at --

18 THE COURT: And, number two, you know,
19 what the sheriff --

09:22AM 20 MR. COOK: I'm sorry.

21 THE COURT: -- his legal decisions about
22 what proves what are irrelevant.

23 Anything else?

24 MR. TIDWELL: Nothing else, Your Honor.

09:22AM 25 THE COURT: Anything else?

1 MR. COOK: Judge, we are -- the lack of
2 factual issues is a fact. That's what I'm trying to get
3 into is the fact --

4 THE COURT: Well, I understand that. But
09:23AM 5 unless you can correct me, the law is clear that in
6 judging the sufficiency of the search warrant you must
7 be confined to the four corners of the document that the
8 magistrate used in determining whether or not to issue
9 the search warrant, and not extraneous issues.

09:23AM 10 In that same vein, Mr. Tidwell would not
11 be justified in presenting additional evidence that's
12 not in the search warrant to justify the issuance of the
13 search warrant.

14 MR. COOK: And, judge, what I'm asking to
09:23AM 15 be allowed to do is to go -- to remain within the four
16 corners of that document and to have the sheriff
17 elucidate not conclusions but facts, facts, in the four
18 corners of that document, which we believe are woefully
19 inadequate.

09:23AM 20 THE COURT: Okay. Objection is sustained.

21 MR. COOK: And, judge, could you mark
22 our -- well, never mind. We take exception to the --

23 THE COURT: Yeah, and I don't think there
24 is any objection, I don't want to put words in your
09:24AM 25 mouth, Mr. Tidwell, to the admission of the search

1 warrant. I think you're entitled to do that.

2 MR. COOK: We're ready, Your Honor.

3 THE COURT: Okay. Bring them in.

4 (JURY PRESENT)

09:25AM 5 THE COURT: Welcome back, ladies and
6 gentlemen. Again, I apologize for having to take you in
7 and out, but that's necessary. Unfortunately, the
8 acoustics in our courtroom are so good that discussions
9 that are sometimes intended to be private here at the
10 bench aren't very private. So at an overabundance of
11 caution, we'll have you out when I feel that's
12 necessary.

13 And again, that's my fault, I apologize,
14 but that's just the way things work.

09:26AM 15 Go ahead, counsel.

16 Q. (By Mr. Cook) As a result of the information
17 that you obtained from the execution of that search
18 warrant, did -- first of all, you were able to obtain a
19 copy of the confidential communication to the Texas
09:26AM 20 Medical Board that was written on Anne Mitchell's
21 computer, correct?

22 A. Correct.

23 Q. And based on their description of who they
24 were, they really didn't do a very good job of remaining
09:26AM 25 anonymous, did they?

1 A. From the list of suspects that I had of 21
2 people who had access to both sets of medical files, no,
3 sir, they did not.

4 Q. Okay. It was pretty easy to -- it was pretty
09:26AM 5 easy to figure that out.

6 Well, let me ask you, what -- I want to
7 back up a little bit, sheriff. You've been sheriff of
8 Winkler County for 18 years, correct?

9 A. Yes, sir.

09:27AM 10 Q. What was your employment before that?

11 A. I was a deputy for the Winkler County sheriff's
12 department.

13 Q. How many years?

14 A. Six years.

09:27AM 15 Q. Okay. And what was your employment before
16 that?

17 A. I worked in the oil field. I worked for the
18 San Antonio police department for six and a half years.

19 Q. In what capacity?

09:27AM 20 A. Patrol officer.

21 Q. Okay. And at anytime have you had employment
22 as an EMT?

23 A. No, sir.

24 Q. At anytime have you received specialized
09:28AM 25 medical training?

1 A. Other than first aid training and CPR training
2 through the police department and sheriff departments,
3 no.

4 Q. Would you agree with me that you are not
09:27AM 5 qualified to make determinations about the way that
6 Dr. Arafiles treated his patients?

7 A. Certainly.

8 Q. How about Deputy Swanson, do you know if he has
9 any training other than -- oh, I think when I was in the
09:28AM 10 fire department the first thing was advanced life
11 saving, and then you kind of bopped your way up to EMT.
12 Does Deputy Swanson have any training of that level?

13 A. I would have no way of knowing that.

14 Q. One of the things you said yesterday is the
09:28AM 15 fact that the letter was anonymous made you feel that it
16 was not -- that it was -- that that's one of the factors
17 you used to say it was malicious, right?

18 A. Correct.

19 Q. Did you ever investigate or research or call
09:28AM 20 the TMB about whether or not an anonymous complaint
21 violated any type of law or was even allowed by the law?

22 A. I questioned them concerning that, and they
23 said they do accept anonymous complaints.

24 Q. Who did you talk to at the TMB?

09:29AM 25 A. Pam Crocker.

1 Q. Have you ever met a lady by the name of Linda
2 Lancaster?

3 A. I don't believe so.

4 Q. Are you aware that the Texas Medical Board
09:29AM 5 issued an instanter subpoena for the medical records in
6 this case?

7 A. No, sir.

8 Q. Were you called -- did you make yourself
9 present in the records department of the Texas -- of the
09:29AM 10 Winkler County hospital when Ms. Linda Lancaster, a
11 senior investigator, seized the patient files that were
12 listed in the complaints?

13 A. I believe I saw two investigators in the
14 records office, but I have no idea what they were doing.

09:29AM 15 Q. Did you have any contact with them?

16 A. Just a cordial hello, how are you.

17 Q. Why were you in the records department of the
18 hospital at the time that the Texas Medical Board was
19 seizing the patient files?

09:30AM 20 A. I believe someone called my office and said
21 that investigators from the TMB were there. I actually
22 went up there to see if there was some kind of
23 assistance or some kind of coordination we could maybe
24 get between our two departments since we were both
09:30AM 25 performing an investigation concerning the same

1 information.

2 Q. Well, you've told this jury that you really
3 weren't investigating any standard of care issue.

4 A. No, sir, I'm not.

09:30AM 5 Q. That's what they were investigating, right?

6 A. Yes, sir.

7 Q. You were just investigating this alleged
8 harassment, right?

9 A. Yes, sir.

09:30AM 10 Q. You guys were not doing the same investigation,
11 sir, were you?

12 A. This investigation apparently crosses lines
13 involving the same actors, conspirators, and victims I
14 believe.

09:30AM 15 Q. Conspirators; you think there was a conspiracy?

16 A. Originally, yes.

17 Q. Is that why you had Ms. Vickilyn Galle
18 arrested?

09:31AM 19 A. Well, we know that Ms. Galle was part of
20 writing this letter. I did not -- I was not and am
21 still not able to prove it other than your volition when
22 we had the meeting in my office.

23 Q. Well, yeah, and let's get that out right now.

24 A. Right.

09:31AM 25 Q. You asked to speak to Ms. Galle and

1 Ms. Mitchell, did you not?

2 A. I asked to interview both of them, yes.

3 Q. And we drove out to Winkler County and met you
4 at the sheriff's department, did we not?

09:31AM 5 A. Yes, sir.

6 Q. And Ms. Mitchell and Ms. Galle had no
7 hesitation in admitting they wrote the letter, did they?

8 A. They never admitted that to me.

9 Q. Well, through us.

09:31AM 10 A. Through you, yes.

11 Q. They owned up.

12 After that meeting -- well, you already
13 knew it was Vickilyn Galle and Anne Mitchell at that
14 time, didn't you?

09:32AM 15 A. We knew that we received -- we retrieved a
16 letter from Anne Mitchell's computer. We had nothing
17 other than our theory of conspiracy with Anne Mitchell
18 and Vicki Galle.

09:32AM 19 Q. They know their cover was blown, and they did
20 nothing to seek to deny or hide from the fact that, yes,
21 we wrote this letter, didn't we?

22 A. Under your volition.

23 Q. Under my volition is you mean I was speaking
24 for them, or Mr. Carney, both of us actually I believe,
09:32AM 25 in your office that day?

1 A. Yes, sir.

2 Q. Did we in any way try to deceive you as to who
3 the authors of the letter was?

4 A. No.

09:32AM 5 Q. In fact, we were very forthcoming with that --

6 A. Yes, sir.

7 Q. -- were we not?

8 A. Yes, sir.

09:32AM 9 Q. Did we attempt to discuss with you how this can
10 not be a violation of the criminal codes?

11 A. You made that statement to me, yes.

12 Q. Okay. And at that time isn't it true that what
13 you told us is you were investigating them for the
14 misdemeanor crime of harassment?

09:33AM 15 A. Yes, sir.

16 Q. You said you investigated Dr. Arafiles as part
17 of this, correct?

18 A. Yes, sir.

09:33AM 19 Q. What -- what did you -- what steps did you take
20 to investigate him?

21 A. The first steps of this investigation were to
22 contact the 10 individuals who in the letter from Texas
23 Medical Board were presumed to have filed these
24 complaints on him.

09:33AM 25 Had I interviewed any of these people and

1 any of these people would have stated that they had in
2 fact filed a complaint or had wished to file a complaint
3 or had been contacted by somebody to file a complaint on
4 their behalf, then my investigation would have been over
09:34AM 5 because that would have substantiated the complaint to
6 the Texas Medical Board.

7 Q. Okay. Let me break this down, see if I
8 understand you, sheriff. What you're saying is that
9 you -- well, first of all, you obtained the patients'
09:34AM 10 home address and telephone numbers?

11 A. Yes, sir.

12 Q. You went to the patients' homes?

13 A. In most cases, yes.

09:34AM 14 Q. Including going across state lines to the state
15 of New Mexico to talk with patients?

16 A. Correct.

17 Q. What jurisdiction and authority do you have to
18 conduct criminal investigations in the state of New
19 Mexico?

09:34AM 20 A. I can conduct a criminal investigation in any
21 state in the United States.

22 Q. How did you coordinate your investigation with
23 the local authorities over there?

09:34AM 24 A. I went by and contacted the chief of police,
25 asked if he knew this man, what the address was, and he

1 actually took me over there.
 2 Q. Okay. And I want to make this clear. You got
 3 their names and addresses from Dr. Arafiles, to the best
 4 of your knowledge?
 09:35AM 5 A. I don't know that for sure, but I requested it
 6 from Dr. Arafiles, yes.
 7 Q. And the next morning it was on your desk?
 8 A. Right.
 9 Q. But to be fair, you did not actually see
 09:35AM 10 Dr. Arafiles put those on your desk?
 11 A. No, sir, I did not.
 12 Q. But you know where they came from?
 13 A. I don't know if he brought them or one of the
 14 girls from the office brought them, but somebody brought
 09:35AM 15 them.
 16 Q. Did you discuss with Dr. Arafiles -- well, let
 17 me ask you this. Before you obtained that private
 18 patient information, did you receive a release from any
 19 of those patients to obtain it?
 09:35AM 20 A. No, sir.
 21 Q. Did you obtain that information for the purpose
 22 of medical diagnosis or treatment?
 23 A. No, sir.
 24 Q. Okay. Let's go back. How did you investigate
 09:35AM 25 your friend Dr. Arafiles --

1 A. As I --
 2 Q. -- other than asking -- is that the --
 3 MR. COOK: Well, strike that, Your Honor,
 4 bad question.
 09:36AM 5 Q. (By Mr. Cook) Is that the extent of your
 6 investigation of Dr. Arafiles?
 7 A. That was the extent that I felt I needed to
 8 investigate the substantiation of his claim of
 9 harassment, correct.
 09:36AM 10 Q. Okay. So really you weren't investigating
 11 Dr. Arafiles as a suspect of any criminal act, were you?
 12 A. Yes, sir, he could be filing a false report.
 13 Q. Okay. He could be harassing the nurses?
 14 A. Correct.
 09:36AM 15 Q. So how did investigating patients go towards
 16 investigating Dr. Arafiles?
 17 A. Once again, the 10 names that were on the list
 18 of alleged complainants against Dr. Arafiles were the
 19 key to whether or not this complaint should be
 09:36AM 20 substantiated.
 21 Q. In your mind?
 22 A. In my mind.
 23 Q. This was your investigation?
 24 A. Yes, sir.
 09:37AM 25 Q. You have investigative services at the Winkler

1 County sheriff's department, correct?
 2 A. Yes, sir.
 3 Q. You had at the time a chief investigator --
 4 A. Yes, sir.
 09:37AM 5 Q. -- correct?
 6 You have other deputies who conduct
 7 investigations, correct?
 8 A. Correct.
 9 Q. But you wanted this one?
 09:37AM 10 A. I believe I explained that yesterday.
 11 Q. Well, did you -- were you concerned at all
 12 about a potential conflict of interest with your --
 13 because of your friendship with Dr. Arafiles?
 14 A. No, sir.
 09:37AM 15 Q. Do you think perhaps in an investigation it's
 16 better to have a neutral party who doesn't -- who is not
 17 socially connected to either a complainant or a victim?
 18 A. I think that would be the ideal situation, yes.
 19 Q. If one of your investigators was investigating
 09:38AM 20 a crime that was purportedly committed by a good friend
 21 of his, would you counsel that investigation --
 22 investigator of the propriety of that?
 23 A. The investigator would probably come to me and
 24 acknowledge that information.
 09:38AM 25 Q. So how did you rule out that Anne Mitchell and

1 Vicki Galle were not -- or were not being harassed by
 2 Dr. Arafiles?
 3 A. I had no complaint from them to say they had
 4 been harassed.
 09:38AM 5 Q. You had no complaint from them because they
 6 wanted the Texas Medical Board to do this investigation.
 7 Would you agree with me?
 8 A. I believe if the complaint that they
 9 submitted -- now you have to remember that at this point
 09:38AM 10 in time that we're in my investigation, where you're at
 11 right now, I did not know Vicki Galle and Anne Mitchell
 12 had wrote that letter or filed that complaint.
 13 Q. Okay. Did you write a written report about the
 14 activities of your investigation?
 09:39AM 15 A. Yes, sir.
 16 Q. And why do you write reports, sheriff?
 17 A. They're records and documentation of the
 18 investigation.
 19 Q. Are they important?
 09:39AM 20 A. Yes, sir.
 21 Q. Do you understand that as the case progresses
 22 from investigation to prosecution that, for instance,
 23 prosecutors are going to rely on the information you put
 24 in that report?
 09:39AM 25 A. Yes, sir.

1 Q. Do you understand that at some point defense
2 attorneys are going to obtain copies of that report and
3 they are also likewise going to rely on the information
4 in that report?
09:39AM 5 A. Yes, sir.
6 Q. Do you believe it's important to put all the
7 information that constitutes evidence in the case in
8 your reports?
9 A. There are a lot of things that are in police
09:40AM 10 reports that are summaries or conclusions of
11 investigations.
12 Q. There are --
13 A. All the field notes are not in the body of a
14 report.
09:40AM 15 Q. Are there field notes relating to this case
16 that you have not provided to Mr. Tidwell or anybody of
17 the State of Texas?
18 A. Yes, sir.
19 Q. Do you still have those field notes?
09:40AM 20 A. Yes, sir.
21 Q. Would you bring those field notes to this
22 courthouse this afternoon and allow us to look at them?
23 A. If requested, yes.
24 Q. I'm requesting that, sir. Thank you.
09:41AM 25 Do you have a copy of the report that you

1 Q. The one that was filed with the Texas Medical
2 Board.
3 A. Yes, sir.
4 Q. You're aware that the investigation of the
09:43AM 5 allegations the ladies made is confidential?
6 A. Yes, sir.
7 Q. You're aware that if nothing was done
8 improperly by the doctor that the fact that the
9 complaint was ever made and dismissed would remain
09:44AM 10 confidential?
11 A. If an investigation was done?
12 Q. Yes, sir.
13 A. It's my knowledge and I've been instructed that
14 once a complaint and an investigation is done by the
09:44AM 15 Texas Medical Board on a physician that that information
16 is posted on their web site and remains on that web site
17 forever, whether or not it's founded or unfounded. It's
18 like a black mark against his name.
19 Q. But you're also aware that there is a
09:44AM 20 preliminary review process that occurs to decide whether
21 the information even warrants an investigation?
22 A. Yes, sir, but you just told me there was an
23 investigation.
24 Q. Okay. Well, that's confidential.
09:44AM 25 If he had done nothing wrong and the

1 made in this case and turned over to the district
2 attorney's office?
3 A. Yes, sir, I do.
4 Q. Is it a three-page report that is signed by you
09:41AM 5 and dated 5-29 of '09?
6 A. It's actually a four-page report counting the
7 cover sheet.
8 Q. May I see your report, sir?
9 When you interviewed the nursing staff at
09:42AM 10 the hospital, you were concerned about the -- you were
11 concerned about the rules and regulations of the
12 hospital; isn't that correct?
13 A. Yes, sir, reporting procedures.
14 Q. And you felt that that information that you
09:42AM 15 received from those nurses was important enough to put
16 in your report, correct?
17 A. Yes, sir.
18 Q. Did you conduct a formal interview of
19 Dr. Arafiles?
09:43AM 20 A. No, sir, other than when he initially filed his
21 complaint in my office, we discussed it, the case, why
22 he felt he was being harassed.
23 Q. You're aware the complaint is privileged and
24 confidential, right?
09:43AM 25 A. Which complaint?

1 review process kicked it out, there was no harm to
2 Dr. Arafiles, was there?
3 A. I'm not sure of that.
4 MR. TIDWELL: Your Honor, we object, Your
09:45AM 5 Honor. That invades the province of the jury on one of
6 the essential elements of the crime.
7 THE COURT: Sustained.
8 MR. COOK: A moment to talk to co-counsel,
9 Your Honor.
09:45AM 10 Q. (By Mr. Cook) This case has been going on for
11 eight months now; is that correct?
12 A. Correct.
13 Q. You've had many, many conversations with
14 Mr. Tidwell, have you not?
09:45AM 15 A. Correct.
16 Q. You -- did you ever give him your field notes?
17 A. No, sir.
18 Q. You have lunch quite often with Mr. Tidwell?
19 A. Correct.
09:45AM 20 Q. And I imagine you guys have discussed this
21 case, and don't tell me what y'all discussed, but you've
22 discussed this case many times in your meetings?
23 A. Correct.
24 Q. Did you ever discuss your field notes with
09:46AM 25 Mr. Tidwell?

1 **A. Only to the extent of interviews I'd had. And**
 2 **basically when we began getting ready for trial, we put**
 3 **together a witness list and I told him what the**
 4 **interviews of the different people or potential**
 09:46AM 5 **witnesses had told me.**

6 **But him actually seeing my field notes,**
 7 **no. He probably wouldn't be able to read my field**
 8 **notes.**

9 **Q. Did you testify to the grand jury?**

09:46AM 10 **A. Yes, sir, I did.**

11 **Q. Did you rely upon your field notes in that**
 12 **testimony?**

13 **A. I don't believe so.**

14 **Q. Are you aware that through the course of this**
 09:46AM 15 **trial that we've asked for all statements and all --**
 16 **through discovery all the investigative materials?**

17 **A. Yes, sir.**

18 **Q. And are you aware of a duty to produce any**
 19 **mitigating information?**

09:47AM 20 **A. Yes, sir, I believe so.**

21 **Q. Okay. Now let's talk about that. A couple of**
 22 **weeks ago when you guys were preparing for trial --**
 23 **strike that. Let me go back.**

24 **Sheriff, isn't it true that you were**
 09:47AM 25 **unable to produce through our discovery request any**

1 **witness statements that talked about Anne Mitchell**
 2 **harassing Dr. Arafiles?**

3 **A. I'm not sure I know what you're asking.**

4 **Q. Did you produce any written statements of**
 09:47AM 5 **witnesses that Anne Mitchell harassed Dr. Arafiles?**

6 **A. No, sir.**

7 **Q. You are aware that, in criminal cases, that any**
 8 **statements of the Defendant are supposed to be disclosed**
 9 **well before trial, correct?**

09:48AM 10 **A. Correct.**

11 **Q. Isn't it true starting about two weeks ago you**
 12 **began the second phase of your investigation and that is**
 13 **to go round up witnesses?**

14 **A. You will have to elaborate on that because I --**

09:48AM 15 **Q. Did you go and talk to people in Winkler County**
 16 **about statements that Anne Mitchell or Vicki Galle would**
 17 **have made that could be seen as bad towards**
 18 **Dr. Arafiles?**

19 **A. Well, it was longer than two weeks ago.**

09:48AM 20 **Q. Can you show me any written documentation, any**
 21 **written statement, any police report, where you talk**
 22 **about this person says this about -- bad about**
 23 **Dr. Arafiles?**

24 **A. No. All my interviews with the nurses, the**
 09:48AM 25 **staff at the hospital were just verbal interviews.**

1 **Q. Okay. Isn't it true that in the last two weeks**
 2 **you and Mr. Tidwell have been conducting interviews of**
 3 **staff members of the hospital?**

4 **A. No, sir.**

09:49AM 5 **Q. Are you aware if Mr. Tidwell has been**
 6 **conducting staff interviews at the hospital?**

7 **A. I believe he was going through his witness**
 8 **list, yes.**

9 **Q. Who gave him the witness list?**

09:49AM 10 **A. We worked on the witness list together.**

11 **Q. And when did you do that?**

12 **A. Oh, maybe -- maybe a month, six weeks ago --**

13 **Q. Okay.**

14 **A. -- we started compiling it.**

09:49AM 15 **Q. A month, six weeks ago.**

16 **Prior to grand jury, you had no witness**
 17 **statements?**

18 **A. No, sir.**

19 **Q. After grand jury -- would you agree with me**

09:49AM 20 **that your investigation pretty much shut down once you**
 21 **obtained the indictments?**

22 **A. To a certain extent. I would get wind around**
 23 **town that somebody had something they wanted to tell me**
 24 **about the nurse case and I would go talk to them.**

09:50AM 25 **Q. Did you ever produce any reports based on those**

1 **conversations?**

2 **A. No, sir. They were all verbal conversations**
 3 **between me and the people who told me what they told me.**

4 **Q. Did you provide the grand jury with any**
 09:50AM 5 **statements of other witnesses that were critical of**
 6 **Dr. Arafiles?**

7 **A. No, sir. This was after grand jury.**

8 **Q. At that time would you say that in your mind**
 9 **the fact that they filed a complaint with the Texas**

09:50AM 10 **Medical Board alone was enough evidence for you to**
 11 **believe they were harassing him?**

12 **A. In the manner which it was filed, which I still**
 13 **contend was bad faith, yes.**

14 **Q. That's your opinion, right?**

09:51AM 15 **A. That is my opinion.**

16 **Q. And your opinion was used to convince the grand**
 17 **jury to return an indictment, right?**

18 **A. I believe that and the report and the elements**
 19 **of the case and the facts that as I presented them to**
 09:51AM 20 **the grand jury, yes.**

21 **Q. Are you aware of any other witnesses testifying**
 22 **to the grand jury?**

23 **A. I don't believe so.**

24 **Q. When we subpoenaed your file for the August**
 09:51AM 25 **hearing, you had copies of Dr. Arafiles' Texas Medical**

1 Board sanctions in your file, did you not?
 2 **A. Yes, sir.**
 3 **Q.** Why did you have those?
 4 **A. I believe --**
 09:51AM 5 **You know, off the top of my head I can't**
 6 **remember where they came from. They came in a packet**
 7 **and I had them. They may have been mailed to me by the**
 8 **Texas Medical Board.**
 9 **Q.** Did you have knowledge of Dr. Arafiles' prior
 09:52AM 10 **misconducts before you read that -- those reports?**
 11 **A. I had heard rumors to that effect, yes.**
 12 **Q.** And did you ask Dr. Arafiles if those rumors
 13 **were true?**
 14 **A. I spoke with Mr. -- with Dr. Arafiles regarding**
 09:52AM 15 **those sanctions.**
 16 **Q.** And, I mean, he's your doctor, right, sir?
 17 **A. Correct.**
 18 **Q.** So did he tell you that it was the result of a
 19 **jealous competitor who filed frivolous accusations**
 09:52AM 20 **against him?**
 21 **A. No, sir, he did not.**
 22 **Q.** Did he admit that he had made mistakes and --
 23 **A. He --**
 24 **Q.** -- deserved to be sanctioned?
 09:52AM 25 **A. He admitted that he took on more than he could**

1 **Q.** He wasn't worried?
 2 **A. No, sir.**
 3 **Q.** He didn't feel hurt?
 4 **A. He was upset. You could tell that the man was**
 09:54AM 5 **basically just tired just of being harassed.**
 6 **Q.** Do you think that if somebody makes constant
 7 **mistakes and nurses and other staff people talk to him**
 8 **about that mistakes, do you feel that is harassment,**
 9 **sir?**
 09:54AM 10 **A. No, sir.**
 11 **Q.** How many times in 2009 did you personally have
 12 **to testify before the grand jury?**
 13 **A. In 2009?**
 14 **Q.** Yes, yes, sir, last year, about this case. I
 09:55AM 15 **don't want --**
 16 **A. About this case?**
 17 **Q.** Yeah. I don't want all the other cases. I'm
 18 **sorry, bad question --**
 19 **A. Just one time --**
 09:55AM 20 **Q.** Just that one time?
 21 **A. -- just the one time the grand jury met.**
 22 **Q.** Okay. Have you ever been to Dr. Arafiles' home?
 23 **A. Yes, sir.**
 24 **Q.** You've had him over to your home?
 09:55AM 25 **A. Yes, sir.**

1 **handle in supervising too many nurse practitioners and**
 2 **he couldn't review all their charts.**
 3 **Q.** And did you notice when you looked at those
 4 **files -- and you also received a copy of that State of**
 09:53AM 5 **New York thing that was included with the Texas Medical**
 6 **Board findings; isn't that true?**
 7 **A. I don't recall that, no.**
 8 **Q.** Okay. Did you notice it was an agreed order?
 9 **A. I didn't pay that much attention to it.**
 09:53AM 10 **Q.** Okay. Did that cause you concern that maybe
 11 **what the nurses were seeing in the hospital had some**
 12 **validity?**
 13 **A. Absolutely not, no.**
 14 **Q.** Did he tell you that he was afraid that this
 09:53AM 15 **new complaint, because of that prior action against him,**
 16 **that he was afraid that this new complaint would**
 17 **jeopardize his medical license?**
 18 **A. No, sir, he never said anything about his**
 19 **medical license.**
 09:54AM 20 **Q.** Would you agree with me that he was worried
 21 **when you spoke with him?**
 22 **A. No, sir. The man was mad. He was tired of**
 23 **being harassed.**
 24 **Q.** So he was mad?
 09:54AM 25 **A. Yes, sir.**

1 **Q.** Have you ever went on vacation with him?
 2 **A. Oh, no, sir.**
 3 **Q.** Ever had lunch with him?
 4 **A. On a couple of occasions, yes.**
 09:55AM 5 **Q.** Played golf with him?
 6 **A. Twice.**
 7 **Q.** Play poker with him?
 8 **A. No, sir.**
 9 **Q.** Does Mr. Tidwell play golf with you?
 09:55AM 10 **A. Yes, sir.**
 11 **Q.** Does he play poker with you?
 12 **A. No, sir.**
 13 **Q.** Have you ever had social events in which you
 14 **and Mr. Tidwell and Mr. Arafiles were present?**
 09:55AM 15 **A. Yes, sir. In July of 2008, July 4th, a friend**
 16 **of -- a friend of mine and Mr. Tidwell's and**
 17 **Mr. Arafiles' had a picnic, July 4th picnic, in his**
 18 **backyard by the park in Kermit, and we all attended that**
 19 **with about 50 other people.**
 09:56AM 20 **Q.** Great.
 21 **You and Mr. Tidwell are good friends,**
 22 **aren't you?**
 23 **A. I consider Mr. Tidwell a good friend, yes.**
 24 **Q.** You do eat lunch with him quite often, don't
 09:56AM 25 **you?**

1 A. **Most every day.**
 2 Q. Most every day.
 3 Do you play poker with him?
 4 A. **No, sir.**
 09:56AM 5 Q. Okay. Do you play poker?
 6 A. **No, sir.**
 7 Q. Oh, okay. You've had dinner with him?
 8 A. **Yes, sir.**
 9 Q. You've traveled together?
 09:56AM 10 A. **Yes, sir.**
 11 Q. You meet during some of these Kermit county
 12 morning bullshit sessions with him, don't you?
 13 A. **Say what?**
 14 Q. You meet with Mr. Tidwell during some of these
 09:56AM 15 Kermit county morning bull -- bull sessions that you
 16 talked about yesterday?
 17 A. **Tough to say, wasn't it?**
 18 Q. What's that?
 19 A. **Tough to say, wasn't it?**
 09:56AM 20 Q. Yes, sir, it was.
 21 A. **Yes, sir, we do --**
 22 Q. Answer my question.
 23 A. **-- we do meet --**
 24 THE COURT: Be careful, Mr. Cook.
 09:56AM 25 MR. COOK: Yes, sir.

1 A. **We do meet on occasion.**
 2 **We haven't -- now that's all changed**
 3 **because they moved the commissioners' office last year**
 4 **and, you know, they just don't get together much**
 09:57AM 5 **anymore.**
 6 Q. From April of 2009 when Dr. Arafiles first came
 7 into your office until you went to grand jury, you never
 8 discussed Naomi Warren's complaint, did you?
 9 A. **No, sir.**
 09:57AM 10 Q. You never discussed why her complaint didn't
 11 harass Dr. Arafiles, did you?
 12 A. **No, sir, because I'm still not convinced that's**
 13 **Naomi Warren's complaint.**
 14 **I know that I received a packet from the**
 09:57AM 15 **Texas Medical Board. Pam Crocker, when I asked for this**
 16 **packet, said she had an anonymous complaint concerning**
 17 **Dr. Arafiles.**
 18 **I don't know if Naomi Warren wrote this**
 19 **letter. I don't know if Naomi Warren signed this**
 09:57AM 20 **letter. It was in the packet that Ms. Mitchell sent to**
 21 **the Texas Medical Board.**
 22 Q. Are you insinuating that perhaps Ms. Mitchell
 23 forged Naomi Warren's signature and wrote multiple
 24 complaints because she really wanted to get this doctor?
 09:58AM 25 A. **I'm not insinuating anything.**

1 Q. Well, let me ask you this. And I don't want to
 2 go into any details of your personal medical file,
 3 anything that you've already shared. But Naomi Warren
 4 for years was your primary caregiver?
 09:58AM 5 A. **Yes, sir.**
 6 Q. Okay. You have high respect for her, don't
 7 you, sir?
 8 A. **I have a lot of respect for Ms. Warren.**
 9 Q. Okay. In fact, Ms. Warren worked in the
 09:58AM 10 clinic?
 11 A. **Yes, sir.**
 12 Q. Ms. Warren quit -- worked in the clinic for
 13 almost 20 years?
 14 A. **I don't know how long.**
 09:58AM 15 Q. Are you aware that Ms. Warren had a lot of
 16 patients who considered her their doctor?
 17 A. **Yes.**
 18 Q. Okay. And Ms. Warren quit Winkler County rural
 19 health clinic, did she not?
 09:58AM 20 A. **Yes, sir.**
 21 Q. Are you aware of why she quit the rural health
 22 clinic?
 23 MR. TIDWELL: Your Honor, object on
 24 relevance grounds. We're way past the elements --
 09:59AM 25 THE COURT: Sustained.

1 Q. (By Mr. Cook) Is she your friend?
 2 A. **Yes, sir, I consider her a friend.**
 3 Q. Did you ever ask her if she signed that letter
 4 and show it to her?
 09:59AM 5 A. **No, sir. I haven't spoken with Ms. Warren in**
 6 **over a year I would imagine.**
 7 Q. In front of you in that packet of the State's
 8 exhibit that has the letter that Ms. Anne Mitchell and
 9 Ms. Vickilyn Galle wrote to the Texas Medical Board, can
 09:59AM 10 you pull that out, sir?
 11 Just let me know when you have it, Your
 12 Honor -- or, sheriff.
 13 A. **I really don't believe it's up here.**
 14 MR. COOK: May I approach? Well --
 10:00AM 15 THE COURT: Sure.
 16 A. **I really don't believe it's up here. I believe**
 17 **that's the evidence that we turned in to you.**
 18 Q. Does that help you?
 19 A. **Yes.**
 10:00AM 20 Q. First off, sheriff, can you show me one
 21 disparaging, untrue remark in either of those two pages
 22 of that letter directed against Dr. Arafiles?
 23 MR. TIDWELL: Your Honor, could we have a
 24 clarification about what letter we're talking about?
 10:01AM 25 MR. COOK: The letter that has been

1 entered into evidence as State's Exhibit Number, let me
2 see this, 2, which is the letter that was seized off the
3 computer of Ms. Anne Mitchell.

10:01AM 4 MR. TIDWELL: Is this Ms. Mitchell's
5 letter or -- you've been talking about a Warren letter,
6 so is this -- which one is it?

7 MR. COOK: At this time I want to talk
8 about Ms. Mitchell's letter, Ms. Mitchell and
9 Ms. Galle's letter, to be correct.

10:01AM 10 Q. (By Mr. Cook) Can you find one disparaging
11 remark?

12 A. **Well, basically this whole letter concerns**
13 **Dr. Arafles, and they're complaining about him.**

14 Q. Can you find one unprofessional comment?

10:02AM 15 A. **Unprofessional?**

16 Q. Yeah. Is there a statement we have a witch
17 doctor in our midst or anything like that?

18 A. **No, sir. I believe it's very well written.**

10:02AM 19 Q. Okay. In fact, we talked yesterday, just to go
20 through that quickly, the first part is her concern is
21 of the policies of the hospital, she would like that
22 investigated, correct?

23 A. **Yes, sir, self-review.**

10:02AM 24 Q. Okay. Second of all, she talks about a problem
25 they had with a Dr. Young who got in trouble with the

1 Texas Medical Board for abandoning his patients, right?

2 A. **I don't believe that's the story I heard, no.**

3 Q. Well, isn't that what the letter says?

4 A. **Yes, sir.**

10:02AM 5 Q. Okay. And obviously the Texas Medical Board,
6 since they conducted that investigation, would have
7 better knowledge than you -- than the story you heard?

8 A. **Oh, yes, sir --**

9 Q. Okay.

10:02AM 10 A. **-- absolutely.**

11 Q. Okay. And then she talks about her duty as a
12 patient advocate, doesn't she?

13 A. **Yes, sir.**

10:03AM 14 Q. Would you read that paragraph to the ladies and
15 gentlemen of the jury.

16 A. **As a patient advocate and registered nurse it**
17 **is my duty and responsibility to express my concerns**
18 **regarding the standard of care that this physician**
19 **provides to the community. This is a brief list of**
10:03AM 20 **patient files that are of concern.**

21 Q. Okay. She never said this guy is a horrible
22 doctor and he's bad. She said I have concerns about her
23 standard of care, correct?

24 A. **Correct.**

10:03AM 25 Q. Okay. There is nothing unprofessional in that

1 statement?

2 A. **No, sir.**

3 Q. Okay. Let me take that away from you for a
4 minute.

10:03AM 5 Would you please tell me what you know of
6 0180116288 without referring to any of your files.

7 A. **I have -- I would have to have a name. I**
8 **didn't do anything by numbers.**

9 Q. Tell me something personal about 0180116288.

10:04AM 10 A. **I can't do anything with that.**

11 Q. You can't do anything with that?

12 How about 6553113450?

13 A. **I can't do anything with that.**

14 Q. You can't do anything with that.

10:04AM 15 She says this is a brief list of patient

16 files that are of concern. And all she puts in this
17 letter is numbers.

18 A. **She put files. I am --**

19 Q. No, sir, she --

10:04AM 20 A. **-- I am thinking that the files are at the**
21 **Texas Medical Board. They're not going to send me**
22 **medical files. They're going to send me a complaint --**

23 Q. Sheriff, you just --

24 A. **-- but I didn't get any files.**

10:04AM 25 Q. -- testified earlier that you were at the

1 hospital when the Texas Medical Board served an
2 instanter subpoena for those files.

3 A. **I didn't -- I did not tell you that they --**
4 **that I was there when they were obtaining files. I told**
10:04AM 5 **you I didn't know why they were there.**

6 Q. But you found out why they were?

7 A. **No, sir, I did not.**

8 Q. Do you have any information that any patient
9 files were ever sent anywhere?

10:05AM 10 A. **Just the letter you're holding.**

11 Q. Which did not have any patient files attached?

12 A. **It said these are patient files.**

13 Q. It says please review these following file
14 numbers. It didn't say these are patient files. It
10:05AM 15 doesn't say enclosure, does it?

16 MR. TIDWELL: Objection, Your Honor. This
17 is argumentative, and the document speaks for itself.
18 It can be interpreted many ways --

19 THE COURT: Sustained.

10:05AM 20 MR. COOK: For argumentative? Okay.

21 THE COURT: Well, and for the document
22 speaks for itself.

23 MR. COOK: Okay.

10:05AM 24 Q. (By Mr. Cook) What is confidential about
25 14820112282?

1 MR. TIDWELL: Your Honor, there is a whole
2 list of numbers on there. It's irrelevant. The sheriff
3 is not going to be able to -- unless he wants him to add
4 up some numbers he can tell him --

10:05AM 5 MR. COOK: Judge, one of the elements in
6 this offense is that confidential information was used.
7 I want to know what that confidential information is.

8 THE COURT: Okay. Would the jury retire
9 to the jury room.

10:06AM 10 (JURY NOT PRESENT)

11 THE COURT: As to the issue of relevance,
12 Mr. Cook?

13 MR. COOK: What's the confidential
14 information? I think that if they had patient files
10:06AM 15 they could actually make some sort of argument that
16 HIPAA protected -- HIPAA protected information is
17 confidential and is kept by the government.

18 Patient file numbers are not confidential
19 because they are not kept from the general public. You
10:07AM 20 can see them in every chart. If you walk through a
21 hospital, you can see them on every charge nurse's
22 board, you can see them on the door next to the
23 patient's name. There is no confidential information in
24 the file number.

10:07AM 25 THE COURT: Okay. I understand that.

1 But what the witness thinks is
2 confidential, how is that relevant?

3 MR. COOK: The witness thinks she sent
4 medical files, and he's wrong. But that is relevant.

10:07AM 5 THE COURT: Well, that's what the jury
6 decides.

7 The opinions of the witnesses, I'm not
8 sure I understand how that's relevant.

9 MR. COOK: Then let me move on to that,
10:07AM 10 that what information do you have of any confidential --
11 government-kept confidential items were transmitted or
12 were disclosed, who they were disclosed to, and why are
13 they confidential.

14 THE COURT: Is there any objection to that
10:07AM 15 question?

16 MR. TIDWELL: No.

17 I mean, obviously when the Texas Medical
18 Board sent the names and dates of birth to Dr. Arafles,
19 somehow patients' names got into this.

10:08AM 20 Now I don't -- the sheriff said he doesn't
21 know what went in with this in the packet. But somehow
22 when the letter came out in April a few days after this,
23 the Texas Medical Board identified 10 people's names,
24 not 01 whatever blah, blah, blah. It was Susie Smith,
10:08AM 25 date of birth 9-9-99, so --

1 MR. COOK: And, judge --

2 MR. TIDWELL: -- there is confidential
3 information somewhere.

4 THE COURT: Well --

10:08AM 5 MR. COOK: And, judge, we have the
6 investigator from the Texas Medical Board under
7 investigation. I believe Mr. Tidwell can ask how
8 they -- how the numbers were translated into names.

9 THE COURT: Okay. Well, my question is
10:08AM 10 the form of the question in -- with due respect to the
11 witness, it's irrelevant what this witness thought was
12 confidential and what --

13 MR. COOK: Judge, this is the only witness
14 that testified to a grand jury and got an indictment
10:09AM 15 returned. I want to know why this woman is on trial for
16 disclosing confidential information. I want to know
17 what that confidential information is.

18 THE COURT: Well, that -- y'all approach
19 here.

10:09AM 20 (AT BENCH, OFF THE RECORD)

21 MR. COOK: Could we have this on the
22 record, judge?

23 THE COURT: Yeah, yeah, we'll get it all
24 on the record.

10:10AM 25 MR. COOK: Okay. Under the rights of this

1 case -- or under the charge of this case, I think I have
2 a right to explore what confidential information he
3 believed she had transmitted or she had disseminated
4 that gave rise to him to go in to the grand jury and get
10:10AM 5 an indictment. As he said, he's the only witness that
6 went in there. It is important.

7 What is the confidential information?

8 THE COURT: I mean, it's important because
9 what?

10:10AM 10 MR. COOK: It's important because it
11 doesn't exist, judge. There is no confidential --

12 THE COURT: Well, that's -- yeah, that's
13 the question that the jury will decide.

14 Whether or not the witness thinks the
10:10AM 15 confidential information exists is irrelevant.

16 MR. COOK: Then I will get away from what
17 the witness thinks and I'll get more just straight
18 factual tell me what the confidential information is,
19 because --

10:11AM 20 THE COURT: I'm trying to think whether
21 that's the same question.

22 MR. TIDWELL: It's still eliciting his
23 opinion. I mean, it's either what's your opinion or
24 tell me what it is. It's going to draw the same answer.
10:11AM 25 It's no different.

1 MR. CARNEY: It's not his opinion. It's a
 2 determining fact of the case.
 3 MR. COOK: He feels he had --
 4 THE COURT: Well, okay, we're going one at
 10:11AM 5 a time.
 6 MR. COOK: He, you know, has said, and the
 7 indictment has said, and this prosecutor -- prosecution
 8 is all about, okay, is having confidential information
 9 by the benefit of their employment and using that
 10:11AM 10 confidential information, okay, to harass, right?
 11 What confidential information is where I
 12 want to go. What -- where in this investigation is
 13 there confidential information?
 14 THE COURT: Well, I --
 10:11AM 15 MR. COOK: The only --
 16 THE COURT: -- I guess that information
 17 is -- I guess that question is a relevant question, I
 18 think.
 19 But a question why do you think -- well,
 10:12AM 20 why do you think that's relevant, that's --
 21 MR. COOK: Okay. I'll get rid --
 22 THE COURT: -- it doesn't matter.
 23 MR. COOK: Okay. I will get rid of -- I
 24 will rephrase better.
 10:12AM 25 THE COURT: Do you understand --

1 MR. COOK: Yeah, I do --
 2 THE COURT: -- what I'm saying?
 3 MR. COOK: -- I do, judge, I do. It's
 4 more of a form than getting --
 10:12AM 5 THE COURT: He can't ask that either.
 6 MR. COOK: Okay. I understand and I
 7 agree.
 8 MR. CARNEY: I have a separate issue to
 9 ask the court about while the jury is out. Will the
 10:12AM 10 court take judicial notice of the fact that the statute
 11 makes reports to the Texas Medical Board confidential?
 12 MR. TIDWELL: Well, there is lots of
 13 exceptions to the confidentiality --
 14 MR. CARNEY: Well, but the statute --
 10:12AM 15 MR. TIDWELL: -- and there is a law
 16 enforcement exception to the confidentiality.
 17 MR. CARNEY: I'm not talking about what he
 18 received; I'm talking about their report.
 19 MR. TIDWELL: Maybe it covers it; maybe it
 10:12AM 20 doesn't.
 21 THE COURT: We'll take that up later.
 22 MR. CARNEY: Okay.
 23 THE COURT: Anything else?
 24 MR. CARNEY: How do you want me to handle
 10:12AM 25 anything that's regarding asking the court to take

1 judicial notice of the statute?
 2 THE COURT: Okay.
 3 MR. CARNEY: I mean, later. I'm just
 4 asking how you --
 10:12AM 5 THE COURT: Well, I'm not sure what you
 6 are --
 7 MR. CARNEY: Well, there is two statutes.
 8 One is that the Texas state medical board is a
 9 subdivision of the State of Texas, a governmental
 10:13AM 10 subdivision, political -- I'm not using the right
 11 language.
 12 THE COURT: Okay. Judicial notice of what
 13 now?
 14 MR. CARNEY: The statutes enacting the
 10:13AM 15 Texas Medical Board as a political subdivision of the
 16 State of Texas.
 17 MR. COOK: And the statute of -- and the
 18 statutes concerning the confidential nature of the
 19 reports and the statute concerning the nurses --
 10:13AM 20 THE COURT: Okay. And how is that
 21 relevant?
 22 MR. CARNEY: Well, because it says for a
 23 nongovernmental purpose in the indictment. And if
 24 you're sending something to the Texas Medical Board,
 10:13AM 25 which is a subdivision of the State, how is that not --

1 THE COURT: Are you talking about judicial
 2 notice, or is that going to be -- or are you asking that
 3 to be part of the instructions that are given to the
 4 jury?
 10:13AM 5 MR. CARNEY: I'm asking to take judicial
 6 notice of that, and I also have in my charge that I
 7 submitted to the court, and I know we haven't had a
 8 chance to go through it, but it's also in there.
 9 THE COURT: Okay. I don't know about the
 10:13AM 10 judicial notice. I -- you know, and we're a little
 11 premature on the charge. We talked briefly about that
 12 yesterday. And I suspect there will be something in
 13 that regard. I haven't -- y'all are going to get that
 14 to me sometime today, and I haven't seen that.
 10:14AM 15 MR. CARNEY: It's on the bench, Your
 16 Honor. I left it this morning.
 17 THE COURT: Okay, good.
 18 MR. CARNEY: And because we're so far from
 19 our office, we had to do it last night --
 10:14AM 20 THE COURT: Great.
 21 MR. CARNEY: -- because you wanted it
 22 tonight.
 23 THE COURT: Great.
 24 I don't know what the answer to that is,
 10:14AM 25 to answer your question, at this point.

1 MR. CARNEY: Okay. You want me to
2 approach before I -- before we talk about anything like
3 that?
4 THE COURT: Yeah.
10:14AM 5 MR. CARNEY: Okay.
6 THE COURT: Well, what do you mean talk
7 about anything like that?
8 MR. CARNEY: Well, as opposed to stand up
9 and say I want to offer into evidence, have the court
10 take judicial notice of, the following statute.
11 THE COURT: Well, yeah, approach before
12 you do that, to answer your question.
13 MR. CARNEY: Okay.
14 THE COURT: Bring in the jury.
10:15AM 15 (JURY PRESENT)
16 THE COURT: Go ahead, counsel.
17 MR. COOK: Thank you.
18 Q. (By Mr. Cook) On this letter alone, with the
19 patient file numbers, there is no confidential
10:15AM 20 government held -- confidential information held by the
21 government in that letter, is there?
22 MR. TIDWELL: I object, Your Honor.
23 Mr. Cook is testifying. He needs to ask a question.
24 THE COURT: Go ahead --
10:15AM 25 MR. COOK: That was my question.

1 THE COURT: -- overruled. Go ahead.
2 Q. (By Mr. Cook) Is there, sheriff?
3 A. Well, I would conclude that, unless these
4 numbers are made up, that they do represent confidential
10:16AM 5 information in a file of a patient which Ms. Mitchell
6 has reviewed or wouldn't have sent this information
7 forward.
8 Q. The file of the patient, without a doubt,
9 contains confidential information, doesn't it?
10:16AM 10 A. Yes, sir.
11 Q. Okay. And is it your belief, sir, that
12 Ms. Mitchell used those files and -- that she forwarded
13 those medical files?
14 A. I have no way of knowing whether she forwarded
10:16AM 15 those files. I am assuming and concluding that she at
16 least reviewed those files or would not have those
17 numbers.
18 Q. Well, whether or not she reviewed the files, do
19 you have any knowledge of her forwarding the
10:16AM 20 confidential information contained within those files?
21 A. I have no way of knowing whether she forwarded
22 files, no.
23 Q. Okay. Were you under the impression as you
24 were doing this investigation that she did?
10:17AM 25 A. I believe information has exchanged hands, yes,

1 confidential information.
2 Q. Has exchanged hands between whom and whom?
3 A. Between Ms. Mitchell and the Texas Medical
4 Board.
10:17AM 5 Q. The Texas Medical Board is allowed to receive
6 confidential health information?
7 A. Yes, sir, they are.
8 Q. The Texas Medical Board is allowed to receive
9 confidential health information without any concerns of
10:17AM 10 HIPAA, which is the Health Insurance Portability
11 Protection Act, the big law to protect our privacy in
12 medical files, because they're HIPAA exempt, right?
13 A. Correct.
14 Q. The Texas Medical Board has the right to
10:17AM 15 receive those files without the consent of the patient?
16 A. Correct.
17 Q. Okay. So the Texas Medical Board is a division
18 of the State of Texas, is part of the government?
19 A. Correct.
10:18AM 20 Q. Okay. So is it your allegation that by -- that
21 if the Texas Medical Board came into confidential file
22 information because of Ms. Mitchell's complaint that she
23 had forwarded that?
24 A. I believe that the Texas Medical Board would
10:18AM 25 not have that information had it not been for the

1 reporting of Ms. Mitchell, yes.
2 Q. Okay. We'll get back -- how many times did you
3 speak with members of the Texas Medical Board, sir?
4 A. To my knowledge, that one day in the hospital.
10:18AM 5 Well, on the phone I talked to them --
6 Q. Okay. Have you --
7 A. -- twice I believe.
8 Q. I'm sorry for interrupting you.
9 You never asked them if they had received
10:18AM 10 any medical files, did you?
11 A. Not to my knowledge, no.
12 Q. Okay. She then -- so we've got the file
13 numbers, which just from me reading them you can't tell
14 me anything personal about those patients?
10:19AM 15 A. No, sir.
16 Q. Patients that are seen in the clinic by
17 Dr. Arafles are later e-mailed and encouraged to buy
18 herbal medicines that he sells. These medicines are not
19 sold in the clinic.
10:19AM 20 Did you investigate whether that statement
21 was true?
22 A. No, sir.
23 Q. In the December meeting -- she talks about
24 these meetings in the hospital and what was happening in
10:19AM 25 them, right?

1 In the December meeting of the medical
2 staff it was decided that Dr. Arafiles would be given
3 active medical staff privileges. This was done with the
4 proviso that he contacts the medical board to remove the
10:19AM 5 restriction on his license. This was to be accomplished
6 within six months, by June 2009. The current bylaws
7 require that the privileges be granted to a physician
8 with an unrestricted license. If this is not
9 accomplished, then he should not be on active staff.

10:20AM 10 Is there anything untrue in that
11 statement?

12 **A. I have no way of knowing.**

13 **Q.** A pharmacy log of interventions has been kept,
14 of interventions necessary due to dosage issues,
10:20AM 15 Vanconicin -- Vancomycin --

16 **THE DEFENDANT:** Vancomycin.

17 **Q.** (By Mr. Cook) -- Vancomycin dosage, dosage in
18 children, MVI usage. Herbal medicines that are not in
19 the formulary.

10:20AM 20 Did you investigate whether or not that
21 statement was true?

22 **A. No, sir.**

23 **Q.** Utilization management was told by
24 administration, Mr. Wiley, not to send any records for
10:20AM 25 review, he would tell utilization management when that

1 could be started. That occurred in the -- or fall of
2 '08.

3 Did your investigation lead you to believe
4 that that was untrue?

10:20AM 5 **A. No.**

6 **Q.** Did you even investigate it?

7 **A. No.**

8 **Q.** Concerns have been voiced by other physicians,
9 emergency department staff, clinic staff. The

10:21AM 10 administrator and board of control have been notified of
11 these concerns, R-E, procedures, standards of care. The
12 chief of staff, Dr. Pham, requested a meeting for

13 October 16th with Dr. Arafiles and Mr. Winton and Anne
14 Mitchell and Mr. Wiley. Mr. Wiley canceled the meeting.

10:21AM 15 He then rescheduled the regular medical staff November
16 meeting and then canceled that one, also. This was the
17 meeting that the privileges were to be determined for

18 Dr. Arafiles, continuation of provisional as recommended
19 by Dr. Pham or appointment by active staff. As stated,

10:21AM 20 Dr. Arafiles was granted active privileges with the
21 proviso that he gets the restriction moved from his
22 license.

23 Did you investigate whether those meetings
24 occurred?

10:22AM 25 **A. It is -- it was my conclusion that those**

1 elements of the letter were all addressed at a physician
2 staff meeting after the first of the year in which --
3 basically it was before the first of the year, where
4 agreements were made by Ms. Mitchell, by Dr. Pham, by
10:22AM 5 the hospital administrator, and by the physicians to
6 correct all the problems that had arisen from
7 allegations of mistreatment or -- not mistreatment, but
8 medical practices in the facility that were not
9 permitted.

10:22AM 10 **Q.** Did you understand that the bylaws of the
11 hospital prevented Dr. Arafiles from having full staff
12 privileges?

13 **A. No, sir.**

14 **Q.** Did you understand that Ms. Mitchell was being
10:22AM 15 asked to sign off on her credentialing files, part of
16 her job, that he met the requirements for full staff
17 privileges?

18 **A. No.**

19 **Q.** Did you understand that Ms. Mitchell refused --
10:23AM 20 **A. No.**

21 **Q.** -- to sign off on him because he never should
22 have been hired in the first place --

23 **A. No.**

24 **Q.** -- under the hospital bylaws?

10:23AM 25 **A. No, sir.**

1 **Q.** Dr. Arafiles, in April when this letter was
2 sent, still had restrictions on his license, didn't he?

3 **A. I don't know that.**

4 **Q.** He testified yesterday that he still has them
10:23AM 5 on them today.

6 Can you show me one item from that letter
7 that you believe is information that has been kept by
8 the government that has been -- that is confidential, in
9 that letter?

10:24AM 10 **A. The only thing I would say is confidential are
11 these numbers unless somebody just made them up. They
12 correspond to a confidential patient file.**

13 **Q.** All those numbers do is tell the investigator
14 where to find evidence. Would you agree with me on
10:24AM 15 that?

16 **A. I believe that's a file number, yes.**

17 **Q.** Okay. You have in your law enforcement
18 capacity been told by witnesses, victims, where to go
19 find evidence?

10:24AM 20 **A. Yes, sir.**

21 **Q.** Looking for evidence is a governmental purpose
22 if it's being done by a licensed peace officer. Would
23 you agree with me?

24 **A. I would agree with that.**

10:24AM 25 **Q.** Linda Lancaster, the senior investigator that

1 you met in the records department, is a licensed peace
2 officer; isn't that correct?

3 **A. I don't know that.**

4 **Q.** Are you aware that investigators for the Texas
10:25AM 5 Medical Board have been granted peace officer status?

6 **A. I'm not aware of that.**

7 **Q.** Would you agree with me then, sir, that if it
8 was a licensed peace officer who obtained medical files
9 that that is a government purpose?

10:25AM 10 **A. Yes, sir.**

11 **Q.** Where is your evidence, sir, that any
12 confidential information has been forwarded to another?

13 **A. This letter.**

14 **Q.** That's it?

10:25AM 15 **A. Unless she made these numbers up, somebody**
16 **reviewed, and I am concluding that Ms. Mitchell reviewed**
17 **these charts, obtained information, letting the medical**
18 **board know they need to look at these charts --**

19 **Q.** And that's --

10:25AM 20 **A. -- or they would have showed up and looked at**
21 **every chart in the hospital.**

22 **Q.** Okay.

23 **A. Somebody violated looking at confidential,**
24 **privileged charts because they had access and relayed**
10:25AM 25 **information that you need to look at these charts.**

1 **Q.** Sheriff, let's talk about you.

2 **A. Yes, sir.**

3 **Q.** You obtained those complaints --

4 **A. Yes, sir.**

10:26AM 5 **Q.** -- right?

6 **A. I sure did.**

7 **Q.** Those complaints are confidential?

8 **A. And can be used for a law enforcement purpose,**
9 **a criminal investigation, which I was conducting.**

10:26AM 10 **Q.** And medical files can be used for law
11 enforcement purposes, for criminal investigations, and
12 also for investigations of the standards that a
13 physician is practicing at, can't they?

14 **A. You will have to repeat that.**

10:26AM 15 **Q.** Medical files can be used for law enforcement
16 investigations and for investigations conducted by the
17 State of Texas into the standard of care of a physician,
18 can't they?

19 **A. I agree with that.**

10:26AM 20 **Q.** And if they were obtained by a licensed peace
21 officer who was conducting an investigation, that's a
22 government purpose --

23 **A. I agree with that.**

24 **Q.** -- isn't it?

10:27AM 25 **And if Anne Mitchell did not transmit any**

1 confidential information, you have a problem with this

2 indictment, don't you?

3 **A. I don't believe so.**

4 **Q.** If I tell you where there is 44 kilos of

10:27AM 5 cocaine and you go and you look and you find 44 kilos of
6 cocaine, did I possess and give that cocaine to you?

7 **A. You may have. You knew where it was.**

8 **Q.** Have you ever arrested a person for telling you
9 where there was evidence of a crime, for simply telling
10:27AM 10 you where there was evidence of a crime?

11 **A. Oh, yes, sir.**

12 **Q.** For that reason alone?

13 **A. He was part of the crime, yes.**

14 **Q.** And your investigation turned out he was part
10:28AM 15 of the crime?

16 **A. Yes, sir.**

17 **Q.** But that's not my question.

18 My question is, have you ever before
19 arrested somebody for the sole reason that they told a
10:28AM 20 police officer where there was evidence of a crime?

21 **A. Yes, sir.**

22 **Q.** For that reason only?

23 **A. Yes, sir.**

24 THE COURT: Ladies and gentlemen, I'm
10:28AM 25 going to admonish members of the audience, once again,

1 no comments, no sounds, no faces. If you can't do that,
2 I'm going to instruct the security officers and the
3 bailiff to remove you from the courtroom. Does
4 everybody understand that?

10:28AM 5 Raise your hand if you understand that.

6 Okay. Again, we are here for a very
7 serious purpose, and we welcome you to be here. When
8 your being here interferes with the purpose that we're
9 functioning, then you won't be here anymore.

10:29AM 10 Excuse me for interrupting, Mr. Cook.

11 MR. COOK: Thank you, Your Honor.

12 **Q.** (By Mr. Cook) The Texas Medical Board at the
13 same time they sent you the complaint that was drafted
14 by Anne Mitchell and Vickilyn Galle sent you a complaint
10:29AM 15 from Naomi Warren, did it not?

16 **A. Yes, sir, this was included in the packet.**

17 **Q.** But there is a difference on how Ms. Warren
18 notified the Texas Medical Board about what patients to
19 be of concern about, isn't there?

10:29AM 20 **A. Yes, sir. There are initials on this one.**

21 **Q.** There is more than initials, sir.

22 First of all, are there any patient file
23 numbers?

24 **A. No, sir.**

10:29AM 25 **Q.** Okay. He gives -- she gives initials in that

1 letter, doesn't she?

2 **A. Yes, sir.**

3 **Q.** And she says stuff, such as LN was started on

4 Armour Thyroid. That could be confidential, couldn't

10:30AM 5 it?

6 **A. Yes, sir.**

7 **Q.** Several months later she was seen by another

8 provider. Her TSH was zero with a very elevated T4. No

9 baseline labs were ever done to determine her need for

10:30AM 10 thyroid replacement.

11 Do you think that's confidential?

12 **A. Yes, sir.**

13 **Q.** You had that information before you went to

14 grand jury, didn't you?

10:30AM 15 **A. Yes, sir.**

16 **Q.** You had that information when you put her in

17 jail, didn't you?

18 **A. Yes, sir.**

19 **Q.** You didn't even know you had that information

10:30AM 20 until I pointed it out to you in a court of law in

21 August of 2009, did you?

22 **A. No, sir, I had this complete packet when I**

23 **received it originally from the Texas Medical Board.**

24 **Q.** You testified under oath, sir, on August 5,

10:30AM 25 2009, that you did not know there was two complaints.

1 Do you remember that, sir?

2 **A. Yes, sir.**

3 **Q.** You never even read it before you accused her

4 and put her in jail, did you, sir?

10:31AM 5 **A. That's wrong.**

6 **Q.** Then how come in August you didn't know there

7 was a second complaint?

8 **A. We have disagreed on this since day one. I got**

9 **one complaint from the Texas Medical Board. They said**

10:31AM 10 **they had anonymous complaint. This all came together.**

11 **I have no way of knowing whether Naomi Warren sent this**

12 **in or not. It was attached to our complaint.**

13 **Q.** Right.

14 And if you look at Anne Mitchell's

10:31AM 15 complaint, she lists five patients of concern, or files

16 of concern, correct?

17 **A. Six.**

18 **Q.** Actually there is six of them, but two of them

19 have the first -- the first part number is the actual

10:31AM 20 patient identifier. Two of them are for the same

21 patient, correct?

22 **A. Yes, sir.**

23 **Q.** Okay. Dr. Arafles was notified of 10 patients

24 that they had a concern of?

10:31AM 25 **A. Correct.**

1 **Q.** Did you ever try to put it together, well, if

2 she complained about five, why are there 10?

3 **A. This complaint was together when I received it.**

4 **Q.** So it's your -- it is your -- what -- and I

10:32AM 5 want to be clear on this. Are you saying that you

6 believe that the letter written and signed by Naomi

7 Warren was not written and signed by Naomi Warren?

8 **A. It is my conclusion that this entire packet was**

9 **sent in at one time as one complaint.**

10:32AM 10 **Q.** How do you know that?

11 **A. Because I asked Pam Crocker of the medical**

12 **board if she had a complaint. She said I have an**

13 **anonymous complaint. An anonymous complaint tells me**

14 **there is one complaint. When I requested it, this is**

10:32AM 15 **what I got.**

16 **Q.** Okay. And you got two complaints?

17 **A. I got one complaint.**

18 **Q.** Okay. Let's put it this way. You got one

19 complaint that's anonymous and you got one complaint

10:32AM 20 that's signed by Naomi Warren, right?

21 **A. I've got one complaint with Naomi Warren's**

22 **signature on it, yes.**

23 **Q.** But you don't believe that Naomi Warren wrote

24 that -- wrote the first letter?

10:32AM 25 **A. I didn't say that. I said I have one with her**

1 **signature on it. I don't know if it was all sent in**

2 **together or not. I --**

3 **Q.** Then why --

4 **A. -- received it together.**

10:33AM 5 **Q.** Then, sheriff, you know Naomi, you know where

6 she works, right?

7 **A. Right.**

8 **Q.** You know where she lives?

9 **A. Right.**

10:33AM 10 **Q.** You know her husband?

11 **A. Right.**

12 **Q.** You know her kids?

13 **A. No.**

14 **Q.** You know -- but if you wanted to go and talk to

10:33AM 15 Naomi, how difficult would that have been?

16 **A. It would have been very easy.**

17 **Q.** But you never did that, did you?

18 **A. No, sir.**

19 **Q.** You never asked Naomi, hey, did you send this

10:33AM 20 in?

21 **A. No, sir.**

22 **Q.** You never did that before you had her indicted

23 and put in jail, did you?

24 **A. No, sir.**

10:33AM 25 **Q.** Naomi Warren lives in Kermit, doesn't she?

1 A. No, sir.

2 Q. Okay. Naomi Warren is very highly regarded in
3 Kermit, doesn't she?

4 A. Yes, sir.

10:34AM 5 Q. Isn't she, excuse me.

6 Well, let me ask you, I'm a little
7 confused by this, how is this evidence different? How
8 is what Naomi has written in that letter -- and,
9 judge -- and, sheriff, I'm going to represent to you,
10 because Ms. Warren is coming to testify, that she wrote
11 that letter, okay?

12 A. Okay.

13 Q. Okay. How is the information contained in that
14 different from the information that you found on
15 Ms. Mitchell's computer?

16 A. For the facts of this case, it wouldn't matter
17 if there was one patient number on there or 300 patient
18 numbers. Confidentiality was breached. The lady in her
19 position as a public servant obtained this information
20 and forwarded it to the Texas Medical Board in bad faith
21 because she had vengeance and a grudge against the
22 doctor and wanted him gone.

23 Q. Well, that's your opinion, right?

24 A. That's why we're here.

10:35AM 25 Q. Another way to look at it is you went and you

1 were going to protect your doc, friend, and you were
2 going to punish anybody who threatened his job; Isn't
3 that true?

4 A. No, sir, that's not.

10:35AM 5 Q. Another way to look at it is you with your
6 lawyer and the doctor's lawyer got together to try to
7 shut them up?

8 A. No, sir.

9 Q. No, sir?

10:35AM 10 A. We investigated a crime.

11 Q. Is it true that --

12 A. I believe a crime has been committed.

13 Q. Is it true that -- is it true that she was
14 fired the same day you put her in your jail?

10:35AM 15 A. I don't know that.

16 Q. And I don't mean to beat a dead horse, but is
17 it your testimony that those patient file numbers are
18 confidential?

19 A. Yes, sir. The information contained within
20 these numbers is confidential, which relates to these
21 numbers. Somebody looked at them. Somebody had to tell
22 the medical board there is confidential information in
23 these files that you need to look at.

24 Q. That's not forwarding the files --

10:36AM 25 A. That's forwarding the information.

1 Q. Are you aware that substandard care under the
2 laws of the State of Texas, specifically the Medical
3 Practice Act, is illegal?

4 A. Yes, sir.

10:36AM 5 Q. Did you ever discuss with the Texas Medical
6 Board a nurse's duty to report?

7 A. Not to my knowledge.

8 Q. Did you ever discuss with anybody other than
9 Scott Tidwell a nurse's duty to report?

10:37AM 10 A. Not to my knowledge.

11 Q. Did you ever discuss with anybody other than
12 Mr. Tidwell every one of us' citizens right to report
13 questionable medical practices?

14 A. Did we discuss everyone's right to report bad
15 medical practice?

16 Q. Yes. Not you and Mr. Tidwell. Did you discuss
17 with a member of the TMB or Dr. Arafiles or anybody a
18 person's right to notify the licensing authority of
19 questionable medical practices?

10:37AM 20 A. When I first called the medical board and asked
21 if I could get a copy of the report and they told me
22 that they accepted anonymous reports, she explained that
23 to me, that anybody can make a complaint, whether it's
24 anonymous or they leave a name or --

10:38AM 25 Q. I'm not talking about anonymous.

1 Anybody can make a report, anybody can
2 sign a report?

3 A. Exactly. That's what I'm telling you.

4 Q. Okay.

10:38AM 5 A. We discussed that.

6 Q. Would you agree with me on the four -- and do
7 you know what I mean by the four corners of that
8 document? And that document, I mean the letter that you
9 received from the Texas Medical Board that tracked the
10 letter that was found on Anne Mitchell's computer.

11 Would you agree with me contained on that two pieces of
12 paper there is no confidential information?

13 A. No, sir, I wouldn't agree with you.

14 Q. Well, without going somewhere else to look,
15 there is no confidential information, is there?

16 MR. TIDWELL: Object, Your Honor. This
17 has been answered about four times.

18 THE COURT: Sustained.

19 Q. (By Mr. Cook) And by the way, did it ever
20 occur to you to compare the letter that was found on
21 Anne Mitchell's computer with what you say is -- you
22 thought was one complaint?

23 A. Yes, sir.

10:39AM 24 Q. Did the portion of the complaint signed by
25 Naomi Warren appear on Anne Mitchell's computer?

1 A. No, sir.

2 Q. Did that cause you to suspect that maybe,
3 possibly, there has been more than one complaint filed
4 against this doctor?

10:39AM 5 A. No, sir.

6 Q. Did you ever conduct an investigation to
7 support your assumption that medical -- private medical
8 information was transmitted by finding out how the Texas
9 Medical Board really came into possession of the actual
10 patient files?

11 A. No, sir.

12 I do know that Dr. Arafiles --

13 Q. And I'm going to ask you --

14 THE COURT: Answer the question as
15 directly as you can. Mr. Tidwell can redirect if he
16 wants to.

17 Go ahead.

18 Q. (By Mr. Cook) Did you have any concern that
19 morning when you found on your desk patient identifying
20 information, home addresses and phone numbers, that you
21 were in possession of confidential HIPAA protected
22 information?

23 A. No, sir.

24 Q. Did you institute an investigation on who
10:40AM 25 breached patient confidentiality and provided that

1 information to you?

2 A. No, sir.

3 Q. Did -- was that information that was provided
4 to you, was that together with any releases from
10:41AM 5 patients saying that they agreed to have that
6 information provided to you?

7 A. No, sir.

8 Q. Did you seek a warrant or have any type of
9 court order allowing you to possess confidential patient
10:41AM 10 information in your investigation?

11 A. No, sir.

12 Q. Did you take that confidential information
13 across state lines?

14 A. Yes, sir.

10:41AM 15 Q. And did you discuss with patients the fact that
16 you knew that they were patients of Winkler County
17 hospital and you knew that they had been seen by
18 Dr. Arafiles?

19 A. No, sir.

10:41AM 20 Q. When you -- when the TMB investigators were at
21 the hospital obtaining records, did they call you for
22 assistance?

23 A. No, sir.

24 Q. Did you ever discuss with Naomi Warren whether
10:42AM 25 her concerns about Dr. Arafiles' practice was real?

1 A. No.

2 Q. Do you believe that Dr. Arafiles always
3 operates above the standard of care?

4 MR. TIDWELL: I'm going to object, Your
10:43AM 5 Honor. That's a question not even a nurse can answer.
6 Only a physician can speak to another physician's
7 standard of care.

8 THE COURT: Sustained.

9 Q. (By Mr. Cook) When you went and interviewed
10:43AM 10 these patients, you took a printout from the hospital
11 that had their names, addresses, telephone numbers, and
12 other information on it, didn't you, with you?

13 A. No, sir. I took the information that was left
14 on my desk with me, and I believe it's hospital
10:43AM 15 generated.

16 Q. Okay.

17 A. I don't know that for a fact.

18 Q. And when you crossed state lines to the state
19 of New Mexico, you had that information with you, didn't
10:43AM 20 you?

21 A. Yes, sir. I had the whole file with me.

22 Q. You never invest -- you never advised the Texas
23 Medical Board that you were not investigating a license
24 holder of the Texas Medical Board, a doctor, did you?

10:44AM 25 A. When I originally began to investigate,

1 everybody was investigated.

2 THE COURT: Take a -- we'll be in recess
3 for 15 minutes. Please feel free to move outside the
4 jury room. Keep in mind the instructions I gave you
10:44AM 5 earlier.

6 (A recess was taken from 10:44 to 11:00.)

7 THE COURT: Bring them in.

8 Go ahead.

9 Q. (By Mr. Cook) When you went to Jal, sheriff,
11:00AM 10 and met with the chief of police over there, did you ask
11 him where Vicki Galle and Anne Mitchell lived?

12 A. No, sir.

13 Q. What facts led you to believe that Dr. Arafiles
14 should be cleared in the investigation?

11:01AM 15 A. None of the complainants listed with the Texas
16 Medical Board filed a complaint.

17 Q. That's this single fact that cleared him?

18 A. I didn't figure he filed on himself.

19 Q. When you got the subpoena, did you put your
11:01AM 20 investigative file notes in the file?

21 A. Yes, sir.

22 Q. And you have not destroyed those, have you,
23 sir?

24 A. My file notes?

11:01AM 25 Q. Yes, sir.

1 A. No, sir. They're right here.
 2 Q. You brought your personal notes with you?
 3 A. I have everything in my file, my file notes.
 4 Q. How about your --
 11:01AM 5 A. I don't have my field notes, no.
 6 Q. Okay. Have your field notes been destroyed?
 7 A. No, sir.
 8 Q. And you've said you would -- you will turn
 9 those over to us this afternoon, right?
 11:01AM 10 A. Yes, sir.
 11 Q. Is it standard practice to keep separate files
 12 in investigation, one with field notes and one with
 13 evidence you turn over to the district attorney?
 14 A. Yes, sir, I believe every officer keeps field
 11:02AM 15 notes.
 16 Q. Do you believe the Texas Medical Board's
 17 understanding when they were cooperating with you was
 18 that you were investigating a doctor?
 19 MR. TIDWELL: I object, Your Honor. How
 11:02AM 20 would he know what a person --
 21 THE COURT: Sustained.
 22 Q. (By Mr. Cook) When you obtained that
 23 confidential letter, that's when you learned that they
 24 were registered nurses over 50 years of age and employed
 11:02AM 25 by Winkler County hospital; isn't that correct?

1 A. That's correct.
 2 Q. And this information led you to believe it
 3 could only be Anne Mitchell and Vicki Galle; is that
 4 correct?
 11:03AM 5 A. It pretty much narrowed it down.
 6 Q. And it was that letter that you obtained that
 7 allowed you to narrow down your search; isn't that
 8 correct?
 9 A. Yes, sir.
 11:03AM 10 Q. And during the course of this investigation,
 11 you kept Mr. Tidwell advised of the progress of the
 12 investigation, didn't you?
 13 A. Yes, sir.
 14 Q. And when you seized the letter from the
 11:03AM 15 computer and compared it to the confidential complaint,
 16 it -- they matched, correct?
 17 A. Pretty much. There are some discrepancies.
 18 Q. Did you interview Mr. Wiley, Stan Wiley, the
 19 administrator of the hospital, as part of your
 11:04AM 20 investigation?
 21 A. Yes, sir.
 22 Q. And have you continued -- or have -- did you
 23 keep him informed as to what you were learning during
 24 the course of the investigation?
 11:04AM 25 A. During parts of the investigation, yes, not all

1 of it at all.
 2 Q. Did Dr. Arafiles ever give you a written
 3 complaint about being harassed?
 4 A. No, sir.
 11:04AM 5 Q. Did you ever ask Dr. Arafiles to make a witness
 6 statement or a victim statement about this case?
 7 A. No, sir.
 8 Q. Is it standard procedure in your office not to
 9 reduce the complaint to writing that a person has --
 11:04AM 10 A. No, sir, we don't take written complaints. We
 11 write the complaints.
 12 Q. Do you take written witness statements?
 13 A. Yes, sir, we take witness statements.
 14 Q. And as the alleged victim in this thing, did
 11:05AM 15 you feel it was necessary to have Dr. Arafiles make a
 16 statement?
 17 A. No, sir.
 18 Q. The information about the patients that you put
 19 in your files, their names and information such like
 11:05AM 20 that in your police report, you obtained that
 21 information through the letter from Dr. Arafiles and
 22 through the printouts that you found on your desk that
 23 morning?
 24 A. The information that's contained in my
 11:06AM 25 report --

1 Q. Of the --
 2 A. -- I verified from the people that I talked
 3 to --
 4 Q. Okay. But you --
 11:06AM 5 A. -- right.
 6 Q. But --
 7 A. But I obtained the initial --
 8 Q. Their identities.
 9 A. -- right, identities through the report from
 11:06AM 10 the Texas Medical Board, and I obtained their locations
 11 and contact numbers from the files that were on my desk
 12 that came -- I believe they were hospital generated, but
 13 I can't testify to that.
 14 Q. Hospital generated and provided by
 11:06AM 15 Dr. Arafiles?
 16 A. Provided -- I asked Dr. Arafiles. I don't know
 17 who brought those.
 18 Q. Did Mr. Wiley give that information to you?
 19 A. No, sir. They were on my desk.
 11:06AM 20 MR. COOK: Your Honor, we'll pass the
 21 witness subject to recalling him after he has provided
 22 us the notes that he's promised us.
 23 THE COURT: Mr. Tidwell?
 24 MR. TIDWELL: Thank you, judge.
 11:06AM 25

REDIRECT EXAMINATION

1
2 BY MR. TIDWELL:
3 Q. Sheriff, in a criminal case, before you go to
4 trial, the State provides the defense counsel with a
11:06AM 5 witness list, don't they?
6 A. Correct.
7 Q. And most good lawyers go out and talk to
8 witnesses, don't they?
9 A. Correct.
11:07AM 10 Q. In fact, you know in this case I went and
11 talked to witnesses?
12 A. Correct.
13 Q. And you know in this case that counsel for the
14 Defendant went and talked to witnesses?
11:07AM 15 A. Correct.
16 Q. Anything wrong with that?
17 A. No, sir. I thought that's the way we do
18 business.
19 Q. Do you have any written witness statements in
11:07AM 20 your file that haven't been turned over?
21 A. No, sir.
22 Q. The -- Mr. Cook asked you quite a bit about the
23 investigators from the medical board showing up at the
24 hospital with a subpoena for something. Was that early
11:07AM 25 in what you were doing or was it quite after?

1 A. That was quite a while after we started this
2 investigation. It was quite a while after Dr. Arafiles
3 gave me the letter that he received from the Texas
4 Medical Board with the names and date of births of the
11:07AM 5 people on it.
6 Q. Okay. Well, let me ask you about that.
7 When -- you have from the Texas Medical Board 10 names
8 and dates of birth?
9 A. Correct.
11:07AM 10 Q. You've been in Kermit a long time?
11 A. Yes, sir.
12 Q. If I give you a list of 10 -- of names of 10
13 people with their date of birth from Kermit, is there a
14 pretty good chance you're going to know a few of them?
11:08AM 15 A. I knew a lot of these that were on this list.
16 Q. Okay. Do you have a phone book on your desk?
17 A. Yes, sir.
18 Q. Do you think you can look up an address and a
19 phone number with a name and date of birth?
11:08AM 20 A. Oh, certainly.
21 Q. In fact, as a law enforcement officer, if you
22 stop someone for a traffic violation and they don't have
23 their driver's license with them, all you have to give
24 your dispatcher is name and date of birth, and then you
11:08AM 25 have everything you need to know?

1 A. Correct.
2 Q. So finding these people wasn't some big huge
3 secret, was it?
4 A. No, sir.
11:08AM 5 Q. Mr. Cook asked you quite a bit about having a
6 conflict of interest. You played golf with Dr. Arafiles
7 twice?
8 A. Yes.
9 Q. You and I have played a few more times than
11:08AM 10 that?
11 A. Yes, sir.
12 Q. Have I ever reported a crime to you?
13 A. Yes, sir, you have.
14 Q. My --
11:08AM 15 A. You had a criminal mischief case in your alley
16 where we had some spray painters paint graffiti on your
17 garage door.
18 Q. Well, because you and I have lunch together,
19 does that prevent you from trying to find the little
11:09AM 20 hoodlums that spray painted my garage door?
21 A. No, sir.
22 Q. A lot of people play golf in the Wednesday
23 night scrambles, don't they?
24 A. Yes, sir.
11:09AM 25 Q. You ever put anybody -- in the group that plays

1 on Wednesday nights, have you ever put one of those
2 people in jail?
3 A. May I elaborate?
4 Q. Sure.
11:09AM 5 A. I'm 55 years old. I've been the sheriff of
6 Winkler County --
7 MR. COOK: And, judge, we'd object as to
8 nonresponsive to the question.
9 THE COURT: Question and answer please.
11:09AM 10 Q. (By Mr. Tidwell) Okay. Do you know a large
11 number of the people that live in Winkler County?
12 A. I know a lot of people that live in Winkler
13 County.
14 MR. COOK: And, judge, I'm failing to see
11:09AM 15 the relevance of this under the charge.
16 THE COURT: What's the relevance?
17 MR. TIDWELL: Just following up, judge, on
18 Mr. Cook's questions.
19 THE COURT: All right. And I'll give you
11:09AM 20 some leeway here but --
21 MR. TIDWELL: Done.
22 THE COURT: -- let's move on.
23 MR. TIDWELL: Done.
24 Q. (By Mr. Tidwell) Are you a public servant?
11:10AM 25 A. Yes, sir, I am.

1 Q. In doing your job as the sheriff, are you
 2 carrying out a governmental purpose?
 3 A. Yes, sir, I am.
 4 Q. If as the sheriff you allow personal
 11:10AM 5 vindictiveness, spite, and motive to drive what you're
 6 doing, are you still acting as -- for a governmental
 7 purpose?
 8 A. No, sir, I'm not.
 9 Q. Is the fact that you're acting out of meanness,
 11:10AM 10 vindictiveness, and personal spite, does that remove
 11 your actions from being a governmental purpose?
 12 A. I believe I would be violating a criminal act
 13 if I was a public servant serving my own personal
 14 interests by my actions, yes.
 11:10AM 15 Q. And in this case, two people got arrested,
 16 Ms. Mitchell and Ms. Galle?
 17 A. Correct.
 18 Q. Was there one single piece of information that
 19 led you to present Ms. Galle's case to the grand jury
 11:10AM 20 and her be arrested?
 21 A. Yes, sir.
 22 Q. What was that one single piece of information?
 23 MR. COOK: And, judge, I'm going to object
 24 as to the relevancy of Ms. Galle's --
 11:10AM 25 THE COURT: Sustained.

1 MR. COOK: -- her case has been dismissed.
 2 MR. TIDWELL: Well, judge, Mr. Cook has
 3 asked about this repeatedly. I'm just trying to --
 4 THE COURT: Well, y'all approach. I guess
 11:11AM 5 I don't understand what the intent is. Approach.
 6 (AT BENCH, OFF THE RECORD)
 7 THE COURT: Sustained.
 8 MR. TIDWELL: Pass the witness, Your
 9 Honor.
 11:11AM 10
 11 RE CROSS-EXAMINATION
 12 BY MR. COOK:
 13 Q. Sheriff, these are copies of what was left on
 14 your desk to identify those patients and help you track
 11:11AM 15 them down, isn't it?
 16 A. Yes, sir, without my notes on them, they are,
 17 yes.
 18 Q. Those are your notes on them, aren't they?
 19 A. Yes, sir.
 11:11AM 20 Q. Okay. Now when you look in the phone book, can
 21 you tell somebody's marital status?
 22 A. No, sir.
 23 Q. Can you tell who they're employed by?
 24 A. No, sir.
 11:12AM 25 Q. Can you tell what their occupation is?

1 A. No, sir.
 2 Q. Can you tell who their insurance carrier is?
 3 A. No, sir.
 4 Q. Can you tell who their business -- personal
 11:12AM 5 guarantor is?
 6 A. No, sir.
 7 Q. Can you tell who their business guarantor is?
 8 A. No, sir.
 9 Q. Can you -- and then you wrote notes about their
 11:12AM 10 medical treatment, right?
 11 A. I wrote notes of what they expressed to me when
 12 I interviewed them.
 13 Q. Here is one, first words, hernia surgery?
 14 A. Right.
 11:12AM 15 Q. Here is one, thyroidectomy?
 16 A. Right.
 17 Q. Here is one, treated for a broken toe?
 18 A. Right.
 19 Q. States he was feeling bad, went to see Dr. A?
 11:12AM 20 A. Right.
 21 Q. Went to see -- went to the clinic to see Naomi.
 22 Naomi not there. Had to see Dr. A?
 23 A. Right.
 24 Q. Earache, got blood work done, blah, blah, blah,
 11:13AM 25 right?

1 A. Right.
 2 Q. Can you find out that information from the
 3 phone book?
 4 A. No, sir.
 11:13AM 5 Q. From your dispatch log?
 6 A. No, sir.
 7 Q. From 911?
 8 A. No, sir.
 9 Q. You collected private health information, did
 11:13AM 10 you not, sir?
 11 A. That was given to me by the patient.
 12 Q. That was asked for you from the patient?
 13 A. I did not ask for it. They volunteered it.
 14 MR. COOK: Pass the witness, subject to
 11:13AM 15 recall, Your Honor.
 16 MR. TIDWELL: No further questions.
 17 THE COURT: You can step down.
 18 Call your next witness.
 19 MR. TIDWELL: Dr. Winton, Your Honor.
 11:14AM 20 THE COURT: You were sworn earlier?
 21 THE WITNESS: Yes, I was sworn.
 22 THE COURT: Okay. Thank you.
 23 Go ahead.
 24
 11:14AM 25 KENNETH WINTON, D.O.

1 having been first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. TIDWELL:

4 Q. Would you tell the jury your name please, sir.

11:14AM 5 A. Dr. Kenneth Winton.

6 Q. And do you practice medicine in Kermit and
7 other places?

8 A. Yes, sir, I do.

9 Q. Did you come to practice in Kermit at about the
11:14AM 10 same time Dr. Arafiles did?

11 A. Approximately probably two months after I would
12 guess, after he was there.

13 Q. Okay. He was first or you were first?

14 A. He was first.

11:15AM 15 Q. Okay. And there are three doctors that
16 currently practice in Kermit; you, Dr. Arafiles, and
17 Dr. Pham?

18 A. Yes, sir.

19 Q. Have you spent many hours working in the Kermit
11:15AM 20 hospital and emergency room?

21 A. Yes, sir.

22 Q. Do you know who Anne Mitchell is?

23 A. Yes, sir.

24 Q. Is she in the courtroom?

11:15AM 25 A. Yes, sir.

1 Q. Where is she?

2 A. Right over here.

3 Q. At counsel table to my right?

4 A. Yes, sir.

11:15AM 5 Q. Okay. Have you ever had a direct conversation
6 with Anne Mitchell where she made any disparaging or
7 unkind or critical comments about Dr. Arafiles directly
8 to you?

9 MR. COOK: And, objection, Your Honor. We
11:15AM 10 object it's irrelevant. We object under the 404(b)
11 violations that we allege have occurred in that they
12 were not -- these statements were not provided to us.
13 And we'd ask the judge -- court to remember the
14 arguments as part of this objection.

11:15AM 15 And if the objection is overruled, we'd
16 ask for a continuing, running objection.

17 THE COURT: Overruled. The objection is
18 overruled.

19 And approach real quickly. I just --
11:16AM 20 there was something I --

21 (AT BENCH, OFF THE RECORD)

22 THE COURT: The objection is overruled.

23 And the running objection is granted inasmuch as the
24 court is able to grant such permission.

11:16AM 25 Go ahead.

1 Q. (By Mr. Tidwell) Have you heard a direct

2 communication from her mouth to your ears?

3 A. Yes, sir.

4 Q. How many times?

11:16AM 5 A. At least on two occasions.

6 Q. And what were those communications?

7 MR. COOK: And we'd object under the same
8 grounds, Your Honor.

9 THE COURT: Overruled.

11:16AM 10 A. She was unhappy with his quality of medical
11 care on both occasions. She did tell me that she wanted
12 him out of the hospital, she did not want him there,
13 didn't feel that he was qualified, to the point where it
14 was certainly not just an individual talking about a
11:17AM 15 physician's quality of care but it seemed like it was
16 much more personal.

17 MR. COOK: And, judge, we're going to
18 object to the end of this as pure speculation on what it
19 seemed like. I think he's trying to testify what was in
11:17AM 20 Ms. Mitchell's mind at the time, and that would be
21 improper.

22 THE COURT: Rephrase it please.

23 Q. (By Mr. Tidwell) Did you -- after hearing
24 these comments, what was your impression of the
11:17AM 25 information being related to you?

1 A. She did not like Dr. Arafiles.

2 Q. Well, did this appear to you to be more than
3 just casual comments about care?

4 A. Yes, sir.

11:17AM 5 Q. Did it appear to be a long-standing vendetta?

6 A. Yes, sir.

7 MR. COOK: And, judge, I object. I think
8 that -- I'll object to the form of that question, and I
9 also think that's speculation as it --

11:18AM 10 THE COURT: Sustained.

11 MR. COOK: Thank you, Your Honor.

12 Q. (By Mr. Tidwell) Were you -- did you become
13 concerned about the focus that Ms. Mitchell had on
14 Dr. Arafiles?

11:18AM 15 A. Yes, sir, I did.

16 Q. And after obtaining that concern, did you do
17 anything relating to that concern?

18 A. Yes, I did. I called the hospital
19 administrator and voiced my opinion about my concerns
11:18AM 20 with regard to her hostility towards him, and actually
21 met with him and Dr. Arafiles to voice my concerns with
22 regards her feelings towards him.

23 Q. Were you giving Dr. Arafiles a heads-up?

24 A. Yes, sir.

11:18AM 25 Q. Okay. And have you been on the -- what we call

1 the medical staff of the hospital since you've been
2 there?

3 A. Yes, sir.

4 Q. As part of being on medical staff, do y'all

11:18AM 5 review charts at medical staff meetings?

6 A. Yes, sir.

7 Q. Do you remember reviewing and talking about

8 charts about the lady that dropped the turkey on her

9 toe, the fellow with the rubber thing on his finger, and

11:19AM 10 the skin graft case?

11 A. Yes, sir.

12 Q. And did the medical staff resolve those issues?

13 A. Yes, sir.

14 Q. And did you resolve them to all the doctors'

11:19AM 15 satisfaction?

16 A. Yes, sir.

17 Q. What was the result of reviewing those charts?

18 A. In reviewing those charts, a lot of times,

19 since there is only three physicians on staff, those

11:19AM 20 charts were also sent out for independent reviews.

21 Q. Okay. Any negative review come back on those

22 three?

23 MR. CARNEY: Objection as to --

24 A. No actions were taken, so --

11:19AM 25 MR. COOK: We'd object as to hearsay as

1 to --

2 THE COURT: Sustained.

3 Q. (By Mr. Tidwell) Was -- were the three

4 procedures that we just talked about, are those things

11:19AM 5 that are somewhat common to be done in emergency rooms

6 that you've worked in?

7 A. No, sir.

8 Q. Okay. Are they procedures that are

9 accomplished in larger emergency rooms?

11:20AM 10 A. Yeah, I would imagine, yes, sir.

11 Q. Okay. As a medical doctor, are you aware of

12 the harm that can come to a doctor just by the mere fact

13 that a complaint is lodged with the medical board?

14 A. Yes, sir.

11:20AM 15 MR. COOK: And, judge, I'm going to

16 object. I don't think this is relevant.

17 THE COURT: Overruled.

18 Go ahead.

19 Q. (By Mr. Tidwell) As a medical doctor, what

11:20AM 20 harm does a medical doctor receive by a complaint being

21 filed?

22 A. Well, his name certainly can be, you know, run

23 through the mud in a community where he -- when he is

24 maliciously maligned, and unfairly. It certainly

11:20AM 25 affects his practice and people's judgment of him.

1 Q. Would it be proper for someone in the hospital
2 who only has one little piece of information about
3 something to make a report to the medical board based
4 on --

11:21AM 5 MR. COOK: And, judge, I think that calls

6 for a legal conclusion, would it be proper, and --

7 number one. And number two, I think that's irrelevant.

8 THE COURT: Approach.

9 MR. TIDWELL: I will -- I can rephrase,

11:21AM 10 Your Honor.

11 THE COURT: Okay, rephrase.

12 MR. TIDWELL: Thank you.

13 Q. (By Mr. Tidwell) As part of the chart review

14 process at Winkler County, there is an internal review

11:21AM 15 procedure, isn't there?

16 A. Yes, sir.

17 Q. Is one of the purposes with the internal review

18 procedure to make sure that before a complaint goes out

19 that everyone that has input and information about an

11:21AM 20 issue gathers and shares their information?

21 A. Yes, sir.

22 Q. Is that a good information sharing process?

23 A. Yes, it is.

24 Q. Is there anything about that that thwarts the

11:21AM 25 further review of an issue?

1 A. No, sir.

2 Q. In fact, does it encourage a good, solid

3 discussion of an issue?

4 A. Yes, it does.

11:21AM 5 Q. Okay. Thank you.

6 MR. TIDWELL: Pass the witness, Your

7 Honor.

8

9

CROSS-EXAMINATION

11:22AM 10 BY MR. COOK:

11 Q. Dr. Winton, we never met. My name is John

12 Cook. How are you, sir?

13 A. How are you, sir?

14 Q. I'm doing well.

11:22AM 15 Did you ever buy a house in Kermit?

16 A. No, sir.

17 Q. Do you live in the hospital?

18 A. Yes, sir.

19 Q. You got turned in to the Texas Medical Board,

11:22AM 20 didn't you?

21 A. Yes, sir.

22 Q. Do you believe that Anne Mitchell turned you

23 in?

24 A. No, sir.

11:22AM 25 Q. And I don't want to go into the facts of that

1 case, but you were sanctioned, were you not, sir?

2 A. Yes, sir.

3 Q. You talked to Anne Mitchell quite often, didn't
4 you?

11:22AM 5 A. No.

6 Q. You talked to Anne Mitchell quite often before
7 you received your privileges, didn't you?

8 A. No, sir.

9 Q. Do you ever remember having conversations with
11:22AM 10 Anne Mitchell that began with we never had this
11 conversation?

12 A. No, sir.

13 Q. Are you denying that you ever had a
14 conversation with Anne Mitchell that you said we never
11:23AM 15 had this conversation?

16 A. Yes, sir.

17 Q. Okay. Did you know that Dr. Arafiles did not
18 meet the qualifications under the bylaws to obtain
19 privileges?

11:23AM 20 A. No, sir.

21 Q. Did you know that Dr. Arafiles had restrictions
22 on his license?

23 A. Yes, sir.

24 Q. Did you know the hospital bylaws in effect at
11:23AM 25 the time of his hiring prevented the hiring of a

1 physician with a restricted -- with something other than
2 an unrestricted medical license?

3 A. No, sir.

4 Q. Did you tell Anne Mitchell that we should let
11:23AM 5 Dr. Arafiles pave the way as a physician with an
6 unrestricted license?

7 A. No, sir, I did not.

8 Q. A restricted license.

9 When you were hired by the hospital, you
11:24AM 10 had an unrestricted license; is that correct?

11 A. Correct.

12 Q. Okay. Do you know who Naomi Warren is?

13 A. Yes, sir.

14 Q. Do you remember talking to Naomi Warren about
11:24AM 15 her decision to resign from the Winkler County clinic?

16 A. Would you rephrase that please?

17 Q. Do you remember having a conversation with
18 Naomi Warren about her decision to resign from the
19 Winkler County clinic?

11:24AM 20 A. Yes, sir, briefly.

21 Q. Okay. Do you have respect for Naomi Warren in
22 the care she gives patients?

23 A. Oh, certainly.

24 Q. She was a tremendous assistant to all the
11:24AM 25 physicians over there in Winkler, wasn't she?

1 A. Oh, certainly was.

2 Q. Did you tell Naomi Warren that you knew the
3 problems were due to Dr. Arafiles and once he was gone
4 they could work together -- or that you guys could work
11:24AM 5 together in the clinic?

6 A. No, sir, I did not.

7 Q. Did you tell Naomi Warren anything about --
8 well, strike that.

9 You know that Naomi Warren had serious
11:25AM 10 concerns about Dr. Arafiles, don't you?

11 A. Yes, sir.

12 Q. You all discussed those concerns, didn't you?

13 A. Yes, sir.

14 Q. You know that one of the reasons that Naomi
11:25AM 15 Warren left was because Dr. Arafiles continued to
16 practice. You talked about that, didn't you?

17 A. Yes, sir.

18 Q. Okay. And you told Naomi Warren -- or you
19 agreed with her that Dr. Arafiles had problems?

11:25AM 20 A. No, sir.

21 Q. Okay. When did you first hear that you were
22 under investigation by the Texas Medical Board?

23 MR. TIDWELL: Your Honor, could -- I'm
24 going to object. This has no relevance to the

11:25AM 25 proceeding we're here about today, has nothing --

1 THE COURT: What was the question again?

2 MR. COOK: When did he first hear he was
3 under investigation. And the relevance is this, is on
4 direct examination he was talking about the harm of
11:26AM 5 being reported. I want to go into that.

6 THE COURT: Go ahead.

7 A. I don't remember the exact date. It was
8 approximately I would say a year prior to my working in
9 Kermit.

11:26AM 10 Q. Okay. Now did you run off to the sheriff and
11 complain about harassment?

12 A. No, sir.

13 Q. Okay. Were you ever concerned with the
14 practices of Dr. Arafiles?

11:26AM 15 A. Yes, sir.

16 Q. Is it your testimony to this jury that the
17 medical staff in your opinion had this problem handled,
18 Dr. Arafiles?

19 A. Rephrase that again for me, sir --

11:27AM 20 Q. Is it your --

21 A. -- I don't quite understand.

22 Q. Is it your testimony that the medical staff had
23 handled the problem with Dr. Arafiles?

24 A. Yes, sir.

11:27AM 25 Q. Okay. What was the discipline that you all

1 decided was appropriate for the injuries that he gave
2 those patients?
3 **A. I'm not aware of any injuries he gave patients.**

11:27AM 4 **Q.** Are you aware that a diabetic, 74-year-old man
5 presented to the ER with an injury to his hand and left
6 with an injury to his hand and an injury to his abdomen
7 where Dr. Arafiles cut the skin from it?

8 How was he disciplined for that?

9 THE COURT: One question at a time. First
11:28AM 10 question?

11 **Q.** (By Mr. Cook) Were you aware --

12 **A. First of all, I don't understand when you're**
13 **describing he inflicted injuries on somebody.**

14 **Q.** Are you familiar with the skin graft case?

11:28AM 15 **A. Yes, sir.**

16 **Q.** Did Dr. Arafiles take a knife and cut a section
17 of that man's skin off his abdomen?

18 **A. Yes, sir.**

11:28AM 19 **Q.** Would you characterize where that skin was
20 removed as a wound?

21 **A. Again, I'm not clear on what you're -- are you**
22 **suggesting that he -- he did remove skin from one**
23 **portion of a person's body and replaced it on another**
24 **portion?**

11:28AM 25 **Q.** Yes.

1 **A. Yes.**

2 **Q.** And would you agree that where he removed the
3 skin is now a wound that needs to have care and healing?

11:28AM 4 **A. I don't know any further -- I don't know**
5 **whatever happened to the case after. I don't do plastic**
6 **surgery. I don't do wound transplants or skin grafts.**

7 **Q.** Neither does -- or neither is Dr. Arafiles
8 supposed to do that, is he?

9 **A. Not in the emergency room.**

11:29AM 10 **Q.** How did the medical staff discipline him for
11 that?

12 **A. We told him that he no longer could do any type**
13 **of outpatient procedures or grafts in the emergency room**
14 **or he could no longer do any type of outpatient**
11:29AM 15 **procedures there.**

16 **Q.** Was there any change to his status and
17 privileges at the hospital?

18 **A. Other than the fact he could not do any**
19 **surgeries in the emergency room.**

11:29AM 20 **Q.** Was he fined any amount of money?

21 **A. Not that I'm aware of, no.**

22 **Q.** Was he ordered to seek any additional medical
23 care?

24 **A. No, not that I'm aware of.**

11:29AM 25 **Q.** Do you believe that doing a skin graft

1 operation the way he did on a 74-year-old, diabetic man
2 met the standard of care that that man deserved?

3 **A. Sir, I am not a dermatologist. I am not a --**

4 **Q.** You're an -- you work in the emergency room --

11:29AM 5 **A. I am not a plastic surgeon and I am not a**
6 **dermatologist and I cannot comment.**

7 **Q.** As an ER doctor with the privileges that he
8 had, do you believe he met the standard of care for that
9 patient?

11:30AM 10 **A. What I can tell you --**

11 MR. TIDWELL: Objection.

12 **A. -- is that is not --**

13 THE COURT: Sustained.

14 **A. -- something that I do in the emergency room.**

11:30AM 15 THE COURT: Go ahead.

16 **Q.** (By Mr. Cook) I don't want to go through all
17 these cases with you, but let me just ask you this

18 question. Are you telling this jury that all five of
19 the patients that were referred by Ms. Mitchell to the

11:30AM 20 Texas Medical Board, all of them were staffed by you,
21 Dr. Pham, and Dr. Arafiles?

22 **A. What do you mean staffed by us?**

23 **Q.** This medical review thing where it was
24 discussed and handled in-house.

11:30AM 25 **A. Again, please clarify the question.**

1 **Q.** Not a problem.

2 You testified that there was a medical
3 staffing, on direct examination, of the concerns for
4 Dr. Arafiles, correct?

11:31AM 5 **A. Yes, sir.**

6 **Q.** Out of all the cases that you staffed with him
7 and found inappropriate contact -- or conduct, was the
8 only sanction that he was given the one that you just
9 told this jury?

11:31AM 10 **A. Yes, sir.**

11 **Q.** In other words, don't do it again, buddy.
12 That's what y'all did, isn't it, slapped him on the
13 wrist and said don't do it again?

14 **A. That is your opinion, yes.**

11:31AM 15 **Q.** Okay. And since that staffing, how many other
16 files have you seen that caused you to question his
17 standard of care?

18 **A. Zero.**

19 **Q.** Zero.

11:31AM 20 How many have you reviewed?

21 **A. I can't give you a specific number.**

22 **Q.** And are you testifying under oath, sir, that
23 all of these files were sent out for independent peer
24 review?

11:32AM 25 **A. I believe they were, yes.**

1 Q. Do you have any documentation to show that jury
2 that that was either, (a), done and, (b), what was the
3 opinion of the independent examiners?

4 A. **I do not have any documentation, no.**

11:32AM 5 Q. Would it be reasonable for somebody who works
6 in the healthcare profession to believe that the
7 information contained in the charts of this case might
8 reasonably cause them to question the doctor's
9 practices?

11:32AM 10 A. **Yes.**

11 Q. Would it be reasonable for a healthcare
12 professional who has an obligation to insure patient
13 safety to believe that the internal processes were not
14 enough and somebody else needed to look at these?

11:32AM 15 A. **That's why we send charts out for independent
16 review.**

17 Q. Nothing that you do in hospital staff prevents
18 a citizen from raising a complaint with the Texas
19 Medical Board, does it?

11:33AM 20 A. **No, sir.**

21 Q. Nothing that you do in your staffing of these
22 charts prevents a registered nurse or any other medical
23 professional from notifying the Texas Medical Board
24 about these practices, does it, sir?

11:33AM 25 A. **No, sir.**

1 Q. And in fact, there are certain cases that even
2 if there are internal controls a person, a licensed
3 person, has a duty to report to the Texas Medical Board.
4 Would you agree with me?

11:33AM 5 A. **Yes.**

6 Q. Anne Mitchell was unhappy with the quality of
7 care that Dr. Arafiles was providing patients. Would
8 you agree with that?

9 A. **Yes.**

11:33AM 10 Q. Anne Mitchell was in a position in the hospital
11 that she saw charts that came in from the ER, the floor,
12 the clinic, from all points; isn't that correct?

13 A. **Yes.**

14 Q. Anne Mitchell was the person that staff was
11:34AM 15 told if they had a concern about compliance or standard
16 of care, take that concern to Ms. Mitchell first,
17 correct, as the compliance officer?

18 A. **I don't know if she was the first person that
19 they would take it to, I was not told that.**

11:34AM 20 Q. Fair enough.

21 Eventually she got -- she, in her job
22 description, had to review those concerns, correct?

23 A. **Correct.**

24 Q. Do you think that a nurse who believes that a
11:34AM 25 doctor injures patients might be angry with that doctor?

1 A. **Yes, sir.**

2 Q. Do you think that a nurse who believes deeply
3 in patient safety and patient care might be angry at
4 anybody who hurts another human being?

11:34AM 5 A. **Yes, sir.**

6 Q. Do you believe in certain circumstances that's
7 appropriate?

8 A. **Yes, sir.**

9 Q. Do you know of any notice of correction that
11:35AM 10 was issued to Dr. Arafiles and signed by him and
11 included in his personnel file?

12 A. **I am not aware of that, no, sir.**

13 Q. What is a letter of correction?

14 A. **It's a letter of basically reprimand by the
11:35AM 15 staff --**

16 Q. Was Dr. Arafiles ever reprimanded in writing by
17 the staff?

18 A. **I'm not aware of that, no.**

19 Q. You testified to Mr. Tidwell that in larger ERs
11:35AM 20 they do these things; is that correct?

21 A. **Do what things?**

22 Q. The type of things that Dr. Arafiles was doing
23 to these patients.

24 A. **In larger ERs they have multi subspecialty
11:36AM 25 people.**

1 Q. Well, let's break them down. Do you think --
2 can you name me a larger, respected ER that would
3 discharge a 10-year-old boy who presented with a
4 complaint of pain in the lower right quadrant, vomiting
11:36AM 5 and nausea, without eliminating appendicitis as a
6 possible cause?

7 A. **No, sir.**

8 Q. Do you think that a larger, more professional
9 emergency room would take a 10-year-old boy that needs
11:36AM 10 surgery and tell him to go drink a bunch of fluids and
11 eat fiber?

12 A. **I don't know what you mean by more professional
13 ER.**

14 Q. More professionally staffed than the Winkler
11:36AM 15 County ER has been, sir.

16 Is it your testimony to the jury that a
17 better ER --

18 THE COURT: One at a time.

19 MR. COOK: I know, judge. I'm sorry.

11:37AM 20 THE COURT: Go ahead. Answer the
21 question.

22 A. **Are you suggesting that our emergency room is
23 not professionally staffed?**

24 Q. Oh, I think the evidence is clear of that, sir.

11:37AM 25 THE COURT: Okay. Approach --

1 MR. TIDWELL: Objection, Your Honor --
 2 THE COURT: -- approach.
 3 MR. TIDWELL: -- that is absolutely
 4 argumentative.
 11:37AM 5 (AT BENCH, OFF THE RECORD)
 6 THE COURT: Jury, retire to the jury room,
 7 remain there.
 8 (JURY NOT PRESENT)
 9 THE COURT: Go head, Mr. Tidwell. On the
 11:37AM 10 record I'm assuming?
 11 MR. TIDWELL: Yes, please, Your Honor.
 12 At this time the State moves for mistrial
 13 based on defense's constant sidebar comments and the
 14 last comment where he has elected to testify to the jury
 11:38AM 15 that he knows how to staff an ER and that this one is
 16 not well staffed. These comments have grown to the
 17 proportion that this has poisoned the jury, and the
 18 State moves for a mistrial at the fault of defense
 19 counsel.
 11:38AM 20 THE COURT: Response?
 21 MR. COOK: Judge, I totally disagree. I
 22 responded to the witness.
 23 I think the evidence is clear that there
 24 is a physician who is on duty with restrictions in
 11:38AM 25 violation of the bylaws, that the evidence is clear that

1 gross substandard care has been occurring --
 2 THE COURT: Okay. I'm not talking about
 3 whether you think it's correct or not. Do you think --
 4 MR. COOK: We oppose the mistrial, judge.
 11:38AM 5 THE COURT: Okay.
 6 MR. COOK: If the judge --
 7 THE COURT: I'm going to take that under
 8 advisement.
 9 And I'm going to instruct all counsel, I
 11:38AM 10 don't want anymore sidebar remarks. We're here to
 11 provide facts for the jury so that they can make a
 12 decision on very serious charges that have been raised.
 13 You get no points for showmanship or anything else.
 14 And I have hesitated to admonish the
 11:39AM 15 attorneys in the presence of the jury. If it continues;
 16 I will do so with whatever consequences follow with that
 17 because I've warned you outside the presence of the
 18 jury.
 19 Does everybody understand that?
 11:39AM 20 MR. COOK: My apologies to the court, Your
 21 Honor.
 22 THE COURT: Okay.
 23 MR. COOK: And, judge, I will clear up my
 24 last statement with the jury if you --
 11:39AM 25 THE COURT: No, it's not necessary. I

1 mean, well, you -- I want us to ask questions and
 2 answers.
 3 MR. COOK: Judge, if you would like, I
 4 will make a statement that my opinion is irrelevant, not
 11:39AM 5 evidence in this case.
 6 THE COURT: Well, that hadn't been asked
 7 for by Mr. Tidwell, but --
 8 MR. TIDWELL: That's for the court to
 9 determine, Your Honor. I don't think I need Mr. Cook to
 11:39AM 10 do that.
 11 MR. COOK: Or actually, judge, it would
 12 not -- I would not be opposed to the court instructing
 13 the jury that what the lawyers say is not evidence in
 14 the case.
 11:39AM 15 THE COURT: Okay. I've done that, and
 16 I'll probably do it again, so I'm not going to worry
 17 about that right now. I just want us to stop.
 18 Bring them back in.
 19 I'm going to request the attorneys to
 11:41AM 20 remind me later about that item taken under advisement.
 21 MR. TIDWELL: Yes, Your Honor.
 22 (JURY PRESENT)
 23 THE COURT: Go ahead, counsel.
 24 Q. (By Mr. Cook) Do you think a child with
 11:41AM 25 appendicitis should be discharged without treatment with

1 instructions to drink fluids and eat fiber, sir?
 2 A. No, sir.
 3 Q. Do you think a needle should be hammered into
 4 the bone of a shattered toe?
 11:41AM 5 MR. TIDWELL: Objection, Your Honor. That
 6 assumes facts not in evidence. Again Mr. Cook just
 7 testified.
 8 MR. COOK: We -- they are in evidence,
 9 judge. Dr. Arafles spoke to this.
 11:41AM 10 THE COURT: Okay. Rephrase it.
 11 Q. (By Mr. Cook) Do you believe that a needle
 12 should be inserted into the bone of a shattered toe in
 13 order to stabilize the bone?
 14 A. I am not a podiatrist. I can't speak -- it's
 11:42AM 15 not something I do in my practice, but it's not --
 16 again, I am not a podiatrist, and it's not something I
 17 do.
 18 Q. And it's not something you would expect to be
 19 done in a larger emergency room, is it?
 11:42AM 20 A. Again, I am not a podiatrist, and I can't speak
 21 as a general orthopedic surgeon.
 22 Q. Fair enough, fair enough.
 23 Now when you were asked what harm can come
 24 from a complaint, isn't it true that the -- a complaint
 11:42AM 25 about practice, correction, isn't it true the complaint

1 is confidential?
 2 **A. Yes, sir.**
 3 **Q.** Isn't it true they notify you that a complaint
 4 has been filed very quickly?
 11:42AM 5 **A. Yes, sir.**
 6 **Q.** Isn't it true that you don't have to tell
 7 anybody, well, other than staff through staff processes,
 8 but you don't have to tell any outside person that you
 9 received a complaint at that point, does it?
 11:43AM 10 **A. No, sir.**
 11 **Q.** Do you think that the simple fact that a
 12 complaint was filed on Dr. Arafiles is why his name has
 13 been run through the mud?
 14 **A. Please ask that question again please.**
 11:43AM 15 **Q.** Let me restrike it.
 16 On direct examination you said part of the
 17 harm of having a complaint is your name is run through
 18 the mud and that you're maliciously maligned.
 19 **A. Correct.**
 11:43AM 20 **Q.** Correct.
 21 Just from having a complaint filed, just
 22 from receiving a response, how is your -- how is your
 23 name run through the mud?
 24 **A. It is also posted by the State of Texas on a**
 11:43AM 25 **flyer that they send out. I would suggest most**

1 **physicians see this. It's posted on their web site.**
 2 **Q.** But that's only if there has been a
 3 determination made by the board; isn't that correct?
 4 **A. No, sir.**
 11:44AM 5 **Q.** Do you think that your name -- do you believe
 6 that Dr. Arafiles' name has been run through the mud?
 7 **A. Yes, sir, I do.**
 8 **Q.** Do you think that that might be because of the
 9 public outrage of having the nurses who informed the
 11:44AM 10 Texas Medical Board about it arrested?
 11 **A. No, sir.**
 12 **Q.** Do you think that by the actions that
 13 Dr. Arafiles took in going to the sheriff that he put
 14 his name out in the public for comment?
 11:44AM 15 **A. Yes, sir.**
 16 **Q.** Do you agree that diabetics' wounds heal as
 17 well as someone without diabetes?
 18 **A. No, sir.**
 19 **Q.** That's pretty ridiculous, isn't it?
 11:45AM 20 **A. Yes, sir.**
 21 **Q.** Do you believe that the Texas Medical Board
 22 gives you due process with complaints?
 23 **A. Yes, sir.**
 24 **Q.** That there is a review by experts of that
 11:45AM 25 complaint, correct?

1 **A. Yes, sir.**
 2 **Q.** There is a request for you to put in your own
 3 two cents?
 4 **A. Yes, sir.**
 11:45AM 5 **Q.** And we accept that as part of having
 6 professional licenses is if our licensing board wants
 7 information we provide it?
 8 **A. Yes, sir.**
 9 **Q.** Okay. That there is an initial panel that will
 11:45AM 10 review those responses, the medical files, the
 11 complaint, and make a determination?
 12 **A. Yes, sir.**
 13 **Q.** That that could result in going to a full
 14 hearing about those issues with your ability to
 11:45AM 15 participate?
 16 **A. Correct.**
 17 **Q.** That if you are unsatisfied with that you could
 18 even take it to a district court?
 19 **A. Correct.**
 11:45AM 20 **Q.** And if you were unsatisfied with that you could
 21 take it to an appellate court, correct? I'm a little --
 22 **A. I imagine, yes.**
 23 **Q.** Okay. Would you prefer to have complaints
 24 against you fully public in a criminal court or the
 11:46AM 25 procedure that's been set out by the law?

1 **A. I am not familiar, sir, with the setup of court**
 2 **of law with regard to how a criminal court is set up.**
 3 **MR. COOK:** Thank you, doctor.
 4 **THE COURT:** Mr. Tidwell?
 11:46AM 5 **MR. TIDWELL:** Nothing further, Your Honor.
 6 **THE COURT:** You can step down.
 7 **MR. TIDWELL:** I have one real short one if
 8 you want.
 9 **THE COURT:** Okay. Yeah, call your
 11:46AM 10 witness, and then you guys run up real quick because
 11 I --
 12 **MR. COOK:** Oh, wait, judge. I have one
 13 more question for him. And I'm either going to
 14 retain -- it's one question.
 11:47AM 15 **THE COURT:** One more, doctor, excuse me.
 16 You learn to walk faster I guess next time.
 17 Go ahead, counsel.
 18 **CROSS-EXAMINATION RESUMED**
 11:47AM 20 **BY MR. COOK:**
 21 **Q.** I'm sorry, doctor. We don't want to have to
 22 bring you back.
 23 When did you inform law enforcement and
 24 give them a statement as to Ms. Anne Mitchell's behavior
 11:47AM 25 towards Dr. Arafiles?

1 **A. I have never talked to law enforcement about**
 2 **Ms. Mitchell.**
 3 **Q.** When did you first talk to Scott Tidwell about
 4 that specific issue, what Anne Mitchell used to say?
 11:47AM 5 **A. Approximately a week ago.**
 6 **Q.** About a week ago? Thank you.
 7 MR. COOK: No further questions.
 8 THE COURT: Anything else?
 9 MR. TIDWELL: Just one, Your Honor.
 11:47AM 10 THE COURT: Okay.
 11
 12 REDIRECT EXAMINATION
 13 BY MR. TIDWELL:
 14 **Q.** The process of reviewing the three charts with
 11:47AM 15 the minor surgical procedures, all three doctors had a
 16 chance to get together and discuss that?
 17 **A. That's correct.**
 18 **Q.** And did you believe that the issue was dealt
 19 with?
 11:48AM 20 **A. Yes, sir.**
 21 **Q.** And have there been, as far as you know, any
 22 further procedures like that since September of 2008 in
 23 the emergency room in Kermit?
 24 **A. No, sir.**
 11:48AM 25 **Q.** Thank you.

1 MR. TIDWELL: Pass the witness, Your
 2 Honor.
 3 THE COURT: Anything else?
 4
 11:48AM 5 RECROSS-EXAMINATION
 6 BY MR. COOK:
 7 **Q.** Reasonable people could disagree with you if
 8 that -- enough was done. Would you agree with that?
 9 Reasonable people could disagree with you that telling
 11:48AM 10 him don't do it again might not be enough of a sanction?
 11 **A. I imagine, yes.**
 12 **Q.** Okay. What discipline did you give him for
 13 using non-formulary medicines?
 14 **A. I'm sorry. Again?**
 11:48AM 15 **Q.** What discipline did Dr. Arafiles receive for
 16 using medicines that were not part of the formulary and
 17 not part of the U.S.P.?
 18 **A. He is not to use those in our facility.**
 19 **Q.** Are you aware that he sells water softeners?
 11:49AM 20 **A. No, sir.**
 21 MR. COOK: That's all I have, judge.
 22 MR. TIDWELL: Nothing else, judge.
 23 MR. COOK: And, judge --
 24 THE COURT: You can step down. And you're
 11:49AM 25 free to go, you're released, or you can stay if you want

1 to, go, stay, whatever.
 2 Call your next witness.
 3 MR. TIDWELL: Tommy Smith, Your Honor.
 4 THE COURT: You were sworn earlier,
 11:49AM 5 correct? You were sworn earlier?
 6 THE WITNESS: Yes.
 7 THE COURT: Okay. Go ahead.
 8
 9 TOMMY SMITH,
 11:49AM 10 having been first duly sworn, testified as follows:
 11 DIRECT EXAMINATION
 12 BY MR. TIDWELL:
 13 **Q.** Would you tell the ladies and gentlemen of the
 14 jury your name please, sir.
 11:50AM 15 **A. Tommy Smith.**
 16 **Q.** And, Mr. Smith, I'm going to try to speak up.
 17 I know you have some difficulty hearing; is that right?
 18 **A. You did?**
 19 **Q.** Okay.
 11:50AM 20 **A. Yes, I do.**
 21 **Q.** Okay.
 22 **A. And seeing.**
 23 **Q.** Okay. You are a former county commissioner in
 24 Winkler County?
 11:50AM 25 **A. Yes, I was.**

1 **Q.** And your term ended December 31st of 2008?
 2 **A. Yes, it did.**
 3 **Q.** Back before December 31st of 2008, was there an
 4 office on the second floor of the courthouse that you
 11:50AM 5 and Mr. Wolf shared as commissioners?
 6 **A. Yes, there was.**
 7 **Q.** Would sometimes from day to day there be a
 8 morning bull session that went on in that office?
 9 **A. Called a bull session? Yes, there was.**
 11:50AM 10 **Q.** Trying to be polite.
 11 **A. It was a coffee break.**
 12 **Q.** Okay. Would any number and variety of people
 13 attend the coffee break?
 14 **A. Yes, several. Several of my friends come by**
 11:51AM 15 **every morning.**
 16 **Q.** Okay. In April of 2008, were you in that
 17 office on a coffee break on an occasion when
 18 Ms. Mitchell made comments about Dr. Arafiles?
 19 **A. Yes, I was.**
 11:51AM 20 MR. COOK: Judge, we'd object for the same
 21 reasons stated earlier.
 22 THE COURT: Okay. Overruled.
 23 **Q.** (By Mr. Tidwell) Would you tell me what the --
 24 what happened, what did you hear?
 11:51AM 25 MR. COOK: And, judge, just to be clear on

1 the record, we are stating for the reasons earlier is
2 the 404(b) and the relevancy issues.

3 THE COURT: Okay. Overruled.

4 **A. Well, Robert Roberts and I were having a**
5 **conversation about him playing golf in the Wednesday**
6 **night scrambles. And I made the statement -- I asked**
7 **Robert if he played in the Wednesday night scramble that**
8 **Wednesday night. This was on a Thursday I think. And**
9 **he said yes, he did.**

10 **And I said who did you play with. He said**
11 **I played with Mr. A. I said who is Mr. A. He said,**
12 **well, he's a new doctor in town and his name is Arafiles**
13 **I think. I didn't know him.**

14 **And when I made that statement,**
15 **Ms. Mitchell said he is not a doctor, he is a witch**
16 **doctor. And I thought, well, that's kind of strange,**
17 **he's a new doctor in town. And I don't know how she**
18 **knew this, but that was the statement that was made.**

19 **Q. Okay. And did her saying he was a witch doctor**
20 **affect your opinion of Dr. Arafiles?**

21 **A. Well, no, it didn't, no, because I didn't know**
22 **him.**

23 **Q. Okay. Thank you.**

24 **MR. TIDWELL: Pass the witness, Your**
25 **Honor.**

1
2 CROSS-EXAMINATION

3 BY MR. COOK:

4 **Q. You know Anne pretty well, don't you, sir?**

5 **A. Yes, I do.**

6 **Q. You -- and when you were on the commissioners**
7 **court, you had some responsibility over that hospital,**
8 **did you not, sir?**

9 **A. Yes, I did.**

10 **Q. Isn't it true that you and Anne had numerous**
11 **conversations about the emergency department of that**
12 **hospital?**

13 **A. We had conversations, yes.**

14 **Q. Do you believe that Anne Mitchell is motivated**
15 **by concern for the patients?**

16 **A. Well, I think Anne was concerned about her**
17 **patients, I do, yes.**

18 **Q. In fact, Mr. Smith, isn't it true that you know**
19 **Anne cares deeply about doing things right, doesn't she?**

20 **A. I think she does, yes.**

21 **Q. Okay. And you know Anne cares deeply about**
22 **treating people who come to your emergency department**
23 **the best that you possibly can, and you know that for a**
24 **fact, don't you?**

25 **A. I think so.**

1 **Q. And you know for a fact that Anne Mitchell's**
2 **concerns for the practices of Dr. Arafiles were because**
3 **she was concerned about patient safety and care?**

4 **A. I -- yeah, I'm -- I feel sure that's true, yes.**

5 **MR. COOK: Pass the witness, Your Honor.**

6 **MR. TIDWELL: No further questions, Your**
7 **Honor.**

8 **THE COURT: You can step down.**

9 **THE WITNESS: Thank you.**

10 **THE COURT: May this witness be excused?**

11 **MR. TIDWELL: Certainly, Your Honor.**

12 **THE COURT: You're free to go, Mr. Smith.**

13 **THE WITNESS: Thank you.**

14 **THE COURT: Call your next witness.**

15 **MR. COOK: Oh, judge, I forgot that one**

16 **last question. Could I ask him one last -- and it's the**
17 **last time I'll do it, I promise, just one more.**

18 **THE COURT: Denied. You'll remember next**
19 **time.**

20 **MR. COOK: Okay.**

21 **MR. TIDWELL: The next witness is very**
22 **lengthy, Your Honor.**

23 **THE COURT: Okay. Well, we're going to do**
24 **10 minutes or nine minutes of the next witness and then**

25 **we're going to break for lunch.**

1 **MR. TIDWELL: Stan Wiley.**

2 **Let me change my mind, Your Honor. There**
3 **may be a short one we can put on and save him for after**
4 **lunch.**

5 **MR. COOK: Judge, this is not going to be**
6 **a short witness.**

7 **THE COURT: As I said, we'll do as many**
8 **minutes as we can get in.**

9 **You were sworn earlier, correct?**

10 **THE WITNESS: Yes, sir.**

11 **THE COURT: Okay. Go ahead.**

12
13 **PEGGY ARMSTRONG, R.N.,**

14 **having been first duly sworn, testified as follows:**

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. Peggy Armstrong.**

20 **Q. And how are you currently employed?**

21 **A. I'm employed at Winkler County Memorial, and I**
22 **am the director of performance improvement.**

23 **Q. Okay. Are you a nurse?**

24 **A. Yes, sir, I am.**

25 **Q. How long have you been a nurse?**

1 A. **Approximately 38 years.**
 2 Q. Is the position that you hold now, are you in
 3 direct patient care or is it more administrative?
 4 A. **More administrative.**
 11:56AM 5 Q. Okay. Do you know Anne Mitchell?
 6 A. **Yes, sir, I do.**
 7 Q. Worked with Ms. Mitchell for many years?
 8 A. **Yes, sir, I have.**
 9 Q. Did you ever hear directly from Ms. Mitchell's
 11:56AM 10 mouth to your ears any disparaging comments about
 11 Dr. Arafiles?
 12 MR. COOK: To which --
 13 A. **Yes, sir, I did.**
 14 MR. COOK: -- Your Honor, we would object
 11:56AM 15 to -- for the reasons, the 404(b) and we believe it's
 16 irrelevant.
 17 THE COURT: Overruled.
 18 Go ahead.
 19 Q. (By Mr. Tidwell) How many occasions did
 11:56AM 20 Ms. Mitchell make disparaging comments to you about
 21 Dr. Arafiles?
 22 A. **Multiple.**
 23 Q. Okay. Two or three times or eight or 10 times?
 24 A. **More than two or three.**
 11:57AM 25 Q. Can you remember some of the comments she made

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1 specifically?
 2 MR. COOK: And we'd object for the same
 3 reasons, Your Honor.
 4 THE COURT: Overruled.
 11:57AM 5 A. **The one that stands out in my mind is an**
 6 **evening and we were at a board meeting, we were leaving,**
 7 **and her statement was we need to get rid of that son of**
 8 **a bitch.**
 9 Q. Do you remember any more of the comments?
 11:57AM 10 A. **There was others about his incompetency.**
 11 Q. Did it appear to you -- was it your perception
 12 hearing these things that she had animosity for
 13 Dr. Arafiles?
 14 A. **Yes, sir, it was.**
 11:57AM 15 Q. Okay. You work at a public hospital, don't
 16 you?
 17 A. **Yes, sir.**
 18 Q. And you get paid with public monies?
 19 A. **Yes, sir.**
 11:57AM 20 Q. You're a nurse, and nurses have certain
 21 obligations, don't they?
 22 A. **Yes, sir, we do.**
 23 Q. And the fact that you are a nurse in a public
 24 hospital even gives you further obligations as a public
 11:58AM 25 servant?

1 A. **Yes, sir.**
 2 Q. Do you -- and the things that you do could be
 3 considered, since you are paid with public monies,
 4 governmental purposes?
 11:58AM 5 A. **Yes, sir, it is.**
 6 Q. Do you believe it's appropriate for a public
 7 servant to interject her own --
 8 MR. COOK: And, judge, I object. I think
 9 this is irrelevant. I think he's going to a statement
 11:58AM 10 of law or a conclusion of law.
 11 THE COURT: I think so, but I haven't
 12 heard all the question.
 13 Come approach.
 14 (AT BENCH, OFF THE RECORD)
 11:59AM 15 THE COURT: Sustained.
 16 MR. COOK: Thank you.
 17 Q. (By Mr. Tidwell) Are you aware, ma'am, of the
 18 internal procedures at the hospital if an employee feels
 19 like there is an issue, there are procedures for
 11:59AM 20 bringing the issue forward?
 21 A. **Yes, there is. There is a chain of command.**
 22 Q. Okay. And issues can be almost anything. If
 23 an employee believes that something needs attention by
 24 maintenance, there is ways to handle that?
 11:59AM 25 A. **Yes.**

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1 Q. And if an employee believes that something has
 2 occurred with a patient, there are ways to handle that?
 3 A. **Yes, sir, there is.**
 4 Q. There is a chain of command for every employee
 11:59AM 5 at the hospital, isn't there?
 6 A. **Yes, sir, there is.**
 7 Q. And do all of the employees at the hospital
 8 have supervisors?
 9 A. **Yes, sir, they do.**
 11:59AM 10 Q. Are you -- if a nurse has a complaint about
 11 patient care, let's say patient care that goes on in the
 12 emergency room, what's the first step to take it to?
 13 A. **It would be to your direct supervisor.**
 14 Q. Okay. And then from there --
 12:00PM 15 A. **And then from there it would go to the next**
 16 **person in charge, the ER supervisor, then the director**
 17 **of nursing.**
 18 Q. Okay. And if it's a patient care issue, could
 19 it be presented to the physician medical staff?
 12:00PM 20 A. **Yes, sir, it can.**
 21 Q. And if it needs to be, can it be presented to
 22 the hospital board of control?
 23 A. **Yes, sir, it can.**
 24 Q. Is there any -- and you're a nurse, right?
 12:00PM 25 A. **Yes, sir.**

1 Q. Is there anything about the procedure that's in
2 place at the Kermit hospital that you believe is in
3 place or designed to slow down or stop complaints being
4 handled in a good businesslike fashion?

12:00PM 5 A. **Not that I'm aware of, no, sir.**

6 Q. Okay. Do you think that if someone has a
7 complaint about an issue that one of the things that
8 needs to be done is everyone that has input needs to
9 have a chance to give their input?

12:01PM 10 A. **Yes, sir, I do.**

11 Q. Lots of things go on in a hospital, don't they?

12 A. **A lot.**

13 Q. And is there a risk that if all of the input
14 isn't gathered from the people involved that someone's
15 perception just on their own may be completely off?

16 A. **There is many different perceptions of what
17 could happen.**

18 Q. If people that are involved in a circumstance
19 have a fair opportunity to have a dialogue about it,
20 does that help patient care?

21 A. **It could help the patient care, yes, sir, it
22 could.**

23 Q. Is nurses and doctors sitting around visiting
24 about issues something that could improve the quality of
25 care in the facility?

1 A. **Oh, definitely.**

2 Q. Is that something you would want to encourage?

3 A. **Yes, sir, I would.**

4 Q. Thank you.

12:02PM 5 MR. TIDWELL: Pass the witness, Your
6 Honor.

8 CROSS-EXAMINATION

9 BY MR. COOK:

12:02PM 10 Q. You have Vicki Galle's old job, don't you?

11 A. **It is -- part of it is Vicki's job. Part of it
12 is quality improvement.**

13 Q. Which was part of Vicki's job?

14 A. **Part of it is Vicki's job, yes, sir.**

12:02PM 15 Q. You have Vicki's old job, don't you?

16 MR. TIDWELL: I object, asked and
17 answered.

18 THE COURT: Sustained.

19 Q. (By Mr. Cook) Okay. You know that Vicki Galle
20 was fired for filing a complaint with the Texas Medical
21 Board?

22 MR. TIDWELL: Objection, Your Honor.

23 She's not the person that hires and fires.

24 THE COURT: Sustained.

12:02PM 25 Q. (By Mr. Cook) Have you heard comments or read

1 comments in the press of why Stan Wiley says he fired
2 her?

3 MR. TIDWELL: Objection, Your Honor. What
4 she may --

12:02PM 5 THE COURT: Sustained.

6 Q. (By Mr. Cook) Did you get a pay raise with
7 your new position, ma'am?

8 A. **No, sir. Actually I got a pay cut.**

9 Q. Did you? I'm sorry.

12:02PM 10 MR. TIDWELL: Objection, Your Honor.

11 THE COURT: Okay. We're going to take a
12 break for lunch. I'm going to admonish the attorneys I
13 don't want any sidebar remarks. We've been warned about
14 this and it's happened again. I don't want it happening
15 again.

16 You're excused for lunch. Be back at
17 1:00. Keep in mind the instructions I gave you earlier.

18 And approach the bench.

19 (JURY NOT PRESENT)

12:04PM 20 THE COURT: I have admonished Mr. Cook
21 both outside the presence of the jury and now in the
22 presence of the jury, I've asked not -- him not to make
23 sidebar remarks. And minutes after that was made I get
24 more sidebar remarks in the presence of the jury.

12:04PM 25 You know, Mr. Tidwell has asked for a

1 mistrial based on those sidebar remarks --

2 MR. TIDWELL: The State again --

3 THE COURT: -- and then we get subsequent
4 sidebar remarks.

12:04PM 5 And I'm warning you again, Mr. Cook. The
6 last thing I want to do is have to do this again.

7 MR. COOK: I know, judge, me, too, me,
8 too.

9 THE COURT: And --

12:05PM 10 MR. TIDWELL: Your Honor, the State renews
11 its motion for mistrial. Mr. Cook is again
12 grandstanding to theatrics. That's aggravated by the
13 fact that the court has had to several times admonish
14 the audience to quit responding to testimony in the
15 case. All Mr. Cook is doing is playing to the audience.

16 It's time to mistry (sic) this case at the
17 fault of defense counsel. And I'm sorry that that has
18 to happen, but we can resolve this issue the next time.

19 THE COURT: Well, and I'm going to take
20 that under advisement. And by that I don't mean by any
21 means to say that I'm taking it lightly. I'm taking it
22 very seriously, particularly in light of the subsequent
23 violations of the orders of the court.

24 MR. CARNEY: Your Honor, the gallery -- we
25 have no control of the gallery.

1 THE COURT: Okay. I'm not asking for any
 2 comments. I'm giving instructions. And I'm not asking
 3 for any response to anything that Mr. Tidwell said.
 4 MR. COOK: My apologies to the court, Your
 12:06PM 5 Honor.
 6 THE COURT: And I don't mean by that that
 7 I agree with what Mr. Tidwell said.
 8 And I don't want you to apologize. I want
 9 you to follow my instructions.
 12:06PM 10 MR. COOK: Yes, Your Honor, I will.
 11 THE COURT: Anything else?
 12 See you at 1:00.
 13 MR. TIDWELL: Nothing.
 14 MR. COOK: Thank you.
 12:06PM 15 (A recess was taken from 12:06 to 1:03.)
 16 (JURY PRESENT)
 17 THE COURT: Welcome back, ladies and
 18 gentlemen. And if you'll notice, it's two days in a row
 19 that we've started early after lunch. I think that's a
 01:03PM 20 record. Congratulations.
 21 Go ahead, counsel.
 22 MR. COOK: Thank you, Your Honor.
 23 Q. (By Mr. Cook) Ms. Armstrong, good afternoon.
 24 Do you know who Naomi Warren is?
 01:03PM 25 A. **Yes, sir, I do.**

1 Q. Do you respect her as a practitioner in
 2 healthcare?
 3 A. **I do.**
 4 Q. Do you believe that Naomi cares deeply about
 01:03PM 5 her patients and people she serves?
 6 A. **I know that she cared for my husband and I was**
 7 **very pleased with the care that she provided for him.**
 8 Q. You've had conversations with Naomi about
 9 Dr. Arafiles, haven't you?
 01:04PM 10 A. **I can't recall any that sticks to my mind, I**
 11 **really do not.**
 12 Q. Did you show Naomi Warren a stack of complaints
 13 that you were saving from other staff members concerning
 14 Dr. Arafiles?
 01:04PM 15 A. **No, sir, I did not.**
 16 Q. In this case we have a file of a lady who
 17 dropped a frozen turkey on her toe. And we don't want
 18 to say any names, to protect her confidentiality, so
 19 we're going to call it the turkey toe case, okay?
 01:05PM 20 You were present in the emergency room
 21 when Dr. Arafiles inserted a needle into that lady's
 22 broken toe, weren't you?
 23 A. **No, sir, I was not present. I was called to**
 24 **the emergency room by a staff that was taking care of**
 01:05PM 25 **her.**

1 Q. Staff that had a concern?
 2 A. **Staff that had a concern, yes, sir.**
 3 Q. And isn't it true, ma'am, exercising your
 4 duties as a nurse, you intervened in that procedure?
 01:05PM 5 A. **Yes, I did intervene.**
 6 Q. And the needle was removed because of your
 7 intervention?
 8 A. **The needle was removed.**
 9 Q. Did you file a complaint with the Texas Medical
 01:05PM 10 Board about that?
 11 A. **No, sir, I did not. I did not feel that**
 12 **patient care had been compromised once he was informed**
 13 **and he followed procedure, removed the needle. Patient**
 14 **was satisfied with the care that she received. And I**
 01:06PM 15 **did not feel like it needed any further intervention.**
 16 Q. Do you think that another healthcare
 17 professional could have a reasonable concern about
 18 putting the needle in in the first place?
 19 A. **Would you expand on that please? I'm sorry --**
 01:06PM 20 Q. It's probably --
 21 A. **-- I don't understand.**
 22 Q. It was probably a bad question. Maybe we'll
 23 try it this way.
 24 A different healthcare professional might
 01:06PM 25 reasonably believe that that practice, that putting the

1 needle in in the first place, was questionable?
 2 A. **I guess it could be perceived that way.**
 3 Q. In the past -- do you take your duty as a nurse
 4 and specifically the duty as patient advocate seriously?
 01:07PM 5 A. **Yes, sir, I do.**
 6 Q. Why is that so important for nurses to be
 7 charged with being patient advocates?
 8 A. **Because we are their voice.**
 9 Q. You have specialized training in medicine,
 01:07PM 10 correct?
 11 A. **I have been trained as a registered nurse, yes,**
 12 **sir.**
 13 Q. You understand standard of care, correct?
 14 A. **Yes, sir, I do.**
 01:07PM 15 Q. If you believe that a person is receiving
 16 substandard care, as a nurse in your duties to the
 17 public you're supposed to speak up, aren't you?
 18 A. **I did speak up.**
 19 Q. I know you have, ma'am.
 01:07PM 20 But do you agree with that, that that is
 21 what a nurse should do?
 22 A. **Yes, sir, they should.**
 23 Q. And in some situations where you believe there
 24 is an immediate risk of harm to a patient, a nurse must
 01:08PM 25 intervene to prevent that harm; isn't that correct?

1 A. Yes, sir.
2 Q. Your entire educational background, this role
3 as patient advocate is hammered into you as a nurse,
4 isn't it?

01:08PM 5 A. Yes, it is.

6 Q. The responsibilities that you have in accepting
7 that license is also, the professional responsibilities,
8 is also hammered into you when you go through your
9 training, is it not?

01:08PM 10 A. It is.

11 Q. You're required to take continuing medical
12 education, are you not?

13 A. Yes, we are.

14 MR. TIDWELL: Your Honor, I object on
01:08PM 15 relevancy. We're just way outside the elements of
16 the --

17 THE COURT: Where are we going?

18 MR. COOK: The role of the nurse as a
19 patient advocate and when the duty arises to report
01:08PM 20 questionable medical practices to a licensing agency.

21 THE COURT: Yeah, go ahead.

22 Q. (By Mr. Cook) And in those continuing medical
23 education conferences, is it true that you're required
24 to study the ethics of nursing?

01:08PM 25 A. Yes, sir, we are.

1 Q. Have you ever been instructed that a facility
2 has the right to prevent you from raising medical --
3 questions of medical care to the appropriate licensing
4 boards?

01:08PM 5 A. I am sorry, would you rephrase that?

6 Q. In your training have you ever been instructed
7 that a facility, a hospital, has the power to prevent
8 you from raising concerns about patient care with either
9 the medical licensing agency or the nurse licensing
01:08PM 10 agencies?

11 A. No facility is never -- no, sir.

12 Q. No, sir.

13 Your duty is a higher -- you have a higher
14 duty to the patient than you do to your boss. Would you
01:10PM 15 agree with that?

16 A. I think we are the patient advocate, we do have
17 to advocate for that patient.

18 Q. And that duty to advocate is greater than your
19 duty to your employer?

01:10PM 20 A. I would think so.

21 Q. In fact, you have witnessed nursing practices
22 that have caused you to question the quality of that
23 care, haven't you?

24 A. Yes, sir, I have.

01:10PM 25 Q. And in fact, you have gone outside of the

1 facility before and reported nursing -- nurses to the
2 Board of Nursing?

3 A. Yes, sir, I have. That was part of my
4 responsibility as the director.

01:10PM 5 Q. And you know that the Board of Nursing will
6 conduct an investigation and give that nurse a fair
7 hearing?

8 A. Yes, sir.

9 Q. Would you agree with me that whether you're a
01:11PM 10 nurse or a doctor that if you're practicing good
11 medicine a complaint will not have an effect on your
12 license?

13 A. I guess I would have to agree with that, yes,
14 sir.

01:11PM 15 MR. COOK: Pass the witness, Your Honor.

16 MR. TIDWELL: No further questions of this
17 witness, Your Honor.

18 THE COURT: You can step down.
19 May this witness be excused?

01:11PM 20 MR. TIDWELL: Yes, Your Honor.

21 THE COURT: Any objection to this witness
22 being excused?

23 MR. COOK: No, Your Honor.

24 THE COURT: You're free to go,

01:11PM 25 Ms. Armstrong. Thank you.

1 THE WITNESS: Thank you.

2 MR. TIDWELL: Judge, this witness has not
3 been sworn.

4 THE COURT: Okay. Just right over here.

01:12PM 5 THE WITNESS: Okay.

6 (WITNESS SWORN)

7 THE COURT: Have a seat.

8 Go ahead.

9

01:12PM 10 STEPHANIE BURROWS UDY,

11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. TIDWELL:

14 Q. Would you tell the court your name please,
01:13PM 15 ma'am.

16 A. Stephanie Burrows Udy.

17 Q. Okay. And are you the same Stephanie Burrows
18 whose name and date of birth appeared in the Texas
19 Medical Board letter about Dr. -- to Dr. Arafiles?

01:13PM 20 A. Yes, sir, the one posted on the Internet, yes,
21 sir.

22 Q. Okay. And are you the patient that had the
23 oxygenated olive oil rubbed on her leg?

24 A. I guess. I had so many creams and so many
01:13PM 25 ointments while I was in there, I can't say exactly yes,

1 but --

2 Q. Did anyone ever come and ask you if they could
3 have your permission to disseminate your private
4 personal medical information?

01:13PM

5 A. Of course not.

6 Q. Did you want your private personal medical
7 information released?

8 A. No, sir.

9 Q. Were you visited by Sheriff Roberts?

01:13PM

10 A. Yes, sir.

11 Q. Did he demand that you tell him about your
12 personal medical history?

13 A. Not once.

14 Q. Okay. Did he ask you if you had a complaint
15 about the care you received from Dr. Arafiles?

01:13PM

16 A. Yes, sir, he did. And my answer to that was
17 no, as well as it is here today.

18 Q. Okay. Still here today, no complaint about
19 your care from Dr. Arafiles?

01:14PM

20 A. No, sir. I continued to see him for long after
21 that and still do.

22 Q. Okay. Do you wish to lodge a complaint about
23 any care you received --

24 MR. COOK: Judge, we'd object --

01:14PM

25 Q. (By Mr. Tidwell) -- during your treatment?

1 MR. COOK: And we'd object. This is
2 irrelevant.

3 THE COURT: Sustained.

4 Q. (By Mr. Tidwell) Do you have any complaints
5 about the care you received back when this issue came
6 up?

01:14PM

7 A. Not at all.

8 Q. Okay. And are you concerned that your private
9 information has now been posted out on the Internet?

01:14PM

10 A. Yes, sir. I actually have seen it myself --

11 MR. CARNEY: Objection, Your Honor --
12 sorry.

13 A. -- my date of birth, my name, everything.

14 MR. COOK: And we would object, judge.

01:14PM

15 First of all, we're assuming facts that are not in
16 evidence. Second of all, I don't know what he's talking
17 about, her private information is being posted. Third
18 of all, if he's insinuating that in any way that we have
19 not tried to protect the information we received as a
20 result of this prosecution, I object to that inference,
21 Your Honor.

01:14PM

22 THE COURT: Okay. Overruled.

23 Go ahead.

24 Q. (By Mr. Tidwell) Are you concerned that your
25 information has been posted out on the Internet?

01:14PM

1 A. Yes, sir. I check it every day to see if it

2 has by chance been taken down, and it's still not.

3 Q. Thank you very much.

4 MR. TIDWELL: Pass the witness, Your

01:15PM

5 Honor.

6

7

CROSS-EXAMINATION

8 BY MR. COOK:

9 Q. Ma'am, what has been posted on the Internet?

01:15PM

10 A. There is the letter from the medical board to
11 Dr. Arafiles, and it has a list of all the patients that
12 were referenced and our date of births on there.

13 Q. And what web site is that posted on?

14 A. On casewatch.org. I can give you the whole URL
15 if you'd like.

01:15PM

16 Q. Okay. Are you aware that -- well, I can't

17 explain that, ma'am. I don't know where they got that,
18 but --

19 So let me ask you this question. Do you

01:15PM

20 recognize that document, ma'am?

21 A. Yes, sir.

22 Q. What is the name of that document, ma'am?

23 A. General conditions of admission and treatment.

24 Q. Did you sign that document, ma'am?

01:16PM

25 A. Yes, sir, I did.

1 Q. Okay. And when you signed a document such as
2 that --

3 A. Uh-huh.

4 Q. -- I assume that you at least know what was in
5 it?

01:16PM

6 A. Yes, sir, I have signed many of them.

7 Q. Okay. And did you know that you consented to
8 the release, use, and disclosure of any and all of your
9 records to any person or corporation -- oh, that's just
10 for the insurance.

01:16PM

11 But let's go down here. You understand
12 that personal information will be used and disclosed for
13 the purpose of treatment, payment, and health oversight
14 activities?

01:16PM

15 A. I understand what you're saying, but I never
16 would have thought that this would be where my medical
17 records would end up, ever.

18 Q. I think that -- yes, ma'am.

19 Do you -- are you under the impression

01:16PM

20 that your medical records were transmitted to the Texas
21 Medical Board by anybody other than an investigator for
22 the Texas Medical Board?

23 A. I'm not exactly sure who sent them. I know
24 that they were sent, and I was never asked for my
25 permission to do it, never asked if I wanted to file a

01:17PM

1 claim, never anything. It just happened and --
 2 Q. Do you understand what medical oversight is,
 3 ma'am?
 4 A. Well, I would assume it's the people that check
 01:17PM 5 over the medical records to make sure that the standard
 6 of care is being withheld.
 7 Q. Right.
 8 Do you --
 9 A. Upheld, sorry.
 01:17PM 10 Q. Are you familiar with what the Texas Medical
 11 Board is?
 12 A. I assume they're the people that take care --
 13 that make sure that the doctor is doing what they are
 14 doing.
 01:17PM 15 Q. Right.
 16 And do you understand that when you
 17 authorized the hospital to release your records by
 18 signing that document for oversight that they're -- that
 19 they could be used for oversight?
 01:17PM 20 A. So -- explain the question you're asking me, if
 21 I understand that when I signed it that it could be used
 22 for that?
 23 Q. Yes, could be used for oversight purposes.
 24 A. Well, obviously that's what it says on the
 01:18PM 25 paper, so --

1 Q. Yeah.
 2 And do you have any medical background?
 3 A. I went to nursing school.
 4 Q. Okay. Do you understand the importance of peer
 01:18PM 5 review?
 6 A. Of peer review?
 7 Q. Peer review.
 8 A. I understand that it is important. I mean, I
 9 don't know if you're asking me like on a scale of one to
 01:18PM 10 10 or what. But I assume that it is important to the
 11 people who are doing it.
 12 Q. Okay. Who told you your medical records were
 13 sent?
 14 A. I was made aware of it by Robert Roberts.
 01:18PM 15 Q. Were you advised by anybody to seek an attorney
 16 because of your medical records?
 17 A. No. I went and asked the county attorney what
 18 was going on because I was curious. But never did I
 19 ask -- was asked to get an attorney, no.
 01:18PM 20 Q. You were not told to sue either Anne Mitchell
 21 or Vicki Galle because of this case?
 22 A. No, I was never told to do anything.
 23 Q. Did Robert Roberts tell you he was conducting
 24 an investigation on behalf of the Texas Medical Board?
 01:19PM 25 A. No. He told me that my name had come up and he

1 wanted to let me know as a courtesy more than anything.
 2 MR. COOK: Thank you, ma'am.
 3 MR. TIDWELL: No further questions, Your
 4 Honor.
 01:19PM 5 THE COURT: You're free to go. Thank you.
 6 THE WITNESS: Thanks.
 7 MR. TIDWELL: And may this witness be
 8 released, Your Honor --
 9 THE COURT: Yes. You're free to go or
 01:19PM 10 stay or do whatever you want to do.
 11 THE WITNESS: Thank you, Your Honor.
 12 THE COURT: I need to swear you in.
 13 (WITNESS SWORN)
 14 THE COURT: Go ahead.
 15
 16 JOANN ELIZABETH BERZOZA,
 17 having been first duly sworn, testified as follows:
 18 DIRECT EXAMINATION
 19 BY MR. TIDWELL:
 01:20PM 20 Q. What's your name please, ma'am?
 21 A. I am JoAnn Elizabeth Berzoza.
 22 Q. And, Ms. Berzoza, how are you employed?
 23 A. I'm full-time at Kermit Independent School
 24 District. I also work at the hospital part-time and
 01:20PM 25 Odessa College part-time.

1 THE COURT: Can you guys hear?
 2 Could you speak up a little bit? You're
 3 kind of soft-spoken.
 4 THE WITNESS: Oh, okay.
 01:20PM 5 THE COURT: And pull the microphone up if
 6 you need to.
 7 A. I work at Kermit Independent School District
 8 and also Odessa College and the hospital part-time.
 9 Q. Okay. What's your profession?
 01:20PM 10 A. I'm an L.V.N.
 11 Q. Okay. And does that mean a nurse?
 12 A. Yes, sir, licensed vocational nurse --
 13 Q. Okay.
 14 A. -- for about 29 years.
 01:21PM 15 Q. Do you understand that at some point your name
 16 came up in a Texas Medical Board letter, your name and
 17 date of birth, about -- that was addressed to
 18 Dr. Arafiles?
 19 A. Yes.
 01:21PM 20 Q. And for purposes of identifying your records,
 21 we've identified you as the lady that dropped the turkey
 22 on her toe.
 23 A. Okay.
 24 Q. Is that correct?
 01:21PM 25 A. Yes, sir.

1 Q. Do you remember dropping the turkey on your
2 toe?
3 A. **The turkey, yes, sir.**
4 Q. Okay. Did it hurt?
01:21PM 5 A. **Yes.**
6 Q. Okay. Did you seek medical care for it?
7 A. **Yes, I did.**
8 Q. Where did you go for your medical care?
9 A. **To the emergency room at Kermit.**
01:21PM 10 Q. Okay. And what doctor did you see?
11 A. **Dr. Arafiles.**
12 Q. And did you receive medical care from
13 Dr. Arafiles?
14 A. **Yes, I did.**
01:21PM 15 Q. Have you ever wanted to make a complaint about
16 the medical care you received relating to this incident?
17 A. **No, sir --**
18 MR. COOK: And, judge, I believe this is
19 irrelevant.
01:22PM 20 THE COURT: Overruled.
21 Go ahead.
22 Q. (By Mr. Tidwell) Can you answer please?
23 A. **No, sir.**
24 Q. Did anyone ever come and ask you if it would be
01:22PM 25 all right to disclose your name and date of birth and

1 medical records?
2 A. **No, sir, never.**
3 Q. Does it concern you that those things were
4 disclosed?
01:22PM 5 A. **Yes, it does.**
6 Q. Were you visited by Sheriff Roberts in this
7 case?
8 A. **Yes.**
9 Q. What did he tell you when he came?
01:22PM 10 A. **He had told me that he was investigating a**
11 **complaint that I had allegedly made to the Texas Medical**
12 **Board. I told him I didn't know anything about it, I**
13 **didn't -- I was asking what incident it was on, and then**
14 **I assumed it was my toe where I had dropped the turkey,**
01:22PM 15 **because I had had surgery on my shoulder like a few**
16 **weeks prior. And so he told me it was on the turkey**
17 **toe, whatever.**
18 **And I told him I had no complaint and it**
19 **really bothered me that somebody said I had made a**
01:22PM 20 **complaint when I hadn't because I am capable of making**
21 **my own complaints if I have one.**
22 Q. Okay. And you're a nurse and you're your own
23 patient?
24 A. **Yes, sir.**
01:22PM 25 Q. You think you can advocate for yourself?

1 A. **Yes, sir.**
2 Q. You understand nurses are supposed to advocate
3 for patients?
4 A. **Yes, sir.**
01:23PM 5 Q. Did you need anybody to advocate for you?
6 A. **No, sir.**
7 Q. You feel competent to do that for yourself?
8 A. **Yes, sir.**
9 Q. Thank you.
01:23PM 10 MR. TIDWELL: Pass the witness, Your
11 Honor.
12 THE COURT: Counsel.
13 MR. COOK: Thank you, Your Honor.
14
01:23PM 15 CROSS-EXAMINATION
16 BY MR. COOK:
17 Q. Did Sheriff Roberts tell you that you had made
18 the complaint?
19 A. **He said a complaint had been made that I assume**
01:23PM 20 **that I had made, but I didn't make it. He was**
21 **investigating it.**
22 Q. Okay. And did it -- and when he was
23 investigating, he told you he was invest -- doing an
24 investigation for the Texas Medical Board, didn't he?
01:23PM 25 A. **It was my understanding, I believe so, yes,**

1 sir.
2 Q. Now did he tell you that somebody had sent off
3 your file?
4 A. **He said that there was a complaint that I had**
01:23PM 5 **allegedly made.**
6 Q. Okay. But you know as an L.V.N. that when you
7 signed the consent to treatment that you also consented
8 for your records to be used for oversight purposes,
9 correct?
01:24PM 10 A. **No, sir, I've never realized that. I thought**
11 **it was for insurance purposes and doctor.**
12 Q. Is it your understanding that a letter from the
13 Texas Medical Board was received by Dr. Arafiles with
14 your name and date of birth on it?
01:24PM 15 A. **Yeah, later I found out that it was -- several**
16 **people had the name with -- or a letter with my name on**
17 **it.**
18 Q. And as a licensed L.V.N., you have professional
19 and ethical responsibilities?
01:24PM 20 A. **Yes, sir.**
21 Q. Do you believe that oversight and peer review
22 are important to advance medicine?
23 A. **Yes.**
24 Q. To learn from mistakes?
01:25PM 25 A. **Yes, sir.**

1 Q. To maybe make a doctor a better doctor?
 2 A. **Yeah, I think mistakes are mistakes and they**
 3 **learn from them.**
 4 Q. Okay. And in your case, the staff of Winkler
 01:25PM 5 emergency room had to intervene to prevent -- or to stop
 6 Dr. Arafles from what he was trying to do to your toe,
 7 didn't they?
 8 A. **Yes, at the end of the procedure.**
 9 Q. Thank you, ma'am.
 01:25PM 10 MR. COOK: Pass the witness.
 11 MR. TIDWELL: No further questions of this
 12 witness, Your Honor.
 13 THE COURT: You can step down.
 14 MR. TIDWELL: May she be excused?
 01:26PM 15 THE COURT: Any objection?
 16 You're free to go. Thank you.
 17 THE WITNESS: Thank you.
 18 MR. TIDWELL: Stan Wiley.
 19 THE COURT: Were you sworn earlier?
 01:28PM 20 THE WITNESS: Yes, sir.
 21 THE COURT: Okay. Have a seat right here.
 22 Go ahead.
 23 MR. TIDWELL: Thank you.
 24
 01:28PM 25 **STAN WILEY.**

1 having been first duly sworn, testified as follows:
 2 DIRECT EXAMINATION
 3 BY MR. TIDWELL:
 4 Q. Would you tell the jury your name please, sir.
 01:28PM 5 A. **Stan Wiley.**
 6 Q. And, Mr. Wiley, how are you employed?
 7 A. **I'm the administrator of the Winkler County**
 8 **Memorial Hospital.**
 9 Q. And when did you take over as the administrator
 01:28PM 10 of the Winkler hospital?
 11 A. **January 8th of 2007.**
 12 Q. And since January 8th of 2007, have you served
 13 continuously as the administrator?
 14 A. **Yes, sir.**
 01:28PM 15 Q. Is the Winkler County Memorial Hospital a
 16 governmental hospital?
 17 A. **Yes, sir, it is.**
 18 Q. It's a tax --
 19 A. **It's a tax supported county hospital.**
 01:29PM 20 Q. Okay. Do you understand that administrators of
 21 hospitals have certain obligations and rules and laws
 22 you must follow?
 23 A. **Yes, sir, and especially with being a county**
 24 **hospital.**
 01:29PM 25 Q. You think your obligations are even heightened

1 because of your role as a public servant?
 2 A. **Right, because it's taxpayer supported.**
 3 Q. Okay. You receive -- your salary is paid by
 4 public money?
 01:29PM 5 A. **That is correct.**
 6 Q. Okay. And as a public servant, do you think
 7 the things that you do perform a governmental
 8 function --
 9 A. **Yes, sir, they do.**
 01:29PM 10 Q. -- a governmental purpose?
 11 Okay. Do you believe that you should let
 12 personal feelings or animosity interfere in you
 13 performing your governmental purpose?
 14 A. **No, sir, they should not.**
 01:29PM 15 Q. If you were to allow your personal feelings to
 16 drive your decisions in a particular instance, do you
 17 think you would be stepping out of your governmental
 18 purpose?
 19 MR. COOK: And, judge, I'm going to
 01:30PM 20 object. That's I believe, number one, irrelevant.
 21 Number two is I believe he's asking this witness to make
 22 a conclusion of law.
 23 THE COURT: Overruled.
 24 Go ahead.
 01:30PM 25 Q. (By Mr. Tidwell) Do you believe that if you

1 allow your personal feelings or animosity to drive your
 2 decision in a particular instance that that is stepping
 3 outside doing a governmental purpose?
 4 A. **Yes.**
 01:30PM 5 Q. Are there rules at a hospital?
 6 A. **Yes, sir.**
 7 Q. Do the rules in the hospital apply to everybody
 8 in the hospital?
 9 A. **Yes, sir, they do.**
 01:30PM 10 Q. If somebody were to say --
 11 A. **Well, the --**
 12 THE COURT: Yeah, we need you to talk one
 13 at a time.
 14 THE WITNESS: I'm sorry.
 01:30PM 15 THE COURT: You'll let him finish the
 16 answer.
 17 And you let him finish the question, okay?
 18 THE WITNESS: Yes, sir.
 19 THE COURT: Go ahead, Mr. Tidwell.
 01:30PM 20 MR. TIDWELL: Thanks, judge.
 21 Q. (By Mr. Tidwell) If one of your employees at
 22 the hospital were to tell you that the rules of the
 23 hospital don't apply to them, would that be contrary to
 24 what you think the safe practice is?
 01:31PM 25 A. **Well, it's contrary, but it was true.**

1 Q. Okay. When was it true?
 2 A. All the time that I've been there for the first
 3 couple of years, if something came up where I had
 4 problems with Anne Mitchell on what I wanted her to do,
 5 if it was contrary to what she wanted to do --

01:31PM

6 MR. COOK: And, judge, I'm going to
 7 object. I think --

8 A. -- then she was allowed not to do it.

9 MR. COOK: Judge, I'm going to object. I

01:31PM

10 think this is nonresponsive, number one. Number two, I
 11 think this line of questioning is irrelevant.

12 THE COURT: Okay. Approach.

13 (AT BENCH, OFF THE RECORD)

14 THE COURT: Sustained.

01:31PM

15 MR. COOK: Judge, we'd ask that the
 16 response be stricken from the record.

17 THE COURT: Okay. The jury is instructed
 18 to disregard the answer of the witness and not consider
 19 it for any purpose.

01:32PM

20 Go ahead.

21 Q. (By Mr. Tidwell) During your time at the
 22 hospital, did Anne Mitchell work there?

23 A. Yes, sir, she did.

24 Q. Do you recognize her being in the courtroom

01:32PM

25 today?

1 A. Yes, sir, I do.

2 Q. Where is she?

3 A. The lady in the blue dress, or in the blue top.

4 Q. Okay. Do you know Dr. Arafiles?

01:32PM

5 A. Yes, sir, I do.

6 Q. Did you make the decision in consultation with
 7 anyone else to hire Dr. Arafiles?

8 A. Yes, sir. I presented the information on

9 Dr. Arafiles to the hospital board. I presented the

01:32PM

10 information on Dr. Arafiles to the county commissioners
 11 and the county judge. I talked it over at least twice
 12 with our nurse practitioner before Dr. Arafiles was ever
 13 offered the job.

14 Q. Okay. And did you recruit Dr. Arafiles to

01:32PM

15 come?

16 A. Yes, sir, I did.

17 Q. Did you think he would be a positive step at
 18 the hospital?

19 A. Yes, sir.

01:33PM

20 Q. And was Dr. Arafiles recruited to see patients
 21 in both the rural health clinic and in the emergency
 22 room?

23 A. Yes, sir.

24 Q. When doctors come to work for the hospital, do

01:33PM

25 they come right in the door with full staff privileges?

1 A. No, sir. The first six months, if you're hired
 2 to work full-time at the hospital, you have six months
 3 worth of provisional privileges.

4 Q. At the end of that six months, what happens?

01:33PM

5 A. At the end of that six months, then you come
 6 before the medical staff to see if you can become an
 7 active staff member.

8 Q. And does active staff member mean full
 9 privileges?

01:33PM

10 A. Yes, sir, it does.

11 Q. Were you aware when you recruited and when
 12 Dr. Arafiles was hired that he had a restriction on his
 13 license?

14 A. Yes, sir, I was.

01:33PM

15 Q. What was the restriction?

16 A. He could not supervise nurse practitioners or
 17 physician's assistants.

18 Q. Did that diminish your need and the help that
 19 he was going to be able to provide to the hospital?

01:34PM

20 A. No, sir. And when I was talking to the
 21 hospital board and the county commissioners and the
 22 county judge, they all knew that, also. It was full
 23 known by each person I just named. They all knew it
 24 ahead of time.

01:34PM

25 Q. Okay. At the time, did the bylaws of the

1 hospital prohibit hiring a doctor with a restriction on
 2 his license?

3 A. Yes, it did.

4 Q. And was that only hiring a doctor at full

01:34PM

5 active staff privileges or was it even a provisional
 6 doctor?

7 A. No, a provisional doctor, also.

8 Q. Okay. And those are rules set by the board of
 9 the hospital, are they not?

01:34PM

10 A. Yes, sir.

11 Q. And if the board sets the rules, can they waive
 12 the rules?

13 A. Yes, sir.

14 Q. Is the board charged with managing the
 15 hospital?

01:34PM

16 A. Yes, sir.

17 Q. And they answer to who?

18 A. The hospital board?

19 Q. Yes, sir.

01:35PM

20 A. They're answerable to the county commissioners.

21 Q. Okay. Are you aware that in September of 2008
 22 Dr. Arafiles performed three little minor surgical
 23 procedures in the emergency room?

24 A. Yes, sir, I'm aware of that.

01:35PM

25 Q. How did that come up?

1 A. The ER supervisor, Donna Paehl, the R.N.,
2 informed me that these surgeries had taken place. I
3 informed Anne Mitchell to have her check it out.
4 Anne checked it out, wrote a letter to

01:35PM

5 Dr. Arafiles, about a one-page, single-spaced letter, to
6 Dr. Arafiles explaining the position of the hospital in
7 regards to surgeries in the emergency room and gave that
8 to Dr. Arafiles.

9 Q. Was it also given to the other medical staff
10 members?

01:35PM

11 A. Yes, sir.

12 Q. And what at the time was there a problem with
13 those procedures being performed in the ER?

14 A. When you're a critical access hospital you're
15 not supposed to do surgery in the ER.

01:36PM

16 Q. Okay. Have you worked at other hospitals that
17 are not critical access hospitals?

18 A. Dr. Arafiles?

19 Q. Have you?

01:36PM

20 A. Yes, in two of them.

21 Q. Okay. Are these types of procedures allowed in
22 other hospitals?

23 A. Yes, sir, they are.

24 Q. Okay. Is it just because of our particular
25 designation at our hospital we're just not supposed to

01:36PM

1 do that?

2 A. If you're designated a critical access
3 hospital, you're not supposed to do those surgeries.

4 Q. Okay. What does it mean to be a critical
5 access hospital?

01:36PM

6 A. It's a hospital that -- well, usually it's in a
7 very small community. Usually you cannot afford to keep
8 your hospital going unless you can get a designation of
9 critical access. It's better for your Medicare funding,
10 those types of things.

01:37PM

11 The federal government, if you're in a
12 small county hospital, or a small hospital anywhere, is
13 more willing to provide you with more governmental
14 dollars if you will play by the rules.

15 Q. Okay.

01:37PM

16 A. And that's one of the rules.

17 Q. So in our emergency room, are we pretty limited
18 about the procedures that can be done?

19 A. Yes, we are. And we have -- we have policies
20 and procedures on what you can and can't do.

01:37PM

21 Q. All right. And then anything that's a big
22 issue has to be shipped somewhere?

23 A. Transferred, yes, sir, almost always to Odessa.

24 Q. Okay. And some critical issues, they go by
25 ambulance or they go by helicopter?

01:37PM

1 A. That is correct.

2 Q. Okay. After these three issues were dealt with
3 about the things happening in the ER, that was in
4 September of '08; is that correct?

01:38PM

5 A. Yes, sir.

6 Q. Since then has another one happened?

7 A. No, sir. The -- what we do or what we did
8 there after those three incidents and after Anne wrote
9 the letter, which I e-mailed her back and said that's a
10 good letter, I also several days later I also e-mailed
11 the same three physicians again and reemphasized that we
12 do not do those surgeries in our emergency room.

01:38PM

13 The -- we also at that time put a copy of
14 that letter into Dr. Arafiles' credentialing file.

01:38PM

15 Q. Okay. Do doctors in a facility have a
16 credentialing file?

17 A. Yes, sir, they do.

18 Q. When he first -- and who is the person that's
19 in charge of the credentialing file?

01:38PM

20 A. At that time Anne Mitchell was.

21 Q. Did Anne Mitchell ever indicate she had a
22 problem signing off on Dr. Arafiles' credentials when he
23 first came to the facility?

01:39PM

24 A. Anne Mitchell had a problem with Dr. Arafiles
25 from day one.

1 Q. And did it get any better?

2 A. No, sir.

3 Q. Did it get worse?

4 A. Yes, sir.

01:39PM

5 Q. Did it appear to build and build on a daily
6 basis?

7 A. Maybe not daily, but it built -- we went --
8 well, that was late September. As early as -- well, by
9 the 10th of October I had already had it reported to me
10 by Dr. Winton that, now it's hearsay to me, but Dr. --

01:39PM

11 MR. COOK: And then we would object
12 because it's hearsay here, too, Your Honor.

13 THE COURT: Sustained.

14 Q. (By Mr. Tidwell) In December of '08, did
15 Dr. Arafiles apply for full active staff privileges?

01:39PM

16 A. Yes, he did.

17 Q. And was a discussion held with the medical
18 staff at the time?

19 A. Yes, sir.

01:39PM

20 Q. Who all was there at that medical staff
21 meeting?

22 A. Pardon me?

23 Q. Who was there at that medical staff meeting?

24 A. Well, before it -- before we got to the active
25 medical staff in December -- I mean, to be allowed to be

01:39PM

1 active medical staff in December, we had a special
2 hospital board meeting early in December where I spelled
3 out to the hospital board that the bylaws that they were
4 in violation of in regards to having a restricted
01:40PM 5 license doctor, that they needed to change those bylaws
6 to where if you were licensed in the State of Texas it
7 would be proper to be on active medical staff.

8 But what they told me was in that board
9 meeting, hospital board meeting, was -- is that as long
01:40PM 10 as the only restriction against --

11 MR. COOK: Judge, we're going to object as
12 to what they told me.

13 THE COURT: Sustained.

14 Q. (By Mr. Tidwell) At the hospital board
01:40PM 15 meeting, what policy did the board adopt?

16 A. They determined that they would not change the
17 policy, but that since the only thing that Dr. Arafles
18 could not do was be in charge of nurse practitioners and
19 P.A.s that that would be acceptable and for me to tell
01:41PM 20 that to the medical staff.

21 Q. Okay. And then the medical staff met?

22 A. Yes, sir.

23 Q. That meeting included you and the three
24 doctors; Pham, Winton, and Arafles?

01:41PM 25 A. No. Dr. Arafles and Dr. Winton weren't in

1 there because they were the ones that were being
2 discussed.

3 Q. Okay. So who did the meeting?

4 A. Dr. Pham.

01:41PM 5 Q. Okay. And did Dr. Pham adopt those two doctors
6 with full staff privileges?

7 MR. COOK: And, judge, that is also
8 hearsay in a roundabout way, so we'd object.

9 THE COURT: Sustained.

01:41PM 10 Q. (By Mr. Tidwell) At the December medical staff
11 meeting, were Dr. Arafles and Dr. Winton granted by the
12 chief of staff full active staff privileges?

13 A. Yes, sir.

14 Q. The Winkler County Memorial Hospital has some
01:41PM 15 rules in place for reporting of patient care issues,
16 don't you?

17 A. Yes, sir.

18 Q. Have the -- did the rules change from the time
19 you got there until current?

01:42PM 20 A. On reporting?

21 Q. Well, let me rephrase. At anytime since
22 January 8th of 2007, have you made a change in the rules
23 for reporting healthcare issues?

24 A. Yes.

01:42PM 25 Q. And are you the person at the facility that

1 decided to make that change?

2 A. I decided to make the change, but you have to
3 work it through the hospital board and the medical
4 staff. And, yes, I did instigate a change.

01:42PM 5 The reason I did that is because in
6 January of 2008 a Dr. Young that I had for the emergency
7 room was reported to the Texas Medical Board, and it was
8 an unfounded report.

9 And I wanted to get it changed so that not
01:42PM 10 one person at the hospital without going to the medical
11 staff and having them review it and agree with it before
12 something like that got sent to the Texas Medical Board.

13 Q. So the complaint that was lodged by -- about
14 Dr. Young was unfounded?

01:43PM 15 A. It was unfounded, yes.

16 Q. And Mr. Cook has asked a couple of witnesses
17 did they know that Dr. Young was sanctioned. Are you --

18 A. He was not sanctioned.

19 Q. Okay. And who was the person at the facility
01:43PM 20 that reported Dr. Young?

21 A. Anne Mitchell.

22 Q. And was that report made, as far as you know,
23 without her having all the facts?

24 MR. COOK: And, judge, that's

01:43PM 25 speculation --

1 THE COURT: Sustained.

2 MR. COOK: -- number one. Second of all,
3 I think the whole line of questions is irrelevant to the
4 charge at hand.

01:43PM 5 THE COURT: Okay. How is this relevant?

6 MR. TIDWELL: It's relevant to -- it's
7 already been discussed in front of the jury, and I've
8 got one more follow-up question.

9 THE COURT: Go ahead, go ahead.

01:43PM 10 Q. (By Mr. Tidwell) How -- did you know -- were
11 you involved in Dr. Young's issue that weekend?

12 A. When he got bad sick, he called me, and I came
13 to the hospital. And he told me, Stan, I am sick, I
14 have got to go. And I told him that's fine, just as
01:44PM 15 soon as Dr. Pham comes I will tell him and he'll take
16 over the care of your patients.

17 Q. And so --

18 A. He was terrible sick.

19 Q. Okay. And so you made sure that there was
01:44PM 20 another physician to cover him?

21 A. Yes, sir.

22 Q. And was Dr. Young reported for leaving without
23 appropriate coverage?

24 A. Yes, sir.

01:44PM 25 Q. Okay. Since coming to the hospital, are

1 patient charts reviewed by the medical staff?

2 **A. They're -- most of the patient charts are**
3 **reviewed by the utilization management committee, which**
4 **would have been Anne Mitchell. And the patient charts**
5 **are reviewed and reported monthly to medical staff. If**
6 **they have any concerns with charts, then they take them**
7 **up usually with Dr. Pham, who is the chief of staff.**

8 **Q. Okay. And is it routine at medical staff**
9 **meetings for the doctors to discuss specific charts?**

10 **A. They do discuss some specific charts, but not**
11 **very many.**

12 **Q. Okay. And then does the hospital send charts**
13 **out for independent peer review?**

14 **A. Yes, sir.**

15 **Q. Is that a process that's random or is it a**
16 **process that is -- that designated charts go out or is**
17 **it a combination?**

18 **A. The -- it's a combination. The -- sometimes**
19 **the charts are random, and then sometimes there is**
20 **specific designated charts that are sent out.**

21 **Q. If the members of the medical staff have a**
22 **concern about a particular chart, is it included in the**
23 **batch that goes out to the A&M system?**

24 **A. I believe it would be.**

25 **Q. And is that called the Archie peer review**

1 system?

2 **A. Yes, sir.**

3 **Q. Okay. Did you have a meeting with Dr. Arafiles**
4 **on October 11th of 2008 with Dr. Winton in attendance?**

5 **A. Yes, I did.**

6 **Q. Where did the meeting occur?**

7 **A. At -- I don't remember the name of the coffee**
8 **shop, but it was there in Kermit.**

9 **Q. What was the purpose of the meeting?**

10 **A. The purpose of the meeting was to discuss with**
11 **Dr. Arafiles some complaints that had been received, or**
12 **I was told by Dr. Winton --**

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

15 **THE COURT: Sustained.**

16 **A. Well, I don't know how to answer that because**
17 **that's why we met.**

18 **Q. Okay. The -- could -- would it be fair to call**
19 **the rules at the hospital for working your way up the**
20 **chain of command to report a patient care issue, would**
21 **it be fair to call that a policy of internal or**
22 **self-review?**

23 **A. I'm not -- the -- what every employee does at**
24 **the hospital, they all have their departmental policies**
25 **and procedures. If something comes up that they don't**

1 **think is right, then they're supposed to report it up**
2 **and to the -- either the administrator, depending on**
3 **which policy and procedure it is, or to the chief of**
4 **staff, depending on which policy and procedure it is, so**
5 **that --**

6 **And it's done that way so that, one, no**
7 **patients get something that goes wrong with some patient**
8 **charts that shouldn't happen if you follow through a**
9 **process.**

10 **Two, another reason you do it, especially**
11 **in administration, is that we should not destroy another**
12 **employee or a contract person until it -- we've had a**
13 **chance to review to make sure it's proper.**

14 **And that applies in -- it's kind of -- a**
15 **hospital is kind of like two different worlds. We've**
16 **got the direct R.N.s, direct L.V.N.s, that really take**
17 **care of patient care. And what they do if they see**
18 **something wrong is they immediately go to their**
19 **emergency room ER nurse and the emergency room medical**
20 **director and try to resolve whatever is wrong**
21 **immediately.**

22 **And then if something doesn't go right,**
23 **then they get a hold of the medical director, who is the**
24 **chief of staff, to try to make sure, one, that patients**
25 **get taken care of properly.**

1 **The other method is for basically the rest**
2 **of us that are administrative type people where we're**
3 **not on the firing line of actually something tragic is**
4 **going to happen if you don't make a change in the next**
5 **two hours. And that process is to make sure that**
6 **whatever you want to do, we make sure it's done proper.**

7 **The whole medical staff bylaws are pages**
8 **and pages of how to properly deal with concerns of**
9 **patient care.**

10 **Q. Okay. Let me read you a statement, and I want**
11 **you to tell me whether this is true or false.**

12 **The bylaws require that a physician**
13 **arrange for care by another provider before he/she**
14 **leaves. This was not done however. The administrator**
15 **was contacted and somehow managed to resolve this issue**
16 **to the board's satisfaction. This issue began when**
17 **Dr. Young, Dr. M. Young, was reported last year for**
18 **abandonment of patient.**

19 **If -- is it correct that Dr. Young left**
20 **and abandoned patients?**

21 **A. He did not abandon his patients, he did not.**
22 **And we received a letter back from the**
23 **Texas Medical Board that said that's an unfounded case,**
24 **because they did review that at the Texas Medical Board**
25 **and they did not agree that he abandoned those patients**

1 because he didn't.

2 Q. Okay. Was there an incident when Dr. Arafiles
3 contacted you to ask you if it would be acceptable to do
4 a procedure in a patient's home?

01:50PM 5 A. I don't recall it, but let me tell you this.

6 In that same -- back in September of '08 --

7 MR. COOK: And, judge, I'm going to object
8 as nonresponsive to the question asked.

9 THE COURT: Yeah, we've got to go question
01:51PM 10 and answer, he's got to ask you questions and you --

11 THE WITNESS: I'm sorry.

12 THE COURT: -- directly answer those
13 questions.

14 THE WITNESS: I'm sorry.

01:51PM 15 THE COURT: Go ahead, Mr. Tidwell.

16 Q. (By Mr. Tidwell) Has Dr. Arafiles, in the fall
17 of '08 period, would he see a patient at home if they
18 needed it?

19 A. Yes, I believe he would.

01:51PM 20 Q. Okay. Did he ever ask for supplies to take to
21 a patient's home?

22 A. Yes, he did.

23 Q. Okay. Did he ask you if that'd be okay?

24 A. Yes, he did.

01:51PM 25 Q. And what did you tell him?

1 A. That as long as those supplies are for
2 something that we could do in that patient's home that's
3 not a surgery or not allowed by clinic rules, then, yes.

4 However, and I told him all of this,

01:51PM 5 however, I don't want you doing things in a patient's

6 home because there's a risk of liability. And since I

7 am the guy that's paying for contract physicians, I

8 don't want you doing them at patient's home, have them

9 come either to the clinic or come to the hospital.

01:52PM 10 Q. And did he comply with your request?

11 A. Yes, sir.

12 Q. Did he throw a fit or anything?

13 A. No, sir.

14 Q. Okay. And did you need Dr. Pham's help to
01:52PM 15 solve that situation?

16 A. No, sir.

17 Q. Dr. Arafiles came in about April of 2008; is
18 that right?

19 A. Yes, sir.

01:52PM 20 Q. Did you take -- when he first came, did you
21 take him and introduce him around town?

22 A. Yes, sir, I did.

23 Q. Did you just go to the sheriff's office or did
24 you go other places?

01:52PM 25 A. I for sure took him to every county

1 commissioner's office. I for sure took him to the
2 county judge.

3 MR. COOK: And, judge, I --

4 A. Without a doubt I took him over to the board
01:53PM 5 president.

6 MR. COOK: And, judge, I'm going to object
7 to this as I just don't see the relevance.

8 THE COURT: How is this relevant,

9 Mr. Tidwell?

01:53PM 10 MR. TIDWELL: I'll move on, judge.

11 Q. (By Mr. Tidwell) Do you have an idea, a rough
12 idea, since April of 2008 how many patients Dr. Arafiles
13 has seen in Kermit?

14 A. Since April of 2008?

01:53PM 15 MR. COOK: And, judge, I'm going to object
16 to the relevance of this.

17 THE COURT: How is this relevant?

18 MR. TIDWELL: Your Honor, Mr. Young has
19 bantered about five charts that he thinks are at issue

01:53PM 20 with Dr. Arafiles' care. I would like to see in the
21 time that Dr. Arafiles has been there how many thousands
22 of patients he's seen so we can compare the five to a
23 realistic number, so we're comparing apples to apples.

24 MR. COOK: And, judge, I don't --

01:53PM 25 THE COURT: Approach.

1 (AT BENCH, OFF THE RECORD)

2 THE COURT: Overruled.

3 Go ahead.

4 MR. TIDWELL: Pass the witness, Your

01:55PM 5 Honor.

6 MR. COOK: May I, Your Honor?

7 THE COURT: Yeah, go ahead.

8 MR. COOK: Thank you, Your Honor.

9

01:55PM 10 CROSS-EXAMINATION

11 BY MR. COOK:

12 Q. Mr. Wiley, we've never met, have we, sir?

13 A. I don't think so.

14 Q. Hi. My name is John Cook. Good afternoon.

01:55PM 15 It's difficult to keep and recruit quality
16 physicians or really any physicians in rural healthcare,
17 isn't it?

18 A. That is correct.

19 Q. I mean, one of your big challenges is to keep
01:56PM 20 doctors on staff, to be able to have doctors on staff,
21 isn't it?

22 A. That's correct.

23 Q. A lot of doctors don't want to come and live
24 out here with us in west Texas, do they?

01:56PM 25 A. That's correct, also.

1 Q. Okay. And a doctor is a very precious
2 commodity for a rural community. Would you agree with
3 that?
4 A. Yes.
01:56PM 5 Q. Okay. Now a hospital is kind of like a medical
6 supermarket, isn't it?
7 A. **I'm not sure I know what you mean there.**
8 Q. Well, there is many, many different services
9 available to a patient in a hospital, correct?
01:56PM 10 A. **I guess, yeah. Yes.**
11 Q. Do you have radiological services, sir?
12 A. **Pardon me?**
13 Q. Do you have radiology services?
14 A. **Yes.**
01:56PM 15 Q. Do you have pharmacy services?
16 A. **Very, very limited on the pharmacy.**
17 Q. But you do?
18 A. **Yes, sir.**
19 Q. Do you have wards where you can admit people
01:56PM 20 for inpatient?
21 A. **Yes, sir.**
22 Q. Do you have services provided in the emergency
23 room?
24 A. **Yes, sir.**
01:57PM 25 Q. Do you have services provided in the rural

1 clinic?
2 A. **Yes, sir.**
3 Q. There is a lot of different things available in
4 Kermit to assist your citizens with their health. Would
01:57PM 5 you agree with me?
6 A. **Yes, sir.**
7 Q. And the truth of the matter is that only a
8 doctor can order those services; is that correct?
9 A. **That's correct.**
01:57PM 10 Q. Only -- it's kind of like if it was a
11 supermarket of healthcare, you have to get permission
12 from a doctor to go in each store --
13 A. **Yes.**
14 Q. -- would you agree with me?
01:57PM 15 A. **Yes.**
16 Q. So your job is to run the hospital as a
17 businessman, correct?
18 A. **Well, it's more than that.**
19 Q. Well, yes. But primarily you are the chief
01:57PM 20 operating officer of the hospital, correct?
21 A. **That is correct.**
22 Q. Okay. And the hospital is a business; isn't
23 that correct?
24 A. **That's correct.**
01:57PM 25 Q. Okay. And you have three doctors, correct?

1 A. **That is right.**
2 Q. And those three doctors are going to be the
3 ones who generate the revenue for the hospital?
4 A. **That's right.**
01:57PM 5 Q. That's right.
6 Okay. And isn't it true that even though
7 you have three that Dr. Arafiles' percentage of income
8 that he generates for the hospital is greater than
9 33 percent?
01:58PM 10 MR. TIDWELL: Object, Your Honor. We just
11 went through how could this be relevant.
12 THE COURT: Sustained.
13 MR. COOK: I'll strike it. Thank you.
14 Q. (By Mr. Cook) Okay. What is your level of
01:58PM 15 training for medicine, not for hospital administration,
16 but for actual medicine?
17 A. **Oh, I'm not in medical.**
18 Q. Do you believe that not having training for
19 medical makes you qualified to pass judgment on standard
01:58PM 20 of care issues?
21 A. **No.**
22 Q. Dr. Arafiles -- there were staff complaints
23 about Dr. Arafiles, correct?
24 A. **I don't know which time -- if you're referring**
01:59PM 25 **to September of '08 --**

1 Q. At anytime that he's been employed, has there
2 been staff complaints that you were made aware of?
3 A. **I wouldn't say any more than any other doctors**
4 **there.**
01:59PM 5 Q. Okay. And have there been some complaints that
6 were -- you received from the clinic?
7 A. **The -- okay, yes.**
8 Q. Okay. Well, actually I need to backtrack a
9 little bit. You're the gentleman who is responsible for
01:59PM 10 hiring this man?
11 A. **I'm -- that is correct.**
12 Q. Okay. What type of investigation did you do of
13 his previous employment before you brought him to
14 Kermit?
01:59PM 15 A. **The -- you call prior places that he's worked**
16 **and ask for references. You pull the Texas Medical**
17 **Board information and go from there.**
18 Q. Who did you -- do you remember who you talked
19 to in Victoria about Dr. Arafiles?
02:00PM 20 A. **No, sir.**
21 Q. Okay. Do you know what the acts that were
22 reported to the Texas Medical Board were about
23 Dr. Arafiles?
24 A. **I know the ones that were in that April 7,**
02:00PM 25 **2007, Texas Medical Board report.**

1 Q. The agreed order that he agreed to sign off on?
 2 A. **Right.**
 3 Q. Okay. Under the bylaws in effect, they're
 4 supposed to have an unrestricted license, as you've
 02:00PM 5 said, right?
 6 A. **That is correct.**
 7 Q. Under the contract that Dr. Arafiles signed,
 8 sir, isn't it also one of his responsibilities to at all
 9 times maintain a currently valid and unrestricted
 02:00PM 10 license?
 11 A. **Probably so.**
 12 Q. Okay. And when you entered into the contract
 13 with him --
 14 Is that Dr. Arafiles' contract that you
 02:01PM 15 entered into when you hired him?
 16 A. **Yes.**
 17 Q. And under the terms of that contract and under
 18 the bylaws, his employment was improper. Would you
 19 agree with me?
 02:01PM 20 A. **If the hospital board and the county**
 21 **commissioners and the county judge all agreed that it's**
 22 **proper to hire Dr. Arafiles, then Dr. Arafiles was**
 23 **hired.**
 24 Q. Regardless of what the bylaws said?
 02:01PM 25 A. **That is correct.**

1 Q. Okay. Now there have been incidents that --
 2 well, let's just keep it confined to this case. You
 3 know about the case files that are before this jury,
 4 right?
 02:02PM 5 A. **Yes, sir.**
 6 Q. Okay. Is it your testimony that you internally
 7 completely handled those concerns?
 8 A. **Yes, sir. Now I don't mean me alone. The --**
 9 **those case files were handled by -- the front line of**
 02:02PM 10 **defense on that was Anne Mitchell. I was satisfied with**
 11 **the letter that she wrote, if a good word is chastising,**
 12 **chastising Dr. Arafiles for those files. I totally**
 13 **agree with that.**
 14 **And then I wrote a letter to the three**
 02:02PM 15 **doctors reaffirming don't do those surgeries, and I was**
 16 **satisfied with that.**
 17 **So, yes, in that respect, in regards to**
 18 **those files, and we did put it in his credentialing**
 19 **file, so, yes, I was satisfied at that point after that.**
 02:03PM 20 Q. Okay. Did you issue a plan of correction for
 21 Dr. Arafiles?
 22 A. **The only plan of correction I had for those was**
 23 **don't do surgeries in our emergency room.**
 24 Q. Is it your testimony under oath that the letter
 02:03PM 25 that Anne Mitchell wrote Dr. Arafiles in September '08

1 is the entire plan of correction?
 2 A. **If you add in the one that I wrote them on**
 3 **September 30th, the answer to that would be yes.**
 4 Q. Do you have any plan of correction signed by
 02:03PM 5 Dr. Arafiles acknowledging that he made a mistake?
 6 A. **No.**
 7 Q. And what was the remedial sanction -- well,
 8 first of all, was Dr. Arafiles sanctioned at all for
 9 what he did?
 02:03PM 10 A. **No more than saying don't do it anymore.**
 11 Q. Okay. He wasn't issued a letter of reprimand,
 12 was he?
 13 A. **Other than the one Anne wrote, no.**
 14 Q. And the letter that Anne wrote was simply -- it
 02:04PM 15 dealt with two things. Number one, we don't do surgery
 16 in our ER, please don't do it again, right?
 17 A. **That's -- yeah, that's pretty close.**
 18 Q. And number two, with your alternative medicine,
 19 if you want to prescribe it, you need to give the
 02:04PM 20 pharmacist information so they can consider -- the
 21 medical staff can consider whether to include it in the
 22 hospital's formulary, right?
 23 A. **Yes.**
 24 Q. And you knew even before you hired him that
 02:04PM 25 Dr. Arafiles practices what they call alternative or

1 complementary medicine?
 2 A. **Yes.**
 3 Q. In fact, you knew Dr. Arafiles, did you not,
 4 you first met him when you and he were both doing some
 02:05PM 5 work in Crane, Texas?
 6 A. **I was not working there when he was at Crane.**
 7 Q. Okay.
 8 A. **The first time I saw Dr. Arafiles was in the**
 9 **Ward County emergency room.**
 02:05PM 10 **When I was at the front when we were --**
 11 Q. Hold on, hold on, Mr. Wiley.
 12 THE COURT: Again, question and answer,
 13 okay?
 14 THE WITNESS: Oh, I'm sorry. Okay.
 02:05PM 15 Q. (By Mr. Cook) You were made aware that
 16 Dr. Arafiles was soliciting patients and staff to buy
 17 herbal remedies and water conditioners and things such
 18 as that, weren't you?
 19 A. **No.**
 02:05PM 20 Q. Were you ever --
 21 A. **Now say it again please.**
 22 Q. I will. You were made aware by staff that
 23 Dr. Arafiles was soliciting patients to buy herbal
 24 remedies?
 02:05PM 25 A. **I had heard that, yes.**

1 Q. Okay. What action did the hospital take to
2 stop that?

3 A. The -- I talked to him, and if you're doing
4 that, don't do it.

02:06PM 5 I also talked to Corina Chavez, who was
6 our R.N. at the clinic, to make a point out of it that
7 if he's doing that in the clinic, don't do it.

8 Q. Okay.

02:06PM 9 A. Now I don't know that he was doing it in the
10 clinic. But if he was, he was told don't do it in the
11 clinic.

12 Q. Were you aware that he was using patient
13 e-mails to send them solicitations?

14 A. No.

02:06PM 15 Q. Would you believe that that would be improper?

16 A. Yes.

17 Q. Do you believe that there is a conflict of
18 interest in a doctor who is selling his own medicines?

02:06PM 19 MR. TIDWELL: Objection, Your Honor. That
20 assumes facts not in evidence.

21 THE COURT: Sustained.

22 Q. (By Mr. Cook) Are you aware that the American
23 Medical Association and the Texas Medical Board have
24 adopted guidelines for complementary medicine?

02:06PM 25 A. No.

1 Q. Dr. Arafiles attempted to perform surgeries in
2 your ER, didn't he?

3 A. Yes, he did.

02:07PM 4 Q. Dr. Arafiles attempted to do a skin graft and
5 that skin graft failed, didn't it?

6 A. I don't know if it failed or not. I was aware
7 that he attempted to do the skin graft.

02:07PM 8 Q. Dr. Arafiles discharged a 10-year-old boy with
9 acute appendicitis without clearing appendicitis as a
10 cause, didn't he?

11 MR. TIDWELL: Again, objection, Your
12 Honor. That is contrary to the testimony of the nurse
13 that was involved in the case.

02:07PM 14 THE COURT: The jury heard the evidence.
15 You are to judge the case based on the evidence that you
16 hear from the witness stand and not what the lawyers
17 say.

18 Go ahead. You can ask your question,
19 Mr. Cook.

02:07PM 20 Q. (By Mr. Cook) Do you remember the question?

21 A. No. Repeat that please.

22 Q. Dr. Arafiles discharged a 10-year-old boy with
23 acute appendicitis from your ER, didn't he?

02:07PM 24 A. All that I'm aware of in regards to that is I
25 reviewed back through my medical staff minutes and I can

1 find where in December of '08 in the medical staff
2 minutes it was stated that a -- the one you're alluding
3 to left and then came back. And that was the part that
4 was written in there by Anne Mitchell.

02:08PM 5 But I didn't see anything in there that
6 would have alerted me that it was good, bad, or
7 improper, not on what I received for information.

8 Q. Okay. And Anne Mitchell, her job was, as you
9 said, to review these files?

02:08PM 10 A. The -- she and one other R.N. that we had there
11 were our front line of defense against anything that was
12 improper.

13 Q. Okay. Do you have any documentation of
14 complaints filed against Anne Mitchell at your hospital?

02:08PM 15 A. Say that one again.

16 Q. Do you have any documentation of complaints
17 filed against Anne Mitchell by any other staff member in
18 your hospital?

19 A. Any other staff member?

02:09PM 20 Q. Yeah.

21 A. No.

22 Q. Do you have any disciplinary letters or
23 sanctions that in her over 20 years at Winkler County
24 hospital are present in her personnel file?

02:09PM 25 A. That I did or that somebody else did?

1 Q. That anybody ever did.

2 A. I don't have any that anybody else ever did.

02:09PM 3 Q. Do you have any documentation to support any
4 standard of care violations by Anne Mitchell?

5 A. I'm not sure how she would fit into that.

6 Now are you asking me if I had complaints
7 against her or --

02:09PM 8 Q. No. I'm asking if you have any documented
9 complaints, anything that went through a formal
10 grievance process at your hospital, sir.

11 A. No, nothing that went through a formal
12 grievance process.

02:10PM 13 Q. Anne Mitchell was given annual performance
14 reviews for most of the time she was at Winkler County
15 hospital, wasn't she?

16 A. Probably.

17 Q. Okay. Anne Mitchell's performance reviews were
18 all excellent, weren't they?

19 A. I would say they were probably pretty good.

02:10PM 20 Q. Anne was competent and she was qualified to
21 perform the job that you gave her, wasn't she?

22 A. The -- I've had problems with her qualities of
23 work since I've been there. I took several of those
24 downtown to the county judge to discuss. Nothing
25 happened.

1 Q. Did you document any of these concerns?

2 A. Did I document them and turn them in to
3 somebody else?

4 Q. Yes.

02:10PM

5 A. No.

6 Q. Did you -- any of them rise to the point where
7 she had to be disciplined, officially disciplined?

8 A. What I did, since I knew that I could not put
9 any documents in in regards to Anne Mitchell, I began to
10 remove jobs from Anne Mitchell so that she would no
11 longer be doing those jobs.

02:11PM

12 Q. You fired Anne Mitchell and Vicki Galle, didn't
13 you?

14 A. Yes, I did.

02:11PM

15 Q. And you fired them for writing that letter to
16 the Texas Medical Board, didn't you?

17 A. Vicki Galle, no.

18 Q. Why did you fire Vicki?

19 A. We were having concerns the last couple of
20 months in regards to who should or should not be
21 deciding on peer review. The chief of staff, Dr. Pham,
22 and the other two doctors, especially Dr. Pham, wanted
23 peer review to be handled internally. Ms. Galle was
24 totally opposed to that.

02:11PM

02:12PM

25 And during that time period before the

1 hospital board could make their final decision on how it
2 was to be done, she quit dealing with medical staff, so
3 I fired her.

4 Q. So it's a coincidence that you fired Anne and
5 Vicki on the same day?

02:12PM

6 A. They were gone on Friday before. The -- well,
7 that would look like a coincidence, too.

8 Q. Now did you fire Anne Mitchell for reporting
9 her concerns to the Texas Medical Board?

02:12PM

10 A. That wasn't the end result -- oh, let me back
11 up. That was the end result, but that wasn't the whole
12 reason why. Probably the last thing that happened
13 was --

14 MR. COOK: And, judge, I think it's asked
15 and answered. Now we're getting to nonresponsive.

02:12PM

16 MR. TIDWELL: I don't believe it is,
17 judge. Could he have a chance to finish?

18 THE COURT: You can do that on redirect.
19 Go ahead.

02:13PM

20 Q. (By Mr. Cook) Well, let's -- Vicki and Anne
21 both wanted into peer review, didn't they?

22 A. Say that one again.

23 Q. Vicki and Anne both wanted the hospital to have
24 independent peer review of some cases, didn't they?

02:13PM

25 A. I would think so.

1 Q. Okay. Naomi and Anne came to you in September
2 and wanted to staff certain cases with the board of
3 control, didn't they?

4 A. All right, I'm not with you on that one. You
5 will have to -- I'm not following you.

02:13PM

6 Q. Is it true that there was attempts to bring
7 medical issues to the board of control in September by
8 Anne Mitchell and Naomi Warren?

9 A. In September of '08?

02:13PM

10 Q. Yes, sir.

11 A. I don't recall that. I can't imagine that we
12 would ever oppose Naomi Warren and Anne Mitchell
13 bringing anything to the board of control. Anne
14 Mitchell was compliance officer and had a report at
15 every hospital board meeting.

02:14PM

16 Q. Okay. I misspoke, medical staff meetings. Did
17 you have knowledge that Anne Mitchell and Naomi wanted
18 to bring some cases to the medical staff meetings in
19 September, October, and November of 2008?

02:14PM

20 A. The -- there was some cases that I know that
21 they wanted to bring in October medical staff meeting,
22 yes.

23 Q. Okay. And they -- those cases were not brought
24 up in the October meeting, were they?

02:14PM

25 A. They weren't brought up, but you wouldn't let

1 me tell why a while ago.

2 Q. Okay. Were they brought up in October?

3 A. No.

4 Q. Were they rescheduled for November?

02:15PM

5 A. I can tell you why they weren't.

6 Q. Ask my -- answer my question, sir.

7 THE COURT: Yeah, just answer as directly
8 as you can.

9 THE WITNESS: Okay.

02:15PM

10 THE COURT: And again, if --

11 THE WITNESS: All right.

12 THE COURT: -- an explanation is needed,
13 Mr. Tidwell can ask you questions about that.

14 A. No, sir, those cases weren't brought up in --
15 at the October meeting, no, sir, they weren't. At --

02:15PM

16 Q. The November meeting?

17 A. At November meeting, we tried to have -- I
18 don't think we had a November meeting.

19 Q. Did you schedule a meeting for the week of
20 Thanksgiving, the same week that Anne Mitchell filed for
21 a vacation, and then when she stayed home from her
22 vacation so she could attend that meeting, did you
23 cancel that meeting?

02:15PM

24 A. Both meetings in November got canceled. The
25 first meeting was because the three doctors were gone

1 somewhere. And the second meeting was canceled because

2 Anne Mitchell was on vacation.

3 Q. Isn't it true --

4 A. We canceled a meeting in July because Vicki

02:16PM 5 Galle was on vacation.

6 Q. Isn't it true that Dr. Pham directed Anne

7 Mitchell to file the complaint against Dr. Young with

8 the Texas Medical Board?

9 A. That's the first I've heard of that.

02:16PM 10 Dr. Pham has rules to abide by, also.

11 MR. COOK: Nonresponsive, judge.

12 THE COURT: Yeah, wait for a question.

13 THE WITNESS: Okay.

14 THE COURT: Go ahead.

02:16PM 15 Q. (By Mr. Cook) Have you ever instructed Vicki

16 Galle not to send reports to peer review?

17 A. No, sir.

18 Q. Did the sheriff come to you and tell you he was

19 investigating this TMB complaints against Dr. Arafiles?

02:17PM 20 A. Yes.

21 Q. Did you cooperate with his investigation?

22 A. Yes.

23 Q. Did you question why a sheriff was

24 investigating something that was been -- had been

02:17PM 25 referred to the Texas Medical Board?

1 A. No.

2 Q. How did you cooperate with him?

3 A. He asked for the names of all the employees

4 that would have access to medical records.

02:17PM 5 Q. And you helped him get those?

6 A. No. As a matter of fact he didn't actually ask

7 me for that; he asked the medical director -- the

8 medical records director for that information.

9 Q. You testified on direct that some of those

02:18PM 10 procedures that Dr. Arafiles performed in the emergency

11 room were the type that are performed at larger

12 hospitals; is that correct?

13 A. If we're referring to those three we talked

14 about a while ago, yes.

02:18PM 15 Q. Okay. Are they performed by people who are not

16 credentialed to do surgery?

17 A. I can't answer that because it would be at

18 another hospital, I can't answer that.

19 Q. Well, you -- you're a hospital administrator

02:18PM 20 and you've got a lot of experience running hospitals,

21 right?

22 A. Well, I still can't answer that question.

23 Q. Okay. Do you believe that hospitals allow

24 persons who are not credentialed to perform surgery to

02:18PM 25 perform surgeries in their hospital?

1 A. I doubt it.

2 Q. Are you aware of what a nurse's code of ethics

3 requires them to do if they reasonably believe that

4 substandard care is being practiced?

02:19PM 5 A. I think so.

6 Q. Are you aware that you're not allowed to

7 institute policies and procedures that prevents a nurse

8 from filing a complaint with either the Texas Medical

9 Board or the Board of Nursing?

02:19PM 10 A. I'm aware that if I'm at a hospital where they

11 have policies and procedures and bylaws that I try to

12 get myself and all the staff to follow them.

13 Q. But you're -- are you able to make policies and

14 procedures that are contrary to state law?

02:19PM 15 A. I wouldn't think so.

16 Q. And if you accidentally did that, sir, would

17 you agree with me the state law would apply?

18 A. Yes.

19 Q. Oh, did you tell Vicki Galle -- or did Vicki

02:20PM 20 Galle come to you and ask permission to send some files

21 to the Archie program and did you tell her not to do

22 that?

23 A. If it was those three files that we discussed

24 in September of '08, the ones which we all already knew

02:20PM 25 should not have been done, if Ms. Galle said that I said

1 that, then I probably did.

2 Q. One of Anne's responsibilities to the Winkler

3 County hospital was the credentialing of all physicians,

4 wasn't it?

02:21PM 5 A. Who?

6 Q. Ms. Mitchell.

7 A. The credentialing?

8 Q. Yes.

9 A. Yes.

02:21PM 10 Q. And she refused to sign off on Dr. Arafiles'

11 credentialing file because he had a restricted license;

12 isn't that true?

13 A. I don't know if that's true or not. The -- the

14 secretary -- if she signed off as secretary, that has to

02:21PM 15 be a medical doctor. If she was not pleased with

16 Dr. Arafiles being hired, that's probably true.

17 Q. Well, when he went for full staff privileges,

18 part of that was to have the compliance officer insure

19 that he met all the requirements under the bylaws for

02:21PM 20 that position; isn't that true?

21 A. I had already pointed that out to our hospital

22 board in the early December meeting that until they

23 changed their bylaws it was not correct.

24 Q. And Anne Mitchell, that was a source of

02:22PM 25 friction between you and her, that she would not sign

1 off as the compliance officer on Dr. Arafiles; isn't
2 that true?

3 **A. No. I don't know that ever created any**
4 **friction between us.**

02:22PM 5 **Q.** Isn't it true prior to April of 2009
6 Dr. Arafiles' performance of medical procedures and the
7 standard of care towards patients -- or concerns of that
8 was voiced by two other physicians?

02:22PM 9 **A. The only ones I'd even be aware of at all is**
10 **through the monthly medical staff meetings. And if they**
11 **voiced any concerns at those medical staff meetings,**
12 **then we would, we, the medical staff, would have done**
13 **something about them.**

02:22PM 14 **I can't imagine anything that happened at**
15 **medical staff meetings that if they voiced it that they**
16 **didn't do something about it.**

17 **Q.** Would you agree with me that as registered
18 nurses both of these ladies had ethical and legal
19 responsibilities to report to the licensing board a
02:23PM 20 practitioner that they had reasonable cause to believe
21 had exposed a patient to substantial risk of harm?

22 **A. What -- their -- Anne Mitchell is in the --**

23 **Q.** Please answer my question, sir.

24 **A. Pardon me?**

02:23PM 25 **Q.** Answer -- did you hear my question, sir?

1 **A. Say it again.**

2 **Q.** Okay. Do you believe as registered nurses that
3 Anne Mitchell and Vicki Galle both had ethical and legal
4 duties to report to appropriate licensing boards any
02:23PM 5 healthcare practitioner that they had reasonable cause
6 to believe had exposed a patient to substantial risk of
7 harm?

8 **MR. TIDWELL:** Objection. That does not
9 substantially comply with the legal definition.

02:23PM 10 **THE COURT:** Go ahead.

11 **Q.** (By Mr. Cook) You may answer the question.

12 **THE COURT:** That's overruled. That means
13 you can answer.

14 **Q.** (By Mr. Cook) Do you believe that, sir?

02:24PM 15 **A. Say it to me one more time. I am paying**
16 **attention.**

17 **Q.** Okay. Are you having trouble hearing me, sir?

18 **A. No, but I'm really trying to hear.**

19 **Q.** Okay. I know. Well, sometimes my voice falls
02:24PM 20 off, and if it -- Mr. Wiley, if you don't understand
21 something I say, just ask me to rephrase it.

22 **A. Okay.**

23 **Q.** And if you can't hear me, ask me to scream a
24 little louder or something.

02:24PM 25 **A. All right.**

1 **Q.** I want to make sure that what we're talking
2 about here, that it's not tricks or anything like that.
3 We're just -- I want to get the facts out, okay?

4 **A. All right.**

02:24PM 5 **Q.** Do you believe as registered nurses that Vicki
6 Galle and Anne Mitchell had both an ethical and a legal
7 responsibility to report to appropriate licensing
8 agencies any practitioner that they had a reasonable
9 cause to believe had exposed a patient to substantial
10 risk of harm?

11 **MR. TIDWELL:** And my objection is, Your
12 Honor, that it also requires the report to be made in
13 good faith or, under the nursing act, to be made without
14 malice.

02:25PM 15 **THE COURT:** Go ahead. That's a matter for
16 cross-examination.

17 You can answer.

18 **A. The R.N.s, if you're asking my opinion, the**
19 **R.N.s that are on a patient floor, floor R.N.s or floor**
02:25PM 20 **L.V.N.s that are right there in the firing line of**
21 **patient safety, which would be inpatients or in the**
22 **emergency room, I agree with everything you just said.**

23 **If it has to do with administrative R.N.s**
24 **that have the obligation to report any of their concerns**
02:25PM 25 **to the medical staff so that whatever actions are**

1 **necessary, then it should be done that way with**
2 **administrative R.N.s, if I'm answering your question.**

3 **Q.** Do R.N.s who are administrative take a
4 different oath when they accept their license?

02:26PM 5 **A. They take -- oh, well, I don't know when they**
6 **take their license. But if you're going to be an**
7 **administrative R.N., you've taken an oath -- not an**
8 **oath, but you've taken an obligation to abide by the**
9 **rules of the hospital.**

02:26PM 10 **And if you're in utilization management,**
11 **it's to go to the medical director, chief of staff, so**
12 **if there are any problems they can be handled by the**
13 **medical doctors.**

14 **Q.** Would you agree with me that everybody who
02:26PM 15 holds a license has certain obligations and duty to the
16 public?

17 **A. Sure, yes.**

18 **Q.** And that when they accept that license that
19 they have accepted duties to the State of Texas?

02:26PM 20 **A. Yes.**

21 **Q.** And that it is improper for a hospital to pass
22 an ordinance that interferes with those duties to the
23 State of Texas?

24 **A. I can't imagine a hospital that would do that.**

02:27PM 25 **Q.** The anonymous complaint sent to the Texas

1 Medical Board by Anne Mitchell and Vickilyn Galle
2 related five patients' file numbers, but it didn't
3 contain any legally protected patient medical
4 information, did it?

02:27PM 5 **A. One, I didn't know Vicki Galle reported**
6 **anything.**

7 **The -- and I don't know as I know the**
8 **answer to that. I know that -- I know that Anne**
9 **reported it to the Texas Medical Board, if that's what**
10 **you're asking me.**

11 **Q.** Did you talk to the sheriff about after he
12 seized the computer and after he met with the ladies
13 that they both admitted to jointly sending that letter?

14 **A. No.**

02:28PM 15 **Q.** You knew before you fired Anne Mitchell that
16 she had made a report to the Texas Medical Board, didn't
17 you?

18 **A. Yes.**

19 **Q.** Did you consult with Mr. Tidwell before you
20 fired Anne Mitchell?

21 **A. Yes. He's the hospital attorney and the county**
22 **attorney.**

23 **Q.** Did you know that Naomi Warren made a report
24 about Dr. Arafiles to the Texas Medical Board?

02:28PM 25 **A. No.**

1 **Q.** Did you know -- well, you know that Naomi
2 Warren quit your clinic, don't you?

3 **A. Yes, sir, I know that.**

4 **Q.** And you know that Naomi Warren -- the primary
02:28PM 5 reason she left your clinic was because of the problems
6 she was having with Dr. Arafiles' patient care?

7 **MR. TIDWELL:** Objection. That's
8 speculative. He's not --

9 **THE COURT:** Sustained.

02:29PM 10 **MR. COOK:** I'm asking if he knows that.

11 **THE COURT:** Sustained.

12 **Q.** (By Mr. Cook) Is it your understanding that
13 all 10 of the patient files requested by the Texas
14 Medical Board in this case were the result of Anne and
02:29PM 15 Vicki's complaint?

16 **A. It's my understanding it was a result of Anne's**
17 **complaint.**

18 **Q.** All 10 of them?

19 **A. As far as I know.**

02:29PM 20 **Q.** And who told you that?

21 **A. Mr. Tidwell.**

22 **Q.** And did Mr. Tidwell tell you that Naomi Warren
23 wrote a complaint with five patient files and that Anne
24 Mitchell and Vicki Galle wrote a complaint with five
02:29PM 25 patient files?

1 **MR. TIDWELL:** I object, Your Honor. Now
2 we're bleeding off into conversations between an
3 attorney and his client. That's improper.

4 **MR. COOK:** I'll withdraw that, judge.

02:30PM 5 Actually I think he's right on that.

6 **Q.** (By Mr. Cook) Why did -- what did you tell
7 Anne when you fired her?

8 **A. Your service is no longer required.**

9 **Q.** Is it your testimony to this jury that the
02:30PM 10 report to the Texas Medical Board filed by Anne Mitchell
11 had nothing to do with her firing?

12 **A. No, I wouldn't say that. I would say that's**
13 **part of it, but that wasn't all of it.**

14 **Q.** But that was one of the factors that you used
02:31PM 15 to discharge her from her duties, wasn't it, sir?

16 **A. Yes.**

17 **Q.** So I take it that it's safe to say that you
18 wouldn't hire someone like Anne in the future?

19 **A. I don't know how you could say something like**
02:31PM 20 **that at all.**

21 **Q.** Do you know who Kevin Sack is, sir?

22 **A. I didn't hear you.**

23 **Q.** Do you know who Kevin Sack is?

24 **A. Kevin Stacks?**

02:31PM 25 **Q.** Sack, S-A-C-K.

1 **A. No.**

2 **Q.** Do you remember speaking with a reporter for
3 the New York Times?

4 **A. Yes.**

02:32PM 5 **Q.** Have you read what he wrote about your
6 conversation?

7 **A. No.**

8 **Q.** Is it true that you told him that you do not
9 believe vengeance was part of Anne's motivation in the
02:32PM 10 report she filed to the Texas Medical Board?

11 **A. Vengeance?**

12 **Q.** Vengeance.

13 **A. Vengeance?**

14 **Q.** Vengeance.

02:32PM 15 **A. I would have said that Vicki Galle wasn't part**
16 **of any vengeance. I wouldn't say that about Anne**
17 **Mitchell.**

18 **Q.** Let me read you what the New York Times said,
19 and tell me if this is what you said, sir.

02:33PM 20 **A. All right.**

21 **Q.** Mr. Wiley said he believed that the nurses had
22 acted in bad faith?

23 **A. I said that.**

24 **Q.** Because they went to the State -- because they
02:33PM 25 went to the State despite his internal efforts to

1 discipline Dr. Arafiles?

2 A. Okay.

3 Q. Okay. But he said I don't believe they did it
4 on a personal vendetta?

02:33PM 5 A. I would have said that I don't believe Vicki
6 Galle did it on a personal vendetta. I would not have
7 said that about Anne Mitchell.

8 Q. Okay. So you believe that, according to that
9 quote, that Vicki Galle acted in bad faith and that's
02:34PM 10 one of the reasons you fired her, right?

11 A. Vicki Galle, unfortunately, what happened in
12 that same time span, got caught up in the swim of all of
13 this --

14 THE COURT: Would y'all approach please.

02:34PM 15 (AT BENCH, OFF THE RECORD)

16 THE COURT: Go ahead.

17 Q. (By Mr. Cook) Have you been keeping track of
18 the testimony of this case?

19 A. I try not to.

02:36PM 20 Q. But have you?

21 A. I'm not sure what you mean.

22 Q. Well, your wife has been present in the
23 courtroom every day, hasn't she?

24 A. Yes, she has been.

02:36PM 25 Q. Has she been telling you what's been going on?

214

1 A. No, sir.

2 MR. COOK: I pass the witness.

3 THE COURT: Any other questions?

4 MR. TIDWELL: Yes, Your Honor.

02:36PM 5 THE COURT: Go ahead.

6
7 REDIRECT EXAMINATION

8 BY MR. TIDWELL:

9 Q. Mr. Cook was asking you about did you have
02:36PM 10 documented complaints in your file about problems with
11 Anne Mitchell. And you said nothing documented, and
12 then you started to say you had some undocumented or
13 verbal issues. What are those verbal issues?

14 A. The -- well, they started with Dr. Young. And
02:36PM 15 then the next ones that became real serious was in July
16 of -- let's see, July of '08 when --

17 MR. COOK: And, judge, we're going to
18 object in advance to any hearsay.

19 MR. TIDWELL: I haven't heard any yet.

02:37PM 20 THE COURT: Yeah, you can't say what
21 somebody else told you.

22 Go ahead.

23 Q. (By Mr. Tidwell) What problems did you have
24 with Anne Mitchell that you didn't write down those
02:37PM 25 problems you had?

1 A. She tried to, in January of '09, she tried to

2 cause Dr. Winton a lot of problems by discussing an
3 internal matter down at the courthouse. She should not
4 have done it, and it creates me problems with
02:37PM 5 physicians. That's one thing.

6 Q. Was that a big issue with Ms. Mitchell?

7 A. Yes, sir. And it was a big issue with
8 Dr. Winton.

9 Q. Okay. And what else?

02:37PM 10 A. The -- and especially in May when the -- May of
11 2009, when we received the letters from the Texas
12 Medical Board, and it was on these 10 cases, and I asked
13 her -- I directed her to go see you in your county
14 attorney hat to make sure that what we sent to Austin to
02:38PM 15 the Texas Medical Board was everything that we had in
16 the credential file to make sure that they had the whole
17 file.

18 And she came back and told me a couple of
19 days later that, no, she had talked to the Texas Medical
02:38PM 20 Board and she had to send that answer back direct
21 without either me or you being involved.

22 What aggravated me about that is by then,
23 not that day, but the next day then is when I found out
24 that she is the one that sent in the complaint, and I,
02:39PM 25 dumb me, had asked her to get with you to resolve the

216

1 complaint. And, man, that's not fair when you're
2 working both sides of the issue. So, yeah, I got very
3 aggravated about that.

4 Q. Any other -- what other issues did you have
02:39PM 5 with her?

6 A. December of '08, when we were working on the
7 active medical staff privileges for Dr. Arafiles -- each
8 month we have medical staff meetings. Each month those
9 utilization management committees are supposed to bring
02:39PM 10 reports to the medical staff. And they did bring
11 reports, but they didn't bring adverse reports about
12 Dr. Arafiles.

13 Not at that meeting or any of those other
14 meetings did any adverse reports get brought in that
02:39PM 15 were serious enough that Dr. Pham would need to take
16 control and observe Dr. Arafiles in action by the
17 medical staff bylaws.

18 But still when we got to the December
19 meeting, then it was she did not want him to become
02:40PM 20 active medical staff. Well, that's not fair because you
21 didn't even bring up stuff that would keep the doctor
22 from becoming active medical staff. So, yeah, that
23 aggravated me.

24 Q. Okay. And did Dr. Pham vote for Dr. Arafiles
02:40PM 25 to have active staff privileges?

1 A. Yes, sir, he did.
 2 Q. And he was the medical director, the chief of
 3 staff?
 4 A. Yes, sir.
 02:40PM 5 Q. Anything else?
 6 A. No, I think that's it.
 7 Q. You said something in response to one of
 8 Mr. Cook's questions about having to take issues with
 9 Anne downtown to Judge Leck. Why would you have to take
 02:40PM 10 issues downtown to Judge Leck?
 11 A. Well, when I first started there I would have
 12 concerns that I would talk to Anne Mitchell, and not
 13 major concerns, but concerns, and I couldn't get
 14 anywhere with them, I couldn't get her to change to do
 02:41PM 15 it this way or change to do it that way.
 16 And I was informed that, look, she works
 17 for the judge, and if you want something done you will
 18 have to talk to the judge. Well, I did that a couple of
 19 times.
 02:41PM 20 Then Dawn Watkins, who was the prior
 21 county attorney, informed me one day, look, she works
 22 for the judge, leave it alone.
 23 And I left it alone all the way until
 24 about January or February of '09 when the hospital board
 02:41PM 25 finally realized that I was not doing anything to Anne

1 Mitchell because I'd been told not to. And the hospital
 2 board directed me then don't ever do that again, that
 3 all of the employees work for you.
 4 Q. Okay. And the previous county auditor,
 02:41PM 5 Ms. Watkins, had she told you that because of
 6 Ms. Mitchell's relationship with Judge Leck that
 7 Ms. Mitchell was untouchable --
 8 MR. COOK: Objection. That, number one,
 9 is facts not in evidence and, number two, is -- he's
 02:42PM 10 asking for hearsay.
 11 THE COURT: Sustained.
 12 Q. (By Mr. Tidwell) Did the medical staff, did
 13 the doctors, remove job duties from Ms. Mitchell?
 14 A. Yes, they did. In May of 2009, they had a
 02:42PM 15 medical staff meeting with Dr. Pham, Dr. Winton, and
 16 Dr. Arafles, and they would not allow Anne Mitchell --
 17 MR. COOK: And, judge, this is hearsay,
 18 also.
 19 THE COURT: Sustained.
 02:42PM 20 Q. (By Mr. Tidwell) As a result of the medical
 21 staff meeting, did the medical staff remove
 22 responsibilities from Ms. Mitchell?
 23 A. Yes, sir.
 24 Q. And what responsibilities were removed?
 02:42PM 25 A. Anything that had to do with a patient's chart

1 either in the clinic, the hospital, or the ER.
 2 Q. And all three of the doctors act as the medical
 3 staff?
 4 A. Yes, sir.
 02:42PM 5 Q. You said that Ms. Mitchell --
 6 A. They -- I'm sorry. They did another -- they
 7 did another thing like that --
 8 Q. Okay.
 9 THE COURT: Question and answer please.
 02:43PM 10 Q. (By Mr. Tidwell) I apologize. I didn't try
 11 to -- I wasn't meaning to try to cut you off.
 12 What else did the medical staff --
 13 A. They -- Dr. Pham especially, and we're talking,
 14 I don't remember the exact date, somewhere around March,
 02:43PM 15 maybe April, of 2009, Dr. Pham, because we had three
 16 physicians on the medical staff, wanted to do internal
 17 peer review, and that's what they wanted to do. And
 18 that was very displeasing to Anne Mitchell.
 19 Q. Anne wanted outside, independent peer review on
 02:43PM 20 certain cases?
 21 A. Yes, sir.
 22 Q. And that's what the Archie system is?
 23 A. Yes, sir.
 24 Q. Okay.
 02:43PM 25 A. Now before I could take that --

1 MR. COOK: And I think it's nonresponsive
 2 now, judge.
 3 THE COURT: Sustained.
 4 Go ahead.
 02:43PM 5 Q. (By Mr. Tidwell) Mr. Cook asked you about the
 6 statement in the New York Times and asked you about
 7 things that you discussed with the reporter.
 8 Do you believe that the actions Anne
 9 Mitchell took in this case were done on a personal
 02:44PM 10 vendetta?
 11 A. Yes, sir.
 12 Q. Was Ms. Mitchell at almost every hospital board
 13 meeting?
 14 A. Yes, sir.
 02:44PM 15 Q. In fact, she had a place on the agenda?
 16 A. Yes, sir.
 17 Q. So if she wanted to speak and give information
 18 to the hospital board, every board meeting she had her
 19 spot on the agenda to say something?
 02:44PM 20 A. Yes, sir.
 21 Q. Do you believe that the obligations and duties
 22 that nurses and healthcare professionals in your
 23 facility have are heightened because of their status as
 24 public servants?
 02:44PM 25 A. Yes, sir.

1 MR. COOK: Judge, I'm going to object to
2 that because I think that is a misstatement of law, and
3 also I think it's irrelevant.

4 THE COURT: Approach.

02:45PM 5 (AT BENCH, OFF THE RECORD)

6 THE COURT: Is there an objection?

7 MR. COOK: There is.

8 MR. TIDWELL: I'll withdraw the question,
9 Your Honor.

02:45PM 10 With that, we'd pass the witness, Your
11 Honor.

12

13 RECROSS-EXAMINATION

14 BY MR. COOK:

02:46PM 15 Q. Ms. Mitchell didn't make hospital policy; isn't
16 that correct?

17 A. Say it again please.

18 Q. Ms. Mitchell did not make the hospital
19 policies, did she?

02:46PM 20 A. That is correct.

21 Q. Ms. Galle didn't make the hospital policies,
22 did she?

23 MR. TIDWELL: Object --

24 A. That is correct.

02:46PM 25 MR. TIDWELL: -- Your Honor. How is that

1 relevant?

2 THE COURT: Sustained.

3 Q. (By Mr. Cook) You make the policies, don't
4 you, sir?

02:46PM 5 A. I follow the policies that the hospital has in
6 place. If there is new policies to be made, they're
7 brought to the hospital board. And then if the hospital
8 board agrees that the policy should be changed, in
9 reality the hospital board makes the policies.

02:46PM 10 Q. You are responsible for at least recommending
11 or putting into place the policy that a report had to go
12 before the board before being reported to the Texas
13 Medical Board, aren't you?

02:47PM 14 A. Yes, I did do that. The policy that we had
15 in -- yes, I did do that.

16 Q. In April of 2009, did you approach Ms. Chavez
17 and ask her to make -- or to copy 10 charts?

18 A. That sounds like those 10 charts that the Texas
19 Medical Board asked for.

02:47PM 20 Q. So the answer is --

21 A. Now I would --

22 Q. Did you ask Ms. Chavez to copy those 10 charts?
23 That's the only question I've asked you, sir.

24 A. Did I ask Ms. Chavez to copy those 10 reports?

02:47PM 25 Q. In late April or early May 2009.

1 A. I remember the reports, and I certainly
2 would -- I would certainly have requested the medical
3 records department to copy those reports. And if they
4 were clinic reports, then the medical records
02:48PM 5 department, yes, would also need the ones that were in
6 the clinic.

7 Q. Who told you she filed the complaint with the
8 Texas Medical Board?

9 A. Who told -- you mean that Anne -- who told
02:48PM 10 me -- say that again.

11 Q. Who told you that Anne had filed a complaint
12 with the Texas Medical Board?

13 A. Mr. Tidwell.

14 MR. COOK: Pass.

02:48PM 15 MR. TIDWELL: No further questions, Your
16 Honor.

17 THE COURT: You can step down.

18 Call your next witness.

19 MR. TIDWELL: With that, the State rests,

02:48PM 20 Your Honor.

21 (STATE RESTS)

22 THE COURT: The -- approach real quick.

23 (AT BENCH, OFF THE RECORD)

24 THE COURT: We're going to be in recess

02:49PM 25 for 20 minutes. We have to take care of some legal

1 matters here in the courtroom during those 20 minutes.
2 So feel free to move outside the jury room. Keep in
3 mind the instructions I gave you earlier. And you can
4 go wherever you want to go except in the courtroom.

02:49PM 5 And ladies and gentlemen, the -- and I
6 hate to be such a stickler about this. The issue about
7 the phones, if you are in the courtroom, do not turn
8 your phone on. Like right now, don't turn your phone
9 on.

02:50PM 10 And I hate to be such a stickler about
11 this, but the reason that I have to do that is because
12 there are people -- the few people who don't follow the
13 rules and try to be difficult make it difficult for all
14 of you who are doing exactly what I'm asking. So don't
02:50PM 15 turn your phone on until you get outside this room.

16 Thank you very much. See you in
17 20 minutes.

18 (JURY NOT PRESENT)

19 THE COURT: Ready to proceed with any
03:10PM 20 motions that we have?

21 MR. COOK: We are, Your Honor.

22 MR. CARNEY: Judge, we would at this time
23 move the court to grant a motion -- grant a verdict in
24 favor of the Defendant at this point, Your Honor,
03:10PM 25 because of a lack of proof on all the elements as

1 required by the State.

2 Your Honor, the defense would like to show
3 the court and move the court that there has been no
4 showing that this is a nongovernmental purpose for which
03:10PM 5 the information was sent.

6 In fact, the Texas Occupation Code,
7 152.001, provides the Texas Medical Board is an agency
8 of the executive branch of state government with the
9 power to regulate the practice of medicine and, as such,
03:11PM 10 it is a governmental agency and anything that was sent
11 to them, such as this, that is sanctioned is for a
12 governmental purpose.

13 Further, Your Honor, I believe that the
14 law, as we've discussed it probably ad nauseam for the
03:11PM 15 court, there is a duty for the nurse to report such
16 things that they believe are necessary for patient
17 safety concerns under the Occupations Code. There is
18 nothing to show that that's not what happened here.

19 I think that the indictment, Your Honor,
03:11PM 20 is lacking in proof on the grounds that there is no lack
21 of -- there is no intent to harm shown. There is not --
22 there is no evidence of intent to harm.

23 There is not a scintilla of evidence to
24 show that this was a nongovernmental purpose. In fact,
03:11PM 25 it was sent for a government purpose to a government

1 agency.

2 Further, because of the nurses duty to
3 require -- required to report this under the Occupations
4 Code under Texas law, and because the First Amendment
03:12PM 5 and the Texas Constitution require sanctioning of free
6 speech, I believe that the charge is also
7 unconstitutional and should be dismissed because of that
8 reason as well, Your Honor.

9 I know that the law gives the nurse the
03:12PM 10 fundamental duty to report these things, Your Honor.
11 And there has been no evidence to disprove that duty.
12 There has been no evidence to show that their right has
13 been -- should be trumped by the statute in this case.

14 And essentially -- and more importantly,
03:12PM 15 there has been no evidence before the court to show that
16 there is anything that should trump that duty nor that
17 this information was sent for a nongovernmental purpose.

18 I think that the -- as Mr. Tidwell pointed
19 out in the beginning of the case to the jury in his
03:13PM 20 opening arguments, his chart, that he has to show this
21 is a nongovernmental purpose. And nothing has shown
22 that this information that was sent to the Texas Medical
23 Board was sent for a nongovernmental purpose.

24 In fact, the direct contrary has been
03:13PM 25 shown in that the sheriff has admitted that the Texas

1 Medical Board is a governmental agency, that they're
2 entitled to receive these reports, the reports are
3 confidential, and that -- I believe -- I believe
4 Mr. Wiley said that, that a nurse -- and everybody
03:13PM 5 understands a nurse has the duty.

6 Even to the point that if the court wants
7 to believe there is some circumstantial evidence to talk
8 about harm, I think that there is absolutely no evidence
9 to show about -- to show that there is a governmental
03:13PM 10 purpose -- excuse me, a nongovernmental purpose for
11 which this information was sent and to whom this
12 information was sent.

13 And the other thing that's been brought
14 out by the testimony, judge, to disprove the harm is
03:13PM 15 that the due process that was in place and that had this
16 complaint tracked its normal course there are several
17 layers of things that would go on before anything would
18 ever be assessed against the doctor as a, quote, "harm."
19 And because of that I think he was protected and no harm
03:14PM 20 actually happened as a result of this information being
21 sent.

22 For those grounds, judge, we'd ask for a
23 directed verdict.

24 THE COURT: Response?

03:14PM 25 MR. TIDWELL: Thank you, Your Honor.

1 We've said during the course of this case,
2 Your Honor, that this is a very simple case, and I think
3 it is. I think the problem is we've made it very, very
4 complicated. We've gotten into standard of care. We've
03:14PM 5 gotten into trying a doctor. We've gotten into trying
6 the medical board. We've gotten into trying the
7 hospital. That's not what this case is about.

8 This case is about whether or not this
9 public servant, this lady in her capacity as a public
03:14PM 10 servant in her employment, we know she's a public
11 servant, we know she had access to confidential
12 information based on her employment, and we know it was
13 confidential information, the two elements that we're in
14 dispute is whether there was an intent to harm and
03:15PM 15 whether the information was divulged for a
16 nongovernmental purpose.

17 There is no doubt in my mind that the
18 Texas Medical Board is an arm of State government.
19 There is no doubt in my mind that the Texas Medical
03:15PM 20 Board is the organization charged with overseeing
21 doctors.

22 But just because they're a State agency
23 does not mean that everything they do is a governmental
24 function. They're just like any other public servant
03:15PM 25 under Texas law.

1 A district attorney in Houston, just
2 because he's in charge of a grand jury, could use the
3 grand jury for a purpose to suit his own personal needs,
4 and that would remove the use of that grand jury and his
03:15PM 5 immunity from the governmental protections.

6 This statute is designed specifically to
7 allow the opportunity for criminal liability for a
8 public servant who violates the statute.

9 I don't doubt that nurses have duties to
03:16PM 10 report things. We want nurses to report things. We
11 want doctors to report things.

12 I think in fact in this case this nurse
13 has a heightened duty because of her status as a public
14 servant.

03:16PM 15 The evidence is replete in this case,
16 however, that the reason she reported in this case is
17 because from the very day Dr. Arafiles got there she
18 didn't want him there, she wouldn't sign off on his
19 credentialing file, and she maintained, in Mr. Wiley's
03:16PM 20 words --

21 THE COURT: Go ahead, go ahead. I --
22 mainly I want -- just want the basic grounds --

23 MR. TIDWELL: Okay.

24 THE COURT: -- as opposed to argument.

03:16PM 25 MR. TIDWELL: Okay.

1 THE COURT: But anything --

2 MR. TIDWELL: I'll stop.

3 THE COURT: All right. The -- both of you
4 are right in some of what you say. It is a relatively
03:17PM 5 simple case, but the conflicting issues or the issue
6 that creates some conflict is that the statutes
7 conflict. And it's a close call, but I'm going to deny
8 the motion for directed verdict at this time.

9 MR. TIDWELL: Thank you, Your Honor.

03:17PM 10 THE COURT: Do y'all have somebody that
11 you need to call or --

12 MR. COOK: We're ready.

13 THE COURT: Okay.

14 (JURY PRESENT)

03:18PM 15 THE COURT: Call your first witness
16 please.

17 MR. COOK: Thank you, Your Honor. The
18 defense would call Naomi Warren.

19 She has not been sworn, Your Honor.

03:18PM 20 THE COURT: Right up here, ma'am.

21 You can bring your -- if you would like to
22 bring that with you, that's okay.

23 (WITNESS SWORN)

24 THE COURT: Have a seat.

03:18PM 25

1 NAOMI WARREN, F.N.P.

2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. COOK:

03:18PM 5 Q. Good afternoon.

6 A. Hello.

7 Q. Ms. -- would you please introduce yourself to
8 the ladies and gentlemen of the jury.

9 A. Naomi Warren.

03:19PM 10 Q. Okay. And, Naomi, or, Ms. Warren, what do you
11 do for a living?

12 A. I'm a family nurse practitioner.

13 Q. And what is a family nurse practitioner?

14 A. It is an advanced practice nurse who sees
03:19PM 15 patients for simple acute illness, stable chronic
16 illness, in a clinic setting, hospital setting, various
17 healthcare settings.

18 Q. And do you have certain privileges to prescribe
19 some medicines and to do some things that doctors
03:19PM 20 normally do?

21 A. I do.

22 Q. In fact, do you have your own client base?

23 A. I do.

24 Q. Okay. And where do you work?

03:19PM 25 A. I work at Sandhills clinic, Monahans.

1 Q. In -- and how long have you worked there?

2 A. Since March 2nd of 2009.

3 Q. So almost a year now?

4 A. Yes, sir.

03:19PM 5 Q. Okay. And prior to working at the Sandhills
6 clinic where did you work?

7 A. At Winkler County rural health clinic.

8 Q. Okay. And as part of your duties at the
9 Winkler County health clinic, did you have a chance to
03:20PM 10 come in contact with a gentleman by the name of
11 Dr. Rolando Arafiles?

12 A. Yes, sir.

13 Q. Okay. And how long have you known
14 Dr. Arafiles?

03:20PM 15 A. He came to Winkler County, the clinic, I
16 believe probably April, April of '09 -- '08.

17 Q. '08?

18 A. Yes.

19 Q. How long after he came did you start having
03:20PM 20 questions about his medical practices?

21 A. Probably within the month.

22 Q. Within the month?

23 A. Yes.

24 Q. Almost immediately?

03:20PM 25 A. Yes, sir.

1 Q. And over the course of a year, was this
2 something that every once in a while he made a -- well,
3 strike that because that's not in evidence.

4 Do you believe that he performed below the
5 standard of care in certain cases?

6 A. Yes, sir.

7 MR. TIDWELL: I'm going to object, Your
8 Honor. A nurse in Texas, as the court well knows, is
9 not able to testify about the standard of care in a
10 physician. Texas law requires in order that testimony
11 be offered about the standard of care of a physician
12 that that be offered by a physician in practice in that
13 same or very similar subspecialty before standard of
14 care issues can be discussed.

15 THE COURT: Mr. Cook?

16 MR. COOK: Judge, I asked her if she had a
17 belief. And under Texas law if a nurse has a belief
18 that there is a concern about the standard of care, then
19 where I'm going is that her duty arises to report.

20 THE COURT: Go ahead.

21 MR. COOK: Thank you.

22 Q. (By Mr. Cook) Did you form a belief that
23 Dr. Arafiles -- that some of the patients that he saw
24 that there was standard of care issues?

25 A. Yes, sir.

1 Q. And did you think that what you saw was enough
2 to require you to take action?

3 A. Yes, sir.

4 Q. Okay. In fact, the ladies and gentlemen of the
5 jury I believe already know -- strike that.

6 Did you file a complaint with the Texas
7 Medical Board against Dr. Arafiles?

8 A. Yes, sir, I did.

9 Q. And did you file that complaint at the same
10 time that Ms. Vickilyn Galle and Ms. Anne Mitchell filed
11 their complaint?

12 A. We filed our complaints together.

13 Q. Okay. And how many patients did you identify
14 in your complaint?

15 A. My complaint -- the original complaint had
16 five cases.

17 Q. Okay. Five cases?

18 A. Yes, sir.

19 Q. And we're trying to be sensitive to patient

20 confidentiality, so if I ask you any questions about
21 those five cases, would you please not mention any names
22 or addresses, date of births --

23 A. Yes, sir.

24 Q. -- things like that.

25 A. I will.

1 Q. And speak as generally as you could about it.

2 A. Okay.

3 Q. Was there a general overall problem that your
4 five complaints have in common?

5 A. Three of those had to do with what I thought to
6 be inappropriate prescribing of thyroid medication.
7 One case was what I thought to be inappropriate care of
8 a diabetic. And the last case had to do with what I
9 perceived as an ethics violation.

10 Q. Okay. Let's talk about the thyroid medication.
11 What were you seeing coming into your clinic?

12 A. Dr. Arafiles gave many patients thyroid
13 medication. There was -- with no laboratory data to
14 support that thyroid supplement.

15 MR. TIDWELL: Judge, now we're deviating
16 off into this is testimony that the doctor may have
17 violated the standard of care, and I renew my objection
18 that this lady is not qualified under Texas law to give
19 that opinion.

20 THE COURT: Overruled.
21 Go ahead.

22 Q. (By Mr. Cook) You may answer, ma'am.

23 A. Regarding the thyroid?

24 Q. The thyroid.

25 A. Dr. Arafiles gave patients thyroid medication.

1 When one gives thyroid medication, you
2 have to have laboratory data to support that according
3 to the standard of care. You can't go base it on how
4 they look or how they feel.

5 Q. Okay.

6 A. And he was giving thyroid medication to two of
7 these three. One had absolutely no labs to support
8 anything. He -- they just got thyroid medicine. As a
9 result this person had -- when it was caught had an
10 extremely high level of thyroid in their blood.

11 Q. What does that do to a human being when they
12 have an extremely high level of thyroid in their blood?

13 A. Consequences of high thyroid are -- well,
14 thyroid controls the metabolism or the energy in the
15 body. So if you give the body more than it needs, then
16 you get palpitations, anxiety, the weight loss, high
17 blood pressure. If it continues, it can cause heart
18 attack, heart valve damage, and buggy eyes that most of
19 the time that can't be repaired --

20 Q. Okay.

21 A. -- and leads to death.

22 Q. And leads to death.

23 And this may seem like a stupid question,
24 but do you believe that those things happening to a

25 patient is harmful?

1 A. Absolutely.

2 Q. Okay. That's one.

3 What are the other two thyroids just

4 generally?

03:25PM 5 A. Let me think now. One was a lady that came in

6 for a sinus infection. She had a thyroid problem. Her

7 labs were perfect. But instead of treating the thyroid

8 infection, he changed all the medicine, took her off

9 cholesterol medicine, changed her thyroid medicine, and

03:26PM 10 then that was the end of that.

11 Two months later I saw her. She had

12 extreme fatigue, all the symptoms of low thyroid. Her

13 labs were checked and they were completely fouled up.

14 Q. She got sick?

03:26PM 15 A. Yes, sir.

16 Q. How about the third one?

17 A. Let me think about that one. I've got so much

18 in my head.

19 Q. Well, actually hold on.

03:26PM 20 Would it help you if you saw the letter

21 you wrote to the Texas --

22 A. It would.

23 Q. Well, let me ask you this while I'm looking for

24 this so we don't waste time. Sheriff Roberts, did he

03:26PM 25 ever ask you if you wrote a letter?

1 A. No.

2 Q. Did you ever know that Sheriff Roberts didn't

3 believe you wrote a letter?

4 A. I had nothing -- we had nothing to do with one

03:27PM 5 another. I -- I didn't know what he thought and I don't

6 know what he thought I thought.

7 Q. Okay. Would it surprise you that he testified

8 that he didn't believe you wrote that letter?

9 A. It wouldn't surprise me, but I wrote the

03:27PM 10 letter.

11 Q. But you did write a letter to the Texas Medical

12 Board on April 7, 2009?

13 A. I did.

14 Q. Did you write that letter because you had

03:27PM 15 genuine concerns, that you had -- because you had

16 serious concerns about the quality of care that

17 Dr. Arafiles was providing?

18 MR. TIDWELL: Leading, Your Honor.

19 A. Absolutely.

03:28PM 20 THE COURT: Approach please.

21 (AT BENCH, OFF THE RECORD)

22 THE COURT: Your objection is irrelevant?

23 MR. TIDWELL: Yes.

24 THE COURT: Okay. Overruled.

03:29PM 25 Q. (By Mr. Cook) Ms. Warren, I'm going to hand

1 you a document that I am marking as Defendant's Exhibit

2 Number 6. Would you take a moment to look at that and

3 tell me if you recognize that document.

4 A. This is my letter to the medical board.

03:29PM 5 Q. You wrote that?

6 A. Yes, sir.

7 Q. You signed that?

8 A. Yes, I did.

9 Q. You intended for that to be received by the

03:29PM 10 Texas Medical Board, didn't you?

11 A. I did.

12 Q. And what was your hope that the medical

13 board -- were you hoping that they would review these

14 cases?

03:29PM 15 A. I was.

16 Q. Okay. Did you feel as a licensed nurse

17 practitioner that you had a right to be able to address

18 those concerns to the medical board?

19 A. I had an obligation and a right.

03:30PM 20 Q. Okay. Do you feel that the quality of the care

21 that you were seeing went beyond just having a right to

22 complain but that you were actually under a duty to

23 notify then the medical board of what was going on?

24 A. I did.

03:30PM 25 Q. Okay. Does that help refresh your memory as to

1 the cases that you referred?

2 A. Yes, sir.

3 Q. How about number three, why did you form a

4 belief that there was a necessity to report that case to

03:30PM 5 the Texas Medical Board?

6 MR. COOK: Is that better, judge?

7 A. Yes, sir, I see my complaint now and it's very

8 clear to me.

9 This third patient I had seen off and on

03:30PM 10 for several years and treated for high blood pressure.

11 He came to see me when I moved to Monahans, within about

12 a month of my moving there. And his blood pressure was

13 very much out of control. He had headaches and anxiety.

14 He told me he had seen Dr. Arafiles

03:31PM 15 several months prior and had lab work and was told -- he

16 was not told that he had thyroid -- a thyroid problem

17 but he was put on thyroid medicine --

18 MR. TIDWELL: Object as hearsay, Your

19 Honor.

03:31PM 20 THE COURT: Sustained.

21 MR. COOK: Judge, I would say that these

22 are statements made for medical diagnosis and they

23 are -- that's an exception to the hearsay rule, and it

24 helps explain why she formed the belief that she needed

03:31PM 25 to report these to the Texas Medical Board.

1 THE COURT: Sustained.

2 Q. (By Mr. Cook) Ms. Warren, what all that legal
3 mumbo jumbo means is I need you to limit your testimony
4 to what you observed firsthand --

03:31PM 5 A. Okay.

6 Q. -- and the beliefs that you made from those
7 observations.

8 A. I will.

9 Q. Well, let me ask you this question. Let me
03:31PM 10 back up then. As part of your regular treatment of
11 patients, do you talk to them?

12 A. Yes.

13 Q. And do you try to get information to -- a
14 medical history?

03:31PM 15 A. Yes.

16 Q. And is that medical history used to help you
17 form an opinion about what is going on?

18 A. Yes.

19 Q. Okay. What was wrong with the third one?

03:32PM 20 A. He had very high blood pressure. And he was
21 taking thyroid medication. And he had a very high pulse
22 and anxiety. And there was no evidence in the lab that
23 he needed thyroid medication.

24 Q. Okay. Did you ever talk to Dr. Arafiles and
03:32PM 25 ask him about these prescribing habits?

1 MR. TIDWELL: Again, that's going to
2 elicit hearsay, Your Honor.

3 THE COURT: Say the question again.

4 MR. COOK: I just asked if she ever asked
03:32PM 5 Dr. Arafiles about the concerns in his prescribing
6 habits.

7 THE COURT: Okay. That question is okay.
8 Go ahead.

9 Q. (By Mr. Cook) And did you ask him that?

03:32PM 10 A. He approached me about it actually.

11 Q. Okay. And again, we can't say what
12 Dr. Arafiles --

13 A. Okay --

14 Q. -- said.

03:33PM 15 A. -- okay.

16 Q. Did -- but did y'all ever have a conversation
17 on why these things were being prescribed? And that's
18 yes or no.

19 A. Yes.

03:33PM 20 Q. Did you ask the doctor to provide you with
21 medical literature to support his decision to do this
22 type of medical prescription?

23 A. I did.

24 Q. And what medical literature did he provide you?

03:33PM 25 A. He gave me two paperbacks written by I don't

1 know who. It was about -- I tried to read one of them.

2 It -- a person had been studying corpses and had
3 determined by the study of these corpses that if your
4 skin is dry on the hands and back here behind the arm
03:33PM 5 and if you're overweight, then you need thyroid no
6 matter what the lab says.

7 Q. Okay. Were these clinical peer-reviewed
8 studies?

9 A. It appeared to me to be one man's view along
03:34PM 10 with testimonials.

11 Q. Was it sufficient -- or was it sufficient
12 documentation to ease your mind?

13 A. None at all, I didn't go for it at all.

14 Q. Do you remember the title of that book?

03:34PM 15 A. No, I don't.

16 Q. Okay. But these were paperback books?

17 A. Yes.

18 Q. Would you consider these books when you read
19 them to be medical literature?

03:34PM 20 A. No.

21 Q. Were they more of alternative medicine or what
22 we might call mainstream medicine?

23 A. Yes.

24 Q. Which one, alternative or mainstream?

03:34PM 25 A. Oh, it was definitely alternative.

1 Q. Did you have serious concerns about the
2 conclusions drawn in that book?

3 A. I did.

4 Q. Did you ever bring these complaints up with
03:34PM 5 your supervisor?

6 A. Yes, I did.

7 Q. And who was your supervisor?

8 A. Mr. Wiley was my administrator.

9 Q. Do you feel that Mr. Wiley as the administrator
03:35PM 10 instituted any type of review policy or disciplinary
11 policy that addressed your concerns?

12 A. No.

13 Q. And can you tell the ladies and gentlemen of
14 the jury how many times you tried to get these cases
03:35PM 15 reviewed?

16 A. Counting meetings, probably three meetings and
17 two individual visits with people in authority.

18 Q. And when -- and how long did this -- or what
19 time frame was that -- were those concerns being
03:36PM 20 addressed to the hospital? I guess the hospital is not
21 the right word there, is it? To the administrator,
22 who -- Mr. Wiley has some over -- or some responsibility
23 with that, too, right?

24 A. Yes. Mr. Wiley and I met around probably June.

03:36PM 25 We had lunch together about it.

1 Q. What year?

2 A. Of '08.

3 Q. '08?

4 A. Yes.

03:36PM 5 Q. So within two months of Dr. Arafiles showing up
6 you were already contacting the administrator of the
7 hospital saying you had concerns?

8 A. Yes.

03:36PM 9 Q. Did you ever feel that there was any oversight
10 being conducted on your concerns?

11 A. No.

12 Q. Did you ever feel -- did you want to send them
13 on at that time for review by the Texas Medical Board?

14 A. I didn't make that plan at that time, no.

03:36PM 15 Q. Okay. Were you given the opportunity to send
16 those files in to the Archie system?

17 A. I submitted those concerns to Vicki, who I --
18 and then she gets the records and sends them.

03:37PM 19 Q. Do you know if any of those files were ever
20 sent for peer review outside the hospital?

21 A. Vicki sends them.

22 Q. Okay. Do you know if they ever were sent?

23 A. She told me she sent them.

03:37PM 24 Q. Okay. Did you ever see any results of that?
25 A. No.

1 Q. Okay. Did you ever see any steps taken by the
2 administration of the hospital to correct what you felt
3 was a harmful practice?

4 A. No.

03:37PM 5 Q. Do you feel like you tried to comply with the
6 hospital's request to handle -- well, let me ask you
7 this. Did you have a general feeling that the hospital
8 did not want you to take any of these concerns outside
9 of the hospital or clinic?

03:37PM 10 A. That was made clear to me.

11 Q. That was made clear to you?

12 A. It was made very clear.

13 Q. And how was that made clear to you?

03:37PM 14 A. In the December hospital meeting -- medical
15 staff meeting we were discussing some cases of concern.
16 And Mr. Wiley said from now on no cases will be reviewed
17 outside of this hospital without my permission, the
18 medical board's permission --

19 MR. TIDWELL: And, again, Your Honor --

03:38PM 20 A. -- and the hospital board.

21 MR. TIDWELL: -- this is hearsay.

22 THE COURT: Sustained.

03:38PM 23 Q. (By Mr. Cook) Based on what you knew about the
24 oversight that was available at the hospital, did you
25 think that was in the patients' best interest?

1 A. No.

2 Q. In fact, did you yourself decide that you were
3 going to try to fight that policy and change it?

4 A. I did.

03:38PM 5 Q. And how did you do that, ma'am?

6 A. I wanted to think that the hospital board did
7 not know what was going on and that all they knew was
8 what Mr. Wiley told them.

9 Q. Okay.

03:38PM 10 A. So I went to the hospital board meeting and --
11 the following hospital board meeting and got on the
12 agenda and made a statement about my concerns about not
13 allowing information outside the hospital.

14 Q. Did you make notes for yourself before you went
03:39PM 15 into that meeting on January 15, 2009?

16 A. I did.

17 Q. I'm showing you --

18 MR. COOK: Oh, judge, before we get --
19 move any further, we'd move for admission of Defendant's
03:39PM 20 Exhibit Number 6, the letter that was written to the
21 Texas Medical Board on April 7, 2009, from Ms. Naomi
22 Warren.

23 (Defendant's Exhibit No. 6 offered)

03:39PM 24 MR. TIDWELL: No objection. I think it's
25 already admitted.

1 THE COURT: It's admitted.

2 (Defendant's Exhibit No. 6 received)

3 Q. (By Mr. Cook) Let me show you what I've marked
4 as Defendant's Number 7.

03:40PM 5 Do you recognize that document?

6 A. I do.

7 Q. What is that document?

8 A. This is a copy of the statement that I read to
9 the hospital board on the January 15, 2009, meeting.

03:40PM 10 Q. And can you tell the ladies and gentlemen of
11 the jury what you told the hospital board in January of
12 2009?

13 A. I told them I wanted to make a point that, as I
14 said to you just then, Mr. Wiley announced at the
03:40PM 15 December medical staff meeting that no chart reviews or
16 reports to any compliance entity could be sent in
17 without first going through medical staff,
18 administration, and the hospital board. I said this is
19 a dangerous policy for the following reasons.

03:40PM 20 Any person has not only the right but the
21 duty to report any harm or potential harm to a patient.
22 If a provider did nothing wrong, then he or she has
23 nothing to worry about. There have long been mechanisms
24 in place in this hospital to insure patient safety. One
03:40PM 25 is utilization review where records that question

1 whether standard of care has been met are reviewed by a
2 non-biased physician review agency hired by this
3 hospital.

03:41PM 4 This review is important for the medical
5 staff because it -- before the medical staff meets
6 because it gives medical staff non-biased input
7 regarding safety and quality of care given here.

8 Mr. Wiley is not a licensed medical
9 professional. He does not have the expertise to
03:41PM 10 determine if the care is appropriate. It is unfair to
11 ask this board to determine appropriate care as you also
12 do not have that expertise.

13 Medicine must police medicine. If you
14 allow administration to control the practice of
03:41PM 15 medicine, then this new hospital will be just a useless
16 building. If you want a quality hospital you must
17 insist that the medical standard of care be practiced.

18 Nothing else is acceptable. You must restore the
19 mechanisms that allow efficient, non-biased review of
03:42PM 20 records. It is inexcusable and unacceptable for any
21 person to suppress information that threatens patient
22 safety.

23 Q. And you believe that from your heart, don't
24 you?

03:42PM 25 A. Absolutely. I still --

1 Q. And as a result --

2 A. -- shudder about it.

3 Q. -- of going before the medical board, did you
4 see any changes in the hospital policy on medical
03:42PM 5 oversight?

6 A. No.

7 Q. I mean the hospital board. This isn't the
8 medical board. This is the --

9 A. No, I saw none. And the medical --

03:42PM 10 Q. You guys got lots of committees.

11 A. The hospital board?

12 Q. Yes, who you made that statement to.

13 A. Well, I don't even know if they were listening
14 very well. The chairman of the hospital board was
03:42PM 15 spending a lot of time working on the lights, lighting
16 system. And I asked once if I should begin my statement
17 over. I don't know what they heard. I wanted them to
18 hear it --

19 Q. Listen to my question, Ms. Warren.

03:42PM 20 A. Okay.

21 Q. Did you see any changes in the policy as a
22 result of that meeting?

23 A. No, nothing.

03:43PM 24 Q. Was it continued to be made clear to you this
25 is the way it's going to be?

1 A. Yes.

2 Q. Okay. About six weeks later you started
3 working in Monahans, correct?

4 A. Yes.

03:43PM 5 Q. Why -- were you discharged from Winkler County
6 hospital?

7 A. I resigned.

8 Q. Did you have a conversation with Dr. Winton
9 about why you were going to resign?

03:43PM 10 A. He came to me.

11 Q. He came to you?

12 A. He asked --

13 MR. TIDWELL: Your Honor, I object this is
14 hearsay.

03:43PM 15 MR. COOK: Judge, we asked this question
16 of Dr. Winton, and he denied that Naomi ever came to --
17 or Ms. Warren ever came to him with concerns --

18 THE COURT: Approach.

(AT BENCH, OFF THE RECORD)

03:46PM 20 THE COURT: The objection is sustained.

21 Q. (By Mr. Cook) Ms. Warren, is one of the
22 reasons you quit Winkler County and moved to Monahans
23 because you -- because of Dr. Arafiles?

24 MR. TIDWELL: Objection, leading.

03:47PM 25 MR. COOK: Okay.

1 THE COURT: Rephrase it.

2 MR. COOK: I will.

3 Q. (By Mr. Cook) Why did you quit?

03:47PM 4 A. I was sick and tired of the whole thing and I
5 was getting nowhere, and so I had to take another
6 approach. I wanted to get out. I didn't want my name
7 associated with his in the clinic.

8 Q. And when you say that, over the course of that
9 year that you worked with Dr. Arafiles --

03:48PM 10 A. Yes.

11 Q. -- was there just rare, random events that gave
12 you concern, was it every once in a while, or was it
13 constant, or was it somewhere in the middle of that?

03:48PM 14 A. It was somewhere in the middle. It wasn't
15 every day; it wasn't every week.

16 Q. Was it enough to form in your mind a concern
17 about patient safety --

18 A. Yes.

03:48PM 19 Q. -- and a concern that future patients were
20 going to be harmed?

21 A. Yes.

22 MR. TIDWELL: Objection, leading.

23 THE COURT: Rephrase it.

24 No, actually that's all right, now that I

03:48PM 25 think of the --

1 MR. COOK: Thank you.
 2 THE COURT: -- wording. Excuse me.
 3 Reask the question. That's okay phrased
 4 that way.
 03:48PM 5 MR. COOK: Thank you, Your Honor.
 6 Q. (By Mr. Cook) Was this information you were
 7 receiving, did it cause you to form in your mind a
 8 concern for patient safety?
 9 A. Yes.
 03:48PM 10 Q. Did it cause you to form in your mind a belief
 11 that there may be future harm to patients?
 12 A. Yes.
 13 Q. And because of your ethics what does that
 14 require you to do?
 03:49PM 15 A. I must report.
 16 Q. Do you have a duty to intervene when you think
 17 that there is a risk of patient harm?
 18 A. I do.
 19 Q. Do you believe that requesting oversight is
 03:49PM 20 intervention?
 21 A. Yes.
 22 Q. Did you personally observe Dr. Arafles working
 23 with patients in the clinic?
 24 A. We weren't in the same exam room together, but
 03:49PM 25 we worked in the same building at the same time.

1 Q. Okay. After you left Winkler County hospital,
 2 you basically set up the same type of practice in
 3 Monahans?
 4 A. I did.
 03:50PM 5 Q. And has that been a struggle to refill your
 6 client base?
 7 A. Not at all.
 8 Q. Is it true that over 500 patients have left
 9 the -- no longer use the Winkler County clinic and they
 03:50PM 10 have followed you to Monahans?
 11 A. Yes.
 12 Q. I need to jump back onto something. For you in
 13 your -- and you're in the clinic, not the hospital?
 14 A. That's right.
 03:50PM 15 Q. So you -- were you under some different rules
 16 than hospital employees, or were you a hospital
 17 employee?
 18 A. I was a hospital employee, I --
 19 Q. Okay. What was the hierarchy for you that was
 03:50PM 20 established for handling complaints?
 21 A. Well, I actually kind of had two bosses.
 22 Dr. Pham was my medical director. And anything related
 23 to medical care, as far as whether the care was
 24 appropriate or advice that I needed, I went to him.
 03:51PM 25 Q. You went to Dr. Pham?

1 A. Dr. Pham, yes.
 2 Q. If you wanted to, could you have gone to
 3 Dr. Arafles?
 4 A. No.
 03:51PM 5 Q. Okay. And then if you didn't feel that
 6 Dr. Pham addressed your concerns, what were you supposed
 7 to do next?
 8 A. Discuss it with the medical -- with the
 9 administrator.
 03:51PM 10 Q. Did you attempt beginning in September of '08
 11 to raise issues with the medical board?
 12 A. September '08?
 13 Q. Yes, ma'am.
 14 A. I did not send anything in --
 03:51PM 15 Q. How about the --
 16 A. -- at that time.
 17 Q. How about the October and November meetings?
 18 And maybe I've got the wrong --
 19 A. Oh, at the medical staff?
 03:51PM 20 Q. Medical staff.
 21 A. Oh, okay, not medical board, okay, medical
 22 staff.
 23 Q. When did you first try to approach them with
 24 concerns about Dr. Arafles and how were you treated the
 03:51PM 25 first time?

1 A. Vicki and Anne presented that -- I don't -- I'm
 2 not on the agenda. I'm a nonvoting member. I was
 3 present. And Vicki and Anne presented cases of concern.
 4 Q. Okay. Do you feel that -- but you were present
 03:52PM 5 and watching?
 6 A. I was.
 7 Q. Do you feel that they received the level of
 8 attention that they deserved?
 9 A. No.
 03:52PM 10 Q. Was there a time when concerns were basically
 11 being tabled and not heard?
 12 A. They were shut down. I guess that's -- Vicki
 13 was stopped from talking several times.
 14 Q. And then did you -- did you try -- well, you
 03:52PM 15 talked with Vicki and Anne about y'all's concerns --
 16 A. Yes.
 17 Q. -- didn't you?
 18 Do you believe that Vickilyn Galle shared
 19 your concern about the way that Dr. Arafles practiced
 03:52PM 20 medicine?
 21 A. Yes.
 22 MR. TIDWELL: That's speculation, Your
 23 Honor.
 24 THE COURT: Sustained.
 03:52PM 25 Q. (By Mr. Cook) Did Anne Mitchell tell you she

1 shared your concerns?

2 **A. Yes.**

3 MR. TIDWELL: That's asking for hearsay,

4 Your Honor.

03:53PM 5 THE COURT: Sustained.

6 MR. COOK: It's the Defendant, Your Honor.

7 THE COURT: Sustained.

8 **Q.** (By Mr. Cook) Do you believe you were alone in
9 your concerns amongst the staff?

03:53PM 10 **A. No.**

11 MR. TIDWELL: Again, that's speculation,

12 Your Honor.

13 THE COURT: Sustained.

14 MR. COOK: Was that sustained or --

03:53PM 15 THE COURT: Sustained.

16 **Q.** (By Mr. Cook) Winkler County hospital is a
17 small hospital, isn't it?

18 **A. It is.**

03:53PM 19 **Q.** If something goes on in that hospital, pretty
20 quickly other people know about it, don't they?

21 **A. That's right.**

22 **Q.** That also includes Dr. Arafiles knows what's
23 going on in that hospital do you believe?

03:53PM 24 MR. TIDWELL: That's speculation, also,
25 Your Honor.

1 original complaints, came from patients that I saw after

2 I got to Monahans that were my patients also in Kermit.

3 So that constituted that five. And then -- that was in

4 April. And then four more cases came up between June

03:55PM 5 and December.

6 **Q.** And are those cases that were for practices

7 that happened years earlier or were those cases that you

8 saw something that alarmed you that was continuing to

9 happen?

03:55PM 10 **A. These were things that were happening within**

11 the week. They had seen Dr. Arafiles in the emergency

12 room and followed up with me.

13 **Q.** Okay. And can you give us a general idea of

14 what those -- what the -- what type of concerns they

03:55PM 15 were?

16 MR. TIDWELL: Your Honor, I'm going to

17 object on relevance grounds. This is well into '09 now,

18 before the date alleged in this indictment, and this has

19 nothing to do with the elements of this offense to this

03:55PM 20 Defendant.

21 THE COURT: Overruled.

22 Go ahead.

23 MR. COOK: Thank you.

03:56PM 24 **Q.** (By Mr. Cook) What were the type of issues
25 that you continued to see last summer and into I guess

1 THE COURT: Sustained.

2 **Q.** (By Mr. Cook) Okay. Well, let me ask you

3 this. At anytime did you feel that the internal

4 mechanisms that Mr. Wiley had imposed on the hospital

03:54PM 5 were adequate to address the problems that you saw?

6 **A. I saw no internal mechanisms. I saw nothing**
7 **being done. I saw appeasement --**

8 **Q.** Okay.

9 **A. -- toward him.**

03:54PM 10 **Q.** Okay. Now we've been told that Mr. Wiley had a

11 talk with Dr. Arafiles back in September of '08 and all

12 the problems were fixed. Is that true, not that they

13 had a talk, but that since September of '08 Dr. Arafiles

14 has just been -- there has been no problems?

03:54PM 15 **A. Absolutely false.**

16 **Q.** Absolutely false.

17 Since you began working in Monahans, have

18 you filed any additional complaints against

19 Dr. Arafiles?

03:54PM 20 **A. Yes, I have.**

21 **Q.** How many?

22 **A. Four.**

23 **Q.** Over the course of the -- that -- what was the

24 time frame of those complaints?

03:57PM 25 **A. Well, actually two of the complaints, my**

1 just a month ago?

2 **A. Of the four, there were two that were very**

3 **serious, life-threatening issues. The first one was a**

4 **patient who had pain in her leg. And I knew her**

03:56PM 5 **previously, and she had a history of blood clots. She**

6 **said she did not get a good response when she went to**

7 **Kermit so she came to see me --**

8 MR. TIDWELL: Objection, hearsay.

9 THE COURT: Sustained.

03:56PM 10 **Q.** (By Mr. Cook) Yeah, not what she said, what

11 you observed, ma'am.

12 **A. Okay.**

13 **Q.** Okay?

14 **A. The patient, when she came in, had leg pain.**

03:56PM 15 **Based on her history of deep vein thrombosis, or blood**

16 **clots in the legs, I sent her for a carotid -- for a**

17 **Doppler study. And thankfully she did not have a blood**

18 **clot.**

19 **But she had a long history of blood clots.**

03:57PM 20 **And she was put on female hormones by Dr. Arafiles.**

21 **Anyone who treats in family practice or women's health**

22 **knows that you never, ever, ever give hormones to a**

23 **patient who has had blood clots because hormones**

24 **increase the risk of blood clots.**

03:57PM 25 **I saw her three weeks after she had a**

1 major blood clot and was in Medical Center Hospital and
2 was then on blood thinner.

3 It could have been devastating. Blood
4 clots from the leg go to the lung and they can kill
5 instantly.

03:57PM

6 And I thought it -- I couldn't -- when she
7 told me that, my only thought was thank God you're
8 alive, thank God you're alive. Because anybody who
9 works with women's health, anybody who knows family, you
10 never, ever, ever give hormones to a person with blood
11 clots, ever. There is no -- there is never an
12 exception.

03:57PM

13 Q. Okay. What was the other life-threatening
14 problem that you saw?

03:58PM

15 A. This lady in December, her son brought her.
16 She had -- she was very weak. Her blood -- her pulse
17 was in the 160s. She was very short of breath. Her
18 legs were this big, fluid, edema.

03:58PM

19 She had seen Dr. Arafles in the emergency
20 room three days prior. She had been diagnosed with a
21 stomach infection and dehydration.

22 When I listened to her heart, it was
23 obvious to me that it was a rhythm called atrial
24 fibrillation. The consequences of that rhythm at
25 160 beats a minute are heart failure and stroke.

03:58PM

1 But what really concerned me on top of
2 everything else is the son made it a point to me to say
3 the doctor never came to our room when he was in the
4 emergency room --

03:59PM

5 MR. TIDWELL: Objection, Your Honor,
6 hearsay.

7 THE COURT: Sustained.

8 Q. (By Mr. Cook) Again, again --

9 A. I'm sorry, I don't realize it.

03:59PM

10 Q. We can't have a normal conversation in here
11 like we normally do.

12 A. Okay.

13 Q. One of the rules, Ms. Warren, and excuse me for
14 not explaining to you better --

03:59PM

15 A. Okay.

16 Q. -- ahead of time is that you can't tell the
17 jury what you heard somebody else say.

18 A. Okay. I'm sorry.

19 Q. Okay? No, that's okay, that's -- this is
20 unnatural, so that's okay.

03:59PM

21 A. Okay.

22 Q. But based on all the information you received
23 in that case, did that give you a belief that this lady
24 had substandard care?

03:59PM

25 A. Yes.

1 Q. And, Ms. Warren, I can't help but noticing that
2 you have some emotion about describing these.

3 A. I just -- every time I think that maybe it's
4 going to get better or maybe we're going to hear
5 something from the medical board it just -- nothing
6 changes, it's -- I come to expect it.

03:59PM

7 Q. It's that -- it's become routine?

8 A. Yes.

9 Q. And that is -- that's a scary thing, isn't it?

04:00PM

10 A. I'm extremely frustrated and upset by it.

11 Q. Okay. In February and March of 2009, last
12 year --

13 A. Yes.

14 Q. -- you were discussing your concerns with Anne
15 Mitchell, weren't you?

04:00PM

16 A. Yes.

17 Q. And she was discussing her concerns with you,
18 wasn't it?

19 A. Yes.

04:00PM

20 Q. Wasn't she?

21 A. Yes.

22 Q. Were your concerns petty little grievances
23 because you just didn't like this doctor?

24 A. No.

04:00PM

25 Q. Do you believe any reasonable practitioner

1 would question the type of care that you've been
2 observing?

3 A. I believe every reasonable practitioner would
4 question the care that I have observed.

04:01PM

5 Q. And in some of these situations do you believe
6 that whether you like the man or not you have to report?

7 A. That's the -- that's right.

8 Q. And do you believe that a facility can stop you
9 from reporting?

04:01PM

10 A. No.

11 Q. It's not a coincidence that your letters --
12 your letter and Anne's letter were sent on the same day,
13 is it?

14 A. No.

04:01PM

15 Q. Y'all talked about it, didn't you?

16 A. We planned to do it together.

17 Q. And as part of that plan did you think that
18 there was anything else that was available for you to
19 try to get this gentleman's practice looked at?

04:01PM

20 A. All avenues for having his care reviewed had
21 been closed to us.

22 Q. And all you're asking the Texas Medical Board
23 to do is look at this?

24 A. That's right.

04:02PM

25 Q. And let the chips fall where they may?

1 A. We -- I believe that his care was
2 inappropriate, but I was not his peer. I wanted his
3 peers to evaluate his care and make a determination
4 about the quality of that care.

04:02PM 5 Q. And it was enough of a concern for you to quit
6 your job that you'd had for many years?

7 A. Yes, sir.

8 Q. And it was enough of a concern for Anne and
9 Vicki -- Vicki was part of this -- well, let me strike
04:02PM 10 that. I was fixing to lead.

11 A. Okay.

12 Q. Was Vickilyn Galle also one of the ones that
13 did it together?

14 MR. TIDWELL: Objection, relevance.

04:02PM 15 THE COURT: Sustained.

16 Q. (By Mr. Cook) Okay. Did you talk to Vickilyn
17 Galle about your concerns?

18 A. Yes.

19 MR. TIDWELL: Objection, relevance.

04:02PM 20 THE COURT: Sustained.

21 Q. (By Mr. Cook) Okay. Did you have enough
22 interaction with Anne Mitchell to be able to form an
23 opinion as to whether or not she was concerned with
24 patient safety?

04:03PM 25 A. I did.

1 Q. And what is your opinion?

2 A. She is very concerned.

3 Q. Did you have enough interaction with Anne
4 Mitchell to form an opinion as to whether or not she was
04:03PM 5 motivated to do -- file this complaint for personal
6 reasons?

7 MR. TIDWELL: Objection, Your Honor. That
8 invades the province of the jury. That goes to the
9 essential -- two of the essential elements of the case.

04:03PM 10 THE COURT: Approach.

11 (AT BENCH, OFF THE RECORD)

12 THE COURT: No, I take that back, I don't
13 need you to approach.

14 Overruled.

04:03PM 15 MR. COOK: Thank you.

16 Q. (By Mr. Cook) Ms. Warren, do you remember the
17 question I just asked you, ma'am?

18 A. No, sir.

19 Q. Did you have enough interactions with Anne
04:03PM 20 Mitchell to form an opinion whether or not she was
21 motivated to file her letter based on personal reasons?

22 A. I had -- she and I talked about our patient
23 concerns. And his personality or what we thought about
24 him never entered the conversation, ever.

04:04PM 25 Q. Would you characterize this more as

1 professional conversations?

2 A. Yes.

3 Q. Did your interactions with Anne Mitchell leave
4 you any doubt of what motivated her?

04:04PM 5 A. No.

6 Q. Do you believe that Anne Mitchell is a
7 competent nurse?

8 A. Yes, I do.

9 Q. How much -- you've worked together, right?

04:04PM 10 A. Yes, we have.

11 Q. Do you believe that Anne Mitchell is a
12 knowledgeable nurse?

13 A. Yes, I do.

14 Q. Do you believe that Anne Mitchell knows what
04:04PM 15 she's talking about?

16 A. She does.

17 Q. Do you believe that Anne Mitchell is driven by
18 patient -- by -- driven to care for patients?

19 A. Absolutely, yes.

04:05PM 20 Q. Do you believe that the reason why you and her
21 sent letters is because of serious concerns for patient
22 safety?

23 MR. TIDWELL: Objection. That's
24 speculation.

04:05PM 25 THE COURT: Sustained.

1 Q. (By Mr. Cook) Okay. Let me just do yours.

2 A. Okay.

3 Q. Do you believe that you had a reasonable --
4 that you formed a reasonable belief that portions of the
04:05PM 5 Medical Practices Act had been violated from -- violated
6 by Dr. Arafles?

7 A. Yes, I do.

8 Q. And did you also form the belief that there was
9 a risk of patient harm in the future?

04:05PM 10 A. Absolutely, yes.

11 Q. And because of that belief you took action?

12 A. I did.

13 MR. COOK: Your Honor, we'll pass the
14 witness.

04:05PM 15

CROSS-EXAMINATION

17 BY MR. TIDWELL:

18 Q. Ms. Warren, you said that you were sick and
19 tired of being in Kermit and you felt like you had to go
04:06PM 20 to Monahans to a similar type practice; is that right?

21 A. Yes.

22 Q. How much of a raise did you receive going to --

23 A. I got a substantial raise.

24 Q. Well, put it in terms of dollars for me.

04:06PM 25 A. I got 20,000 a year.

1 Q. Okay. This letter that you read that you read
 2 to the hospital board is critical of Mr. Wiley for not
 3 changing a bunch of medical patient issues; is that
 4 correct?
 04:06PM 5 A. No.
 6 Q. You don't think it has to do with -- aren't you
 7 saying he's not a licensed medical professional, he
 8 shouldn't be worrying about the medicine issues?
 9 A. **I said he should not be deciding whether care**
 04:07PM 10 **was appropriate.**
 11 Q. Okay. So you're critical because you think you
 12 were complaining to him about appropriate medical issues
 13 and he wasn't doing anything?
 14 A. **He wasn't doing anything, that's right.**
 04:07PM 15 Q. Okay. But didn't you say a while ago that if
 16 you had a complaint about a medical issue Dr. Pham is
 17 the one you're supposed to take it to?
 18 A. Yes.
 19 Q. Because he's a doctor?
 04:07PM 20 A. **That's right.**
 21 Q. Well, so why were you even talking about
 22 medical issues with Mr. Wiley, why weren't you talking
 23 to Dr. Pham?
 24 A. **I talked to both of them.**
 04:07PM 25 Q. So are you mad at Dr. Pham for not resolving

1 the medical issues?
 2 A. **I think he tried. He was shut down.**
 3 Q. Okay. But you weren't critical of him as he's
 4 the medical director, he's chief of staff?
 04:07PM 5 A. **He was trying, but Dr. -- Mr. Wiley was**
 6 **abandoning the situation, he was -- Dr. Arafles made**
 7 **the hospital a lot of money, and Mr. Wiley intended to**
 8 **see that that continued.**
 9 Q. Give me an idea of how many patients
 04:08PM 10 Dr. Arafles has seen since April of 2008.
 11 A. **I don't know.**
 12 Q. Thousands. Would that be fair?
 13 A. **I don't know. I have no idea.**
 14 Q. Okay. Well, how many patients do you normally
 04:08PM 15 see in a year, roughly?
 16 A. **I see roughly 300 a month in a clinic setting.**
 17 Q. Okay. So that's 3,600 a year.
 18 A. **Probably, yes.**
 19 Q. Would Dr. Arafles see a fairly similar number?
 04:08PM 20 A. **In the clinic he didn't see near that number.**
 21 Q. Okay.
 22 A. **He wasn't there very often.**
 23 Q. He worked a lot more in the ER than the clinic,
 24 right?
 04:08PM 25 A. **No. He would just -- didn't show up to work**

1 **very often.**
 2 Q. Okay. But he worked a lot more in the ER than
 3 Dr. Pham did?
 4 A. Yes.
 04:08PM 5 Q. Okay. When you presented your cases in October
 6 of '08, you presented them to the medical staff, to a
 7 group of doctors?
 8 A. **Which cases?**
 9 Q. Well, you talked with Mr. Cook about presenting
 04:09PM 10 cases in October of '08 at medical staff --
 11 A. **I did not --**
 12 Q. -- that Vicki and Anne presented cases for you.
 13 A. **I didn't say that I presented those cases.**
 14 **Vicki and Anne presented them. I was present.**
 04:09PM 15 Q. Okay. And were you -- and were cases being
 16 presented to doctors for review of medical care?
 17 A. Yes.
 18 Q. And is that appropriate?
 19 A. Yes.
 04:09PM 20 Q. Okay. In your -- you talked to Mr. Cook about
 21 being extremely frustrated and upset about the lack of
 22 action so far by the medical board?
 23 A. **Not the medical board, the hospital board and**
 24 **the administrator.**
 04:09PM 25 Q. Okay. Well, you sent your complaint in to the

1 medical board April of 2009, right?
 2 A. Yes.
 3 Q. And you're not frustrated with them?
 4 A. **I'd like to see them move on, but I want them**
 04:10PM 5 **to take the time they need to make the right decision.**
 6 **And I also know that it takes months. That's routine**
 7 **with the medical board.**
 8 Q. Okay. Have you ever heard directly from her
 9 mouth Anne Mitchell make a derogatory comment about
 04:10PM 10 Dr. Arafles?
 11 A. No.
 12 Q. Never, ever?
 13 A. Never.
 14 Q. You never, ever heard her say I got to get him
 04:10PM 15 out of here, we got to get him out of here?
 16 A. **Nope, I sure didn't.**
 17 Q. You never heard her say we've got to get rid of
 18 that son of a bitch?
 19 A. **No, I never did.**
 04:10PM 20 Q. You never heard her say he's a witch doctor?
 21 A. No.
 22 Q. Okay. Never anything?
 23 A. **We didn't talk about him personally. We didn't**
 24 **have personal issues with him. I personally like**
 04:10PM 25 **Dr. Arafles, he's a nice guy. But I had to separate**

1 that from what he was doing as a caregiver.
 2 Q. Okay. Are you --
 3 A. And she did, too.
 4 Q. Are you telling us that Ms. Mitchell never made
 04:11PM 5 any of these statements to anybody?
 6 MR. COOK: Your Honor, that --
 7 A. I'm not telling you that.
 8 MR. COOK: Your Honor, objection. That's
 9 beyond the scope of her knowledge. I don't think that
 04:11PM 10 she and Ms. Mitchell are joined at the hip.
 11 THE COURT: Well, I think she can say
 12 that, she can say that she doesn't know. That's --
 13 Go ahead.
 14 A. I have no knowledge that she made those
 04:11PM 15 comments.
 16 Q. And you have no knowledge that she didn't make
 17 them, either way?
 18 A. I have no knowledge either way.
 19 Q. Okay. You said that Ms. Mitchell, you've made
 04:11PM 20 three or four statements in a row, she was a competent
 21 nurse, she knew her stuff, she was driven, she was
 22 concerned about patient care?
 23 A. Yes.
 24 Q. Okay. Do you know what her general reputation
 04:11PM 25 in the facility was as a nurse?

1 A. As in her position now?
 2 Q. Well, you made these statements that she's a
 3 competent nurse --
 4 A. Okay.
 04:11PM 5 Q. -- she's a driven nurse --
 6 MR. COOK: And, judge, I think that we're
 7 going to object. General reputation for -- as a nurse,
 8 (a), I don't see how it's relevant, (b), I think it's an
 9 improper opinion question.
 04:12PM 10 THE COURT: Overruled.
 11 Go ahead.
 12 Q. (By Mr. Tidwell) Do you know what her general
 13 reputation in the facility was as a nurse?
 14 A. I worked in a separate building. So if there
 04:12PM 15 was talk, I'm not sure what it was or what it could be.
 16 I know how she is and I know her personality.
 17 Q. You never heard a thing about how she was
 18 viewed in her abilities as a nurse in the facility?
 19 A. No.
 04:12PM 20 Q. Okay. Thank you.
 21 MR. TIDWELL: Pass the witness, Your
 22 Honor.
 23
 24 REDIRECT EXAMINATION
 04:12PM 25 BY MR. COOK:

1 Q. Did you ever see Dr. Arafiles or files that you
 2 felt he was ordering unnecessary tests?
 3 A. Yes.
 4 Q. Did you ever have a concern that he would order
 04:12PM 5 these tests and then never review the results?
 6 A. Yes.
 7 Q. Does the hospital make money off tests?
 8 A. Yes.
 9 Q. Did you ever feel that any appropriate actions
 04:13PM 10 were taken by the administration, the medical board, or
 11 anybody to address your concerns about his medical
 12 practice?
 13 A. No.
 14 Q. Do you know any reason why the administration
 04:13PM 15 wanted to stop Anne from voicing her concerns?
 16 MR. TIDWELL: And that's speculation.
 17 THE COURT: Sustained.
 18 MR. COOK: Pass the witness, Your Honor.
 19 MR. TIDWELL: No further questions, Your
 04:13PM 20 Honor.
 21 THE COURT: You can step down.
 22 May this witness be excused?
 23 MR. TIDWELL: Certainly.
 24 MR. COOK: Yes, Your Honor.
 04:13PM 25 THE COURT: You're free to go. Thank you.

1 Call your next witness.
 2 MR. COOK: Your Honor, the defense would
 3 call Debby Egger.
 4 THE COURT: Have you been sworn?
 04:14PM 5 THE WITNESS: No, sir.
 6 (WITNESS SWORN)
 7 THE COURT: Have a seat.
 8
 9 DEBBY EGGER, L.V.N.,
 10 having been first duly sworn, testified as follows:
 11 DIRECT EXAMINATION
 12 BY MR. COOK:
 13 Q. Good afternoon.
 14 A. Hello.
 04:14PM 15 Q. Hello.
 16 Would you please introduce yourself to the
 17 ladies and gentlemen of the jury.
 18 A. My name is Debby Egger.
 19 Q. And, Ms. Egger, how are you employed?
 04:14PM 20 A. I'm employed at the Sandhills Family Clinic in
 21 Monahans.
 22 Q. Okay. And what is -- do you hold any
 23 professional licensing?
 24 A. Yes, I do, L.V.N. license.
 04:15PM 25 Q. And what is L.V.N.?

1 **A. Licensed vocational nursing license.**
 2 **Q. Okay. How long have you worked at the clinic**
 3 **in Monahans?**
 4 **A. I started September 10th of 2009.**
 04:15PM 5 **Q. Okay. And prior to working in the clinic at**
 6 **Monahans where did you work?**
 7 **A. At the Winkler County rural health clinic in**
 8 **Kermit.**
 9 **Q. Okay. And in your -- in working at the rural**
 04:15PM 10 **health -- when did -- well, let me go back to that.**
 11 **How long have you been a nurse?**
 12 **A. Since 1990.**
 13 **Q. Since 1990?**
 14 **And when you were working at the rural**
 04:15PM 15 **health clinic in -- well, golly, my mind is getting**
 16 **muddled, I'm tired.**
 17 **When did you begin working as a nurse in**
 18 **the rural health clinic of Kermit?**
 19 **A. Why or when?**
 04:15PM 20 **Q. When.**
 21 **A. It was in July of 2007 maybe.**
 22 **Q. During the time that you worked there did you**
 23 **have contact with a man by the name of Rolando Arafiles?**
 24 **A. Dr. Arafiles, yes, I did.**
 04:16PM 25 **Q. Okay. And let me ask you this question. Why**

1 **did you leave your job?**
 2 **A. It became too stressful. I took my work at**
 3 **home mentally and emotionally. I was worried about the**
 4 **patients and their care.**
 04:16PM 5 **Q. Okay. Was this -- were you worried about the**
 6 **patient -- the care that Naomi was giving?**
 7 **A. No, sir.**
 8 **Q. Were you worried about the care that Dr. Pham**
 9 **was giving?**
 04:16PM 10 **A. No, sir.**
 11 **MR. TIDWELL: Object, Your Honor, leading.**
 12 **THE COURT: Sustained.**
 13 **Q. (By Mr. Cook) Was there a particular**
 14 **practitioner that you had concerns about, the level of**
 04:16PM 15 **care?**
 16 **A. Just Dr. Arafiles.**
 17 **Q. Just Dr. Arafiles?**
 18 **And what do you mean that you were taking**
 19 **it home with you?**
 04:17PM 20 **A. I would find multiple things that he would do**
 21 **and I was I guess wondering if maybe if I didn't catch**
 22 **everything that he was doing and how it would affect the**
 23 **patient if I had not.**
 24 **Q. Was this something that rarely happened?**
 04:17PM 25 **A. It happened quite often.**

1 **Q. By quite often do you mean, you know, once in a**
 2 **blue moon, once every two months, once a month?**
 3 **A. If he was in the clinic, sometimes he'd be in**
 4 **the clinic three days a week, it would happen probably**
 04:17PM 5 **twice a week.**
 6 **Q. Okay. And I mean, were these little tiny**
 7 **things that you had to catch or were these serious**
 8 **medical --**
 9 **A. To me they were serious.**
 04:17PM 10 **Q. Could they result in harm to patients --**
 11 **A. Yes, sir.**
 12 **Q. -- if you failed to catch them?**
 13 **A. Yes, sir.**
 14 **Q. Were you afraid -- what was your -- you say you**
 04:17PM 15 **took it home. What was your fear would happen if you**
 16 **failed to catch something?**
 17 **A. If they were given a medication they were**
 18 **allergic to, that could affect them.**
 19 **Q. And you saw that happen?**
 04:18PM 20 **A. I caught the medication before it was handed**
 21 **actually the prescription to the patient.**
 22 **Q. You intervened?**
 23 **A. Yes, sir.**
 24 **Q. On one occasion or more than one?**
 04:18PM 25 **A. I would -- more than one.**

1 **Q. What else, what other type of things did you**
 2 **see?**
 3 **A. He would write -- he would okay prescriptions**
 4 **on medications that the patient was not -- I don't know**
 04:18PM 5 **if they were taking, but we had no documentation**
 6 **whatsoever the patient was on that medication.**
 7 **Q. Do you have a genuine concern about the level**
 8 **of care that Dr. Arafiles provides people?**
 9 **A. Yes, I do.**
 04:18PM 10 **Q. Do you have a genuine belief that Dr. Arafiles**
 11 **could present a risk of harm to patients in the future?**
 12 **A. If it doesn't get stopped, yes, sir.**
 13 **Q. What -- did you ever try -- and now we're**
 14 **talking back in Winkler. Did you ever try to report**
 04:19PM 15 **these concerns to anybody?**
 16 **A. I reported them to my supervisor and I reported**
 17 **to Dr. Pham.**
 18 **Q. And who was your supervisor?**
 19 **A. Corina Chavez.**
 04:19PM 20 **Q. Did you ever feel that the Winkler County**
 21 **hospital or clinic took any steps to alleviate these**
 22 **fears that you had?**
 23 **A. No, sir.**
 24 **Q. Have you ever seen him mix patients up?**
 04:19PM 25 **A. Yes, sir.**

1 Q. Can you tell the jury what that means?

2 A. We had a patient come in that had some lab work
3 done. And the next following day --

4 Dr. Arafiles puts the charts on my desk.

04:20PM 5 I go through them. He'll put follow up in two weeks or
6 we just file them, whatever he writes on the orders.

7 So I'm going through the chart, and it
8 says follow up in two weeks. I called the patient.

9 She's not there, so I talked to the patient's husband --

04:20PM 10 Q. And you can't say what the husband says.

11 A. Okay.

12 Q. Okay.

13 A. But I'm just telling you she's to follow up in
14 two weeks and --

04:20PM 15 Q. Okay.

16 A. And I was informed that, no, Dr. Arafiles
17 called --

18 MR. TIDWELL: Your Honor, this is hearsay.

19 MR. COOK: Yeah.

04:20PM 20 THE WITNESS: Okay.

21 THE COURT: Sustained.

22 A. So anyway I come across a lab. And he marked
23 out the patient's name and put another patient's name on
24 that lab. And he had ordered CT scan, a sonogram, and

04:20PM 25 some labs off of somebody else's lab. He was treating

1 this patient off of somebody else's lab. I caught that.

2 Q. And I take that -- I take it that's not
3 regular -- oh, actually never mind.

4 Are you glad that Anne, Vicki, and Naomi

04:21PM 5 informed the Texas Medical Board about his practices --

6 A. Yes, sir.

7 MR. TIDWELL: Objection, relevance.

8 THE COURT: Sustained.

9 MR. COOK: Pass the witness.

04:21PM 10 CROSS-EXAMINATION

11 BY MR. TIDWELL:

12 Q. Hi, Debby.

13 A. Hello.

04:21PM 14 Q. When did -- you and I have known each other a
15 long time, haven't we?

16 A. It seems like forever.

17 Q. Okay. We used to be sort of somehow in-laws.

18 A. Correct.

04:21PM 19 Q. Okay. When did you first meet Dr. Arafiles?

20 A. When he came into the clinic at the facility at
21 the -- Kermit.

22 Q. Okay. What -- did you ever play golf with him?

23 A. Never played golf with him.

04:21PM 24 Q. Okay. You play -- you and your husband play on

1 the sheriff's Wednesday night scramble team?

2 A. I play with you and Robert Roberts and the
3 other ones that are on our team, yes, sir.

4 Q. Okay. Thank you.

04:21PM 5 MR. TIDWELL: Pass the witness, Your
6 Honor.

7 MR. COOK: Thank you.

8 THE COURT: You can step down.

9 Any objection to this witness being

04:21PM 10 excused?

11 MR. TIDWELL: None, Your Honor.

12 MR. COOK: No.

13 THE COURT: You're free to go.

14 Call your next witness.

04:22PM 15 MR. COOK: Your Honor, Judge Bonnie Leck.

16 And, Your Honor, this witness has not been

17 sworn.

18 THE COURT: Let me swear you in.

19 (WITNESS SWORN)

04:22PM 20 THE COURT: Have a seat.

21 Go ahead, counsel.

22 MR. COOK: Thank you, Your Honor.

23 BONNIE LECK.

04:22PM 24 having been first duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. COOK:

3 Q. A moment please.

4 Ma'am, would you please introduce yourself

04:23PM 5 to the ladies and gentlemen of this jury.

6 A. Yes, sir. My name is Bonnie Leck, and I'm the
7 county judge in Winkler County.

8 Q. How long have you been the county judge at
9 Winkler County?

04:23PM 10 A. This is my sixteenth year.

11 Q. Wow.

12 So I think you're my first witness I've
13 ever had to call Your Honor.

14 But, Your Honor, do you, in your capacity

04:23PM 15 as county judge, do you receive knowledge and have
16 knowledge of things that happen in the county hospital?

17 A. Yes, sir.

18 Q. Okay. And let me ask you this. Do you know
19 this lady sitting right here?

04:23PM 20 A. Yes, I do.

21 Q. And can you identify her?

22 A. This is Anne Mitchell. She is my emergency
23 management coordinator for Winkler County, as well as a
24 former employee at the hospital, at the county hospital.

04:23PM 25 We have a county facility.

1 Q. All right. How long have you known Anne?
 2 A. As far as knowing who she was, probably -- many
 3 years. And then as -- of course I've gotten to know her
 4 better since she's been our emergency management
 5 coordinator. That's since 2005.

04:24PM

6 Q. 2005?

7 A. Uh-huh.

8 Q. Is she still the county's emergency management
 9 coordinator?

04:24PM

10 A. Yes, sir.

11 Q. You know that the county fired her from her
 12 position in the hospital, don't you?

13 A. Yes, sir.

14 Q. Okay. Were you under any pressure to fire her
 15 from her other job?

04:24PM

16 A. Well, actually she's appointed by the
 17 commissioners court.

18 Q. Okay. Why didn't you fire Anne when you heard
 19 she got indicted for a felony offense?

04:24PM

20 MR. TIDWELL: Your Honor, she just
 21 testified that she's not the one, the commissioners
 22 court is --

23 THE COURT: Sustained.

24 MR. COOK: Oh, okay, okay. I'll strike
 25 that, judge.

04:24PM

1 A. I am her direct supervisor.

2 Q. You are her direct supervisor?

3 A. Yes, sir.

4 Q. Okay. Do you know Dr. Arafiles?

04:25PM

5 A. Yes, yes, sir.

6 Q. Okay. Did Dr. Arafiles ever come in and ask
 7 you to fire her?

8 A. Yes, sir.

9 MR. TIDWELL: That's hearsay, Your Honor.

04:25PM

10 THE COURT: Sustained.

11 Q. (By Mr. Cook) Okay. Have you seen any cause
 12 in the last year to recommend to the commissioners court
 13 that Anne be discharged from her duties as Homeland
 14 Security?

04:25PM

15 A. No, sir. She does a fine job.

16 Q. Were you involved in the decision to terminate
 17 her from the county hospital?

18 A. No, sir.

19 Q. Do you support that decision?

04:25PM

20 A. No, sir.

21 Q. Do you have conversation -- or let's go back to
 22 February and March of last year. Did you have frequent
 23 contact with Ms. Mitchell?

24 A. I have -- I generally have daily contact with
 25 her because of the emergency management position.

04:25PM

1 Q. So would it have been normal for last year
 2 before April 7th that you would have had contact with
 3 her?

4 A. Oh, yes.

04:26PM

5 Q. And then during these contacts did she ever --
 6 did you two ever talk about her concerns with patient
 7 safety and patient care in Winkler County hospital?

8 A. Yes.

9 Q. Do you know what her chief concern was?

04:26PM

10 A. Patient care.

11 Q. Was there a particular practitioner that she
 12 was concerned about?

13 A. Yes, sir.

14 Q. Did -- well, did you have enough contact with
 15 her to be able to form an opinion as to whether or not
 16 her concerns were genuine?

04:26PM

17 A. Let me think about that a minute. Would you
 18 restate the question please?

19 Q. Yeah. Did you have enough contact and enough
 20 conversations with her to form an opinion as to whether
 21 her concerns about patient care were genuine?

04:26PM

22 A. Oh, I believe, even though I'm not a medical
 23 professional, I believe, yes, that they were founded,
 24 she had a genuine concern, yes.

04:27PM

25 Q. Yeah, and I'm not asking you to say, okay, this

1 is what happened and, yes, this is a medical concern.

2 Did you form an opinion that she had a
 3 genuine concern?

4 A. Yes, sir.

04:27PM

5 Q. Okay. Did you at anytime form an opinion that
 6 she was concerned about Dr. Arafiles' practices simply
 7 because it was a personal -- she personally did not like
 8 him?

9 A. No, sir.

04:27PM

10 Q. Did Anne talk to you about trying to go work
 11 with Dr. -- or Mr. Wiley to alleviate these concerns?

12 A. Yes.

13 Q. Do you believe Anne felt frustrated?

14 A. Yes.

04:28PM

15 Q. Did Mr. Wiley come to you with complaints about
 16 Anne?

17 A. Yes.

18 Q. What were the nature of his complaints?

19 A. I'm not sure entirely. He -- he asked if she
 20 could just work full-time for emergency management.

04:28PM

21 Q. Okay. And when was that?

22 A. That would have been, let me think a moment, in
 23 either late '08 or -- probably late in 2008.

24 Q. Late 2008.

04:28PM

25 Okay. And did you have any conversations

1 with Sheriff Roberts about an anonymous complaint filed
2 with the Texas Medical Board?
3 **A. No. I don't recall one though.**
4 **Q. That's fine.**

04:30PM 5 Do you believe that Anne's motivations
6 were genuine?

7 **A. Yes, sir.**

8 **Q. Do you have any doubt about that actually,**
9 **judge?**

04:30PM 10 **A. No, sir.**

11 **Q. None at all?**

12 **A. No, sir.**

13 **Q. Thank you, Your Honor.**

14 **MR. COOK: I'll pass the witness.**

04:30PM 15 **CROSS-EXAMINATION**
16 **BY MR. TIDWELL:**

18 **Q. Hi, judge.**

19 **A. Good afternoon.**

04:30PM 20 **Q. You have great ownership, don't you, in the new**
21 **hospital in Kermit?**

22 **A. I'm very proud of it. It was a labor of love,**
23 **yes.**

24 **Q. And it is a beautiful facility?**

04:30PM 25 **A. It turned out very well, yes. I think the**

1 **citizens are proud of it.**

2 **Q. Okay. And that's one -- is that one of the**
3 **things that you're most proud of being able to**
4 **accomplish during your term in office?**

04:30PM 5 **A. I am proud of it among other things, yes, sir.**

6 **Q. Do you -- and you go to hospital board**
7 **meetings?**

8 **A. Yes, sir.**

9 **Q. You're an ex officio member of the hospital**
10 **board?**

11 **A. That's correct.**

12 **Q. Okay. The lady makes good cookies at the**
13 **hospital board meeting.**

14 **A. Yes, sir.**

04:31PM 15 **Q. We talked about that.**

16 Do you remember a hospital board meeting
17 in late '08 or early '09 where Mr. Wiley discussed with
18 the board concerns that he had that he could not control
19 Anne Mitchell?

04:31PM 20 **A. I recall something to that effect.**

21 **Q. Do you recall that Mr. Wiley related to the**
22 **board that he had been -- it had been indicated to him**
23 **that because of Ms. Mitchell's relationship with you**
24 **that she was untouchable?**

04:31PM 25 **A. He may have felt that way. I don't know.**

1 **Q. Okay. You know Dr. Arafiles?**

2 **A. Yes, sir.**

3 **Q. In fact, did you just get him appointed a few**
4 **weeks ago again as the county's health officer?**

04:32PM 5 **A. He is the county's health officer. The**
6 **commissioners court reappointed him for another two-year**
7 **term, yes, sir.**

8 **Q. Okay. And that was at your request?**

9 **A. It is standard procedure.**

04:32PM 10 **Q. Okay. Thank you.**

11 **MR. TIDWELL: Pass the witness, Your**
12 **Honor.**

13 **THE COURT: Anything else?**

04:32PM 15 **REDIRECT EXAMINATION**

16 **BY MR. COOK:**

17 **Q. Do you know if Mr. Wiley and Ms. Mitchell had**
18 **conflict because of her refusal to sign off on**

04:32PM 19 **Dr. Arafiles' credentialings because of his restriction**
20 **on his health license?**

21 **A. I'm not sure.**

22 **Q. But the conflict between Mr. Wiley and**
23 **Ms. Mitchell was over Anne's -- Anne was adamant that**
24 **she wanted something done, some peer review, some**
25 **oversight, something -- some input into Dr. Arafiles'**

04:33PM

1 **practices; is that correct?**

2 **A. That's correct.**

3 **Q. It's hard to hire doctors out in Kermit, isn't**
4 **it?**

04:33PM 5 **A. Yes, sir.**

6 **Q. And once you get them you kind of want to keep**
7 **them, don't you?**

8 **A. Yes, sir.**

04:33PM 9 **Q. And Anne Mitchell worked for that hospital for**
10 **a long time, didn't she?**

11 **A. Yes, sir.**

12 **Q. And the staff, and not the doctors right now,**
13 **but the staff of that hospital, the nurses, the techs**
14 **you've got out -- you have out there, they're very good**
15 **at what they do, aren't they?**

04:33PM

16 **A. Yes.**

17 **Q. And Anne Mitchell is one of the reasons they're**
18 **so good, isn't it?**

19 **A. Yes. Compliance is important.**

04:33PM 20 **Q. And it's important.**

21 **And Anne Mitchell -- I mean, rules are**
22 **rules to Anne, aren't they?**

23 **A. Yes, sir.**

24 **Q. Okay. She doesn't ignore things. I mean, if**
25 **she sees something that's violating the rules, she's**

04:33PM

1 going to say something, isn't she?
 2 **A. Yes, sir.**
 3 **Q.** She's not hesitant to speak her mind at all, is
 4 she?
 04:34PM 5 **A. That's correct.**
 6 **Q.** And in all honesty, one of the jobs of the
 7 compliance officer is to bring mistakes to the attention
 8 of the people who made them. Would you agree with me?
 9 **A. That's correct anywhere, yes, sir.**
 04:34PM 10 **Q.** Okay. And Anne wasn't afraid to do that, was
 11 she?
 12 **A. That is correct.**
 13 **Q.** And Anne also wasn't comfortable shifting
 14 problems onto other people. Would you agree with me?
 04:34PM 15 **MR. TIDWELL:** I object, speculation, Your
 16 Honor.
 17 **THE COURT:** Sustained.
 18 **MR. COOK:** I think she has actual
 19 knowledge, Your Honor.
 04:34PM 20 **THE COURT:** Sustained.
 21 **Q.** (By Mr. Cook) Okay. Had you -- in your
 22 relationship with Anne, she followed -- is she the type
 23 of person that follows problems through to the end?
 24 **A. Correct.**
 04:34PM 25 **Q.** And she wants things fixed?

1 **A. That is correct.**
 2 **Q.** And do you believe that the quality of
 3 healthcare at the Kermit hospital benefited by Anne
 4 Mitchell and Vickilyn Galle's discharge?
 04:35PM 5 **MR. TIDWELL:** Objection, speculation.
 6 That invades the province of the jury.
 7 **MR. COOK:** Judge, she's on the board --
 8 **THE COURT:** Sustained.
 9 **Q.** (By Mr. Cook) Thank you, Your Honor.
 04:35PM 10 **MR. COOK:** Pass the witness.
 11
 12 **RE CROSS-EXAMINATION**
 13 **BY MR. TIDWELL:**
 14 **Q.** Judge, is Ms. Mitchell the kind of person that
 04:35PM 15 once she sets her mind to something she goes absolutely
 16 full steam ahead?
 17 **A. Yes, uh-huh.**
 18 **Q.** Are you a public servant?
 19 **A. Yes, sir.**
 04:35PM 20 **Q.** And you're the county judge, so you preside
 21 over criminal cases, misdemeanor criminal cases?
 22 **A. That's correct.**
 23 **Q.** Would it be appropriate for you -- would it be
 24 appropriate for a judge, and this is a hypothetical, no
 04:35PM 25 suggestion at all that this has ever occurred, but would

1 it be appropriate for a judge to interject their
 2 personal animosities toward a Defendant during a
 3 sentencing?
 4 **MR. COOK:** And, judge, I'm going to object
 04:35PM 5 because I -- I mean, I really can't see the relevance.
 6 **THE COURT:** Sustained.
 7 **Q.** (By Mr. Tidwell) Would it be appropriate for
 8 you as a public servant to carry out your duties and use
 9 personal animosities while doing so?
 04:36PM 10 **MR. COOK:** And, judge, I still don't see
 11 the relevance in this.
 12 **THE COURT:** Go ahead.
 13 **A. No, I would not do that, no.**
 14 **Q.** If you were to do that, do you think that would
 04:36PM 15 remove your actions from being governmental purposes?
 16 **MR. COOK:** And, judge, again, I don't know
 17 how that's relevant.
 18 **THE COURT:** Sustained.
 19 **Q.** (By Mr. Tidwell) No public servant should do
 04:36PM 20 that, should they?
 21 **A. Who are --**
 22 **MR. COOK:** And, judge --
 23 **A. Who are you defining as a public servant?**
 24 **MR. COOK:** -- again, I'm going to object
 04:36PM 25 to relevance --

1 **THE COURT:** Overruled.
 2 Go ahead.
 3 **Q.** (By Mr. Tidwell) Is a public servant someone
 4 that is a governmental employee? Is that a reasonable
 04:36PM 5 definition?
 6 **A. Okay.**
 7 **Q.** And should any governmental employee interject
 8 personal animosities when carrying out their
 9 governmental duties?
 04:36PM 10 **A. Oh, no.**
 11 **Q.** That wouldn't be --
 12 **A. In my opinion, no.**
 13 **Q.** And that wouldn't be governmental, would it?
 14 **A. In my opinion, no.**
 04:37PM 15 **Q.** Okay. Thank you.
 16 **MR. TIDWELL:** Pass the witness, Your
 17 Honor.
 18
 19 **REDIRECT EXAMINATION**
 04:37PM 20 **BY MR. COOK:**
 21 **Q.** Your Honor, and I hate to bounce you around
 22 like a ping-pong ball, but do you have any belief that
 23 Anne Mitchell would ever use personal animosity to do
 24 what she had to do as compliance officer in that
 04:37PM 25 hospital?

1 MR. TIDWELL: Object, speculation, invades
2 the province of the jury.
3 THE COURT: Sustained.
4 Q. (By Mr. Cook) You talked extensively with Anne
04:37PM 5 about her decision to file the letter with the Texas
6 Medical Board, didn't you?
7 A. To file the letter, no.
8 Q. Okay. Let's strike that.
9 You talked at great length with Anne about
04:37PM 10 her concerns of Dr. Arafiles, didn't you?
11 A. Yes.
12 Q. And is it your opinion those were professional
13 concerns and not personal animosity concerns?
14 A. Correct.
04:37PM 15 MR. COOK: No further questions.
16 MR. TIDWELL: No further questions, Your
17 Honor.
18 THE COURT: You can step down.
19 May this witness be excused?
04:37PM 20 MR. COOK: They may.
21 THE COURT: You're free to go.
22 THE WITNESS: Thank you.
23 THE COURT: Call your next witness.
24 MR. COOK: Your Honor, Dr. Lora Lee, I
04:38PM 25 believe, Lockhart.

1 Can I switch that, judge? I've got a guy
2 that's going to be a lot quicker and needs to get back
3 to Kermit and I think he's got --
4 THE COURT: That's fine.
04:38PM 5 MR. COOK: Okay. Dr. Pham.
6 THE COURT: Sorry, doctor.
7 Were you sworn in earlier?
8 THE WITNESS: I do.
9 (WITNESS SWORN)
04:38PM 10 THE COURT: Have a seat.
11 Go ahead.
12
13 KHOA PHAM, M.D.,
14 having been first duly sworn, testified as follows:
04:38PM 15 DIRECT EXAMINATION
16 BY MR. COOK:
17 Q. Good evening -- or good afternoon, sir. Would
18 you please introduce yourself to the ladies and
19 gentlemen of the jury.
04:38PM 20 A. I am Dr. Pham. I'm a physician at Winkler
21 County Memorial Hospital.
22 Q. In fact, are you -- you're the chief of staff
23 out there, aren't you?
24 A. Yes.
04:39PM 25 Q. Okay. And is it -- are you planning on leaving

1 Winkler County in the near future?
2 A. Yes. I'm leaving -- I will leave Winkler
3 County in July --
4 Q. Okay.
04:39PM 5 A. -- this July.
6 Q. And where are you going?
7 A. Monahans.
8 Q. Okay. Do you know Naomi Warren?
9 A. Yes, I do. I am her supervisor.
04:39PM 10 Q. Okay. Do you like working with Naomi?
11 A. Yes, I do.
12 Q. Do you know Anne Mitchell?
13 A. Yes.
14 Q. And in what capacity did you and Anne -- Ms. --
04:39PM 15 well, let me not assume facts in evidence. Did you --
16 have you worked in the past with Anne Mitchell?
17 A. Before Winkler County?
18 Q. No, at Winkler County.
19 A. Yes, I worked with her.
04:40PM 20 Q. Okay. Did you find her to be competent?
21 A. Yes, I think she is competent.
22 Q. Did you find her to be concerned for patient
23 safety?
24 A. No.
04:40PM 25 Q. You don't believe she's concerned for patient

1 safety?
2 A. Please, please ask the question again.
3 Q. That's -- and, doctor, if I say something you
4 don't understand, then just ask me exactly that,
04:40PM 5 rephrase it.
6 A. Okay.
7 Q. Do you believe Anne Mitchell is genuinely
8 concerned in patient safety?
9 A. No.
04:40PM 10 Q. No?
11 Okay.
12 A. Oh, sorry, I did not follow your question.
13 Q. Okay. And, no, and, look, don't let me put
14 words in your mouth. I just want to make sure what you
04:40PM 15 believe is what you're telling this jury. Do you
16 believe Anne Mitchell is concerned in taking care of
17 patients, how about that?
18 A. Yes.
19 Q. Do you have any doubt in your mind about that?
04:41PM 20 A. No.
21 Q. Did Anne Mitchell ever express to you concerns
22 about a Dr. Rolando Arafiles?
23 A. Again please.
24 Q. Did Anne Mitchell ever talk to you about
04:41PM 25 Dr. Arafiles?

1 A. **Yes, she did.**
 2 Q. Did she have medical concerns about his
 3 practice?
 4 A. **Yes.**
 04:41PM 5 Q. Do you share those concerns?
 6 A. **Not all the cases, yes.**
 7 Q. But some of them?
 8 A. **Right.**
 9 Q. Do you believe that Anne Mitchell, when she was
 04:41PM 10 talking to you, was speaking as a medical professional
 11 or just an angry woman?
 12 A. **As a medical professional, yes.**
 13 Q. Every time?
 14 A. **Yes.**
 04:41PM 15 Q. Do you think it's reasonable for a person in
 16 some cases to have concerns about the practices of
 17 Dr. Arafiles?
 18 A. **Please ask the question again.**
 19 Q. Okay. Do you think it's reasonable for Anne
 04:42PM 20 Mitchell to have concerns about some of the practices
 21 that Dr. Arafiles has done?
 22 A. **Yes.**
 23 Q. Okay. And to be clear, Dr. Arafiles does do a
 24 good job most of the time?
 04:42PM 25 A. **That's correct.**

1 Q. But there are some things that have caused you
 2 concern; is that not true?
 3 A. **That's correct.**
 4 Q. Did Naomi Warren address concerns with you?
 04:42PM 5 A. **Yes, she did.**
 6 Q. Did Debby Egger address concerns with you?
 7 A. **Yes, she did.**
 8 Q. And were these real and legitimate concerns
 9 that, as chief of staff, you were interested in?
 04:43PM 10 A. **Yes.**
 11 Q. Do you remember in December of 2008 that the
 12 issue of Dr. Arafiles being granted full staff
 13 privileges came up?
 14 A. **Yes.**
 04:43PM 15 Q. And the testimony that we've heard is that you
 16 supported that decision. Did you?
 17 A. **Yes, I did.**
 18 Q. Did you at first?
 19 A. **No, I did not --**
 04:43PM 20 Q. You --
 21 A. **-- at first.**
 22 Q. You did not. In fact, at first you were
 23 against granting him full privileges; isn't that true?
 24 A. **That's correct.**
 04:43PM 25 Q. And did they work out a compromise to get you

1 to sign on?
 2 A. **Yes, there was a compromise.**
 3 Q. In that compromise -- what was that compromise,
 4 doctor?
 04:43PM 5 A. **That I can leave the practice --**
 6 Q. Okay.
 7 A. **-- I can terminate my contract.**
 8 Q. Okay. And then did you try to terminate your
 9 contract last year?
 04:44PM 10 A. **Yes, I did.**
 11 Q. Okay. And then were you allowed to walk away
 12 from that contract after they told you you could?
 13 A. **No.**
 14 Q. Was there ever a compromise made about signing
 04:44PM 15 off on Dr. Arafiles' full staff privileges with you?
 16 A. **Again please ask the question.**
 17 Q. Well, maybe this will help. Are you aware of a
 18 provisional agreement between -- that -- to allow -- or
 19 a temporary agreement to allow Dr. Arafiles to have full
 04:44PM 20 staff privileges?
 21 Let me back up. Does Dr. Arafiles have a
 22 restricted medical license?
 23 A. **Yes, he did have, and he still have a**
 24 **restricted medical license.**
 04:45PM 25 Q. Okay. Were you opposed to granting him full

1 staff privileges at that time because of that
 2 restriction?
 3 A. **No, not because of that.**
 4 Q. Okay. Were you opposed to granting him full
 04:45PM 5 staff privileges because of the quality of care?
 6 A. **That's correct.**
 7 Q. How long have you practiced medicine?
 8 A. **Altogether? At least five years.**
 9 Q. Okay. You hold a license with the Texas
 04:46PM 10 Medical Board as a medical doctor; is that correct?
 11 A. **That's correct.**
 12 Q. Do you have any board certifications?
 13 A. **I have a license in California.**
 14 Q. Okay.
 04:46PM 15 A. **I have a board certification in family medicine**
 16 **and internal medicine.**
 17 Q. Okay. Congratulations.
 18 You know that Anne Mitchell filed a
 19 complaint with the Texas Medical Board asking for them
 04:46PM 20 to look into Dr. Arafiles' practices, don't you?
 21 I need you to say something out loud
 22 because this lady --
 23 A. **Yes.**
 24 Q. -- yeah, she can't type this down.
 04:46PM 25 Do you believe that Anne Mitchell -- Anne

1 Mitchell's concern with Dr. Arafiles' practices are of a
2 personal nature or of a medical nature?
3 MR. TIDWELL: Objection, Your Honor. It
4 invades the province of the jury, goes to the essential
5 elements of the crime.

04:47PM

6 THE COURT: Overruled.
7 Go ahead.

8 Q. (By Mr. Cook) Did you hear my question?

9 A. **Medical nature.**

04:47PM

10 MR. COOK: Pass the witness.

11

12 CROSS-EXAMINATION

13 BY MR. TIDWELL:

04:47PM

14 Q. Dr. Pham, did you actually write a letter to
15 the Texas Medical Board in early 2009 asking them if
16 they could please remove the restriction on
17 Dr. Arafiles' license so he could go ahead and supervise
18 nurse practitioners and P.A.s?

19 A. **Yes, I did.**

04:47PM

20 Q. What is a J-1 H-1B doctor?

21 A. **Can you say it again.**

22 Q. You are in Kermit and you have to serve a
23 certain number of years to be able to get is it
24 citizenship status?

04:48PM

25 A. **No, not the citizenship status. It's a**

1 **requirement to serve to be qualified for H-1B visa.**

2 Q. Okay. So you are trying to get a visa to stay
3 in the country?

4 A. **That's correct.**

04:48PM

5 Q. And in order to do that you --

6 A. **No, actually when I am granted a visa, it is a**
7 **requirement to complete a three-year contract.**

8 Q. So in order to keep your visa you have to
9 complete your three-year requirement at Winkler County?

04:48PM

10 A. **No, with Premier.**

11 Q. Okay. With the group --

12 A. **With Premier is my employer.**

13 Q. Premier?

14 A. **Right.**

04:48PM

15 Q. Okay. And they have you assigned in Kermit
16 then?

17 A. **That's correct.**

18 Q. And in July your three years is up?

19 A. **This July, yes.**

04:48PM

20 Q. Okay. And then you're going to go somewhere
21 else?

22 A. **Yes.**

23 Q. Will you still work with Premier or are you out
24 from under that then?

04:49PM

25 A. **No, I will work not with Premier.**

1 Q. Okay. And what will your visa status be after
2 July?

3 A. **Still H-1B.**

4 Q. Okay. And so you'll have to -- but you're free
5 to work anywhere you want then?

04:49PM

6 A. **That's correct.**

7 Q. So you're sort of -- you're serving a
8 three-year term to fulfill visa requirements?

9 A. **That's correct.**

04:49PM

10 Q. Do you feel like doctors can review charts of
11 other doctors to determine issues of care?

12 A. **Yes.**

13 Q. In fact, as chief of staff at the Winkler
14 County hospital is that one of your functions?

04:49PM

15 A. **Yes.**

16 Q. And over the time that you've been there have
17 you had a chance to review many charts?

18 A. **Yes, not all of them, but some of them.**

04:49PM

19 Q. Okay. As medical -- as chief of medical staff,
20 if you have an issue concerning a particular chart, you
21 have the right to review it?

22 A. **That's right.**

23 Q. And have you in fact done that?

24 A. **Yes, I did.**

04:50PM

25 Q. Okay. And are some of the charts from the

1 hospital sent out for independent review to the A&M
2 system?

3 A. **That's correct.**

4 Q. They call it the Archie system?

04:50PM

5 A. **That's correct.**

6 Q. If you had a particular chart that you wanted
7 reviewed in the Archie system, could you make that
8 request to have it sent?

9 A. **Yes.**

04:50PM

10 Q. Okay. Who is the person that should have
11 resolved issues with medical quality of care in the
12 clinic or the hospital, you as chief of staff or
13 Mr. Wiley as the administrator?

14 A. **Both of us. Usually on -- in the meetings**
15 **we're both there.**

04:50PM

16 Q. Okay. As far as medical issues go, does your
17 authority supersede his?

18 A. **Yes.**

19 Q. And the concerns that Naomi and Debby Egger
20 brought to you, did you try to address those concerns?

04:51PM

21 A. **Yes, I try.**

22 Q. Okay. And that was your job as the medical
23 director?

24 A. **That's correct.**

04:51PM

25 Q. Okay. Thank you.

1 MR. TIDWELL: Pass the witness, Your
2 Honor.

3
4 REDIRECT EXAMINATION

04:51PM 5 BY MR. COOK:

6 Q. A couple of -- do you remember Dr. Young?

7 A. Yes, I remember him.

8 Q. Do you remember an incident where he was
9 accused of abandoning patients?

04:51PM 10 A. Yes, I remember that.

11 Q. Did you direct Anne Mitchell to forward
12 information about that case to the Texas Medical Board?

13 A. No, I did not direct her to do so, but she
14 informed me that she would do so.

04:51PM 15 Q. Okay.

16 A. And I agreed with her.

17 Q. And you agreed with her to do it.

18 Was that just a big misunderstanding
19 because Dr. Young got sick or did he abandon patients in
04:52PM 20 your opinion at that time?

21 A. I wasn't sure if he was not -- he was sick or
22 not. But the standard of practice is when you are sick
23 you should -- when you transfer a patient, it should be
24 doctor to doctor.

04:52PM 25 Q. So you --

310

1 A. So if he was sick, I mean, he just -- I don't
2 know how sick he was, but I don't think he was sick
3 enough not be able to call me.

4 Q. Okay. So you shared Ms. Mitchell's concern
04:52PM 5 about that case and you agreed with her decision to let
6 some outside professionals look at it?

7 A. I agreed with her on the -- Dr. Young.

8 MR. COOK: Thank you, Dr. Pham.

9

04:53PM 10 RECROSS-EXAMINATION

11 BY MR. TIDWELL:

12 Q. Doctor, are you aware that the Texas Medical
13 Board relating to Dr. Young found that complaint to be
14 unfounded?

04:53PM 15 A. Yes, I was aware of that.

16 Q. Okay. Thank you.

17 MR. TIDWELL: Pass the witness, Your
18 Honor.

04:53PM 20 REDIRECT EXAMINATION

21 BY MR. COOK:

22 Q. So there was no harm to Dr. Young?

23 A. No, there was no harm to Dr. Young.

04:53PM 24 Q. As a medical practitioner, do you think it's
25 important to be able to -- for staff people to be able

1 to feel free to go outside the facility and get opinions
2 about quality of care?

3 A. Please ask the question again.

4 Q. Do you think peer review is important?

04:53PM 5 A. Yes, it is very important.

6 Q. Do you think that oversight by the licensing
7 board is important?

8 A. Yes, it's very important.

9 Q. And do you believe that these two things, peer
04:54PM 10 review and oversight, are important to protect patients?

11 A. Yes.

12 Q. In the medical profession, we want to learn
13 from mistakes, not bury them; isn't that correct?

14 A. That's correct.

04:54PM 15 Q. If mistakes are made, people can die, right?

16 A. That's correct.

17 Q. Do you believe that if we don't learn from
18 those mistakes people will die?

19 A. I believe so.

04:54PM 20 Q. And that has for a long time been a very, very
21 important part of medicine?

22 A. Yes.

23 Q. Thank you.

24 MR. COOK: No questions.

04:54PM 25

312

1 RECROSS-EXAMINATION

2 BY MR. TIDWELL:

3 Q. Doctor, do you believe if an incident occurs in
4 the hospital that it would be a good thing for all of
04:54PM 5 the persons that are involved in that incident to be
6 able to come together and have a free discussion of
7 information about that incident?

8 A. Yes.

9 Q. Do you think that's an excellent peer review?

04:54PM 10 A. Yes.

11 Q. Do you have a problem with doing that?

12 A. No.

13 Q. Thank you.

14 MR. TIDWELL: Pass the witness, Your Honor.

04:55PM 15 MR. COOK: Nothing.

16 THE COURT: You're free to go. Thank you,
17 doctor.

18 Call your next witness.

19 MR. COOK: May I approach? I have one
04:55PM 20 ready, judge, but may I approach?

21 THE COURT: Yes.

22 (AT BENCH, OFF THE RECORD)

23 MR. COOK: Your Honor, Dr. Lora Lee
24 Lockhart.

04:55PM 25 THE COURT: Were you sworn earlier?

1 THE WITNESS: Yes.

2 THE COURT: Have a seat.

3 Go ahead.

04:55PM 5 LORA LEE LOCKHART, PH.D., R.N.,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. COOK:

04:56PM 9 Q. Would you please introduce yourself to the
10 ladies and gentlemen of the jury.

11 A. I'm a nurse doctor. And I normally go by Lolly
12 Lockhart. That's how people know me. The IRS knows me
13 both ways.

14 Q. Okay.

04:56PM 15 A. But I'm a nurse Ph.D.

16 Q. Nobody but me calls you doctor because -- is
17 that right?

18 A. Pretty much.

19 Q. But you do have a Ph.D., don't you?

04:56PM 20 A. Yes, I do.

21 Q. Could you please explain to the ladies and
22 gentlemen of the jury your educational background.

04:56PM 23 A. Yes. I have a baccalaureate degree in nursing
24 from the University of Texas Medical Branch. I have a
25 master's degree in nursing, education, med-surg, from

1 the UT campus in Austin. And I have a Ph.D. in
2 healthcare administration from the University of
3 Mississippi.

04:56PM 4 Q. How long -- and you're licensed -- are you
5 licensed as a nurse?

6 A. Yes.

7 Q. And when did you first receive your license?

8 A. Well, in 1961. In two years I will have been a
9 nurse for 50 years.

04:56PM 10 Q. For 50 years, 48 years, congratulations, ma'am.
11 What type of employment -- what type of
12 jobs -- would you like a glass of water?

13 A. There is -- is this one here?

04:57PM 14 Q. Okay. What type of jobs have you held in those
15 50 years of nursing?

16 A. Well, I'll try to be brief. The first 25 years
17 I worked as a direct care nurse. I worked as assistant
18 director in a large hospital.

04:57PM 19 I taught nursing for 15 years. I've
20 worked for the Texas Nurses Association, our
21 professional association in Texas, and also the
22 professional association in Washington state.

04:57PM 23 I worked for the Board of Nursing in
24 Oklahoma. And I guess -- I taught 15 years. I don't
25 know if I said that.

1 The -- after I got my Ph.D., I moved back
2 to Texas and I worked for the peer review organization
3 that's a contract under the Medicare program. And we
4 reviewed 25 percent of all the Medicare admissions in
04:57PM 5 the state. I reviewed them. I had people working under
6 me and around the state.

7 We reviewed them for medical necessity for
8 their admission, for appropriate treatment. We also
9 looked to see if the coding that determined the billing
04:58PM 10 was appropriate, and also quality issues.

11 The other part of my job was to supervise
12 the seven regional quality assurance committees that
13 were physicians and the State level quality assurance
14 committee.

04:58PM 15 Then when I left the Texas Medical
16 Foundation peer review organization I went to work for
17 the Texas Medical Board because at that time they did
18 not have anyone there qualified to review clinical
19 records. They had police officers that did
04:58PM 20 nontherapeutic drug buys. That's the doctors
21 prescribing nontherapeutically or not necessarily. I
22 did that for a year. That was a wonderful experience.

23 And then I went to work for a law firm,
24 Fulbright & Jaworski, in Austin. I was there for eight
04:58PM 25 and a half years. And during that time I worked with

1 the firm with our clients on compliance with the
2 Medicare, Joint Commission, and any other regulations
3 that -- the State regulations that hospitals are
4 required to comply with.

04:59PM 5 And then in 1996 I decided to go into
6 business for myself, and I did. And I continued to work
7 closely with Fulbright. I have a -- I tutor doctors on
8 the law of medicine for a jurisprudence exam they have
9 to take. I hope this isn't going on too long.

04:59PM 10 And I also work with doctors when they
11 have problems before the medical board. I work with
12 hospitals when they have compliance problems with
13 Medicare. I teach them how to do a self mock survey
14 with all the State and federal regulations. And I work
04:59PM 15 with nurses in terms of compliance and quality
16 improvement.

17 I served on a task force for the Board of
18 Nursing concerned with jurisprudence and nurses'
19 knowledge of the law. And I served on a task force for
04:59PM 20 the Texas Nurses Association recently concerned with
21 creating a culture of safety, that is, everybody being
22 very conscious of safe practices in the hospitals.

23 I think that's probably --

24 Q. Wow.

04:59PM 25 A. -- pretty much what I've done.

1 Q. Okay. Yes, it is.

2 Ma'am, do you have specialized knowledge
3 about the ethics of nursing?

4 A. Absolutely.

05:00PM 5 Q. Do you have specialized knowledge about how
6 complaints are handled by the Texas Medical Board?

7 A. Yes, I do.

8 Q. In fact, did you -- what did you do for the
9 Texas Medical Board when you worked for them?

05:00PM 10 A. At the time they employed me as a contract they
11 did not have any clinical investigations going on. And
12 I had talked to several of the board members and they
13 were concerned about this. So they asked me to come
14 over there and set up a clinical investigations program
05:00PM 15 like I had been working with with the Medicare program.

16 So I hired nurses and a P.A. and actually
17 trained them and set up the policies and procedures. I
18 had 150 doctors around the state who agreed to review
19 records for us to give us opinions. They've now built
05:00PM 20 that into their rules.

21 But that was something we started right
22 away because when nurses look at records, we can look at
23 them, we can identify issues and flag the record and
24 raise issues so that the physician reviewers then can
05:01PM 25 come along and see what we said.

1 They're always free to look at the record
2 and find other issues or whatever, but we share with
3 them what our belief and our concerns are about any
4 particular record.

05:01PM 5 Part of my job there also was to screen
6 any complaints that came in and determine, number one,
7 whether the Board of Medical Examiners actually had
8 jurisprudence over the case, that is, was it
9 something -- I mean, in their jurisdiction, was that
05:01PM 10 something that was a violation of practice act. And a
11 lot of them weren't.

12 Then the next was if they were under the
13 jurisdiction of the board, was there any way that you
14 could get evidence to even prove it. Some cases were so
05:01PM 15 vague and difficult that there wouldn't be any way of
16 really investigating.

17 And then the others that were both under
18 their jurisdiction and that we had some concerns, which
19 most often that we worked with were medical records,
05:01PM 20 then we would contact the doctor and discuss, you know,
21 would share with the doctor what the concerns were and
22 give the doctor an opportunity to give us the doctor's
23 side.

24 And sometimes it would be a matter of just
05:02PM 25 providing a record from the hospital or his office that

1 would clarify what the question in the record was.

2 Other times they were more serious.

3 Q. Hold on a second.

4 A. Okay. I'm sorry.

05:02PM 5 Q. The Texas Medical Board is designed to receive
6 complaints; is that correct?

7 A. Absolutely.

8 Q. The -- in fact, the intent of the Medical
9 Practices Act is to encourage people to file complaints,
05:02PM 10 isn't it?

11 A. Absolutely. That's one of their main issues.

12 Q. Okay. And they receive thousands a year?

13 A. Actually because I'm so interested in how the
14 board functions and their development, this last year,
05:02PM 15 in '09, they handled 7,000 complaints during a one-year
16 period. Now some of those came forward from the
17 previous year.

18 Q. Okay.

19 A. They have a large volume.

05:02PM 20 Q. So there is a mechanism in place with the Texas
21 Medical Board to -- well, let me ask you this question.
22 Is there a mechanism in place to rank these complaints
23 based on severity?

24 A. You really have to do that because of the
05:03PM 25 volume. And if some appear that patients are at

1 immediate risk -- one case I know we handled, they may
2 still do this, was a temporary suspension. We had a
3 physician who was an immediate threat to safety of
4 patients. And we convened, we got the records, had the
05:03PM 5 them actually brought in on Southwest Airlines --

6 Q. Okay.

7 A. -- had them reviewed the next day --

8 Q. Ms. Lockhart, if we could just --

9 A. Okay. I'm sorry.

05:03PM 10 Q. You need to listen carefully to my question,
11 and --

12 A. Okay.

13 Q. -- I do find you fascinating, but we need to
14 get through this.

05:03PM 15 There is a mechanism to --

16 A. Absolutely.

17 Q. -- rank the --

18 Okay. And there is a mechanism to get rid
19 of complaints that don't rise to the level that they
05:03PM 20 need more attention?

21 A. Yes.

22 Q. In fact, are there quite a few complaints that
23 are -- that never make it to a full screening in the
24 board?

05:04PM 25 A. There is a significant number.

1 Q. Okay. And the board wants those complaints,
 2 too, don't they?
 3 A. **They look at every single complaint. They have**
 4 **system and they have criteria for looking at every**
 05:04PM 5 **complaint that comes in.**
 6 Q. Okay. But is the board designed to handle the
 7 volume?
 8 A. **They got increased staff this last legislative**
 9 **session for that purpose.**
 05:04PM 10 Q. And does the board encourage members of the
 11 public and encourage members of the medical profession
 12 to bring concerns to them?
 13 A. **Absolutely.**
 14 Q. Okay. And is the board designed to provide
 05:04PM 15 some confidentiality in that process?
 16 A. **Absolutely.**
 17 Q. Okay. Now if a doctor practices good medicine,
 18 but there is a disgruntled person who just wants to file
 19 things on him, the board is designed to weed those out
 05:05PM 20 pretty quick, isn't it?
 21 A. **Yes, they look at the facts.**
 22 Q. Okay. And there is no sanction to the doctor,
 23 is there?
 24 A. **None whatsoever.**
 05:05PM 25 Q. Okay. In fact, is the purpose of the board --

1 was this thing created to punish doctors?
 2 A. **No. It's to protect the public.**
 3 Q. Okay. And is this a government function?
 4 A. **Absolutely.**
 05:05PM 5 Q. Is the board a member of the executive branch
 6 of the State of Texas?
 7 A. **The executive branch, it's the -- well, let's**
 8 **see, the -- is it the executive branch? It's an**
 9 **administrative State agency.**
 05:05PM 10 Q. It's part of the government?
 11 A. **Yes, part of the State government. I'm not**
 12 **sure it's the executive branch.**
 13 Q. And how important is it to have people who --
 14 to make people feel that they're free to bring their
 05:05PM 15 concerns to the board?
 16 A. **It's extremely important because if they didn't**
 17 **the board would not know how to go out and identify**
 18 **people that were possibly unsafe to the public.**
 19 Q. And if -- do you think that there should be
 05:06PM 20 punishments for people who file complaints that might
 21 not be that serious?
 22 A. **Absolutely not. They need to let the board**
 23 **decide the seriousness of the issue.**
 24 Q. You're familiar with the facts in this case,
 05:06PM 25 are you not?

1 A. **Yes, I am.**
 2 Q. In fact, you've been allowed to sit and listen
 3 to this entire trial --
 4 A. **Yes, I have.**
 05:06PM 5 Q. -- is that correct?
 6 Do you have an opinion as to the propriety
 7 of a sheriff conducting a criminal investigation that is
 8 based on a complaint to the medical board?
 9 MR. TIDWELL: Objection, relevance. It
 05:06PM 10 invades --
 11 THE COURT: Sustained.
 12 MR. TIDWELL: -- the province of the jury.
 13 Q. (By Mr. Cook) If a -- there are bad doctors in
 14 Texas, aren't there?
 05:06PM 15 A. **Yes.**
 16 Q. There are good doctors who make mistakes,
 17 aren't there?
 18 A. **Yes.**
 19 Q. There are doctors who may not make a lot of
 05:07PM 20 mistakes but they might have some sort of problem in
 21 their personal life, drug addiction, alcoholism, stuff
 22 like that, that could call in the question of patient
 23 safety?
 24 A. **Yes.**
 05:07PM 25 Q. And is the board designed to handle all of

1 those?
 2 A. **Yes.**
 3 Q. How important is medical oversight?
 4 A. **Extremely important.**
 05:07PM 5 Q. Is it more important to learn from mistakes or
 6 is it -- the importance of the oversight to punish
 7 offenders?
 8 A. **A culture of safety that we're trying to focus**
 9 **on now is to have mistakes and near misses come forward**
 05:07PM 10 **so they can be addressed and not repeated, and not for**
 11 **the purpose of punishing anyone unless there is clear**
 12 **negligence in the -- a violation of their trust.**
 13 Q. Okay. Does medicine try to learn from its
 14 mistakes?
 05:08PM 15 A. **Absolutely.**
 16 Q. And we're in a time of very rapidly changing
 17 technologies, are we not?
 18 A. **Yes.**
 19 Q. Do you think it is as important today as at
 05:08PM 20 anytime in history to review practices that some find
 21 questionable?
 22 A. **It's even more important now than it was when I**
 23 **started practicing nursing.**
 24 Q. Let's talk about nurse ethics. Can you tell
 05:08PM 25 the ladies and gentlemen of the jury what -- we've been

1 talking about the role of a nurse as the patient
2 advocate. Can you tell them what that means?
3 **A. The -- as a profession we have a code of ethics**
4 **for nursing. And it's established at the national**
5 **level, but all of us at the state level put input into**
6 **that.**

05:08PM

7 **And it's interesting to me that the first**
8 **three statements in our national code of ethics for**
9 **nurses concerns our responsibility to patients. The**
10 **first one is a very general statement. The second one**
11 **talks about our duty to the people we're taking care of.**
12 **The third one talks about our responsibility to insure a**
13 **safe environment for their healthcare services.**

05:08PM

14 **And the code of ethics is something that**
15 **we take very seriously. It's complemented and**
16 **consistent with what's written into our Nurse Practice**
17 **Act, which is what gives us our license to practice.**
18 **All of those are parts and pieces that fit together.**

05:09PM

19 **Q. And the Nurse Practice Act is the law in the**
20 **state of Texas, correct?**

05:09PM

21 **A. Yes.**

22 **Q. And it imposes liability for -- on nurses for**
23 **failure to perform --**

24 **A. Yes, sir.**

05:09PM

25 **Q. -- in their patient advocacy role; is that**

1 correct?

2 **A. That's correct.**

3 **Q. I have said in this trial that there are --**
4 **that everybody has a right to report questionable**
5 **medical practices to the board. Is that true?**

05:09PM

6 **A. Yes.**

7 **Q. And I've also said that some licensed**
8 **professionals in certain circumstances have a duty?**

9 **A. That's true.**

05:10PM

10 **Q. Okay. And do you believe that the**
11 **personalities of the doctor and the nurse should be used**
12 **at all to gauge whether or not somebody should file?**

13 **A. No. Whether or not you like someone has**
14 **nothing to do with your duty to report a concern.**

05:10PM

15 **Q. Okay. What is a standard of care?**

16 **A. A standard of care is -- changes over time as**
17 **we learn more, there is more technology, more**
18 **information that we learn about healthcare and our**
19 **bodies. And it's established by the professions.**

05:10PM

20 **There is a general standard of care that's**
21 **established for medical practice generally that all**
22 **doctors are expected to adhere to. And then as they**
23 **move into specialties, each specialty has its own**
24 **standard of care based on the evidence that they have**
25 **collected through research and through practice, through**

05:10PM

1 **professional meetings, to share what is the best**
2 **approach to deal with a particular problem.**

3 **Q. And what is the duty of a nurse when she**
4 **reasonably believes that a practitioner has engaged in**
5 **substandard care?**

05:11PM

6 **A. Well, the nurse has responsibility to make a**
7 **change, to bring -- to work through the channels, the**
8 **local channels, up through the chain, the supervisor,**
9 **the administrator, director of nursing, whoever it is.**

05:11PM

10 **But if it doesn't make a significant**
11 **change that the nurse feels is protecting the patient,**
12 **the nurse has a duty beyond that to follow through. And**
13 **clearly it's stated in our act and in our ethics that we**
14 **have to report that to the State agency if that's what's**
15 **necessary to make a change with the health department.**

05:11PM

16 **Q. So if an administrator says I fixed it but you**
17 **in your heart believe, no, it hasn't been fixed?**

18 **A. I still have to do something to fix it.**

19 **Q. What is your duty?**

05:11PM

20 **A. My duty is to the patient and it may be to**
21 **report to the medical board.**

22 **Q. Even if it makes some administrators angry?**

23 **A. Yes. Our code of ethics even says while we**
24 **have that duty to report, it may be problematic for us,**
25 **it may cause problems for us, but that does not take**

05:12PM

1 **away our duty to report if we have reason to believe**
2 **that patients are at risk.**

3 **Q. Right. And this is the decision the nurse has**
4 **to make herself, right?**

05:12PM

5 **A. That's right.**

6 **Q. It's whether this -- it's not whether the**
7 **administrator thinks there should be reason to believe,**
8 **it's not whether the doctor thinks there's reason to**
9 **believe, it has to be what the nurse thinks; is that**
10 **correct?**

05:12PM

11 **A. Absolutely.**

12 **Q. Okay. And what is the procedure when a**
13 **complaint is filed at the Texas Medical Board, what**
14 **happens --**

05:12PM

15 **A. Well, first --**

16 **Q. -- as briefly as you can?**

17 **A. Okay. I'll try to be brief. I get very**
18 **excited about this so I talk a lot.**

05:12PM

19 **But first it's screened, like I said, to**
20 **try to determine whether or not the board has**
21 **jurisdiction over it, and if they don't, they let the**
22 **person know that they don't, or if it actually refers to**
23 **another board. So the screening up front is the first**
24 **step. And that basically would prioritize the one that**
25 **the board is going to investigate.**

05:12PM

1 And so then they have systems in place --
 2 if it involves medical records, they have routine
 3 systems for subpoenaing or asking the doctor to provide
 4 those records, whatever it takes. They have full
 5 subpoena power to look at any patient records without
 6 any concern about privacy issues because the Board of
 7 Medical Examiners have probably more privacy controls
 8 than most other organizations.

05:13PM

9 MR. TIDWELL: Your Honor, objection on
 10 relevance. We're just going on without --

05:13PM

11 THE COURT: How is this relevant?

12 MR. COOK: To show that there is no harm
 13 to a doctor by having --

05:13PM

14 THE COURT: So the -- I'm talking about
 15 the procedures that are involved in filing a complaint
 16 before the medical board. How is that relevant?

17 MR. COOK: It shows that the doctor is
 18 going to receive due process and the doctor is also
 19 protected.

05:13PM

20 THE COURT: The statement of the
 21 procedures?

22 MR. COOK: Yes.

23 THE COURT: Move along.

24 MR. COOK: Okay.

05:13PM

25 Q. (By Mr. Cook) Okay. Well, let me just -- in a

1 nutshell, okay, there is protections for doctors in this
 2 review procedure?

3 A. Absolutely.

4 Q. Okay. Does the Texas Medical Board have power
 5 to regulate medicine in the State of Texas?

05:13PM

6 A. Yes.

7 Q. Is that a government function?

8 A. Yes.

9 Q. In a nutshell, what are nurses taught about
 10 filing complaints to either the Board of Nursing or the
 11 Texas Medical Board?

05:14PM

12 A. Nurses are taught that we have the legal
 13 obligation to do so if we have cause to believe, and we
 14 also have an ethical responsibility.

05:14PM

15 Q. Okay. And it is the law of the State of Texas,
 16 to your knowledge, that that responsibility is greater
 17 than any facility rules or regulations?

18 A. Absolutely. In case -- there are cases to that
 19 point.

05:14PM

20 Q. Did you listen to all the medical cases being
 21 discussed here this week?

22 A. Yes, I have.

23 Q. In fact, have you had an opportunity to review
 24 those charts?

05:14PM

25 A. Yes, I have.

1 Q. As a nurse, what you heard and read, did it
 2 cause any concern to you?

3 A. Yes.

4 MR. TIDWELL: Objection, Your Honor. That
 5 invades the province of the jury.

05:14PM

6 THE COURT: Sustained.

7 Rephrase it.

8 Q. (By Mr. Cook) Well, as a nurse, do you believe
 9 that it would -- a reasonable practitioner could

05:15PM

10 conclude that there has been a violation of the Medical
 11 Practices Act?

12 MR. TIDWELL: Objection, Your Honor. It
 13 invades the province of the jury.

14 THE COURT: Close, but rephrase it.

05:15PM

15 You're almost there. I'm sorry.

16 Q. (By Mr. Cook) Do you have an opinion as to --

17 let me put it this way. Do you have an opinion as to
 18 whether or not what you heard here today or this week
 19 would be something that the Texas Medical Board would be
 20 interested in?

05:15PM

21 A. Absolutely.

22 MR. TIDWELL: Objection, relevance, Your
 23 Honor.

24 THE COURT: Approach.

05:15PM

25 (AT BENCH, OFF THE RECORD)

1 THE COURT: Go ahead, counsel.

2 Q. (By Mr. Cook) If the information you heard
 3 about these cases came to you while you were a
 4 compliance officer of a hospital, would you be
 5 concerned?

05:16PM

6 A. Absolutely.

7 Q. If you felt that you were not able to get the
 8 administration and the medical staff and stuff to
 9 adequately address those concerns, would you have --
 10 would you feel compelled to report them?

05:16PM

11 A. I would.

12 Q. Do you even think that it may be a violation of
 13 the nurses code of ethics not to report them?

14 A. Absolutely, and a violation of the law as well.

05:16PM

15 Q. And a violation of the law.

16 Did any of the information or any of the
 17 files that you reviewed strike you as frivolous?

18 MR. TIDWELL: Objection, relevance. And
 19 she's not been qualified --

05:17PM

20 THE COURT: Go ahead. Overruled.

21 Q. (By Mr. Cook) Or lacking merit?

22 A. No. All of them have merit that needed to be
 23 looked at and evaluated by proper authorities.

24 Q. And we've heard some talk about the difference
 25 between administrative nurses and direct patient care

05:17PM

1 nurses. Do they have the same duties?

2 **A. Absolutely.**

3 **Q.** Do they have the same legal requirements?

4 **A. Yes.**

05:18PM

5 **Q.** Are administrative nurses usually nurses who
6 have spent quite a bit of time in direct patient care
7 and have been promoted up?

8 **A. Virtually always.**

05:18PM

9 **Q.** Do you believe that peer review and oversight
10 and these activities should be encouraged?

11 **A. Absolutely.**

12 **Q.** Are you concerned with the -- are you concerned
13 with the fact that there is a nurse sitting in a
14 criminal trial --

05:19PM

15 **A. Yes, I am.**

16 **Q.** -- that may chill reporting?

17 **MR. TIDWELL:** Objection, relevance, Your
18 Honor.

19 **THE COURT:** Sustained.

05:19PM

20 **Q.** (By Mr. Cook) Oh, patient medical files are
21 sent to the Texas Medical Board all the time, aren't
22 they?

23 **A. Absolutely.**

24 **Q.** They're HIPAA exempt, aren't they?

05:19PM

25 **A. That's right.**

1 **Q.** Do you need patient consent?

2 **A. No.**

3 **Q.** Do you even need hospital approval?

4 **A. No.**

05:19PM

5 **Q.** The TMB has investigators who are peace
6 officers?

7 **A. That's true.**

8 **Q.** They have the power to seize evidence, don't
9 they?

05:19PM

10 **A. That's right.**

11 **Q.** And patient files are sent to the TMB as part
12 of the government purpose that the TMB has, isn't it,
13 aren't they?

14 **A. Yes.**

05:19PM

15 **MR. COOK:** Pass the witness, Your Honor.

16 **THE COURT:** Go ahead.

17 **MR. TIDWELL:** Thank you.

18

19 **CROSS-EXAMINATION**

05:19PM

20 **BY MR. TIDWELL:**

21 **Q.** Ma'am, are -- is the information contained in a
22 patient's medical file, is that very sensitive
23 information?

24 **A. That's confidential patient information, yes.**

05:20PM

25 **Q.** Is that something that should be bantered about

1 easily?

2 **A. Only with those persons who have a need to
3 know.**

4 **Q.** Okay. If -- do you think a patient finding out
5 that their medical records have been sent off and
6 they're in the middle of something would be a little
7 concerned?

05:20PM

8 **A. Patients don't understand the peer review
9 process and the role of the board. So they may be
10 concerned, but it's not with cause.**

05:20PM

11 **Q.** So it's just none of their business?

12 **A. Actually not necessarily. If some health
13 professional has concern about their healthcare, they
14 may not know that their healthcare is not adequate. And
15 I've had many experiences of dealing with that.**

05:20PM

16 **Q.** Okay. If an incident occurs in a facility, do
17 you think it's important to get everyone together that
18 was involved in the incident and let everyone have a
19 free exchange of information?

05:20PM

20 **A. That might be one approach that could be
21 helpful in resolving the issue.**

22 **Q.** Okay. It's certainly a way to make sure that
23 everyone involved has the same sets of facts?

24 **A. That could be.**

05:21PM

25 **Q.** Okay. And you don't see anything wrong with

1 that, do you?

2 **A. As long as the people that are there have a
3 need to know the information that's being shared if it's
4 private patient information.**

05:21PM

5 **Q.** Right. Well, let's assume something happens
6 and three nurses and one doctor are involved. If they
7 were in direct patient care, there is nothing wrong with
8 those four getting together and discussing it?

9 **A. Not a problem.**

05:21PM

10 **Q.** Okay. And we know that there is 10 files that
11 the Texas Medical Board is looking at relating to
12 Dr. Arafiles, don't we?

13 **A. Yes.**

14 **Q.** And those files will be looked at regardless of
15 what our outcome is here today?

05:21PM

16 **A. That's true.**

17 **Q.** And that process will work its way through
18 regardless of what we do in Andrews, Texas?

19 **A. That's true. It's different from court.**

05:21PM

20 **Q.** Okay. And you're aware from your many years of
21 experience in working with the legal professionals that
22 only physicians can give expert opinions about the
23 standard of care relating to their specific specialty?

24 **A. That's true.**

05:22PM

25 **Q.** And the Nurse Practice Act, you said it

1 requires reports to be made; it also says the reports
 2 should be made without malice?
 3 **A. That's true.**
 4 **Q.** Okay. What does malice mean to you?
 05:22PM 5 **A. Malice would mean that you were letting your**
 6 **feelings, negative feelings, interfere with your thought**
 7 **process. And in nursing we have to focus on what the**
 8 **issue is, the patient issue, rather than concern with**
 9 **other feelings.**
 05:22PM 10 **Q.** Okay. You heard the testimony earlier that
 11 Ms. Mitchell told the former director of nursing we need
 12 to get that son of a bitch. Now does that indicate to
 13 you some feeling of malice or personal feeling?
 14 **A. Not necessarily.**
 05:23PM 15 **Q.** You think that's a statement a nurse ought to
 16 make about a doctor?
 17 **A. Probably not.**
 18 **Q.** That's not professional, is it?
 19 **A. Probably not. However, there is an expression**
 05:23PM 20 **of frustration in those words.**
 21 **Q.** And frustration could come from the fact that
 22 she's tried and tried and tried and her system to get
 23 him hasn't worked yet?
 24 **A. That's true --**
 05:23PM 25 **Q.** Okay.

1 **A. -- the system isn't working.**
 2 **Q.** And do you think it's --
 3 MR. COOK: Whoa, whoa, whoa.
 4 **Q.** (By Mr. Tidwell) -- appropriate for a nurse to
 05:23PM 5 call a doctor a witch doctor?
 6 **A. Probably not.**
 7 **Q.** Do you think it's appropriate for a nurse to
 8 say that a doctor is not even a doctor if he is?
 9 **A. That's an expression of an opinion of that**
 05:23PM 10 **person.**
 11 **Q.** Okay.
 12 **A. So I'm not in their shoes.**
 13 **Q.** Do you think it's some evidence of personal
 14 malice?
 05:23PM 15 **A. It could be.**
 16 **Q.** And the Texas Medical Board has physician
 17 reviewers that review medical records because doctors
 18 need to review doctors' records; is that correct?
 19 **A. That's true.**
 05:23PM 20 **Q.** And you were talking when you started about the
 21 Texas Medical Board has a system of severity ranking.
 22 You started to talk about a case where there was
 23 horrible medical care, some records were -- came in on
 24 Southwest Airlines, the company plane, and the doctor
 05:24PM 25 was stopped immediately?

1 **A. Uh-huh.**
 2 **Q.** Is that correct?
 3 **A. That's a temporary suspension proceedings.**
 4 **Q.** Okay. And so there -- if there is an immediate
 05:24PM 5 threat to patient care, there is a procedure in place
 6 that could be instituted?
 7 **A. Yes, uh-huh.**
 8 **Q.** And you're very familiar with the Texas Medical
 9 Board. We're 10 months down the road from this
 05:24PM 10 complaint going in. No temporary suspension has been
 11 issued so far. Is that your understanding?
 12 **A. That's my understanding. I'm not surprised.**
 13 **Q.** Okay. Are you -- you keep up pretty close with
 14 the Texas Medical Board?
 05:24PM 15 **A. Actually I do. I still work with attorneys and**
 16 **doctors --**
 17 **Q.** Okay.
 18 **A. -- with the board and two of the doctors, so**
 19 **I'm very much --**
 05:24PM 20 **Q.** And the medical board was subject to Sunset
 21 review in the last legislative session?
 22 **A. That's true.**
 23 **Q.** What does Sunset review mean?
 24 **A. Sunset was established, I'm trying to think, I**
 05:25PM 25 **think we've been through 12-year cycles, but it's when**

1 **the State -- they have a Sunset commission. They look**
 2 **at every single State agency to determine if that agency**
 3 **is in fact doing its job and they will make**
 4 **recommendations. I actually met with the Sunset staff**
 05:25PM 5 **concerning the medical board's Sunset review.**
 6 **Q.** Okay. In fact, there was discussion of a bill
 7 in the legislature this time to stop anonymous patient
 8 complaint reporting --
 9 **A. I don't remember that.**
 05:25PM 10 **Q.** -- is that correct?
 11 **A. I didn't follow all the legislation this last**
 12 **time.**
 13 **Q.** Okay. Has that issue come up before that the
 14 medical board should not take anonymous complaints?
 05:25PM 15 **A. I think that in the discussion that I've been**
 16 **involved in when I have been with the board and since is**
 17 **that they don't want to shut any possibilities if some**
 18 **people feel they can't put their name to a piece of**
 19 **paper. The board is going to investigate, look at**
 05:25PM 20 **whatever information they can, and make a decision**
 21 **whether it's the name on it or anonymous.**
 22 **Q.** Okay. Well, let me ask you, ma'am, if you
 23 thought you had a duty to report something and you
 24 thought that by reporting it you would gain protections
 05:26PM 25 of the law for reporting it, would putting your name on

1 it insure that you're getting your duty done and
2 receiving your protections?

3 **A. I think putting your name on it is not**
4 **necessary if it isn't required. I'm --**

05:26PM 5 **Q.** I didn't ask you if it was required.

6 **A. Okay. Ask me again. I didn't understand your**
7 **question.**

8 **Q.** If you have a duty to report something and if
9 you get protections for reporting it, does putting your
10 name on it help make sure that people will know that
11 you've satisfied your duty and you can receive your
12 protections?

13 **A. Well, I don't think it's necessary to prove**
14 **that you've satisfied your duty. That's a personal**
15 **responsibility. And in fact, if the nurse didn't**
16 **report, it was later found out that she knew or should**
17 **have known and failed to report, the nursing board may**
18 **come and want to talk with that nurse about why he or**
19 **she did not respond to a threat to patient safety.**

05:26PM 20 **Q.** Okay. And if that nurse could pull something
21 out and say look here, I did report it and I signed my
22 name to it, then they wouldn't have any complaint
23 against her, would they?

24 **A. They wouldn't require that.**

05:27PM 25 **Q.** That's not my question.

1 If she could prove that she had done that
2 and signed her name to it, could they sanction her for
3 it?

4 **A. No.**

05:27PM 5 **Q.** Okay. So it would be a further protection,
6 wouldn't it?

7 **A. It could be.**

8 **Q.** Do you think it's appropriate for a healthcare
9 professional to interject their personal feelings or
10 animosity into a patient care issue?

11 **A. We're all humans, but we have to try to control**
12 **that.**

13 **Q.** Okay. That's just not appropriate, is it?

14 **A. No.**

05:27PM 15 **Q.** Okay. Thank you.

16 **MR. TIDWELL:** Pass the witness, Your
17 Honor.

18 **THE COURT:** Any other questions?

19 **MR. COOK:** Just briefly, judge.

05:27PM 20 **REDIRECT EXAMINATION**
21 **BY MR. COOK:**

22 **Q.** The reality out there is there are -- there at
23 times in some facilities is there is a lot of pressure
24 on nurses not to do their duty, isn't there?
05:28PM 25

1 **A. That's true.**

2 **Q.** And the reality is that some nurses by many
3 different means know that if they raise patient concerns
4 on the State level that facilities will seek to
5 retaliate against them?

05:28PM 6 **MR. TIDWELL:** That's speculative, Your
7 Honor.

8 **THE COURT:** Sustained.

9 **Q.** (By Mr. Cook) Has there been a history of
10 retaliation for raising concerns against local politics
11 and policies?

12 **MR. TIDWELL:** Again, speculative, Your
13 Honor, and no basis in foundation.

14 **MR. COOK:** I think she has knowledge of
05:28PM 15 this; she's been in it for 50 years.

16 **THE COURT:** Predicate.

17 **MR. COOK:** Predicate.

18 **Q.** (By Mr. Cook) Do you have personal knowledge
19 of attempts by hospitals, doctors, to prevent nurses
20 from reporting patient safety concerns?

21 **A. Nothing like the present situation.**

22 **Q.** This is the most extreme you've ever seen?

23 **A. Absolutely.**

24 **Q.** Anne Mitchell said in her letter that she had
05:28PM 25 concern about her job, didn't she?

1 **A. Yes.**

2 **Q.** What happened to her job?

3 **A. She was fired.**

4 **Q.** It looked like a real fear. Would you agree?
05:29PM 5 **MR. TIDWELL:** Objection, invades the
6 province of the jury.

7 **THE COURT:** Sustained.

8 **Q.** (By Mr. Cook) The fear of retaliation is real
9 and it's out there, isn't it?

05:29PM 10 **A. Yes.**

11 **Q.** And it's wrong to threaten retaliation or put
12 it -- or put in a culture of silence in the medical
13 community --

14 **A. That's true.**

05:29PM 15 **Q.** -- isn't it?

16 **A. That's true.**

17 **Q.** And if we let this continue people will die;
18 isn't that true?

19 **A. That's true.**

05:29PM 20 **MR. COOK:** Pass the witness.

21 **MR. TIDWELL:** No further questions.

22 **THE COURT:** You can step down. Thank you.
23 And you're free to go, stay, whatever you want to do.

24 **Call your next witness.**

05:29PM 25 **MR. COOK:** Judge, I think we've got -- let

1 me look at my list, but I think our other one is on the
2 way from Austin. May I check with my assistant?

3 THE COURT: Sure.

4 MR. COOK: Okay. I think we've got one,
5 judge.

6 THE COURT: Approach.

7 (AT BENCH, OFF THE RECORD)

8 THE COURT: I'll tell you what, we'll just
9 break for the day. We had -- we were going to have one

05:30PM 10 more quick witness, but we'll just take a break for the
11 day. We'll be in recess for -- until 9:00 tomorrow
12 morning. Please keep in mind the instructions I gave
13 you earlier.

14 Folks in the courtroom remain in the
05:31PM 15 courtroom until the jury has the opportunity to leave in
16 peace. Thank you very much. See you in the morning.

17 (JURY NOT PRESENT)

18 (COURT ADJOURNED)

19

20

21

22

23

24

25

1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS)

3

4 COUNTY OF ANDREWS)

5

6 I, Kelly Allen, Official Court Reporter in
and for the 109th District Court of Andrews County,
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