

# **Summary of Investigative Findings**

## **Allegations Against Dr. Anil Nanda**

**Former Neurosurgery Department Chair at Rutgers University**

Prepared By:

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## **I. Introduction**

Rutgers University (“Rutgers” or the “University”), through its Office of the General Counsel, engaged Lowenstein Sandler LLP (“Lowenstein”) to review and investigate allegations made against Dr. Anil Nanda. Dr. Nanda was the Chair of the Departments of Neurological Surgery (“Neurosurgery Departments”) at Rutgers New Jersey Medical School (“NJMS”) and Robert Wood Johnson Medical School (“RWJMS”).

Late last year, allegations were raised that Dr. Nanda had conducted so-called “ghost surgeries,” in other words, that he was not appropriately present for surgeries for which he billed and was the attending physician. The genesis of the “ghost surgery” allegations was an anonymous complaint stating that on November 4, 2021, Dr. Nanda had two scheduled surgeries and was also hosting a virtual symposium that same day.

Local media subsequently reported that Dr. Nanda had been the subject of similar allegations at Louisiana State University Health Sciences Center – Shreveport (“LSU”), where he was previously chair of the neurosurgery department. Specifically, an article stated that LSU had paid more than \$700,000 in fines and restitution to the Office of Inspector General of the U.S. Department of Health and Human Services (“OIG”) because of “instances where LSU Health had improperly billed Medicare for three concurrent surgeries . . . in some instances where Nanda was not present in the operating room.” The article also noted that Dr. Nanda was removed from his position as neurosurgery chair at LSU around the same time, raising questions whether Dr. Nanda had been fully forthcoming with Rutgers about the events at LSU during his hiring process.

A third set of issues arose in connection with Dr. Nanda’s non-renewal of a neurosurgery professor’s employment at Rutgers and the testimony that Dr. Nanda later provided about that non-renewal. That non-renewal is currently the subject of a pending arbitration.

The University asked Lowenstein to thoroughly investigate these allegations, consistent with the highest investigative standards. Lowenstein’s investigation culminated in a 39-page report (“Report”) about the above issues. Portions of the Report contain confidential information. For example, the arbitration referenced above is a non-public proceeding subject to non-disclosure instructions issued by the arbitrator. Other Report portions contain confidential information from the personnel files of University employees (including other than Dr. Nanda) or contain otherwise privileged information. This summary has been compiled to provide transparency regarding this investigation while avoiding potentially improper and prejudicial disclosures and maintaining applicable privileges.

## **II. Background**

Dr. Nanda joined Rutgers in 2018 as a nationally renowned neurosurgeon. In addition to managing the Neurosurgery Departments at Rutgers, through Rutgers’ hospital affiliations Dr. Nanda also was the Chief of Neurosurgical Services at Robert Wood Johnson University Hospital (“RWJUH”) in New Brunswick and University Hospital in Newark, and conducted procedures at both hospitals. Because Rutgers is a teaching institution, Dr. Nanda is assisted in his surgical

procedures by residents, who perform portions of the procedures to gain the necessary skills for their own future practice.

Upon his arrival at Rutgers, Dr. Nanda made significant and aggressive changes to the Neurosurgery Departments, and brought about substantial employee turnover, resulting in Dr. Nanda having ardent supporters and significant enemies within the University community. Numerous internal workplace-related complaints regarding Dr. Nanda have been made, with at least one lawsuit filed against him. The myriad work environment complaints against Dr. Nanda are being investigated separately by the University Ethics & Compliance office (“UEC”) at Rutgers. Lowenstein has provided investigative information to that office as part of our work.

### **III. Methodology**

Lowenstein personnel independently developed the work plan for this investigation and executed it without interference from the University. The University fully and without exception cooperated with the investigation by making its employees available for interviews and supplying Lowenstein with requested information, documents and other materials.

Lowenstein interviewed Dr. Nanda, nurses and doctors present for the two procedures on November 4, the two deans who made the decision to hire Dr. Nanda, members of the Rutgers search committee that vetted candidates and recommended that Dr. Nanda be hired, UEC personnel, members of Dr. Nanda’s administrative staff, and others affiliated with the University and RWJUH. Interviews were conducted in person, by videoconference or by phone, as circumstances would permit. We also contacted the former chancellor at LSU who had removed Dr. Nanda from his chairmanship there; however, he declined to participate in an interview with us.

To assist in our assessment of the facts, we consulted with a nationally recognized neurosurgeon, who is not affiliated with Rutgers. This neurosurgery expert is the chair of the neurosurgery department at a prominent national medical school.

The investigation also included review of voluminous documents, emails and text messages, which we obtained from the University and from witnesses interviewed, online sources and other third-party sources. We also reviewed video footage from the operating room (“OR”) hallways at RWJUH on November 4, a video recording of the virtual symposium that took place that day and materials related to the above-mentioned arbitration. Additionally, we conducted a site visit to view the location of the RWJUH operating rooms and Dr. Nanda’s office. We also made a public records request to LSU regarding Dr. Nanda, as well as a Freedom of Information Act request to OIG, and reviewed the documents received in response to those requests.

## IV. Findings

### A. November 4, 2021 Surgeries

#### 1. Background and Standards

On November 4, 2021, Dr. Nanda was the attending physician for two surgeries at RWJUH and also was hosting the second day of an international virtual symposium on neurosurgery. The two surgeries on November 4 were not concurrent (unlike the above-referenced surgeries that led to repayments by LSU). The first surgery ended at 10:18 a.m. and the second surgery began at 11:21 a.m. Two neurosurgery residents handled the majority of both procedures: a seventh-year chief resident and a sixth-year senior resident. Both residents had performed these types of procedures many times before. It is undisputed that the medical outcome of both procedures was successful.

The federal Centers for Medicare & Medicaid Services (“CMS”) has issued Guidelines for Teaching Physicians, Interns, and Residents regarding payment for services furnished in teaching settings, such as at Rutgers. Those guidelines provide that CMS will pay for services that “are furnished by a resident when a teaching physician is physically present during the critical or key portions of the service.”<sup>1</sup> The guidelines provide that “physically present” means “the teaching physician is located in the same room as the patient . . . and/or performs a face-to-face service.”<sup>2</sup> The guidelines further provide that the “critical or key portion” of the procedure is to be determined by the teaching physician.<sup>3</sup>

The “critical or key portion” standard is widely known at teaching hospitals. Application of the standard is purposely left to the discretion of the attending surgeon, as there are many variables, such as the nuances of the particular operation being performed, that may affect what is deemed the critical portion in a particular case. The critical portion of the procedure is typically the most difficult part of the case, and it is generally not the opening (incisions) or the closing (stitches and gluing), but is some portion in the middle.

The CMS guidelines also state that the teaching physician “must be . . . immediately available to furnish services during the entire service.”<sup>4</sup> The phrase “immediately available” has not been specifically defined by CMS in terms of time or distance. However, a CMS Medicare Benefit Policy Manual states that “for services furnished on-campus, the supervisory physician may not be so physically distant on-campus from the location where hospital outpatient services are being furnished that he or she could not intervene right away.”<sup>5</sup> Ultimately, this determination

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<sup>1</sup> See CMS Medicare Learning Network, *Guidelines for Teaching Physicians, Interns, and Residents*, 2 (March 2018), <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Guidelines-Teaching-Physicians-Text-Only.pdf>.

<sup>2</sup> *Id.* at 9.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 10.

<sup>5</sup> See CMS, *Medicare Benefit Policy Manual: Chapter 6 - Hospital Services Covered Under Part B*, 14 (Dec. 31, 2020), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c06.pdf>.

is left to the hospital or supervisory physician, who “must judge the supervisory physician’s relative location to ensure that he or she is immediately available.”<sup>6</sup>

Guidance from other sources tracks these CMS directives, including guidance from the American Association of Neurological Surgeons, from the Accreditation Council for Graduate Medical Education, and from Rutgers policy documents, all of which are discussed in the Report.

## 2. Craniotomy

Dr. Nanda’s first procedure on November 4 was a craniotomy, which generally involves making a small hole in the skull to access the brain. This particular craniotomy involved a biopsy, or removing small pieces of tumorous brain tissue for testing.

Dr. Nanda was in the OR for two parts of this procedure. First, he was present when the patient’s “time-out” took place. During the time-out, which is led by the anesthesia team before the surgery begins, the surgical team reviews the patient’s information and goes through a standardized series of questions regarding the procedure. The surveillance video from the hallway outside of the OR shows that Dr. Nanda entered the OR at 7:52 a.m. and exited at 7:57 a.m.

Following the time-out, Dr. Nanda returned to his office and observed the second session of the symposium that day, which was scheduled for 8 a.m. to 9 a.m. During that time, anesthesia was administered, the patient was prepared for surgery, and the residents created the incision, made a hole in the patient’s skull, and navigated to the area of the brain where the tumor was. The residents were able to access the tumor easily as it was at the surface of the brain.

The residents then asked one of the nurses to call Dr. Nanda, and he came back to the OR for the biopsy. The OR video shows that upon returning to the OR, Dr. Nanda remained in the OR for a total of three minutes, from 9:11 a.m. to 9:14 a.m. Dr. Nanda did not “scrub in” to the procedure (wash hands and forearms, put on gown and gloves), but rather observed what the residents were doing from a short distance away. During that time, the residents took samples of the brain tissue for testing. Dr. Nanda deemed this the critical portion of the procedure, as this is when bleeding and other complications can occur. If Dr. Nanda had needed to jump in to assist, he would have needed to go outside the OR and scrub in before he could help as he was not sterile.

Dr. Nanda then returned to his office and introduced the next session of the virtual symposium, which began at 9:30 a.m. Another doctor introduced presenters for that session along with him, and they had discussed that he would fill in for Dr. Nanda if Nanda had been delayed due to his surgeries. The craniotomy ended at 10:18 a.m.

As noted above, Lowenstein consulted a neurosurgery expert regarding the November 4 procedures. Our expert agreed that the removal of brain tissue samples could reasonably be deemed the critical portion of the craniotomy procedure and stated that it could be done in three minutes. He noted that a craniotomy with a brain biopsy is a relatively simple procedure, particularly when the tumor is superficial. However, our expert was nonetheless concerned that Dr. Nanda was present in the two-hour procedure for less than ten minutes. Additionally, the

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<sup>6</sup> *Id.*

expert took issue with the fact that Dr. Nanda did not scrub into the procedure. While he said this is frowned upon, there is no requirement in CMS rules that a teaching physician must scrub in. The CMS guidelines focus on the teaching physician's availability to supervise residents, and do not require the physician to personally conduct any portion of the procedure.

### 3. Laminectomy

The second procedure on November 4 was an elective, pre-scheduled laminectomy. A laminectomy is back surgery where bone is removed to decompress the spine, allowing for more space for the nerves. Laminectomies are not considered to be difficult procedures for neurosurgeons, though they are generally more complicated than craniotomy biopsies.

Based on the OR video, Dr. Nanda was in the OR for this patient's time-out from 10:54 a.m. to 10:57 a.m. Dr. Nanda then left and went back to his office. After the anesthesia was administered and the patient was prepared for surgery, the residents made the incisions and deepened them down to the bone. The chief resident began to remove pressure from the easier points on the spine.

The residents then called Dr. Nanda when they got to the most compressed part of the spine. Nanda scrubbed in and removed the bone from that part himself. The OR video shows that he entered the OR at 12:42 p.m., left at 12:43 p.m., re-entered at 12:44 p.m., and then exited at 12:50 p.m., so he was in the OR for six to eight minutes. Dr. Nanda deemed this the critical portion of the laminectomy, particularly in view of the risk of spinal leak or tear during this part of the procedure. While acknowledging that he was not in the OR for more than several minutes, Dr. Nanda stated that he can do this procedure faster than others due to his experience.

Our expert was skeptical that the critical portion of a laminectomy could be done in eight minutes. However, not having been there, he could not state with certainty that Dr. Nanda was not there for the critical portion of the procedure. Significantly, the governing federal standard allows the attending physician to define and determine the critical portion.

### 4. Conclusion

Our investigation did not reveal evidence sufficient to conclude that Dr. Nanda was not present for the critical portion of these two procedures under the applicable standard. He was present for the critical portions of the procedures as he defined them, and the relevant standard provides that the teaching physician has the discretion to set that definition. Our expert could not rebut Dr. Nanda on his assertion that he was present for the critical portions. These conclusions are consistent with those previously rendered by medical officials affiliated with the hospital.

Though both residents had successfully performed these types of procedures many times before, and the medical outcome here was successful, in these two cases Dr. Nanda pushed the envelope of the CMS standards as far as possible. He was in the procedures for the shortest possible amount of time, and he did not scrub into one of the procedures. Additionally, the fact that Dr. Nanda had a speaking role at a virtual symposium he was hosting on the same day that he had these two procedures makes it appear that he was not prioritizing his patients. Dr. Nanda's

having conflicting responsibilities that day reflects poor decision-making and his conduct was contrary to general expectations regarding surgeon practices.

We reviewed whether Dr. Nanda may have been incentivized to schedule and bill for these procedures to increase his compensation. While about an eighth of his compensation was contingent on Dr. Nanda completing a certain number of “relative value units” (“RVUs”) for medical services he provides, he was already well above the necessary RVUs at RWJMS for that fiscal year.

Given concerns raised about the amount of time Dr. Nanda is present in his procedures and based on the evidence adduced in this investigation, the Report recommends that Rutgers conduct a broader review regarding Dr. Nanda’s procedures beyond the two November 4 surgeries that Lowenstein investigated. We further recommend that Dr. Nanda be counseled regarding not engaging in conduct that has the potential to distract from his surgical responsibilities.

## 5. Related Issues

During our investigation, we became aware of other issues regarding Dr. Nanda’s November 4 procedures, which are summarized below.

First, we considered whether Dr. Nanda being in his office during the portions of the procedures for which he was not in the OR was improper. As noted above, CMS guidelines state that a teaching physician must be “immediately available” during the portions of the procedure for which he or she is not physically present.

Dr. Nanda’s office is in a separate building across the street from RWJUH, but there is a pedestrian bridge connecting the buildings. While he was in his office, Dr. Nanda was wearing scrubs. We visited the site and timed the walk from Dr. Nanda’s office to the OR. There are some variables involved, as the walk requires taking two elevators. We found that the walk could be completed in approximately six to seven minutes.

Typically, physicians remain outside the OR doors (within the OR suite) when not physically in the OR for one of their procedures. However, our expert stated that Dr. Nanda being six or seven minutes away from the OR in his office was reasonable, particularly since he was already wearing scrubs and could leave his office as soon as he was called. While we would not consider it a good practice, Dr. Nanda sitting in his office during portions of the November 4 procedures did not violate any governing standard. His practices in this regard were, however, questionable and were similar to his pushing the limits of propriety on other issues we reviewed.

Another issue we encountered was that the times logged in the OR records for Dr. Nanda entering and exiting the OR did not line up with the OR video for the two November 4 procedures. We determined that Dr. Nanda did not direct hospital personnel to record any particular times and that this discrepancy resulted from human error.

## **B. The Hiring of Dr. Nanda**

Dr. Nanda was hired by Rutgers after a University search committee vetted numerous candidates over several months and sent a list of three recommended finalists to the deans of the two medical schools. The search committee consisted of thirteen members, including doctors from the two medical schools, department chairs at the schools and representatives from the affiliated hospitals. The search committee's formal work spanned from March to September 2017.

The Neurosurgery Departments' chair position was publicly advertised and the search committee received twenty-three applications from across the country. The committee selected twelve of those candidates for initial Skype interviews, during which ten to twelve standard questions were asked of each candidate. The committee then narrowed the field to eight candidates, including Dr. Nanda, for on-campus interviews that each spanned multiple days. Dr. Nanda's on-campus interview took place on June 28 and June 29, 2017. The candidates were interviewed by the medical schools' leadership, hospital leadership, department chairs, faculty, residents and search committee members. The interviewers scored each candidate in a number of categories and also provided narrative comments. No negative issues regarding Dr. Nanda's position at LSU were mentioned during his two rounds of interviews.

The search committee also vetted each candidate by speaking to three to four references that the candidate provided, which included current and past supervisors, hospital executives and past trainees. Dr. Nanda provided as references his former supervisor at LSU, the chief medical officer at the hospital LSU was affiliated with, and the residency program director at LSU. In addition to the references provided by Dr. Nanda, members of the search committee proactively reached out and spoke to other potential references. Neither the references provided by Dr. Nanda, nor the other individuals contacted, mentioned any billing or concurrent surgery issues at LSU during the vetting process.

Thus, the search committee was unaware of any allegations of improper conduct by Dr. Nanda at LSU before the committee issued its recommendation. On September 30, 2017, the search committee recommended three candidates to the deans, including Dr. Nanda. While the three finalists technically were not ranked in order of committee preference, the search committee report indicates that the committee gave Dr. Nanda the highest scores of the three. Rutgers subsequently hired Dr. Nanda, following completion of an additional public-records background check.

Between the time of the search committee's recommendation and Rutgers offering Dr. Nanda the job, two issues arose regarding Dr. Nanda's position at LSU: (1) he was removed as the neurosurgery chair by the LSU chancellor, and (2) the search committee became aware of a billing audit at LSU involving Dr. Nanda's surgical procedures. How Dr. Nanda addressed these two issues is discussed below.

### 1. Removal as Chair at LSU

Four days after the search committee issued its report and recommendations, on October 4, 2017, the chancellor of the LSU School of Medicine removed Dr. Nanda as chair of LSU's



neurosurgery department. LSU's letter to Dr. Nanda did not provide a reason for the removal, but simply stated that LSU "is moving in a different direction as it relates to administration of the clinical departments in the School of Medicine."

The next day, Thursday, October 5, 2017, Dr. Nanda called the search committee chair at Rutgers and informed him that he was asked to step down as the neurosurgery chair at LSU. Dr. Nanda stated that he believed the demotion occurred because the LSU chancellor found out that he was looking at other positions and because of a public disagreement he had with the chancellor about the chancellor taking funds from certain departments at LSU to offset a deficit.

While the search committee's role is typically over after it issues its recommendation, because of the LSU chair situation, the committee remained involved in the vetting process and members of the search committee reached out to the references they had previously spoken to for further information. They also spoke to other individuals at LSU who were not contacted during the committee's initial vetting process. Those consulted from LSU generally stated that their understanding was that the chancellor removed Dr. Nanda because of disagreements over management of the department.

The search committee chair also reached out and spoke directly with the LSU chancellor himself. The chancellor gave Dr. Nanda a good recommendation. As to the chair position, he said that the "school's leadership wanted to go in a different direction in Neurosurgery." He explained that he had made similar changes in leadership in several other departments at LSU.

In sum, Dr. Nanda disclosed his removal as chair to the search committee right away, and even though their role was formally over, the committee members looked into it. As department chairs serve at the pleasure of the dean or chancellor, they can be removed for nearly any reason; such changes are not particularly unusual. There is no reliable evidence that Dr. Nanda lied to Rutgers about his removal or that his removal at LSU was for cause. The overall sense that people at LSU conveyed is that Dr. Nanda and the Chancellor simply had political-type disagreements.

## 2. LSU Billing Audit

The second issue that arose after the search committee's September 2017 recommendation of Dr. Nanda as a finalist was that the search committee chair became aware of an internal billing audit at LSU involving the neurosurgery department there.

In 2016, LSU's Compliance Department ("LSU Compliance") began an internal audit regarding billing for concurrent surgeries following receipt of a complaint regarding Dr. Nanda. While the audit initially focused on Dr. Nanda, LSU expanded it to include the entire LSU neurosurgery department and all other surgical specialties within LSU after review of the initial audit results.

LSU voluntarily reviewed approximately 91,000 procedures that took place from November 2011 through December 2016, including approximately 6,500 for neurosurgery. LSU identified 344 concurrent procedures for which LSU decided to refund payment to CMS, which administers payment for Medicare and Medicaid patients. According to documents received from

LSU, LSU Compliance determined it needed to pay back 8.9 percent of Dr. Nanda's cases that were reviewed. Eight other neurosurgeons' cases were reviewed, and four of those surgeons had zero paybacks. For the other four neurosurgeons, LSU Compliance determined it needed to pay back 1.5 percent of their cases that it had reviewed. Only 0.1 percent of other departments' cases needed to be refunded. Dr. Nanda's cases constituted 82 percent of the neurosurgery cases and 60 percent of all cases identified for refunds.

On June 1, 2017, LSU Compliance met with the LSU neurosurgery department, including Dr. Nanda, to discuss the findings of the audit as it related to neurosurgery and inform Dr. Nanda that LSU would self-disclose the results to CMS. LSU self-disclosed its findings to CMS the next day, on June 2, 2017. About a year later, on or about June 8, 2018, LSU entered into a settlement agreement with OIG in which it agreed to pay back \$732,854.40, with \$441,129.61 constituting restitution and \$291,724.79 constituting penalties. That agreement was executed well after Dr. Nanda had accepted the position at Rutgers.

LSU's self-disclosure to OIG occurred while Dr. Nanda was under consideration for the chair position at Rutgers, and presumably, LSU began discussions with OIG during that time. While the search committee was looking into Dr. Nanda's removal as chair at LSU, Dr. Nanda affirmatively disclosed the audit to the search committee. According to email records, Dr. Nanda called the search committee chair on December 8, 2017, and said that the LSU chancellor "tried to get him on billing compliance issues. [He] was audited and came out clean." Nanda's view was that the audit was an internal audit, as opposed to a CMS audit, and was a "nonissue."

Dr. Nanda's position is that: 1) he had followed guidance from LSU regarding billing practices, but LSU later changed its position on billing guidelines and decided to issue the refunds to CMS in an abundance of caution; 2) the LSU review was not limited to him but rather involved other departments and other surgeons within his department; 3) LSU Compliance provided him with doctor-by-doctor data on the refunded cases in the neurosurgery department, but did not provide him with any information on refunded cases for the other departments; 4) there was no criminal investigation in connection with the audit, there was no OIG investigation and there was no internal LSU finding of misconduct; 5) LSU Compliance told him that the initial complaint itself that had caused the review had been determined to be unfounded; and 6) the refunds were voluntary.

While Dr. Nanda affirmatively disclosed the LSU billing audit to Rutgers, he could have mentioned the audit at an earlier point, while the search committee was still reviewing the candidates, which would have allowed the committee to investigate the issue further. Moreover, once Dr. Nanda did disclose the audit, he said he "came out clean," which was not accurate, as at that point LSU had decided to make a self-disclosure and issue refunds. Further, Dr. Nanda had a significantly higher percentage of refunded cases than other neurosurgeons in his department. It is not unusual for candidates to be advocates for themselves during a hiring process, within limits. Additionally, billing audits and refunds are not uncommon, and Dr. Nanda himself may have viewed the audit as a nonissue. However, he downplayed the audit to an extent that rendered his remarks to Rutgers representatives not entirely truthful.