



From the Desk ofEric E. Frische, MD

Date: 9/11/13

Re: Anagnost memo for record.docx

5/26/10 My first review of the case and I agree that based on the opinion from the Tulsa spine surgeons that an emergency hearing is warranted.

6/11/10 The complaint and citation is filed.

6/18/10 The emergency hearing is held and the emergency portion is dismissed by the State. Some time after the hearing, Lyle and Libby Scott agree that given the size and complexity of the case, we will need a special prosecutor and according to Lyle, the AG's office signed off on this through Jan Preslar. Randy Sullivan looks at the case but the decision is made that he will not take the case.

12/17/2010 I contacted a spine surgeon in Denver who is a past president of the North American Spine Association and who also served on several peer review and quality assurance committees at the national level. I also spoke with him by phone and asked for recommendations for helpful experts who might help us. His only response was to send me a copy of a chapter he authored for a textbook.

4/27/2011 I visited with Dr. Michael Bowman from the University of Wisconsin who was in charge of their program which offered evaluations of physicians. After listening to the substance of the case he informed me that their program was equipped to evaluate the doctor including his surgical skills. Our investigator on the case visited there for a CME course and in May I sent Dr. Bowman a letter to request an assessment of the doctor. In late June or early July, the University closed the program due to the State's budget crisis.

6/29/2011 Lyle and I visited with the CPEP program and they offered up that they could now do an evaluation of a surgeon's work which they wouldn't do in the past.

10/28/11 We were finally able to meet with the doctor and his attorney about going to CPEP. We advised that he could go voluntarily making it confidential and that if he could get a favorable evaluation that it would help him. We gave him a few weeks to consider this option but he made no attempt to contact CPEP. It is noteworthy that during the interview he was asked if he had made payments for any of the lawsuits. He responded that there were no payments made on his behalf. He did tell us that as long as the Boards complaint and citation was out there, he was not being allowed to take his recertifying exam.

1/20/12 I speak with Dan Graves about the case and he agrees to take the case. We are still looking for an expert.

4/12/12 Contact with Dr. Kern Singh and he agrees to look at the case. (see my email of that date) Dan Graves and Dr. Singh develop the case material.

On March 8th 2013 at 1:30, Lyle, Gayla and I met with Steve Mullins, attorney to the Governor about the Dr. A case. He told us that he wasn't here to interfere with the work of the Board but Governor Fallon "didn't want any more calls from Rick Perry about this, that Governor Perry said it was a travesty and what would it take to make it go away". We attempted to discuss the case and express the seriousness of the charges and findings and that it was too far along to just go away. Mr. Mullins then responded that there was concern that this case would result in "some bad law" and the Governor didn't want that. The meeting ended and Lyle walked out with Mr. Mullins and discovered that the doctor had a benefactor by the name of Dick Powell who was very wealthy, a significant contributor to Rick Perry and also a

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surrogate father to the doctor and that he was behind the effort to get rid of this. After Mr. Mullins left we talked among ourselves and with reluctance we considered our options realizing that we had been told to try and get rid of the case.

We began to work on an agreement that involved the doctor not agreeing to any guilt but that he would admit that if there was a hearing there might be board action. He would also agree that he would take a fellowship and that he would not renew his Oklahoma license when it expired. We did meet with the doctor and his attorneys about these terms but the sides could not reach an agreement.

6/15/13 Dr. Singh's deposition is taken. Shortly after this the doctor's lawyers file various cases against the Board.

On 9/9/13 I had several phone calls on this case. The first at 11:00am while in the car returning from a weekend, I spoke with Marissa about the anticipated conference call and I outlined what I thought appropriate for a proper review of Dr. A's work to include selection of cases, operative technique, surgical judgment and post op care especially in the acute period. I expressed the opinion that the fellowship program should have knowledge of the issues and asked if any information about the complaint or the actual case material had been sent to the program. Marissa said she didn't know and about 30 minutes later during the conference call with Dr. Puna he said they had received no such material but agreed that knowledge of the case information would be important. He also reported that no hands on experience would be available as the cases were for the clinical fellows and that the doctor would be taking an observer-ship or "traveling fellowship". Dr. Puna said he was there during the doctor's residency and fellowship and that he was "one of their best residents and fellows". Further discussion indicated that cadaver lab work would or could be part of the experience if desired. One of the attorneys broke in and said that the call had "taken an unexpected turn" and the call was ended.

At 8:51 pm, 9/9/13 I received a phone call from Lyle telling me that he had had a call from John Wiggins and he reported receiving a call at 5:30 from Jan Preslar that an agreement had been reached and that part of that agreement would involve dropping the conflict of interest suit against John so that he could resume the position of trial examiner so that he could be present in the executive session to "sell" this agreement to the Board. There was to be a "global settlement" of all issues. The plan is to frighten the Board members into voting for this settlement or otherwise they might be subject to lawsuits if this case continues.

At about 4:30 there was another conference call with Lyle, Regi and Dixon and Gross for the AG's office and most of the conversation was from the AG telling us that while their due process claim wasn't that strong, all they needed to do was turn one Supreme court Justice from the earlier 5 to 4 decision and we would loose and if we didn't loose and had a hearing with adverse action against the doctor there would be a "quagmire" of court cases and depositions and that we should just drop the matter or settle it in any way we could. The guys from the AG's office said he (Dr. A) would probably leave the State and go elsewhere.

At 9:20 pm I received a draft copy of a VSJ from Marissa. She had spoken with Lyle earlier in the evening after the call from John Wiggins stating that she was working of the VSJ (that Jan Preslar had earlier said was already completed).

On 9/10/13 at 7:49 am, after reading the draft, I emailed Marissa and informed her that I could not go along with the process as proposed.

Later in the morning of the 10th Lyle, Reji and Randy Sullivan spoke by phone and discussed our options. I learned during this call that the AG's office had advised our attorney Dan Graves as of two weeks ago that he was off the case and not to bill any more hours. Lyle reports that Dan thinks it is a no win situation and is moving on. If the case was ever to come before the Board then it would be up to Marissa to handle the case and all of us agreed privately that she could not handle it on such short notice especially against Macaffey & Taft. Lyle seems resigned to this being settled for basically nothing that is reasonable.

9/11/13 During the day we received some updates from Marissa about the ongoing negotiations and at about 4:00pm the final version. Basically the doctor will take 16 hours of CME on proper coding and record keeping and attend his "traveling fellowship" after which the Board "shall" allow him to return to surgical practice.

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9/11/13 8:30pm We all await the action of the Board and while we secretly hope they will reject the VSJ and ask for a hearing, the consensus is that the doctor's lawyers will find a way to block that. My thought is that there will be a revolt amongst the Tulsa physicians to bring this to a head but the trouble is that they do not know all the facts and will probably blame the Board. Lyle doesn't think his job is in jeopardy but as I consider the matter, there will be a need for a scapegoat. I think the doctor will stay in Tulsa and be able to regain his hospital privileges (that is end his leave of absence). Given the animosity (the various doctor's children have taken this matter to school to the doctor's children), short of an actual hearing I do not believe this will go away.

10/22/13 Representative Richard Morrisette issued a press release about the Nursing Board's IT costs and the Medical Licensing Board's action against the doctor calling the action "a prolonged and dubious campaign".

1/15/14 Since the Board hearing in September, the doctor has filed law suites against the doctors in Tulsa as well as Bar complaints against Dan Graves, Randy Sullivan, John Wiggins and former Board member Gary Brooks. As part of that inquiry all of our records and emails related to the case have been subpoenaed with the understanding that all will be held confidential. We will comply with the subpoena and I have transferred over 80 emails for Jason to put together and will try and transfer the rest of my word documents tomorrow.



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