

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
DIVISION NO. III  
CIVIL ACTION NO. 15-CI-551

|                         |   |                        |
|-------------------------|---|------------------------|
| PAUL KEARNEY, M.D.,     | ) | DEPOSITION TAKEN ON    |
|                         | ) | BEHALF OF PLAINTIFF    |
| PLAINTIFF               | ) | <u>BY: NOTICE</u>      |
|                         | ) |                        |
| VS.                     | ) |                        |
|                         | ) |                        |
| UNIVERSITY OF KENTUCKY, | ) | Witness:               |
|                         | ) |                        |
| DEFENDANT               | ) | DEAN FRED DeBEER, M.D. |

\* \* \* \* \*

The deposition of DEAN FRED DeBEER, M.D., was taken before Desiree J. Wright, Court Reporter and Notary Public in and for the State of Kentucky at Large, and by videotape recording, at the law offices of Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Suite 1500, Lexington, Kentucky, on Tuesday, October 4, 2016, commencing at the approximate hour of 9:40 a.m. Said deposition was taken pursuant to Notice, heretofore filed, to be read and used as evidence on behalf of the Plaintiff at the trial in the above-captioned action and all other purposes as permitted by the Kentucky Rules of Civil Procedure.

\* \* \* \* \*

## APPEARANCES:

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ATTORNEYS FOR DEFENDANT

## ALSO PRESENT:

Angela Edwards,  
Video Technician

Paul Kearney, M.D.

I N D E X

WITNESS: DEAN FRED DeBEER, M.D. PAGES

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1 THE VIDEO TECHNICIAN: We're on the  
2 video record. I'm Angela Edwards, the video  
3 technician. The court reporter is  
4 Desiree Wright.

5 We're here today to take the  
6 deposition of Dean Fred DeBeer, at 333 West  
7 Vine Street in Lexington, Kentucky.

8 This deposition is being taken  
9 pursuant to Notice in the Fayette Circuit  
10 Court; styled Paul Kearney, M.D. versus the  
11 University of Kentucky.

12 The date is October 4th, 2016. The  
13 time is 9:44 a.m.

14 Counsel will now introduce  
15 themselves and state who they represent.

16 MR. PAFUNDA: Bernard Pafunda, on  
17 behalf of Dr. Paul Kearney.

18 MR. BEAUMAN: Bryan Beauman, for the  
19 University.

20 The witness, DEAN FRED DEBEER, M.D.,  
21 after first being duly sworn, was examined  
22 and testified as follows:

23 EXAMINATION

24 By Mr. Pafunda:

25 Q As has already been mentioned,

1       you're Dean Fred DeBeer; is that correct?

2               A           I was dean. I stepped down in April  
3 of this year.

4               Q           You were dean from when?

5               A           I was dean for about five -- five  
6 years.

7               Q           And that's after Emery -- Dr. Emery  
8 Wilson was acting dean?

9               A           That's right.

10              Q           And Dr. Emery Wilson succeeded  
11 Dr. Perman as dean?

12              A           Yes.

13              Q           And Dr. Wilson was dean from when to  
14 when, approximately?

15              A           I became dean...

16              Q           The year will be fine.

17              A           I think '11, '12 -- '12 -- '12.  
18 '12, '13, '14, '15, '16. I became dean I think in  
19 '11.

20              Q           And Dr. Wilson was dean for how long  
21 a period of time as acting dean?

22              A           About a year, year and a bit longer.

23              Q           Then that would place Dr. Perman's  
24 tenure at approximately 2010?

25              A           Eight years, I think.

1 (CURRICULUM VITAE OF DEAN FRED  
2 DeBEER, M.D., WAS MARKED AS PLAINTIFF'S  
3 EXHIBIT NO. 1 FOR PURPOSES OF  
4 IDENTIFICATION.)

5 Q Thank you.

6 Dean DeBeer, I asked you to bring  
7 certain documents to the deposition today and you  
8 furnished some of those documents per my request.  
9 One of them, we marked it as Plaintiff's Exhibit  
10 No. One, which is your curriculum vitae; correct?

11 A Yes.

12 Q And is this an up-to-date CV?

13 A No. It's 2015, so I think it still  
14 says I'm dean. And there's some research ventures  
15 that are not mentioned, grants that I just  
16 recently -- will receive in disclosure, so it's  
17 not up to date.

18 Q Other than some recent grants that  
19 you -- that you're going to receive and the fact  
20 that you -- you're no longer dean, it is up to  
21 date, though?

22 A I believe so, yes.

23 (FOUR-PAGE SERIES OF E-MAILS WAS  
24 MARKED AS PLAINTIFF'S EXHIBIT NO. 2 FOR  
25 PURPOSES OF IDENTIFICATION.)

1 Q Thank you.

2 And Exhibit No. 2, if you would just  
3 take a moment and look at it and identify it for  
4 the record, please.

5 MR. BEAUMAN: Bernie, I think we may  
6 have a stapling issue.

7 MR. PAFUNDA: You correct it any way  
8 you see fit.

9 MR. BEAUMAN: My pages go 1, 3, 4,  
10 2, so they may not be in order.

11 MR. PAFUNDA: Well, I've seemed to  
12 have made that mistake in the past, so you  
13 go ahead and feel free to do whatever you --

14 MR. BEAUMAN: It's all there.  
15 They're just not in the right order.

16 THE WITNESS: It is the chain e-mail  
17 letter?

18 MR. BEAUMAN: Right. There's two  
19 e-mails that we produced. That's one of  
20 them.

21 THE WITNESS: I recognize that.

22 Q And what do these e-mails concern?

23 A It concerns Dr. Kearney's conduct of  
24 himself during Grand Rounds.

25 Q And specifically what conduct?

1           A           Well, at Grand Rounds with the issue  
2 of surgical lotions, sterilizing entities were  
3 discussed, and the possible inflammability --  
4 flammables. They are flammable some of them. And  
5 related to I believe some incendiary incidents in  
6 the OR.

7           Q           And when you say incendiary, just in  
8 terms of plain street language, there was a fire  
9 in the OR with respect --

10          A           Oh, I'm unaware of the details of  
11 that. I believe there was an event that involved  
12 some fire.

13          Q           If you'll look at what's been marked  
14 in these documents as Page 3, you'll see it's  
15 mentioned that there was a fire safety issue; am I  
16 correct?

17          A           That was what I was informed of.

18          Q           All right. And as dean, you were  
19 not present when this occurred?

20          A           No.

21          Q           And you weren't present at the Grand  
22 Rounds meeting itself?

23          A           No.

24          Q           And what comment or comments  
25 allegedly did Dr. Kearney make at that Grand



1       Rounds?

2                   A           The comment I think  
3       Dr. Zwischenberger refers to is -- I believe  
4       this -- I actually ran into Dr. Chang yesterday in  
5       the corridor and confirmed it. This letter is  
6       directed at Dr. Chang, or whoever. The comment of  
7       pencil-pushing peckerheads, when it deals with an  
8       issue so critical, so central as patient safety.  
9       Dr. Chang was the senior surgeon responsible for  
10      aspects of OR management, and that comment was in  
11      my view very significant.

12                   Q           And some follow-up points on that  
13      comment, and what occurred. You'll note in the  
14      items that are boxed, and by boxed I mean circled,  
15      if you will, just read those in the record. One  
16      of them starts, "In one case," and if you would  
17      read that into the record, please.

18                                Do you see there's a circle next to  
19      it?

20                                MR. BEAUMAN: Can I show him?

21                                MR. PAFUNDA: Yes.

22                   A            "In one case, the surgeon's pants  
23      literally caught on fire.

24                                The second case, we put the flaming  
25      stick in a trash can and that caused the trash can

1 to catch on fire."

2 Q That brings us full circle to my  
3 earlier question, there was, in fact, according to  
4 these comments in this e-mail list, a fire in the  
5 OR at the time?

6 A It was an incendiary event, yes. I  
7 forgot the detail of what exactly happened, but  
8 that's -- that's what raised this to a very  
9 serious issue.

10 Q And when you say a serious issue,  
11 the incendiary events themselves would raise a  
12 serious issue in terms of patient care, would they  
13 not?

14 A Absolutely.

15 Q And were you aware of the fact that  
16 Dr. Kearney was asked to make his comments with  
17 respect to the particular, and I'll call it  
18 lotion, that was 70 percent alcohol?

19 A I don't know.

20 Q So what you were relying on was the  
21 information that Dr. Zwischenberger passed on to  
22 you; is that correct?

23 A Yes.

24 Q And I take it from --

25 A And that information was

1 corroborated by Dr. Chang.

2 Q And when Dr. Chang corroborated it,  
3 that was yesterday in a conversation?

4 A No. It was an e-mail to that  
5 effect.

6 Q Do you still have a copy of that  
7 e-mail --

8 MR. BEAUMAN: Yes.

9 Q -- from Dr. Chang?

10 A Yes.

11 Q Would you identify it for the  
12 record, please, in this pile of e-mails?

13 MR. BEAUMAN: (Indicating.)

14 MR. PAFUNDA: And we'll mark that as  
15 Plaintiff's Exhibit 3 as a separate exhibit.

16 MR. BEAUMAN: You know there's two  
17 e-mails; right?

18 MR. PAFUNDA: No, I don't.

19 MR. BEAUMAN: I'm sorry.

20 MR. PAFUNDA: I thought you handed me  
21 three and they were all the same.

22 MR. BEAUMAN: No.

23 THE WITNESS: I'm sorry.

24 MR. PAFUNDA: No, that's fine.

25 Q Dean DeBeer, there's a separate

1 e-mail that may contain the chain?

2 MR. BEAUMAN: Right, so now you've  
3 marked Exhibit 2, a chain that I guess ends  
4 on November 13?

5 MR. PAFUNDA: Correct.

6 MR. BEAUMAN: Your next exhibit, may  
7 I suggest --

8 MR. PAFUNDA: Exhibit 3.

9 MR. BEAUMAN: -- would be a later  
10 e-mail that ends on December 10th from  
11 Dr. Chang to Dr. Zwischenberger. But there  
12 are e-mails from Dr. Chang in both of these  
13 chain e-mails.

14 MR. PAFUNDA: All separate, Bryan?

15 MR. BEAUMAN: Huh?

16 MR. PAFUNDA: These are --

17 MR. BEAUMAN: I made you mul -- I  
18 made you and -- yes, I made you multiple  
19 copies.

20 MR. PAFUNDA: All right.

21 (E-MAIL DATED 12/10/15 WAS MARKED AS  
22 PLAINTIFF'S EXHIBIT NO. 3 FOR PURPOSES OF  
23 IDENTIFICATION.)

24 Q I've marked that as Plaintiff's  
25 Exhibit No. 3, and would you please, Dean DeBeer,

1 identify that document?

2 A I recognize it.

3 Q And what is it? It's an e-mail from  
4 whom to whom?

5 A It's an e-mail from Dr. Chang to  
6 Dr. Zwischenberger.

7 Q And the date of it, please?

8 A December the 10th.

9 Q And the subject matter?

10 A That Dr. Kearney was at Grand Rounds  
11 and he referred to hospital administrators as  
12 pencil-pushing peckerheads. There followed a  
13 discussion, and that Dr. Chang, who was I believe  
14 the individual -- the administrative surgeon  
15 responsible for handling this. I can say for  
16 myself that I was not inclined to continue the  
17 discussion after that comment.

18 Q So in your opinion, did Dr. Chang  
19 find the comment to be unprofessional?

20 A I don't know. I certainly found it  
21 to be unsuited, unprofessional and even an  
22 endangerment to patient safety. There are such  
23 comments against administrative surgeons that just  
24 tends to want to set up a system that's safe for  
25 patients.

1           Q           How is the comment pencil-pushing  
2 peckerheads, how did that threaten patient safety?

3           A           It threatens a patient's safety by  
4 having -- by changing a culture, a culture that an  
5 individual surgeon can have a view that is  
6 contrary to the system in the OR, and that such  
7 dissent, using such language, is acceptable. It  
8 endangers patients safety by letting residents in  
9 the Grand Rounds be exposed to such language and  
10 then a culture of ill discipline and indiscipline.  
11 It would be much better to direct objections  
12 privately rather than in public where residents  
13 are present.

14           Q           And with respect to that, did the  
15 fire itself that's noted in the e-mail chain that  
16 was marked as Plaintiff's Exhibit No. 2, did the  
17 fire itself threaten patient safety?

18           A           I have no idea.

19           Q           But based on what you read, and you  
20 can infer, would you agree that it did threaten  
21 patient safety?

22           A           It threatened many things, patient  
23 safety included.

24           Q           And likewise, did it also, the fire  
25 itself, threaten physician safety?

1           A           I guess so. For sure. Threatens  
2 everybody's safety.

3           Q           And was there investigation done by  
4 anyone to determine why that lotion, for lack of a  
5 better expression, was flammable or was set on  
6 fire at that time?

7           A           I have no technical knowledge of  
8 that.

9           Q           Well, did you initiate an  
10 investigation?

11          A           It's not my purview.

12          Q           Whose purview is it?

13          A           It's the hospital administration  
14 purview.

15          Q           Were you aware at the time that  
16 Dr. Kearney was Dr. Chang's mentor?

17          A           I was aware of that many years. If  
18 I may go back, I think the fact that the hospital  
19 administration acted on that event was exactly the  
20 fact that Dr. Chang communicated this risk at the  
21 Grand Rounds to effect a change in the way these  
22 inflammable lotions were used or even the type of  
23 lotion.

24          Q           And I take it from your remark that  
25 a change was effectuated?

1           A           I -- I don't know.

2           Q           Well, I also asked you to bring with  
3 you a copy of the student complaint, and I take it  
4 from our remarks before we went on the record that  
5 you don't have a copy of that?

6           A           Well, I have a copy of it which --  
7 which doesn't have any -- I never -- I can't  
8 recall -- I never knew the name of the student.

9           Q           But what copy do you have?

10           MR. BEAUMAN: That's already been  
11 produced. Page -- bear with me.

12           MR. PAFUNDA: I will, if you are  
13 brief.

14           MR. BEAUMAN: Pages 79 through 82 of  
15 our production.

16           MR. PAFUNDA: Thank you.

17           MR. BEAUMAN: You are welcome.

18           Q           And I also asked you to bring with  
19 you a copy of any and all complaints regarding  
20 Dr. Paul Kearney that Dr. Zwischenberger provided  
21 to you. Do you have copies of written complaints  
22 that Dr. Zwischenberger provided to you?

23           A           All documentation that  
24 Dr. Zwischenberger provided to me was these  
25 letters that you have, and anything that related



1 to his personnel file would have been administered  
2 to be placed in his personnel file. It was  
3 already there, and the duplicates would not have  
4 been placed. This is all handled  
5 administratively. I have nothing else that  
6 Zwischenberger brought to me specifically. We had  
7 conversations about Dr. Kearney.

8 Q I'm not interested in the  
9 conversations. My question is the documentation  
10 that Dr. Zwischenberger provided to you about  
11 complaints concerning Dr. Paul Kearney?

12 A No, I don't have those.

13 Q When you say you don't have those,  
14 did Dr. Zwischenberger provide you with  
15 documentation regarding complaints?

16 A I can't recall.

17 Q When you say you can't recall, if he  
18 had provided you such documentation, would you  
19 have -- would it be in your office?

20 A It would probably be in his  
21 personnel file.

22 Q When you say probably, is there  
23 another place or places where that documentation  
24 might be deposited?

25 A Not that I know of.

1           Q           So if such documentation did, in  
2 fact, exist, it would be in Dr. Kearney's  
3 personnel file; is that correct?

4           A           Most likely.

5           Q           Well, when you say most likely,  
6 that's an equivocal response, wouldn't you agree?

7           A           Well, it depends on what the  
8 documentation is. It depends whether it's mundane  
9 or whether it's something that validates. I can't  
10 recall Dr. Zwischenberger, you know, bringing such  
11 documentation to me. I'm sure that if he sent it  
12 through the dean's office, it would have been  
13 administratively handled and filed.

14          Q           And so if he, in fact, had sent it  
15 to the dean's office, to take it off the equivocal  
16 dime, it would be in his file, correct, personnel  
17 file?

18          A           I presume so.

19          Q           Is there anyone in your office that  
20 we could double check that fact with?

21          A           You need to check with the dean's  
22 office.

23          Q           Well, I'm speaking with the -- you  
24 are the person who is the former dean and was the  
25 dean at the time; correct?

1           A           Yeah, you can check. I do not know  
2 who handles this currently. In those days I think  
3 that -- that you can check with Charlotte Baker or  
4 Christy Anderson.

5           Q           One of those two people or both of  
6 them would certainly have the answer to the  
7 question?

8           A           What went into Dr. Kearney's file,  
9 yes.

10          Q           Is Dr. Kearney's official personnel  
11 file maintained in the dean's office?

12          A           Yes.

13          Q           At all times; correct?

14          A           I believe so.

15          Q           And when you say you believe so, is  
16 that someone else's job to maintain that file?

17          A           It's an administrative function of  
18 somebody. I think Charlotte Baker probably does  
19 it.

20          Q           And if it's not Charlotte Baker, who  
21 else?

22          A           I don't know who else.

23          Q           Well, during your time as dean, if  
24 you had to name those persons who were responsible  
25 for maintaining the personnel files other than

1 Charlotte, who else would you name?

2 A I would say that Charlotte Baker --  
3 Christy Anderson is the overall in charge of  
4 administration. I think Charlotte has individuals  
5 reporting to her, working with her. I do not know  
6 their names, and they would probably also be  
7 dealing with it. It's 8 or 900 faculty. It's a  
8 huge amount of data, so it's handled by  
9 Charlotte Baker administratively with staff, and I  
10 don't know how many staff she has and who handles  
11 it.

12 Q Well, and if you would for the  
13 record, explain or describe your job duties when  
14 you were in the position as Dean of the College of  
15 Medicine?

16 A Well, I'm responsible for the  
17 academic programs of the College of Medicine,  
18 teaching, and it means the research. And I also  
19 had another job which was Vice President of  
20 Clinical Academic Affairs. And these job  
21 descriptions are available at the University if  
22 you want to pull them. They will show you exactly  
23 what the responsibilities were. Where I dealt  
24 mostly with the --

25 Q Well, let me interrupt you just for

1 a moment. I want you to describe those  
2 responsibilities as they fall into both  
3 categories.

4 A I was responsible for maintaining a  
5 high-quality teaching of all students in the  
6 College of Medicine, and making sure that these  
7 programs remain accredited, and also  
8 responsibility to provide the manpower that this  
9 Commonwealth and beyond needs.

10 In terms of research, it is an  
11 academic medical center, and we pursue a  
12 philosophy that you cannot practice sophisticated  
13 quaternary medicine without intimately  
14 underpinning it with research. These two are  
15 intimately intertwined. And that these two  
16 develop the research support for the sophisticated  
17 medicine that UK Healthcare practices. That was  
18 my responsibility.

19 Q So as I understand it, and correct  
20 me if I'm mistaken, what you're explaining is that  
21 No. 1, you had the academic responsibility which  
22 was grounded in the research; is that correct?

23 A No. The academic responsibility has  
24 many components. The word academic is all  
25 encompassing. It involves that integral, which

1 means imparting knowledge, ordering knowledge,  
2 discovering knowledge, practicing knowledge. It's  
3 an integral. You can't define it in little  
4 blocks. It is keeping a continuum going of  
5 discovering knowledge, ordering and restructuring  
6 knowledge, applying knowledge, teaching knowledge.

7 Q But you also mentioned it, and maybe  
8 I -- we're speaking at cross-purposes, that there  
9 was an a significant research factor in that  
10 academic realm; correct?

11 A Absolutely.

12 Q And you were aware of the fact that  
13 over his tenure at the University of Kentucky,  
14 Dr. Kearney received 27 teaching awards?

15 A Yes.

16 Q And you are also aware that over his  
17 tenure as a trauma surgeon at the University of  
18 Kentucky that he received throughout that tenured  
19 period almost unanimously excellent evaluations;  
20 is that correct?

21 A Yes.

22 Q Who evaluates your job performance  
23 or your job performance as the dean?

24 A The provost and the Vice President  
25 for -- Executive Vice President for Healthcare,

1 Dr. Michael Karpf.

2 Q So on the organizational chart, I  
3 take it that the provost, who is -- Tim Tracy at  
4 the time was one provost?

5 A Tim was -- it was Christine Riordan  
6 and then Tim was interim for some time and then he  
7 became provost. I don't know exactly who was at  
8 that time.

9 Q Christine Riordan, though, during  
10 her tenure as provost, what type of evaluations  
11 did she render of your job performance?

12 A I have no idea.

13 Q So you're not privy to your own --

14 A Oh, I am. They're pretty generic.

15 Q Well, give me an idea.

16 A I have no idea. I think 4, 3's.  
17 Something like that.

18 Q And those job performance  
19 evaluations, I take it they're in written form;  
20 correct?

21 A I imagine so, yes.

22 Q And where are they maintained?

23 A They're maintained at the  
24 University.

25 Q Did Mr. Tracy also when he served as

1 provost do a job performance evaluation of you?

2 A Yes. Interim provost, or provost.  
3 I'm not sure what he was at the time. Yes, I  
4 think so.

5 Q Why did Ms. Riordan leave the  
6 position as provost, if you know?

7 A I am not really able or -- to  
8 discuss that.

9 Q What had you heard were the reason  
10 or reasons why she left?

11 A I don't think that's something I  
12 would like to discuss because this is just...

13 Q You have to answer the question.  
14 It's discoverable. Why did she leave, the reason  
15 or reasons that you've heard?

16 A Various reasons, and such I'm  
17 reluctant to point to a reason, various form --  
18 and it's a lot of talk, so I think if you ask for  
19 a reason, I can't give you a reason. Obviously  
20 she -- she decided to pursue other options.

21 Q No, I understand that, but my  
22 question was the reason or reasons that she left  
23 that you've heard?

24 A That she didn't function as an ideal  
25 member of a university executive leadership group.



1 That's amongst others what I've heard, but I have  
2 no firsthand knowledge of these things.

3 Q I understand that.

4 Any other reasons that you may have  
5 heard why she left?

6 A Am I obligated to get into such  
7 baseness and hearsay?

8 MR. BEAUMAN: Wait. Give me a  
9 second.

10 MR. PAFUNDA: Before you get the  
11 second. If we may just --

12 MR. BEAUMAN: If you want to move on,  
13 that's fine.

14 MR. PAFUNDA: No, what I wanted you  
15 to do is identify these, if these are  
16 different than the exhibits I've marked.

17 (Off the record.)

18 MR. PAFUNDA: I'll move on to another  
19 subject --

20 MR. BEAUMAN: That's good.

21 MR. PAFUNDA: -- and then you can  
22 have a break with your client.

23 MR. BEAUMAN: We need a break.

24 MRL PAFUNDA: I apologize,  
25 Dean DeBeer. I should have told you that

1           you can take a break to get some of the free  
2           coffee or water.

3                   THE WITNESS: I take the liberty of  
4           helping myself.

5                   MR. PAFUNDA: Thank you.

6           Q       And your accent, I take it you are  
7           from where?

8           A       I'm South African by birth.

9           Q       And you came to the United States  
10          approximately when?

11          A       About 28, 29 years ago.

12          Q       And Lexington, Kentucky, you began  
13          your tenure at the University of Kentucky  
14          approximately when?

15          A       Yes. Oh, 1989, I think.

16          Q       We just mentioned a moment ago your  
17          job performance evaluations; how would you  
18          evaluate your performance as Dean of the College  
19          of Medicine?

20          A       Adequate. I wish I could have done  
21          more.

22          Q       In what regard?

23          A       I think that I wish I could have  
24          advanced the research agenda more. I think the  
25          clinical growth was, which is really an interface

1 between the College of Medicine and UK Healthcare,  
2 was spectacular. In 2003, when I became Chairman  
3 of Medicine, there were crisis financial problems.  
4 We were a small hospital in decline.

5 Q Now, when you say we were a small  
6 hospital in decline, put it in --

7 A 19,000 discharges placed us at the  
8 25 percentile of academic medical centers.

9 Q And when was this?

10 A 2003. We didn't have the financial  
11 resources to really be an academic medical center  
12 of repute. When Mike Karpf came in 2003, I became  
13 Chairman of Internal Medicine. We pursued the  
14 philosophy that no Kentuckian would leave Kentucky  
15 for sophisticated healthcare, and we needed to  
16 provide that sophisticated quaternary healthcare  
17 to Kentucky. Those that could afford it, could  
18 always leave, but numerous -- the bulk of  
19 Kentuckians can't afford it, and we believe we  
20 have to have access to that sort of healthcare.  
21 And so it was a growing of the old clinical  
22 ventures, which I think grew at the rate which is  
23 among the fastest in the country, to generate the  
24 sort of financial means to cross-fund the academic  
25 ventures, particularly the research recruitment,

1 to elevate us to that level where we can really  
2 serve Kentucky and provide high-end healthcare to  
3 all of Kentucky. So I think the clinical growth  
4 is the engine that provided the financial ability,  
5 the cash flow, to invest in the college, and if  
6 you look at the investment in the College of  
7 Medicine, it has exploded, such as every other  
8 aspect of the College of Medicine, teaching and  
9 research.

10 Q You knew during -- over a period of  
11 years that Dr. Kearney was instrumental in raising  
12 the trauma center to a Level 1 trauma center, did  
13 you not?

14 A I'm sure he contributed.

15 Q When you say contributed, my  
16 question was more pointed, that he was  
17 instrumental in raising the trauma center to a  
18 Level 1?

19 A I have no detailed knowledge of who  
20 did what in the trauma center. He was surely a  
21 respected trauma surgeon.

22 Q And it did reach a Level 1 status;  
23 correct?

24 A Yes, absolutely.

25 Q Is it still at a Level 1 status?

1           A           I believe so.

2           Q           And in the picture that you've just  
3 drawn in terms of what you tried to achieve, is  
4 that important that the trauma center itself is at  
5 a Level 1 status?

6           A           Yes, because that means --

7           Q           Explain that, please.

8           A           If you want to serve Kentucky by  
9 delivering the highest-end care, most complex  
10 care, then a nationally recognized cancer center,  
11 like NCI designation or comprehensive status,  
12 Level 1 trauma center, very advanced NICU,  
13 Neonatal Intensive Care, these are all absolute  
14 prerogatives.

15          Q           Are you aware of the fact that in  
16 the Department of Surgery more surgeons have left  
17 the Department of Surgery in the last five years  
18 than did in the previous 25 years?

19          A           Sometimes people leave. Sometimes  
20 people come. Sometimes you're glad people leave.  
21 I do not know the number.

22          Q           And you're familiar with the  
23 person --

24          A           What I do know is that the surgical  
25 volume is still very high and growing.

1           Q           All right. Which would necessitate,  
2 would it not, that more surgeons be available to  
3 address that?

4           A           Yes.

5           Q           And when I say more surgeons  
6 available, I mean more full-time surgeons in the  
7 Department of Surgery?

8           A           Yes.

9           Q           And you're familiar, are you not,  
10 with the Press Ganey Employee Engagement Survey?

11          A           Yes.

12          Q           Both for the years 2015 and 2016?

13          A           Yes.

14          Q           Where did the Department of Surgery  
15 rate in that engagement survey?

16          A           It rated -- it rated poorly.

17          Q           And when you say it rated poorly,  
18 can you give me a statistical --

19          A           I don't know offhand.

20          Q           Would it be in the bottom 1 percent?

21          A           I don't know where it rated.

22          Q           Do you know that Dr. Zwischenberger  
23 admitted that his department rated the lowest of  
24 any of the departments in that engagement survey?

25          A           Yes. I am aware that surgery rated

1 the lowest.

2 Q Why wasn't then  
3 Dr. Zwischenberger removed as the Chairman of the  
4 Department of Surgery?

5 A I believe that by the time that  
6 survey came to be, I was in the process of  
7 stepping out as dean. I don't -- I don't even  
8 think that that's -- when was that survey  
9 released?

10 Q I don't know. Well, I'll ask you.

11 A I don't know whether I was still  
12 dean at that time. But in any case, the fact is  
13 that such a survey is multifactorial. It is --  
14 basically it is financial. It's basically the  
15 idea that -- that you should earn more money, we  
16 deserve more money, and it is basically the  
17 perception that there is more money to pay us, so  
18 thought that if you can invest this much into new  
19 hospitals and all of these ventures, you should  
20 pay us more. It's a financial issue I think was a  
21 significant contributor to that -- that  
22 dissatisfaction.

23 Q Well, the dissatisfaction was at  
24 least noted by the survey in 2015, was it not?

25 A Yes.

1           Q           And returning to my earlier  
2 question, why wasn't Dr. Zwischenberger removed as  
3 Chair of the Department of Surgery if his  
4 performance was so poor?

5           A           Well, I don't think  
6 Dr. Zwischenberger's performance was that poor. I  
7 think that the survey reflected a culture amongst  
8 the surgeons which was an entitlement that they  
9 should get paid more, and they don't get their  
10 fair share, and I don't think it is correct. I  
11 think that our faculty are very well compensated,  
12 and that -- that any significant increases in  
13 salaries would be out of line with what is  
14 reasonable.

15          Q           In other words, to make it clear,  
16 any increases in salaries would be unwarranted?

17          A           I would imagine that it would be  
18 better to say increases in salaries that would  
19 meet the ambition of those that were dissatisfied  
20 would be not only unwarranted, it would be  
21 financially detrimental to the whole system.

22          Q           And when you say financially  
23 detrimental to the whole system, isn't it  
24 important for -- to attract physicians to offer  
25 them as -- at least a competitive compensation?



1           A           Absolutely, and that is why KMSF  
2           existed initially, changed over the years, and we  
3           have no problem with attracting physicians. We  
4           recruit easily when I was dean. And if you look  
5           at the growth in faculty over the years, it's been  
6           absolutely phenomenal.

7           Q           Well, you -- you added to your  
8           response a qualifier. You said that Kentucky  
9           Medical Services Foundation was initially set up  
10          to provide that competitive compensation, but it  
11          changed over the years?

12          A           Sure.

13          Q           How --

14          A           Really what I meant was that paying  
15          physicians at credible market-related salaries for  
16          academic dispositions to the surgical is  
17          absolutely essential. You cannot pay much less  
18          than the University of Louisville or University of  
19          Cincinnati. You'll have a movement that  
20          destabilizes.

21          Q           Which is commonsense; correct?

22          A           Sure.

23          Q           And so you mentioned the Kentucky  
24          Medical Services Foundation, and it was set up  
25          initially, created to provide those funds for

1 those competitive salaries; correct?

2 A Yes. Nearly 40 years ago.

3 Q Yes. And during that 40-year  
4 period, Kentucky Medical Services Foundation  
5 maintained that it was unaffiliated with the  
6 University of Kentucky, did it not?

7 A I believe it is.

8 Q And as a matter of fact, as dean,  
9 you became president of Kentucky Medical Services  
10 Foundation, did you not?

11 A I did.

12 Q And during what period of time, from  
13 when to when?

14 A I was president when I became dean,  
15 and I very soon afterwards, I think within months,  
16 stepped down because the Kentucky Medical Services  
17 Foundation is a complex entity and I did not have  
18 the -- I believed I did not have sufficient time  
19 to do justice to KMSF, and the bylaws were changed  
20 to elect a new president, which became Dr. Mark  
21 Randall. And the bylaws state that I as dean  
22 could at any moment in time step back to be  
23 president if I thought that any reason exists why  
24 I should go back.

25 Q The bylaws changed though so that

1 you wouldn't have to be elected as president of  
2 KMSF; am I correct?

3 A No, I was the president of KMSF.  
4 I'm the president of KMSF under the previous  
5 bylaws because I was dean. The dean was the  
6 president. So I voluntarily stepped down as  
7 president because it is a significant  
8 administrative operation that I did not think -- I  
9 knew I couldn't do it thoroughly and do the  
10 academic ventures and do the other  
11 responsibilities of a dean. I mean, I all of the  
12 years had a very active research program, so I'm  
13 different than many other deans and chairs, in  
14 that I conduct active research, and so I judged  
15 that to be the case and I retained the right in  
16 the bylaws to step back if there should be any  
17 reason why I should step back, and Dr. Randall was  
18 elected.

19 Q And just briefly, so I'm not lost in  
20 the fog, you became president of Kentucky Medical  
21 Services Foundation simply by virtue of the fact  
22 that you were the dean?

23 A Yes.

24 Q Had the bylaws been changed at any  
25 point so that the dean automatically became

1 president of Kentucky Medical Services  
2 Foundation?

3 A That was the bylaw change then. I  
4 don't know what the bylaws is now. I do know the  
5 current dean is not the president of KMSF.  
6 Mark Randall remains that, so I presume there's no  
7 big change.

8 Q And as president of Kentucky Medical  
9 Services Foundation, to continue on the line --  
10 it's a nonprofit, nonmember private corporation;  
11 correct?

12 A Yes, 501(c).

13 Q And during your tenure as president,  
14 as well as your familiarity with it, you knew that  
15 Kentucky Medical Services Foundation was not  
16 subject to open records requests; is that correct?

17 A That is what our legal counsel  
18 informed us.

19 Q No, I'm asking you for your opinion,  
20 not legal counsel?

21 A I mean, I don't know what is subject  
22 to open record requests or not. I ask legal  
23 counsel whether it's open records or not. And I  
24 was led to believe, I do believe, that is not part  
25 of the University. It serves the University.

1 It's outside of the University, and as such, is  
2 not subject to open records.

3 Q And to draw the picture even  
4 clearer, those that compose the Board of Directors  
5 of Kentucky Medical Services Foundation are also  
6 chairs of the various departments in the College  
7 of Medicine?

8 A That is the current state. Under  
9 the previous -- under Dr. Perman, all chairs  
10 became -- changes were made in the bylaws which at  
11 that time not all chairs were on the board of  
12 KMSF, and so changes were made and now all chairs  
13 are board members of KMSF.

14 Q And during your tenure as dean, that  
15 was also true that all chairs were board members?

16 A Yes, I believe so.

17 Q And who determined who selects a  
18 chair over the department?

19 A Well, it's a whole process in the  
20 University. Ultimately the choice is the dean's,  
21 and -- but it's a whole process that needs  
22 consultation with faculty and with numerous  
23 stakeholders. And generally there's a search  
24 committee, and generally a list of three  
25 candidates, usually not ranked, is presented to

1 the dean.

2 Q But for purposes of our discussion  
3 here today, the dean gets the ultimate call on who  
4 shall be selected as a chair of the department; is  
5 that correct?

6 A Ultimate, with approval of the Board  
7 of Trustees.

8 Q And in the chain of command, other  
9 than the provost, the Executive Vice President of  
10 Health Affairs, is -- is the Executive Vice  
11 President of Health Affairs one of your superiors?

12 A Yes.

13 Q And in what regard? How does the  
14 Executive Vice President of Health Affairs  
15 supervise you as the dean?

16 A The -- my job description is both  
17 dean and Vice President for Clinical Academic  
18 Affairs, and so that position that I reported to  
19 the Vice President -- Executive Vice President for  
20 Health Affairs, Dr. Michael Karpf, and that is to  
21 assure intimate interfacing.

22 Q I don't know what intimate -- what  
23 is intimate interfacing? Is that one-on-one  
24 between you and Dr. Karpf, or is it a much broader  
25 concept?

1           A           Let me finish.

2                   Intimate interfacing between  
3 physicians and their clinical practice and the  
4 hospital and its clinical needs, so that it's a  
5 harmonious integrated system, not physicians  
6 practicing for their own account. It is -- what  
7 we had many, many years ago in KMSF, that  
8 physicians were practicing to maximum income  
9 generation. To KMSF, that does not suit  
10 developing a system that serves Kentucky.

11                   For instance, if surgeons want to  
12 start an off-site surgical practice that competes  
13 with our hospital, does not serve us serving  
14 Kentucky at the very quaternary level of medicine.  
15 That is a competition with the hospital. And so  
16 that intricate, intimate interfacing means that we  
17 all are on one team to build one academic medical  
18 center that is this integral of research,  
19 information, all of the information, high-quality  
20 care, that integral that is a team, so it's a  
21 single entity. It can't be divided into  
22 physicians that sort of contract themselves to a  
23 hospital. That's not the system that we developed  
24 and that's the very basis of that integration,  
25 which effected this massive growth both in quality

1 and in volumes.

2 Q Now, when you say massive growth in  
3 quality and volume, are you saying at the present  
4 time the University of Kentucky healthcare system  
5 is one of the best healthcare systems available?

6 A Well, I can only refer you to the --  
7 to yesterday, I think that we -- of a hundred  
8 academic medical centers in a survey, a very --  
9 you know, you can check my credentials on this,  
10 Mr. Beauman can get it to you, we were placed  
11 25th, so surely we were amongst the better ones,  
12 surely not at the bottom.

13 Q And what survey is that?

14 A Four stars, ranked among the top 25  
15 academic medical centers, and four stars out of  
16 five in the ranking for quality, among the  
17 nation's top 25 academic medical centers. Overall  
18 ranked 21st among more than a hundred academic  
19 medical centers that submit data, including the  
20 study -- our new ranking in quality and  
21 accountability and survey, sir.

22 Q What survey is that?

23 MR. BEAUMAN: You'll need to slow  
24 down a little bit for Desiree.

25 A It's -- it's a Vizient survey. You



1 can find out what Vizient is.

2 Q Is that the -- what it's identified  
3 as, Vizient?

4 A That's what it says.

5 Q And how do you spell that for the  
6 record?

7 A V-I-Z-I-E-N-T.

8 Q Is that a nationally recognized  
9 survey?

10 A I believe it is.

11 MR. BEAUMAN: Where, it wasn't on the  
12 internet?

13 THE WITNESS: I think that the  
14 quality control would be confirmed for many  
15 other parameters. You know, all quality and  
16 cancer care can be inferred from having an  
17 NCI designated cancer center, and -- and  
18 it's -- and the credentialing, and I think  
19 that quality can be inferred from the nurses  
20 Magnet program award that they received. So  
21 the quality is from transplants, all of  
22 these credentialing strong spots. And if  
23 you look at, say, cardiac transplants, we  
24 have had an explosive growth, and our  
25 quality is excellent. So you can look at

1           any aspect of it.

2           Q           Let's look at one aspect of it, and  
3 you mentioned or touched upon it, Kentucky Medical  
4 Services Foundation, as you've explained earlier,  
5 has changed over the years, has it not?

6           A           Yes.

7           Q           Would you tell me from your vantage  
8 point how it's changed over the years or morphed  
9 into something that it didn't start out to be?

10          A           Initially, 40 years ago, it started  
11 out as --

12          Q           When we were all younger.

13          A           Yeah, yeah.

14                   MR. PAFUNDA:   Except you, Bryan.

15                   **THE WITNESS:**   You're younger than I  
16 am, so is --

17          Q           I don't think -- how old are you?

18          A           I'm 69.

19          Q           68.

20                   Go ahead.

21          A           Well, you Kentuckians wear diapers a  
22 long time.

23          Q           Well, I'm a New Yorker, which is  
24 almost as close to Afrikaans as you can get.

25                   Go ahead.

1 THE WITNESS: Better take that out.

2 A You know, when it started,  
3 physician -- the billing system, people service  
4 system, allowed physicians to bill for their  
5 services, and that -- that billing -- that billing  
6 paid for salaries.

7 Q Let me interrupt you. You correct  
8 me where I step out of bounds.

9 A Uh-huh.

10 Q Kentucky Medical Services Foundation  
11 is a third-party billing service; correct?

12 A It's not a billing service, but it  
13 bills for the UK physicians.

14 Q And the UK physicians actually by  
15 virtue of their work, the clinicians, generate the  
16 billings; correct?

17 A Yes.

18 Q And then Kentucky Medical Services  
19 Foundation, for lack of a better expression,  
20 collects payment based on those billings; correct?

21 A Yes.

22 Q And so at present, for the last  
23 couple of years, it's run about a 200 million  
24 dollar budget, if not even more?

25 A 230 million of it.

1 Q Thank you.

2 And those billings are then --  
3 originally planned that those funds were to be  
4 returned to the physicians as well as the Dean's  
5 Enrichment Fund; am I correct?

6 A Yes.

7 Q Now, if we may, the Dean's  
8 Enrichment Fund, what is it and what purposes does  
9 it serve?

10 A The Dean's Enrichment Fund is an 8  
11 percent overage in KMSF that is used to fund a  
12 huge variety of ventures that --

13 Q Before we go into all of the  
14 ventures, to save some time, are there -- is there  
15 any documentation that explains what the Dean's  
16 Enrichment Fund is, and what those funds are to be  
17 used for?

18 A Yes.

19 Q And what is that documentation?

20 A It is at the discretion of the dean.

21 Q But, I mean, is there a document or  
22 a regulation?

23 A Yes, I believe there is.

24 Q Well, you were the dean; is there or  
25 isn't there?

1           A           The Fund is to be expended at the  
2           discretion of the dean, and the accounting of the  
3           Fund on the -- I've actually looked at it about a  
4           year ago. The myriad of expenses paid from there  
5           is -- I think that -- that Roxie Allison was the  
6           Assistant Chief Financial Officer.

7           Q           You have to --

8           A           She actually gave that information  
9           to I believe the Herald-Leader.

10          Q           You're not telling me to go to the  
11          Herald-Leader, are you?

12          A           Well, you can get it yourself.  
13          They'll give it to you.

14          Q           No, I can ask you for it.

15          A           I -- I don't have it.

16          Q           Now, you mentioned a lady's name and  
17          I didn't catch it?

18          A           Roxanne Allison.

19          Q           Thank you very much.

20                        Now, you've mentioned off the cuff  
21          the Herald-Leader, so I take it that the Dean's  
22          Enrichment Fund made payments to the Iroquois Hunt  
23          Club?

24          A           Iroquois Hunt Club, and it leased  
25          aircraft and it funded the Child Development

1 Center. Iroquois Hunt Club, to develop a health  
2 system that delivers high-end care to Kentucky --

3 Q You don't need foxhounds, do you?

4 A Look, if you're going to take this  
5 conversation down to a --

6 Q I am.

7 A Then -- then it's really a little  
8 bit silly.

9 Q You mentioned it.

10 A It is a massively successful event  
11 to engage with those that have the financial means  
12 and resources through philanthropy to advance UK  
13 Healthcare. Huge amounts of philanthropy from  
14 very blessed individuals have supported UK  
15 Healthcare, look at the new hospital, and so that  
16 such events are absolutely reasonable.

17 Q So --

18 A In the sense that you do not take  
19 them to Billy's Barbecue when you actually want to  
20 raise the sort of money that was raised over the  
21 last years. You might take lawyers there, but not  
22 that type of people I'm talking about.

23 The second thing is --

24 Q No, let me just interrupt you so  
25 that we can get on track with this, because you've

1 raised an interesting point.

2 So in your opinion as dean, you,  
3 No. 1, had absolute discretion on how to spend the  
4 funds in the Dean's Enrichment Fund; is that  
5 correct?

6 A Sure.

7 Q All right. Unbridled, absolute  
8 discretion?

9 A That's what I believe.

10 Q And that's what you did?

11 A Within, you know, the parameters  
12 that are reasonable.

13 Q Right.

14 Now, when you were spending these  
15 funds exercising your discretion, did you confer  
16 with other administrators, and, if so, with whom?

17 A It depends on the -- on the amount  
18 spent. There were huge amounts of small money  
19 spent. I mean, scholarships to impoverished  
20 students, which is 4 to 5, \$10,000, that I didn't  
21 confer. I just acted, and it's all there. I  
22 think when it was significant amounts like the  
23 Child Development Center or the social events that  
24 have a purpose and it brought together the whole  
25 of UK Healthcare leadership with an expanded group

1 of individuals that actually had a enormous  
2 positive effect on the way UK Healthcare is  
3 perceived, the College of Medicine being part of  
4 that, is perceived as what we would like as  
5 elegant, high-quality healthcare. And so when it  
6 deals with something like the Child Development  
7 Center, of course we consulted on that and thought  
8 it was the right thing to do, and we decided that  
9 it was the right thing to do.

10 Q Now, with -- but that's my point of  
11 my question. When you say we consulted, you  
12 consulted with whom when you made the decision  
13 with respect to say the Child Development Center?

14 A I -- I surely talked to  
15 Mark Birdwhistell, to Murray Clark, to Mike Karpf.  
16 I surely talked to others in my office. I can't  
17 recall who, but I definitely talked to  
18 Mark Birdwhistell, talked to Mike Karpf, talked to  
19 Murray Clark about the need for such a venture.

20 Q And such a venture in terms of  
21 dollar amount to the Child Development Center out  
22 of the Dean's Enrichment Fund came to what?

23 A A few million.

24 Q When you say a few million, would I  
25 be correct in stating 5 million?



1           A           I think less than that, but  
2 probably --

3           Q           But in the neighborhood of 5  
4 million?

5           A           Yes.

6           Q           And was that a loan to be paid back?

7           A           I don't recall the exact detail of  
8 that contractual obligation.

9           Q           And since it came through the Dean's  
10 Enrichment Fund, did it need approval by the Board  
11 of Trustees of the University of Kentucky?

12          A           No, I don't believe it does.

13          Q           In fact, it does not; isn't that  
14 correct?

15          A           Yes.

16          Q           So, in other words, the funds that  
17 were expended to the Iroquois Hunt Club, that  
18 didn't need approval from the Board of Trustees?

19          A           No.

20          Q           Likewise, the lease of the airplane  
21 didn't need approval of the Board of Trustees?

22          A           Well, let me -- if you want to put  
23 it in this context -- allow me to expand on that.  
24 That --

25          Q           I would --

1           A           -- I personally leased an airplane  
2           to go to Green Bay, Wisconsin that was expended  
3           from those funds. I went to Green Bay, Wisconsin  
4           to study branch medical campuses and the branch  
5           medical campus that we want to establish, is being  
6           established, in Bowling Green, Connie Smith is CEO  
7           of Bowling Green Medical Center, went with and two  
8           of her surgeons, and the provosts and deans from  
9           Western Kentucky University, and Connie told me  
10          that she cannot have two surgeons out for more  
11          than a day. They cannot take a commercial flight  
12          to Green Bay. She wants to be there and gone the  
13          same day. So I paid a portion. Connie paid a  
14          portion. Western Kentucky paid a portion. The  
15          plane went from Bowling Green, picked me up in  
16          Lexington with some others, went to Green Bay and  
17          came back. That was -- on other ventures that the  
18          plane was leased was absolutely reasonable in  
19          terms of very high-compensated individuals going  
20          to Charleston, West Virginia for a meeting.

21                        You can't have numbers of very  
22          highly-compensated physicians and others out for a  
23          long period of time. We don't even have the  
24          manpower in some of these areas to compensate for  
25          that, so these plane leases were part of our

1 business operations, as is very normal, I'm sure  
2 you know, in any 1.6 billion dollar size operation  
3 that is expanding not only in Kentucky but  
4 regionally.

5 Q Well, likewise -- so since we're  
6 discussing plane trips, did you accompany  
7 Dr. Karpf to Hazard Cardiology on a visit on a  
8 leased plane?

9 A Yes.

10 Q And at that time, were bonus checks  
11 handed out to Hazard Cardiology?

12 A I have no idea.

13 Q Well, you were present, were you  
14 not?

15 A I have no idea if bonus checks were  
16 handed out. What I know is -- let me finish.

17 Q No, let me --

18 A I drove to Hazard with Mark -- with  
19 I think Mark Birdwhistell, and then an eminent  
20 individual in Hazard offered us his plane to fly  
21 back.

22 Q Mr. Garman?

23 A No. It was somebody else. It  
24 was -- I don't know.

25 Q Mr. Craft?

1           A           I have no idea.

2           Q           Hazard is not a big town.

3           A           I think it was Mr. Craft, actually,  
4 but I'm not sure. It was a Cessna jet.

5 Mr. Garman's is a Beechcraft Twin Turboprop.

6           Q           So when you drove to Hazard, just to  
7 hammer my point home, how long a trip was that?  
8 Two hours at the most?

9           A           Well, you must be driving very fast.  
10 It takes us about two and half hours, sometimes  
11 three hours.

12          Q           So you've got a three-hour  
13 turnaround. So that's six hours in the car;  
14 correct?

15          A           Yeah.

16          Q           And so my question is: Hazard  
17 Cardiology, are you familiar with the purchase of  
18 that practice?

19          A           I'm aware of it, yes.

20          Q           And you're still a member, are you  
21 not, of Kentucky Medical Services Foundation?

22          A           Yes.

23          Q           And is member the correct term?

24          A           I'm a physician and I have clinical  
25 privileges, and as such, I --

1 Q I mean, on the Board of Kentucky  
2 Medical --

3 A No, no, no.

4 Q Ex-officio member?

5 A No.

6 Q And with respect to --

7 A I belong to Kentucky Medical  
8 Services Foundation. I have no position in it  
9 since I stepped down as dean.

10 Q We're a little bit ahead of  
11 ourselves, but as I understand it, the money for  
12 the Dean's Enrichment Fund comes from Kentucky  
13 Medical Services Foundation; am I correct?

14 A Yes.

15 Q And likewise, the Dean's Enrichment  
16 Fund also paid for Dr. Karpf's membership or box  
17 at Keeneland?

18 A I presume that it did, and I think  
19 that -- that it's absolutely appropriate because  
20 it's easy to take these things like Iroquois Hunt  
21 Club and a box at Keeneland as if these are  
22 egregious luxuries. They are essential components  
23 that elevated UK Healthcare, through Mike Karpf  
24 personally, from an entity that was not really  
25 respected even in the State to the most -- one of

1 the most respected and largest healthcare delivery  
2 systems. It's Mike's engagement with those that  
3 have the means and have the influence to shape  
4 healthcare and its future. And that engagement  
5 occurs in certain venues. It does not occur, as I  
6 said, at Burger King.

7 Q Well, you said Billy's Barbecue  
8 where lawyers would go?

9 A That -- that probably was a good  
10 choice for lawyers.

11 Q All right.

12 Now, let's just take that one step  
13 further. Why didn't Dr. Karpf pay for his own  
14 box?

15 A I think there are all sorts of  
16 financial issues that if you -- exactly why KMSF  
17 was created in the beginning, to generate income  
18 for physicians, to advance physician practice, and  
19 outside the University, it can spend outside the  
20 State financial statutes, and that's what it makes  
21 essential to have in an effective business.

22 For instance, if you -- if Good  
23 Samaritan Hospital, buying it was bought by KMSF.  
24 Why, because KMSF could act instantly and quickly.  
25 It is nimble. If you had to buy Good Samaritan

1 Hospital though the State system, it would have  
2 taken us an incredibly long time, and we wouldn't  
3 be able to buy Good Samaritan. Buying Good  
4 Samaritan at that critical time was central to UK  
5 Healthcare's development. So it offers the  
6 outside-the-state restrictions the ability to  
7 engage in effective business transactions.

8 Q And likewise in those business  
9 transactions, if KMSF is conducting those business  
10 transactions, it doesn't have to go by state  
11 procurement laws; isn't that true?

12 A No.

13 Q Oh, it does?

14 A No, it doesn't have to go by them,  
15 no.

16 Q All right. Thank you.

17 So we're in agreement that it can  
18 get around state procurement laws because --

19 A I disagree with your language, get  
20 around. It is not subjective. Get around has the  
21 implication of something devious, which I resent.

22 Q Well, let's -- let's take it off the  
23 devious platter.

24 The business dealings of Kentucky  
25 Medical Services Foundation don't have any Board

1 of Trustees oversight; is that correct?

2 A That's correct.

3 Q And when I say Board of Trustees,  
4 for the record, I mean Board of Trustees of the  
5 University of Kentucky?

6 A Yes.

7 Q And likewise, someone at some point  
8 in time had to make the decision to use the Dean's  
9 Enrichment Fund for these expenditures that you've  
10 pointed out rather than the University of Kentucky  
11 money; correct?

12 A Whenever an expenditure would be --  
13 not fit under the state procurement entities,  
14 whenever it was essential for advancing our  
15 business cause, from hunt clubs to planes to a box  
16 at Keeneland, that advances our cause as a  
17 physician practice, as an integrated practice and,  
18 yes, it was discussed with me and I approved it.

19 Q Well, so am I correct in stating  
20 that you're the one who made the ultimate decision  
21 to use your examples to spend the money on  
22 foxhounds at the Uni -- at Iroquois Hunt Club?

23 A You are totally inaccurate in the  
24 sense that -- in the sense you make a statement  
25 "Spend money on foxhounds."



1                   I've never spent a cent on a  
2                   foxhound. The Iroquois Hunt Club was a club at  
3                   which a social event was held, there's no  
4                   foxhounds involved, and I did not spend money on  
5                   foxhounds. So let's at least be accurate in the  
6                   picture you're trying to paint.

7                   Q           Well, then let's be accurate with  
8                   the picture you're trying to paint in terms of  
9                   that expenditure to Iroquois Hunt Club, how did  
10                  that did boost specifically UK Healthcare?

11                  A           If you look at who was present at  
12                  that meeting, all of the chairs, all of the  
13                  leaders, selected faculty, they're intermingling  
14                  with eminent individuals in the -- in the City. I  
15                  can give example. At that -- personal example.

16                                At that hunt club, I had a long  
17                  conversation with Mr. Bill Sisson, and enormously  
18                  facilitated interactions by having Central Baptist  
19                  as a training facility for our institution. It  
20                  created an ambiance of knowing each other. I knew  
21                  Bill for a long time, but I haven't spoken to him  
22                  in a long time. That allows me to meet  
23                  Bill Sisson again. That's a personal example  
24                  which usually advantaged me.

25                  Q           Let's take that personal example.

1 He's the CEO of Central Baptist?

2 A In Lexington, yes.

3 Q And that's how far from the  
4 University of Kentucky, your office specifically?  
5 Say ten blocks at the most?

6 A I guess so.

7 Q And you can pick up the phone and  
8 call him, can you not, arrange an appointment and  
9 a luncheon with him at Billy's Barbecue?

10 A There is a reason why one has an  
11 ambiance to communicate to certain individuals.  
12 It's a setting that is more appropriate, and that  
13 was the judgment why the Illinois -- the Iroquois  
14 Hunt Club, the building, that beautiful old  
15 building and stone on that little river is a good  
16 setting that creates an ambiance. It creates an  
17 ambiance of pride in chairs and others that  
18 contributed to the growth, and allows us to  
19 communicate with those that can facilitate in the  
20 future growth of UK Healthcare.

21 Q Does the Dean's Enrichment Fund also  
22 use money to purchase art for the hospital?

23 A That is absolutely correct in the  
24 sense that creating an ambiance of beauty and of  
25 culture and quality with such a new hospital is

1 exactly important. You cannot have an austere  
2 health system that looks like a -- if you look at  
3 any of the health competitors that we face. If  
4 you look at Cincinnati Children's, though we're  
5 not competing with them. If you look at Mayo or  
6 Cleveland Clinic, they have beautiful art. It's  
7 an ambiance that radiates the positive. And so  
8 yes, it's a...

9 MR. PAFUNDA: Dean, we have to take a  
10 break because the tape is about to run out,  
11 because you and I seem to talk forever, so  
12 we have to take a break.

13 THE WITNESS: It's you that's --

14 MR. PAFUNDA: No, it's you.

15 THE WITNESS: You're asking all  
16 these silly questions.

17 THE VIDEO TECHNICIAN: The time is  
18 10:45.

19 (Brief recess.)

20 THE VIDEO TECHNICIAN: Back on the  
21 video record at 10:46.

22 CONTINUED EXAMINATION

23 By Mr. Pafunda:

24 Q If you recall, Dean DeBeer, you  
25 attended a College of Medicine faculty council

1 meeting on April 15th, 2014?

2 A I believe I might have done. I did  
3 a number of those I presume.

4 Q I'll show you what we'll mark as  
5 Plaintiff's Exhibit No. 4. That was marked in a  
6 previous deposition 3. In this one it's 4.

7 (MINUTES DATED 4/15/14 WAS MARKED AS  
8 PLAINTIFF'S EXHIBIT NO. 4 FOR PURPOSES OF  
9 IDENTIFICATION.)

10 MR. PAFUNDA: Do you want a copy,  
11 Bryan?

12 MR. BEAUMAN: Yes.

13 MR. PAFUNDA: Thank you.

14 MR. BEAUMAN: I believe I've seen it  
15 before.

16 MR. PAFUNDA: Probably.

17 Q Have you had an opportunity to  
18 review those minutes?

19 A No.

20 Q If you would, look at them again.

21 A I've looked at it.

22 Q I know.

23 Are those the minutes of the  
24 meeting?

25 A Yes.

1 Q Thank you.

2 And in attendance at that meeting,  
3 you'll see a column that says "Basic Sciences" and  
4 underneath it, would you read the names in the  
5 record?

6 A Lee Blonder, Davy Jones,  
7 Mike Mendenhall, Hollie Swanson, Melinda Wilson,  
8 Basic Sciences.

9 Do you want me to read the clinical  
10 too?

11 Q No.

12 And with regard to the Basic  
13 Sciences, they're in the College of Medicine; is  
14 that correct?

15 A Yes.

16 Q And they're not licensed physicians;  
17 is that correct?

18 A No.

19 Q And, in fact, they're not medical  
20 doctors at all, are they?

21 A No.

22 Q Ph.D.'s?

23 A Yes.

24 Q Do they teach in the College of  
25 Medicine?

1           A           Amongst others, yes.

2           Q           Do they teach medical students and  
3 residents?

4           A           Some of them do; some don't.

5           Q           Who do and who don't?

6           A           Oh, I can't off -- Davy Jones  
7 doesn't teach medical students. Mike Mendenhall,  
8 I don't know. I don't think Hollie Swan -- I  
9 don't know whether Hollie Swanson does. I don't  
10 know exactly who teaches what. I don't think  
11 Lee Blonder does. I don't know who teaches  
12 medical students.

13           Q           So you're saying that on those  
14 listed as basic scientists, none of them teach  
15 either residents or medical students?

16           A           I'm saying I don't know. Some of  
17 them might. I don't know.

18           Q           But it's true, in fact, that Basic  
19 Sciences do teach medical residents and medical  
20 students; is that correct?

21           A           No, it's not correct. I'm unaware  
22 that they on any sort of regular basis teach  
23 residents.

24           Q           I didn't say regular. I'm just  
25 asking if they teach students or residents?

1           A           I'm unaware that they teach  
2 residents.

3           Q           What about medical students?

4           A           Some of them might teach medical  
5 students.

6           Q           In fact, do the Basic Sciences, or  
7 some of them, teach medical students?

8           A           Yes.

9           Q           Do they attend Grand Rounds?

10          A           Rarely, I presume.

11          Q           My question is, do they attend Grand  
12 Rounds?

13          A           Not on a regular basis, as far as I  
14 know.

15          Q           But your answer would then be, yes,  
16 but not on a regular basis?

17          A           I would say yes, I believe, without  
18 having data, exceptionally.

19          Q           And likewise, do the Basic Sciences  
20 attend lectures that are given to either the  
21 medical students, the residents or the clinical  
22 physicians?

23          A           I presume they may. I have no idea  
24 who attends what lectures.

25          Q           And those lectures are open to the

1 public, are they not?

2 A It depends, I guess.

3 Q But there are lectures given that  
4 are open to the public?

5 A There are.

6 Q And any member of the public,  
7 whether a licensed physician or not, can attend  
8 those lectures; isn't that true?

9 A I presume so, yes.

10 Q And if you'll look at the body of  
11 those minutes, what was discussed -- one of the  
12 subjects was the Practice Plan Committee?

13 A Yes.

14 Q What is your understanding of the  
15 Practice Plan Committee?

16 A Well, it goes back to the discussion  
17 that we had on KMSF and its foundation and its  
18 evolution. The Practice Plan Committee is defined  
19 as an addendum to the College of Medicine Practice  
20 Plan. There's two practice plans, the College of  
21 Medicine Practice Plan and Departmental Practice  
22 Plan. And in the addendum to the College of  
23 Medicine Practice Plan, this committee was  
24 established.

25 Q And there's a date June of 2009; is



1           that correct?

2                   A           Well, I don't know, but it sounds  
3           about right.

4                   Q           Well, if you'll look at the minutes,  
5           does that trigger your memory in any regard with  
6           respect to the creation of the Practice Plan?

7                   A           I was not dean at that time.  
8           Jay Perman was dean, and I think it's -- I think  
9           it's right.

10                  Q           And the members -- the information  
11           concerning the Practice Plan Committee, is that  
12           maintained in the dean's offices?

13                  A           It would be.

14                  Q           And who would -- I take it you don't  
15           have hands-on on that information; correct?

16                  A           Well, the Practice Plan Committee in  
17           the time I was dean up to this time, you know, I  
18           was really unaware of their existence. They were  
19           the elected members of the KMSF Board, but it's  
20           one of these committees in the University that  
21           becomes defunct because its purpose changes. You  
22           know, where initially this Practice Plan Committee  
23           had significant value when physicians could earn  
24           their own income. That was lost when physician  
25           earnings couldn't even remotely compensate for

1 their income. You know, currently physician  
2 income benefits and all other payments amounts to  
3 about 190 million a year. 51 million of that  
4 comes from UK Healthcare. So the physician  
5 ability to earn through fee for services billing  
6 is usually short of the income that needs to be  
7 paid to physicians to achieve market value --  
8 market compatibility and the recruitment of  
9 high-quality physicians.

10 I think that as such, the Practice  
11 Plan Committee and the practice plans became less  
12 relevant in the sense that if 51 million of your  
13 salary support comes from a single source, you  
14 know, that is where the focus is, rather than on  
15 how you distribute what you have. And I think in  
16 the big scheme of things, it was -- it was this  
17 interfacing with UK Healthcare, which was  
18 exceedingly positive in causing the growth and  
19 development, but also became the financial  
20 reality.

21 And it's not only UK Healthcare.  
22 It's everywhere. I mean, the physicians billing  
23 for their own services and making a living off  
24 that is becoming rarer. There's a huge surge in  
25 employing physicians at hospitals, so this

1 committee became, you know, I would say somewhat  
2 of a dinosaur.

3 I think the implication -- the  
4 suspicion always was, oh, this committee would get  
5 us more money out of KMSF. The recognition was  
6 never there that whatever KMSF generated couldn't  
7 possibly pay physician salaries. Physician  
8 salaries, as I said, 51 million out of 190  
9 million, I don't know what it was over the years,  
10 comes from UK Healthcare. So the emphasis is in  
11 practice in harmony with UK Healthcare as an  
12 integral and not practice for yourself. That's  
13 the principle.

14 So this committee, I was even  
15 unaware of its existence, and since it was  
16 rediscovered and was formulated, I've never --  
17 it's an advisory committee to the dean, which I  
18 take it that they can advise me if they want to,  
19 or I can ask them for advice if I need to. I  
20 never asked them for advice, I don't believe. I  
21 asked Emery Wilson whether -- he asked me and  
22 wasn't aware of the existence either during the  
23 year that he was interim dean, and they never  
24 offered any advice to me. So I think it's a  
25 committee that really was created at the time when

1 the whole financial paradigm was very different  
2 than what it is today.

3 Today KMSF and physicians'  
4 compensations cannot sustain itself even for a  
5 very short period of time.

6 Q So at the time that you were dean  
7 right up until the date of this meeting, you were  
8 unaware of the existence of the Practice Plan  
9 Committee; is that correct?

10 A No, that -- yes, I was aware of it  
11 sometime by Cliff Iler, and they told me that this  
12 committee is something that people are interested  
13 in. I looked at the addendum and noted the  
14 committee. There are many committees at the  
15 University that become defunct with time. It's an  
16 organism that tends to do that --

17 Q So --

18 A -- so it didn't surprise me that  
19 there was such a committee.

20 Q -- to cut through the response, what  
21 you're saying is that prior to this April 15, 2014  
22 meeting, you were unaware of the existence of the  
23 Practice Plan Committee, correct, until Cliff Iler  
24 informed you of its existence; is that a correct  
25 statement?

1           A           I was not -- this committee was not  
2 prominent in my mind, i.e., I'm sure I've heard of  
3 it before somewhere. It was not something that I  
4 integrated into my management of the financial  
5 affairs of the college in the sense that it was,  
6 you know -- as shown with time could not  
7 contribute significantly in that -- that the  
8 practice plans in its relevance to physician  
9 compensation has changed as the hospital, UK  
10 Healthcare, provides a huge support for physician  
11 compensation. That had become the new interface.  
12 An interfacing with UK Healthcare to gain that  
13 support is integrally more important than  
14 distributing resources that are totally inadequate  
15 to pay physicians.

16           Q           I didn't ask you about the viability  
17 of the Practice Plan Committee. I asked you about  
18 the existence of the Practice Plan Committee, did  
19 I not?

20           A           It was not prominent in my mind.

21           Q           All right. In fact, you weren't  
22 even aware of it; isn't that correct?

23           A           I didn't think of it, and I might  
24 have been vaguely aware of it, but it didn't  
25 feature in any decisions I made or needed to

1 feature, because it's an advisory committee. It's  
2 an advisory committee. It needs to proffer me  
3 advice. If it's felt that it needs to proffer me  
4 advice, it could proffer me advice. If I needed  
5 to seek advice, I would have probably gone to  
6 them. I would have asked where I can seek such  
7 advice. But such advice is no longer relevant in  
8 the sense that the financial paradigm has changed,  
9 so it is an unimportant committee, and it so  
10 remains in my view a completely unimportant  
11 committee.

12 Q You mentioned the financial paradigm  
13 on several occasions, but that's not my question.

14 My question is, and I'll make it  
15 even clearer, from the time you became dean until  
16 April 15th, 2014, the Practice Plan Committee  
17 never ever sought your advice; is that correct?

18 A I never sought their advice and they  
19 never proffered advice to me.

20 Q And did the Practice Plan Committee  
21 from the time you became dean either in 2010 or  
22 2011 to 2014 even exist or function?

23 A It existed in that it was according  
24 to addendum the members of the KMSF Board. I do  
25 not believe it functioned.

1 Q Thank you.

2 And --

3 A Because it had no function.

4 Q All right. Thank you. And --

5 A And since it was resurrected, it  
6 also didn't function, because it had no function,  
7 or has no function.

8 Q And you are aware that as of the  
9 date of this meeting, you were informed by  
10 Dr. Karpf to supply to the members of the faculty  
11 council the names of the individuals who comprised  
12 the Practice Plan Committee; isn't that correct?

13 A The Practice Plan Committee --  
14 I've -- I can't recall the detail of that.

15 Q Well, if you will, take a moment and  
16 just look, and it's the third line up, and you'll  
17 see it begins, "Karpf agreed," and if you'll just  
18 read that sentence into the record.

19 A "EVPHA Karpf gave a summary of his  
20 experiences at other academic health centers and  
21 described events that led to the current" --

22 MR. BEAUMAN: You have to go slow.

23 Q No, you're going to have to slow  
24 down. I'm from New York and I don't have a  
25 problem with the pecuniary expressions, but if

1 you'll see the sentence, and I can point it out to  
2 you, and I just want you to read it into the  
3 record slowly. Not too slowly or we'll be here  
4 all day.

5 Q Just read that sentence.

6 A "Karpf agreed to send information  
7 regarding the identify of the faculty members of  
8 the Practice Plan."

9 Q Thank you.

10 The Practice Plan Committee  
11 information was at that time maintained in the  
12 dean's office, was it not?

13 A It was the members of the KMSF Board  
14 that was elected by the faculty that constituted  
15 the members of the Practice Plan Committee.

16 Q My question is, was the information  
17 concerning those members' identity maintained in  
18 the dean's office?

19 A No, it was not to my knowledge,  
20 because it was a committee that was not  
21 functioning, not advising or being sought advice  
22 from, and as such, it existed as the members of  
23 the KMSF Board elected by the faculty. So there's  
24 no -- the dean's office doesn't maintain any list  
25 of such faculty that happens -- as far as I



1 know -- that happens to be on the elected members  
2 of the KMSF Board. That is a KMSF responsibility.

3 Q So as dean, as of 2000 -- April of  
4 2014, what you've made clear is that the Practice  
5 Plan Committee was, in fact, defunct; correct?

6 A That advisory committee, only  
7 advisory to the dean, even before I became dean, I  
8 believe, was defunct due to the huge paradigm  
9 change in the financial remuneration that affects  
10 physicians' salaries.

11 Q I'll show you what is marked as  
12 Exhibit 5. It's just an organizational chart for  
13 easy reference.

14 (UNIVERSITY OF KENTUCKY  
15 ADMINISTRATIVE ORGANIZATION CHART, OFFICE OF  
16 THE PRESIDENT, WAS MARKED AS PLAINTIFF'S  
17 EXHIBIT NO. 5 FOR PURPOSES OF  
18 IDENTIFICATION.)

19 MR. BEAUMAN: Okay.

20 **THE WITNESS:** (Indicating.)

21 Q The position of dean in the College  
22 of Medicine, where would that fall in this  
23 organizational chart?

24 A It would report both to the provost  
25 and the EVPHA, and I don't know exactly how you

1 delineate it. It would report -- it would report  
2 both -- it's not -- you can't do it in a single  
3 plane. It will have to be in another dimension of  
4 reporting to Mike Karpf and the provost.

5 Q So I take it -- and you touched upon  
6 this earlier, so the dean reports to the provost  
7 as well as the Executive Vice President for Health  
8 Affairs; is that --

9 A The dean reports to the provost for  
10 academic ventures. The Executive Vice President  
11 for Clinical Academic Affairs reports to  
12 Mike Karpf.

13 Q If you'll notice in this  
14 organizational chart, general counsel is listed  
15 below the president; correct?

16 A Yes.

17 Q So in the chain of command, the  
18 general counsel is just one step below the  
19 president of the University; correct?

20 A This is what this is drawn at, but I  
21 didn't draw this and I don't think I've seen it  
22 before, but yes, that's what it says, yes.

23 Q And would the general counsel be in  
24 a position given this administrative chart to give  
25 the dean of the College of Medicine instruction on

1           how to run the College of Medicine?

2           A           No.

3           Q           All right.

4           A           Though I would surely appreciate  
5           advice --

6           Q           Other -- that's not my question.

7           A           -- from anybody.

8           Q           Not advice, but would he be in a  
9           position --

10          A           No.

11          Q           All right. Had you seen this  
12          document before today?

13          A           I can't recall, but I'm pretty sure  
14          I must have seen it -- perhaps I have, yes. I'm  
15          almost certain I've seen it.

16          Q           Do you recall when it was presented  
17          to you?

18          A           I can't.

19          Q           Well, was it within the last couple  
20          of weeks?

21          A           No. It was a long time ago.  
22          Dr. Boulanger came to my office and presented this  
23          issue as -- as an event and described what  
24          transpired.

25          Q           And so I take it --

1           A           Merely informed me that this was  
2           ongoing.

3           Q           And I take it that was at about the  
4           time of September 5, 2014; correct?

5           A           I presume, yeah, it was about 2014,  
6           fall.

7                       MR. PAFUNDA:   Attorney/client  
8           communication.

9                       MR. BEAUMAN:   I'm sure it was.

10                      (LETTER DATED 9/5/14, ONE PAGE, WAS  
11           MARKED AS PLAINTIFF'S EXHIBIT NO. 6 FOR  
12           PURPOSES OF IDENTIFICATION.)

13           Q           I take it that you concurred in  
14           Dr. Boulanger's action; is that correct?

15           A           I did not concur, nor not concur. I  
16           was merely made aware of this incident that was  
17           being investigated. I was not asked to concur or  
18           not concur.

19           Q           So Dr. Boulanger on his own took  
20           this action without any input from you; is that  
21           correct?

22           A           This is a Chief Medical Officer  
23           prerogative and I believe that -- that this action  
24           was taken after informing me of the  
25           event -- of the alleged event, and the

1 investigation that is going to be pursued.

2 Q That's not my question. My question  
3 is: Did Dr. Boulanger unilaterally take this  
4 action? Yes or no?

5 A I can't recall the exact  
6 communications between me and Dr. Boulanger. I am  
7 aware that he discussed it with me, informed me of  
8 it, and what I agreed to, what I supported and  
9 what I didn't support, I don't know. I knew this  
10 event occurred and that it was being investigated,  
11 and that certain steps as delineated here were  
12 taken were --

13 MR. BEAUMAN: Actually, that's not  
14 what he's asking you. What he's asking you  
15 is if you know if Dr. Boulanger concurred  
16 with anyone else before he took these steps?

17 **THE WITNESS:** I don't know.

18 Q Did he confer with you, to back up?

19 A He might have. I can't remember.

20 Q Well, let's take a look at it. If  
21 you would, Dean DeBeer, on September 5th, 2014,  
22 was Dr. Paul Kearney a tenured professor at the  
23 University of Kentucky?

24 A And he still is.

25 Q So the answer to my question is yes?

1 A Yes.

2 Q Thank you.

3 Was he teaching at the time, on  
4 September 5th, 2014?

5 A I believe, yes.

6 Q Was he teaching medical students as  
7 well as residents?

8 A I believe, yes.

9 Q Was he attending Grand Rounds?

10 A I believe, yes.

11 Q Did he have access to the campus at  
12 the University of Kentucky?

13 A I believe, yes.

14 Q Could he talk to members of the  
15 University of Kentucky employees?

16 A I believe, yes.

17 Q And colleagues?

18 A Yes.

19 Q Thank you.

20 If you will, Item No. 3, would you  
21 read that into the record, please?

22 A "You shall have no contact with any  
23 faculty, residents, medical students or staff."

24 Q And did you agree with that?

25 A I agreed with that. I can't

1 directly recall authorizing Dr. Boulanger to do  
2 that. I really can't remember, but I agree with  
3 that in the sense that I had never looked at  
4 Dr. Kearney's personnel file, but about that time,  
5 for the first time, Dr. Kearney's personnel file  
6 came to my attention. And what I found in there  
7 disturbed me severely. It was a track record of  
8 what I would call demeaning intimidation  
9 through -- I can only describe as abusive and  
10 vulgar words over many years, and -- that involved  
11 all of these individuals mentioned here, and this  
12 event concerned me in the context of that  
13 personnel file --

14 Q So --

15 A -- that it needed to be taken  
16 seriously, and that such what I considered  
17 potential behavior, because it was being  
18 investigated, placed a risk.

19 Q Aside from that, my question is, did  
20 you concur with the action that was taken that's  
21 expressed in numerical Paragraph 3 of this e-mail?

22 A I think that the answer is if I look  
23 at it now, I'd say it was a reasonable action.

24 Q I'm not asking you that. I'm  
25 talking about back then on or about September 5th,

1 did you concur with Dr. Boulanger's directive that  
2 Dr. Kearney had no contact with any faculty,  
3 resident, medical students or staff?

4 A Well, I can't remember, but I think  
5 that looking at it now, yes, I think we had  
6 discussions. It's two years ago. I can't  
7 remember exactly who concurred what. At the same  
8 time, there was another educational venture that  
9 was being explored, and so the two events came  
10 together, and it was the two events that --  
11 particularly this one -- that led me to look at  
12 Dr. Kearney's personnel file for the first time  
13 and disturbed me severely. So in the context of  
14 did I concur, did I write this, did I say yes, I  
15 can't exactly remember. But I think it's  
16 perfectly reasonable given the track the record,  
17 this event and other events.

18 Q Well, let's back up a moment. You  
19 took no action to prevent this directive and --  
20 that's listed in numerical Paragraph 3, did you?

21 A I did not have any -- I did not send  
22 this or write.

23 Q And likewise, in numerical  
24 Paragraph 1, if you would read that into the  
25 record, please?



1           A            "You shall not be present on the  
2           University of Kentucky campus unless you or a  
3           member of your family is in need of emergency  
4           medical services."

5           Q            You took no action as dean of the  
6           College of Medicine to rescind that, did you?

7           A            No.

8           Q            So you, in fact, concurred with that  
9           action by Dr. Boulanger?

10          A            I think this action, which was what  
11          I would view as an emergency action, to the  
12          event -- the patient event that was being  
13          investigated was reasonable, because given  
14          Dr. Kearney's personnel file, given what I read in  
15          there of his track record, given this event which  
16          is being investigated, I believed that the -- has  
17          the potential to intimidate and humiliate faculty,  
18          residents, medical students and staff, and that  
19          his interactions with them, if this event proved  
20          to be correct, would be --

21          Q            So to answer my question in the  
22          affirmative, you would say yes, that you agreed  
23          with Dr. Boulanger banning Dr. Kearney from the  
24          University of Kentucky campus; correct?

25          A            I think -- you know, do I agree?

1 Q Did you agree?

2 A I did not agree to it. I just  
3 wasn't authorized -- I was never asked to approve  
4 this, but I think it was not -- it was  
5 understandable. Agree is one word. It's  
6 understandable that this -- this occurred.

7 Q Were you in a position to disagree  
8 with it or take any action in your position as  
9 Dean of the College of Medicine?

10 A I presume I was. I would have had  
11 to go to the provost and legal counsel.

12 Q Why would you have to go to legal  
13 counsel?

14 A Because it's a tenured faculty  
15 member, and if you act in such a way, you would  
16 probably need to see whether it's legal and within  
17 University regulations. I don't know all of the  
18 University regulations as pertains to conduct of  
19 regular Title III Series faculty.

20 Q In your opinion on or about  
21 September 5th, 2014, could a tenured faculty  
22 member be banned from the University of Kentucky  
23 campus?

24 A I don't know. I mean, Dr. Kearney  
25 is the very first tenured faculty member I

1 believe, at least in my 29 years, that has ever  
2 lost his clinical privileges and ever had this  
3 type of track record and ever was -- you know, so  
4 this is sort of a unique situation that I had no  
5 experience, and I don't even think there was even  
6 anything similar.

7 Q In other words, what you're saying  
8 is, Dr. Kearney is the first physician who didn't  
9 accept the settlement offer and go quietly into  
10 the night; isn't that correct?

11 MR. BEAUMAN: Object to form.

12 A Mr. Pafunda, you're making  
13 absolutely ridiculous statements.

14 Q Well, let's --

15 A It's -- I have no knowledge of that,  
16 and I think that -- that many other -- I'm sure  
17 some other, I don't even know their names,  
18 physicians when they recognized what they were  
19 doing, left the University. As such, Dr. Kearney  
20 elected to stay, and as is his right, and defend  
21 himself. But your statement is not something I  
22 even appreciate.

23 Q Well, let's take it one step further  
24 and see if you appreciate this, Dean DeBeer:

25 A Well, I didn't appreciate that. The

1 next step I probably won't.

2 Q Let's talk about Dr. Plunkett.

3 A Yeah.

4 Q Did he lose his clinical privileges?

5 A I'm unaware that he did.

6 Q Did he settle with the University?

7 A I believe he did.

8 Q Was he a physician whose work by  
9 virtue of his work that he should have lost his  
10 clinical privileges?

11 A I have no idea. I don't believe so.

12 Q You're the Dean of the College of  
13 Medicine, are you familiar with his work?

14 A I -- I don't believe so.

15 Q All right.

16 A From what I know, I don't believe  
17 so. It was never tested in a formal process.

18 Q If --

19 A Dr. Plunkett elected to leave us and  
20 a settlement was reached.

21 Q If a physician -- treatment of a  
22 patient falls below the standard of care such that  
23 he injures the patient -- seriously injures the  
24 patient or causes the patient's death, should that  
25 physician lose his clinical privileges?

1 MR. BEAUMAN: Object to the form.

2 A It should be investigated by the  
3 appropriate channels to exactly establish the  
4 facts and exactly what happened to make  
5 appropriate decisions.

6 Q If the appropriate decision in the  
7 investigation reaches the conclusion that the  
8 physician was negligent or grossly negligent, and  
9 that negligence or gross negligence caused serious  
10 physical injury to the patient or death, should  
11 that physician have lost his or her clinical  
12 privileges?

13 MR. BEAUMAN: Object to the form.

14 A It depends on this case. It depends  
15 on the details. You can't make such a generic  
16 statement and expect me to answer.

17 Q In your experience at the University  
18 over the years, has any physician lost their  
19 clinical privileges because they caused the  
20 patient's death or serious injury by virtue of  
21 being negligent or grossly negligent?

22 A I can't offer and think of anybody  
23 that did this.

24 Q All right. Thank you.

25 So the answer to my question is no;

1 correct?

2 A The answer is I don't know.

3 Q Well, isn't it true that the only  
4 physician in the last let's say 20 years that lost  
5 his clinical privileges is Dr. Kearney?

6 A Yes, I believe so.

7 Q Thank you.

8 I take it from your earlier response  
9 what you're saying to me is that Chief Medical  
10 Officer, his actions that he takes, his  
11 disciplinary actions that he takes would trump  
12 even your authority as dean; is that correct?

13 A No, I don't say that. I think  
14 that -- I can't recall the exact interplay between  
15 Bernie Boulanger, the Chief Medical Officer, and  
16 myself at that time. It's not a question of  
17 trumping. It's a question of communicating and  
18 deciding on an emergent basis what is a reasonable  
19 course of action while the alleged event is being  
20 investigated.

21 Q In your opinion, it was reasonable  
22 to ban Dr. Kearney from the University campus;  
23 correct?

24 MR. BEAUMAN: Object to the form.

25 A I -- I think after knowing all of

1 the facts --

2 Q No, I'm not --

3 A -- now, I think it was a wise  
4 precaution.

5 Q Did you think so at the time?

6 A I can't recall what I thought at the  
7 time. I can't even recall seeing it at the time.

8 Q Did you have e-mail communication  
9 with Dr. Boulanger as of September 5th, 2014, or  
10 thereabouts, with respect to Dr. Kearney?

11 A I can't recall.

12 Q If you, in fact, had any such e-mail  
13 communication regarding Dr. Kearney or the  
14 discipline of Dr. Kearney, where would it be  
15 maintained?

16 A It will be maintained in my e-mail.

17 Q Which is on your own personal  
18 computer?

19 A No. It's University server.

20 Q University server backup -- backed  
21 up?

22 A I -- I believe so.

23 Q All right. Thank you.

24 A My own personal e-mail now goes only  
25 back a few months.

1 Q No, I know. I'm talking about at  
2 the time.

3 A I -- I can't recall.

4 Q But there is a server that serves as  
5 a backup server; correct?

6 A I believe so.

7 Q Thank you.

8 If you will, I'll direct your  
9 attention to the next exhibit. I believe it's  
10 Exhibit 7 -- marked as Plaintiff's Exhibit 7.

11 (LETTER DATED 1/26/15, TWO PAGES, WAS  
12 MARKED AS PLAINTIFF'S EXHIBIT NO. 7 FOR  
13 PURPOSES OF IDENTIFICATION.)

14 A I've read it.

15 Q And if you would, sir --

16 MR. BEAUMAN: I think he's got two  
17 copies.

18 MR. PAFUNDA: Does he, Bryan?

19 Q If you would, Dean DeBeer, read into  
20 the record the conclusory paragraph on Page 2?

21 A "During your suspension, you shall  
22 not be present on the University of Kentucky  
23 campus unless you are -- you or a member of your  
24 family is in need of medical services. In  
25 addition, you shall not -- have no contact with



1 patients, faculty, residents, medical students or  
2 staff. Any communications you have with the  
3 University should be made by your attorney through  
4 the University's Office of Legal Counsel. If you  
5 have any questions related to this letter or the  
6 procedures summarized herein, please have your  
7 attorney contact Clifton Iler."

8 Q I take it that at the time this was  
9 sent out by Dr. Boulanger as Chief Medical  
10 Officer, you had an opportunity to review this  
11 correspondence?

12 A I can't recall.

13 Q Did you have an opportunity sometime  
14 prior to today to review this correspondence?

15 A I really can't recall. I mean,  
16 there's so many of these letters, they jumble in  
17 my mind. I think this is --

18 Q Has there been so many of these  
19 letters that have jumbled your mind with respect  
20 to the suspension of a physicians' clinical  
21 privileges?

22 A I think that -- that -- you're  
23 asking me whether I recall this letter, if I've  
24 seen it, I can't.

25 Q But my question -- follow-up

1 question was, have you actually looked at a  
2 number -- a number of correspondence concerning  
3 the suspension of physicians' clinical privileges?

4 A I have looked at a number of  
5 documents relating to Dr. Kearney's clinical  
6 privileges. I can't recall looking at any other  
7 physician's clinical privileges at this point.

8 Q Have there been any other physicians  
9 whose clinical privileges have been threatened to  
10 be suspended during your tenure as dean?

11 A It's an spectrum. There are some  
12 physicians who've come close to this and many --  
13 some elected to leave us and some is in the  
14 process, addressed.

15 Q And who are they?

16 A I'm not going to give you names.

17 Q And why aren't you going to give me  
18 names?

19 MR. BEAUMAN: That's going to get  
20 into a whole lot of other issues.

21 MR. PAFUNDA: No, it's not. It's  
22 the same or similarly situated physicians,  
23 and so let's just go there later, you think?

24 MR. BEAUMAN: Okay.

25 MR. PAFUNDA: Or do you want me to

1           just --

2                   THE WITNESS: I can't give you the  
3 names. I don't recall.

4                   MR. PAFUNDA: We're handling it.

5                   MR. BEAUMAN: Yeah, let me --

6                   MR. PAFUNDA: Let's go there later;  
7 fair enough?

8                   MR. BEAUMAN: Yup.

9           Q        So I take it at the time that you  
10 concurred with this action, or you --

11           A        You notice that I wasn't copied on  
12 this?

13           Q        Yes, I do. Since you've brought  
14 that up -- let me interrupt you for a second  
15 because we can save some time. That segues into  
16 my earlier question whether the Chief Medical  
17 Officer in terms of his authority trumped you?

18                   MR. BEAUMAN: Object to the form.

19           Q        You're not copied on this, are you?

20           A        You asked me that before. I said  
21 absolutely not. Dr. Boulanger and I communicated  
22 frequently during this time. I expect we  
23 communicated even more than once a week, and this  
24 communication was verbal, and so I was informed at  
25 every level of where this goes. So did I approve

1 it in a formal way, this exact wording, no, but I  
2 was disturbed and disappointed in what came to  
3 pass in terms of Dr. Kearney's behavior. And I  
4 was disturbed and saddened when I looked at the  
5 personnel file.

6 Q When did you look at the personnel  
7 file?

8 A Around about this time.

9 Q Well, around about this time  
10 stretches from September to January. Did you look  
11 at his -- correct?

12 A Yeah.

13 Q Did you look at his personnel file  
14 around September of 2014?

15 A I -- you know, I can't recall the  
16 exact date, but the -- the -- I looked at the --  
17 particularly, I recall, I looked at his 2012,  
18 Dr. Perman -- I remember all sorts of little  
19 anecdotes written in the personnel file. I can  
20 give it to you: "Shit for brains. Whose fault is  
21 it" -- usually -- I was disturbed by it.

22 Q And when you say you looked at his  
23 personnel file, that was the personnel file that  
24 was maintained in your office; correct?

25 A It was maintained in the dean's

1 office.

2 Q Your office as dean; correct?

3 A Yes. I don't know whether at that  
4 time the file was actually with legal counsel or  
5 it was still in my office.

6 Q Well --

7 A I tell you I did not read the whole  
8 thing, because it's as thick as this (indicating),  
9 and it even went back to Byron Young sanctioned  
10 Dr. Kearney.

11 Q I didn't ask you whether you read  
12 the whole thing. What I'm asking you is when you  
13 looked at it?

14 A Yeah.

15 Q And I think you told us earlier you  
16 looked at it in September of 2014 when the initial  
17 action was taken against Dr. Kearney to ban him  
18 from the University?

19 A I looked at it --

20 MR. BEAUMAN: Object to form. I  
21 think he said it was near to that time.

22 **THE WITNESS:** I looked at it in or  
23 around that season.

24 MR. PAFUNDA: Well, I'll just now  
25 take Mr. Beauman's deposition. Would you

1 stop it?

2 MR. BEAUMAN: (Indicating.)

3 Q Did you place any documents in  
4 Dr. Kearney's file?

5 A Not that I can recall.

6 Q When you say not that I recall,  
7 that's a very simple question, even though time  
8 has passed.

9 MR. BEAUMAN: It's not a simple  
10 question if he doesn't recall.

11 Q Did you place any documents in  
12 Dr. Kearney's personnel file?

13 A When you deal with documents that go  
14 into a personnel file and handled  
15 administratively, documents come to the dean's  
16 office to be placed in the personnel file,  
17 administratively it's handled and placed in the  
18 file. I don't do it personally. I don't even  
19 know which documents goes where. I think that I'd  
20 be -- I'm confident that many of these documents  
21 as pertains to the College of Medicine would end  
22 up in his file.

23 Q Did you at your direction or by your  
24 authority cause any documents to be placed in  
25 Dr. Kearney's file?

1           A           Not that I can personally recall  
2           that I said, "Place it in his file."

3           Q           So at this point in time, as of  
4           January of 2015, January 26th, to be precise, your  
5           conversations with Dr. Boulanger regarding  
6           Dr. Kearney were all off paper; is that correct?

7           A           They were part of the regular Chief  
8           Medical Officer, dean, and particularly Vice  
9           President of Academic Affairs interfacing to  
10          assure smooth faculty/patient -- faculty-related  
11          patient operations.

12          Q           But all of your communications were  
13          verbal; is that correct?

14          A           As far as I recall, yes.

15                   MR. BEAUMAN: Object to form.

16          A           I can't -- you're welcome to look  
17          back at e-mails. I don't know.

18          Q           And when you say I'm welcome to look  
19          back at e-mails, those would be your e-mails?

20          A           Dr. Boulanger's. I can't recall  
21          that -- that -- exactly what was written where,  
22          when two years ago.

23          Q           Now, if you will on the first page  
24          of this, it refers Dr. Kearney to Article 9.4.2 of  
25          the bylaws, does it not?

1 A It does.

2 Q Are you familiar with those bylaws?

3 A No, I'm not.

4 Q And were --

5 A I'm sure I am, but I can't offhand  
6 recall them. I'll probably recognize them.

7 Q Pardon me, sir?

8 A I'll probably recognize them if you  
9 show them to me.

10 MR. PAFUNDA: I'll mark this as  
11 Plaintiff's Exhibit No. 8.

12 (PAGE 44, MEDICAL STAFF EXECUTIVE  
13 COMMITTEE DECISION, 9.4.2, WAS MARKED AS  
14 PLAINTIFF'S EXHIBIT NO. 8 FOR PURPOSES OF  
15 IDENTIFICATION.)

16 Q Here, I'll show you.

17 MR. PAFUNDA: Do you want a copy?

18 MR. BEAUMAN: Is it just that one  
19 page?

20 MR. PAFUNDA: Yes.

21 A Yes, I was aware of this. And this  
22 was the process I believe that was followed in  
23 case of the event.

24 Q In fact, isn't it correct,  
25 Dean DeBeer, that this process was not followed?



1 MR. BEAUMAN: Object to the form.

2 A I disagree.

3 Q Were you involved in the  
4 disciplinary process as you've just described to  
5 us of Dr. Kearney from the beginning?

6 A No, I was not.

7 Q Despite your conversations with  
8 Dr. Boulanger, you maintain that you were not  
9 involved in Dr. Kearney's disciplinary process?

10 A I surely expressed opinions, but I  
11 was not involved in the formal process which is  
12 conducted through various prescribed bodies.

13 Q I didn't ask about the formal  
14 process. I asked if you were involved in  
15 Dr. Kearney's disciplinary process?

16 A Well, define involve. What do you  
17 mean, did I talk about my opinion to people, yes.

18 Q When you talked to Dr. Boulanger  
19 about your opinion of Dr. Kearney, what was your  
20 opinion of Dr. Kearney?

21 A I was saddened, disturbed, shocked  
22 that a man which I held in high esteem, which I  
23 knew had certain tendencies and actual fact has a  
24 track record such as he had.

25 Q And as of September of 2014, and

1           upon your review of his personnel file, did you  
2           find any patient complaints in that personnel file  
3           other than the one by Mr. Wilson?

4           A           No.

5           Q           Did you find any complaints from  
6           residents?

7           A           No.

8           Q           Did you find any complaints by  
9           staff?

10          A           Yes.

11          Q           And that was nurses?

12          A           Yes.

13          Q           Any other staff?

14          A           I can't offhand recall. I think  
15          that there was an event with a faculty member. I  
16          can't recall exactly. I think the majority were  
17          nurses.

18          Q           Did you note that not only did he  
19          receive 27 teaching awards, but he also enjoyed an  
20          endowed chair?

21          A           Yes.

22          Q           And isn't it true that when you go  
23          to the Iroquois Hunt Club as opposed to Billy's  
24          Barbecue, you do so to foster business  
25          relationships that would lead to endowments?

1 MR. BEAUMAN: Object to the form.

2 A That's not an expression. That's a  
3 prejudicial statement. I think what you are --  
4 you are creating an atmosphere which is completely  
5 devoid of reality. Iroquois Hunt Clue is a venue  
6 like the Hilton Hotel. It is not as you try to  
7 portray it. I think that what you're talking  
8 about is relatively small expenditures in KMSF  
9 that is appropriate to advance the cause of UK  
10 Healthcare.

11 Q But it wasn't expenditures from  
12 KMSF. It was expenditures from the Dean's  
13 Enrichment Fund?

14 A Which ultimately is derived from  
15 KMSF.

16 Q Yes, which is ultimately derived  
17 from the physicians' billings; is that not  
18 correct?

19 A The implication -- no. The  
20 implication that you're making here is that these  
21 expenditures detracted from what potentially would  
22 be physician income. That's I believe the root  
23 cause of Dr. Kearney's view of KMSF. Dr. Kearney  
24 and I had a conversation in which I offered to  
25 show him in great detail the budgets of the

1 College of Medicine and how totally dependent it  
2 is on UK Healthcare transfers and how irrelevant  
3 these expenditures are in terms of promoting the  
4 ambiance in which we practice healthcare in the  
5 State. Dr. Kearney told me that he doesn't  
6 believe in budgets because they're all meant to  
7 deceive. So it's very difficult to communicate  
8 with him on any factual, reasonable basis because  
9 he was so prejudiced that he failed to have any  
10 insight into reality.

11 Q Well, let's take his insight into  
12 reality. Did you offer to show him -- open the  
13 books of the Kentucky Medical Services Foundation  
14 to Dr. Kearney?

15 A I think that he's -- as a member of  
16 the Kentucky Medical Services Foundation he surely  
17 can look at what is appropriate.

18 Q Did you know that he's been told  
19 that he's not a member of Kentucky Medical  
20 Services Foundation prior to the time his clinical  
21 privileges were suspended?

22 A I'm not aware of it.

23 Q Are you aware of the fact that he  
24 was told recently, despite his membership in the  
25 Department of Surgery, that he's not a member of

1 the Kentucky Medical Services Foundation?

2 A Well, he's no longer a practicing  
3 clinician, so that doesn't surprise me.

4 Q Were you aware of the fact that he  
5 was told that Kentucky Medical Services Foundation  
6 is a nonmember organization?

7 A I am not aware of that. I am --

8 Q You served as president of Kentucky  
9 Medical Services Foundation and you still are on  
10 the Board of Directors?

11 MR. BEAUMAN: Object to form.

12 A Absolutely not. I told you before  
13 I'm not on any official position on Kentucky  
14 Medical Services Foundation.

15 Q So my --

16 A I'd appreciate it if you don't  
17 repeat inaccuracies.

18 Q Well, I will appreciate this -- I'll  
19 return to my original question -- would you have  
20 opened the books of Kentucky Medical Services  
21 Foundation to Dr. Kearney, and your answer was  
22 yes?

23 A Sure. Well, I think that -- that I  
24 would have opened them. Though I would have been  
25 very concerned that Dr. Kearney would look at them

1 with a very prejudicial eye and only see what he  
2 wants to see and not see reality. I don't have  
3 high regard for Dr. Kearney's financial insights.

4 Q You would agree with me, though,  
5 that those books and records should be opened to  
6 any practicing clinician at the University of  
7 Kentucky; isn't that correct?

8 MR. BEAUMAN: Object to the form.

9 A I have not looked at KMSF bylaws and  
10 exactly what KMSF does, but I'm quite sure that  
11 those physicians that belong to KMSF should be  
12 informed of the financial disposition of KMSF, and  
13 they are.

14 Q And do they receive reports  
15 concerning the financial condition and  
16 expenditures of KMSF?

17 A The chairs do at the board meeting,  
18 department by department.

19 Q And I take it you would be in  
20 agreement with Dr. Mark Randall's comment that the  
21 physicians at the University of Kentucky are  
22 treated as widgets?

23 MR. BEAUMAN: Object to the form.

24 A Treated as what?

25 Q As widgets.

1           A           I think that's Mark's opinion;  
2           that's not mine.

3           Q           All right.

4           A           If that is his opinion, and if it's  
5           not taken out of context.

6           Q           If you would, please read into the  
7           record --

8                       MR. BEAUMAN: I'm sorry.

9                       MR. PAFUNDA: No, that's all right.

10          Q           If you would, please read into the  
11          record the second sentence of 9.4.2 (a).

12          A           A.

13          Q           I can highlight it for you to make  
14          it easier.

15          A           Yes.

16                       (Handing.)

17          Q           There you go.

18          A           "Within 14 calendar days thereafter,  
19          the Medical Staff Executive Committee shall  
20          conduct a hearing."

21          Q           Thank you.

22                       Did you in February of 2015 attend a  
23          hearing of the Kentucky Medical Staff Executive  
24          Committee?

25          A           Yes.

1 Q Was that meeting recorded?

2 A I don't know.

3 Q Are the Medical Staff Executive  
4 Committee meetings recorded?

5 A I don't know.

6 Q Do you attend those meetings?

7 A Very, very rarely.

8 Q And are --

9 A I think my whole tenure as dean  
10 perhaps two or three times.

11 Q What prompted you on this occasion  
12 to attend the Medical Staff Executive Committee  
13 meeting of February, 2015?

14 A I think what compelled me was that,  
15 and I've used the words before, I was saddened and  
16 disturbed by what I've seen in Dr. Kearney's  
17 personnel file, what I was made aware of in terms  
18 of his conduct over perhaps decades, and that I  
19 thought that the Committee should go through the  
20 process thoroughly to examine Dr. Kearney in the  
21 context of his medical privileges, and --

22 Q Well, you then --

23 A -- that -- that it has major  
24 implications for the whole University and UK  
25 Healthcare if such conduct is just condoned. If



1 in actual fact it was his conduct, that needed to  
2 be investigated.

3 Q Well, when you reviewed his  
4 personnel file and you were shocked -- correct  
5 word?

6 A Yes.

7 Q Okay.

8 A Disturbed would be a better word.

9 Q Were you disturbed by his  
10 performance evaluations?

11 A No. I think that Dr. Kearney is a  
12 combination of excellence with a tendency of this  
13 incredible weakness to demean and humiliate with  
14 vulgarity. I think it is that that disappointed  
15 me, the fact that he's never changed. I was  
16 unaware of how many years this has been going on.

17 Q Well, or was it the fact that at the  
18 April of 2014 faculty council meeting that  
19 Dr. Kearney and others demanded information with  
20 respect to the Practice Plan Committee?

21 MR. BEAUMAN: Object to the form.

22 Q Were you offended by that?

23 A No. You can have the whole thing,  
24 everything. I'm not offended by it. It's  
25 perfectly...

1           Q           Did you take any steps, you or  
2 anyone else on the administration, to block that  
3 committee from obtaining information about the  
4 Practice Plan Committee?

5           A           No. I'm completely unaware of it.

6           Q           All right.

7           A           But it was really a committee that  
8 didn't feature in my mind because it served no  
9 purpose, and has not served a purpose and doesn't  
10 serve a purpose because its function became  
11 defunct within new financial realities.

12          Q           Let's talk about the April of 2014  
13 council meeting. Isn't it true Mr. Thro as  
14 general counsel told the faculty members that the  
15 Practice Plan Committee was none of their  
16 business?

17          A           I think that -- that, you know, the  
18 faculty council does not really have the -- in  
19 general, it has sort of a faculty involvement, but  
20 this is really out of the purview of the faculty  
21 council. The faculty council's purview is  
22 education, and getting into the practice plans and  
23 the detail thereof is really very, very lateral  
24 from what a faculty council should do,  
25 particularly as the faculty council comprises

1 Basic Sciences and clinicians, and one of the  
2 clinicians happens to be a basic scientist, so  
3 this is very tangential to what they should do.  
4 And it is not really in my view, you know, the  
5 purview of the faculty council. Surely they can  
6 ask for documents. Surely they can offer general  
7 opinions, but this is not their purview. That is  
8 not why faculty council exists.

9 Q My question was, Dean DeBeer, did  
10 general counsel, Mr. Thro, make the remark that  
11 the Practice Plan Committee or their questions  
12 concerning it was none of their business?

13 A I don't recall that, but in general  
14 I think he's right.

15 Q I didn't ask you that.

16 A I would say it's none of their  
17 business is a bit off, but it really isn't  
18 tangential to what they are involved in.

19 Q But as Dean of the College of  
20 Medicine, it was your position that such a remark  
21 would be a correct one, that it was none of their  
22 business?

23 A I think that I would not have made  
24 that remark exactly like that. I'm not even sure  
25 he made the remark because I can't recall it.

1 Q Well, whether you can't recall it,  
2 are you disputing whether Hollie Swanson can  
3 recall it?

4 MR. BEAUMAN: Object to form.

5 A I would say that my memory is no  
6 worse than Hollie Swanson's.

7 Q And when you were selected as the  
8 dean, there was a Search Committee, was there not?

9 A I believe there was.

10 Q Was Dr. Swanson on that Search  
11 Committee?

12 A I can't recall.

13 Q Was Dr. Swanson on the Search  
14 Committee for provost?

15 A I can't recall. I don't know.

16 Q Thank you.

17 (MEDICAL STAFF EXECUTIVE COMMITTEE,  
18 DATED 2/5/15, WAS MARKED AS PLAINTIFF'S  
19 EXHIBIT NO. 9 FOR PURPOSES OF  
20 IDENTIFICATION.)

21 Q If you'll turn to the second page of  
22 what I've marked as Exhibit No. 9. Have you  
23 reviewed that?

24 A Well, I looked at it.

25 Q Well, take your time and review it,

1           because I'm going to ask you --

2           A           The second page?

3           Q           Yes.

4           A           Why don't you ask the questions and  
5 I can focus on the issue?

6           Q           Why don't you review it first and  
7 then I'll just do what I want to do within reason?

8           A           Within reason, yes. Let's emphasize  
9 that. I've read it.

10          Q           Have you had an opportunity to  
11 review it?

12          A           Yes.

13          Q           If you'll direct your attention to  
14 where it points that you briefly addressed the  
15 group with your views about the suspension.

16          A           Yes.

17          Q           Do you see that?

18          A           Yes.

19          Q           What were your remarks, your exact  
20 remarks, to the Medical Staff Executive Committee?

21          A           I can't recall. I spoke from my  
22 heart.

23          Q           Well, tell us what --

24          A           Well, let me finish.

25                       I spoke from my heart, but the

1 sentiment was that I was disturbed. I was  
2 emotional that such conduct as Dr. Kearney had  
3 shown over many years has become part of our  
4 culture. And I think that I -- I urged them to  
5 look at it very objectively, and I presume I said  
6 that I think that it is potential to create a  
7 hostile work environment. It has the potential to  
8 intimidate. It has the potential to create an  
9 environment which does not lead to optimum  
10 functioning in patient care.

11 Q And throughout his 27-year history  
12 at the University of Kentucky, other than this  
13 Wilson complaint, were there any patient  
14 complaints about Dr. Kearney and patients?

15 MR. BEAUMAN: Object to the form.

16 A I'm unaware of it, but you need to  
17 see this in another context. It is not  
18 necessarily Dr. Kearney's patient interaction. It  
19 is the intimidation of residents by using  
20 vulgarities. It's the intimidation of nurses.  
21 It's the intimidation of the whole surroundings,  
22 anesthesiologists, that makes them more unwilling  
23 to come forward to say anything. It is creating a  
24 culture of intimidation that leads to a defunct  
25 system that is intimidated and doesn't function

1       optimally. Residents, and particularly -- not  
2       every resident, but particularly residents that  
3       would be more receptive to this type of  
4       intimidation.

5               Q       With respect to intimidation and  
6       threats to residents --

7               A       I think demean is the right word,  
8       humiliating.

9               Q       Well, let's just go to it.  
10               On what factual basis did you  
11       express that opinion that residents had either  
12       been intimidated, demeaned or threatened in any  
13       regard?

14              A       I think that -- that residents, and  
15       I cannot give you a fact right now, were --  
16       recognized Dr. Kearney as a -- for instance, let  
17       me give you an example. The surgical resident, a  
18       lady's name who escapes me, during the Wilson  
19       event says that for Dr. Kearney, on a scale of 10,  
20       this is a 6, which I found upsetting because of  
21       what Dr. Kearney said and how he acted to the  
22       patient Wilson was in a rather experienced  
23       resident's view 6 on a scale of 10. And I don't  
24       want to know what 7, 8, 9, 10 is, and so -- so I  
25       think that -- that you can read that Wilson

1 incident and see for yourself the reaction with  
2 the staff -- with the residents and the students  
3 was intimidating.

4 Q So the factual basis that you used  
5 that Dr. Kearney needed to be suspended was based  
6 on resident complaints of intimidation?

7 A I did not make that determination.  
8 That determination was made by the appropriate  
9 channels. I expressed my displeasure, my sadness  
10 at behavior that has become part of a culture  
11 around Dr. Kearney that it needs to be looked at  
12 in the context of the facts to ascertain whether  
13 this is something that we can allow to continue.

14 Q Well, give me examples, factual  
15 examples, of the culture that developed around  
16 Dr. Kearney.

17 A If you tell a nurse you have to have  
18 a colostomy bag on your head because you have shit  
19 for brains, do you think she'll function or do you  
20 think other nurses will be scared? If you -- a  
21 pregnant nurse says "I'm pregnant" when she  
22 alleges he hits her, he denies it, and he says,  
23 "Whose fault is it, yours or the guy's," that's  
24 intimidation. I think that other nurses would shy  
25 away. The man is explosive. The man would direct



1 abusive at them, and so you find a system that  
2 doesn't function. You find a system that -- and I  
3 saw this in the other things that I can't recall  
4 from his personnel file.

5 Q All right.

6 A I think the 2012 document is the  
7 most recent where Jay Perman actually -- I  
8 agreed -- said that this must be the end or  
9 there'll be consequences.

10 Q Did Jay Perman send that document to  
11 Dr. Kearney so Dr. Kearney --

12 A I have no idea. Dr. Kearney agreed  
13 to it. I believe it got to Dr. Kearney, yes, and  
14 he received it, I presume.

15 Q And you would expect that he would  
16 receive it?

17 A Letter was addressed to Dr. Kearney,  
18 I think.

19 Q You would expect if Dr. Perman made  
20 those comments and others signed off on it, that  
21 Dr. Kearney would get a copy of it, because he'd  
22 be the subject of the communication; correct?

23 A Yes.

24 Q And that would be a responsibility  
25 of the dean, would it not?

1           A           It was a responsibility of  
2 Dr. Perman.

3           Q           So your opinion in the short of it  
4 was that Dr. Kearney needed to have his clinical  
5 privileges suspended?

6           A           You're again making inaccurate  
7 statements. My opinion was that it needed to be  
8 investigated --

9           Q           No, I'm talking --

10          A           -- given his track record to  
11 conclude whether his clinical privileges should be  
12 continued, not suspended. There's a difference  
13 between investigating, getting the facts by large  
14 numbers of faculty at many levels to see whether  
15 his clinical privileges should be continued. And  
16 you might also remember that every body of faculty  
17 that looked at this unanimously found that his  
18 clinical privileges should not be continued, i.e.,  
19 suspended.

20                       I did not make that decision. It  
21 was not mine to make. It was a process that had  
22 to unfold based on facts and investigation and  
23 committees as exactly prescribed in the  
24 regulations.

25          Q           And if you will again, turn to

1 Page 2 of that February Medical Staff Executive  
2 Committee meeting, maybe I'm speaking at  
3 cross-purposes, but was it your recommendation to  
4 the Committee that Dr. Kearney's clinical  
5 privileges be suspended?

6 A I can't recall what I exactly said.  
7 I told you I spoke from my heart because I was  
8 disturbed and I was saddened and I was upset, and  
9 two things came together, the whole teaching issue  
10 and this patient issue in the context of his track  
11 record, and so I spoke from my heart, and I think  
12 that the teaching issue was not small in my mind.  
13 I actually had the occasion to listen to that  
14 so-called lecture myself, and I found it vulgar  
15 and offensive. So I was in no mood to respect  
16 that type of behavior.

17 Q Well, you just segued into my next  
18 question. You listened to the lecture which was  
19 the subject of the disciplinary action?

20 A Yes.

21 MR. BEAUMAN: Object to form.

22 Q Thank you.

23 A I asked the lecture to be forwarded  
24 to me and I listened to it.

25 Q And you found it to be offensive and

1 discriminatory; correct?

2           A           I found it to be unprofessional. I  
3 think that I would hate medical students to  
4 believe that this is the type of language, the  
5 type of communication that one expects  
6 professionals to radiate. Professionalism as of  
7 the last year has become a major issue in  
8 credentialing, and that type of lecture I think  
9 threatens our credentials, because, you know, the  
10 effect of that type of communication that  
11 Dr. Kearney indulges in can be seen in one of the  
12 residents that actually came to one of the  
13 meetings to speak in his defense. When asked  
14 whether he used the same language Dr. Kearney  
15 used, and he said yes. That is how one instills  
16 unprofessionalism. Professionalism is a  
17 discipline. It is restricting yourself with  
18 discipline to what is appropriate and what is  
19 sensitive. It is not an indulgence in using the  
20 word shit and chitlins and shit more than one time  
21 in a lecture. That is vulgar. That's not  
22 professional.

23           Q           As well as pencil-pushing  
24 peckerheads; correct?

25           A           I agree.

1 Q Thank you.

2 A And that has a patient safety  
3 implication when it comes to incendiary events in  
4 the OR.

5 MR. BEAUMAN: Ask your next question.

6 Q And when we talk about incendiary  
7 events, we're talking literally incendiary events  
8 where fires are started; correct?

9 A That's what I'm led to believe.

10 MR. PAFUNDA: We've only got five  
11 minutes left. We'll take a break.

12 THE WITNESS: All right, if you want  
13 to.

14 MR. PAFUNDA: Yes, well, I have to.

15 THE VIDEO TECHNICIAN: The time is  
16 12:03.

17 (Brief recess.)

18 THE VIDEO TECHNICIAN: Stand by.

19 We're back on the record at 12:15.

20 CONTINUED EXAMINATION

21 By Mr. Pafunda:

22 Q Dean DeBeer, we're going to fast  
23 forward in time and I'll show you what I've marked  
24 as Exhibit No. 10.

25 (FINAL ACTION OF THE UNIVERSITY

1 HEALTH CARE COMMITTEE WAS MARKED AS  
2 PLAINTIFF'S EXHIBIT NO. 10 FOR PURPOSES OF  
3 IDENTIFICATION.)

4 MR. BEAUMAN: Let me get it for you.

5 MR. PAFUNDA: Excuse me.

6 MR. BEAUMAN: Is that the August one?

7 MR. PAFUNDA: Yes. Here, take it.

8 MR. BEAUMAN: I just --

9 MR. PAFUNDA: No, just take it will  
10 you, God. Lord, it's easier than arguing  
11 with you.

12 (Handing.)

13 **THE WITNESS:** I've read it.

14 Q Prior to today, had you seen this  
15 document which is entitled "Final Action of the  
16 University Healthcare Committee"?

17 A I believe I have at some time.

18 Q And you would agree with me, would  
19 you not, that from September of 2014 until August  
20 24th, 2015, No. One, Dr. Kearney was banned from  
21 campus?

22 MR. BEAUMAN: Object to the form.

23 A I suspect so. I don't know exactly.

24 Q And he was also ordered not to  
25 communicate with students, staff, residents or

1 colleagues; correct?

2 A I believe so.

3 Q Thank you.

4 And as Dean of the College of  
5 Medicine on August 24th, 2015, when did you first  
6 become aware of this final action of the  
7 University Healthcare Committee?

8 A I presume around about that time of  
9 that communication.

10 Q Did you get a copy of this order  
11 ever?

12 A I can't recall.

13 Q Am I safe in saying that you did not  
14 receive a copy of this order?

15 A No, you're not. I can't recall. I  
16 get huge number of communications in a day as dean  
17 and I can't recall exactly what I get.

18 Q Do you get a number of huge  
19 communications concerning Dr. Kearney from the  
20 University Healthcare Committee?

21 A I can't recall.

22 Q If you would, would you agree with  
23 me that one of the first things that the  
24 Healthcare Committee ordered was to allow  
25 Dr. Kearney to have access to campus?

1 MR. BEAUMAN: Object to the form.

2 A Yes. I believe that sounds like  
3 they made their decision and the final authority  
4 says --

5 Q So they reversed Dr. Boulanger's  
6 action, did they not?

7 MR. BEAUMAN: Object to the form.

8 A I think that you're putting it in a  
9 very limited context. Dr. Boulanger's action was  
10 instituted at the time when these issues were  
11 being investigated. We did not know at that time,  
12 I presume, of exactly the extent of what happened,  
13 who says what, what happened, why, and so I think  
14 that -- that yes, it did reverse those decisions.

15 Q Thank you.

16 You knew at the time that  
17 Dr. Boulanger took those actions that Dr. Kearney  
18 was a tenured professor; correct?

19 A Yes.

20 Q You knew at the time that  
21 Dr. Boulanger took those actions, as well as the  
22 Medical Staff Executive Committee, banning him  
23 from campus, that they had exceeded their  
24 authority as concerns Dr. Kearney as a tenured  
25 professor, did you not?



1 MR. BEAUMAN: Object to the form.

2 A I'm unaware of that. I don't know  
3 that sort of detail.

4 Q If you go on to No. 2 from the  
5 University Healthcare Committee, which is for the  
6 record part of the Board of Trustees; correct?

7 A I believe so, yes. Yes, absolutely.

8 Q And a ruling body of the Board of  
9 Trustees; correct?

10 A Yeah.

11 Q And No. 2, they said, "Allow  
12 Dr. Kearney to have an office in an appropriate  
13 location"; correct?

14 A Yes.

15 Q And his old office was vacant at the  
16 time this was entered, was it not?

17 A Yes.

18 Q And had you or anyone on your behalf  
19 instructed staff members prior to August of 2015  
20 that Dr. Kearney was dangerous?

21 A No.

22 Q Was it your opinion that Dr. Kearney  
23 was a dangerous person?

24 A Dangerous, no.

25 Q Yes. Thank you.

1                   If you will, look at No. 3, "Allow  
2 Dr." --

3                   A           Hang on. Danger can mean many  
4 things. Danger in terms of afflicting personal  
5 assault no, but creating a culture through  
6 intimidation and verbal abuse, that is -- has  
7 elements of danger in it.

8                   Q           But in terms of committing personal  
9 or physical abuse --

10                  A           No, no.

11                  Q           If you'll look at No. 3, "Allow  
12 Dr. Kearney to communicate with his University  
13 colleagues," they reversed Dr. Boulanger's action,  
14 as well as that of the Medical Staff Executive  
15 Committee, did they not?

16                               MR. BEAUMAN: Object to the form.

17                  A           Yes.

18                  Q           And No. 4, "Lift the suspension of  
19 Dr. Kearney's University e-mail account," do you  
20 see that?

21                  A           Yes.

22                  Q           Why was Dr. Kearney's e-mail account  
23 suspended?

24                  A           I do not know. I did not authorize  
25 it. I think it was suspended during the

1 investigation before all of the depth and  
2 dimensions of the incident was noted.

3 Q Was his University e-mail account  
4 immediately restored?

5 A I don't know.

6 Q Was he immediately allowed to have  
7 access to campus?

8 A I have no idea.

9 Q Was he immediately allowed to have  
10 an office in an appropriate location?

11 A I have no idea how immediate  
12 immediate is. I'm sure -- I know he had an office  
13 assigned to him.

14 Q Well, if you would, read the last  
15 sentence into the record of this Final Action of  
16 the University Healthcare Committee.

17 A "Lift the suspension of  
18 Dr. Kearney's University" --

19 Q The last sentence.

20 A "Reaffirmation should happen  
21 immediately."

22 Q Do you have trouble understanding  
23 what the word immediately means?

24 MR. BEAUMAN: Object to the form.

25 A Mr. Pafunda, I don't think that is a

1 comment that I appreciate.

2 Q Well, how do you understand --

3 A As soon as one possibly can.

4 Q Thank you.

5 A It doesn't mean now. It means that  
6 it shouldn't be delayed beyond reason. I'm  
7 unaware that it was delayed beyond reason.

8 Q So whatever the Healthcare Committee  
9 meant by the word "immediately," you took it that  
10 there could be a delay if it had a reasonable  
11 basis; correct?

12 MR. BEAUMAN: Object to the form.

13 A No, I don't believe I -- the reason  
14 there could be a delay. It had to be effected as  
15 soon as possible.

16 Q Thank you.

17 MR. PAFUNDA: Here, I'll give you a  
18 copy.

19 MR. BEAUMAN: May I see that?

20 (Handing.)

21 MR. PAFUNDA: I'll mark this as  
22 Plaintiff's Exhibit No. 11.

23 (E-MAIL DATED 10/14/15, FOUR PAGES,  
24 WAS MARKED AS PLAINTIFF'S EXHIBIT NO. 11 FOR  
25 PURPOSES OF IDENTIFICATION.)

1 Q And to save time, Dean DeBeer, I  
2 won't ask you to review this. I'll just ask you  
3 some questions, and then if you want to take a  
4 minute to review that?

5 A Sure. Ask the questions and I  
6 shall --

7 Q Thank you.

8 Following the University Healthcare  
9 Committee's directive that Dr. Kearney be allowed  
10 to have access to campus as well as an office and  
11 communicate with his colleagues and lift the  
12 suspension concerning his e-mail account,  
13 Dr. Capilouto came out with a public apology on  
14 October 14th apologizing for the way that  
15 Dr. Kearney's matter had been mishandled; is that  
16 correct?

17 MR. BEAUMAN: Object to the form.

18 A I don't think that's correct.

19 Q If you will --

20 A I think that President Capilouto put  
21 it in context.

22 Q Go ahead, explain yourself, please.

23 A It was an exceptional event,  
24 unusual. It involved patients, and I think it's  
25 not surprising, given this type of event doesn't

1 occur frequently, that decisions were made at the  
2 moment this event occurred and later were  
3 corrected and put in appropriate context.

4 Q But you would agree with me, would  
5 you not, that banning Dr. Kearney from campus,  
6 prohibiting him from communicating with colleagues  
7 smacks of retaliation, does it not?

8 MR. BEAUMAN: Object to the form.

9 A I totally disagree.

10 Q All right. Thank you.

11 A I don't even know retaliation from  
12 what?

13 Q Well, you were at the meeting in  
14 April of 2014; correct?

15 A Yes.

16 Q At that meeting, did not Dr. Karpf  
17 threaten to termination Dr. Kearney?

18 A Absolutely not.

19 MR. BEAUMAN: Object to form.

20 A Dr. Kearney pontificated about KMSF  
21 in what I view as sort of a rather ignorant way,  
22 and Dr. Karpf indicated that if a physician is not  
23 satisfied with the structures in which we operate,  
24 any physician can leave. He did not specifically  
25 or personally threaten Dr. Kearney at all.

1 Q Well, when --

2 A Dr. Swanson actually asked, "Are you  
3 threatening Dr. Kearney," and Dr. Karpf said, "No.  
4 Any physician that is dissatisfied with the  
5 structures in which we operate can leave."

6 Q So it was Dr. Swanson's opinion at  
7 the time that Dr. Kearney -- that Dr. Karpf had  
8 actually, in fact, threatened Dr. Kearney?

9 MR. BEAUMAN: Object to form.

10 A I totally disagree.

11 MR. PAFUNDA: I'll mark this as  
12 Exhibit No. 12.

13 (LETTER DATED 8/28/15 WAS MARKED AS  
14 PLAINTIFF'S EXHIBIT NO. 12 FOR PURPOSES OF  
15 IDENTIFICATION.)

16 MR. PAFUNDA: Do you want a copy?  
17 I'll give you a copy.

18 MR. BEAUMAN: What is it?

19 MR. PAFUNDA: It's a letter from --

20 MR. BEAUMAN: The first one post --  
21 post the Board of Trustees?

22 MR. PAFUNDA: Yes.

23 MR. BEAUMAN: I've got it. Just tell  
24 me what it is. I've got it right here.

25 MR. PAFUNDA: I'm not just telling

1           you anything. You're the one that caused  
2           all of this. Okay.

3           Q           Have you had an opportunity to  
4           review it?

5           A           Yes.

6           Q           That's fine.

7                        If you will, turn to the last page.  
8           You are, in fact, copied on this letter; correct?

9           A           Oh, I believe I was, yes. I don't  
10          see myself -- oh, yes, I am. Yes.

11          Q           Yes, you are.

12          A           Yeah.

13          Q           My question is, did you, in fact,  
14          receive a copy of this?

15          A           Mr. Pafunda, I receive -- I am  
16          pretty sure I did. I can't say yes or no. I  
17          can't exactly recall. I know the content of this,  
18          so I presume I did.

19          Q           But if you did, in fact, receive  
20          this correspondence, or a copy of this  
21          correspondence, where would it be maintained?

22          A           In the dean's office.

23          Q           All right. But where?

24          A           Or in my e-mail on the server.

25          Q           So it could be in both locations;



1 correct?

2 A Could be. I don't know whether a  
3 hard copy exists or whether it's on the server.

4 Q Thank you.

5 After the Healthcare Committee  
6 issued its directive, did the president form a  
7 group of people to address the return of  
8 Dr. Kearney?

9 MR. BEAUMAN: Object to the form.

10 A I -- I believe, yes.

11 Q Thank you.

12 A To accommodate Dr. Kearney as a  
13 regular Title III Series faculty member and define  
14 what potential exists for a new role.

15 Q If you would, just read the second  
16 paragraph into the record?

17 A "Because Dr. Kearney's status has  
18 materially changed as a result of the Committee's  
19 action, at the direction of the president, a group  
20 of appropriate persons was immediately formed to  
21 comprehensively define Dr. Kearney's roles and  
22 responsibilities going forward."

23 Q Were you part of that group?

24 A I believe I was.

25 Q Was there a meeting of that group?

1           A           I can't recall exact dates, but I  
2 presume there was.

3           Q           I didn't ask for dates. I just  
4 asked if the group met?

5           A           I believe they did. I can't recall.

6           Q           If they did not, were you in  
7 communication with anybody on the president's  
8 behalf concerning Dr. Kearney?

9           A           Not on the president's behalf, no.

10          Q           On whose behalf then?

11          A           I communicated with the College of  
12 Medicine and UK Healthcare, particularly the  
13 College of Medicine at this stage because his  
14 clinical privileges are revoked, in terms of how  
15 to accommodate him in the College of Medicine as a  
16 regular Title III series faculty member.

17          Q           But you see there that at the  
18 direction of the president, Eli Capilouto, a group  
19 of appropriate persons was immediately formed?

20          A           Yes.

21          Q           My question is rather simple:  
22 No. 1, were you part of the group?

23          A           Yes, I believe I was.

24          Q           Well, from the copy of this  
25 correspondence, it appears that you were --

1           A        Yes.

2           Q        -- correct?

3                    Does that trigger your recollection?

4           A        I attended lots of conversations  
5 about how to accommodate Dr. Kearney and make a  
6 productive faculty member in the only genre open  
7 to research. I can't exactly recall who met  
8 where, when.

9           Q        That was my next question. As a  
10 collective group, was there a meeting?

11          A        I believe there were a number of  
12 meetings, more than one.

13          Q        With the members who are identified  
14 on this copy?

15          A        I can't recall whether all of the  
16 members were there or not.

17          Q        With whom did you meet?

18          A        I met with provost -- I can't  
19 recall.

20          Q        Were there any notes of any meetings  
21 or any memoranda?

22          A        I'm unaware of it. I don't know.

23          Q        So who made the decisions to -- with  
24 respect to Dr. Kearney's involvement following his  
25 return by the Healthcare Committee?

1 MR. BEAUMAN: Object to the form.

2 A I don't know exact -- decisions on  
3 what -- what decisions are you referring to  
4 specifically?

5 Q Let's take a look at numerical  
6 Paragraph 1 on Page 2. Do you have that in front  
7 of you?

8 A Yes.

9 Q No, you don't.

10 A Page 2?

11 Q Yes.

12 A Uh-huh.

13 Q If you'll take a moment and just  
14 review numerical Paragraph 1.

15 A Yes.

16 Q Take it step-by-step.

17 A I have.

18 Q Thank you.

19 If you will, direct your attention  
20 to the sentence before the bullet items. It's the  
21 second sentence before we get to the bullet items  
22 that begins "Accordingly"; do you see that  
23 sentence?

24 A "Accordingly"?

25 MR. BEAUMAN: Can I show him

1 (indicating)?

2 MR. PAFUNDA: Yes.

3 A "Accordingly," yes.

4 Q Would you read that sentence?

5 A "Accordingly, the University forbids  
6 Dr. Kearney from teaching or interacting with  
7 house staff."

8 Q Did you believe yourself as Dean of  
9 the College of Medicine that that violated the  
10 University Healthcare Committee's order of August  
11 24th, 2015?

12 A I don't know, but I believe it was  
13 the right thing to do, given that one had the  
14 unique situation, rare situation of a faculty  
15 member that lost his clinical privileges, and the  
16 interaction of such a person with house staff  
17 would be unprofessional and create serious issues  
18 in terms of credentialing.

19 Q Is it your position that a person  
20 who lacks clinical privileges, although they  
21 retain their medical license, may not teach at the  
22 College of Medicine?

23 A It depends on the circumstances. I  
24 believe that in Dr. Kearney's case that it placed  
25 us at accreditation risk in terms of

1 unprofessional behavior.

2 Q Were there any communications from  
3 any organization that underscored your position  
4 that the University's accreditation was at risk?

5 A I don't -- I know what it takes to  
6 be LCME accredited and what the resident program  
7 accreditation takes. I believe there is  
8 documentation from Dr. Susan McDowell about  
9 professionalism, so I don't -- I can't recall any  
10 specific communication.

11 Q In fact, there were none, was there?

12 A I don't recall any. It doesn't mean  
13 there isn't any.

14 Q If there were some and you didn't  
15 receive it as Dean of the College of Medicine, who  
16 would be in the best position to receive such a  
17 communication?

18 A If there were such communications, I  
19 might have received it. I can't recall it. I  
20 don't know if I was copied on it. I think perhaps  
21 the Senior Associate Dean for Education or -- I  
22 can't exactly define.

23 Q Would it in fact be Susan McDowell  
24 who held the position as Associate Dean for  
25 Graduate --

1           A           Oh, in terms of residency  
2 interactions, yes.

3           Q           All right. Thank you.

4                        Did anybody at any time during your  
5 meetings with this, and I'll call it the group  
6 that was formed by the president's directive,  
7 receive any communications from outside sources  
8 that the accreditation of the college was somehow  
9 threatened by Dr. Kearney's behavior?

10          A           I am not aware of that. Though I  
11 held the opinion that given his track record of  
12 unprofessionalism, him having lost his clinical  
13 privileges, that given the enormous emphasis on  
14 professionalism in the accreditation, that it was  
15 at risk, was my opinion. It still is my opinion.

16          Q           And so you --

17          A           And you have to recognize that the  
18 student letter serves as an example that could  
19 appear at the LCM investigation. And if -- you  
20 know, I feared that an accrediting body would  
21 listen to that lecture and find it like I found  
22 it.

23          Q           Would an accreditation organization  
24 also look harshly upon the fact that a physician's  
25 personnel file had been -- that false documents

1 had been placed in a physician's personnel file?

2 MR. BEAUMAN: Object to form.

3 A You're actually talking about things  
4 that I know nothing about and unaware of.

5 Q So you're unaware that  
6 accreditation -- if false documents are placed in  
7 a file --

8 A I'm sure that could affect  
9 accreditation, but I'm unaware that any such event  
10 or incident occurred. I've seen this.

11 Q When you say "I've seen this," have  
12 you seen it before?

13 A Yes.

14 Q Did you place it in his personnel  
15 file --

16 A No.

17 Q -- in Dr. Kearney's personnel file?

18 A No.

19 Q Do you know how it got placed in his  
20 file, and by whom?

21 A Well, in 2010, I believe that either  
22 Emery Wilson or Jay Perman -- I think Emery Wilson  
23 was dean, and it got placed then.

24 Q Are you saying that Emery Wilson  
25 placed it?



1           A           I have no idea who placed it. I  
2 think that was prior to me being dean. I was  
3 unaware of this completely.

4           Q           When you reviewed his personnel file  
5 back in 2014, did you remove this from his file?

6           A           No.

7           Q           And why not?

8           A           I didn't remove anything from his  
9 file, nor did I add anything.

10          Q           Did you conduct any investigation or  
11 any inquiry to determine how this draft document  
12 ended up in his file?

13          A           No.

14          Q           Did anybody prior to today ask you  
15 how this document got into his file?

16          A           No.

17          Q           If you'll look on the second page,  
18 and they're numbered up in the left-hand corner,  
19 an item that's marked numerical No. 1; do you see  
20 that?

21          A           Yes.

22          Q           If you would, read the first  
23 sentence right across from the numerical No. 1.

24          A           "You are removed as Director of  
25 Trauma Services. The financial support for this

1 administrative position will be removed your  
2 salary effective" -- dah, dah, dah -- "2010."

3 Q My question to you, Dean, was he  
4 removed as Director of Trauma Services?

5 A I have no idea. This preceded my  
6 tenure as dean.

7 Q If you'll look at No. 2, and read  
8 the sentence, the first sentence.

9 A "You are removed from clinical  
10 service schedules (both hospital and clinic) for  
11 28 days starting" -- dah, dah, dah -- "2010."

12 Q And was he re -- was Dr. Kearney  
13 removed?

14 A I have no idea.

15 Q If the information contained in this  
16 draft document is false, you would agree with me,  
17 would you not, that Dr. Kearney's personnel file  
18 contains falsified information?

19 MR. BEAUMAN: Object to the form.

20 A Absolutely -- you know, I think that  
21 I know Jay Zwischenberger and I know Rick Lofgren  
22 as men of ethics and -- and character, and I  
23 cannot even imagine why you use words as "false"  
24 and "falsified." I mean, it's ludicrous in my  
25 view.

1           Q           It would be ludicrous, would it not,  
2 if it was just placed in there by accident, would  
3 it not?

4           A           I can't comment on that. I have no  
5 idea. I do not have any knowledge of that, and I  
6 do not believe it's the case, but my belief is not  
7 important.

8           Q           But if it was placed in there  
9 deliberately in order to paint Dr. Kearney in a  
10 false light on a disciplinary matter, you would  
11 agree with me, would you not, that that smacks of  
12 retaliation?

13                   MR. BEAUMAN: Object to the form.

14           A           That's totally hypothetical.

15           Q           Go ahead, you can answer.

16           A           Totally hypothetical. I do not  
17 believe that these individuals who I know well  
18 does such things.

19           Q           If false information was passed on  
20 to the Medical Staff Executive Committee in order  
21 to effectuate the suspension of Dr. Kearney's  
22 clinical privileges, you would agree with me,  
23 would you not, that that smacks of retaliation?

24                   MR. BEAUMAN: Object to the form.

25           A           I don't agree with your statements

1 because it's prejudicial, and if I say yes, it  
2 sounds as if I agree it occurred. I'm unaware  
3 that it occurred. I do not believe in our system  
4 such things occur. Although I might not know  
5 about everything. But you're painting a picture  
6 of an ambiance, a culture which doesn't exist. It  
7 doesn't tarnish individuals. It doesn't place  
8 false documents in a personnel file. I'm unaware  
9 of it.

10 Q And if such a culture did exist,  
11 those in pos -- administrative positions of  
12 authority should take immediate action to correct  
13 that culture; isn't that true?

14 MR. BEAUMAN: Object to form.

15 A If it exists, yes, but I do not  
16 believe it exists or existed.

17 Q And if false information was passed  
18 on to the Fair Hearing about Dr. Kearney's  
19 behavior, you would agree with me that that also  
20 smacks of retaliation, does it not?

21 MR. BEAUMAN: Object to the form.

22 A Well, I -- you're going on with the  
23 same thing, yes, reluctantly because I don't -- I  
24 don't accept your premise of basing this on  
25 falseness.

1 Q If you will, return to the letter of  
2 August 28th, 2015, exhibit, please.

3 MR. BEAUMAN: Right here.

4 **THE WITNESS:** Right there.

5 (LETTER DATED 5/7/10, DRAFT, FOUR  
6 PAGES, WAS MARKED AS PLAINTIFF'S EXHIBIT NO.  
7 13 FOR PURPOSES OF IDENTIFICATION.)

8 Q Prior to the bullet points, the next  
9 sentence that begins "This prohibition," would you  
10 read that sentence into the record?

11 A "This prohibition includes, but is  
12 not limited to, the following clinical and  
13 teaching settings:"

14 Q Now, according to these bullet  
15 points and your group's action, Dr. Karpf --

16 A It is not my group. Let me correct  
17 you.

18 Q All right. And it's the president's  
19 group; correct?

20 A The University.

21 Q Well, when you say the University,  
22 it's the president who formed the group, is it  
23 not?

24 A It's the University legal counsel  
25 writing on behalf of the University, and I presume

1 you can say the president or the Board of  
2 Trustees.

3 Q Or it could, in fact, be the legal  
4 counsel who is taking over the operation of the  
5 College of Medicine, could it not?

6 MR. BEAUMAN: Object to form.

7 A You're being totally silly.

8 Q Let's see how silly I'm being.

9 A Yes.

10 Q Was Mr. Thro at the April of 2014  
11 meeting?

12 A Say again. I can't recall.

13 Q Well, if you will, we --

14 A Oh, at the meeting with faculty  
15 council?

16 Q Yes.

17 A Yes, he was.

18 Q Did he make a remark that the  
19 Practice Plan Committee was none of the council's  
20 business?

21 MR. BEAUMAN: Can I object? This has  
22 all been asked and answered.

23 A I can't recall. I've giving an  
24 answer that I can't recall, and if he made that  
25 remark, it probably is correct.

1 Q Thank you.

2 So let's look at the bullet points.  
3 So as of August of 2015, August 28th, to be  
4 precise, Dr. Kearney is now prohibited from  
5 attending mortality and morbidity conferences;  
6 correct?

7 A Yes.

8 Q Likewise, he's prohibited from  
9 attending Grand Rounds; correct?

10 A At that time, yes.

11 Q Well, has that been reversed?

12 A I -- I don't recall when he started  
13 attending Grand Rounds, whether this was prior to  
14 this letter. I think it was prior -- he started  
15 attending Grand Rounds after this letter. I can't  
16 exactly recall the events that led him to attend  
17 Grand Rounds.

18 Q Likewise, as of this time, the next  
19 item in line is that he was prohibited from  
20 attending house staff conferences; correct?

21 A I believe so, yes.

22 Q What are house staff conferences?

23 A It's a variety of things. It's  
24 conferences where residents, interns discuss  
25 clinically-related things.

1 Q Give me an example for the record.

2 A You know, a teaching conference with  
3 residents on a specific topic. There are numerous  
4 of those that goes on. Some more formal, some  
5 informal.

6 Q Are those open to the public?

7 A I don't know. I think that some of  
8 these conferences actually deal with patient  
9 material. It depends on what's discussed with it  
10 and if they're open to the public. I would  
11 presume some of it is actually not open because of  
12 the nature of --

13 Q But you would agree with me that  
14 some of these house staff rooms -- staff  
15 conferences are open to the public; correct?

16 A It could be, but I -- it depends on  
17 the conference. That is a very generic term,  
18 conference.

19 Q That's why I was asking you examples  
20 of it.

21 A I can't give you any.

22 Q Thank you.

23 The next in line is that he was  
24 prohibited from attending presentations by  
25 visiting professors or named lecture events?



1 A Yes, sir.

2 Q And you concurred with that?

3 A You know, I didn't write this. I  
4 think that -- that at that time I felt that  
5 Dr. Kearney's behavior wherever residents or  
6 interns were, given his disposition to interject  
7 with the type of language he uses, would be a  
8 problem.

9 Q All right. So --

10 A Like the peckerhead comment that  
11 we've mentioned.

12 Q And the inflammatory incidence;  
13 correct?

14 A Yes.

15 Q So to return to my previous  
16 question, you concurred with the fact that  
17 Dr. Kearney be prohibited from attending  
18 presentations by visiting professors or named  
19 lecture events?

20 A You know, concur was not asked of  
21 me. I think I could see the point.

22 Q Well, if it wasn't asked of you, who  
23 formulated these bullet points?

24 A I think this is a University  
25 directive.

1           Q           And when you say the University  
2 director, who are you talking about?

3           A           I don't know. Reports that everyone  
4 do, and I'm sure in consultation with others, and  
5 I didn't object to any of these.

6                       MR. BEAUMAN: He said directive, not  
7 director.

8                       MR. PAFUNDA: Oh, I thought he said  
9 director.

10                      THE WITNESS: Directive.

11           Q           So Mr. Thro, for lack of a better  
12 expression, was the architect of these bullets  
13 points; is that correct?

14                      MR. BEAUMAN: Object to form.

15           A           I disagree. I think Mr. Thro is the  
16 author, not the architect.

17           Q           There's an interesting bullet point  
18 that the author has put in here, and just for  
19 clarification, the author, Mr. Thro, is part of  
20 the group that the president formed, is he not?

21           A           Yeah.

22           Q           Thank you.

23                      That Dr. Kearney not attend any  
24 other teaching settings where house staff attend;  
25 correct?

1           A           Yes.

2           Q           What are those? Give us some  
3 examples so we understand what it is.

4           A           Teaching setting that house staff  
5 attend is numerous house staff -- it's morning  
6 report, for instance, when house staff present  
7 patients that were admitted over the night. And  
8 you use the examples of patients admitted with a  
9 specific case to expound on the treatment and the  
10 options and decisions that were made and was the  
11 decision correct or could it have been better.  
12 Numerous of those occur. There are 450-plus  
13 residents, so dozens of these occur.

14          Q           The next one, "Attending any  
15 recruitment activities for house staff," what are  
16 recruitment activities?

17          A           When individuals apply to be  
18 surgeons, the residents are chosen by a group, I  
19 don't exactly know in surgery who decide which  
20 would be -- they're ranked the residents and the  
21 match, and they would have certain residents --  
22 potential residents come in for a visit and they  
23 perhaps would be treated at a social event.

24          Q           Then the next one is prohibited from  
25 "Engaging in an activity that involves protected

1 health information or patient safety work  
2 product."

3 My question No. 1 is, protected  
4 health information of a patient, correct, is  
5 self-explanatory?

6 A Yeah.

7 Q As a licensed physician, Dr. Kearney  
8 would be bound by any HIPAA regulations pertaining  
9 to that, would he not?

10 MR. BEAUMAN: Object to the form.

11 A I don't know enough about this. I  
12 think that -- if he hasn't got clinical privileges  
13 and he's not part of the clinical operation, I  
14 don't know that he effectively has a license gives  
15 access UK Healthcare's health information.

16 Q Patient safety work product, what is  
17 that?

18 A I don't really know. I mean, that  
19 it is an issue like in the Grand Rounds where one  
20 deals with a patient's safety issue such as the  
21 inflammability of certain liquids and how to limit  
22 risk by changing the way they're used or even the  
23 entity itself. That is a patient's safety work  
24 product. It's changing the mode of -- modus  
25 operandi given a certain product.

1 Q And he's also prohibited from -- and  
2 the final bullet point is -- "Engaging in any  
3 interaction with medical students except as  
4 authorized by the Dean of the College of  
5 Medicine"; correct?

6 A Yes.

7 Q Did you authorize him at any point  
8 in time up to and including today -- well, while  
9 you were dean -- I'll strike that.

10 While you were dean, did you  
11 authorize him to engage in any interaction with  
12 medical students?

13 A I don't believe so.

14 Q And it was your -- it has been your  
15 position as dean that he should not interact with  
16 medical students; correct?

17 A Yes.

18 Q That's due to your allegation of  
19 unprofessional behavior; is that correct?

20 A It's not my allegation. It's due to  
21 his unprofessional behavior and the accreditation  
22 risk that it holds.

23 Q Did Dr. Kearney remain a member of  
24 the Department of Surgery?

25 A No.

1           Q           Who removed him from the Department  
2 of Surgery?

3           A           Dr. Kearney was placed in the dean's  
4 office at a time when there was a number of  
5 discussions and decisions that needed to be made  
6 how to make Dr. Kearney a productive faculty  
7 member limited to what he was capable and allowed  
8 to do. And so I don't know exactly who removed  
9 him. I think that the provost discussed it with  
10 me and I thought -- and I think the Chair of  
11 Surgery also agreed that -- that Dr. Kearney's  
12 presence in surgery would not be conducive to an  
13 ambiance that we'd like to promote.

14          Q           Who formally removed Dr. Kearney  
15 from the Department of Surgery?

16          A           I do not recall, but I would be  
17 happy to say that I am supportive of this, and I  
18 think it was the right thing to do.

19          Q           Is it within the sole province of  
20 the provost to remove someone from the Department  
21 of Surgery?

22          A           You're dealing here with a situation  
23 that has never occurred before. It's not as if  
24 this is something that occurs. This hasn't ever  
25 happened, as far as I know, so this was into

1 unchartered waters.

2 Q Well, the uncharted waters as of  
3 August 28th, 2015 prevented Dr. Kearney from  
4 attending public lectures, correct, from teaching,  
5 correct?

6 A Yes, it's all written here.

7 MR. BEAUMAN: Object to form.

8 Q It also -- if you'll look at the --  
9 it begins on the first page in the conclusionary  
10 paragraph, and it begins with the sentence that  
11 reads "Because," and if you would read that into  
12 the record?

13 A "Because Dr." --

14 MR. BEAUMAN: He's in the wrong spot  
15 (indicating), Page 1.

16 **THE WITNESS:** Oh, yeah.

17 Q That's my fault.

18 A "Because Dr. Kearney lacks clinical  
19 privileges, there are significant restrictions on  
20 his access to particular areas of the hospital and  
21 to patient information, and on his interaction  
22 with various members of the UK community. But  
23 because he remains a tenured professor within the  
24 College of Medicine, he retains certain rights."

25 Q Show me in this letter what rights

1 he retains?

2 A I can't -- I don't know.

3 Q All right. Thank you.

4 A But again, it's uncharted waters. I  
5 mean, I don't think this University has ever dealt  
6 with a faculty member that's a clinician that lost  
7 his clinical privileges. I'm unaware of it.

8 Q If you'll look at -- and it's on  
9 Page 3, numerical Item No. 6, and if you would,  
10 please read that into the record.

11 A "To the extent Dr. Kearney may wish  
12 to engage in any consulting or employment outside  
13 of the University, Administrative Regulation 3.9  
14 applies. Like all tenured faculty members,  
15 Dr. Kearney must obtain prior approval from the  
16 Dean of the College before engaging in outside  
17 consulting or employment."

18 Q Those physicians who have not lost  
19 their clinical privileges and who bear the regular  
20 title series tenured position, do they have to  
21 obtain permission from the dean --

22 A Yes.

23 Q -- to work outside?

24 A Yes.

25 Q Thank you.



1                   And so at any time did Dr. Kearney  
2                   express a desire to work outside the University?

3                   A           I believe he did.

4                   Q           And what was your response?

5                   A           I would not allow it.

6                   Q           Did you refer him to General Counsel  
7                   William Thro, or did you on your own say, "No, you  
8                   can't do that"?

9                   A           I discussed it with legal counsel  
10                  amongst others, and I don't recall who else.

11                  Q           Who made the ultimate decision  
12                  that --

13                  A           I'm ultimately responsible for --  
14                  it's the dean that makes the decision. I'm  
15                  ultimately responsible to not allow it, not while  
16                  he's a faculty member at UK.

17                  Q           Thank you.

18                               MR. PAFUNDA: I'll mark this as  
19                               Plaintiff's Exhibit No. 14. It's a letter  
20                               dated October 24th, 2015.

21                                       (LETTER DATED 10/24/15, FOUR PAGES,  
22                                       WAS MARKED AS PLAINTIFF'S EXHIBIT NO. 14 FOR  
23                                       PURPOSES OF IDENTIFICATION.)

24                  Q           Take a moment to review it, or I can  
25                  ask the questions, whichever you prefer.

1 A Please ask the questions.

2 Q Thank you.

3 A Point me to the appropriate  
4 sections. I'll meanwhile look at it.

5 Q Look at the --

6 MR. PAFUNDA: Do you want a copy,  
7 Bryan?

8 MR. BEAUMAN: I've got it.

9 Q If you look at the second paragraph  
10 that begins with the word "First," and then just  
11 take a moment and read that paragraph.

12 A "First, Dr. Kearney is" --

13 Q No, just to yourself. If I ask you  
14 to read a sentence out loud, I'll tell you.

15 A I've read it.

16 Q If you would read the second  
17 sentence in that paragraph?

18 A "Such an arrangement would be  
19 outside the University's" --

20 Q No.

21 A -- "healthcare administrative  
22 system, and outside the University's medical  
23 malpractice coverage."

24 Q And continue on, please.

25 A "Per University practice, we

1 generally do not allow our tenured faculty  
2 physicians to practice at other hospitals on even  
3 a part-time basis."

4 Q And continue.

5 A "Nor do we allow our tenured faculty  
6 physicians to practice outside the University's  
7 administrative and insurance umbrellas on even a  
8 part-time basis."

9 Q Thank you.

10 If you'll turn the page.

11 A Okay.

12 Q Letter Paragraph A.

13 A Yeah.

14 Q According to that, Dr. Kearney's  
15 salary was reduced; is that correct?

16 A Yes.

17 Q Was it reduced as of October 24th,  
18 2015?

19 A I believe, yes. I'm not sure.

20 Q Is that at or about the same time  
21 that the president apologized for the mishandling  
22 of Dr. Kearney's return to the University?

23 MR. BEAUMAN: Object to form.

24 A I really don't know.

25 Q And at that time did you know that

1 Dr. Kearney was involved in litigation with the  
2 University of Kentucky?

3 A I suspect I did. I don't exactly  
4 know when I knew about it.

5 Q But you knew about it before this  
6 letter; correct?

7 A I suspect so, yes.

8 Q Did you know that this was applied  
9 in terms of the reduction in 80 percent of his  
10 salary in order to force Dr. Kearney to settle his  
11 litigation?

12 MR. BEAUMAN: Object to form.

13 A I absolutely object to that  
14 statement of yours. I won't even dignify it with  
15 an answer.

16 Q Well, dignify it with this response:  
17 Were you privy to any kind of discussions like  
18 that with Mr. Thro or any -- any lawyer?

19 MR. BEAUMAN: Object to the form.

20 A I'm not going to tell you --

21 MR. BEAUMAN: It's not objection to  
22 the form. That's a privileged matter. He's  
23 not going to answer questions which are  
24 privileged.

25 MR. PAFUNDA: Well, I thought he

1           might.

2                   MR. BEAUMAN: No, you thought I was  
3           asleep, and I had so many objections I  
4           couldn't figure out which one to levy first.

5                   MR. PAFUNDA: I'm glad I got it on  
6           film. No, stop. Are you awake now?

7                   MR. BEAUMAN: I could go a few more  
8           if I need to.

9                   MR. PAFUNDA: I can't help it. All  
10          right. God, I've got to stop.

11                  MR. BEAUMAN: We're moving along.

12                  MR. PAFUNDA: Yeah, we are. We're  
13          going as fast as we can. A lot of material  
14          to cover here.

15                  Q           If you'll look at lettered  
16          Paragraph D. Just take a moment to read it to  
17          yourself.

18                  A           I've read it.

19                  Q           You'll see there that patients'  
20          records -- the patient -- the new employer would  
21          have to request the patients' records from UK  
22          Healthcare; correct?

23                  A           Yes.

24                  Q           Well, you're aware of the fact that  
25          a patient can request their own records be

1 removed. They don't need permission from UK  
2 Healthcare, do they?

3 A Sure.

4 Q Oh, they do need that permission?

5 A No, they can have access to their  
6 own records.

7 Q Yeah. And they can actually get a  
8 free copy of their own records, can they not?

9 A Sure.

10 Q So why was that restriction placed  
11 on Dr. Kearney?

12 MR. BEAUMAN: Object to the form.

13 MR. PAFUNDA: It's a back doorway to  
14 get through the attorney/client privilege.

15 MR. BEAUMAN: What was that again?

16 A I don't think -- I don't even  
17 believe this is a restriction.

18 Q Thank you.

19 A Just identifies how Dr. Kearney can  
20 get access to his records if he goes -- if the  
21 patient agrees and if everything is --

22 Q So we know by October 24th that  
23 Mr. Thro has taken it upon himself reduce  
24 Dr. Kearney's --

25 A Mr. Pafunda, I --

1 MR. BEAUMAN: Object to form. He's  
2 not asking a question.

3 Q Did he confer with you about  
4 reducing Dr. Kearney's salary?

5 A I believe he did.

6 Q Thank you.

7 And you agreed with that, did you  
8 not?

9 A I agreed.

10 Q Thank you.

11 In fact, you received a copy of this  
12 correspondence, did you not, if you look at the  
13 last page?

14 A I believe I did.

15 Q But the other members of the group  
16 aren't copied on this letter as they were on the  
17 August 28th, 2015 correspondence?

18 A No, I don't see it.

19 Q All right. And why not?

20 A I have no idea. A remuneration for  
21 a faculty member is really a dean's issue.

22 Q Is there a Compensation Committee  
23 that is involved with the compensation?

24 A Yes, but not with issues such as  
25 this.

1           Q           Does the Compensation Committee keep  
2 minutes?

3           A           I have no idea. I doubt it.

4           Q           Do they meet?

5           A           Oh, yes, very frequently.

6           Q           When you were last dean, who was on  
7 the Compensation Committee?

8           A           A large number of people. I can't  
9 recall. Dr. Moliterno chaired --

10          Q           Just name some of them --

11          A           David Moliterno chaired it, and they  
12 generally met at 7:00 on a Friday morning in the  
13 dean's office.

14          Q           Did any individual have the final  
15 say on the amount of compensation to be paid to a  
16 physician?

17          A           It's -- compensation to physicians  
18 is a system that has to have many checks and  
19 balances in terms of productivity, in terms of  
20 sources of revenue, in terms of seniority, in  
21 terms of contributions, in terms of how much such  
22 a physician needs in UK Healthcare support. It  
23 depends on grant funding. It's a complex system.  
24 It's not just a set salary.

25          Q           That was my earlier question, are



1           there minutes maintained by the Compensation  
2           Committee?

3                   A           I am unaware.  It's not a statute to  
4           the Committee.  Many of these advisory committees  
5           don't have minutes.

6                   Q           And if you'll look here in numerical  
7           paragraph that begins with the word "Sixth," and  
8           just take a moment to read that.  That's on  
9           Page 3.

10                   A           Show me.  6.  Yes, okay.

11                   Q           Just take a moment to read that to  
12           yourself.

13                   A           I read it.

14                   Q           Would you read the last sentence of  
15           that paragraph into the record?

16                   A           "Dr." --

17                   Q           "Per University practice."

18                   A           "Per University practice, when the  
19           dean makes a final decision about Dr. Kearney's  
20           departmental home, the president will make a  
21           recommendation to the Board of Trustees."

22                   Q           You say Dr. Kearney was removed from  
23           the Department of Surgery; correct?

24                   A           Yes.

25                   Q           Did the president make a

1 recommendation to the Board of Trustees?

2 A I am unaware of that.

3 Q If the president had made such a  
4 recommendation to the Board of Trustees, that  
5 would be maintained in a public record in the  
6 minutes of the Board of Trustees, would it not?

7 A I presume so.

8 Q Thank you.

9 So in effect, if that hasn't been  
10 done, Dr. Kearney is still a member of the  
11 Department of Surgery, is he not?

12 MR. BEAUMAN: Object to the form.

13 A Oh, I don't agree.

14 Q And if he, in fact, has been removed  
15 by your unilateral authority, and you've bypassed  
16 the Board of Trustees, then you've retaliated  
17 against Dr. Kearney in terms of removing him from  
18 the Department of Surgery; correct?

19 MR. BEAUMAN: Object to form.

20 A Totally disagree.

21 Q Thank you.

22 If you'll look at the last sentence  
23 on that same page. It begins with, "If  
24 Dr. Kearney" -- on the same page. Do you see it?

25 A Yes.

1 "If Dr. Kearney believes" --

2 Q Would you read that into the record,  
3 please?

4 A "If Dr. Kearney believes it is  
5 appropriate for him to attend a particular  
6 clinical and teaching event, and if he wishes to  
7 do so, he must submit a request for permission to  
8 the dean at least three working days in advance."

9 Q And after October 24th, 2015, did  
10 Dr. Kearney make such a request at any time?

11 A I believe he did.

12 Q Did you grant the request?

13 A Yes.

14 Q Thank you.

15 And you were given the sole  
16 discretion to grant or deny such a request, were  
17 you not?

18 A The University gave me that  
19 discretion.

20 Q And when you say the University gave  
21 you that discretion, Mr. Thro is the author of  
22 this letter, is he not?

23 A Yes.

24 Q Is he speaking on behalf of the  
25 University?

1           A           I presume so.

2           Q           He's not running the College of  
3 Medicine by himself, is he?

4           A           Mr. Pafunda, I really think you're  
5 wasting time with such silly remarks.

6           Q           Let's make it -- let's take it out  
7 of the realm of silly. Did he run these proposals  
8 by you before he drafted this letter of October  
9 24th, 2015?

10          A           Mr. Thro and I extensively discussed  
11 aspects regarding Dr. Kearney, extensively, and I  
12 can't recall what discussion occurred at what  
13 time.

14                   MR. BEAUMAN: Nor should you repeat  
15 them because they would be privileged.

16                   THE WITNESS: Yeah.

17                   MR. PAFUNDA: That's an interesting  
18 question, but we're not there yet.

19                   MR. BEAUMAN: It's where we are  
20 today.

21                   MR. PAFUNDA: It is where we are  
22 today. And I told you I would stay there,  
23 and so --

24                   MR. BEAUMAN: I appreciate it.

25                   MR. PAFUNDA: There's no sense

1           arguing with you because you're not going to  
2           change your mind anyhow.

3                   MR. BEAUMAN: Is this the November  
4           11th letter?

5                   MR. PAFUNDA: Yes, it is.

6                   (Off the record.)

7           Q           Dean DeBeer, I'll show you a letter  
8           we've marked as Plaintiff's Exhibit No. 15. It's  
9           the November 11, 2015 letter. If you will, just  
10          take a look at that, and if you prefer, I can ask  
11          you questions.

12                   (LETTER DATED 11/11/15, TWO PAGES,  
13          WAS MARKED AS PLAINTIFF'S EXHIBIT NO. 15  
14          FOR PURPOSES OF IDENTIFICATION.)

15          A           Please do, please do.

16          Q           All right. Thank you.

17                   If you'll direct your attention to  
18          the second paragraph on Page -- on the first page,  
19          and in that paragraph which begins "First," would  
20          you read that sentence into the record, please?

21          A           "Second, the president has redefined  
22          Dr. Kearney's duties."

23          Q           No, no.

24                   MR. BEAUMAN: This (indicating).

25          A           "First, Dr. Kearney does not have a

1 right to practice medicine with the University's  
2 competitors while remaining a tenured professor at  
3 the University. Like all full-time faculty  
4 members, Dr. Kearney must obtain explicit  
5 permission from his dean before engaging in  
6 outside employment or consulting."

7 Q Let me stop you right there. Did he  
8 at any time prior to November of 2015 or  
9 thereafter ask your permission to go practice  
10 medicine at another facility or institution?

11 A I can't recall. I wouldn't be  
12 surprised if he did.

13 Q But if he, in fact, had asked your  
14 permission, as the dean, would you have granted  
15 it?

16 A No.

17 MR. BEAUMAN: Object to form.

18 Q And why not?

19 A Because if you lose your privileges  
20 while practicing with UK Healthcare, I personally  
21 believe that I can't have a University of Kentucky  
22 professor practice at another facility that has a  
23 track record of treating those around him as  
24 Dr. Kearney did.

25 Q It would be similar to if you had a

1 professor that was engaging in sexual harassment,  
2 correct, which you would describe as  
3 unprofessional behavior; isn't that true?

4 MR. BEAUMAN: Object to form.

5 A I won't dignify that with an answer.

6 Q And the reason you wouldn't dignify  
7 that with an answer is because we've had a recent  
8 incident at the University of Kentucky where a  
9 professor who was engaged in a pattern of sexual  
10 harassment was actually let go without any warning  
11 to future institutions; correct?

12 MR. BEAUMAN: Object to the form.

13 A I have no opinion.

14 Q If you would, the second paragraph,  
15 and it begins "Second" --

16 A Yeah.

17 Q -- just read that first sentence  
18 into the record.

19 A "Second, the president has redefined  
20 Dr. Kearney's duties, and those duties now include  
21 an obligation to refrain from attending certain  
22 events."

23 Q So we're now back to that either you  
24 or the president has the final word on what  
25 Dr. Kearney may or may not do; is that correct?

1 A Yes.

2 Q Thank you.

3 A I presume so.

4 Q Thank you.

5 A Ultimately in the University, the  
6 Board of Trustees has the final word.

7 Q No, no, stop.

8 MR. PAFUNDA: I'll mark this next  
9 letter, December 23rd, 2015, as Plaintiff's  
10 Exhibit No. 16.

11 (LETTER DATED 12/23/15, TWO PAGES,  
12 AS PLAINTIFF'S EXHIBIT NO. 16 FOR PURPOSES  
13 OF IDENTIFICATION.)

14 MR. PAFUNDA: Got it.

15 MR. BEAUMAN: I do.

16 Thank you.

17 MR. PAFUNDA: Here you go. Thank  
18 you again.

19 Q Just hand that back to me for a  
20 second.

21 A Sure.

22 (Handing.)

23 Q Thank you.

24 If you will -- and I think this will  
25 go faster, I've highlighted certain portions of



1 the letter.

2 A Thank you.

3 Q If you'll just take a moment and  
4 review those.

5 A Sure. I've read it.

6 Q If I may?

7 A Sure.

8 Q If you'll note at the top of Page 2,  
9 it begins, "Second," all right?

10 A Yeah.

11 Q If you'll read that into the record  
12 for me, please.

13 A "Second, there are numerous rumors  
14 that Dr. Kearney is about to accept an offer of  
15 employment with one of University's healthcare  
16 competitors."

17 Q Did you hear such rumors?

18 A I did not personally.

19 Q Thank you.

20 Do you know where Mr. Thro gathered  
21 that information?

22 A I have heard that he engaged in  
23 legal work outside the University. That would  
24 be...

25 Q Who Mr. Thro or Dr. Kearney?

1           A           Dr. Kearney.

2           Q           Other than hearing he engaged in  
3 legal work outside of the University, you heard  
4 nothing about him obtaining employment elsewhere?

5           A           Nothing definitive. I mean, lots of  
6 talk, but nothing that I could substantiate with  
7 any significance.

8           Q           Well, the sentence reads, "There are  
9 numerous rumors"?

10          A           I think there were rumors. I don't  
11 know what numerous rumors mean. I can't  
12 specifically recall such a rumor except the legal  
13 work outside the University.

14          Q           Did you confer with Mr. Thro when  
15 this letter was drafted and published?

16          A           I believe that -- Mr. Thro and I  
17 conferred and -- conferred on all of these letters  
18 and copied me on.

19          Q           And if you will, read the second to  
20 last paragraph which begins "Of course."

21          A           "Of course, as the University has  
22 repeatedly emphasized, if Dr. Kearney wishes to  
23 resign his tenured position and pursue full-time  
24 medical practice elsewhere, the University is  
25 prepared to discuss continuation of benefits for a

1 limited period, including benefits provided  
2 through KMSF."

3 Q So in order to get outside  
4 employment, he would have to resign his position;  
5 is that correct?

6 MR. BEAUMAN: Object to the form.

7 A Yes.

8 Q Thank you.

9 A That's what this says.

10 MR. BEAUMAN: I said object to the  
11 form. You were looking at me as though you  
12 didn't hear me.

13 MR. PAFUNDA: No, I was -- your  
14 client didn't stop, okay, so I was -- I  
15 shouldn't say your client. I should say the  
16 deponent wouldn't stop. Because that's an  
17 interesting question in and of it itself,  
18 but it's a managerial position.

19 MR. BEAUMAN: Yes.

20 MR. PAFUNDA: I don't know if he's a  
21 decision-maker after today. You got this  
22 one, too, Bryan?

23 MR. BEAUMAN: February?

24 MR. PAFUNDA: Yes.

25 MR. BEAUMAN: Yes.

1 MR. PAFUNDA: Thank you. I  
2 appreciate that.

3 (LETTER DATED 2/17/16, TWO PAGES,  
4 WAS REMARKED AS PLAINTIFF'S EXHIBIT NO. 16  
5 FOR PURPOSES OF IDENTIFICATION.)

6 Q I'll ask you the questions if you  
7 don't mind, Dean?

8 A Sure.

9 Q And that way we'll move through it.  
10 If you'll look at the second  
11 paragraph, you would agree with me that as of  
12 February 17th, 2016, Dr. Kearney's salary has been  
13 reduced; is that correct?

14 A Yes.

15 Q So from the time that he was  
16 returned as a tenured professor, No. 1, he was  
17 denied outside employment; correct?

18 A Yes.

19 Q And, No. 2, his salary was reduced;  
20 correct?

21 A Yes.

22 Q He was denied the ability to teach;  
23 correct?

24 MR. BEAUMAN: Object to the form.

25 Q Correct?

1           A           Let me say yes, with very good  
2 reasons.

3           Q           You've gone over those reasons in  
4 detail?

5           A           Yes, yes.

6           Q           But to answer my question, it's yes,  
7 correct?

8           A           Yes, with very good reasons.

9           Q           Which exhibit did I just hand you?

10          A           16.

11          Q           Is it March 24th, 2016?

12          A           February 17th.

13          Q           We're going to move on to the March.

14                    (LETTER DATED 3/24/16, TWO PAGES, WAS  
15 MARKED AS PLAINTIFF'S EXHIBIT NO. 17 FOR  
16 PURPOSES OF IDENTIFICATION.)

17          Q           Plaintiff's Exhibit No. 17. Thank  
18 you. If you'd just return it to me just for a  
19 second. I think we can speed this process up.

20                    You would agree with Mr. Thro,  
21 general counsel, that Dr. Kearney retains academic  
22 freedom; is that correct?

23          A           Yes.

24          Q           Thank you.

25                    Then if you'll look at -- after

1 number -- the numerical 1 through 6, if you'll  
2 look at that full paragraph, "In preparing his  
3 plan" -- are you ready?

4 A Yes.

5 Q If you would read that into the  
6 record.

7 A "In preparing his plan, Dr. Kearney  
8 must recognize (1) the Board of Trustees  
9 Healthcare Committee has revoked his clinical  
10 privileges due to his behavior; and (2) because of  
11 accreditation concerns and his previous behavior  
12 in the classroom settings, he may not interact  
13 with medical students or graduate medical  
14 students. In other words, a plan that involves  
15 the exercise of clinical privileges or interaction  
16 with medical students and graduate medical  
17 students is unacceptable."

18 Q Thank you.

19 And again, we're returning to the  
20 earlier question concerning accreditation. What  
21 is the factual basis that there were accreditation  
22 concerns?

23 A Dr. Kearney's behavior hugely  
24 crossed the line of professionalism, and  
25 professionalism is, as Dr. McDowell and others

1 have stated, is a major issue in accrediting a  
2 medical school.

3 Q Thank you.

4 A And the residency program.

5 Q So Dr. McDowell, you're relying on  
6 her opinion that behavior issues raise serious  
7 accreditation --

8 A Not just Dr. McDowell. Dr. Chip  
9 Griffith in terms of medical school echoed that,  
10 and there was a concern that -- and our  
11 accreditation is coming up very quickly.

12 Q Would you agree with Hollie Swanson  
13 that a breach of AR 3:14 that established the  
14 Practice Plan Committee threatened the  
15 accreditation -- the University's accreditation?

16 MR. BEAUMAN: Object to form.

17 A Absolutely not. That's  
18 preposterous.

19 Q Thank you.

20 A That has nothing to do with  
21 accreditation.

22 Q Is that 17?

23 A That is 17.

24 Q Thank you.

25 (Off the record.)

1 (LETTER DATED 4/20/16 WAS MARKED AS  
2 PLAINTIFF'S EXHIBIT NO. 18 FOR PURPOSES OF  
3 IDENTIFICATION.)

4 Q The second sentence on the first  
5 page, if you would read that into the record.

6 A "First" -- does it start with  
7 "First"?

8 Q Here, I'll mark it.

9 A If you'll mark it, it will be  
10 easier.

11 Q Let's do that. You're correct. My  
12 marker is running out of marker, Dean DeBeer. I  
13 apologize, but go ahead.

14 A Yeah.

15 Q Highlighted portion, would you read  
16 that full sentence into the record, please?

17 A "When the Board of Trustees'  
18 University Healthcare Committee permanently  
19 revoked Dr. Kearney's clinical privileges at the  
20 beginning of the academic year, the University had  
21 insufficient -- had sufficient grounds to revoke  
22 his tenure."

23 Q Did the University as of April 20th,  
24 2016 revoke Dr. Kearney's tenure?

25 A I'm unaware of it. Dr. Kearney has



1 remained a tenured faculty member through all of  
2 this time.

3 Q When you say all of that time,  
4 that's from September of 2014 to the present time;  
5 is that correct?

6 A I'm unaware at the present time,  
7 until I was -- stepped away as dean, yes.

8 Q And which was again?

9 A April of this year.

10 Q Thank you.

11 What is your understanding of what  
12 procedural steps need to be undertaken to revoke a  
13 professor's tenure?

14 A It's a complex procedure that I  
15 can't contribute to this conversation. I don't  
16 know. It has to go through many channels.

17 Q I'm just asking your understanding.

18 A It's a complex process, and I don't  
19 know the details. I've never done it, and I never  
20 engaged in it, so I'm very unaware of the details  
21 of it.

22 Q If it's a complex procedure, you --  
23 and it was undertaken, you'd certainly be aware of  
24 it?

25 A Absolutely.

1 Q In fact, you would be a participant  
2 in it, would you not?

3 A Say again.

4 Q You would be a participant in the  
5 procedure?

6 A I presume so, yes.

7 Q Thank you.

8 If you'll turn to Page 2, and I  
9 think -- can you see where I've highlighted?

10 A Yeah, yeah.

11 Q If you'll read the full sentence  
12 that begins "Second."

13 A "Second, the University recently has  
14 learned that Dr. Kearney is providing expert  
15 testimony in a medical malpractice case."

16 Q Continue on.

17 A "Without obtaining the required  
18 approvals."

19 Q No. 1, my question is, who do you  
20 have to get approval from?

21 A You'd have to get approval from the  
22 dean.

23 Q And that would have been you at the  
24 time?

25 A Yes.

1 Q Did he ask for any such approval?

2 A No.

3 Q Was he, in fact, providing expert  
4 testimony in a medical malpractice case without  
5 approval?

6 A I don't know.

7 Q If he was not, you would agree with  
8 me that that's a false statement; correct?

9 MR. BEAUMAN: Object to the form.

10 A I don't know.

11 Q If -- I'll turn your attention to  
12 Page 3, and I didn't highlight this, but it's the  
13 first full paragraph.

14 A Okay, first.

15 Q And you'll see that in April 20th,  
16 2016, Dr. Kearney's salary was again reduced to  
17 \$43,500.

18 MR. BEAUMAN: Actually, it was  
19 effective May 1st.

20 MR. PAFUNDA: May the 1st.

21 Q To satisfy counsel, if you would  
22 read that full first sentence into the record,  
23 please.

24 A "First, effective May the 1, 2016,  
25 the University reduces Dr. Kearney's salary to

1       \$43,500."

2                   Q           So again, for the second time, maybe  
3 even the third time, Dr. Kearney's salary has been  
4 reduced; correct?

5                   MR. BEAUMAN:   Object to form.

6                   A           Yes.

7                   Q           Thank you.

8                               And then the next paragraph that  
9 begins with a sentence "Second" -- begins with  
10 "Second," if you'll read those two sentences into  
11 the record, please.

12                   A           "Second, effective immediately, the  
13 University prohibits Dr. Kearney from engaging in  
14 outside consulting, serving as an expert witness  
15 or attending Grand Rounds."

16                   Q           Are there specific regulations that  
17 prohibit Dr. Kearney from participating in outside  
18 con -- consulting, expert witness, or attending  
19 Grand Rounds?

20                   A           We do not allow faculty to engage in  
21 outside consulting without approval.

22                   Q           No, that's not my question. My  
23 question is, is there a specific administrative  
24 regulation that says that --

25                   A           I'm unaware of it.

1 Q Is there a specific bylaw of the  
2 Medical Staff Committee that prohibits?

3 A I can't point to that.

4 Q All right. Thank you.

5 A Doesn't mean there isn't one, but.

6 Q I understand that.

7 The closing paragraph, and the  
8 sentence begins -- it's the second sentence, and  
9 it begins with the word "Because," if you would  
10 read that into the record.

11 A "Because Dr. Kearney has lost his  
12 clinical privileges due to his own egregious  
13 behaviors, the University will not allow him to  
14 practice medicine in our hospitals, work for the  
15 University healthcare competitors and pursue  
16 clinical research or interact with medical  
17 students or residents in a teaching or clinical  
18 context."

19 Q If you would, focus on the fact that  
20 they won't -- you, the University, will not allow  
21 Dr. Kearney to work for the University's  
22 healthcare competitors.

23 A He needs approval before he can do  
24 that. It says here he doesn't --

25 Q But it doesn't have the word

1 approval in there, and it doesn't reference any  
2 approval by yourself as dean then?

3 A But previous documents indicated  
4 that, so I presume it still is in effect. I don't  
5 know. It doesn't have the word in there, you're  
6 right.

7 Q But you would agree with me, would  
8 you not, that Dr. Kearney was under no contractual  
9 restrictive covenant not to work at other  
10 healthcare facilities?

11 MR. BEAUMAN: Object to form.

12 A I don't agree with you.

13 Q Are you saying that he had a  
14 restrictive covenant in his contract?

15 A We do not allow full-time UK faculty  
16 to practice at outside hospitals without our  
17 approval. We do not extend malpractice coverage  
18 for that and we do not approve of it, unless we  
19 approve.

20 Q No, my question is, Dr. -- this says  
21 Dr. Kearney can't go to work for a healthcare  
22 competitor; correct?

23 A It says that, yes.

24 Q As you noted earlier, there's no  
25 regulation or administrative regulation or bylaw

1 that says you can't go to work for a competitor --

2 MR. BEAUMAN: Object to form.

3 Q -- to your knowledge?

4 A I don't have exact detail of all of  
5 those regulations and bylaws. It's certainly not  
6 allowed for faculty to do that without --

7 Q And you know what a restrictive  
8 covenant is in a contract?

9 A Yes.

10 Q And if there's no such restrictive  
11 covenant in Dr. Kearney's contract, then he would  
12 be allowed to go to another healthcare facility,  
13 even if that was deemed in competition with the  
14 University of Kentucky, would he not?

15 A I'm not sure that's correct. I do  
16 not know enough about it. In any case, I do know  
17 we do not allow faculty to do it. It would  
18 destroy the system.

19 Q Now, in the conclusory paragraph,  
20 you'll see it's the second to last sentence begins  
21 with the word "Third"; do you see that? Dean, can  
22 I mark --

23 A "Third," yes.

24 Q If you'd read that full sentence.

25 A "Third, Dr. Kearney's academic

1 freedom does not exempt him from compliance with  
2 all applicable statutes, regulations, policies and  
3 rules."

4 Q And likewise, the University is not  
5 exempt from complying with all applicable  
6 statutes, regulations, policies and rules, are  
7 they?

8 A I presume they aren't.

9 Q In other words, to put it in street  
10 language, the door swings both ways?

11 A That's understood.

12 Q Thank you.

13 So it's your position as the dean at  
14 the relevant time, as well as a member of the  
15 president's group, that the reduction of  
16 Dr. Kearney's salary, as well as the restriction  
17 on his activities were an effort to leverage him  
18 into settling his legal -- leverage him into  
19 settling his lawsuit with the University; is that  
20 correct?

21 MR. BEAUMAN: Object to the form.

22 A I disagree with you. I think it  
23 was -- reducing his salary commensurate with the  
24 revenue he generates, which is 0.

25 MR. PAFUNDA: This is between me and



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him. I may be done.

MR. BEAUMAN: Okay, good.

MR. PAFUNDA: What do you mean good.

You get paid by the hour.

Q Dean, if you'll give me just a few minutes, I may be finished.

THE VIDEO TECHNICIAN: The time is 1:28.

\* \* \* \* \*

THEREUPON, the taking of the deposition of Dean Fred DeBeer, M.D., was concluded at 1:28 p.m.

\* \* \* \* \*

1 STATE OF KENTUCKY )

2 COUNTY OF PENDLETON )

3 I, DESIREE J. WRIGHT, the undersigned  
4 Notary Public in and for the State of Kentucky at  
5 Large, certify that the facts stated in the caption  
6 hereto are true; that at the time and place stated  
7 in said caption the witness named in the caption  
8 hereto personally appeared before me, and after  
9 being by me duly sworn, was examined by counsel  
10 for the parties; that said testimony was taken down  
11 stenotype by me and later reduced to computer  
12 transcription by me, and the foregoing is a true  
13 record of the testimony given by said witness.

14 Upon request of counsel, the witness  
15 herein was furnished a copy of the foregoing  
16 deposition to read and sign. An errata sheet was  
17 also furnished for any corrections the witness  
18 wished to make. When same is returned to this  
19 reporter, it will be filed with the deposition.

20 My commission expires: 9/11/2018.

21 IN TESTIMONY WHEREOF, I have hereunto set  
22 my hand and seal of office on this the 18th day of  
23 November, 2016.

24 \_\_\_\_\_  
25 DESIREE J. WRIGHT  
NOTARY PUBLIC, STATE AT LARGE

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