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

PAUL KEARNEY, M.D.,

Plaintiff,

V.

UNIVERSITY OF KENTUCKY,

Defendant.

ORIGINAL

VIDEO DEPOSITION OF KEVIN NELSON, M.D.

Pursuant to Notice, the video deposition of **KEVIN NELSON, M.D.**, was taken before Brandy D. Mowery, CR and Notary Public in and for the Commonwealth of Kentucky at Large, at Sturgill, Turner, Barker & Moloney, 333 West Vine Street, Lexington, Kentucky, on Friday, September 15, 2017, commencing at the hour of 1:07 p.m.

The deposition was taken to be used for any and all purposes permitted under the Kentucky Rules of Civil Procedure.

An/Dor Reporting & Video Technologies
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APPEARANCES

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Also present: Angela Edwards, Video technician
Paul Kearney, M.D.

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DEPONENT: KEVIN NELSON, M.D.

THE VIDEOGRAPHER: We're on the video record. I'm Angela Edwards, the video technician. The court reporter is Brandy Mowery. We're here today to take the deposition of Dr. Kevin Nelson, at 333 West Vine Street, in Lexington, Kentucky. This deposition is being taken pursuant to notice in the Fayette Circuit Court, styled Paul Kearney, M.D., versus University of Kentucky.

The date is September 15th, 2017. The time is 1:07 p.m. Counsel will now introduce themselves and state who they represent, please.

MR. PAFUNDA: Berrnard Pafunda, on behalf of Dr. Paul Kearney.

MR. BEAUMAN: Bryan Beauman, for University of Kentucky.

KEVIN NELSON, M.D., called as a witness, first being duly sworn by the Court Reporter/Notary Public, testified as follows, to wit:

EXAMINATION

BY MR. PAFUNDA:

Q. You're Dr. Kevin Nelson?

A. Yes, sir.

Q. Employed by the University of Kentucky?

A. Yes.

Q. And your field of specialty is what, Doctor?

A. Neurology.

Q. And are you Board certified?

A. Yes.

Q. When did that happen?

A. 1986, I believe.

Q. And you went to medical school where?

A. University of Michigan.

Q. And residency completed there?

A. No. I then went to the University of New Mexico for an internal medicine internship, followed by three years of general neurology, at the University of New Mexico.

After that, I went into private practice in Boston -- North Shore, Boston for a year.

And then in 1984 - September, I believe - I came to the University of Kentucky, where I've remained ever since.

Q. And -- and I asked you to bring your CV with you today, and you didn't do that?

A. That's correct.

Q. And the reason or reasons?

A. I was real busy and just forgot.

Q. Okay. And when you say "real busy," are you engaged in clinical work?

A. And administrative work. I do both.

Q. All right. Before we get to that -- and you completed your undergraduate where?

A. University -- Michigan State University.

Q. All right. So your education, primarily, was in Michigan?

A. Yes, it was, and New Mexico.

Q. And what brought you to the University of Kentucky? What attracted you to the University of Kentucky?

A. The job, actually -- well, the job, where I could focus on clinical practice that I enjoyed. And it was a good place to raise my family and, you know --

Q. Are you -- are you saying Michigan wasn't?

A. I'm saying that North Shore, Boston, wasn't because that's where I moved from.

Q. All right.

A. And, yet, it was still close -- a day's drive to Michigan. Not too close to the family, but close enough to where I could get there.

Q. And you came -- and as you began your matriculation at the University of Kentucky, I take it it was at the Chandler Hospital?

A. Not -- not a matriculation, I don't think. But, yes, I was -- I began my employment at the University of Kentucky Med Center.

Q. All right. With teaching responsibilities also?

A. Yes, yes.

Q. And do you still teach?

A. Yes, I do.

Q. And what do you teach?

A. Neurology. And it's in two basic forms. One is -- when I'm attending on general neurology wards and consultations, I will have a cadre of residents at different levels and -- as well as, medical -- usually, there are sometimes --

Q. And -- and I take it that -- by your comments, you also teach in the classic classroom sense?

A. I occasionally give formal lectures, but my -- the demands of that are scant in the latter years.

Q. How -- how have your job duties changed over the years since you've been here for 20-plus years?

A. 30-plus years, yes.

Q. I was trying to be kind. I won't make that mistake again.

A. Okay. When I first came as junior faculty, I had heavy clinical duties and -- extremely heavy clinical duties and -- and heavy teaching duties. They mistreat general faculty, often -- junior faculty, oftentimes, load us with a lot of duties. And I had research that had to be conducted

for my promotion.

Over the years, I have done less -- less research, a little less teaching, kept up the clinical work and then added administrative duties that really began after I was Interim Chairman of Neurology. The dates escape me, but I would --

Q. Who was -- who was the -- who did you succeed as interim chairman?

A. Michael McClellan (spelled phonetically). And I was interim chair for two years or so.

Q. Approximately, when?

A. I want to say 1992, '93.

Q. And who appointed you as chairman?

A. Emery Wilson.

Q. And -- Dean -- Dean of the College of Medicine at the time?

A. Yeah.

Q. And it was -- I take it, at the time, it was the duties of the Dean of College of Medicine to appoint chairs?

A. Yes, it was.

Q. Is that still true to this day?

A. Yes, it is.

Q. And a chair can be removed at any time, correct?

A. I think the chair serves at the pleasure of the

Dean, but I -- that is more the academic side, which is less of what I do now. I do mostly a clinical rotation.

Q. You mentioned earlier - and I don't want to get too far off base - that you -- and -- had initially engaged in quite a bit of research.

A. More research than I do now, yeah. I still engage in research.

Q. All right. Focused in what field or fields, primarily?

A. Neuromuscular. I'm principally an electromyographer. My subspecialty in neurology is neuromuscular diseases.

Q. And I take it from your comments that you're published in that area?

A. Yes, I am.

Q. And will provide, through Mr. Beauman, a copy of your CV?

A. Yes, I'll -- I --

Q. Would you just get off the stick and get that done?

A. Yes, sir.

Q. Thank you.

Let me ask you this: Are you engaged in any charitable activities in -- in the community?

A. Other than through donations, no.

Q. And, presently - you -- you -- you have touched on it briefly - what administrative positions do you hold at the present time?

A. I'm the Director of Medical Affairs, which is a segment of the Chief Medical Office, and Chair of the Credentials Committee.

Q. All right. And you attain those positions how?

A. By appointment.

Q. And who was the -- who -- who did the appointing?

A. Chief Medical Officer.

Q. So, at one time, I take it Dr. Boulanger appointed you to the position?

A. Continued me in that position, actually. I was initially appointed, I think, by Byron Young. Then that was sustained through Rick Lockrin (spelled phonetically), sustained through Paul DuPreece, sustained through Boulanger. Currently, sustained through Phillip Chaney.

Q. And -- and I take at one particular point in time, Chair of Neurology was Dr. Joseph Berger?

A. Yes, it was.

Q. And the reason he was removed as chair?

A. I don't know all the reasons.

Q. All right. But what reasons are you aware of?

A. He -- he was at the displeasure of the Dean.

Q. And that -- the Dean at the time was who?

A. Dr. Debeer.

Q. All right. And do you recall any reason or reasons why he was at the displeasure of the Dean?

A. No.

Q. Any speculation in that regard?

A. No, I don't. I remained blissfully ignorant of that issue.

Q. Did you participate in any of the decision-making to remove Dr. Berger from his position as chairperson?

A. No, I did not.

Q. Were you asked for any input?

A. No, I was not.

Q. Did Dr. Burger, at the time, question any of the expenditures by Dr. Michael Karpf with respect to the hospital?

A. Not -- I'm not aware of any.

Q. And now you've been -- and I'll use -- I'll -- I'll -- I'll state it crudely. You've been overseeing clinical privileges for 20 years?

A. Roughly, yes.

Q. All right. And -- and that position entails what?

A. As Chair of the Credentials Committee, some -- the

authority for privileges starts at the governing Board of Trustees. And they cannot delegate that authority, but the process for maintaining those privileges then is -- begins with the department -- actually, it begins with the division or the section head, followed by the department, followed by the credentials committee, followed by the Chief Clinical Officer and Med Staff Executive Committee and then to the Board.

Q. Walk me through it --

A. Yeah.

Q. -- if you don't mind. Some physician applies for clinical privileges at -- at the hospital. What are the steps?

A. Yeah. The steps are -- are, largely, what I iterated. It's -- the approval comes at the section department level.

Q. Well, in other words, it -- it starts at the Section Division Chief?

A. Yeah, division or section. Sometimes, the divisions have even more sections but -- at the lowest section. But it starts at the division, if there are divisions or sections. Then to the department. And has to get the approval of the department chair. Usually, department chair is very heavily-involved with approvement

and appointment. And then the request for privileges then goes to the credentials committee, where it's reviewed by a multidisciplinary committee that I have chaired. And after approval, then the Chief Clinical Officer signs a -- temporary privileges so that the person can practice before it -- the application then goes to the staff committees and then to the Board for final approval.

Q. All right. But with respect to the board approval, are you talking about the Board of Trustees, at the University of Kentucky?

A. Yeah. Ultimately, all privileges have to be approved by the Board of Trustees.

Q. But that's just a matter of listing a physician on a particular slot that goes up to the Board of Trustees. They don't -- they don't interview the individual physician?

A. They are not doing the mechanics of much -- of the work.

Q. Thank you. In fact, they just merely pass their hand over --

A. They -- they oversee the process. They know who is involved with the process, and they are responsible for overseeing the integrity of the process.

Q. Do they oversee the process when clinical privileges are revoked?

A. Yes, they do.

Q. In what respect?

A. Ultimately, the revocation of privileges is the final decision -- rests with the Board of Trustees.

Q. When you say "the Board of Trustees," are you -- are you stating that's the entire Board of Trustees?

A. I think it's the subcommittee of the Board of Trustees, the hospital committee.

Q. Other that Dr. Paul Kearney, during your tenure -- and I'll use the word "tenure" as a --

A. Yes.

Q. -- person who is over clinical privileges - has any -- any physician's clinical privileges been revoked?

A. In a formal setting like Dr. Kearney's, not that I'm aware of.

Q. All right. Have any physician's clinical privileges been revoked in any other setting?

A. There are many ways to tailor practices and -- where -- short of a full revoking of privileges.

Q. That's a euphemistic way of putting it, isn't it, in terms of tailoring practices, short of revoking privileges?

A. Euphemistic for what?

Q. Well, let's look at it this way. How do you

tailor a practice, short of revoking their privileges?

A. Voluntary agreement that someone should not be engaged in that practice. And then the -- and -- and that is generally how we -- we approach it.

Q. When was the last time that someone's practice was tailored by voluntary agreement?

A. Oh, I can't remember.

Q. Has it been over 10 years?

A. No. It's been less than 10 years.

Q. All right. How recently?

A. I can't recall right offhand.

Q. You'd have to consult what?

A. More of my memory.

Q. Well, absent your memory, there's a written record; is there not?

A. Yes.

Q. All right. And where's the written record maintained and by whom?

A. In the med staff office.

Q. And who is it maintained by?

A. The med staff office, which is a subdivision of the Chief Medical Office.

Q. And do you also keep a copy?

A. Yeah, it's -- no, no. Actually, that's the only

copy.

Q. Do you recall any of -- any of the mechanics of the voluntary agreement to tailor a practice?

A. It can be done where an administrative agreement -- well, short of taking their privileges away, well, you will not see those patients, for example.

Q. Now --

A. And, you know, you'll refer those to your colleague or your -- your expertise in this area -- although you were once given privileges, your expertise has waned, because you haven't seen patients in that area or techniques have changed and someone else has a better techniques and -- and they should be doing that. So we don't have to involuntarily revoke privileges.

Q. All right. So, in other words, as I take it from the tone of your responses, that the physician is approached and requested to engage in a -- in a voluntary -- what's called a curtailment of their practice --

A. Uh-huh.

Q. -- is that correct?

A. Curtail or -- curtail might be an okay word.

Q. All right. Is there any other word that may be more appropriate or any other description?

A. No. I think, you know, generally, you're -- if

you're taking that, you're asking them not to do that. So that would be curtail. So, you know, I'll take it.

Q. Give me -- give me an example so that we can operate in a concrete world.

A. Okay. I can't -- I cannot reveal specifics.

Q. No, I'm not asking you to.

A. Yeah.

Q. I'll ask that later.

MR. BEAUMAN: And I'll object.

MR. PAFUNDA: And he will, and we'll go around in a rosy bush, but go ahead.

A. Okay. That's okay. You may -- you may have a thoracic surgeon who is -- has specialized in one area of thoracic surgery, to the exclusion of other areas of thoracic surgery. And so you ask them to stay there -- stay in that area where you developed special expertise and not engage in the full range of thoracic surgery.

Q. So, in other words, as I take it from your example, that -- let's stick with the thoracic surgeon. They've tried to expand their practice beyond what would be designated as their specialty and -- and a voluntary agreement -- you're trying to reign them in so that they don't go into other areas?

A. No, let's -- I'll give you a -- a more specific

example.

Q. Thank you.

A. Let's take neurology. Okay? Neurology is -- I am a neuromuscular doctor. And, for several years, I've engaged in general neurology practice. And we have a specialty inpatient service of stroke neurology. I am qualified to do -- engage in stroke neurology and take care of stroke patients, but I tailor my practice away from stroke and focus on general neurology and neuromuscular and let those specialists in stroke that have -- have their practice focused on stroke, engaged in stroke -- they -- my practice -- my privileges have not been diminished or curtailed, but my practice has been adjusted so that my expertise is applied to those patients that I am best -- conform with.

Q. All right. But I was talking about more -- more directly to the point, where privileges have been either curtailed or diminished, to use your description.

A. Well, that is an example of it.

Q. Yeah, but that's voluntary on the part of the physician, from your example.

A. Okay, okay.

Q. I mean, you voluntarily did that. No one stepped in and said, Dr. Nelson, step back from this particular

area.

A. Well, we do it -- the same -- the same thing happens. I mean --

Q. Well, let's take -- let's take --

A. Let me ask this --

Q. No. I'm asking the questions.

A. No, no. I'm asking what was the question you were asking?

Q. Let me -- let me take it from this approach. You're familiar with peer review?

A. Uh-huh.

Q. All right. If you have a -- and you've participated in those, I take it?

A. Yeah.

Q. And if a physician's treatment of a patient falls below the standard of care, is substandard, resulting in either injury or death to the patient - all right - in that instance, is a physician's clinical privileges curtailed, diminished or revoked?

A. It depends -- and I -- the -- there are standard -- standard of care -- depends on what standard you're using. For example, in my case, with a -- with general neurology, I can provide standard of care stroke treatment. It would be for the community neurologist, but it's not our

internal standard for an academic stroke specialist.

Q. I'm -- I'm talking about an instance where the physician's standard of care is substandard and, as a consequence, results in injury or death to the patient. Is that physician's clinical privileges revoked?

A. No, not necessarily.

Q. All right. Have any physician's clinical privileges been revoked in the last --

A. Involuntarily?

Q. -- in the last 10 years?

A. Not that I'm aware of.

Q. In -- in the entire time that you've been there?

A. Well, we have ways of ensuring that that practice is either improved, the physician comes up to standard or they stop practice.

Q. All right. Have you had, in your position in -- with respect to clinical privileges, had to monitor a physician so that their standard of practice comes up, improves?

A. Yes.

Q. All right. And how recently has that been?

A. In the last six months.

Q. And prior to that, on the other end of the spectrum, I take it from your response, in at least the last

10 years, no physician's privileges have been revoked as a result of substandard care?

A. No, not in the -- not -- not that comes to mind.

Q. But cases of substandard care have come to your attention, have they not?

A. Yes, they have.

Q. All right. And why have -- why has not the university or yourself revoked privileges in those instances?

A. Because we've either improved the practice or stopped the practice.

Q. All right. And when you say "stopped the practice," can you give me an example of that?

A. The -- not without identifying physicians, but...

Q. Give it -- give it a shot.

A. No. We -- we have, actually.

Q. Recently then?

A. Last 10 years, yes.

Q. On -- on how many occasions?

A. I can't count.

Q. More than two?

A. Yeah.

Q. More than 10?

A. Maybe.

Q. All right.

A. It's -- it's really hard to say a number.

Q. But -- but -- taking it from -- from your responses, then, I take it, with respect to physicians, there are graduated levels of discipline that can be imposed as it concerns clinical privileges, correct?

A. Graduated levels of administrative actions. That can be voluntary or involuntary, yes.

Q. All right.

A. That's what...

Q. Thank you. And one of those levels of action is, as you're familiar, in Dr. Kearney's case is summer suspension?

A. Yes, that's right.

Q. And I take it you attended the medical -- the initial medical staff executive committee meeting?

A. Yeah, you're going to have to refresh -- is that --

Q. Now, are you -- are you going to --

A. We've got two -- I think we had two.

Q. I think I said the initial.

A. Okay. Yeah, yeah. I think we had two. Okay. Yes.

Q. Had you ever been to a medical staff executive

committee -- committee meeting prior to Dr. Kearney concerning summer suspension of clinical privileges?

A. We -- we've held them periodically. Infrequently, at that level. But, yes, we've held them infrequently.

Q. All right. When --

A. But not for disciplinary reasons.

Q. No. I'm talking about disciplinary. We're solely focused --

A. No. I think that's the only one we've had.

Q. So it would stand out in your mind in terms of being --

A. Yes.

Q. -- a singular event in the last 20-plus years?

A. For -- for medical staff. We've had them for residents, but it is -- that's the only one that comes to mind for medical staff.

Q. All right. And, in fact, that is the only one, correct?

A. Yeah, as far as I -- I -- I recall, yeah.

Q. All right. And the reason you were at that initial meeting?

A. Because I'm a member of the med staff executive committee as -- in my capacity as Chairman of the Credentials Committee.

Q. All right. And at that medical staff executive committee meeting, was that meeting recorded?

A. I think it was.

Q. Have you had --

A. I don't know if it was.

Q. -- an opportunity to listen to that recording prior to today?

A. No.

Q. Have you listened to it at any time?

A. No.

Q. Oh. And you announced to the medical staff executive committee that Dr. Paul Kearney had crossed the line --

A. I'd --

Q. -- in that initial --

A. -- have to look at -- I'd have to look at the minutes and...

Q. Well, let's look at the minutes, then, and see if we can -- because if you had said that, it should be reflected in the minutes?

A. Yeah, if I did. Let's see what the minutes say.

Q. Okay.

MR. PAFUNDA: Want to see a copy, Bryan?

MR. BEAUMAN: Sure.

MR. PAFUNDA: I just happen to have a copy.

A. All right. Surprise.

MR. PAFUNDA: No, for Bryan. I knew you would be shocked.

I'd like to mark as Plaintiff's Exhibit No. 1 Medical Staff Executive Committee Meeting minutes of January 29th.

(Plaintiff's Exhibit No. 1 was marked for identification purposes.)

MR. PAFUNDA: Thank you, Bryan.

MR. BEAUMAN: You're more than welcome.

Q. And I'll hand you, Dr. Nelson, what I have marked as Exhibit No. 1. And take your time and review that.

A. Okay.

(Witness reviews document.)

Q. And while you're reviewing --

A. Do you have a pen that I can borrow? Thanks.

Q. Not to be rude, but you didn't draft these minutes?

A. No, I did not.

Q. Did you review these minutes after they were drafted?

A. I don't recall doing that. That was not my -- my

position to do so.

Q. Did you discuss the minutes at any time?

A. Not that I recall. I'm looking for my -- oh, yeah, I did. "Dr. Nelson reviewed the recusal process." Yeah, I remember doing that.

Q. Doing -- now, you're on what -- which page, for the record?

A. Second page.

Q. All right. And you're reading which paragraph?

A. "Dr. Nelson reviewed the recusal process. He noted that each participant of this committee should examine our relationship with Dr. Paul Kearney and determine..."

Q. Okay. You're gonna have to slow down or speak up.

A. All right. Sorry.

MR. BEAUMAN: Or -- or read yourself. That's okay too.

A. Okay. You can read it.

Q. Or, better yet -- all right.

MR. BEAUMAN: Let him ask a question.

Q. And I don't have to touch you to do this. All right. Better yet, for the court reporter - all right - read it slowly for the record.

A. Okay. For the record --

Q. Thank you.

A. -- "Dr. Nelson reviewed the recusal process. He noted that each participant of this committee should examine our relationship with Dr. Paul Kearney and determine if a significant conflict exists that should then recuse you from this discussion and subsequent voting. Also, if any of the members of this committee have been approached by Dr. Kearney, Dr. Nelson asked that you please let Cliff Iler know."

Q. Does that minute accurately contain everything you discussed with the medical staff executive committee at that initial meeting in January of 2015?

A. As I recall it.

Q. Did you, at that time, tell the committee that in your opinion, Dr. Kearney had stepped across the line?

A. I -- I would have to listen to a recording to know that.

Q. All right. And, as you told me a moment ago, you had not, prior to your deposition today, listened to any recording, correct?

A. No, I have not.

Q. At any time since that meeting; is that correct?

A. Would you repeat that question again for me?

Q. Yes, I will. Since that meeting in January of 2015 -- and you'll note that it was recorded, correct, by

Sarah Bentley --

A. Okay.

Q. -- on the first pages.

A. She was the CMO secretary at the time.

Q. Yes. And that means she was the secretary to Dr. Boulanger?

A. Yes.

Q. And she was there to record it, was she not?

A. I believe so.

Q. All right. And -- and the minutes reflect that she was there and recorded it, correct?

A. I don't know. I didn't see that in the minutes.

Q. If you'll -- I think you have to flip to the first page --

A. Oh.

Q. -- and you'll see across -- across -- on the line that says "Presiding," you'll see "Dr. Fred Zachman," and you'll see --

A. Oh, "Recorder."

Q. Yes.

A. I don't know if that means electronic recording or taking notes, recording --

Q. But we don't have to go down that rabbit hole, do we? Because it says "Recorder," correct?

MR. BEAUMAN: Yeah. He explained.

A. Yeah, it says "Recorder."

Q. All right. So absent any -- listening to the recording, you have no recollection whether you made the comment that Dr. Kearney had stepped across the line to the medical staff?

A. No, I don't recall.

Q. All right. Would it be appropriate for you to make that comment prior to any investigation into this matter?

A. It could.

Q. All right. Tell me how.

A. Well, in the course of presenting the -- the evidence and reviewing the letter of Dr. Boulanger.

Q. All right. And what evidence did you review prior --

A. The letter from Dr. Boulanger. I did not conduct the investigation of Dr. Kearney.

Q. So you took the letter from Dr. Boulanger at face value to be accurate?

A. Yes.

Q. Did you discuss the matter with Dr. Boulanger or anyone prior to that meeting?

A. No --

Q. Then --

A. -- not that I recall.

Q. And you happened to obtain a copy from Dr. Boulanger -- of his letter because...

A. I think it went to all of the members of the medical staff executive committee.

Q. All right.

A. I mean, I thought that was the basis of our meeting. So it would only be natural that we would look at the document.

MR. PAFUNDA: Exhibit No. 2. Do you -- do you want a copy, too, Bryan?

MR. BEAUMAN: Sure.

(Plaintiff's Exhibit No. 2 was marked for identification purposes.)

MS. PAFUNDA: Thank you.

Q. If you'll take a moment and review that, please, Dr. Nelson.

A. Uh-huh.

(Witness reviews document.)

A. Okay. Yep.

Q. All right. Would you point out there -- in there the reason or reasons why Dr. -- that -- first of all, that is the letter from Dr. Boulanger?

A. Yeah.

Q. And as it notes on the second page, it was provided to the medical staff executive committee?

A. Uh-huh.

Q. All right.

A. Yes.

Q. And that's how you received a copy, correct?

A. Yes.

Q. All right. And the letter is dated January 26th?

A. 2015.

Q. All right. And date of the medical staff executive committee meeting is...

A. January 29th, 2015.

Q. All right. So you had a -- at -- at an optimum, you had three days in which to receive and review this letter, correct?

A. Yes.

Q. All right. And did you, in -- during that period of time, discuss this matter with Dr. Boulanger?

A. Not that I recall.

Q. Is that a no or a yes, or just I don't have any recollection of it?

A. I -- that is, I don't recall.

Q. All right. Now, if you would -- you've -- you've

had an opportunity to review the letter, correct?

A. Uh-huh, yes.

Q. Would you point out where the letter states the reason or reasons why Dr. Boulanger engaged in a summary suspension of Dr. Kearney's clinical privileges.

A. "...you are summarily suspended pursuant to Article 9.4.1 of the University of Kentucky UK Healthcare Medical Staff Bylaws due to unprofessional conduct on your part directed towards staff, resident physicians, medical students and a patient and willful violation of the University's Behavioral Standards Inpatient Care."

Q. Right. Now, does he point out a specific reason or incident or -- or incidents in that letter to the medical staff that resulted in Dr. Kearney's summary suspension of his clinical privileges?

A. The data behind that statement is not given in this particular letter.

Q. All right. So one could not jump to the conclusion that Dr. Kearney stepped over the line until they had reviewed the data, correct?

A. Yes.

Q. All right. And to do so would, in fact, be to pre-judge Dr. Kearney's conduct as warranting revocation of his clinical privileges, correct?

MR. BEAUMAN: Object to the form.

A. This was a hearing to determine if the suspension should be upheld.

Q. I'm not asking you about the hearing. I'm asking you about the letter.

A. Well, the --

Q. As -- as you just noted, isn't it true that you couldn't jump to the conclusion that his summary suspension was warranted until you knew the data underlying --

A. Yes, that's true.

Q. -- the -- the --

A. That's true.

Q. -- comments from Dr. Boulanger, correct?

A. Yes.

Q. All right.

A. Knowing the data behind the statements I just read.

Q. And if someone said that Dr. Kearney stepped over the line, they couldn't draw that --

A. Unless they've seen the data.

Q. -- unless they've seen the data. And if they had made that statement, that he had crossed over the line, that doctor would be asking the medical staff executive committee to pre-judge Dr. Kearney's conduct before they had seen the

data, correct?

A. Yes.

Q. Thank you. Now, returning to my earlier question. All right. And since you're from Canada, I knew you'd be patient.

A. No, I'm from Michigan.

Q. All right. Michigan. Did you make the statement to the medical staff executive committee that Dr. Kearney had stepped over the line?

MR. BEAUMAN: I think he's already answered that.

A. I don't recall making it.

Q. All right. But you would agree with me, based on your answers, that if you made it, that would be an inappropriate statement to make to the medical staff executive committee?

MR. BEAUMAN: Object to the form.

A. It would be inappropriate if I hadn't seen the data.

Q. All right. Had you seen the data prior to the meeting?

A. I probably did. I don't know when and in what form, but --

Q. Who --

A. -- I probably saw the data.

Q. -- who would have furnished you with the data?

A. Dr. Boulinger's office would have.

Q. All right. Now, you have a three-day period of time here.

A. And, also, Margaret Pisacano and Paula Holbrook, who do our risk investigations.

Q. All right. So between January 26th and the meeting on January 29th, the medical staff executive committee, someone provided you with the data?

A. They could have, yeah. I don't remember how I got it, but -- but I certainly had it and looked at the data before the meeting.

Q. And what data do you recall looking at?

A. I can't remember. It was the data that formed the -- the basis of the letter in the meeting.

Q. But you do recall the person or persons who, in all probability, performed -- made -- made that data available to you as either Ms. Pisacano, Dr. Boulanger or who else?

A. Paula Holbrook. She's in our risk office. It came to me some way, through one of those three people, and I can't really recall how it came to me.

Q. All right.

A. But it -- it did come to me before -- before the meeting.

Q. And do you know if other physicians who are on the medical staff executive committee were provided with that data prior to the meeting?

A. I don't think so.

Q. All right. And --

A. And -- and I -- and I got access to it because of my position as the Chairman of the Credentials Committee & Privileging.

Q. Any other reason why you would have access to it?

A. No, just for that.

Q. If you'll be patient with me, I'm going to play this -- well, maybe I'm not. It won't go in.

MR. PAFUNDA: All we need, Bryan. I've got a copy for you.

MR. BEAUMAN: I assume it's the same one I've seen?

MR. PAFUNDA: It's -- it's exactly the same, but I'm going to laboriously play it. All right?

MR. BEAUMAN: The whole thing?

MR. PAFUNDA: The whole thing. It's 45 minutes.

MR. BEAUMAN: You've got it cued up.

MR. PAFUNDA: Huh?

MR. BEAUMAN: You've got it cued up --

MR. PAFUNDA: No --

MR. BEAUMAN: -- don't you?

MR. PAFUNDA: -- I don't. No, I don't -- I -- and I'll tell you why I don't, because I didn't think it would be appropriate for the witness. All right. So you have to suffer through it. You redacted it. You have to suffer through it.

MR. BEAUMAN: Just so Dr. Nelson knows, he had made a request for the recording.

THE WITNESS: Okay.

MR. BEAUMAN: So, of course, we retrieved it. There are certain things on there that are attorney/client privilege, where -- if you recall, Cliff was there. So when members of the committee or others are asking him legal advice, we redacted that out of the hearing.

MR. PAFUNDA: They claim it's legal advice. That's a battle for another day. But you don't have to concern yourself --

MR. BEAUMAN: If you ask a lawyer a question --

THE WITNESS: It's not my battle.

MR. PAFUNDA: No, it's not your battle. All right.

THE WITNESS: Can I -- can I have another Coke?

MR. BEAUMAN: Yes. You really going to play this whole thing?

THE WITNESS: A regular Coke.

MR. PAFUNDA: Yeah, I am.

THE WITNESS: A regular Coke.

MR. BEAUMAN: Okay.

MR. PAFUNDA: All right.

THE WITNESS: In fact, I think we should order a pizza.

MR. BEAUMAN: Why don't we -- do you want to go off the record and play it?

MR. PAFUNDA: Bryan, I'll leave the room and play it. I just want him to identify it. All right?

MR. BEAUMAN: Okay. The whole thing or his voice?

MR. PAFUNDA: Who is speaking, so on and so forth to make sure it's an accurate copy, to the best of his recollection, unless you want to stipulate that after I start the darn thing?

MR. BEAUMAN: I mean --

MR. PAFUNDA: Get him a -- get Dr. Nelson a Coke.

THE WITNESS: I think the person that made the recording --

MR. BEAUMAN: Yeah, she's already done this.

THE WITNESS: Okay.

MR. BEAUMAN: She's already gave her deposition.

THE WITNESS: So this is a fruitless endeavor?

MR. BEAUMAN: Well --

MR. PAFUNDA: No, it's not. Okay.

MR. BEAUMAN: It's -- I think it's a fair question to you, if he doesn't know who is speaking.

THE WITNESS: Okay. All right.

MR. PAFUNDA: Whether it's --

MR. BEAUMAN: I don't know about the whole --

MR. PAFUNDA: -- whether it's fair or --

MR. BEAUMAN: -- 45 minutes.

MR. PAFUNDA: -- unfair, it don't matter. Okay?

MR. BEAUMAN: Well, now, that's not

true.

MR. PAFUNDA: I will in just a second. You -- you getting Dr. Nelson a Coke?

MR. BEAUMAN: I'm getting him a Coke. Would anyone else like anything?

MR. PAFUNDA: No. Pizza? God, you've got to be joking, right? No. I mean, you don't need pizza, do you?

THE WITNESS: Yeah. I haven't had lunch.

MR. PAFUNDA: All right. Take a break.

THE VIDEOGRAPHER: The time is 1:45.

(WHEREUPON, a break was taken in the proceedings.)

THE VIDEOGRAPHER: Back on the video record at 1:49.

BY MR. PAFUNDA:

Q. As Mr. Beauman pointed out, I was provided with a copy of the recording that's a redacted version. Redacted, in the sense that there may have been legal advice given at that particular meeting, in the medical staff executive committee. But I'm going to go ahead and play the recording and ask you to identify it as accurate, to the best of your recollection, who is speaking and when you speak.

A. Okay.

Q. Thank you very much, Dr. Nelson.

(Video played.)

Q. Cliff Iler, correct, said that?

A. Yeah.

Q. Who is -- who is that?

A. Fred Zachman.

Q. Thank you very much.

(Video stopped.)

If you'll notice, right there, Dr. Zachman is -- is stating that it's due to the presence of harm to patients and staff, correct?

A. Yeah.

Q. All right. So it doesn't have anything to do -- and that's an imminent --

A. Yes, yes.

Q. -- danger to patients and staff, correct?

A. Yes.

Q. All right. And, at that particular point, it -- it would raise at least the inference that it's physical harm to patients and staff, correct?

A. May not, no.

Q. All right. Well, what --

A. There's psychological and physical.

Q. All right. And if it was psychological, how would that be empirically noted?

A. The -- it would be in the data.

Q. All right. In the data that you were provided, was there any evidence of psychological harm?

A. Or potential psychological harm --

Q. Yeah.

A. -- or inferred psychological harm.

Q. All right. Given what you were provided?

A. Yes.

Q. All right. And -- and on what basis do you form that opinion?

A. I'd have to review the data again.

Q. All right. And do you recall the nature and extent of that data that was --

A. No.

Q. -- provided to you by either of those three --

A. I'd have to look at the data.

Q. Have you retained the data?

A. No.

Q. So I take it from your response, you returned it to whoever gave it to you?

A. Yes, or --

Q. Or destroyed.

A. -- or destroyed it.

Q. All right.

(Video played.)

Q. So, at this particular point, Dr. Zachman is telling the members of the medical staff executive committee that Dr. Kearney does not have a right to be present at that meeting in February; is that correct?

A. I think so, yes.

Q. All right. In fact, that's what happened, isn't it? He wasn't --

A. He was not present.

Q. All right. Was he entitled to a hearing --

A. I know --

Q. -- before --

A. -- I'd have to look at the bylaws to -- to know that.

Q. Had you formed an opinion at that point that he was not entitled to a hearing before the medical staff executive committee?

A. No.

MR. PAFUNDA: Well, you didn't want me to take too long, did you?

THE WITNESS: Plus, we only booked two hours. We may be concluding on another day.

MR. PAFUNDA: That's fine.

(Plaintiff's Exhibit No. 3 was marked for identification purposes.)

Q. Would you just take a moment and read through that?

A. Yeah. This looks like the medical staff bylaws.

Q. And for your regular reference, 9.4 is the summary suspension procedure; is that correct?

A. Yes.

Q. All right. And if you'll turn the page, you'll see 9.42, which is the medical staff executive committee decision portion.

A. Yes.

Q. All right. And if you would, under 9.42, read into the record the second sentence, under paragraph Subsection A.

A. Beginning with "Within 14"?

Q. Yes.

A. Okay. "Within 14 calendar days thereafter, the medical staff executive committee shall conduct a hearing. The medical staff" --

Q. No. That's the only thing I asked you to read, was that sentence. All right.

(Video played.)

Q. So I take it, at that particular point, everyone, including yourself, in terms of the medical staff executive committee, was relying on what Dr. Fred Zachman represented concerned -- concerning the bylaws and the procedures, thereunder --

A. Yes.

Q. -- is that correct?

(Video played.)

Q. Let me ask you this. You just heard someone question whether everybody knows each other?

A. I'll take your word for that. I didn't hear it very well.

Q. You need to pay attention to this. Okay? And it will go much faster. How many physicians have clinical privileges at Chandler Hospital?

A. Physicians? We have, also, privileged advanced practitioners. So if you combine the two, about 1,300.

Q. All right. So to state the obvious, people don't know each other; is that correct?

A. No, that's not true. Actually, many people do know one another. It depends on the circumstances. It's very individualized. For example, many people know who I am. Many people know who Dr. Kearney is. But there will be many other physicians where they are not well-known or don't

know each other.

Q. All right. But other than those isolated examples that you just gave of yourself and Dr. Kearney, you're not saying that everybody on the medical staff executive committee works with each -- each other physician or -- or anyone with privileges on a day-to-day basis; is that correct?

A. On a day-to-day basis?

Q. Yes.

A. No one knows -- very few people, do we work with on a day-to-day basis. Over the course of working over years, we have become quite familiar with a variety of other physicians.

Q. All right.

(Video played.)

Q. That's you?

A. That's me.

Q. All right. And, please, identify your voice for the record. Okay?

A. That's me, Kevin Nelson.

(Video played.)

Q. At this particular point, you characterize his behavior as disruptive.

A. That's what's being -- that's the allegation, yes.

Q. Okay. And -- and would you point to any specifics in Dr. Boulonger's letter of January 2015 that shows disruptive behavior --

A. Dr. --

Q. -- or provides data?

MR. BEAUMAN: He can answer that if he can, but just let me object to the form, because you asked him to comment on a piece of evidence, and it speaks for himself, but --

MR. PAFUNDA: Well, he's --

MR. BEAUMAN: If he wants to point you to something in there, he's more than welcome to.

Q. Go ahead.

A. Dr. Boulanger's letter is a notification of suspension. It's not the data that is behind the suspension.

Q. No. I'm aware of that. You've already told me that on two separate occasions. My question, though, is -- you said "his disruptive behavior."

A. Yes.

Q. All right. Other than that letter, any other information concerning Dr. Kearney's behavior that it would -- could be categorized or characterized as disruptive?

A. From -- the data that I was speaking of is the

data that served to produce that letter.

Q. All right. And -- and how was his behavior disruptive? And if it was, from that data, what did it disrupt?

A. It disrupted patient care and -- and it was disconcerting to other providers.

Q. When you say "other providers," identify what you're talking about.

A. That's in the data. The other providers are in the data. You're asking me about the data --

Q. Yeah, I am.

A. Okay. Well, where's the data?

Q. Well, I'm asking you, from your memory, what's the data that he was disruptive?

A. I'm not -- I cannot answer from my memory.

Q. Well, there's an allegation, is there not, at some particular point in time that he was -- are you saying disruptive with a patient?

A. Disruptive means -- not just with patients, but with staff.

Q. All right.

A. Disruptive is a term used in med staff affairs for a physician that disturbs the delivery of healthcare either with providers or staff or patients.

Q. All right. And if a physician is disruptive - all right - which, as you just stated, interferes with the delivery of healthcare, correct?

A. Yes.

Q. All right. That should be noted, should it not, in their evaluations?

A. Yes, it should be.

Q. All right.

(Video played.)

Q. At that particular point, you asked the medical staff executive committee if Dr. Kearney has approached anyone to unduly influence the committee or its --

A. Uh-huh.

Q. -- how it would vote.

A. Yes.

Q. What about the flip side of that? Has anybody in administration -- why weren't they asked if anybody in -- in administration has approached the committee to vote -- vote in favor of the revocation of Dr. Kearney's clinical privileges?

A. Play that -- play that phrase -- can you -- can you get back there?

Q. I'll try.

(Video played.)

MR. BEAUMAN: You need to go to the very beginning.

MR. PAFUNDA: I know.

THE WITNESS: Sorry.

MR. PAFUNDA: That's all right. You don't have to apologize.

MR. BEAUMAN: Would you like me to help?

MR. PAFUNDA: If you know how. It's an Apple.

MR. BEAUMAN: How far ahead do you think we were?

MR. PAFUNDA: At least a quarter of the way. Just jump -- just jump --

MR. BEAUMAN: Yeah. So -- how do you -- what you do is you grab that cursor here and that's how you slide it forward and back.

MR. PAFUNDA: Thank you.

MR. BEAUMAN: You're welcome. I think you need to go a little further up.

(Video plays.)

Q. Let me know when you want to stop.

The flip side of that question that you -- you asked the medical staff executive committee was my earlier question. Why you didn't ask the medical staff executive

committee if anyone from the administration had approached them?

A. No, I did not.

Q. And the reason?

A. At least not to that point.

Q. Right. But, at that point, any reason why you did not?

A. No.

Q. All right. Because you had already been approached, had you not, and been provided with data by at least -- whether it was Margaret Pisacano, Dr. Boulanger, or somebody else, you had been provided with what you've described --

A. Right.

Q. -- as data.

A. As Chairman of the Credentials Committee, yes.

Q. All right. But you weren't Chairman of the Medical Staff Executive Committee?

A. No.

Q. So would you consider that an attempt to influence your vote?

A. No.

MR. BEAUMAN: Object to form.

Q. So even though you were provided with that, you

hadn't formed any opinion one way or the other, correct?

A. No. My -- my role, and when I -- when I looked at the data, my judgment at that time was, does the data raise the suspicion enough to sustain the suspension.

Q. Right.

A. That -- that was really the question.

Q. And -- and you had, at that point, already formed on opinion, hadn't you?

A. I looked at the data before enough to sustain the suspension to launch an investigation, yes.

Q. No. My question is: You had already formed an opinion that it had, right? It was enough to --

A. A preliminary opinion.

(Video played.)

Q. So I take it that given your -- that is you speaking, correct?

A. That's me.

Q. All right. So since the beginning of your employment at UK, over that period of time, you had already formed an opinion about Dr. Kearney's professional behavior, had you not?

A. I had been given privy to data about his interactions with other staff.

Q. All right. And so, on the basis of that, you had

already formed on opinion that his clinical privileges needed to be revoked, correct?

A. I had only preliminarily decided at that point.

Q. No. I'm not even talking at that point. I'm talking -- let's take it even a year before the Boulanger letter. You had already formed the opinion that Dr. Kearney's clinical privileges needed to be revoked, correct --

A. No.

Q. -- for his disruptive behavior?

A. No, that's not true.

Q. Okay. Were you privy to any information prior to the Boulanger letter that would support such an opinion?

A. No, that was not my opinion.

Q. No. That's not my question. Listen to my question. Prior to the Boulanger letter, prior to the data you received -- after you got the Boulanger, prior to that, had you been given any information that Dr. Kearney's professional behavior was, to use your word, disruptive?

A. Yes.

Q. All right.

A. I'm sure I have. As Chairman of the Credentials Committee, information comes to me periodically. And Dr. Boulanger was not the only Chief Medical Officer to have

issues with Dr. Kearney. Dr. DuPreece and his former chairman, Dr. Byron Young.

Q. And did they recommend that his clinical privileges be revoked?

A. I don't -- not to me.

Q. All right. And you were in that position -- if they had recommended it, it would be done, correct?

A. Yes, I would --

Q. Thank you.

A. -- I would know.

(Video played.)

Q. You voiced an opinion that he's not going along with corrective measures.

A. Yeah, that's right.

Q. All right. On what basis did you form that opinion?

A. I had access to data of earlier investigations through the course of my position as Chairman of the Credentials Committee.

Q. All right. What -- just let me -- what data did you have access to?

A. I can't recall.

Q. Well, what data would you need?

A. Other investigations, other letters received from

Dr. -- by Dr. Kearney from Cliff Iler, the data behind those letters, letters from Dr. Young. There -- there would be -- there's a series of data that I have -- have looked at over the years that I have seen come across my file --

Q. All right. And when you --

A. -- my desk.

Q. -- when you say "your file" or "your desk" --

A. My desk.

Q. -- did you retain that data?

A. No, I don't retain that data.

Q. All right.

(Video played.)

Q. What information or data -- and I'll use your word, "data" --

A. Uh-huh.

Q. -- did Dr. Karpf provide you?

A. None.

Q. All right. Well, you mentioned Dr. Karpf.

A. Yes. We -- Dr. DuPreece went to Dr. Karpf about Dr. Kearney -- Dr. Kearney's behavior. And I don't know the results of that other than Dr. Kearney remained on -- on staff. But I do know that Dr. -- that he and Dr. Karpf --

Q. Were sideways.

A. -- were sideways.

Q. All right. But you don't recall the specific reason why they were at the time?

A. No. I saw what -- I saw the concerns about Dr. Kearney's behavior that went to Dr. Karpf, but I don't know the interaction between Dr. Karpf and Dr. Kearney.

Q. All right. But you knew, given your position, that Dr. Kearney and Dr. Karpf were sideways on some matter --

A. Yes.

Q. -- or matters?

A. Oh, yes.

Q. Thank you.

(Video played.)

Q. Now, you've already told the medical staff executive committee that, in your opinion, given your position, as I'll call it, head of clinical privileges, that he's crossed the line.

A. He crossed the line, yes.

Q. All right. Now, who drew the line?

A. The behavioral standards are the line.

Q. And what behavioral standards did he violate?

A. Abusing a patient.

Q. Anything else that you recall?

A. That's sufficient.

Q. All right. And so verbal abuse of a patient is sufficient for revocation of clinical privileges?

A. It can be if it is severe enough --

Q. All right.

A. -- and -- and part of a long pattern.

Q. All right. But absent the long pattern -- let's just stick with verbal abuse of a patient, any other physicians that you recall who had their clinical privileges revoked for verbal abuse of a patient?

A. Yes.

Q. All right. Who?

A. I can't tell you.

Q. How long ago?

A. That one that came first to mind was several years ago.

Q. All right. So was that a summary suspension of those clinical privileges?

A. Yes.

Q. All right. Did that person go through this, we'll call it -- we'll use Mr. Iler's word, so-called, due process?

A. I can't go into that.

Q. Why not? It's --

A. Because --

Q. -- public record.

MR. BEAUMAN: No.

MR. PAFUNDA: Yes, it is.

A. Then find the record.

MR. BEAUMAN: Maybe, maybe not.

Q. Thank you. I will.

A. Okay.

Q. Okay. And if the record doesn't exist, that would mean that no one had been -- had their privileges revoked for verbal abuse of a patient?

MR. BEAUMAN: Or it's beyond the retention period.

MR. PAFUNDA: Oh, I don't think so.

MR. BEAUMAN: Well, we'll -- we'll --

MR. PAFUNDA: We'll battle that out.

(Video played.)

A. Yeah. And that was the information provided that's on the basis of this that I don't think the committee had seen at this point.

Q. Well, we know several things to be true, do we not? That the committee, number one, wasn't privy to the data that was provided to you, correct, in this instance?

A. At that point, it may have been. I don't know. It may have been presented to them before they formed the

investigation. See, they have to have a basis for the investigation, as well.

Q. No. My question is, the data that was given to you -- you said that he verbally abused a patient. So that's one piece of data you had?

A. That's one piece of data I had.

Q. All right. And do you know if that piece of data was made available to the other members of the medical staff executive committee?

A. I don't know. It was --

Q. No. I'm asking you --

A. -- but when, I don't know.

Q. All right. And, No.2, it's also true that, at this particular point, when you said he crossed the line, that no investigation had been done; is that correct?

A. This part of the investigation had been done. A preliminary investigation had been done --

Q. All right. And --

A. -- to form the basis of the suspension letter.

Q. Right. And according to that preliminary investigation, was the patient complaint corroborated?

A. I believe it was.

Q. All right. Let's continue on. I think we're almost done with your part.

(Video played.)

Q. We're done.

A. You really need a speaker -- a better speaker.

Q. I don't need to do anything. I can --

(Video played.)

Q. I'm not lugging speakers around.

So my question is: You -- you, together with Cliff Iler, put a package together for the investigative committee; is that correct?

A. Yeah. I can't remember what that was. Must have been the -- the results of the data that we had that formed the basis for the --

Q. No. My question is -- is more pointed than that. You and Mr. Iler put a package together that was given -- then given to the investigative committee; is that correct?

A. Let's hear it again there. I think -- I don't recall that. I think that's...

Q. Well, did you work with Mr. Iler after this --

A. I don't recall doing -- working with Mr. Iler after this. That's why I wanted to hear.

(Video played.)

Q. That's Fred Zachman speaking, correct?

A. Uh-huh, yes.

(Video played.)

A. Yeah. I don't recall it, but I am -- I -- I am assuming that I had the data that formed the basis of the letter -- at least I had the full body of it, and I was working -- simply as Chairman of the Credentials Committee, I was working with the -- the attorney to make sure the investigative committee got it. I think that that's what that was referring to.

Q. And it's safe to say, is it not, that -- well, the -- the audio speaks for itself. You and Dr. Zachman were to gather, with Mr. Iler, the information to be given to the investigative team; is that --

A. The preliminary investigation -- yeah, to form the basis of this letter. And then they were to do a second investigation.

Q. They actually were to do the very first investigation, correct?

A. Well, the first investigation was to determine if a letter should even be issued and suspension be done. So you would have to have a body of facts to form the basis of this letter and the action taken. And so that's -- that is, informally, an investigation, when you're gathering data.

Q. All right. And so -- and -- and your parlance is, we'll use it?

A. Yeah.

Q. The team from the Medical Staff Executive Committee would conduct the second investigation?

A. Or another investigation.

Q. All right.

A. A subsequent investigation.

Q. All right.

(Video played.)

Q. That's you speaking?

A. That's me.

Q. And the information you say you were privy to --

A. Yeah. That's -- to form the basis here --

Q. The data you'd been provided by either Mrs. Pisacano --

A. Yeah, Mrs. -- or Dr. Boulanger.

Q. All right.

(Video played.)

A. That was mine, yes.

Q. That was your what?

A. My interpretation of the bylaws.

Q. All right. So your interpretation of the bylaws was then passed onto the Medical Staff Executive Committee, correct?

A. Yes.

Q. All right. And I take it the Medical Staff

Executive Committee relied upon your interpretation of the bylaws, correct?

A. You would have to ask them.

Q. All right.

A. I simply gave my opinion.

Q. I don't know that I'll be able to ask them.

MR. BEAUMAN: Well, you've already talked to two or three of them, so...

MR. PAFUNDA: But you're not -- are you going to let me get into the deliberance process?

MR. BEAUMAN: No.

MR. PAFUNDA: Thank you.

MR. BEAUMAN: Actually, it's Judishua (sic) who says you can't get --

MR. PAFUNDA: No. It's you and --

MR. BEAUMAN: It was, first, me.

MR. PAFUNDA: We haven't crossed that bridge completely.

Q. But the Medical Staff Executive Committee is relying on your -- not just your interpretation of the medical staff bylaws, but also Mr. Iler's; is that correct?

A. I would anticipate they would, yes.

Q. All right. And -- because Mr. Iler was there to answer any legal questions that they may have, correct?

A. Yes.

Q. Were there any legal questions?

A. I don't recall.

Q. All right. They are not -- certainly, if there were any legal questions, they are not reflected in the minutes of that meeting, correct?

A. I'd have to look at the minutes. I don't recall.

Q. Go ahead. Just take a minute and look at them.

A. Any legal questions?

Q. Yes.

(Witness reviews document.)

A. I don't see anybody asking. That says "foundational information." I don't know if that's addressing your question or not.

Q. But absent what has been designated as foundational information, there's certainly no legal opinions expressed in these minutes?

A. Not that I'm aware of.

Q. All right.

(Video played.)

Q. Now, that was Dr. Susan McDowell, correct?

A. Yeah, that last voice.

Q. Who said that she had the best chance of managing the student residents?

A. I think that's what she said, yes.

Q. All right. And how would she be in a position to manage the student residents?

A. Because she knows the contacts of who to call to get ahold of someone.

Q. But if we're talking about the mistreatment of a patient in an endoscopy suite, that would all be on record, would it not, who was present?

A. It may be. I -- that's a procedural issue that is...

Q. Yeah. But it would be contained in the medical records, would it not?

A. I would think it -- you know, it may or may not be. If there's medical students present, it may or may not be.

Q. And, likewise, in the patient's medical records, it would also reveal who was the attending physician --

A. Yes --

Q. -- right?

A. -- it would. And the resident physicians.

Q. So there would be no need for anybody to be able to, quote, "manage," close quote, the residents?

A. You would have to ask her about those words. I interpreted them as getting ahold of their supervisors,

arranging for the -- for the meetings. That -- that's the way in which I interpreted it, just managing the process, not the students themselves.

Q. But it could also be interpreted to manage the students themselves?

A. Not by me.

Q. All right. So you would take it to be, you know, get ahold of the supervisors, which is not a difficult task, is it?

A. It's a large place. It's more Byzantine than you may realize.

Q. So to return to one of my earlier questions, in this Byzantine, large place, there's a lot of physicians who aren't familiar with Dr. Kearney?

A. There are some physicians, certainly.

Q. Yeah. And, in fact, Dr. Susan McDowell testified she didn't know Dr. Kearney had an endowed chair.

A. Well, we don't know everything about all of our physicians.

Q. But, certainly, there's not a lot of physicians at the University of Kentucky Chandler Hospital that have an endowed chair, correct?

A. Would you repeat that, please?

Q. A lot of physicians have endowed chairs?

A. Many physicians have endowed chairs.

Q. All right.

(Video played.)

Q. So to follow up on that comment, who -- who made that comment, if somebody --

A. I did.

Q. Yes. So if somebody has already pre-judged the situation, they should recuse themselves from the process; wouldn't you agree?

A. That's not derived from what I had said there.

Q. No. But wouldn't you agree, if somebody has already pre-judged the situation --

A. Yes.

Q. -- then they -- they should recuse themselves?

A. No. They can form a preliminary opinion, but not a final opinion. There are differences between preliminary opinions and final opinions. Like, we have provisional diagnoses and final diagnoses.

Q. And we also have situations in which individuals pre-judge situations, correct?

A. Some people can.

(Video played.)

A. Some people can retain an open mind.

Q. That should be close to the legal advice. If you

listen closely, you can hear it.

A. I thought his instructions earlier were legal advice.

Q. Oh, gosh. That's what I thought too. That's scary.

A. On my part.

Q. Absent Mr. Iler's quote, "legal advice," close quote, true and accurate recording of the Medical Staff Executive Committee?

A. As best I could hear it.

Q. Thank you.

MR. PAFUNDA: We'll mark this as Plaintiff's Exhibit No. 4.

(Plaintiff's Exhibit No. 4 was marked for identification purposes.)

MR. PAFUNDA: Is that a problem, Bryan?

MR. BEAUMAN: No.

Q. So to wrap up, no question, as that meeting was concluded, that Dr. Kearney was not going to be present -- I mean, he was going to be permitted to be present before the Medical Staff Executive Committee would have met in February, correct?

A. Correct.

Q. All right. And despite the fact that 9.4.2 says

that there will be a hearing, correct?

A. I don't think that's the hearing that the --

Q. No. I --

A. -- bylaws are referring to.

Q. What -- what you think the hearing the bylaws are referring to is the fair hearing panel, correct?

A. Yes, sir.

Q. All right. Did you reach that conclusion on your own, or did somebody else tell you that was the case?

A. I reached that on my own.

Q. And you - so, then - advised the Medical Staff Executive Committee, correct?

A. Yes. I gave them my opinion.

Q. All right. And they went along with your opinion --

A. You would --

Q. -- obviously?

A. -- you would have to ask them.

Q. Well, we -- I don't have to ask them. Dr. Kearney wasn't present, was he, at the February meeting?

A. No.

Q. All right. Did anybody take the trouble to bring in Dr. Kearney's past evaluations?

A. I don't -- I can't recall.

Q. If that -- if that was present at that February meeting, it should be part of the record, should it not?

A. It may be. I don't know.

Q. All right. Should it have been?

A. It's a legal question.

Q. Okay.

A. A procedural question.

Q. And was that question left up to legal?

A. I don't know who made -- or what decision was made or who made it --

Q. But you didn't make it?

A. -- or if a decision was made.

Q. All right. But you didn't make it?

A. I did not make that decision.

Q. All right. And, as you're aware, no one on the Medical Staff Executive Committee made that decision either, correct, that you're aware of?

A. Not that I'm aware of.

Q. All right. If you'd give me just a minute, I think we may be finished.

A. Okay.

Q. Is it -- is it less than two hours?

A. Yes.

THE WITNESS: May I go off the record

and go to the bathroom, please?

THE VIDEOGRAPHER: The time is 2:44.

(WHEREUPON, a break was taken in the proceedings.)

THE VIDEOGRAPHER: Back on the record at 2:51.

BY MR. PAFUNDA:

Q. Did Dr. Thomas Schwarcz have a hearing in front of the Medical Staff Executive Committee?

A. Not that I'm aware of.

Q. All right. And when -- when we speak of endowed chairs, there are not many physicians who have -- who are active and have an endowed chair in their name, are there?

A. That's really an academic question that the college of medicine deals with. And -- and we really don't deal with -- from -- from the med staff --

Q. So your -- so your answer is, you don't know?

A. I'm not sure.

Q. Well, you were aware that Dr. Kearney has an endowed chair in his name and he was an active member, correct?

A. Yes, I'm aware of that.

Q. And that's highly unusual, isn't it?

A. It's -- it is the -- he's exceptional.

Q. All right. And when you say "exceptional," you mean in terms of performance, correct?

A. Academic and clinical performance.

Q. Thank you. And the -- the Medical Staff Executive Committee, either directly or through the investigative team of Beasal & McDowell, had access to Dr. Kearney's personnel file, did they not?

A. I -- I do not know.

Q. But certain personnel records were presented to the medical staff executive committee, correct?

A. I cannot recall. I don't know if -- I don't have the data before me.

Q. Well, were -- were documents taken from his personnel file and given to the investigative team?

A. I was not involved with that activity.

Q. All right. Were they taken from his personnel file and provided to you?

A. Personally?

Q. Yes.

A. Not that I'm aware of.

Q. All right.

A. Not -- not as part of this investigation.

Q. All right. But you, earlier, said that any disruptive behavior should have been reflected in his -- in

his personnel evaluations, correct?

A. It can be.

Q. All right. And it should -- and so that would be an -- an investigative -- an important piece of data, would it not?

A. I did not run the investigation.

MR. PAFUNDA: All right. That's all. I quit.

MR. BEAUMAN: No questions.

THE VIDEOGRAPHER: We'll go off the videotape record. The time is 2:53.

(The video deposition of Kevin Nelson, M.D., concluded at the approximate hour of 2:53 p.m.)

REPORTER'S CERTIFICATE

STATE OF KENTUCKY)
) SS.
COUNTY OF FAYETTE)

I, Brandy D. Mowery, CR and Notary Public in and for the Commonwealth of Kentucky at Large, do hereby certify that the facts as stated by me in the caption hereto are true, to the best of my knowledge and belief and as provided to me in the Notice of Deposition; that the deponent hereinbefore named was placed under oath by me; that the foregoing proceedings were taken by me in stenotype and were reduced to transcript format by computer-aided transcription; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this action.

No party to the action nor counsel for said parties requested that the foregoing deposition transcript be read and signed by the deponent.

IN WITNESS WHEREOF, I have affixed my signature and seal this 6th day of October, 2017.

AN/DOR REPORTING & VIDEO TECHNOLOGIES, INC.

Brandy D. Mowery

Brandy D. Mowery, CR
Notary Public for the State of Kentucky at Large

My Commission Expires: April 28, 2018

Y

Z

MEDICAL STAFF EXECUTIVE COMMITTEE

January 29, 2015
5:00 PM; CTW-317

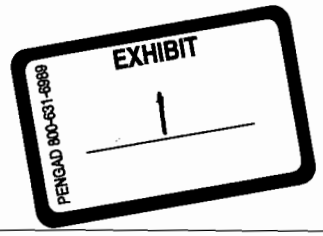
Voting Members Present: *See attached sign-in sheet* – Tadarro Richardson, M. Elizabeth Oates, Roger Humphries, Michael Dobbs, Susan McDowell, Darrell Jennings, Andrew Pearson (via phone), Bernard Boulanger, Scott Stevens, Kevin Nelson and Louis Bezold

Voting Members Absent: Andrew Bernard (Recusal), Cletus Carvalho

Ex Officio Members Present: Dean Sharon Turner, Associate Dean Angela Dearinger, Colleen Swartz and Cliff Iler

Presiding: Dr. Fred Zachman Recorder: Sarah Bentley

AGENDA ITEM	DISCUSSION	ACTION
Call to Order Dr. Fred Zachman	*The meeting of the UK HealthCare Medical Staff Executive Committee was called to order by Dr. Zachman.*	
Preamble/Review of Bylaw process Dr. Fred Zachman	On September 5th, Dr. Paul Kearney agreed to go on paid administrative leave while a patient care incident was being investigated, which will be further detailed. Throughout lengthy negotiations, the President offered a generous severance package that has been refused by Dr. Kearney. Since the potential of harm to staff and patients remains substantial, on January 26th Dr. Kearney was placed on summary suspension by Dr. Boulanger according to UK Medical Staff Bylaws (section 9.4). A copy of the suspension notification provided to Dr. Kearney was provided as a meeting handout. This called meeting is the second of several steps in our Medical Staff Bylaw process. As the MSEC, this group has 14 days to sustain, amend or rescind the suspension. The grounds to sustain the suspension consist of whether there are reasonable grounds to believe that the allegations are true. They don't have to be proven conclusively true at this stage. The purpose of this step is to ensure that the summary suspension is not capricious, or motivated by a personal or professional vendetta. The purpose of the call meeting for today is to hear preliminary findings and appoint an investigative team who will report back to this committee. This group will reconvene next Thursday (2/5) to review the findings of the investigation and conduct a vote. During the meeting next week any deliberation and voting on the suspension will be attended only by voting members of the Medical Staff Executive Committee. If the suspension is affirmed, Dr. Kearney's case moves on to the fair hearing phase where he will have opportunity to plead his case before a different body. This body's decision is not the final action. After the fair hearing phase, if the suspension is again affirmed, he will have a single appeal before a committee of the Board of Trustees of the University. As a body and as individuals, the MSEC is held legally harmless if acting	Dr. Louis Bezold and Dr. Susan McDowell will investigate the suspension and report their findings to the MSEC voting members on February 5, 2015.



AGENDA	M	DISCUSSION	ACTION
		in good faith. The behavioral standard was briefly discussed to include principles and commitments as described in that document. The Bylaws and Behavioral Standards documents were available for the Committee's review. Cliff Iler was available to answer any questions the committee had around the process. Dr. Nelson reviewed the recusal process. He noted that each participant of this committee should examine our relationship with Dr. Paul Kearney and determine if a significant conflict exists that should then recuse you from this discussion and subsequent voting. Also, if any of the members of this committee have been approached by Dr. Kearney, Dr. Nelson asked that you please let Cliff Iler know. As a next step, the floor was opened for discussion related to the formation of an investigative team. After discussion, Dr. Louis Bezold and Dr. Susan McDowell were selected by the group. This team will collect data around the suspension and report back to the voting members at next week's meeting. *The motion to proceed with Dr. Bezold and Dr. McDowell as the investigative team was made by Dr. Nelson, seconded by Dr. Oates. The motion passed with unanimous consent.*	
Foundational Information Cliff Iler		Foundational information related to the substance of the allegations was presented by Cliff Iler. This investigation will be looking at all incidents, not just one isolated incident from last year. The committee presented questions around the foundational suspension with questions addressed by Cliff Iler, Dr. Kevin Nelson and Dr. Bernard Boulanger.	
Adjournment			

UKHealthCare

Chief Medical Office
University of Kentucky
800 Rose Street, N105
Lexington, KY 40536-0293
Phone: (859) 257-6467
Fax: (859) 323-2044
www.ukhealthcare.uky.edu

January 26, 2015

Paul Kearney, M.D.
c/o Bernard Pafunda, Esq.
Pafunda Law Office
175 E. Main Street, Ste. 600
Lexington, Kentucky 40507

Re: Notice of the Summary Suspension of Dr. Paul Kearney

Dear Dr. Kearney:

I am writing to notify you that effective immediately you are summarily suspended pursuant to Article 9.4.1 of the University of Kentucky UK HealthCare Medical Staff Bylaws due to unprofessional conduct on your part directed toward staff, resident physicians, medical students, and a patient, in willful violation of the University's Behavioral Standards in Patient Care. As required by the Bylaws, your suspension is made with the concurrence of the acting President of the Medical Staff in this matter, Frederick Zachman, M.D. If substantiated, this behavior violates (1) the Medical Staff Bylaws and (2) the Written Reprimand and Action Plan Re Unprofessional Conduct that you agreed to on January 9, 2013. In connection with this suspension, given your long history of unprofessional behavior and the recent incidents involving staff, residents, medical students, and a patient, I am recommending to the Medical Staff Executive Committee that your medical staff privileges be revoked.

Pursuant to Article 9.4.2 of the Bylaws, upon receiving this notice of summary suspension, the Medical Staff Executive Committee shall direct an investigation to determine if this suspension and/or further action against your privileges are warranted. This decision will be made within fourteen (14) calendar days of this notice of summary suspension. If the Medical Staff Executive Committee concludes that this suspension and/or further action against your privileges are warranted, you will receive a Notice of Proposed Action pursuant to Article 10.3 of the Bylaws. This notice will provide you with an explanation of the reasons for the action being taken against you and provide you with a summary of your rights under Article 10 of the Bylaws, including your right to a hearing.

corrective action to be considered. The report may inform the Medical Staff Executive Committee of additional incidents, deficiencies, problems, or other relevant information learned in the course of investigation. If the investigation body concludes there is no basis for the request for corrective action, it shall report such conclusion to the Medical Staff Executive Committee.

9.2.5 The report shall be delivered to the President and Chief Medical Officer within 30 calendar days from the date the request was received, unless the investigation body informs the Chief Medical Officer or President that it requires an additional 30 calendar days to complete the investigation. In such event, the report shall be delivered by the end of such additional 30 day period.

9.3 Action on Report[63]

As soon as practical following receipt of the investigation body report, the President shall deliver the report to the Medical Staff Executive Committee in closed session with voting members only in attendance, either at a regular meeting or a special meeting called for such purpose. The Medical Staff Executive Committee shall act upon the report by either:

9.3.1 Issuing a formal decision not to take an action or not to recommend that an action be taken;

9.3.2 Issuing a warning to the Practitioner that the investigative body report finds that factual support exists for corrective action to be considered but that taking into consideration relevant information learned in the course of investigation, corrective action will not be taken or recommended at this time; or

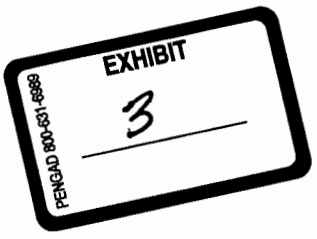
9.3.3 Reducing, restricting, suspending, revoking, denying, or not renewing clinical privileges or Medical Staff membership or recommending any such action to the University Health Care Committee. Any such adverse action shall entitle the physician or oral surgeon to the procedural rights afforded by the Fair Hearing Plan, except as provided in the Fair Hearing Plan.

9.4 Summary Suspension[64]

9.4.1 Whenever a Practitioner willfully disregards these Bylaws or UK HealthCare policies, or whenever his/her conduct may require that immediate action be taken to protect the health or safety of a patient, or to reduce the substantial likelihood of imminent injury to the health or safety of any patient, employee, or other person in the Hospital, the Chief Medical Officer, with the concurrence of the President, may summarily suspend the Medical Staff appointment and/or any or all of the Practitioner's clinical privileges. The summary suspension shall become effective immediately upon imposition. The Chief Medical Officer shall immediately notify the Practitioner, the Chair, the Chief Administrative Officer(s) at the Hospital(s) where the Practitioner practices and the Medical Staff Executive Committee of the

[63] EP6 & EP33 MS01.01.01

[64] EP29 & EP32 MS01.01.01



suspension. The Chief Medical Officer or the Chair shall arrange alternative medical coverage of the suspended Practitioner's patients in the Hospital. The wishes of the patients shall be considered in the selection of an alternative Practitioner.

9.4.2 Medical Staff Executive Committee Decision

(a) Upon summary suspension of a Practitioner, the Medical Staff Executive Committee shall direct that an investigation be conducted by persons designated by the Medical Staff Executive Committee to determine the need for the suspension or further action concerning the Practitioner. Within 14 calendar days thereafter, the Medical Staff Executive Committee shall conduct a hearing. The Medical Staff Executive Committee may, as a result of the hearing, recommend modification, continuation, or termination of the summary suspension, and may take such further action concerning the Medical Staff membership and clinical privileges of the Practitioner as it considers appropriate. If the investigation is completed within 14 calendar days from the date of the suspension and the investigation does not result in adverse action, as defined in the Fair Hearing Plan, the Practitioner shall not be entitled to the procedural rights of the Fair Hearing Plan. If the Medical Staff Executive Committee does not recommend immediate termination of the suspension or if further adverse action, as defined in the Fair Hearing Plan, is taken as a result of the investigation:

(i) The Practitioner shall be afforded the right to appellate review as provided in the Fair Hearing Plan, but the terms of the summary suspension shall remain in effect pending a final decision by the University Health Care Committee.

(ii) The Chief Medical Officer or the Chair shall arrange for alternative medical coverage of the suspended Practitioner's patients in the Hospital. The wishes of the patient shall be considered in the selection of an alternative Practitioner.

9.5 Automatic Suspensions[65]

9.5.1 Loss of Licensure or Federal Sanctioning. If a Practitioner's license or other legal credential authorizing him/her to practice is revoked or suspended by a state licensing authority, or the individual has been included on the OIG Sanction Report, the GSA List, or any other Federal or State report of sanctions, he/she shall immediately and automatically be suspended from practicing in the Hospital by the Chief Medical Officer, and his/her Medical Staff membership shall automatically be terminated.

9.5.2 Lapse of Liability Insurance. A Practitioner who does not maintain professional liability insurance as required in these Bylaws shall be automatically suspended until he/she furnishes adequate and satisfactory evidence of such coverage without gaps of coverage for all periods of practice.

9.5.3 Revocation or Suspension of DEA. A Practitioner whose DEA number is revoked or who is suspended from prescribing scheduled drugs as recognized by the DEA shall immediately and automatically be suspended from practicing in the Hospital by the

[65] EP28 MS01.01.01

MEDICAL STAFF EXECUTIVE COMMITTEE

January 29, 2015
5:00 PM; CTW-317

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