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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge
Diane S. Goodstein, Circuit Court Judge

Consolidated Cases For Trial

Case No.: 2010-CP-28-322
Case No. 2010-CP-28-323

Jamie Curley, Plaintiff,

v.

SCENT Land Holdings, LLC, Amy Puchalski, and Robert Puchalski, Defendants
and Dr. Orville Dyce, Plaintiff,

v.

South Carolina ENT, Allergy & Sleep Medicine, P.A., Amy Puchalski, and Robert
Puchalski, Defendants

Of Whom Jamie Curley, and Dr. Orville Dyce are the Respondents/Appellants,

And

SCENT Land Holdings, LLC, Amy Puchalski and Robert Puchalski, South
Carolina ENT, Allergy & Sleep Medicine, P.A. are the Appellants/Respondents.

RECORD ON APPEAL VOL. XV

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7
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16
 17 (COURT REPORTER'S NOTE: --- INDICATES INTERRUPTION,
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2	E-mail from Bruce Armon to William	
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10	E-mail from Charlie Lucas to	
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15	to Robert Puchalski dated 2/16/10	
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16	Theresa Williams dated 2/17/10	Def. Ex. 46
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12	Encounter Form	Def.	Ex. 67
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E-mail from Mike Grabowski dated 4/5/10	Def. Ex. 85
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1 The videotaped deposition of Dr. Orville H. Dyce is
2 being taken pursuant to Notice and in accordance with the
3 South Carolina Rules of Civil Procedure and Amendments as
4 adopted by the Supreme Court which shall control the use
5 and taking of said deposition.

6 Counsel, with the specific consent of the witness,
7 waives the reading and signing of the deposition prior to
8 the time it is filed with the Court.

9 (Orville H. Dyce, M.D., having been duly sworn, testifies
10 as follows:)

11 VIDEOGRAPHER: This is the video deposition
12 of Dr. Orville Dyce, Civil Action Number 2010-CP-
13 28-323. This deposition is being held at the
14 Womble Carlyle Law Firm 5 Exchange Street,
15 Charleston, South Carolina 29401, on Monday,
16 January 28th, 2012. We are going on the record
17 at 10:48. Will the court reporter please swear
18 in the witness?

19 COURT REPORTER: Would you raise your right
20 hand, please? Do you solemnly swear to tell the
21 truth, the whole truth and nothing but the truth
22 so help you God?

23 DR. DYCE: I do.

24 COURT REPORTER: Thank you.

25 (Orville Dyce, having been duly sworn, testifies as

1 follows:

2 EXAMINATION BY MR. SHEHEEN:

3 Q Dr. Dyce, I'm Vincent Sheheen. We have met before.

4 You can just ---

5 MR. SHEHEEN: Do you need the mic on him?

6 VIDEOGRAPHER: Yes, please.

7 MR. SHEHEEN: Okay.

8 DR. DYCE: (To court reporter) I

9 think it is under your bag. Oh. Is it

10 just coming from underneath the table?

11 VIDEOGRAPHER: Yes, sir.

12 DR. DYCE: Oh, okay. Sorry. Sorry.

13 Q Okay. We had a microphone problem. You've got that

14 on okay?

15 A. Yes, sir.

16 Q Okay. Good. Dr. Dyce, I'm Vincent Sheheen. I

17 represent the Defendants in this case. You and I have

18 met before; is that correct?

19 A. Yes, sir.

20 Q Okay. I'm going to take your deposition today. Is

21 there any reason today that your answers can't be

22 truthful?

23 A. No, sir.

24 Q Okay. And if you don't understand any of my

25 questions, would you please ask me to clarify or tell

- 1 me that you can't understand so that I can restate
2 them?
- 3 A. Yes, sir.
- 4 Q. Okay. You understand you have to answer all of the
5 questions orally so that the court reporter can get
6 down what you are saying; correct?
- 7 A. Yes, sir.
- 8 Q. Okay. Why don't you for the record just state your
9 full name.
- 10 A. Orville Hussein -- Orville Dyce.
- 11 Q. Okay. And where do you live, Dr. Dyce?
- 12 A. Hartsville, South Carolina.
- 13 Q. And how long have you lived there?
- 14 A. Since 2005.
- 15 Q. Okay. And what do you do for a living?
- 16 A. I'm a physician.
- 17 Q. Okay. What type of physician?
- 18 A. I'm an ear, nose and throat, sleep and allergy
19 physician.
- 20 Q. Okay. During the course of Discovery in this case,
21 your attorney provided me the end of last year with
22 copies of transcripts of phone conversations. Have
23 you reviewed those transcripts?
- 24 A. I have not, sir.
- 25 Q. Okay. Are you aware they exist?

- 1 A. Yes, sir, I am
- 2 Q Did you tape record secretly conversations between you
3 and other people?
- 4 A. I taped recorded conversations between myself and Dr.
5 Puchalski, yes, sir.
- 6 Q Okay. And did you tape record conversations between
7 you and other people as well?
- 8 A. Can you clarify like what other people?
- 9 Q Did you tape record conversations where a gentleman
10 named Dr. Gunnlaugsson was also in on the
11 conversation?
- 12 A. Only if the meeting I had with Dr. Puchalski also
13 involved Dr. Gunnlaugsson.
- 14 Q Okay. How about if the meeting also involved your
15 wife, Ms. Curley?
- 16 A. No, sir.
- 17 Q Okay. Do you recall tape recording phone
18 conversations?
- 19 A. Yes, sir.
- 20 Q And do you tape -- do you recall tape recording a
21 conversation that occurred in person?
- 22 A. Please clarify the question.
- 23 Q Sure. Do you recall tape recording conversations that
24 weren't on the phone but were human to human contact
25 conversations?

- 1 A. With Dr. Puchalski?
- 2 Q. You tell me. With Dr. Puchalski?
- 3 A. I'm asking you to clarify.
- 4 Q. Okay. Sure. With Dr. Puchalski, do you recall ---
- 5 A. Yes, sir.
- 6 Q. -- again, you recall that Dr. Gunnlaugsson may have
- 7 been involved in some of those conversations?
- 8 A. He may have been present.
- 9 Q. Okay. And do you recall if there were any other
- 10 persons who you tape recorded the conversations with?
- 11 A. I don't recall who -- who else may have been present
- 12 at those meetings.
- 13 Q. Okay. Tell me how you tape recorded those
- 14 conversations.
- 15 A. Used a tape recorder and I tape recorded them
- 16 Q. Okay. Was that on your phone or on a videocassette or
- 17 excuse me, or on a cassette player?
- 18 A. It was a -- I think it was a little tape recorder.
- 19 Q. Okay. You -- you were the one that did this tape
- 20 recording; right?
- 21 A. Yes, sir.
- 22 Q. Okay. So, do you still have that tape recorder?
- 23 A. I -- if I look for it, I could possibly find it. I
- 24 don't know for sure.
- 25 Q. Okay. Can you describe it to me?

- 1 A. It's just a small little tape recorder like this big.
2 (Witness indicates).
- 3 Q Okay. And I asked you if you secretly tape recorded
4 these conversations. Did you tell the people you tape
5 recorded that you were tape recording the
6 conversations?
- 7 A. No, sir.
- 8 Q Why not?
- 9 A. Because it was for my own personal use.
- 10 Q Okay. You could have used it even if they knew that
11 you were tape recording it; right?
- 12 A. I'm not sure what you are asking me, sir.
- 13 Q Okay. I'm asking you why you didn't just tell people
14 that you were tape recording them when you were tape
15 recording them
- 16 A. Because it was for my personal use.
- 17 Q Okay. Do you tape record a lot of people when you
18 have conversations with them?
- 19 A. No, I don't, sir.
- 20 Q If someone was tape recording a conversation that you
21 were having with them, would you want them to tell you
22 that they were tape recording it?
- 23 A. I haven't given it that much thought, sir.
- 24 Q Okay. Well, why don't you think about it for a
25 minute, then.

- 1 A. Certainly, I'm not worried if someone tape records me.
- 2 Q Okay. Would you like them to tell you they're tape
3 recording you?
- 4 A. It doesn't matter one way or another to me, sir.
- 5 Q Okay. Why wouldn't you -- and I understand -- tell me
6 what you mean by you -- you didn't tell people when
7 you tape recorded them because it was for your own
8 personal use. What do you mean by that?
- 9 A. I was the only one that -- they were essentially like
10 my notes. So, if -- if I had them and I needed to
11 reference them again, I had them available.
- 12 Q And did you let your wife listen to these tape
13 recordings?
- 14 A. I don't think she's listened to them, sir.
- 15 Q Okay. I want you to think about it carefully so you
16 can give a correct answer. Did you allow your wife to
17 listen to any of them?
- 18 A. I don't allow or disallow my wife to do anything. She
19 does what she wants.
- 20 Q You're a smart man.
- 21 A. Yeah.
- 22 Q Did you control this tape recorder and was it in your
23 physical presence or did -- did you keep it with you?
- 24 A. During the tape recordings?
- 25 Q Yes, sir.

- 1 A. Yes. That's how I tape recorded them
- 2 Q Okay. How about after the tape recordings, what would
3 you do with it?
- 4 A. You know, put it with the remainder of my things.
- 5 Q Do you know if your -- did you ever play them for your
6 wife?
- 7 A. I don't recall ever playing them for my wife, sir.
- 8 Q Okay. Do you know if she ever played them herself?
- 9 A. I'm pretty sure she didn't.
- 10 Q Okay. Did you -- did you share these tapes with
11 anybody else?
- 12 A. Eventually my attorney, sir.
- 13 Q Okay. When did you turn them over to your attorney?
- 14 A. I'm -- I'm not exactly sure of the date. Some time
15 last year. After -- after mediation, I think.
- 16 Q Did you maintain them on cassette tapes or how were
17 they stored? How were these conversations stored?
- 18 A. I -- I think I had them on USB drives or something
19 that I -- I don't remember exactly what -- and sent it
20 to my attorney.
- 21 Q Okay. Do you still have copies of them yourself?
- 22 A. I'm not sure. I'd have to see if my computer still
23 has them
- 24 Q Okay. Help me understand, because I'm not a
25 technologically smart person, how you got them from

- 1 the tapes to the computer.
- 2 A. Well, they're on the tape and you can put them on the
3 computer and -- I'm not sure exactly what you're
4 asking.
- 5 Q Okay. It's probably because I'm not technologically
6 savvy, but so, you have a tape, right, with -- with
7 voices on it?
- 8 A. It's actually not a tape. It's a -- there's no tape
9 involved. It's just a -- a recorder.
- 10 Q Okay. Well, that's what I was asking you at the
11 beginning what you recorded them on.
- 12 A. I don't want to -- I don't want to use the improper
13 term because I don't know what -- what file format
14 they are or whatever. It's like music or anything
15 else; it's in -- it's the same thing. It's not, you
16 know, if you have -- it's not actually on a tape per
17 se; it's just there.
- 18 Q So, would it be like an iPod or an iPhone?
- 19 A. I'm not sure. It's -- it's a tape recorder.
- 20 Q Okay. Did you buy it?
- 21 A. Yes, sir.
- 22 Q Okay. Do you still have it?
- 23 A. Like I said, I don't know. If I search, I can
24 probably find it.
- 25 Q Okay.

1 A. Maybe.

2 Q And -- and it was something you could plug into the
3 computer and transfer the data into it; is that what
4 you're telling me?

5 A. Yes, sir.

6 Q Okay. And I'm going -- I want to talk with you about
7 a few of these recordings; okay?

8 A. Okay.

9 Q All right. This one -- it's going to take me a little
10 while because I want to make sure I'm talking to you
11 about the right one as we go forward. Okay. This one
12 has been marked as Exhibit Seven. It's premarked.
13 I'm going to hand it to you. Okay This was provided
14 to me by your attorney towards the end of last year.
15 Have you seen this before, this transcription?

16 A. No, sir.

17 Q Okay. Do you know who did the transcription?

18 A. No idea, sir.

19 Q Okay. I want you to look on page -- what's -- do you
20 see these little page numbers at the bottom on the
21 right-hand side of each one. It says "Dyce/ SCENT."

22 A. Yes, sir.

23 Q Okay. I want you to look at the one that says
24 "Dyce/ SCENT 1248." See that? Are you on that page?

25 A. 1248, yes, sir.

1 Q Okay. It says on here -- Man 1 and Man 2. Man and
2 Man 2, do you see that?

3 A Yes, sir.

4 Q Okay. I want you to just take a minute and you can
5 look back at the front, you can look at this page or
6 whatever, and does it appear that Man 1 is you and Man
7 2 is Dr. Puchalski? Take your time and you're welcome
8 to look at the first page.

9 A It appears Man 1 -- if this is correct, it appears Man
10 1 may be me, and Man 2 may be Dr. Puchalski.

11 Q All right. I want you to look on page 1248 and about
12 midway down, do you see where it says Man 2 and
13 there's maybe four lines starts with an "All right"?
14 Do you see that?

15 A All right. Yes, sir.

16 Q Okay. And we -- we think that's Dr. Puchalski; right?

17 A Think so.

18 Q Okay. It says, "All right. I'm going to -- and I'm
19 going to read to you from it just for a minute to save
20 some time. "All right. I'm going to send you another
21 one. It's the latest version that we have, but you've
22 got to put a note on it, it says it's going to, you
23 know, what I can do is I can send you a copy of the
24 latest letter with our negotiating points and then you
25 will know what negotiating points we're putting in

1 there." Do you see that?

2 A. Yes, sir.

3 Q Okay. What's he -- is he referring to a Contract that

4 you and he are negotiating at that point?

5 A. I don't know, sir.

6 Q Okay. This was your conversation; right?

7 A. Yes, sir.

8 Q And you taped it; right?

9 A. Yes, sir.

10 Q And you taped it I think you said for your own

11 personal use?

12 A. Yes, sir.

13 Q Okay. And why were you taping it for your own

14 personal use?

15 A. So, that I -- if I ever needed it, I could refer back

16 to it.

17 Q All right. Good. We're going to refer back to it

18 right now.

19 A. Okay.

20 Q And I want you to tell me what was going on and what

21 Dr. Puchalski was telling you.

22 A. I don't know, sir.

23 Q Okay. Does it appear that he is discussing with you

24 the terms of some agreement that you guys are

25 discussing?

- 1 A. I don't know that for sure, sir.
- 2 Q Tell me what you think.
- 3 A. Well, I don't know. We -- the practice discussed a
4 lot of agreements with a lot of different entities.
5 I don't know what particular agreement this one -- the
6 discussion is for.
- 7 Q All right. If you look at the very back of this, Page
8 1258, it says -- excuse me one minute. I'm sorry. It
9 says, "January 24th, 2010." Do you see that?
- 10 A. Yes, sir.
- 11 Q Okay. You can go back to Page 1248. Does that jog
12 your memory as to what you guys were discussing during
13 that time?
- 14 A. No, sir.
- 15 Q Okay. Turn with me to Page 1255.
- 16 A. Yes, sir.
- 17 Q Okay. Do you see the -- about midway down, it says
18 Man 2, there's a big long line, and then it says,
19 "I'll let you go because I've got to go. Have you
20 heard from Bruce about either the loan closing or
21 moving ahead with purchasing that equipment for the
22 lab?" Do you see that?
- 23 A. Yes, sir.
- 24 Q Who is Bruce?
- 25 A. Bruce Armon is an attorney that I retained in -- from

1 Phi l adel phi a.

2 Q And is -- does this appear to be Dr. Puchalski asking

3 you if Bruce has been able to talk to you about the

4 loan closing or about purchasing equipment for a lab?

5 A. He could be referring to that, sir.

6 Q What else would he be referring to?

7 A. I don't know. I don't recall the conversation. I'd

8 have to kind of look at the whole thing in its

9 entirety.

10 Q Okay. Well, we've got it here. Do you want to look

11 at it and tell me?

12 A. Sure. I'll start reading from the beginning.

13 Q Okay. Dr. Dyce, don't -- if you want to take some

14 notes, write them on the side, but not on that

15 document just because it is an exhibit.

16 A. Okay.

17 Q When you get to Page 10, let me know. Let me ask you

18 about that page, and then we will talk about some

19 other; then you can read more or -- would that be

20 fair?

21 A. Maybe.

22 Q And Doctor, if you need me to ask my question again

23 when you get to Page Ten, please let me know. Did you

24 get to Page Ten, Doctor?

25 A. Yes, I did.

- 1 Q Okay. Based on what you've read thus far, this is
2 Page Ten, where it says "Man 2", long slash, "I'll let
3 you go because I've got to go. Have you heard from
4 Bruce about the loan closing or moving ahead with
5 purchasing that equipment for the lab"? What is Dr.
6 Puchalski asking you about there?
- 7 A It seems like he may be asking me about something to
8 do with one of the buildings, I'm guessing. I could
9 be wrong. And also, the I'm assuming the sleep lab.
- 10 Q Okay. At that point, had you -- was SCENT building a
11 building in Lugoff, South Carolina?
- 12 A I don't remember if we were actually building it.
- 13 Q Okay. And this is -- it looks to be January of 2010;
14 right?
- 15 A Yeah.
- 16 Q Okay. Do you recall that you were already in the
17 Hartsville building, you were using the Hartsville
18 building that had been built?
- 19 A Yes, sir.
- 20 Q Okay. And do you recall that in the fall of 2009 into
21 2010, you all were beginning to build the Lugoff
22 building?
- 23 A I don't know if we had already built it, begin --
24 began building it or had the plans to build it or had
25 purchased the lots. I can't remember the exact dates.

- 1 Q Is it most likely this loan that he's talking about
2 closing relates to that Lugoff building?
- 3 A There's a chance it may.
- 4 Q Or what other building would it be?
- 5 A It's probably that one, but ---
- 6 Q Okay.
- 7 A I don't remember the dates. I would have to look at
8 that all of that again.
- 9 Q And the equipment that was attempting to be purchased,
10 were you stopping the SCENT from closing this loan or
11 purchasing the equipment at this time until you had
12 talked to Bruce, your lawyer?
- 13 A I wasn't stopping anything. I was asking for an
14 opportunity to review a lot of documents that Dr.
15 Puchalski had delayed in giving to us; he gave them to
16 us in January of 2010, and they weren't documents that
17 you reviewed in a day or two.
- 18 Q Okay. If you -- if you weren't blocking it or
19 stopping it, why would he be asking you about it right
20 there?
- 21 A Because the Contract requires that we get approval
22 from all shareholders for a number of opportunities
23 that the practice has.
- 24 Q Okay. At that time, were you a Fifty Percent (50%)
25 shareholder?

1 A. At that time, I believe I was an equal shareholder to
2 Bob Puchalski. What I was at that time was based on
3 documents that Bob Puchalski gave me and showed me.

4 Q Okay. I'm going to ask that question again, and that
5 was, at that time, were you a Fifty Percent (50%)
6 shareholder of SCENT?

7 A. My answer is, I'm not sure what percentage shareholder
8 I was at that time based on what I knew at that time.

9 Q All right. Look at Page 11 with me. Okay. If you
10 look down about midway, it says "Man," and then it
11 says, "No. He just implied that not to do anything,
12 not to touch anything. I said, "What about
13 construction. He was like I would call off" -- it
14 says call off -- "call off construction until we get
15 this figured out." And then Man 2, we know is Dr.
16 Puchalski said, "So, he wants to call off
17 construction?" And then Man, which we believe is you
18 said, "No, that would be his advice to me at this
19 time." Man 2 says, "Is that what you'd like us to
20 do?" Do you see that?

21 A. Yes, sir.

22 Q Do you recall that conversation?

23 A. Well, I recall reading it now.

24 Q So, prior to this, you had no memory of that
25 conversation?

1 A. Well, I hadn't reviewed the documents. There are a
2 lot of conversations we had. I haven't reviewed any
3 of those documents to recollect them on a day to day
4 or month to month basis.

5 Q And I'm ---

6 A. It's been about three years.

7 Q Okay. I'm just -- and so, I'm asking you, did you
8 recall that conversation?

9 A. I recall it based on this.

10 Q Okay.

11 A. So, if you're asking me if I recall it based on this,
12 I don't remember the individual conversation, but I
13 recall it -- after reading this, I could say yeah, I
14 could see that happening, but I -- I don't -- I can't
15 tell you -- oh, I remember that conversation
16 explicitly, this, this and this happened. Without
17 this, I would not be able to tell you that.

18 Q Okay. And then I want you to look down where it says
19 maybe a couple lines down, it says "Man 2. "Okay.
20 Well, I'm okay with that. Just recognize that it puts
21 us in a little bit of a limbo if we get a cash call
22 again. We've got to take it from the practice." And
23 you say, and then Man, which you believe is you, says,
24 "Yeah, is that why we haven't" blank, and Man 2 says,
25 "Well, that and we've got to get everything figured

- 1 out, yes." Do you see that?
- 2 A. Yes, sir.
- 3 Q Okay. Is that Dr. Puchalski telling you that they're
4 going to have to -- that SCENT will have to put money
5 into the SCENT land so that the bills can be paid on
6 the building that was being constructed?
- 7 A. I don't know what Dr. Puchalski was telling me at that
8 time. I actually don't know what Dr. Puchalski is
9 telling me at that time.
- 10 Q Okay.
- 11 A. It sounded like a threat actually.
- 12 Q Okay. Do you see where it says -- you say, "Yeah, is
13 what why we haven't?" Do you see that?
- 14 A. Yes.
- 15 Q Okay. What are you saying there? What are you trying
16 to say?
- 17 A. I don't recall the conversation to know exactly what
18 I was saying at the end of that.
- 19 Q Okay. So, you kept these recordings as notes for
20 yourself, but they don't help you understand what was
21 going on at all?
- 22 A. Oh, I know what was going on.
- 23 Q Well, if you don't recall and you can't tell from
24 looking at these notes, then how do you know?
- 25 A. Because I lived it.

- 1 Q Okay. But didn't you just tell me that you didn't
2 recall this conversation until you saw these notes?
- 3 A. We had a lot of conversations over the course of 2009,
4 2010. This -- an individual conversation, I cannot
5 recall the specifics of that conversation. If I ever
6 needed to reference that conversation, I have the
7 recordings which would afford me an opportunity to go
8 back and attempt to refresh my memory. An individual
9 conversation, though, on its own, I'm not going to
10 remember. I do know the events that were transpiring
11 at that time.
- 12 Q Okay. So, what I'm trying to do with this is -- is
13 what you just said which is refresh your recollection
14 by looking at your recordings that you made.
- 15 A. Okay.
- 16 Q Let's look at Page 12 there. About maybe a third of
17 the way down it says, "Man 2," which is Dr. Puchalski,
18 says, "So, I'm not worried about" blank "as much as
19 I'm worried about covering the construction costs."
20 You see that?
- 21 A. Yes, sir.
- 22 Q Is it fair to say that at this time Dr. Puchalski was
23 worried about covering the costs of construction for
24 the Lugoff building?
- 25 A. I mean, if that's what he says. If you choose to

1 believe what he says, that's fine.

2 Q Well, I'm asking you if he expressed to you that he
3 was worried about covering the construction costs?

4 A. That's what he expressed there, but you asked me was
5 he worried about it. I don't know. I wasn't Dr.
6 Puchalski.

7 Q Okay. Did he express to you that he was worried about
8 it?

9 A. That's what he says right there, yes, sir.

10 Q Okay. You recall him saying that on other occasions?

11 A. Do I recall him saying what?

12 Q Do you recall him on other occasions saying that he
13 was worried about covering the costs of construction?

14 A. I recall him on other occasions making the
15 construction the forefront of whatever argument he
16 chose to make it that day, yes.

17 Q Let me show you what's been marked as Exhibit Eight.
18 There you go. You can hand that one to the court
19 reporter. Excuse me. Okay.

20 A. This is mine?

21 Q Yes, sir. And that's going to be Exhibit Eight.

22 A. Okay.

23 Q You go ahead and take it.

24 A. Oh, okay.

25 Q Yeah. Okay. Do you see this document at the top

1 says, "Audio File (Odie Austin Comment)"?

2 A. Yes, sir.

3 Q Okay. Do you know who put the little title at the

4 top?

5 A. I do not, sir.

6 Q Okay. Would you -- would you have done that?

7 A. I don't know, sir.

8 Q Okay. And if you had put it there, how would we know

9 you put it there?

10 A. I don't know, sir.

11 Q Okay. Okay. So, in this -- I want you to look at the

12 front page of this. Does it appear that you tape

13 recorded yourself, Dr. Puchalski and Austin Sheheen?

14 A. It appears so, sir.

15 Q Okay. And then there's a question mark person that

16 you tape recorded; see down at the bottom? There's a

17 question mark person down at the bottom. Do you see

18 that?

19 A. Yes, sir. I thought you were talking to him. Sorry.

20 Yes.

21 Q There's a question mark person down at the bottom, do

22 you see that?

23 A. Yes, I see that, sir.

24 Q Does that appear to be Dr. Gunnlaugsson?

25 A. I -- I don't know, sir.

1 Q Okay. Well, we'll read this page, but is it safe to
2 say then that you tape recorded multiple people
3 without their knowledge?

4 A Yes, sir. I stated that before, sir.

5 Q Okay. Why don't you look at two-thirds of the way
6 down where it says, "Austin" and there's a big block
7 of -- I'm on that front page.

8 A What I'm sorry.

9 Q Okay. On that front page, ---

10 A Yes, sir.

11 Q -- about two-thirds of the way down, there's a block
12 that says "Austin" and there's a lot of text. Do you
13 see that?

14 A Yes, sir.

15 Q Okay. Could you maybe just read that to yourself
16 quietly? Do you see that?

17 A Yes, sir.

18 Q Were you able to read it?

19 A I skimmed it, sir.

20 Q Okay. Does that appear to be -- is Austin Sheheen the
21 accountant for SCENT?

22 A He was, sir.

23 Q Okay. And does that appear to be him briefing you and
24 Dr. Puchalski and the question mark person on
25 financial matters related to the company?

1 A. He's making some statements about the company; yes,
2 sir, it appears to be that.

3 Q Okay. And they were talking about financial matters
4 related to the company; right?

5 A. It appears so, sir.

6 Q Okay. I want you to turn to the next page with me so
7 we can figure out who the question mark is. And do
8 you see the second place where the question mark
9 person is designated? It says, "Does Rebecca give you
10 the 10 -- can Rebecca call you with a 1099?" Do you
11 see that?

12 A. Yes, sir.

13 Q All right. So, who would that tell you question mark
14 is?

15 A. I know Chad Gunnlaugsson's wife is named Rebecca.

16 Q Okay. So, is question mark most likely Chad
17 Gunnlaugsson?

18 A. It's a possibility, sir.

19 Q All right. I didn't ask you if it was possible, but
20 is it most likely that was Chad Gunnlaugsson?

21 A. It appears to. Again, I haven't reviewed this
22 document in its entirety. It appears so.

23 Q Okay. Do you recall this where you tape recorded
24 Austin Sheheen, Dr. Gunnlaugsson and Dr. Puchalski?
25 Do you recall this? Do you recall it yourself?

1 A. I'm sorry.

2 Q Do you have an independent recollection of this
3 meeting that you tape recorded?

4 A. No. No, I -- I'd have to review it to see if things
5 jogged my memory.

6 Q All right. I want you to turn to the page that says
7 "1261" at the bottom. Tell me when you're there.

8 A. I'm there, sir.

9 Q Okay. About a little bit over halfway down, there's
10 a double question mark person, which we think is Chad
11 Gunnlaugsson, who says, "No," blank, "we're getting --
12 we're all getting the same 1099" blank "K1's." Do you
13 see that? Double question marks. I'm sorry. Look at
14 the second time. The sixth line about a little bit
15 over half the way down.

16 A. Yes, sir.

17 Q Okay. I want you to read what Austin says in response
18 to that. And read it out loud, please, so the court
19 reporter can hear.

20 A. "Nobody gets a 1099 that's an employee that can. You
21 get a 1099 last year because you weren't a partner."

22 Q All right. That's Austin Sheheen responding to Dr.
23 Gunnlaugsson it appears?

24 A. It appears so, sir.

25 Q Okay. Okay. I want to you to look on Page Four about

1 the top quarter down there's a place that says
2 "Puchalski," where Dr. Puchalski is asking a question
3 or making a statement. Do you see that?

4 A. I see a Puchalski, sir.

5 Q Okay. And he said, "Actually, he's not," blank
6 "shareholder." Do you see that?

7 A. Yes, sir.

8 Q Okay. And then Austin says, "Okay. So, it should be
9 going to payroll as opposed to going to 1099, if he's
10 an employee." Do you see that?

11 A. Yes, sir.

12 Q Okay. So, here you have Dr. Puchalski talking about
13 the fact that Dr. Gunnlaugsson is not a shareholder;
14 correct?

15 A. It appears he mentions that Dr. Gunnlaugsson is not a
16 shareholder, sir.

17 Q Okay. And then Austin talks about how he should be
18 paid. Is that right?

19 A. Yeah. Yes, it appears so, sir.

20 Q Okay. If you would give that one to the court
21 reporter. Let me show you, Dr. Dyce, what's been
22 marked as Exhibit Nine. And could you read what it
23 says at the top of that for me? Out loud.

24 A. "Odie 100119 001 2010 Provider Meeting January 19,
25 2010."

- 1 Q Okay. For the trans -- whoever transcribed this
2 somehow knew this was the provider meeting January
3 19th, 2010; is that right?
- 4 A Yes, sir.
- 5 Q Okay. How would they know that?
- 6 A It might have been labeled. I don't quite know.
- 7 Q Okay. If you loaded these things on a computer, did
8 you -- how did -- did you label them for somebody?
9 Did you do something?
- 10 A I know prior to sending them off, I labeled them I
11 don't remember if I labeled them before or just on the
12 computer.
- 13 Q Explain to me how you labeled them if they were a --
14 a voice recording, how you labeled them
- 15 A You can just click on it and change the name, yes.
- 16 Q Okay. So, you had each file recorded separately and
17 then you would put what you thought they were?
- 18 A I would -- I had -- when I -- whenever I labeled them
19 I would put a -- you can -- I think you can just click
20 on the word and change then the name of something.
- 21 Q Okay. Did you use your company iPhone to record these
22 conversations?
- 23 A No, sir.
- 24 Q You understand you're under oath?
- 25 A I'm sorry?

- 1 Q You understand you're under oath?
- 2 A Absolutely, sir.
- 3 Q Did you record anybody outside of Dr. Puchalski's
- 4 presence? For example, Ed White or Austin Sheheen?
- 5 A Yes, sir.
- 6 Q Okay. I want you to look on page, on this Exhibit the
- 7 page that's labeled 1273 at the bottom okay? Tell me
- 8 when you're there.
- 9 A I am there, sir.
- 10 Q Okay. There's a long paragraph that is labeled from
- 11 Dr. Puchalski; do you see that?
- 12 A Yes, sir.
- 13 Q Okay. Right above it, it says "~~Woman~~/Women." Who
- 14 were you -- what woman were you tape recording in this
- 15 conversation; do you know?
- 16 A I have no idea, sir.
- 17 Q Okay. Do you know why on these transcriptions it
- 18 always says your name and Puchalski's, but when there
- 19 are other people, it most of the time doesn't have
- 20 anybody listed?
- 21 A I don't know, sir.
- 22 Q Okay. I want you to -- to read what Puchalski says
- 23 here in that paragraph. Okay? You can read it to
- 24 yourself.
- 25 A (Witness complies).

1 Q Are you through with it? Did you get through it?

2 A Yeah, I skimmed it.

3 Q Okay. Is that Dr. Puchalski briefing you and question
4 mark and woman on financial matters related to the
5 Hartsville and relationships with the Hartsville
6 Hospital?

7 A I -- I'm not actually sure. It seem -- it seems like
8 it's talking about the Hartsville investment, plus Dr.
9 Paul, plus some other things. I'm not sure exactly --
10 plus CT Scans and visits. There's a whole lot he's
11 saying in that.

12 Q Okay. He's briefing you on those matters you just
13 talked about?

14 A It appears that he's talking about them I don't know.
15 -- I can't glean exactly from what -- what it's about.

16 Q All right. Turn to page -- and these have -- are
17 actually numbered at the bottom as well; so, it says
18 15 at the bottom I'm looking on or 1285, whichever
19 one you want to call it. Are you there?

20 A I am on Page 15, sir.

21 Q Okay. Thank you. Read with me -- I'll read it out
22 loud just to save some time. It says, "Orville" the
23 second time on the page. Well, actually, let's read
24 Puchalski's first. Okay. I'm going to read it. It
25 says -- are you there? It says, "And so we can't do

1 it unless that guy" blank.

2 A. Yes, sir.

3 Q "So, without any pressure, do you know what point in
4 the process Bruce will feel -- feel comfortable,"
5 blank? And Bruce is your lawyer; right?

6 A. Yes, sir.

7 Q So, Dr. Puchalski is asking you about when Bruce will
8 feel comfortable with something. Then your response
9 is "Well, the only time I really get a chance to talk
10 to Bruce is in the evenings and I call after hours or
11 I e-mail him. So, I can e-mail him again tonight and
12 say, you know, we have kind of a timeline on" blank.
13 I think Ed -- Ed was a lawyer who did work for SCENT;
14 is that right?

15 A. He was the corporate attorney, sir.

16 Q Okay. "I think Ed sent him a whole bunch of stuff,
17 probably even more than what he'd asked for, and he
18 just started reviewing it last week. So, I think that
19 all is tying into why he is taking so long." Do you
20 see where you said that?

21 A. Yes, sir.

22 Q Okay. So, apparently, at this point, Ed, the lawyer
23 for SCENT, had sent Bruce, your lawyer, a whole bunch
24 of you said "stuff." Is that right?

25 A. I'm sorry. Was there a question?

1 Q Yes, sir, it was. At this point, you told -- you were
2 telling Dr. Puchalski that Ed, the lawyer for SCENT,
3 had sent your lawyer a bunch of stuff that he was
4 reviewing; is that right?

5 A. It would appear so, sir.

6 Q Okay. In fact, you said that it was even more than
7 what Bruce had asked for; is that right?

8 A. That's what it appears so, sir.

9 Q Okay. Then if you look about halfway down, you say,
10 "You can speak to Ed, but I think Ed is actually in
11 contact with him because Ed sent some e-mail and other
12 stuff or some stuff." That -- you're speaking --
13 you're saying that Ed was communicating directly with
14 Bruce, right?

15 A. I -- I -- I would assume that's what we're talking
16 about, yes, sir.

17 Q Okay. And then at the very bottom do you see that,
18 your last sentence there? You say, "No, he's not a
19 real talkative guy. He just kind of remains quiet a
20 lot. He didn't say -- he didn't -- just looking
21 through the stuff. The only thing is, like he said,
22 I have the stuff, it's a lot of it that Ed sent to me.
23 But it sounds like it was more than what he requested
24 from Ed and I'm going to go through it." Do you see
25 that?

1 A. Yes, sir.

2 Q I want you to turn to Page 22. Do you see that? Are

3 you there?

4 A. Yes, sir.

5 Q About midway down, Puchalski asks you, "Are you and

6 Chad discussing the Contract?" See where I'm at?

7 A. Yes, sir.

8 Q Okay. And Chad is Dr. Gunnlaugsson; is that right?

9 A. Yes, sir.

10 Q He was also a doctor at SCENT? Was he also a doctor

11 at SCENT?

12 A. He is one of the physicians at SCENT, yes, sir.

13 Q Okay. Do I refer to it incorrectly when I say doctor?

14 A. You could also say shareholder.

15 Q Okay. He states that he wasn't a shareholder at

16 SCENT; right?

17 A. Okay.

18 Q Isn't that right?

19 A. Apparently. I haven't seen what he said.

20 Q Okay. I'll show you. All right. And then after it

21 said, "Are you and Chad discussing the Contract?" You

22 say, "No. No. The one we just got"? Do you see

23 that?

24 A. Yes, sir.

25 Q And Dr. Puchalski says, "Yeah." And you say, "No, I

1 haven't -- I really haven't looked at it in any great
2 detail yet." Do you see that?

3 A. Yes, sir.

4 Q So, apparently, Dr. Puchalski had provided you with a
5 copy of a proposed Contract at that time; correct?

6 A. Yes, sir.

7 Q Okay. And he asked you if you and Chad had been
8 discussing it; right?

9 A. Yes, sir.

10 Q Okay. You're aware that Chad prior to this date had
11 written in a Memorandum to himself on what you and Dr.
12 Puchalski were discussing as far as terms of the
13 Contract?

14 A. I'm not aware of anything.

15 Q Let me show you what's -- you can hand that one to the
16 court reporter. I hand you what's been marked Exhibit
17 Ten. It says up at the top "Attempts to Justify
18 Action." Do you see that?

19 A. Yes, sir.

20 Q That would have been the title that you gave it when
21 you listed these things out on your computer?

22 A. Possibly. Probably.

23 Q Okay. I want you to go down about mid -- midway.
24 You're discussing charts, and you say, "What charts?"
25 And Bob says, "The 1,500 charts or so." And you say,

- 1 "Nope. They always sign off on my charts. I told him
2 just go ahead and sign off on them" You see that?
- 3 A. Yes, sir.
- 4 Q That's your medical charts that you're referring to?
- 5 A. I assume, sir. I assume so, sir.
- 6 Q Okay. And who is it you told to sign off on your
7 medical charts?
- 8 A. It's not necessarily. The -- the HIA's, often we
9 just sign off on physician's charts.
- 10 Q Okay. I'm talking about you.
- 11 A. I don't know who I would have told. I don't tell a
12 specific HIA. They just kind of clean up the EMR
13 system and they'll sign off on charts.
- 14 Q Okay. So, on your charts. Okay.
- 15 A. On all charts.
- 16 Q I'm talking about yours. Okay. On Dr. Dyce's charts,
17 do you know who was signing off on them?
- 18 A. No, sir, I don't.
- 19 Q Okay. Do you know who was signing off on any other
20 doctors' charts?
- 21 A. No, sir, I don't.
- 22 Q Okay. Did you ever sign off on your charts?
- 23 A. I don't recall if I have or if I did or didn't.
- 24 Q Do you do it now?
- 25 A. Yes, sir.

1 Q Okay. Do you believe that you're obligated under the
2 Medical Board Guidelines to sign off on your charts?

3 A I haven't seen the Medical Board Guidelines.

4 Q I'm asking what you believe, what your understanding
5 is.

6 A My understanding is taking care of patients,
7 documenting what you do and signing beneath them for
8 what you've done. That's what I believe.

9 Q Okay. So, I'm asking you about signing off on your
10 charts.

11 A I sign off on the charts I do where I sign my name at
12 the bottom yes, sir.

13 Q Is that the final version of your chart?

14 A Where I am now -- yes, it is.

15 Q How about where you were before?

16 A I don't know what the final version is because I
17 wasn't privy to that. What I did was, I signed off on
18 the letters that I sent out to referring physicians.

19 Q All right. I'm going to show you -- I've got a lot of
20 these to show you -- I'm going to show you an example
21 of the -- of the sign-off chart. If you would -- I'm
22 just going to show it to you and let's get one for
23 your lawyer to look at. Take a look at that, please.

24 MR. ELLISON: Is that an Exhibit?

25 MR. SHEHEEN: Not right yet. I'm just

1 letting him look at it.

2 Q Would you look at that, please?

3 A (Witness complies).

4 Q Are you familiar with that type of screen or that ---

5 A I don't -- I don't remember this screen.

6 Q Okay. How about, do you have a similar screen where

7 you work now?

8 A No, sir.

9 Q Do you do things electronically where you work now as

10 far as your charts?

11 A No, sir.

12 Q Okay. Do you ever recall seeing a screen similar to

13 that while you were at SCENT?

14 A It's -- it's been over three plus years. I -- I don't

15 recall anything much about the EMR system

16 Q I want you to look on the page of -- excuse me the

17 bottom of Page Two.

18 A Of Exhibit Ten still?

19 Q Yes. On the very bottom or close to the bottom it

20 says, "Bob," and it says, "Um, he also wanted to share

21 with me that under no circumstances were you talking

22 to Chad or attorneys weren't talking or anything else.

23 Is that still your position that over the last few

24 months that you have" blank. And you said, "I haven't

25 talked to Chad about anything. I talk to Chad

- 1 periodically, but not about this stuff." And Bob
2 says, "No attempts by your attorney to talk to Chad's
3 attorney or Chad?" And you said, "Not that I know of,
4 not that I know about." I had the opportunity to
5 depose you briefly previously; do you remember that?
- 6 A. Yes, sir.
- 7 Q Okay. We were in Charleston in a different law office
8 somewhere. And I showed you an Affidavit that Dr.
9 Gunnlaugsson or his attorney had prepared for your
10 signature. Do you remember that?
- 11 A. Yes, sir.
- 12 Q And you told me that he had shared that with you, but
13 that you had not signed it. Do you recall that?
- 14 A. Yes, sir.
- 15 Q Okay. So, at this point when Dr. Puchalski is asking
16 you if you've talked with Chad, you didn't mention to
17 him that he had shared this Affidavit with you. Is
18 that right?
- 19 A. It doesn't appear that I mention an Affidavit in this
20 conversation.
- 21 Q You can hand that one to the court reporter. Let me
22 show you what's been marked as Plaintiff's -- excuse
23 me, as Exhibit 11.
- 24 MR. ELLISON: Exhibit 11?
- 25 Q Yes. Uh-huh (affirmative response).

1 A. Thank you.

2 Q Make sure we're on the right -- we're each on the same
3 one. It says up at the top, "Audio File 001 A 037."
4 And then has "Odie" and more numbers.

5 A. Yes, sir.

6 Q Okay. I want you to look on Page Three. About maybe
7 a third of the way down, it says, Dr. Puchalski says,
8 "Good. Well, I was hoping that maybe on Wednesday you
9 and I could go through the Contract after the Board
10 Meeting. Does that sound" -- and you said, "Well, I
11 want to go through it with Bruce first because it
12 doesn't make sense for me to go through it and then
13 have to go through it with him so let me kind of
14 bring up the points he" blank, "and then we kind of do
15 it that way." Do you see that?

16 A. Yes, sir.

17 Q Okay. Is that Dr. Puchalski trying to talk with you
18 about the proposed Contract and the negotiations you
19 and he are having?

20 A. It appears so, sir.

21 Q Okay. If you'll look on Page Six. Are you there?

22 A. Almost, sir. Yes, sir.

23 Q Okay. There's a -- maybe a quarter of the way down,
24 a long paragraph by Dr. Puchalski. Why don't you just
25 quickly read that to yourself. Tell me when you're

1 done.

2 A. (Witness complies).

3 Q Are you done with it? I'm sorry.

4 A. I'm sorry. What did you ask me?

5 Q Have you finished -- did you get to skim that or read

6 that paragraph?

7 A. The paragraph with Dr. Puchalski?

8 Q Yes, sir.

9 A. I think so.

10 Q Okay. Does that appear to be him briefing you on some

11 financial matters related to SCENT?

12 A. It appears so. I'm not sure about what, though.

13 Q Okay. I want you to turn to Page 23. I want you to --

14 oh, excuse me. I'm sorry, Doctor. 22, actually.

15 A. No problem

16 Q Look at the -- kind of close to the bottom Dr.

17 Puchalski says, "We want to talk about that and update

18 about that; clearly, that's not part of SCENT" blank,

19 "that's SCENT Land Holdings, but it's affecting SCENT

20 and it's affecting SCENT because we have now funneled

21 \$300,000 in SCENT" blank. And you said, "Go ahead."

22 And he said, "So, we now funnel \$300,000," blank

23 "SCENT Land Holdings; so, it becomes a SCENT issue.

24 And so, as soon as the loan closes, the loan will pay

25 off SCENT for its contributions to SCENT Land Holdings

1 and make SCENT Land Holdings whole." Do you see that?

2 A. Yes, sir.

3 Q. That's Dr. Puchalski briefing you on the fact that

4 SCENT was having to loan money to SCENT Land and to pay

5 the construction costs? Does that appear to be what

6 that is?

7 A. It appears so, sir. Do you know the date of this

8 meeting?

9 Q. I believe that it was February 10th.

10 A. Yes, sir.

11 Q. Would that sound right to you?

12 A. I don't know.

13 Q. Okay.

14 A. I'm asking.

15 Q. Okay. Well, I think that was the date.

16 A. Okay.

17 Q. And then if you look on Page 23. Dr. Puchalski

18 continues, "Bruce to see whether or not things were

19 okay and whether or not he felt comfortable with you

20 and you felt comfortable with moving ahead with the

21 closing and I'm hoping that we've had," blank, "we've

22 got another bill coming from Charlie in an amount that

23 we don't know yet, but the amount is going to get more

24 and more expensive as" blank. And you said, "Um

25 yeah, I did speak to Bruce. He was still leaning

1 towards holding off. He says you know what you need
2 to do, whatever you need to do to get the operations
3 done. But he wanted to talk to Ed again and that's
4 why he was trying to get a hold of him yesterday."
5 See that? And then there was some more in that
6 paragraph. So, that's you and Dr. Puchalski talking
7 about the building in Lugoff, is that right, and
8 whether or not you would agree to close on the loan?

9 A. It appears so, sir.

10 Q Okay. Let me show you what's been marked as
11 Defendant's Exhibit 12. You hold on to it. I'm
12 sorry. Just take -- let me catch up myself. You can
13 hand that one to her now, Dr. Dyce, and I'm going to
14 hand you Exhibit 12. Up at the top, it says I think
15 a "Repeat." Do you see that?

16 A. What did you say?

17 Q Do you see that? Are we on the same one? Does it say
18 what looks to be like "Repeat"?

19 A. Yes, sir.

20 Q Is that your handwriting?

21 A. No, sir.

22 Q Okay. I want you to look on page that says 1442 at
23 the bottom right-hand column. See that? Are you
24 there?

25 A. Yes, sir.

- 1 Q Would you read that to yourself? That bottom long
2 paragraph that says Bob Pucha -- it says Bob and
3 there's a -- he's talking for a while. Just read that
4 to yourself.
- 5 A. Okay.
- 6 Q Okay. Dr. Puchalski is briefing you on -- on what
7 physician assistants will do or tell me what he's
8 doing there, what you all are talking about.
- 9 A. I'm not sure. He's saying something about call
10 coverage and physician assistants. I'm not sure what
11 he's saying.
- 12 Q Okay. Would he brief you about what was going on with
13 the physician assistants or their -- the management of
14 them from time to time?
- 15 A. I'm not sure what you mean by briefing me about it.
- 16 Q Would he tell you -- would he talk to you about
17 physician assistants and the management of them from
18 time to time and tell you ---
- 19 A. He would speak to myself, Gunnlaugsson and Vidrine
20 about them periodically.
- 21 Q Okay.
- 22 A. I'm not sure what you're asking.
- 23 Q That's what I'm asking. So, he would talk to you
24 about them?
- 25 A. Not just myself, but other folks as well.

- 1 Q Okay. Dr. Puchalski handled the management of the
2 business part of the company; is that fair to say?
- 3 A. Yes, he was the managing shareholder and responsible
4 for a lot of the business aspects.
- 5 Q You can give that one to the court reporter. You can
6 go ahead and give that one to our court reporter.
7 This one is marked as Defendant's Exhibit 13. I give
8 that to you. You can put that up. Turn to Page Two.
9 Well, let's make sure we're on the right one. At the
10 top of the page, on the first page, it says "Land
11 Holdings Meeting with Jamie with Capital Call." Do
12 you see that?
- 13 A. Yes, sir.
- 14 Q And turn to Page Two, please. Do you recollect at all
15 this telephone call?
- 16 A. General -- generalities about it, sir, yes, sir.
- 17 Q Okay. I want you to look at the top of Page Two. It
18 says, Bob says, "Okay. All right. Fantastic. Good.
19 And uh, is anyone recording this call?" Do you see
20 that?
- 21 A. Yes, sir.
- 22 Q What did your wife say?
- 23 A. No.
- 24 Q And then Amy Puchalski said, "No." Right?
- 25 A. Yes, sir.

- 1 Q Did your wife know that you were recording the call?
- 2 A I don't think so.
- 3 Q Okay. And did it bother you that your wife and Amy
- 4 Puchalski were telling Dr. Puchalski that no one
- 5 recorded the call when you were recording the call?
- 6 A It bothered me more that they were calling an illegal
- 7 capital call and trying to kick me out.
- 8 Q Okay. That's not what I asked you. What I asked you
- 9 is, did it bother you ---
- 10 A I didn't even think about it.
- 11 Q Okay. Let me finish my question first; okay?
- 12 A I'm sorry.
- 13 Q Did it bother you that you were recording the
- 14 telephone call when someone specifically asked if they
- 15 were recording the telephone call and that your wife
- 16 said no and you didn't speak up?
- 17 A No, it did not, sir.
- 18 Q Okay. Why not just say -- I'm recording this? Be
- 19 honest about it. Why not just say that?
- 20 A I don't know. It was just -- I didn't even think
- 21 about it.
- 22 Q Okay. Let me show you what's been marked Defendant's
- 23 Exhibit 14. And you can give that one to our court
- 24 reporter. Okay. Make sure we're on the right -- all
- 25 on the same one. It says at the top 100609 001 and

- 1 there, it looks like it says, "Half blame Chad." Do
2 you see that?
- 3 A. Yes, sir.
- 4 Q Okay. Why would you have labeled that "Half blame
5 Chad"?
- 6 A. I don't know. I would have to look through it and see
7 if I can glean why I put that name on top of it.
- 8 Q Okay. That's all I had on that one. Why don't you go
9 ahead and give that one to her. Dr. Dyce, you're
10 familiar with Dr. Chad Gunnlaugsson; correct?
- 11 A. I know him yes, I do, sir.
- 12 Q Okay. Do you consider him to be an honest person?
- 13 A. Yes, sir, I do.
- 14 Q Do you believe that he would tell the truth under oath
15 in a court of law?
- 16 A. I don't know what he would do in a court of law.
- 17 Q So, do you believe he might lie under oath in a court
18 of law?
- 19 A. I don't know what he would do. I'm not Chad
20 Gunnlaugsson. As far as I know, to me, he's been
21 honest.
- 22 Q Okay.
- 23 A. And my interactions with him have been very
24 forthright. We've been forthright with each other.
- 25 Q Okay. Are you aware that under oath in court, he

1 stated that he had never been a shareholder of SCENT?

2 A. My attorney mentioned something to that ---

3 MR. ELLISON: Whoa, whoa, whoa, whoa.

4 Q. Don't talk to me about what your attorney told you.

5 A. Well ---

6 MR. ELLISON: Stay away from attorney
7 communications.

8 DR. DYCE: Okay.

9 Q. Are you aware that -- don't tell me what your attorney
10 said, okay?

11 MR. ELLISON: Wait a minute. Wait a minute.

12 A. How do I ---

13 MR. ELLISON: Wait, wait, wait. If he's
14 learned of anything -- if he's learned of
15 anything through me, if he hasn't learned
16 independently, that's subject to privilege
17 and should not answer the question.

18 A. So, what do I say.

19 Q. I'll help you out with the phrasing.

20 MR. ELLISON: I'm not trying to be
21 difficult.

22 MR. SHEHEEN: I can handle it.

23 MR. ELLISON: I know.

24 Q. Except for anything your attorney may have told you --
25 don't tell me that -- are you aware that Dr.

- 1 Gunnlaugsson testified in court that he was never a
2 shareholder of SCENT?
- 3 A. Not outside of what ---
- 4 Q Is the answer no?
- 5 A. No.
- 6 Q Okay. If I informed you that Dr. Gunnlaugsson
7 testified that way, would you expect him to have
8 testified honestly based on your interactions with
9 him?
- 10 A. As I mentioned before, my interactions with Chad have
11 been fairly forthcoming and honest. I have no reason
12 to believe he would be dishonest on purpose about
13 anything that he does. From my perspective.
- 14 Q I'm going to show you Plaintiff's Exhibit Five.
- 15 MR. ELLISON: Plaintiff's?
- 16 Q Excuse me, Defendant's -- it's just my ---
- 17 MR. ELLISON: Habit.
- 18 Q Let me show you what's been marked as Defendant's
19 Exhibit Five. You've got it right there. And I'm
20 going to tell you this is a Consent Order of Dismissal
21 with Prejudice as to Dismiss All Claims, it's titled
22 that, and I'm going to refer you to the second to the
23 last page where it shows it's signed by Judge Cooper;
24 do you see that?
- 25 A. Yes, sir, I do.

- 1 Q Okay. Look at Number One here on the front page.
2 Front page. See where it says Number One?
- 3 A Yes, sir.
- 4 Q It says, "Plaintiff admits that he is not and never
5 was a shareholder of South Carolina ENT Allergy and
6 Sleep Medicine or any other subsidiaries or affiliates
7 and consents to a finding of the Court to this
8 effect." Do you see that? Do you see that on the
9 front page?
- 10 A Yes, sir, I do.
- 11 Q And turn to the very back page.
- 12 A This?
- 13 Q Yes, sir.
- 14 A Yes, sir.
- 15 Q Do you see where Dr. Chad Gunnlaugsson signed that?
- 16 A I do believe that's his signature, sir. Yes, sir.
- 17 Q So, would you agree with me that Dr. Gunnlaugsson has
18 admitted that he is not and never was a shareholder of
19 South Carolina ENT, Allergy and Sleep Medicine?
- 20 A Do I agree with you that Dr. Gunnlaugsson admitted
21 that he never was a shareholder?
- 22 Q Right. Read ---
- 23 A Apparently, based on this paper that that's true, and
24 that's what you're saying, yes, sir.
- 25 Q Okay. Is it my -- scratch that, I'll re-ask the

1 question. I believe in your previous deposition,
2 there was a brief discussion about your taxes and how
3 -- how you filed them. Do you recall that?

4 A. I don't recall my previous deposition, no, sir.

5 Q. Okay. Did you read your previous deposition before
6 you came to this deposition?

7 A. No, sir.

8 Q. Okay. Did you read any other depositions or documents
9 before you ---

10 A. No, sir.

11 Q. Did you file your 2010 Tax Return or any tax documents
12 in that year, for that year as if you were a one-third
13 owner of SCENT?

14 A. I think I did, sir.

15 Q. Okay. And have you gone back and changed that since
16 Dr. Gunnlaugsson has admitted that he was never a
17 shareholder in SCENT?

18 A. No, sir.

19 Q. Okay. Do you plan to do that?

20 A. No, I don't, sir.

21 Q. Okay. So, at this point, Dr. -- Dr. Gunnlaugsson,
22 based on what you just read, has admitted that he
23 wasn't a shareholder of SCENT and Dr. Puchalski says
24 that Dr. Gunnlaugsson wasn't a shareholder of SCENT;
25 is it your position, Orville Dyce, that Dr.

- 1 Gunnlaugsson was a shareholder of SCENT?
- 2 A. Yes, sir.
- 3 Q Okay. Tell me why.
- 4 A. Well, I will defer to the tax matters specialists who
- 5 I have hired. But based on the documents we have in
- 6 our possession, it appears that Dr. Gunnlaugsson was
- 7 a shareholder of SCENT.
- 8 Q Okay. Tell me what documents that is.
- 9 A. I think I would refer you to Richard Livingston.
- 10 Q Okay. Well, I'm not asking Mr. Livingston today; I'm
- 11 asking you. This is your case; right?
- 12 A. Yes, sir.
- 13 Q You sued SCENT?
- 14 A. Yes, sir.
- 15 Q You sued SCENT?
- 16 A. Yes, sir.
- 17 Q And in that suit, you now claim that Dr. Gunnlaugsson
- 18 was a third owner; right?
- 19 A. Third shareholder, yes, sir.
- 20 Q Okay. And so, I'm assuming that means that you,
- 21 Orville Dyce, had a reason to believe that; is that
- 22 true or not true?
- 23 A. Yes, sir.
- 24 Q Okay. Tell me why you, Orville Dyce, believe that.
- 25 A. Based on people who are tax experts, of which I am

1 not, and attorneys, of which I am not, ---

2 MR. ELLISON: Don't get into what
3 attorneys said.

4 A. Sorry. Tax experts, who have reviewed the documents
5 appropriately and multiply and based on the way the
6 corporation was organized and the pay-outs were done,
7 we believe there was a third shareholder at least in
8 Dr. Gunnlaugsson.

9 Q Okay.

10 MR. ELLISON: And for purposes of the
11 record, questions as to whether Dr. Gunnlaugsson
12 was a shareholder of SCENT is a legal matter ---

13 MR. SHEHEEN: We can argue that in Court,
14 but I can ask him whatever ---

15 MR. ELLISON: I understand. And he -- and
16 I have no problem with him telling you things
17 that don't involve -- this is why I'm putting
18 this on the record, I have no problem with him
19 telling you things that don't involve
20 conversations with his counsel.

21 MR. SHEHEEN: Right.

22 MR. ELLISON: Because of this, we believe it
23 is a legal matter. I am instructing him not to
24 answer anything based on conversations he's had
25 with his counsel.

- 1 Q Listen. Let me just so your attorney doesn't have to
2 interrupt. Don't ever tell me anything that your
3 lawyer has told you. Okay?
- 4 A Yes, sir.
- 5 Q Okay. I'm asking you, Orville Dyce, in your mind,
6 based on what you independently know, separate from
7 anything you've discussed with your attorney, do you,
8 Orville Dyce, have evidence that Dr. Gunnlaugsson was
9 a third shareholder or third owner of SCENT?
- 10 A Yes, I do.
- 11 Q Tell me what that is.
- 12 A Well, when Dr. Gunnlaugsson was buying in, he bought
13 a portion of my shares, and he paid me for them. He
14 bought a portion of Dr. Puchalski's shares. We sent
15 him a letter saying you are going to be a shareholder
16 by this date. He did everything he was to do as a
17 shareholder, and he became a shareholder.
- 18 Q Okay. Did he write you checks? You said he paid you
19 for your shares. Did he write you checks?
- 20 A Did he write me a check personally?
- 21 Q Yes, sir.
- 22 A No, Dr. Gunnlaugsson never wrote me a check
23 personally.
- 24 Q You said he did everything he was supposed to do to
25 become a shareholder. Tell me what that was.

- 1 A. Paid his money.
- 2 Q Okay. Did he write -- did he write Dr. Puchalski a
3 check, to your knowledge?
- 4 A. I don't know what he did with Dr. Puchalski.
- 5 Q Okay. Did he write you a check?
- 6 A. No, he did not.
- 7 Q Okay. Did he write SCENT a check?
- 8 A. I don't know what he did to SCENT. That was between
9 him and Bob.
- 10 Q Okay. So, how do you know he paid his money?
- 11 A. Same way I paid my money.
- 12 Q Okay.
- 13 A. I never wrote a check.
- 14 Q Okay. Did you -- how do you know -- how did you know
15 when you became a shareholder?
- 16 A. Please repeat the question.
- 17 Q Sure. How did you know when you became a shareholder?
- 18 A. I can't talk about that.
- 19 Q Okay. Forget about anything your lawyer told you. Do
20 you have any independent knowledge yourself about when
21 you became a shareholder?
- 22 A. I can't talk about that.
- 23 Q Okay. Is that because -- I'm not asking anything your
24 lawyer told you; okay?
- 25 A. The documents that Dr. Puchalski prepared do conflict

- 1 on a number of things, but the records are fairly
2 clear. I can't much talk about it.
- 3 Q Okay. Well, do you not want to talk about it in court
4 if we have a Trial?
- 5 A. I will have Richard Livingston and tax specialists and
6 other people, who are way more knowledgeable about
7 this area who I trust who are doing things the right
8 way, testify to the facts of the case as they are.
- 9 Q Did you speak with Richard -- the man you referred to
10 -- Richard Livingston?
- 11 A. Only through my attorney.
- 12 Q Okay. No, I'm asking if you personally spoke with
13 him
- 14 A. Only to introduce myself.
- 15 Q Okay. Did you give him any factual information
16 yourself?
- 17 A. Only through my attorney.
- 18 Q Okay. So, and I don't want us to be confused. I
19 understand that it could be you -- when you met with
20 Mr. Livingston, did you meet with Mr. Livingston?
- 21 A. I have met him personally, yes, sir.
- 22 Q Okay. Did you speak any words directly to him about
23 this case?
- 24 A. Apart from introducing myself?
- 25 Q Right.

- 1 A. I think that's pretty much it.
- 2 Q Okay. If Dr. Gunnlaugsson is correct in his statement
3 to the court that he was not a shareholder or owner,
4 do you know how much money you would owe the IRS?
- 5 A. I am not a tax or IRS specialist.
- 6 Q So, does that mean you do know or you don't know?
- 7 A. I don't know.
- 8 Q Okay. You received that money as if you were a Fifty
9 Percent (50%) shareholder; correct?
- 10 A. I don't know. I don't know what Bob was doing with
11 the books.
- 12 Q Okay. If you did not receive that money -- excuse me.
13 Strike that. If you received that money as a Fifty
14 Percent (50%) shareholder, do you not think you should
15 pay taxes on it?
- 16 MR. ELLISON: Object to the form
17 I don't understand the question.
- 18 A. I don't understand.
- 19 MR. ELLISON: Please rephrase it.
- 20 MR. SHEHEEN: I'll try -- I'll try to
21 rephrase it.
- 22 Q If you were paid as a Fifty Percent (50%) shareholder,
23 you received money from SCENT as a Fifty Percent (50%)
24 shareholder, do you know who paid taxes on the shares
25 of money you received if you didn't?

- 1 A. I -- please.
- 2 Q Okay. Do you want me to restate the question?
- 3 A. Yeah.
- 4 Q And I'll do it as a hypothetical. It might help. If
- 5 there was a hundred, excuse me, if there was a
- 6 \$1,000.00 from SCENT that was paid Fifty Percent (50%)
- 7 to you and Fifty Percent (50%) to Bob Puchalski, you
- 8 would receive \$500.00. Do you understand that?
- 9 A. I would have received what?
- 10 Q If there was a \$1,000.00 from SCENT, ---
- 11 A. Okay.
- 12 Q -- and it was paid Fifty Percent (50%) to you and
- 13 Fifty Percent (50%) to Bob Puchalski, you would have
- 14 received \$500.00 of that \$1,000.00.
- 15 A. Okay.
- 16 Q Okay. And I believe what we discussed was, for 2010,
- 17 you filed your taxes as if you owned a third of the
- 18 shares of SCENT; do you understand?
- 19 A. Okay.
- 20 Q Okay. So, -- but you received Fifty Percent (50%) of
- 21 the money from SCENT. Are you with me?
- 22 A. This is absolutely hypothetical.
- 23 Q This is hypothetical.
- 24 A. Okay.
- 25 Q Do you understand?

1 MR. ELLISON: Just for purposes of the
2 record.

3 A. You're saying if I received ---

4 MR. ELLISON: Wait. Wait, Orville. Just
5 for purposes of the record, this is not
6 supported by the records, but go ahead.

7 MR. SHEHEEN: I know, that's why I'm ---

8 A. -- it is hypothetical.

9 MR. SHEHEEN: -- it's not supported by
10 the record, but we can deal with that later.

11 MR. ELLISON: I understand.

12 Q. He gets to ask you questions after me if he wants ---

13 A. Okay.

14 Q. -- okay, and that's when he gets to clear up anything
15 that he thinks is the wrong impression. If you
16 received Fifty Percent (50%) of the proceeds or
17 disbursements ---

18 A. Yes, sir.

19 Q. -- then, is there some amount of money out there that
20 no one has paid taxes on, to your knowledge?

21 A. I don't know.

22 Q. Okay. Are you worried at all that you may owe taxes?

23 A. Not in the least, sir.

24 Q. Do you know if Dr. Gunnlaugsson paid taxes as if he
25 were a shareholder or an employee?

1 A. I don't delve into the finances of Dr. Gunnlaugsson.
2 I have no idea what he's done or what documents he was
3 getting from SCENT. That's between him and Bob.

4 Q You haven't discussed that with him at all?

5 A. I did not discuss it with him sir.

6 Q And if -- if he paid it as an employee and not as a
7 Fifty Percent (50%) -- excuse me -- a third
8 shareholder, would that surprise you?

9 MR. ELLISON: Repeat the question.

10 A. Yeah.

11 MR. ELLISON: Repeat the question.

12 Q If Dr. Gunnlaugsson paid his taxes for 2010 as if he
13 were an employee and not a shareholder, would that
14 surprise you?

15 A. I haven't really given it that much thought. It
16 doesn't -- doesn't keep me up at night.

17 Q That's not what I'm asking. I'm just asking if that
18 ---

19 A. I haven't -- it wouldn't surprise me because I haven't
20 given it that much thought. I haven't thought about
21 it to be surprised or not surprised is what I'm trying
22 to say.

23 Q Let me show you what's been marked as Plaintiff's
24 Exhibit One -- Defendant's Exhibit One. Excuse me.
25 Take a minute and look over that.

- 1 A. (Witness reviews document).
- 2 Q Did you get a chance to look at that?
- 3 A. I skimmed it, sir.
- 4 Q Okay. Can you tell me what it is?
- 5 A. It looks like a letter from the South Carolina
6 Department of Health and Human Services.
- 7 Q Okay. Were these before -- what are they telling you
8 in there? I'm sorry.
- 9 A. It -- it's saying that, according to the National
10 Correct Coding Initiative, there are a few codes that
11 can't be billed with other codes. I can list the
12 codes out separately if you need to know.
- 13 Q You -- is that generally what it's telling you --
14 okay. Keep going.
- 15 A. And it appears that the claims went out, were paid,
16 and they're saying in review, they shouldn't have been
17 paid between 2007 and 2010.
- 18 Q Okay. And there was a -- in other words, there was a
19 total overpayment; is that correct? Does it say that?
- 20 A. Total potential overpayment.
- 21 Q Okay. And did any other physicians at SCENT get a
22 letter like this that you're aware of?
- 23 A. I don't know, sir. This was handed to me by Dr.
24 Puchalski or one of the assistants.
- 25 Q Okay. Do you understand what you were doing

1 i n c o r r e c t l y a c c o r d i n g t o t h i s l e t t e r ?

2 A. T h i s l e t t e r s a y s t h e r e a r e c o d e s t h a t c a n ' t b e u s e d t o
3 b i l l w i t h o t h e r c o d e s t h a t w e r e b i l l e d w i t h o t h e r
4 c o d e s .

5 Q O k a y . S o , I ' m a s k i n g y o u , d o y o u - - d o y o u u n d e r s t a n d
6 w h a t t h e y ' r e s a y i n g i n t h e r e ?

7 A. S o r t o f .

8 Q O k a y . W e r e y o u r e s p o n s i b l e f o r c o d i n g t h e p r o c e d u r e s
9 y o u w e r e d o i n g ?

10 A. T h e - - t h e r e w e r e a l o t o f p e o p l e i n v o l v e d i n t h e
11 c o d i n g p r o c e s s i n o u r - - i n o u r p r a c t i c e . A n u m b e r o f
12 f o l k s w o u l d p u t t h e - - e n t e r t h e c o d e s i n t o t h e
13 c o m p u t e r . I w r o t e w h a t I d i d d o w n , h a n d w r o t e i t w h e n
14 I d i d a s u r g i c a l p r o c e d u r e , a n d i t w a s u p t o t h e m t o
15 c o d e a n d p u t i n t o t h e c o m p u t e r w h a t w a s d o n e .

16 Q O k a y .

17 M R . E L L I S O N : L e t - - l e t h i m f i n i s h .

18 A. I ' m f i n i s h e d .

19 Q A n d t h e n d i d y o u s i g n o f f o n w h a t c o d e s w e r e p u t i n ?

20 A. T h e r e ' s - - a s f a r a s I k n o w , t h e r e w a s n o s i g n i n g o f f .
21 Y o u j u s t - - y o u j u s t - - I j u s t w r o t e - - l i k e I w o u l d
22 h a v e a s h e e t o f p a p e r l i k e t h i s f r o m t h e O p e r a t i n g
23 R o o m , a n d t h e s e a r e a l l O R p r o c e d u r e s o r p r o c e d u r e s o f
24 s o m e s o r t , I ' d w r i t e i t d o w n , h a n d t h e m i n ; t h e y w e r e
25 p u t i n b y s o m e o n e a n d - - t o g o i n t o t h e b i l l i n g . I

- 1 didn't actually enter these codes into the computer.
- 2 Q Okay. You were the Compliance Director for SCENT;
- 3 right?
- 4 A In name only.
- 5 Q You took that name on?
- 6 A I'm sorry?
- 7 Q You agreed to take that name on; correct?
- 8 A Right. Yes, sir.
- 9 Q Okay. Did you do the job?
- 10 A I tried to.
- 11 Q Okay. Did you check to make sure that mistakes like
- 12 this didn't occur?
- 13 A It wasn't that sort of a compliance position. It was
- 14 more of a position where if there were -- I had an
- 15 anonymous e-mail and if someone had information of
- 16 wrongdoing or improper action by anyone, including the
- 17 physicians, they were to e-mail me, and it was an
- 18 anonymous e-mail so they couldn't be penalized for it.
- 19 Q Okay. Have you been investigated by South Carolina
- 20 Medicaid since this letter?
- 21 A Not that I know of.
- 22 Q Okay. Did you take courses on billing while you were
- 23 at SCENT from Karen Zupko Billing?
- 24 A Yes, I went to a few courses, sir.
- 25 Q Okay. And were they paid for by SCENT?

1 A. Yes, sir.

2 Q Do you remember going to Vegas, Jeopardy and HIA 101
3 Coding and Billing Workshops at SCENT as well?

4 A. I remember being present, yes, sir.

5 Q Okay. Are you still billing this same way now that
6 you were then?

7 A. I wasn't billing these, sir.

8 Q Okay. So, you're the physician; is that right?

9 A. Yes, sir.

10 Q As the physician, aren't you responsible for the
11 billing, your own billing?

12 A. I'm responsible for documenting everything that I've
13 done. Every practice is set up a little bit
14 differently. The oversight goes to Bob, the Billing
15 Department that he met with regularly, and the like.

16 Q Okay, you ---

17 A. But I was responsible for writing down what I did,
18 handing it to the folks that were putting the
19 information in.

20 Q Okay. You were the Compliance Director?

21 A. Absolutely, sir.

22 Q Okay. Let me show you what's been marked Exhibit Two.
23 Do you recognize this letter?

24 A. Yes, sir.

25 Q This is a letter to you -- from you to HHS; is that

1 right?

2 A. It appears to be so, sir.

3 Q In which you sent back a check in the amount that they

4 referenced in the previous letter; is that right?

5 A. Yes, sir.

6 Q And that check, do you recall, did it come from you

7 personally or from SCENT?

8 A. It came from SCENT, sir.

9 Q Okay. The procedures that were used for billing, were

10 they -- would it surprise you to know that -- excuse

11 me, strike that. The procedures that were used for

12 compliance, did you -- didn't you write those

13 procedures?

14 A. No, sir.

15 Q You didn't have any involvement in those?

16 A. I was appointed the Compliance Director by Dr.

17 Puchalski. My first compliance incident involved a

18 complaint against Dr. Puchalski. When I brought it up

19 to him, he fired me as the Compliance Director.

20 Q So, how long were you Compliance Director for?

21 A. I'm not sure how long.

22 Q I want you to look -- how about the surgical

23 procedures, did you help write those?

24 A. If I did a surgical procedure on the sheet that I

25 handed in, I wrote down the name of the procedure that

- 1 I did. For example, if it was a thyroid, I'd put left
2 or right thyroid or total thyroidectomy or whatever it
3 was, hand it in, and they would enter it into the
4 computer.
- 5 Q Okay. I see here you've said -- this letter again I'm
6 looking at.
- 7 A Yes.
- 8 Q Exhibit Two, I believe. At the bottom it says, "Our
9 periodic internal audits are referred to our internal
10 compliance program" See that?
- 11 A Yes, sir.
- 12 Q "In addition, we address these issues through
13 quarterly continuing education and training sessions
14 held within the practice."
- 15 A Yes, sir.
- 16 Q Are all those things true?
- 17 A I don't know.
- 18 Q Okay. Is this your signature?
- 19 A Yes, sir.
- 20 Q Do you -- was it true at the time you signed it?
- 21 A I don't know.
- 22 Q Do you sign things that you don't know are true or
23 false?
- 24 A Particularly working with South Carolina ENT, I have
25 done that a lot, sir.

1 Q Okay. This is dated April 13th, 2012; do you see
2 that?

3 A. Yes, sir.

4 Q You were represented by a lawyer at this time?

5 MR. ELLISON: Wait, wait, wait. April
6 13th, 2010.

7 MR. SHEHEEN: 2010. I apologize.

8 Q This was dated April 13th, 2010; do you see that?

9 A. Yes, sir.

10 Q You were represented by a lawyer at that time?

11 A. I had a -- an inferior corporate attorney.

12 Q Okay. Let's think about the date, okay? April 13th,
13 2010, hadn't you already been being represented by
14 Bruce Armon at that point?

15 A. As far as I know, I was still a shareholder, and I was
16 being represented by the corporate attorney.

17 Q Okay.

18 A. Which is one of my contentions, that he never
19 represented me.

20 Q Okay. I understand that. What I'm asking you is,
21 weren't you represented by an attorney at that time,
22 you yourself?

23 A. Yes, I was, sir.

24 Q Okay. If you had wanted to talk to a lawyer about
25 something you were signing, you could have; right?

- 1 A. I had a number of attorneys I could have spoke to.
- 2 Q Did you ever -- you were provided with a copy of the
- 3 Provider Handbook for SCENT; correct?
- 4 A. I may have been. I'm not sure.
- 5 Q Okay. Did -- do you recall that in that Handbook, it
- 6 says that the provider is responsible for signing off
- 7 on charts and for documentation in all meds?
- 8 A. Again, I don't remember being provided with a copy,
- 9 and I don't remember what the Handbook says, sir.
- 10 Q Okay. You knew there was a Handbook; correct?
- 11 A. I don't even if I knew there was a Handbook.
- 12 Q Okay. Didn't you go to these training meetings and
- 13 things that SCENT had?
- 14 A. I was present at a lot of the training meetings, yes,
- 15 sir.
- 16 Q Okay. And they discussed the Handbook in the training
- 17 meetings, didn't they?
- 18 A. I don't know, sir. Typically, it was -- I wasn't sort
- 19 of an active participant in a lot of them
- 20 Q Okay. Were you a supervising physician for Stephanie
- 21 Tetterton or Danielle Makupson or Makupson?
- 22 A. I believe so, but I'm not sure what their Contract
- 23 says.
- 24 Q Okay. What was your role as a supervising physician
- 25 for them?

1 A. To be available if they had any questions or any
2 concerns.

3 Q Were you supposed to sign off on PA charts?

4 A. I actually don't know.

5 Q If you were in violation of any South Carolina Medical
6 Board requirements relating to the signing of charts
7 or overseeing PA's, would you report yourself?

8 A. I'm sorry; say that again.

9 Q If you were in violation of any South Carolina Medical
10 Board requirements relating to signing of charts or
11 supervision of PA's, would you report yourself?

12 A. I'm not sure. I haven't given it that much thought.
13 Depends on what violation means.

14 MR. SHEHEEN: Let's go off the record
15 for just a minute.

16 VIDEOGRAPHER: Going off the record at
17 12:37.

18 (OFF THE RECORD).

19 VIDEOGRAPHER: Going on the record at 1:24.

20 EXAMINATION BY MR. SHEHEEN CONTINUED:

21 Q Dr. Dyce, we took a short break and we're back on the
22 record. I want to show you what's been marked ---

23 MR. SHEHEEN: Off the record.

24 VIDEOGRAPHER: Going off the record at 1:24.

25 (OFF THE RECORD).

1 VIDEOGRAPHER: Going on the record at 1:25.

2 MR. SHEHEEN: Thank you.

3 EXAMINATION BY MR. SHEHEEN CONTINUED:

4 Q Dr. Dyce, I'm going to show you some more Exhibits.

5 I'm going to show you -- I want to first show you
6 what's been marked as Defendant's Exhibit 78.

7 MR. SHEHEEN: You have this that
8 deals with the Shareholder's Agreement?

9 MR. ELLISON: Which one?

10 MR. SHEHEEN: 2008.

11 MR. ELLISON: I guess I wasn't ---

12 Q Bear with me one moment. Let me share that with your
13 lawyer and get another copy.

14 A. Am I still supposed to hold onto these?

15 Q Actually, if you would give those to the court
16 reporter, I'd appreciate it. Thank you.

17 MR. ELLISON: What's that Exhibit Number
18 again?

19 MR. SHEHEEN: Exhibit 78.

20 MR. ELLISON: For my edification, what
21 are these numbers for -- just ---

22 MR. SHEHEEN: Just how I put them
23 together so that I could save time while
24 we are here.

25 MR. ELLISON: That's -- that's fine.

- 1 Q And I'll go ahead and give you 79 as well.
- 2 MR. ELLISON: Which is?
- 3 MR. SHEHEEN: 2008 Employment Agreement.
- 4 It's not ---
- 5 MR. ELLISON: Which Employment Agreement?
- 6 MR. SHEHEEN: 2008.
- 7 Q Okay. Okay. Let's look at Exhibit 79, the Employment
- 8 Agreement. We're going to talk about both of these
- 9 for a little while, I want to get your understanding
- 10 of some things. But let's look at 79 first. I want
- 11 you to turn -- first of all, turn with me to the last
- 12 page, which is Page 14. Do you see that?
- 13 A. Yes, sir.
- 14 Q Okay. And is that your signature there?
- 15 A. It appears to be so, sir.
- 16 Q Okay. Look at -- look with me, excuse me, on Page 11
- 17 of that. Do you see that?
- 18 A. I'm on Page 11, sir.
- 19 Q Okay. I want you to look at provision 6.1 where it
- 20 says that, "Except as otherwise provided in the
- 21 Shareholders' Agreement, this Agreement contains the
- 22 complete, full and exclusive understanding of the
- 23 parties with respect to the Physician's engagement by
- 24 the Group and supersedes any and all agreements
- 25 between the parties with respect to this subject

1 matter." Do you see that?

2 A. Yes, sir, I do.

3 Q Okay. And that was your agreement at that time?

4 A. It was the agreement I signed, yes, sir.

5 Q Okay. I want you to look on 78. Just put that one to

6 the side. Look at Exhibit 78. Does this appear to be

7 the Shareholders' Agreement from 2008?

8 A. Without checking it completely, I would assume it's

9 so.

10 Q Okay. I want you to turn -- there's some Bates

11 Stamping at the bottom -- to what's Bates Stamped as

12 Page 305. On my copy, it's cut off a little bit at

13 the bottom I'm sorry. Do you see that?

14 A. Yes, sir.

15 Q And does that appear to be your signature?

16 A. It does.

17 Q Okay. Look with me at in that Agreement to provision

18 8.2 which is on Page 18. I'm going to read 8.1 to

19 you. "Prior Agreements. All other agreements dated

20 prior to the date of this Agreement are hereby

21 superseded in their entirety by the terms and

22 conditions of this Agreement; provided, however, that

23 the Agreement shall not be deemed to supersede the

24 terms and conditions of the Employment Agreement

25 executed simultaneously with this Agreement." Do you

- 1 see that?
- 2 A. Yes, sir.
- 3 Q Okay. And was that the terms of your Agreement when
- 4 you signed this?
- 5 A. I signed this Agreement. I'm not sure what you're
- 6 asking.
- 7 Q That term was contained within the Agreement that you
- 8 signed?
- 9 A. I assume so. I haven't checked the original document
- 10 that I signed, but it ---
- 11 Q I'm representing to you that this is a copy of it.
- 12 A. Okay. Then yes, it would be.
- 13 Q Okay. Thank you. I want you to look in the
- 14 Employment Agreement; that was Exhibit 79. Sorry to
- 15 make you go back and forth. I just want to talk about
- 16 both of them. On Page 12, on 6.9, it discusses
- 17 Expenses if a party brings an action in court for
- 18 enforcement or relief alleging a breach or threatened
- 19 breach by the party, and it goes on to discuss
- 20 attorney's fees and that type of things. Are you
- 21 familiar with that provision?
- 22 A. I can -- sorry -- I can read it right now.
- 23 Q Okay. Did you sign this Agreement -- excuse me, did
- 24 you read this Agreement when you signed it?
- 25 A. I -- I assume, sir. I don't remember what I did

1 before signing it.

2 Q In this Agreement, it states that you can bring an
3 action for arbitration instead of an action in court.
4 Don't tell me what your lawyer told you or anything,
5 but personally, do you know why you brought an action
6 in court and not an arbitration action?

7 MR. ELLISON: That's going to get
8 into ---

9 Q If you don't have any knowledge outside of what your
10 attorney told you, don't -- just say -- no, I don't
11 know.

12 A. It's just what my attorney said.

13 Q Okay. Let's look at the Shareholders' Agreement which
14 is 78. Look at Section 3.5. Page Seven. I'm sorry.
15 Section -- are you there?

16 A. Yes, sir.

17 Q Section 3.5 says that, "The Shareholders agree to
18 execute any guarantees necessary to secure the
19 obligations of the Corporation as approved by a
20 majority of the Shareholders'." Do you see that?

21 A. Yes, sir.

22 Q Okay. Do you recall signing Guarantees with the bank
23 relating to loans for SCENT?

24 A. I remember signing some things with the banks. I
25 can't -- I'd have to go back and look at exactly what

- 1 I signed.
- 2 Q Okay. Let me show you what's been marked Defendant's
- 3 Exhibit 90. Does that state at the top that it's a
- 4 Guaranty?
- 5 A. The word "Guaranty" is at the top.
- 6 Q Okay. And is it dated at the top October 7th, 2008?
- 7 A. It is indeed, sir.
- 8 Q Okay. Is that your signature at the bottom?
- 9 A. Yes, sir.
- 10 Q And does it reference SCENT Land Holdings up there
- 11 toward the top?
- 12 A. Yes, sir, it does.
- 13 Q Okay. In Paragraph Four down there, do you see where
- 14 it says, "The liability of the Undersigned hereunder
- 15 shall be limited to a principal amount of unlimited"?
- 16 A. Yes, sir.
- 17 Q Okay. So, does it appear from this document that you
- 18 signed as an unlimited guarantor on the debts of SCENT
- 19 related to this document?
- 20 A. I would have to review this with an attorney to see
- 21 what it exactly means.
- 22 Q Okay. You signed it; right?
- 23 A. Yes, sir.
- 24 Q Okay. Do you understand that you are still an
- 25 unlimited guarantor on the debt of SCENT?

- 1 A. Again, I'd have to discuss what this means with my
2 attorneys now.
- 3 Q Right. I'm just asking you yourself ---
- 4 A I -- I don't understand anything. That's what I'm
5 trying to say. I would have to review and see what
6 this means for me.
- 7 Q And you can say you don't understand; I just need you
8 to say that if I ask and you don't understand or you
9 don't know. Do you have any plans to pay on the debt
10 that SCENT or SCENT Land may have incurred while you
11 were there?
- 12 A I haven't really thought about what my plans are.
- 13 Q Okay. Well, I'm going to ask you to think about it
14 for a second and tell me -- do you plan to pay on any
15 of the debt that was incurred by SCENT or SCENT Land
16 while you were there?
- 17 A Again, I would have to see what these documents means
18 for me from a legal perspective and decide accordingly
19 with folks who I trust, both real estate attorneys and
20 regular attorneys, advising me accordingly.
- 21 Q Okay. This case has been going on for about three
22 years; is that correct?
- 23 A Longer.
- 24 Q Okay. So, when you get up in court in this Trial, are
25 you going to say -- strike that. What I need to do in

1 this deposition is understand what your testimony is
2 going to be. That's part of the point of this
3 deposition.

4 A. Okay.

5 Q Do you understand that?

6 A. I understand that, sir.

7 Q Okay. So, I need to know what you think now about,
8 for example, what you think you may be owed, what your
9 testimony is going to be. So, that's why I'm asking
10 these questions. If you agree with me -- do you agree
11 that you signed on as a guarantor for the debt of
12 SCENT Land?

13 A. I agree that I signed this document that says
14 "Guaranty" at the top.

15 Q Okay. And do you agree with me that SCENT Land and
16 SCENT incurred debt while you were there?

17 A. I agree that SCENT Land incurred debt while I was
18 there.

19 Q Okay. And do you believe now, currently in your mind
20 as we speak, that you should pay for any of the debt
21 that was incurred while you were there?

22 A. I believe in order for me to determine what I am owed
23 or what -- what is owed by me, I need to speak to the
24 appropriate parties to figure out where we are. I
25 cannot answer that. I don't have the knowledge base

1 to answer that. I was never given access to all these
2 documents. These documents were given to me to sign.
3 I was -- I thought that the attorneys and Bob were
4 acting in my best interest. I signed them and I need
5 folks to help me figure out what they all mean because
6 that was not told to me originally.

7 Q Okay. This case has been going on for three years as
8 we just discussed.

9 A. I understand that.

10 Q Have you had adequate time to talk to advisors about
11 the financial records and about your obligations?

12 A. I think as far as I know, they're still going through
13 it.

14 Q When are you going to formulate your opinions as to
15 what you believe is owed or not owed and what
16 obligations you have or do not have?

17 A. I am sure when we get a chance to review all of the
18 documents in their entirety -- entirety and review the
19 possibilities and I get advice from Mr. Richard
20 Livingston, who's looking at all of these things, who
21 is an expert at this, not me; I'm a physician, and I
22 practice medicine. That's what I'm an expert at. I'm
23 not an expert at real estate closings or what these
24 words mean or these terms mean. I'm -- I do things on
25 the advice of people who I think are advising me in my

1 best interest; i.e., Bob and Ed White or whoever was
2 helping out with these closings at that time.

3 Q Okay. Are you aware that Austin Sheheen made his
4 records available to your counsel and your expert I
5 believe more than a year ago? I believe two years
6 ago.

7 MR. ELLISON: Not all of them I
8 don't think.

9 Q Are you aware that records were made available?

10 A. I'm aware some records were made available.

11 Q Are you aware of any records that you don't think
12 you've been given?

13 A. I would have to review with my counsel what records we
14 haven't been given.

15 Q Okay. Are you aware of any records that you haven't
16 been given?

17 A. I don't know. I haven't thought about it. I've been
18 practicing medicine for the past three years.

19 Q Okay. You understand that, as part of this
20 litigation, I have to be able to understand what your
21 testimony is going to be?

22 A. I completely understand that, sir, and we have been
23 asking for records for a long time. Some of it has
24 been given to us. Some of it has not.

25 Q Okay. That's my -- I'm sorry.

1 A. And because it is coming in in that fashion, there's
2 been time -- it's required time to sift through it and
3 correlate it and figure out what's -- what's real and
4 what's not. As such, I don't meet with my folks on a
5 regular basis on minute to minute because it changes
6 depending on what information is passed along from you
7 and your client. And so, I haven't looked at this
8 particular document to know exactly what it means for
9 me yet. And I haven't discussed it with the folks
10 that would be able to advise me accordingly.

11 Q Okay. Now, what I want to know and I want to be real
12 specific because I need to know the answer, and that
13 is -- and you can answer yes or you can answer no and
14 explain yourself. Are you aware of any documents that
15 you, Orville Dyce, believes you need -- you, Orville
16 Dyce, believe need to be obtained that you or your
17 folks have not obtained? Are you aware of any?

18 A. I haven't thought about it, sir.

19 Q Okay. Does that mean no, you're not aware of any or
20 yes, you are aware of any?

21 A. I haven't thought about it to know if we have all of
22 them or have not received all of them

23 Q That's not what I'm asking you.

24 A. That's the best answer I can give you. It's not a yes
25 or no answer.

- 1 Q Okay. Are you -- so you -- are you aware that there
2 are some specific documents missing?
- 3 A I haven't thought about it yet.
- 4 Q Okay. When are you going to think about it?
- 5 A I know we don't have all of Macy's documents.
- 6 Q Okay. Well, that's ---
- 7 A So, I don't -- I don't know what else we don't have.
8 I haven't -- like I said, I have not gone back and sat
9 down and reviewed everything we've received.
- 10 Q Okay. So, what documents related to Macy do you
11 believe ---
- 12 A I don't remember. I reviewed it a while -- a couple
13 months ago when we tried to have a meaningful
14 mediation.
- 15 Q Let's look in the Shareholders' Agreement which is 7
16 -- 78. If you would turn to Section 2.7.
- 17 A 2.7?
- 18 Q I'm sorry. 3.7.
- 19 A Okay.
- 20 Q Are you there?
- 21 A Yes, sir.
- 22 Q And that section is headed "Confidentiality"; is that
23 right?
- 24 A Yes, sir.
- 25 Q And it says, "The Shareholders shall not disclose any

1 information relating to the Corporation regarding the
2 Corporation's operations, records, patients, or
3 procedures to any persons other than employees of the
4 Corporation, federal and state regulatory, third-party
5 reimbursements," and it goes on and on. Do you see
6 that?

7 A. Yes, I see that section, sir.

8 Q Okay. And then it says, "Each Shareholder shall use
9 information related to the business of the Corporation
10 to advance the Corporation's best interest." See
11 that?

12 A. Yes, sir.

13 Q And then it says, "All templates systems including
14 billing systems are the property of the Corporation
15 and shall not be used apart from the Corporation." Do
16 you see that? The next section.

17 A. Yes, sir. I do.

18 Q Okay. When you went to work -- where do you work
19 currently?

20 A. I work in Hartsville, South Carolina, sir.

21 Q And what is the name of the company you work for?

22 A. HMA.

23 Q Okay. When you went to work for HMA, did you use some
24 templates from SCENT in your practice with HMA?

25 A. Not as far as I know, sir.

1 Q Did you disclose to Chad Gunnlaugsson some of the
2 negotiations or terms of negotiations that you were
3 having with Dr. Puchalski regarding a new Shareholder
4 Agreement with SCENT?

5 A. Not that I can recall, sir.

6 Q Are you aware that Dr. -- have you read Dr. Vidrine's
7 deposition in any case?

8 A. I have not, sir.

9 Q Okay. Are you aware that Dr. Vidrine testified that
10 Dr. Gunnlaugsson would tell him that you were
11 negotiating, standing up for the practice and other
12 matters related to negotiations with Dr. Puchalski?

13 A. I'm not sure what you're asking me, sir.

14 Q Are you aware that Dr. Vidrine knew what was going on
15 with you and Dr. Puchalski?

16 A. I'm not aware of what Dr. Vidrine said is frankly
17 relevant.

18 Q Any idea how he would have known those things if Dr.
19 Gunnlaugsson hadn't told him?

20 A. Oh, I can imagine that Bob would put him up to it so
21 that he could try to protect himself.

22 Q You think Macy's not an honest person or ---

23 A. I don't know what Macy is actually, sir.

24 Q Okay. 86.

25 VI DEOGRAPHER: Going off the record at

1 1: 45.

2 (OFF THE RECORD).

3 VIDEOGRAPHER: Going on the record at

4 1: 46

5 EXAMINATION BY MR. SHEHEEN CONTINUED:

6 Q Why don't you give those -- not the -- give the 90 to
7 the court reporter. You can keep the other two. Just
8 to keep you from getting too far behind with the
9 paper. Let me show you what's been marked as
10 Plaintiff's Exhibit Number 86.

11 MR. ELLISON: Defendant's Exhibit.

12 MR. SHEHEEN: Yeah.

13 Q Defendant's Exhibit Number 86. Okay. This is a
14 document that was provided to your lawyer some time
15 ago that was found on the computers of SCENT from Dr.
16 -- it was left there by Dr. Gunnlaugsson. Okay.
17 First of all, have you ever reviewed the before?

18 A. I don't -- I don't remember.

19 Q Okay. Does it look familiar?

20 A. Everything in this case looks familiar at this point.
21 It's been three years.

22 Q Same feeling. I'll just kind of work off of it with
23 you. Okay. Okay. I want you to look on the second
24 page. And I want you to look about -- get to the
25 Number Two -- there's a little note that's numbered.

1 One says Number Two and one says Number Three. And
2 they each discuss -- and Dr. Gunnlaugsson put these in
3 quotes, a "K-1" distribution, money used to fund the,
4 quote, "buy-in", and then in -- in the third
5 paragraph, they start talking about the -- start
6 talking about "sweeps." Okay. And then in the middle
7 of the third paragraph, it says, "For example, Dyce
8 agreed to pay Dr. Puchalski the taxable amount of
9 money that Dr. Puchalski absorbed during Dr. Dyce's
10 "buy-in period" -- period. "This would be
11 approximately equal to Forty Percent (40%) of the
12 taxable rate of the \$620,000 "buy-in" in my case. "
13 All right. So, he is writing down in his -- on a
14 SCENT computer information related to you and Dr.
15 Puchalski's business dealings in SCENT. Isn't that
16 what that looks like?

17 A. It looks like he's writing down his understandings of
18 what -- his understanding of what the business
19 agreement was.

20 Q Okay. And if you look down a little further, at the
21 bottom -- just stay on this page, at the bottom of
22 Number Three, four lines up at the end of the line and
23 four lines up, it says, "Since" -- excuse me. "Since
24 Dr. Dyce agreed to do this prior to becoming a
25 shareholder, I did not take issue with this policy."

- 1 Do you see that sentence?
- 2 A. Yes.
- 3 Q You have read it. Okay. Now, that is information
4 about what you did relating to SCENT; correct?
- 5 A. That's his -- that's his account of information
6 related to SCENT. If he had heard the information
7 from me, he would have realized I never agreed to pay
8 taxes. That was never in the Contract, and I never
9 once agreed to it. I never once said -- yes, it's
10 okay, Bob, you can pay taxes. Bob did that on -- Bob
11 did that on his own. So, if he had gotten the
12 information from me, this is not what it would have
13 said.
- 14 Q Okay. Well, how would he have gotten this information
15 if he didn't get it from you?
- 16 A. The entire time he was buying in, he was in lengthy
17 discussions with Bob. I was not present for those
18 discussions. I was in the business of practicing
19 medicine. Bob handled all the Contracts and all the
20 information between physicians. Bob -- I don't know
21 who told him that, but it certainly wasn't me because
22 I would have never said -- yes, Chad, I agreed to a
23 number, but then I also agreed to pay Bob's taxes. I
24 would have never said that.
- 25 Q Okay. So, you wanted Bob to pay taxes on money that

1 you say you earned?

2 A. I didn't want or not want anything. It just wasn't
3 something we agreed to. So, in point of fact, I
4 probably argued against him talking to me because he
5 would have known that's not true. And he would have
6 known that Bob took it himself.

7 Q Let me show you what's been marked as Exhibit 76. I
8 gave your lawyer a copy of it. While he's getting
9 that, I'll ask you about -- do you still have that
10 Exhibit in front of you, the one we were just talking
11 about?

12 MR. ELLISON: Which one are you referring
13 to now

14 MR. SHEHEEN: The one that says Chad
15 Gunnlaugsson at the top ---

16 MR. ELLISON: With SCENT?

17 MR. SHEHEEN: Yes.

18 Q Let's look up at the front of that page. The third
19 para -- fourth paragraph. Excuse me, the fourth
20 sentence of the first paragraph. It says, "Currently
21 Drs. Puchalski and Dyce are shareholders in the S-
22 Corporation designated SCENT." Do you see that?

23 A. No.

24 Q Fourth -- four lines down.

25 MR. ELLISON: Where is that?

1 MR. SHEHEEN: Four lines down.

2 MR. ELLISON: What page?

3 MR. SHEHEEN: Front page.

4 A. I do see it.

5 Q. Okay. That was Dr. Gunnlaugsson saying that; correct?

6 A. If you say so.

7 Q. Well, he's admitted this is this; so, ---

8 A. Okay. Haven't seen what he's admitted or not
9 admitted.

10 Q. All right. Well, let's assume that this is his and he
11 was telling the truth when he said this was his. It
12 looks like that, according to the statement he made
13 here, would you agree with me that he thought at this
14 time that Dr. Puchalski and Dyce were shareholders in
15 the S-Corporation designated SCENT?

16 A. If that's what he said, I'll -- I'll believe he meant
17 it.

18 Q. That's consistent with what was in the Court Order
19 where he admitted it; correct?

20 A. I don't know.

21 Q. All right. I showed you that Court Order; remember?

22 A. The Court Order is from 2012, as I remember, and this
23 is from 2009; so, I'm not sure how to reconcile the
24 two.

25 Q. Okay. In the 2012, he said that he had never been a

- 1 shareholder of SCENT; right? We looked at that
2 earlier.
- 3 A. This is from 2009. As far as I know, he didn't leave
4 until 2010; so, I don't know what he believes and what
5 he doesn't believe.
- 6 Q Okay. My -- my question simply was, is it consistent
7 with what he put in?
- 8 A. It may be consistent. I don't know what -- what he
9 actually said and what he meant by these statements.
- 10 Q Okay. Do you think it's inconsistent?
- 11 A. I don't know. I haven't thought about it, and I
12 haven't asked him personally what he meant by them.
- 13 Q Okay. But I've showed you the -- do you agree with me
14 I showed you the Order?
- 15 A. You showed me the Court Order, yes, sir.
- 16 Q In which he admitted he'd never been a shareholder?
- 17 A. That's what the Court Order says, apparently.
- 18 Q Okay. And then I show you this where he says that in
19 2009?
- 20 A. Three years earlier, yes, sir.
- 21 Q Okay. And I'm going to show you what's been marked as
22 Defendant's Exhibit 76 which is the Affidavit we
23 talked about a little earlier. See that?
- 24 A. Yes, sir.
- 25 Q And I think you and I might have discussed that

- 1 briefly in your previous deposition. Now, you
2 admitted that Dr. Gunnlaugsson had shared this with
3 you previously; right?
- 4 A. Yes, sir.
- 5 Q And you didn't tell Dr. Puchalski or anybody else at
6 SCENT that it happened; right?
- 7 A. I don't think so.
- 8 Q Okay. And if you were acting in a manner that was
9 loyal to SCENT, don't you think you would have shared
10 this with somebody else at SCENT? Dr. Gunnlaugsson
11 was conspiring to do these things or asking you to
12 sign Affidavits?
- 13 A. He actually didn't ask me to sign an Affidavit.
- 14 Q Okay. So, why did he give you this?
- 15 A. Because he was worried he was going to be terminated.
- 16 Q Okay. So, why did he tell you he had done an
17 Affidavit?
- 18 A. I'm sorry?
- 19 Q Why did -- you said he didn't ask you to sign it; is
20 that your testimony?
- 21 A. That's my testimony.
- 22 Q Okay. So, why did he give it to you?
- 23 A. Because he thought he was going to be fired.
- 24 Q Okay. And why does thinking you're going to be fired
25 lead to -- lead to handing you this? I don't

- 1 understand what you mean.
- 2 A. Because, as I mentioned previously, he had completely
3 bought in and fulfilled all of the requirements to be
4 a shareholder; he had paid all of his money, and he
5 was worried that Bob was going to turn around and do
6 exactly what he's doing now and saying -- you were
7 never a shareholder and by the way, you're not getting
8 your money back. I assume that's why he would do it,
9 because if I were in that situation, that's what I
10 would do.
- 11 Q You would draft an Affidavit?
- 12 A. No, that's what I would assume.
- 13 Q Okay.
- 14 A. I don't know what I would do from an Affidavit
15 standpoint. That's what I would do.
- 16 Q All right. In this Affidavit, which he presented to
17 you, Number One says that, "My name is Orville Dyce
18 and (prior to the admission, as shareholder, of Dr.
19 Gunnlaugsson) am a 50 percent shareholder of South
20 Carolina ENT, Allergy and Sleep Medicine." Do you see
21 that?
- 22 A. Yes, sir.
- 23 Q Okay.
- 24 A. Do you know what date this is, sir?
- 25 Q I believe it was December 20, ---

- 1 A. Okay.
- 2 Q -- 2009.
- 3 A. When?
- 4 Q I believe it was either in December 2009 or January of
5 2010. That two month period there. January of 2010.
- 6 A. Okay.
- 7 Q All right. You still haven't answered my question of
8 why you think -- I understand you said he didn't ask
9 you to sign it. So, why do you think he gave you an
10 Affidavit? I understand that ---
- 11 A. Because -- go ahead.
- 12 Q -- you thought -- that you said that you thought that
13 he was concerned about being terminated, but why an
14 Affidavit? Why hand you an Affidavit? Why did he
15 tell you he was handing you this Affidavit?
- 16 A. Because the entire time after he had completed his
17 buy-in, he was very excited about being a shareholder,
18 extremely excited about joining the practice, very
19 excited about being -- essentially, we're going to be
20 the premier ENT; we have great surgeons, great docs,
21 and Bob began behaving differently. And I remember in
22 a meeting, he said to Chad, "Listen, if you want to
23 leave, if you decide to leave, we will take care of
24 your family," which is actually something he also said
25 to me which I thought was just completely out of the

1 blue -- just completely out of the blue because, the
2 entire time, we thought we were going to be all
3 shareholders alike in this great practice.

4 Q Okay. So, I don't know if you're not understanding me
5 or I'm not making sense, but the question -- I
6 understand all of that. My question really isn't why
7 were people unhappy. It's -- why did he tell you he
8 was giving you an Affidavit? Was he just saying -- I
9 did it for kicks; I just wanted to have this Affidavit
10 around? Did he want you to sign it? Did he ---

11 A. I don't remember the conversation, but he sent it to
12 me. He said his attorney had drafted it, and I don't
13 remember the conversation to say why he gave me --
14 it's been three years like I said.

15 Q Okay. I want to show you what's been marked as
16 Defendant's Exhibit 83. While he's looking for that,
17 do you recall there was a Board Meeting two days prior
18 to January 31st, excuse me, two days after January
19 31st, and that you did not mention in that Board
20 Meeting anything about Dr. Gunnlaugsson presenting you
21 with this Affidavit?

22 A. One, there was no Board Meeting. Two, I'm not -- I
23 don't remember any events of that meeting.

24 Q Or a provider's meeting. Do you know what I'm talking
25 about?

- 1 A. I don't remember.
- 2 Q Okay. I'll show you what's been marked Defendant's
- 3 83. This is an Affidavit from Kieley Taylor and I'm
- 4 just going to read it to you. It said that, second
- 5 paragraph, she's talking about being in the parking
- 6 lot when I was -- "When I walked out the back door of
- 7 the Lugoff office, I saw Dr. Gunnlaugsson and Dr. Dyce
- 8 in the parking lot having what appeared to be a
- 9 confidential conversation. They both looked at me,
- 10 paused in their discussion until I entered my car."
- 11 See that? Do you see that?
- 12 MR. ELLISON: Can I have a copy of that?
- 13 A. Yeah, I see this ---
- 14 MR. ELLISON: Wait a minute. Can I have a
- 15 copy of this?
- 16 MR. SHEHEEN: Yeah.
- 17 MR. ELLISON: This is mine?
- 18 MR. SHEHEEN: Yeah.
- 19 A. Yeah, I see this Affidavit.
- 20 Q Okay. Do you recall that conversation with Dr.
- 21 Gunnlaugsson?
- 22 A. No, sir.
- 23 Q Do you recall seeing Kieley Taylor that day?
- 24 A. I don't pay attention to who I see and who I don't
- 25 see.

1 Q Okay. You don't pay attention to your e-mails either;
2 right?

3 A. I know it's hard to believe, but during this period,
4 I did see a lot of patients. I saw well over a
5 hundred patients per week. I was working from 7:30 to
6 6:30. I never met with attorneys. I never met with
7 accountants. I was working. There was not one day
8 that I really got off before 6:30 or 7:00 or got home
9 by that time. I put 70,000 miles on my car in two --
10 in three years. I was concerned with the practice of
11 medicine, primarily. When I would show up, sometimes,
12 it would be fifteen, twenty e-mails, and I would try
13 to sift through and see which ones were the more
14 important ones if I could get to them. I got an
15 opportunity to check them maybe once a week or twice
16 a week. So, if there were e-mails, yes, they could
17 have been missed. Do I know that I missed any
18 critical ones -- I don't know. I'll have to answer
19 you. So, it wasn't that I was purposely ignoring
20 people's e-mails.

21 Q All right. But in your -- your prior deposition, you
22 told me that you didn't pay a lot of attention to your
23 e-mails. I don't remember your exact words, but ---

24 A. It was probably in reference to what I just stated,
25 sir.

- 1 Q Okay. Let's see. I asked -- somebody asked you --
2 maybe a different lawyer, "Does this refresh your
3 recollection regarding the \$100,000.00," and you said,
4 "I ignored a lot of my e-mails." Is that what you
5 meant by that?
- 6 A Yeah, I had to sift through a lot of the important
7 ones and non-important ones. So, that -- that's what
8 I was referring to.
- 9 Q I'm going to show you what's been marked as Exhibit
10 Four, and I want to talk to you about the second page
11 of it. Second page. Tell me what this is. Does it
12 look familiar? Is this a list of ---
- 13 A It appears to be a list of an emergency kit.
- 14 Q Would it surprise you -- does this appear -- do you
15 believe -- if you look at them does it appear to be
16 the stuff that you use in an emergency kit at your
17 practice that you're at now?
- 18 A I don't know. I'd have to check the emergency kit in
19 my practice.
- 20 Q Okay. Would it surprise you that it's the same exact
21 items that are in -- that you -- that were at SCENT?
- 22 A I don't know. I'd have to check what's in the
23 emergency kit at SCENT.
- 24 Q When you left, did you take a list of what -- some of
25 the equipment at SCENT, such as the emergency kit?

- 1 A. No, these are standard things for setting up an
2 allergy practice. Everyone has an emergency kit.
- 3 Q Just flip the page to the next page. I'm sorry. Just
4 take a look. What does that appear to be?
- 5 A. It's a list of equipment -- list of supplies in an
6 emergency kit. Or a list of supplies.
- 7 Q All right. Would it surprise you to know that list of
8 supplies that you -- that we got -- provided by HMA
9 for you is the same as the list of supplies at SCENT?
- 10 A. Okay.
- 11 Q Would that surprise you?
- 12 A. I hadn't thought about it, like I said.
- 13 Q Okay. I'm going to try to skip through some Exhibits.
14 You'll just have to bear with me; okay?
- 15 A. Uh-huh (affirmative response).
- 16 Q To save us a little bit of time. I'm going to show
17 you what's been marked as Defendant's Exhibit 18.
18 Does this appear to be an e-mail from -- it's a couple
19 e-mails, but is the top one from Dr. Puchalski to
20 Jamie Dyce, Amy Puchalski; do you see that?
- 21 A. Okay.
- 22 Q Is that what it appears to be?
- 23 A. That's what it appears to be.
- 24 Q If you go down, it appears to be an e-mail from
25 Charlie Lucas to Robert Puchalski; do you see that?

- 1 A. Okay.
- 2 Q Did -- do you know who Charlie Lucas is?
- 3 A. I was told by Bob that he was the construction person.
- 4 Q Okay. And this is dated March 21st, 2010; is that
- 5 right? At the top.
- 6 A. Okay.
- 7 Q Do you see down here that on -- Charlie -- maybe you
- 8 want to take a minute to read it, but do you see down
- 9 here that Charlie Lucas -- that Bob is responding to
- 10 Charlie Lucas about when he is going to get paid?
- 11 A. Okay.
- 12 Q Were you aware that Charlie Lucas was complaining to
- 13 SCENT and SCENT Land that he wasn't being paid at that
- 14 time?
- 15 A. Bob was the intermediary between Charlie Lucas and
- 16 myself.
- 17 Q Okay.
- 18 A. I was aware of what Bob was telling me about what
- 19 Charlie Lucas was saying.
- 20 Q Okay. Well, in this e-mail. your -- your wife at
- 21 least got a copy of the communications with Charlie
- 22 Lucas; right?
- 23 A. No, she got a communication from Bob.
- 24 Q And attached to it was a communication from ---
- 25 A. With an attached, it quoted a communication from

1 Charlie Lucas.

2 Q Okay. Did you and your wife talk about -- you and
3 your wife talked about what was going on with SCENT
4 Land and SCENT; right?

5 A. In generalities.

6 Q Let me show you what's been marked Defendant's Exhibit
7 22. And I want you to refer to the second half of the
8 e-mail. It looks like it's from Theresa Williams to
9 Orville Dyce, Chad Gunnlaugsson, Macy Vidrine; is that
10 right? Robert Puchalski?

11 MR. ELLISON: Which one?

12 MR. SHEHEEN: Second half of the page.

13 Q Do you see that?

14 A. Yes.

15 Q Do you know what she's referring to about the
16 \$2,000.00 per doctor to Md State?

17 A. Not this specific \$2,000.00.

18 Q Do you recall anything about Md State?

19 A. Some general things about Md State.

20 Q Do you -- do you believe that you're owed -- that you
21 were -- strike that. Do you believe that Dr.
22 Puchalski was paid more in call pay than you after
23 your 2008 Employment Agreement was signed?

24 A. I'm sorry; what?

25 Q Okay. After your 2008 Employment Agreement was

- 1 signed. ---
- 2 A. Yes.
- 3 Q -- do you believe that Dr. Puchalski was paid more in
4 call pay than you were?
- 5 A. I don't know.
- 6 Q Okay. I'll show you what's been marked Defendant's
7 Exhibit 24. This appears to be two e-mails that
8 involved Chad Gunnlaugsson and Dr. Puchalski at the
9 top and you, Dr. Dyce, Dr. Puchalski and Chad
10 Gunnlaugsson at the bottom. Do you see that?
- 11 A. Okay. Yes, I do.
- 12 Q And in the bottom message, it's Dr. Puchalski to you
13 two, and it says, "Guys, Ed is working on the changes
14 we discussed and has promised red-line version of the
15 previously signed Contract by tonight. I will forward
16 it for your review. If you feel comfortable with the
17 Employment Agreement, I would like to forward it to
18 Macy to review. If you do not feel comfortable with
19 the changes, I will return for a meeting sometime this
20 week." Do you see that?
- 21 A. I see the -- yes, I see that, sir. Those sentences.
- 22 Q So, this is him providing you with a red-line --
23 saying that he will provide you with a red-line copy
24 of the Employment Agreement to discuss?
- 25 A. Yes, this is him saying he's going to provide us with

- 1 a red-line copy.
- 2 Q You're not saying he never -- that you never got a
3 red-line copy, are you?
- 4 A. No, eventually, I did get a copy of the Employment
5 Agreement.
- 6 Q Okay. Okay. I will show you what's been marked as
7 Plaintiff's Exhibit 26. At the top is a message from
8 Chad to Dr. Puchalski, cc'ing you guys. He says he's
9 confused over some of this. Date, September 2nd,
10 2009. And right below that is a message from Dr.
11 Puchalski saying, "The call checks will be equal in
12 future months. The amount of these checks, however,
13 is yet to be determined. The amounts will be
14 dependent on a few factors including aggregate PA
15 reimbursement. I do not expect the checks to be below
16 \$6,000.00 per month." Do you see that?
- 17 A. Yes, sir, I do.
- 18 Q Okay. Did you have any problems with anything he said
19 in there when you received the e-mail?
- 20 A. I don't even know if I saw this e-mail.
- 21 Q Okay. This might have been one that you deleted?
- 22 A. I don't know if I saw that e-mail.
- 23 Q Okay. Well, help me with that. It looked like it was
24 sent to you; right?
- 25 A. It does, sir.

1 Q Okay. So, if it was sent to you, would you have --
2 when you say you don't know if you saw it, do you mean
3 that you didn't always look at the e-mails that were
4 sent to you, that somebody else was checking your e-
5 mail; what do you mean?

6 A A lot of the e-mails that I received, and they were
7 voluminous, and primarily from Bob because he was the
8 only one not doing as much clinical work and he was
9 the business person; of course, I was cc'd, but I did
10 not need to comment on or say anything about it. So,
11 I tried to -- because I could spend an extra two hours
12 a day particularly going through e-mails and
13 responding, I tried to prioritize and see which e-
14 mails I needed to respond to and which ones I didn't.
15 I deferred to Bob on a lot of them. Obviously, I
16 shouldn't have done that; okay, I admit that. That
17 was a huge mistake for a number of reasons. But I
18 don't know if this was one of the e-mails I saw or
19 didn't see. This was from December of 2009. We're
20 going on almost three and a half years now. So, to
21 remember an individual e-mail would be quite difficult
22 for me. I was not also given access to the Outlook
23 after a while, and my e-mail account was shut down
24 before I left. It's been going even before that that
25 I have access to these e-mails.

- 1 Q Okay. So, do you recall complaining about anything in
2 the terms of this e-mail to Dr. Puchalski?
- 3 A I don't know if I saw the e-mail. I don't even
4 remember ---
- 5 Q I'm asking if you recall ---
- 6 A I do not recall them
- 7 Q Okay. I'm going to show you what's been marked as
8 Defendant's Exhibit 27. This looks like it's an e-
9 mail to William Cox, who was doing the closing. Do
10 you recall that William Cox was doing the closing of
11 -- of the loan with SCENT?
- 12 A Yeah, I think so.
- 13 Q Do you see at the top where it says, "William I give
14 Bruce Armon permission to obtain the documents"?
- 15 A I don't see who it's from but yes.
- 16 Q Okay. Do you see down, if you go down where it says
17 from Bruce Armon to William Cox and says, "William I
18 cc'd Dr. Dyce's e-mail. Thank you for forwarding
19 whatever documents you currently have via e-mail and
20 for coordinating with Drs. Puchalski and Dyce so I can
21 receive all of the documents." Do you see that?
- 22 A Yes, sir.
- 23 Q Okay. Do you have any reason to believe these
24 documents that Bruce was requesting weren't provided
25 to him?

- 1 A. I don't know what documents he's referring to.
- 2 Q. Okay. But my question though is, do you have any
3 reason to believe that these documents that Mr. Armon
4 requested were not given to him?
- 5 A. Based on the pattern of lack of transparency and not
6 giving documents to me over the years, I have reason
7 to believe that probably not all the documents were
8 given to him per Dr. Puchalski's wishes.
- 9 Q. Okay. I understand what you're saying about a
10 pattern, but I'm talking about these specific
11 documents.
- 12 A. Well, you're asking me if I have any reason to believe
13 it.
- 14 Q. Let me finish. I'm going to ask another question. I
15 understand what you said about a pattern; now, I'm
16 asking you a separate question. Do you have any -- do
17 you specifically know whether any of these documents
18 were not provided to Mr. Armon?
- 19 A. I do not know, sir.
- 20 Q. Okay. Did you know that Mr. White, Ed White, and Mr.
21 Armon, who was your attorney, were communicating
22 directly about information, questions?
- 23 A. I knew they were communicating, sir.
- 24 Q. Okay. I'll show you what's been marked as Exhibit 28.
25 Does this -- excuse me -- appear to be an e-mail from

1 Ed White to Bruce Armon or communications between the
2 two?

3 A. Yes, sir, it does appear to be so.

4 Q Do you appear to be copied on that?

5 A. It does appear so.

6 Q Okay. And does this appear to be discussions between
7 Ed White and Bruce Armon about Agreements, what
8 they're going to look like, that kind of thing?

9 A. No, it appears to be Bruce Armon asking for the -- the
10 Agreements that were prepared only by Dr. Puchalski
11 and Ed White.

12 Q And they were forwarded to Bruce Armon?

13 A. I'm sorry?

14 Q And then they were forwarded to Bruce Armon?

15 A. Not until the following month, sir.

16 Q It was in January instead of December?

17 A. I believe so. I don't remember the exact date, but
18 not until the following month.

19 Q Okay. I'm going to hand you what is marked as
20 Defendant's Exhibit 29. Excuse me. I'm not trying to
21 throw any of these at you. I'm a little far away from
22 you; so -- take a minute and read that.

23 A. (Witness complies).

24 Q Okay. Are you looking at an e-mail dated January
25 13th, 2010?

- 1 A. Yes, sir.
- 2 Q From Ed White to Bruce Armon?
- 3 MR. ELLISON: Excuse me, Armon.
- 4 (Pronounced phonetically).
- 5 MR. SHEHEEN: Like Arm & Hammer?
- 6 MR. ELLISON: Yeah.
- 7 MR. SHEHEEN: Okay. I'm sorry. It's my
- 8 southern drawl.
- 9 Q Ed White to your lawyer, Bruce; is that right?
- 10 A. Yes, sir.
- 11 Q Okay. Dated January 13th. Is that right?
- 12 A. Yes, sir.
- 13 Q Okay. And it says, "Bruce, please find attached a
- 14 clean and red-line version of the Employment Agreement
- 15 and Shareholders' Agreement that Dr. Puchalski has had
- 16 me prepare for Dr. Dyce's review." Is that correct?
- 17 A. Yes, sir.
- 18 Q "Also enclosed are the corporate records of the
- 19 corporation." Is that right?
- 20 A. Yes, sir.
- 21 Q Did you get back to Dr. Puchalski or did Mr. Armon get
- 22 back to Ed White about the changes that you wanted in
- 23 the Shareholders' Agreement or in the Employment
- 24 Agreement?
- 25 A. Yes, sir.

- 1 Q Do you know when that was about?
- 2 A I -- I don't remember.
- 3 Q Okay. You can give that to her. Okay. I'm going to
- 4 show you what's been marked as Defendant's Exhibit 31.
- 5 And if you look, there's a -- it looks like an e-mail
- 6 was forwarded from Ed White to Bob Puchalski cc'ing
- 7 Bruce Armon. Do you see that? Then it says Bob and
- 8 Orville under that.
- 9 A Yes, sir.
- 10 Q You were in the two top. It's from Ed. It says, "I
- 11 had a good conversation with Bruce Armon today
- 12 concerning the Shareholder Agreement and Employment
- 13 Agreement. While I gave him lots of insights into the
- 14 objectives that Bob was trying to address with the
- 15 modifications to both documents, we did not come to
- 16 any specific conclusions. The recommendation that
- 17 both of us agreed upon is that the two of you need to
- 18 go through both documents paragraph by paragraph."
- 19 See that?
- 20 A Yes, sir.
- 21 Q Okay. And this was February -- this appears to be
- 22 February 4th, 2010?
- 23 A Okay. Yes, sir.
- 24 Q Do you recall in the phone conversations that -- I
- 25 don't know whether they were phone or person to person

1 -- but the conversations you taped with Dr. Puchalski,
2 that Dr. Puchalski would talk to you about what you
3 wanted in the Contracts and you would tell him you
4 needed to talk to Bruce, do you recall those
5 conversations?

6 A. I remember at points letting him know that I needed to
7 talk to Bruce.

8 Q Do you recall at one point there being a closing
9 scheduled for the loan on the building for March the
10 3rd and Ms. Curley, your wife, saying that she wasn't
11 going to be able to make it because the girls had
12 music and swim class? Do you recall that?

13 A. I remember a number of closings, one of which -- one
14 of which we may not have been able to make. I don't
15 remember why.

16 Q I'm going to show you what's been marked as
17 Defendant's Exhibit 34. Look at -- it says Jamie
18 Curley -- to Jamie Curley from Theresa Williams and
19 then there's one that says from Jamie to Theresa, and
20 then at the bottom there's one from Theresa to
21 Orville Dyce, Jamie Curley, Puchalski. Do you see
22 that?

23 A. I see a bunch of e-mails back and forth, yes, sir.

24 Q Okay. Let's look at the bottom one. It says, "Dr.
25 Dyce, I have the SCENT Land Holdings' financial

1 documents for your review and have them prepared for
2 you to take once Jamie has signed the "sign out form".
3 I will attach another copy of the "sign out form" that
4 was also sent out last Monday and Saturday. If you
5 can get this signed and returned, I will be happy to
6 courier these documents over to you or have them at
7 your closing today at 4:00." Do you see that?

8 A. Yes, sir.

9 Q Do you know if you all signed that form to sign out
10 the documents?

11 A. I don't remember, sir.

12 Q I'll show you what's been marked as Defendant's
13 Exhibit 35. That one will be Thirty-five. I want you
14 to look down the page. It says from Theresa Williams
15 to Dr. Dyce, cc Puchalski. It says, "Dr. Dyce, please
16 find the attached loan documents that I received today
17 from our attorney. Thanks, Theresa." Do you see
18 that?

19 A. Yes, sir.

20 Q Okay. And then below that, there's an e-mail, looks
21 like it was also March 3rd from the law firm to Kieley
22 Taylor and Theresa Williams. Do you see that?

23 A. Yes, sir.

24 Q Okay. So, does it look like they forwarded you a copy
25 of all of the closing documents as soon as or the same

- 1 day they received them?
- 2 A. I don't know when they received them but the e-mail
3 says they did, sir.
- 4 Q Okay. Well, let's just say based on -- does it appear
5 they forwarded you the closing documents the same day
6 as this e-mail is dated?
- 7 A. The e-mail says they were sending me the closing
8 documents. I don't know if they actually did it. If
9 you look back at this form that they sent to Jamie, it
10 was a blank document and Jamie wrote back saying it
11 wasn't. So, I don't want to say they did and they
12 didn't. I don't want to say they did something that
13 they didn't do; so, I don't know.
- 14 Q Do you recall Dr. Puchalski or SCENT offering to let
15 you come look, you or your accountant, come look on
16 the premises at whatever documents you wanted to look
17 at?
- 18 A. I recall Dr. Puchalski trying to allow me to look at
19 certain documents with him present on the premises.
- 20 Q Did you take him up on that offer?
- 21 A. No, sir, I did not.
- 22 Q Do you recall him offering to allow you to have a
23 accountant come in and do a review of any documents?
- 24 A. I don't recall exactly what he said, sir.
- 25 Q Do you recall him telling you that Charlie Lucas was

- 1 threatening to assert a Mechanic's Lien against SCENT
2 because the building -- the work that he had done on
3 the building hadn't been paid for?
- 4 A. I recall him saying something to that effect, sir.
- 5 Q. I'll show you an Exhibit that's been marked
6 Defendant's Exhibit 40. Does this appear to be --
7 let's see, you were copied on this e-mail; is that
8 right? It says from Robert Puchalski to Charlie
9 Lucas?
- 10 A. Yes, sir.
- 11 Q. It says, "Charlie, I assure you we are doing
12 everything in our power to facilitate the closing
13 today. Your workmanship has been exceptional and I
14 appreciate all of your patience with us." Do you see
15 that?
- 16 A. Yes, sir.
- 17 Q. Do you see in the next paragraph from Charlie Lucas to
18 Dr. Puchalski where it says, the second sentence, "We
19 are just giving you our concerns over the delays on
20 the last two invoices." Do you see that?
- 21 A. Yes, sir.
- 22 Q. Okay. So, you were aware there was pressure coming
23 from the builder about not closing the loan and paying
24 the builder; right?
- 25 A. I was aware of Bob Puchalski said there was pressure

1 coming from the builder.

2 Q Okay. You got a copy of this e-mail; correct?

3 A If that says I did, I'll assume so, sir.

4 Q You -- excuse me -- that means I'm talking too much
5 when my voice starts to go. You signed a Closing
6 Statement and loan documents when the Hartsville
7 building was constructed; right?

8 A I believe so, sir.

9 Q Okay. And that's the building that you primarily
10 operated out of, worked in; is that right?

11 A It was one of the buildings I worked out of.

12 Q Did you spend the majority of your time working out of
13 the Hartsville building?

14 A I spent three days elsewhere and two days in
15 Hartsville, if I remember correctly. I may be
16 incorrect on that.

17 Q Okay. And did you spend time in the Cheraw office?

18 A Yes, sir, I did.

19 Q How many days there?

20 A I think one. I'm not a hundred percent sure.

21 Q Did anybody -- do you live in Hartsville?

22 A I do, sir.

23 Q Were you living at the time in Hartsville?

24 A I do, sir.

25 Q Okay. And did anybody else use the Hartsville

- 1 building? Anybody else -- excuse me, any other
2 physicians of the practice use the Hartsville office
3 as much as you did?
- 4 A. Probably not, sir.
- 5 Q Okay. You wanted the Hartsville building to be built;
6 isn't that fair to say?
- 7 A. I think it was a business decision, sir.
- 8 Q Okay. But you wanted it to be built as part ---
- 9 A. Yeah. Yeah.
- 10 Q -- of the business, didn't you?
- 11 A. There were a lot of things going on. One, we were not
12 on friendly terms with the hospital; they were
13 terminating our lease. We had a lot that we weren't
14 quite sure what to do with, and we made a decision to
15 go ahead and build so that no one could kick us out
16 and kick us off campus. So, that -- so, in the sense
17 of -- we wanted it to be built, not me personally.
- 18 Q Okay. I'm not saying you were the only person that
19 wanted it to be built. I'm sorry if I gave that
20 impression. But you, along with Dr. Puchalski, wanted
21 the building in Hartsville to be built; is that
22 correct?
- 23 A. It was in the best interest of our practice at that
24 time, yes, sir.
- 25 Q And you believe that?

- 1 A. I believe that.
- 2 Q And you signed the necessary documents; is that right?
- 3 A. I believe so.
- 4 Q You didn't demand to see the books of SCENT or the
- 5 books of SCENT Land Holdings or anything like that at
- 6 that time, did you?
- 7 A. I don't recall doing that, sir, no.
- 8 Q Okay. I'm going to show you what has been marked as
- 9 Defendant's Exhibit 43. This appears to be an e-mail
- 10 from Tammy Szymanski to you, cc'ing Dr. Puchalski and
- 11 Theresa Williams dated February 16th, and it's
- 12 discussing switching your medical malpractice
- 13 protection insurance; is that right?
- 14 A. It appears to be so, sir.
- 15 Q Okay. And you refused to authorize that change; is
- 16 that right?
- 17 A. I didn't authorize the change, yes, sir.
- 18 Q Okay. And you understand it was -- you were told that
- 19 this would save the practice money if you switched to
- 20 the new insurance carrier, weren't you?
- 21 A. Bob Puchalski was telling me a lot of things, sir.
- 22 Q Okay. That's not what I asked you. What I asked you
- 23 was, you were told that it would save the practice
- 24 money if you switched to this liability insurance
- 25 carrier; right?

- 1 A. I was told that by -- yes, sir.
- 2 Q Okay. Excuse me. Okay. I'm going to show you what's
3 been marked as Defendant's Exhibit 45. It appears to
4 be a copy of an e-mail from Ed White to Bruce Armon.
5 Is that correct? At the top.
- 6 A. Ed White to Bruce Armon. Yes, sir.
- 7 Q Okay. And he says, "Bruce, I meant to copy you on
8 this e-mail." And then there is below that an e-mail
9 that Ed White sent to you, Orville Dyce; is that
10 correct?
- 11 A. Yes, sir.
- 12 Q Okay. It was dated February 17th?
- 13 A. Appears so. Yes, sir.
- 14 Q Do you know if you got that e-mail when it was sent to
15 you?
- 16 A. This looks familiar. I may have -- I may have read
17 it. I don't know if it was this particular e-mail,
18 but it does look familiar.
- 19 Q Okay. I show you what's been marked as Defendant's
20 Exhibit Number 46. This e-mail was from Dr. Puchalski
21 to Theresa Williams, and it cc'd you. Do you see
22 that?
- 23 A. Yes, sir.
- 24 Q Okay. And it -- and Dr. Puchalski says, "Let's make
25 all these available to him tonight and answer any and

1 all of his questions. I would not feel comfortable
2 sending anything out of the practice without adequate
3 confidentiality protections." Do you see that?

4 A. Yes, sir.

5 Q. Do you see down at the bottom of the e-mail that he's
6 referring to says, "Dr. Dyce has requested the
7 following information," and then there's a list of
8 things?

9 A. Yes, sir.

10 Q. Okay. You got a copy of this e-mail where he says,
11 "Let's make this available to him tonight."

12 A. (No audible response).

13 Q. Yes?

14 A. Yes, sir.

15 Q. Okay. Did you review those documents when they were
16 made available to you?

17 A. I don't remember what happened on that day, sir.

18 Q. Okay. I'll show you what's been marked as Defendant's
19 Exhibit 47. And this is an e-mail dated February
20 22nd. It appears to be from Bruce Armon to Orville
21 Dyce, and then it's -- the meat of it is in the e-mail
22 before that where it says it's to Bruce from Ed. Do
23 you see that?

24 A. Yes, sir.

25 Q. It says, "Bruce, I e-mailed Dr. Puchalski after our

1 call, and he followed up with me that everything has
2 been provided to Dr. Dyce except his own present
3 policy. Those are mailed directly to the physician's
4 home by the insurer." This is discussing the medical
5 malpractice issue we talked about a little earlier,
6 changing carriers?

7 A. I -- I don't know. It sounds like it could be, sir.

8 Q Okay. And it appears that they're saying you received
9 whatever information you requested related to that?

10 A. It appears that's what the e-mail is saying, sir.

11 Q Okay. Do you know if Bruce ever got back to them and
12 said anything contrary to that?

13 A. I -- I don't know, sir. Can I use the restroom real
14 quick?

15 Q Absolutely. Going off the record.

16 VIDEOGRAPHER: Going off the record at 2:40.

17 (OFF THE RECORD).

18 VIDEOGRAPHER: Going on the record at 2:47.

19 EXAMINATION BY MR. SHEHEEN CONTINUED:

20 Q Dr. Dyce, you mentioned that you heard or observed a
21 conversation where Dr. Gunnlaugsson was told by Dr.
22 Puchalski that his family would be taken care of or
23 something like that; is that right?

24 A. Something to that effect.

25 Q Did you tape record that conversation?

- 1 A. I don't remember.
- 2 Q Did you tape record all the conversations with Dr.
- 3 Puchalski?
- 4 A. I don't think so.
- 5 Q Did you tape record any conversations with Dr.
- 6 Puchalski that I don't have a copy of at this point?
- 7 A. I sent all tape recordings that I had of Dr. Puchalski
- 8 to my attorney.
- 9 Q Did you tape record anybody else in the last two years
- 10 besides Dr. Puchalski?
- 11 A. Ed White and Austin Sheheen.
- 12 Q Anybody else?
- 13 A. I don't think so. I don't think so.
- 14 Q Okay. Where would -- did you hide the tape recorder
- 15 when you were tape recording people?
- 16 A. It was just in my pocket.
- 17 Q You had your scrubs on -- in your pocket with your
- 18 scrubs?
- 19 A. It was in my pocket.
- 20 Q My question is, did you have pockets in your scrubs?
- 21 A. Yes, sir.
- 22 Q Okay. Are you aware that Dr. Gunnlaugsson apologized
- 23 to SCENT and Dr. Puchalski for breaching his Contract?
- 24 A. I'm not aware of what Dr. Gunnlaugsson did.
- 25 Q Let me show you what's been marked as Defendant's

1 Exhibit 48. And this appears to be a message from Dr.
2 Puchalski to you forwarding a message from Walter Long
3 at First Palmetto Savings Bank. And Dr. Puchalski says
4 in his message to you, "Attached are the loan
5 documents for the closing tomorrow." Do you see that?

6 A. Yes, sir.

7 Q And it appears that these documents were sent to him
8 according to the e-mail below, at 5:39 p.m. on
9 February 23rd. Do you see that?

10 A. Yes, sir.

11 Q And what time does it appear that he forwarded them to
12 you?

13 A. 5:43 p.m.

14 Q Okay. I'm going to show you what's been marked as
15 Defendant's Exhibit 49. This looks like it's you
16 responding to Theresa Williams and you say, "Thanks
17 for the e-mail, Theresa, but as Dr. Puchalski knows,
18 I would like copies of the documents which I
19 requested. A meeting is insufficient but copies would
20 be great." Do you see where you say that?

21 A. I see where that's written, yes, sir.

22 Q Do you recall saying that?

23 A. I don't recall much of these -- many of these e-mails,
24 these smaller e-mails from way back when.

25 Q Read with me below that. It was an e-mail to Jamie

1 from Theresa. It says, "Dr. Puchalski asked me to
2 follow up with you about scheduling a meeting to
3 review the financial documents for SCENT Land
4 Holdings. I will be happy to schedule any time that
5 you need between now and the Wednesday closing.
6 Please let me know what works for you." Do you see
7 that?

8 A. I see where that's written, yes, sir.

9 Q. Okay. So, obviously, Jamie must have forwarded this
10 to you or you were copied on it or something; is that
11 right?

12 A. I don't know.

13 Q. You were -- this was not one of those that you ignored
14 because you responded to it; right?

15 A. It appears so, sir.

16 Q. Okay. And in it, Theresa is offering to let Jamie
17 come up and look at whatever documents she's
18 requested, it appears to be?

19 A. That would appear so, sir.

20 Q. Okay. And do you know why you and Jamie didn't want
21 to actually look at the documents on the premises but
22 wanted to take them away?

23 A. I can't speak on this, but I can tell you in general
24 terms. There was a complete breakdown of trust at
25 that practice. There was a lot of -- there seemed to

1 be a lot of areas where Dr. Puchalski was making
2 distributions to himself with the help -- sorry,
3 making distributions to himself that I felt were
4 inappropriate, and the people who were supposed to be
5 acting as corporate aids for the shareholders didn't
6 appear to be doing -- didn't appear to have my best
7 interest at heart. So, I had to obtain external
8 counsel, not to gain a leg up, but just to get a fair
9 examination of the documents and being told what my
10 liabilities were, what the benefits were and the like.
11 So, I needed external people to look at these
12 documents -- external experts to look at these
13 documents. I could not rely on the folks who were
14 supposed to be helping the practice.

15 Q So, did -- why didn't you take the external folks that
16 you needed up there to review the documents with you
17 they offered for you to look at?

18 A. Because one of them was in Philadelphia. One of them
19 was in Charleston. It wasn't very practical.

20 Q Okay. Do you realize that you were paid more from
21 SCENT in 2009 than Dr. Puchalski was?

22 A. I realize that Dr. Puchalski and whoever the
23 accountant was prepared the taxes to make it appear as
24 though I was paid more.

25 Q So, are you disputing that you were paid more in 2009?

- 1 A. I'm disputing that the Tax Returns were prepared
2 properly.
- 3 Q Okay. But I'm asking about the amount of pay you
4 received in 2009. You're not contesting that you
5 received more pay and have taken home less, are you?
- 6 A. I actually am. I'm saying I don't know.
- 7 Q Okay. And then you mentioned something about -- I
8 don't want to put words in your mouth, but expenses
9 for Dr. Puchalski or distributions for Dr. Puchalski.
- 10 A. Okay.
- 11 Q You just said something about that. When I asked you
12 why it wasn't, you didn't take them up on the offer to
13 come look at the documents on the premises. You said
14 that you had some concern about some distributions Dr.
15 Puchalski had taken or something?
- 16 A. Is that a question?
- 17 Q Yeah, I'm asking ---
- 18 A. What is the question?
- 19 Q The question is, could you tell me what you were
20 saying about distributions that Dr. Puchalski took
21 that you had some questions about.
- 22 A. I just didn't think that the shareholders were being
23 treated fairly and equally as per the Contracts.
- 24 Q Okay. But you actually got paid -- actually more than
25 he did in 2009 according to the -- the financial

1 records that have been provided. Is that correct?

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

3 Q Okay. So, do you believe that you got paid less in

4 2009?

5 A. I don't think the financial records are correct as

6 they were prepared.

7 Q Okay. Well, how do you think they're incorrect?

8 A. I'll defer those questions to Mr. Richard Livingston.

9 Q Does that mean you don't know?

10 A. I don't know. I'll defer those questions to Mr.

11 Richard Livingston.

12 Q So, when you testify in court, you're not going to

13 state any facts as to whether or not they were ---

14 A. I'll defer those questions to Mr. Livingston.

15 Q Let me finish my question and then you can give me

16 your answer.

17 A. Okay.

18 Q I won't interrupt you, okay, but let me start again.

19 A. I'm sorry.

20 Q Okay. When -- when you testify in court, when you're

21 asked if -- if you did not receive monies you were

22 entitled to, say, in 2009, are you not going to have

23 any testimony yourself and you're going to rely on

24 whatever Mr. Livingston says?

25 A. Well, Mr. Livingston is the one who is reviewing the

1 Tax Returns; he is reviewing the Corporate Statements
2 and the like, and so, I'd like to defer all questions
3 regarding the tax issue and the distributions to him
4 because I think he has a better handle on it than I
5 do.

6 Q Okay. That's fine. I just don't -- if I'm asking you
7 now and you're not giving me an answer, and then you
8 got up and gave some answer in court that was contrary
9 to what you're telling me, then -- then ---

10 A. I'm sure it won't be contrary because I haven't
11 reviewed the documents with Mr. Livingston.

12 Q Okay. So, of your own knowledge, you will have no
13 knowledge as to whether or not you received the right
14 amount, less than you were entitled to or more than
15 you were entitled to, of your own knowledge, not Mr.
16 Livingston's; is that right?

17 A. Again, I'll defer to Mr. Livingston. I haven't
18 thought about it much.

19 Q Okay. This lawsuit has been pending for three years;
20 right?

21 A. I know.

22 Q And you sued him ---

23 MR. ELLISON: Wait a minute. It's been at
24 least four times. Go on.

25 MR. SHEHEEN: That's because I'm not getting

1 an answer, Morris.

2 MR. ELLISON: No. He -- he answered the
3 question. Let's go on.

4 MR. SHEHEEN: And the answer to my question
5 is what?

6 MR. ELLISON: He has answered your question
7 four times. Let's go on.

8 MR. SHEHEEN: That he's going to defer to
9 Mr. Livingston?

10 MR. ELLISON: Yeah.

11 MR. SHEHEEN: And that's ---

12 MR. ELLISON: Let's go on.

13 MR. SHEHEEN: Well, my question is not was
14 he going to defer to Livingston. So, I will tell
15 you he's going to defer to Mr. Livingston. My
16 question ---

17 MR. ELLISON: Vincent, four times.

18 MR. SHEHEEN: Let's go ahead.

19 MR. ELLISON: Four times. Enough.

20 MR. SHEHEEN: I understand. It's because
21 he's not answering the question, Morris.

22 MR. ELLISON: He has answered the question.
23 You don't like the answer. Let's go on.

24 MR. SHEHEEN: I don't mind the answer. He
25 says he's going to defer to Mr. Livingston.

1 MR. ELLI SON: You'll get the same answer the
2 fifth and the sixth and the seventh time. He's
3 answered it. Let's go.

4 MR. SHEHEEN: I hear you. I understand what
5 you're doing, but that's not the point of
6 Discovery. The point of Discovery is to
7 understand what his testimony is going to be.

8 MR. ELLI SON: If you want to take it up with
9 the Judge, you can take it up with the Judge.
10 He's answered the question ---

11 MR. SHEHEEN: I'm fine going forward.

12 MR. ELLI SON: -- four times.

13 MR. SHEHEEN: Let's go back on the record.

14 MR. ELLI SON: If you want to answer him the
15 fifth, sixth and seventh time, you can answer it
16 a fifth and sixth time ---

17 MR. SHEHEEN: That's fine. I understand.

18 MR. ELLI SON: -- and you don't need to
19 answer it a seventh time.

20 MR. SHEHEEN: Back on the record?

21 VIDEOGRAPHER: We never went off.

22 MR. SHEHEEN: Okay.

23 Q Dr. Dyce, do you -- do you know of any documents that
24 show that you did not receive monies that you were
25 entitled to?

1 A. Apart -- not in a way that I was made aware of by
2 counsel.

3 Q That don't mean -- if he's seen the document whether
4 you showed it to him or not. If he -- no documents
5 prepared by your counsel. Documents, are you aware of
6 any documents that show you were not -- that you did
7 not receive money you were entitled to?

8 A. Any documents that I know about have been reviewed by
9 Mr. Livingston and any information from that that I
10 received has been given to me through my counsel.

11 Q Okay.

12 MR. SHEHEEN: Do we need you and I
13 need to discuss whether it's protected
14 by attorney/client privilege or not.

15 MR. ELLISON: Let's try -- let's try ---

16 Q Okay. Don't tell me any documents your lawyer
17 prepared for you. Okay. What -- regardless of how
18 you got them do you have any documents that you're
19 aware of that show that you did not receive monies
20 that you're entitled to from SCENT?

21 A. I've seen things that -- such as in the Ledger -- such
22 as distribution to Nelson Mullins with an attendant
23 letter saying -- this is how you basically hide it
24 from another shareholder in the form of \$250,000.00
25 that Dr. Puchalski gave to Nelson Mullins, the

1 corporate attorney, of which Ed White is a member
2 saying that this is how you prevent him from getting
3 it. The -- that's probably the only thing I can
4 remember.

5 Q Okay. And that's what I'm asking you. So, is there
6 any other documents besides the one you just mentioned
7 that you're aware of?

8 A That's -- that's the -- that's one of those that I can
9 remember.

10 Q Okay. I'm going to show you what's been marked
11 Defendant's Exhibit 52. This is -- it says on the
12 from section, from Dr. -- from Robert Puchalski, to
13 Jamie, Tammy Szymanski, cc Dr. Dyce.

14 MR. ELLISON: What is this?

15 Q What number is on that?

16 A 52, please.

17 Q 52. Thank you. Then it says, "Jamie, we -- we
18 already have a Mechanic's Lien on the property and the
19 closing on the property is now imperative. Please ---

20 A Wait, stop.

21 Q Uh-huh (affirmative response). I'm I reading a
22 different one?

23 A This is what I have for 52.

24 Q I'm sorry. Okay. Sorry. I apologize, Dr. Dyce.

25 (NO EXHIBIT 52 WAS PLACED INTO

1 EVI DENCE)

2 Q I'll show you what's been marked as Plaintiff's --
3 Defendant's Exhibit Number 55. Take a minute and look
4 over these things, please. Could you tell me what
5 these appear to be?

6 A. The top of it says, "Report of All ICD-9 Procedures
7 Done -- by Procedure, Carolina Pines RMC. Patients
8 Discharged between 10/1/2010 and 2/4/2011."

9 Q Okay. And when did you start your practice with HMA?

10 A. I didn't start my practice. I was hired by HMA.

11 Q Okay.

12 A. My first clinic day was the end of October.

13 Q Okay. Are you practicing medicine currently?

14 A. I am

15 Q Okay. Are you practicing medicine with HMA?

16 A. I am sir.

17 Q Okay. And when did you begin practicing medicine with
18 HMA?

19 A. As an employee, in October of 2010.

20 Q Are you now an owner of HMA or something different
21 from an employee?

22 A. No, I'm still -- but I practiced medicine before at
23 HMA, but it was in the Operating Room not as an
24 employee or an owner.

25 Q Okay. So, ---

1 A. And I do own some ownership, some stock in the
2 hospital, but I don't know if that's considered
3 ownership.

4 Q Okay. But you went to work for HMA in the medical
5 practice as an employee in October of 2010?

6 A. Yes, sir.

7 Q Okay. And if this is a -- you were telling me what
8 this was.

9 A. It's just a list of procedures it says.

10 Q Okay. These are procedures you -- some of the
11 procedures you did with your new employment?

12 A. I don't know where it came from. It could be.

13 Q Okay.

14 A. I don't know how they -- what was asked for; so, ---

15 Q And you saw a good number of patients once you went to
16 work for HMA; is that fair to say?

17 A. I saw a lot of -- I see a lot of patients.

18 Q I'm talking about in this -- these months' period here
19 I've just given you, is it fair to say you saw a good
20 number of patients?

21 A. I mean, I don't know what a good number is. I saw ---

22 Q Okay.

23 A. -- whatever the number says there.

24 Q Did -- did -- these were surgeries it appears to be.
25 Do you want to look at them and make sure?

- 1 A. Okay.
- 2 Q Is that what it appears to be?
- 3 A. It could be.
- 4 Q Okay. Did you -- you started up seeing -- strike
- 5 that. Where did you work at before SCENT?
- 6 A. In Winchester, Virginia.
- 7 Q What did you do there?
- 8 A. I was an ENT there.
- 9 Q Okay. Do you believe you did this many surgical
- 10 procedures in the first three months there as you did
- 11 once you went to work for HMA?
- 12 A. I don't know. I'd have to go back and look. That was
- 13 2003.
- 14 Q Okay. Did most of these procedures, would they have
- 15 been on people who had been patients of your when you
- 16 were at SCENT?
- 17 A. I don't know. I'd have to go back and look at them
- 18 Q I'm going to show you what's been marked as Exhibit
- 19 73. Okay. This is a compilation of transfer patients
- 20 from SCENT to you. Do you see that?
- 21 A. Yes, sir.
- 22 Q Do you recognize any of these names? Do you want to
- 23 look at them for a minute?
- 24 A. I do, sir.
- 25 Q Okay. Do they appear to be patients that used to be

1 patients at SCENT that are now patients at HMA where
2 you work?

3 A. Some of them appear so.

4 Q Do you have any idea how much money HMA is generating
5 -- well, we can turn to the back and see. Turn to the
6 very back page. Okay. If -- if I represent to you
7 this is money or fees that were paid to SCENT in the
8 year prior to these patients' departures to go to HMA
9 where you were then practicing, would you have any
10 reason to think they would be -- that these numbers
11 would be abnormal?

12 MR. ELLISON: Hold on a minute. What is
13 this?

14 MR. SHEHEEN: The compil ---

15 MR. ELLISON: Yeah, when was this typed?
16 This has never been presented to us.

17 MR. SHEHEEN: Last week.

18 MR. ELLISON: Okay. It has not been
19 produced. I'm entitled to discuss this.

20 MR. SHEHEEN: Absolutely.

21 VIDEOGRAPHER: Going off the record at 3:09.

22 (OFF THE RECORD).

23 VIDEOGRAPHER: Going on the record at 3:13.

24 EXAMINATION BY MR. SHEHEEN CONTINUED.

25 Q Okay. Dr. Dyce, we were talking about Exhibit 73.

- 1 A. Yes, sir.
- 2 Q Okay. You treated these patients prior to your
3 departure to HMA; is that right?
- 4 A. Some of the names look familiar, like people I have
5 treated before, but I can't -- I don't know much. I
6 would have to verify that independently.
- 7 Q Okay. These names were pulled pursuant to information
8 you provided to us or your attorney provided to us.
9 And you may or may not be able to answer the question,
10 but I'm looking at the collections to the right that
11 SCENT has listed out that was collected the year prior
12 to these patients' departures. Do you have any reason
13 to believe those might be incorrect?
- 14 A. Yes.
- 15 Q Okay. Tell me why.
- 16 A. Because I don't trust Bob or any numbers coming out of
17 his camp.
- 18 Q Okay. Do you have any independent reason based on
19 facts that you know yourself related to these patients
20 that would tend to say they are incorrect?
- 21 A. Apart from not trusting Bob?
- 22 Q Right. We understand you don't trust Bob.
- 23 A. No, I don't know -- I don't know anything about these
24 documents. These were just presented to me today. I
25 haven't reviewed them to come up with an opinion on one

1 way or another.

2 Q Okay. You have -- you can give that to the court
3 reporter. You have Exhibit 78 still in front of you,
4 which was the Shareholder Agreement, and Exhibit 79,
5 which was the Employment Agreement. Okay. I want you
6 to look at Page Four of the Employment Agreement,
7 3.1B. And I want you to -- B says, "Physician will
8 comply with all the rules and regulations of the Group
9 and perform all duties in the manner determined by the
10 Group." Do you see that?

11 A. Yes, sir.

12 Q "Provided, however, that the Group shall not require
13 performance of any duties which violate any law or
14 ethical principle of medicine. Physician shall use
15 Physician's best efforts to further the practice of
16 the Group and enhance the Group's standing among
17 members of the medical profession and present or
18 prospective clients." Do you see all of that?

19 A. Prospective patients. Yes, sir.

20 Q I'm sorry. Patients. I'm sorry. Did you feel like
21 you should have told SCENT about Dr. Gunnlaugsson's
22 Affidavit and communications with you because of that
23 provision? Were you -- did you recall that provision?

24 A. Sorry, please rephrase the question and specify what
25 -- what you're talking about.

1 Q Remember the Affidavit you and I discussed earlier
2 with ---

3 A. Yes, sir.

4 Q Did you feel like you should have notified the
5 managing shareholder of SCENT that that was going on,
6 that Dr. Gunnlaugsson had brought that to you and that
7 he was saying the things he was saying to you based on
8 this provision of the Contract?

9 A. In all honesty, I didn't think about it one way or
10 another. Again, most of the shareholder discussions
11 were in these ad hoc meetings between Bob and
12 Gunnlaugsson; so, I don't know what -- what they
13 discussed. So, I don't know what the backdrop to it
14 was, and I assumed that was where it was coming from.
15 So it -- much in the way I had a policy of almost
16 noninterference with a lot of the folks that were
17 hired, whether they were physicians, physician
18 assistants, nurse practitioners, this was just another
19 one of those things. It was a -- a shareholder, I
20 figured they were going to get it worked out and this
21 was it.

22 Q Do you -- excuse me. Do you believe that SCENT owes
23 you money?

24 A. I'm sorry?

25 Q Do you believe that SCENT owes you money?

- 1 A. No. I know they owe me money.
- 2 Q Okay. How much do they owe you?
- 3 A. I don't know yet.
- 4 Q Okay. And how do you know they owe you money?
- 5 A. Because I worked at SCENT, I had shares. I've never
- 6 been paid my partnership interest, my shareholder
- 7 interest instead. I have also, with regards to the
- 8 Land Holdings, I've never -- we've never been paid for
- 9 our interest in the Land Holdings; so, to name a few,
- 10 at least those. But, yes, they do owe me money.
- 11 Q Okay. Have you ever looked at the Shareholders'
- 12 Agreement that you signed that calculates how a
- 13 departing shareholder is supposed to be paid?
- 14 A. I haven't reviewed it, sir.
- 15 Q Okay. Do you believe that that is the Shareholder
- 16 Agreement that governs your claim against SCENT?
- 17 A. I think there are a lot of things in that Shareholder
- 18 Agreement that governs my claims against SCENT.
- 19 Q Okay.
- 20 A. Not just any one individual part.
- 21 Q And how many shareholders -- are you aware that part
- 22 of the calculation within that Shareholder Agreement
- 23 is based on how many shareholders there are?
- 24 A. Okay.
- 25 Q I'm asking if you're aware of that..

- 1 A. I guess in general terms.
- 2 Q Okay. And in this case, are you asserting that we
- 3 should use three shareholders in calculating that
- 4 figure or two shareholders?
- 5 A. I'm asserting that we do this transaction properly
- 6 based on the information we have using the appropriate
- 7 number of shareholders.
- 8 Q Right. So, what I'm asking is, is that appropriate
- 9 number three or two?
- 10 A. I don't know yet.
- 11 Q Okay. And which -- is that what your testimony in
- 12 Court is going to be?
- 13 A. I'm going to defer a lot of these questions to Mr.
- 14 Richard Livingston.
- 15 Q Okay. Do you think Mr. Livingston is basing any of
- 16 his opinions on things you've told him?
- 17 A. Well, I haven't spoken to him a whole lot.
- 18 Q Okay. That's what we talked about that earlier.
- 19 A. So, it would primarily be based on the documents that
- 20 Dr. Puchalski and SCENT, if they are indeed true, sent
- 21 over to him
- 22 Q Okay. So, any opinions he has formulated have not
- 23 been based on things you personally told him because
- 24 you just said hello to him or something; right?
- 25 A. I mean, I said more than hello. I introduced myself,

- 1 but I haven't -- I have been very careful not to tell
2 him what I think.
- 3 Q Okay. So, at this point, you don't have an opinion on
4 whether to use two or three shareholders in running
5 these calculations?
- 6 A I don't have an opinion of it. I'm going to defer
7 that to him
- 8 Q Okay.
- 9 A So that it's done properly.
- 10 Q Do you admit that you have practiced medicine within
11 twenty (20) miles of the SCENT Hartsville building
12 within a year of leaving SCENT?
- 13 A I admit that I currently practice in Hartsville
14 starting in 2010 and I left -- in October of 2010, and
15 I left SCENT in May of 2010.
- 16 Q Would you agree with me that that practice site was
17 and is within twenty (20) miles of the SCENT's former
18 practice site?
- 19 A Yes, sir.
- 20 Q In fact, you're in the same building now, right?
- 21 A Yes, sir.
- 22 Q As SCENT formerly occupied?
- 23 A Yes. Dr. Puchalski leased it to the hospital.
- 24 Q Okay. Turn to Page 13 of the Shareholders' Agreement
25 which would be 78. I want you to look at Section

- 1 4.6.4.
- 2 A. I'm sorry. Say that again. Which ---
- 3 Q It's 298 of ---
- 4 A. 13 of which Agreement?
- 5 Q Of the Shareholder Agreement.
- 6 A. Shareholder Agreement. 294 you said?
- 7 Q It's 298. It says Page 13 at the bottom and then
- 8 it's Bates Stamped P.
- 9 A. Okay.
- 10 Q Are you there?
- 11 A. Yes, sir, I'm in -- I'm on page 298.
- 12 Q Okay. At the bottom it says 4.6.4. Do you see that?
- 13 A. Yes, sir.
- 14 Q Okay. It says "Set off. Any damages resulting from the
- 15 breach of any of the foregoing representations or a
- 16 breach of Section 3.6 shall be applied against the
- 17 balance of the Purchase Price in the same manner as if
- 18 there were a prepayment of the Purchase Price." Do
- 19 you see that?
- 20 A. Yes, sir.
- 21 Q Okay. Do you understand that SCENT has asserted that
- 22 you breached your Contracts with SCENT?
- 23 A. In the past three years, SCENT has asserted a lot of
- 24 things against me, sir.
- 25 Q Okay. So, that wasn't my question. My question was,

- 1 are you aware that SCENT has asserted that you have
2 breached your Contract with SCENT?
- 3 A. I'd have to review exactly what they've said.
- 4 Q. Okay. So, you're not aware of that?
- 5 A. I may -- I don't remember exactly what they said, and
6 I don't want to say yes and agree to something I don't
7 agree to.
- 8 Q. Okay.
- 9 A. I don't just want to assume that what you're meaning
10 is what I'm meaning.
- 11 Q. Okay. Well, let me just tell you that SCENT has
12 asserted that -- that you have breached your Contract
13 with SCENT. Okay?
- 14 A. Okay.
- 15 Q. And SCENT has also asserted that you are practicing in
16 violation of your agreement within a proximity of
17 SCENT. Do you understand that?
- 18 A. I understand what you're saying to me, yes, sir.
- 19 Q. I'm not asking you to agree with me. In fact, I'm
20 quite sure you're not going to agree with me;
21 otherwise, we wouldn't be sitting here having this
22 deposition. But you understand that what I'm telling
23 you is they've asserted those things against you?
- 24 A. Okay.
- 25 Q. And you understand that you -- that you have caused

1 them injuries exceeding a million dollars; are you
2 aware of that?

3 A. I'll -- for the sake of this deposition, I'll believe
4 whatever you're saying to me right now.

5 Q Okay. Are you aware that in this Shareholders'
6 Agreement that, if you breach any of the agreements
7 that you had with SCENT, that it could affect the
8 amount of money that you would be owed or that you may
9 owe SCENT?

10 A. I'm sorry. Say that again.

11 Q That's okay. It's a confusing question. Are you
12 aware that there were certain obligations that you
13 made in the Shareholders' Agreement; are you aware of
14 that? There were obligations you made?

15 A. Yes, sir.

16 Q Okay. And there were obligations you made in your
17 Employment Agreement; correct?

18 A. Yes, sir.

19 Q Do you feel like you owe, based on the patients who
20 now are being seen by you and the revenue loss by
21 SCENT, believe that you owe SCENT anything for the
22 money that is now going to your employer instead of
23 SCENT?

24 MR. ELLISON: Did you understand that?

25 DR. DYCE: No.

1 MR. ELLISON: Neither do I. Do you want to
2 try it again?

3 MR. SHEHEEN: I will if you want to object
4 to it.

5 MR. ELLISON: No, I don't under -- he didn't
6 understand ---

7 A. I'm not sure what you're asking me exactly.

8 MR. SHEHEEN: You can object to it.

9 MR. ELLISON: Okay. It's ambiguous. Go
10 ahead.

11 Q Okay. Do you -- would you agree with me that HMA is
12 receiving payments from patients that formerly were
13 patients of SCENT?

14 A. Okay. Yes, sir.

15 Q And would you agree with me that, most likely, those
16 patients would have continued to be seen by SCENT
17 instead of HMA?

18 A. No, I do not, sir.

19 Q You think they would have gone somewhere else?

20 A. Yes, sir.

21 Q Are you aware that most of them continued to be seen
22 at SCENT until you started working at HMA?

23 A. I don't agree with that, sir.

24 Q So, your testimony is, you don't think they continued
25 to be seen at SCENT?

- 1 A. No, my testimony is, I don't believe what you just
2 said is correct.
- 3 Q Okay. Well, do you believe that they left SCENT prior
4 to you going to work for HMA?
- 5 A. I think a number of them did. I can't -- I haven't
6 tabulated the numbers.
- 7 Q This is a document that was provided to us and copied
8 your counsel by HMA. And it's been marked as
9 Defendant's Exhibit 56. This shows an estimated
10 revenue projection by HMA based on you coming to work
11 with them. And it estimates year one that they would
12 generate 1.2 million dollars from your work, and
13 that's in the third column about midway down. Do you
14 see that?
- 15 A. Is that where the check-mark is?
- 16 Q Yes, sir. I thought it would be easier for you to see
17 it if I checked it.
- 18 A. All right.
- 19 Q Do you see that?
- 20 A. Okay.
- 21 Q Do you have any reason to know whether that number was
22 met or not met?
- 23 A. I have no idea, sir. These are HMA. You would
24 probably be best served asking them.
- 25 Q Okay. Well, they're not here; so, you work for them

- 1 I have to ask you.
- 2 A. They don't -- it's not something I'm -- I know readily
3 offhand.
- 4 Q Do you keep up with the revenue generated by your
5 practice -- your work for HMA?
- 6 A. Again, I -- I try to -- from a practice standpoint,
7 the reason why I didn't start -- one of the reasons is
8 I -- my acumen is not business; it's medicine. So, I
9 -- I focus on the medicine side, and if I focus on the
10 medicine side, everything else falls into place
11 usually. So, I don't on a minute to minute or week to
12 week or month to month. They may give me updates. I
13 don't know that I pay attention to them too much.
- 14 Q Okay. So, my question was whether you kept up with
15 them and I think you're telling me you don't keep up
16 with it too much?
- 17 A. Not too much, sir.
- 18 Q Okay. Are your bonuses at HMA based on the amount of
19 revenue that you generate in part?
- 20 A. Probably. Yes.
- 21 Q Okay. Do you keep up with that so you know when
22 you're entitled to the bonuses or you just go on what
23 they tell you?
- 24 A. I go on what they tell me, sir.
- 25 Q Okay. You can -- I want to show you what's been

1 marked Exhibit 57. Again, these are for your
2 information, just documents that were provided to me
3 and your attorney by HMA.

4 MR. ELLISON: 57, I'm sorry?

5 MR. SHEHEEN: Yes.

6 MR. ELLISON: I'm sorry, what?

7 MR. SHEHEEN: I'm sorry. 57.

8 Q And this is an e-mail from a guy named Jon Larkin; do
9 you know who that is?

10 A. Yes, sir.

11 Q Who is that?

12 A. He was the practice administrator for HMA.

13 Q Okay. And they're to Carol Crosbie. Do you know who
14 that is?

15 A. Oh, no, sir.

16 Q Okay. And Lance Jones used to work at HMA; is that
17 right?

18 A. Still works at HAM, sir.

19 Q Okay. And he's cc'd it. It says, "Carol, I have
20 attached an updated add form for the practice
21 described above. We were originally planning to
22 operate as a separate LLC, but due to contracting
23 issues have incorporated the practice into Hartsville
24 Medical Group. Please let me know if you have any
25 questions." Do you see that?

- 1 A. Yes, sir.
- 2 Q Do you know what they're talking about there?
- 3 A. No, sir.
- 4 Q Okay. At one point, were you going to -- did you talk
5 to them about coming in, not as an employee, but as a
6 separate practice that contracted with them or
7 something like that?
- 8 A. Not that I can recall.
- 9 Q Do you have an equipment company that you own that
10 owns ENT equipment?
- 11 A. Yes, sir.
- 12 Q And do you lease that equipment to HMA?
- 13 A. Yes, sir.
- 14 Q Is that another way for you to earn revenue?
- 15 A. I guess. Sure.
- 16 Q Okay. Let me show you a document I marked Exhibit 58.
17 This is an e-mail apparently to you from -- from you
18 to Phyllis Cogley and Jon Larkin. It says, "I'm
19 having a bit of a problem scheduling pickup and
20 delivery of my equipment. Moving from Maryland to
21 Hartsville. What day will the office be ready? If I
22 move the equipment myself, is there anyone available
23 to help me move and arrange the office? Possibly on
24 Sunday?" Did HMA move your equipment that they were
25 then going to lease or did you move it?

- 1 A. I -- both.
- 2 Q Okay. Tell me how that went down.
- 3 A Well, I paid for it to be -- the movers to bring it up
- 4 -- bring it down, and they had some folks that worked
- 5 and helped to transport it.
- 6 Q And did -- do you rely on HMA to help you with setting
- 7 up the equipment business or did you do it yourself?
- 8 A Simple form You apply On-line for an LLC.
- 9 Q Okay. So, you did it yourself?
- 10 A Much in the same way you do Somace or anything like
- 11 that.
- 12 Q All right. My question is, did you do it yourself?
- 13 A Yes.
- 14 Q HMA didn't help you?
- 15 A No, you just paid Twenty Bucks or a Hundred Bucks or
- 16 whatever the number is and they send you a form saying
- 17 you're an LLC.
- 18 Q Do you have a checking account for that business?
- 19 A I don't know.
- 20 Q Who would do your books for you?
- 21 A Me.
- 22 Q Okay. So, you would know if there was a checking
- 23 account?
- 24 A I just deposit it into the checking account, but I
- 25 don't know if it's a separate checking account.

- 1 Q In other words, it might be your own personal ---
- 2 A It might be my own personal account, yes.
- 3 Q I show you what's marked as 59. This -- this is a
- 4 Certificate of Existence that was provided on
- 5 Hartsville ENT, LLC. Do you see that?
- 6 A Yes, sir.
- 7 Q It was created on August 24th, 2010. Is that what it
- 8 appears to be, according to this?
- 9 A It's what it appears to say, yes, sir.
- 10 Q Did you take the steps necessary to create this LLC?
- 11 A I didn't create this LLC, sir.
- 12 Q Okay. Can you tell me who did?
- 13 A I don't know, sir.
- 14 Q So, you don't know anything about this at all?
- 15 A I know the name of the practice as per HMA is
- 16 Hartsville ENT. I can't tell you who created it, who
- 17 filed the forms; I can't tell you that. I didn't
- 18 create it.
- 19 Q Okay. How much are you currently -- how much are you
- 20 currently earning from Hartsville HMA?
- 21 A I don't know the number, sir.
- 22 Q Okay. How much did you make in 2011?
- 23 A I really don't know the numbers. I made a base of --
- 24 I don't know. I don't -- I don't know what the number
- 25 was.

- 1 Q Can you ball park it for 2012?
- 2 A No, I can't. I don't want to say something wrong
3 because I may be way off.
- 4 Q Okay. I will help you and if you can't do, you just
5 tell me you can't do it; okay? Is it less -- more
6 than \$100,000.00?
- 7 A Yes, sir.
- 8 Q Okay. Is it more than \$200,000.00?
- 9 A Yes, sir.
- 10 Q Is it more than \$300,000.00?
- 11 A Yes, sir.
- 12 Q Okay. Is it more than \$400,000.00?
- 13 A Well, my base is \$400,000.00.
- 14 Q Okay. And then ---
- 15 A And I made bonuses on top of the base.
- 16 Q Do you know how much the bonuses were?
- 17 A No, I don't, sir. That's the problem
- 18 Q Do you know if the bonuses were more than \$25,000.00?
- 19 A I don't know. I'd have to look.
- 20 Q Okay. Let me show you what's been marked as
21 Defendant's Exhibit 61. It looks like it was data
22 provided from you to Hartsville HMA when you went to
23 work for them Are these accounts you listed out
24 still currently accounts?
- 25 A I actually don't know what this is, sir.

1 Q Okay. Well, let's just go through them one by one.
2 Do you have a Bank of America account? Credit card?
3 A I think so. Yes.
4 Q If you don't know, you don't know.
5 A I don't know.
6 Q Okay.
7 A I think -- I think I may. I'm not sure which one that
8 is.
9 Q Okay. Do you know what your limits are on those
10 accounts?
11 A No, sir.
12 Q Do you have a bank account at First Federal CHAS?
13 A I don't know, sir.
14 Q What do you think your net worth is at this time?
15 A I have no idea, sir.
16 Q Do you own a home in Hartsville?
17 A I do not, sir.
18 Q Okay. Does your wife own a home in Hartsville?
19 A No, sir.
20 Q Okay. Do you live in a home in Hartsville?
21 A I do, sir.
22 Q Who owns that home?
23 A Tom Fink.
24 Q Okay. Who is Tom Fink?
25 A The person that owns the home in Hartsville that we

- 1 rent from
- 2 Q You -- you rent from Mr. Fink?
- 3 A Yes, sir.
- 4 Q Okay. Do you own a home anywhere else?
- 5 A Yes, we do.
- 6 Q Where is that?
- 7 A Daniel Island.
- 8 Q Okay. Is that home for sale or do you still live in
- 9 it?
- 10 A It's for sale, sir.
- 11 Q Okay. Do you own any other real property? And I'm
- 12 sorry, by real property, I mean real estate or homes.
- 13 A I also own a rental property on Daniel Island.
- 14 Q Okay. Is that one for sale or ---
- 15 A Actually, both properties are rental properties on
- 16 Daniel Island.
- 17 Q Okay. Are they both for sale or are they not for
- 18 sale?
- 19 A Only one is for sale.
- 20 Q Okay. Hand that over to her, please. I want you to
- 21 look at what's been marked as Defendant's Exhibit Two,
- 22 excuse me, 62.
- 23 A Can I ask you a question?
- 24 Q Sure.
- 25 A What was 61?

- 1 Q It was something provided to us by HMA. That's why I
2 was asking you what it was.
- 3 A I have no idea.
- 4 Q Okay. Let's look at 62. Can you tell me what this
5 is?
- 6 A Some writing on a paper.
- 7 Q Yeah, I figured that. Is that your signature on the
8 bottom?
- 9 A It appears to be so, sir.
- 10 Q Okay. So, that's why I was asking you what it was.
- 11 A I don't know what it was in reference to; that's why
12 I said it's just writing on a paper. I don't know
13 what it's in reference to.
- 14 Q So, can you read it and then tell me what it is?
- 15 A It says, "I left my previous practice (SCENT) on
16 5/9/2010 and cancelled my occurrence policy in July of
17 2010. While I sought a new position, I delayed
18 renewing my policy. I have not been in active
19 practice and have taken a leave of absence from all
20 hospitals where I am credentialed."
- 21 Q And then you signed it?
- 22 A Yes, sir.
- 23 Q Do you know what the purpose of this was, why you
24 wrote this letter?
- 25 A I -- I don't know, sir.

1 Q You mentioned earlier that you had been terminated as
2 SCENT's Compliance Officer at some point?

3 A. Yes, sir.

4 Q Was that after you left your employment with SCENT?

5 A. No, sir.

6 Q You're saying it was before?

7 A. Yes, sir.

8 Q Okay. You mentioned that there was a complaint that
9 -- that somebody sent you?

10 A. (No verbal response).

11 Q Who was -- who was that?

12 A. I think the name was Kristin something. She was a
13 audio -- audiology -- she's in the Audiology
14 Department.

15 Q Okay. I'm going to show you -- you can put that to
16 the side -- what's been marked as Defendant's Exhibit
17 63.

18 MR. ELLISON: What is this? Defense
19 63?

20 MR. SHEHEEN: 63.

21 Q This is an e-mail that from Lance Jones to Cherry,
22 Michael, and then it includes the chain from Lance
23 Jones and a copy to you. And I want you to look at --
24 towards the bottom. It says, "Also, Orville, please
25 confirm that you would like to purchase the ENT chair

1 that we already have on site. Michael may be able to
2 factor this into the monthly payment amount we pay you
3 discounted for the purchase of the chair." Do you see
4 that?

5 A. Yes, sir.

6 Q Okay. Is it fair to say that HMA was helping you
7 arrange the purchasing of this equipment?

8 A. No, sir.

9 Q It's not. Okay. Well, read that paragraph right
10 above it. Tell me what they're talking about.

11 A. "Michael, please find attached two e-mails from
12 Orville -- from Dr. Dyce re office equipment. Note
13 that he has prioritized what equipment he needs to get
14 going and is underway with securing that himself. The
15 quotes for equipment are attached in the second e-mail
16 for fair market value purposes. Please commence the
17 lease equipment contract b/n Dyce Medical" -- oh,
18 "between Dyce Medical Enterprises, LLC and the
19 practice. Also, recognize other items will no doubt
20 be added to this agreement as Dr. Dyce's practice
21 builds so we will need to plan to amend as the items
22 are acquired. Orville, please confirm DME, LLC is the
23 correct entity you are using to acquire all of your
24 equipment as the invoices/quotes will need to be to
25 that entity. I am also securing for you materials so

1 you can access a company which offers physicians
2 access to the buying groups shared by many others. I
3 will have this today and you can use it for some
4 competitive shopping."

5 Q Okay. So, when they said, "I'm securing for you
6 materials so you can access a company which offers
7 physicians access to the buying groups shared by many
8 others," were they helping you get a better price for
9 equipment? What were they doing?

10 A I'm actually not sure, sir.

11 Q Okay. Are you paid above fair market value in this
12 lease from HMA?

13 A I don't think so.

14 Q I want you to look at Exhibit 64. And skip to the
15 bottom. It says -- it's from you to Lance Jones.
16 "Lance, here is a list of equipment I am purchasing
17 for lease. Smaller items are not included." And then
18 there's another sentence. Then it says, "Invoices and
19 quotes are included in the subsequent e-mail. If HMA
20 has less expensive vendors or better deals, I would
21 entertain that information." Do you see that?

22 A Yes, sir.

23 Q Okay. Were you -- was HMA helping you find vendors or
24 better deals?

25 A No, sir.

- 1 Q You were asking them to do it; right?
- 2 A Yes, I was asking them to see if they could.
- 3 Q And isn't that what they then attached in another e-
- 4 mail that ---
- 5 A That they were going to do it, yes.
- 6 Q Okay.
- 7 A Or they were going to try to do it. I don't think
- 8 they ever did.
- 9 Q Are you sure that's not what was attached in the
- 10 previous e-mail?
- 11 A I don't know what was attached in the previous e-mail.
- 12 I just know where I bought the equipment from and I
- 13 know who researched it and I know who purchased it.
- 14 Q Okay. I show you what's been marked Defendant's
- 15 Exhibit 67. Can you tell me what that is?
- 16 A It looks like an Encounter Form
- 17 Q Okay. It's the sheet that you use to do coding; is
- 18 that right?
- 19 A It's a sheet that we use to describe the visit.
- 20 Q Okay. And then, where do these sheets go after you do
- 21 that?
- 22 A To HMA.
- 23 Q I mean, do they go to a particular person, entity,
- 24 nurse, billing coordinator? Do you know where they
- 25 go?

- 1 A. I don't know. The patient hands them back in up
2 front.
- 3 Q Okay. Did you have a similar sheet at SCENT when you
4 worked ---
- 5 A. We used an EMR system at SCENT.
- 6 Q Okay. So, you entered it into a computer?
- 7 A. I did not enter anything into the computer.
- 8 Q Okay. So, what did you provide?
- 9 A. I provided either a verbal or written description of
10 what I did, and it was entered -- entered into the
11 computer.
- 12 Q Do you maintain the coding and billing information
13 that you are associated with at HMA now? Do you
14 maintain that information?
- 15 A. I'm not sure what you mean by "maintain it".
- 16 Q Do you have it in your control?
- 17 A. I have -- the part of what I have in my control is my
18 description of what services I provided that day.
- 19 Q And what is that on? Is it on a piece of paper; is it
20 in the computer? Is it on that?
- 21 A. Yes. And this gets handed in up front.
- 22 Q Right. And you maintain copies of those?
- 23 A. No, I don't.
- 24 Q That's what I meant. Okay. I show you what has been
25 marked Exhibit 68. I won't ask you a lot about this.

- 1 I just want to show it to you. Okay?
- 2 A. Okay.
- 3 Q Does this look -- is this a report that you signed
- 4 relating to a patient -- does it appear to be?
- 5 A. That's what it appears to be, sir.
- 6 Q Okay. And does it appear that you would -- this
- 7 patient would be an HMA patient, right, while you were
- 8 working at HMA? November 27th, 2011?
- 9 A. I'm not sure what you're asking me, sir.
- 10 Q Okay. Look at the bottom of it right there.
- 11 A. Yes.
- 12 Q What is the date on it?
- 13 A. November 27th, 2011.
- 14 Q Okay. And this is the type of form that you use when
- 15 you see a patient?
- 16 A. No, it's not, sir.
- 17 Q Tell me what it is.
- 18 A. This is an interpretation of a patient that was
- 19 studied at the HMA Sleep Lab, sir.
- 20 Q Okay. Would you -- do you do that at HMA?
- 21 A. Do what?
- 22 Q Do you use this form?
- 23 A. It's a standard template by Sleep Elite that I can
- 24 plug things into.
- 25 Q Who is Sleep Elite?

- 1 A. They are the folks that manage the Sleep Lab at HMA.
- 2 Q Okay. Do you know how they came up with this form?
- 3 A. No, I never asked them sir.
- 4 Q Did you help them come up with this form?
- 5 A. I don't know. I may have. I didn't really ask them
- 6 Q Okay. Would it surprise you that this form uses the
- 7 exact same wording that the SCENT's form does that Dr.
- 8 Puchalski wrote?
- 9 A. Okay.
- 10 Q Would that surprise you?
- 11 A. I -- it -- I wouldn't think one way or another.
- 12 Q Did you take Dr. Puchalski's form and use it at your
- 13 current employment?
- 14 A. I never had access to Dr. Puchalski's form
- 15 Q You didn't use these forms when you were at SCENT?
- 16 A. I didn't read sleep studies when I was at SCENT; so,
- 17 no.
- 18 Q Did you ever have them in the course of your work with
- 19 patients that had had sleep studies? Did you have
- 20 access to these?
- 21 A. I mean, I had access to patient records and there were
- 22 sleep studies on them
- 23 Q That would include these types of forms?
- 24 A. Yes.
- 25 Q Okay. Are you sure you didn't take a form like this

1 and give it to the folks at your new employment?

2 A. At Sleep Aid?

3 Q Yes, sir.

4 A. At HMA?

5 Q Yes.

6 A. No, I don't think so.

7 Q Could you have?

8 A. I could have, but I don't think so. I'm not sure,

9 though.

10 Q If you did, wouldn't you agree with me that would be

11 in breach of your obligations with SCENT?

12 A. No.

13 Q Do you think it would be okay for you to do that?

14 A. No, I would -- I don't agree with you and I -- I don't

15 know -- with these forms, I'd have to see. I don't

16 know. I'd have to review the Contract and what the

17 forms say. So, I don't remember what these are.

18 Q I show you what's been marked as Exhibit 70. These

19 are a copy of some of your tax information from 2008

20 that we been provided because I think we have all

21 talked about it before. But have you -- this -- would

22 you agree with me this form says whatever it says;

23 does it seem to be accurate to the best of your

24 recollection?

25 A. I'd have to review it, but I'll take your word that

- 1 it's accurate.
- 2 Q Okay. My real question is, have you changed any --
- 3 have you gone back to change anything on the 2008 form
- 4 that you're aware of?
- 5 A. I don't think so.
- 6 Q Okay. How about 2007?
- 7 A. I'm sorry?
- 8 Q Okay. On your 2007 Tax Return, do you know if you've
- 9 gone back and changed anything?
- 10 A. I don't think so.
- 11 Q Okay. And in 2007, you filed as an employee of SCENT,
- 12 not an owner; right?
- 13 A. I'd have to look back, but probably.
- 14 Q Okay. I show you this document that was provided by
- 15 HMA, 71. Do you know what this is?
- 16 A. It looks like a portion of my initial offer from HMA.
- 17 Q Okay. And there's some things that say "Redacted."
- 18 It looks like HMA redacted it. See that?
- 19 A. Okay.
- 20 Q Do you see that?
- 21 A. Yeah, I see the words "Redacted".
- 22 Q Any idea what was there?
- 23 A. I don't know, sir.
- 24 Q Okay. Do you have a copy of this in your possession?
- 25 A. Right now?

- 1 Q I mean, I know you've got that one in your hand.
- 2 A I don't know. I'd have to look.
- 3 Q Okay. Were you given a copy of this whenever you were
4 negotiating with HMA?
- 5 A Again, I'd have to look at what I was given.
- 6 Q So, let me ask a different way. Do you recall if you
7 have a copy of this?
- 8 A I don't know. I'd have to check and see what the
9 Contract actually says.
- 10 Q Okay. According to the records of SCENT, there was a
11 dramatic decline in patients seen in the
12 Hartsville/Cheraw offices from the time you began
13 practicing in for -- HMA; were you aware of that?
- 14 A I was aware that there was a dramatic decline in the
15 patients seen at the Hartsville office after I left.
- 16 Q Do you believe that that started after you left or
17 when you began to practice in competition with SCENT?
- 18 A Probably after Bob fired me.
- 19 Q So, you're saying that you think, to the best of your
20 knowledge, it did not increase after you began to
21 practice at a different ---
- 22 A I was not privy to SCENT's records to know whether it
23 increased or decreased; so, I don't know what SCENT
24 did, but after I left, I know there was a decline in
25 the number of patients seen.

1 Q You -- you have -- is it fair to say hundreds of
2 former patients, SCENT patients, who now you are
3 seeing?

4 A I don't know what the number is.

5 Q Okay. Do you doubt that?

6 A I don't know what the number is.

7 Q The money you -- the money you earned from HMA, is
8 that money that's generated by your seeing patients as
9 an ENT?

10 A Some of it, yes.

11 Q Okay. You're generating revenue that -- that goes to
12 HMA; is that right?

13 A Yes, sir.

14 Q And then HMA pays you a salary plus a bonus; is that
15 what you testified to?

16 A Yes, sir.

17 Q Okay. If you weren't seeing any patients, do you
18 think HMA would keep you around?

19 A You'd have to ask HMA.

20 Q Okay. Do you think they might?

21 A I don't know what their big term plan is.

22 Q Okay.

23 A Long-term plan.

24 Q All right. I want to show what we marked as
25 Defendant's Exhibit 75, I believe. You and I looked

1 at this briefly one time before. It's a chart showing
2 an increase in text messages from you to Dr.
3 Gunnlaugsson and increasing calls from you to Dr.
4 Gunnlaugsson on your SCENT cell phones. Do you recall
5 us discussing that at your last deposition briefly?

6 A. I recall us mentioning it.

7 Q Okay. And it -- would you agree with me that it
8 spiked dramatically in December and January of 2009
9 and '10?

10 A. I agree that you produced a document that I haven't
11 personally verified that seems to suggest that there
12 is increased frequency, but I don't know how true this
13 document is and I've never verified it myself.

14 Q Okay.

15 A. So ---

16 Q You think that -- do you not recall that you had a
17 dramatic increase in your phone calls and text
18 messages to Dr. Gunnlaugsson at that time?

19 A. I remember I also had a dramatic increases in calls to
20 Dr. Puchalski at that time. I had a dramatic increase
21 in calls to Dr. -- to Bruce Armon at that time; so, I
22 don't know that any one is more dramatic than the
23 other.

24 Q Were you talking about the same subject matter with
25 all of them Dr. Gunnlaugsson, Dr. Dyce, and Dr. --

1 excuse me, Dr. Gunnlaugsson, Bruce Armon and Dr.
2 Puchalski?

3 A. I was talking -- well, I won't tell you what I was
4 talking to Bruce about. I assume that's
5 attorney/client privilege.

6 Q You don't need to tell me that.

7 A. Dr. Puchalski, we were talking a lot about the
8 Contract and what he was going to do if I didn't sign
9 that Contract. With Gunnlaug -- Gunnlaugsson, there
10 were a lot of things we were talking about. I don't
11 remember all of them

12 Q Were some of those the Contract and what Dr. Puchalski
13 and you were talking about?

14 A. No. No, we didn't talk about it. We didn't need to
15 talk about it. He was more worried about becoming a
16 partner, not more worried, but mostly, he was actually
17 more excited about becoming a partner. We were
18 becoming better friends because he was around; he was
19 actually working. Puchalski was on vacation a lot or
20 out a lot. He helped me out on a couple tough cases.
21 We were studying for the Sleep Boards. We were doing
22 a lot of things together at that time.

23 Q Is it your testimony under oath that, during this
24 spike in conversations, you were not talking about
25 your contract negotiations with Dr. Puchalski when you

1 talked to Dr. Gunnlaugsson?

2 A. No, that's not my testimony.

3 Q What is your testimony?

4 A. My testimony is, we didn't talk about anything of
5 substance with regards to the Contract. He knew we
6 were involved in a Contract because Dr. Puchalski
7 actually presented it to him and he -- and when he
8 realized it wasn't well received, withdrew it, or
9 presented some Contract to him -- I don't remember
10 when -- and then tried to browbeat me into signing the
11 Contract. So, that between Dr. Gunnlaugsson -- I
12 didn't need to go -- and Dr. Puchalski started making
13 overtures to Dr. Gunnlaugsson about -- well, we'll
14 take care of your family if you leave and the like.
15 And Dr. Gunnlaugsson wanted to know what those things
16 meant, and he was talking to Dr. Puchalski about
17 those. So, I didn't need to talk to Dr. Gunnlaugsson
18 about the Contract. I think even Dr. Puchalski told
19 Dr. Gunnlaugsson that he had already finished paying
20 in; it was purely some contractual issues that needed
21 to be worked out. That was Dr. Puchalski telling him
22 that, not me.

23 Q Is that something you're testifying that Dr. Puchalski
24 told you?

25 A. I'm telling you what was.

- 1 Q Okay. But somebody had to tell you that, right, or
2 else you wouldn't ---
- 3 A Tell me what?
- 4 Q What you just said Dr. Puchalski said.
- 5 A I was there for the conversation.
- 6 Q Okay. And you were tape recording your conversations
7 with Dr. Puchalski?
- 8 A Some of them
- 9 Q Okay. It seems like -- well, did you tape record that
10 one?
- 11 A I don't know. I haven't gone back and listened to the
12 tapes.
- 13 Q Okay. Let me show you what's been marked as
14 Defendant's Exhibit 80. Just read or take a quick
15 look at this. See if that's -- do you recognize this?
- 16 A Vaguely.
- 17 Q Do you remember getting an offer from Dr. Puchalski
18 and SCENT after you left that would have brought you
19 back in as an at-will employer or employee with
20 particular terms to it?
- 21 A I vaguely recollect something to this.
- 22 Q Okay. Let me show you what has been marked
23 Defendant's Exhibit 81 which is the SCENT Land
24 Holdings Operating Agreement. Are you familiar with
25 that document?

- 1 A. I know it's out there.
- 2 Q Okay. Are you aware that SCENT Land Holdings was
3 formed with the Secretary of State in 2008?
- 4 A. I'm sorry. What is your question?
- 5 Q Are you aware that SCENT Land Holdings was formed in
6 2008?
- 7 A. I'm not sure what date it was -- what year it was
8 formed.
- 9 Q Did you communicate with your wife, Jamie, about the
10 buildings and -- and her -- and when she needed to
11 come and sign for any documents for them for the
12 Hartsville building or things that related to the
13 buildings?
- 14 A. I communicated some with her, yes.
- 15 Q Okay. She wasn't talking to Dr. Puchalski directly;
16 right? She would talk to you about what was going on
17 with that land?
- 18 A. I actually wasn't a member of SCENT Land, but we
19 talked some about it.
- 20 Q Okay.
- 21 A. But I didn't know all those details about SCENT Land
22 myself because Dr. Puchalski was the one who was
23 meeting with the attorneys and the building folks and
24 everything else; so, ---
- 25 Q All right. Look at page 328. It says P328 at the

1 bottom or Page 12 of the Agreement.

2 MR. ELLISON: What page?

3 MR. SHEHEEN: 12 and 13.

4 Q Why don't you look at 5.5(B). It's on page 13. Are
5 you there, Page 13?

6 A. Yes, sir.

7 Q Okay. On B and you can read along with me. "For a
8 member dissociating from the Company prior to the 5th
9 anniversary of the member obtaining their Membership
10 shared of SCENT Land Holdings and the seven and a half
11 year anniversary of obtaining shareholder status in
12 SCENT, the value of the Member's interest shall be the
13 Member's ownership percentage multiplied by the
14 difference between the cost of land acquisition and
15 the construction of the improvements/buildings on the
16 property, as computed by the Founding Member." Do you
17 see that?

18 A. Yes, sir.

19 Q Do you understand what that means?

20 A. Not fully, but -- not fully.

21 Q Okay. Do you think it means that the way -- well,
22 let's take it this way --- do you agree with me that
23 Jamie had not been a member of SCENT Land for seven or
24 five years at the time of the disassociation?

25 A. No, I don't agree with that?

- 1 Q You don't? How long do you think she had been a
2 member of SCENT Land?
- 3 A. From its inception.
- 4 Q Okay. And when was it started?
- 5 A. When I started.
- 6 Q Okay. Let's look at ---
- 7 A. Let me think.
- 8 Q Okay.
- 9 A. 2007. 2007. So, sorry, yes.
- 10 Q Okay. So, she had been there -- she's been a member
11 less ---
- 12 A. From 2007, yes.
- 13 Q She's been a member less than five years; right?
- 14 A. Okay. Yes, sir.
- 15 Q Okay. So, do you agree that this provision of
16 calculating the disassociation value would be the
17 provision that is applicable?
- 18 A. No, sir.
- 19 Q Why not?
- 20 A. Because this Contract taken in its entirety has very
21 specific ways, as I understand it, and I haven't
22 looked at it lately -- about how to disassociate
23 someone, and it wasn't done in a manner that was
24 consistent with the Contract.
- 25 Q So, how much do you think Amy should be owed from

- 1 SCENT Land Holdings?
- 2 A. I'm going to defer that question to Richard Livingston
- 3 and the appraisers and everyone.
- 4 Q Do you, yourself, have an independent opinion separate
- 5 from them or are you going to defer ---
- 6 A. I do not.
- 7 Q Okay. Do you have an opinion as to whether this is
- 8 the appropriate provision to use in calculating that,
- 9 and when I say "this", I'm sorry, I mean 5.5(B)?
- 10 A. I don't have an opinion.
- 11 Q Okay. Would you look with me on page -- it's I think
- 12 Page 40 of the Agreement.
- 13 MR. ELLISON: Where are you now?
- 14 MR. SHEHEEN: Page 40 of the same
- 15 Agreement.
- 16 Q Are you there?
- 17 A. Yes, sir.
- 18 Q Okay. This is -- does it say "Exhibit A," and it's
- 19 attached to the Agreement; is that right?
- 20 A. Yes, sir.
- 21 Q Okay. And it -- it says "Contributions," and it has
- 22 the contributions from Amy Puchalski of the building
- 23 lot in Darlington and Richland County of \$110,000.00;
- 24 is that -- is that right?
- 25 A. It has Amy Puchalski, building lots in

- 1 Darlington/ Richland County, \$110,000.00.
- 2 Q Okay. Then it has Jamie Ourley, and it does not have
- 3 a contribution; is that right?
- 4 A It was no words, contribution next to her name.
- 5 Q And this was a part of the Agreement that was signed
- 6 to your knowledge; is that right?
- 7 A Yes, sir.
- 8 Q Okay. Do you know if Amy made any contributions to
- 9 SCENT Land? Any ---
- 10 A Who -- who? Amy?
- 11 Q Sorry. Jamie.
- 12 A I don't think the contribution section goes into which
- 13 member contributed. It was just there are three
- 14 columns. One was member, one was contributions; one
- 15 was fair market value.
- 16 Q Right. Are you saying there should be something next
- 17 to Amy's name under the contributions?
- 18 A Jamie?
- 19 Q Yes, sir. Did I say -- I'm sorry. I'm not being
- 20 clear. Jamie.
- 21 A Jamie. Jamie absolutely contributed.
- 22 Q Okay. What do you think should have been put right
- 23 there?
- 24 A Whatever is the equal share of Amy.
- 25 Q Do you know who paid for the building lots in

- 1 Darlington and Richland County?
- 2 A. Please rephrase the question.
- 3 Q Sure. Do you need to take a break, by the way?
- 4 A. No, I'm fine. I'm fine.
- 5 Q Do you know who paid for the building lots in
- 6 Darlington and Richland Counties?
- 7 A. SCENT and myself and Bob.
- 8 Q Okay. So, is it your testimony that you think that is
- 9 not correct where it says Amy Puchalski paid for them?
- 10 A. You have to go back to the way the buy-in was -- my
- 11 initial buy-in was formulated. But we paid in, and we
- 12 paid equal ownership; we paid for equal ownership in
- 13 SCENT Land properties. We actually started -- we
- 14 started paying for the Richland lot while I was
- 15 completing my buy-in, and Bob came and asked me for
- 16 permission to go ahead and buy the Richland lot
- 17 because he realized it was going to be with my money;
- 18 so, I'm not sure exactly what you're asking.
- 19 Q Okay. Are you aware that Amy Puchalski purchased the
- 20 Hartsville lot in 2005?
- 21 A. Initially, yes, sir.
- 22 Q Okay. Are you aware that she purchased the Park
- 23 Central lot in October of 2007?
- 24 A. I was told that, when I bought in, I was buying into
- 25 both of those lots. I don't know what name Dr.

- 1 Puchalski put on the documents, which is why we're
2 here today. A lot of the documents seem to contradict
3 and seem to not go along with what we said.
- 4 Q This document said what it said when Jamie signed it;
5 right?
- 6 A. It did.
- 7 Q Okay.
- 8 A. But it was prepared by Dr. Puchalski.
- 9 Q He managed the business of SCENT; is that right?
- 10 A. Exactly, and I trusted him
- 11 Q Okay. Let me show you what's been marked --
12 except I wrote on it; so I just don't want to junk the
13 record up with my comments. Just to keep the record
14 clean, I'm going to take Mr. Sheheen's comments off.
15 This is Exhibit 84, and it appears to be an e-mail
16 from Bob Puchalski to Tammy Szymanski copying to you.
17 Do you see that?
- 18 A. Yes, sir.
- 19 Q It says, "Tammy, just a quick review of the future
20 breakdown of the car expense." \$100,000 -- excuse me,
21 "\$1000/month covered by the practice. \$500 covered by
22 my personal account." Do you see that?
- 23 A. Yes, sir.
- 24 Q All right. So, you knew as of at least August 20,
25 2009, that Dr. Puchalski -- part of Dr. Puchalski's

1 car was an expense of the practice?

2 A. This e-mail was sent to me. I don't say I knew it.

3 Q Okay. Well, Dr. Puchalski ---

4 A. What we had agreed upon was, potentially, I would
5 consider having him get his car payment, but we needed
6 to settle the issues on the table with the Contract
7 first. Dr. Puchalski went ahead and sent out this e-
8 mail saying -- oh, he agreed by me cc'ing this, which
9 you will see a lot of the documents reflect.

10 Q Okay.

11 A. Do you have a response from me on this?

12 Q No, do you have one?

13 A. No, I don't, and that's my point.

14 Q So, you -- he cc'd you on this. Obviously, he wasn't
15 trying to hide it from you, right? Or else he
16 wouldn't have cc'd you; would you agree with that?

17 A. I sent an e-mail later where I said I do not approve
18 of the -- so, in as far as not trying to hide -- it's
19 interesting that you produce this e-mail but don't
20 produce the e-mail where I said -- I do not approve of
21 the -- the document for the car.

22 Q Could it be because ---

23 MR. ELLISON: Hold it. He's asking you
24 questions. Okay? Answer his questions.

25 This is not the time to get into an

1 argument.

2 DR. DYCE: Okay.

3 MR. ELLISON: I know it's ---

4 A. So, my point is, there's another e-mail to back this
5 up saying I do not agree with it which you
6 conveniently -- Dr. Puchalski and yourself do not
7 have.

8 Q Could that be because that e-mail doesn't exist?

9 A. I know you would want everyone to believe that.

10 Q I have what I have.

11 A. Okay.

12 Q Is it true what you said in your deposition, that you
13 ignore a lot of your e-mail?

14 A. I do.

15 Q Okay. But you specifically, unlike all the rest that
16 we talked about today, happen to remember this one and
17 the response?

18 A. I do. I remember the poignant ones is what I was
19 trying to tell you.

20 Q Okay. I'm going to show you what's marked as Exhibit
21 85. Can you tell me what this is?

22 A. This appears to be an Employment Agreement with HMA
23 and myself.

24 Q Okay. And it was signed or at least dated September
25 15th, 2010?

- 1 A. It appears so.
- 2 Q Turn with me -- I'm sorry -- to page -- what it says
3 at the bottom 45. Are you there?
- 4 A. Yes, sir.
- 5 Q Okay. On 6.7, do you see where it says "Covenant Not
6 to Compete"?
- 7 A. Yes, sir.
- 8 Q Okay. You signed this Agreement; is that right?
- 9 A. Yes, sir.
- 10 Q You've agreed to that Covenant not to compete?
- 11 A. Yes, sir.
- 12 Q Do you plan to abide by it?
- 13 A. I do.
- 14 Q Okay. And it says that you agree not to work --
15 excuse me, it says, "You won't practice your medical
16 specialty or otherwise compete with the Practice's
17 operations directly or indirectly within the radius of
18 thirty (30) miles of the Practice locations where you
19 work for a period of twelve (12) months after this
20 Agreement expires or is terminated." Do you see that?
- 21 A. Yes, sir.
- 22 Q Okay. Do you agree that that thirty (30) miles is a
23 reasonable geographic restriction that you agreed to?
- 24 A. I signed it. I don't know that I agree it's
25 reasonable.

- 1 Q Okay. On the very last page, Page 57, it says,
2 "Agreement to be Bound. By signing below, you and me
3 each acknowledge that we have read and we understand
4 and accept the terms of the Amendments and when this
5 Amendment is fully signed and approved, it will become
6 part of the Agreement." Do you see that?
- 7 A. Yes, sir.
- 8 Q Okay. And -- there's a similar one on Page 55. See
9 it?
- 10 A. Yes, sir.
- 11 Q And I want you to turn to Page 47.
- 12 A. Yes, sir.
- 13 Q It says, "By signing below, you and me each
14 acknowledge that we have read and we understand and
15 accept and agree to the terms of this Agreement." See
16 that?
- 17 A. Yes, sir.
- 18 Q And you signed it; right?
- 19 A. Yes, sir.
- 20 Q Okay. So, do you plan to abide by this thirty (30)
21 miles radius that's set forth in this Covenant not to
22 Compete?
- 23 A. As much as I am able to, yes, sir.
- 24 Q Okay. Did you negotiate with them about this
25 Agreement or did you just sign whatever they

1 presented?

2 A. I think we probably negotiated.

3 Q Let me show you what's been marked as Defendant's

4 Exhibit -- oh, I gave you the wrong one. I'm sorry.

5 87. This is I'll represent to you because you

6 probably haven't seen it, an e-mail from a guy who

7 helped set up Dr. Gunnlaugsson's practice. At the

8 top, it says, "Donny is out of town, but checks his e-

9 mails regularly. I've cc'd him and expect he will

10 respond to the questions on sole proprietorship soon.

11 If Dr. Dyce comes in early as a partner, I guess it

12 would make the answer easy." Do you see that?

13 A. Yes, sir.

14 Q All right. Did you have conversations with Dr.

15 Gunnlaugsson about going to work with him in Richland

16 County?

17 A. We talked about a lot of things, sir.

18 Q Okay. So, was one of those things whether or not you

19 might come work with him in Richland County?

20 A. Not -- not as far as joining -- when I wasn't working,

21 not as far as joining his practice, no, sir.

22 Q All right. Dr. Dyce, ---

23 A. We talked about a lot of long-term and short-term

24 goals. Long-term, we liked each other. We stood up

25 for each other. We work well with each other. Did we

1 plan on practicing together, opening a practice
2 together, no, if that's what you're asking. Would I
3 have done it at some point in the future if the
4 opportunity presents itself -- medicine is changing a
5 lot. I don't know what I'm going to do in the future.
6 I would keep all options on the table. At no point
7 did I ever say, -- Chad, let's go into business
8 together and let's screw Puchalski. I know that's
9 what you want me to say, but it did not happen.

10 Q No, no, that's not what I want you to say. I want you
11 to tell me the truth. What I want you to tell me is,
12 did you talk to Dr. Gunnlaugsson about potentially
13 coming to work for him in any manner whatsoever?

14 A. Not that I can recall, sir.

15 Q Did you have a SCENT credit card?

16 A. I did at one point.

17 Q Did you use it to charge for gas and meals and that
18 type of thing?

19 A. Gas mostly. Gas.

20 Q Did you use it sometimes to charge meals?

21 A. I don't recall using it for meals.

22 Q Okay. Did you sometimes -- did you sometimes go on --

23 I don't know what you call them in medicine -- but

24 CME's?

25 A. Ch. Yes.

1 Q All right. When you went on a CME, would you use the
2 SCENT credit card to pay for items that were necessary
3 for that trip?

4 A. Sometimes I may have.

5 Q Could that have included meals?

6 A. Possibly.

7 Q Would it potentially have included travel expenses?

8 A. Poss -- maybe.

9 Q Would it have included gas?

10 A. Maybe.

11 Q Okay. Do you see anything wrong with that?

12 A. Do I -- do I see anything wrong with using the credit
13 card for my CME courses?

14 Q Yes, or for gas or for any meals that you might have
15 ---

16 A. Oh, we had a gas limit that we all agreed to abide by.

17 Q Okay.

18 A. That was one thing. Two, we had actually defined what
19 we could and couldn't do on the gas -- on the credit
20 cards. So, the point is, if I went over or I did
21 something, I was called on it and given a receipt and
22 told that -- if I remember correctly -- that it would
23 be, you know, I had to pay that back or something; so,
24 I don't see anything wrong with paying for CMEs and
25 legitimate business expenses, no, sir.

1 MR. SHEHEEN: Why don't we break for
2 like five minutes. I'm going to try to
3 hurry this up.

4 VIDEOGRAPHER: Going off the record
5 at 4:20.

6 (OFF THE RECORD).

7 VIDEOGRAPHER: Going on the record at
8 4:35.

9 EXAMINATION BY MR. SHEHEEN CONTINUED:

10 Q Dr. Dyce, we took a short break. Thank you. We're
11 going to continue your deposition. Now, I want to ask
12 you about your influence on hiring employees at your
13 -- at HMA who work with you in your work there. Tell
14 me how that works. How do employees get hired to work
15 in the office you work in?

16 A. I don't know exactly. I'm not really that involved in
17 the process. If they come to me and ask me what I
18 think about someone I know, I'll try to give them an
19 honest answer, but I don't -- I don't control the
20 hiring and the firing.

21 Q If you tell them you don't want somebody to work in
22 your office, would they force that person to work in
23 your office?

24 A. I don't know. You'd have to ask them

25 Q What do you think?

- 1 A. Well, they have in the past.
- 2 Q Have they? Who is that they forced to work with you?
- 3 A. A -- I should probably not say.
- 4 Q How about give me their first name.
- 5 A. T.C.
- 6 Q That's the initials?
- 7 A. That's the initials.
- 8 Q Okay. So, they -- does that person still work in
- 9 there with you?
- 10 A. No, they don't.
- 11 Q Okay. Did you tell HMA you didn't want that person to
- 12 work for you?
- 13 A. Not initially. And they continued to work there, but
- 14 they requested a transfer, as far as I know.
- 15 Q Okay. Were you the Medical Director of the Kershaw
- 16 Health Speech and Swallowing Center?
- 17 A. I'd have to look back at what the Contract says, but
- 18 I was involved with the Speech and Swallowing. I
- 19 think I might have been, but I'm not sure.
- 20 Q You had a position with the Kershaw Health Speech and
- 21 Swallowing Center?
- 22 A. Yes, sir.
- 23 Q And you were paid for that?
- 24 A. I was paid some, yes, sir.
- 25 Q Okay. And those checks went straight to you or they

- 1 went to SCENT?
- 2 A. I don't remember.
- 3 Q Okay. Would it surprise you if I told you they went
- 4 straight to you?
- 5 A. Okay.
- 6 Q I'm asking you if you're surprised.
- 7 A. I really don't remember; so, nothing would surprise me
- 8 now that you tell me.
- 9 Q Okay. Do you know if you got permission from SCENT to
- 10 receive that pay?
- 11 A. I don't remember.
- 12 Q Tell me -- you talked about where you worked prior to
- 13 SCENT. You told me you were an ENT elsewhere?
- 14 A. Yes, sir.
- 15 Q Is that right?
- 16 A. Yes, sir.
- 17 Q And how much money were you making there?
- 18 A. I don't remember an exact number. Might have been
- 19 like around \$160,000.00 or something like that for the
- 20 first year that I was there.
- 21 Q Okay. And when you worked for SCENT in 2009, you made
- 22 over a million dollars; is that right?
- 23 A. I don't know what I took home, but on paper, I think
- 24 it was -- I think it was over a million dollars.
- 25 Q Okay. And during your time at SCENT, did SCENT pay

- 1 for you to be certified in any specialties such as
2 sleep or allergy or anything like that?
- 3 A. SCENT -- SCENT paid for my CME's which was a part of
4 our Agreement and for all educational courses, I
5 think.
- 6 Q And so, what did you become certified in as a result
7 of SCENT paying for these classes you mentioned?
- 8 A. Allergy and sleep medicine.
- 9 Q Okay. Did you do any cosmetic?
- 10 A. Not much, sir.
- 11 Q Were you certified in that?
- 12 A. I don't know what that means.
- 13 Q I don't know either; so, I'll just ask you, is there
14 a certification?
- 15 A. Well, it's one of the Boards of our specialty.
- 16 Q Okay.
- 17 A. So, reconstructive and cosmetics as far as I
18 understand; so, I did some.
- 19 Q Okay. Did you take any classes for that while you
20 were working for SCENT?
- 21 A. I don't quite recall.
- 22 Q Okay. Did Bob personally buy you gifts while you were
23 an employee of SCENT? Pool table, furniture, dinners,
24 that kind of thing?
- 25 A. He never bought me a pool table. With regards to the

1 gifts that he mentions, I'm not sure if he got those
2 out of the company ledgers or his pocket; so, I don't
3 know.

4 Q Okay. Did SCENT or Dr. Puchalski give you some living
5 room furniture, for example?

6 A I don't remember what we got, but I think we got a
7 wedding present back in 2005, maybe. I think.

8 Q Golf clubs?

9 A He had an old set of golf clubs that he wasn't using.

10 Q Did you ever give him any things in return? One way?

11 A I worked my behind off while he was vacation half the
12 time if that counts for anything.

13 Q Okay. I think he knows that you worked. You've
14 alleged in your Complaint that Amy Puchalski took
15 money inappropriately from SCENT; are you aware of
16 that?

17 A I haven't reviewed the Complaint recently.

18 Q Does that mean you're aware of it or you're not aware
19 of it?

20 A I think we alleged something about Amy and money, but
21 I don't remember exactly what it says. So, I haven't
22 reviewed the Complaint recently.

23 Q Do you believe that Amy Puchalski took money from
24 SCENT that she wasn't entitled to?

25 A I believe there's a possibility that Amy Puchalski

- 1 took money from SCENT she wasn't entitled to.
- 2 Q There's a possibility I might get hit by a bus when I
- 3 walk out ---
- 4 A. Absolutely.
- 5 Q -- today, but I hope not. What I'm asking is
- 6 different than a possibility. What I'm asking is, do
- 7 you believe -- do you, Orville Dyce, believe that Amy
- 8 Puchalski took money from SCENT that she is not
- 9 entitled to?
- 10 A. I believe she may have gotten things from SCENT she
- 11 wasn't entitled to.
- 12 Q Tell me what.
- 13 A. Well, I haven't gone over it in full with Richard
- 14 Livingston, but I know that she had things such as a
- 15 cell phone paid for, trips to the Bahamas, maybe trips
- 16 to Thailand, I can't remember all of them offhand, but
- 17 things like that.
- 18 Q Okay. And those would have been accompanying Dr.
- 19 Dyce; would you agree?
- 20 A. What?
- 21 Q Dr. Puchalski.
- 22 A. I -- I don't -- I don't know. I'd have to review that.
- 23 Q Let me rephrase -- let me rephrase that question since
- 24 I messed it up pretty badly. These things that you
- 25 just stated you believed Amy Puchalski may have

1 gotten, would those have been trips that she took with
2 her husband, Dr. Puchalski?

3 A. I -- I don't know. I don't know who she took them
4 with.

5 Q. Are you aware -- are you aware -- are you aware of any
6 other things you believe Amy Puchalski took that were
7 inappropriate?

8 A. I haven't had a chance to review everything with
9 Richard Livingston and my attorneys.

10 Q. Okay. I got that. What I'm asking you is, right now,
11 you, Orville Dyce, do you know of anything or not and
12 you have to talk to Richard Livingston?

13 A. Right now, I don't know what she took inappropriately.

14 Q. Okay. Are you aware that Dr. Gunnlaugsson in his
15 lawsuit dismissed prior to Trial his claims that Amy
16 Puchalski took maybe some money inappropriately? Are
17 you aware of that?

18 A. No, sir.

19 Q. Are you aware that SCENT and SCENT Land have a
20 combined debt of approximately five million dollars?

21 A. I don't know, sir.

22 Q. Okay. You understand that Dr. Puchalski and Dr.
23 Vidrine have to pay that money because it is a debt of
24 SCENT; are you aware of that?

25 A. I don't know, sir.

- 1 Q Okay. You want money from SCENT; right?
- 2 A No, I'm entitled to money from SCENT.
- 3 Q Do you want money from SCENT?
- 4 A I -- yes, I do.
- 5 Q Okay. Do you -- do you think it's fair for you to get
- 6 money from SCENT, but not have to pay back some of the
- 7 debt that was incurred when you were there?
- 8 A I think I'm entitled to my interest as a shareholder
- 9 from SCENT.
- 10 Q And I understand that. I'm just asking ---
- 11 A Among other things.
- 12 Q I'm asking you, in a sense of fairness, okay -- I'm
- 13 not saying that, legally, you think you have to pay;
- 14 I'm saying, as far as your sense of fairness, do you
- 15 think it's fair for Dr. Puchalski and Dr. Vidrine to
- 16 have five million dollars of debt, much of which was
- 17 incurred while you were there, and then they pay you
- 18 money? Is that fair?
- 19 A First off, I -- I don't even know what SCENT's debt
- 20 is. I didn't -- I wasn't privy -- I don't know what
- 21 he's calling debt. So, I don't -- I don't have an
- 22 opinion on that. I just know that I'm entitled to my
- 23 share of the -- my interest as a shareholder in Land
- 24 Holdings and whatever the accounting proves that we
- 25 are owed.

- 1 Q You mentioned that SCENT used EMR I think is what you
2 called it -- billing; is that right?
- 3 A For -- for practice manage -- for seeing patients,
4 yes, sir.
- 5 Q Okay. Did you have to sign onto that system yourself?
- 6 A I had a log-in, yes, I did, sir.
- 7 Q I'm saying, did you have a signature that was put into
8 that system?
- 9 A I don't -- I don't recall. Probably. I don't know.
- 10 Q Do you remember getting the passwords for it?
- 11 A Yeah, I did have a password.
- 12 Q Did you share that password with anybody?
- 13 A A number of people had the password, but also there
14 were some super users of which I think Dr. Puchalski
15 was one who could go in and change what they needed to
16 change. I don't know exactly what it meant, but I
17 wasn't a super user. But a number of people had my
18 password in the practice.
- 19 Q We talked a little bit about the text messages, and I
20 showed you that chart?
- 21 A Yes, sir.
- 22 Q Would it surprise you that some of those text messages
23 were during provider meetings when you all were
24 sitting around?
- 25 A I'm not -- nothing would surprise me plus or minus.

1 I don't know what -- what you're asking me actually.

2 Q I'm asking you, were you texting Gunnlaugsson during

3 provider meetings when you were all sitting around?

4 A I don't remember if I was or not, sir.

5 Q Are you aware that Dr. Gunnlaugsson has called where

6 he would call you and then he would call his lawyer

7 and then call you and you would call your lawyer; are

8 you aware of that?

9 A I haven't really looked into it, sir.

10 Q Okay. Did you ever talk to his lawyer, Chuck

11 Thompson?

12 A I have spoken with Chuck Thompson.

13 Q Okay. When was that?

14 A I don't recall the date I met Chuck.

15 Q Okay. Was it this year, 2011, 2012?

16 A It might have been like last year or even before. I

17 don't remember.

18 Q Okay. Did you all talk about this case?

19 A Whenever I met Chuck Thompson, I was in the presence

20 of my attorney.

21 Q Okay.

22 A So, the attorney/client privilege about what we spoke

23 about.

24 Q Mr. Thompson wasn't representing you, was he?

25 MR. ELLISON: Doesn't matter.

1 A. I was in the presence of my ---

2 MR. ELLISON: It doesn't -- hold on -- it
3 doesn't matter ---

4 MR. SHEHEEN: I'm not asking him what
5 they talked about.

6 MR. ELLISON: It just doesn't matter,
7 Vincent. It's the attorney-client ---

8 MR. SHEHEEN: That's fine. He can say
9 yes, we were.

10 Q And so, was Mr. Thompson representing you?

11 A. I don't -- I don't -- no, he wasn't, not to my
12 knowledge.

13 Q Okay.

14 MR. ELLISON: Vincent, ---

15 Q Okay. So, your testimony is, Mr. Thompson wasn't
16 representing you at that time?

17 A. I didn't hire Mr. Thompson to represent me, no, sir..

18 Q Okay.

19 MR. SHEHEEN: I'm sure the Court would
20 frown on ---

21 Q You said earlier that in your conversations with Dr.
22 Gunnlaugsson in December of '09 and January of 2010
23 that you didn't talk about shareholder negotiations
24 with Dr. Puchalski; is that right? Did I understand
25 that right?

- 1 A. Not that I can recall, sir.
- 2 Q Okay. Did you purposely not talk to him about it?
- 3 A. I didn't seek to actively not or to talk about things.
- 4 I think sometimes in a practice when you're
- 5 interacting with someone -- I have a tendency to keep
- 6 things private. If I had a dispute with you, I didn't
- 7 want someone to know it for whatever reason, and
- 8 that's just my general nature; so, I didn't talk to G
- 9 about P and P about G and anyone about T. And if
- 10 someone came to me in confidence, unless it was a
- 11 compliance issue and formally a complaint, I wasn't
- 12 going to sit there and essentially talk behind your
- 13 back. It wasn't something that I do normally.
- 14 Q Did you communicate with -- I know you told me you
- 15 communicated with Chuck Thompson last year. Did you
- 16 communicate with him prior to that?
- 17 A. I don't remember. I don't remember when I first met
- 18 Chuck Thompson.
- 19 Q Do you think it was while you were still working for
- 20 SCENT?
- 21 A. I doubt it, but I don't remember.
- 22 Q We talked about your being the Compliance Officer and
- 23 you leaving, and I'm still a little unsure as to when
- 24 that was. Were your duties as the Compliance Officer,
- 25 weren't they terminated after your employment was

- 1 terminated but before you actually left?
- 2 A. I -- I don't remember, sir.
- 3 Q. Would it make sense that you would no longer be the
- 4 Compliance Officer if you were not going to be working
- 5 there any more? Would that not make sense?
- 6 A. I've never much thought about it. A lot of things
- 7 don't make sense to me, sir.
- 8 Q. Okay. You mentioned that you're renting a home now in
- 9 Hartsville. Did you formerly own that home and sold
- 10 it or you never owned it?
- 11 A. We're just renting it, sir.
- 12 Q. Okay. Did you own it previously?
- 13 A. No, sir.
- 14 Q. Okay. Have you ever owned a home in Hartsville?
- 15 A. Yes, sir.
- 16 Q. Okay. You sold that home obviously?
- 17 A. Yes, sir.
- 18 Q. Okay. Do you -- do you understand that in this case,
- 19 SCENT is seeking in excess of a million dollars from
- 20 you in Counterclaim? Do you understand that?
- 21 A. Okay, sir.
- 22 Q. And you understand that they have a right to know
- 23 where your assets are. Did you put the funds from the
- 24 sale of that house in a bank account or did you spend
- 25 them?

1 A. I'm paying legal fees to try to get our money from
2 SCENT, sir.

3 Q So, you used that money for that purpose?

4 A. Yes, sir, as far as I know.

5 Q Do you have a bank account ---

6 MR. ELLISON: This is not appropriate
7 at this stage of the proceedings, Vincent.
8 It's not ---

9 MR. SHEHEEN: It's not ---

10 MR. ELLISON: Ask in a supplemental
11 nature. Yes, it is.

12 MR. SHEHEEN: I'm asking general
13 questions. I'm not asking ---

14 MR. ELLISON: Any questions about assets
15 related to supplemental proceedings are not
16 appropriate now. Unless your -- unless there are
17 allegations that he stole money from SCENT which
18 you haven't alleged.

19 MR. SHEHEEN: There's allegations that
20 he has been damaged.

21 MR. ELLISON: That's fine, but that doesn't
22 entitle you to know what the state of his assets
23 are.

24 MR. SHEHEEN: Well, let me rephrase the
25 question.

1 Q Are you claiming that you have been financially
2 damaged by any actions of SCENT?

3 A. I have been financially damaged by actions of SCENT.

4 Q Are you claiming that you have lost money at the
5 actions of SCENT, because of the actions of SCENT?

6 A. I have -- I'm claiming I haven't received monies I'm
7 entitled to by actions of SCENT.

8 Q Are you claiming that you've had any income diminish
9 because of actions of SCENT?

10 A. I have had income diminished because of SCENT. I
11 don't know what my -- I'd have to look back at the
12 wording of my -- the amended suit to see exactly which
13 ones of those I'm claiming.

14 Q Are you aware that in his deposition, Chad
15 Gunnlaugsson denied that he had ever received a copy
16 of any share -- strike that question. Did you share
17 any copies of draft Shareholder Agreements with Dr.
18 Gunnlaugsson prior to your termination of your
19 employment with SCENT?

20 A. No, sir.

21 Q So, if Dr. Gunnlaugsson is discussing what those
22 drafts may have contained, do you have any idea how he
23 would have known if you didn't tell him?

24 A. I do not, sir.

25 Q Are you aware that he has denied that Dr. Puchalski

- 1 shared any drafts with him?
- 2 A. I don't know what Dr. Gunnlaugsson has said, sir.
- 3 Q Did you take any copies of any insurance Contracts
- 4 from the premises of SCENT?
- 5 A. I did, sir.
- 6 Q Okay. Tell me what those were.
- 7 A. Insurance Contracts.
- 8 Q Okay. Do you know who they were with?
- 9 A. No, sir.
- 10 Q Okay. And why did you take them?
- 11 A. Because I wanted to review what an insurance Contract
- 12 looked like.
- 13 Q Was that so that you could set up a new practice, go
- 14 to work somewhere else?
- 15 A. No, I just wasn't aware of all the goings on in SCENT,
- 16 and I was trying to get information from SCENT, being
- 17 systematically denied at every turn. And so, I was
- 18 just reviewing the -- I was just reviewing some things
- 19 from SCENT.
- 20 Q You saw those e-mails that said you could come on the
- 21 premises and look at whatever it is you wanted; right?
- 22 A. Yes, sir.
- 23 Q Did you ask to look at those documents?
- 24 A. I don't remember what we asked for, sir.
- 25 Q Are you working at your current place of employment

- 1 with any former employees of SCENT?
- 2 A. There are two people currently working at my current
3 place of employment in my office who were -- who are
4 former employees of SCENT.
- 5 Q. Can you tell me their names?
- 6 A. Tammy Emerson and Estelle Lair.
- 7 Q. Do you believe that Dr. Vidrine was a shareholder of
8 SCENT prior to you leaving SCENT?
- 9 A. He may have been.
- 10 Q. Do you know?
- 11 A. I don't know for sure.
- 12 Q. Did you call any members of SCENT's staff after you
13 left to ask for copies of procedure forms or any
14 protocols or anything like that?
- 15 A. No, sir.
- 16 Q. Are you sure?
- 17 A. I'm sure, sir.
- 18 Q. Bear with me one minute. We looked at Exhibit 73
19 earlier. I'm going to hand it back to you. That was
20 a compilation of information you provided to -- it has
21 referring physicians listed there. Do you see those?
- 22 A. Yes, sir.
- 23 Q. Okay. Those -- were those -- do you recognize any of
24 the names?
- 25 A. Of the referring physicians?

- 1 Q Yes, sir.
- 2 A Yes, sir.
- 3 Q Okay. Were those referring physicians that referred
4 patients to you when you worked at SCENT?
- 5 A Some of them were.
- 6 Q And how did you get to know them? How were you
7 introduced to them?
- 8 A I don't know them personally, sir.
- 9 Q Okay. Have you ever met any of them?
- 10 A Yes, sir.
- 11 Q Okay. So, how did you meet them?
- 12 A Beth Morris is in my church. Dr. Harless, when I do
13 rounds, I see him Dr. Reynolds, a lot of these folks
14 are also hired by HMA.
- 15 Q Did you know that this -- they referred to you prior
16 to you going to HMA; right? I'm sorry. They referred
17 to you prior to you going to work for HMA; correct?
- 18 A Yes, sir.
- 19 Q Okay. And is that when you got to know them while
20 you were working for SCENT?
- 21 A I don't know them personally.
- 22 Q Okay. Maybe we're kind of using the word personally
23 differently. I'm not asking you if you're like
24 buddies, you know, go out to dinner with them I'm
25 asking you, like, know them as in you recognize who

- 1 they are; okay?
- 2 A. I've seen a few of their patients; so, they may know
- 3 me through correspondence.
- 4 Q Okay. Have you ever met any of them?
- 5 A. Most of them I've met.
- 6 Q Okay. That's what I'm asking. Did you meet them when
- 7 you worked for SCENT?
- 8 A. I met them when I moved to Hartsville.
- 9 Q Okay. And was that when you worked for SCENT?
- 10 A. Yes. I also had an agreement with the hospital at
- 11 that time.
- 12 Q Okay. And was Dr. Puchalski practicing in Hartsville
- 13 prior to you going there?
- 14 A. I believe he was, sir.
- 15 Q Okay. Were some of these doctors referring to him at
- 16 that point as the doctor who was over there for SCENT?
- 17 A. I assume. I don't know. I would have to go back and
- 18 look, sir.
- 19 Q Okay. And these doctors are now referring patients to
- 20 you; is that correct, at HMA?
- 21 A. Again, I can't comment on this because I don't know,
- 22 but yes, these -- these doctors' named do refer
- 23 patients to me currently.
- 24 Q Okay. So, do you know -- do you have any knowledge --
- 25 do you have any knowledge if they are referring

1 patients to SCENT at the current time?

2 A. I have no idea, sir.

3 Q In your previous deposition, you mentioned that at
4 some point after your termination with SCENT, that you
5 discovered that your gas credit card had been stopped.
6 And I'm not -- I don't know -- I'm not trying to hold
7 to what exactly I was asking you about that. Did you
8 learn at some point that your gas credit card had been
9 stopped?

10 A. I think so, sir.

11 Q Okay. And I'll just read you what you said. You
12 said, "At some point afterwards," we'll have to figure
13 out what afterwards is, "I found out I could no longer
14 buy gas on my company credit card." Do you recall
15 that?

16 A. I recall not being able to buy gas on my company
17 credit card.

18 Q Okay. And do you recall if that was after you no
19 longer worked there or before?

20 A. I was still working at the time, sir.

21 Q Did it surprise you that it was stopped?

22 A. At that point, nothing surprised me about Bob
23 Puchalski, sir.

24 Q I mean, do you think that it should have been
25 continued?

- 1 A. I was still performing all my duties at SCENT, which
2 required me to drive a lot. I drove more than anyone
3 else in the practice; so, I thought it would have been
4 fair.
- 5 Q Okay. Did you say anything to anybody about it?
- 6 A. I don't recall, sir. Actually, I do recall. I did.
7 I told Dr. Puchalski.
- 8 Q Do you recall being -- prior to you leaving, do you
9 recall, you know, in any years, '08, '09, '07, being
10 in meetings with Austin Sheheen where he would brief
11 you and the other people there on the financial status
12 of the company?
- 13 A. I recall there would be meetings with Austin Sheheen.
- 14 Q Do you recall him discussing financial matters?
- 15 A. I -- it -- when Austin was there, it usually involved
16 something financial.
- 17 Q And did you ever -- let's say to make it easier on you
18 -- prior to January of 2010, did you ever ask him any
19 questions?
- 20 A. I don't recall what I asked Austin, sir.
- 21 Q Do you -- you don't recall if you asked him any
22 questions?
- 23 A. I don't recall one way or another.
- 24 Q Okay. Do you recall if he ever failed to answer any
25 questions that you asked?

- 1 A. I recall requesting documents from him that I was
2 entitled to view as a shareholder and him telling me
3 or indicating to me somehow or the other that I had to
4 go through Bob and Theresa to do so.
- 5 Q Okay. Give me a minute to review my notes, Dr. Dyce.
6 (Counsel reviews notes). You mentioned an e-mail
7 response to the e-mail I showed you about the car. Do
8 you recall that?
- 9 A. Yes, sir.
- 10 Q Okay. Did you cc Tammy Szymanski with that e-mail
11 response that you said you made?
- 12 A. I don't remember, sir.
- 13 Q Do you feel like you were fairly compensated from
14 SCENT while you were there?
- 15 A. I'm not sure what that means, sir.
- 16 Q Okay. Did you think you deserved to make more than a
17 million dollars in 2009, or did you believe that was
18 a fair amount of compensation for the work you were
19 doing?
- 20 A. I never thought about it in those terms as far as
21 what's fair and what's not fair. I spoke about it in
22 terms of what we agreed upon, what were the terms of
23 the Contract. Sometimes, I agreed to things that are
24 unfair in the spirit of compromise; so, from a
25 fair/not fair standpoint, I don't know how to answer

1 that. That wasn't an issue.

2 Q Okay. Do you think you could have made over a million
3 dollars in any other practice that you had come into
4 connection with besides SCENT?

5 A. Do I think it's possible to make over a million
6 dollars as an ENT?

7 Q Do you think that you, Orville Dyce, had any
8 opportunities to make over a million dollars at any
9 other ENT practices that you had the opportunity to
10 work at?

11 A. Yes.

12 Q Okay. Where?

13 A. As far as where to work at, the practice that I left
14 in Virginia paid a low up-front salary because I was
15 supposed to take over a practice. The physician who
16 was there was already making very close to a million
17 dollars. He was planning on leaving and phasing out,
18 and he hadn't developed allergy or any other ancillary
19 services that I knew I could develop. So, yes, there
20 -- in interviewing, after I was wrongfully terminated
21 by Bob, I went to a number of practices, one, to
22 interview, two, to see how they did things, and a
23 number of those physicians were making over a million
24 dollars. So, the answer is yes, it's possible to make
25 over a million dollars. Secondly, by me, is it

1 possible for me to make over a million dollars, yes,
2 I think it would be possible.

3 Q Are you aware that a million dollars is way over the
4 average amount made by an ENT in either South Carolina
5 or in Virginia?

6 A Okay.

7 Q I'm asking if you're aware of that.

8 A I don't -- I don't know what the average ENT makes.
9 I know in interviewing -- I interviewed a number of
10 places, and most of the practices I interviewed had a
11 physician who was earning close to or a little over a
12 million dollars. So, I don't know where those numbers
13 come from. If you're -- I don't know what you're
14 quoting, but I know it's possible and I know it's not
15 unique to only South Carolina ENTs.

16 Q Did -- did you ever complain to Bob that you weren't
17 getting your fair share of call pay?

18 A I didn't know -- I didn't know that call pay wasn't
19 being disbursed equally among the -- among the
20 physicians who were supposed to be getting it. So,
21 no, I never complained about it. All I knew was what
22 Bob told me.

23 Q Are you aware that you and Bob, after 2008 at least,
24 were receiving the same amount of call pay
25 distribution?

1 A. I don't know what we were receiving.

2 Q Are you aware of that?

3 A. I don't believe that.

4 Q Okay. After you left SCENT's employment, did you look

5 at any other states to go work in?

6 A. Yes, sir.

7 Q Did you conduct any interviews?

8 A. Yes, sir.

9 Q What -- briefly, what states were those?

10 A. Georgia. Massachusetts. Missouri. Virginia.

11 Maryland.

12 Q Did you interview with practices?

13 A. Yes, sir.

14 Q Did you get any job offers at those practices?

15 A. Yes, sir.

16 Q Would you say that SCENT was financially successful

17 while you were there?

18 A. I was being told it was, sir.

19 Q Okay. Well, now, do you have an opinion as to whether

20 it was successful ---

21 A. Well, now, after talking and presented with

22 information saying they're five million dollars in

23 debt, and so, I'm not sure what to believe.

24 Q Did -- have you spoken to Dr. Gunnlaugsson in the last

25 year about SCENT?

- 1 A. Yes, sir.
- 2 Q Have you talked about your case with him at all?
- 3 A. No, not much.
- 4 Q When you say "not much;" does that mean a little bit?
- 5 A. Well -- again, I've been more focused on what I'm
6 doing from a physician standpoint, not on the case.
7 I understand I -- initially, when this first occurred,
8 I thought it would be resolved within a month or two
9 after being wrongfully terminated and having to leave.
10 It's dragged on a long time. I've had to regroup,
11 figure out what my priorities are in life and go from
12 there; so, that's been my focus over the past three
13 years.
- 14 Q So, you said you talked to Dr. Gunnlaugsson a little
15 bit about the case. Can you tell me what you said to
16 him?
- 17 MR. ELLISON: No, most of this is
18 a Joint Defense Agreement, and as it
19 relates to this case, then, no, he can't.
- 20 MR. SHEHEEN: Okay.
- 21 Q Have you talked to Dr. Gunnlaugsson?
- 22 MR. ELLISON: You can't do that.
- 23 Q Have you talked to Gunnlaugsson, Dr. Gunnlaugsson,
24 outside of the presence of your attorney?
- 25 A. Probably.

- 1 Q Okay. Tell me what you talked to him about.
- 2 MR. ELLISON: No. Not if it relates to
- 3 this subject to -- it was a Joint Defense
- 4 Agreement, and he is not ---
- 5 MR. SHEHEEN: Are you instructing him not to
- 6 answer the question?
- 7 MR. ELLISON: Yes.
- 8 MR. SHEHEEN: Are you going to file
- 9 a motion?
- 10 MR. ELLISON: File it.
- 11 MR. SHEHEEN: I think you file it. I don't
- 12 file it.
- 13 MR. ELLISON: No, you're going to file.
- 14 MR. SHEHEEN: But the Rule says if you're
- 15 instructing him not to answer the question, you
- 16 file the Motion ---
- 17 MR. ELLISON: Fine. We'll do it.
- 18 Q I'm just going through these questions to try to --
- 19 have you spoken to Dr. Battista at all about your
- 20 case?
- 21 A. No, sir.
- 22 Q Okay. Have you spoken to him at all in the last year?
- 23 A. Yes, sir.
- 24 Q Okay. What did you speak with him about?
- 25 A. Him covering for me.

- 1 Q Okay. Anything else besides medical related stuff?
- 2 A No, sir.
- 3 Q Does he cover for you in Hartsville?
- 4 A Yes, sir.
- 5 Q Okay. When is the last time he did that?
- 6 A I can't recall, sir.
- 7 Q This year? Last year?
- 8 A I really can't recall.
- 9 Q Tell me why you didn't -- you said you were
10 interviewed -- had offers from practices outside of
11 South Carolina. Tell me why you didn't accept those
12 offers.
- 13 A Well, we were exploring opportunities that serve our
14 family best as a whole. Not just from a financial
15 standpoint, but also from a livability standpoint and
16 professional standpoint. I sat; we talked about it
17 and the -- we decided that the best decision for us at
18 this time was to stay in Hartsville.
- 19 Q You mentioned that you provided all your tapes that we
20 discussed today some time after mediation. Is there
21 a reason why you didn't provide them prior to that?
- 22 A I -- I just always assumed they were my own personal
23 notes. I didn't -- I didn't think -- I don't know, I
24 don't even think they were requested in all honesty.
- 25 Q I think you mentioned two people went to work for you

1 -- excuse me, let me rephrase that question. Two
2 people went to work for HMA and work with you. Ms.
3 Estelle and Tammy Emerson; is that correct?
4 A. Estelle Lair and Tammy Emerson, yes, sir.
5 Q Did you ask HMA not to hire them?
6 A. As a general rule of thumb, I don't ask HMA to hire or
7 not to hire anyone.
8 Q So, that means no, you didn't?
9 A. I did not.
10 Q Okay. And you mentioned that you talked to Battista.
11 Has he said anything about Dr. Puchalski, good or bad?
12 A. Not that I can recall, sir.
13 Q Are you sure?
14 A. I don't recall him saying anything.
15 MR. SHEHEEN: All right. We're about
16 done. Let me take one minute and we'll
17 finish up. Okay?
18 VIDEOGRAPHER: Going off the record at
19 5:14.
20 (OFF THE RECORD)
21 VIDEOGRAPHER: Going on the record at
22 5:21.
23 EXAMINATION BY MR. SHEHEEN:
24 Q Dr. Dyce, thank you very much for your patience. I
25 only have just a couple more questions. Number one,

- 1 we discussed your Contract with HMA that contained a
2 Covenant not to Compete that had a thirty (30) mile
3 radius. Do you recall that?
- 4 A. Yes, sir.
- 5 Q. Okay. And I asked you if you thought that was fair
6 and I think you said -- I don't want to put words in
7 your mouth, but that you weren't sure you would say
8 that was fair, something like that? Do you recall
9 what you said?
- 10 A. I said I signed it.
- 11 Q. Okay.
- 12 A. I never said it was fair.
- 13 Q. All right. So, let's -- let's just have that out in
14 the clear. Do you think it's fair or not fair?
- 15 A. I signed it, and it's not something that I think is
16 fair.
- 17 Q. Okay. But you signed it, and you plan to live up to
18 it?
- 19 A. In the spirit of compromise, I signed it, and as far
20 as I can, I'll try to live up to it.
- 21 Q. Do you think that Contract is a binding obligation on
22 you?
- 23 A. I think it's a binding obligation on all parties
24 involved.
- 25 Q. Okay. You mentioned that there were a couple of

1 employees who formerly worked at SCENT that now work
2 at HMA. Have you had any contact with any other
3 employees who either now or formerly worked with
4 SCENT?

5 A. Well, yes.

6 Q Could you tell me their names?

7 A. Steph Tetterton and Angie Vincent.

8 Q Okay. And can you tell me what you might have
9 discussed with them or they told you?

10 A. Well, Steph would take care of our dogs because her
11 husband is a vet. And we would -- I would just call
12 in periodically just to see how she was doing. I
13 heard she had left SCENT; so, I thought it was okay to
14 talk to her.

15 Q Okay.

16 A. You can tell me if it's not. And then the other one
17 is Angie Vincent worked at HMA as well, but left.

18 Q Did you ever talk with Ms. Tetterton or Ms. Vincent --
19 is that it?

20 A. Yeah.

21 Q Did you ever talk to them about SCENT or Dr. Puchalski
22 after or during these conversations?

23 A. I try not to.

24 Q Okay. Do you, though?

25 A. I don't recall talking to them about that.

1 Q So, you don't recall if they said anything about Dr.
2 Puchalski or SCENT?

3 A. I don't recall.

4 Q Okay. Are you -- did Dr. Gunnlaugsson ever tell you
5 that he was communicating with someone who was working
6 with SCENT?

7 A. No, he never did, sir.

8 Q Do you have any knowledge as to whether he was
9 communicating with anyone ---

10 A. I don't, sir.

11 MR. ELLISON: Hold on, please. Vincent, I
12 don't recall this line of questions or any
13 conversations between Orville and Dr.
14 Gunnlaugsson as it relates to the claim
15 itself back when you -- do you understand what
16 I'm saying?

17 MR. SHEHEEN: Not really, but you're going to
18 file a Motion for a Protective Order for
19 whatever it is?

20 MR. ELLISON: Yeah, but I want to be sure
21 that to the extent you want to ask questions, I
22 mean, if you want to ask specific questions, then
23 give us specific questions. It is not a blanket
24 objection to any conversation that Dr. Dyce might
25 have had with Dr. Gunnlaugsson -- only as it

1 pertains to himself and ---

2 MR. SHEHEEN: Okay. I'm not sure I
3 understand what you are saying, but I have asked
4 questions and -- I have asked questions which he
5 has answered in that specific line of
6 questions.

7 MR. ELLISON: Right. And I recall that.

8 MR. SHEHEEN: Okay.

9 Q If -- Dr. Dyce, if we agreed to sell the SCENT
10 buildings and split the proceeds and the debt with you
11 and Jamie Curley, would you think that's fair?

12 A. I don't know. I'd have to review the numbers.

13 Q Okay.

14 A. Or I'd have to have some experts review the numbers.

15 MR. SHEHEEN: That's all the questions
16 I have. Thank you. I don't know, your
17 attorney might have ---

18 MR. ELLISON: Yeah, I have ---

19 EXAMINATION BY MR. ELLISON:

20 Q Dr. Dyce, you were shown Exhibit -- Defendant's
21 Exhibit 75 which talked about -- which was prepared by
22 the Defendants dealing with alleged volumes of text
23 messages and calls between you and Dr. Gunnlaugsson;
24 do you remember that?

25 A. I remember the Exhibit, yes, sir.

1 Q I don't want to dig it out from that stack of
2 exhibits. Well, I'll show you my copy. It purports
3 to show a spike in calls in December, 2009 and
4 January, 2010?

5 A. Yes, sir.

6 Q And Mr. Sheheen asked you some questions with regard
7 to malpractice coverage that was -- that SCENT was
8 looking into in February, 2010; do you remember that?

9 A. Yes, sir.

10 Q Do you recall what one -- whether malpractice was one
11 of the subjects of conversations that you were having
12 with Dr. Gunnlaugsson in December 2009 and January of
13 2010?

14 A. I don't know if we ever used the word "malpractice,"
15 but there was a patient care issue that we discussed
16 a lot at that time.

17 Q Can you describe that patient care issue?

18 A. There was a patient that had a fairly big head and
19 neck cancer surgery requiring removal of structures in
20 the head and neck, lymph node; it was a big surgery;
21 it was a guy who had been performed after radiation.
22 And Dr. Puchalski was covering during the holiday
23 weekend, and when I came back to round -- I think it's
24 the Wednesday after the or Thursday after the holiday
25 weekend -- or to go to the Operating Room, I kept

1 getting reports from -- I think it was the PA; I don't
2 remember who -- that he was doing great, he was doing
3 fine. So, I went to check on him because I'd operated
4 on him and it had been -- other people had been
5 rounding ---

6 Q You had operated on him?

7 A I had operated on him. And -- but Dr. Puchalski was
8 supposed to cover, and our agreement was unit patients
9 and folks that had bigger surgeries, obviously, it
10 would be preferable that the physicians see them, not
11 just the PA. When I went by, the -- the gentleman,
12 thinking the guy would be ready to go home, the
13 patient's entire neck was filled with pus, broken
14 down, and no one had checked on his wound apparently
15 when I asked them over the previous three to five
16 days. They'd just kind of come in and wave their hand
17 and -- I checked the chart and there was no note from
18 Dr. Puchalski that he had ever seen the -- he had seen
19 the patient in the ---

20 Q Who was supposed to have seen the patient?

21 A The physician.

22 Q And that physician was?

23 A The physician was Dr. Puchalski. We can have PA's see
24 the patients, but they tend to see more routine
25 things, not the bigger stuff, bigger -- bigger -- the

1 more complicated patients.

2 Q And what happened?

3 A. Dr. Gunnlaugsson volunteered to help me fix the wound
4 by a series of not one, but two pectoralis flaps. I
5 think the second one, he may have even done himself,
6 and we were in discussions back and forth about how to
7 repair it and what to do next and -- and so, we were
8 back and forth a lot managing that patient
9 complication after surgery.

10 Q Anything else about that particular patient that you
11 can recall or you might have discussed with Dr.
12 Gunnlaugsson in the time period ---

13 A. It was ---

14 Q -- of December -- during the time period December
15 2009/January 2010?

16 A. I remember we were -- I just remember we were both a
17 little bit shocked that he had never seen the patient.

18 MR. ELLISON: Nothing further.

19 VIDEOGRAPHER: Going off the record at
20 5:29.

21 MR. SHEHEEN: I had follow-up.

22 VIDEOGRAPHER: I apologize. Going on the
23 record at 5:29.

24 EXAMINATION BY MR. SHEHEEN:

25 Q Did you -- did you just describe this patient, did you

1 ever discuss that with Dr. Puchalski?

2 A. I don't quite recall. I think I let him know that the

3 gentleman's wound had broken down, but I don't

4 remember exactly what I -- what exactly I said.

5 Q Okay.

6 MR. SHEHEEN: Thank you. Nothing further.

7 Thank you.

8 VIDEOGRAPHER: Going off the record at

9 5:30.

10 (THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS

11 CONCLUDED AT 5:30 P.M.).

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Hartsville Referring Dr. Report	May 2008-2009				
		Number of Patients Referred			
Doctor	2008	2009			
Harless, Michael	7	4			
Morphis, Elizabeth	6	3			
Areephanthu, Abraham	5	1			
Long, William	4	2			
Surka, Aqil	4				
Davis, William	3	3			
Daniel, Roosevelt	3	2			
Ciobanu, Mariana	3	1			
Elder, Robert	2	3			
Cooper, Emanuiel	2	1			
Ovanni-Budhram, Joni	2	1			
Reynolds, Karen	2	1			
Curl, Anita	2				
Posang, Paveena	2				
Coward, Paul	1	6			
Ropp, John	1	4			
Chapman, Raymond	1	2			
Hanna, Brian	1	2			
Bell, Thomas	1	1			
Davis, Christopher	1	1			
Moyd, Ken	1	1			
Thielen, Thomas	1	1			
Wolfe, Dana	1	1			
Crickman, Bonnie	1				
Dameron, Jason	1				
Moyd, Pickens	1				
Quaye, Emmanuel	1				
Robinson, Leroy	1				
Soliman, Mohammed	1				
Bullard, Robert		3			
Christopher, Kaye		2			
Garcellano, Marian		2			
Hunt, Leon		2			
Li, Carl		2			
McLeod, John		2			

Morphis, James			2		
Reynolds, Susan			2		
Scheuer, Jack			2		
Siegmann, James			2		
Ambrose, Michael			1		
Bali, Arvin			1		
Biester, Christina			1		
Budhram, Solomon			1		
Danzey, Toya			1		
Edosomwan, Fidelis			1		
Evans, Joseph			1		
Evans, Kenneth			1		
Griffin, Sidney			1		
Kirby, Charlene			1		
McConnell, Amanda			1		
Moorehead, Robert			1		
Novinger, Travis			1		
Sawyer, Ondria			1		
Scharstein, Jeffrey			1		
Wallace, Joshua			1		
Total:		62	78		

Cheraw Referring Dr. Report		May 2008-2009			
		Number of Patients Referred			
Doctor		2008	2009		
Ciobanu, Mariana		5	11		
Davis, Christopher		3	2		
McLeod, John		3			
Condon, Frank		2			
Newsom, Joseph		2			
Li, Carl		1	3		
Soliman, Mohammed		1	3		
Huggins, Carisa		1	1		
Mann, Lawrence		1	1		
Schultz, Agnes		1	1		
Simpson, Gabe		1			
Acaylar, Francis		1			
Moyd, Ken		1			
Robins, Susan		1			
Hollis, Angela			2		
Novinger, Travis			2		
Bailey, Adam			1		
Budhram, Solomon			1		
Smith, Stephen			1		
Total		24	27		

PNE Referring Dr. Report	May 2008-2009			
	Number of Patients Referred			
Doctor	2008	2009		
High, Patrice	7	4		
Hamzy, Nada	7	2		
Dubose, Theodore	6	7		
Painter, William	6	4		
Marler, Eric	6	3		
Soroos, Jennifer	6	1		
Finch, Michael	5	5		
Russo, Tanya	5	5		
Jani, Rutkumar	5	3		
Patel, Jaiprakash	5	2		
Schaefer, Catherine	5	1		
Cabiness, Barry	4	4		
Nienhuis, Michael	4	3		
Bodison, Dan Jr.	4	2		
Alteri, James	4	1		
Daniels, Damon	3	6		
Baggett, Teresa	3	4		
Barker, Michael	3	2		
Hartvigsen, Robert	3	2		
Hooks, Stuart	3	2		
Stahl, Peter	3	2		
Boone, Tasha	3	1		
Dodds, Douglas	3	1		
Hite, L. Carey	3	1		
Shrouds, Richard	3	1		
Lopez, Carl	3			
Mubarak, Phillip	3			
Lawhead, Michael	3			
McCorquodale, Kristine	3			
Williams, Alana	3			
Serbin, Stephen	2	5		
Smith, David	2	4		
Brook, Sylvia	2	2		
Gamage, Anoma	2	2		
Mattocks, Karen	2	2		
Pridgen, Kaoru	2	2		
Bell, Gary	2	1		
Greenhouse, Deborah	2	1		
Kapp, Lloyd	2	1		
Fitzgibbon, Rodney	2			
Krueger, Heather	2			
Neilsen, Edward	2			
Young, Stewart	2			
Broadway, Anne	2			
Brown, Rachel	2			
Moore, Kay	2			

Nunnery, Michael	1	8		
Yuchongtian, Lyanna	1	3		
Amin, Bhavesh	1	2		
Plante, Paul	1	2		
Wideman, Vanessa	1	2		
Albert, Ruby	1	1		
Bartlett, Emilie	1	1		
Boyer, Richard	1	1		
Claytor, Susan	1	1		
Colby, Randell	1	1		
Dillard, Larry	1	1		
Ford, Jeffrey	1	1		
Gibbons, Thomas	1	1		
White, Becky	1	1		
Bonnett, Arthur	1			
Brown, David	1			
Carter, Charles	1			
Dixon, Woodward	1			
Fravel, William	1			
Griffen, Kristen	1			
Heichberger, Lisa	1			
Kayse, Mary	1			
Kudchadkar, Aril	1			
Massey, Jean	1			
McKee, David	1			
O'Leary, Melinda	1			
Parker, Reginald	1			
Patrick, Harmon	1			
Powell, Langston	1			
Shealy, Jerri	1			
Simons, Beverly	1			
Stout, Michael	1			
Willard, Grant	1			
Williams, Bruce	1			
Williams, Joseph	1			
Wilson, Lynn	1			
Balogun, Olajide	1			
Beaver, George	1			
Bowers, J. Ford	1			
Cavanagh, Joseph	1			
Coxe, Bobby	1			
Darby, Clarence	1			
Dewar, James	1			
Floyd, Willie	1			
Galan, Jorge	1			
Hall, Patrick	1			
Hall, Rachel	1			
Heebner, Carol	1			
Holmes, Louise	1			
Jahnke, John	1			

Korman, William		1		
Laws, Richard		1		
Martin, Frank		1		
McElmurray, Charles		1		
Mills, Melissa		1		
Montgomery, Stefan		1		
Moore, Donald		1		
Pinner, Carroll		1		
Reid, Tanya		1		
Sharma, Sunil		1		
Shoemaker, Daniel		1		
Shuler, Wesley		1		
Taylor, Julie		1		
Varughese, Beena		1		
Wenner, Allen		1		
Haile, Elizabeth			5	
Todd, Marc			5	
Brady, Anna			4	
Borucki, Robert			3	
Franco, Mark			3	
Millus, Donald			3	
Crowe, Tamaro			2	
Monteith, Ragin			2	
Solaja, Mojibola			2	
Taillon, Michael			2	
Ambroziak, Jeremy			1	
Ashley, Kim			1	
Atkinson, Katherine			1	
Bacon, Janice			1	
Bernardo, Michael			1	
Blanks, Troy			1	
Brearily, William			1	
Brown, Pamela			1	
Clark Brown, Annette			1	
Clyburn, Karen			1	
Comer, Carolyn			1	
Cope, Bruce			1	
Ditzler, Russell			1	
Douglas, Leonard			1	
Durant, Jr, James			1	
Evans, Joseph			1	
Gabriel, Joseph			1	
Gajewski, Stacy			1	
Garcia, Jorge			1	
Gould, John			1	
Grooms, Sarah			1	
Hamada, Allison			1	
Hawn, Jason			1	
Head, Sonya			1	
Henderson, Frampton			1	

Hess, Lori			1		
Honig, Philip			1		
Hossler, Janice			1		
Hutto, Eric			1		
Hynes, John			1		
Intintola, Pamela			1		
Izard, Stephen			1		
James, Asha			1		
Kinsey, Timothy			1		
Kumar, Puneet			1		
Labrador, Edgar			1		
Mareska, Michael			1		
Marion, Henry			1		
Matthew-Betts, Cynthia			1		
Meadows, Lora			1		
Menachery, Lissy			1		
Mestler, Lynne			1		
Miller, Catherine			1		
Mitchell, Carl			1		
Moore-Bowens, Stacie			1		
Morris, David			1		
Neal, Green			1		
Neubers, Ronnie			1		
Padgett, Ronald			1		
Parsons, Scott			1		
Peterson, Alan			1		
Phillips, James			1		
Pruitt, Luke			1		
Qadeer, Adnan			1		
Rafiq, Muhammed			1		
Reed, Michael			1		
Rickenmann, Laura			1		
Risinger, Patricia			1		
Rojas, Michelle			1		
Rowe, John			1		
Spero, Michele			1		
Sribnick, Martha			1		
Streeter, Mary			1		
Stuck, Deborah			1		
Thomas, Christie			1		
Valentin, Milagros			1		
Walsh, Eileen			1		
Washington, Gail			1		
Wehner, Joseph			1		
Williams, James			1		
Word, Bradley			1		
Total:		221	198		

WW Referring Dr. Report	May 2008-2009				
		Number of Patients Referred			
Doctor		2008	2009		
Carlton, Marguerite		10	11		
Joseph, Thomas		10	9		
McAlpine, James		9	4		
Belmar, Paula		6	6		
Munn, Susan		6	5		
Kalutz, Theodore		6	4		
Porter, Cathy		6	2		
Kearse, Carl		6	1		
Burton, Patricia		6			
Godfrey, Anthony		5	3		
Brooks, Alice		5	1		
Addis, Mary Lee		5			
Dubose, Theodore		5			
Taylor, Julie		5			
Sellers, Christine		4	2		
Blake, Anne		4			
Broadway, Anne		4			
Hegler, Jonathan		4			
Wilberding, Cynthia		4			
Balogun, Olajide		3	7		
Oliver, Richard		3	2		
Cunningham, Kievers		3	1		
Scheuer, Jack		3	1		
Quadir, Zafar		3			
Riley, Rebecca		3			
Kahler, Guy		2	5		
Holmstrom, Tallulah		2	4		
Ciobanu, Mariana		2			
Finch, Michael		2			
Pennebaker, Gordon		2			
Shaw, James		2			
Shehorn, Jill		2			
Fitzgibbon, Rodney		2			
Kang, Min		1	5		
Hamzy, Nada		1	4		
Smith, Roy		1	4		
Baxley, Elaine		1	2		
Nelson, Torell		1	2		
Alderson, Todd		1	1		

Brook, Sylvia		1	1		
Bullard, Robert		1	1		
Marion, Henry		1	1		
Christenberry, Paul		1			
Claytor, Susan		1			
Durant, James		1			
Ledlie, Lauren		1			
McCorkle, Francis		1			
Mitchiner, Mark		1			
Shrouds, Richard		1			
Summers, Andrew		1			
Biester, Christina		1			
Brant, Russell		1			
Buschor, Theresa		1			
Dubose, John		1			
Foster, Michael		1			
Gill, Edward		1			
Heebner, Carol		1			
Hess, Lori		1			
Hollis, Angela		1			
Lance, Billy		1			
Long, William		1			
McKay, Scott		1			
McLaughlin, Niall		1			
Ogburn, Aquilla		1			
Okeke, Alfred		1			
Patrick, Elizabeth		1			
Piasecki, Andrew		1			
Skinner, Ada		1			
Soliman, Mohammed		1			
Studnicka, Benedict		1			
Suits, Steven		1			
Weaver, Gary		1			
Bryant, Earl			6		
Timmons, James			4		
Barker, Michael			2		
Grooms, Sarah			2		
Johnson, Ronald			2		
Marler, Eric			2		
Painter, William			2		
Reynolds, Eva			2		
Robinson, William			2		
Serbin, Stephen			2		
Solaja, Mojibola			2		

Taylor, Lauren			2		
Zimmermann, Paul			2		
Ahsley, Kim			1		
Alteri, James			1		
Anderson, Katie			1		
Bartlett, Emilie			1		
Biggins, William			1		
Bonnett, Arthur			1		
Brady, Anna			1		
Callis, Robert			1		
Carson, Kenneth			1		
Cline, Brian			1		
Connell, Foy			1		
Desai, Nehal			1		
George, Leland			1		
Guyton, Richard			1		
Haile, Elizabeth			1		
Hawkey, Thomas			1		
Indra, Steven			1		
Jordan, Lee			1		
Kudchadkar, Shubha			1		
Lawhead, Michael			1		
Lucas, Jamee			1		
Mareska, Michael			1		
McFaddin, Ansel			1		
McLeod, Linda			1		
Miller, McKenzie			1		
Moore-Bowens, Stacie			1		
Norris, Tommy			1		
Nunnery, Michael			1		
Pate, John			1		
Patel, Marenda			1		
Powell, D Langston			1		
Pridgen, Kaoru			1		
Robinson, Leroy			1		
Rojas, Michelle			1		
Rowe, John			1		
Schaefer, Catherine			1		
Soroos, Jennifer			1		
Streeter, Mary			1		
Taylor, William			1		
Washington, Lorone			1		
Total:		183	161		

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1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF KERSHAW
4 DR. CHAD GUNNLAUGSSON,
Plaintiff,
5 vs. Case No.: 2010-CP-28-00475
SOUTH CAROLINA ENT, ALLERGY AND SLEEP
6 MEDICINE, P.A. AND DR. ROBERT PUCHALSKI,
Defendants.
7 SOUTH CAROLINA ENT, ALLERGY AND SLEEP
MEDICINE, P.A.,
8 Third-Party Plaintiff,
vs.
9 SOUTHEASTERN EAR NOSE THROAT ALLERGY
AND SLEEP DISORDERS INSTITUTE, LLC,
10 Third-Party Defendant.
11

12 T R I A L
13 SETTLEMENT AGREEMENT
14 BEFORE THE HONORABLE JUDGE G. THOMAS COOPER JR.
15
16

17 DATE: Tuesday, December 11, 2012
18 LOCATION: Kershaw County Courthouse
1121 Broad Street
19 Camden, South Carolina
20 REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

21 -----
COMPUSCRIPTS, INC.
22 A Full-Service Court Reporting Agency
Post Office Box 7172
23 Columbia, South Carolina 29202
803-988-0086
24 1-888-988-0086
compuscripts.com
25

0002

1 APPEARANCES:
2 ATTORNEYS FOR THE PLAINTIFF AND
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3
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7

8 ATTORNEYS FOR THE DEFENDANTS AND
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9

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12 803.432.1992
13 SAVAGE, ROYALL & SHEHEEN, L.L.P.
BY: VINCENT A. SHEHEEN, ESQUIRE

Settlement Agreement.txt

1111 Church Street
Camden, South Carolina 29020
vsheehen@thesavagefirm.com
803.432.4391

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0003

1 THE COURT: All right. Mr. Sheheen.

2 MR. SHEEHEEN: Thank you, Your Honor. Your
3 Honor, the parties have reached a settlement in this
4 case and would like to recite it into the record, at
5 which time then the parties will take some testimony
6 and make some findings.

7 Your Honor, number one, by December 31, this
8 year, the plaintiff Chad Gunnlaugsson will pay to the
9 defendants SCENT the settlement of \$15,000. \$10,000
10 for settlement of this case in chief, and \$5,000 for
11 the settlement of a pending appeal of an order of this
12 court related to a contempt motion.

13 Number two, the parties will file a joint
14 motion for appeal (sic) on the contempt appeals that
15 were referenced. There are actually counter appeals on
16 that.

17 THE COURT: Say that again.

18 MR. SHEEHEEN: The parties will file a joint
19 motion to dismiss. I'm sorry, I apologize. Yeah.

20 The contempt. There are pending joint
21 appeals, and the parties agree to file a joint motion
22 to withdraw those cross appeals.

23 Number three, Mr. Gunnlaugsson will say on
24 the record that he apologizes for not giving proper
25 notice under the 2008 contract for leaving the

0004

1 practice.

2 Number four, Mr. Gunnlaugsson will state
3 under oath that he never was a shareholder of SCENT or
4 its affiliates, and the judge will include a finding of
5 the court, if it is testimony that the judge finds
6 appropriate. The judge will include an order of the
7 court. The parties agree that Mr. Gunnlaugsson never
8 was a shareholder of SCENT or its affiliates.

9 Number five, Mr. Gunnlaugsson will --

10 THE COURT: Doctor.

11 MR. SHEEHEEN: Dr. Gunnlaugsson will state to
12 the court under examination that he is not contesting
13 the validity or the enforceability of the covenant not
14 to compete that was contained in his 2008 employment
15 contract, and the court, if the court deems
16 appropriate, will make a finding that the covenant was
17 enforceable and was valid.

18 Judge, number --

19 THE COURT: Six.

20 MR. SHEEHEEN: Six. Number six, Dr.
21 Gunnlaugsson agrees to produce an affidavit by December
22 31st acknowledging that he read the Battiatia/Rabon

Page 2

23 complaint in the qui tam action that has been filed in
24 federal court. He is not aware of any billing
25 irregularities other than those specifically outlined
0005

1 in the May 28, 2010, letter from Chuck Thompson to Ed
2 White, and he has no knowledge of the intent of that
3 being intentional.

4 Dr. Gunnlaugsson also agrees that any
5 testimony he may give in any cases related to any
6 allegations of improper billing shall be truthful.

7 Your Honor, Dr. Gunnlaugsson agrees to
8 restrict his -- agrees to refrain from the sale of new
9 sites of Southeastern subsidiaries, successors, or
10 assigns or from hiring any physicians, physician
11 assistants, or nurse practitioners beyond the current
12 levels for a period of 18 months.

13 If after six months he does these things, he
14 will pay \$350,000 to SCENT. If after a period of 12
15 months but before 18 months he does any of these
16 things, he will pay to SCENT a sum of 175,000.

17 Your Honor, the parties agree that they shall
18 not disparage or negatively comment on the business
19 practices of the other parties, the personal characters
20 of the other parties; their capacities as doctors,
21 physicians, or businesses or the businesses'
22 affiliates.

23 Your Honor, the parties are going to agree
24 that this dismissal will be with prejudice, and they
25 are bound by Rule 43 related to that.

0006

1 MR. BLAND: 43(k).

2 MR. SHEHEEN: 43(k), I'm sorry. Thank you.

3 The parties agree that SCENT, the defendants
4 in this case, shall drop or withdraw their appeal of --

5 MR. BLAND: They will withdraw their pending
6 motion for certification in the United States District
7 Court in the Battiat case.

8 MR. SHEHEEN: Relating to Gunnlaugsson only.

9 MR. BLAND: To seek appeal from the dismissal
10 to the fourth circuit.

11 MR. SHEHEEN: And that pertains to
12 Gunnlaugsson only. And the parties are reserving any
13 rights for indemnity or contribution, and this
14 withdrawal is without prejudice in that regard.

15 Your Honor, Dr. Gunnlaugsson is going to
16 admit that he reviewed -- or stipulate that he reviewed
17 confidential information of SCENT.

18 MR. BLAND: That he received confidential
19 information.

20 MR. SHEHEEN: I'm sorry, received. I
21 apologize.

22 MR. BLAND: During the course of his
23 employment.

24 MR. SHEHEEN: Admit that he received
25 confidential information of SCENT.

0007

1 And, Your Honor, Dr. Gunnlaugsson is going to
2 agree to relinquish staff privileges at Kershaw Health
3 and agree not to practice medicine or open an office or
4 a practice in Kershaw County for a period of three
5 years from December 31st -- or January 1st. And the
6 privileges are included in that three-year prohibition.

7 Your Honor, the parties agree that this

Settlement Agreement.txt

8 agreement is punishable by contempt of court and will
9 be enforced by the court and will be enforceable by
10 damages that any party suffers as a result.
11 Your honor, the only little tweak, I think --
12 Mr. Bland, you listen to this -- is that I think this
13 is what we were saying, that Dr. Gunnlaugsson
14 acknowledges that he's read the Battiata complaint and
15 he acknowledges that the only billing irregularities
16 he's aware of are those that he specifically outlined
17 in the May 28, 2010, letter.
18 THE COURT: I think you basically said that.
19 MR. SHEHEEN: Yes, I just wanted to clarify.
20 Thank you.
21 THE COURT: Mr. Bland.
22 MR. BLAND: Your Honor, I agree with the
23 outline of the settlement as announced by Mr. Sheheen
24 with some of the additions I made, and at this time I
25 would like to, with Your Honor's permission, we would
0008 like to have the right to call our clients.
2 THE COURT: Please do.
3 MR. BLAND: At this time I would like to call
4 Dr. Chad Gunnlaugsson.
5 CHAD GUNNLAUGSSON; M.D., being first
6 duly sworn, testified as follows:
7 THE COURT: State your name for the record.
8 THE WITNESS: Chad Gunnlaugsson.
9 EXAMINATION
10 BY MR. BLAND:
11 Q. Dr. Gunnlaugsson, you have been present in
12 the courtroom throughout this trial; is that correct?
13 A. Yes, sir.
14 Q. And you have, obviously, been present for
15 many of the proceedings in this case that have taken
16 place since the lawsuit's filing on April 23, 2010; is
17 that correct?
18 A. Yes, sir.
19 Q. You just heard Attorney Sheheen announce the
20 terms of the settlement in front of Judge Cooper; is
21 that correct?
22 A. Yes, sir.
23 Q. Okay. Do you agree with the terms of
24 settlement as announced by Mr. Sheheen and also
25 supplemented by me that was put on the court record?
0009 A. Yes, sir, I do.
2 Q. Do you agree with all of those terms that we
3 set forth, specifically those that require you to make
4 certain representations, those that require you to give
5 an affidavit, and those that require you to refrain
6 from doing?
7 A. Yes, sir, I do.
8 Q. Do you give those under your own free will?
9 A. Yes, sir, I do.
10 Q. Do you do that without duress or coercion?
11 A. Yes, sir, I do.
12 Q. At this time are you pleased with the service
13 that your attorneys have rendered on your behalf
14 throughout your representation from April 2010 forward
15 till today?
16 A. Yes, sir, I am.
17 Q. At this time, Dr. Gunnlaugsson, do you
18 concede that you at no time were a shareholder in SCENT
Page 4

19 or any of its affiliates?
20 A. Yes, I do.
21 Q. At this time do you not contest the validity
22 and enforceability of the June 1, 2008, covenant not to
23 compete?
24 A. No, I don't.
25 Q. At this time, sir, do you admit that during
0010 the course of your employment with SCENT that you
1 received confidential information?
2 A. Yes, I did.
3 Q. And documents?
4 A. Yes, I did.
5 Q. Do you agree at this time, sir, that from
6 this day forward you will not disparage or negatively
7 make comment about Dr. Robert Puchalski, his medical
8 practice that he's a shareholder in, South Carolina
9 Ear, Nose and Throat, or any of its physicians,
10 employees and staff, that you will not comment about
11 their business practices, any personal character or any
12 of their professional capacity?
13 A. Yes, I understand.
14 Q. Do you agree that for 36 months from January
15 1, 2013, you will relinquish any current staff
16 privileges that you have with Kershaw hospital and will
17 not reapply for privileges during that time?
18 A. Yes, sir, I understand.
19 Q. Do you agree that from January 1, 2013, for
20 36 months you will not practice medicine or open an
21 office or work in an office in Kershaw County treating
22 Kershaw County patients?
23 A. Yes, sir, I understand that.
24 Q. Do you understand that if there's a violation
0011 by you or your practice of any of the terms of the
1 settlement today that the party opposing your conduct
2 can bring an action for contempt of court or for
3 monetary damages?
4 A. Yes, sir, I understand that.
5 Q. Sir, the other thing is, at this time I would
6 like you to put on court record that you apologize for
7 not giving adequate notice to SCENT of your desire to
8 terminate your employment in April 2010.
9 A. I apologize that I did not give SCENT
10 adequate notice of my intention to terminate my
11 employment in April of 2010.
12 MR. BLAND: That's all the questions I have.
13 If Attorney Sheheen wants to ask any questions.
14 Judge, do you have any?
15 THE COURT: No.
16 MR. SHEHEEN: Your Honor, he obviously didn't
17 go through all of the terms of the agreement, but he
18 asked him if he agreed with the terms, yes.
19 THE COURT: He did.
20 MR. SHEHEEN: Yes.
21 THE COURT: You want to call your client?
22 MR. SHEHEEN: Thank you. I call Macy Vidrine
23 first, Your Honor.
24 D. MACY VIDRINE, M.D., being first
0012 duly sworn, testified as follows:
1 THE WITNESS: My name is David Macy Vidrine.
2 EXAMINATION
3

Settlement Agreement.txt

4 BY MR. SHEHEEN:
5 Q. Mr. Vidrine, are you a co-owner of SCENT?
6 A. Yes, sir.
7 Q. And its affiliates?
8 A. Yes, sir.
9 Q. And have you been in court during the
10 presentations thus far?
11 A. Yes, sir.
12 Q. Have you been listening to the presentations
13 thus far?
14 A. Yes, sir.
15 Q. Did you listen to the settlement agreement
16 that was read into the record by myself and Mr. Bland?
17 A. Yes, sir.
18 Q. And did you understand the terms of that
19 settlement agreement?
20 A. Yes, sir.
21 Q. Did you participate in the negotiations of
22 that settlement agreement?
23 A. Yes, sir.
24 Q. Are you satisfied with that settlement
25 agreement?
0013
1 A. Yes, sir.
2 Q. Is it acceptable to you to end this case?
3 A. Yes, sir.
4 Q. And do you understand that it will end this
5 case?
6 A. Yes, sir.
7 Q. Do you understand that as part of that
8 settlement agreement that you're agreeing, you and your
9 company are agreeing to drop or to dismiss a pending
10 matter against Dr. Gunnlaugsson only that is pending
11 before the Fourth Circuit Court of Appeals?
12 A. I agree to that. I understand.
13 Q. In U.S. District Court?
14 A. Yes, sir.
15 Q. Do you understand that once this case is
16 dismissed it will be dismissed with prejudice? Do you
17 understand that?
18 A. I do.
19 Q. Which means it ends the case?
20 A. Yes, sir.
21 Q. Do you understand if you violate the terms of
22 the agreement which I read into the record with the
23 assistance of Mr. Bland that you could be held in
24 contempt of court?
25 A. I understand.
0014
1 Q. Do you understand that if you violate the
2 terms of this agreement, that you could be sued for
3 damages as a result of your actions?
4 A. I understand that.
5 Q. And is it still your desire for the court to
6 accept this settlement agreement?
7 A. It is.
8 Q. Do you -- have you worked with your counsel
9 from DuBose-Robinson and Savage, Royall & Sheheen in
10 this case?
11 A. I have.
12 Q. And have you been involved in those
13 preparations?
14 A. I have.

15 Q. Are you satisfied with the counsel that you
16 have been given thus far?
17 A. I am.
18 Q. And is there anything else at this point that
19 needs to be done for the judge that you are aware of?
20 A. No, sir.
21 MR. SHEHEEN: Okay.
22 THE COURT: All right, sir. You may come
23 down.
24 MR. SHEHEEN: Your Honor, I would call Dr.
25 Robert Puchalski to the stand.

0015

1 ROBERT PUCHALSKI, M.D., being first
2 duly sworn, testified as follows:
3 THE WITNESS: My name is Robert Puchalski.
4 EXAMINATION
5 BY MR. SHEHEEN:
6 Q. Thank you, Dr. Puchalski.
7 Are you a resident of Kershaw County?
8 A. I am.
9 Q. And are you an owner of SCENT?
10 A. I am.
11 Q. Are you the founding owner of South Carolina
12 ENT Allergy and Sleep Medicine?
13 A. I am.
14 Q. Is your wife in the courtroom with you today?
15 A. She is.
16 Q. Have you been present in the courtroom during
17 the proceedings thus far?
18 A. I have.
19 Q. Have you participated in the preparation of
20 this case?
21 A. I have.
22 Q. Have you been involved with your attorneys in
23 planning for this case and also during trial?
24 A. I have.
25 Q. And did you hear the testimony that was given

0016

1 in this case and also the opening statements?
2 A. I have.
3 Q. Did you hear the stipulations and the
4 settlement agreement that was read into the record by
5 myself with the assistance of Mr. Bland?
6 A. Yes, sir.
7 Q. Did you understand those terms?
8 A. Yes, sir.
9 Q. Do you have any questions about them?
10 A. No, sir.
11 Q. Do you accept those terms of settlement to
12 end this case?
13 A. Yes, sir.
14 Q. And do you understand that the court will,
15 with your consent and the consent of the other parties,
16 accept these terms and enter them as an order of the
17 court?
18 A. I understand.
19 Q. Do you understand that they will be binding
20 upon you and upon SCENT?
21 A. I understand.
22 Q. You understand that Dr. Gunnlaugsson has
23 waived any claim that he was ever a shareholder of
24 SCENT?
25 A. I understand.

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0017

1 Q. Do you understand that he is not contesting
2 the validity or the enforcement of the covenant not to
3 compete contained in his employment contract?
4 A. I understand.
5 Q. Do you understand that as a condition of this
6 settlement that you are agreeing to drop any request
7 for appeal or appeal stemming from a pending qui tam
8 action involving Dr. Gunnlaugsson only that's pending
9 in the South Carolina Federal District Court and that
10 that is without prejudice to any rights of
11 indemnification or contribution that SCENT may have?
12 A. I agree.
13 Q. Do you understand that this settlement could
14 be punishable -- excuse me, if you violated this
15 settlement agreement, that that violation could be
16 punishable by contempt of court?
17 A. I am.
18 Q. And do you understand that you could be sued
19 for money damages if you were to breach this agreement?
20 A. I understand.
21 Q. Did you work with your lawyers in preparation
22 of this case?
23 A. Yes.
24 Q. Are you satisfaction with the actions and the
25 conduct of your lawyers thus far?

0018

1 A. Yes.
2 Q. Is there anything else that you need your
3 lawyers to do at this time?
4 A. No, sir.
5 Q. Do you have any complaints or anything like
6 that about your attorneys?
7 A. No, sir.
8 Q. Do you understand the terms of the
9 settlement?
10 A. Yes, sir.
11 Q. Is there any other questions you believe need
12 to be answered before the judge accepts the settlement
13 agreement?
14 A. No, sir.
15 MR. SHEHEEN: Thank you.
16 THE COURT: Let me ask you, both of you, I
17 would like for both counsel to confirm that this
18 settlement agreement includes the corporate parties.
19 MR. BLAND: It does, Your Honor.
20 MR. SHEHEEN: It does, Your Honor.
21 THE COURT: And the clients understand that?
22 MR. SHEHEEN: Yes, Your Honor.
23 MR. BLAND: Yes, Your Honor.
24 THE COURT: All encompass?
25 MR. SHEHEEN: And I'll ask the question.

0019

1 BY MR. SHEHEEN:
2 Q. Dr. Puchalski, do you understand that all
3 parties are being released and the case is ended,
4 whether it's the corporate defendant or the individual
5 plaintiffs or defendants or third parties?
6 A. I understand that for both sides.
7 Q. Yes, sir.
8 Do you think that given the circumstances
9 that this settlement is acceptable and fair given the
10 circumstances that you are presented with?

Settlement Agreement.txt

11 A. Yes, sir.
12 MR. SHEHEEN: Sorry, I said third parties,
13 Your Honor. I meant third-party plaintiff, third-party
14 defendant. We were talking about that earlier.
15 THE COURT: I understood.
16 BY MR. SHEHEEN:
17 Q. You're entering this agreement under your own
18 free volition; is that correct?
19 A. Yes, sir.
20 MR. SHEHEEN: Thank you.
21 THE COURT: Thank you.
22 MR. SHEHEEN: Your Honor.
23 THE COURT: For the record, based on the
24 evidence presented to me in this hearing I now find
25 that at no time was Dr. Chad Gunnlaugsson a shareholder
0020
1 in SCENT, South Carolina Ear, Nose and Throat, ENT, and
2 that the covenant not to compete that is contained in
3 the employment agreement, both in the body of the
4 agreement, I forget, 3.9, and the attached addenda of
5 the covenant not to compete are valid and enforceable
6 based on testimony that I've heard today.
7 Anything further?
8 MR. SHEHEEN: Nothing further, Your Honor.
9 We'll jointly submit a short order that you can sign.
10 THE COURT: I wish you would assist the court
11 in drafting a consent order with the terms of this
12 settlement.
13 MR. BLAND: Does Your Honor accept the terms
14 of settlement as announced by the party?
15 THE COURT: I do. I think that both parties
16 freely and voluntarily entered into these negotiations
17 of the settlement agreement. I so find.
18 MR. BLAND: Your Honor, can it be agreed that
19 the attorneys sign the consent order of dismissal and
20 it doesn't need the signature of any clients?
21 THE COURT: You know, just let me raise an
22 issue. That as the confidentiality of settlement
23 agreements, this settlement agreement does not need to
24 be on record.
25 MR. SHEHEEN: Your Honor, this isn't
0021
1 confidential. It is not confidential.
2 THE COURT: It's open to the public?
3 MR. SHEHEEN: We're in court. It's on the
4 record.
5 THE COURT: All right. I just don't want to
6 get in trouble with my boss.
7 MR. SHEHEEN: We're not asking you for a
8 confidentiality provision. We have a non-disparity
9 provision.
10 THE COURT: That's true. As you know, she's
11 not a big fan of confidential settlements.
12 MR. SHEHEEN: Yes, sir.
13 THE COURT: All right. Well, let me just say
14 this to both the parties, both Dr. Puchalski and Dr.
15 Gunnlaugsson.
16 You don't have to stand.
17 I can tell you, in my humble opinion, this
18 jury could not have done what you have done today. I'm
19 not even certain that they would have been willing to
20 try to do what you have done today.
21 I told you, I've said earlier that when both
Page 9

22 parties walk away from an agreement and are not totally
23 happy with it, they didn't get everything they wanted,
24 it's probably a pretty good settlement. This gives you
25 a path to continue your practice and do what you know

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1 how to do best, to treat patients, without having to
2 spend a lot of time with lawyers in depositions and
3 producing all your documents and all those types of
4 things.

5 Had this matter continued, I honestly feel
6 that nobody in this courtroom would have been satisfied
7 with what this jury did. That's not to impugn the
8 integrity or the intelligence of the jury. I believe
9 in juries. They always try to do the right thing, but
10 this was such a complex issue or issues, there were so
11 many complex issues for them, that I doubt that any
12 time before the end of the year they would have been
13 able to comprehend and try to fashion a satisfactory
14 resolution to this dispute.

15 So I commend all of you for your willingness
16 to get this matter resolved. I think your attorneys
17 worked hard. I will be happy to put this behind me,
18 too. As you know, I have been involved in several
19 stages of the proceedings, and Ms. Shirley will be
20 happy for the rest of the week off.

21 So at this time I need to bring in the jury
22 and I will not tell them any great detail, but I will
23 tell them that the matter is settled and that they are
24 released from jury service.

25 Any objection?

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1 MR. BLAND: No, Your Honor.

2 THE COURT: Bring the jury, please.

3 (The jury enters the courtroom.)

4 THE COURT: Once again, ladies and gentlemen,
5 I want to thank you for your patience, but your
6 patience has been rewarded. Some of you may have
7 anticipated what was happening in your absence. But
8 for those of you who did not anticipate, this case has
9 been settled.

10 It involved -- I will tell you, it involved a
11 lot of complicated, complex issues. You have only
12 heard the tip of the iceberg. I hate to think how long
13 this case would have continued had these attorneys and
14 these parties not been willing to sit down and work out
15 their differences. It's a fairly complex settlement
16 agreement, but it assures both parties that they will
17 go back to work, do what they do best in treating
18 patients, and not have to face you every day.

19 I think when they saw your faces, they said,
20 "Oh, we better start talking, get this matter
21 resolved." But seriously, that's how important your
22 service is. This case would have never been resolved.
23 This case would have been going on for years if we
24 hadn't impaneled you as jurors and let these parties
25 know that you were ready and willing to solve this

0024

1 matter and resolve this dispute. And I have no doubt
2 that you could have done so.

3 But I think you would have been in the jury
4 room a long time talking about how to, who's right and
5 who's wrong and what contract was broken and who did
6 what to who.

7 So your service is invaluable, even though
8 the case didn't play out to its full extent. You can
9 tell when they start bringing in TVs and all this
10 electronic equipment, somebody is real serious about
11 this. And they were both very serious about it. They
12 both felt that the other one had -- the other party had
13 maybe taken advantage of them. It went both ways. It
14 wasn't just one side.

15 So I have already commended the lawyers and
16 the litigants, the parties, for being diligent. And
17 that's what's been pretty much going on all day. I
18 know you were in and out and took a long lunch break,
19 we had to break again, but it facilitated getting this
20 matter settled. And a settlement is always a good
21 thing. People can go on with their lives and not worry
22 about having to appeal something or continue litigation
23 and that sort of thing.

24 But as I said earlier, these disputes don't
25 get settled unless a jury is present and ready to do it

0025 1 for them, and they knew you were ready to do it for
2 them. But they chose the path of working it out among
3 themselves.

4 So that completes your jury service, and we
5 won't have to be here next week, which I assure you, we
6 would have been here next week if this case had kept on
7 going. Might even run into Christmas. I don't know.

8 But it's over now, so I want to thank you on
9 behalf of myself and clerk staff and litigants and the
10 attorneys who participated in this matter. I hope you
11 learned a little bit about our judicial system, at
12 least in the opening stages of this trial. It's a good
13 system. I tell people all the time it's a unique
14 system in the world, and it's something that we need to
15 be proud of in this country, the jury system, because
16 it doesn't exist in many parts of the world.

17 So with that, I want to wish you all God
18 speed, happy holiday season. Madam Clerk has told me
19 that she has your work excuses, and you're going to get
20 a big Christmas bonus. Don't plan on making your house
21 payment. Good luck to all of you. Thank you very much
22 for your service. You are excused.
23
24
25

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1
2 CERTIFICATE OF REPORTER
3

4 I, Sheri L. Byers, Registered
5 Professional Reporter and Notary Public of the
6 State of South Carolina at Large, do hereby
7 certify:

8 That the foregoing proceedings were
9 taken before me on the date and at the time
10 mentioned on page 1 and the proceedings were
11 recorded stenographically by me and were thereafter
12 transcribed under my direction; that the foregoing
13 transcript as typed is a true, accurate and
14 complete record of the proceedings to the best of
15 my ability.

16 I further certify that I am neither
17 related to nor counsel for any party to the cause

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pending or interested in the events thereof.
witness my hand, I have hereunto
affixed my official seal this 14th day of December,
2012, at Columbia, Richland County, South Carolina.

Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
January 5, 2014

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I N D E X

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) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2010-CP-28-322

) CIVIL ACTION NO. 2010-CP-28-322

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FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-28-00323

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DEFENDANTS' REQUESTS TO ADMIT

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1. Admit or deny that Orville Dyce practiced otolaryngology within 18 months of the date of termination of employment with SCENT.

ANSWER: Admit.

2. Admit or deny that Orville Dyce practiced otolaryngology within a 20 mile radius of a SCENT practice site within 18 months of the date of termination of his Employment with SCENT.

ANSWER: Admit.

3. Admit or deny that Orville Dyce created emails and/or documents in 2009 that were adverse to South Carolina ENT and/or Dr. Puchalski prior to the date of termination of his Employment with SCENT.

ANSWER: Denied.

4. Admit or deny that Orville Dyce provided SCENT's confidential information to Chad Gunnlauggson prior to termination of Dyce's employment with SCENT.

ANSWER: Denied.

5. Admit or deny that Orville Dyce currently practices in the same office building that SCENT formerly practiced in while located in Hartsville.

ANSWER: Admit.

6. Admit or deny that Orville Dyce currently practices in the same medical plaza that SCENT formerly practiced in while located in Cheraw.

ANSWER: Denied.

7. Admit or deny that Orville Dyce knew of emails from Dr. Chad Gunnlauggson that were detrimental to the interests of SCENT prior to Dr. Dyce's employment with SCENT being terminated.

ANSWER: Denied.

8. Admit or deny that Dr. Chad Gunnlauggson shared documents or emails with Orville Dyce that were detrimental to the interests of SCENT.

ANSWER: Denied.

9. Admit or deny that Dr. Dyce shared copies of Shareholder Draft Agreements or provisions of draft Shareholder agreements with Dr. Gunnlauggson prior to Dr. Dyce's termination of employment with SCENT.

ANSWER: Denied.

10. Admit or deny that Dr. Dyce and Dr. Gunnlauggson discussed the possibility of coordinating a legal strategy adverse to SCENT prior to Dr. Dyce's termination of employment with SCENT.

ANSWER: Denied.

11. Admit or deny that Dr. Dyce took copies of insurance contracts from the premises of SCENT.

ANSWER: Admit.

12. Admit or deny that Dr. Dyce gave to Dr. Gunnlauggson copies of insurance contracts obtained from SCENT.

ANSWER: Denied.

13. Admit or deny that Dr. Dyce through his legal counsel or directly was communicating with legal counsel of Dr. Gunnlauggson prior to Dr. Dyce's termination of employment with SCENT.

ANSWER: Denied.

14. Admit or deny that an entity that Dr. Dyce is affiliated with hired three SCENT employees who Dr. Dyce supervises within 18 months of Dr. Dyce's departure from SCENT.

ANSWER: Denied.

15. Admit or deny that if Dr. Gunnlauggson was not a shareholder of SCENT, Dr. Dyce owes the IRS taxes.

ANSWER: Such information is not known or readily obtainable by Plaintiffs to enable them to admit or deny the information sought in this Request. Notwithstanding said objections, if Dr. Gunnlaugsson was not a shareholder of SCENT, Dr. Dyce would be entitled to more Monthly Sweep Distributions and bi-weekly distributions and would be owed more money from SCENT. To the extent this would impact income taxes, this question is better directed to an accountant who is familiar with the tax consequences of this and who is familiar with the business practices of SCENT.

16. Admit or deny that Dr. Vidrine was a shareholder of SCENT prior to Dr. Dyce's termination from SCENT.

ANSWER: Dr. Dyce cannot state with legal certainty whether Dr. Vidrine was a shareholder of SCENT prior to his termination.

17. Admit or deny that if Dr. Gunnlauggson was a shareholder of SCENT then Dr. Dyce received more money from SCENT than he was entitled to.

ANSWER: Denied.

18. Admit or deny that you expressed concerns to Dr. Puchalski over whether Dr. Gunnlauggson was a good fit for joining the practice of SCENT as a shareholder.

ANSWER: Denied.

19. Admit or deny that Dr. Dyce called members of SCENT's staff after the termination of his employment to ask for and received information relating to procedural forms and protocols.

ANSWER: Denied.

WOMBLE CARLYLE SANDRIDGE & RICE LLP



Morris A. Ellison, S.C. Bar No. 1881
William C. Cleveland, S.C. Bar No. 1284
Jana B. Baker, S.C. Bar No. 72487
WOMBLE CARLYLE SANDRIDGE & RICE
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400
ATTORNEYS FOR PLAINTIFF

September 26, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

I do hereby certify that on the 26th day of September 2013, I served a copy of the within ***PLAINTIFFS' AMENDED RESPONSE TO DEFENDANTS' REQUEST TO ADMIT*** to counsel of record in the within entitled matter by sending a copy of the same via first class mail addressed to:

Vincent A. Sheheen Esq.
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