

In The Matter Of:
Board of Registration in Medicine v.
Padmanabhan, M.D.

Bharanidharan Padmanabhan, M.D.
Vol. V
January 16, 2015

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COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

Docket No. RM-14-363

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BOARD OF REGISTRATION IN MEDICINE,

Petitioner,

v.

BHARANIDHARAN PADMANABHAN, MD,

Respondent.

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HEARING BEFORE MAGISTRATE KENNETH BRESLER

Friday, January 16, 2015

10:04 a.m. to 11:34 a.m.

Civil Service Commission

One Ashburton Place, Room 503

Boston, Massachusetts

Reporter: Marianne R. Wharram, CSR/RPR

1 A P P E A R A N C E S

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BOARD OF REGISTRATION IN MEDICINE

4

(BY JAMES PAIKOS, ESQ.)

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I N D E X

| WITNESS | DIRECT | CROSS | REDIRECT | RECROSS |
|----------------------|--------|-------|----------|---------|
| PATIENT D | | | | |
| (BY DR. PADMANABHAN) | 750 | | | |
| (BY MR. PAIKOS) | | 758 | | |

1 P R O C E E D I N G S

2 THE MAGISTRATE: Okay. We're on the
3 record. Good morning.

4 DR. PADMANABHAN: Good morning.

5 MR. PAIKOS: Good morning.

6 THE MAGISTRATE: Before I forget,
7 Dr. Padmanabhan, you greeted me out in the hall.
8 I'm not allowed, really, to communicate with you
9 outside the presence of the Board of Registration
10 in Medicine, so I wasn't being rude. I tried to
11 acknowledge some of your greeting, but --

12 DR. PADMANABHAN: Understood.

13 THE MAGISTRATE: Today is January 16th,
14 2015. We are at One Ashburton Place, Boston,
15 Massachusetts. This is a hearing of the Division
16 of Administrative Law Appeals. It's being held at
17 the Civil Service Commission. This appeal has a
18 Docket Number RM-14-363. The petitioner is the
19 Board of Registration in Medicine. The respondent
20 is Bharanidharan Padmanabhan, MD.

21 I am Administrative Magistrate Kenneth
22 Bresler. James Paikos, Esquire, represents the
23 petitioner. Dr. Padmanabhan represents himself.
24 The parties' representatives are present.

1 All electronic devices that make noise
2 should be off. Electronic devices -- I'm sorry.
3 Recording devices and cameras are not allowed to be
4 used in the hearing room.

5 MR. PAIKOS: An update relative to
6 Dr. Levin. Last -- after the hearing was done, he
7 informed me that he was starting to feel sick
8 during the end of the testimony, and I think he was
9 in the bathroom a while with either a stomach bug
10 or the flu or something viral. He stayed here and
11 lied down in the back for a while and wasn't able
12 to drive himself home. His car is still in a
13 parking garage. I talked to him at 6:00 a.m. this
14 morning and he felt it was best that he shouldn't
15 come in. He was still feeling weak and --

16 THE MAGISTRATE: That makes sense.

17 MR. PAIKOS: And it's been ten hours.

18 THE MAGISTRATE: Okay, so
19 Dr. Padmanabhan, you have more direct examination
20 coming and we will reschedule Dr. Levin's
21 testimony. Is that it for the board's case besides
22 the continuation of the cross-examination of
23 Dr. Levin?

24 MR. PAIKOS: We had another witness,

1 Patient H. We mentioned that we had gotten a call
2 from her. We spoke to her husband, who said that
3 she had slipped and fallen yesterday. Her husband
4 said -- we didn't speak with her, but her husband
5 said January 29th, which was the day we were
6 looking for, would work with her as well. So she's
7 out injured. So those would be the main updated
8 last two witnesses.

9 THE MAGISTRATE: And Dr. Padmanabhan,
10 how does January 29th look for you?

11 DR. PADMANABHAN: Good, sir.

12 THE MAGISTRATE: Okay, so this is what
13 I'm going to propose. We're going to take
14 advantage of the fact that we are all here. We
15 have this room and the stenographer is here and
16 we're going to proceed with what we can. And we're
17 going to take the case somewhat out of order, so
18 Dr. Padmanabhan, I'd like you to start your case.

19 DR. PADMANABHAN: Okay. We are ready
20 to go, sir. We will have Patient D.

21 THE MAGISTRATE: Patient B?

22 DR. PADMANABHAN: D. D as in data.

23 THE MAGISTRATE: And that's the first
24 witness who you'll be calling?

1 DR. PADMANABHAN: Yes, sir.

2 THE MAGISTRATE: And you do plan on
3 testifying as well?

4 DR. PADMANABHAN: I haven't had time.
5 So yesterday, the mother of a friend of mine passed
6 away, so I was with them all evening. I have to go
7 there again today. So I have not prepared my
8 statements, opening or closing.

9 THE MAGISTRATE: Well, it's not going
10 to be an opening or closing. It's going to be your
11 testimony. And I -- you do have to --

12 DR. PADMANABHAN: It would be good if
13 you could explain what that means, because I
14 understood yesterday that it was a 20-minute
15 speech.

16 THE MAGISTRATE: The opening statement
17 that I gave you a chance for was a preview of the
18 facts that you anticipated emerging during the
19 hearing, the facts that would help your case and
20 refute the allegations by the Board of Registration
21 in Medicine. There almost certainly will not be a
22 closing argument given to me orally. I will do
23 that on paper. I'll give the parties a chance to
24 explain their positions and why the facts and the

1 law support them, but what you have a chance to do
2 in between those two is to actually put the facts
3 on the record, to go through the medical records
4 and explain if, for instance, Dr. Levin misread
5 something, literally like not reading your
6 handwriting correctly, misinterpreted the
7 significance, you get to explain the significance
8 of every record that Dr. Levin testified about and
9 anything else that you think will help your case
10 and refute the allegations.

11 DR. PADMANABHAN: Okay.

12 THE MAGISTRATE: You just -- I'm going
13 to -- if you choose that option, if you choose to
14 do it, then I swear you in as a witness like I
15 swore in Dr. Levin and I'm about to swear in
16 Patient D, and you tell me that -- the facts that
17 would help your case.

18 DR. PADMANABHAN: All right, sir. Will
19 you want me to do it today or after I finish my
20 cross-examination of Dr. Levin? Because that's one
21 of the things that I would like to do with him page
22 by page, as he had done for three days.

23 THE MAGISTRATE: Let me confirm.
24 You're planning on going through page by page with

1 Dr. Levin? You're allowed to. I'm just trying to
2 understand.

3 DR. PADMANABHAN: Not the full three
4 days he did, but yes.

5 THE MAGISTRATE: You're allowed to do
6 that if that is necessary for your case. I'm not
7 -- I'm not questioning that. I'm confirming that
8 that's what you want to do.

9 DR. PADMANABHAN: Right, because I
10 initially had planned I would do it with him as
11 part of the cross-examination.

12 THE MAGISTRATE: Okay. In that case,
13 what I'm inclined to do is take Patient D. On
14 January 29th, we'll continue cross-examination.
15 We'll take Patient H for the Board of Registration
16 in Medicine. Then you'll resume. And then after
17 cross-examination, you can fill in the gaps with
18 your direct testimony.

19 DR. PADMANABHAN: Okay, sir.

20 THE MAGISTRATE: You get to put things
21 on the record directly that you can't establish
22 through questions and answers of Dr. Levin. If he
23 disagrees with your premise, then you get to be the
24 witness and say no, this is what happened. Okay?

1 MR. PAIKOS: This morning, I did not
2 talk scheduling with Dr. Levin, but as soon as we
3 can, we'll confirm it. I think he's got full
4 patients every day, so he probably would just have
5 to cancel that day, but I want to confirm. If
6 there's an issue, I will notify yourself and
7 Dr. Padmanabhan as soon as possible.

8 THE MAGISTRATE: If the 29th won't
9 work, I'd ask the parties to confer. Propose, I
10 mean, up to six days in January, February, six days
11 total when everybody you need to call can come
12 back. As long as we're talking scheduling, the
13 witnesses should be here when we resume. It's not
14 like we're going to wait for an hour for someone to
15 arrive. We're going to stack up the witnesses.
16 Somebody's got to wait, whether it's witnesses or
17 whether it's us and the stenographer. It's going
18 to be witnesses. They are going to be stacked up
19 and they're going to be ready to go. If someone is
20 late, we'll just take the next witness. They might
21 be out of order.

22 The other thing I want to say is,
23 Dr. Padmanabhan, before we take Patient D, and you
24 should know for the other patients you're planning

1 on calling, actually --

2 DR. PADMANABHAN: There is C and I.

3 THE MAGISTRATE: Right, but what I said
4 about the other patients applies to these patients.
5 If they are -- if you are planning on calling them
6 --

7 DR. PADMANABHAN: They'll be here, sir.
8 They'll be ready to go.

9 THE MAGISTRATE: No. If you're
10 planning on calling them because you provided
11 excellent care to them, or standard of care, it
12 doesn't necessarily defeat the allegations. I want
13 you to know that.

14 DR. PADMANABHAN: Okay.

15 THE MAGISTRATE: And if the Board of
16 Registration in Medicine's allegations rely chiefly
17 on the state of the medical records, I will hear
18 that testimony, but I doubt it's going to be --
19 relate to that.

20 DR. PADMANABHAN: Right.

21 THE MAGISTRATE: Do you understand
22 that?

23 (Witness gesturing.)

24 THE MAGISTRATE: Okay, so it may be

1 limited usefulness and I want you to know that as
2 you plan your direct examination today and as you
3 plan for Patients C and I.

4 Okay. There's one more logistical
5 thing. Witnesses generally testify from there.

6 MR. PAIKOS: Do you want us to move?

7 THE MAGISTRATE: Yeah, I was going to
8 suggest it. It is one thing to have Dr. Levin
9 testify from there. I know he's working very
10 closely with you. If you move the tables together,
11 do the parties have any objection to that? That
12 way we'll just give the witness a little bit of
13 space.

14 MR. PAIKOS: More room. Right.

15 (Pause.)

16 THE MAGISTRATE: And then the last
17 thing I'm going to do before we take Patient D's
18 testimony, Mr. Paikos, do you have the impoundment
19 order?

20 MR. PAIKOS: I do. I have it out.

21 THE MAGISTRATE: Okay. And you're more
22 familiar with having a witness identify himself or
23 herself, patients in corresponding to the
24 pseudonym, so I'm going to ask you to establish

1 that --

2 MR. PAIKOS: Certainly.

3 THE MAGISTRATE: -- even though it's
4 Dr. Padmanabhan's witness. Did you follow what I'm
5 asking Mr. Paikos to do?

6 (Witness gesturing.)

7 THE MAGISTRATE: Okay. What I need to
8 have on the record is that the patient who you're
9 calling Patient D is in fact the person named in
10 the impoundment order. The patient will not use
11 the actual name. Mr. Paikos is familiar with the
12 procedure of going through that, so even though
13 it's your witness, I'm going to ask Mr. Paikos just
14 to show the impoundment order to the patient and
15 establish who the patient is through the
16 impoundment order, and then we're going to turn the
17 questioning over to you. Okay, so you're nodding
18 your head, so you understand?

19 DR. PADMANABHAN: Yes.

20 THE MAGISTRATE: So you're ready to
21 call Patient D now?

22 DR. PADMANABHAN: Yes.

23 THE MAGISTRATE: If Patient D is in the
24 hearing room, I'd ask Patient D to step forward.

1 I'm going to ask you to stand in front of the chair
2 and ask you to raise your hand.

3 PATIENT D,

4 a witness called on behalf of the Respondent,
5 having first been duly sworn by the Administrative
6 Magistrate, was examined and testified as follows:

7 THE MAGISTRATE: Okay. Thank you.

8 Please be seated. And because the patient is
9 testifying, I am going to ask the door to be
10 closed. And Mr. Paikos, your understanding is that
11 members of the public can be here during patient
12 testimony?

13 MR. PAIKOS: Typically, they have not
14 been. And I've reviewed the order. It doesn't
15 have any specific language regarding that. I
16 thought it regularly -- I don't think it does have
17 it in the impoundment order. We could even ask the
18 patient if it is acceptable to have them hear it,
19 because there will be some information about his
20 medical history, so typically, in the past, I've
21 seen the courtroom closed for members of the
22 public, so that's the usual practice I've seen.
23 However, I don't know if that can be, you know,
24 established or confirmed with this -- with

1 Patient D.

2 THE MAGISTRATE: Okay, so besides
3 Patient D, who is now seated in the witness seat, I
4 see three members of the public in the back. They
5 do not have to identify themselves. In general,
6 the hearing is public, but I do want to ask
7 Patient D if he minds that members of the public
8 are here for testimony about what will probably be
9 personal medical matters.

10 THE WITNESS: No.

11 THE MAGISTRATE: And the answer is no?

12 THE WITNESS: No. I'm all set. I'm
13 good.

14 THE MAGISTRATE: Mr. Paikos, anything
15 else that we should take care of before you --

16 MR. PAIKOS: No.

17 THE MAGISTRATE: -- go through your
18 impoundment order?

19 MR. PAIKOS: No.

20 THE MAGISTRATE: Can I ask whether you
21 know the other three people in the hearing room?

22 THE WITNESS: One of them.

23 MR. PAIKOS: Sir -- may I approach?

24 THE MAGISTRATE: Yes, you may.

1 ESTABLISHMENT OF IDENTIFICATION OF WITNESS

2 Q. (BY MR. PAIKOS) I want to show you an
3 order of pseudonyms and impounded medical records.
4 Do you see where it says -- oh, glasses?

5 A. I'm sorry.

6 THE MAGISTRATE: Not a problem. The
7 patient is getting glasses so he can read the
8 impoundment order.

9 Q. (BY MR. PAIKOS) Sir, do you see where it
10 says Patient D?

11 A. Yeah.

12 Q. Is that your name next to Patient D?

13 A. Yes, it is.

14 Q. So during this hearing, you'll be referred
15 to as Patient D for privacy purposes.

16 A. Okay.

17 Q. Do you understand?

18 A. Yes.

19 THE MAGISTRATE: And you won't be
20 referring to yourself by your real name either.

21 A. Patient D.

22 THE MAGISTRATE: We will be referring
23 -- we will refer to you as Patient D, and I'd ask
24 you to refer to yourself as Patient D also.

1 A. Okay.

2 THE MAGISTRATE: Thank you. Thank you,
3 Mr. Paikos. Dr. Padmanabhan, questions for this
4 witness?

5 DIRECT EXAMINATION

6 Q. (BY DR. PADMANABHAN) Good morning,
7 Patient D.

8 A. Good morning, Doctor.

9 Q. I'm going to start out with some background
10 information.

11 A. Okay.

12 Q. How long have you been my patient?

13 A. About since 2005, I believe.

14 Q. What did you come to see me for?

15 A. I had had a major back injury and I was
16 having nerve problems with my legs, pain, pain and,
17 you know, treatment.

18 Q. Are you also seeing other physicians for
19 your pain?

20 A. Yeah, I see my -- Dr. Mason up in Brighton,
21 who did my original surgery, and I get facet nerve
22 block injections.

23 Q. Who do you get the facet nerve block
24 injections from?

1 A. I get them from the New England Baptist
2 Hospital.

3 Q. And where exactly is your pain?

4 A. It is from my back back down to my legs.
5 I've had both my knees replaced. I've had major
6 back surgery, so.

7 Q. Are you in pain every day?

8 A. Yes.

9 Q. And you sought treatment for pain. What
10 did you seek the treatment for pain for?

11 A. To relieve the pain.

12 Q. Okay. And what does relief -- what does
13 pain relief help you with?

14 A. Tying my shoes, washing in the shower,
15 everyday use, you know, moving around every day.

16 Q. Are you the primary caregiver for members
17 of your family?

18 A. Yeah, myself and my wife.

19 Q. Okay. Are there other people, members of
20 your family, living in your residence?

21 A. Yes, my -- I have an in-law apartment that
22 I built for my daughter and her husband and my
23 three grandchildren.

24 Q. Are you also taking care of the

1 grandchildren?

2 A. Yes. My daughter is just recovering from a
3 double mastectomy. She has breast cancer.

4 Q. Okay. When did you have your knees
5 replaced?

6 A. I want to say four years ago, but it could
7 have been three years ago. It's coming up in
8 February.

9 Q. The witness that the government presented
10 made certain statements about --

11 THE MAGISTRATE: Okay. Witnesses can't
12 compare testimony. Just ask this witness a
13 question about what he knows.

14 Q. (BY DR. PADMANABHAN) I was actually going
15 to go, Your Honor, to the visits that he had
16 regarding his medical conditions.

17 THE MAGISTRATE: You can ask him about
18 that, but I'm not going to allow you to ask one
19 witness to compare testimony to another witness'
20 testimony.

21 DR. PADMANABHAN: Okay.

22 Q. (BY DR. PADMANABHAN) This ten years that
23 you've been my patient, have I explained to you
24 side effects of medicines that I have prescribed?

1 A. Yes.

2 Q. Was I the first to start you on opiate pain
3 medicines?

4 A. No.

5 Q. Did I take over the care of your opiate
6 pain medicines from a different physician?

7 A. Yes.

8 Q. Have I explained to you the various
9 neurological conditions that we have discussed
10 regarding your health?

11 A. Yes.

12 Q. Do you feel that you received enough
13 information during your visits to understand what
14 is going on?

15 A. Every visit. Absolutely.

16 Q. Have you always used the same pharmacy to
17 fill your prescriptions?

18 A. For -- yes.

19 Q. Have you received adequate relief from any
20 medicines that I prescribed to you?

21 A. Yes.

22 Q. Did I in addition to your back pain also
23 give you evaluation and advice regarding your legs?

24 A. Yes.

1 Q. Did I help you in any way with the swelling
2 in your knee and leg and calf and the red rash that
3 you developed?

4 A. Yes.

5 Q. Are you happy with the care that I
6 provided?

7 A. Absolutely.

8 Q. When I saw you for rewriting your monthly
9 hard copy prescriptions, did I once in a while
10 examine you completely from head to toe?

11 A. Yes.

12 Q. Did you feel at any time that I did not
13 spend enough time with you?

14 A. Actually, I thought you spent too much time
15 with all your patients.

16 Q. Did you feel at any time that I did not
17 treat your concerns with the respect they deserve?

18 A. No, you -- you're very -- you're -- you're
19 very thorough.

20 Q. At any time, did you feel that you gave me
21 some symptoms and I ignored it completely?

22 A. No, absolutely not.

23 Q. Is it true that you followed me from a
24 previous place of practice to the Cambridge

1 Hospital system?

2 A. Yes, from your practice in Abington. It
3 was in the next town over from mine.

4 Q. Did you say that I used to practice in the
5 next town over from where you stayed?

6 A. Yes.

7 Q. And then you had to drive a considerable
8 distance --

9 A. Yes.

10 Q. -- to see me afterwards?

11 A. Yes.

12 Q. Are you still my patient to this day?

13 A. Yes.

14 Q. When you had the double knee replacement,
15 what happened after the operation?

16 A. After the surgery, I went from the Baptist
17 to Braintree Rehab, and you vis-- came in and
18 visited me, you know, not -- to my surprise, but
19 not really to my surprise, because you knew that I
20 was having my surgeries. And you brought me a big
21 bushel of oranges also.

22 Q. After I was removed from working at
23 Cambridge Hospital, who did you see?

24 A. That was -- that was a chaotic time. You

1 know, I went in. You were just dismissed like two
2 days before my appointment with you, and they told
3 me you weren't there any more. I said well, you
4 know, who is going to see me, then? Who is taking
5 over the doctor's practice? They said they'd get
6 back to me. I said well, I have medications that I
7 need filled or I'm going to end up in the hospital.
8 They said they'd get in touch with me. I called
9 back and they put me in touch with I think
10 Dr. Cranberg, something like that.

11 Q. And did you see Dr. Cranberg?

12 A. I did.

13 Q. Did Dr. Cranberg continue the same
14 prescriptions that you were getting from me?

15 A. Yes, he did.

16 Q. And after the stay at Braintree Rehab, did
17 you return under my care?

18 A. Yes, I did.

19 Q. At any point, did you feel that you
20 received poor quality or low standard care?

21 A. Not from you, no.

22 Q. Are you in agreement with the Board of
23 Registration in Medicine for prosecuting me in your
24 name?

1 A. Absolutely not.

2 THE MAGISTRATE: You know what? I'm
3 not going to allow -- I'm not going to allow that
4 question. The board -- the legal premise is not
5 correct and I'm not going to allow the question.

6 DR. PADMANABHAN: Okay, sir.

7 Q. (BY DR. PADMANABHAN) Did the Board of
8 Registration in Medicine consult you prior to this
9 case?

10 A. No.

11 Q. Were you aware that the Board of Medicine
12 had filed a case using your records?

13 A. I do not know that.

14 Q. Did you consent to the use of your medical
15 records in this proceeding?

16 A. I did not. I did not.

17 Q. Would you be unhappy if your physician were
18 removed from practice by the board using your
19 medical records?

20 A. Very unhappy.

21 Q. Thank you.

22 THE MAGISTRATE: If the premise is that
23 the patient has control over his medical records in
24 this proceeding and has to give permission, that

1 premise is not correct.

2 DR. PADMANABHAN: I understand, sir.

3 THE MAGISTRATE: Okay.

4 DR. PADMANABHAN: That's all.

5 THE MAGISTRATE: Okay. Mr. Paikos is a
6 lawyer with the Board of Registration in Medicine.
7 He may have some questions for you.

8 THE WITNESS: Okay.

9 CROSS-EXAMINATION

10 Q. (BY MR. PAIKOS) Sir, good morning.

11 A. Good morning.

12 Q. You said you were treating with Dr. Mason
13 at New England Baptist Hospital. Is that correct?

14 A. Yes.

15 Q. Was he the surgeon for your knees?

16 A. No.

17 Q. What was he a surgeon for?

18 A. For my back.

19 Q. For your back. And after the surgery, did
20 -- when was your back surgery?

21 A. '03.

22 Q. And you continue to follow with him or see
23 him?

24 A. Yes.

1 Q. Did he -- after your surgery in 2003, do
2 you remember if he prescribed you medications for
3 your pain?

4 A. I'm sure he did, you know, because I had
5 major back surgery.

6 Q. At some point, did he stop prescribing
7 medications for your pain to you?

8 A. Yes.

9 Q. Do you remember when that was?

10 A. I do not remember.

11 Q. Okay. Did he tell you why he was stopping
12 the medications for your pain?

13 A. He said I should be, you know, in physical
14 rehab, and to tell you the truth, I really don't
15 remember.

16 Q. Okay.

17 A. Because you know, I still go back there for
18 facet and nerve block injections, so that's on --
19 every two to three times a year.

20 Q. Okay. And do you -- you still see
21 Dr. Mason there?

22 A. I see his nurse practitioner. I go to the
23 office.

24 Q. Mm-hmm. Okay.

1 A. Same office that did my knees.

2 Q. Okay. And how often do you -- are you seen
3 by Dr. Padmanabhan in the last year?

4 A. I see him every month.

5 Q. Okay. And how long have you seen him every
6 month?

7 A. What do you mean?

8 Q. How long -- you've seen him every month for
9 the past year, I'm assuming from the question. Has
10 that been the case since he started treating you
11 back in Abington?

12 A. No. Sometimes it's monthly, or if I need
13 my -- if I don't need a physical checkup, he'll
14 write my prescriptions two months in advance and
15 predate them. I turn my prescriptions over to the
16 pharmacy.

17 Q. And do you turn them over at the time you
18 turn in the first prescription?

19 A. Yes.

20 Q. And what pharmacy is that?

21 A. Bemis.

22 Q. What was that again?

23 A. Bemis, B-E-M-I-S.

24 Q. Thank you. And what town is that in?

1 A. Abington.

2 Q. So you currently live in the Abington area?

3 A. I live in Whitman, the next town over.

4 Q. Okay. And what medications at your last
5 visit did Dr. Padmanabhan prescribe you?

6 A. Diazepam, Oxycodone, OxyContin, and
7 ibuprofen.

8 Q. And how long has he been prescribing you
9 the diazepam?

10 A. Around the first time that I started seeing
11 him way back. About nine years now.

12 Q. Okay. Has -- and has he told you why he's
13 prescribing you the diazepam?

14 A. I was taking flexeril before and flexeril
15 bothered my chest. I got a lot of chest
16 palpitations from flexeril. That's a muscle
17 relaxer. And the diazepam was easier on my -- it
18 relaxed my muscles. It helped me to sleep. I
19 don't sleep in a bed. I sleep in a reclining
20 chair, been sleeping in a reclining chair for about
21 five years.

22 Q. Are you seeing anyone for your sleep
23 issues?

24 A. For sleep issues? No.

1 Q. Let me make sure I've got the information.
2 You have trouble sleeping because of your pain?

3 A. Correct.

4 Q. A separate issue relative to the sleep
5 outside of your pain?

6 A. It's just my pain. If I sleep in a regular
7 bed, it's like I've been hit with a box of rocks.

8 MR. PAIKOS: No further questions.

9 Thank you, sir.

10 THE MAGISTRATE: Dr. Padmanabhan, do
11 you have any follow-up questions to Mr. Paikos'
12 questions?

13 DR. PADMANABHAN: No, sir.

14 THE MAGISTRATE: Patient D, thank you
15 for your testimony.

16 THE WITNESS: Thank you.

17 THE MAGISTRATE: You can stay in the
18 hearing room or leave at your choice.

19 (Witness excused.)

20 THE MAGISTRATE: Is there anything else
21 besides -- I want to take up some procedural
22 motions. Is there anything else? Okay. That is
23 it for testimony for today. If the parties could
24 get their discovery motions, let's start talking

1 about those.

2 Okay. First, I want to discuss
3 Dr. Padmanabhan's response to Magistrate Bresler's
4 order to compel discovery and request to vacate.
5 Do the parties have that in front of them?

6 DR. PADMANABHAN: I do not, sir. I was
7 fully immersed in Dr. Levin's cross-examination,
8 but I am willing to proceed, so.

9 THE MAGISTRATE: So I'm looking at the
10 first page. I'm looking at paragraph three, which
11 states the respondent received notice of this
12 motion only at 2:00 p.m. on the 30th of December.
13 I mailed it the previous week.

14 DR. PADMANABHAN: I did not receive any
15 notice of this compel order before that date, sir.

16 THE MAGISTRATE: Okay. The motion to
17 compel was mailed the previous week. Did it arrive
18 on December 30th at 2:00 p.m.?

19 DR. PADMANABHAN: Yes, sir.

20 THE MAGISTRATE: In the mail.

21 DR. PADMANABHAN: Yes, sir.

22 THE MAGISTRATE: Okay. Paragraph four
23 says that the respondent the very next morning
24 submitted an opposition again explaining the facts.

1 I did not get that before I issued my order to
2 compel. I waited more than a week after the motion
3 to compel arrived on December 23rd to rule on it
4 and then I granted it.

5 DR. PADMANABHAN: Yes, sir. I was
6 merely explaining why you didn't receive my
7 opposition before then.

8 THE MAGISTRATE: But I'm also
9 explaining why I ruled on it without having heard
10 from you.

11 Okay. I'm looking at paragraph seven,
12 eight and nine, and I do not accept as a fact or
13 your editorializing that it's a corrupt document,
14 but I am referring to it as a corrupt document to
15 identify it so that you can respond to this,
16 Dr. Padmanabhan. What you contend is a corrupt
17 document, do you have this now?

18 DR. PADMANABHAN: The document?

19 THE MAGISTRATE: Yes.

20 DR. PADMANABHAN: It's at home. Yes.

21 THE MAGISTRATE: Okay, so --

22 DR. PADMANABHAN: And it was entered
23 into the exhibits.

24 THE MAGISTRATE: I just want to

1 confirm. Paragraphs seven, eight and nine, you're
2 no longer contending that you don't have that.

3 DR. PADMANABHAN: I don't have
4 Appendix A from that document, only Appendix B.

5 THE MAGISTRATE: Mr. Paikos, are you
6 familiar with the document he's referring to?

7 MR. PAIKOS: I think he's referring to
8 the Greeley report, which I think at the prehearing
9 conference Dr. Padmanabhan was asking for, but it
10 turned out he had it. There was -- that was the
11 subject of -- the motion to compel was to compel
12 all discovery based on the request for production,
13 including that report. We requested -- the Board
14 of Registration in Medicine requested
15 supplementation by Cambridge Health Alliance of a
16 previous subpoena and they provided it, and that
17 was something I provided again to Dr. Padmanabhan
18 and it's one of the exhibits currently, so we have
19 it now. It didn't come through Dr. Padmanabhan,
20 but --

21 THE MAGISTRATE: But as far as you
22 know, Dr. Padmanabhan has it and --

23 MR. PAIKOS: Yes, that's my
24 understanding. We provided it to him.

1 THE MAGISTRATE: -- hold on --
2 including an Appendix A and Appendix B, or
3 Attachment A and Attachment B?

4 MR. PAIKOS: I know the main report was
5 provided. What I received I believe on the second
6 is what I said. I did not -- I requested the
7 supplementation of the Greeley report. I don't
8 think I got any -- any appendixes. Essentially, I
9 think what Dr. Padmanabhan may be referring to is
10 the CV of the author of the Greeley report or the
11 name of the person. We did not get that.

12 THE MAGISTRATE: Okay. Is that what
13 you're referring to?

14 DR. PADMANABHAN: Attachment A and
15 Attachment B. Attachment B is present;
16 Attachment A is absent, and in the prehearing
17 conference, I was still asking for Attachment A.

18 THE MAGISTRATE: Okay. Right now we're
19 dealing with your motion to compel discovery and
20 request for order to vacate.

21 Okay. Paragraph ten. My response is
22 paragraph ten refers to a 22-page document. I'm
23 not aware that the Board of Registration in
24 Medicine has the entire document when it quotes

1 from it and I'm not going to compare documents and
2 cross-reference them. I did order it to be turned
3 over. My response to paragraph 11 is that this
4 appeal is not about institutional corruption.

5 My response to paragraph 12 actually is
6 a question to the Board of Registration in
7 Medicine. Did you give the password to the doctor?

8 MR. PAIKOS: Yes, and I can give you
9 the chronology of we provided it I know for certain
10 on January 2nd, 2015. I wasn't at the prehearing
11 conference because of an outside issue and my
12 understanding was that it had been provided. When
13 I received on January 2nd, I believe, a note from
14 Dr. Padmanabhan saying I have never gotten the
15 password, I went back and looked at the transcript.
16 There was no indication that it had been given, so
17 I faxed over the transcript -- faxed over the
18 password in a letter. And then I had received
19 another motion that Dr. Padmanabhan hadn't gotten
20 the password yet. I refaxed it and the CV he was
21 referring to of Dr. Horwitz.

22 Up until that time, I hadn't realized
23 that it hadn't been given at the prehearing
24 conference. I hadn't mailed it to him, so that was

1 my error. So from what I understand, it wasn't
2 given. It's not in the transcript.

3 During the course of discovery, I sent
4 a letter to Dr. Padmanabhan asking for the Greeley
5 report prior to the motion to compel and he sent me
6 a letter saying he hadn't -- didn't have a paper
7 copy of Dr. Horwitz's CV. There was no mention in
8 there about he didn't have the password. If this
9 had happened back on December 11th, I would have
10 checked as I did on the second.

11 THE MAGISTRATE: But you provided it
12 now?

13 MR. PAIKOS: I provided it, yes.

14 THE MAGISTRATE: Dr. Padmanabhan, do
15 you have the password?

16 DR. PADMANABHAN: Again, Magistrate
17 Bresler, I vociferously object to the late
18 providing of the password. It was so ordered on --

19 THE MAGISTRATE: Right now I'm asking a
20 narrow question.

21 DR. PADMANABHAN: Do I have the
22 password?

23 THE MAGISTRATE: Yes.

24 DR. PADMANABHAN: Yes, sir.

1 THE MAGISTRATE: How long have you had
2 the password?

3 DR. PADMANABHAN: From January 2nd.

4 THE MAGISTRATE: Okay. The motion to
5 vacate is denied. The motion to sanction the Board
6 of Registration in Medicine is denied. And the
7 request -- any other request contained in this is
8 denied.

9 DR. PADMANABHAN: Your Honor, does that
10 include the board turning over Attachment A?

11 THE MAGISTRATE: That motion I've ruled
12 on. Opposition to petitioner's motion to compel
13 discovery, which I now have, I think is moot,
14 because I've denied the motion to vacate my order
15 to turn over discovery.

16 Now we're on to Dr. Padmanabhan's
17 objection to disparate treatment. I'm looking at
18 paragraphs one to four. I'm not aware of the Board
19 of Registration in Medicine violating Standing
20 Order 13-1, consciously or not. Do you have,
21 Dr. Padmanabhan, a simple paper copy of the CV that
22 you've been seeking?

23 DR. PADMANABHAN: No, sir, because it's
24 Attachment A.

1 THE MAGISTRATE: Paragraph two has to
2 do with consciously withholding the password, which
3 I don't find and I think that issue is resolved.
4 Paragraph three is about passwords, which I now
5 find that's resolved. And paragraph four is about
6 the password. Paragraph five has to do with the
7 Greeley report. The Greeley report is in the Board
8 of Registration of Medicine's hands. The doctor
9 has a copy except for the CV of the person who
10 prepared it.

11 DR. PADMANABHAN: The Attachment A.

12 THE MAGISTRATE: Paragraph six, I'm not
13 following, and so we're going to move on. There is
14 no paragraph seven. Paragraph eight says that I
15 granted the Board of Registration in Medicine's
16 motion immediately, despite being fully aware of
17 the real facts. I did not grant it immediately. I
18 waited more than a week and did not hear from
19 Dr. Padmanabhan. Paragraph nine says I have not
20 issued any rulings condemning the Board of
21 Registration in Medicine for consciously and
22 unilaterally violating Standing Order 13-1. I am
23 not aware of any violations of Standing Order 13-1,
24 consciously or otherwise. And there are some

1 unnumbered paragraphs, Dr. Padmanabhan, saying that
2 you again request an unredacted transcript. What's
3 the transcript of?

4 DR. PADMANABHAN: If you'd permit me to
5 read that, sir?

6 THE MAGISTRATE: Well, no, Doctor.
7 This is your motion.

8 DR. PADMANABHAN: Very well. The --
9 thank you. Ah. The board had admitted into its
10 evidence a redacted summary of interviews with
11 Dr. Glick and Dr. Nardin. That was what that
12 referred to.

13 THE MAGISTRATE: Do you have the
14 transcripts?

15 DR. PADMANABHAN: But you haven't
16 included it into the final exhibit list.

17 THE MAGISTRATE: Let me ask you,
18 Dr. Padmanabhan, do you have those transcripts?

19 DR. PADMANABHAN: No, sir.

20 MR. PAIKOS: As part of discovery,
21 Dr. Padmanabhan didn't ask for interview notes,
22 et cetera. However, in addition to what we
23 provided in the binder, we provided him the
24 complete medical records and interview summaries of

1 people we interviewed during the course of the
2 investigation, including Dr. Glick. It wasn't
3 requested, but we provided it to him in one of the
4 discs. There was no transcript. What we do
5 typically, and we did in this case, we sit down
6 with the witness. An investigator or nurse
7 investigator takes notes, and it's not transcribed
8 by anyone. There's no stenographer there, so we
9 don't have a transcript is the bottom line.

10 DR. PADMANABHAN: Your Honor, since
11 it's not in the main exhibit list, it's moot.

12 THE MAGISTRATE: So this part is moot?

13 DR. PADMANABHAN: Yes, sir.

14 THE MAGISTRATE: Okay. There's also an
15 unnumbered paragraph referring to all documents
16 provided to the board by the Cambridge Health
17 Alliance.

18 DR. PADMANABHAN: Yes, sir. That is
19 important, because if you look at Respondent's
20 Exhibit Tab 12, there is a subpoena from -- sent by
21 the board to Cambridge Health Alliance,
22 November 9th, 2011, which was after the Cambridge
23 Hospital purchased the Greeley report from the
24 Greeley Company. And if you look at Tab 13, there

1 is a document sent by me documenting that
2 Attorney Paikos quoted verbatim from the Greeley
3 report in the complaint that was dated in January
4 2013. The implication clearly is that the
5 Cambridge Health Alliance did produce a copy of the
6 Greeley report in response to that subpoena.

7 THE MAGISTRATE: Is this all about the
8 Greeley report, or are there other documents you're
9 seeking from the -- that the Cambridge Health
10 Alliance provided to the Board of Registration in
11 Medicine?

12 DR. PADMANABHAN: The Board of
13 Registration has stated on the record that they did
14 not receive a copy of the Greeley report in
15 response to the subpoena.

16 THE MAGISTRATE: Dr. Padmanabhan, is
17 this all about the Greeley report, or are you
18 seeking other documents that the Cambridge Health
19 Alliance turned over to the Board of Registration
20 in Medicine?

21 DR. PADMANABHAN: Specifically, Your
22 Honor, I need only Attachment A of the Greeley
23 report.

24 THE MAGISTRATE: Back to the motion.

1 There's an unnumbered paragraph on the fourth page
2 talking about the respondent again requests. I am
3 not following that paragraph. Do you want to
4 explain it?

5 DR. PADMANABHAN: No, sir.

6 THE MAGISTRATE: Okay. And the last
7 paragraph seems to have to do with discovery, which
8 is a separate motion, so to the extent that this
9 motion -- that this pleading asks for something, I
10 deny it. To the extent that it asks me to rule
11 that I'm treating the Board of Registration in
12 Medicine and the respondent disparately, I deny it.
13 In fact, to the extent that it asks me to find bad
14 faith and conscious violations of law by the board,
15 I deny it.

16 DR. PADMANABHAN: Your Honor?

17 THE MAGISTRATE: Yes.

18 DR. PADMANABHAN: You've just ruled
19 that there was no violation of Standing Order 13-1,
20 but doesn't Standing Order 13-1 specifically state
21 that they need prior permission before submitting
22 exhibits in electronic form?

23 THE MAGISTRATE: To me.

24 DR. PADMANABHAN: Oh, just you, not to

1 other parties? Okay. I did not understand that.

2 THE MAGISTRATE: Next is respondent's
3 objection to the Board of Registration in
4 Medicine's ongoing bad faith actions and a motion
5 to compel discovery. Paragraph one says the
6 respondent received an envelope from the Board of
7 Registration in Medicine on January 1st, 2015,
8 containing four compact disks and a list of
9 23 exhibits.

10 DR. PADMANABHAN: Your Honor, you don't
11 need to go through the whole motion, because it's
12 still about the password, so it's moot.

13 THE MAGISTRATE: This motion to compel
14 is moot?

15 (Dr. Padmanabhan gesturing.)

16 THE MAGISTRATE: You have the password?

17 DR. PADMANABHAN: Yes.

18 THE MAGISTRATE: Okay. Now I'm looking
19 at your motion to compel discovery and seek
20 sanctions for conscious fraud by the government. I
21 am assuming the Board of Registration in Medicine
22 refers to the government?

23 DR. PADMANABHAN: Again, it refers to
24 Attachment A. That's all.

1 THE MAGISTRATE: Okay, so this is what
2 you filed January 13th, 2015?

3 DR. PADMANABHAN: Oh. Yes. This also
4 refers to Attachment A.

5 THE MAGISTRATE: Okay. We're down to
6 one issue, which is Attachment A to the Greeley
7 report.

8 DR. PADMANABHAN: Yes, sir.

9 THE MAGISTRATE: And Attachment A is
10 the CV of the person who wrote the Greeley report?

11 DR. PADMANABHAN: Yes, sir.

12 THE MAGISTRATE: The Greeley report is
13 in evidence?

14 MR. PAIKOS: Yes.

15 THE MAGISTRATE: And the Board of
16 Registration will be relying on it?

17 MR. PAIKOS: In part. It's a piece of
18 the board's evidence.

19 THE MAGISTRATE: A piece of the board's
20 evidence?

21 MR. PAIKOS: Right.

22 THE MAGISTRATE: Just so I understand
23 where you're going with the Greeley report, can you
24 compare it in importance to Dr. Levin's testimony?

1 MR. PAIKOS: I think Dr. Levin's
2 testimony is much more important and significant.

3 THE MAGISTRATE: How important is it
4 that -- to the board's case that the author of the
5 Greeley report be anonymous?

6 MR. PAIKOS: It's not our issue at all.
7 I think it's -- it may be a peer-review issue
8 through Cambridge Health Alliance, but it's not
9 our -- you know, we requested the Greeley report.
10 We received that without attachments, so it's -- we
11 -- we requested and got it without those
12 attachments, which include the CV, so it's not our
13 issue, necessarily.

14 THE MAGISTRATE: And Doctor, you need
15 Appendix A, you need the CV of the Greeley report
16 because?

17 DR. PADMANABHAN: I need to understand
18 who actually wrote it so I can understand the
19 report. They have provided Attachment B, but
20 specifically not Attachment A, which I wonder
21 about. And the reason I approached you is because
22 I don't have subpoena power, whereas you do and
23 they do, and they have already sent a subpoena to
24 the board -- to Cambridge Health Alliance. So I am

1 curious how -- because the subpoena letter, if you
2 read it, Your Honor, from the board says if you
3 retained certain documents, please list the
4 documents that you retained and the reasons why you
5 retained them, so the reason I asked for a copy of
6 what the Cambridge Health Alliance sent over was to
7 see if they did retain the Greeley report and
8 mentioned that they retained the Greeley report and
9 why in response to the subpoena initially.

10 THE MAGISTRATE: Okay. Doctor, you
11 have some subpoena power, as I mentioned in the
12 prehearing conference. Is there an issue that the
13 Board of Registration in Medicine gave you disks of
14 documents, the entire medical records of Patients A
15 through I instead of paper copies?

16 DR. PADMANABHAN: Yes, sir, because I
17 specifically requested paper copies.

18 THE MAGISTRATE: Okay, but I'm just
19 trying to identify the issues, so right now, we're
20 talking about Appendix A to the Greeley report and
21 not getting paper copies.

22 DR. PADMANABHAN: Appendix A is by far
23 more important. I am willing to forget about the
24 paper copy.

1 THE MAGISTRATE: You're willing to
2 forget about the paper copies?

3 DR. PADMANABHAN: Yes, because
4 Appendix A is really the most crucial.

5 THE MAGISTRATE: So Mr. Paikos, can you
6 tell me which exhibit the Greeley report is?

7 MR. PAIKOS: I believe it's 26. And
8 while we're on the subject of the Greeley report,
9 we provided it to you with -- it didn't have a name
10 in it. It had medical record numbers that only
11 mean something to the Cambridge Health Alliance,
12 but we have versions that have the patients', you
13 know, pseudonyms with the medical records.

14 THE MAGISTRATE: Okay, so Exhibit 27?

15 MR. PAIKOS: Twenty-seven.

16 THE MAGISTRATE: Yes. Okay. How about
17 this? Because we don't have witnesses waiting, how
18 about if I go read the Greeley report and rule on
19 how necessary Appendix A is to Dr. Padmanabhan's
20 case?

21 MR. PAIKOS: That's all right.

22 DR. PADMANABHAN: That's fine. Is it
23 possible to introduce the report without knowing
24 the author?

1 THE MAGISTRATE: It's possible, and
2 that's why I'm going to go look at the report
3 substantively and decide that. That's the issue.

4 DR. PADMANABHAN: Okay.

5 THE MAGISTRATE: Okay? So with that, I
6 will take Exhibit 27. I will go to an office that
7 I'm using here at the Civil Service Commission. I
8 will leave the report. The parties can't go far.
9 Stay close to the hearing room. You don't have to
10 stay in the hearing room. And I'll be back.

11 MR. PAIKOS: Your Honor, would it be
12 helpful if I gave yourself and Dr. Padmanabhan a
13 version of the Greeley report that had the patient
14 identifiers?

15 THE MAGISTRATE: That's what you were
16 referring to before?

17 MR. PAIKOS: Yes. Yes, because right
18 now, it has the medical record numbers in there,
19 which unless you know the medical record numbers --

20 THE MAGISTRATE: I see what you're
21 saying. Okay. Do you have another version?

22 MR. PAIKOS: Yes.

23 THE MAGISTRATE: Thank you.

24 MR. PAIKOS: That may be Exhibit 27.

1 THE MAGISTRATE: Okay, so I have this
2 listed as Exhibit 27, and you have it as
3 Exhibit 26.

4 MR. PAIKOS: More likely my error.

5 THE MAGISTRATE: Okay. I'm just trying
6 to double check. And with that, I will be back in
7 however long it takes me to review this.

8 (Off the record.)

9 (Recess taken from 10:55 to 11:06.)

10 THE MAGISTRATE: Are we ready to
11 proceed?

12 MR. PAIKOS: Yes.

13 THE MAGISTRATE: Mr. Paikos, I'm going
14 to hand back the Greeley report. I am prepared to
15 rule soon on Appendix A, or at least semi-rule, but
16 first, what I want to do is something I was
17 planning on doing anyway. Because this is an
18 administrative law hearing, because hearsay is
19 allowed, because documents can be introduced
20 without a witness explaining them, what I would
21 like the parties to do, I'd like to walk through
22 the documents and ask the parties introducing them
23 to explain the significance. In case I do have
24 questions, I will be able to present those to live

1 witnesses if appropriate.

2 So let's look at the petitioner's
3 exhibits first, exhibits by the Board of
4 Registration in Medicine. All the patient records
5 are the subject of Dr. Levin's testimony. I'm
6 looking now at Exhibit 12, the CV of Dr. Horwitz.
7 Mr. Paikos, the significance of that?

8 MR. PAIKOS: Dr. Horwitz provided a
9 report at Tab 13 relative to the patients involved
10 in the statement of allegations.

11 THE MAGISTRATE: And how does
12 Exhibit 13 relate to your case, especially in
13 relationship to Dr. Levin's testimony?

14 MR. PAIKOS: Exhibit 13, the report?

15 THE MAGISTRATE: Yes.

16 MR. PAIKOS: I think it relates to the
17 case because it sets out some of the things that
18 Dr. Padmanabhan failed to do in the care of his
19 patients. It says that the patients were not
20 provided care that would meet the standard of care.
21 That's a summary, and sort of explains the basis,
22 what was the basis for the statement of allegations
23 itself originally.

24 THE MAGISTRATE: Are these issues that

1 Dr. Levin has not testified about?

2 MR. PAIKOS: I think -- they're
3 relatively the same issue, without parsing it out
4 completely. They're the same general issues
5 regarding the cases that deal with primarily the
6 prescriptions issues and the other material that
7 deals with more neurological issues of the last
8 three patients.

9 THE MAGISTRATE: I'm sorry. More with
10 what kind of issues?

11 MR. PAIKOS: Neurological issues
12 per se, MS and the other diagnose -- things that
13 deal with the diagnosis of CNS and MS.

14 THE MAGISTRATE: I'm allowed to
15 consider hearsay under certain circumstances. If
16 this is going to the ultimate issue, a report by a
17 doctor who hasn't been sworn in, who is not subject
18 to cross-examination or questions by me, I'm not
19 inclined to give it a whole lot of weight. Do you
20 understand that?

21 MR. PAIKOS: I understand the issue
22 relative to weight.

23 THE MAGISTRATE: Okay. And are there
24 any -- if there are particular parts of Exhibit 13

1 that you want to bring to my attention, you can
2 either do it now -- well, no, because I don't have
3 follow-up questions for witnesses. Just make sure
4 to highlight them in the post-hearing brief,
5 please.

6 MR. PAIKOS: Yes.

7 THE MAGISTRATE: The significance of
8 Exhibit 14?

9 MR. PAIKOS: Exhibit 14, the allegation
10 -- refers to the allegations regarding
11 Dr. Padmanabhan's failure to renew or have his
12 Massachusetts Controlled Substance Registration
13 license. These are evidence that he prescribed
14 during the time that that was lapsed, so there are
15 actual prescriptions that were written during that
16 time.

17 THE MAGISTRATE: And where is the
18 evidence of his -- the lapse?

19 MR. PAIKOS: The following several
20 exhibits are.

21 THE MAGISTRATE: So Exhibit 15,
22 Exhibit 16 --

23 MR. PAIKOS: Yes.

24 THE MAGISTRATE: -- Exhibit 17? Do you

1 want to walk me through these now, because again,
2 you're not planning on having a witness and I want
3 -- I need to make sure I understand these.

4 MR. PAIKOS: The first one is a report
5 that --

6 THE MAGISTRATE: The first one being
7 Exhibit 14?

8 MR. PAIKOS: Fifteen.

9 THE MAGISTRATE: Fifteen.

10 MR. PAIKOS: It is a report done on a
11 specific day showing that at the time of the
12 report, Dr. Padmanabhan's status was expired, does
13 not possess currently active MCSR, which is
14 Massachusetts Controlled Substance Registration, a
15 form from the Massachusetts Controlled Substance
16 Registration, a credentialing verification
17 document. So at the time of this document, on the
18 second paragraph, it shows his status on
19 March 27th, 2014.

20 THE MAGISTRATE: Okay.

21 MR. PAIKOS: So that's the purpose of
22 that document. And it is very specific, but there
23 are more documents showing more information.
24 Exhibit 16 is a printout showing when the recall,

1 which is the language used in the regulations, and
2 I could cite to the regulations, when
3 Dr. Padmanabhan's license was recalled, or -- it's
4 the language of the -- the language of the Code of
5 Massachusetts Regulations where the DPH can recall
6 someone's Mass. Controlled Substance Registration.
7 And this shows that it was recalled, meaning it was
8 a request for renewal, essentially, is the way I
9 would interpret it. And the next one, next
10 document shows --

11 THE MAGISTRATE: I'm going to tip you
12 off that I'm going to have trouble with that
13 without having live testimony to what that means.

14 MR. PAIKOS: Okay.

15 THE MAGISTRATE: The fact that it's
16 your understanding. Dr. Padmanabhan?

17 DR. PADMANABHAN: Yes, sir. That's
18 exactly the point. Where are the people who were
19 supposed to come and testify?

20 THE MAGISTRATE: That's okay. Not to
21 argue about it, but just to highlight things that
22 they think are important in their exhibits.

23 MR. PAIKOS: The next one is also
24 regarding the registration, and it shows the -- an

1 issue date of April 8th, 2014, showing that that's
2 when his current registration or this registration
3 -- showing that at the time of this document, he
4 was registered, so sort of giving some of the
5 parameters. The next one is his application for a
6 Massachusetts Controlled Substance renewal, which
7 was dated April 10th, 2014, which was after the
8 time of the -- of the recall.

9 DR. PADMANABHAN: May I refer to
10 respondent's exhibits?

11 THE MAGISTRATE: Not really, because
12 we're not arguing about them. I'm giving
13 Mr. Paikos the chance to highlight what he thinks
14 is important in his exhibits in case I have
15 follow-up questions.

16 MR. PAIKOS: And then the final one
17 shows again that -- something similar to one of the
18 previous ones that showed the expiration of his
19 Massachusetts registration, Controlled Substance
20 Registration.

21 THE MAGISTRATE: That's Exhibit 19?

22 MR. PAIKOS: Yes.

23 THE MAGISTRATE: Okay. I'll tell you
24 preliminarily, I'm certainly familiar with the

1 expression that the documents speak for themselves.
2 In general, I don't believe that.

3 MR. PAIKOS: Okay.

4 THE MAGISTRATE: Okay. Exhibit 20 is
5 just to provide background and employment history?

6 MR. PAIKOS: It does, and what his role
7 at Cambridge Health Alliance was, that he had
8 clinical privileges in neurology.

9 THE MAGISTRATE: Any more about
10 background and employment is Exhibit 21?

11 MR. PAIKOS: Yes. That shows more of
12 the allegations, just the end of the Cambridge
13 Health Alliance relationship. That's what's
14 documented there.

15 THE MAGISTRATE: Okay, so some
16 documents speak for themselves because they're
17 minor, such as the Exhibit 22 appears to speak for
18 itself because it's minor and procedural, providing
19 background history. Exhibit 23 are basically
20 sources?

21 MR. PAIKOS: Sources relied upon by
22 Dr. Levin.

23 THE MAGISTRATE: We saw Exhibit 24 on
24 the screen?

1 MR. PAIKOS: That was -- yes.

2 THE MAGISTRATE: Are we going to be
3 seeing Exhibit 25?

4 MR. PAIKOS: It turns out we will not
5 need Exhibit 25.

6 THE MAGISTRATE: Exhibit 26 of
7 Patient D's prescriptions?

8 MR. PAIKOS: Yes, to supplement his
9 medical record.

10 THE MAGISTRATE: Okay. And now to the
11 Greeley report. Before I rule on it, or semi-rule
12 on it, what's important in it to your case and what
13 do you wish to highlight for me in the absence of a
14 live witness?

15 MR. PAIKOS: It shows that
16 Dr. Padmanabhan provided substandard care to some
17 of the same patients that Dr. Levin testified to,
18 so it's further evidence of that -- those basic
19 allegations in the statement of allegations.

20 THE MAGISTRATE: Let's turn to the
21 doctor's exhibits before we return to the Greeley
22 report. Doctor, looking at Respondent's Exhibit 2,
23 the partial excerpt from the fair hearing, day
24 three, volume three, what's important in this that

1 you wish to highlight for me?

2 DR. PADMANABHAN: It is sworn testimony
3 from a bona fide pain specialist about exactly the
4 same patients in the statement of allegations.

5 THE MAGISTRATE: Okay. I will read it.

6 This witness is not sworn in here and is not
7 subject to cross-examination by -- is this a fair
8 hearing before the hospital or before the board?

9 DR. PADMANABHAN: Hospital.

10 MR. PAIKOS: Before the hospital.

11 THE MAGISTRATE: Did you get a chance
12 to cross-examine him, or someone from your board?

13 MR. PAIKOS: I'm sorry. No, not at the
14 fair hearing.

15 THE MAGISTRATE: I'm sorry. For the
16 hospital.

17 MR. PAIKOS: Yeah.

18 THE MAGISTRATE: So Doctor, I'll let
19 you know preliminarily, I could change my mind, but
20 this witness is not sworn in here, is not subject
21 to cross-examination here or my follow-up
22 questions, so I'll take a look at it. I'm not
23 quite sure what weight I'm going to give it, but I
24 also am letting you know that it doesn't speak for

1 itself and isn't coming in at a hundred percent
2 weight.

3 DR. PADMANABHAN: Agreed. The
4 government actually turned in a redacted version
5 with the cross-examination as well yesterday. You
6 have that.

7 THE MAGISTRATE: But not subject to
8 cross-examination by Mr. Paikos.

9 DR. PADMANABHAN: Right.

10 THE MAGISTRATE: Okay. Exhibit 3, do
11 you want to explain the significance?

12 DR. PADMANABHAN: Yes. The government
13 claims that I let my Massachusetts Controlled
14 Substance Registration lapse. This letter was the
15 letter from Cambridge Hospital to the credentials
16 department. The credentials department are the
17 people who inform physicians about their paperwork.
18 And this was a letter that was sent before a final
19 decision on my termination from Cambridge Health
20 Alliance essentially told me that I wasn't going
21 back there. So change of address, I got the
22 message and I changed the address for both the
23 federal DA certificate --

24 THE MAGISTRATE: Okay, so I understand

1 the significance of it, Doctor --

2 DR. PADMANABHAN: And also --

3 THE MAGISTRATE: Dr. Padmanabhan, we're
4 on Exhibit 3.

5 DR. PADMANABHAN: No. I have to show
6 you respondent's exhibit --

7 THE MAGISTRATE: Wait.

8 Dr. Padmanabhan, we're just preliminarily going
9 through and making sure I understand the
10 significance of it. So let me point out, you have
11 a dual role here. You're a party and you're
12 representing yourself and you're also a prospective
13 witness. When you take the stand, I'll ask -- I'm
14 going to ask you to follow up on this and what you
15 tell me to -- what you say under oath subject to
16 cross-examination. Exhibit 4 has to do with your
17 controlled substance certificate as well?

18 DR. PADMANABHAN: Correct.

19 THE MAGISTRATE: Okay, so I'll ask you
20 the same thing. I understand the significance of
21 it preliminarily and I'll ask you to testify about
22 that under oath and be subject to
23 cross-examination. Exhibit 5 has to do with that
24 as well?

1 DR. PADMANABHAN: Exhibit 5, yes.

2 THE MAGISTRATE: Okay. Same thing,
3 please. What's the significance of Exhibit 7?

4 DR. PADMANABHAN: It has to do with the
5 notice sent to the Board of Registration in
6 Medicine which opened my docket that I had
7 voluntarily resigned to avoid an investigation, and
8 if you go on the public website, the public profile
9 for the board, that allegation still exists that I
10 resigned. And resignation implies that I was
11 employed there, and as my visa ran out, I couldn't
12 have been employed there.

13 THE MAGISTRATE: So this is all
14 something that you can testify about --

15 DR. PADMANABHAN: Yes.

16 THE MAGISTRATE: -- rather than someone
17 else testifying about?

18 DR. PADMANABHAN: Correct.

19 THE MAGISTRATE: Okay. Exhibit 8 --

20 DR. PADMANABHAN: Also about --

21 THE MAGISTRATE: The same issue?

22 DR. PADMANABHAN: -- the date and the
23 visa, yes.

24 THE MAGISTRATE: I'm going to ask you

1 to testify about that. You don't have to take the
2 stand, you don't have to testify about that, but
3 that would be helpful for me. Exhibit 9, does that
4 have to do with a specific patient?

5 DR. PADMANABHAN: Yes. It's supposed
6 to be my witness, Patient J, and it had to do with
7 my ability to diagnose MS, my ability to read MRI's
8 correctly and to counter the credibility of
9 Dr. Nardin, who testified here yesterday or Tuesday
10 that she had grave concerns about my ability to
11 diagnose MS.

12 THE MAGISTRATE: Okay. I haven't
13 written the opinion yet. I haven't even started
14 the opinion yet. I've written enough opinions that
15 I sense where I can go. I could change my mind,
16 but Dr. Nardin's opinion on your standard of care
17 is not going to be a major part of my decision.

18 DR. PADMANABHAN: Understood. I was
19 actually going to show it to Dr. Levin to get his
20 read of the two different MRI's, because he had
21 compared, in his testimony, the two reports from
22 Dr. Auerbach and Dr. Fay, and that will address
23 that.

24 THE MAGISTRATE: Okay. The

1 significance of Exhibit 10?

2 DR. PADMANABHAN: Ongoing
3 communications between the board and Cambridge
4 Hospital.

5 THE MAGISTRATE: Okay. Which you'll be
6 able to testify about?

7 DR. PADMANABHAN: Yes. You already
8 tossed Exhibit 11.

9 THE MAGISTRATE: Right. Exhibit 12,
10 you'll be able to testify about. Exhibit 13 has to
11 do with discovery, in effect?

12 DR. PADMANABHAN: It proves that the
13 board already had possession of the Greeley report
14 before January 2013.

15 THE MAGISTRATE: Okay. Exhibit 14 are
16 minutes. I don't have questions about them.
17 Fifteen?

18 DR. PADMANABHAN: Exhibit 15, Your
19 Honor, was something that I would have loved to use
20 on Tuesday to cross-examine Dr. Nardin, but as my
21 exhibits had not yet been submitted, I couldn't.
22 She stated here repeatedly under oath that she does
23 not recall how I was informed that I was suspended
24 and terminated, who informed me that I was

1 suspended and terminated, and exhibit -- this
2 letter on Exhibit 15 here simply states delivered
3 by hand. Dear Dr. Padmanabhan, this letter
4 confirms your conversation today with Dr. Rachel
5 Nardin and myself --

6 THE MAGISTRATE: Okay, so I'm looking
7 at it. What specifically do you want me to note?

8 DR. PADMANABHAN: To note that the
9 patient lied under oath. The doctor -- the witness
10 lied under oath.

11 THE MAGISTRATE: Okay, so your
12 contention is that this disproves Dr. Nardin's
13 testimony, or contradicts it?

14 DR. PADMANABHAN: Correct.

15 THE MAGISTRATE: Okay, so again, my
16 preliminary assessment is that Dr. Nardin testified
17 to basic background information about your
18 employment, how you came to leave the Cambridge
19 Health Alliance and how the Greeley report came
20 into existence, so her credibility will not be a
21 major factor in my opinion is what I anticipate.
22 The significance of Exhibit 16?

23 DR. PADMANABHAN: The letter from CHA
24 documenting that my visa status ended in

1 January 2011, and therefore, I could not have been
2 employed at Cambridge Health Alliance through
3 October 28th, 2011, as they told the board.

4 THE MAGISTRATE: Okay. Exhibit 17, I
5 understand. Exhibit 18, you will be able to
6 testify about this because this is an e-mail
7 involving you?

8 DR. PADMANABHAN: And I will be
9 questioning Dr. Levin about the MRI reports
10 contained within.

11 THE MAGISTRATE: Okay. Exhibit 19 is
12 likewise an e-mail involving you. You'll be able
13 to testify about it?

14 DR. PADMANABHAN: Yes, sir.

15 THE MAGISTRATE: Exhibit 20, the
16 significance of it?

17 DR. PADMANABHAN: This had to do with,
18 again, the difference in expertise between
19 Dr. Nardin and myself, and it relates to her
20 testimony under oath here on Tuesday and to show
21 that Dr. Nardin had no basis in fact to declare
22 that my diagnosis of MS could have been incorrect.

23 THE MAGISTRATE: Okay, so my same
24 preliminary thoughts as before on Dr. Nardin's

1 testimony. So I see the e-mail from -- is it
2 Dr. Glick? Is that correct?

3 DR. PADMANABHAN: Yes, sir.

4 THE MAGISTRATE: Okay. And I know this
5 is important to your case. If he's not testifying,
6 I will -- the weight I accord it will be less.

7 DR. PADMANABHAN: Yes.

8 THE MAGISTRATE: Okay.

9 DR. PADMANABHAN: It gives you the
10 background of the whole fracas.

11 THE MAGISTRATE: I see Exhibit 22 and I
12 assume you'll be able to testify about it?

13 DR. PADMANABHAN: Yes.

14 THE MAGISTRATE: And that is it for
15 exhibits. So back to the Greeley report. It's
16 approximately 22 pages, including the cover page.
17 I haven't read every word. You can probably guess
18 that from the amount of time I was out of the
19 hearing room. I'm not saying that Dr. Padmanabhan
20 is entitled to Appendix A in discovery. I am
21 saying the doctor is entitled to try to get it
22 through discovery under the Code of Massachusetts
23 Regulations. I don't know if it's too late under
24 this hearing, but again, I haven't written the

1 decision. I haven't even started it. I've written
2 enough decisions to have a sense of what I will
3 rely on and I will give you a preliminary sense or
4 share that preliminary sense. I'm going to be
5 relying on Dr. Levin's testimony, because it's
6 subject to cross-examination by Dr. Padmanabhan,
7 because I get to ask follow-up questions. The
8 Greeley report is not subject to cross-examination
9 and I don't get to ask follow-up questions. To the
10 extent that it's duplicative, I'm just going to
11 look at Dr. Levin's testimony. Let's say that the
12 CD, Appendix A, never emerges. It becomes even
13 less significant to me, because I don't know who
14 wrote it, so I don't -- the issue is somewhat
15 amorphous. And I'm not sure there's a motion in
16 front of me, but the report can come in without the
17 appendix. The doctor is entitled to try to get the
18 appendix through discovery under CMR. It's
19 something that the board doesn't have; is that
20 right?

21 MR. PAIKOS: We don't have it.

22 THE MAGISTRATE: You don't have
23 Appendix A. And even if I get Appendix A, it might
24 be of diminished weight anyway. Yes?

1 DR. PADMANABHAN: How would I go about
2 getting Appendix A?

3 THE MAGISTRATE: I can't give you
4 medical advice -- I'm sorry; legal advice about how
5 to proceed in this medical appeal. Code of
6 Massachusetts Regulations 801 CMR.

7 DR. PADMANABHAN: I am under the
8 impression that I could not issue a subpoena.

9 THE MAGISTRATE: If you want -- if you
10 want to go through 801 CMR and comply with that,
11 that procedure, I'll entertain something in
12 writing, but not something oral.

13 DR. PADMANABHAN: Thank you.

14 THE MAGISTRATE: And you know, as I've
15 said two or three times just now, you're entitled
16 to try to get it. I'm not saying I'm going to
17 issue a subpoena, but if you heard what I said, I'm
18 also not inclined to give the Greeley report much
19 weight with or without --

20 DR. PADMANABHAN: Thank you.

21 THE MAGISTRATE: -- the appendix.
22 Anything else before me today?

23 MR. PAIKOS: Relative to the
24 Massachusetts Controlled Substance Registration

1 materials, would we be permitted to call someone
2 from there at this point? I know we've discussed
3 it and was trying to limit the time by providing
4 the documents and resting on those. However, is
5 that acceptable?

6 THE MAGISTRATE: You can call a
7 witness, and that's why I went through both
8 parties' documents. Again, because we have the
9 informality of allowing documents in without a
10 witness, sometimes they're sufficient and sometimes
11 just not enough, but I let the parties know my
12 inclination.

13 MR. PAIKOS: The only other thing is
14 that I've copied the -- tried to print out the
15 Dawson's fingers from the Internet. I have a copy
16 and I can provide -- I can see if I go back to my
17 office and try to get a better view of it, because
18 this is what it came up as when I printed it from
19 my home, so I don't know if -- and if you remember,
20 it was the entire face, but the Dawson's fingers
21 are here, so I'd like to give another try to get a
22 clearer picture, but -- unless we need them today
23 to complete this issue.

24 THE MAGISTRATE: You don't need them

1 today. So that issue is open. You'll get those to
2 me. I don't have 801 CMR in front of me in terms
3 of discovery, in terms of subpoena power. I don't
4 -- I'm not prepared to rule on it. I'm not saying
5 it's, um, you can get a subpoena, can get
6 everything on time. We're not holding the hearing
7 open for that, so I am saying you are -- you were
8 entitled to try and you're entitled to try now and
9 I will -- whatever ends up in front of me in
10 writing, Mr. Paikos may oppose it, may point out
11 flaws in it.

12 Okay. With that, I think the next
13 thing is to wait to hear from the parties on
14 January 29th --

15 MR. PAIKOS: Yes.

16 THE MAGISTRATE: -- and whether that's
17 going to work.

18 MR. PAIKOS: I have a tentative text
19 message from Dr. Levin saying it should work, he's
20 on call the next day, but if we could confirm on
21 Tuesday, confirm with his office, because I think
22 he's at home.

23 DR. PADMANABHAN: That works for me.

24 THE MAGISTRATE: Excuse me?

1 DR. PADMANABHAN: My patients will be
2 here.

3 THE MAGISTRATE: Okay. January 29th
4 works for you. I'm going to ask the parties to
5 stay in touch and I'm going to ask Mr. Paikos to
6 communicate with me on behalf of the patients --
7 I'm sorry; on behalf of the parties. He'll send
8 you a copy of whatever he mails to me. So with
9 that, I thank everybody and the hearing for today
10 is over.

11 (Off the record.)

12 (Whereupon the proceedings were
13 suspended for the day at 11:34 a.m.)

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C E R T I F I C A T E

I, Marianne R. Wharram, Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public, do hereby certify that the foregoing transcript, Volume V, Pages 734-803, is a true and accurate transcription of my stenographic notes taken on Friday, January 16, 2015, in Boston, Massachusetts.

Dated this 28th day of January, 2015.

Marianne R. Wharram
Certified Shorthand Reporter
CSR No. 1426S96
Registered Professional Reporter
Notary Public
My Commission Expires:
July 29, 2016