

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

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DYLAN BRANDT, et al.,	:	
	:	
Plaintiff,	:	
v.	:	Case No. 4:21-CV-00450-JM
LESLIE RUTLEDGE, et al.,	:	
	:	
Defendant.	:	
	:	
-----	X	

**RESPONSE IN OPPOSITION TO
DEFENDANTS’ MOTION FOR A PROTECTIVE ORDER**

Plaintiffs first informed Defendants of their intent to depose Dr. Branman, a defendant in this action, three days after completing the deposition of Amy Embry, the Executive Director of the Arkansas Medical Board. During her deposition, Ms. Embry declined to discuss the views or actions of Board members, which prevented Plaintiffs from exploring important issues about the State’s justifications for the Health Care Ban. Upon contacting Defendants, Plaintiffs offered to take the deposition at a time most convenient for Dr. Branman, including after the close of discovery. Plaintiffs subsequently proposed limiting the deposition to three hours and told Defendants that they were willing to schedule the deposition during the evenings or on the weekend if that was best for Dr. Branman and his

patients. Rather than respond to any of these requests, Defendants filed their Motion to quash the deposition.

Defendants do not dispute that Dr. Branman's testimony could be relevant to this case, nor do they argue that Dr. Branman is unavailable at any point beyond May 26, 2022. Instead, they argue that two weeks is not "reasonable notice" under Federal Rule of Civil Procedure 30(b), and that a deposition after the close of fact discovery would somehow derail preparation for a trial in October. Both arguments are baseless. Courts routinely allow depositions with notice of only a few days, and there is no reason to think that a deposition that accommodates Dr. Branman's schedule would delay the proceedings in any way—particularly since trial is scheduled to begin almost five months from now.

Despite their obligation to meet and confer, Defendants have yet to speak with Plaintiffs at any point about this matter. In fact, Plaintiffs have learned more about Dr. Branman's schedule from reading the Defendants' brief than they did in three separate attempts to discuss the deposition. Plaintiffs remain willing to work with Defendants on a mutually agreeable solution. The Court should deny the Defendants' Motion and allow those good faith discussions to finally commence.

BACKGROUND

On May 10, 2022, Plaintiffs took the deposition of Amy Embry, who Defendants designated to speak on behalf of the Arkansas Medical Board under

Federal Rule of Civil Procedure 30(b)(6).¹ During her deposition, Ms. Embry was unwilling or unable to answer questions about the views or actions of Arkansas Medical Board members, including Dr. Branman. For instance, in response to the question “Does the Board recognize that gender-affirming hormones can be a help to some adolescents?”, Ms. Embry replied “not to my knowledge.” When asked to explain that answer, she said “You’re going to have 14 different Board members with 14 different opinions, so you can have 14 different answers.”² Similar answers were provided for a host of questions seeking information central to this case.³

After reviewing those responses, Plaintiffs decided to move forward with the deposition of a member of the Board, Dr. Branman. Plaintiffs notified Defendants of this decision on May 13, three days after Ms. Embry’s deposition and two weeks before the close of discovery.⁴ Plaintiffs’ message to Defendants offered possible dates of May 23 or May 24, and went on to say that “[w]e are willing to

¹ See *Exhibit A* - Embry Deposition .

² See, e.g., *id.* at 170.

³ See, e.g., *id.* at 149–150, 158, 161, 226.

⁴ *Exhibit B* – Good Faith Email Chain, at May 13 email from Daniel Richardson to Michael Cantrell.

meet and confer about dates, including to potentially stipulate to taking his deposition after the close of fact discovery, if those dates do not work.”⁵

Defendants did not respond to that request. On May 17, Plaintiffs served a Notice of Deposition, which provided that the deposition would take place on May 24, 2022, in Little Rock, Arkansas, where Dr. Branman works. Once again, Plaintiffs clarified that “we are willing to revise the date if there is a better one for the witness.”⁶ Defendants responded the next day, but rather than attempting to reach any reasonable agreement concerning the date or length of the deposition, Defendants simply asked Plaintiffs to withdraw the Notice. Plaintiffs replied by offering to “limit the deposition to three hours on the record and to meet with [Dr. Branman] at a time that is most convenient, including in the evenings or during the weekend.”⁷ But Defendants refused to engage, deciding instead to file this Motion. Prior to that filing, Defendants never attempted to discuss specific constraints on Dr. Branman’s schedule, never proposed any limits on the deposition, and never explained why a deposition after the close of discovery would inhibit preparation for a trial nearly five months away.

⁵ *Id.*

⁶ *Id.* at May 17 email from Daniel Richardson to Michael Cantrell.

⁷ *Id.*

ARGUMENT

“A party seeking to quash a deposition in its entirety has a heavy burden of demonstrating good cause.” *Ruminer v. Gen. Motors Corp.*, 2005 WL 8164522, at *1 (E.D. Ark. Nov. 10, 2005) (quoting *Bucher v. Richardson Hosp. Auth.*, 160 F.R.D. 88, 92 (N.D. Tex. 1994)) (denying a motion to quash and reasoning that “[e]ven four days notice of a deposition has been found to be reasonable under the particular circumstances”). Defendants provide only one ground for “good cause”: that “the Notice of Deposition issued by Plaintiffs does not afford reasonable notice to Defendant Branman.”⁸ Under Rule 30(b), “the determination of whether the notice given can be deemed ‘reasonable’ is highly fact-specific, and depends upon the circumstances of the particular case.” *Smith v. Wallace*, 2016 WL 6962817, at *2 (E.D. Mo. Nov. 29, 2016). Here, the facts show that Plaintiffs served the Notice shortly after the Rule 30(b)(6) deposition of the Arkansas State Medical Board by its designee, the Board’s Executive Director Ms. Embry, during which it became apparent that testimony from a member of the Board would be necessary. Moreover, Plaintiffs first notified Defendants of their intent to depose Dr. Branman two weeks before the close of discovery; have consistently offered to meet with Defendants to discuss accommodations for Dr. Branman’s schedule—including holding the

⁸ *Defendant’s Brief in Support of Motion for a Protective Order 3.*

deposition sometime after the close of discovery—and reasonable limits on Dr. Branman’s deposition; and each time have received either no response from Defendants or have been met with demands to withdraw the Notice. Taken together, those facts show reasonable conduct by the Plaintiffs and steadfast obstruction by the Defendants. *See Ruminer*, 2005 WL 8164522, at *2 (“Even four days notice of a deposition has been found to be reasonable under the particular circumstances.” (citing *F.A.A. v. Landy*, 705 F.2d 624, 634-35 (2nd Cir. 1983)); *CFTC v. United Invs. Grp., Inc.*, 2006 WL 8446783, at *3 (S.D. Fla. Mar. 6, 2006) (holding that notice of five days was reasonable in part because of “Plaintiff’s un rebutted assertion that it offered to work with defendants regarding the timing and order of completing the depositions prior to the close of discovery” (citations omitted)).

Defendants offer no persuasive argument against that straightforward conclusion. First, there is no *per se* rule that notices must be filed many weeks before a deposition. To the contrary, courts regularly find that notice of only a few days is sufficient. *See, e.g., Ruminer*, 2005 WL 8164522, at *2. Reasonableness turns on the facts, and here Plaintiffs had good reason for waiting until Ms. Embry’s deposition before moving forward. Given the circumstances, there was nothing unreasonable about serving a notice more than one week away, even if Plaintiffs had not offered to take the deposition at a later point. *See Paul v. Winco Holdings, Inc.*,

249 F.R.D. 643, 656 (D. Idaho 2008) (holding that notice eight business days before the close of discovery was reasonable).

None of the cases cited by Defendant suggest otherwise. *Jackson v. Allstate Ins. Co.* involved discovery requests served one week *before trial*. 785 F.3d 1193, 1202 (8th Cir. 2015). In *Sulfuric Acid Antitrust Litig.*, the plaintiff sought to depose foreign citizens in the United States and failed to respond to defendants' effort to discuss the deposition for two weeks. 231 F.R.D. 320, 327 (N.D. Ill. 2005). Based on those particular circumstances, the Court granted the motion to quash, while noting that "ten business days' notice would [ordinarily] seem reasonable." *Id.* And *G&K Servs. Co. v. Bill's Super Foods Inc.* addressed a party's attempt to extend the discovery deadline, which is not at issue here. 2009 WL 2215765, at *20 (E.D. Ark. July 23, 2009).

Second, Plaintiffs offered to depose Dr. Branman after the close of discovery to accommodate his schedule. Defendants failed to mention this in their motion when arguing that Dr. Branman's deposition would cause "significant hindrance on Defendants' continued preparation" for depositions on May 25 and May 26.⁹ And a deposition after the close of fact discovery would not impair Defendants' ability to litigate this case. Defendants offer no reason why a deposition

⁹ *Brief in Support*, at 3.

in the weeks following the May 26 close of discovery—particularly one that Plaintiffs offered to limit to three hours—would interfere with preparation for a trial in October. And while Defendants assert that Plaintiffs’ request has “pulled [them] away” to “prepare for this last minute discovery dispute that now requires Court intervention,” they are the ones that chose to file a motion before picking up the phone.

Third, there is nothing unusual or improper about taking a deposition after the close of fact discovery. Plaintiffs understand that Dr. Branman has a busy schedule and that the medical care he provides to his patients should not be interrupted. For that reason, Plaintiffs stand ready to meet whenever is most convenient for him, whether that means waiting a few weeks or taking his deposition in the evening or on the weekend. It is not clear why Defendants are unwilling to do the same. Defendants argue that this Court’s scheduling order somehow prevents the parties from stipulating to a later deposition. It does no such thing. The portion of the Order quoted by the Defendants relates to motions for a continuance, which no one here is seeking.¹⁰ And the very same paragraph contemplates discovery beyond the date provided in the Scheduling Order.¹¹ The present dispute arose prior

¹⁰ See Final Scheduling Order, Doc. 76, at 1.

¹¹ *Id.* (“The parties may conduct discovery beyond this date if all parties are in agreement to do so.”).

to the close of discovery. If Defendants were not prepared to agree to a deposition after the close of discovery, they should have identified some point during the two week period when the deposition could have taken place. To the extent that Dr. Branman's deposition will now occur after the close of fact discovery, that is as much the product of Defendant's delay tactics as it is Dr. Branman's busy schedule.

CONCLUSION

Plaintiffs have made three efforts to meet with Defendants to discuss this deposition and have unilaterally proposed limits in order to reach an agreement. Rather than respond in good faith, Defendants burdened the Court with this Motion. That conduct falls well short of the parties' obligation to meet and confer, and this Court should deny the Motion.

Dated: May 25, 2022

/s/ Leslie Cooper

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Attorney for Plaintiffs

Exhibit A

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF ARKANSAS
3 CENTRAL DIVISION
4 CASE NO. 4:21-CV-00450-JM

5 -----X

6 DYLAN BRANDT, by and through his
7 Mother, JOANNA BRANDT, et al.,
8 Plaintiffs,

9 V.

10 LESLIE RUTLEDGE, et al.,
11 Defendants.

12 -----X

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14

15 REMOTE/ORAL/WEB VIDEOCONFERENCE
16 VIDEOTAPED DEPOSITION OF AMY E. EMBRY
17 (Sitting in Little Rock, Arkansas)

18 May 10, 2022

19 10:00 a.m.

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24 Reported by:

25 Maureen Ratto, RPR, CCR

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Videotape deposition of Amy E.
Embry, held virtually via Zoom
Teleconference, hosted from Veritext
Legal Solutions, pursuant to notice,
before Maureen Ratto, Certified Court
Reporter, License No. XI01165,
Registered Professional Reporter,
License No. 817125, and Notary Public.

* * *

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

2

3 Counsel for the Plaintiffs:

4 SULLIVAN & CROMWELL, LLP

5 125 Broad Street

6 New York, New York 10004

7 BY: JONATHAN G. LESTER, ESQ.

8 DANIEL RICHARDSON, ESQ.

9

10 AMERICAN CIVIL LIBERTIES UNION

11 125 Broad Street

12 New York, New York 10004

13 BY: LESLIE COOPER, ESQ.

14

15 AMERICAN CIVIL LIBERTIES UNION

16 OF ARKANSAS

17 904 West 2nd Street

18 Little Rock, Arkansas 72201

19 BY: GARY SULLIVAN, ESQ.

20

21 GILL RAGON OWEN, PA

22 425 West Capitol Avenue

23 Little Rock, Arkansas 72201

24 BY: DRAKE MANN, ESQ.

25 BETH ECHOLS, ESQ.

1 A P P E A R A N C E S , continued:

2

3 Counsel for the Defendants:

4 SENIOR ASSISTANT ATTORNEY

5 GENERAL, PUBLIC PROTECTION DIVISION

6 OFFICE OF ARKANSAS ATTORNEY GENERAL

7 323 Center Street

8 Little Rock, Arkansas 72201

9 BY: AMANDA LAND, ESQ.

10

11 ALSO PRESENT:

12 Randy Schoening, Legal Video Specialist

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1 VIDEOGRAPHER: We are on
2 the audio and video record. It is
3 10:05 a.m. The date is May 10th,
4 2022.

5 This is the videotape recorded
6 deposition of Amy Embry, taken by
7 counsel for the Plaintiff in the
8 matter of Dylan Brandt, et al
9 versus Leslie Rutledge et al, filed
10 in the United States District Court
11 Eastern, District of Arkansas,
12 Central Division, Case No.
13 4:21-CV-00450-JM.

14 This deposition is being held
15 at Gill Ragon & Owen, PA, 425 West
16 Capitol, Suite 3800, Little Rock,
17 Arkansas.

18 My name is Randy Schoening
19 from the firm of Veritext, I'm the
20 videographer. The court reporter
21 is Maureen Ratto, from the firm
22 Veritext.

23 Will counsel please introduce
24 themselves for the record.

25 MS. COOPER: Yes. Thank you.

1 Leslie Cooper from the ACLU for
2 Plaintiffs.

3 MR. LESTER: John Lester from
4 Sullivan & Cromwell for the
5 Plaintiffs.

6 MR. RICHARDSON: Daniel
7 Richardson from Sullivan & Cromwell
8 for the Plaintiffs.

9 MR. SULLIVAN: Gary Sullivan,
10 ACLU of Arkansas for the
11 Plaintiffs, in person.

12 MR. MANN: Drake Mann, Gill
13 Ragon Owen for the Plaintiffs.

14 MS. LAND: Amanda Land of the
15 Arkansas Attorney General on behalf
16 of the Defendants.

17 VIDEOGRAPHER: Will the
18 witness please be sworn?

19 * * *

20 A M Y E. E M B R Y, having been duly
21 sworn by an authorized Notary of the
22 State of Arkansas, testifies as
23 follows:

24 DIRECT EXAMINATION BY MS. COOPER:

25 VIDEOGRAPHER: You may

1 AMY E. EMBRY

2 proceed.

3 Q. Thanks so much. Good morning,
4 Ms. Embry. I'm Leslie Cooper. I'm with
5 the ACLU, counsel for Plaintiffs and I'll
6 be taking your deposition today.

7 Before we get started, can I
8 just ask you to state your full name for
9 the record?

10 A. My name is Amy Elizabeth
11 Embry.

12 Q. Thank you. And have you ever
13 had your deposition taken before?

14 A. Yes.

15 Q. Okay. How many times?

16 A. Once.

17 Q. Was that in your capacity as
18 an employee of the Board?

19 A. Yes.

20 Q. Okay. Can you tell me what
21 that case was about?

22 A. It was a lawsuit basically for
23 a license action or action against a
24 license, I guess I should say.

25 Q. So a medical provider

1 AMY E. EMBRY

2 challenging a decision concerning a
3 licensing --

4 A. Correct.

5 Q. -- issue?

6 A. Correct.

7 Q. So you have been deposed once
8 before, so what I'm about to say may
9 sound familiar, but just to make sure so
10 we get a clean record I'm going to go
11 over some of the groundrules for
12 deposition taking so the transcript is
13 clear.

14 First thing is, the best we
15 can, to the best we can we should really
16 try to avoid speaking over one another.
17 So if you could give me a chance to
18 finish my question, even if you
19 anticipate what I'm asking, before
20 answering it will prevent the court
21 reporter from having to try to hear two
22 things at once. Does that sound okay?

23 A. Yes.

24 Q. Okay. And I similarly will try
25 to wait until you complete your answer to

1 AMY E. EMBRY

2 ask a new question.

3 Also, unlike regular
4 conversations, we have to always answer
5 verbally. We can't nod or even say a-hum
6 because that's kind of hard to understand
7 in -- typed out what that means. So I'm
8 just going to ask you to do your best to
9 answer verbally each time. Okay?

10 A. Okay.

11 Q. It may be that I'll ask
12 questions that you don't fully understand
13 or are confusing. If that happens, just
14 let me know that the question wasn't
15 clear to you and I can try to ask the
16 question in a different way to clarify
17 it. So please make sure to do that if a
18 question is not clear. Okay?

19 A. Okay.

20 Q. Because if you do answer a
21 question we will assume that means you
22 understood it. Okay?

23 We will take breaks as we go
24 through. I will take them periodically,
25 but if you feel you need to break at any

1 AMY E. EMBRY

2 time before I bring it up just let me
3 know and we can find a breaking point to
4 do that. We will just need to make sure
5 we get completed answers to any questions
6 pending and then I'll find a time to take
7 a break. So no problem if you need to
8 take a break. Okay?

9 A. Okay.

10 Q. Is there anything that would
11 prevent you from giving complete and
12 accurate testimony today?

13 A. No.

14 Q. Okay. Is there any material
15 you're consulting today in connection
16 with your deposition, any notes or
17 written materials?

18 A. I do not have any notes or
19 anything with me.

20 Q. Okay. Did you do anything to
21 prepare for your deposition today?

22 A. Just -- I reviewed the
23 documents received for the deposition, I
24 reviewed that, and spoke with Amanda
25 Land.

1 AMY E. EMBRY

2 Q. And when you say the documents
3 received, what documents are you
4 referring to?

5 A. That was the document stating
6 that I was going to be deposed today.

7 Q. Okay. We'll look at that just
8 to confirm. I understand you to be
9 referring to the notice of your
10 deposition; is that your understanding?

11 A. Yes.

12 Q. And that included topics for
13 the deposition?

14 A. Yes.

15 Q. Okay. You didn't review
16 anything else?

17 A. No.

18 Q. Okay. And you said you met
19 with Ms. Land; is that correct?

20 A. Yes.

21 Q. And without sharing any
22 content of your conversation, how long
23 did you meet with her?

24 A. Maybe an hour, maybe an hour.
25 I didn't write down the beginning time or

1 AMY E. EMBRY

2 ending time, but maybe an hour.

3 Q. When was that?

4 A. Yesterday.

5 Q. And just the one time?

6 A. Yes.

7 Q. Okay. Did you review any
8 documents with counsel?

9 MS. LAND: Objection.

10 MS. COOPER: I'm sorry. I
11 didn't hear.

12 MS. LAND: I made an
13 objection.

14 A. Again, it was the document
15 that I received for my deposition and
16 what I would be responsible for answering
17 today.

18 Q. And I probably should have
19 mentioned this before, that your counsel
20 may from time to time object to some of
21 my questions. Some of them may be
22 objections about the form of my question,
23 in which case she's making the record and
24 I can either correct the question or you
25 can -- or leave it as is and you can

1 AMY E. EMBRY

2 answer. Unless she makes a privilege
3 objection and instructs you not to
4 answer, otherwise you can continue
5 answering. Okay?

6 A. Okay.

7 Q. Have you spoken with anyone
8 besides Ms. Land about your deposition
9 today?

10 A. I spoke with higher-ups at the
11 Department of Health to let them know I
12 would be in a deposition today. I also
13 informed the Board that they were being
14 sued and that I would be deposed.

15 Q. Okay. And when you say you
16 informed the Board, I know that's a lot
17 of people, how did you inform them?

18 A. I believe it was at a meeting
19 and I just told them that we had received
20 documents that we were being sued because
21 of the legislation that was passed and
22 the question from them was; why are they
23 suing us? And I said I don't know.

24 Q. And when did this happen?

25 A. I believe the lawsuit was

1 AMY E. EMBRY

2 filed last fall, so I don't have a date,
3 a specific date, but it would have been
4 in the fall or shortly after the lawsuit
5 was filed.

6 Q. So that was a meeting you --
7 that occurred some time shortly after the
8 lawsuit was filed in this case; is that
9 right?

10 A. It could be. And again, I have
11 to say this was months ago. So it may be
12 that I only spoke with one Board member.
13 I just don't recall. I do know that I did
14 tell a Board member that we're being
15 sued.

16 Q. Okay. Did you notify the Board
17 at any time in writing that they were
18 being sued?

19 A. Not to my knowledge.

20 Q. Okay. And did anybody else
21 notify the Board in writing, besides you,
22 that the Board was being sued?

23 A. No, just the documents that
24 came.

25 Q. Okay. And then so that was at

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AMY E. EMBRY

least several months ago that communication with at least one Board member about being sued. But more recently, since you've been notified about your deposition, did you speak to anyone in the Board about that?

A. No.

Q. Okay. And I'd like to mark as Exhibit 1 the 30(b)(6) notice of the Board. That will be posted on Exhibit Share in a moment.

(Exhibit 1, 30(b)(6) notice for Defendant Arkansas State Medical Board was received and marked on this date for identification.)

MS. LAND: This is my first time using Exhibit Share, so I'm just making sure I find it as well. Leslie, has it been uploaded to Exhibit Share yet? I am not seeing it.

MS. COOPER: I think it's still uploading. Sorry about that.

1 AMY E. EMBRY

2 Let's give it another minute before
3 we abandon Exhibit Share.

4 MR. SULLIVAN: I'm going to
5 try and reload the exhibit. I
6 apologize.

7 MS. COOPER: Thank you.

8 MR. RICHARDSON: If you reload
9 the folder named Marked Exhibits
10 you should see Exhibit 1, Notice of
11 30(b)(6) deposition.

12 VIDEOGRAPHER: This is the
13 court reporter, we're going to need
14 someone to share that to a screen
15 share because the witness is not
16 able, I mean, I'm not able to go
17 out of the feed into the share. So
18 can you actually share it on the
19 screen?

20 MS. COOPER: I think given
21 that tech issue that we didn't
22 realize would be an issue, we
23 should resort to the hardcopies.
24 Can we go off the record for just a
25 moment?

1 AMY E. EMBRY

2 VIDEOGRAPHER: Yes. We are off
3 the record at 10:18 a.m.

4 (Discussion is held off the
5 record.)

6 VIDEOGRAPHER: We are back on
7 the record at 10:20 a.m.

8 Q. Thank you. Ms. Embry, you've
9 been shown a document that we'd like to
10 mark as as Exhibit 1. Do you recognize
11 this document?

12 A. Yes.

13 Q. Is this the Notice of
14 Deposition that you referred to earlier?

15 A. Yes.

16 Q. Okay. And you've reviewed this
17 entire document?

18 A. Yes.

19 Q. Okay. And do you understand
20 that you have been designated by the
21 Defendant Arkansas State Medical Board to
22 testify on its behalf concerning a number
23 of topics listed in this notice?

24 A. Yes.

25 Q. And are you prepared to

1 AMY E. EMBRY

2 testify on behalf of the Board regarding
3 the topics listed in this notice?

4 A. Yes.

5 Q. You can put that aside for
6 now. Are you currently employed by the
7 Arkansas State Medical Board?

8 A. I am.

9 Q. And if I say "the Board" will
10 you understand that I mean the Arkansas
11 State Board?

12 A. Yes.

13 Q. And are you currently the
14 Executive Director of the Board?

15 A. Yes.

16 Q. Okay. Since when?

17 A. 2018.

18 Q. And did you hold any position
19 with the Board before 2018?

20 A. Yes.

21 Q. What position was that?

22 A. It was the Administrative
23 Services Manager.

24 Q. And what were your
25 responsibilities in that position?

1 AMY E. EMBRY

2 A. I was responsible for the
3 human resources, accounting, budget,
4 general office management of the Board.

5 Q. When did you start that
6 position?

7 A. 2014.

8 Q. Prior to that did you hold any
9 employment with the Board?

10 A. No.

11 Q. What did you do before that?

12 A. I worked at the Department of
13 Finance and Administration for the State
14 of Arkansas.

15 Q. Do you have any medical
16 training?

17 A. No.

18 Q. Any training at all related to
19 healthcare?

20 A. No.

21 Q. Can you tell me what your
22 responsibilities are as the Executive
23 Director of the Board?

24 A. I manage the day-to-day
25 functions of the Board, I have managers

1 AMY E. EMBRY

2 that manage certain sections, I also work
3 closely with the Board for Board meetings
4 and each section within the Board works
5 with the Board in their own way. In a
6 nutshell, that's what I do.

7 Q. Now, you mention sections.
8 Could you tell me what the sections are?

9 A. We have a regulatory section,
10 licensure, we have IT and we have a
11 credentialing section.

12 Q. And those are all of the
13 sections?

14 A. Yes.

15 Q. And you have someone who is a
16 manager for each of those sections; is
17 that right?

18 A. Yes.

19 Q. And are there other employees
20 of the Board besides you and those
21 managers?

22 A. Yes. Those --

23 Q. I'm sorry.

24 A. Those managers do have
25 employees and we have right now I would

1 AMY E. EMBRY

2 say 25, between 25 and 30 total
3 employees, including the managers and
4 myself.

5 Q. Okay. And can you tell me
6 within the regulatory section who the
7 employees are or what their positions are
8 and what they do?

9 A. There are three employees, one
10 of those is a manager. The manager's
11 name is Juli Carlson and she had two
12 employees who are fairly new, one is
13 Penny Henderson and the other is
14 Elizabeth Jones.

15 Q. And what are their jobs?

16 A. They handle all the complaints
17 that come in that need to be processed to
18 the Board, they also handle any letters
19 or communication from the Board to the
20 licensees. They handle continuing medical
21 education audits, any questions that come
22 in as far as how to file a complaint.

23 Q. And do I assume correctly that
24 the licensing or licensure section has to
25 do with doctors and other healthcare

1 AMY E. EMBRY

2 providers getting their license to
3 practice in Arkansas; is that correct?

4 A. It is the healthcare providers
5 that we license, that is what they deal
6 with.

7 Q. But any complaints regarding
8 any licensed healthcare providers go to
9 the regulation section; is that right?

10 A. Correct.

11 Q. Or regulatory, is that what
12 you called it?

13 A. Yes, ma'am.

14 Q. Okay. Thank you. The employees
15 in the regulatory section, do any of
16 those employees have medical or
17 healthcare training?

18 A. Not to my knowledge.

19 Q. Okay. I want to ask you a few
20 questions about the current Board members
21 of the Board. You have at this point, I'm
22 going to count here. Maybe you can just
23 tell me how many because you probably
24 know it, how many Board members you have?

25 A. In all we have 14 Board

1 AMY E. EMBRY

2 members.

3 Q. And of those Board members
4 that are currently on the Board, are all
5 -- have they all been on the Board since,
6 say, the beginning of 2021?

7 A. With the exception of one. I
8 would have to go back and check my
9 records to see when they came in. I only
10 know of one that was not on the Board as
11 of 2021.

12 Q. And who was that?

13 A. Dr. Brian McGee. He was just
14 appointed within the past two months.

15 Q. And any of the members who
16 were on the Board in January 2021, if you
17 look at that list of people, are any of
18 those members no longer on the Board?

19 A. Yes.

20 Q. Who is that?

21 A. You have Dr. Rutledge,
22 Dr. Staggs. Bear with me, I have to think
23 about this. I think that's it. We've lost
24 two.

25 Q. So you've lost two and you

1 AMY E. EMBRY

2 gained one?

3 A. Correct.

4 Q. Okay.

5 MS. COOPER: Can we mark as
6 Exhibit 2, tab 2, please, the
7 Arkansas Medical Practices Act and
8 Regulations.

9 (Exhibit 2, Arkansas Medical
10 Practices Act and Regulations,
11 revised as of December 2, 2020 was
12 received and marked on this date
13 for identification.)

14 Q. Do you have that in front of
15 you, Ms. Embry?

16 MS. LAND: I'm showing her my
17 Exhibit Share.

18 MS. COOPER: I'm sorry. Is
19 there someone speaking that I can't
20 hear on the record?

21 MS. LAND: That was Amanda
22 Land. I asked if I could have a
23 copy because I don't believe you
24 are uploading these to --

25 MS. COOPER: Yeah. We can

1 AMY E. EMBRY

2 upload to Exhibit Share

3 simultaneously. You're able to

4 review that, Amanda?

5 MS. LAND: I'm on Exhibit

6 Share. It seems to be working

7 because I can see the first exhibit

8 that you did upload, but if --

9 whether it's in paper or Exhibit

10 Share, I don't have a preference.

11 MS. COOPER: Okay. We will

12 upload all of the exhibits on

13 Exhibit Share for counsel to be

14 able to review while giving

15 hardcopies to the witness. Okay. So

16 we're in the process of uploading

17 Exhibit 2.

18 And Amanda, if you can let me

19 know when you're able to see that.

20 MS. LAND: It has popped up

21 for me.

22 MS. COOPER: Amanda, I can't

23 hear you so well. If you can speak

24 a little louder or adjust the mic.

25 MS. LAND: I can see the

1 AMY E. EMBRY

2 exhibit.

3 MS. COOPER: Great. Thank you.

4 Q. Ms. Embry, do you recognize
5 the document placed in front of you
6 that's been marked as Exhibit 2?

7 A. Yes.

8 Q. Okay. And that is the, for the
9 record, the title page is Arkansas State
10 Medical Board, Arkansas Medical Practices
11 Act and Regulations; is that correct?

12 A. Yes.

13 Q. And is this set of -- is this
14 act and set of regulations what governs
15 the Board?

16 A. Yes.

17 Q. And I take it you've seen this
18 document before?

19 A. Yes.

20 Q. Okay. If you can turn to
21 Section 17-95-301?

22 A. Let me go to the table of
23 contents to get the page.

24 Q. I believe it's 21. Is this the
25 provision that dictates the membership of

1 AMY E. EMBRY

2 the Board?

3 A. Yes.

4 Q. And do I understand correctly
5 that there are 14 members appointed by
6 the Governor?

7 A. Yes.

8 Q. And 10 must be active medical
9 practitioners?

10 A. Yes.

11 Q. And one must be a practicing
12 physician; did I say that right? If you
13 look at Subsection 3 --

14 A. Yes. That is the one that --
15 yes. There are physicians but this is the
16 one that is appointed by that specific
17 organization. That's what was throwing me
18 on your question.

19 Q. Understood. Thank you. So
20 there are other physicians on the Board
21 as well?

22 A. Yes.

23 Q. Okay. And I understand -- do I
24 understand correctly that two members
25 must not be medical providers; is that

1 AMY E. EMBRY

2 correct?

3 A. Yes.

4 Q. And one must be an osteopathic
5 physician?

6 A. Correct.

7 Q. Now, I'd like to go through
8 the current members of the Board and ask
9 you to tell me what their designated
10 position is on the Board? In other words,
11 are they a medical practitioner, are they
12 a non-medical provider, and what their
13 area of practice is, if they are medical
14 providers.

15 So we can start with -- and if
16 I read a name and that person is no
17 longer on the Board just let me know.
18 Sylvia Simon, is she still on the Board?

19 A. Yes.

20 Q. And what is her designated
21 position on the Board?

22 A. She is the Chairman of the
23 Board, Chairperson of the Board.

24 Q. And she is a physician?

25 A. Yes.

1 AMY E. EMBRY

2 Q. What is her practice area?

3 A. I'm going to say family
4 practice.

5 Q. How about Brian Hyatt, is he
6 still on the Board?

7 A. Yes.

8 Q. And what is his designated
9 position?

10 A. He is the vice-chair.

11 Q. And he's a physician as well?

12 A. Yes.

13 Q. What is his area of practice?

14 A. Psychiatry.

15 Q. How about Veryl Hodges?

16 A. Yes.

17 Q. They're on the Board?

18 A. Yes.

19 Q. And what is their designated
20 position?

21 A. He is the secretary of the
22 Board.

23 Q. Is he a physician?

24 A. Yes.

25 Q. I see his title says DO, is

1 AMY E. EMBRY

2 that a doctor of osteopathy, am I saying
3 that correctly?

4 A. Yes.

5 Q. Is John Scribber still on the
6 Board?

7 A. That's John Scribner.

8 Q. Thank you. Is he still on the
9 Board?

10 A. Yes.

11 Q. And what is his designated
12 position on the Board?

13 A. He is the treasurer.

14 Q. And he's a physician?

15 A. Yes.

16 Q. What is his area of practice?

17 A. Family practice.

18 Q. Okay. Elizabeth Anderson, is
19 she still on the Board?

20 A. Yes.

21 Q. Is she a physician?

22 A. No.

23 Q. So she's one of the designated
24 non-physicians on the Board?

25 A. Correct.

1 AMY E. EMBRY

2 Q. Okay. Does she have a title
3 within the Board, such as secretary or
4 treasurer?

5 A. No.

6 Q. Rhys Branman still on the
7 Board?

8 A. Yes.

9 Q. And what is -- does he have a
10 designated position or title?

11 A. All the designated were the
12 four officers we've already mentioned.

13 Q. Okay. Is Rhys Branman a
14 physician?

15 A. Yes.

16 Q. What is his area of practice?

17 A. Plastic surgery.

18 Q. Is Robert Breving still on the
19 Board?

20 A. Yes.

21 Q. And he's a physician as well?

22 A. Yes.

23 Q. What area of practice?

24 A. Surgery.

25 Q. Is Edward Gardner still on the

1 AMY E. EMBRY

2 Board?

3 A. Yes.

4 Q. Is he a physician?

5 A. Yes.

6 Q. And his area of practice is?

7 A. He's an ENT doctor, ENT

8 physician.

9 Q. Is Rodney Griffin still on the
10 Board?

11 A. Yes.

12 Q. Is he a physician?

13 A. Yes.

14 Q. And is his area of practice?

15 A. Family medicine, as far as I
16 can recall.

17 Q. Is Betty Guhman -- am I saying
18 that right?

19 A. Guhman.

20 Q. Is Betty Guhman still on the
21 Board?

22 A. Yes.

23 Q. Is she a physician?

24 A. No.

25 Q. Okay. Is Timothy Paden still

1 AMY E. EMBRY

2 on the Board?

3 A. Yes.

4 Q. Is he a physician?

5 A. Yes.

6 Q. What area of practice?

7 A. Family medicine.

8 Q. Is Don Philips still on the
9 Board?

10 A. Yes.

11 Q. And he's a physician?

12 A. Yes.

13 Q. And what is his area of
14 practice?

15 A. OBGYN.

16 Q. Okay. And I believe you said
17 William Rutledge and David Staggs are no
18 longer on the Board?

19 A. That is correct.

20 Q. Okay. Are they both
21 physicians?

22 A. Yes.

23 Q. And can you tell me what their
24 areas of practice are?

25 A. Dr. Rutledge was a surgeon and

1 AMY E. EMBRY

2 Dr. Staggs was family practice.

3 Q. Okay. Thank you. We were
4 looking at the Arkansas Medical Practices
5 Act. If we can go to Section 17-95-303(5)
6 and I understand that Section 303(5) are
7 the duties of the Board and it says, "The
8 Arkansas State Medical Board shall:", and
9 list a number of items. And number (5)
10 says "have the authority to employ a
11 Medical Director who shall hold a valid
12 license to practice medicine in this
13 State to evaluate medical issues and to
14 assist in investigations pending before
15 its Board." Did I read that right?

16 A. Yes.

17 Q. Does the Board employ a
18 Medical Director?

19 A. No.

20 Q. No. Since you've been with the
21 Board have they ever employed a Medical
22 Director?

23 A. No.

24 Q. Do you know why that is?

25 A. No, I do not.

1 AMY E. EMBRY

2 Q. Okay. Staying in that same
3 part of the statute, Section 303, under
4 subsection (7) it says, that the Medical
5 Board shall "have the power and authority
6 to employ one or more inspectors as may
7 be necessary to carry out the provisions
8 of the Arkansas Medical Practices Act."

9 Does the Board employ
10 inspectors?

11 A. We employed one inspector.

12 Q. Is that in the past?

13 A. Yes.

14 Q. When was that?

15 A. Within the past year. I don't
16 have exact dates.

17 Q. But you don't currently have
18 any employed inspectors?

19 A. Not employed by the Board, no.

20 Q. Do you work with inspectors
21 who are not employed by the Board?

22 A. Yes.

23 Q. What is that arrangement? Can
24 you explain that to me?

25 A. It is in the Arkansas code

1 AMY E. EMBRY

2 that we are to use Pharmacy Services at
3 the Arkansas Department of Health for
4 inspections, investigations -- not
5 inspections, investigations.

6 Q. Is that only for
7 investigations concerning issues relating
8 to prescription of drugs?

9 A. Yes, and other things, we use
10 it also for others besides just the
11 prescription of drugs.

12 Q. So these are inspectors that
13 are employed by Pharmacy Services at the
14 Department of Health?

15 A. Correct, but it's
16 investigators not inspectors. I believe
17 they're investigators.

18 Q. So just I want to make sure I
19 understand how this works. If there is a
20 complaint against a physician, for
21 example, and the Board feels the need to
22 do an investigation it would work with an
23 investigator from Pharmacy Services; is
24 that right?

25 A. Yes.

1 AMY E. EMBRY

2 Q. How many investigators do they
3 have at Pharmacy Services that you work
4 with?

5 A. That I know of, we have worked
6 with three.

7 Q. But are there others there
8 besides the ones you've worked with?

9 A. That is my understanding but
10 that's not my staff, so I can't answer
11 truthfully on that.

12 Q. Okay. You know of three; is
13 that right?

14 A. Yes. That is correct.

15 Q. And what is the role of these
16 investigators?

17 I sort of tried to lay out
18 what I understood but I'm sure that was
19 not a full description.

20 What do these investigators do
21 when you work with them?

22 A. Well, if the Board votes that
23 there needs to be an investigation on a
24 complaint that comes in a subpoena will
25 be issued that I sign and those

1 AMY E. EMBRY

2 investigators serve that subpoena for
3 whatever is listed in the subpoena.

4 Q. Do they do anything else?

5 A. They gather that information,
6 they do -- they evaluate it and they
7 present a report back to the Board
8 offices to present to the Board members.

9 Q. When you say they gather
10 information, is that information that
11 they gather documents that are requested
12 by a subpoena that they then deliver; is
13 that what you mean?

14 A. That is correct.

15 Q. That might be some of their
16 medical records, that kind of thing?

17 A. It could be, yes.

18 Q. So the investigator serves the
19 subpoena that asks for documents and then
20 collects those materials and then writes
21 a report about the materials; did I get
22 that right?

23 A. Yes, they take them back. They
24 will look through them and try to gather
25 what information they can, and then

1 AMY E. EMBRY

2 present a report to the Board office.

3 Q. And who identifies the
4 documents that are being requested in the
5 subpoena? Is that an employee of the
6 Board?

7 A. I need you to clarify that
8 question.

9 Q. Sure. So you mention that the
10 investigators from Pharmacy Services will
11 serve the subpoena. Who writes the
12 subpoena?

13 A. The Board office does, staff
14 at the office writes the subpoena.

15 Q. Which staff? Let's say it's in
16 -- presumably it's always in a regulatory
17 context, right?

18 A. Yes, regulatory section.

19 Q. So that would be the manager
20 or the other employees in the regulatory
21 section would write that subpoena?

22 A. Correct.

23 Q. Presumably with counsel is
24 that involved or no?

25 A. Yes. It's a very generic

1 AMY E. EMBRY

2 subpoena listing exactly what we need,
3 so...

4 Q. And then the report is
5 provided to those within the regulatory
6 section when it's done?

7 A. Yes.

8 Q. And then what happens after
9 that in the investigation process?

10 A. It is prepared, that report is
11 prepared to be presented to the Board
12 members, it's discussed at the next
13 meeting or if they feel they have enough
14 information from that investigation to
15 present it to the Board. If not, there
16 may be other things that need to be done
17 and then the Board discusses it and they
18 make a decision on what needs to be done
19 next.

20 Q. Thank you. While we're in this
21 part of the Arkansas Medical Practices
22 Act, if you can look at 17-95-303
23 subsection (9), bottom of the same page
24 and it's again, "The Arkansas State
25 Medical Board shall consider and give

1 AMY E. EMBRY

2 deference to data, studies consensus
3 documents and conclusions issued by the
4 Center For Disease Control and Prevention
5 or the National Institute of Health
6 whenever their data, studies consensus
7 documents and conclusions are relevant to
8 any decision made pursuant to the Board's
9 powers and duties under the Arkansas
10 Medical Practices Act."

11 Is that something the Board
12 does?

13 A. I have not seen it in my
14 tenure at Director. I don't know if a
15 situation has come up that they have to
16 do that. So during the time that I've
17 been the Board Director, I can't say that
18 I've seen that --

19 Q. Okay.

20 A. -- from these organizations
21 listed in this section.

22 Q. Okay. Have you seen data,
23 studies, consensus documents or
24 conclusions issued by other organizations
25 that were considered by the Board in

1 AMY E. EMBRY

2 making any decisions concerning
3 regulation of medical professionals?

4 A. I do not recall that. I would
5 have to go back and look at documents to
6 see.

7 Q. Okay. Is it fair to say the
8 Board is the State entity in Arkansas
9 charged with regulating the practice of
10 medicine; is that correct?

11 A. Yes.

12 Q. And what does that mean, to
13 regulate the practice of medicine to the
14 Board?

15 MS. LAND: Object to form. You
16 may answer.

17 A. Well, they put it in the code
18 that the State Medical Board is -- is --
19 let me start that over.

20 We are responsible for
21 regulating those healthcare professionals
22 that we license. If someone is practicing
23 medicine without a license it is usually
24 referred to our Board. So if someone has
25 another license with another healthcare

1 AMY E. EMBRY

2 licensing board, but it does not fall
3 within their scope of practice what the
4 complaint is being made against that
5 individual, then it will probably be
6 referred to the Medical Board as
7 practicing medicine, this individual is
8 practicing medicine.

9 Q. And for those who are licensed
10 by the Board, those medical professionals
11 licensed by the Board, you said you're
12 responsible for regulating those
13 healthcare professionals. What do you
14 mean by "regulating" them?

15 A. Well, maybe that wasn't the
16 best term but we are responsible for
17 those individuals that are licensed by
18 us, but we work on a complaint basis.

19 So we have between 19 and 20
20 thousand liscensees at the Board right
21 now in various practice and various types
22 of licenses. And if a complaint comes in
23 every single complaint is reviewed by the
24 Board, every single complaint is reviewed
25 by the Board, and from there it is

1 AMY E. EMBRY

2 determined what needs to be done. We do
3 get complaints that it may be, for
4 example, on a nurse, we do not regulate
5 nurses, we forward it onto the Nursing
6 Board.

7 Q. Thank you.

8 A. And we work on a complaint
9 basis.

10 MS. COOPER: Can we see tab 3
11 and mark that as Exhibit 3?

12 (Exhibit 3, printout of the
13 homepage of the Arkansas State
14 Medical Board website was received
15 and marked on this date for
16 identification.)

17 MS. COOPER: Amanda, if you
18 can let me know if that's available
19 to you.

20 MS. LAND: Yes, it is. I'll
21 let you know each time going
22 forward.

23 Q. Thank you. Ms. Embry, do you
24 recognize what's been marked as Exhibit
25 3?

1 AMY E. EMBRY

2 A. Yes.

3 Q. And can you tell me what that
4 is?

5 A. This is -- it is the homepage
6 or a page from our website.

7 Q. So I'd like you to read along
8 with me the box to the section in the
9 middle that says, "The Medical Board's
10 mission is to protect the public" --
11 excuse me, I'll start that again. "The
12 Medical Board's mission is to protect the
13 public and act as their advocate by
14 effectively regulating the practices of
15 medical doctors, osteopathic medical
16 directors, physician assistants, medical
17 corporations, respiratory therapists,
18 occupational therapists, occupational
19 therapy assistants, radiology
20 practitioner assistants and radiologist
21 assistants." Did I read that right?

22 A. Yes, ma'am.

23 Q. Is this an accurate statement
24 of the Board's mission?

25 A. Yes.

1 AMY E. EMBRY

2 Q. And I understand the Board has
3 authority to enact regulations to carry
4 out the purposes and intentions of the
5 Medical Practices Act; is that right?

6 A. Yes.

7 Q. So under what circumstances
8 can the Board enact regulations?

9 A. If it is in the law where it
10 says that a licensing board shall or will
11 promulgate a rule or if we are requested
12 by the legislature to do so.

13 Q. Okay. So I want to unpack that
14 a little bit.

15 So the first scenario is if a
16 statute says the Board shall enact a
17 regulation concerning a particular topic,
18 you will -- the Board will enact a
19 regulation; is that correct?

20 A. Yes.

21 Q. Okay. And then a separate
22 scenario is if the legislature requests
23 the Board to enact a regulation; did I
24 understand that right?

25 A. Yes.

1 AMY E. EMBRY

2 Q. And that's outside of the
3 context of a statute?

4 A. Yes. That is very rare.

5 Q. Has that ever happened since
6 you've been with the Board?

7 A. Yes. It finished up when I
8 became Director. It started with a
9 previous Director and even though we were
10 requested by the legislature to come up
11 with a rule, the rule did not pass and it
12 was not enacted.

13 Q. What was the issue that the
14 legislature asked you to come up with a
15 rule about?

16 A. It was basically about
17 cosmetic procedures, as far as what was
18 happening at medical spas, what can be
19 considered the practice of medicine, what
20 cannot be considered the practice of
21 medicine.

22 Q. And how was that communicated
23 to the Board by the legislature that they
24 wanted you to to come up with a
25 regulation?

1 AMY E. EMBRY

2 A. They can either make a request
3 to the Board, themselves, through
4 attorneys, they can ask a Board member,
5 say we're interested in a rule about
6 this. But again, that is very rare and
7 since I've been with the Board since 2014
8 that's only happened once, which the rule
9 did not pass.

10 Q. Okay. And given that the
11 legislature includes a lot of people,
12 does it have to be that the legislature
13 as a body has voted by majority vote to
14 request that regulation or could an
15 individual legislator ask the Board to
16 enact a regulation?

17 A. I can only speak to my
18 understanding. I do not have any
19 knowledge of how the legislature would
20 handle that, but to my knowledge and my
21 understanding is that anybody can ask.

22 Q. Anybody within the
23 legislature?

24 A. Yes.

25 Q. Can ask -- let me make sure I

1 AMY E. EMBRY

2 asked that question that's not broken up
3 for the record.

4 So anybody who is a member of
5 the legislature can ask the Board to
6 enact a regulation; that's your
7 understanding?

8 A. That is my understanding, but
9 that would be a question for the
10 legislature.

11 Q. And in the example that you
12 mention, the one time that happened since
13 you've been with the Board, the cosmetic
14 procedure issue, was that a single member
15 of the Board asked for that or how did
16 that come to you?

17 A. That I do not know because I
18 was not on the front end of that when it
19 began, so I cannot answer to that.

20 Q. Okay. Can anyone outside of
21 the legislature, who is not a member of
22 the legislature, ask the Board to enact a
23 regulation on a topic?

24 A. I suppose. I suppose. It has
25 not happened but there is a whole process

1 AMY E. EMBRY

2 that the legislature must approve all the
3 rules. So even if we draft a rule, it has
4 to be approved by the legislature before
5 it can be considered an active rule.

6 Q. And that's true of all of the
7 rules that have been passed by the Board
8 so far?

9 A. Correct. Correct.

10 Q. And I believe there's
11 something like 30-something rules; is
12 that right?

13 A. That's right.

14 Q. They've all been approved by
15 the legislature?

16 A. Yes.

17 Q. Okay. Has, to your knowledge,
18 any other government official, outside of
19 the legislature, let's say within the
20 executive branch of government, ever
21 asked the Board to enact a regulation?

22 A. Not to my knowledge, not that
23 I know of.

24 Q. That would include the
25 Governor's Office has never asked?

1 AMY E. EMBRY

2 A. Since I've been Director, I
3 have not received that request.

4 Q. And are you aware if that's
5 ever happened before?

6 A. I am not aware if it's
7 happened before.

8 Q. Okay. Can the Board enact a
9 regulation on its own without being
10 requested to do so by somebody else?

11 A. It could but, again, it's
12 usually never done. I don't know if it
13 has been done.

14 Q. So I looked through the
15 regulations that you have and I see that
16 there are lots of different topics about
17 which the Board has passed regulations.
18 I'm just going to list some and ask if
19 you're familiar.

20 I saw one about precautions
21 concerning HIV. And this is not a test.
22 Let me back it up. I'm happy to have you
23 look through.

24 Do I understand correctly that
25 Regulation 16, which is in Exhibit 2 --

1 AMY E. EMBRY

2 A. That's correct.

3 Q. -- is about precautions
4 related to HIV and some other
5 communicable diseases; is that correct?

6 A. Yes.

7 Q. And then I understand that
8 Regulation 22 has some guidelines
9 concerning laser surgery; is that
10 correct?

11 A. Yes.

12 Q. And there are guidelines, or I
13 should say regulations concerning
14 abortion in Regulation 36?

15 A. Yes.

16 Q. And there is a Regulation 27
17 concerns informed consent for gastric
18 bypass surgeries; is that right?

19 A. Yes.

20 Q. And then Provision 21 relates
21 to -- is a regulation concerning
22 anorexiant drugs. Am I saying that right,
23 anorexiant?

24 A. Anorexiant.

25 Q. Now, were you on the Board or

1 AMY E. EMBRY

2 not on the Board -- excuse me.

3 Were you employed by the Board
4 when any of those provisions were
5 enacted?

6 A. The ones that you mentioned?

7 Q. Yes.

8 A. No, I was not at the Board.

9 Q. Okay. And do you know if all
10 of these provisions were prompted by a
11 statutory directive by the legislature?

12 A. I would need to go back and
13 research but nearly every rule is
14 prompted by legislation.

15 Q. But some are not?

16 A. I would have to go back and
17 read the history of each one. So I can't
18 answer that honestly.

19 Q. Okay. Can we look at
20 Regulation 21 concerning anorexiant?

21 Would looking at this rule, or
22 I should say regulation, provide you with
23 the information about whether it was
24 prompted by a statute?

25 A. It may.

1 AMY E. EMBRY

2 Q. Okay.

3 A. Again, I could not answer
4 completely honestly without going back
5 and looking how this began.

6 Q. So from the regulation,
7 itself, where it says at the end, if you
8 look along with me, "history adopted
9 March 13, 1998 amended August 6, 2015
10 effective December 14, 2015", that
11 doesn't tell you what prompted it?

12 A. It would not tell me because I
13 was not at the Board. If I was there I
14 may remember.

15 Q. Okay. If the Board had a
16 concern about how medical care was being
17 provided in a particular field, could the
18 Board get together and put together a
19 regulation?

20 A. They could.

21 Q. They could. But you don't know
22 if they've ever done that?

23 A. Not to my knowledge.

24 Q. They have not done that, to
25 your knowledge, is that what you're

1 AMY E. EMBRY

2 saying?

3 A. I have no memory of them doing
4 that in my time at the Board.

5 Q. And do you know whether prior
6 to your time at the Board that was ever
7 done?

8 A. I do not know.

9 Q. I want to ask some of the
10 process about enacting regulations. Who
11 within the Board, or is it someone within
12 the Board who drafts these regulations?

13 A. They're usually drafted either
14 by staff or with the assistance of an
15 attorney.

16 Q. And who decides on the
17 content?

18 A. The Board votes on the final
19 draft. They approve what will be the rule
20 that will begin -- that will be sent for
21 the promulgation process.

22 Q. So if it's a draft that
23 relates to let's say -- I guess they're
24 all within the regulatory context, right,
25 all of these regulations? So if there's

1 AMY E. EMBRY

2 -- if somebody were to draft a regulation
3 relating to orthopedics, for example,
4 would the staff who are drafting that
5 regulation look to expertise within the
6 field of orthopedics to draft the
7 regulation?

8 A. Yes. That would be -- yes.

9 MS. LAND: Objection to form
10 on that previous question.

11 Q. Okay. How would they -- how
12 would they do that?

13 A. They would work with the Board
14 members and the Board members would have
15 their input. The Board members would then
16 say if they did not -- for example, if it
17 was orthopedics, if there is an
18 orthopedic society or association to get
19 some expertise, if they did not have that
20 expertise. And then changes would be made
21 to that and then the Board would vote yay
22 or nay on the draft.

23 Q. If they were to reach out to
24 an orthopedic society or an organization
25 with expertise, would that mean to then

1 AMY E. EMBRY

2 speak with orthopedists who could offer
3 expertise; is that what you mean?

4 A. It could be, yes.

5 Q. Could it also be to look at
6 any best practices guidelines they have?

7 A. Could be, yes.

8 Q. Have any regulations been
9 enacted by the Board since you've been
10 employed by the Board?

11 A. Yes.

12 Q. Can you tell me which ones?

13 A. I may not have been the
14 Director, but these are the ones that
15 were -- let me get back to the table of
16 contents. It will be the ones towards the
17 end. 39 was amended, 40 was created, 41,
18 42, 43 and 44 and 45.

19 Q. Thank you. So let's take, for
20 example, Regulation 40, Arkansas Surgical
21 Technologists. Did the Board reach out to
22 any surgical professional groups in
23 developing that regulation?

24 A. Let me flip to that. I believe
25 this was taken directly from the code,

1 AMY E. EMBRY

2 which is on our rules, it's just cut and
3 paste and put in there what it is.

4 Q. And by "code" do you mean
5 Arkansas statutes?

6 A. Yes.

7 Q. Okay. And let's look at number
8 43, Genetic Counselor Licensure, was that
9 taken directly from the code?

10 A. Yes.

11 Q. All of it?

12 A. To my knowledge, yes. Without
13 having documents in front of me, to my
14 knowledge yes.

15 Q. Okay. Is it your understanding
16 that all of the regulations are language
17 from the legislature or -- let me ask it
18 differently. Strike that.

19 Does the Board ever develop
20 language for regulations, itself?

21 A. Yes.

22 Q. And is there ever a case where
23 the statute mandates a regulation and
24 certain requirements but the Board may
25 fill that out with additional details in

1 AMY E. EMBRY

2 the regulation?

3 A. Yes.

4 Q. And is that where the
5 expertise of professional associations
6 may come in; is that correct?

7 A. Yes.

8 Q. Okay. Which professional
9 associations do you recall the Board
10 having relied on?

11 A. The ones that we work closest
12 with, the ones that we have the most
13 contact with and I would say, okay, the
14 Medical Society, the Hospital
15 Association, Physician Assistant, and
16 these are all within Arkansas, these are
17 all Arkansas organizations. Let's see who
18 else? Occupational Therapy and
19 Respiratory.

20 Q. So when you say the Medical
21 Society, is that an association called
22 the Arkansas Medical Society, is that its
23 name?

24 A. Yes.

25 Q. And is that a professional

1 AMY E. EMBRY

2 association of doctors within Arkansas?

3 A. Yes, it is.

4 Q. Okay. And when you mentioned,
5 say, the Occupational Therapy, you said
6 Occupational Therapy, is that an
7 association, a professional association
8 of occupational therapists in Arkansas?

9 A. Yes, ma'am. I can't remember
10 the exact name off the top of my head.

11 Q. Okay. And when you've worked
12 with these groups did they -- again, did
13 members of those groups provide expertise
14 as professionals within the field?

15 A. Sometimes, yes.

16 Q. And when you've worked with
17 these groups did you ever review -- and
18 by "you" I mean the Board -- best
19 practices guidelines of those
20 organizations?

21 A. Yes.

22 Q. And does the Board, when it
23 enacts regulations, attempt to try to
24 enact regulations that are consistent
25 with best practices in a particular

1 AMY E. EMBRY

2 field?

3 A. They do try, yes.

4 Q. Are you familiar with the
5 regulation about opioid prescriptions?

6 A. Yes.

7 Q. Was that a regulation that was
8 passed based on a statutory mandate?

9 A. That was before I was the
10 Director. My understanding is that it was
11 drafted and put through the promulgation
12 process at the request of the legislature
13 because of the opioid epidemic.

14 Q. So your understanding is
15 that's in that category of a request of
16 the legislature but not a statutory
17 provision?

18 A. Correct.

19 Q. That's correct?

20 A. Yes. That's my understanding.

21 Q. I may not have heard part of
22 your answer. I understood you to say it
23 was drafted at the request of the
24 legislature because of a concern; is that
25 what I heard?

1 AMY E. EMBRY

2 A. It was because of the opioid
3 epidemic.

4 Q. Okay. That was before your
5 time on the Board; is that right?

6 A. Yes. Before I was Director,
7 yes.

8 Q. You were employed at the Board
9 at that time?

10 A. Yes. But in my previous job I
11 had nothing to do with the rules or
12 anything.

13 Q. Understood. Okay. Thank you.
14 You mentioned that the
15 legislature needs to approve any
16 regulations that the Board enacts. Did I
17 understand that correctly?

18 A. Yes.

19 Q. Has that always been a
20 requirement since you're aware?

21 A. Yes.

22 Q. Since you've been employed by
23 the Board?

24 A. Yes.

25 Q. And the process to get the

1 AMY E. EMBRY

2 legislature approval after you enact a
3 regulation, or I guess you would call it
4 a proposed regulation at that point, does
5 it actually have to get voted on by the
6 State Legislature?

7 A. It must be voted on by
8 committees and subcommittees.

9 Q. So it's not the full
10 legislature that has to approve it but
11 the relevant committee; is that correct?

12 A. That's my understanding, yes.

13 Q. Is it a particular committee
14 or subcommittee that generally has to
15 approve your regulations?

16 A. I do know it's -- it's the
17 Rules Subcommittee and I'm sorry, I can't
18 remember the name of the actual committee
19 that it's the subcommittee of.

20 Q. You mentioned various Arkansas
21 professional medical or related
22 organizations that the Board will
23 sometimes look to for guidance in
24 developing regulations. Does the Board
25 ever look to national professional

1 AMY E. EMBRY

2 medical groups like the American Medical
3 Association?

4 A. Since I have been Director I
5 think it's more for information, data
6 collection, things of that nature.

7 Q. And the Board will look to
8 those national groups for information and
9 data collection; is that correct?

10 A. If needed, yes.

11 Q. Can you tell me in what
12 context?

13 A. An example may be that if they
14 need to know what the national average is
15 for a particular prescription of a drug,
16 the AMA, for example, may have that
17 information. They would go to the website
18 and see what information is there, so
19 just basically on an informational scale.

20 Q. Got it. And when the Board
21 passes a regulation, that's by a majority
22 vote; is that right?

23 A. Yes.

24 Q. So it's not a consensus
25 requirement?

1 AMY E. EMBRY

2 A. No, but it does require a
3 vote.

4 Q. Is there a public comment
5 period for regulations?

6 A. Yes.

7 Q. Is that before or after it
8 goes to the legislature?

9 A. Before.

10 Q. So do I understand right, the
11 Board will write the regulation, vote to
12 approve it, then put it out for public
13 comment or do I have that backwards?

14 A. You are correct.

15 Q. Okay. And then the Board
16 considers the comments that were made by
17 the public?

18 A. Absolutely.

19 Q. And potentially change the
20 regulation as a result?

21 A. Could be. Could be. That is an
22 option.

23 Q. And then they would have a
24 perhaps a revised version that they would
25 vote on again; is that right?

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2 A. That is correct.

3 Q. And at that point it would get
4 sent to the legislature for approval?

5 A. At that point any changes that
6 are made it has to go through the whole
7 promulgation process again, so it would
8 have the public comment period again and
9 then begin the legislative process.

10 Q. Okay. Has the legislature ever
11 rejected a proposed regulation?

12 A. Yes.

13 Q. Do you know what about?

14 A. It was the one we discussed
15 earlier, the one about the cosmetic
16 procedures. That's the only one that I
17 know of.

18 Q. Oh, I misunderstood. So the
19 Board actually did adopt a regulation but
20 the legislature rejected it; is that
21 right?

22 A. Correct.

23 Q. Do you know why?

24 A. During the committee meeting
25 they thought the Medical Board did not

1 AMY E. EMBRY

2 have the authority to -- to regulate
3 those procedures when they were not their
4 licensees and it was also a scope of
5 practice issue. So it was voted down in
6 the legislature -- in the committee, in
7 the committee.

8 Q. And what do you mean by "a
9 scope of practice issue"?

10 A. Scope of practice basically
11 means was it in the Board's scope to say
12 this -- this person can or cannot do this
13 procedure; was it in the law?

14 Q. And by "the law" you mean the
15 law that gives the Board authority to
16 regulate various healthcare providers?

17 A. Yes.

18 Q. The Arkansas Medical Practices
19 Act?

20 A. Yes.

21 Q. Okay. You mention the public
22 comment period. Do public comments ever
23 get submitted on proposed regulations by
24 professional medical groups?

25 A. Yes.

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2 Q. Would those be Arkansas
3 professional medical groups or national
4 groups or both?

5 A. Usually they are Arkansas.

6 Q. Would that include the same
7 groups that you mentioned earlier, the
8 Arkansas Medical Society and similar
9 organizations for occupational therapists
10 and physician assistants, I think you
11 said?

12 A. Yes.

13 Q. Any others?

14 A. Not that I can think of but
15 public comments can come from anyone,
16 anywhere on the planet.

17 Q. Okay. And are those comments
18 from the medical groups given weight by
19 the Board in making a decision?

20 A. Sometimes.

21 Q. I want to talk a little bit
22 about licensing.

23 I understand the Board
24 licenses certain kind of medical
25 providers, correct?

1 AMY E. EMBRY

2 A. Yes.

3 Q. And that includes medical
4 doctors, right?

5 A. Yes.

6 Q. Where would I find the
7 requirements for licensure of a medical
8 doctor in Arkansas? Where are those
9 contained?

10 A. They're contained in the
11 Medical Practices Act but they're also on
12 our applications on our website.

13 Q. Okay. But no other places
14 besides that?

15 A. Not that I'm aware of.

16 Q. Okay.

17 MS. COOPER: Can we look at
18 tab 4 and post that, please, and
19 mark that as Exhibit 4?

20 (Exhibit 4, printout from the
21 Medical Board re: Regulatory and
22 Discipline was received and marked
23 on this date for identification.)

24 MS. LAND: I have it.

25 MS. COOPER: Thank you.

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2 Q. Do you recognize this page?

3 A. Yes.

4 Q. Do I understand correctly this
5 is from the Arkansas State Medical
6 Board's website?

7 A. Yes.

8 Q. And if you'll read with me the
9 box that says Regulatory/Discipline, it
10 says, "The Arkansas State Medical Board's
11 mission is to protect the health, safety
12 and welfare of the people of the State of
13 Arkansas with the goal that all citizens
14 are provided with the highest quality
15 healthcare. The Medical Board receives
16 and reviews complaints against each type
17 of medical profession it licenses. All
18 complaints received are reviewed by the
19 Medical Board to determine if there have
20 been any violations of the Medical
21 Practices Act. If the Medical Board
22 determines that violations have occurred
23 disciplinary actions are taken." Did I
24 read that correctly?

25 A. Yes.

1 AMY E. EMBRY

2 Q. Is this an accurate statement
3 of the Board's mission concerning
4 regulatory work?

5 A. Yes.

6 Q. Okay. I'd like to go back to
7 what we marked as Exhibit 2, the Medical
8 Practices Act and Regulations.

9 Before I turn to a particular
10 provision, I just have a more open
11 general question.

12 Can the Board, is it right,
13 can investigate allegations of wrongdoing
14 by doctors; is that correct?

15 A. Yes.

16 Q. And if you can turn to Section
17 17-80-106. I understand this is the
18 provision that says, "Investigations and
19 inspections of alleged wrongdoing",
20 correct?

21 A. Yes.

22 Q. If you look down to Section C
23 it has some subsections there and if you
24 would like to take the time to read (c),
25 and then the (2), I have a question about

1 AMY E. EMBRY

2 that. So why don't you take a moment.

3 (Deponent reviews the
4 document.)

5 A. Okay.

6 Q. So do I understand correctly
7 from this provision or perhaps somewhere
8 else that the Board can investigate to
9 determine if doctors are practicing their
10 profession in a way as to endanger the
11 general health and welfare of the public?

12 A. Yes.

13 Q. So if somebody brings a
14 complaint that there is a doctor engaging
15 in some conduct that they say is harmful,
16 you would investigate that? You, the
17 Board, will investigate that complaint?

18 A. Yes.

19 Q. You mentioned you're a
20 complaint-based -- it's a complaint-based
21 process. If it comes to the attention of
22 the Board that a doctor is practicing in
23 a way that is endangering the public, but
24 nobody has brought a formal complaint,
25 can the Board investigate?

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2 A. Yes.

3 Q. Has that ever happened?

4 A. Oh, yes.

5 Q. Can you tell me about those
6 times?

7 A. Well, I don't -- I could not
8 tell you specifically which ones without
9 documents in front of me but other ways
10 that we can be notified is if someone is
11 arrested, if they make the news, if a
12 Board member finds out about it, if it
13 happens in front of a Board member.

14 Q. And this is something that's
15 happened -- when I say "this" let me
16 rephrase that.

17 Investigations that were done
18 in the absence of a formal complaint, is
19 that something that's happened since
20 you've been with the Board?

21 A. Yes.

22 Q. Can you estimate how many
23 times?

24 A. If I had to guess, if I had to
25 guess in the four years since I've been

1 AMY E. EMBRY

2 there, I would say a dozen, maybe a
3 little less. But that's my best guess
4 without documents in front of me.

5 Q. Understood. And you said you
6 gave some examples of potential ways an
7 issue could come to the Board's attention
8 and in one example you mention was if it
9 made the news.

10 Are there particular examples
11 you can think of where something was in
12 the news that prompted the Board to act?

13 A. Usually what happens is if we
14 hear on the news that a doctor or a
15 licensee, it doesn't have to be a doctor,
16 just one of our licensees is arrested, if
17 they are actually arrested that sends up
18 red flags. If they are just suspected but
19 no arrest has been made, that still sends
20 up red flags. But usually an arrest
21 means they have something, some sort of
22 proof that they could justify an arrest.
23 And then we would usually have what's
24 called a "called meeting", which means a
25 meeting outside of our regular scheduled

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2 board meetings, if that individual is an
3 immediate threat to the public, and we
4 could -- the Board could decide; does
5 this need to be an Emergency Order of
6 Suspension or what needs to be done?

7 Q. And just to understand this
8 type of circumstance better, I imagine a
9 doctor or other licensed provider could
10 be arrested for something that has
11 nothing to do with their practice of
12 medicine, say, you know, really bad
13 speeding violations, would that be
14 something that would prompt the Board's
15 attention and investigation?

16 A. Every situation is different.
17 They look at it; does it put the public
18 in danger? Speeding is one thing, two
19 DUIs is something else. So it just really
20 depends. That's just examples, it's just
21 an example. So every situation is
22 different and the Board must address that
23 situation and decide what needs to be
24 done.

25 Q. Have there been times when a

1 AMY E. EMBRY

2 Q. What if, for example, somebody
3 was arrested for writing improper
4 prescriptions, you know, for friends to
5 get painkillers or something like that,
6 would that be something that could prompt
7 the Board's investigation?

8 A. Yes.

9 Q. And that would be whether or
10 not somebody brought a formal complaint
11 against the Board, is that right, against
12 the doctor?

13 A. Not necessarily. There does
14 not have to be a formal complaint if
15 there is an arrest or something that
16 shows substance abuse or that could
17 affect their ability to practice medicine
18 safely.

19 Q. Okay. Understood. I think I
20 asked the question awkwardly.

21 So there does not need to be a
22 complaint for the Board to investigate?

23 A. No.

24 Q. Understood. Have there been
25 any investigations of doctors or other

1 AMY E. EMBRY

2 licensees for providing care that is
3 considered harmful to patients?

4 A. Yes.

5 Q. Can you tell me about those
6 examples?

7 A. We've had complaints, for
8 example, most recently we've had
9 complaints that a doctor was prescribing
10 a drug to county inmates that they felt
11 was inappropriate. And that's the most
12 recent one.

13 Q. What drug was that?

14 A. Ivermectin.

15 Q. So that was a formal complaint
16 made to the Board?

17 A. Several formal complaints made
18 to the Board and it also made the news.

19 Q. That's something that the
20 Board was going to address and did
21 address?

22 A. Yes. They are currently
23 addressing it and I can't say much more
24 on open investigations.

25 Q. So the investigation is open

1 AMY E. EMBRY

2 now?

3 A. Yes.

4 Q. How many complaints did the
5 Board receive about that Ivermectin use
6 in the jail?

7 A. Written complaints, if I had
8 to give a ballpark number, around ten.

9 Q. And what about unwritten?

10 A. Well, that would be from
11 media, social media and I could not tell
12 you how many there were. There were quite
13 a few but I could not give you an exact
14 number.

15 Q. Has the Board received any
16 complaints or otherwise chosen to
17 investigate doctors that provided care
18 that departed from accepted standards in
19 the field?

20 A. Yes.

21 Q. Can you tell me some of those?

22 A. I couldn't tell you exactly
23 but it is very common to receive a
24 complaint that the Board reviews in
25 which, for example we'll use surgery,

1 AMY E. EMBRY

2 somebody writes a complaint that the
3 surgery did not go well, that they're not
4 healing well or they're suffering from
5 that and it is very common when the Board
6 reviews that complaint they may ask the
7 surgeons on the Board; is this common?
8 They will say; yes, this is a common
9 occurrence in surgery; or no, it is not a
10 common occurrence, and we need to do an
11 investigation.

12 Q. In the surgery example you
13 gave, that's a real life example that has
14 happened at least once that someone
15 complained about a surgery that they felt
16 went wrong; is that correct?

17 A. Yes.

18 Q. And then so the surgeons on
19 the Board would be consulted about
20 whether what was described is a common
21 occurrence or not?

22 A. That's just my example, but
23 usually during the board meeting all the
24 Board members review that complaint, but
25 some of them may have, you know, may say;

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2 surgeons, what do you think about this,
3 and get their expertise.

4 Q. And then if there's concern
5 that it may be inappropriate treatment,
6 then it would be investigated?

7 A. Usually, yes.

8 Q. And when you say they may ask
9 the surgeons about what do you think, is
10 the question; is this conduct by the
11 surgeon at issue consistent with accepted
12 medical practice or something else? I
13 just want to make sure I understand.

14 A. Yes, it is usually accepted
15 medical practice.

16 Q. So failure to follow accepted
17 medical practice could be a reason for
18 investigation?

19 A. Could be.

20 Q. And to determine the accepted
21 medical practice, does that involve
22 looking to some of these medical
23 professional groups that you talked
24 about?

25 A. That would be a question for a

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2 physician. I can't answer that as an
3 unphysician, as far as use.

4 Q. But for the Board to determine
5 whether this is something that should be
6 investigated for failing to comply with
7 accepted medical practices, how do they
8 determine that?

9 A. There are 14 Board members, so
10 each one determines that individually. I
11 think what I was trying to get to is that
12 if they ask the surgeons their expertise
13 and the surgeon says; this never should
14 have happened, they would have been
15 taught in medical school, or something
16 like that. So it could be from medical
17 education, it could be from continuing
18 education, it could be from
19 certifications.

20 Q. When you say "it could be from
21 medical education" and these other
22 things, what is the "it" you mean?

23 A. Their decision.

24 Q. Oh, what they might base it
25 on?

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2 A. A-hum.

3 Q. I see. But would it be a
4 violation of the Arkansas State Medical
5 Practices Act for doctors to provide care
6 that departs from accepted standards in
7 the field?

8 MS. LAND: Objection to form.

9 A. Could you repeat the question?

10 Q. Sure. Would it be a violation
11 of the Arkansas Medical Practices Act for
12 doctors to provide care in a way that
13 departs from accepted standards in the
14 field?

15 A. Not necessarily. I think it
16 would just depend on the situation.

17 Q. But the accepted standards in
18 the field are relevant to assessing
19 whether there was a violation; is that
20 right?

21 A. If I had to answer on how the
22 Board makes their decision, I would say
23 yes, that is part of their consideration.

24 MS. COOPER: Okay. I'm mindful
25 of the time, we've been going for

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2 close to an hour and a half. Are
3 folks, including the court
4 reporter, okay going a few more
5 minutes until a break to wrap up a
6 line of questions?

7 (Discussion is held off the
8 record.)

9 Q. Just to explore a little bit
10 more this process the Board goes through
11 when it's considering whether to
12 investigate a complaint, and I should
13 back up and ask, am I even describing
14 that right, that there is a process that
15 happens before a decision is made whether
16 to investigate; is that correct?

17 A. Yes. Yes.

18 Q. So in the case of a complaint,
19 a complaint is filed with the Board and I
20 understand you spoke earlier about
21 potentially hiring or not hiring, I guess
22 working with investigators to collect
23 subpoenaed information from the licensee
24 and then issuing the report, but before
25 you get to that stage does something

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2 happen at the Board before investigators
3 are called to assist?

4 A. Yes. And again, every
5 situation is different, but we do have a
6 process within the office that is
7 followed before it's presented to the
8 Board.

9 Q. And what is that process
10 before the investigation would be
11 launched?

12 A. Okay. So when a complaint
13 comes in the complaint is processed, a
14 letter is sent to the complainant saying
15 we have received your complaint; a copy
16 of that complaint is also sent to the
17 licensee and that licensee needs to
18 respond to that complaint.

19 At that point when we receive
20 that response both the complaint and the
21 response from the licensee is presented
22 to the Board and they determine if there
23 has been a violation of the Medical
24 Practices Act and then from there that is
25 -- they determine; are we going to do an

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2 investigation; does the licensee need to
3 come and talk to us more before we decide
4 what we need to do? There could be a
5 variety of situations of how this could
6 work out.

7 It could also be that the
8 Board reads it, reads the response and
9 they take it as information only, meaning
10 that we understand we've received the
11 complaint, we've reviewed the complaint,
12 there has been no violation of the
13 Medical Practices Act and that's the end.
14 And then once it is concluded a letter is
15 sent to the complainant and also the
16 physician to let them know the outcome.

17 Q. Thank you. Very helpful.

18 So in the event that they
19 determine there is a violation, that's
20 when they would then investigate? Or do
21 they need the investigation to determine
22 if there is a violation?

23 A. Again, it all depends on the
24 complaint. There are some complaints that
25 we receive that are so severe that we may

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2 call the Chairman of the Board saying; do
3 you want us to start an investigation now
4 to at least gather some medical records,
5 description records, whatever they did?
6 Or it could be that it's a standard
7 complaint, it's presented to the Board
8 and the Board says; yes, we need to open
9 an investigation and we would like to see
10 these medical records for these patients.
11 And this is just an example, just to give
12 you an idea, that they could say we want
13 the medical records, we also want the
14 PDMP report, which is the Prescription
15 Drug Monitoring Program in Arkansas, for
16 opioids and so forth and they can
17 determine from there. So, again, it
18 really depends on the complaint.

19 Q. So there are some complaints
20 where -- tell me if this is correct --
21 that when the complaint and the response
22 are presented to the Board, on the face
23 of it the Board can determine that a
24 violation has or has not occurred; is
25 that correct?

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2 A. Yes.

3 Q. Do they ever review, the Board
4 ever review the complaint and response
5 and determine they need an investigation
6 to determine if a violation has occurred?

7 A. Yes.

8 Q. And then in terms of where
9 they look to determine what constitutes a
10 violation, would that be the provisions
11 that we looked at -- actually, let me ask
12 you generally because I don't want to
13 limit your answer if there is more.

14 Where does the Board look to
15 determine what standards they're applying
16 to determine what constitutes a violation
17 of the Medical Practices Act by a doctor
18 or other licensee?

19 A. They look at the Medical
20 Practices Act and the rules that are a
21 part of it.

22 MS. COOPER: Okay. I think
23 this would be a good time to take a
24 break. How is ten minutes.

25 VIDEOGRAPHER: We are off the

1 AMY E. EMBRY

2 record at 11:36 a.m.

3 (Recess is taken.)

4 VIDEOGRAPHER: We are back on
5 the record at 11:48 a.m.

6 Q. Thank you. When we were
7 speaking before we were talking about the
8 process the Board follows when there is a
9 complaint against a licensee and I just
10 have a couple of additional questions
11 about that.

12 Is there ever a hearing
13 involving a complaint against a licensee?

14 A. A hearing occurs whenever
15 there is any action against a licensee,
16 against their license. Usually that's an
17 Emergency Order of Suspension.

18 Q. So if the Board decides to
19 suspend a license there would be a
20 hearing first?

21 A. Yes -- no. Let me -- you can
22 do an Emergency Order of Suspension if
23 you feel there is an immediate threat to
24 the public and then there will be a
25 hearing at the next scheduled board

1 AMY E. EMBRY

2 meeting.

3 Q. If the Board does not believe
4 there is an immediate threat would there
5 be a meeting before the suspended
6 license?

7 A. Yes.

8 Q. So if there is an emergency
9 suspension of the license it's followed
10 up by a hearing to allow the person to
11 contest it; is that correct?

12 A. Correct.

13 Q. So a licensee could have their
14 license suspended without any hearing?

15 A. Yes. If there is -- if there
16 is a perceived threat to the public.

17 Q. I'm sorry. Let me -- let me
18 try to ask it differently.

19 If there is a complaint about
20 some wrongdoing by a licensee, and the
21 Board determines that a violation has
22 occurred, it would make that
23 determination before there would be any
24 hearing for the licensee?

25 A. That is correct. Action can be

1 AMY E. EMBRY

2 taken on a license without a licensee
3 being present, but they must be given a
4 hearing and that is actually part of the
5 administrative rules in Arkansas.

6 Q. So they get a hearing if
7 action is taken to rescind or suspend
8 their license?

9 A. Correct. Any action on a
10 license, if they feel that it needs to be
11 a revocation, which is very rare, and
12 EOS, Emergency Order of Suspension is
13 usually the most common done by our
14 Board.

15 Q. In that case there would be an
16 emergency order of suspension but it
17 would be followed up by a hearing?

18 A. Correct.

19 Q. But if it's not an emergency
20 order of suspension, but the Board would
21 like to suspend, would there be a hearing
22 and then a decision whether to suspend?

23 A. No, they can suspend at a
24 meeting. For example, if a complaint
25 comes in, they review that complaint,

1 AMY E. EMBRY

2 they vote that there has been a violation
3 of the Medical Practices Act, they can
4 suspend the license then.

5 Q. And then there is no hearing?

6 A. And then there is a hearing,
7 the licensee is given notice that their
8 hearing will be at the next board
9 meeting.

10 Q. And they give -- are given an
11 opportunity to convince the Board to
12 change their mind, is that the idea?

13 A. Correct.

14 Q. And when there is a hearing --
15 so there's always a hearing when action
16 is taken to suspend or revoke a license;
17 is that correct?

18 A. Yes.

19 Q. Does the Board make a case at
20 the hearing for why it is suspending the
21 license?

22 A. Yes. That falls on the
23 attorneys.

24 Q. The attorneys for the Board
25 would do that?

1 AMY E. EMBRY

2 A. Correct.

3 Q. Would the attorneys for the
4 Board present experts?

5 A. Yes, they could.

6 Q. And those would be experts in
7 the relevant field at issue?

8 A. Usually, yes.

9 Q. Okay. And how does the Board
10 find those experts?

11 A. There really is no official
12 way that we find them. We could use
13 recommendations of somebody in a
14 particular field.

15 For example, if a complaint
16 was against an ENT doctor, we may ask our
17 Board member who is an ENT; do you know
18 of anybody that would be a good expert to
19 review this.

20 Q. So we've kind of been talking
21 about this but I haven't asked this
22 question; can the Board discipline a
23 doctor who is licensed by the Board?

24 A. Oh, absolutely, yes.

25 Q. And under what circumstances

1 AMY E. EMBRY

2 can a Board discipline a doctor?

3 A. It could be that they're -- I
4 will give an example, that a complaint
5 comes in and it's more about boundaries,
6 that they feel they overstep their
7 bounds, they've become too close to
8 patients, they could have a relationship
9 with the patient. It could be numerous
10 things.

11 So part of the discipline can
12 be you need to take a boundaries course
13 and you need to take that documentation
14 to the Board and report back to the Board
15 to let us know what's going on.
16 Discipline, if there is substance abuse
17 involved they could say; you need to meet
18 with the Foundation, which is the
19 organization that handles licensees in
20 distress. So they can administer
21 discipline that way. Very rarely do we
22 issue a reprimand, but reprimands can be
23 issued.

24 Q. If we can go back to Exhibit
25 2, the Medical Practices Act, and turn to

1 AMY E. EMBRY

2 Section 17-95-409, page 28.

3 A. 28?

4 Q. Got that? If you'll read with
5 me (a)(1) says, "The Arkansas State
6 Medical Board may revoke an existing
7 license, impose penalties as listed in
8 17-95-410 or refuse to issue a license in
9 the event the holder or -- in the event
10 that holder or complainant, as the case
11 may be, has committed any of the acts or
12 defenses defined in this section to be
13 unprofessional conduct."

14 My first question is, is this
15 the provision that defines the scope of
16 when the Board can discipline or the
17 circumstances under which the Board can
18 discipline a licensee?

19 A. Well, this is when it may
20 revoke. This says when it may revoke.

21 Q. Well, it says -- I'm sorry. Go
22 ahead.

23 A. This section specifically
24 relates to revocation and refusal to
25 issue a license.

1 AMY E. EMBRY

2 Q. And they impose penalties as
3 listed in Section 95-410, that's also
4 limited to, I see denial, suspension or
5 revocation. Okay.

6 So these are -- Section
7 17-95-409 are the circumstances under
8 which a license may be revoked or not
9 issued; is that correct?

10 A. Correct.

11 Q. And other types of discipline
12 for other -- excuse me. Sorry. Strike
13 that.

14 You talked about other kinds
15 of discipline, like requiring a doctor to
16 take a particular kind of course about
17 boundaries. Where in the act, if
18 anywhere, are those kinds of discipline
19 options enumerated?

20 A. That's going to be in the
21 code. I don't know exactly where in the
22 code. I would have to do some research to
23 find it.

24 Q. Okay. Then let me ask a
25 different way.

1 AMY E. EMBRY

2 So the Board has the ability
3 to deny, suspend or revoke a license
4 based on the grounds listed in Section
5 17-95-409, correct?

6 A. Yes.

7 Q. And is it correct that the
8 Board has the authority to take other
9 action, like suspension of a license?

10 A. Within this section, is that
11 what you're asking?

12 Q. Well, let me ask it
13 differently.

14 You've talked about suspension
15 and emergency suspension. Is that
16 something -- I'm sorry. Strike that. I
17 read it wrong.

18 Apart from denial, suspension
19 and revocation, are there other types of
20 discipline a Board can impose?

21 A. Just off the top of my head,
22 the ones I've already mentioned. Usually
23 it is, you know, we want you to report
24 back, check in, you need to take these
25 courses just as a refresher. That's, off

1 AMY E. EMBRY

2 the top of my head, without having other
3 things in front of me, that's what I can
4 think of.

5 Q. Thank you. And focusing then
6 on suspension and revocation, it is
7 correct then that 17-95-409 are all of
8 the grounds for suspension or revocation
9 or denial of license?

10 A. In the code, yes. I'm going to
11 have to read through each one of these
12 individually. There may be other issues
13 but I need to see if it's included in
14 there.

15 Q. Well, let's look at subsection
16 (2) of 17-95-409. It says -- and
17 actually, before we look at that, just
18 because we've skipped around a little
19 bit, going back to section (a)(1), it
20 says, "The Arkansas State Medical Board
21 may revoke an existing license, impose
22 penalties as listed in Section 17-95-410
23 or refuse to issue a license in the event
24 that the holder or applicant, as the case
25 may be, has committed any of the actions

1 AMY E. EMBRY

2 or offenses defined in this section to be
3 unprofessional conduct." And if we look
4 at subsection Unprofessional Conduct, as
5 used in the Arkansas Medical Practices
6 Act, what the citations mean, and it
7 lists sections (A) through (S), correct?

8 A. Yes.

9 Q. So those are all practices or
10 conduct deemed to be unprofessional
11 conduct under the Act; is that correct?

12 A. Correct.

13 Q. And are there other places
14 where conduct may be deemed
15 unprofessional conduct, besides what's in
16 this statute?

17 A. To my knowledge, yes,
18 everything is listed here.

19 Q. Okay. I have a few questions
20 about just a couple of these provisions.

21 If you could look at
22 subsection (G), "grossly negligent or
23 ignorant malpractice", does the Board
24 have a standard for determining grossly
25 negligent or ignorant malpractice?

1 AMY E. EMBRY

2 A. They do have a definition of
3 grossly negligent that they have as part
4 of their Board packet when considering
5 this. I do not have it in front of me,
6 though.

7 Q. When you say "part of their
8 Board packet when considering this", what
9 do you mean by that?

10 A. We give them a list of
11 definitions so they'll understand what
12 suspension means; grossly negligent
13 they'll understand that; if we say
14 revoke, what does revoke mean. It's just
15 a reference sheet, the reference sheets
16 of commonly used words.

17 Q. And does "grossly negligent"
18 include departing from accepting
19 standards of medical care?

20 A. I would have to look at the
21 definition that they use. Again, I don't
22 have that with me.

23 Q. Okay. Is it based on
24 community standards of care?

25 A. I do not know.

1 AMY E. EMBRY

2 Q. Okay. Can you give examples of
3 some -- well, let me ask it differently.

4 Since you've been with the
5 Board has anyone faced discipline based
6 on gross and ignorant -- grossly
7 negligent or ignorant malpractice?

8 A. Not that I can recall.

9 Q. Could you look down to
10 subsection (S), the last one, it says,
11 "committing an ethical violation as
12 determined by the Board by rule." Did I
13 read that right?

14 A. Yes.

15 Q. Okay. So I understand from
16 this the Board has authority under this
17 provision to determine ethical violations
18 or to enact rules to identify what are
19 ethical violations; is that correct?

20 A. Yes.

21 Q. Has the Board done that?

22 A. Yes.

23 Q. Can you tell me where they've
24 done that?

25 A. It is Rule -- I don't want to

1 AMY E. EMBRY

2 say it wrong, I'm thinking it is 17 but I
3 need to make sure.

4 Q. Okay.

5 A. No. It is Rule 32, Rule 32.

6 Q. Do I understand from previous
7 testimony that this was a rule that was
8 enacted prior to you joining or becoming
9 employed by the Board?

10 A. That is correct.

11 Q. Okay. Is this the only rule
12 the Board has identifying ethical
13 violations?

14 A. To my knowledge, yes.

15 Q. By the way, I see sometimes
16 the terminology in these -- in the
17 regulations calls it a regulation and
18 sometimes it calls it a rule. Is there
19 any difference?

20 A. It was in 2019 the legislature
21 said we had to change everything that
22 says "regulation" to "rule", that was
23 statewide, all agencies. So we are in the
24 process of updating everything. So
25 anything that says "regulation" would be

1 AMY E. EMBRY

2 changed to "rule". That is the only
3 difference.

4 Q. Okay. But the content won't be
5 changed, just the name --

6 A. Just the name.

7 Q. -- that they would be all
8 rules. Okay.

9 Let's look at Regulation 32
10 that I suppose will soon be referred to
11 as Rule 32; is that correct?

12 A. Yes.

13 Q. It says, "Pursuant to Act 1178
14 of the 87th General Assembly the Arkansas
15 State Medical Board determines that the
16 following conduct is an ethical
17 violation." And in that regulation it
18 lists subsections (a) through (e),
19 correct?

20 A. Yes.

21 Q. So these are enumerated
22 examples of -- strike that.

23 The conduct listed in
24 subsections (a) through (e) are the only
25 things that are deemed unethical or

1 AMY E. EMBRY

2 ethical violations by the Board; is that
3 correct?

4 A. That is correct for this rule,
5 yes.

6 Q. Are there other rules that
7 address ethical violations that the Board
8 has promulgated?

9 A. Not to my knowledge.

10 Q. So to your knowledge, this is
11 the universe of ethical violations for
12 physicians?

13 A. Yes.

14 Q. Okay. If we can just fairly
15 briefly go through them, subsection (a)
16 is about improper sexual contact or
17 relationship with patients; is that
18 correct?

19 A. Yes.

20 Q. Section (b) is about physician
21 disclosing confidential information about
22 a patient, correct?

23 A. Yes.

24 Q. Section (c) is about failing
25 to notify a patient that they have an

1 AMY E. EMBRY

2 ownership in a facility or service?

3 A. Yes.

4 Q. And (d) is sexual harassment
5 by the physician; is that correct?

6 A. Yes.

7 Q. And (e) is a licensed
8 physician grossly overutilizing or
9 ordering or performing tests or
10 procedures on a patient when that may
11 result in harm to the patient; is that
12 correct?

13 A. Yes.

14 Q. So that's the universe of
15 ethical violations for physicians; is
16 that correct?

17 A. Yes.

18 MS. COOPER: I'd like to mark
19 as Exhibit -- sorry -- 5 what is
20 tab 5.

21 (Exhibit 5, Arkansas State
22 House Bill 1718 was received and
23 marked on this date for
24 identification.)

25 MS. LAND: It has pulled up on

1 AMY E. EMBRY

2 my screen.

3 MS. COOPER: Thank you.

4 Q. Just for the record, I'm going
5 to say this is Section 20-6-201 of
6 Arkansas Statutes.

7 Are you familiar with this
8 statute?

9 A. I am. It's been a while since
10 I've read it.

11 Q. I would like to call your
12 attention to a particular part of this
13 statute but if you need to read more we
14 can take time to do that.

15 I'm going to, instead of
16 taking your time, why don't I look for
17 the relevant provision. Let's put that
18 to the side and we'll come back to that.

19 So we talked earlier about the
20 provision in the Medical Practices Act
21 about unprofessional conduct. And that
22 one of the examples of unprofessional
23 conduct was an ethical violation as
24 determined by the Board by rule, correct?

25 A. Could you repeat that?

1 AMY E. EMBRY

2 Q. Right. That one of the -- we
3 talked earlier about the definition of
4 unprofessional conduct with subsections
5 (A) through (S) in the Arkansas Medical
6 Practices Act; do you remember that?

7 A. Yes.

8 Q. And then one of those
9 provisions for unprofessional conduct was
10 defined as unethical conduct or
11 violations as determined by the Board by
12 rule; is that correct?

13 A. Yes.

14 Q. So what I'm trying to
15 understand is if there were a complaint
16 about a doctor engaging in conduct that
17 was considered harmful by the complainant
18 but it didn't fall under any of the
19 categories in the unprofessional conduct
20 statute (A) through (S), and wasn't
21 considered an ethical violation under
22 Regulation 32, is that something the
23 Board could investigate and potentially
24 address?

25 MS. LAND: Objection to form.

1 AMY E. EMBRY

2 A. Yes. Yes, they could.

3 Q. So anything that involves a
4 complaint by someone in the public
5 alleging that a doctor is engaging in
6 harmful conduct could be investigated by
7 the Board?

8 A. Yes. It could be, yes.

9 Q. And would the Board need to
10 determine that the doctor violated any of
11 those provisions that were defined as
12 unprofessional conduct subsections (A)
13 through (S) or an ethical violation under
14 Regulation 32 to take action against a
15 licensee?

16 A. They would need to determine
17 if there had been any violation in any
18 part of the Medical Practices Act,
19 whether it's in code or in the rule.

20 Q. And to revoke -- let me ask it
21 differently.

22 To revoke or suspend a license
23 would it have to be "unprofessional
24 conduct" under the statute we discussed?

25 A. I don't know if it's limited

1 AMY E. EMBRY

2 just to that, a revocation. I would have
3 to do some research on that one.

4 Q. Okay.

5 A. But if -- I can't -- I can't
6 answer truthfully to that.

7 Q. I'm just trying to think of --
8 for example, somebody says; I went to a
9 surgeon and the surgeon did this
10 treatment that left me disfigured, would
11 that potentially be a basis to suspend a
12 license?

13 A. They would have to research,
14 they would have to do an investigation,
15 unless there was an immediate threat to
16 the public.

17 Q. If we can look at the Medical
18 Practices Act, Exhibit 2, Section
19 17-95-410. Can we look at subsection
20 (e)(1), and when you have that let me
21 know, it's on page 29.

22 A. What subsection?

23 Q. (e)(1).

24 A. Okay.

25 Q. So it says here, "At the

1 AMY E. EMBRY

2 conclusion of the hearing the Board shall
3 first decide whether the accused is
4 guilty of the charges against him or her
5 and then decide on the appropriate
6 disciplinary action; subsection (2), If
7 the accused is not guilty the Board shall
8 dismiss the charges; subsection (3), If
9 the accused is found guilty the Board may
10 do one or more of the following; (a)
11 revoke his or her license; (b) suspend
12 his or her license not to exceed one
13 year; (c) issue a reprimand; (d) issue a
14 probation allowing the licensee to
15 continue practicing under terms and
16 conditions found to be in the best
17 interests of the accused and the general
18 public; or (e) levy a fine up to \$1,000
19 under the Arkansas Medical Practices Act
20 and collect out-of-pocket costs of
21 investigation incurred by the Board to
22 conduct the disciplinary hearing."

23 Those are all forms of
24 discipline that the Board can impose if a
25 doctor is found to be in violation of the

1 AMY E. EMBRY

2 Medical Practices Act?

3 A. Yes.

4 Q. Are there other discipline
5 options besides those?

6 A. As we discussed earlier, you
7 know, if there's no action taken against
8 the license they can say prescribing
9 courses, they need you to meet with
10 so-and-so or whatever. But if this is --
11 if there is an actual -- an actual -- I'm
12 sorry -- an actual action against the
13 license.

14 Q. Okay. And focusing in on
15 subsection (3)(d) that we looked at it
16 says, "The Board can impose a probation
17 allowing the licensee to continue
18 practicing under terms and conditions
19 found to be in the best interests of the
20 accused and the general public". Is what
21 you just described an example of that,
22 you know, a course on anything that you
23 thought the doctor needed?

24 A. Imposing a probation, I'm
25 wondering if this can refer to what we

1 AMY E. EMBRY

2 call consent orders, meaning you're
3 allowed to practice as long as you do A,
4 B and C.

5 Q. That's called a consent order?

6 A. Yes. That's a legal document.
7 As far as impose a probation, I'm
8 thinking that's what that is.

9 Q. And can you tell me examples
10 of some of those? You called it a
11 consent order?

12 A. Yes.

13 Q. What kinds of conditions are
14 required? You can continue practicing if
15 you do A, B or C, what kinds of
16 conditions?

17 A. Just some off the top of my
18 head, if it is a substance abuse issue,
19 they're allowed to practice as long as
20 they're in compliance with their contract
21 with the Arkansas Medical Foundation who
22 monitors distressed physicians licensed
23 by our Board. It could also be that they
24 have to complete these courses in a
25 certain timeframe and present it to the

1 AMY E. EMBRY

2 Board member, the Board as a whole, and
3 -- I mean, that gives you some ideas,
4 that there are certain stipulations that
5 they must adhere to in order to continue
6 practicing.

7 Q. Is there something called a
8 restricted license?

9 A. No. We do not have a
10 restricted license.

11 Q. You just have the consent
12 order that says you need to do X, Y or Z
13 to continue practicing?

14 A. Right.

15 Q. But even with, say, issues
16 concerning, you know, prescription of
17 drugs improperly there couldn't be a
18 consent order that says you can continue
19 practicing but you can't prescribe drugs?
20 Could that be something?

21 A. Sure. It could be in the
22 consent order, yes.

23 Q. Has the Board ever done that?

24 A. I can't recall. We've had a
25 lot of consent orders, so I would have to

1 AMY E. EMBRY

2 look at that.

3 Q. So one example you gave was
4 involving substance abuse. Have there
5 ever been consent orders that do relate
6 to prescription practices?

7 A. Yes.

8 Q. What kinds of consent orders?

9 A. It could be, for example, if
10 the complaint was the physician or
11 whomever was overprescribing, that part
12 of the consent orders, if the Board chose
13 to do so, they could say, you know,
14 continue practicing but you must
15 surrender your DEA license.

16 Q. And what is a DEA license?

17 A. Drug enforcement, so you can
18 prescribe controlled substances.

19 Q. So the doctor could continue
20 practicing but couldn't prescribe
21 controlled substances?

22 A. Correct.

23 Q. Is there ever monitoring as
24 part of the consent order, monitoring by
25 the Board?

1 AMY E. EMBRY

2 A. There is monitoring, but we
3 would gather that information from other
4 sections. For example, as I discussed
5 earlier, the PDMP is the Prescription
6 Drug Monitoring Program, we can request a
7 report from that program to show what
8 physician or licensee prescribed to
9 whomever whenever. So we could use that
10 as -- to give you an example.

11 Q. And when the decision is made
12 to impose discipline, whether suspension
13 or revocation or something else, is that
14 a majority vote by the Board?

15 A. Yes.

16 Q. If the Board learned that a
17 doctor were using a treatment that is
18 unsafe, could the Board issue a rule
19 prohibiting the use of that treatment?

20 A. They could. They could draft a
21 rule and put it through the promulgation
22 process.

23 Q. Has it ever done that?

24 A. Yes.

25 Q. Tell me about that.

1 AMY E. EMBRY

2 A. It was discussed earlier, it
3 was the rule about the cosmetic
4 procedures and that's the one that I have
5 since I have been at the Board that I
6 know about.

7 Q. And that was a rule to ban
8 certain procedures across the board or
9 prohibit them from being provided at all?

10 A. It was to say who could
11 provide those services, not prohibit.

12 Q. So let me ask it differently.
13 Has the Board ever promulgated
14 a rule that prohibits anyone from
15 performing a particular service or
16 medical treatment?

17 A. Not to my knowledge, no.

18 Q. But it could if that came to
19 its attention that there was a harmful
20 treatment going around?

21 A. Yes.

22 Q. Has the Board ever considered
23 prohibiting a treatment across the board?

24 A. Not to my knowledge, no.

25 Q. I want to switch gears away

1 AMY E. EMBRY

2 from the process, the Board's process.

3 When the legislature passes
4 laws concerning the regulation of
5 medicine, is the Board consulted about
6 legislation of that nature?

7 A. Sometimes.

8 Q. Can you tell me examples of
9 when it has been consulted?

10 A. Most recently they were
11 considering licensing another healthcare
12 provider and they consulted with the
13 Board. They had a bill that was
14 introduced and they said if we went
15 forward with this bill what would need to
16 be done. We went with them and went
17 through that process.

18 Q. I'm sorry. I may not have
19 understood. You said "they" meaning the
20 legislature were considering licensing a
21 healthcare provider?

22 A. Correct.

23 Q. I didn't realize the
24 legislature licenses healthcare
25 providers. What do you mean by that?

1 AMY E. EMBRY

2 A. They put forward a bill to
3 license naturopathic physicians.

4 Q. I see. Not a particular
5 provider but a category of providers?

6 A. Correct. Correct.

7 Q. So there was a bill to license
8 -- I'm sorry, what did you call the
9 category?

10 A. Naturopathic.

11 Q. Naturopathic physicians. And
12 the legislature consulted with the Board
13 about what sorts of issues the --

14 A. They would say if we decided
15 to license, how would your office handle
16 this if we put it underneath your Board?
17 And we told them when you're drafting the
18 bill this is how our licensure process is
19 set up now, so if you do move forward
20 with this bill we would ask you to
21 consider X, Y or Z.

22 Q. Was the Board asked its view
23 on whether that was a good idea to
24 license naturopathic physicians?

25 A. In that instance, no.

1 AMY E. EMBRY

2 Q. Are there any other examples
3 where you think that the legislature
4 consulted with the Board about a bill?

5 A. There may have been. The one
6 that I gave earlier, that's the one that
7 actually required a sit-down meeting but
8 it's very common for the legislature to
9 ask for statistics or information before
10 they draft a bill.

11 It is -- to my knowledge, it
12 is not required for the legislature to do
13 that and it has not done on any -- any
14 and all bills that would affect our
15 licensees.

16 Q. Since you've been with the
17 Board or since you've been Executive
18 Director, are there other examples
19 besides the naturopathic physician
20 licensing measure that the legislature
21 consulted with the Board about?

22 A. Let me think on that for a
23 minute. There may have been. I just
24 can't think of any off the top of my
25 head. I just remember that one about the

1 AMY E. EMBRY

2 naturopaths, that stuck out in my mind.

3 Q. And since you've been the
4 Executive Director have there been any
5 bills that actually were passed
6 concerning the regulation of medicine?

7 A. Yes.

8 Q. Which ones?

9 A. Well, I don't have the
10 documents in front of me, but 2021 was a
11 very active session and I do know that
12 the Act 626 that we're here about today,
13 that was passed, that would affect the
14 Medical Practices Act. There was also,
15 that affected the Board directly, is that
16 they changed that physicians could renew
17 for two years rather than one year, they
18 put that into law.

19 I don't have my list in front
20 of me. That's a couple of them.

21 Q. Did the legislature consult
22 with the Board about the rule or bill
23 about physicians renewing for two years?

24 A. No.

25 Q. And when you said before that,

1 AMY E. EMBRY

2 referring to the naturopathic physician
3 bill, that the legislature consulted with
4 the Board, who in the legislature did
5 that?

6 A. I don't have my notes in front
7 of me but it was one representative and I
8 believe one senator and I believe they
9 were the sponsor and co-sponsors of the
10 bill so they met -- it was during the
11 pandemic, so it was via Zoom.

12 Q. So is that something that has
13 happened in other situations that the
14 sponsors of a bill would consult with the
15 Board about a bill?

16 A. It could happen, yes, that
17 could happen.

18 Q. Have there been any
19 significant bills concerning the
20 regulation of medicine where the
21 legislature did not consult with the
22 Board?

23 MS. LAND: Object to form.

24 A. I would have to say yes. I
25 don't know what they are, but at some

1 AMY E. EMBRY

2 point, yes.

3 Q. That there are times that the
4 legislature does not consult with the
5 Board?

6 A. Correct.

7 Q. Is it typical that they do
8 consult with the Board when it's a matter
9 of medical regulation?

10 A. In my opinion, I wouldn't say
11 typical.

12 Q. Sometimes yes, sometimes no?

13 A. Correct.

14 Q. And when they consult with the
15 Board, who on the Board do they consult
16 with?

17 A. It would come through the
18 office. So they could speak to me, they
19 could speak to a member of my staff. They
20 could also reach out because we're under
21 the Department of Health, it may come
22 through the Department of Health. It
23 would be direct contact or it could be
24 indirect contact.

25 Q. So in the example you gave

1 AMY E. EMBRY

2 about the naturopathic physicians, did
3 that come through you?

4 A. Yes, it did, yes.

5 Q. And you said it was the
6 sponsors of the bill that reached out?

7 A. From what I can recollect,
8 without anything in front of me, yes.

9 Q. And then do you then connect
10 the legislators with members of the Board
11 or do you just talk to them yourself?

12 A. No. We do not do that at the
13 Board. We do not connect them unless it's
14 specifically requested by the legislator
15 or Department of Health or anything like
16 that, no.

17 Q. So when the Board gave input
18 to the legislature -- legislators, I
19 should say, in what format did that come?

20 A. For?

21 Q. Let me ask it differently.

22 I understood you to be saying
23 that these legislators asked for the view
24 of the Board with respect to some
25 questions related to the bill. Were you

1 AMY E. EMBRY

2 the one who answered those questions to
3 provide the information they were
4 seeking?

5 A. Yes. Because in that instance
6 for the naturopathic it was specifically
7 licensing questions and that would come
8 from the Board staff.

9 Q. So the Board staff would
10 typically provide the information that
11 the legislators are seeking regarding a
12 bill?

13 A. Yes.

14 Q. It would not go to the Board
15 members?

16 A. Only if it is something that
17 the Board needs to consider before
18 returning that. For example, as I used in
19 that example, the licensing practices,
20 the Board would -- the licensing
21 practices are what they are, the staff
22 could answer that. But if they are
23 asking; we want your input from a
24 physician point of view, or something
25 like that, we would either ask them to

1 AMY E. EMBRY

2 draft something that we would present to
3 the Board or they could come and address
4 the Board at the next board meeting.

5 Q. And have legislators ever come
6 to address the Board on questions about
7 which they wanted input?

8 A. I'm trying to recall. Since
9 I've been Director, no.

10 Q. But do you know if that's been
11 done in the past?

12 A. I'm not sure. I'm not sure.

13 Q. And you said they could put,
14 the legislators could put questions in
15 writing for the Board; is that correct?

16 A. Yes.

17 Q. Has that ever been done?

18 A. Not since I've been Director.

19 Q. Before that?

20 A. I don't know.

21 Q. Okay. But I understand you to
22 be saying that if it were a question
23 about wanting input from the Board on a
24 matter of practice of medicine, that you
25 would take that to the Board, not answer

1 AMY E. EMBRY

2 it by staff alone?

3 A. Correct.

4 Q. Okay.

5 A. The staff handles what the
6 staff can handle. The rest goes to the
7 Board.

8 Q. Okay. We talked earlier about
9 prescription of opioids and I'd like to
10 look at Section 17-95-701 of the Medical
11 Practices Act. And this is titled --
12 subchapter (7) is titled Chronic
13 Intractable -- Chronic Intractable Pain
14 Treatment Act, correct?

15 A. Yes.

16 Q. And is this the provision of
17 the Medical Practices Act that governs
18 prescriptions for painkillers?

19 A. Yes.

20 Q. And I think you touched on it
21 in the past. Has overprescription of
22 opioids been a problem in Arkansas?

23 A. Yes.

24 Q. Has it caused harm to the
25 public?

1 AMY E. EMBRY

2 A. Yes.

3 Q. What kind of harms?

4 A. Addiction.

5 Q. And there have been complaints
6 to the Board about doctors
7 overprescribing opioids; is that correct?

8 A. Yes.

9 Q. Did the Board enact
10 regulations to address overprescription
11 of opioids?

12 A. Yes, 2.8.

13 Q. Okay. And that one is which
14 one, I think we talked about it, but --

15 A. It's Rule 2.8.

16 Q. Thank you. You said 2.8?

17 A. No. I'm wrong about that. I'm
18 sorry.

19 Q. I'm not finding it there.

20 A. It is -- it's in Regulation 2,
21 Regulation 2 has quite a bit to it, and
22 if you look at 6 (a) and (b).

23 Q. You said subsection 6 of
24 Regulation 2?

25 A. Correct.

1 AMY E. EMBRY

2 Q. "The treatment of pain with
3 dangerous drugs and controlled substances
4 is a legitimate medical practice when
5 done in the usual course of medical
6 practice", that provision? I'm reading
7 just a portion of it just to make sure
8 we're on the same page; is that correct?

9 A. Yes.

10 Q. And this regulation, was this
11 all dictated by statute or did the Board
12 develop any of this?

13 A. This was before my time, but
14 from what I understand, this was at the
15 request of the legislature.

16 Q. Not by a statute but
17 legislators requesting it?

18 A. Correct. That is my
19 understanding.

20 Q. If we can go back to
21 subchapter 7 of the Medical Practices Act
22 that's on page 34, and if we look at
23 subsection (c)(1) it says, "In lieu of a
24 finding of gross and ignorant malpractice
25 the Board after a hearing may

1 AMY E. EMBRY

2 incrementally impose sanctions as
3 follows: (a) monitor prescribing habits
4 of the physician not to exceed six
5 months; (b) require that the decision to
6 voluntarily surrender his or her United
7 States Drug Enforcement Agency license to
8 the Board for a specified period of time
9 not to exceed three months; (c) suspend
10 the physician's license, stay the
11 suspension and require monitoring of
12 prescribing habits; (d) revoke the
13 physician's license, stay revocation and
14 require monitoring of the physician's
15 prescribing habits for a specified time;
16 and (e) revoke the physician's license
17 for serious violations of statutes and
18 regulations."

19 Are these all steps the Board
20 can take if a doctor is found to violate
21 the provisions regarding prescription of
22 pain medication?

23 A. Yes.

24 Q. And the Board has a Pain
25 Management Review Committee to review

1 AMY E. EMBRY

2 complaints of overprescription of main
3 medications; is that right?

4 A. Yes.

5 Q. And have doctors faced
6 discipline due to improper prescription
7 of opioids?

8 A. Yes.

9 Q. Can you say approximately how
10 many, since you've been ED?

11 A. Not truthfully. I honestly
12 could not give an honest number on that.
13 It has occurred.

14 Q. Do you know if it's more than
15 20?

16 A. Since I've been Director, no,
17 it's not more than 20.

18 Q. Okay. But it's happened?

19 A. Yes.

20 Q. Did any of them have
21 monitoring or surrender of DEA license as
22 a discipline that was imposed?

23 A. Describe "monitoring"?

24 Q. Well, I'm just reading what it
25 says there; "monitoring prescribing

1 AMY E. EMBRY

2 habits up to six months."

3 A. Yes. They can be referred to
4 the Pain Management Review Committee and
5 it could be that we want an MP run every
6 month for the next six months.

7 Q. And some doctors have had
8 their DEA license revoked or they've had
9 to surrender it, I should say?

10 A. We cannot revoke a DEA
11 license.

12 Q. But you can require them to
13 surrender it as a condition to continuing
14 to practice?

15 A. Yes, if that's what the Board
16 decides.

17 Q. And has that happened?

18 A. Yes.

19 Q. Did these actions serve to
20 protect the public from harmful conduct
21 by these doctors?

22 A. Yes.

23 Q. Did the Board consider just
24 prohibiting the use of opioids
25 altogether, given the harm they were

1 AMY E. EMBRY

2 causing to the public?

3 A. I do not know.

4 Q. You do not know. Okay.

5 That's never been proposed as
6 a regulation by the Board?

7 A. Not since I've been Director,
8 no.

9 Q. Do you know why they did not
10 do that?

11 A. I have no knowledge about
12 that. This was before I was there.

13 Q. Okay. Can we look at
14 Regulation 27? This is the provision,
15 "Informed consent for gastric bypass
16 surgery." Okay?

17 A. A-hum.

18 Q. Do I understand correctly from
19 this that the Board has established
20 requirements for the informed consent
21 process before a doctor can perform
22 gastric bypass surgery?

23 A. Yes.

24 Q. And is this a regulation that
25 was mandated by statute?

1 AMY E. EMBRY

2 A. Yes. Actually, by Act 1356.

3 Q. Okay. And did the Board
4 develop any part of the regulation or was
5 it all specified by statute?

6 A. I do not know. I would have to
7 look at the document.

8 Q. And in looking at this I see
9 it says here, "Pursuant to Act 1356 of
10 the 84th General Assembly of 2003 all
11 physicians of the State prior to
12 performing gastric bypass surgery, also
13 known as open or laparoscopic Roux-en-Y,
14 will have the patient signs an informed
15 patient consent form acknowledging they
16 have been told information about the
17 various complications that can result
18 from the surgery. The complications and
19 information the patient must be informed
20 of are as follows:" Did I read that
21 correctly?

22 A. Yes.

23 Q. And then it lists (a) through
24 (i) as complications that patients must
25 be informed of, correct?

1 AMY E. EMBRY

2 A. It's actually A through M.

3 Q. Oh, sorry. It is A through M.

4 And then some of those provisions have
5 subsections, correct?

6 A. Yes.

7 Q. Okay. So, for example,
8 subsection I says, "The following
9 surgical complications may arise", and it
10 lists 33 potential complications,
11 correct?

12 A. Yes.

13 Q. And then there are a series of
14 nutritional complications, four of those,
15 correct, under J?

16 A. Yes.

17 Q. And psychiatric complications
18 under K include 4, psychiatric
19 complication, correct?

20 A. Yes.

21 Q. And then L lists items 1
22 through 22 as additional complications,
23 correct?

24 A. Yes.

25 Q. And then M identifies

1 AMY E. EMBRY

2 pregnancy complications, correct?

3 A. Yes.

4 Q. And then going back to Section
5 E says, "There is no guarantee of weight
6 loss or long-term weight management as a
7 result of getting surgery." Did I read
8 that right?

9 A. Yes.

10 Q. Okay. And then F, a lifetime
11 of followup medical care is required; is
12 that correct?

13 A. Yes.

14 Q. So these are all provisions
15 that doctors have to inform patients
16 about, complications and risks that the
17 doctors have to inform patients about
18 before performing gastric bypass surgery,
19 correct?

20 A. Yes.

21 Q. Now, how did the Board
22 identify all of these complications?

23 A. I do not know. I was not at
24 the Board when this was created and
25 promulgated. So I would have to look at

1 AMY E. EMBRY

2 that documentation.

3 Q. Okay.

4 A. But it is possible it came
5 directly from the Act.

6 Q. Okay. And do these provisions
7 that lay out requirements for informed
8 consent for gastric bypass protect the
9 public from harm?

10 A. My belief is yes.

11 Q. And how is that?

12 A. Well, it's information to the
13 patient, they need to be made aware of
14 these complications.

15 Q. Did the Board ever discuss
16 prohibiting gastric bypass surgery?

17 A. I do not know.

18 Q. Okay. Does the Board prohibit
19 any -- I think I asked a version of this
20 question before but I want to make sure I
21 understand. Does the Board prohibit any
22 medical treatment across the Board?

23 A. No.

24 Q. And has the Board ever
25 considered, to your knowledge, a proposal

1 AMY E. EMBRY

2 to prohibit a particular medical
3 treatment across the Board?

4 A. Not to my knowledge, no.

5 Q. Has any member of the Board
6 proposed a regulation that would prohibit
7 a particular medical treatment across the
8 Board?

9 A. Not since I've been the
10 Director, no.

11 Q. Okay. Are you aware of, as the
12 Director of the Board, of any State
13 statutes that prohibit a particular
14 medical treatment?

15 A. The only one that I am aware
16 of is the one that we're here today to
17 discuss, Act 626.

18 Q. You're not aware of any
19 others?

20 A. No, I am not.

21 Q. Now, is off-label use of drugs
22 permitted in Arkansas?

23 A. Yes.

24 Q. Is it common?

25 A. Yes. I would say so, yes.

1 AMY E. EMBRY

2 Q. And I understand that the
3 State allows off-label use of
4 hydroxychloroquine to treat COVID; is
5 that correct?

6 MS. LAND: Objection to
7 relevance. You can answer.

8 A. It does not prohibit it.

9 MS. COOPER: Can we mark as
10 Exhibit 6, tab 8?

11 (Exhibit 6, Guidance For the
12 Use of Hydroxychloroquine and
13 Chloroquine For the Treatment of
14 COVID 19 was received and marked on
15 this date for identification.)

16 MS. COOPER: Amanda, do you
17 have it up?

18 MS. LAND: Leslie, it is not
19 loading for me.

20 MR. RICHARDSON: One moment.
21 That should be available to you
22 now.

23 MS. LAND: Yes, I have it.

24 MS. COOPER: Great.

25 Q. For the record, I'll just

1 AMY E. EMBRY

2 state that the document is called
3 Guidance For the Use of
4 Hydroxychloroquine and Chloroquine For
5 the Treatment of COVID 19, dated July 29,
6 2020 from the Arkansas Department of
7 Health.

8 Have you ever seen this
9 before, Ms. Embry?

10 A. Yes.

11 Q. When did you see it?

12 A. When it was released back in
13 2020.

14 Q. And why was this -- why did
15 you see it? How did you come to see it?

16 A. It was sent out by the
17 Department of Health to all of its
18 sub-agencies and sections. It was also on
19 their website.

20 Q. Did the Board have any role in
21 the creation of this guidance?

22 A. No.

23 Q. That was done by the
24 Department of Health?

25 A. To my knowledge, yes.

1 AMY E. EMBRY

2 Q. And just stepping back, I
3 understand that you're -- well, let me
4 ask you differently.

5 What is the relationship
6 between the Arkansas State Medical Board
7 and the Department of Health?

8 A. We are within the Department
9 of Health. The State Medical Board is an
10 agency or subsection or whatever you want
11 to call it of the Department of Health.

12 Q. Okay. Thank you.

13 And if we can just read along
14 together, since it's pretty short, it
15 says, "On June 15, 2020 the Food and Drug
16 Administration, FDA, revoked the
17 emergency use authorization, EUA, for the
18 use of chloroquine, CQ, and
19 hydroxychloroquine, HCQ, to treat COVID
20 19 after concluding it was 'no longer
21 reasonable to believe that oral
22 formulations of HCQ and CQ may be
23 effective in treating COVID 19, nor is it
24 reasonable to believe that the known and
25 potential benefits of these products

1 AMY E. EMBRY

2 outweigh their known and potential
3 risks.' The latter included serious
4 adverse events. Based on this
5 information, the Arkansas Department of
6 Health, ADH, updated its guidance related
7 to HCQ and CQ indicating that their use
8 for treatment of COVID 19 should be
9 avoided in both outpatient and
10 hospitalized settings, but could be
11 administered prescribed and dispensed for
12 FDA medical supervision of a patient's
13 healthcare provider. Unapproved use,
14 i.e., off-label use, of these medications
15 is left to the discretion of individual
16 clinicians and their patients. However,
17 the ADH wants clinicians to be aware that
18 coadministration of HCQ or CQ with
19 remdesivir and MEUA, approved medication
20 for treatment of COVID 19, is not
21 recommended based on data showing an
22 antagonistic effect of these medications
23 on the antiviral activity of remdesivir."

24 Did I read that reasonably
25 okay?

1 AMY E. EMBRY

2 A. Yes.

3 Q. Despite some of the big words.
4 So you said you were familiar
5 with this guidance, correct?

6 A. Yes.

7 Q. Was the Board consulted in any
8 way about this guidance?

9 A. This was nearly two years ago
10 but my recollection right now is no, they
11 were not consulted.

12 Q. Okay. Did the Board have any
13 conversations about this guidance?

14 A. Not that I can recall. I would
15 need to go back and look at meetings.
16 It's been years.

17 Q. Did you have any conversation
18 with Board members or Board have about
19 this guidance?

20 A. No.

21 Q. Did you hear any conversations
22 from Board staff or Board members about
23 it?

24 A. No.

25 Q. So I understand here that the

1 AMY E. EMBRY

2 Department of Health is allowing
3 off-label use of hydroxychloroquine to
4 treatment COVID despite the State's
5 awareness of the lack of evidence of
6 effectiveness plus serious risks of use,
7 correct?

8 A. Repeat that question.

9 Q. Yes. I understand from here
10 the State is -- the Department of Health
11 is allowing the off-label use of
12 hydroxychloroquine to treat COVID despite
13 the State's awareness of the lack of
14 evidence of effectiveness for this
15 purpose and the serious risks of using
16 it; is that correct?

17 A. According to this document, it
18 says it's allowing the decision to be
19 left to the individual clinicians and
20 their patients.

21 Q. Okay. And this is not
22 something the Board considered weighing
23 in on?

24 A. Not that I can recall.

25 VIDEOGRAPHER: Is there a

1 AMY E. EMBRY

2 chance we can take a break? I've
3 got to change a card and I'm
4 getting pretty close.

5 MS. COOPER: Sure. We can take
6 a break now. How much time do you
7 need?

8 VIDEOGRAPHER: We are off the
9 record at 12:56 p.m.

10 (Recess is taken.)

11 VIDEOGRAPHER: We are back on
12 the record at 1:50 p.m.

13 Q. Thank you. Welcome back.

14 You mentioned earlier an issue
15 with some doctors or a doctor at a jail
16 prescribing Ivermectin for COVID. Did I
17 say that right?

18 A. Yes.

19 Q. Okay. And I think you
20 mentioned there were a number of
21 complaints about that use of Ivermectin;
22 is that right?

23 A. Yes.

24 Q. And was it all against the
25 same doctor or multiple doctors?

1 AMY E. EMBRY

2 A. In that instance it was the
3 same doctor.

4 Q. And so I understand that there
5 were multiple complaints against this
6 doctor and am I right that there was a
7 determination that no action was taken at
8 some point by the Board with respect to
9 the complaint against this doctor for
10 prescribing Ivermectin for COVID?

11 A. This one is still open, so I
12 cannot say that nothing has been done.

13 Q. Okay. So when you say "this
14 one is still open" and maybe I may be
15 misspeaking here, but if there is
16 multiple complaints about one doctor,
17 then they get joined together as one
18 investigation or are they separate
19 investigations?

20 A. It could. It depends on the
21 nature of the complaint as well.

22 Q. And in this case with the
23 doctor prescribing Ivermectin, is there
24 one process only or have there been more
25 than one process in investigating these

1 AMY E. EMBRY

2 complaints?

3 A. I think we did group this one
4 into one investigation.

5 Q. So the Board never reached any
6 conclusion with respect to this -- any
7 complaint against this doctor?

8 A. It is still ongoing.

9 Q. And it never took a complaint
10 for "information only" at any stage?

11 A. They may have taken some for
12 "information only".

13 Q. When you say "some", some
14 complaints against this doctor?

15 A. Yes. So, for example, let's
16 say ten complaints were received. All ten
17 complaints would be presented to the
18 Board individually as separate
19 complaints. Some complaints may say we
20 need to look into this one further, we
21 need to do an investigation, whatever
22 they decide. There may be another
23 complaint to say, no, there was no
24 violation, from what we have found there
25 is no violation of the Medical Practices

1 AMY E. EMBRY

2 Act and this one is closed.

3 Q. So with these Ivermectin
4 complaints, some of them have been
5 closed?

6 A. Yes.

7 Q. And was that based on a
8 determination in those complaints there
9 wasn't a violation of the Medical
10 Practices Act?

11 A. Yes.

12 Q. And does that mean in those
13 situations the Board determined that
14 Ivermectin had not been prescribed to
15 treat COVID in those cases?

16 A. It would depend on what that
17 particular complaint was. If it was a
18 complaint about Ivermectin and they took
19 it as no violation, then that's it but I
20 would have to go back and review every
21 single one of those to see if it was
22 specifically Ivermectin.

23 Q. Was there ever a complaint --
24 and I know I could go review all the
25 board meetings and look at this myself,

1 AMY E. EMBRY

2 but maybe you can help me cut to the
3 chase here.

4 Was there ever one where the
5 Board heard the complaint, had a hearing
6 and determined that even though the
7 doctor was found to have prescribed
8 Ivermectin to treat COVID, that it was
9 not a violation of the Medical Practices
10 Act?

11 A. No. There has not been
12 anything like that.

13 Q. Okay. Has the Board considered
14 passing any regulation prohibiting the
15 use of Ivermectin for COVID?

16 A. No.

17 Q. It's not been proposed by
18 anybody?

19 A. I'm sorry. Could you repeat
20 that?

21 Q. It hasn't been proposed by
22 anybody?

23 A. Not to my knowledge.

24 Q. Okay. Is informed consent a
25 requirement for medical treatments

1 AMY E. EMBRY

2 generally in Arkansas?

3 A. Could you repeat that?

4 Q. Let me repeat that. Are you
5 having trouble hearing me?

6 A. I think you were just breaking
7 up on that question.

8 Q. Okay. I'll repeat it.
9 Is informed consent a
10 requirement for medical treatment in
11 Arkansas?

12 A. I would have to check the code
13 but I do know we have some regulations
14 for informed consent, abortion, gastric
15 bypass and I do know on certain instances
16 you do have to have a consent form to
17 treat certain patients. For all of them,
18 I'm not sure about.

19 Q. Is the Board aware of the
20 Gender Spectrum Clinic at Arkansas
21 Children's Hospital?

22 A. I can't answer for all the
23 Board members, so I don't know if they're
24 aware of it or not.

25 Q. But the Board, itself, has the

1 AMY E. EMBRY

2 Board had any information provided to the
3 Board that made it aware of the Arkansas
4 Children's Hospital Gender Spectrum
5 Clinic?

6 A. Not to my knowledge, no.

7 Q. Did the Board ever have any
8 discussions about the Gender Spectrum
9 Clinic at Arkansas Children's Hospital?

10 A. Not to my knowledge no.

11 Q. Did any members of the Board
12 have any discussion about the Gender
13 Spectrum Clinic at Arkansas Children's
14 Hospital?

15 A. Not to my knowledge.

16 Q. What about Board staff?

17 A. No. Not to my knowledge, no.

18 Q. So you've not been part of any
19 conversations about the Gender Spectrum
20 Clinic?

21 A. No.

22 Q. Do you know what I refer to
23 when I refer to Gender Spectrum Clinic?

24 A. No. I just figure it's a
25 section of that hospital.

1 AMY E. EMBRY

2 Q. Has the Board ever received
3 any complaints concerning
4 gender-affirming medical care for minors?

5 A. No.

6 Q. And by the way, do you know
7 what I mean by "gender-affirming medical
8 care" or do you have an understanding of
9 that term?

10 A. Yes. It was the definition
11 provided in the document to me.

12 Q. Okay. And just to be clear, in
13 case there is any confusion, by
14 "gender-affirming medical care", I'm
15 referring to medical interventions for
16 adolescents with gender dysphoria,
17 including hormone therapy or puberty
18 blocker or surgery to treat their gender
19 dysphoria. Are we having a common
20 understanding there?

21 A. Yes.

22 Q. So I will use the term
23 gender-affirming medical care as
24 shorthand rather than say that every
25 time, okay?

1 AMY E. EMBRY

2 A. Okay.

3 Q. So going back to my question,
4 has the Board ever received any
5 complaints regarding doctors providing
6 gender-affirming medical care?

7 A. No.

8 Q. Never? And that's including
9 before the introduction of what became
10 Act 626 and since?

11 A. To my knowledge, it has never
12 received a complaint regarding
13 gender-affirming medical care.

14 Q. And is that for minors or
15 adults?

16 A. Correct.

17 Q. Has the Board ever had any
18 discussions about gender-affirming
19 medical care?

20 A. Not to my knowledge, no.

21 Q. Well, so does that -- you are
22 testifying on behalf of the Board, and
23 you have been designated by the Defendant
24 Board to testify on this topic.

25 So have you been prepared --

1 AMY E. EMBRY

2 can you answer on behalf of the Board
3 that the Board has not had discussions
4 about this topic, let's say, since you've
5 been Executive Director?

6 A. There has not been discussion
7 at any of the board meetings. I cannot
8 speak for every single Board member to
9 see if they ever discussed it.

10 Q. Are you aware of any
11 conversations with any -- with or between
12 any Board members concerning
13 gender-affirming medical care?

14 A. No.

15 Q. And are you aware of any
16 conversations that included any Board
17 staff about gender-affirming medical
18 care?

19 A. No.

20 Q. Okay. So when the bill that
21 became Act 626 was being debated and
22 ultimately passed, nobody at the Board
23 staff or at board meetings discussed it
24 at all?

25 A. No.

1 AMY E. EMBRY

2 Q. Has the Board ever considered
3 are passing a regulation concerning
4 gender-affirming medical care?

5 A. No. Not as I've been
6 Director, no.

7 Q. Did the Board ever see a need
8 for a regulation concerning
9 gender-affirming medical care?

10 A. It was not communicated to me
11 if they did.

12 Q. And so I asked you about
13 whether there were complaints about
14 gender-affirming medical care and you
15 said there weren't, but I understand from
16 your testimony earlier sometimes things
17 come to the Board's attention apart from
18 complaints.

19 Did any problems related to
20 gender-affirming medical care for minors
21 ever come to the Board's attention
22 outside of complaints?

23 MS. LAND: Object to form.

24 A. No.

25 Q. Okay.

1 AMY E. EMBRY

2 MS. COOPER: Beth, if you can
3 take tab 9 and we'll have that
4 marked as Exhibit 7? Thank you.

5 (Exhibit 7, May 5, 2021 email
6 re: Public Health Grand Rounds was
7 received and marked on this date
8 for identification.)

9 MR. RICHARDSON: Exhibit 7 has
10 been introduced.

11 MS. LAND: I have it.

12 MS. COOPER: Thank you.

13 Q. Ms. Embry, you have Exhibit 7
14 in front of you?

15 A. Yes.

16 Q. Have you seen this document
17 before?

18 A. I cannot recall seeing this
19 specific one.

20 Q. Have you seen any documents
21 representing grand rounds regarding
22 gender-affirming medical care?

23 A. I have to grand rounds. I
24 can't say that I have seen it for
25 gender-affirming but I have seen grand

1 AMY E. EMBRY

2 rounds.

3 Q. And just to be clear the
4 document marked as Exhibit 7 is an email
5 including a document that has in large
6 text Public Health Grand Rounds,
7 Announcing a Session on Gender-Affirming
8 Care Services in Arkansas. I'm just
9 stating that for the record, not as part
10 of the question.

11 So you were not aware of a
12 grand rounds --public health grand rounds
13 on gender-affirming care services in
14 Arkansas?

15 A. Well, I may have received this
16 email but we receive these normally
17 weekly, so I do not recall this one in
18 particular.

19 Q. And so sitting here now is the
20 first time that you think you have been
21 aware of this grand round?

22 A. Correct.

23 Q. Just so I understand the email
24 at the top, it says from Matt Gilmore
25 ADH, is that the Arkansas Department of

1 AMY E. EMBRY

2 Health?

3 A. Yes.

4 Q. And it's sent to Heather Owen
5 cc: Sarah Morris. Who is Heather Owen?

6 A. Heather Owen is an employee of
7 the Board.

8 Q. What is her position on the
9 Board?

10 A. She is one of the licensing
11 managers.

12 Q. Okay. And Sarah Morris?

13 A. I have no idea who Sarah
14 Morris is.

15 Q. Okay. Below that there is a --
16 it looks like it was forwarding an
17 earlier email from Sarah Morris to ADH
18 All. Is ADH All, do I take it, an email
19 list of all ADH employees?

20 A. Correct.

21 Q. Okay. So you would have
22 received this but you don't recall that
23 particular grand rounds?

24 A. Correct.

25 Q. Okay. Did anyone at the Board

1 AMY E. EMBRY

2 discuss the fact that there was going to
3 be a grand rounds on gender-affirming
4 care in Arkansas?

5 A. Not to my knowledge.

6 Q. And just for the record, I'm
7 noting that it's dated, the event was
8 dated to occur May 6th, 2021.

9 Does that help refresh your
10 recollection about whether there was any
11 conversation about this?

12 A. There was no conversation with
13 me about this.

14 Q. And you're not aware of others
15 discussing it?

16 A. No.

17 Q. Okay. When Act 626 was first
18 introduced in the legislature as HB 1570,
19 during that period when it was being
20 considered, did anyone at the Board
21 discuss the bill?

22 A. No, not to my knowledge.

23 Q. Okay so no official board
24 meeting discussion of the bill?

25 A. No.

1 AMY E. EMBRY

2 Q. And you're not aware of any
3 conversations among the Board members
4 about the bill?

5 A. No.

6 Q. And you're not aware -- well,
7 let me ask you a different question.

8 Are you aware of any
9 conversation involving any Board staff or
10 employees about the bill?

11 A. No.

12 Q. Sorry if I'm -- I'm finding it
13 surprising that a bill that obviously had
14 a lot of public attention involving
15 medical regulation, nobody at the Board
16 talked about it at all?

17 MS. LAND: Object to form.

18 Q. Is that right? Really, nobody
19 discussed it?

20 A. I found out about the bill it
21 was either on social media or the news.

22 Q. Back at the time it was being
23 considered?

24 A. Correct.

25 Q. So just to be clear, you are

1 AMY E. EMBRY

2 not aware of any conversations had among
3 any Board members or involving any Board
4 members or any staff about this bill that
5 became Act 626?

6 A. No.

7 Q. Now, we talked earlier about
8 other areas of regulations by the Board
9 that were -- where the regulations after
10 statutes were passed on the particular
11 topic like gastric bypass procedures.

12 Is the Board expected to pass
13 regulations relating to Act 626?

14 A. I do not have the act in front
15 of me, but I do not recall that act
16 requiring any Licensing Board to
17 promulgate a rule. If it is specifically
18 in there that they will promulgate a rule
19 then it will be promulgated.

20 Q. But at this point so far has
21 there been any discussion about a
22 possibility of promulgating a rule?

23 A. No.

24 Q. Has any government official in
25 the executive branch or the legislature

1 AMY E. EMBRY

2 communicated with the Board about Act
3 626?

4 A. No, not to my knowledge, no.

5 Q. Okay. And when the bill was
6 introduced and being considered did
7 anyone from the legislature consult with
8 the Board regarding this bill?

9 A. No.

10 Q. And just to be clear, "this
11 bill" I'm referring to the bill that
12 became Act 626.

13 A. No. No one contacted, no.

14 Q. So the Board's input was not
15 sought by any member of the legislature?

16 A. No.

17 Q. Okay. And since the law Act
18 626 was enacted has any government
19 official communicated with the Board
20 about enacting regulations regarding the
21 Act?

22 A. No.

23 Q. So your understanding is that
24 the Act 626 does not require any
25 regulations or rules to be promulgated by

1 AMY E. EMBRY

2 the Board?

3 A. Yes, from my recollection. I
4 don't have it in front of me, I would
5 have to read through it again, but I do
6 not recall a requirement for rules in
7 that Act.

8 Q. So there is no plan on the
9 part of the Board to pass a regulation
10 relating to Act 626?

11 A. No.

12 Q. Has the Board consulted with
13 any experts on the topic of
14 gender-affirming medical care?

15 A. No.

16 Q. So prior to the introduction
17 of HB 1570, the bill that became Act 626,
18 was the Board ever approached by any
19 government official or their
20 representatives about enacting
21 regulations concerning gender transition
22 procedures?

23 A. As long as I've been Director,
24 no. Before that, I can't answer that.

25 Q. And was the Board or any Board

1 AMY E. EMBRY

2 member or Board staff contacted by
3 anybody from the Governor's Office
4 related to HB 1570 or Act 626, which it
5 later became?

6 A. I was not, and I don't recall
7 anybody else in the office, being
8 contacted by the Governor's Office.

9 Q. Are you aware of any Board
10 member being contacted by anyone from the
11 Governor's Office?

12 A. I am not aware of anything.

13 Q. So the way I had asked the
14 questions before about legislators, is
15 whether any of the legislators contacted
16 the Board. Do you know if anybody from
17 the Board contacted any legislators
18 concerning HB 1570?

19 A. Not to my knowledge, no.

20 Q. Do you know if anybody from
21 the Board staff contacted any legislator
22 regarding Act 626 or HB 1570?

23 A. Not to my knowledge.

24 Q. Okay. Did anyone from the
25 Board or the Board staff reach out to any

1 AMY E. EMBRY

2 government official, executive or
3 legislative branches regarding HB 1570,
4 which later became Act 626?

5 A. Did you say executive
6 branches?

7 Q. Yes, from the executive or
8 legislative branches.

9 A. No.

10 Q. Okay. Did the Board ever take
11 a position on HB 1570?

12 A. No.

13 Q. Why not?

14 A. The Board does not lobby.

15 Q. Did the Board ever discuss the
16 possibility of taking a position about
17 the bill?

18 A. No.

19 Q. Was the Board ever asked its
20 position by anyone?

21 A. Not to my knowledge.

22 Q. But it was asked by press
23 reporters, right?

24 A. I don't recall being contacted
25 by the press on this.

1 AMY E. EMBRY

2 MS. COOPER: Okay. Can we,
3 Beth, take tab 10 and let's mark
4 that as Exhibit 8.

5 (Exhibit 8, email dated May
6 25, 2021, re: CNN Inquiry was
7 received and marked on this date
8 for identification.)

9 MR. RICHARDSON: Exhibit 8 has
10 been introduced.

11 MS. LAND: I've got it pulled
12 up.

13 Q. I'll give you a moment to just
14 take a look at that.

15 A moment ago I asked whether
16 the Board was ever asked its position on
17 HB 1570 or after it became law Act 626.
18 I'll ask a slightly different question
19 now.

20 Was the Board ever asked its
21 view on the lawsuit challenging Act 626?

22 A. Yes.

23 Q. And so the exhibit marked
24 Exhibit 8, which I have handed to you, is
25 a -- I'll describe for the record, an

1 AMY E. EMBRY

2 email from Chance Pagan sent Tuesday, May
3 25th, 2021 to Juli Carlson, cc: Ann
4 Embry ASMB Regulatory/Disciplinary
5 Department, subject: Forward CNN
6 Inquiry. That's just for the record.

7 Do you recognize this email?

8 A. Yes, I do.

9 Q. You were copied on it? You saw
10 it at the time?

11 A. I was. This was a year ago.

12 Q. Okay. And is this -- I do read
13 right that CNN was asking for comment
14 from the Board on the ACLU lawsuit
15 against Act 626?

16 A. Yes.

17 Q. And so tell me if I'm getting
18 this right, it looks like the initial
19 email is from someone named Jamiel Lynch
20 from Warner Media at, according to their
21 email address, to ASMB Support
22 Department, copying Kodwyer,
23 K-o-d-w-y-e-r, @HDLlaw.com, subject: CNN
24 Interview.

25 What is ASMB Support

1 AMY E. EMBRY

2 Department, do you know?

3 A. That's just an email, email
4 that can go to Support Department, which
5 means more than one person has access to
6 that email. Anything that they need
7 assistance with they send it to that, and
8 so one of three or four people will be
9 able to help out.

10 Q. Okay. So then it looks like
11 someone named Chance Pagan listed as
12 Systems Administrator sent this,
13 forwarded this email to Juli Carlson and
14 you; is that correct?

15 A. Correct.

16 Q. And who is Chance Pagan?

17 A. He is in our IT department.

18 Q. It says here in the email, "I
19 believe this would be for you." I assume
20 he meant Juli Carlson; is that correct?

21 A. That's why he sent it to Juli
22 and this was sent to the Support
23 department, which goes to IT. He
24 forwarded it onto the Regulatory
25 department.

1 AMY E. EMBRY

2 Q. Thank you. Did you talk with
3 Juli Carlson about this request?

4 A. I'm sure I did but this was a
5 year ago, and I don't remember. We would
6 have responded but I'd have to go back
7 and look at my emails and notes on this.

8 Q. Did the Board take a position
9 on the ACLU lawsuit?

10 A. No. We would not have taken a
11 position.

12 Q. Did it make a statement?

13 A. I can't remember. I would have
14 to go back and look in my emails and look
15 at in my notes.

16 Q. Okay. Was the Board asked for
17 comment or statements about Act 626 or
18 the ACLU lawsuit challenging Act 626,
19 apart from this CNN inquiry?

20 A. It's possible. It is possible.

21 Q. And what responses would the
22 Board have made?

23 A. I would have to go back and
24 look at my notes but it would be a
25 generic response.

1 AMY E. EMBRY

2 Q. A generic response to the
3 effect of what?

4 A. We would not take a stance in
5 the lawsuit, it would be somewhere along
6 the lines -- and again, this is not what
7 the response would have said -- is that
8 we would have followed the process; we
9 have a lawsuit filed against us, we'll
10 follow the process.

11 Q. Are you aware that the
12 Governor vetoed HB 1570 before it
13 ultimately became law?

14 A. I think I do recall that, yes.

15 Q. And were you aware that --
16 well, let me ask a different question.

17 Have you seen the Governor's
18 veto statement or heard him speak about
19 his veto?

20 A. No.

21 Q. You never saw it?

22 A. Not that I can recall.

23 Q. Do you know why the Governor
24 vetoed the law?

25 A. No.

1 AMY E. EMBRY

2 Q. Does the Board have a view
3 about the appropriate course of treatment
4 for adolescents with gender dysphoria?

5 A. No.

6 Q. Does the Board recognize that
7 gender-affirming hormones can be a help
8 to some adolescents?

9 A. Not to my knowledge.

10 Q. "Not to my knowledge" that the
11 Board knows, or the Board recognizes
12 this, rather?

13 A. You're going to have 14
14 different Board members with 14 different
15 opinions, so you can have 14 different
16 answers.

17 Q. Do you know the views of any
18 individual Board member?

19 A. No.

20 Q. Is the Board taking the
21 position in this case that no adolescent
22 can benefit from gender-affirming hormone
23 therapy?

24 A. I don't feel I can answer that
25 question. The Board has not discussed it,

1 AMY E. EMBRY

2 so I don't know the answer to that.

3 Q. So the Board doesn't -- the
4 Board doesn't have a position on that?

5 A. No.

6 Q. And is it also true the Board
7 does not have -- does not take the
8 position that gender-affirming medical
9 treatments can never be helpful to
10 alleviate gender dysphoria in
11 adolescents?

12 A. Can you repeat that?

13 Q. I'm realizing that was a
14 terrible question with a double negative.
15 I'm going to rephrase it.

16 Is it the Board's position
17 that gender-affirming medical treatments
18 can never alleviate gender dysphoria in
19 adolescents?

20 A. It's never been discussed, so
21 they do not have an opinion on this at
22 the Board.

23 Q. Is it the Board's position
24 that the risks of gender transition
25 procedures always outweigh the benefits

1 AMY E. EMBRY

2 for every minor patient with gender
3 dysphoria?

4 A. Again, they haven't discussed
5 this, so there is no position that I'm
6 aware of.

7 Q. Does the Board recognize that
8 for adolescents who are currently
9 receiving gender-affirming medical
10 treatments that withdrawing that
11 treatment from them could put them at
12 risk of harm?

13 A. Again, they haven't discussed
14 this, so I do not know the Board's
15 position on this.

16 Q. So does the Board have a
17 position on this?

18 A. No, they have never discussed
19 it.

20 Q. So it's not just that you
21 don't know the Board's position, is it
22 your testimony that the Board doesn't
23 have a position on this?

24 A. They have not discussed
25 anything to have a position on this. This

1 AMY E. EMBRY

2 issue has not come up. The Board did not
3 know about the bill or anything until it
4 hit the media, same as us.

5 Q. So is it fair to assume that
6 nobody from the Board lobbied legislators
7 to support the bill?

8 A. No.

9 Q. Nobody lobbied -- nobody from
10 the Board lobbied legislators one way or
11 the other related to the bill?

12 A. The Board does not lobby.

13 Q. The Board doesn't lobby about
14 any bills; is that right?

15 A. That is correct.

16 Q. So members of the Board, have
17 they ever individually taken positions on
18 any bill related to medical care?

19 A. Not at the Board meeting.

20 Q. But outside of the board
21 meeting?

22 A. I wouldn't know that.

23 Q. Are you aware of any times
24 that happened?

25 A. No. I don't know, no.

1 AMY E. EMBRY

2 Q. In Arkansas do parents have to
3 consent to medical treatment for their
4 children, for their minor children?

5 A. Usually yes. That's between
6 the physician and the parent and the
7 patient.

8 Q. And what do you mean by it's
9 "between the physician and the parent and
10 the patient"?

11 A. Well, any care on any patient,
12 whether it's a minor or an adult, that is
13 between the physician and the patient. If
14 a minor is involved, then the parent is
15 involved.

16 Q. When you say any care between
17 the patient and the physician and if it's
18 a minor the parent, do you mean the
19 decision about whether to undergo care?

20 A. I would think it -- yes. Yes.

21 Q. But I think you testified that
22 generally parents do have to consent for
23 medical treatment for their children, if
24 they want them to have that care? Excuse
25 me. Let me do that again because that was

1 AMY E. EMBRY

2 my fault. I spoke over you. I just want
3 to get a clear record.

4 Do you understand your
5 testimony that in Arkansas generally
6 before minors can have medical care their
7 parents need to consent?

8 A. Yes.

9 Q. Okay. Are there exceptions
10 where the minor could consent on their
11 own without parents?

12 A. I don't know.

13 MS. COOPER: Beth, if we can
14 take tab 12 and mark that as
15 Exhibit 9.

16 (Exhibit 9, copy of House Bill
17 1570 was received and marked on
18 this date for identification.)

19 MS. LAND: Okay. It's pulled
20 up for me.

21 Q. For the record, I'm going to
22 identify Exhibit 9 as House Bill 1570.

23 Have you seen this bill
24 before?

25 A. Yes.

1 AMY E. EMBRY

2 Q. When did you see it for the
3 first time?

4 A. For the first time it would be
5 after it was put on the news or social
6 media, however I heard of it, I pulled it
7 up.

8 Q. Why did you -- sorry. Go
9 ahead.

10 A. I pulled it up on the
11 legislative website.

12 Q. Why did you do that?

13 A. Because I knew that it would
14 probably affect the Board in some form or
15 fashion, so I was just looking at it.

16 Q. Why did you think it would
17 affect the Board in some form or fashion?

18 A. Because it involved
19 physicians.

20 Q. And now that you've looked at
21 it, does it involve the Board in some
22 form or fashion?

23 A. One section.

24 Q. Which section is that?

25 A. It's going to be from page 9

1 AMY E. EMBRY

2 line 27, and the Code is 20-9-1504, it's
3 the enforcement. And it says, "Any
4 referral for or provision of gender
5 transition procedures to an individual
6 under 18 years of age is unprofessional
7 conduct and is subject to discipline by
8 the appropriate licensing entity or
9 Disciplinary Review Board with competent
10 jurisdiction in this State."

11 Q. And that's the one provision
12 within HB 1570 that you understand to
13 involve the Board --

14 A. Yes.

15 Q. -- is that right? Is that
16 because the Board is the appropriate
17 licensing entity at issue?

18 A. Well, it is the appropriate --

19 Q. Excuse me. I have to -- I
20 asked my question terrible. I'll redo it.

21 Is it because the Board is the
22 appropriate licensing entity or
23 Disciplinary Review Board with
24 jurisdiction in this State?

25 MS. LAND: I'll object to the

1 AMY E. EMBRY

2 form. You can answer that.

3 A. It is the licensing entity for
4 some healthcare professionals in the
5 State of Arkansas.

6 Q. And is it also the
7 Disciplinary Review Board for some
8 healthcare professionals in Arkansas?

9 A. We've always just been called
10 a Licensing Board. I've never heard us
11 called a Disciplinary Review Board.

12 Q. Okay. So I have a few
13 questions about this provision, which is
14 20-9-1504, subsection (a).

15 As you read it says, "Any
16 referral for or provision of gender
17 transition procedures to an individual
18 under 18 years of age is unprofessional
19 conduct."

20 I'm trying to understand what
21 that means for your enforcement as you,
22 the Board, because there's a whole other
23 provision in the Medical Practices Act
24 laying out unprofessional conduct.

25 Is it your understanding that

1 AMY E. EMBRY

2 this is an additional type of conduct
3 that now constitutes unprofessional
4 conduct, in addition to what we discussed
5 in the other statute defining that term?

6 A. Yes.

7 Q. Okay. So I believe that one
8 had subpoints A through S defining
9 unprofessional conduct, so this is just
10 one more?

11 A. Yes.

12 Q. Okay. And you testified that
13 the Board is the licensing entity for
14 some medical providers.

15 Is there any other entity that
16 enforces or that is a licensing entity or
17 Disciplinary Review Board that would be
18 relevant with respect to enforcing Act
19 626?

20 A. It depends on what healthcare
21 professionals would be providing these
22 services.

23 Q. Okay. So let's break that
24 down. That's helpful.

25 So for physicians who are

1 AMY E. EMBRY

2 providing procedures that are prohibited
3 by HB 1570, the Board would be the
4 appropriate licensing entity; is that
5 correct?

6 A. Yes.

7 Q. Okay. Is there any other
8 entity in Arkansas that would be a
9 licensing entity for physicians?

10 A. No, not for physicians.

11 Q. Is there any other entity in
12 Arkansas that would be responsible for
13 discipline of physicians in Arkansas?

14 A. No.

15 Q. Does the Board have discretion
16 in deciding how to enforce Act 626,
17 should it take effect?

18 A. It would -- it would work, as
19 the same as any other enforcement, if the
20 complaint came, that they would read the
21 law and see what needs to be done because
22 that's just how it works on a complaint
23 basis.

24 Q. Well, I think you also said
25 while it's on a complaint basis, things

1 AMY E. EMBRY

2 can come to the Board's attention apart
3 from complaints that the Board could then
4 act on; is that right?

5 A. Yes.

6 Q. Like if it's in the news, for
7 example, I think you said?

8 A. Correct.

9 Q. Okay. Has the Board been
10 provided any direction from any
11 government official or entity about how
12 to enforce Act 626 if it takes effect?

13 A. No.

14 Q. Has the Board had any
15 conversations or any Board members or
16 Board staff about how the Board would
17 enforce Act 626 should it take effect?

18 A. No.

19 Q. Are you aware that the law Act
20 626 was preliminarily enjoined by Federal
21 Court in Arkansas and is not currently in
22 effect?

23 A. Yes.

24 Q. Okay. And prior to that,
25 before the court ruled, I believe --

1 AMY E. EMBRY

2 well, let's find this. I'm going to just
3 strike that and ask it differently.

4 If the law were to take effect
5 would there be a process the Board would
6 need to undergo to determine how to
7 enforce Act 626?

8 A. No. It would go through the
9 usual process of any complaint received,
10 it would be addressed by the entire Board
11 and they would determine if there has
12 been a violation.

13 Q. So if tomorrow Act 626 went
14 into effect the Board would be ready to
15 field any complaints should they arise?

16 A. Yes.

17 Q. Okay. It doesn't have anything
18 it needs to do to get ready for that?

19 A. No.

20 Q. Okay. So if Act 626 took
21 effect and a complaint came to the Board
22 saying that there is a doctor who is
23 providing gender-affirming medical care
24 to an adolescent, what would happen? What
25 would the Board do?

1 AMY E. EMBRY

2 A. It would be the same as any
3 other complaint. The physician would be
4 provided a copy of the complaint and
5 asked to respond and once that is
6 received by the complaint and the
7 response is presented to the Board and
8 then they will move forward from there;
9 if there needs to be an investigation;
10 does action need to be brought against
11 the license; it could be a variety of
12 situations, but the whole thing will go
13 before the full Board and it will be
14 discussed.

15 Q. And so if they got a
16 complaint, the Board got a complaint
17 about this and the physician responded
18 and admitted providing that care, would a
19 violation be determined?

20 A. I can't answer that question.
21 That would go before the Board, they
22 would look at all situations, all
23 circumstances surrounding it. So I can't
24 answer how the Board would vote.

25 Q. So there could be

1 AMY E. EMBRY

2 circumstances under which it might not
3 constitute a violation?

4 A. No. I can't think of anything
5 off the top of my head.

6 Q. So the Board would not have
7 any discretion not to find a violation if
8 the person admitted to providing care
9 prohibited by Act 626?

10 A. Could you repeat?

11 MS. LAND: Object to form.

12 Q. Sure. Would the Board have no
13 discretion, it would have to find a
14 violation if a doctor admitted providing
15 care prohibited by Act 626?

16 A. That is possible, that is a
17 possible outcome.

18 Q. Possible? Let me ask the
19 question differently because I'm not sure
20 I understand your answer.

21 Would the Board be required to
22 make a finding of a violation of Act 626
23 -- let me ask that differently. I didn't
24 ask that right.

25 Would the Board have to make a

1 AMY E. EMBRY

2 finding of unprofessional conduct as
3 directed by Act 626 if a doctor admitted
4 to providing prohibited care under the
5 statute?

6 A. Yes.

7 Q. Okay. Would the doctor be
8 subject to discipline by the Board?

9 A. Yes.

10 Q. And what would happen? What
11 would be the discipline?

12 A. That is strictly up to the
13 Board. You are looking at different
14 scenarios every single time. Every
15 single case is different. It could be
16 that they find that they may have to
17 suspend the license, it could be that
18 they say; okay, you need to go back and
19 take these courses and make sure you
20 understand the law. It just depends.
21 Every situation is different.

22 Q. Could the Board revoke the
23 license of the doctor?

24 A. If their legal counsel says
25 they do have enough and that's what the

1 AMY E. EMBRY

2 Board votes to do, yes, they can.

3 Q. When you say if their legal
4 counsel says they do have enough, if the
5 Board's legal counsel says they do have
6 enough, is that what you mean?

7 A. Correct. Yes.

8 Q. And have enough what?

9 A. Evidence to either suspend or
10 revoke a license.

11 Q. Would admission or proof of
12 providing gender-affirming medical care
13 to a minor be enough to suspend or revoke
14 a license?

15 A. That would actually be a
16 question for the Board's legal counsel,
17 not me. It is very common for the Board
18 to ask the legal counsel in the room; do
19 we have enough for a suspension or
20 revocation before they make any decision.

21 Q. But it's a possible outcome?

22 A. Yes.

23 Q. When we talked earlier about
24 the definition of unprofessional conduct
25 in 17-95-409 of the Medical Practices Act

1 AMY E. EMBRY

2 and they had subsection A through S as
3 conduct that's deemed unprofessional
4 conduct, were those all determined by the
5 legislature, those categories of
6 unprofessional conduct or the Board?

7 A. Let me go back to that 17-95
8 --

9 Q. Actually, withdraw the
10 question. I answered it myself. I
11 withdraw it.

12 If there were a complaint
13 against a doctor for violating Act 626
14 and the doctor responded by saying
15 withdrawing treatment from a patient
16 would cause severe harm to the patient,
17 would that be a defense to the complaint
18 for unprofessional conduct based on 626?

19 A. Yes, it could be a defense.

20 Q. It could be a defense. And
21 there would be a hearing on that?

22 A. I hearing is usually held only
23 if a license is going to be -- action is
24 going to be taken against a license. A
25 hearing is not held just because a

1 AMY E. EMBRY

2 complaint is received.

3 Q. So you're saying even before
4 the need for a hearing, the Board could
5 potentially deem a doctor's defense or I
6 should say the doctor's statement that
7 withdrawing the care a patient could
8 cause harm to the patient as a defense to
9 a complaint of unprofessional conduct
10 based on Act 626?

11 MS. LAND: Object to form.

12 A. So I want to make sure I
13 understand your question. The original
14 question was, you can do all this without
15 a hearing. So if a complaint comes in on
16 a physician, they gather the complaint,
17 the response from the physician, the
18 Board reviews it, they can decide then
19 there's been no violation and it's done.
20 They can also decide we want to see this
21 doctor at the next board meeting. They
22 can also determine just from the response
23 or from the complaint; has there been a
24 violation that rises to the level of a
25 suspension or a revocation? If they do

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2 that, then the hearing will be at the
3 next meeting.

4 So I'm getting confused as far
5 as what you're asking as far as a hearing
6 and a defense because a hearing is only
7 held if action is brought against a
8 license. Asking a doctor to appear is not
9 an action against a license. Asking a
10 doctor to respond is not an action
11 against a license. So I'm confused as to
12 what you're asking.

13 Q. Thank you. That's helpful.
14 I'll break it down into smaller bits and
15 try to focus better.

16 If there is a complaint
17 against a doctor on the basis that the
18 doctor is providing gender-affirming
19 medical care and the doctor's response is
20 to say withdrawing treatment for this
21 particular patient would cause severe
22 harm to the patient, so I could not do
23 that, is it possible that the Board could
24 determine that the doctor's conduct was
25 not a violation?

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2 A. It's possible. They could
3 choose to do that.

4 Q. So the Board would not be
5 required to discipline a doctor for
6 providing gender-affirming medical care
7 in all cases?

8 A. Again, it depends on the
9 situation. They would have to look at all
10 the evidence before them.

11 If I had to speculate, if a
12 complaint came in of this nature they
13 would want to speak with the physician.
14 So more than likely the physician would
15 be likely to appear to discuss this.

16 Q. And then if the Board were
17 convinced that the doctor's concern about
18 harm to patient in the event of
19 withdrawing treatment was valid, the
20 Board would not have to find a violation
21 and discipline the doctor?

22 A. That is possible.

23 Q. Okay. One of the topics on our
24 30(b)(6) deposition notice had to do with
25 two doctor plaintiffs in this case and

1 AMY E. EMBRY

2 their -- let me pull up the notice. The
3 medical license of Dr. Michelle Hutchison
4 and the medical license of Dr. Katherine
5 Stambough.

6 Do those doctors have any
7 pending complaints against them?

8 A. No.

9 Q. Have there been any complaints
10 against either doctor?

11 A. No.

12 Q. Okay. Another topic on our
13 notice was what the Board did to search
14 for documents in response to our
15 subpoena. I believe that was the last
16 item on the list.

17 Can you tell me what was done
18 to search for documents?

19 MS. LAND: I'm going to object
20 to that question to the extent it
21 elicits any attorney-client
22 privilege information. So to the
23 extent she can answer that without
24 revealing any of that, I'll assert
25 that objection.

1 AMY E. EMBRY

2 Q. Right. So without revealing
3 any attorney-client communications, what
4 was searched or how did the search
5 happen?

6 A. We received the request and
7 then we gave it to our IT department and
8 I don't have the original request in
9 front of me but I think it was along the
10 lines any information we had on HB 1570
11 or 626. So we researched our entire
12 email system for those terms.

13 And then the second request
14 came in and we did it again and because
15 the Board hadn't any involvement with
16 this legislation there was not anything
17 in there.

18 When the third request came it
19 came with two or three pages of search
20 terms or search items and that is when
21 they put that through the system and all
22 these documents came out, whether they
23 were relevant to this act or not.

24 Q. And when you say "through the
25 system" does that mean all employees of

1 AMY E. EMBRY

2 the Board?

3 A. Yes, the entire email system.

4 Q. For Board employees, though;
5 is that right?

6 A. Yes.

7 Q. Or is it beyond Board
8 employee?

9 A. No. It is only Board employee
10 employees.

11 Q. And what about Board members?

12 A. No, we do not have email
13 addresses for Board members.

14 Q. So you didn't search files of
15 any Board members?

16 A. We don't have files on Board
17 members as far as communications. They
18 don't use any of our systems to
19 communicate.

20 Q. Okay. So the Board members
21 don't have an official email that they
22 use in their business as Board members?

23 A. No.

24 Q. They just use their personal
25 email?

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2 A. Correct.

3 Q. So when the Board members are
4 conducting Board business is it ever done
5 through email?

6 A. No. Well, that is if we have
7 to send out some attachments that were
8 not part of the, you know, original Board
9 package, things of that nature, or if we
10 have to say; here is the Zoom link for
11 the board meeting or something like that.

12 Q. And in those cases you'll
13 email to their personal email?

14 A. Correct.

15 Q. Or might it be their workplace
16 email?

17 A. It might it depends on what
18 email address they choose to use.

19 Q. For these Board members this
20 is just a part-time activity for them, is
21 that right, it's not their full-time?

22 A. No. No. The majority of them
23 are full-time physicians.

24 Q. Okay. And when you talked
25 about giving a packet to members of the

1 AMY E. EMBRY

2 Board, I assume that relates to different
3 complaints against medical providers; is
4 that right?

5 A. Yes. It is what is provided
6 that they review at every single board
7 meeting. They are sent out on disks and
8 they are loaded into their computer and
9 into the Board system and that is
10 everything that they will discuss or that
11 any appearances for that board meeting.

12 Q. So it's based on what's on the
13 agenda at the next board meeting, they
14 will get a packet of materials; is that
15 right?

16 A. Correct.

17 Q. And that could be related to a
18 complaint against a physician; is that
19 right?

20 A. Yes.

21 Q. And that could include
22 something related to a regulation being
23 considered; is that right?

24 A. A-hum.

25 Q. And all of those kinds of

1 AMY E. EMBRY

2 materials are sent on a disk in the U.S.

3 mail or how do they get them?

4 A. No. They are sent FedEx with
5 signature required.

6 Q. Wow. Okay.

7 MS. COOPER: Why don't we take
8 a break, maybe about ten minutes.

9 Okay?

10 VIDEOGRAPHER: We are off the
11 record at 2:53 p.m.

12 (Recess is taken.)

13 VIDEOGRAPHER: We are back on
14 the record at 3:06 p.m.

15 MS. COOPER: Thank you. I just
16 want to put on the record that Beth
17 Echols, who is on the Plaintiff's
18 counsel team joined the deposition
19 some time ago but we have not
20 mentioned that until now.

21 Beth, can you grab tab 5?

22 Actually, I'm sorry, did we already
23 mark tab 5? We did, didn't we?

24 MR. RICHARDSON: We marked it
25 as Exhibit 5.

1 AMY E. EMBRY

2 Q. So let's turn to Exhibit 5.

3 A. I'm afraid, Leslie, that the
4 ones before 6 were not marked, so if you
5 could identify them?

6 Q. I'm sorry, yes. We'll do that
7 after but it is the document that says on
8 the top A Bill and it's House Bill 1718.

9 Do you see that?

10 A. Yes.

11 Q. Okay. Ms. Embry, are you
12 familiar with this law?

13 A. I know of it. I've read it.

14 Q. Well, I want to call your
15 attention to a particular part of it and
16 if you want to read more, that will be
17 fine but I specifically want to point to
18 the beginning where it says, it's called
19 Subsector 2, Patient Right-to-Know Act
20 and it says 20-6-201 is the title and if
21 you look right below that 20-6-202
22 Legislative Findings and Purpose. You
23 got that?

24 A. Yes.

25 Q. And it says, "(a) the General

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2 assembly finds that; (1) is patients are
3 entitled to continuity of care with their
4 healthcare providers; (2) healthcare
5 providers are prohibited legally and
6 ethically from abandoning a patient
7 before treatment has concluded." We can
8 stop reading there.

9 Does that refresh your
10 recollection about this statute?

11 A. Yes. This was done before I
12 was Director.

13 Q. Okay.

14 A. So I would not have been as
15 involved with this.

16 Q. Okay. And so I wanted to ask
17 you, focusing in on subsection (a)(2) it
18 says, "Healthcare providers are
19 prohibited legally and ethically from
20 abandoning a patient before treatment has
21 concluded."

22 So is this another source of
23 ethical obligations of doctors in
24 Arkansas?

25 A. Ethical I don't know, but it

1 AMY E. EMBRY

2 is an obligation that the Board would
3 look at.

4 Q. Okay. Well, I ask because it
5 says, "The healthcare providers are
6 prohibited legally and ethically from
7 abandoning a patient."

8 So is that your
9 understanding, that it would be an
10 ethical violation to abandon a patient
11 before treatment has concluded?

12 A. Yes.

13 Q. Okay. And so under this
14 provision if a doctor is treating a
15 patient and has to stop care for any
16 reason before treatment is concluded,
17 they have -- is it an ethical obligation
18 to help them find care from another
19 doctor?

20 A. Yes.

21 Q. Is that right? I'm sorry?

22 A. Yes.

23 Q. Yes, okay. And can complaints
24 be filed with the Board for doctors
25 abandoning patients in violation of this

1 AMY E. EMBRY

2 section?

3 A. Yes.

4 Q. Has that ever happened?

5 A. Yes.

6 Q. Under your watch?

7 A. Yes.

8 Q. Can you tell me about those
9 kinds of circumstances?

10 A. It would be a letter of
11 complaint saying that either they were
12 fired or they were abandoned by the
13 physician without providing another
14 physician or a referral to another
15 physician and it would go through the
16 complaint process.

17 Q. Have any doctors been
18 disciplined for abandoning patients?

19 A. I can't recall if they were
20 disciplined. I know some were called
21 before the Board to explain what
22 happened, but without looking at
23 documents, I can't recall if they were
24 disciplined.

25 Q. But under the Board's

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2 authority that could be something that
3 would happen?

4 A. Yes.

5 Q. And just to be clear, the
6 Board could discipline a doctor for
7 abandoning a patient in violation of
8 20-6-202?

9 A. Yes, they could.

10 Q. We talked about the ethical
11 obligations for doctors contained in
12 Regulation 32. And now we've talked about
13 an ethical requirement in Section
14 20-6-202.

15 Are there other sources of
16 ethical obligations for doctors in
17 Arkansas besides those?

18 A. Not that I'm aware of. You
19 know, anything in the code that is law we
20 adhere to that as well. Just because it's
21 in the law doesn't necessarily mean there
22 is a rule.

23 Q. I'm sorry. I didn't hear you.

24 A. So if there could be a law
25 that we're not required to have a rule on

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2 that we must adhere to that law as well.

3 Q. So if there were other
4 statutes that identified ethical duties
5 of doctors, that would be an ethical
6 obligation of doctors even if there is no
7 corresponding rule; is that what you're
8 saying?

9 A. Correct.

10 Q. Are you aware of any besides
11 this ethical obligation contained in
12 Section 20-6-202?

13 A. Without looking at all my
14 documents, no, I can't answer that
15 truthfully. I can't say that with all,
16 through the Arkansas -- all Arkansas
17 statutes there aren't any others. I can't
18 say that honestly.

19 Q. Okay. We talked a few minutes
20 before the break about parents being
21 required generally, I think you said, to
22 provide informed consent for treatment of
23 their minor children. Do you recall that?

24 A. Yes.

25 MS. LAND: I objected to the

1 AMY E. EMBRY

2 form of that previous question.

3 MS. COOPER: Okay.

4 Q. Is that correct, that as a
5 general matter, minors cannot undergo
6 medical treatment without their parents
7 providing informed consent?

8 A. As far as I know.

9 Q. Well, okay. That's fine.

10 Are there any other medical
11 treatments, besides gender-affirming
12 medical care for minors with gender
13 dysphoria, that parents cannot provide
14 informed consent for their children to
15 undergo?

16 A. I don't -- I don't think so.
17 This is the only one that I saw that
18 meets those parameters, but no.

19 Q. Under what circumstances could
20 the Board step in and ban a particular
21 medical treatment?

22 A. I don't know of any because
23 they have not banned any medical
24 treatment, so that would be new ground,
25 new territory.

1 AMY E. EMBRY

2 Q. So because it's not something
3 they've ever done you can't say under
4 what circumstances they would do
5 something like that; is that right?

6 A. No.

7 Q. Okay. And as the Board being
8 the entity responsible for regulating the
9 areas of medicine that you cover, when
10 would banning a particular treatment be
11 an appropriate regulation of the field of
12 medicine?

13 A. I don't know.

14 Q. The Board doesn't have a view
15 on that?

16 A. No.

17 Q. And when is it appropriate for
18 the State entity that regulates medicine,
19 the Board, to override patients and their
20 doctors' decisions about medical care?

21 MS. LAND: Objection, form.

22 A. I do not know the answer to
23 that question.

24 Q. Does the Board have a view
25 about when it's appropriate to override

1 AMY E. EMBRY

2 patients and their doctors' decisions
3 about medical care?

4 A. Not to my knowledge.

5 MS. LAND: Objection to form.

6 Q. Does the Board have any view
7 about the type of -- excuse me. Let me
8 rephrase that.

9 Does the Board have a view
10 about the level of evidence of
11 effectiveness that is required before
12 doctors should be permitted to provide a
13 medical treatment?

14 A. No. That has not been
15 addressed since I've been the Director.

16 Q. So am I right that the Board
17 would not prohibit or restrict a
18 particular medical treatment based on the
19 level of scientific evidence that
20 supports that treatment?

21 A. They have not, I can say that.
22 They have not prohibited any procedure. I
23 can't say what would be done in the
24 future.

25 Q. Has it ever come up before the

1 AMY E. EMBRY

2 Board that a particular treatment is
3 harmful because it's not supported by
4 adequate scientific research
5 demonstrating its effectiveness?

6 A. Not to my knowledge.

7 Q. So as the representative of
8 the Board here, the Board is not aware of
9 that ever coming up, that has not come
10 up?

11 A. Not to my knowledge.

12 Q. Has there ever been any issue
13 raised with the Board whether in the
14 context of a complaint against a doctor
15 or otherwise an investigation against a
16 doctor or a proposed regulation about the
17 appropriate amount of evidence that's
18 required before medical treatment should
19 be allowed?

20 A. No.

21 Q. Is it the Board's
22 understanding that only -- sorry.

23 Is it the Board's
24 understanding that all medical treatment
25 that is provided in Arkansas and allowed

1 AMY E. EMBRY

2 to be provided is supported by randomized
3 control clinical trials?

4 A. No.

5 Q. Are there medical treatments
6 that are permitted to be provided in
7 Arkansas that are not supported by
8 randomized controlled clinical trials?

9 A. I do not know the answer to
10 that.

11 Q. We talked earlier about the
12 complaints about Ivermectin being used
13 for COVID and I think -- I don't think I
14 asked this question, has anyone proposed,
15 within the Board, to prohibit doctors
16 from prescribing Ivermectin to treat
17 COVID?

18 A. No.

19 MS. LAND: Objection to
20 relevance.

21 Q. Why not?

22 A. You are asking me? Is that
23 question toward me?

24 Q. That's for you, Ms. Embry.

25 So you said there have not

1 AMY E. EMBRY

2 been any proposals to prohibit the use of
3 Ivermectin to treat COVID and I asked why
4 not?

5 A. Because it is off-label drug
6 and what is prescribed between a patient
7 and the physician is between the
8 physician and the patient, as with any
9 prescription.

10 Q. So even if there are known
11 risks for using Ivermectin for COVID and
12 no evidence of its effectiveness, the
13 Board leaves that decision to patients
14 and their physicians?

15 A. It is left between physicians
16 and patients, yes.

17 Q. And the Board is in agreement
18 with that position, that that should be
19 between the patients and their
20 physicians?

21 A. Yes.

22 Q. Am I right that doctors can't
23 provide treatment to patients in Arkansas
24 without informing the patients of
25 potential risks? I'm not talking about

1 AMY E. EMBRY

2 Ivermectin specifically, but in general.

3 A. Do you mean as far as
4 prescription or treatment in general?

5 Q. We can break that down. Let's
6 start with treatment in general. Is it
7 correct that doctors can't provide
8 medical treatments to patients without
9 informing them of any potential risks?

10 A. I believe so. I can't answer
11 completely on that point.

12 Q. Okay. What about with respect
13 to use of prescriptions, that doctors --
14 is it your understanding that doctors are
15 required to inform patients of risks
16 before prescribing drugs?

17 A. I'm not -- I don't know of a
18 requirement. I know it is usually done. I
19 don't know of a requirement.

20 Q. Is it the Board's position
21 that there are some treatments patients
22 should not be permitted to consent to
23 after being fully informed of the risks?

24 A. Could you repeat that?

25 Q. Is it the Board's position

1 AMY E. EMBRY

2 that there are some medical treatments
3 patients should not be permitted to
4 consent to after being fully informed by
5 their doctors of the risks of the
6 treatment?

7 A. I don't know. That would be a
8 -- the Board members would have to decide
9 that.

10 Q. Okay. Imagine Act 626 didn't
11 exist, no one ever thought about it and
12 it was just -- imagine times before that
13 law.

14 If there was a doctor that was
15 providing gender-affirming medical care
16 to minors and was not following the
17 accepted standards in that field, could
18 that issue be addressed by the Board?

19 A. If the complaint is filed,
20 yes.

21 Q. And would that also be true if
22 it otherwise came to the Board's
23 attention that that was happening?

24 A. Yes.

25 Q. If the Board had a broader

1 AMY E. EMBRY

2 concern about doctors overprescribing
3 hormone therapy for adolescents with
4 gender dysphoria, is that something the
5 Board could step in and regulate?

6 A. Regulate means to form a
7 regulation?

8 Q. Yes.

9 A. They can create a rule if they
10 choose to do so. It would go through the
11 promulgation process. It does not mean
12 that it would pass.

13 Q. I'm just thinking about, we
14 talked about the very detailed
15 regulations about pain medications and
16 regulation in place to govern how
17 prescriptions can be provided, is that a
18 fair description?

19 A. Could you repeat that?

20 Q. Yeah. I'll ask it clearer.

21 We talked earlier about the
22 regulations for pain medications. You
23 remember that?

24 A. Yes.

25 Q. If there were an issue with,

1 AMY E. EMBRY

2 say, some doctors in the State providing
3 gender-affirming medical care to minors
4 and specifically overprescribing hormone
5 therapy, similar to the way opioids have
6 been overprescribed, would it be possible
7 for the Board to enact a regulation to
8 address that problem?

9 A. Yes. If they found it
10 necessary, yes.

11 Q. And similarly, if the Board
12 were to learn that some doctors in
13 Arkansas who provide gender-affirming
14 medical care to minors were not providing
15 sufficient information in the informed
16 consent process about the risks and
17 benefits of these treatments, could the
18 Board enact regulations to impose
19 informed consent requirements?

20 A. The Board can create a
21 regulation on any subject they choose.
22 Whether or not it passes the promulgation
23 process is what determines if it goes
24 into effect.

25 Q. But I'm just thinking about,

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2 for example, the gastric bypass
3 regulation that we talked about earlier
4 that had, I don't know, dozens, dozens of
5 risks that doctors are required to tell
6 patients about before they can obtain
7 informed consent for the procedure. If
8 there was a concern about inadequate
9 informed consent with gender-affirming
10 medical care for minors, could the Board
11 pass a regulation to spell out informed
12 consent requirements in a similar way?

13 A. Again, if they feel a need to,
14 for which they have a concern, they can
15 do that.

16 MS. LAND: I'll object to the
17 form of that previous question as
18 well.

19 Q. Okay. So that would include
20 enacting a regulation like the gastric
21 bypass informed consent regulation that
22 would impose requirements for informed
23 consent before obtaining -- before
24 providing hormone therapy for minors?

25 A. Yes. And I believe on that

1 AMY E. EMBRY

2 one, though, that that was through an Act
3 that was required.

4 Q. Thank you. But that is
5 something the Board could do if it saw a
6 need; is that right?

7 A. Yes. It could -- it could
8 attempt. Let me say that, it could
9 attempt to promulgate a rule.

10 Q. And I want to make sure I
11 understand what you mean by that.

12 Do you mean they could come up
13 with a rule but there is no guarantee the
14 legislature would approve it; is that
15 what you mean?

16 A. Correct. Right.

17 Q. But assuming the legislature
18 were onboard, they could pass a rule to
19 establish informed consent requirements
20 for hormone therapy for minors if they
21 felt that that was something that was not
22 being done properly by all doctors in
23 Arkansas?

24 A. If that's what the Board chose
25 to create a rule on, yes, that's the

1 AMY E. EMBRY

2 process.

3 Q. There is nothing about that
4 type of regulation that couldn't be done?

5 A. Well, we can't make a
6 regulation that is against law. Right,
7 but we can --

8 Q. Understood. Assuming Act 626
9 never existed, you would be able to do
10 that?

11 A. If that's what the Board voted
12 to do.

13 Q. Okay. And I think we touched
14 on this before but I want to be sure, if
15 the Board felt that gender-affirming
16 medical care for adolescents were
17 inherently harmful, it could enact a
18 regulation to prohibit that care; is that
19 right?

20 A. I mean, if that was a concern
21 and that's what the Board felt was
22 necessary it would start the process, go
23 through the appropriate channels to
24 create a rule.

25 Q. Right. And it could enact a

1 AMY E. EMBRY

2 rule and then it would just be a question
3 of whether the legislature approved it;
4 is that right?

5 A. Yes. And I mean, there's
6 various steps to this. I mean, it is a
7 lengthy process. It takes at least months
8 to get it done.

9 Q. It takes how long?

10 A. At least months. It could go
11 into years.

12 Q. Okay. But if they felt -- if
13 the Board felt there was a problem and
14 they needed -- let me rephrase that.

15 If the Board felt that
16 gender-affirming medical care for
17 adolescents was inherently harmful it
18 could -- if the Board agreed that was the
19 case, they could pass a regulation
20 banning that care that could take effect
21 as long as the legislature approved it?

22 MS. LAND: Object to form.

23 THE WITNESS: Answer it?

24 MS. LAND: Yes.

25 A. Yes.

1 AMY E. EMBRY

2 Q. That issue of gender-affirming
3 medical care for minors has never been
4 raised as an issue at the Board; is that
5 right?

6 A. That is correct.

7 MS. COOPER: I'd like to take
8 tab 11. We haven't done that one
9 yet, right? I'm checking with my
10 team. Can we mark that as the next
11 exhibit, which is --

12 MR. RICHARDSON: This will be
13 -- apologies, uploading -- this
14 will be Exhibit 10.

15 MS. COOPER: Exhibit 10. Thank
16 you.

17 (Exhibit 10, Opinion article
18 in Washington Post dated April 8,
19 2021 was received and marked on
20 this date for identification.)

21 MR. RICHARDSON: Exhibit 10
22 has been produced.

23 MS. LAND: I've got it.

24 Q. So we've now marked Exhibit
25 10, and just for identification, it's a

1 AMY E. EMBRY
2 document from the Washington Post opinion
3 titled Why I Vetoed My Party's Bill
4 Restricting Healthcare For Transgender
5 Youth by Asa Hutchinson, dated April 8th,
6 2021.

7 We talked a few minutes a
8 while back about the Governor's veto of
9 HB 1570 before it became law and I can't
10 remember if you said you've seen his veto
11 statement or his reasons for his veto.
12 Have you seen this before?

13 A. No, I have not.

14 Q. Could you -- why don't you
15 take a minute to read this and I'll have
16 a couple of questions.

17 (Deponent reviews the
18 document.)

19 Q. Have you had a chance to read
20 it? Okay.

21 Just to make sure I'm covering
22 all bases, did the Board have any
23 discussions about the Governor's veto or
24 his statement about the veto?

25 A. No.

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2 Q. And the staff, the same?

3 A. No. There may have been
4 conversations; hey, did you see he vetoed
5 it? But nothing as far as Board
6 business.

7 Q. So you were aware at the time
8 that he vetoed HB 1570?

9 A. Yes.

10 Q. And that was something that
11 was acknowledged among members of the
12 Board staff?

13 A. Yes.

14 Q. Do you remember who?

15 A. It was me and Juli Carlson.

16 Q. That was back at the time?

17 A. Yes.

18 Q. Roughly around April 8th, '21?

19 A. Thereabouts. I don't know the
20 date.

21 Q. Who brought it up; was it you
22 or Juli Carlson?

23 A. I don't recall and I know we
24 both got it on our phone that's how we
25 found out about it.

1 AMY E. EMBRY

2 Q. I didn't hear part of what you
3 said.

4 A. We saw it on social media or
5 from a news station, social media and
6 that's how we found out about it. That's
7 what started the conversation, that's it.

8 Q. And what did you say to one
9 another about it?

10 A. Nothing. It was not a long
11 drawn out conversation. It was just;
12 hey, the Governor vetoed this bill.

13 Q. Okay. Did anybody -- did
14 either you or Juli Carlson express
15 agreement or disagreement with the
16 Governor's decision?

17 A. No.

18 Q. Neither one?

19 A. Not that I recall. This was
20 well over a year ago, so not that I
21 recall.

22 Q. Okay. In part of the message
23 the Governor talks about concerns about
24 youth accessing treatment on the black
25 market. Do you recall seeing that part?

1 AMY E. EMBRY

2 A. Yes.

3 Q. Well, do you agree in general
4 that it is harmful for people to access
5 medical treatment on the black market?

6 A. Are you asking as a personal
7 opinion or as my opinion as Executive
8 Director?

9 Q. Let's start with the Board, as
10 the Executive Director of the Board.

11 A. Yes. It is dangerous to
12 receive it on the black market.

13 Q. Do you have a different
14 personal opinion about it?

15 MS. LAND: I'll object to any
16 questions about her personal
17 opinions, that would be outside the
18 scope of the notice for her
19 30(b)(6) witness.

20 MS. COOPER: Okay.

21 Q. Did you have a different
22 personal opinion? You can answer, she
23 objected.

24 A. No. I don't have a different
25 personal opinion.

1 AMY E. EMBRY

2 Q. Does the Board recognize, as
3 the Governor mentioned, that the
4 procedures banned by the Law 626 are
5 considered best practice medical care for
6 youth with gender dysphoria?

7 A. I'm sorry. Repeat that
8 question.

9 Q. Yeah. Does the Board
10 recognize, as the Governor does, that the
11 gender transition procedures banned by
12 Act 626 are part of best practice medical
13 care for youth with gender dysphoria?

14 A. The Board has never discussed
15 that, so I don't know what their stand is
16 on that.

17 MS. LAND: Object to the form
18 of that previous question.

19 Q. And does the Board agree with
20 the Governor that the decision about
21 providing gender-affirming medical care
22 to minors is best left to parents and
23 doctors?

24 A. Again, the Board has never
25 discussed this, so I do not know the

1 AMY E. EMBRY

2 Board's stance.

3 Q. Okay. And does that mean the
4 Board doesn't have a stance, since you're
5 testifying on behalf of the Board?

6 A. I don't know how to answer
7 that. They've never discussed it. It's
8 never been brought up to discuss. So I
9 don't -- as of right now they don't have
10 a stance because it's not been discussed.
11 It has not been an issue.

12 Q. Understood. I want to go back
13 to few more questions about the Board's
14 enforcement of 626, if it should take
15 effect and to understand a little bit
16 more about that.

17 You mentioned a little while
18 ago we talked about Arkansas Stat
19 20-6-202 which says, "Healthcare
20 providers are legally and ethically
21 prohibited from abandoning a patient
22 before treatment has been concluded." Do
23 you recall that?

24 A. Yes.

25 Q. So if doctors are currently

1 AMY E. EMBRY

2 treating adolescents with
3 gender-affirming hormones, would the
4 doctor be violating their ethical duty to
5 discontinue treatment for a patient
6 without referring them to an alternative
7 provider?

8 A. According to this law, yes.

9 Q. And by "this law" you mean
10 20-6-202?

11 A. Yes.

12 Q. Okay. So that would be
13 unprofessional conduct on the part of a
14 doctor to discontinue gender-affirming
15 hormones without providing a referral to
16 another doctor to continue that care; is
17 that correct?

18 A. Yes, that is my understanding.

19 Q. So what is the Board to do if
20 that situation arises and a complaint is
21 filed or the Board otherwise comes to
22 learn about a doctor who is providing
23 care to a patient, an adolescent patient,
24 specifically gender-affirming medical
25 care, and was providing that care before

1 AMY E. EMBRY

2 Act 626 took effect and then after 626
3 takes effect feels the doctor cannot
4 discontinue that care because it would be
5 abandoning their patient? So on the one
6 hand, there's the issue of abandonment
7 and on the other hand, Act 626 says the
8 doctor can't provide that care; how are
9 doctors supposed to navigate that
10 conflict?

11 MS. LAND: Objection to form.

12 A. If that were to occur, then
13 what would happen is the Board would let
14 their legal counsel know there is a
15 conflict of these two rules and we need
16 to know how to proceed. That attorney may
17 go further and it may require an AG
18 opinion. When two laws conflict they have
19 to ask for legal assistance.

20 Q. Has the Board raised the
21 concern about Act 626 putting it in this
22 bind?

23 A. No. The Board has not
24 addressed Act 626 at all.

25 Q. Okay. Does the Board have any

1 AMY E. EMBRY

2 concerns about the impact of enforcing
3 Act 626 on adolescents who are receiving
4 gender-affirming medical care?

5 A. The Board has not addressed
6 this. Nothing has been discussed at the
7 Board level of Act 626, so nothing has
8 been addressed.

9 Q. So if the Board were put in
10 that situation where Act 626 took effect,
11 a complaint was brought to the Board
12 because a doctor is continuing to provide
13 care to a patient that they had been
14 treating beforehand, I'm trying to
15 understand, would the Board tell that
16 doctor they have to stop providing that
17 care?

18 A. So are you asking if 626 was
19 in effect and it conflicts with 20-6-202,
20 the Board would ask for legal assistance
21 on this; what do they need to do.

22 Q. Does the Board view Act 626
23 promoting the well being of minors?

24 A. Again, the Board has not
25 addressed Act 626 so this has not been

1 AMY E. EMBRY

2 discussed.

3 Q. So the Board has no position?

4 A. No position.

5 Q. So then just to make sure I
6 understand, does the Board not have any
7 knowledge of ways Act 626 to benefit
8 minors?

9 A. It has not been provided by
10 the Board Office to the Board members
11 anything about Act 626.

12 Q. So the -- what I'm trying to
13 learn is whether the Board, itself, has
14 any evidence or knowledge that Act 626
15 would benefit minors in some way?

16 A. To my knowledge, no.

17 Q. Okay. Is the Board aware of
18 any minors in Arkansas who have been
19 harmed by gender-affirming medical care?

20 A. The Board has not received any
21 complaints and that's how they would
22 learn about that. So, no.

23 Q. So again, I can be confident
24 that the Board will not be presenting any
25 evidence based on its own experiences of

1 AMY E. EMBRY

2 any minors being harmed by
3 gender-affirming medical care?

4 A. We have not received any
5 information or any complaints to that
6 nature.

7 MS. LAND: Objection to form
8 on that previous question.

9 Q. So I think you testified
10 earlier that the Board is the State
11 entity charged with regulating medicine
12 in Arkansas with respect to the
13 categories of medical professionals that
14 you license; is that correct?

15 A. Correct.

16 Q. And that includes doctors; is
17 that correct?

18 A. I'm sorry? What was that?

19 Q. And that includes doctors?

20 A. Yes.

21 Q. Is it the Board's view that
22 Act -- sorry. Is it the Board's view
23 that Act 626 is an appropriate regulation
24 of medicine?

25 A. The Board has not addressed

1 AMY E. EMBRY

2 Act 626.

3 Q. So it has no view?

4 A. It has no view.

5 Q. Okay.

6 MS. COOPER: Can we mark tab
7 13 as Exhibit 11?

8 (Exhibit, 11, email dated
9 March 22, 2021, from Sarah Vestal
10 to ASMB was received and marked on
11 this date for identification.)

12 MR. RICHARDSON: Exhibit 11
13 has been introduced.

14 MS. LAND: I've got it.

15 Q. Okay. Thank you. Ms. Embry,
16 have you seen Exhibit 11?

17 A. Yes, I have.

18 Q. For the record, I'll identify
19 it as an email marked "Confidential" from
20 Sarah Vestal sent Monday, 22 March, 2021.

21 I understand this to be
22 referencing a complaint against a surgeon
23 based on the complainant being
24 transgender; do I read that right?

25 A. That is correct.

1 AMY E. EMBRY

2 Q. Okay. Now, we didn't get the
3 complaint that this was about. Was there
4 ever a complaint filed?

5 A. I believe that I would have to
6 go back and look at the files again. I
7 do not have the files with me and we get
8 an average of 400 complaints a year. So I
9 would have to actually have documents to
10 answer anything about this.

11 However, when this came in I
12 think this was the complaint because this
13 was asking, it was not filing a complaint
14 against a physician, no physician is
15 named. It asks if there was a statute of
16 limitations for filing an ethics
17 complaint.

18 Q. I see. So and this could
19 satisfy your requirements for a
20 complaint, they just have to notify the
21 Board that they are making a complaint,
22 there is no form they have to use?

23 A. No, but it must be in writing.
24 It can be email, it can be handwritten,
25 U.S. mail, whatever, but it must be in

1 AMY E. EMBRY

2 writing and must include the doctor's
3 name or licensee's name.

4 Q. Okay. And what -- did this
5 complaint get taken up by the Board?

6 A. I would have to see if an
7 actual complaint came in after this. This
8 cannot be considered a complaint because
9 it does not mention a licensee's name.
10 This was specifically a question as to
11 the statute of limitations for filing an
12 ethics complaint.

13 Q. So you don't know whether
14 Sarah Vestal subsequently filed a
15 complaint?

16 A. She may have because I do
17 remember this name but, again, it could
18 be that I'm remembering her name from
19 this document.

20 Q. So sitting here now, you have
21 no recollection of the outcome of that.
22 Okay.

23 Now, assuming what she alleged
24 here is correct, understanding that we
25 don't know, but would the refusal to

1 AMY E. EMBRY

2 treat a patient because they're
3 transgender be something that would be an
4 appropriate issue for the Board to
5 address?

6 A. Again, that depends on the
7 situation. If it's a new patient, the
8 doctor can refuse new patients. So I
9 mean, you would have to get into more
10 detail to determine if there had been a
11 violation.

12 Q. So if it was discrimination by
13 a doctor based on any of the protected
14 characteristics, that would not be
15 something the Board would be involved
16 with?

17 A. If the investigation can be
18 proven, then that is something the Board
19 would take up.

20 Q. Oh, sorry. Let me clarify my
21 question.

22 Assuming she were able to
23 prove discrimination by her doctor
24 because she's transgender, is that
25 something the Board would -- could find

1 AMY E. EMBRY

2 in violation?

3 A. Yes.

4 MS. COOPER: Can we take a
5 short break? Let's take ten minutes
6 and I think we're getting close.

7 VIDEOGRAPHER: We are off the
8 record at 3:56 p.m.

9 (Recess is taken.)

10 VIDEOGRAPHER: We are back on
11 the record at 4:15 p.m.

12 Q. Ms. Embry, is Act 626 an
13 appropriate regulation of medicine?

14 A. I do not have an opinion on
15 that.

16 Q. And does that mean the Board
17 doesn't have an opinion about that?

18 A. The Board, that would be a
19 question for the Board. Also, I'm not a
20 physician.

21 Q. Okay. Now, this is one of our
22 topics on the notice about regulation of
23 medicine and so -- and you're testifying
24 on behalf of the Board and you should
25 have been prepared on these. So I'm

1 AMY E. EMBRY

2 looking at the, you know, much of the
3 notice is about regulating the medical
4 profession. So is this -- is Act 626 an
5 appropriate regulation of medicine?

6 MS. LAND: I'll object to the
7 form of that question and it is
8 also vague. You can answer.

9 A. I would need more detail, such
10 as who drafted the legislation, who did
11 they consult with, did they consult with
12 anybody in the medical field? I don't
13 have enough information as to how this
14 was drafted to say if this is a good form
15 of medicine.

16 Q. And I hear you and I think
17 that your answer is telling me maybe my
18 question could have been clearer because
19 I wasn't -- I wasn't asking about what
20 medical experts would say about
21 appropriate medical care for youth with
22 gender dysphoria, so let me ask the
23 question a little bit differently because
24 I see how it was heard by you.

25 Is prohibiting treatment that

1 AMY E. EMBRY

2 is -- well, let me just ask it this way;
3 you're aware that gender-affirming
4 medical care is recognized as best
5 practices in the medical field by many
6 professional medical professional
7 associations?

8 MS. LAND: Objection to form.

9 A. Could you repeat that question
10 again?

11 Q. Are you aware that
12 gender-affirming medical care is
13 recognized as best practice in the -- for
14 the treatment of gender dysphoria by many
15 medical associations, medical
16 professional associations?

17 A. No, I was not aware of that.

18 Q. Okay. Is prohibiting a
19 particular medical treatment, blanket
20 ban, typical of how medicine is -- the
21 field of medicine is normally regulated?

22 MS. LAND: Objection to form.

23 A. It is not typical as to how
24 Arkansas regulates medicine at the
25 moment.

1 AMY E. EMBRY

2 Q. And I think you said earlier
3 this is the only -- strike that.

4 I believe you said earlier Act
5 626 is the only ban on a particular
6 medical treatment in Arkansas that you're
7 aware of; is that correct?

8 A. That I am aware of.

9 Q. Okay. And that the Board is
10 aware of; is that correct?

11 A. Yes, it is.

12 Q. Okay. So do you have any
13 concerns about the government intruding
14 on the medical decisions families make
15 with their doctors?

16 MS. LAND: Objection to form.

17 A. I believe the Board would have
18 concern with some of the issues in 626.
19 If they were to address this issue they
20 may have concerns.

21 Q. And which concerns or what
22 concerns?

23 A. If I had to speculate to
24 answer for 14 individuals, it would be
25 about cutting off care to patients that

1 AMY E. EMBRY

2 are already undergoing treatment. It
3 would also be a conflict with another
4 law, as we've already discussed earlier.

5 Q. And what is your basis for
6 thinking that might be -- those may be
7 concerns? And let's start with the
8 cutting off care to patients already
9 receiving treatment.

10 A. That is strictly from
11 witnessing the Board at board meetings.
12 What is -- issues that may not be exactly
13 like this but similar to it and how they
14 have addressed those issues.

15 Q. So are you speaking of other
16 issues unrelated to gender-affirming
17 medical care where there were concerns
18 expressed by the Board about physicians
19 cutting off care for patients; is that
20 correct?

21 A. Yes. It's called patient
22 abandonment.

23 Q. And the Board, some of the
24 Board members have expressed concerns
25 about when that happens, when patients

1 AMY E. EMBRY

2 are abandoned by doctors; is that right?

3 A. Yes.

4 Q. What concerns were raised by
5 the Board members about that?

6 A. Just, in general, just the
7 fact that patient abandonment happened,
8 that they abandoned a patient with
9 nowhere else to go and a complaint was
10 filed against the Board and they
11 addressed it as would any other
12 complaint.

13 Q. Did the Board express concerns
14 that that's harmful to patients when that
15 happens?

16 A. Yes. At times they have said
17 it is harmful to the patient.

18 Q. And why? Why did they say it
19 was harmful?

20 A. They did not give a reason
21 why. When they spoke of that it was just
22 a statement that it was harmful to
23 patients when you abandon them.

24 Q. Which Board member said that?

25 A. Oh, there's been -- I don't

1 AMY E. EMBRY

2 know. I don't know, but there have been
3 issues of patient abandonment that have
4 been brought before the Board.

5 Q. I'm sorry. I can't recall if I
6 asked you this question. Do you have
7 concerns about the government intruding
8 on the medical decisions families make
9 with their doctors?

10 MS. LAND: Objection to form
11 and to the scope of that question.
12 You can answer.

13 A. I do believe upon any
14 legislation that comes before the Board
15 if they discuss, if they do have concerns
16 they do discuss it and they would ask
17 their legal counsel what would be the
18 best way to proceed.

19 Q. And are you speaking -- I
20 asked the question a little bit generally
21 but I didn't probably ask it as
22 specifically as I should have and that
23 may help clarify your answer.

24 Do you have concerns about,
25 with respect to Act 626, the government

1 AMY E. EMBRY

2 intruding on the medical decisions

3 families make with their doctors?

4 MS. LAND: Objection to form

5 and scope.

6 A. There is a possibility, yes.

7 It's all I can say on that is that there

8 is a possibility. Until it is addressed

9 by the Board, I can't give a definite

10 answer.

11 Q. And there is a possibility

12 that you would have concerns or there is

13 a possibility that if Act 626 takes

14 effect that the government would be

15 intruding on medical decisions families

16 make with their doctors? I'm not sure I

17 understood your answer.

18 A. I would say yes to both.

19 Q. So does that mean there is a

20 possibility that the Board, if faced with

21 complaints about doctors providing care

22 that is prohibited by Act 626, that the

23 Board may not enforce Act 626 and

24 prohibit doctors from or discipline

25 doctors for engaging in such care?

1 AMY E. EMBRY

2 A. Again, every situation is
3 different, but if Act 626 went into
4 effect, as your question is based on, if
5 it were to go into effect, it would be in
6 conflict with another law and the Board
7 would need to ask for legal assistance on
8 what to do.

9 MS. LAND: I'll object to the
10 form of that previous question.

11 Q. And that conflict would only
12 be, if I understand correctly, in the
13 case of individuals who are already
14 receiving care from a doctor; is that
15 right?

16 MS. LAND: Object to form.

17 A. Yes. According to 20-6-202
18 it's legally and ethically prohibited
19 from abandoning a patient before
20 treatment has been concluded. So that
21 means they are already within treatment.

22 Q. Right. So understanding that
23 the Board would need to ask for legal
24 advice from counsel about what to do in
25 the event of a complaint that raises this

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AMY E. EMBRY

conflict between two statutes, if you had, you know, putting aside patients who are already receiving care and just somebody who their doctor recommends or would recommend that they initiate care that would violate Act 626, do you have concerns about the government intruding into that decision made by families with their doctor?

MS. LAND: Objection to form.

A. I don't understand the question. I don't understand exactly --

Q. Let me ask it differently.

If Act 626 were in effect and a patient, minor patient and their parent saw a doctor and after assessment the doctor's recommendation would be gender-affirming medical treatment, and the parents and minor agree that that's in the best interests of that patient, but that Act 626 would not permit the child or minor to receive that care that the parent and doctor believe is in the child's best interests, do you have

1 AMY E. EMBRY

2 concerns about the law intruding into
3 this medical decision that families make
4 with their doctors?

5 MS. LAND: Objection to form
6 and scope.

7 A. I would say that the Board, it
8 is possible that they would have
9 concerns. But, again, if it were in
10 effect and it's in conflict with another
11 law, they would not do anything until
12 they advised their legal counsel.

13 Q. And in your view it's possible
14 the Board would have concerns even if
15 there's an individual minor who is not
16 currently receiving care but is --
17 parents and doctors believe care would be
18 in their best interest?

19 A. It is possible, it is a
20 possibility that the Board would voice
21 concerns.

22 Q. But you have not heard
23 specific concerns voiced by anybody at
24 this point?

25 A. No.

1 AMY E. EMBRY

2 Q. Okay. Do you have concerns?

3 MS. LAND: I'll object to the
4 form of that question to the extent
5 it's asking for any personal views
6 that would be outside the scope of
7 this notice. So I will object to
8 any question that's going to elicit
9 personal views of this witness.

10 MS. COOPER: Okay.

11 MS. LAND: And if we're going
12 to continue to ask her personal
13 views, that might need to be a
14 discussion we need to have further.

15 MS. COOPER: Yeah. I just have
16 this question.

17 Q. Do you remember the question?

18 MS. LAND: You can answer.

19 A. Okay. So I have concerns that
20 the law that was passed, Act 626, is in
21 violation of other laws. That is my
22 concern.

23 Q. And which other laws?

24 A. The 20-6-202.

25 Q. Any others?

1 AMY E. EMBRY

2 A. Not that I'm aware of right
3 now.

4 Q. Okay. So that's a concern
5 about people who are currently receiving
6 care not being able to have the doctor
7 continue to provide or refer them for
8 continuation of that care?

9 A. Correct.

10 Q. Okay. But not about the people
11 who haven't started care yet, there are
12 no concerns about that?

13 A. I don't know -- at this point,
14 no. If the law were enacted, then more
15 research would need to be done.

16 Q. And have you talked with any
17 families who will be directly affected by
18 Act 626 if it takes effect?

19 A. Have I spoken to anyone? No.

20 Q. Do you know any?

21 A. No, I do not.

22 Q. Okay. Do you know any
23 transgender adolescents who are receiving
24 gender-affirming medical care?

25 A. The only ones that I am aware

1 AMY E. EMBRY

2 of are the ones that were listed in the
3 lawsuit.

4 Q. So you don't personally know
5 or the Board doesn't have interaction
6 with any minors who are receiving
7 gender-affirming medical care?

8 A. Not to my knowledge.

9 MS. COOPER: Just a minute.
10 That's all I've got.

11 MS. LAND: I don't have any
12 questions.

13 VIDEOGRAPHER: We are off the
14 record at 4:35 p.m.

15 MS. LAND: We would like to
16 read and sign.

17 (The proceedings were
18 adjourned at 4:35 p.m.)

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C E R T I F I C A T E

I, MAUREEN M. RATTO, a Registered Professional Reporter, do hereby certify that prior to the commencement of the examination, AMY E. EMBRY was sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.



MAUREEN M. RATTO, RPR
License No. 817125

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I N D E X

WITNESS: AMY E. EMBRY 6
DIRECT EXAMINATION BY MS. COOPER 6

E X H I B I T S

Exhibit 1, 30(b)(6) notice for 15
Defendant Arkansas State Medical
Board
Exhibit 2, Arkansas Medical 24
Practices Act and Regulations,
revised as of December 2, 2020
Exhibit 3, printout of the 44
homepage of the Arkansas State
Medical Board website
Exhibit 4, printout from the 69
Medical Board re: Regulatory and
Discipline
Exhibit 5, Arkansas State House 105
Bill 1718
Exhibit 6, Guidance For the Use 138
of Hydroxychloroquine and
Chloroquine For the Treatment of
COVID 19
Exhibit 7, May 5, 2021 email re: 155
Public Health Grand Rounds

1 Exhibit 8, email dated May 25, 165
2 2021, re: CNN Inquiry
3 Exhibit 9, copy of House Bill 175
4 1570
5 Exhibit 10, Opinion article in 217
6 Washington Post dated April 8,
7 2021
8 Exhibit 11, email dated March 229
9 22, 2021, from Sarah Vestal to
10 ASMB

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1 AMANDA LAND, ESQ.

2 aland@arkansasag.gov

3 May 24, 2022

4 RE: BRANDT, et al. vs. RUTLEDGE, et al.

5 5/10/2022, Amy E. Embry (#5219516)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 erratas-cs@veritext.com.

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21

22 Yours,

23 Veritext Legal Solutions

24

25

1 BRANDT, et al. vs. RUTLEDGE, et al.

2 5/10/2022 - Amy E. Embry (#5219516)

3 E R R A T A S H E E T

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

Exhibit B

From: Richardson, Daniel J.
Sent: Thursday, May 19, 2022 2:28 PM
To: Michael Cantrell
Cc: Nicholas Bronni; Dylan Jacobs; Amanda Land; zzExt-LCOOPER; Simpson LaGoy, Duncan C.
Subject: RE: Deposition of Dr. Rhys Branman

Mike,

We sent our notice of deposition shortly after we completed the 30(b)(6) deposition for the Arkansas Medical Board and two weeks before the close of discovery. And although we offered at that time to discuss dates that were most convenient, you did not take us up on that offer. That said, we would be willing to discuss ways to accommodate Dr. Branman's schedule. We would be willing to limit the deposition to three hours on the record and to meet with him at a time that is most convenient, including in the evenings or during the weekend. We also already offered to stipulate to taking Dr. Branman's deposition after the close of discovery.

We are willing to meet and confer with you concerning this deposition to reach a reasonable compromise, but we are not going to withdraw our notice of deposition.

Best,
Dan

From: Michael Cantrell <michael.cantrell@arkansasag.gov>
Sent: Wednesday, May 18, 2022 5:56 PM
To: Richardson, Daniel J. <richardsond@sullcrom.com>; zzExt-LCOOPER <LCOOPER@aclu.org>; Simpson LaGoy, Duncan C. <SimpsonD@sullcrom.com>
Cc: Nicholas Bronni <nicholas.bronni@arkansasag.gov>; Dylan Jacobs <dylan.jacobs@arkansasag.gov>; Amanda Land <amanda.land@arkansasag.gov>
Subject: [EXTERNAL] RE: Deposition of Dr. Rhys Branman

Daniel,

We have contacted Dr. Branman. But, as a surgeon, his schedule is understandably booked out several weeks in advance, and he has conflicts for next week.

Dr. Branman has been a Defendant throughout the entire eleven months of this litigation, and Plaintiffs could have sought to depose him during that time. Given that discovery ends next week, there is not sufficient time to do that now. Plaintiffs should withdraw the notice of deposition so we are not forced to file a motion to quash. Please let me know.

Regards,

Mike

Michael A. Cantrell
Assistant Solicitor General

Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
501.813.0857

Michael.Cantrell@ArkansasAG.gov | ArkansasAG.gov [arkansasag.gov]

From: Richardson, Daniel J. <richardsond@sullcrom.com>
Sent: Tuesday, May 17, 2022 5:52 PM
To: Michael Cantrell <michael.cantrell@arkansasag.gov>
Cc: zzExt-LCOOPER <LCOOPER@aclu.org>; Simpson LaGoy, Duncan C. <SimpsonD@sullcrom.com>
Subject: RE: Deposition of Dr. Rhys Branman

EXTERNAL EMAIL

Mike,

We wanted to follow up on our request for a deposition date for Dr. Rhys Branman. Attached is a notice of deposition, we are willing to revise the date if there is a better one for the witness.

Best,
Alex

From: Richardson, Daniel J.
Sent: Friday, May 13, 2022 1:30 PM
To: Michael Cantrell <michael.cantrell@arkansasag.gov>
Cc: zzExt-LCOOPER <LCOOPER@aclu.org>; Simpson LaGoy, Duncan C. <SimpsonD@sullcrom.com>
Subject: Deposition of Dr. Rhys Branman

Mike,

Plaintiffs intend to depose Dr. Rhys Branman from the Arkansas Medical Board. Would Dr. Branman be available on either Monday, May 23 or Tuesday, May 24 for the deposition? We are willing to meet and confer about dates, including to potentially stipulate to taking his deposition after the close of fact discovery, if those dates do not work.

Thanks very much and have a nice weekend.

Best,
Dan

Daniel Richardson
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*Not admitted to the bar

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

****This is an external message from: michael.cantrell@arkansasag.gov ****