

1 that. But I explored that area pretty well, you know,
2 especially the second time -- well, first and second time
3 around -- and I didn't see anything there.

4 Q. The manner of death being homicide, unless you see
5 it, like you did in my demonstration, you don't -- you can't
6 come up with any intent, can you?

7 You don't know if that homicide was negligent homicide
8 or a manslaughter or a murder or capital murder.

9 A. Yeah. Homicide just means dying at the hands of
10 another. It doesn't specify any of these other categories
11 at all.

12 MR. FRANKLIN: No further questions.

13 MS. LAMBERT: Nothing further from the State.

14 THE COURT: Thank you, Doctor.

15 MS. LAMBERT: May this witness be excused,
16 Judge?

17 MR. FRANKLIN: No objection.

18 THE COURT: Proceed. Next witness.

19 MISS SHUGHART: Your Honor, State calls Dr.
20 Joseph Sample.

21 *(Witness sworn by the Court.)*

22 THE COURT: Proceed.

23 **JOSEPH SAMPLE, MD,**

24 the witness hereinbefore named, having been duly sworn by
25 the Court, testifies under oath as follows:

DIRECT EXAMINATION

BY MISS SHUGHART:

Q. Can you please introduce yourself to the jury.

A. My name is Joe Sample. I'm a retired physician.

Q. And what sort of physician were you?

A. Internist.

Q. What sort of training and background do you have?

A. Medical school, internship, residency.

Q. And then how long did you practice for?

A. Forty-plus years.

Q. And where did you practice?

A. Medical City Dallas. Baylor Hospital Plano.

Q. And while you were there, what did you generally do?

What were your daily activities?

A. I spent most of my day in the office, seeing primary-care patients.

Q. Okay. Did you have other duties at the hospital?

A. I had administrative responsibilities, with a medical staff.

Q. What sort of administrative responsibilities?

A. I was chairman of the Peer Review Committee -- physician peer review -- and sat on the Executive Committee of the medical staff.

Q. Can you tell the jury what the Peer Review

1 Committee is.

2 A. The medical staff Peer Review Committee reviews
3 hospital cases or length of stay, infection control,
4 performance of physicians, in all areas in the hospital.

5 Q. How do those things come to the Peer Review
6 Committee to be looked at?

7 A. Most of the parameters are automatic. Length of
8 stay is calculated for every patient. Time in the ICU.
9 Other things are brought to the attention of Peer Review by
10 certain trigger events.

11 Q. So when you're talking about the length of the
12 stay in the ICU, does it come to y'all every time?

13 Or is it just when it's unexpected?

14 A. Well, the data comes all the time. And then
15 unexpected events, or anything out of the norm, is brought
16 to the attention of the Peer Review Committee.

17 Q. And then you mentioned "trigger events". What are
18 you talking about, when you say "trigger events"?

19 A. An unexpected event: a hospital death, prolonged
20 length of stay. There's a host of events that
21 triggers.

22 Q. And what was your job on the Peer Review
23 Committee?

24 A. I looked at all the events from the administrative
25 staff that were considered trigger events to be reviewed by

1 the Committee. Brought those to the attention of the
2 Committee. Set the agenda. Chaired the Committee,
3 basically.

4 Q. So you're in charge of the Committee?

5 A. As any chairman would be, yes.

6 Q. And, I guess, can you tell us a little bit about
7 how the Peer Review Committee -- what those meetings are
8 like. I mean, what are you doing in them?

9 A. We have six or eight physicians sitting together
10 reviewing charts. Physician performance, parameters.
11 Fairly routine work.

12 Q. What sort of things does the Committee look at,
13 when reviewing a particular case or a physician?

14 A. Well, the medical record is reviewed in detail.
15 That's usually assigned to some physician. That's presented
16 to the Committee.

17 Q. Does anybody ever come testify to the Committee or
18 talk to y'all, explain things?

19 Do you ever have, like, a surgeon on the case come talk
20 to the Committee to explain what happened on a particular
21 case?

22 A. At the request of the Committee, yes, that can
23 happen.

24 Q. Okay. What kind of -- you said there are about
25 six to eight people on the Committee. Who is it made up of,

1 what kind of people?

2 A. Different subspecialties in the medical staff are
3 represented: general surgery, orthopedic surgery,
4 anesthesia, intensivist, internist.

5 Q. And how does the Committee go about reviewing the
6 case and making a decision?

7 A. Well, we have an idea of what is expected. If a
8 case is outside the norm, then a medical record is reviewed
9 in some detail by the Committee and a determination is made:
10 Does the case meet the standard of care for the hospital?

11 Q. What is the purpose of the Committee? Why are
12 y'all conducting these reviews?

13 A. To maintain the standard of care in the hospital.

14 Q. To try and make sure that everything at the
15 hospital is being done correctly or that problems can be
16 fixed, if they're not?

17 A. Yes. That's reasonable.

18 Q. What sort of actions can you take, after you
19 review a case?

20 A. Well, if a case is judged to meet the standard of
21 care, there's no further action.

22 If a case is felt to be not -- doesn't meet the
23 standard of care, there's a range of options, from reviewing
24 a particular physician for the next five, ten or 20 cases
25 that occurred for that physician in the hospital. The case

1 could be adjudicated.

2 And, not meeting the standard of care, certain
3 recommendations could be offered to the hospital's Medical
4 Executive Committee.

5 Q. And is the Peer Review Committee, the stuff that
6 goes on in it, is it pretty well confidential?

7 A. Oh, it is confidential.

8 Q. It's quite protected, right?

9 A. Yes.

10 Q. Because the purpose is for the hospital to use, to
11 make itself better, right?

12 A. Yes.

13 Q. And so you also mentioned the Medical Executive
14 Committee.

15 A. Yes.

16 Q. Can you tell us what that is.

17 A. It's an elected group of eight or ten physicians
18 who represent the medical staff and administrative
19 management of the hospital.

20 Q. So it's not the same as the Peer Review Committee?

21 A. No.

22 Q. What sort of things does the Medical Executive
23 Committee do?

24 A. Fairly wide ranging, from reviewing all the sub
25 committees, Peer Review Committees reports, setting policy

1 and procedure for the hospital.

2 Q. Are you also on that Committee?

3 A. Yes.

4 Q. Okay. What was your role on that Committee?

5 A. Just a member of the medical staff.

6 Q. Okay. And how did you first come to hear about
7 Christopher Duntsch?

8 A. I had a report from one of the nurse reviewers who
9 reviews. There is a reporting system in the hospital, which
10 we abbreviated Midas, because that's the name of the
11 reporting system, where we get all kind of data: length of
12 stay, unanticipated consequences. And it's reviewed and
13 collated by the nurse reviewer. And if she finds something
14 out of the ordinary, then I will get an email about a
15 particular case.

16 I got an email that a patient in the intensive care
17 unit, who was postoperative from a cervical spine procedure,
18 had made comments to the nursing staff that the patient had
19 consumed a combination of cocaine and heroine with the
20 attending surgeon.

21 The patient also made other comments, some of which
22 were irrational. That's to be expected of somebody who is
23 coming out of anesthesia. So I had that report to deal
24 with.

25 Q. And when you get that report, what do you do then?

1 What does that mean to you?

2 What are the next steps that you take?

3 A. Review the medical record and then interview the
4 person who did the report.

5 Q. And are you doing those actual things?

6 A. That's correct.

7 Q. And are you doing this in your position on the
8 chair review -- the Peer Review Committee or the Medical
9 Executive Committee?

10 A. The Peer Review Committee.

11 Q. I'm sorry. What else do you do?

12 A. Then I make a determination about if the report
13 requires further investigation and what that investigation
14 would be and what committees that information should go to.

15 Q. So what did you decide in this particular case?

16 A. The information was discussed with a ad hoc call
17 committee of the Executive Committee, and the surgeon was
18 referred to the Physician Wellness and Health Committee for
19 evaluation of the assertion by the patient that there was
20 drug abuse involved.

21 Q. So did you guys actually call a meeting of the
22 Peer Review?

23 It sounded like you called kind of an ad hoc one, an
24 unplanned one.

25 A. Yes.

1 Q. Do you remember, in general, who was in
2 attendance?

3 Well, let me ask a better question: Was Dr. O'Brien
4 there?

5 A. Not initially. He was -- I think the meeting had
6 gone for an hour or so before he came to the meeting.

7 Q. Okay. Was the Defendant there during that
8 meeting?

9 A. No.

10 Q. Okay. What were y'all doing during that hour
11 before Dr. O'Brien came?

12 A. We were reviewing the information we got about
13 possible drug use, and we were reviewing the patient's
14 postoperative complications.

15 Q. So y'all were aware of the problem that he was
16 having physically?

17 A. Yes.

18 Q. And is that patient Jerry Summers that y'all were
19 looking at, at that time?

20 A. Yes.

21 Q. So why did Dr. O'Brien come to the peer review
22 meeting?

23 A. My recollection is the hospital administrator
24 asked Dr. O'Brien to come render an opinion to the
25 non-surgical physicians Peer Review and Executive Committees

1 about the postoperative complications especially.

2 Q. So Dr. O'Brien, he's a surgeon?

3 A. That's correct.

4 Q. But there are non-surgeons on the Committee?

5 A. Yes.

6 Q. So he was coming to explain to them the
7 postoperative complications?

8 A. Yes.

9 Q. Okay. What else did he do in that Committee?

10 I mean, did he orally tell you what he had found with
11 the patient?

12 A. Yes.

13 Q. Did anything else happen at that meeting?

14 Did y'all decide to take any actions?

15 A. Yes. If I remember, we made the referral to Dr.
16 Duntsch to the physician health and wellness for evaluation
17 of the -- for drug abuse. And then to ask Dr. Duntsch to
18 refrain from scheduling any further surgical cases for the
19 next two weeks.

20 Q. Why do you have them -- why did you have Dr.
21 Duntsch refrain from scheduling surgical cases?

22 A. The Committee's feeling was that the patient had
23 an unexpected outcome from the surgery; that the surgeon
24 failed to recognize the complications; that the surgeon may
25 have performed an inadequate second surgical procedure.

1 Q. And so are you guys investigating during this
2 break that you asked him to take?

3 A. Yes.

4 Q. Okay. And you said that you sent him to a health
5 and wellness. Is he being interviewed by a psychologist at
6 that point?

7 A. Yes. That was the recommendation of our health
8 and wellness physician, was drug testing and referral for a
9 psychiatric interview.

10 Q. Okay. And that was done by Dr. Edgar Nace?

11 A. Yes.

12 Q. Was the Defendant -- did the Health and Wellness
13 Committee -- did they also send the Defendant to be drug
14 tested?

15 A. Yes.

16 Q. And that was a few days later?

17 A. Yes.

18 Q. Do you remember what those results came back as?
19 Did they come back negative?

20 A. That's my remembrance of the completed test. Dr.
21 Duntsch made one appearance without a photo ID, which meant
22 he was unacceptable as a candidate for drug testing.

23 He returned at a later time and submitted a specimen
24 that came back negative for drugs.

25 Q. Okay. And when is all of this occurring? Is this

1 occurring during that two-week break?

2 A. Yes.

3 Q. Okay. And is this pretty much right after Jerry
4 Summers' surgery, when this starts happening?

5 A. Yes.

6 Q. Did y'all get back a response from Dr. Nace?

7 A. Yes.

8 Q. And what did he say?

9 A. From his interview, he didn't find any evidence
10 that the patient -- the physician was impaired by drugs or
11 was using drugs.

12 Q. And that's what was told to this -- your
13 Committee?

14 A. Yes.

15 Q. Now, I want to make clear, when you brought the
16 Defendant to the Peer Review Committee, it was made known to
17 him that y'all had concerns about the outcome of the
18 surgery?

19 A. Yes.

20 Q. Okay. And he would have known that y'all were
21 looking into it?

22 A. Absolutely.

23 Q. I'm showing you State's Exhibit 79. Do you
24 recognize that?

25 A. Yes. It looks like a letter from me to Dr.

1 Duntsch, dated 14 February, which would have been the
2 week -- ten days or so after the Jerry Summers' case.

3 *MISS SHUGHART:* At this time, we would offer
4 State's Exhibit 79.

5 *MRS. LEHMANN:* We'll renew our 404(b)
6 objection.

7 *THE COURT:* Overruled. Admitted.

8 Q. (By Miss Shughart) Dr. Sample, what is the
9 purpose of this kind of letter?

10 A. That's a formal notice to the physician that
11 his -- one of his cases is being reviewed.

12 Q. Okay. And we can see that it happened on
13 February 14th, he was sent this letter.

14 A. Yes.

15 Q. And this is you down here sending it (indicating)?

16 A. Yes.

17 Q. And here, we just have an MR number and an account
18 number. Is that information relating to the patient?

19 A. Yes.

20 Q. And that patient was Jerry Summers?

21 A. Yes.

22 Q. Okay. So while the Defendant is taking his leave
23 of absence, who's taking over the care of the patient Jerry
24 Summers?

25 A. My remembrance is Dr. O'Brien took over the case.

1 Q. And did y'all have to remove the Defendant from
2 Jerry Summers' case?

3 A. He was asked to relinquish care to Dr. O'Brien.

4 Q. Okay. How often does this happen, that a
5 physician is asked to relinquish care of their patient?

6 A. In my experience, rarely.

7 Q. And why was it asked in this particular case?

8 A. The Committee had concerns about the original
9 surgery: the complications, postoperatively; the second
10 surgery to repair the complications; and the -- an
11 unacceptable relationship that developed between the
12 patient, the patient's family and the operating surgeon.

13 Q. So there was some discord and tension between
14 them?

15 A. Yes.

16 Q. Okay. When the Defendant was at the Peer Review
17 Committee meeting, did you ask him if he had received
18 notification from the family's attorney?

19 A. I don't remember asking that question.

20 Q. Okay. So how does a physician go about taking a
21 leave of absence?

22 A. He would request that from the medical staff
23 office, so that there's proper notifications to the
24 different departments in the hospital that he is on a leave
25 of absence.

1 The emergency room needs to know, the admitting office
2 needs to know, the operating scheduling people need to know.

3 Q. And when he's on this leave of absence, he's no
4 longer operating at the hospital during this time?

5 A. That's correct.

6 Q. Did the Peer Review Committee also have somebody
7 do an external review?

8 A. Yes.

9 Q. And how do y'all decide who does that?

10 A. When it's determined that an external review is
11 needed, the hospital administrator contacts a -- basically,
12 a reviewing company who takes the information for the case
13 and assigns it to a expert in the field, for which the case
14 needs to be reviewed. In this case, neurosurgery.

15 Q. And how long does a review like that generally
16 take?

17 A. My experience has been in the neighborhood of
18 three, four months or so.

19 Q. So, in this case, were you expecting that it was
20 going to take that long again?

21 A. Yes, I was.

22 Q. Dr. Sample, I want to show you some minutes from
23 the Peer Review Committee notes on February 13th.

24 Does it refresh your memory as to whether the Defendant
25 was asked if he knew that the Summers family had retained an

1 attorney?

2 A. I see that that's in the minutes, yes.

3 Q. And did the Defendant respond that he knew that
4 they had retained an attorney?

5 A. The minutes reflect that, yes.

6 Q. Okay. Do you know when the Defendant was allowed
7 to operate at Baylor Plano hospital again?

8 A. I don't remember the exact date, but something on
9 the record of three weeks.

10 Q. And can you explain to the jury why he was allowed
11 to operate at Baylor Plano hospital again.

12 A. The Summers case was going to be reviewed, and
13 under review, for the next weeks. Dr. Duntsch requested a
14 return to surgical privileges.

15 We asked Dr. Duntsch to not schedule anything but minor
16 surgical procedures. And my remembrance is that was his
17 agreement, that he would not.

18 Q. And by that time had you also gotten back the drug
19 test results?

20 A. Yes.

21 Q. And they were negative?

22 A. That's correct.

23 Q. And by that time had you also heard back from Dr.
24 Nace?

25 A. Yes.

1 Q. And he indicated he couldn't find anything.

2 A. That's correct.

3 Q. Had the external review of the Summers case come
4 back at the time?

5 A. No.

6 Q. Okay. But you expected that to take months
7 longer?

8 A. Yes.

9 Q. And, at this time, did the Defendant have patients
10 waiting to be operated on?

11 A. That's what he told me. Yes.

12 Q. And so he asked for his privileges to be
13 reinstated?

14 A. Yes.

15 Q. And y'all agreed to it?

16 A. Yes.

17 Q. The very next surgery that he did at the hospital
18 was on March 12th, 2012, with patient Kellie Martin.

19 Does that sound right?

20 A. Yes.

21 Q. And how did that surgery go?

22 A. The patient had an unanticipated surgical outcome
23 that resulted in the patient's death.

24 Q. And so that, of course, came across your desk.

25 A. Yes.

1 Q. And what did you do?

2 A. I remembered -- so the timing is that, the next
3 day, I elected to bypass the Peer Review Committee and take
4 the case directly to the Medical Staff Executive Committee
5 for review.

6 Q. And why would you do that?

7 A. I thought the case needed to be looked at
8 expeditiously. I thought it would eventually reach the
9 level of the Executive Medical Commit for action, and I
10 elected to move it there promptly.

11 Q. Did the Medical Executive Committee have more
12 power and ability to act faster?

13 A. Both.

14 Q. Okay. And you're also on that Committee?

15 A. Yes.

16 Q. Okay. So then, what did you do?

17 A. The medical record on that case was reviewed -- my
18 remembrance, there were seven or eight physicians of various
19 specialties represented, who reviewed the case over about an
20 hour, the early morning hours after the patient's death.

21 Q. Okay. And did y'all ask a specialist to come in
22 and review the case with you?

23 Or was he already on the Committee?

24 A. Well, I don't remember a specialist. I don't
25 remember anyone.

1 Q. Did a Dr. Randy Marcel come and review the
2 anesthesia records for y'all?

3 A. Yes. I think he was on the Executive Committee at
4 that time anyway.

5 *THE COURT:* Hang on.

6 It's now the noon hour. Let's go ahead and
7 take our lunch break at this time. Be back at one o'clock.

8 *THE BAILIFF:* All rise.

9 *(Members of the Jury retire to the jury
10 room.)*

11 *(Luncheon recess had.)*

12 *(Defendant present in the courtroom.)*

13 *THE BAILIFF:* All rise.

14 *(Members of the Jury enter the courtroom.)*

15 *THE COURT:* Thank you. Please, be seated.
16 State may resume.

17 *MISS SHUGHART:* Thank you, Your Honor.

18 **JOSEPH SAMPLE, MD,**

19 **DIRECT EXAMINATION CONTINUED**

20 **BY MISS SHUGHART:**

21 Q. Dr. Sample, I think, when we left off, we had just
22 talked about Dr. Marcel, that he was on the Executive
23 Committee with y'all.

24 A. That's correct.

25 Q. And he was reviewing the anesthesia records for

1 the Kellie Martin case?

2 A. Yes.

3 Q. And did y'all review all the records for the
4 Kellie Martin case?

5 A. We reviewed everything we had, which was the
6 anesthesia, nursing notes, laboratory reports.

7 Q. When you were looking through the records, did
8 y'all come to a decision on what had caused Kellie Martin's
9 death?

10 A. Yes.

11 Q. And what did y'all conclude?

12 A. We concluded the patient bled to death.

13 Q. Did you address the idea that she may have been
14 allergic to the anesthesia?

15 A. Yes.

16 Q. And what were your conclusions on that?

17 A. We didn't find evidence for that.

18 Q. Okay. I just want to be clear, it was not
19 anything related to the anesthesia that caused Kellie
20 Martin's death?

21 A. No.

22 Q. Okay. It was definitely the blood loss?

23 A. Correct.

24 Q. Are you familiar with the retro peritoneal sac?

25 A. Yes.

1 Q. And why you would have blood in there?

2 A. Yes.

3 Q. How does blood get into that area of the body?

4 A. Usually, by some penetrating wound.

5 Q. Did y'all -- so could it have been caused by
6 maybe, like, a surgical tool?

7 A. Correct.

8 Q. Did y'all do any sort of outside review on the
9 Kellie Martin case?

10 A. No.

11 Q. Okay. Y'all just reviewed it internally?

12 A. Yes.

13 Q. Now, the external review that you had done on the
14 Jerry Summers case, when did y'all get that report back?

15 A. Some time in that time frame. I believe, 24, 48
16 hours or so.

17 Q. And would that have been after the Kellie Martin
18 surgery?

19 A. Yes.

20 Q. Okay. So y'all get that back after Kellie Martin
21 had already passed?

22 A. Yes.

23 Q. And did that report help the Committee come to
24 some conclusions and who was at fault in the Jerry Summers
25 case?

1 A. Yes.

2 Q. And what did y'all find?

3 A. That the patient had a postoperative complication
4 caused by the surgeon; that that complication was not
5 recognized clearly, and a second procedure was done that was
6 not indicated and may have made the situation worse.

7 Q. Okay. I just want to be clear, the Peer Review
8 Committee and the Medical Executive Committee found that
9 there was -- it was the surgeon's fault that Jerry Summers
10 had the injury that he had?

11 A. Yes.

12 Q. And it was the surgeon's fault that Kellie Martin
13 had passed away?

14 A. Yes.

15 Q. Was the Defendant aware that y'all were looking
16 at -- that y'all were looking at the Kellie Martin case
17 also?

18 A. Yes.

19 Q. Do you know how he was made aware of that?

20 A. My remembrance, probably direct communication
21 between the Committee and the surgeon.

22 Q. Okay. And so it was communicated to him that
23 y'all had concerns about the Kellie Martin case also?

24 A. Yes.

25 Q. Did y'all request he take another leave of

1 absence?

2 A. Yes.

3 Q. Okay. And while he was on that leave of absence,
4 were you all planning on doing the same things that you had
5 done with the Jerry Summers leave of absence?

6 A. Yes.

7 Q. You were going to continue to investigate the
8 case?

9 A. Yes.

10 Q. Did the Defendant know at that time he was not
11 going to be allowed to operate at Baylor again?

12 A. Yes.

13 Q. That was communicated to him?

14 A. Yes.

15 Q. Did the Committee request that the Defendant take
16 another drug test, after the Kellie Martin case?

17 A. I don't remember.

18 Q. I'm showing you State's Exhibit 80. Do you
19 recognize that?

20 A. That's the -- yes. This is dated 15 March.

21 Q. Okay. So this was March 15th of 2012?

22 A. Yes.

23 Q. And that would have been after Kellie Martin's
24 surgery.

25 A. Yes.

1 Q. Okay. And are these the drug test results from
2 the Defendant's drug test after that case?

3 A. Yes.

4 Q. And it was three days later?

5 A. Yes.

6 *MISS SHUGHART:* We would offer State's
7 Exhibit 80.

8 *MRS. LEHMANN:* We have our 404(b) objection,
9 Your Honor.

10 *THE COURT:* Okay. Overruled. It will be
11 admitted.

12 Q. (*By Miss Shughart*) So, Dr. Sample, when we look
13 at this, we can see that it's the Defendant's drug test,
14 right? It's got his name.

15 A. Yes.

16 Q. And we can see the date.

17 A. Yes.

18 Q. And can you tell the jury what the results were.

19 A. "Negative for drugs dilute" which means it's a
20 failed drug test.

21 Q. And can you explain to the jury why "diluted"
22 means it's a failed drug test?

23 A. It means the specific gravity of the liquid
24 testing was too diluted to be identified as urine.

25 Q. And, in your training and experience, what does

1 that mean?

2 A. It's tap water.

3 Q. Okay. And so is it the policy of the hospital
4 that if you have a diluted drug test that it's considered
5 failed?

6 A. Yes.

7 Q. Okay. Now, a few days later, did the Defendant
8 have another drug test?

9 A. Yes.

10 Q. And he passed that one?

11 A. Yes.

12 Q. And are there certain drugs that get out of your
13 system during that time frame?

14 A. Yes.

15 Q. Okay. You mentioned earlier the Defendant was
16 asked to take another leave of absence while y'all were
17 investigating.

18 A. Yes.

19 Q. Did the Defendant ask you to be reinstated at the
20 hospital?

21 A. Yes.

22 Q. I'm showing you State's Exhibit 81. Do you
23 recognize that?

24 A. Yes.

25 Q. Okay. And is that the letter that the Defendant

1 sent to the hospital asking to be reinstated?

2 A. Yes.

3 Q. And did he send that to you?

4 A. Yes.

5 *MISS SHUGHART:* We'd offer State's Exhibit
6 81.

7 *MRS. LEHMANN:* Our 404(b) objection, Your
8 Honor.

9 *THE COURT:* Be admitted.

10 Q. (By Miss Shughart) And this letter, when is it
11 dated?

12 A. 12 April, 2012.

13 Q. So that's exactly a month after Kellie Martin
14 died?

15 A. Yes.

16 Q. Were the Defendant's privileges reinstated at the
17 hospital?

18 A. No.

19 Q. And why not?

20 A. Well, the information from the Committee to Dr.
21 Duntsch was he was not now, nor would he ever operate at
22 Baylor Plano.

23 I was a little surprised by the letter. I actually
24 dismissed it.

25 Q. So when he sent y'all this letter, he had already

1 been told he wasn't going to be allowed to operate there
2 again?

3 A. That's correct.

4 Q. Dr. Sample, I'm going to show you State's Exhibit
5 82. Do you recognize what that is?

6 A. Yes. This looks like a request for information
7 from another hospital to the Peer Review Committee, Baylor
8 Plano, about Dr. Duntsch's privileges and credentials at
9 Baylor Plano.

10 Q. Okay.

11 *MISS SHUGHART:* We would offer State's
12 Exhibit 82.

13 *MRS. LEHMANN:* Just other 404(b) objection,
14 Your Honor.

15 *THE COURT:* Overruled. Admitted.

16 Q. *(By Miss Shughart)* Dr. Sample, can you kind of
17 explain to the jury, why do hospitals make this request?

18 A. When somebody applies for credentials at a new
19 hospital, there's a long list of things they have to submit:
20 their credentials, training, previous experience and if
21 they've been -- and a list of all the hospitals that they've
22 ever had privileges at.

23 Q. And so when we look at this letter, we can see
24 that it's dated April 16th of 2012; is that right?

25 A. April 16th?

1 Q. Uh-huh.

2 A. Yes.

3 Q. And is it written to you? It says "Chairman".

4 A. Yes.

5 Q. And does it basically indicate to your hospital
6 that he is applying for privileges at Methodist McKinney
7 hospital?

8 A. Yes.

9 Q. And in it, does it indicate that the Defendant has
10 told them that he has two patients that are currently under
11 peer review at your facility?

12 A. Yes.

13 Q. So this shows us that he's applying to another
14 hospital and that he is aware he is under peer review for
15 two cases.

16 A. Yes.

17 Q. Do you know if the Defendant was told the results
18 of the peer review on the Jerry Summers case?

19 A. Yes.

20 Q. What do you know?

21 A. I told Dr. Duntsch personally that the Summers
22 case didn't meet the standard of care; that I had grave
23 concerns about his operative technique and judgment; that
24 the plans of the Peer Review Committee was to review the
25 case in detail and submit recommendations to the Medical

1 Executive Committee with regard to his continued privileges
2 and credentials at the hospital.

3 Q. Okay. And what about on the Kellie Martin case,
4 was he told the results of the peer review on that?

5 A. Yes.

6 Q. And how was that done?

7 A. My remembrance is that the medical staff president
8 did that personally, by telephone, to Dr. Duntsch.

9 Q. Okay. And then did the Defendant resign his
10 privileges on April 20th?

11 A. Yes. That's my remembrance, yes.

12 Q. And I'm showing you what's marked as State's
13 Exhibit 84.

14 Is that the Defendant's resignation letter?

15 A. Yes, that's correct.

16 *MISS SHUGHART:* Offer State's Exhibit 84.

17 *MRS. LEHMANN:* No objection, other than our
18 404(b) objection.

19 *THE COURT:* All right. Be admitted.

20 Q. *(By Miss Shughart)* When we look at this letter,
21 what is the reason that the Defendant gives for resigning?

22 A. Moving his practice to a different location.

23 Q. But in fact he had just asked to be reinstated on
24 his privileges eight days before this; is that correct?

25 A. That's correct.

1 Q. Why does a person resign their privileges at a
2 hospital -- why, in this case, did the Defendant resign his
3 privileges at the hospital, if you know?

4 A. I don't know.

5 Q. Okay. If the Defendant had not resigned his
6 privileges and, instead, the hospital had refused to renew
7 his privileges, what sort of consequences does that have?

8 A. Well, he'd have to report that, if he made
9 application to any other hospital.

10 Q. And does that get reported to the national
11 databank?

12 A. I'm not sure of the requirements for reporting to
13 the national databank.

14 Q. Okay. If you had done something formal, where the
15 hospital had actually kicked him out, would that have to be
16 reported to the national databank?

17 A. Yes.

18 Q. Okay. And do doctors generally know this?

19 A. Yes.

20 Q. And do they sometimes resign so that doesn't
21 happen?

22 A. Yes.

23 Q. Okay. Have you ever seen anything like these two
24 cases before, in your career?

25 A. No.

1 Q. And how long have you been doing this?

2 A. Forty-five years.

3 Q. And what makes them so different?

4 A. A failure to recognize the consequences of the
5 surgery. Accidents happen in surgery. Every surgical
6 procedure has got a mortality rate associated with it. But
7 there were two events too close together that were very
8 disturbing.

9 Q. And you've never seen anything like that before?

10 A. No.

11 MISS SHUGHART: We'll pass the witness.

12 CROSS EXAMINATION

13 BY MRS. LEHMANN:

14 Q. Dr. Sample, I don't know if it's been made clear
15 to the jury what this national database is.

16 The National Practitioner Database. Can you explain
17 what that is.

18 A. I wouldn't consider myself an authority on that.

19 Q. That's okay. I'm sure you're familiar with it.

20 A. I'm familiar with it.

21 Q. Okay.

22 A. There are certain reporting requirements that a
23 hospital has to make on a physician, if there's a change in
24 the physician's member status. If a physician's privileges
25 are taken away, for any reason, then that is a reportable

1 event. There are other events.

2 Q. Okay. So, for instance, if Baylor decided to take
3 away Dr. Duntsch's privileges, Baylor would have to report
4 that.

5 A. Depends on the circumstances.

6 Q. Okay. Well, we're talking about two surgeries:
7 Kellie Martin and Jerry Summers, which you describe as very
8 disturbing. You have grave concerns about Dr. Duntsch.

9 Wouldn't you have to report that, if you decided to
10 take away his privileges, because of your opinion about his
11 surgical abilities?

12 A. I don't know the answer to that.

13 Q. You have grave concerns about Dr. Duntsch.

14 A. I do.

15 Q. You don't want him operating at your hospital.

16 A. Right.

17 Q. But you don't think other hospitals should know
18 about that?

19 A. I think they should.

20 Q. Okay. And that's what the National Practitioner
21 Database does.

22 A. Inadequately, it does.

23 Q. It's better than saying nothing, though, isn't it?

24 A. In this case, it would, yes. But physicians have
25 also been reported for failure to complete medical records.

1 So it's not a perfect system, is what I'm getting at.

2 Q. It's not a perfect system, but it's better than
3 saying nothing.

4 A. That's correct.

5 Q. And Baylor said nothing.

6 A. I don't know the answer to that.

7 Q. You know that they didn't report Dr. Duntsch --
8 your hospital did not report Dr. Duntsch to the National
9 Practitioner Database.

10 A. I don't know that.

11 Q. Now, apparently, there was some conversation
12 between people at Baylor and Dr. Duntsch about how he wasn't
13 going to perform surgeries anymore; is that correct?

14 A. Yes.

15 Q. That wasn't put in writing.

16 A. Correct. I didn't put it in writing.

17 Q. If it was put in writing, then you would have
18 certain obligations -- Baylor. When I say "you" I mean
19 Baylor.

20 A. Yes. After the cases had been reviewed in detail.

21 Q. Okay. You don't tell a surgeon "you're not
22 operating in our hospital anymore" unless you have reviewed
23 his cases in detail.

24 A. Some detail.

25 Q. In this particular case, Baylor did. And did

1 review Kellie Martin and did review Jerry Summers; is that
2 correct?

3 A. Yes, that's correct.

4 Q. After that deliberate review of those two cases,
5 then Baylor went to Dr. Duntsch and said, "You're not
6 operating here anymore."

7 A. Yes.

8 Q. Verbally.

9 A. Yes.

10 Q. Not in writing.

11 A. Yes.

12 Q. And there's a reason why that happened that way.
13 Isn't that true?

14 A. Well, from my aspect, I wanted him to know that
15 minute. I didn't take the time to write it out. I told him
16 face-to-face, " Stop. You're not operating here anymore."

17 Q. Right. Because you had grave concerns about him.

18 A. I did.

19 Q. But not grave enough that you're going put it in
20 writing. And not grave enough that you would report it to
21 the National Practitioner Database.

22 A. That was our recommendation, from the Peer Review
23 Committee to the Medical Executive Committee, that these --
24 that he be reported to the Texas State Board of Medical
25 Examiners.

1 Q. You are part of the Peer Review Committee, as well
2 as the Medical Executive Committee at Baylor; is that right?

3 A. That's correct.

4 Q. And when I hear that, it leads me to believe that
5 one of your primary jobs is to make sure that the doctors at
6 your hospital are good and they are practicing medicine at a
7 high caliber; is that correct?

8 A. That's correct.

9 Q. And I'm sure you have contacts with people at the
10 Texas Medical Board; is that correct?

11 A. No.

12 Q. You don't?

13 A. I do not.

14 Q. You don't know anyone there?

15 A. No.

16 Q. Okay. Do you know anyone that works for the
17 National Practitioner Database?

18 A. No.

19 Q. You've never communicated with them?

20 A. Never.

21 Q. You've never reported a doctor to them?

22 A. No.

23 Q. Do you know if Baylor has?

24 A. I don't know.

25 Q. Do you know if anyone at Baylor knows how to do

1 that?

2 A. I don't know.

3 Q. So if you have a doctor at Baylor that you think
4 isn't good enough for your patients, you're okay with just
5 passing 'em off to another hospital?

6 A. No.

7 Q. That's what happened in this case; isn't that
8 correct?

9 A. I don't know.

10 Q. Have you heard of Ms. Efurd?

11 A. No.

12 Q. Doctor, I want to go through some dates. Do you
13 recall that Jerry Summers' surgery was on February 2nd,
14 2012?

15 A. Yes.

16 Q. Does that seem accurate?

17 A. Yes.

18 Q. Okay. And then February 14th, 2012, Baylor
19 notified Dr. Duntsch that Mr. Summers' case was selected for
20 peer review.

21 A. Yes.

22 Q. Okay. And then February 29th, 2012, Dr.
23 Duntsch, he takes a voluntary leave of absence.

24 A. Yes.

25 Q. And then March 1st, 2012, Baylor contacts Dr.

1 Nace to do an evaluation on Dr. Duntsch.

2 A. Yes.

3 Q. Okay. And, as a side note, Dr. Nace is someone
4 that you respect.

5 A. Yes.

6 Q. You respect his opinions?

7 A. Yes.

8 Q. If he says Dr. Duntsch doesn't have a substance
9 abuse problem, you trust that opinion?

10 A. Yes.

11 Q. If he says Dr. Duntsch doesn't have psychiatric
12 problems, you trust that opinion?

13 A. Yes.

14 Q. If he says Dr. Duntsch can operate, you trust that
15 opinion?

16 If he says he's fit, psychologically, to be a medical
17 doctor and surgeon, you trust that opinion?

18 A. Yes.

19 Q. Now, on March 6th, 2012, you have a telephone
20 conference with Dr. Nace.

21 A. Yes.

22 Q. March 9th, 2012, Dr. Nace informs Baylor that
23 Dr. Duntsch has no substance abuse problems and he has no
24 psychiatric problems.

25 A. Yes.

1 Q. March 12th, 2012, that's Kellie Martin's surgery.

2 A. Yes.

3 *MISS SHUGHART:* Judge, we would ask that the
4 Defense be required to ask questions instead of just making
5 statements.

6 *MRS. LEHMANN:* I'm trying to avoid excessive
7 verbiage, Judge. If the State's insisting that I say,
8 "March 12th, 2012 is when Kellie Martin had a surgery,
9 right?" -- if that's a question for them, that I can add
10 "right" I don't think that's necessary, when the inflection
11 to the doctor, he seems to understand, that I'm asking a
12 question.

13 *THE COURT:* Overruled. Let's move on.

14 Q. (By Mrs. Lehmann) March 22nd, 2012, that's when
15 Dr. Duntsch takes his voluntary leave of absence; is that
16 correct?

17 March 22nd, 2012. Does that sound right, Doctor?

18 A. Yes.

19 Q. Okay. April 18th, 2012, the Medical Executive
20 Committee determines that the standard of care was not met
21 in the Summers case and the Martin case.

22 A. Yes.

23 Q. April 20th, 2012, Baylor sends a letter to Dr.
24 Duntsch stating that all investigations are closed. Baylor
25 does not disclose the findings that the standard of care was

1 not met in the Summers case and the Martin case.

2 A. I don't think that was in the letter.

3 Q. Okay. I'm showing you, Doctor, what's been marked
4 as Defendant's Exhibit Number 3.

5 Do you recognize that letter?

6 A. Yes.

7 Q. Okay. Does it refresh your memory regarding the
8 contents of the communications about the findings in regard
9 to the Summers case and the Martin case?

10 A. Yes.

11 Q. Okay. And --

12 *MRS. LEHMANN:* Defense will offer Defendant's
13 Exhibit Number 3.

14 *MISS SHUGHART:* No objection.

15 *THE COURT:* Be admitted.

16 Q. (*By Mrs. Lehmann*) So, Doctor, let's take a look
17 at this letter.

18 Okay. So, this is a letter to Dr. Duntsch and it's
19 from Patricia Sproles.

20 Who is she?

21 A. Medical staff secretary.

22 Q. And in this letter she is telling him that the
23 investigation with respect to any areas of concern regarding
24 Dr. Duntsch are closed.

25 And what does the last paragraph say?

1 A. The one that starts "As of this day...?"

2 Q. Yes.

3 A. (Reading) "...there have been no summary or
4 administrative restrictions or suspensions of Dr. Duntsch's
5 medical staff membership or clinical privileges during the
6 time that he has practiced at Baylor Regional Medical Center
7 Plano."

8 Q. Well, what does that mean?

9 A. It means exactly what he says.

10 Q. Okay. When I read it -- and tell me if this is
11 accurate -- I understand that to mean there are no problems
12 with Dr. Duntsch.

13 A. I wouldn't read it that way.

14 Q. Okay. Well, if there was a concern about him and
15 his performance as a surgeon, shouldn't it be in this
16 letter?

17 A. The letter's to Dr. Duntsch. He already knew.

18 Q. This letter doesn't talk about the findings, the
19 conclusions, that Baylor came to regarding Summers and
20 Martin. Isn't that true?

21 A. They are not in this letter. That's correct.

22 Q. Do you remember receiving a letter from him, from
23 Dr. Duntsch, dated May 24th, 2012?

24 Doctor, I'm showing you what's been marked as
25 Defendant's Exhibit Number 6. I'll let you review that.

1 Please, let me know if you recognize it.

2 *(Brief pause in proceedings.)*

3 *THE WITNESS:* Yes, I do.

4 Q. *(By Mrs. Lehmann)* Okay. And that's a letter from
5 Dr. Duntsch, addressed to you.

6 A. Yes.

7 Q. Okay.

8 *MRS. LEHMANN:* We'll offer Defendant's
9 Exhibit Number 6.

10 *MISS SHUGHART:* Your Honor, my objection is
11 going to be it's a highlighted copy. If they have a clear
12 copy, that will be fine.

13 *MRS. LEHMANN:* It doesn't change the content
14 of the letter. No different than using --

15 *MISS SHUGHART:* Your Honor, it's highlighted
16 with Defense counsel's specific highlights.

17 *THE COURT:* All right. Let's have an
18 unaltered copy. It will be admitted.

19 *MRS. LEHMANN:* Well, Judge, I will need
20 additional time to get one.

21 *THE COURT:* That's fine. You can still
22 publish it for the witness, but not the jury.

23 *MRS. LEHMANN:* Okay.

24 Q. *(By Mrs. Lehmann)* So, Doctor, can you tell the
25 jury, just in summary for now, what that letter says.

1 A. It's a long letter.

2 Q. Sure.

3 A. I can give you my interpretation of what it says.
4 My interpretation was that Dr. Duntsch's attorney wrote this
5 letter. He says: (Reading) "I was never in fact furnished
6 any findings of the Peer Review Committee." Wrong. I
7 talked to him directly what the findings were.

8 Q. Let me ask you a question then. Okay?

9 A. Okay.

10 Q. In that letter, is he requesting that you provide
11 him with information regarding Baylor's findings with regard
12 to Ms. Martin's surgery and Jerry Summers?

13 A. That may be down here in the letter somewhere,
14 yeah.

15 Q. May I take a look, please.

16 A. Yeah.

17 Q. Thank you. Okay. Since I can't publish this at
18 this time, would you agree that this letter says: (Reading)
19 "On several subsequent occasions I was told I would be
20 furnished with the results of this review...?"

21 And he's referring to Jerry Summers. Is that accurate?

22 A. Yes.

23 Q. Okay. (Reading) "But as you are aware, I was
24 never in fact furnished with any findings of the Peer Review
25 Committee, and I was never given any opportunity to respond.

1 Instead, I was simply allowed to return to surgical
2 practice."

3 Did I read that accurately?

4 A. Yes.

5 Q. And then he says: (Reading) "Regarding the
6 surgical case of Kellie Martin, I was informed there would
7 be a similar Peer Review investigation...and after that
8 meeting, there was no further communication..."

9 He's referring to a meeting with -- is that Dr.
10 Marcucci?

11 A. Marcucci.

12 Q. And Patricia Sproles. (Reading) "...after that
13 meeting, there was no further communication regarding the
14 matter of any kind. I was never advised of any findings of
15 any investigations, or any criticisms of my care and
16 treatment of either Mr. Summers and Mrs. Martin.

17 "I was subsequently informed that all investigations
18 were closed, and that I was in good standing with Baylor at
19 all times during my medical practice there. I resigned from
20 Baylor in good standing on April 20th, 2012."

21 Is that correct?

22 A. That's what the letter says.

23 Q. And that's accurate?

24 A. No.

25 Q. Well, we just saw a letter --

1 A. You mean, is the letter accurate?

2 Q. He did receive a letter from Baylor that did not
3 indicate he had any problems. Isn't that true? We just
4 looked at it.

5 A. Yes, that's correct.

6 Q. And he voluntarily resigned. Baylor did not take
7 his privileges away. Isn't that true?

8 A. That's correct.

9 Q. Okay. So we just finished talking about Dr.
10 Duntsch resigns on April 20th, 2012. Then May 24th,
11 2012, he requests information. We just reviewed that
12 letter.

13 And then on August 31st, 2012, you send a letter to
14 Dallas Medical Center.

15 Do you remember that?

16 A. Yes.

17 Q. Okay. Do you remember the contents of that
18 letter?

19 A. No.

20 Q. Is that the letter, Doctor (indicating)?

21 A. Yes.

22 Q. Okay. And in this letter, Baylor is responding, I
23 guess -- responding to Dallas Medical Center regarding a
24 request for information.

25 A. Yes.

1 Q. Okay. And Baylor provides him -- provides Dallas
2 Medical Center with information about Dr. Duntsch.

3 A. Yes.

4 Q. And what kind of information do you provide them
5 in that letter?

6 A. It was the results of a peer review investigation
7 of the two cases.

8 Q. Okay. And you tell them essentially what you told
9 the jury today about Baylor's conclusions regarding Dr.
10 Duntsch's performance in the Martin case and the Summers
11 case.

12 A. Yes.

13 Q. Okay. Is this the first time Baylor contacted
14 Dallas Medical Center?

15 I guess, responded to their request for information on
16 Dr. Duntsch?

17 A. Could you repeat the question for me.

18 Q. Sure. Is August 31st, 2012, the date of this
19 letter, where you tell Dallas Medical Center about Dr.
20 Duntsch's performance as a surgeon, is this the first time
21 you've communicated with them?

22 Or did you or Baylor have any communications with
23 Dallas Medical Center before, regarding Dr. Duntsch?

24 A. I'm not aware of any.

25 Q. Doctor, this is State's Exhibit 82, which has

1 already been admitted. That's the letter from Methodist to
2 you -- to Baylor, requesting information on Dr. Duntsch.

3 Did you get anything like that from Dallas Medical
4 Center?

5 A. I don't remember.

6 Q. Okay. If a doctor is applying for privileges at a
7 hospital, you being -- Baylor being a hospital where Dr.
8 Duntsch has previously had privileges, would you expect to
9 get a letter like this?

10 A. Yes.

11 Q. From the prospective hospital.

12 A. Yes.

13 Q. Because they want to know if is this a good
14 doctor, right?

15 A. Yes.

16 Q. Does he have any problems.

17 A. Yes.

18 Q. This is the whole point of Methodist or Dallas
19 Medical Center, any hospital, seeking information from a
20 former hospital, right?

21 A. Right.

22 Q. Okay. You'd agree that Dr. Duntsch was
23 cooperative with Baylor through all the investigations:
24 Baylor's request that he go see Dr. Nace, all that stuff, he
25 was cooperative.

1 A. Yes.

2 Q. Now -- and he would go do the UAs, whenever you
3 requested. Isn't that true?

4 A. Yes.

5 Q. Okay. And UA, I mean urinalysis, right?

6 A. Yes.

7 Q. The State talked about a diluted drug test --

8 A. Repeat that, please.

9 Q. A diluted drug test. They admitted it as State's
10 Exhibit 80.

11 Doesn't that really just mean there's too much water in
12 the urine sample?

13 A. No.

14 Q. Okay. Could you explain that.

15 A. It means that the dilution is such that it would
16 be impossible to be urine.

17 Q. Okay. So you're saying that someone's actually
18 pouring tap water into a urine sample, instead of urine?

19 Is that what you're saying?

20 A. No. All I'm saying is that it's not urine. How
21 it got -- it's not urine.

22 Q. Did Baylor ever request a hair sample from Dr.
23 Duntsch?

24 A. Not that I know of.

25 Q. You could have done that.

1 A. I'm not aware of that.

2 Q. Okay. But, it was possible.

3 A. I'm not aware of that. That test usually takes a
4 long time to get back.

5 Q. Well, we're talking about a doctor's reputation
6 and his livelihood, right?

7 A. Yes.

8 Q. You would wanna take your time and be careful.

9 A. I think that's what we were doing.

10 Q. And a more accurate test would be a hair test
11 versus a urine test.

12 A. I'm not sure it's more accurate.

13 Q. Doctor, I'm showing you Defendant's Exhibit
14 Number 8. It's a timeline of the events that we've
15 discussed today.

16 Would you please review that and tell me if it's an
17 accurate summary of the dates that we've discussed today.

18 A. (Witness complies.)

19 *(Brief pause in proceedings.)*

20 *THE WITNESS:* Can you tell me what that
21 shorthand is right there (indicating).

22 Q. *(By Mrs. Lehmann)* "Not. Not."

23 A. So that says: (Reading) "MEC determines standard
24 of care not met in the Summers and Martin" --

25 Q. Yes.

1 A. Okay.

2 (Brief pause in proceedings.)

3 THE WITNESS: There's a -- it says:

4 (Reading) "Baylor does not disclose findings re: Summers and
5 Martin..."

6 Disclose to who?

7 Q. (By Mrs. Lehmann) In the letter. The letter
8 dated April 20th, 2012, that we discussed earlier.

9 A. Oh, to Dr. Duntsch?

10 Q. Yes.

11 A. Okay.

12 (Brief pause in proceedings.)

13 THE WITNESS: The only thing I would add is
14 "Baylor does not disclose the findings 'in this letter'..."

15 Q. (By Mrs. Lehmann) Okay. Other than that -- if I
16 add that, would this be an accurate timeline?

17 A. I think so.

18 Q. Okay. So I added "Baylor does not disclose in
19 this letter findings regarding Summers and Martin".

20 Is that accurate?

21 A. Yes.

22 MRS. LEHMANN: Okay. Defense will offer
23 Defendant's Exhibit Number 8.

24 MISS SHUGHART: No objections, Your Honor.

25 THE COURT: Be admitted.

1 Q. (By Mrs. Lehmann) So, Doctor, you don't know when
2 Baylor received any request for information from Dallas
3 Medical Center regarding Dr. Duntsch?

4 You don't know that, when that happened?

5 A. No.

6 Q. The letter you sent on August 31st, 2012, was a
7 response to a request from Dallas Medical Center for
8 information.

9 A. Yes.

10 Q. So we know that, at some point, they did reach out
11 to Baylor and ask for information on Dr. Duntsch.

12 A. That letter would have been in response to a
13 request, yes.

14 Q. Now, earlier, you talked about a letter -- and I
15 believe the State admitted it.

16 It was a letter to a Sunnyvale hospital regarding a
17 request for information from Dr. Duntsch.

18 Do you recall that?

19 A. I do not.

20 Q. Okay. I might be thinking about the Methodist
21 request.

22 Let me show you Defendant's Exhibit Number 5. That
23 appears to be a letter from Baylor to Linda White at Texas
24 Regional Medical Center at Sunnyvale.

25 Have you seen that letter before?

1 A. I don't remember seeing this letter. But it looks
2 like a pretty standard request for information.

3 Q. Okay. That's fine, Doctor. Would you agree that
4 hospitals are extremely cautious, when it comes to getting
5 in the way of a doctor's career?

6 A. No.

7 Q. Well, if there's a problem, it looks like it
8 doesn't always get written down. Isn't that true?

9 A. No.

10 Q. If there was a conversation with a doctor, where
11 you are saying you're not going to operate in this hospital
12 anymore, that doesn't get written down?

13 A. My conversations do.

14 Q. It doesn't get reported so that other hospitals
15 can know.

16 A. There is a process for reporting, yes. But the
17 information is confidential, just like patient information
18 is confidential. It has to be protected.

19 Q. But there comes a point where it's not
20 confidential anymore and things are reported.

21 A. It's always confidential.

22 Q. Well, information disclosed to the National
23 Practitioner Database isn't confidential.

24 A. That is correct.

25 Q. And what has to happen for Baylor, or any other

1 hospital, to decide that other people should know about a
2 surgeon?

3 A. If after review, that question is specifically
4 asked: Does a physician governing body need to know this
5 information?

6 It was the recommendation from the Peer Review
7 Committee that this information be reported to the Texas
8 State Board of Medical Examiners.

9 Q. Okay. I'm a little confused.

10 A. Okay.

11 Q. It happens a lot, so don't take it personally.
12 So, are you saying that the Peer Review Committee or this
13 Medical Executive Committee decides when something needs to
14 be reported to the National Practitioner Database? Is that
15 what you're saying?

16 A. Yes.

17 Q. And in this case Baylor decided that Dr. Duntsch's
18 surgeries did not compel you to make that report?

19 A. I can't answer that question.

20 MRS. LEHMANN: I'll pass the witness.

21 MISS SHUGHART: Just a few questions, Your
22 Honor.

23 **REDIRECT EXAMINATION**

24 **BY MISS SHUGHART:**

25 Q. Dr. Sample, I just want to clear up a couple of

1 things.

2 We were just talking about the databank, but you had
3 said the Texas Medical Board, right?

4 The peer review -- or is it the Medical Executive
5 Committee -- decided to report it to the Texas Medical
6 Board; is that right?

7 A. Yes.

8 Q. Y'all weren't talking about the national databank?

9 A. No.

10 Q. You don't deal with the databank.

11 A. No.

12 Q. It was your Committee's decision to report it to
13 the Texas Medical Board?

14 A. Yes.

15 Q. And that's in the peer review records.

16 A. Yes.

17 Q. Okay. And the -- let's explain to the jury a
18 little bit about how the process goes, when other hospitals
19 are asking you about your physicians.

20 So, in order to let other hospitals know, they have to
21 request the information from you; is that correct?

22 A. That's correct.

23 Q. And what do you do, in response to that?

24 A. We give any information that we have.

25 Q. Okay. And when you give that information, is it

1 just -- originally, just kind of a generic letter saying,
2 yes, he had privileges here and, yes, investigations were
3 closed or that there are no pending investigations?

4 A. Could you restate that, please.

5 Q. Sure, of course. I guess, what I'm getting at is,
6 when hospitals get -- are asking for information from other
7 hospitals, is there a process where they have to
8 specifically request peer review information?

9 A. Yes.

10 Q. How does that happen? How does that go?

11 A. We would get a letter saying, "Are there any
12 adverse peer review determinations for this physician?"

13 Q. So it's kind of my understanding -- and please
14 correct me if I'm wrong -- that there is an original letter
15 from hospital A asking hospital B if this surgeon worked
16 there and was in good standing; and hospital B responds,
17 yes, he used to work here and was in good standing or fine
18 standing when he left.

19 But you have to request specifically peer review
20 information; is that correct?

21 A. Yes.

22 Q. And so hospital A has to send another letter back
23 to hospital B saying, "Please give us the peer review
24 stuff."

25 Is that right?

1 A. Yes.

2 Q. And does sometimes the surgeon has to sign off on
3 whether that peer review stuff gets sent back?

4 A. Always.

5 Q. Okay. So, it's confidential, right?

6 A. Yes.

7 Q. And that's why the surgeon has to sign off on
8 their peer review records being given back to hospital A.

9 A. That's correct.

10 Q. Okay. I'm going to show you State's Exhibit 83.
11 I believe the Defense showed it to you as one of their
12 exhibits, but it wasn't offered.

13 Is that the same letter they showed you earlier?

14 A. Yes.

15 Q. Okay. This is the August 31st of 2012 letter?

16 A. Yes.

17 *MISS SHUGHART:* I'd offer State's Exhibit 83.

18 *MRS. LEHMANN:* No objection, other than our
19 404(b).

20 *THE COURT:* It will be admitted.

21 Q. *(By Miss Shughart)* So, Dr. Sample, if the jury
22 looks closely at this letter -- and they can take it back
23 with them -- this has all the information that you've been
24 telling us about, how the Defendant did not meet the
25 standard of care; is that correct?

1 A. Yes.

2 Q. Okay. And this was going to Dallas Medical
3 Center?

4 A. Yes.

5 Q. And it was from you?

6 A. Yes.

7 Q. And it's got all the information on both patients?

8 A. Yes.

9 Q. Is this the letter that Baylor was sending out to
10 all the hospitals, when they were requesting peer review
11 information, something similar to this?

12 A. Yes.

13 Q. And when a hospital receives a letter like this,
14 what does that tell them?

15 A. It should tell 'em there's a problem physician
16 applying to their staff.

17 Q. So a hospital that's receiving this is going to
18 know we have a bad physician here?

19 A. Yes.

20 Q. Okay. So earlier, when you were being asked by
21 the Defense, well, shouldn't this be reported to the
22 national databank, you said that that's not the best way.

23 What is the best way?

24 A. The Texas State Board of Medical Examiners.

25 Q. The Texas Medical Board, which your Committee

1 recommended should be reported, right?

2 A. (Witness nods.)

3 Q. And would you agree that these specific letters
4 that go out to the hospitals telling exactly what happened
5 with a surgeon, that's also a really good way?

6 A. Yes.

7 Q. And that's better than just the national databank?

8 A. Yes.

9 Q. And that's what Baylor was in fact doing.

10 A. Yes.

11 Q. Okay. So when we look at Defendant's Exhibit 3,
12 this is the letter from April 20th, that was written by
13 Patty Sproles, did you know that the Defendant hired an
14 attorney to negotiate this letter?

15 A. No.

16 Q. Okay. And in this letter, it's actually very
17 specific, isn't it?

18 I mean, it says "there has been no summary or
19 administrative restrictions" right?

20 A. Yes.

21 Q. And that's true, isn't it?

22 A. Yes.

23 Q. The Defendant wasn't technically restricted by
24 Baylor. He took a leave of absence on his own.

25 A. That's correct.

1 Q. In lieu of Baylor having to restrict him.

2 A. Yes.

3 Q. Okay. So this is the Defendant's choices that
4 this didn't happen.

5 A. That's correct.

6 Q. And it is in fact true that all investigations
7 were closed. Isn't that right?

8 A. Yes.

9 Q. But there were investigations.

10 A. Yes.

11 Q. And is this letter, in any sort of way, meant to
12 go out to other hospitals? I mean, who's it addressed to?

13 A. Dr. Duntsch.

14 Q. It's not addressed to any hospitals that he's
15 applying for.

16 A. That's correct.

17 Q. If you are asking other hospitals, they would be
18 getting this other letter.

19 A. That's correct.

20 Q. And State's Exhibit 6, where the Defendant is
21 asking you about the peer review findings, that's not
22 exactly true, is it?

23 A. No.

24 Q. Okay. Why is it not true?

25 A. Because he was told by me.

1 Q. Okay. So when he says in here that he was not
2 told the final decisions of the peer review, it's kind of
3 technically correct, because it means he wasn't formally
4 told, right?

5 A. Yes.

6 Q. He wasn't given a paper by Baylor saying, "You did
7 not meet the standard of care in each one of these cases."

8 A. Right.

9 Q. And he was not called back into the Peer Review
10 Committee after he had resigned to be told this, right?

11 A. Right.

12 Q. Okay. But in fact he was told in person.

13 A. Yes.

14 Q. He was told orally by you.

15 A. Yes.

16 Q. And he knew the results of that. So even though
17 he's claiming in that letter he doesn't, he actually does.

18 A. He does.

19 *MISS SHUGHART:* We'll pass the witness, Your
20 Honor.

21 **REXCROSS EXAMINATION**

22 **BY MRS. LEHMANN:**

23 Q. There's a reason why you didn't formally tell Dr.
24 Duntsch about the findings with regard to Summers and
25 Martin, isn't there?

1 A. Repeat the question again.

2 Q. Isn't there a reason why you didn't formally
3 inform Dr. Duntsch about Baylor's finding with regard to
4 Ms. Martin's surgery and Mr. Summers' surgery?

5 A. Yes. He was -- had already resigned from the
6 staff --

7 Q. Forgive me for cutting you off. So there is a
8 reason why you didn't put it in writing for him?

9 A. The time frame, please.

10 Q. Okay. On April 18th, 2012, that's when the
11 Medical Executive Committee determined that Summers and
12 Martin did not meet the standard of care.

13 That's correct, right? That was April 18th, 2012.

14 A. The Medical Executive Committee determined the day
15 after the Martin case that he didn't meet the standard of
16 care.

17 Q. Okay.

18 A. And it was reported to Dr. Duntsch verbally and
19 expeditiously.

20 Q. Okay. And then -- but just referring to your
21 letter, the August 31st letter, 2012, in that letter you
22 state on April 18th, 2012: (Reading) "The Medical
23 Executive Committee determined that two cases referenced
24 above did not meet the standard of care," referring to
25 Summers and Martin.

1 A. That's correct.

2 Q. So, theoretically, y'all could have shot him an
3 email with that. You could have sent him a letter, right?

4 A. When?

5 Q. April 18th, 2012.

6 A. I don't understand your question. Could you
7 repeat it for me.

8 Q. You could have sent him an email or a letter on
9 April 18th, 2012, documenting your findings. But you
10 didn't.

11 A. They would have been incomplete. We didn't have
12 the medical examiner's final report.

13 Q. Now, in order for you to write a letter like the
14 one that you wrote on August, 31, 2012 to Dallas Medical
15 Center, you would have to receive consent from the doctor in
16 question; isn't that right?

17 Where you're describing the peer review outcome, you
18 have to get the doctor's consent to this.

19 A. The doctor gave his consent to the other hospital,
20 when he applied for privileges.

21 Q. Okay. So he's saying to Dallas Medical Center, go
22 ahead, I'm an open book, right?

23 That's what a consent is, to disclose information.

24 A. He has no choice but to do that, if he applies.
25 It's part of the application process.

1 Q. Okay. Even though he has no choice, you don't say
2 anything until he signs that form and you receive it.

3 You're saying it's inevitable, right?

4 A. No.

5 Q. If he wants to work, he's got to sign that
6 consent.

7 A. I'm confused with the pronouns here.

8 Q. Okay. If Dr. Duntsch wants to work, he has to
9 sign the consent form.

10 A. That's correct. The consent for information?

11 Q. Yes. From Baylor.

12 A. Yes.

13 Q. Yes. And that information that you're saying is
14 privileged, y'all could decide -- Baylor could decide to
15 disclose it, though, on your own.

16 A. No.

17 Q. Maybe not to Dallas Medical Center, but to the
18 Texas Medical Board, to the National Practitioner Database.

19 You have the authority to do that, without his consent.
20 Isn't that true?

21 A. Yes.

22 *MRS. LEHMANN:* I'll pass the witness.

23 *MISS SHUGHART:* Nothing further for this
24 witness, Your Honor.

25 *THE COURT:* Thank you, Doctor.

1 MISS SHUGHART: May he be excused?

2 MRS. LEHMANN: We have no objection.

3 THE COURT: All right. Ladies and Gentlemen
4 of the Jury, let's take our afternoon break at this time.
5 Be back in ten minutes.

6 THE BAILIFF: All rise.

7 *(Members of the Jury retire to the jury
8 room.)*

9 *(Recess had.)*

10 *(Defendant present in the courtroom.)*

11 THE COURT: Okay. Let's line 'em up.

12 THE BAILIFF: All rise.

13 *(Members of the Jury enter the courtroom.)*

14 THE COURT: Thank you. Please, be seated.
15 State may proceed.

16 MR. McCANTS: State will call Rob Crain, Your
17 Honor.

18 THE COURT: Proceed.

19 *(Witness sworn by the Court.)*

20 THE COURT: Proceed.

21 **ROB CRAIN,**

22 the witness hereinbefore named, having been duly sworn by
23 the Court, testifies under oath as follows:

24 **DIRECT EXAMINATION**

25 **BY MR. McCANTS:**