

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Petitioner,

v.

S232639

SUPERIOR COURT OF RIVERSIDE COUNTY,  
Respondent,

SUPREME COURT  
FILED

HOSSAIN SAHLOLBEI

Real Party in Interest.

JUL 13 2016

Frank A. McGuire Clerk

Fourth Appellate District, Division Two, NO. E062380  
Riverside County Superior Court No. INF1302523  
The Honorable Michael J. Naughton  
Department 3N

Deputy

**OPPOSITION TO THE PEOPLE'S PETITION FOR WRIT OF  
SUPERSEDEAS; APPLICATION FOR STAY OF TRIAL PRESENTLY  
SET TO BEGIN ON AUGUST 29, 2016**

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Respondent, Hossain Sahlolbei, M.D. (“Dr. Sahlolbei”) hereby opposes the People’s Petition for Writ of Supersedeas (“the Petition”), filed June 21, 2016, in the present case, *People v. Superior Court (Hossain Sahlolbei)*, California Supreme Court case number S232639. This Opposition is based on the Memorandum of Points and Authorities below as well as the record before the Court in case number S232639.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I.**

#### **INTRODUCTION**

The People charged Dr. Sahlolbei in September 2013, and he has been waiting for a speedy trial – as is his constitutional right – ever since, for nearly three years. Now the People propose to delay his trial on the sole surviving count of the Information even further, for two more years or even more depending upon this Court’s docket. Dr. Sahlolbei’s constitutional and statutory interest in a speedy trial far outweighs the meager interests articulated by the People.

When Dr. Sahlolbei prevailed at his preliminary hearing and the trial court dismissed the People’s meritless Government Code section 1090 charges, the People stubbornly filed an information with the same charges again, forcing Dr. Sahlolbei to wait until the trial court granted his Penal Code section 995 motion to dismiss the charges once again. Then Dr. Sahlolbei waited for more than a year while the People pursued a writ challenging that dismissal, which the Court of Appeals soundly rejected for multiple reasons. Now, having lost in two courts and made Dr. Sahlolbei await trial for 33 months, the People demand that he wait again so they can press their argument further.

The trial court is intimately familiar with this case, its facts, and its equities. That court agreed that Dr. Sahlolbei should not have to wait any further, and after

weighing the relevant factors, granted his motion to lift the stay and set a trial date. This Court should not disturb that ruling. Dr. Sahlolbei's trial on the sole remaining count of the information will not interfere with this Court's jurisdiction to hear the issue before it, and the People's arguments for further delay are insubstantial.

## II.

### PERTINENT FACTS

#### **A. Dr. Sahlolbei's Relationship with The Hospital and Dr. Barth**

The People themselves presented evidence of the following facts at the preliminary hearing on this matter. The relevant pages of the transcript are attached hereto as Exhibit A.

Palo Verde Hospital ("the Hospital") is a hospital district and a public entity under California law. (Exh. A at 92.) Dr. Sahlolbei worked as an independent contractor for the Hospital.

Dr. Bradley Barth ("Dr. Barth") testified that he worked as a subcontractor for Dr. Sahlolbei at the Hospital in 2006 and 2007. (Exh. A at 42-43.) He left the Hospital, and thereafter learned that Dr. Sahlolbei had been paid more for Dr. Barth's services than Dr. Sahlolbei had passed on to him, an arrangement he regarded as "shrewd." (Exh. A at 99.)

In 2009, Dr. Sahlolbei contacted Dr. Barth and asked if he would be willing to return to the Hospital. (Exh. A at 46-47.) Dr. Barth testified that Dr. Sahlolbei told him that Dr. Sahlolbei had the contract to provide anesthesia services at the Hospital and could subcontract Dr. Barth to provide those services. (Exh. A at 47-48.) In June 2009, Dr. Sahlolbei sent Dr. Barth a draft June contract that suggested that Dr. Barth would work for Pars Surgery, Inc., Dr. Sahlolbei's corporation. (Exh. A at 50-51.) The People presented evidence that Dr. Sahlolbei did not have a contract from the Hospital to provide anesthesia at the time. (Exh. A at 130.)

Soon after Dr. Barth arrived at the Hospital in September 2009, Dr. Sahlolbei explained that rather than their original arrangement, Dr. Barth would have a contract *directly* with the Hospital, and then a separate contract with Dr. Sahlolbei's business, Pars Surgery. (Exh. A at 61-62.) Dr. Sahlolbei provided a modified contract between Dr. Barth and Pars Surgery, and Dr. Barth signed it. (*Ibid.*) Under the new contract ("the October 2009 Contract"), rather than Pars Surgery paying Dr. Barth directly, the Hospital paid Dr. Barth, Dr. Barth would give his Hospital paychecks to Pars Surgery, and Pars would then pay Dr. Barth the amount he had been promised under the June 2009 contract. (Exh. A at 64-65.) The Hospital subsequently provided Dr. Barth with a *direct* contract, which he signed. (Exh. A at 69-70.) Dr. Barth testified that he deposited his Hospital paychecks in the Pars Surgery account and received a check from Dr. Sahlolbei. (Exh. A at 72-73.)

Dr. Barth decided to sign both the October 2009 Contract with Dr. Sahlolbei and the direct contract with the hospital. (Exh. A. at 104.) At the time, he understood that he would be depositing his Hospital checks with Dr. Sahlolbei and Dr. Sahlolbei would be paying him a lesser amount. (*Ibid.*) He also understood that he would have a direct contractual relationship with the Hospital rather than a subcontractor of Dr. Sahlolbei. (Exh. A at 105-106.) Dr. Barth accepted the contracts because he was going to be paid what he had been promised based on the original June 2009 contract; the particular method was "moot" to him and he was getting what he wanted from the contractual relationship. (Exh. A at 107.) In addition, ***Dr. Barth admitted that he received benefits from the contract with Dr. Sahlolbei that he did not receive from the Hospital contract.*** First, Dr. Sahlolbei guaranteed the Hospital's promise of payment. (Exh. A at 107.) Second, Dr. Sahlolbei paid for Dr. Barth's coverage at the Hospital when Dr. Barth was away;

under the Hospital contract, Dr. Barth had to pay for that himself. (Exh. A at 107-108.)

**B. The Hospital's Decision To Give Dr. Barth The Contract**

Peter Klune, former CEO of the Hospital, testified that Dr. Sahlolbei negotiated Dr. Barth's 2009 contract on Dr. Barth's behalf. (Exh. A at 90, 109.) Mr. Klune thought that the contract asked for too much, and the Hospital hired a third party valuation expert to give a range of acceptable values for Dr. Barth's compensation. (Exh. A at 111.) The expert reported back that the compensation fell into the 90<sup>th</sup> percentile for cost, but was legal under applicable restrictions. (*Ibid.*) Mr. Klune testified that Dr. Barth's higher pay was reasonable in part because Dr. Barth was an anesthesiologist, representing an upgrade in the quality of care previously presented by the Hospital's Certified Nurse Resident Anesthetist. (Exhibit A at 111-112.) Moreover, Mr. Klune testified that it was difficult to recruit qualified doctors to Blythe and that the Hospital understood it might have to spend more than metropolitan areas would. (Exhibit A at 133-134.)

James Carney, a former member of the Hospital's Board, testified that the Board talked to Dr. Barth and arrived at a contract that was acceptable to Dr. Barth and the Board, and that he had so reported to the Board in a public meeting in 2009. (Exhibit A at 255-256.)

**C. Pertinent Procedural History**

The People charged Dr. Sahlolbei in a four-count criminal Complaint in September 2013. The Complaint included Count One, charging a violation of Government Code section 1090, on the theory that Dr. Sahlolbei was a government official covered by Section 1090 and made a contract in which he had a financial interest. That is the Count on which this Court has accepted review. The Complaint also included Count Two, charging a violation of Penal Code section

487(a) for theft by fraud in 2009. (See Exhibit B hereto.) That is the Count set for trial on August 29, 2016.

After a preliminary hearing, Superior Court Judge Dale Wells dismissed three of the four counts of the Complaint – all but Count Two. Judge Wells agreed with Dr. Sahlolbei that under *People v. Christiansen* (2013) 216 Cal.App.4th 1181, review den. (Aug. 28, 2013), Section 1090 did not apply to an independent contractor like Dr. Sahlolbei for purposes of criminal charges. The People re-filed all four counts in an Information, and Dr. Sahlolbei moved to dismiss it pursuant to Penal Code section 995. On September 30, 2014, Judge Michael J. Naughton granted that motion in part, dismissing the same three counts again and agreeing that under *Christiansen* an independent contractor like Dr. Sahlolbei is not criminally liable under Section 1090.

The People subsequently filed a petition for writ of mandate to the California Court of Appeal, challenging the dismissal of Count One based on a question of interpretation of Section 1090. The trial court granted the People's motion for a stay of proceedings on Count Two pending that proceeding over Dr. Sahlolbei's objection. The Court of Appeal affirmed, both under *Christiansen* and for the independent reason that the People did not show that Dr. Sahlolbei made any contract in his official capacity. This Court granted the People's petition for review. Subsequently, on June 3, 2016, the trial court granted Dr. Sahlolbei's motion to lift the stay on proceedings concerning Count Two, and set a trial date for August 29, 2016. In doing so, the trial court considered and rejected the People's arguments for further delay, which amounted to the same arguments they make here.

The People then sought, and obtained over Dr. Sahlolbei's objection, leave to amend the Information to change the putative victim of the theft charged in Count Two from Dr. Barth to the Hospital, on the dubious theory that Dr. Sahlolbei



stole money by taking it from Dr. Barth without telling the Hospital, even though it was with Dr. Barth's consent.

### III.

#### ARGUMENT

Dr. Sahlolbei has now waited almost *three* years since his arrest to go to trial. He waited fourteen months while the People pursued their writ in the Court of Appeal. Now the People want him to wait even longer while this Court reviews the Court of Appeal's denial of the People's writ petition. The People's extreme delay of Dr. Sahlolbei's case is unfair, prejudicial, and an affront to Dr. Sahlolbei's constitutional and statutory rights to a speedy trial.

The People advance three arguments in support of their Petition. The People contend: (1) piecemeal litigation of Dr. Sahlolbei's charges leads to potential confusion and possible prejudice to the People; (2) because the evidence underlying the self-dealing and theft charges are "nearly identical," a trial on the theft charge alone will result in unnecessary duplication of presentation of evidence, resultant court congestion, and imposition of hardship on witnesses; and (3) because Dr. Sahlolbei is charged with an enhancement, calculation of his penalty, if convicted, will be hindered because the enhancement provides for varying penalties depending on the number of related felony counts charged. (Pet. 8.) All of these lack merit.

As an initial matter, the People's first contention, that piecemeal litigation of Dr. Sahlolbei's charges will lead to potential confusion and possible prejudice to the People, is baseless. The People provide absolutely no explanation of how confusion or prejudice will arise if Dr. Sahlolbei's self-dealing and theft charges are litigated separately. The elements of the theft charge and Section 1090 charge are different, and when Dr. Sahlolbei is found not guilty on the theft charge – as he expects – that will not preclude the People from trying him on the Section 1090

charge in the unlikely event they prevail in this court. On this basis alone the Court should reject this contention—the People cannot expect to simply raise an argument without providing any concrete explanation in support thereof.

The People's concern about waste of time and resources similarly rings hollow. The People have devoted massive resources of their own, and imposed heavily on the courts' resources, by appealing their losses twice. They do not claim – and could not – that the trial would be particularly lengthy or complex; repeating it does not weigh heavily on the scales.

The People's concern about sentencing is also meritless. They do not explain in particular what sentence they would seek that they could not achieve in the extremely unlikely event that Dr. Sahlolbei is convicted twice, nor do they explain why that strategic consequence of their appellate campaign should outweigh Dr. Sahlolbei's right to a speedy trial.

Even if the Court finds some merit to any of the People's contentions, the unfairness that would result to Dr. Sahlolbei would substantially outweigh any benefit of staying the trial. Again, Dr. Sahlolbei has already waited nearly three years for his case to be heard, and if the People's application for stay is granted, he will be forced to endure even more waiting. The People contend that an order to stay Dr. Sahlolbei's trial would only “minimally inconvenience” him (Pet. 8). This statement is offensive and frankly ridiculous. Dr. Sahlolbei, a citizen, suffers the stigma of a felony charge, and the People want to prevent him from vindicating himself. The felony charge makes it impossible for him to seek other employment if he wanted to and interferes with his ability to renew malpractice insurance essential to his practice. Meanwhile, Dr. Sahlolbei's life is circumscribed by the People's draconian asset freeze under Penal Code section 186.11. Further, the People's demand comes in the context of charges concerning events in 2009. The more time elapses, the more witnesses will die or move away, documents will be

destroyed, and memories will fade. If the People have their way Dr. Sahlolbei might not go to trial until 10 years after the events at issue.

The People's contention that they will suffer prejudice if their application is denied is purely speculative—they provide no explanation whatsoever to support this claim. By contrast, Dr. Sahlolbei will indisputably be prejudiced if his trial is further delayed. A stay of Dr. Sahlolbei's trial is clearly unwarranted. He has waited long enough.

IV.

CONCLUSION

Based on the following, Dr. Sahlolbei respectfully requests that the Court deny the People's Petition.

Dated: July 6, 2016.

Kenneth White

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**CERTIFICATE OF WORD COUNT**

Case No. S232639

Pursuant to California Rules of Court, Rule 14(c)(1), the undersigned certifies the text in this brief consists of 2,885 words as counted by the Microsoft Word 2016 word processing program used to generate the brief.

Dated: July 6, 2016.



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**DECLARATION OF SERVICE BY MAIL**

Case No. S232639

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 333 South Hope Street, 40<sup>th</sup> Floor, Los Angeles, California 90071.

On July 6, 2016, I served the following document(s) described as:  
**OPPOSITION TO THE PEOPLE'S PETITION FOR WRIT OF SUPERSEDEAS; APPLICATION FOR STAY OF TRIAL PRESENTLY SET TO BEGIN ON AUGUST 29, 2016** in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

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- BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 6, 2016, at Los Angeles, California.



Sharlene Khadavi

# EXHIBIT A

SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

HOSSAIN SAHLOLBEI, M.D.,

Defendant.

AUG 01 2014

**G. MORROW**

Case No. INF1302523

Volume 1 of 2  
Pages 1 to 173

REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

BEFORE THE HONORABLE DALE R. WELLS

July 21, 2014

APPEARANCES:

For the Plaintiff:

OFFICE OF THE DISTRICT ATTORNEY  
By: WILLIAM E. ROBINSON  
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For the Defendant:

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Reported by:

KATHLEEN SMITH, CSR No. 11501

**COPY**

KATHLEEN SMITH, CSR

1 Palo Verde Hospital, facility. Hospital desires to secure a  
2 director of anesthesia at the facility.

3 Director is duly licensed to practice medicine in the  
4 State of California.

5 Pursuant to the provisions of California Health and  
6 Safety Code section 32126.5, the hospital board of directors has  
7 determined that, in order to serve the best interests of the  
8 public health of the community and to provide quality patient  
9 care in a cost-effective and efficient manner, it is necessary  
10 for hospital to contract with director to provide services at  
11 the facility.

12 Q. Can you tell us what all that means?

13 A. Well, director -- department director of a hospital  
14 serves some administrative duties for the hospital, and I think  
15 the department directors are required under California state  
16 law. And so I was going to be the director of the tiny  
17 anesthesia department at Palo Verde Hospital.

18 Q. Is it common to have a director over a certain  
19 departments within a hospital?

20 A. Yeah. I think it is common.

21 Q. I'm going to next draw your attention to under  
22 "Agreement," Section 1, where it says, "Director's Obligations"  
23 and then "Services." Can you read that for us.

24 A. Directors's obligations. Services. During the term of  
25 this agreement, director shall attend any and all meetings  
26 within the facility that director is asked to attend by  
27 facility's chief executive officer, the CEO; and perform such  
28 other duties at the facility as may from time to time be



1 reasonably requested by facility's medical staff and the CEO.

2 Q. There is an exhibit attached to this contract on Bates  
3 Stamp No. 003904, and that's Exhibit A, where it says,  
4 "Anesthesia Director's Duties." Do you see that?

5 A. Yes.

6 Q. Can you read that for us.

7 A. Director anesthesia services. Director shall serve as  
8 the medical director of anesthesia services at facility while  
9 this agreement is in effect. Director's duties as director  
10 shall include:

11 Supporting the implementation of the anesthesia and  
12 surgical services departments' and daily operations of the same;

13 Participate in the monthly meetings of the surgery  
14 committee;

15 Two, communication with physicians regarding the status  
16 of individual patients as appropriate;

17 Three, participating in the educational programs  
18 conducted by facility and its medical staff in order to assure  
19 facility's overall compliance with accreditation and licensing  
20 requirements, and performing such other reasonable teaching  
21 functions as hospital may request;

22 Four, directing non-physician department personnel in  
23 the performance of professional services for patients;

24 Five, advising hospital with respect to the selection,  
25 retention, and termination of all personnel who may be required  
26 for the proper operation of the department; provided, however,  
27 that hospital shall retain the ultimate decision-making  
28 authority regarding the selection, retention, and termination of

1 obligations of the director's duties as spelled out in the  
2 contract.

3 Q. Were you ever asked by Dr. Sahlolbei to perform -- I'm  
4 sorry -- to sign off on paperwork indicating that you performed  
5 anesthesia duties under a directorship when you really didn't do  
6 the work?

7 A. Well, yeah. There's a form that has to be filled out  
8 in order to get the checks, and the form has a list of duties  
9 which may be considered administrative. You have to check off  
10 how many hours you did in certain duties, and so when I was  
11 first asked to fill the form out, I filled it out according to  
12 what I thought I had done.

13 But it was either Dr. Sahlolbei or possibly the medical  
14 staff director, a lady named Bonnie, who is the medical staff  
15 coordinator, brought the forms back to me and said they weren't  
16 filled out adequately because it had to contain at least 15  
17 hours of duties per month in order for it to be reimbursed. And  
18 I really couldn't see how I had done 15 hours. I was unable to  
19 fill out the form to be adequately reimbursed.

20 So the lady, the medical staff coordinator, Bonnie  
21 Brown, filled those out for me, and, you know, I really didn't  
22 think what was filled out was correct. But Dr. Sahlolbei asked  
23 me to sign those papers and I did. And they were eventually  
24 reimbursed.

25 Q. Dr. Barth, do you recall the interview by an  
26 investigator with my office by the name of Dan stack?

27 A. Yes.

28 Q. In January of 2013?

1 A. Yes.

2 Q. Do you recall that interview being conducted in your  
3 home in Blythe?

4 A. Yes. That's right.

5 MR. ROBINSON: Your Honor, may I approach?

6 THE COURT: Yes.

7 Q. BY MR. ROBINSON: Do you recall being asked about the  
8 directorship and the various responsibilities under the  
9 directorship that were assigned to you and whether or not you  
10 actually performed those tasks?

11 A. Yes.

12 Q. Do you think looking at a copy of the narrative of the  
13 report that was generated after the interview was done would  
14 help refresh your recollection about whether or not to what  
15 extent you actually performed those tasks?

16 MR. WHITE: Objection. No lack of recollection has  
17 been established.

18 THE COURT: Sustained.

19 Q. BY MR. ROBINSON: Dr. Barth, did you ever at any time  
20 tell an investigator with my office that the directorship was  
21 fake or bogus?

22 A. Well, I don't know if technically it was bogus, but it  
23 kind of seemed that way to me.

24 Q. Can you tell us --

25 A. The reason I say that is that -- I believe now that  
26 I've worked in perhaps seven or eight different hospitals in the  
27 U.S., and in every one of those hospitals, I was the director of  
28 anesthesia because they've all been small hospitals. And almost

1 all of the time, I was the only anesthesiologist in those  
2 hospitals, and so I've been the director of anesthesia many  
3 times. And there was never any reimbursement for it.

4 And so these forms where you have to fill out the  
5 duties that you actually performed to receive compensation, the  
6 way they eventually got filled out and signed by myself was  
7 bogus to the extent that there were many checkmarks made for  
8 hours of work where I don't think I did the work. It doesn't  
9 really represent what I actually did, and yet I signed those  
10 papers anyway at Dr. Sahlolbei's request because there was some  
11 reimbursement involved and so --

12 Q. Do you recall saying that you hadn't really done the  
13 assignments?

14 A. Well, yeah. That's true.

15 Q. So it's true that you hadn't really done the  
16 assignments?

17 A. Right. You know, without having those forms in front  
18 of me, I can't recall what all the duties were; but they're  
19 things like public relations and staff education. And, you  
20 know, it's showing I did an hour back here, an hour back there,  
21 where, no, I didn't really do those things. Dr. Sahlolbei said  
22 to me, "Well, you know, any time you talk to a nurse, that's  
23 staff education. Well, you know, any time you talk to a patient  
24 or patient's family, that's public relations." I don't know if  
25 that's true either.

26 Under the terms of the agreement, what constitutes  
27 administrative work, I can't really say, but the way that those  
28 forms were filled out was essentially kind of phony and bogus.

1 things to sign which would result in checks being issued, you  
2 know, for several months of these duties; and I refused to sign  
3 them just because I felt uncomfortable about signing them  
4 because I didn't feel they were not right. That's what I told  
5 her, "I think this is some kind of fraud," and so it wasn't  
6 discussed after that.

7 Q. Did you have a conversation with Dr. Sahlolbei about  
8 your refusal to sign?

9 A. No, not after that last conversation with Bonnie Brown,  
10 no.

11 Q. Did Dr. Sahlolbei ever approach you and ask you to sign  
12 back-dated paperwork indicating that you attended meetings and  
13 completed assignments that you didn't do?

14 A. Yeah. I believe so. Yes.

15 Q. Can you tell us when that happened?

16 A. Not exactly. There were two main times when I was  
17 presented with a stack representing several months of  
18 administrative duties to sign off on, and I did sign off on.

19 Q. Present by Dr. Sahlolbei?

20 A. Yeah. Once by Dr. Sahlolbei. And I believe the second  
21 time, it was Bonnie Brown that presented me the papers.

22 Q. Did you refuse when Dr. Sahlolbei approached you about  
23 signing?

24 A. Yeah. Well, we had a discussion about it because, you  
25 know, I felt like these things that I was, you know, checking  
26 off the boxes and signing -- if I was going to do it, you know,  
27 accurately, according to what I thought my actual work I had  
28 done, he wouldn't reimburse because there had to be some 15

1 hours of duties. In which the average month, I just didn't see  
2 that I was doing 15 hours worth of work. There were maybe one  
3 or two meetings a month to go to, maybe an hour each; and then  
4 all these other administrative duties that I supposedly had been  
5 doing, staff education, you know, it just didn't seem to me that  
6 I had done, 15 hours of that type of work.

7 Q. And was the \$3,000 a month directly tied to you  
8 performing that 15 hours' worth of work?

9 A. Yes.

10 Q. Was Dr. Sahlolbei -- did he appear to be upset when you  
11 refused to sign on that occasion that he approached you asking  
12 you to sign backdated paperwork, indicating that you had  
13 completed work that you hadn't?

14 A. Yeah. There was a little bit of a low-key argument  
15 about it. That's when he was telling me any time that I talked  
16 to a patient that's public relations work on behalf of the  
17 hospital and any time I talked to a nurse or a tech, that's --  
18 that's considered to be education of hospital staff, which, you  
19 know, I didn't see that.

20 So the bottom line is that for the first year and a  
21 half that I was there, I signed these papers that I felt  
22 uncomfortable with. I didn't fill out the boxes myself on the  
23 time spent on administrative duties. They were filled out, I  
24 believe, by Bonnie Brown and presented to me by either  
25 Dr. Sahlolbei or by Bonnie Brown for my signature.

26 So I signed several of those like that, but then at a  
27 certain point, I stopped signing them because I was feeling  
28 uncomfortable that what I was doing was fraudulent.

1           And during the endoscopy, he stopped breathing and was  
2 turning blue, which means that you have a very short period of  
3 time before he's likely to have a cardiac arrest. And I asked  
4 Dr. Sahlolbei to remove the scope from his mouth so that I could  
5 resuscitate him, and Dr. Sahlolbei was not removing the scope.  
6 And he persisted several seconds. He did not appear to be  
7 making any move to remove the scope, so I took the scope out of  
8 the patient's mouth, used artificial resuscitation to start his  
9 breathing again. And the patient did fine.

10           Dr. Sahlolbei got very angry at me, saying that I was  
11 prejudiced, that I would never have done that to a white  
12 surgeon; and he was very angry, yelling; and within the hour, he  
13 had issued a letter suspending my privileges at the hospital.  
14 So that's the nature of that suspension.

15           Q.   Were you ever disciplined again after that?

16           A.   Yes, I was.

17           Q.   Can you tell us about that.

18           A.   Maybe a month and a half after that -- well, see, I was  
19 suspended; and then we had a meeting. And my privileges were  
20 reinstated. We had a meeting with the medical executive  
21 committee and the hospital administrator, so my privileges were  
22 reinstated later that day.

23           Then like a month and a half later, after I had been  
24 having ongoing negotiations with the hospital about a new  
25 contract, basically the new contract was almost finalized. All  
26 the terms were agreed to, and the hospital administrator sent me  
27 a letter saying that I was terminated, that they weren't going  
28 to do the new contract; and so I was finished.

1 My attorney called the hospital attorney, and they both  
2 agreed that --

3 MR. WHITE: Objection. Hearsay.

4 MR. ROBINSON: I'm going to stop you there, Dr. Barth.

5 THE COURT: Sustained.

6 Go ahead.

7 Q. BY MR. ROBINSON: So you were terminated, and was that  
8 by the hospital?

9 A. The hospital administrator.

10 Q. Who was that at the time?

11 A. It was a man named Larry Blitz.

12 Q. And was he the new chief executive officer?

13 A. Yeah. He was an interim chief executive officer. He  
14 had been there several months -- well, a few months. He'd been  
15 there a few months.

16 Q. Did he replace Peter Klune?

17 A. Right.

18 Q. Was it indicated why you were being terminated?

19 A. Well, I believe that the letter indicated that they  
20 needed to have a contract in place and I wasn't cooperative or  
21 whatever, so I was terminated.

22 Q. I'm sorry. The last part I didn't hear that.

23 A. I was terminated. It was just a termination letter,  
24 stating that they were contracting with a new anesthesia service  
25 and I was no longer needed.

26 MR. ROBINSON: Thank you.

27 I have no further questions at this time.

28 THE COURT: Okay. Mr. White.



1 MR. WHITE: A-h-m-a-d.

2 THE WITNESS: Early in 2007. And I can't remember the  
3 exact time of that conversation, but he was in the process of  
4 leaving Palo Verde Hospital.

5 Q. BY MR. WHITE: And he tried to warn you off working  
6 with Dr. Sahlolbei; right?

7 A. Right.

8 Q. He told you if you did, you would regret it?

9 A. Yeah. We had both been working at the hospital for  
10 some time, and he said, "You should get out as soon as you can,  
11 or you'll be leaving here crying." That's what he said to me.

12 Q. So sometime later in 2008, the hospital itself  
13 approached you about possibly coming back; correct?

14 A. In 2008?

15 Q. That was my question. Yes.

16 A. I think it was in late 2007. You could be right.

17 Q. Well, the hospital sent you a proposed contract to  
18 bring you back; correct?

19 A. Yes.

20 Q. And you sent that contract on to Dr. Sahlolbei;  
21 correct?

22 A. At his request, yeah.

23 Q. And he gave you thoughts about it?

24 A. Yeah. We talked about it on the phone briefly.

25 Q. But you decided not to take that direct contract that  
26 was offered from the hospital; right?

27 A. I had never intended to take it.

28 Q. And one of the reasons you didn't intend to take it was

1 you weren't confident that the hospital could reliably pay you;  
2 correct?

3 A. No. That had nothing to do with it.

4 Q. Well, and you thought there was too much strife and  
5 disagreement at the hospital?

6 A. I had no intention of going back to the hospital at  
7 that time. It just didn't seem like a good place to work.

8 Q. But you did send the contract to Dr. Sahlolbei;  
9 correct?

10 A. Yeah. Dr. Sahlolbei called me and told me that they  
11 would be sending me a contract. He said to me that he had been  
12 talking to them and he wanted me to cooperate with this thing.  
13 They were going to be sending me a contract. I told him I  
14 wouldn't be coming back to work there. He said, "That's okay."  
15 Just look at the contract, and it's never going to be finalized  
16 anyway," something along those lines.

17 Q. So eventually you did come back, as you testified  
18 today, in October of 2009; correct?

19 A. Yeah.

20 Q. It was during that time sometime that Jim Carney called  
21 you and asked you some questions on the phone; correct?

22 A. Right. It was within a couple of weeks of my starting  
23 work there in October of 2009.

24 Q. It was after you came, you believe?

25 A. Yes.

26 Q. Could it have been before?

27 A. No.

28 Q. All right. And he, you testified on direct, seemed to

1 there when I arrived because there was some overlap. The first  
2 day I was there, there was still a CRNA there working, and we  
3 worked together that day. The CRNA was required to proctor my  
4 practice. In other words, according to the hospital's bylaws,  
5 I'm starting there fresh. I have to be proctored by another  
6 provider. So that nursing anesthetist watched me do a couple of  
7 cases and then signed off on those cases, and that constitutes  
8 proctoring.

9 Q. Have you completed your answer, Doctor?

10 A. Yes.

11 Q. Thank you. So the day that you signed this second  
12 contract with Dr. Sahlolbei in 2009 --

13 A. Yes.

14 Q. -- you understood that there would be a new  
15 relationship; correct?

16 A. Right.

17 Q. You understood that now that you would be having a  
18 direct contract with the hospital?

19 A. Right.

20 Q. And you were expecting that contract to come?

21 A. Yes.

22 Q. And you understood that you were supposed to take the  
23 checks the hospital paid you and deposit them in to the Pars  
24 Surgery account; correct?

25 A. Yes.

26 Q. And you didn't object that day?

27 A. No.

28 Q. You didn't go to the hospital administration to

1 complain?

2 A. No.

3 Q. You didn't try to sue to overturn the contract?

4 A. No.

5 Q. In fact, Dr. Sahlolbei offered you that day, when you  
6 saw signed, an opportunity to go consult with a lawyer before  
7 you signed it?

8 A. Yes, he did.

9 Q. He even offered to pay for you to see a lawyer?

10 A. I don't think so.

11 Q. You decided to go through and sign the contract?

12 A. Yes.

13 Q. Later -- you said it was after that that the hospital  
14 approached you to sign contracts?

15 A. Right. They presented the two contracts that are in  
16 evidence in late November or early December 2009.

17 Q. So it's your testimony that it was after the meeting  
18 with Dr. Sahlolbei?

19 A. Weeks after.

20 Q. And, once again, you saw that the hospital was going to  
21 be paying you \$24,000 a month?

22 A. Yes.

23 Q. Excuse me. Yes. That's right. 24,000.

24 A. Well, I saw that when I was presented with those two  
25 contracts by the hospital by Peter Klune.

26 Q. And you understood that the hospital was paying -- what  
27 the hospital was going to pay you, you were going to deposit  
28 that amount into Pars Surgery's account; right?

1 A. Right.

2 Q. And Dr. Sahlolbei was going to pay you back a lesser  
3 amount?

4 A. Right.

5 Q. The ratio of how much the hospital paid versus how much  
6 you got was roughly the same, you thought, as it was in 2006;  
7 correct?

8 A. Yeah. When I saw the contracts later, I looked at it;  
9 and, yeah, it was pretty much the same.

10 Q. So you decided to sign these contracts with the  
11 hospital?

12 A. Right.

13 Q. You didn't refuse to sign them?

14 A. No.

15 Q. You didn't go back to Dr. Sahlolbei and say, "This is  
16 off"?

17 A. No.

18 Q. You didn't complain to the hospital about the  
19 contracts?

20 A. No.

21 Q. You signed them because they assured that you would be  
22 paid; correct?

23 A. Right.

24 Q. And you thought that as long as you had guaranteed  
25 payment, the particular structure was moot to you?

26 A. Right.

27 Q. And, in fact, you sent a letter to Dr. Sahlolbei's  
28 attorney saying that as long as I got money --

1 MR. ROBINSON: Objection. Hearsay.  
2 THE COURT: Okay. Hold on. There's an objection.  
3 Overruled.  
4 I'm going to let him finish the question. I'll reserve  
5 a ruling at that point.  
6 MR. WHITE: I'll withdraw the first part of the  
7 question, Your Honor.  
8 THE COURT: Thank you.  
9 Q. BY MR. WHITE: The way you saw it, you were getting  
10 what you wanted from the contractual relationship?  
11 A. Right. The amount that I agreed to when I was still in  
12 Missouri was the amount I was getting under this new  
13 arrangement, and I was okay with that.  
14 Q. And, in addition, Dr. Sahlolbei was guaranteeing you  
15 payment separate from the hospital?  
16 A. Yeah. I suppose so.  
17 Q. Now do you recall testifying on direct that  
18 Dr. Sahlolbei didn't, under the contracts, provide any services  
19 to you?  
20 A. I was asked about the provision providing services and  
21 equipment and so forth. Yeah. That's right.  
22 Q. Dr. Sahlolbei did, however, pay for the coverage when  
23 you were away from the hospital; correct?  
24 A. He did.  
25 Q. And the hospital contract didn't require the hospital  
26 to pay for your coverage; correct?  
27 A. That's correct.  
28 Q. Under the hospital contract, you would have to pay out

1 of your own pocket the day-to-day coverage if you were away?

2 A. Well, that was also the terms in my contract with  
3 Dr. Sahlolbei. My understanding was that I was going to be  
4 paying for my own coverage. Contractually, I was supposed to  
5 pay for my coverage.

6 Q. But later, actually, Dr. Sahlolbei paid for your  
7 coverage?

8 A. He insisted to pay. Yes.

9 Q. He said it was his obligation under your arrangement?

10 A. He insisted that it was going to be his responsibility  
11 to pick the providers and to pay for them.

12 Q. Out of his pocket?

13 A. Mm-hmm.

14 Q. Now, you got along okay with Dr. Sahlolbei for awhile  
15 when returned; correct?

16 A. Yes.

17 Q. However, eventually, there was a time where there was a  
18 lot of tension between you?

19 A. Yes.

20 Q. The tension wasn't about what you already knew about  
21 this contractual relationship; correct?

22 A. No.

23 Q. One of the reasons for tension was that you didn't like  
24 the way he treated staff?

25 A. Well, yeah. I certainly had a problem with that  
26 ongoing, but, yeah. Mm-hmm.

27 Q. So you were extremely angry, in fact, about the way he  
28 treated staff?

1           A.    I wouldn't say I was extremely angry, but it bothered  
2 me that, you know, a person in a position of power was treating  
3 those who had no power in a way that I saw as abusive.

4           Q.    Would you please turn to Exhibit GG.

5           A.    Yes.

6           Q.    Do you see at the bottom of that page, there's an  
7 e-mail?

8           A.    Yeah.

9           Q.    That's an e-mail that you sent to Dennis Rutherford;  
10 correct?

11          A.    Yes.

12          Q.    In February of 2013?

13          A.    Mm-hmm.

14          Q.    That was after the relationship with Dr. Sahlolbei had  
15 soured?

16          A.    Yes.

17          Q.    And who is Mr. Rutherford?

18          A.    He was the chief financial officer of the hospital.

19          Q.    At that time?

20          A.    At this time, no. He would be the interim chief  
21 executive officer after Peter Klune was terminated.

22          Q.    All right. Now, you were complaining in this e-mail  
23 about Dr. Sahlolbei's treatment of some member of the staff;  
24 correct?

25          A.    Yeah.

26          Q.    Do you recall testifying a moment ago that you don't  
27 think you were extremely angry?

28          A.    Yeah.



1 Q. Mr. Klune, are you familiar with the Palo Verde  
2 Hospital?

3 A. I'm intimately familiar with the Palo Verde Hospital.

4 Q. Were you at one time employed as the chief executive  
5 officer of Palo Verde Hospital?

6 A. I was.

7 Q. When was that?

8 A. Approximately May 2009 to February of 2012 -- I'm  
9 sorry. 2013.

10 Q. Can you tell us a little bit about your training and  
11 experience that qualified you for the position.

12 A. I have been in the health care industry for three  
13 decades. I was prior a prior employee with Brim, B-r-i-m,  
14 Health Care just prior to coming to Palo Verde Hospital, and in  
15 that capacity, I was the vice president of operations for the  
16 western region, responsible for the operations of like-sized  
17 hospitals similar to Palo Verde Hospital.

18 Q. What were the circumstances of your hiring?

19 A. I was hired at Palo Verde Hospital by two board members  
20 when I was asked to fill a consulting assignment on a temporary  
21 basis. That temporary consulting assignment turned into an  
22 offer of permanent employment.

23 Q. What were your duties as CEO?

24 A. As CEO of Palo Verde Hospital, my duties were to  
25 circumspect operations of that hospital from quality to finance  
26 that had no limitation. I was responsible to a five-member  
27 publicly elected board of directors, and they were the  
28 authority. They were the final authority, and I was there at

1 Q. Is the Palo Verde Hospital a district hospital?

2 A. It is.

3 Q. And what's the significance of it being a district  
4 hospital?

5 A. As a district hospital, it's a public entity. It has  
6 to follow certain regulations in terms of its operation. It has  
7 open board meetings, and it has to subscribe to the various  
8 relations within the Brown Act.

9 Q. What's the size of the hospital?

10 A. The hospital is a 25-bed hospital.

11 Q. Relatively small?

12 A. It is relatively small. It was originally licensed for  
13 probably about 50 beds, but most hospitals have had a  
14 contraction. And Palo Verde, likewise, operates at a 25-bed  
15 even though its license probably states more.

16 Q. Does the Palo Verde Hospital receive public funds?

17 A. It does.

18 Q. And that's to help with operating income?

19 A. Correct.

20 Q. What was the condition of the hospital when you first  
21 arrived?

22 A. Chaotic.

23 Q. And why do you say that?

24 A. The hospital had \$400,000 in the bank with a looming  
25 payroll, a biweekly payroll of \$500,000. They had outstanding  
26 citations from the Department of Health, CMS and DHS. Those  
27 issues were not being addressed because there was no management.  
28 The prior management company, AHM, was no longer on the job. So

1 A. I'm sorry. Would you restate the question.

2 Q. Does the medical executive committee wield a certain  
3 power of discipline over the doctors that work at the hospital?

4 A. Yes. Most certainly.

5 Q. How so?

6 A. The medical executive committee has the right to  
7 discipline any physician on staff and even to kick that  
8 physician off the staff of the hospital.

9 Q. Would one of the ways in which that would happen be to  
10 suspend the privileges of a doctor?

11 A. Absolutely.

12 Q. Are you familiar with something called an 805 report?

13 A. Intimately.

14 Q. What is that?

15 A. That is a report that the -- in this case, the medical  
16 executive committee makes to the State of California -- I'm  
17 sorry -- the California Medical Board and informs them of a  
18 conduct or event involving a physician that they feel is  
19 dangerous or a problem.

20 Q. And are you aware of whether or not, once a report is  
21 made to the medical board, if that report has long-term  
22 consequences on that doctor and that doctor's ability to work at  
23 other hospitals?

24 A. Absolutely. Not only is it expensive for that doctor  
25 to defend, it takes a long time, and it is absolutely something  
26 that will follow a physician's resume.

27 Q. You indicated -- let me ask you this. Do you know Dr.  
28 Hossain Sahlolbei?

1 make that recommendation.

2 Q. In your experience, does the board also rely on the  
3 medical executive committee recommendations when it comes to the  
4 granting or suspending of privileges of doctors at the hospital?

5 A. Generally, yes.

6 Q. Can you tell us what does that mean when privileges are  
7 affected by a decision of the medical executive committee?

8 A. The medical executive committee may make a decision or  
9 suggest to the board -- frankly not suggest to the board, but  
10 will make a decision in their body that they wish to suspend a  
11 particular physician for whatever the reason. And that will  
12 have the effect of suspending that physician's privileges such  
13 that he is no longer able to admit patients or treat patients or  
14 see patients in the hospital.

15 Q. Does the medical executive committee make  
16 recommendations to the board about privileges that are later  
17 either affirmed or denied by the board?

18 A. Would you please repeat the question.

19 Q. I'm sure that was very confusing. I'm sorry.

20 Does the board of directors for the hospital, do they  
21 make decisions about privileges for doctors after being given a  
22 recommendation by the medical executive committee?

23 A. Yes.

24 Q. And then what about credentials? Does the medical  
25 executive committee make recommendations to the board about the  
26 credentialing of doctors?

27 A. Yes.

28 Q. And does the board ultimately make a decision about the

1 credentialing of doctors?

2 A. Yes.

3 Q. And does the board usually rely on the medical  
4 executive committee's recommendation about whether or not to  
5 credential a doctor?

6 A. Yes.

7 Q. So ultimately does the medical executive committee make  
8 recommendations to the board about issuing privileges and  
9 credentials to doctors?

10 A. Yes.

11 Q. Does the medical executive committee make  
12 recommendations about whether or not to deny privileges or  
13 credentials for doctors?

14 A. Yes.

15 Q. Does the medical executive committee make  
16 recommendations to the board about whether or not to suspend  
17 privileges or credentials for doctors?

18 A. Yes.

19 Q. Does the medical executive committee make  
20 recommendations to the board about whether to revoke privileges  
21 or credentials of doctors?

22 A. Yes.

23 Q. As the chief executive officer, did you become familiar  
24 with the bylaws of the Palo Verde Health Care District?

25 A. Yes.

26 MR. ROBINSON: Your Honor, may I approach?

27 THE COURT: Yes.

28 Q. BY MR. ROBINSON: I'm going to show you what's been --

1 or what will be marked as People's 18, marked for  
2 identification. If you can take a look at the that and read it  
3 quietly to yourself.

4 Does that look familiar?

5 A. It does.

6 Q. Can you tell us what that is.

7 A. The board, in addition to being subject to the laws of  
8 the State of California as a district hospital, also adopts  
9 their own structure, and that structure is laid out in the  
10 bylaws that the board adopts.

11 Q. And does this appear to be a true and accurate copy of  
12 the Palo Verde Health Care District Bylaws as of April 2006?

13 A. To the best of my knowledge, yes.

14 MR. ROBINSON: For the record, People's Exhibit 18  
15 contains a number of pages that are marked as Bates Stamp  
16 Nos. 006576 through 006584. I'm going to make specific  
17 reference to Bates No. 006582.

18 Q. BY MR. ROBINSON: And, Mr. Klune, I'm going to direct  
19 your attention to Article VIII, where it says, "Medical Staff"?  
20 Do you see that?

21 A. Yes, I do.

22 Q. Can you read that for us.

23 A. Organization. There shall be a medical staff  
24 organization for the hospital with appropriate officers and  
25 bylaws and with staff appoints on a biennial basis. The medical  
26 staff of the hospital shall be self-governing with respect to  
27 the professional work performed in the hospital. Membership in  
28 the medical staff organization shall be a prerequisite to the

1 exercise of clinical privileges in the hospital, except as  
2 otherwise specifically provided in the medical staff bylaws.

3 Q. And does that illustrate what you were speaking of with  
4 respect to doctors having to have privileges that were approved  
5 by the medical staff in order to be able to perform work at the  
6 hospital?

7 A. Yes, it does.

8 Q. Then I'm going to next draw your attention to Bates  
9 Stamp No. 006583 under the heading of "Quality Assurance,  
10 Medical Staff Membership and Clinical Privileges." I'm going to  
11 ask you to read from this point on. I'm going to put a bracket  
12 for the record in the area in the middle of the paragraph where  
13 I would like you to begin to start reading.

14 A. Final action on all matters relating to medical staff  
15 quality assurance, membership status, clinical privileges, and  
16 corrective actions shall be taken by the board after considering  
17 medical staff recommendations. The board shall utilize the  
18 advice of the medical staff in granting and defining the scope  
19 of clinical privileges to individuals, commensurate with their  
20 qualifications, experience, and present capabilities. If the  
21 board does not concur with a medical staff recommendation  
22 relative to any medical staff appointment, reappointment, or  
23 termination of appointment and granting or curtailment of  
24 clinical privileges, there shall be a review of the  
25 recommendation by a conference of two directors and two or other  
26 number members of the medical staff before the board renders a  
27 final decision. No applicant shall be denied medical staff  
28 membership and/or clinical privileges on the basis of sex, race,

1 creed, color, or national origin, or on the basis of any other  
2 criterion lacking professional justification.

3 Q. Mr. Klune, do the officers of the medical executive  
4 committee often consult the board on matters related to quality  
5 assurance?

6 A. Yes.

7 Q. Does the board rely, in your opinion, on the  
8 recommendations of the medical executive committee with respect  
9 to issues of quality assurance?

10 A. Yes.

11 Q. What about corrective action?

12 A. That would be true as well.

13 Q. And what is corrective action?

14 A. Corrective action could be any one of numerous things,  
15 including discipline of a physician or removal of privileges or  
16 restriction of privileges.

17 Q. Mr. Klune, were you the CEO when Dr. Barth was  
18 contracted to work for the hospital in 2009?

19 A. Yes, I was.

20 Q. Did you participate in the contract negotiations?

21 A. Yes, I did.

22 Q. Were you the only one, or were there others?

23 A. There were others.

24 Q. Can you tell us who?

25 A. Sandra Hudson and Jim Carney and Dr. Sahlolbei.

26 Q. What about other board members, such as Tim Maley?

27 A. The other board members were only peripherally involved  
28 in reports to the board at the board meetings, either in open or



1 closed session.

2 Q. And what about Mr. -- or Dr. Tejada?

3 A. To the extent he would have been at a board meeting, he  
4 would have heard the same thing that the other board members  
5 would.

6 Q. You mentioned that Dr. Sahlolbei was involved in the  
7 negotiations for the Barth contract. Did Dr. Sahlolbei at any  
8 point during those negotiations indicate to you that Dr. Barth  
9 could not be present for those negotiations?

10 A. Yes.

11 Q. Can you tell us about what he said in that regard.

12 A. Dr. Sahlolbei described Dr. Barth as an individual who  
13 did not like administrators who was delicate and likely to be  
14 scared away from working at the hospital if he had to negotiate  
15 with an administrator.

16 Q. Did Dr. Barth ever participate in the negotiations?

17 A. No.

18 Q. Did you rely on Dr. Sahlolbei's representations that  
19 Dr. Barth did not want to participate in the negotiations of his  
20 own contract?

21 A. Yes. That is correct.

22 Q. Did Dr. Sahlolbei represent himself to be as someone  
23 who had the authority to represent Dr. Barth in negotiations of  
24 Dr. Barth's contract with the hospital?

25 A. Yes. That is correct.

26 Q. During the negotiations of that contract, was there a  
27 dispute over the length of the contract?

28 A. Yes, there was.

1 Q. Can you describe what that dispute was about.

2 A. The dispute was about the amount of money that was to  
3 be paid to Dr. Barth, and as any small struggling hospital, that  
4 was always a contention for really two reasons. One is just the  
5 amount of money that the hospital could afford to pay a  
6 physician; and, number two, because we are subject to federal  
7 guidelines in terms of Stark and other legislation that  
8 prohibits us from paying beyond fair market value for a  
9 physician's service.

10 Q. And how was that dispute resolved?

11 A. We hired a third party, an outside valuation consultant  
12 that gave us direction and a range of acceptable values for  
13 Dr. Barth's compensation.

14 Q. Was one of the concerns of the committee that was  
15 negotiating the contract that there was a request by  
16 Dr. Sahlolbei to pay a significant amount of money more than  
17 what the hospital was paying the CRNA group?

18 A. That is correct.

19 Q. How was the issue related to compensation resolved?

20 A. When we got the report from the valuation consultant,  
21 they identified that we would be at the approximate ninetieth  
22 percentile but that we would fall within the guidelines for  
23 Stark. So that issue was addressed in that manner. The issue  
24 of the increase in cost was adjudged to be somewhere in the  
25 neighborhood of -- I'm remembering about \$180,000 of increased  
26 costs to go with the anesthesiologist, Dr. Barth, over the prior  
27 CRNA contracts. And that was adjudged to be an improvement in  
28 clinical quality for the organization to be able to step up and

1 say, "We have an anesthesiologist now instead of a CRNA." So it  
2 was viewed -- and I think the way the board made that decision  
3 was basically it looked at that as an upgrade or an improvement  
4 in our quality of care that we were paying for.

5 Q. To justify the added costs?

6 A. That's correct.

7 Q. The negotiations with the committee and Dr. Sahlolbei,  
8 did they at some point become tense?

9 A. Many times.

10 Q. And did Dr. Sahlolbei ever threaten anyone in the  
11 committee about the contract?

12 A. Yes.

13 Q. Can you tell us about that.

14 A. The one time that was very much imprinted in my memory  
15 came upon discussion of the embarrassing terms of the contract,  
16 and I had suggested to Jim Carney at that moment that I could  
17 not, in good conscience, recommend that he sign or approve or  
18 take to the board this contract that included not only  
19 increased -- or the compensation amounts but the evergreen  
20 clause and the no termination clause.

21 At that moment Dr. Sahlolbei stood up and told Jim  
22 Carney that if he did not sign that contract there would be  
23 repercussions.

24 Q. Did he describe what those repercussions would be?

25 A. His -- close to being his exact statement was "Jim, if  
26 you don't sign this contract, you just wait, and you will see  
27 what we will do." By "we" I took that he was referring to the  
28 medical staff that he controls.

1 A. Not the production, but typically I would have a chance  
2 to review them. Correct.

3 Q. These particular minutes are for the meeting on  
4 October 8th, 2009; correct?

5 A. It does appear to be so. Yes.

6 Q. And at the bottom of the page, there's an entry,  
7 "President Carney continues and calls for a motion on the  
8 anesthesia contract with Dr. Barth"; correct?

9 A. I do see that. Yes.

10 Q. And then in the next column, it indicates it was  
11 carried unanimously, the motion?

12 A. I do see that. Yes.

13 Q. If you look at the top of page 1, it indicates that you  
14 were present; correct?

15 A. It does.

16 Q. Now, at that meeting -- the meetings are recorded;  
17 correct?

18 A. I think they all are.

19 Q. So one could review the recording of a particular  
20 meeting to see exactly what was said?

21 A. Yes.

22 Q. Okay. At the meeting, Mr. Carney -- President Carney  
23 was the one who called for the motion to vote; right?

24 A. It looks like Secretary Hudson made the motion.

25 Q. Okay. In the middle column, it says, "President Carney  
26 continues and calls for a motion"?

27 A. I do see that. Yes.

28 Q. All right. At the meeting Mr. Carney said that he had

1 fire at will was an embarrassment?

2 A. The collective terms of that contract were an  
3 embarrassment.

4 Q. Your contract was amended in 2012; correct?

5 A. Yes, it was.

6 Q. Prior to that, the hospital couldn't terminate your  
7 contract at will, could they?

8 A. My contract had a term definite, and my contract also  
9 allowed me to be terminated for a list of -- a litany of acts.

10 Q. You could be terminated for cause; correct?

11 A. Correct.

12 Q. And so could Dr. Barth under the proposed contract;  
13 right?

14 A. I'm not familiar with the document at this time to be  
15 able to make that statement. What we were talking about at one  
16 point in time was what was proposed, and what was proposed was  
17 that we could not terminate Dr. Barth but that the MEC needed to  
18 make that decision. And that was part of what was embarrassing,  
19 in addition to the evergreen clause that was in that contract.

20 Q. Your recollection is that it said that the board  
21 couldn't even terminate Dr. Barth for cause?

22 A. Not without MEC approval.

23 Q. You indicated that the salary that was proposed for  
24 Dr. Barth was determined to be on the high end of the acceptable  
25 range; correct?

26 A. That is correct.

27 Q. You found it difficult to recruit physicians to Blythe;  
28 correct?

1 A. It was very difficult.

2 Q. And as a result of that, you might have to pay somewhat  
3 more than metropolitan areas might?

4 A. That's true.

5 Q. You indicated that you said that you immediately  
6 refused the idea of Dr. Sahlolbei providing all the services for  
7 surgery at the hospital; correct?

8 A. Correct.

9 Q. Could the board have overruled you?

10 A. Absolutely.

11 Q. You indicated that the doctor, Dr. Sahlolbei, attempted  
12 to influence you?

13 A. Yes, I did.

14 Q. Is it fair to say that he was not always successful?

15 A. I would agree with that.

16 Q. You know board member Ms. Hudson; correct?

17 A. I do.

18 Q. And you know the board member Dr. Tejeda? That's  
19 T-e-j-a-d-a.

20 A. I have met him. Yes.

21 Q. You mentioned a lawsuit that the hospital filed against  
22 Dr. Sahlolbei; correct?

23 A. That is true.

24 Q. You were aware that in that lawsuit those two members  
25 filed declarations saying that they were aware of the Barth  
26 contracts?

27 MR. ROBINSON: I'd object as to hearsay.

28 MR. WHITE: It would go to impeachment at the moment,

SUPERIOR COURT - STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE

PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. INF1302523
	)	
HOSSAIN SAHLOLBEI, M.D.,	)	
	)	
Defendant.	)	Volume 2 of 2
	)	Pages 174 to 318

REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

BEFORE THE HONORABLE DALE R. WELLS

July 22, 2014

APPEARANCES:

For the Plaintiff: OFFICE OF THE DISTRICT ATTORNEY  
By: WILLIAM E. ROBINSON  
3096 Orange Street  
Riverside, California 92501

For the Defendant: BROWN WHITE & NEWHOUSE LLP  
By: KENNETH P. WHITE  
333 South Hope Street, 40th Floor  
Los Angeles, California 90071-1406

Reported by: KATHLEEN SMITH, CSR No. 11501

COPY

KATHLEEN SMITH, CSR

1 anesthesiologist; correct?

2 A. That's what it has listed here is the anesthesia  
3 service contract. Yes.

4 Q. Okay. Would you please then turn to the next exhibit,  
5 Exhibit CC. Tell me when you have that before you, sir.

6 A. I have it before me now.

7 Q. Those are the minutes of the special meeting on  
8 October 8th, 2009; correct?

9 A. It appears so.

10 Q. And under "Directors Present," it shows that you were  
11 there at the meeting; right?

12 A. Yes, sir. It does.

13 Q. And then down in the middle column towards the very  
14 bottom, it says that you called for a motion on the contract  
15 with Dr. Barth; correct?

16 A. Yes, it does.

17 Q. Okay. The meetings are recorded, aren't they?

18 A. They are.

19 Q. All right. So you said to the board, "Anesthesia  
20 service contracts approved Dr. Barth as written and talked about  
21 with Dr. Barth and the hospital." Does that sound right?

22 A. It sounds right.

23 Q. Because that was a true statement; is that correct?  
24 That was a true statement that I read to you?

25 A. I would imagine. I'm not listening to the tapes but --

26 Q. Okay. You also made a statement, "We have a contract  
27 with Dr. Barth. He's spoken to the hospital, and we've come up  
28 with a contract which is agreeable with the hospital and



1 Dr. Barth." Does that sound correct?

2 A. Yes. That sounds correct.

3 Q. Because that would also be a true statement?

4 A. Yes.

5 Q. The board is not, by any means, a rubber stamp for the  
6 MEC, is it?

7 A. No, sir. It's not.

8 Q. Were you the one who drafted the contracts that  
9 Dr. Barth --

10 A. No, sir. I was not.

11 Q. Did you make any amendments to them yourself?

12 A. Three years and five years.

13 Q. So you changed that --

14 A. I didn't change that. I mentioned that, and it was a  
15 discussion item. And, no -- did I type or make any changes  
16 myself? No, I did not.

17 Q. Okay. Do you remember being interviewed by  
18 Investigator Stack who is seated at counsel table?

19 A. Yes, I do.

20 Q. You mentioned to him that there are two affidavits from  
21 board members who remember something different about the --

22 A. I saw something at one time that --

23 MR. ROBINSON: Your Honor, if I may, I just want to  
24 interpose a hearsay objection. I think it relies on hearsay.

25 THE COURT: Well, I don't think, one, the question was  
26 completed before the answer began. So let's go back to that  
27 point right now and let Mr. White finish his question. Then  
28 I'll see about the objection.

REPORTER'S CERTIFICATE

PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff, )

vs. )

HOSSAIN SAHLOLBEI, M.D., )

Defendant. )

Case No. INF1302523

I, Kathleen Smith, Certified Shorthand Reporter  
No. 11501, hereby certify:

On July 21 and 22, 2014, in the county of Riverside,  
state of California, I took in stenotype a true and correct  
report of the testimony given and proceedings had in the  
above-entitled case, pages 1-318, and that the foregoing is a  
true and accurate transcription of my stenotype notes and is the  
whole thereof.

DATED: Indio, California; July 31, 2014.

  
KATHLEEN SMITH, CSR NO. 11501

KATHLEEN SMITH, CSR

# EXHIBIT B

CASH BOND 589,000.00  
RECOMMENDED \$ ~~WARRANT~~  
PAUL E. ZELLERBACH  
DISTRICT ATTORNEY

EXTRACTION  
~~APPROVED~~ ~~DISAPPROVED~~  
DDA: *W. J. [Signature]*  
AGENCY#: DAR2013192001/RDA

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
(Indio)

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

HOSSAIN SAHLOLBEI, M.D.  
DOB:03/26/1962

Defendant.

D.A.# 317314

CASE NO. INF 1302523  
FELONY COMPLAINT

OTHER - SPS

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

SEP 24 2013

*[Signature]*  
V. Davila

COUNT 1

The undersigned, under penalty of perjury upon information and belief, declares: That the above named defendant committed a violation of Government Code section 1090, a felony, in that on or about October 2009, in the County of Riverside, State of California, he did wilfully and unlawfully make a contract in his official capacity in which he had a financial interest, to wit: CONTRACT FOR ANESHESIA SERVICES WITH DR. BRADLEY BARTH.

COUNT 2

That the above named defendant committed a violation of Penal Code section 487, subdivision (a), a felony, in that on or about October 2009, in the County of Riverside, State of California, he did wilfully and unlawfully steal and take and defraud money, labor, real and personal property of DR. BRADLEY BARTH, of a value exceeding Nine Hundred Fifty Dollars (\$950.00) to wit: MONEY.

COUNT 3

That the above named defendant committed a violation of Government Code section 1090, a felony, in that on or about January 20, 2006, in the County of Riverside, State of California, he did wilfully and unlawfully make a contract in his official capacity in which he had a financial interest, to wit: CONTRACTOR FOR OBSTETRICS AND GYNAECOLOGY SERVICES WITH DR. MOHAMMAD AHMAD.

COUNT 4

That the above named defendant committed a violation of Penal Code section 487, subdivision (a), a felony, in that on or about January 20, 2006, in the County of Riverside, State of California, he did wilfully and unlawfully steal and take and defraud money, labor, real and personal property of DR. MOHAMMAD AHMAD, of a value exceeding Nine Hundred Fifty Dollars (\$950.00) to wit: MONEY.

SEP 27 2013

**CASH BOND**

RECOMMENDED \$ \_\_\_\_\_

PAUL E. ZELLERBACH  
DISTRICT ATTORNEY

Page 2

It is further alleged that the said defendants, committed two or more related felonies, a material element of which was fraud or embezzlement, which involved a pattern of related felony conduct, and this pattern of related felony conduct involved the taking of more than five hundred thousand dollars (\$500,000.00) within the meaning of Penal Code section 186.11, subdivision (a), subsection (2).

It is further alleged that in the commission and attempted commission of the above offense the said defendant, with the intent so to do, took, damaged and destroyed property of a value exceeding \$200,000, within the meaning of Penal Code section 12022.6, subdivision (a), subsection (2).

**ZAMORA ALLEGATION:**

Pursuant to Penal Code section 803(c)(1) and Penal Code section 803(c)(4), the statutory limitation of time to prosecute the offenses charged in counts 1 through 4 did not commence to run until the discovery of the offenses.

The crimes charged in counts 1 through 4 were not discovered nor could they have reasonably been discovered until November 19, 2012, when the Chief Executive Officer of the Palo Verde Hospital, Peter Klune, met with representatives of the District Attorney's office and reported possible violations of California Government and Penal Code sections committed by Hossain Sahlobei.

**MARSY'S LAW**

Information contained in the reports being distributed as discovery in this case may contain confidential information protected by Marsy's Law and the amendments to the California Constitution Section 28. Any victim(s) in any above referenced charge(s) is entitled to be free from intimidation, harassment, and abuse. It is unlawful for defendant(s), defense counsel, and any other person acting on behalf of the defendant(s) to use any information contained in the reports to locate or harass any victim(s) or the victim(s)'s family or to disclose any information that is otherwise privileged and confidential by law. Additionally, it is a misdemeanor violation of California Penal Code § 1054.2a(3) to disclose the address and telephone number of a victim or witness to a defendant, defendant's family member or anyone else. Note exceptions in California Penal Code § 1054.2a(a) and (2).

I declare under penalty of perjury upon information and belief under the laws of the State of California that the foregoing is true and correct.

Dated: September 24, 2013

WER:bjg

  
Complainant