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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA; STATE OF WASHINGTON, *ex rel.* DR. DEANETTE L. PALMER, PHD, and RICHARD PALMER, as RELATORS, Plaintiffs, v. MULTICARE HEALTH SYSTEM dba MULTICARE DEACONESS HOSPITAL and MULTICARE ROCKWOOD CLINIC NEUROSURGERY, Defendant.	No. 2:22-cv-00068-SAB UNITED STATES' AND STATE OF WASHINGTON'S STATEMENT OF DISPUTED AND ADDITIONAL FACTS

The United States of America and the State of Washington, by and through the undersigned counsel hereby submits their Statement of Disputed and Additional Facts in support of the United States' and the State of Washington's Response to Defendant's alternative motion for summary judgment. This Statement of Disputed and Additional Facts is provided pursuant to Fed. R. Civ. P. 56 and Local Rules 56(c)(1)(B). As detailed in the United States' and the State of Washington's Response to Defendant's alternative motion for summary judgment, Defendant MultiCare leaves out many facts from its Statement of Material Facts Not in Dispute (ECF No. 64) and therefore each of Defendant's numbered facts are addressed in serial fashion below with additional facts and context added where needed. At bottom, the below disputed facts and additional facts preclude summary judgment in favor of Defendant MultiCare.

Language from the numbered paragraphs, 1 through 126, is taken from Defendant's Statement of Material Facts Not in Dispute in Support of Summary Judgement Pursuant to FRCP 56 (ECF No. 64) and the United States' and State of Washington's disputes, additional needed factual context, and/or objections are noted in italics below the relevant paragraph.

Additional facts are provided herein both in the italicized responses to the Defendant's numbered facts and in the numbered paragraphs below that are in addition to the Defendant's number facts and which begin at paragraph 127, *infra*. All additional facts provided herein are supported by facts already in the record or by the separately filed declarations in support of the United States' and State of Washington's Response to Defendant's Motion for Summary Judgment and the exhibits thereto.

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I. Disputed Facts

1. Based in Tacoma, MultiCare Health System is an independently-owned non- profit organization, governed by a local board of directors, which cares for patients across the Puget Sound and the Inland Northwest. *See* ECF No. 26 at ¶ 15.

Not in dispute.

2. MultiCare operates Deaconess Medical Center ("Deaconess") in Spokane, Washington. ECF No. 26 at ¶¶ 15, 49.

Not in dispute.

3. MultiCare's operational values include Respect, Integrity, Stewardship, Collaboration, Kindness, and Excellence, the latter of which embodies the organization's intent to hold itself accountable to excel in quality of care, personal competent, and operational performance. ECF No. 26 at ¶ 50.

***Objection**: lack of foundation as the citation to the record does not support the fact of Defendant MultiCare's operational values, rather the citation to the record merely supports that Defendant MultiCare holds itself out as having those values. ECF No. 26 at ¶ 50.*

*To the extent that the claimed fact is deemed admissible it is **disputed** based on all the additional facts referenced herein showing, among other things, that these are not in fact Defendant MultiCare's operational values.*

4. In July 2013, Jason A. Dreyer, DO ("Dr. Dreyer") was hired at Providence St. Mary Medical Center ("Providence"), a hospital in Walla Walla, Washington. ECF No. 26 at ¶¶ 66-67.

Not in dispute.

5. On May 22, 2018, Dr. Dreyer was placed on administrative leave at Providence. ECF No. 26 at ¶ 73.

Not in dispute as to the fact that Dr. Dreyer was placed on administrative leave on that date at Providence, but additional context is needed. *Providence placed Dr. Dreyer on administrative leave as the result of concerns articulated by Providence medical staff. ECF No. 47-3 at 90 (Dorshimer Exhibit 36 at 3). At that time Providence initiated an independent analysis of certain concerns articulated as to Dr. Dreyer with regard to specific patients. Id. Providence's independent analysis was an independent expert review and it corroborated Dr. David Yam's (then the Medical Director at Providence) concerns with regard to seven specific surgeries of Dr. Dreyer's at Providence that Dr. Yam had identified. Declaration of Raysinger*[1] *at ¶ 6. Providence's independent expert further found that as to those seven surgeries Dr. Dreyer had operated without proposer indications for surgery and had misrepresented imaging. Id.*

6. On November 13, 2018, Dr. Dreyer effectively resigned from Providence. ECF No. 26 at ¶ 73.

Not in dispute.

7. Providence has admitted that, as Dr. Dreyer's employer, it did not report Dr. Dreyer to the National Practitioner Data Bank ("NPDB") or the Washington State Department of Health (the "DOH"). ECF No. 26 at ¶ 73; Ex. 36 at 3(E).

Not in dispute.

[1] Refers to the separately filed Declaration of Special Agent Raysinger in Support of United States' and State of Washington's Response to Defendant's Motion for Summary Judgment.

8. In early 2019, MultiCare was recruiting additional neurosurgeons to adequately service the patient volume, including providing on call emergency neurosurgeon coverage, as well as to expand its neurosurgery practice and to establish a neuroscience institute. ECF No. 26 at ¶¶ 88-89. Recruiting was extremely difficult as neurosurgeons are in high demand and typically want to work in larger metropolitan areas. ECF No. 26 at ¶ 89.

Not in dispute, but additional context is needed. *Defendant MultiCare was shorthanded, had a backlog of cases, and needed to hire another neurosurgeon for additional support. Exhibit 4*[2] *at pg. 50, ln. 2-7*[3]*. In fact, Defendant MultiCare was anxious to hire another neurosurgeon at that time as it was down one and a half neurosurgeons. Exhibit 4 at pg. 98, ln. 8-19; pg. 99, ln. 3-6. In addition, hiring a neurosurgeon from its largest competitor, Providence, would have the added benefit to Defendant MultiCare of increasing its market share in the neurosurgery space. Exhibit 4 at 241, ln. 18-25; pg. 242, ln. 1-6; pg. 250, ln. 4-8; pg. 340, ln. 3-25; pg. 341, ln. 1-25.*

9. MultiCare effectively formed a selection and hiring committee for the neurosurgeon position, which included MultiCare's Medical Director for Surgical Services, Dr. John Demakas, MultiCare's Regional Administrator, Mark Donaldson, and MultiCare's President of Deaconess Hospital, Laureen Driscoll. ECF No. 26 at ¶ 89.

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[2] Exhibits to the Declaration of Assistant U.S. Attorney Tornabene in Support of United States' and State of Washington's Response to Defendant's Motion for Summary Judgment are cited herein by reference only to their exhibit number.

[3] Reference the page of the excerpted deposition transcript and line numbers.

Not in dispute.

10. On March 16, 2019, Dr. Dreyer contacted MultiCare via email regarding potential employment. ECF No. 26 at ¶ 88; Ex. 3 at 1.

Not in dispute as to the date and general subject of the email, but additional context is needed*. As stated in the email from Dr. Dreyer to Dr. John Demakas and Dr. Heller, Dr. Dreyer had obtained their contact information from Jeff Underwood who Dr. Dreyer understood had a brother, Jay Underwood, who worked with Dr. Demakas and Dr. Heller. ECF No. 47-1 at 22 (Dorshimer Exhibit 3 at 1). Jeff Underwood worked in the operating room with Dr. Dreyer in Walla Walla, Washington. Declaration of Raysinger at* ¶ 12. Jeff Underwood's brother, *Jay Underwood, was an independent distributor of surgical implants that worked in Spokane and Coeur D'Alene. Declaration of Raysinger at* ¶¶ 11-12.

11. At the time he presented to MultiCare for employment, Dr. Dreyer had been board-certified by the American Board of Osteopathic Surgery since 2014. Ex. 4 at 3, 5. After time serving in the Army reserves, he earned a master's degree in hospital administration and then his Doctor of Osteopathic Medicine degree from Kirksville College of Osteopathic Medicine in Kirksville, Missouri in 2007. Ex. 4 at 3. He completed a six-year neurosurgery residency at Michigan State University in 2013. Ex. 4 at 3-4. As of February 12, 2013, the State of Washington issued Dr. Dreyer a license to practice medicine, which had remained active. *See also* Ex. 5 at ¶ 1.1.

Objection: *the citation to "Ex. 4" (which is ECF No. 47-1 at 27-35) is a letter dated February 4, 2020, purportedly written by Dr. Dreyer's then attorney Ryan M. Beaudoin in response to the 116 page complaint filed by Dr. Matthew Fewel with the Washington State Department of Health Services Quality*

Assurance alleging and detailing that while at Providence St. Mary Dr. Dreyer had falsified diagnoses and conducted medically unnecessary surgeries. See ECF No. 26 at ¶ 75; see also Exhibit 1 at pg. 1-5; Tornabene[4] Declaration at ¶2 . The letter itself is inadmissible hearsay offered for the truth of the matter asserted i.e. the qualifications of Dr. Dreyer. See Fed. R. Evid. 801 and 802. While those recited qualifications may or may not be accurate, the letter is not the appropriate way to introduce them into evidence.

The fact that as of February 12, 2013, the State of Washington issued Dr. Dreyer a license to practice medicine, which had remained active is not objected to and is not disputed as it is based on admissible evidence: the State of Washington Department of Health Board of Osteopathic Medicine and Surgery Statement of Charges in the matter of Jason Adam Dreyer. See ECF No. 47-1 at 39 (Dorshimer Exhibit 5 at 1).

12. After March 16, 2019, MultiCare considered Dr. Dreyer for employment as a neurosurgeon, which included obtaining information from Dr. Dreyer and his former employers, references, and other pertinent sources. *See* ECF No. 26 at ¶ 53; *see infra* section C.

***Not in dispute as to this general proposition, but additional context is needed and is provided infra**. In addition to the additional facts provided, infra, although Dr. Demakas denied to federal investigators that he had contacted Jeff Underwood during the hiring process, Jeff Underwood advised that he in*

[4] Refers to the separately filed Declaration of Assistant U.S. Attorney Tornabene in Support of United States' and State of Washington's Response to Defendant's Motion for Summary Judgment.

fact had spoken with Dr. Demakas around the time of Dr. Dreyer's hire and had specifically asked Dr. Demakas if he was aware that Dr. Dreyer had been suspended. Declaration of Raysinger at ¶¶ 14-15.

13. On March 28, 2019, Mr. Donaldson emailed Dr. Demakas, stating that he met with a Globus sales representative, who told Donaldson on March 27, 2019, that "they spoke very highly of Dr. Dreyer and said he has been exonerated of the issues in Walla Walla." *See* ECF No. 26 at ¶ 92; Ex. 6 at 1.

Not in dispute as to the date of the email and the quoted material, but additional context is needed. *Defendant MultiCare reached out to the Globus sales representative because it was aware of Dr. Dreyer having issues surrounding his departure from Providence St. Mary's. Exhibit 4 at pg. 244, ln. 24-25; pg. 245, ln. 1-21]. Although Mr. Donaldson did email Dr. Demakas (both of whom were part of Defendant MultiCare's selection and hiring committee for the neurosurgeon position), regarding the meeting with the Globus sales representative, Mr. Donaldson has testified that he understood the Globus sales rep wanted Dr. Dreyer's continued business if hired by Defendant MultiCare and therefore he took with a grain of salt what he was told, which included that the allegations were unfounded and that Dr. Dreyer was a "high producer." Exhibit 4 at pg.62, ln. 1-20. Further, neither Mr. Donaldson nor Dr. Demakas conducted any inquiry directly with Providence St. Mary regarding the "issues" for which Dr. Dreyer had supposedly been "exonerated," Exhibit 4 at pg. 61, ln. 21-25; pg. 125, ln. 6-26, pg. 126, ln. 2-21; see Declaration of Raysinger at* ¶¶ 13-14 and 16-18. *The United States and the State of Washington have not had the opportunity to depose Mr. Donaldson in this litigation.*

In addition, Dr. Antione Tohmeh, another spine surgeon for Defendant MultiCare, though not included by Defendant MultiCare in the hiring process, took it upon himself during the hiring process to call Dr. David Yam, then the former Providence St. Mary Medical Director of Neurosurgery, to inquire about his work with Dr. Dreyer. Exhibit 9 at pg. 32, ln. 10-12; pg. 36, ln. 10-12. Dr. Yam informed Dr. Tohmeh "nothing good" regarding Dr. Dreyer and further informed Dr. Tohmeh that Dr. Yam had questioned Dr. Dreyer's medical indications for surgery. Exhibit 9 at pg. 31, ln. 18-24; pg. 32, ln. 4-7. Dr. Tohmeh, prior to Dr. Dreyer being hired by Defendant MultiCare, informed Dr. Demakas of the information provided by Dr. Yam. Exhibit 9 at pg. 32, ln. 8-9. Dr. Tohmeh was also aware during the hiring process that Dr. Dreyer had been put on administrative leave while employed at Providence St. Mary. Exhibit 9 at pg. 32, ln. 24-25; pg. 33, ln. 1. Dr. Tohmeh was also aware during the hiring process that Dr. Dreyer had not performed a surgery in approximately a year due to concerns that had arisen while he was employed at Providence St. Mary. Exhibit 9 at pg. 34, ln. 9-19. While Dr. Tohmeh did not himself find out why Dr. Dreyer had not performed surgeries in approximately a year, he was concerned by that fact. Exhibit 9 at pg. 34, ln. 20-25. Prior to Defendant MultiCare hiring Dr. Dreyer, Dr. Tohmeh informed Dr. Demakas of what Dr. Yam had said about Dr. Dreyer and the fact that Dr. Dreyer had not performed surgeries in a year. Exhibit 9 at pg. 32, ln. 4-9; pg. 34, ln. 20-25; pg. 35, ln. 1-2. At that time Dr. Demakas informed Dr. Tohmeh that they would need to "reign him [Dr. Dryer] in". Exhibit 9 at pg. 35, ln. 3-4. Based on his conversations with Dr. Demkas it was Dr. Tohmeh's understanding that Dr. Demakas, as one of three members of Defendant MultiCare's hiring and selection committee for the neurosurgeon position, understood there was a problem with Dr. Dreyer but that Dr. Demakas thought he could control it. Exhibit 9 at pg. 35, ln. 18-21. The United States

and the State of Washington have not had the opportunity to depose Dr. Tohmeh in this litigation.

In addition, Mark Donaldson, also a member of Defendant MultiCare's hiring and selection committee for the neurosurgeon position, became aware during the interview process of questions regarding Dr. Dreyer's aggressiveness and surgical selection. Exhibit 4 at pg. 44, ln. 1-8. Dr. Demakas, also a member of Defendant MultiCare's hiring and selection committee for the neurosurgeon position, was also aware of questions regarding Dr. Dreyer's surgical aggressiveness from his prior employer Providence St. Mary. Exhibit 4 at pg.44, ln. 25; pg. 45, ln. 1-7; Exhibit 7 at pg. 27, ln. 20-25; pg. 28, ln. 1-21. Laureen Driscoll, then President of Deaconess Hospital for Defendant MultiCare, and the third member of Defendant MultiCare's hiring and selection committee, was also aware during the hiring process of questions regarding Dr. Dreyer's clinical judgment. Exhibit 4 at pg. 55, ln. 5-16. The United States and the State of Washington have not had the opportunity to depose Ms. Driscoll in this litigation.

14. On April 3, 2019, Mr. Donaldson emailed Ms. Driscoll and Dr. Demakas regarding, among others, interviews for the neurosurgeon candidates. *See* Ex. 7 at 1. The email states, in part: "There are some red flags on [Dr. Dreyer's] practice style and relationships that we need to clarify when he comes for an interview." Ex. 7 at 1; ECF No. 26 at ¶ 95.

Not in dispute as to the date of the email and the quoted material, but additional context is needed*. Mr. Donaldson, the author of the email, has testified that the reference to "red flags on [Dr. Dreyer's] practice style", was directly referencing concerns regarding Dr. Dreyer's surgical case selection. Exhibit 4 at pg.96, ln.*

3-7. In addition, the reference to "red flags" in the hiring process of Defendant MultiCare means a potential stopping point to the entire hiring process unless it is satisfactorily resolved. Exhibit 4 at pg. 260, ln. 19-25; pg. 261, ln. 1-3.

15. On or around April 10, 2019, MultiCare conducted a full day in-person interview of Dr. Dreyer. *See* ECF No. 26 at ¶ 97; Ex. 8 at 1.

Disputed. *Defendant MultiCare did not "conduct a full day in-person interview of Dr. Dreyer." The document cited as proof that the in-person interview is an itinerary for Dr. Dreyer for the day in question which only reflects various meetings. ECF No. 47-1 at 52 (Dorshimer Exhibit 8 at 1). That document does not indicate any interviews let alone an all day in person interview of Dr. Dreyer. Rather that document reflects a series of meetings with various personnel of Defendant MultiCare, including meetings with personnel who were not on the hiring and selection committee, all ending at 2:00 pm and then picking back up at 6:00 pm with a dinner at Mizuna's in downtown Spokane.*

Significantly, the meetings were not designed to resolve any of the red flags about Dr. Dreyer's surgeries then known to Defendant MultiCare. Exhibit 4 at pg.262, ln. 1-25; pg. 263, ln. 1-6. In fact, Defendant MultiCare's meetings that day of Dr. Dreyer consisted of three half hour long meetings with each the three members of Defendant MultiCare's hiring and selection committee separately. Exhibit 4 at pg. 52, ln. 4-19; see also ECF No. 47-1 at 52 (Dorshimer Exhibit 8 at 1) (itinerary indicating multiple 30 minute meetings with various personnel of Defendant MultiCare including the three members of the hiring and selection committee). Further, during those in-person meetings Defendant MultiCare did not ask Dr. Dreyer about the questions and concerns regarding his clinical

judgment and surgical aggressiveness at Providence. Exhibit 4 at pg. 58, ln. 5-16.

16. On April 12, 2019, MultiCare extended an offer of employment to Dr. Dreyer. ECF No. 26 at ¶ 98.

Not in dispute, but additional context is needed. A*t the time of hiring Dr. Dreyer it was known in the Eastern Washington neurosurgery community generally, and by Defendant MultiCare specifically, that Providence St. Mary's had suspended Dr. Dreyer based on, inter alia, his tendency to over operate and over complicate surgeries. Exhibit 5 at pg. 19, ln. 9-25; pg. 20 ln. 1-4; pg. 95 ln. 13-24. Defendant MultiCare had actual knowledge, prior to hiring Dr. Dreyer, that Dr. Dreyer had lost privileges or been placed on leave at Providence St. Mary's. Exhibit 7 at pg. 27, ln. 20-25; pg. 28, ln. 1-7.*

Moreover, after being offered the position but before accepting, Dr. Dreyer informed Defendant MultiCare that he needed Defendant MultiCare to purchase new surgical equipment from a specific medical device manufacturer, Medtronic, in order for him to accept the position. Exhibit 4 at pg. 304, ln. 14-24; pg. 305, ln. 1-24. Although, the purchase of such equipment was not then in Defendant MultiCare's capital budget, Defendant MultiCare acquiesced in this late request and in so doing, based on the authorization of Defendant MultiCare's President of Deaconess Hospital, Laureen Driscoll, secured the additional capital needed to purchase the new surgical equipment and obtain Dr. Dreyer's acceptance of the offer of employment. Exhibit 4 at pg. 304, ln. 14-24; pg. 305, ln. 1-24.

17. On May 3, 2019, MultiCare's Spine Center of Excellence (COE) Provider Team met, and a draft of the meeting minutes that day reflected: "Dr. Dreyer: Work horse. May need to advise him on what type of surgeries are appropriate and what is not tolerated." ECF No. 26 at ¶ 100.

Not in dispute, but additional context is needed. *Defendant MultiCare understood that the reference to "what type of surgeries are appropriate and what is not tolerated," was referring directly to the then known concerns about Dr. Dreyer's surgical case selection and surgical aggressiveness. Exhibit 4 at pg. 174, ln. 14-71.*

18. Later on May 3, 2019, Donaldson edited the meeting minutes "to make sure we don't have disparaging remarks that are discoverable by either [Dr. Dreyer or Dr. Teff] after they arrive." Ex. 9 at 2; *see* ECF No. 26 at ¶ 100.

Not in dispute.

19. On May 3, 2019, Dr. Dreyer formally signed an employment agreement with MultiCare. ECF No. 26 at ¶ 100; Ex. 10 at 1.

Not in dispute.

20. On May 3, 2019, in his responses on the Washington Practitioner Application, Dr. Dreyer answer and verified "**No**" in response to the question "Have you ever been subject to review, challenges, and/or disciplinary action, formal or informal, by an ethics committee, licensing board, medical disciplinary board, professional association or education/training institution?" Composite Ex. 11 at 14.

Not in dispute.

21. On May 20, 2019, MultiCare received a peer reference for Dr. Dreyer. Reviewer indicated a "focused review" was conducted in response to another staff member complaint. ECF No. 26 at ¶ 102; Comp. Ex. 11 at 47. The peer reference elaborated: "No significant issues were identified by medical staff and the only recommendation was that all elective neurosurgery patients take part in a multidisciplinary evaluation preoperatively. This is a common feature of many of our service lines." ECF No. 26 at ¶ 102; Comp. Ex. 11 at 47.

Not in dispute.

22. Prior to May 31, 2019, MultiCare engaged in its routine hiring and credentialing process with respect to Dr. Dreyer, including but not limited to the following acts that are documented in the hiring and credentialing records in Composite Exhibit 11:

***Objection**: the conclusion that Defendant MultiCare "engaged in its routine hiring and credentialing process" is not supported by any proffered testimony and the cited document is merely Defendant MultiCare's credentialing file.*

*With regard to Defendant MultiCare engaging in a hiring and credentialing process with respect to Dr. Dreyer prior to May 31, 2019, there is no dispute, but if deemed admissible the rest of the asserted fact is **disputed**.*

In fact, Defendant MultiCare rushed the credentialing process in part to accommodate Dr. Dreyer's hobby of making films as well as due to it urgent need for another neurosurgeon. Exhibit 4 at pg. 108, ln. 22-25; pg. 109, ln. 1-12. Further, the concerns regarding Dr. Dreyer's surgical selection, surgical aggressiveness, investigation by his previous employer, and not having worked for a year, while known to Defendant MultiCare, as detailed supra, were not known by those charged with credentialing Dr. Dreyer and had those issues been known to

those charged with credentialing Dr. Dreyer, his credentials would not have been approved. Exhibit 6 at pg. 13, ln. 20-21; pg. 18, ln. 22-25; pg. 19, ln. 1-12; pg. 21, ln. 14-25; 38, ln. 10-19; pg. 52, ln. 10-20; pg. 55, ln. 22-26; pg. 56, ln. 7-9; pg. 63, ln. 23-25; pg. 64, ln. 1-25; pg. 65, ln. 10-17; pg.67, ln. 6-13; pg. 118, ln. 18-25; pg. 119, ln. 1-4; pg. 143, ln. 9-25; pg. 144, ln. 1-4; pg. 147, ln. 13-25; pg. 148, ln. 1-9; pg. 156, ln. 1-16.

a. verifying Dr. Dreyer's required education,training, and board certifications, and licensure dates, *see* Comp. Ex. 11 at 34-44, 74, 81, 85-107, 111;
Not in dispute.

b. verifying Dr. Dreyer's employment dates and prior healthcare entity/facility affiliations, *see* Comp. Ex. 11 at 63-65, 184;
Not in dispute.

c. requesting verification from Providence of Dr. Dreyer's clinical privileges and receiving in response a written statement from Providence representing that "no adverse professional review action as defined in the Health Care Quality Improvement Act has been taken regarding this practitioner [meaning] that there has been no reduction, restriction, suspension, revocation, denial, or involuntary relinquishment of the practitioner's staff membership or clinical privileges," Comp. Ex. 11 at 62;
Disputed. *While, Providence did provide the cited written statement to Defendant MultiCare, that is by no means the only information Defendant MultiCare obtained from Providence or regarding Dr.*

Dreyer's employment at Providence. During the hiring process, Defendant MultiCare reached out to Providence St. Mary's directly, outside of the credentialing process, and determined that 1) Dr. Dreyer had been placed on administrative leave while at Providence; and 2) Dr. Dreyer had not practiced medicine for approximately a year. Exhibit 9 at pg. 32, ln. 24-25; pg. 33, ln. 1; pg. 34, ln. 9-19. Defendant MultiCare's own hiring and selection committee for the neurosurgeon position was aware of these two facts prior to making the decision to nonetheless hire Dr. Dreyer. Exhibit 9 at pg. 32, ln. 4-9; pg. 34, ln. 20-25; pg. 35, ln. 1-2. At *the time of hiring Dr. Dreyer, it was known in the Eastern Washington neurosurgery community generally, and by Defendant MultiCare specifically, that Providence St. Mary's had suspended Dr. Dreyer based on, inter alia, his tendency to over operate and over complicate surgeries. Exhibit 5 at pg. 19, ln. 9-25; pg. 20 ln. 1-4; pg. 95 ln. 13-24.*

d. searching the National Practitioner Data Bank ("NPDB") on May 16, 2019 and May 31, 2019, both of which turned up "no reports" for any category, which included **no** Medical Malpractice Payment Reports, State Licensure actions, Exclusion or Debarment Actions, Government Administrative Actions, Clinical Privilege Actions, Health Plan Actions, Professional Society Actions, DEA/Federal Licensure Actions, Judgment or Conviction Reports, and Peer Review Organization Actions, *see* Comp. Ex. 11 at 130-132;

Not in dispute, but additional context is needed*. While the search of the NPDB did not result in finding reports regarding Dr. Dreyer, that is by no means the only information Defendant MultiCare obtained*

regarding Dr. Dreyer's employment at Providence. During the hiring process, Defendant MultiCare reached out to Providence St. Mary's directly, outside of the credentialing process, and determined that 1) Dr. Dreyer had been placed on administrative leave while at Providence; and 2) Dr. Dreyer had not practiced medicine for approximately a year. Exhibit 9 at pg. 32, ln. 24-25; pg. 33, ln. 1; pg. 34, ln. 9-19. Defendant MultiCare's own hiring and selection committee for the neurosurgeon position was aware of these two facts prior to making the decision to nonetheless hire Dr. Dreyer. Exhibit 9 at pg. 32, ln. 4-9; pg. 34, ln. 20-25; pg. 35, ln. 1-2. At *the time of hiring Dr. Dreyer, it was known in the Eastern Washington neurosurgery community generally, and by Defendant MultiCare specifically, that Providence St. Mary's had suspended Dr. Dreyer based on, inter alia, his tendency to over operate and over complicate surgeries. Exhibit 5 at pg. 19, ln. 9-25; pg. 20 ln. 1-4; pg. 95 ln. 13-24.*

e. obtaining completed peer evaluation forms from four peer references who worked with Dr. Dreyer, none of which noted any significant concerns, and each of which rated Dr. Dreyer as "superior" in most categories and "recommend highly without reservation," *see* Comp. Ex. 11 at 45-60;

Disputed. *Not all of the information Defendant MultiCare received from Dr. Dreyer's peers prior to credentialing him was positive. Defendant MultiCare was in fact aware during the hiring the process that Dr. Dreyer's previous supervisor at Providence St. Mary's, Dr. David Yam, had "nothing good" to say about Dr. Dreyer and had*

informed Defendant MultiCare that he had questioned Dr. Dreyer's medical indications for surgery. Exhibit 9 at pg. 31, ln. 18-24; pg. 32, ln. 4-7. Dr. Yam had worked with Dr. Dreyer at Providence St. Mary as his Medical Director for over five years. ECF No. 47-3 at 88-89 (Dorshimer Exhibit 36 at 1-2). Dr. Yam's concerns regarding Dr. Dreyer's medical indications for surgery were known to Defendant MultiCare's hiring and selection committee for the neurosurgeon position prior to hiring Dr. Dreyer. Exhibit 9 at pg. 32, ln. 4-9; pg. 34, ln. 20-25; pg. 35, ln. 1-2]; Exhibit 4 at pg. 44, ln. 1-8. Further, at the time of hiring Dr. Dreyer it was known in the Eastern Washington neurosurgery community generally, and by Defendant MultiCare specifically, that Providence St. Mary's had suspended Dr. Dreyer based on, inter alia, his tendency to over operate and over complicate surgeries. Exhibit 5 at pg. 19, ln. 9-25; pg. 20 ln. 1-4; pg. 95 ln. 13-24.

f. obtaining a separate Washington State Criminal Conviction History Report and Washington State Child/Adult Abuse Report, confirming no criminal or registry reports, Comp. Ex. 11 at 66-67;
Not in dispute.

g. confirming, though a query of the OIG List of Excluded Individuals and Entities List, that Dr. Dreyer was not an excluded individual, Comp. Ex. 11 at 116-120;
Not in dispute.

h. collecting a completed copy of Dr. Dreyer's Washington Practitioner Application, the standard credentialing application form mandated by Washington law, Comp. Ex. 11 at 4-15;

Not in dispute.

i. obtaining a current Certificate of Liability Insurance, including a claims history report with no reported claims, Comp. Ex. 11 at 121-129; and

Not in dispute.

j. conducting initial interviews between Dr. Dreyer and various MultiCare leaders and fellow MultiCare neurosurgeons. *See*, *e.g.*, Ex. 8 at 1.

Disputed. *The evidence shows that these initial meetings with Dr. Dreyer were not interviews in any real sense of the word. The only evidence cited as proof of these "interviews" is an itinerary for Dr. Dreyer for the day in question. ECF No. 47-1 at 52 (Dorshimer Exhibit 8 at 1). However, that document reflects a series of meetings with various personnel of Defendant MultiCare, including meetings with personnel who were not on the hiring and selection committee, all ending at 2:00 pm and then picking back up at 6:00 pm with a dinner at Mizuna's in downtown Spokane. Significantly, the meetings were not designed to resolve any of the red flags about Dr. Dreyer's surgeries then known to Defendant MultiCare. Exhibit 4 at pg.262, ln. 1-25; pg. 263, ln. 1-6. In fact, Defendant MultiCare's meetings that day of Dr. Dreyer consisted of three half hour long meetings with each the three members of Defendant MultiCare's hiring and selection*

committee separately. Exhibit 4 at pg. 52, ln. 4-19; see also ECF No. 47-1 at 52 (Dorshimer Exhibit 8 at 1) (itinerary indicating multiple 30 minute meetings with various personnel of Defendant MultiCare including the three members of the hiring and selection committee). Further, during those in-person meetings Defendant MultiCare did not ask Dr. Dreyer about the questions and concerns regarding his clinical judgment and surgical aggressiveness at Providence. Exhibit 4 at pg. 58, ln. 5-16.

23. On March 4, 2019, a complaint was submitted to the DOH about 11 of Dr. Dreyer's surgeries at Providence. ECF No. 26 at ¶ 75.

Not in dispute, but additional context is needed. *On March 4, 2019, Dr. Matthew Fewel, a neurosurgeon who at that time had practiced in Richland, Washington, for 14 years, submitted a 116-page complaint with the Washington State Department of Health's Health Systems Quality Assurance, alleging and detailing that while at Providence St. Mary Dr. Dreyer had falsified diagnoses and conducted medically unnecessary surgeries. Exhibit 1 at pg. 1-5; Tornabene Declaration at ¶2. Dr. Fewel. wrote in his complaint to the Washington State Department of Health:*

I am writing this document to summarize a number of patient care concerns that have come to my attention regarding the neurosurgery group at Providence St. Mary's in Walla Walla and Dr. Jason Dreyer in particular. These issues have become evident to me primarily from patients seeking a second opinion following spinal surgery procedures that were done at St. Mary's as well as patients being transferred to [the hospital where Dr. M.F. worked] from St. Mary's. After it became clear to me that this was not an isolated occurrence, I began to keep a record of the patients I encountered from St. Mary's and this is my summary and review of the most troubling cases. The majority of these cases involve Dr. Jason Dryer, DO and I have limited this document to the 11 of the most egregious cases.

Exhibit 1 at pg. 2. Dr. Fewel's 116-page complaint to the Washington State Department of Health of what Dr. Fewel considered to be the 11 most egregious cases were all Dr. Dreyer surgeries and contained falsified diagnoses, medically unnecessary surgeries and false statements by Dr. Dreyer regarding the surgery actually performed. Exhibit 1 at pg. 3-4; Tornabene Declaration at ¶2 . Dr. Fewel informed the Washington State Department of Health that "[m]any of these cases represent fraud, deception, and a blatant disregard for the truth," and that "the motivating factor here in these cases, in my opinion, is pure and simple greed." Exhibit 1 at pg. 4. Specifically, Dr. Fewel concluded that the reason that Dr. Dreyer had falsified diagnoses, over operated, and conducted medically unnecessary surgeries was "[t]o secure insurance approval and justification for fusion surgery and to generate large numbers of RVUs. . ." Exhibit 1 at pg. 3. Dr. Fewel advised that Dr. Dreyer should not be allowed to continue as a neurosurgeon. Exhibit 1 at pg. 4.

24. DOH notified Dr. Dreyer of the complaint on May 6, 2019. *See* ECF No. 26 at ¶¶ 77, 148; Ex. 12 at 1.

Not in dispute.

25. DOH sent its May 6 notice that it had received a complaint to Dr. Dreyer's former address at Providence. Ex. 12 at 1. However, additional information about the complaint, including the complainant, the patients, the care in question, and a copy of the complaint itself, was not provided to Dr. Dreyer until months later. *See id.;* Ex. 4 at 1-2.

***Objection**: the document cited as support for when Dr. Dreyer received notice of the complaint is a letter from Dr. Dreyer's attorney dated February 4, 2020, offered for the truth of the matter asserted- the purported date of when Dr. Dreyer received*

notice of the complaint- and therefore is inadmissible hearsay. Fed. R. Evid. 801 and 802.

*If this fact is deemed admissible it is **disputed** as there is no admissible evidenced in the record showing that Dr. Dreyer did not receive the complaint "until months later." However, it is not in dispute that the letter from DOH found at ECF No. 47-2 at 60 (Dorshimer Exhibit 12 at 1) is addressed to an address associated with Providence St. Mary in Walla Walla, Washington.*

Further, the evidence shows that Dr. Dreyer was aware of the complaint by at least May 31, 2019, when his attorney notified DOH that he represented Dr. Dreyer and was in receipt of the May 6, 2019, complaint. Exhibit 3 at pg. 1.

26. Dr. Dreyer was represented in the DOH matter by his own attorney. Ex. 4 at 1, 9.

Not in dispute.

27. The DOH investigation was not disclosed to MultiCare, by Dr. Dreyer or anyone else, during the hiring or credentialing process at MultiCare. *See supra* ¶¶ 8-25.

***Objection**: Defendant MultiCare has cited to no admissible evidence to establish this fact. Further, the admissible evidence indicates the contrary that in fact Defendant MultiCare, through its employee Dr. Dreyer, had direct knowledge of the May 6, 2019, complaint as of the date Dr. Dreyer became its employee as Dr. Dreyer had direct knowledge at least as of May 31, 2019. Exhibit 3 at pg. 1.*

*To the extent this claimed fact is deemed admissible it is **disputed**. In fact, Defendant MultiCare had knowledge, though its own employee Dr. Dreyer who*

had direct knowledge of the DOH investigation at least as of May 31, 2019. Exhibit 3 at pg. 1.

28. On July 23, 2019, Dr. Dreyer was granted clinical privileges at MultiCare Deaconess Hospital and began seeing patients. ECF No. 26 at ¶ 104; Ex. 13 at 1.

Not in dispute.

29. Dr. Dreyer, like any new physician joining the medical staff at Deaconess, underwent a focused provider review of his cases, which turned up no issues. Ex. 11 at 192-94; Ex. 13 at 1; Ex. 14 at ¶¶ 10-11.

***Objection**: lack of relevance and lack of foundation, the cited documents do not establish what a "focused provider review of his cases" is or consists of and therefore this claimed fact does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402. To the extent the fact is deemed admissible it is **disputed**.*

30. On August 28, 2019, Dr. Dreyer operated on Patient M.W., which was M.W.'s second spinal surgery at MultiCare but Dr. Dreyer's first surgery on M.W. ECF No. 26 at ¶¶ 173, 176; Declaration of Joel D. Winer, M.D. (Ex. 2) at ¶ 10. His second surgery on M.W. was February 24, 2020. ECF No. 26 at ¶ 177; Ex. 2 at ¶ 10.

Not in dispute.

31. On around September 19, 2019, Leigh Gilliver, a Physician Assistant at MultiCare, raised his concern that Dr. Dreyer was performing a higher volume of complex surgeries than the neurosurgeons with whom Mr. Gilliver previously worked. *See* ECF No. 26 at ¶¶ 114, 117, 119. Mr. Gilliver was not involved with Dr.

Dreyer's patients preoperatively or with the preoperative or interoperative planning of Dr. Dreyer's surgeries. Ex. 15 at 29:22-25, 55:5- 10, 77:21-78:11, 135:23-25, 136:1-4.

Disputed, *to the extent that the proposed fact is that Mr. Gillver's concerns were so limited. In fact,* ***Mr. Gilliver's concerns, expressed directly to Dr. Demakas on or about that date, were made immediately after walking out of the operating room where Dr. Dreyer was engaging in a surgery that Mr. Gilliver believed was dangerous and unnecessary****. Exhibit 5 at pg. 43, ln. 25; pg. 44, ln. 1-25; pg. 45, ln. 1-24. At that time, immediately upon walking out of the operating room, Mr. Gilliver saw Dr. Demakas and told Dr. Damakas that "he [Dr. Dreyer] is up to his antics again." Exhibit 5 at pg. 139, ln. 21-25; pg. 140, ln. 1-4. Mr. Gilliver's concerns were by no means limited to mere concerns of Dr. Dreyer performing a higher volume of complex surgeries, but also included concerns about the safety of Dr. Dreyer's patients. Exhibit 5 at pg. 45, ln. 13-17; pg. 46, ln. 4-24. Mr. Gilliver was the physician's assistant that Defendant MultiCare assigned to Dr. Dreyer to assist in the operating room on Dr. Dreyer's surgeries for Dr. Dreyer's first several months as a neurosurgeon for Defendant MultiCare (July to late September 2019). Exhibit 5 at pg.18, ln. 2-14; pg. 83, ln. 20-25.*

Mr. Gilliver also had concerns about Dr. Dreyer's template medical records, which indicates involvement with, and or awareness of patient conditions pre-operatively. Mr. Gilliver stated Dr. Dreyer had a "template" medical record that always included "due to the severity of the disease, if I perform a laminectomy, I will cause a [sic] iatrogenic weakness, so therefore…I am recommending that we [] do a fusion." Exhibit 5 at pg. 36, ln. 11-25; pg. 37, ln. 1-9. Ultimately, Mr. Gilliver indicated that once Dr. Dreyer began at Defendant MultiCare, the

"patients stayed the same" but the "procedures became a lot more complex." Exhiibt 5 at pg. 34, ln. 7-25; pg. 35, ln. 1-11.

32. On September 23, 2019, Mr. Donaldson and Dr. Demakas held a follow-up meeting with Mr. Gilliver and asked him to identify four surgeries for which he had concerns, which they would review, and he did. ECF No. 26 at ¶ 122; Ex. 15 at 47:5-20, 87:5-19, 114:24-117:22. Mr. Gilliver testified both Mr. Donaldson and Dr. Demakas were empathic and took his concerns seriously. Ex. 15 at 118:9-24.

Disputed. *This fact completely mischarterizes the meeting even while being accurate as to the date of the meeting, the request to identify four surgeries and providing those, and the fact that Mr. Gilliver testified, among many other relevant items, in answer to two questions during a multi-hour deposition in that manner. In fact, Mr. Gilliver's testimony is that at the meeting he expressed his concerns to Mr. Donaldson and Dr. Demakas that Dr. Dreyer was "hurting people." Exhibit 5 at pg. 45, ln. 13-17; pg. 115, ln. 19-25. Mr. Gilliver provided the four requested examples of concerning Dr. Dreyer surgeries to Dr. Demakas. Exhibit 4 at pg. 87, ln. 5-19. While Mr. Gilliver testified that he believed Defendant MultiCare reviewed those examples, he did not know what the results of those reviews were. Exhibit 4 at pg. 87, ln. 5-19. There is no evidence in the record as to the extent of any Defendant MultiCare review of the four examples. There is no evidence in the record as to what if any corrective or precautionary measures Defendant MultiCare took as a result of Mr. Gilliver's expressed concerns regarding the safety of Defendant MultiCare patients operated on by Dr. Dreyer.*

33. About two weeks later, in early October 2019, Mr. Gilliver met with numerous MultiCare personnel to discuss his concerns, including Dr. Dreyer,

Mr. Donaldson, Dr. Demakas, and neurosurgeons Dr. Heller and Dr. Morgan, among others. ECF No. 26 at ¶ 123; Ex. 15 at 127:11-132:14.

Not in dispute as to the date of the meeting and the attendees, but more context is needed as to what actually occurred at this meeting. *Specifically, at this second meeting regarding Mr. Gilliver's concerns regarding Dr. Dreyer being so great that Mr. Gilliver literally walked out of the operating room rather than participate in what he saw as another dangerous Dr. Dreyer surgery, Mr. Gilliver re-iterated the concerns he had already relayed in his September meeting with Dr. Demakas and Mr. Donaldson. Exhibit 5 at pg. 130, ln. 10-13. At the conclusion of that meeting, Dr. Demakas and Mr. Donaldson asked Mr. Gilliver to resign from neurosurgery, ultimately placing Mr. Gilliver in Defendant MultiCare's urgent care unit. Exhibit 5 at pg. 47, ln. 5-25; pg. 48, ln. 1-22. Other than asking the physician's assistant who walked out of what he saw as a dangerous surgery to resign, there is no evidence in the record that Defendant MultiCare took any corrective or preventative action as a result of Mr. Gilliver's expressly stated patient safety concerns.*

34. In late 2019, another Physician Assistant at MultiCare, Josiah Newton, went to Dr. Demakas even prior to assisting Dr. Dreyer because of what he had heard from Leigh Gilliver, and then based on "what on paper seeing []how aggressive Dr. Dreyer was" compared to a few other neurosurgeons with whom Mr. Newton had worked. ECF No. 26 at ¶ 124; Ex. 16 at 31:10-34:10.

Disputed, *to the extent that Mr. Newton's expressed concerns were so limited. Mr. Newton testified more specifically that the concerns about Dr. Dreyer's surgery that he brought to Dr. Demakas were based on "Dr. Dreyer perform[ing] surgeries that had extensive instrumentation compared to the other surgeons. . .," that Dr. Dreyer "was performing surgeries that were excessive in*

nature and not indicated from a – a medical need," and Dr. Dreyer's patient selection and the extent of his surgeries. Exhibit 7 at pg. 31, ln. 6-8; pg. 33, ln. 22-24; 38, ln. 11-16. Significantly, Mr. Newton was the very next physician's assistant that Defendant MultiCare assigned to be Dr. Dryer's first assist after the initial physician's assistant that Defendant MultiCare assigned to Dr. Dreyer, Mr. Gilliver, walked out of the operating room because Dr. Dreyer was hurting people again and reported that immediately to Dr. Dreyer's supervisor, Dr. Demakas. Exhibit 5 at pg. 43, ln. 25; pg. 44, ln. 1-25; pg. 45, ln. 1-24 pg. 47, ln. 5-25; pg. 48, ln. 1-22.

35. Mr. Newton had no pre-operative or post-operative involvement with Dr. Dreyer's patients. Ex. 16 at 88:4-20, 115:23-116:4.

***Not in dispute, but additional context is needed**. Physician's assistants employed by Defendant MultiCare, like Mr. Newton, were consider the first assists for the surgeons and also had responsibility for patient safety. Exhibit 7 at pg. 44, ln. 20-25; pg. 45, ln. 1-25; pg. 46, ln. 1-6. In the operating room the role of physician's assistance, like Mr. Newton, employed by Defendant MultiCare included "being another set of eyes," including looking at imaging. Exhibit 7 at pg.128, ln. 2-10.*

36. Dr. Demakas told Mr. Newton that MultiCare would take appropriate steps to address J.N.'s concern for the safety of Dr. Dreyer's patients. ECF No. 26 at ¶ 128.

***Not in dispute, but additional context is needed**. As a result of concerns about the extensive nature of Dr. Dreyer's surgeries, Dr. Demakas issued a directive that any spinal surgery of more than 2 levels needed to be addressed by the Spine Center of Excellence. Exhibit 7 at pg.57, ln. 17-25; pg. 58, ln. 1-16. There is*

no evidence in the record as to whether any of Dr. Dreyer's surgeries involving more than a two level fusion were in fact subject to this additional layer of review. Further, Mr. Newton observed that there were no changes being implemented by Defendant MultiCare as to Dr. Dreyer and the safety of his patients, and so Mr. Newton informed Dr. Demakas that he could not ethically work with Dr. Dreyer and left his employment with Defendant MultiCare. Exhibit 7 at pg. 139, ln. 9-17; pg. 145, ln. 19-23.

37. On January 10, 2020, Dr. David Yam, M.D. ("Dr. Yam") filed a *qui tam* action in the Eastern District of Washington, on behalf of the United States and the State of Washington, against Providence (alone) alleging Providence submitted false claims with respect to Dr. Dreyer's patients and therefore violated the False Claims Act. Ex. 17.

Not in dispute.

38. The Yam *qui tam* case was sealed in its entirety, Ex. 18, until September 21, 2021, when it was partially unsealed for the limited purpose of disclosing the existence of the case only to Providence and its counsel, Ex. 19.

Not in dispute.

39. On February 4, 2020, unbeknownst to MultiCare, Dr. Dreyer provided a response to the DOH's May 6, 2019 notice of a complaint, through his attorney. *See* ECF No. 26 at ¶ 80; *see generally* Ex. 4. His response included support from two highly-qualified physicians (Dr. Patrick Hsieh, the Director of the Neurosurgery Spine Program at the University of Southern California, and Dr. Jerome Barakos, a board certified neuroradiologist at California Pacific Medical Center with nearly 28 years

of experience), who both opined Dr. Dreyer's care was reasonable and appropriate at all times. ECF No. 26 at ¶ 80; Ex. 4 at 7.

Objection: *the conclusion regarding the qualifications of Dr. Hsieh and Dr. Barokos is an opinion for which no direct testimony is in the record.*

Objection: *the conclusion that Defendant MultiCare did not know that it, through its employee Dr. Dreyer, had responded to the DOH complaint is not supported by any testimony or other evidence in the record.*

If the fact is nevertheless deemed admitted then it is ***disputed*** *to the extent that Defendant MultiCare had direct knowledge, through its employee Dr. Dreyer, that he was responding to the DOH notice of complaint.*

Not in dispute as to the date of the response, that it was made through an attorney, or that it contained opinions from Dr. Barakos and Dr. Hsieh, but additional context is needed*. Specifically, subsequent to Dr. Dreyer's February 4, 2020, response, the independent expert review of Dr. Abhineet Chowdhary for the Washington Board of Osteopathic Medicine, confirmed that Dr. Fewel's expert assessment as to 7 of Dr. Dreyer's surgeries where the preoperative imaging and physical exams did not provide the medical indications for the various planned surgeries. Exhibit 2 at pg. 1-17.*

40. On February 15, 2020, the United States Department of Justice, acting through Assistant U.S. Attorneys Tyler Tornabene and Daniel Fruchter (collectively, the "DOJ"), sent an email to an attorney at a private firm who had served as outside counsel for MultiCare. *See* ECF No. 26 at ¶ 131; Ex. 1 at 2.

Not in dispute.

41. The email did not copy any employee of MultiCare. Ex. 1 at 2.

Not in dispute.

42. The opening sentences of the February 15 email stated that the DOJ had "opened an investigation into Dr. Jason Dreyer," which was "ongoing," "and in fact [wa]s at a very early stage," and had given the DOJ "great concern for the safety of any current patients of Dr. Dreyer." Ex. 1 at 2; see ECF No. 26 at ¶ 132.

Not in dispute.

43. The email described the scope of the DOJ's investigation: "Dr. Dreyer is a target of our ongoing investigation for actions ***he took during his previous employment with Providence Health in Walla Walla***, which we understand ended in 2018." Ex. 1 at 2 (emphasis added); *see* ECF No. 26 at ¶ 131. Their concerns were based on Dr. Dreyer's conduct "for approximately five years prior to his employment or association with [MultiCare] Deaconess." Ex. 1 at 2.; *see* ECF No. 26 at ¶¶ 131, 133. Specifically, the concerns were of medical misconduct, which they said involved unnecessary surgeries that "apparently" or "potentially" resulted in severe harm. Ex. 1 at 2.

Not in dispute, but additional context is needed. *As stated in the February 15, 2020, USAO written notification to Defendant MultiCare, the investigation at that time was in its early stages and was at that time focusing on Dr. Dreyer's conduct while employed at Providence St. Mary. As the investigation progressed over the months and years more facts were uncovered regarding Defendant MultiCare's knowledge and conduct in hiring and credentialing Dr. Dreyer as well as Defendant MultiCare's conduct, through its employee Dr. Dreyer, on it's neurosurgery patients and the resulting claims for payment to federal health care programs. Declaration of Raysinger at* ¶ 9.

44. The DOJ's email explicitly informed MultiCare:

> Currently, based solely on the evidence we have to date, [MultiCare] ***Deaconess it is not a target of our investigation and we currently have no direct evidence, one way or the other, of Dr. Dreyer's actions while working at Deaconess***.

Ex. 1 at 2 (emphasis added); *see* ECF No. 26 at ¶¶ 131-32.

Not in dispute.

45. The email further stated that "the credible evidence of unnecessary surgeries, the resulting patient harm, and evidence of Dr. Dreyer creating false and fraudulent medical records" caused the DOJ to provide MultiCare with this information, but added that "***our ongoing investigation has not reached any final conclusions***." Ex. 1 at 2 (emphasis added); *see* ECF No. 26 at ¶ 132.

Not in dispute.

46. The email advises that:

> Further, ***the attached materials are not our conclusions, nor are they the sum total of all information we possess***, but these materials are being provided to you as they do contain summaries of ***some of the most concerning evidence and allegations*** that appear credible and which we are vigorously investigating.

Ex. 1 at 2 (emphasis added).

Not in dispute.

47. The email stated that MultiCare may "share with the appropriate persons at Deaconess" on a "need to know" basis:

> Further, we request that [MultiCare] Deaconess not distribute this information, in any manner whatsoever, beyond Deaconess and beyond those persons at Deaconess or within

> your firm who need to have some or all of this information to ensure patient safety. ***Any disclosure beyond those who need to know at Deaconess or within your firm could seriously prejudice our ongoing investigation.***

Ex. 1 at 2 (emphasis added).

> ***Not in dispute, but additional context is needed***. *The USAO's written notification to Defendant MultiCare, went on to provide in the next sentence not quoted by Defendant MultiCare above, "If at any time there is a need to provide this information outside of your firm or Deaconess please approach us before any such disclosure so that we can work with you to determine the appropriate parameters of any such disclosure and the timing of any such disclosures in order to eliminate or minimize the potential adverse impact on our ongoing investigation." ECF No. 47-1 at 3 (Dorshimer Exhibit 1 at 2).*

48. The DOJ's email did not specifically request that MultiCare respond to or contact the DOJ. *See* Ex. 1 at 2.

> ***Not in dispute, but additional context is needed***. *The USAO's written notification stated, in pertinent part, "We are available to further discuss this matter with you, and any persons with Deaconess that may be appropriate, at your earliest convenience. While Monday is a federal holiday we can be reached throughout the weekend by email and, as you know, my cell is [cell phone number of Assistant U.S. Attorney provided]." ECF No. 47-1 at 4 (Dorshimer Exhibit 1 at 3).*

49. The DOJ's email did not request or demand that MultiCare take any actions with respect to Dr. Dreyer, or report any such actions to the DOJ. *See* Ex. 1 at 2.

Disputed. *The USAO written notification did in fact request, among other things, that based on the USAO's "great concern for the safety of any current patients of Dr. Dreyer" the USAO was "providing this information to you to share with the appropriate persons at Deaconess so that Deaconess can have sufficient information to fully and immediately ensure the safety of its patients." ECF No. 47-1 at 3 (Dorshimer Exhibit 1 at 2).*

50. All of the materials attached to that email concerned Dr. Dreyer's actions during his previous employment with Providence in Walla Walla. *See* Ex. 1 at 2; *see* ECF No. 26 at ¶ 133.

Not in dispute, but additional context is needed. *Specifically, the materials attached to the February 2020 USAO written notification to Defendant MultiCare, which include specific anonymized patient data regarding dozens of medically unnecessary surgeries conducted by Dr. Dreyer while at Providence St. Mary showing specific and concrete examples of Dr. Dreyer's fraudulent and falsified diagnoses, double billed and faked procedures, and medically unnecessary surgeries while at Providence St. Mary. See Exhibit 1 to the Declaration of Raysinger. These were all in the possession of Defendant MultiCare on or about February 15, 2020. Id., and ECF 47-1 at 2-4 (Dorshimer Exhibit 1 at 1-3).*

51. On February 17, 2020, outside counsel confirmed by reply email receipt of the DOJ's February 15 email that she had reached out to Dayle Hosek (MultiCare Director of Risk Management), the "correct contact" for MultiCare. Ex. 1 at 2; *see* ECF No. 26 at ¶ 134.

Not in dispute.

52. On Friday, February 21, 2020, AUSA Tornabene replied by email to the outside counsel to "touch base because they had not heard anything" since her February 17 response. Ex. 1 at 1. The email continued:

> ***While Deaconess is under no obligation whatsoever to discuss anything with us***, we thought it would be best to reach out regarding the current status of Dr. Dreyer at Deaconess and his current ability through Deaconess to perform surgeries. ***Again, Deaconess is under no obligation to provide us any information at this time, however as we assess other/additional avenues to address any immediate patient safety concerns we thought it best to reach out.***

Ex. 1 at 1 (emphasis added).

Not in dispute, but additional context is needed. *The email goes on to provide the availability of the two assigned AUSAs in case Defendant MultiCare, while under no obligation to do so, chose to share information with the USAO or engage in any relevant dialogue.*

53. That same day, the outside counsel replied that her MultiCare client contact said "[i]t is being discussed with exec on Monday" (which was February 24, 2020) and "assured [her] they are taking it very seriously." Ex. 1 at 1.

Not in dispute.

54. On Monday, February 24, 2020, MultiCare executives met to discuss the information in the DOJ's February 15 email. ECF No. 26 at ¶ 134.

Not in dispute.

55. On February 25, 2020, within one day of the executives' meeting, MultiCare's Chief Medical Officer, Dr. Geoff Swanson, created a confidential Situation, Background, Assessment, and Recommendation analysis ("SBAR"),

describing the situation as concerning "quality and billing issues involving the previous practice of neurosurgeon Jason Dreyer, DO." ECF No. 26 at ¶ 135; Ex. 20.

Not in dispute.

56. The SBAR summarizes the background as follows:

> On February 24, RWC and MultiCare Inland Northwest (INW) leadership was presented information received by the INW general counsel alleging Dr. Dreyer, at a previous practice site; 1) exhibited questionable surgical decision-making, 2) excessively utilized surgical repair and instrumentation and 3) was involved in fraudulent billing practices. The quality of this evidence was not substantiated, nor was the information sourced.

ECF No. 26 at ¶¶ 136-37; Ex. 20.

Not in dispute, however additional context is needed. *Specifically, that despite Defendant MultiCare displaying its actual knowledge on February 24, 2020, of concerns coming from an ongoing federal investigation regarding Dr. Dreyer that included "fraudulent billing practices" it did not communicate, at a minimum, that aspect of the concerns to those it charged with ostensibly protecting its patients' safety. In fact, Defendant MultiCare did not inform Dr. Demakas of the concerns coming from an ongoing federal investigation regarding, inter alia, Dr. Dreyer engaging falsifying medical records, making false and fraudulent diagnoses, or falsifying billing. Declaration of Raysinger at* ¶ 18. *Further, defendant MultiCare did not provide Dr. Demakas a copy of the USAO written notification, the voluminous attachments thereto containing the anonymized patient data (see Exhibit 1 to Declaration of Raysinger), or the SBAR itself. Declaration of Raysinger at* ¶ 18. *In fact, Dr. Swanson, who as Defendant MultiCare's Chief Medical Officer, assigned Dr. Demakas to conduct the prospective reviews of all of Dr. Dreyer's elective cases as envisioned in the SBAR that he, Dr. Swanson had authored, had not himself even seen the attachments to the USAO written*

notification with the detailed anonymized patient data of dozens of Dr. Dreyer's dangerous surgeries conducted while he was at Providence. Exhibit 8 at pg. 171, ln. 11-22; pg. 182, ln. 2-25; pg. 183, ln. 1-5. Dr. Demakas, speaking, while accompanied by attorneys for Defendant MultiCare, during a voluntary interview of HHS OIG, stated that had he known that given that he was relying on information provided by Dr. Dreyer for the reviews that he, Dr. Demakas, should have been informed that there were concerns regarding Dr. Dreyer falsifying records. Declaration of Raysinger at ¶ 22. *Dr. Demakas further advised in that interview that his reviews of Dr. Dreyer's work were premised on a base level of honesty from Dr. Dreyer that Dr. Demakas had to rely on. Declaration of Raysinger at* ¶ 22.

57. The SBAR further states, as part of the assessment:

> It is unclear at this time if the information presented or the implied investigations are valid or will be vetted. However, in this period, the obligation of patient safety takes precedence over other considerations until this matter is fully investigated and an objective analysis is completed by regulatory agencies and MultiCare Health System.

ECF No. 26 at ¶ 138; Ex. 20.

Not in dispute, but additional context is needed. *Contrary to this characterization, the USAO's investigation of Dr. Dreyer for performing medically unnecessary surgeries, falsifying diagnoses, and fraudulently billing federal health programs, was not "implied" but rather explicitly disclosed to MultiCare in writing. ECF No. 47-1 at 3-2 (Dorshimer Exhibit 1 at 1-2); see also Declaration of Raysinger at* ¶ 9. *In addition, there is no evidence in the record that Defendant MultiCare ever questioned the validity of the USAO's explicitly disclosed investigation during Dr. Dreyer's continued employment with Defendant MultiCare.*

58. The SBAR set forth four recommended actions: (1) to meet with Dr. Dreyer to determine if he adequately disclosed these issues, if known to him, or to make him aware, if unknown; (2) immediately implement a peer review of all planned surgical services, including authority to cancel planned surgeries if 10 the peer reviewer deems it warranted; (3) initiate, "as soon as practical," "an independent objective review of at least [10] major surgical cases of Dr. Dreyer's since his employment at [MultiCare]"; and (4) "proceed with further discovery of information if available." ECF No. 26 at ¶¶ 139-40, 142-43; Ex. 20.

Not in dispute, but additional context is needed. *First, when MultiCare approached Dr. Dreyer subsequent to the SBAR, he first denied and then subsequently disclosed the Washington State Department of Health Board of Osteopathic Medicine and Surgery's investigation (characterizing it as a "'query' by the osteopathic medical board regarding a complaint made by Dr. Fewel," and that "[t]he osteopathic medical board sent a letter to Providence and I did not find out about it until after I started here," and that he had submitted a responsive report through "the Providence attorney" on February 4, 2020. ECF No. 47-2 at 122 (Dorshimer Exhibit 21 at 1). Despite Dr. Dreyer's initial denial and then admission of an ongoing complaint regarding his surgeries that was being "queried" by the Washington State Department of Health Board of Osteopathic Medicine and Surgery, which he, Dr. Dreyer, had not affirmatively disclosed during Defendant MultiCare's hiring and credentialing process or even subsequently on February 26, 2020, when directly asked about any investigation, and only subsequently disclosing it on March 5, 2020, (ECF No. 47-2 at 122-123 (Dorshimer Exhibit 21 at 1-2), there is no evidence in the record that Defendant MultiCare took any action to suspend or even curtail Dr. Dreyer's surgeries despite this admitted lack of candor regarding Dr. Fewel's complaint and the resulting investigation by the*

Washington State Department of Health Board of Osteopathic Medicine and Surgery.

Second, despite Defendant MultiCare displaying its actual knowledge on February 24, 2020, of concerns coming from an ongoing federal investigation regarding Dr. Dreyer that included "fraudulent billing practices" it did not communicate, at a minimum, that aspect of the concerns to those it charged with ostensibly protecting its patients' safety. In fact, Defendant MultiCare did not inform Dr. Demakas of the concerns coming from an ongoing federal investigation regarding, inter alia, Dr. Dreyer engaging falsifying medical records, making false and fraudulent diagnoses, or falsifying billing. Declaration of Raysinger at ¶ 18. *Further, defendant MultiCare did not provide Dr. Demakas a copy of the USAO written notification, the voluminous attachments thereto containing the anonymized patient data (see Exhibit 1 to Declaration of Raysinger), or the SBAR itself. Declaration of Raysinger at* ¶ 18. *In fact, Dr. Swanson, who as Defendant MultiCare's Chief Medical Officer, assigned Dr. Demakas to conduct the prospective reviews of all of Dr. Dreyer's elective cases as envisioned in the SBAR that he, Dr. Swanson had authored, had not himself even seen the attachments to the USAO written notification with the detailed anonymized patient data of dozens of Dr. Dreyer's dangerous surgeries conducted while he was at Providence. Exhibit 8 at pg. 171, ln. 11-22; pg. 182, ln. 2-25; pg. 183, ln. 1-5. Dr. Demakas, speaking, while accompanied by attorneys for Defendant MultiCare, during a voluntary interview of HHS OIG, stated that had he known that given that he was relying on information provided by Dr. Dreyer for the reviews that he, Dr. Demakas, should have been informed that there were concerns regarding Dr. Dreyer falsifying records. Declaration of Raysinger at* ¶ 22. *Dr. Demakas further advised in that interview that his reviews of Dr. Dreyer's work were premised on a base level of honesty*

from Dr. Dreyer that Dr. Demakas had to rely on. Declaration of Raysinger at ¶ 22.

Further, Defendant MultiCare did not inform Dr. Demakas of the at least one example it knew of through the USAO written notification and attached materials of Dr. Dreyer falsely justifying an emergency surgery. See Declaration of Raysinger at ¶ 18 and Exhibit 1 to the *Declaration of Raysinger. There is no evidence in the record that Defendant MultiCare took any steps whatsoever to address concerns of Dr. Dreyer falsely justifying emergency surgery prior to conducting them, only planned surgeries. Likewise, there is no evidence in the record that during nearly a full year of Dr. Demakas supposedly conducting presurgical reviews of all of Dr. Dreyer's planned surgeries that Dr. Demakas ever engaged in concurrent proctoring of Dr. Dreyer in the operating room or ever canceled one of Dr. Dreyer's surgeries. In fact, Dr. Demakas' declaration to the DOH stated that he did not engage in presurgical review of all of Dr. Dreyer's planned surgeries but rather "continued to periodically perform prospective reviews of Dr. Dreyer's planned surgical procedures." ECF No. 47-2 at 65,* ¶12 *(Dorshimer Exhibit 14 at 2,* ¶12*). Moreover, Dr. Demakas himself stated that after elective surgeries started back up (which was in March of 2020), he ceased even memorializing his pre-operative reviews of Dr. Dreyer's elective surgeries. Declaration of Raysinger at* ¶ 20.

Third, there is no evidence in the record that Defendant MultiCare initiated any independent review of any of Dr. Dreyer's surgical cases until after the State Board of Osteopathic Surgery issued an immediate suspension of Dr. Dreyer's ability to perform spinal surgeries based on its findings that he posed an "immediate threat to public health and safety," in March of 2021.

Fourth, the SBAR recommendation for "immediate" action was for Defendant MultiCare's legal team to "proceed with further discovery of information if available." ECF No. 47-2 at 120 (Dorshimer Exhibit 20 at 1). However, there is no evidence in the record of what if any efforts Defendant MultiCare made during the remaining approximate one year of Dr. Dreyer's employment with Defendant MultiCare to follow up on the concerns internally or with outside third parties such as Providence, the Washington State Department of Health Board of Osteopathic Medicine and Surgery, or the USAO, regarding the concerns that Dr. Dreyer had falsified medical diagnoses, conducted medically unnecessary surgeries, and harmed patients.

59. On February 26, 2020, Dr. Dreyer met with Dr. Swanson, Dr. Demakas (MultiCare's Medical Director for Surgical Services), and Mel Hoadley (a MultiCare Human Resources employee) to discuss the DOJ's investigation into Dr. Dreyer's conduct while at Providence. ECF No. 26 at ¶ 144; *see* Ex. 21 at 2.

***Disputed**, to the extent that the cited document does not characterize the meeting as discussing any "investigation" rather it claims to reference "an inquiry" by the U.S. Attorney's Office for Eastern Washington, despite the USAO written notification explicitly disclosing the fact of its investigation.*

60. During that meeting, Dr. Dreyer represented that while he was aware of an inquiry that occurred while he worked at Providence, it was a "board inquiry that Providence initiated concerning neurological services across their system," that after an "external review … no material findings were disclosed" to him, and that he "considered the matter closed and had received no notice from the State of

Washington," which Dr. Dreyer verified with his attorney. ECF No. 26 at ¶¶ 144-45; Ex. 21 at 2.

Not disputed.

61. In response to MultiCare's specific question whether he had been notified by the Washington Medical Commission of any investigation, Dr. Dreyer responded that he had not. ECF No. 26 at ¶¶ 144-45; Ex. 21 at 2.

Disputed. *In fact, Dr. Dreyer, while initialing denying any investigation by "the Washington Medical Commission" during the February 26, 2020, meeting, then characterized it as a "query," by "the osteopathic medical board" in his March 5, 2020, follow up email explicitly disclosing the following facts about the investigation of the Washington State Department of Health Board of Osteopathic Medicine and Surgery to Dr. Swanson, Dr. Demakas, Mel Hoadly and others: 1) that Dr. Fewel a neurosurgeon in the Tri-Cities working at a Providence hospital called Kadlec had made a complaint to the Washington State Department of Health Board of Osteopathic Medicine and Surgery regarding what Dr. Dreyer characterized as the "non-ideal outcomes" of some portion of his surgeries; 2) that Dr. Fewel's complaint had cited 11 specific patients; 3) that the Washington State Department of Health Board of Osteopathic Medicine and Surgery had sent a letter to Providence; 4) that Dr. Dreyer found out about the complaint after starting with Defendant MultiCare (but in context by prior to at least February 4, 2020); 5) that Providence had hired an attorney for Dr. Dreyer to assist in his response; 6) that Dr. Dreyer had responded to the Washington State Department of Health Board of Osteopathic Medicine and Surgery with an expert report, on February 4, 2020; and 7) that Dr. Dreyer had not, as of that date March 5, 2020, heard back from Washington State Department of Health Board of Osteopathic Medicine and Surgery. ECF No.*

47-2 at 122 (Dorshimer Exhibit 21 at 1). The record contains no evidence that Defendant MultiCare, despite the initial denial and then detailed admissions by Dr. Dreyer regarding Dr. Fewel's complaint, the Washington State Department of Health Board of Osteopathic Medicine and Surgery's investigation of it, Providence's knowledge of it, his and his attorney's response to it, and its apparently ongoing nature, took any steps to inquire further of 1) Dr. Dreyer (to even determine the identity of his referenced attorney); 2) Dr. Dreyer's attorney; 3) Providence; or 4) the Washington State Department of Health Board of Osteopathic Medicine and Surgery.

62. MultiCare advised Dr. Dreyer during that meeting that, "as a precautionary measure," "[Dr. Demakas] would review 100% of elective surgical cases from a prospective perspective and 100% post-surgical reviews of both elective and emergent cases" and would also obtain external review of some surgeries he had performed at MultiCare. Ex. 21 at 2.

Not in dispute.

63. Dr. Swanson then met with Dr. Demakas to discuss the concerns and the plan for peer oversight of Dr. Dreyer's surgeries, though he did not disclose to Dr. Demakas a copy of the DOJ's "notice email." *See* ECF No. 26 at ¶ 140.

Not disputed, but additional context is needed. *In fact, Defendant MultiCare did not inform Dr. Demakas of the concerns coming from an ongoing federal investigation regarding, inter alia, Dr. Dreyer engaging falsifying medical records, making false and fraudulent diagnoses, or falsifying billing. Declaration of Raysinger at* ¶ 18. *Further, defendant MultiCare did not provide Dr. Demakas a copy of the USAO written notification, the voluminous attachments thereto containing the anonymized patient data (see Exhibit 1 to Declaration of Raysinger), or the SBAR itself. Declaration of Raysinger*

at ¶ 18. In fact, Dr. Swanson, who as Defendant MultiCare's Chief Medical Officer, assigned Dr. Demakas to conduct the prospective reviews of all of Dr. Dreyer's elective cases as envisioned in the SBAR that he, Dr. Swanson had authored, had not himself even seen the attachments to the USAO written notification with the detailed anonymized patient data of dozens of Dr. Dreyer's dangerous surgeries conducted while he was at Providence. Exhibit 8 at pg. 171, ln. 11-22; pg. 182, ln. 2-25; pg. 183, ln. 1-5. Dr. Demakas, speaking, while accompanied by attorneys for Defendant MultiCare, during a voluntary interview of HHS OIG, stated that had he known that given that he was relying on information provided by Dr. Dreyer for the reviews that he, Dr. Demakas, should have been informed that there were concerns regarding Dr. Dreyer falsifying records. Declaration of Raysinger at ¶ 22. Dr. Demakas further advised in that interview that his reviews of Dr. Dreyer's work were premised on a base level of honesty from Dr. Dreyer that Dr. Demakas had to rely on. Declaration of Raysinger at ¶ 22.

Moreover, Dr. Demakas advised federal investigators that his pre-operative surgical reviews of Dr. Dreyer's elective surgeries took 15 to 20 minutes and did not include talking with any patients, reviewing Dr. Dreyer's corresponding wRVUs or billing, and were not memorialized after elective surgeries were resumed after the COVID 19 pause in elective surgeries was lifted (March 2020). Declaration of Raysinger at ¶¶ 20-21 and 23-24.

64. Immediately following the meeting with Dr. Swanson, Dr. Demakas, who at the time was a licensed neurosurgeon, a Fellow of the American Association of Neurological Surgeons, and the Medical Director for Surgical Services at MultiCare Rockwood Clinic, began peer reviewing all pre-surgical elective cases and all post-surgical cases, both elective and urgent procedures, planned or performed by Dr. Dreyer. *See* ECF No. 26 at ¶¶ 140-41; Ex. 14 at ¶¶ 11-12.

Disputed. *Dr. Demakas' declaration to the DOH stated that he did not engage in presurgical review of all of Dr. Dreyer's planned surgeries but rather "continued to periodically perform prospective reviews of Dr. Dreyer's planned surgical procedures." ECF No. 47-2 at 65,* ¶12 *(Dorshimer Exhibit 14 at 2,* ¶12*). Moreover, Dr. Demakas advised federal investigators that his pre-operative surgical reviews of Dr. Dreyer's elective surgeries took 15 to 20 minutes and did not include talking with any patients, reviewing Dr. Dreyer's corresponding wRVUs or billing, and were not memorialized after elective surgeries were resumed after the COVID 19 pause in elective surgeries was lifted (March 2020). Declaration of Raysinger at* ¶¶ *20-21 and 23-24.*

65. On March 2, 2020, Dr. Swanson, with input from Dr. Demakas and MultiCare leadership, formalized a "Jason Dreyer, DO Clinical Review Form" for the pre-and post-operative review of elective cases, which he shared via email with Dr. Demakas, Dr. Dreyer, and others. *See* Ex. 22.

Objection: *the email and its attachment (ECF No. 47-2 at 126-130 (Dorshimer Exhibit 22)) is inadmissible hearsay offered for the truth of the matter asserted. Fed. R. Evid. 801 and 802. The United States has had no opportunity to obtain testimony in this litigation from any of the individuals purportedly communicating in the email, including Dr. Dreyer or Dr. Swanson.*

66. The "Jason Dreyer, DO Clinical Review Form" includes a section titled "Imaging Summary" for the peer reviewer's review of and summary of the patient's imaging. Ex. 22 at 3.

Objection: *the email and its attachment (ECF No. 47-2 at 126-130 (Dorshimer Exhibit 22)) is inadmissible hearsay offered for the truth of the matter asserted. Fed. R. Evid. 801 and 802. The United States has had no opportunity to obtain*

testimony from any of the individuals purportedly communicating in the email, including Dr. Dreyer or Dr. Swanson.

67. Dr. Swanson, in the March 2 email, explains that the Form is "only applicable to elective cases as we obviously would not want to inappropriately slow emergent cases," but "I think we should complete the post-surgical review for emergent cases as well." Ex. 22 at 1.

Objection: *the email and its attachment (ECF No. 47-2 at 126-130 (Dorshimer Exhibit 22)) is inadmissible hearsay offered for the truth of the matter asserted. Fed. R. Evid. 801 and 802. The United States has had no opportunity to obtain testimony from any of the individuals purportedly communicating in the email, including Dr. Dreyer or Dr. Swanson*.

68. Dr. Demakas used the "Jason Dreyer, DO Clinical Review Form" for his pre- and post-operative reviews of Dr. Dreyer's elective surgeries. *See, e.g.*, Comp. Ex. 23.

Objection: *the apparently filled out "Jason Dreyer, DO Clinical Review Forms" (ECF No. 47-2 at 132-174; ECF No. 47-3 at 1-25 (Dorshimer Exhibit 23)) are inadmissible hearsay offered for the truth of the matter asserted i.e. that Dr. Demakas used them for any pre or post-operative reviews of Dr. Dreyer's elective surgeries. Fed. R. Evid. 801 and 802. The United States has had no opportunity to obtain testimony in this litigation from Dr. Dreyer or from Dr. Demakas who is now deceased*.

69. On March 5, 2020, Dr. Swanson emailed Dr. Dreyer to document their discussions during their February 26, 2020 meeting. Ex. 21 at 2.

Disputed. *There is no evidence in the record as to the reasons why Dr. Swanson emailed Dr. Dreyer on March 5, 2020. Not disputed as to the date of the email and the fact that Dr. Swanson sent it to Dr. Dreyer and others listed on the document.*

70. In response, Dr. Dreyer emailed Dr. Swanson "[j]ust to clarify" that the Providence review was not the result of any "event relative to my employment there" and that he voluntarily resigned, which he "discussed with Dr. Demakas prior to [] getting hired at MultiCare." Ex. 21 at 1. He further stated,

> There was a 'query' by the osteopathic medical board regarding complain made by Dr. Fewel [another Providence neurosurgeon] … . He would see some second opinions of mine when a patient was not doing well and I wanted another experienced neurosurgical opinion. … After I was hired here, but before I actually started, Providence received a complaint about me …. ***The osteopathic medical board sent a letter to Providence and I did not find out about it until after I started here. Providence hired an attorney to help me review the cases and respond to the "query." He assured me that there was no "investigation."*** … [H]e engaged an outside neurosurgeon and neuroradiologist from academic centers in California. … Both physicians said that my care fit with the standard of care they would expect to see at their institutions. The report was submitted 2/4/20 and I have yet to hear back.

Id. (emphasis added); ECF No. 26 at ¶ 147

Not in dispute.

71. Dr. Dreyer's email to Dr. Swanson added, "I certainly have not heard anything about the US attorney's office. My lawyer from Providence has not either." Ex. 21 at 1.

Not in dispute.

72. Dr. Swanson, via email on the evening of March 5, thanked Dr. Dreyer for his response. Ex. 21 at 1. Having been copied on this email, Dr. Demakas received a complete copy of Dr. Swanson and Dr. Dreyer's March 5 email chain. Ex. 2 21 at 1.

Disputed. *There is no evidence in the record that Dr. Demakas actually received the email chain in question let alone that he read it. In fact, Defendant MultiCare did not inform Dr. Demakas of the concerns coming from an ongoing federal investigation regarding, inter alia, Dr. Dreyer engaging falsifying medical records, making false and fraudulent diagnoses, or falsifying billing. Declaration of Raysinger at* ¶ 18. *Further, defendant MultiCare did not provide Dr. Demakas a copy of the USAO written notification, the voluminous attachments thereto containing the anonymized patient data (see Exhibit 1 to Declaration of Raysinger), or the SBAR itself. Declaration of Raysinger at* ¶ 18. *In fact, Dr. Swanson, who as Defendant MultiCare's Chief Medical Officer, assigned Dr. Demakas to conduct the prospective reviews of all of Dr. Dreyer's elective cases as envisioned in the SBAR that he, Dr. Swanson had authored, had not himself even seen the attachments to the USAO written notification with the detailed anonymized patient data of dozens of Dr. Dreyer's dangerous surgeries conducted while he was at Providence. Exhibit 8 at pg. 171, ln. 11-22; pg. 182, ln. 2-25; pg. 183, ln. 1-5. Dr. Demakas, speaking, while accompanied by attorneys for Defendant MultiCare, during a voluntary interview of HHS OIG, stated that had he known that given that he was relying on information provided by Dr. Dreyer for the reviews that he, Dr. Demakas, should have been informed that there were concerns regarding Dr. Dreyer falsifying records. Declaration of Raysinger at* ¶ *22. Dr. Demakas further advised in that interview that his reviews of Dr. Dreyer's work were premised on a base level of honesty from Dr. Dreyer that Dr. Demakas had to rely on. Declaration of Raysinger at* ¶ *22.*

73. From March 18, 2020 to May 18, 2020, a statewide shutdown of all elective procedures took effect, including Dr. Dreyer's elective surgeries, due to the COVID-19 pandemic. *See* Comp. Ex. 24.

Not in dispute.

74. After February 27, 2020, Dr. Demakas reviewed dozens of Dr. Dreyer's surgeries. *See* Comp. Ex. 23; *see also* Ex. 14 at ¶¶ 11-12.

***Objection**: the apparently filled out "Jason Dreyer, DO Clinical Review Forms" (ECF No. 47-2 at 132-174; ECF No. 47-3 at 1-25 (Dorshimer Exhibit 23)) is inadmissible hearsay offered for the truth of the matter asserted i.e. that Dr. Demakas used them for any pre or post-operative reviews of Dr. Dreyer's elective surgeries. Fed. R. Evid. 801 and 802. Likewise, Dr. Demakas' declaration is inadmissible hearsay offered on this point, that Dr. Demakas did in fact review dozens of Dr. Dreyer's surgeries, for the truth of the matter asserted. Id. The United States has had no opportunity to obtain testimony in this from Dr. Dreyer or Dr. Demakas who is now deceased.*

Moreover, Dr. Demakas advised federal investigators that his pre-operative surgical reviews of Dr. Dreyer's elective surgeries took 15 to 20 minutes and did not include talking with any patients, reviewing Dr. Dreyer's corresponding wRVUs or billing, and were not memorialized after elective surgeries were resumed after the COVID 19 pause in elective surgeries was lifted (March 2020). Declaration of Raysinger at ¶¶ 20-21 and 23-24.

75. On August 2 and 3, 2020, Dr. Dreyer made diagnoses and performed urgent surgery on Patient T.K. ECF No. 26 at ¶¶ 198-99; Ex. 2 at ¶ 8.

Not in dispute.

76. On September 16, 2020, Dr. Dreyer performed surgery on Patient D.P. ECF No. 26 at ¶ 189; Ex. 2 at ¶ 11.

Not in dispute.

77. On October 28, 2020, Dr. Dreyer performed surgery on Patient I.L. ECF No. 26 at ¶ 184; Ex. 2 at ¶ 9.

Not in dispute.

78. On January 9, 2021, Dr. Dreyer completed his provider attestation for re-credentialing, in which he denied that there were any professional sanctions against his medical license or that he has been the subject of a review, challenges, or disciplinary action. Ex. 25.

***Objection**: this document is ostensibly from the full re-credentialing file for Dr. Dreyer but the full document is not included and therefore this should be excluded as violating the rule of completeness in the absence of producing the full document. Fed. R. Evid. 106. The United States has not had the opportunity to obtain discovery, including the testimony of Dr. Dreyer and other witnesses, regarding Defendant MultiCare's recredentialing of Dr. Dreyer.*

79. On March 10, 2021, Dr. Dreyer performed what would be his final surgery at MultiCare.

***Not in dispute, but more context is needed**. Specifically, the only reason that this was Dr. Dreyer's last surgery for Defendant MultiCare was because the*

Washington State Department of Health Board of Osteopathic Medicine and Surgery suspended Dr. Dreyer on March 12, 2021 as an immediate threat to public health and kept restraints on Dr. Dreyer despite Defendant MultiCare's efforts to prevent Dr. Dreyer from being suspended from or having his surgeries restricted by the State in any way. ECF No. 47-3 at 40-43 (Dorshimer Exhibit 26) ECF No. 47-3 at 47-53 (Dorshimer Exhibit 28); ECF No. 47-2 at 64-66 (Dorshimer Exhibit 14).

80. On March 5, 2021, the DOH filed a Statement of Charges against Dr. Dreyer, which provided Dr. Dreyer an opportunity to respond to the charges. ECF No. 26 at ¶ 82; Ex. 5.

Not in dispute.

81. One week later after filing its Statement of Charges and before Dr. Dreyer submitted any response thereto, on Friday, March 12, 2021, the DOH made *ex parte* findings, based on Dr. Dreyer's conduct at Providence between August 2014 and January 2016, that Dr. Dreyer posed a present threat to public health and safety and thus "summarily restricted" Dr. Dreyer "from performing spine surgeries" pending further proceedings. Ex. 26 at 2, 3.; *see* ECF No. 26 at ¶ 83.

***Not in dispute, but additional context is needed**. The summary restriction was supported by an independent expert review of certain of Dr. Dreyer's surgeries conducted while he was at Providence. Exhibit 2 at 1-17; ECF No. 47-3 at 47-48 (Dorshimer Exhibit 28 at 1-2). Specifically, on January 21, 2021, as part of the Department of Health's investigation of Dr. Fewell's allegations regarding Dr. Dreyer's surgeries, an independent neurosurgeon reviewed the surgeries and submitted an expert report to the State Board of Osteopathic Surgery. Exhibit 2 at 1-17. That independent expert report confirmed Dr. Fewell's*

expert review as to 7 of Dr. Dreyer's surgeries where the preoperative imaging and physical exams did not provide the medical indications for the various planned surgeries. Exhibit 2 at 1-17. Specifically, the independent expert summarized that:

> *In culmination, these cases highlight a pattern of extensive spinal surgery that appears to be out of proportion to indications and documentation. In addition, there are significant operative irregularities the [sic] display a clear pattern of overstating the surgery that is being performed.*

Exhibit 2 at 17.

82. On Monday, March 15, 2021, MultiCare learned for the first time that the DOH had summarily restricted Dr. Dreyer's license. *See* Ex. 27.

Objection: *the cited exhibit is a letter from Defendant MultiCare offered to prove the truth of the matter asserted: that Defendant MultiCare first learned of the summary restrictions on March 15, 20321. Fed. R. Evid. 801 and 802. The United States has had no opportunity to obtain discovery in this litigation from Defendant MultiCare on this issue nor to depose, among others, the purported author of the letter Dr. Swanson or its ostensible recipient Dr. Dreyer.*

83. That same day, Dr. Swanson contacted Dr. Dreyer to inform Dr. Dreyer that MultiCare was placing him on administrative leave. *See* Ex. 27.

Objection: *the cited exhibit is a letter from Defendant MultiCare offered to prove the truth of the matter asserted: that Dr. Swanson contacted Dr. Dreyer to inform Dr. Dreyer he was being placed on administrative leave. Fed. R. Evid. 801 and 802. The United States has had no opportunity to obtain discovery in this litigation from Defendant MultiCare on this issue nor to*

depose, among others, the purported author of the letter Dr. Swanson or its ostensible recipient Dr. Dreyer.

84. The following day, March 16, 2021, MultiCare confirmed to Dr. Dreyer by letter that MultiCare was placing him on administrative leave effective immediately, and until further notice that he could not provide patient care ***in any manner***. Ex. 27.

Objection: *the cited exhibit is a letter from Defendant MultiCare offered to prove the truth of the matter asserted: that Defendant MultiCare placed Dr. Dreyer on leave effective that day and instructed Dr. Dreyer not to provide patient care. Fed. R. Evid. 801 and 802. The United States has had no opportunity to obtain discovery in this litigation from Defendant MultiCare on this issue nor to depose, among others, the purported author of the letter Dr. Swanson or its ostensible recipient Dr. Dreyer.*

85. On March 22, 2021, the DOH issued a Corrected Statement of Charges against Dr. Dreyer. *See* Ex. 28 at 3, ¶ 1.1.

Not in dispute.

86. On March 25, 2021, Dr. Dreyer responded to the original Statement of Charges. *See* ECF No. 26 at ¶ 84.

Not in dispute.

87. On March 25, 2021, Dr. Demakas signed a declaration attesting: "In the retrospective and prospective reviews of Dr. Dreyer's cases that I have personally performed, I did not observe concerning or substandard care based upon the

information that was available to me at the time." Ex. 14 at ¶ 14; *see* ECF No. 26 at ¶ 84.

Not in dispute, but additional context is needed. *Defendant MultiCare did not inform Dr. Demakas of the concerns coming from an ongoing federal investigation regarding, inter alia, Dr. Dreyer engaging falsifying medical records, making false and fraudulent diagnoses, or falsifying billing. Declaration of Raysinger at* ¶ 18. *Further, defendant MultiCare did not provide Dr. Demakas a copy of the USAO written notification, the voluminous attachments thereto containing the anonymized patient data (see Exhibit 1 to Declaration of Raysinger), or the SBAR itself. Declaration of Raysinger at* ¶ 18. *In fact, Dr. Swanson, who as Defendant MultiCare's Chief Medical Officer, assigned Dr. Demakas to conduct the prospective reviews of all of Dr. Dreyer's elective cases as envisioned in the SBAR that he, Dr. Swanson had authored, had not himself even seen the attachments to the USAO written notification with the detailed anonymized patient data of dozens of Dr. Dreyer's dangerous surgeries conducted while he was at Providence. Exhibit 8 at pg. 171, ln. 11-22; pg. 182, ln. 2-25; pg. 183, ln. 1-5. Dr. Demakas, speaking, while accompanied by attorneys for Defendant MultiCare, during a voluntary interview of HHS OIG, stated that had he known that given that he was relying on information provided by Dr. Dreyer for the reviews that he, Dr. Demakas, should have been informed that there were concerns regarding Dr. Dreyer falsifying records. Declaration of Raysinger at ¶ 22. Dr. Demakas further advised in that interview that his reviews of Dr. Dreyer's work were premised on a base level of honesty from Dr. Dreyer that Dr. Demakas had to rely on. Declaration of Raysinger at ¶ 22.*

Moreover, Dr. Demakas advised federal investigators that his pre-operative surgical reviews of Dr. Dreyer's elective surgeries took 15 to 20 minutes and did

not include talking with any patients, reviewing Dr. Dreyer's corresponding wRVUs or billing, and were not memorialized after elective surgeries were resumed after the COVID 19 pause in elective surgeries was lifted (March 2020). Declaration of Raysinger at ¶¶ 20-21 and 23-24.

88. Dr. Demakas' Declaration further explained the scope of his personal review:

> In addition to undergoing a focused provide review, beginning in February 2020 and over a period of several months thereafter, I engaged in a concurrent review and surgical oversight of planning surgical cases performed by Dr. Dreyer for the purpose of reviewing surgical options and planning surgical services …. I reviewed cases that Dr. Dreyer had performed on an emergent basis retrospectively. I continued to periodically perform prospective reviews of Dr. Dreyer's planned surgical procedures until his recent suspension. In the past year Dr. Dreyer's cases have also been subject to multi-specialty reviews where the other specialists who also participated in the care of a particular patient (such as physiatry and neuro-radiological services) is also considered.

Ex. 14 at ¶¶ 11-14.

Objection: *lack of relevance and lack of foundation, there is no testimony or other evidence explaining what is meant by "subject to multi-specialty reviews" or what it consists of generally or in this specific instance. Therefore this claimed fact does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402.*

To the extent that it is nonetheless deemed admissible the fact is ***disputed*** *as it is contradicted by the evidence in this case. Specifically, Defendant MultiCare did not inform Dr. Demakas of the concerns coming from an ongoing federal investigation regarding, inter alia, Dr. Dreyer engaging falsifying medical records, making false and fraudulent diagnoses, or falsifying billing. Declaration of Raysinger at* ¶ 18. *Further, defendant MultiCare did not provide Dr. Demakas a copy of the USAO written notification, the voluminous attachments thereto containing the anonymized patient data*

(see Exhibit 1 to Declaration of Raysinger), or the SBAR itself. Declaration of Raysinger at ¶ 18. *In fact, Dr. Swanson, who as Defendant MultiCare's Chief Medical Officer, assigned Dr. Demakas to conduct the prospective reviews of all of Dr. Dreyer's elective cases as envisioned in the SBAR that he, Dr. Swanson had authored, had not himself even seen the attachments to the USAO written notification with the detailed anonymized patient data of dozens of Dr. Dreyer's dangerous surgeries conducted while he was at Providence. Exhibit 8 at pg. 171, ln. 11-22; pg. 182, ln. 2-25; pg. 183, ln. 1-5. Dr. Demakas, speaking, while accompanied by attorneys for Defendant MultiCare, during a voluntary interview of HHS OIG, stated that had he known that given that he was relying on information provided by Dr. Dreyer for the reviews that he, Dr. Demakas, should have been informed that there were concerns regarding Dr. Dreyer falsifying records. Declaration of Raysinger at ¶ 22. Dr. Demakas further advised in that interview that his reviews of Dr. Dreyer's work were premised on a base level of honesty from Dr. Dreyer that Dr. Demakas had to rely on. Declaration of Raysinger at ¶ 22.*

Moreover, Dr. Demakas advised federal investigators that his pre-operative surgical reviews of Dr. Dreyer's elective surgeries took 15 to 20 minutes and did not include talking with any patients, reviewing Dr. Dreyer's corresponding wRVUs or billing, and were not memorialized after elective surgeries were resumed after the COVID 19 pause in elective surgeries was lifted (March 2020). Declaration of Raysinger at ¶¶ 20-21 and 23-24.

89. On April 2, 2021, Dr. Dreyer filed with the DOH his Answer to DOH's March 22, 2021, Corrected Statement of Charges. *See* Ex. 28 at 4, ¶ 1.2.

Not in dispute.

90. Dr. Demakas' declaration was submitted to the DOH on April 5, 2021. *See* Ex. 14 at 4.

Not in dispute.

91. On April 16, 2021, the DOH held a hearing regarding the allegations against Dr. Dreyer. Ex. 28 at 1.

Not in dispute.

92. On April 26, 2021, the DOH found that less restrictive prohibitions could prevent or avoid the danger to public safety and thus reinstated Dr. Dreyer's license, as suspended modified with restrictions, allowing him to conduct surgeries only if approved by two board-certified neurosurgeons actively licensed in Washington, "and at least one must work outside of [Dr. Dreyer's] place of employment and have no financial interest in the institution." Ex. 28 at 5-6; *see* ECF No. 26 at ¶¶ 85-86.

Not in dispute, but additional context is needed. *In that final order of April 26, 2021, the Washington State Department of Health Board of Osteopathic Medicine and Surgery found, as it had on March 12, 2021, that Dr. Dreyer "poses an immediate threat to public health, safety, or welfare." ECF No. 47-3 at 51 (Dorshimer Exhibit 28 at 5).*

93. In November 2020, Dr. Swanson contacted The Greeley Company, LLC ("Greeley"), an independent healthcare consulting company that provides external peer reviews. *See* Ex. 29.

Objection: *the cited exhibit is an email purportedly from The Greeley Company to Defendant MultiCare offered to prove the truth of the matter asserted: that Dr. Swanson contacted The Greeley Company at that time and what the services offered*

by The Greeley Company were. Fed. R. Evid. 801 and 802. The United States has had no opportunity to obtain discovery in this litigation from Defendant MultiCare on this issue nor to depose, among others, the purported author of the email, or anyone with The Greeley Company, or the ostensible recipient of the email Dr. Swanson.

94. In early 2021, MultiCare engaged Greeley to perform a retrospective external peer review based on individual patient medical records and imaging for 20 of Dr. Dreyer's surgeries performed at MultiCare. *See* Ex. 30 at 2, ¶ 5; *see* Ex. 31 at 3; *see* ECF No. 26 at ¶ 142.

Objection: *the first cited exhibit (ECF No. 47-3 at 57-58 (Dorshimer Exhibit 30)) is a letter from an attorney for Defendant MultiCare offered by Defendant MultiCare to prove the truth of the matter asserted: that Defendant MultiCare engaged The Greeley Company to perform the specified task. Fed. R. Evid. 801 and 802. The second cited exhibit (ECF No. 47-3 at 60-65 (Dorshimer Exhibit 31) is a portion of the purported report from Greeley that Defendant MultiCare ostensibly obtained and is inadmissible hearsay offered to prove the truth of the matter asserted: that Greeley conducted a review and the results of that review. The United States has had no opportunity to obtain discovery in this litigation from Defendant MultiCare on this issue nor to depose, among others, anyone with The Greeley Company.*

95. On November 8, 2021, after its review of Greeley issued its External Peer Review Final Report, which concluded that the overall physician care is appropriate and none of the cases fell outside the spectrum of safe and appropriate care. *See* Ex. 31 at 1, 4-6.

Objection: *the cited exhibit (ECF No. 47-3 at 60-65 (Dorshimer Exhibit 31) is a portion of the purported report from Greeley that Defendant MultiCare*

ostensibly obtained and is inadmissible hearsay offered to prove the truth of the matter asserted: that Greeley conducted a review and the results of that review. The United States has had no opportunity to obtain discovery in this litigation from Defendant MultiCare on this issue nor to depose, among others, anyone with The Greeley Company.

96. On November 18, 2021, Dr. Dreyer resigned from MultiCare. *See* ECF No. 10 26 at ¶ 160.

Not in dispute.

97. On or before September 11, 2019, Dr. Dreyer proposed he move from a guaranteed flat salary to a production-based model of compensation, which was an alternative, pre-existing compensation model at MultiCare. Ex. 32; Ex. 33; ECF No. 26 at ¶¶ 54, 104, 110-11.

Not in dispute.

98. On October 1, 2019, MultiCare changed Dr. Dreyer's compensation method from a guaranteed flat salary to a production-based model known as the "Work RVU [Relative Value Units] Production Method as outlined in the MultiCare Rockwood Clinic Provider Compensation Manual." ECF No. 26 at ¶¶ 104, 112; Ex. 33.

Not in dispute.

99. Work Relative Value Units ("wRVUs") are a standard unit of measurement set by Medicare to establish value for health care procedures. ECF No. 26 at ¶ 55.

Not in dispute.

100. wRVUs for particular services and procedures are calculated based on a value assigned under the Medicare Physician Fee Schedule. ECF No. 26 at ¶ 55.

Not in dispute.

101. The number of wRVUs increases as the complexity of the procedure increases. ECF No. 26 at ¶ 55.

Not in dispute.

102. Like most wRVU-based compensation models, under MultiCare's production model, neurosurgeons were paid a set amount for each wRVU generated for a procedure or service they personally performed. ECF No. 26 at ¶ 55.

Disputed. *Defendant MultiCare provides no admissible evidence tending to show that its wRVU-based compensation model was "like most."*

Not in dispute that under Defendant MultiCare's production model neurosurgeons were paid a set amount for each wRVU generated for a procedure or service they personally performed.

103. The wRVU compensation model is promulgated by CMS. ECF No. 26 at ¶ 55; 42 C.F.R. § 414.22. Since the implementation of the wRVU compensation model, CMS has proposed numerous amendments to the governing regulations that indicate the wRVU compensation metric is proper and permissible. *See, e.g.,* 83 Fed. Reg. 226 (Nov. 23, 2018).

Objection: *lack of relevance, whether and to what extent CMS has regulations governing wRVUs does not tend to make any fact of consequence more or less probable, there is no evidence in the record linking the wRVU compensation model promulgated by CMS to Defendant MultiCare's compensation model and further*

there are no allegations that Defendant MultiCare's compensation model violated any rule or regulation promulgated by CMS. Fed. R. Evid. 401 and 402.

104. CMS regulations explicitly permit using wRVUs as a method for calculating productivity compensation. 42 C.F.R. § 411.352(i)(2)(ii) ("A productivity bonus must be calculated in a reasonable and manner. A productivity bonus will be deemed not to relate directly to the volume or value of referrals if one of the following conditions is met: (A) The productivity bonus is based on the physician's total patient encounters or the relative value units (RVUs) personally performed by the physician.").

Objection: *lack of relevance, whether and to what extent CMS has regulations governing wRVUs does not tend to make any fact of consequence more or less probable, there are no allegations that Defendant MultiCare's compensation model violated any rule or regulation promulgated by CMS. Fed. R. Evid. 401 and 402.*

105. CMS recognizes that wRVUs generally represent fair market value because CMS determines the values of the three components of wRVUs—physician's work, practice expense, and malpractice insurance—based on current market conditions. *See, e.g.*, Revisions to Payment Policies Under the Physician Fee Schedule, 81 Fed. Reg. 80,170, at 80,172 (Nov. 15, 2016).

Objection: *lack of relevance, whether and to what extent CMS has regulations governing wRVUs does not tend to make any fact of consequence more or less probable, there are no allegations that Defendant MultiCare's compensation model violated any rule or regulation promulgated by CMS. Fed. R. Evid. 401 and 402.*

106. Recent healthcare industry publications state that the wRVU compensation model is both the standard practice and commonplace throughout the healthcare industry. *See generally*, *e.g.*, Rob Stone & Valerie Rock, E/M 14 Changes Are Here—What Health Lawyers Need to Know about the Compliance and Reimbursement Impacts, AHLA (Oct. 19, 2020) (noting wRVU methods are explicitly permitted under both the Anti-Kickback Statute and Physician Self-Referral Law (aka the Stark Law)), attached as Ex. 34; Michelle Frazier *et al.*, Physician Compensation—The Enforcement Trend That Never Seems To Go Out Of Style, AHLA Seminar Papers (Sept. 28, 2022) ("Compensation plans based solely on [wRVU] production have commonly been utilized in physician employment agreements for the past decade… The simplicity of administering wRVU-based plans, combined with the objectivity of the wRVU as a measure of work, allowed such compensation plans to become the preferred physician compensation model by 2020."), attached as Ex. 35.

Objection: *lack of relevance, whether and to what extent Defendant MultiCare's wRVU compensation model is within any industry standard does not tend to make any fact of consequence more or less probable, there are no allegations that Defendant MultiCare's compensation model is an outlier in any industry, further Defendant MultiCare provides no link applying the opinions in the cited publications to Defendant MultiCare's compensation model. Fed. R. Evid. 401 and 402.*

Objection: *the cited publications are inadmissible expert opinion testimony that is not helpful to the trier of fact, not based on any actual facts or data related to this case, not the product of reliable principles and methods, and does not represent a reliable application of any principles or methods to the facts of this case. Fed. R. Evid. 702.*

Objection: *the cited publications are inadmissible hearsay offered for the truth of the matters asserted. Fed. R. Evid. 801 and 802.*

107. On March 15, 2022, Providence settled the *qui tam* action brought by Dr. Yam on behalf of the Government regarding Dr. Dreyer. ECF No. 26 at ¶ 74; Ex. 36.

Not in dispute.

108. In its settlement agreement with the Government and Relators, Providence admitted that its staff neurosurgeons, including Dr. Dreyer, "were paid compensation for each wRVU that they generated, with no cap on the wRVU-based compensation that could be earned," but makes no admission that such compensation was unlawful or improper and, in fact, the settlement agreement expressly states that "Providence does not concede that liability arises, under the False Claims Act or any other cause of action, from those facts." Ex. 36 at 2 (C) and 5(J); *see* ECF No. 26 at ¶¶ 71-72, 74.

Not in dispute.

109. On April 14, 2023, Dr. Dreyer, in settling the Government's allegations he violated the federal False Claims Act and Washington State False Claims Act, agreed to pay the Government $1,174,849 and agreed to be excluded from Medicare, Medicaid, and all other federal health care programs for nine years. ECF No. 26 at ¶¶ 157, 161. Ex. 37 at 3-4

Not in dispute, but additional context is needed*. Dr. Dreyer's conduct for which he resolved his False Claims Act liability with the United States and the State of Washington was for the actions he took during his period of employment as a neurosurgeon, between May 2019 and November 2021, with Defendant MultiCare and for the resulting false claims submitted by Defendant MultiCare*

to Medicare, FEHBP, TRICARE, VA Community Care, and other federally funded health care programs, as well as the State of Washington's Medicaid program, for Dr. Dreyer's surgeries while working for Defendant MultiCare. ECF No. 47-3 at 106-108 (Dorshimer Exhibit 37 at 1-3).

110. In his settlement agreement with the Government, Dr. Dreyer admitted that he "was paid compensation for each wRVU that he generated, with no cap on the wRVU-based compensation that could be earned," but makes no admission that such compensation was unlawful or improper and, in fact, expressly agreed that "this Settlement Agreement is not an admission of liability or fault." Ex. 36 at 2 (B) and 3(F); *see* ECF No. 26 at ¶ 159.

Not in dispute.

111. On April 13, 2022, Relators, Deanette Palmer, PhD and Richard Palmer, filed this case as a *qui tam* on behalf of the United States and the State of Washington. ECF No. 1; ECF No. 26 at ¶ 16.

***Objection**: lack of relevance, the fact of the qui tam being filed or the date it was filed does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402.*

To the extent it is deemed admissible the fact is not in dispute.

112. On three separate occasions, the United States sought extensions of time to investigate and consider intervening in this case, each time stating that "the United States has been diligently investigating the relators' allegations." ECF No. 3 at 2; ECF No. 6 at 2; ECF No. 9 at 2.

***Objection**: lack of relevance, the fact of the United States seeking extensions of time to investigate or its representations to the Court of its diligent investigation,*

does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402.

To the extent it is deemed admissible the fact is not in dispute.

113. On August 4, 2023, the United States elected to intervene. ECF No. 12; ECF No. 26 at ¶ 16.

Not in dispute.

114. On January 26, 2024, the United States and State of Washington jointly filed the Complaint in Intervention ("Complaint"). ECF No. 26.

Not in dispute.

115. The DOH first received a complaint alleging Dr. Dreyer engaged at Providence in medically unnecessary surgeries and fraudulent billing practices in March 2019, but, based on the information in that complaint, it did not take emergency action. *See* ECF No. 26 at ¶¶ 75, 82-83; Ex. 5.

Not in dispute.

116. The DOH did not bring charges until March 5, 2021. ECF No. 26 at ¶ 82; Ex. 5.

Not in dispute.

117. The DOH did not take emergency summary action until March 12, 2021. ECF No. 26 at ¶ 83; Ex. 26.

Not in dispute.

118. The United States and State of Washington investigated for two years before they sought to intervene and settle in the Yam FCA case on January 13, 2022. *See* Ex. 17; Ex. 38.

Objection: *lack of relevance, the length of time of the investigation of the qui tam filed against Providence or the date of intervention in that matter does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402.*

To the extent it is deemed admissible the fact is not in dispute.

119. The United States and State of Washington investigated this case for more than a year and a half before they filed their Complaint against MultiCare. *See* ECF Nos. 1, 3, 6, 9, 26.

Objection: *lack of relevance, the length of the investigation in this matter does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402.*

To the extent it is deemed admissible the fact is ***not in dispute but additional context is needed.*** *Specifically, between at least March of 2023 through at least August of 2023 the investigation was less active as the parties attempted to negotiate a pre-intervention resolution. Declaration of Raysinger at* ¶ 10.

120. On March 17, 2020, the DOJ issued a subpoena duces tecum to MultiCare seeking production of all diagnostic, surgical, or other medical records from Dr. Dreyer, including, but not limited to, any calculations of any compensation based on any wRVUs. Ex. 39.

Not in dispute but additional context is needed. *Specifically, the United States has has not received any production of documents from Defendant MultiCare regarding*

121. Between April 17, 2020 and August 15, 2022, MultiCare produced documents in response to the DOJ Subpoena and responded in writing to specific questions from the DOJ. *See*, *e.g.*, Ex. 30.

Not in dispute but additional context is needed. *The United States has not received, among other things, the complete medical patient records for all patients treated by Dr. Dreyer, all images concerning any treatment or procedure by Dr. Dreyer, and all billing records for patients treated by Dr. Dreyer as requested in the March 17, 2020, subpoena duces tecum. Tornabene Declaration at ¶ 20; see generally Raysinger Declaration at ¶ 8. Specifically, the United States has not received these materials from Defendant MultiCare for any of Dr. Dreyer's surgeries occurring since at least May 29, 2020. Tornabene Declaration at ¶ 20.*

122. Prior to filing the Complaint, the DOJ's investigation of this matter included review of documents produced by MultiCare; review of documents produced by Providence and others; review of allegations and materials provided by Dr. Yam in connection with their qui tam against Providence based on Dr. Dreyer's conduct; review of allegations and materials provided by Relators in this case, the Palmers, in connection with their qui tam against MultiCare based on Dr. Dreyer's conduct; interviews of current and former MultiCare and Providence employees; expert reviews of Dr. Dreyer's surgeries; review of Washington DOH materials and investigation into Dr. Dreyer; patient complaints at MultiCare and Providence; and analysis of MultiCare's billings to federal healthcare programs for Dr. Dreyer's services.

Objection: that Defendant MultiCare cites to no admissible evidence for this asserted fact.

To the extent this fact is deemed admissible, it is not disputed that this is a non-exhaustive list of the investigative activities in this matter.

123. Under 42 C.F.R. § 405.371(a), Medicare payments to providers may be: (1) Suspended, in whole or in part, by CMS or a Medicare contractor if CMS or the Medicare contractor possesses reliable information that an overpayment exists or that the payments to be made may not be correct, although additional information may be needed for a determination"; or "(2) In cases of suspected fraud, suspended, in whole or in part, by CMS or a Medicare contractor if CMS or the Medicare contractor has consulted with the OIG, and, as appropriate, the Department of Justice, and determined that a credible allegation of fraud exists against a provider or supplier, unless there is good cause not to suspend payments."

***Objection**: this is an inadmissible statement of law not of fact.*

***Objection**: lack of relevance, there is no evidence in the record that CMS or any Medicare contractor suspected any fraud in this case or consulted with the OIG or the Department of Justice during the relevant timeframe and therefore even to the extent that this legal statement constitutes a fact it does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402.*

124. Under 42 C.F.R. § 1001.701, HHS OIG has the authority to exclude an individual that has "(2) Furnished, or caused to be furnished, to patients (whether or not covered by Medicare or any of the State health care programs) any items or services substantially in excess of the patient's needs, or of a quality that fails to meet professionally recognized standards of health care," which determination OIG may make based on, *inter alia*, state or local licensing authorities or any other sources deemed appropriate by the OIG. 42 C.F.R. §§ 1001.701(a)-(b).

***Objection**: this is an inadmissible statement of law not of fact.*

***Objection**: lack of relevance, there is no evidence in the record that HHS OIG should have excluded Dr. Dreyer sooner than it did and therefore even to the extent that this legal statement constitutes a fact it does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402.*

***Objection:** even if this were considered a fact not a statement of law, any scant probative value it may have is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury namely by supporting the wholly improper argument, essentially for jury nullification, that HHS OIG should have caught Dr. Dreyer sooner not withstanding the efforts Defendant MultiCare took to give his fraud cover and to profit from it while endangering the lives and well being of its own patients.*

125. Under 42 C.F.R. § 1001.901(a), HHS OIG may exclude any individual that it determines has committed an act described in [42 U.S.C. § 1320a-7a], which provides for Civil Monetary Penalties for claims for items or services not 22 provided as claimed, false or fraudulent claims, claims for services not medically necessary, among other things. 42 C.F.R. §§ 1001.901(a); 42 U.S.C. § 1320a-7a.

***Objection**: this is an inadmissible statement of law not of fact.*

***Objection**: lack of relevance, there is no evidence in the record that HHS OIG should have excluded Dr. Dreyer sooner than it did and therefore even to the extent that this legal statement constitutes a fact it does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402.*

***Objection:** even if this were considered a fact not a statement of law, any scant probative value it may have is substantially outweighed by the*

danger of unfair prejudice, confusion of the issues, and misleading the jury namely by supporting the wholly improper argument, essentially for jury nullification, that HHS OIG should have caught Dr. Dreyer sooner not withstanding the efforts Defendant MultiCare took to give his fraud cover and to profit from it while endangering the lives and well being of its own patients.

126. Under the Washington Revised Code, RCW 18.130.050(8) provides that the disciplining authority "has the following authority:" … "(8) To take emergency action ordering summary suspension of a license, or restriction or limitation of the license holder's practice pending proceedings by the disciplining authority. …," which summary suspension remains in effect until proceedings by the disciplining authority have been completed. RCW 18.130.050(8).

***Objection**: this is an inadmissible statement of law not of fact.*

***Objection**: lack of relevance, there is no evidence in the record that the State of Washington should have excluded Dr. Dreyer sooner than it did and therefore even to the extent that this legal statement constitutes a fact it does not tend to make any fact of consequence more or less probable. Fed. R. Evid. 401 and 402.*

***Objection:** even if this were considered a fact not a statement of law, any scant probative value it may have is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury namely by supporting the wholly improper argument, essentially for jury nullification, that the State of Washington should have caught Dr. Dreyer sooner not withstanding the efforts Defendant MultiCare took to give his fraud cover and to profit from it while endangering the lives and well being of its own patients.*

II. **Additional Undisputed Facts**

A. Additional Experts Have Reviewed Dr. Dreyer's Scheduled And Performed Surgeries at Defendant MultiCare.

127. After the State of Washington Department of Health Board of Osteopathic Medicine and Surgery found that Dr. Dreyer continuing to conduct surgeries for Defendant MultiCare posed an immediate threat to public health and safety on March 12, 2021, Defendant MultiCare reassigned Dr. Dreyer's scheduled surgeries to other surgeons. *Exhibit 9 at* pg. 56, ln. 2-14. At that time Defendant MultiCare reassigned twelve (12) of Dr. Dreyer's patients who were at that time scheduled for surgery to Dr. Antoine Tohmeh, a spine surgeon for Defendant MultiCare to Dr. Antoine Tohmeh, a spine surgeon for Defendant MultiCare. *Exhibit 9 at* pg. 56, ln. 2-24; pg. 57, ln. 2-23; pg. 58, ln. 1-3; pg. 59, ln. 4-8; ln. 16-19.

128. The United States and State of Washington retained Dr. Diana L. Kraemer, MD, as a neurosurgeon expert in this case to review the records and imaging of example patients D.P., T.K., I.L., and M.W., as outlined in the Complaint. Dr. Kraemer's CV is attached to the report of T.K. which shows her lengthy experience and expertise in neurosurgery. Dec. of D. Taylor,[5] Ex. B at p. 22.

129. Dr. Kraemer reviewed the records and imaging for patient D.P. and determined the surgery Dr. Dreyer performed on September 16, 2020, was neither reasonable nor medically necessary. Dec. of D. Taylor, Ex. A at p. 2-3. The 5-level cervical fusion was a very risky procedure and occurred before D.P. attempted any other type of conservative treatment. In addition, the indications for surgery are

[5] Refers to the separately filed Declaration of Derek Taylor in Support of the Untied States' and the State of Washington's Response to Defendant's Motion for Summary Judgment.

questioned. *Id.* As mentioned in the report, Defendant MultiCare's own radiologist compared both CT and MRI imaging from 2016 to 2020 and noted "most of the findings are unchanged since prior study." *Id.* at p. 20-21. Even after this, Dr. Dreyer performed a massive, risky surgery, that ended up injuring D.P. *See Id.* at p. 9.

130. Dr. Kraemer reviewed the records and imaging for patient T.K. and determined the surgery Dr. Dreyer performed on August 3, 2020, was excessive and not reasonable nor necessary in relation to the fusions at levels C5-6 and C6-7. Dec. of D. Taylor, Ex. B at p. 2-3. Dr. Dreyer incorrectly stated T.K. had severe stenosis at those levels, seemingly to justify his invasive fusion surgery, when Dr. Kraemer and a Defendant MultiCare radiologist only say mild to moderate stenosis. *Id.* Mild to Moderate stenosis would not justify the operation Dr. Dreyer performed. *Id*.

131. Dr. Kraemer also reviewed the records and imaging of patient I.L. For patient I.L., Dr. Kraemer determined the surgery was reasonable, but not medically necessary. See Dec. of D. Taylor, Ex. C. Dr. Dreyer performed a fusion surgery after only one facet block injection and after no other conservative therapy was attempted. *Id.* Importantly, the typical standard of care would be to do a radiofrequency ablation (RFA) which is a way less invasive procedure. *Id.*

B. Defendant MultiCare Submitted Claims to Federal Health Programs for Payment for Dr. Dreyer Procedures that Contained Material Falsities.

132. Medical providers authorized to submit claims for reimbursement to Medicaid are assigned National Practitioner Identifiers ("NPI"). These medical providers utilize their assigned NPIs in making claims for reimbursement to Medicaid. Claims for reimbursement from authorized medical providers to Medicaid must also include the appropriate CPT code for each service rendered or procedure performed as well as the appropriate ICD code indicating the diagnosis that justifies the service

rendered or procedure performed. *See* Declaration of Lucero[6] at ¶ 14; Declaration of Tracy[7] at ¶ 5.

133. The CPT is a systematic list of codes for procedures and services performed by or at the direction of a physician. Declaration of Lucero at ¶ 15; Declaration of Tracy at ¶ 5. Each procedure or service is identified by a five-digit CPT code. In addition to the CPT Manual, the AMA publishes the International Classification of Diseases Manual, which assigns a unique alphanumeric identifier (ICD-10) or numeric identifier (ICD-9) to each medical condition. Declaration of Lucero at ¶ 15; Declaration of Tracy at ¶ 5. In order to be payable by federal health programs or by Medicaid, a claim for reimbursement must identify both the CPT code that the provider is billing for and the corresponding ICD-9 or ICD-10 code that identifies the patient's medical condition that renders the provider's service medically necessary. *See* Declaration of Lucero at ¶ 15; Declaration of Tracy at ¶ 5.

134. As a material condition of reimbursement under federal health programs and Medicaid, neurosurgery services and procedures are required to be medically reasonable and necessary. *See* Declaration of Lucero at ¶16; Declaration of Tracy at ¶ 8; *see also* 42 C.F.R. § 424.516(a)(1). Physicians and medical providers who seek reimbursement under Medicaid or federal health care programs must certify the necessity of the services. *See* Declaration of Lucero at ¶16; Declaration of Tracy at ¶8; *see also, e.g.,* 42 U.S.C. § 1395y(a) (excluding from Medicare and Medicaid coverage any item or service that is not "reasonable and necessary"); 42 C.F.R. § 424.10(a) (physicians and medical providers who seek reimbursement under the

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[6] Refers to the separately filed Declaration of Catrina Lucero.

[7] Refers to the separately filed Declaration of Eric D. Tracy in Support of the United States' and State of Washington's Response to Defendant's Motion for Summary Judgment.

Medicare Act must certify the *necessity* of the services); 10 U.S.C. § 1079(a) (excluding from TRICARE coverage any service or supply that is "not medically or psychologically necessary"); 38 U.S.C. § 1710(a)(1) (providing that the VA "shall furnish hospital care and medical services *which the Secretary deems to be needed*") (emphasis supplied); *In re: Eargo Securities Litigation*, 656 F. Supp. 3d 928, 934 (N.D. Cal. 2023) (FEHBP insurance carriers typically condition claim reimbursements on a determination of medical necessity).

135. Defendant MultiCare billed, collected, and retained all professional fees for all professional medical services rendered by Dr. Dreyer while he was employed by Defendant MultiCare. Exhibit 17 at 6. Defendant MultiCare determined in its sole discretion the amounts of the professional fees to be charged for Dr. Dreyer's professional medical services while it employed Dr. Dreyer. Exhibit 17 at 6. Further, Defendant MultiCare even had a limited power of attorney that it could exercise on behalf of Dr. Dreyer for, among other things, executing agreements with government reimbursement plans. Exhibit 17 at 7.

136. While he was an employee of Defendant MultiCare, Dr. Dreyer input the CPT codes and ICD codes required for Defendant MultiCare to seek reimbursement from federal health care programs for Dr. Dreyer's claimed procedures. Raysinger Declaration at ¶ 23; ECF No. 47-3 at 106-107 (Dorshimer Exhibit 37 at 1-2).

137. Defendant MultiCare used the information provided by its employee, Dr. Dreyer, regarding the procedures he claimed to have conducted on patients to submit claims and accept reimbursement from Medicare, TRICARE, VA Community Care, the Federal Employee Health Benefit Plan, and other federally funded health care programs as well as from the State of Washington Medicaid program. ECF No. 47-3 at 106-107 (Dorshimer Exhibit 37 at 1-2); *see also* Declaration of Tracy at ¶ 6-7; Declaration of Tracy at ¶ 7.

138. To the extent that any claims for payment paid by federal health care programs or Medicaid are based on falsified diagnoses, medically unnecessary services, services that are not medically indicated, services that are performed below the applicable standard of care, or are for services not actually performed, Medicaid would not pay those claims. *See* Declaration of Lucero at ¶17; Declaration of Tracy at ¶ 9; s*ee also* 42 U.S.C. § 1320a-7b(a)(1)-(2); 42 C.F.R. §§ 1320a-7b(a)(1)-(2), 413.24(f)(4)(iv).

C. Dr. Dreyer was a National Outlier among other Neurosurgeons for Certain Spinal Surgeries that MultiCare Billed to Medicare

139. Dr. Dreyer was a national outlier in certain Medicare Part B rendering claims, according to an analysis of Dr. Dreyer's Medicare Part B Rendering Claims conducted by HHS-OIG's Office of the Chief Data Officer ("OCDO") of 14 procedure codes used by neurosurgery providers nationwide with a similar practice size during the time that Dr. Dreyer was employed by and operating on patients for Defendant MultiCare,. *See* Declaration of Raysinger at ¶ 25-27.

140. According to the OCDO peer comparison report, Dr. Dreyer ranked 89 out of 4,143 providers—higher than most his peers— in terms of the amount Medicare Part B paid for these 14 procedure codes rendered by Dr. Dreyer during this time period. Declaration of Raysinger at ¶ 28. Additionally, the report found that Dr. Dreyer ranked 113 out 4,143 providers—again, higher than most of his peers—in terms number of the number of Medicare beneficiaries Dr. Dreyer performed these 14 procedures on. Declaration of Raysinger at ¶ 28. This same OCDO peer comparison report also identified Dr. Dreyer as an extreme outlier for the year 2020, in terms of the amount Medicare Part B paid for his rendering of the same 14 procedures codes. Declaration of Raysinger at ¶ 28.

141. The results of additional HHS-OIG OCDO peer comparison reports comparing Dr. Dreyer's Medicare Part B rendering claims, involving certain,

individual procedure codes, to neurosurgery providers nationwide with a similar practice size during the time that Dr. Dreyer was operating on patients on behalf of Defendant MultiCare, are summarized in the following table:

CPT Code	**CPT Code Description**	**Medicare Paid Amount Percentile 7/23/2019–3/12/2021[8]**	**Medicare Paid Amount Percentile 2020[9]**	**Number of Medicare Beneficiaries Percentile 7/23/2019-3/12/2021[10]**	**Number of Medicare Beneficiaries Percentile 2020[11]**
22853	insertion of cage or mesh device to spine bone and disc space during spine fusion	98th percentile nationwide	99th percentile nationwide	98th percentile nationwide	99th percentile nationwide
22846	placement of stabilizing device to front, 4-7 spine bone segments	97th percentile nationwide	99th percentile nationwide	97th percentile nationwide	99th percentile nationwide
63047	Partial removal of spine bone with release of lower spinal cord and/or	97th percentile nationwide	96th percentile nationwide	98th percentile nationwide	98th percentile nationwide

[8] Out of 4,143 neurosurgery providers nationwide with a similar practice size.

[9] Out of 3,970 neurosurgery providers nationwide with a similar practice size.

[10] Out of 4,143 neurosurgery providers nationwide with a similar practice size.

[11] Out of 3,970 neurosurgery providers nationwide with a similar practice size.

	nerves, 1 segment				
22845	placement of stabilizing device to front, 2-3 spine bone segments	97th percentile nationwide	98th percentile nationwide	98th percentile nationwide	99th percentile nationwide
22585	fusion of spine bones through front of body with partial removal of disc, each additional disc	98th percentile nationwide	99th percentile nationwide	98th percentile nationwide	99th percentile nationwide

Declaration of Raysinger at ¶ 29.

D. Defendant MultiCare Knew During its Credentialing of Dr. Dreyer that Dr. Dreyer was under investigation by the Washington State Department of Health

142. On July 16, 2019, a Healthcare Investigator for the Washington State Board of Osteopathic Physicians and Surgeons notified Dr. Dreyer, then an employee of Defendant MultiCare days away from his credentialing being completed and conducting his first surgery on behalf of Defendant MultiCare, that:

> It is alleged that you have repeatedly overstated or exaggerated dynamic instability to justify fusion surgeries and that you in general overstate what was actually carried out in the procedures. It is also alleged that your clinical notes, history & physicals, and operative notes are worded in a nearly identical format.

The Healthcare Investigator then identified the 11 patients and surgical procedures that were part of the complaint and informed Dr. Dreyer that he was required to respond to each. Exhibit 12.

E. Defendant MultiCare rewarded Dr. Dreyer with high wRVUs

143. During August 2019, Dr. Dreyer's first full month of operating on patients for Defendant MultiCare, Dr. Dreyer was by far the most productive neurosurgeon for MultiCare in Spokane, producing 1,745 wRVUs. Exhibit 10 at 1. In comparison, MultiCare's next most productive neurosurgeon in Spokane produced 585 wRVUs during that same period. Exhibit 10 at 1.

144. On August 28, 2019, Mark Donaldson identified the fact that because Leigh Gilliver had started working with Dr. Dreyer, Mr. Gilliver's increased productivity would support Defendant MultiCare moving Mr. Gilliver to a wRVU production based model thereby allowing him to earn more money. Exhibit 15 at 3.

145. Mark Donaldson sent an email to MultiCare's finance department on September 11, 2019, stating:

> Jason Dreyer, our new Neurosurgeon who started in July, has quickly ramped up his practice. . . He wants to move to production on October 1, but would first like to verify that his wRVUs make that a wise choice. Hi [sic] surgery volumes suggest so. I know it usually takes couple months [sic] to get the data, but is there anything we can do to get an assessment to him?

Exhibit 13.

146. On September 16, 2019, Mark Donaldson received the requested assessment of Dr. Dreyer's wRVU production from the Defendant MultiCare finance department. Exhibit 11. This assessment projected that Dr. Dreyer would produce 11,274 wRVUs annually based on his current wRVU production. Exhibit 11. This was more than 2,000 wRVUs over MultiCare's own target of 9,230 annualized wRVUs for Dr. Dreyer. Exhibit 11. In providing Dr. Dreyer the detailed assessment of his high wRVU production, the Mark Donaldson emailed Dr. Dreyer the following:

> Hi Jason,
> I just received your wRVU detail, which includes data from July 15-August 31. Based on that analysis and assuming you can maintain your current production levels, it is advantageous for you to move to

> production on October 1. By my calculations, after adjusting for the 9-week vacation allowed under the production model, you would benefit in excess of $190k annually. . . .

Exhibit 14.

147. During September 2019, Dr. Dreyer's second full month of operating on patients for Defendant MultiCare, Dr. Dreyer was again by far the most productive neurosurgeon at MultiCare in Spokane, producing 1,455 wRVUs. Exhibit 10 at 1. In comparison, MultiCare's next most productive neurosurgeon in Spokane produced 400 wRVUs. Exhibit 10 at 1.

148. Effective October 1, 2019, Defendant MultiCare moved Dr. Dreyer to its wRVU production method, allowing him to earn uncapped wRVUs as opposed to a base salary, prior to the end of his start-up period as an employee for Defendant MultiCare. Exhibit 16.

149. In October and November of 2019, Dr. Dreyer produced 1,904 and 1,262 wRVUs, respectively, for operations on patients for Defendant MultiCare, as compared to 997 and 993 wRVUs produced, respectively, by Defendant MultiCare's next most productive neurosurgeon in Spokane. Exhibit 10 at 1

150. Within the first three (3) months of Defendant MultiCare allowing Dr. Dreyer to operate on its patients, Dr. Dreyer had produced 6,716 wRVUs. Defendant MultiCare's next most productive neurosurgeon in Spokane produced 8,566 wRVUs over the course of eleven (11) months. Exhibit 10 at 1. This equates to Dr. Dreyer producing approximately 2,238 wRVUs per month while Defendant MultiCare's next most productive neurosurgeon in Spokane in 2019 earned an average of only approximately 778 wRVUs per month. *See* Exhibit 10 at 1.

151. Defendant MultiCare paid Dr. Dreyer to perform surgeries on patients for Defendant MultiCare and provided Dr. Dreyer, starting on October 1, 2019, higher compensation based on Dr. Dreyer conducting a greater number of procedures and/or

a higher complexity of procedures. Exhibit 16; ECF No. 47-3 at 107 (Dorshimer Exhibit 37 at 2).

152. In this manner, in 2020 Defendant MultiCare compensated Dr. Dreyer over $1.7 million for his volume of surgical procedures, which was more than twice his original base annual salary of $797,000 with Defendant MultiCare. ECF No. 47-3 at 107 (Dorshimer Exhibit 37 at 2); Exhibit 17 at 1.

DATED this 27th day of January, 2025,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 27, 2025, a true and correct copy of the foregoing was delivered by reliable electronic means through the CM/ECF system to all counsel of record in this matter.

Tyler H.L. Tornabene
Assistant United States Attorney