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AUGUST 8, 2023 - MOTION HEARING & ORAL ARGUMENT  
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Appeal of the Determination of the Responsible Authority for the Minnesota Board of Medical Practice that Certain Data about Roger J. Day are Accurate and/or Complete

OAH DOCKET NO. 65-0903-39023

Office of Administrative Hearings  
600 Robert Street North  
Courtroom 4  
Saint Paul, Minnesota

Met, pursuant to Notice, at 9:30 in the morning on August 8, 2023.

BEFORE: Judge Ann O'Reilly

TRANSCRIPT PREPARED BY: Christine Simons, RMR, RPR

1 APPEARANCES:

2 JAMAL ZAYED & THERESA FLAHAVEN, Assistant  
3 Attorneys General, appeared on behalf of the  
4 Minnesota Board of Medical Practice.

5 DR. ROGER J. DAY, Pro se.

6 ALSO PRESENT:

7 ELIZABETH HUNTLEY, Executive Director of the  
8 Board of Medical Practice

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1                   JUDGE O'REILLY: All right. Well, let's  
2 go on the record. This is In the Matter of the  
3 Appeal of the Determination of the Responsible  
4 Authority for the Minnesota Board of Medical  
5 Practice that Certain Data about Roger J. Day are  
6 Accurate and/or Complete. OAH Docket Number  
7 65-03 -- 0903-39023.

8                   Today is August 8th, 2023. It's a little  
9 after 9:30 a.m., and we are appearing in Courtroom 4  
10 at the Office of Administrative Hearings for a  
11 motion hearing and oral argument.

12                   Let's first identify everybody. I am  
13 Ann O'Reilly. I am the Administrative Law Judge  
14 assigned to this matter.

15                   If I could, please, have counsel for the  
16 Board note your appearances.

17                   MR. ZAYED: Jamal Zayed, on behalf of the  
18 Board of Medical Practice.

19                   JUDGE O'REILLY: And with you today.

20                   MS. FLAHAVEN: Theresa Flahaven,  
21 Assistant Attorney General on behalf of the Board of  
22 Medical Practice, and Elizabeth Huntley, Executive  
23 Director of the Board of Medical Practice.

24                   JUDGE O'REILLY: Very good.

25                   And let's have you note your appearance,

1 Dr. Day.

2 DR. DAY: I am Roger Jerome Day, MD. I  
3 am the subject of the data, and I am the filer of  
4 the data challenge and the appellate appealing the  
5 responsible authority's determination on the  
6 challenge.

7 JUDGE O'REILLY: Very good.

8 We are here in a courtroom at the Office  
9 of Administrative Hearings. All of us are here  
10 together in person.

11 We also have on the big screen -- and  
12 Dr. Day has on his personal laptop -- live  
13 transcription that is being provided by Microsoft  
14 Teams. So the transcription as we speak, there's a  
15 slight delay, but it is transcribing what we say.  
16 It is being broadcast on a large screen in the  
17 courtroom and also on Dr. Day's laptop computer.  
18 And this is to provide him the opportunity to read  
19 along as we proceed.

20 After I give this brief opening statement  
21 to talk about how we're going to proceed, there will  
22 be very little that you'll hear from me. Everything  
23 will be you, Dr. Day. Today is your opportunity to  
24 both respond to the motion that is made -- that has  
25 been made by the Board and to bring your own motion

1 for summary disposition.

2 On May 23rd, 2023, I issued an amended  
3 first prehearing order, and it set out certain  
4 requirements for the parties to proceed with motion  
5 practice. And this was to ensure that Dr. Day was  
6 accommodated with the ability to respond to the  
7 Board's motion and to bring his own motion, both  
8 orally, instead of submitting something in writing.

9 Under that order, the Board was required  
10 to file its motion for any dispositive motions that  
11 it had by July 7th, 2023.

12 Appellant then had the option to file a  
13 written response to that motion, file his own motion  
14 by July 7th, 2023, or to present his response and  
15 his own motion for summary disposition orally at  
16 this -- today's hearing, August 8th, 2023.

17 Dr. Day has elected to present both his  
18 response to the Board's motion and his own motion  
19 for summary disposition orally at today's hearing.

20 We are recording the hearing, and I will  
21 be looking at my computer frequently to ensure that  
22 the recording is working. We are digitally  
23 recording the hearing and transcribing it in live  
24 time up on the screen. There will be a copy of this  
25 digital recording available to you almost

1 immediately after today's hearing.

2 What we do need for you to do is to make  
3 a written request for that digital recording. We  
4 will then provide it to you electronically, and you  
5 can use that recording to have a review transcribed  
6 into a written document if you so chose.

7 If you choose to obtain a transcript, I  
8 ask that you provide me a copy of that transcript as  
9 well, so that we can keep it in the official court  
10 file. And we will -- I will also ask you to provide  
11 a copy to the Board if the Board requests it.  
12 Otherwise, the Board also has the opportunity to  
13 request in writing the digital recording of today's  
14 hearing.

15 The Board will not be heard at today's  
16 hearing. The Board has until August -- I'm sorry,  
17 September 8th, 2023, to file a response to  
18 Appellant's cross-motion for summary disposition.  
19 Reply briefing will not be allowed.

20 All right. That's basically everything I  
21 need to say. I'm going to ask you, Dr. Day, is  
22 there -- do you have any questions for me? Has  
23 anything been unclear?

24 DR. DAY: Is there a form that I can  
25 simply sign to request the audio recording?

1 JUDGE O'REILLY: Why don't I do this:  
2 When we get done with the hearing, you remind me,  
3 and I will send an e-mail to my staff -- I will copy  
4 you on it, I will copy the Board on it -- making  
5 that request for you.

6 DR. DAY: Because I already do know that  
7 it will be essential to transcribe this audio. I  
8 can already see that the closed captions are good  
9 enough for me to make sense of what was said.  
10 Again, opposing counsel came up as "dead smell."

11 So we really need to have a high-fidelity  
12 recording at this -- and this is a data practice  
13 proceeding, and so the data really needs to be  
14 accurate, and so we will want an accurate  
15 transcription of what is said here.

16 JUDGE O'REILLY: Yes. The point of the  
17 Teams transcription here, this is -- the Teams  
18 transcription is an accomodation for you to read  
19 along. It's not perfect. Because it is live closed  
20 captioning, it's done by a computer. If you watch a  
21 television show and you have closed caption on the  
22 bottom, you'll see the same thing where there will  
23 sometimes be errors.

24 But if you provide the digital recording  
25 to a court reporter, that court reporter, a human,

1 will have a better transcript of -- he or she can  
2 provide a better transcript for you.

3 Okay. So we will get you a recording,  
4 and then you can take that and get a transcript.

5 DR. DAY: Perfect.

6 JUDGE O'REILLY: All right. And so just  
7 so the court reporter who eventually hears this  
8 knows that the female voice that they're going to be  
9 hearing, my voice, is the judge. Dr. Day will be  
10 speaking almost exclusively today, and other than  
11 noting their appearances earlier, the Board will not  
12 be heard today.

13 So it should be fairly easy for the court  
14 reporter. Sometimes court reporters, when they take  
15 a digital recording, sometimes have a hard time  
16 differentiating between different voices, but I  
17 think my voice is enough different than yours that  
18 the court reporter should have no problem. All  
19 right?

20 DR. DAY: And so what I present here  
21 orally will be my motion for summary disposition?

22 JUDGE O'REILLY: Right.

23 DR. DAY: And then, I guess, the -- the  
24 Respondent's can choose to transcribe that oral  
25 motion in order to prepare their response, or not,

1 at their discretion?

2 JUDGE O'REILLY: Correct. They can use  
3 the audio recording. Mr. Zayed is here today. He's  
4 probably going to take some really good notes.  
5 That's what I would do if I was in his position, and  
6 that's what I'm doing here. I tend to listen better  
7 if I can write it down, because I find that's three  
8 data points that I have. I hear you, it comes in my  
9 ear. I, then, put it in my own words in my head,  
10 and then I write it down. And I found that in those  
11 three steps, my notes are pretty darn good. But if  
12 I have a question, I'll play back the recording, or  
13 I'll look at the transcript that you are going to  
14 prepare for us.

15 DR. DAY: It is a potential concern to me  
16 to hear that there will not be provision for reply  
17 and --

18 JUDGE O'REILLY: Our rules generally  
19 don't have replies to dispositive motions. In fact,  
20 we rarely -- our rules say that oral argument is  
21 optional. So we're kind of going above and beyond  
22 at this point.

23 I feel comfortable, if there is something  
24 that I don't understand, I could request reply. But  
25 at this point, I don't believe it will be necessary,

1 but let's hear your arguments, and I'll let you know  
2 if there's something that I don't understand.

3 DR. DAY: I mean, I guess what I'm  
4 thinking about is that -- the fact that we are  
5 correcting data, and in my academic and professional  
6 life, I always consider data available for  
7 examination and correction. And so I consider every  
8 dataset to be an open dataset, and I am always  
9 prepared to reexamine anything that is called into  
10 question.

11 And so it's -- I understand that for  
12 legal operational purposes, we need to do things in  
13 bite-sized chunks, and we have to say conversation  
14 opens and closes and opens and closes. So I just  
15 want to be sure that we continue to iterate on  
16 anything that's in dispute, is the bottom line.

17 JUDGE O'REILLY: Argument is not the data  
18 that is subject to correction. What is subject to  
19 review and correction for accuracy and completeness  
20 is the data that you have identified as being  
21 inaccurate.

22 So argument -- which is what we're doing  
23 here -- is not what we're reviewing for accuracy or  
24 completeness. It is argument. It is legal  
25 argument, and so there has to be an end time for

1 going back and forth with legal argument. And so  
2 the endpoint will be when the Board responds to your  
3 motion, and that is how the law is. Okay?

4 DR. DAY: That makes sense. That is  
5 workable.

6 JUDGE O'REILLY: Okay. Well, let's  
7 begin, sir.

8 MS. FLAHAVEN: Your Honor.

9 JUDGE O'REILLY: Yes.

10 MS. FLAHAVEN: Just briefly.

11 JUDGE O'REILLY: Can you identify  
12 yourself, please?

13 MS. FLAHAVEN: Theresa Flahaven, for the  
14 record.

15 Your Honor, my understanding was based on  
16 the amended pretrial order that Roger Day would be  
17 providing us written notice if he intended to bring  
18 a motion today, and I don't believe we saw that.  
19 And I just wanted to see if we missed something,  
20 because we were not expecting the -- his motion  
21 today.

22 JUDGE O'REILLY: Well, technically the  
23 order said that the Appellant may, but is not  
24 required to, file a written response to the Board's  
25 motion. Instead, at the request of the Appellant,

1 Appellant is granted the opportunity to oral --  
2 orally present his response to the Board's motion at  
3 the videoconference hearing using Microsoft Teams  
4 with contemporaneous closed captioning on  
5 August 8th, 2023, at 9:30 a.m.

6 If Appellant chooses to file a written  
7 response to the Board's motion instead of presenting  
8 an oral response, Appellant shall serve and file his  
9 written response to the motion by August 7th, 2023,  
10 at 4:30 p.m. Appellant may not file -- may not both  
11 file a written response and present oral argument.  
12 In other words, the Appellant must choose one, and  
13 he's chosen to move forward with the oral argument.

14 And then with response to Appellant's  
15 dispositive motion, it says that Appellant has the  
16 option to either serve and file a written motion for  
17 summary disposition on July 7th, 2023, or orally  
18 present his motion for summary disposition at the  
19 videoconference using Microsoft Teams on August 8th,  
20 2023, at 9:30 a.m. Appellant must choose to present  
21 his motion in writing or orally, but cannot do both.

22 So it doesn't require him to let you  
23 know. I think you'll be fine proceeding here. You  
24 will have a full recording and potentially a  
25 transcript, if you need it.

1 MS. FLAHAVER: Certainly. And I was  
2 referring to paragraph 3, which required him to  
3 notify the ALJ and the Board in writing of his  
4 intent to bring a motion by July 7th, but I  
5 understand the Judge's ruling.

6 JUDGE O'REILLY: Oh, okay. It does say  
7 if Appellant seeks to bring a dispositive motion, he  
8 must advise the Administrative Law Judge and Board  
9 in writing of his intent to bring such motion on or  
10 before July 7th, 2023.

11 Technically, Dr. Day did not do that.  
12 Given his -- the accommodations that he has been  
13 provided and his difficulty with making written  
14 requests, I am going to allow him to proceed today  
15 with his motion for summary disposition.

16 Okay. Now you may proceed, Dr. Day.

17 DR. DAY: Thank you.

18 This matter begins with a data challenge  
19 that was submitted to the Board of Medical Practice  
20 on November 11th, 2022, addressed to the responsible  
21 authority at that time, Ruth Martinez, Executive  
22 Director. And the written challenge that was  
23 submitted consisted of a 22-page document and five  
24 attachments.

25 The first paragraph on the first page

1 reads: From Minnesota Statute Section 13.04 Subd.  
2 4, I write to you, the agency's responsible  
3 authority, to challenge the accuracy and  
4 completeness of three sets of data which the agency  
5 maintains and publishes about the data subject.

6 Under Minnesota Statute 13.04 Subd. 4A,  
7 procedure when data is not accurate or complete, the  
8 agency has 30 days to correct the corrupt data.

9 JUDGE O'REILLY: Do you want to identify  
10 the three sets of data what you are challenging?

11 DR. DAY: Well, actually, I want to  
12 clarify that that paragraph itself is not spot-on  
13 thorough, and so that paragraph doesn't actually  
14 encompass the entire challenge, but that is one  
15 paragraph within this 22 pages. And it might be  
16 more efficient to get a sense of the whole package  
17 before delving into the specifics.

18 I think all along here, we're going to  
19 have to kind of go back and forth between bird's-eye  
20 view and specific details of little subsections.  
21 Because this is a really big dataset and a really  
22 big challenge. The first --

23 JUDGE O'REILLY: May I ask you a  
24 question? With respect to the -- you refer  
25 repeatedly to three sets of data in your challenge,

1 can you just identify the three documents you are  
2 talking about?

3 DR. DAY: I'm about to do that.

4 JUDGE O'REILLY: It would be helpful if  
5 you'd just do it right now and just identify those  
6 three documents you are challenging.

7 DR. DAY: Well, we have to slow down here  
8 and I understand something about my disability. It  
9 is very disorienting for me to be interrupted and  
10 asked to do something in a different way without  
11 being able to explain why I'm approaching the matter  
12 the way that I am.

13 And so, first off, I need to take a  
14 breath and relax.

15 JUDGE O'REILLY: Sure. Just relax. This  
16 will likely be the only question I have for you.

17 DR. DAY: So even this -- this first page  
18 of the data challenge is much more tightly organized  
19 than the 21 pages that follow it, but these 22 pages  
20 together comprise the data challenge. And these  
21 22 pages make reference to these four attachments  
22 and more.

23 And a person can get the best sense of  
24 things, I think, by looking at this first  
25 attachment. The first attachment to the data

1 challenge is a screenshot that was taken from the  
2 Internet on the day of the challenge. And the  
3 challenge is really about this website and all of  
4 the data that it represents.

5 And these three documents that are  
6 identified as sets of data are things that are  
7 actively posted on this website, and each of them  
8 claims to be based upon all of the underlying  
9 records.

10 And so this website is a current summary  
11 of all of the State's data about me, and it's an  
12 open data subject. I was not a data subject of the  
13 State of Minnesota until 1991, and I had no  
14 disability until 1991. I was licensed by the State  
15 of Minnesota in September of 1990, and at that time,  
16 I was a healthy, practicing doctor not under State  
17 investigation.

18 In 1991, the State of Minnesota received  
19 a report about me and chose to place me under  
20 investigation. And so beginning in, approximately,  
21 May 1991, I became a forensic medical subject of the  
22 State of Minnesota under investigation by the  
23 State's Office of the Attorney General, and I remain  
24 that as we speak.

25 Currently I am a licensed physician who

1 has a professional profile, and this professional  
2 profile is published 24/7 on the Internet, and that  
3 is the body of data that I am challenging here. So  
4 I am challenging the body of data published about me  
5 on the Internet by the State of Minnesota under the  
6 heading of "professional profile."

7 And the most recent document on that  
8 professional profile, the most recent three  
9 documents are these three things identified in this  
10 letter, and so those three things actually encompass  
11 the other things on the profile. And so the data  
12 challenge actually includes all of it, and it  
13 includes the fact that it is published right now.

14 And so everything that the Attorney  
15 General's Office and the State of Minnesota have  
16 collected about me and said about me and hold in  
17 their databases about me is all part of this  
18 forensic medical record about me.

19 And that forensic medical record is not  
20 just a compendium of what has happened, it is a  
21 statement about what is happening, and it's also a  
22 prognosis about in what ways I am able to practice  
23 or not right now and in the foreseeable future. And  
24 so this body of data needs to be accurate, not only  
25 in its historical account, but in its description of

1 my prognosis. There are -- so this is medical data  
2 that prognosticates about me and that dictates how  
3 the public should comprehend my existence within the  
4 world healthcare infrastructure.

5 And this body of data is rife with  
6 inaccuracies, and those inaccuracies have been the  
7 source of my disability. My disability is a moral  
8 distress caused by the creation and dissemination  
9 and operation of inaccurate data. When regulatory  
10 data is false, it creates misregulation, and this is  
11 regulatory data. This data tells the public what it  
12 can and cannot do in relation to this regulated  
13 industry.

14 And so when this -- when any licensure  
15 data is wrong, it harms the potential recipients of  
16 that licensed practice. So when this data is wrong,  
17 it stops people from having access to my  
18 professional services, and they are injured,  
19 sometimes lethally. And so it causes me moral  
20 distress to have people being denied lifesaving care  
21 due to inaccurate data about me.

22 So I've had this profound moral distress  
23 and disability for 32 years. It started with one  
24 very serious inaccuracy in the early '90s, and it  
25 was compounded with another very serious inaccuracy

1 in the mid-2000s. And it's been now compounding  
2 year on year, especially since 2019, the last time  
3 that I was able to initiate a legal challenge to the  
4 whole confluence of inaccuracy.

5 So we are here in a data practices forum,  
6 and we are here to correct data. There are just a  
7 few pieces of data here that are actually primary  
8 data. Most of the data here is of a derivative  
9 nature. A lot of the data here is who said what  
10 about me, who drew what conclusions about me, what  
11 was done in connection with various events.

12 The -- you know, the primary data, again,  
13 concerns the inaccurate things that have been  
14 directly said about me and my actions and my  
15 condition. And so that's what we're looking for  
16 here, what we are looking to correct.

17 Ten days ago we were in a hearing, and  
18 that matter is still under advisement, so there's  
19 some litigation between me and these Respondents in  
20 another venue. And at that venue the question came  
21 up, you know, are we trying to relitigate any of  
22 this? And the answer is, no, we are not  
23 relitigating anything here, but it is important to  
24 point out where there are inaccuracies in litigation  
25 surrounding this data.

1           A lot of this -- a lot of the original  
2           inaccuracies here have just been parlayed into other  
3           venues, and now there are a lot of misstatements  
4           about me online, in history, and it would be  
5           wonderful if we could correct them directly. We  
6           can't, but what we can do here is start at the  
7           beginning and correct what's wrong within this  
8           record here.

9           So there's this professional profile for  
10          credential 33984. And if a person Googles Minnesota  
11          Board of Medical Practice, they find that there is a  
12          Minnesota Board of Medical Practice website. Which  
13          I have just done. Under "consumers," there is "find  
14          a practitioner, verify a license," and under that,  
15          there is "professional profile."

16          If I person clicks on that and then  
17          clicks again on professional profile, one gets a  
18          credentials search, and put in a number -- 33984 --  
19          enter, and it shows results, one match, Roger J.  
20          Day, birth year, 1960.

21          And so there is the dataset under  
22          challenge is this website. And if you scroll down  
23          to the bottom, it says this information is valid as  
24          of Tuesday, August 8th, 2023, 10:24:03 a.m. So it  
25          is saying this is valid information as of this

1 second. So that's the active, open body of data  
2 that we're referring to.

3 JUDGE O'REILLY: Okay. That helps me.

4 DR. DAY: And, actually, the first thing  
5 it says under my name and birth year, it says  
6 credentials, restricted, parenthesis, active. And  
7 this data challenge actually challenges that  
8 designation, that this license is not accurately  
9 legitimately restricted. These documents that are  
10 listed here are not valid documents, and they don't  
11 legitimately restrict this license.

12 And so -- and even if that is accurate,  
13 it's very incomplete to just say the license is  
14 restricted. That restriction idea flows from an  
15 analysis of all these other documents below, and  
16 again, it's a conclusion being drawn and being  
17 advertised today.

18 And then after "credentials," it says  
19 that my credential has been renewed. It says it was  
20 issued back on 09/15/1990 and expires on the end of  
21 my next year's birth month. Because I renew this  
22 credential every year during my birth month, as all  
23 actively licensed physicians do.

24 The next section says: Public actions,  
25 and it lists 1-17-2006, it says that's "other," and

1 it says "conditions and restrictions." So that is  
2 the first dataset that is identified in this first  
3 paragraph of this first page of this 22-page  
4 challenge.

5 And the next line, it gives you a spot  
6 there to download it, and Attachment No. 2 is a  
7 download from the date of the challenge. So back in  
8 November, I went to this website, clicked this  
9 download, printed out this document, and included it  
10 as Attachment No. 2.

11 And there's another public document dated  
12 7-13-05. That one has a download, also, and I  
13 downloaded that in November, and that is  
14 Attachment 3 in the challenge. Next, there is a  
15 document 6-17-05. I downloaded that, and that is  
16 Attachment 4.

17 And then there's something below that  
18 says: Day, Roger, J., statement of disagreement,  
19 6-24-09, and that has a download. And that download  
20 is Attachment 5.

21 JUDGE O'REILLY: Give me one moment,  
22 please. You'll just have to bear with me.

23 Your statement of disagreement is your  
24 exhibit -- is your Attachment No. 5?

25 DR. DAY: That's Attachment No. 5 to the

1 November challenge.

2 JUDGE O'REILLY: Hold on. Hold on one  
3 moment. I need -- got it. Thank you.

4 DR. DAY: And what we discovered at  
5 prehearing conference in May is that the 6-17-05  
6 download is not the same now as it was back in  
7 November.

8 JUDGE O'REILLY: 6-17 download, one  
9 moment, please. That -- it says: True and exact  
10 copy of original findings of fact, conclusions and  
11 order?

12 DR. DAY: Right. It does say that on the  
13 exhibit, and that's the way it showed up in  
14 November. But it turned out that that was only true  
15 for the front page, and not part of the pages in  
16 back.

17 And part of this challenge in November  
18 was that this document had been challenged back in  
19 2009, and in response to the challenge, part of it  
20 was taken off view, even though the challenge was  
21 disregarded.

22 And I actually may be getting a little  
23 ahead of myself here, we're going off on a tangent  
24 that we'll have to come back.

25 So, again, the -- so Attachment 4 is the

1 November download. And what we see online today, if  
2 we click on that download icon, we will get a  
3 different document than we got in November. We'll  
4 get a document that's had something added back to it  
5 that's been missing, and what that is is it's a  
6 memorandum that is riddled with inaccuracies.

7 So back in 2005, on June 17th, this set  
8 of data was created and published by the State, and  
9 I was -- I've been treated abusively ever since is  
10 the challenge here. This 6-17-05 public action is a  
11 massive fraud. And it's what I was referring to  
12 when I say there was a central inaccuracy in the  
13 mid-2000s. That this thing from 6-17-05 is just  
14 rife with misrepresentations and inaccuracies.

15 And part of its inaccuracy was that  
16 it's -- it was created by taking an Administrative  
17 Law Judge's report and deleting and rewriting its  
18 memorandum, and that process of deleting and  
19 rewriting the memorandum, introduced hundreds of  
20 inaccuracies. And then on top of that, the  
21 memorandum's medical conclusion was -- was  
22 interpreted as a ground for changing the statutory  
23 subdivision upon which the license was, and is,  
24 restricted. And that is a legal inaccuracy.

25 It was, in fact, a legal inaccuracy to

1 hold this second prosecution in the matter of this  
2 license to begin with, and that's where these next  
3 two documents come in. Because, I guess, so now  
4 we're back from our tangent. So we went off on a  
5 tangent at this June 2005 public action.

6 The next thing on the website is a  
7 December 22nd, 1992, public action. That one is  
8 called stipulation and order. And I did not  
9 download that or attach it to this data challenge,  
10 but it is subsumed under the other orders because  
11 the other orders say that they are based upon all of  
12 the records in the matter. And, in fact, the 2005  
13 document states that it supercedes the prior order,  
14 and that is a false statement, too.

15 The 2005 order calls itself a stipulation  
16 and order, and this thing in 1992 actually is a  
17 stipulation and order, and it says so right on the  
18 website here. That is a correct statement. But  
19 this one on June 17th, 2005, just says order after  
20 hearing. So these two things have different titles:  
21 2005 says order after hearing, and '92 says  
22 stipulation and order.

23 But when we go and look at the contents  
24 of 6-17-05, we will see that it calls itself  
25 stipulation and order internally, and that that is

1 inaccurate. So there has been this inaccuracy in  
2 this record since June 17th, 2005, and that has been  
3 illegitimately restricting this license for the last  
4 18 years, depriving people of healthcare, and  
5 causing mass murder. Again, we are not here to  
6 litigate the murder. We are here to show that this  
7 is inaccurate regulation.

8 So there's this stipulation and order  
9 from 1992. It does contain some inaccuracies within  
10 it as well, and so this challenge does also  
11 challenge the contents of that 1992 document.

12 And then the last public document on the  
13 list is 5-2-1992. That one also says, order after  
14 hearing, and is downloadable. It is not included  
15 amongst the attachments, but it is subsumed  
16 underneath the rest.

17 And that is also incorrect that 5-2-92 is  
18 a temporary order pending hearing; that 5-2-92 was  
19 the date upon which this agency took its first  
20 action on this license in response to the  
21 investigation that began 11 or 12 months prior, and  
22 that document contains inaccuracies as well.

23 So the big picture is that the Minnesota  
24 Office of the Attorney General has been gathering  
25 data about me, the data subject, since May 1991.

1 It has created multiple documents about its  
2 investigation, and has provided these documents to  
3 the State through its agency, Board of Medical  
4 Practice, and advised that Board to sign it into  
5 law.

6 The Board has had an obligation to make  
7 sure that the documents are both medically and  
8 legally accurate, and the Board has failed  
9 miserably, has caused me horrendous disability, and  
10 has hoisted a terroristic misinformation campaign  
11 upon the world that continues through the operation  
12 of this website as we speak.

13 And what this challenge does is it  
14 contains -- it has 22 pages of text that I dictated  
15 for the Attorney General's Office last summer. So  
16 this text was not generated specifically for this  
17 data challenge -- well, yeah, it sort of was. And  
18 maybe the method behind it isn't so important, but  
19 what is important is that last summer I sat down  
20 with these three documents and worked my way through  
21 them, identifying what I could in terms of  
22 inaccuracies and incompleteness. And so within  
23 these pages, there are identifications of  
24 inaccuracies and incompletions.

25 And, actually, I made myself a separate

1 copy of the 22 pages, and I've worked my way about  
2 halfway through those pages in the recent days  
3 trying to prepare for today.

4 So, for example, on the second page, I  
5 begin by telling the Attorney General's Office that  
6 I've asked for an interlocutory process and have  
7 wanted to identify errors and go over them with the  
8 Attorney General's Office, but they haven't allowed  
9 me to do that.

10 And so I'm doing this one-way  
11 communication of working through these documents.  
12 And I say on line one, two, three, four, five, six,  
13 seven, eight -- so on line 16 of this section  
14 entitled, Voicemail 1 of 32, I say -- well, on line  
15 14 I say, the body of documentation that is  
16 fraudulent consists of public actions.

17 The next line up, the Minnesota Board of  
18 Medical Practice: The Minnesota Board of Medical  
19 Practice has issued, I believe it is, five public  
20 actions In the Matter of Physician License 33984.  
21 Each of those five actions is a document created by  
22 the Office of Attorney General for the Minnesota  
23 Board of Medical Practice. So I want to go through  
24 each of those five documents, starting with the most  
25 recent and working our way back. Each of those five

1 documents is riddled with dishonesty and  
2 misrepresentation, and each of them constitutes a  
3 set of felonious false statements and false filing.  
4 And so that is what was presented back in November  
5 as this data challenge. And the Respondents had  
6 30 days to respond, and they didn't.

7 So my first argument for summary  
8 disposition was that there was no response to this  
9 data challenge as required back in December, and so  
10 these 22 pages can be deemed admitted. And so we  
11 can simply extract all of the corrections and  
12 additions that are in these 22 pages and make that  
13 our record of this case.

14 Because there was no rebuttal, and so  
15 from a legal standpoint, this is all true. And I  
16 would say from a medical standpoint, I have never  
17 made one false statement ever with regard to any of  
18 this, and these Respondents have just been  
19 anti-truth all the while. And it is an outrage, and  
20 for them to be asking for dismissal now after not  
21 even answering the thing when they were supposed to  
22 is unethical.

23 So I would recommend to the three people  
24 sitting here that they withdraw their motion.  
25 It's -- it prolongs this crime to go through these

1 frivolous proceedings where I state truth and this  
2 agency tries to obstruct the correction of things  
3 that are wrong.

4 So it's an undisputable fact, this  
5 challenge was made in November, an answer was due in  
6 December, there was no answer in December. There  
7 was no answer in January, and so I turned to the  
8 Department of Administration. And, again, I am not  
9 testifying here. This is on record. So I am just  
10 recounting what is on the record. I am not  
11 testifying as to what happened outside the record.

12 The record shows that the Department of  
13 Administration contacted the Respondents for an  
14 answer, and the Respondents then provided an answer  
15 to the Department of Administration, and the answer  
16 was outrageous. The answer was nonresponsive to the  
17 assertions in the challenge.

18 The answer, first of all, just said the  
19 data is all correct. So we just -- the answer was  
20 called a "determination," and I forget whether the  
21 determination was made by Ruth Martinez or by  
22 Elizabeth Huntley. It was right around that time  
23 that Elizabeth Huntley replaced Ruth Martinez. Oh,  
24 here we go. January 12th, it was Ruth Martinez.

25 So within the OAH record, there is this

1 letter from Ruth Martinez, Executive Director, Board  
2 of Medical Practice, January 12th, 2023: This is in  
3 response to your November 11, 2022, letter in which  
4 you purport to challenge. That word "purport" is  
5 odd. And then it says: The data you seek to  
6 challenge is correct. So, again, this "seek to  
7 challenge" is really improper language.

8 So this 22-page data challenge identifies  
9 five things here -- and everything behind them --  
10 and she asserts that it's correct. It does say,  
11 "the data pertaining to your medical license  
12 maintained on the Board's website," so that's good  
13 that the answer -- the determination does refer to  
14 the website. It just says, "it accurately reflects  
15 the decisions made," and that's not the deal.

16 It's not just whether the Board's  
17 inaccurate data is recounted with fidelity. That's  
18 really disingenuous and unethical. And it saying,  
19 "you may disagree with conclusions, legal and  
20 factual. It does provide a basis for challenge to  
21 accuracy of data." That's an interesting legal  
22 argument. That's a legal argument saying that there  
23 is not room within the data practice law for this  
24 proceeding to take place, I guess is what the  
25 argument is.

1           And then it goes on to say that, "your  
2 challenge is substantially the same as your previous  
3 challenge brought in 2009. As you know,  
4 Commissioner of Administration dismissed that appeal  
5 finding that data challenge appeal is not within  
6 Commissioner's jurisdiction." And then there's a  
7 copy of that decision.

8           So this January 12th determination makes  
9 an assertion about the data and just says the data's  
10 all correct, and then it argues that this process  
11 just isn't available to correct what I am asserting  
12 is incorrect. And I -- I think it's really, again,  
13 disingenuous and murderous for this body of doctors  
14 to do this.

15           This is a forensic medical record, and  
16 these doctors are letting their lawyers say there  
17 are procedural constraints that keep us from  
18 answering your challenge, and that is outrageous.  
19 It's not true, for starters. But, you know, at some  
20 point we might need a ruling as to whether we are  
21 permitted to be here doing what we are doing.

22           But what I am doing is I am challenging  
23 this data. I have used the statute the way that it  
24 is designed, and the Department of Administration  
25 has actually set up this proceeding to take place.

1 So this proceeding that we are in flies in the face  
2 of this September 7, 2009, Commissioner -- or  
3 Director's decision from the Information Policy and  
4 Analysis Division.

5 So it looks like this agency got advice  
6 from its counsel saying that it can and should make  
7 the same argument that it made in 2009. And when  
8 the Department of Administration received this, the  
9 Department of Administration went ahead and set this  
10 on for hearing.

11 So they -- what we are currently doing  
12 seems to be a correct procedure, and it looks like  
13 in 2009, the Department of Administration got it  
14 wrong. So it appears to me that's what I would  
15 contend, what I would assert, what I see. So I see  
16 that this answer in January tries to say we can't do  
17 this process, and the only thing it says about the  
18 challenge is that all the data is correct.

19 It also says it accurately reflects what  
20 the Board did, and that's a lie. And we discovered  
21 that when we were here in May, and we discovered in  
22 May that this memorandum was surreptitiously  
23 replaced sometime between January and May. And we  
24 currently have a motion for dismissal that says, oh,  
25 that was done as soon as the inadvertence was

1 discovered. Super disingenuous, very unethical.

2 This motion for summary dismissal says  
3 nothing about the data, also. So it's -- the motion  
4 for summary dismissal is also one big argument about  
5 the unavailability of process to correct these  
6 mistakes, and it just lists a bunch of litigation  
7 that has occurred since the issuance of this  
8 2005-thing. And it never addresses the central fact  
9 that the 2005-thing is not a stipulation and order,  
10 and is just not a valid legal instrument, and it  
11 contains a bunch of medical dishonesties. So the  
12 argument for summary adoption of the data challenge  
13 is that the January determination does not address  
14 any of the corrections and additions made in these  
15 22 pages.

16 And now the summary disposition motion,  
17 likewise, does not address any of the corrections  
18 and additions in these 22 pages. So we have  
19 22 pages of corrections and additions to this  
20 website, and none of them have been rebutted despite  
21 three occasions upon which to do so.

22 So, again, this first page is pretty  
23 tightly edited, and the other pages are very loosely  
24 assembled. And so it will be a little bit arduous,  
25 but this all should have been read and responded to

1 back in November, and so it's time to read it now.

2 So paragraph 2 of the first page of this  
3 22 pages, in the middle of it says there are false  
4 claims embedded in Public Action 7-13-05, 1-17-06  
5 that keep compounding and extending the corruption  
6 of Public Action 6-17-05.

7 And then there's an asterisk on the false  
8 claims that brings us down to a footnote. The  
9 footnote says, the central deceit in these public  
10 actions lies in the Board's legal counsel falsely  
11 asserting that the matter was reviewed, quote, on  
12 the merits, unquote. And that, quote, the  
13 Respondent has failed to show fraud, comma, newly  
14 discovered evidence, comma, or other recognized  
15 ground relating to request for reconsideration.

16 And then it offers the correction that  
17 the petitions for reconsideration and for review  
18 each made a clear showing of fraud and were not  
19 heard on their merits. So those are the facts that  
20 are contained within this data challenge and can  
21 actually be seen within the body of data.

22 And it's notable that this sentence says  
23 "the petitions for reconsideration and for review."  
24 Those are two different things. And the word  
25 "reconsideration" is used inaccurately in the first

1 document to which the successive pages turn their  
2 attention.

3 So under Voicemail 2 of 32, the challenge  
4 says that the most recently created document is from  
5 January of '06, signed on January 17th by Jon V.  
6 Thomas, MD, Board Vice-Chair. The next page points  
7 out that the Board doesn't actually have chair  
8 persons, but they have presidents, vice presidents,  
9 and secretaries, and so that appears to be an  
10 inaccuracy, that Jon Thomas appeared to be vice  
11 president.

12 And then the next sentence says -- let's  
13 start at the top. On the first page of this  
14 document, the upper-right corner says, "Order  
15 Denying Respondent's Second Request for  
16 Consideration." That's a false title. What had  
17 been submitted for the Board's process was a hearing  
18 demand, a request for hearing under Minnesota rules.

19 Minnesota rules for Board hearings say  
20 that a request for a review hearing can be made to  
21 the Board when there is a showing. So this  
22 paragraph in the data challenge is pointing out that  
23 this document has the wrong title.

24 JUDGE O'REILLY: Which document has the  
25 wrong title?

1 DR. DAY: The January -- Attachment 2.

2 So Attachment 2, at the top of it --

3 JUDGE O'REILLY: Okay.

4 DR. DAY: -- says -- let me find my copy.

5 It says, Order Denying Respondent's Second Request

6 for Reconsideration. And what it actually was

7 denying was a petition for review or rehearing.

8 So, again, this is an exact copy of the

9 original that is inaccurate. The original is

10 inaccurate. So that's an accurate copy of an

11 inaccurate thing. So the first inaccuracy out of

12 the gates is the title on this page.

13 The document is four pages and an

14 affidavit of service. And, again, it's notable on

15 the third page, the page begins with a list of

16 members present, and then it says, "upon all of the

17 files, records, and proceedings herein." And the

18 "proceedings herein" are on the left-hand side of

19 the top page. In the Matter of the Medical License

20 of Roger J. Day, MD, License Number 33984, so the

21 "matter herein" is the entire matter of the license.

22 It's not just this hearing and order. The matter is

23 the entire license from September 1990 to this

24 morning.

25 So on page 3, it says what it thinks it's

1 doing. It says, "it is hereby ordered as follows:  
2 One, Respondent's second petition that the Board  
3 reconsider its June 2005 Order in this matter is  
4 denied." And that's very incorrect language.  
5 Again, this is not a second petition, and it's not a  
6 petition for reconsideration, and it's not for  
7 reconsideration of an order.

8 For the last 18 years, this agency has  
9 been using this truncation, "June 2005 Order," and  
10 the agency has been using that as an abbreviation  
11 for something much more than the order. The order  
12 is a 10-page thing that says that I stipulated to  
13 stuff, and I didn't. And so that's wrong, but it's  
14 not just that order that's the problem.

15 When a contested case comes before the  
16 Board for hearing, the Board issues a decision that  
17 may or may not include an order. And so the word  
18 there should be "decision" rather than "order." And  
19 the petition should be described for what it was,  
20 which was a request for review or rehearing. And  
21 this was a request for rehearing based on fraud.  
22 There's a petition made saying this decision and  
23 order is fraudulent, has been shown such, needs to  
24 be reheard, or at least reviewed.

25 And the Attorney General's Office

1           incorrectly used the word "reconsider" instead of  
2           "rehear." That's a really serious legal inaccuracy,  
3           and it's a medical inaccuracy. It's saying we need  
4           to reexamine this thing.

5                         JUDGE O'REILLY: May I -- I know that you  
6           have difficulty with this, but you're talking about  
7           Attachment 3 to your challenge.

8                         DR. DAY: It's still Attachment 2, I  
9           think.

10                        JUDGE O'REILLY: Attachment 2 is the  
11           Order Denying Respondent's Second Request for  
12           Reconsideration.

13                        DR. DAY: Yes.

14                        JUDGE O'REILLY: And you're saying that  
15           that title is inaccurate?

16                        DR. DAY: Right.

17                        JUDGE O'REILLY: What should the title  
18           have been?

19                        DR. DAY: Ah, yes. So it should have  
20           been --

21                        JUDGE O'REILLY: Okay.

22                        DR. DAY: -- Order Denying Petitioner's  
23           Request for Review or Rehearing of 2002 Contested  
24           Case Decision and Order.

25                        JUDGE O'REILLY: Okay. I got that down.

1 Are we done with Attachment 2?

2 DR. DAY: So pretty close --

3 JUDGE O'REILLY: Okay.

4 DR. DAY: -- but, unfortunately, not.

5 Because there's a one and a two, and so one says  
6 what is -- that there's a denial, and then number  
7 two says there's a following memorandum that's  
8 incorporated. So the verbiage that flows down on  
9 page 3 and 4 is all part of the order here.

10 So -- and, again, this is a decision and  
11 order. So, I guess, yeah, the title should actually  
12 be decision and order, rather than just order  
13 denying. Because it's not just an order, it's also  
14 a decision --

15 JUDGE O'REILLY: Okay.

16 DR. DAY: -- explained by memorandum.

17 And so the word "memorandum" on page 3  
18 should probably say "decision," but at least we  
19 understand that is it now. And then it says, the  
20 Board concludes that further review of this matter  
21 is barred by the doctrine of res judicata, and I  
22 would call that an incomplete statement rather than  
23 a fully inaccurate statement.

24 You know, the Board is -- actually can be  
25 thought of in two ways. The Board proper is 15 or

1 16 people, but the Board as a state agency is those  
2 16 people and their staff as an extension of the  
3 State itself.

4 JUDGE O'REILLY: Okay.

5 DR. DAY: And so a person could actually  
6 substitute "the State concludes" instead of "the  
7 Board concludes," because this is actually a State  
8 of Minnesota legal decision. And so the Board  
9 actually offers up the decision to the State and  
10 makes it a matter of state law. And so I would  
11 argue that should say, the State concludes that  
12 further review of this matter is barred by the  
13 doctrine of res judicata.

14 And we do see up above that the people  
15 who made this -- actually, at the bottom of page 4,  
16 yeah, the last sentence says, by unanimous vote, the  
17 Board has decided further review is barred by res  
18 judicata, and so they're saying this was decided by  
19 the list of people.

20 And actually within my narrative here, we  
21 do see more that I mentioned about the list of  
22 people, too. So we may have gone off on a little  
23 bit of a tangent and might do well to continue to  
24 track down the 22 pages.

25 Now, Voicemail No. 4 calls out that there

1 is this, quotation, June 2005 Order, closed  
2 quotation. And so there, I'm showing it, again.  
3 I'm not making new argument in the course of my  
4 motion here, that the things that I am calling out,  
5 I actually called out in the data challenge. This  
6 data challenge says under Voicemail 4, this is not  
7 just an order, but it is facts and conclusions that  
8 make up a decision.

9 It says, the memorandum is a decision,  
10 and so each time we see this phrase, "June 2005," it  
11 should say "decision and order" rather than just  
12 "order." That is part of the November data  
13 challenge that was not rebutted in any of the three  
14 opportunities to rebut it, and so we should just  
15 correct this record by correcting these documents.

16 And then trekking through, so I started  
17 right at the top and -- sorry, as we're looking at  
18 this Attachment 2, this data challenge walks through  
19 each sentence, and it strikes all the things that  
20 are wrong and substitutes things that are correct.  
21 And it says this "June 2005 order," the thing in  
22 parentheses should not be.

23 The next sentence says, on July 7th,  
24 Roger J. Day, MD, Respondent, filed a request for  
25 reconsideration of the order, quote, first petition,

1 with the Board. Okay. The July 7th date is wrong,  
2 and it says so in Voicemail 4. Voicemail 4 says  
3 that date should be June 30th, and that hasn't been  
4 rebutted. So that date on that document should say  
5 June 30th and not July 7th.

6 And the word "order" should be changed to  
7 "decision." Should be changed to "decision in 2002  
8 contested case." And the word the "first petition"  
9 should be struck, because it was the only filing of  
10 request for reconsideration.

11 And I need a water break.

12 JUDGE O'REILLY: Okay. Hold on a moment.  
13 I'm just going to make sure that we have this. Give  
14 me one moment.

15 How long would you like to have? Would  
16 you like 10 minutes? What would --

17 DR. DAY: I'm probably going to grab a  
18 snack, is there a vending area here?

19 JUDGE O'REILLY: Hmm, not really. We  
20 only have until noon.

21 DR. DAY: Oh, okay. Why don't we take 10  
22 minutes, go until noon, and figure out when we can  
23 reconvene.

24 THE COURT: Why -- how long -- much  
25 longer do you need? These hearings are generally

1 scheduled -- these -- if we have oral argument, it's  
2 usually only scheduled for no more than one hour.

3 DR. DAY: Well, the problem is, this is  
4 not argument. This is actually filing of --

5 JUDGE O'REILLY: Your motion.

6 DR. DAY: -- of memorandum.

7 JUDGE O'REILLY: Right.

8 DR. DAY: And the challenge is, it's very  
9 hard to create the memorandum in this way. I don't  
10 know how long it will take to walk through these  
11 remaining pages.

12 JUDGE O'REILLY: Okay.

13 DR. DAY: (Indiscernible.)

14 JUDGE O'REILLY: So why don't we take a  
15 10-minute break, and you can grab some water, et  
16 cetera, and then we'll reconvene. And, you know, we  
17 do need to set some limits as to how long this is  
18 going to take, right?

19 DR. DAY: Well --

20 JUDGE O'REILLY: So you need to be --

21 DR. DAY: Well, actually I -- if the --  
22 if the Court wants to, it can just walk through  
23 these pages and pull out what's there, I guess.

24 JUDGE O'REILLY: Oh, I have read them  
25 very carefully.

1 DR. DAY: You know, so -- and the --

2 JUDGE O'REILLY: So when -- I guess, I'm  
3 going to give you this advice, is that I have read  
4 that very carefully. That is your challenge, right?  
5 That identifies what challenges you are making. So  
6 your argument now, you don't have to reread those  
7 22 pages. You can just give me your arguments.

8 DR. DAY: Well, I think the real  
9 difficulty is that my verbiage on these pages is --  
10 it kind of alternates in between application  
11 directly to these documents and their wider  
12 consequences. And so --

13 JUDGE O'REILLY: Well, why don't we take  
14 a 10-minute break, and then you give me an estimate  
15 of how much more time you will need. Because I will  
16 need to rearrange my schedule, because I have other  
17 cases scheduled today.

18 DR. DAY: So it's whether we would  
19 continue more today or to reconvene?

20 JUDGE O'REILLY: Today is the only day,  
21 yes.

22 DR. DAY: So it will be how much longer  
23 we go today, not --

24 JUDGE O'REILLY: Correct.

25 DR. DAY: -- whether we come back on a

1 future date?

2 JUDGE O'REILLY: We will not be coming  
3 back on a future date.

4 DR. DAY: Well, that will be hard to  
5 assess. Because as I say, I've only made it halfway  
6 through this myself, to see how many --

7 JUDGE O'REILLY: All right.

8 DR. DAY: I think we'll be able to do all  
9 right. Actually, I think there is -- there's this  
10 place in the middle where I show how we can  
11 practically do a delete-all.

12 JUDGE O'REILLY: Okay. Very good.

13 DR. DAY: So --

14 JUDGE O'REILLY: So why don't we --

15 DR. DAY: Yeah.

16 JUDGE O'REILLY: I'll actually give you  
17 15 minutes. We're going to reconvene at 11:45.  
18 It's now 11:27. We're going to reconvene at 11:45,  
19 and we -- and you will kind of give us an idea how  
20 much longer you think, okay --

21 DR. DAY: Yeah.

22 JUDGE O'REILLY: -- at that time?

23 DR. DAY: Yeah.

24 JUDGE O'REILLY: All right. So we  
25 will -- we will stand in recess for the next

1 15 minutes. Thank you.

2 DR. DAY: Thank you.

3 (Recess taken.)

4 JUDGE O'REILLY: Okay. It's 11:44, and  
5 we are returning on the record, continuing with  
6 Dr. Day.

7 DR. DAY: Thank you.

8 JUDGE O'REILLY: Um-hmm.

9 DR. DAY: So what I'm noticing here is  
10 that there are a lot of legal inaccuracies, there  
11 are a lot of incorrect dates, incorrect applications  
12 of concepts and rules, and what all of those do is  
13 they embed a lot of medical inaccuracies as well.  
14 So there's medical error that's frozen in all of  
15 these legal errors, and it's probably most important  
16 to correct the medical errors.

17 JUDGE O'REILLY: You'll have to address  
18 specifically which attachments you are referring to  
19 on each time.

20 DR. DAY: All right. And Attachment Nos.  
21 2 and 3 are both procedural documents that refuse to  
22 deal with the medical contents of Attachment 4. So  
23 there -- so Attachments 2 and 3 are all problematic  
24 just in their reenforcing No. 4 and saying that it's  
25 not -- it hasn't been shown to be fraudulent, when

1           it has.

2                       So I think that the question for summary  
3 disposition is whether there is enough error called  
4 out in regard to Attachment 4 that we can summarily  
5 decide the case, or whether we actually need to go  
6 to a hearing to take testimony on what ought to be  
7 there.

8                       Because that's the broad distinction  
9 that -- that's kind of the task for today, it's can  
10 we actually cover enough to say that all of the  
11 corrections to Attachment 4 are asserted in the data  
12 challenge so that we can be summarily done and make  
13 all the necessary corrections? And I think the  
14 answer is not quite.

15                      But even Attachment No. 4, again, is a  
16 second prosecution, and that's something that I  
17 mentioned within Voicemail 20. That -- that  
18 Voicemail No. 20 talks about how this whole  
19 contested case in 2002 is a second prosecution of  
20 the 1991 circumstances and medical condition.

21                      This license came under investigation in  
22 1991 relative to a 1991 report -- a citizen report,  
23 and it has been under restriction with regard to  
24 that ever since. And this 2002 hearing, when one  
25 looks at it closely, one can see that it is -- it's

1 decided on a basis of misinterpreting the contents  
2 of the 1992 settlement, and that the 1992 settlement  
3 is a correction of the 1992 temporary order.

4 So they do all tie together, and one can  
5 find all of that within all of this stuff, but not  
6 as quickly as I'd like. So maybe we shift gears and  
7 start taking things chronologically from the start  
8 instead of trying to claw our way back from the  
9 present.

10 So in 1991, there was this complaint, and  
11 the Attorney General's Office investigational  
12 findings are put forward in this May 2nd, 1992,  
13 action. And within that action, it recounts that  
14 the University of Minnesota had dealt with some of  
15 this data and that the Hennepin County courts had  
16 dealt with some of this data. And there's a  
17 statement about some of those proceedings, and it  
18 says that within that data one can find an admission  
19 from me, and that is inaccurate, that there is no  
20 such admission. And so that May 1992 document is  
21 inaccurate in that way.

22 And that is the crux of this 32-year  
23 erroneous record, because this 32-year record starts  
24 with that incorrect statement that there is some  
25 admission from me about some 1991 conduct. And,

1 again, that is a -- it's incorrectly captioned as  
2 "order after hearing" on the website, and it's  
3 actually a "temporary license suspension pending  
4 hearing." And it's wickedly deceptive, because  
5 there are -- those inaccuracies are what drives  
6 everyone's desire to keep this record wrong.

7 And that's where it might be good for me  
8 to actually get into testimony to actually talk  
9 about what I have encountered with the creation of  
10 this record. You know, another thing that's missing  
11 from this record is a 2008 hearing. Because there  
12 was a 2008 hearing by the Board in the matter of  
13 this license, March 8th, 2008, and I may or may not  
14 have made reference to that in this petition, in  
15 this challenge. We'll get to that.

16 So this is a big, thorny mess, and I  
17 guess for this month's purposes, we mostly need to  
18 deny the motion to dismiss. Because there are still  
19 very clearly identified inaccuracies that have been  
20 pointed out in the data challenge and have not been  
21 rebutted. And so at a minimum, the motion to  
22 dismiss fails.

23 As far as partial summary judgment on the  
24 data challenge, and I think we can go -- I think the  
25 Court can actually go through these 32 voicemails

1 and see what needs to be stricken and what needs to  
2 be added in.

3 And there's one place where Burton  
4 Schwartz's name is in there, and Dr. Schwartz was  
5 listed as Board President back in 2005 when this  
6 matter was re-prosecuted. When I -- and  
7 Dr. Schwartz's name appears on one or more of these  
8 documents, and I had asked whether he actually was  
9 present at those things. But, again, the  
10 Respondents didn't respond to that question.

11 We have an incorrect admission in this  
12 1992 document. In the December settlement, we can  
13 see that the word "admission" does not appear, and,  
14 in fact, the entire set of so-called facts within  
15 that document are expressly stipulated to for the  
16 purposes of the process.

17 And it says, the Board can take them as  
18 true. It doesn't say they are stipulated to be  
19 true. It says, they are stipulated as true, and so  
20 that is -- that's a rather -- that's actually an  
21 incomplete statement. It doesn't really describe  
22 how those words apply to the case.

23 And one of the words that's used in one  
24 of those paragraphs is the word "reported." And so  
25 a person finds the word "reported" appearing in the

1 1992 stipulation, instead of the word "admitted" in  
2 the prehearing order. And that's an important  
3 distinction that has been lost on every doctor and  
4 lawyer and judge dealing with this 32-year forensic  
5 medical record.

6 And the wrong medical decision that gets  
7 inserted in place of Barbara Nielson's analysis says  
8 that my ambivalence about those words and facts  
9 renders me unsafe and unskilled medically.

10 So this nineteen -- excuse me, this  
11 June 2005 document draws a medical conclusion that  
12 the licensee stands in violation of Paragraph L, and  
13 Paragraph L is a conferring of a medical diagnosis,  
14 and that is an inaccurate diagnosis based on an  
15 inaccurate assertion that facts were admitted back  
16 in 1992. So these 1992 inaccuracies are parlayed  
17 into an inaccurate diagnosis within a fraudulent  
18 memorandum that was substituted for the accurate  
19 memorandum of Barbara Nielson.

20 So in December 2004, Barbara Nielson  
21 created an accurate memorandum. So she offered the  
22 Board an accurate decision, and the Board violated  
23 competent medical practice and administrative  
24 procedure by striking that memorandum in its  
25 entirety and writing a new memorandum that was not

1           legally or medically honest. And it was that  
2           memorandum that was pulled off of view in 2009, and  
3           just got put back on view last March or so.

4                   And so it was a republishing of data that  
5           is grossly inaccurate after insisting that it was  
6           even correctly displayed, when it wasn't even  
7           correctly on display.

8                   So we have layer upon layer of  
9           inaccuracies, but the ultimate inaccuracy is a  
10          medical inaccuracy that says that this data subject  
11          actually stipulated to having his license restricted  
12          based on a diagnosis of lack of fitness to practice,  
13          which is just wildly fraudulent and wickedly  
14          murderous. It totally terrorizes the world away  
15          from this practice and closes it indefinitely.

16                   But the very easy thing to see is that  
17          the phrase "stipulation and order" is used, and this  
18          was actually a prosecution where the assertion was  
19          that there was new evidence of medical illness. And  
20          what we see in the new memorandum created for the  
21          doctors by nondoctors, it says that there was a  
22          failure to progress under the 1992 order, and that  
23          is inaccurate and incomplete.

24                   And ALJ Nielson's memorandum says that  
25          the order hasn't been satisfied because the Board

1 hasn't actually supplied the data that it was  
2 supposed to supply and hasn't conducted the  
3 procedures that it's supposed to use, but that  
4 there's no evidence on record to continue that 1992  
5 restriction.

6 So it's an inaccuracy to substitute this  
7 Board memorandum for Barbara Nielson's memorandum.  
8 And one can correct that inaccuracy and  
9 incompleteness by deleting the fraudulent memorandum  
10 and reinstating the accurate memorandum. And one  
11 can strike the public actions that follow as having  
12 just dishonestly not addressed the issue and created  
13 new problems by falsely presenting what was going on  
14 procedurally.

15 It is clearly a medical and legal error  
16 to allow this Board memorandum to replace Judge  
17 Nielson's memorandum. There are just -- there are  
18 thousands of words of dishonesty there.

19 And the last -- again, the last  
20 attachment is Dr. -- is Barbara Nielson's.

21 JUDGE O'REILLY: That's your last  
22 attachment?

23 DR. DAY: Yeah. It's actually -- it's a  
24 data challenge to the June 2005 Order that argues  
25 for, and then reproduces, Barbara Nielson's report

1 and her 75 pages. You know, and with -- the bottom  
2 of page 75 is BLN, Barbara L. Nielson. And, again,  
3 her report is not without inaccuracies, but it  
4 was -- it's what should be reviewed.

5 JUDGE O'REILLY: Okay.

6 DR. DAY: There is -- somewhere within it  
7 there's a really important line that talks about the  
8 failure to meet the burden of proof, which was just  
9 preponderance of evidence, and I would argue that  
10 that's not even the right standard. But this was a  
11 disciplinary hearing to see whether there was a new  
12 ground upon which to restrict this license, and  
13 there wasn't even probable cause.

14 So the whole 2002 hearing should not have  
15 taken place, and -- here we go, on page 58, right  
16 after Footnote 309, this directive has been  
17 construed to mean that it is necessary to address,  
18 quote, the quality of the evidence that should  
19 comprise a preponderance in professional  
20 disciplinary proceedings. In deciding whether a  
21 preponderance exists, the finder of fact must assess  
22 the quality, as well as the quantity, of the  
23 evidence, and determinations of whether the  
24 licensing authority has established a preponderance  
25 must be based on evidence of equality.

1           And then she goes on and shows how it  
2 wasn't equality that -- that there was actually  
3 perjury committed by the only witness for the Board,  
4 Dr. Abel. So she shows that this was a -- just a  
5 frivolous hearing, and that there was no basis for  
6 the Board to quote/unquote win. And then the Board  
7 issued this thing that it says is a stipulated  
8 result, and that's just patently false on its face.

9           So we really have a record that all  
10 harkens back to an error of investigation in 1991  
11 when the Attorney General's Office actually deferred  
12 to the University of Minnesota and to the Hennepin  
13 County courts, who also deferred to the University  
14 of Minnesota.

15           And in both cases, each of those venues  
16 relied upon a counterfeit report. That the inciting  
17 incident here was this complaint made to all three  
18 entities, but there is -- there is an allegation  
19 that a patient reported me doing something sexual  
20 with her. And she had -- had a telephone discussion  
21 with me and recorded the discussion, and then  
22 provided a complaint to these three bodies that  
23 called itself a transcript of the telephone  
24 discussion.

25           And it was not a fidelity transcript. It

1 actually had the word "sexually" inserted in the  
2 pivotal question where it had not actually existed.  
3 And so this one word is -- "sexually" was  
4 inaccurately placed in this patient report and was  
5 picked up by the University, the courts, and the  
6 Attorney General's Office. And all three of those  
7 bodies asserted that that question and answer, she  
8 asked me if I had been sexually excited, and then  
9 there was an answer there that said, "sure," and  
10 those were not elements of the original  
11 conversation.

12 So there was this counterfeit -- this  
13 inaccurate document provided to the State in three  
14 different venues in 1991, and that inaccuracy is  
15 carried forward 32 years. And everything that the  
16 State has done ever since has been in an effort to  
17 make sure that this license doesn't recover, because  
18 it looks like there is a sexual misconduct at the  
19 root of it, when that is inaccurate.

20 So a very large 32-year body of forensic  
21 medical data that really boils down to one question  
22 and answer, that I'm correct, of what we have is  
23 this 2005 diagnosis that's still online today saying  
24 this license is restricted due to this combination  
25 of five public actions. And the only one that's

1 legitimate is the December '92, because that one  
2 bears my signature and is, in fact, a stipulation.

3 But all that it says is that there's a  
4 patient report out there, and that there are other  
5 entities that have drawn conclusions based upon it,  
6 and all those conclusions are not actually data.  
7 All those conclusions are actually mistaken analyses  
8 of the data. And so there's only one piece of data  
9 here that says that there are -- there  
10 are patient -- there was a patient report in '91,  
11 and that's the only correct piece of data we have  
12 here.

13 And there's a bunch of correct stuff  
14 about my medical condition, and Barbara Nielson  
15 makes a bunch of correct assessments that says that  
16 there's no reason to discipline this license, and  
17 this procedure failed. And so we actually have a  
18 lot of analysis in this 32-year record that shows  
19 other analysis to be wrong.

20 And, in general, we have a group forensic  
21 medical practice, a group of doctors on a state  
22 Board. It used to be called Board of Medical  
23 Examiners, and now it's called Board of Medical  
24 Practice. And they have their Attorney General's  
25 Office and their medical -- medical regulations

1 analysts doing investigation for 31 years, but they  
2 have never included a medical coordinator.

3 A medical coordinator is a person  
4 available to this state agency to do this forensic  
5 medical analysis. And they've never done it, and  
6 instead they just relied on the Attorney General's  
7 Office to tell them what they can skip, and the  
8 Attorney General's Office keeps telling them that  
9 they can skip and skip and skip and skip. So  
10 there's been 32 years of forensic medical  
11 malpractice here and inaccurate information being  
12 published on the Internet to the world's 8 billion  
13 people.

14 So in one of these paragraphs in these  
15 voicemails, I offered up what could be done.  
16 Voicemail 17 says: It looks like all we need to do  
17 is actually take all of the five things off view  
18 that are on view. All these documents are so poorly  
19 created it makes the most sense to stop publishing  
20 them.

21 I don't think there is any legal  
22 requirement that any of it be posted, and that they  
23 all deceive the public by being posted. So in an  
24 instant, the public actions under this license could  
25 be removed from view, and that would provide a

1 significant correction to the inaccurate data, to  
2 stop publishing. It would be (indiscernible) -- it  
3 would be better.

4 And, again, that's something that I think  
5 the Department of Administration could do. I don't  
6 know if the Department of Administration would have  
7 the authority to -- well, I don't know. That's  
8 something to be worked out. You know, who strikes  
9 what from where in order to get the wrong data gone.

10 But another thing that could be done  
11 would be to draw up a new stipulated agreement and  
12 an order of unconditional license. That can be a  
13 pretty short document. It says: It can just say  
14 the Board received a complaint in 1991. The  
15 complaint was found to include a counterfeit  
16 document, and upon review, the complaint was not  
17 substantiated, and Respondent's license did not  
18 warrant restriction. End of story.

19 So this license should rightfully have  
20 been unrestricted all along, but for, ultimately,  
21 Attorney General misconduct that put false  
22 information in the Board's first order on May 2nd,  
23 1992. There was no admission, and that's maybe not  
24 that easy to see from this record, and so it might  
25 take us going to a hearing.

1           What I brought with me today, among other  
2 things, is the transcript from the Hennepin County  
3 trial. And within -- and that that trial is part of  
4 this record, and so all this data, again, is -- is  
5 included by reference. And I think it is -- it is  
6 mentioned, it actually is -- you know, it's taken as  
7 one of the "whereas's" in this nineteen -- this  
8 May 1992 Order. It says, whereas this court  
9 found -- rendered this conviction.

10           And so we have this record of conviction,  
11 and within this record of conviction, we have  
12 reference to this telephone conversation. And  
13 within this court record, it is referred to as a  
14 transcript, and that document is not actually  
15 entered into evidence in court, but it is put into  
16 the hands of the jury to look at while listening to  
17 the recording. And the jury is instructed to  
18 ignore -- or to override what they read if they hear  
19 something different, which is a very prejudicial way  
20 to try to find fact in a hearing.

21           And so this hearing was prejudiced in  
22 that way, but it got worse from there. That when  
23 the court reporter prepared this transcript of the  
24 hearing, she typed -- what follows in this  
25 transcript is the transcript of the phone call. And

1 then she typed out what was handed to the jury  
2 instead of doing stenography on the tape that was  
3 played, and one can see that by reading the thing.

4 And we see the defense attorney arguing  
5 about using this counterfeit transcript. We see the  
6 prosecuting attorney saying, oh -- they say it's  
7 very accurate, and the defense says, well, there are  
8 one or two points where it's not. And he gets  
9 interrupted and doesn't get to say much about it,  
10 but he does say there's this place where there's a  
11 change in verb tense, and it goes from "would ruin"  
12 to "did ruin."

13 And when you go through and you look at  
14 where the stenographer recounts it, she uses the  
15 "did ruin" instead of "would ruin." So you can see  
16 that the stenographer did not do her job accurately  
17 and put the wrong information into this record. And  
18 so this same inaccuracy within the counterfeit  
19 report to the Board gets converted to a confession  
20 in this trial.

21 And then we also have the University  
22 being called to testify at this trial, and the  
23 University testifies that it actually enacted  
24 discipline back in January on the same basis. And  
25 we see that there's actually a January 1992

1 discipline at the University of Minnesota, and a  
2 dismissal letter that says that the data subject was  
3 deemed dismissed based on an admission. And so  
4 there's this incorrect word "admission" in this  
5 January 1992 University document.

6 So we had an incorrect data point within  
7 this 1991 complaint being carried over to an  
8 incorrect data point in the University's  
9 January 1992 documentation. And then we have a  
10 carryover into Hennepin district court's April 1992  
11 documentation, and then in the Medical Board's  
12 May 1992 documentation, and only vaguely  
13 contradicted in the December 1992 stipulation.

14 And so it has been forensic medical  
15 malpractice ever since May 1991 to let the Attorney  
16 General tell the Medical Board what its medical  
17 record is, and to not double check and see whether  
18 the words that the Attorney General is typing and  
19 issuing into the law are medically correct.

20 And so I do believe that all of that is  
21 visible in the pleadings and in the incorporated  
22 documentation. So I don't think that we actually  
23 have to get onto the witness stand and have me  
24 recount all of the last 32 years of history. But it  
25 would be welcome, because I have been pro-truth for

1 32 years and the State of Minnesota has been  
2 anti-truth for 32 years.

3 One of the litigations that's part of  
4 this record is the federal case that was filed in  
5 2019. And in 2019, I made a discovery request to  
6 ask if the State and this agency and the Attorney  
7 General's Office still have the tape recording. And  
8 the Attorney General's Office did not answer the  
9 discovery request, and moved on specious grounds to  
10 have the case dismissed without first following  
11 federal rules and having a picks (phonetic)  
12 conference with me, and the federal court colluded  
13 with the Attorney General's Office to dismiss the  
14 case.

15 So I still don't know if the State of  
16 Minnesota retains this audiotape. I lost my copy.  
17 I know what it says, and what it doesn't. And I've  
18 testified to it when I've had a chance, but most  
19 often I am cheated on process and do not get a  
20 chance to advance honesty and accuracy.

21 So I can attest to the inaccuracy of all  
22 of these records, but I do think, on their face, we  
23 can see that they are all based on an inaccurate  
24 description of this counterfeit captioning of this  
25 telephone call. It was called a transcript, and it

1 wasn't a transcript. It was a captioning with  
2 fraudulent insertions. There's the fraudulent  
3 insertion of the question, "were you sexually  
4 excited" and a fraudulent insertion of an answer,  
5 "sure."

6 And a person can see in the sentences  
7 that follows that that's not consistent. It says,  
8 well, how much further could it have gone from  
9 there? And it says, if it went any further from  
10 where it went, it would have been a problem. It  
11 would have ruined everything if it had actually been  
12 a sexual contact. And this thing reversed it to  
13 say, we did totally ruin it. And so that verb tense  
14 from subjunctive to declarative is wickedly  
15 inaccurate.

16 And the whole phrase "sexual contact" is  
17 a statutorily defined phrased that has a very  
18 specific statute -- meaning in statute, and that was  
19 what this criminal hearing -- criminal trial was  
20 about was whether that statute was satisfied, and  
21 that statute was only satisfied if there was sexual  
22 gratification. And so that's an inaccurate legal  
23 proceeding, again, based on a counterfeit document  
24 that was not directly entered into evidence, but was  
25 incorporated into the transcript by stenographic

1 misconduct.

2 And it was judicial misconduct for -- or  
3 at least it was a judicial error on  
4 LaJune Lange's -- on Judge LaJune Lange's part to  
5 override the objection of defense counsel and let  
6 this counterfeit thing into the jury's hands to  
7 prejudice their listening to the audio evidence.

8 And there's judicial error in the  
9 appellate procedure, and there are all kinds of  
10 judicial errors that are all in service of keeping  
11 this additional -- this initial error intact.

12 JUDGE O'REILLY: Can you help me? I'm  
13 trying to read this Barbara Nielson's  
14 recommendation, does this result from you  
15 requesting -- petitioning for reinstatement at some  
16 point? I mean, where was the Board action --

17 DR. DAY: No.

18 JUDGE O'REILLY: -- that you are  
19 contesting?

20 DR. DAY: Yeah, so we are still under the  
21 1992 agreement.

22 JUDGE O'REILLY: I get that, but how  
23 does this --

24 (Indiscernible cross-talking.)

25 DR. DAY: And this -- and this was a

1 procedure on top of it.

2 JUDGE O'REILLY: Right.

3 DR. DAY: That I was last sent for Board  
4 evaluation in July 2002. You'll find in there that  
5 I was sent down to -- to Atlanta, Georgia, to be  
6 examined by Dr. Abel.

7 JUDGE O'REILLY: Yeah, I get that. I  
8 just am wondering --

9 DR. DAY: And then when I returned, the  
10 Board was supposed to obtain his data and give it to  
11 my doctors, and, instead, they issued a letter  
12 saying we allege that you are now in violation of  
13 two paragraphs of Subd. 1 in the Statute 147.091.

14 So that was in -- so on September 8th,  
15 2002, I believe, the Board sent the letter that I  
16 got on September 10th saying you have to appear  
17 before us, or we will find new disciplinary grounds  
18 to further restrict your license.

19 And so I wrote a rebuttal and appeared in  
20 conference on September 20th --

21 JUDGE O'REILLY: What year?

22 DR. DAY: 2002.

23 And we left that conference with the  
24 Board having made some admissions that it later  
25 backpedalled on, and with instructions to me and the

1 Board's counsel to commute on the -- communicate on  
2 the prospect of drawing up a new stipulation.

3 And then the Attorney General's Office,  
4 Steve Gunn, got the Board to give him authority to  
5 initiate a new case if I refused to resettle. And  
6 that's how this thing sprang up, that then in  
7 November or December, the Board just came out sua  
8 sponte saying we're starting a new case against you,  
9 and it wasn't a new case. It was a -- it was  
10 actually a realleging of the '91 settled case, but  
11 it was repackaged as an allegation that I now had a  
12 medical condition that I didn't have before.

13 But the settlement of the '92 case set up  
14 a remedy where we would examine my medical  
15 condition, and so there's no way that any new  
16 medical condition would result in any new conditions  
17 on my license. Because I was already being kept  
18 entirely out of practice because they weren't coming  
19 up with a proper diagnosis to say that I could  
20 practice.

21 So this 2005 decision is the product of a  
22 dishonest issuing of a notice of hearing in November  
23 or December of 2002, and that is somewhere within  
24 this documentation. And Barbara Nielson's report  
25 probably begins with a prologue that --

1 JUDGE O'REILLY: Unfortunately --

2 DR. DAY: -- recounts it.

3 THE COURT: -- she spends many pages, but  
4 without identifying what the procedural posture was.

5 DR. DAY: Let's see, this matter came on  
6 for hearing beginning on April 13th, 2004. Yeah.  
7 There were actually two years of pretrial motions,  
8 and so when it came on for hearing in April 2004,  
9 that was after two years of motion practice where I  
10 was trying to get the thing properly not heard.

11 And so we -- yeah, I guess -- yeah,  
12 that's all that shows up here, is that it came on in  
13 April 2004, but that was pursuant to an actual  
14 commencement of the action two years prior.

15 And, actually, the notice of conference  
16 in September 2002, again, alleged violations of  
17 Paragraph L and T, because Paragraph T is the sexual  
18 misconduct paragraph under which the first hearing  
19 was brought.

20 JUDGE O'REILLY: Yeah, but I just can't  
21 figure out how you got -- how this -- the Board's  
22 order of two-thousand -- hold on one moment. 2005.

23 DR. DAY: Yeah, so that this --

24 JUDGE O'REILLY: How that even got to  
25 them, what it -- I would need to look at the Notice

1 and Order for Hearing --

2 DR. DAY: Yeah.

3 JUDGE O'REILLY: -- to see what happened.  
4 Did you apply for reinstatement?

5 DR. DAY: No, as I said --

6 JUDGE O'REILLY: It doesn't make sense.

7 DR. DAY: -- it was sua sponte. They  
8 brought it of their own accord. They say, when we  
9 look at Dr. Abel's report, we have a new concern,  
10 and so we are going to prosecute that concern.  
11 And --

12 JUDGE O'REILLY: I can't believe that  
13 Barbara Nielson wrote this long of a thing and  
14 didn't even get to the (indiscernible) --

15 DR. DAY: Yeah.

16 JUDGE O'REILLY: -- figure it out.

17 DR. DAY: Yeah. It's disappointing that  
18 that is not part of this particular record. You  
19 actually will see it in the federal litigation from  
20 2006.

21 JUDGE O'REILLY: This goes beyond -- I'm  
22 just trying to figure out how we got here, because I  
23 don't understand how it even became a contested case  
24 action. Because I don't get how it even got to  
25 Barbara Nielson in the first place, what the

1 procedural posture is.

2 DR. DAY: Yeah. Yeah. I think you can  
3 find that within the federal litigation of 2006.

4 JUDGE O'REILLY: No, I'm not going to --

5 DR. DAY: But I --

6 JUDGE O'REILLY: -- the federal  
7 litigation to --

8 DR. DAY: No, but I'm --

9 JUDGE O'REILLY: -- figure it out.

10 DR. DAY: And, again, I can testify to  
11 it. I do know it, and I can help you, if you'd  
12 like.

13 JUDGE O'REILLY: Well, I get that you had  
14 to present certain medical opinion, I just don't  
15 understand what action the Board took that you were  
16 appealing that resulted --

17 DR. DAY: Yeah.

18 JUDGE O'REILLY: -- in the contested --

19 DR. DAY: Yeah.

20 JUDGE O'REILLY: -- case action.

21 DR. DAY: They sent me a notice of  
22 conference in September 2002 in the wake of my July  
23 examination.

24 JUDGE O'REILLY: Yeah.

25 DR. DAY: And that notice of conference

1 made the allegation that I might be in violation of  
2 L and T. We had our conference on September 20th,  
3 and then it was -- it was -- I think it was on  
4 December 15th, 2002, that Peter Krieser filed a  
5 Notice of Hearing, taking me to administrative  
6 hearings over the allegation that I was in violation  
7 of Paragraph L. And so that's the document that you  
8 would like to see is the December 15, 2002, Notice  
9 of Hearing.

10 JUDGE O'REILLY: Yes.

11 DR. DAY: Yeah. Because that Notice of  
12 Hearing -- and I remember the date, because it was  
13 two years to the day that Barbara Nielson issued her  
14 findings.

15 JUDGE O'REILLY: No.

16 DR. DAY: That on December 14th, 2004,  
17 she issued this report.

18 JUDGE O'REILLY: Right. I'm looking for  
19 the December 11th, 2002, Notice of Order for  
20 Hearing.

21 DR. DAY: Right.

22 JUDGE O'REILLY: That's what I would like  
23 to see.

24 DR. DAY: Yeah. I believe the date is  
25 December 15th, because she issued this on the 14th,

1 and it struck me as being that it would have been  
2 two years if she waited one more day.

3 JUDGE O'REILLY: Well --

4 DR. DAY: So that's how I am remembering  
5 it personally, but I might not be right.

6 JUDGE O'REILLY: I don't think you're  
7 right, but it doesn't matter. I just need -- I just  
8 would like to know the procedural posture of how it  
9 even became -- before her --

10 DR. DAY: Yeah.

11 JUDGE O'REILLY: -- just to kind of give  
12 background to how this got here.

13 DR. DAY: And would that still be in  
14 OAH --

15 JUDGE O'REILLY: No.

16 DR. DAY: -- files? Or in -- or it's  
17 probably still in the Attorney General's files.

18 JUDGE O'REILLY: I don't know.

19 DR. DAY: I would imagine that the  
20 Attorney General has a lot of stuff that is the  
21 subject of this thing.

22 JUDGE O'REILLY: Well, it's -- it's fine.

23 DR. DAY: But she does -- in the end, and  
24 so the Board made the conclusion that I was in  
25 violation of L. And that gave them the legal

1 ability to issue an order, but the order that they  
2 issued could not be a stipulation. And so that's  
3 just a legal error that renders the thing invalid.

4 JUDGE O'REILLY: Okay. I understand.  
5 You can proceed.

6 DR. DAY: It's not what it says it is.

7 And so we would still be under the 1992  
8 agreement if it were valid, but that thing itself  
9 is -- was actually an adhesion contract where I was  
10 forced to accept it as-is or lose my license.

11 JUDGE O'REILLY: Okay.

12 DR. DAY: And so the '92 stipulation has  
13 never really been a legitimate legal instrument  
14 either, but it is a signed instrument by me. I  
15 signed it under duress and without being allowed to  
16 correct its semantic flaws. And I have adhered to  
17 it for 31 years, and the State never has. The State  
18 has lied and cheated and misconstrued and denied  
19 process, and has just been wickedly in breach of  
20 contract at every turn.

21 The thing requires that I get data from  
22 the examiners, and I never get data from the  
23 examiners. It requires that I get process on  
24 petitions that I bring, and I never get process on  
25 petitions I bring.

1           But, ultimately, Barbara Nielson did take  
2 testimony from doctors about the history and the  
3 current condition, and concluded that there was  
4 nothing about my medical condition that failed to  
5 satisfy the '92 condition -- '92 restrictions, and  
6 that my reinstatement petition should be certified,  
7 I think, is the word that she uses in the document.  
8 And that seems to have led to some confusion as to  
9 who should do what next.

10           And then there's a mistaken argument by  
11 Peter Krieser saying, well, Dr. Day actually has a  
12 petition before you for reinstatement, and you are  
13 deciding that. And Rosellen Condon answers back,  
14 that's your opinion? And he says, yes. And then  
15 they go off into a closed deliberation, and they  
16 come out with a revision to the stipulation, which  
17 isn't medically or legally right.

18           And so Peter Krieser makes the incorrect  
19 assertion that the contested case is a hearing on my  
20 petition, and the Board's memorandum makes the same  
21 mistake. The Board's erroneous memorandum starts to  
22 recount how we progressed underneath the '92 order,  
23 and says I haven't satisfied it and such and such.  
24 And so there's this incorrect body of verbiage in  
25 this substitute memorandum that actually puts the

1 wrong question in front of the Board. And so the  
2 decision actually imagines that it's passing  
3 judgment on a petition from me, when it isn't.

4 JUDGE O'REILLY: Okay.

5 DR. DAY: Does that help?

6 JUDGE O'REILLY: Yeah. Okay. What's the  
7 next area that you want to (indiscernible)?

8 DR. DAY: I guess -- and so Barbara  
9 Nielson's report is here, and the statement of  
10 disagreement --

11 JUDGE O'REILLY: Yeah, (indiscernible).

12 DR. DAY: -- goes through why it's all  
13 correct, and why none of the substituted memorandum  
14 is. And, again, that hasn't been rebutted ever, and  
15 so I think we can, as a matter of summary  
16 disposition, strike this erroneous memorandum and  
17 put Barbara Nielson's back.

18 JUDGE O'REILLY: Okay.

19 DR. DAY: I'm not sure what to do about  
20 the -- I guess, the '92 documents, again, they are  
21 inaccurate and incomplete.

22 JUDGE O'REILLY: Okay.

23 DR. DAY: And, again, they are -- the  
24 completeness thing is a real challenge when we're  
25 talking about a forensic medical record. You know,

1 from a bird's-eye view, there's 32 years of medical  
2 investigation into my psychological make-up, my  
3 behaviorial history, and my psychological and  
4 behaviorial prognosis.

5 JUDGE O'REILLY: Okay.

6 DR. DAY: And that's what this body of  
7 data is about, and for it to be accurate, it has to  
8 be without errors. It has to be without crucial  
9 errors to be accurate, and I think we've identified  
10 the crucial errors. The main crucial error is this  
11 error that says that I made an admission to a -- to  
12 a sexual, unethical behavior 32 years ago.

13 JUDGE O'REILLY: And you're talking about  
14 that in the stipulation, correct?

15 DR. DAY: And I'm saying -- and that  
16 shows up in multiple places, and so for this record  
17 to be correct, it has to not show up everywhere in  
18 the record. And so it's a herculean task to get  
19 that inaccuracy removed from everywhere it shows up.  
20 Because the whole 32-year body of verbiage is all  
21 about that one question and answer.

22 JUDGE O'REILLY: Can you just point to me  
23 what you're talking -- in what document you're  
24 talking about?

25 DR. DAY: Um.

1 JUDGE O'REILLY: You're talking about in  
2 the stipulation that you signed?

3 DR. DAY: Well, the stipulation does not  
4 use the word "admission."

5 JUDGE O'REILLY: Okay. Which one does?

6 DR. DAY: The one before that, the  
7 May 2nd --

8 JUDGE O'REILLY: Okay. The original.

9 DR. DAY: -- order temporarily suspending  
10 license pending contested case hearing. So that was  
11 the first instance of inaccurate information --

12 JUDGE O'REILLY: Got it.

13 DR. DAY: -- being published, but the  
14 inaccurate information first appeared within a  
15 complaint to the Medical Board.

16 JUDGE O'REILLY: Okay.

17 DR. DAY: And to the University and to  
18 police and attorneys and courts.

19 And so it shows up as primary data within  
20 the Medical Board's licensure file. It shows up  
21 there in 1991, and I receive a letter in 1991 from  
22 the Medical Board saying, we've opened an  
23 investigation, please come talk to us.

24 JUDGE O'REILLY: Okay.

25 DR. DAY: And that conversation never

1 occurs, and the first time I end up in conversation  
2 with the Board is on December 16th, 1992, when they  
3 offer me this settlement.

4 JUDGE O'REILLY: Okay.

5 DR. DAY: And so on December 16th, 1992,  
6 I accept this settlement that makes some correction  
7 of this fraudulent 1991 complaint. And it casts the  
8 complaint as a report, rather than a fact, but it  
9 has the report under a section called "facts." And  
10 so that is a deceit of Skip Humphrey's that confuses  
11 everyone for 32 years.

12 JUDGE O'REILLY: I understand. That is  
13 making sense now when you put it all together.

14 DR. DAY: So that's the big picture and  
15 a --

16 JUDGE O'REILLY: A lot of detail.

17 DR. DAY: -- tiny maneuvering around  
18 process.

19 JUDGE O'REILLY: Right. I do understand  
20 it. Do you have anything further?

21 DR. DAY: Um.

22 JUDGE O'REILLY: As you've been talking,  
23 I've been looking up the documents and pulling them  
24 up to follow along.

25 DR. DAY: Great.

1 I have this note to remind myself that I  
2 was a nondisabled person in 1990, and what disables  
3 me is being assaulted by the effects of what people  
4 do with the false information and in service of the  
5 false information.

6 JUDGE O'REILLY: Sure.

7 DR. DAY: So it's a really serpentine  
8 chain of dominos.

9 JUDGE O'REILLY: May I ask you what your  
10 current status is? I assume you're not practicing?

11 DR. DAY: So I actually am practicing as  
12 we sit here. I am assessing, actually, the mental  
13 health of each person involved in the creation of  
14 this record. And I am seeing where they have acted  
15 on narcissism and delusion, and I am actually  
16 diagnosing a number of individuals here as mentally  
17 ill and dangerous.

18 So I am -- I am doing a kind of forensic  
19 medical practice as we sit here. This --

20 JUDGE O'REILLY: Are you authorized by  
21 the Board to practice medicine in the State of  
22 Minnesota?

23 DR. DAY: So the problem is that this is  
24 an illegitimate record that does not accurately  
25 reflect the reality of my license.

1 JUDGE O'REILLY: Okay.

2 DR. DAY: And so, you know, if I were to  
3 provide services to someone and bill them for those  
4 services, they could contact the Medical Board, and  
5 say, oh, I just got services from a doctor and your  
6 records show that his license is restricted. And  
7 that you have not yet worked out an approved  
8 practice that he would agree -- you know, that I see  
9 that he has a stipulation with you that says you  
10 have to approve of the practice that he submits, and  
11 so then there would become a contested case over  
12 whether I had actually practiced outside of the  
13 legitimate conditions on my license.

14 JUDGE O'REILLY: Okay.

15 DR. DAY: And then we would have a  
16 hearing, a debate over whether this is a valid or an  
17 invalid contract, and so I've been avoiding that  
18 debate by not offering my services for remuneration.

19 JUDGE O'REILLY: Okay.

20 DR. DAY: But I believe that right now I  
21 could offer services for remuneration, that that  
22 would trigger a potential case, and then we would  
23 have to argue what the legitimate restrictions are,  
24 and are not, on my license. Right now I assert that  
25 these are not legitimate restrictions and that my

1 license is not restricted, but that is an incorrect  
2 word on that website.

3 JUDGE O'REILLY: Okay.

4 DR. DAY: And it's interesting that  
5 question came up as I was describing my disability.

6 JUDGE O'REILLY: Okay.

7 DR. DAY: And that I have a disability  
8 that does not have any effect on my practice,  
9 safety, or competence, and that is what is  
10 essential. And that is what is completely wrong  
11 about this 2005 decision.

12 This 2005 decision says explicitly I have  
13 a medical condition making me unskilled and unsafe,  
14 and my medical condition is one of profound  
15 emotional distress over my professional abilities  
16 being so wickedly misrepresented that they actually  
17 serve as a vehicle of terror in the world.

18 This condition says that there are  
19 doctors out there who are unsafe in general, and  
20 that this is one of them. You cannot go to this  
21 doctor even if you want to, and you shouldn't want  
22 to. And you should trust us to make these kinds of  
23 decisions, and that you can go to other doctors that  
24 we deem safe, and you can't go to this one because  
25 we deem this one unsafe.

1           So it sets up the State of Minnesota as  
2 being a trustworthy source of information about safe  
3 versus sexually assaultive doctors, and it holds me  
4 out to be an admittedly sexually assaultive doctor,  
5 which is just a horrific false flag operation. It's  
6 all designed to make Minnesota look like a good,  
7 safe place, and to make me look like a demon.

8           And it's wickedly dishonest and  
9 terroristic, and that just breaks my heart and makes  
10 me slow and methodical and super precise. And so a  
11 lot of people don't meet someone as slow and precise  
12 as me, but it's very important to recognize that my  
13 abilities are impeccable.

14           And that this 32-year record is just  
15 egregiously corrupt and terrifying. It really  
16 scares the world into thinking it's different than  
17 it truly is, and that causes me to -- to be slow --

18           JUDGE O'REILLY: Okay.

19           DR. DAY: -- and painstaking.

20           And, I guess, the other important thing  
21 to recognize is, again, this is an open, active  
22 dataset. The things that we are saying and doing  
23 here is actually part of a demonstration of what my  
24 mental health is and is not.

25           JUDGE O'REILLY: Um-hmm.

1 DR. DAY: And the Board can and should  
2 actually accurately determine whether I am  
3 ambivalent or non-ambivalent about facts and whether  
4 I have good judgment.

5 What this memorandum says in 2005 is that  
6 I actually have ambivalence about facts, and that  
7 suggests I've got poor judgment and that I still  
8 haven't recovered from doing this bad thing in '91.  
9 So it's essential that what we are -- what I --  
10 again, what I'm doing right now is a forensic  
11 medical practice.

12 I am actually correcting the forensic  
13 medical mistakes of the 10 or 11 doctors that have  
14 sat on this Board over this 31-year course. Each of  
15 them serving somewhere between one year and  
16 eight years, and so there are -- there are a couple  
17 dozen doctors here who have committed forensic  
18 medical malpractice, and the current 10 or 11 on the  
19 Board are doing so as we speak. And for them to not  
20 acknowledge that is to misdiagnose me, so it's a  
21 little bit circular.

22 But, again, it's an open, active record,  
23 and as we saw, this physician profile is online  
24 right now, and it is making these incorrect  
25 statements to the world's people. And so we really

1 need to -- well, first and foremost, correct what's  
2 being published so it's not happening in real time.

3 But then we also need to get underneath  
4 and totally dissect and eradicate this malignancy.  
5 There are all these sick data cells within this body  
6 of data, and the physician in me says, well, you  
7 can't use radiation --

8 JUDGE O'REILLY: Right.

9 DR. DAY: -- and you can't even use  
10 chemo, they have to go in and actually surgically  
11 remove every wrong word, and that's really hard to  
12 do.

13 JUDGE O'REILLY: All right. Anything  
14 further? Because I'm going to go through a few  
15 things here, as I've been writing down, just to  
16 complete our record.

17 DR. DAY: I do want to make clear that we  
18 are here working on the State of Minnesota's data  
19 about me, the subject.

20 JUDGE O'REILLY: Correct.

21 DR. DAY: And we're doing so for the  
22 people of the world, even beyond Minnesota, but  
23 we -- but the Department of Administration is the  
24 Minnesota entity that is conducting this process,  
25 and the Minnesota Attorney General is the one

1 responsible for the participation of the Respondent.

2 And so Department of Administration is  
3 one of Tim Walz's employees, and Keith Ellison is  
4 another of Tim Walz's employees, I think -- maybe  
5 not. No.

6 JUDGE O'REILLY: No.

7 DR. DAY: He's not a Minnesota  
8 department.

9 JUDGE O'REILLY: Right.

10 DR. DAY: He's an independent  
11 constitutional officer.

12 JUDGE O'REILLY: Correct.

13 DR. DAY: Yeah.

14 JUDGE O'REILLY: All right. I think  
15 we're kind of going off center here, so I'm going  
16 to -- have you -- I think I've heard every -- I  
17 believe I understand all your arguments. You've  
18 both made a response to the Board's motion to  
19 dismiss, and I understood all of your arguments with  
20 respect to that, and you've made your own motion for  
21 summary disposition.

22 My understanding is that I am going to  
23 kind of boil it down to two things on your motion  
24 for summary disposition, and here's what I wrote:  
25 It is that your first argument is that the Board

1 failed to respond within 30 days to your accuracy  
2 and completeness challenge, and that as a result,  
3 the voicemails that you attached, the 22 pages that  
4 you attached to your accuracy and completeness  
5 challenge of November 11th, 2022, should replace the  
6 documents that are on the Board's website.

7 DR. DAY: Or whatever information they  
8 refer to.

9 JUDGE O'REILLY: Correct.

10 Okay. The second argument is that the  
11 Board -- the undisputed facts show that the three  
12 challenged documents contain inaccurate or  
13 incomplete information, and they should, therefore,  
14 be removed from the Board's website and replaced  
15 with Judge Nielson's 2004 Findings of Fact,  
16 Conclusions of Law, and Recommendation.

17 Or in the alternative, the Board should  
18 issue a new order and stipulation removing any  
19 restrictions or conditions on your license.

20 DR. DAY: And I don't know if the word is  
21 "retracting" or "acknowledging" all of the errors.

22 JUDGE O'REILLY: Okay. I'll add that in.

23 DR. DAY: I think they have -- we have a  
24 problem of unacknowledged errors spreading out  
25 across the world over --

1 JUDGE O'REILLY: I get it.

2 DR. DAY: -- for a period of time, and we  
3 can't necessarily retract them, and so we actually  
4 need a visible correction of every visible error.

5 JUDGE O'REILLY: Well --

6 DR. DAY: (Indiscernible.)

7 JUDGE O'REILLY: -- what you're really  
8 asking for is removal of those, what you consider,  
9 inaccurate or incomplete documents and --

10 DR. DAY: That have been demonstrated as  
11 inaccurate or incomplete.

12 JUDGE O'REILLY: Right, and a replacement  
13 with either Judge Nielson's recommendation from  
14 2004, or a new order and stipulation which removes  
15 any restriction or conditions on your license, and  
16 retracting and acknowledging any errors --

17 DR. DAY: Yeah.

18 JUDGE O'REILLY: -- that the Board has  
19 made.

20 DR. DAY: And those are essentially one  
21 and the same, because that is what she recommends.

22 JUDGE O'REILLY: Okay. So those are the  
23 two arguments that you make that the Board will then  
24 respond to in their response to the motion for  
25 summary disposition. As you know, a motion for

1 summary disposition requires that there be  
2 undisputed facts. So -- okay. So the Board will  
3 respond to that in writing.

4 Now, I had originally in the first -- in  
5 the Amended First Prehearing Order gave a deadline  
6 for the Board to respond as September 8th, 2023.  
7 And I'm going to change that, and the reason I'm  
8 going to change that is that you are going -- you  
9 have indicated that you will obtain a transcript of  
10 today's hearing, which will be a written version,  
11 essentially, of all your arguments. So I am going  
12 to give you the opportunity to do that.

13 Well, too -- if I get you the recording  
14 by tomorrow, do you think you'll be able to arrange  
15 for the transcript within the next few weeks, or how  
16 much time do you need?

17 DR. DAY: It's really tough, because it's  
18 not so much a matter of time.

19 JUDGE O'REILLY: I'm not requiring you to  
20 do it. I'm just going to give you the opportunity  
21 to do so.

22 DR. DAY: Um.

23 JUDGE O'REILLY: Because there will be  
24 a --

25 DR. DAY: Well I --

1 JUDGE O'REILLY: -- fair amount of cost  
2 associated with that.

3 DR. DAY: Right. I mean, I think that I  
4 need it for posterity --

5 JUDGE O'REILLY: Okay.

6 DR. DAY: -- for my own purposes.

7 JUDGE O'REILLY: And that's -- you're  
8 free to do that.

9 DR. DAY: The question is whether I would  
10 even -- the question is whether I would want to make  
11 corrections to it in order for it to actually be my  
12 motion, is that what we're asking for?

13 JUDGE O'REILLY: Okay.

14 DR. DAY: Are you saying, is my motion  
15 actually not made until I have corrected the  
16 transcription?

17 JUDGE O'REILLY: No.

18 DR. DAY: Or is my motion -- I think my  
19 motion has already been made based on what I have  
20 verbally presented.

21 JUDGE O'REILLY: Okay.

22 DR. DAY: And so it might actually be  
23 that if the Respondents want a transcript in order  
24 to hone their opposition that they can order one and  
25 create it.

1 JUDGE O'REILLY: Okay. Good idea. So  
2 I'm not requiring you to get a transcript. I'm  
3 giving you the opportunity. I am going to -- we're  
4 going to provide you with a recording of this  
5 hearing. I'll actually provide it to both parties.

6 I'm going to -- I'm going to stay silent  
7 here for a moment, so I don't forget to do it, and  
8 I'm going to send the e-mail right now. Okay. And  
9 I'll read it for you. I am going to -- give me one  
10 moment.

11 Please repeat your e-mail address for me,  
12 sir.

13 DR. DAY: It's ten letters long,  
14 R-O-G-E-R-D-A-Y-M-D.

15 JUDGE O'REILLY: Yup, there,  
16 RogerDayMD@comcast.net.

17 So here's what the e-mail says, the  
18 e-mail is to LeeAnn Cary, she is our director of  
19 like IT, if you will, and I say: Hi, LeeAnn. Would  
20 you please be so kind as to provide a copy of the  
21 digital recording of the motion hearing in Court  
22 File Number 0903-39023, which was conducted today to  
23 both -- to Dr. Roger Day and the Board's attorneys,  
24 Jamal Zayed and Theresa Flahaven.

25 One moment.

1 I'm asking her to please provide them to  
2 you by the end of the week, which is August 11,  
3 2023, if possible. If she is out of the office, I  
4 can't get that done earlier, but I'm going to hope  
5 that she's here.

6 Okay. So I am sending that right now.  
7 You'll receive a copy of that e-mail, so you should  
8 receive it. She'll, number one, respond to that,  
9 and if you don't receive something by early next  
10 week, please let us know. Okay. So, let's see, by  
11 Monday if you haven't received anything, I need you  
12 to e-mail me and Mr. Zayed and Ms. Flahaven. Okay.  
13 And I'll make sure it gets done. Is that clear?

14 DR. DAY: Sounds good.

15 JUDGE O'REILLY: Okay. Now, because  
16 there might be time that will be required, say --  
17 let's say the Board needs time to listen to all your  
18 arguments again, because normally they'd get a  
19 written response, and they -- and a written motion,  
20 and when they get the written motion, you can thumb  
21 through it and read back and forth and go over it.  
22 But when something is presented orally, it's a  
23 little harder. You're going to have to rewind and  
24 go forward and listen to it again.

25 Because that might take some time, I'm

1 going to extend the time for the Board to respond to  
2 your motion. I'm going to extend it to  
3 October 16th, 2023. That gives them time if they  
4 want to get a transcript and to prepare their  
5 response to your motion.

6 Does that make sense?

7 DR. DAY: It does.

8 It occurs to me that there is -- there is  
9 the problem, again, that this is -- this is a  
10 real-time publication of data identified as  
11 erroneous and not rebutted. I'm wondering if it's  
12 possible to issue a temporary injunction saying that  
13 the data goes offline until such time as its decided  
14 that it shouldn't be.

15 JUDGE O'REILLY: I'm going to deny your  
16 motion for a temporary injunction. No, that is not  
17 something I have the authority to do.

18 DR. DAY: Okay.

19 JUDGE O'REILLY: Okay. So I'm going to  
20 continue talking now.

21 Now, I just want to clarify, I have a  
22 copy of your original -- your original challenge  
23 dated November 11th, 2022. It is followed by  
24 approximately 22 pages of voicemail messages, which  
25 you have transcribed that detail your -- what you

1 consider to be the errors and inaccuracies.

2 Attachment No. 1 is a copy -- a  
3 screenshot of the Board's website that shows the  
4 documents that you are challenging. Exhibit No. --  
5 Attachment No. 2 is the Order Denying Respondent's  
6 Second Request for Consideration. Attachment No. 3  
7 is the Order Denying Request for Consideration.  
8 Attachment No. 4 is the Findings of Fact,  
9 Conclusions of Law, and Order issued by the Board of  
10 Medical Practice in 2005.

11 Attachment 5 is the June 24th, 2009,  
12 challenge that you filed. Attachment 6 is the  
13 statement of disagreement and proposed corrections  
14 to data maintained by the Board of Medical Practice  
15 as public action, that is your document that you --

16 DR. DAY: That is actually all one  
17 document as posted on the website.

18 JUDGE O'REILLY: Correct.

19 DR. DAY: The -- so there's --

20 JUDGE O'REILLY: I'm breaking them up so  
21 I can address this separately.

22 DR. DAY: But they're --

23 JUDGE O'REILLY: As attachments.

24 DR. DAY: But that is all -- there are  
25 only five attachments, that that -- the last --

1 JUDGE O'REILLY: Oh, okay. The last one,  
2 Attachment 5 includes --

3 DR. DAY: Attachment 5 has a cover  
4 letter --

5 JUDGE O'REILLY: Ah, correct.

6 DR. DAY: -- has the ALJ report, and then  
7 25 pages of analysis for summary.

8 JUDGE O'REILLY: Ah, okay. So you only  
9 have five attachments, but then I'm going to -- just  
10 for clarity, I'm going to call the Statement of  
11 Disagreement as Exhibit A to your Attachment 5, and  
12 the -- and Judge Nielson's Findings of Fact,  
13 Conclusions of Law, and Recommendation as Exhibit B  
14 to your Attachment 5. That way I can refer to them  
15 easier.

16 DR. DAY: Okay.

17 JUDGE O'REILLY: Okay. Because it always  
18 helps if things are clearly marked as exhibits so  
19 that we can identify them. So I just wanted to make  
20 that note for the record.

21 DR. DAY: If I may.

22 JUDGE O'REILLY: Yes.

23 DR. DAY: You use the word "followed by"  
24 when you describe the first page, and then the next  
25 21 pages of the data challenge.

1 JUDGE O'REILLY: Correct.

2 DR. DAY: And I think the way I  
3 conceptualize it is that it is a 22-page challenge.

4 JUDGE O'REILLY: Correct. I apologize.

5 DR. DAY: That the first page is not the  
6 challenge. It's actually all 22 pages together that  
7 are the challenge.

8 JUDGE O'REILLY: Very good. You have  
9 corrected me, and so your challenge is 22 pages. It  
10 includes a first page as, like, a cover letter, and  
11 then 21 pages of transcribed voicemails, and then  
12 attachments.

13 DR. DAY: If I had had more time and more  
14 skill, it wouldn't be in a cover letter and other  
15 format. And so the front page is not actually  
16 identified as a cover letter, and it might create  
17 confusion to treat it as such.

18 JUDGE O'REILLY: Very good.

19 All right. I'm going to ask Mr. Zayed or  
20 Ms. Flahaven to, please -- have you provided me a  
21 paper copy? I noticed it was over 400 pages -- your  
22 motion -- have you provided a paper copy to me?

23 MR. ZAYED: I don't believe so, but I'm  
24 happy to do that.

25 JUDGE O'REILLY: I would prefer you do

1 that, because we have only a few printers upstairs,  
2 and when I print out 500 pages, it gets everybody  
3 upset. It's just a lot of time, and it costs -- I  
4 actually bill it. So it makes more sense for you to  
5 just provide me a paper copy of your original  
6 motion, and then send me a paper copy, courtesy  
7 copy, of your response to his motion.

8 When you do that, will you put a cover  
9 letter on that and say that these are courtesy  
10 copies for the Judge, and they've already been  
11 eFiled? Because, otherwise, you're going to have my  
12 staff trying to scan them all in, again.

13 MR. ZAYED: Will do.

14 JUDGE O'REILLY: Okay. So just make note  
15 that these have already been eFiled. Because you'll  
16 go back to your office and you'll write a letter  
17 saying, you know, attached is the Notice of Motion  
18 to Dismiss. This document has already been eFiled.  
19 This is purely a courtesy copy for the Judge, and  
20 you'll do the same when you file your response to  
21 his Motion for Summary Disposition. Does that make  
22 sense?

23 MR. ZAYED: Yeah, absolutely. Not a  
24 problem.

25 JUDGE O'REILLY: Okay.

1 DR. DAY: It strikes me that -- that it  
2 really will be best if you have a written copy of my  
3 motion, also.

4 JUDGE O'REILLY: I'm fine with either  
5 way, because I've taken such extensive notes and  
6 I've been typing as we go. You can provide that  
7 transcript to me.

8 DR. DAY: Yeah. I have run into other  
9 areas in my life where judges have taken notes and  
10 then chosen different words to describe the words  
11 that I used. And so I want to take care that that  
12 not happen here, as it's not that I --

13 JUDGE O'REILLY: Okay.

14 DR. DAY: -- that I think that that will  
15 happen, but I know that it can happen. And it might  
16 be the highest fidelity if you actually have my  
17 words in front of you as you are deciding --

18 JUDGE O'REILLY: Okay.

19 DR. DAY: -- the motion.

20 JUDGE O'REILLY: Well, then you have  
21 three weeks in order to provide me a transcript of  
22 today's hearing.

23 DR. DAY: Um.

24 JUDGE O'REILLY: So you decide.

25 DR. DAY: Yeah, well, I think -- yeah,

1 it --

2 JUDGE O'REILLY: It will need to be a  
3 transcript prepared by a court reporter with a  
4 certification, so let's --

5 DR. DAY: Right. Yeah.

6 JUDGE O'REILLY: -- see here, today is  
7 the 8th, one, two, three, by August 29th --

8 DR. DAY: Again, I'm wondering if the  
9 court can do that? It's something that I will have  
10 disability symptoms impairing my efforts, and it --  
11 it just -- it seems to me that when we are  
12 conducting a data practice proceeding and we are  
13 trying to establish correct data -- again, it's  
14 argument and not data.

15 JUDGE O'REILLY: Yeah.

16 DR. DAY: So --

17 JUDGE O'REILLY: It's argument.

18 DR. DAY: Yeah.

19 JUDGE O'REILLY: So I'm going to give you  
20 until August 29th, 2023, to provide a transcript of  
21 this oral argument and eFile it with our office,  
22 send a copy to the Board. And so you have that  
23 option.

24 Now, you do not have to. I am fine with  
25 using the digital recording, but you do have the

1 option. But I'm giving you until August 29th, 2023,  
2 because I'm not going to just leave that open-ended,  
3 right? Because I have to get an order out, so I'm  
4 going to give you until August 29th, 2023. That's  
5 three weeks to provide a transcript of the oral  
6 argument. You will eFile it, and copy the Board on  
7 that if you --

8 DR. DAY: Yeah. I -- I am not capable of  
9 eFiling, so I don't know.

10 JUDGE O'REILLY: How about just file it?  
11 Just bring it here and file it.

12 DR. DAY: So, I --

13 JUDGE O'REILLY: Okay. So I'm not going  
14 to say eFile. You will file it. You can file it by  
15 hand-delivering it to our office.

16 DR. DAY: Absolutely.

17 JUDGE O'REILLY: Okay. Again, you are  
18 not required to obtain a transcript, but you can if  
19 you would like.

20 As our human resources director has  
21 already told you, that that is not something that  
22 our office will provide. It is not something we  
23 provide in any case or pay for. So that is  
24 something that if you want it, you certainly are  
25 welcome to do it. We'll give you the digital

1 recordings to do that. Okay. So she has already  
2 considered your -- your request for accomodation on  
3 that, and provided you with that information, so I'm  
4 reiterating that.

5 If the Board could just address, again,  
6 in their response to his motion, you know, it  
7 appears that the Board never responded to -- well,  
8 didn't respond to his November 11th, 2022,  
9 challenge. And then he appealed it to the  
10 Department of Administration, and then the Board  
11 responded. But if you could clarify the basis for  
12 the nonresponse as part of his first argument of  
13 summary disposition.

14 All right. I think I have all of the  
15 information I need. I have carefully listened to  
16 everything you've said. You've been very articulate  
17 and very thorough.

18 And I will then -- I'll issue just a  
19 summary order just explaining what I've explained  
20 here -- all right -- with respect to the extension  
21 of the decision of the Board's response and the  
22 issue regarding a transcript, if you so choose.

23 All right.

24 DR. DAY: And what happens when neither  
25 motion is granted?

1 JUDGE O'REILLY: Well, I haven't made  
2 that decision.

3 DR. DAY: Right. I'm saying if --

4 JUDGE O'REILLY: Oh, okay. I --

5 DR. DAY: -- let's say that there -- I  
6 think that there are, maybe, four possibilities.  
7 Actually, I don't think you can grant both. So you  
8 can grant one or the other, or you can deny them  
9 both.

10 JUDGE O'REILLY: Correct.

11 DR. DAY: This is what I see as three  
12 possibilities.

13 JUDGE O'REILLY: Yes.

14 DR. DAY: And so I'm wondering what  
15 happens in the event -- and I, actually, see my  
16 motion as a potential motion for partial summary  
17 judgment. It's possible to actually grant the  
18 additions, but see that there's still need for  
19 completions.

20 And so I am -- I think I am -- I'm  
21 actually moving for partial summary disposition to  
22 accept the corrections and additions identified  
23 within the challenge, but to continue to provide  
24 more completion for the data that's identified as  
25 incomplete.

1 JUDGE O'REILLY: Okay. One moment. So  
2 the options, like you said, there are three options.  
3 I could grant the Board's motion. In which case,  
4 the case gets dismissed. Number two, I could grant  
5 your motion for summary disposition or partial  
6 summary disposition, and then say, well, there were  
7 inaccurate or incomplete data here, and they need to  
8 be corrected. Okay. And number three, I could deny  
9 both, and then we go to a contested case hearing.

10 Does that make sense?

11 DR. DAY: Yes.

12 JUDGE O'REILLY: Okay.

13 DR. DAY: And so when you receive their  
14 memorandum in opposition, then you will have some  
15 time to take that under advisement, and we will hear  
16 in some number of weeks out?

17 JUDGE O'REILLY: Correct. Correct.

18 After that, I will take it -- the record closes upon  
19 their filing of their response, and then I will  
20 issue my order after that.

21 DR. DAY: And that order might entail us  
22 setting that on for contested case or --

23 JUDGE O'REILLY: In which case, it will  
24 identify a date for hearing.

25 DR. DAY: Okay.

1 JUDGE O'REILLY: Okay. So if I deny both  
2 motions, that order will set forth the date for a  
3 hearing. Does that make sense?

4 DR. DAY: Yeah.

5 JUDGE O'REILLY: All right. Well, very  
6 good. Thank you for your time and thoroughness  
7 today. I appreciate it, and that concludes today's  
8 hearing.

9 Thank you very much.

10 (Hearing adjourned at 1:36 p.m.)

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REPORTER'S CERTIFICATE

I, Christine Simons, do hereby  
certify that the above and foregoing transcript of the  
tape-recorded proceeding, consisting of the preceding 104  
pages is a full, true and complete transcript of the  
tape-recorded proceedings to the best of my ability.

Dated August 25, 2023.

CHRISTINE SIMONS  
Registered Merit Reporter,  
Registered Professional Reporter

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