

EXHIBIT 23

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: BOSTON SCIENTIFIC CORP.,
PELVIC REPAIR SYSTEMS MDL NO. 2326
PRODUCTS LIABILITY LITIGATION

IN THE DISTRICT COURT, 407th DISTRICT
BEXAR COUNTY, TEXAS

DIANA PALOS and JESUS PALOS,
Plaintiffs,
vs. Cause No. 2013-CI-11261

SAMMY VICK, M.D., SAMMY VICK, M.D.
P.A., BOSTON SCIENTIFIC CORPORATION,
C.R. BARD, INC., and TISSUE SCIENCE
LABORATORIES LIMITED,
Defendants.

Video Deposition of DENNIS MILLER, M.D., VOL. II
Friday, May 23, 2014
9:06 a.m. - 4:23 p.m.

Reported by: Sarah A. Hart, RMR, CRR

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1 Q Have you read any other depositions or been shown any
2 others?

3 A I have not.

4 Q Have you talked to anybody regarding either your
5 testimony or testimony that has been given in this
6 litigation?

7 MR. ANIELAK: Other than his lawyer --
8 other than his lawyers.

9 BY MR. PIRTLE:

10 Q Well, excluding the lawyers.

11 A Sure. I assume that's what your questions are
12 related to. No.

13 Q Have you brought any additional documents with you
14 here today to produce?

15 A I have not.

16 Q And have you produced any additional documents?

17 A I have not.

18 Q In the first deposition -- and I won't be too
19 repetitive, but it's my understanding that from that
20 deposition, which I've recently reread, that you are
21 an inventor of a POP device.

22 A I am.

23 Q The Pinnacle.

24 A And co-inventor of Uphold.

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1 Q I was getting there.

2 A Okay.

3 Q And you're the co-inventor of Uphold?

4 A Yes.

5 Q And at least as far as the U.S. is concerned, Uphold
6 LITE is still being sold?

7 A Uphold LITE is still being sold.

8 Q We've -- and I won't go back over it, but we've
9 established that you have a financial interest in
10 these Boston Scientific products.

11 A I receive royalties for having invented this fixation
12 device.

13 Q And you've also received money from Boston Scientific
14 in the form of consulting fees?

15 A I have. In the past particularly, I have.

16 Q And you've also received money from Boston Scientific
17 in the form of reimbursement or fees for training
18 other doctors?

19 A Correct, yes.

20 Q I believe that I had asked you in the last
21 deposition, or Mr. Purdue did, whether or not -- in
22 terms of your background, whether or not you were a
23 reviewer for any journals.

24 A I am a reviewer for -- on several journals.

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1 A I would assume that I did, yes.

2 Q You were consulting with lawyers representing Boston
3 Scientific during that time period, weren't you?

4 MR. ANIELAK: Object to the form.

5 THE WITNESS: That I can't say with
6 certainty. But actually back that far I would be
7 surprised. But it -- but I don't know.

8 BY MR. PIRTLE:

9 Q Did you --

10 A Because one -- I assume it came -- my contact with
11 them would have come substantially after my subpoena.

12 Q You were engaged in helping Boston Scientific prepare
13 materials for submission and talked to the FDA?

14 A The FDA, yes.

15 Q There was lawyers involved in that process, weren't
16 there?

17 MR. ANIELAK: Say that again.

18 BY MR. PIRTLE:

19 Q There were Boston Scientific lawyers involved in that
20 process, weren't there?

21 MR. ANIELAK: Are you talking about -- are
22 you talking about 2011?

23 MR. PIRTLE: '11.

24 THE WITNESS: I cannot say at this time

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1 license from to practice?

2 A Right. That's why this is so important.

3 Q And when you say "they're not in that field," they're
4 in every field. They regulate every bit of the
5 practice of medicine in California.

6 A Every bit of it.

7 Q Including --

8 A Across every specialty.

9 Q Including urogynecology?

10 A Including urogynecology.

11 Q "I think that may be the role of this group as
12 opposed to providing them with the scientific
13 argument for mesh."

14 Do you treat patients in California?

15 A I do not.

16 Q At the time in 2012, was Boston Scientific selling
17 POP mesh in California?

18 A They were.

19 Q And you received royalties from that?

20 A I receive royalties on Pinnacle and Uphold
21 specifically.

22 Q At that point in time?

23 A At that point in time and today.

24 Q And you had a financial interest in these products

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1 being sold in California? And I'm talking
2 specifically now Pinnacle and Uphold.

3 A I have -- I have a -- I receive royalties for
4 Pinnacle and Uphold, again, with the -- with the
5 caveat being we're talking about -- they're not
6 talking about banning Pinnacle and Uphold. They're
7 talking about banning slings, which nearly every
8 surgeon in this country, certainly every surgeon in
9 Wisconsin, utilizes.

10 This is a part of the entire field of
11 urogynecology. So in that way it was not -- it was
12 not specific in any way to Pinnacle and Uphold.
13 So I have really strong opinions, as do most
14 doctors, about whether California should wholesale
15 ban the use of slings or any kind of mesh based on
16 one physician's resolution without even consulting
17 the urogynecologists.

18 So I feel really strongly about giving
19 my opinion. I have no role in it, and I couldn't
20 influence them in any way, of course, but I can give
21 my opinion.

22 Q All right. Let me go back to this. The resolution
23 would have banned the use of POP mesh, too?

24 A It would have banned all mesh.

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1 Q All right. That's what I'm getting at.

2 A A shocking resolution.

3 Q Including the -- the mesh products that you receive
4 royalties on?

5 A It would have also included those, too.

6 Q By the way, in this draft letter, I don't see that
7 you tell the California Medical Association in any
8 spot that, "Hey, I've got a financial interest in
9 Pinnacle and Uphold and it's going to hurt my
10 pocketbook if you ban it."

11 MR. ANIELAK: Form.

12 THE WITNESS: That's correct. I never
13 intended to send this.

14 BY MR. PIRTLE:

15 Q Well, who were the 300 doctors?

16 A Well, the point was -- that's a casual estimate
17 of -- there are so many doctors who want their
18 opinions known. And someone has to draft the
19 words, and then each doctor has to decide if they
20 agree with those words and then decide if they want
21 to be a cosignatory.

22 So it's a demonstration that --
23 for them to understand that large numbers of
24 doctors don't agree. And so my intention was to

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1 Q And you knew at the time you were so angry that you
2 could not be objective?

3 MR. ANIELAK: Form.

4 (Attorney Malone leaves proceedings.)

5 THE WITNESS: I knew at the time that, like
6 so many doctors in the country, that I was angry
7 about this concept coming from one doctor. And
8 thankfully, it was dismissed out of hand by that
9 group.

10 And I did not feel that my ability to
11 write that letter -- I didn't feel that that would be
12 the right time to write a letter. I had to think
13 about it further.

14 BY MR. PIRTLE:

15 Q I'm going to see if I can get an answer to my
16 question. My question was simply: You were so mad
17 that you could not be objective?

18 MR. ANIELAK: Form.

19 THE WITNESS: No. What I -- my answer is
20 what my answer was, that I felt that I was -- I felt
21 that to give the best wording I would need to
22 wait and to think further about it, to give it more
23 deliberation.

24 MR. PIRTLE: Show you 1009.

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1 (Exhibit 1009 marked for identification.)

2

3 BY MR. PIRTLE:

4 Q I'm going to the top paragraph. You say: "Hi
5 guys" -- this is to Roger Goldberg and Vince Lucente.
6 "I think Roger is correct. I am so pissed off right
7 now I can't tone it down with objectivity."

8 That's your words?

9 A Yes. I can be objective, but I can't tone down that
10 letter while I'm angry.

11 Q And it says -- the next email is from you to
12 colleagues, CMA letter. "You have been identified as
13 having cosigned on the editorial: 'A Time to
14 Rethink.'" What is that?

15 A "A Time to Rethink" was an editorial on mesh.

16 Q It was a pro-mesh editorial?

17 MR. ANIELAK: Form.

18 THE WITNESS: It was -- yes.

19 BY MR. PIRTLE:

20 Q And what you're proposing is sending the -- whatever
21 you're going to send to the California Medical
22 Association to the people who signed off on "A Time
23 to Rethink"?

24 A Yes. As I said before, I'm a person who has a

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1 Q MUS. That's a question of -- COI is conflicts of
2 interest, correct?

3 A Correct.

4 Q When you were asked to join, did you have to reveal
5 any conflicts of interest or potential conflicts of
6 interest?

7 A Yes. We actually had to go through it because the
8 initial view of some was that my -- since my
9 royalties are specific to Pinnacle and Uphold, that I
10 wouldn't. And I just felt that it was best to
11 disclose broadly. And so, yes, I provided the
12 disclosure that I receive royalties on a -- not on
13 slings but on a prolapse mesh. So yes.

14 (Exhibit 1012 marked for identification.)

15 BY MR. PIRTLE:

16 Q Moving forward in time, late November.

17 MR. ANIELAK: Tom, just give him a second
18 to read it before you --

19 MR. PIRTLE: Sure.

20 THE WITNESS: Oh, yeah. Yes. I'm ready.

21 BY MR. PIRTLE:

22 Q You had an opportunity to review Exhibit 1012?

23 A I have.

24 Q When's the last time you saw this document?

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1 A I don't know. Probably on the date it was sent or
2 received.

3 Q You write in this -- this is between Charles Nager
4 and yourself, and others actually, right?

5 A I don't see a cc list, but -- so I'm not sure. This
6 one might have just come directly to me.

7 Q Well, the first one --

8 Let's go to the bottom, Chuck.

9 A Yes, that one for sure.

10 Q -- has a bunch of folks on there.

11 A That's correct.

12 Q And Charles says, "Thank you for participating in
13 this AUGS-SUFU MUS Task Force. The goal is to
14 prepare materials (e.g., a tool kit) for our members
15 to help them with the unbalanced anti-MUS message
16 confronting them daily from media. Tentative
17 plans are to develop a position statement, frequently
18 asked questions, and/or talking points. Because of
19 anticipated anti-polypropylene media reports that
20 could come out around year's end that could include a
21 hypothetical cancer scare, we are on a tight time
22 frame, and I think we should plan to meet by phone
23 weekly or" -- "for four to six weeks to finish this
24 task."

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1 Did I read that reasonably correct?

2 A You read this correct.

3 Q All right. So you're participating -- it's
4 November 26th, and you're pulling together a tool
5 kit, right?

6 A Yes.

7 Q Including a position statement.

8 Was there talking points?

9 A Yes.

10 Q All right. And "because of anticipated
11 anti-polypropylene media reports and this
12 hypothetical cancer scare," that's talking about
13 Dr. Ostergard's paper, isn't it?

14 A Yes.

15 Q So this is a response, one, to -- well, one of the
16 things that was being done was responding to
17 Dr. Ostergard's opposed paper?

18 A Yes.

19 Q Now, this is November. And the paper hadn't been
20 published, had it?

21 A That's correct.

22 Q Did you have a copy of it?

23 A No.

24 Q Who did?

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1 A I have no idea. Dr. Ostergard -- Dr. Ostergard stood
2 up at the meeting and told the entire AUGS that he
3 intended to publish this. And that's -- and that was
4 one of the things that shocked --

5 Q Yes, I know, the entire body.

6 "I am available at" times "as well.
7 The challenges with websites, TV ads, and highly
8 capitalized law firms is making something that we
9 will get seen" -- "making something that" we "will
10 get seen."

11 What did you mean there?

12 A I lost you there. Sorry. I don't see it being
13 highlighted.

14 Q "I am available at this time as well. The
15 challenge" --

16 A No.

17 MR. ANIELAK: No, Tom. We're on --

18 BY MR. PIRTLE:

19 Q Second sentence of your email back --

20 MR. ANIELAK: On top.

21 THE WITNESS: Can you highlight that? Oh,
22 thank you. Okay.

23 BY MR. PIRTLE:

24 Q "The challenge with websites, TV ads, and highly

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1 capitalized law firms is making something that will
2 get seen."

3 So you were wanting to make something
4 that folks will see?

5 A Absolutely. I still feel that way.

6 Q And you wanted to make a document someone could point
7 to in their own lawsuit, correct?

8 A That -- that would be -- yes, I think that would be
9 beneficial.

10 Q And so one of the purposes of this position statement
11 was to produce something that a doctor could point to
12 in their own lawsuit?

13 MR. ANIELAK: Form.

14 THE WITNESS: It's one of the out- -- it
15 would be one of the outcomes of it.

16 BY MR. PIRTLE:

17 Q And this is before it was written. So you're
18 formulating the goals -- you're formulating your
19 goals that you want to try to achieve with it?

20 MR. ANIELAK: Form.

21 THE WITNESS: I was --

22 MR. ANIELAK: Form.

23 THE WITNESS: I was summarizing what I
24 think the outcomes of it could be. The goal of it is

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1 to make clear the position of the boards of two very
2 large organizations. That's the goal.

3 Any other outcomes are things that I
4 can speculate about.

5 BY MR. PIRTLE:

6 Q "Doctors are being named on lawsuits that are
7 ultimately intended for the manufacturer, but the
8 doctor is getting dragged in to keep the case" out of
9 "state court."

10 A "In state court."

11 Q "In state court. In the absence of actual
12 negligence, the plaintiff's claim would be the doctor
13 should have told the patient about the 'known extreme
14 dangers' of sling mesh."

15 Did I read that reasonably correct?

16 A You did.

17 Q You know, I've read a lot of documents by you talking
18 about lawyers. You're not a lawyer?

19 A I am not a lawyer.

20 Q Other members of the group agreed with you?

21 MR. ANIELAK: Where are you reading, Tom?

22 Are you reading from somewhere?

23 MR. PIRTLE: No, I'm not.

24 MR. ANIELAK: Okay. I'm sorry.

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1 A Yes. I don't know Eric personally, but Eric is the
2 president of the largest society for the urologists
3 in treating incontinence and prolapse. I interact
4 less with the urologists, so I don't know him
5 personally, yes.

6 Q He's a guy that uses slings?

7 MR. ANIELAK: Form.

8 THE WITNESS: According to surveys that we
9 have, 99 percent of gynecologists and urologists -- I
10 know the city of Milwaukee and Wisconsin better, and
11 I know that it's how pretty much every surgeon
12 treats incontinence.

13 So it would not surprise me to hear
14 that Eric Rovner uses slings to treat -- to treat
15 incontinence, but I don't know -- and I'm not sure
16 what else he would use, but -- I -- but I don't
17 have personal knowledge of how he practices. I
18 don't know him. He participated in this task force.

19 BY MR. PIRTLE:

20 Q "Agree that we have a huge task. My thoughts" --
21 number one goal was to protect the patients' access
22 to the surgery.

23 A Um-hmm.

24 Q Two, "Number one is not the same as protecting our

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1 colleagues from medico-legal problems. But I think
2 that this is important to do as well.

3 "There is a very thin line between
4 being self-serving in our own interests as
5 physicians/surgeons and doing one and two."

6 A Yes.

7 Q "If done poorly, this could be a PR disaster and have
8 the opposite effect that we desire. It would be very
9 challenging to craft any kind of document that is not
10 in the least bit self-serving (or can be misconstrued
11 or twisted by our legal comrades as such and used
12 against us)."

13 Did I read that reasonably correct?

14 A You did.

15 Q Now, truth of the matter is, in drafting this
16 particular document, the position statement, you took
17 part, didn't you?

18 A I was asked to be on the committee.

19 Q And you were careful to try to write the statement so
20 that it -- any statement in there did not implicate
21 any type of mesh?

22 MR. ANIELAK: Object to the form.

23 THE WITNESS: Yeah, you'll have to --
24 try -- can you restate it, or say it again at least?

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1 Q Yes, sir. I believe that's the preceding exhibit.

2 A I would believe that makes sense, yes.

3 Q All right. Now, take the preceding exhibit, 1020, I
4 believe, and let's go back to talking about it.

5 Second page.

6 A Second page.

7 Q "Tool kit: Charlie Nager proposed that the tool kit
8 for members contain the following three components
9 (the task force agreed): AUGS-SUFU position
10 statement, talking points to help with the media and
11 legal community, frequently asked questions for
12 physicians to use with their patients."

13 Did y'all get the talking points
14 out?

15 A I can honestly say I'm not sure if the talking
16 points have come out. I would expect it to be
17 out by this time because we were on a tight
18 timeline, but I'm not certain.

19 Q Okay. Now, in terms of the "Position Statement Edits
20 and Comments," the group wanted the members to use
21 the position statement at legal proceedings. That's
22 the first point.

23 A I don't see that.

24 Q It's highlighted on the screen under "Position

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1 Statement Edits and Comments: We want our members to
2 use this position statement at legal proceedings."

3 A Correct. There was this sense that -- that the
4 position of the societies of doctors would need to be
5 known.

6 Q Here's a statement that I've heard you say several
7 times, so let's flesh it out. "Used by 99 percent of
8 AUGS members."

9 MR. ANIELAK: Do you see it on the --

10 THE WITNESS: I do see that on the page.

11 BY MR. PIRTLE:

12 Q Now, that is a statement that you said a few times in
13 this deposition, correct?

14 A Yes.

15 Q Now, AUGS, how many members does AUGS have?

16 A I don't know.

17 Q AUGS stands for what?

18 A American Urogynecologic Society.

19 Q Are all urogynecologists a member of AUGS?

20 A It's not a requirement, but certainly the
21 overwhelming majority are.

22 Q It is a voluntary organization, professional
23 organization?

24 A It is. It is.