

Date Printed: 07/01/2019

Case Summary

Case number: 2010553260

File Date: 08/03/2010

Style: NICOLAU, DAN (M.D.);

Disposition Date: 10/07/2010

vs. TEXAS TECH UNIVERSITY HALTH SC;

Case Type: OTHER CIVIL

Court: D237

Events:	Code	Description	Evt Date	Actn Date	Comments
1	PETN	PETITION FILED	08/03/2010	10/07/2010	
2	DCP2	DISCOVERY LEVEL 2	08/03/2010	/ /	
3	JYRQ	JURY REQUEST	08/03/2010	08/03/2010	
4	LETT	LETTER	08/03/2010	08/02/2010	
5	CISS	CITATION ISSUED	08/04/2010	08/04/2010	
6	INSH	CASE INFORMATION SHEET	08/03/2010	08/06/2010	
7	CSRV	CITATION SERVED	08/06/2010	08/06/2010	
8	CHCK	CHECK CASE	09/30/2010	09/30/2010	
9	ANSR	ANSWER RECEIVED	08/30/2010	08/30/2010	
10	LETT	LETTER	08/30/2010	08/26/2010	
11	MNST	MOTION FOR NON-SUIT	09/30/2010	10/01/2010	
12	LETT	LETTER	09/30/2010	09/24/2010	
13	ORNS	ORDER FOR NON-SUIT	10/07/2010	10/01/2010	
14	NOJD	NOTICE OF JUDGMENT	10/07/2010	10/07/2010	
15	NOJD	NOTICE OF JUDGMENT	10/07/2010	10/07/2010	

NO. 2010-553,260

DAN NICOLAU, M.D.
Plaintiff,

V.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER SCHOOL OF
MEDICINE;
Defendant.

IN THE DISTRICT COURT
237 JUDICIAL DISTRICT

OF LUBBOCK COUNTY, TEXAS

FILED FOR RECORD CO.
DISTRICT CLERK LUBBOCK CO. DEPUTY
BY Barbara Lundy
2010 AUG -3 AM 9:32

DAN NICOLAU, M.D.'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

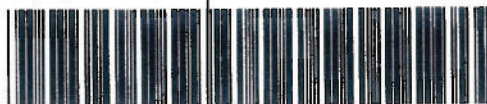
NOW COMES DAN NICOLAU, M.D., hereinafter called DAN NICOLAU, M.D., complaining of and about TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE, hereinafter called DEFENDANTS, and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. DAN NICOLAU, M.D. intends that discovery be conducted under Discovery Level.

PARTIES AND SERVICE

2. DAN NICOLAU, M.D. is an Individual whose address is 4706 Bonner Corpus Christi, Texas 78411.
3. The last three digits of the driver's license number of DAN NICOLAU, M.D. are ***420. The last three digits of the social security number for DAN NICOLAU, M.D. are ***-**-*712.
4. Defendant, TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE, a Corporation based in Texas, may be served by and through its attorney, Kevin Williams, Office of the General Counsel, Texas Tech Medical School, located at 360 4TH Street, 2B141 HSC Bldg., Lubbock, Texas 79430. Service of said TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE as described above can be effected by certified mail, return receipt requested. **SERVICE AND CITATION IS REQUESTED.**



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PETN - PETITION FILED
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JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this court.
6. This court has personal jurisdiction herein because TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE T is a Texas corporation licensed to conduct business and is conducting business in the State of Texas, Lubbock County.
7. Venue in Lubbock County is proper in this cause pursuant to Section 17.56 of the Texas Business and Commerce Code.

FACTS

8. DAN NICOLAU, M.D., graduated from TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE in December 2007.
9. DAN NICOLAU, M.D.'s student academic performance records are exemplary.
10. At the beginning of third year medical school DAN NICOLAU, M.D.'s clinical rotations started with OB/GYN (7/2005). CAROL FELTON, M.D., the director of the student program, did not give the medical students an orientation for the rotation because she was absent. DAN NICOLAU, M.D. told a resident that the students were not given clear directions of our duties at the start of the rotation. CAROL FELTON, M.D. was informed of DAN NICOLAU, M.D.'s comments and retaliated against him for speaking up. The rotation was six weeks long. After the first few days CAROL FELTON, M.D. began a campaign of humiliation, belittlement, and threats against DAN NICOLAU, M.D., including that he would be kicked out of medical school. Also, DAN NICOLAU, M.D. was blacklisted by CAROL FELTON, M.D. after his OB/GYN rotation with her, thereby causing doctors if different rotations to unfairly form negative opinions about DAN NICOLAU, M.D. and make unfavorable comments about DAN NICOLAU, M.D. in their evaluations of him. Following a week into the rotation, DAN NICOLAU, M.D. went to his OB/GYN mentor, GARY SUTKIN, M.D., and asked for help. To which, GARY SUTKIN, M.D. replied if DAN NICOLAU, M.D. "had any problems he should keep them to himself". DAN NICOLAU, M.D. then went to the Associate Dean, TERRY MCMAHON, M.D., Dean STEVEN L. BERK, M.D. and JOANN LARSON in Student Affairs multiple times asking for help in correcting the unfair and

false comments being made about him by CAROL FELTON, M.D. These individuals were at all times acting as agents and employees of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE. At this time, Dean of the Medical School STEVEN L. BERK, M.D., told DAN NICOLAU, M.D. that the negative comments in the OB/GYN rotation by CAROL FELTON, M.D. would be removed. However, the comments were never removed. In fact, STEVEN L. BERK, M.D. now perpetuates the problem by repeating the offending comments in his Dean's Letter to each residency program DAN NICOLAU, M.D. applies.

11. DAN NICOLAU, M.D. has been irreparably harmed as a direct and proximate result for the foregoing. For the 2009 residency match DAN NICOLAU, M.D. applied to mostly Texas residency programs with which he did not get a single interview. DAN NICOLAU, M.D. then applied to the rest of the country for the same residency match and again did not get a single interview. DAN NICOLAU, M.D. then applied for the 2009 scramble all over the country and did not get an interview. For the 2010 residency match DAN NICOLAU, M.D. applied again all over the country to psychiatry, internal medicine, transitional programs, anesthesiology, and a few other specialties and received 2 interviews. During one interview in Nashville, Tennessee on December 4, 2009 and during the second interview in Mobile, Alabama on November 4, 2009, both interviewers told DAN NICOLAU, M.D. that the reason he did not get more interviews was because of the comments from his OB/GYN rotation by CAROL FELTON, M.D. The statements made include, but are not limited to, that DAN NICOLAU, M.D. "did not know what a doctor does," that his "communication skills were very poor," and that he was "not able to improve but slightly over the rotation." Also implied was that DAN NICOLAU, M.D. would "not know whether or not to admit a suicidal patient." This statement is harmful because any medical student would know the answer to this question. As a result of the foregoing, interviewers for various residency programs questioned DAN NICOLAU, M.D.'s abilities after reading the OB/GYN comments and asked if the characterizations were true, to which DAN NICOLAU, M.D. said they were not. Consequently, DAN NICOLAU, M.D. did not match during the 2010 match and did not match for the 2010 scramble. DAN NICOLAU, M.D. did not get a single interview for the 2010 scramble because of

the defamatory comments by the DEFENDANTS. DAN NICOLAU, M.D. is now applying for the 2011 residency match. DAN NICOLAU, M.D. has been unable to obtain admission into any medical residency program because of the continued wrongful defamation by TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE.

12. As a result of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's conduct, DAN NICOLAU, M.D. has developed severe anxiety disorder, which is manifested by physical symptoms. He never had any anxiety problems before the complained of conduct. The anxiety has made DAN NICOLAU, M.D.'s concentration and work duties difficult. Psychiatrists have diagnosed DAN NICOLAU, M.D. with Agoraphobia with Panic Attack disorder resulting from the wrongful conduct of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE. This disorder built up gradually after the OB/GYN rotation and has continued since

AGENCY

13. At and during the time of the acts and/or omissions complained of herein, any acts and/or omissions committed by an agent, representative or employee of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE, DEFENDANTS including, but not limited to, STEVEN L. BERK, M.D., occurred within the scope of the actual or apparent authority of such person on behalf of said TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE.

14. Said TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE is therefore liable to DAN NICOLAU, M.D. for the acts and/or omissions of any such agent, representative or employee complained of herein by virtue of such agency relationship.

RESPONDEAT SUPERIOR

15. At and during the time of the acts and/or omissions complained of herein, said acts and/or omissions of any employee or agent of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE including, but not limited to, STEVEN L. BERK, M.D. occurred within the scope of the general authority and for the accomplishment of the objectives for

which such employee was employed.

16. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE is therefore liable to DAN NICOLAU, M.D. for the acts and/or omissions of any such employee complained of herein under the doctrine of respondeat superior.

CAUSES OF ACTION

COUNT I: REQUEST FOR INJUNCTIVE RELIEF

17. The purpose of this petition is to request a preliminary injunction prohibiting STEVEN L. BERK, M.D., as the Dean, and the TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE or any of its staff members or employee's from releasing untrue and negative information regarding DAN NICOLAU, M.D., and instead, require that DEFENDANTS provide non-adverse (neutral) information until a final disposition can be held on the merits of the case.

18. Injunctive relief is authorized by general principles of equity, federal statutes, or state law. *See eBay Inc. v. Merc-exchange, L.L.C.*, 547 U.S. 388, 391 (2006). According to well-established principles of equity, DAN NICOLAU, M.D., in seeking a permanent injunction, must satisfy a four-factor test before a court may grant such relief. DAN NICOLAU, M.D. must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between DAN NICOLAU, M.D. and TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *Id.* at 391.

19. In the matter involving the TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE, DAN NICOLAU, M.D. has already suffered irreparable injury to his medical education, his practice of medicine, his reputation, his family, and his career, and will continue to do so. Unless TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE is prohibited from discharging defamatory information about him, DAN NICOLAU, M.D. will be unable to obtain admission to a medical residency

program or continue with the practice of medicine. As a direct and proximate result of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's conduct and bad faith, DAN NICOLAU, M.D. will continue to suffer substantial damages to his reputation, to his ability to continue his medical education and his future practice of medicine. DAN NICOLAU, M.D. has incurred and will continue to incur a tremendous loss of revenues due to the actions of the TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's conduct denied him due process right and caused him significant damages.

20. There is no adequate remedy at law for the injuries DAN NICOLAU, M.D. has suffered and will continue to suffer. Money damages cannot prevent TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE from continuing its disbursement of egregiously false information.

21. In considering the balance of hardships, the injury DAN NICOLAU, M.D. continues to face far outweighs any injury that would be sustained by TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE as a result of injunctive relief. Likewise, injunctive relief in this matter would not adversely affect public policy or public interest. Promoting the ability of an individual to practice medicine would have the opposite effect; the public would benefit significantly from such injunctive relief, especially in these times of need for qualified healthcare professionals.

22. Inasmuch as DAN NICOLAU, M.D. has met the equity factors required for injunctive relief, he seeks the following relief:

- A. That TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE be estopped from communicating or publishing disparaging and inaccurate information regarding DAN NICOLAU, M.D.
- B. That TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE be directed to communicate or publish only non-controversial information until a hearing can be conducted on which to establish the merits of this request.

COUNT II: NEGLIGENCE

23. In the course of the transactions between DAN NICOLAU, M.D. and TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE, TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE owed DAN NICOLAU, M.D. a duty to accurately report his performance while enrolled in the TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE .

24. DAN NICOLAU, M.D. would show that TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE failed to exercise ordinary care in performing such duty. The acts and/or omissions of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE described hereinabove by which TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE breached such duty constitute a proximate cause of the damages of DAN NICOLAU, M.D. described more fully hereinbelow, for which TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE are liable to DAN NICOLAU, M.D..

COUNT III: NEGLIGENT HIRING, SUPERVISION, AND/OR MANAGEMENT

25. DAN NICOLAU, M.D. would show that TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE owed a duty to its students, including DAN NICOLAU, M.D., to exercise ordinary care in the hiring of competent employees, and in the supervision and management of said employees, namely STEVEN L. BERK, M.D., when these employees were charged with the duty of issuing letters from the Dean of the TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE on behalf its students to medical residency programs throughout the country.

26. DAN NICOLAU, M.D. would further show that TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE failed to use ordinary care in these respects, including but not limited to failing to properly investigate potential job applicants, failing to properly supervise said personnel, failing to implement adequate safeguards to prevent

the situation that resulted in DAN NICOLAU, M.D.'s damages, and failing to provide adequate oversight for such agents and employees. These conditions created an environment in which students such as DAN NICOLAU, M.D. would be harmed and such harm was reasonably foreseeable to occur, and which in fact did occur in the course of the transactions involving DAN NICOLAU, M.D. and TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE described hereinabove, which proximately caused the damages sustained by DAN NICOLAU, M.D. herein, and for which DAN NICOLAU, M.D. hereby sues.

COUNT IV: BREACH OF CONTRACT

27. DAN NICOLAU, M.D. would further show that the actions and/or omissions of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE described hereinabove constitute breach of contract, which proximately caused the direct and consequential damages of DAN NICOLAU, M.D. described hereinbelow, and for which DAN NICOLAU, M.D. hereby sues.

28. As a result of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's breach of contract, DAN NICOLAU, M.D. is entitled to contract damages as may be proven, including, but not limited to, the cost of his medical school education and the loss of future wages as a practicing physician as a result of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's wrongful breach.

COUNT V: DEFAMATION

29. Under Texas law, a statement is "defamatory" if it exposes a person to financial injury or if it impeaches a person's honesty, integrity, virtue or reputation. *Clemens V. McNamee*, 608 F.Supp. 2d 811 (S.D. Tex. 2009). DAN NICOLAU, M.D., in alleging defamation, must prove that the defamatory language is false and that the publication of the language was the proximate cause of the DAN NICOLAU, M.D.'s damages. *Brown v. Petrolite Corp.*, 965 F.2d 38 (5th Cir. Tex. 1992).

30. The publication of defamatory words means to communicate orally, or in writing, or in print to some third person capable of understanding their defamatory import, and in such a way that he did so understand. *Houston Belt & Terminal Ry. Co. v. Wherry*, 548 S.W.2d 743 (Tex. Civ. App. Houston 1st Dist. 1976).

31. The defamation of DAN NICOLAU, M.D. by TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE held, and continues to hold him up to shame, contempt, and ridicule and caused him personal and professional embarrassment and humiliation which have resulted in financial loss in the form of lost tuition, lost wages as a practicing physician and emotional distress. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's conduct was done with malice which entitles DAN NICOLAU, M.D. to punitive damages.

**COUNT VI: TORTUOUS INTERFERENCE WITH A BUSINESS
BUSINESS AND PROSPECTIVE BUSINESS RELATIONSHIP**

32. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE has violated the common law of the State of Texas by interfering with DAN NICOLAU, M.D.'s business relationship with his existing and potential residency programs and future medical patients.

33. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE, with knowledge of DAN NICOLAU, M.D.'s business relationships and have intentionally, wrongfully, and maliciously interfered with same.

34. To establish tortuous interference with existing or prospective business relationships, DAN NICOLAU, M.D. must prove (1) there was a relationship subject to interference, or a reasonable probability the parties would have entered a business relationship; (2) the act of interference was willful and intentional, or TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE acted maliciously by intentionally

preventing that relationship from occurring with the purpose of harming DAN NICOLAU, M.D.; (3) such intentional act was a proximate cause of DAN NICOLAU, M.D.'s damage; (4) TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's actions were not justified or privileged; and (5) DAN NICOLAU, M.D. suffered actual damage as a result of the interference. Exxon Corp. v. Allsup, 808 S.W.2d 648, 659 (Tex. App.--Corpus Christi 1991, writ denied).

35. The harm suffered by DAN NICOLAU, M.D. as a result of the aforesaid conduct by DEFENDANTS is irreparable in nature and incapable of being measured solely in terms of monetary damages, thereby leaving no adequate remedy at law for said harm to DAN NICOLAU, M.D. Such harm includes losses suffered by DAN NICOLAU, M.D. as a result of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's defamation of him to medical residency programs with which he applies with the sole intended purpose of causing these medical residency programs discontinue their educational and business relationships with DAN NICOLAU, M.D. and to cause future patients of DAN NICOLAU, M.D. to do the same. New and further irreparable injury and damage will result to DAN NICOLAU, M.D. during the pendency of this suit.

COUNT VII: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

36. DAN NICOLAU, M.D. is informed and believes and thereon alleges that, at all times herein mentioned, the employees and agents of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE were at all times acting within the purpose and scope of such agency and employment.

37. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE was bound to exercise due care towards DAN NICOLAU, M.D..

38. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's acts or omission to act constitute a breach of duty or breach of contract.

39. As a proximate result of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's acts or omissions and the consequences proximately caused by it, as hereinabove alleged, DAN NICOLAU, M.D. suffered severe humiliation, mental anguish, and emotional and physical distress, and has been injured in mind and body as follows: lost tuition, lost wages and medical expenses damage in the sum of \$2.2 million dollars.

COUNT VIII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

40. DAN NICOLAU, M.D. is informed and believes and thereon alleges that, at all times herein mentioned, the agents and employees of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE were at all times acting within the purpose and scope of such agency and employment.

41. The Parties were bound by contract to exercise due care towards DAN NICOLAU, M.D.

42. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE's conduct was intentional and malicious and done for the purpose of causing DAN NICOLAU, M.D. to suffer humiliation, mental anguish, and emotional and physical distress.

ACTUAL DAMAGES

43. DAN NICOLAU, M.D. sustained the following actual damages as a result of the actions and/or omissions of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE described hereinabove:

- (a) Out-of-pocket expenses, including but not limited to \$150,000.00.
- (b) Lost earnings.
- (c) Lost earning capacity.

- (d) Reasonable medical care and expenses in the past.
- (e) Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future.

DAMAGES FOR MENTAL ANGUISH

44. DAN NICOLAU, M.D. would further show that the false, misleading and deceptive acts, practices and/or omissions described hereinabove were committed "knowingly," as provided by Section 17.45(9) of the Texas Business and Commerce Code, in that TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE had actual awareness of the falsity, deception, or unfairness of such acts, practices, and/or omissions.

45. As a result of such acts, practices and/or omissions, DAN NICOLAU, M.D. sustained a high degree of mental pain and distress of such nature, duration and severity that would permit the recovery of damages for mental anguish pursuant to Section 17.50(b) of the Texas Business and Commerce Code, and for which DAN NICOLAU, M.D. hereby sues in an amount in excess of the minimum jurisdictional limits of this Court.

EXEMPLARY DAMAGES

46. DAN NICOLAU, M.D. would further show that the acts and omissions of TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE complained of herein were committed knowingly, willfully, intentionally, with actual awareness, and with the specific and predetermined intention of enriching said TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE at the expense of DAN NICOLAU, M.D.. In order to punish said TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE for such unconscionable overreaching and to deter such actions and/or omissions in the future, DAN NICOLAU, M.D. also seeks recovery from TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE for exemplary damages as provided by Section 41.003(1) of the Texas Civil Practice and Remedies Code.

ATTORNEY'S FEES

47. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of DAN NICOLAU, M.D. herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as provided by: (a) Chapter 38 of the Texas Civil Practice and Remedies Code; and, (b) common law.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, DAN NICOLAU, M.D., respectfully prays that the TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for DAN NICOLAU, M.D. against TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE for the actual damages requested hereinabove in an amount in excess of the minimum jurisdictional limits of the Court, together with prejudgment and postjudgment interest at the maximum rate allowed by law, attorney's fees, costs of court, and such other and further relief to which DAN NICOLAU, M.D. may be entitled at law or in equity, whether pled or unpleaded.

Respectfully submitted,

By: 

Jeffrey C. Grass
Texas Bar No. 00787581
Bank of America Tower
101 E. Park Blvd., Suite 600
Plano, TX 75074-5483
Tel. (214) 273-7290
Fax. (214) 273-7291
Attorney for DAN NICOLAU, M.D.
DAN NICOLAU, M.D.

DAN NICOLAU, M.D. HEREBY DEMANDS TRIAL BY JURY

Law Office
OF
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August 2, 2010

VIA FEDEX HAND DELIVERY
Lubbock County District Clerk
904 Broadway, Room 105
P.O. Box 10536101
Lubbock, Texas 79408-3536

**Re: Dan Nicolau, M.D. v. Texas Tech University Health Sciences Center
School of Medicine**

2010-553,260

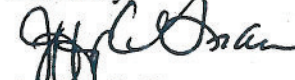
237#

Dear Sir/Madam:

Please find enclosed herewith Plaintiff's Original Petition in the subject case. Enclosed is an Original and three (3) copies along with a check in the amount of \$372.00 for filing, jury fee, citation and personal service. Please file the original copies and returned the remaining file stamped copies to me in the self-addressed stamped envelope.

Please contact me at the forgoing address should you have any questions regarding this matter.

Sincerely,



Jeffrey C. Grass

JCG/pgh



01900150606004
LETT - LETTER
Case No: 2010553260

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
BY [Signature] DEPUTY

2010 AUG -3 AM 9:32

Barbara Lacey



THE STATE OF TEXAS

TO: Texas Tech University Health Sciences Center School of Medicine,
By and through its attorney, Kevin Williams,
Office of the General Counsel, Texas Tech Medical School
360 4th Street, 2B141 HSC Bldg., Lubbock, Texas 79430

Defendant, Greetings:

NOTICE

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk of the Court who issued this citation by 10 o'clock a.m. on the Monday following expiration of 20 (twenty) days after you have been served this citation and **Original Petition**, a default judgment may be taken against you.

Said **Dan Nicolau, M.D.'s Original Petition** was filed in the **237th District Court** of Lubbock County, Texas, on **August 3, 2010**. The file number of said suit being **NO. 2010-553,260**.

Dan Nicolau, M.D.

Plaintiff

vs.

Texas Tech University Health Sciences Center School of Medicine

Defendant

The nature of **Dan Nicolau, M.D.'s** demand is set out and shown by a true and correct copy of **Dan Nicolau, M.D.'s Original Petition**, accompanying this citation, and made a part thereof.

Dan Nicolau, M.D. is represented by:

Jeffrey C. Grass, 101 E. Park Blvd., Suite 600, Plano, Texas 75074, (214) 273-7290.

The office executing this writ shall promptly serve the same according to requirements of law, and the mandates hereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Lubbock County, Texas, this the 4 day of August, 2010.

Barbara Sucsy, District Clerk
Lubbock County, Texas
904 Broadway, Room 105
Lubbock, Texas 79401

By Sammy W. Smith, Deputy

COPY

91 7108 2133 3937 4480 2492



01900150606005
CISS - CITATION ISSUED
Case No: 2010553260

NO. 2010-553,260

Dan Nicolau, M.D.

VS.

**Texas Tech University Health
Sciences Center School of Medicine**

ISSUED:

4 day of August, 2010

Barbara Sucsy
District Clerk
237th District Court
Lubbock County, Texas

CITATION
GENERAL CIVIL

SHERIFF'S RETURN

Come to hand on the _____ day of _____, 20 __, at _____ O' Clock __.M.,
and executed in _____ County, Texas, by delivering to each of the within
named defendants, in person, a true copy of this citation, having first endorsed thereon the following
time and places, to-wit:

NAME	DATE	TIME	PLACE
------	------	------	-------

AND NOT EXECUTED TO DEFENDANT _____

the diligence used in finding said defendant, being _____

and the cause of failing to execute this process is: _____

and the information received as to the whereabouts of the said defendant, being _____

FEES - Serving \$ _____ cop \$ _____ \$ _____

OTHER FEES \$ _____ \$ _____

OTHER FEES \$ _____ \$ _____

TOTAL FEES \$ _____

Sheriff or Constable

County, Texas

Deputy

CERTIFICATE OF DELIVERY

I do hereby certify that I delivered to _____ of the
_____ day of _____, 20 __, at _____ o'clock __.m. A copy of this instrument.

Sheriff or Constable

County, Texas

Deputy

Law Office
OF
JEFFREY C. GRASS

Attorney & Counselor at Law
Bank of America Tower
101 E. Park Blvd., Suite 600
Plano, Texas 75074
JCGrass@gmail.com
www.medical-peer-review.com

Telephone: (214) 273-7290

Fax: (214) 273-7291

August 2, 2010

VIA FEDEX HAND DELIVERY
Lubbock County District Clerk
904 Broadway, Room 105
P.O. Box 10536101
Lubbock, Texas 79408-3536

**Re: Dan Nicolau, M.D. v. Texas Tech University Health Sciences Center
School of Medicine**

2010-553,260

2374

Dear Sir/Madam:


Please find enclosed herewith Plaintiff's Original Petition in the subject case. Enclosed is an Original and three (3) copies along with a check in the amount of \$372.00 for filing, jury fee, citation and personal service. Please file the original copies and returned the remaining file stamped copies to me in the self-addressed stamped envelope.

Please contact me at the forgoing address should you have any questions regarding this matter.

Sincerely,


Jeffrey C. Grass

JCG/pgh

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
BY  DEPUTY

2010 AUG -3 AM 9:32

Barbara Lucas

COPY

01900150606006
INSH - CASE INFORMATION SHEET
Case No: 2010553260

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
DEPUTY
2010 AUG 9 AM 9:47
COURT OF
TEXAS
DISTRICT

237TH JUDICIAL DISTRICT

Track Assignment: _____ Level I _____ Level II _____ Level III
 Date filed _____ Date of Service _____ Answer Date _____
 Scheduling Order due: _____ Trial Date: _____ Date DRC notified: _____
 Date Attorney(s) notified of trial date: _____



Date: 08/06/2010

2010-553,260

SAMMY SMITH:

The following is in response to your 08/06/2010 request for delivery information on your Certified Mail(TM) item number 7108 2133 3937 4480 2492. The delivery record shows that this item was delivered on 08/06/2010 at 08:21 AM in LUBBOCK, TX 79408. The scanned image of the recipient information is provided below.

Signature of Recipient:

Delivery Section	
Signature	<i>Dave McMurray</i>
Printed Name	DAVE MCMURRAY

Address of Recipient:

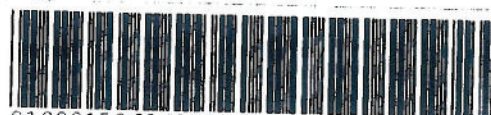
Address	5865
---------	------

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO
BY *Barbara Ducey*
2010 AUG -6 PM 7:06
DEPUTY

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service



01900150606007
CSRV - CITATION /WRIT SERVED
Case No: 2010553260

THE STATE OF TEXAS

TO: **Texas Tech University Health Sciences Center School of Medicine,
By and through its attorney, Kevin Williams,
Office of the General Counsel, Texas Tech Medical School
360 4th Street, 2B141 HSC Bldg., Lubbock, Texas 79430**

Defendant, Greetings:

NOTICE

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk of the Court who issued this citation by 10 o'clock a.m. on the Monday following expiration of 20 (twenty) days after you have been served this citation and **Original Petition**, a default judgment may be taken against you.

Said **Dan Nicolau, M.D.'s Original Petition** was filed in the **237th District Court** of Lubbock County, Texas, on **August 3, 2010**. The file number of said suit being NO. **2010-553,260**.

Dan Nicolau, M.D.

Plaintiff

vs.

Texas Tech University Health Sciences Center School of Medicine

Defendant

The nature of **Dan Nicolau, M.D.'s** demand is set out and shown by a true and correct copy of **Dan Nicolau, M.D.'s Original Petition**, accompanying this citation, and made a part thereof.

Dan Nicolau, M.D. is represented by:

Jeffrey C. Grass, 101 E. Park Blvd., Suite 600, Plano, Texas 75074, (214) 273-7290.

The office executing this writ shall promptly serve the same according to requirements of law, and the mandates hereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Lubbock County, Texas, this the 4 day of August, 2010.

Barbara Sucsy, District Clerk
Lubbock County, Texas
904 Broadway, Room 105
Lubbock, Texas 79401

By  Deputy
Sammy W. Smith

NO. 2010-553,260

Dan Nicolau, M.D.

VS.

**Texas Tech University Health
Sciences Center School of Medicine**

ISSUED:

4 day of August, 2010

Barbara Sucsy
District Clerk
237th District Court
Lubbock County, Texas

CITATION
GENERAL CIVIL

SHERIFF'S RETURN

Come to hand on the _____ day of _____, 20 ____, at ____ O' Clock __.M.,
and executed in _____ County, Texas, by delivering to each of the within
named defendants, in person, a true copy of this citation, having first endorsed thereon the following
time and places, to-wit:

NAME	DATE	TIME	PLACE
------	------	------	-------

AND NOT EXECUTED TO DEFENDANT _____

the diligence used in finding said defendant, being _____

and the cause of failing to execute this process is: _____

and the information received as to the whereabouts of the said defendant, being _____

FEES - Serving \$ _____ cop \$ _____ \$ _____

OTHER FEES \$ _____ \$ _____

OTHER FEES \$ _____ \$ _____

TOTAL FEES \$ _____

Sheriff or Constable

County, Texas

Deputy

CERTIFICATE OF DELIVERY

I do hereby certify that I delivered to _____ the
_____ day of _____, 20 ____, at ____ o'clock __.m. A copy of this instrument.

Sheriff or Constable

County, Texas

Deputy

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER SCHOOL OF MEDICINE
C/O KEVIN WILLIAMS
360 4TH STREET, 2B141 HSC BLDG.
LUBBOCK, TEXAS 79430
91 7108 2133 3937 4480 2492
RD

CAUSE NO. 2010-553,260

DAN NICOLAU, M.D.

V.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER SCHOOL OF
MEDICINE

§
§
§
§
§
§

IN THE DISTRICT COURT OF

LUBBOCK COUNTY, TEXAS

237TH JUDICIAL DISTRICT

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
DEPUTY
2010 JUN 30 PM 2:13
BY [Signature] Deputy

**DEFENDANT TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER'S
ORIGINAL ANSWER**

TO THE HONORABLE JUDGE:

COMES NOW, TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER ("TTUHSC"), Defendant in the above styled and numbered cause, represented by and through Greg Abbott, Attorney General of Texas, and files this its Original Answer and Jury Demand to Plaintiff's Original Petition, and for such answer would respectfully show the Court as follows:

I.

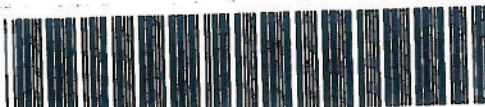
GENERAL DENIAL

Defendant TTUHSC asserts a general denial as authorized by the Texas Rules of Civil Procedure to the allegations of material fact contained in Plaintiff's Original Petition and requests that Plaintiff be required to prove such allegations by a preponderance of the credible evidence as required by law. Said Defendant also denies each and every, all and singular, the allegations contained in Plaintiff's Original Petition, and demands strict proof thereof.

II.

SOVEREIGN IMMUNITY

Defendant is a governmental unit of the State of Texas. Accordingly, TTUHSC has full sovereign immunity both from suit and from liability, save only to the extent of the partial waiver



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ANSR - ANSWER RECEIVED
Case No: 2010553260

of same given by the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101, and hereby pleads and asserts its claim to and defense of sovereign immunity and the limits, exemptions and exclusions of the Texas Tort Claims Act.

III.

PLEA TO THE JURISDICTION

Defendant is entitled to sovereign immunity from suit and from liability and Plaintiff's petition failed to allege adequate grounds to establish a waiver of such sovereign immunity. Therefore, the court is without jurisdiction to hear this cause of action and the same should be dismissed with prejudice. Defendant requests a hearing and that the Court hear this plea at its earliest convenience.

IV.

SUIT LIMITATIONS

Plaintiff's claim for a damage award is limited to the cap imposed by the Texas Tort Claims Act. Defendant specifically pleads and incorporates herein by reference, as an affirmative defense, all applicable caps and limitations upon any award of damage, both compensatory and punitive, which are provided by law, including but not limited to the provisions of the Texas Civil Practice and Remedies Code, Chapters 41 and 101.

V.

MEDICAL EXPENSES

Pursuant to Chapter 41 of the Texas Civil Practice and Remedies Code, Defendant would show that under any circumstances recovery for any medical expenses in this suit should be limited to the amount actually paid or incurred. Defendant is not liable for any portion of the "full charges"

of medical bills which are subject to credit or reduction by virtue of (1) contractual discounts or credits; (2) discounts or credits which result from the application of statutes and/or regulations governing federal, state or local medical assistance programs such as Medicare, Medicaid or similar programs; or (3) lowered costs associated with or resulting from membership in any health maintenance organization, managed care organization and/or preferred provider organization.

VI.

EXEMPLARY DAMAGES AND ATTORNEY'S FEES

Defendant would show further that Plaintiff is not entitled to recover exemplary and/or punitive damages or attorney's fees for any of the allegations, even those of gross negligence. Tex. Civ. Prac. & Rem. Code §101.024.

VII.

JURY DEMAND

Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Defendant hereby demands a trial by jury on all issues so triable in the foregoing cause of action. Defendant would show that pursuant to §6.001 of the Texas Civil Practice and Remedies Code, the State is exempt from paying jury fees at this time.

VIII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER, prays that upon final hearing hereof that the Court enter judgment, that the Plaintiff take nothing by reason of such suit, and that all costs of court be taxed and adjudged against the Plaintiff. Defendant further prays for such other and further relief, both general and

special, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

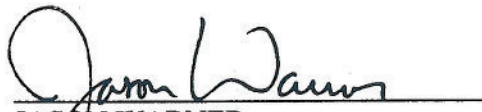
GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy First Assistant Attorney Civil General

RUTH R. HUGHS
Director of Defense Litigation

NELLY R. HERRERA
Chief, Tort Litigation Division




JASON WARNER
Assistant Attorney General
State Bar No. 24028112
Tort Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
512.463.2197
FAX 512.463.2224

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded, to opposing counsel of record herein by U.S. Certified Mail, Return Receipt Requested, on this the 26th day of August, 2010 at the following address:

Jeffrey C. Grass
ATTORNEY AT LAW
Bank of America Tower
101 E. Park Blvd., Suite 600
Plano, Texas 75074-5483



JASON WARNER
Assistant Attorney General



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

POST OFFICE BOX 12548
AUSTIN TEXAS 78711-2548

Return Services Requested

CERTIFIED MAIL™



7008 0500 0001 5053 2846

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BARBARA SUCSY
LUBBOCK COUNTY DISTRICT CLERK
PO BOX 10536
LUBBOCK TEXAS 79408 3536

049JB2024653

\$05.88

08/26/2010

Mailed From 76701

US POSTAGE



FOR PRIVATE



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2010

Barbara Sucsy, CMRRR 7008 0500 0001 5053 2846
Lubbock County District Clerk
P.O. Box 10536
Lubbock, Texas 79408-3536

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
BY Barbara Sucsy
2010 AUG 30 PM 2:14

Re: Cause No. 2010-553,260; *Dan Nicolau, M.D. v. Texas Tech University Health Sciences Center School of Medicine*; In the 237th Judicial District Court of Lubbock County, Texas.

Dear Ms. Sucsy:

Enclosed please find for filing in the above entitled and numbered cause:

1) **Defendant Texas Tech University Health Sciences Center's Original Answer.**

Please note the time and date of filing on the margin of the enclosed copy of each instrument and return to me for my files. A stamped, self-addressed envelope is enclosed for your convenience.

By copy of this letter, all counsel of record are also being furnished copies of the above described document(s) and notice of this filing. Thank you for your attention to this matter.

Sincerely,

JASON WARNER
Assistant Attorney General
Tort Litigation Division
512.463.2197
FAX 512.463.2224
jason.warner@oag.state.tx.us

Enclosure (as stated)

cc: Jeffrey C. Grass, CMRRR 7008 0500 0001 5053 2853



01900150606010
LETT - LETTER
Case No: 2010553260

NO. 2010-553,260

DAN NICOLAU, M.D.
Plaintiff,

V.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER SCHOOL OF
MEDICINE
Defendant.

§ IN THE DISTRICT COURT
§
§
§ 237TH JUDICIAL DISTRICT
§
§
§
§ OF LUBBOCK COUNTY, TEXAS.

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
DEPUTY
BY *Barbara Lucy*
2010 SEP 30 AM 11:58

MOTION FOR NONSUIT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, DAN NICOLAU, M.D., as Movant herein, and bring this Motion for Non-Suit and Voluntary Dismissal of all Claims, and in support thereof, would show the court the following:

I.

Plaintiff, DAN NICOLAU, M.D., asks the Court to enter a nonsuit on all claims against TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE.

II.

Plaintiff files this motion to dismiss without prejudice to the rights of any party the lawsuit styled: DAN NICOLAU, M.D. v. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE, Cause No. 2010-553,260.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Court grant this motion for nonsuit, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

By: *Jeffrey C. Grass*
JEFFREY C. GRASS
Texas Bar No. 00787581
Bank of America Tower



01900150606011
MNST - MOTION FOR NON-SUIT
Case No: 2010-553,260

101 E. Park Blvd., Suite 600
Plano, TX 75074-5483
Tel. (214) 273-7290
Fax. (214) 273-7291
Attorney for Plaintiff
DAN NICOLAU, M.D.

CERTIFICATE OF SERVICE

I certify that on September 24, 2010, a true and correct copy of Motion to Nonsuit was served by certified mail, return receipt requested on Jason Warner, Assistant Attorney General, Tort Litigation Division, P.O. Box 12548, Capitol Station, Austin, Texas 78711-2548.


JEFFREY C. GRASS

CERTIFICATE OF CONFERENCE

I certify that on September 24, 2010, counsel for the Defendant, Jason Warner, Assistant Attorney General, was contacted regarding this Motion to Nonsuit to which he indicated he was unopposed.


JEFFREY C. GRASS

Law Office
OF
JEFFREY C. GRASS

Attorney & Counselor at Law
Bank of America Tower
101 E. Park Blvd., Suite 600
Plano, Texas 75074
JCGrass@gmail.com
www.medical-peer-review.com

Telephone: (214) 273-7290

Fax: (214) 273-7291

September 24, 2010

VIA FEDEX HAND DELIVERY
Lubbock County District Clerk
904 Broadway, Room 105
P.O. Box 10536101
Lubbock, Texas 79408-3536

**Re: Dan Nicolau, M.D. v. Texas Tech University Health Sciences Center
School of Medicine**

2010-553,260
237H

Dear Sir/Madam:

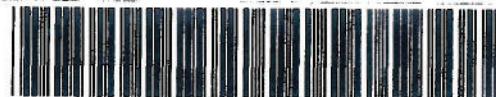
Please find enclosed herewith an original and 2 copies of Plaintiff's Motion to Nonsuit. Please file the original and return the remaining copies in the enclosed self-addressed stamped envelope.

Please contact me at the forgoing address should you have any questions regarding this matter.

Sincerely,


Jeffrey C. Grass

JCG/pgh



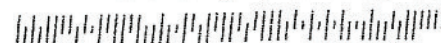
01900150606012
LETT - LETTER
Case No: 2010-553,260

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
DEPUTY
BY *Barbara Lacey*
2010 SEP 30 AM 11:58

Law Offices of Jeffrey C. Grass
101 E Park Blvd., Suite 600
Plano, Texas 75074



Lubbock Cpony District Clerk
904 Broadway, Room 105
P.O.BOX 10536101
Lubbock, Texas 79408-3536



NO. 2010-553,260

DAN NICOLAU, M.D.
Plaintiff,

V.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER SCHOOL OF
MEDICINE
Defendant.

§ IN THE DISTRICT COURT
§
§
§ 237TH JUDICIAL DISTRICT
§
§
§
§ OF LUBBOCK COUNTY, TEXAS

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
DEPUTY
2010 OCT -7 PM 1:19
BY *H. J. [Signature]*

ORDER FOR NONSUIT

On 10-1-2010, the Court considered the Motion for Nonsuit and Voluntary Dismissal of all Claims filed by Plaintiff, DAN NICOLAU, M.D., and finds that the Motion should be **GRANTED**.

IT IS THEREFORE ORDERED that the Motion for Nonsuit and Voluntary Dismissal of all claims is **GRANTED**. The cause of action styled, DAN NICOLAU, M.D. v. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER SCHOOL OF MEDICINE, Cause No. 2010-553,260 is dismissed without prejudice to the rights of any.

Signed on: October 1, 2010.

[Signature]

JUDGE PRESIDING



01900150606013
ORNS - ORDER FOR NON-SUIT
Case No: 2010553260



OFFICE OF THE DISTRICT CLERK

ROOM 105, COURTHOUSE
P O Box 10536
LUBBOCK, TEXAS 79408-3536
(806) 775-1317
FAX (806) 775-1382

BARBARA SUCSY
DISTRICT CLERK

Judy Border
CHIEF DEPUTY

October 7, 2010

Jeffrey C. Grass
Attorney at Law
Bank of America Tower
101 E. Park Blvd., Suite 600
Plano, TX 75074

Jason Warner
Assistant Attorney General
Tort Litigation Division
P.O. Box 12548, Capitol Station
Austin, TX 78711

Re: Cause No. 2010-553,260
In the 237th District Court of Lubbock County, Texas
Dan Nicolau, M.D., Plaintiff vs. Texas Tech University Health Sciences Center School of
Medicine, Defendant

In compliance with Rule 306a(3) of the Texas Rules of Civil Procedure, you are hereby
notified that an **Order for Nonsuit** was signed in the above styled and numbered cause on
October 1, 2010.

Barbara Sucsy
District Clerk
Lubbock County, Texas

By _____
Sara L. Wagoner

COPY



01900150606014
NOJD - NOTICE OF JUDGMENT
Case No: 2010553260