ANESTHESIA PROFESSIONAL LIABILITY: ANATOMY OF A MEDICAL MALPRACTICE LAWSUIT

CONFLICT OF INTEREST DISCLOSURE

Tracey Dujakovich, JD is a Lead Claims Professionals and Risk Advisors for Preferred Physicians Medical, a medical professional liability insurance carrier that exclusively insures anesthesiologists, CRNAs, and their practices nationwide. The speaker has no additional financial relationships with a commercial interest to disclose nor any undisclosed conflicts of interest.

ANATOMY OF A MEDICAL MALPRACTICE LAWSUIT

Elements of Medical Negligence – Plaintiff has burden to prove, by preponderance of the evidence, each of the following elements:

1. Duty – Forming clinician-patient relationship establishes legal duty to act in accordance with standard of care (SOC) – *In Oklahoma, the SOC is defined as the average level of skill, care, and diligence that a reasonably competent healthcare provider in the same field would have exercised under similar circumstances
2. Breach – Clinician failed to adhere to the SOC
3. Causation – The breach of duty was the actual or proximate cause of an injury that would not have otherwise occurred
4. Damages – The plaintiff suffered actual loss/injury

INITIAL STEPS AFTER SERVICE OF SUMMONS AND COMPLAINT

- IMMEDIATELY notify your professional liability insurance carrier or risk management if employed by hospital or academic institution; lawsuits are time sensitive and must be responded to promptly

- DO NOT discuss case details with anyone other than insurance carrier, defense attorney assigned to you, or peer review/QA committee (after consulting with insurance carrier or your defense attorney)

- Insurance carrier or employer will retain defense counsel to represent you until conclusion of the case; defense counsel is ethically bound to protect client's best interests regardless of who's paying the legal fees and expenses

- Defense counsel will enter appearance and file an "Answer" to the lawsuit

Requests for production of documents – e.g. medical records, business records, tax documents, etc.

Interrogatories – written questions about the case submitted to other party, answers under oath

Depositions – parties and witnesses questioned under oath by opposing attorney, often videotaped

Expert discovery – retained experts review medical records and prepare reports containing opinions; reports disclosed to other parties, experts present for depositions

DISMISSAL, SETTLEMENT, OR TRIAL?

Dismissals and Motion Practice

- Defense counsel and claims professional evaluate case and liability exposure on ongoing basis
- Motion to Dismiss may be filed early in the case to challenge the sufficiency of the complaint (i.e., there is no legal basis for the lawsuit)
- As case proceeds through discovery, plaintiff may decide to dismiss some defendants from the case
- After close of discovery, parties can conduct motion practice and ask Court to enter judgment as a matter of law, e.g., Motion for Summary Judgment can be granted if there is no genuine dispute of material facts,

DISMISSAL, SETTLEMENT, OR TRIAL?

Settlement

- Many professional liability insurance policies contain consent to settlement provisions
- Claims professional and defense counsel may recommend settlement if there is liability exposure
- Defense counsel might encourage client to request settlement in interest of protecting personal assets; insureds may retain personal counsel at their own expense
- Insurance carrier makes final decisions regarding settlement
- Parties may attempt to reach settlement agreement informally, or they may elect to mediate the case

DISMISSAL, SETTLEMENT, OR TRIAL?

Trial

- Most professional liability insurance carriers reserve the right to proceed to trial regardless of insured's consent
- Decision to proceed to trial is based on expert reviews, defense counsel's evaluation, and anesthesia professional's desire to defend their care; unreasonable settlement demands from an emboldened plaintiff's bar has also played a role, recently
- Depending on number of parties and witnesses, the trial may last two weeks or longer
- Defendants must attend trial each day; claims professional attends to evaluate case and support insured
- Jurors represent cross-section of the local community; typically, they not trained health care providers

DISMISSAL, SETTLEMENT, OR TRIAL?

Trial

- Parties call witnesses and retained experts to present testimony and help introduce other evidence
- Jurors weigh the credibility of the witnesses and evidence
- Jury gets case following submission of all evidence and closing arguments, deliberates before reaching verdict
- If jury finds liability, monetary damages are awarded to plaintiff (this is the "judgment")
- Liability may be apportioned among the parties, including plaintiff

DISMISSAL, SETTLEMENT, OR TRIAL?

Trial

- Losing parties may request new trial or appeal if error made by the Court
- Courts are allowed great discretion in their rulings
- Appeals often require losing party to post appeal bond
- Appeals average two years or longer and may result in a new trial if case overturned on appeal
- Liability may be apportioned among the parties, including plaintiff

FEDERAL AND STATE REPORTING REQUIREMENTS

Settlements and judgments paid by insurance carrier are reported to the National Practitioner Data Bank (NPDB) and state licensing boards

There is no minimal amount of settlement that triggers a NPDB report

NPDB information is not available to the public

NPDB information is available to: Hospitals, other health care entities, state licensing boards and certification authorities, professional societies with formal peer review, state Medicaid Fraud Units, and law enforcement

HOW TO HANDLE THE STRESS OF LITIGATION

Medical malpractice litigation is a highly stressful event that can have significant personal and emotional impact on medical providers and their families

Allegations of wrongdoing and malpractice often create self-doubt and guilt

Psychological stress often results in re-evaluation of professional motivation and inherent patient mistrust

Anesthesia professionals may stop seeing certain patients, consider career change or early retirement, and discourage their children from entering the medical profession

HOW TO HANDLE THE STRESS OF LITIGATION

Strategies for Coping – Social Support

- Anesthesia professional are advised by defense attorney and insurance carrier not to discuss the "facts of the case"
- Social support involves discussing and expressing the emotional impact of the litigation while maintaining factual confidentiality
- Sources include family, trusted colleagues, mental health professionals, attorneys, professional liability insurance carriers, and providers support groups

HOW TO HANDLE THE STRESS OF LITIGATION

Physical and Mental Health

- Both may be neglected while lawsuit is pending
- Physical manifestations associated with litigation may include anxiety and insomnia
- Avoid temptation to self-prescribe sleep aids, anxiolytics, other medication, or abuse alcohol or other substances
- Consider establishing care with mental health professional
- Educate yourself about the litigation process
- Participate in your defense to have some control over the process; work closely with defense attorney and insurance professional

AWARENESS

PPM INJURY DESCRIPTIONS & COMMON ALLEGATIONS

Intraoperative Awareness During GA

Improper technique or anesthesia plan; failure to recognize vital sign changes

Insufficient Depth of Sedation (MAC Cases)

Improper technique or anesthesia plan; fail to obtain informed consent

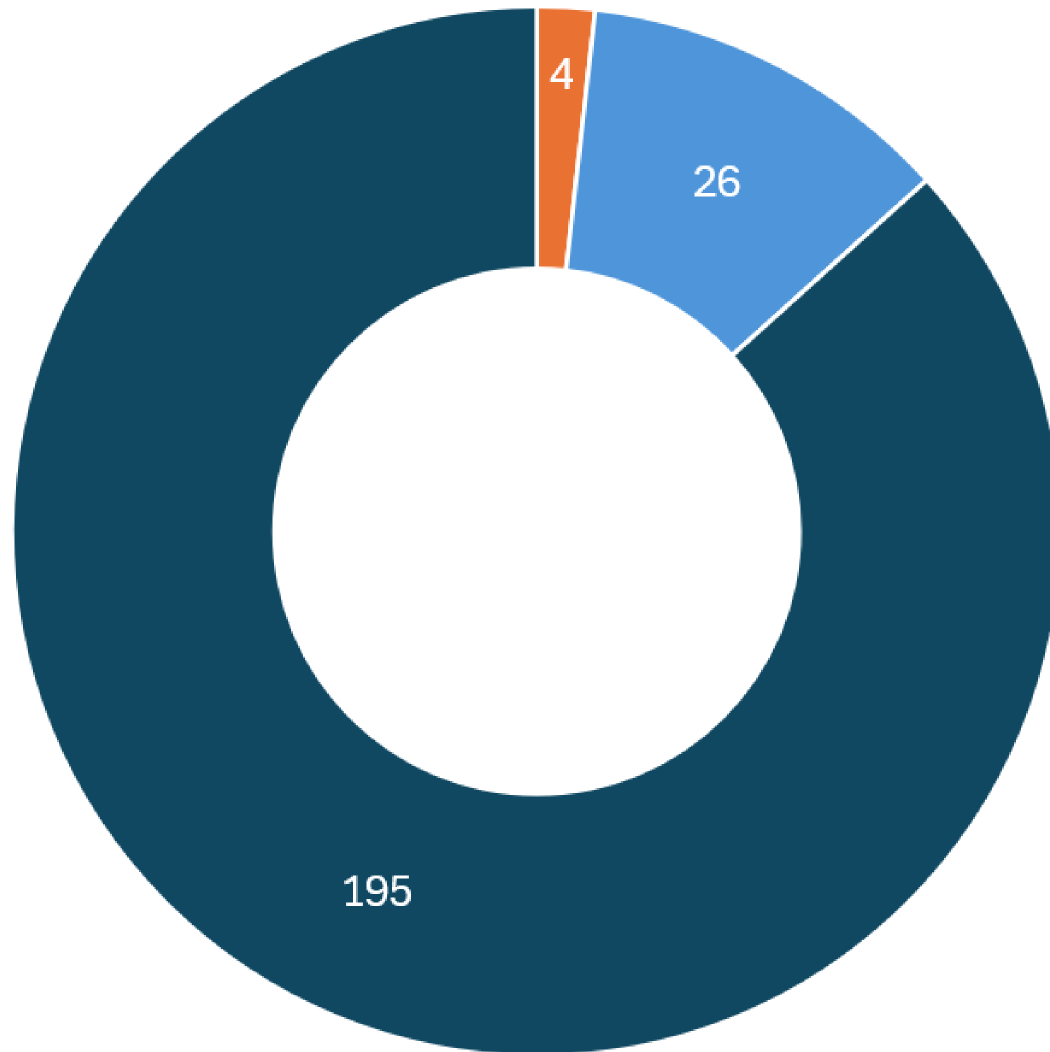
Awareness Resulting from Human Error (Vial Mix-up, Equipment Malfunction)

Lack of vigilance; poor communication; unfamiliarity with equipment

Inadequate Pain Control (Neuraxial & Regional Blocks)

Improper technique or anesthesia plan; fail to obtain informed consent; delay in responding to stat C-section

INTRAOPERATIVE AWARENESS DURING GA – REPORTED EVENTS

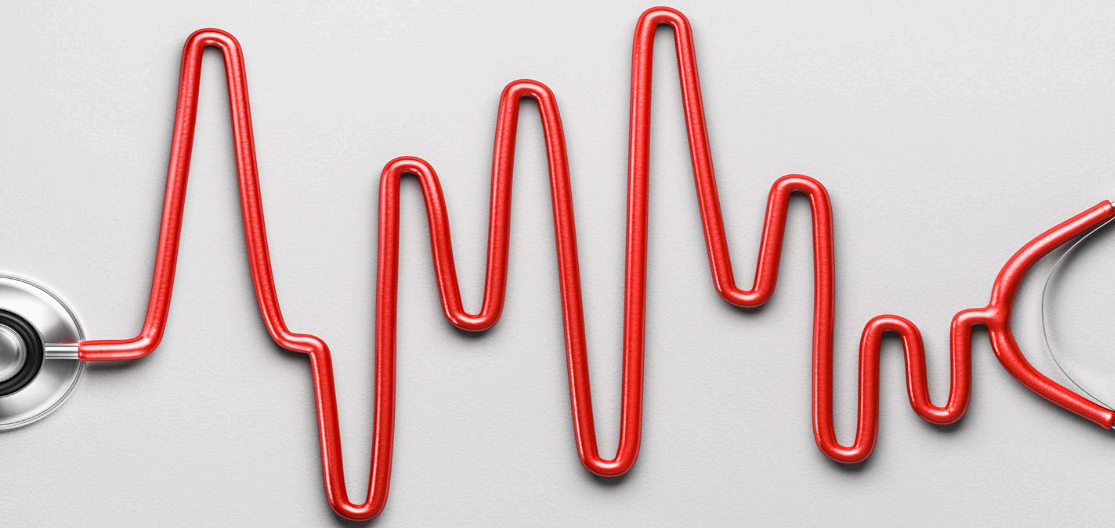


- Incident Reported but No Claim
- Resulted in Claim, File Closed without Payment
- Resulted in Claim, File Closed with Payment

*1987-2025

INTRAOPERATIVE AWARENESS DURING GENERAL ANESTHESIA

RISK MANAGEMENT STRATEGIES



- Include risk of intraoperative awareness on anesthesia informed consent form
- Be vigilant and watch for clinical changes such as elevated HR and BP
- Consider using BIS monitoring, particularly for TIVA cases
- If patient reports experiencing recall, offer to assist with psychiatric consult or counseling referral

AWARENESS – CLOSED CLAIMS HISTORY

Insufficient Sedation (MAC)

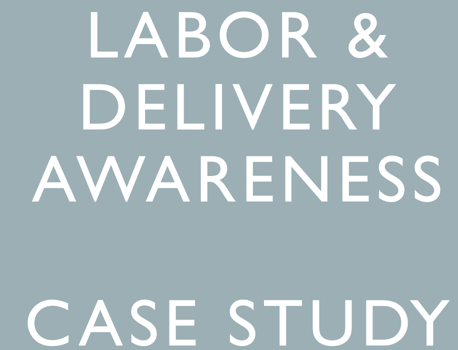
100% of Files Closed without Indemnity Payment

Human Error or Equipment Malfunction

> 90% of Files Closed with Indemnity Payment

Neuraxial & Regional Blocks

9 of 22 Files Closed with Indemnity Payment (Recent PV under Appeal)

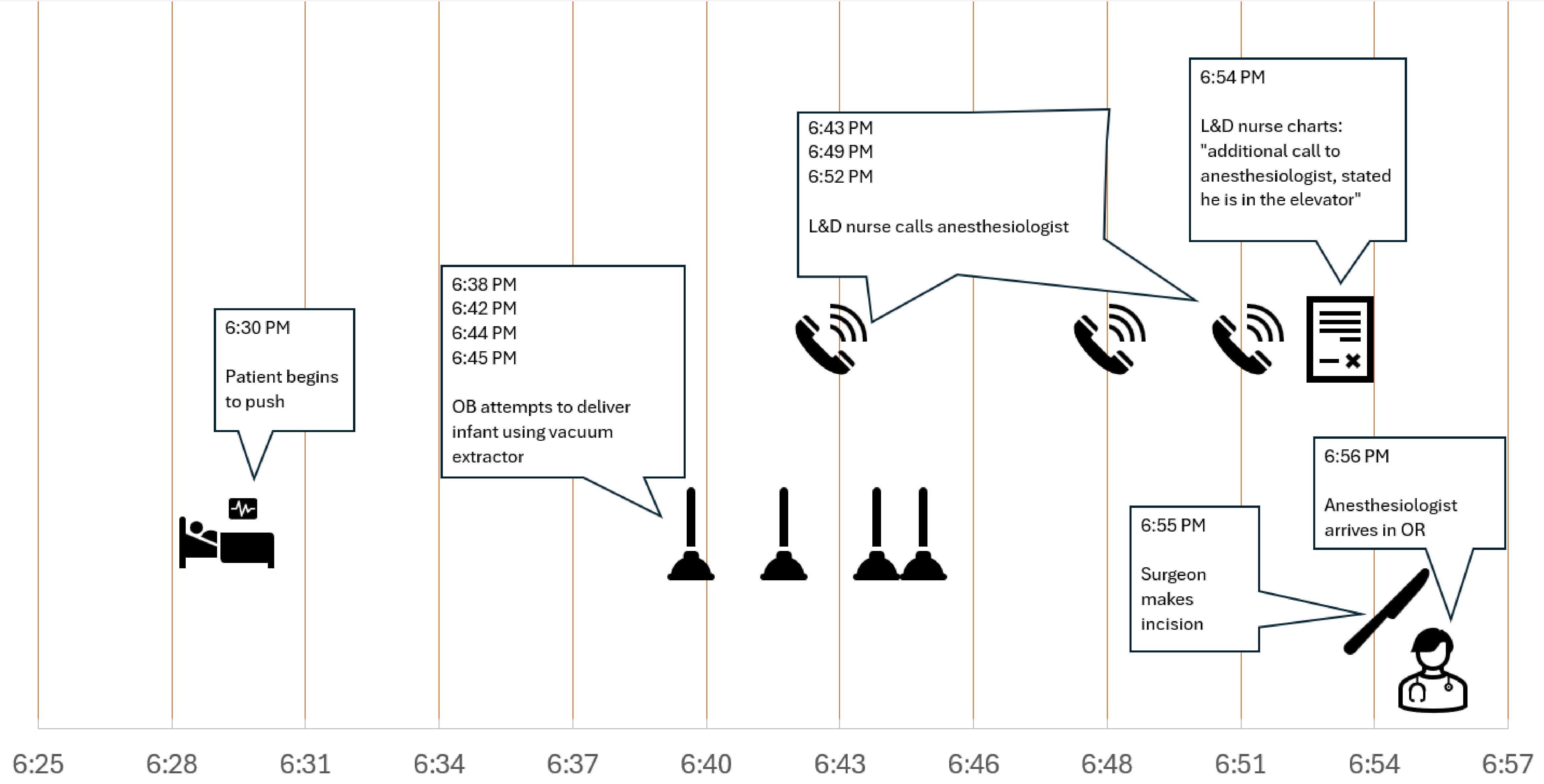


LABOR & DELIVERY AWARENESS

CASE STUDY

- A 36 y.o. female presented for a scheduled induction at 40 weeks
- Patient's medical history was significant for G1P0, advanced maternal age, in-vitro fertilization, and polycystic ovary syndrome; pregnancy was otherwise uncomplicated
- The following day at 12:10 PM, our insured anesthesiologist placed a labor epidural; he re-dosed the epidural at 5:09 PM d/t increased pain

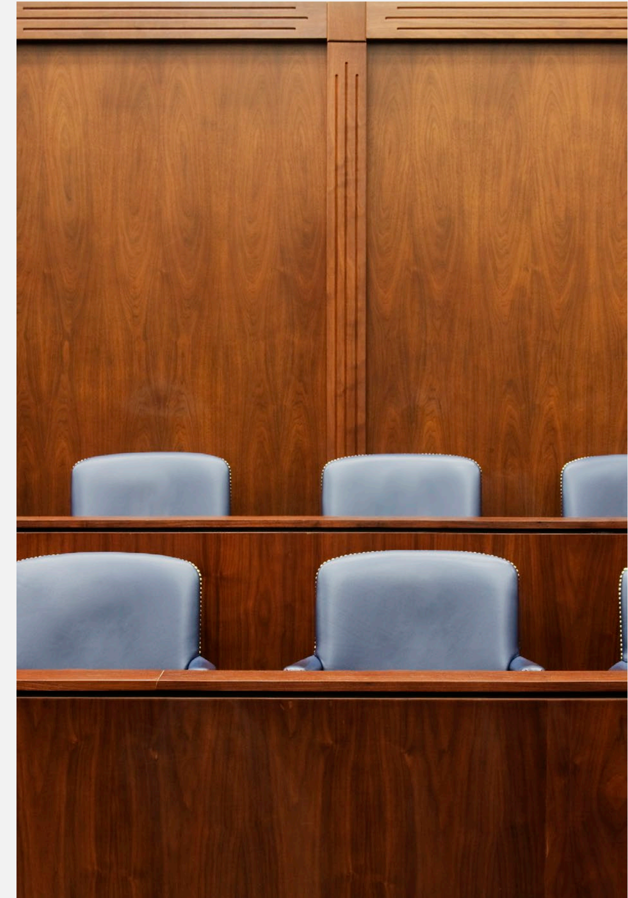
LABOR & DELIVERY AWARENESS – CASE STUDY



LABOR & DELIVERY AWARENESS

CASE STUDY

- The anesthesiologist immediately administered general anesthesia with sevoflurane (via mask), propofol, and versed; he also re-dosed the epidural
- Infant was quickly delivered with APGARS of 8 & 9
- Patient emerged from anesthesia without complication, and her post-partum course was routine and uneventful
- The patient sued our insured anesthesiologist and the hospital alleging that she suffers from PTSD because of severe pain as part of the C-section was done without adequate anesthesia



QUESTIONS?

THANK YOU!