

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 ELI LILLY AND COMPANY,)
)
 Defendant.)
)
 _____)
 Case No. 3AN-06-05630 CI

VOLUME 14

TRANSCRIPT OF PROCEEDINGS

March 20, 2008 - Pages 1 through 239

BEFORE THE HONORABLE MARK RINDNER
Superior Court Judge

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1 PROCEEDINGS
 2 THE COURT: Please be seated.
 3 We are back on the record in Eli
 4 Lilly versus -- State of Alaska versus Eli Lilly
 5 3AN-06-5630 Civil. All members of the jury are
 6 present, as are counsel.
 7 We're continuing with the testimony
 8 of Dr. Kahn. Dr. Kahn, you realize you're under
 9 the same oath and the same obligations of that
 10 oath that you took yesterday?
 11 THE WITNESS: Yes, Your Honor.
 12 THE COURT: Thank you. Mr. Allen.
 13 MR. ALLEN: Thank you, Your Honor.
 14 I'd like to invoke Rule 615, please.
 15 THE COURT: Okay. Do you have
 16 witnesses here that are in the courtroom?
 17 MS. GUSSACK: Yes, Your Honor.
 18 THE COURT: Could you ask them --
 19 ladies and gentlemen, if you're going to be a
 20 witness in this case, Mr. Allen has invoked the
 21 rule that requires me to exclude you from the
 22 courtroom until after you've testified in this
 23 case. So if you're going to be a fact witness in
 24 the case, could you please wait outside until
 25 it's your turn to testify. And could you notify

1 A-P-P-E-A-R-A-N-C-E-S, continued

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1 any of your other witnesses that the rule has
 2 been invoked?
 3 MS. GUSSACK: Yes, Your Honor.
 4 MR. ALLEN: May I begin,
 5 Your Honor?
 6 THE COURT: Please.
 7 CROSS-EXAMINATION, continued
 8 Q. (BY MR. ALLEN) Good morning, Doctor.
 9 A. Good morning, Mr. Allen.
 10 Q. How are you doing this morning?
 11 A. Fine, thank you.
 12 Q. Sorry I had to have you back. I'll try
 13 to do this as expeditiously as possible, but I
 14 need to cover some things.
 15 A. No problem.
 16 Q. If at any time you don't understand a
 17 question, you let me know. Okay?
 18 A. Okay.
 19 Q. Before I begin, sir, I want to give you
 20 an opportunity to say anything you'd like. Is
 21 there anything about your testimony to me
 22 yesterday that you'd like to modify, change,
 23 alter or anything?
 24 A. No.
 25 Q. Thank you, sir. I thought we left

1 off -- we're not really going to talk about this,
2 but we left off on the issue of mood stabilizer.

3 Do you remember that?

4 A. You can refresh my memory as to what
5 you're referring to.

6 Q. I was over here looking at the
7 deposition.

8 Zyprexa is not a mood stabilizer,
9 is it, sir?

10 A. Mood stabilizer is a term that doesn't
11 have a formal agreed-upon scientific definition.
12 It is a term that many psychiatrists use to
13 describe drugs that are used to stabilize mood in
14 patients who have bipolar disorder.

15 Q. So we're clear, as you testified in your
16 deposition, mood stabilizer is not a
17 scientifically-validated term?

18 A. In that it's a term that describes a
19 range of actions of drugs that are used in
20 bipolar disorder. I'm not aware of any
21 scientific body that has given a definition of
22 mood stabilizer.

23 Q. I apologize. It seems like I'm arguing
24 with you. You testified -- this is your
25 testimony under oath. Do you agree with this

1 statement and you may --

2 MR. BRENNER: Objection,
3 Your Honor. Is this impeachment?

4 THE COURT: Yes. What is this? If
5 it's impeachment I don't think you have anything
6 to impeach.

7 Q. (BY MR. ALLEN) Okay. Is mood
8 stabilizer a scientifically validated term?

9 MR. BRENNER: Objection; asked and
10 answered, Your Honor.

11 THE COURT: I'll let him ask that
12 question.

13 A. Researchers and clinicians use the term
14 to refer to drugs that are used to stabilize mood
15 in bipolar disorder. I'm unaware of any
16 scientific body that has given a formal fixed
17 definition of the term.

18 THE COURT: Was that a no, it's not
19 a term used scientifically?

20 THE WITNESS: Well, you know, it's
21 not a term that has an official scientific
22 definition.

23 Q. (BY MR. ALLEN) Thank you, sir.

24 We talked about the risk/benefit
25 equation yesterday.

1 Do you recall that?

2 A. Yes.

3 Q. As you said, it would be improper to try
4 to minimize, eliminate or neutralize the risk; do
5 you recall that?

6 A. Yes. I'm sorry, could you just repeat
7 the last sentence again?

8 Q. You said it would be improper, I think,
9 to minimize, eliminate or neutralize risk.

10 A. That's correct.

11 Q. I want to talk about -- when I look back
12 at my notes, I don't think I talked about the
13 benefits side of the equation. I briefly did.

14 But it would also be improper to
15 overstate the benefits, right?

16 A. Yes.

17 Q. In fact, the FDA has said that to
18 overstate the benefits would be false and
19 misleading.

20 Are you aware of that?

21 A. I'm not aware of that.

22 Q. Sir. In Exhibit 1169, which is the
23 November, 1996 letter that the jury has seen --
24 if you want to read any of this other than what I
25 show you, let me know, okay?

1 They said that Eli Lilly has
2 engaged in false and misleading practices,
3 including giving appropriate balance to their
4 safety and benefits.

5 Do you see that, sir?

6 A. I see that.

7 Q. And do you agree with the FDA that it
8 would be false and misleading to overstate the
9 benefits of a product?

10 A. In general, if someone were doing that,
11 yes.

12 Q. And in fact, they got more specific --
13 by the way, I forgot to ask this, sir. Did you
14 read any additional documents last night?

15 A. No.

16 Q. On page 3 of the FDA's letter --

17 MR. BRENNER: Your Honor, may we
18 approach on an objection.

19 THE COURT: You may.
20 (Bench discussion.)

21 MR. BRENNER: Your Honor, I fear
22 that what we're about to do is present a lot of
23 documents that the witness has never seen. It's
24 not germane to his testimony. Did the FDA say
25 this --

1 THE COURT: To the extent that he
2 was asked and said he wanted all the documents
3 that might be meaningful and might be relevant, I
4 that think this is proper cross-examination.

5 MR. BRENNER: Thank you,
6 Your Honor.

7 (End of bench discussion.)

8 Q. (BY MR. ALLEN) We're back on the
9 risk/benefit equation.

10 A. Okay.

11 Q. And by the way, this is Exhibit 1169.

12 When you asked for all potential,
13 even remotely relevant documents, did you get
14 this document?

15 A. I simply don't remember all the
16 documents that may have been sent to me.

17 Q. Back to the benefits equation. We were
18 talking about in general you agreed, but the FDA
19 got specific. They said: The other labeling
20 pieces identified above contain one or more of
21 the violations enumerated above. They are all
22 lacking in balance relating to adverse events and
23 precautionary information and present a
24 misleading impression of Zyprexa as superior,
25 highly effective, virtually free of side effects,

1 easy to use product. This impression is contrary
2 to the approved labeling.

3 Do you see that?

4 A. Yes, I see that.

5 Q. And you, of course, have reviewed the
6 labeling, have you not?

7 A. Yes.

8 Q. And it would be contrary to the approved
9 labeling to represent Zyprexa, as you said
10 yesterday, as superior to any of the
11 second-generation antipsychotics, right?

12 A. I don't believe I made that statement
13 yesterday.

14 Q. I thought I asked you was there anything
15 in the label -- the testimony, we can get it --

16 A. Yeah.

17 Q. I believe I asked you yesterday: Was
18 there anything within the label that indicated
19 Zyprexa was superior to any of the other
20 products --

21 A. Anything in the label. You're correct,
22 there's nothing in the label that indicates it's
23 superior.

24 Q. Right. And they said it would be false
25 and misleading to say it is highly effective,

1 virtually free of side effects and easy to use.

2 Do you see that?

3 A. I see that.

4 Q. Okay. Now, the FDA didn't just say
5 that; they told Eli Lilly to immediately
6 discontinue this -- these labeling pieces and any
7 other ones that would make those statements.

8 Do you see that?

9 A. Yes, I see that.

10 Q. It says immediately discontinue the use
11 of all promotional labeling pieces, and it goes
12 on, right?

13 A. Yes. It goes on, I don't know. I see
14 what you're writing.

15 Q. And I don't -- if you want to --
16 anything you'd like to look at it.

17 A. Yeah.

18 Q. Let me know when you're through.

19 A. I just didn't know what you meant by "it
20 goes on." But I see exactly what you've
21 highlighted.

22 Q. Well, I just didn't want to read
23 everything, but I didn't want you to think I
24 didn't.

25 So they told Eli Lilly in 1996 to

1 don't do that anymore and it's false and
2 misleading; do you agree?

3 A. I agree that the document says that.

4 Q. And, sir, the document's from the FDA,
5 is it not?

6 A. Well -- but I don't know what it's
7 referring to so all I can agree with is that the
8 document states that.

9 Q. Well, let me ask you then your: Would
10 you agree that if the FDA tells a drug company to
11 stop engaging in conduct which the FDA says is
12 false and misleading, that the drug company
13 should stop engaging in that conduct?

14 MR. BRENNER: Objection,
15 Your Honor. It's argumentative and beyond the
16 scope of anything this witness has testified to.

17 THE COURT: Overruled.

18 A. As a hypothetical, I would agree. In
19 this example, I have no opinion because I don't
20 know the background or what the facts were.

21 Q. (BY MR. ALLEN) And, sir, I didn't ask
22 your opinion about this example. Do you agree,
23 as a physician who prescribes medications, that
24 if the FDA tells a drug company to stop this type
25 of misleading conduct, the drug company should

1 stop?

2 A. In general, as a hypothetical, yes.

3 Q. And you've reviewed documents that
4 indicate to you that Eli Lilly did not stop doing
5 that, did they?

6 A. I don't know what documents you're
7 referring to.

8 Q. Well, did you review the Viva Zyprexa
9 Campaign?

10 A. Sir, I don't have an opinion on this
11 area.

12 Q. That wasn't -- sir, I'm not trying to be
13 difficult.

14 Did you review the Viva Zyprexa
15 Campaign documents?

16 A. Not to my recollection.

17 Q. So that was more material that you did
18 not receive; is that correct?

19 A. I don't recall.

20 Q. Well, I'll try -- I may refresh your
21 recollection in a minute.

22 Now, sir, I also wanted just to
23 clear up what I hope is a noncontroversial topic.

24 You prepared a PowerPoint
25 presentation; is that correct?

1 A. Yes.

2 Q. Sir, did you prepare this PowerPoint, or
3 did somebody do it for you?

4 A. I did it in conjunction with the lawyers
5 at Pepper Hamilton.

6 Q. Okay. And one of the things -- and you
7 were actually here as we recall, when
8 Dr. Inzucchi was here, were you not?

9 A. For a portion of his testimony.

10 Q. Okay. Just as a reminder, because we're
11 going to get to it in a minute, the article you
12 discussed the survey was just about
13 schizophrenia, right?

14 A. Yes.

15 Q. Okay. But you had in your PowerPoint
16 comorbid conditions and you wrote type 2
17 diabetes.

18 A. Yes.

19 Q. Okay. Again, when Dr. Inzucchi was
20 here, he provided us a PowerPoint, and then
21 Mr. Suggs asked him about the American Diabetes
22 Association risk factors for diabetes.

23 Were you here during that
24 testimony?

25 A. I'm not positive. I may have seen this

1 slide, but I'm not crystal clear.

2 Q. Okay. Well, now you have it before you,
3 American Diabetes Association Risk Factors for
4 Diabetes.

5 Can you tell this jury where you
6 find schizophrenia as a risk factor for diabetes,
7 sir?

8 A. It's not on that list as a risk factor
9 for diabetes.

10 Q. All right. So at least as far as the
11 American Diabetes Association is concerned, it is
12 not a risk factor?

13 A. My slide didn't state it was.

14 Q. Okay. You would agree it's not a risk
15 factor?

16 A. I don't know.

17 Q. Okay. You don't know. But more than
18 that, when you were provided with the documents
19 from Eli Lilly, did they tell you about the
20 meeting they had with diabetes experts down in
21 Atlanta in October of 2000?

22 A. No.

23 Q. You never heard about that?

24 A. No.

25 Q. Well, they met with experts down in

1 Atlanta, and I think this is a Dr. Holcombe, when
2 he was -- let me get that.

3 He was at the meeting, and he's
4 from the endocrinology section of Eli Lilly. You
5 know Eli Lilly makes diabetes drugs?

6 A. Yes.

7 Q. So if individuals develop diabetes, Eli
8 Lilly has medications to treat them; you
9 understand that?

10 A. Yes, Eli Lilly makes medications for
11 diabetes.

12 Q. Okay. Now, there was a series of
13 e-mails -- and we're not going to go over every
14 one. The jury has seen them on the 9th and 10th
15 summarizing what happened at those meetings.

16 Did you see any of those e-mails?

17 A. No, I did not.

18 Q. Dr. Holcombe from the diabetes side of
19 the company, when they went to meet with him
20 says, Our advisory group is a Who's Who in
21 diabetes.

22 Do you see that?

23 A. Yes.

24 Q. I'm not trying to be mean or anything,
25 you but you're not a Who's Who in diabetes, are

1 you, sir?
 2 A. No.
 3 Q. You're not an expert in that area?
 4 A. That's correct.
 5 Q. But the Who's Who in diabetes were
 6 presented data from Eli Lilly. I guess you
 7 didn't know that?
 8 A. I don't know that.
 9 Q. Okay. And here's what the Who's Who
 10 said: From the data shown, the group did not
 11 agree with the premise that diabetes mellitus has
 12 a higher than normal prevalence in schizophrenia.
 13 Do you see that?
 14 A. I see that sentence.
 15 Q. So at least as this document reflects,
 16 Eli Lilly was told by the Who's Who in diabetes
 17 they did not believe schizophrenia increased the
 18 risk of diabetes; do you agree?
 19 A. That's not what it says.
 20 Q. I'm sorry. It says: From the data
 21 shown -- then we'll just move on -- from the data
 22 shown, the group did not agree with the premise
 23 that diabetes mellitus has a higher than normal
 24 prevalence in schizophrenia, right?
 25 A. That's what it says.

1 Q. Okay. You don't disagree with the Who's
 2 Who in diabetes, do you?
 3 A. I have no opinion.
 4 Q. Now, sir, I want to talk about your
 5 report. I guess -- do we need -- you don't have
 6 a copy?
 7 A. No.
 8 Q. Do we have a copy? Thank you --
 9 MR. ALLEN: Do you need a copy,
 10 Your Honor?
 11 THE COURT: Actually I thought I
 12 had one, but --
 13 MR. ALLEN: I have another one.
 14 THE COURT: Thank you.
 15 MR. ALLEN: Yes, sir.
 16 Q. (BY MR. ALLEN) And to briefly recap,
 17 you prepared this report yourself; it's all your
 18 words and it's factually accurate?
 19 A. To the best of my ability.
 20 Q. Obviously, sir.
 21 You wish -- well, since you said
 22 that, do you wish to retract, change, modify,
 23 alter or in any way modify your report at this
 24 time?
 25 A. No.

1 Q. Okay. Now, we were talking about the
 2 issue yesterday about sources of information.
 3 Do you recall that?
 4 A. Yes.
 5 Q. And that is opinion No. 1, summary of
 6 your opinion No. 1A, is it not?
 7 A. Yes.
 8 Q. You say: Treatment decisions for mental
 9 health patients are based on many sources --
 10 THE COURT: Could you lower it down
 11 a little bit? I just want to make sure we
 12 don't --
 13 MR. ALLEN: That's why I wanted you
 14 to have a copy.
 15 All right. Let me see where I was.
 16 Q. (BY MR. ALLEN) Opinion No. 1A:
 17 Treatment decisions for mental health patients
 18 are based on many sources of information and the
 19 unique circumstances of each patient, correct?
 20 A. Yes.
 21 Q. And then on page 5 you expound upon
 22 that, right?
 23 A. My numbered page 5 is the one that we
 24 were just on.
 25 Q. I'm sorry, sir. That's right, you say

1 it again on page 5.
 2 THE COURT: We were just on page 2,
 3 your summary of opinions.
 4 THE WITNESS: Okay. Am I on a
 5 different -- I'm on page 5 with you.
 6 MR. ALLEN: I apologize.
 7 THE WITNESS: Yeah, no problem.
 8 Q. (BY MR. ALLEN) On page 5 now --
 9 A. I got you. Yeah, here we are, the
 10 underlined section.
 11 Q. Okay. And then you expound on this
 12 opinion concerning physician sources of
 13 information?
 14 A. Yes.
 15 Q. All right. Now, yesterday I asked you,
 16 are these things doctors rely upon?
 17 Do you recall that?
 18 A. Yes.
 19 Q. And you told me, Mr. Allen, I didn't say
 20 rely.
 21 A. That's right.
 22 Q. So I just want to use your words. I'm
 23 going to put "info" for information; is that all
 24 right?
 25 A. All right.

1 Q. You were correct. You did not use the
2 word "rely". You used the term physicians'
3 knowledge about treatment; is that correct?
4 A. Yes.
5 Q. What's that mean?
6 A. Knowledge about treatment alternatives.
7 Their understanding of what are the available
8 treatments and what are the implications of those
9 treatments.
10 Q. Okay. Understanding the treatments and
11 the implications of the treatments?
12 A. Yes.
13 Q. So, is there any difference, really,
14 between knowledge about treatments and the
15 implications than rely upon that information?
16 A. Yes, there is.
17 Q. Okay. I just -- when somebody has
18 knowledge about something, what does that mean?
19 A. It means they have a broad understanding
20 about a variety of points of view.
21 Q. Okay. That's good. Knowledge means a
22 broad understanding about a variety of points of
23 view, right?
24 A. Yes.
25 Q. Now, why would you want a variety of

1 points of view?
2 A. Doctors have to sift the validity and
3 the reliability of information that they receive
4 in order to know how to apply it in the treatment
5 decisions that they make about individual
6 patients.
7 Q. So they need all the information in
8 order to do that sifting, do they not?
9 A. They need valid and accurate and usable
10 information.
11 Q. Well, is that what you said in your
12 report, sir?
13 A. It's what I'm saying to you in answer to
14 your question.
15 Q. Well, sir, in your report and I'll get
16 it for you.
17 At page 2, I believe. Let me see.
18 I didn't write it down, but I think it's page 2.
19 Yes. On your background on mental health --
20 mental health illnesses and treatment.
21 Do you see that?
22 A. Yes, I do.
23 Q. Sir, again, you can read any part of
24 this that you'd like. But I want to go down
25 to -- I think it's the last sentence on this

1 page, all right?
2 A. Yes.
3 Q. Why don't you just -- in one word on the
4 second page. Why don't you read to yourself the
5 last sentence on page 2 and the last word on page
6 3 and see if you meant what you said.
7 A. I agree with it.
8 Q. Okay. You said: The treatment of
9 patients with these diseases -- and what diseases
10 were you talking about?
11 A. Schizophrenia and bipolar disorder.
12 Q. Sir, I thought you were talking about
13 more than that. Right up in the prior paragraph,
14 you're saying all of the mental health diseases
15 and you were talking about agitation secondary to
16 dementia, depression, anxiety. You were talking
17 about bipolar maintenance --
18 A. Oh, actually, yes, the sentence says:
19 All of the mental health diseases that olanzapine
20 is used for.
21 Q. Right. You weren't talking just about
22 schizophrenia, were you, sir?
23 MR. BRENNER: Objection,
24 Your Honor. We're drifting into an area you
25 excluded.

1 THE COURT: We are drifting, but we
2 haven't drifted too far yet.
3 MR. ALLEN: May I proceed,
4 Your Honor?
5 THE COURT: Yes.
6 Q. (BY MR. ALLEN) You said all of the
7 mental health diseases that olanzapine is used
8 for, right?
9 A. Yes, that's what I said.
10 Q. You can read any part you want, but I
11 want to look at the last sentence. You said:
12 The treatment of patients with these diseases --
13 and you're talking about all of the diseases that
14 Zyprexa is used for, correct?
15 A. Yes.
16 Q. -- with prescription drugs involves
17 balancing how well the drug addresses the
18 particular symptoms -- that's Zyprexa for
19 symptoms?
20 A. Yes.
21 Q. -- being experienced by the patient --
22 A. I'm sorry, go back to Zyprexa for
23 symptoms. The drug's particular symptoms being
24 experienced by the patient. Yeah.
25 Q. Okay. The -- I'm sorry, sir, I got lost

1 now. Involves balancing how well the drug
2 addresses the particular symptoms being
3 experienced by the patients against all possible
4 side --

5 MR. BRENNER: If we could just read
6 it accurately, Your Honor, and not insert words.

7 THE COURT: Yeah. You stuck "all"
8 in there. It's not in the report.

9 MR. ALLEN: Did I? I'm sorry and I
10 didn't mean to. I apologize and I'll do it
11 again. I'll try to read it correctly this time.

12 Q. (BY MR. ALLEN) Balancing how well the
13 drug addresses the particular symptoms being
14 experienced by the patient against possible side
15 effects.

16 A. Yes.

17 Q. You stand by that statement?

18 A. Yes, I do.

19 Q. Okay. Why does a doctor need to know
20 about possible side effects?

21 A. What possible side effects refers to
22 here is the fact that of the known side effects
23 of a medication, not every patient will
24 experience every side effect. It's possible a
25 patient will experience them; it's possible a

1 patient won't.

2 Q. But as you said, in making that
3 determination, the doctor needs to know of the
4 possible side effects?

5 A. Well, there are known side effects of
6 drugs, and we need to know about the known side
7 effects. It's possible with respect to the
8 individual. Side effects are statistical is the
9 meaning of the sentence.

10 THE COURT: I think he's asking
11 you, that you're using the word possible. He's
12 asking you, you didn't use the word probable, you
13 didn't use the word likely or frequently observed
14 or something.

15 THE WITNESS: That's right.

16 THE COURT: You used the word
17 possible. So, do you mean by that any possible
18 side effects?

19 THE WITNESS: What I mean is that
20 of the known side effects it is possible that a
21 given patient will experience them.

22 THE COURT: Any of them?

23 THE WITNESS: Of the known side
24 effects.

25 Q. (BY MR. ALLEN) Okay. Doctor, you'd

1 agree, diabetes is serious?

2 A. Yes.

3 Q. You agree that weight gain can be
4 serious?

5 A. Yes.

6 Q. You agree that hyperlipidemia can be
7 serious?

8 A. Yes.

9 Q. You agree that hyperglycemia can lead to
10 serious conditions?

11 A. Yes.

12 Q. Okay. And have you ever seen this
13 before when you were reviewing the evidence in
14 this case?

15 A. No.

16 Q. Do you see -- and I've got -- the
17 labeling shall be revised to include a warning as
18 soon as there is reasonable evidence of an
19 association.

20 Do you see that?

21 A. Yes.

22 Q. And then it says -- I think it says: A
23 causal relationship need not have been proved.

24 Do you see that?

25 A. I see that.

1 Q. You're not quibbling with this
2 regulation, are you, sir?

3 MR. BRENNER: Objection,
4 Your Honor, commentary on federal regulations?

5 THE COURT: Yeah --

6 MR. ALLEN: I'll let it -- let me
7 ask this.

8 Q. (BY MR. ALLEN) Sir, proving causation
9 can sometimes take decades, can it not?

10 A. I'm not an expert on causation, sir.

11 Q. Of anything? I mean, I'm not -- what
12 you said you learned about -- remember you said
13 you learned about weight gain in medical school?

14 A. Yes.

15 Q. Okay. We're going to talk about that in
16 a minute, but have you learned through your
17 medical experience -- Harvard?

18 A. Columbia.

19 Q. Columbia, or your training or working
20 there at Columbia Hospital Medical School, sir?

21 A. Yes.

22 Q. Have you learned that sometimes proving
23 causation can take decades?

24 A. That's correct.

25 Q. Okay. And so if a patient's going to

1 take a medication and they need to be warned
2 about possible side effects, it wouldn't be right
3 to make the patient and the family wait 20 years,
4 would it?

5 A. Well, that wasn't the meaning of my
6 sentence in the -- as I explained, possible side
7 effects refers to known, established side effects
8 that a patient -- some patients will experience
9 known established side effects and some won't.
10 I'm not an expert on FDA regulations.

11 Q. Yes, sir. Regardless, just cast the FDA
12 regulations aside. A patient, regardless of FDA
13 regulations, take out Zyprexa, think about any
14 medication. Just as a doctor, it would be wrong
15 for a patient taking a medication, not Zyprexa,
16 don't worry about the regulations, just worry
17 about patient safety.

18 It would be wrong to require a
19 patient and his or her family to wait 20 years to
20 be told about a side effect until some doctor
21 somewhere finally proves it as an absolute fact.

22 That would be wrong, wouldn't it?

23 A. I'm afraid I'm confused by your
24 question. To be told about a side effect,
25 patients should be told about side effects. I'm

1 right.

2 Q. Really, that's about patient care, is it
3 not?

4 A. The existence of a side effect,
5 absolutely.

6 Q. You know, Doctor, I have your report,
7 and I looked at it last night.

8 And we -- I didn't want to quibble
9 yesterday, but, really, it's ultimately the
10 patient's choice. In 99.99 percent of the cases,
11 it's the patient. Eli Lilly doesn't get to make
12 the choice; even you don't get to make the
13 choice; the patient has the right to make the
14 choice, true?

15 A. Outside of those rare circumstances in
16 psychiatry where there's involuntarily treatment,
17 absolutely.

18 Q. Like I said, 99.9 percent of the time.

19 A. Whatever the percentage is.

20 Q. Would you agree approximately?

21 A. Yes.

22 Q. And so when we're talking about who
23 should get a medication, Eli Lilly is entitled to
24 their point of view. Are they not? They are,
25 aren't they?

1 not sure what you mean by waiting 20 years to be
2 told about a side effect.

3 Q. Maybe you and I aren't communicating.

4 So what you're saying is patients
5 should not have to wait 20 years to see if
6 there's absolute causation; they need to be told
7 of possible side effects for their own health and
8 safety?

9 A. I'm not sure --

10 THE COURT: He's asking, when do
11 you have enough information to have to be told
12 about side effects? That's his question. Do you
13 have to wait until you know it for sure, or do
14 you have to wait until some other point in time?
15 And if so, what's the point in time?

16 THE WITNESS: Oh, yeah. If you
17 know that a side effect exists, patients should
18 be informed about side effects. That's separate
19 from the question of causation which you added
20 into it.

21 Q. (BY MR. ALLEN) Yes, sir, and I think
22 you're making my point. Side effects is separate
23 from the question of absolute causation; is it
24 not?

25 A. The existence of a side effect. You're

1 A. Yes.

2 Q. You're entitled to your point of view,
3 right?

4 A. Yes.

5 Q. But who is going to be taking the drug
6 into their body is the patient, right?

7 A. That's correct.

8 Q. And they're the people that have to deal
9 with the side effects or possible side effects as
10 they occur, correct?

11 A. That's right.

12 Q. So, really, the Hippocratic Oath.
13 First, thou do no harm; isn't that right?

14 A. Absolutely.

15 Q. And so what we want is to give our
16 patients the choice, looking at all the risks,
17 and then they can decide if they want to take
18 Risperdal or Zyprexa or Geodon or Abilify or the
19 first-generation, or they can decide I don't want
20 to take any of them, right?

21 A. That's correct.

22 Q. There's nothing wrong with that, is it?

23 A. No.

24 Q. Now, if the patient gets diabetes -- I
25 mean, really, I can go home tonight and if a

1 patient gets diabetes, it's really -- it's not my
2 problem, right? There's nothing I can do about
3 it, correct?

4 A. When you say it's not my problem, as a
5 physician, it is my problem.

6 Q. Okay. Okay. Well, it's also the State
7 of Alaska's problem too, isn't it, sir?

8 MR. BRENNER: Objection,
9 Your Honor.

10 MR. ALLEN: I could tie this in.

11 THE COURT: I'll let you have one
12 introductory question and then tie it in.

13 Q. (BY MR. ALLEN) Yes. You understand I
14 represent the State of Alaska.

15 Do you understand that?

16 A. Yes.

17 Q. And I represent the Medicaid department.

18 Do you understand that?

19 A. I'm not aware of exactly who you
20 represent.

21 Q. Well, just assume that I represent the
22 State of Alaska, the Medicaid Division. Okay?

23 Do you understand that?

24 If a patient gets diabetes -- and
25 it's in your PowerPoint and it was in your

1 testimony --

2 MR. BRENNER: Objection,
3 Your Honor.

4 THE COURT: I am going to sustain
5 the objection at this point.

6 MR. ALLEN: Okay. Let me look.

7 Q. (BY MR. ALLEN) Sir, on the sources of
8 information --

9 A. Which page are we on, sir?

10 Q. Page 5.

11 A. Gotcha.

12 Q. 5. I won't write them all down, unless
13 you want me to. But you list medical literature,
14 continuing education, guidelines, algorithms,
15 things of that nature, didn't you?

16 A. Yes.

17 Q. And you list the Eli Lilly sources. See
18 that?

19 A. Well, I don't use the word Eli Lilly.
20 It says "other sources." It first describes --

21 Q. Sir -- I'm not trying to be difficult,
22 but other sources -- this is an Eli Lilly report
23 about Zyprexa, is it not?

24 A. Right. Other sources include
25 information from drug manufacturers is the

1 phrase.

2 Q. Yes, sir. And it goes on to describe
3 that in more detail, does it not?

4 A. Uh-huh.

5 Q. Say yes, sir.

6 A. Yes.

7 Q. I'm not trying to be rude. We have to
8 get a record, so it says "uh-huh" --

9 A. I apologize.

10 Q. Now, did you review any testimony from
11 the director of global marketing for Zyprexa,
12 Denice Torres?

13 A. Not that I recall.

14 Q. She was asked -- I think her deposition
15 was played two days ago. I don't know, two or
16 three days ago.

17 She was asked this question by me:
18 Why does a company and why did Eli Lilly have
19 sales representatives?

20 Do you see that question?

21 A. Yes, I do.

22 Q. I'll read it out loud unless -- would
23 you prefer, or do you want me to read it out
24 loud?

25 A. You can read it.

1 Q. She said: One of the -- you know, one
2 big reason is that in many therapeutic areas, you
3 know, whether Prozac or even Zyprexa,
4 prescribers/physicians may not know about -- you
5 know, they may not have learned as much in
6 medical school about certain conditions,
7 et cetera, because they can't be experts in
8 everything. So what a sales representative can
9 do is to help bring information about a
10 therapeutic area, about treating customers --
11 treating patients or an actual drug, bringing
12 that information to those customers.

13 Do you see that?

14 A. Yes, I see that.

15 Q. That makes sense, doesn't it?

16 A. I have no opinion about this.

17 Q. That's the PDR, is it not?

18 A. Yes, it is.

19 Q. You agree that -- there's a lot of
20 medications in there, isn't there?

21 A. Yes.

22 Q. I mean, if I picked one out at random
23 and asked you to describe for us what's in the
24 adverse reaction section, what's in the warning
25 section, what that drug's risks are, what the

1 precautions are, how was it developed, you
 2 couldn't do it, could you? You couldn't have me
 3 pick a drug out at random and do that, could you?
 4 A. From memory?
 5 Q. Yes, sir.
 6 A. No. Not from -- at random?
 7 Q. That's not a criticism; it's just a
 8 fact.
 9 A. It would be a very difficult task at
 10 random.
 11 Q. Right. So as Ms. Torres says, the drug
 12 company has representatives in many therapeutic
 13 areas concerning medications because doctors
 14 can't know all this from medical school and they
 15 bring the doctors the information. Is that
 16 right?
 17 A. That's what it says.
 18 Q. Right. Well, do you agree with that?
 19 A. I have no opinion on this.
 20 Q. Getting back to your sources of
 21 information, it did include the drug company,
 22 right?
 23 A. Yes.
 24 Q. Ms. Gussack on opening statement told
 25 the jury: Lilly was sharing its information with

1 doctors about weight gain and sharing its
 2 information with the FDA and it wasn't just
 3 relying on the label.
 4 Do you see that?
 5 A. I see that statement.
 6 Q. Okay. So she goes on to say in her
 7 opening statement that Lilly trained its sales
 8 representatives who call on physicians to answer
 9 questions about weight gain and diabetes that
 10 doctors might raise.
 11 Do you see that?
 12 A. I see that.
 13 Q. Isn't that the exact role of the sales
 14 representatives as described by both Ms. Torres
 15 and Ms. Gussack?
 16 A. I have no opinion on the role of sales
 17 representatives. I have no expertise in that
 18 area, sir.
 19 Q. Okay. Well -- you have no expertise in
 20 what area?
 21 A. The role of sales representatives.
 22 Q. Well, sir, with all due respect, you
 23 prepared a report concerning physicians'
 24 knowledge about treatment --
 25 A. Yes.

1 Q. -- and sources of information, and it
 2 wasn't me that wrote this, and you started
 3 listing them, did you not?
 4 A. That's correct.
 5 Q. Okay. Are you an expert in this?
 6 A. I'm an expert in how doctors assimilate
 7 information. I'm not an expert in how it's
 8 organized and provided by companies.
 9 Q. I didn't ask you about how companies
 10 organized and provided it. I asked you about
 11 doctors' assimilation, their knowledge about the
 12 treatment that comes from the drug company, does
 13 it not?
 14 A. One component of information that
 15 doctors may consider is information that comes
 16 from the drug company. It's far from the only
 17 source.
 18 Q. No, sir. In fact, you list in your
 19 report at page 5 --
 20 A. Yes.
 21 Q. -- and if I get one wrong, because I
 22 wrote a piece of paper out last night, tell me if
 23 I missed one.
 24 You said that sources of the
 25 knowledge about treatment --

1 A. Yes.
 2 Q. -- are companies' responses to
 3 questions, right?
 4 A. It is one source of information.
 5 Q. Yes, sir. I'm going to go one at a
 6 time.
 7 That's one source, correct?
 8 A. It is a source that doctors may
 9 consider.
 10 Q. Okay, sir. That's one source?
 11 A. That they may consider.
 12 Q. Yes, sir, that's all I'm asking.
 13 Another one is the package insert?
 14 A. Yes, they may consider the package
 15 insert.
 16 Q. Another one is sales rep detailing?
 17 A. Yes.
 18 Q. Another one is journal advertisements?
 19 A. Yes.
 20 Q. Another one is detail pieces?
 21 A. Bear with me for a second. It doesn't
 22 say detail pieces.
 23 Q. Okay. Well, that's --
 24 A. Sales representative detailing is the
 25 phrase that I used, yeah.

1 Q. Okay. Well, fair? Detail pieces. You
2 think I'm being reasonable? I don't want you to
3 think I'm being unreasonable.

4 A. I guess that's what happens.

5 MR. BRENNER: Objection,
6 Your Honor, I have an objection on cumulative.
7 We covered this yesterday.

8 MR. ALLEN: No, we didn't.

9 THE COURT: I overrule the
10 objection.

11 Q. (BY MR. ALLEN) Then you said in your
12 report exchanges between colleagues, medical
13 literature, guidelines and algorithms and CME,
14 right?

15 A. Those actually came first.

16 Q. Yes, sir, I'm sorry. But they're all in
17 there?

18 A. They're all in there in an order, yeah.

19 Q. Yes, sir, I apologize. Okay.

20 Would you like to change your
21 answer in any regard? I want to give you --

22 A. No.

23 Q. I prepared a demonstrative diagram
24 myself last night. Now, Lilly, Answers That
25 Matter. You've seen documents in this case. I'm

1 sure when you reviewed documents that Lilly has
2 the Answers That Matter.

3 Did you not?

4 A. Sir, I don't recall seeing this.

5 Q. No, not this -- I just drew this last
6 night. There's no way you could see it.

7 A. I'm not familiar with a document called
8 Answers That Matter.

9 MR. ALLEN: Well, where are the
10 exhibits?

11 Q. (BY MR. ALLEN) Sir, they're too thick.
12 Would you assume with me that I'm not
13 misrepresenting a thing that Lilly has on many of
14 its documents the phrase Answers That Matters?

15 MR. BRENNER: Your Honor, that's an
16 improper question. Assume with me something --

17 THE COURT: Why don't you just
18 assume for the purposes of answering this
19 question --

20 MR. ALLEN: You know, what,
21 Your Honor, I don't want to quibble. We'll
22 strike out Answers That Matter, okay.

23 Q. (BY MR. ALLEN) We have Lilly. You see
24 that?

25 A. I see that.

1 Q. All right. Now, on this doctors'
2 sources of knowledge -- by the way, the doctor
3 then imparts that information down to the
4 patients and the family that he received, right?

5 A. Sir, you're getting to the end of the
6 story before you've outlined the beginning, and
7 this -- the drawing that you have bears no
8 relationship to anything that I've said.

9 Q. Okay. Well, it's kind of my job as a
10 lawyer to make this, and you tell me when I'm
11 wrong.

12 My question is: After your
13 doctors -- as your words, I think today,
14 assimilates and sifts through the information,
15 they then talk to the family and the patient,
16 right?

17 A. Sir, the drawing that you made bears no
18 relationship to my testimony or any opinion that
19 I've given.

20 MR. ALLEN: Your Honor, I -- can he
21 answer the question, please?

22 THE WITNESS: What's the question?

23 THE COURT: Go on.

24 Q. (BY MR. ALLEN) You testified that the
25 doctors -- and I don't have your exact words

1 here, sir, but I was sitting here -- standing in
2 this courtroom, and I said sources of information
3 and knowledge about treatment, right? Your
4 report has that in there, does it not?

5 A. I'm sorry. I was looking at your
6 drawing -- the question you just asked me. My
7 report has what in it? I was looking at the
8 drawing, so I didn't hear the sentence you just
9 stated.

10 Q. I think it's page 5 --

11 A. Yeah.

12 Q. -- it was about your opinions; it had
13 sources of information, right?

14 A. Yes.

15 Q. And then you had -- and I keep on
16 forgetting the phrase, doctors' knowledge about
17 treatment; is that correct?

18 A. That's correct.

19 Q. Okay. And then you told me -- I said,
20 what does that mean? And I think you said
21 something along these lines and we'll see in the
22 transcript if we have to, what doctors do is they
23 assimilate this information, they sift through
24 it, and then they advise the patient; is that
25 correct?

1 A. That's one description of the process.
 2 Q. Okay. Well, that's -- it was your
 3 description of the process, wasn't it?
 4 A. Yeah, something like that.
 5 Q. Okay. Right. And then we -- I went
 6 through and we listed the sources of doctors'
 7 information, did we not? These are them --
 8 guidelines --
 9 A. You've given it a graphic representation
 10 that has nothing to do with the way that I've
 11 described it.
 12 Q. (BY MR. ALLEN) Well, Your Honor -- I
 13 mean, Doctor, my job as a lawyer, I'm just going
 14 to -- CME was the source of that information,
 15 right?
 16 A. It is one source of many.
 17 Q. Yes, sir, it's one?
 18 A. Okay.
 19 Q. Yes, sir. CME is one; guidelines and
 20 algorithms are one; medical literature is one;
 21 exchanges between colleagues is one; detail
 22 pieces is one; journal advertisements is one;
 23 sales rep detailing is one; package insert is
 24 one; right?
 25 A. Well, sir, look, I'm not an artist but

1 your drawing -- I will stand by my testimony and
 2 not by your drawing. These are not equally
 3 weighted. They may not be equally important.
 4 This graphic --
 5 THE COURT: That's what you're
 6 disagreeing -- some doctors might not have -- the
 7 guidelines and algorithms might not be as
 8 important or known to some doctors, and that the
 9 detail pieces might be viewed with skepticism by
 10 some doctors, and some doctors might heavily rely
 11 on some pieces of information and not on other
 12 pieces of information. Is that why you're
 13 quibbling with the drawing?
 14 THE WITNESS: That begins to
 15 describe, Your Honor, exactly why I'm quibbling
 16 with the drawing. There are many doctors who may
 17 never see a detail person.
 18 Q. (BY MR. ALLEN) Sir, I'm talking about
 19 the universe of sources of information. Do you
 20 understand that?
 21 Have you ever talked to any doctor
 22 in Bethel?
 23 A. Where is Bethel, sir?
 24 Q. How about Wasilla? You ever talk to any
 25 doctor in Wasilla?

1 A. No.
 2 Q. How about in Ketchikan?
 3 A. No.
 4 Q. Fairbanks?
 5 A. No.
 6 MR. BRENNER: Are we going to go
 7 through every municipality in Alaska, Your Honor?
 8 MR. ALLEN: No, we're not.
 9 THE COURT: I don't think so.
 10 Q. (BY MR. ALLEN) And you're right, sir.
 11 Doctors may have different weights, they may look
 12 at things differently. We're just talking about
 13 the universe of doctors. These are some of the
 14 sources; these are ones that you put in your
 15 report, is it not?
 16 A. Sir, I'll stand by my testimony in the
 17 report that physicians' knowledge about treatment
 18 alternatives comes from numerous sources.
 19 Q. Can you read out for us, please, the
 20 numerous sources you list in your report?
 21 A. Yes.
 22 THE COURT: We're getting to asked
 23 and answered. Ask the --
 24 MR. ALLEN: He's arguing with me,
 25 Your Honor --

1 THE COURT: No, I think you've gone
 2 through the numerous sources many times.
 3 MR. ALLEN: Okay. I agree.
 4 Q. (BY MR. ALLEN) You agree that the
 5 company's responses to questions, sales rep
 6 detailing, journal advertisements and detail
 7 pieces are Lilly information, right?
 8 A. Yes, but many doctors may not pay
 9 attention to them, or if they pay attention,
 10 they'll sift it in relationship to other
 11 information that they see as well.
 12 Particularly peer-review journal
 13 articles, the advice of their colleagues,
 14 guidelines and algorithms that they may read,
 15 conversations that they have, grand rounds that
 16 they attend. Many, many sources of information,
 17 sir. Different doctors will weight these
 18 differently, respond differently, have different
 19 access to different sources of information.
 20 Q. Yes, sir. Anything else you want to
 21 say? Feel free. Anything else?
 22 A. No.
 23 Q. And by the way, is there anything that
 24 you want to add, subtract to or change from the
 25 testimony today that you've given?

1 A. No, sir.
 2 Q. Okay. You said they also get their
 3 information from peer-reviewed literature; is
 4 that right?
 5 A. They may, yep.
 6 Q. This is Eli Lilly's exhibit, 3801 in
 7 this case. Hard for me to get in, 3801.
 8 You see that?
 9 A. Yes.
 10 Q. Dr. Cavazzoni, Dr. Breier, and then
 11 Dr. Buse. Do you know who these people are?
 12 A. No.
 13 Q. Study was sponsored by Eli Lilly; do you
 14 see that?
 15 A. Uh-huh, yes, I do.
 16 Q. So back to my drawing, the medical
 17 literature, Eli Lilly has input in that, does it
 18 not?
 19 A. Into some of it, they do.
 20 Q. Yes, sir. Where's my pen?
 21 So Lilly is involved --
 22 A. You're making it appear that it's
 23 exclusively a source from Eli Lilly.
 24 Q. No, sir, I'm not. There's a lot of
 25 literature not written by Eli Lilly, isn't there?

1 A. Enormous amounts.
 2 Q. Yes, sir.
 3 A. The vast majority.
 4 Q. I didn't suggest that there wasn't. Eli
 5 Lilly, though, we've seen right here, is involved
 6 in the medical literature; isn't that true?
 7 A. One participant in funding research.
 8 Q. Right, and the sources of information.
 9 Now, AK10186 -- a call note the
 10 jury's seen -- back in November of 2001 to
 11 Dr. Duane Hopson.
 12 Do you see that?
 13 A. Yes.
 14 Q. And the sales rep -- I think it was
 15 Ms. Eski. It was. She's setting up another --
 16 possibly setting up another afternoon meeting,
 17 and possibly setting up another afternoon meeting
 18 and preparing data, or showing the PsychLink. He
 19 likes the PsychLinks for CME.
 20 You see that?
 21 A. Yes.
 22 Q. That's a source of information.
 23 CME. You listed in your report.
 24 Did you not?
 25 A. Yes.

1 Q. And it just appears right on the face of
 2 the call note, Lilly is involved in CME?
 3 A. As are many, many other sponsors;
 4 commercial, noncommercial, academic.
 5 Q. Yes, sir, I'm not arguing with that.
 6 I'm saying was Lilly involved in CME?
 7 A. Sir, I -- Lilly was involved in CME,
 8 yes.
 9 Q. Yes. Okay. Guidelines and
 10 algorithms -- this is your article, correct,
 11 which you said contains, well, here it is,
 12 guidelines; correct?
 13 A. Yes.
 14 Q. Eli Lilly is involved in funding that?
 15 A. Yes.
 16 Q. The only thing we're left with is
 17 exchanges between colleagues.
 18 Do you see that?
 19 A. Yes.
 20 Q. You know Eli Lilly is involved in that
 21 also, do you not?
 22 A. I'm not sure what you're referring to.
 23 Q. Well, don't you know Eli Lilly hires
 24 doctors, pays them money and has them go out and
 25 speak? Don't you know that?

1 A. Yes, from a speakers' bureau?
 2 Q. Yes, sir.
 3 A. I'm generally aware that pharmaceutical
 4 companies are able to do that.
 5 Q. Yes, sir. So Lilly's involved in that,
 6 right?
 7 A. Yes.
 8 Q. Now -- and by the way, all those sources
 9 of information are the ones you listed in your
 10 report, not me, right?
 11 A. Yes.
 12 Q. Is there any source of information that
 13 you list in your report that Lilly is not
 14 involved in?
 15 A. Well, my objection to your drawing, sir,
 16 is that it makes it appear that Eli Lilly is the
 17 sole source of information, and I profoundly
 18 object to the way that this has been graphically
 19 depicted. I think it's a complete distortion of
 20 what I said.
 21 MR. ALLEN: Your Honor, that was
 22 not my question.
 23 THE COURT: Well, I know it wasn't
 24 your question. But maybe I can help deal with
 25 the objection the doctor has to your -- can you

1 agree that when you're writing Lilly, you're not
2 contending Lilly is the only source for that
3 information?

4 MR. ALLEN: I can agree they're not
5 the only source of information in the
6 guideline -- let me rephrase it. I'll get it.

7 THE COURT: You've written Lilly in
8 red, can you agree?

9 MR. ALLEN: Yeah, I just did that
10 on accident.

11 THE COURT: If he agrees to that,
12 will that deal with what your concern is,
13 Doctor, about the graphic representation?

14 THE WITNESS: No, I think this is
15 just a gross distortion. You could just as well
16 add the National Institutes of Mental Health to
17 many of the arrows, the FDA to many of the
18 arrows, Columbia University, Harvard University,
19 Stanford, you know, you could add these all.
20 These are all places that help generate
21 scientific information, hypotheses, theories that
22 doctors take into account.

23 Q. (BY MR. ALLEN) Okay. Let's add the
24 FDA. You wanted to add the FDA, let's add the
25 FDA.

1 A. No, I'm talking about to many of these
2 arrows. I mean, this is an absurd diagram that I
3 think profoundly misrepresents the ways in which
4 doctors receive information. Lilly -- you know.

5 Q. Sir, you said we could add the FDA. I
6 just added the FDA.

7 A. No, I said to many of these arrows that
8 you already have shown, you make it appear that
9 Lilly is in control of the information that
10 doctors receive. It's a distorted picture.

11 Q. You added Harvard and Columbia, we'll
12 get to that in a second. You added FDA.

13 Lilly provides information to the
14 FDA, do they not?

15 A. Sir, you're distorting the process.

16 Q. Okay. You added Harvard and some other
17 schools, didn't you?

18 A. Sir, my point is that --

19 Q. Lilly gives them money, too, don't they?

20 A. Sir, in many of these arrows, including
21 exchanges between colleagues, medical literature,
22 guidelines and algorithm and you know, from my
23 nonexpert understanding, the role that the FDA
24 plays in approving materials that Eli Lilly
25 distributes, to those existing arrows, you could

1 add dozens of other contributors.

2 Q. Yes, you could. And every one you
3 mentioned, including medical schools and the FDA,
4 Lilly helps fund them too, don't they?

5 A. Many, many sources of funding contribute
6 to medical information. Lilly helps in some
7 aspects. I couldn't tell you how much, and to
8 what degree and what sources.

9 Q. Right. Now, talk about speakers. This
10 is an exhibit, 1145. When you looked at anything
11 that might possibly be relevant to this case,
12 however remote, do you remember this exhibit?

13 A. No.

14 Q. Okay. I think it was mentioned in the
15 deposition of Ms. Torres. This is an e-mail from
16 Anthony Fiola concerning Dear Affiliates, the
17 hyperglycemia diabetes documents contains new
18 information on diabetes speaker slides.

19 Do you see that?

20 A. Yes, I see that.

21 Q. And that's what you talked about
22 earlier, that Lilly hires and pays money to
23 doctors, prepares slides, and they go out and
24 give talks, right?

25 A. It is one source of preparation of

1 educational materials among many.

2 Q. Yes, sir. I'm not asking -- this is the
3 source I'm talking about now.

4 A. Yes.

5 Q. Paying doctors, preparing them slides.
6 You can read any part of this you want, sir.

7 I want to read this: To maximize
8 Zyprexa's success in the market -- do you see
9 that?

10 A. By the way, if we could just back up.
11 I'm sorry.

12 Q. Yes, sir, you can read -- ask the --

13 MR. ALLEN: Do we have an extra
14 copy of this?

15 A. The previous question that you asked me
16 doesn't say who prepared the slides.

17 Q. (BY MR. ALLEN) Okay.

18 A. So, I would -- if you asked me the
19 question implying that Lilly prepared the slides,
20 I have no knowledge of how the slides were
21 prepared. I don't know what this refers to.

22 Q. All right. We'll let other people have
23 to look at that and weigh the evidence --

24 MR. BRENNER: Your Honor, I object.

25 THE COURT: I prefer you don't make

1 comments about his testimony.

2 MR. ALLEN: All right. All right.

3 Q. (BY MR. ALLEN) March 30th, Eli Lilly
4 knew information on hyperglycemia/diabetes. Dear
5 Affiliates, the hyperglycemia/diabetes document
6 conveys new information on diabetes speaker
7 slides, global hyperglycemia market research,
8 global response document, a copy of the U.S. sale
9 sheet, hyperglycemia/diabetes standby statement.

10 Does that help you formulate an
11 opinion that we're talking about documents that
12 Eli Lilly has prepared in this Eli Lilly
13 document?

14 A. I'm sorry. I don't know anything about
15 the things that are referred to here. I don't
16 know who prepared them or what they are.

17 Q. Well, yes, sir. You -- but you -- in
18 your report you talk about weighing of benefit
19 and risk, and you told us yesterday quite clearly
20 it would be wrong and false and misleading for a
21 drug company to minimize, neutralize or attempt
22 to eliminate a risk. Remember you told us that?

23 A. A known risk.

24 Q. Does Zyprexa -- we're talking about
25 maximizing Zyprexa success in the market. The

1 Zyprexa safety subteam has actively been working
2 on this issue so that we can provide you
3 information to refute this issue effectively.

4 MR. BRENNER: Your Honor, I just --

5 Q. (BY MR. ALLEN) Did I read that
6 correctly?

7 A. Yes, you did.

8 THE COURT: Wait, we've got -- we
9 have an --

10 MR. BRENNER: I just have an
11 objection, Your Honor. There has to be a
12 question here.

13 THE COURT: Well, there was a
14 question. I mean, there needs to be a question
15 beyond did I read it, effectively --

16 MR. ALLEN: Oh, there's going to
17 be.

18 THE COURT: -- and I understand
19 there will be.

20 MR. ALLEN: Yes, sir.

21 Q. (BY MR. ALLEN) Well, first of all, did
22 I read this correctly?

23 A. Yes.

24 Q. Okay. And then they list the goals of
25 this subteam and the material they prepared.

1 Do you see the overall goals of the
2 team?

3 A. You said and the materials they
4 prepared. I don't know who prepared the
5 materials. I don't know what they are.

6 Q. Okay. They -- did they list overall
7 goals?

8 A. Yes.

9 Q. What's goal No. 1? Can you read it out
10 loud for the jury, please?

11 A. Stop hyperglycemia slash diabetes from
12 becoming a top ten attribute influencing
13 prescribing.

14 Q. So Eli Lilly wanted to stop
15 hyperglycemia/diabetes from becoming a top ten
16 attribute that would influence doctors regarding
17 prescribing.

18 That's what that indicates,
19 correct?

20 A. The letter says that. I don't know what
21 Eli Lilly intended because I don't know what the
22 document is, and I really can't comment on this.

23 Q. Yes, sir. Would you agree with me --
24 you knew about the consensus statement. You told
25 us -- well, here is what you said, actually.

1 You said you look in the adverse
2 reaction section. You remember testifying about
3 that yesterday?

4 A. Yes, I do.

5 Q. Now, we're going to talk about that in a
6 little while.

7 But as -- Lilly -- see, and this is
8 '98. Metabolic and nutritional disorders,
9 frequent weight loss.

10 Do you see that?

11 A. Yes.

12 Q. Was that a frequent adverse reaction of
13 Zyprexa? Weight loss?

14 A. Sir, it's stated in the package insert.

15 Q. Well, you said you rely upon it and
16 that's where you go.

17 So my question is: Was a frequent
18 adverse reaction to Zyprexa weight loss?

19 A. It states it in the package insert.

20 Q. Yes, sir, I know that.

21 A. Yeah.

22 Q. But I'm asking you as a doctor: Was
23 weight loss a frequent adverse reaction to
24 Zyprexa?

25 MR. BRENNER: Your Honor, yesterday

1 there was an objection that that was beyond his
2 expertise, that he couldn't talk about other
3 knowledge and other sources.

4 MR. ALLEN: Is that a speaking
5 objection, Your Honor?

6 MR. BRENNER: I apologize, Your
7 Honor.

8 THE COURT: That's okay.

9 MR. ALLEN: Well, He testified
10 about the adverse reaction section. He trains
11 his people --

12 THE COURT: Excuse me. Can we
13 approach?

14 MR. ALLEN: Yeah.
15 (Bench discussion.)

16 THE COURT: And if you're going to
17 comment on his making speaking objections, don't
18 make them back.

19 What's your objection?

20 MR. BRENNER: My objection, Your
21 Honor, is he was -- yesterday when I tried to
22 elicit testimony about what was in the field,
23 what was known, that was objected to and
24 sustained.

1 THE COURT: But I allowed him to
2 talk about his own personal experience. So if
3 you phrase the question as your own personal
4 experience, which I thought is what he was doing.
5 But make it clearer so then we can -- if the
6 question's rephrased, I'll allow it.

7 MR. BRENNER: Very good, Your
8 Honor.

9 (End bench discussion.)

10 Q. (BY MR. ALLEN) Was weight loss, in your
11 experience, a frequent adverse reaction of
12 Zyprexa?

13 A. In my own personal experience, no.

14 Q. Why is it in the package insert then?

15 A. I don't know.

16 Q. Well, we know, though, hyperglycemia is
17 in the adverse reaction section?

18 A. Yes, it is.

19 Q. And we have hypoglycemia. Aren't those
20 the opposite?

21 A. Yes, they are.

22 Q. In your personal experience, was
23 hypoglycemia a frequent adverse reaction of
24 Zyprexa?

25 A. No.

1 Q. We also have the flu syndrome.

2 Do you see that?

3 A. Yes.

4 Q. Was that, in your personal experience, a
5 frequent adverse reaction of Zyprexa? The flu?

6 A. No.

7 Q. We also have seborrhea, dermatitis, dry
8 skin, libido decrease, eye inflammation, dry
9 ears, ear pain, urinary incontinence.

10 Were those adverse reactions, in
11 your experience, of Zyprexa?

12 A. One of them that you listed was. Did
13 you list an ocular side effect?

14 THE COURT: It was eye pain.

15 A. No -- I'm sorry. Of the ones that you
16 rattled off, one of them is a side effect I've
17 seen often and the others no.

18 Q. (BY MR. ALLEN) Okay. Well, then -- so
19 if a doctor is about to prescribe the drug, we
20 have hypoglycemia and we have hyperglycemia,
21 don't we?

22 A. Yes.

23 Q. How are they supposed to determine from
24 this section whether the flu is right or --
25 gingivitis is down there. Was that a adverse

1 reaction of Zyprexa?

2 A. Yes, it's listed, sir.

3 Q. Yes, sir. But was it in your experience
4 an adverse reaction of Zyprexa?

5 A. Not that I've seen.

6 Q. Okay. You said weight loss wasn't.
7 I'll just ask one more. Let's see if I can find
8 one that --

9 Libido, did I say libido?

10 A. Oh, that's the one yes. Decreased
11 libido is frequently a side effect, yeah.

12 Q. Okay. All right. So, how about
13 vertigo?

14 A. Vertigo is a term referring to
15 dizziness, and, yes, I've seen dizziness with
16 Zyprexa.

17 Q. Okay. How about leg cramps?

18 A. Leg cramps, sometimes.

19 Q. Okay.

20 THE COURT: I thought you were only
21 going to ask one.

22 MR. ALLEN: All right.

23 Q. (BY MR. ALLEN) When a doctor looks at
24 all this list, how's he supposed to know which
25 one is and which one isn't?

1 A. Well, that's actually not the way
2 doctors use, you know, lists all the time. This
3 is a description of events that occurred during
4 clinical trials, is my understanding.
5 Q. Right.
6 A. And I'm not in a position to dispute
7 whether they occurred or didn't occur in the
8 clinical trials.
9 Q. Okay. Well, in fact, Ms. Eski, who is a
10 sales rep, testified that when a warning is given
11 in a package insert, it acts as an alert and they
12 go out and talk to the doctors.
13 Do you have any dispute with that?
14 A. Sir, again, I'm not an expert in
15 labeling, so I can't offer any opinion on Ms.
16 Eski's testimony.
17 Q. Okay. You did offer opinions about
18 sources of information.
19 A. Yes.
20 Q. Position: To meet our goals, we must
21 continue to drive our position around this issue
22 in the minds of our customers. All of the
23 strategy elements and all of the tactics need to
24 be consistent with this position.
25 What's the position listed, sir?

1 A. Sir, listen, I don't know the context of
2 this document, so by saying what the position is
3 I'm not sure that what you asked me to read would
4 be their position. I simply don't know what this
5 is. I don't know the context. I don't know how
6 it's constructed, who it was by or what it was
7 for.
8 Q. Sir, and my question is: Can you please
9 read out loud for the jury the position of Eli
10 Lilly?
11 A. You can point to the line. I don't know
12 what Eli's -- Eli Lilly's position was, and I
13 don't know who this document represents.
14 Q. Yes, sir. You've made that clear.
15 Can you just read out loud for the
16 jury, please, the position of Eli Lilly?
17 A. I don't know that this is the position
18 of Eli Lilly, so I won't read it under that
19 perception.
20 THE COURT: Can you read the line
21 where it says, "Position"?
22 THE WITNESS: The position -- but,
23 again, I don't know whose position it is or what
24 it means.
25 THE COURT: That's clear.

1 THE WITNESS: I will read the line
2 that says, Position: Diabetes/hyperglycemia may
3 occur in patients taking antipsychotics and/or
4 mood stabilizers, including Zyprexa, at
5 comparable rates with the possible exception of
6 clozapine.
7 Q. (BY MR. ALLEN) Comparable rate.
8 A. Yes.
9 Q. What's that mean?
10 A. It means that there is this side effect
11 of diabetes or hyperglycemia, and that it may
12 occur in patients that are taking antipsychotics
13 or mood stabilizers, and that it can be seen in
14 patients taking Zyprexa, and that it may be seen
15 as well in other antipsychotics or mood
16 stabilizers at comparable rates.
17 Q. Right. We know -- we know that Eli
18 Lilly gave the comparable rates message here in
19 Alaska, don't we?
20 A. I don't know the answer to that
21 question.
22 Q. Well, Alaska 10 -- 10186. Dr. Hopson
23 back in -- he was in Fairbanks in November, 2001,
24 they gave him the comparable rates message, did
25 they not?

1 A. I don't know that, sir.
2 Q. Okay, sir. Let's talk about weight
3 gain.
4 You gave opinions in your report
5 and in your article on weight gain, did you not?
6 A. In my re -- in my article. You're
7 referring to the practice guidelines or --
8 Q. Talks about weight gain, does it not?
9 A. Before I answer the question, I'd just
10 like to be sure I know what you're referring to.
11 Q. Your -- I think -- the 1999 Treatment of
12 Schizophrenia Expert Consensus Guideline Series.
13 A. Yes, yes.
14 Q. Okay. Does Zyprexa cause weight gain?
15 A. Zyprexa is associated with weight gain.
16 Q. Yes, sir.
17 A. It's a side effect.
18 Q. No, sir, that wasn't my question.
19 A. Oh, does Zyprexa cause weight gain?
20 Q. Yeah, does it cause it?
21 A. Yes, Zyprexa causes weight gain.
22 Q. All right. Zyprexa causes weight gain.
23 What is it about the pill Zyprexa
24 that causes weight gain?
25 A. I don't know.

1 Q. Okay. You know the pill causes it?
 2 A. Yes.
 3 Q. And, in fact, I don't know if you
 4 reviewed this. It's Exhibit 1453, and I'm not
 5 going to pull it back out, but Eli Lilly knew
 6 that normal patients who were not schizophrenics
 7 who were put on Zyprexa, they gained weight.
 8 Did you know that?
 9 A. I didn't know that.
 10 Q. You did not know that?
 11 A. No.
 12 Q. 1453 also says that animals on fixed
 13 diets, they can't eat any more calories. You
 14 know what that means.
 15 A. Yes.
 16 Q. They also gained weight. Did you know
 17 that?
 18 A. Didn't know that.
 19 Q. How is it that Zyprexa can cause weight
 20 gain in animals on fixed diets?
 21 A. I don't know biochemically why it causes
 22 it, but so be it.
 23 Q. It's a metabolic response, right?
 24 A. Sir, I don't know the mechanism.
 25 Q. Okay. You just know it causes it?

1 A. It causes it in some individuals, yes.
 2 Q. Okay. The pill causes it. The pill
 3 causes weight gain.
 4 A. In some individuals.
 5 Q. Yes, sir. That's --
 6 A. Yeah.
 7 Q. So Eli Lilly shouldn't be out telling
 8 doctors the pill doesn't cause weight gain,
 9 should they?
 10 A. I'm not aware that they did.
 11 Q. Okay. But my question is: Eli Lilly
 12 should not be out telling doctors the pill does
 13 not cause weight gain, should they?
 14 A. Sir, it -- I'm not aware that they said
 15 that to anybody.
 16 Q. Sir, you're going to see some of it in a
 17 minute, but my only question is: Eli Lilly
 18 should not be out telling doctors the pill does
 19 not cause weight gain, should they?
 20 A. Correct.
 21 Q. And to do so would be false, deceptive
 22 and misleading, true?
 23 A. Yes.
 24 Q. Why would it be false, deceptive and
 25 misleading --

1 A. Because --
 2 Q. -- to tell doctors that the pill doesn't
 3 cause weight gain?
 4 A. Because in some patients it does appear
 5 to be associated with weight gain.
 6 Q. Well, sir, you changed the word again.
 7 You've already told us it causes it, right?
 8 A. Well, it's certainly a side effect. You
 9 know, again, if we're getting to a level of
 10 technicality here, it's a known side effect of
 11 Zyprexa.
 12 Q. Well, sir, the testimony -- let's look
 13 at what the testimony is.
 14 A. Yeah.
 15 Q. There it is. One more thing before I
 16 get to these documents.
 17 False, deceptive, misleading. Now
 18 we're going to go to, I learned it in medical
 19 school. Do you remember saying that? I learned
 20 it in medical school?
 21 A. Yes.
 22 Q. M-E-D is going to mean medical; is that
 23 all right?
 24 A. Sure.
 25 Q. Those were your words, right?

1 A. With respect to?
 2 Q. Weight gain.
 3 THE COURT: Ask him the question.
 4 Q. (BY MR. ALLEN) Do you recall telling
 5 Mr. Brenner -- you all were actually talking
 6 about the package insert and you were talking
 7 about the adverse reactions section and he said:
 8 Did you know about weight gain?
 9 Do you recall that?
 10 A. Did I know about weight gain as a side
 11 effect? Yes.
 12 Q. And you said, did you know about -- I
 13 think, and I'm paraphrasing, sir. I can't get it
 14 exactly, but see if you recall this.
 15 He said: Did you know about the
 16 side effects of weight gain?
 17 A. Yes.
 18 Q. And then you said --
 19 A. Well, the side effects of weight, the
 20 consequences or the associated, you know,
 21 problems that occur with weight gain.
 22 Q. Okay. Consequences, that's a good word.
 23 A. Sir, don't take my words out of context.
 24 We can go back, you know -- the associated
 25 problem with weight gain.

1 Q. Did you learn about the consequences of
2 weight gain in medical school?

3 A. I learned about the problems associated
4 with weight gain in medical school.

5 Q. The problems. Did you learn about the
6 sequelae of weight gain?

7 A. I learned about the problems associated
8 with weight gain.

9 Q. And a different question. Did you learn
10 about the sequelae of weight gain?

11 A. Sir, I don't recall precisely what words
12 would be connected, but I learned about the
13 problems associated with weight gain.

14 Q. What does sequelae mean in medicine?

15 A. I don't have a precise definition
16 available to me, but sequelae generally means
17 things that happen in association with each
18 other.

19 Q. Okay. Now, I never got it clear what it
20 is you learned about weight gain in medical
21 school. Tell us what you learned about weight
22 gain in medical school.

23 A. Weight gain is a health problem that has
24 a number of associated other health issues that
25 occur, and these include arthritis.

1 Q. Yes, sir.

2 A. Back pain.

3 Q. Yes, sir.

4 A. Hypertension, heart disease.

5 Q. Okay. Almost through. Did you say
6 hypertension?

7 A. Hypertension.

8 Q. That's high blood pressure?

9 A. That's right.

10 Q. Okay. I can draw an arrow up like that
11 and put --

12 A. Sure. BP, yep.

13 Q. -- BP?

14 I think you said --

15 A. Heart disease.

16 Q. Heart disease. I'm going to put D-X for
17 disease --

18 A. Sure.

19 Q. -- is that all right?

20 A. Elevated blood sugar.

21 Q. I'm going to put elevated sugar.

22 A. Elevated lipids and cholesterol.

23 Q. What else?

24 A. I could keep going. A list of things.

25 Sleep apnea is seen in people who have weight

1 gain.

2 Q. What about diabetes?

3 A. As -- within the set of problems
4 associated with high blood sugar.

5 Q. So you knew that in college? Or not
6 college, medical school?

7 A. Yes.

8 Q. All right. How much weight gain was
9 associated with Zyprexa?

10 A. In the package insert it describes over
11 approximately an eight-month period -- I think
12 it's 238, 234 days, I forgot precisely how
13 much -- patients gained, I think the figure is
14 5.4 kilograms.

15 Q. Eleven pounds?

16 A. About 11, 12 pounds.

17 Q. Okay. Now, I'm looking in this adverse
18 reactions section. And we actually had -- Dr.
19 Inzucchi testified -- you saw him testify, didn't
20 you?

21 A. Yes, a portion of his testimony.

22 Q. He testified under oath for this company
23 that Zyprexa does not cause diabetes. Were you
24 here for that?

25 A. Yes.

1 Q. But we know, according to you, it causes
2 weight gain, right?

3 A. Yes.

4 Q. Therefore, it causes diabetes, doesn't
5 it?

6 A. No.

7 Q. Well --

8 A. We don't know the cause of diabetes.

9 Q. Oh, you don't. Matter of fact, you say
10 that in your article when you're discussing
11 another topic. Do you recall saying that in this
12 article? You're not even discussing -- you
13 remember that?

14 A. No.

15 Q. I'll show it to you later.

16 Well, would it be proper and
17 appropriate -- let me ask this: Would it be
18 misleading for Eli Lilly to go around and try to
19 unlink the connection between weight gain and
20 diabetes?

21 A. Unlink is an awfully broad term.

22 Q. What's it mean to you?

23 A. I'm not sure what you mean by it, sir.

24 Q. Yes, sir. And I -- what we're going to
25 do here today is I'm going to use words and if

1 you don't understand it, you ask me, and I'm
2 going to give you the right to use whatever
3 definition you would like.

4 What's unlink mean to you, sir?

5 A. Sir, you're asking me the question. I'd
6 like to answer your question.

7 Q. Yes, sir, I know, but that's not the way
8 things work.

9 THE COURT: Doctor, what he's
10 willing to do is if you don't understand what he
11 means by something, he'll use whatever definition
12 you use to answer the question. So he's asking
13 you what unlink means, and then he's going to
14 say, using your definition and he's going to ask
15 another question.

16 THE WITNESS: Right. What concerns
17 me is that if he's asking me if Eli Lilly did
18 something and I don't know what he means by what
19 they did, I can't answer the question.

20 Q. (BY MR. ALLEN) Sir, with all respect,
21 and I mean all respect, we're going to go a
22 question at a time. And isn't it your response
23 when you said I'm going to tell the truth, the
24 whole truth and nothing but the truth so help me
25 God --

1 MR. BRENNER: Objection, Your
2 Honor.

3 THE COURT: Yeah. That's -- that's
4 -- Doctor, we will go a question at a time, and
5 if you don't understand a question or you can't
6 answer a question, it's your right to say I can't
7 answer the question, explain why, and then if Mr.
8 Allen can clarify or do other things, he will.
9 But --

10 THE WITNESS: Precisely what I
11 meant, sir.

12 Q. (BY MR. ALLEN) Okay. What does unlink
13 mean to you?

14 A. Look, in this context, I have no idea
15 what you mean.

16 Q. Okay. Well, then let me try and see if
17 this helps and we'll come up with a definition
18 together. I'm not a very good artist.

19 I think about a link as a chain
20 with links in it, do you not? Links of a chain?

21 A. That's one way to think of the term.
22 That's a concrete definition.

23 Q. Is there any other way? Any other way
24 to think of the term unlink? That's what I'm
25 asking. You can give any definition you want.

1 A. Unlink can -- if you're talking about a
2 causal chain?

3 Q. Yeah.

4 A. Is that what you're asking me?

5 Q. Yes, sir. I said you can use anything
6 you want, and I just said yes. Let's call it a
7 causal chain.

8 A. Okay.

9 Q. Let's call it a causal chain. I'm going
10 to use whatever words you want.

11 A. Okay.

12 Q. And if you unlink that chain, you would
13 -- what it clearly means is you take the chain
14 that was that long and you unlink it, it's no
15 longer together, right?

16 A. Correct.

17 Q. All right. That's what I thought unlink
18 meant.

19 A. Okay.

20 Q. And you've told us from med school you
21 knew there was a link between diabetes and weight
22 gain, right?

23 A. That there is an association.

24 Q. Okay. An associative link; is that
25 right?

1 A. Association.

2 Q. Okay. Well --

3 A. We've defined link differently.

4 Q. All right. Well, we'll see.

5 Have you read -- when you asked for
6 anything that possibly might be relevant, did you
7 -- I got it out of focus, hold on.

8 Did you read Exhibit 1901, AK1901,
9 that's in evidence in this case?

10 A. Not that I can recall.

11 Q. Do we have an extra copy of this? I'll
12 give it to you. Mr. Noesges was in here earlier.
13 Do you know -- he was here, he's left. He's the
14 -- and I'm paraphrasing the title. He at one
15 time was in charge of the western region for
16 Zyprexa.

17 Did you meet Mr. Noesges?

18 A. I've met him briefly.

19 Q. Where?

20 A. Here this morning in the courtroom.

21 Q. Okay. He testified that they trained
22 the sales representatives to have the same
23 training in Alaska and across the country.

24 Does that make sense to you?

25 A. I have no comment.

1 Q. No comment. All right. And Ms. Eski
2 said that they had resource guides -- she
3 testified under oath they have resource guides
4 and things called implementation guides that
5 train the sales reps what to say.

6 Do you know anything about that?

7 A. No.

8 Q. Of course, these would be the sales reps
9 that you listed as one of the sources of
10 information, right?

11 A. Yes.

12 Q. And Ms. Torres has testified distinctly
13 that they're the people that are going to bring
14 information to the customers, right?

15 A. Yes.

16 Q. All right. Turn to page 2 of this
17 document, sir.

18 A. Yes.

19 Q. We're going to look at Eli Lilly's
20 strategy. You see strategy?

21 A. Yes.

22 Q. Eli Lilly, second paragraph: Our goal
23 is to continue to drive new patient starts on
24 Zyprexa, keep patients on therapy longer and to
25 ensure the appropriate dose is utilized. In

1 Q. All right. Now, would it be -- and you
2 testified it would be false, deceptive and
3 misleading to try to neutralize a possible side
4 effect, correct?

5 A. Well, sir, it says to neutralize the
6 hyperglycemia/diabetes issue, health physicians
7 manage weight gain. Doesn't look like they're
8 denying it to me.

9 MR. ALLEN: Objection;
10 nonresponsive, Your Honor.

11 THE COURT: Yeah. Listen to the
12 question --

13 A. I can't give you an opinion on this
14 document, because, clearly there's a context of
15 this that I'm not an expert in.

16 Q. (BY MR. ALLEN) Sir, I'm not asking you
17 for an opinion about this document.

18 Can you lay the document to the
19 side?

20 A. Yes.

21 Q. It would be false, deceptive, and
22 misleading to try to neutralize a doctor's view
23 of hyperglycemia and diabetes as it relates to
24 the drug Zyprexa, true?

25 A. It's a very broad statement. What I

1 order to maximize this effort, we must neutralize
2 the hyperglycemia/diabetes issue.

3 Do you see that?

4 A. Yes.

5 Q. And that's the very thing you told us
6 yesterday and this morning would be false,
7 deceptive and misleading, right?

8 A. I used the word neutralize with
9 reference to neutralizing or denying element of a
10 risk or a side effect.

11 Q. I thought you told me what's an adverse
12 reaction is a risk or side effect.

13 A. That's right.

14 Q. Okay. Whatever your testimony, at
15 least, hyperglycemia and diabetes is in here,
16 right?

17 A. Yes.

18 Q. And you actually told me that doctors
19 need to know about possible side effects.
20 Remember?

21 A. Yes.

22 Q. Okay. Well, using all of your own
23 definitions, diabetes and hyperglycemia would be
24 possible side effects of Zyprexa, true?

25 A. That's right.

1 testified is it would be false and misleading to
2 neutralize -- it's to deny a fact. Neutralize in
3 the sense of denying that something is a side
4 effect.

5 Q. Possible side effects, you said that in
6 your report?

7 A. To deny that something is a side effect.

8 Q. And you said possible side effects?

9 A. A known side effect that an individual
10 may possibly experience was what I explained my
11 phrase meant.

12 Q. Okay. So -- let me ask this, and then
13 we'll move on to the next point.

14 Are you changing any of the
15 testimony that you gave me earlier this morning?

16 A. No. What I explained earlier this
17 morning, possible side effect means a known side
18 effect that an individual patient might
19 experience.

20 Q. No, sir. I was standing right over
21 here --

22 A. Yes.

23 MR. BRENNER: Your Honor, I think
24 we're just arguing.

25 THE COURT: Ask a question.

1 Q. (BY MR. ALLEN) I was standing right
2 over here and I said it would be wrong to make a
3 patient wait 20 years, didn't I?

4 A. Sir, what I said was that if there is a
5 known side effect that a patient may possibly
6 experience.

7 Q. Okay. Let me ask you a new way.

8 Is diabetes and hyperglycemia a
9 known side effect that patients might possibly
10 experience?

11 A. Yes.

12 Q. Okay. So, therefore, it would be wrong
13 to neutralize the hyperglycemia/diabetes possible
14 side effect, wouldn't it?

15 A. Look, again, I hate to quibble with you,
16 but neutralize a side effect is a phrase that I
17 described to you what would be wrong. It would
18 be wrong to deny that the side effect exists.

19 Q. Oh, okay. Let's look at message point
20 2.

21 A. This says it would help patients manage
22 their -- help doctors manage their patients'
23 weight gain.

24 Q. Sir, do you want to say anything else?

25 A. No.

1 Q. I mean I want you to have full
2 opportunity. You can look at this jury and tell
3 them anything you would like to tell them.

4 MR. BRENNER: Your Honor.

5 THE COURT: No.

6 Q. (BY MR. ALLEN) Now, sir, why don't we
7 turn to page 3. Message point. We've heard
8 testimony in this trial from Mr. Michael Bandick,
9 among others, and I think Mr. Jordan, a message
10 is something we communicate to an audience.

11 Do you know what a message is?

12 A. I'm sorry, sir. I was just looking at
13 the document when you asked me the question.

14 Q. Yes, sir. Do you know what a message
15 is?

16 A. Sure.

17 Q. What's a message?

18 A. It's a point of view.

19 Q. Point of view. This is Lilly's point of
20 view, because this is a Lilly document, right?

21 A. Yes. I presume this is a Lilly
22 document.

23 Q. Yes, sir. As long as I'm telling you
24 the truth, that this is a Lilly document, will
25 you just accept that?

1 A. Where within Lilly? Again, I don't know
2 the context of this document, what was done with
3 it, who it was produced for. I just want to make
4 that clear.

5 Q. I actually do, sir. This is a Resource
6 Guide and Ms. Eski testified and sworn under oath
7 she testified that Resource Guides --

8 THE COURT: I mean, he doesn't know
9 and you're telling him doesn't make it true. The
10 jury has heard the testimony, and the jury will
11 be able to decide where the document came from.

12 Q. (BY MR. ALLEN) I'll move forward.

13 Message point, many physicians
14 think there is a logical link between weight gain
15 and diabetes.

16 You see that?

17 A. Yes.

18 Q. You're in that group, are you not?

19 A. That there's an association, yes.

20 Q. That's right. I want to go with a
21 logical link. Are you in that group of a logical
22 link?

23 A. You know, I prefer to use the precise
24 term. I'm in the group that knows that there's
25 an association between weight gain and diabetes.

1 Q. Okay. Many physicians think there's a
2 logical link between weight gain and diabetes.
3 In market research, we see that many of them even
4 use those two words interchangeably. We believe
5 it is essential to weaken this link in order to
6 neutralize the diabetes and hyperglycemia issue.

7 Do you see that?

8 A. Yes, I do.

9 Q. It appears just from the plain English
10 Eli Lilly was trying to break the chain of
11 association or causation between Zyprexa and
12 weight gain and diabetes, true?

13 THE COURT: Do you have an
14 objection?

15 MR. BRENNER: Maybe we can
16 approach, Your Honor.

17 THE COURT: Please.

18 (Bench discussion.)

19 MR. BRENNER: All we're doing is
20 having the witness read the statement and then
21 comment on Lilly's intent --

22 THE COURT: He's asking him whether
23 he agrees with whether it would be wrong and
24 inappropriate and false and misleading, and he's
25 got to read the statement before he can answer.

1 MR. BRENNER: I think the question
2 that was asked -- what did Lilly believe. I
3 don't think this witness can comment on corporate
4 intent.

5 THE COURT: Right. That's a fair
6 question. Why don't you go to what he believes
7 rather than what Lilly believes.

8 (End of bench discussion.)

9 Q. (BY MR. ALLEN) Do you think it's fair
10 to try to break the logical link between weight
11 gain and diabetes?

12 A. Sir, again, let me say again, you know,
13 without knowing the full context of this, it
14 seems to me that they're talking about
15 specifically here with respect to Zyprexa and not
16 as a general medical principle.

17 Q. Well, let's go back to the pill causes
18 weight gain.

19 You remember telling us that?

20 A. Yes.

21 Q. There's no doubt -- let me see here.

22 MR. ALLEN: Do you want to take a
23 break, Your Honor? I don't know what time it is.

24 THE COURT: It's 10:00. We can
25 take a break or take a break in a few minutes.

1 Between 10:00 and 10:30 is when I like to take
2 the first break. When you get to a convenient
3 point, let me know.

4 MR. ALLEN: Okay. I have to get
5 this from Ms. Rivers. While we're doing that,
6 I'll get an exhibit number in a minute. We
7 didn't --

8 You have it?

9 Thank you.

10 Q. (BY MR. ALLEN) Sir, we admitted
11 yesterday into evidence, yesterday morning,
12 Alaska AK10205, which are call notes of actual
13 discussions between the sales representatives
14 here in Alaska with the doctors here in Alaska.

15 Have you reviewed any of those?

16 A. No.

17 Q. Okay. But, again, as you've said, we
18 started the day with, these are sources of
19 information that act as a knowledge of treatment
20 options and treatment, right?

21 A. They're one source of information that
22 physicians may take into account.

23 Q. Yes. Now, you told us that the pill
24 causes weight gain, right?

25 A. Yes, in some patients.

1 Q. Yes. Well, this is a call note in 2002
2 on -- again, I'll try to focus.

3 And the sales representative is
4 Kristen, I'm going to say Clouthier -- or
5 Clouthier? Do you see that?

6 A. Yes, I do.

7 Q. She's calling on a doctor here in
8 Anchorage. She's doing that on June the 27th,
9 2002, right?

10 A. Yes.

11 Q. We've learned from Dr. Hopson and
12 others, the name of the doctor is right here,
13 Madeline Grant.

14 You see that?

15 A. Yes, I do.

16 Q. Okay. Now, in this call it says: Pam
17 Engle was concerned about weight gain.

18 We've heard that doctors have, what
19 do you call it? The nurses and nurse
20 practitioners. You understand that?

21 A. Yes.

22 Q. Matter of fact, are you called upon by
23 detail personnel for drug companies?

24 A. No.

25 Q. Oh, you're not?

1 A. No.

2 Q. Why not?

3 A. I work at a medical center that
4 discourages unsolicited visits by detail people.

5 Q. Why is that?

6 A. I don't know. Safety, security. Just a
7 policy of the medical center.

8 Q. So, really, you personally don't have
9 any experience with detail people?

10 A. I have some experience.

11 Q. How?

12 A. I sometimes call them to get information
13 or literature.

14 Q. Why do you call them?

15 A. When a new product comes out and I want
16 to see the package insert, for example.

17 Q. Anything else?

18 A. That's the main reason.

19 Q. Okay. Can't you get the package insert
20 out of the PDR?

21 A. Well, when something is brand-new, the
22 PDR is often quite out of date.

23 Q. That's a good point. I thought you
24 could get it on the web on WebMD.

25 A. Yes, but sometimes when a new product

1 comes out I'll want to get information from the
2 company about it.

3 Q. Right. That's what I thought. Why are
4 you calling them? What information are you
5 looking for?

6 A. They can provide literature reviews,
7 they can provide medical letters. From time to
8 time, I'll call a company representative to get
9 information about the product.

10 Q. They're not only a source of
11 information, they're a very valuable source of
12 information, right?

13 A. I didn't say that.

14 Q. Pam Engle was concerned about weight
15 gain for Zyprexa patients, but we discussed
16 proper diet and the fact that if patients are
17 feeling better, perhaps they will be able to
18 actually exercise. Did I read that correctly?

19 A. Yes.

20 Q. Also discuss the mechanism of Zyprexa,
21 and that the drug does not cause weight gain. Do
22 you see that?

23 A. Yes.

24 Q. That's false, deceptive and misleading,
25 is it not?

1 A. I would disagree with the statement.

2 Q. Yes, sir. Not only disagree, you said
3 the pill does cause weight gain. So therefore,
4 to tell somebody that the drug does not cause
5 weight gain would be false, deceptive and
6 misleading; true?

7 A. Well, it's funny because she says in
8 here that there's weight gain in Zyprexa patients
9 and they need to do things to help lose weight so
10 I'm not quite sure what this meant or what she
11 meant.

12 Q. Yes, sir. I'm just reading and writing
13 the English language. Also discussed the
14 mechanism of Zyprexa, and that the drug does not
15 cause weight gain. What's that mean to you?

16 MR. BRENNER: Your Honor, could we
17 read the entire sentence?

18 MR. ALLEN: Sure. We're going to
19 read it.

20 THE COURT: That's fair.

21 Q. (BY MR. ALLEN) The drug does not cause
22 weight gain, but it increases the patient's
23 appetite.

24 Do you see that?

25 A. Yes.

1 Q. Okay. Now, we'll talk about that in a
2 minute.

3 You said the pill causes weight
4 gain. Remember, the pill causes weight gain?

5 A. Yes, in some patients.

6 Q. That's what you said. So, isn't it true
7 that when they told a doctor that the drug does
8 not cause weight gain, that was false?

9 A. Sir, this isn't a transcript of a
10 meeting, and it's clear from the context of the
11 sentence that the salesperson acknowledged that
12 the patient had an increase in weight because
13 they were taking Zyprexa. So, I don't know what
14 she meant.

15 Q. Oh, you don't?

16 A. I really don't know what she meant.

17 Q. Well, I thought we saw and I thought
18 that you agreed that the pill caused weight gain
19 and we see it occur in normal patients, we've
20 seen it can occur in --

21 MR. BRENNER: Objection; asked and
22 answered.

23 THE COURT: Yeah, move on.

24 Q. (BY MR. ALLEN) Let's go to the next
25 call note with Pam Engle. Right here. It's in

1 there again.

2 Do you see that?

3 A. Yes.

4 Q. If I asked you: Does the pill cause
5 weight gain, your answer is yes, isn't it?

6 A. Yes.

7 Q. Thank you, sir. Now.

8 MR. BRENNER: Objection,
9 Your Honor.

10 Q. (BY MR. ALLEN) The position on weight
11 gain is in document 1110.

12 Did you review this when you asked
13 for anything possibly relevant to this case?

14 A. Not that I can recall.

15 Q. Well, you said you had three volumes of
16 marketing material. I'm trying to figure out
17 what you had.

18 A. Sir, that was in preparation for the
19 report that was written a year ago, and it's
20 impossible to remember everything that I have
21 read in preparation.

22 Q. Have I showed you one document that
23 you've read so far?

24 A. Sir, it's impossible to recall

25 everything that I saw over a year ago.

1 Q. All right. Issues, management planning.
2 Our position, weight gain can occur with Zyprexa
3 as with other antipsychotics and mood
4 stabilizers.

5 A. Yes.

6 Q. For most patients this can be managed,
7 allowing them to receive the overwhelming
8 benefits Zyprexa offers, right?

9 A. Yes.

10 Q. So, I guess that Risperdal, Seroquel,
11 and I'm going to abbreviate that SQ.

12 A. Yes.

13 Q. Geodon, Abilify causes the same amount
14 of weight gain as Zyprexa; is that right?

15 MR. BRENNER: Your Honor, can we
16 restrict that to the doctor's experience?

17 THE COURT: No, given a article
18 that he wrote.

19 Q. (BY MR. ALLEN) So I guess all these,
20 Risperdal, Seroquel, Geodon, Abilify cause the
21 same amount of weight as Zyprexa?

22 A. Not necessarily.

23 Q. They don't, do they? They just flat
24 don't, do they?

25 A. No.

1 Q. Then, why are they going out with a
2 position that says weight gain can occur with
3 Zyprexa as with other antipsychotics, for most
4 patients it can be managed, allowing them to
5 receive the overwhelming benefits. Do you know
6 why?

7 THE COURT: Again, to ask him why
8 Lilly does something is -- he's made clear that
9 he doesn't know what Lilly did or didn't do. And
10 so --

11 MR. ALLEN: Your Honor, he's also
12 made clear that he reviewed marketing documents.
13 I have to test that.

14 THE COURT: But you've already
15 established that he didn't review this one.

16 Q. (BY MR. ALLEN) Sir. What's a
17 rationale, please, sir? A rationale?

18 A. A reason.

19 MR. BRENNER: Objection,
20 Your Honor. That's not the word.

21 Q. (BY MR. ALLEN) Rational. I'm going to
22 call it rational but I'm thinking it's a
23 misspelling. But we'll just say rational.

24 MR. BRENNER: Your Honor, can we
25 approach?

1 THE COURT: You may.
2 (Bench discussion.)

3 MR. BRENNER: That may be a typo,
4 and Mr. Allen can't testify to that in front of
5 the jury.

6 THE COURT: The jury has been
7 advised and I'll advise them again at the end of
8 the trial that his questions aren't evidence.
9 This --

10 MR. BRENNER: The problem with the
11 documents -- read them as they're written.

12 THE COURT: The document is what
13 the document says.

14 MR. ALLEN: No problem.
15 (End bench discussion.)

16 THE COURT: Yeah, let's take a
17 15-minute break. Ladies and gentlemen, we're
18 going to take our first break of the day, and
19 we'll be in recess until about 10:30.

20 We'll be off record.

21 THE COURT: Off record.

22 (Break.)

23 (Jury out.)

24 (Break.)

25 THE COURT: Please be seated.

1 We received a communication from
2 one of the jurors, and just so the record is
3 clear, my understanding is that a remark was made
4 to Mr. Borneman by the juror. I asked the
5 juror if she would -- I asked that the jurors be
6 brought back. I told Mr. Borneman to tell the
7 juror to put it in a note. The note reads the
8 call note with Pam Engle and Dr. Grant are
9 physicians at the health center I work at,
10 Anchorage Neighborhood Health Center. Does this
11 create a problem? And it's signed by Ms. Sand,
12 who is juror No. 11.

13 So what I would propose is that we
14 bring in Ms. Sand outside the presence of the
15 rest of jurors and make sure it doesn't create a
16 problem.

17 MR. FIBICH: Well, Your Honor, I
18 respectfully would disagree with the Court. I
19 don't think it creates a problem. I think you
20 can cure this with an instruction to her that she
21 is to decide the evidence in this case based on
22 the evidence in the courtroom and not consider
23 anything else. But to bring her in and put her
24 under the microscope I think is inappropriate. I
25 mean, obviously she's a conscientious juror

1 because she brought it up to us. That was not
2 something that she was required to do under any
3 rule. But I think focusing on it is going to
4 exacerbate the problem.

5 THE COURT: Well, I may end up
6 giving an instruction, and it may be that I can
7 cure it or it may be I don't have anything that I
8 need to cure, but until I make a record I don't
9 think I can know.

10 MR. ALLEN: I think it ought to be
11 done back in your chambers as the other issue.
12 We don't need to do this here.

13 THE COURT: I don't have any
14 problems with that.

15 MR. ALLEN: And I think you should
16 be the one to talk to her and not anybody else.
17 It's not voir dire.

18 MS. GUSSACK: Your Honor, for
19 Lilly, I think that the fact that the juror
20 raised it plainly makes it a concern that needs
21 to be explored. And I would appreciate receiving
22 a copy of the call note that is being referenced
23 by the juror so that we can follow along about
24 what her concern is or that what she's focusing
25 on. But certainly to the extent that she

1 believes that she has a connection with any of
2 the participants in that call note, I think it is
3 something that needs to have some inquiry about
4 and a record created.

5 MR. ALLEN: Well, let me say, Your
6 Honor. At the start of the trial, you asked the
7 people who they know and who they don't know.

8 THE COURT: That was based on
9 witnesses and I recognize these people are not
10 witnesses. That may be significant or it may not
11 be significant.

12 At this point all I have is a note,
13 and this all may be a tempest in a teapot, and it
14 may be something extremely significant. And I
15 have no idea until I talk to -- until we talk to
16 the juror.

17 MR. ALLEN: Yes, sir. I just point
18 out in the middle of a trial as opposed to a voir
19 dire selection, the test is different --

20 THE COURT: You're telling me what
21 the legal standards are before I even know
22 there's a problem.

23 MS. GUSSACK: Your Honor, can you
24 just -- can you just read us the inquiry --

25 THE COURT: The call note with Pam

1 Engle and Dr. Grant are physicians at the health
2 center I work at, parenthesis, Anchorage
3 Neighborhood Health Center, closed parenthesis.
4 Does this create a problem, question mark.
5 Signed by Ms. Sand.

6 So what I'm going to do is we'll
7 take her back in chambers and ask her if it
8 creates a problem for her. We'll find out about
9 it and find out what the nature -- maybe she'll
10 say no.

11 MR. ALLEN: With due respect, I
12 know the Court is wise and has done a good job.
13 This is not the test. The test is in voir dire
14 she was a qualified juror and when you hear
15 evidence you have to weigh and evaluate the
16 evidence. You're going to hear some you like and
17 some you don't like.

18 THE COURT: Again, I'm not even
19 sure this is an issue in any particular way.
20 Maybe she says, doesn't affect me at all. I just
21 wanted to let everyone know about this. Then
22 we're going to be done with this.

23 MR. FIBICH: Your Honor, I think we
24 all understand what's going on here. They're
25 going to want a mistrial if there's any way to

1 get one. We do not. But how you phrase the
2 inquiry, I think, is important. And I don't mean
3 to impose on the Court to tell me in advance, but
4 what we ask her is extremely important. I think
5 that's what Mr. Allen is alluding to.

6 MS. GUSSACK: I suggest to the
7 implication that the Defendant wants anything
8 other than a fair trial by fair and impartial
9 juror, untainted and unpolluted by relationships
10 and I understand the Court will make appropriate
11 inquiry to determine if there's an issue there.

12 THE COURT: If you want me to make
13 the inquiry -- I'll make the inquiry the way I
14 want to make the inquiry. If you want to make
15 the inquiry, that's fine, too. I'll let you
16 follow up. I don't know what she's going to say.
17 I can't say what kind of follow-up questions we
18 have or what cautions.

19 The juror, I think, was being
20 conscientious and said these people's names come
21 up and I know them. And does this matter? And
22 she's asking us if it matters, but I think the
23 first thing we need to do is find out --

24 MR. ALLEN: Right, Your Honor, I
25 would on behalf of the State, we object to

1 attorneys asking her questions. It's not voir
2 dire. The instruction is attorneys are not
3 supposed to talk to jurors. I think that would
4 be improper and we object.

5 THE COURT: Your objection is
6 noted. I'll see if I think -- I mean, I want
7 there to be a record of this given that we're
8 down to 12 jurors, and I think it's important to
9 make a record.

10 MR. ALLEN: Mr. Fibich is prepared
11 to go back to chambers with Your Honor.

12 THE COURT: Okay. Why don't we
13 have one person from Lilly.

14 Why don't you go get her and bring
15 her in, Mark, and we can stay on the record and
16 then I've got a microphone.

17 (Break.)

18 THE COURT: I've given the jury a
19 two-minute heads up.

20 Based on the witness' testifying,
21 and there's no application being made at this
22 point. We're just going to continue with the
23 trial. Please be seated.

24 So we'll bring the jury in a couple
25 of minutes and resume cross-examination.

1 (Jury in.)

2 THE COURT: Please be seated.

3 Back on the record and all members
4 of the jury are present.

5 Mr. Allen.

6 Q. (BY MR. ALLEN) Doctor, I'm going to get
7 through. My partners reminded me shorter is
8 sweeter. Let me see if I can get on.

9 The rationale for position -- in
10 this document -- the rationale -- to minimize the
11 liability of weight gain while at the same time
12 increasing focus on Zyprexa's superior efficacy.

13 Did I read that correctly?

14 A. Yes.

15 Q. And, again, it looks like they're
16 minimizing -- minimizing an adverse event or side
17 effect, correct?

18 A. Sir, I don't know how they mean the
19 phrase.

20 Q. Well, in ordinary English as used by you
21 on a daily basis, they were minimizing a side
22 effect, true?

23 MR. BRENNER: Same objection as
24 previously, Your Honor.

25 THE COURT: Yeah. He's not -- if

1 he thinks he can understand what the thing means,
2 he can understand it. If not, you can argue what
3 you argue.

4 Q. (BY MR. ALLEN) Let me ask you this,
5 Doctor, without regard to the document, to
6 minimize weight gain, would that be to minimize a
7 side effect?

8 A. That's not what the document said.

9 Q. I'm not asking about the document. To
10 minimize weight gain, would that be to minimize a
11 side effect?

12 A. The phrase minimize weight gain could
13 mean to lessen the amount of weight gain, it
14 could be to minimize the impact of weight gain,
15 it could mean a lot of different things.

16 Q. It says: While at the same time
17 increasing the focus on Zyprexa's superior
18 efficacy.

19 Would that be to overstate the
20 benefits?

21 MR. BRENNER: Same objection,
22 Your Honor.

23 THE COURT: Yeah, the document is
24 what the document is, and you can argue to the
25 jury and the jury is going to decide what they

1 think the document means, and --

2 MR. ALLEN: Okay. Yes, Your Honor.

3 Q. (BY MR. ALLEN) You remember 1196,
4 however, where the FDA told Eli Lilly that it
5 would be a misleading impression of Zyprexa if it
6 was noted as superior, highly effective,
7 virtually free of side effects and an easy-to-use
8 product.

9 You remember that, don't you?

10 A. Yes.

11 Q. Thank you, sir. Now, on the issue of
12 whether or not --

13 MR. ALLEN: I need 3860 and I think
14 it's been marked.

15 Q. (BY MR. ALLEN) On the issue of false,
16 deceptive, misleading, you've told us that the
17 pill causes weight gain?

18 A. Yes.

19 Q. And if, in fact, Eli Lilly said the pill
20 did not cause weight gain, that would be contrary
21 to what you have stated in this courtroom, right?

22 A. Yes.

23 Q. I want to hand you what's been marked
24 for identification purposes at this time --

25 MR. ALLEN: Mary Beth, do we have

1 one for the other side?

2 MR. BRENNER: Yes, could we see a
3 copy?

4 Q. (BY MR. ALLEN) I'm going to hand you
5 what's been marked as Exhibit 3860 --

6 MR. BRENNER: Is this in evidence?

7 MR. ALLEN: No, it's marked for
8 identification purposes.

9 THE COURT: I understand that. Is
10 that AK or EL --

11 MR. ALLEN: I'm sorry, AK3860.

12 THE COURT: Thank you.

13 Q. (BY MR. ALLEN) Is that one of the
14 documents you reviewed in the marketing records
15 of this case?

16 A. Not that I recall.

17 Q. It may have been one you reviewed?

18 A. I don't know. No recollection.

19 Q. So in order to refresh your
20 recollection, we need to review it, true?

21 A. Sure.

22 Q. Okay. 3860 --

23 MR. BRENNER: If, Your Honor,
24 please, for that review it should be done not in
25 the presence of the jury.

1 THE COURT: It's not going to be
2 done on the screen to refresh his recollection.

3 Q. (BY MR. ALLEN) Yes, sir. Do you see
4 page 4 -- excuse me -- 1, 2, 3 of this document
5 concerning --

6 MR. BRENNER: Your Honor, could we
7 approach on this?

8 THE COURT: You may.
9 (Bench discussion.)

10 MR. BRENNER: Your Honor, I think
11 it's clear that he can't establish a foundation
12 for the document through this witness. If we go
13 through it under the guise of refreshing his
14 recollection, we will have introduced, in effect,
15 evidence that may ultimately not be introduced.

16 MR. ALLEN: It's Eli Lilly's
17 document. It's an admission by party opponent.
18 I can offer an admission at any time and I tender
19 3860 as an admission by party opponent --

20 THE COURT: You have to establish
21 all the things through a different witness that
22 it's an admission by party opponent. It doesn't
23 just come in on its face to me.

24 MR. ALLEN: Your Honor, admissions
25 by party opponent are not hearsay and admissible

1 evidence. I'll offer 3860.

2 THE COURT: Sure. And until you
3 establish it through a witness, I'm not going to
4 admit it at this point. I don't even know this
5 is a Eli Lilly document.

6 MR. ALLEN: It's Lilly document.

7 MR. BRENNER: As you are aware,
8 Your Honor this witness can't authenticate this
9 for us or establish a foundation.

10 MR. ALLEN: It's an admission by
11 party --

12 THE COURT: I'm not going to admit
13 it at this time. If you want to ask him
14 questions subject to eventually being
15 admitted you can and you can -- but, again, I
16 don't want it shown to the jury up on the screen
17 until that happens.

18 MR. ALLEN: I'll -- to say it's not
19 a Lilly document is false.

20 THE COURT: That may be, and
21 there's a lot of Lilly people that I'm sure we'll
22 have a long cross-examination on. And -- but at
23 this point, that's the order I want the evidence
24 to go in.

25 MR. ALLEN: I will do what you tell

1 me, sir.

2 MR. BRENNER: I understand,
3 Your Honor, that the proffer is going to be
4 linked up appropriately.

5 MR. ALLEN: You told me that I can
6 try to link it up.

7 MR. BRENNER: I'm just noting my
8 objection for the record.
9 (End bench discussion.)

10 Q. (BY MR. ALLEN) I'm sorry, sir.
11 AK3860 has Lilly's logo on the
12 front, does it not?

13 A. There is a logo that says Lilly. I
14 don't know exactly what their logo is, but this
15 does say Lilly. I don't know if it's Lilly's
16 logo but it says Lilly.

17 Q. What does it say under Lilly?

18 A. It says, Lilly, Answers That Matter.

19 Q. Okay. Did you read marketing documents
20 that said, Lilly, Answers That Matter when you
21 reviewed?

22 A. I don't recall the trademark.

23 Q. Okay. Let me just ask this: That's not
24 an equal sign, isn't it?

25 A. In mathematical terms, that's what the

1 sign means.
 2 Q. Right. WG for weight gain?
 3 A. Yes.
 4 Q. Of course, if somebody told you that the
 5 pill does not equal weight gain, you'd tell them
 6 they were wrong; true?
 7 A. No.
 8 Q. Okay, so the pill -- I thought you told
 9 me earlier that the pill did equal weight gain?
 10 A. I never said that.
 11 Q. What did you say?
 12 A. I said in some patients the pill can
 13 cause weight gain.
 14 Q. Can cause?
 15 A. Yes. Can cause in some patients.
 16 Q. Right. The pill?
 17 A. In some patients.
 18 Q. Okay. If I was to say to you that the
 19 pill cannot cause weight gain in patients, would
 20 that be right or wrong?
 21 A. If you said that, but that's not what
 22 this says.
 23 Q. Well, the pill does not cause weight
 24 gain, that would be wrong? Is that right?
 25 A. That's not what this says, sir.

1 THE COURT: That's not the
 2 question. The question is: If that question
 3 that he asked you is said to you, would that be
 4 wrong? We'll let the jury, if they look at the
 5 document, decide what the document means.
 6 THE WITNESS: Sure. He just
 7 pointed to this, Your Honor, when he asked me the
 8 question so I wanted to make it clear that what
 9 he was pointing to wasn't the same as what he was
 10 saying. So if you'd like me to respond to the
 11 picture, the answer is no. I don't remember if
 12 it was yes or no. So ask me your question in
 13 words. Let's disregard the picture.
 14 Q. (BY MR. ALLEN) We'll move on, sir, I
 15 apologize, do you have anything else you'd like
 16 to say on this point?
 17 MR. ALLEN: I want to make sure --
 18 THE COURT: I'm sure that defense
 19 counsel, if they have other questions to ask him,
 20 are going to ask him.
 21 MR. ALLEN: Yes, sir, I'm moving
 22 on.
 23 Q. (BY MR. ALLEN) On Exhibit 1169, you've
 24 seen where the FDA said that Dr. Gary Toleffson
 25 had misrepresented and contained false statements

1 when he tried to turn the side effect of weight
 2 gain into a benefit.
 3 Have you seen that?
 4 A. Do I have that in front of me?
 5 Q. No, sir. You want me to get you one --
 6 A. I'll look at it on the screen with you.
 7 Yeah, why don't I see the document. I don't have
 8 the whole thing on my screen.
 9 Q. It's all right. Any time.
 10 A. Thanks. Where should I turn to?
 11 Q. I think it's the next to last page
 12 before the signature line, I think. Yes, sir,
 13 it's page 4 -- no, it's page 5, actually, sir.
 14 Four and 5.
 15 A. Got it.
 16 Q. I want you to go to page 5, please.
 17 A. Okay.
 18 Q. All right. We'll read it together:
 19 When asked a question about weight gain,
 20 Dr. Toleffson's response misleadingly turned an
 21 adverse event into a therapeutic benefit.
 22 Do you see that?
 23 A. Yes, I do.
 24 Q. It goes on to say -- I apologize for the
 25 reading -- he states: So we went back and

1 analyzed our data and saw that the vast majority
 2 of weight gain reported initially as an adverse
 3 event, in fact, was weight gain occurring in
 4 patients who had baseline before starting
 5 treatment, had been below their ideal body
 6 weight.
 7 And then the document, it may not
 8 show up here.
 9 The next sentence is bolded: So we
 10 really look at this with the majority of patients
 11 as being part of a therapeutic recovery rather
 12 than an adverse event, and that data, I think, is
 13 fairly compelling because it was included in our
 14 labeling.
 15 Then the FDA says -- closed quotes.
 16 Emphasis added.
 17 The information on weight gain was
 18 indeed included in the approved labeling, but as
 19 an adverse event, not a therapeutic benefit.
 20 Since the product was approved at the time of the
 21 teleconference, Dr. Toleffson knew or should have
 22 known what information the approved labeling
 23 contained and in what section it appeared. His
 24 statements were, therefore, false and misleading.
 25 Did I read that correctly, sir?

1 A. Yes, you did.

2 Q. And would you agree it would be false
3 and misleading for Eli Lilly to turn an adverse
4 event or adverse reaction into a therapeutic
5 benefit?

6 MR. BRENNER: Same objection as
7 previously.

8 THE COURT: I'll sustain the
9 objection.

10 Q. (BY MR. ALLEN) Do you agree, in your
11 experience, that it would be wrong for a drug
12 company to turn an adverse reaction into a
13 therapeutic benefit?

14 A. In general?

15 Q. Yes, sir.

16 A. There might be -- I can imagine
17 situations where some adverse events under other
18 circumstances for some patients would be
19 benefits. If you're asking in general, I can't
20 answer.

21 Q. Okay, sir.

22 In reviewing the documents and
23 asking for anything remotely relevant in this
24 case, did you get provided AK04007?

25 A. Can't recall.

1 A. No.

2 Q. Doesn't it indicate they need to stop
3 this conduct immediately?

4 A. Again, I don't know -- I don't know the
5 context of this.

6 Q. Thank you, sir. 4077, AK4077 (sic).

7 Did you receive this document in all the material
8 that you wanted that would be remotely relevant
9 in the case?

10 A. I don't know.

11 THE COURT: Did you say 4077? Was
12 that what you referred to? Because it's not.

13 MR. ALLEN: I meant AK4007.

14 Q. (BY MR. ALLEN) Did you receive this
15 document, sir?

16 A. I don't know, sir.

17 Q. Okay. Did you know about the Viva
18 Zyprexa -- you knew about the primary care
19 physician launch, did you not?

20 A. Can't recall it, sir.

21 Q. Isn't it referenced in your report
22 about --

23 A. The primary care physician launch?

24 Q. The use of Zyprexa by primary care
25 doctors. Wasn't that referenced in your report?

1 Q. And by the way, again in 1196, which was
2 the FDA letter, quoting Dr. Toleffson, the FDA
3 told Eli Lilly to stop this immediately; is that
4 right?

5 MR. BRENNER: Objection; asked and
6 answered, Your Honor. We've been over this
7 document a lot.

8 MR. ALLEN: I'm entitled to frame a
9 question and lay a predicate and move forward,
10 Your Honor.

11 THE COURT: As long as you're just
12 laying a predicate, but at times your predicate
13 tends to be reading the document and moving on
14 And I want to make sure there's a question
15 regarding this.

16 Q. (BY MR. ALLEN) There's one coming. It
17 says: The FDA said, Immediately discontinue this
18 conduct, right?

19 A. It says immediately discontinue the use
20 of all promotional labeling pieces et cetera, so
21 I don't know what conduct was occurring.

22 Q. And cancel all advertising containing
23 any of the false and/or misleading statements
24 discussed above, provide. It goes on to say --
25 do you want to read the whole thing?

1 A. There was no reference to a launch.

2 Q. All right, sir. Viva Zyprexa, audio
3 program No. 3, post-meeting communications
4 campaign, cassette version, December of 2000, Eli
5 Lilly, Viva Zyprexa.

6 Do you know who Dr. Alan Breier is?

7 A. No.

8 Q. Dr. Alan Breier's comments are recorded.
9 He said: I came to Eli Lilly and Company almost
10 four years ago from the National Institutes of
11 Health because I thought this was an opportunity
12 to make an impact. He goes on to say -- let's go
13 to the first one: Growing sales in the elderly.
14 How many people in their own lives and their own
15 families --

16 MR. BRENNER: Your Honor.

17 THE COURT: I'll sustain the
18 objection.

19 Q. (BY MR. ALLEN) Is weight gain a plus in
20 the elderly, sir?

21 A. Sometimes it is; sometimes it isn't.
22 Depends on the person.

23 Q. Is the weight gain -- is the weight gain
24 with Zyprexa a plus in the elderly?

25 A. In an emaciated elderly person, it might

1 be.

2 THE COURT: Let me ask you, Doctor.

3 When you give people Zyprexa --

4 THE WITNESS: Yes.

5 THE COURT: -- and you give them
6 your warnings and discuss the drug with them and
7 you give them informed consent.

8 THE WITNESS: Yes.

9 THE COURT: Do you say, you're
10 going to gain weight and that's a really good
11 thing, or do you say you're going to gain weight
12 and that could be a problem. We're going to
13 watch it?

14 THE WITNESS: Generally I tell them
15 it's a problem. I have treated depressed
16 patients where I have chosen Zyprexa in the
17 course of bipolar illness, psychosis,
18 schizophrenia, where Zyprexa has been part of
19 their regimen, because it stimulates their
20 appetite.

21 Q. (BY MR. ALLEN) Do you use Zyprexa for
22 depressed people?

23 MR. BRENNER: Objection, Your
24 Honor.

25 A. In the context of maintenance treatment

1 in bipolar illness where it's indicated.

2 THE COURT: That's a fair question
3 whether he does.

4 Q. (BY MR. ALLEN) You use the Zyprexa in
5 depression.

6 A. In the maintenance treatment of bipolar
7 disorder.

8 Q. Is that on-label?

9 A. The maintenance treatment of bipolar
10 disorder is on-label.

11 Q. Do you use it for generalized
12 depression?

13 A. No.

14 Q. Why not? Why don't you use it for
15 generalized depression?

16 THE COURT: That he doesn't use it
17 is significant.

18 A. Generalized depression is not a
19 diagnosis.

20 MR. BRENNER: Wait a minute,
21 Doctor. There's no question.

22 THE COURT: I'll sustain the
23 objection.

24 Q. (BY MR. ALLEN) Sir, on the issue of
25 balancing risks and benefits, did you review this

1 document?

2 A. No, I don't recall it.

3 Q. Zyprexa launch meeting.

4 We saw the Geodon document
5 yesterday. Do you recall talking about Geodon?

6 A. Yes.

7 Q. It is AK00019, and we go down, talking
8 about Geodon, and implementation guide. It says:
9 Eli Lilly said it's simply not a primary-care
10 drug.

11 Do you see that?

12 A. Yes, I do.

13 Q. Do you agree with that?

14 A. Sir, I don't know the context of the
15 document or what was meant here, so I can't
16 answer.

17 Q. Eli Lilly, Zyprexa launch meeting,
18 Zyprexa primary care, ours is a gross strategy,
19 not a niche strategy, and Zyprexa can and will
20 become an everyday agent in primary care.

21 Do you believe that Zyprexa should
22 be an everyday agent in primary care?

23 MR. BRENNER: Objection,
24 Your Honor. Beyond the scope of any direct,
25 beyond the scope of any issue.

1 THE COURT: I'll sustain the
2 objection.

3 MR. ALLEN: Your Honor, can I
4 approach?

5 THE COURT: You may.
6 (Bench discussion.)

7 MR. ALLEN: The uses in other -- in
8 schizophrenia and bipolar mania are admissible.
9 This man weighs the risks versus the benefits,
10 and I have to be able to show both the risks and
11 the benefits.

12 THE COURT: And I think he's
13 testified as to what he uses -- he personally
14 uses Zyprexa for. To the extent you're showing a
15 lot of documents about what Lilly may or may not
16 have tried to do, documents that he doesn't know
17 about and he's consistently said that he doesn't
18 know what the context is or what Lilly does,
19 those -- that topic, I'm sustaining objections to
20 it. But I think you've established what he uses
21 Zyprexa for.

22 MR. ALLEN: Your Honor, he
23 testified he reviewed all these marketing
24 documents on --

25 THE COURT: He testified that he

1 reviewed the documents that he got, and you've
2 established a lot of documents that he didn't
3 get and --

4 MR. ALLEN: I'm going to go through
5 some of the documents and see if he got them.

6 THE COURT: I would assume that
7 when his deposition was taken you got to see what
8 the documents that he reviewed.

9 MR. ALLEN: That isn't the way
10 things worked. This was the MDL deposition.
11 Wasn't anybody involved in the Alaska case --

12 THE COURT: I know you didn't take
13 the deposition. I would have thought that the
14 people who took the deposition would have gotten
15 the file --

16 MR. ALLEN: Your Honor, I accept
17 it. I'm going to ask him what documents he
18 reviewed.

19 THE COURT: I think we've been
20 through that, too.

21 (End of bench discussion.)

22 Q. (BY MR. ALLEN) Sir, I'm going to go and
23 ask you about your survey, and we will be done.

24 I apologize. I just don't want to
25 lose any paper.

1 Do you have your survey?

2 A. Not handy right here with me.

3 Q. Can we get him a copy? Do you need a
4 copy?

5 A. Yeah, that would be great. Thanks.

6 Q. Y'all need a copy of mine --

7 A. Thanks, Mr. Allen.

8 Q. Certainly. All right, sir, we see --

9 Do you read the American Journal of
10 Psychiatry, sir?

11 A. Yes, I subscribe to it, and I can't say
12 I read it cover to cover, but try to get a chance
13 to look at it.

14 Q. Yes, sir, that's a good point. Doctors,
15 even though they subscribe to magazines, they
16 can't read every article published in the medical
17 literature, can they?

18 A. Impossible.

19 Q. It would be totally and completely
20 impossible?

21 A. That's right.

22 Q. Particularly, that's one of the reasons
23 that the sources of information that doctors have
24 to rely upon is a drug company to bring them the
25 synthesized information because they can't read

1 every article; is that right?

2 A. No.

3 Q. Okay. We'll move on. Do you recall
4 reading the issue of a conflict of interest? Do
5 you recall reading those articles in American
6 Journal of Psychiatry back in 2006?

7 A. No.

8 Q. Do you know any of the editors of the
9 American Journal of Psychiatry?

10 A. I have to see a list.

11 Q. Robert Friedman?

12 A. No.

13 Q. David Lewis?

14 A. No.

15 Q. Robert Michaels?

16 A. Yes.

17 Q. How do you know Dr. Michaels?

18 A. Dr. Michaels is a psychiatrist
19 affiliated with New York Presbyterian Hospital
20 where I work.

21 Q. Do you find him to be a reputable and
22 fine physician?

23 A. Yes.

24 Q. So, you would think he -- let me ask you
25 if you agree with this statement: Many doctors

1 do not believe that they are influenced by
2 pharmaceutical industry funding and therefore do
3 not see a need for self-disclosure of other
4 funding. However, as -- let me go on -- however,
5 as our credibility as a field requires complete
6 disclosure of authors' sources of income from the
7 pharmaceutical and biomedical industry, the
8 American Journal of Psychiatry requires full
9 disclosure of all industry-derived personal
10 income and research funding from all authors for
11 all articles. Do you agree with that?

12 A. That's a standard policy that all
13 academic journals adhere to in every field.

14 Q. When did that happen?

15 A. I don't know, but it certainly is the
16 case now.

17 Q. It wasn't the case until very recently;
18 isn't that correct?

19 A. I don't know.

20 Q. Do you agree with this: For
21 psychopharmaceuticals in particular, the public's
22 perception that medications are prescribed by
23 physicians free from industry influence is
24 critical. Thus, we need to establish boundaries
25 for our ethical behavior. The pharmaceutical

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1 industry needs to use its industrial
2 organizations to set new boundaries and standards
3 for ethical support of physician education. We
4 as psychiatrists cannot allow treatment of our
5 vulnerable patients to be compromised by the
6 unintended effects of overzealous marketing.
7 Do you agree with that?
8 A. Sir, I don't know the whole context of
9 the statement or why it was generated or what
10 else was stated in the article. So I can't agree
11 or disagree with that phrase.
12 Q. Sir, regardless of an article, do you
13 agree that the pharmaceutical companies, in
14 general, are engaged in overzealous marketing?
15 A. No.
16 Q. All right, sir. In your Journal of
17 Clinical Psychiatry article -- first of all, I
18 saw it was written in 1999?
19 A. Yes.
20 Q. And the information contained within was
21 gathered when?
22 A. The information would have been -- I
23 can't tell you precisely, but roughly within the
24 year prior to the publication.
25 Q. '98?

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1 A. Sometime in '98, '99. These evolved
2 over about a 12-month period.
3 Q. Has a lot happened since the time you
4 gathered this information?
5 A. A lot in the world?
6 Q. No, sir. And I guess I meant a lot in
7 regard to the facts of this kind of case and
8 atypical antipsychotics and typical
9 antipsychotics and Zyprexa.
10 MR. BRENNER: Your Honor, I have to
11 object to the form of that question. There's a
12 lot happened -- a range of events?
13 THE COURT: If the doctor
14 understands the question, he can answer the
15 question.
16 A. I don't understand the question,
17 Mr. Allen.
18 Q. (BY MR. ALLEN) Has there been
19 significant developments in the last -- you said
20 the information was gathered in '98 -- in the
21 last ten years or so in the field of
22 second-generation antipsychotics and atypicals
23 and Zyprexa?
24 A. Boy, you know, I'm not sure how you
25 would say what's significant, what's not

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1 significant, what's a lot, what's a little.
2 Q. Let me ask it again, then: In your
3 opinion, has there been a fair amount of
4 significant -- your opinion, significant
5 developments in the field of second-generation
6 antipsychotics, first-generation antipsychotics
7 and Zyprexa in the last ten years?
8 A. Look, I don't mean to quibble about it,
9 but this is such a qualitative question --
10 THE COURT: He's asking you to
11 provide your standards for those qualitative
12 things.
13 A. I mean, psychiatry is such a complex
14 area. Our understanding of the brain evolves
15 slowly. Our understanding of the -- you know,
16 effects of drugs, ways that they're used evolves
17 over time. Is it significant? I wouldn't say
18 that there's been a revolution, you know, since
19 1999. Has there been changes in understanding?
20 In some areas, yes; in some areas, no. Will they
21 be significant? Time will tell us whether
22 they're significant.
23 Q. (BY MR. ALLEN) In your review of
24 documents, did you review the internal e-mail --
25 internal report of Eli Lilly in 2000 concerning

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1 the global labeling committee's request to change
2 the listing of hyperglycemia from infrequent to
3 common or frequent.
4 Did you review that document?
5 A. I can't recall that specific document
6 by name, sir.
7 Q. Did you review -- and I'm talking about
8 events that occurred since 1998 -- did you review
9 the October, 2000 e-mails -- internal to Eli
10 Lilly in October of 2000 concerning Eli Lilly's
11 meetings with the endocrinologists in Atlanta?
12 A. Don't recall seeing e-mail, sir.
13 Q. Did you see anything concerning the
14 message from endocrinologists that Eli Lilly
15 needed to come clean?
16 A. Don't recall seeing that.
17 Q. Did you review the letter in October of
18 2000 from the FDA that their attempt to change
19 and their changing of the label concerning blood
20 glucose was a wrong statement implying
21 therapeutic benefit and they needed to remove it?
22 Did you review that?
23 MR. BRENNER: Object to the
24 characterization of a document that's in
25 evidence.

1 THE COURT: I think what he's
2 trying to do is save some time. You can show him
3 each document.

4 MR. BRENNER: No, Your Honor, but
5 there are adjectives added to there, is my
6 objection.

7 MR. ALLEN: I'll rephrase it for
8 him, Your Honor.

9 Q. (BY MR. ALLEN) Did you review the
10 letter addressed to Eli Lilly in October of 2000
11 asking them to take language out of their label?

12 A. No.

13 Q. Did you review the continuous analysis
14 report of Dr. Patrizia Cavazzoni showing that
15 there was statistical significant elevations in
16 blood glucose in Zyprexa patients compared to
17 placebo and Haldol?

18 A. I'm not sure that I can tell you which
19 document that was, so I don't know.

20 Q. You don't know. Did you review any
21 information in that regard?

22 A. If it was a paper, I might have read it.
23 If it was an unpublished document, I don't know
24 if I reviewed it or not.

25 Q. Let me ask you this in another way and

1 A. In connection with preparation for this
2 case.

3 Q. So prior to the preparation for this
4 case, you were unaware of that, is that correct?

5 A. That's correct.

6 Q. Were you aware that in the Japanese
7 warning in April of 2002 when you got prepared
8 for this case, where it said causation with
9 Zyprexa cannot be denied.

10 Were you aware of that?

11 A. I can't recall the precise wording, so I
12 can't say without seeing the document.

13 Q. Thank you, sir. At the time you
14 prepared this material you could not have been
15 aware of the consensus panel recommendations; is
16 that correct?

17 A. Because those came later.

18 Q. Yes, sir.

19 A. The ADA consensus panel.

20 Q. We started with has a lot of significant
21 developments occurred between the time the
22 material was gathered and today?

23 A. That was a development. That's why I
24 didn't want to quantify them by significance.

25 Q. Yes, sir. I apologize that we're having

1 I'm just trying to see if we can agree.

2 Were you aware of Dr. Cavazzoni's
3 continuous analysis showing a statistically
4 significant difference in blood glucose
5 elevations between Zyprexa as compared to placebo
6 and Haldol?

7 A. I can't recall it off the top of my
8 head.

9 Q. Did you review the HGFU study report
10 where Lilly said using the letter A that blood
11 glucose elevations were probably causally related
12 to Zyprexa? Did you review that?

13 A. Not that I can recall.

14 Q. Were you aware that special warnings and
15 precautions for diabetes and hyperglycemia were
16 added to the European label on Zyprexa in 1999?

17 Were you aware of that?

18 A. No.

19 Q. Were you aware that the Japanese
20 required a new warning in a red box, what we call
21 over here a black box, in Japan in April of 2002?

22 A. I've been aware of that.

23 Q. When did you become aware of that?

24 A. Recently, sir.

25 Q. How recently?

1 this disagreement. I was going to see whether or
2 not -- you agree, then, you obviously were not
3 aware of the consensus panel's recommendations?

4 A. No one was, because it hadn't occurred
5 at this time.

6 Q. Yes, sir. Therefore, when we're looking
7 at Exhibit No. 99, it did not take that into
8 account, right?

9 A. Could not possibly have.

10 Q. Of course, you're aware -- Doctor, did
11 you review all of the English language literature
12 on the subject of atypical antipsychotics in
13 order to prepare yourself to come down here
14 testify?

15 A. All the literature?

16 Q. All of the English language literature
17 in the world, did you review it?

18 A. I read a lot, but I can't say 100
19 percent.

20 Q. Did you review the animal studies?

21 A. No.

22 Q. Did you -- before you wrote your report,
23 did you meet with doctors who disagreed with you
24 as well as doctors who agreed with you and then
25 formed your opinion?

1 A. That's not how I prepared, sir.
 2 Q. Thank you, sir. Were you aware, at the
 3 time you prepared this report that Eli Lilly --
 4 at the time you prepared your report in this case
 5 as opposed to the article --
 6 A. The report a year ago?
 7 Q. And when did you prepare the report,
 8 sir?
 9 A. Approximately a year ago.
 10 Q. I'm not -- do you recall? April?
 11 A. It would have been, I think -- when was
 12 the deposition? April. It was more or less than
 13 a year ago. The report must have been prepared
 14 leading up to it. March, April.
 15 Q. Okay, sir. Were you aware that the
 16 FDA -- have you ever been aware at the time you
 17 prepared your report or as we sit here today,
 18 that the FDA wrote a letter to Eli Lilly asking
 19 them to provide new information that the FDA had
 20 seen in the New York Times?
 21 A. Yes, I'm aware that they sent a letter.
 22 Q. That who sent the letter?
 23 A. That the FDA sent the letter to Eli
 24 Lilly.
 25 Q. And what happened after that?

1 A. I don't know, sir, in detail.
 2 Q. Aren't you aware that after that the FDA
 3 got information that it never seen before and
 4 required a label to be changed on Zyprexa?
 5 A. Sir, I'm not aware that they got
 6 information that they'd never seen before.
 7 Q. But you're aware that FDA asked to see
 8 information that they'd never seen before?
 9 A. To that level of detail, sir, I can't
 10 answer the question.
 11 Q. Okay, sir. Now, in your Journal of
 12 Psychiatry -- it's the last round of questions --
 13 there's an editorial board, is there not?
 14 A. That is the editorial board for the
 15 Journal of Clinical Psychiatry, not for this
 16 supplement.
 17 Q. Yes, sir. And this is where this
 18 article was published was in the Journal of
 19 Clinical Psychiatry?
 20 A. That's right. I wanted to be clear what
 21 they were the editorial board for.
 22 Q. Yes, sir. Do you know -- how many of
 23 the editorial board members do you recognize as
 24 being spokespeople or people hired by the drug
 25 companies?

1 A. Couldn't tell you.
 2 Q. Well, do you recognize the name of Dr.
 3 Hirschfeld from my hometown of Galveston, Texas?
 4 Do you know Dr. Hirschfeld?
 5 A. Actually I do know Dr. Hirschfeld. Yes.
 6 Q. Isn't he from Galveston, Texas?
 7 A. Yes, he is.
 8 Q. At the University of Texas Medical
 9 Branch.
 10 A. That's right.
 11 Q. Isn't he a hired -- a speaker for drug
 12 companies?
 13 A. I don't know.
 14 Q. Okay. Let me see. What about Henry
 15 Nasrallah. As I recall, he was in Cincinnati,
 16 wasn't he?
 17 A. I know the name. I don't know where Dr.
 18 Nasrallah was or where he is now.
 19 Q. You don't know if he's a speaker for
 20 drug companies?
 21 A. I don't know.
 22 Q. Paul Keck. Where's Dr. Keck from? Is
 23 it North Carolina?
 24 A. Cincinnati. Cincinnati, unless he's
 25 moved.

1 Q. That may be. You know he's a speaker
 2 for drug companies?
 3 A. Yes, I do know he's spoken for drug
 4 companies.
 5 Q. Then on the editors for policy
 6 guidelines, you know some of these people are
 7 paid by drug companies?
 8 A. Sir, when in time, I don't know. This
 9 was ten years ago.
 10 Q. Tell the jury the ones you know were
 11 paid by drug companies.
 12 A. I couldn't tell you.
 13 Q. Well, how about Mark Olson?
 14 A. I don't know if he's been paid by drug
 15 companies.
 16 Q. He's listed as a witness for Eli Lilly
 17 in this case.
 18 Did you know that?
 19 A. No, I did not know that.
 20 Q. Okay, sir. Now, just so the record is
 21 clear, and I know we said it, but this was only
 22 on schizophrenia only in 1999, right?
 23 A. The guidelines?
 24 Q. Yes, sir.
 25 A. Yes, the guidelines were about

1 schizophrenia.

2 Q. And don't you know that a majority of
3 the use of Zyprexa in this country by doctors is
4 not for schizophrenia?

5 MR. BRENNER: Objection,
6 Your Honor.

7 THE COURT: No. I'll let him
8 answer that question.

9 A. I don't know what proportion of it is
10 used for what conditions.

11 Q. (BY MR. ALLEN) Do you have an
12 indication in any regard?

13 A. No.

14 Q. How -- how does -- do you know -- what's
15 more prevalent in -- in your opinion as a doctor,
16 high blood pressure, high cholesterol or
17 schizophrenia?

18 A. You know, it's a fair question, but I,
19 frankly, don't know the statistics on prevalence.
20 They're all common and serious public health
21 problems.

22 Q. Yes, sir. High cholesterol. You think
23 high cholesterol may be as prevalent as --
24 schizophrenia -- excuse me, let me rephrase,
25 strike that.

1 Do you think that schizophrenia is
2 as prevalent as high blood pressure?

3 A. No, I'm sure more Americans have high
4 blood pressure and have high cholesterol than
5 have schizophrenia. I couldn't tell you the
6 precise percentages, but as illnesses in the
7 population, I wouldn't dispute that.

8 Q. Well, Lipitor is a high cholesterol
9 drug, right?

10 A. Right.

11 Q. Now, Zocor is a high cholesterol drug?

12 A. Yes, it is.

13 MR. BRENNER: Your Honor.

14 THE COURT: Where are we going with
15 this?

16 MR. ALLEN: What do you want me to
17 do?

18 THE COURT: I'm trying to be sure
19 we have relevance here.

20 (Bench discussion.)

21 MR. ALLEN: Your Honor, I'm
22 entitled to show that this drug was widely used
23 in weighing benefits and is not used in
24 schizophrenia.

25 THE COURT: You can ask him if

1 that's what he did or you ask him if he knows
2 whether other people did that. But that's the
3 extent of it.

4 MR. ALLEN: Okay.

5 (End of bench discussion.)

6 MR. BRENNER: Your Honor, just for
7 the record, though, I object.

8 THE COURT: Okay.

9 Q. (BY MR. ALLEN) Did you know -- did you
10 know other people and did you prescribe Zyprexa
11 for children?

12 A. I'm not a child psychiatrist, so I
13 haven't. Among my colleagues who were child
14 psychiatrists, I'm aware of children who have
15 received it. I can't say that I know colleagues
16 who have prescribed it for children.

17 Q. It's real important to give a true and
18 accurate picture --

19 A. I am. I am.

20 THE COURT: He's not referring to
21 you. Let him finish the question, and you'll
22 understand what he's talking about.

23 Q. (BY MR. ALLEN) It's real important to
24 give a clear and accurate picture of the risks
25 and benefits of a drug, though, isn't it?

1 A. Yes.

2 Q. Let's go back to your article.

3 Now, just for the record, you're
4 not telling this jury to read your article and
5 say these are the rules, are you?

6 A. That's correct.

7 Q. In fact, you're specific in your report
8 guidelines saying that that's just not the case.
9 Any set of guidelines can provide only general
10 suggestions for clinical practice and
11 practitioners must use their own clinical
12 judgment in treating and addressing the needs of
13 each individual patient -- I've got to focus
14 down -- taking into account the patients' unique
15 clinical situation. There is no representation
16 of the appropriateness or validity of these
17 guideline recommendations.

18 Did I read that correctly?

19 A. For any given patient.

20 MR. ALLEN: I'm trying -- I'll read
21 the whole thing and then we'll go on.

22 THE COURT: I think the whole thing
23 has been read now. It was just the last part of
24 it was --

25

1 Q. I wasn't trying to. I'm sorry. There
2 is no representation of the appropriateness or
3 validity of these guideline recommendations for
4 any given patient. Did I read that correctly?

5 A. You read that correctly.

6 Q. Matter of fact, you go on to say: The
7 developers of these guidelines disclaim all
8 liability and cannot be held responsible for any
9 problems that may arise from their use. Did I
10 read that correctly?

11 A. That's correct.

12 Q. But you've got even more detailed than
13 that. You say the reports of whatever opinions
14 are in these guidelines, you said, the
15 recommendations in the guidelines are derived
16 from the statistically aggregated opinions of the
17 group of experts and do not necessarily reflect
18 the opinion of each individual expert on each
19 question.

20 Did I read that correctly?

21 A. Absolutely.

22 Q. Therefore, even if you have it in the
23 book, some of the doctors you consulted with may
24 disagree with you?

25 A. Oh, sure.

1 Q. And, in fact, sir, on that point, what
2 you did is you contacted, I think, 62 people in
3 this country to put this input in here?

4 A. For the psychopharmacology section,
5 that's correct.

6 Q. Where is the person from Alaska?

7 A. I don't believe there is one in the
8 medication section.

9 Q. Yes, sir. And the medication sections
10 are the doctors that helped with all the things
11 you discussed with Mr. Brenner, all those graphs,
12 right?

13 A. That's right.

14 Q. And there's not anybody from Alaska?

15 A. That's correct.

16 Q. Did you talk to Dr. Hopson?

17 A. No.

18 Q. Okay. And then you go on to say -- by
19 the way: One of the persons, though, you sent
20 this material to is Dr. Casey. Dan Casey. Who
21 is he?

22 A. Let me just explain something. That I
23 didn't personally assemble this expert panel.
24 Dr. Francis, who is the editor for the section
25 assembled the expert panel. Dr. Casey is a

1 researcher in schizophrenia.

2 Q. Okay. By the way, I want to make sure
3 you and I are just -- we're almost done. We're
4 totally communicating. You're not here speaking
5 for Dr. Casey or people on the board. You're not
6 speaking for Dr. Buchanan, Caroff, Casey,
7 Chouinard or Cole, are you?

8 A. Individually, no.

9 Q. You're not even attempting to do that
10 are you?

11 A. To speak for them individually?

12 Q. Yes.

13 A. To represent their personal opinions?

14 Q. Right.

15 A. No.

16 Q. Now, what were Dr. Casey's interactions
17 with Eli Lilly?

18 A. Don't know.

19 Q. Did you review any documents on that
20 point?

21 A. Not on that point.

22 Q. Let's go on.

23 Then you were asked a question, you
24 asked and answered your own question in this
25 report about the validity of what's contained in

1 here, did you not?

2 A. Can you direct me to the phrase you're
3 looking at?

4 Q. Yes, sir. Page 8, introduction.

5 A. Okay.

6 Q. You see the introduction?

7 A. Yes, I'm with you on the introduction.

8 Q. Did you write this?

9 A. Pardon me?

10 Q. Did you write this?

11 A. Well, Dr. Francis signed this page. I
12 did not write this page, but it's very similar to
13 wording that I wrote in other guidelines where
14 the group of us worked as a team.

15 Q. Yes, sir. I'm not trying to quibble
16 with you --

17 A. I certainly would stand behind --

18 Q. You stand behind it?

19 A. We can go to individual phrases to
20 discuss my opinions about them.

21 Q. Is there any particular one you would
22 like to discuss?

23 THE COURT: Ask him a question.

24 MR. ALLEN: Okay.

25 Q. (BY MR. ALLEN) They have a question in

1 here. Introduction. Changes in the accept best
 2 clinical practice often occur at a much faster
 3 rate than the necessarily slow-paced research
 4 efforts that would eventually provide scientific
 5 documentation for change. Did I read that
 6 correctly?
 7 A. That's right.
 8 Q. Okay. Back to my question asked
 9 earlier, this was gathered in '98, written in
 10 '99, have we had some fast-paced developments in
 11 the field of second-generation antipsychotics and
 12 particularly with Zyprexa within the last ten
 13 years.
 14 A. I don't know how to quantify fast-paced,
 15 so --
 16 Q. Okay, sir, I'll move on. Then you have
 17 in your report, how valid are the expert opinions
 18 provided in these guidelines and how much can I
 19 trust the recommendations? Did I read that
 20 correctly?
 21 A. That's right.
 22 Q. You said: We should be able to answer
 23 this question when our current research projects
 24 on guideline implementations are completed.
 25 A. That's right.

1 Q. For now, the honest answer is that we
 2 simply don't know. Right?
 3 A. That's right.
 4 Q. Are you telling me now you know?
 5 A. Sir, there's a lot of things in this
 6 guideline. To generalize an answer to all of
 7 them is impossible.
 8 Q. Thank you, sir. And, in fact, you go
 9 further and say: Expert opinion -- remember, you
 10 told us yesterday you were here not speaking for
 11 anybody, you were just giving your opinion, do
 12 you recall that?
 13 A. In some of the questions that you asked
 14 me, that's right.
 15 Q. Let the record reflect that you say:
 16 Your expert opinion must always be subject to the
 17 corrections provided by the advance of science.
 18 Has there been any advances in science regarding
 19 Zyprexa in particular since 1999?
 20 A. I'd say so.
 21 Q. Moreover, precisely because we asked the
 22 experts about the most difficult questions facing
 23 you in clinical practice, many of the
 24 recommendations must inevitably be based on
 25 incomplete research information and may have to

1 be revised as we learn more.
 2 Did I read that correctly?
 3 A. Yes, you did.
 4 Q. Have these ever been revised?
 5 A. The guidelines?
 6 Q. Yes, sir. For schizophrenia?
 7 A. There was a related guideline that was
 8 published in 2003, treatment of psychotic
 9 disorders. I was not involved in the project at
 10 that point -- yeah, I mean that's part of the
 11 revision process, the series of guidelines that
 12 this project was a member of.
 13 Q. The experts -- expert consensus
 14 guideline series on the treatment of
 15 schizophrenia 1999. Have those guidelines been
 16 revised?
 17 A. These are part of a series of
 18 guidelines. There are aspects of treatment of
 19 patients with schizophrenia which were reasked of
 20 a different expert panel, many of the same
 21 members of it, by the group that put these
 22 together several years later. I couldn't give
 23 you the exact date, we could look up the
 24 bibliography. And there was a revision.
 25 Q. You have a bibliography in your report,

1 did you not?
 2 A. Yes.
 3 Q. I couldn't find any revisions.
 4 A. Because I didn't participate personally
 5 in later revisions.
 6 Q. Okay, so whatever you gave us is
 7 outdated, outmoded and no longer any good, right?
 8 A. No.
 9 Q. But there's been revisions; is that
 10 correct?
 11 A. To aspects of this, there were
 12 subsequent guidelines. I don't know if the
 13 results were different from this or not, so I
 14 don't know if there have been revisions.
 15 Q. I asked you a minute had there been
 16 revisions?
 17 A. There had been a new version of the
 18 guideline. Did it revise recommendations, I
 19 don't know.
 20 Q. Have you read it?
 21 A. Sir, I would have to compare it side by
 22 side.
 23 Q. That wouldn't make any difference, have
 24 you read the guidelines?
 25 A. The guidelines that were a subsequent

1 version of this I read some time ago.
 2 Q. Were they different?
 3 A. I'd have to look at each item and see.
 4 Q. Did you review them in preparation for
 5 your testimony here today?
 6 A. No.
 7 Q. Did you review them in preparation of
 8 your report?
 9 A. No.
 10 Q. You don't have the most recently
 11 available information for this jury; is that
 12 correct?
 13 A. Sir, you're asking me about a document
 14 that I didn't author and whether I reviewed it in
 15 preparation, and I didn't review it in
 16 preparation for this testimony because I didn't
 17 write it.
 18 Q. Yes, sir. But didn't you review a lot
 19 of material you didn't write?
 20 A. Yes, but in respect to the guidelines
 21 you're asking me if these guidelines were
 22 revised. The guidelines as a document underwent
 23 a revision. What did that revision change is
 24 what I can't answer for you today.
 25 Q. Or this jury. You can't tell the jury

1 what the revisions are?
 2 A. Not without comparing them side by side.
 3 Q. Let's go to page 9 of this, how to use
 4 the guidelines. Are you there?
 5 A. Yes.
 6 Q. How many psychiatrists are there in this
 7 country, sir?
 8 A. I believe it's somewhere close to
 9 40,000.
 10 Q. Okay. The 1999 guidelines are based on
 11 a survey of 57 doctors, right?
 12 A. That's right.
 13 Q. 57 out of 60 -- I can't find it, 62?
 14 A. I think it's -- yeah.
 15 Q. Okay. How many primary care doctors are
 16 there in this country, sir?
 17 A. I don't know.
 18 Q. Hundreds of thousands, right?
 19 A. I don't know.
 20 Q. Okay. You sent this survey back in 1998
 21 to 57 psychiatrists, right?
 22 A. We sent it to 62.
 23 Q. 62 and you got answers from 57?
 24 A. That's right.
 25 Q. Common sense will tell you that there's

1 a lot of room for disagreement among experts on
 2 these opinions. You've got 57 out of 40,000,
 3 right?
 4 A. I didn't say there were 40,000 experts,
 5 there were 40,000 practicing psychiatrists and we
 6 sent it to a representative group of research
 7 experts in schizophrenia.
 8 Q. Oh. Research -- are you a research
 9 expert?
 10 A. I'm not a research expert, myself, sir.
 11 Q. There's fine doctors have offices in
 12 nice buildings and in doctors' buildings every
 13 day that don't do research who are good
 14 practicing doctors?
 15 A. Absolutely.
 16 Q. Who use that book right up there by you?
 17 A. The PDR?
 18 Q. Yes, sir.
 19 A. Yes.
 20 Q. To take care of patients?
 21 A. Yes.
 22 Q. And you sent it to 57 doctors in this
 23 country and nobody from Alaska, correct?
 24 A. We sent it to 62 people who are defined
 25 in the criteria that we used at the beginning as

1 research experts in schizophrenia.
 2 Q. Okay, sir, so now turn to page 12.
 3 Strategies from selecting medications.
 4 A. Yes.
 5 Q. Here's where you say expert opinion has
 6 changed dramatically -- that's an adjective, is
 7 it not?
 8 A. Yes.
 9 Q. Expert opinion has changed dramatically
 10 since our last survey in 1996. Is that correct?
 11 A. That's what it says.
 12 Q. Okay. So, from '96 to '98 when you sent
 13 this out, expert opinion had changed
 14 dramatically; is that correct?
 15 A. That was Dr. Francis' conclusion.
 16 Q. Yes, sir, and you say you stand by these
 17 words?
 18 A. No, you asked me about the introduction
 19 that he wrote, describing how guidelines were
 20 used. I stood by those words.
 21 Q. You stand by these words?
 22 A. That's Dr. Francis' opinion.
 23 Q. Do you agree or disagree with it?
 24 A. Between '96 and '99 I'd say that there
 25 was -- you know, a significant change.

1 Q. Yes, sir, and I'm not trying --
 2 A. I just wanted to be clear what we said
 3 before when I stood by his words, you were asking
 4 me about the introduction.
 5 Q. You stand by part of his words and not
 6 all of his words; is that correct?
 7 A. Sir, I didn't say I don't stand by some
 8 of his words. You asked me did I stand by the
 9 introduction; I said yes. Do I agree with his
 10 statement, expert opinions change dramatically?
 11 Yes, I think that that's true. Between 1996 and
 12 '99 there was a change.
 13 Q. Yes, sir, to be fair, it wasn't '99 --
 14 A. '98.
 15 Q. That's when it was written. The survey
 16 was sent out in '98?
 17 A. The survey was sent out sometime in the
 18 year prior to publication.
 19 Q. '98?
 20 A. Sometime in late '98 perhaps, yeah.
 21 Q. Do you remember when?
 22 A. I can't tell you the exact date that it
 23 was mailed out. Yeah, sorry.
 24 Q. Expert opinion has changed dramatically
 25 since our last survey in 1996 when the experts

1 still considered conventional antipsychotics to
 2 be a first-line treatment for schizophrenia in
 3 many clinical situations.
 4 Did I read that correctly?
 5 A. Yes, you did, sir.
 6 Q. Yesterday I had this note. That's why
 7 I've had it here, so I wouldn't forget. You
 8 talked about lobotomies and ice baths. Do you
 9 recall that?
 10 A. Yes.
 11 Q. You said that took place before the
 12 invention of the first-generation antipsychotics,
 13 isn't that what you testified to?
 14 A. Yes.
 15 Q. If Zyprexa disappeared off the face of
 16 the earth, would you have to go back to ice baths
 17 and lobotomies?
 18 A. Of course not.
 19 Q. That's just ridiculous, isn't it?
 20 A. Yes.
 21 Q. Now, sir, let me see.
 22 Now, page 15.
 23 Selecting medications to avoid side
 24 effects. I'm sorry, you see that?
 25 A. Yes, I do.

1 Q. Then you have a footnote reference and
 2 you go to 11, you go to the bottom of the page,
 3 right?
 4 A. Right. And that keys you into the
 5 survey question.
 6 Q. Yes, sir, and that's what I was going to
 7 ask you about and I want you to help me, maybe
 8 we're almost done. We're on our last leg. It
 9 keys you into the medication survey questions
 10 about what, side effects?
 11 A. Yeah, that were used to generate this
 12 table.
 13 Q. And I think we're communicating, sir, I
 14 don't want to miscommunicate. So the side
 15 effects that were used to create this table,
 16 which is guideline 5 --
 17 A. Right.
 18 Q. Selecting medication to avoid side
 19 effects. The side effects listed are what, sir?
 20 A. These were a list of side effects that
 21 the editors of this particular section of the
 22 guideline felt were important considerations in
 23 the treatment of patients with schizophrenia.
 24 Q. You were an editor, I thought?
 25 A. Of the medication section. I was not

1 the editor of the medication section, I explained
 2 that was Dr. Francis and two other authors.
 3 Q. Do you stand by this guideline?
 4 A. Yes. Oh, I do, yeah.
 5 Q. I'm looking on the medication side
 6 effects. I'm looking for hyperglycemia, I'm
 7 looking for diabetes, and I'm looking for
 8 hyperlipidemia. Can you find it for me, please?
 9 A. No.
 10 Q. Why not?
 11 A. They're not listed.
 12 Q. And they're not even listed by the
 13 authors of this expert panel that was assembled
 14 back in 1998 of 57 people, are they, sir?
 15 A. That's correct.
 16 Q. Let's go on. But it did list weight
 17 gain. This is what you learned about in med
 18 school, right?
 19 A. Yes, sir. It lists weight gain.
 20 Q. What you learned about in med school?
 21 A. We learned about a lot of things in med
 22 school, what do you mean. I learned about weight
 23 gain in med school, yes, not in relation to
 24 guideline.
 25 Q. All right, sir. Don't you accumulate

1 knowledge -- and you start using it. I used what
2 I learned in college.

3 A. Sure.

4 Q. Most likely to, what, sir, cause --

5 A. Yeah, this is the way that we took the
6 survey results. The question that the question
7 was asked, as I recall if we go to the actual
8 survey questions, is what medications -- I have
9 to tell you, the way the table is written, we
10 took the results, the editors took the results
11 and tabulated these in a format so that a
12 clinician would see what medications are most
13 likely to cause a side effect, what medications
14 are least likely to cause a side effect.

15 Q. What was the medications that were most
16 likely to cause weight gain?

17 A. Let's see, Clozapine and olanzapine.

18 Q. Just like the consensus panel reiterated
19 again in 2003, isn't that right?

20 A. Sir, I'd have to see the language of the
21 consensus panel to agree or disagree with you.

22 Q. You don't recall table 2?

23 A. I'd have to see the language.

24 Q. Let's turn to the next page. We have
25 the maintenance phase. Do you recall the

1 maintenance phase?

2 A. Let's see. What page are you on?

3 Q. The next page.

4 A. There we go. Yeah, got it.

5 Q. Tell the jury what the maintenance phase
6 means?

7 A. Maintenance phase means that in
8 long-term treatment after a patient is stabilized
9 from an episode and you're continuing them on
10 medication, that's the maintenance phase.

11 Q. Continuing the patient on medication?

12 A. Yes.

13 Q. I'm looking for blood glucose monitoring
14 on the page. Do you see it?

15 A. Yes.

16 Q. You see blood glucose monitoring? Do
17 you see it?

18 A. No, it's not on here.

19 Q. Because back in 1998 that was not part
20 of the protocol, was it, sir?

21 A. Well, I wouldn't use the word protocol.

22 Q. What word would you use?

23 A. The way that the table was assembled is
24 that those results that met the statistical
25 criteria for an absolute first-line priority were

1 included here as the recommendations. The
2 majority, though, in the survey did respond that
3 it was a very highly rated test to monitor for.

4 Is that what you're looking for -- I'm sorry,
5 sir, ask the question again, I may be conflating
6 two questions in my head. Ask the question
7 again, sir.

8 Q. Blood glucose monitoring is not anywhere
9 listed in the maintenance phase, is it, sir?

10 A. That is correct. Scanning it quickly,
11 but let me read it carefully and just be sure.
12 That's correct.

13 Q. No doubt about it anymore is there?

14 A. Today?

15 Q. Today, as we sit here?

16 A. That's right.

17 Q. Now, there was blood monitoring, but it
18 was to make sure the patient was taking the drug,
19 right?

20 A. Sir, let me just look at that and see.

21 Q. Yes, sir.

22 A. Wait a second. Actually, sir, I'm going
23 to go back and revise this in terms of
24 maintenance phase because before I answer that I
25 may want to revise the answer that I gave you. I

1 have to see what this question referred to, if
2 you pardon me for just a moment. We're going
3 fast here, I wanted to make sure I knew what you
4 were asking and what I was answering.

5 Q. Take your time.

6 A. During maintenance phase -- sir, this
7 didn't have to do with medical monitoring of
8 tests in the questions that we were answering
9 yesterday. I'm sorry. I apologize. I

10 misunderstood your question and what this table
11 is for. This table has to do with the general
12 clinical psychiatric monitoring. This has not to
13 do with monitoring of side effects or medical
14 problems.

15 Q. Well --

16 A. It does say, monitor for and manage
17 emerging side effects at each visit. But this
18 really had to do with psychiatric monitoring, not
19 monitoring for comorbid medical strategies, and I
20 think the -- I was misled as you asked your
21 question to think that this had to do with
22 overall detailed recommendations for side effect
23 monitoring. This had to do with how you monitor
24 the psychiatric symptoms of the patients during
25 the maintenance phase and I retract the answer I

1 give earlier, because it was irrelevant. This
 2 wasn't about medical monitoring. This is about
 3 psychiatric monitoring.
 4 Q. That's strange. Let's look at what it
 5 says. Ongoing monitoring, on the maintenance
 6 phase.
 7 A. Right. But here --
 8 Q. Sir, I hadn't asked the question yet.
 9 Do you want to say anything else?
 10 A. I'm sorry.
 11 Q. Routinely evaluate for and promptly
 12 respond to prodromal signs of relapse. What does
 13 that mean?
 14 A. That has to do with monitoring for signs
 15 of relapse of schizophrenia.
 16 Q. Monitor for and manage emerging side
 17 effects at each visit?
 18 A. That's right.
 19 Q. What side effects?
 20 A. Well, I'd have to go back to the survey
 21 question to tell you, and the footnote to that is
 22 14. And the question that generated this
 23 guideline, can we go to question 14 --
 24 Q. Here it is.
 25 A. Footnote is for the psychosocial survey

1 question. You have to go to the right one, show
 2 you how to read this. Psychosocial survey
 3 questions 1 through 4.
 4 Q. I thought it said --
 5 A. No, sir. It says psychosocial survey
 6 questions 1 through 4.
 7 Q. Let's talk about that quickly. The
 8 psychosocial survey, was that to the doctors?
 9 A. No, they weren't.
 10 Q. No, it wasn't, was it?
 11 A. Well, some of them. They were health
 12 care providers. We'll have to look at them and
 13 see. It was not to the psychopharmacologists
 14 because it wasn't about the medical monitoring,
 15 it was about the overall monitoring of the course
 16 of treatment.
 17 Q. So when you were answering Mr. Brenner's
 18 questions, and you were using some of the graphs,
 19 you were using graphs and charts not from the
 20 doctors; isn't right correct?
 21 A. No, that's not correct. The graphs that
 22 we looked at yesterday were the graphs that we
 23 sent to the doctors for the medical component of
 24 the treatment, not the psychosocial component of
 25 the treatment.

1 Q. I'm going back to monitor and manage for
 2 emerging side effects and as a footnote, it says
 3 14?
 4 A. Now, I got my glasses on. It's fine
 5 print but it says 14, psychosocial survey,
 6 questions 1 through 4. Those were the survey
 7 questions used to generate that recommendation.
 8 Q. Okay. I'm trying to find high blood
 9 glucose, diabetes or hyperlipidemia?
 10 A. Those wouldn't have been part of the
 11 psychosocial survey, sir.
 12 Q. Sir, let's go back to the -- so, we
 13 agree, at least, that the maintenance phase of
 14 this medication doesn't say anything about
 15 hyperglycemia, right?
 16 A. Sir, give me just a second to review
 17 this here.
 18 Q. Yes, sir.
 19 A. I want to make sure we're in the right
 20 section to answer the question that you're
 21 looking for. You're in the psychosocial portion
 22 of the survey, the medical monitoring section
 23 where it talks about blood tests is not what
 24 you're looking at. This is for monitoring
 25 psychiatric symptoms, it's not the medical

1 monitoring portion.
 2 Q. Sir, I'm under strategies for selecting
 3 medications. That starts on page 12, doesn't it?
 4 A. Sir, let's see, strategies for selecting
 5 medications. That's Roman numeral I.
 6 Q. On page 12?
 7 A. Right. And then in the -- then we get
 8 to guideline 6 which has to do --
 9 Q. Sir --
 10 A. -- with psychiatric monitoring during
 11 the maintenance phase.
 12 THE COURT: Let him ask the
 13 questions one at a time and I think we'll get
 14 through this quicker.
 15 A. Sure.
 16 Q. Page 12?
 17 A. Page 12.
 18 Q. Strategies for selecting medications?
 19 A. That's right.
 20 Q. This is part of the survey of doctors,
 21 is it not?
 22 A. Well, no, different questions in the
 23 course of the guideline are drawn from various
 24 sources, depending on the question we were trying
 25 to answer.

1 Q. Okay, sir?
 2 A. And it's footnoted to show who the
 3 respondents were.
 4 Q. Let's turn the page, I want to go one at
 5 a time, we turn to page 13, 14, and 15. You're
 6 giving listing guidelines?
 7 A. They follow a logical sequence in terms
 8 of the flow of decisions that clinicians need to
 9 make in the course of treating patients with
 10 schizophrenia. They're laid out in a logical
 11 sequence.
 12 Q. Yes, sir, I'm not quibbling with you.
 13 A. Right.
 14 Q. Guideline one, guideline two, guideline
 15 three on the next page.
 16 A. Sure.
 17 Q. And then you have guideline 3A and 3B,
 18 you actually break it down, right?
 19 A. Right.
 20 Q. Then you have guideline 4, selecting the
 21 medications for specific complicating problems,
 22 right?
 23 A. Right.
 24 Q. Then you go to guideline 5, which we
 25 talked about where it says most likely to cause

1 the side effect of weight gain is Zyprexa, right?
 2 A. That's right.
 3 Q. And then you go to guideline 6.
 4 A. Right.
 5 Q. The maintenance phase?
 6 A. Right. Maintenance phase in long-term
 7 treatment of schizophrenia.
 8 Q. That's all I've asked you.
 9 A. Yeah.
 10 Q. They we're going what you need to do in
 11 ongoing monitoring; isn't that what it says?
 12 A. Monitoring of their schizophrenic
 13 symptoms.
 14 Q. Sir, why don't you look at it?
 15 A. I'm telling you what it says. This is
 16 the context of monitoring for symptoms of
 17 schizophrenia.
 18 MR. ALLEN: Your Honor, can I have
 19 a question and answer format.
 20 THE COURT: Just ask your next
 21 question.
 22 Q. Yes, monitoring for tardive dyskinesia?
 23 A. Right.
 24 Q. At least every four months for
 25 conventional antipsychotics and six months for

1 newer atypical antipsychotics, and nine months
 2 for clozapine.
 3 Did I read that correctly?
 4 A. That's right.
 5 Q. So just back to what we said yesterday,
 6 tardive dyskinesia is something you need to
 7 monitor for, and that's why it's in the warnings
 8 and the adverse reaction section?
 9 A. I can't tell you why it's in what
 10 section, it is something you have to monitor for.
 11 Q. Now, plasma, that's blood, is it not?
 12 A. That's right, it's a blood component.
 13 Q. This does talk about blood monitoring,
 14 doesn't it?
 15 A. Let me see the line you're looking at
 16 here. I think as you said that refers to drug
 17 levels specifically.
 18 Q. Yes, sir, it does.
 19 A. That's part of the treatment of the
 20 schizophrenic syndrome.
 21 Q. The plasma monitoring under the
 22 maintenance phase has nothing to do with
 23 hyperglycemia and diabetes?
 24 A. This has to do with maintenance phase of
 25 monitoring the psychiatric status of the patient.

1 Just trying to clarify that. It doesn't exclude
 2 anything else, it includes psychiatric situation.
 3 Q. Okay, sir. Now, you did tell me back on
 4 No. 5 -- we're almost done -- that on the side
 5 effects that you all quizzed on, footnote 11 and
 6 that's the medication survey questions 19 and 21,
 7 right?
 8 A. That's right.
 9 Q. Okay. Now, your editorial board and all
 10 your advisers, I'm sure wanted to do a complete,
 11 thorough, accurate, best job possible, right?
 12 A. The editorial board --
 13 Q. Whoever wrote these questions?
 14 A. Right. That would have been the
 15 Dr. Francis and his editors for these various
 16 sections of the guidelines.
 17 Q. I'm looking in the questions -- 19 --
 18 you can take your time.
 19 A. Sure and we're in the medication section
 20 there, not the psychosocial section.
 21 Q. Wasn't that where I was supposed to go
 22 to? Medication section?
 23 A. Sir, what page are you on?
 24 Q. Isn't that 47?
 25 A. Let's see. Let's see, yeah, page 47,

1 there we are.
 2 Q. All right. When all these good experts
 3 got together, the 57 of them, tell them where
 4 they said we need to start monitoring for side
 5 effects of hyperlipidemia?
 6 A. Well, the experts were posed questions
 7 by the editors of the guideline.
 8 Q. Yes, sir. And tell me where it asked
 9 about hyperlipidemia?
 10 A. Didn't ask about it here.
 11 Q. Tell me where it asked about diabetes
 12 mellitus.
 13 A. Give me a moment.
 14 Q. Yes, sir. It's not there, is it, sir?
 15 A. In this question, it's not asked.
 16 Q. Yes, sir, and I'm not trying to play
 17 tricks on you. The question No. -- guideline 5
 18 tells us where to go. I didn't write it. It
 19 says selecting medications to avoid side effects,
 20 right?
 21 A. Yes, sir.
 22 Q. And it tells us to go to these
 23 questions?
 24 A. That's absolutely correct.
 25 Q. Okay, sir. Let's go to the questions

1 and let's look at the questions 19 and 21, and
 2 tell me when it directs me to go there, where
 3 does it say a word about diabetes?
 4 MR. BRENNER: Asked and answered.
 5 A. It does not.
 6 Q. Does not. Where does it say a word
 7 about hyperglycemia?
 8 MR. BRENNER: Asked and answered.
 9 A. It does not.
 10 THE COURT: I'll overrule the
 11 objection.
 12 Q. (BY MR. ALLEN) Where does it say that?
 13 A. Cardiovascular side effects.
 14 Q. Does it say related to diabetes,
 15 hyperglycemia or hyperlipidemia?
 16 A. Doesn't specify.
 17 Q. Yes, sir. Let me see if I have any
 18 other thing. I might -- oh, sir, on page 56, one
 19 of these charts you went over with Mr. Brenner
 20 yesterday.
 21 A. Yes, sir.
 22 Q. And you -- remember that you talked
 23 about SMAC testing?
 24 A. Yes.
 25 Q. What part -- what part of the

1 questionnaire was this all on?
 2 A. This was question 38.
 3 Q. Yes, sir.
 4 A. And it was in -- I'm just giving
 5 background here. This was in the section of the
 6 survey that, again, dealt with the medication
 7 treatment of schizophrenia.
 8 Q. But psychosocial or doctors, who was it?
 9 A. It was in the doctors section.
 10 Medication section.
 11 Q. Okay. The doctors session, weight
 12 monitoring, blood pressure check. Medical
 13 history, physical, that's pretty standard stuff
 14 for all of us, isn't it?
 15 A. Yes.
 16 Q. Complete blood count, standard for all
 17 of us, isn't it?
 18 A. Yes.
 19 Q. Blood chemistry screening, standard for
 20 all of us, isn't it?
 21 A. Yes.
 22 Q. Electrocardiogram. Standard for all of
 23 us, isn't it?
 24 A. These things are standard parts of
 25 medical evaluation.

1 Q. Dental checkup?
 2 A. Yes.
 3 Q. Pelvic examination or Pap smear. That's
 4 if you're a woman, right?
 5 A. Yes.
 6 Q. Drug screen, that's just to make sure
 7 the patient is not on drugs, right?
 8 A. And a patient at high risk for substance
 9 abuse, that's right.
 10 Q. The point of this, sir -- and then you
 11 go on down, it gets to HIV and mammography. This
 12 is just general guidelines and recommendations
 13 for an annual checkup, isn't it, sir?
 14 A. Well, actually, I'll read you the
 15 question. It says, Please rate the
 16 appropriateness of including each of the
 17 following tests as part of an annual routine
 18 screening for patients in maintenance treatment
 19 for chronic schizophrenia. So the focus here on
 20 what are the health needs of patients with
 21 schizophrenia. Not about the general population.
 22 It happens that many of the health
 23 needs of schizophrenics overlap with the patients
 24 of general population, but this was asking the
 25 needs of patients with schizophrenia.

1 Q. Okay. Remember, you talked about --
2 were you trying to imply that this answer on page
3 57 -- let me see, 57, were you trying to imply
4 that this medication and symptom monitoring was
5 somehow supposed to be blood glucose monitoring?
6 Were you trying to imply that in your testimony?

7 A. Let's see, page 57. If you're on page
8 57, I think you're here in the psychosocial
9 survey.

10 Q. Tell the jury what the psychosocial
11 survey is?

12 A. Well, the psychosocial survey -- I'd
13 have to look, refresh my memory, this was ten
14 years ago. But the psychosocial survey was put
15 together to describe those aspects of care that
16 have to do with providing psychological support,
17 living support, psychotherapeutic support,
18 variety of supportive services that are used in
19 the care of people with chronic mental illness,
20 schizophrenia in particular.

21 Q. Wasn't talking about blood testing, was
22 it?

23 A. I'd have to look at it, if it mentions
24 blood testing.

25 Q. Well, you answered Mr. Brenner's

1 questions very easily yesterday, didn't you?

2 MR. BRENNER: Your Honor.

3 THE COURT: No. That's
4 argumentative.

5 Q. (BY MR. ALLEN) Okay. Are my
6 questions -- I'll rephrase. Sir, medication and
7 symptom monitoring, does that have anything to do
8 with blood glucose testing, top side or bottom
9 and you have all the time you need to read this
10 entire report?

11 A. It's a pretty general phrase, sir. I
12 couldn't say what it includes or doesn't include.

13 Q. Yes, sir. In fact, though, you actually
14 can, though, I think, if you look -- go ahead.
15 Say whatever --

16 A. Go ahead, ask your question, I condition
17 go back.

18 Q. What would you like to tell me?

19 A. Reask me your first question, if you
20 wouldn't mind.

21 Q. No, sir. I have a new question.

22 What did you have to say?

23 A. I was going to try to respond to your
24 request.

25 Q. The question is: Does this have

1 anything to do with blood glucose monitoring for
2 high glucose?

3 A. Here, it wouldn't specifically.

4 Q. Thank you, sir. Find for me anywhere in
5 there where it says we recommend that we do
6 routine baseline and followup blood monitoring
7 for glucose in schizophrenic patients. Find it
8 for me, please, sir?

9 A. That phrase doesn't appear in these
10 questions.

11 Q. No, sir, I mean in this entire document.

12 A. Sir, I don't think that phrase appears
13 in the document.

14 Q. Whether it's that phrase or something
15 similar, routine baseline and ongoing plasma
16 glucose monitoring, where is it in this document?

17 A. Well, sir, every time the patient is
18 admitted to the hospital, you know, when you do a
19 survey of this nature.

20 MR. ALLEN: Your Honor.

21 A. Let me answer the question.

22 THE COURT: Let him answer the
23 question.

24 A. When we admit a patient to the hospital,
25 for example, we take their blood pressure, we get

1 baseline blood tests, we get an
2 electrocardiogram, we do a mental status
3 examination, we do a physical examination.

4 There's a whole process that occurs
5 when we bring a patient into treatment. When a
6 new patient comes into the clinic, every
7 psychiatrist gets a -- should get a full medical
8 screening when they enter the clinic. When I see
9 a patient in my practice I get a full medical
10 screening of that patient before I undertake
11 treatment or if its an emergency, within a few
12 days of the time that I undertake treatment.

13 When a patient comes into the
14 emergency room, every hospital has a protocol for
15 the types of tests that it does to evaluate the
16 patient. When we do a survey of this nature, we
17 don't ask about stuff that's so basic that every
18 doctor worth his salt knows to do it. We ask
19 about those areas where guidance is needed in
20 terms of clinical decision-making that might call
21 for some extra attention.

22 THE COURT: Let me ask you a
23 question about that. You just said that you
24 don't ask for things that every doctor worth his
25 salt knows about. I saw blood pressure

1 monitoring on the survey questions, I would
2 assume any doctor worth his salt knows to monitor
3 people's blood pressure when they first come in
4 for a screening.

5 THE WITNESS: At a basic initial
6 screening when we evaluate a patient.

7 THE COURT: And so you did ask
8 those kinds of questions.

9 THE WITNESS: We asked here in
10 terms of prioritizing, given that schizophrenics
11 are a vulnerable population, where it's difficult
12 to do everything, and where you have to focus
13 your energy, what are the important things to
14 look at when you take care of your patients over
15 the long haul.

16 Q. And my original question was, in this
17 whole document that you were an editor on and you
18 and Mr. Brenner discussed --

19 A. Yes.

20 Q. -- find me anywhere that it says monitor
21 routine blood glucose at baseline and following
22 up? Can you find it?

23 A. Baseline is assumed. Following up is
24 stated right in the guideline.

25 Q. In here?

1 A. It's recommended that the blood tests be
2 taken on an annual basis.

3 Q. Annually. Okay.

4 A. It doesn't exclude taking them more
5 often.

6 Q. Now you said something in your answer.
7 You said any doctor worth his salt; do you
8 remember saying that?

9 A. Yes.

10 Q. Do you know Dr. Duane Hopson?

11 A. I don't know him personally, sir.

12 Q. You know of him?

13 A. I believe he's here in Alaska.

14 Q. You think he's worth his salt?

15 A. I'm sure he is.

16 Q. He's told us he changed his practice on
17 blood monitoring recently, did you know that?

18 A. No.

19 Q. Did you read his testimony?

20 A. No.

21 MR. ALLEN: Anything else?
22 Tommy? Dave?

23 Thank you, sir, I apologize for the
24 length. I'm normally not that long and I
25 appreciate your patience.

1 THE COURT: Do you want to take our
2 second break before you start?

3 MR. BRENNER: If this would be
4 appropriate, that would be good, Your Honor.

5 THE COURT: Thank you, ladies and
6 gentlemen. We'll be in recess for 15 minutes.

7 (Jury out.)

8 (Break.)

9 THE COURT: Mr. Brenner.

10 MR. BRENNER: Your Honor, with the
11 Court's permission, I'd like to publish to the
12 jury the exhibit we had marked yesterday, EL3907.

13 THE COURT: If it was admitted, you
14 may publish it to the jury.

15 MR. BRENNER: Also, with the
16 Court's permission, there was a PDR that shown to
17 Dr. Kahn in reference. I'd like to mark that for
18 identification.

19 THE COURT: Sure. I'm not sure
20 that it isn't already in as an exhibit.

21 MR. ALLEN: Yes, the 1998 PDR
22 reference to Zyprexa was admitted yesterday. I'm
23 sorry, 2008.

24 THE COURT: Rather than have
25 duplicates of the thing, if we can find the

1 exhibit, let's just use the one that's admitted.

2 MS. GUSSACK: PDR --

3 MR. ALLEN: The book's not
4 admitted.

5 THE COURT: You want to use the
6 whole book?

7 MR. BRENNER: Just so the record's
8 clear.

9 MR. ALLEN: For identification
10 purposes, that's fine.

11 MR. BRENNER: I'm marking it for
12 identification as EL3909.

13 THE COURT: 3909?

14 MR. BRENNER: Yes, sir.

15 THE COURT: EL -- just so the
16 record is clear, 3909 is the entire 19- --

17 MR. ALLEN: 2008.

18 THE COURT: -- 2008 PDR.

19 REDIRECT EXAMINATION

20 Q. (BY MR. BRENNER) Doctor?

21 A. Yes.

22 Q. In his cross-examination, Mr. Allen
23 asked you about a number of potential adverse
24 events with Zyprexa and asked you whether you'd
25 ever seen them in your practice.

1 Do you recall that?
 2 A. Yes.
 3 Q. Have you seen hyperglycemia occur in
 4 patients treated with Zyprexa?
 5 A. Yes.
 6 Q. And do you monitor their blood for that?
 7 A. Yes, I do.
 8 Q. And have you done that since 1996?
 9 A. Yes.
 10 Q. Doctor, has anybody from Eli Lilly and
 11 Company ever sought to minimize any side effect
 12 to you?
 13 A. No.
 14 Q. Has anybody from Eli Lilly and Company
 15 ever told you that Zyprexa did not cause gain?
 16 A. No.
 17 Q. With respect to the consensus
 18 guidelines, Doctor, do you have an estimate as
 19 to -- strike that.
 20 For whom are the guidelines
 21 intended?
 22 A. Practicing psychiatrists.
 23 Q. And were these guidelines actually
 24 mailed out to practicing psychiatrists?
 25 A. Yes, they were.

1 Q. Approximately how many?
 2 A. I believe that this guideline was mailed
 3 to the membership of the American Psychiatric
 4 Association, that mailing list essentially, which
 5 would have been about 30,000 psychiatrists, if
 6 I'm not mistaken.
 7 Q. And so any psychiatrist in Alaska who
 8 was a member of the American Psychiatric
 9 Association would have this mailed to him or her?
 10 A. Yes.
 11 MR. BRENNER: Can I have internal
 12 page 9, please, the right-hand column, the
 13 middle.
 14 MR. ALLEN: Mr. Brenner, can I have
 15 the actual page?
 16 MR. BRENNER: It's Page 8. Yes.
 17 It'll always be one page behind the internal
 18 page.
 19 MR. ALLEN: Okay. Thank you.
 20 Q. (BY MR. BRENNER) Doctor, you were asked
 21 this question about the portion of the
 22 guidelines. The first thing I'd like to ask you,
 23 there are limitations to these guidelines,
 24 correct?
 25 A. Yes.

1 Q. As in all guidelines for practice,
 2 correct?
 3 A. Absolutely.
 4 Q. And Mr. Allen had you read part of this
 5 section that enumerates some of the limitations?
 6 A. Yes.
 7 Q. Can you read for the jury, please, the
 8 last two sentences? The one beginning "despite
 9 this."
 10 A. Yes. Despite this, the aggregation of
 11 the universe of the expert opinion is often the
 12 best tool we have to develop guideline
 13 recommendations. Certainly, the quantification
 14 of the opinions of a large number of experts is
 15 likely to be much more trustworthy than the
 16 opinions of any small group of experts or of any
 17 single person.
 18 Q. Is that one of the reasons why you and
 19 your colleagues took the time to prepare and
 20 promulgate these guidelines?
 21 A. Precisely.
 22 Q. Doctor, you were asked about a blood
 23 test known as an SMAC. In your practice, is that
 24 a type of blood test commonly used to monitor
 25 blood glucose levels?

1 A. Yes.
 2 Q. In your practice is that type of blood
 3 test commonly used to monitor lipid levels?
 4 A. Yes.
 5 Q. Is there some special, you know, arcane
 6 kind of blood test that doctors use to check
 7 blood glucose levels?
 8 A. No.
 9 Q. Or to check lipid levels?
 10 A. No.
 11 Q. Is that still a test you use today?
 12 A. Yes, it is.
 13 Q. You were asked questions about tardive
 14 dyskinesia yesterday.
 15 Do you recall that?
 16 A. Yes, I do.
 17 Q. In your clinical experience, are rates
 18 of tardive dyskinesia higher in patients who get
 19 first-generation antipsychotics or
 20 second-generation?
 21 A. The rates are higher in patients who get
 22 first-generation antipsychotics.
 23 MR. BRENNER: Mike, could we have
 24 internal page 47 of EL3907, and item 19, please?
 25 Q. (BY MR. BRENNER) Doctor, could you tell

1 us what data are depicted in item 19 from the
 2 1999 guidelines?
 3 A. Yes. Item 19 is a -- I'll read the
 4 question. Rate the appropriateness of the
 5 different antipsychotic medications for a patient
 6 for whom it is important to avoid the following
 7 side effects. Give your highest ratings to --
 8 that would be 7, 8 or 9. Give your highest
 9 ratings to the drugs that are least likely to
 10 cause these problems and assume that the patient
 11 is receiving an average therapeutic dose of the
 12 antipsychotic medication.
 13 Q. And the issue here is one of
 14 extrapyramidal symptoms?
 15 A. Right, we listed a whole bunch of side
 16 effects, when we asked the questions, we would
 17 ask them in sequence and list the drugs under it,
 18 and they would be listed in alphabetical order.
 19 Q. Just remind us briefly: What are
 20 extrapyramidal symptoms?
 21 A. Extrapyramidal symptoms are symptoms
 22 such as -- drug-induced. Parkinsonism and
 23 akathisia that we talked about yesterday.
 24 Q. As a result of this survey to the
 25 experts with whom your group consulted, what were

1 the drugs they found least likely to cause
 2 extrapyramidal symptoms?
 3 A. The drugs where the survey respondents
 4 fell within the first-line range as shown by the
 5 confidence intervals were in the following order,
 6 clozapine, quetiapine, olanzapine, and
 7 ziprasidone.
 8 Q. If you were wanted to avoid
 9 extrapyramidal symptoms, this is what the experts
 10 prescribed?
 11 A. That's correct.
 12 MR. BRENNER: Can I have the next
 13 page, please, and item 23.
 14 Q. (BY MR. BRENNER) Doctor, this -- these
 15 data address something called something
 16 akathisia, and I know you addressed yesterday.
 17 Just remind us what akathisia is.
 18 A. Yes, I'm sorry. It was on the wrong
 19 page, pardon me.
 20 Which is the internal page of the
 21 document?
 22 Q. It's one page additional.
 23 A. Got it. Oh, here I am. Question 23,
 24 sorry.
 25 Q. Just remind us what akathisia is.

1 A. Akathisia is best described as restless
 2 legs, inability to sit still or hold still in one
 3 place.
 4 Q. Okay. Am I correct that this question
 5 was soliciting views from the experts as to what
 6 drug you would use or switch a patient to if you
 7 wanted to avoid akathisia?
 8 A. Well, if a patient is on -- and the way
 9 this question is phrased, if a patient is on a
 10 high potency conventional antipsychotic at the
 11 lowest dose that you believe will be effective --
 12 just explain what that means. We are still in an
 13 era here where there were patients being treated
 14 with first-generation antipsychotics. That's
 15 what conventional means. The high-potency
 16 conventional antipsychotics were the ones that
 17 were most frequently associated with akathisia.
 18 Haldol would be the best known example.
 19 So if a patient was being treated
 20 with a high-potency conventional antipsychotic,
 21 for example, like Haldol, and you've lowered the
 22 dosage as much as you can, which would be the
 23 first thing, you know, you would try to do within
 24 the limits of what the patient still needs to
 25 treat their psychosis, and they still have

1 distressing akathisia, despite concomitant
 2 treatment with an anticholinergic,
 3 anti-Parkinsonian agent like the kind of antidote
 4 I mentioned yesterday such as Cogentin. So
 5 they're on a high-potency drug. You've lowered
 6 the dosage. You've given them Cogentin, and
 7 you've given that agent like Cogentin at the
 8 highest dosage that the patient can tolerate,
 9 because you remember those have side effects too.
 10 This is the setup. So they have
 11 akathisia and you're stuck. Please rate each of
 12 the following treatment strategies for this
 13 problem. Then we gave them, you know,
 14 alphabetical the whole list and this was the rank
 15 ordering of how they were rated.
 16 Q. And olanzapine was the highest ranked?
 17 A. Yes, 79 percent of the panel felt that
 18 this would be their first-line intervention, to
 19 switch the patient at this point from the
 20 high-potency conventional drug to olanzapine.
 21 Q. And they would do that -- their
 22 recommendation was to avoid or do away with this
 23 akathisia side effect?
 24 A. Specifically because of the akathisia.
 25 Q. Okay. Doctor, in your practice do you

1 currently prescribe many first-generation
2 antipsychotics?
3 A. Very infrequently currently.
4 Occasionally, but not often.
5 Q. Why don't you prescribe them very much?
6 A. Because of the neurological side
7 effects.
8 MR. BRENNER: Mike, can we go to
9 internal page 7, please?
10 Q. (BY MR. BRENNER) Doctor, at the
11 beginning of the guidelines there's a list of a
12 lot of people to whom surveys were sent or who
13 were consulted in some way in generating these
14 guidelines, right?
15 A. Yes.
16 Q. And there's a section called State
17 Medical Directors?
18 A. Yes.
19 MR. BRENNER: It's over to the
20 right-hand column, please. All the way over.
21 Q. (BY MR. BRENNER) And within the state
22 medical directors, is there a Carey Ozer,
23 O-z-e-r, M.D.?
24 A. Yes.
25 Q. And Dr. Ozer was from the Alaska

1 Department of Mental Health here in Anchorage?
2 A. That's right.
3 MR. BRENNER: Can I also have
4 internal page 8, please?
5 Q. (BY MR. BRENNER) Near the end of the
6 list of people consulted, Doctor, are
7 representatives from an organization called -- or
8 affiliated with an organization called NAMI,
9 N-A-M-I?
10 A. Yes.
11 Q. What's that?
12 A. The National Alliance for the Mentally
13 Ill.
14 Q. And there's a John F. Malone identified?
15 A. Yes.
16 Q. And he is -- he was with the Alaska
17 Mental Health Trust Authority?
18 A. Yes. This is an aggregation of State
19 branches of this national organization, which is
20 an advocacy group that advocates for the
21 appropriate care and resources for people with
22 mental illness.
23 MR. BRENNER: Could I have internal
24 page 57, please, item 38.
25 Q. (BY MR. BRENNER) I think the jury's

1 probably seen this enough, Doctor. But very
2 briefly, is weight monitoring and blood chemistry
3 screening recommended as screening measures that
4 should be taken in connection with patients in
5 maintenance treatment for chronic schizophrenia?
6 A. Yes.
7 Q. And that was certainly as of the time
8 these data were derived in 1998 and 1999?
9 A. Yes.
10 Q. And that had been your practice since
11 1996?
12 A. Yes.
13 MR. BRENNER: And then at the
14 bottom of that page, if we could show item 39.
15 Q. (BY MR. BRENNER) And 39 were the
16 recommendations from the experts as to comorbid
17 medical conditions and risk factors for which of
18 those patients should be monitored?
19 A. Yes.
20 Q. And among those were obesity and
21 diabetes, correct?
22 A. Yes. Both viewed as -- by the majority
23 of experts as first-line areas of concern.
24 Q. Okay. Doctor, Mr. Allen read to you
25 from various parts of your report. I want to

1 show you one other portion. The top paragraph.
2 Doctor, is it correct that one of
3 the things you noted in your report -- I'll just
4 read it -- is discussion of weight gain and
5 metabolic issues relating to olanzapine has been
6 in the medical literature since at least the late
7 1990s, and information concerning these topics
8 has been set forth in the olanzapine product
9 labeling from the time of its launch. That
10 olanzapine can cause weight gain in some patients
11 has been well understood in the psychiatric
12 community, as are the potential consequences of
13 weight gain.
14 Have I read that correctly?
15 A. Yes.
16 Q. That was an opinion you held at the time
17 you prepared your report?
18 A. Yes.
19 Q. Is it an opinion you hold today?
20 A. Yes, it is.
21 Q. And do the potential consequences of
22 weight gain that you noted in your report, do
23 they include hyperglycemia?
24 A. Yes.
25 Q. Hyperlipidemia?

1 A. Yes.
 2 Q. Diabetes?
 3 A. Yes.
 4 MR. BRENNER: Nothing further,
 5 Your Honor.
 6 RE-CROSS-EXAMINATION
 7 Q. (BY MR. ALLEN) Okay. Let's go back to
 8 your article.
 9 First of all, you talked about
 10 NAMI?
 11 A. Yes.
 12 Q. National Alliance for the Mentally Ill?
 13 A. Yes.
 14 Q. Financed and supported in part by Eli
 15 Lilly, correct?
 16 A. I don't know to what degree. I don't
 17 know their sources of financing.
 18 Q. You don't know any of them?
 19 A. No.
 20 Q. Are you aware there's evidence in these
 21 files that, in fact, the National Alliance for
 22 the Mentally Ill is financed in part by Eli
 23 Lilly?
 24 MR. BRENNER: Objection,
 25 Your Honor.

1 THE COURT: Sustain that.
 2 Q. (BY MR. ALLEN) Now, concerning the
 3 experts for the medical questions --
 4 A. Yes.
 5 Q. -- that's page 4.
 6 A. Yes.
 7 Q. Who's from Alaska?
 8 MR. BRENNER: Objection; asked and
 9 answered.
 10 MR. ALLEN: No, he brought it back
 11 up.
 12 Q. (BY MR. ALLEN) Who's from Alaska?
 13 THE COURT: I'll allow this.
 14 A. None of them are, sir.
 15 Q. (BY MR. ALLEN) Yes, sir. Now, on the
 16 issue of sending something to the people in
 17 Alaska, that -- was in regard to policy experts
 18 on page 5?
 19 A. Sending something to people in Alaska?
 20 Q. Well, this list --
 21 A. Participation in the survey you mean?
 22 Q. Well, sir, I'm not trying to quibble.
 23 A. No, no. I just wanted to be sure.
 24 Q. Turn to page 5, please, sir.
 25 A. Yes.

1 Q. Is this where the -- you said somebody
 2 from Alaska was sent a survey?
 3 A. Yes.
 4 Q. Okay. The survey was not on medical
 5 issues, was it, sir?
 6 A. That's correct.
 7 Q. It was on public policy and the
 8 financing of care of schizophrenia; is that
 9 correct?
 10 A. Yes, that's right.
 11 Q. And you understand that's who's hired me
 12 to be here on their behalf in this case? Do you
 13 understand that?
 14 A. Yes, I understand what you mean.
 15 Q. Right. So does that give you an
 16 indication of how they feel today?
 17 MR. BRENNER: Objection,
 18 Your Honor.
 19 THE COURT: Sustained.
 20 Q. (BY MR. ALLEN) Now, sir, on these
 21 guidelines -- tardive dyskinesia and akathisia,
 22 all right? You said in your deposition -- I can
 23 get it out if you want and I'm paraphrasing --
 24 that the CATIE study is probably the most
 25 important study that you've seen in a long time,

1 right?
 2 A. Well, let's look at what I've said.
 3 Looking at the expert report?
 4 Q. No, sir. I was actually looking at your
 5 deposition.
 6 A. Okay.
 7 MR. BRENNER: Your Honor, are we
 8 going to impeach him with deposition testimony or
 9 --
 10 THE COURT: I don't know what the
 11 question is, so I have to wait to rule on an
 12 objection before I understand that. Right now
 13 this is all preliminary to something.
 14 MR. ALLEN: Yes.
 15 Q. (BY MR. ALLEN) You remember being asked
 16 questions about the CATIE study?
 17 A. Boy, that was a year ago.
 18 Q. Yes, sir. Do you agree that the CATIE
 19 study is quite relevant?
 20 The CATIE study was a
 21 widely-promulgated study. Studies such as CATIE
 22 that received front-page national newspaper
 23 attention and key articles in widely disseminated
 24 journals are a very important component that
 25 doctors take into account when they make

1 treatment decisions, and I would think -- and it
2 would be, I think, a mistake to overlook an
3 article with the impact of CATIE in talking about
4 how doctors make decisions.

5 A. Yes.

6 Q. So you agree with that?

7 A. If I said that, I wouldn't revise it
8 now.

9 Q. Okay. And --

10 THE COURT: And, again, Mr. Allen,
11 if you're going to read a deposition, you can
12 remind him of his testimony. You can impeach him
13 if there's something to impeach, but if you're
14 just going to read his testimony to him, what you
15 should just do is ask the question over again.

16 MR. ALLEN: Well, I'm sorry. I was
17 trying to speed this along, Your Honor.

18 Q. (BY MR. ALLEN) How about this? Do you
19 agree the CATIE study is important and doctors
20 should pay attention to it?

21 A. Yes.

22 Q. Okay, sir. And didn't it look -- it was
23 independently sponsored. It wasn't sponsored by
24 a drug company; isn't that right?

25 A. That's right.

1 Q. And it was by the National Institutes of
2 Mental Health, right?

3 A. That's right.

4 Q. They looked at neurologic side effects
5 of second-generation and first-generation
6 antipsychotics, did they not?

7 A. They compared second-generation
8 antipsychotics with one middle potency
9 first-generation. So it was singular
10 first-generation, an antipsychotic.

11 Q. Perphenazine?

12 A. Perphenazine.

13 Q. Perphenazine, I'm sorry, sir.

14 And they concluded -- this was the
15 NIMH -- there were no significant differences
16 among the groups in the incidence of
17 extrapyramidal side effects, akathisia or
18 movement disorders, as reflected by rating
19 scale measures of severity, did they not?

20 A. The NIMH didn't conclude that, sir. The
21 authors of the study did.

22 Q. Who were not financed by drug companies?

23 A. That's correct.

24 Q. You know, we were talking about
25 treatment guidelines, and yours were in '99?

1 A. Yes.

2 Q. What's been admitted into evidence in
3 this case is Alaska 10147, Practical Treatment
4 Information for Schizophrenia by Dr. Carol
5 Tamminga.

6 Are you familiar with that?

7 A. No.

8 Q. Do you know Dr. Tamminga?

9 A. No.

10 Q. So you have not reviewed the treatment
11 guidelines -- by the way, it's published in the
12 American Journal of Psychiatry in April of 2006.

13 Have you reviewed that?

14 A. What's the title of the document?

15 Q. Yes, sir. It's admitted into evidence.
16 It's AK10147, entitled Practical Treatment
17 Information for Schizophrenia.

18 Have you reviewed that?

19 A. The editorial that she wrote. At some
20 point I may have read it. I'd be glad to look at
21 parts of it again or look at the whole editorial
22 again if you wish.

23 Q. Yes, sir. My first question is: It's
24 an editorial by one of the editors of the journal
25 and one of their designated experts in this case.

1 Have you read it?

2 MR. BRENNER: Objection, Your
3 Honor. I don't believe Dr. Tamminga is an
4 expert.

5 MR. ALLEN: She was designated.

6 THE COURT: Well, whether she was
7 or she wasn't, just rephrase the question.

8 Q. (BY MR. ALLEN) Have you read this?

9 A. I believe I may have read it.

10 Q. Yes. And, in fact, it has more
11 up-to-date guidelines, of course, since it was
12 published in April of 2006 than your 1999 report;
13 wouldn't you agree?

14 A. Yes.

15 Q. In fact, she identifies two specific
16 drugs. And let's read it together: The
17 metabolic and other somatic effects of olanzapine
18 and clozapine also have implications for
19 psychiatric practice. As long as psychotropic
20 medications were considered relatively free of
21 side effects, psychiatrists could practice in
22 settings appropriate to other mental health
23 counselors. However, medication treatments with
24 high side-effect burdens demand clinical settings
25 that are capable of detecting and managing

1 serious side effects.

2 Did I read that correctly?

3 A. Yes, you did.

4 Q. This knowledge means that a clinician's
5 office needs to be equipped to efficiently
6 monitor antipsychotic drug side effects, blood
7 pressure cuffs, scales, body tape measures, a
8 process for plasma chemistry monitoring, and
9 electrocardiograms, and qualified consultants for
10 medical questions -- let's see -- qualified
11 consultants for medical questions become
12 important components of practice. Dynamic
13 information of drug side effects needs to take a
14 prominent place in a patient's psychiatric chart.
15 Medical consequences of psychiatric drugs are
16 real, preventable and require focused monitoring.
17 Clinicians will need to have systems for the
18 effective monitoring of drug side effects to
19 maintain and promote physical health among
20 patients as well as psychiatric health. That
21 these studies were NIMH-funded increases our
22 confidence that they are as free from marketing
23 or other bias or spin as possible.

24 Did I read that correctly?

25 A. Yes, you did.

1 Q. And there's been a problem with the drug
2 industry putting spin on medical recommendations
3 prior to 2006, wasn't there?

4 MR. BRENNER: Objection,
5 Your Honor.

6 THE COURT: I'll let the doctor
7 answer the question, if he's able to.

8 Q. (BY MR. ALLEN) Hasn't there been a
9 problem with spin and bias?

10 A. I wouldn't have an opinion on that, sir.

11 Q. Okay. Did you see in these new practice
12 guidelines that Dr. Tamminga identifies clozapine
13 and olanzapine as the two worst drugs following
14 CATIE?

15 A. This is not a practice guideline, sir.
16 I see that she makes the statement.

17 Q. Okay. Do you disagree with her
18 statement?

19 A. Could I see the context? I haven't
20 reviewed the whole article.

21 Q. I'll let you have my highlighted and
22 starred copy. I don't know if I have another
23 one.

24 A. Sure.

25 THE COURT: Just for the record,

1 the document he's being shown is what number?

2 MR. ALLEN: 10 -- sorry -- AK10147.

3 Let me make sure.

4 Yes, sir, Your Honor, AK10147.

5 A. So your question to me, sir? I'm sorry.

6 Q. (BY MR. ALLEN) I can't even remember
7 anymore.

8 Do you agree with these guidelines?

9 A. Sir, this is a long article. I can't
10 tell you that I agree or disagree with an entire
11 article.

12 Q. Thank you, sir.

13 A. And it's not a guideline.

14 Q. Let me see if I can find it -- I thought
15 the exact words they used. Let me put it back
16 up.

17 Doesn't she, in fact -- by the way,
18 this is Carol Tamminga --

19 THE COURT: Is he reviewing the
20 Tamminga editorial, or is he reviewing the CATIE
21 study? I thought he was reviewing --

22 MR. ALLEN: He's reviewing the
23 editorial following the CATIE study, which has
24 been admitted into evidence.

25 MR. BRENNER: The document speaks

1 for itself.

2 THE COURT: I thought it was the
3 CATIE study, that was following this and that
4 that's the number that -- which article -- are
5 you looking at the CATIE study?

6 THE WITNESS: No, I'm looking at
7 the editorial published in a different journal
8 from the journal that the CATIE study was
9 published in.

10 THE COURT: Okay.

11 Q. (BY MR. ALLEN) Yeah. And this was
12 following the CATIE -- actually, CATIE had three
13 parts, did it not? 1, 2 and 3?

14 A. In terms of the way that the research
15 proceeded.

16 Q. Yes, sir.

17 A. Yes.

18 Q. Didn't it have three parts?

19 A. Yes.

20 Q. And I didn't know -- just so we can look
21 right here. She talks -- the reason this article
22 is written -- and if you can read any part of it,
23 it's following the CATIE analysis; isn't that
24 right?

25 MR. BRENNER: Your Honor, I don't

1 think he can testify to why an article was
2 written.

3 MR. ALLEN: It's reflected in the
4 article and the article is in evidence.

5 MR. BRENNER: It speaks for itself.

6 THE COURT: He may or may not be
7 able to. If the document explains it, then he
8 probably can reflect it, and if he can't, he
9 can't.

10 Q. (BY MR. ALLEN) Let's just read it
11 together since everybody -- we were at a point
12 where we can ask which among the multiple
13 antipsychotic treatments are best for
14 effectiveness, efficacy and tolerability.

15 Do you see that?

16 A. Sure, I'm sorry. Which --

17 Q. Right on the first page.

18 A. First page. Yes, I see it, second
19 paragraph.

20 Q. I'll quit reading. And we're talking
21 about CATIE, right?

22 A. Yes.

23 Q. And then you go to the last page, which
24 is the part I read, and it talks about the
25 metabolic and somatic effects of two drugs,

1 recommendation -- you know, the question was
2 asked: What would you do for annual monitoring?
3 And, you know, annually you would certainly check
4 these things. And then let me be precise about
5 the answer -- pardon me for a moment.

6 Then it says: Routinely monitoring
7 for comorbid medical conditions, and routinely is
8 not defined.

9 THE COURT: Okay. What did you do
10 when you said that you monitored in 1996?

11 THE WITNESS: Sure.

12 THE COURT: What did you do?

13 THE WITNESS: Well, certainly, as I
14 said, you know, annually you would have patients
15 get a basic check-up and look for common health
16 conditions that might occur, some of which we
17 know patients with schizophrenia are at higher
18 risk for. So we'd be watching for those and
19 making sure that if they were not fully able to
20 adhere with all of our recommendations, as any of
21 us might, that we would make sure that at least
22 our patients got focused evaluation for certain
23 problems. And that would include the kind of
24 blood tests we talked about before.

25 In terms of routine monitoring,

1 Zyprexa and clozapine, right?

2 A. That's right.

3 Q. Thank you, sir.

4 MR. ALLEN: I have no further
5 questions.

6 MR. BRENNER: If I may, Your Honor.

7 REDIRECT EXAMINATION

8 Q. (BY MR. BRENNER) Doctor, in connection
9 with the 1999 guidelines that have been
10 discussed, was it recommended that there be blood
11 monitoring and monitoring for diabetes among
12 patients being treated for schizophrenia?

13 A. Yes.

14 Q. Would that be your recommendation today
15 as well?

16 A. Yes.

17 MR. BRENNER: Thank you.

18 THE COURT: I'm actually going to
19 follow that question up.

20 What was the blood monitoring that
21 was recommended in 1999? Was it once a year?
22 Was it every six months? Was it every two weeks?
23 What was -- what was that recommendation intended
24 to recommend?

25 THE WITNESS: Okay. The

1 when you see a patient develop signs or symptoms
2 of hyperglycemia, you would step up your
3 vigilance, get a blood test at that point. If
4 you see a patient gaining weight at any point,
5 you begin to do things like check their thyroid
6 function, look to see if they've developed
7 altered lipids or blood sugars. These are things
8 that you do in the course of seeing patients who
9 you might be seeing every few weeks, every month,
10 every few months, but at those intervals when you
11 see them, you're observing for changes in their
12 health status and then asking them to have
13 appropriate evaluations based on the changes that
14 you see.

15 THE COURT: So how often would you
16 take blood? When you saw them gaining weight,
17 you'd take blood?

18 THE WITNESS: Yeah. If you see a
19 patient gaining weight and they've put on --

20 THE COURT: How much weight would
21 they have to gain to --

22 THE WITNESS: I'm sorry.

23 THE COURT: How much weight would
24 they have to gain to do the blood tests?

25 THE WITNESS: You know, there's not

1 a strict cutoff point there. I'd say when you
 2 look at someone and, you know, they're moving
 3 up -- a woman is moving up a couple dress sizes,
 4 a man's belt is -- you know, people have to get
 5 new clothes, you're putting on 5 percent of your
 6 body weight, you know. It's hard to say exactly.
 7 But people know when they're gaining a
 8 significant amount of weight out of the usual
 9 fluctuation of what they experience. You know it
 10 as a doctor; the patient knows it. Sometimes
 11 they can gain a small amount, and it's going to
 12 be unusual for them.

13 I've had patients where, you know,
 14 if they gain three or four pounds, it's a big
 15 change because they usually have very stable
 16 weights. Other patients whose weights go up and
 17 down, they come back from a Carnival Cruise
 18 vacation and they've put on ten pounds. But when
 19 they're taking medication, if I see someone put
 20 on anything in the order of, you know, ten pounds
 21 over the course of a portion of the year, I'm
 22 going to be concerned about them, and I'm going
 23 to step up my monitoring. I'm going to have them
 24 diet and exercise more. If I see them gaining
 25 more weight, I'm going to be checking their

1 bloods, as I said, periodically monitoring
 2 thyroid function. And I may lower their dosage
 3 or change their treatment.

4 MR. ALLEN: Can I ask a question
 5 now, Your Honor?

6 THE COURT: You may.

7 RE-CROSS-EXAMINATION

8 Q. (BY MR. ALLEN) We're not talking
 9 Carnival Cruise Line gaining weight here, are we,
 10 sir?

11 A. I'm talking about the range in weight
 12 fluctuation that people experience. And the
 13 threshold for medical evaluation depends on the
 14 individual. Certainly there's a point of a lot
 15 of weight gain where you're going to be concerned
 16 about a higher risk of diabetes or
 17 hyperlipidemia. You're going to check bloods in
 18 the course of the year.

19 Q. And to answer the judge's question --

20 MR. BRENNER: If Your Honor please.
 21 If Your Honor has other questions, Your Honor can
 22 ask them.

23 THE COURT: I'll let both sides
 24 follow up to when I ask questions. I think it's
 25 only fair.

1 Q. (BY MR. ALLEN) 38, please rate the
 2 appropriateness of including each of the
 3 following tests as part of an annual routine
 4 screening for patients in maintenance treatment
 5 for chronic schizophrenia. That's the list we
 6 went down, dental check-up and everything else,
 7 right?

8 THE COURT: Again, he answered that
 9 question to me, and I understand that.

10 MR. ALLEN: All right. Yes, sir?

11 THE WITNESS: I'm sorry. Did you
 12 want me to --

13 MR. ALLEN: No, the judge told me
 14 not to answer -- not to ask it.

15 Q. (BY MR. ALLEN) Now, are you aware -- I
 16 think you said yesterday, and implied to
 17 Your Honor a minute ago, that you've seen less
 18 than a handful of patients with diabetes related
 19 to Zyprexa?

20 A. Developing frank clinical diabetes, I've
 21 seen a handful of patients.

22 Q. Are you familiar with the fact that
 23 doctors had informed Eli Lilly in November of
 24 1999 --

25 THE COURT: This isn't a follow-up

1 to my question.

2 MR. ALLEN: Okay. I'll withdraw.

3 THE COURT: Do any of the members
 4 of the jury have any questions?

5 Can counsel please approach?

6 (Bench discussion.)

7 THE COURT: I think there's a
 8 little bit of confusion, but I'll ask him.

9 Doctor, the question from the juror
 10 is: If blood monitoring is recommended for all
 11 schizophrenic patients, why didn't you start
 12 doing it until 1996?

13 THE WITNESS: Oh, I didn't mean to
 14 leave that impression. I think I said yesterday
 15 I've been doing blood monitoring of patients from
 16 the time that I began practicing psychiatry
 17 certainly as part of a baseline evaluation of
 18 every patient. Certainly recommending that my
 19 patients with schizophrenia have annual health
 20 monitoring just as I would recommend it for
 21 anyone who didn't have schizophrenia.

22 And certainly from the time that
 23 I've been seeing patients in psychiatry, I've
 24 been using drugs that cause weight gain, lithium,
 25 Depakote, conventional antipsychotics of the

1 first generation, newer antipsychotics of the
2 second generation. This has been a recognized
3 problem with psychiatric medications for many
4 years, that weight gain occurs with not all of
5 them, but a number of them. And from the time
6 that I've been practicing this type of medical
7 monitoring, I think it's been part of the care
8 that my colleagues and I deliver to our patients.

9 I didn't mean to leave the
10 impression that this was new in 1996.

11 THE COURT: Do we have another one?
12 Counsel, please approach.
13 (Bench discussion.)

14 THE COURT: I think this is outside
15 his expertise, but maybe not.

16 MR. ALLEN: If he wants --

17 MR. BRENNER: I think we'll --
18 (End of bench discussion.)

19 THE COURT: I think this is outside
20 the doctor's area of expertise, so I'm not going
21 to ask this question.

22 Thank you, Doctor. I think you're
23 done.

24 Who is Lilly's next witness?

25 MR. LEHNER: Your Honor, if we

1 could just approach briefly to talk about it.

2 THE COURT: Please.
3 (Bench discussion.)

4 MR. LEHNER: Just on a matter of
5 scheduling. We had intended to start playing the
6 deposition of Dr. Beasley. It's rather long. By
7 the time we set up the screen, we're probably
8 going to have 15 minutes or so left. And there's
9 a couple of other matters that -- it's up to you.

10 THE COURT: Let's take up the other
11 matters and then we'll put --

12 MR. LEHNER: -- with respect to
13 some of our witnesses that Dave has raised so --

14 THE COURT: Well, we'll do it.
15 (End of bench discussion.)

16 THE COURT: Ladies and gentlemen of
17 the jury, my understanding is that the next
18 witness that Lilly would present is a long
19 deposition witness. By the time we set up the
20 screen and in order to get everybody out of here
21 at 1:30, we don't have much time left.

22 So what I'm going to do is send you
23 home early and take up some matters with the
24 attorneys to use up the rest of the time. I
25 would like you to be here again at 8:30 tomorrow

1 and we'll get started.

2 Again, I would remind you, please
3 do not discuss this case with anyone or let
4 anyone discuss it with you. Please try to keep
5 an open mind until you've heard all of the
6 evidence in this case. Please, as I've
7 previously instructed you, please do not listen
8 to or watch any media that might concern the
9 subject matter of this case.

10 I'll see everybody tomorrow at
11 8:30.

12 (Jury out.)

13 THE COURT: Please be seated.

14 We're outside the presence of the
15 jury. Just for the record, I think I may have
16 neglected when the jury came back around our noon
17 break and Mr. Brenner resumed with his redirect,
18 I may have neglected to state for the record that
19 all members of the jury were present. So the
20 record should just reflect that all members of
21 the jury have been present throughout the trial
22 part of the case.

23 Where are we and what other issues
24 do we have? And I want to talk to the parties
25 again about jury instructions, because I would

1 really like to at least start thinking in my own
2 mind about jury instructions. And so I really
3 need something by close of business tomorrow so
4 that I can use the weekend productively.

5 MR. LEHNER: I think that's our
6 intention, to certainly get you some material, if
7 not sooner.

8 I just want to raise --

9 THE COURT: Just so that there's no
10 doubt about it, if the parties are going to
11 submit any additional jury instructions, I want
12 it by close of business tomorrow.

13 MR. FIBICH: And we will comply
14 with that request, Your Honor.

15 MR. LEHNER: Thank you, Your Honor.

16 One matter with respect to our next
17 live witness. Dave, I don't have the slides here
18 in front of me -- I was just going to raise with
19 the judge. We'd provided the -- certain
20 demonstratives that we anticipated using with Dr.
21 Baker. Dr. Baker is an employee of Lilly.
22 Product safety -- and he was going to be coming
23 to testify about work that he does. And we had
24 prepared some demonstratives that would
25 illustrate some of the material that he would be

1 talking about. And I think Mr. Suggs suggested
2 that he was concerned that these would be expert
3 opinions. I don't want to mischaracterize what
4 you were saying.

5 MR. SUGGS: Yes.

6 MR. LEHNER: I think these are
7 matters here. I think those are the ones you
8 identified to me that you had concerns about.

9 Dr. Baker was deposed in this
10 litigation extensively by Mr. Suggs. He has
11 talked about a number of these matters, and
12 certainly these matters have been well-known to
13 the Plaintiffs. These are about the various
14 Lilly submissions -- the various submissions
15 Lilly made to the FDA. These reflect Lilly's
16 conclusions about those submissions. And I think
17 it's certainly proper testimony in light of the
18 prior deposition, in light of his position at the
19 company, in light of the work that he does on
20 Zyprexa. And he would be explaining using
21 those --

22 THE COURT: This is a witness who
23 is going to testify as to the views of Lilly on
24 these submissions, or on these studies and why
25 Lilly -- this is my word -- discounted them or

1 didn't feel that they were -- said what they said
2 or --

3 MR. LEHNER: I think your first
4 question is proper. He's going to testify as to
5 what Lilly's view of what these studies say and
6 reflect and the conclusions that Lilly drew from
7 these studies, exactly.

8 THE COURT: Okay. And what's the
9 --

10 MR. SUGGS: Your Honor, our
11 objection is he's a fact witness. We have no
12 report from him. These --

13 THE COURT: I understand what the
14 fact is, is he's going to say Lilly --

15 MR. SUGGS: Your Honor, I have no
16 objection --

17 THE COURT: -- looked at the GPRD
18 study and this is what they thought about it, and
19 Lilly looked at the Allison clinical trial
20 analysis and felt that there -- this is what
21 Lilly felt that it showed.

22 MR. SUGGS: Your Honor, if, in
23 fact, the questions are phrased that way and this
24 is what we told the FDA about, you know, what our
25 conclusions were about the study, I've got no

1 problem with that. But I don't want him, you
2 know, with a mantle of an expert that, you know,
3 these studies show --

4 THE COURT: Well, he's not going to
5 be offered as an expert, for one thing, correct?

6 MR. LEHNER: No, he's not being
7 offered as an expert. He's --

8 THE COURT: So I'm not going to
9 announce to the jury, as I am asked to do with
10 experts, that I recognize him as an expert in
11 anything. You can certainly cross-examine to the
12 extent you need to do that. So I'm not sure -- I
13 understand what you're worried about, but I
14 really am not seeing it as something that can't
15 be handled with cross-examination or other
16 clarification.

17 MR. SUGGS: Okay. Very well.

18 THE COURT: And particularly to the
19 extent that you feel that this is going beyond
20 him being a fact witness and giving the Lilly
21 point of view as to these studies or submissions,
22 then you can come on up and we'll discuss what to
23 do, whether it's going too far over to give the
24 false impression that he's an expert.

25 MR. LEHNER: Thank you, Your Honor.

1 The next matter, I think, concerns
2 Dr. Cavazzoni. We have given Plaintiffs some
3 deposition designations for Dr. Cavazzoni -- it
4 doesn't appear that she's going to be able to
5 come live now -- to play in the case. Not to
6 mischaracterize Mr. Suggs' position, but he
7 mentioned to me earlier this morning that because
8 her deposition was not noticed in the Alaska
9 proceedings, that he would object to our using
10 deposition designations in our case, correct?

11 I'm not sure that I understand that
12 objection, because as the State of Alaska noted
13 earlier on, that they expect to rely on documents
14 produced in depositions taken in the MDL. Alaska
15 has absolutely no desire to reinvent the wheel or
16 create unnecessary work for itself or Lilly. And
17 I think it was generally agreed that matters
18 taken in the MDL would be used in this
19 proceeding. She was deposed twice. I think
20 Mr. Allen, in fact, was there at her second
21 deposition. And we would intend to play those
22 deposition designations here.

23 MR. SUGGS: Your Honor, her
24 deposition was not -- Alaska was not noticed in
25 that deposition. At that point in time, I think

1 this case was -- was filed in June -- her
2 deposition was taken in June, was it not, June of
3 2006?

4 MR. LEHNER: Her deposition was
5 taken twice and I don't remember the dates they
6 were taken. But certainly the other
7 deposition --

8 MR. SUGGS: The latest one -- well,
9 her first one was taken before the State of
10 Alaska even filed suit. The second one, I think,
11 was filed about the -- was about the same time.
12 At that point, this case was like in the
13 netherworld, I think, in the federal district
14 court here. It ultimately got remanded back
15 here. The State of Alaska was not represented at
16 that deposition. Mr. Allen was there, but was
17 not representing the State of Alaska. And absent
18 the --

19 THE COURT: The State wasn't
20 represented or wasn't -- before you can use a
21 deposition, doesn't a party who is on the other
22 side of the particular case you're using it in
23 have to be represented in some particular way?

24 MR. LEHNER: Well, Your Honor, I
25 think -- Your Honor, I think the understanding,

1 recollection of it being noticed.

2 I told Mr. Lehner if there was some
3 agreement, you know, about this that would cover
4 this, I'd be happy to look at it. He also
5 mentioned he thought Your Honor has issued an
6 order about this previously. And I said, look,
7 I'd be happy to look at that too. But I'm not
8 aware of any agreement --

9 THE COURT: Again, I won't decide
10 this now. If the parties -- if you want to use
11 the deposition in this proceeding and it wasn't
12 noticed for this proceeding, if there's an
13 agreement, if I issued an order, if there's
14 anything like that that permits it, then I'll
15 allow you to do it. But you're going to have to
16 convince me that there's some basis for Alaska
17 having either waived any objection they have that
18 it wasn't noticed for that proceeding, or that
19 they were noticed and -- for the proceeding. And
20 so why don't you give me something in the
21 morning.

22 MR. LEHNER: That's why I raised
23 it, so we could know and prepare something for
24 you, and we will.

25 THE COURT: Yes.

1 if I'm not mistaken, was that the work that had
2 been done in the MDL, in part because these
3 attorneys have been involved in this work from
4 the very beginning, would be used here so there
5 wouldn't be a need to reinvent the wheel. And
6 the fact that the State of Alaska, I don't think,
7 wasn't participating in the depositions of Mr. --
8 Dr. Beasley and the other depositions that have
9 been played here. We certainly were there as
10 Lilly, of course. But I think it would be -- I
11 think it was clearly the understanding --

12 THE COURT: But what's the process
13 of noticing these depositions in the MDL? Do you
14 designate there what it's being used for and in
15 which cases?

16 MR. SUGGS: Your Honor, the cover
17 page of her deposition transcript -- I don't have
18 it here. Do you have it here? It lists all the
19 parties that are represented there. And -- and,
20 in fact, Lilly did notice -- cross-notice
21 depositions in State court actions where you can
22 tell right on the front of the deposition
23 transcript that these are the ones where their
24 notice was filed. There is Alaska -- I'm told --
25 is not listed on there at all. We have no

1 MR. SUGGS: Your Honor, I'd also
2 point out that Dr. Cavazzoni was not on the
3 original deposition designations which were due,
4 like, a month ago as well.

5 MR. ALLEN: And there's one other
6 thing, since it's on the record that I attended.
7 Your Honor, I think I had been hired by Mr. Ken
8 Bailey in Houston, Texas approximately two weeks
9 before that to assist him with his personal
10 injury matters. I wasn't hired by the State of
11 Alaska until like -- I can't -- you know,
12 whatever day you signed the pro hoc --

13 THE COURT: I understand. The
14 question is going to be -- I mean, the rule
15 allows depositions to be used under certain
16 circumstances, but one of the critical things is
17 that the other side gets to be present and
18 participate at the deposition. And what I'm
19 hearing is, at least on that initial threshold,
20 that wasn't met in this case. Whether there were
21 other orders, I don't remember, and whether -- or
22 whether there were other agreements, I don't
23 know, and so you can let me know if that's the
24 case.

25 I guess the second question, which

1 probably I'll just let everybody know, if you
2 meet the first threshold, the noticing of the
3 deposition -- the of the deposition probably
4 isn't going to bother me that much.

5 MR. LEHNER: That's why I raised
6 it, Your Honor. Thank you. We'll prepare you
7 something.

8 THE COURT: So we'll -- I'll just
9 wait and see what you give me on that.

10 And then as to these documents, I
11 think we'll -- I'll allow them subject to what
12 we've just discussed.

13 And then I'll get jury instructions
14 tomorrow. We're going to start with Dr. Baker
15 tomorrow -- or we're going to start with --

16 MR. LEHNER: We're going to start
17 with some deposition --

18 THE COURT: Depositions tomorrow.
19 And then go to --

20 MR. LEHNER: Dr. Baker.

21 MR. ALLEN: Your Honor, since we
22 have time -- do you have anything? I'm sorry.

23 MR. LEHNER: I do not have anything
24 else.

25 MR. ALLEN: Okay. I want to offer

1 an exhibit into evidence, Your Honor. I would
2 offer 3860, Your Honor, which I've used with
3 their witness. It's a Lilly document, from their
4 files, and I'd like to offer 3860.

5 MR. LEHNER: Your Honor, I thought
6 the State had closed its case. I don't think
7 it's time to be offering any evidence. I haven't
8 seen that document. It wasn't on, I think, their
9 initial exhibit production, but it may or may not
10 have been. But the real point is that the case
11 is closed on the State's side.

12 THE COURT: Well, can't the witness
13 in cross-examination offer a document? But the
14 question is, you don't have cross-examination
15 here; you're just offering the exhibit. So it's
16 not like you're using this for cross-examination
17 purposes and offering it and having authenticated
18 it. You're just giving us an extra exhibit,
19 which kind of is your case in chief.

20 MR. ALLEN: Well, you know, I'm --
21 Your Honor, I tend to disagree with you on this
22 level. But you and I just don't see eye to eye
23 on this, and I think I've been over it with you.

24 THE COURT: Yeah. I mean, I will
25 tell you, and I don't think we see eye to eye. I

1 do have somewhat of an aversion to sort of like
2 just giving jurors documents where we haven't had
3 any witness to testify about the documents.

4 MR. ALLEN: Right. Right. But,
5 obviously, I mean, you and I have agreed
6 to dis- --

7 THE COURT: That may be my little
8 quirk, but --

9 MR. ALLEN: Right. You know,
10 Your Honor, I respect this Court. You know I do.

11 But when a witness such as Dr. Kahn
12 gets up there and testifies about weight gain
13 being widely known, and he's been hired by the
14 Defendants and given, quote, every relevant
15 document, and then I'm able to show that he
16 wasn't given this document, it goes to
17 impeachment of the witness and it is directly --
18 and it goes to the credibility of the Defendants.
19 He's testified -- he prepared a report, spent 30
20 hours, was paid \$18,000, and they didn't give him
21 that document.

22 THE COURT: Again, as I recall the
23 testimony, he couldn't really say whether this
24 document was given to him.

25 MR. LEHNER: Exactly.

1 THE COURT: I do agree with you.
2 The fact that a specific document, that he can
3 say, I wasn't given this document, that would
4 make it at least relevant for that purpose.

5 MR. ALLEN: What if he said he was
6 given the document? If he was given the
7 document, it would be relevant. And so by giving
8 the middle answer, which I don't know one way or
9 the other. You escape -- if he says he was given
10 it, you're entitled to show it. If he says he
11 wasn't given it, you're entitled to show it. But
12 if he gives the middle answer, which is I don't
13 know, I can't show it? That doesn't make -- I
14 mean, with all due respect to the Court, it
15 doesn't make any sense.

16 THE COURT: I understand your
17 point, and let me hear from Mr. Lehner.

18 MR. LEHNER: Well, Your Honor, I
19 think that's the ultimate sort of point about the
20 laying a foundation and authenticating the
21 document. He says, I don't know. If he says, I
22 wasn't given the document, then it really goes to
23 whether or not it was relevant and whether or
24 not -- you know, you can bring any document and
25 say, I wasn't given this and then try to move

1 that into evidence here. You know, he was not
2 able to sort of say whether I've seen this
3 document or not. It was an honest answer, and it
4 has no bearing -- it doesn't lay any basis for
5 which to make it now part of their case and enter
6 it into evidence.

7 THE COURT: I'm going to keep this
8 document out for the time being. Again, if
9 there's some Lilly witnesses that are Lilly
10 people that we actually hear from live, then
11 we'll see what happens.

12 MR. ALLEN: Your Honor, can I mark
13 it and make it a bill?

14 THE COURT: You can. You
15 definitely can do that.

16 MR. ALLEN: I want to mark this and
17 make -- just so the record is clear -- because I
18 may have missed something, but I thought this man
19 was up here talking about weight and he had known
20 it since college or medical school. And the
21 document, 3860, was handling weight. And the
22 page that I'm interested in is Eli Lilly training
23 their sales reps, which Ms. Gussack said on
24 opening statement -- here's what it says: Weight
25 gain with Zyprexa is due to increased appetite,

1 not in metabolic response, i.e., the pill does
2 not equal weight gain. Now, he's testified he
3 asked for everything remotely related to this
4 topic. He testified that he reviewed those
5 documents in 30 hours. The Court has indicated,
6 and I respect this Court, that if he had said, I
7 have not reviewed it, I could get it in. If he
8 said he --

9 THE COURT: For that purpose.

10 MR. ALLEN: Right. If he says he
11 reviewed it, I could get it in as a basis of his
12 opinion. But I guess if I'm unlucky enough
13 to have the man say, I don't know one way or the
14 other, that keeps it out. I just don't believe
15 that's the evidence rule. I can't believe if he
16 says no, it comes in; if he says yes, it comes
17 in; if he says I don't know, it doesn't come in.

18 THE COURT: Well, again, to the
19 extent -- you're not just really offering it for
20 I've known about weight gain since law (sic)
21 school. You want to get in very specific things
22 and we both understand that. And I --

23 MR. ALLEN: I want to go get in the
24 very fact that he's not telling the truth and the
25 company's not. That's my position in this case,

1 that these people are not telling the truth. I
2 respect the lawyers, but I'm talking about the
3 company. The State of Alaska hired me to prove
4 that. And when this document proves it, this man
5 looked at three folders of, quote, marketing
6 documents, and he gets away with saying I don't
7 know one way or the other. If he says yes, I get
8 it in; if he says no, I get it in --

9 THE COURT: I think you got in the
10 discussion of -- you didn't get in the document
11 yet, but you've gotten in the questions about
12 what was on the document, as I recall.

13 MR. ALLEN: Well, that's one thing
14 and a series of questions as opposed to a
15 document I can show the jury at closing.

16 THE COURT: I understand what
17 you're saying, but for now I'm keeping it out.

18 MR. ALLEN: All right. Let me mark
19 it.

20 THE COURT: You may, though -- this
21 is totally without prejudice to renewing your
22 motion at the end of the day. And even if we
23 don't have a Lilly witness, I'll let you ask me
24 one more time when the case is --

25 MR. ALLEN: Yes, sir. I appreciate

1 it.

2 THE COURT: -- close to going to
3 the jury.

4 MR. ALLEN: Right. 3860, I'm going
5 to mark AK3860. That's what it says, right?

6 MS. RIVERS: Yes.

7 MR. ALLEN: And I'm going to submit
8 it to the Court and have it rejected at this time
9 and I want the Court to have it for the record.

10 THE COURT: I will -- the number is
11 3860?

12 MR. ALLEN: Yes, sir.

13 THE COURT: Okay. 3860 for the
14 time being is not admitted; it is offered.
15 Again, you can renew that if there's an
16 appropriate witness to renew it with, and I will
17 also let you take another crack at me at the end
18 of the case, depending on who the witnesses are
19 that have shown up.

20 MR. ALLEN: You've been -- thank
21 you, Your Honor. We disagree, but you've been
22 very patient and I appreciate your patience.

23 That's it. That's all I have.

24 THE COURT: Anything else?

25 MR. LEHNER: No. Thank you, Your

1 Honor.

2 THE COURT: Then, we'll be off
3 record.

4 THE CLERK: Please rise. Superior
5 Court in the State of Alaska is off record.
6 (Trial adjourned at 1:26 p.m.)
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1 REPORTER'S CERTIFICATE

2
3 I, SANDRA M. MIEROP, Certified Realtime
4 Reporter and Notary Public in and for the State of
5 Alaska do hereby certify:

6 That the proceedings were taken before me at
7 the time and place herein set forth; that the
8 proceedings were reported stenographically by me
9 and later transcribed under my direction by computer
10 transcription; that the foregoing is a true record
11 of the proceedings taken at that time; and that I am
12 not a party to, nor do I have any interest in, the
13 outcome of the action herein contained.

14 IN WITNESS WHEREOF, I have hereunto subscribed
15 my hand and affixed my seal this 20th day of March,
16 2008.

17
18
19

20 _____
SANDRA M. MIEROP, CRR, CCP
Notary Public for Alaska
My commission expires: 9/18/11

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