

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

v.

Case No. 11-CV-236

JENNIFER KING VASSEL,

Defendant.

**DEFENDANT JENNIFER KING VASSEL'S BRIEF IN OPPOSITION TO THE
PLAINTIFF'S RENEWED MOTION IN LIMINE REGARDING FALSE CLAIMS**

The plaintiff's renewed motion in limine represents his fundamental misunderstanding of the law and the facts of this case. The plaintiff misstates the decisions of this Court and the Seventh Circuit issued in this case; improperly shifts the burden of proof to the defense - about which the plaintiff was already warned by this Court; and admits that the State of Wisconsin has knowingly approved and reimbursed the pharmacies that filled the prescription medications written by defendant Jennifer King Vassel (Dr. King), and had the legal right to choose to do so. This admission effectively precludes the plaintiff from proving an essential element of his claim, *i.e.*, that Dr. King knowingly caused a false claim to be submitted, as the plaintiff has conceded the State of Wisconsin established criteria that approved its reimbursement of the medications prescribed by Dr. King.

In addition, his attempt to strike Dr. King's expert and lay witnesses must be denied, as the reports of the experts met the requirements of Fed. R. Civ. P. 26(a)(2) and although the plaintiff asked and was provided the opportunity to depose the experts, at the last minute he withdrew that request. Dr. King respectfully requests that the plaintiff's motion be denied.

FACTS

Omitted from the plaintiff's brief are critical facts. In November 2013, the plaintiff admitted that if a prescription medication was submitted in compliance with the applicable formulary, it was legally reimbursable by a state Medicaid program. *Affidavit of Bradley S. Foley, Exhibit A, Plaintiff's Response to Dr. King's Second Set of Requests to Admit*, Number Four.

REQUEST NO. 4: Admit that if a prescription medication was submitted in compliance with the applicable formulary described in Request No. 3¹, the prescription medication was legally reimbursable by a state Medicaid program.

RESPONSE: **Denied as to federal funds used to pay for such prescriptions. Without sufficient information to admit or deny whether such prescriptions are legally reimbursable with state funds. It may be that it is allowable for a state Medicaid program to use state funds to pay for outpatient drug prescriptions that are not for a medically accepted indication as defined in 42 U.S.C. § 1396r-8(k)(6), § 1396r-8(g)(1)(B)(I); however, it is not legally reimbursable by federal funds. As to using state funds, that is an open question which may or may not be resolved through discovery or briefing and decision, or both.**

Id. (emphasis added). Based on this admission, the plaintiff's disagreement is with the State, not Dr. King.²

The plaintiff admits that the State is legally permitted to reimburse prescriptions and that he does not have any evidence that the State did not knowingly approve and pay for the prescription

¹In request number three, the plaintiff was asked to admit "that the prescription medication written by Dr. King, as alleged in the complaint, were in compliance with the formulary, applicable for the period of time she treated N.B., used by the State of Wisconsin in compliance with 42 U.S.C. § 1396r-8 *et seq.*" *Affidavit of Bradley S. Foley, Exhibit A, Plaintiff's Response to Dr. King's Second Set of Requests to Admit*, Number Three.

²Approximately three and a half years ago, the plaintiff's attorney, in a similar lawsuit in Alaska federal court, also acknowledged that a state, in that case Alaska, covered off-label use of prescription medication. *Affidavit of Bradley S. Foley, Exhibit B, Plaintiff's Opposition to a Motion to Dismiss*, pp. 10-11.

medication. The plaintiff at his own deposition also acknowledged that he lacked the factual basis that the State did not knowingly approve and pay for the prescription medications. *Affidavit of Bradley S. Foley, Exhibit C, Deposition of the Plaintiff*, p. 42 (testifying that he did not recall or know whether BadgerCare has a different formulary than the three compendia listed in the complaint.)

The following exchange highlights what is occurring here: that the plaintiff knows that the prescription medications were paid pursuant to a formulary.

The Witness: It says, “ASHP supports third-party reimbursement for FDA-approved drug products properly prescribed for unlabeled uses.”

Mr. Gottstein: Right.

The Witness: It says it does support that.

Mr. Gottstein: Yeah, right, because third party payors often don’t pay for them.

Mr. Larson: May or may not.

The Witness: Well, they’ve paid for all the ones I’ve written for.

Mr. Gottstein: **You know, we know that.**

The Witness: Because they were on their formulary.

Mr. Gottstein: **We know that.**

(Document 145-4, p. 56)(emphasis added).

The plaintiff agrees with this: “I do know that certain practitioners are given formularies that they are allowed to use or not use certain medications. And so pharmacies, in their systems, they have things that will ping and say, hey, this doctor wrote a prescription for this medication, it’s a Medicaid patient, and it will flag saying we can’t bill it, don’t; the pharmacist will call back to the doctor at the clinic or the [. . .] and say, hey, you wrote this prescription for this, it’s not authorized through the program, what else do you want to do. They’ll send a new order over and do that. That happens routinely. That happens a lot.” *Deposition of the Plaintiff*, p. 69.

“I mean there are clinics, hospitals and pharmacies that have these formularies that say these

are the meds that you're allowed to use [. . .]" *Id.*, p. 70. The plaintiff even acknowledged that it is up to a psychiatrist to use her clinical judgment in a particular case: "It's a clinical judgment within the scope of what's allowable, I guess." *Id.*, p. 25.

Shortly before the plaintiff answered the requests to admit, the plaintiff stated he "does not dispute that Wisconsin has been reimbursing prescriptions that are not for a medically accepted indication when a doctor such as the defendant here ignores Congress' coverage restriction to medically accepted indications. Whether such prescriptions may be legally reimbursed is a legal question, not a factual one." *Plaintiff's Opposition to Dr. King's Motion for a HIPAA Qualified Protective Order* (Document 133, pp. 2-3).

As such, the plaintiff is requesting that the court ignore the facts that he has admitted, but not offered in his brief, and reach a conclusion that misstates the law.

ARGUMENT

I. THE SEVENTH CIRCUIT DID NOT ESTABLISH THE FLAWED INTERPRETATION OF THE MEDICAID REIMBURSEMENT STATUTES THAT THE PLAINTIFF PROFFERS.

Fundamentally underlying the plaintiff's motion, and the basis of the litigation of this case since remand, is his flawed interpretation of Medicaid reimbursement that he believes is supported by the Seventh Circuit decision, *United States v. King-Vassel*, 728 F.3d 707 (7th Cir. 2013). This Court, however, noted that the Seventh Circuit held open the question "whether the prescriptions at issue were written for uses supported by one or more compendia. As mentioned above, the Court essentially views this as an element of Watson's case: to establish that King Vassel wrote a false claim, Watson must show that the prescription was written for a use that is not approved by the FDCA and that is not supported by one or more compendia." (Document 137, p. 8); *See also Door*

Systems, Inc. v. ProLine Door Systems, Inc., 83 F.3d 169, 173-74 (7th Cir.1996) (on remand a party can advance arguments not pursued on appeal, provided they have not been previously waived in the district court).³ “In contrast to the FDCA question, the Seventh Circuit did not make any final pronouncements on this issue. Instead, the Seventh Circuit left the question open, and seemed to make clear that Watson had the burden to prove up this fact - whether it be through use of an expert or not.” (Document 137, p. 8).

In fact, this Court noted that it was *the plaintiff’s burden* to determine whether the prescriptions at issue were written for a use supported by the compendia. “[I]t is Watson’s duty to examine the compendia as compared to the record and determine for himself whether there is evidence that would support his false claim contentions.” *Id.*

This Court then noted the primary issue, and what has been litigated since remand.

The Court has left open for review and further evidence gathering whether states are permitted to draft their own formularies that provide reimbursement for prescriptions that were not prescribed for uses provided in the FDCA or the compendia, and whether the prescriptions written by King Vassel may fall under Wisconsin’s formulary. (Document #116, at 3-5). *The Court has noted that this information may establish that either: (1) the prescriptions - even if written for non-FDCA approved or compendia-supported reasons - are not false claims; or (2) King Vassel lacked the requisite knowledge that the prescriptions were for impermissible reasons.*

(Document 137, p. 10) (emphasis added). This is what guides the presentation of the case at this

³The plaintiff, of note, has never contended that the Seventh Circuit established the law of the case based on his interpretation of the Medicaid reimbursement statutes. The law of the case doctrine “is a rule of practice, based on sound policy that, when an issue is once litigated and decided, that should be the end of the matter.” *Gertz v. Robert Welch, Inc.*, 680 F.2d 527, 532 (7th Cir.1982). The consistency provided by the rule “protects parties ‘from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action [. . .]’ ” *Key v. Sullivan*, 925 F.2d 1056, 1060 (7th Cir.1991) (citation omitted).

point, and not the plaintiff's flawed view of court decisions that have never provided a final adjudication of his interpretation of 42 U.S.C. § 1396r-8 (g)(1)(B)(I). The law and facts support that Dr. King did not cause to be submitted a false claim.

II. THE PLAINTIFF HAS ADMITTED THAT THE STATE OF WISCONSIN PAID FOR THE PRESCRIPTION MEDICATIONS AT ISSUE AND THUS DR. KING CANNOT HAVE KNOWINGLY CAUSED TO BE SUBMITTED CLAIMS THAT WERE FALSE.

The plaintiff's admission should lead to dismissal. The plaintiff carries the burden of proof in this action. 31 U.S.C. § 3731(d). Despite this Court's discussion noted above and the statute, the plaintiff attempts to improperly shift the burden of proof to Dr. King although he admits that the State of Wisconsin established criteria that approved its reimbursement of the medications prescribed. As the plaintiff even states in his brief, "[t]he most that can be said is that Wisconsin is paying for such prescriptions [the State paying for the prescriptions at issue pursuant to its own criteria under its formularies]." *Plaintiff's brief*, p. 17 (Document 145).

"Knowing" and "knowingly," in the context of the False Claims Act, mean a person:

- (I) has actual knowledge of the information;
 - (ii) acts in deliberate ignorance of the truth or falsity of the information; or
 - (iii) acts in reckless disregard of the truth or falsity of the information
- [. . .]

31 U.S.C. § 3729 (b)(1)(A). The plaintiff has admitted that "actual knowledge" is not at issue here: "[w]e understand that Dr. King did not actually know she was causing false claims when writing prescriptions to N.B." *Affidavit of Bradley S. Foley, Exhibit D, Plaintiff's November 12, 2013 email*. The plaintiff has not presented any evidence that Dr. King acted in deliberate ignorance of the truth. Thus the issue is whether the plaintiff has presented any evidence that Dr. King acted in "reckless

disregard” when allegedly causing prescription medications to be submitted to Medicaid. This is not negligence. *Hindo v. University of Health Sciences*, 65 F.3d 608, 613 (7th Cir. 1995). “‘Reckless disregard’ is described as either a failure “to make such inquiry as would be reasonable and prudent to conduct under the circumstances,” or “when the actor knows or has reason to know of facts that would lead a reasonable person to realize” that harm is the likely result of the relevant act. *King-Vassel*, 728 F.3d at 713. Dr. King cannot be held to have acted in reckless disregard when the plaintiff admitted proper payments were approved and made through the Medicaid program.

The plaintiff admits that the State is legally permitted pursuant to its criteria to reimburse prescriptions and that he does not have any evidence that the state did not knowingly approve and pay for the prescription medication, nor any documentation that the State improperly used the money. The plaintiff testified that he lacked the factual basis that the State did not pay for the prescription medications. *Deposition of the Plaintiff*, p. 42.

Ms. Meyer, the mother of N.B., does not question that the State reimbursed the prescriptions pursuant to its criteria either. In fact she admitted that she never had to pay for prescription medications for N.B. that she presented to a pharmacy, when she presented her state Medicaid card. When she filled a prescription at a pharmacy, she would show them her Forward Health (Medicaid) card. *Affidavit of Bradley S. Foley, Exhibit E, Deposition of Christine Maxwell Meyer*, p. 26. She went to the pharmacy with the intent of having the prescriptions filled and paid for by whatever program that paid for the prescription. *Id.*, p. 27. The pharmacy was aware of who the payor was. *Id.* The pharmacy processed the medications, and she does not know if the prescriptions were paid with federal or state monies; only that she did not have to pay a co-pay. *Id.*, p. 28.

A. A False Claim Presented to the State Is a False Claim Presented to the Federal

Government and Accordingly the Plaintiff's Claims Should be Dismissed.

Although the plaintiff believes that he can proceed solely against the federal government despite his admission that the State reimbursed the prescriptions at issue pursuant to its criteria, the law belies this argument. The plaintiff misstates the arrangement between the federal and state government to administer and fund Medicaid, and does not cite to any law that supports this contention. The Seventh Circuit in this case discussed the federal-state arrangement that administers and funds Medicaid.

Although the federal government ultimately foots much of the bill, the administration of the program is left to the states. In the case of prescription drugs, pharmacies pay pharmaceutical companies for drugs and then submit claims to the state Medicaid agency for reimbursement. 42 U.S.C. §§ 1396a(a) (23)(32). The federal government then reimburses the state. 42 U.S.C. § 1396-1. In that way, claims submitted to state Medicaid agencies are considered claims presented to the federal government and may serve as the basis for FCA liability.

King-Vassel, 728 F.3d at 711. The plaintiff cannot parse his claims to dismiss the claims against the state, but retain the claims against the federal government. The federal government and state government are inextricably linked pursuant to a web of regulations and statutes that govern the Medicaid program and reimbursement in particular. The claims presented to the State, which the plaintiff admits were reimbursed pursuant to its own criteria, are considered claims presented to the federal government. The plaintiff acknowledged this in his complaint: “Wisconsin must administer MA [Wisconsin’s Medical Assistance program] in conformity with federal law and policy [. . . .]” *Complaint*, ¶ 17 (Document 1, p. 4). Thus the knowledge element fails as to both governmental entities.

“Medicaid is not funded by a static block grant. Instead, the state seeks federal funding

through quarterly requests, draws down from federal letters of credit as providers seek payment for Medicaid claims, and then submits reconciliations to the federal government which affect future funding. Under this funding scheme, in which false claims lead to direct draw downs from federal letters of credit, a provider who submits a false Medicaid claim to the state presents a false claim for payment or approval to the United States.” *United States ex re. Ven-A-Care v. Actavis Mid Atlantic, LLC*, 659 F.Supp.2d 262, 269-70 (D. Mass. 2009); *U.S. v. Ortho-McNeil Pharmaceutical, Inc.*, 2007 WL 2091185, *2 (N.D. Ill. 2007). The plaintiff attempts to simplify a complex federal program, and does not represent its proper operation and funding. “Indeed, several courts have highlighted the substantial role played by the federal government in its funding and enforcement of Medicare and Medicaid programs [. . . .]” *U.S. ex rel. Tyson v. Amerigroup Illinois, Inc.*, 2005 WL 2667207, *2 (N.D. Ill. 2005).

The fact that the plaintiff admitted payments were made by the State pursuant to its own criteria means that the federal government also approved the payment. He has not presented any law or evidence to the contrary. In fact, the plaintiff would not even have a factual basis to separate out claims: he denied that federal funds were used to pay for the prescriptions at issue. *Plaintiff’s Response to Dr. King’s Second Set of Requests to Admit*, Number Four. The plaintiff cannot provide a consistent theory of liability. The plaintiff’s confusion about Medicaid further supports Dr. King’s position that a reasonable psychiatrist cannot possibly know which governmental entity funds the reimbursement of prescription medication.

B. Estoppel is Not Applicable.

The estoppel cases cited by the plaintiff do not address the procedural posture here: where a private party, not a governmental agency, is prosecuting the *qui tam* claim. Moreover, estoppel is

not the correct term of art for the State's undisputed reimbursement of the prescription medications. Equitable estoppel is not applicable here, as the underlying foundation of estoppel is that there was a misrepresentation (of reimbursement of the prescription medications), as opposed to here where the defense has asserted that the prescriptions written were not false or fraudulent. "The doctrine of equitable estoppel precludes a litigant from asserting a claim or defense which might otherwise be available to him against another party who has detrimentally altered her position in reliance on the former's misrepresentation or failure to disclose a material fact." *Portmann v. United States*, 674 F.2d 1155, 1158 (7th Cir.1982). However, even if estoppel is viewed to be a defense, it cannot be asserted here.

This case does not present a factual scenario where the United States is both the plaintiff and the entity of which the defense is attempting to defend against the conduct of its agents. The issue presented is whether the plaintiff's agreement that the State reimbursed pursuant to its criteria the prescription medications at issue establishes that the plaintiff failed to meet its burden of proof that Dr. King knowingly caused to be submitted a false claim. Thus, the cases cited by the plaintiff are not applicable.

In *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51(1984), the plaintiff was the United States Secretary of Health and Human Services (DHHS), and the defendant was a nonprofit that entered into a contract with the DHHS. *Id.* at 54-55. As noted by the Court: "When the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the Government may not be estopped on the same terms as any other litigant." *Id.* at 60. The *Heckler* court, however, declined to adopt a *per*

se rule “that there are no cases in which the public interest in ensuring that the Government can enforce the law free from estoppel might be outweighed by the countervailing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government.” *Id.* at 60-61. “Although the traditional view is that equitable estoppel may not be asserted against the government on the same terms as any other litigant, the Supreme Court has left open the question of whether to expand this general principle into a flat rule that estoppel may not lie against the government in any case.” *Kennedy v. United States*, 965 F.2d 413, 417 (7th Cir. 1992).

In *Hagood v. Sonoma County Water Agency*, 929 F.2d 1416 (9th Cir. 1991), the case was postured on a motion to dismiss. *Id.* at 1418. Although the court of appeals reversed the trial court’s dismissal of the action, the court acknowledged that the reversal was based in part on the allegations in the third amended complaint, and on a motion to dismiss the complaint is to be read generously. *Id.* at 1420-1421. As the court noted, “[w]hat is crucial - and what must be proven at trial - is that the Water Agency knew that the information was false.” *Id.* at 1421. That is not the case here. As the plaintiff admitted that the State reimbursed pursuant to its own regulations the prescription medications at issue, Dr. King cannot be held to have knowingly submitted a false claim. If this is the law on which the plaintiff contends that established Dr. King’s knowledge, then there is no legal basis for his claim. *See* (Document 145, p. 10).

C. Dr. King’s Testimony Establishes that She Did Not Act In Reckless Disregard of any Information Regarding the Prescription Medications.

As to Dr. King, she testified that she relied on the formularies established by the payors, and she assumed if a prescription medication was on the formulary, that it would be paid. This was the She testified that she has “to use a formulary otherwise I won’t be reimbursed. I only prescribe

medications either that are on formulary or that I fill out a prior authorization for.” (Document 145-4, p. 20). The formularies are from the payor. (Document 145-4, p. 21). There are a number of different formularies. *Id.* The formulary is “a list of medications that they [the payors] cover without having to do a prior authorization.” (Document 145-4, p. 22). Dr. King’s assumption was that if the medication was listed on the Medicaid formulary, then the payor would make sure that it was legal and proper before they placed the medication on their formulary. (Document 145-4, p. 45).

Moreover, the decisions issued by the courts in this case have not been final adjudications of the issues presented. The Court’s order issued on November 5, 2013 explicitly states this. (Document 137, pp. 8-9)(the Seventh Circuit did not make any final pronouncements as to whether the prescriptions at issue were written for uses supported by one or more compendia). Of note, the plaintiff has never moved for a temporary restraining order, a permanent injunction, or any other type of order to prevent Dr. King from continuing to practice medicine in the manner that he believes violates the Medicaid reimbursement statutes. In fact, what the plaintiff is requesting is that Dr. King treat her Medicaid patients in manner different from other patients; in light of being served the complaint, however, she testified that she does not treat her Medicaid patients any differently than any other patient. (Document 145-4, p. 40). She does what she thinks is in the best interest of her patients. *Id.*

Further, Dr. King cannot be placed on notice of what occurred in the courts, when what occurred is subject to dispute, and there has not been any final legal adjudication. “To take advantage of a disputed legal question, as may have happened here, is to be neither deliberately ignorant nor recklessly disregardful.” *Hagood*, 929 F.2d at 1421. In *United States ex rel. Yannacopoulos v. General Dynamics*, the Seventh Circuit repeated that mere differences in interpretation growing out

of a disputed legal question do not give rise to FCA liability. 652 F.3d 818, 836 (7th Cir.2011). A psychiatrist cannot be held to a standard of interpreting court opinions. (Document 145-4, p. 49).

IV. DR. KING'S EXPERTS PRODUCED REPORTS THAT MET THE DISCOVERY DISCLOSURE STANDARDS.⁴

Although the plaintiff desires to exclude Dr. King's experts⁵, he does not present the framework in which that could occur. *Finwall v. City of Chicago*, 239 F.R.D. 494, 501 (N.D. Ill 2006), provides that framework.

A complete report must include the substance of the testimony which an expert is expected to give on direct examination together with the reasons therefor. [citation omitted.] It must not be 'sketchy, vague or preliminary in nature.' Expert reports must include 'how' and 'why' the expert reached the particular result, not merely the expert's conclusory opinions. [citation omitted.] The reason, of course, that experts must substantiate their opinions is that an expert who supplies only an ultimate conclusion with no analysis supplies nothing of value to the judicial process.

Id., 239 F.R.D. at 501. Compared against this standard, the reports of Mr. Olson (the plaintiff incorrectly refers to him as a physician) and Dr. Diamond meet these standards and they can testify at trial. In essence the plaintiff wants the experts struck because the opinions provided do not meet his interpretation of Medicaid reimbursement. That is not a basis to strike the defense experts. Of note, the plaintiff does not raise any objection to these experts being able to offer opinions, only the substance of their opinions.

⁴The plaintiff never states which rule or statute provides authority to request exclusion.

⁵Although Dr. Rolli has not been named as an expert, the plaintiff wishes her to be excluded as well. Dr. Rolli will discuss medical indications in medicine in her role as a practicing psychiatrist. This topic is relevant; the plaintiff has argued what are a medically accepted indication throughout this case, including on pages one and seven of his brief. (Document 145).

In addition to reviewing the facts pertaining to this case and N.B., in order to form his opinions Mr. Olson stated that he reviewed the formularies for Managed Health Services (MHS), the state Medicaid contracted HMO that reimbursed nearly all of N.B.'s prescriptions (straight Medicaid paid the remainder), and was familiar with the formularies of Medicaid and MHS based on his service on the pharmacy and therapeutics committee of MHS and the Medicaid drug utilization board. He also based his opinions on his education and experience practicing in Wisconsin. (Document 145-1, p. 2). This is the “how” and “why.”

The opinions of Mr. Olson directly address one of the defenses proffered by Dr. King (and which was acknowledged by this Court): that the compendia is not used to write prescriptions, and Medicaid reimbursement is not solely defined by the compendia. *Id.* Instead, reimbursement is done pursuant to the formularies and prior authorizations. *Id.*⁶ These opinions are certainly not sketchy or vague. They directly address how a pharmacy/pharmacist is reimbursed for the processing of a prescription medication recommended by a physician. Disagreement with Mr. Olson's opinion does not mean that it should be struck.

As to Dr. Diamond, a psychiatrist that has been a member of the faculty of the University of Wisconsin Medical School since 1978, a practitioner for 36 years, and a member of the state Medicaid formulary committee since 2004, he authored a report that clearly explains the “how” and “why” of his opinions. For example, Dr. Diamond opined that medication decisions are not limited to any specific formulary. (Document 145-2, p. 2). He supported this opinion as follows: “Wisconsin, and many other states, specifically allow for medications to be filled off of formulary restrictions through the use of a prior authorization form. This is considered a regular part of medical

⁶Dr. King stated this as well. (Document 132, ¶ 2).

practice.” (Document 145-2).

Dr. Diamond’s opinion supports the defense position that the prescription of medications is based on the development of medical knowledge which includes the off-label use of prescription medication. “Within Medicaid and the other commonly used pharmacy benefit management systems, diagnosis and indications are not even collected. Many of the medication that are considered ‘first line’ by expert consensus are recommended outside of FDA indications.” (Document 145-2). Dr. Diamond provided opinions that are the opposite of being sketchy, vague, or preliminary. He provided his thoughtful consideration to the practice of medicine by Dr. King.⁷

One other point before leaving this topic that the plaintiff failed to reveal: that Dr. King set up the deposition of Mr. Olson, and offered to set up the deposition of Dr. Diamond, but then at the November 11th deposition of Ms. Meyer the depositions were suddenly cancelled by the plaintiff. *Deposition of Christine Maxwell Meyer*, p. 46. Prior to this sudden cancellation, the plaintiff had originally set a record production deposition of Mr. Olson on November 11, 2013, and Mr. Olson’s deposition on November 13, 2013. After considerable discussion with the plaintiff, the deposition and record production were both moved to November 13th. *Affidavit of Bradley S. Foley, Exhibit F, Second Amended Notice of Deposition of Mr. Olson*.

After a request from the plaintiff, Dr. Diamond was also scheduled to be deposed on November 14th. *Affidavit of Bradley S. Foley, Exhibit G, Emails exchanged with the plaintiff’s attorney regarding the deposition of Dr. Diamond*.

Both experts have presented opinions that have met the requirements for disclosure. They

⁷As there has not been any final adjudication of the issues presented in this case, Dr. Diamond need not address the effect of any decisions.

will testify based on their personal knowledge and experience with Wisconsin's reimbursement system where medications are in fact approved for medical indications based on information permitted under the Medicaid provisions. (Document 145-1, p. 2; Document 145-2, p. 2). They will also explain the sources of the medical information used for such approval that includes but reaches beyond the compendia (which the Medicaid statutes specifically authorize), and which the publications that are part of the compendia expressly state is not a static criteria. *Id.* One of those publications, the American Hospital Formulary Service Drug Information (AHFS) (as provided in 42 U.S.C. § 1396r-8(g)(1)(B)(i)(1)) cautions readers at the beginning of the book about the information provided in the book:

The nature of drug information is that it is constantly evolving because of ongoing research and clinical experience and is often subject to interpretation and the uniqueness of each clinical situation and patient. [. . .] Because of the dynamic nature of drug information, readers are advised that decisions regarding drug therapy must be based on the independent judgment of the clinician, changing information about a drug (e.g. as reflected in the literature), and changing medical practices.

Affidavit of Bradley S. Foley, Exhibit H, AHFS 2006 Drug Information, "Notices." They should not be struck.

CONCLUSION

Based on the foregoing arguments, defendant Jennifer King Vassel respectfully requests that the Court deny the plaintiff's motion.

Dated at Milwaukee, Wisconsin this 21st day of November, 2013.

**GUTGLASS, ERICKSON,
BONVILLE & LARSON, S.C.**

s/ Bradley S. Foley
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

v.

Case No. 11-CV-236

JENNIFER KING VASSEL,

Defendant.

**AFFIDAVIT OF BRADLEY S. FOLEY IN SUPPORT OF DEFENDANT JENNIFER
KING VASSEL'S OPPOSITION TO THE PLAINTIFF'S RENEWED MOTION IN
LIMINE REGARDING FALSE CLAIMS**

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

BRADLEY S. FOLEY, being duly sworn under oath, deposes and states as follows:

1. I am one of the attorneys representing defendant Jennifer King Vassel in the above-referenced action and am authorized to make this affidavit on her behalf.

2. Attached as Exhibit A is a true and accurate copy of the Plaintiff's Response to Dr. King's Second Set of Requests to Admit.

3. Attached as Exhibit B is a true and accurate copy of the Plaintiff's Opposition to a Motion to Dismiss in an Alaskan federal case.

4. Attached as Exhibit C is a true and accurate copy of the May 4, 2012 deposition of the plaintiff.

5. Attached as Exhibit D is a true and accurate copy of the plaintiff's attorney's

November 12, 2013 email (redacted to only include information related to the motion).

6. Attached as Exhibit E is a true and accurate copy of the November 11, 2013 deposition of Christine Maxwell Meyer.

7. Attached as Exhibit F is a true and accurate copy of the Second Amended Notice of Deposition of Mr. Olson.

8. Attached as Exhibit G is a true and accurate copy of emails exchanged with the plaintiff's attorney regarding the deposition of Dr. Diamond.

9. Attached as Exhibit H is a true and accurate copy of the 2006 edition of the American Hospital Formulary Service Drug Information, "Notices" section.

s/Bradley S. Foley
Bradley S. Foley

Subscribed and sworn to before me
this 21st day of November, 2013.

s/Carrie Wentland
Notary Public, State of Wisconsin
My Commission expires: 1/19/14

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

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Case No. 11-CV-236-JPS

JENNIFER KING VASSEL,

Defendant.

**RELATOR'S RESPONSES TO DEFENDANT'S SECOND
SET OF REQUESTS TO ADMIT, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO PLAINTIFF DR. TOBY TYLER WATSON**

REQUESTS FOR ADMISSION

REQUEST NO. 1: Admit that Dr. King never sought payment from the federal or state governments for prescribing medications to N.B. (This request is intended to distinguish billing for Dr. King seeing a psychiatric patient such as N.B. as opposed to billing for prescribing medications.)

RESPONSE:

Admit that Dr. King never billed for the cost of the prescriptions themselves. Otherwise denied. Some, most, or all of Dr. King's billing for seeing a psychiatric patient such as N.B., is for the purpose of prescribing medications. Thus, Dr. King is paid for prescribing medications to patients such as N.B.

REQUEST NO. 2: Admit that Dr. King received money from the state or federal governments for seeing patient N.B. but was never paid for writing prescriptions for N.B.



RESPONSE:

Admit that Dr. King received money from the state or federal governments for seeing patient N.B. Otherwise, denied. Some, most, or all of the money received from the state or federal governments by Dr. King for seeing patient N.B. was for the purpose of prescribing medication. Thus, Dr. King was paid for writing prescriptions to N.B.

REQUEST NO. 3: Admit that the prescription medications written by Dr. King, as alleged in the complaint, were in compliance with the formulary, applicable for the period of time she treated N.B., used by the State of Wisconsin in compliance with 42 U.S.C. § 1396r-8 et seq.

RESPONSE:

To the extent the request asks *Relator* to admit that the prescriptions were written in compliance with 42 U.S.C. § 1396r-8 et seq., it is denied. Otherwise, the *Relator* is unable to admit or deny for the reasons set forth in the attached e-mail correspondence between counsel.

However, Document 131-1, filed by Dr. King, includes what is titled Managed Health Services (MHS) Preferred Drug List, Revised 4/3006, and *Relator* admits that the drugs for prescriptions identified in:

- (a) paragraph 24 of the Complaint, Document No. 1,
- (b) Document Nos. 46-1, 46-2, and 46-3, and
- (c) *Relator's* Initial Disclosures, including supplements,

are listed on the MHS Preferred Drug List. This does not mean that *Relator* admits they were "in compliance with" the MHS Preferred Drug List. More specifically, page 3 of the MHS Preferred Drug List has a section, titled "Unapproved Use of Preferred Medication," which states:

Medication coverage under this program is limited to non-experimental indications as approved by the FDA. Other indications may also be covered if they are accepted as safe and effective using current medical and pharmaceutical reference texts and evidence-based medicine. Reimbursement decisions for specific non-approved indications will be made by MHS in accordance with the procedures outlined in Section III. Experimental drugs, investigational drugs and drugs used for cosmetic purposes are not eligible for coverage.

"Section III," does not appear to be included in the exhibit and a "Google Search" did not reveal it. "Current medical and pharmaceutical reference texts" very well could mean the compendia.

Dr. King's deposition is scheduled for November 11, 2013, and Jacob Olson's deposition for November 13, 2013. These depositions may provide additional information to allow Relator to definitively admit or deny additional aspects of Request for Admission No. 3.

REQUEST NO.4: Admit that if a prescription medication was submitted in compliance with the applicable formulary described in Request No. 3, the prescription medication was legally reimbursable by a state Medicaid program.

RESPONSE:

Denied as to federal funds used to pay for such prescriptions. Without sufficient information to admit or deny whether such prescriptions are legally reimbursable with state funds.

It may be that it is allowable for a state Medicaid program to use state funds to pay for outpatient drug prescriptions that are not for a medically accepted indication as defined in 42 U.S.C. § 1396r-8(k)(6), § 1396r-8(g)(1)(B)(i); however, it is not legally reimbursable by federal funds. As to using state funds, that is an open question which may or may not be resolved through discovery or briefing and decision, or both. This is essentially the question on which the Court asked the parties to conduct discovery in its October 2, 2013, Order, Docket No. 116. Therefore, the Relator cannot at this point either admit nor deny that aspect of the Request for

Admission. If sufficient information is revealed through discovery or otherwise to permit an admission or denial, this response will be supplemented.

REQUEST NO. 5: Admit that the compendia referred to in 42 U.S.C. § 1396r-8 was not the sole basis for determining whether the prescription of medication was properly reimbursable by a state Medicaid program for the period of time Dr. King treated N.B.

RESPONSE:

Admit.

REQUEST NO. 6: Admit that the federal Food, Drug, and Cosmetic Act was not the sole basis for determining whether the prescription of medication can be reimbursed by a state Medicaid program during the period of time Dr. King was treating N.B.

RESPONSE:

Admit.

REQUEST NO. 7: Admit that the Wisconsin Drug Utilization Board took into consideration the peer-reviewed medical literature and the state of medical science during the time period alleged in the complaint in order to determine whether prescribing medication was properly reimbursable by the state Medicaid program.

RESPONSE:

Relator is unable to admit or deny at this time. Until October 30, 2013, Dr. King had not identified any witness or documents to support her contention regarding the role of the Wisconsin Drug Utilization Review Board in negating Congress' restriction of Medicaid coverage to medically accepted indications. On October 30, 2013, Dr. King identified Jacob Olson, a member of the Wisconsin Drug Utilization Board, as her expert witness and a

deposition has been scheduled for November 13, 2013. Relator may be able to admit or deny this request for admission following that deposition.

REQUEST NO. 8: Admit that the attached chart, marked as Exhibit A, is not inclusive of all statutory provisions governing determination by states as to whether prescribing of medication was reimbursable under their Medicaid program.

RESPONSE:

Admit as there are additional restrictions.

The chart of Medically Accepted Indications for Pediatric Use of Certain Psychotropic Medications attached as Exhibit A to Defendant's Second Set Of Requests To Admit, Interrogatories, and Requests For Production Of Documents To Plaintiff Dr. Toby Tyler Watson (Medically Accepted Indications Chart) sets forth, with respect to certain psychotropic drugs, uses approved under the FDCA for patients under 18 years of age, and if not, whether there is support for such use in DRUGDEX. The Medically Accepted Indications Chart was developed to depict medically accepted indications as defined under 42 U.S.C. § 1396r-8(k)(6), § 1396r-8(g)(1)(B)(i). DRUGDEX was used because it is the most expansive of the compendia incorporated into 42 U.S.C. § 1396r-8(k)(6) for determination of a medically accepted indication when the use is not approved under the FDCA.

REQUEST NO. 9: Admit that Exhibit A does not contain any reference to the medication Clonidine.

RESPONSE:

Admit.

REQUEST NO. 10: Admit that the Wisconsin ForwardHealth Medicaid and Badger Care Plus Claims History Report, attached as Exhibit B and provided by the plaintiff as part of his

required initial disclosures, does not provide any prescription medication claims history for the following dates when Dr. King saw patient N.B.:

March 23, 2005
May 29, 2005
July 21, 2005
September 8, 2005
October 4, 2005
November 3, 2005
December 13, 2005
February 7, 2006
April 6, 2006
June 6, 2006
July 10, 2006
August 14, 2006
September 18, 2006
October 17, 2006, and
November 15, 2006.

RESPONSE:

Admit that the Wisconsin ForwardHealth Medicaid and Badger Care Plus Claims History Report, attached as Exhibit B to Defendant's Second Set Of Requests To Admit, Interrogatories, and Requests For Production Of Documents to Plaintiff Dr. Toby Tyler Watson, and provided by the Relator as part of his required initial disclosures (Medical Assistance Report), does not provide any prescription medication claims history for the specific above dates listed, but Walmart records also provided by the Relator demonstrates many prescriptions that do not appear on the Medical Assistance Report were in fact filled and paid for by Medicaid through Managed Health Services, shown as MHS on the Walmart records, or otherwise.

In addition, the deposition of defendant, Jennifer King-Vassel, is scheduled for November 11, 2013, and additional information pertaining to this request for admission may be discovered.

REQUEST NO. 11: Admit that any claims for medications prescribed by Dr. King on or before March 2, 2005, as alleged in the complaint, are barred by the statute of limitations.

RESPONSE:

Admit

REQUEST NO. 12: Admit that Dr. King never wrote a prescription for Prozac for N.B. on April 29, 2008, as alleged in the complaint.

RESPONSE:

Without sufficient information to either admit or deny.

While Dr. King's records in Relator's possession do not show a prescription for Prozac for N.B. written on April 29, 2008, prescriptions were written by Dr. King for N.B. and filled at Walmart for dates not reflected in Dr. King's records. The deposition of defendant Jennifer King Vassel is scheduled for November 11, 2013, and additional information pertaining to this request may be discovered..

REQUEST NO. 13: Admit that Dr. King never wrote a prescription for Seroquel for N.B. on April 29, 2008, as alleged in the complaint.

RESPONSE:

Without sufficient information to either admit or deny.

While Dr. King's records in Relator's possession do not show a prescription for Seroquel for N.B. written on April 29, 2008, prescriptions were written by Dr. King for N.B. and filled at Walmart for dates not reflected in Dr. King's records. The deposition of defendant Jennifer King Vassel is scheduled for November 11, 2013, and additional information pertaining to this request may be discovered.

REQUEST NO. 14: Admit that Dr. King never wrote a prescription for Zoloft for N.B. on April 29, 2008, as alleged in the complaint.

RESPONSE:

Without sufficient information to either admit or deny.

While Dr. King's records in Relator's possession do not show a prescription for Zoloft for N.B. written on April 29, 2008, prescriptions were written by Dr. King for N.B. and filled at Walmart for dates not reflected in Dr. King's records. The deposition of defendant Jennifer King Vassel is scheduled for November 11, 2013, and additional information pertaining to this request may be discovered.

INTERROGATORIES

1. If the response to any of the above stated Requests to Admit was a denial, set forth all of the factual bases for such denial and provide the names and addresses of any persons who have knowledge of the basis for the denial.

RESPONSE:

The bases of any denials are stated in the respective responses to the requests for admissions. *Relator*, Dr. Toby Tyler Watson, 2808 Kohler Memorial Drive, Sheboygan, WI 53081, 920-457-9192 has knowledge of the basis of such denials.

2. If the response to any of the above stated Requests to Admit was neither an admission nor denial of the entire request, please set forth in detail all of the efforts the plaintiff or his counsel have made to determine the truthfulness or otherwise acquire knowledge sufficient to admit or deny the request.

RESPONSE:

The efforts to acquire knowledge sufficient to admit or deny requests for admissions that were not admitted or denied are stated in the respective responses to the requests for admissions.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please provide copies of all written documents, billing statements, computer entries, or other physical evidence utilized to respond to or referenced in response to the interrogatories and/or requests to admit as set forth above.

RESPONSE:

The documents responsive to this request are identified in the respective requests for admission and have been previously provided or their location provided, are statutory references, or received from defendant. In addition, photographs of prescription bottles and Walmart Receipts are attached hereto.

DECLARATION AS TO INTERROGATORIES

I state under penalty of perjury that the responses to the interrogatories are true and correct to the best of my knowledge and belief.

Dated this 5th day of November, 2013.

s/ Toby Tyler Watson, PsyD
Toby Tyler Watson, PsyD

Dated this 5th day of November, 2013.

LAW PROJECT FOR PSYCHIATRIC
RIGHTS, INC.

s/ James B. Gottstein

James B. Gottstein (Alaska Bar # 7811100)
Attorney for *relator* Dr. Toby Tyler Watson

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CERTIFICATE OF SERVICE

On November 5, 2013, the foregoing was e-mailed to Stacy C Gerber Ward at stacy.g.ward@usdoj.gov and mailed to:

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s/ James B. Gottstein

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Attorney for Law Project for Psychiatric Rights

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA)	
<i>Ex rel.</i> Law Project for Psychiatric)	Case No. 3:09-CV-00080-TMB
Rights, an Alaskan non-profit)	
corporation,)	
)	
Plaintiff,)	
)	
vs.)	
)	
OSAMU H. MATSUTANI, MD, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

OPPOSITION TO MOTION TO DISMISS UNDER RULE 12(b)(6)

Qui tam relator Law Project for Psychiatric Rights (PsychRights®) opposes the Defendants' Motion to Dismiss under Rule 12(b)(6), Dkt. No. 92, (12(b)(6) Motion). The 12(b)(6) Motion directly raises the question of whether PsychRights is correct that Congress restricted reimbursement for outpatient drugs by the federal government under Medicaid to those that are "medically accepted indications," defined as indications approved by the Food and Drug Administration (FDA), or the use of which is supported by one or more citations included or approved for inclusion in (i) American Hospital Formulary Service Drug Information, (ii) United States Pharmacopeia-Drug Information (or its successor publications), or (iii) DRUGDEX Information System (Covered



Outpatient Drugs). 42 USC § 1396r-8(k)(3); 42 USC § 1396r-8(k)(6); 42 USC § 1396r-8(g)(1)(B)(i).

**I. CONGRESS RESTRICTED FEDERAL MEDICAID
REIMBURSEMENT FOR OUTPATIENT DRUGS TO
MEDICALLY ACCEPTED INDICATIONS.**

**A. Congress Limited Medicaid Federal Financial Participation to
Covered Outpatient Drugs**

42 USC 1396R-8(k)(3) provides in pertinent part, "The term 'covered outpatient drug' does not include any . . . drug . . . used for a medical indication which is not a medically accepted indication." 42 USC 1396R-8(k)(6) provides:

The term "medically accepted indication" means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C.A. § 301 et seq.], or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i) of this section.

42 USC § 1396R-8(g)(1)(B)(i), in turn, designates the compendia as

- (I) American Hospital Formulary Service Drug Information;
- (II) United States Pharmacopeia-Drug Information (or its successor publications); and
- (III) the DRUGDEX Information System.

(Compendia).

In sum, Medicaid is only permitted by Congress to reimburse the states for expenditures on outpatient drugs for "medically accepted indications," defined as indications approved by the FDA or "supported" by a citation in any of the three Compendia.

In their 12(b)(6) Motion, the Defendants assert Congress did not limit Medicaid coverage of outpatient drugs to "covered outpatient drugs" as set forth above, citing 42 U.S.C. §1396d(a)(12), which includes "prescribed drugs" in the definition of "medical assistance," for the proposition that Medicaid pays for all drugs prescribed by someone

licensed to do so, and §1396r-8(d)(1)(B)(i) for the proposition that because it allows states to limit coverage to covered outpatient drugs, prescription drug coverage under Medicaid must not otherwise be limited to covered outpatient drugs. They assert Congress established "covered outpatient drugs" as a floor or minimum, not a ceiling or maximum, also stating that the sections cited by PsychRights nowhere say or even imply that Medicaid payments are limited to "covered outpatient drugs." This is simply not true. States are not required to offer drug coverage, although they all have elected to do so, and federal reimbursement for such prescription drug coverage is limited under §1396b(i)(10) to "covered outpatient drugs," except as otherwise specifically allowed.¹

The structure of the Medicaid Statutes, which are found at 42 U.S.C. §1396 to 42 U.S.C. §1396w-2,² is that §1396a sets forth the requirements of "State Plans," §1396b sets forth how reimbursement to the states is determined, §1396d defines certain terms, and other provisions of the statutes set forth specific requirements for what medical assistance is authorized to be reimbursed by the Medicaid program. §1396r-8, which is at issue here, defines the scope and requirements for prescription drug coverage, and other sections address other types of medical assistance. That a service or product is included in the definition of "medical assistance" in §1396d(a) does not mean that Medicaid pays for all of such service or product.

For example, while §1396(d)(15) includes "services in an intermediate care facility for the mentally retarded" in the definition of "medical assistance," §1396a(a) requires that "a State plan for medical assistance must," at §1396a(a)(30)(B)(i)

¹ At §1396r-8(a)(3)(A) Congress allowed Medicaid to pay for drugs that are not covered outpatient drugs

if (A)(i) the State has made a determination that the availability of the drug is essential to the health of beneficiaries under the State plan for medical assistance; (ii) such drug has been given a rating of 1-A by the Food and Drug Administration; and (iii)(I) the physician has obtained approval for use of the drug in advance of its dispensing in accordance with a prior authorization program described in subsection (d) of this section.

² Hereafter, citations to sections within this statutory range omit the Title Number.

(30) provide, under the program described in subparagraph (A), that-- (i) each admission to a[n] . . . intermediate care facility for the mentally retarded . . . is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved,

and at §1396a(a)(31) that

(31) with respect to services in an intermediate care facility for the mentally retarded (where the State plan includes medical assistance for such services) provide, with respect to each patient receiving such services, for a written plan of care, prior to admission to or authorization of benefits in such facility, in accordance with regulations of the Secretary, and for a regular program of independent professional review (including medical evaluation) which shall periodically review his need for such services.³

In §1396i, Congress mandated an entire certification and approval process for intermediate care facilities for mentally retarded Medicaid beneficiaries. This is analogous to the restrictions on prescription drug coverage, including to medically accepted indications, contained in §1396r-8, and is an illustration of the principle that, contrary to the Defendants' assertion, the Medicaid statutes do not allow payment for everything defined as "medical assistance" in 1396d(a).

Similarly, the inclusion of "prescription drugs" in the definition of "medical assistance," at §1396d(a)(12) does not allow Medicaid to pay for all prescriptions by a licensed prescriber as asserted by the Defendants. Instead, §1396a(a)(54) requires that if a state elects to provide prescription drug coverage, it must comply with the requirements concerning "covered outpatient drugs" contained in §1396r-8, and at §1396b(i)(10)(A) prohibits payment "with respect to covered outpatient drugs unless there is a rebate agreement in effect under section 1396r-8 of this title with respect to such drugs or unless section §1396r-8(a)(3) of this title applies." The exception in §1396r-8(a)(3)⁴ makes no sense whatsoever under the Defendants' interpretation.

³ See, also §1396a(B)(i)(44).

⁴ See, note 1, *infra*.

The Defendants are simply wrong when they assert at page 7 of their 12(b)(6) Motion that "covered outpatient drugs" establishes a floor or minimum, not a ceiling or maximum. There are a number of provisions that allow or mandate the states to restrict payment for "covered outpatient drugs." §1396r-8(d)(1)(A) allows states to establish prior authorization programs for covered outpatient drugs so long as they comply with §1396r-8(d)(5). §1396r-8(d)(1)(B) allows states to exclude or otherwise restrict coverage of covered outpatient drugs used for anorexia, weight loss, weight gain, cosmetic purposes or hair growth, smoking cessation, and sexual or erectile dysfunction, or to promote fertility. §1396r-8(d)(4) allows states to establish formularies under specified rules.

B. The United States District Courts for the Districts of Massachusetts and Illinois, and the United States Department of Justice Agree With PsychRights' Interpretation

In contesting this straightforward interpretation, the Defendants, rely on 42 USC §1396r-8(d)(1)(B)(i), which provides:

(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if--

(i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6) of this section);

The Defendants' argument is this language implies Medicaid must cover more than for "medically accepted indications," because otherwise there is no reason for this provision allowing the States to exclude or restrict coverage to medically accepted indications. In other words, the Defendants' argument is that PsychRights' interpretation renders §1396r-8(d)(1)(B)(i) superfluous and an interpretation that a statutory provision is superfluous is disfavored.

In support of this contention, Defendants cite to the following in the unpublished decision in *U.S. ex rel. Franklin v. Parke Davis*, 2003 U.S. Dist. LEXIS 15754, 2003 WL 22048255, p 3 (D.Mass. 2003):

Thus, in Relator's view, § 1396r-8(d)(1)(B)(i) is simply superfluous, giving states the discretion to exclude drugs that are not covered by Medicaid to begin with. Basic rules of statutory construction, however, disfavor this interpretation.

(citation omitted). However, the *ex rel Franklin* district court specifically declined to rule on the issue:

It is not clear which side gets the better of the statutory-tail-chases-cat debate. The Court would appreciate an amicus brief from federal officials, providing the federal government's understanding of the extent to which the Medicaid statute empowers states to provide coverage of off-label, non-compensum prescriptions.

Id.

Most importantly the district court there did not overrule its previous published opinion where it concluded PsychRights' interpretation is correct:

Whether a drug is FDA-approved for a particular use will largely determine whether a prescription for that use of the drug will be reimbursed under the federal Medicaid program. Reimbursement under Medicaid is, in most circumstances, available only for "covered outpatient drugs." 42 U.S.C. § 1396b(i)(10). Covered outpatient drugs do not include drugs that are "used for a medical indication which is not a medically accepted indication." *Id.* § 1396r-8(k)(3). A medically accepted indication, in turn, includes a use "which is approved under the Federal Food Drug and Cosmetic Act" or which is included in specified drug compendia. *Id.* § 1396r-8(k)(6). See also *id.* § 1396r-8(g)(1)(B)(i) (identifying compendia to be consulted). Thus, unless a particular off-label use for a drug is included in one of the identified drug compendia, a prescription for the off-label use of that drug is not eligible for reimbursement under Medicaid.

U.S. ex rel. Franklin v. Parke-Davis, 147 F. Supp. 2d 39, 44,45 (D.Mass 2001) (footnote omitted).

In a later published decision, *US ex rel Rost v. Pfizer*, 253 F.R.D. 11, 13-14 (D.Mass 2008) the District Court for the District of Massachusetts again agreed with PsychRights' interpretation, holding:

Medicaid can only pay for drugs that are used for a "medically accepted indication," meaning one that is either approved by the FDA or "supported

by citations" in one of three drug compendia, including DRUGDEX. See 42 U.S.C. § 1396r8 (k)(3), (6); 42 U.S.C. § 1396r-8 (g)(1)(B)(I).

Similarly, the US District for the District of Illinois *U.S. v. Ortho-McNeil Pharmaceutical, Inc.*, 2007 WL 2091185, p. 2 (N.D.Ill. 2007), has held that Medicaid coverage is limited to "covered outpatient drugs," which excludes indications that are not for a medically accepted indication.

While not filing the *amicus* brief desired by the Massachusetts District Court in the 2003 unpublished *Franklin* opinion,⁵ the Department of Justice has since taken a consistent position, repeatedly asserted, that agrees with PsychRights' interpretation. For example, in September of 2009 the Department of Justice issued a news release announcing a \$2.3 Billion settlement with Pfizer, stating, "[Pfizer] caused false claims to be submitted to government health care programs for uses that were not medically accepted indications and therefore not covered by those programs." Exhibit 1, p.1.

Similarly, the Government's February 13, 2009, Complaint in Intervention in *U.S. ex rel Gobble v. Forest Laboratories*, Case No. 03-cv-10395-NMG, District of Massachusetts, Exhibit 2, p. 9, at ¶s 26-30, sets forth the Government's position that prescriptions caused to be presented to Medicaid that are not for medically accepted indications are false claims. Paragraph 37, Exhibit 2, p.10, also recites that Celexa (citalopram) and Lexapro (escitalopram) have no medically accepted indications for children and youth⁶ and at p.31, ¶97, specifically alleges that claims presented to

⁵ 2003 U.S. Dist. LEXIS 15754, 2003 WL 22048255, p 3.

⁶ The FDA subsequently approved Lexapro for Major Depressive Disorder. In the First Amended Complaint herein, Dkt. No. 107, that Celexa has no medically accepted indication for children and youth is set forth at p. 34, ¶166(c), and that the only medically accepted indication for Lexapro is Major Depressive Disorder at ¶167(m).

Medicaid as a result of prescriptions of Celexa and Lexapro by physicians for use in children and youth are false or fraudulent for that reason. *See*, also ¶100, Ex. 2, p. 32. The settlement agreement in *U.S. ex rel Wetta v. AstraZeneca Pharmaceuticals*, Case No. 04-cv-3479-BMS, Eastern District of Pennsylvania, Exhibit 3, p. 6, also sets forth the Government's position that claims presented to Medicaid for outpatient drugs not for a medically accepted indication are false or fraudulent.

Thus, the Massachusetts and Illinois US District Courts and the Department of Justice all agree with the interpretation that Congress has limited federal reimbursement for outpatient drugs to "medically accepted indications."

C. Statutory Construction Principles Confirm PsychRights,' The Massachusetts and Illinois District Courts,' and the Department of Justice's Interpretation

The Defendants rely on the maxim or canon of statutory construction that an interpretation that anything in a statute is superfluous is disfavored, but of course, there are competing maxims of statutory construction.

[A]s every judge knows, the canons of construction are many and their interaction complex. The canons "are not mandatory rules." *Chickasaw Nation v. United States*, 534 U.S. 84, 94, 122 S.Ct. 528, 151 L.Ed.2d 474 (2001). They are guides "designed to help judges determine the Legislature's intent."

Xilinx, Inc. v. C.I.R., 598 F.3d 1191, 1196 (9th Cir. 2010).

In *Chickasaw Nation*, 453 U.S. at 94, the Supreme Court specifically rejected the canon of construction that an interpretation rendering part of a statute superfluous was controlling there:

The canon requiring a court to give effect to each word "if possible" is sometimes offset by the canon that permits a court to reject words "as surplusage" if "inadvertently inserted or if repugnant to the rest of the statute"

Of course, the first thing to examine is the language of the statute itself:

In interpreting the statute we look to general principles of statutory construction and begin with the language of the statute itself. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989)

Siripongs v. Davis, 282 F.3d 755 (9th Cir. 2002).

Defendants' interpretation of the statute immediately falls apart when looking at the provision upon which they rely, §1396r-8(d)(1)(B)(i), which states:

(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if--

(i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6) of this section);

This is circular because, "covered outpatient drug" is defined in 42 USC 1396R-8(k)(3) to "not include any . . . drug . . . used for a medical indication which is not a medically accepted indication."

Thus, substituting the definition of "medically accepted indication" the statutory provision relied upon by the Defendants states,

A State may exclude or otherwise restrict coverage of a covered outpatient drug to a covered outpatient drug.

or, substituting the definition of "covered outpatient drug:"

A State may exclude or otherwise restrict coverage of drugs prescribed for a medically accepted indication to drugs prescribed for a medically accepted indication.

There is thus simply no avoiding the conclusion that 42 U.S.C. §1396r-8(d)(1)(B)(i) is superfluous. Most importantly, it can not be used to override Congress' explicit limitation of Medicaid coverage for outpatient drugs to medically accepted indications.

Defendants cite to *Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991), for the proposition that courts " must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."

PsychRights respectfully suggests this maxim supports PsychRights' position rather than Defendants' because Defendants' position writes out of the statute that part of the definition of "covered outpatient drugs" that limits it to medically accepted indications, doing violence to the whole Medicaid statutory scheme in the process. The Defendants' interpretation that all prescribed drugs are covered under Medicaid because prescribed drugs are one of the elements of medical assistance is contrary to the whole structure and intent of the Medicaid statutes and the intent of Congress to limit prescription drug coverage in OBRA 1990.

For example, §1396b(i)(10)(A), provides, "Payment under the preceding provisions of this section shall not be made . . . with respect to covered outpatient drugs unless there is a rebate agreement in effect under section 1396r-8 of this title with respect to such drugs or unless §1396r-8(a)(3) of this title applies."⁷ This evinces Congress' intent to restrict payments for outpatient drugs, among quite a few other things,⁸ to "medically accepted indications."

PsychRights respectfully suggests its, the Massachusetts and Illinois District Courts,' and the Department of Justice's interpretation that Congress restricted coverage for outpatient drugs to covered outpatient drugs is correct.

II. THAT ALASKA'S PLAN HAS BEEN SEEKING REIMBURSEMENT FOR DRUGS THAT ARE NOT FOR A MEDICALLY ACCEPTED INDICATION IS IRRELEVANT

In Part II.C., of their 12(b)(6) Motion, the defendants demonstrate that Alaska has been obtaining reimbursement under its approved plan for prescription drugs that are not for medically accepted indications, arguing this means the reimbursements are

⁷ It seems worth noting here that the title to §1996(b)(i), includes "other restrictions," and "Titles are also an appropriate source from which to discern legislative intent." *United States v. Nader*, 542 F.3d 713, 717 (9th Cir. 2008). Moreover, §1396r-8 is contained in §4401 of OBRA 1990, which is the first section in, "Part 1-Reductions in Spending," and itself is titled, "Reimbursement for prescribed drugs," denoting that the whole section pertains to the requirements for reimbursement for prescribed drugs.

⁸ See §1396r-8(k)(3) which has quite a few restrictions in addition to the one that restricts coverage to "medically accepted indications."

authorized. This is a reason for granting a preliminary injunction against the practice rather than shedding any light on whether the practice is permitted under Medicaid.

Protection of the public fisc requires that those who seek public funds act with scrupulous regard for the requirements of law; respondent could expect no less than to be held to the most demanding standards in its quest for public funds. This is consistent with the general rule that those who deal with the Government are expected to know the law and may not rely on the conduct of Government agents contrary to law

Heckler v. Community Health Services, 467 U.S. 51, 63, 104 S.Ct. 2218, 2225 (1984).

Citing to *Heckler*, in *U.S. ex rel Hagood v. Sonoma County Water Agency*, 929 F.2d 1416, 1422 (9th Cir 1991), in a False Claims Act case such as this, the Ninth Circuit held that United States government officials' approval of a contract based on an erroneous interpretation of law did not defeat a False Claims Act cause of action, and reversed the district court's dismissal under Rule 12(b)(6). That the State of Alaska has promulgated regulations and acts thereunder contrary to the law, and the officials who approved the State of Alaska's Medicaid Plan have acquiesced, is no defense--it is an admission.

III. CONCLUSION

For the foregoing reasons, the Defendants' Motion to Dismiss under Rule 12(b)(6), Dkt. No. 92, should be denied.

RESPECTFULLY SUBMITTED this 7th day of May, 2010.

Law Project for Psychiatric Rights, an Alaskan non-profit corporation

By: /s/ James B. Gottstein
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 7, 2010, a true and correct copy of this document was served electronically on all parties of record by electronic means through the ECF system as indicated on the Notice of Electronic Filing, or if not confirmed by ECF, by first class regular mail.

/s/ James B. Gottstein
JAMES B. GOTTSTEIN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

vs. Case No. 11-CV-236

JENNIFER KING VASSEL, CAPS
CHILD & ADOLESCENT PSYCHOLOGICAL
SERVICES, and ENCOMPASS EFFECTIVE
MENTAL HEALTH SERVICES, INC.,
Defendants.

Deposition of TOBY T. WATSON
Friday, May 4th, 2012

1:39 p.m.

at

GUTGLASS, ERICKSON, BONVILLE & LARSON, S.C.,
735 North Water Street
Milwaukee, Wisconsin

Reported by Rosanne E. Pezze, RPR/CRR

INDEX

EXAMINATION	PAGE
By Mr. Larson.	4
By Mr. Knight.	63

EXHIBITS

EXHIBIT NO.	PAGE NUMBER
No. 1 Employment Agreement between Encompass-Effective and Dr. Jennifer King.	64
No. 2 Associated Psychological Health Services Release of Information and Health Records.	75

(Original exhibits attached to Original transcript.
Copies of exhibits are attached as requested.)

REQUESTS

(None.)

Deposition of TOBY T. WATSON, a witness in
the above-entitled action, taken at the instance of
the Defendants, pursuant to the Federal Rules of
Civil Procedure, pursuant to Notice, before Rosanne
E. Pezze, RPR/CRR, Certified Realtime Reporter and
Notary Public, State of Wisconsin, at 735 North Water
Street, Milwaukee, Wisconsin, on the 4th day of May,
2012, commencing at 1:39 p.m. and concluding at 3:47
p.m.

APPEARANCES:

OFFICE OF REBECCA L. GIETMAN, by
Ms. Rebecca L. Gietman
805 South Madison Street
Chilton, Wisconsin 53014-1535
appeared on behalf of the Plaintiffs.

GUTGLASS, ERICKSON, BONVILLE & LARSON, S.C.,
by

Mr. Mark E. Larson
735 North Water Street, Suite 1400
Milwaukee, Wisconsin 53202
Appeared on behalf of the Defendant
Jennifer King Vassel.

GIMBEL, REILLY, GUERIN & BROWN, LLP, by
Mr. Patrick J. Knight
330 East Kilbourn Avenue, Suite 1170
Milwaukee, Wisconsin 53202
Appeared on behalf of the Defendants
Encompass Effective Mental Health Services,
Inc.

TRANSCRIPT OF PROCEEDINGS

TOBY T. WATSON, having been first duly
sworn on oath, was examined and testified as follows:

EXAMINATION

BY MR. LARSON:

Q Would you state your full name for the record,
please.

A Toby Tyler Watson, W-A-T-S-O-N.

Q And it's Dr. Watson?

A Correct.

Q Doctor, there was a Notice of Deposition Duces Tecum
that we had sent out regarding this deposition. Have
you seen that document? It asked you to bring a
number of things with you.

A I believe I have seen the document. Is this the one
right here? Yes, I have seen this. I do remember
it.

Q The first thing I should ask you is, have you given a
deposition before?

A I have.

Q So you're familiar with kind of the ground rules
about not speaking over each other and kind of the
process; it's question and answer?

A Yes.

Q All right. So I won't go through the whole boring



Page 5

1 description for you.
2 First of all, did you bring anything
3 that's responsive to the request there?
4 A Well, let's walk through it. You were looking for
5 any notes, any documents to support the allegations
6 in the complaint that have not been previously noted,
7 I'm sorry, provided. Research conducted for the
8 case, medical claim information submitted to any
9 government entity, communication with any government
10 entity, any and all radiographic films or videos
11 related to NB, any and all photographs, films, any
12 and all written communications with NB or the mother
13 and father, medical records concerning, any material
14 related to the matter. All right. Walked through
15 them. I didn't bring the materials, and I'll let you
16 know why.
17 Q Well, let me, because it's a question/answer format,
18 I'd like to lay kind of a logical formation here, if
19 I can.
20 Do you have documents that are
21 responsive to this in your possession that you didn't
22 bring today?
23 A Do I have documents that are in my possession that I
24 didn't bring today?
25 Q Yeah, that are responsive to this list of documents

Page 6

1 we requested.
2 A If I had medical records, I couldn't tell you I have
3 medical records because it would be privileged
4 information.
5 Q Okay. I'm a little confused by that in the sense
6 that if -- to the extent that we know NB's name,
7 because that's already been disclosed. We've also
8 had disclosures with regard to the fact that he
9 treated with Dr. King. I believe we've also had
10 disclosures that he's treated with other people and
11 we've had the disclosure that you haven't treated
12 him.
13 A Correct.
14 Q So I mean we have disclosures about things, so I mean
15 do you have records -- let me ask you this way.
16 The records that are in your
17 possession, are they records of anyone's care and
18 treatment other than Dr. King's of NB?
19 A I couldn't comment because, again, if I have records,
20 that would be medical records, and I tell you that I
21 have them, I would be disclosing to you that I have
22 records and that he is my patient, and I can't give
23 you that information that he would be a patient of
24 mine or that --
25 Q Well, it's already been disclosed in documents, court

Page 7

1 documents, that --
2 A But not that he's my patient, though --
3 Q That he's not your patient.
4 A -- or that I have any records or anything like that.
5 So if I acknowledge I have it, then I would be
6 acknowledging -- you know, it would be a breach of
7 confidentiality.
8 Q I'm confused here on things. I have a representation
9 that you have not treated Nicholas Bingham, correct?
10 A I believe so, yes.
11 Q All right. So these are not your own treatment
12 records. These are treatment records, if you have
13 records in your possession, they're records that were
14 created by other healthcare providers. That's true?
15 A If I would have any records, they would be by other
16 healthcare providers, yes.
17 Q And my question to you is, simply, do you have, and
18 I'm not asking you the identities at this point in
19 time, but we know he has seen pediatricians and
20 things like that, so that's not anything new or
21 anything that hasn't been disclosed. But do you have
22 records in your possession that were created by any
23 healthcare provider other than Dr. King?
24 A I would have to go back and look. I don't recall.
25 Q Okay. Other than medical records, are there anything

Page 8

1 else that you have in your possession that would be
2 responsive that you didn't bring today, such as
3 notes, diary, a log, anything like that?
4 A I don't have anything in my possession.
5 Q All right. Did you ever create such items and turn
6 them over to somebody else?
7 A When I met with my attorney, I did create items and
8 then gave it to my attorney.
9 Q For purposes of her representation of you?
10 A Correct.
11 Q Okay. And I want to make the distinction. If you
12 made notes for your own benefit and then later on she
13 asked to see them, that's distinct from making notes
14 for purposes of giving them to her.
15 A Right, right.
16 Q And I'm making that distinction.
17 A Okay. I understand now. I didn't collect or make
18 any notes without it being related to working with my
19 attorney.
20 Q All right.
21 A So there wasn't anything gathered prior to.
22 Q Have you done any kind of research in this case?
23 Typically in medical cases people might go online and
24 do Medline searches or eMed searches or something
25 like that.

2 (Pages 5 to 8)

Page 9	Page 11
<p>1 A Not that I've done any Internet-type searching, no.</p> <p>2 Q Have you done any book research?</p> <p>3 A No.</p> <p>4 Q Copied articles of any kind, medical literature of</p> <p>5 any kind for this case?</p> <p>6 A Only -- I mean afterwards, you know, like when I read</p> <p>7 an article and I see something, like recently in</p> <p>8 North Carolina there was a Medicaid fraud case they</p> <p>9 just now investigated. When that came up I sent it</p> <p>10 over to my attorney.</p> <p>11 Q But you don't have any of those copies in your</p> <p>12 possession?</p> <p>13 A I have a copy of that article, sure.</p> <p>14 Q Okay. Medical claim information submitted to any</p> <p>15 government entity; do you have any of that</p> <p>16 information in your possession?</p> <p>17 MS. GIETMAN: We did submit to you that</p> <p>18 Forward Health summary. So other than that you're</p> <p>19 asking?</p> <p>20 MR. LARSON: Yes.</p> <p>21 THE WITNESS: I don't. I don't have</p> <p>22 anything else.</p> <p>23 BY MR. LARSON:</p> <p>24 Q Any communications with any government entity other</p> <p>25 than what we've already been provided?</p>	<p>1 A No.</p> <p>2 Q Have you had contact with his father in any way,</p> <p>3 shape or form?</p> <p>4 A I don't remember.</p> <p>5 Q Have you had contact with his mother?</p> <p>6 A Yes.</p> <p>7 Q And then there is the catch-all; any other materials</p> <p>8 that relate to this that we haven't talked about that</p> <p>9 aren't privileged by attorney-client communication --</p> <p>10 A No.</p> <p>11 Q -- that's in your possession?</p> <p>12 A No.</p> <p>13 Q All right. Where do you currently reside?</p> <p>14 A My home address is 477 Sir Howard Circle in the</p> <p>15 Village of Kohler, Wisconsin.</p> <p>16 Q How long have you resided in the Kohler or Sheboygan</p> <p>17 area?</p> <p>18 A In Kohler, I've been there, I'm going to say, five</p> <p>19 years, and I was born and raised in Kohler up until I</p> <p>20 was about 23.</p> <p>21 Q And then did you live in Sheboygan -- you're making</p> <p>22 the distinction between Kohler and Sheboygan, and</p> <p>23 people I'm sure in the area do, but it's fairly in</p> <p>24 close proximity.</p> <p>25 A Correct.</p>
Page 10	Page 12
<p>1 A No.</p> <p>2 Q And let me just ask you; have you ever met Nicholas</p> <p>3 Bingham?</p> <p>4 A I got to think if I can answer that.</p> <p>5 Q If you're not his treater, I don't know how a</p> <p>6 privilege could apply.</p> <p>7 A That's what I'm trying to figure out, if it applies</p> <p>8 or not.</p> <p>9 Q Well, then I'm confused again because the</p> <p>10 representation was that you are not a treating</p> <p>11 psychologist.</p> <p>12 A Correct. But if I became aware or had contact with</p> <p>13 him and somebody else is, all of that information</p> <p>14 obtained through that communication would be</p> <p>15 privileged, including who I have contact with.</p> <p>16 Q No, no, it wouldn't be privileged. I mean once</p> <p>17 someone who's not in the privilege loop is involved,</p> <p>18 privileges evaporate.</p> <p>19 A No, I haven't met Nicholas.</p> <p>20 Q No one's provided you a videotape of him</p> <p>21 demonstrating his behavior or anything like that, I'm</p> <p>22 assuming?</p> <p>23 A No.</p> <p>24 Q All right. Have you had direct communication with</p> <p>25 Nicholas telephonically or in writing?</p>	<p>1 Q Do you make a distinction for how long you lived in</p> <p>2 Sheboygan as opposed to Kohler?</p> <p>3 A Only because you said the area; that's why I thought</p> <p>4 about the distinction, so --</p> <p>5 Q How long have you lived in the Sheboygan area?</p> <p>6 A From birth until -- from birth until when I went off</p> <p>7 to college at about 19 and then came back and kept a</p> <p>8 residence there, and then came back to the area again</p> <p>9 when I was about 32, 33 years old.</p> <p>10 Q Can you outline for me your formal education. Start</p> <p>11 from the time you graduated from high school.</p> <p>12 Sheboygan High School?</p> <p>13 A Sheboygan High School, University of</p> <p>14 Wisconsin-Milwaukee.</p> <p>15 Q Did you obtain a degree from the University of</p> <p>16 Wisconsin-Milwaukee?</p> <p>17 A I did.</p> <p>18 Q Let me just look back here. Okay. And that would</p> <p>19 have been what degree?</p> <p>20 A My undergraduate, Bachelor of Science.</p> <p>21 Q Okay. Looking at your vitae that was attached, maybe</p> <p>22 I misunderstood.</p> <p>23 A Um-hmm.</p> <p>24 Q It appeared that you attended UWM for roughly three</p> <p>25 years, 1989 to 1992. There's no degree designation</p>

1 after that.
2 A I did attend for about three years, stopped, opened a
3 few businesses, and then returned to UWM, finished my
4 degree, and then went on for my masters.
5 Q Okay. Because your vitae shows that you obtained
6 your Bachelor of Arts, and then it also says B.S.,
7 which is a little confusing to me. Major in
8 psychology. And as I understood it, that was -- I
9 guess it's not clear what --
10 A Can I take a look?
11 Q -- what institution that was from.
12 A It's from Milwaukee, UW-Milwaukee.
13 Q All right. I was a little confused about that. Let
14 me ask you a question. Did you prepare the vitae?
15 A I did, and I've never noticed that, actually. It
16 says Bachelor of Arts and then B.S.
17 Q Yeah. It's typically one or the other, or you could
18 have -- now it's EBA or --
19 A Yeah. In all the years no one's ever caught that or
20 noticed it, so --
21 Q Okay. So you had a Bachelor of Science?
22 A Yeah.
23 Q Not a Bachelor of Arts. Bachelor of Science, and you
24 obtained that from UWM in 1997?
25 A Correct.

1 Q And then you did some graduate studies at UWM in
2 psychology?
3 A Correct. I stuck around afterwards, I think, for a
4 semester, if I remember right.
5 Q And then you went to California to an institution
6 called California School of Professional Psychology?
7 A Correct.
8 Q That's where you obtained your masters in the year
9 2000?
10 A I'd have to look again.
11 Q You know what? I think I've got an extra copy. Make
12 sure I'm not giving you my --
13 MS. GIETMAN: I do.
14 MR. LARSON: Okay.
15 THE WITNESS: Thank you.
16 MS. GIETMAN: Patrick, do you need a copy,
17 too?
18 MR. KNIGHT: No, I'll wing it.
19 THE WITNESS: Correct. June 2000.
20 BY MR. LARSON:
21 Q And then you got your doctorate in psychology from
22 the same institution two years later?
23 A California School of Professional Psychology then
24 merged with Alliant University, and then I got my
25 doctorate in August of 2002.

1 Q All right. Have you had any formal education since
2 then?
3 A Formal meaning any academic university? No.
4 Q Right. And with psychology, do you go through any
5 kind of board certification or --
6 A Licensing.
7 Q Licensing with the state?
8 A Correct.
9 Q Okay. Anything where you have to take any sort of
10 further examination?
11 A Other than the EPPP and then the oral exam, no.
12 Q All right. Do you have to repeat that at any point
13 in time or become recertified or anything like that?
14 A No.
15 Q One thing I'm curious about here as well; on your
16 vitae you indicate there's a one-year period of time,
17 on the second page, talks about Psychological Service
18 Center.
19 A Um-hmm.
20 Q It says, "provided Court-ordered domestic violence
21 group psychotherapy," meaning the participants had
22 to --
23 A Correct.
24 Q They were required by Court order to --
25 A Not me. They were required.

1 Q The way that reads, it's a little bit -- so you were
2 physically --
3 A Court ordered me to, no.
4 Q Unless a punishment for something. So it appears
5 that you were practicing in California for a period
6 of roughly two years?
7 A Correct, under someone else's license, though. That
8 wasn't part of my clinical training.
9 Q Okay. All right. You're not a medical doctor?
10 A Correct.
11 Q So you're not a psychiatrist?
12 A Correct.
13 Q You do not have nor ever have had the legal ability
14 to prescribe medication?
15 A Correct.
16 Q Can you tell me what your current psychology practice
17 encompasses?
18 A I'm not sure -- I didn't understand the question.
19 Q Can you just tell me, do you have a private
20 psychology practice currently?
21 A Yes.
22 Q And you see individual patients?
23 A Correct.
24 Q Can you describe it for me; for example, how many
25 days a week are you there --

1 A Sure.
2 Q -- what patients do you see?
3 A Sure. The name of the practice is Associated
4 Psychological Health Services. I took it over
5 approximately seven years ago. It was a full
6 outpatient mental health clinic. And I divide my
7 time up between individual therapy with children,
8 adolescents and adults, family therapy, some couples
9 therapy, and then I supervise a doctoral student, two
10 master-level students, and that kind of rotates over
11 the years with new either interns or postdocs coming
12 in and out. And then we do psychological testing
13 and --
14 Q Do you actually apply the psychological testing?
15 A Correct.
16 Q Are there any other employees of Associated
17 Psychological Health Services?
18 A No.
19 Q And the trainees that you're talking about --
20 A Um-hmm.
21 Q -- where do they come from?
22 A We have one right now from Marquette University, one
23 from -- one from Lakeland College, and one from --
24 I'm forgetting which university. I forget where she
25 comes from.

1 Q Do you have any faculty appointments?
2 A No.
3 Q Have you ever had any faculty appointments?
4 A No.
5 Q Do you currently see any patients -- strike that. I
6 should back up. You may have told me something and I
7 may have this wrong.
8 You charge the patients that you see
9 for your services?
10 A Some.
11 Q Some. How do you determine which ones you charge and
12 which ones you don't?
13 A We have a standardized sliding fee scale which is
14 based on income and ability to pay. The majority of
15 the patients, though, are low income and don't have
16 insurance, so most of the clinic is a free clinic.
17 Q Do you take Title 19 patients?
18 A We do take them, but we don't bill Title 19.
19 Q Have you ever?
20 A No.
21 Q So do you have any experience at all with submitting
22 billings for coverage under Medicaid or BadgerCare
23 Plus?
24 A Yes.
25 Q Where would that experience have come from?

1 A Allendale Association, the Bradley Counseling Center.
2 Q That would have been in the years 2001-2005 you were
3 there?
4 A Correct.
5 Q And was that as an intern?
6 A Intern and then postdoc and then staff psychologist.
7 Q Okay.
8 A Although, really, the only time that I really got
9 involved with any sort of Medicaid billing would have
10 been probably during my intern year, and maybe the
11 postdoc.
12 Q And that would have been 2001, 2002?
13 A Correct.
14 Q Were you responsible for submitting the billing or
15 did someone else?
16 A Someone else.
17 Q You would just code what you did, and how it was
18 processed was how it was processed?
19 A Correct, and I didn't even have to code it.
20 Q They would code it for you?
21 A Correct.
22 Q You'd just describe what services you provided?
23 A Didn't even have to describe it. Patients were
24 assigned to us. We'd get notice that we were going
25 to see a certain patient at a certain time, at a

1 certain date; we'd be there, we'd provide therapy.
2 The receptionist would take care of everything then.
3 I would just have to make sure that the notes were
4 following a certain protocol for Medicaid, and then
5 we'd do audits internally to make sure that our
6 paperwork was in order.
7 Q So the type of service you provided was known ahead
8 of time and could be coded ahead of time?
9 A Correct.
10 Q Do you know if there was ever any disallowance of any
11 of the services that you provided?
12 A For my service?
13 Q Yes.
14 A I don't believe so.
15 Q But there were disallowances for other people at
16 Allendale?
17 A Yeah. Allendale is a huge treatment facility, and
18 they would have audits from Medicaid that would come
19 in and do audit reviews.
20 Q Do you know the basis for some of those
21 disallowances?
22 A I know that staff would tell me why, but I don't have
23 actual factual knowledge of it.
24 Q Do you hold yourself out as a forensic psychologist?
25 A No.

Page 21

1 Q Do you have any formal training as a forensic
2 psychologist? And maybe I should lay the foundation
3 properly here.
4 Is forensic psychology recognized by
5 any professional group as a subspecialty?
6 A Yes.
7 Q Okay. Do you meet the qualifications to be a
8 forensic psychologist?
9 A No. Maybe I should -- I don't know. Rather than say
10 no, I would say I don't know.
11 Q And you haven't tried to obtain status --
12 A No.
13 Q -- as being recognized as a forensic psychologist?
14 A Correct, right.
15 Q Is there any training -- and I know there's probably
16 overlap of training. But is there any specific
17 training for being a forensic psychologist that
18 you've taken?
19 A No.
20 Q You're obviously aware of the group Psychrights.org?
21 A Yes.
22 Q Is that the proper name of the organization? I see
23 that on the Internet.
24 A I don't know. I refer to it as Psychrights. I think
25 there may be a longer name.

Page 22

1 Q Okay. How long have you had some connection with
2 that organization?
3 A Seven years. I would be guessing at seven years,
4 approximately.
5 Q Would it be fair for me to assume it predates you
6 having any knowledge of the existence of Nicholas
7 Bingham?
8 A Correct.
9 Q Do you have any sort of formal relationship with the
10 organization?
11 A I do not.
12 Q Have you ever had any?
13 A I've never.
14 Q All right. Is it a group that shares a common
15 position on medication of children in adolescence --
16 or maybe it's broader than that -- has a common
17 position on medication of mental health issues?
18 A There are some shared beliefs, but no, they don't
19 fully overlap.
20 Q Can you describe that a little bit for me.
21 A Psychrights --
22 Q Explain that, I should say.
23 A Psychrights, and I'm speaking not for them, but my
24 understanding of Psychrights is that they are
25 adamantly opposed to psychiatric drugging or

Page 23

1 medication use for emotional or thought disorders,
2 and adamantly against any sort of forced,
3 quote/unquote, treatment; drugging, medicating,
4 electroconvulsive therapy, commitments. I am not
5 adamantly against or in opposition to all those.
6 Q All right. But to a degree you -- let me ask you.
7 Are there any groups, whether it be by age or some
8 other characteristics, that you believe it's just
9 inappropriate to medicate for emotional or mental
10 health issues?
11 A I don't have any all or none, like you shouldn't ever
12 medicate a child, you shouldn't ever medicate an
13 adult, or -- I'm much more about informed consent and
14 patient autonomy and the right to make that decision,
15 whereas I think Psychrights is much more of it
16 shouldn't happen. I have patients that take
17 medications and find them helpful, and I have no
18 problems with that and I'm glad that they work.
19 Q I was going to ask that question.
20 A Yeah.
21 Q You, as a psychologist, don't prescribe medications
22 for mental health issues?
23 A Correct.
24 Q You don't prescribe medications legally, anyway, for
25 any purpose, right?

Page 24

1 A Correct.
2 Q You do have patients from -- and I was going to ask
3 you this question anyways. You do have patients who
4 also see a psychiatrist who do prescribe medications
5 for their mental health issues?
6 MS. GIETMAN: I'm going to object. I don't
7 think any of this is relevant or likely to lead to
8 admissible evidence, but you can still go ahead and
9 answer.
10 THE WITNESS: Yes, I have patients that
11 also see psychiatrists and we work in conjunction.
12 BY MR. LARSON:
13 Q All right. You don't, because you're a psychologist,
14 you don't make professional judgments on the
15 psychiatrist's decision on medications. True?
16 A No.
17 Q You might have concerns, but --
18 A No. I make recommendations. Yeah, I do. I mean --
19 that falls within our scope. It falls within our
20 scope. They don't have to listen to us.
21 Q And you can make -- I can make a suggestion --
22 A Sure.
23 Q -- arguably to someone, and even as a patient, a
24 patient can request medication?
25 A Um-hmm.

6 (Pages 21 to 24)

1 Q It's clinical judgment as to whether or not the
2 psychiatrist thinks it's warranted or would be
3 helpful, correct?
4 MS. GIETMAN: Again, I'm going to object,
5 but you can answer.
6 BY MR. LARSON:
7 Q Or is that outside -- is that like outside the scope
8 of your expertise?
9 A Whether or not a psychiatrist -- repeat the question.
10 Q Yeah. My question was: People can suggest or even
11 request medications, but it's up to a psychiatrist to
12 determine the medical indications, whether it's
13 warranted in that particular case? It's a clinical
14 judgment?
15 A Well, it goes beyond just a clinical judgment, which
16 even kind of highlights, I think, part of this suit.
17 It's a clinical judgment within the scope of what's
18 allowable, I guess.
19 Q Okay. We'll -- I do have some questions here in a
20 little bit. Are you actively involved in -- strike
21 that.
22 Do you ever receive referrals of
23 people to work with, not as a treater, but to work
24 with in some other manner from Psychrights?
25 MS. GIETMAN: Again, I'm going to object

1 that this is not relevant and not likely to lead to
2 admissible evidence, but you can answer.
3 THE WITNESS: I've never received any like
4 referrals or anything like that from Psychrights.
5 BY MR. LARSON:
6 Q Or contacts. And what I'm looking at --
7 A I mean for clinic or otherwise or -- yeah.
8 Q And I didn't mean as patients --
9 A Yeah, I know.
10 Q -- when you would see them as a patient. But say the
11 person has a Chapter 51 issue, they contacted you and
12 said -- or they've put the person in contact with you
13 and you know that's the mechanism of the contact for
14 you to assist them with regard to Chapter 51 rights.
15 A Yeah. I wouldn't know. I don't recall. Yeah.
16 Q Have you acted as an expert witness for people in
17 Chapter 51 cases?
18 A Yes.
19 Q How often does that occur?
20 A I would say in the last two years, three times,
21 maybe.
22 Q All in the Sheboygan area or have they been in other
23 parts of the state?
24 A Other parts of the state.
25 Q And your role has been as an expert witness as

1 opposed to being kind of a legal advocate or
2 consultant?
3 A Correct. Both, actually, but I think I've only been
4 a consultant maybe once, maybe twice.
5 Q And a consultant in what context?
6 A Where an attorney called me and said, hey, you know,
7 found you on the Internet and I have some questions,
8 what do you think about this, and they gave me a
9 hypothetical and I give them some feedback and what I
10 think.
11 Q Are you compensated for providing those services?
12 A Nah, not like that.
13 Q How about prescription issues as opposed to Chapter
14 51? Have you acted as an expert or a consultant in
15 those types of situations?
16 MS. GIETMAN: Again, I'm going to object.
17 Not relevant, but just a continuing objection. Go
18 ahead and answer.
19 THE WITNESS: I have testified as an expert
20 witness with regards to optimal treatment outcomes,
21 which has specifically been focused on medication
22 versus nonmedical approaches.
23 BY MR. LARSON:
24 Q In what kind of a context?
25 A Somebody is on a commitment; they want off a

1 commitment. I don't evaluate them. I simply come in
2 to discuss the treatment plan that is being proposed
3 and then I highlight what the research would say
4 about the treatment plan by comparison to what the
5 research has indicated based on different studies.
6 Q Have you had contact with anyone at Psychrights
7 regarding this particular case?
8 MS. GIETMAN: Again, I'm going to object.
9 Not relevant or likely to lead to admissible
10 evidence.
11 THE WITNESS: I'm trying to think if --
12 well, yeah, I mean --
13 MS. GIETMAN: But you can answer.
14 THE WITNESS: -- we've had conversations,
15 so I guess that would be. I guess I'm thinking -- I
16 guess, yeah, I was part of it, so --
17 BY MR. LARSON:
18 Q And now you have met, and I'm going to get his name
19 wrong, but Jim, is it Gottstein?
20 A Jim Gottstein.
21 Q Stein?
22 A Yes.
23 Q You've met him?
24 A I have.
25 Q You met him multiple times, or more than once, I

<p style="text-align: right;">Page 29</p> <p>1 should say?</p> <p>2 A I see him about once a year. In fact, it is once a</p> <p>3 year I see him.</p> <p>4 Q And where do you see him?</p> <p>5 A At a conference.</p> <p>6 Q Is it a particular conference that you see him</p> <p>7 annually?</p> <p>8 A It is.</p> <p>9 Q What's the name of that?</p> <p>10 A International Society for Ethical Psychology and</p> <p>11 Psychiatry. It's a professional continuing ed</p> <p>12 conference, two- or three-day conference.</p> <p>13 Q Is that a group that is not adamantly opposed but is</p> <p>14 not an advocate of the medical treatment of mental</p> <p>15 health issues?</p> <p>16 A Yes.</p> <p>17 Q You said you've given depositions before.</p> <p>18 A Um-hmm.</p> <p>19 Q Can you give me an idea of how many times?</p> <p>20 A One, two.</p> <p>21 Q Has that been in the context of any of the things</p> <p>22 that we've been talking about, Chapter 51?</p> <p>23 A (Witness nods.) No.</p> <p>24 Q No? It's some other type of a setting?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q Okay, I see. Do you know where that case was venued?</p> <p>2 A I think it was in federal court. Asked a lot of</p> <p>3 questions about my ability to be an expert and</p> <p>4 whether I met the Daubert --</p> <p>5 MR. KNIGHT: Daubert.</p> <p>6 THE WITNESS: Daubert. Thanks.</p> <p>7 MR. KNIGHT: They always do.</p> <p>8 MR. LARSON: Supposed to.</p> <p>9 THE WITNESS: Passed. Passed. Passed.</p> <p>10 BY MR. LARSON:</p> <p>11 Q Do you remember the name of the case?</p> <p>12 A I don't.</p> <p>13 Q Do you remember the name of the attorney who asked</p> <p>14 you to review the case?</p> <p>15 A You know what? I don't. I don't know who it was.</p> <p>16 It was the only time I had contact with him.</p> <p>17 Q And then you said one time was in the context of a</p> <p>18 case with one of your businesses?</p> <p>19 A I don't recall. I think there was a time one time.</p> <p>20 I'm not positive, though.</p> <p>21 Q And your businesses other than real estate</p> <p>22 investment --</p> <p>23 A Um-hmm.</p> <p>24 Q -- do you have other businesses?</p> <p>25 A I do.</p>
<p style="text-align: right;">Page 30</p> <p>1 Q Is this with regard to some of your personal</p> <p>2 litigation history in Wisconsin or --</p> <p>3 A I think there was one that was related to a personal</p> <p>4 suit related to one of my companies, and then the</p> <p>5 other one was related to me as a psychologist where I</p> <p>6 did an evaluation of someone and that person was</p> <p>7 suing their insurance company, and they wanted -- the</p> <p>8 insurance company wanted to depose me on my report.</p> <p>9 Q Okay. And was that a work comp type of case? Was it</p> <p>10 a personal injury case?</p> <p>11 A It was a --</p> <p>12 Q Denial of benefit case?</p> <p>13 A Yeah, denial of benefits from his disability</p> <p>14 insurance, or he had a disability insurance and they</p> <p>15 refused to pay on the claim.</p> <p>16 Q And you gave a deposition like you're giving today?</p> <p>17 A Yep. A few more people, camera.</p> <p>18 Q Oh, yeah. That was done for purposes of trial?</p> <p>19 A I believe so.</p> <p>20 Q And that was done in your capacity as a treating</p> <p>21 psychologist?</p> <p>22 A Not a -- evaluating psychologist.</p> <p>23 Q You had evaluated him on behalf of the insurance</p> <p>24 company?</p> <p>25 A I evaluated him on behalf of his attorney.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q In what? Can you tell me what areas?</p> <p>2 A You want the list? All right.</p> <p>3 Q Yes.</p> <p>4 A There's Watson's Distribution, Inc., which is a</p> <p>5 company that set up an energy drink called Limelite,</p> <p>6 the official drink of the Brewers and Ryan Braun.</p> <p>7 That's the only company that I currently have right</p> <p>8 now yet. There has been a lot of other companies</p> <p>9 over the years that I've opened, done, and then sold.</p> <p>10 Q At one time you were an investor in a tavern or a</p> <p>11 nightclub?</p> <p>12 A Yep. Yep. A couple, actually. Several.</p> <p>13 Q I did notice there was a citation to that institution</p> <p>14 at one point that went to the Court of Appeals?</p> <p>15 A Yeah.</p> <p>16 Q And there is a -- and I was going to ask you this.</p> <p>17 It shows up somewhere. It's part of your own</p> <p>18 discovery responses. In 1992, which would take us</p> <p>19 back to your college days, criminal misdemeanor case</p> <p>20 in Milwaukee. Do you know -- do you recall what that</p> <p>21 involved?</p> <p>22 A Vaguely. It was related to a roommate who had done</p> <p>23 some sort of crime. I don't know if he pled on it or</p> <p>24 not or if he was found guilty or not. We got</p> <p>25 included in it initially, and then I believe it was</p>

1 dismissed. I believe that's what the case was about,
2 but I think they dismissed it then afterwards.
3 Q Have you reviewed anything in preparation for today's
4 deposition?
5 A I reread the complaint, the request for disclosures,
6 our response, the Drug Compendia.
7 Q The drug, was it Drugdex?
8 A Drugdex. Yeah, Drugdex. And I believe that was it.
9 Q Do you know if this particular case which you are the
10 relator, this is the only Psychrights case that is
11 still pending in the United States?
12 A I don't -- you want to say -- I don't know.
13 MS. GIETMAN: I'm going to just ask for
14 clarification about that, about your labeling it a
15 Psychrights case. So what do you mean by that before
16 I think he can even possibly answer?
17 MR. LARSON: Let me ask you this.
18 Q Do you know if Psychrights keeps a list of cases that
19 they consider somehow their own or somehow involved
20 with that are pending?
21 A I know that their website has a listing of cases that
22 either, I think, they've done or someone else has
23 done. I know if I Googled my name, I think it pops
24 up, but I don't know if they have other ones that
25 they've either consulted on or they've -- I guess are

1 working on or have done anything like that.
2 Q Can you tell me how you became involved in this
3 matter, and I'm using the term "matter" very broadly.
4 A I met Jim Gottstein originally at ISEPP. At some
5 point over the last couple of years he gave a talk
6 about this topic of foster children being medicated
7 and that there may be fraud happening to the
8 government. I think this was on the heels of drug
9 companies paying out for encouraging doctors to do
10 off-label prescription writing.
11 I then in turn listened to a webinar
12 that he gave about this qui tam type suit and then
13 did some initial reading on it through Psychrights'
14 website, at which point then I realized that I've
15 seen it, the exact behavior that they kind of
16 highlighted happening, you know, all the time, you
17 know, profusely, and decided that I would be
18 interested in taking on -- I shouldn't say taking on.
19 I felt it was wrong that the
20 government's paying out money for things that they
21 shouldn't be paying out money for, and I felt like I
22 wanted to see if I could help recapture money for the
23 government and then also try to ensure that
24 physicians and psychiatrists start using a minimum
25 standard for safety and efficacy, and that's how I

1 got involved.
2 Q And it was between this seminar or discussions and
3 then the webinar where you heard details about FDA
4 approval and the compendiums and how that might
5 apply?
6 A Correct.
7 Q And you said that you had seen this type of a
8 practice before. Obviously, that means you'd seen it
9 before in settings other than anything involving
10 Dr. King. Truc?
11 A Correct. I had no knowledge of Dr. King.
12 Q How did this particular Nicholas Bingham case with
13 Dr. King come to your attention?
14 A The mother contacted me. She told me about her son
15 and the medications that he was being given and the
16 ages and the diagnoses.
17 Q Do you know how she came to contact you? How did she
18 know to contact you?
19 A She saw an advertisement that I listed in a newspaper
20 indicating certain medications that may not be
21 reimbursable by Medicaid constituting possible fraud,
22 and then she called me.
23 Q Where did you advertise? What newspaper?
24 A A newspaper called the Sheboygan Sun.
25 Q Since I don't live that far from Sheboygan, with the

1 daily paper up there, that's not the Sun. That's
2 something else. The Sun is a weekly --
3 A Correct, weekly --
4 MR. KNIGHT: Shopper kind of --
5 THE WITNESS: Shopper-type paper.
6 BY MR. LARSON:
7 Q How long ago was it that you advertised?
8 A I can't recall off the top of my head. I could get
9 that for you or even a copy of the ad if you want it.
10 Q And then you met with the mother and she provided you
11 with some documentation or presented you with
12 authorizations to obtain documentation?
13 A Authorizations. And I believe -- I don't recall if
14 she brought anything with her. I recall -- I don't
15 remember.
16 Q Have you had any contact with Diane Goodevich
17 regarding this matter?
18 A No. I don't know who that is.
19 Q You don't know her to be someone in Madison, I
20 believe, who's connected with Psychrights? You
21 haven't had any contact with her?
22 A I don't believe so. I don't recall her name.
23 Q Other than with your attorney, have you discussed
24 this case or any, you know, strategy or looked to
25 anyone for any kind of advice or information, input,

Page 37

1 whatever, just very broadly. any contact with anyone
2 other than your attorney regarding the Nicholas
3 Bingham matter?
4 A Not in any kind of serious detail. My wife knows I'm
5 doing this, but she's a homemaker. But, no, not in
6 any sort of consultative type way.
7 Q Have you had any kind of ongoing communications with
8 the mother?
9 A Yes.
10 Q What's her role in this?
11 A I'm not sure what you mean.
12 Q I mean does she have any active role in the
13 litigation from your perspective?
14 A She -- she's active in that she has ongoing contact,
15 you know, through the attorney and kind of -- and me.
16 I've actually talked with her, not real often, but
17 she kind of checks in once in a while. She obviously
18 provided kind of the details and the names of any,
19 you know, the people that are listed.
20 Q Are you involved as a relator in any other matter or
21 are contemplating in any other matter?
22 A No.
23 Q The mother has been the sole source of information
24 specifically regarding Nicholas Bingham?
25 A She was the sole source initially to get information

Page 38

1 from all the other sources.
2 MS. GIETMAN: I hate to interrupt you, but
3 could we take five minutes? I just need to use a
4 restroom.
5 MR. LARSON: Absolutely.
6 (Brief recess taken.)
7 THE WITNESS: I was reminded, because I
8 said I talked with Jim Gottstein, because I think you
9 said that I had said that have I talked with anyone
10 about this case at all, and I said, yeah, the
11 attorney, obviously Jim, and then you have an
12 assistant which I forgot about.
13 BY MR. LARSON:
14 Q That's fine. Anybody in her office I'm lumping
15 together with her.
16 A Because I thought there was another guy who was at a
17 meeting.
18 Q Jim Gottstein, you've talked to him about this
19 outside the presence of Rebecca, or was he involved
20 in conversation with Rebecca?
21 A No, no. I have not, no.
22 Q Okay. Oh. Has the mother been involved in a
23 discussion in a meeting with Rebecca where you were
24 present?
25 A Yes. Has the mother -- I mean yes.

Page 39

1 Q The three of you have been in a meeting before?
2 A Yes, the first meeting right off the bat.
3 Q All right. Is there any sort of an arrangement with
4 the mother that she or someone else will receive some
5 benefit if this litigation is successful that you're
6 aware of?
7 A Yes.
8 Q Is there a reason she's not the relator? I mean was
9 that discussed and some decision made, do you recall?
10 A I'm trying to think. No. It never really came up.
11 Q Now, there was some medical records that were
12 attached both to your initial disclosures and also in
13 response to the RPDs that contain records from
14 Encompass and also CAPS. There's a few records that
15 go back 2005 and I think -- yeah, I believe one that
16 goes in 2004 or a couple that go back to 2004. Are
17 these the only records that you have seen in this
18 case, including medical records?
19 A I haven't looked at all the records that were
20 obtained for a long time, and I don't know. I don't
21 have anything in my possession anymore, so I don't
22 remember if there was anything different.
23 Q I'm just going to show you a few things here. You
24 can see where someone has ran a highlighter over
25 certain things, like on page 15, you can see where a

Page 40

1 highlighter went over the arrow, over some writing,
2 and there is another arrow downward in the middle of
3 the page that points to some writing that was also
4 highlighted. My question is: Is that your writing
5 that's highlighted?
6 A I don't know if that would be -- I don't think it is.
7 No, I don't believe it is.
8 Q Do you know who did the highlighting?
9 A I'm going to guess that this is the other person that
10 was helping out with the -- I don't know what you
11 want to call it, I guess the team, or the legal team
12 which is a woman, Amanda.
13 Q Well, I mean one of the notations, for example, says
14 "age eight, approved only 10 to 17." You're saying
15 that's not your --
16 A That's not my writing.
17 Q Okay.
18 A Mine looks like doctor writing.
19 Q So if there are similar things on page 45 and
20 potentially other sources, again --
21 A Correct.
22 Q -- it would appear there's an arrow, there's
23 highlighting, none of that is your notations --
24 A Correct.
25 Q -- and not your highlighting?

10 (Pages 37 to 40)

Page 41

1 A Not my highlighting.
 2 Q We were provided a cover letter that was written
 3 to -- I believe it was written to the state and it
 4 refers to some attachments, but then there is -- the
 5 attachments were not provided. Do you know anything
 6 about that? It was written to -- it starts on
 7 page 46 and runs to page 49. It's a letter written
 8 by your counsel to Assistant U.S. Attorney Stacey
 9 Gerber-Ward.
 10 A Um-hmm.
 11 Q And I guess what I'm looking for is: Do you know
 12 what the attachments were?
 13 A Do you want me to read it all and find it? I don't
 14 know what the intentions are unless I look at it and
 15 try to figure out what it was.
 16 Q Do you recall seeing this letter before?
 17 A I do. I did see this letter, and I believe this is
 18 the woman that I may have met with, I think.
 19 Q Okay. In the context of this litigation?
 20 A Correct.
 21 Q What do you recall from that conversation?
 22 A Nice woman.
 23 Q Anything else?
 24 MR. KNIGHT: Short, dark hair, medium
 25 build.

Page 42

1 THE WITNESS: Yeah.
 2 BY MR. LARSON:
 3 Q Anything else that you recall? Do you remember any
 4 of the contents, let me ask you that, not what the
 5 time of day was or how the weather was or anything.
 6 A I recall her -- I recall her, I, my attorney all
 7 meeting together. I recall her indicating that she
 8 was favorable of what we were doing. And I indicated
 9 that, if I recall, that the Attorney General's office
 10 wasn't going to pursue it but they by all means were
 11 going to watch the case as we do it. And I think
 12 there was even something that they could possibly get
 13 back involved at some point, they said.
 14 Q Do you remember her saying, though, that the state --
 15 states have the ability to determine what medications
 16 they will cover or won't cover --
 17 A I do.
 18 Q -- in their administration of Medicaid programs?
 19 A I do not recall her saying that.
 20 Q Do you know if BadgerCare has a different formulary
 21 than the three compendia that you refer to in your
 22 complaint?
 23 A I don't recall that or know that.
 24 Q Okay. Did you download the form complaint from
 25 Psychrights' website?

Page 43

1 A At some point. I shouldn't say -- download. At some
 2 point I probably did, yeah. I don't recall. Either
 3 I looked at it or printed a copy off and read it or
 4 read it online.
 5 Q Was that before or after you advertised for someone
 6 to contact you in the Sheboygan Sun?
 7 A Before.
 8 Q Do you remember the language that was used in the
 9 advertisement?
 10 A Bold heading, Medicaid patients, if you were
 11 prescribed one or more of these medications while you
 12 were under the age of 18, you may be entitled to
 13 participate in a possible Medicaid fraud suit, and
 14 then it listed a fair number of the medications that
 15 there were no -- a fair number of medications that
 16 may not have been indicated that are approved.
 17 And then it had, please, if you are
 18 interested, please call, and then it listed a general
 19 number I have.
 20 Q What are the terms, as you understand it, of the
 21 agreement that Ms. Maxwell-Meyer would receive some
 22 compensation?
 23 A If there would be any sort of reimbursement, legal
 24 expenses, I believe, would be paid. If there were
 25 any proceeds after that, a third would end up -- or,

Page 44

1 yeah, I believe a third would end up going to the
 2 attorney, or maybe out of that third the legal
 3 expenses get paid. I'm not recalling. A third would
 4 go to either the parent or the actual child, I forget
 5 how we wrote it, and then a third would end up coming
 6 back to me. And then any sort of expense out of
 7 pocket for the attorney for any filing fees or
 8 anything like that, I would be covering and paying
 9 for.
 10 Q Do you have any knowledge of Dr. King independent of
 11 this particular matter?
 12 A No.
 13 Q You've never met her professionally?
 14 A No.
 15 Q You've never treated any patients of hers that you're
 16 aware of?
 17 A Not that I'm aware of.
 18 Q Who actually prepared the complaint in this
 19 particular case? Did you prepare it?
 20 A No.
 21 Q Counsel?
 22 A Yeah.
 23 Q All right. Did you review the attachment to your
 24 initial disclosure to the court that included a
 25 claims history report from, and I want to get the

11 (Pages 41 to 44)

Page 45

1 name correct, Wisconsin ForwardHealth, Medicaid and
2 BadgerCare Plus. Did you review this?
3 A Yes.
4 Q You see there's -- on the first page of your page 1
5 of 11 --
6 A Um-hmm.
7 Q -- there's a handwritten note on there?
8 A Um-hmm.
9 Q Do you see that name?
10 A Yes.
11 Q All right. Did you write that?
12 A I believe I did.
13 Q Do you know that person?
14 A I do not.
15 Q Do you know if she's a pediatrician in Cedarburg?
16 A I don't know the name. I don't recall, but it looks
17 like it might be my handwriting. That kind of looks
18 like my handwriting there, so --
19 Q And the handwriting is for what? Identifying what
20 the medication was?
21 A This handwriting right here looks like it says
22 Saukville.
23 Q It says Saukville. Okay. So that's referring --
24 there's a Wal-Mart in Saukville right on 33 there --
25 A Okay.

Page 46

1 Q -- that has a pharmacy. So that's what that's
2 referencing?
3 A I believe so.
4 Q Okay. Do you know, is this intended to indicate that
5 in fact these medications that were originally
6 prescribed to Nicholas Bingham in this time frame of
7 2003 was prescribed by this pediatrician?
8 A I don't know.
9 Q All right. You may have that information; you just
10 don't recall?
11 A Yeah. I don't. I don't recall. I'd have to go back
12 and actually look at everything.
13 Q Is there a reason why you didn't include that
14 pediatrician in this litigation?
15 A I don't recall if she's a pediatrician or if she
16 actually was a prescriber. I'm going to have to go
17 back and actually look, pull the file or pull the
18 notes from her and kind of look and figure out what
19 it was.
20 Q On page 5, I don't know what that is, but there's a
21 marking that clearly appears to have been added to
22 the report. Do you know what that is?
23 A I do not. You don't have it with you by chance?
24 MS. GIETMAN: I thought I did, but I can't
25 put my hands on it.

Page 47

1 THE WITNESS: That's okay.
2 BY MR. LARSON:
3 Q And if you go to the next page.
4 A Looks like at the end there was a date or something.
5 Looks like a five. No.
6 Q And the next couple of pages there's some -- some
7 more black marks. Do you know what was there?
8 A I don't.
9 Q Do you know if you would have made those, somebody
10 else would have made those?
11 A Again, I don't. This is going back a couple years
12 ago now, and I don't recall. That one looked like it
13 ended with a five, so I'm guessing this might be some
14 dates or something maybe. I'm thinking that it's
15 possible that it could be the dates of these
16 medications and maybe with FDA approval or something.
17 At some point it wasn't relevant, so maybe it was
18 crossed out. I don't remember.
19 Q Have you done anything to verify whether the
20 medications listed on here that were prescribed by
21 Dr. King or someone else? And what I'm referring to
22 again is the report from Wisconsin ForwardHealth,
23 Medicaid and Badger Plus.
24 A Yes.
25 Q You have gone through and tried to verify that?

Page 48

1 A Correct.
2 Q Well, for example, these 2003 prescriptions --
3 A Is that the same as this one, or no?
4 Q Yeah. It should be the same document. I just
5 happened to --
6 A Pick one.
7 Q Yeah.
8 A Got it. What we did is that we had gotten lists
9 of -- we got lists of the medications, where they
10 were filled, cross-referenced that with, I believe,
11 Dr. King's notes that we obtained, found in the note
12 where it actually said medication, order was written,
13 and then cross-referenced it with where did it
14 actually get filled. And then we put that into an
15 Excel spreadsheet. And as I did that work and put it
16 together kind of sitting with Amanda and Adam and
17 basically said, here you go.
18 Q Well, the medical records that I've been provided,
19 and I will represent to you the only records I have
20 access to, and for that matter Dr. King at this point
21 in time does, shows the earliest contact, at least
22 it's documented in what's been provided to us by you,
23 is 2004?
24 A Um-hmm.
25 Q So are you in possession of records that indicate Dr.

Page 49

1 King's treatment went back earlier?
 2 A I believe we do not have records from Dr. King prior
 3 to 2004.
 4 Q Okay. So would you agree with me that it appears
 5 based on this billing report, this claims history,
 6 that someone other than Dr. King was prescribing at
 7 least some of the medications that are the subject
 8 matter of this complaint prior to Dr. King ever
 9 becoming involved?
 10 A Correct. There's medications that were written prior
 11 to Dr. King.
 12 Q Did you appreciate when you prepared this -- let me
 13 ask you. The Excel spreadsheet, who put that
 14 together with the billings; you or someone else?
 15 A I did. Well, I did it in conjunction with them at
 16 the same time.
 17 Q With the law firm?
 18 A Yeah.
 19 Q Have you kept that Excel spreadsheet?
 20 A I did not.
 21 Q You don't have it anymore?
 22 A I don't have anything. Everything I turned over and
 23 she's keeping the file.
 24 Q And maybe what I should ask is: Was it originally
 25 created on your computer at your office, at your

Page 50

1 clinic, or was it prepared originally somewhere else?
 2 A It was created on an old laptop. I don't have the
 3 laptop anymore, but it was created on that.
 4 Q It was a laptop that was yours as opposed to the
 5 attorney's?
 6 A Correct.
 7 Q Did you notice that there was a four-year gap in the
 8 claims history?
 9 A Not off the top of my head.
 10 Q Do you have any information that there was payment
 11 for any medications prescribed by Dr. King from
 12 September of 2003 until the beginning of 2007?
 13 A Say the question again.
 14 Q Yeah. That there is -- let me ask it this way. Did
 15 you appreciate and are you aware --
 16 A Okay.
 17 Q -- that from September of 2003 and at least through
 18 the end of 2006, there's no indication that any
 19 prescriptions written by Dr. King were covered by
 20 this program?
 21 A Got it.
 22 Q Were you aware of that?
 23 A I am looking at a document that shows right now that
 24 there were no medications from, correct, '03 until
 25 January 9th of '07.

Page 51

1 Q So if the complaint contains allegations that
 2 prescriptions written by Dr. King were submitted for
 3 payment by Medicaid programs for Nicholas Bingham,
 4 that would be inaccurate?
 5 A Say it one more time. I'm sorry.
 6 Q I'll give it one more try.
 7 A I apologize.
 8 Q Would you agree with me that to the extent that the
 9 complaint alleges that prescriptions written by
 10 Dr. King for Nicholas Bingham during the time frame
 11 between September of 2003 and until at least the end
 12 of 2006, had been submitted to Medicaid for
 13 reimbursement, that those allegations would in fact
 14 be inaccurate?
 15 A I don't know. I only have the information that I
 16 gathered. I don't have if there was actually even
 17 more medication submitted by her or by somebody else.
 18 I wouldn't know.
 19 Q Are you aware of any other claims information other
 20 than what's attached here to your initial disclosure
 21 to the court?
 22 A I don't believe so.
 23 Q I assume you're familiar with the concept of
 24 off-label prescribing?
 25 A Correct.

Page 52

1 Q You would agree with me that that's recognized as,
 2 generally speaking, that off-label prescribing in and
 3 of itself is not unreasonable care by a physician?
 4 A I wouldn't use the word unreasonable, but it is often
 5 done and almost customary.
 6 Q It's done very often and, in fact, some off-label
 7 uses of prescription medication are actually more
 8 common and more widely utilized by physicians than
 9 the approved FDA purpose; is that true?
 10 A Correct.
 11 Q Because the way the law works in the United States is
 12 once the FDA approves a medication for use in the
 13 United States, physicians have the ability to
 14 prescribe that medication for other reasons?
 15 A Correct.
 16 Q And very reasonable, competent physicians use that
 17 for the benefit of their patients every day?
 18 A Generally speaking, yes; but I would caution about
 19 not for the benefit of the patient often.
 20 Q Well, there are medications that are very beneficial
 21 to patients that are only prescribed on an off-label
 22 basis?
 23 A If we're talking about just the psychiatric
 24 medications, they are often given off-label, not
 25 always for the benefit of the patient, but it's often

13 (Pages 49 to 52)

1 done. And you have to be careful how you define
2 benefit. It may actually cause a symptom reduction
3 of thought and/or behavior in the short term, but the
4 long term there is no benefit then. So it's kind of
5 a loaded question when you say benefit.
6 Q But one of the ways this happens is there are a group
7 of patients who have heart disease, for example?
8 A Sure.
9 Q People learn, and it's reported through the medical
10 literature and medical science then agrees to accept
11 this as a proven fact that there are medications that
12 were intended to aid a cardiac condition that has
13 some other benefit, it reduces risks of some other
14 ailment?
15 A Sure. Yeah, there's certain meds that can do that.
16 Q And that's off-label prescribing?
17 A Yes.
18 Q In this particular case, Dr. King, to the extent that
19 she ever received any reimbursements of her services
20 through Medicaid, that would be for seeing the
21 patient, correct, or don't you know?
22 A I don't know.
23 Q All right. Do you know whether or not -- do you have
24 any base of knowledge for whether or not she would
25 have been reimbursed regardless of whether she

1 prescribed medication for Nicholas Bingham or not?
2 A I do not know.
3 Q As you sit here today, do you have any knowledge of
4 any time frames when Nicholas Bingham had stopped
5 seeing Dr. King for whatever reason for any extended
6 periods of time between 19 -- I'm sorry -- 2004 and
7 2009?
8 A I do not -- I don't recall any periods of time
9 whether there are big lapses or anything like that.
10 Q Do you know if he was ever hospitalized anywhere? Do
11 you recall that?
12 A I do not recall that.
13 Q Do you know what medications he was treated on --
14 treated with during any inpatient psychiatric
15 hospitalizations?
16 A I do not.
17 Q I should correct that. Between 2004 and 2008 do you
18 know if there were any gaps in time when he was being
19 treated by someone other than Dr. King for mental
20 health issues?
21 A Go ahead and give me the dates again, please.
22 Q I'm actually -- from 2004 until 2008.
23 A And you're wondering if he was seen by any other
24 physicians between 2004 and 2008?
25 Q Yes, for mental health issues.

1 A Yes.
2 Q Do you know who they were? You're not going to tell
3 me. All right. I'm assuming you're not going to
4 tell me, or you don't think you can tell me?
5 A I don't think I can tell you. But I can tell you
6 that I do know that he was seen by other mental
7 health professionals during that time period.
8 Q What is it that you're referring to to refresh your
9 recollection here in this deposition?
10 A I saw a mental health note from another agency during
11 the time period that you asked that would indicate
12 that he was, in fact, seen or treated.
13 Q But you won't identify that nor disclose the document
14 to me?
15 A Yeah.
16 Q All right. Do you know who Carol Estill is?
17 A The name I just saw on this.
18 Q And that's the person you said you did or didn't know
19 was a pediatrician in Cedarburg?
20 A Correct.
21 Q Do you have any connection with Cedar Mills?
22 A I do not.
23 Q Do you know who Dr. Edwin Montgomery is?
24 A I do not.
25 Q Do you know who Dr. Elizabeth Hagen is?

1 A I do not.
2 Q Dr. Basil Jackson?
3 A I don't know Dr. Jackson, but the name sounds
4 familiar to me, Basil Jackson.
5 Q You'd be pretty hard pressed to live in Wisconsin for
6 any length of time and not know who Basil Jackson is.
7 A He's the psychiatrist attorney, if I remember right.
8 MR. LARSON: I guess he did go back to law
9 school, didn't he?
10 THE WITNESS: He's been around a long time.
11 He's an older gentleman.
12 MR. KNIGHT: Still practicing. He's well
13 into his 80's.
14 THE WITNESS: Well-versed guy.
15 MR. KNIGHT: Yeah, pretty much a
16 renaissance guy. He's pretty interesting.
17 BY MR. LARSON:
18 Q Have you had any contact with any of the people that
19 I've mentioned before this?
20 A No.
21 Q Do you know Dr. Bruce Semon?
22 A No.
23 Q Dr. Lawrence Young?
24 A No. I thought I knew a lot of people.
25 Q Dr. Mark Simms?

<p style="text-align: right;">Page 57</p> <p>1 A No.</p> <p>2 Q Do you know a psychologist from Manitowoc by the name</p> <p>3 of Todd Eldon?</p> <p>4 A I don't know Todd Eldon. I recognize the last name</p> <p>5 but --</p> <p>6 MR. KNIGHT: Does he play for the Rockies?</p> <p>7 MR. LARSON: No. I think that's a</p> <p>8 different Todd.</p> <p>9 MR. KNIGHT: Oh.</p> <p>10 BY MR. LARSON:</p> <p>11 Q Now, you prepared -- were you a participant in</p> <p>12 preparing the discovery responses?</p> <p>13 A Correct.</p> <p>14 Q That's an extra copy. It's a clean copy.</p> <p>15 A Thanks.</p> <p>16 Q And this is also -- this is responses to Dr. King's</p> <p>17 first set of interrogatories and requests for</p> <p>18 production of documents.</p> <p>19 A Um-hmm.</p> <p>20 Q Is that correct?</p> <p>21 A Correct.</p> <p>22 Q And did you review these before they were prepared?</p> <p>23 A I did.</p> <p>24 Q And that's your signature on page 11?</p> <p>25 A It is.</p>	<p style="text-align: right;">Page 59</p> <p>1 Q And that chart is actually a document from</p> <p>2 Psychrights.org?</p> <p>3 A Correct.</p> <p>4 Q Did you have any involvement in creating that</p> <p>5 document?</p> <p>6 A I did not. I know that I reviewed it and I went</p> <p>7 through it, and there were two medications that</p> <p>8 weren't listed on here that I recognized that weren't</p> <p>9 on here that then I hand wrote a note to myself, hey,</p> <p>10 these aren't on here. I think one was --</p> <p>11 Q This is not a document that's created by any</p> <p>12 governmental body, correct?</p> <p>13 A No. Correct.</p> <p>14 Q In fact, at the bottom of each page, anyone looking</p> <p>15 at this is invited to contact Jim Gottstein with any</p> <p>16 errors that they see?</p> <p>17 A Correct.</p> <p>18 Q Jim Gottstein is an attorney?</p> <p>19 A Correct.</p> <p>20 Q Does he have any medical training that you're aware</p> <p>21 of?</p> <p>22 A I don't know.</p> <p>23 Q Other than the one face-to-face meeting that you</p> <p>24 described with Stacey Gerber --</p> <p>25 MR. KNIGHT: Ward.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q And to the best of your knowledge the responses are</p> <p>2 true and accurate?</p> <p>3 A Correct.</p> <p>4 Q It appears the mother now lives in Adell as opposed</p> <p>5 to Random Lake?</p> <p>6 A I believe that she is residing in Adell, at least at</p> <p>7 the time when we signed this.</p> <p>8 Q The information about FDA approval for certain groups</p> <p>9 or ages, is that information you provided, or was</p> <p>10 that information that someone else came up with and</p> <p>11 you've agreed with?</p> <p>12 A The information about FDA approval and what's FDA</p> <p>13 approved and what's not FDA approved --</p> <p>14 Q I'm looking in response to a whole series of</p> <p>15 interrogatories about specific medications.</p> <p>16 A Correct. You're asking if I gave that to the</p> <p>17 attorney?</p> <p>18 Q Yes. If you've independently looked at it or you're</p> <p>19 relying on --</p> <p>20 A I independently looked at it and then provided that</p> <p>21 information to the attorney.</p> <p>22 Q With regard to the Request for Production of</p> <p>23 Documents, one of the documents provided to us was a</p> <p>24 Medically Accepted Indications Chart.</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. LARSON: -- Ward.</p> <p>2 THE WITNESS: Um-hmm.</p> <p>3 BY MR. LARSON:</p> <p>4 Q -- any other contacts with the state or federal</p> <p>5 government regarding this matter, this lawsuit, that</p> <p>6 you personally have had?</p> <p>7 A That I personally had, no.</p> <p>8 Q But you've been aware of some other contacts by your</p> <p>9 attorney --</p> <p>10 A Correct.</p> <p>11 Q -- but that would just be attorney-client</p> <p>12 communication?</p> <p>13 A Right.</p> <p>14 Q Do you have any independent -- do you have any</p> <p>15 personal knowledge of whether or not Dr. King was</p> <p>16 aware that any prescriptions she wrote, the cost of</p> <p>17 those prescriptions was going to be submitted to</p> <p>18 Medicaid?</p> <p>19 A I do not have any -- well, I got to think. Do I have</p> <p>20 any actual knowledge that she would know that it</p> <p>21 would be going to Medicaid, which means did she know</p> <p>22 and do I have any factual knowledge that she knew</p> <p>23 this was a Medicaid patient.</p> <p>24 Q Well, not just a Medicaid patient, but that the</p> <p>25 prescriptions specifically would be provided or</p>

1 submitted to Medicaid.
2 A Can I see the notes? I don't off the top of my head
3 know. I would need to review the records from her to
4 see if it was written somewhere that she knew this
5 was a Medicaid patient, in which case it would be
6 automatic that if she knew it was a Medicaid patient,
7 she would know that anything she does would be
8 submitted to Medicaid for reimbursement, either a
9 prescription or the appointment --
10 Q Well, it's certainly within the patient's parents'
11 rights not to submit it, correct?
12 A True, yeah. They could pay out of pocket, that's
13 true.
14 Q And that's a decision they would have to make? I
15 mean they certainly could do that? There's nothing
16 that requires them to submit it? That would be a
17 decision by the patient or the parent to submit a
18 claim, correct?
19 A You know, I don't know. I would think so, but I
20 don't know.
21 Q Well, you treat --
22 A I know what you mean. I mean they could go there and
23 say, I will pay for this prescription, don't send it
24 through, and I would imagine they would allow that to
25 happen.

1 Q And you treat patients who are otherwise enrolled in
2 Medicaid and you don't bill them?
3 A Correct, we just do it for free.
4 Q So not every medical service provided to a Medicaid
5 person requires that somebody bill Medicaid?
6 A Correct.
7 Q And the reason you won't give me copies of the
8 authorizations that you obtained from the mother is
9 it would disclose the identity of healthcare
10 providers?
11 A Say it one more time.
12 Q The reason why, in response to Requests for
13 Production of Document No. 8, I'll be very specific,
14 you declined to provide us with -- with copies of the
15 authorizations signed by the parents or guardians of
16 Nicholas Bingham is that you didn't want to disclose
17 the identity of the other healthcare providers?
18 A I don't think I have the right to release it without
19 her permission saying, hey, you can disclose this
20 information. So, yeah, it's kind of HIPAA, I think,
21 protected.
22 Q And RPD, or Request for Production of Document No. 10
23 asked if you've kept any logs, diaries, notes,
24 e-mails or other written memorandum relating in any
25 way to the events complained of in this lawsuit.

1 MS. GIETMAN: I think you're looking at the
2 wrong --
3 MR. LARSON: It's at page 10 of the
4 response.
5 THE WITNESS: Got it. I have no logs,
6 diaries, notes, e-mails or other written memoranda
7 related in any way to the events complained in the
8 lawsuit other than, I guess, just the stuff that
9 we've been kind of doing, but no. And I don't have
10 any log that -- I didn't keep anything like that, no.
11 MR. LARSON: I think that's all I have.
12 Thank you.
13 MR. KNIGHT: I don't have as much.
14 THE WITNESS: Okay.
15 E X A M I N A T I O N
16 BY MR. KNIGHT:
17 Q Doctor, I'm Pat Knight. I represent Encompass in the
18 matter, so I have just a few questions in a number of
19 areas.
20 Did you have an opportunity to -- did
21 you have an opportunity to review the contract
22 between Encompass and Dr. King, the --
23 A Do you have a copy of it so I can see it and let you
24 know?
25 MR. KNIGHT: Sure. Let me get one marked.

1 (Deposition Exhibit No. 1 marked for
2 identification.)
3 THE WITNESS: Correct. Yes, I did see
4 this.
5 BY MR. KNIGHT:
6 Q Okay. And that's Exhibit No. 1 that you're looking
7 at, and that's the agreement that Dr. King, "as an
8 independent contractor, will provide clinical
9 treatment for clients in need of psychiatric
10 evaluations, monitor medication, and provide clinical
11 consultation as needed for Encompass Effective Mental
12 Health Services."
13 Now, are you aware of any other
14 agreement or contract between Dr. King and Encompass?
15 A I don't -- I don't recall. I don't believe so.
16 Q Do you have any knowledge of any other --
17 A No.
18 Q -- agreement which brought them into connection with
19 each other --
20 A Not that I'm aware of, no.
21 Q -- with regard to Dr. King's psychiatry practice?
22 A Not that I'm aware of.
23 Q Okay. Are you aware of any evidence that Encompass
24 independently can prescribe medication or ever has
25 prescribed medication for Nicholas Bingham or anyone

Page 65

1 else similarly situated?
 2 A My understanding is only an individual can actually
 3 prescribe, not an entity.
 4 Q We're in accord on that then.
 5 And your complaint has named Encompass
 6 in it solely on the basis of respondeat superior as
 7 the employer of Dr. King?
 8 A I don't know if it would be employer, but employer,
 9 agent, representative, that would be the one to
 10 facilitate billing and assist her in that.
 11 Q Okay. Is your understanding of how Encompass
 12 facilitated that is providing a location in which Dr.
 13 King could see a patient and paying Dr. King for
 14 eight hours of seeing people who needed their
 15 medication managed?
 16 A That would be part of it.
 17 Q Is there any more of that --
 18 A My --
 19 Q -- that you're aware of?
 20 A My understanding from reading this, when I got it,
 21 would be that they also agreed to provide the billing
 22 services, have a receptionist, things of that nature.
 23 Q Okay. Have you reviewed any billing records of
 24 Encompass at all?
 25 A I don't recall. I don't believe so.

Page 66

1 Q You're not aware of any billing records for Dr. King?
 2 A Correct.
 3 Q Okay. And you're not aware of any evidence that
 4 suggests that Encompass had any connection with bills
 5 that may have been submitted to the Medicaid program
 6 for prescription medication?
 7 A Can you ask the question again? Sorry.
 8 Q Sure. You're not aware of any evidence that suggests
 9 that Encompass submits bills for prescription
 10 medication? In other words, you don't believe
 11 they're a pharmacy also?
 12 A I don't believe that Encompass is a pharmacy, no.
 13 Q And you're not aware of any circumstances under which
 14 Encompass would submit a bill to the Medicaid program
 15 for prescription medication?
 16 A I'm not aware of anything, no.
 17 Q Okay. Do you have any evidence that -- do you know
 18 whether Dr. King has an identification number for the
 19 federal government, internal revenue, or do you have
 20 any knowledge in that regard?
 21 A I don't recall the number or if I have a copy of
 22 anything like that, but I know that practitioners
 23 that have the ability to prescribe drugs or any sort
 24 of medication has to have a federal number for that
 25 and probably an NPI number as well, national provider

Page 67

1 number.
 2 Q Do you have any evidence or knowledge whether Dr.
 3 King is self-employed, as most physicians are?
 4 A I don't have any evidence about whether she's
 5 self-employed, but recognizing just the contract
 6 agreement that she's an independent contractor with
 7 Encompass.
 8 Q Are you aware whether or not Dr. King had any
 9 separate business other than the eight hours that she
 10 would purportedly go in to Encompass and see
 11 patients?
 12 A I don't recall that I have anything else, where else
 13 she would work.
 14 Q Or any indication to the contrary; you don't have any
 15 knowledge?
 16 A No.
 17 Q Are you aware of any -- is there any evidence that
 18 you're aware of that suggests that Encompass as an
 19 entity has the ability to control what Dr. King might
 20 do under that contract, in other words, in terms of
 21 professional services or prescribing? Do you want me
 22 to rephrase it?
 23 A Yeah, I just wanted to read it again.
 24 Q I kind of figured. It's awkward. And I'm -- and I
 25 don't want -- I showed you the contract just to

Page 68

1 refresh your recollection. I don't want you to limit
 2 your response. If you're aware from any other source
 3 or you know of evidence that suggests something, I
 4 mean I don't want -- you're not just limited to what
 5 you see on the paper.
 6 A Yeah.
 7 Q But do you know of any evidence that Encompass had
 8 the right to control the manner and means by which
 9 Dr. King saw patients or made clinical decisions or
 10 made prescription decisions?
 11 A The only way that Encompass, I can understand, would
 12 be able to control Dr. King's prescription habits
 13 would be to exercise the right to terminate the
 14 contract if she violated the line indicating that she
 15 would stay current with all state mandates and
 16 requirements. That would be the only way to control
 17 it would be to say, hey, you're doing something that
 18 you're not supposed to, we're terminating your
 19 contract.
 20 Q But other than an after-the-fact determination that
 21 you've breached our agreement to provide services,
 22 you're not aware of any evidence that Encompass can
 23 climb into the doctor-patient relationship and much
 24 like -- let me preface it a little bit.
 25 A I don't have any evidence that Encompass would do

17 (Pages 65 to 68)

Page 69

1 that or has done that.
 2 Q Okay. And that's not commonly done where anybody is
 3 providing professional physician services normally?
 4 A I don't know if it's commonly done, but I do know
 5 that certain practitioners are given formularies that
 6 they are allowed to use or not use certain
 7 medications. And so pharmacies, in their systems,
 8 they have things that will ping and say, hey, this
 9 doctor wrote a prescription for this medication, it's
 10 a Medicaid patient, and it will flag saying we can't
 11 bill it, don't; the pharmacist will call back to the
 12 doctor at the clinic or the --
 13 Q In a clinical operation --
 14 A -- and say, hey, you wrote this prescription for
 15 this, it's not authorized through the program, what
 16 else do you want to do. They'll send a new order
 17 over and do that. That happens routinely. That
 18 happens a lot.
 19 Q And that happens in different environments than we're
 20 talking about here with Encompass and Dr. King seeing
 21 patients as a psychiatrist? You're talking about a
 22 clinical setting which encompasses a pharmacy, which
 23 encompasses medical professionals and a medical group
 24 and formularies --
 25 A Yeah.

Page 70

1 Q -- dictated by that group?
 2 A Right. I mean there are clinics, hospitals and
 3 pharmacies that have these formularies that say these
 4 are the meds that you're allowed to use for these
 5 things, and I don't know if Encompass has that or has
 6 done that with Dr. King or --
 7 Q You don't -- you're not aware of any formulary or any
 8 directive --
 9 A Correct.
 10 Q -- or even any attempt to exercise any control on the
 11 part of Encompass with regard to Dr. King or any
 12 other psychiatrist?
 13 A Correct.
 14 Q Okay. Have you ever inquired, in the course of
 15 preparation for this, have you ever questioned
 16 anybody at Encompass about whether they have any
 17 involvement with psychiatrists and what they may
 18 prescribe or recommend for patients?
 19 A I have not. I'd like to, but I haven't.
 20 Q Don't let me stop you. You're aware of no evidence
 21 that Encompass directs or controls any specific tasks
 22 by Dr. King?
 23 A No. I have no information or evidence that they're
 24 controlling any of her tasks.
 25 Q Okay. And you're not aware of any evidence that

Page 71

1 Encompass provides instructions to Dr. King or any
 2 other psychiatrist with regard to treatment
 3 recommendations?
 4 A Correct, other than what's stated in the agreement.
 5 Q In the independent contractor. Now, you're not --
 6 you're not aware of any evidence to suggest that
 7 Encompass ever provided -- has ever provided any
 8 training to Dr. King or any other psychiatrist?
 9 A I have no evidence about Encompass providing any
 10 training.
 11 Q Okay. And other than what's reflected in that
 12 agreement that you've seen --
 13 A Um-hmm.
 14 Q -- you're not aware of any evidence to suggest that
 15 Encompass directs Dr. King's business practice in any
 16 way?
 17 A Other than what's outlined in the agreement, no.
 18 Q No. So many hours and what will it compensate you
 19 for X amount of hours, correct?
 20 A That and just the idea of staying current with the
 21 state mandates and that she'll complete treatment
 22 plans, do all the necessary paperwork.
 23 Q You're not aware of Dr. King receiving any benefits
 24 from Encompass, are you? You're not aware of any
 25 evidence to suggest that Dr. King gets health

Page 72

1 insurance or --
 2 A I have no knowledge of that.
 3 Q -- any income continuation or any benefits that are
 4 traditionally viewed as an employment type?
 5 A I'm not aware of anything like that.
 6 Q You have no evidence that would suggest that
 7 Encompass ever issued a W-2 or anything like that to
 8 Dr. King or any other psychiatrist?
 9 A No.
 10 Q Just a few more questions.
 11 Do you recall when you met with, is
 12 it -- I don't want to just say -- Ms. Maxwell Meyer,
 13 when you first met with her?
 14 A Yes, sure. I believe it would have been either
 15 March -- April 17th or April 22nd, 2010.
 16 Q April 17th or 22nd?
 17 A Correct. One was a phone call in general just
 18 explaining the nature of the ad, and then the other
 19 one, I believe, was the first meeting when my
 20 attorney and I actually physically met her.
 21 MR. LARSON: What was the date of that?
 22 THE WITNESS: I believe April 22nd, 2010.
 23 Yes, I believe that's it.
 24 BY MR. KNIGHT:
 25 Q Okay. Ms. Maxwell-Meyer has never been a patient of

18 (Pages 69 to 72)

1 yours, correct?
 2 A I don't know if I can acknowledge that.
 3 Q Oh, okay.
 4 A I believe that would be HIPAA protected.
 5 MR. KNIGHT: All right.
 6 MS. GIETMAN: You're asking about the child
 7 or the mother?
 8 MR. KNIGHT: No. I was asking about her,
 9 whether or not --
 10 MS. GIETMAN: I would object anyways.
 11 BY MR. KNIGHT:
 12 Q You currently have -- I know we've established that
 13 you're not a treating psychologist for young
 14 Mr. Bingham.
 15 A Correct.
 16 Q Okay. And when you met with Ms. Maxwell-Meyer, it
 17 was not for purposes of becoming her treating
 18 psychologist, I assume, because why would you bring
 19 your lawyer along. Is that a fair statement?
 20 A Yes.
 21 Q Okay.
 22 A I'm really careful.
 23 Q And when you met on April 17th or -- or the 22nd when
 24 you had the meeting in person, is that when you
 25 entered into the financial agreement with her with

1 regard to the proceeds of the litigation?
 2 A I believe it was.
 3 Q Okay. And was there a written agreement executed to
 4 that degree?
 5 A There was a written agreement executed.
 6 Q At that time or possibly later or --
 7 A I believe we executed it later.
 8 Q And that agreement in no way anticipated you becoming
 9 a treating psychologist or providing psychological
 10 services?
 11 A Correct.
 12 Q Okay. And did you meet and then provide to
 13 Ms. Maxwell-Meyer an authorization to release
 14 Mr. Bingham's treatment records?
 15 A I'm trying to think how it happened, but either she
 16 requested when she said that she -- when it was
 17 indicated to her that we needed to obtain records,
 18 either she asked and said, hey, do you have a release
 19 that I can sign here rather than there, and either we
 20 provided that or gave it to her, but somehow gave her
 21 a release.
 22 Q So you provided a release to her?
 23 A Correct.
 24 (Deposition Exhibit No. 2 marked for
 25 identification.)

1 BY MR. KNIGHT:
 2 Q I'm going to show you what's been marked Exhibit 2.
 3 Take a look at that.
 4 A Yes.
 5 Q Does that appear to be a copy of the release form
 6 that you presented to Chris Maxwell-Meyer?
 7 A I believe it is.
 8 Q Okay. And that is a release form of Associated
 9 Psychological Health Services?
 10 A Correct.
 11 Q And that is for release of information that was
 12 directed to Dr. Jennifer King?
 13 A Correct.
 14 Q From you, Dr. Toby T. Watson --
 15 A Correct.
 16 Q -- psychologist and agent?
 17 A Correct.
 18 Q And I presume that's agent for Associated
 19 Psychological Health Services?
 20 A And the attorney.
 21 Q You are the agent for the attorney?
 22 A No.
 23 Q Oh.
 24 A Meaning it was coming from me and agent -- and my
 25 agent, because of the fact that I was hiring an

1 attorney to look at this, that I wanted to be able to
 2 acknowledge to her that, hey, this is coming from us.
 3 Q Okay. Does Ms. Gietman's name appear anywhere on
 4 that release?
 5 A Sorry. Again?
 6 Q Does your attorney's name appear anywhere on that
 7 release?
 8 A No.
 9 Q Under purpose, rights, payment, fees, do you see that
 10 paragraph?
 11 A I do.
 12 Q Okay. And correct me if I read this wrong, "For the
 13 purpose of providing psychological services and for
 14 no other purpose whatsoever, APHS and Dr. Watson are
 15 bound by privacy rule and will not release any
 16 obtained information to any unauthorized agency."
 17 Goes on to state that copying -- it
 18 goes on to standard language with regard to a medical
 19 release for medical -- or for treatment purposes,
 20 correct?
 21 A Correct.
 22 Q Was this a one-page release form?
 23 A Correct.
 24 Q Okay. So I take it then there is no language in this
 25 release form that the release is for legal purposes

<p style="text-align: right;">Page 77</p> <p>1 or for the pursuit of litigation or for the</p> <p>2 evaluation of --</p> <p>3 A Correct.</p> <p>4 Q And despite the fact that you never became nor never</p> <p>5 intended to be a treating psychologist for Toby</p> <p>6 Watson, this is purely a release for treatment</p> <p>7 purposes, isn't it?</p> <p>8 A This is a release form that I use for treatment</p> <p>9 purposes. However --</p> <p>10 Q Is there any other purpose for this form that you're</p> <p>11 aware of?</p> <p>12 A The purpose of this form when discussed to her was to</p> <p>13 obtain the medical records for Nicholas as part of</p> <p>14 providing service for Nicholas' mother. But, yeah.</p> <p>15 Q Was that --</p> <p>16 A This line should have been changed, yeah.</p> <p>17 Q Was that discussed -- well, should it be under the</p> <p>18 heading of Associated Psychological Health Services,</p> <p>19 this release, or is there a litigation section at</p> <p>20 ABHS?</p> <p>21 A I do do -- I do do a fair amount of forensic work</p> <p>22 where I use this form to obtain records and things</p> <p>23 like that, but usually it's related to doing</p> <p>24 different psych services. This is kind of -- I mean</p> <p>25 when she first came, it was basically kind of</p>	<p style="text-align: right;">Page 79</p> <p>1 her the contingent fee-splitting arrangement that you</p> <p>2 referred to earlier?</p> <p>3 A At the time when she signed this?</p> <p>4 Q Which would have been four days after the meeting.</p> <p>5 A Correct. We did already discuss the fee arrangement,</p> <p>6 I believe, at that time. Although I know you</p> <p>7 mentioned for the sole purpose of providing psych</p> <p>8 services, and the sole purpose wasn't to provide</p> <p>9 psych services.</p> <p>10 Q So the release as presented, the authorization as</p> <p>11 presented to Dr. King to release records was a</p> <p>12 misrepresentation on its face?</p> <p>13 A I don't know how to answer that one.</p> <p>14 Q Well, let me qualify. I'm not suggesting anything</p> <p>15 more nefarious than as it is presented to Dr. King.</p> <p>16 A I know.</p> <p>17 Q On its face, does the authorization misrepresent the</p> <p>18 purpose for which the records were sought?</p> <p>19 A Yeah, partially, it does.</p> <p>20 Q Okay. And that partially would be where it says that</p> <p>21 the purpose is for providing psychological services</p> <p>22 and no other purpose?</p> <p>23 A Correct.</p> <p>24 Q Just a couple of notes.</p> <p>25 MR. LARSON: Off the record.</p>
<p style="text-align: right;">Page 78</p> <p>1 educating, I guess, her about the possibility of a</p> <p>2 lawsuit and kind of the psychoeducation of this is</p> <p>3 what I know about these medications, this is what I</p> <p>4 know about the approved uses of it.</p> <p>5 So I remember when I did it, I was</p> <p>6 kind of thinking, okay, well, I'm providing</p> <p>7 psychoeducation but there's also this legal component</p> <p>8 to it. So ideally I would have -- I guess I should</p> <p>9 have, would have changed this so that it was more</p> <p>10 clear so that it was for the purpose of providing</p> <p>11 psych services, i.e. psychoeducation, and for the</p> <p>12 purpose of the potential for being included into a</p> <p>13 lawsuit.</p> <p>14 Q And at the time you obtained her signature on here,</p> <p>15 and it appears that it was signed on April 26, so</p> <p>16 that would have been four days after your meeting on</p> <p>17 the 22nd?</p> <p>18 A Correct, correct.</p> <p>19 Q Did she come to your offices in order to sign at that</p> <p>20 time?</p> <p>21 A Correct. I believe she did come to my office to sign</p> <p>22 this, yes. It would have been in front of me.</p> <p>23 Q So at the time she signed the authorization to</p> <p>24 release records solely for the purpose of</p> <p>25 psychological services, you'd already discussed with</p>	<p style="text-align: right;">Page 80</p> <p>1 (Discussion off the record.)</p> <p>2 MS. GIETMAN: Can we have just a moment?</p> <p>3 MR. KNIGHT: Oh, sure.</p> <p>4 MS. GIETMAN: Thanks. Let's go out in the</p> <p>5 hall a second.</p> <p>6 (Discussion off the record.)</p> <p>7 MR. KNIGHT: You good?</p> <p>8 THE WITNESS: Good break. I wanted to add</p> <p>9 she had noted that my timeline was messed up. We did</p> <p>10 meet on that 22nd. We did talk about the agreement</p> <p>11 of fees being split, but it wasn't until after I got</p> <p>12 the records to verify that there actually was the</p> <p>13 potential of a case that the actual agreement was</p> <p>14 formalized and she signed it.</p> <p>15 BY MR. KNIGHT:</p> <p>16 Q But it didn't get executed till later on?</p> <p>17 A It didn't get executed until later.</p> <p>18 Q All right. Doctor, do you know if at any of the time</p> <p>19 you were entering into these discussions whether or</p> <p>20 not Mr. Bingham had a guardian ad litem to represent</p> <p>21 his interests with regard to any of these contractual</p> <p>22 proceedings?</p> <p>23 A Are you asking if he -- if I was aware he had a</p> <p>24 guardian ad litem when his mother and I entered into</p> <p>25 a contractual agreement you mean?</p>

Page 81

1 Q Yes. Are you aware of whether or not he had a
2 guardian ad litem acting on his behalf with regard to
3 legal matters. If he did or didn't, did you have any
4 knowledge of that?
5 A I did ask, I thought the mother at the time, like are
6 you the legal guardian, and she acknowledged and
7 that's when we went forward.
8 Q So you're operating under the impression that the
9 mother as legal guardian had the right to enter into
10 contractual matters?
11 A To get a release for records.
12 Q With regard -- to get a release for pursuing
13 litigation in which she was going to take a one-third
14 interest if it was successful? In other words, you
15 weren't looking to anyone other than her to authorize
16 either embarking on this litigation or obtaining the
17 records?
18 A I was not looking for anybody else as a legal
19 representative for Nicholas.
20 Q And you assumed that that would be permissible
21 contracts to enter into utilizing Mr. Bingham's
22 records solely based on his mother's ascent and
23 agreement?
24 A Can you ask it again? I'm sorry. Sounds like a
25 legal question which I defer to my attorney.

Page 82

1 Q It's not a legal question, but your impression at the
2 time is that his mother could authorize the release
3 of his records --
4 A Correct.
5 Q -- for purposes of exploring litigation that she
6 would be a benefiting party from?
7 A Yes.
8 Q Okay. Is there -- I know you've answered a number of
9 questions. Is there any evidence that you're aware
10 of with regard to Encompass and Dr. King and the
11 relationship between them other than what you've
12 testified to here today?
13 A I do not believe I have any other documents or
14 evidence about their relationship.
15 Q And you don't have any other knowledge with regard to
16 Dr. King's practice or Encompass's association with
17 Dr. King or their mutual connection between common
18 patients other than what you've testified to here
19 today?
20 A Correct.
21 MR. KNIGHT: That's all I have.
22 MR. LARSON: All done. Thank you.
23 MS. GIETMAN: Okay.
24 THE WITNESS: Thank you.
25 (Deposition concluded at 3:47 p.m.)

Page 83

1 (Original exhibits attached to Original transcript.
2 Copies of exhibits are attached as requested.)
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Page 84

1 STATE OF WISCONSIN)
2) SS:
3 MILWAUKEE COUNTY)
4
5 I, Rosanne E. Pezze, RPR/CSR/CRR and
6 Notary Public in and for the State of Wisconsin, do
7 hereby certify that the deposition of TOBY T. WATSON
8 was recorded by me and reduced to writing under my
9 personal direction.
10 I further certify that said deposition
11 was taken at 735 North Water Street, Milwaukee,
12 Wisconsin, on the 4th day of May, 2012, commencing at
13 1:39 p.m.
14 I further certify that I am not a
15 relative or employee or attorney or counsel of any of
16 the parties, or a relative or employee of such
17 attorney or counsel, or financially interested
18 directly or indirectly in this action.
19 In witness whereof, I have hereunto
20 set my hand and affixed my seal of office on this
21 11th day of May, 2012.
22
23 ROSANNE E. PEZZE, RPR/CSR/CRR
24 Notary Public
25 My commission expires January 26, 2014

21 (Pages 81 to 84)

<p>A</p> <p>abhs 77:20</p> <p>ability 16:13 18:14 31:3 42:15 52:13 66:23 67:19</p> <p>able 68:12 76:1</p> <p>aboveentitled 2:2</p> <p>absolutely 38:5</p> <p>academic 15:3</p> <p>accept 53:10</p> <p>accepted 58:24</p> <p>access 48:20</p> <p>accord 65:4</p> <p>accurate 58:2</p> <p>acknowledge 7:5 73:2 76:2</p> <p>acknowledged 81:6</p> <p>acknowledging 7:6</p> <p>acted 26:16 27:14</p> <p>acting 81:2</p> <p>action 2:2 84:17</p> <p>active 37:12,14</p> <p>actively 25:20</p> <p>actual 20:23 44:4 60:20 80:13</p> <p>ad 36:9 72:18 80:20 80:24 81:2</p> <p>adam 48:16</p> <p>adamantly 22:25 23:2,5 29:13</p> <p>add 80:8</p> <p>added 46:21</p> <p>address 11:14</p> <p>adell 58:4,6</p> <p>administration 42:18</p> <p>admissible 24:8 26:2 28:9</p> <p>adolescence 22:15</p> <p>adolescent 1:8</p> <p>adolescents 17:8</p> <p>adult 23:13</p> <p>adults 17:8</p> <p>advertise 35:23</p> <p>advertised 36:7 43:5</p>	<p>advertisement 35:19 43:9</p> <p>advice 36:25</p> <p>advocate 27:1 29:14</p> <p>affixed 84:19</p> <p>afterthefact 68:20</p> <p>age 23:7 40:14 43:12</p> <p>agency 55:10 76:16</p> <p>agent 65:9 75:16,18 75:21,24,25</p> <p>ages 35:16 58:9</p> <p>ago 17:5 36:7 47:12</p> <p>agree 49:4 51:8 52:1</p> <p>agreed 58:11 65:21</p> <p>agreement 3:8 43:21 64:7,14,18 67:6 68:21 71:4 71:12,17 73:25 74:3,5,8 80:10,13 80:25 81:23</p> <p>agrees 53:10</p> <p>ahead 20:7,8 24:8 27:18 54:21</p> <p>aid 53:12</p> <p>ailment 53:14</p> <p>allegations 5:5 51:1 51:13</p> <p>alleges 51:9</p> <p>allendale 19:1 20:16,17</p> <p>alliant 14:24</p> <p>allow 61:24</p> <p>allowable 25:18</p> <p>allowed 69:6 70:4</p> <p>amanda 40:12 48:16</p> <p>america 1:3</p> <p>amount 71:19 77:21</p> <p>annually 29:7</p> <p>answer 4:23 5:17 10:4 24:9 25:5 26:2 27:18 28:13</p>	<p>33:16 79:13</p> <p>answered 82:8</p> <p>anticipated 74:8</p> <p>anybody 38:14 69:2 70:16 81:18</p> <p>anymore 39:21 49:21 50:3</p> <p>anyones 6:17</p> <p>anyway 23:24</p> <p>anyways 24:3 73:10</p> <p>aphs 76:14</p> <p>apologize 51:7</p> <p>appeals 32:14</p> <p>appear 40:22 75:5 76:3,6</p> <p>appeared 2:14,17 2:21 12:24</p> <p>appears 16:4 46:21 49:4 58:4 78:15</p> <p>applies 10:7</p> <p>apply 10:6 17:14 35:5</p> <p>appointment 61:9</p> <p>appointments 18:1 18:3</p> <p>appreciate 49:12 50:15</p> <p>approaches 27:22</p> <p>approval 35:4 47:16 58:8,12</p> <p>approved 40:14 43:16 52:9 58:13 58:13 78:4</p> <p>approves 52:12</p> <p>approximately 17:5 22:4</p> <p>april 72:15,15,16 72:22 73:23 78:15</p> <p>area 11:17,23 12:3 12:5,8 26:22</p> <p>areas 32:1 63:19</p> <p>arent 11:9 59:10</p> <p>arguably 24:23</p> <p>arrangement 39:3 79:1,5</p>	<p>arrow 40:1,2,22</p> <p>article 9:7,13</p> <p>articles 9:4</p> <p>arts 13:6,16,23</p> <p>ascent 81:22</p> <p>asked 4:13 8:13 31:2,13 55:11 62:23 74:18</p> <p>asking 7:18 9:19 58:16 73:6,8 80:23</p> <p>assigned 19:24</p> <p>assist 26:14 65:10</p> <p>assistant 38:12 41:8</p> <p>associated 3:10 17:3,16 75:8,18 77:18</p> <p>association 19:1 82:16</p> <p>assume 22:5 51:23 73:18</p> <p>assumed 81:20</p> <p>assuming 10:22 55:3</p> <p>attached 3:13,13 12:21 39:12 51:20 83:1,2</p> <p>attachment 44:23</p> <p>attachments 41:4,5 41:12</p> <p>attempt 70:10</p> <p>attend 13:2</p> <p>attended 12:24</p> <p>attention 35:13</p> <p>attorney 8:7,8,19 9:10 27:6 30:25 31:13 36:23 37:2 37:15 38:11 41:8 42:6,9 44:2,7 56:7 58:17,21 59:18 60:9 72:20 75:20 75:21 76:1 81:25 84:14,16</p> <p>attorneyclient 11:9 60:11</p>	<p>attorneys 50:5 76:6</p> <p>audit 20:19</p> <p>audits 20:5,18</p> <p>august 14:25</p> <p>authorization 74:13 78:23 79:10 79:17</p> <p>authorizations 36:12,13 62:8,15</p> <p>authorize 81:15 82:2</p> <p>authorized 69:15</p> <p>automatic 61:6</p> <p>autonomy 23:14</p> <p>avenue 2:20</p> <p>aware 10:12 21:20 39:6 44:16,17 50:15,22 51:19 59:20 60:8,16 64:13,20,22,23 65:19 66:1,3,8,13 66:16 67:8,17,18 68:2,22 70:7,20 70:25 71:6,14,23 71:24 72:5 77:11 80:23 81:1 82:9</p> <p>awkward 67:24</p> <p>B</p> <p>b 3:6 13:6,16</p> <p>bachelor 12:20 13:6,16,21,23,23</p> <p>back 7:24 12:7,8,18 18:6 32:19 39:15 39:16 42:13 44:6 46:11,17 47:11 49:1 56:8 69:11</p> <p>badger 47:23</p> <p>badgercare 18:22 42:20 45:2</p> <p>base 53:24</p> <p>based 18:14 28:5 49:5 81:22</p> <p>basically 48:17 77:25</p> <p>basil 56:2,4,6</p>
---	--	--	--	--

basis 20:20 52:22 65:6 bat 39:2 becoming 49:9 73:17 74:8 beginning 50:12 behalf 2:14,17,21 30:23,25 81:2 behavior 10:21 34:15 53:3 beliefs 22:18 believe 4:15 6:9 7:10 20:14 23:8 30:19 32:25 33:1 33:8 36:13,20,22 39:15 40:7 41:3 41:17 43:24 44:1 45:12 46:3 48:10 49:2 51:22 58:6 64:15 65:25 66:10 66:12 72:14,19,22 72:23 73:4 74:2,7 75:7 78:21 79:6 82:13 beneficial 52:20 benefit 8:12 30:12 39:5 52:17,19,25 53:2,4,5,13 benefiting 82:6 benefits 30:13 71:23 72:3 best 58:1 beyond 25:15 big 54:9 bill 18:18 62:2,5 66:14 69:11 billing 19:9,14 49:5 65:10,21,23 66:1 billings 18:22 49:14 bills 66:4,9 bingham 7:9 10:3 22:7 35:12 37:3 37:24 46:6 51:3 51:10 54:1,4 62:16 64:25 73:14	80:20 binghams 74:14 81:21 birth 12:6,6 bit 16:1 22:20 25:20 68:24 black 47:7 board 15:5 body 59:12 bold 43:10 bonville 1:19 2:15 book 9:2 boring 4:25 born 11:19 bottom 59:14 bound 76:15 bradley 19:1 braun 32:6 breach 7:6 breached 68:21 break 80:8 brewers 32:6 brief 38:6 bring 4:13 5:2,15 5:22,24 8:2 73:18 broad 22:16 broadly 34:3 37:1 brought 36:14 64:18 brown 2:19 bruce 56:21 build 41:25 business 67:9 71:15 businesses 13:3 31:18,21,24 <hr/> C <hr/> c 1:19 2:11,15 california 14:5,6,23 16:5 call 40:11 43:18 69:11 72:17 called 14:6 27:6 32:5 35:22,24 camera 30:17 cant 6:22 36:8	46:24 69:10 capacity 30:20 caps 1:7 39:14 cardiac 53:12 care 6:17 20:2 52:3 careful 53:1 73:22 carol 55:16 carolina 9:8 case 1:6 5:8 8:22 9:5,8 25:13 28:7 30:9,10,12 31:1 31:11,14,18 32:19 33:1,9,10,15 35:12 36:24 38:10 39:18 42:11 44:19 53:18 61:5 80:13 cases 8:23 26:17 33:18,21 catchall 11:7 caught 13:19 cause 53:2 caution 52:18 cedar 55:21 cedarburg 45:15 55:19 center 15:18 19:1 certain 19:25,25 20:1,4 35:20 39:25 53:15 58:8 69:5,6 certainly 61:10,15 certification 15:5 certified 2:5 certify 84:6,9,13 chance 46:23 changed 77:16 78:9 chapter 26:11,14 26:17 27:13 29:22 characteristics 23:8 charge 18:8,11 chart 58:24 59:1 checks 37:17 child 1:8 23:12 44:4 73:6 children 17:7 22:15	34:6 chilton 2:13 chris 75:6 circle 11:14 circumstances 66:13 citation 32:13 civil 2:4 claim 5:8 9:14 30:15 61:18 claims 44:25 49:5 50:8 51:19 clarification 33:14 clean 57:14 clear 13:9 78:10 clearly 46:21 clients 64:9 climb 68:23 clinic 17:6 18:16,16 26:7 50:1 69:12 clinical 16:8 25:1 25:13,15,17 64:8 64:10 68:9 69:13 69:22 clinics 70:2 close 11:24 code 19:17,19,20 coded 20:8 collect 8:17 college 12:7 17:23 32:19 come 17:21 18:25 20:18 28:1 35:13 78:19,21 comes 17:25 coming 17:11 44:5 75:24 76:2 commencing 2:8 84:11 comment 6:19 commission 84:23 commitment 27:25 28:1 commitments 23:4 common 22:14,16 52:8 82:17	commonly 69:2,4 communication 5:9 10:14,24 11:9 60:12 communications 5:12 9:24 37:7 comp 30:9 companies 30:4 32:8 34:9 company 30:7,8,24 32:5,7 comparison 28:4 compendia 33:6 42:21 compendiums 35:4 compensate 71:18 compensated 27:11 compensation 43:22 competent 52:16 complained 62:25 63:7 complaint 5:6 33:5 42:22,24 44:18 49:8 51:1,9 65:5 complete 71:21 component 78:7 computer 49:25 concept 51:23 concerning 5:13 concerns 24:17 concluded 82:25 concluding 2:8 condition 53:12 conducted 5:7 conference 29:5,6 29:12,12 confidentiality 7:7 confused 6:5 7:8 10:9 13:13 confusing 13:7 conjunction 24:11 49:15 connected 36:20 connection 22:1 55:21 64:18 66:4
---	---	--	--	---

82:17	28:14	court 1:1 6:25	declined 62:14	direction 84:8
consent 23:13	copied 9:4	15:24 16:3 31:2	defendant 2:17	directive 70:8
consider 33:19	copies 3:13 9:11	32:14 44:24 51:21	defendants 1:10	directly 84:17
constituting 35:21	62:7,14 83:2	courtordered 15:20	2:3,21	directs 70:21 71:15
consultant 27:2,4,5	copy 9:13 14:11,16	cover 41:2 42:16,16	defer 81:25	disability 30:13,14
27:14	36:9 43:3 57:14	coverage 18:22	define 53:1	disallowance 20:10
consultation 64:11	57:14 63:23 66:21	covered 50:19	degree 12:15,19,25	disallowances
consultative 37:6	75:5	covering 44:8	13:4 23:6 74:4	20:15,21
consulted 33:25	copying 76:17	create 8:5,7	demonstrating	disclose 55:13 62:9
contact 10:12,15	correct 4:10 6:13	created 7:14,22	10:21	62:16,19
11:2,5 26:12,13	7:9 8:10 10:12	49:25 50:2,3	denial 30:12,13	disclosed 6:7,25
28:6 31:16 35:17	11:25 13:25 14:3	59:11	depose 30:8	7:21
35:18 36:16,21	14:7,19 15:8,23	creating 59:4	deposition 1:15 2:1	disclosing 6:21
37:1,14 43:6	16:7,10,12,15,23	crime 32:23	4:11,12,19 30:16	disclosure 6:11
48:21 56:18 59:15	17:15 19:4,13,19	criminal 32:19	33:4 55:9 64:1	44:24 51:20
contacted 26:11	19:21 20:9 21:14	crossed 47:18	74:24 82:25 84:6	disclosures 6:8,10
35:14	22:8 23:23 24:1	crossreferenced	84:9	6:14 33:5 39:12
contacts 26:6 60:4	25:3 27:3 29:25	48:10,13	depositions 29:17	discovery 32:18
60:8	35:6,11 36:3	err 1:24 2:5 84:4,22	describe 16:24	57:12
contain 39:13	40:21,24 41:20	csr 84:4,22	19:22,23 22:20	discuss 28:2 79:5
contains 51:1	45:1 48:1 49:10	curious 15:15	described 59:24	discussed 36:23
contemplating	50:6,24 51:25	current 16:16	description 5:1	39:9 77:12,17
37:21	52:10,15 53:21	68:15 71:20	designation 12:25	78:25
contents 42:4	54:17 55:20 57:13	currently 11:13	despite 77:4	discussion 38:23
context 27:5,24	57:20,21 58:3,16	16:20 18:5 32:7	detail 37:4	80:1,6
29:21 31:17 41:19	58:25 59:3,12,13	73:12	details 35:3 37:18	discussions 35:2
contingent 79:1	59:17,19 60:10	customary 52:5	determination	80:19
continuation 72:3	61:11,18 62:3,6		68:20	disease 53:7
continuing 27:17	64:3 66:2 70:9,13	D	determine 18:11	dismissed 33:1,2
29:11	71:4,19 72:17	d 3:1	25:12 42:15	disorders 23:1
contract 63:21	73:1,15 74:11,23	daily 36:1	diagnoses 35:16	distinct 8:13
64:14 67:5,20,25	75:10,13,15,17	dark 41:24	diane 36:16	distinction 8:11,16
68:14,19	76:12,20,21,23	date 20:1 47:4	diaries 62:23 63:6	11:22 12:1,4
contractor 64:8	77:3 78:18,18,21	72:21	diary 8:3	distribution 32:4
67:6 71:5	79:5,23 82:4,20	dates 47:14,15	dictated 70:1	district 1:1,2
contracts 81:21	cost 60:16	54:21	didn't 5:15,21,24	divide 17:6
contractual 80:21	couldn't 6:2,19	daubert 31:4,5,6	8:2,17 16:18	doctor 4:11 16:9
80:25 81:10	counsel 41:8 44:21	day 2:7 42:5 52:17	19:19,23 26:8	40:18 63:17 69:9
contrary 67:14	84:14,16	84:11,20	46:13 55:18 56:9	69:12 80:18
control 67:19 68:8	counseling 19:1	days 16:25 32:19	62:16 63:10 80:16	doctoral 17:9
68:12,16 70:10	county 84:2	78:16 79:4	80:17 81:3	doctorate 14:21,25
controlling 70:24	couple 32:12 34:5	decided 34:17	different 28:5	doctorpatient
controls 70:21	39:16 47:6,11	decision 23:14	39:22 42:20 57:8	68:23
conversation 38:20	79:24	24:15 39:9 61:14	69:19 77:24	doctors 34:9
41:21	couples 17:8	61:17	direct 10:24	document 4:13,15
conversations	course 70:14	decisions 68:9,10	directed 75:12	48:4 50:23 55:13

59:1,5,11 62:13 62:22 documentation 36:11,12 documented 48:22 documents 5:5,20 5:23,25 6:25 7:1 57:18 58:23,23 82:13 doing 37:5 42:8 63:9 68:17 77:23 domestic 15:20 dont 7:24 8:4 9:11 9:21,21 10:5 11:4 18:12,15,18 20:14 20:22 21:9,10,24 22:18 23:11,21,24 24:6,13,14,20 26:15 28:1 31:12 31:15,15,19 32:23 33:12,12,24 35:25 36:13,14,18,19,22 36:22 39:20,20,21 40:6,6,7,10 41:13 42:23 43:2 45:16 45:16 46:8,10,11 46:11,15,20,23 47:8,11,12,18 49:21,22 50:2 51:15,16,22 53:21 53:22 54:8 55:4,5 56:3 57:4 59:22 61:2,19,20,23 62:2,18 63:9,13 64:15,15,15 65:8 65:25,25 66:10,12 66:21 67:4,12,14 67:25 68:1,4,25 69:4,11 70:5,7,20 72:12 73:2 79:13 82:15 download 42:24 43:1 downward 40:2 dr 1:4 3:8 4:9 6:9 6:18 7:23 35:10	35:11,13 44:10 47:21 48:11,20,25 49:2,6,8,11 50:11 50:19 51:2,10 53:18 54:5,19 55:23,25 56:2,3 56:21,23,25 57:16 60:15 63:22 64:7 64:14,21 65:7,12 65:13 66:1,18 67:2,8,19 68:9,12 69:20 70:6,11,22 71:1,8,15,23,25 72:8 75:12,14 76:14 79:11,15 82:10,16,17 drink 32:5,6 drug 33:6,7 34:8 drugdex 33:7,8,8 drugging 22:25 23:3 drugs 66:23 duces 4:11 duly 4:2 E e 1:24 2:5,11,11,16 3:1,6,18,18 4:4 63:15 78:11 84:4 84:22 earlier 49:1 79:2 earliest 48:21 east 2:20 eastern 1:2 eba 13:18 ed 29:11 educating 78:1 education 12:10 15:1 edwin 55:23 effective 1:8 2:21 64:11 efficacy 34:25 eight 40:14 65:14 67:9 either 17:11 33:22	33:25 43:2 44:4 61:8 72:14 74:15 74:18,19 81:16 eldon 57:3,4 electroconvulsive 23:4 elizabeth 55:25 elses 16:7 emails 62:24 63:6 embarking 81:16 emed 8:24 emotional 23:1,9 employee 84:14,15 employees 17:16 employer 65:7,8,8 employment 3:8 72:4 encompass 1:8 2:21 39:14 63:17,22 64:11,14,23 65:5 65:11,24 66:4,9 66:12,14 67:7,10 67:18 68:7,11,22 68:25 69:20 70:5 70:11,16,21 71:1 71:7,9,15,24 72:7 82:10 encompasseffecti... 3:8 encompasses 16:17 69:22,23 encompasss 82:16 encouraging 34:9 ended 47:13 energy 32:5 enrolled 62:1 ensure 34:23 enter 81:9,21 entered 73:25 80:24 entering 80:19 entitled 43:12 entity 5:9,10 9:15 9:24 65:3 67:19 environments 69:19	eppp 15:11 erickson 1:19 2:15 errors 59:16 established 73:12 estate 31:21 estill 55:16 ethical 29:10 evaluate 28:1 evaluated 30:23,25 evaluating 30:22 evaluation 30:6 77:2 evaluations 64:10 evaporate 10:18 events 62:25 63:7 evidence 24:8 26:2 28:10 64:23 66:3 66:8,17 67:2,4,17 68:3,7,22,25 70:20,23,25 71:6 71:9,14,25 72:6 82:9,14 ex 1:4 exact 34:15 exam 15:11 examination 3:2 15:10 examined 4:3 example 16:24 40:13 48:2 53:7 excel 48:15 49:13 49:19 executed 74:3,5,7 80:16,17 exercise 68:13 70:10 exhibit 3:7 64:1,6 74:24 75:2 exhibits 3:13,13 83:1,2 existence 22:6 expense 44:6 expenses 43:24 44:3 experience 18:21 18:25	expert 26:16,25 27:14,19 31:3 expertise 25:8 expires 84:23 explain 22:22 explaining 72:18 exploring 82:5 extended 54:5 extent 6:6 51:8 53:18 extra 14:11 57:14 F face 79:12,17 facetoface 59:23 facilitate 65:10 facilitated 65:12 facility 20:17 fact 6:8 29:2 46:5 51:13 52:6 53:11 55:12 59:14 75:25 77:4 factual 20:23 60:22 faculty 18:1,3 fair 22:5 43:14,15 73:19 77:21 fairly 11:23 falls 24:19,19 familiar 4:21 51:23 56:4 family 17:8 far 35:25 father 5:13 11:2 favorable 42:8 fda 35:3 47:16 52:9 52:12 58:8,12,12 58:13 federal 2:3 31:2 60:4 66:19,24 fee 18:13 79:5 feedback 27:9 fees 44:7 76:9 80:11 feesplitting 79:1 felt 34:19,21 figure 10:7 41:15
--	--	--	--	---

46:18 figured 67:24 file 46:17 49:23 filing 44:7 filled 48:10,14 films 5:10,11 financial 73:25 financially 84:16 find 23:17 41:13 fine 38:14 finished 13:3 firm 49:17 first 4:2,18 5:2 39:2 45:4 57:17 72:13 72:19 77:25 five 11:18 38:3 47:5 47:13 flag 69:10 focused 27:21 following 20:4 follows 4:3 forced 23:2 forensic 20:24 21:1 21:4,8,13,17 77:21 forget 17:24 44:4 forgetting 17:24 forgot 38:12 form 11:3 42:24 75:5,8 76:22,25 77:8,10,12,22 formal 12:10 15:1 15:3 21:1 22:9 formalized 80:14 format 5:17 formation 5:18 formularies 69:5 69:24 70:3 formulary 42:20 70:7 forward 9:18 81:7 forwardhealth 45:1 47:22 foster 34:6 found 27:7 32:24 48:11	foundation 21:2 four 78:16 79:4 fouryear 50:7 frame 46:6 51:10 frames 54:4 fraud 9:8 34:7 35:21 43:13 free 18:16 62:3 friday 1:16 front 78:22 full 4:6 17:5 fully 22:19 further 15:10 84:9 84:13 G gap 50:7 gaps 54:18 gathered 8:21 51:16 general 43:18 72:17 generally 52:2,18 generals 42:9 gentleman 56:11 gerber 59:24 gerberward 41:9 gietman 2:12,12 9:17 14:13,16 24:6 25:4,25 27:16 28:8,13 33:13 38:2 46:24 63:1 73:6,10 80:2 80:4 82:23 gietmans 76:3 gimbel 2:19 give 6:22 27:9 29:19 51:6 54:21 62:7 given 4:18 29:17 35:15 52:24 69:5 giving 8:14 14:12 30:16 glad 23:18 go 4:25 7:24 8:23 15:4 24:8 27:17	39:15,16 44:4 46:11,16 47:3 48:17 54:21 56:8 61:22 67:10 80:4 goes 25:15 39:16 76:17,18 going 11:18 19:24 23:19 24:2,6 25:4 25:25 27:16 28:8 28:18 32:16 33:13 39:23 40:9 42:10 42:11 44:1 46:16 47:11 55:2,3 60:17,21 75:2 81:13 good 80:7,8 goodevich 36:16 googled 33:23 gotten 48:8 gottstein 28:19,20 34:4 38:8,18 59:15,18 government 5:9,9 9:15,24 34:8,23 60:5 66:19 governmental 59:12 governments 34:20 graduate 14:1 graduated 12:11 ground 4:21 group 15:21 21:5 21:20 22:14 29:13 53:6 69:23 70:1 groups 23:7 58:8 guardian 80:20,24 81:2,6,9 guardians 62:15 guerin 2:19 guess 13:9 25:18 28:15,15,16 33:25 40:9,11 41:11 56:8 63:8 78:1,8 guessing 22:3 47:13 guilty 32:24 gutglass 1:19 2:15	guy 38:16 56:14,16 H h 3:6 habits 68:12 hagen 55:25 hair 41:24 hall 80:5 hand 59:9 84:19 hands 46:25 handwriting 45:17 45:18,19,21 handwritten 45:7 happen 23:16 61:25 happened 48:5 74:15 happening 34:7,16 happens 53:6 69:17 69:18,19 hard 56:5 hasnt 7:21 hate 38:2 havent 6:11 10:19 11:8 21:11 36:21 39:19 70:19 head 36:8 50:9 61:2 heading 43:10 77:18 health 1:9 2:21 3:10,10 9:18 17:4 17:6,17 22:17 23:10,22 24:5 29:15 54:20,25 55:7,10 64:12 71:25 75:9,19 77:18 healthcare 7:14,16 7:23 62:9,17 heard 35:3 heart 53:7 heels 34:8 help 34:22 helpful 23:17 25:3 helping 40:10 hereunto 84:18	hes 6:10 7:2,3 56:7 56:10,11,12,16 hey 27:6 59:9 62:19 68:17 69:8,14 74:18 76:2 high 12:11,12,13 highlight 28:3 highlighted 34:16 40:4,5 highlighter 39:24 40:1 highlighting 40:8 40:23,25 41:1 highlights 25:16 hipaa 62:20 73:4 hiring 75:25 history 30:2 44:25 49:5 50:8 hold 20:24 home 11:14 homemaker 37:5 hospitalizations 54:15 hospitalized 54:10 hospitals 70:2 hours 65:14 67:9 71:18,19 howard 11:14 huge 20:17 hypothetical 27:9 I id 5:18 14:10 46:11 70:19 idea 29:19 71:20 ideally 78:8 identification 64:2 66:18 74:25 identify 55:13 identifying 45:19 identities 7:18 identity 62:9,17 ill 5:15 14:18 51:6 62:13 im 5:7 6:5 7:8,18 8:16 10:7,9,21
---	---	---	--	---

11:18,23 14:12 15:15 16:18 17:24 22:23 23:13,18 24:6 25:4,25 26:6 27:16 28:8,11,15 28:18 31:20 33:13 34:3 37:4,11 38:14 39:10,23 40:9 41:11 44:3 44:17 46:16 47:13 47:14,21 51:5 54:6,22 55:3 58:14 63:17 64:20 64:22 66:16 67:24 72:5 73:22 74:15 75:2 78:6 79:14 81:24 imagine 61:24 impression 81:8 82:1 inaccurate 51:4,14 inappropriate 23:9 include 46:13 included 32:25 44:24 78:12 including 10:15 39:18 income 18:14,15 72:3 independent 44:10 60:14 64:8 67:6 71:5 independently 58:18,20 64:24 indicate 15:16 46:4 48:25 55:11 indicated 28:5 42:8 43:16 74:17 indicating 35:20 42:7 68:14 indication 50:18 67:14 indications 25:12 58:24 indirectly 84:17 individual 16:22	17:7 65:2 information 3:10 5:8 6:4,23 9:14,16 10:13 36:25 37:23 37:25 46:9 50:10 51:15,19 58:8,9 58:10,12,21 62:20 70:23 75:11 76:16 informed 23:13 initial 34:13 39:12 44:24 51:20 initially 32:25 37:25 injury 30:10 inpatient 54:14 input 36:25 inquired 70:14 instance 2:2 institution 13:11 14:5,22 32:13 instructions 71:1 insurance 18:16 30:7,8,14,14,23 72:1 intended 46:4 53:12 77:5 intentions 41:14 interest 81:14 interested 34:18 43:18 84:16 interesting 56:16 interests 80:21 intern 19:5,6,10 internal 66:19 internally 20:5 international 29:10 internet 21:23 27:7 internettype 9:1 interns 17:11 interrogatories 57:17 58:15 interrupt 38:2 investigated 9:9 investment 31:22 investor 32:10 invited 59:15	involved 10:17 19:9 25:20 32:21 33:19 34:2 35:1 37:20 38:19,22 42:13 49:9 involvement 59:4 70:17 involving 35:9 isepp 34:4 isnt 77:7 issue 26:11 issued 72:7 issues 22:17 23:10 23:22 24:5 27:13 29:15 54:20,25 items 8:5,7 ive 9:1 11:18 13:15 14:11 22:13 26:3 27:3 32:9 34:14 37:16 48:18 56:19 <hr/> J j 2:19 jackson 56:2,3,4,6 january 50:25 84:23 jennifer 1:7 2:18 3:8 75:12 jim 28:19,20 34:4 38:8,11,18 59:15 59:18 judgment 25:1,14 25:15,17 judgments 24:14 june 14:19 <hr/> K keep 63:10 keeping 49:23 keeps 33:18 kept 12:7 49:19 62:23 kilbourn 2:20 kind 4:21,22 5:18 8:22 9:4,5 15:5 17:10 25:16 27:1	27:24 34:15 36:4 36:25 37:4,7,15 37:17,18 45:17 46:18 48:16 53:4 62:20 63:9 67:24 77:24,25 78:2,6 king 1:7 2:18 3:8 6:9 7:23 35:10,11 35:13 44:10 47:21 48:20 49:2,6,8,11 50:11,19 51:2,10 53:18 54:5,19 60:15 63:22 64:7 64:14 65:7,13,13 66:1,18 67:3,8,19 68:9 69:20 70:6 70:11,22 71:1,8 71:23,25 72:8 75:12 79:11,15 82:10,17 kings 6:18 48:11 49:1 57:16 64:21 68:12 71:15 82:16 knew 56:24 60:22 61:4,6 knight 2:19 3:3 14:18 31:5,7 36:4 41:24 56:12,15 57:6,9 59:25 63:13,16,17,25 64:5 72:24 73:5,8 73:11 75:1 80:3,7 80:15 82:21 know 5:16 6:6 7:6 7:19 9:6 10:5 14:11 20:10,20,22 21:9,10,15,24 26:9,13,15 27:6 31:1,15,15 32:20 32:23 33:9,12,18 33:21,23,24 34:16 34:17 35:17,18 36:18,19,24 37:15 37:19 39:20 40:6 40:8,10 41:5,11 41:14 42:20,23	45:13,15,16 46:4 46:8,20,22 47:7,9 51:15,18 53:21,22 53:23 54:2,10,13 54:18 55:2,6,16 55:18,23,25 56:3 56:6,21 57:2,4 59:6,22 60:20,21 61:3,7,19,19,20 61:22 63:24 65:8 66:17,22 68:3,7 69:4,4 70:5 73:2 73:12 78:3,4 79:6 79:13,16 80:18 82:8 knowledge 20:23 22:6 35:11 44:10 53:24 54:3 58:1 60:15,20,22 64:16 66:20 67:2,15 72:2 81:4 82:15 known 20:7 knows 37:4 kohler 11:15,16,18 11:19,22 12:2 <hr/> L l 2:12,12 labeling 33:14 lake 58:5 lakeland 17:23 language 43:8 76:18,24 lapses 54:9 laptop 50:2,3,4 larson 1:19 2:15,16 3:3 4:5 9:20,23 14:14,20 24:12 25:6 26:5 27:23 28:17 31:8,10 33:17 36:6 38:5 38:13 42:2 47:2 56:8,17 57:7,10 60:1,3 63:3,11 72:21 79:25 82:22 law 49:17 52:11
--	--	---	--	---

56:8 lawrence 56:23 lawsuit 60:5 62:25 63:8 78:2,13 lawyer 73:19 lay 5:18 21:2 lead 24:7 26:1 28:9 learn 53:9 legal 16:13 27:1 40:11 43:23 44:2 76:25 78:7 81:3,6 81:9,18,25 82:1 legally 23:24 length 56:6 letter 41:2,7,16,17 license 16:7 licensing 15:6,7 limelite 32:5 limit 68:1 limited 68:4 line 68:14 77:16 list 5:25 32:2 33:18 listed 35:19 37:19 43:14,18 47:20 59:8 listen 24:20 listened 34:11 listing 33:21 lists 48:8,9 litem 80:20,24 81:2 literature 9:4 53:10 litigation 30:2 37:13 39:5 41:19 46:14 74:1 77:1 77:19 81:13,16 82:5 little 6:5 13:7,13 16:1 22:20 25:20 68:24 live 11:21 35:25 56:5 lived 12:1,5 lives 58:4 llp 2:19 loaded 53:5 location 65:12	log 8:3 63:10 logical 5:18 logs 62:23 63:5 long 11:16 12:1,5 22:1 36:7 39:20 53:4 56:10 longer 21:25 look 7:24 12:18 13:10 14:10 41:14 46:12,17,18 75:3 76:1 looked 36:24 39:19 43:3 47:12 58:18 58:20 looking 5:4 12:21 26:6 41:11 50:23 58:14 59:14 63:1 64:6 81:15,18 looks 40:18 45:16 45:17,21 47:4,5 loop 10:17 lot 31:2 32:8 56:24 69:18 low 18:15 lumping 38:14 M m 1:17 2:8,9 4:4 63:15 82:25 84:12 madison 2:13 36:19 major 13:7 majority 18:14 making 8:13,16 11:21 managed 65:15 mandates 68:15 71:21 manitowoc 57:2 manner 25:24 68:8 march 72:15 mark 2:16 56:25 marked 63:25 64:1 74:24 75:2 marking 46:21 marks 47:7 marquette 17:22	masterlevel 17:10 masters 13:4 14:8 material 5:13 materials 5:15 11:7 matter 5:14 34:3,3 36:17 37:3,20,21 44:11 48:20 49:8 60:5 63:18 matters 81:3,10 maxwell 72:12 maxwellmeyer 43:21 72:25 73:16 74:13 75:6 mean 6:14,14 9:6 10:16 24:18 26:7 26:8 28:12 33:15 37:11,12 38:25 39:8 40:13 61:15 61:22,22 68:4 70:2 77:24 80:25 meaning 15:3,21 75:24 means 35:8 42:10 60:21 68:8 mechanism 26:13 medicaid 9:8 18:22 19:9 20:4,18 35:21 42:18 43:10 43:13 45:1 47:23 51:3,12 53:20 60:18,21,23,24 61:1,5,6,8 62:2,4 62:5 66:5,14 69:10 medical 5:8,13 6:2 6:3,20 7:25 8:23 9:4,14 16:9 25:12 29:14 39:11,18 48:18 53:9,10 59:20 62:4 69:23 69:23 76:18,19 77:13 medically 58:24 medicate 23:9,12 23:12 medicated 34:6	medicating 23:3 medication 16:14 22:15,17 23:1 24:24 27:21 45:20 48:12 51:17 52:7 52:12,14 54:1 64:10,24,25 65:15 66:6,10,15,24 69:9 medications 23:17 23:21,24 24:4,15 25:11 35:15,20 42:15 43:11,14,15 46:5 47:16,20 48:9 49:7,10 50:11,24 52:20,24 53:11 54:13 58:15 59:7 69:7 78:3 medium 41:24 medline 8:24 meds 53:15 70:4 meet 21:7 74:12 80:10 meeting 38:17,23 39:1,2 42:7 59:23 72:19 73:24 78:16 79:4 memoranda 63:6 memorandum 62:24 mental 1:9 2:21 17:6 22:17 23:9 23:22 24:5 29:14 54:19,25 55:6,10 64:11 mentioned 56:19 79:7 merged 14:24 messed 80:9 met 8:7 10:2,19 28:18,23,25 31:4 34:4 36:10 41:18 44:13 72:11,13,20 73:16,23 meyer 72:12 middle 40:2	mills 55:21 milwaukee 1:20 2:7 2:17,20 13:12 32:20 84:2,10 mine 6:24 40:18 minimum 34:24 minutes 38:3 misdemeanor 32:19 misrepresent 79:17 misrepresentation 79:12 misunderstood 12:22 moment 80:2 money 34:20,21,22 monitor 64:10 montgomery 55:23 mother 5:12 11:5 35:14 36:10 37:8 37:23 38:22,25 39:4 58:4 62:8 73:7 77:14 80:24 81:5,9 82:2 mothers 81:22 multiple 28:25 mutual 82:17 N n 2:11 3:1 4:4,4 63:15,15 nah 27:12 name 4:6 6:6 17:3 21:22,25 28:18 29:9 31:11,13 33:23 36:22 45:1 45:9,16 55:17 56:3 57:2,4 76:3,6 named 65:5 names 37:18 national 66:25 nature 65:22 72:18 nb 5:11,12 6:18 nbs 6:6 necessary 71:22 need 14:16 38:3
--	---	--	--	---

<p>61:3 64:9 needed 64:11 65:14 74:17 nefarious 79:15 never 13:15 22:13 26:3 39:10 44:13 44:15 72:25 77:4 77:4 new 7:20 17:11 69:16 newspaper 35:19 35:23,24 nice 41:22 nicholas 7:9 10:2 10:19,25 22:6 35:12 37:2,24 46:6 51:3,10 54:1 54:4 62:16 64:25 77:13,14 81:19 nightclub 32:11 nodes 29:23 nonmedical 27:22 normally 69:3 north 1:20 2:6,16 9:8 84:10 notary 2:6 84:5,23 notations 40:13,23 note 45:7 48:11 55:10 59:9 noted 5:6 80:9 notes 5:5 8:3,12,13 8:18 20:3 46:18 48:11 61:2 62:23 63:6 79:24 notice 2:4 4:11 19:24 32:13 50:7 noticed 13:15,20 npi 66:25 number 3:7 4:14 43:14,15,19 63:18 66:18,21,24,25 67:1 82:8</p> <p>O o 4:4 63:15 oath 4:3</p>	<p>object 24:6 25:4,25 27:16 28:8 73:10 objection 27:17 obtain 12:15 21:11 36:12 74:17 77:13 77:22 obtained 10:14 13:5,24 14:8 39:20 48:11 62:8 76:16 78:14 obtaining 81:16 obviously 21:20 35:8 37:17 38:11 occur 26:19 office 2:12 38:14 42:9 49:25 78:21 84:19 offices 78:19 official 32:6 offlabel 34:10 51:24 52:2,6,21 52:24 53:16 oh 30:18 38:22 57:9 73:3 75:23 80:3 okay 6:5 7:25 8:11 8:17 9:14 12:18 12:21 13:5,21 14:14 15:9 16:9 19:7 21:7 22:1 25:19 30:9 31:1 38:22 40:17 41:19 42:24 45:23,25 46:4 47:1 49:4 50:16 63:14 64:6 64:23 65:11,23 66:3,17 69:2 70:14,25 71:11 72:25 73:3,16,21 74:3,12 75:8 76:3 76:12,24 78:6 79:20 82:8,23 old 12:9 50:2 older 56:11 once 10:16 27:4 28:25 29:2,2 37:17 52:12</p>	<p>onepage 76:22 ones 10:20 13:19 18:11,12 33:24 onethird 81:13 oneyear 15:16 ongoing 37:7,14 online 8:23 43:4 opened 13:2 32:9 operating 81:8 operation 69:13 opportunity 63:20 63:21 opposed 12:2 22:25 27:1,13 29:13 50:4 58:4 opposition 23:5 optimal 27:20 oral 15:11 order 15:24 20:6 48:12 69:16 78:19 ordered 16:3 org 21:20 59:2 organization 21:22 22:2,10 original 3:13,13 83:1,1 originally 34:4 46:5 49:24 50:1 outcomes 27:20 outline 12:10 outlined 71:17 outpatient 17:6 outside 25:7,7 38:19 overlap 21:16 22:19</p> <p>P p 1:17 2:8,9,11,11 82:25 84:12 page 3:2,7 15:17 39:25 40:3,19 41:7,7 45:4,4 46:20 47:3 57:24 59:14 63:3 pages 47:6</p>	<p>paid 43:24 44:3 paper 36:1,5 68:5 paperwork 20:6 71:22 paragraph 76:10 parent 44:4 61:17 parents 61:10 62:15 part 16:8 25:16 28:16 32:17 65:16 70:11 77:13 partially 79:19,20 participant 57:11 participants 15:21 participate 43:13 particular 25:13 28:7 29:6 33:9 35:12 44:11,19 53:18 parties 84:15 parts 26:23,24 party 82:6 passed 31:9,9,9 pat 63:17 patient 6:22,23 7:2 7:3 19:25 23:14 24:23,24 26:10 52:19,25 53:21 60:23,24 61:5,6 61:17 65:13 69:10 72:25 patients 16:22 17:2 18:5,8,15,17 19:23 23:16 24:2 24:3,10 26:8 43:10 44:15 52:17 52:21 53:7 61:10 62:1 67:11 68:9 69:21 70:18 82:18 patrick 2:19 14:16 pay 18:14 30:15 61:12,23 paying 34:9,20,21 44:8 65:13 payment 50:10 51:3 76:9</p>	<p>pediatrician 45:15 46:7,14,15 55:19 pediatricians 7:19 pending 33:11,20 people 6:10 8:23 11:23 20:15 25:10 25:23 26:16 30:17 37:19 53:9 56:18 56:24 65:14 period 15:16 16:5 55:7,11 periods 54:6,8 permissible 81:20 permission 62:19 person 26:11,12 30:6 40:9 45:13 55:18 62:5 73:24 personal 30:1,3,10 60:15 84:8 personally 60:6,7 perspective 37:13 pezze 1:24 2:5 84:4 84:22 pharmacies 69:7 70:3 pharmacist 69:11 pharmacy 46:1 66:11,12 69:22 phone 72:17 photographs 5:11 physically 16:2 72:20 physician 52:3 69:3 physicians 34:24 52:8,13,16 54:24 67:3 pick 48:6 ping 69:8 plaintiffs 1:5 2:14 plan 28:2,4 plans 71:22 play 57:6 please 4:7 43:17,18 54:21 pled 32:23 plus 18:23 45:2</p>
--	---	--	---	--

<p>47:23 pocket 44:7 61:12 point 7:18 15:12 32:14 34:5,14 42:13 43:1,2 47:17 48:20 points 40:3 pops 33:23 position 22:15,17 positive 31:20 possession 5:21,23 6:17 7:13,22 8:1,4 9:12,16 11:11 39:21 48:25 possibility 78:1 possible 35:21 43:13 47:15 possibly 33:16 42:12 74:6 postdoc 19:6,11 postdocs 17:11 potential 78:12 80:13 potentially 40:20 practice 16:16,20 17:3 35:8 64:21 71:15 82:16 practicing 16:5 56:12 practitioners 66:22 69:5 predates 22:5 preface 68:24 preparation 33:3 70:15 prepare 13:14 44:19 prepared 44:18 49:12 50:1 57:11 57:22 preparing 57:12 prescribe 16:14 23:21,24 24:4 52:14 64:24 65:3 66:23 70:18 prescribed 43:11</p>	<p>46:6,7 47:20 50:11 52:21 54:1 64:25 prescriber 46:16 prescribing 49:6 51:24 52:2 53:16 67:21 prescription 27:13 34:10 52:7 61:9 61:23 66:6,9,15 68:10,12 69:9,14 prescriptions 48:2 50:19 51:2,9 60:16,17,25 presence 38:19 present 38:24 presented 36:11 75:6 79:10,11,15 pressed 56:5 presume 75:18 pretty 56:5,15,16 previously 5:6 printed 43:3 prior 8:21 49:2,8 49:10 privacy 76:15 private 16:19 privilege 10:6,17 privileged 6:3 10:15,16 11:9 privileges 10:18 probably 19:10 21:15 43:2 66:25 problems 23:18 procedure 2:4 proceedings 4:1 80:22 proceeds 43:25 74:1 process 4:23 processed 19:18,18 production 57:18 58:22 62:13,22 professional 14:6 14:23 21:5 24:14 29:11 67:21 69:3</p>	<p>professionally 44:13 professionals 55:7 69:23 profusely 34:17 program 50:20 66:5,14 69:15 programs 42:18 51:3 proper 21:22 properly 21:3 proposed 28:2 protected 62:21 73:4 protocol 20:4 proven 53:11 provide 20:1 62:14 64:8,10 65:21 68:21 74:12 79:8 provided 5:7 9:25 10:20 15:20 19:22 20:7,11 36:10 37:18 41:2,5 48:18,22 58:9,20 58:23 60:25 62:4 71:7,7 74:20,22 provider 7:23 66:25 providers 7:14,16 62:10,17 provides 71:1 providing 27:11 65:12 69:3 71:9 74:9 76:13 77:14 78:6,10 79:7,21 proximity 11:24 psych 77:24 78:11 79:7,9 psychiatric 22:25 52:23 54:14 64:9 psychiatrist 16:11 24:4 25:2,9,11 56:7 69:21 70:12 71:2,8 72:8 psychiatrists 24:11 24:15 34:24 70:17</p>	<p>psychiatry 29:11 64:21 psychoeducation 78:2,7,11 psychological 1:8 3:10 15:17 17:4 17:12,14,17 74:9 75:9,19 76:13 77:18 78:25 79:21 psychologist 10:11 19:6 20:24 21:2,8 21:13,17 23:21 24:13 30:5,21,22 57:2 73:13,18 74:9 75:16 77:5 psychology 13:8 14:2,6,21,23 15:4 16:16,20 21:4 29:10 psychotherapy 15:21 psychrights 21:20 21:24 22:21,23,24 23:15 25:24 26:4 28:6 33:10,15,18 34:13 36:20 42:25 59:2 public 2:6 84:5,23 pull 46:17,17 punishment 16:4 purely 77:6 purportedly 67:10 purpose 23:25 52:9 76:9,13,14 77:10 77:12 78:10,12,24 79:7,8,18,21,22 purposes 8:9,14 30:18 73:17 76:19 76:25 77:7,9 82:5 pursuant 2:3,4 pursue 42:10 pursuing 81:12 pursuit 77:1 put 26:12 46:25 48:14,15 49:13</p>	<p>Q qualifications 21:7 qualify 79:14 question 4:23 5:17 7:17 13:14 16:18 23:19 24:3 25:9 25:10 40:4 50:13 53:5 66:7 81:25 82:1 questioned 70:15 questions 25:19 27:7 31:3 63:18 72:10 82:9 qui 34:12 quote 23:3</p> <p>R r 2:11 3:18 radiographic 5:10 raised 11:19 ran 39:24 random 58:5 read 9:6 41:13 43:3 43:4 67:23 76:12 reading 34:13 65:20 reads 16:1 real 31:21 37:16 realized 34:14 really 19:8,8 39:10 73:22 realtime 2:5 reason 39:8 46:13 54:5 62:7,12 reasonable 52:16 reasons 52:14 rebecca 2:12,12 38:19,20,23 recall 7:24 26:15 31:19 32:20 36:8 36:13,14,22 39:9 41:16,21 42:3,6,6 42:7,9,19,23 43:2 45:16 46:10,11,15 47:12 54:8,11,12 64:15 65:25 66:21</p>
---	---	--	---	---

67:12 72:11 recalling 44:3 recapture 34:22 receive 25:22 39:4 43:21 received 26:3 53:19 receiving 71:23 receptionist 20:2 65:22 recertified 15:13 recess 38:6 recognize 57:4 recognized 21:4,13 52:1 59:8 recognizing 67:5 recollection 55:9 68:1 recommend 70:18 recommendations 24:18 71:3 record 4:6 79:25 80:1,6 recorded 84:7 records 3:10 5:13 6:2,3,15,16,17,19 6:20,22 7:4,12,12 7:13,13,15,22,25 39:11,13,14,17,18 39:19 48:18,19,25 49:2 61:3 65:23 66:1 74:14,17 77:13,22 78:24 79:11,18 80:12 81:11,17,22 82:3 reduced 84:7 reduces 53:13 reduction 53:2 refer 21:24 42:21 referencing 46:2 referrals 25:22 26:4 referred 79:2 referring 45:23 47:21 55:8 refers 41:4 reflected 71:11	refresh 55:8 68:1 refused 30:15 regard 6:8 26:14 30:1 58:22 64:21 66:20 70:11 71:2 74:1 76:18 80:21 81:2,12 82:10,15 regarding 4:12 28:7 36:17 37:2 37:24 60:5 regardless 53:25 regards 27:20 reilly 2:19 reimbursable 35:21 reimbursed 53:25 reimbursement 43:23 51:13 61:8 reimbursements 53:19 rel 1:4 relate 11:8 related 5:11,14 8:18 30:3,4,5 32:22 63:7 77:23 relating 62:24 relationship 22:9 68:23 82:11,14 relative 84:14,15 relator 33:10 37:20 39:8 release 3:10 62:18 74:13,18,21,22 75:5,8,11 76:4,7 76:15,19,22,25,25 77:6,8,19 78:24 79:10,11 81:11,12 82:2 relevant 24:7 26:1 27:17 28:9 47:17 relying 58:19 remember 4:16 11:4 14:4 31:11 31:13 36:15 39:22 42:3,14 43:8 47:18 56:7 78:5	reminded 38:7 renaissance 56:16 repeat 15:12 25:9 rephrase 67:22 report 30:8 44:25 46:22 47:22 49:5 reported 1:24 53:9 reporter 2:5 represent 48:19 63:17 80:20 representation 7:8 8:9 10:10 representative 65:9 81:19 request 5:3 24:24 25:11 33:5 58:22 62:22 requested 3:13 6:1 74:16 83:2 requests 57:17 62:12 required 15:24,25 requirements 68:16 requires 61:16 62:5 reread 33:5 research 5:7 8:22 9:2 28:3,5 reside 11:13 resided 11:16 residence 12:8 residing 58:6 respondeat 65:6 response 33:6 39:13 58:14 62:12 63:4 68:2 responses 32:18 57:12,16 58:1 responsible 19:14 responsive 5:3,21 5:25 8:2 restroom 38:4 returned 13:3 revenue 66:19 review 31:14 44:23 45:2 57:22 61:3	63:21 reviewed 33:3 59:6 65:23 reviews 20:19 right 4:16,25 5:14 7:11 8:5,15,15,20 10:24 11:13 13:13 14:4 15:1,4,12 16:9 17:22 21:14 22:14 23:6,14,25 24:13 32:2,7 39:2 39:3 44:23 45:11 45:21,24 46:9 50:23 53:23 55:3 55:16 56:7 60:13 62:18 68:8,13 70:2 73:5 80:18 81:9 rights 26:14 61:11 76:9 risks 53:13 rockies 57:6 role 26:25 37:10,12 roommate 32:22 rosanne 1:24 2:4 84:4,22 rotates 17:10 roughly 12:24 16:6 routinely 69:17 rpd 62:22 rpd's 39:13 rpr 1:24 2:5 84:4 84:22 rule 76:15 rules 2:3 4:21 runs 41:7 ryan 32:6	68:9 saying 40:14 42:14 42:19 62:19 69:10 says 13:6,16 15:20 40:13 45:21,23 79:20 scale 18:13 school 12:11,12,13 14:6,23 56:9 science 12:20 13:21 13:23 53:10 scope 24:19,20 25:7 25:17 seal 84:19 searches 8:24,24 searching 9:1 second 15:17 80:5 section 77:19 see 8:13 9:7 16:22 17:2 18:5,8 19:25 21:22 24:4,11 26:10 29:2,3,4,6 31:1 34:22 39:24 39:25 41:17 45:4 45:9 59:16 61:2,4 63:23 64:3 65:13 67:10 68:5 76:9 seeing 41:16 53:20 54:5 65:14 69:20 seen 4:13,15,16 7:19 34:15 35:7,8 39:17 54:23 55:6 55:12 71:12 selfemployed 67:3 67:5 semester 14:4 seminar 35:2 semon 56:21 send 61:23 69:16 sense 6:5 sent 4:12 9:9 separate 67:9 september 50:12 50:17 51:11 series 58:14 serious 37:4
--	---	---	--	---

<p>service 15:17 20:7 20:12 62:4 77:14 services 1:8,9 2:21 3:10 17:4,17 18:9 19:22 20:11 27:11 53:19 64:12 65:22 67:21 68:21 69:3 74:10 75:9,19 76:13 77:18,24 78:11,25 79:8,9 79:21 set 32:5 57:17 84:19 setting 29:24 69:22 settings 35:9 seven 17:5 22:3,3 shape 11:3 shared 22:18 shares 22:14 sheboygan 11:16 11:21,22 12:2,5 12:12,13 26:22 35:24,25 43:6 shell 71:21 shes 37:5,14 39:8 45:15 46:15 49:23 67:4,6 shopper 36:4 shoppertype 36:5 short 41:24 53:3 shouldnt 23:11,12 23:16 34:18,21 43:1 show 39:23 75:2 showed 67:25 shows 13:5 32:17 48:21 50:23 sign 74:19 78:19,21 signature 57:24 78:14 signed 58:7 62:15 78:15,23 79:3 80:14 similar 40:19 similarly 65:1 simms 56:25</p>	<p>simply 7:17 28:1 sir 11:14 sit 54:3 sitting 48:16 situated 65:1 situations 27:15 sliding 18:13 society 29:10 sold 32:9 sole 37:23,25 79:7,8 solely 65:6 78:24 81:22 somebody 8:6 10:13 27:25 47:9 51:17 62:5 son 35:14 sorry 5:7 51:5 54:6 66:7 76:5 81:24 sort 15:9 19:9 22:9 23:2 32:23 37:6 39:3 43:23 44:6 66:23 sought 79:18 sounds 56:3 81:24 source 37:23,25 68:2 sources 38:1 40:20 south 2:13 speaking 4:22 22:23 52:2,18 specific 21:16 58:15 62:13 70:21 specifically 27:21 37:24 60:25 split 80:11 spreadsheet 48:15 49:13,19 ss 84:1 stacey 41:8 59:24 staff 19:6 20:22 standard 34:25 76:18 standardized 18:13 start 12:10 34:24 starts 41:6 state 1:4 2:6 4:6</p>	<p>15:7 26:23,24 41:3 42:14 60:4 68:15 71:21 76:17 84:1,5 stated 71:4 statement 73:19 states 1:1,3 33:11 42:15 52:11,13 status 21:11 stay 68:15 staying 71:20 stein 28:21 stop 70:20 stopped 13:2 54:4 strategy 36:24 street 1:20 2:7,13 2:16 84:10 strike 18:5 25:20 stuck 14:3 student 17:9 students 17:10 studies 14:1 28:5 stuff 63:8 subject 49:7 submit 9:17 61:11 61:16,17 66:14 submits 66:9 submitted 5:8 9:14 51:2,12,17 60:17 61:1,8 66:5 submitting 18:21 19:14 subspecialty 21:5 successful 39:5 81:14 suggest 25:10 71:6 71:14,25 72:6 suggesting 79:14 suggestion 24:21 suggests 66:4,8 67:18 68:3 suing 30:7 suit 25:16 30:4 34:12 43:13 suite 2:16,20 summary 9:18</p>	<p>sun 35:24 36:1,2 43:6 superior 65:6 supervise 17:9 support 5:5 supposed 31:8 68:18 sure 9:13 11:23 14:12 16:18 17:1 17:3 20:3,5 24:22 37:11 53:8,15 63:25 66:8 72:14 80:3 sworn 4:3 symptom 53:2 systems 69:7</p> <p style="text-align: center;">T</p> <p>t 1:15 2:1 3:6,18 4:2,4 63:15 75:14 84:6 take 13:10 15:9 18:17,18 20:2 23:16 32:18 38:3 75:3 76:24 81:13 taken 2:2 21:18 38:6 84:10 talk 34:5 80:10 talked 11:8 37:16 38:8,9,18 talking 17:19 29:22 52:23 69:20,21 talks 15:17 tam 34:12 tasks 70:21,24 tavern 32:10 team 40:11,11 tecum 4:11 telephonically 10:25 tell 6:2,20 16:16,19 20:22 32:1 34:2 55:2,4,4,5,5 term 34:3 53:3,4 terminate 68:13 terminating 68:18</p>	<p>terms 43:20 67:20 testified 4:3 27:19 82:12,18 testing 17:12,14 thank 14:15 63:12 82:22,24 thanks 31:6 57:15 80:4 thats 5:3 6:7 7:14 7:20 8:13 10:7 11:11 12:3 14:8 26:13 32:7 33:1 34:25 36:1,1 38:14 40:5,15,16 45:23 46:1,1 47:1 52:1 53:16 55:18 57:7,14,24 59:11 61:12,14 63:11 64:6,7 69:2 72:23 75:18 81:7 82:21 therapy 17:7,8,9 20:1 23:4 theres 12:25 15:16 21:15 32:4 39:14 40:22,22 45:4,7 45:24 46:20 47:6 49:10 50:18 53:15 61:15 78:7 theyll 69:16 theyre 7:13 66:11 70:23 theyve 26:12 33:22 33:25,25 thing 4:18 15:15 things 4:14 6:14 7:8,20 29:21 34:20 39:23,25 40:19 65:22 69:8 70:5 77:22 think 10:4 14:3,11 21:24 23:15 24:7 25:16 27:3,8,10 28:11 30:3 31:2 31:19 33:2,16,22 33:23 34:8 38:8 39:10,15 40:6</p>
--	---	---	---	---

41:18 42:11 55:4 55:5 57:7 59:10 60:19 61:19 62:18 62:20 63:1,11 74:15 thinking 28:15 47:14 78:6 thinks 25:2 third 43:25 44:1,2 44:3,5 thought 12:3 23:1 38:16 46:24 53:3 56:24 81:5 three 12:24 13:2 26:20 39:1 42:21 threeday 29:12 till 80:16 time 7:19 12:11 15:13,16 17:7 19:8,25 20:8,8 31:16,17,19,19 32:10 34:16 39:20 42:5 46:6 48:21 49:16 51:5,10 54:4,6,8,18 55:7 55:11 56:6,10 58:7 62:11 74:6 78:14,20,23 79:3 79:6 80:18 81:5 82:2 timeline 80:9 times 26:20 28:25 29:19 title 18:17,18 toby 1:4,15 2:1 4:2 4:8 75:14 77:5 84:6 today 5:22,24 8:2 30:16 54:3 82:12 82:19 today's 33:3 todd 57:3,4,8 told 18:6 35:14 top 36:8 50:9 61:2 topic 34:6 traditionally 72:4	trainees 17:19 training 16:8 21:1 21:15,16,17 59:20 71:8,10 transcript 3:13 4:1 83:1 treat 61:21 62:1 treated 6:9,10,11 7:9 44:15 54:13 54:14,19 55:12 treater 10:5 25:23 treating 10:10 30:20 73:13,17 74:9 77:5 treatment 6:18 7:11,12 20:17 23:3 27:20 28:2,4 29:14 49:1 64:9 71:2,21 74:14 76:19 77:6,8 trial 30:18 tried 21:11 47:25 true 7:14 24:15 35:10 52:9 58:2 61:12,13 try 34:23 41:15 51:6 trying 10:7 28:11 39:10 74:15 turn 8:5 34:11 turned 49:22 twice 27:4 two 14:22 16:6 17:9 26:20 29:12,20 59:7 tyler 1:4 4:8 type 20:7 29:24 30:9 34:12 35:7 37:6 72:4 types 27:15 typically 8:23 13:17	15:19 17:20 24:25 29:18 31:23 41:10 45:6,8 48:24 57:19 60:2 71:13 unauthorized 76:16 undergraduate 12:20 understand 8:17 16:18 43:20 68:11 understanding 22:24 65:2,11,20 understood 13:8 united 1:1,3 33:11 52:11,13 university 12:13,15 14:24 15:3 17:22 17:24 unquote 23:3 unreasonable 52:3 52:4 use 23:1 38:3 52:4 52:12,16 69:6,6 70:4 77:8,22 uses 52:7 78:4 usually 77:23 utilized 52:8 utilizing 81:21 uwm 12:24 13:3,24 14:1 uwmilwaukee 13:12	vitae 12:21 13:5,14 15:16 vs 1:6 <hr/> W <hr/> w2 72:7 walk 5:4 walked 5:14 walmart 45:24 want 8:11 27:25 32:2 33:12 36:9 40:11 41:13 44:25 62:16 67:21,25 68:1,4 69:16 72:12 wanted 30:7,8 34:22 67:23 76:1 80:8 ward 59:25 60:1 warranted 25:2,13 wasnt 8:21 16:8 42:10 47:17 79:8 80:11 watch 42:11 water 1:20 2:6,16 84:10 watson 1:4,15 2:1 4:2,8,8,9 75:14 76:14 77:6 84:6 watsons 32:4 way 6:15 11:2 16:1 37:6 50:14 52:11 62:25 63:7 68:11 68:16 71:16 74:8 ways 53:6 weather 42:5 webinar 34:11 35:3 website 33:21 34:14 42:25 wed 19:24 20:1,1,5 week 16:25 weekly 36:2,3 wellversed 56:14 went 12:6 13:4 14:5 32:14 40:1 49:1 59:6 81:7	weve 6:7,9,11 9:25 28:14 29:22 63:9 73:12 whats 25:17 29:9 37:10 48:22 51:20 58:12,13 71:4,11 71:17 75:2 whatsoever 76:14 whereof 84:18 whos 10:17 36:20 widely 52:8 wife 37:4 wing 14:18 wisconsin 1:2,4,20 2:6,7,13,17,20 11:15 30:2 45:1 47:22 56:5 84:1,5 84:11 wisconsinmilwau... 12:14,16 witness 2:1 9:21 14:15,19 24:10 26:3,16,25 27:19 27:20 28:11,14 29:23 31:6,9 36:5 38:7 42:1 47:1 56:10,14 60:2 63:5,14 64:3 72:22 80:8 82:24 84:18 woman 40:12 41:18 41:22 wondering 54:23 wont 4:25 42:16 55:13 62:7 word 52:4 words 66:10 67:20 81:14 work 23:18 24:11 25:23,23 30:9 48:15 67:13 77:21 working 8:18 34:1 works 52:11 wouldnt 10:16 26:15 51:18 52:4 write 45:11
---	---	---	---	---

writing 10:25 34:10 40:1,3,4,16,18 84:7	40:14 44:15 51:23 54:23 55:2,3,8 58:16,18 59:20 63:1 64:6 65:19 66:1,3,8,13 67:18 68:2,4,17,18,22 69:21 70:4,7,20 70:25 71:5,6,14 71:23,24 73:6,13 77:10 81:8 82:9	2002 14:25 19:12 2003 46:7 48:2 50:12,17 51:11 2004 39:16,16 48:23 49:3 54:6 54:17,22,24 2005 39:15 2006 50:18 51:12 2007 50:12 2008 54:17,22,24 2009 54:7 2010 72:15,22 2012 1:16 2:8 84:11 84:20 2014 84:23 22nd 72:15,16,22 73:23 78:17 80:10 23 11:20 26 78:15 84:23	7 735 1:20 2:6,16 84:10 75 3:10	
written 5:12 41:2,3 41:6,7 48:12 49:10 50:19 51:2 51:9 61:4 62:24 63:6 74:3,5	youve 21:18 28:23 29:17 38:18 44:13 44:15 58:11,18 60:8 62:23 68:21 71:12 82:8,11,18	2005 39:15 2006 50:18 51:12 2007 50:12 2008 54:17,22,24 2009 54:7 2010 72:15,22 2012 1:16 2:8 84:11 84:20 2014 84:23 22nd 72:15,16,22 73:23 78:17 80:10 23 11:20 26 78:15 84:23	8 8 62:13 805 2:13 80s 56:13	
wrong 18:7 28:19 34:19 63:2 76:12		2005 39:15 2006 50:18 51:12 2007 50:12 2008 54:17,22,24 2009 54:7 2010 72:15,22 2012 1:16 2:8 84:11 84:20 2014 84:23 22nd 72:15,16,22 73:23 78:17 80:10 23 11:20 26 78:15 84:23	9 9th 50:25	
wrote 44:5 59:9 60:16 69:9,14		2005 39:15 2006 50:18 51:12 2007 50:12 2008 54:17,22,24 2009 54:7 2010 72:15,22 2012 1:16 2:8 84:11 84:20 2014 84:23 22nd 72:15,16,22 73:23 78:17 80:10 23 11:20 26 78:15 84:23		
X	Z			
x 3:1,6 4:4 63:15 71:19				
Y	0			
yeah 5:25 13:17,19 13:22 20:17 23:20 24:18 25:10 26:7 26:9,15,15 28:12 28:16 30:13,18 32:15 33:8 38:10 39:15 42:1 43:2 44:1,22 46:11 48:4,7 49:18 50:14 53:15 55:15 56:15 61:12 62:20 67:23 68:6 69:25 77:14,16 79:19	03 50:24 07 50:25	3 3 2:8 82:25 32 12:9 33 12:9 45:24 330 2:20 39 1:17 2:8 84:12		
year 14:8 19:10 29:2,3	1 1 1:17 2:8 3:8 45:4 64:1,6 84:12 10 40:14 62:22 63:3 11 45:5 57:24 1170 2:20 11cv236 1:6 11th 84:20 1400 2:16 15 39:25 17 40:14 17th 72:15,16 73:23 18 43:12 19 12:7 18:17,18 54:6 1989 12:25 1992 12:25 32:18 1997 13:24	4 4 3:3 45 40:19 46 41:7 47 2:8 82:25 477 11:14 49 41:7 4th 1:16 2:7 84:11		
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Brad Foley

From: Jim Gottstein <jim.gottstein@psychrights.org>
Sent: Tuesday, November 12, 2013 4:57 PM
To: Mark Larson
Cc: Brad Foley; 'Rebecca Gietman'; tobywatson@gmail.com; jim.gottstein@psychrights.org
Subject: RE: Final Settlement Report

Hi Mark,

[REDACTED]

Having said that, as I told Brad right after the Trial Scheduling Order, we understand that Dr. King did not actually know she was causing false claims when writing prescriptions to N.B.

[REDACTED]

James B. (Jim) Gottstein, Esq.
President/CEO



Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, Alaska 99501 USA
Phone: (907) 274-7686 Fax: (907) 274-9493
jim.gottstein@psychrights.org
<http://psychrights.org/>



The Law Project for Psychiatric Rights is a public interest law firm devoted to the defense of people facing the horrors of forced psychiatric drugging and electroshock. We are further dedicated to exposing the truth about

Deposition of Christine Maxwell Meyer, 11/11/2013

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

vs. Case No. 11-CV-236

JENNIFER KING VASSEL, CAPS
CHILD & ADOLESCENT PSYCHOLOGICAL
SERVICES, and ENCOMPASS EFFECTIVE
MENTAL HEALTH SERVICES, INC.,
Defendants.

Deposition of CHRISTINE MAXWELL MEYER
Monday, November 11th, 2013

2:57 p.m.

at

GUTGLASS, ERICKSON, BONVILLE & LARSON, S.C.
735 North Water Street
Milwaukee, Wisconsin

Reported by Rosanne E. Pezze, RPR/CRR

Page 3

INDEX

1	EXAMINATION	PAGE
2		
3	By Mr. Larson.	4, 43
4	By Ms. Gietman.	37
5		
6		
7		
8	EXHIBITS	
9	EXHIBIT NO.	PAGE NUMBER
10	No. 1 Affidavit of Christine Maxwell Meyer.	11
11	No. 2 Affidavit of Christine Maxwell Meyer regarding Consent.	30
12	No. 3 Release form.	31
13	No. 4 Authorization documents.	32
14	No. 5 Drug info sheets.	32
15		
16		
17		
18	(Original exhibits attached to Original transcript. Copies of exhibits are attached.)	
19		
20		
21		
22		
23	REQUESTS	
24		
25	(None)	

Page 2

Deposition of CHRISTINE MAXWELL MEYER, a
witness in the above-entitled action, taken at the
instance of the Defendants, pursuant to the Federal
Rules of Civil Procedure, pursuant to Notice, before
Rosanne E. Pezze, RPR/CRR, Certified Realtime
Reporter and Notary Public, State of Wisconsin, at
735 North Water Street, Milwaukee, Wisconsin, on the
11th day of November, 2013, commencing at 2:57 p.m.
and concluding at 4:05 p.m.

APPEARANCES:

OFFICE OF REBECCA L. GIETMAN, by
Ms. Rebecca L. Gietman
805 South Madison Street
Chilton, Wisconsin 53014-1535

-and-

PSYCH RIGHTS, by
Mr. Jim Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501
Appeared on behalf of the Plaintiffs.

GUTGLASS, ERICKSON, BONVILLE & LARSON, S.C.,
by
Mr. Mark E. Larson
735 North Water Street, Suite 1400
Milwaukee, Wisconsin 53202
Appeared on behalf of the Defendant
Jennifer King.

ALSO PRESENT: Dr. Toby Tyler Watson

Page 4

TRANSCRIPT OF PROCEEDINGS

CHRISTINE MAXWELL MEYER, having been first
duly sworn on oath, was examined and testified as
follows:

EXAMINATION

BY MR. LARSON:

- Q Would you state your full name for the record,
please.
A Christine Maxwell Meyer.
Q Have you ever gone by any other names other than
that?
A It was just Maxwell.
Q Okay. And Meyer, is that your married name?
A Yeah.
Q Are you currently married?
A Yes.
Q And who are you married to?
A Peter Meyer.
Q And how long have you been married to Peter Meyer?
A It will be four years next year, so three years.
Q Where do you reside?
A W6929 South County Road A, Adell.
Q And how long have you lived there?
A Almost eight years.
Q Who else resides with you in that home other than you

1 (Pages 1 to 4)

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Page 5

1 and Peter Meyer?
2 A My son Nicholas.
3 Q Anyone else?
4 A No.
5 Q Anyone between 2004 and the present reside at that
6 home other than Mr. Meyer, your son?
7 A My daughter.
8 Q And what time frame did she reside there?
9 A She lived there till she was almost 18, so she'll be
10 21.
11 Q And what's her name?
12 A Stephanie.
13 Q And last name?
14 A Porath.
15 Q Can you spell that?
16 A P-O-R-A-T-H.
17 Q And, I'm sorry, what time frame did she live there?
18 A She lived there until she was almost 18, and then she
19 went to move in with her dad.
20 Q Which was when?
21 A About three, four years -- about three-and-a-half,
22 four years.
23 Q Okay. What's the last level of formal education
24 you've completed?
25 A School? I went to tenth grade and then I went for my

Page 6

1 GED.
2 Q When did you obtain your GED?
3 A Right after I --
4 Q I'm sorry?
5 A Right after I dropped out. Right after tenth grade I
6 went for my GED.
7 Q Can you give me an idea what year?
8 A Let's see once. I was 18. About -- almost 18 years
9 ago. Would that be right?
10 Q So if this is 2013 --
11 A I'm going to be 46 this month. So...
12 Q 1995?
13 A Yeah.
14 Q Okay. What's your date of birth?
15 A 11/26/67.
16 Q And where did you obtain the GED from?
17 A MATC in West Bend.
18 Q And what high school did you attend?
19 A Ozaukee High School.
20 Q Any other formal education after attending MATC for
21 your GED?
22 A No.
23 Q And maybe I'm wrong, but if you got your GED in
24 '95 --
25 MR. GOTTSTEIN: I think she said '85,

Page 7

1 didn't she?
2 DR. WATSON: '85.
3 THE WITNESS: Maybe it was '85.
4 MR. LARSON: No. The math she just gave me
5 a minute ago was 18 years ago.
6 MR. GOTTSTEIN: Okay, okay.
7 MR. LARSON: That would be '95, and I'm
8 just trying to get a handle on it here. If you were
9 born in '67 --
10 THE WITNESS: I was born in '67. I dropped
11 out when I was almost 18.
12 BY MR. LARSON:
13 Q So age 18 would have put you at '85.
14 A Okay.
15 Q Is there a ten-year gap between dropping out of high
16 school and getting your GED?
17 A No, no.
18 Q How long of a gap?
19 A I got my GED right after I dropped out when I was 18.
20 So, sorry, I gave you the wrong --
21 Q So it was 28 years ago?
22 A Yeah. I'm old.
23 MS. GIETMAN: We all are.
24 BY MR. LARSON:
25 Q Because now I was sidetracked with the discrepancy

Page 8

1 there; any formal education between the time you
2 obtained your GED and the present?
3 A No.
4 Q Are you currently working?
5 A Yes.
6 Q And where are you working?
7 A I work at Pizza Ranch.
8 Q All right. Now, I've see the sign for it on 43. Is
9 that up in -- it's not in Belgium?
10 A Oostburg.
11 Q Can you just kind of outline for me, were you working
12 in the time frame 2004 to 2010?
13 A Yeah, I used to clean.
14 Q And where?
15 A I cleaned private homes.
16 Q And that was your own business?
17 A Um-hmm.
18 Q I'm sorry?
19 A Yes.
20 Q Okay. I'm assuming you have no medical experience of
21 any kind?
22 A No. I worked in a nursing home for three years, but
23 I mean -- no.
24 Q And that was as a -- was that as a certified nurse
25 assistant?

2 (Pages 5 to 8)

Page 9

1 A No.
2 Q It was just working in a nursing home?
3 A I was an activity assistant, so I just worked with
4 the residents one on one, so it was no medical.
5 Q You're not named as a party in this lawsuit, but have
6 you ever been a party to any kind of a legal action?
7 A No.
8 Q Have you ever been a party to a criminal matter?
9 A No.
10 Q Have you ever been party to an administrative matter,
11 a work comp claim, anything like that?
12 A No.
13 Q Divorce?
14 A No.
15 Q Paternity action?
16 A Paternity by my daughter, yeah.
17 Q How about for your son?
18 A I'm not sure if we went in for paternity. I don't
19 think he fought anything on it. We never had tests
20 done.
21 Q And you've never been convicted of a crime?
22 A No.
23 Q You have to answer verbally for the court reporter.
24 A Yes.
25 Q You have been?

Page 10

1 A Um-hmm.
2 Q Can you tell me how many times?
3 A Once.
4 Q Okay. And where was that?
5 A It was a client that I had cleaned for.
6 Q The claim was theft?
7 A Petty theft, yeah.
8 Q And where were you convicted?
9 A Like what do you mean?
10 Q Which county?
11 A Sheboygan County.
12 Q And it was just the one conviction?
13 A Um-hmm.
14 Q Again, you have to answer verbally.
15 A Yes. Sorry.
16 Q Thank you. You have been involved in this
17 litigation, however, even though you're not a party;
18 is that correct?
19 A Um-hmm, yes.
20 Q Is anyone in this room your attorney?
21 A No.
22 Q So your involvement is in cooperating with Dr. Watson
23 and Attorney Gietman?
24 A Yes.
25 Q All right. Have you ever met Attorney Gottstein

Page 11

1 before?
2 A No.
3 Q Did you know of his involvement prior to today?
4 A No. Just -- no.
5 Q Now, my understanding from Dr. Watson's deposition is
6 that there is a formal agreement between you, himself
7 and Attorney Gietman on any proceeds that may be
8 recovered from this case?
9 A Um-hmm, yes.
10 Q Okay. And what are the terms of that agreement?
11 A Was just I would get a third. Each of us would get a
12 third after all the proceeds were taken care of.
13 Q And you would get a third?
14 A Yes.
15 Q We marked as Exhibit 1, it's in front of you, a copy
16 of an affidavit that you prepared. Have you had any
17 other involvement in this litigation other than in
18 reviewing and signing that affidavit that was
19 prepared for you?
20 A No.
21 Q And have you taken any other actions where you've
22 done anything as far as looking at any paperwork,
23 contacting anybody, getting records for anybody,
24 anything like that?
25 A No, just the releases that I signed.

Page 12

1 Q Okay. Actually, let me skip ahead here a little bit
2 and make sure I understand correctly. And you did
3 bring some stuff with you today?
4 A Yes.
5 Q All right. Maybe we should take a look at that first
6 if you don't mind. You brought that with you?
7 A Yes.
8 Q Can I just see it?
9 A (Witness complies.) That was his old Forward card.
10 Q Just so we have a format, and I don't mean to be --
11 it's not a matter of being impolite; it's a matter of
12 creating a record so that when we read this later on
13 that we can kind of understand exactly what it was
14 that we were looking at.
15 You've got what looks, appears to be a
16 credit card, but it's a Forward Wisconsin card; is
17 that correct?
18 A Yes.
19 Q And this was for your son?
20 A Yes.
21 Q How old is he currently?
22 A He's 13.
23 Q And did he sign the back of this as well as you, or
24 how did that work?
25 A No. I did when -- it was a long time ago. They've

3 (Pages 9 to 12)

Page 13

1 given different ones out now. So...
 2 Q Okay. And then you've got a -- says it's a two-year
 3 planner with --
 4 A Just some X's.
 5 Q It's got information contained inside of it?
 6 A Yes. Just dates I marked that are X'd when I had
 7 doctor appointments with Dr. King.
 8 Q Have you ever compared your two-year planner with any
 9 records?
 10 A No.
 11 Q I mean like, for example, pharmacy records,
 12 Dr. King's records either through her own office or
 13 through Encompass?
 14 A No.
 15 Q And then I notice this is for 2006, 2007. Do you
 16 have a planner for other years?
 17 A That was all I could find at the time.
 18 Q That you provided to Attorney Gietman?
 19 A Yes.
 20 Q Contained in there --
 21 A I don't think that was important to anything.
 22 Q Okay. It appears to be a partial physical therapy
 23 sheet from Aurora Sheboygan. And you're just saying
 24 it just happened to be in the planner?
 25 A Yeah.

Page 14

1 Q Okay. All right. And then there are four medication
 2 bottles in a plastic bag. It says 2006 on the
 3 outside?
 4 A Um-hmm.
 5 Q Again, you have to answer.
 6 A Yes. Sorry.
 7 Q Who put 2006 on the outside of the bag?
 8 A I did.
 9 Q And is there any significance to you doing that?
 10 A No. They were just together and I just put them --
 11 and dated the ones that I could find and just kind of
 12 put them in the years they were and who prescribed
 13 them.
 14 Q Did you do that for physicians other than Dr. King,
 15 prescriptions that were written by physicians other
 16 than Dr. King?
 17 A No, not at this point.
 18 Q No. But did you ever for Attorney Gietman?
 19 A No.
 20 Q It would appear at least two of the bottles contain
 21 medication in them?
 22 A Yes.
 23 Q All right. So all the medications weren't used?
 24 A Yes. If he changed over to something else, that's
 25 just what I found in the time frames.

Page 15

1 Q And it looks like some of the prescriptions were
 2 written or were filled, I should say, at Wal-Mart in
 3 Plymouth and some of them were at Wal-Mart -- well,
 4 these are all from Wal-Mart in Plymouth; is that
 5 right?
 6 A Yes.
 7 Q When did you pull this together, these prescription
 8 bottles for Attorney Gietman?
 9 A Approximately, I don't know, it was like over a year
 10 ago.
 11 Q Was it after the lawsuit was started?
 12 A Yeah.
 13 Q Was it after you had -- or was it prior to you
 14 signing that authorization?
 15 A No, I think I did it right before.
 16 Q Okay. And then --
 17 MS. GIETMAN: Just to be clear, by
 18 authorization, you mean this affidavit?
 19 MR. LARSON: I'm sorry. I meant the
 20 affidavit. I'm sorry.
 21 Q And then there's a number of what I'm going to assume
 22 is coffee-stained drug information sheets that would
 23 have come from a pharmacy?
 24 A Yes.
 25 MR. LARSON: And let me just ask counsel.

Page 16

1 Are these the ones that were attached as color copies
 2 to the recent disclosures?
 3 MS. GIETMAN: Yes.
 4 MR. LARSON: And all of them were
 5 disclosed?
 6 MS. GIETMAN: I believe so, yeah.
 7 MR. LARSON: It looks -- I'm going to quick
 8 count because I don't want to go through them all.
 9 (Brief pause.)
 10 BY MR. LARSON:
 11 Q There appears to be 13 different drug information
 12 sheets from pharmacies?
 13 A Yes.
 14 Q And then you also brought with you, it looks like,
 15 some information here. Let me just see if I can go
 16 through here and figure out what they all are.
 17 Authorization to release prior health information.
 18 It's got a Wal-Mart caption at the top and it looks
 19 like it was signed by you on July 11 of 2012. Is
 20 that right?
 21 A Yes.
 22 Q And then there's a release for confidential
 23 information. It's an authorization that appears to
 24 be written -- it's a two-page authorization from
 25 Attorney Gietman's office to Wal-Mart pharmacy in

4 (Pages 13 to 16)

Page 17

1 Saukville that you apparently signed on May 6th of
2 2012?
3 A Yes.
4 Q And then there was one -- there is another one that
5 appears you signed on the same day and it's addressed
6 to Walgreens pharmacy in Saukville. Is that right?
7 A Yes.
8 Q Okay. So you filled some prescriptions at Wal-Mart
9 but also some others at Walgreens, or did you not
10 know if you had filled any at Walgreens?
11 A I'm not sure. I mean most of the -- I'm not sure.
12 Maybe they were just checking. I'm not sure.
13 Q And then there is another one from the same date,
14 May 6, 2012, from Attorney Gietman's office that you
15 signed on that May 6th date, 2012 addressed to
16 Wal-Mart pharmacy in Plymouth?
17 A Yes.
18 Q Then it looks like there's some other version that's
19 faxed. Looks like basically the same one, but it's
20 got fax notations at the top of it; is that right?
21 A Yes.
22 Q And then another authorization you signed on May 6,
23 2012 for Attorney Gietman's office addressed to
24 Wisconsin Forward Health?
25 A Yes.

Page 18

1 Q And then it looks like a copy of the same thing with
2 the actual fax date line at the top?
3 A Yes.
4 Q And then it looks like a release that you signed on
5 May 30th of 2012 addressed to Wisconsin Medicaid?
6 A Yes.
7 Q And there's an authorization here from Attorney
8 Gietman's office that you signed on the same date,
9 May 6, 2012, addressed to the Wal-Mart in West Bend?
10 A Yes.
11 Q All right. Is that a Wal-Mart that you had
12 frequented for prescriptions for your son?
13 A Yeah. We would -- I used all three of them at one
14 point.
15 Q And then here's apparently the original affidavit
16 that you signed?
17 A Yes.
18 Q There's a fax cover sheet -- it's just a fax cover
19 sheet of Attorney Gietman sending the authorization
20 that you signed to Wisconsin Forward Health, correct?
21 A Yes.
22 Q All right. Then there's a document from Walgreens
23 pharmacy dated May 10th of 2012 addressed to you that
24 appears to indicate -- for some reason it says
25 Walgreens is unable to determine medications to be

Page 19

1 redacted based on condition or specific extremity,
2 and they're asking you to modify your authorization.
3 Do you remember doing anything with this?
4 A I don't recall exactly.
5 Q And then there's an authorization but that one
6 appears to be unsigned. That's from Walgreens?
7 A Yes.
8 Q Okay. Appears to be another copy of the
9 authorization you signed on May 6th addressed to the
10 Wal-Mart pharmacy in Saukville. Another one that you
11 signed for the Wal-Mart in Plymouth?
12 A Yes.
13 Q And another copy of the one that you signed to
14 Wisconsin Forward Health?
15 A Yes.
16 Q This looks like the first page of the one going to
17 the Saukville Walgreens pharmacy but there's not the
18 second page?
19 A Yes.
20 Q Okay. Another copy of your affidavit --
21 A Yes.
22 Q -- correct? And then there's a different affidavit
23 that contains more paragraphs than the one that we
24 marked as Exhibit No. 1, correct?
25 A Yes.

Page 20

1 Q And this one is dated September 17th of 2013,
2 correct?
3 A Yes.
4 Q Okay. Do you know under what circumstances you
5 signed this affidavit?
6 A Can I see it again, please?
7 Q Yeah.
8 A I think there was -- there was one that he had signed
9 for a release.
10 Q Who prepared this affidavit?
11 A Attorney Gietman.
12 MR. LARSON: Off the record for a second.
13 (Discussion off the record.)
14 BY MR. LARSON:
15 Q There's an envelope. Apparently you brought this
16 material in an envelope. I'm assuming the envelope
17 has nothing to do with this matter?
18 A No. It was just directions to get here.
19 Q Okay. And I see something here. It says kitty,
20 Hilton, recovery, Kilbourn --
21 A It's just addresses, numbers and streets to remember
22 how to get to the office.
23 Q Okay. On the back side it just says, look at books,
24 notes, calendar. So appointment books, notes,
25 calendars; this is a reminder to you?

5 (Pages 17 to 20)

Page 21

1 A Yeah, that I needed to look for anything.
2 Q It says Toby Watson case and it's got 2:00 p.m. So
3 I'm assuming that refers to today?
4 A Yes.
5 Q Okay. Have you seen any actual pharmacy records?
6 Have you actually reviewed any pharmacy records?
7 A No.
8 Q Not from anyone? Not from Wal-Mart, not from
9 Walgreens?
10 A No.
11 Q All right. Have you looked at any claims history
12 information from Wisconsin Forward Health, Badger
13 Care or any other names?
14 A No.
15 Q MHS?
16 A No.
17 Q You haven't reviewed and tried to compare whether
18 anything in the -- well, let me ask you this. Have
19 you seen the complaint that was filed in this case by
20 Attorney Gietman on behalf of Dr. Watson?
21 A No.
22 Q It's a formal document that sets forth what the
23 allegations are in the case. You don't recall seeing
24 anything like that?
25 A I don't recall that.

Page 22

1 Q So you wouldn't have gone through and looked to see
2 if what was being alleged as far as prescription
3 dates and for what prescription to verify the
4 accuracy of any of that?
5 A No.
6 Q Have you seen any records from Encompass or CAPS at
7 all?
8 A No.
9 Q So you never obtained a copy of any of the records
10 that Dr. King was involved with for your son --
11 A No.
12 Q -- at any point in time?
13 A No.
14 Q What I said is correct?
15 A Yes.
16 Q Now, the affidavit, and maybe I'll wait until we get
17 that in here, but you saw apparently a newspaper ad
18 in a weekly shopper in the Sheboygan area?
19 A Yes, it was in the Sun, the paper, the Sun.
20 Q S-U-N. And that's how you became acquainted with
21 Dr. Watson?
22 A Yes.
23 Q All right. You had never met him before?
24 A No.
25 Q And I am correct in assuming that no one had ever

Page 23

1 said that there was any kind of issue of concern
2 about the reimbursement for the prescriptions written
3 by Dr. King until you saw and spoke with Dr. Watson?
4 A Yes.
5 Q So let me go to the affidavit that we marked as
6 Exhibit No. 1. Do you know as you sit here today
7 whether all the prescriptions were filled at one of
8 two Wal-Mart pharmacies --
9 A It was --
10 Q -- that were written by Dr. King?
11 A Yeah, usually between Saukville, West Bend and
12 Plymouth Wal-Marts.
13 Q And why is it that you went to any one of those
14 three?
15 A I think I kind of coordinated it -- sometimes if I
16 was in that certain area for that reason to have them
17 filled if my stuff was around that area, too.
18 Q So there might have been a prescription written and
19 then you'd hang onto it until you were near one of
20 the Wal-Mart pharmacies to get it filled?
21 A Yes.
22 Q Did you ever contact anyone yourself at Wisconsin
23 Forward Health, MHS or Badger Care regarding your
24 son's prescriptions?
25 A No.

Page 24

1 Q And there's an 800 number on the back of the card
2 that you produced today?
3 A Um-hmm.
4 Q Did you ever use that 800 number to contact anybody?
5 A Might have been looking up different locations or I
6 needed information on anything, yeah. I mean I never
7 called it that often.
8 Q But it was locations of what?
9 A I mean if he -- for different -- if they give you --
10 call them, ask them for different listings of doctors
11 or whatever.
12 Q How was it that you came to see Dr. King for your
13 son?
14 A I don't really recall exactly.
15 Q Do you remember if it was on a referral from the
16 Random Lake School District?
17 A No. It might have been just the name of doctors that
18 covered -- or that were under the Forward card.
19 Q Do you remember if the Random Lake School District,
20 though, had recommended that your son be seen by a
21 child psychiatrist?
22 MS. GIETMAN: I think you're further than
23 the Court's going to say is relevant.
24 MR. LARSON: Well, it's background
25 information of how we got to where we did. I

6 (Pages 21 to 24)

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Page 25

1 don't --

2 MS. GIETMAN: Well, she said she doesn't
3 recall how she came to have Dr. King as her son's
4 doctor. I think you've asked and answered it.

5 MR. LARSON: Okay. So you're telling her
6 not to answer that question?

7 MS. GIETMAN: I'm telling you I think
8 you've -- the parameters the Court has said are
9 relevant, I think you're going beyond that.

10 MR. LARSON: Well, it does relate directly
11 to how she got to Dr. King, and that's why I'm asking
12 the question whether she remembers that there was a
13 school district referral.

14 MS. GIETMAN: She already said she didn't
15 remember.

16 MR. LARSON: Well, can I get an answer to
17 that specific question about a referral to a child
18 psychiatrist?

19 MS. GIETMAN: You asked her how she came --
20 THE WITNESS: I don't --

21 MR. LARSON: I can attempt to refresh
22 someone's recollection. I don't think that runs
23 afoul of the Court's pretrial order. I mean if you
24 think it does, tell her not to answer. But I don't
25 think I'm asking about the care by someone other than

Page 27

1 A Yes.

2 Q So you were going there with the intent of having the
3 prescriptions filled and paid for by whatever program
4 it was, correct?

5 A Yes.

6 Q The pharmacy would obviously be aware of who the
7 payor was, correct?

8 A Yes.

9 Q They processed the prescriptions, correct?

10 A Yes.

11 Q Did you provide any additional information other than
12 the card and the prescription to them?

13 A No.

14 Q Do you know if you had to fill out any information
15 specific about your son?

16 A I don't recall, but I don't think so.

17 Q Do you know if the pharmacy, by accessing this card
18 number on here, would have had information about your
19 son?

20 A I don't think so.

21 Q All right. You don't know whether they would know,
22 for example, the age of your son when they filled the
23 prescriptions?

24 A I'm sure the pharmacy had record of that or --

25 Q Okay. And I'm assuming, as you sit here today, when

Page 26

1 Dr. King at this point in time.

2 MS. GIETMAN: No. You haven't asked that
3 yet, but go ahead. I believe she said she doesn't
4 recall how she came, but --

5 BY MR. LARSON:

6 Q I understand. But my question specifically is: Do
7 you recall whether there was a referral or a
8 suggestion from somebody at the Random Lake School
9 District that your son be seen by a child
10 psychiatrist?

11 A I don't recall that. No, I don't think so.

12 Q All right. When you would take any of the
13 prescriptions written by Dr. King and you went to
14 Wal-Mart, was Wal-Mart -- did you use a card similar
15 to the one that you've produced here today with
16 Wal-Mart? Did you have to show it to them?

17 A Yes.

18 Q So you showed them this card?

19 A Yeah. They used to have their numbers on there and
20 then they handed out new ones.

21 Q But you would give them a card that would indicate
22 that you were submitting this to be paid under
23 whatever program it was that was on the card?

24 A Yes.

25 Q And you would give them the prescription?

Page 28

1 you would submit those prescriptions through
2 Wisconsin Forward Health, we'll use that, for
3 example, do you know whether or not it was paid with
4 federal monies or state monies?

5 A I don't know that. All I know is I never had a
6 co-pay.

7 Q Now, was your son in the Badger Care Plus program as
8 well? Did you ever have a card that said Badger Care
9 Plus for your son?

10 A Just recently. I mean a few years ago, but that
11 was --

12 Q Do you remember -- do you remember your son being
13 covered through MHS, an entity called MHS?

14 A Managed Health Services?

15 Q Yes.

16 A Yeah, it was just a thing of their card from the
17 state.

18 Q It was an HMO?

19 A Yeah.

20 Q And you don't know how they processed the
21 prescription claims?

22 A No.

23 Q And you don't know if they spent any federal monies
24 in reimbursing the pharmacy for your son's
25 prescriptions versus federal (sic) monies?

7 (Pages 25 to 28)

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Page 29

1 A I don't know. No.
2 MS. GIETMAN: You said federal monies
3 versus federal money. Is that what you meant?
4 BY MR. LARSON:
5 Q I'm sorry. Federal money versus state money?
6 A No.
7 Q You didn't know where the monies were coming from?
8 A No.
9 Q And I think you indicated that you reviewed obviously
10 the affidavit that we've marked as Exhibit No. 1,
11 correct?
12 A Yes.
13 Q All right. Have you reviewed -- and you obviously
14 also reviewed the releases that we went through here
15 a little while ago, correct?
16 A Yes.
17 Q You reviewed the authorization -- I'm sorry -- the
18 affidavit that you filled out, the other one that
19 we're waiting to have come back, correct?
20 A Yes.
21 Q Have you reviewed any other documents related to this
22 litigation?
23 A No.
24 Q For example, you haven't reviewed any of the --
25 you've already told me you haven't gone through any

Page 30

1 of the pharmacy records or anything like that. You
2 haven't looked at any sort of charts to determine the
3 accuracy of the information?
4 A No.
5 Q For example, you haven't reviewed any documents to
6 determine whether or not -- you haven't reviewed any
7 documents to determine whether the prescription
8 charges were, in fact, for prescriptions written by
9 Dr. King as opposed to someone else?
10 A No.
11 Q You haven't done that, correct?
12 A No.
13 MR. LARSON: I'll just give you the
14 originals back. Why don't we take one second here.
15 (Deposition Exhibit Nos. 2 through 5 marked
16 for identification.)
17 BY MR. LARSON:
18 Q All right. I'm going to show you what we marked as
19 Exhibit No. 2, and this is that second affidavit that
20 we were talking about that you signed, correct?
21 A Um-hmm.
22 Q You have to say --
23 A Yes.
24 Q And it's dated in actually September of this year,
25 correct?

Page 31

1 A Yes.
2 Q All right. And basically it relates to an affidavit
3 about your communications and contacts with
4 Dr. Watson and Attorney Gietman that led up to you
5 signing the authorizations for the release of medical
6 records on behalf of your son?
7 A Yes.
8 Q Exhibit No. 3 is a four-page document signed by you
9 and Dr. Watson, correct?
10 A Yes.
11 Q And it's on -- it looks like letterhead from Dr.
12 Watson's office, correct?
13 A That was a release form, yes.
14 Q Well, actually, this is the document then, if I get
15 to the end pages, it talks about paying you one-third
16 of any sort of settlement proceeds collected as a
17 result of this lawsuit?
18 A Yes.
19 Q All right. Did you have an attorney review this
20 document at all, Exhibit No. 3, before you signed it?
21 A She went over it with me.
22 Q Attorney Gietman?
23 A Yes.
24 Q Any attorney of your own choosing?
25 A No.

Page 32

1 Q Exhibit No. 4 is a collection of all the
2 authorization documents that we went through a little
3 while ago?
4 A Yes.
5 Q And Exhibit 5 is a copy of the, I think I said
6 13-page, whatever it was, of all the drug information
7 documents that you received from the pharmacy?
8 A Yes.
9 Q All right. And these were all that you have; is that
10 fair?
11 A That's what I have found, yeah.
12 Q Have you ever had the experience, and I'm not talking
13 about with regard to psychiatric medications for your
14 son, but experience, I'm just talking globally, of
15 submitting a prescription for any reason and the
16 pharmacy saying that the medication is not covered
17 under whatever plan it is you're submitting under?
18 Have you ever had that experience?
19 A Yeah. There was a couple of prescriptions when they
20 tried putting Nicholas on some different medicines
21 for his ADHD, and the insurance might not have
22 covered it and you had to prove that he tried all
23 these other alternatives.
24 Q So then was there -- did you ever pay out of pocket
25 ever for any prescription meds, regardless of who

8 (Pages 29 to 32)

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Page 33

1 wrote them? But have you ever had the experience
2 where you chose to pay out of pocket for those
3 prescriptions?
4 A No.
5 Q All right. When they said it wasn't covered, was it
6 the experience where in order for it to be covered
7 some additional information had to be requested and
8 processed by the pharmacy first?
9 A I think they just wanted to know the protocol, if
10 he's been through a list of certain other drugs first
11 or something. I don't know.
12 Q So the pharmacy asked you those questions, asked you
13 those questions, correct?
14 A Yeah. Usually went through -- the insurance would go
15 back and forth with the doctor or whatever. I didn't
16 have any control.
17 Q Did they ever ask you for that information?
18 A No.
19 Q But you're aware that process was taking place?
20 A Yes.
21 Q How did you know that it was taking place?
22 A I mean they would say they denied it and they would
23 have to wait to get some kind of authorization for
24 that drug.
25 Q And then there would be authorization and it was paid

Page 34

1 for?
2 A Yes.
3 Q Were you the person that was making the treatment
4 decisions for your son?
5 A Yes.
6 Q And you understood you had the right to accept or
7 reject treatment recommendations by a physician?
8 A Yes.
9 MR. LARSON: And maybe I asked you -- I
10 should ask. There was a disclosure, I'm assuming,
11 that we haven't quite seen yet because it's coming in
12 the mail. Is Ms. Meyer designated as a fact witness?
13 MR. GOTTSTEIN: Wasn't she in the initial
14 disclosures?
15 MS. GIETMAN: I believe she is.
16 MR. LARSON: Anything different as far as
17 the disclosure about what she would testify to other
18 than just the prescriptions?
19 MR. GOTTSTEIN: There's no supplementation
20 as to Ms. Meyer.
21 DR. WATSON: No. Yeah.
22 BY MR. LARSON:
23 Q Is there any additional information that you believe
24 you possess about this matter that's something other
25 than what was contained in Exhibit No. 1 that I've

Page 35

1 put in front of you?
2 A That's all I could find at this point.
3 Q No. But if you look at the contents of what you're
4 saying about what you know about this matter.
5 A Can you repeat the question? I'm sorry.
6 Q It's poorly word. I'll follow up in a different way.
7 In your affidavit, if you look at that. Have you
8 looked at that recently, Exhibit No. 1?
9 A I looked at it before, yeah.
10 Q Okay. My question is: Is there any information that
11 you believe you possess about this matter other than
12 what's contained in Exhibit 1?
13 A No.
14 MR. LARSON: That's all I have. Thank you.
15 MS. GIETMAN: I have a few.
16 DR. WATSON: Can we take a quick break
17 because I have to use the restroom?
18 (Discussion off the record.)
19 MS. GIETMAN: Can we clarify? Back on the
20 record for a second. When you asked her about the
21 affidavit, the extent of your knowledge in this
22 matter, you're looking at Exhibit 1, what you've
23 marked as Exhibit 1?
24 MR. LARSON: Correct.
25 MS. GIETMAN: You can go back off.

Page 36

1 (Discussion off the record.)
2 MR. LARSON: Let me just clarify the last
3 question again, if I can.
4 MR. GOTTSTEIN: We're on the record again.
5 BY MR. LARSON:
6 Q I was asking about Exhibit 1, the affidavit, about
7 whether that's the extent of your knowledge. Do you
8 have any information as to what your son's specific
9 diagnoses were at any given time, or would the
10 medical records --
11 A I mean I know what they are. Is that what you're --
12 Q Can you tell me at what point in time they were and
13 whether they changed at all?
14 A Nicholas was diagnosed with ADHD and PDD when he was
15 three.
16 Q Okay. Who diagnosed him with that at age three?
17 A Trying to think who the doctor was. Dr. Eden out of
18 Manitowoc.
19 MS. GIETMAN: I'm going to object. The
20 judge said prior or post -- other doctors' diagnoses
21 and information wasn't relevant here.
22 MR. LARSON: I don't know if he exactly
23 said that. It had to do with some treatment issues
24 and prescription.
25 Q But you said that's what your son's diagnoses were?

9 (Pages 33 to 36)

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Page 37

1 A ADHD and PDD.
2 Q Do you know if those diagnoses ever changed through
3 Dr. King?
4 A No.
5 Q Do you remember her diagnosing him with Asperger's
6 disease?
7 A That's the AP? Yeah.
8 Q You understood it to be basically the same, the PDD?
9 A Yeah, that's correct.
10 Q And again, you haven't seen any of the records that
11 Dr. King had generated or Encompass maintained?
12 A No.
13 MR. LARSON: All right. That's all I have.
14 MS. GIETMAN: Okay. I have a couple.
15 EXAMINATION
16 BY MS. GIETMAN:
17 Q Christine, you were asked whether this affidavit
18 marked as Exhibit 1 has all of your information that
19 might be relevant to this case. Do you really have
20 any way of knowing that unless somebody asks you a
21 question?
22 MR. LARSON: Well, I object to the form of
23 that. Calls for her to speculate, but go ahead.
24 THE WITNESS: No.
25 MS. GIETMAN: Go ahead and answer.

Page 38

1 THE WITNESS: Yes. No.
2 BY MS. GIETMAN:
3 Q So if somebody asked you a specific question, you
4 could have information relevant to this case? You
5 just don't know it unless you're asked?
6 A Yes.
7 Q For example, you would know how old Nicholas was on
8 January 1st of 2007, but that's not contained in this
9 affidavit, correct?
10 A No.
11 Q No, it's not in this affidavit?
12 A No, it's not in the affidavit.
13 Q But that's information you do know?
14 A Yes.
15 Q So there could be other information regarding this
16 case that you have; you just don't know it yet?
17 A Yes.
18 Q There's a few other things about your testimony I
19 wanted to clarify.
20 You told Dr. King's attorney that you
21 had an agreement between Dr. Watson -- that there was
22 an agreement between Dr. Watson, me and you. There's
23 no agreement between me and you, correct?
24 MR. LARSON: Let me just object. It's
25 leading and suggestive, and this is not a hostile

Page 39

1 witness. So you got to ask her a question and you
2 can't tell her what it is.
3 BY MS. GIETMAN:
4 Q Is there any agreement between you and me?
5 A No.
6 Q Do you have an agreement with Dr. Watson?
7 A Yes.
8 Q And what do you understand that agreement to be?
9 A That if anything -- proceedings come out of this that
10 I get a third.
11 Q And you also told Dr. King's attorney that you
12 provided to me your calendar and that I brought that;
13 is that correct?
14 A I brought that.
15 Q Until today -- strike that. When's the first time I
16 saw that calendar?
17 A Today.
18 Q Also, you were asked about pill bottles. There are
19 four in that bag, I believe.
20 A Yes.
21 Q You actually did provide more than four pill bottles
22 to me?
23 A Yes.
24 Q Do you know why only four of those bottles were
25 brought to this meeting today?

Page 40

1 A I guess just to show that Nicholas was prescribed
2 medication from Dr. King at certain times.
3 Q And some of the pill bottles you brought to me were
4 from other providers; is that correct?
5 A Yes.
6 Q Now, in September of 2013 you signed this affidavit
7 that at the bottom is titled "Affidavit of Christine
8 Maxwell Meyer Regarding Consent."
9 A Yes.
10 Q Do you recall how you came to sign this?
11 A From a letterhead.
12 Q Do you recall the circumstances of you signing this?
13 A Because there was a release form that I had signed in
14 Dr. Watson's office. That was one of his, because
15 that's all we had available at that time.
16 Q And when you signed this affidavit a few months ago,
17 do you recall where you were when you signed it?
18 A We were in Sheboygan at the bank.
19 Q And when I met you there, did I ask you to bring with
20 you other records?
21 A Yes.
22 Q And did you bring your folder of records for me?
23 A Yes.
24 Q And at that time did I make any copies?
25 A Yes.

10 (Pages 37 to 40)

Page 41

1 MS. GIETMAN: Could I see Exhibit 3,
2 please?
3 MR. LARSON: Certainly.
4 BY MR. LARSON:
5 Q Exhibit 3 is in front of you. And that is an
6 agreement between you and Associated Psychological
7 Health Services. Is that one of the documents I
8 copied that day?
9 A Yes.
10 Q Do you know why I copied it?
11 MR. LARSON: Calls for speculation.
12 BY MS. GIETMAN:
13 Q Were you informed why I copied it?
14 A Yes.
15 Q And why was that?
16 A Because the first release -- because it was -- the
17 release form that I was supposed to sign was under
18 Dr. Watson's office and it wasn't one of yours.
19 Q This document that you -- you had this document
20 already in your file, is that right, already in your
21 envelope?
22 A It was the contract to Dr. Watson.
23 Q Right, this contract. And I took a copy of this. Do
24 you recall why I took a copy of this?
25 MR. LARSON: Again, calls for speculation.

Page 42

1 BY MR. LARSON:
2 Q Did I tell you I didn't have a copy of that?
3 A Yes.
4 Q And prior to me taking a copy in September, had you
5 and Dr. Watson talked about having agreement other
6 than what this document says?
7 A That he just wanted it in his name, not in the
8 business.
9 Q And are you aware -- so after you signed this
10 document --
11 A Yes.
12 Q -- you and Dr. Watson had a discussion about that?
13 A Yes.
14 Q Do you remember what that discussion was?
15 A Was that he just wanted -- he didn't want it linked
16 to his practice, just his name.
17 Q And did he tell you that he -- did he make
18 arrangements with you personally about the proceeds
19 that he was receiving?
20 A No.
21 Q Did you still understand, even though it wasn't his
22 clinic that was bringing the lawsuit, did you
23 understand that Dr. Watson personally would give you
24 a third of whatever he recovered?
25 A Yes.

Page 43

1 MS. GIETMAN: Okay. Nothing further.
2 MR. LARSON: Now I'm a little bit confused.
3 EXAMINATION
4 BY MR. LARSON:
5 Q I hadn't checked the discovery responses to compare
6 bottles, and I'm not sure that I want to actually
7 pull the labels out and do that. But are you saying
8 that there are more prescription bottles -- I guess I
9 can't see or tell that they're different than the
10 ones that are attached as color copies to a discovery
11 response. How many more prescription bottles are
12 there?
13 MS. GIETMAN: Regarding Dr. King?
14 BY MR. LARSON:
15 Q Well, how many more prescription bottles did you
16 provide to Attorney Gietman?
17 A I don't know the number.
18 Q And they were from people other than Dr. King?
19 A Yes.
20 Q And you gave those to Attorney Gietman?
21 A Yes.
22 Q And Attorney Gietman is not your attorney, correct?
23 A No.
24 Q What I said is correct?
25 A Yes.

Page 44

1 Q What happened to the other prescription bottles that
2 you don't have here with you today? Does Attorney
3 Gietman still have them?
4 A Yes.
5 Q I'm examining the pictures that are attached to the
6 relator's responses to defendant's second set of
7 requests to admit interrogatories and requests for
8 production of documents to plaintiff Dr. Toby Tyler
9 Watson, and the only photographs that have been
10 provided are in fact photographs of these four
11 bottles but not the other bottles. So I guess I did
12 not understand that there were, in fact, additional
13 bottles that you had in your possession.
14 Are there other bottles that were in
15 your possession but are now in Attorney Gietman's
16 possession for Dr. King?
17 A Yes.
18 Q And I'm also -- I'm also confused now about this
19 Exhibit No. 3. Can I have that for a second?
20 MS. GIETMAN: This is two. This is three.
21 BY MR. LARSON:
22 Q Now, are you saying that there's other different
23 agreements between you and Dr. Watson other than
24 what's set forth here in Exhibit No. 3?
25 A I think -- well, everything stays the same except for

11 (Pages 41 to 44)

1 just the letterhead of -- his business with Toby
2 Watson, Dr. Watson.
3 Q But there is another document somewhere?
4 A Yes. I don't know --
5 Q Where it is, though?
6 A Yeah.
7 Q But there is another document; you just don't know
8 where it is?
9 A Yes.
10 Q And is it your understanding, though, that if
11 Dr. Watson was somehow successful in this case that
12 you would get a third, Dr. Watson would get a third,
13 and Attorney Gietman would get a third? Is that your
14 understanding?
15 A Yes.
16 Q Again, you haven't retained your own attorney to
17 represent your own interests or --
18 A No.
19 MR. LARSON: Okay. That's all I have.
20 Thanks.
21 MS. GIETMAN: Can she review and sign?
22 MR. LARSON: That's really not what we do
23 in Wisconsin but --
24 MS. GIETMAN: Federal rules allow for it.
25 MR. LARSON: Okay. Yeah. Can we put on

1 the record you've indicated to me, just so I'm not --
2 MS. GIETMAN: I withdraw my subpoena for
3 documents and to testify issued to Jacob Olson.
4 MR. LARSON: Jake Olson. And then we had
5 tentatively talked about Dr. Diamond's dep and that's
6 off, too?
7 MS. GIETMAN: That's off as well.
8 MR. LARSON: We're going to order a
9 transcript. She's going to send a PDF. All right.
10 Thanks.
11 MS. GIETMAN: Thanks.
12 (Deposition concluded at 4:05 p.m.)
13 (Original exhibits attached to Original
14 transcript. Copies of exhibits are attached.)
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1 STATE OF WISCONSIN)
2) SS:
3 MILWAUKEE COUNTY)
4
5 I, Rosanne E. Pezze, RPR/CSR/CRR and
6 Notary Public in and for the State of Wisconsin, do
7 hereby certify that the deposition of CHRISTINE
8 MAXWELL MEYER was recorded by me and reduced to
9 writing under my personal direction.
10 I further certify that said deposition
11 was taken at 735 North Water Street, Milwaukee,
12 Wisconsin, on the 11th day of November, 2013,
13 commencing at 2:57 p.m.
14 I further certify that I am not a
15 relative or employee or attorney or counsel of any of
16 the parties, or a relative or employee of such
17 attorney or counsel, or financially interested
18 directly or indirectly in this action.
19 In witness whereof, I have hereunto
20 set my hand and affixed my seal of office on this
21 18th day of November, 2013.
22

23 ROSANNE E. PEZZE, RPR/CSR/CRR
24 Notary Public
25 My commission expires January 26, 2014

1 STATE OF WISCONSIN)
2) SS:
3 MILWAUKEE COUNTY)
4
5
6
7 I, CHRISTINE MAXWELL MEYER, do hereby certify
8 I have read the foregoing transcript of proceedings
9 taken November 11th, 2013, at 735 North Water
10 Street, Milwaukee, Wisconsin, and the same is true
11 and correct except for the list of corrections noted
12 on the annexed page.
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23
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25

Dated at _____
this _____ day of _____, 2013.

CHRISTINE MAXWELL MEYER

<p>A</p> <p>aboveentitled 2:2</p> <p>accept 34:6</p> <p>accessing 27:17</p> <p>accuracy 22:4 30:3</p> <p>acquainted 22:20</p> <p>action 2:2 9:6,15 47:17</p> <p>actions 11:21</p> <p>activity 9:3</p> <p>actual 18:2 21:5</p> <p>ad 22:17</p> <p>additional 27:11 33:7 34:23 44:12</p> <p>addressed 17:5,15 17:23 18:5,9,23 19:9</p> <p>addresses 20:21</p> <p>adell 4:22</p> <p>adhd 32:21 36:14 37:1</p> <p>administrative 9:10</p> <p>admit 44:7</p> <p>adolescent 1:8</p> <p>affidavit 3:10,11 11:16,18 15:18,20 18:15 19:20,22 20:5,10 22:16 23:5 29:10,18 30:19 31:2 35:7 35:21 36:6 37:17 38:9,11,12 40:6,7 40:16</p> <p>affixed 47:19</p> <p>afoul 25:23</p> <p>age 7:13 27:22 36:16</p> <p>ago 6:9 7:5,5,21 12:25 15:10 28:10 29:15 32:3 40:16</p> <p>agreement 11:6,10 38:21,22,23 39:4 39:6,8 41:6 42:5</p> <p>agreements 44:23</p> <p>ahead 12:1 26:3</p>	<p>37:23,25</p> <p>alaska 2:16</p> <p>allegations 21:23</p> <p>alleged 22:2</p> <p>allow 45:24</p> <p>alternatives 32:23</p> <p>america 1:3</p> <p>anchorage 2:16</p> <p>annexed 48:12</p> <p>answer 9:23 10:14 14:5 25:6,16,24 37:25</p> <p>answered 25:4</p> <p>anybody 11:23,23 24:4</p> <p>ap 37:7</p> <p>apparently 17:1 18:15 20:15 22:17</p> <p>appear 14:20</p> <p>appeared 2:16,20</p> <p>appears 12:15 13:22 16:11,23 17:5 18:24 19:6,8</p> <p>appointment 20:24</p> <p>appointments 13:7</p> <p>approximately 15:9</p> <p>area 22:18 23:16 23:17</p> <p>arrangements 42:18</p> <p>asked 25:4,19 26:2 33:12,12 34:9 35:20 37:17 38:3 38:5 39:18</p> <p>asking 19:2 25:11 25:25 36:6</p> <p>asks 37:20</p> <p>aspergers 37:5</p> <p>assistant 8:25 9:3</p> <p>associated 41:6</p> <p>assume 15:21</p> <p>assuming 8:20 20:16 21:3 22:25 27:25 34:10</p> <p>attached 3:18,18</p>	<p>16:1 43:10 44:5 46:13,14</p> <p>attempt 25:21</p> <p>attend 6:18</p> <p>attending 6:20</p> <p>attorney 10:20,23 10:25 11:7 13:18 14:18 15:8 16:25 17:14,23 18:7,19 20:11 21:20 31:4 31:19,22,24 38:20 39:11 43:16,20,22 43:22 44:2,15 45:13,16 47:14,16</p> <p>aurora 13:23</p> <p>authorization 3:13 15:14,18 16:17,23 16:24 17:22 18:7 18:19 19:2,5,9 29:17 32:2 33:23 33:25</p> <p>authorizations 31:5</p> <p>available 40:15</p> <p>aware 27:6 33:19 42:9</p> <p>B</p> <p>b 3:7</p> <p>back 12:23 20:23 24:1 29:19 30:14 33:15 35:19,25</p> <p>background 24:24</p> <p>badger 21:12 23:23 28:7,8</p> <p>bag 14:2,7 39:19</p> <p>bank 40:18</p> <p>based 19:1</p> <p>basically 17:19 31:2 37:8</p> <p>behalf 2:16,20 21:20 31:6</p> <p>belgium 8:9</p> <p>believe 16:6 26:3 34:15,23 35:11 39:19</p>	<p>bend 6:17 18:9 23:11</p> <p>beyond 25:9</p> <p>birth 6:14</p> <p>bit 12:1 43:2</p> <p>bonville 1:19 2:17</p> <p>books 20:23,24</p> <p>born 7:9,10</p> <p>bottles 14:2,20 15:8 39:18,21,24 40:3 43:6,8,11,15 44:1 44:11,11,13,14</p> <p>bottom 40:7</p> <p>break 35:16</p> <p>brief 16:9</p> <p>bring 12:3 40:19,22</p> <p>bringing 42:22</p> <p>brought 12:6 16:14 20:15 39:12,14,25 40:3</p> <p>business 8:16 42:8 45:1</p> <p>C</p> <p>c 1:19 2:11,17</p> <p>calendar 20:24 39:12,16</p> <p>calendars 20:25</p> <p>call 24:10</p> <p>called 24:7 28:13</p> <p>calls 37:23 41:11 41:25</p> <p>cant 39:2 43:9</p> <p>caps 1:7 22:6</p> <p>caption 16:18</p> <p>card 12:9,16,16 24:1,18 26:14,18 26:21,23 27:12,17 28:8,16</p> <p>care 11:12 21:13 23:23 25:25 28:7 28:8</p> <p>case 1:6 11:8 21:2 21:19,23 37:19 38:4,16 45:11</p> <p>certain 23:16 33:10</p>	<p>40:2</p> <p>certainly 41:3</p> <p>certified 2:5 8:24</p> <p>certify 47:6,9,13 48:7</p> <p>changed 14:24 36:13 37:2</p> <p>charges 30:8</p> <p>charts 30:2</p> <p>checked 43:5</p> <p>checking 17:12</p> <p>child 1:8 24:21 25:17 26:9</p> <p>chilton 2:13</p> <p>choosing 31:24</p> <p>chose 33:2</p> <p>christine 1:15 2:1 3:10,11 4:2,9 37:17 40:7 47:6 48:7,20</p> <p>circumstances 20:4 40:12</p> <p>civil 2:4</p> <p>claim 9:11 10:6</p> <p>claims 21:11 28:21</p> <p>clarify 35:19 36:2 38:19</p> <p>clean 8:13</p> <p>cleaned 8:15 10:5</p> <p>clear 15:17</p> <p>client 10:5</p> <p>clinic 42:22</p> <p>coffeestained 15:22</p> <p>collected 31:16</p> <p>collection 32:1</p> <p>color 16:1 43:10</p> <p>come 15:23 29:19 39:9</p> <p>coming 29:7 34:11</p> <p>commencing 2:8 47:12</p> <p>commission 47:23</p> <p>communications 31:3</p> <p>comp 9:11</p> <p>compare 21:17</p>
--	--	---	---	---

Case 2:11-cv-00236-JPS Filed 11/21/13 Page 14 of 19 Document 148-5

find 13:17 14:11 35:2	15:8,17 16:3,6 18:19 20:11 21:20 24:22 25:2,7,14 25:19 26:2 29:2 31:4,22 34:15 35:15,19,25 36:19 37:14,16,25 38:2 39:3 41:1,12 43:1 43:13,16,20,22 44:3,20 45:13,21 45:24 46:2,7,11	17:24 18:20 19:14 21:12 23:23 28:2 28:14 41:7 heres 18:15 hereunto 47:18 hes 12:22 33:10 high 6:18,19 7:15 hilton 20:20 history 21:11 hmo 28:18 home 4:25 5:6 8:22 9:2 homes 8:15 hostile 38:25	initial 34:13 inside 13:5 instance 2:3 insurance 32:21 33:14 intent 27:2 interested 47:16 interests 45:17 interrogatories 44:7 involved 10:16 22:10 involvement 10:22 11:3,17 issue 23:1 issued 46:3 issues 36:23 ive 8:8 34:25	29:1,7 33:9,11,21 35:4 36:11,22 37:2 38:5,7,13,16 39:24 41:10 43:17 45:4,7 knowing 37:20 knowledge 35:21 36:7
folder 40:22 follow 35:6 follows 4:4 foregoing 48:8 form 3:12 31:13 37:22 40:13 41:17 formal 5:23 6:20 8:1 11:6 21:22 format 12:10 forth 21:22 33:15 44:24 forward 12:9,16 17:24 18:20 19:14 21:12 23:23 24:18 28:2 fought 9:19 found 14:25 32:11 four 4:20 5:21,22 14:1 39:19,21,24 44:10 fourpage 31:8 frame 5:8,17 8:12 frames 14:25 frequented 18:12 front 11:15 35:1 41:5 full 4:7 further 24:22 43:1 47:9,13	giemans 16:25 17:14,23 44:15 give 6:7 24:9 26:21 26:25 30:13 42:23 given 13:1 36:9 globally 32:14 go 16:8,15 23:5 26:3 33:14 35:25 37:23,25 going 6:11 15:21 16:7 19:16 24:23 25:9 27:2 30:18 36:19 46:8,9 gottstein 2:15 6:25 7:6 10:25 34:13 34:19 36:4 grade 5:25 6:5 guess 40:1 43:8 44:11 gutglass 1:19 2:17	I idea 6:7 identification 30:16 ill 22:16 30:13 35:6 im 5:17 6:4,11,23 7:7,22 8:18,20 9:18 15:19,20,21 16:7 17:11,11,12 20:16 21:3 25:7 25:11,25 27:24,25 29:5,17 30:18 32:12,14 34:10 35:5 36:19 43:2,6 44:5,18,18 46:1 impolite 12:11 important 13:21 indicate 18:24 26:21 indicated 29:9 46:1 indirectly 47:17 info 3:14 information 13:5 15:22 16:11,15,17 16:23 21:12 24:6 24:25 27:11,14,18 30:3 32:6 33:7,17 34:23 35:10 36:8 36:21 37:18 38:4 38:13,15 informed 41:13	J jacob 46:3 jake 46:4 january 38:8 47:23 jennifer 1:7 2:20 jim 2:15 judge 36:20 july 16:19	L 12:12,12 labels 43:7 lake 24:16,19 26:8 larson 1:19 2:17,18 3:3 4:6 7:4,7,12 7:24 15:19,25 16:4,7,10 20:12 20:14 24:24 25:5 25:10,16,21 26:5 29:4 30:13,17 34:9,16,22 35:14 35:24 36:2,5,22 37:13,22 38:24 41:3,4,11,25 42:1 43:2,4,14 44:21 45:19,22,25 46:4 46:8 lawsuit 9:5 15:11 31:17 42:22 leading 38:25 led 31:4 legal 9:6 letterhead 31:11 40:11 45:1 level 5:23 line 18:2 linked 42:15 list 33:10 48:11 listings 24:10 litigation 10:17 11:17 29:22 little 12:1 29:15 32:2 43:2 live 5:17 lived 4:23 5:9,18 locations 24:5,8
G g 2:15 gap 7:15,18 ged 6:1,2,6,16,21 6:23 7:16,19 8:2 geitmans 18:8 generated 37:11 getting 7:16 11:23 gielman 2:12,12 3:4 7:23 10:23 11:7 13:18 14:18	H h 3:7 hadnt 43:5 hand 47:19 handed 26:20 handle 7:8 hang 23:19 happened 13:24 44:1 havent 21:17 26:2 29:24,25 30:2,5,6 30:11 34:11 37:10 45:16 health 1:9 16:17		K kilbourn 20:20 kind 8:11,21 9:6 12:13 14:11 23:1 23:15 33:23 king 1:7 2:20 13:7 14:14,16 22:10 23:3,10 24:12 25:3,11 26:1,13 30:9 37:3,11 40:2 43:13,18 44:16 kings 13:12 38:20 39:11 kitty 20:19 know 11:3 15:9 17:10 20:4 23:6 27:14,17,21,21 28:3,5,5,20,23	

long 4:19,23 7:18
12:25
look 12:5 20:23
21:1 35:3,7
looked 21:11 22:1
30:2 35:8,9
looking 11:22
12:14 24:5 35:22
looks 12:15 15:1
16:7,14,18 17:18
17:19 18:1,4
19:16 31:11

M

m 1:17 2:8,9 4:5
21:2 37:15 43:3
46:12 47:12
madison 2:13
mail 34:12
maintained 37:11
making 34:3
managed 28:14
manitowoc 36:18
mark 2:18
marked 11:15 13:6
19:24 23:5 29:10
30:15,18 35:23
37:18
married 4:13,15,17
4:19
mate 6:17,20
material 20:16
math 7:4
matter 9:8,10 12:11
12:11 20:17 34:24
35:4,11,22
maxwell 1:15 2:1
3:10,11 4:2,9,12
40:8 47:7 48:7,20
mean 8:23 10:9
12:10 13:11 15:18
17:11 24:6,9
25:23 28:10 33:22
36:11
meant 15:19 29:3
medicaid 18:5

medical 8:20 9:4
31:5 36:10
medication 14:1,21
32:16 40:2
medications 14:23
18:25 32:13
medicines 32:20
meds 32:25
meeting 39:25
mental 1:9
met 10:25 22:23
40:19
meyer 1:15 2:1
3:10,11 4:2,9,13
4:18,19 5:1,6
34:12,20 40:8
47:7 48:7,20
mhs 21:15 23:23
28:13,13
milwaukee 1:20 2:7
2:19 47:2,10 48:3
48:10
mind 12:6
minute 7:5
modify 19:2
monday 1:16
money 29:3,5,5
monies 28:4,4,23
28:25 29:2,7
month 6:11
months 40:16
move 5:19

N

n 2:11 3:1 4:5,5
37:15,15 43:3,3
name 4:7,13 5:11
5:13 24:17 42:7
42:16
named 9:5
names 4:10 21:13
near 23:19
needed 21:1 24:6
never 9:19,21 22:9
22:23 24:6 28:5
new 26:20

newspaper 22:17
nicholas 5:2 32:20
36:14 38:7 40:1
north 1:20 2:7,19
47:10 48:9
nos 30:15
notary 2:6 47:5,23
notations 17:20
noted 48:11
notes 20:24,24
notice 2:4 13:15
november 1:16 2:8
47:11,20 48:9
number 3:8 15:21
24:1,4 27:18
43:17
numbers 20:21
26:19
nurse 8:24
nursing 8:22 9:2

O

o 4:5 37:15 43:3
oath 4:3
object 36:19 37:22
38:24
obtain 6:2,16
obtained 8:2 22:9
obviously 27:6 29:9
29:13
office 2:12 13:12
16:25 17:14,23
18:8 20:22 31:12
40:14 41:18 47:19
okay 4:13 5:23 6:14
7:6,6,14 8:20 10:4
11:10 12:1 13:2
13:22 14:1 15:16
17:8 19:8,20 20:4
20:19,23 21:5
25:5 27:25 35:10
36:16 37:14 43:1
45:19,25
old 7:22 12:9,21
38:7
olson 46:3,4

once 6:8 10:3
ones 13:1 14:11
16:1 26:20 43:10
onethird 31:15
oostburg 8:10
opposed 30:9
order 25:23 33:6
46:8
original 3:18,18
18:15 46:13,13
originals 30:14
outline 8:11
outside 14:3,7
ozaukee 6:19

P

p 1:17 2:8,9,11,11
21:2 46:12 47:12
page 3:2,8 19:16,18
48:12
pages 31:15
paid 26:22 27:3
28:3 33:25
paper 22:19
paperwork 11:22
paragraphs 19:23
parameters 25:8
partial 13:22
parties 47:15
party 9:5,6,8,10
10:17
paternity 9:15,16
9:18
pause 16:9
pay 32:24 33:2
paying 31:15
payor 27:7
pdd 36:14 37:1,8
pdf 46:9
people 43:18
person 34:3
personal 47:8
personally 42:18
42:23
peter 4:18,19 5:1
petty 10:7
pezze 1:25 2:5 47:4
47:22
pharmacies 16:12
23:8,20
pharmacy 13:11
15:23 16:25 17:6
17:16 18:23 19:10
19:17 21:5,6 27:6
27:17,24 28:24
30:1 32:7,16 33:8
33:12
photographs 44:9
44:10
physical 13:22
physician 34:7
physicians 14:14
14:15
pictures 44:5
pill 39:18,21 40:3
pizza 8:7
place 33:19,21
plaintiff 44:8
plaintiffs 1:5 2:16
plan 32:17
planner 13:3,8,16
13:24
plastic 14:2
please 4:8 20:6
41:2
plus 28:7,9
plymouth 15:3,4
17:16 19:11 23:12
pocket 32:24 33:2
point 14:17 18:14
22:12 26:1 35:2
36:12
poorly 35:6
porath 5:14,16
possess 34:24 35:11
possession 44:13,15
44:16
post 36:20
practice 42:16
prepared 11:16,19
20:10
prescribed 14:12

40:1 prescription 15:7 22:2,3 23:18 26:25 27:12 28:21 30:7 32:15,25 36:24 43:8,11,15 44:1 prescriptions 14:15 15:1 17:8 18:12 23:2,7,24 26:13 27:3,9,23 28:1,25 30:8 32:19 33:3 34:18 present 2:21 5:5 8:2 pretrial 25:23 prior 11:3 15:13 16:17 36:20 42:4 private 8:15 procedure 2:4 proceedings 4:1 39:9 48:8 proceeds 11:7,12 31:16 42:18 process 33:19 processed 27:9 28:20 33:8 produced 24:2 26:15 production 44:8 program 26:23 27:3 28:7 protocol 33:9 prove 32:22 provide 27:11 39:21 43:16 provided 13:18 39:12 44:10 providers 40:4 psych 2:14 psychiatric 32:13 psychiatrist 24:21 25:18 26:10 psychological 1:8 41:6 public 2:6 47:5,23	pull 15:7 43:7 pursuant 2:3,4 put 7:13 14:7,10,12 35:1 45:25 putting 32:20 <hr/> Q question 25:6,12,17 26:6 35:5,10 36:3 37:21 38:3 39:1 questions 33:12,13 quick 16:7 35:16 quite 34:11 <hr/> R r 2:11 3:23 ranch 8:7 random 24:16,19 26:8 read 12:12 48:8 really 24:14 37:19 45:22 realtime 2:5 reason 18:24 23:16 32:15 rebecca 2:12,12 recall 19:4 21:23 21:25 24:14 25:3 26:4,7,11 27:16 40:10,12,17 41:24 received 32:7 receiving 42:19 recollection 25:22 recommendations 34:7 recommended 24:20 record 4:7 12:12 20:12,13 27:24 35:18,20 36:1,4 46:1 recorded 47:7 records 11:23 13:9 13:11,12 21:5,6 22:6,9 30:1 31:6 36:10 37:10 40:20	40:22 recovered 11:8 42:24 recovery 20:20 redacted 19:1 reduced 47:7 referral 24:15 25:13,17 26:7 refers 21:3 refresh 25:21 regard 32:13 regarding 3:11 23:23 38:15 40:8 43:13 regardless 32:25 reimbursement 23:2 reimbursing 28:24 reject 34:7 rel 1:4 relate 25:10 related 29:21 relates 31:2 relative 47:14,15 relators 44:6 release 3:12 16:17 16:22 18:4 20:9 31:5,13 40:13 41:16,17 releases 11:25 29:14 relevant 24:23 25:9 36:21 37:19 38:4 remember 19:3 20:21 24:15,19 25:15 28:12,12 37:5 42:14 remembers 25:12 reminder 20:25 repeat 35:5 reported 1:25 reporter 2:6 9:23 represent 45:17 requested 33:7 requests 44:7,7 reside 4:21 5:5,8	residents 9:4 resides 4:25 response 43:11 responses 43:5 44:6 restroom 35:17 result 31:17 retained 45:16 review 31:19 45:21 reviewed 21:6,17 29:9,13,14,17,21 29:24 30:5,6 reviewing 11:18 right 6:3,5,5,9 7:19 8:8 10:25 12:5 14:1,23 15:5,15 16:20 17:6,20 18:11,22 21:11 22:23 26:12 27:21 29:13 30:18 31:2 31:19 32:9 33:5 34:6 37:13 41:20 41:23 46:9 rights 2:14 road 4:22 room 10:20 rosanne 1:25 2:5 47:4,22 rpr 1:25 2:5 47:4 47:22 rules 2:4 45:24 runs 25:22 <hr/> S s 1:19 2:11,17 3:7 3:23,23 saukville 17:1,6 19:10,17 23:11 saw 22:17 23:3 39:16 saying 13:23 32:16 35:4 43:7 44:22 says 13:2 14:2 18:24 20:19,23 21:2 42:6 school 5:25 6:18,19 7:16 24:16,19	25:13 26:8 seal 47:19 second 19:18 20:12 30:14,19 35:20 44:6,19 see 6:8 8:8 12:8 16:15 20:6,19 22:1 24:12 41:1 43:9 seeing 21:23 seen 21:5,19 22:6 24:20 26:9 34:11 37:10 send 46:9 sending 18:19 september 20:1 30:24 40:6 42:4 services 1:8,9 28:14 41:7 set 44:6,24 47:19 sets 21:22 settlement 31:16 sheboygan 10:11 13:23 22:18 40:18 sheet 13:23 18:18 18:19 sheets 3:14 15:22 16:12 shell 5:9 shes 46:9 shopper 22:18 show 26:16 30:18 40:1 showed 26:18 sic 28:25 side 20:23 sidetracked 7:25 sign 8:8 12:23 40:10 41:17 45:21 signed 11:25 16:19 17:1,5,15,22 18:4 18:8,16,20 19:9 19:11,13 20:5,8 30:20 31:8,20 40:6,13,16,17 42:9
--	--	--	---	--

significance 14:9	submit 28:1	35:14 36:7,25	18:2	17:10 18:22,25
signing 11:18 15:14	submitting 26:22	37:7,9,13 38:8,13	transcript 3:18 4:1	19:6,17 21:9
31:5 40:12	32:15,17	40:15 45:19,22	46:9,14 48:8	walmart 15:2,3,4
similar 26:14	subpoena 46:2	46:5,7	treatment 34:3,7	16:18,25 17:8,16
sit 23:6 27:25	successful 45:11	theft 10:6,7	36:23	18:9,11 19:10,11
skip 12:1	suggestion 26:8	therapy 13:22	tried 21:17 32:20	21:8 23:8,20
somebody 26:8	suggestive 38:25	theres 15:21 16:22	32:22	26:14,14,16
37:20 38:3	suite 2:15,19	17:18 18:7,18,22	true 48:10	walmarts 23:12
someones 25:22	sun 22:19,19,20	19:5,17,22 20:15	trying 7:8 36:17	want 16:8 42:15
son 5:2,6 9:17	supplementation	24:1 34:19 38:18	two 14:20 23:8	43:6
12:19 18:12 22:10	34:19	38:22 44:22	44:20	wanted 33:9 38:19
24:13,20 26:9	supposed 41:17	theyre 19:2 43:9	twopage 16:24	42:7,15
27:15,19,22 28:7	sure 9:18 12:2	theyve 12:25	twoyear 13:2,8	wasnt 33:5 34:13
28:9,12 31:6	17:11,11,12 27:24	thing 18:1 28:16	tyler 1:4 2:21 44:8	36:21 41:18 42:21
32:14 34:4	43:6	things 38:18		water 1:20 2:7,19
sons 23:24 25:3	sworn 4:3	think 6:25 9:19	U	47:10 48:9
28:24 36:8,25		13:21 15:15 20:8	u 3:23	watson 1:4 2:21 7:2
sorry 5:17 6:4 7:20	T	23:15 24:22 25:4	umhmm 8:17 10:1	10:22 21:2,20
8:18 10:15 14:6	t 3:7,23 4:5 37:15	25:7,9,22,24,25	10:13,19 11:9	22:21 23:3 31:4,9
15:19,20 29:5,17	43:3	26:11 27:16,20	14:4 24:3 30:21	34:21 35:16 38:21
35:5	take 12:5 26:12	29:9 32:5 33:9	unable 18:25	38:22 39:6 41:22
sort 30:2 31:16	30:14 35:16	36:17 44:25	understand 12:2,13	42:5,12,23 44:9
south 2:13 4:22	taken 2:2 11:12,21	third 11:11,12,13	26:6 39:8 42:21	44:23 45:2,2,11
specific 19:1 25:17	47:10 48:9	39:10 42:24 45:12	42:23 44:12	45:12
27:15 36:8 38:3	talked 42:5 46:5	45:12,13	understanding	watsons 11:5 31:12
specifically 26:6	talking 30:20 32:12	three 4:20 5:21	11:5 45:10,14	40:14 41:18
speculate 37:23	32:14	8:22 18:13 23:14	understood 34:6	way 35:6 37:20
speculation 41:11	talks 31:15	36:15,16 44:20	37:8	weekly 22:18
41:25	tell 10:2 25:24	threeandahalf 5:21	united 1:1,3	went 5:19,25,25 6:6
spell 5:15	36:12 39:2 42:2	till 5:9	unsigned 19:6	9:18 23:13 26:13
spent 28:23	42:17 43:9	time 5:8,17 8:1,12	use 24:4 26:14 28:2	29:14 31:21 32:2
spoke 23:3	telling 25:5,7	12:25 13:17 14:25	35:17	33:14
ss 47:1 48:2	tentatively 46:5	22:12 26:1 36:9	usually 23:11 33:14	west 6:17 18:9
started 15:11	tenth 5:25 6:5	36:12 39:15 40:15		23:11
state 1:4 2:6 4:7	tenyear 7:15	40:24	V	weve 29:10
28:4,17 29:5 47:1	terms 11:10	times 10:2 40:2	vassel 1:7	whats 5:11,23 6:14
47:5 48:1	testified 4:3	titled 40:7	verbally 9:23 10:14	35:12 44:24
states 1:1,3	testify 34:17 46:3	toby 1:4 2:21 21:2	verify 22:3	whens 39:15
stays 44:25	testimony 38:18	44:8 45:1	version 17:18	whereof 47:18
stephanie 5:12	tests 9:19	today 11:3 12:3	versus 28:25 29:3,5	wisconsin 1:2,4,20
street 1:20 2:7,13	thank 10:16 35:14	21:3 23:6 24:2	vs 1:6	2:6,7,13,19 12:16
2:15,19 47:10	thanks 45:20 46:10	26:15 27:25 39:15		17:24 18:5,20
48:10	46:11	39:17,25 44:2	W	19:14 21:12 23:22
streets 20:21	thats 14:24 17:18	told 29:25 38:20	w6929 4:22	28:2 45:23 47:1,5
strike 39:15	19:6 22:20 25:11	39:11	wait 22:16 33:23	47:11 48:1,10
stuff 12:3 23:17	32:11 34:24 35:2	top 16:18 17:20	waiting 29:19	withdraw 46:2
			walgreens 17:6,9	

witness 2:2 7:3,10 12:9 25:20 34:12 37:24 38:1 39:1 47:18	11:21 12:15 13:2 25:4,8 26:15 29:25 35:22 46:1	28 7:21		
word 35:6	Z	3		
work 8:7 9:11 12:24	0	3 3:12 31:8,20 41:1 41:5 44:19,24		
worked 8:22 9:3	00 21:2	30 3:11		
working 8:4,6,11 9:2	05 2:9 46:12	30th 18:5		
wouldnt 22:1	1	31 3:12		
writing 47:8	1 3:10 11:15 19:24	32 3:13,14		
written 14:15 15:2 16:24 23:2,10,18 26:13 30:8	23:6 29:10 34:25 35:8,12,22,23 36:6 37:18	37 3:4		
wrong 6:23 7:20	10th 18:23	4		
wrote 33:1	11 3:10 6:15 16:19	4 2:9 3:3,13 32:1 46:12		
X	11cv236 1:6	406 2:15		
x 3:1,7 4:5 37:15 43:3	11th 1:16 2:8 47:11 48:9	43 3:3 8:8		
xd 13:6	13 12:22 16:11	46 6:11		
xs 13:4	13page 32:6	5		
Y	1400 2:19	5 3:14 30:15 32:5 530141535 2:13		
yeah 4:14 6:13 7:22 8:13 9:16 10:7 13:25 15:12 16:6 18:13 20:7 21:1 23:11 24:6 26:19 28:16,19 32:11,19 33:14 34:21 35:9 37:7,9 45:6,25	17th 20:1	53202 2:19		
year 4:20 6:7 15:9 30:24	18 5:9,18 6:8,8 7:5 7:11,13,19	57 1:17 2:8 47:12		
years 4:20,20,24 5:21,22 6:8 7:5,21 8:22 13:16 14:12 28:10	18th 47:20	6		
youd 23:19	1995 6:12	6 17:14,22 18:9 67 6:15 7:9,10		
youre 9:5 10:17 13:23 24:22 25:5 25:9 32:17 33:19 35:3,22 36:11 38:5	1st 38:8	6th 17:1,15 19:9		
youve 5:24 9:21	2	7		
	2 1:17 2:8 3:11 21:2 30:15,19 47:12	735 1:20 2:7,19 47:10 48:9		
	2004 5:5 8:12	8		
	2006 13:15 14:2,7	800 24:1,4		
	2007 13:15 38:8	805 2:13		
	2010 8:12	85 6:25 7:2,3,13		
	2012 16:19 17:2,14 17:15,23 18:5,9 18:23	9		
	2013 1:16 2:8 6:10 20:1 40:6 47:11 47:20 48:9,16	95 6:24 7:7 99501 2:16		
	2014 47:23			
	206 2:15			
	21 5:10			
	26 6:15 47:23			

Brad Foley

From: Gietman Law <gietmanlaw@gmail.com>
Sent: Friday, November 08, 2013 11:41 AM
To: Brad Foley; Jim Gottstein; Toby, Watson PsyD - Office
Subject: Olson Deposition
Attachments: SecondAmendedNoticeOlson.pdf; SecondAmendedSubpoenaOlson.pdf

Brad,

Attached are the second amended Notice of Deposition and Subpoena. Again, thank you for accepting service on behalf of Mr. Olson.

Rebecca

--
Rebecca L. Gietman

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Gietman Law
805 S Madison St.
Chilton, WI 53014
414-841-7173 (ph)
888-977-4907 (fax)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

v.

Case No. 11-CV-236-JPS

JENNIFER KING-VASSEL, *et al.*,

Defendant.

SECOND AMENDED
NOTICE OF DEPOSITION

Jacob J. Olson
Children's Hospital of Wisconsin
Clinics Building
9000 W. Wisconsin Ave.
Wauwatosa, WI 53226

PLEASE TAKE NOTICE that Jacob J. Olson has been commanded appear and testify on November 13, 2012, commencing at 10:00 AM, at the offices of Gramann Reporting, Schooner Room, 740 N Plankinton Ave, Suite 400, Milwaukee, WI, before an official court reporter regarding his knowledge of facts and his opinions asserted in the above titled matter.

HE HAS BEEN FURTHER COMMANDED to bring the following:

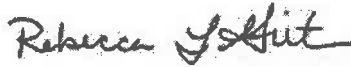
1. All documents, references, or other information, or any combination, he believes illustrates his authority to speak on behalf of the Wisconsin ForwardHealth /Badgercare / Medicaid program.
2. All documents, references, or other information, or any combination, he relied upon since March 2, 2005 through present, or would rely upon to determine whether a prescription presented on behalf of a Medicaid recipient was eligible for reimbursement under the Medicaid program.

3. All documents, references, or other information, or any combination, he relied upon in writing his October 30, 2013, report (letter) in the above referenced matter.
4. All Minutes of the Wisconsin Drug Utilization Review Board from March 2, 2005, to date.
5. All documents, references, or other information, or any combination, he relied upon, or would rely upon to, determine whether a prescription was written for a use approved under the Food, Drug and Cosmetic Act from March 2, 2005, to date.
6. Any and all documents, references, reports, notes, memos, work sheets, and supporting data utilized in conjunction with the formulation of his opinion in this case and/or reviewed by him in investigating and reviewing this case.
7. Any and all writings or recordings, other than drafts, which reflect any of his opinions in regard to this case.
8. Any and all correspondence in regard to this matter including, but not limited to, any correspondence to or from the hiring attorney and his firm (to the extent the correspondence to or from the firm or attorney (i) relates to compensation for the expert's study or testimony; (ii) identifies facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (iii) identifies assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.)
9. Any and all business records which reflect time and effort on this matter, including but not limited to, invoices, hourly or daily charges, time sheets and ledgers.
10. If he has reviewed outside source material such as books or articles or other written materials which pertain to the subject matter of this litigation and relate to his investigation in this matter, then you are hereby requested to produce such material.
11. Any and all charts, diagrams, sketches or demonstrative illustrations that he has created or relied upon in working on this matter.

12. His complete "file" in this matter.

This examination by oral deposition will be subject to continuance or adjournment from time to time and place to place until completed.

Date: Nov. 8, 2013



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James B. Gottstein (Alaska Bar # 7811100)
Law Project For Psychiatric Rights, Inc.
406 G Street, Suite 206
Anchorage, AK 99501
Phone: (907) 274-7686
e-mail: jim.gottstein@psychrights.org

Attorneys for relator Dr. Toby Tyler Watson

Brad Foley

From: Brad Foley
Sent: Thursday, November 07, 2013 10:29 AM
To: 'Gietman Law'
Subject: RE: Deposition of Ronald Diamond

Rebecca, Dr. Diamond is available on Nov 14 after 2 pm in Madison.

Brad

From: Gietman Law [<mailto:gietmanlaw@gmail.com>]
Sent: Wednesday, November 06, 2013 4:52 PM
To: Brad Foley; Mark Larson; Jim Gottstein; tobywatson@gmail.com
Subject: Deposition of Ronald Diamond

Mark and Brad:

I would like to schedule Ronald Diamond's deposition for November 12, at 9:00 AM. Does this work with your schedules?

--

Rebecca L. Gietman

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