STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

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RE: DECLARATORY RULING PROCEEDING JANUARY 5, 2010
REGARDING INFORMED CONSENT

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STATE BOARD OF CHIROPRACTIC EXAMINERS

BEFORE: MATTHEW SCOTT, D.C., CHAIRMAN
PAUL POWERS, D.C., BOARD MEMBER
SEAN ROBOTHAM, D.C., BOARD MEMBER
MICHELE IMOSSI, D.C., BOARD MEMBER
JEAN REXFORD, PUBLIC MEMBER
VINCENT A. PACILEO, PUBLIC MEMBER

FOR THE BOARD:

DANIEL SHAPIRO, ASSISTANT ATTORNEY GENERAL

APPEARANCES:

FOR THE CONNECTICUT CHIROPRACTIC ASSOCIATION:

MOORE LEONHARDT & ASSOCIATES
67 Russ Street
Hartford, CT 06106
BY: MARY ALICE MOORE LEONHARDT, ATTORNEY

FOR THE CHIROPRACTIC STROKE AWARENESS ORGANIZATION:

LAW OFFICES OF NORMAN A. PATTIS, LLC
P. O. Box 280, 649 Amity Road
Bethany, CT 06524
BY: NORMAN A. PATTIS, ESQUIRE

FOR THE VICTIMS OF CHIROPRACTIC ABUSE, INC.:

JAY MALCYNSKY, ESQUIRE
One Liberty Square
New Britain, CT 06051

. . .Verbatim proceedings of a hearing before the State of Connecticut, State Board of Chiropractic Examiners, in the matter of the Declaratory Ruling Proceeding Regarding Informed Consent, held at the Department of Public Health, 300 Capitol Avenue, Hartford, Connecticut, on January 5, 2010 at 9:11 a.m. . . .

CHAIRMAN MATTHEW SCOTT: And before you, we are the Board. The purpose of the Board is to protect and to serve the people of the State of Connecticut. Our Board consists of four practicing chiropractic physicians, along with three, usually three lay members of the public, who have been nominated by a public official and been nominated by the Governor, and then, I'm sorry, appointed by the Governor.

We, as the Board, we give of our time freely and experience for the good of the citizens for the State of Connecticut. We also pledge to require, as a requirement of our position, to be unbiased both professionally, politically and emotionally on these issues.

We, the Board, have already read and often

re-read the pre-trial, I'm sorry, the pre-hearing testimony and rebuttal. The purpose of this hearing is to gather relevant facts and scientific data, as pertained to the question before us. Later on, Dr. Paul Powers will tell you the exact question that is before us.

The Board will then gather all the relevant information presented, and we will come to a -- then we will adjourn, and then we will come to a decision, based on the relative facts and scientific data presented.

To my right is Attorney Dan Shapiro, who is our attorney from the Attorney General's Office, and he will enlighten us, as to the legal protocols and the requirements of relevant testimony and relevant facts.

We, the Board, sit before you as a blank sheet of paper. Again, we are here to serve the public and the best interest of the people of the State of Connecticut.

We, the Board, are all aware that this is a very emotionally-charged issue, and, for all concerned, this hearing will be held in an orderly, reasonable manner. Mr. Shapiro?

MR. DANIEL SHAPIRO: Good morning. I'm Daniel Shapiro from the Attorney General's Office. I know we have a lot of parties and intervenors and members of

the public that are here today.

With respect to all the designated parties, we are going to try to get through a lot of information as quickly and efficiently as possible and make sure that everyone has the opportunity to present information on this issue.

I would ask all the designated parties to, to the best of their ability, to keep their testimony and the evidence presented on the issue and the question presented today.

As the notice indicated, we will allow designated parties to make a brief position statement on the issue, followed by their adopting of their testimony under oath, and then being subject to Cross-Examination in the order that you've received.

We are not -- the Board is not looking for people to read their testimony or to summarize all of the testimony. The Board will read all of the testimony that's admitted into evidence.

We do have a few preliminary matters that we need to deal with. The first is I'm asking the parties to agree to a date where a decision will be issued, and my suggestion is that it be 90 days from the final day of fact finding of the Board, so I'd just like to get -- have

the parties identify themselves for the record, and then maybe state their position with respect to an agreed upon date.

I'm making that suggestion based on the language of Section 4176, subsection I, which allows a time period to be agreed to by the parties with respect to a Declaratory Ruling Proceeding.

So with respect to the Connecticut Chiropractic Association, Incorporated?

MS. MARY ALICE MOORE LEONHARDT: Good morning. Good morning, Mr. Chair and members of the Board and Attorney Shapiro. My name is Mary Alice Moore Leonhardt. I am here on behalf of the Connecticut Chiropractic Association, the petitioner who brought the petition for Declaratory Ruling.

I also represent the Connecticut Chiropractic Council, the American Chiropractic Association and the International Chiropractic Association here today.

We have no objection to the request that you have put forth. Thank you.

MR. SHAPIRO: And that's the position for the Connecticut Chiropractic Association and, also, the Connecticut Chiropractic Council, is that correct?

MS. MOORE LEONHARDT: That's correct.

MR. SHAPIRO: Okay and the party, the Victims of Chiropractic Abuse?

MR. JAY MALCYNSKY: Good morning. My name is Attorney Jay Malcynsky, and I represent the Victims of Chiropractic Abuse. The only caution I would remind the Board of with regard to the timing is I know that the legislature had wanted to potentially deal with this issue, and I know that that's not your primary concern, but 90 days would probably work, but, Attorney Shapiro, I assume what you mean is 90 days or earlier?

MR. SHAPIRO: That's correct. From the last day that the Board conducts fact finding.

MR. MALCYNSKY: Which would be the last day of this hearing?

MR. SHAPIRO: That's not correct. The Board will schedule --

MR. MALCYNSKY: Go ahead.

MR. SHAPIRO: The Board will schedule a fact finding to deliberate regarding these issues after the close of hearings. I have no idea whether the hearings will end tomorrow or not.

MR. MALCYNSKY: Can you give me an idea of when that, you know, typically when that fact finding

meeting might be?

MR. SHAPIRO: My guess --

MR. MALCYNSKY: Assuming that this hearing closes tomorrow.

MR. SHAPIRO: If the hearing closes tomorrow, there's certainly no interest on the Board in delaying anything, my recommendation to the Board would be that they would meet within three or four weeks to conduct fact finding, and then a decision would be issued 90 days from that date.

MR. MALCYNSKY: Then I would object to the 90 days, because it sounds like the 90 days could easily become 120 or 150 days, and I think it is important. This issue is a very important issue that has been deliberated in the General Assembly.

I think there are a lot of people that are looking to this Board to settle the issue, and I think, if we get into four or five months, there's a danger that we lose the potential window of opportunity for the legislature to review the matter.

MS. MOORE LEONHARDT: If I may speak, it's my understanding that the legislators, who were involved in the discussions about whether to present this issue to the Board for the Board's consideration, given the well-

established notion of the Board regulating the professions, the idea was for the Board to conduct a full hearing to allow for a full airing of the issues, to allow both sides to present their positions and cases.

In fact, Attorney General Blumenthal had weighed in on it and asked the Board to allow patients and members of the public to have an opportunity to speak, and the CCA, CCC and the National Organizations all embrace that notion and that position, and we trust that the Board, with its expertise in conducting these hearings, will conduct itself properly, move the issue along, and give the issue under consideration due time and weight.

The legislature will have an opportunity to deal with it at some point if it deems fit, and I don't see any reason for this Board to rush the issue simply in order to allow a ball to be bounced back during the next legislative session.

It may not be warranted, there may be further study necessary, and I think the process should be allowed to occur, without putting an undue restriction on this Board and its procedures. Thank you.

MR. SHAPIRO: Attorney Malcynsky, the other point I wanted to raise is that it does take a period of time for the transcripts from the hearing to come in. My

understanding is that it's approximately 10 days.

The Board is going to review those transcripts, I'm sure. The transcripts will probably be fairly lengthy, so before the Board comes into the fact finding, I'm sure the Board members are going to review sort of a great, not a sort of, a great volume of evidence, and I do think that that time frame is reasonable and will not allow excessive delay.

MR. MALCYNSKY: And I certainly respect everything you've delineated, and it is certainly our interest that the Board has the ability to fully deliberate all the information.

I would just remind you, though, that we've had the principal testimony since October and the rebuttal testimony since November. We're already into January. Most, if not all, of any additional information that the Board will receive will be in the context of this hearing, which will likely end tomorrow.

We're certainly not interested in limiting the Board's ability to deliberate on the information they have. I just think that they have the bulk of what they're going to need to consider and certainly will have had all they need to consider, with the exception of the transcripts that you referred to, by the close of business

tomorrow, if this hearing finishes in two days.

I would certainly like to think that the Board can wrap up their decision making expeditiously, rather than use any unnecessary time.

MR. SHAPIRO: And I think, Attorney Malcynsky, without belaboring this point, that the time frame that I'm talking about would allow the Board only approximately two weeks of time to review any of the information that they've received at the hearing today and to re-review the evidence that's admitted into evidence today.

I think that if the fact finding, in fact, occurs within four weeks of the close of the hearings, that it's a reasonable time frame to have the decision drafted and to make sure that all members of the Board are comfortable with that decision before it's disseminated to the parties and the public.

I would ask for the support of the Victims of Chiropractic Abuse on the time frame that I've suggested.

MR. MALCYNSKY: I think that's reasonable. I also would just ask that, to the extent that we can be cognizant of the need to get the decision sooner, rather than later, that you give us that due consideration.

Thank you.

MR. SHAPIRO: Thank you. And the final party is the Chiropractic Stroke Awareness Group.

MR. NORMAN PATTIS: Good morning. My name is Norm Pattis. I'm here on behalf of the Chiropractic Stroke Awareness Group. I'll adopt Attorney Malcynsky's remarks, but note that we share an interest in timely consideration and resolution of this issue, and in adopting Attorney Malcynsky's remarks, we're not waiving any right to seek relief against an appropriate party or an association in a court by way of an action at common law to establish the requirement for informed consent.

So I join Attorney Malcynsky's remarks, insofar as they express a concern for timely consideration of this issue for the legislature, but on behalf of my client convey a great impatience and a burning desire to have this issue teed up in a forum that will decide the issue conclusively. If it won't be the legislature, it's our intension to turn to the courts as early as next week.

MR. SHAPIRO: Thank you. With those comments and without objection, the time frame, as suggested, will be adopted, and certainly I can assure the parties that there will be no delay from our office's perspective, in terms of getting a decision, and we'd be

more than happy to get the decision out prior to 90 days, if that's possible.

MS. MOORE LEONHARDT: Attorney Shapiro, may I inquire?

MR. SHAPIRO: Yes.

MS. MOORE LEONHARDT: In the time frames that you're suggesting are you also contemplating that the parties will have an opportunity to submit written briefs?

MR. SHAPIRO: That issue hasn't come up yet. If the parties and intervenors want to submit briefs, we can discuss that and discuss an appropriate page limit.

I think, you know, with all the information that the Board is going to have to consider, certainly we would look for pointed comments, as opposed to a regurgitation of all the information that's presented, but I'd be happy to hear from the parties with respect to their interest level in filing briefs, but that certainly cuts against the time frame issue.

I mean that's more information that needs to be read and reviewed, but I also want the parties to have an opportunity and the intervenors to have an opportunity to present that information.

MS. MOORE LEONHARDT: Thank you. On behalf

of the Connecticut Chiropractic Association and the Connecticut Chiropractic Council, we hereby request an opportunity, pursuant to the rules of practice applicable to these Declaratory Ruling Proceedings before the Department of Health and the Board of Chiropractic Examiners, under 19a-9-29h, the opportunity to prepare and present a brief in the form of a closing argument, which we would accept a page limitation of 15 pages, if you feel that's appropriate. Thank you.

MR. MALCYNSKY: Sounds like we're going to be having fun all day here. I certainly would have no problem filing a brief in a timely manner. That would not in any way impact the schedule that you had indicated.

MR. SHAPIRO: Okay and the Chiropractic Stroke Awareness Group?

MR. PATTIS: No objection to briefs. We would request an expedited briefing schedule, with no more than 72 hours from the close of the hearing.

MR. SHAPIRO: Okay. I would recommend to the Board that we allow post-hearing briefs of 15 pages maximum in length, according to the normal standards of double-spaced, etcetera, and that briefs be due 10 days from the close of evidence, which the transcript is going to take 10 days anyway, so 10 actual days, not business

days. Ten days from the close of evidence. I'll take a motion on that.

DR. PAUL POWERS: This is Dr. Powers. I make a motion that we adopt, as Attorney Shapiro recommended, to have briefs come in within 10 days.

DR. MICHELE IMOSSI: I'm Dr. Imossi, and I second that.

CHAIRMAN SCOTT: Is there any discussion? We'll vote on it. All in favor?

ALL: Aye.

CHAIRMAN SCOTT: All opposed? It's carried.

MR. SHAPIRO: Okay, so, briefs will be due 10 calendar days from the close of evidence. We'll discuss the actual date that they're due at the close of evidence. The briefs can be no longer than 15 pages, and there will be no rebuttal briefs or follow-up briefs, so you'll have one opportunity to file simultaneous briefs 10 calendar days from the close of evidence.

MS. MOORE LEONHARDT: Thank you.

MR. SHAPIRO: There's been a request for recusal or motion to disqualify Board Member Jean Rexford, and, prior to doing that, I wanted to see if we, as a procedural matter, could admit some of the documents,

which are on the exhibit list, and I would ask for the parties' position on that.

What I'm interested in doing right now is admitting into evidence documents 1 through 31 on the exhibit list, and I wanted to first get the position of the Connecticut Chiropractic Association and Connecticut Chiropractic Council with respect to Exhibits 1 through 31.

If there's objections to individual exhibits, then we'll do it slower, but I think it may be possible to admit the first 31 exhibits without any issues.

MS. MOORE LEONHARDT: Thank you. On behalf of the Connecticut Chiropractic Association and the Connecticut Chiropractic Council, our position is as follows.

To the extent that any of those items refer to the following matters, we have an objection and move to strike any reference or evidence that would be constituted in those documents that relate to the following matters.

Number one, the topic of subluxation. Number two, the topic of vaccinations. Number three, the topic of endoscopy procedures. Number four, the topic of death certificates or autopsy reports. Number five, the

topic of the model Code of Ethics of the Federation of Chiropractic Licensing Boards. And, finally, the topic of evidence that relates to a letter from a physician, which is contained in a submission. Let me just get to that.

The letter is drafted and authored by a Cyril Wecht, W-E-C-H-T, and we object to any evidence or references to that, as well. Thank you. Otherwise, we have no objection to those exhibits being accepted into evidence.

MR. SHAPIRO: Counsel, are you aware whether or not those topics are contained in these documents, meaning, do you have any specific information with respect to those topics being in these first 31 documents?

MS. MOORE LEONHARDT: We can go document-by-document, but I do know that under the CSAG and VOCA documents, for example, and in the documents that had been offered for submission by the Campaign for Science-based Healthcare, there are death certificates and autopsy reports.

No witnesses, no experts have been offered or appeared here today to present those properly, and due to the highly prejudicial nature of documents, such as that, or the letter authored by a doctor, an alleged Dr.

Wecht, we feel that a level playing field should be available to all parties to this proceeding, and any reference to that testimony or evidence would be highly improper in the context of this proceeding.

MR. SHAPIRO: Okay.

MR. MALCYNSKY: I would just say, on behalf of VOCA, that all of what we're seeing from the Chiropractor's Association are tactics to delay the hearing and deny the Board and the public the opportunity to fully vet these issues.

The information that they seek to exclude has been pre-filed as part of the testimony for months. They had an opportunity to object in their rebuttal testimony and did not.

I would ask that we move to the matter before the Board, and let's hear the issues and trust the Board to weigh the evidence for what it is. I mean this is -- I think we're going to see that this is a consistent theme with the Chiropractor's Association in this hearing.

They filed a series of motions starting at 5:00 last night, and, again, about three minutes before the hearing, I was handed a stack of motions to eliminate certain specific pieces of evidence. I mean it's a tactic. It's not a -- there's no, you know, sound basis

for that evidence to be excluded, and we would object to the exclusion of it.

MS. MOORE LEONHARDT: Well, as counsel may recall, the evidence that has been submitted has been pre-filed at the request of the Board. Each party, pursuant to the notice associated with this proceeding, who wishes to have that evidence considered by the Board has been directed to appear here today to adopt that evidence under oath and to give the other side an opportunity to Cross-Examine that person on their testimony and the evidence, any documentary evidence that they're wishing the Board to review, which means that the evidence has not yet been admitted into this proceeding.

Under the Uniform Administrative Procedures Act, it is entirely proper, appropriate and a responsible procedure for counsel to file motions to exclude and motions to strike evidence that is not properly offered before the Board.

So our process is not a delay tactic. It's not a dilatory tactic. It is proper legal procedure commonly followed in contested hearings and Declaratory Ruling Proceedings.

Now I know that Attorney Malcynsky does a lot of lobbying on this issue before the legislature, and

perhaps there are a lot of delay tactics and chess game maneuvers followed in those proceedings, but I assure you that the Chiropractors in this proceeding take this very seriously.

We are respectful of the rules of practice of the Department of Public Health as they apply to this proceeding, and we intend to follow the rules and proceed in an orderly fashion, and personal attacks have no room in this proceeding. Thank you.

MR. MALCYNSKY: I don't know what you're referring to, by the way, of personal attacks. What I do agree with in what you just said was that the appropriate way to vet the evidence is through Cross-Examination.

I don't see anything to be gained by excluding this evidence, but I think we should move on to the issues.

MR. SHAPIRO: Attorney Pattis, do you have any remarks you'd like to make with respect to this?

MR. PATTIS: Yes. I think of T.S. Eliot's line, Do I Dare to Eat a Peach? In answer to your question, as to topics 1 through 31, I believe these were all preliminary filings to tee up the issue, so I don't believe many of the items appear in those.

We do not object to the admission of 1

through 31 in toto. If the Board is inviting our argument on topics 1 through 6, I'm prepared to argue those now, or we can do it on a document-by-document basis. I have no objection to 1 through 31.

MR. SHAPIRO: Thank you, Attorney Pattis. Yeah, I think that what's unfortunately going to need to happen is to go document-by-document, because I want to be able to deal with any objections in an orderly fashion.

I have thought and hoped that the first 31 documents could be admitted without objection, but if that's not the case, then we'll go one-by-one.

MS. MOORE LEONHARDT: We will defer to the Board's ruling in interest in moving the proceedings along. Again, we are not trying to bog down the proceedings. We're just protecting our right to Cross-Examine and object to evidence that's irrelevant or highly prejudicial that wouldn't otherwise be properly admitted into this hearing. Thank you.

MR. SHAPIRO: Attorney Leonhardt, I don't understand what you mean when you say you're going to defer to the Board. Are you withdrawing your objections to 1 through 31?

MS. MOORE LEONHARDT: No, I'm not.

MR. SHAPIRO: Okay.

MS. MOORE LEONHARDT: I'm just merely stating that we obviously respect the Board's expertise and authority here, and we're prepared to accept whatever ruling the Board makes. Thank you.

MR. PATTIS: We agree to behave, as well.

MR. SHAPIRO: Attorney Malcynsky, I just wanted to be clear. You, on behalf of your client, are not objecting --

MR. MALCYNSKY: We're not objecting to the admission of items 1 through 31.

MR. SHAPIRO: Okay. You may just have to let me finish my question, just so the record is clear.

MR. MALCYNSKY: No problem.

MR. SHAPIRO: Thank you. Attorney Leonhardt, I'm going to go through these documents one-by-one with you, as the other parties do not object, and if you have any objection to the specific document, you'll need to make it at that time.

Do you have any objection to what's been marked Exhibit 1?

MS. MOORE LEONHARDT: No, I do not. Petition for Declaratory Ruling, dated June 2, 2009?

MR. SHAPIRO: Yes.

MS. MOORE LEONHARDT: No objection.

MR. SHAPIRO: Okay.

(Whereupon, the above-mentioned document was marked as Exhibit No. 1.)

MR. SHAPIRO: Document No. 2?

MS. MOORE LEONHARDT: We have no objection to the Notice of Declaratory Ruling Proceeding, published in the Connecticut Law Journal, dated July 21, 2009, so long as the hearing is tailored to that notice and does not get expanded beyond what is noticed in the notice. Thank you.

(Whereupon, the above-mentioned document was marked as Exhibit No. 2.)

MR. SHAPIRO: Document No. 3?

MS. MOORE LEONHARDT: We do not have an objection to the Connecticut Chiropractic Association's Petition for Party Status.

(Whereupon, the above-mentioned document was marked as Exhibit No. 3.)

MR. SHAPIRO: Document No. 4?

MS. MOORE LEONHARDT: No objection to the Connecticut Chiropractic Association Ruling on Request for Status.

(Whereupon, the above-mentioned document was marked as Exhibit No. 4.)

MR. SHAPIRO: Exhibit 5?

MS. MOORE LEONHARDT: No objection to the Connecticut Chiropractic Council Petition for Party Status, and no objection to No. 6, the Ruling on their Request for Status Approving Status.

(Whereupon, the above-mentioned documents were marked as Exhibit Nos. 5 and 6.)

MR. SHAPIRO: Exhibit 7?

MS. MOORE LEONHARDT: We object to Exhibit 7 to the extent that it seeks to expand this Declaratory Ruling Proceeding to a proceeding that defines and proscribes a discharge summary process, as that was not part of the Notice of Hearing and was not specifically enumerated as a matter that would be considered by this Board.

MR. SHAPIRO: Okay. I would recommend to the Board that they overrule that objection and admit Exhibit 7 into evidence. You need a motion.

DR. POWERS: This is Dr. Powers. I'm going to make a motion that that's overruled, per Attorney Shapiro. This was discussed in our Board, and my motion is that we overrule that objection.

MR. SHAPIRO: Is there a second?

DR. ROBOTHAM: Dr. Robotham. I'll second

that.

CHAIRMAN SCOTT: I'm Dr. Scott. Is there any discussion? All in favor?

ALL: Aye.

CHAIRMAN SCOTT: All opposed? So carried.

(Whereupon, the above-mentioned document was marked as Exhibit No. 7.)

MR. SHAPIRO: Attorney Leonhardt, Exhibit 8?

MS. MOORE LEONHARDT: Prior to proceeding, may I just inquire to clarify for the record? Is it then my understanding that the scope of this hearing will encompass a consideration by the Board of whether or not a discharge summary should be required of chiropractors in the context of an informed consent process?

MR. SHAPIRO: Attorney Leonhardt, I believe you were present on the day that that issue came up, when the Board was considering the nature and topic of the Declaratory Ruling, and there was some discussion that that issue of whether a discharge summary and whether any special notification on discharge summary was appropriate would be something that the Board considered relevant when discussing this issue.

For example, if the Board, and I believe

this was discussed on the record, if the Board concluded after this Declaratory Ruling that there was a certain risk of a stroke or other concerns that are related to the petition, it would certainly be reasonable that the Board may have something to say with respect to what notification patients should receive on that, and that issue was discussed.

During the course of the proceedings, I think the Board is going to be very careful to limit evidence to what's relevant to the question presented, as stated in the notice that was published in the Connecticut Law Journal, but that issue was discussed on the record, as well.

MS. MOORE LEONHARDT: Okay. On behalf of the -- thank you. I was present, and the petition that we submitted on behalf of the Connecticut Chiropractic Association had listed four questions. One of the questions was what written information, if any, should be given to a patient in the context of informed consent.

The Board narrowed the issue to one question, and that question does not mention or inquire about what written information, if any, so I'm not taking a position antagonistic to the Board. I'm trying to understand with a greater degree of specificity the true

scope of the notice that was issued.

I have, at this point, my clients, the Connecticut Chiropractic Association and the Connecticut Chiropractic Council, will not object to that consideration of a discharge summary, so long as the Board also considers whether, if there is a reason to impart any written information, perhaps it be done in an alternative form to a written discharge summary.

So long as the scope of this hearing would not preclude that inquiry, we have no objection to the notice and the adequacy of notice. Thank you.

MR. SHAPIRO: Okay. Thank you. Your comments will be noted. I appreciate that. I think we're on Exhibit 8. Do you have any objection to Exhibit 8?

MS. MOORE LEONHARDT: Excuse me. I'd just like to take a moment to re-review that exhibit, if I may?

MR. SHAPIRO: Okay.

MS. MOORE LEONHARDT: My only objection is to the extent that the witness, who will be putting in testimony pursuant to Exhibit 8 and, also, the prior witness, to the extent that they seek to introduce opinion testimony, that is the nature of expert opinion testimony, that they're precluded from doing so, as my understanding is they are merely lay witnesses and wouldn't qualify as

experts to provide any expert opinion testimony, otherwise, I have no objection.

MR. SHAPIRO: Okay. I would recommend to the Board that they overrule the objection and admit Exhibit 9 into evidence.

DR. POWERS: Motion to overrule and accept No. -- were we on 9 or 8? I'm sorry.

MS. MOORE LEONHARDT: I believe we were on 8.

DR. POWERS: Motion to overrule and accept Exhibit 8.

CHAIRMAN SCOTT: Do we have a second? A second. Any discussion? Okay, we'll have a vote. All in favor?

ALL: Aye.

CHAIRMAN SCOTT: Any opposed? So carried.

(Whereupon, the above-mentioned document was marked as Exhibit No. 8.)

MR. SHAPIRO: Counsel, is there any objection to Exhibit 9?

MS. MOORE LEONHARDT: Exhibit 9 is the Petition for Party Status by the Chiropractic Stroke Awareness Group?

MR. SHAPIRO: Yes.

MS. MOORE LEONHARDT: My same remarks, as raised with regard to Exhibit 7 and 8, would be repeated and applied here.

MR. SHAPIRO: Okay and given that that authority -- well I'll take a motion.

CHAIRMAN SCOTT: Motion to overrule the objection and accept Exhibit 9.

DR. POWERS: Second.

CHAIRMAN SCOTT: Any discussion? We'll have a vote on it. All in favor?

ALL: Aye.

CHAIRMAN SCOTT: Any opposition? So ruled.

(Whereupon, the above-mentioned document was marked as Exhibit No. 9.)

MR. SHAPIRO: Is there any objection to Exhibit 10?

MS. MOORE LEONHARDT: Well I would voice the same objections. Exhibit 10 is the ruling on the Connecticut Stroke Awareness Group's Request for Status, so I would just simply raise the same objection in the interest of moving this along. Thank you.

MR. SHAPIRO: Okay. I don't really think your objection applies to Exhibit 10, which is a ruling from the Board, but your comments have been noted for the

record. The Board will take Exhibit 10.

(Whereupon, the above-mentioned document was marked as Exhibit No. 10.)

MR. SHAPIRO: Exhibit 11?

MS. MOORE LEONHARDT: Exhibit 11 is the Connecticut Medical Examining Board's Request to Participate as an Intervenor, and to the extent that the Connecticut Medical Examining Board is going to present a witness here today to adopt their testimony, we don't have an objection to the admission of this document as evidence. If they are not present to appear to adopt the testimony and take their position, as reflected in this document, Exhibit 11, we do object. Thank you.

MR. SHAPIRO: Okay. Exhibit 12?

MS. MOORE LEONHARDT: Is there going to be a ruling on that?

MR. SHAPIRO: Well I don't hear an objection.

MS. MOORE LEONHARDT: Well perhaps we can inquire of the audience, as to whether or not someone is here.

MR. SHAPIRO: Attorney Leonhardt, I'm not going to inquire regarding the audience with respect to that issue. If there's a request to participate as an

intervenor, the request has been made to the Board, and it's been granted by the Board.

If there's not someone with respect to any designated party here to adopt testimony under oath, then that testimony is not going to be admitted into evidence, so I don't think it's a relevant objection with respect to simply their request to participate as an intervenor when that request has already been granted.

For example, if there's someone that you represent that's not here to adopt testimony under oath, we're not going to admit that testimony either, so we're not going to go through each exhibit, each request and have you make an objection, that if there's someone not here to adopt that testimony, then you'll object to the request, itself.

The request, itself, is not evidence. It's more of a procedural nature that there's been a request made. There's nothing in this request, in and of itself.

MS. MOORE LEONHARDT: To the extent that the request is merely admitted for purposes of indicating that the Connecticut Medical Examining Board made a request to participate, we will not object.

To the extent that anything reflected in that request could potentially affect the Board's decision

making process, because it states a position, and in the absence of a witness to adopt that position and present him or herself for Cross-Examination, we would object. Thank you.

MR. SHAPIRO: Okay. I would recommend that Exhibit 11 be admitted over objection.

CHAIRMAN SCOTT: Motion to accept Exhibit 11 and overrule the objection?

DR. POWERS: Second.

CHAIRMAN SCOTT: Is there any discussion? All in favor?

ALL: Aye.

CHAIRMAN SCOTT: Any opposition? So ruled.

(Whereupon, the above-mentioned document was marked as Exhibit No. 11.)

MR. SHAPIRO: Attorney Leonhardt, Exhibit 12?

MS. MOORE LEONHARDT: Same objection. Thank you.

MR. SHAPIRO: Attorney Leonhardt, with respect to that specific objection, we'll note your objection for the record. I don't believe that we need a full vote of the Board with respect to each one.

Your objection on those issues have been

noted, and I've already informed you that, if there's not an appropriate person to adopt the testimony under oath, then we can go back and look at these exhibits later.

MS. MOORE LEONHARDT: Thank you.

(Whereupon, the above-mentioned document was marked as Exhibit No. 12.)

MR. SHAPIRO: Do you have any objection to Exhibit 13?

MS. MOORE LEONHARDT: We have no objection to Exhibit 13, which is the request from Senator Fasano to participate.

(Whereupon, the above-mentioned document was marked as Exhibit No. 13.)

MR. SHAPIRO: Exhibit 14?

MS. MOORE LEONHARDT: We have no objection, which is the ruling approving Senator Fasano's request. Thank you.

(Whereupon, the above-mentioned document was marked as Exhibit No. 14.)

MR. SHAPIRO: Exhibit 15?

MS. MOORE LEONHARDT: We have no objection to the request to the International Chiropractic Association's Request to Participate.

(Whereupon, the above-mentioned document

was marked as Exhibit No. 15.)

MR. SHAPIRO: Exhibit 16?

MS. MOORE LEONHARDT: No objection.

(Whereupon, the above-mentioned document was marked as Exhibit No. 16.)

MR. SHAPIRO: Exhibit 17?

(Off the record)

MS. MOORE LEONHARDT: I would just reiterate the same objections with regard to this request from the Connecticut Stroke Awareness Organization as I indicated for Exhibit 7, 8, 9 and 10, to the extent that these documents seek to bring in evidence that will not be offered, or positions, which are beyond laypersons' purview. Thank you.

MR. SHAPIRO: Thank you. Exhibit 18?

MS. MOORE LEONHARDT: Same objection.

MR. SHAPIRO: Exhibit 19?

MS. MOORE LEONHARDT: Same objection.

MR. SHAPIRO: Exhibit 20?

MS. MOORE LEONHARDT: Same objection.

MR. SHAPIRO: Exhibit 21?

MS. MOORE LEONHARDT: Same objection.

MR. SHAPIRO: Exhibit 22?

MS. MOORE LEONHARDT: I object to Exhibit

22, to the extent that it's inflammatory and that it seeks to submit layperson testimony.

MR. SHAPIRO: You're talking about 22, which is the ruling of the Board?

MS. MOORE LEONHARDT: Oh, I'm sorry. Same objection to the prior one. I moved ahead to 23. I'm getting ahead of myself. I apologize.

MR. SHAPIRO: Exhibit 23?

MS. MOORE LEONHARDT: As I began to say, I do object to Exhibit 23 for the same reasons that I've objected to Exhibits 7, 8, 9 and 10 and those thereafter.

MR. SHAPIRO: Okay. Exhibit 24?

MS. MOORE LEONHARDT: Same objection.

MR. SHAPIRO: Exhibit 25?

MS. MOORE LEONHARDT: I object to Exhibit 25 to the extent that it puts forth a medical opinion, or an expert opinion for which this witness is not qualified to express or present to this Board in the absence of any accompanying expert opinion that it subject to Cross-Examination. Thank you.

MR. SHAPIRO: Okay. Exhibit 26?

MS. MOORE LEONHARDT: Same objection.

MR. SHAPIRO: Exhibit 27?

MS. MOORE LEONHARDT: I object to Exhibit

27. The Board was notified that this particular witness and individual will not be appearing here today to testify, and, therefore, the petition and any evidence pre-filed is entirely irrelevant and doesn't belong in the record of this hearing.

As I understand it, his participation and appearance has been withdrawn.

MR. SHAPIRO: Okay. I'll hear very, very briefly from the parties with respect to this. I know there's been a ruling issued that we will admit into evidence. Attorney Malcynsky, do you have any comments you'd like to make?

MR. MALCYNSKY: Attorney Shapiro, are you talking about the request to have a substitute witness for Mr. Long?

MR. SHAPIRO: Yes. In some respects, yes. I mean, right now, we're looking at Exhibit 27. Okay. Just so the parties and intervenors know, if there are exhibits that are not admitted into evidence, we're going to mark them for identification only for two reasons, one, so that we have an accurate record, and, two, so that the order of the exhibits remains the same.

I'm going to suggest to the Board that they make the ruling on the request to designate another

individual to present pre-filed and rebuttal testimony, dated December 31, 2009, a one-page document, Exhibit 51. Is there any objection from the parties to the ruling being admitted as evidence?

MS. MOORE LEONHARDT: No objection.

MR. PATTIS: I would like an opportunity to be heard on its merits.

MR. SHAPIRO: You will be given that opportunity. Is there any objection to the document coming in?

MR. PATTIS: No, sir.

MR. MALCYNSKY: No.

MR. SHAPIRO: Okay, so, this document, Exhibit 51, this one-page document --

MR. MALCYNSKY: I'm sorry, Mr. Shapiro. Could you just clarify for me what we're doing here? I'm a little confused.

MR. SHAPIRO: Okay. Exhibit 27, which we were looking at to see if there was any objection to, that raises some issues that were handled by a ruling of the Board on December 31st, so I wanted to make sure that that ruling was in evidence, so that we could discuss Exhibit 27 and whether to mark that as a full exhibit or an exhibit for ID only, so I've admitted, the Board has

admitted, unless there's an objection, Exhibit 51 as a full exhibit, which is the ruling of December 31, 2009, signed by Mr. Kardys on behalf of the Board.

MR. MALCYNSKY: Got it. Thank you.

(Whereupon, the above-mentioned document was marked as Exhibit No. 51.)

MR. SHAPIRO: Attorney Malcynsky, do you have any position with respect to Exhibit 27 that you'd like to state on the record?

MR. MALCYNSKY: No. I'm fine with that at this point.

MR. SHAPIRO: Okay.

MR. MALCYNSKY: I think we're going to deal with it again when we come to item 42.

MR. SHAPIRO: Okay. Attorney Pattis?

MR. PATTIS: I don't mean to break ranks with Mr. Malcynsky, but I do object to its exclusion for the following grounds. Items 1 through 31 were preliminary matters that this Board reviewed in determining which parties had an interest in the proceeding. Whether that interest rose to that level sufficient to make them parties, or merely warranted intervenor status, was a decision the Board made on a case-by-case basis.

Dr. Long provided information to the Board. The Board ruled that his information was relevant and pertinent to these proceedings. For personal reasons, he's been unable to appear. The parties interested in his testimony have sought permission to substitute someone, who is prepared to come here and adopt his testimony under oath, thus crossing the threshold of admissibility, in terms of the guarantees that an oath gives, as to reliability.

We were troubled by the ruling to deny that and noted with great interest that at or about the same time that was denied, we were informed for the first time of a new witness for the International Chiropractic Association, a man by the name of Dr. Luigi DiRubba. We're not objecting to his appearing, because so long as he appears under oath and submits himself to the scrutiny of Cross-Examination, we're confident that our interests aren't prejudiced.

We're not confident, however, that excluding Dr. Long's information, merely because he cannot be present because of a physical, or because of a personal problem, serves the interest that this Board is here to serve, that is the protection of the public.

Dr. Long has prepared information, and our

belief is that it is pertinent to this Board's decision to frame these issues, and that what's more, because of his inability to attend, so long as we can tender a witness who is prepared to adopt it, it's admissible for substantive reasons, as well as preliminarily.

So, for those reasons, I do request that 27 and 28 be made part of this record.

MS. MOORE LEONHARDT: May I respond?

MR. SHAPIRO: You may.

MS. MOORE LEONHARDT: Yes. On behalf of the Connecticut Chiropractic Association and the Connecticut Chiropractic Council, we vehemently objected to Dr. Long being permitted to have another individual step into his shoes to presumably adopt and present his opinion testimony. That is virtually impossible. I don't know if anyone in this room has the ability to read another person's mind, or to reconstruct the decision making process that goes on in one individual's mind in creating, formulating and rendering medical opinions about the types of important issues that are before this Board today.

It is virtually impossible, and I challenge both counsel to present me evidence that that can be done.

Secondly, Dr. Long presented himself as an

individual, unlike the International Chiropractic Association and the Connecticut Chiropractic Council, which are membership organizations.

They pre-filed testimony as Associations, as organizations. They have been granted Associational status. As such, they represent the positions of the organization. We are not speaking as an individual when we present testimony through those organizations. We are speaking on behalf of an organization.

It's not an apples-to-apples comparison. I assume that Attorney Pattis is well familiar with the case law on Associational representation and has no issue with the fact that that's been granted in this proceeding to the Associations that are presenting before the Board today, which include his Association or organization and the Connecticut Stroke Awareness Group. Thank you.

MR. PATTIS: We certainly have no objection to the concept of Associational standing and will be revisiting it in the Superior Court soon.

As to the contention that Preston Long's opinions are merely idiosyncratic and could not be shared by another person, because they are his and his alone, that turns out to be a quite damming admission from Attorney Leonhardt and one I don't think she means.

What this Board is here to do today is to determine whether there is scientific evidence, which consistent with the law of informed consent requires that consumers be given information about a substantial or perhaps immaterial, but, nonetheless, real risk of stroke and/or death, or other catastrophic illness as a result of chiropractic care.

Preston Long didn't go back into a room somewhere, consult some tealeaves, or sublux his upper spine to let his inner energy free when he came up with these opinions. He reviewed literature, literature, which another person has accessible to him, and literature, which another person can as capably agree or disagree with, so I don't believe that standard here is what a person believes. We're not here to preach. We're not here to worship at any altar. We've come here to reason together about data that is common and in the public domain.

Preston Long issued an opinion that was consistent with what he reviewed in that data. If another person is prepared to come in and adopt it, they're not adopting his preference in iced teas, or flavors of ice cream. They're adopting his take on what the evidence suggest is necessary to protect consumers in Connecticut.

MR. SHAPIRO: Thank you, counsel.

MS. MOORE LEONHARDT: If I may just reply, I think counsel misunderstands. My objection is based upon the lack of availability of Dr. Long to present himself and be subject to Cross-Examination.

Cross-Examination is an inveterate right. It's a very important right, guaranteed in hearings, such as this, and I think all members of the public fundamentally understand the importance of the right to Cross-Examination.

Since Dr. Long will not be present, we feel very strongly that his testimony should not be permitted to be admitted into evidence. Thank you.

MR. PATTIS: If I may, that avoids the issue and now it changes its focus. The issue is not whether Preston Long has intrinsically valuable information in and of himself, but whether, as a scientist, he was capable of reviewing literature and reaching conclusions that others can share.

It is the very essence of scientific evidence and scientific testimony that it's capable of being tested, that it's subject to peer review, and that people similarly trained can reach conclusions about risk, about materiality, about benefits and about harms when

they review the same data.

We have prepared to tender a person, who can appear in lieu of Dr. Long, and that person will have reviewed the literature and either reached or not reached conclusions consistent with his.

The crucible of Cross-Examination will be applied to him, capably I'm sure, by Attorney Leonhardt, and if this witness wants to distance himself from Dr. Long, this witness can, but we believe it would not serve the fact finding and truth finding function that this Commission is here to serve to preclude this testimony.

MS. MOORE LEONHARDT: Well, again, there's a mystery afoot that violates, directly and forcibly, the right to Cross-Examination.

MR. SHAPIRO: Attorney Leonhardt, I think we --

MS. MOORE LEONHARDT: If I may just finish, because this is an important point? Allegedly, there's a person, who would step into Dr. Long's place and present testimony. An important aspect of Cross-Examination, particularly of someone who is going to offer expert opinion testimony, is the ability of the parties who are conducting Cross-Examination to understand and appreciate the background, experience, education and knowledge of

that individual.

We have not been given any such information. None of that was offered. This would be, in essence, a surprise witness, particularly where Attorney Malcynsky is trying to get this hearing done in two days, which we'd all be in favor of that, as long as the rights of the parties that have been granted in this proceeding are not stepped on, and that's why we object. Thank you.

MR. PATTIS: Those issues and a proper Cross-Examination all go to its weight, rather than its admissibility, and insofar as timely consideration of these issues is concerned, we'd be into the substance of this if we weren't already tendering objections and listening to argument on objections to prior rulings of this body.

MR. MALCYNSKY: I would just like to say I'd like to amend my earlier comments on this matter to align myself with Attorney Pattis, in that if the Board is considering excluding the testimony, the written testimony of Preston Long, as well as denying the request that Dr. Bellamy be allowed to testify, I would be opposed to that.

I would support the fact that Dr. Bellamy is merely testifying as a member of VOCA. Preston Long was also a member of VOCA. The written testimony of

Preston Long is in the record. Dr. Bellamy is going to testify, is making himself available for Cross-Examination.

There are no surprises here, or the potential for surprises here, so I would join Attorney Pattis in his comments.

MR. SHAPIRO: Thank you.

MS. MOORE LEONHARDT: Well this is the first I've heard of Dr. Bellamy, number one. Dr. Bellamy is an orthopedic doctor and not a chiropractor, and we have not had an opportunity to prepare Cross-Examination of Dr. Bellamy.

We do not have his curriculum vitae. We have no information of Dr. Bellamy, other than the press conference that was held yesterday, which may have given us a preview of what he would like to present to this Board, in which case I think that we would, if the Board were inclined to grant this motion, which we feel the Board should not do, because it would be violating the notice that was issued on September 14, 2009, in which it warned all parties and practitioners that if they were not present to adopt their testimony, the testimony and evidence they sought to present would not be allowed in.

That would violate the procedures

established by the Board in this hearing, and we are opposed to it. For all of the reasons that I've previously stated, we stand by our objection.

After the Board considers this objection, I would ask that the Board inquire of Attorney Pattis, as to the several threats he has made to seek court intervention relative to this proceeding, because --

MR. SHAPIRO: Attorney Leonhardt? Attorney Leonhardt?

MS. MOORE LEONHARDT: -- if he intends to go to court, we ought to know now, so he doesn't waste this Board's time today. Thank you.

MR. PATTIS: There's been no threat. We may bring a common law action out of frustration with what appears to be the industry's determination to avoid reaching the merits here, but we've come here fully to participate in these proceedings and to present the evidence we think is pertinent.

There are three branches of government. There is a judiciary branch. There is a common law informed consent requirement. Nothing precludes us from going there. There have been no threats made.

As to the contention, that somehow they're prejudiced by Dr. Bellamy, this Board knows full well that

good cause is always a reason for relaxing any ruling. Dr. Preston Long cannot be present here, because of personal reasons.

We have presented someone, who has reviewed his findings and is prepared to endorse them in full or in part. There are no mysteries here.

MR. MALCYNSKY: The other thing, Mr. Shapiro, just quickly, I mean the Board has allowed the substitution of a witness from the Association. I don't see the harm in allowing the same accommodation to VOCA and to the Stroke Victims. Thank you.

MR. SHAPIRO: Okay. I would recommend --

MS. MOORE LEONHARDT: To the extent that the Board --

MR. SHAPIRO: Attorney Leonhardt, we've heard all we're going to hear on this now. We've heard all we're going to hear. I would recommend to the Board that the objection be sustained and that Exhibit 27 be marked for identification only. We're just dealing with 27, and I would recommend to the Board that they mark that for identification only.

DR. POWERS: I make a motion that we mark Exhibit 27 for ID only.

CHAIRMAN SCOTT: Is there a second?

A MALE VOICE: Second.

CHAIRMAN SCOTT: Is there any discussion?

MS. JEAN REXFORD: I just need to clarify. That means that -- I'm sorry. Does that mean that Dr. Long's testimony will be removed?

MR. SHAPIRO: That issue has been ruled on with respect to Exhibit 51.

MS. REXFORD: Okay and the other physician, the physician cannot testify?

MR. SHAPIRO: That's correct. I'm not sure we've quite gotten to that state yet, in terms of what the rulings have been so far, but, right now, what I'm dealing with is just Exhibit 27. There's been a ruling of the Board that --

MS. REXFORD: That's Exhibit 51, right.

MR. SHAPIRO: That's Exhibit 51.

MS. REXFORD: December 31st.

MR. SHAPIRO: Dr. Long's request to appoint Dr. Katz to present submission is denied. The notice was clear from the Board, that people, who wanted to present evidence, would have to be there to adopt their testimony under oath.

In this particular case, Dr. Long applied as an individual to present testimony, and he's not

available for Cross-Examination.

MR. VINCENT PACILEO: Just another quick question. There was a doctor, named Bellamy. I don't see his name as part of this. Is he a replacement for Dr. Katz?

MR. SHAPIRO: He won't be a replacement.

MR. PACILEO: There was a name mentioned. I don't see any documentation or ruling associated with that individual.

MS. MOORE LEONHARDT: As a matter of information or point of information, that individual never applied for party status or intervenor status, as required in the procedures established long ago and noticed by the Board.

MR. PACILEO: Move the question.

CHAIRMAN SCOTT: All in favor?

ALL: Aye.

CHAIRMAN SCOTT: Any opposition? So ruled.

(Whereupon, the above-mentioned document was marked as Exhibit No. 27 for identification only.)

MR. SHAPIRO: Attorney Leonhardt, I would ask for your position with respect to Exhibit 28. I think, as a procedural matter, it doesn't contain the substance of Dr. Long's testimony, but it might be

important to create an accurate record, which is the ruling of the Board, dated September 14, 2009.

MS. MOORE LEONHARDT: I won't object to that, so long as we're recognizing item number 51, which was just discussed at length, the ruling denying him to have a substitute witness. Thank you.

(Whereupon, the above-mentioned document was marked as Exhibit No. 28.)

MR. SHAPIRO: Okay. Exhibit 29?

MS. MOORE LEONHARDT: I reiterate my objections to the petition by Sharon Mathiason and Murray Katz, dated August 14, 2009. Same objections as I raised with regard to Exhibit 7, 8, 9 and 10 and those thereafter. Thank you.

MR. SHAPIRO: Thank you. Exhibit 30?

MS. MOORE LEONHARDT: Same objection.

MR. SHAPIRO: Exhibit 31?

MS. MOORE LEONHARDT: No objection.

(Whereupon, the above-mentioned document was marked as Exhibit No. 31.)

MR. SHAPIRO: Okay. I would recommend to the Board that they accept the documents over the objection, with the exception of 27, which we've issued a separate ruling on, which is all those documents.

DR. POWERS: I believe it's 17 to 26, 29 and 30, is that correct?

MR. SHAPIRO: I believe that's correct.

DR. POWERS: Okay, so, I make a motion that we overrule objections by counsel and accept documents 17 to 26, 29 and 30.

CHAIRMAN SCOTT: Is there a second?

A MALE VOICE: Second.

CHAIRMAN SCOTT: Is there any discussion?

DR. IMOSSI: I think we need to add Exhibit 31 to that.

MR. SHAPIRO: She didn't object to 31.

DR. IMOSSI: Okay.

CHAIRMAN SCOTT: Thank you. All in favor?

ALL: Aye.

CHAIRMAN SCOTT: Any opposition? So carried.

(Whereupon, the above-mentioned documents were marked as Exhibit Nos. 17 through 26, 29 and 30.)

MR. SHAPIRO: Attorney Leonhardt, I understand you've made a request for recusal or motion to disqualify Board Member Jean Rexford.

MS. MOORE LEONHARDT: Yes. On behalf of the Connecticut Chiropractic Association and the

Connecticut Chiropractic Council, we would, at this time, inquire, as to whether Public Member Jean Rexford is willing to recuse herself from hearing evidence in this hearing and participating in this particular hearing.

We are not in a position today to speak about the propriety of her continuing to serve as a member of the Board. We have raised an issue that I think needs to be given consideration in the context of this proceeding, and we leave the remainder of Ms. Rexford's participation as a Public Member of the Board in future proceedings to the Attorney General's Office and any other State agencies that should properly be called upon to review that issue.

MR. MALCYNSKY: May I be allowed to respond?

MR. SHAPIRO: In a minute. Well, counsel, I reviewed your motion, and I've reviewed the current case law on this issue, and I'm going to make some factual inquiry with respect to Ms. Rexford, and then I'll allow you to make any further argument.

The Connecticut Supreme Court in 2009 said the applicable due process standards for disqualification of administrative adjudicators do not rise to the heights of those prescribed for judicial disqualification.

The mere appearance of bias that might disqualify a Judge will not disqualify an Arbitrator. Moreover, there is a presumption that administrative Board members acting in an adjudicative capacity are not biased.

To overcome this presumption, the Plaintiff must demonstrate actual bias, rather than a mere potential bias of the Board members challenged, unless the circumstances indicate a probability of such bias too high to be constitutionally tolerable.

The Plaintiff has the burden of establishing a disqualifying interest. And that's from Moraski versus the Connecticut Board of Examiners of Embalmers and Funeral Directors from our Connecticut Supreme Court in 2009.

So you understand, counsel, that you have the burden of showing this disqualifying interest or circumstances to indicate a probability of such bias too high to be constitutionally tolerable?

MS. MOORE LEONHARDT: Yes, I do. Mr. Shapiro, I'm very familiar with the Moraski case. I'm also familiar with other pronouncements, cases, such as Elf(phonetic) versus Department of Public Health, a 2001 case, and Clusen(phonetic) versus Board of Police Commissioners, as well, and all of the court rulings cited

to in that important body of case law.

I'm prepared to distinguish a claim of bias, such as the one you're referring to, from that to which I felt compelled, with all due respect to Ms. Rexford and the Board, to raise a request for recusal, and we apologize that this will take up the Board's time today, but given the importance of the matters before the Board and the importance for there to be a fair hearing by unbiased decision makers, we felt compelled to at least explore this with Ms. Rexford in the event that she was not willing to voluntarily recuse herself, since she certainly is well aware of her position, what she is paid to do, how she gets paid, who she works for and where and when she does and engages in those activities.

I have done research with the State Ethics Commission. I've done research with the State Attorney General's Office. I have researched the Secretary of State's Office.

I've also done research that any one of you sitting in this room could do, which is to get on the internet and examine the internet website of the organization that Ms. Rexford is employed by.

This organization, for those of you who are not aware, I believe, unless Ms. Rexford tells me

otherwise, she is the Executive Director.

MR. PATTIS: Are we going to proceed by proffer or by testimony, because I'm not prepared to accept at face value the representations of counsel on this issue, and I ask the Board, if it's going to consider questions of disqualification, whether we can poll the chiropractic members of the Board to determine who among them are members of the Connecticut Chiropractic Association or the Connecticut Chiropractic Council, or the International Chiropractics Association.

All parties or intervenors in this matter they appear to be identically situated to Ms. Rexford, in that an inquiry into what they're paid, how they get paid, and when and where they do the activities that generate payment may reflect information on bias.

MR. SHAPIRO: Attorney Pattis --

MS. MOORE LEONHARDT: May I finish?

MR. SHAPIRO: I'm going to respond to Attorney Pattis, and then I'm going to allow you to make any further comments you may have.

Attorney Pattis, I think your comments are well taken, and it certainly would not be the advice of, legal advice of our office, that membership, in and of itself, would present a disqualifying interest.

The concern raised by Attorney Leonhardt's motion is that there are parties, who are members of her organization, and whether or not she has taken the specific position with respect to this issue prior to today, and, so, I'm going to make some limited inquiry to this Board member regarding her ability to hear the evidence in an unbiased fashion and, also, whether or not her group has taken a specific position with respect to informed consent and the risk of stroke and then move forward from there.

Attorney Leonhardt, do you have any remarks you'd like to make?

MS. MOORE LEONHARDT: Yes. First of all, I'd like to clarify that I agree with Attorney Pattis, and, from time-to-time, before we got started here, he and I agreed that we often agreed on a lot of issues.

I disagree with his interpretation of my motion. My motion is not challenging membership. That's not the basis of this motion. My motion relates to the appointment of Public Members to the Board of Chiropractic Examiners, which is very specific and precludes any member of the public from serving as the Public Member if they have a substantial financial interest that runs them afoul of the State Ethics Code for public officials.

I would be surprised if any of the attorneys here would disagree with me that, in serving on the Board, Ms. Rexford is serving in official capacity as a public official.

MR. PATTIS: My point was a simpler one, and that is that, in terms of financial interest in the outcome, the Chiropractic Board is governed by a series of public and non-public members, and the non-public members are regulated entities, in and of themselves, governing and, in effect, regulating over what they, themselves, shall be required to do.

So in terms of a substantial financial interest in the outcome, we're not here to question the integrity of any of the Board members. We think they'll all do a fine job, and we think that they're all open-minded people.

We view the attack on Ms. Rexford as unusual, and if the Board is going to go down a road that questions people's substantial financial interest in the outcome, then there's potentially a motion to disqualify the majority of the Board, which gets us nowhere.

MS. MOORE LEONHARDT: Well, again, counsel, you misunderstand my motion, so let me perhaps walk you through it. This --

MR. SHAPIRO: Counsel?

MS. MOORE LEONHARDT: -- does not derive from a substantial --

MR. SHAPIRO: Excuse me, counsel. I think I understand your motion. Can you tell me what evidence you have that Ms. Rexford has a financial interest in the outcome of this?

MS. MOORE LEONHARDT: That's not the basis of my motion.

MR. SHAPIRO: Okay.

MS. MOORE LEONHARDT: Which is why I was trying to clarify myself.

MR. SHAPIRO: I thought you just said that it was the basis.

MS. MOORE LEONHARDT: She has a financial interest in promoting the position and the interest of patients in the State of Connecticut and taking a position on behalf of the members of her organization and working for them and promoting and facilitating their positions on issues, including issues of informed consent, and I will now present the evidence of that.

I believe that her position in that organization --

MR. PATTIS: Again, same objection. We're

proceeding by way of proffer and not competent evidence.

MR. SHAPIRO: I'll hear the proffer.

MS. MOORE LEONHARDT: If we could have Ms. Rexford sworn, I would be happy to present to her the copies of the documents that have been downloaded from the website of the organization that she is employed by and present them and have them entered into evidence, and then we can hear her testimony in that regard, and then I would ask the Attorney General's Office to render an opinion, as to whether her participation as a Public Member of the Board really is inappropriate, because she's disqualified from serving in that position as the statute defines Public Members' membership on this Board.

MR. PATTIS: It's an incoherent proffer. It's not a financial interest, except when it is, and it's only a financial interest when Ms. Leonhardt thinks it's convenient to have one.

This person either has a financial interest or not, and, if she does have a financial interest in the outcomes of these proceedings, so do the five chiropractic members of the Board.

If we're going to go down this road, are we going to place under oath each chiropractor on this Board to determine whether they can be neutral and detached on

an important issue of patient safety?

MS. MOORE LEONHARDT: The chiropractors, unlike Ms. Rexford, have been mandated, and any interest of membership or relationships with others is waived by statutory Fiat Grant in the statute, itself. That is not so with regard to a Public Member appointment to this Board, and that is what I'm putting at issue here.

MR. PATTIS: So it's all right for the fox to guard the chicken coop, so long as they swear an oath of vegetarianism?

MS. MOORE LEONHARDT: If there's a fire truck that arrives at a fire, are you going to say the fire truck caused the fire?

MR. PATTIS: Are you conceding that chiropractic care causes urgency in patients' lives comparable to a fire that might pose a risk of death or serious physical injury to another person, Ms. Leonhardt?

MS. MOORE LEONHARDT: I'm surprised that you would even ask that question, Attorney Pattis, because you're disrespecting the Board with it.

MR. MALCYNSKY: Excuse me. As the only one who has attempted to be polite here, can I be heard briefly on this issue?

MR. SHAPIRO: Sure.

MR. MALCYNSKY: Ms. Rexford was appointed by Governor Rell as a Public Member of this Board. It was well-known to all the parties when she was appointed and to others in the medical community that she is a Patient's Rights Advocate. Ms. Rexford's ties to other groups may well have not -- may or may not have stated a position on this issue, are not that different, and, as Attorney Pattis said, indeed less direct than other members of this Board, who are also members of the professional organizations that are actually party to this proceeding.

Ms. Rexford is not a member of an organization that's a party to this proceeding. We have not asked that any member of the Board, who is also a member of a professional organization, which is actually a party to this proceeding, be disqualified.

We are prepared to trust that despite their close connection to the chiropractic profession and the issues before the Board, they can be objective in their deliberations.

If the argument is being made that Jean Rexford should be disqualified as a member, who is a member of an organization that is not a party to this proceeding, nor did it move to be so, or move to intervene, other members of the Board are also members of

the very party professional organizations filing briefs and arguing before you today.

Those organizations have also testified before the legislature on the very same issue that's being heard by this Board today. Ms. Rexford was appointed to the Board as a Public Member for the very reason that she has some familiarity with the subject matter.

To disqualify a Public Member for that very familiarity, without disqualifying professional members for theirs, would do a disservice to the fairness and the makeup of this Board.

This motion, again, like the other motions filed today by Attorney Leonhardt, was filed on the eve of the hearing, is nothing more than an effort to frustrate the process and thwart the Board's ability to benefit from the participation and the perspective of all of its members --

MS. MOORE LEONHARDT: I take issue with that accusation, and I vehemently deny it, and I would like an opportunity to present my motion, which seems to be hanging in the air here, so that all in this audience that are hearing this discussion and argument, which I anticipated would be heated, can understand the critical underpinnings of my motion, which, as I said from the

outset, I deeply regretted having to raise this issue at all.

We were uncertain, as to whether Ms. Rexford would be here today, sitting on this Board to hear the issues, and, given her appearance, we feel compelled to press the issue.

Obviously, we leave it to the Board and, if necessary, the Attorney General's Office to render a formal opinion on this. May I present my motion?

MR. SHAPIRO: Just give me one moment. Attorney Leonhardt, do you have any information that Ms. Rexford has specifically lobbied with respect to the issue of the informed consent question that's presented to this Board today?

MS. MOORE LEONHARDT: Yes, I do.

MR. SHAPIRO: Okay. What is that information?

MS. MOORE LEONHARDT: Draw your attention to Exhibit D to my motion.

MR. SHAPIRO: Yes.

MS. MOORE LEONHARDT: Exhibit D is a copy of the website from the Connecticut Center for Patient Safety. It identifies Ms. Rexford as the Executive Director of that organization, specifically, if you take a

look at Exhibit D.

If you take a look at Exhibit E, the website states the following. Quote, "The Connecticut Center for Patient Safety works in our communities, within our health care systems and with elected officials to improve the quality of health care and to protect the rights of injured patients through education, accountability and advocacy."

Next, Exhibit F. In addition, according to the website maintained by Ms. Rexford's organization, the organization posts its members' names and stories in an effort to assist those members to publish their stories and get support.

As stated on the website, quote, "Tell us your story. Have you had an experience you would like to share with us? The strength of the Connecticut Center for Patient Safety is the reality of what happened to you or a loved one. By adding your voice to ours, we grow stronger. Please provide the following basic contact information, so that we can call you to find out more about your experience."

MR. SHAPIRO: Counsel --

MS. MOORE LEONHARDT: "Your personal story will help us move this issue forward."

MR. SHAPIRO: Counsel?

MS. MOORE LEONHARDT: Yes?

MR. SHAPIRO: If I need to interrupt you, I want you to not continue to try to talk over me, because that won't lead to an efficient hearing, okay?

MS. MOORE LEONHARDT: I'm simply trying to complete my sentence when I do that, counsel.

MR. SHAPIRO: I understand that, but what you're doing is reading to me the exhibits, which I've already read, so I was asking you if you have any other information than what you've already put in your exhibits, because I've read the exhibits.

MS. MOORE LEONHARDT: Well, counsel, I think that given the fact that both attorneys to my right and left have had ample opportunity to read their extensive objections into the record, which I might point out are raised on behalf of Ms. Rexford, though they have not filed an appearance on her behalf, and I have to question the propriety of their doing so, I note that Ms. Rexford does not seem to have independent counsel here, and I am simply asking for an equal opportunity to present my motion.

The people sitting in this room do not have the motion before them, do not have the items to which I'm

referring, and I think that everyone in this room has the right to know.

MR. SHAPIRO: Okay.

MR. MALCYNSKY: I would just say that we have never, at least I have never, and I don't think Attorney Pattis has endeavored to speak as a representative of Ms. Rexford. Our objection is on behalf of VOCA, and merely to point out the absurdity that the accusation that Ms. Rexford comes to this hearing with a certain perspective, while not recognizing that the chiropractors, who are sitting on this Board, also come with a perspective.

(Off the record)

MR. MALCYNSKY: We're willing to accept the fact that this Board, including the chiropractors on this Board, can be independent. We would expect the same would be afforded Ms. Rexford.

There's no showing of actual bias or probability of bias in my opinion.

MR. PATTIS: I join in Attorney Malcynsky's remarks, and, also, I'm not aware of having read anything into the record. I'm simply responding to a motion that I received at 5:00 last night on the eve of this hearing.

I don't see anything in it that supports an

inference of actual bias. I would ask the committee to vote on this motion and to reject the motion to recuse.

MS. MOORE LEONHARDT: Well I ask for an opportunity to continue to present my evidence before the Board considers the issue and votes.

MR. SHAPIRO: Counsel, I don't have any issue with you presenting your evidence.

MS. MOORE LEONHARDT: Thank you.

MR. SHAPIRO: What I'm not interested in is having you read exhibits that are attached to your motion into evidence. I agree with Attorney Pattis, that his objections have not been something that he's already filed with the Board, and, therefore, the Board or myself has already read them.

So if you have anything to offer or argument, based on what your exhibits say, I'd be happy to hear that on behalf of the Board.

MS. MOORE LEONHARDT: Yes, I do. Thank you very much for that. Drawing your attention to Exhibit G, this is not about a perspective that Ms. Rexford may have. It's about the fact that she's listed as a member on her website Ms. Britt Harwe, who is the co-founder of the Connecticut Stroke Awareness Group, and on the next page, Exhibit H, of the website there is a complete member story

of Ms. Harwe, and in that story she is particularly stating claims against chiropractors and raising statements and making statements about the matters that are before the Board today.

As such and given the fact that the mission of Ms. Rexford's organization, for which she is paid to acquit her duties, is to advance Ms. Harwe's story and her position that she has to present here in this hearing.

Our position is that Ms. Rexford is not a qualified person to sit in the position of a Public Member on this Board in this hearing. In addition -- yes?

MR. MALCYNSKY: You refer to statements on the website made by Ms. Harwe, not by Ms. Rexford.

MS. MOORE LEONHARDT: Ms. Rexford's organization is the organization --

MR. MALCYNSKY: In much the same way that the chiropractors who sit on this Board are members of the Association that you represent who are testifying as parties before this proceeding today.

MS. MOORE LEONHARDT: No.

MR. MALCYNSKY: Your argument is patently absurd.

MS. MOORE LEONHARDT: It is not absurd. Let me tell you the difference. The difference is this.

Ms. Rexford gets paid to advance and promote and advocate on behalf of CSAG.

MR. MALCYNSKY: The same way the chiropractors are paid as chiropractors.

MS. MOORE LEONHARDT: No. The chiropractors are paid to --

MR. MALCYNSKY: I suggest we move on to the merits of this. More of this tactic is just delaying the hearing, and it's denying the public the right to hear the testimony from your side, as well as our side. Let's move on, Ms. Leonhardt.

Let's get rid of the eight or nine motions you filed this morning to delay the hearing. You've kept us here for, oh, almost two hours since the start of the hearing, and we haven't heard any testimony yet.

MS. MOORE LEONHARDT: Attorney Malcynsky --

MR. PATTIS: I join in Attorney Malcynsky's remarks and note the irony that Ms. Leonhardt seeks to read into the record documents that are a public record. The public has a right to know, and those assembled here should know what's in the public record.

We do agree with Attorney Leonhardt. There is a right to know, and we're here to contest and litigate the issue of the public's right to know about the risks

they submit themselves to when they go to men and women called chiropractors.

MS. MOORE LEONHARDT: I appreciate the efforts of counsel to avoid this very important issue, but this goes to the fundamental notion of a fair hearing and impartiality of the members of the Board hearing this very important issue.

For the record, my name is Moore Leonhardt, and I would appreciate counsel addressing me properly with my full name.

Having gotten beyond that, I would appreciate the opportunity to present my -- to complete my presentation of the evidence that we believe supports the notion that Ms. Rexford should recuse herself.

If Ms. Rexford would recuse herself, we could move on to the matters of import today, which is the evidentiary presentation in this hearing.

I am not seeking to prolong this. This could be avoided by Ms. Rexford voluntarily recusing herself. If she would do so, we can move on. If she won't do so, then I'm going to press my motion to disqualify, because I have an obligation to do that as an advocate for my clients and in the interest of justice and fair hearings, which the State of Connecticut, Attorney

General's Office has always supported. May I proceed?

MR. PATTIS: Attorney Shapiro, I would ask that you hold Ms. Moore Leonhardt, and we'd like less of you, rather than more, Ms. Leonhardt, but that's all right, I would ask you to hold her to the question that you've asked. Does she have anything additional?

She continues to merely regurgitate what is a matter of public record.

MS. MOORE LEONHARDT: Well I disagree. Is anyone in this audience aware of the additional evidence that I seek to present to this Board?

MR. PATTIS: They're not voting. Most of them are paying your fee. Let the Board decide the issue.

MR. SHAPIRO: Attorney Leonhardt, do you have any final remarks with respect to your argument and motion?

MS. MOORE LEONHARDT: Yes. Yes, I do, because I've only identified the advocacy and efforts made on behalf of Ms. Harwe of the Connecticut Stroke Awareness Group.

There's also a membership interest indicated at Exhibit I that the Victims of Chiropractic Abuse are members of this organization, as well, and, as such, Ms. Rexford advocates on their behalf, as well.

As VOCA is a party to this proceeding and its founder, Ms. Levy, has filed testimony, we ask that that be taken into consideration by the Board.

Finally, I'd like to point out to the Board the legal authority upon which I stand. I am standing on the powers of appointment of the members of the Chiropractic Board, which define the Public Member qualifications.

I am also raising the issue because of an opinion of the Attorney General, Richard Blumenthal, dated November 5, 2007, regarding Peter Cok(phonetic) and the Board of Firearms Permit Examiners, in which the Attorney General took the position, under similar circumstances of deep regret by the moving parties that they had to even raise the issue, but took the position that that Board member should be disqualified for very similar reasons to those we're raising here today.

It is not the membership, as counsel would like you to believe. They are skirting the issue. The issue is that Ms. Rexford has been paid and has actively advocated on behalf of parties in this proceeding, and, as such, she is disqualified as a Public Member.

She should not be a Public Member sitting on this Board in this proceeding, because of that conflict

of interest, and that is my position here.

MR. MALCYNSKY: The implication, Attorney Moore Leonhardt, is that VOCA is paying, somehow paying Ms. Rexford. Nothing could be further from the truth.

She advocates for an Association that accepts contributions from members and others across the Board. She's not a paid advocate for VOCA. Your argument is specious on its face.

MS. MOORE LEONHARDT: Well, as stated by Attorney General Blumenthal --

MR. MALCYNSKY: -- chiropractors who are on this Board that earn their living as chiropractors have more of a financial nexus to this issue than Ms. Rexford.

MS. MOORE LEONHARDT: That is not the issue.

MR. MALCYNSKY: And we are not objecting to their participation.

MS. MOORE LEONHARDT: There's a difference here. Any conflict that might arise by virtue of the members of the Board who are chiropractors hearing this issue has been expressly waived by the statutory mandate that appoints them to this Board as experts for purposes of ruling on matters that pertain to the regulation of the profession.

The same mandate and waiver does not apply to the public member appointment, and if you read the statute, counsel, you will surely agree that the --

MR. MALCYNSKY: Where is the evidence of actual bias? Where's the evidence of actual bias?

MS. MOORE LEONHARDT: I have presented bias that Ms. Rexford has actively advocated for and represented positions of these organizations by virtue of her duties and position as Executive Director of the Connecticut Center for Public Safety and Advocacy.

And if we would like to pursue this, I would like Ms. Rexford to be sworn under oath, so that she can be Cross-Examined on the issue, unless she's willing to recuse herself.

MR. SHAPIRO: Thank you, counsel. I would recommend to the Board, based on my reading of the current statutes and my review of the exhibits and the motion and the argument on the motion, that the Board deny the motion for recusal and to disqualify the Board member, Jean Rexford.

I don't believe an inquiry is necessary, because even assuming that the documents that were printed as part of the motion are accurate, I don't believe that legally they create circumstances which indicate a

probability of such bias too high to be constitutionally tolerable, and I don't believe there's been sufficient evidence of any actual bias, as well.

MS. MOORE LEONHARDT: Counsel, we respectfully disagree with that and ask --

MR. SHAPIRO: Counsel, when I'm done speaking, you can --

MS. MOORE LEONHARDT: -- that you examine Ms. Rexford.

MR. SHAPIRO: Counsel, when I'm done speaking, you can disagree, and you can file a motion in the end, or do anything you want, but I would ask that you give me the courtesy of allowing me to finish my recommendation to the Board before you interrupt me.

Based on that, I would recommend to the Board that they deny the motion that's been made and, also, the motion to Cross-Examine the Board member.

DR. POWERS: Okay. In an effort to move this forward to the Board at this point, I'll make a motion that we deny the request for recusal of Board Member Jean Rexford and deny the motion for Cross-Examination at this time.

DR. IMOSSI: I second that.

DR. POWERS: Is there any discussion among

the Board members?

CHAIRMAN SCOTT: Does Ms. Rexford have anything to say for herself?

MR. SHAPIRO: That's all right. If Ms. Rexford has something to say, she can say it, but I don't want her to be examined by the Board or myself, unless the Board thinks that that inquiry is necessary, but she's perfectly capable of speaking for herself.

If she wants to offer anything, she can, but I've made the recommendation to the Board. The Board, as you know, can accept or reject that recommendation. My role is to simply do my best job to make sure the proceeding is legal, and based on what I've read and what I've reviewed in the current state of the case law as I've interpreted it, that's my recommendation to the Board.

CHAIRMAN SCOTT: Okay. Do we have any other discussion on this matter? I'm going to bring it to a vote. All in favor?

VOICES: Aye.

DR. ROBOTHAM: I'm going to abstain from this.

CHAIRMAN SCOTT: I'm sorry?

DR. ROBOTHAM: Abstain.

CHAIRMAN SCOTT: You're going to abstain?

One abstention. Any opposition? So ruled.

MR. SHAPIRO: Just for the record, I would recommend to the Board that they admit the request for recusal or motion to disqualify Board Member Jean Rexford as Exhibit 52. Is there any, Attorney Malcynsky, is there any objection?

MR. MALCYNSKY: No.

MR. SHAPIRO: Attorney Pattis, is there any objection?

MR. PATTIS: No, sir.

MR. SHAPIRO: Exhibit 52 is, therefore, admitted.

(Whereupon, the above-mentioned document was marked as Exhibit No. 52.)

CHAIRMAN SCOTT: At this time, we're going to take a 10-minute break, so we'll all convene back at five after 11:00. Thank you.

(Off the record)

CHAIRMAN SCOTT: I wish everybody would take your seats. We're going to have an agenda now for the rest of the day. We're going to breaking for lunch at 12:30 and returning at 1:15, and then we're going to be concluding today at 4:45. Attorney Shapiro, please continue.

MR. SHAPIRO: Thank you. My suggestion is that we, unless there are any other preliminary matters that need to be dealt with now, that we move into the testimony of the parties, beginning with the Connecticut Chiropractic Association.

What I think is the best way is, before we admit testimony into evidence, that we just make sure that the individuals are here to adopt their testimony under oath.

Actually, as they adopt it under oath, we can actually go back. Maybe it makes similar sense to go back. So, Attorney Moore Leonhardt, do you want to call your first witness?

MS. MOORE LEONHARDT: Yes.

MR. MALCYNSKY: Excuse me. Can I ask one procedural question? I apologize.

MR. SHAPIRO: Sure.

MR. MALCYNSKY: Am I to assume that the other motions have been withdrawn?

MR. SHAPIRO: I don't have any motions before me.

MR. MALCYNSKY: Okay, great. Thank you.

MS. MOORE LEONHARDT: Perhaps, to clarify the record, counsel, were there particular motions to

which you were referring?

MR. MALCYNSKY: Just that stack that you put on my chair about two minutes before the hearing started.

MS. MOORE LEONHARDT: The motions in limine and to exclude have not been withdrawn. I have been directed by Assistant Attorney Shapiro to present those motions as the evidence and testimony is presented through your witnesses. Thank you. May I proceed?

MR. SHAPIRO: You may.

MS. MOORE LEONHARDT: Thank you. First, I would like to ask the Board to take administrative notice. Administrative notice would be taken of Dr. Powers' statement as a member of the Board on May 28, 2009 at a regular meeting of the Connecticut State Board of Chiropractic Examiners.

The administrative notice would be Dr. Powers' statement, noting that informed consent is already part of the standard of care, and, for the record, I do have copies of that, and I would like to distribute those copies now, if permitted.

MR. MALCYNSKY: Just one question. Is Dr. Powers going to be testifying today?

MS. MOORE LEONHARDT: No. I'm asking that

the Board take administrative notice of its position on the informed consent standard of care, as it exists in the State of Connecticut, which is proper for it to do under the Uniform Administrative Procedures Act.

MR. MALCYNSKY: So just so I'm clear, you're asking the Board to take administrative notice of their own opinion, as to the standard of care with regard to informed consent?

MS. MOORE LEONHARDT: Yes, I am, as a matter of record in this proceeding, yes.

MR. MALCYNSKY: I would object.

MR. PATTIS: Yeah, I'll join in the objection. I mean, first of all, the statement rule of completeness would suggest that if an isolated statement was going to be offered, the entire proceedings be offered, so that it could be taken in context.

Second, whether informed consent is part of the standard of care as a matter of common law largely begs the question in this case, which is whether informed consent ought to conclude, or include, rather, a discreet risk of deaths or serious physical injury arising from certain types of therapy, so I don't think Dr. Powers' statement, A, in isolation is meaningful, B, reflects necessarily the position of the Board, or, C, sheds any

material or relevant light on the issue the Board has to decide in these hearings, so I would oppose it on those grounds.

MS. MOORE LEONHARDT: I defer to the Board.

MR. SHAPIRO: May I see the document that you're referring to? Is this the whole document?

MS. MOORE LEONHARDT: This is the document of the minutes of that particular Board meeting on May 28, 2009.

MR. PATTIS: In that case, I have an additional objection. A document of minutes aren't statements, and I really don't know what we are, and I don't know how closely the Board intends to adhere to the code of evidence.

Minutes, typically, are not statements and are not admissible, as such.

MR. MALCYNSKY: And I would also add that, by proceeding in that manner, you're asking the Board to reach a conclusion, which is one of the central issues to this hearing in the first place, before they've heard any testimony. I think it's prejudicial, unnecessary and very unusual.

MS. MOORE LEONHARDT: Actually, counsel, I think, again, you misconstrue me. The purpose of the

offer is simply to note in the record of this proceeding that the Board has recognized that there is a standard of care with regard to informed consent that already exists and is applied to chiropractors in the State of Connecticut.

That is my offer. I stand by it. The Board is entitled to take administrative notice, and this is a matter that has previously been taken notice of by the Board, and we're simply asking that that matter be brought into this record, so that we have a complete record of this hearing.

MR. MALCYNSKY: I object.

MR. PATTIS: And I object, as well. If we're going to get into the position of you offering isolated remarks, then we would offer in a similar vein a remark made by Dr. Agostino Villani at the Insurance Committee hearing of February 13, 2007.

MS. MOORE LEONHARDT: I object to that being brought into this hearing, counsel. It's irrelevant.

MR. PATTIS: Yeah. The standard of care in Connecticut would be that the patient should be informed of all the risks associated with the procedures being performed.

I don't think that we get to cherry pick on isolated statements by parties with interest or persons who have made opinions on this matter.

MR. SHAPIRO: Thank you, counsel. It's certainly the Board's determination of whether this is relevant, but I would recommend that this document be excluded on relevance grounds. It's also unclear whether Dr. Powers is speaking for the entire Board or just himself in this context, and it wasn't in the context of any ruling. It was merely minutes.

Dr. Powers noted that informed consent is part of the standard of care, but I don't believe that that's a pronouncement of the Board in any fashion, and I would question its relevance to the question presented today and allow the Board to make a decision about its admissibility.

DR. POWERS: I'm going to make a motion that we deny this request for administrative notice on this particular issue.

A MALE VOICE: Second.

CHAIRMAN SCOTT: Is there any discussion? All in favor?

ALL: Aye.

CHAIRMAN SCOTT: Opposition? So carried.

MR. SHAPIRO: Just for the record, this document will be marked as Exhibit 53 for identification only.

MS. MOORE LEONHARDT: Thank you. That was one inquiry.

(Whereupon, the above-mentioned document was marked as Exhibit No. 53 for identification only.)

MS. MOORE LEONHARDT: Secondly, I would ask if the Board has the ability to take official notice of any prior position it has taken with regard to whether chiropractors are held currently to a standard of care on informed consent generally, as the law exists in the state.

MR. PATTIS: In isolation, that statement means nothing. Whether there is some floating common law duty of a standard of care is merely a sort of hortatory statement that may mean as much as professional associations saying everybody does it, but they have nothing to produce by way of showing that it means anything.

So whether this Board has previously articulated positions outside of an adjudicatory context in which a particular issue has been framed for decision simply isn't relevant.

MS. MOORE LEONHARDT: I present my question to the Board. I believe the Board, in its capacity of regulating the profession, has the responsibility to apply standards of care to practitioners of chiropractic care and does, from time-to-time, do so in assessing whether or not a particular practitioner is in compliance with the standard of care, whether it be with regard to the performance of a clinical procedure, or with regard to securing informed consent from a patient.

MR. PATTIS: As framed, counsel's inquiry is really little more than an advisory opinion and an invitation to troll through her file and submit other items. I believe the Board should rule on the admissibility of evidence on a document-by-document basis and deny the request for what amounts to an advisory opinion.

MR. SHAPIRO: I agree with that. Counsel, do you have any documents you want to offer?

MS. MOORE LEONHARDT: On what issue, counsel?

MR. SHAPIRO: Counsel, it's your case to present.

MS. MOORE LEONHARDT: Yes.

MR. SHAPIRO: I had asked you if you had a

witness to testify, as to their pre-filed testimony.

MS. MOORE LEONHARDT: I do have witnesses to present. I assume, then, that the Board is declining to pronounce whether or not at this point in time it has recognized that there is an informed consent law that is applied to chiropractors in the State of Connecticut.

MR. SHAPIRO: Yes. I would recommend that the Board decline to make pronouncements regarding informed consent prior to the start of this hearing. I don't think we need a motion for that.

Counsel, do you have a witness you'd like to call?

MS. MOORE LEONHARDT: Yes, I do. Thank you very much. May I proceed?

MR. SHAPIRO: You may.

MS. MOORE LEONHARDT: I'd like to call Dr. William Lauretti. Before I get started, I was curious, as to whether the gentleman to my right is a witness or a member of the firm that is representing one of the parties before this proceeding.

MR. PATTIS: He's a consultant.

MS. MOORE LEONHARDT: Could we please identify the consultant and have that noted in the record, since he has not previously been identified here?

MR. PATTIS: I'll decline your invitation. Call your witness, please.

MS. MOORE LEONHARDT: Counsel? Mr. Attorney General, may we have some advisement, as to whether or not the consultant, who is sitting at counsel table, should be required to identify himself?

MR. SHAPIRO: Yeah. I don't think there's any legal requirement, that if he's a consultant to Attorney Pattis, or his firm, or the party, that he be identified. He's not, as far as I know, presenting any testimony or evidence, because he hasn't pre-filed any testimony or evidence, and I don't think there's any requirement that he be identified if they choose not to identify him.

MS. MOORE LEONHARDT: I don't have access to the information that you just articulated, and, therefore, I felt compelled to ask the question. I assume that you're aware of who this consultant is and feel comfortable not directing the identification of this particular individual?

MR. PATTIS: I'll vouch for him. He's not armed, a member of Al-Qaeda, or about to perform an unauthorized and dangerous medical procedure.

MR. SHAPIRO: Counsel, I don't have any

information about who this individual is.

MS. MOORE LEONHARDT: So I take it my request is declined?

MR. SHAPIRO: That's correct.

MS. MOORE LEONHARDT: Thank you.

DR. WILLIAM LAURETTI

having been called as a witness, testified as follows:

DIRECT EXAMINATION

BY MS. MOORE LEONHARDT:

Q Good morning, Dr. Lauretti.

A Good morning.

Q How are you?

A I'm fine, thanks.

Q Thank you for your patience this morning. You've been asked here to testify on behalf of the Connecticut Chiropractic Association, have you not?

A Yes, I have.

Q And are you also here as the spokesperson for the American Chiropractic Association?

A That's correct.

Q And you have previously submitted your testimony, have you not?

A That's correct.

Q And you've also previously submitted your resume, have you not?

A Yes, I have.

Q All right. I'd like to just briefly review with you your background and experience for the Board, if I may. Would you please describe your education for the Board?

A Yes. I have a Doctor of Chiropractic degree from Western States Chiropractic College. I have an undergraduate degree from the State University of New York at Albany.

Q And are you currently employed?

A Yes, I am.

Q Where are you employed?

A I'm an Associate Professor of Chiropractic Clinical Sciences at New York Chiropractic College.

Q And how long have you been in that position?

A For just over four years now.

Q And how would you describe your responsibilities and duties in that position, as they pertain to your testimony here today?

A Among the courses that I teach are chiropractic techniques. Specifically, I'm the lead instructor for our second-year students, the technique course for second-year students, in which we cover in quite a bit of detail issues regarding chiropractic neck treatments, both risks and the scientific evidence of the benefit of those treatments.

I also teach a course in coding, billing and documentation, where we talk in some detail about documentation standards, and I also teach a course in patient education, where we talk about informed consent standards.

Q And do the documentation standards that you teach about encompass documentation of informed consent discussions between chiropractors and their patients?

A Yes, they do.

Q All right. You also practice as a legal consultant and expert witness, do you not?

A Yes, that's right.

Q And do any of those cases include or involve an evaluation of chiropractic standards of care involving informed consent?

A Yes, they do.

Q And are you aware of what the standards are that

are applied in those cases?

A Yes, I am.

Q And what are those standards?

MR. PATTIS: Objection, relevance. Where? Connecticut?

THE WITNESS: I've never testified in Connecticut.

MR. PATTIS: May I have a ruling on my objection, please?

MR. SHAPIRO: Can you state the objection?

MR. PATTIS: Have you ever offered testimony or expertise on the question of chiropractic standards of care with regard to informed consent, and my objection was relevance, insofar as it's not related to Connecticut.

MS. MOORE LEONHARDT: And I would argue that his experience in providing evaluation and opinions with regard to informed consent, whether it's in Connecticut or outside of Connecticut, is pertinent and probative and relevant and should be permitted.

MR. SHAPIRO: Attorney Pattis, was your objection as to the location of where the advice was being provided?

MR. PATTIS: It was unclear what the

proffer was he has expertise in having testified. We're here to decide an issue presumably as a matter of Connecticut law.

If he's offering merely an advisory opinion about what's done in other states and has nothing to offer on what is required in Connecticut, you know, that's marginally relevant, I suppose, but I didn't know whether he was going to opine about what takes place in Connecticut never having appeared here before.

MR. SHAPIRO: Okay. I think we'll allow counsel a little bit of latitude here, and I would recommend that the Board allow the question to be answered.

MS. MOORE LEONHARDT: Thank you.

Q Can you answer the question, please, Doctor?

A Can you repeat the question, please?

Q Yes. In the course of your consulting work as an expert witness and consultant, have you advised and evaluated the standard of care with regard to informed consent?

A Yes, I have.

Q And can you please describe the nature of that activity?

A As far as what the standard of care for informed

consent is, specifically?

Q Yes.

A I believe that the standard of informed consent requires the treating doctor to discuss the benefits of the treatment that is proposed, as well as the material and relevant risks of any treatment that is proposed, as well as alternatives to the proposed treatments, including the relative risks and benefits of those alternatives.

Q And are those the standards that you've applied in your consulting work?

A Yes.

Q And are those standards that you've applied in connection with your role here today as an expert on behalf of the Connecticut Chiropractic Association and spokesperson for the American Chiropractic Association?

A Yes, they are.

Q Thank you. Now you're also a Clinical Director of ChiroPlus, have been in the past?

A I have been in the past, yes.

Q And has that activity brought you into any involvement with the issue of informed consent standards or protocols?

A Yes, for I believe it was four or five years I was the Clinical Director of the managed care group,

called ChiroPlus, in the Washington, D.C. area, and, in regard to that, we made policy regarding what the doctors were required to do in their procedures regarding informed consent and regarding exam procedures and so forth.

Q Okay and were those policies consistent with the elements of informed consent that you just articulated?

A I believe they were.

Q All right, now --

MR. SHAPIRO: Let me just interrupt for one second. I just want to make sure that the court reporter swore this witness in. Was this witness sworn in? Okay. We need to make sure this witness is sworn in, and then I'll ask him.

(Whereupon, Dr. William Lauretti was sworn.)

COURT REPORTER: Could you spell your last name for the record, please?

THE WITNESS: L-A-U-R-E-T-T-I.

MR. SHAPIRO: And could the court reporter just inquire, as to the witness, as to whether the testimony he's already provided is truthful and accurate?

COURT REPORTER: Was the testimony you already provided true and accurate?

THE WITNESS: Yes, it was.

COURT REPORTER: Thank you.

MS. MOORE LEONHARDT: Thank you, Dr. Lauretti.

Q With regard to your clinical experience, would you please describe for the Board any clinical experience you have with regard to treating complaints of head or neck pain?

A Yes. Prior to joining the faculty at New York Chiropractic College, I was in full-time practice for about 16 years in the Washington, D.C. area.

Q And were you also licensed to practice in the State of New York?

A Yes. I'm currently licensed in the State of New York.

Q All right and have you practiced as a Clinical Chiropractor in the State of New York in the past?

A Not outside of my role as a full-time clinical instructor, no.

Q All right. You've received many honors I note by our curriculum vitae. These honors include Excellence in Teaching, Presidential Awards, Chiropractor of the Year, an award for Outstanding Achievement, you're a Diplomat of the American Academy of Pain Management, and you've won scholarships and were an honors graduate.

A That's correct.

Q Now you've also been actively involved in many presentations and professional activities and publications, and because I don't want to -- I don't mean to be disrespectful, but trying to move this hearing along, I would ask if you could take a look at your curriculum vitae and point out to us what aspects of your presentations with regard to the items described there may have informed your opinion on the issue that's before the Board today.

A Okay. Well I have published several articles, beginning with an article in the peer review journal, Journal of Manipulative and Physiological Therapeutics, back in 1995. I've also published several articles in the professional literature, let's say, namely, the ACA News. I've edited so far three book chapters specifically talking about informed consent and the relative risks of chiropractic cervical treatments.

I've given postgraduate lectures probably about three or four times on the same topic.

Q Okay, now, among the items of professional activities that you've listed, I note that in May of 2008 you were appointed to a task force charged with developing and drafting an updated informed consent policy by the

American Chiropractic Association Board of Governors.

A That's correct.

Q Is that correct?

A Yes.

Q Are you currently involved with that?

A That was an ad hoc task force, and our job has been finished.

Q All right and can you describe for us what particular activities you were engaged in on that task force?

A We were asked by the Chairman of the ACA to formulate an updated policy on informed consent. The previous policy had been in effect for a number of years, and it was decided that we needed something updated, so there were I believe about five or six members on that committee.

We corresponded by e-mail and by phone conference, and we basically hammered out a new informed consent policy that we thought was more relevant and more up-to-date than the previous one.

Q All right and the informed consent policy that you generated from that task force, did that inform your expert opinion that you're presenting here today on behalf of the Connecticut Chiropractic Association?

A Yes, I believe it did.

Q All right and with regard to peer reviewing that you have performed, as indicated on your curriculum vitae, have some of the peer review activities that you've been engaged in involved reviewing chiropractors' compliance with standards of care relative to informed consent?

A Yes.

Q All right and, in addition to that, as the official spokesperson for the American Chiropractic Association, has the Association taken a position with regard to a chiropractor's standard of care with regard to informed consent?

A I believe it has, and that position is reflected in the policy that I helped to formulate.

Q All right and what is that policy?

A That informed consent is a process. It's not simply having the patient sign a specific document, and, as doctors of chiropractic, we're responsible for talking the patient through their options and their choices and, as I said before, offering our option that we would like to treat them with, other reasonable options, and talk about the material risks and probable benefits of those options.

MR. SHAPIRO: Attorney Moore Leonhardt, I

want to make sure that we're not getting into an area that the Board has specified procedures for, in the sense that it's one thing to ask him about his credentials, but then we're not going to do a full Direct Examination of each witness. Rather, we're going to allow each witness to make a brief position statement, and then adopt his testimony under oath, and then subject that witness to Cross-Examination.

MS. MOORE LEONHARDT: I absolutely am following that procedure and respect that procedure. I'm in the process of qualifying Dr. Lauretti as an expert witness. I have previously filed his curriculum vitae. I would like to offer it at this time as an exhibit, along with his presentation, and ask that he be qualified as an expert witness at this time.

MR. SHAPIRO: Attorney Malcynsky, is there any objection?

MR. MALCYNSKY: No objection.

MR. SHAPIRO: Attorney Pattis?

MR. PATTIS: We don't object, because we think the issue is moot. There's no requirement that experts be qualified in an administrative proceeding, so we received his documents and are prepared to question him.

MR. SHAPIRO: Okay.

MS. MOORE LEONHARDT: I'm offering Dr. Lauretti as an expert, because, typically, in administrative proceedings, where issues are raised that affect health care practitioners, there is expert testimony offered by practitioners of similar background, training and experience, and I thank counsel for not objecting to Dr. Lauretti being qualified as an expert witness. Thank you.

Q Dr. Lauretti, would you take a look at the testimony that you submitted? Thank you.

MS. MOORE LEONHARDT: Calling the Board's attention to a document that's been submitted on behalf of the Connecticut Chiropractic Association, it's listed as item 32 on the exhibit list, and it's pre-filed testimony, dated October 27, 2009.

Dr. Lauretti submitted his testimony at that time, and his document is dated October 26, 2009.

Q Dr. Lauretti, is this your testimony?

A Yes, it is.

Q Did you draft this document?

A Yes, I did.

Q And do you intend this to be your testimony here today?

A Yes, I do.

Q And you adopt it as your testimony today?

A Yes, I do.

Q Would you briefly summarize for the Board members the key points of your testimony? Thank you.

A I discuss what I consider to be a landmark study sponsored by the Bone and Joint Decade. We'll refer to it as the Cassidy Study, and that study was a population-based case control and case crossover study that looked at all cases of vertebral artery dissection and stroke that occurred in the Canadian Province of Ontario from 1993 to 2002.

The results of the study found that there was a small association between visiting a chiropractor and having this rare type of stroke, called a VBA stroke, however, there was a similar and in some patient groups a greater association between visiting a primary care physician and subsequently having a VBA stroke.

The study concluded that any observed association between the VBA stroke and the patient's visit either to the chiropractor or to the family physician was likely due to patients with an undiagnosed vertebral artery dissection, seeking care for things like neck pain or headache before they actually had the stroke.

One of the only consistent symptoms of an evolving vertebral artery dissection is, in some cases, patients will complain of neck pain or headache, and, in some cases, they don't even have that as a symptom. In some cases, the vertebral artery dissection and stroke occur in what appear to be a spontaneous way.

I concluded that based upon this study and this study being fairly new evidence that was just published in February 2008, that I believe that, as doctors of chiropractic, we are not ethically or legally obligated to specifically discuss any potential risk of vertebrobasilar artery stroke in all cases with all patients before treating their neck. In some cases, that may be appropriate if the patient has certain red flags, but not in all cases.

Q Okay. Were there any other research matters or information policies or procedures that informed your opinion?

A I think, in general, it would be the bulk of the literature that I've read over the past 15 years, so I can't name one specific study, if that's what you're looking for.

Q No, but I take it you've, in the course of your work on the task force, in the course of your work as a

professor, in the course of your work as a clinician, you've kept yourself up-to-date on the research, and could you describe for the Board what it is about the research that compels you to take a position with regard to the issue before the Board today?

A Well I think, specifically, this journal article is a major game changer, and the reason is that this article was sort of a re-do of a previous article that was published in 2000.

In that article, they use pretty much the same study design, but they only ask the question does going to the chiropractor is that associated with a higher risk of having a vertebrobasilar artery stroke?

In this article, they basically did the same study over again, but the other question they asked was what about going to the primary care doctor, and that was the surprising finding of this article, so, basically, they found the risk is the same, whether a patient goes to a primary care doctor, presumably does not have anything done to their neck, and they will have a vertebrobasilar artery stroke in the same probability as somebody who goes to the chiropractor, presumably having their neck treated with a chiropractic treatment.

Q All right, so, putting that in laymen terms,

wouldn't you agree that it would follow that just because you see a house on fire --

MR. PATTIS: Objection, leading.

MR. SHAPIRO: Counsel, I think --

Q Can you make an analogy of your opinion in lay terms, so that the members of the public who are here today, or are observing this on a newscast can understand in laymen's terms what the essence of your testimony is with regard to cause and effect?

A I believe that this study shows that there is no cause and effect relationship between seeing a chiropractor and subsequently having a stroke. There's an association, much like if you drive up and you see a house on fire, there may be a fire truck in front of the house, and you'll probably always see a fire truck sitting in front of the house on fire. The fire truck didn't cause the fire. The fire truck is there, because it's associated with a fire, and the same way here.

The visit either to the chiropractor or the primary care doctor is associated with the stroke afterwards, but it's not a cause of that stroke.

Q All right, so, is it your belief that there is no reliable scientific research that has proven that there's a cause and effect relationship between a

chiropractic manipulation and a stroke?

A I believe there's never been any good scientific evidence as showing a cause and effect relationship. All of the studies that have been done have been retrospective case studies, talking about individual cases. They've never demonstrated a cause and effect relationship.

This study strongly suggests there is not a cause and effect relationship between the two.

Q Thank you. Now, just finally, you did arrive at an opinion, as to that's the question before the Board, which is, when a chiropractic physician obtains informed consent from a patient prior to the performance of a joint mobilization, manipulation, or adjustment of the cervical spine, should the risk and/or possibility of the occurrence of a stroke or cervical artery dissection as a side effect of the --

(Off the record)

A -- case basis. I think having the Board mandate that is a problem. I don't believe the Board can mandate that. I don't believe any mandate can stay current with the current scientific evidence. I don't believe any mandate can be specific enough for any specific patient, so, no, I don't believe that should be mandated by the Board.

Q Okay and is it your understanding, with regard to the Connecticut Chiropractic Association's position, that they believe there is a standard of care relative to informed consent in the state?

A I --

MR. SHAPIRO: Counsel, I'm going to cut you off there. We've given you great latitude, in terms of Direct Examination. He's made his brief statement, and I'd like him to be subject to Cross-Examination. If you have further questions after the Cross-Examination, the Board will allow you to, but, basically, he's supposed to make a short position statement, not be subject to a lengthy Direct, and be subject to Cross-Examination, and he's made his statement.

He's submitted his testimony. It's been admitted, and I'd like him to be able to be subject to Cross-Examination before there are further questions from you.

MS. MOORE LEONHARDT: Thank you.

MR. SHAPIRO: Attorney Malcynsky?

MR. MALCYNSKY: Thank you.

CROSS-EXAMINATION

BY MR. MALCYNSKY:

Q Good morning, Dr. Lauretti.

A Good morning.

Q When you began your testimony a few minutes ago, you went through what you thought the standard of care in Connecticut ought to be, based on your expertise, and you included in that description benefits to the treatment, as well as material and relevant risks of the treatment, is that correct?

A Yes.

Q Do you recall authoring an article in 2003, entitled, "What are the Risks of Chiropractic Neck Adjustments?"

A Yes.

Q And would I be correct in stating that, in that article, you concluded that there's an extremely small risk of major complications from chiropractic neck treatments?

MS. MOORE LEONHARDT: Objection. I'd like the witness to have the article before him, in order to answer your question, so that he's able to adequately address your question, if we may. Thank you.

MR. SHAPIRO: Well I haven't heard any evidence from the witness that he needs the article in front of him.

Q Do you need the article?

A That would help.

Q Okay.

A I do author quite a few articles, so I would like to see exactly which article you're referring to.

Q I'm more than happy to share it with you.

MS. MOORE LEONHARDT: May I inquire of counsel, as to whether this article has previously been filed?

MR. MALCYNSKY: It's part of the pre-filed testimony.

MS. MOORE LEONHARDT: Thank you.

Q Would you just read to me what you've included? I think I highlighted it there for you.

A "In summary, although all available evidence demonstrates that there's an extremely small risk of major complication from chiropractic neck treatments, this is an area of concern for the chiropractic profession. Doctors of Chiropractic have contributed valuable research on the physiological, epidemiological and clinical understanding of these injuries.

Our profession seeks to work closely with other medical professionals on this matter for the best interest of our patients."

Q Thank you. And have you changed your mind concerning that conclusion since you authored that article?

A I believe I have.

Q I think you indicated that the cause of that change of heart was the Cassidy Study?

A I believe so, yes.

Q And can you explain, just briefly, what in the Cassidy Study led you to basically abandon your learned opinion in 2003?

A I think it all boils down to one word, and that word is where I say "extremely small risk." Today, I would change the word "risk" to "association."

Q How would you define "extremely small risk?" Excuse me. You stated earlier that the standard of care should include disclosing to a patient material and relevant risks. What's a material and relevant risk?

A I believe that's a significant risk to the patient.

Q What is significant risk, though? Can you give me a little more definition? Does it happen frequently, often, every day? What do you mean by significant risk?

A I believe the standard for when you're talking about most drugs is a one percent risk. I think that's

pretty much the standard in the medical field.

Q So you would only advise someone who you were going to administer a procedure to of the risks if it occurred in one out of every 100 patients or less?

A I think that's a reasonable lower limit, so, then, I would --

Q Reasonable lower limit, meaning what?

A I would surely advise, if the risk was greater than one out of 100, but if it was less than one in 100, I don't believe it's 100 percent necessary to advise people of that risk in most cases.

Q Whether you're using numerical percentages, if it could be established that an occurrence happens every day, would you say you would advise somebody of that risk?

A What do you mean by it happens every day?

Q If you could establish that every day someone is victim, falls victim to a stroke as a result of a cervical neck manipulation, would you advise that person that that's a material risk?

A I don't think that's a meaningful comparison. It depends on how many treatments are done every day and how many patients you're talking about.

Q Are you familiar with the International Chiropractic Association?

A Yes, I am.

Q Are you aware of their statement, which is in the pre-filed testimony, that strokes occur with a frequency of one in every one million adjustments?

MS. MOORE LEONHARDT: Would you please show the witness to what you're referring, so that he can ascertain the time frame of that published information?

MR. MALCYNSKY: If you'd like. It's just going to take me a minute to get him the document.

MS. MOORE LEONHARDT: Thank you.

Q Do you have the pre-filed testimony before you?

A Yes. I'll have to go hunting through it. I can probably find it, though. This is the ICA?

Q Correct. This is your own testimony, I believe, or the ICA's own submission. Excuse me. If you'll bear with me? I'm sorry. There's several documents that I'm going to have to share with you, so if Attorney Leonhardt is going to insist that I share them with you, I'll have to pull them out. It will take a few minutes.

A Okay.

MS. MOORE LEONHARDT: Counsel, I'm not trying to belabor anything here. I just want the witness's testimony to be clear and correct, so that he has an understanding that he's referring to the same

document and the same information that is the basis for your inquiries.

MR. MALCYNSKY: I think he said that he was familiar with it.

A What would you like me to --

Q Would you just read me the highlighted area?

A This on page three I believe it is?

Q I'm sorry. It's not highlighted. Would you show him where it is?

A I see. "That causality factor?"

Q Yes.

A Okay. "That causality factor is simply not present." Well let me back up, because I don't know what they're talking about here, so let me start earlier. "What constitutes a significant level of risk is open to a diverse range of opinions and interpretations, however, to pinpoint risk requires that exact data on causality needs to be present.

That causality factor is simply not present, and even the coincidental occurrence of a stroke in correlation with a chiropractic procedure is exceptionally rare, perhaps no more than one per three million neck adjustments."

Q Thank you. Are you familiar with the June

edition of the Chiropractic Report? Are you familiar with the Chiropractic Report?

A I'm familiar with the Chiropractic Report.

Q What is the Chiropractic Report?

A It's a -- I believe it's a newsletter that comes out six times per year, published by David Chapman-Smith in Canada.

Q Okay. In the pre-filed testimony, there's a copy of the June 2006 Chiropractic Report. Could you just read for me the sentence regarding the current best evidence?

A Referring to U.S. Chiropractic Guidelines, 1993, the opening paragraph, or, "Later on, clear need for health professions to offer informed consent, both as a matter of law and a matter of ethics."

Q In that document, there's a quote that's highlighted that says, "Current best evidence is that the risk of vertebral injury and stroke associated with cervical manipulation is about one in one million treatments." Is that correct?

A Yes.

Q Okay, thank you. Are you familiar with the ICA Quick Facts?

A No, I'm not.

Q One second, please. Could you just read the highlighted portion for me, please?

A "The process of chiropractic adjustment is a safe, efficient procedure, which is performed merely one million times every working day in the United States."

Q Are you familiar with the World Chiropractic Alliance?

A Yes, I am.

Q Bear with me. I apologize. Excuse me. Dr. Lauretti, could you just read for me the highlighted portion of that article from the World Chiropractic Alliance?

MS. MOORE LEONHARDT: Could we please have the date of the report?

THE WITNESS: 4/12/04, looks like.

Q And what does it say in the portion I asked you to read, please?

A "Cerebral vascular incidents, CVAS it's also known as, is estimated at between one and three incidents per million adjustments."

Q Okay, so, we've established rather clumsily here that there could be -- there are as likely as many as one million adjustments done nationally every day, and, according to the World Chiropractic Alliance, they believe

that between one and three strokes occur per every million, correct?

A I believe --

MS. MOORE LEONHARDT: Objection.

MR. MALCYNSKY: I'm just him if that's what the --

MS. MOORE LEONHARDT: I have the right to make an objection, and my objection is that you're misleading and misconstruing the witness's testimony. The witness has already testified that that information came from 2004.

MR. MALCYNSKY: No. I've asked the witness to read verbatim from those reports.

MS. MOORE LEONHARDT: I would like to complete my objection before you speak, counsel, and I believe I'm entitled to.

MR. MALCYNSKY: I'll just remind you, I have a daughter graduating from college next June.

MS. MOORE LEONHARDT: What does that have to do with being relevant to this proceeding?

MR. PATTIS: She wants to study chiropractory. Just finish your objection.

MS. MOORE LEONHARDT: Doctor, calling your attention to the date of that article before you answer

the question, the article was dated 2004, I believe?

THE WITNESS: That's correct.

MS. MOORE LEONHARDT: Thank you.

MR. PATTIS: I'm going to object to this. She's coaching her witness in the midst of a question now.

MR. MALCYNSKY: I'm merely asking the witness to read verbatim from reports that are part of the pre-filed testimony. I'm not leading him in any way, shape, or manner. I'm asking him to read from the reports that are part of the testimony.

MS. MOORE LEONHARDT: And I would like the record to be clear, because your question was posed in such a way to suggest that that was current data, when, in fact, it's a report of data, that report, itself, being 2004, and the data reported in that may be even older than that, therefore, my objection is that you are misconstruing his testimony.

Q Dr. Lauretti, did the Chiropractic Report not indicate that the best evidence is that the risk of vertebral injury and stroke associated with cervical manipulation is about one in one million? Is that correct? That's what the document said?

A It did, but I disagree with the conclusion.

Q Okay, well, I'm just asking you what the

document said at this point.

A You can read it as well as I can.

Q Right. Did the ICU Quick Facts indicate that the chiropractic industry does over one million neck adjustments every day? Is that what the document said?

A It did, but I disagree with that.

Q Do you think it's more or less?

A I think it's less.

Q And how many do you think there are?

A I don't know, but I don't know where they got that number from.

Q Are they an industry organization, publication?

A It's an informal update, as it says. It's a Quick Facts. It's an update for the profession. It's not held to any scholarly standard.

Q You mean they don't ascribe to the Cassidy Study?

A I don't know. I'm not a member of the ICA, and I believe that that particular article was published before the Cassidy Study.

Q Okay. Let's try again what I asked, if you can answer the question asked. Did the ICA Quick Facts indicate that chiropractors do over one million neck adjustments a day?

A I think I already answered that.

Q Is that what the document indicated?

A That's what it indicated, and I'm saying I disagree with it.

Q We respect your opinion, as well. Did the ICA estimate that of the one million per day, that can mean one to three Americans are a victim of chiropractic stroke every day?

In other words, if there's one million adjustments done every day, assuming their numbers are correct, and I know you don't agree, and then the World Chiropractic Alliance stated that they believe that there's between one and three million strokes per million adjustments, that would mean, just the math, if you take the math, that would mean there could be one every business day?

A Rather than speculating and going around the issue like this --

Q We're not speculating. I'm asking you what it says in the material.

MS. MOORE LEONHARDT: I object. I ask counsel to let the witness answer the question.

MR. SHAPIRO: Excuse me. Excuse me.

MR. MALCYNSKY: The answer calls for a

simple yes or no answer.

MR. SHAPIRO: Attorney Malcynsky, excuse me. When we started this proceeding today, one of the things I said is that we're going to have a hearing that has reasonable amounts of decorum in the hearing. That means that if there's an objection, you need to let counsel state her objection for the record.

That means, if the witness is speaking, you need to let him finish his question, and that means, for the witness, if counsel is speaking, you can't interrupt or argue.

The Board is also not particularly interested in banter between counsel and comments that are not relevant to the proceeding today, and I would warn counsel to refrain from that activity.

If you have questions, this witness can answer those questions. I'm a little concerned about where you're going with this, because you've asked him to read from certain publications, but that's not his testimony regarding what those documents mean, and he's indicated he doesn't agree with those statistics.

If you want to question him on that, please feel free to do so.

MR. MALCYNSKY: Thank you.

MS. MOORE LEONHARDT: May the witness be permitted to answer the question? Thank you.

MR. SHAPIRO: Yes. The witness can answer the previous question, if he remembers what it was.

A I think I can recall what the gist of the question, or at least see the garden path that the attorney was trying to lead me down. According to the Cassidy Study, I think this will answer the question better, there were 818 vertebrobasilar artery strokes hospitalized in a population of more than 100 million person years in Ontario over the nine-year study.

That means all of the vertebrobasilar artery strokes in Ontario, everybody, whether they saw a chiropractor or not, 818 over nine years, I figure that's 3,285 days, so that's far less than one per day. That's maybe one for every four or five days, roughly.

Q You brought up the code and the Cassidy Study.

A Um-hum.

Q Are you familiar with what the code is for VAD?

A They list several codes that they use.

Q Are you familiar with the code for VAD?

A I don't know it off the top of my head.

Q Okay. Are you familiar with the codes that were used in the Cassidy Study?

A They used ICD codes 9433.0, which may be a mistype. I don't have a book in front of me.

Q Why would you think it would be a mistype?

A Because it has one digit too many for an ICD code.

Q Or it's not the proper code?

A I'm not sure what that code is. It may actually not be a U.S. ICD code. There are some ICD codes that are not used in the U.S.

Q Are you familiar with what codes were used in the Cassidy Study?

A Yes.

Q And what are those codes indicative of, what conditions, what medical conditions?

A I don't have a coding book in front of me, and I don't have the codes all memorized.

Q Well did you earlier say that you teach and consult on coding?

A Yes.

Q And you're not familiar with what the codes are?

MS. MOORE LEONHARDT: Objection, argumentative. The witness has already answered that question.

MR. SHAPIRO: I would recommend to the

Board they overrule the objection and allow the witness to answer that question.

Q Are you familiar with the codes used in the Cassidy Study?

A I cannot testify whether these specific codes are correct or not, unless I have a coding book.

Q Do you have the Cassidy Study in front of you?

A I have the Cassidy Study in front of me.

Q Does the Cassidy Study indicate what codes were used?

A Yes, they do.

Q What were those codes?

A They say, "Cases that had an acute care hospital admission for any type of stroke" --

Q The numeric codes.

A ICD 9433.0, 433.2, 434, 436, 433.1, 433.3, 433.8, 433.9, 430, 431, 432, and 437.1, close parenthesis, transient cerebral ischemia 9435 or late effects of cerebral vascular diseases were excluded.

Q Do you know what the specific code for vertebral arterial dissection is?

A According to them, they're saying it's ICD 9433.0 and 433.2.

MR. PATTIS: I'd move to strike. The

report says flatly otherwise.

MR. MALCYNSKY: Pardon?

MR. PATTIS: I'd move to strike that testimony, unless he's got a report that's other than the one that's published.

MS. MOORE LEONHARDT: I believe the question was with regard to Dr. Lauretti's understanding of code. The --

MR. MALCYNSKY: No, the question was --

MS. MOORE LEONHARDT: -- to that report.

A Pardon me. I misspoke. I need to correct that. I was reading ahead. That list of codes that I read from says cases that had an acute care hospital admission for any type of stroke and that list of strokes that I gave were excluded.

The included strokes, we included all incident vertebrobasilar occlusion and stenosis strokes.

Q Can you stop for a second? Are occlusion and stenosis the same thing as vertebral arterial dissection? Can you tell me what occlusion is and what stenosis are?

MS. MOORE LEONHARDT: Objection to the form of the question. He's asked a question two different ways. What question is being put to the witness, counsel?

Q Can you tell me what occlusion and stenosis are?

A Stenosis is a closing of a vessel. Occlusion is a blockage of a vessel.

Q And neither one of those are vertebral arterial dissection, is that correct?

A That's correct, but --

Q Okay. Do you know what the code --

MS. MOORE LEONHARDT: Would the witness please be permitted to finish his answer?

MR. PATTIS: He did. It called for a yes or no, and he's running with a narrative.

Q Do you know what the code --

MR. SHAPIRO: Wait, counsel. I think the witness can finish his answer. You can finish your answer.

A There's a difference between a vertebrobasilar artery dissection and a stroke. In some cases, a stroke follows a dissection. In some cases, it does not. A dissection simply means that the artery has been damaged. There's some sort of a split along the arterial wall.

Typically, the arterial wall separates from the inner lining of the artery. That, in and of itself, will often cause no symptoms, whatsoever, and it's not a clinically important condition, unless it proceeds into an occlusive stroke. By that, I mean if a clot forms on that

dissection --

MR. MALCYNSKY: I think he's gone on long enough. I'm the one asking the questions here.

MS. MOORE LEONHARDT: Would the witness please be permitted to finish his answer?

MR. MALCYNSKY: No. He's being allowed to go on on a diatribe, which is not relevant to my question. My question calls for a yes or a no answer.

MR. SHAPIRO: If the witness can't answer the question with a yes or no answer, he should be allowed to answer. I'll ask the Board if they believe that what the witness is testifying to is relevant, based on the question.

MR. MALCYNSKY: Then maybe the Board should ask the questions and the lawyers should just go home.

MR. SHAPIRO: I think you're doing a perfectly fine job, counsel.

MR. PATTIS: Can I second that?

MR. SHAPIRO: Why don't you finish your answer, please?

A As I was saying, the clinically important issue is if that clot that forms on the dissection breaks off and migrates up into the circulation of the brain. That's the stroke. There are probably people walking around

every day who have a dissection of the vertebral artery and will never know it.

It is not an easy to diagnose condition, unless it proceeds to the stroke.

Q Is a vertebral artery dissection a serious problem that can lead to a stroke?

A It depends.

Q Can it lead to a stroke?

A It can lead to a stroke.

Q Okay.

A In some cases, it does not.

Q Would you say that the Cassidy Study should have included coding for vertebral artery dissection?

A Well I'm not an expert in stroke, however, I will note that in the beginning of the study, they say that they chose those codes in consultation with stroke experts.

Q But can you say, definitively for me, that the proper code specifically for vertebral arterial dissection was included in the Cassidy Study?

A I don't know if it was.

Q Thank you. Do you think that the Cassidy Study was limited in any way, as to its value?

A Well there's no such thing as a perfect study,

but I believe, in light of the subject and in light of the rarity of this condition, I think it's the best study that's been done to date on it.

Q In addition to looking at codes, are you familiar with whether or not the Cassidy Study looked at any medical charts?

A I don't know. It's not mentioned in the study.

Q It's not mentioned in the study?

A To my knowledge.

Q Is there any mention in the study of review of x-ray reports?

A I'm not sure what relevance an x-ray report would have in a condition like this, but, no, there's not.

Q Okay. Did they look at the hospital records or family physician records as part of their study?

A As far as I know, the study is silent whether they did or not.

Q And you have the Cassidy Study in front of you?

A I do.

Q Can you turn to the back of the study for me, please? It's the paragraph prior to the conclusion. Would you read for me the sentence that begins with "Our results?"

A "Our results should be interpreted cautiously

and placed into clinical perspective. We have not ruled out neck manipulation as a potential cause of some VBA strokes."

Q Thank you.

A "On the other hand, it's unlikely to be a" --

Q Thank you.

A -- "major cause of these rare events."

Q Okay, so, that would indicate that Cassidy does not conclude that there's no relationship between neck manipulations and stroke?

A Well they go on to state that "Our results suggest the association between chiropractic care and VBA stroke found in previous study is likely explained by presenting symptoms attributable to vertebral artery dissection."

Q Can you go back up and read me the first sentence again?

MS. MOORE LEONHARDT: Would the witness please be permitted to answer and not be interrupted by counsel?

Q Would you please read me the first sentence?

A I can repeat what I just read. "Our results should be interpreted cautiously and placed into clinical perspective. We have not ruled out neck manipulation as a

potential cause of some VBA strokes."

Q Thank you.

A "On the other hand, it's unlikely to be a major cause of these rare events."

Q Okay, but they do not conclude that there's no relationship between neck manipulation and stroke, do they?

A I believe they were -- they showed sufficient scientific caution.

Q But they don't conclude that there's no association, do they?

A They conclude that their study strongly suggests that there is not.

Q Well would you read that introductory sentence for me again, please?

MR. SHAPIRO: Counsel, I'm going to --

MR. MALCYNSKY: You're allowing the witness to draw conclusions, which are contrary to what it says.

MR. SHAPIRO: I'm not allowing the witness to do anything.

MR. MALCYNSKY: I'm asking him what the report concluded.

MR. SHAPIRO: Counsel, he's read it twice, and we can all read it, as well, so if you have a

question, you can ask a question, but he's read that sentence twice.

Q Could you turn to the previous page for me, please? Under the heading of discussion, can you read me the second sentence, starting with the word "first?"

A Well I'll read you the whole paragraph. "Our study advances knowledge about the association between chiropractic care and VBA stroke in two respects. First, our case control results agree with past case control studies and found an association between chiropractic care and vertebral artery dissection and VBA stroke.

Second, our case crossover results confirm these findings using a stronger research design with better control of confounding variables. The case crossover design controls for time independent confounding factors, both known and unknown, which could affect the risk of VBA stroke."

Q Would you agree that Cassidy is clear, that there is, indeed, a risk of stroke or even death as a result of a neck manipulation?

A No, I do not.

Q So the fact that they say that they agree with past control studies finding an association between chiropractic care and vertebral artery dissection to VBA

stroke is not consistent with what I just asked you?

A No, it's not. An association is not the same as a risk.

Q Can you explain that to me?

A An association is not the same as a risk.

Q Can you explain the difference to me?

A If you have a fire truck in front of a house on fire, there's an association. Having the fire truck there is not increasing the risk of a fire.

Q Can you explain it to me in the context of the neck manipulation and the stroke?

A I think they're very clear, that they found an association, both between the chiropractic visit and the primary care doctor visit. If one is to say that by finding that association that is a causal factor, then one would have to conclude that going to the primary care doctor is a cause of stroke.

I've never seen anybody suggest that. It doesn't fit with any existing model.

Q So when they say our case control results agree with past control studies that found an association between chiropractic care and vertebral artery dissection and stroke, that has no bearing in your mind on the fact that someone can suffer a stroke by having a neck

manipulation?

A That's not what they conclude, sir. That's not at all what they conclude.

Q Well what does that sentence mean if it doesn't conclude that?

A They say that "Our case control results agree with past case control studies that found an association between chiropractic care and vertebral stroke." They don't use the word "cause." They don't use the word "risk."

Q But what does association mean?

A It means one and the other go together.

Q Right, so, neck manipulation and a stroke go together?

A Just like love and marriage.

Q Right.

A One doesn't necessarily lead to the other.

MR. MALCYNSKY: I have nothing further.

CHAIRMAN SCOTT: At this time, we're going to take a lunch break now until 1:15. Thank you.

(Lunch recess)

MR. SHAPIRO: Attorney Pattis, if you're ready, you can proceed.

MR. PATTIS: Can you hear me now? I feel

like it's a Verizon commercial.

CROSS-EXAMINATION

BY MR. PATTIS:

Q My name is Norm Pattis, Dr. Lauretti. I'm fairly new to this controversy, and I wanted to start by asking just some basic questions to see if I can understand your testimony. Fair enough? You are a chiropractor, correct?

A I'm licensed in teaching the science of chiropractic care, as well.

Q And you've been teaching for a number of years?

A Yes.

Q You've published some peer review articles, correct?

A Yes.

Q And you've consulted as an expert, correct?

A Yes.

Q And you're here today on behalf of the Connecticut Chiropractic Association, is that correct?

A That's correct.

Q And you are also a spokesman for the American Chiropractic Association, is that correct?

A That's correct.

Q And when I say "spokesman," that means you're a person designated by this National Trade Group to articulate the Association's position as need be, whether it be in front of a regulatory body, a legislative body, or in front of the media. Am I correct on that?

A My primary role is to speak to the media in that position, yes.

Q Okay. That is in your function as spokesperson for the ACA, correct?

A Correct.

Q In your teaching role, however, you've mentioned that you are the lead instructor for second-year students, correct?

A That's correct.

Q And among the courses that you teach is a course involving chiropractic neck treatments, correct?

A Correct.

Q And among the topics covered in that course are the risks associated with chiropractic neck treatment?

A That's correct.

Q The scientific evidence concerning the efficacy, or the utility, or use of chiropractic neck treatment, correct?

A That's correct.

Q And the evidence, or lack thereof, of any evidence of harm resulting from chiropractic neck treatments, correct?

A Yes.

Q And you also are involved in your teaching enterprises in instructing students on coding, billing and documentation for chiropractic care, fair enough?

A Yes.

Q And one final area that you teach the students in is in the area of informed consent, correct?

A Correct.

Q Have you reviewed the pleading, that's a lawyerly way of saying a paper with a fancy title, the Petition for Declaratory Ruling submitted by the Connecticut Chiropractic Association prior to testifying today?

A Yes, I have.

Q And you have it in your materials there, I suspect, if they're numerically organized, as item number nine. Were you involved in preparing that document prior to its submission to this tribunal?

A No, I was not.

Q Now the document, itself, refers to a series of potential harms, known as a CAD, CVA, or VBA. Can you

tell me what a CAD what that refers to?

A CAD stands for Cervical Artery Dissection.

Q Okay and CVA?

A Cerebral Vascular Accident.

Q And VBA?

A Vertebrobasilar Artery, or Vertebrobasilar Accident.

Q Now I'm going to refer to myself as a dummy here, but I don't mean it in terms of my presentation, but using me as a dummy. The arteries in question snake up the back of the spine and base out at the base of the brain, correct?

A They're enclosed by portions of the cervical spine, yes.

Q But the arteries run through portions of the cervical spine and branch out at the base of the skull, correct?

A Actually, they don't branch out. They come together.

Q Okay and it's at that juncture where they come together from the spine that is a particular focal point of potential cause of injury, fair enough?

A No.

Q You would disagree with neurological findings to

that effect?

A That's incorrect the way you stated it.

Q How would you state -- withdrawn. Just by way of protocol, I'm going to try to ask simple questions that usually call for a yes or no, and, if they don't, I'll ask you for more, and, if you can't answer yes or no, because I'm misleading you, please let me know, fair enough?

A Okay.

Q Describe the area of the juncture of these arteries as they ascend from the spine into the area at the base of the skull. How would you describe that?

A It's an area known as the Circle of Willis, where the arteries come together in the base of the brain, and that's entirely enclosed within the skull, that portion.

Q Would you agree or disagree that that junction is an area of particular concern to chiropractors?

A I would disagree.

Q Why would you disagree with that?

A Because it's inside the skull.

Q Okay. Okay and can you point to yourself, using the area where you expect the first cervical juncture to be at the base of the skull?

A Right here.

Q Okay and just so the record is clear, that would be at an area lateral almost to the lower portion of your earlobe, correct?

A It would be inferior to my earlobe.

Q I'm a lawyer. Inferior means?

A Below.

Q Below, okay.

A Closer to the floor.

Q I'm sorry, sir?

A Closer to the floor.

Q Assuming you're standing, of course.

A Um-hum.

Q Now with respect to the risks of chiropractic care that you instruct your students on, what risks with respect to chiropractic neck treatments do you tell them about?

A We speak chiefly about soreness, post-treatment soreness, cases where a patient may complain of post-treatment dizziness, and, also, cases where it looks like the patient has had a complication following treatment.

Q Okay, so, is it your testimony, sir, that the risks that you instruct your students on are in two classes, risks associated with discomfort to the patient incident to treatment, that would be one, is that fair?

A Okay.

Q And, second, complications of what may or may not be preexisting conditions. Would you agree with that?

A Correct.

Q And would you agree with the following, that you do not instruct your students that there are any risks that are incident to or caused by chiropractic care, at least insofar as neck manipulation is concerned?

A Can you restate the question? I don't really understand what you're asking.

Q Sure. Obviously, you would agree with me that chiropractic is a science, correct?

A Correct.

Q It operates on the basis of general principles that can be communicated from one person to the next, correct?

A Correct.

Q And, as a science, it's not like mathematics, that can be conducted in isolation from an actual person. It also requires manipulation of the person, correct?

A Not necessarily.

Q A neck manipulation would require a person to manipulate?

A Chiropractic is the practice of chiropractors.

Q I'm referring simply in this case to what you're teaching your second-year students on neck treatments, fair enough?

A Okay.

Q Neck treatments requires a person to be treated, fair enough?

A That's not the specific limitation in what I teach my second-year students.

Q I didn't ask you that, and I'll give you the question I give my wife at the mall. We can buy everything. We just can't do it all at once. We're on the installment plan here. One question at a time.

One of the things that you teach your students is the proper technique for a manipulation, is that correct?

A That's one of the things I teach, yes.

Q And, thus, properly administrated chiropractic care requires not simply a conceptual or cognitive understanding of the abstract science, but the ability to manipulate a person consistent with scientific principles. Would you agree with that?

A That's correct.

Q And is it your testimony, sir, that as you teach students -- and where are you teaching again, sir? I

didn't get that in my notes.

A At New York Chiropractic College.

Q And are you saying that at New York Chiropractic College your students are told or taught that there is no risk of physical harm to a patient incident to a properly performed chiropractic manipulation of the neck?

A No.

Q What risks do you recognize in what you teach, other than the risk of modest discomfort incident to treatment or aggravation of a preexisting condition?

A Well there's some problems in how you're defining terms.

Q I'm using the terms that you offered in your Direct testimony, sir. What risks do you teach them are incident to chiropractic care, potentially incident to chiropractic care?

A I teach that there are possible complications from an adjustment in some cases, whether that's applied properly or improperly.

Q Okay.

A And among those potential complications are temporary dizziness and the fact that following a chiropractic adjustment a patient may present with neurological signs or symptoms.

Q Do you discuss with your students why some strokes seem to be related to, but are not necessarily caused by chiropractic neck treatments?

A Yes, we do.

Q Okay, now, you, in fact, have offered a continuing education course to people in the chiropractic industry on that very topic in 2009, have you not?

A I don't believe it was in 2009, but it's been in the past. I think it was 2008 was the last time.

Q It was after the Cassidy Study was published, correct?

A Yes.

Q And you would agree, as you sit here today, would you not, with the following statement, that some strokes seem to be related to, but are not necessarily caused by chiropractic neck treatments? You would agree with that statement?

A Yes, I would.

Q In your testimony in both response to Ms. Moore Leonhardt's questions and Mr. -- I forgot my co-counsel's name. And questions from my other counsel here, you were quick to draw a distinction between something that's caused -- something that causes something and something that's merely associated with something, correct?

A That's correct.

Q And the analogy that you used was the fire truck analogy, correct?

A Yes. We beat that into the ground sufficiently, I believe.

Q Well let me take a couple more swings at it. Fair enough? I think, if I understand the analogy correctly, you claim that merely seeing a fire truck at the scene of a fire all that shows is an association, correct?

A Correct.

Q It doesn't show causation, correct?

A Correct.

Q Suppose on that analogy, sir, you were to learn that a person who just left the house had recently bought a gallon of gas and put it in a plastic jug, and that person was seen to have walked out of the house that was afire. Would that raise suspicions to you about whether that person was involved? Was that something you'd want to investigate?

A I probably would.

Q And would you agree, sir, that within the topic of chiropractic medicine, the topic of vertebrobasilar stroke and chiropractic care has been examined extensively

in the literature in the past 10 to 15 years?

A Yes, it has.

Q There have been a series of studies on the incidence of that stroke and whether it's been -- whether chiropractic care is responsible, fair enough?

A There have been a series of studies. I'm not sure how sufficiently they address the question of whether or not the chiropractic adjustment was responsible.

Q But you're aware of studies that have concluded that there is a risk associated with chiropractic neck manipulation and stroke, are you not?

A I'm aware that there are studies that suggest there's a correlation between the two events.

Q And let's talk about correlation. We actually, in science, know very, very little about causation, wouldn't you agree?

A Probably, in many cases.

Q In fact, as part of your training -- and you didn't tell us what you studied as an undergraduate. Your Bachelor's degree is in what, sir?

A In psychology is the Bachelor's degree.

Q And, so, as a psychology undergraduate, I'm sure you took several courses in applied statistics, did you not?

A Yes.

Q And applied statistics really was simply the ability to associate one phenomenon with another, fair enough?

A Well I recall one phrase that my stats teacher opened the class with. "Correlation is not necessarily causation."

Q No, it's not, but it's the best we can do in many instances, isn't that true?

A In some cases, you can do better, and you should do better.

Q But statisticians, you recall, have tests to determine the statistical significance of correlations, don't they?

A Yes.

Q And that's a good part of what you learn in the first statistics course you take, is it not?

A Yes.

Q And, thus, if a given class of phenomenon occurs and it is followed temporally that is in time by something else, there are numerical tests that you can do to determine whether the events are correlated, fair enough?

A Correct.

Q And correlation, in the absence of the ability

to trace each and every step in an event, is sometimes the best that a scientist can do in looking for a suspected causation, fair enough?

A But correlation is not necessarily.

Q No, it's not necessarily, but you would agree, would you not, sir, that events that are correlated to one another raise the suspicion that they're not accidentally related, correct?

A Correct.

Q Thus, with respect to the analogy you drew on the fire truck and the house, the correlation there is that trucks respond to fire, fair enough?

A Correct.

Q But they don't cause fire, fair enough?

A Correct.

Q In looking for cause, you might look for things like a short circuit, an arsonist, a lightening strike, any of a number of factors that are recognized among arson investigators, fair enough?

A Correct.

Q And I should tell you, I do a lot of arson cases on the side, so don't go too far with the firehouse thing.

The Cassidy Study was not, as you

understand -- withdrawn. The Cassidy Study, as you understood it, was designed to provide or shed more light on the question of the correlation, if any, between stroke, vertebrobasilar stroke and chiropractic care, correct?

A It was designed, I believe, to look at the question of correlation and to come up with some ideas for why that correlation is or is not present.

Q Okay, but it did not, itself, find causation, correct?

A Correct.

Q It did not, itself, rule out causation, correct?

A That's correct.

Q And you recognize -- by the way, do you teach history of chiropractic science, as well?

A Not as a formal course.

Q You're generally aware of it, however?

A Yes.

Q A fairly new science?

A Um-hum.

Q One hundred and ten, fifteen years old?

A Yes.

Q In relations between chiropractors and physicians, so-called medical doctors, they're sometimes

frosty, are they not?

A Sometimes, they are.

Q Oddly contested terrain at this point, fair enough?

A In some cases.

Q Especially with respect to the business of chiropractic --

MS. MOORE LEONHARDT: Objection, irrelevant.

MR. PATTIS: Bias. It goes to bias in the question of causation.

MS. MOORE LEONHARDT: What physicians do, or what their positions are, vis-à-vis chiropractor doctors, is irrelevant to the question before the Board and is not probative of what the Board has to consider on the issue before it.

MR. PATTIS: If many medical journals conclude that there is a risk --

MS. MOORE LEONHARDT: I have an objection pending, and I would like a ruling.

MR. PATTIS: I'm not asking a question. I'm responding to the objection.

MS. MOORE LEONHARDT: I would like a ruling.

MR. PATTIS: In response to the objection, if many medical journals written by physicians, including -- well, if many medical journals written by physicians conclude that there is a risk of neck manipulation causing pain and the doctor is here to say that there is no risk, the relationship between the two professions may be relevant, and he may be understating the risk to serve institutional interest of the Chiropractic Association. Small point. It may not prove the issue here.

MR. SHAPIRO: I would recommend giving him just some minimal latitude on this line of questioning. Can you answer the question?

A Can you repeat the question?

Q I don't know. Let me try again. In jury trials, there's usually a court reporter right there, and you can have her re-read it to you when you have geriatric moment. By the way, would neck manipulation help my memory? I'm over 50.

A There may be no hope for that I'm afraid.

Q In fact, with respect to what chiropractic can do, that's, itself, disputed, is it not?

A Both within and without the profession. There is some controversy.

Q Are you among those chiropractors who believe,

for example, that chiropractic care is efficacious for the treatment of --

MS. MOORE LEONHARDT: Objection, irrelevant. It's beyond the scope of the issue before the Board. The Board is not here to determine whether chiropractic care is efficacious or not. It is here on the issue of informed consent, as it pertains to the issue noticed in the Board's Notice of Hearing.

MR. PATTIS: We disagree, and we disagree for the following, and I also assert that this is within the scope of the doctor's Direct Examination. He testified that he recognizes four factors as involved in the standard of care for informed consent, benefits of treatment, material and relevant risks, the alternatives and the risk and benefits of alternatives.

I think the evidence here will show that chiropractic care is contested within the medical profession. If the doctor is here to say that there is no risk associated with chiropractic care, he may be here on behalf of an industry that's trying to carve out acceptable practices that many in the medical community disagree with.

MS. MOORE LEONHARDT: And that's my point.

MR. PATTIS: This would go to what weight

to attach to his testimony. Thus, for example, there are chiropractors who can say, hey, that it can treat bedwetting, or that it can treat rheumatism, and that it can treat other things and some that don't, and, so, the claims for causation for what they can do that is efficacious are very, very broad within the industry.

This man is testifying that there are things it does not do. In other words, we can't show causation, as to harm, but perhaps we can show causation, as to bedwetting, and it seems to me that that's a door that swings both ways, because key to the question of causation is the notion of mechanism.

That's how a physician or a scientist explains cause. They say you begin with A, you go to B, you go to C, to D, to E, and when you associate these things together enough times with enough observations, you have a treatment protocol or regimen. I'm simply trying to lay that foundation to ask this man those questions.

MS. MOORE LEONHARDT: I disagree. I think what counsel is doing, very aggressively here, is trying to expand the scope of this hearing way beyond matters noticed, and if the Board is going to be inclined to allow him to go down this path, then I will have no choice, but to ask for a continuance and a revised Notice of Hearing,

so that all parties can be properly prepared to respond and meet the evidence that counsel seems to be intending to bring into a hearing that we all came here to have very narrowly put on, so that we can get to the heart of the issue, which is informed consent and whether or not the association of stroke is something that needs to be discussed with a patient prior to the performance of a chiropractic manipulation and nothing more than that.

If the notice is going to be interpreted as including a determination by the Board or consideration by the Board of the efficacy, the necessity and the benefits of chiropractic care generally, then the notice is grossly inadequate and insufficient, and I would state that it would be improper to go any further with the hearing at this time, until a new notice can be issued.

MR. PATTIS: Ms. Moore Leonhardt --

CHAIRMAN SCOTT: The motion is sustained.

MS. MOORE LEONHARDT: Thank you.

Q Now, sir, with respect to causation, you would agree that chiropractic care does provide benefits to patients?

A Yes, I believe it does.

Q And all sorts of things, correct?

MS. MOORE LEONHARDT: Again, counsel is

ignoring the ruling that was just made. This hearing is not to be focused on the benefits. The witness was asked about the components of the existing informed consent law, as it applies in Connecticut to chiropractors, and he testified to that.

The focus of the testimony and his testimony, as submitted under Direct, was whether or not a chiropractor should be required to disclose an association, which is extremely rare, of stroke to a patient prior to performing an adjustment. It is not about benefits.

MR. PATTIS: Actually, that's untrue. We endured a lengthy Direct Examination of the witness by Ms. Moore Leonhardt, in which he was permitted to testify about such things as his understanding of causation, the difference between that and association, and now we have an additional term introduced, relationship, and then he talked about his teaching and the standard of care about the benefits of treatment, about material and relevant risks, about alternatives and the risks and benefits of those alternatives.

To teach those topics necessarily requires some comprehension of the notion of causation and is necessarily involved in this case.

If the contention is going to be that chiropractic care causes no harm, there's no proof. Is that standard so high that we can't show that it causes any good either? In other words, is it a double standard here? Does causation serve when we're paid for our services and disserve when it requires us to notify patients of potential harm?

And, so, I believe that that is fair Cross-Examination and well within the scope of what was offered through this witness.

MS. MOORE LEONHARDT: I, again, disagree. I reiterate my objection. At the risk of being repetitive, I don't think it's necessary. The scope of this hearing is narrow, and I think we ought to stay there, so that we can get through this and proceed to a decision from the Board.

CHAIRMAN SCOTT: We're going to sustain, as not being relevant, and let's carry on, please.

MS. MOORE LEONHARDT: Thank you.

Q When you're teaching about the standard of care to students and the notion of informed consent, I presume that also takes place within the context of chiropractic neck treatments, correct?

A That's part of --

Q -- teaching is applicable to that?
A I'm sorry. Say that again?
Q That teaching would be applicable to that, would it not?
A That's part of the topic that I cover when I'm talking about informed consent.
Q And how long is the course of study for a chiropractic physician?
A It is three and a third calendar years, which equates to four academic years.
Q And is part of that training clinical in character?
A Yes, it is.
Q Thus, the clinical portion of that training requires applying the scientific principles to cases in actual patients, correct?
A That's correct.
Q And there's a collaborative enterprise at that point to bring students up to speed with the standard of care, not just as to manipulation, but information shared?
A That's correct.
Q Now you mentioned that you taught with respect to coding, as well, correct?
A Correct.

Q And there are a series of codes that are used. Those are the ICD 9 codes, correct?

A There are several versions. There's an ICD 9, which is used almost exclusively in the United States. The more current version is ICD 10, which I believe is used in Canada, and they have different codes than ICD 9. I'm not very familiar with ICD 10, because we use ICD 9 in the United States.

Q But --

MS. MOORE LEONHARDT: And I'd like to object to a line of question that goes down the path focusing on coding, as it is not relevant, it's not probative of the issues. The witness was being qualified as an expert witness at the time that he discussed those activities.

I know that counsel went through a series of questions under Cross-Examination in that regard. At the risk of not prolonging this proceeding, I refrained from objecting, so that we could have just a free flow of witness testimony, but before we go any further, I would ask that the Board ask counsel for an offer of proof, as to why we're going down a path for a primer on coding, when that is not the issue before this Board.

The issue before the Board is informed

consent, and I don't think I need to reiterate what the question is that's pending.

MR. MALCYNSKY: Well I would just say this about the coding issue, Attorney Moore Leonhardt. The entire crux of the testimony of this witness was that they're hanging their hat on the Cassidy Study as the be all and end all to reverse 70 years of learned knowledge and case study on the relationship between neck manipulation and strokes.

The entire basis of the Cassidy Study is related to information that was gathered pursuant to codes, rather than review of patient records, or discussion with victims, or anything else. How could coding be irrelevant to this hearing?

MS. MOORE LEONHARDT: Those are suppositions that you're making. I don't believe the witness has ever testified that there weren't chart reviews done.

MR. MALCYNSKY: He did.

MS. MOORE LEONHARDT: No. You're mischaracterizing the witness's testimony.

MR. MALCYNSKY: No, I am not. You are.

MS. MOORE LEONHARDT: The witness testified that it was not reported in the report, as to whether

there were chart reviews, and we're prepared to produce evidence that will demonstrate that there were chart reviews that tested the data, which makes it even more sound and reliable scientific evidence.

DR. POWERS: Okay. Let's slow down for a second here. We're going to rule on the motion.

MR. PATTIS: May I be heard on that?

DR. POWERS: Let me tell you where we're at right now, because we've just chatted it, okay? We're going to sustain the motion, and what we're going to do is recommend please keep your questioning, if there's coding questions, make them just specific to the article, okay, because that's what was in front of us, not the entire ICD 9 or ICD 10 manual.

MR. MALCYNSKY: Can I just get a clarification of what you're saying? You're saying we can ask questions about coding, as it relates to the Cassidy Study?

DR. POWERS: Sorry. Please make the questions related to the Cassidy Study coding questions, okay?

Q Okay, but you do teach this coding at New York Chiropractic College, correct, sir?

A That is a course I teach.

Q Is it an entire course, just coding?

A It is a 30-hour course.

Q Okay. The Cassidy Study is something that you have reviewed prior to coming in to testify here, correct?

A That's correct.

Q And the Cassidy Study is pivotal in your understanding about the risks associated with chiropractic neck care, is it not?

A That's correct.

Q As a result of reading that study, you changed your thinking on the topic, did you not?

MS. MOORE LEONHARDT: I'd like to object and, again, clarify the record, that this witness has never used the phrase neck care, and I'd like that stricken, because it mischaracterizes the testimony of this witness.

He has never spoken of a neck care. That is counsel's terminology poorly used in this hearing, and I'd like to remind everyone that this is a very important issue to chiropractors, and they don't use terminology loosely.

MR. PATTIS: Well of course witness adopted my questions and agreed with me, so he may or may not want to distance himself from Ms. Moore Leonhardt. The fact of

the matter is that he testified in the affirmative to each of those questions, so if the court wants to strike his sworn testimony, I can't prevent you from doing that.

MR. SHAPIRO: Okay. Counsel, why don't you proceed, Attorney Pattis.

MS. MOORE LEONHARDT: I would like the witness to have the opportunity to correct his testimony if he's misspoken, because --

MR. SHAPIRO: Counsel, on Redirect, you can ask the witness whatever you'd like.

Q The Cassidy Study led you to rethink your position about the potential for risk in chiropractic care, as relates neck manipulation, correct?

A That's correct.

MS. MOORE LEONHARDT: Again, I would ask counsel to refrain from putting questions to the witness, where he's using terminology of chiropractic neck care. It is inflammatory, highly prejudicial, and it is not consistent with this doctor's testimony under Direct.

MR. PATTIS: Perhaps we should take a recess, so that Ms. Moore Leonhardt can counsel her own witness to stop agreeing with me, then, because there appears to be a divide between counsel and the witness, who evidences no inability to understand what I'm saying.

MS. MOORE LEONHARDT: I don't think there is, counsel.

MR. SHAPIRO: Counsel, the objection is overruled.

Q The Cassidy Study that you read from, do you have a copy of it in front of you, sir?

A Yes, I do.

Q That appeared in Spine Magazine, correct?

A It appeared in the Journal of Spine, correct.

Q Spine, an international journal for the study of the spine, correct?

A Correct.

Q It relied on an overview of a large number of cases, did it not?

A It covered some 10 million person years over its course.

Q And what was included for analysis were those cases that were given two ICD codes, correct?

A That is correct.

Q ICD number 9433, correct?

A 9433.3. I'm sorry. 9433.0.

Q And 433.2, correct?

A Correct.

Q And just so the record is clear, earlier in your

testimony today, you made an error that was unintentional, when you recited a series of ICD codes. You realize now that those were the ones that were excluded, correct?

A That's correct.

Q Thus, Cassidy and company, when they designed the study, had choices to make about what to include and what to exclude in their sample size, correct?

A And they state that they chose those codes in consultation with stroke experts.

Q Understood. Do you know why they excluded that ICD code that is pertinent to dissection of the vertebral artery?

MS. MOORE LEONHARDT: Objection. I don't believe that the witness said that under Direct. It's beyond the scope of Direct.

MR. PATTIS: Well it's not, but I'll let you rule.

MR. SHAPIRO: I would overrule the objection.

Q Do you know why ICD code 443.24, dissection of vertebral artery, was excluded from this study?

A I'm sorry. Was that listed among the excluded codes, or was that just not included?

Q It's neither listed as included or excluded. Do

you know why?

A I don't know why, no.

Q Mr. Cassidy, do you know whether that's the same David Cassidy who was found to have fudged data in an earlier study? Do you know whether this is the same man?

A I don't know any accusations of him, quote, "fudging data."

Q Okay. The Cassidy Study reports the following language, does it not? Well, withdrawn. Let me go about it a different way. Would you agree or disagree, sir, with the following statement, that it's hard to know when a patient, who presents with neck pain or headache, is in the midst of suffering from a vertebral stroke? It's hard to distinguish those patients, who are having a stroke from those who are not?

A It's a difficult differential diagnosis. That's correct.

Q And when you use the term "differential diagnosis," you're simply talking about the process by which a physician looks at the symptoms and rules out things, correct?

A That's correct.

Q And, thus, the process of differential diagnosis involves going from the broader to the narrower potential

sources of harm to a patient, fair enough?

A Correct.

Q And, thus, a person, who presents with neck pain and/or headache, that person may be suffering from vertebral stroke, but they may not, correct?

A That's correct.

Q They may have a tension headache, for example, or a migraine, or some other source, correct?

A That's correct.

Q And, in those instances, when you refer to something as a tension headache, or a migraine, you're ascribing causation to the phenomena of pain, correct?

A That's a diagnosis, so, yes.

Q But the diagnosis is saying this is what causes the pain, correct?

A It categorizes the pain, I think is more proper to say.

Q That's exactly right, because causation remains a somewhat murky topic in your science, does it not?

A Correct.

Q And it's not possible always to know what phenomena is caused by another. Sometimes you simply have to rely on correlations, statistically significant correlations, correct?

A If that's all you have, yes.

Q Would you agree or disagree with the following statement? Given our current state of knowledge, the decision of how to treat patients with neck pain and/or headache should be driven by effectiveness and patient preference.

A I agree.

Q And you would agree that that occurs at the end of the Cassidy Study, correct?

A That's listed in the Cassidy Study?

Q That that occurs, that that's the very last sentence prior to the conclusion in the Cassidy Study?

A I can check on it, if you'd like.

Q Only if you distrust me.

A I'll trust you, yes.

Q Okay, thank you. In terms of the question of causation, I believe Mr. Malcynsky already covered this. You understand that Cassidy, whatever else it did, it hasn't ruled out neck manipulation as a potential cause of some VBA strokes, correct?

A That's correct.

Q Now you did review, you said, the pleadings or the materials prepared by the Connecticut Chiropractic Association prior to testifying today, correct?

A Recently, but not right before now, yeah.

Q And you also testified that you served on an ad hoc committee for the ICA, or, excuse me, ACA that was responsible for updating the informed consent policy, correct?

A That's correct.

Q That task force has been disbanded, because it achieved its purpose, correct?

A That's correct.

Q And its purpose was to articulate standards for members of the Association to use when counseling persons about the risk of stroke, correct? Withdrawn.

MR. PATTIS: Thank you for not leaping on me.

MS. MOORE LEONHARDT: Thank you.

Q That standard, that committee constructed an informed consent policy that was to be used in general for chiropractors advising patients about potential risk, fair enough?

A That is a general policy of the ACA, correct.

Q And would you agree or disagree with the following statement? Doctors of Chiropractic should employ their best good faith effort that the patient possess enough information to enable an intelligent choice

in regard to proposed chiropractic treatment. The patient should make his or her own determination on such treatment. You would agree with that?

A That's correct.

Q That's language from the ACA policy on informed consent, isn't it?

A I believe so.

Q It's certainly consistent with that, correct?

A Yes.

Q And has the ACA distanced itself from that standard articulated by the Association of Chiropractic Colleges, if you know?

A I'll say that that was one of the publications we looked at in forming the ACA policy, and we found it was not entirely satisfactory.

Q And that was because it gave too much weight to potential risk, isn't that right?

A I think it was too wordy and too detailed.

Q Well was part of the wordiness and detail that you objected to the following? If a certain risk is a mere possibility, which ordinarily need not be disclosed, yet, if it's occurrence causes serious consequences, as, for example, paralysis or even death, it should be regarded as a material risk requiring disclosure? Do you

disagree with that statement?

A Can you repeat it, please, one more time?

Q Yes, sir. If a certain risk is a mere possibility, which ordinarily need not be disclosed, yet, if it's occurrence causes serious consequences, as, for example, paralysis or even death, it should be regarded as a material risk requiring disclosure? Do you agree or disagree with that?

A I agree.

Q Okay. Do you agree with the -- and do you agree, sir, that that is the standard articulated by the Association of Chiropractic Colleges in their guidelines on informed consent?

A I don't have that document in front of me, so I can't say.

Q Now would you agree or disagree with the following proposition, that doctors should err on the side of caution when it comes to obtaining informed consent from their patients?

A I agree.

Q The process of obtaining informed -- withdrawn. You described the obtaining of informed consent as a process, correct?

A Correct.

Q Not simply the signing of a particular document, correct?

A Correct.

Q Has the American -- withdrawn. Has the American Chiropractic Association published a recommended template, or guideline, or informed consent document for its membership?

A To my knowledge, no.

Q Why not?

A I don't know.

Q Well you were on the ad hoc committee that helped develop standards, correct?

A Correct.

Q And that standard was designed to educate your membership on how best to serve patients, correct?

A Correct.

Q How to help doctors err on the side of caution, correct?

A Correct.

Q Recognizing that even a remote chance of death or paralysis should be regarded as a material risk?

MS. MOORE LEONHARDT: Objection, argumentative.

MR. PATTIS: No. He just told us. I'm

asking him if he agrees with his --

MS. MOORE LEONHARDT: The witness did not agree that that was a material risk, and you're mischaracterizing his testimony.

MR. SHAPIRO: I would recommend overruling the objection.

Q You agreed, sir, for the benefit of your counsel, with the following from the Association of Chiropractic Colleges. If a certain risk is a mere possibility, which ordinarily need not be disclosed, yet if it's occurrence carries serious consequences, as, for example, paralysis or even death, it should be regarded as a material risk requiring disclosure? You agree with that, correct?

A I agree with that.

Q So do you agree, sir, that there is anything that a chiropractor does that carries with it the risk of serious injury or even death to a patient?

A Is there anything? Yes.

Q Okay, so, there are circumstances when you think that doctors should err on the side of caution, correct?

A You're making general statements that I really can't respond to. It depends on the specific circumstances of the case.

Q Sir, I'm not making any statements at all. I'm asking you questions about the policy that you helped craft. You were on an ad hoc committee that disbanded in May of 2008, correct?

A Correct.

Q The purpose of the committee was to provide your membership with guidance about the requirements of informed consent, correct?

A Correct.

Q And that was, in part, to protect them from liability, should claims arise in some jurisdiction, correct?

A Correct.

Q But --

MR. SHAPIRO: Attorney Pattis, you just have to keep your voice up, or move a little closer to the microphone, if you can.

MR. PATTIS: Sorry.

Q But it was also, in larger part, motivated by your care and love of your profession, was it not?

A Yes.

Q The desire to seek excellence in the treatment of others, fair enough?

A Yes.

Q You issued a written policy statement, correct?
A Correct.
Q But made a decision not to require a written informed consent document. That was a self-conscious decision the committee made, isn't that right?
A That was not our charge as a committee, firstly. That was not what we were charged with doing, and, also, as a National Association, we felt it was not appropriate for us to try to supersede State laws.
Q Well, sir, you testified here in response to Ms. Moore Leonhardt's questions that you had consulted throughout the nation on the topic of informed consent, correct?
A Correct.
Q The charge that you were given by the ACA was to develop standards that could applicably guide your membership throughout the United States, correct?
A Correct.
Q Is it your testimony that you thought that any writing, whatsoever, however minimal in character, was something that was beyond the scope of what you were asked to do to provide your members with assistance on what to use in providing informed consent?
A Please restate?

Q Is it your testimony, sir, that when you talk about your charge, you were charged with developing a policy to help your membership, correct?

A Yes.

Q And you didn't think that giving them some writing to use to assist them and their patients, you thought that was beyond the scope of the charge?

A Yes.

Q Okay. Are you aware of any written informed consent document provided by any professional association associated with chiropractic care that gives physicians guidance on the warnings that they should give patients, as to risk?

MS. MOORE LEONHARDT: May I just inquire, counsel, to make sure the witness understands your question? Are you talking about within the United States, or are you talking beyond the United States into other territories, such as Canada?

Q Do you understand the question, sir?

A If you can clarify it in those terms?

Q Are you aware of any chiropractic association that has provided written guidance to its membership, in terms of a form that they recommend to be used in providing informed consent to their patients?

A As a specific form, no, I'm not.
Q Okay. How about as a general form?
A No, I'm not. No.
Q So there's none?
A As far as I know.
Q Why?
A I don't know.
Q In terms of educating your students, don't you provide them with treatment protocols?
A Yes.
Q And aren't treatment protocols the sort of thing that a chiropractor is expected to learn how to research in the course of their education?
A Yes.
Q Because part of differential diagnosis is trying to figure out what to do about what you're presented with, correct?
A Yes.
Q A treatment protocol might specify symptoms and give you things to look at to rule out potential causes, correct?
A Correct.
Q And then it would recommend what to do to provide treatment, correct?

A Yes.

Q And in all those written protocols, there's nowhere an example of an informed consent form that a --

MS. MOORE LEONHARDT: I'm going to object. We're going far a field. There are not treatment protocols, the use of treatment protocols, and incorporation of treatment protocols as a matter of practice is not probative of the issues before the Board.

MR. PATTIS: That wasn't the question.

MS. MOORE LEONHARDT: The question before the Board is disclosure in an informed consent process, not treatment protocols.

MR. PATTIS: And the question didn't call for whether treatment protocols --

MR. SHAPIRO: Why don't you rephrase the question and we'll see?

Q You would agree, sir, that you're aware and you would know, I presume, in your role as an educator and spokesman for the ACA, you're aware of no written guidance to the chiropractic industry in general, as to what informed consent they should obtain from a patient, insofar as a form is concerned, use this form to obtain consent?

A There is no specific recommended form to use.

Q And there was no, you agreed moments ago, no general form either, correct?

MS. MOORE LEONHARDT: Objection. The witness previously testified that there are courses, and, as part of the course in informed consent, there is a scope that covers documentation of the informed consent discussion, so to the extent that you're suggesting that there isn't a documented report of the informed consent between the patient and the chiropractor, I believe you're mischaracterizing this witness's testimony.

MR. SHAPIRO: I think the record is going to speak for itself. I think the question has been asked and answered, though, counsel.

MR. PATTIS: Okay. Thank you, sir.

Q When you were on the Board for the ACA -- withdrawn. When you were on the task force for the ACA, as regards the topic of informed consent, did you also study the standards articulated by the International Chiropractic Association?

A Not that I recall, no.

Q Do you agree or disagree with the following statement, that a patient has a right to actively participate in any and all decisions regarding care?

A I agree.

Q Do you disagree with the -- agree or disagree with the following, that a patient has a right to refuse care after being informed of possible adverse consequences?

A I agree.

Q Do you agree or disagree with the following, that a patient has a right not to be subjected to any procedure without voluntary consent?

A I agree.

Q Where you disagree with those seeking informed consent in Connecticut at least is insofar as you regard the risk of chiropractic stroke as immaterial, correct?

MS. MOORE LEONHARDT: I object. First of all, you're mischaracterizing this witness's testimony yet again. This witness has not testified that there is not an informed consent law in the State of Connecticut that governs chiropractic care, so by posing your question as you are, you are mischaracterizing this witness's testimony, and you're being argumentative.

MR. SHAPIRO: I would recommend overruling the objection. I think it's a fair question that can be asked, and if the witness disagrees with the characterizations that counsel is making, he can answer the question accordingly.

Q I don't remember the question anymore, do you?
A No, but I disagree with it. (Laughter)
Q That's sort of like causation in subluxation, isn't it? You know it when you see it, but you can't define it. Let me try it a different way.
MS. MOORE LEONHARDT: I move to strike that.
Q With respect to the question, you understand the question before this tribunal is whether there ought to be a discreet warning about the possibility of a stroke or cervical artery dissection as a side effect of certain procedures, correct?
MS. MOORE LEONHARDT: I object. That is not the question before this Board. If counsel would like to read that --
MR. SHAPIRO: Counsel, then he can answer the question. He's posing a question. If the witness doesn't agree, then he doesn't agree.
MR. PATTIS: And may the record reflect that he nodded his head and said yes as counsel was speaking.
MS. MOORE LEONHARDT: I would ask the witness whether moving his head was intended to be an agreement with counsel.

MR. PATTIS: No, no, no. These are chiropractors. Don't go there. We don't want to talk about causation --

DR. POWERS: Hang on a second. Hang on. I've got to stop this here for a minute. We've been sitting here as a Board and listening to this testimony, but the barbs between attorneys and the barbs about professional issues unrelated to the one question we have have to stop right here.

MR. PATTIS: Yes, sir.

DR. POWERS: Would everyone agree to that?

MR. PATTIS: Yes, sir.

VOICES: Yes.

DR. POWERS: Okay. Please continue.

Q Sir, would you disagree or agree with the following, that one of the questions, perhaps the central question that we're here today, is whether a Connecticut physician, or chiropractic physician, should obtain informed consent from a patient prior to the performance of a joint mobilization manipulation or adjustment of the cervical spine, should the risk and/or possibility of occurrence of a stroke or cervical artery dissection as a side effect --

(Off the record)

COURT REPORTER: Could you repeat that last question, sir?

MR. PATTIS: No.

Q Do you have the submissions, the exhibits and so forth there, sir? Let me try it again. Would you agree or disagree, that one of the issues before us here today, perhaps the only issue, is when a chiropractic physician obtains informed consent from a patient prior to the performance of a joint manipulation, mobilization, or adjustment of the cervical spine, should the risk and/or possibility of occurrence of a stroke or cervical artery dissection as a side effect of the procedure be addressed with the patient? You understand that's why we're here?

A I understand that, yes.

Q You're not here to testify, sir, that there is absolutely no risk, are you?

A Specify the question, please?

Q I can't be any clearer than I was.

A No risk to what? To whom? To when?

Q Well, in terms of the question that I just read, and I'll re-read it to you, you understand, sir, that we're here on the following question. When a chiropractic physician obtains informed consent from a patient prior to the performance of a joint mobilization, manipulation, or

adjustment of the cervical spine, should the risk and/or possibility of the occurrence of a stroke or cervical artery dissection as a side effect of the procedure be addressed with the patient? Do you agree that's why we're here?

A Yes.

Q You're not here to testify that there is no risk of stroke or cervical artery dissection as a side effect of the procedures associated with joint mobilization, manipulation, or adjustment of the cervical spine, are you?

MS. MOORE LEONHARDT: Objection, argumentative. The witness has already testified that he doesn't believe there is a risk, and he doesn't believe that there's been any cause and effect relationship established by reliable research, and by asking this question, you're being argumentative and trying, again, to distort this witness's testimony.

MR. SHAPIRO: I would recommend overruling the objection. I think the question, about whether or not there's no risk, can be answered by this witness.

A There is no scientific evidence of a cause and effect relationship between a chiropractic neck treatment and a subsequent stroke.

Q But what there is is the sort of material that Mr. Cassidy and company talked about, associations, correct?

A Correct.

Q And what science is involved in with the application of statistical methods is not so much determining causations, but reliable associations, correct?

A I disagree.

Q Okay, now, with respect to the general incidence of stroke in the population, your view is that when a person suffers -- withdrawn. Your view is that when a person reports or suffers a stroke after chiropractic care, that is coincidental to a preexisting condition, correct?

A Yes, I believe it is.

Q Coincidence, as you understand it, means two things appearing together, correct?

A Correct.

Q Not necessarily caused one by the other, fair enough?

A Correct.

Q And, thus, it’s merely bad luck, fair enough?

A Yes.

Q The chiropractor was a victim of bad luck, as it were?

A The patient was, too.

Q Um-hum. What is the incidence -- and you referred, I believe, sir, to certain VBAs as spontaneous, correct?

A Correct.

Q And I don't want to beat the fire metaphor too much. It's not like spontaneous combustion, is it?

A No, it's not.

Q Okay. By spontaneous, you mean of no known origin, correct?

A Correct.

Q And you concede, do you not, that there are -- given the current state of our knowledge, you can't determine what patients with neck pain or headache should be screened as potential stroke candidates, correct? A person comes in with a headache. You don't know whether they're having a stroke or not.

A Well all patients should be screened with a sufficient examination, physical examination and history, and the best science suggests that's the only place that you will see signs and symptoms of this type of stroke.

Q But even with the best diagnosis and

examination, you're not always sure, are you?

A That's correct.

Q And that's the part of medicine that's frightening, correct?

A That's correct.

Q And wouldn't you agree with the following proposition? Given the potential for harm, that is that a person may be there in the midst of a stroke, they should be warned about those things that may exacerbate a stroke? Would you agree with that?

MS. MOORE LEONHARDT: Objection, argumentative. This witness has not said that chiropractic care harms a patient.

MR. PATTIS: Didn't ask that.

MS. MOORE LEONHARDT: You did use the terminology "harm," and you, by implication, suggested that.

MR. PATTIS: Mr. Shapiro, can I ask that comments be directed to the tribunal? That, I think, will eliminate some of the byplay.

MR. SHAPIRO: That makes sense from all parties. If you have arguments to make, you can make them to the Board.

Q Would you disagree or agree with the following

proposition, that the relationship between chiropractic care and VBA strokes is an ongoing topic of scientific research?

A Yes, it is.

Q And would you agree or disagree with the following, that the question of causation has not been conclusively proven? That chiropractic care can cause stroke, that has not been proven, correct?

A It has not been conclusively proven.

Q And neither has it been disproven, isn't that correct?

A It has not been disproven, but the weight of evidence is strongly in favor of that conclusion.

Q Now that weight is evidence that you agree with, correct?

A Yes.

Q And you disagree with those that conclude that, for example, as many as one in 400,000 people may suffer from chiropractic stroke after neck manipulation? You disagree with that?

A I don't know where you pull that number up, so I really can't say.

Q Okay. I've got so much paper here that I can't find it, so I'll move on. You --

MR. PATTIS: May I have one moment, please?

Q In your testimony, in response to Ms. Moore Leonhardt's questions, you talked about three causes of harm relating to vertebral arteries, potential stenosis, occlusion and dissection, correct?

MS. MOORE LEONHARDT: Again, I object, because I believe that mischaracterizes the witness's testimony. If the witness understands the question, perhaps he can answer it, but I don't think the form of the question is proper.

MR. PATTIS: I think what I was trying to clarify was the difference between those three terms.

Q They are three distinct phenomena within the study of chiropractic, are they not?

A Three distinct phenomena within the study of pathology. It's not a chiropractic issue.

Q An occlusion is the blocking of an artery, correct?

A Correct.

Q Stenosis is the closing of an artery, correct?

A A narrowing of an artery, yes.

Q Okay, thank you. And dissection may or may not cause blocking, fair enough?

A Correct.

Q It may, if it dislodges something from the interior and that goes on to lodge itself onto the wall and, thus, restrict the flow of blood, correct?

A That's correct.

Q And, as you sit here today, you don't know, do you, whether dissection has played any role in occlusion or stenosis, do you, in the study, in the Cassidy Study, or in any other study, frankly?

A Well, from other studies, it has been found that most of these types of stroke come from a vertebral artery dissection.

Q Okay and, again, you don't know why the Cassidy Study didn't include those trauma coded as a vertebral artery dissection. You don't have any account for that.

A I can give you some ideas that I think is the reasoning, because I think, if they used that code, they would have found many fewer cases, because I think, in most cases, a vertebral artery dissection goes unrecognized until it becomes that posterior circulation stroke.

Q And that's my point, sir. VAD is often unrecognized, until it has produced symptoms that can yield paralysis or even death in rare cases, correct?

A In rare cases.

Q And you don't know when a patient is walking in whether this is a person who is suffering VAD when they complain of head or neck pain, correct?

A No chiropractor knows that. No emergency room physician knows that. No general medicine practice physician knows that.

Q Well I'm not picking on the chiropractic creed. No one knows, fair enough?

A Correct.

Q But what becomes evident to a patient, who is going to suffer a stroke, is symptomalogy. They may suffer aphasia. That is the inability to recall. There may be paralysis in speech, numbness in an extremity. These are sorts of things they'd know, correct?

A Correct.

Q What would be wrong, sir, with chiropractors providing people who come in for treatment of head and neck pain with a list of symptoms to look out for, just in case the chiropractor missed the fact that they were having a coincidental stroke as the care was provided? What would be wrong with that?

A I think that would be good practice.

Q So would you agree, then, or disagree, that this Board should consider ordering a discharge summary that

helps a patient recognize whether they're having a stroke?

A I think that if you limit that to the chiropractic profession, with the understanding the Board doesn't have jurisdiction, but you're limiting that to the chiropractic profession, when it's just as likely the patient is going to have the same problem if they walk into their family doctor with a headache.

Q Are you familiar with the logical fallacy, known as the Tu quoque?

A Yes.

Q Would you agree that that's what you've just engaged in? We don't want to do it, unless everybody has to?

MS. MOORE LEONHARDT: Objection, argumentative.

MR. PATTIS: I'll withdraw that.

Q Sir, this is the Board of Chiropractic Examiners, and it has no jurisdiction over any other body. You understand that?

A Yes, I do.

Q And you agree that a discharge summary would be a good idea, given what is both known and unknown about VADs, correct?

MS. MOORE LEONHARDT: Objection. That's

not what the witness's testimony was.

Q Do you agree or disagree it would be a good idea, sir?

A I don't believe mandating it would be appropriate.

Q Why?

A Because I think it's a matter of good practice.

Q Well what's wrong with mandating good practice?

A Because you can't mandate everything that goes into good practice.

Q Dying of a stroke is a fairly significant event?

A Having a stroke is a fairly significant event.

Q Catastrophic for patients. About the worse possible outcome that you would see in a chiropractic practice, correct?

A So why aren't you sitting in front of the Medical Board right now, telling them the same thing?

Q If they issue the invitation, I'll go, but I don't pick my fights. They pick me. This is the one I have. You're here on behalf of the industry. What you're telling me is if the medical doctors do it, you'll do it, too, but unless they can't, we don't want to? Is that what your testimony comes down to?

A I don't think it's appropriate to put the onus

on our profession, when the onus is not put on theirs.

Q Are you afraid that there will be economic consequences if patients are warned?

A No.

MS. MOORE LEONHARDT: Objection, argumentative and irrelevant to the issue at hand. This is not about financial. This is about patient safety.

MR. PATTIS: Absolutely.

Q It is about patient safety, and what's wrong with telling your patients what you're doing if you think there's potential for undiagnosed coincidental harm? What's wrong with telling patients about that?

A Again, there's nothing wrong with doing it, and I recommend people do it, but requiring it essentially puts an onus on our profession, which is what this hearing has been about.

Q An onus on your profession to do what you think is the right thing?

A No. An onus on our profession to give people the impression that we're harming them.

Q And you would agree that it is preferred practice to provide patients with information about potential risk?

A I think it's a good thing, and I think all

providers should do it.

MR. PATTIS: Nothing further.

DR. POWERS: Okay. I have one question for you that I'm surprised no one asked, so I'll do it.

EXAMINATION BY DR. POWERS:

Q Early on, you had said that you do not feel that, and I'm paraphrasing for the purposes of this, that you don't feel that this warning should be given in all cases, and you had mentioned only in cases of, and I quote what you said, "red flags." No one has explored that. Can you tell us what these red flags are?

A Well the biggest red flag is that there is an ongoing neurological event, an actual stroke. The big red flags would be some sort of neurological problem. The patient has dizziness, lightheadedness, they can't see straight, they can't speak, they can't walk straight, so those are the big things that suggest that this patient is having a stroke right now, or has just had a stroke.

So those are obviously big red flags, and before I even touch the patient, I'm going to want to -- I'll want to explore those issues further. Some of the more subtle red flags that puts patients probably at a higher risk of having the vertebral artery dissection, so, again, we're talking about two different events, the

dissection versus the stroke, that put people at a higher risk of having a dissection are various connective tissue diseases, things like Ehlers Danlos Syndrome and Osteogenesis Imperfecta and things like that, so those are things that I would consider red flags.

And, in a case like that, it wouldn't necessarily mean that I'm not going to treat the patient, but I would make sure the patient understands very clearly the potential problems with having a vertebral artery event in those cases.

Q I have done a lot of research on this topic in the midst of reading everyone's exhibits, and one of the things I did is I went to the American Stroke Association's website.

MR. PATTIS: For what it's worth, we don't object to the Board asking questions from any information that it has read. I think that it might assist the other Board members.

MS. MOORE LEONHARDT: We have no objection, as to the Board having considered other information, as long as we know what that information was, if it informs the Board. The Board has its own expertise, and we respect and regard that.

DR. POWERS: Thank you, everybody. I

figured I was on the Board I can ask a couple of things here.

Q Is high blood pressure a risk factor for stroke?

A It's a risk factor for stroke. It's not a risk factor for a vertebral artery dissection.

Q Is cigarette smoking?

A Again, it's a general risk factor of stroke. It's probably not a risk factor for a vertebral artery dissection.

Q Heart disease?

A Again, a risk factor for general stroke, maybe or maybe not. Probably not a risk factor for vertebral artery disease, however, one marker for heart disease is a risk factor. That's elevated serum, serum homocysteine level, and that's one of the risk factors both for heart disease and for this specific type of stroke and vertebral artery dissection.

Q And, lastly, diabetes?

A I don't know if the evidence is clear enough to say either way. Again, it's clearly a risk factor for regular strokes. Whether or not it's a specific risk factor for vertebral artery dissection, I don't believe the evidence is clear enough to say either way.

Q So considering these risk factors, would you say

that if someone came into the chiropractic office that had these risk factors, those are the patients that should be specifically warned about possibility of stroke?

A I think, in general, they should be counseled on their health, but I don't believe that those specific risk factors put them at any greater risk of having a vertebral artery dissection.

You should tell them, yes, you have high blood pressure, you should lose weight and watch your blood pressure, but I don't believe it necessarily means that they should be treated specially when it comes to these specific issues that we're talking about.

DR. POWERS: Okay, thank you.

BY MR. MALCYNSKY:

Q Excuse me, Dr. Lauretti. What does the Cassidy Study say about the existence of appropriate screening protocols for VAB?

A I don't recall anything specific that they talk about.

Q Can you just turn to the Cassidy Study, please?

A Um-hum.

Q And the last page, or the page just above the conclusion, the paragraph just above the conclusion. The paragraph that says, "Our results." About halfway down

the paragraph, there's a sentence that says, "Unfortunately." Doesn't it say, "Unfortunately, there's no acceptable screening procedure to identify patients with neck pain at risk of VAB stroke?"

A That's correct.

Q Would you agree with that?

A And it also says, "These events are so rare and difficult to diagnose that future studies would need to be multi-centered and have unbiased ascertainment of all potential exposures."

Q Right.

A In other words, these are such rare conditions that they have not been able to identify any specific risk factors, according to Cassidy.

Q Correct, but --

A -- is what I quote --

Q But the issue is what you are testifying to are these red flags, but the red flags are not easily discernible, are they? There's not a test to see if somebody is having a VAB stroke, according to Cassidy?

A There's not a -- well there is a test that's not very good to see if they're having an evolving dissection.

Q An MRI?

A Well it's an MRA, actually. It's very

expensive.

Q But it's something you would do in a chiropractor's office?

A Not something you would do in a chiropractor's office, and not a good screening tool, because it does not have very high specificity or sensitivity.

Q There's no good screening tool, is there?

A No, there's not.

MR. MALCYNSKY: Thank you.

MS. MOORE LEONHARDT: Thank you.

REDIRECT EXAMINATION

BY MS. MOORE LEONHARDT:

Q Dr. Lauretti, just a couple of follow-up questions. When you began your testimony, I believe you referred to a notion of having been familiar with what the standard of care ought to be in the State of Connecticut. Was it your understanding that there is a standard of care applicable to chiropractors when it comes to engaging in an informed consent process?

A It's my understanding there is, yes.

Q All right, so, in fact, you misstated by using the word "ought," did you not?

A I don't recall using that, but if you say I did,

then I did.

Q Just so your testimony is clear on the record, your belief, based upon the research you did, your review of the literature, review of all the submissions by the Connecticut Chiropractic Association, the CCC and the ICA and the ACA and your fine work that you've done both clinically and academically, your understanding is that there is an informed consent law in Connecticut that applies to chiropractors?

A Yes. To the best of my knowledge, that's true.

Q And to just bring your testimony back, Dr. Lauretti, why would you not be in favor of a specific requirement being attached to the existing current law, which allows for, according to your testimony, a discussion of the benefits, material risks, possible side effects, and the effect of choosing no treatment at all?

Why would you not be in favor of that law being changed to include a specific requirement that all chiropractors discuss with their patients the association or side effect of stroke prior to performing a manipulation?

A Well I think it's very limiting. I think that having a mandate like that can't keep up with an evolving standard of care, you can't list all possible

complications, and it has to be specific to the circumstances specific to patients.

In most patients, it's not needed, and, in a few, it is, but I think that's a professional judgment that the treating doctor has to make.

Q All right and let me take this one step further, because I believe counsel asked you about a discharge summary. Let's take a hypothetical.

Let's assume that this Board believes that although there is an extremely rare association of a VBA stroke with a chiropractic manipulation, that there ought to be a discussion of the signs and symptoms of stroke with the patient prior to performing the procedure on the patient, all right? Let's make that assumption.

Do you, then, agree that if there's a written informational sheet provided to the patient that describes the signs and symptoms of stroke, it should be given to the patient before the procedure as part of the informed consent process or after?

A I think it should be part of the informed consent process prior to any treatment.

Q All right and wouldn't it be true, then, that the discharge summary would be less effective than an informational sheet provided before? Would you agree with

that?

A Yes, because, as I'm forming my diagnosis, I should tell the patient the other possibilities that it can be.

Q And, in fact, if you're having the discussion with the patient about the signs and symptoms of stroke by giving them an informational sheet beforehand, you would be documenting that the patient has that information, and would that not be more patient protective?

A Yes, I think it would be.

Q Now, as I understand it, you agree that chiropractors are engaged in a desire to protect patient safety, is that correct?

A Correct.

Q And do you believe that, by simply mandating a requirement, such as the one that's proposed before the Board by the other parties in this proceeding, that all patients would be protected?

A Oh, no.

Q Wouldn't you agree that patients, who are having their necks manipulated or adjusted by other professionals, not chiropractors that is, would still remain at risk?

A Yes.

Q And isn't that, sir, why you embrace the notion that if there is a specific mandate, it should be applied to all practitioners who perform a procedure that is associated with neck or head pain?

MR. PATTIS: Objection, relevance. We're not here on all, merely on this group.

MS. MOORE LEONHARDT: I'm probing his opinion.

MR. PATTIS: -- unique opportunity to lead the way, as to others, but this Board doesn't have the authority to do what for all perhaps should be done.

MS. MOORE LEONHARDT: Well I would call the question, because I think it forms the basis of his opinion.

MR. SHAPIRO: I would overrule the objection.

Q Can you answer that question, Doctor?

A I think, ultimately, if you're going that route, it shouldn't even be discussed as a risk. It should be discussed as a diagnostic possibility. If you have a headache, you might be having a stroke, and if chiropractors have to tell people that, I think everybody who treats people with headaches ought to tell people that.

Q That would include the primary care doctor, wouldn't it?

A Absolutely.

Q What about the physical therapist?

A The physical therapist.

Q And what about an osteopath?

A Certainly.

Q Do they not perform manipulations on patients' necks in response to complaints?

A Yes, and whether or not they do or not really isn't relevant. If they're seeing patients with a headache, that's what was relevant.

Q And would you require the doctor who tells the patient to take two aspirin and call me in the morning to tell the patient about the severe allergic reaction that could occur when they take that aspirin, then?

MR. PATTIS: Are we going to get into causation about bedwetting and whatnot? I'm going to object on relevance on the grounds that I wasn't able to --

MR. SHAPIRO: I think I would sustain the objection.

MS. MOORE LEONHARDT: I'm simply making an analogy.

Q Lastly, would you take a look, again, at that 2004 report that counsel had you read?

A Oh, I don't have it anymore. They took that back.

Q That was a 2004 report of study. Do you recall your testimony on that?

A Refresh my memory.

Q I believe counsel drew your testimony to a figure that said one in three per adjustment, and you stated that you disagreed with the conclusions in that report?

A I vaguely recall, but go on.

MS. MOORE LEONHARDT: May we have that report again, please, the 2004 report?

MR. MALCYNSKY: I'm not aware of any 2004 report. There's a 2006 report of the Chiropractic Report, and there's a report from the International Chiropractor's Association, which speaks to the one million manipulations per day.

MS. MOORE LEONHARDT: That's 2004, I believe.

MR. MALCYNSKY: It's not dated. It's in the pre-filed testimony. It's not dated.

MS. MOORE LEONHARDT: I believe it was the

2004 data. If we could ask Dr. Lauretti to turn to that report again?

A I don't have it in front of me. I'm sorry.

MS. MOORE LEONHARDT: Could we have that copy? It's the World Chiropractor Alliance Report, dated 2004. Thank you.

MR. MALCYNSKY: Just a correction. That is not dated 2004. I believe that is the current website available if you went on today to the World Chiropractic Association.

Q Dr. Lauretti, can you enlighten us? Is the information reported in that report 2004 information?

A Do I agree with the highlighted part?

Q First of all, is there anything that indicates on there a date of 2004 relative to the information reported in that document?

A No. This does look like a printout from a website.

Q Okay.

A It's not dated.

Q So it's not a research reported journal article, is it?

A No, it's not.

Q All right and you stated that -- well counsel

asked you if there was a report one million per day occurrence rate.

A I think that was the ICA report, where they said there were one million adjustments per day. I disagree with that.

Q Okay and why do you disagree with that?

A I don't see any basis for them to make that conclusion.

Q Was there anything in the report that you recall in that ICA report that isolated out all adjustments from the cervical adjustments?

A No.

Q All right, so, that was an all inclusive figure, as opposed to a figure associated simply with cervical adjustments?

A I, again, don't know. It wasn't clear.

Q It was not clear in the report?

A Yes.

Q Thank you. And would you agree that your testimony, to the extent that you may have agreed with Attorney Pattis as he questioned you and utilized the term neck tear, was exacted in error?

A Yes, I would

Q And why is that?

A I think it's too general a term. I'm not really sure what neck care means.

Q Have you ever used or heard the term neck tear used in --

MR. PATTIS: No. It was care, not tear. It was care, C-A-R-E, not tear, T-E-A-R.

Q Well I'd just the record to be clear, that you never intended to be quoted using a terminology that sounds like neck tear, did you?

A No. No.

Q Thank you. And, finally, your mission, I assume, as a professional is to protect patient safety, and that's why you're here today, because you felt compelled to support the effort of the associations who brought this petition to the Board in the first instance?

A That is correct.

MS. MOORE LEONHARDT: Thank you very much, Dr. Lauretti.

DR. IMOSSI: I have one question.

EXAMINATION BY DR. IMOSSI:

Q You were questioned twice about the vertebral artery dissection code and why or why not it was used in the Cassidy Study, and it was determined that it was not used, correct?

A Correct.

Q In the study. Now vertebral artery dissection alone, does that constitute a stroke?

A No.

Q Is that a stroke?

A No.

Q All right, well, then, that would explain why it wasn't used in the study, I would assume, because the title of the study is "Risk of Vertebrobasilar Stroke in Chiropractic Care."

A Right, and, again, the only way they can presume that these strokes were caused by a vertebral artery dissection is where the strokes occurred, so I think that's why the author has chose to just use the diagnostic codes for the stroke versus the diagnostic code for the dissection.

I don't think they would have had enough data if they chose to just use that code versus using the stroke codes. And, again, the codes they use were done in consultation with stroke experts, they state right in their text.

Q All right and I think, in their conclusion, correct me if I'm wrong, they were implying that perhaps these vertebral artery dissections were there to begin

with. That might have been the whole reason these people were seeking the care of a primary care physician or a chiropractor?

A Yes. I think that was part of the conclusion of the study, yes.

DR. IMOSSI: Okay, thank you.

MR. MALCYNSKY: Just one question to follow-up on Dr. Imossi's issue.

RECROSS-EXAMINATION

BY MR. MALCYNSKY:

Q You testified that of the three conditions, occlusion, stenosis, or VAD, that the VAD would be the one most likely to be associated with neck manipulation. You testified to that here 10 minutes ago. Why would it not be relevant that they use the code for VAD?

A I think they were trying to capture as many cases as they reasonably could.

Q Then why wouldn't they use VAD, which is, as you testified, something that could result in a stroke?

A Because I doubt very much if somebody would have that code in isolation, because if you just had a vertebral artery dissection without the stroke, nobody is going to know it. It's not going to be diagnosed. There

would be no reason for that to be diagnosed.

Q But if the VAD is the one condition most likely to be produced by a neck manipulation that would cause a stroke and they have a specific code for VAD, why would they have specifically excluded VAD? I don't understand that.

MS. MOORE LEONHARDT: Objection, argumentative. The lead-in to the question was argumentative, a distortion of this witness's testimony, and intended to mislead and misconstrue this expert's opinion on the issue.

MR. MALCYNSKY: I think he can answer the question. It's a pretty straightforward question. He's answered it before, I think.

MS. MOORE LEONHARDT: I also object to the form of the question.

DR. POWERS: Just hang on one second. Let us consider this.

MR. SHAPIRO: The objection will be sustained as asked and answered.

MS. MOORE LEONHARDT: Thank you.

MR. PATTIS: Any other follow-up permitted?

MR. SHAPIRO: Attorney Pattis, you can follow-up.

RECROSS-EXAMINATION

BY MR. PATTIS:

Q Do you agree or disagree with the following proposition, sir, that case reports and surveys have estimated the risk of VBA after cervical manipulation to be between one in 1.3 million to one in 400,000 manipulations?

A Yes, I believe that's true.

Q Okay and are you aware, sir, of studies that show that with respect to VBAs and strokes incident to VBA, that 75 percent of persons reporting with strokes incident to VBA had those within 30 minutes of leaving a chiropractor's office? Are you aware of that study?

MS. MOORE LEONHARDT: Objection. Beyond the scope of this witness's testimony. Counsel is trying to introduce some data that is not before this witness, and we're way beyond the scope of the Direct and the Redirect. It's improper.

MR. PATTIS: I believe it's fair follow-up to Dr. Imossi's question.

MS. MOORE LEONHARDT: It's argumentative.

MR. SHAPIRO: Counsel, let me hear the question again. What's the question?

Q Are aware of data that indicates that 75 percent of persons who suffer from stroke do so as a result of, a VAB-induced stroke, do so within 30 minutes of leaving a chiropractor's office? Are you aware of that?

A I'm familiar with the literature. I've never seen an article that stated that.

Q And are you familiar that 94 percent of people suffering strokes as a result of chiropractic care had it within two days of leaving the office?

A I'm not familiar with that either.

Q Have you conducted any studies to challenge these assertions?

A I've never had reason to challenge them. I've never known they existed.

Q But you're aware of the assertions in the literature?

A No, I'm not.

Q You just said you were with respect to the 75 percent of people who report within 30 minutes of leaving an office.

MS. MOORE LEONHARDT: I object. There's a lack of foundation on that. The witness did not agree with you.

MR. PATTIS: No further questions.

MS. MOORE LEONHARDT: And you're mischaracterizing his testimony, and I would like to ask a follow-up.

BY MS. MOORE LEONHARDT:

Q Dr. Lauretti, are you aware of any challenges to the Cassidy Report and Study that has been well-publicized since it was first produced in the spine article?

A I am unaware of any substantive criticism that's appeared in the peer-reviewed literature.

MS. MOORE LEONHARDT: Thank you.

THE WITNESS: Can I go? For real?

MS. MOORE LEONHARDT: I have no further questions. I don't know if the Board is excusing you at this point. I assume it is.

CHAIRMAN SCOTT: You are excused.

THE WITNESS: Thank you.

MS. MOORE LEONHARDT: Thank you, Dr. Lauretti.

CHAIRMAN SCOTT: Please call your next witness.

MS. MOORE LEONHARDT: I'd like to call my next witness, Dr. James Lehman. May the witness be sworn in, please?

DR. JAMES LEHMAN

having been called as a witness, having been duly sworn, testified on his oath as follows:

COURT REPORTER: Can you state and spell your name for the record, please?

THE WITNESS: James Joseph Lehman, L-E-H-M-A-N.

DIRECT EXAMINATION

BY MS. MOORE LEONHARDT:

Q Good afternoon, Dr. Lehman.

A Good afternoon.

Q At whose request are you appearing here today?

A The Connecticut Chiropractic Association.

Q And are you a chiropractor?

A I am.

Q And how long have you been practicing as a chiropractor?

A Since 1972.

Q Okay. You have before you your curriculum vitae?

A I don’t have it before me, but I’m fairly familiar with it.

Q Okay. Would you briefly describe the background and education that you bring with you today?

A I have a Master's degree in Business Administration from the Anderson School of Management, the University of New Mexico, and a Doctorate in Chiropractic from the Logan College of Chiropractic in St. Louis, and I'm a Board Certified Chiropractic Orthopedist.

Q How long have you been practicing, sir?

A Since 1972.

Q Okay. Are you currently employed?

A I am.

Q Where are you employed?

A I'm employed at the University of Bridgeport, College of Chiropractic.

Q And briefly describe, please, what your duties and responsibilities are in that employment?

A I'm a full-time Assistant Professor of Clinical Sciences, and I teach orthopedic and neurological evaluation, and I also teach ethical and legal business procedures.

Q And in the course of teaching ethical and legal business procedures, do you encompass coursework on informed consent?

A Yes, I do.

Q Are you aware of a law pertaining to informed consent as it governs chiropractic care in the State of Connecticut?

A Yes, I am.

Q And what is that law, that you're aware of?

A It's a case law that mandates that all health care providers perform an informed consent process, one that describes the nature of the procedure or the intervention, one that describes the risks or adverse reactions potentially, one that also describes the different types of care that might be available outside of the one you're recommending, options, if you will, or no care, and, also, the benefits of the treatment.

Q All right and when you describe risks or adverse events, are you talking about something that is material or all risks?

A Well a material risk, for instance, with a manipulative procedure could be a very minimal type of side effect, such as muscle soreness, or it could be as significant as a fractured rib.

Q Okay and what about other risks that you would consider as required to be imparted in the context of informed consent, as the law currently exists in this state? Are those encompassed as material risks, or just

general risks?

A I would say most of them are material risk.

Q And that's your understanding of the law?

A Correct.

Q And in considering your professional responsibilities at the University of Bridgeport, how long have you been teaching there?

A This is my fourth academic year.

Q Okay and, approximately, how many students do you teach?

A On an annual basis, or per semester?

Q On an annual basis.

A Annual basis, it would approximately 120 students, approximately.

Q And I understand, in the course of your teaching responsibilities, you also teach in the area of neurology?

A Yes, ma'am.

Q And do you also consider topics involving the informed consent, as it is developed, that must be a standard applied to the chiropractic profession?

A Yes.

Q And, in the context of considering that, are you interacting with any other professional organizations?

A Maybe I don't understand your question.

Q In the context of your duties at the University of Bridgeport, are you collaborating, for example, with any other professional chiropractic organizations?

A I am not.

Q All right. In the course of your private practice as a chiropractor, have you performed neck manipulations?

A I have.

Q And, approximately, how many would you say you've performed?

A Well I practiced in New Mexico for 33 years, and I performed approximately 5,000 cervical manipulations per annum during that time period.

Q Over a 30-year period, 33-year period?

A Um-hum.

Q And, in the course of performing those procedures, did any of your patients ever report to you an association of stroke symptoms or an event?

A No.

Q Now, in the course of your securing informed consent with your patients during that 33-year practice period, did you have occasion to discuss with patients the association or the alleged association between a VAD related stroke and the manipulation on the cervical spine?

A Yes.

Q And how frequently did you do that?

A I normally did it with patients that presented certain risk factors.

Q All right and, for example, what would those risk factors be?

A Obesity, smoking, hypertension, use of certain medications, blood thinners, if you would.

Q Okay.

A But different types of risk factors that might cause a patient to present with severe head pain, neck pain, etcetera, with other symptoms.

Q And I take it that, at the time that you made those disclosures, you did it based upon your belief that you were complying with the standard of care relative to informed consent?

A Well, actually, in the State of New Mexico, where I was practicing at that time, it wasn't considered a standard of care. It was considered appropriate practice, but they never clarified it as standard of care.

Q Okay.

A So it was, in my opinion, best practice, and it improved patient safety.

Q All right and in preparing for your evaluation

of the issue that was presented to you for your expert opinion, were there particular materials that you reviewed before you formulated your opinion?

A Yes.

Q And what were those materials?

A Relative to my written testimony, I have provided sources, references, if you will. If you don't mind, I'll grab them. There were eight different references that I utilized with my written testimony.

Q And what were those resources?

A Well I certainly did use Cassidy, which is a very well-known article at this point today, but I also used research done at the Thomas Jefferson University School of Medicine, along with the Office Health Policy and Clinical Outcomes, where they did different types of evidence research.

I also used an article that I co-authored with two other chiropractic physicians. I used an article by Lamb, et al, on vertebral artery dissection, an article by Lee, et al, on incidence and outcome of cervical artery dissection, the Cassidy article, Wind, et al, relative to the effect of cervical spine manipulation.

DR. POWERS: Dr. Lehman?

THE WITNESS: Yes.

DR. POWERS: One moment, please. We have to remember we already have all this. We don't need it read again.

THE WITNESS: Okay.

DR. POWERS: If you could adopt your testimony, make a brief statement, we can start Cross-Examination and move forward, okay?

THE WITNESS: Okay.

DR. POWERS: Thank you.

A There were eight different references.

Q All right and they're listed on your testimony.

A Yes.

Q And the Board has that.

A Yes.

MS. MOORE LEONHARDT: I'd like to move Dr. Lehman's curriculum vitae into evidence as an exhibit and qualify him as an expert.

COURT REPORTER: One moment, please.

MR. SHAPIRO: Any objection? Okay, you can have the witness adopt his testimony.

MS. MOORE LEONHARDT: Thank you.

Q Dr. Lehman, you submitted pre-filed testimony in support of an opinion that you are appearing here to present to the Board, did you not?

A Yes, I did.

Q Is it your intention to adopt that testimony as your testimony today?

A Correct.

Q And would you briefly state to the Board what your opinion is with regard to the question before the Board, which is, when a chiropractic physician obtains consent from a patient prior to the performance of a joint mobilization, manipulation, or adjustment of the cervical spine, should the risk and/or possibility of the occurrence of a stroke or cervical artery dissection as a side effect of the procedure be addressed with the patient?

A According to the evidence, it does not demonstrate that a chiropractor should.

Q So your answer is no?

A Correct.

Q Thank you. Would you please explain to the Board why you take that position?

A Sure. Vertebral artery dissection is difficult to diagnose. Basically, the three articles that impress me the most and gave me my personal professional opinion were based on the fact one was the Cassidy article, which everyone is familiar with, but, also, there was an attempt

with one of the articles to actually cause vertebral artery dissection within canines and then perform cervical manipulation to see if it made the condition worse and it didn't.

There was also the study by Trional(phonetic), which discussed the safety of cervical spinal manipulation and could not cause vertebral artery dissection.

So, with those three fairly current articles, it's my perception and professional opinion that cervical manipulation isn't the cause. It doesn't cause a side effect that results in stroke or vertebral artery dissection.

Q Thank you. And, from a public policy point of view, would you be in favor of a specific mandate being applied to the existing informed consent law that governs chiropractic care?

A No.

Q Why not?

A For a few reasons. The way I understand -- with the discharge summary?

Q Yes.

A It does not improve patient safety.

Q Why not?

A Because it's after the fact. If a patient presents with risk factors, the discussion should take place before a procedure.

Q In the context of that discussion, if it is warranted, I take it you wouldn't be opposed to a discussion surrounding the signs and symptoms of stroke?

A Absolutely should be done.

Q In fact, you recommend that be done in the context of a particular patient-specific encounter with a chiropractor if it's warranted, do you not?

A I do.

Q And isn't that consistent with the existing standard of care?

A Absolutely.

MS. MOORE LEONHARDT: Thank you. Nothing further.

CROSS-EXAMINATION

BY MR. MALCYNSKY:

Q Good afternoon, Dr. Lehman.

A Good afternoon, sir.

Q You advocate to chiropractors not advise patients of risk of stroke from cervical adjustments, correct?

MS. MOORE LEONHARDT: Objection, argumentative.

MR. SHAPIRO: Counsel, he's allowed to ask the questions. The objection is overruled.

Q Let me ask it again. You advocate to chiropractors don't advise patients of the risk of stroke from cervical adjustments, is that correct?

A Your question is very vague, because it's not taking into consideration the risk factors.

Q Okay. Do you routinely advise patients of the risks associated with cervical manipulation?

A I definitely, with any spinal manipulation, I advise the patients of risk.

Q Let me ask you a question. Do you believe that every chiropractor, when they're seeing a patient on whom they're going to do a cervical manipulation, should obtain informed consent prior to doing the procedure?

A Yes.

Q You do?

A Yes.

Q Okay and in what form would you advocate that that informed consent take?

A Well, most importantly, the doctor and the patient should discuss the diagnosis and the treatment

recommendations. A verbal discussion is the most important part.

Q Why not a written disclosure?

A Well a written disclosure does not indicate that the patient understood the recommendations, only that they were given a form and they signed it. A verbal discussion allows the provider to actually educate the patient, answer their questions.

To have a signed form that compliments that particular endeavor, I don't think there's anything wrong with it, but to just hand a form, without that discussion, I don't think it really accomplishes informed consent.

Q That sounds like good practice. A verbal discussion, followed by a written disclosure?

A Correct.

Q And you would advocate that for everyone who is going to administer a neck manipulation?

A I believe that if it's the first time that the doctor is seeing the patient, that that's reasonable. I wouldn't suggest that on every follow-up visit that it's reasonable.

Q I agree with that. Now let me ask you another question. You just made the statement, that you thought prior to the manipulation would be the best time to go

through the discussion, which I would agree with. What about giving them something to take away afterward?

A I think that's excellent.

Q And what would you advise be included in this document that they would take with them when they left the office?

A Well it's up to the provider, obviously, to develop the form that they want to use to educate their patients and improve the patient's safety. One of our malpractice insurance companies actually produces forms that can be distributed to patients. Some of the National Associations that were referenced to earlier by Dr. Powers, the National Stroke Awareness Association, they produce wonderful videos, etcetera, that could educate patients about stroke awareness.

Q Now in the disclosure form that you would discuss with them verbally and then allow them to take with them, would you advocate that part of what is disclosed is the symptoms a patient may have if they're having a stroke?

A Absolutely.

Q Thank you. You also mentioned that you -- well let me ask you this way. I'm sorry. Do you believe that there's appropriate protocols and tests that can help you

determine whether somebody is having a stroke when they present themselves in your office?

A Well, as mentioned earlier, the history may provide you with ample information to realize there's some type of neurological event taking place, but not always. Sometimes a vertebral artery dissection is quiet.

Q Difficult to diagnose?

A Absolutely.

Q It doesn't present itself easily?

A Correct.

Q And you're familiar with what the Cassidy Study has stated about that issue?

A Yes, I am.

Q And, generally speaking, what do they say?

A I mean, basically, what Cassidy says relative to being able to diagnose this is that the spontaneous vertebral artery dissection is extremely difficult to evaluate, and that specialized imaging is important, etcetera, and that medical intervention has to involve the expertise.

Q Thank you. Are you familiar with the Association of Chiropractic Colleges Guideline on Informed Consent?

A I am.

Q I'm just going to read you a very brief portion of it.

MS. MOORE LEONHARDT: May the witness see a copy?

MR. MALCYNSKY: It's in the pre-filed testimony.

MS. MOORE LEONHARDT: All right. If you could direct him to that?

MR. MALCYNSKY: I think it's Dr. Carucci, page 11 of her testimony.

MS. MOORE LEONHARDT: I don't believe the witness has it in front of him.

Q Do you mind just reading that top paragraph that's highlighted in part?

A You're talking about the second half at the top?

Q You can read the whole paragraph.

A "In determining what information the doctor should convey to a patient concerning risks involved in a particular procedure, the doctor must take into consideration both, one, the potential severity of the injury or adverse consequences which may result, two, the likelihood that the injury or consequences will occur.

No doctor is required to disclose every single conceivable risk of a proposed procedure,

regardless of how remote the risk of injury might be, however, if a certain risk is a mere possibility, which ordinarily need not be disclosed, yet, if its occurrence carries serious consequences, as, for example, paralysis or even death, it should be regarded as a material risk requiring disclosure. When in doubt, the doctors err on the side of the disclosure, rather than non-disclosure."

Q Would you agree with that?

A I would say yes.

Q Okay and, further down on that page, it says, "Finally, the Association of Chiropractic Colleges Guideline states:" Would you read that paragraph for me, please?

A "In states that employ the reasonable patient standard, the safest approach for the doctor is to disclose the material risks, which are inherent to the procedure, if either a reasonable doctor would disclose those risks as being material or a reasonable patient would think those risks are material and, thus, should have been part of his or her decision making before accepting care."

Q Do you agree with that statement?

A Yes.

MR. MALCYNSKY: Thank you. I'll take it

back.

CHAIRMAN SCOTT: At this time, we're going to take a 10-minute break.

(Off the record)

MR. SHAPIRO: Attorney Pattis, you can go ahead.

CROSS-EXAMINATION

BY MR. PATTIS:

Q Good afternoon, Dr. Lauretti. Dr. Lehman. Excuse me. I apologize. Can you hear me well from there?

A Fairly well.

Q Now, as I understand your pre-filed testimony, you do agree that a chiropractic physician should address risk factors of joint mobilization, manipulation and adjustment of the cervical spine if the signs or symptoms of a stroke or cerebral, excuse me, or cervical artery dissection are revealed during the evaluation, correct?

A That's correct.

Q And would you agree or disagree with the following proposition, that they can be hard to discern, they can be hard to detect, the signs of cervical artery dissection?

A Of cerebral artery dissection, they may be

difficult to discern.

Q Would you agree or disagree with the following. Given that difficulty, erring on the side of caution might require a general notice to all patients to avoid the risk of not notifying someone who is in imminent risk of harm?

A I would disagree.

Q Why?

A I think that you should be rational and not express fear to those that don't deserve it.

Q How do you know who deserves it and who doesn't if you're unclear about who is at risk and who is not?

A Well, obviously, you don't know everything about every patient, but certainly you look at the risk factors and the history before you even start the actual physical exam, and there are different findings that might lead you to be concerned about the potential for that cerebral problem or arterial dissection.

Q There was testimony earlier today about certain red flag events, and I believe you refer to them in your testimony?

A Correct.

Q And you were here during the earlier testimony today?

A I was.

Q You agree with those red flag conditions, do you not, high blood pressure and so forth?

MS. MOORE LEONHARDT: Objection to form.

MR. SHAPIRO: I recommend that it be overruled.

A I don't know if I recall every bit of the statement, but the red flags that would indicate the possibility of a cerebral stroke I believe they should be known by any health care provider that treats patients with cervical manipulation.

Q Do you take the position, sir, that informed consent should be patient-centered or doctor-centered?

A Patient-centered.

Q Okay and that would be providing patients with all the information they need to determine whether to assume the risk of care, fair enough?

A Yes.

Q Okay and you would agree that paralysis and/or death are catastrophic outcomes, correct?

MS. MOORE LEONHARDT: Objection. This line of testimony is inflammatory. The issue before the Board is whether, in accordance with the performance of a particular procedure, the Association -- I believe the question says risk of stroke should be discussed with the

patient, and I think counsel is, by implication, necessarily and intentionally escalating and inflaming the discussion here and the examination of the issue here in such a way that he's distorting the issue and misleading the Board's attention.

MR. SHAPIRO: I would recommend that it be overruled.

A I may answer? I believe that, when patients present certain risk factors or certain signs and symptoms, they should be advised.

Q Do you agree or disagree with the following statement, that rotation of the neck may injury an abnormally fragile vertebral artery along its course by partially tearing the inner artery wall, the intima?

MS. MOORE LEONHARDT: May the witness see the document from which the statement is being quoted?

MR. PATTIS: At this point, I'm simply asking him whether he agrees or disagrees with the statement.

A I don't know that to be a fact.

Q Okay. Would looking at a document help refresh -- well, withdrawn. You've never read that before?

A No.

Q You know Dr. Lauretti, correct?

A Bill Lauretti?

Q Yes.

A The doctor that was testifying, yes.

Q Yes. And are you aware of an article that he wrote in 2003, called "What are the Risks of Chiropractic Neck Adjustments?"

A I may have read that at some point.

Q But you don't recall whether you read the language that I just referred to you?

A I don't.

Q Would looking at a document perhaps refresh your memory?

A Yes.

MR. PATTIS: I'm not sure how to do that here.

MS. MOORE LEONHARDT: May I see the document first? I'd like to see the document first. Thank you. No objection.

MR. PATTIS: Excuse me. May I have the document?

MS. MOORE LEONHARDT: I'd be happy to pass it to the witness.

MR. PATTIS: May I have the document? Thank you.

Q I'm showing you a document, sir, that is entitled "What are the Risks of Chiropractic Neck Adjustments?" It purports to be written by Dr. Lauretti in 2003. Take a moment to familiarize yourself with the article, and let me know when you're ready.

A I don't see any identification of the publication.

Q Fair enough. Do you have reason to believe that Dr. Lauretti did not write that article?

A No.

Q Okay. I had asked you earlier about whether you were familiar, or whether you agreed or disagreed with a certain proposition, and it is highlighted at the bottom of page one. Can you take a moment and read it to yourself?

A Yes.

Q And do you agree or disagree with what's written there?

A I would not agree with that. I don't think we know the answer.

Q Okay, but --

MS. MOORE LEONHARDT: Could we please have the proposition that you're putting to the witness as a question, so that I have an opportunity to consider it and

object, counsel?

MR. PATTIS: I'll be happy to repeat it for the third time.

Q Do you agree or disagree that rotation of the neck may injure an abnormally fragile vertebral artery along its course by partially tearing the inner artery wall, the intima? This event is called a vertebral artery dissection, and you disagree with that?

A Correct.

Q Okay. On this document -- withdrawn. The various vertebrae are numbered, are they not?

A Yes.

Q And the cervical area is the upper region of the spine, is that correct?

A That is correct.

Q And how many vertebrae are in the cervical area?

A Seven.

Q And they begin, we've had testimony, in the area that is just below or inferior to the earlobe, correct?

A Might be more accurate to use the proper anatomy and say the occiput or the base of the skull.

Q Yeah, but I won't get it. Can you point to it on me, so the Board knows?

A Right here.

Q And that's where -- and then this was the area of cervical number one, correct?

A There.

Q And number two?

A Right there.

MR. SHAPIRO: Counsel, I'm sure you understand that, in terms of a written record, this is going to be awfully difficult.

MR. PATTIS: I do.

MS. MOORE LEONHARDT: I think this is more for the videographer in the room.

MR. PATTIS: I think it's to illustrate a point about the dog study that I'm about to make, and I'll be happy to follow it up with a verbal --

MS. MOORE LEONHARDT: Well could we have a foundation and an offer of proof, then, prior to going any further?

MR. PATTIS: I would like to proceed with this witness, so that I can ask some further questions about --

MS. MOORE LEONHARDT: Well, before you get to those questions, counsel, I'm asking for a foundation to be laid, which is a proper objection.

MR. PATTIS: I'd ask for permission to

proceed this. This is really obstructive at this point, and I'd ask the Hearing Officer to remind counsel that we're to address our comments to the tribunal, rather than to one another.

MR. SHAPIRO: I think he can proceed. We'll give you some latitude, counsel.

MR. PATTIS: Hum?

MR. SHAPIRO: We'll give you some latitude.

DR. POWERS: Can you return to your seat, though, for the questioning?

MR. PATTIS: In one moment. I just want to get through numbers one through five.

MS. MOORE LEONHARDT: I object to a physical examination being conducted in this hearing in this fashion, not only that, but counsel's hair is in the way, and I'm addressing my remarks to the Board, with all due respect, and ask that counsel really come back to the counsel table and put his questions to the witness as Mr. Malcynsky and I have done respectfully all day.

DR. POWERS: Attorney, we're going to rule on this at this point on a couple of things. You can't be put in the record physically, so let's not have physical touching and pointing. Let's just get back to asking questions.

Q How much lower, how many inches down is the fourth and fifth vertebrae from the first in a typical human being?

A You'd be talking about from C-1 to C-4?

Q Yes, sir.

A Oh, approximately, four finger widths.

Q Okay, so, that would be four finger widths from where you touched me but can no longer do so, correct? Thank you. And you made reference in your testimony in response to the CCA's counsel that you relied, in part, for your conclusions on something you referred to as the dog study, correct?

A I mentioned the study on canines, correct.

Q Okay and that study was a study of 10 animals, correct?

A I believe they did reduce the total number that they actually performed the procedure on to approximately 10.

Q And what they did is they performed a manipulation in the area of C-4 and 5, did they not?

MS. MOORE LEONHARDT: Before counsel proceeds, I would ask that he lay a proper foundation for that study, and if he's going to ask questions about the study, that a copy of the study be given to the witness,

so that he's not being put on the spot to answer questions off the top of his head.

MR. PATTIS: My response to the objection is that was precisely what he did in response to his Direct Examination. I presume he's been prepared to testify. I'm simply challenging what he offered spontaneously in response to Ms. Moore Leonhardt's questions.

MR. SHAPIRO: Counsel, I believe he responded that this is one of the articles that he relied on, in terms of formulating his opinion. If he needs a copy, he can ask for a copy of it.

MS. MOORE LEONHARDT: I agree that he did answer that way. My point is that, to the extent that counsel is going to conduct Cross-Examination with regard to the content of that article, it seems to me only fair that this witness be given a copy of that article, so that he has it in front of himself and can refresh his recollection, in order to adequately and completely answer the questions put to him under Cross.

MR. SHAPIRO: Well I think that if he needs the article when asked a question, he can ask for the article.

MS. MOORE LEONHARDT: Thank you.

Q Cervical manipulation in humans, in which vertebrae are they focused in cervical manipulation?

A It depends on the patient.

Q Okay. Does it matter whether the manipulation is performed as to C-1, C-2, C-3 or C-4?

A Certainly.

Q And would you agree or disagree with the following, that most injury -- withdrawn. Would you agree or disagree with the following, that the risk of harm is higher in the C-1, C-2 area in human beings when there is manipulation done?

A We don't know that.

Q Okay. Would you agree or disagree with the following, that in the canine study, the manipulations were done in the area of C-4?

A Yes.

Q Okay.

MS. MOORE LEONHARDT: I would object to a consultant utilizing some piece of equipment in the context of this hearing. He is not counsel of record. He is not being asked to utilize any demonstrative evidence. There's been no offer made. There's been no foundation laid.

And I think it's inflammatory, highly

inflammatory and improper and disrespectful of the Board.

MR. PATTIS: May I attempt to lay a foundation?

MS. MOORE LEONHARDT: There was no pre-filing. There was no notice given to the parties in this proceeding of any intent to use any device.

MR. SHAPIRO: Counsel, Attorney Pattis, before you do that, why don't you come back to your seat and lay the foundation?

MR. PATTIS: May I --

MR. SHAPIRO: No.

Q Sir, you understand that we're here to talk about standard of care, insofar as chiropractic care is concerned, correct?

A Well the actual issue I'm familiar with, actually ask a different question.

Q And do you recognize the item that I'm holding up as a model of anything in particular?

A I do.

MS. MOORE LEONHARDT: Again, I renew my objection, and ask that the Board determine the appropriateness of the use of this particular piece of equipment at this time before counsel proceeds.

MR. SHAPIRO: Counsel, my understanding is

that he's making an offer of proof, and, so, in order to rule on your objection, I have to hear what the offer of proof is.

MS. MOORE LEONHARDT: Well before he makes his offer of proof, I would ask that the piece of equipment be placed down on the table and that he proceed in the usual fashion in this hearing and respect the proper rules of procedure.

By flashing the equipment, he is already effectuating testimony or the record, and I ask that it be laid down and that he lay his foundation before this is incorporated into the record. Thank you.

MR. PATTIS: For sake of the record, the equipment I'm referring to is a model of the human spine that illustrates C-1 through C-6 and more and also illustrates an area that is particularly important in the dog study.

I don't think it's any mystery that we've come here to talk about vertebral arterial dissection and spinal manipulation and cervical manipulation, so for counsel for the Chiropractic Association to claim surprise and prejudice by being shown a model of the human spine is, quite frankly, stunning and cynical beyond belief.

I request permission to continue to lay my

foundation through the doctor by getting him to tell us what this is. It was objected to that my hair got in the way when I was trying to make an illustration earlier, so what we've got is a hairless model.

MR. SHAPIRO: Just give us a moment, counsel. Okay, you can continue making the offer of proof.

Q Am I showing you what looks to be an example of a human spine?

A Yes.

Q And does it reflect the area that I had you point to on me, the area of C-1 through C-4, et al?

A Yes.

MS. MOORE LEONHARDT: I object. This is not an offer of proof. He's conducting Cross-Examination.

MR. SHAPIRO: I agree with that, counsel.

MS. MOORE LEONHARDT: And I believe the Board just directed him not to do so, and he's disrespecting the Board yet again.

MR. SHAPIRO: Okay. Attorney Pattis? Excuse me?

MR. PATTIS: I didn't understand. I apologize.

MR. SHAPIRO: Okay. Can you make to the

Board and to myself your offer of proof, without questioning the witness?

MR. PATTIS: Sure. The witness has testified that he relied, in part, on a dog study --

COURT REPORTER: Can you speak up? I can't really hear you on the record.

MS. MOORE LEONHARDT: I believe the witness used the word canine, not dog, counsel.

MR. PATTIS: The witness has referred to a study involving dogs or canines, a synonym in the English language for most, and, in that study -- and I attempted, through my own body, to show the Board, the non-chiropractic members of the Board, where the various vertebrae are located.

Insofar as his testimony regarding causation relied on the study to show that this dog study informed it, I would like to show the Board that the dog study focused on vertebrae well down the spinal column, away from an area of particular risk where an artery turns, and is, therefore, prone to injury.

This exhibit is intended simply to educate the non-chiropractic members of the Board on the assumption that the chiropractors had to memorize this in school.

DR. POWERS: I think that simple question should be posed, and I don't think we need to --

MR. SHAPIRO: Okay.

MS. MOORE LEONHARDT: And I would simply ask that should any of the witnesses --

COURT REPORTER: Too many mikes.

DR. POWERS: Ask that specific question. You don't need a model. You don't need any further really review of that. Simply ask him what level it's at, and ask him if that goes away from the other regions you want to talk about.

We'll educate the Board members as we need to in the process of our deliberations if there's questions from them. Let's just try to move forward.

MR. PATTIS: I'm confused here. I know that you're a chiropractor and some of the public members aren't, and, so we do not challenge the objectivity of chiropractors on the Board.

DR. POWERS: I understand that.

MR. PATTIS: We'd like an opportunity to educate them ourselves through the testimony of this witness. May we, please, have that?

DR. POWERS: I think that, if you just ask him what level it's at and bring your point out, we can

move forward.

MR. PATTIS: Okay. Understood, sir.

Q With respect to the canine study, or the study involving dogs, that was in the C-4 area, correct?

A Yes.

Q And with respect to vertebral artery dissection, do you understand, sir, that the focus of research is in the area of C-1 and C-2?

A I understand that it has been researched at that area, but I do not believe that it is the only area that could be damaged.

MR. PATTIS: No further questions.

CHAIRMAN SCOTT: Any other Redirect?

MR. MALCYNSKY: No, I have no further questions. Thank you.

CHAIRMAN SCOTT: Okay.

MS. MOORE LEONHARDT: Nothing further.

MR. SHAPIRO: Does the Board have any questions?

DR. IMOSSI: I have one more question.

EXAMINATION BY DR. IMOSSI:

Q Dr. Lehman, you were talking about the risk factors for vertebral artery dissection and possible medications as being risk factors. Are you aware of oral

contraceptive use as increasing the chances of vertebral artery dissections?

A It certainly is a precautionary situation relative to stroke, and I'm not certain of specific research that states it's going to be a vertebral artery dissection, per se, but certainly could be.

DR. IMOSSI: Okay, thank you.

CHAIRMAN SCOTT: Okay. The witness is now excused.

THE WITNESS: Thank you.

CHAIRMAN SCOTT: Thank you very much for your time.

THE WITNESS: Thank you, sir.

MS. MOORE LEONHARDT: Thank you, Dr. Lehman.

CHAIRMAN SCOTT: Please call your next witness.

MS. MOORE LEONHARDT: Thank you. My next witness is Dr. Clay McDonald.

DR. CLAY McDONALD

having been called as a witness, having been duly sworn, testified on his oath as follows:

COURT REPORTER: Can you state and spell your last name for the record, please?

THE WITNESS: McDonald, M-C-D-O-N-A-L-D.

MS. MOORE LEONHARDT: May I proceed?

DR. POWERS: Okay. For the purposes of the Direct, we really would like to not go through very lengthy qualifications. As a matter of fact, not at all. We have all of the qualifications on file. You know that, by virtue of being here and your degree, we understand you're an expert in the area, and, again, we want to make this very brief on the Direct side, where you can spend time on the Redirect, if necessary, after the Cross, okay?

So a couple of qualifications, accept, you know, formally adopt your testimony, and let's move forward, please.

MS. MOORE LEONHARDT: Thank you.

DIRECT EXAMINATION

BY MS. MOORE LEONHARDT:

Q Dr. McDonald, thank you for coming this afternoon. You're here on behalf of the Connecticut Chiropractic Association, are you not?

A Yes.

Q And were you asked to review a series of

documents and comment on the question that is presented before the Board?

A Yes.

Q And did you do so?

A Yes.

Q All right, now, your background and experience, just very briefly, is contained in a curriculum vitae that has been pre-filed with the Board, is that correct?

A Yes.

Q And could you simply state what background and experience is described in that C.V., if you will, which you feel pertains to your ability to testify as an expert on the issue before the Board?

A I was the head of the task force for the Association of Chiropractic Colleges that wrote the informed consent policy guideline that the Association uses. I serve on the Council on Chiropractic Education and serve on the task force that is re-writing the standards for the Council on Chiropractic Education pertinent to student education, itself.

As a past Dean of clinics, I have been involved in the creation of practice guidelines and, as a past vice-president, the creation of practice guidelines for clinics, student clinics.

Q And have you practiced as a clinician, as well?

A Yes. I've practiced eight and a half years as a private practitioner with a neurologist.

Q And have you performed manipulations of the cervical spine in the course of your practice?

A Yes, I did.

Q On approximately how many patients would you say?

A I was in a very small community in Eureka, Montana. It had 3,000 people in a 45-mile radius. I saw 2,630 of them as new patients, so whatever that adds up to.

Q And did you perform manipulations of the cervical spine on all those people?

A Yes. On the vast majority of those patients, I performed spinal manipulation, inclusive of the cervical spine.

Q And, in the course of providing those services, did any of your patients complain to you that they had suffered a stroke in association with the services you provided?

A No, nor did they, if I might add, in the 600 plus patients per day seen in the Palmer College Clinics over the nine years I was there, nor at NYCC, with the 300

or 400 patients per day, including Monroe Hospital, a geriatric eldercare center.

MS. MOORE LEONHARDT: Thank you. I'd like to move in the curriculum vitae of Dr. McDonald as an exhibit and have him qualified as an expert.

MR. SHAPIRO: Any objection? Okay.

MS. MOORE LEONHARDT: Thank you.

Q Dr. McDonald, you also pre-filed testimony in support of the position of the Connecticut Chiropractic Association and the position of the Connecticut Chiropractic Council, did you not?

A Yes, I did.

Q And that testimony is before you at this moment, is it?

A Yes.

Q And having reviewed that testimony, is it your intent to adopt it as your position here today?

A Yes.

Q And does that testimony state your opinion on the issue that's before the Board with regard to the informed consent and disclosure of risk of stroke?

A Yes, it does.

Q What is your position?

A It is that the common law in the State of

Connecticut the position of the ACC and the position of the Connecticut Chiropractic Association all compliment or are near identical in their structure, and that they are appropriate, that specifically naming a risk in an informed consent is an unusual decision and one that precludes the natural progress of science.

We learn every day something new, and this would hinder that evolvement or the evolution of that into the mainstream of health care.

Q So would you consider the mandate that's being proposed here to be anti-patient safety?

A Yes. Anti-patient safety and anti-science both.

Q Thank you. And why is that?

A There is no evidence in the literature that the association between a spinal adjustment, upper cervical spine mobilization grade 4/5 and stroke is absolute. In fact, it would appear, depending on who you read and who you're most interested in and how you feel emotionally, to be somewhere between one in three million and one in five million, or not at all.

The newest evidence is that is associated with a visit to the physician, which is logical. When we go to doctors, we frequently mask disorders or diseases that aren't caught, so I don't see the association. And,

certainly, if there is the association, it is so oblique that it would be unreasonable.

Q All right. Just a couple of follow-up questions. It's not your opinion that there would never be a discussion in which a disclosure of the association of stroke occurred, but that it would be patient-by-patient?

A Yes. There are certainly patients who presented in my office, in any office, and in our college clinics, who you would want to have that conversation with.

Q All right and, just lastly, your opinion is based on the Cassidy Study, in addition to other background and experience and research that you've reviewed over the years?

A Yes.

Q And were you present during the discussion on the Cassidy Study with regard to the coding issue?

A Yes, I was. Yes.

Q Can you shed any light on the issue of whether or not this particular type of association with the VAD was considered?

A I can't be in the minds of the authors, so this is an interpretation. My interpretation is that --

MR. PATTIS: -- essentially speculative at

this point.

MR. SHAPIRO: We'll sustain the objection.

MS. MOORE LEONHARDT: Thank you. Nothing further.

MR. SHAPIRO: Okay. Attorney Malcynsky?

CROSS-EXAMINATION

BY MR. MALCYNSKY:

Q Good afternoon, Doctor.

A Hi.

Q I understand you're also an attorney, is that correct?

A Yes.

Q And having witnessed what's gone on here today, you're still willing to admit that?

A Yes.

Q Just a few questions. Did I understand your testimony correctly, that you are, in some way, shape, or form, associated with the Association of Chiropractic Colleges?

A Yes, I am. I represent Palmer College at the Association meetings over the past three years. When the presidents meet, I'm one of the representatives from Palmer College. I am not the president.

Q I want to ask you the same question I asked the previous witness. Could you just -- this is the -- in the pre-filed testimony, this is the statement of the Association of Chiropractic Colleges from their Guidance on Informed Consent. Would you read me this paragraph?

A I have the original here.

Q Oh, good.

A "No doctor is required to disclose every single conceivable risk of a proposed procedure, regardless of how remote that risk of injury might be, however, if a certain risk is a mere possibility, which ordinarily does not need to be disclosed, yet if its occurrence carries a serious consequence, as, for example, paralysis or even death, it should be regarded as a material risk and requiring disclosure. When in doubt, the doctor is encouraged to err on the side of disclosure, rather than non-disclosure."

Q Would you agree with that?

A Absolutely. On a case-by-case basis, it's absolutely true.

Q Okay and what do you think of the second paragraph that I've asked you to read? Could you read that for me, please? It's highlighted.

A "Is to disclose material risks, which are

inherent to the procedure, if either a reasonable doctor would disclose those risks as being material, or a reasonable patient would consider those risks material, and, thus, should have been part of his or her decision making process."

Q Okay. Do you, in your practice, seek informed consent from each patient on whom you're going to perform a neck manipulation?

A I haven't personally practiced for 19 years. The Palmer College of Chiropractic does.

Q If you were practicing now --

A Palmer College does seek informed consent from each patient that we treat.

Q Okay and in what form does that informed consent take?

A It's a standardized form that identifies basically that you should be -- all your questions should be answered, and that inherent in any treatment is risk. It doesn't specify the risks, because it depends tremendously on what you treat the patient with. What's their presentation? What's your diagnosis? What's your treatment plan? Your treatment plan varies tremendously from patient-to-patient, so it doesn't identify the specific.

Q So the previous witness testified that it's his practice and he thinks that it's good practice for all chiropractors to go over the potential risks of the procedure verbally prior to administering the procedure and, also, to provide that person with something in writing that they can take with them when they leave the office having had the procedure. Do you agree with that?

MS. MOORE LEONHARDT: I object. It's a mischaracterization of the prior witness's testimony.

Q Let me ask you. Would you agree with what I just described? Would you agree that it's good practice to inform a patient on whom you're going to perform a neck manipulation of the risks verbally prior to administering the neck manipulation, and, also, would you think it's good practice to give them something in writing to take with them after they've had the manipulation done?

MS. MOORE LEONHARDT: Objection, based on form. You're asking a compound question to the witness. I would ask that you break down the question and allow the witness to answer one question at a time.

Q Do you understand what I'm asking?

MS. MOORE LEONHARDT: My objection is pending.

MR. SHAPIRO: Counsel, I would tend to ask

it as separate questions, if you can.

Q Do you agree that reviewing the risks of the procedure with a patient verbally prior to conducting a manipulation on the patient is good practice?

A I believe that true informed consent would require my interacting with the patient, talking with them about the risks I foresaw for them.

Q Is that a yes?

A Yes.

Q Okay and would you also agree that after the manipulation has been performed, that it's good practice to give them something to take with them in writing?

A Relative to what I had discussed with them and the document they have signed informed consent, yes.

Q And relative to the procedure that you had performed on them.

A Sure. What to look out for, an exacerbation of symptomatology, sure.

Q So do I understand the last part of what you said to mean that you would describe for them symptoms they may encounter, so that they would know how to care for that?

A The relative symptoms, yes, that I would be concerned that that patient might experience.

Q And, in that disclosure, would you include, for people on whom you had conducted a neck manipulation, the possible risk of stroke?

A No. I would do that based on the individual patient and the risk factors I thought.

Q Now if you go back and look at the Association of Chiropractic Colleges recommendation, which you said you agreed to, how are the two consistent?

A I think they're exactly the same. I think that they compliment what the common law in Connecticut is, and they compliment what the majority of references used in creating the ACC document said, which is that we cannot know, foresee, every possible thing that might happen to a patient.

Current literature tells us that there is little, if any, association between upper cervical spine mobilization and stroke, so it is very unlikely that I would bring that up to my patient, unless I thought my patient was at risk for stroke to begin with.

Q Do you have your own testimony in front of you?

A Yes.

Q Can you read me the last sentence of your testimony?

A "Finally, for any health care practitioner, who

believes their patient may be at risk for stroke, regardless of whether or not they have performed the manipulation, they should provide the patient with information." Yes, absolutely. I wouldn't adjust a patient I thought was having a stroke.

(Off the record)

Q Didn't you also testify in your written testimony that you believe that cervical spine manipulation -- excuse me. That the odds of a patient suffering a stroke secondary to a cervical spine manipulation would appear to be between one in four million or one in five million?

A The literature that associates --

Q But that's your testimony?

A Yes.

Q Which indicates --

A The full paragraph.

Q Right. Right, which would indicate that albeit you believe it's small, there's some risk of a stroke associated with cervical manipulation?

A Anything is possible. To try to tie that directly to every patient, no. Anything is possible.

Q But a stroke is possible with every patient?

A With every patient?

Q If it could happen to one out of four million, every patient could be that one.

A No.

Q How do you know?

A Based on the evidence that we have in front of us, would already have to have a dissecting artery, vertebral artery.

Q According to?

A The literature that we're aware of. We don't have anything in front of us that says that spinal manipulation causes that dissection.

Q No, but the record is replete with statistics from your own Associations, indicating that it's either one in 400,000, it's one in one million, it's one in three million, or, as you say, it's one in four million, but everyone acknowledges that there's some risk. Would you agree?

A Not on every patient.

Q How do you know which patient is that patient?

A You wouldn't with the dissection, because you would probably not do the kinds of testing necessary to pick it up.

Q Right.

A And no one would do it, nor does anyone,

physical therapy, who manipulates --

Q So you can never know which patient is going to be that one patient?

A No. No more than you would putting someone under anesthesia or anything else.

Q And what does the Cassidy Study, which you mentioned earlier, have to say about the availability of reliable protocols for detecting which patients are at risk?

A There virtually aren't any.

Q Okay. Were you present for the testimony of Dr. Lauretti?

A Yes.

Q Attorney Pattis asked Dr. Lauretti and I'll ask you, would you agree with the statement various studies and reviews estimate the risk from a low of 1.85 million to a high of one in 400,000 manipulations? That's from the American Journal of Public Health in 2002. Would you agree with that?

A That they printed that? Yes. I think the evidence is, current evidence is evolving. I would say that -- I'm going to use a comparison here. Joseph Campbell is the 20th Century probably leading authority on culture, myth and religion, and he states that the science

of today becomes a religion of tomorrow.

The science in 2002, based on what the Public Health Association believed, said that there's that frequency. The science of 2009 says apparently isn't.

Q Just in another area, you testified that specifically requiring informed consent for a certain procedure I think you said precludes the natural progress of science.

A Um-hum.

Q Can you explain what you mean by that in more detail?

A Yes. I think that, and it goes back to the statement that the science of today becomes a religion of tomorrow, when we get tied up in the emotionality, or the fears of the time, or the latest hot topic, or what the media says about this or that, we begin to embrace it as the truth, and it's very difficult sometimes for us to get over that, whether it's the Earth being flat or its changes in health care systems and what works and what doesn't work.

You just saw the controversy about breast examination, self-exams, and the frequency of mammograms, for an example. It's a very touchy topic, one that we all care deeply about, has potentially devastating results for

people, but the science is evolving.

Q But if all of the indications are that there's a risk of stroke associated with neck manipulation and people disagree, as to the frequency, etcetera, but even the Cassidy Study says do not confuse what we're saying with concluding that it can't happen.

What's wrong with this Board issuing a Declaratory Ruling that says that informed consent in chiropractic care shall include, but not be limited to, seeking informed consent when you're going to do a neck manipulation? That doesn't preclude them from requiring it --

A You do seek informed consent when you do manipulation of the cervical spine. You're asking, specifically.

Q With regard to the risk of stroke? What would be wrong with this Board requiring it in cases where people are having neck manipulation that they disclose the risk of stroke? What's wrong with that?

A It strikes me as poor public policy.

Q Why?

A Because it locks people into the belief, it confirms something that we don't know to be true. In fact, we suspect it may not be true. I understand that we

don't know. I understand that it is possible that studies from several years ago or many years ago may prove out to be right, but, currently, we don't know that. It appears as if there is a very tenuous association.

Q But if the World Chiropractic Alliance says that it can happen between one or three times a day in this country, that's one to three people a day in this country that they're going to have a stroke from a cervical manipulation, what's the harm in saying disclose it as a possibility?

A Well, first, I would --

Q Albeit rare.

A I would be giving credence to that statistic, first of all, as well as credence to an association that no one knows the number of members.

Q We'll give credence to your statistic. Use yours. If one person out of four million people can be that one person that has a stroke, whose life is totally changed and devastated in incredibly horrific ways, what's wrong with telling those people it's a possibility, along with telling them it's only a possibility in one in five million cases? What's wrong with telling them that?

A That there's an association. If you ask me this, what's wrong with telling patients who come into my

office and I diagnose and I'm going to treat for a cervical spine lesion, subluxation, malalignment that there appears to be an association that people who have this complaint that one in five million of them might be walking into a medical doctor's office right now or a chiropractor's office and I feel obligated to tell you that, I would be obligated to tell you an awful lot of things, because there is a tremendous opportunity, probably much higher, of lots of things.

I see a physician, as do you. We see dentists. We see lots of different people. The laundry list of things that they would have to go through with us they are devastating if they happen. It's long.

There's a reasonableness of standard applied to all of this.

Q Right, and that's what we're searching for, is reasonableness.

A Right.

Q Now you mentioned going to the physician. I mean I took my children to get a flu shot, a vaccine. They gave me something in writing, which would disclose the very rare potential for some seriously adverse side effects. Why is it okay for a vaccine, but not okay for chiropractic?

MS. MOORE LEONHARDT: I'd like to renew my objection to the use of vaccination as an analogy, as it's not germane, it's not comparing apples-to-apples. Vaccinations do not belong in this hearing.

This is about chiropractic care, and it's not about vaccinations. To the extent that counsel is seeking to utilize documents that have been pre-filed that represent forms that may be distributed when someone gets a vaccine, again, I believe that those are irrelevant and not probative, because we have other documents that have been pre-filed that represent documentation relative to chiropractic care.

Q Are you familiar with the ICA, Doctor?

A Yes, I am.

Q Do you generally support the information that's disseminated by that group?

A Personally?

Q Yes.

A No.

Q And why do you not?

A Because the largest association in the United States is the Association of Chiropractic, ACA, American Chiropractic Association, which has about 80 percent of all chiropractors who are members of an Association, so it

is, by far, the dominant force as an Association.

The ICA is the second largest and tends philosophically to be slightly different. I'll just leave it at that. And, finally, there are several others. There was the Association for Chiropractic Medicine and the WCA, both of which you would identify as small, very small organizations, with unique positions, just as there are, I am sure, subsets of the AMA.

Q Do you have a position on whether people should receive a disclosure form when they get a vaccine?

A I think it depends on the risks and what those risks are.

MS. MOORE LEONHARDT: Again, I renew my objection. We're really going far a field, and there's been no foundation laid.

MR. PATTIS: I would oppose the objection on the following ground. The question for the committee is to determine reasonable risk and incidence, and the claim of the industry is that it's remote and rare and perhaps doesn't exist at all, depending on the witness.

If there are other procedures to which people voluntarily submit and other industries have developed standards for informing people and obtaining their consent about risk, even remote risk, that is

probative, and it may or may not shed light on what this committee decides to do with the issue.

MR. SHAPIRO: Okay. The objection on that issue is sustained.

MS. MOORE LEONHARDT: Thank you.

Q So just let me go back to a question I had asked earlier that I don't believe we elicited an answer for. You testified that informed consent, requiring informed consent for a specific procedure precludes the natural progress of science, and then you said it was against public policy.

A Um-hum.

Q How could it ever be against public policy, in your opinion, where it is uniformly accepted that there is risk, albeit small, to notify people of that risk? How could that ever be against public policy?

A I will use a term that Mr. Pattis used. Voluntary disclosure and encouraging people to disclose is very different from mandating them to disclose and identifying one specific thing, which is what we're doing here.

We're talking about one specific outcome to the exclusion of all the other potential outcomes, good and bad.

Q Why does it have to be that way? Why does it have to be to the exclusion of all other outcomes? Why couldn't this Board issue a Declaratory Ruling, saying that there shall be informed consent with regard to the risk of stroke subsequent to neck manipulation, but it shall not be limited to risk of stroke?

A It would bring up, to me, the red flag of why did you bring it up at all, then?

Q Because there's a risk. One in four million people, according to you, are going to have a stroke after they have their neck manipulated.

MS. MOORE LEONHARDT: Objection. That's mischaracterizing the witness's testimony, but I'll let the witness comment.

MR. MALCYNSKY: No, that is the witness's testimony.

MS. MOORE LEONHARDT: I disagree.

MR. MALCYNSKY: The witness's testimony is that one in every four cases, in every four million cases of a neck manipulation can result in a stroke. That's his testimony.

MS. MOORE LEONHARDT: No. The witness testified to an association, not a risk.

Q Read your own testimony, please, with regard to

that issue, just so we're clear, the last paragraph of your testimony.

A Which one do you want me to read, the last page? "Based on current peer-reviewed literature, the odds of a patient suffering a stroke secondary to a cervical spine manipulation would appear to be one in four million to one in five million, when and, in fact, or, in fact, recently published spine, risk of a vertebrobasilar stroke in competent care, Cassidy, et al, found no evidence of excess risk of stroke." That's my testimony, is that those two facts are out there for us all to consider.

Q Right, but you would acknowledge that there's been testimony from various other witnesses and various other publications that there's risk, as well, albeit small? Some say one in one million, some say one in three million, some say one in five million, you said one in four or one in five million.

A I would say that, as you date the literature, that's true, working your way backwards, yes, and credibility.

Q And the Cassidy Study specifically says they are not ruling out a relationship between neck manipulation and a stroke?

A An association.

Q Right, so, there's a risk?

MS. MOORE LEONHARDT: Objection. Asked and answered, and he is badgering the witness now. I thought that counsel wanted to move through this hearing.

MR. SHAPIRO: Counsel, I do think that's been asked and answered.

MR. MALCYNSKY: Thank you very much. I don't have any further questions.

MR. SHAPIRO: Attorney Pattis?

CROSS-EXAMINATION

BY MR. PATTIS:

Q Good afternoon, Doctor.

A Hi.

Q How are you?

A Good.

Q Do you agree or disagree that stroke or stroke-like symptoms can occur in patients as a result of rotary-type manipulations, regardless of whether there is a preexisting symptom?

MS. MOORE LEONHARDT: Objection to the terminology rotary-like manipulations, if that's what you just utilized, because it is inflammatory, there's a lack of foundation, that is not what's been presented before

the Board.

MR. PATTIS: I think it's a fair question. It's not inflammatory. I mean that's why we're here. And to say rotary-type, if it's inflammatory, I apologize to Rotarians everywhere, but I don't know what's so inflammatory about it, given everything we've heard today.

MR. SHAPIRO: Doctor, do you understand the question that's been asked?

THE WITNESS: Yes, it is. I will say, however, a specific type of upper cervical spine manipulation, grade 4/5 mobilization of the cervical spine or upper cervical spine can take many forms, one of which is rotation.

I am unaware of any literature that specifically says that that's going to happen.

Q Are you aware of the Textbook of Clinical Chiropractic, A Specific Biomechanical Approach, edited by Gregory Plaugher, P-L-A-U-G-H-E-R?

A Yes, I am.

Q If Mr. Plaugher writes that stroke or stroke-like symptoms can occur in patients as a result of rotary-type manipulations, regardless if the patient has preexisting symptoms, would you agree or disagree with him?

A I'd disagree with him.

Q Okay and, so, what it would come down to is this would be a situation, where reasonable experts disagree? If he makes the assertion and you disagree, you're both reasonable people.

MS. MOORE LEONHARDT: Objection. The party to whom counsel refers has not been qualified as an expert, and, without that proper foundation being laid and that person being qualified as an expert, I don't believe the witness can properly or adequately answer the question.

MR. PATTIS: In fact, he can. He's been offered as an expert. He acknowledges the textbook. It's a learned treatise, and, if necessary, I'll lay a more adequate foundation for that, but it's not required, any more than it would -- much, though, I'd love to have a piece of Mr. Cassidy, or Dr. Cassidy, and Butch, too. They're not here, and it is appropriate Cross-Examination of a witness to ask him to opine about the opinions of other experts.

MS. MOORE LEONHARDT: I would respectfully ask the Board to clarify the record that the correct reference to the Cassidy article is that the article was authored, the research was reported by Dr. Cassidy, not

Mr. Cassidy.

MR. PATTIS: For whatever it's worth, I mean onto the substance of the hearing, I'm impeaching the man from a learned treatise, which, by the code of evidence and the common law of every state, I think even this witness would agree is a proper form of impeachment.

MR. SHAPIRO: He just said he was familiar with the textbook, though, counsel.

MS. MOORE LEONHARDT: Yes. I was just wondering, has this textbook been pre-filed?

MR. PATTIS: No.

MS. MOORE LEONHARDT: My objection stands. Thank you.

MR. PATTIS: The expert has been offered, based on his education, skill and training, and I'm testing his opinions by virtue or by use, rather, of a common textbook used by chiropractic doctors. Should I pre-file the Bridgeport Chiropractic College in its entirety, every brick and mortar, to talk to somebody about what goes on there? Of course not. That's ridiculous.

So I'd ask for permission to ask the question again.

MR. SHAPIRO: Why don't you rephrase the

question, and we'll see if there's an objection.

Q Would you agree that reasonable experts can agree or disagree about rotary-type manipulations on the cervical spine and the risk they pose to patients? Yes or no?

A Well you tricked me when you said reasonable and Dr. Plaugher, but --

Q You don't think he's reasonable, because he disagrees with you?

A I don't think he's --

Q Don't look to your counsel. Answer the question.

A I don't think that it's reasonable to use someone who is promoting a specific technique over other techniques as a basis to build a foundation. I am unaware, still, of any research. I am aware that that's his opinion, yes.

Q Okay, so, that's not a textbook you would permit to be used in teaching or training any student that you are involved with, is that correct?

A Oh, no. It's used in almost all the chiropractic colleges, including Palmer College, as one technique book.

Q Okay and, so, that one technique book represents

the opinion of one school of experts, who assess risk differently than you, fair enough?

A I can't answer that question. I don't know.

Q I'm new to this debate, probably the newest lawyer in it, so I have a lot to learn. You chuckled somewhat when you referred to the ICA as slightly different. How are they slightly different?

A Every profession has disagreements inside of it. They're professional disagreements. The ICA, in some states, like the State of Connecticut, there are two Associations. They have moderately different philosophies.

There is one, presumably -- well, actually, I don't know. There is an ACA, which represents the vast majority of --

DR. POWERS: Excuse me. We're just going to ask you to stop for one second, okay? Again, counsel, your explanation is great, but I don't think it's needed.

Q Do you disagree with the standards articulated by the ICA?

A That's a broad question.

MS. MOORE LEONHARDT: Again, I would object, because I think that's taking us far a field. The record should reflect that there is a united consensus

among the Connecticut Chiropractic Association, the Connecticut Chiropractic Council, the American Chiropractic Association and the International Chiropractic Association all appearing here today in support of the same position.

They are united in their position, and their position is against the -- is in the negative as an answer to the question. And we've appeared here with various witnesses, so that we can explain why those organizations and the witnesses who have appeared who are experts have taken their position, but it is a united position in the industry.

MR. PATTIS: Well, I mean, that's a fine argument, but I've never seen one witness say, and I address this to the panel, and chuckle about the apparent qualifications of another, while using the highly loaded term in this case, subluxation, and, so, the witness chuckled when he responded to a question that my brother counsel raised about the ICA standards and called them slightly different, and I think that this door has been opened, absent objection.

I understand one member of the Board believes it's not relevant. I'd ask for a ruling of the entire Board. If I have to concede one vote, I will, but

I think it's highly irregular to abridge a Cross-Examination on a highly-loaded topic, such as this, about why one Association is regarded as slightly different on the issue potentially of subluxation, which may go to the heart of why we're here.

MS. MOORE LEONHARDT: Well I move to strike that, in the sense that the Board has already ruled and determined that subluxation does not belong in this hearing, and I think what counsel is really fishing for is an opportunity to expand the hearing well beyond the narrow scope of this Declaratory Ruling proceeding and well beyond what was noticed.

I also would like to just state for the record that I'm sure Dr. McDonald takes this proceeding very seriously. He has traveled a long way. He has willingly and voluntarily offered his time and effort here, and he takes this very seriously, and it is no laughing matter. Thank you.

MR. MALCYNSKY: I don't know what the relevance of Attorney Moore Leonhardt rambling on about this is, and I also would like clarification from the Board or counsel to the Board, as to her pronouncement about subluxation as being off limits with regard to any questions.

MR. PATTIS: It has not been ruled on. That was a subject of what I'll refer to as the 9:00 a.m. motions in limine, which the ruling has been deferred on each of them. There were five motions to preclude testimony in five different areas, subluxation being one of them.

The Board has not ruled on those, and this may or may not be the time to entertain argument on that. I don't need to get into subluxation, but I think I'm entitled to an answer about what makes the ICA slightly different.

If it's because of some internecine squabble, about what is required to inform a patient of, that's highly pertinent. If it's because one Association adopts a patient-centered standard with respect to the standard of care and the other goes more toward an antiquated doctor-centered standard, that is also pertinent to the Board.

To testify, as Attorney Moore Leonhardt attempts to do, from the safety a non-Cross-Examinable seat and say that all of these Associations are in lockstep and march together is simply untrue and farcical.

They may present a united front here, but

in so doing, they expose themselves to an attack, and when one witness laughs about the qualifications of another group, I'm hard-pressed to think of any tribunal interested in finding facts that would view that as not admissible.

MS. MOORE LEONHARDT: Well I take great umbrage with counsel questioning my integrity. I've represented that all four chiropractic organizations are here united, and I stand by that.

If necessary, and the Board would like to, I will renew my motion to exclude and strike any testimony or evidence that relates to subluxation, but I was not looking to bog this hearing down at this point.

The hour is getting late, and I think that we're going far a field, and we ought to bring the Cross-Examination back into focus and proceed with the issues that are probative for the Board. Thank you.

MR. PATTIS: There's nothing out of focus about a question within the scope of prior counsel's questioning. If Attorney Leonhardt is going to continue to make pronouncements about the positions, I'd ask for permission to call her as a witness and submit her to Cross-Examination.

It has nothing to do with her integrity.

It has everything to do with her objectivity as an advocate.

MR. SHAPIRO: Let me ask the Board its pleasure with respect to the issue that's been raised about the ICA, about whether the Board considers it relevant evidence that the Board wants to hear from, and you can have discussion about that and vote on it, if you so choose.

DR. POWERS: I have no problem discussing the ICA's position on manipulation and stroke. Anything outside of that is just not relevant to the question. I mean let's stay focused here.

Informed consent we're asking be mandate whether or not we mandate that chiropractors inform people that stroke is a consequence of the cervical adjustment, and I think we have to stay within that.

I mean to start exploring the fundamental philosophical differences between organizations is not relevant to me.

MS. REXFORD: I am very interested in hearing more about the ICA.

DR. POWERS: Particular to manipulation and stroke, or broadly what's the differences in their Charters?

MS. REXFORD: I guess I would benefit from a little bit of background, and then focus on what you were saying, stroke.

MS. MOORE LEONHARDT: If I may point out, there is an intervenor. There has been intervenor status granted to the International Chiropractic Association, and they will be presenting their testimony here, and if the hearing proceeds, we may eventually get to that witness. Thank you.

MR. MALCYNSKY: Just a question of clarification.

DR. POWERS: Hang on one second. We're about to make a motion, and then we'll get into this. I'm going to make a motion regarding this objection, that the questions and the testimony are limited to any printed material the ICA has pertaining to the issue of stroke tied to manipulation. That just starts the process of our Board having a discussion.

MR. MALCYNSKY: Just one comment on that? So are you saying that even if the representative of the ICA in their testimony tomorrow states something that's either in addition to what's been provided in written testimony or contrary to written testimony, you're only going to consider --

DR. POWERS: Attorney, I don't mean to interrupt, but I know where you're going. We'll deal with that tomorrow. We're dealing with the objection with this witness right now.

MR. MALCYNSKY: But I mean the issue of how peer review groups or associations of like professionals feel about subluxation, neck manipulation, the likelihood of a stroke resulting there from are central to the issue before this Board. How can you say you're not interested?

DR. POWERS: I don't agree, and, right now, we have a motion pending, so if we can attend to that motion, and then we can get back?

MR. PACILEO: So you need a second. I'll second your motion.

CHAIRMAN SCOTT: Do we have any discussion? All in favor?

MR. MALCYNSKY: Can you repeat what the motion is, so we understand exactly what the Board is determining?

MR. SHAPIRO: The motion is to sustain the objection to this particular question with respect to the philosophy of the ICA, as I understand it.

MR. PATTIS: No. The question was why he was laughing when he referred to the ICA. It may or may

not have to do with the philosophy.

MR. SHAPIRO: I thought there was a follow-up question to that.

MR. MALCYNSKY: So do I.

MS. MOORE LEONHARDT: I agree. That's how I understood it.

MR. MALCYNSKY: So no questions about the ICA are going to be permitted?

MR. SHAPIRO: No, that's not what we're saying. We're saying this particular. My understanding is that the question was about this witness's thoughts on the philosophy of the ICA, and that is the question that there's been a motion on to sustain the objection on relevance grounds.

It doesn't mean that other questions about the ICA won't be deemed to be relevant by this Board.

MR. MALCYNSKY: Thank you.

CHAIRMAN SCOTT: All right. We're going to have a vote. All in favor?

ALL: Aye.

CHAIRMAN SCOTT: Anybody opposed? So done.

MR. SHAPIRO: Attorney Pattis, you can continue, although -- Attorney Pattis, do you have any sense of how much longer you have with this particular

witness, because the Board is interested in having a brief discussion about other hearing dates prior to its close at 4:45.

MR. PATTIS: I think I'm very close to being done. In fact, if you sustain the foreseeable objection to this question, I probably will be, so may I ask it?

MR. SHAPIRO: I'm happy to sustain it now, even before you ask it, if that would help you.

MR. PATTIS: I've noticed, but in the interest of a complete record --

Q What makes the ICA slightly different, as you testified while chuckling earlier?

MS. MOORE LEONHARDT: Objection on the same grounds. The Board has already ruled on that.

MR. SHAPIRO: It's going to be sustained.

MR. PATTIS: No, they haven't. I didn't ask about the philosophy. It may be their preference in sports teams or colors of lab jackets. I really don't know.

MS. MOORE LEONHARDT: Irrelevant.

DR. POWERS: Actually, what the motion included was that you're allowed to ask ICA questions pertaining to stroke and manipulation, and that's what we

were limiting that to.

MR. PATTIS: To note my protest for purposes of review in another forum, my Cross-Examination has been abridged, in the sense that I'm being prohibited from asking questions clearly within the scope of the responses that this witness asked previously.

So I understand it's your ruling, and you're free to do as you like. I simply take an exception to that, and I have no further questions.

MR. SHAPIRO: Thank you, counsel. Can all the parties excuse this particular witness? Any questions of the Board? Okay, Doctor, you're excused. Thank you.

MS. MOORE LEONHARDT: Thank you, Dr. McDonald.

THE WITNESS: You're welcome.

MR. SHAPIRO: It's my understanding, from talking to the Board liaison, that there are certain dates that this room or this building can be utilized prior to the end of this month, and maybe it will be helpful for the Board to schedule some additional dates, given the progress that's been made.

MR. JEFFREY KARDYS: Okay. Currently, because the legislative session starts in February, we can use this room for the month of January. The only dates

this room is not available presently is January 21st, 26th and 28th.

The Board presently has a meeting, a quarterly meeting scheduled for Tuesday, the 19th. If you want to utilize that date and if you feel a fourth date will be necessary, we can --

DR. POWERS: Are you recommending that we consider two days at this point?

MR. SHAPIRO: Yeah, I would recommend that.

DR. POWERS: Okay, so, either the 18th, 19th, or 20, basically?

MR. SHAPIRO: It's easier to cancel it than it is to schedule it after. I would recommend 19 and 20.

DR. IMOSSI: Just to comment, we have another hearing on that date?

MR. SHAPIRO: That hearing has been moved.

DR. IMOSSI: That's cancelled?

MR. SHAPIRO: Yes.

DR. IMOSSI: Okay, thank you.

MS. MOORE LEONHARDT: I apologize. I have a trial on the 20th.

MR. PATTIS: I would request the following date. I'm on trial in New London for the first three weeks of this month and got two days off to come here.

MR. SHAPIRO: So you're saying the 19th you cannot do?

MR. PATTIS: I'll ask permission of the Trial Judge for that day off, if necessary.

MR. SHAPIRO: Okay.

MR. PATTIS: But if you could go the following week, I think that would serve Attorney Moore Leonhardt, as well.

MR. SHAPIRO: What about the 19th and 27th?

MS. JANN BELLAMY: Mr. Shapiro, I'm an intervenor, and I know I can't Cross-Examine, but some consideration should be given to the schedules of those of us who travel far away, me from Florida, to attend this hearing, and, also, the fact that I have surgery scheduled for the 12th of January and will have a certain recovery time, and I need to cancel that surgery if you guys are going to have it when you suggest you're going to have it.

So I was wondering if the attorneys and parties would agree to take some of us out of order, so we wouldn't have to return.

MR. SHAPIRO: That may be possible. What are you suggesting?

MS. BELLAMY: Well our only other day is tomorrow, and if I could get my portion in tomorrow, then

I wouldn't have to return.

MR. SHAPIRO: I'm certainly happy to canvas the parties on that. I think that's reasonable, and, if it's possible, I would suggest -- I mean witnesses can be taken out of order certainly by the agreement of the parties, but even otherwise.

Which intervenor are you, in terms of this list?

MS. BELLAMY: Campaign for Science-Based Healthcare.

MR. SHAPIRO: Okay, so, you're the first intervenor on this list?

MS. BELLAMY: Yes.

MR. SHAPIRO: Okay. Attorney Moore Leonhardt, is there any objection to interrupting the order and taking the Campaign for Science-Based Healthcare first thing tomorrow morning?

MS. MOORE LEONHARDT: I believe that -- I'm just looking for a nod from my clients, and I'd like an opportunity simply to speak with them. I know that I've got a couple of witnesses, who have come a long way, and while I'm not necessarily averse to this witness proceeding with some testimony tomorrow, if I may just take a moment to confer with my witnesses, who came

prepared?

MR. SHAPIRO: Yeah, why don't you do that?

MS. MOORE LEONHARDT: Thank you.

MR. SHAPIRO: Attorney Malcynsky, do you have any objection?

MR. MALCYNSKY: We have no objection.

MR. SHAPIRO: Okay. Attorney Pattis, do you have any objection? Okay.

(Off the record)

MR. SHAPIRO: Tomorrow, any time tomorrow is fine with you? Okay. I'm going to try to accommodate that.

MS. BELLAMY: Thank you.

MR. SHAPIRO: We can go off the record for scheduling purposes.

(Whereupon, the hearing adjourned at 4:41 p.m.)

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