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BEFORE THE KANSAS STATE BOARD OF HEALING ARTS

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IN THE MATTER OF) Docket No. 10-HA00129

Ann K Neuhaus M.D.) OAH No. 10-HA0014

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Kansas License No. 04-21596

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VOLUME I

TRANSCRIPT OF PROCEEDINGS

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taken on the 12th day of September, 2011, beginning at 9:01 a.m., at the Shawnee County District Court, 200 Southeast 7th Street, Room 326, in the City of Topeka, County of Shawnee, and State of Kansas, before, Edward J. Gaschler, Presiding Officer.

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APPEARANCES

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ON BEHALF OF THE PETITIONER:

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PRESIDING OFFICER: All right. We're now on the record in the matter of Ann K Neuhaus M.D., Kansas dock -- Kansas Board of Healing Arts Docket No. 10-HA000129, Office of Administrative Hearing No. 10HA0014. The hearing is being held in Topeka, Shawnee County, Kansas, on September 12th, 2011. The presiding officer is Ed Gaschler from the Office of Administrative Hearings. Would parties make their appearance for record, please.

MR. HAYS: Yes, sir. Reese Hays and Jessica Bryson for the Board of Healing Arts.

MR. EYE: Good morning. For the respondent, respondent appears in person and through her counsel, Kelly Kauffman and Robert Eye. And, also appearing with us is Kori Trussell.

PRESIDING OFFICER: Okay. Thank you. All right. As a preliminary matter, counsel, you -- well, when you -- when you -- when you will be calling your witnesses, you will know whether or not those witnesses will be testifying concerning confidential matters, patient -- patient privilege, peer review and so forth. Please alert me to that at that stage where -- if it requests we close the hearing, we may -- we'll close the

hearing.

MR. HAYS: Yes, sir.

PRESIDING OFFICER: Otherwise, the hearing's open to the public.

MR. HAYS: Yes, sir.

PRESIDING OFFICER: All right. We have a pending motion, Mr. Eye?

MR. EYE: We do, Your Honor. And -- and we have a -- a housekeeping matter as well we'd like to take up at this time if that's acceptable.

PRESIDING OFFICER: Housekeeping first, please.

MR. EYE: Okay. Your Honor, Magistrate Sebelius has set a hearing at noon tomorrow in a federal case where we are involved, it's a detention hearing -- the lawyers aren't being detained or proposed to be detained, but our client is. We would beg the -- your indulgence to take a recess tomorrow at about 11:30. We anticipate that the hearing may go about I -- I would say anywhere from a half hour to an hour, in that range. So it may be that we would not be available to get back in the courtroom here until the 1:30 time range, if that would be an acceptable alternative to the Court and to you,

Your Honor. And I've spoken to Mr. Hays about this and unfortunately, we just -- this is a case that came up this last week and we're kind of having to be in two places at the same time.

PRESIDING OFFICER: Mr. Hays.

MR. HAYS: Sir, we -- we don't have an objection. I know it's going to be a time crunch, but it's up to your discretion, sir.

PRESIDING OFFICER: Well, Judge Sebelius takes -- takes precedence over me. So we will go -- go with -- we will take -- whenever you need to break, you let me know and we'll go there -- from there.

MR. EYE: Thank you. I think that's our only housekeeping matter before we take up the pending motion, Your Honor.

PRESIDING OFFICER: Okay. Go ahead.

MR. EYE: Your Honor, as you know, we have filed a -- a motion to strike the petitioner's expert witness and I will briefly review the primary points that we believe bear on that. The -- the motion, as you know, sets out extensive factual assertions drawn primarily from Doctor Gold's deposition concerning her qualifications to testify as an expert in this

matter. We believe that while she has qualifications to testify about some aspects of psychiatric care and evaluations, in this more narrowly drawn circumstance, she lacks those qualifications. The -- if I have -- I'm sure that you've had an opportunity to look through our papers in this, but the dearth of any exposure by Doctor Gold to anything that has to do with abortions is striking. Her testimony in her deposition was that she had not had any exposure to abortions or abortion-related care and treatment as a medical student or as a practitioner. In fact, she has apparently kept her distance from matters related to abortion, since she couldn't even tell us during her deposition which hospitals, if any, she had ever affiliated with that actually offered abortion-related services. She couldn't tell us whether in Washington D.C. and the greater Washington D.C. area whether abortion services were even available. Consequently, we believe that her ability to -- to testify about the more narrowly drawn standard of care related to this case is inadequate. The more narrowly drawn standard of care in this case, Your Honor, derives

from the statutory requirement of 65-6703. That is the statute that specifies the prerequisites in order for a woman to receive an abortion. The second provision of that deals with dealing with -- or deals with whether a psychological or mental health impairment would have an irreversible and substantial effect on the woman's life. This is an area of evaluations that Doctor Gold has never done. She's never dealt with an abortion referral. She's never dealt with patients as young as 10 and 11 who find themself pregnant. She's not referred anybody for an abortion. In fact, it's her position, really doctrinaire position that psychiatrists don't make referrals for abortions. And to the extent that that has been a consistent aspect of her practice as, apparently, it has based upon her deposition testimony, she lacks the actual real world experience that will assist you in this case as the tryer of fact in rendering a decision. Consequently, because she does not have the per -- prerequisite qualifications, she is not qualified to be an expert in this case. Perhaps more troubling is the fundamental misunderstanding that -- and conflict, I would say, it's more than --

it's more than a misunderstanding, it's a flat-out conflict that exists between Doctor Gold and the prevailing law. This is a case about evaluations done for late-term abortions, statutorily defined late-term abortions. Late-term abortions are something that women have the right to receive under prevailing United States Supreme Court law and under 65-6703. Notwithstanding, that clear legal right, Doctor Gold finds no circumstances in which the mental health of the patient would justify referring that patient for an abortion. That is the premise of her observations and opinions. Therefore, when an expert enters into a case such as this with a fundamental misunderstanding of what the rights of the patient may be, that is to obtain a late-term abortion under certain limited circumstances, it would follow that her opinions would be misguided, faulty and without any analytical value in terms of assisting, Your Honor, in rendering a decision in this case. Certainly, the -- this conflict in terms of her understanding of the role of the law in terms of determining when a woman can get a late-term abortion has undermined her ability to make an opinion that should be admitted in this

case. Moreover, Doctor Gold never made any attempt to determine what the standard of care is in Kansas. There was never the least bit of inquiry, study or attempt to determine how K.S.A. 65-6703 is applied in our state. And, in fact, Doctor Gold seemed to -- seemed to have the approach that it didn't matter how 65-6703 would be applied. Because in her view, a national general standard would prevail here. It's our view that the national general standard only goes so far. In fact, it's only a point of departure to the more specific narrowly drawn standard of care that applies to evaluations under 65-6703. Accordingly, she should be excluded. I -- I -- I -- I am remiss if I do not address the petitioner's view that somehow, K.S.A. 60-3412 applies in this case. It does not. 60-3412 is intended to apply to medical malpractice cases only. The statute is very clear in that and the interpretation of that statute is very clear. Extending it to apply to Board of Healing Arts cases would be contrary to the specific language used in the statute that says it is to apply to medical malpractice cases only. Extending it to this case would only undermine the legislature's

intention to limit it to medical malpractice cases. You have our papers and I don't want to belabor this, but I do believe it's important that we -- we point out that, for example, back to Doctor Gold's qualifications and I -- I apologize for jumping back to this, but it is an important point. We cite Smith against Printup, the 262 Kan. 587 case. That's an important case here. And it's -- and it is perhaps, one could argue, about splitting hairs. But certainly, in these kinds of proceedings, splitting hairs is much about what is -- what the proceeding revolves around. In Smith against Printup, an expert was offered to testify about trucking and bus operations. His opinion was on -- was based on his experience and understanding of large trucking and bussing businesses. The party that he was evaluating, the business that he was evaluating was a small trucking and bus business. The court said while he may have been qualified to testify about large concerns, he was not qualified to testify -- testify about smaller business concerns and the practices that they use. There was a recognition that the practices of a large business would be different than a small business. The

expert was qualified to test about -- testify about the large business, but not the small. And his testimony was excluded. Similarly, in this case, Doctor Gold can testify about some general rules, but in terms of the specifics of this case dealing with how 65-6703 is applied, she's not qualified to testify. In our judgement, this is not a case for generalities. This is a case about specifics. Generalities will not get us to a disposition. It is supported by authority and by the record and by reasonable interpretations of those authorities in the record. Accordingly, Your Honor, we ask that our motion to strike the petitioner's expert be sustained and I'll answer any questions that you may have.

PRESIDING OFFICER: Okay. Thank you. Mr. Hays.

MR. HAYS: Yes, sir. Sir, this case is within an administrative hearing purview. And within that purview, the ultimate trier of fact will be the Board of Healing Arts, who has a specialized knowledge of the medical professional field. And case law is pretty clear that they can rely upon that medical knowledge. And that's important because the cases that the respondent

quotes, the trier of fact is different. The trier of fact does not have that specialized knowledge, it juries in the civil arena outside of the administrative law arena and criminal juries and criminal judges and civil judges. That's a specific difference. And the public policy behind the experts portion of it is the misleading -- the trier of fact. Well, that public policy isn't met -- met here in the administrative process because the trier of fact is actually medical professionals. And let's look at the Kan -- what the Kansas court has held within Kansas State Board of Healing Arts cases. Which looking at Hart v. Board of the Healing Arts, the Kansas court found that there was not a requirement for the board's expert to state what the standard of care was that a physician was being held for. Therefore, the board can rely upon its own expertise to determine whether or not Doctor Hart met the standard of care. If that same evidence was lacking in a civil trial or a criminal trial, would they have come to the same decision? Probably not, because that trier of fact lacks the specialized knowledge. But let's move on to what the respondent's trying to do here. They're

trying to limit this to a specific mental health evaluation for an abortion. But when you look at the respondent's case files, you will see that there's no indication of any referral occurring in those case files. The only thing you're going to see is evidence of diagnoses from, allegedly, a mental health evaluation occurring. Furthermore, the limitation of this to a specific individualized -- underneath that statute of the purpose of the referral was not what she was doing, apparently, because if you look at her inquisition -- or her testimony within the -- the previous criminal trial that she testified in, it becomes clear that she was going and doing diagnoses and basing her mental evaluation for those diagnoses within that arena and it was not limited to just looking at whether it met the statute or not. Now, respondent has also stated that our expert has not looked into what Kansas' standard of care is. Well, she has -- it's been made known to her within her reports. But additionally, I would proffer that Doctor Gold would testify or will testify that in looking in Doctor Tiller's records, that she has found evidence of him doing an mental health evaluation

that met the standard of care for a mental health evaluation in Kansas because of her basis of opinion. Furthermore, they do not address whether -- or the reason how Doctor Neuhaus's use of internationally recognized mental health materials to form her basis of her diagnoses -- or Doctor Neuhaus's formation of her diagnoses. She utilized the DSM-IV, which is internationally recognized as a mental health guide, which she testifies about also as being a list of the actual diagnoses that are available. And, two, the computer programs she used are, one, written by the same individuals who wrote the DC -- DSM-IV. And, two, it's based upon the DSM-IV. Furthermore, the respondents provide no evidence that the -- that the respondent has a special knowledge, skill, experience or training that she used to base -- to base upon her knowledge of how to give an abortion and not upon the special knowledge, skill and evidence or training in a field of mental health. It's based upon mental health and how to give a proper mental health evaluation and come to a diagnoses, which apparently possibly was used to come to this referral that was required underneath the statute.

Furthermore, the -- the accusation -- or the issues that the respondent brings up goes to weight, to whether Doctor Gold's opinion holds water. And that's where this issue comes down to, rather than meeting a burden that the respondent must meet in order to have this expert stricken. And, sir, the board is of the position that the respondent has not met their burden to have this expert stricken. Thank you, sir.

MR. EYE: May I?

PRESIDING OFFICER: Briefly.

MR. EYE: Counsel for the petitioner cites Hart against Kansas State Board of Healing Arts based on my notes about that, that was another malpractice action, a medical malpractice action that -- that again, to the extent that they're trying to loop 3412 back into this, that -- that should not apply. More importantly however, a good deal of the re -- the petitioner's argument dealt with the conduct of Doctor Neuhaus in this case. Our motion focuses on the qualification of their expert, Doctor Gold. Which is independent of anything that Doctor Neuhaus may have done or not done in this case. The focus is about Doctor Gold's qualifications, about her

ability to render an admissible expert opinion. This is not about misleading the finder of fact. We're trying to illuminate and -- and inform here with evidence and information that is reliable, that comes from a source that has a basis from which to render an effective opinion. The petitioner's counsel argues that there is no requirement for their witness to state the standard of care. Well, whether there is a -- a requirement or not, I guess, is something we can -- we can deal with. Because in Kansas, in order to advance a question about medical negligence, it requires an expert witness to advance a question -- to advance evidence on standard of care. Moreover, even if that is not the case, the fact is, their witness did advance a standard of care opinion. Whether it was gratuitous or required notwithstanding, she did render that opinion. And we are arguing that it is undermined because of the lack of qualifications and understanding about how the standard of care applies to 65-6703. This is a standard of care case and they've got to have a witness to advance their standard of care theory. If they don't, they can't go forward. I'm not sure exactly where the-- the petitioner's

counsel is going with the argument that there was -- that the diagnosis -- diagnoses were not based upon K.S.A. 6703 -- K.S.A. 65-6703. That's all that they were based on.

THE REPORTER: I'm sorry. Re -- restate that.

MR. EYE: I'm sorry. The -- the petitioner's counsel has argued that the diagnoses involved in this case were not derived from the requirements imposed by 65-6703. I'm not sure exactly where the petitioner is deriving that information, but, in fact, that is what this case revolves around, the legal requirement that is imposed on physicians to do a late-term abortion is defined by K.S.A. 65-6703. And there's a requirement that there be a finding that there is an -- a substantial and irreversible impairment to a woman's health in order to go forward with the late-term abortion. Accordingly, the argument that somehow, the more generalized standard of care would trump here, I think, is wrong. And, in fact, the more specific standard of care should define the scope of the discussion in this case. The petitioner's counsel also argues that somehow this proceeding, this adjudication can somehow

just be looked at in a more casual way because the board will ultimately make it's own decision here. But as I understand this proceeding, Your Honor, there will be findings of fact and conclusions of law that are derived from this proceeding. To the extent that there are findings of fact under the Kansas Administrative Procedure Act, there's a requirement that those be supported by substantial and competent evidence. The substantial and competent evidence that bears on witness admiss -- or expert witness admissibility here is lacking. Their expert doesn't have enough basis to render an opinion that makes any difference in this case. It's not about allowing this opinion to come in and then giving it the weight that Your Honor might -- might allow. It is about admissibility. And adopting the petitioner's -- respondent's argument would mean that all expert witness testimony always comes in and then the finder of fact gets to assign the weight to it or not that they see fit. That's not the law in our state. There are minimum prerequisites. And to the extent that their witness has a faulty resume in terms of having a basis to render an opinion based upon education and experience, and a fundamental

misunderstanding of how 65-6703 applies in this case, it's not about admitting their opinion and then giving it some weight or not, it's about whether that opinion is admissible. And it's our position that it is not and this we argue is a basis to sustain our motion to strike. Thank you, sir.

PRESIDING OFFICER: Counsel has spent an enjoyable Saturday afternoon reviewing your filings in this matter concerning the motions to strike Doctor Gold. And, Mr. Eye, you have some good arguments I suppose, but as a practical matter, Doctor Gold is board certified -- is board certified in psychiatric medicine. She will be, if I'm understanding where we're going in this case today, be giving an opinion as to whether Doctor Neuhaus met the applicable standard of care when Doctor Neuhaus made psychiatric or psychological findings that a continuation of the pregnancy would cause substantial and irreversible impairment of the major bodily function of a pregnant woman. The respondent seems to be arguing that because this was, quote, an abortion case, that there's some special knowledge, special -- special education, some kind of special

experience -- experience I haven't -- I haven't heard any evidence to that affect. That may be the fact, but I haven't heard any evidence to the fact that in order to be -- in order to make the determination Doctor Neuhaus made, you have to have some specialized findings. Haven't had any evidence of that yet, so at this point in time, I'm going to find that Doctor Gold is a expert under -- and will be allowed to testify. She's going to testify as an expert in the field of psychiatric or psychological medicine and she's qualified to give the opinion. That will be the ruling.

MR. EYE: We have another motion to advance, Your Honor. May I?

PRESIDING OFFICER: Sure.

MR. EYE: Thank you. Your Honor, the uncontroverted testimony in this case is that of the 11 patients that are at issue, 10 are minors, ranging in age from 10 to 17. There is one adult at 18. K.S.A. 65- 6703(a)(2) specifies that this process applies to whether the continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman. Doctor Gold has testified

that women are considered to be 18 years old. So applying this statute strictly means that the woman refers to an adult. We have one adult in this group, that's Patient No. 10, the others are minors. This statute 65-6703(a) does not apply to minors, it applies to pregnant women. And for that reason, we would ask that the -- that you rule that the testimony in this case be limited to Patient 10 and that the others be determined to not fall within the -- the purview of K.S.A. 65-6703(a)(2). Thank you.

PRESIDING OFFICER: Mr. Hays.

MR. HAYS: Yes, sir. I guess this comes down to what is the intent of that statute and the drafters of the legislative intent of what they -- what a woman means. Our position is that a woman means childbearing individual, someone who's capable of a child -- to bear a child. Since it just got presented to us at this point in time, I -- I'm at a handicap to know what the legislative intent is at this point in time. However, I think it's clear through the statute that's what they -- they were intending. Therefore, we can still move forward in this case.

PRESIDING OFFICER: Well, counsel, both

of you are missing the point. We are not here to determine whether Doctor Neuhaus violated a criminal law. We're not here for that. We're here to determine whether she adhered to the standard of care. And the standard of care, it -- whether it's a woman or a man, it doesn't -- we're not here for this statute. Objection -- motion is denied. Let's proceed. Mr. Hays, is the board ready to proceed?

MR. HAYS: Yes, sir. I believe we need to maybe take a -- a brief rest -- or -- or a recess to go over the exhibits because there's a stipulation of fact that we need to attend to so we can offer all of the exhibits at one time so you'll have those in -- for you.

MR. EYE: If a recess is what is being requested --

MR. HAYS: Or -- or unless you want to do it right now.

MR. EYE: Well, I mean, I -- I don't know exactly what -- what exhibits you want to have admitted en masse here. These are all your exhibits you wanted admitted at once?

MR. HAYS: A majority of the -- of the exhibits. The exhibits that -- if you're -- that

you'll be able to stipulate to.

MR. EYE: We've had this discussion and we can make some stipulations, we cannot stipulate all together as to what you've proposed in terms of the completeness of Doctor Tiller's records, for example. But I don't see any purpose to be serving or advancing the admission of exhibits before there's a -- a -- a witness to support it, except for the ones that we are willing to stipulate to.

PRESIDING OFFICER: Okay.

MR. EYE: So if you're -- if you're wanting to have the discussion we've had earlier about admission of -- or stipulation to some of these records that we can't stipulate to, then, you know, I don't know that there's going to be really anything served by having to recess now. So I don't see any reason to -- to have a recess, but --

MR. HAYS: Your Honor, there's an issue of -- the reason why we -- we had -- we discussed about the subpoena at our last prehearing conference, the outstanding subpoena. And the reason that we believe it was un -- that it was taken care of is because respondent's counsel had

indicated that there was a stipulation to be made on that -- on those exhibits. And in addition --

MR. EYE: I'm sorry, go ahead.

MR. HAYS: And I believe that portion of it still is outstanding because I don't think I -- we have not -- or he hasn't given me an answer whether he's going to stipulate on it -- to it or not.

MR. EYE: Your Honor, the stipulation we talked about was admission of the records that we had received. We stipulate to the admission of those records. The stipulation that's been offered includes a provision that we would stipulate that they are complete records. We can't stipulate to the completeness of these records, because we don't know whether they're complete. We can certainly stipulate to the -- to the records that we've been provided as being admissible, as being relevant and all of that. But stipulating to something that we don't know is not something that we're going to do.

MR. HAYS: I've -- I've actually moved on past that to what we've requested within the -- the outstanding subpoena, the computer program for the DTREE and the GAF program and that portion of

the stipulation.

MR. EYE: We don't object to -- to those materials being admitted, Your Honor. I thought we were dealing with the medical records.

MR. HAYS: And for the amount of the medical records, we would like to offer those up and to the point that what we received from Doctor Neuhaus pursuant to the subpoena was everything that she had at that time.

MR. EYE: As I have said, we are willing to stipulate that the records that Doctor -- Doctor Neuhaus provided were what she had. They're asking us to -- to stipulate to the completeness of another clinic's records and --

PRESIDING OFFICER: Meaning Doctor Tiller's record -- meaning Doctor Tiller's records?

MR. EYE: Yes.

PRESIDING OFFICER: How can he -- how could they possibly stipulate to that?

MR. HAYS: I'm just speaking about Doctor Neuhaus' record right now and now that we can -- we can do Doctor Tiller's records later. What I was attempting to do was get everything we had a stipulation for and everything that we requested

from you to take an official notice of, done and completed before we start into the witnesses.

MR. EYE: I wasn't aware that there was a request for administrative notice on anything that related to the evidence that I'm aware of. But again, we would stipulate to the admission of Doctor Neuhaus' records, the -- the DTREE information, the GAF information. That sort of foundation and evidence, we're okay with.

PRESIDING OFFICER: Does that resolve your issue?

MR. HAYS: Yes, sir.

PRESIDING OFFICER: Okay.

MR. HAYS: Would you like opening argument, sir?

PRESIDING OFFICER: It's up to you.

MR. HAYS: Sir, how well people perform at their job will be placed upon a continuum -- or can be placed upon a continuum. On one side, you have the hard worker that does everything possible, that's -- takes copious notes, that ensures that their T's are dotted and their I's -- or their T's are crossed and their I's are dotted. On the other side of the continuum, you have the individual who attempts to get by by

doing the bare minimum and fails to meet the standard in which they're going to be held to. And, sir, the evidence will show that's where Doctor Neuhaus falls in this case. She took on the task of a mental health specialist. The evidence will show Doctor Neuhaus, in her consultation services, took on the task of a specialist. That makes her subject to the standard of care of a specialist. And the reason why she had performed these consultation services or was asked to perform these consultation services by Doctor Tiller is because Doctor Tiller needed a documented referral from another physician who has determined that the abortion is necessary to preserve the life of a pregnant woman or a continuation of a pregnancy will cause a substantial or irreversible impairment of a major bodily function of the pregnant woman. But, sir, it's about meeting the standard of care of the mental health evaluation, the mental status examination, and the evaluation of the patient's functional impact of those symptoms. That is the standard of care that Doctor Neuhaus will be held to in performing that. And as you stated correctly, this case is not about the -- the

criminal statute, but rather, the standard of care that was due to those patients for their safety. And let's talk a little bit about that and see what we'll be seeing in this next week, sir. You'll be presented Doctor Neuhaus' records and Doctor Tiller's records. These are two -- from two separate physicians. Doctor Neuhaus' records will have to stand on their own because they were not kept together, that evidence will show. They will be shown that she kept her records in a totally different location. But furthermore, let's talk a little bit more about what you'll see within these patients records. They range from five pages to 20 pages. But keep in mind the evidence will show that the 20 pages -- or the 20-page patient record contains numerous duplicate copies within that patient's record. So on an average, you'll see between five and 10 documents or pages of documents within these records. So let's talk about the information within the records that you're going to see generally. First, in almost every case, you'll see a patient intake form. From the face of this page, you will not be able to tell whose record it is. But the evidence that will be presented will explain to you that this

was a Doctor Tiller record, that it was his patient intake form and not Doctor Neuhaus'. You will also see a record of disclosures that was created by Doctor Neuhaus and then you will also see a authorization to disclose protected health information. But the next document that you'll see and will be presented to you is something that's called an MI statement or MI indicators, depending which version of the document that you'll see. The evidence will show that this document contains, for the most part, because they're not all exactly the same, some information about the patient's pregnancy, how they view it and things like that. Excuse me. But you'll also see a notation of SIGECAPSS. The board's export -- expert will explain what SIGECAPSS is. And she will explain that SIGECAPSS is a pneumonic device to aide the personnel that's using that form in remembering the initial questions to ask the patient for depression. She'll also explain to you that it does not rule out any other diagnoses or any other mental health conditions, it's specifically for depression. Now, also from this document, it will be very difficult to tell whose document it is. Because it doesn't indicate on a

majority of them who took the document -- or who took the information from the patient, if it came from the patient, where it came from, when it came from. It -- but the evidence will show that it, once again, is a Doctor Tiller record that occurs in her file. Now, you will find and the evidence will show two records that are reports that were generated by Doctor Neuhaus from an overall arching PsychManager Lite Program. You will -- it'll be explained to you that the a PsychManager Lite Program basically has two modules, a GAF module and a DTREE module. So let's talk first about the GAF module and what -- what you're going to hear about that. The GAF mod -- module is based upon the global assessment of functioning in an Axis V located in the DSM, which you will hear testimony about. That the information contained in those reports are conclusionary statements that are basically quotes from the DSM. Now, you will -- the board's expert will explain to you what the global assessment of functioning is. And she will explain to you that the GAF is broken down into a 100-point scale that has two components. The first rates the patient's symptoms and severity and the second portion, the patient's level of

functioning. Evidence will show that this GAF rating cannot be used to determine a basis of a diagnosis of a psychiatric condition, but rather, it rates the individual's functioning portion of their life, and is separate from diagnosing what mental condition they may or may not have. Furthermore, a review of that will -- that record will not indicate any patient-specific information, but rather, generalized information of and/or, it could be this or this. It -- it really doesn't speak specifically to what the actual patient's functioning was. Well, let's move on and talk about the -- the DTREE module. The board expert will explain that the DTREE module is based upon a decision tree. So, let's talk a little bit about what the evidence will be about a decision tree. The board's expert will explain to you that decision trees are diagnostic algorithms that was quite popular in the 1980s. However, since it's first induction, it has fallen out of favor as a diagnostic tool because its unreliability and -- and validity. The board's expert will explain to you why and how its use is not within the standard of care of performing a mental health evaluation and determining the

individual's functioning and coming to a diagnoses. But let's talk about the diagnoses that you'll see that's present in these records. You'll see one of three diagnoses contained in Patient 1 through 11, however -- well, actually, you'll see one of three diagnoses contained in the records of Patient 1 through 10, Patient 11, there is no diagnosis. But, let's talk about the three diagnoses. You'll either see anxiety disorder NOS, which you'll hear means not otherwise specified. You will see a -- a patient possibly diagnosed with major depressive disorder or acute stress disorder. The board's expert will explain to you what is needed to be met in coming to those diagnoses and what is needed to be met in determining the diagnostic criteria that forms the basis of a mental health evaluation. Whether or not Doctor Neuhaus came to the correct diagnosis is not determinate upon whether the standard of care is met. It's how she met the standard of care in the evaluation of that patient. And that will be explained to you by the board's expert and how she did the mental status evaluation and how she did the behavioral and functional impact of the patient's sick -- symptoms or diagnoses. But,

let's talk about what you're not going to see in these records. When she goes to the documentation standard of care and also the requirements and standards underneath the K.A.R. that's required for minimum record keeping and what's supposed to be included within a physician's record, you're not going to see a date and time of when Doctor Neuhaus had an appointment with any of these patients. You're not going to see a discussion of -- or any documentation of any specific behavioral impact of the reported diagnoses. There's not going to be a discussion of any treatment plan. There's not going to be any evidence that any of these patients within her record were referred to anybody, there is not a referral document located. The evidence that you will -- that you will see is that these diagnoses and documentation that she was using as documentation of her mental health evaluation were only arbitrary labels placed upon these patients. The board's expert will provide in detail testimony for each patient describing how, in her expert opinion, Doctor Neuhaus did not meet the standard of care that was due to the patients during Doctor Neuhaus' evaluation of the mental health of these patients, and that is

documented within her records.

Sir, Doctor Neuhaus is being held to a standard, a standard of care that requires her to perform at a level of protection for her parent -- patients. And the evidence will show that the standard of care requires a physician to practice the healing arts with that level of skill -- care, skill and treatment which is recognized by a reasonable prudent practitioner as being acceptable under similar conditions and circumstances. Furthermore, because she held herself out to be a specialist, she is held to the standard of care of a specialist. A specialist must practice in a manner consistent with a special degree of skill and knowledge ordinarily possessed by other specialists in the same field of expertise at the time of diagnosis and treatment. Furthermore, you will have evidence that these mental health evaluations are standard mental health evaluations that there's a standard of care due to the way they are performed through -- throughout -- throughout the entire nation. Therefore, any locality requirement that may be limited to Kansas performs them different, you will not see -- or you will hear an explanation

how the tools and resources that Doctor Neuhaus utilized to perform her mental health evaluations were tools that are internationally recognized by the mental health community. Thank you, sir.

MR. EYE: Your Honor, this case is about the process that was used to evaluate women to determine whether they were -- or I should -- not women, patients to determine whether they were eligible to meet the standards under 65-60 -- 6703 to get a late-term abortion. That is, would carrying the pregnancy to term cause a substantial and irreversible impact to the patient's health? And that includes mental health under prevailing Supreme Court authority and prevailing law. Because this case will detail the process used to evaluate for late-term abortions, it's important to understand that this was a collaborative approach that was undertaken by both Women's Health Care Services, Doctor Tiller's clinic, and Doctor Neuhaus. The evidence will be that staff at Women's Health Care Services -- I'll call it WHCS -- and Doctor Neuhaus knew they were under constant scrutiny. In effect, they were living in a fishbowl. Their procedures, the healthcare that they were offering women was controversial. They

knew they had to be careful, they knew they had to meet the legal requirements, they knew that there was a possibility that the anti-choice faction would -- would plant bogus patients in an effort to get WHCS or Doctor Neuhaus to violate the legal requirements. So that Doctor Neuhaus and the staff at WHCS were constantly careful to make sure the legal requirements were met and that includes those that deal with standard of care. In fact, WHCS went as far as to bring in outside counsel to provide guidance to Doctor Neuhaus on exactly how to meet these requirements. Moreover, Doctor Tiller offered an extensive memo that Doctor Neuhaus will testify about that specified the actual practice techniques that were required so that standard of care would be met. There was an ongoing and -- effort to refine and improve this evaluation process. There were intraclinic discussions about how the determinations were made to justify a late-term abortion. And remember, Your Honor, the late-term abortion statute 65-6703 doesn't come with a guidance manual. It is very general in terms of what it expects. It expects physicians to make findings. It doesn't say how. It doesn't say what techniques of analysis should

be used, it doesn't even suggest a particular specialty that would be used to derive these findings. At the end of this proceeding, Your Honor, we believe that one of the things that will be dispelled is that somehow WHCS was a -- an abortion on demand facility. And, in fact, that's not what it was. The staff at WHCS was not a rubber stamp for abortion on demand. The evidence will show that Doctor Tiller was not a rubber stamp for abortion on demand. And the evidence will show that Doctor Neuhaus was not a rubber stamp for abortion on demand and, in fact, she turned down patients who presented who had expectations that they would get abortions and she determined that their mental health status did not qualify for a late-term abortion. Doctor Neuhaus took the time necessary on a patient-by-patient basis to determine whether that patient met the statutory requirements for a late-term abortion. Some patients took longer than others. I believe the testimony will be that Doctor Neuhaus frequently took hours to complete some of these evaluations. Some of them took appreciably less time. But we're talking about the quality of the evaluation here, not necessarily the duration of

time that it required. The statute does not say and these evaluations must last a specific duration of time. The statute only provides the conclusion that must be reached. This is not a cookie-cutter process. It's not a one-size-fits-all process as Doctor Gold would suggest. Doctor Neuhaus took account of empirical proof derived from the SIGECAPSS plus material -- or empirical evidence derived from the GAF and the DTREE. But as important as that -- and Doctor Gold will agree with this, I believe, based upon her deposition testimony -- Doctor Neuhaus had face-to-face contact with these -- with these patients, spoke with them during interviews. And as Doctor Gold points out in her deposition, those interviews provide, I believe she said, a wealth of information that's not necessarily reflected in a empirically-based technique of analysis, for example, the DTREE or the GAF. This analytical process that Doctor Gold (sic) engaged was reviewed by a -- her expert, Doctor Allen Greiner, a full professor at the University of Kansas Medical Center. In each and every chart, he found that the standard of care to reach a diagnosis had been met in all 11 charts, and he reviewed all 11.

As we mentioned in our arguments concerning the motion to strike, Your Honor, in our view, there is a general standard of care, but that standard of care is really sufficiently broad and nebulous, it doesn't really have much value here. It's the specific -- the specific standard of care that applies to the evaluations for late-term abortions that makes the difference. Was there enough information derived from the quantitative or empirically-based instruments that Doctor Neuhaus used in combination with face-to-face interviews that justify an -- or -- a -- a referral for a late-term abortion under the statute? That's the question. And again, Doctor Greiner, who you will hear his testimony, actually is a person who reviews charts for the Kansas Medical Foundation as part of his out -- as part of his practice. He's called upon by outside bodies to review charts to determine whether or not they are adequate and meet standard of care. Doctor Gold has a view of the standard of care that's very general because that's really all she's qualified to do. You can't really get into the specifics of these kinds of evaluations because she doesn't have any experience with them. Her opinions are

frequently based on speculation. For example, she speculates that based on her review, these evaluations didn't take enough time. She never tried to find out how long these duration -- the -- the duration of these interviews actually did last. She didn't inquire staff at WHCS to determine what their observations were concerning the duration of these interviews. Meaning her opinions are based on inference piled on inference piled on mischaracterization. For example, it's inferred that since abortion isn't an intervention, according to Doctor Gold, for a mental health problem, no late-term abortion can ever be justified to protect the mental health of the girl, the teen, or the adult. It's a fundamental misunderstanding. And it represents a fundamental bias in terms of how this statute's to be applied. Under Doctor Gold's analysis, that statute shouldn't even be on the books. And we believe that the evidence will -- it will establish that that is the basis upon which she rendered her opinions in this matter. There's a fundamental lack of knowledge that Doctor Gold has about practice in Kansas. Doctor Greiner will testify that the use of the GAF, which by the way,

Doctor Gold uses in her practice as well on occasion, that the DTREE, that the MI, the SIGECAPSS combined with face-to-face interviews more than meets the standard of care. More than meets the standard of care. And, in fact, it's interesting because Doctor Gold, in her testimony, her deposition, actually suggests that a diagnosis could be rendered for depression, for example, using only the SIGECAPSS. And you would meet the standard of care using that. That's her testimony in her deposition. There are other fundamentally unsound views that Doctor Gold brings to this case that will affect, I believe, your evaluation of her testimony. Doctor Greiner also reviewed the adequacy of the documentation in this case. In all 11 instances, he testified in his deposition that it met the standard of care for practitioners in Kansas. And again, Doctor Greiner has extensive experience in reviewing charts for standard of care purposes of Kansas practitioners. There's also, I think, a misunderstanding here about how the standard of care functions in the real world. It's suggested that the continuum that was discussed in the opening statement of petitioner's counsel, that the continuum somehow

controls here. This is not a mechanistic -- necessarily a linear process. This is a -- the practice of both the science and the art of medicine. It is not a cookie-cutter process. Your Honor, we believe that when the evidence is -- the evidentiary phase of this case is over, that you will find based upon the evidence that we present, that Doctor Neuhaus has met the standard of care in all 11 of these cases. That the standard of care was met in both in terms of how the diagnosis was determined and how it was documented. And as that occurs, we believe that there will be a finding of fact that will justify that the standard of care was met in both the diagnostic process and the -- the documentation process. Thank you.

MR. EYE: Your Honor, I'd like to move to sequester all fact witnesses that may be in the courtroom at this time.

PRESIDING OFFICER: Okay. Mr. Hays, you -- your witnesses.

MR. HAYS: Yes, sir. We have one, but he's going to be called.

PRESIDING OFFICER: Excuse me?

MR. HAYS: He's going to be called as the

first witness.

PRESIDING OFFICER: Okay.

MR. HAYS: Okay. So --

PRESIDING OFFICER: Any -- any other witnesses present?

MR. HAYS: I don't see any other witnesses here.

PRESIDING OFFICER: Mr. Eye, you don't have any witnesses in here, do you?

MR. EYE: No, sir, we don't.

PRESIDING OFFICER: Okay. So --

MR. EYE: Other than our client.

PRESIDING OFFICER: Yes, naturally. Okay. All right. So, your first witness, Mr. Hays.

MR. HAYS: Ms. Bryson is going to be calling the first witness.

MS. BRYSON: I would like to call Clifford Hacker, please.

PRESIDING OFFICER: I can't hear you.

MS. BRYSON: I'd like to call Clifford Hacker, please.

PRESIDING OFFICER: Okay.

MS. BRYSON: And also, because we'll be going into patient records, it would be

appropriate to close the session at this point in time.

MR. EYE: Your Honor, my understanding was that the records that we were going to be covering in this hearing were redacted. And that the -- the set with the identifying information would have been provided -- or would be provided under seal. So, I don't know that there's a necessity to close the hearing if we're going to be dealing with records that have already been redacted.

MS. BRYSON: I -- I was going to say in order to identify the patient name with patient numbers, that's why we would need to go into the sealed records in order to lay the foundation.

MR. EYE: We will stipulate that the names that are assigned to Patients 1 through 11 correspond with the -- to the -- to the files as they've been produced to us in this matter. And I don't think there's going to be any confusion about what patient goes with which chart, but I -- I will leave it to your discretion to determine whether that's a designation that we need to establish on the record.

PRESIDING OFFICER: With the stipulation

that -- that he just made, is there any need for closed session.

MS. BRYSON: No, just so long as we do not use any patient names or initials.

THE WITNESS: Okay.

PRESIDING OFFICER: Okay.

CLIFFORD HACKER,

called as a witness on behalf of the Petitioner, was sworn and summarizations as follows:

DIRECT EXAMINATION

BY MS. BRYSON:

Q. Would you please state your name for the record?

A. Clifford F. Hacker.

Q. And what is your occupation?

A. I'm Special Investigator II for the Kansas State Board of Healing Arts.

Q. And how long have you been employed as an investigator for the Kansas State Board of Healing Arts?

A. 10 years.

Q. And what did you do before?

A. I was Lyon County Sheriff for 16 years.

Q. And as a special investigator, would you please summarize what your responsibilities are?

A. We are assigned to gather materials on cases, put the materials together and submit them for expert review.

Q. And how does an investigation come about?

A. A number of ways. The complaint is submitted to the board and it is reviewed to determine that that's an issue that they want investigated and then it is assigned to the investigator by the disciplinary counsel.

Q. Once a case is assigned to you, what do you do?

A. We review the material that was submitted as the complaint so that we have an idea of what was -- what the complaint is and then we obtain records and if necessary, interviews and materials and compile a -- a file that is submitted for the appropriate corresponding specialty to review.

Q. And your job does include requesting documentation to further the investigation?

A. Yes.

Q. How is that documentation requested?

A. It can be requested by contacting someone and asking them to submit it or contacting -- filling out the proper forms requesting that a subpoena get issued that is then sent out and the

records are -- are received under subpoena.

Q. And are they -- are the subpoenas sent by a certified mail?

A. Normally, yes.

Q. And there was an investigation that led to this case, correct?

A. Yes, there was.

Q. Okay. Would you please look at Exhibit 82, it's in the largest binder.

MR. EYE: Did you say 82, Counsel?

MS. BRYSON: Yes. It's in the largest binder. It's in the largest binder.

MR. EYE: Got it.

BY MS. BRYSON:

Q. Do you recognize that document?

A. Yes, that's a subpoena.

Q. Is that a subpoena that you issued?

A. No, it's one I requested. It's issued by the executive director of the Kansas State Board of Healing Arts.

Q. Okay. What is the case number and the subpoena number associated with that subpoena?

A. Case number is 07-00158. Subpoena No. 11763.

Q. And what did you request in that

subpoena?

A. I requested copies of any and all records in Doctor Neuhaus' possession and -- and control or subject to her possession and control regardless of source pertaining to the attached list of 23 patients.

Q. And on page 3 of this exhibit, is that a redacted copy of the 23 names?

A. It appears to be, yes. There's 11 patients I -- and then the rest is redacted.

Q. Okay. What date was that subpoena issued?

A. It'd have been on the 3rd day of April 2009.

Q. And who was it sent to?

A. Ann K Neuhaus M.D..

Q. And was her address provided in the subpoena?

A. Yes, it was.

Q. How was it sent?

A. It was sent by certified mail.

Q. And was Doctor Neuhaus required to respond to the subpoena?

A. Yes.

Q. By what date?

A. April 22nd, 2009.

Q. And did you receive a response to this subpoena?

A. I -- yes.

Q. Was that on the last page of the exhibit?

A. The last page of the exhibit is the -- a copy of the priority mailing envelope that I received that was sent to the requested address from the -- Doctor Neuhaus' address.

Q. And the address in return, is that -- that's the same address as where the subpoena was sent, correct?

A. Yes, it is.

Q. What date was the response received?

A. It was received April the 22nd, 2009.

Q. I don't know if this helps, but Exhibits 1 through 11 are Doctor Neuhaus' unredacted copies. Just 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11. But I'm going to use the unredacted exhibit -- exhibit numbers if that's okay.

MR. EYE: I guess I'm not completely --

MR. HAYS: Sir, there's only one copy of 1 through 11. And Exhibits 1 through 11 and 12 through 22, those are the unredacted copies that we request be put under seal. There's only one

copy of those in this room, everything else that everyone else has is the redacted copies. And those start at 23 and continue down. So basically, if we can just establish that 1 and 12 are the same records and we're just using redacted copies and any of those in exhibits, also.

MS. BRYSON: Otherwise -- otherwise, I'd ask to go into closed session so I could link Exhibit 1 with Exhibit 23 as being Patient 1, and Exhibit 2 with Exhibit 24 as being the redacted and unredacted versions together.

MR. EYE: May I inquire, Your Honor?

PRESIDING OFFICER: Do I have 1 through 11 up here?

MR. HAYS: No, sir.

PRESIDING OFFICER: Okay.

MR. HAYS: And we -- and we can provide that to you.

PRESIDING OFFICER: No, no.

MR. HAYS: We just withhold -- withheld it at this point in time so we know where it is.

MR. EYE: Your Honor, I think it would be -- in order to really protect these records, I think that at this time the unredacted version should be provided to you and that way, we know

where they are and -- and that they're not floating around the courtroom in an unprotected state. So I would move that that would be done.

PRESIDING OFFICER: Okay.

MR. EYE: And then I will --

MR. HAYS: Do you want to take a look at it?

MR. EYE: -- I will accept the representation of counsel that, for example, Exhibit 1 corresponds to Exhibit 12?

MS. BRYSON: 20 -- 23.

MR. EYE: I'm sorry. I beg your pardon. It -- it corresponds with Exhibit 23. I will accept that representation from counsel. And with that, I -- I think we have essentially solved the -- the problem here, at least from my view.

PRESIDING OFFICER: Okay. So --

MR. HAYS: As long as we're all on the same page with these.

PRESIDING OFFICER: Yes. Okay.

MR. EYE: And I'm -- again, I'm accepting that -- that counsel is handing you the notebook with the unredacted records that relate to the 11 patients in this case.

PRESIDING OFFICER: Okay. And they --

they -- they are Exhibits 1 through 22 unredacted?

MR. HAYS: Yes, sir.

PRESIDING OFFICER: They are accepted under seal.

BY MS. BRYSON:

Q. Would you please look at Exhibit 23. Actually, it's in the small book.

In the small book.

A. (Witness complies.)

Q. Do you rec -- do you recognize exhibit -- Exhibit 23?

A. Yes.

Q. Would you please describe the cover page?

A. The cover page is a page that I fill out when I receive records that names the person I received it from and case number, what the records are, how many pages are in it, who it was received from, what date. It contains my initials and the date that I processed the records.

Q. And who is the respondent?

A. Ann K Neuhaus M.D.

Q. And the case number?

A. 07-00158.

Q. And is that the case that the subpoena was issued in?

A. Yes, it is.

Q. And who did you receive these records from?

A. I received them from Doctor Neuhaus' address.

Q. And who are the medical records of?

A. Patient No. 1.

Q. And how many records did you receive?

A. Six pages of medical records.

Q. When you create the cover page, is this the process you follow whenever you receive a response to a subpoena?

A. When I receive any records, yes.

Q. And these were -- these six pages are all the records that you received for Patient 1?

A. Yes.

Q. Do you do anything with the records once you receive them?

A. Once I receive the records, I create the cover page, I manually Bates stamp to number the pages, and then I submit them to the board office for the board's file.

Q. Okay. And other than -- other than the cover page and Bates stamping the records, did you do anything else to them?

A. No, I did not.

Q. Okay. Would you please go to Exhibit 24.

A. (Witness complies.)

Q. And do you recognize Exhibit 24?

A. Yes, it's a cover page.

Q. And would you please describe this exhibit?

A. It's a records cover page that I create once I receive the records. It has the respondent and the case number, the medical records, the pages, received from, received date and my initials and the date I processed it.

Q. And what was the case number?

A. 07-00158.

Q. And what did you receive?

A. Seven pages of medical records.

Q. For?

A. Patient No. 2.

Q. And who did you receive them from?

A. I received them from Doctor Neuhaus' address.

Q. And when did you receive them?

A. April the 22nd, 2009.

Q. And what did you do with these records after you received them?

A. I created a cover page. I Bates stamped numbered the pages and then submitted them to the board office for the board file.

Q. And these were all the records you received for Patient 2 from Doctor Neuhaus?

A. Yes, it is.

Q. Would you please look at Exhibit 25. Do you recognize Exhibit 25?

A. Yes, this is a records cover page created by me.

Q. And would you please describe it?

A. It has the respondent and the case number. It has medical records, the number of pages. It shows Patient No. 3 received from Doctor Neuhaus' address on April the 22nd, 2009.

Q. And how many pages were received?

A. 10 pages.

Q. And Patient 3 was on the subpoena that you issued in Exhibit 22 -- or that was sent in Exhibit 22?

A. On the cover page, yes.

Q. And were those 10 pages all the records that you received for Patient 3 from Doctor Neuhaus?

A. Yes.

Q. Other than the cover page and the Bates stamping, did you do anything else to the records?

A. No, I did not.

Q. Would you please go to Exhibit 26. Do you recognize this exhibit?

A. Yes. This is a records cover page created by me.

Q. And would you please describe it?

A. It contains the respondent, the case number. It indicates medical records received from Doctor Neuhaus' address, received on April 22nd, 2009. I initialed it and dated it.

Q. And how many -- or what was the case number you received this for?

A. 07-00158.

Q. And that was in response to the subpoena you issued -- or that you sent in Exhibit 22?

A. Correct.

Q. How many pages of medical records did you receive?

A. 10.

Q. And the medical records are for?

A. Patient No. 4.

Q. Other than Bates stamping and the cover page, did you do anything to these 10 pages?

A. No.

Q. And the 10 pages were -- were they all the records you received for Patient 4?

A. Yes, they were.

Q. Would you please go to Exhibit 27. Do you recognize Exhibit 27?

A. Yes. This is the records cover page created by me.

Q. Would you please describe it?

A. It has the respondent, has the case number, has the number of medical records, number of pages, received from Doctor Neuhaus' address, date received April 22nd, 2009, and my initials and the date I processed it.

Q. Is the case number on the -- in Exhibit 27 the same as the subpoena that was sent in Exhibit 82?

A. Yes, it is.

THE REPORTER: The part that was sent?

MS. BRYSON: In Exhibit 82.

THE REPORTER: Thank you.

BY MS. BRYSON:

Q. And how many medical records did you receive?

A. Eight pages.

Q. For?

A. Patient No. 5.

Q. And was Patient No. 5 one of the patients listed in Exhibit 82?

A. Yes, it was.

Q. Did you Bates stamp these records, also?

A. Yes, I did.

Q. Did you do anything else to the records?

A. Not other than submitting them to the board office for the file.

Q. And the eight pages were the complete records that you received are all the records that you received from --

A. Yes, they were.

Q. -- Doctor Neuhaus? Would you please go to Exhibit 28. Do you recognize that exhibit?

A. This is a record -- cover page created by me.

Q. Would you please describe it?

A. It contains the respondent, contains the case number, medical records of patient number, received from. I have Ann K Neuhaus M.D. on the record, but it's received from that address. There was no other indication. It shows the date received, my initials and the date I processed it.

Q. And who is the patient in this exhibit?

A. Patient No. 6.

Q. And was this patient listed in the subpoena that was sent in Exhibit 82?

A. Yes, it was.

Q. How many pages of medical records did you receive?

A. 20 pages.

Q. And were those all the medical records you received from Doctor Neuhaus for Patient 6?

A. Yes, they were.

Q. And did you Bates stamp these, also?

A. Yes, I did.

Q. Did you do anything else to these records?

A. Submit them for the file.

Q. Would you please go to Exhibit 29. Do you recognize Exhibit 29?

A. Yes. It's the record cover page created by me.

Q. Would you please describe it?

A. Names the respondent, the case number, medical records of patient number, received from, date received, my -- my initials and the date.

Q. And who is the respondent?

A. Ann K Neuhaus M.D.

Q. And the case number?

A. 07-00158.

Q. And who were the medical records for?

A. Patient No. 7.

Q. And is Patient No. 7 listed on the subpoena that was sent in Exhibit 82?

A. Yes.

Q. And did you Bates stamp these medical records?

A. I see no Bates stamping on this.

Q. But are these all the medical records you received from Doctor Neuhaus for Patient No. 7?

A. I believe so, yes.

Q. Would you please look at Exhibit 30. Do you recognize this exhibit?

A. Yes. It's a records cover page created by me.

Q. And would you please describe this exhibit?

A. It has the respondent Ann K. Neuhaus M.D., Case No. 07-00158, medical records five pages, Patient No. 8, received from Ann K Neuhaus M.D., date received April 22nd, 2009, my initials CFH, and date 04-22-09.

Q. And is Patient No. 8 listed on the subpoena that was set in Exhibit 82?

A. Yes.

Q. And were these pages Bates stamped?

A. Yes, they were.

Q. And were these five pages all the records you received from Doctor Neuhaus for Patient No. 8?

A. Yes.

Q. Would you please go to Exhibit 31. Do you recognize this exhibit?

A. Yes. This is the records cover page created by me.

Q. Would you please describe it?

A. It shows respondent Ann K. Neuhaus, M.D., Case No. 07-00158. It shows medical records 10 pages, Patient No. 9, received from Ann K Neuhaus M.D., date received April 22nd, 2009, my initial CFH, dated 04-22-09.

Q. And was Patient No. 9 one of the patients listed in the subpoena for -- in Exhibit 82?

A. Yes, it is.

Q. And did you Bates stamp these pages?

A. Yes, I did.

Q. And were these 10 pages all the records

that you received from Doctor Neuhaus --

A. Yes.

Q. -- in response to the subpoena?

A. Yes, they were.

Q. Would you please go to Exhibit 32. Do you recognize this exhibit?

A. Yes. This is a records cover page created by me.

Q. Would you please describe it?

A. It shows respondent Ann K. Neuhaus M.D., Case No. 07-00158, medical records 10 pages, Patient No. 10, received from Ann K. Neuhaus, M.D., dated received April 22nd, 2009, my initials CFH, date 04-22-09.

Q. And is Patient No. 10 a patient that was listed in the subpoena that was sent in Exhibit 82?

A. Yes.

Q. And are these records Bates stamped?

A. Yes, they are.

Q. And are these 10 pages all records that you received from Doctor Neuhaus in response to the subpoena?

A. Yes.

Q. Would you please go to Exhibit 33. Do

you recognize Exhibit 33?

A. Yes. It's a records cover page created by me.

Q. And would you please describe it?

A. It shows respondent Ann K Neuhaus, M.D., Case No. 07-00158, medical records five pages, Patient No. 11, received from Ann K Neuhaus M.D., date received April 22nd, 2009, my initials CFH, and the date processed 04-22-09.

Q. And is Patient 11 a patient that was listed in the subpoena that was sent in Exhibit 82?

A. Yes.

Q. And were these medical records Bates stamped?

A. Yes.

Q. And were these all the medical records you received from Doctor Neuhaus in response to the subpoena?

A. Yes.

MS. BRYSON: At this time, I'd like to move to admit Exhibits 1 through 12, 22 through 33 and Exhibit 82.

MR. EYE: May I voir dire the witness briefly.

VOIR DIRE EXAMINATION

BY MR. EYE:

Q. Mr. Hacker, would you please take a look at Exhibit 29. Are you there?

A. Yes.

Q. How many pages does it indicate that were produced by Doctor Neuhaus in terms of this particular Patient No. 7?

A. There are no -- there is no number indicating.

Q. Do you have a record elsewhere that might indicate the number of pages that were received by you?

A. Without looking at the original file, I can't say.

Q. And where does the original file reside?

A. At the Board of Healing off -- Arts office at -- here in Topeka.

Q. And is there a chain of custody that's -- that's generated to follow the -- that particular set of documents or that particular set of records?

A. Once I receive the records and process them, I send them to the Topeka office to the administrative assistant that files those and they

-- they go into the -- the main file for the boards.

Q. But as you sit here today, you can't testify that Exhibit 29 is complete, correct?

A. That's correct.

MR. EYE: Your Honor, with -- I -- I would object to the admission of 29. I don't believe we have an objection for the balance.

PRESIDING OFFICER: Objection to 29 is what?

MR. EYE: It's just because there is no testimony that this is a complete record from the respondent Doctor Neuhaus.

PRESIDING OFFICER: Any response?

MS. BRYSON: Just -- may have I just a moment? Your Honor, we would respectfully assert that these substantially meet the requirements for admission.

MR. EYE: I -- I want to make sure I -- I have a fix on exactly what' being offered here. The exhibits that are being offered, as I understand, are the patient records in the unredacted form that have been provided to Your Honor and the redacted version that we just went through with Mr. Hacker, is that correct?

MS. BRYSON: Correct.
MR. EYE: And your offer is limited to just those records at this time, correct?
MS. BRYSON: Just those records.
MR. EYE: All right. Well, with the -- with the one objection we made concerning Exhibit 29, we would not object to the admissions of the balance of these records, Your Honor.
PRESIDING OFFICER: Well, I thought we had admitted under seal 1 through 22. We have, correct?
MR. EYE: That is my understanding.
PRESIDING OFFICER: Then -- then your objection to 29 -- your -- you're objecting to 29 -- the re -- the redacted version of one of these that's already been admitted?
MR. EYE: My understanding is that -- that the exhibit that we're objecting to is No. 29. I think the exhibits that you have are 1 through 22.
PRESIDING OFFICER: But don't --
MR. EYE: I -- I may be be confused here in terms of how we're -- how we're designating these exhibits
MS. BRYSON: Exhibits 1 through 22 are

exact replicas of 23 -- 23 through 33, I think.

MR. EYE: Your Honor --

MS. BRYSON: 23 through.

MR. EYE: 22 -- I'm sorry.

MS. BRYSON: No. 1 through 22 are exact -- or 23 through 33 are exact duplicates of 1 through 22 except for 23 through 33 are redacted.

MR. EYE: I -- I'm not sure --

MS. BRYSON: And we already stipulated beforehand that all the records that Doctor Neuhaus submitted --

PRESIDING OFFICER: Ms. Bryson, let's ask the question this way. Exhibit 29 --

MS. BRYSON: Yes.

PRESIDING OFFICER: -- is duplicated somewhere in 1 through 22?

MS. BRYSON: It would be No. 7.

MR. EYE: Your Honor, when that record -- when that binder was given to you, it was on the presumption that these were complete records. And now we don't have the testimony to support that. And to the extent that that was a stipulation made on the basis of a mistake, then that stipulation ought to be now modified because we don't have testimony to establish that this was a complete

record. It may be a complete record, but it's the burden of proof that the board has to establish the completeness of these records.

MS. BRYSON: Then we would reserve the right to further produce documentation.

PRESIDING OFFICER: All right. Objection is sustained at this point as to 29.

DIRECT-EXAMINATION (continued)

BY MS. BRYSON:

Q. Okay. Would you please turn to Exhibit 81.

A. (Witness complies.)

Q. Do you recognize Exhibit 81?

A. Yes. This is a subpoena.

Q. Could you please describe it?

A. It's a subpoena in -- in Case No. 07-00322, Subpoena No. 11284 issued to George R. Tiller, M.D., Women's Health Care Services, 5101 East Kellogg, Wichita, Kansas 67218. It's for nonredacted copies of any and all records regardless of source which are in your possession, your control or subject to your possession and control pertaining to the 15 patients identified in the complaint information filed by --

THE REPORTER: I'm sorry. Speak up,

please. Pertaining to patient?

A. Pertaining to the 15 patients identified in the complaint information filed by Kansas Attorney General Phil Kline in Sedgwick County District Court Case No. 06-CR-2961.

BY MS. BRYSON:

Q. And why was a subpoena requested?

A. Because I was given the -- the information to investigate that case.

Q. What date was the subpoena issued?

A. It was issued on the 2nd day of October, 2008.

Q. And how was it sent?

A. It was sent by a certified mail on the 3rd of October 2008.

Q. And was Doctor Tiller required to respond to the subpoena?

A. Yes, he was.

Q. By what date?

A. By October 17th, 2008.

Q. Did you receive a response to this subpoena?

A. Based on my memory, yes, I did.

Q. Would you please look at Exhibit 34.

A. (Witness complies.)

Q. Do you recognize Exhibit 34?

A. Yes. This is a records cover page created by me.

Q. Would you please describe it?

A. It says, the respondent, Tiller, George R., M.D., Case No. 07-00322, medical records 85 patients -- or 85 pages. Patient No. 1 received from Randall J. Forbes, PA, attorney, received on December 15th, 2008. It has my initials CFH and the date I processed it would be 12-15 of '08.

Q. Do you know who Randall J. Forbes, PA attorney is?

A. He was an attorney for Doctor Tiller.

Q. And was Patient 1 one of the patients that was listed in Exhibit 82?

A. Yes.

Q. And were these 85 pages all the pages that you received from Doctor Tiller's attorney in response to the subpoena issued in Exhibit 81?

A. Yes.

Q. And what did you do with these documents once you received them?

A. I filled out the records cover page, I Bates stamped them and I submitted them to the Board of Healing Arts to be filed in the official

file.

Q. Did you do anything other than Bates stamping and creating a cover page?

A. No, I did not.

Q. Would you please look at Exhibit 35. Do you recognize Exhibit 35?

A. Yes. This is a records cover page created by me.

Q. Would you please describe Exhibit 35?

A. It shows, respondent Tiller, George R., M.D., Case No. 07-00322. It shows medical records 78 pages Patient No. 2 received from Randall J. Forbes attorney received on December 15th, 2008. It has my initials CFH, date processed 12-15 of '08.

Q. And were the 78 pages all received from Doctor Tiller's attorney in response to this -- in response -- in response to the subpoena issued in Exhibit 81?

A. Yes, it is.

Q. And is Patient 2 one of the patients that are listed in Exhibit 82 -- in the subpoena that was in Exhibit 82?

A. Yes.

Q. And did you do anything to these records

once you received them?

A. Created the records cover page, Bates stamped them and submitted them to the board office for the official filing.

Q. And you didn't do anything else to those records?

A. No, I did not.

Q. Would you please look at Exhibit 36. Do you recognize Exhibit 36?

A. Yes. It's a records cover page created by me.

Q. And would you please describe Exhibit 36?

A. It says Respondent Tiller, George R., M.D., Case No. 07-00322. It shows medical records 57 pages Patient No. 3 received from Randall J. Forbes attorney, date received December 15th, 2008. It has my initials CFH and the date I processed them, which would be 12-15 of '08.

Q. And did you do anything to these records once you received them?

A. Created the cover page, Bates stamped them and submitted them to the Board of Healing Arts for official filing.

Q. And are these 57 pages all the pages you received in response to the subpoena issued in

Exhibit 81?

A. Yes, they are.

Q. And is Patient No. 3 one of the patients listed in Exhibit 82?

A. Yes.

Q. Would you please go to Exhibit 37. Do you recognize Exhibit 37?

A. It's a records page covered by me -- created by me.

Q. Would you please describe Exhibit 37?

A. Shows respondent Tiller, George R., M.D., Case No. 07-00322. It shows medical records 71 pages, Patient No. 4, received from Randall J. Forbes attorney, date received December 15th, 2008, my initials CFH, date processed was 12-15 of '08.

Q. And once you received these records, what did you do with them?

A. I completed the cover page, Bates stamped the records and submitted them to the Board of Healing Arts.

Q. And are these 71 pages all the records you received from Doctor Tiller's attorney in response to the subpoena issued in Exhibit 81?

A. Yes, they are.

Q. And is Patient 4 one of the patients listed in Exhibit 82?

A. Yes.

Q. Would you please turn to Exhibit 38. Do you recognize Exhibit 38?

A. Yes. It's a records cover page created by me.

Q. Would you please describe Exhibit 38?

A. It shows respondent Tiller, George R., M.D., Case No. 07-00322. It shows medical records 57 pages, Patient No. 5, received from Randall J. Forbes attorney, date received December 15th, 2008, my initials CFH, date processed was 12-15-08.

Q. And what did you do with these records once you received them?

A. I created the cover page, I Bates stamped the records and submitted them to the Board of Healing Arts for official filing.

Q. And did you do anything else to them?

A. No, I did not.

Q. Are these 57 pages all the records you received from Doctor Tiller's attorney in response to the subpoena issued in Exhibit 81?

A. Yes.

Q. And is Patient No. 5 one of the patients named in Exhibit 82?

A. Yes.

Q. Would you please turn to Exhibit 39. Do you recognize Exhibit 39?

A. It's the records cover page created by me.

Q. Would you please describe Exhibit 39?

A. It shows Respondent Tiller, George R., M.D., Case No. 07-00322, medical records 53 pages, Patient No. 6, received from Randall J. Forbes attorney, date received December 15th, 2008, my initials CFH and the date 12-15 of '02 (sic).

Q. And what did you to with these records once you received them?

A. Created the cover page, Bates stamped them and submitted them to the Board of Healing Arts for filing.

Q. Did you do anything else with those records?

A. I did not.

Q. And are those 53 pages all the records you received from Doctor Tiller's attorney in response to the subpoena issued in Exhibit 81?

A. Yes, they are.

Q. And is Patient No. 6 one of the patients in Exhibit 82?

A. Yes.

Q. Would you please turn to Exhibit 40. Do you recognize Exhibit 40?

A. It's a records cover page created by me.

Q. Would you please describe Exhibit 40?

A. It shows Respondent Tiller, George R., M.D., Case No. 07-00322, medical records 68 pages, Patient No. 7, received from Randall J. Forbes attorney, date received December 15th, 2008, my initials CFH, date processed 12-15-08.

Q. And did you -- what did you do with those records once you received them?

A. Created the cover page and I Bates stamped the records and submitted them to the Board of Healing Arts office.

Q. Did you do anything else to those records?

A. I did not.

Q. Are those 68 pages all the records you received from Doctor Tiller's attorney in response to the subpoena sent in Exhibit 81?

A. Yes.

Q. Is Patient No. 7 one of the patients

listed in Exhibit 82?

A. Yes.

Q. Would you please turn to Exhibit 41. Do you recognize Exhibit 41?

A. Yes. It's the records cover page created by me.

Q. Would you please describe Exhibit 41?

A. It shows Respondent Tiller, George R., M.D., Case No. 07-00322. It shows medical records 48 pages, Patient No. 8, received from Randall J. Forbes attorney, date received December 15th, 2008, my initials CFH and the date I processed them 12-15-08.

Q. What did you do with those records once you received them?

A. Created the cover page, Bates stamped them and submitted them to the Board of Healing Arts office for filing.

Q. Did you do anything else to those records?

A. I did not.

Q. Are those 48 pages all the records you received from Doctor Tiller's attorney in response to the subpoena sent --

A. Yes.

Q. -- in Exhibit 81?

A. Sent.

Q. And is Patient 8 one of the patients named in Exhibit 82?

A. Yes.

Q. Would you please turn to Exhibit 42. Do you recognize Exhibit 42?

A. Yes. It's a records cover page created by me.

Q. Would you please describe Exhibit 42?

A. It shows Respondent Tiller, George R., M.D., Case No. 07-00322. It shows medical records 52 pages, Patient No. 9, Randall J. Forbes attorney, date received December 15th, 2008, my initials CFH, date processed 12-15-08.

Q. And what did you do with those records once you received them?

A. Created the cover page, Bates stamped them and submitted them to the Board of Healing off -- Arts office for filing.

Q. Did you do anything else to those records?

A. No.

Q. And are those 52 pages all the pages you received from Doctor Tiller's attorney in response

to Exhibit 81?

A. Yes.

Q. And is Patient 9 one of the patients listed in Exhibit 82?

A. Yes.

Q. Would you please turn to Exhibit 43. Do you recognize Exhibit 43?

A. It's a records cover page created by me.

Q. Would you please describe Exhibit 43?

A. It shows Respondent Tiller, George R., M.D., Case No. 07-00322. It show medical records 49 pages, Patient No. 10, received from Randall J. Forbes attorney, date received December 15th, 2008, my initials CFH, date processed 12-15-08.

Q. What did you do with those records once you received them?

A. Created the cover page, Bates stamped the records and submitted them to the Board of Healing Arts office.

Q. And did you do anything else to those records?

A. I did not.

Q. And are those 49 pages all the medical records that you received from Doctor Tiller's attorney in response to the subpoena in Exhibit

81?

A. Yes, they are.

Q. And is Patient 10 one of the patients named in Exhibit 82?

A. Yes.

Q. Would you please turn to Exhibit 44. Do you recognize Exhibit 44?

A. It's the records cover page created by me.

Q. Would you please describe Exhibit 44?

A. It shows Respondent Tiller, George R., M.D., Case No. 07-00322, medical records 46 patients -- pages -- pardon me -- Patient No. 11, received from Randall J. Forbes attorney, date received December 15th, 2008. It has my initials CFH and the date processed 12-15-08.

Q. And what did you do once you received those records?

A. I created the records cover page, Bates stamped the records and submitted them to the Board off -- of Healing Arts office for filing.

Q. Did you do anything else to those records?

A. I did not.

Q. And are those 46 pages all the records

you received for Patient 11 from Doctor Tiller's attorney in response to the subpoena in Exhibit 81?

A. Yes.

Q. And is Patient 11 one of the patients named in Exhibit 82?

A. Yes.

MS. BRYSON: At this time, I'd like to move to admit Exhibits 34 through 44 and Exhibit 81.

MR. EYE: May I voir dire briefly, Your Honor?

PRESIDING OFFICER: Yes.

VOIR DIRE EXAMINATION

BY MR. EYE:

Q. Mr. Hacker, let's just go to Exhibit 35, please. Do you have that in front of you?

A. Yes, I do.

Q. Would you please within the body of Exhibit 35 point out the page that indicates that this actually came from Randall Forbes attorney other than the page that you created?

A. That would not be in this particular file. However, we have one page that's submitted with -- with all the files showing where they came

from.

Q. And what is the -- what is that page?

A. I would -- I would have to look at the records to find it.

Q. Do you know -- do you have it here?

A. It should be in the records. It should be a -- a receipt mailing of where -- who came -- where it came from, or in some cases, it would be a cover letter.

Q. Do you know which it is in this case?

A. Not without looking at the records.

Q. I think your counsel has a -- has a -- a -- it appears to be a -- a FedEx receipt. I presume that that's some record that --

MR. EYE: Thank you. May I approach, Your Honor?

BY MR. EYE:

Q. I'm going to hand you what your counsel just gave me and ask if you recognize that document?

A. Yes. It's a FedEx US air bill showing the sender's name as Randy Forbes and the recipient's -- is my name.

Q. Now, when you received those documents that I presume were in the package that had that

receipt on it --

A. Right.

Q. -- correct --

A. Correct.

Q. -- did you ever speak with Mr. Forbes about these records?

A. Not to my knowledge.

Q. And so you don't have anything under oath indicating that these are complete records from Doctor Tiller's office, correct?

A. I have no proof, no.

Q. And my understanding is that these are the only records that you've ever looked at from Doctor Tiller's office, that is that were produced from -- pursuant to that subpoena and, apparently, in a package that carried that receipt that you have in your hand, is that correct?

A. On this particular case, yes.

Q. So you've never compared these records with the originals, correct?

A. Correct.

Q. So you can't testify whether this is a complete file or not from Doctor Tiller's office, correct?

A. Correct.

MR. EYE: Your Honor, we would object to the admission of these documents because there's no indication that one, these are the documents that -- or that the complete chart rather for each patient. There's never been a comparison with the originals. These were not produced in a records deposition under oath and therefore, there's really no way to determine whether these are the actual records that came from George Tiller's charts or not. So we would object on that basis.

MS. BRYSON: And we would respond that he -- that opposing counsel has misstated Mr. Hacker's testimony. Mr. Hacker has testified that these are the records he received from the attorney. He didn't say these are the complete records. In addition, these records were produced to counsel in -- they -- they were produced to counsel with all the other records that we -- the inquisition testimony from the trial. So he has had a chance to review them and he had a chance to depose Mr. Hacker, if he so desired.

MR. EYE: And we would have established that he did never -- he never compared these to the originals and he didn't get them under oath in a records deposition just like he's testified here

today. The fact that they were produced for our review doesn't remove the problem with establishing either their authenticity or that they've been handled properly through the chain of custody.

PRESIDING OFFICER: Objection noted for the record. 34 through 44 are admitted.

MS. BRYSON: I have -- I have no further questions.

MR. HAYS: Can I move on with my case?

PRESIDING OFFICER: I think he --

MR. EYE: I -- I believe I'm entitled to cross-examine this witness, Counsel.

MR. HAYS: Oh, I'm sorry.

MR. EYE: Thank you.

MR. HAYS: I apologize.

CROSS-EXAMINATION

BY MR. EYE:

Q. Mr. Hacker, you're familiar with the complaint in this matter, I presume?

A. I would have to review it, but, yes.

Q. Who made the complaint? Let me -- let me help you. Cheryl Sullenger, correct?

A. I would have to review it.

Q. Do you have that record in front of you?

A. I don't believe so.

Q. And your -- you haven't reviewed this record to determine who the complainant was in this matter?

A. I haven't, no. I do at the time it was received, however, that was --

Q. Well, does it sounds familiar to you that -- that Cheryl Sullenger was the complainant in this case?

A. That would be entirely possible, yes.

Q. And why would it be entirely possible?

A. It's because --

Q. Is it because she'd made a lot of other complaints regarding Doctor Neuhaus and Doctor Tiller?

A. We did receive complaints, yes.

Q. Now, how did you know which charts to request?

A. On the -- the --

Q. Through the subpoenas?

A. It was the ones that were -- were addressed by then Attorney General Phillip Kline.

Q. And were the charts that were requested, were they specified in Ms. Sullenger's complaint to you? To you, meaning to the board?

A. Once again, I'd have to look at the complaint to know for sure.

Q. Have you ever spoken to Ms. Sullenger about this complaint?

A. I believe -- I -- I -- I don't know, I would have to look at the record.

Q. Do you make records of individuals to whom you speak about these complaints?

A. Yes.

Q. Where is your investigation record?

A. It should be in the original file.

Q. Is it in any of the exhibits that are in front of you at the witness stand?

A. I don't believe so.

Q. And you can't testify today as to whether you have ever spoken with the complainant, is that my understanding?

A. I've spoken with the complainant.

Q. About this case?

A. I can't say for sure about this case.

Q. And you don't know what documents the complainant submitted with her complaint, is that correct?

A. That's correct. Not without reviewing the file.

Q. Would you characterize the response to the subpoena that you served on Doctor Neuhaus as prompt?

A. I would believe so. It was received within the -- the designated time.

Q. Did Doctor Neuhaus register any objection to producing those records?

A. Not that I recall.

Q. Now, as I understand your testimony, it's your -- part of your job responsibility is to assemble the record for expert review, is that correct?

A. For peer review within the board, yes.

Q. And what peers reviewed this that you compiled?

A. I would have to see which committee it went to and which -- what -- who -- who was on that committee. I -- offhand, I can't tell you.

Q. Did you have any interaction with that peer review, other than providing records?

A. Probably I attended the initial peer review to answer any questions that I could, but I -- I don't recall specifically on this case.

Q. Was it represented to the peers that reviewed this that the records you presented were

complete charts of each one of the patients involved?

MS. BRYSON: Objection, Your Honor. This is outside the -- outside the direct of scope. He testified that once he submit -- once he received the records, he sent it to the board for further processing and that was it.

MR. EYE: He testified that they were submitted for peer review and I just want to make sure that we know what was submitted and what his involvement with it.

PRESIDING OFFICER: Objection -- objection overruled. Go ahead.

A. There was not a discussion with the review committee on the number of records reviewed. They -- it was -- they were reviewing, I -- I suppose, what was submitted to them, which should have been the whole file.

BY MR. EYE:

Q. That's the question. Was it represented to them that these were complete charts?

A. I -- not by me, but then it wasn't -- it was not addressed by me or in the -- in the review portion that I was attending.

Q. Do you know whether the peer review

proceeded on the assumption that these were complete charts?

A. I -- I have no -- no way of knowing.

Q. And you don't know whether these are the -- the charts from Doctor Tiller, you don't know whether they're complete or not, do you?

A. I -- I can't say they are or not.

Q. Exhibit 81, Mr. Hacker. I believe that -- let me just -- sorry. Do you have 81 in front of you?

A. Yes.

Q. According to my notes from your direct examination, you mentioned that when it came to Exhibit 81, that it was your recollection that these had been -- that the -- that you were recalling from memory that -- that this was a response or -- to the subpoena, is that correct? What was it that you were -- that you said you testified from memory about Exhibit No. 81? Do you recall being asked about Exhibit 81?

A. The only thing I would have recalled was that it was a -- a case submitted to me. And based on the information that was submitted, this subpoena was requested.

Q. And it's my understanding that -- that

you have also not ever undertaken a review of any of the original records from Doctor Neuhaus, is that correct?

A. Not the originals, no.

Q. You requested 23 charts all together, is that correct?

A. From --

Q. 23 patient charts?

A. Not on ex -- not on Exhibit 81. I think that was on Doctor Neuhaus' subpoena.

Q. You asked for the records of 23 patients from Doctor Neuhaus, correct?

A. Correct.

Q. Did you ask for those same patients from Doctor Tiller?

A. Not under this subpoena.

Q. Okay. Did you ever ask for the same records from Doctor Tiller -- the same patient records for the same patients from Doctor Tiller that you asked for doc -- from Doctor Neuhaus?

A. Without being able to review the file, I can't -- I don't recall for sure.

Q. And it's your testimony that -- that whatever patient charts you requested came from information that you obtained related to the

criminal prosecution of Doctor Tiller in Sedgwick County District Court?

A. The -- on Doctor Tiller's subpoena?

Q. No.

A. It's just --

Q. When I asked you how you determined which charts to request, you said something about it related to the prosecution that was being pursued at that time by then Attorney General Kline, is that correct?

A. To the best of my knowledge, yes, based on the subpoena.

Q. So you didn't do any other independent investigation to determine whether other charts should be requested, correct?

A. Not in this case, no.

Q. How about in -- how about in any other cases involving the -- either Women's Health Care Services or Doctor Neuhaus?

A. Have I requested other records from either one of those?

Q. Related to this case?

A. I don't recall.

Q. Do you know whether the records that were produced under the subpoena that you issued to

Women's Health Care Services and to Doctor Neuhaus contained records that were also produced in the course of the criminal trial in -- in Sedgwick County that was where Doctor Tiller was a defendant?

MS. BRYSON: Objection, relevance.

PRESIDING OFFICER: How is this relevant?

MR. EYE: I'm trying to establish exactly what records -- how he decided what records to request.

PRESIDING OFFICER: Why don't you ask him that question.

BY MR. EYE:

Q. How did you decide which records to request?

A. Based on the information I was provided in the complaint.

Q. And who provided that?

A. I would have to look at the complaint to determine that. I do not recall that without a copy of the --

MR. EYE: May I approach, Your Honor?

PRESIDING OFFICER: Certainly.

BY MR. EYE:

Q. Mr. Hacker, I'm going to show you a

letter dated January 8, 2007 that purports to have your signature. Can you identify that document, sir?

A. It appears to be a -- a -- a letter that was sent to Cheryl Sullenger.

Q. And does that look like your signature, sir?

A. Yes, it does.

Q. Is that a -- a letter that you would have sent to Ms. Sullenger in the regular course of your duties related to the -- as -- as a board investigator?

MS. BRYSON: Objection, relevance.

MR. EYE: Again, I'm trying to establish the origin of these records, Your Honor. And --

PRESIDING OFFICER: Is it -- is that part of the exhibits?

MR. EYE: The -- I haven't offered this as an exhibit, Your Honor.

PRESIDING OFFICER: Is it in your packet?

MR. EYE: I put it --

MS. BRYSON: No, it is not.

MR. EYE: -- well, I got these records from the board, so I presume that they --

PRESIDING OFFICER: Objection overruled.

MR. EYE: -- also have it.

PRESIDING OFFICER: Objection overruled. Go ahead. Okay. Answer if you can.

A. Yes, it does appear like what I sent out.

BY MR. EYE:

Q. And you were requesting records in that letter, correct?

A. I was requesting information, yes.

Q. Did you get a response?

A. I don't recall without looking at the file.

MR. EYE: May I approach?

PRESIDING OFFICER: (Nods head.)

MS. BRYSON: Your Honor, if you -- would opposing counsel mind if we take a look at that first?

MR. EYE: I am not offering it, but you may certainly look at it.

MS. BRYSON: Thank you.

BY MR. EYE:

Q. Mr. Hacker, have you ever received medical records in any instance from Ms. Sullenger, that you recall?

A. I don't recall offhand. I -- it's possible that it was submitted with -- with the

complaint. I -- I don't -- but specifically, I can't identify.

MR. EYE: May I approach again, Your Honor?

PRESIDING OFFICER: (Nods head.)

BY MR. EYE:

Q. Mr. Hacker, I'm going to show you a document that's dated March 1, 2007. And this is a letter to Cheryl Sullenger signed by Shelly R. Wakeman. Do you know who Shelly R. Wakeman is?

A. She was disciplinary counsel during that time period.

Q. Okay. And does this -- is this letter part of the records that you've maintained in this case?

A. I'm -- I'm not -- I -- the files are maintained at the -- at the board office so --

Q. Do you maintain a separate investigation file for your own work?

A. I obtain -- I keep some materials until I complete the investigation and then at such time, I destroy those files.

Q. And have you destroyed any records related to this case?

A. I believe I have.

Q. What did you destroy related to this case?

A. Anything that I would have had had, because it was not part of the official file, it was only my investigative material that was submitted to the board.

Q. So is there a copy of what you've destroyed that we can access?

A. The original file.

Q. Now, in that letter that I've put in front of you signed by Ms. Wakeman, it indicates that it's an acknowledgment of a receipt of a letter from Ms. Sullenger that was dated February 26, 2007 that included accompanying documents. What documents accompanied that, if you know, since you were the investigator?

A. I -- I don't know. It -- it -- I -- I can't recall offhand --

MS. BRYSON: Objection, relevance.

A. -- the specific documents.

MR. EYE: This is part of the board's file. This is a records case. I'm trying to nail down precisely the corpus of the records that we're dealing with.

PRESIDING OFFICER: Objection overruled.

BY MR. EYE:

Q. So you don't know whether or not Ms. Sullenger submitted records with her complaint?

A. From what I personally recall, no. I would assume there is because it was in the letter by Ms. Wakeman.

Q. As part of your investigation in this matter, did you review all of the records that had been submitted?

A. Yes.

Q. From whatever source?

A. I believe so, yes.

Q. Did you identify records that had been submitted by Ms. Sullenger?

A. No.

Q. Would you then have an explanation as to why that letter indicates that there was documents submitted with her complaint?

A. Because Shelly Wakeman, disciplinary counsel, would have reviewed the complaint originally before she assigned it to an investigator. She would have responded to the complaint and to the complainant reference the complaint. That -- that's the process as it's done. Then the information would have been

submitted to an investigator to conduct the investigation and to gather the records and submit it.

Q. Is it the general course of the investigative process at the Board of Healing Arts that the investigator like you have access to whatever information's been submitted by the complainant?

A. Yes, it is.

Q. But you don't know whether that happened in this case, correct?

A. Whether I saw it?

Q. Yes.

A. I'm sure I did, but I just don't recall it.

Q. And you can't identify what it was?

A. I haven't seen it, so I don't -- I mean, if -- if I saw a copy of it, I could probably identify what I saw at the time. But I don't have the original file in front of me, so I have nothing to recall what the original complaint in this case was.

Q. Or the documents that accompanied it, if any?

A. Or the documents that accompanied this

particular case.

MR. EYE: May I approach?

PRESIDING OFFICER: (Nods head.)

BY MR. EYE:

Q. Mr. Hacker, it is the case that Cheryl Sullenger is a -- is a -- a well known person in the -- that is opposed to abortions, correct?

A. I believe so.

MS. BRYSON: Objection, relevance.

PRESIDING OFFICER: Sustained.

BY MR. EYE:

Q. Did you ever interview Ms. Sullenger in this matter?

MS. BRYSON: Objection, asked and answered already.

MR. EYE: I don't think I've asked about an interview.

MS. BRYSON: Yes, you have.

PRESIDING OFFICER: No, he has not.

BY MR. EYE:

Q. Did you ever interview miss --

MS. BRYSON: Objection, relevance.

MR. EYE: I'm trying to nail down the origin of the information that was used to prosecute this complaint.

PRESIDING OFFICER: Overruled. You can answer.

BY MR. EYE:

Q. Did you ever interview Ms. Sullenger regarding this case?

A. I believe I probably would have, but I don't recall.

Q. Did you keep a record of it?

A. It would have been in the original file.

Q. And you didn't produce the original file?

A. I don't produce the original file, it's in the board office.

Q. Did you provide the original file to your -- to counsel to produce?

A. I -- I don't have the original file, I'm not at -- I'm not responsible for maintaining it.

Q. Is it your routine to make a record of interviews that you conduct in an investigation?

A. A -- a report would have been done if I had conducted it, yes.

Q. And so if the original file is produced and if there are -- and if you conducted an interview there would, at least consistent with your standard of practice, be a record of it?

A. Should be, yes.

MR. EYE: That's all I have, Your Honor. Thank you.

PRESIDING OFFICER: Thank you. Any redirect?

MS. BRYSON: Yes, sir.

REDIRECT-EXAMINATION

BY MS. BRYSON:

Q. When did you get Exhibits 1 through 11? Those are the nonredacted copies for Patients 1 through 11. Where did you get your -- where did you get Exhibits 23 through 34?

MR. EYE: And are we 1 through 11 or 23 through 34?

MS. BRYSON: No, they're the same. 1 through 11 are the re -- nonredacted copies of 23 through 34.

MR. EYE: Well, it's a compound question. I think we ought to deal with them one at time or the -- at least the groups.

BY MS. BRYSON:

Q. Where did you get the records from -- or Exhibits 23 through 34?

A. They were received from Doctor Neuhaus' address.

Q. And those were all the records that you

received from her that you submitted?

A. As far as I know, yes. That what I -- the part I'm -- what we've examined here, yes.

Q. Where did you get the medical records for Exhibits 35 through 46?

A. From Randall Forbes, attorney for Doctor Neuhaus -- I mean, for -- the attorney for Doctor Tiller. I'm sorry.

Q. Do you need to see records 1 through 11 in order to determine where those records came from?

A. Yes, I would.

MS. BRYSON: In that case, Your Honor, we would move to go into closed session since that's the nonredacted copy.

PRESIDING OFFICER: Well, does -- is he going to identify people by name by looking at the documents?

MS. BRYSON: No.

MR. EYE: If the question is to -- it is -- if I understand it -- if the question is, where did those documents come from as far as the witness' knowledge, I don't think that requires a disclosure of any patient information -- or patient identification information.

A. 1 through 11 would have been the ones received from Doctor Neuhaus.

BY MS. BRYSON:

Q. In response to the subpoena in Exhibit 82?

MR. EYE: Asked and answered.

PRESIDING OFFICER: Sustained.

BY MS. BRYSON:

Q. And what are Exhibits 12 through 22?

MR. EYE: I think this has been asked and answered as well, Your Honor.

PRESIDING OFFICER: I -- where are we going here, Ms. Bryson?

MS. BRYSON: He's wondering where all these records are coming from, so we're trying to establish where they came from.

PRESIDING OFFICER: No, that's not what I hear Mr. Eye saying. Mr. Eye is saying, how do you know you have the complete file? Am I following -- following you, sir?

MR. EYE: Yes, sir.

MS. BRYSON: Well, we're trying to establish that all of these records he submitted are records -- or the -- the records he received are all the re -- records that he submitted and

that we produced.

PRESIDING OFFICER: There is no dispute about that either, I don't believe.

MR. EYE: That's correct, Your Honor. We don't dispute that we got what they received. It's -- the question is completeness of what was submitted under the subpoena.

MS. BRYSON: These are the complete records that we received.

PRESIDING OFFICER: I don't believe you're allowed to testify. He's already said --

MS. BRYSON: Well, that's what I'm trying to ask him and establish.

PRESIDING OFFICER: He's already said that that's what he received, I thought. I don't believe there's any -- any issue here.

MS. BRYSON: Okay.

PRESIDING OFFICER: He didn't say he took anything out and threw it away.

MS. BRYSON: Okay. Then no further questions.

MR. EYE: The only --

MS. BRYSON: Do you need the --

MR. EYE: No, I don't.

RECROSS-EXAMINATION

BY MR. EYE:

Q. The only other question I would have, Mr. Hacker, is did you make a separate record of the documents that you destroyed? In other words, do we have an inventory of that which you -- you testified earlier about having destroyed?

A. No. Once I get them and review them and collate them, I -- I -- it's everything that I would see would be what would be in the official file. There is a copy of everything that I do.

Q. So the answer is, there is not a separate record to document what you destroyed from this investigation, correct?

A. No. What I destroyed is copies of what was submitted to the Board of Healing Arts office.

Q. My question is: Did you make a record of the documents that were destroyed related to this investigation?

A. Separate from the original file, no.

Q. So there is no way to determine conclusively what records were destroyed, correct?

MS. BRYSON: Objection, this is outside the scope of cross -- or redirect.

PRESIDING OFFICER: It is. And -- and you're mischaracterizing it. Mr. Hacker, do I

understand correctly anything you destroyed is nevertheless still in the board's file?

THE WITNESS: The original is in the board's file.

BY MR. EYE:

Q. Although, there's no way to verify that, correct?

A. There is no photograph of --

MS. BRYSON: Objection, it's outsides the scope --

A. -- what I had or --

THE REPORTER: Hold on. One at a time.

PRESIDING OFFICER: Sustained. Outside the scope.

MR. EYE: Thank you.

PRESIDING OFFICER: Thank you, Mr. Hacker. We're going to take a necessary break.

(THEREUPON, a recess was taken.)

PRESIDING OFFICER: Mr. Hays, your first -- next witness.

MR. HAYS: Yes, sir. I believe we need to release Mr. Hacker. He was under the impression that he was released.

MR. EYE: He is not. We reserve the right to recall him in the course of this.

PRESIDING OFFICER: Is he -- is he -- is he identified as one of your witnesses?

MR. EYE: We identified -- we adopted him because he was listed by the petitioner.

PRESIDING OFFICER: Okay. All right. But we can be released from -- for right now?

MR. EYE: Oh, as far as right now is concerned, yes.

PRESIDING OFFICER: Yes.

MR. HAYS: And, sir, prior to calling the next wishing -- witness, I'd like to move for you to accept Exhibit No. 45 pursuant to K.S.A. 77-524 for official notice. It is a transcript -- or portion of a transcript from the criminal trial of Doctor Tiller, specifically, the pages of where Doctor Ann Kristin Neuhaus testified under oath, and for you to take official under -- or official notice.

MR. EYE: Your Honor, this -- this is not the -- this document isn't subject to administrative notice. This is not the kind of document that is offered up. This is a separate transcript that has separate testimony, much of it's controverted. This is not -- this doesn't fall within the scope of what the administrative

or judicial notice requirements would specify.

MR. HAYS: Sir, it's a record of other proceedings before a state agency or before a state.

MR. EYE: It's a transcript. I think that the record that -- that is anticipated in the judicial notice and administrative notice is something that is not in the nature of a transcript that has identifiable issues and -- and colloquy. It -- it would be -- it -- this just doesn't match what is anticipated under judicial notice statute.

PRESIDING OFFICER: Mr. Hays, you're offering under 77-524(f)?

MR. HAYS: Yes, sir.

THE REPORTER: Will you say that number for me one more time?

PRESIDING OFFICER: 77-524(f) as in Frank.

THE REPORTER: Thank you.

PRESIDING OFFICER: Well, Mr. Eye, is this -- is this or is this not an official transcript -- a transcript from the proceeding held in the District Court of Sedgwick County.

MR. EYE: It is a copy that purports to

be, although again, the authenticity of it, I do not know.

MR. HAYS: Sir, if you look at --

PRESIDING OFFICER: At this time, Mr. Hays, you're -- the transcript is not certified.

MR. HAYS: Yes, sir. Then we'll withhold offering it until we get a certified copy.

PRESIDING OFFICER: At that point, we'll take it up again.

MR. HAYS: And sir, I'd move on to Exhibit No. 46, which does contain certified copies of an inquisition of Doctor Ann Kristin Neuhaus. And if you look at Bates page 004 Neuhaus 2124, there's a certification on there.

MR. EYE: Your Honor, we would object to this. First of all, again, this does not meet the expectations under 77-524 as a -- as a document that can be judicially or administratively noticed. More importantly though, we have an objection based upon foundation and relevance. There's been no showing as to the relevance of this particular transcript as to this particular case. So I -- we would object until relevancy and foundation can be established. And, you know, perhaps we don't have an objection at that point,

but admitting this entire transcript en masse in a proceeding that may or may not have much to do with what's in it, I think is improper. If it is being used to compare the testimony of witnesses from one proceeding to the next, that's one thing. But admitting as an ex -- as an exhibit, I believe is improper if that's the basis that -- that the exhibit's being offered.

PRESIDING OFFICER: How is Exhibit No. 46 relevant to the board's finding that Doctor Neuhaus practiced below the standard of care?

MR. HAYS: It's previous testimony about the patients that are involved in this case. She has provided pre -- previous testimony of these patients that have -- 1 through 11 are contained within this transcript.

MR. EYE: Well, then he can ask her about it. But, as having administrative notice an entire transcript, arguably only parts of which bear on the issues here, I think is improper use of administrative notice.

PRESIDING OFFICER: Does -- does Doctor Neuhaus in this transcript admit that she practiced below the standard of care?

MR. HAYS: No, sir. She explains how she

practiced and how she gave those mental health evaluations.

PRESIDING OFFICER: Okay. And does that testimony prove your -- prove the board's case?

MR. HAYS: It assists.

HEARING OFFICER: How?

MR. HAYS: By explaining the actual -- there's -- within her documentation, you can't tell how she actually did these mental health evaluations. She explains within this testimony how she interviewed each patient and how she went about doing it. It goes specifically to how she performed her mental health evaluations for these patients.

MR. EYE: Again, if he wishes to compare testimony from this proceeding with that which occurred in the inquisition, that's one way to use this transcript. It is not proper, however, just to admit the entire transcript.

PRESIDING OFFICER: I would have to agree with Mr -- Mr. Eye.

MR. HAYS: Yes, sir. And then we'll move on to Exhibit No. 47, which is a stipulation and agreement and offering of that also under -- as a previous record of other proceedings before the

state agency, and more specifically, the Board of Healing Arts.

MR. EYE: Your Honor, this is a stipulation and agreement and enforcement order that carries the signatures of Larry Buening and -- and Doctor Neuhaus and one of their litigation counsel. But this is not, you know -- there's been no showing of the relevance or foundation as to how this document relates to the matter that's before you.

PRESIDING OFFICER: Well, I think it will go to if -- if Doctor Neuhaus has been found to practice below the standard of care, it will be one of the factors to used in deciding what type of discipline should be imposed. It will be admitted under 77-524(f).

MR. HAYS: And we move to admit Exhibit 48 for the same reason.

MR. EYE: Your Honor, this deals with a completely different case. This doesn't have anything to do with the evaluations that she made for Women's Health Care Services. This is a case that -- the file stamp on this record shows it was filed on August 29, 2000. The charts out of this case were from 2003. This doesn't have anything

to do with her case. And this is in the nature of propensity evidence and we would object. There's been no notice under 6460, for example, that -- that this -- or 6455 rather, that this is going to be introduced. So I -- if it's -- if it's introduced for the purpose of establishing propensity, we object.

PRESIDING OFFICER: It's not being offered for propensity in my -- I -- I'm thinking you're going for -- for disciplinary --

MR. HAYS: Yes, sir.

PRESIDING OFFICER: -- action. If -- if a finding is made that she practiced below a standard of care, that's what --

MR. EYE: I'm sorry.

PRESIDING OFFICER: -- that's the only purpose it -- it can -- it could be used for so far as I'm concerned.

MR. EYE: We object on the grounds of relevancy and there's been no foundation to show how this document relates to this case. Moreover, if there is discipline imposed, this document is within the -- the board's files and they can take notice of it accordingly. But we object on the grounds of relevancy and foundation.

PRESIDING OFFICER: Objection noted for the record. 48 --

MR. HAYS: 48.

PRESIDING OFFICER: -- is admitted.

MR. HAYS: And 49 for the same purpose, sir, we move to admit.

MR. EYE: Same objection, Your Honor.

PRESIDING OFFICER: Well, I note your objection, but I'm going to admit it because it shows that the emergency order was terminated which goes in Doctor Neuhaus' favor.

MR. EYE: It's part of an irrelevant exhibit, however, Your Honor

PRESIDING OFFICER: Very good. Thank you. 49 is admitted.

MR. HAYS: Exhibit 50 for the same purpose, sir.

MR. EYE: Well, now we're back dealing with just more documents on a case that we -- that you've already evidently -- or on a different case again. Objection on the grounds of relevancy. There's no been -- been no foundation laid for this document.

PRESIDING OFFICER: Objection overruled and No. 50 is admitted for the purposes of

discipline.

MR. HAYS: And Exhibit No. 51, sir, for the same purpose.

MR. EYE: Object on the same grounds, Your Honor. This is just more irrelevant documentation.

PRESIDING OFFICER: Okay. Objection overruled and No. 51 is admitted.

MR. HAYS: And Exhibit 52, we would move pursuant to the stipulation that the respondent's counsel was going to make for the records and also -- or the documents and computer program for the PsychManager Lite program.

THE REPORTER: I'm sorry. The PsychManager?

MR. HAYS: PsychManager Lite. And if you'd like to look at the originals, we have the originals. And -- okay.

MR. EYE: I want to make sure, is it the three -- is it three pages?

MR. HAYS: It is a --

MR. EYE: I'm -- I'm looking at 53 -- Exhibit 50 -- I'm sorry -- Exhibit 52.

MR. HAYS: Exhibit 52.

MR. EYE: Is it a three-page document?

MR. HAYS: We -- we would offer the first page and remove the second two pages. Unless you want to enter how I obtained it.

MR. EYE: Well, it's your exhibit, Counsel.

MR. HAYS: Then we'll move to admit and also to stipulate to it.

MR. EYE: I -- Your Honor, I -- I don't know that there's any foundation to admit the second page of that exhibit. And it -- it standing alone really doesn't have relevance to this case. And as far as the -- the third page, it appears just a -- a transaction document related to obtaining these materials. So I'm -- I'm not sure we have any objection to that, although I don't know how much relevance it really has. So we would -- we would not object to the admission of this, although whether it is consistent with what Doctor Neuhaus knew and understood about this particular program is, of course, an outstanding issue.

PRESIDING OFFICER: Then 52 is admitted. And the second and third page, whatever the value, I don't see any value to this case at all, but --

MR. HAYS: Yes, sir. And Exhibit 53 is a

copy -- front page copy to the PsychManager Lite manual that is -- if I may approach. And this will be moved to be entered pursuant to their stipulation.

MR. EYE: Okay. So I -- I want to make sure, is Exhibit 53 you're offering the -- the document -- the cover page or is it this (indicating)?

MR. HAYS: That is what we're offering (indicating). The cover page is a representation within our notebook.

PRESIDING OFFICER: And for the record, what is "that"?

MR. HAYS: That is the PsychManager Lite User Manual.

MR. EYE: May I inquire as to what witness you intend to have sponsor this?

MR. HAYS: This is in direct response to your agreement not to enforce -- the subpoena's outstanding. This is the information that we were going to get -- or attempting to get that she has not responded to. We had a discussion about entering these in as a stipulation instead of her producing it, because that's an exact copy.

MR. EYE: I'm just asking what witness

you're going to have sponsor these? That's all I'm asking.

MR. HAYS: It's a stipulation for their entrance to be used.

MR. EYE: Are you going to have a witness explain these?

MR. HAYS: Yes.

MR. EYE: So you can -- very well. Would you mind telling us who?

MR. HAYS: Doctor Gold will explain her view of it.

MR. EYE: Well, if that's the basis, Doctor Gold's already testified that she's not familiar with DTREE, in her deposition.

MR. HAYS: It's been made known to her since we've obtained it.

MR. EYE: So her testimony's changed?

MR. HAYS: We made it known to her since your -- her deposition. We attempted to get it pursuant to the subpoena. The subpoena's date and time that you issued, sir, came and passed with no response. We requested a prehearing conference to that. Prior to the prehearing conference, we discussed it. And I was under the impression he was going to stipulate to the entrance of these

documents.

MR. EYE: I -- I haven't changed that stipulation. I'm just inquiring as to the origin of the testimony related to it. That's all I'm -- I haven't backed out on my stipulation.

PRESIDING OFFICER: Okay. No. 53 is admitted to the record by stipulation.

MR. EYE: Right. And I never objected to it.

PRESIDING OFFICER: Yeah, sure.

MR. EYE: So just for the record.

MR. HAYS: And we move to admit Exhibit No. 54, also the DTREE manual.

MR. EYE: Same -- okay. No objection pursuant to our stipulation.

PRESIDING OFFICER: 54 is admitted.

MR. HAYS: And No. 55, the computer program in all.

MR. EYE: Again, we stipulate to its admission.

PRESIDING OFFICER: Admitted.

MR. HAYS: And 56 is a -- the -- the key tools as required for the GAF and the DTREE to be used.

MR. EYE: I'm sorry, I didn't catch that.

MR. HAYS: It's required as a key.
MR. EYE: Oh.
MR. HAYS: And that's the key.
MR. EYE: Right. We don't object pursuant to stipulation, Your Honor.
PRESIDING OFFICER: Thank you.
MR. HAYS: And 56 is also the person -- professional and personal organizer -- organizer for PsychManager.
MR. EYE: Right. And again, pursuant to stipulation, we do not object.
PRESIDING OFFICER: Okay.
MR. HAYS: And 57 is the GAF report manual.
MR. EYE: No objection, Your Honor, we stipulate to the admission of that.
MR. HAYS: And, sir, we'd also move for you to take official notice of Exhibit 59, which is the Kansas statute K.S.A. 65-2801.
MR. EYE: I -- I don't know that that's really something you take notice of. It's a statute, therefore, I think it's the law of the land and we're all subject to it.
MR. HAYS: We're providing it for your convenience, sir. And -- and that's located --

the pertinent statutes we're providing for your convenience, and it's 59 through 65.

PRESIDING OFFICER: Well, I don't think it properly labeled exhibits because that would mean that Mr. Eye would have the -- a right to object them and Mr. Eye can't object to Kansas statutes any more than you can, so --

MR. HAYS: Yes, sir. I -- I'm sorry. I'm used to a -- a -- a different way to call them. And for right now, we can call the witness right now, sir, or it's -- it's up to your discretion.

PRESIDING OFFICER: Who's your next witness?

MR. HAYS: Doctor Gold.

PRESIDING OFFICER: Well, I'm assuming that Doctor Gold's going to be with us for quite some time, so it's 10 -- it's 8 till 12. Should we take a lunch, Mr. Eye?

MR. EYE: That sounds fine, Your Honor.

(THEREUPON, a recess was taken.)

MR. HAYS: Sir, the board calls Doctor Gold, Liza Gold. Doctor Gold if you could please state your name.

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LIZA GOLD, M.D.,

called as a witness on behalf of the petitioner, was sworn and testified as follows:

DIRECT-EXAMINATION

BY MR. HAYS:

Q. Doctor Gold, could you please state your full name for us?

A. Liza Hannah Gold. It's L-I-Z-A H-A-N-N-A-H G-O-L-D.

Q. And could you please state your credentials?

A. I am a medical doctor, M.D.

Q. And could you please state your professional address?

A. It's in Arlington, Virginia.

Q. Now, would you please explain for the hearing officer the medical training that you have received?

A. I went to medical school at New York University School of Medicine. I did a one-year internship and then I did a three-year psychiatric residency training at Boston University Department of Psychiatry.

Q. Can you please explain in general what is involved with getting a medical degree?

A. I'm sorry. A medical --

Q. What is involved with getting a medical degree? I'm sorry.

A. Well, you get a medical degree when you graduate from medical school. And medical school has generally two modules, so to speak. The first two years are primarily academic, lectures and course work. And the second two years are clinical training through a variety of rotations that you have to complete. And then at the end, you can do some elective clinical rotations in things that you have more interest in.

Q. Now you mentioned clinical rotations. Could you explain a little bit more about that?

A. Yes. There are certain required clinical rotations. I'm not sure whether they're all the same everywhere in the country, but I suspect they're relatively similar. There's a required rotation of -- of -- the two big ones are medicine generally, internal medicine and surgery generally. And then there are shorter rotations in obstetrics and gynecology, pediatrics and psych -- psychiatry.

Q. Can you explain about the general medicine portion of that?

A. Well, that's going to differ de -- you know, depending on where you do your training and what -- what hospitals your medical school is affiliated with. So it can be a general in -- typically, mostly inpatient I -- usually. But there -- it can -- although it's general medicine, you may be assigned to certain specialized types wards, for example, a -- a cancer ward or a cardiac unit or something like that. But the idea of it is to expose you to pretty much general medicine, the practice of general internal medicine.

Q. What about the general and surgery rotation?

A. Same -- same basic idea, although again, you may be detailed, so to speak, to departments or -- or specialized units depending on where you train and what -- what's available.

Q. What about that OB-GYN that you mentioned?

A. Yes. OB-GYN, same thing. Inpatient and again, depending on where -- well, not inpatient, I mean, most people have -- it's -- it's the labor and delivery part, although there may be some outpatient associated with it in terms of just

following up, pregnancies or various gynecological problems that women may have. Most of -- most of the early training that doctors get typically is inpatient training, so it would be reasons that people would be in the hospital.

Q. What was your experience with OB-GYN rotation?

A. I was assigned to a hospital in Queens, New York, I'm -- I can't remember the name of it. And I was on call every third night, so I'd spend about 12 to 16 hours -- 12 to 16 and then you'd do a whole like a 36 to 40 type hour shift. And that was tending to labor -- I was on the labor and delivery wards, we were delivering -- assisting, I mean. Obviously, as a medical student, you're not the person in charge, but women in labor, women getting C-sections.

Q. What's involved in the psychiatry rotation?

A. Well, and -- and again, those vary depending on what the -- what resources the medical school has access to. So I can't speak to every medical school in the country, obviously. But again, typically it's inpatient psychiatry where a medical student is assigned to a -- a ward

or to a doctor, a psychiatrist or a resident who works on a ward and follows a patient through admission, treatment, discharge. And that's what you're doing on all the other wards as well and trying to figure out what treatment and -- is appropriate and dealing with the kind of problems that come up.

Q. Now, I'd like to direct your attention to one of the notebooks, the larger of the two, and Exhibit 66.

A. (Witness complies.) Okay.

Q. Can you tell us what that is and whether you recognize it -- or can you tell us whether you recognize it?

A. Yes.

Q. And what is it?

A. That's a copy of my CV.

Q. And is that your most recent copy?

A. No, it's not.

Q. Can you explain to us what is the difference between your most current copy of your CV and that CV?

A. There was an error I corrected -- the most current one has a corrected error in it, which is for the American Academy of Psychiatry

and the Law. It said I was vice president elect for 2012 to 2013, and I'm actually vice president for 2011 to 2012 starting in October. And also, there's an award that I won that's not on here.

Q. Okay. If I can direct your attention to Exhibit 83. Is that a copy -- can you tell me what that is?

A. Yes. I -- I think this would -- yes, this is a copy of my CV. And let me see if I -- yes, this is a current copy.

Q. And if you'll please take a moment to review that document.

A. (Witness reading.) Okay.

Q. And who prepared that document?

A. I did.

Q. And is that an accurate reflection of your education, experience and training?

A. Yes, it is.

MR. HAYS: And we move to admit that CV.

MR. EYE: No objection.

PRESIDING OFFICER: Exhibit 83 admitted?

MR. HAYS: Yes, sir.

PRESIDING OFFICER: Yes.

BY MR. HAYS:

Q. Now, you mentioned that you have a

specialty in psychiatry and -- and board certified in psychiatry. Who is your certifying body?

A. The American Board of Psychiatry and Neurology.

Q. And what is involved with becoming certified in the American Board of psych -- psychiatry?

A. Well, you have -- you have to take a board exam and pass the board exam. To take the board exam, you have to be qualified by training, by having gone through a accredited psychiatric residency training program. So you can't just show up and take the board exam if you haven't had the training. And the -- the American Board of Psychiatry Neurology exam had two parts. The first part is a written part, the national standardized test, which you have to pass in order to be able to go on to the second part, which is an oral examination.

Q. Now, from your CV, it looks like that you're a member of a committee of that American Board of Psychiatry?

A. Yes, I am.

Q. And what committee is that?

A. It's the subcommittee on forensic

psychiatry. Forensic psychiatry is a board certified subspeciality of psychiatry and has a separate examination and I'm on the committee that writes the questions and organizes and puts the test together for national certification for forensic psychiatry.

Q. And what role do you perform?

A. I write the questions and help put the test together. As do the other people, I don't do it by myself.

Q. What current licenses to practice medicine do you have?

A. Virginia, District of Columbia, New York and New Jersey.

Q. Now it indicates from your CV that you had a break in time for your D.C. license?

A. Yes.

Q. Can you explain that?

A. Yes. When I stopped -- I practiced in D.C. up until 1997 and then I stopped practicing in D.C., in my entire practice, I was in Virginia at that time. And then I started practicing again in D.C., and had to renew my license. And so instead of doing the smart thing and just keeping it active, I let it go and had to renew it.

Q. What past licenses have you had?

A. Massachusetts and New Hampshire.

Q. And why don't you have those licenses anymore?

A. Because in 1991, I moved from the Boston area down to the Washington D.C. area and was no longer going to be practicing in Massachusetts and New Hampshire.

Q. Have you had any malpractice suits against you?

A. No.

Q. Have you had any discipline taken against any of your licenses?

A. No.

Q. Have you ever had any complaints against any of your licenses?

A. No.

Q. Now, it also indicates that you were certified under the National Board of Medical Examiners. Can you explain what the process is for that?

A. That's a three-part exam that I think is related more to demonstrating that you've acquired the adequate knowledge and medical school and internship to go on for further medical training.

I think that what -- that's what that's for. That exam is three parts. You take the first part after the second year of medical school, the second part after the fourth year of medical school and the third part towards the end or right after your internship. And --

Q. Now, you also stated that you had a psychiatry residency?

A. Yes.

Q. What's involved in that?

A. You have to do -- well, for most specialties, you have to do a year of internship. So you have to do a year of internship to go on to the residency. Internship is -- there are different kinds, medical, surgical. There's also rotational or transitional internship. But you have to complete a year of internship and then you go on to a specialty training. It's three years of specialty training in all areas of psychiatry or psychiatric practice.

Q. And what did yours involve?

A. Extensive inpatient and outpatient clinical practice, training, treating patients, diagnosing patients, outpatient follow-up. Mine also involved some training in electroshock

therapy, issues involving commitment, treating children, adolescents. They -- they are also required rotational -- required rotations within a residency. So, for a general psychiatry residency, you have to do or have exposure to most or all of the subspecialties. So, for example, there's a rotation child and adolescent psychiatry, there's a rotation in geriatric psychiatry. If your school has the -- or if your training program has access to forensic, there's a rotation in forensic. If there aren't rotations, there are also didactics or lectures, courses on those. And, so, you're also expected to do quite a bit of course work while you're a resident, as well.

Q. Now, within all of your formal medical school training, have you been trained on how to perform a mental health evaluation?

A. Yes.

Q. And what kind of training have you received?

A. In med -- in medical school?

Q. (Nods head.)

A. In medical school, it's relatively basic, obviously, and it gets more complex as you go on.

But you basically learn how to screen someone for mental health problems through a variety of screening tools, the clinical interview, use of rating scales or inventories, that type of thing.

Q. And what additional training have you had on mental health evaluations?

A. Well, after -- after that, I did three years -- three-and-a-half, because I did some of it during my internship as well, of almost exclusive training on doing mental health evaluations, diagnosing, admitting, treating, et cetera. So you go from the relatively basic training you get in medical school that all medical students have to have to highly specialized training.

Q. And what's some of that highly specialized training?

A. I'm sorry?

Q. What's some of that highly specialized training?

A. Working in treating patients exclusively on your own with supervision by other physicians initially and then more -- with less and less supervision. Teaching and training people who are coming up who don't have as much experience as you

have. Being responsible for primary patient care on psychiatric units. Inpatient and outpatient, admitting, discharging, basically managing all aspects of care of -- of patients whose primary problems are psychiatric. They may have other problems. It also includes consultation for patients whose primary problems may be medical, but may have a psychiatric problem that their doctor wants a specialist's opinion on.

Q. Now, after successfully completing your residency, where did you -- where did you practice?

A. My -- my first non-moonlighting position was in Malden Hospital in Malden, Massachusetts.

Q. And you explained moonlighting or what -- you stated moonlighting. What is moonlighting?

A. Well, during medical school and -- I'm sorry -- during residency, when you have a medical li -- you have a medical license at that point, but residents are often not paid a lot money. And so it's very common practice for a young doctor in training to take night jobs at other hospitals, for example, to admit patients who come in at night or on weekends to go in and do rounds and provide emergency care at hospitals or clinics or

whatever. And those are considered moonlighting jobs, they're not your --

Q. And what moonlighting jobs did you have?

A. I had two moonlighting jobs, both at psychiatric -- freestanding psychiatric hospitals. One was Charles River Hospital and the other was -- in Massachusetts, and the other was in Hampshire Hospital in New Hampshire.

Q. And you mentioned your first full-time job, I believe. What was your second full -- next full-time job?

A. Catholic Medical Center in Manchester, New Hampshire.

Q. And what was your duties with them?

A. I was the associate medical director of their inpatient unit.

Q. And what -- what did -- what did you do in that position?

A. I admitted and treated patients. I performed administrative duties. At any one time, I was responsible for between nine to 12 psychiatric inpatients, admission, evaluation, treatment, discharge. I also provided consultations, psychiatric consultations for the rest of the hospital and the emergency room and --

and did some outpatient work there, as well.

Q. And what was the next job that you had?

A. Well, after that, there was -- technically, that was my last salaried job. After that, even though I worked in a hospital, I was -- it was private practice. And at that point, I moved to the Washington D.C. area and that's when I went into private practice. I had -- I was an attending physician at the Psychiatric Institute of Washington where I admitted and treated psychiatric patients. And I had an outpatient office practice and that was originally in McLean, Virginia.

Q. And have you done any other duties while performing your private practice?

A. Well, I've had academic appointments and I do teaching, I write.

Q. Did you -- but more specifically, did you see other patients on a private practice basis or was that --

A. Yeah. I saw patients in the hospital private practice and in my office outpatient private practice.

Q. Have you had any other jobs like that, is that the sum total of your jobs of that type of

practice?

A. Yes. Everything else is -- is -- you know, is consultation, which is part of my private practice. So, I do forensic consultation, I provide competency to stand trial evaluations and criminal responsibility evaluations for the District of Columbia, Arlington County, Fairfax County, Alexandria County.

Q. Now, are those specialized consultations?

A. Yes, they are.

Q. And what's involved with them?

A. Well, you have to have forensic training, typically, to provide those kind of consultations, which means understanding what's involved in comp -- in -- for the law, for someone to be competent to stand trial or whether they meet the standards for criminal responsibility at the time of an offense.

Q. And you've also mentioned that you were appointed to several academic appointments?

A. Yes.

Q. And what academics appointments have you been appointed?

A. Well, the current one, the most recent one is I'm a clinical professor of psychiatry at

Georgetown University in Washington D.C.

Q. And what are your duties?

A. I teach residents, general psychiatry residents, and I also teach forensic psychiatry fellows, which is a -- an additional year of training after you have completed general psychiatry residency. So that's specialized training over and above generalized psychiatry.

Q. And what have you done in the past academic, teaching wise?

A. Well, I started as a -- I believe, a clinical instructor. Then I was an associate professor and eventually, became a clinical professor. But I've taught courses in gender issues in psychiatry, forensic psychiatry to the general residents and fellows. To the fellows -- for the fellows specifically, I supervised doing forensic evaluations or, you know, court-ordered -- or -- or not so much the court-ordered ones, but the ones that arise in civil litigation. I do disability evaluations, workers' comp evaluations as part of my private practice and I try to teach them how to do those to -- to the fellows.

Q. Any other academic appointments that you've had?

A. Well, during my residency, there were a number of academic appointments, but that was -- that was awhile back. I was chief resident on my last year at Boston University. I was a Ginsberg Fellow for the Group for the Advancement of Psychiatry.

THE REPORTER: I'm sorry. For the group?

A. Group for the Advancement of Psychiatry.

THE REPORTER: Thank you.

BY MR. HAYS:

Q. Now, you've also indicated on your CV that you have some professional organizations that you have participated in?

A. Yes.

Q. And what are those?

A. Well, the two that I'm most active with are the American Academy of Psychiatry and Law and the American Psychiatric Association.

Q. And what are your responsibilities with the first one?

A. I've done a number of -- of things with the American Academy of Psychiatry and Law. First of all, I'm a member. Second, most recently, I'm about to begin a year as vice president of the organization. I was program chair for their

annual meeting in 2006. I chaired the task force on preparing guidelines for the forensic evaluation of disability, which was published. I don't remember what year it was published, I'd have to look. It was published, I think, in 2008. And then I've been on a number of committees for that organization. I was president of the local chapter of the American Academy of Psychiatry and the Law for a few years, as well.

Q. And the other, what were your duties within the second one that you mentioned?

A. Oh, the American Psychiatric Association. I'm a Distinguished Fellow at the American Psychiatric Association since 2006. I've chaired one committee, I've been on a number of other committees. And I haven't held political office in that organization.

Q. And are there a couple or three others that --

A. Yes. The Washington Psychiatric Association is the local chapter of the American Psychiatric Association. The AMA -- I'm a member of the AMA, American Medical Association. And then the Association of Women Psychiatrists, which is also affiliated with the A -- with the American

Psychiatric Association.

Q. Now, it also indicates public service activities. What was involved with that?

A. Well -- well, one of them was after the Virginia Tech shootings, there was a -- a revamp of the laws regarding commitment of -- in Virginia. And there were committees organized to review various aspects and make suggestions about changes. And I was on one of those committees, so that was a public service activity. I chaired the 150th anniversary event -- academic event for Saint Elizabeths Hospital in Washington D.C. where I organized a day-long academic program for -- in honor of the hospital's 150th anniversary, and that was a public service activity.

Q. Now, I'd like to talk about your -- your professional writing affiliations that you've had.

A. Okay.

Q. There seems to be several pages. So could you start off with maybe, in your opinion, the -- the most important ones?

A. Well, the journal affiliations or the -- or the stuff that I've written myself?

Q. Well, let's go with the journal affiliations first.

A. Okay. Because that's -- I mean, the primary ones are the Journal of the American Academy of Psychiatry and Law. I've been the associate editor. I've been re-appointed associate editor, so I got to change my CV again. So now that goes to 2014. I'm on the editorial board of the Journal of Psychiatry and the Law, which confusingly is very similarly named, but is a different journal. And -- and I've been a peer reviewer for a number of -- of other journals that I don't sit on the board of.

Q. And -- and can you explain generally what a peer reviewer does?

A. Peer review journals are journals where when you submit an article for publication, they send it out for what -- a blind peer review. They're -- they send them to acknowledged experts in those particular areas. And you -- as the expert, you review the article and comment upon whether it seems to have merit, if there are problems with it, if there are problems with the statistics, with the research technique, with the writing, with the citations, anything that you find that is a problem with the article. And it's a blind review, so you don't know who wrote it.

It's a -- it's also the people who wrote it don't know who reviewed it, so there's no personal bias involved. And an article has to pass a peer review in order to get published. And there's usually anywhere between three and five peer reviewers in most publications. So that's what you do, you read the articles and you write opinions and --

Q. And looking at moving on to your publications and books, it looks like there's several of -- of those. Would you like to start with the first one and kind of explain what you did?

A. Okay. I was co-editor of the American Psychiatric Publishing Textbook of Forensic Psychiatry, which is now out in its second edition. I wrote a number of chapters for that, as well. That is the APA, American Psychiatric Association-endorsed textbook for forensic psychiatry, the study of forensics psychiatry. There's a study guide that go -- went along with that, which I also wrote. So that -- that's been a big project and it -- we just did the second edition last year or the year before. I co-wrote a book on mental health disability evaluations in

the workplace and that was published in 2009, and a book on the assessment of sexual harassment in employment litigation and that was published in 2004.

Q. Now, looking at the book chapters themselves, and it -- it goes on for a -- several pages.

A. Yes.

Q. So could you explain the significant ones of those?

A. Well -- well, you know, when you ask an author about what's significant of what they've written, they're all significant, right? So, but, a number of them are in the Textbook of Forensic Psychiatry. The first one, two, three, four, listed there are in the textbook. The general areas that I've written about -- and maybe that would be better -- is forensic psychiatry, the history of psychiatry, gender issues in psychiatry, post-traumatic stress disorder. Let's see. And those would be the book chapters. And sexual harassment.

Q. And do any of these chapters have to do with mental health evaluations or --

A. Well, the books, both the disability

evaluation book and the sexual harassment evaluation books, both are centered on the process of evaluation.

Q. And then the chapters within it would be?

A. Would be -- and since I wrote all of those, they would also be -- and those two books, I -- I wrote those, so they would all be relevant to evaluation.

Q. And it also looks like it goes on, which there's several more pages. Just generally explain what the topics of those pages cover --

A. Okay.

Q. -- the presentation?

A. Well, the art -- articles cover mostly the same types of issues. There are some outliers. I wrote a -- a -- a biographical article about one of the former presidents of the American Academy of Psychiatry and Law. There are also some articles on the reproductive psychiatry, the use of medication in pregnancy and postpartum disorders.

Q. Well, let's talk about that one.

A. Okay.

Q. What was it specifically to?

A. Let's see. There was one,

Psychopharmacological Treatment of Depression During Pregnancy, which was in the current Women's Health Reports in 2003. One on Postpartum Disorders and Their Pharmacological Treatment in Primary Care Clinics and Office Practice in 2002. An article on the Clinical and Forensic Aspects of Postpartum Depression in the Journal of American Academy of Psychiatry and Law in 2001. Use of Psychotropic Medication During Pregnancy, Risk Management Guidelines and Psychiatric Panels in 2000. Treatment of Depression During Pregnancy in the Journal of Women's Health 1999. And I think that's it.

Q. And can you give a layman's review of what those articles kind of address?

MR. EYE: Objection, vague.

PRESIDING OFFICER: Overruled. Go ahead and answer if you can.

A. Okay. The -- what the articles address is the treat-- primarily, the treatment options for women who have been diagnosed with either new onset or are preexisting depression during pregnancy and new onset disorders or preexisting disorders during the postpartum period. And the use of medication in pregnant and lactating women

is -- can sometimes be a -- a tricky business and -- and is something that people don't always understand how to approach. So I -- because that was a specialized interest of mine, I became educated, knowledgeable, developed an expertise. A consultation -- I was a consultation source for a variety of other psychiatrists, they would send -- if their patients -- patients got pregnant, they would send them to me for evaluation and treat -- and treatment suggestions, and often let them stay with me for treatment and then they would go back after they were --

BY MR. HAYS:

Q. And you say you did some things to become knowledgeable about that. What did you do?

A. I started reviewing the literature. I contacted the lead researchers in the country and spent some time informally with them, people at NIMH, people at Mass General, people at Emory were the -- at that time, sort of the lead researchers.

Q. And you said NIMH.

A. I'm sorry.

Q. What's that mean?

A. National Institute of Mental Health, which is in Washington.

Q. And how much time did you spend preparing yourself or becoming knowledgeable?

MR. EYE: About what?

MR. HAYS: About the expertise that she said that she had gained.

A. Between continuing medical education programs and informal, I would say at least 100 hours easily.

BY MR. HAYS:

Q. And does that generally cover your -- the general topics that are covered within several pages there at the end of your CV?

A. Well, at the very end are lectures and presentations. And -- and again, there are a couple of outliers, but primarily, yes, those are them.

Q. And could you please explain what your practice was in July of 2003 to two -- November of 2003?

A. Well, I had a private practice. I was no longer seeing inpatients at that time. I was treating patients 75 to 80 percent of the time at that point.

Q. And was that the same as for the two proceeding years -- the proceeding years from July

of 2003?

A. It was -- it was either the same or a little more.

Q. And in your practice, have you examined, evaluated or treated adolescent patients?

A. Yes, I have.

Q. Okay. Can you explain how you have?

A. Well, through referrals. If they were referred to me and it sounded like -- you know, I screen all my referrals. And if it sounded like they were issues that I felt I had the expertise to address, then I would evaluate them and treat them if they chose to be treated.

Q. And during that process of evaluating and treating, have you consultated or evaluated or treated teenage pay -- teenage patients?

A. Yes. Before I went to a primarily in -- outpatient practice through the years in the hospitals, if -- and let me just clarify, go back and clarify. If teenage patients were admitted, I would evaluate and treat them because they were admitted to the hospital and assigned to me for evaluation and treatment. So through my hospital work, I evaluated and treated many, many adolescents. In my own private practice, it was

fewer because child and adolescent psychiatry is a subspecialty area. And out in an office practice, people would often either -- would often refer or take their children or adolescents to a subspecialist like a child and adolescent psychiatrist.

Q. And through your process -- through your exposure and your processes and the adolescents that you saw, were any of them pregnant?

A. Yes.

Q. And could you explain the number?

A. I only -- in -- in my outpatient practice, there were only two. In the inpatient group, there may have been some and I simply don't recall. People turned up pregnant -- women turned up pregnant not infrequently and often they themselves didn't know it at the time they were admitted. And when they got -- when women of reproductive age are admitted to psychiatric hospitals, they are always given a pregnancy screening test -- or at least in the hospitals I worked, a pregnancy screening test and often it was a surprise to them that it came up positive.

Q. Now, have you performed what would be classified as primary care physician activities?

A. To the extent -- to a small extent.

Q. And can you describe -- describe the small extent?

A. Well, certainly on an in-patient unit, if someone needs medication or has a physical problem that's relatively straightforward that doesn't require ex -- you know, extensive expertise in internal medicine to address. So for example, someone who has a blood pressure problem who is on blood pressure medication, you would maintain and manage them in the hospital and you wouldn't necessarily get an internal medicine consult to look at something that they'd been on for a long time and their blood pressure's stable and you manage it. Someone who can't get in to see their primary care doctor who needs a renewal of a prescription for a medication that they've been taking for a long time and they're stable on, you might renew that until they got in to see their regular doctor. So to some degree, but only, you know, when necessary. That's not why people came to see me and that's not what I offer primarily as treatment for folks.

Q. As a medical doctor, are you trained in performing primary care physician functions?

A. Yes, as -- well, as a medical student, you get the certain basic amount of training. And as an intern, medical intern, you have to do your rotations, you get some more training. But, you know, that training is relatively limited and I would not -- I would not want to be seen for a problem by a primary care doctor who had that minimal amount of training in primary care. In a pinch, it might be okay until I could get to someone else, but --

Q. Now, in your experience in treating patients, have you ever treated pregnant patients who were not adolescents?

A. Yes.

Q. And can you quantify how many of those there would be?

A. Hundreds, easily hundreds.

Q. And in the treatment of all the patients that have been pregnant, has abortion come up?

A. The issue of abortion often arises.

Q. And why is that?

A. Well, not everybody who gets pregnant necessarily wants to be pregnant. And when my -- when patients would come in and talk to me about what they were struggling with, an unwanted

pregnancy, people would talk about adoption, people would talk about abortion, people would talk about having the baby. You know, they -- it comes up and people look at their options.

Q. Now, in performance of those -- of that treatment --

A. And -- and -- I'm sorry. And if people -- even in a wanted pregnancy, if people find out that there's something wrong with the fetus, the subject of abortion comes up. They have a -- a genetic problem where abortion is -- has been recommended because it's a nonviable fetus and they don't necessarily want to go through that, they want to give it a chance, et cetera. There's a lot -- I mean, even in wanted pregnancies, there can be reasons why the abortion issue arises.

Q. And with those patients, have you performed mental health evaluations on them?

A. Yes, but not -- yes, I have performed mental health evaluations.

Q. And what's -- what makes up a mental health evaluation?

A. A mental health evaluation consists of a clinical interview where you review a patient's presenting problems, duration, frequency,

intensity of current symptoms, their past history, if any, including treatment and response to treatment, family history, social history, occupational history. You know, and again, especially in adolescents, you would not look so much at occupational, but at academic history. Family history, medical history. You get a complete background and you do a mental status examination, which is a directed set of questions to determine psychiatric and cognitive functioning at that moment in time when you're actually seeing the patient. You may get -- you may refer for additional evaluation. For example, if it's a new onset disorder and someone with no previous history and you suspect there may be a medical problem, you may refer that person for a medical evaluation. You may refer for a -- a head CT or a -- a MRI. Lab tests are often, if not always, part of the initial evaluation. And medical records, if those are available.

Q. What about evaluating their behavioral and functional impact of their conditions?

A. Well, that's part of -- that's part of the conclusory part of the evaluation. And at the -- at the end of getting all that data, you come

to certain conclusions. And part of the data -- when I say present symptoms, intensity, frequency, duration, et cetera, symptoms and their behavioral impact go together, so that's --

Q. And when do you perform these mental health evaluations?

A. At -- when I see the patients.

Q. Do you perform it every time that you see the patient?

A. Well, no. You do -- you do a -- certainly, the first one or two times, depending on how complex the case is, it might even be a few more times than that, you do an extensive evaluation. After that, the evaluations are less extensive. For example, their family history's not going to change necessarily. You know, their childhood history is not going to change. Those are things that are pretty stable. There are things you re-evaluate as you go along. For example, if someone's using drugs or alcohol, you re-evaluate that each time you see them, how much are you still using, et cetera. So and it doesn't have to be quite as formal, because once you come to know somebody, if that person's mental status changes, often, you know, it's observable. Just

like the way once you come to know someone, you can tell a lot of stuff about them just by sitting and talking to them.

Q. Now, have you -- I believe you testified that you've had patients referred to you?

A. Yes.

Q. From another physician?

A. Yes. From -- I -- I've had consultations from primary care practice doctors, OB-GYN doctors and other psychiatrists regarding treatment of depression -- primarily, depression and anxiety to moods disorders and anxiety disorders in pregnant and postpartum women.

Q. And when you have those patients referred to you, do you do your own mental health evaluation?

A. Yes.

Q. Do you rely upon other physicians' mental health evaluations, if performed?

A. Well, their -- I rely upon their information to the extent that it informs -- it's more data that informs my own evaluation. But depending on what I get and -- and how well documented it is and whether it looks like it was a -- an in-depth evaluation, the weight I give it

varies.

Q. Now, let's move on. Do you personally know Doctor Neuhaus?

A. No.

Q. Do you personally know the late Doctor Tiller?

A. No.

Q. Now, were you asked to review patient records by the Board of Healing Arts?

A. Yes.

Q. And have you ever reviewed patient records for the Board of Healing Arts prior to this case, the Kansas Board of Healing Arts?

A. No.

Q. Have you ever testified at a hearing before?

A. Yes.

Q. And what kind of testimony or where was it -- the testimony at?

A. I've testified in Maryland, the District of Columbia and Virginia.

Q. And were any of those licensing cases?

A. No.

Q. Now, were the patient records that you reviewed for the Board of Healing Arts from one

physician or two?

A. My understanding was they were from two, and they were marked as Physician 1 and Physician 2.

Q. And at the time of your reviewal -- reviewing those records, did you know who the physicians were?

A. No, I did not.

Q. How did you come about to know the identity of the physicians?

A. Not too long after I received the records for review, I believe, I don't recall exactly when it was, but it was early on in -- in my involvement, I was in an airport, I don't even remember where I was traveling to, and there was a news bulletin about a doctor in Kansas who had been shot and killed and he was a doc -- associated with performing abortions, third-trimester abortions. And I -- there aren't that many people who do that and I figured it must have been him and -- at least one of the two physicians. And I called -- I don't even remember who I talked to -- I called someone at the Board of Healing Arts and asked if that was him and they confirmed that it was.

Q. Was it an attorney that you called?

A. It probably was Ms. Selzler-Lippert, because she was the first attorney I worked with on the case. Very distressing.

Q. Now, I -- I can imagine. In reviewing Doctor Tiller's records, how did you use his patient records in your review?

A. Well, Doctor Tiller's records contained more information that -- and I -- and I subsequently came to learn that Doctor Tiller was Physician 1 and -- or like -- actually was referred to as Licensee 1 and Licensee 2, so Doctor Tiller was Licensee 1 and Doctor Neuhaus was Licensee 2. But, Doctor Tiller's records contained more information than Doctor Neuhaus' records. And so it was helpful for me both in terms of understanding the case and in terms of understanding what actually happened, what -- what was actually provided to this patient. And it certainly filled -- his records certainly filled in a lot of gaps regarding the process of referral and treatment at the clinic that I did not -- was not able to glean from Doctor Neuhaus' records.

MR. EYE: Your Honor, I would like to at this time, I -- I sense that we're about to embark

on opinion testimony or we're getting close to asking for opinions. And I would like to object to this witness offering any opinion testimony based on the grounds that we stated in our papers, the motion and the reply brief that was submitted to Your Honor related to our motion to strike. I would like to have a standing objection in that regard throughout the course of Doctor Gold's testimony or if you would prefer, I would certainly make objections contemporaneously with her opinion testimony. But I would like to have a continuing objection and avoid the breakup in the -- in the testimony if that's acceptable to Your Honor.

PRESIDING OFFICER: That's acceptable. You will have an ongoing objection to any and all expert -- expert witness testimony given by this witness --

MR. EYE: Thank you.

PRESIDING OFFICER: -- preserved for the record.

MR. EYE: Thank you, Your Honor.

MR. HAYS: And, sir, are those objections also all over -- or I guess are you going to allow her to have opinion testimony?

PRESIDING OFFICER: I am. But Mr. -- Mr. Eye on behalf of Doctor Neuhaus --

MR. EYE: Yes.

PRESIDING OFFICER: -- has an ongoing objection to that. We all know this doesn't stop here, it goes to the Board of Healing Arts.

MR. HAYS: Yes, sir.

PRESIDING OFFICER: It may go on farther, we don't know.

MR. HAYS: Yes, sir.

PRESIDING OFFICER: Okay.

MR. HAYS: I just wanted to make it clear. Thank you, sir.

BY MR. HAYS:

Q. You also had other items made known to you by the board?

A. Items other than the medical records?

Q. Yes, ma'am.

A. Yes.

Q. And what were those items?

A. There were certain statutes that were provided for my review.

Q. So let's talk about those. What statutes were provided for you?

A. Well, I don't know the numbers of them

off the top of my head.

Q. Can you give the overall generalized --

A. There were -- the statutes related to document -- documentation. There were statutes that related to abortion and statutes related to third-trimester abortions. I'm not sure they were referred to as third-trimester, I think they were referred to as late-term.

Q. Now, did you prepare an expert report on this situation -- or in this case?

A. I prefer -- I prepared 11 expert reports, one for each case file.

Q. And did you document the items that were initially made known to you by the board --

A. Yes.

Q. -- within your patient -- or within your -- your expert reports?

A. Yes, I did.

Q. And how did you use those items in coming to your expert opinion?

A. I was asked to give an opinion on standard of care relative to documentation and evaluation and treatment. And in order to do that, you need to know what the legal framework for the standard of care is. Legal standard of

care is statutorily defined. The -- that's what is required by law. Medical standard of care often overlaps the legal standard of care, but it's not exactly the same thing. So just because something is written as a statute or a law doesn't mean that it's the standard of care medically, i.e. what the common and average practitioner does. So --

Q. Were you giving -- given a definition of the standard of care?

A. Yes, I was.

Q. And is that document in your expert reports?

A. Yes, it is.

Q. Is -- is how you used it documented in -- within your expert reports?

A. Yes.

Q. And you prepared written reports for Patients 1 through 11, is that correct?

A. That is correct.

Q. How many hours did you spend reviewing the records of Patients 1 through 11?

A. I -- I don't know exactly because I didn't bring my timesheets with me or review them. I imagine it was somewhere between 20 and 30

hours.

Q. Can you estimate how many hours you spent preparing your reports?

A. Oh, it would be about the same, 20 to 30.

Q. Could you please explain to the presiding officer what was your approach and mind-set when you set out reviewing these records?

MR. EYE: Objection, vague, especially as to mind-set.

PRESIDING OFFICER: Rephrase it.

BY MR. HAYS:

Q. Would you please explain to the presiding officer what your approach was in setting out to review the -- review these records or your methodology?

A. I read the records, I compared Licensee 1 or Doctor Tiller's records and Doctor Neuhaus' records. And I looked for what the process of evaluation for Doctor Neuhaus seemed to involve and the process of recording that evaluation.

Q. Did you approach it with an open mind-set without any preconceived notions as to what your determination would be?

MR. EYE: Objection, leading.

PRESIDING OFFICER: Overruled. Go ahead

and answer if you can.

A. Yes.

BY MR. HAYS:

Q. Did you review any literature or any other resources as a part of your review?

A. Yes.

Q. And what did you review?

A. The American Academy of Child and Adolescent Psychiatry Practice Parameters, which was published in 1997. They had an updated version, but it was updated only for anxiety disorders in 2007, but I read that, as well. And I consulted some of my books on treatment and -- diagnosis and treatment of disorders during pregnancy.

MR. EYE: I'm sorry. Could you -- and the last part of your answer, I didn't hear.

A. I'm sorry. I consulted some of my books on diagnosis and treatment of disorders during pregnancy and postpartum.

MR. EYE: Thank you.

BY MR. HAYS:

Q. And did you also utilize the DSM?

A. Oh, yes. I'm sorry. Yeah, that's --

Q. Well, let's talk about the practice

parameters, I believe is what you just called it. Can you explain what that resource is?

A. As I -- I think I said before, child and adolescent psychiatry is a subspecialty of psychiatry. There are differences in the evaluation of -- from -- of children and adolescents from adults. The child -- the American Academy of Child and Adolescent Psychiatry has published practice parameters or guidelines about what the best practices are in terms of how to conduct an evaluation of children and -- and adolescents.

Q. How did you use that practice parameters?

A. To inform my assessment of whether an adequate evaluation had taken place as demonstrated by Doctor Neuhaus' records.

Q. You also quoted this resource --

THE REPORTER: I'm sorry. Restate that.

BY MR. HAYS:

Q. Oh, I'm sorry. You also quoted this resource in your report?

A. Yes..

Q. And you also stated that you utilized the DSM. Can you explain what that is?

A. That's correct. Diagnostic and

Statistical Manual, the current edition, is -- and it is referred to as DSM. The current edition is the fourth edition with some text revision, so it's DSM-IV-TR is the shorthand way that people refer to it. And that is the resource published by the American Psychiatric Association that lists recognized psychiatric diagnoses. And it lists the diagnoses and it lists the criteria for the diagnoses. And also, a lot of data regarding, you know, the incidents and that kind of thing.

Q. How is that manual used?

A. Well, that manual is -- is supposed to be used to assist diagnosis of psychiatric disorders by clinicians who are skilled and experienced in the application of -- of the -- of the criteria to come to diagnostic conclusions.

Q. Is it used locally or how is it -- how many --

A. It -- it is a national and international resource that is used locally, nationally, in other countries. It's used by medical and nonmedical entities. It is basically the -- the current taxonomy of psychiatric disorders.

Q. Do you know what year it came out?

A. The DSM-IV-TR came out in 2000. The

original edition of DSM-IV was 1996. The third edition was in 1980. And there's going to be a fifth edition next year.

Q. Can you tell us what the difference is between the DSM-IV and the DSM-IV-TR is?

A. Yeah. The -- none of the diagnoses were changed between DSM-IV and IV-TR. Some of the text was revised, so TR stands for text revision. So the text was revised to update some of the scientific data that had changed between 1996 and 2000 or that had not been included in the 1996 edition.

Q. Can you explain how you utilized the DSM in the review -- in your review of these patient records?

A. Well, in order to make a diagnosis, people have to -- in order to qualify for a diagnosis, patients have to meet certain criteria. And the DSM provides those criteria. So you -- you can't be -- with some exceptions, you generally can't be -- a diagnosis can't be applied to an individual who doesn't meet all the criteria of the diagnosis. So you use the DSM to compare, basically, those criteria.

Q. And in using the DSM-IV-TR, do you have

to use clinical judgment?

A. Yes.

Q. And do you know whether the DSM-IV-TR states that?

A. Yes, it does. It -- it states very clearly in the beginning that it is not to be used either as a cookbook or as a diagnostic tool -- a die -- or as a diagnostic assessment just by asking a list of questions, that clinical judgment has to be applied.

MR. HAYS: And if I could have a moment. And if I may approach?

PRESIDING OFFICER: (Nods head.)

MR. HAYS: Can you hand me the DSM-IV? May I approach?

PRESIDING OFFICER: (Nods head.)

BY MR. HAYS:

Q. Can you tell me what that is?

A. That's a -- a copy of the current edition of the DSM-IV-TR.

Q. And that's the DSM-IV that you referred about in your testimony?

A. Yes.

Q. And is that the one that you -- that's a copy of the version that you utilized in your

review?

A. Yes.

Q. And you spoke about that clinical judgment. Do you know what page that occurs on?

A. 37.

Q. Okay. Is that Roman numeral 37?

A. Yes.

Q. Okay. Can you flip to that page?

A. Yes.

MR. HAYS: And if it would aid you, we have an Elmo and we can put it up, so when she testifies about it, we can use it at that point in time.

BY MR. HAYS:

Q. Is that a true and accurate representation of the document that you're explaining?

A. Yes.

MR. HAYS: And we'd like to move to admit a copy of that.

MR. EYE: Of?

MR. HAYS: The page.

MR. EYE: Of that page?

MR. HAYS: Correct. And we have copies of the pages, we're pulling right now.

MS. BRYSON: I'm not finding it.
MR. EYE: Counsel, was that on your exhibit list?
MR. HAYS: Yes, it was. The entire DSM-IV-TR was on our exhibit list.
THE REPORTER: Hold -- hold on.
MR. HAYS: I'm sorry.
THE REPORTER: Restate.
MR. HAYS: The entire DSM-IV-TR was on our exhibit list.
MR. EYE: No objection.
PRESIDING OFFICER: All right. Copy of page 37 -- Roman numeral page 37 of the DSM-IV?
MR. HAYS: Yes, sir. And we can fire up the Elmo if you'd like and then we put it up there and then replace it in the record with a copy of that page.
PRESIDING OFFICER: Whatever.
MR. EYE: Do you have the copies?
MR. HAYS: They're looking for the copies right now. Can you minimize everything -- Jessie, can you minimize everything on your computer screen.
MS. BRYSON: It is minimized.
MR. HAYS: Okay. Can you read that

document? It's a little --

THE WITNESS: Not at all.

MR. EYE: That makes two of us.

THE WITNESS: I see where it says, Use of Clinical Judgment, but I don't know that I can read --

MR. HAYS: Can you read that? Let's try to -- what about that?

THE WITNESS: That's a little better. I can probably read that.

BY MR. HAYS:

Q. Okay. Have you reviewed that page before?

A. Multiple times.

Q. And can you tell us what the meaning of that page is?

A. That it's -- it is a -- referred to as a cautionary -- part of the cautionary statement about things that the DSM is not supposed to be used for or should be used cautiously for. One of things that the writers or the framers of the DSM worried about was that by providing a taxonomy -- a taxonomy of psychiatric diagnoses that involved counting certain symptoms, that people without clinical experience and training in understanding

and interpreting symptoms would use the DSM as a cookbook. If you had this, this, this and this, then you had this disorder. And they put the caution in so that it's clear this developed classification of mental disorders developed through using clinical, educational and research settings that are meant to be employed by individuals with appropriate clinical training and experience in diagnosis. And the next sentence is, it is the key one, it is important that DSM-IV not be applied mechanically by untrained individuals. The diagnoses are guidelines to be informed by clinical judgment and not meant to be used in a cookbook fashion.

Q. All right. Thank you, ma'am.

MR. HAYS: And we're going to make copies of this page and place it in. And I believe it's going to be Exhibit 84 if I'm not mistaken.

BY MR. HAYS:

Q. Now, how does the DSM recommend that you conduct -- conduct a psychiatric evaluation?

A. The DSM recommends that you collect all of the information that I discussed previously. They do -- and I -- and I don't think they list it specifically, it's called the standard psychiatric

examination and the presentation of your conclusions or data are suggested to be presented in what's called a -- a five axes or the axial system, which basically, is five categories referred to as Axis I, Axis II, Axis III, Axis IV and Axis V.

Q. And what are those axis?

A. Axis I is for major mental disorders. It's where you -- where you would write down the major mental disorders, i.e. the - - the diagnoses you would find in the DSM. Axis II is for personality disorders or mental retardation codes. Axis III is medical problems, any active or pertinent relevant medical problems. Axis IV is for listing and -- and rating potentially of psychosocial stressors, that is environmental factors that might be relevant to the psychiatric presentation. And Axis V is a rating scale called the global assessment of functioning where it recommends that you assign a numerical score based on the data that's given.

Q. Can you explain that Axis V GAF a little bit?

A. Yeah. GAF is a scale from zero to 100 which is meant to be used to reflect impairment in

various aspects of psychological, occupational or social functioning due to psychiatric symptoms. It can also be used to describe severity of psych -- of psychiatric symptoms. It's an either/or, either severity of psychiatric symptoms or impairment in functioning. And it breaks down into 10 sort of subgroups with specifiers. So how -- how an individual is functioning, did -- they give examples in the DSM and the evaluator looks at the examples, relies on their clinical training and experience and determines what's the most appropriate rating score.

MR. HAYS: May I approach, Your Honor?

THE REPORTER: What's running over here?

MR. HAYS: Oh, it's the --

THE REPORTER: Thanks.

BY MR. HAYS:

Q. And what I'm handing to you is a copy of the DSM-IV. Can you tell us, is that GAF information -- or is the Axis V information about the GAF located in the DSM-IV?

A. Yes, it is?

Q. Can you tell us what page it's located on?

A. Page 34 and -- well, page 34.

Q. Is it -- what about 32?

A. Yeah. The explanation of how to use it begins on 32 and the rating scale itself is on page 34.

Q. Okay.

MR. HAYS: I'm going to provide you a copy, a working copy also to the presiding officer.

BY MR. HAYS:

Q. And is that material that you reviewed in -- for your review of these patient records?

A. Yes.

MR. HAYS: And I move to admit a copy of those pages, also.

MR. EYE: No objection.

PRESIDING OFFICER: Thank you. Admitted 84, also?

MS. BRYSON: Actually, my paralegal said we should be starting with 87.

MR. HAYS: Okay.

MR. EYE: So this is?

PRESIDING OFFICER: 88?

MR. HAYS: 88.

MR. EYE: 88.

THE REPORTER: That's still running.

Sorry.

BY MR. HAYS:

Q. And what's the significance of those pages?

A. Well, that basically is a short description of how the global assessment of functioning scale is supposed to be used and is also the actual scale, so it's a -- a sample of the actual scale.

Q. And what is the function of the GAF?

A. Well, it -- there's a -- a few different functions of it. It is a way, a shorthand way to communicate among treatment providers of a variety of information, including current level of functioning, prior level of functioning, changes in level of functioning, from previous to current and then on forward with treatment whether the treatment is effective. If treatment is effective, theoretically, the level of functioning should improve. So it's a -- it's a shorthand way of tracking levels of impairment and symptoms and what changes there are backwards or forwards.

Q. Is it designed to be used as a stand-alone access -- axis?

A. No.

Q. Why is that?

A. Because it doesn't convey -- of itself, a number does not convey specific information. And even the general statements, if you look in, you know, what's associated -- just pick a number -- No. 60, it says, moderate symptoms, and then it gives some general examples. But if you write down, 60 moderate symptoms on a patient's chart with nothing else, you really haven't communicated anything about that individual patient. What are those symptoms, how are they affecting functioning, et cetera. So as a stand-alone without any additional data, no.

Q. Now, did you also write a report for each patient, I believe you testified about?

A. Yes.

Q. And if I can direct your attention to the -- the large exhibit book that's in front of you. And starting at Exhibit No. 67.

A. (Witness complies.) Okay.

Q. Can you tell us what that is?

A. Yes. That is a redacted version of a chart that I made as I reviewed these cases to -- I made the chart for a variety of reasons.

Q. And could you look at Exhibits 67 through

78.

A. (Witness complies.) Yes.

Q. And could you explain what those are?

A. Those are the individual reports for each case log.

Q. Are they original reports?

A. Well -- I'm sorry. I think they're copies.

Q. Are they true and accurate representations of the documents that you created?

A. Yeah. It looks like I forgot to sign one of them, so --

Q. And --

A. But --

Q. Are those complete reports for Patient 1 through 11?

A. Yes.

Q. Do they contain the relevant events that are contained in the records for each patient?

A. Yes.

Q. Do they contain your opinions about whether Doctor Neuhaus met the standard of care in performing an adequate patient interview for each patient?

A. Yes.

Q. Do they cane -- contain your opinions about whether Doctor Neuhaus met the standard of care in performing an adequate review of the patient's history?

A. Yes.

Q. Do they contain your opinions whether Doctor Neuhaus met the standard of care in performing an adequate evaluation of the behavioral or functional impact of each patient's condition and symptoms?

A. Yes.

Q. Do they contain your opinions about whether Doctor Neuhaus met the standard of care in performing an adequate mental status examination?

A. Yes.

Q. For each patient, for Patient 1 through 11?

A. Yes.

Q. Do they contain your opinions about whether Doctor Neuhaus met the standard of care in meeting the minimum requirements for adequate patient -- for every documentation for patient -- Patients 1 through 11?

A. They contain my opinions regard -- regarding standard of care for documentation, I

didn't address it to minimum requirement of documentation.

Q. Okay. Do they contain your opinions at -- on whether Doctor Neuhaus was performing an evaluation that a type by a medical -- that is performed by a medical doctor who has specialized training in the field of psychiatry?

A. Well, they -- they're mental health evaluations so they contain my opinion regarding mental health evaluation, which is typically with -- performed by a medical doctor, a psychiatric evaluation.

Q. Do they contain your opinions as to whether these mental health evaluations performed by Doctor Neuhaus on Patient 1 through 11 required specialized training?

A. Yes.

Q. Do the reports contain your opinions on whether Doctor Neuhaus met the standard of care in performing a mental health evaluation which served as her basis of determining a diagnosis for each patient?

A. Yes.

Q. Where present -- a diagnosis where present?

A. Yes, where present.
Q. For Patient 1 through 11, correct?
A. Correct.
Q. During your review, did you create a doc -- document to aide you in determining what documentation was present in each of Doctor Neuhaus' patient records?
A. Yes.
Q. And that was the first document that you spoke about --
A. Yes.
Q. -- Exhibit --
A. 67.
Q. -- 67?
A. Yes.
Q. Did this document also contain what you could determine from the patient records as a diagnosis Doctor Neuhaus came up -- came to for each patient?
A. Yes.
Q. And --
MR. EYE: Counsel, are you looking at 67? Is that -- are you inquiring about Exhibit 67 at this point?
MR. HAYS: Yes, I am.

MR. EYE: Okay. Thank you.

MR. HAYS: And I would move to offer Exhibits 67 through 78.

MR. EYE: We object to all of them on the basis of the grounds that we advanced in our motion to strike this witness. And a separate objection to 67. I don't believe it was produced during discovery. So we would object to that. This is the first time I've seen Exhibit 67, this summary table. So, I would object to it for not being produced in discovery.

MR. HAYS: We can check. It was under my -- it was my understanding that it had been produced. However, I did not start the discovery process and I did not marsh -- I believe we put it in our last -- that discovery process before May is when I --

MR. EYE: Well, we object to it nevertheless.

PRESIDING OFFICER: If -- if it -- unless you can show me that it was provided as -- as required by the prehearing orders, it can't be admitted.

MS. BRYSON: 179.

MR. HAYS: We provided it -- we're going

to have to get the -- we can prove that, sir. We just may have to -- which page? What date? Can you tell me what date that was? It was contained within a Volume 3.

MR. EYE: Well, I -- I don't recall seeing it. If --

PRESIDING OFFICER: Well, the wit --

MR. EYE: -- if they can demonstrate that it's been provided, that's another matter.

PRESIDING OFFICER: That's -- that's correct. I mean, just because you can't recall -- I mean, I can understand why you can't recall.

MR. EYE: Exactly. Thank you.

PRESIDING OFFICER: But, if they can -- if they can establish that they provided it, it makes a rule -- the ruling.

MR. EYE: I agree. Thank you, Your Honor.

MR. HAYS: You're just talking about this one page, correct?

MR. EYE: No. I'm just talking about the chart that is Exhibit 67.

MR. HAYS: This chart.

MR. EYE: Or the table, I guess it is.

PRESIDING OFFICER: Okay.

MR. HAYS: And once we discover that, we can come back to it.

PRESIDING OFFICER: Yes. Mr. Hays, I -- stop for a short break.

(THEREUPON, a recess was taken.)

PRESIDING OFFICER: Ready? Mr. Eye, are you ready?

MR. EYE: Yes, I am.

PRESIDING OFFICER: Mr. Hays, are you ready?

MR. HAYS: Yes. Yes, sir.

PRESIDING OFFICER: All right. We're back on the record.

MR. HAYS: I believe Exhibit 87 was -- I think I maybe indicated it was not Roman numeral 32, but that was the page that we were looking at on the actual screen. And I'll put that right -- right there.

THE WITNESS: Okay.

MR. HAYS: That's the page that we were looking at was 32.

MR. EYE: I see.

MR. HAYS: I may have made a mistake in referring to the wrong Roman numeral number.

PRESIDING OFFICER: Okay.

MR. HAYS: Yes, sir. Okay.

BY MR. HAYS:

Q. After you submitted your reports to the Board of Healing Arts, did you review supplemental material that was sent to you by the board staff?

A. Yes, I did.

Q. And what did you review?

A. I reviewed the inqui -- Doctor Neuhaus' inquisition testimony from 2006, and Doctor Neuhaus' testimony in Doctor Tiller's trial in 2009.

Q. And did those items change your opinions in any way?

A. They strengthened my opinions, served to strengthen my opinions.

Q. Have you reviewed the respondent's expert's reports?

A. Yeah. I'm sorry. Yes, I have also reviewed the respondent's expert's report, I've reviewed the respondent's expert's deposition, and I have reviewed the computer programs that generate the documents entitled DTREE Positive Report --

THE REPORTER: I'm sorry. Restate that. Entitled?

A. DTREE Positive Report Diagnosis and GAF.

BY MR. HAYS:

Q. And did Doctor Greiner's opinion letter change your opinion in any way?

A. No.

Q. What about his deposition?

A. No, it did not.

Q. And when were you available to review this -- these DTREE and GAF programs?

A. Those -- when was I able to review them? I reviewed them this past weekend.

Q. Have you performed mental health evaluations before?

THE REPORTER: Have you performed?

BY MR. HAYS:

Q. Mental health evaluations?

A. Yes.

Q. Are you familiar with mental status examinations?

A. Yes.

Q. Have you performed those in your practice?

A. Yes.

Q. Are you familiar with evaluations of behavioral functional impact of a patient's

condition and symptoms?

A. Yes.

THE REPORTER: Restate that.

MR. HAYS: Sorry.

THE REPORTER: Are you familiar?

BY MR. HAYS:

Q. Are you familiar with evaluations of behavioral or functional impact of a patient's conditions and symptoms?

Have you performed evaluations of a patient's behavioral or functional impact of the patient's condition -- condition and symptoms before?

A. Yes.

Q. Could you please explain what a mental health evaluation is?

MR. EYE: Objection, asked and answered.

PRESIDING OFFICER: Sustained.

BY MR. HAYS:

Q. Now, you've already testified about performing those. Can you -- can you testify about the -- the training that a -- a physician would need to be able to perform those?

MR. EYE: Objection, I believe that was also asked and answered.

MR. HAYS: Sir, I believe I asked about

her training and not specifically what a physician would need.

MR. EYE: I'll withdraw the objection.

PRESIDING OFFICER: Overruled, yes. Go ahead.

MR. HAYS: You can answer.

A. Well, in the sense that anybody can ask a series of questions, anybody could ask the series of questions if they're listed on a chart. How you -- the quality of the data you collect and how you interrupt it requires clinical training and expertise. And typically, a mental health examination is typically done by someone who's had more training than just general medical education. There are different levels of more training. There's training for social workers, training for psychologists, training for psychiatric nurses and training for doctors.

BY MR. HAYS:

Q. And how would a physician obtain this type of training?

A. Well, that's what psychiatric training is. You wouldn't necessarily have to be board -- a board certified psychiatrist in order to have specialized expertise, but you certainly have to

have committed psychiatric structured training. It's not -- it's not something that can just be self-taught.

Q. Are you familiar with Doctor Neuhaus' medical training?

A. I have reviewed Doctor Neuhaus' CV and I have read the testimony regarding her training in -- that she provided in her inquisition testimony.

Q. And what did she describe her training to be in providing these mental health evaluations?

A. Doctor Neuhaus stated that she majored in psychology as an undergraduate and took a number of psychology courses in college. That she had always been interested in psychiatry. That she had considered becoming a psychiatrist. That she had read some of the major works in the field of psychiatry by Freud, Jung and other authors, and that she had read the DSM-IV twice, I believe it was twice.

Q. And in your reviewing of these patient records and other materials that you reviewed, have you come to an opinion as to what the level of training is as required to perform those mental health evaluations of Patients 1 through 11?

A. Yes.

Q. And what is that opinion?

A. My opinion is that these are psychiatric -- complicated psychiatric evaluations of children and adolescents and should have been referred to a child and adolescent mental health professional, whether a psychiatrist, psychologist, licensed social worker.

Q. And that's your expert opinion?

A. Yes.

Q. And do you have an expert opinion as to whether Doctor Neuhaus was qualified in performing these mental health evaluations for Patient 1 through 11?

MR. EYE: I'm -- I'm going to object to this because this was not one of her opinions that she offered up in her report.

PRESIDING OFFICER: Well, and I don't know, but -- well, I -- I think the -- the question isn't whether or not she was qualified, is it?

MR. HAYS: Sir, it goes to her specialized training of being a specialist that's been alleged in the petition.

MR. EYE: Nevertheless, in her report, she did not, I believe, offer a separate opinion

regarding the qualifications that Doctor Neuhaus rendered these evaluations.

PRESIDING OFFICER: May I ask the doctor a question?

MR. HAYS: Yes, sir.

PRESIDING OFFICER: Did you express an opinion whether Doctor Neuhaus was qualified to conduct these evaluations in your opinion?

THE WITNESS: No, I did not express an opinion.

PRESIDING OFFICER: Okay. Objection sustained then.

MR. EYE: Thank you.

BY MR. HAYS:

Q. Are you familiar with the standard of care of a specialist who is performing a mental health evaluation?

A. Yes.

Q. And how did you become aware of that standard of care?

A. Through years of reviewing, supervising, teaching and practicing.

Q. And are you familiar with Kansas standard of care for a specialist?

A. That was provided to me as -- as the

legal def -- are you talking about the legal definition of --

Q. No. The medical definition of standard of care.

A. Oh, I'm sorry. Okay. Well, the medical definition of standard of care, that -- that question presupposes that there's a different standard of care in Kansas.

Q. Is there a difference?

A. And I am not aware of the different standard of care in Kansas for performing mental evaluations.

Q. Why is that?

A. Because the performance of a mental status examination and mental health evaluations are taught the same everywhere in the United States. There is no regional variation in obtaining a psychiatric history or doing a mental status examination that -- of which I am aware. These -- whenever -- when I travel, when I review records from other states, et cetera, the information is always a -- approximately the same information obtained in -- in generally the same way. Regional variations can -- in practice can occur. So for example, if you're in a very rural

area and you don't have access to a psychiatrist except someone who's maybe 400 miles away, then you might -- then it might not be standard of care to refer evaluations to a psychiatrist, even complex ones. But that's a matter of -- of local geography and availability of resources and not difference in the actual content of the mental health evaluation.

Q. What is the -- you speak about a nationwide standard of care. What is that standard of care for a mental health evaluation?

A. Well, it involves getting the history of the current and previous illness. Other history that's relevant, as I discussed before, social, personal, occupational, et cetera. Medical history, history of prior treatment, if any, and response to treatment. And -- and a mental status examination, either formally or informally. I'm sorry. And in the case of children and adolescents typically includes getting collateral information, meaning from a third party, since children and adolescents often are not the best informants of their own mental state. And reviewing records if there are any available and that is the general standard.

Q. Are there any work resources that aided in the formation of the basis of a standard of care for mental health evaluations?

A. Well, again, there are the guidelines for the evaluation of children and adolescents -- it's not guidelines -- practice parameters for children and adolescents. There are similar practice parameters for other -- for evaluation of adults. But, I didn't cite them because only one of these patients was 18, all the rest were younger, so I didn't cite the adults. But it's a very similar type of document with the exception that children and adolescents have developmental issues and dependency issues that need to be considered when you do their evaluations.

Q. Now, you also listed -- you just spoke about the practice parameters. Is the failure to follow those exactly, does that create a per se violation of the standard of care?

A. No, it does not.

Q. Why?

A. Because the -- the parameters are guidelines and they have to be informed by clinical judgement. You don't have to do everything that's in the guideline in order to

perform a -- a -- you know, an examination that meets the standard of care. There are certainly going to be cases where it's -- where not every single one of the parameters listed apply. But, generally speaking, what's in that document is -- is basically the -- the standard examination. And if it's a little bit less, if it's a little bit more, that's okay. But, if it's too far afield, especially on the less end, then you've moved pretty far afield and are likelier to run into standard of care issues.

Q. Now, you mentioned what was involved with meeting the standard of care for the types of examinations that you would have to do and the type of information that you have to do. Could you break that down a little bit more and explain why each one is important to get. And we can start with obtaining their symptoms if that --

MR. EYE: Objection, that mischaracterizes the testimony. This witness didn't -- did not talk about symptoms in doing the mental health evaluations. It was not one of the categories that was covered.

PRESIDING OFFICER: I believe that's correct, Mr. Hays.

BY MR. HAYS:

Q. Would you like to start with the -- the first item that you mentioned in mental health evaluations.

A. Well, the first item is to investigate the presenting problem, why the individual is there for evaluation, which includes their perception of the problem. If they're not able to communicate, then the caregiver's perception of the problem. And that does include symptoms, including and -- and evaluation of symptoms includes duration, intensity, frequency, and -- and precipitant if you can find it. In other words, when did this begin and was there an event that triggered these symptoms to occur?

Q. Now, why is it important to get that?

A. Well, if you're doing an evaluation for diagnostic or treatment purposes, you can't figure out what a diagnosis is without -- without knowing the symptoms.

Q. What's the next thing that you need?

A. Past history, did this person have a history of this kind of problem or not? If they did have a history of it, what kind of treatment they had and how they responded to treatment.

Q. And why is it important to give that information?

A. Well, you want to know if it's a new disorder. If it's a new disorder, you are likely to approach it in a different way than if it's a recurrence of a previous disorder, for a variety of reasons.

Q. What are some of those reasons?

A. Well, it -- you know, the first -- especially in children or teenagers, a new onset diagnosis, you want to be especially careful that it's not the present -- presentation of a medical problem that could be presenting as psychiatric symptoms. So, for example, hypothyroidism, having low thyroid can present as depression, lethargy, cognitive impairment and looks an awful lot like depression, so that's someone that you would really want to make sure that you did a lab eval -- a laboratory evaluation on and check their thyroid as part of your evaluation. Whereas someone who has a history of depression, you know, and has had a few episodes before and has had their check -- thyroid checked three times before and it's all been negative, it might not be critical to check their thyroid again if it's a

recurrence. So that's taking sort of a simple example. But, one is always more careful about the evaluation of a new onset illness, especially in a child or a teenager.

Q. What's another item that may be required?

A. CAT scan and MRI. An evaluation of -- of whether -- I mean, in some rare cases, evaluations of whether there's a seizure disorder.

Q. Would it depend on how the patient presents on how -- or instead of how -- but what the mental health evaluation would -- would require?

A. Can you restate the question.

Q. Do all mental health re -- as a general rule, do all mental health evaluations require the same thing?

A. Not necessarily. Some -- again, depending on the context, the purpose and the presentation of the patient.

Q. So was it a list that you provided, was it an all-inclusive list or is it a list that depends on the -- how the patient presents?

A. Well, that's why it's not -- that's why if you look at it, it says that these have to be informed by clinical judgment because the -- for

example, an attempt to get medical records in a patient that has never been to a doctor is going to be fruitless, so the fact that you don't review the medical records for that patient doesn't mean you haven't followed the practice parameters. You can't review something that doesn't exist. So clinical judgment has to be used whenever you look at what any individual evaluation means.

Q. Now, let's talk a little bit about Doctor Neuhaus' process. Are you aware of how her process was for Patients 1 through 11?

A. I believe I know.

Q. And how are you aware of that?

A. Primarily through testimony provided, inquisition -- in inquisition and -- and Doctor Tiller's trial testimony. Not -- not his, but people who testified, including Doctor Neuhaus.

Q. Are you aware of her purpose for the consultation services that she provided for Doctor Tiller's Patients 1 through 11?

A. They were for the purpose of evaluating whether there would be substantial and irreversible harm if the pregnancy was continued.

Q. And how do you know that?

A. That was her testimony.

Q. Now, within the review of -- of patient records, how was this ref -- referral documented?

A. It was not.

Q. Do you know how it was communicated?

A. I know that Doctor Neuhaus mentioned briefly that it was communicated by telephone. But the content of the referral, in other words, any specific information regarding any specific patient, no, I don't know how that was communicated.

Q. With your review of the records of Patients 1 through 11 from both physicians, do you know whether any referral documents were created?

A. There was a letter in Doctor Tiller's records that doctor -- from Doctor Neuhaus referring the patient to him for consultation -- for treatment of an unwanted pregnancy -- I'm -- I'm not sure that those were the exact words -- but a pregnancy that if the patient was forced to continue the pregnancy would lead to substantial and irreversible harm.

Q. Is there any referral communication from Doctor Tiller to Doctor Neuhaus to --

A. Not -- I'm sorry.

Q. -- to send these patients to her for her

consultation?

A. No.

Q. How would that normally be documented from your experience?

MR. EYE: Objection, there's no foundation for that question.

MR. HAYS: I'll rephrase, Your Honor.

BY MR. HAYS:

Q. Have you ever seen in your practice referrals for consultation services?

A. Yes.

Q. And how have you seen that referred, that type of documentation?

A. There's a wide range from formal referrals in hospitals that are filled out in triplicate on which the consultant writes their report and it becomes part of the medical record to out in, for example, private practice or community world where one physician picks up another physician -- picks up the phone and calls another physician and says, hey, could you see this person for me, I have the following question or issue.

Q. How that is usually doc -- or is that usually documented?

A. The initial phone call may not be documented, but typically, if you do that, you -- you write a report memorializing the evaluation and your conclusion, et cetera. And those letters, even very briefly, say, thank you for referring Ms. or Mr. So-and-so, or at your request, I evaluated Mr. So-and-so. So, it becomes clear that you are providing information that the referring doctor asked you for.

Q. Is there any evidence of that within the patient records that you reviewed?

A. No.

Q. Do you know what formed the basis of this referral from Doctor Neuhaus to Doctor Tiller?

A. I'm not sure. I don't understand the question.

Q. You testified about the referral being for the substantial and irreversible impairment of the pregnant individual. Do you know what formed the basis of Doctor Neuhaus' decision to refer to Doctor Tiller?

A. Doctor Neuhaus was conducting a evaluation and a -- a mental health evaluation, basically.

Q. How do you know that?

A. Well, from the documents that she generated in the -- in the cases where there is documentation, the documentation is all psychiatrically-oriented. Plus in her testimony, Doctor Neuhaus described doing what she called the directed physical examination. And when asked to explain that, really basically listed elements of a mental eval -- mental -- a psychiatric evaluation or -- or a mental evaluation.

Q. How did she describe how she performed her mental health evaluations?

A. Well, it wasn't entirely consistent through the records. Doctor Neuhaus described that she would spend anywhere from 15 minutes to as much as two days evaluating a patient. That she reviewed Doctor Tiller's medical records, that -- and any other medical records that patients might have brought with them. That she spoke alone with the patient and also with the patient's parent, again, in the cases -- or caregiver -- in the cases where the children were -- or -- or the patients were under 18.

Q. Did she say -- say whether she took any notes during these patient interviews?

A. She said at the beginning that she took

notes and then converted to this computer program to document her evaluation.

Q. Did she describe what computer program this was?

A. She did not. It's the DTREE and GAF, they're part of the same computer program. She -- in her testimony, she did not refer to the title of the program or the name of the program.

Q. Now, you spoke about her indicating that she reviewed documents from another physician. Did she indicate whether she included a copy of these documents in her patient records?

A. Yeah. She indicated that when she had reviewed them, she included them in her records.

Q. Now, did Doctor Neuhaus speak about any items that she performed that she did not document within her patient records for Patients 1 through 11, as a general rule?

A. Yes. She listed the direct physical examination which -- which she specified included elements of the mental status examination.

Q. Did she give any explanation why she didn't document these items?

A. Not -- not generally speaking. At one point, for one of the patients whose chart lacked

a GAF or DTREE report, when questioned about that, she stated that most of what she did could not be documented.

Q. Did she say why it couldn't be documented?

A. Because it was too complex.

Q. Did she describe how she documented her performance of a mental health evaluation within her patient records?

A. Yes, she did.

Q. And how did she do that?

A. She said that the DTREE and the GAF were the -- reports were the documentation of her mental health evaluation.

Q. And from your review of the patient records, did she come to diagnoses?

A. In every -- from the records in all except one case, there's clear evidence of a diagnosis.

Q. Did she testify about that patient that there was not a diagnosis?

A. Yes.

Q. And what did she testify to that patient?

A. In regard to?

Q. The diagnosis.

MR. EYE: Your Honor, I'm going to object to this witness restating testimony. I think that the better practice is to actually cite the testimony that is supposedly being relied on. I mean, we're asking -- or this asks -- the witness is being asked essentially to recall a colloquy in a transcript and I'm not sure that that's the most effective way to figure out exactly what was actually said by a particular witness, in this case, Doctor Neuhaus.

PRESIDING OFFICER: May not be the best way, but I'm not going to -- I can't tell Mr. Hays how to present his case.

MR. EYE: Well, I'm going to object to it because it lacks foundation.

PRESIDING OFFICER: Overruled.

BY MR. HAYS:

Q. Did you have an opportunity to -- you already said you had an opportunity to review the inquisition testimony, correct?

A. Correct.

Q. And is that where you're getting that information from?

A. This information, yes.

Q. And do you remember the exact page

numbers from that document?

A. No.

Q. Did you create a -- a document that would aid you in remembering those patient numbers?

A. Yes, I did.

Q. And what was that document?

A. Those were some handwritten -- handwritten -- computer typed notes about -- relevant to both Doctor Neuhaus' general process and specific process when I could identify the patients.

Q. And would utilize -- utilization of your notes aid you in testifying in this matter?

A. They would be an assist to my memory.

MR. HAYS: May, I approach sir?

PRESIDING OFFICER: (Nods head.)

THE WITNESS: Thank you.

BY MR. HAYS:

Q. And do you also have inquisition testimony in front of you?

A. Do I?

Q. Well, I direct your attention to exhibit -- well, what's marked as Exhibit 46 within your --

A. Okay. Okay.

Q. Is that the document that you reviewed?

A. Yes.

Q. And is that the document that you took notes of?

A. Yes.

Q. Now, do you remember -- within that statement, do you remember where it was located, the one we were talking about previously about documentation?

A. The one -- the one without the formal diagnosis in the chart?

Q. Correct.

A. Yes. That's --

Q. Do you --

A. -- that one's on page -- it begins on page 246.

Q. And what was her testimony?

A. Doctor Neuhaus' testimony was that she had diagnosed this patient with suicidal ideation and acute stress disorder.

Q. And did she explain why that diagnosis was not documented within her record?

MR. EYE: May I inquire, is this page 246 of the -- of the transcript or the 246 of the Bates stamp?

THE WITNESS: Oh, I'm sorry. 246 of day two of the inquisition testimony. The Bates numbered on my copy --

MR. EYE: Yes.

THE WITNESS: -- is -- I can't tell if it's 887 or 837.

MR. EYE: And you were looking at page 246, correct?

THE WITNESS: It's 887, yes. It's page 246 on Bates 837 -- 8 -- 887.

MR. EYE: And -- okay.

THE WITNESS: Sorry.

BY MR. HAYS:

Q. And did you have an opportunity to -- or what type of documents are generally present in the records for Patients 1 through 11 for Doctor Neuhaus?

A. Generally, but not always, there is the clinic intake or face sheet that lists basic information, name, address, date, date of birth, et cetera. There's a brief yes or no checklist medical history on that form which sometimes is filled out and sometimes is not. Insurance information is on that form. There is sometimes a typed or handwritten or both document referred to

as an MI document which was generated by Doctor Tiller's staff as a -- one of them is generated -- was generated, if I understood correctly, by -- by phone interview as a screening tool for patients calling the clinic and -- and seeking to obtain a procedure. Sorry.

Q. Let's just get a list and --

A. Oh, okay. I'm sorry.

Q. -- then we'll go specifically?

A. Okay. So there was the intake form. The MI forms, handwritten and/or typed. There were authorization to disclose records form and a disclosure -- record of disclosure form.

Q. And in your experience as a medical professional, have you documented patient records before?

A. Yes.

Q. Have you been trained in patient record documentation?

A. There's -- it's training by fire, but, yes.

Q. And do you know what the purpose of the documentation or what the person -- purpose of patient record documentation is?

A. Well, one is that there is a law -- legal

standard regulation that requires that you document patient contacts and et cetera. But, beyond that, from a medical perspective, the purpose of adequate documentation is to make sure that the next treater down the line or treaters who are providing care at the same time as you are understand what your process is, what your -- what you've diagnosed, why, the treatment you've provided and why, and the patient's response to treatment. That's -- in the interest of patient care.

Q. And what does Doctor Neuhaus' documentation tell you about her processes?

A. The documentation alone does not reveal -- the documentation reveals, where it's available, that Doctor Neuhaus used a computer program to come to conclusions. Often, if -- if the timing stamps at the top are correct, within two, three, four minutes. Now, I understand that Doctor Neuhaus explained that those were not the evaluations, those were her records of the evaluations, but --

Q. Do you know where she explained that at?

A. That's in her -- in her testimony. I don't know that I have that specific citation.

But as documentation, it doesn't show that a mental health evaluation of a specific patient occurred with any degree of depth.

Q. Well, let's talk about the patient intake form. Do you know whether this was her document?

A. I believe this was a document generated by Doctor Tiller's clinic.

Q. How do you know that?

A. Doctor Neuhaus testified that that was one of the forms that Doctor Tiller's clinic gave her to review.

Q. Did you know that prior to reviewing her inquisition testimony?

A. No, if I -- well, I suspected that it had been generated by Doctor Tiller's clinic, but I did not know it for a fact prior to reading the testimony.

Q. Now, you also said that there were pay -- patient's authorization to disclose protected health information in her record?

A. Yes.

Q. And what is that document for?

A. That's -- that document is basically required that the patient has to consent to allow you to discuss protected health information with

another professional or really any -- or agency.

Q. And there is a patient record of disclosures?

A. Correct.

Q. Do you know what that patient record's for?

A. Yeah. Under HIPAA, whenever you disclose patient information, you are supposed to keep a record of who you disclosed it to and when.

Q. From a review of her records for Patient 1 through 11, did any of those documents have any disclosures recorded on them?

A. No, they did not.

Q. Do you know whether there was any protected health information records disclosed out of Doctor Neuhaus' records to any other physician?

A. Well, in Doctor Tiller's records, some of the pay -- some of the DTREE reports and GAF reports and the letter doc -- and -- are in his records, so presumably, those were disclosed. And the letter of referral back to Doctor Tiller was in his records, so those would all have been disclosed.

MR. EYE: Could you repeat the last part of your answer, please?

A. The letter of referral back to Doctor Tiller, so all of those documents would have constituted a disclosure.

MR. EYE: Thank you.

BY MR. HAYS:

Q. Now, you already started speaking about the MI Statement. Can you explain from your review of the records what type of information was included on that?

A. On the MI Statement, often had a few short paragraphs or sentences regarding why the patient was seeking an abortion and then there would typically be a mnemonic -- M-N-E -- I don't know how to spell it -- mnemonic, M-N-E-M-O-N-I-C -- oh, gosh -- that's referred to as SIGECAPSS and that's S-I-G-E-C-A-P-S-S, which is a -- a mnemonic that's used primarily to teach -- in medicine, to teach medical students, but also to teach nonprofessionally trained people who may be working in the mental health field the basic symptoms to ask to screen for depression. So S-I-G, those are all -- stand for certain kinds of symptoms associated with depression. And that list is reviewed and the patient's response to those questions, are you feeling guilty, has there

been a change in your energy level, change in your appetite, those symptoms are filled out with the patient's responses. If there was a second MI Statement, I think what that meant was once the patient arrived at the clinic, a more extensive evaluation was done -- or not evaluation, but interview was done by Doctor Tiller's staff.

Q. How do you know it was Doctor Tiller's staff that filled that out?

A. Well, again, there was testimony to that effect. But -- I'm sorry.

Q. Did you know it prior to reviewing that testimony?

A. I suspected it, but I did not know it for a fact.

Q. Okay. Can you indicate in the testimony where it -- Doctor Neuhaus speaks about --

A. On page 88, Doctor Neuhaus testified that generally, what she would receive from Doctor Tiller's office was the face sheet or clinic sheet, the telephone interview and any medical records that the patient has forwarded or brought with them.

Q. Now, in your opinion, would you call the information on the MI Statement mental health

information?

MR. EYE: I -- I'm going to object. There was no opinion rendered by the witness in her report in response to this question. She didn't offer an opinion in her written report in this regard.

PRESIDING OFFICER: Well, is it -- is it -- is this going to the documentation allegation?

MR. HAYS: Yes, sir.

MR. EYE: I don't think that she offered a separate opinion on the question that's being posed, though.

MR. HAYS: Sir, he's trying to limit -- limit us to exactly what she said within that -- her expert opinion report. She -- that is the overall basis of her opinion and these are the specifics of her opinion. If she wrote the specifics of her opinion, then it would be thousands and thousands of pages long. And in evidence, by their opinion, their expert opinion, which they made a motion -- or we tried to limit them to those two pages --

PRESIDING OFFICER: Well, I -- I believe it still goes to the question of whether or not Doctor Neuhaus properly documented her treatment.

Or is that not where we're going here?

MR. HAYS: Yes, sir, that's exactly where we're going here.

MR. EYE: I think he asked for a -- and I -- I could be wrong, but the way I understood, his question was asking for an opinion. It was beyond what she had written in her -- an opinion separate from what she had provided in her report. And that was the basis for my objection.

PRESIDING OFFICER: It -- are you asking for something other than what's --

MR. HAYS: No, sir.

PRESIDING OFFICER: Okay. Reask your question and if you field an objection.

MR. EYE: Thank you.

BY MR. HAYS:

Q. Now, in your opinion, would you call that information on the MI Statement mental health information?

A. It -- it could be.

Q. How could it be?

A. Because it -- there is certainly an overlap between emotional distress symptoms and psychiatric symptoms. And that screening information came up positive for all of these

young women. And so what that says is that they need further psychiatric evaluation to determine whether they have indeed had a -- have a psychiatric disorder.

Q. Would that document alone be sufficient to document a mental health evaluation?

A. No. Par -- particularly --

Q. What additional information would you need in order to meet the standard of care of documentation for a mental health evaluation?

A. Well, you would need documentation that that information had been elaborated on and evaluated by a trained professional who had expertise and experience in psychiatric evaluation or mental health evaluations. My -- my understanding is that the people generating these reports were nonmental health professionals.

Q. And how did you become that -- how did you obtain that understanding?

A. Well, again, I suspected it by reading the content of it, but that was confirmed when I read testimony in Doctor Tiller's trial by at least one, possibly two of his office staff as to how the paperwork was generated.

Q. Now, let's talk about the DTREE. Are you

familiar with these DTREEs?

A. Only in the context of this case. Well, a DTREE is a diagnostic -- the DTREE is a diagnostic algorithm. Diagnostic -- I am familiar with a variety of diagnostic algorithms, they're not all exactly the same as the DTREE. I have only ever seen the DTREE specifically in this context. Diagnostic algorithms are used as teaching instruments.

Q. Do you know when the -- the diagnostic trees were first developed?

A. When were they first developed? They were -- they were first developed, I believe, in the mid to late 1980s as an outflow or a consequence of D --

(Phone interruption.)

A. -- the DSM -- I'm sorry. They -- were a consequence of the development of the DSM-III, which made these -- which put psychiatric diagnoses into classifications with criteria. The par -- the D -- this particular DTREE is based on the DSM-IV and was copyrighted the same year as the DSM-IV, I believe, in 1996. And it was written by the same people who wrote the DSM-IV.

Q. How do you know that?

A. Because it's the same names on the programs on the book.

Q. Have you not had an opportunity to review the DTREE programs?

A. Yes.

Q. And do you remember what the overall arching program name was?

A. PsychManager Lite, spelled L-I-T-E.

Q. And can you explain what that D -- or PsychManager Lite program was -- was after your review?

A. Well, there were various modules of this computer program. The only two I reviewed were DTREE and -- the DTREE and GAF modules.

Q. Can you explain the DTREE module?

A. The DTREE module is a diagnostic algorithm where it asks a series of screening questions to which the person running the program either puts yes or no with no other -- no specific information. And after a series of those questions, the -- the program drops you into a diagnostic category. And then it asks you a series of exclusionary questions, which you can't be in this category if you answer yes to some of these questions. So that would -- it would then

kick you out of the category if you did that. So if you answer the exclusionary questions no, this is not an exclusion, no, this is not an exclusion, then it drops you into more specific symptom questions to figure out which of the diagnoses in that category best apply.

Q. Now, in 2003, had you seen this program used before?

A. No.

Q. Had you seen any type of program like this used before?

A. No.

Q. What about prior to 2003?

A. There were large institutions which hire many nonmental health trained professionals, had a variety of computer programs where people could write yes or no and -- as screeners and the document would go via computer to the trained professional who could then amend, add, put in specific data, et cetera, et cetera. But, a program which simply spit out a diagnosis at the end of answering a series of yes or no questions, no, that I had not seen.

Q. Do you know whether -- or -- or from your review, do you know whether reports can be

produced from this DTREE program?

A. Yes, they can.

Q. How were they produced?

A. How --

Q. How within the program do you produce these records?

A. Well, you go through the process, you get final report on the computer and you press the print button.

Q. Are there any dates and times that are --

A. Yes. The computer populates the document with a date and a time. And presumably, the person filling out the form or going through the program adds the name.

Q. And do you know if this DTREE program comes with any cautions upon its use?

A. Yes, it does.

Q. And how does it -- does -- how does it convey those cautions?

A. Before you can get into the yes or no questions, you have to go through the cautionary statements. Those cautionary statements are -- are based -- like -- like all the language are in the DTREE, it's -- those cautionary statements are practically verbatim from the DSM. Again, as I

said, that program was created by the same people who wrote the book, so they just used the same language.

MR. HAYS: May I approach, sir?

PRESIDING OFFICER: (Nods head.)

MR. HAYS: What I'm handing the witness is a one-page document. I'll hand it also to the presiding officer, a working copy.

BY MR. HAYS:

Q. Can you tell me whether you recognize that?

A. Yes.

Q. And how do you recognize that?

A. That was the caution -- it says cautionary screen. That was the screen that came up as you entered the DTREE program.

Q. Is that a true and accurate representation of that cautionary screen?

A. Yes, except someone wrote DTREE on the top because the screen wasn't labeled DTREE because you were already in the DTREE program when the screen comes up, so --

Q. So all but that indication on the printout is a true and accurate representation?

A. Yes.

MR. HAYS: I move to admit that exhibit into evidence as the marked exhibit of -- 85, sir.

PRESIDING OFFICER: It's marked 86 on mine.

MR. HAYS: Oh.

PRESIDING OFFICER: At the bottom.

MR. EYE: It's 85 on mine.

MR. HAYS: Let me exchange your copy.

MR. EYE: Okay.

THE WITNESS: Mine says 85, also.

MR. HAYS: Okay. Sorry about that, sir.

MR. EYE: We don't object to this exhibit, Your Honor.

PRESIDING OFFICER: Thank you. Admitted.

BY MR. HAYS:

Q. Now, can you explain to us what that cautionary statement means?

A. It -- again, like the cautionary statement in the DSM, it advises you about the limitations of the information and the use of the program.

Q. And what limitations does it have?

A. First of all, it requires specialized ken -- clinical training based on a large body of knowledge and clinical skills. And it says, the

accuracy of output is strictly limited by the quality of the clinical observations that are used in addressing the DTREE questions. So again, it's not something that should be used as just a cookbook by an untrained -- by someone who doesn't have the clinical skills to use it.

Q. What would constitute as a specialized clinical skills?

A. Well, as the DSM states, the related document, you know, training and experience in mental health.

Q. Are there any other cautionary statements on the DTREE's use?

A. Yes. There is a statement that says that this -- the program can only aid the clinician in making a diagnosis. A diagnosis and all of its ramifications for treatment are the complete responsibility of the clinician who must consider all available data.

Q. And, what does that mean?

A. That you cannot use this computer program as a substitute for a mental health evaluation because this program does not allow you to consider all the relevant clinical data.

Q. Do you know how Doctor Neuhaus utilized

this program?

A. Not from the documentation. From her testimony.

Q. Which testimony?

A. The -- I'm sorry -- the inquisition testimony.

Q. And do you know where that's located at?

A. I'm sorry. It was from her testimony in Doctor Tiller's trial.

Q. And do you know what page that was?

A. Yes. On page -- on page 22.

Q. And if it would aid in your testimony, Exhibit No. 45, can you tell us what that is?

A. Well, it actually starts at the bottom of 21 where Doctor Neuhaus testified that the DTREE is a computerized algorithm which goes through a list of questions and sorts the material into diagnostic categories. When asked if this helped her in arriving at her diagnosis, she responded, well, it could. It's actually designed so that nonterminal degreed professionals could use it so you wouldn't have to be a clinical psychologist or a physician or psychiatrist to use it. Okay. Which is true, anybody can use a program anywhere, but it's not designed for use without the clinical

expertise to use it, otherwise, you don't get a valid result. And she continues that's not the way she used it, but it could be used in that way. I actually used it just to be able to record all the information quickly and readily and thoroughly. So Doctor Neuhaus' testimony was that she didn't use it to arrive at diagnoses, but used it to record all the information that she had gleaned in her evaluation.

Q. Is that the proper use of this program?

A. It -- you could use the program -- if the information is input correctly and you're coming to a valid diagnosis, you could use the printout as part of your documentation, but it would not constitute all of it. So that just printing out the report is not a -- it's not what the program was designed to be used for and it's -- it's not a valid use of the program to simply print out the report to document your evaluation.

Q. Does this program con -- account for the patient's being pregnant?

A. It could.

Q. How?

A. There is an exclusionary criterion after you've been dropped into a category about whether

there is a medical condition that could account for symptoms. I don't remember exactly how it's worded. If you consider pregnancy to be a medical condition that affects -- could potentially have physiological or psychological consequences, the correct answer to that exclusionary question would be yes. And then you would be dropped into a different pathway presumably on the tree.

THE REPORTER: I'm sorry on the?

A. On the tree, on the diagnostic tree.

BY MR. HAYS:

Q. Do you have an expert opinion as to how the -- this program is designed to be used to be performed, whether it meets the or exceeds the standard of care in performing a mental health evaluation?

MR. EYE: I'm going to object. This was an opinion not expressed by Doctor Gold in her written report. It seems to me to be a rather distinct opinion as opposed to the one that I objected to prior.

MR. HAYS: Sir, it goes to how she was perform -- performing her mental health evaluations that was alleged within the petition -- within the petition. Her report based her

opinion upon how she did that. This is how she did that mental health evaluation.

MR. EYE: But she just asked a standard of care question about use of DTREE and -- and I -- I -- I guess I don't know that that's part of the physician's report that was provided to us.

MR. HAYS: It does not specifically say DTREE in it. However, she did not have an opportunity to review it until this past weekend on Saturday and Sunday and did not have an opportunity to revise her actual expert opinion report.

MR. EYE: And so I didn't have a chance to depose her on it, either.

PRESIDING OFFICER: Can you read back the question to me?

(THEREUPON, the court reporter read the following testimony back.

"Q. Do you have an expert opinion as to how the -- how this program is designed to be used to be performed, whether it meets the or exceeds the standard of care in performing a mental health evaluation?")

PRESIDING OFFICER: Well, I -- I don't understand the question at all.

MR. HAYS: Well, I guess I'll rephrase the question.

PRESIDING OFFICER: Please do.

BY MR. HAYS:

Q. If you use this pro -- program the way it's designed, does it meet or exceed the standard of care for performing a mental health evaluation?

MR. EYE: Now I'm going to object because that is outside the scope of the expert's report that's provided.

PRESIDING OFFICER: It -- it is.

MR. HAYS: And our argument would be it -- it's within the scope because the documents that she reviewed to come to her opinion were products of this program, the GAF and the DTREE program. How this program's algo --

PRESIDING OFFICER: The doctor's findings are contained in her report. I don't see anywhere in this one I'm looking at where she mentions DTREE or anything else. If I'm wrong, tell me I'm wrong. Hold on.

MR. HAYS: Sir, if you --

PRESIDING OFFICER: Okay. Hold on. Mr. Eye, I'm looking at Exhibit No. 68, page 3, paragraph -- first paragraph midway through.

MR. EYE: Your Honor, may I take a look at the page you're -- you're looking at to make sure I get on the same.

PRESIDING OFFICER: (Indicating) 68.

MR. EYE: Correct. But again, that reference that -- that your Honor pointed out does not infer a standard of care opinion as the question elicited.

PRESIDING OFFICER: Objection overruled. Go ahead and answer if you can.

A. Could you ask it again?

BY MR. HAYS:

Q. If you use the program in the way it's designed, does it meet or exceed the standard of care for performing a mental health evaluation?

A. No.

Q. Why? Oh, excuse me. Why?

A. Well -- well, they were originally designed thinking that a skilled clinician could use the program and come to a valid diagnostic assessment. And the reason that it never became used widely is because it became clear very quickly that those kind of algorithms that only allowed you to have yes or no answers to questions, some of those questions were either/or

questions, and the answer would be yes or no, but it -- it didn't make sense. And so by itself, even if you were a skilled clinician and all you did was ask the patient as the questions are worded in the DTREE program -- so for example, have you had a recent increase or decrease in your appetite, and that's a yes or no question, it -- it leads to a result that can't be supported. And so by -- and so they never became widely used and are not widely used now as anything other than teaching devices or mnemonic devices.

MR. EYE: Your Honor, I'm going to move to strike that last answer because that was in effect a standard of care opinion that was not included in her -- in her report.

MR. HAYS: Sir, I believe it's a derivative of what's contained in her report, and once again to limit her to exactly what's in that report will, one, should not be allowed. And, two, in order for her to put every opinion possible and every derivative from the summarizations that she has placed in this reported would cause this report to be thousands of pages.

MR. EYE: Your Honor, it's not a matter

of every derivative opinion. It's the opinions that they are advancing that would be the basis for discipline, and the opinions that they -- that are in the report would be presumably a basis for discipline. But the -- whether using the DTREE does or doesn't meet the standard of care would to me could conceivably be the basis of a disciplinary measure but that's not an opinion that was rendered.

PRESIDING OFFICER: A computer-generated DTREE positive DX report, comma, unsupported by necessary and relevant information does not constitute a differential diagnosis.

MR. EYE: But that's not the same thing as stating that it's below the standard of care. I mean that's not a standard of care opinion.

PRESIDING OFFICER: It's under her explanation of opinion in her report.

MR. EYE: But it is separate from the opinion that she has provided here in terms of whether use of DTREE is -- I believe the way the question was phrased meets or exceeds the standard of care.

PRESIDING OFFICER: I disagree after reading her report she outlines DTREE positive

report unsupported by necessary and relevant information does not constitute a differential diagnosis. That's under her findings that's the standard of care was not met. Objection overruled.

BY MR. HAYS:

Q. Now let's move on to the GAF report.

THE WITNESS: Can I take a quick break? Is that okay? Like two minutes.

PRESIDING OFFICER: Sure.

(THEREUPON, a recess was taken.)

PRESIDING OFFICER: All right. Mr. Hays, continue.

MR. HAYS: Yes, sir.

BY MR. HAYS:

Q. Okay. I believe we stopped at the GAF report?

A. Correct.

Q. Could you explain how the GAF model -- or GAF module of the program works?

A. Well, the GAF module actually begins with its own cautionary statement and then asks again a series of questions, yes or no questions and based on response to those questions it puts you -- it puts -- play -- it assigns a functional range.

All the functional ranges are between -- it's 100 to 91, 90 to 81, zero -- zero to 10, 11 to 20. Anyway, they're 10 point increments between the ranges so there is 10 functional ranges, and it by default once it assigns a functional range the default rating assignment is in the middle of the range. So, 25, 35, 45, 55. It does have a place -- that part does have a place where the clinician can adjust the number based on the clinical data up or down within that range but that's basically the end of the program.

Q. Now in the GAF reports that you review for Patients 1 through 11, had any of those ranges been moved off the default middle range?

A. No.

Q. And you spoke about a cautionary statement, can you explain a little about what that cautionary statement is?

A. This is the DTREE one --

Q. Well, let me approach. Did it also present a cautionary screen?

A. Yes.

MR. HAYS: I'm handing defense counsel and presiding officer Exhibit No. 86.

BY MR. HAYS:

Q. Can you tell me what that is?

A. That is the cautionary screen from the GAF module.

Q. Is that the actual cautionary screen or is that a printout?

A. I'm sorry. It's a printout of the screen.

Q. Is that a true and accurate representation of that cautionary screen that you saw?

A. Yes.

Q. Are there any differences?

A. Well, this one has a little exhibit number at the bottom.

Q. But for that exhibit number?

A. Yes, that's, no.

MR. HAYS: Sir, I would move to offer that exhibited into evidence.

MR. EYE: No objection.

PRESIDING OFFICER: Thank you. Admitted.

BY MR. HAYS:

Q. Now could you explain what the implication of that cautionary statement is?

A. Okay. Well, again as within DSM but this one -- this GAF report is this computer module is

to be rated with respect only to psychological, social and occupational functioning. It doesn't contain any questions regarding impairment and function related to physical problems such as an inability to walk due to paralysis of a limb or environmental limitations such as poverty.

Q. Okay.

A. So if you answer yes to one of these questions about impairment symptoms it means that it is because of a social, occupational, or psychological functioning issue related to a psychiatric symptom. They are excluding physical and environmental problems.

Q. What's the significance of that?

A. Well, if you think about it you could have someone who has been in a severe motor vehicle accident who has got four broken limbs and can't get out of bed and has no energy and thinks that he or she would be better off dead, and you could fill out the GAF for that person and come out with a very low GAF score indicating highly impaired functioning due to a psychiatric reason. When the reality is it is highly impaired functioning due to a physical reason. You could also do the same thing for someone with a severe

environmental problem. They list poverty for this one. Do you ever think about being dead, you know, et cetera? Or do you feel depressed or sad some time or all of the time or most of the time. So the caution is to make sure that the person who's using the program understands that it's for psychiatric or psychological reasons and not to use it for people who have -- there are all kinds of reasons people can have impairment. This GAF score -- rating scale is to be used for psychiatric or mental health reasons.

Q. And does it give caution to how this or when this should be used?

A. Yes. It also says that it's limited and it's limited by the validity of the answers provided to the questions, and therefore should only be used after a comprehensive clinical evaluation has been conducted by an individual with clinical skills.

Q. And why is that?

A. Well, if you look at the yes or no questions they don't elicit any -- when -- when you get a -- when you use this computer program and you fill it out based on the yes or no questions you get all of the negative responses

but you don't get any of the positive responses. So, for example, it'll say patient demonstrates significant impairment in major areas of function which is a very broad general statement, but it doesn't give you any specific information about what those are. That's a conclusion, that's not data. Okay. So the clinical comprehensive clinical evaluation has to provide the data for you to get to that conclusion, specific data. So one of the criterion for example is suicidal thoughts or actions or behaviors. Well, there is an extremely wide spectrum between someone who says, you know, I'm so upset about this particular problem, I really wish I hadn't been born, and someone whose psychotically depressed and has an acute -- has an active plan to kill themselves within the next 10 minutes but both of those would be yes on the GAF. Clearly there is a difference in the functioning of those two people. Okay. The GAF doesn't discriminate that. It only allows you to write yes. So you have to be able to support with the clinical interview what the positive findings are.

Q. Now do you have an expert opinion as to how the use of this GAF module as designed meets

or exceeds the standard of care?

MR. EYE: I'm going to make the same objection I made before. That specific opinion I don't think was rendered in the report.

PRESIDING OFFICER: Objection noted for the record. Overruled. Go ahead and answer if you can.

A. Okay. Yeah, it does not.

BY MR. HAYS:

Q. Why?

A. Because from looking at that printed out report there is no way to understand what the specific impairments and behavioral functioning are. That's the first one. The second one is that if it's -- if there hasn't been a clinical evaluation to correlate the yes or no statements with specifics, then by definition of, you know, the caution what it's designed for the program doesn't give you a valid result.

Q. Now, let's move on to the diagnoses that you testified about being present in Doctor Neuhaus' patient records for Patients 1 through 11. Can you tell me what the diagnoses were that were made?

A. There were three different categories of

diagnoses. One was anxiety disorder, not otherwise specified, one was major depressive disorder and one was acute stress disorder.

MR. HAYS: And, sir, at this point in time I'm getting ready to move into the patient record or into each individual patient, so I don't know whether you want me to continue into a little bit of it and find a stopping point or stop here and?

PRESIDING OFFICER: Mr. Eye, do you have any thoughts on it?

MR. EYE: I really don't, Your Honor. It -- it seems to me -- I mean it's, what, four o'clock. I would appreciate if we could stop at about maybe 20 after or a quarter after the hour just so we could get our materials gathered up and so we are up and out of her by five o'clock which is I guess when we need to be out of here. So I -- I would have to defer to Mr. Hays in terms of whether that's enough time for him to get into the -- the body of the questions he really wanted to do or whether he wants to take it up tomorrow morning and do in an interrupted fashion. So, but again I just am concerned about getting our materials together and out of here by the time

that's prescribed.

PRESIDING OFFICER: Well, speaking of tomorrow were we going to start earlier than nine tomorrow?

MR. HAYS: Sir, we can be here whenever you want to be here.

MR. EYE: I'm not sure that I wouldn't make that quite blanket statement, and my colleague would definitely not go along with that.

PRESIDING OFFICER: 8:30 is okay with you though?

MR. EYE: 8:30 is fine.

MR. HAYS: 8:30 is fine.

PRESIDING OFFICER: Is that fine with you?

THE REPORTER: Perfect.

PRESIDING OFFICER: All right. Why don't we just adjourn this evening till tomorrow morning at 8:30. Is that acceptable?

MR. HAYS: Yes sir.

(THEREUPON, the hearing concluded for the day at 4:01 p.m.)

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CERTIFICATE

STATE OF KANSAS

ss:

COUNTY OF SHAWNEE

I, Cameron L. Gooden, a Certified Shorthand Reporter, commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A. 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this

day of , 2011.

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Cameron L. Gooden, C.S.R. No. 1335