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2

BEFORE THE BOARD OF HEALING ARTS

3

OF THE STATE OF KANSAS

4 .

5 IN THE MATTER OF

Docket NO. 10HA00129

6 ANN K. NEUHAUS, M.D.

OAH No. 10HA0014

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8

Kansas License No. 04-21596

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VOLUME V

13

TRANSCRIPT OF PROCEEDINGS

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15 taken on the 16th day of September, 2011,
16 beginning at 8:30 a.m., at the Kansas State Board
17 of Healing Arts, 800 Southwest Jackson, Lower
18 Level, Suite A, in the City of Topeka, County of
19 Shawnee, and State of Kansas, before, Edward J.
20 Gaschler, Presiding Officer.

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1 APPEARANCES

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14 K. ALLEN GREINER, JR., M.D.

15 Direct-Examination by Mr. Eye 1068

16 Cross-Examination by Mr. Hays 1105

17 .

18 .

19 EXHIBITS

20 RESPONDENT EXHIBIT NO: MARKED

21 No 1 Dr. Greiner CV 1067

22 No 2 Dr. Greiner's letter report 1103

23 .

24 REPORTER'S NOTE: Exhibits were put with the agency
25 records.



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1 HEARING OFFICER GASCHLER: All right
2 we're back on the record. Mr. Hays, continue.

3 ANN K. NEUHAUS, M.D.,
4 previously called as a witness on her own behalf,
5 having been sworn, continued to testify as
6 follows:

7 CROSS-EXAMINATION (cont.)

8 BY MR. HAYS:

9 Q. Doctor Neuhaus, let's take a look at
10 Patient No. 3, okay. You kept your own patient
11 record for this patient, correct?

12 A. Yes.

13 Q. And you stored this patient's records
14 separate from Doctor Tiller's records, correct?

15 A. Correct.

16 Q. And there is nothing within this patient
17 record that indicates that you reviewed any other
18 patient records, correct?

19 A. That's correct.

20 Q. There's nothing within this patient --
21 sorry about that, strike that. There's nothing
22 within this patient record that indicates what
23 records you relied upon to form the basis of your
24 conclusions, correct?

25 A. That's correct.

1 Q. There's nothing within this patient
2 record that indicates what records were available
3 at the time you provided the service for this
4 patient, correct?

5 A. That's correct.

6 Q. There's nothing within this patient
7 record that indicates the date your professional
8 service was provided, correct?

9 A. Didn't we talk about this yesterday?
10 This same one? I would say no, that's incorrect.

11 Q. And what is the date?

12 A. The report, the DTREE and GAF reports are
13 on that same date. You asked if it indicates.
14 Does it say prove?

15 HEARING OFFICER GASCHLER: Doctor
16 Neuhaus, I'm not hearing you.

17 A. Oh, I'm sorry. He asked if it indicated
18 and I said that does indicate. It may not prove
19 it, but it certainly is an indicator.

20 BY MR. HAYS:

21 Q. You do not know the time that you met
22 with this patient?

23 A. It's not indicated in the record. It
24 would have been sometime during the day.

25 Q. You do not know the exact time that you

1 met with this patient, correct?

2 A. I do not know the exact time, no, not
3 from this record.

4 Q. You cannot tell us when any of Doctor
5 Tiller's records were created, correct?

6 A. That's -- would you repeat that question?

7 Q. You cannot tell us when any of Doctor
8 Tiller's records were created, correct?

9 A. No, I'd say that's incorrect.

10 Q. You can tell us when the patient records
11 --

12 A. If I look through his chart I'm sure that
13 I could find certain parts of his record that have
14 some type of time indication.

15 Q. Your record for this patient does not
16 indicate who created it?

17 A. Not specifically, no.

18 Q. Your record for this patient does not
19 reflect the source of the information that
20 resulted in the conclusions contained within the
21 computer-generated reports, correct?

22 A. No, that's incorrect, because it's about
23 a particular patient whose name is on the record,
24 or was before it was redacted.

25 Q. Your record for this patient does not

1 reflect a physical exam being performed by you,
2 correct?

3 A. Well, by physical exam could you be more
4 specific?

5 Q. What's your definition of physical exam?

6 A. Well, normally that's listed under
7 objective, which can include a mental status and
8 an examination of the actual person's physical
9 being, so, technically anything that's an
10 objective finding would fall under that category
11 of the O or objective part of the exam, so, when
12 you're doing a directed exam it's related to
13 what's clinically relevant and in this case that
14 would have been the person's mental state; so, no,
15 did I look in her ears, listen to her heart? No,
16 I didn't and it's not in the record, but that
17 doesn't mean I didn't do the objective part of the
18 exam.

19 Q. This patient's record does not reflect
20 the patient's initial reason for seeking your
21 services, correct?

22 A. Considering they're all there for the
23 same reason, I'd have to say that that's
24 irrelevant, but it doesn't specifically, other
25 than possibly the fact that the cover sheet, which

1 is in my record, indicates that they were referred
2 and the only service offered at this facility is
3 pregnancy termination, so, I mean, I guess you
4 could say -- you could infer it from that, that
5 that's why they were there. Wasn't for an
6 appendectomy or blood pressure treatment.

7 **Q. So, that does not specifically say the**
8 **patient's initial reason for seeking your**
9 **services, correct?**

10 A. Well, it's not in my record, other than
11 the fact that they were referred for, by family or
12 friend in this case, to a facility that does
13 nothing but pregnancy terminations, so, no, it
14 isn't specifically put in there, but, I mean, it's
15 presumable from the record.

16 **Q. Nothing within this patient record**
17 **reflects that you were consulting for Doctor**
18 **Tiller, correct?**

19 A. Not in my record. In his record it is,
20 the one that -- the letter that I sent, which has
21 my name on it.

22 **Q. Nothing within this patient's record**
23 **reflects any treatment recommendation, correct?**

24 MR. EYE: Counsel, when you say patient's
25 record, you're referring to the record that --

1 MR. HAYS: I'm referring just to her
2 patient record.

3 A. That's in the letter that I sent, the
4 referral letter. It's not in this.

5 BY MR. HAYS:

6 Q. That referral letter --

7 A. No, there's not a copy in this record.

8 Q. Nothing within this patient's record
9 reflects that any treatment was performed by you,
10 correct?

11 A. That's correct.

12 Q. This patient's record contains a document
13 from another physician, correct?

14 A. That's correct.

15 Q. There's nothing within this record that
16 contains your signature, correct?

17 A. This particular one, I don't think so.

18 Q. This -- the patient's record does not
19 contain any of your observations about the
20 patient's overall intelligence, correct?

21 A. I think there might be some negative
22 inference, but I'd have to read through it. Just
23 a second. Comments like that usually aren't part
24 of the physical unless they're relevant.

25 Q. So, it doesn't contain any, correct?

1 A. I'm reading. There's nothing in her
2 record that I can see showing any impairment in
3 her, or any deficit of intelligence.

4 **Q. So, the patient record does not contain**
5 **any of your observations about the patient's**
6 **overall intelligence?**

7 A. That's correct.

8 **Q. The patient's record does not contain any**
9 **of your observations about the patient's mental**
10 **capacity, correct?**

11 A. No, that's incorrect. Unless you can be
12 a little more -- a little less vague about what
13 you mean by mental capacity.

14 **Q. What's your definition of mental**
15 **capacity?**

16 A. Well, it would depend on the
17 circumstances. Are you talking about it from a --
18 well, can you be -- are you talking about it from
19 a medical perspective or what mental capacity?

20 **Q. We're talking about patient records.**

21 A. I would say that there's plenty of
22 evidence about her mental capacity, but whether --
23 if you're saying specifically intelligence, no;
24 but if you're talking about someone's overall
25 response to their environment due to their mental

1 state or capacity in that sense, I would say there
2 is information, so, I'd have to disagree with
3 that.

4 Q. Okay. The patient's record does not
5 contain any specific observations that resulted in
6 the conclusions contained within the generated
7 computer reports, correct?

8 A. No, completely disagree with that.

9 Q. Let's move on to Patient No. 4, or
10 correction, let's move on to Patient No. 5.
11 Exhibit No. 27, if it helps. You kept your own
12 patient record for this patient, also?

13 A. I did.

14 Q. And you stored this patient's records
15 separate from Doctor Tiller's record, correct?

16 A. Yes.

17 Q. And there's nothing within this patient
18 record that indicates that you reviewed any other
19 patient records, correct?

20 A. Well, I mean, just the fact this top
21 sheet is in there indicates that I got it from
22 Doctor Tiller's chart, but other than that, no.

23 Q. There's nothing within this patient's
24 record that indicates what records you relied upon
25 to form the basis of your conclusions, correct?

1 A. Correct.

2 Q. There's nothing within this patient's
3 record that indicates what records were available
4 at the time that you provided the service for this
5 patient, correct?

6 A. Other than what's contained in the MI
7 Statement, or statements. Yeah, other than that,
8 no.

9 Q. Other than that, no?

10 A. There's no indication other than what's
11 contained in here, which is the MI Statement, and
12 the cover sheet.

13 Q. There's nothing within this patient's
14 record that states the date your professional
15 service was provided, correct?

16 A. That is incorrect.

17 Q. So, what indicates the date that you saw
18 this patient, or what states -- strike that. What
19 states the date that you saw this patient?

20 A. The date of the disclosure, because I
21 couldn't have obtained them from someone in Quebec
22 without being there with that patient or at least
23 it's not reasonable to infer otherwise.

24 Q. You did not write that date, correct?

25 A. I usually had the patients fill those

1 out, but they didn't have those papers prior to me
2 giving them to them and I wouldn't have had it in
3 my record if I hadn't collected it.

4 Q. The disclosures are not a service,
5 correct?

6 MR. EYE: I'm sorry, they are not what?

7 MR. HAYS: A service.

8 A. They're part of a service. They're
9 required for a service and there's no other
10 purpose for them besides a service, so, therefore
11 they are part and parcel of the service. What you
12 want to call them I guess is your business.

13 BY MR. HAYS:

14 Q. You do not know the time that you met
15 with this patient?

16 A. That time is not indicated.

17 Q. Your record for this patient does not
18 indicate who created it?

19 A. The record of disclosures or the whole
20 record?

21 Q. The whole entire record.

22 A. Does not indicate that, no.

23 Q. Your record for this patient does not
24 reflect the source of the information that
25 resulted in the conclusions contained within the

1 computer-generated reports, correct?

2 A. Well, the patient's name is on it, so, I
3 would have to disagree.

4 Q. This patient's record does not reflect
5 the patient's initial reason for seeking your
6 services, correct?

7 A. Considering that virtually 100 percent of
8 the patients are there for the exact same reason,
9 I did not put that on there specifically. I think
10 it's implied and it's certainly in the referral
11 letter.

12 Q. Nothing within this patient's record
13 reflects that you were consulting for Doctor
14 Tiller, correct?

15 A. Specifically within this record, no.

16 Q. And that referral letter that you spoke
17 about is not contained within that patient record,
18 correct?

19 A. There is not a copy, that's correct.

20 Q. Nothing within this patient's record
21 reflects any treatment recommendation, correct?

22 A. That's correct.

23 Q. Nothing within this patient's record
24 reflects that any treatment was performed,
25 correct?

1 A. That's correct.

2 Q. This patient's record contains a document
3 from another physician, correct?

4 A. Yes.

5 Q. And there is nothing within this patient
6 record that contains your signature, correct?

7 A. Well, I initialed the MI Statement.

8 Q. But what about a signature?

9 A. Well, I mean, initials, signature. I'm
10 really not willing to make a huge differentiation
11 there. They look fairly similar, but -- so, I
12 guess I'd have to disagree with the essence of
13 what you're saying, but if you want to get
14 technical. I don't know, you could compare. I
15 would say that it was an indication that I
16 attempted to personify it or personalize it,
17 memorialize it, whatever the word was by putting
18 initials on the MI Statement and the DTREE report.

19 Q. This record does not contain your
20 signature, correct?

21 A. I'm going to disagree because my initials
22 are on it. I mean, that's just my opinion. I'm
23 not --

24 Q. The patient's record does not contain any
25 of your observations about the patient's overall

1 intelligence, correct?

2 A. Well, it doesn't specifically say that
3 there's a problem with her intelligence, no.

4 Q. So, it does not contain any observations
5 about your, about the patient's intelligence,
6 correct?

7 A. That's correct.

8 Q. The patient's record does not contain any
9 of your observations about the patient's mental
10 capacity, correct?

11 A. Incorrect.

12 Q. The patient's record does not contain any
13 specific observations that resulted in the
14 conclusions contained within the
15 computer-generated reports, correct?

16 A. Can you do that again? I'm sorry.

17 Q. The patient's record does not contain any
18 of your specific observations that resulted in the
19 conclusions contained within the
20 computer-generated reports?

21 A. I disagree and we've been over this
22 ground before. I can cover it again if you need
23 me to, but I disagree with that. You're arguing
24 semantics of specific having to do with and and
25 ors based on the testimony of someone who believes

1 that there's no real world situation where someone
2 might conceivably need a therapeutic abortion.
3 So, no, I'm going to disagree with that statement.
4 I think there's plenty of specific information in
5 here.

6 Q. All right, let's move on to patient
7 record number 5. I'm sorry, patient record number
8 7, which is Exhibit No. 29. You kept your own
9 patient record for this patient, also, correct?

10 A. I did.

11 Q. And you stored this patient record
12 separate from Doctor Tiller's record?

13 A. Yes.

14 Q. And there's nothing within this patient
15 record that indicates that you reviewed any other
16 patient records, correct?

17 A. Yes.

18 Q. There's nothing within this patient
19 record that indicates what records were available
20 at the time that you provided the service for this
21 patient, correct?

22 A. That's correct.

23 Q. There's nothing within this patient's
24 record that indicates -- or strike that -- that
25 states the date your professional service was

1 provided, correct?

2 A. Incorrect.

3 Q. What states the date that your
4 professional services?

5 A. The DTREE report has that exact same
6 date. The GAF report has the same date. The
7 cover sheet has the same date. The patient's
8 signature on the disclosures all have the same
9 date, and I don't see a date on the MI Statement,
10 but all the others have the same date.

11 Q. But none of those dates specifically say
12 this was an appointment date for this patient,
13 correct?

14 A. Well, just to clarify, the cover date was
15 always the date of the appointment the vast
16 majority of the time, so, I have to disagree with
17 your statement.

18 Q. But the cover sheet came from Doctor
19 Tiller's office, correct?

20 A. It's in my record, so, it's now a part of
21 my record which is kept independently of Doctor
22 Tiller's.

23 Q. But it came from Doctor Tiller's office,
24 correct?

25 A. Yes, but the date is the date of the

1 appointment. It's always that way and you can
2 tell it was the date of the appointment because
3 the ultrasound data is in the little box in the
4 lower right which indicates that this wasn't just
5 something generated and printed prior to the
6 patient arriving at the clinic. That information
7 was added afterwards, therefore it indicates
8 that's the date of the appointment and I disagree
9 with your statement and I will keep disagreeing as
10 many times as you ask me.

11 **Q. You do not know what time that you met**
12 **with this patient, correct?**

13 A. That is correct.

14 **Q. Your record for this patient does not**
15 **indicate who created it, correct?**

16 A. That once again doesn't specifically say
17 that I did.

18 **Q. Your record for this patient does not**
19 **reflect a source of the information that resulted**
20 **in the conclusions contained within the**
21 **computer-generated reports, correct?**

22 A. Incorrect for the same reasons I said it
23 before; that the patient's name is on there and
24 the information came from the patient.

25 **Q. This patient's record does not reflect**

1 the patient's initial reason for seeking your
2 services, correct?

3 A. Yes, because they all came for the same
4 reason, so, it's not specifically indicated.

5 Q. Nothing within this patient's record
6 reflects that you were consulting for Doctor
7 Tiller, correct?

8 A. Well, I mean, thinking about it, I guess
9 that's wrong, too, so, all the times I said no is
10 incorrect because it's in the disclosure that the
11 information is to be released to Women's Health
12 Care Services, so, I mean, I'd have to say I was
13 wrong when I said that before. I just didn't
14 think about it, but it is clearly in the
15 authorization to disclose who it's intended for,
16 so, I apologize for being wrong about all the
17 other ones.

18 Q. That document's purpose was to provide
19 you an authorization to disclose, correct?

20 A. That's correct, and to one specific
21 facility, Women's Health Care Services, which was
22 owned and operated by Doctor Tiller.

23 Q. Nothing within this patient's record
24 reflects any treatment recommendation, correct?

25 A. That's correct.

1 Q. Nothing within this patient's record
2 reflects that any treatment was performed,
3 correct?

4 A. Correct.

5 Q. Your referral letter is not contained
6 within that record either, correct?

7 A. That's correct.

8 Q. This patient's record does not -- or
9 strike that. This patient's record contains a
10 document from another physician, correct?

11 A. That's correct.

12 Q. There's nothing within this document that
13 contains your signature, correct?

14 A. That's correct.

15 Q. The patient's record does not contain any
16 of your observations about the patient's overall
17 intelligence, correct?

18 A. That's correct.

19 Q. The patient's record does not contain any
20 of your observations about the patient's mental
21 capacity, correct?

22 A. By the definition that I gave earlier,
23 that's incorrect.

24 Q. The patient's record does not contain
25 your specific observations that resulted in the

1 conclusions contained within the
2 computer-generated reports, correct?

3 A. Incorrect.

4 Q. Let's take a look at your patient record
5 of disclosures real quick.

6 MR. EYE: For the same patient?

7 MR. HAYS: Correct.

8 BY MR. HAYS:

9 Q. There are no disclosures that have been
10 recorded on that document, correct, which is Bates
11 page --

12 A. Right, and the reason I didn't put that
13 on there is because we already had mutual
14 disclosures and it didn't seem necessary; but
15 that's true, it is not specifically listed because
16 it's on the other page and it was on the same day,
17 so, actually Doctor Tiller's record doesn't
18 reflect one to me either.

19 Q. All right, let's move on to Patient 9,
20 Exhibit 31. You kept your own patient record for
21 this patient, correct?

22 A. Yes.

23 Q. You stored this patient's records
24 separate from Doctor Tiller's record, correct?

25 A. I did.

1 Q. There's nothing within this patient
2 record that indicates you reviewed any other
3 patient records, correct?

4 A. That's correct, other than the MI
5 indicator, which was not my record.

6 Q. There's nothing within this patient's
7 record that indicates what records you relied upon
8 to form the basis of your conclusions, correct?

9 A. That's correct, other than the, what's
10 included.

11 Q. There's nothing within this patient
12 record that indicates what records were available
13 at the time that you provided the service for this
14 patient, correct?

15 A. That's correct.

16 Q. There's nothing within this patient's
17 record that states the date your professional
18 service was provided, correct?

19 A. Incorrect. Just about every page in here
20 has that date, other than the DTREE and GAF, which
21 are the next day.

22 Q. It does not specifically state
23 appointment date and then give a date, correct?

24 A. The records that I have include the day
25 of the appointment.

1 Q. And where are you getting that
2 information from?

3 A. From the cover sheet and from the
4 disclosure pages.

5 Q. There is nothing, there is not a document
6 within that patient record that states your
7 appointment date specifically?

8 A. Well, I was the only one that collected
9 this paperwork and I was there to do it, so, I put
10 the date of the appointment on there. So, I
11 disagree.

12 Q. Which document did you put the date of
13 the appointment on?

14 A. Well, the patient filled it in, but it's
15 on the two disclosures.

16 Q. So, you did not put a date on any of
17 those documents, correct?

18 A. I had the patient's mom put the date on.

19 Q. So, you did not put the date on any of
20 those documents, correct?

21 A. I handed it to the patient's mom and she
22 filled it out and I took it back.

23 Q. So, you did not put the date on those
24 documents, correct?

25 MR. EYE: It's asked and answered. She

1 said how she did it.

2 HEARING OFFICER GASCHLER: Sustained.

3 BY MR. HAYS:

4 Q. You do not know what time you met with
5 this patient, correct?

6 A. I do not.

7 Q. Your record for this patient does not
8 indicate who created it, correct?

9 A. Well, by indicate, I mean, if you would
10 define that. Did I write on there I made this
11 record? No, but, you know, if you look at
12 indicators, the fact that I'm the only one with
13 that program would indicate it at least that I was
14 the one who made the record.

15 Q. How do you know you're the only person
16 with that program?

17 A. Well, I mean, I think you could get the
18 records of all the people in Kansas or the midwest
19 that have it and I would be probably be the only
20 one, so, I could prove it by some way. I can't
21 prove it right now.

22 Q. So, as we sit right now you do not know
23 whether you're the only person that has that
24 program or not, correct?

25 A. I do not know that a hundred percent.

1 Q. Your record for this patient does not
2 reflect the source of the information that
3 resulted in the conclusions contained within the
4 computer-generated reports, correct?

5 A. Once again, incorrect.

6 Q. And why is that incorrect?

7 A. Because the patient's name is on multiple
8 documents and that's who we're talking about. The
9 patient was the source of the information.

10 Q. This patient's record does not reflect
11 the patient's initial reason for seeking your
12 services, correct?

13 A. Not specifically, no, other than the fact
14 that the cover sheet indicates that she was
15 referred to a facility that provides only
16 abortions.

17 HEARING OFFICER GASCHLER: Doctor
18 Neuhaus, I'm looking at that sheet and I don't see
19 it.

20 A. Well, the facility -- oh, hmm. That this
21 is Women's Health Care Services? Maybe it
22 doesn't. Well, I think in the record that it's
23 disclosed to Women's Health Care Services and it
24 has in the back --

25 HEARING OFFICER GASCHLER: Okay, you're

1 not talking about this sheet?

2 A. Right.

3 HEARING OFFICER GASCHLER: Okay, I'm
4 sorry.

5 A. And, I thought that they had their name
6 on here, but I guess they don't.

7 HEARING OFFICER GASCHLER: I'm sorry.
8 I'm sorry.

9 A. Well, I mean, I think, you know, a
10 reasonable person would conclude that a person
11 coming to an abortion clinic was seeking abortion
12 services.

13 BY MR. HAYS:

14 Q. Nothing within this patient's record
15 reflects that you were consulting for Doctor
16 Tiller, correct?

17 A. Incorrect.

18 Q. And what reflects that?

19 A. The fact that these disclosures to
20 Women's Health Care Services are dated for the
21 date of service.

22 Q. Let's take a look at that disclosure
23 since you have it up. Is there any disclosures
24 that are documented on that document?

25 A. The first sheet, not the second -- or the

1 second one. On 03 there is and on 02 there is not
2 for the same reason I stated before. It wasn't
3 necessary to put it on both.

4 Q. So, on the record of patient disclosures
5 there is no disclosure documented, correct?

6 A. Correct because --

7 Q. Just on that document.

8 A. Because it's already on number 3.

9 Q. Just on that document.

10 A. Just on the second one there were no
11 further disclosures after the 4th of November,
12 2003, that's correct. That's what that indicates.

13 Q. From your record how would anyone know
14 that WHCS only provides abortion services?

15 A. Outside of the fact that virtually
16 everyone in that area does know that, it would be
17 quite a simple matter to look in the phone book,
18 the White Pages, the Yellow Pages, the internet.
19 You know, any number of sources of publicly
20 available information which should take no more
21 than a few seconds, someone who is computer
22 literate.

23 Q. So, there's nothing within your patient
24 record that indicates WHCS only provides abortion
25 services, correct?

1 A. Well, I'd have to really spend some time
2 studying that. I would disagree. This patient
3 statement certainly discusses the whole notion.
4 If you want I'll look through the entire thing and
5 point out particular items. How long have you
6 known you were pregnant? Why can you not carry
7 this pregnancy to term? That certainly indicates
8 some possibility that we're talking about a
9 pregnancy, number one, and a pregnancy that is
10 problematic in some way. Has anyone talked to you
11 about adoption? I mean, adoption is obviously an
12 alternative to an abortion, so, I mean, once again
13 we're talking about a pregnancy with some issues
14 involved, possibly -- and then her answers talk
15 about termination, what would be the consequences
16 if we were told we couldn't do it? I mean, I
17 think there's an inference there that the it might
18 have something to do with abortion because even
19 though the prior question was about adoption, you
20 know, that wouldn't be logical to assume that
21 that's what the it is referring to. Let's see.
22 So, I mean, I would say on the basis of that a
23 reasonable person would conclude, even without
24 medical training, that there was a discussion of
25 the issues of what to do with a problematic



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1 pregnancy and there are only a couple of types of
2 facilities that would deal with that in any kind
3 of comprehensive manner, so, I have to disagree.

4 Q. So, you discussed how they provide
5 abortion services, but my question was, what
6 indicates in that record that WHCS only provides
7 abortion services?

8 A. Well, number one, I mean, I think just
9 some minor investigation could prove that, so, I
10 mean, we're arguing about semantics and maybe I
11 said that, so, now I have to defend it and I would
12 say that, you know, I didn't realize that I had to
13 write something that a contract lawyer would do to
14 define that as an only or whatever; so, I mean, I
15 think it's common knowledge. I think, you know,
16 if you looked in the White Pages you would realize
17 that, and it's actually not even true because I
18 think he still had some patients that he managed
19 their blood pressure or whatever; but I think in
20 general most people coming there, certainly people
21 with a problematic pregnancy, were there for
22 pregnancy termination. So, I think a reasonable
23 person could infer from the record that that's
24 what they were there for.

25 Q. This record does not contain a copy of

1 your referral, correct?

2 A. That's correct.

3 Q. Nothing within this patient's record
4 reflects any treatment recommendations, correct?

5 A. That's correct.

6 Q. Nothing within this patient's record
7 reflects that any treatment was performed,
8 correct?

9 A. Correct.

10 Q. This patient's record contains a document
11 from another physician, correct?

12 A. Yes. More than one document.

13 Q. There's nothing within this patient's
14 record that contains your signature, correct?

15 A. That's correct.

16 Q. The patient's record does not contain any
17 of your observations about the patient's overall
18 intelligence, correct?

19 A. Correct.

20 Q. The patient's record does not contain any
21 of your observations about the patient's mental
22 capacity, correct?

23 A. Incorrect.

24 Q. The record does not contain any specific
25 observations that resulted in the conclusions that

1 contained -- strike that. The patient's record
2 does not contain any of your specific observations
3 that resulted in the conclusions contained within
4 the computer-generated reports, correct?

5 A. Completely and 100 percent incorrect.

6 Q. Let's move on to Patient No. 11, which
7 would be the last exhibit in that book that you
8 have in front of you.

9 MR. HAYS: Sir, may I check the original
10 documents real quick? I'm not going to go into
11 them, the sealed ones. I just want to check
12 something real quick. Can I check the witness'
13 copy real quick? Do you mind?

14 MR. EYE: That's fine.

15 MR. HAYS: Can you approach real quick?

16 MR. EYE: Sure

17 MR. HAYS: It looks like in the copying
18 that on the redacted copies one of the pages is
19 missing but it's in the unredacted copy.

20 MR. EYE: So it would be 2?

21 MR. HAYS: It's page 3 of --

22 MR. EYE: And this is of X?

23 MR. HAYS: Of 11.

24 MR. EYE: No, Patient 11 but it's X.

25 Just check my version.

1 HEARING OFFICER GASCHLER: You're saying
2 there's a document missing from the copies?

3 MR. HAYS: From the redacted copies, yes.
4 It's in the actual unredacted that we have under
5 seal.

6 MR. EYE: May I?

7 MR. HAYS: Oh, yeah.

8 HEARING OFFICER GASCHLER: Page 10.

9 MR. HAYS: Correct.

10 MR. EYE: This is the unredacted.

11 MR. HAYS: Correct.

12 HEARING OFFICER GASCHLER: You were
13 provided unredacted?

14 MR. EYE: We had to sign a protective
15 order, but yes.

16 HEARING OFFICER GASCHLER: I just didn't
17 know that.

18 MR. EYE: Right.

19 HEARING OFFICER GASCHLER: Okay, so we
20 need to --

21 MR. HAYS: We need to make --

22 HEARING OFFICER GASCHLER: A redacted
23 copy of Bates page 2 of Exhibit 11.

24 MR. EYE: Yes. It appears so.

25 HEARING OFFICER GASCHLER: Can you do

1 that now or --

2 MR. HAYS: Sir -- probably do it now
3 because she's reviewing the record.

4 MR. EYE: It seems like it.

5 MR. HAYS: And I can have my paralegal do
6 that. We can just take about five minutes.

7 HEARING OFFICER GASCHLER: Right, off the
8 record for five minutes:

9 (THEREUPON, a recess was taken.)

10 HEARING OFFICER GASCHLER: The record
11 should be reflected that the sealed Exhibit No. 11
12 containing information regarding Patient 11
13 contained a authorization to disclose protected
14 health information that was not set out in the
15 redacted version of Patient's 11 record as found
16 in Exhibit 33. The Board has made a redacted
17 version of the authorization to disclose protected
18 health information for Patient 11 and it's been
19 placed in Exhibit 33. And this, for the record,
20 you -- Mr. Eye, you told me that you'd been
21 provided the sealed documents and, so, you were
22 aware of this document?

23 MR. EYE: Yes, sir. Yes, sir.

24 HEARING OFFICER GASCHLER: Okay, so, it's
25 just a technical glitch.

1 MR. EYE: It is and just for the record,
2 that was I believe Bates 2 --

3 HEARING OFFICER GASCHLER: Yes.

4 MR. EYE: -- of Exhibit 33.

5 HEARING OFFICER GASCHLER: Yes. Correct,
6 Mr. Hays?

7 MR. HAYS: Yes, sir, it is. Thank you.

8 HEARING OFFICER GASCHLER: Thank you.

9 BY MR. HAYS:

10 Q. Doctor Neuhaus, I believe we left off
11 with Patient No. 11 starting. Do you have that
12 exhibit in front of you?

13 A. I do.

14 Q. Okay, and you kept your own patient
15 record for this patient, also?

16 A. I did.

17 Q. And you stored this patient record
18 separate from Doctor Tiller's record, also,
19 correct?

20 A. Yes.

21 Q. There's nothing within this patient's
22 record that indicates that you reviewed other
23 patient records, correct?

24 A. Other than what's included, no.

25 Q. There's nothing within this patient's

1 record that indicates what records you relied upon
2 to form the basis for your conclusions, correct?

3 A. That's correct.

4 Q. There's nothing within this patient
5 record that indicates what records were available
6 at the time that you provided this service for
7 this patient, correct?

8 A. Yes.

9 Q. There's nothing within this patient's
10 record that states the date your professional
11 services were provided, correct?

12 A. Incorrect.

13 Q. Why is that incorrect?

14 A. The patient disclosure, the top sheet and
15 -- that's it, the top sheet, or the intake form
16 from Doctor Tiller and my disclosure of Doctor
17 Tiller is dated for the date of the appointment.

18 Q. And Doctor Tiller's -- or strike that.
19 The intake form is Doctor Tiller's form, correct?

20 A. Yes. It is a part of my record, yes.

21 Q. You do not know what time that you met
22 with this patient?

23 A. I am not certain about the time.

24 Q. Your record for this patient does not
25 indicate who created it, correct?

1 A. Well, once again, I mean, I guess we
2 could argue about that because it's got my name on
3 it and some other things, so, I guess I disagree
4 with that in principle.

5 Q. Your record for this patient does not
6 reflect a source of the information that resulted
7 in the conclusions contained within the
8 computer-generated reports, correct?

9 A. Incorrect.

10 Q. Why is that incorrect?

11 A. Because it's about the patient whose name
12 is on it or was and that's the source of the
13 information.

14 Q. The patient's record does not reflect the
15 patient's initial reason for seeking your
16 services, correct?

17 A. Other than the fact that they were at an
18 abortion clinic, no.

19 Q. Nothing within this patient's record
20 reflects that you were consulting with Doctor
21 Tiller, correct?

22 A. Incorrect. It's on the disclosure.

23 Q. And the disclosure says, purpose for
24 which I am authorizing the disclosure for
25 protected health information, correct?

1 A. Yes, and it says medical evaluation,
2 including mental health evaluation required by law
3 for treatment of the above condition, so, actually
4 everything I said about that before is -- this is
5 going to have to summarize all the other 11
6 charts; that that states clearly what the purpose
7 was and to whom it was being disclosed.

8 **Q. Can you read the sentence right above**
9 **that?**

10 A. Purpose for which I am authorizing the
11 disclosure of protected health information.

12 **Q. Thank you. This record does not contain**
13 **a copy of your referral letter, correct?**

14 A. That's correct.

15 **Q. Nothing within this patient's record**
16 **reflects any treatment recommendation, correct?**

17 A. That's correct.

18 **Q. Nothing within this patient's record**
19 **reflects that any treatment was performed,**
20 **correct?**

21 A. That's correct.

22 **Q. And this patient's record contains a**
23 **document from another physician, correct?**

24 A. That is correct.

25 **Q. Nothing within this patient's record**

1 contains your signature, correct?

2 A. Correct.

3 Q. The patient's record does not contain any
4 of your observations about the patient's overall
5 intelligence, correct?

6 A. Correct.

7 Q. And the patient's record does not contain
8 any of your observations about the patient's
9 mental capacity, correct?

10 A. Incorrect.

11 Q. Why is that incorrect?

12 A. For the same reasons I stated before;
13 that there are a lot of data that were included
14 about a person's mental capacity. Since you're
15 using them as two distinct things, it's obviously
16 in your definition not the same thing as their
17 intelligence, so, by mental capacity we mean every
18 function that is the result of a person's mental
19 state, so, I mean, actually that's not just
20 incorrect, it's completely incorrect because
21 that's what this was largely concerned with.

22 Q. The patient's record does not contain any
23 of your specific observations that resulted in the
24 conclusions contained within the
25 computer-generated reports, correct?

1 A. No, that's incorrect.

2 Q. Let's move on to patient --

3 MR. EYE: May I -- I'm sorry, I didn't --
4 I need clarification. Could you repeat the last
5 question that you asked? I'm not sure I heard it
6 correctly.

7 MR. HAYS: You want me to read it from
8 the record?

9 MR. EYE: If you wouldn't mind.

10 MR. HAYS: The patient's record does not
11 contain any of your specific observations that
12 resulted in the conclusions contained within the
13 computer-generated reports, correct.

14 MR. EYE: Thank you, counsel, I -- that's
15 fine, thank you.

16 BY MR. HAYS:

17 Q. Your patient -- before we move on, for
18 Patient 11 your patient record of disclosures does
19 not have any record of disclosures contained on
20 it, correct?

21 A. No, none beyond the number two, page 2 to
22 Women's Health Care Services, no.

23 Q. Does this patient record contain a record
24 of disclosures?

25 A. Additional ones, it does not, apparently,

1 although this is what I got back after a seizure
2 of the records by Phil Cline and no chain of
3 custody, so, whether it was there before, I really
4 can't say. I mean, since all the other 11 had it
5 and this one doesn't, it seems kind of odd, but I
6 can't prove it one way or the other that it wasn't
7 here before. Basically, he had told me that I
8 would just refer to my records, but when I showed
9 up with the records he seized them, so, I had no
10 preparation, I had no proper subpoena that I was
11 aware of. The records were just taken and I was
12 given the option of going to jail or turn over the
13 records, so, that's what happened to my records.
14 What I got back I have no idea if it was complete
15 or not.

16 MR. HAYS: I'd move that answer to be
17 unresponsive.

18 HEARING OFFICER GASCHLER: It is.

19 MR. HAYS: I'd move for it to be
20 stricken.

21 HEARING OFFICER GASCHLER: Stricken. It
22 will be stricken.

23 BY MR. HAYS:

24 Q. Let's move on to Patient No. 4, which is
25 Exhibit No. 26. Do you have that in front of you,

1 Doctor Neuhaus?

2 A. I do.

3 Q. You kept your own patient record for this
4 patient?

5 A. I did.

6 Q. You stored this patient's record separate
7 from Doctor Tiller's record, correct?

8 A. Yes.

9 Q. There's nothing within this patient's
10 record that indicates that you reviewed any other
11 patient records, correct?

12 A. Correct, other than what's included.

13 Q. There's nothing within this patient
14 record that indicates what records you relied upon
15 to form the basis of your conclusions, correct?

16 A. Correct.

17 Q. There's nothing within this patient
18 record that indicates what records were available
19 at the time that you provided your service for
20 this patient, correct?

21 A. Correct.

22 Q. There's nothing within this patient's
23 record that states the date your professional
24 service was provided, correct?

25 A. Correct -- no, incorrect.

1 Q. And what states the date of your
2 professional services?

3 A. The date that I obtained the record
4 disclosure.

5 Q. You did not write that date, correct?

6 A. As I said, the patients wrote those in,
7 but I observed it. I witnessed it.

8 Q. You do not know the time that you met
9 with this patient, correct?

10 A. That's correct.

11 Q. Your patient record does not indicate who
12 created it, correct?

13 A. Not specifically.

14 Q. Your record for this patient does not
15 reflect the source of the information that
16 resulted in the conclusions contained within the
17 computer-generated reports, correct?

18 A. Incorrect.

19 Q. What does that indicate the source is?

20 A. It's the patient's name. That was the
21 source.

22 Q. This patient's record does not reflect
23 the patient's initial reason for seeking your
24 services, correct?

25 A. Incorrect. It's on the disclosure.

1 Q. What --

2 A. Six, page 6.

3 Q. Page 6? And is that in the same location
4 as the previous patient, correct?

5 A. Pardon?

6 Q. Where you allege that it indicates the
7 patient's initial reason.

8 A. Oh, yes. Right, under the, for which.

9 Q. And that's the same type of document as
10 the previous patient, correct?

11 A. Yes, it is.

12 Q. Just with the name changed and
13 affirmation changed?

14 A. Yes.

15 Q. Let me clear that up.

16 MR. EYE: Information? I would object to
17 just information.

18 BY MR. HAYS:

19 Q. The names are changed on this document,
20 correct?

21 A. Correct.

22 Q. And the dates are changed on this
23 document, correct?

24 A. Probably. I didn't look at the date, but
25 presumably, yes. I mean, I didn't look at the

1 other date.

2 Q. So, the patient specific information for
3 this document is changed, correct?

4 A. Yes.

5 Q. Nothing within this patient's record
6 reflects that you were consulting for Doctor
7 Tiller, correct?

8 A. Incorrect.

9 Q. Why is that incorrect?

10 A. Because his, the facility that he owned
11 and operated is listed in the disclosure.

12 Q. This record does not contain a copy of
13 your referral letter, correct?

14 A. Correct.

15 Q. Nothing within this patient's record
16 reflects any treatment recommendation, correct?

17 A. Correct.

18 Q. Nothing within this patient record
19 reflects that any treatment was performed,
20 correct?

21 A. Correct.

22 Q. This patient's record contains a document
23 from another physician, correct?

24 A. That is correct.

25 Q. There's nothing within this record that

1 contains your signature?

2 A. Correct.

3 Q. The patient's record does not contain any
4 of your observations about the patient's overall
5 intelligence, correct?

6 A. Correct.

7 Q. And the patient's record does not contain
8 any of your observations about the patient's
9 mental capacity, correct?

10 A. Incorrect.

11 Q. And is that for the same reason as we
12 discussed before?

13 A. Yes.

14 Q. Are there any specific reasons that would
15 be different for that one?

16 A. Not that I can think of, no.

17 Q. The patient's record does not contain any
18 of your specific observations that resulted in the
19 conclusions contained within the
20 computer-generated reports, correct?

21 A. Incorrect.

22 Q. And let's take a look at Bates page 3.
23 That's your patient record of disclosures,
24 correct?

25 A. That's correct.

1 Q. And no disclosures have been recorded on
2 that, correct?

3 A. None after the ones to Women's Health
4 Care Services.

5 HEARING OFFICER GASCHLER: I didn't hear
6 you.

7 A. Nothing after the one to Women's Health
8 Care Services. There's nothing recorded
9 subsequent to that, no.

10 BY MR. HAYS:

11 Q. Is that disclosure recorded on that
12 document, on that specific document?

13 A. No, it is not, because it's on the other
14 one.

15 Q. And there's nothing within this patient's
16 record that reflects the traumatic event the
17 patient was exposed to, correct?

18 A. I doubt that that's true. Give me a
19 minute, I guess. Well, it indicates that she had
20 a pregnancy test, so, presumably this had
21 something to do with pregnancy and, so, I have to
22 disagree.

23 Q. There's nothing within that patient's
24 record that reflects a specific traumatic event
25 the patient was exposed to, correct?

1 A. Incorrect. I think it can be inferred
2 that she was there because of a problem pregnancy
3 from the record as is contained here.

4 **Q. Let's move on to Patient No. 6.**

5 A. Oh, I'm sorry, actually there was a whole
6 extra record here that I didn't see because it was
7 behind the disclosures, so, there's a lot more
8 information about that patient's situation, 'cause
9 I only had the written one and then I'm sorry,
10 page 4 and 5 there's quite a bit more material
11 about her situation that make it fairly clear why
12 she was there. It was just an oversight 'cause I
13 -- they're out of order, the pages, so, sorry.

14 **Q. So, can you indicate what the significant**
15 **event was? Strike that. Let me make sure I get**
16 **the verbiage here. Can you indicate what the**
17 **traumatic event this patient was exposed to?**

18 A. You want an exact sentence or just
19 overall? Of course, I know what the traumatic
20 event was. It was an unintended pregnancy, that's
21 clear, but I mean, do you want me to pick out
22 specific sentences?

23 **Q. Specifically, what the event was.**

24 A. The unintended pregnancy. It constitutes
25 for these patients -- I've, you know, seen

1 hundreds of them over the years and it's a threat
2 to their bodily integrity, the idea of something
3 alien growing inside them that they don't want is
4 a threat to their physical integrity. They
5 perceive it that way. Whether or not it is in
6 reality is a matter of subjectivity, but to them
7 that's certainly the way they perceive it.

8 Q. You kept -- let's move to Patient No. 6
9 again, Exhibit No. 28.

10 MR. EYE: I'm sorry, we at Patient 6?

11 MR. HAYS: Correct.

12 MR. EYE: Thank you.

13 MR. HAYS: Exhibit No. 28.

14 MR. EYE: Thank you.

15 BY MR. HAYS:

16 Q. You kept your own patient record for this
17 patient, correct?

18 A. I did.

19 Q. You stored this patient's records
20 separate from Doctor Tiller's records, correct?

21 A. Yes.

22 Q. There is nothing within this patient
23 record that indicates that you reviewed any other
24 patient records, correct?

25 A. Other than what's contained.

1 Q. There is nothing within this patient
2 record that indicates what records you relied upon
3 to form the basis of your conclusions, correct?

4 A. Other than what's contained, no.

5 Q. There's nothing within this patient
6 record that indicates what records were available
7 at the time that you provided the service for this
8 patient, correct?

9 A. That's correct.

10 Q. There's nothing within -- strike that.
11 There's nothing within this patient record that
12 states the date your professional service was
13 provided, correct?

14 A. Incorrect.

15 Q. What indicates the date?

16 A. Just about every piece of paper. The top
17 sheet.

18 Q. Let me strike that question. What states
19 the date of your appointment?

20 A. Okay. The top sheet, the cover sheet.
21 Oh, let me just say page number 2, page number 7,
22 page number 8, page number 9, and page number 12
23 all have the date of the appointment.

24 Q. And page number 2 is Doctor Tiller's
25 intake form, correct?

1 A. That is correct.

2 Q. And Bates page number 9 is the DTREE
3 positive DS report?

4 A. It is.

5 Q. And the only date that is consistent with
6 Doctor Tiller's intake form is the rating date and
7 time, correct?

8 A. That's correct.

9 Q. And the rating date was 8-26-2003,
10 correct?

11 A. That's right.

12 Q. And the time was 0958, correct?

13 A. That's right.

14 Q. However, the report date and time is
15 9-5-2003, correct?

16 A. That would have been the time it was
17 printed out, yes.

18 Q. You do not know the time that you met
19 with this patient, correct?

20 A. No, not specifically.

21 Q. Your record for this patient does not
22 indicate who created it, correct?

23 A. Not specifically, other than the fact
24 that I was the only one with the program and that
25 I collected the disclosure material, and I mean

1 it's in my chart; but other than that,
2 specifically no.

3 Q. Your record for this patient does not
4 reflect the source of the information that
5 resulted in the conclusions contained within the
6 computer-generated reports, correct?

7 A. Incorrect.

8 Q. What reflects the source?

9 A. Well, all of it really. The MI Statement
10 is from the patient. The disclosures have the
11 patient's family members, and the patient's
12 signature, and the report was completed with
13 information from the patient; so, I think it can
14 be inferred that that was the source.

15 Q. The patient was the source?

16 A. Yes, at least. I mean, there's some
17 suggestion that it could have been the mother as
18 well, but certainly the patient would have had to
19 have been a source and I think a reasonable person
20 would be able to infer that.

21 Q. The patient service -- strike that. The
22 patient's record does not reflect the patient's
23 initial reason for seeking your services, correct?

24 A. Incorrect.

25 Q. And why is that incorrect?

1 A. Because it's on the disclosure.

2 Q. At the same location as for the previous
3 patients?

4 A. Yes.

5 Q. And it states the same thing as the
6 previous patients?

7 A. Correct.

8 Q. Nothing within this patient's record
9 reflects that you were consulting for Doctor
10 Tiller, correct?

11 A. Incorrect.

12 Q. This record does not contain a copy of
13 your referral, correct?

14 A. Correct.

15 Q. Nothing within this patient's record
16 reflects any treatment recommendation, correct?

17 A. That's correct.

18 Q. Nothing within this patient's record
19 reflects that any treatment was performed,
20 correct?

21 A. Correct.

22 Q. This patient's record contains a document
23 from another physician, correct?

24 A. Yes.

25 Q. There's nothing within this record that

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1 contains your signature, correct?

2 A. I believe that is correct.

3 Q. The patient's record does not contain any
4 of your observations about the patient's overall
5 intelligence, correct?

6 A. Correct.

7 Q. The patient's record does not contain any
8 of your observations about the patient's mental
9 capacity, correct?

10 A. Incorrect.

11 Q. The patient's record does not contain any
12 of your specific observations that resulted in the
13 conclusions contained within the
14 computer-generated reports, correct?

15 A. Incorrect.

16 Q. Now let us flip to Bates page 8. That's
17 your patient record of disclosures -- I'm sorry?

18 A. It is.

19 Q. Okay. That's your patient record of
20 disclosures, correct?

21 A. It is.

22 Q. And there are no -- strike that. This
23 document does not contain any record of
24 disclosures being recorded, correct?

25 A. That's correct.

1 Q. There's nothing within this patient's
2 record that reflects the traumatic event the
3 patient was exposed to, correct?

4 A. Incorrect.

5 Q. Can you tell what the specific traumatic
6 event was?

7 A. An unintended pregnancy.

8 Q. Let's move on to Patient 10, which will
9 be Exhibit No. 32.

10 THE REPORTER: 33?

11 MR. HAYS: 32.

12 BY MR. HAYS:

13 Q. You kept your own patient record for this
14 patient, correct?

15 A. I did.

16 Q. You stored this patient's record separate
17 from Doctor Tiller's record, correct?

18 A. Yes.

19 Q. There's nothing within this patient's
20 record that indicates that you reviewed any other
21 patient records, correct?

22 A. Other than what's included.

23 Q. There's nothing within this patient
24 record that indicates what records you relied upon
25 to form the basis of your conclusions, correct?

1 A. Correct.

2 Q. There's nothing within this patient's
3 record that indicates what records were available
4 at the time you provided the service for this
5 patient, correct?

6 A. Yes.

7 Q. There's nothing within this patient
8 record that states the date your professional
9 service was provided, correct?

10 A. Incorrect.

11 Q. And where is that located?

12 A. Page 1, page 4, page 6, page 7, and
13 that's it.

14 Q. This document also contains, or strike
15 that. This patient's record also contains a DTREE
16 positive DS report, correct?

17 A. Yes.

18 Q. And it has a date on it, also, correct?

19 A. That's correct.

20 Q. And its date is different than the dates
21 that you were indicating your appointment date was
22 on, correct?

23 A. It is different.

24 Q. What was the date that you indicate that
25 the patient's appointment was on?

1 A. 11-4-03.

2 Q. And what's the date for the rating date
3 and time for your --

4 A. 11-13-03.

5 Q. Let me -- I'll have to finish just to
6 make the record, okay? Thank you. What is the
7 date that's indicated on your DTREE positive DS
8 report?

9 A. 11-13-2003.

10 Q. And you also have a GAF report on this
11 patient, also?

12 A. I do.

13 Q. And what is your rating date and time --
14 or strike that. What is your rating date for this
15 GAF report?

16 A. 11-13-2003.

17 Q. You do not know the time that you met
18 with this patient, correct?

19 A. Not specifically, no.

20 Q. Your record for this patient does not
21 indicate who created it, correct?

22 A. Other than the things I mentioned before,
23 correct.

24 Q. Your record for this patient does not
25 reflect a source of the information that resulted

1 in the conclusions contained within the
2 computer-generated reports, correct?

3 A. Incorrect.

4 Q. That's because the source was the
5 patient?

6 A. That's right.

7 Q. The patient's record does not reflect the
8 patient's initial reason for seeking your
9 services, correct?

10 A. Incorrect.

11 Q. And why is that?

12 A. Because it's on the disclosure and it's,
13 it's specifically stated.

14 Q. It states the same language as the
15 previous patient's patient --

16 A. Yes.

17 Q. -- record?

18 A. Page 7.

19 Q. Doctor Neuhaus, I just have to finish or
20 the court reporter can't --

21 A. I'm sorry.

22 Q. -- get us both at the same time. So,
23 it's on -- you're indicating it's on authorization
24 to disclose protected health information, correct?

25 A. Yes.

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1 Q. And a portion of that document is the
2 same portion that you indicated in the previous
3 patients?

4 A. It is.

5 Q. There's nothing within this patient's
6 record that specifically reflects that you were
7 consulting for Doctor Tiller, correct?

8 A. Incorrect.

9 Q. Why is that incorrect?

10 A. Because his facility is listed.

11 Q. This record does not contain a copy of
12 your referral letter, correct?

13 A. It does not.

14 Q. Nothing within this patient record
15 reflects any treatment recommendation, correct?

16 A. Correct.

17 Q. Nothing within this patient's record
18 reflects that any treatment was performed,
19 correct?

20 A. That's correct.

21 Q. This patient's record contains a document
22 from another physician, correct?

23 A. Yes, it does.

24 Q. There's nothing within this record that
25 contains your signature, correct?

1 A. I don't think so. It does not.

2 Q. The patient's record does not contain any
3 of your observations about the patient's overall,
4 overall intelligence, correct?

5 A. Correct.

6 Q. And the patient's record does not contain
7 any of your observations about the patient's
8 mental capacity, correct?

9 A. Incorrect.

10 Q. The patient's record does not contain any
11 specific observations that resulted in the
12 conclusions contained within the
13 computer-generated reports, correct?

14 A. Incorrect.

15 Q. And let's take a look at the patient
16 record of disclosures for this patient, also, at
17 Bates 6, and that patient record of disclosures
18 does not record any -- strike that. That patient
19 record of disclosures does not have any recording
20 of any disclosures being made, correct?

21 A. It does not.

22 Q. Can you tell us what the specific
23 traumatic event was for this patient?

24 A. An unintended pregnancy.

25 Q. Let's go to Patient 8, which is Exhibit

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1 No. 30. Do you have that in front of you, Doctor
2 Neuhaus?

3 A. I do.

4 Q. You kept your own patient record for this
5 patient, also?

6 A. I did.

7 Q. You stored this patient's record separate
8 from Doctor Tiller's record?

9 A. Yes.

10 Q. There's nothing within this patient
11 record that indicates that you reviewed any other
12 patient records?

13 A. Other than what's included.

14 Q. There's nothing within this patient
15 record that indicates what records you relied upon
16 to form the basis of your conclusions, correct?

17 A. That's correct.

18 Q. There's nothing within this patient's
19 record that indicates what records were available
20 at the time that you provided the service for this
21 patient, correct?

22 A. Correct.

23 Q. There's nothing within this patient's
24 record that states the date of your professional
25 service, correct? Let me strike that. There's

1 nothing within this patient's record that states
2 the date your professional service was provided,
3 correct?

4 A. Incorrect.

5 Q. You do not know the time that you met
6 with this patient, correct?

7 A. Correct.

8 Q. Your record for this patient does not
9 indicate who created it, correct?

10 A. Well, I guess it -- that's -- well, I
11 mean now that you mention that I have to really
12 disagree with that because it has my name on page
13 3 as it did on all the other ones, so, I mean,
14 that would indicate -- when you use the word
15 indicate, I'd have to disagree with that.

16 Q. The patient was the source for the
17 information that resulted in your conclusions?

18 A. That's correct. At least the patient and
19 -- actually, you know, it was the mom as well, as
20 it was with the others, a parent.

21 Q. This record does not contain a copy of
22 your referral letter, correct?

23 A. It does not.

24 Q. And nothing within this patient's record
25 reflects any treatment recommendation?

1 A. That's correct.

2 Q. And nothing within this patient's record
3 reflects that any treatment was performed,
4 correct?

5 A. Correct.

6 Q. And this patient's record also, also
7 includes a document from another physician,
8 correct?

9 A. It does.

10 Q. There's nothing within this patient
11 record that contains your signature, correct?

12 A. I believe it does not, correct.

13 Q. And the patient's record does not contain
14 any of your observations about the patient's
15 overall intelligence, correct?

16 A. Correct.

17 Q. Now let's move out of the patient records
18 just briefly. You testified on direct that you
19 had access to Doctor Tiller's chart, correct?

20 A. I did.

21 Q. And that at some point you knew who you
22 would be seeing, correct?

23 A. Yes.

24 Q. And then at some point after they had
25 done a number of steps you actually had access to

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1 that chart, correct?

2 A. That's correct.

3 Q. And that was your testimony during
4 direct?

5 A. I mean, I'm not -- actually I don't
6 remember exactly what I said, but that's correct
7 and I would stand by it.

8 Q. And then you testified that you would sit
9 down and review that chart, correct?

10 A. That's correct.

11 Q. And that chart being Doctor Tiller's
12 chart, correct?

13 A. Right.

14 Q. Isn't it true that on December 8th, 2006,
15 -- or strike that. Isn't it true that at the
16 December 8th, 2006, inquisition you testified
17 about whether you would routinely review Doctor
18 Tiller's record?

19 A. I don't remember, and I haven't reviewed
20 that.

21 Q. Okay. Well, let's go to Exhibit No. 46.
22 It's probably going to be in the larger binder.
23 It will be the first two, one of the first two,
24 and can you turn to page Bates page 850 and let's
25 take a look at lines 5 through 8, okay? And as

1 you look at that, isn't it true that you testified
2 there's nothing to prevent me from going and
3 getting the chart, but I don't do that as a matter
4 of routine. That was your testimony, correct?

5 A. I guess so. But it is not accurate
6 actually.

7 Q. But that was your testimony, correct?

8 A. Apparently.

9 MR. HAYS: Can we take a quick recess,
10 sir?

11 HEARING OFFICER GASCHLER: How much time
12 -- how much time you need?

13 MR. HAYS: Five minutes.

14 (THEREUPON, a recess was taken.)

15 MR. HAYS: I don't have any further
16 questions.

17 HEARING OFFICER GASCHLER: Okay.

18 Redirect?

19 MR. EYE: Yes, sir.

20 REDIRECT-EXAMINATION

21 BY MR. EYE:

22 Q. Doctor Neuhaus, would you please turn to
23 exhibit, the exhibit for Patient -- well, let's
24 just turn to the exhibit for Patient No. 1, and I
25 want to direct your attention to the records

1 disclosure and that would be Exhibit 23 and I
2 would like for you to look at page number 2 of
3 Exhibit 23. Are you there?

4 A. Yes.

5 Q. And is this the form that is called the
6 patient record of disclosures?

7 A. It is.

8 Q. And this is in your record?

9 A. It is.

10 Q. Now, there's a box in the middle of the
11 page or about in the middle of the page and would
12 you please read the first paragraph of that
13 material that's within the box.

14 A. The privacy rule generally requires
15 health care providers to take reasonable steps to
16 limit the use or disclosure of and request for PHI
17 to the minimum necessary to accomplish the
18 intended purpose. These provisions do not apply
19 to uses or disclosures made pursuant to an
20 authorization requested by the individual.

21 Q. And the acronym PHI refers to protected
22 health information?

23 A. It does.

24 Q. Please turn to Bates numbered page 3 in
25 Exhibit 23. Does it indicate about, oh, it's

1 about a fourth of the way down the page that you
2 were the person who was authorized to make
3 disclosures of information for this patient?

4 A. It does.

5 Q. And does it further specify that you are,
6 that you are designated specifically to disclose
7 information to Women's Health Care Services?

8 A. It does.

9 Q. And that's about halfway down the page?

10 A. Yes.

11 Q. Now, go back to Bates number 2, please,
12 and the second sentence of the paragraph that you
13 read before, does it indicate that, that if you
14 are authorized to make a disclosure to a specific
15 -- that you've been authorized to make a
16 disclosure that there would be a necessity to do a
17 recording of that or a specification of it in the
18 chart that's below or the box that's below
19 indicating to whom records would be disclosed?

20 A. It indicates that those provisions do not
21 apply to uses or disclosures made pursuant to an
22 authorization requested by the individual, which
23 was page 3.

24 Q. So, when you provided your disclosure to
25 Doctor Tiller's office or your letter of referral,

1 rather, there was no necessity to record it
2 because you had been specifically authorized to
3 make that disclosure to Women's Health Care
4 Services, correct?

5 A. That's the way I understood it.

6 Q. And that would be the case for all 11
7 patients, correct?

8 A. Yes.

9 Q. Now, you were asked for, I believe, all
10 11 charts and if not, some of these questions will
11 be directed to all 11 charts. I believe you were
12 asked about all of them, but at any rate, did you
13 undertake in each instance of Patients 1 through
14 11 in this record to do a mental health
15 examination?

16 A. I did.

17 Q. And did you in each instance review what
18 records were provided to you by Women's Health
19 Care Services?

20 MR. HAYS: Objection, leading.

21 HEARING OFFICER GASCHLER: Overruled.

22 A. I did.

23 BY MR. EYE:

24 Q. Now, irrespective of whether there is a
25 specific memorialization in your chart of having

1 reviewed records from Women's Health Care Services
2 that were provided to you, you did so, correct?

3 A. I did.

4 Q. And whether it is specifically designated
5 in the chart, you undertook a mental health exam,
6 correct?

7 A. Yes.

8 Q. I would like you to take a look at, again
9 let's just look at Patient No. 1, which would be
10 Exhibit 23, page 1. At the top of the page does
11 it indicate an appointment date?

12 A. It does.

13 Q. And does it indicate an appointment time?

14 A. It does.

15 Q. Do those, based upon your knowledge of
16 the process that you undertook at Women's Health
17 Care Services, does that correspond to the date
18 that you would have seen patients?

19 A. It does.

20 Q. And would that apply to all 11 patients?

21 A. It would.

22 Q. And there's an appointment time specified
23 at the top of page 1 of Exhibit 23 as well,
24 correct?

25 A. Yes.

1 Q. And based upon your recollection, would
2 that approximate the time when you would have been
3 meeting with these patients?

4 A. Sometime then or thereafter.

5 Q. Would that be a designation of when the
6 patient would have been at the Women's Health Care
7 Services clinic?

8 A. Yes.

9 Q. And that would correspond when you were
10 there, correct?

11 A. Correct.

12 Q. And that would apply to all 11 patients,
13 correct?

14 A. Yes.

15 Q. Now, Doctor Neuhaus, do you know of any
16 requirement under any particular standard of care
17 that would require the documentation of the
18 specific time that an appointment commences?

19 A. I do not.

20 Q. An appointment for a consultation in an
21 examination room or at a health care facility, is
22 there any requirement for a specification of when
23 the time of the appointment commences?

24 A. Not that I've ever been aware of, no, or
25 read any statute.

1 Q. In the case of all 11 patients did you
2 undertake a -- as part of your exam did you gather
3 the patient's history as it was articulated by
4 either the patient or the patient's parent or
5 guardian?

6 A. I did.

7 Q. Did you then use that information to, to
8 produce the DTREE diagnosis?

9 A. I did.

10 Q. Did you use that information to create
11 the global assessment of functioning document
12 that's found in, in all but one of these charts?

13 A. I did.

14 Q. Whether it is specified or not in your
15 charts, and again, for all 11 charts, did you
16 undertake to review whatever records were provided
17 to you from Doctor Tiller's office, including the
18 MI?

19 A. I did.

20 Q. Now, you were asked to look at some
21 testimony a few minutes ago and we'll refer to
22 Exhibit 46 and I believe you were directed to look
23 at Bates page 815. Do you have that back in front
24 of you?

25 A. 815?

1 Q. Well, it's -- the number 815 is the one
2 down in the lower right-hand corner?

3 A. Oh, yeah. Yes, I did.

4 Q. Now, your testimony at the top of that
5 page, does it say, you know, I can, but I
6 generally just deal with the material that they
7 give me, is that -- is that an indication of you
8 being provided the patient material from Doctor
9 Tiller's staff?

10 A. It is, but I think there's some testimony
11 on page 813 that would clarify that.

12 Q. And we'll, we'll get to that in a moment.
13 Now, once you were provided the material from
14 Doctor Tiller's staff for these patients, did you
15 review it routinely before you met with the
16 patients?

17 A. The material that they provided me
18 specifically, yes.

19 Q. Did you take that material routinely in
20 with you to the meeting with the patient?

21 A. I did.

22 Q. Say again.

23 A. I did, yes.

24 Q. You took the chart or the materials from
25 Doctor Tiller's office into the meeting with the

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1 patient?

2 A. Oh, the chart, I did not bring the chart
3 in. Just the materials, the extra materials that
4 they copied for me.

5 Q. And what would that have consisted of?

6 A. Well, should I documentary the whole
7 thing of how it happened or?

8 Q. What --

9 A. They made specific materials for me that
10 generally ended up in my chart. They all -- the
11 patient also had a chart that floated around the
12 clinic to all the various stations. By the time
13 they were ready to see me the chart was in the box
14 right outside of Doctor Tiller's office and that's
15 where I would review the materials; but what I
16 actually brought into the exam room was my own
17 copy that they had made for me with the MI
18 statements and the disclosures that I included
19 into that, so, I would make up the beginning of my
20 own chart with the top sheet, the MI Statements,
21 and then I added my disclosures as I introduced
22 myself and did the original paper -- the, you
23 know, the initial administrative things; but I
24 tried, I really endeavored not to take Doctor
25 Tiller's chart in the room for a number of

1 reasons. For one thing, they needed to have
2 access to it for adding paperwork and things.
3 Secondly, I didn't want to be responsible for it.
4 I sometimes get a little absentminded and it can
5 be kind of, you know, a lot of activity there, so,
6 I didn't want to be responsible for the chart, so,
7 I left it in Doctor Tiller's box and, so, that's
8 where I would review it and I think it's discussed
9 a little bit on page 813 that it's obvious I did
10 look through those because Maxwell is asking me
11 about it and I'm saying, well, this is where this
12 would have been and that's where that would have
13 been. So, why I said that at that point I don't
14 know, but I felt really badgered in there and it
15 went on for hours and hours and I mean, who knows
16 what kind of weird things I said in there, but --

17 **Q. Doctor Neuhaus, once, once the consent**
18 **was signed, the consent for you to disclose**
19 **records and to --**

20 A. From Doctor Tiller's or mine?

21 **Q. Both. Once those documents were signed**
22 **there was -- you could go and get access to**
23 **whatever records were provided by Doctor Tiller's**
24 **office, correct?**

25 A. That's correct.

1 Q. Or by Women's Health Care Services. Was
2 your routine to review those records prior to the
3 time that you met with the patient?

4 A. It was.

5 Q. And if you needed to go back and review
6 those again after your meeting with the patient,
7 could you do that?

8 A. I could.

9 Q. And is that what you meant by there was
10 nothing to prevent you from getting the chart?

11 A. That's, that's exactly what I meant.

12 Q. And is it the case that generally you
13 didn't need to do that after you met with the
14 patient, at least as a matter of routine?

15 A. Right, that's correct. That's a more
16 accurate depiction of the reality.

17 Q. So, it is your testimony that you did
18 review records that were provided to you by Doctor
19 Tiller's office prior to meeting with patients?

20 MR. HAYS: Objection, asked and answered.

21 HEARING OFFICER GASCHLER: Sustained.

22 BY MR. EYE:

23 Q. And you didn't take records such as let's
24 say the sonogram images into the meeting with the
25 patient, correct?

1 A. That is correct.

2 Q. You would take documents in to meet with
3 the patient such, such as the MI Statement which
4 had actually been completed by the patient or the
5 information had come from the patient, correct?

6 A. That's correct.

7 Q. So --

8 A. I generally didn't want to take Doctor
9 Tiller's chart into the consultation. I probably
10 did on a number of occasions and at some point
11 decided to avoid doing that.

12 Q. And why?

13 A. Mainly because it interfered with other
14 peoples' access to the chart and it also made it
15 incumbent upon me not to lose anything out of it
16 because not everything was pinned in and I just
17 didn't want to be responsible for it.

18 Q. Irrespective of whether there is a
19 specific recordation or a, a record, you did
20 review -- excuse me. You did rely on records that
21 were generated by Women's Health Care Services,
22 correct?

23 A. I did.

24 Q. And other health care providers to the
25 extent that those records were made available to

1 you?

2 A. That's correct.

3 Q. Irrespective of whether you made a
4 specific note about that, correct?

5 A. That's right.

6 Q. The exhibits of your records, which would
7 be 23 through 33, is that correct? Is that -- I
8 believe it is. These would be of your records.
9 Is that -- are those -- is that the correct
10 sequence of --

11 A. 23 through 33, yes.

12 Q. All right. You were the person that
13 created the chart that is represented by Exhibits
14 23 through 33, correct?

15 A. I am.

16 Q. Those records may include documents that
17 originated in other places or with other health
18 care providers, but you were the one that
19 assembled those into what is now Exhibits 23
20 through 33?

21 A. I am.

22 Q. Doctor Neuhaus, was there ever an
23 intention in the course of your evaluation for you
24 to render treatment to a patient as differentiated
25 from an evaluation of the patient?

1 A. Never.

2 Q. Was there any expectation as you
3 understand it by Women's Health Care Services that
4 you would render treatment to the patient?

5 A. Not as I understood it.

6 Q. As you understood the obligation that you
7 had to render this second opinion, did it include
8 an obligation to render treatment to the patient?

9 A. It did not.

10 Q. Irrespective of whether there is a
11 specific notation in Exhibits 23 through 33, did
12 you as you saw necessary convey advice to either
13 the patient or the patient's parent or guardian or
14 both -- that is the patient and the patient's
15 parent and/or guardian -- about your views
16 concerning further mental health care treatment
17 that might be advisable for the patient to seek?

18 A. I did.

19 Q. And did you do that as a routine part of
20 your meetings with patients?

21 A. I did.

22 Q. In the course of your mental health
23 examination for each of the patients that have
24 records related to this matter, that is Patients 1
25 through 11, in the course of doing your mental

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1 health examination did you make observations
2 concerning the patients' cognitive capacities?

3 A. I did.

4 Q. Did you make observations -- if those
5 observations of cognitive ability indicated
6 abnormalities, would that have been part of what
7 you put into either the DTREE or the GAF or both?

8 A. That, or even a separate note. I mean,
9 it actually would have been a separate note 'cause
10 it really isn't easy to put it in the other.

11 Q. As I understand your testimony, you
12 considered the presence of your initials to be the
13 functional equivalent of your signature?

14 A. Yes. A lot of times you can't
15 distinguish them.

16 Q. Please take a look at Exhibit 32 and it
17 would be Bates 2, I believe, yes. Down at the
18 bottom right-hand corner of that page, is that
19 your initial, or initials?

20 A. It could be. I mean, it's AN, so, that
21 could be. I'm not a hundred percent certain, but
22 --

23 Q. Would that be how -- would you use
24 routinely your initials AN --

25 A. Yes.

1 Q. -- to use, to signify or represent that
2 you looked at a record?

3 A. Well, it's hard to say I did it routinely
4 here, but yes, that's what I would use when I do,
5 usually just AN.

6 Q. Would it be the case at anyplace where
7 your initials appear would be indicative of a
8 specific recording of your review of that record?

9 A. It would.

10 Q. But in the absence of your initials, you
11 still reviewed all the records that were provided
12 to you by Doctor Tiller's office?

13 A. Right. I would have no reason not to. I
14 mean, that's what I was there to do.

15 Q. For each Patient 1 through 11 did you
16 reach conclusions based upon your examination of
17 the patients?

18 A. I did.

19 Q. And is the product of that examination
20 contained in the DTREE and the GAF?

21 A. It is.

22 Q. Irrespective of whether there is a
23 specific notation in Exhibits 23 through 33, were
24 you doing consultations for Women's Health Care
25 Services in the, in the course of your meetings

1 with these patients, 1 through 11?

2 A. I was.

3 Q. Did the mental health examination that
4 you conducted include a determination of the
5 patient's intelligence range?

6 A. Yes.

7 Q. And you did that irrespective of whether
8 there was a specific notation of it in the chart,
9 correct?

10 A. That's correct.

11 Q. You were -- yesterday you were asked to
12 answer some questions about testimony that you had
13 given in another proceeding concerning how you put
14 the patient first, you remember that testimony?

15 A. I do.

16 Q. Do you remember that testimony, Doctor?

17 A. Yes. During the inquisition? I do.

18 Q. In that regard, you were specifically
19 required to do an evaluation to determine the
20 suitability of Patients 1 through 11 for a
21 late-term abortion consistent with what KSA
22 65-6703 requires, correct?

23 A. Yes.

24 Q. And in doing so you had in mind to keep
25 the patients' interests as the primary concern,

1 correct?

2 A. Yes.

3 Q. And in doing so is that why you collected
4 the history of the patient during the course of
5 the narrative, the face-to-face meeting and the
6 narrative that was provided to you during that
7 meeting?

8 A. That's correct.

9 Q. And did you do your best then to take
10 that collected information concerning the
11 patient's history and enter it into the DTREE and
12 GAF?

13 A. I did.

14 Q. And was that your means to document the
15 narrative statements that were provided to you?

16 A. It was.

17 Q. And by keeping the interests of the
18 patient as your primary concern, is that why you
19 provided advice to the patient or the patient's
20 parent or guardian about follow-up consultations
21 or care and treatment related to mental health
22 that might be called for?

23 A. That is correct.

24 Q. And by keeping the interests of the
25 patient as your primary concern, is that why you

1 made entries into the, into your chart that were
2 consistent with what you understood to be the
3 standard of care but balanced against maintaining
4 the privacy interests of your patients?

5 A. It is.

6 Q. You used the term during the course of
7 your testimony yesterday patient-centered
8 practice. Do you remember that?

9 A. I do.

10 Q. What is a patient-centered practice, what
11 does that mean?

12 A. Well, it has different definitions, but
13 the main thing means that you put the patient's
14 perspective at the center of all the care that you
15 provide; so, you elicit their perspective about
16 their illness, their perception of it, how it
17 affects them in every, in every sphere of their
18 life. You collaborate with them rather than act
19 in a more, the older model, which was a more
20 patriarchal model where the physician knew what
21 was best for the patient and the patient
22 unquestioningly accepted that. So, I guess the
23 essence of that is that everything that you do is
24 treating the patient as an equal or a collaborator
25 in their own health.

1 Q. And is that the practice philosophy that
2 you applied for Patients 1 through 11 in this
3 matter?

4 A. It is.

5 Q. Doctor Neuhaus, is the date that is
6 present on the intake sheet, for example, Bates 1
7 of Exhibit 23 -- there's a date at the top of that
8 page that says it's July 22nd, 2003?

9 A. Yes.

10 Q. Is it your testimony that that was the
11 date that you rendered your service to this
12 patient by conducting the evaluation?

13 A. It is.

14 Q. And that is a document that appears in
15 your chart, correct?

16 A. It does.

17 Q. Taking a look at -- take a look at
18 exhibit, Exhibit 32, Bates 1. That carries a date
19 of November 4th, 2003, correct?

20 A. It does.

21 Q. And appointment time 8:30 a.m., correct?

22 A. Correct.

23 Q. And as you go horizontally across that
24 page your name is written, correct?

25 A. It is.

1 Q. And this is a record that was in your
2 chart?

3 A. That's correct.

4 Q. Does your name appearing on that record
5 indicate that this is associated with you?

6 A. It does.

7 Q. And would it be the case that any time on
8 a top sheet that your name appears up in that
9 corner, that this is a record associated with your
10 evaluation of the patient?

11 A. That's a reasonable inference.

12 Q. For instance, take a look at Exhibit 26,
13 Bates 1. Does your name appear at the top
14 right-hand corner of that?

15 A. It does.

16 Q. And page, or Exhibit 27, Bates 1.

17 A. It also appears there.

18 Q. Do you know who put that writing there?

19 A. I do not for sure.

20 Q. But it is -- it corresponds to you and
21 your evaluation?

22 A. It does.

23 Q. And that would be the case also for
24 Exhibit 28, Bates 2, correct?

25 A. It would.

1 Q. And Bates 30, correct? Bates 30, page 1?

2 A. That's correct.

3 Q. I'm sorry, Exhibit 30, Bates 1, correct?

4 A. Yes.

5 Q. Exhibit 31, Bates 1?

6 A. Yes.

7 Q. Exhibit 32, Bates 1, is that your name
8 again?

9 A. It is.

10 Q. You were asked yesterday about
11 characterizing the DSM as an encyclopedia as
12 opposed to a Bible. In terms of your
13 understanding of the structure and function of the
14 DSM, is it something that you can use as a
15 reference?

16 A. It is.

17 Q. And encyclopedias are frequently used as
18 a reference, too, aren't they?

19 A. They are.

20 Q. So, you weren't trying -- were you - you
21 weren't trying to minimize the importance of the
22 DSM by calling it or comparing it to an
23 encyclopedia, correct.

24 A. Oh, no, I was contrasting the difference
25 between a compilation of literature of Nomadic

1 Sephardic shepherds to a compendium of terms and
2 their definitions.

3 Q. In the course of the examinations that
4 you conducted for Patients 1 through 11, to the
5 extent that psychosocial information was provided
6 to you either directly through an interview or
7 through the MI, was that something that you took
8 into account to render your diagnosis?

9 A. It was.

10 Q. To the extent that medical information
11 was provided to you from whatever source for
12 Patients 1 through 11, did you take that into
13 account in rendering your diagnosis?

14 A. I did.

15 MR. EYE: Your Honor, I think I'm close
16 to being finished. May I consult with my
17 colleagues for a moment?

18 BY MR. EYE:

19 Q. Doctor Neuhaus, in each of the -- for
20 each of the patients involved in this case,
21 numbers 1 through 11, is it accurate to say that
22 each came to you as a part of the process to deal
23 with an unwanted pregnancy?

24 A. That would be accurate.

25 Q. Irrespective of whether it was

1 specifically noted in your chart, correct?

2 A. That's correct.

3 Q. And as a part of your evaluation -- back
4 up. Was it the objective of your evaluation to
5 determine whether that unwanted pregnancy could
6 lead to a substantial and irreversible harm to the
7 health of the patient that was presented, 1
8 through 11?

9 MR. HAYS: Objection, asked and answered.

10 MR. EYE: I don't think I've asked that.

11 MR. HAYS: He asked earlier at the
12 beginning about the purpose.

13 HEARING OFFICER GASCHLER: As for the
14 purpose was for -- no, that question I don't think
15 has been answered. If it has been, I don't recall
16 it, but go ahead and answer if you can.

17 BY MR. EYE:

18 Q. You may answer.

19 A. Can you repeat it again?

20 Q. Sure, try to. Was the objective of the
21 evaluations that you did for Patients 1 through 11
22 to determine whether the unwanted pregnancy could
23 lead to a substantial and irreversible impact,
24 negative impact on that patient's health?

25 A. That was the objective.

1 Q. Whether it was specified in a direct way
2 or, in your chart or not?

3 A. That is right.

4 Q. And in 2003 when you did these
5 evaluations for Patients 1 through 11 was it your
6 understanding that to the extent that an unwanted
7 pregnancy could cause a substantial and
8 irreversible harm to a patient's health, that that
9 would be a justification to perform a late-term
10 abortion?

11 A. It was my understanding.

12 Q. And that would be the case for all 11
13 charts?

14 A. That's correct.

15 Q. 11 patient charts, correct?

16 A. Correct.

17 Q. Doctor Neuhaus, you were asked some
18 questions about why the GAF and the DTREE dates
19 differed from the date of the appointment of the
20 patients. Can you explain why there were, at
21 least in some instances, the GAF and the DTREE was
22 generated later than -- on a day that was later
23 than the date of the appointment?

24 A. Because at that point I was inputting the
25 information after the patient contact.

1 HEARING OFFICER GASCHLER: After what?

2 A. After the patient contact just as a
3 matter of just finishing up the record after the
4 interview sometimes.

5 BY MR. EYE:

6 Q. Doctor, is it your understanding based
7 upon your practice experience that there can be a
8 time lag between the time when a physician
9 examines a patient and when the physician produces
10 the chart entry for that examination?

11 A. That's my understanding, yes.

12 Q. Is the -- based upon your understanding,
13 is the fact that there is a time lag between the
14 time when an examination is conducted and when a
15 record for it is produced, is that an indication
16 of a violation or a deviation from the standard of
17 care?

18 A. Not if it's not extreme, like months
19 later maybe, although plenty of those cases do
20 happen.

21 MR. EYE: That concludes by redirect,
22 Your Honor.

23 HEARING OFFICER GASCHLER: Any recross?

24 MR. HAYS: Sir, just briefly.

25 RE-CROSS-EXAMINATION

1 BY MR. HAYS:

2 Q. Can you go to Exhibit No. 27, Bates page
3 6. Those are your initials at the top, correct?

4 A. They are.

5 Q. Now, let's go to -- keep your hand right
6 there where you have that one, too. Exhibit No.
7 32, page 2, correct -- or if we can go there. You
8 got page 2?

9 A. I do.

10 Q. And those are the initials that you
11 indicated were your initials, correct?

12 A. I indicated that they could be.

13 Q. But now looking at initials that you know
14 are yours, those are not your initials, correct?

15 A. I mean, I'm not certain. I never said I
16 was. I just said it could be.

17 Q. Those -- after reviewing that, those are
18 not your initials, correct?

19 MR. EYE: Asked and answered.

20 A. Probably --

21 HEARING OFFICER GASCHLER: Sustained.

22 She didn't ever claim that they were hers on page
23 2. She said they could be.

24 MR. HAYS: And let's go to -- well,
25 strike that. I have no further questions.

1 MR. EYE: Nothing further, Your Honor.

2 HEARING OFFICER GASCHLER: Doctor

3 Neuhaus, I just want to make sure I understand
4 perfectly clear. Your DTREE and your GAF reports,
5 you did not do those while -- well, you did not do
6 those while you were doing the interviews with the
7 patients?

8 A. Not at this point in time I was no
9 longer.

10 HEARING OFFICER GASCHLER: You would do
11 them either at the facility in Wichita later or at
12 your other office or at your home?

13 A. When I got home, right, whatever,
14 depending on how late it was.

15 HEARING OFFICER GASCHLER: Okay, thank
16 you. I thought I was sure about that, but I
17 wasn't. You're excused.

18 MR. EYE: Your Honor, before I call our
19 next witness may we take a brief recess?

20 HEARING OFFICER GASCHLER: Sure.

21 (THEREUPON, a recess was taken.)

22 (THEREUPON, Respondent Exhibit No 1 was
23 marked for identification.)

24 HEARING OFFICER GASCHLER: Back on the
25 record.

1 MR. EYE: We call Doctor Greiner.

2 K. ALLEN GREINER, JR., M.D.,
3 called as a witness on behalf of the Respondent,
4 was sworn and testified as follows:

5 DIRECT-EXAMINATION

6 BY MR. EYE:

7 Q. Sir, would you please state your name.

8 A. Yeah, K. Allen Greiner, Jr.

9 Q. And how are you employed?

10 A. Faculty at the University of Kansas
11 Medical Center in Kansas City.

12 Q. Doctor Greiner, I've handed you what has
13 been marked as Respondent's 1. Do you, do you
14 recognize this document?

15 A. Yes.

16 Q. And what is it?

17 A. It's my CV.

18 Q. Now, under current academic rank it
19 indicates that you're an associate professor.
20 Have you -- since February 10, 2011, which is the
21 date that's up in the upper left-hand corner, have
22 you -- has that status changed?

23 A. Yes.

24 Q. And, what is it now?

25 A. I'm now full professor.

1 Q. And, when did that -- when did that
2 occur, when did that appointment occur?

3 A. As of July 1, 2011.

4 Q. Are there additional publications that
5 could be inserted into this document if it were to
6 be current as of today?

7 A. Yes. There are some additional
8 publications that have come into, into press since
9 the time of this document.

10 Q. Now, you're familiar with the issues that
11 are being dealt with in this particular matter,
12 aren't you?

13 A. Yes.

14 Q. Do any of the publications that are not
15 specified on your CV, do they have anything to do
16 with the review that you did in this matter?

17 A. No.

18 MR. EYE: I'd move admission of
19 Respondent's 1.

20 MR. HAYS: No objection.

21 HEARING OFFICER GASCHLER: Respondent's 1
22 is admitted. Thank you.

23 BY MR. EYE:

24 Q. How long have you been on the faculty at
25 the University of Kansas Medical Center?

1 A. Little over 13 years.

2 Q. Briefly, what was your undergraduate
3 education?

4 A. I attended college at Brown University in
5 Providence, Rhode Island, for four years.

6 Q. Did you obtain a degree?

7 A. Yes.

8 Q. And what was that degree in?

9 A. Anthropology.

10 Q. And subsequent to obtaining your degree
11 at Brown University, from Brown University, what
12 did you do?

13 A. I matriculated at the University of
14 Kansas Medical Center School of Medicine.

15 Q. And did you obtain a degree?

16 A. Yes.

17 Q. What year?

18 A. 1995.

19 Q. Do you have an additional degree that
20 you've obtained?

21 A. Yes.

22 Q. And what is that?

23 A. I have a master's in public health
24 degree.

25 Q. And when did you obtain that?

1 A. In 2000.

2 Q. Are you licensed to practice medicine?

3 A. Yes.

4 Q. Are you licensed in Kansas?

5 A. Yes.

6 Q. Doctor Greiner, are you board certified
7 in any specialty?

8 A. Yes, family medicine.

9 Q. And what is required for you to obtain a
10 board certification in family medicine?

11 A. You must complete an accredited residency
12 program in family medicine and also pass the board
13 examination in family medicine.

14 Q. Once you obtain a board certification in
15 family medicine, what does that mean?

16 A. It essentially means that you've
17 completed a set of required training activities as
18 well as through examination proved that you've
19 retained the knowledge that, that you gleaned from
20 those training activities and that you can apply
21 that, that knowledge and information to the
22 practice of that specialty.

23 Q. Since your appointment to the faculty at
24 the University of Kansas Medical Center have you
25 taught?

1 A. Yes.

2 Q. Currently what are your faculty duties at
3 the medical center?

4 A. My, my faculty duties at the medical
5 center essentially involve three sets of
6 activities. One is the practice of medicine, of
7 family medicine. We have a, a family medicine
8 clinical practice at the medical center with
9 approximately 16 physicians. It also involves
10 teaching activities, which occur both in didactic
11 or classroom settings, field settings and applied
12 settings, as well as inside of our office
13 practice, there's teaching activities that are
14 going on with both medical students and residents,
15 and then I also am engaged in ongoing public
16 health and preventive health research activities.

17 Q. In addition to your faculty duties at the
18 University of Kansas do you do outside chart
19 reviews for any organization?

20 A. Yes.

21 Q. And what organization is that?

22 A. The Kansas Foundation for Medical Care.

23 Q. And what is the Kansas Foundation for
24 Medical Care? What do you understand it to be?

25 A. I -- my understanding is that the Kansas

1 Foundation for Medical Care is the CMS or Centers
2 for Medicare and Medicaid Services quality
3 assurance organization for the state of Kansas and
4 my understanding is that each state has a quality
5 assurance organization, it's a nonprofit entity
6 somewhat funded by CMS, but that facilitates peer
7 review by physicians.

8 Q. Do you consider yourself competent to
9 review medical charts for purposes of determining
10 standard of care?

11 A. Yes.

12 Q. How did you come about to, to be
13 designated as a person who does chart reviews for
14 the Kansas Foundation for Medical Care?

15 A. In the context of my faculty activities
16 at the University of Kansas Medical Center I work
17 with a number of colleagues. One of the
18 colleagues I've worked with consistently over the
19 past I believe 10 or 11 years is Doctor Edward
20 Ellerbeck who's the chair of the Department of
21 Preventive Medicine and Public Health and he's
22 been a long-time paid consultant to the Kansas
23 Foundation for Medical Care. He previously worked
24 for HCFA, which was the acronym for CMS before it
25 became CMS, and he recommended me I believe eight

1 years ago as a physician peer reviewer to the
2 staff at the Kansas Foundation for Medical Care.

3 Q. Over the course of your time that you've
4 done chart reviews for KFMC approximately how many
5 charts do you recall reviewing? And again, this
6 is an approximation given it's over some number of
7 years.

8 A. Approximately 70 charts.

9 HEARING OFFICER GASCHLER: How many?

10 A. 70.

11 BY MR. EYE:

12 Q. And in the course of those chart reviews
13 are you looking for standard of care issues?

14 A. Yes.

15 Q. In the course of reviewing those charts
16 do some of them contain evidence of mental health
17 examinations?

18 A. Yes.

19 Q. And do you -- are you -- do you consider
20 yourself competent to determine whether the
21 evidence of those mental health examinations are
22 consistent with the standard of care?

23 A. Yes.

24 Q. The charts that you review for Kansas
25 Foundation for Medical Care, do they include

1 charts that are, that are for physicians or
2 related to physicians who are not psychiatrists?

3 A. Yes. The -- yes.

4 Q. Do most of them, are most of them related
5 to physicians who are not psychiatrists?

6 A. Yes. The vast majority are, are primary
7 care physicians.

8 Q. And in the course of primary care there
9 are mental health examinations that occur in
10 physicians' offices on occasion?

11 A. Yes.

12 Q. And those would have been in some of the
13 charts that you reviewed for KFMC?

14 A. Yes.

15 Q. Doctor Greiner, I want to go back and
16 discuss a bit about the family practice that you
17 currently have that's a part of your work at the
18 University of Kansas Medical Center. Could you
19 describe what that family practice consists of?

20 A. Yes. Our family practice office provides
21 full spectrum primary care services to children,
22 adolescents, adults, as well as women's health,
23 geriatric medicine, mental health services as well
24 as a range of other behavioral services, and a
25 variety of coordination of care and social work

1 services.

2 Q. In the course of your family practice do
3 you see patients?

4 A. Yes.

5 Q. Do you see patients on occasion that
6 require some type of mental health examination be
7 conducted?

8 A. Yes.

9 Q. And do you conduct those mental health
10 examinations on occasion?

11 A. Yes.

12 Q. In the course of your duties at the
13 University of Kansas Medical Center do you teach a
14 class or work with students related to clinical
15 skills?

16 A. Yes.

17 Q. And could you describe that, please.

18 A. Yes. The primary class I'm currently
19 teaching that involves clinical skills training is
20 a rural family medicine research elective for
21 medical students during the summer months. I've
22 actually taught in several clinical skills courses
23 over the years at the medical center, but that's
24 the primary one I've been engaged in ongoing and
25 continue to be engaged in. That course involves

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1 teaching medical students who have received some
2 minimal clinical skills training during the course
3 of their first year medical school, but do not
4 have the full range of clinical skills in order to
5 see patients and examine them and come to some
6 conclusions based on that examination. So, we, we
7 provide an in depth training to those students,
8 it's usually between 20 and 30 students each year.
9 We provide that at the beginning of the summer and
10 I oversee that and lead those training sessions
11 with those students.

12 Q. During the course of that clinical skills
13 teaching responsibility is it on occasion
14 necessary to discuss the, the purpose and function
15 of a mental health examination?

16 A. Yes.

17 Q. And does it include how to conduct a
18 mental health examination?

19 A. Yes.

20 Q. Is it the case that a mental health
21 examination is at least to a certain extent
22 patient-specific as to how it's conducted?

23 A. Yes.

24 Q. Do criterion such as age of the patient
25 make a difference in terms of how a mental health

1 examination is conducted?

2 A. Yes.

3 Q. Why, or why are those kinds of
4 idiosyncrasies, if you will, why are they
5 important in terms of determining how a mental
6 health examination is conducted?

7 A. Primarily because of the cognitive
8 abilities of patients and individuals of different
9 ages, as well as the full spectrum of their
10 medical disorders, both physical as well as
11 neurologic and/or mental; so, in terms of doing a
12 mental health evaluation or examination,
13 especially in primary care we feel it's very
14 important to take all factors into consideration.
15 With the age issue it can be things such as
16 language capability. Those factors could also
17 come into play if you're interviewing people of
18 different cultural backgrounds or social or
19 educational backgrounds, so, trying to pull all
20 that together is very important in terms of the
21 way in which you conduct those, those mental
22 health evaluations.

23 Q. In the course of your clinical practice
24 do you maintain patient charts?

25 A. Yes.

1 Q. And in the course of your teaching do you
2 offer guidance to students about documentation and
3 charts?

4 A. Yes, to both students and residents.

5 Q. When I say students, that refers to
6 medical students and what's the difference between
7 a medical student and a resident, Doctor?

8 A. So, a resident is a physician in training
9 after completion of medical school.

10 Q. Your chart review for KFMC, are those
11 charts that originate with Kansas physicians?

12 A. Yes.

13 Q. Exclusively?

14 A. Yes.

15 Q. And what do you do when you review charts
16 for KFMC?

17 A. I read the chart from cover to cover. I
18 evaluate both clinical as well as various
19 administrative features of the chart and then
20 based on set questions or areas that I'm asked to
21 evaluate from the staff at the Kansas Foundation
22 for Medical Care I levy an opinion and write an
23 opinion statement regarding what I found in that
24 chart.

25 Q. In the course of that review do you --

1 have charts included diagnoses of mental illness
2 or issues related to mental illness?

3 A. Yes.

4 Q. And have you judged the standard of care
5 related to those diagnoses?

6 A. Yes.

7 Q. Do you also do some medical-related work
8 for the Wyandotte County Health Department?

9 A. Yes.

10 Q. What sort of work do you do for the
11 Wyandotte County Health Department, Doctor?

12 A. I'm the health officer for the Wyandotte
13 County Health Department and also a medical
14 consultant to them.

15 Q. What does that -- what does that work
16 involve?

17 A. So, that work involves primarily the
18 development and the annual review and adjustment
19 of care protocols for several of the different
20 clinical programs that they offer within the
21 health department as well as ongoing consultation
22 on infectious and contagious diseases, especially
23 those that are reportable; so, for care protocols
24 it involves protocols for the family planning
25 clinic that runs out of the health department, the

1 sexually transmitted infection clinic that runs
2 out of the health department, again the infectious
3 disease control program, as well as laboratory
4 service programs that are offered there and then
5 some involvement with the pediatric program.
6 There are other pediatricians staff from K.U.
7 involved in that as well, but I, I fill in service
8 there as well as provide oversight and
9 consultation in the peds clinic.

10 Q. Doctor Greiner, in the course of your
11 education and training did you -- were you trained
12 in at least to a certain extent on how to evaluate
13 the mental health of a patient?

14 A. Yes.

15 Q. In, in a general brief way could you
16 describe the medical school course work that you
17 took that related to determining the mental health
18 status of patients.

19 A. Yes. There -- during medical school
20 there's a required behavioral science course
21 that's traditionally been taught in the second
22 year of medical school and at the time I took it I
23 believe it was a semester-long course. That may
24 have changed some, but the course remains intact
25 and I believe it's a four credit hour course that

1 involves broad training in behavioral medicine,
2 psychiatry, psychology, and general mental health.
3 In addition to that, I completed a clerkship, four
4 credit hour course I believe during my third year
5 of medical school which is a clinical clerkship
6 course in psychiatry performing both inpatient and
7 outpatient psychiatry training activities under
8 the supervision of psychiatrists and psychologists
9 in the K.U. School of Medicine psychiatry
10 department, and that's, that's really it from
11 medical school.

12 **Q. And have you had opportunities to receive**
13 **any further experience in terms of evaluating the**
14 **health of, the mental health of patients?**

15 A. Yeah, during residency in family medicine
16 there's an extensive curriculum requirement in,
17 again in what we call behavioral sciences and, so,
18 there are a number of training activities that
19 must be completed by all residents in family
20 medicine during their three-year training course.
21 Our, our department has always had psychologists,
22 Ph.D. psychologists that led that training
23 activity. That involved some direct hands-on time
24 working with those psychologists in performing
25 mental health evaluations and providing mental

1 health services, but in addition there's ongoing
2 work and training in mental health working with
3 physician faculty in family medicine.

4 Q. Doctor Greiner, as a family practitioner
5 and as a person who teaches others to become
6 family practitioners, is that correct, you do have
7 that responsibility?

8 A. Yes.

9 Q. Is it anticipated that family
10 practitioners will deal with pregnant women?

11 A. Yes.

12 Q. Is that fairly common from a family
13 practice perspective?

14 A. Yes.

15 Q. And in the course of working with
16 patients who are pregnant in the family practice
17 context is there a necessity to do mental health
18 evaluations on occasion?

19 A. Yes.

20 Q. And as a, as a function of doing those
21 mental health evaluations is treatment sometimes
22 recommended?

23 A. Yes.

24 Q. Would that include prescribing drugs?

25 A. Yes.

1 Q. Could it include other kinds of therapy
2 or interventions?

3 A. Yes.

4 Q. And are family practitioners at least in
5 general qualified to conduct a mental health
6 examination on a pregnant woman for purposes of
7 determining treatment or intervention?

8 A. Yes.

9 Q. And that would be -- strike that. In the
10 course of your practice do you prescribe drugs for
11 mental health diagnoses?

12 A. Yes.

13 Q. And is that consistent with your
14 abilities to do so as a family practitioner?

15 A. Yes.

16 Q. Doctor Greiner, do you know Doctor
17 Neuhaus?

18 A. Yes.

19 Q. And how do you know Doctor Neuhaus?

20 A. I first met Doctor Neuhaus at the
21 Wyandotte County Health Department when she began
22 working there as a provider I believe three, three
23 and a half years ago.

24 Q. And do you know Doctor Neuhaus in a
25 student context?

1 A. Yes. Following our initial meeting at
2 the health department Doctor Neuhaus explained to
3 me that she was interested in learning more about
4 public health and also about public health
5 research and we happen to run a, what we call a
6 post-doctoral training program for fellows that's
7 in what we call primary care and public health
8 research and, so, she applied for that fellowship
9 program and was accepted into it and then became a
10 trainee in a program that I direct and has gone on
11 to complete courses in our master's in public
12 health program as well as engage in and receive
13 training in our public health research activities.

14 **Q. If you know, is Doctor Neuhaus currently**
15 **pursuing the master's in public health at the**
16 **University of Kansas Medical Center?**

17 A. Yes.

18 **Q. Doctor Greiner, does the fact that you**
19 **have this prior knowledge in relationship with**
20 **Doctor Neuhaus affect the opinions that you've**
21 **rendered in this case?**

22 A. No.

23 **Q. Why?**

24 A. The opinions I've rendered in this case
25 are more formed by my prior work as a peer

1 reviewer and my ability to evaluate standard of
2 care when it comes to the provision of primary
3 care obstetrics and mental health services. I do
4 not feel that my knowledge of Doctor Neuhaus and
5 my work with her in any way relates directly to
6 prior work she performed in these cases.

7 **Q. And you have had an occasion to observe**
8 **Doctor Neuhaus' medical practice at the Wyandotte**
9 **County Health Department?**

10 A. Yes.

11 **Q. Have there been any other settings in**
12 **which you have had an opportunity to observe**
13 **Doctor Neuhaus' practice?**

14 A. Yes.

15 **Q. Would you please describe those.**

16 A. Yes. As a, as a part of our ongoing
17 public health research activities that we do out
18 of the, out of the Department of Family Medicine
19 and out of K.U. Medical Center, we engage in a
20 number of partnership activities with community
21 organizations and entities, nonprofits,
22 educational institutions, and other organizations,
23 and as part of that partnership building we're
24 often we're collecting data or beginning the
25 process of launching a project where we'll collect

1 data, we provide clinical services, so, we often
2 will conduct health fairs where we're doing
3 different types of clinical examination screening
4 activities on individuals, community members, and
5 others. We have engaged extensively in providing
6 school physicals for students, especially
7 adolescents and young adults in places such as
8 Wyandotte County and at Haskell Indian Nations
9 University in Lawrence. So, those sorts of
10 settings.

11 Q. In your observation of Doctor Neuhaus'
12 practice in those various settings that you've
13 just described, is it your opinion based upon
14 those observations that she has met the standard
15 of care?

16 A. Yes.

17 Q. And, Doctor Greiner, were you provided
18 the medical charts for what we've called Patients
19 1 through 11 that are involved in this matter?

20 A. Yes.

21 Q. Who gave you those charts?

22 A. You did.

23 Q. And what form were they in?

24 A. They were on a CD-ROM.

25 Q. When you were provided those charts what

1 was the purpose that was, that they were provided
2 to you?

3 A. My understanding of the purpose was for
4 me to evaluate those charts and assess through a
5 peer review process whether the standard of care
6 had been met by the providers within those charts
7 in regards to mental health evaluation, provision
8 of what I considered primary care services, as
9 well as documentation standard of care.

10 Q. Were you told how to go about reviewing
11 these charts?

12 A. No.

13 Q. Was it suggested to you as to what
14 conclusions to reach?

15 A. No.

16 Q. Now, in the course of reviewing the
17 charts, the medical information related to this
18 case, did you ever have an occasion to discuss
19 these charts with Doctor Neuhaus?

20 A. Yes.

21 Q. And why did you do that?

22 A. I felt I needed additional clarification
23 on some logistical features of the care provision
24 process. Having not been involved previously in
25 pregnancy termination services myself and not

1 having knowledge of how that process proceeded, I
2 wanted to know things such as did Doctor Neuhaus
3 travel to Wichita to see these patients? Did, did
4 Doctor Neuhaus follow a certain routine when she
5 performed her examinations and even more
6 specifically I wanted to know some information
7 about whether or not the use of specific
8 algorithms and scoring systems was used to come to
9 mental health diagnoses with each of the patients
10 represented in the charts.

11 Q. And were you able to obtain answers to
12 your questions from Doctor Neuhaus?

13 A. Yes.

14 Q. Did that information that you derived
15 from the conversation you had with Doctor Neuhaus
16 assist in you evaluating the charts related to
17 this matter?

18 A. Yes.

19 Q. Did it assist you in rendering an opinion
20 or opinions related to this matter?

21 A. It didn't change my opinion, but it
22 facilitated that opinion.

23 Q. So, is it fair to say that you have
24 reviewed the documentation related to Patients 1
25 through 11?

1 A. Yes.

2 Q. And that you've observed Doctor Neuhaus'
3 practice in various settings?

4 A. Yes.

5 Q. And you have spoken to her about the
6 charts that are involved in this matter?

7 A. Yes.

8 Q. Doctor Greiner, what does the term
9 clinical judgment mean to you?

10 A. The term clinical judgment to me means
11 the assessment and the -- essentially the
12 evaluation that a health care provider of any type
13 makes following the sum total collection of a
14 number of pieces of information and then some sort
15 of weigh, weighing and sifting of all the factors
16 that that health care provider has in order to
17 come to a conclusion about, about what's going on
18 clinically and -- and in some cases what ought to
19 be done to address that clinically.

20 Q. To the extent that there may be a
21 difference in clinical judgment between two
22 physicians, does that mean per se that there's
23 been a deviation in standard of care?

24 A. No.

25 Q. Doctor Greiner, what does standard of

1 care mean at least in the general sense?

2 A. My understanding of standard of care is
3 it's a level of care at which a large group of
4 peer providers would look and find that level of
5 care to be reasonable, prudent, acceptable within
6 the range of care that those peer providers see as
7 such.

8 Q. Does the standard of care have specific
9 patient characteristics that -- in other words, do
10 you judge standard of care based upon
11 characteristics of the patient that's involved?

12 A. Absolutely.

13 Q. Why?

14 A. Because the -- just as with clinical
15 judgment, the standard of care is subject to a
16 very large number of factors and pieces of
17 information that are put together within the
18 clinical context and, and then result in
19 assessments and typically decisions for proceeding
20 with treatment and those, many of the factors
21 involved are patient-specific.

22 Q. Would it be the case that a standard of
23 care also could have some contextual variations to
24 it depending upon what, what the context may be
25 that the patient is seen and for what problems?

1 A. Yes.

2 Q. And why is that?

3 A. Again, because of the, the amalgamation
4 of all the features and factors that go into
5 clinical decision making and that's, the process
6 that would be called standard of care context,
7 environment, et cetera, is a big part of that and
8 I think that's why the Centers for Medicare and
9 Medicare Services has 50 quality assurance
10 organizations in 50 states because they recognize
11 the contextual features that relate to quality of
12 care.

13 Q. Doctor Greiner, I believe you testified
14 earlier that you reviewed the 11 patient charts
15 related to this matter, correct?

16 A. Yes.

17 Q. Did you for purposes of this matter
18 determine, based upon that review and any
19 information that you've obtained from Doctor
20 Neuhaus, determine whether the standard of care
21 was met in terms of the diagnosis that was reached
22 for each one of these patients?

23 A. Yes.

24 Q. And what is your opinion in regard -- in
25 that regard?

1 A. I believe the standard of care was met.

2 Q. In your review of the 11 charts related
3 to this matter did you have -- did you determine
4 whether the standard of care was met related to
5 documentation both based upon your review of the
6 charts and your conversations with Doctor Neuhaus?

7 A. Yes.

8 Q. And what was your opinion in that regard?

9 A. I believe the standard of care was met.

10 Q. Now, Doctor Greiner, there are in these
11 charts, at least in 10 of the 11 there is a, an
12 instrument -- or there is evidence of something
13 called the DTREE. Did you review those documents?

14 A. Yes.

15 Q. And is the, is the DTREE -- what's your
16 understanding of how the DTREE was used by Doctor
17 Neuhaus in this matter?

18 A. My understanding and my assessment based
19 on the review of the charts was that an interview
20 and assessment by Doctor Neuhaus was used to
21 generate a large amount of information that was
22 then entered into an assessment algorithm that
23 apparently was computerized to assist in the
24 development of the diagnosis and evaluation.

25 Q. There was a -- there was something called

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1 a general assessment of functioning or a GAF or
2 GAF it's been referred to variously. Is that an
3 instrument with which you have some familiarity?

4 A. Not extensive familiarity, no.

5 Q. Do you -- did you understand how the GAF
6 was used by Doctor Neuhaus in this case?

7 A. Yes.

8 Q. And what was your understanding of how it
9 was used?

10 A. Again, based on the chart information
11 available to me, it -- my assessment was that
12 Doctor Neuhaus collected an extensive amount of
13 information from each patient while seeing,
14 interviewing and examining them, then used that
15 information to enter it into and develop the GAF
16 statement.

17 Q. And in terms of the, both the DTREE and
18 the GAF as a, if you combine those, is that
19 indicative of, to the extent that it's consistent
20 with having gathered information from the patient,
21 is that indicative of a patient history having
22 been gathered?

23 A. Yes.

24 Q. Is that consistent with -- or is that
25 evidence of, rather, a, an assessment of that

1 history having been done by Doctor Neuhaus?

2 A. Yes.

3 Q. Doctor Greiner, in terms of your
4 experience as a clinician and also as a person who
5 reviews charts in a peer review sense for Kansas
6 Foundation for Medical Care, is it your experience
7 that practitioners in Kansas, family practitioners
8 in Kansas who make mental illness diagnoses use
9 more diagnostic methods than used by Doctor
10 Neuhaus in her work with the patients in this
11 matter?

12 A. No.

13 Q. Do they frequently use less?

14 A. Yes.

15 Q. And is that one of the bases for your
16 opinions in this regard, in this matter?

17 A. Yes.

18 Q. Is it within the standard of care, for
19 instance, to arrive at a diagnosis of a mental
20 illness, that is a diagnosis made by a family
21 practitioner, without using -- formally using the
22 GAF?

23 A. Yes.

24 Q. And same question for the DTREE?

25 A. Yes.

1 Q. Now, Doctor Greiner, the chart for
2 Patient No. 8, I believe, does not have a GAF or a
3 DTREE. Do you remember that chart? Do you
4 remember one of the charts does not have a GAF or
5 DTREE?

6 A. Yes.

7 Q. Did that chart have a SIGECAPPS or an MI?

8 A. I believe it had an MI Statement, yes.

9 Q. And is the MI Statement, which includes
10 the SIGECAPPS review, is that a, a useful tool in
11 determining the mental status and functioning of a
12 patient?

13 A. Yes.

14 Q. Why?

15 A. Because it, it asks a series of questions
16 that again over time and tested repeatedly in
17 clinical environment have, have shown to provide
18 valuable information about a patient's mental
19 status, functioning, behavior, as well as various
20 psychological and psychiatric pathologies.

21 Q. So, those are relevant questions that are
22 being posed?

23 A. Yes.

24 Q. Doctor Greiner, Patient No. 2, did you
25 review the chart for that patient?

1 A. Yes.

2 Q. And it's -- you can certainly refer to it
3 as you need to. It would be exhibit, exhibit
4 number --

5 HEARING OFFICER GASCHLER: 24.

6 BY MR. EYE:

7 Q. -- Exhibit 24.

8 A. Okay.

9 Q. Do you recall this patient?

10 A. Yes.

11 Q. Or the chart of the patient?

12 A. Yes.

13 Q. And was this the 10-year-old patient?

14 A. Yes.

15 Q. Doctor Greiner, it's certainly not the
16 usual occurrence that a family practitioner has to
17 deal with a pregnant 10-year-old, correct?

18 A. Right.

19 Q. Would it be the case that a pregnant, a
20 pregnant 10-year-old that presents for an
21 evaluation would have to be approached and
22 consider the context of why that patient is there?

23 A. Yes.

24 Q. And would that patient have to be
25 evaluated considering her age?

1 A. Yes.

2 Q. And would it be reasonable to rely on
3 statements from the parent who accompanies that
4 patient for information related to the patient?

5 A. Yes.

6 Q. But it would also be reasonable for, in
7 this case Doctor Neuhaus, to sit in the
8 examination room and observe face-to-face the
9 10-year-old?

10 A. Yes.

11 Q. Would you expect that that examination
12 would be the same as it would be for an
13 18-year-old?

14 A. No.

15 Q. Irrespective of what is in the, in the
16 chart for the 10-year-old patient, for Patient No.
17 2, to the extent that it includes a DTREE and a
18 GAF, is that evidence of a mental health
19 examination having been conducted by Doctor
20 Neuhaus?

21 A. Yes.

22 Q. Now, in your review of these records did
23 you also look at records that had been provided to
24 you that, that were from Women's Health Care
25 Services or Doctor Tiller's clinic in Wichita?

1 A. Yes.

2 Q. And did you find in those records letters
3 from Doctor Neuhaus for the patients that
4 indicated that she had -- or strike that. What
5 did those letters that you saw that came from
6 Doctor Neuhaus that were, that were provided to
7 Women's Health Care Services, what did you
8 interpret those letters to mean?

9 A. I felt those letters represented evidence
10 that Doctor Neuhaus had performed an examination
11 and evaluation of each of these patients, had come
12 to a conclusion and reached an assessment and then
13 was, was presenting that assessment to Doctor
14 Tiller.

15 Q. And would that have required an
16 evaluation of each such patient that had a letter,
17 or a letter from Doctor Neuhaus to Women's Health
18 Care Services that corresponded to that patient?

19 A. Yes.

20 Q. Now, one of the letters that you examined
21 in this, in this record that was provided by
22 Doctor Neuhaus to Women's Health Care Services
23 didn't have her signature, remember that?

24 A. Uh-huh.

25 Q. Is that a yes?

1 A. Yes.

2 Q. And did you make a further assessment as
3 to whether it was reasonable that that letter
4 originated with Doctor Neuhaus?

5 A. Yes.

6 Q. And what was your opinion in that regard?

7 A. I believed that it had originated with
8 Doctor Neuhaus.

9 Q. Doctor Greiner, in your conversation and
10 conversations with Doctor Neuhaus about her work
11 doing second opinions for Women's Health Care
12 Services, were you able to derive information that
13 you needed to render opinions in this case?

14 A. I supplemented the information that I
15 needed to make those opinions, yes.

16 Q. Thank you. Were there any questions that
17 you posed to Doctor Neuhaus that she did not
18 answer?

19 A. No.

20 Q. Doctor Greiner, is it the case that you
21 have considered, having observed Doctor Neuhaus'
22 practice in various settings, have you considered
23 inviting her to join your clinical practice?

24 A. Yes.

25 Q. And subsequent to your review of the

1 charts in this case would you still consider
2 making the same invitation?

3 A. Yes.

4 Q. Doctor Greiner, is it reasonable in the
5 course of, of evaluating these patients 1 through
6 11 that Doctor Neuhaus would rely on information
7 that was provided to her from Women's Health Care
8 Services?

9 A. Yes.

10 Q. Is it the case in many family practice
11 settings that staff people, perhaps not medically
12 trained staff people, will obtain information
13 related to a patient and provide that to the
14 practitioner?

15 A. Yes.

16 Q. And is reliance on that information, so
17 long as the practitioner is comfortable with its
18 origins and so forth, is that consistent with the
19 standard of care?

20 A. Yes.

21 Q. Therefore, was it necessary for Doctor
22 Neuhaus to go through and repeat the questions
23 that were asked in the MI form that was provided
24 to her that had been generated by other staff?

25 A. No.

1 MR. HAYS: Objection, lacks foundation.

2 MR. EYE: I think he's said that he
3 reviewed the charts which included the MI
4 indicators and so forth.

5 HEARING OFFICER GASCHLER: Overruled.

6 BY MR. EYE:

7 Q. Doctor Greiner, in your clinical practice
8 do you rely on information that's been generated
9 by staff people who are not physicians?

10 A. Yes.

11 Q. Why do you consider that to be
12 reasonable?

13 A. The staff under the health care
14 provider's supervision often are capable of
15 collecting more detailed and in some cases more
16 specific information that might require the
17 provider taking an extensive amount of time, so,
18 it improves efficiency, and again is so routine
19 within, within care practice settings that it
20 certainly meets the standard of care.

21 Q. Does the information generated by a staff
22 person, such as the MI indicators in this case, is
23 that used as a, for lack of a better term, a point
24 of departure for the clinician to use to delve
25 further into problems that are presented by the

1 patient during, in this case, the face-to-face
2 interviews?

3 A. Yes.

4 MR. EYE: Sir, this would be a good time
5 to, for us to break, if that's agreeable, for the
6 lunch recess.

7 HEARING OFFICER GASCHLER: Mr. Hays, any
8 objection?

9 MR. HAYS: No, sir.

10 HEARING OFFICER GASCHLER: All right,
11 back at 1 o'clock.

12 (THEREUPON, a recess was taken for
13 lunch.)

14 (THEREUPON, Respondent's Exhibit No 2 was
15 marked for identification.)

16 HEARING OFFICER GASCHLER: Back on the
17 record. Go ahead, Mr. Eye.

18 MR. EYE: Thank you, sir.

19 BY MR. EYE:

20 Q. Doctor Greiner, in the course of your
21 professional duties as a physician have you ever
22 testified before today in another case?

23 A. I've had a deposition taken.

24 Q. Is that -- and you were deposed in this
25 case as well?

1 A. Yes.

2 Q. Are those the only two times other than
3 today that you've testified as a witness in a
4 medically-related case?

5 A. Yes.

6 Q. Doctor Greiner, what's your compensation
7 arrangement for this case?

8 A. I'm not being compensated.

9 Q. Doctor Greiner, did you prepare an
10 opinion letter in this case?

11 A. Yes.

12 Q. And is it dated -- did you do that last
13 March?

14 A. Yes.

15 Q. And was that -- was the -- was that
16 opinion letter based upon a review of the charts
17 that were provided to you?

18 A. Yes.

19 Q. And does it contain a summary of your
20 opinions and the basis therefor?

21 A. Yes.

22 Q. I've handed you what's been marked as
23 Respondent's Exhibit 2. Do you recognize that,
24 Doctor?

25 A. Yes.

1 Q. And what is it?

2 A. It's a letter from me describing my
3 review and my findings and opinion in relation to
4 this case.

5 Q. And does it appear to be a true and
6 correct copy of the opinion letter that you
7 prepared in this case?

8 A. Yes.

9 MR. EYE: I would move admission of
10 Respondent's 2, Your Honor.

11 MR. HAYS: No objection.

12 HEARING OFFICER GASCHLER: 2's admitted,
13 thank you.

14 MR. EYE: That concludes my
15 direct-examination of this witness, Your Honor.
16 Tender him for cross-examination.

17 CROSS-EXAMINATION

18 BY MR. HAYS:

19 Q. Good afternoon, Doctor Greiner. You've
20 been familiar with Doctor Neuhaus for the past
21 couple years, correct?

22 A. I believe three and a half.

23 Q. And you testified that you met her while
24 she worked at Wyandotte County Health Department?

25 A. Yes.

1 Q. And you're currently the department chair
2 for the master of public health degree program?

3 A. No.

4 Q. Okay, what is your position?

5 A. I'm the vice-chair for research in the
6 Department of Family Medicine.

7 Q. And in your position at K.U. Med are you
8 responsible for determining who the students are
9 that get accepted for the master's in public
10 health program?

11 A. No.

12 Q. But you discussed Doctor Neuhaus -- you
13 discussed with Doctor Neuhaus about entering into
14 the master of public health degree program at the
15 University of Kansas, correct?

16 A. Yes.

17 Q. And you two discussed her application to
18 this program?

19 A. Her application was to a fellowship
20 program, post-doctoral fellowship program that
21 would include course work in the master's in
22 public health program.

23 Q. And you mutually agreed that she would be
24 a good fit if she came and joined this program?

25 A. Yes.

1 Q. And that was a competitive program,
2 correct?

3 A. Yes.

4 Q. And that program's actually ranked,
5 nationally ranked?

6 A. No.

7 Q. So, the master of public health degree
8 program at University of Kansas has -- or strike
9 that. It's not your recollection it's ranked as
10 the sixth best community health graduate degree in
11 the nation by U.S. News and World Reports?

12 A. The master's in public health program may
13 be, but our fellowship program is separate from
14 that and it includes course work as part of it,
15 but it's -- they're two separate entities.

16 Q. You're the one that received Doctor
17 Neuhaus' application when she applied, correct?

18 A. Yes.

19 Q. And you're the individual who chose
20 Doctor Neuhaus from the applicant pool, correct?

21 A. Yes.

22 Q. And that application required an
23 application form?

24 A. Yes.

25 Q. A personal statement?

1 A. Yes.

2 Q. A CV in SoM format?

3 A. I believe so.

4 Q. And a department chair letter of
5 recommendation?

6 A. I don't recall that.

7 Q. And it needed reference letters, correct?

8 A. Yes.

9 Q. And Doctor Neuhaus provided that
10 application package to you, correct?

11 A. Yes.

12 Q. And her application did not have the
13 required reference letters, correct?

14 A. I don't recall.

15 Q. And her application did not have the
16 required department chair letter recommendation,
17 correct?

18 A. It wouldn't 'cause she hadn't had an
19 academic appointment prior to that time.

20 Q. And you are the individual that sent her
21 her acceptance letter, correct?

22 A. I believe so.

23 Q. All right, let's open up the big book
24 that you've got right there. Take a look at
25 Exhibit 80.

1 MR. EYE: Sorry, which one?

2 MR. HAYS: 80.

3 HEARING OFFICER GASCHLER: Sorry, which

4 --

5 MR. HAYS: Exhibit 80. Eight zero, sir.

6 BY MR. HAYS:

7 Q. Can you tell me what that document is?

8 A. Yes, I believe it's Doctor Neuhaus'
9 application to our fellowship program.

10 Q. And that's the application that you
11 provided to the Board in response to their
12 request, correct?

13 A. Yes.

14 Q. Let's turn to page, what's indicated to
15 be page number 3.

16 A. Okay.

17 Q. It's actually the second page in that.

18 A. Okay.

19 Q. And at the bottom it states what is an
20 application packet checklist, correct?

21 A. Yes.

22 Q. And what is on that checklist?

23 A. There are five items. Want me to read
24 them?

25 Q. Yes, please.

1 A. Number one is an application form
2 completed; number two, personal statement; number
3 three, curriculum vita in SoM format; number four,
4 department chairperson letter of recommendation;
5 number five, reference letters.

6 **Q. And can you turn to the next page and**
7 **what's at the top of that page?**

8 A. University of Kansas Primary Care
9 Research Development Program.

10 **Q. And underneath it?**

11 A. Application packet checklist.

12 **Q. And are those checklists items that are**
13 **located there the same ones that you just read?**

14 A. Yes.

15 **Q. And how many of those are checked off?**

16 A. Two.

17 **Q. And which two are checked off?**

18 A. The personal statement and the curriculum
19 vita in SoM format.

20 **Q. And can you take a look through the**
21 **application and tell me where the two reference**
22 **letters are located?**

23 A. I don't see any reference -- I don't see
24 any reference letters.

25 **Q. Okay, and can you turn to the page that**

1 has your signature on it?

2 A. Yes.

3 Q. And what is that page?

4 A. It's the last page of that exhibit.

5 Q. What is -- what is that document?

6 A. It's a letter from me to Doctor Neuhaus
7 describing her acceptance into the program.

8 Q. And you advised her of that acceptance
9 without a complete application, correct?

10 A. I can't say that for certain.

11 Q. But that's the entire application you
12 provided to the Board, correct?

13 A. It is -- yes, it's what I provided to the
14 Board.

15 Q. And when Doctor Neuhaus entered into that
16 program you became her mentor, correct?

17 A. Yes.

18 Q. You provided her with constructive
19 criticism on her progression within the course,
20 correct?

21 A. Not within the course, but within the
22 developmental program, yes.

23 Q. You would discuss with her which courses
24 to take, correct?

25 A. Yes.

1 Q. You discussed with her her career
2 progression?

3 A. Yes.

4 Q. You discussed what type of work that she
5 would like to do in the future, correct?

6 A. Yes.

7 Q. You guided her career progression? Let
8 me strike that. Let me rephrase that. You guided
9 her career progression?

10 A. Yes.

11 Q. You discussed an opening for a medical
12 doctor that your family medicine department had,
13 correct?

14 A. No.

15 Q. You had an opening in the family medicine
16 program, correct, or within the family medicine
17 department, correct?

18 A. We have had openings, yes.

19 Q. And as you testified on direct, one of
20 those openings you invited Doctor Neuhaus to join?

21 A. No. Her position would be different than
22 one of those openings. She wouldn't have -- she
23 wouldn't have a clinical faculty position.

24 Q. Would she be seeing patients?

25 A. Yes.

1 Q. And you have recommended her to your
2 supervisor for that opening, correct?

3 A. Not for the opening. To see patients,
4 yes.

5 HEARING OFFICER GASCHLER: I'm sorry?

6 A. To see patients, yes.

7 BY MR. HAYS:

8 Q. You also gave a recommendation to your
9 supervisor's secretary?

10 A. I believe I discussed it with her, yes.

11 Q. And you also recommended her to your
12 executive director?

13 A. Discussed it with her, yes.

14 Q. And your supervisor is the individual
15 who's responsible for evaluating your work
16 performance, correct?

17 A. Yes.

18 Q. And it's possible that she'll become one
19 of your co-workers, correct?

20 A. She, she really already is one of my
21 co-workers, yes.

22 Q. Now, let's talk about your discussion of
23 this case with Doctor Neuhaus. You discussed it
24 because you needed to get some clarification from
25 her as to the details of her work with Doctor

1 Tiller, correct?

2 A. Yes.

3 Q. And that was because you could not get
4 that information from the records that you were
5 reviewing, correct?

6 A. Yes.

7 Q. She even gave you her opinion as to what
8 she thought of the case before you wrote the
9 opinion, correct?

10 MR. EYE: Objection, vague.

11 BY MR. HAYS:

12 Q. She also gave you her opinion about this
13 case and matter before you wrote your opinion?

14 MR. EYE: Objection, assumes facts not in
15 evidence. And it lacks foundation.

16 HEARING OFFICER GASCHLER: Overruled.

17 BY MR. HAYS:

18 Q. Go ahead and answer.

19 A. Yes, she did.

20 Q. And she told you that she did not think
21 that the case was adequate for her to lose her
22 medical license, correct?

23 A. Yes.

24 Q. And you've already testified that you're
25 not being compensated for this expert opinion?

1 A. Correct.

2 Q. So, basically you're doing it for free?

3 A. Yes.

4 Q. And you've even taken vacation time from
5 your State of Kansas employment, correct?

6 A. Yes.

7 Q. And the first time you were approached
8 about being an expert was from Doctor Neuhaus,
9 correct?

10 A. Yes.

11 Q. And the reason she came to you is because
12 she was having difficulty finding someone to be an
13 expert in her case, correct?

14 A. I believe so.

15 Q. And you agreed to perform the expert
16 services if she could not find someone else,
17 correct?

18 A. Correct.

19 Q. And this was before you saw any of the
20 patient records to determine whether you were
21 qualified to provide an expert opinion on the
22 matter, correct?

23 A. It was before I saw any of the records,
24 yes.

25 Q. Now, you've testified that you're, you're

1 licensed in Kansas to practice medicine and
2 surgery?

3 A. Correct.

4 Q. And Doctor Neuhaus is licensed in Kansas,
5 too, correct?

6 A. Correct.

7 Q. And there are certain professional
8 standards that are required by law in the state of
9 Kansas for a person who's licensed to practice
10 medicine and surgery in the state of Kansas to
11 follow, correct?

12 A. Correct.

13 Q. And one of these professional standards
14 is in the area of recordkeeping, correct?

15 A. Correct.

16 Q. And you are subject to the same
17 professional standards as Doctor Neuhaus, correct?

18 A. Correct.

19 Q. As a licensee subject to these
20 professional standards, you can agree your failure
21 to follow these professional standards could
22 possibly result in a license -- possibly result in
23 a licensee being subject to disciplinary action,
24 correct?

25 MR. EYE: Objection, calls for a legal

1 opinion.

2 HEARING OFFICER GASCHLER: Overruled.

3 A. Correct.

4 BY MR. HAYS:

5 Q. Therefore, you have the duty to follow
6 those same professional standards, correct?

7 A. Correct.

8 Q. And in order to follow those professional
9 standards you would need to know them, correct?

10 A. Not necessarily, no.

11 Q. So, it's your testimony that in order to
12 follow a rule you wouldn't need to know what the
13 rule is?

14 A. You can certainly follow the rule without
15 knowing what it was.

16 Q. Now let's take a look at Exhibit No. 65.
17 That exhibit is KAR 100-24-1 which places the duty
18 upon you because you're licensed to practice
19 medicine in the state of Kansas to maintain
20 adequate records for each patient for whom you
21 perform a professional service, correct?

22 A. Appears to be, yes.

23 Q. And that KAR requires each patient record
24 to be eligible -- legible, sorry.

25 A. Legible?

1 Q. Legible.

2 A. Yes.

3 Q. Contain only those terms and
4 abbreviations that are or should be comprehensible
5 to similar licensees?

6 A. Yes.

7 Q. Contain adequate identification of a
8 patient?

9 A. Yes.

10 Q. Indicate the dates any professional
11 service was provided?

12 A. Correct.

13 Q. Contain pertinent and significant
14 information concerning the patient's condition?

15 A. Correct.

16 Q. Reflect when examinations, vital signs
17 and tests were obtained, performed or ordered and
18 the findings and results of each?

19 A. Correct.

20 Q. Indicate initial diagnosis and the
21 patient's initial reason for seeking the
22 licensee's services?

23 A. Correct.

24 Q. Indicate the medications prescribed,
25 dispensed or administered and the quantity and

1 strength of each?

2 A. Correct.

3 Q. Reflect the treatment performed or
4 recommended?

5 A. Correct.

6 Q. Document the patient's progress during
7 the course of treatment provided by the licensee?

8 A. Correct.

9 Q. And include all patient records received
10 from other health care providers if those records
11 form the basis for a treatment decision by the
12 licensee, correct?

13 A. Correct.

14 Q. And each entry shall be authenticated by
15 the person making the entry unless the entire
16 patient record is maintained in the licensee's own
17 handwriting?

18 A. Correct.

19 Q. Now, not all of Doctor Neuhaus' records
20 met those requirements, correct?

21 A. Incorrect.

22 Q. Well, in fact, you had to go to Doctor
23 Neuhaus personally and ask her if some of the
24 patient -- some of the pertinent evaluations were
25 performed with all 11 patients, correct?

1 A. I asked about the DTREE and the GAF
2 because I couldn't believe that someone would go
3 to that length to document mental health
4 evaluation and assessment. That's above and
5 beyond the scope of typical primary care and
6 psychiatric care in this state, in my opinion.

7 Q. I apologize, I grabbed the wrong
8 transcript. Do you remember a deposition being
9 taken?

10 A. Yes.

11 Q. And I was present for that?

12 A. Yes.

13 Q. And opposing counsel was present for
14 that?

15 A. Yes.

16 Q. And you were sworn?

17 A. Yes.

18 Q. And you had an opportunity to make any
19 corrections to the record after it was produced,
20 correct?

21 A. Yes.

22 Q. And --

23 MR. EYE: May I, for the record, the time
24 allowed for Doctor Greiner to prepare corrections
25 I don't believe has expired yet. He has 30 days

1 after the transcript's presented and that 30 days
2 I don't believe has elapsed yet, so, just for the
3 record, make sure that that's clear.

4 HEARING OFFICER GASCHLER: Well, I guess
5 my query is, have you reviewed your deposition?

6 DOCTOR GREINER: I have.

7 HEARING OFFICER GASCHLER: When did you
8 do that?

9 DOCTOR GREINER: In the car on the way
10 over here yesterday and this morning while I was
11 sitting back in the room, so, I've reviewed it.

12 HEARING OFFICER GASCHLER: And have you
13 made any corrections?

14 DOCTOR GREINER: No, I haven't made any
15 corrections.

16 HEARING OFFICER GASCHLER: Are there
17 corrections that need to be made?

18 DOCTOR GREINER: Not that I've found yet.

19 MR. EYE: Your Honor, I only pointed that
20 out with the idea that the time has not yet -- I
21 don't believe it's lapsed yet, but it's -- I'd
22 only point that out just to make sure the record
23 is clear.

24 HEARING OFFICER GASCHLER: Well, it may
25 pose problems down the road, though.

1 MR. HAYS: Correct, sir, and we did our
2 deposition within the time frame that was allowed
3 by your order.

4 HEARING OFFICER GASCHLER: Well, I'm not
5 pointing fingers of fault at anyone here, folks.
6 I'm looking at potential problems down the road.

7 MR. HAYS: Then do we need to give him an
8 opportunity to review it and make corrections?

9 MR. EYE: Your Honor, let me just say to
10 the extent that Doctor Greiner has reviewed his
11 deposition --

12 HEARING OFFICER GASCHLER: He's only
13 partially reviewed it, if I got him right.

14 MR. EYE: Doctor Greiner, have you --

15 HEARING OFFICER GASCHLER: Did I
16 misunderstand you, Doctor?

17 DOCTOR GREINER: No. I mean I partially
18 reviewed it. I feel like there aren't any
19 significant errors in there that need correction
20 from what I've seen so far.

21 MR. EYE: May I suggest this, to the
22 extent that there is a section that you want to
23 examine him about, that he just be given an
24 opportunity to review that to see if there are
25 corrections that need to be made based upon the

1 testimony you want him to review.

2 MR. HAYS: Sir, if corrections need to be
3 made then I need to be able to have time to adjust
4 for those corrections that need to be made.

5 MR. EYE: Well then -- I'm sorry.

6 MR. HAYS: I don't know what the
7 corrections are, I mean.

8 MR. EYE: I'm simply --

9 MR. HAYS: It may affect my cross.

10 MR. EYE: I'm simply pointing out that --
11 that if you wish to examine him about a part of
12 his testimony that to the extent that he has no
13 corrections to be made about that, then we can go
14 on and if he does see something that needs to be
15 corrected, then we can adjust as need be; but I
16 don't anticipate that that's going to happen. I
17 just want to make sure the record was clear that
18 in terms of what the status was of his review.

19 HEARING OFFICER GASCHLER: And I
20 appreciate that, but that still leaves me with a
21 problem here.

22 MR. EYE: We are willing certainly to
23 allow an examination based upon the deposition
24 testimony as long as Doctor Greiner has it pointed
25 out to him the section he's being examined on and

1 he has an opportunity to read it. That's all I'm
2 suggesting as a, as a practical way to address
3 this.

4 MR. HAYS: That leaves --

5 HEARING OFFICER GASCHLER: How long is
6 the deposition?

7 MR. HAYS: How long is the deposition?
8 It is 362 pages.

9 HEARING OFFICER GASCHLER: Took care of
10 that idea I had. Mr. Hays, do you have any
11 suggestions?

12 MR. HAYS: How long would it take him to
13 review it?

14 MR. EYE: Again, is there -- is it
15 possible that we could have the examination
16 proceed pointing out the sections that you want
17 him to read and then he reads that and you can
18 examine him on it if that's -- I mean, that's what
19 he would be doing anyway in the course of this
20 examination.

21 MR. HAYS: But there's a hole there
22 because he may make changes on the fly. Not
23 saying he's going to, but it's a possibility.

24 MR. EYE: I offered that as a potential
25 remedy and I think it will work. If it doesn't we

1 would know as the record progresses.

2 HEARING OFFICER GASCHLER: I believe I
3 asked you if you have any recommendations how to
4 proceed.

5 MR. HAYS: Sir, can we take a recess so I
6 can --

7 HEARING OFFICER GASCHLER: Yes.

8 (THEREUPON, a recess was taken.)

9 HEARING OFFICER GASCHLER: Back on the
10 record.

11 MR. HAYS: Yes, sir, and to place it on
12 the record, the hard copy of the transcript was
13 actually received on August 22nd, so there's been
14 a lapse of 23 days which is a lot of time.
15 However, what I would propose to do is provide him
16 enough time today and then whenever he completes
17 it we'll just continue on today until we get this
18 completed.

19 MR. EYE: The statute allows 30 days and
20 I think that the last volume of his testimony was
21 sent out on the 25th of August, 'cause this was in
22 three separate volumes. I think the first two
23 volume went out on the 22nd of August and the
24 third volume went out on the 25th --

25 THE REPORTER: 23rd.

1 MR. EYE: I'm sorry 23rd. I'm just
2 suggesting the witness has a statutory right to
3 take his, take that time to do the review that is
4 allowed.

5 HEARING OFFICER GASCHLER: By statute he
6 has -- I'm trusting you're right on the 30 days, I
7 haven't looked at the statute in eons so, I'll
8 trust that -- is it 30 days, Mr. Hays?

9 MR. HAYS: Yes, sir, I believe so.

10 HEARING OFFICER GASCHLER: You're asking
11 me to deprive him of the statutory time which I
12 cannot do.

13 MR. HAYS: Yes, sir. I guess it would be
14 whether it's agreeable by defense counsel to give
15 him the time today.

16 HEARING OFFICER GASCHLER: Well, no, he
17 has the time.

18 MR. HAYS: Okay.

19 HEARING OFFICER GASCHLER: Defense
20 counsel can't waive it for him. He has it.

21 MR. HAYS: Then I guess it would be up to
22 the witness whether he'd want to waive it or not
23 and review it today.

24 HEARING OFFICER GASCHLER: Well, it's 370
25 pages, if I heard correctly.

1 MR. EYE: It's in that territory, I
2 forget exactly.

3 HEARING OFFICER GASCHLER: Doctor, can
4 you give me a ballpark idea of how many pages
5 you've reviewed so far?

6 DOCTOR GREINER: Yeah, 200 probably.

7 HEARING OFFICER GASCHLER: And that's
8 taken you approximately how long to do?

9 DOCTOR GREINER: Probably three to four
10 hours.

11 HEARING OFFICER GASCHLER: So, it would
12 take you another hour and a half to two hours
13 would be a fair estimate?

14 DOCTOR GREINER: (Nods head up and down.)

15 MR. EYE: Is that a yes, Doctor?

16 DOCTOR GREINER: Yes.

17 HEARING OFFICER GASCHLER: Well, and I'm
18 -- if he has 30 days by statute you're asking me
19 to take away those 30 days.

20 MR. HAYS: Well, sir, and then my next
21 argument is we had to work around their schedule
22 to -- and it was an invitation for error because
23 they knew what the date was that we were going to
24 have our hearing when we set the deposition.

25 HEARING OFFICER GASCHLER: I don't know

1 that anyone caused this problem. I think it was
2 because of scheduling. I'm not pointing fingers
3 at anyone. Well, I'm going to make this proposal
4 'cause I don't know what else to do. We will
5 adjourn today, give him his 30 days to make
6 changes and come back when that's completed.

7 MR. HAYS: Yes, sir.

8 MR. EYE: That's agreeable by, with
9 respondent, Your Honor.

10 HEARING OFFICER GASCHLER: I was hoping
11 there would be a fight. All right, I will get in
12 touch with both counsel sometime next week to see
13 when we can get this reset.

14 MR. HAYS: Yes, sir.

15 MR. EYE: Thank you, Your Honor.

16 HEARING OFFICER GASCHLER: Thank you all.
17 Mr. Hays, the unredacted patient records I am
18 leaving here at the Board of Healing Arts.

19 MR. HAYS: Yes, sir, we'll put them with
20 the agency record.

21 HEARING OFFICER GASCHLER: Thank you.

22 (THEREUPON, the hearing adjourned at 1:45
23 p.m.)

24 .

25 .

1 CERTIFICATE

2 STATE OF KANSAS

3 ss:

4 COUNTY OF SHAWNEE

5 I, Barbara J. Hoskinson, a Certified
6 Shorthand Reporter, commissioned as such by
7 the Supreme Court of the State of Kansas,
8 and authorized to take depositions and
9 administer oaths within said State pursuant
10 to K.S.A. 60-228, certify that the foregoing
11 was reported by stenographic means, which
12 matter was held on the date, and the time
13 and place set out on the title page hereof
14 and that the foregoing constitutes a true
15 and accurate transcript of the same.

16 I further certify that I am not related
17 to any of the parties, nor am I an employee
18 of or related to any of the attorneys
19 representing the parties, and I have no
20 financial interest in the outcome of this
21 matter.

22 Given under my hand and seal this
23 day of _____, 2011.

24

25 _____
Barbara J. Hoskinson, C.S.R. No. 0434



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