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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HELEN MONROE, Administrator of the Estate of deceased,)	
)	No. 04 CV 7358
Plaintiff,)	
vs.)	Chicago, Illinois
UNITED STATES OF AMERICA, MELISSA GILLIAM,)	October 12, 2010
Defendants.)	10:39 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

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1 Appearances (continued:)

2

3

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1 (Proceedings taken in open court:)

2 THE CLERK: 04 C 7358, Monroe versus the United
3 States.

10:38:57

4 MS. BROCK: Good morning, Your Honor.
5 Gina Brock for the United States.

6 MR. LUMB: Good morning, Your Honor.
7 Kenneth Lumb, L-u-m-b, on behalf of plaintiff.

8 MR. HOFERT: Dan Hofert on behalf of Dr. Gilliam.

10:39:10

9 THE COURT: The short answer to the questions raised
10 by the motion filed today, it would be my intent to hear the
11 testimony of Patrice Bond subject to continuing the hearing to
12 another day. I recognize that I'm probably imposing on myself
13 the burden of hearing an examination that looks very much like
14 a deposition, but I'd rather start getting the show on the
15 road. So we will hear evidence, but if there's more than
16 required, I'll give you another period on another day, as well.

10:39:43

17 Okay? So you can remain in the courtroom or wander
18 about, just don't go too far.

19 MR. LUMB: Thank you, Your Honor.

10:40:02

20 MR. HOFERT: Thank you.

21
22
23
24
25

1 (Whereupon, the Court directed his attention to other
2 matters on his call, after which the following
3 further proceedings were had herein:)

11:11:10

4
5 THE CLERK: 2004 C 7358, Monroe versus the United
6 States.

7 MS. BROCK: Gina Brock for the United States.

8 MS. WAWZENSKI: And Linda Wawzenski for the United
9 States, Your Honor.

11:11:28

10 MR. LUMB: Good morning again, Your Honor.

11 Kenneth Lumb, L-u-m-b, on behalf of the plaintiff.

12 MR. HICKEY: Richard Hickey on behalf of Dr. Gilliam.

13 THE COURT: Okay.

11:11:43

14 MR. HICKEY: And Dan Hofert of our office is here as
15 well.

16 THE COURT: Thank you.

11:12:03

17 We're here for a hearing today on Dr. Gilliam's status
18 with the federal government. Because of my schedule today, we
19 are going to have to break up this hearing, but we will finish
20 it today, one way or the other. And it's not a case where
21 we're going to be sitting here at 8:00 o'clock at night, but
22 there'll some down time for all of you for which I offer my
23 apology.

24 Who calls the first witness?

11:12:20

25 MS. BROCK: The plaintiff and Dr. Gilliam are trying

1 to change the status quo, so they go first.

2 THE COURT: Right.

3 MR. HICKEY: Your Honor, we had discussed this before.
4 Dr. Gilliam filled out an employment application and was
5 working as an employee and was under the understanding she had
6 immunity. It's our position that the U.S. Attorney is trying
7 to change the --

11:12:34

8 THE COURT: No, I understand your position very well,
9 the question is is who's calling the first witness.

11:12:48

10 MR. LUMB: I think it's our position that it's the
11 United States' burden and their position is the opposite.

12 THE COURT: I'm not concerned about the burden, I'm
13 concerned about who wants to put on a witness.

11:13:04

14 MR. HICKEY: If it's not subject to burden, I'll be
15 happy to call the first witness.

16 THE COURT: Okay.

17 MS. BROCK: Your Honor, I notice that Dr. Wood is in
18 the courtroom. He's not a party, so we'd ask that he be
19 excluded until after he testifies.

11:13:15

20 THE COURT: Sure.

21 (Whereupon Dr. Wood exited the courtroom.)

22 MR. HICKEY: Your Honor, we'd like to call Dr. Garmon
23 as the first witness, as an adverse witness.

24 (Brief pause).

11:13:49

25 THE COURT: Over here.

1 (Brief pause.)

2 THE COURT: Face me and raise your right hand.

3 (Witness duly sworn.)

4 THE COURT: Please be seated.

11:13:59

5 GWENN GARMON, DEFENDANT GILLIAN WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. HICKEY:

8 Q. Doctor, could you please state your full name and spell
9 your name for the record.

11:14:09

10 A. Gwenn Garmon. G-w-e-n-n, G-a-r-m-o-n.

11 Q. Dr. Garmon, I'm going to hand you what was marked as
12 Defendant's Exhibit Number 9 and ask you to please take a look
13 at this.

14 (Document tendered to the witness).

11:14:28

15 BY MR. HICKEY:

16 Q. Have you had a chance to look at it?

17 A. Yes.

18 Q. This is a copy of your CV?

19 A. Correct.

11:14:45

20 Q. And it's accurate?

21 A. Yes.

22 Q. Now, you are a part-time attending at the VA, is that
23 correct?

24 A. Are you taking that from the CV?

11:14:59

25 Q. No, I'm asking you.

1 A. Oh ...

2 Q. You are a part-time attending at the VA, is that correct?

3 A. Part of my time is with clinical work.

4 Q. Okay. All right. Are you a part-time attending doctor?

11:15:18 5 A. I'm not sure what you're asking.

6 Q. Okay. Do you understand the concept of full-time at the
7 VA?

8 A. Yes.

9 Q. Okay. And you're not full-time, correct?

11:15:50 10 A. I am full-time.

11 Q. Did you give a deposition in this matter on May 16th of
12 2008?

13 A. Yes.

14 Q. And you indicated you were represented by counsel at that
11:16:00 15 time, correct?

16 A. Correct.

17 Q. And you were sworn to tell the truth, correct?

18 A. Correct.

19 Q. Page 57, line 2.

11:16:17 20 Doctor, all I'm going to ask you now is, were you
21 asked these questions and did you give these answers. It calls
22 for a yes or no, okay?

23 A. Yes.

24 Q. Line 2:

11:16:26 25

1 "Question: Are you full-time.

2 "Answer: No.

3 "Question: Part-time?

4 "Answer: Yes."

11:16:34

5 Were you asked those questions, did you give
6 those answers?

7 A. Yes.

8 Q. Thank you.

11:16:48

9 Doctor, the time that you do spend, 75 to 85 percent
10 of that time is administrative, correct?

11 A. Yes. Now, there is one point of clarification. I was
12 part-time status in that year that I was deposed and I'm now
13 full-time status.

11:17:03

14 Q. Okay. Doctor, you did not recall the breakdown between
15 clinical and administrative time back in 2001, is that correct?

16 A. I do recall. It's about the same currently.

17 Q. Again, Doctor, did you give a deposition in this case?

18 A. Yes.

19 Q. And you were under oath?

11:17:27

20 A. Yes.

21 Q. And I'm going to ask you were you asked these questions and
22 did you give these answers, Page 9, starting at line 2 for
23 context.

11:17:46

24 Doctor, again, my only question to you is a yes, no
25 question, were you asked these questions and did you give this

1 answer:

2 "Question: How would you divide the time in which
3 between administrative and clinical care?

11:17:58

4 "Answer: My time here in the administrative care
5 comprises 75 to 80 percent.

6 "Question: And the clinical care would be the
7 balance?

8 "Answer: Yes.

9 "Question: And that would be true in 2001?

11:18:08

10 "Answer: I don't recall."

11 Did you give those answers to those questions,
12 Doctor?

13 A. Yes.

11:18:24

14 Q. Okay. Now, Doctor, your role is Director of Women's
15 Healthcare at the Jesse Brown VA, correct?

16 A. Correct.

17 Q. And that's a clinic for women vets, is that right?

18 A. Correct.

11:18:38

19 Q. It has primary care as well as interdisciplinary care,
20 correct?

21 A. Correct.

22 Q. It has multispecialty clinic aspects to it, correct?

23 A. Correct.

24 Q. Now, you were an internist, correct?

11:18:46

25 A. Correct.

1 Q. So you would give care as a primary care physician,
2 correct?

3 A. Correct.

4 Q. Okay. You are not a specialist in surgery, correct?

11:18:56

5 A. Correct.

6 Q. You're not -- excuse me.

7 You've not done a residency in OB-GYN, correct?

8 A. Correct.

9 Q. So you're not credentialed to see patients as a

11:19:07

10 gynecologist, correct?

11 A. Correct.

12 Q. And you're not credentialed to see patients in the various
13 specialties, correct?

14 A. Correct.

11:19:17

15 Q. Another specialty that might see patients at the clinic
16 would be a gynecologic oncologist, correct?

17 A. Correct.

18 Q. You do not supervise a gynecologic oncologist being in the
19 room with them, correct?

11:19:33

20 A. Correct.

21 Q. Various other people who are specialists that come to the
22 clinic, you do not go in the room and supervise them, correct?

23 A. Correct.

24 Q. Now, a gynecologist who works at the clinic, because you do
25 not have education, training, or background in that area, you

11:19:45

1 would not personally supervise that gynecologist, correct?

2 A. Correct.

3 Q. You wouldn't have the education, training, or experience to
4 review such a person, correct?

11:19:59

5 A. Correct.

6 Q. Now, you do supervise certain staff people at the clinic,
7 correct?

8 A. Correct.

11:20:15

9 Q. And you identify those as nurse practitioners, nurses,
10 social workers, a psychiatrist, and an administrative officer,
11 correct?

12 A. Correct.

13 Q. Now, typically, a staff member's treatment of a VA patient
14 would not be supervised by any other physician directly,
15 correct?

11:20:33

16 A. Correct.

17 Q. Hypothetically, if the VA hired a full-time full salaried
18 gynecologist to work at the clinic, you would not be the one to
19 supervise that person from a clinical aspect, correct?

11:20:52

20 A. Correct.

21 Q. Your supervision is from the administrative perspective,
22 correct?

23 A. Correct.

24 Q. You did not provide reviews for any surgeons, correct?

11:21:01

25 A. When?

1 Q. At the relevant time.

2 A. No.

3 Q. Okay. And you did not have credentials to provide reviews
4 for surgeons at the relevant time, 1999 through 2001, correct?

11:21:16

5 A. Correct.

6 Q. And you did not know who would supervise Dr. Gilliam from
7 surgery, correct?

8 A. Correct.

9 Q. All right. Now, Doctor, I'm going to switch.

11:21:23

10 For a patient to come -- now, I want you to understand
11 I'm switching to give the Court an understanding of how
12 Dr. Gilliam would come to see a patient. So are you with me
13 there?

14 A. Uh-huh.

11:21:42

15 Q. Can I ask that you answer yes or no.

16 A. Yes.

17 Q. Just because it's being recorded.

18 All right. The patient, first of all, had to be a VA
19 beneficiary, correct?

11:21:52

20 A. Correct.

21 Q. Another VA physician had to refer the patient to
22 Dr. Gilliam for more complicated gynecologic care, correct?

23 A. Correct.

24 Q. Then VA personnel would take charge of making the
25 appointment and setting the appointment, correct?

11:22:08

1 A. Correct.

2 Q. And then it would be documented on VA records, correct?

3 A. Correct.

4 Q. And where Dr. Gilliam would see the patient would be at the

11:22:18

5 VA clinic itself, correct?

6 A. Most of the time.

7 Q. Unless she was seeing the patient presurgical or on the

8 surgical aspect, correct?

9 A. Correct.

11:22:29

10 Q. Okay. Now, you have no documentation ever produced of

11 Dr. Gilliam seeing a patient, a VA patient, outside the VA

12 facility, correct?

13 A. No, that's incorrect.

14 Q. Okay. You have no knowledge of whether Dr. Gilliam ever

11:22:51

15 saw a VA patient outside the VA, that's correct?

16 A. No, that's not correct.

17 Q. Okay. There were obstetrical patients, is that correct?

18 A. Correct.

19 Q. And obstetrical patients might have to go for things such

11:23:09

20 as ultrasounds, correct?

21 A. Correct.

22 Q. And those ultrasounds and that equipment might be located

23 outside the VA, correct?

24 A. Correct.

11:23:19

25 Q. All right. You have no knowledge as to how many patients,

1 if any, Dr. Gilliam may have seen outside of Jesse Brown,
2 correct?

3 A. No, that's not correct.

11:23:41

4 Q. You gave a deposition in this matter, again that was back
5 on May 16th, 2008, correct?

6 A. Correct.

7 Q. Okay. I'm going to ask you on Page 65, starting at line 24
8 and going on to Page 66, through line 3.

11:23:57

9 Doctor, again, my question to you is, were you --

10 THE COURT: I think she understands this now.

11 MR. HICKEY: Okay. I'm sorry, Judge. Some judges
12 require foundation each time.

13 THE COURT: No, just read it.

14 MR. HICKEY: Yes.

11:24:06

15 BY MR. LUMB:

16 Q. (Reading:)

17 "Question: Do you have any knowledge has to how many

18 patients, if any, she might have seen outside of

19 Jesse Brown, I mean VA patients? "Answer: I don't

11:24:17

20 know."

21 Did you give that answer?

22 A. Yes.

23 Q. Now, Dr. Gilliam had to comply with the policies and
24 procedures of the VA when she was seeing patients at the VA,

11:24:31

25 correct?

1 A. Correct.

2 Q. Dr. Gilliam could not bring her own assistant to help her
3 treat patients at the VA clinic, correct?

4 A. Incorrect.

11:24:41

5 Q. Page 39 to Page 40, were you asked these questions and did
6 you give these answers:

7 "Question: If Dr. Gilliam needed any, when Dr.
8 Gilliam provided treatment at the clinic, could Dr.
9 Gilliam bring her own assistants in to help her treat
10 patients at the clinic?

11:25:15

11 "Answer: No.

12 "Question: Did she have to use assistants that
13 were given to her or is designated to her by the VA?

14 "Answer: Yes."

11:25:24

15 Did you give those answers to those the
16 questions?

17 A. Yes, but I think you --

18 MR. HICKEY: Move to strike, Your Honor.

19 THE COURT: The answer "yes" may stand but I will

11:25:36

20 permit the witness to answer whatever she wishes because it'll
21 save us a little time.

22 Go ahead.

23 BY THE WITNESS:

24 A. I think I understood your question to mean any patient that
25 she needed assistance for whether it be in the OR or in the

11:25:47

1 clinic, and that's why I answered yes. She could call an
2 assistant to help her in the operating room.

3 Q. In the operating room, that would be something within
4 Dr. Wood's jurisdiction, correct?

11:26:05

5 A. Correct.

6 Q. That would not be something you were in charge of, correct?

7 A. Correct.

8 Q. So if we went through any week between 1999 and 2001, you
9 wouldn't know what assistants were available in the surgical

11:26:17

10 section, correct?

11 A. I knew because the doctors would come through the clinic
12 and talk with us about patient care and some of the operations
13 that they were involved in. And it was quite common with the
14 gynecologists prior to Dr. Gilliam to bring assistants from the
15 University of Illinois over to help her in the operating room.

11:26:35

16 MR. HICKEY: We move to strike as non-responsive, Your
17 Honor.

18 THE COURT: Right. But we're going to get to it
19 anyway and I'd rather not have her repeat it.

11:26:45

20 MR. HICKEY: Right.

21 BY MR. HICKEY:

22 Q. Doctor, I'm not talking about before Dr. Gilliam came
23 there, I was talking specific time frame. You could not say
24 what assistants were present at any given week in the OR area,
25 correct?

11:27:01

1 A. I don't recall of any assistant during that time.

2 Q. Okay. And so how many times did you scrub and go into a
3 procedure in the surgical area, not in the clinic but in the
4 surgical area, with Dr. Gilliam?

11:27:17

5 A. None that I recall.

6 Q. Okay. If Dr. Gilliam had complaints about staff at the
7 clinic, she would go to you, correct?

8 A. Me or her supervisor at the University of Illinois.

11:27:53

9 Q. Okay. Page 45, line 11, again were you asked these
10 questions and did you give these answers:

11 "Question: If Dr. Gilliam had complaints or problems
12 with the assistants that were provided to her for
13 treatments of patients at the VA, who would she have
14 gone to see?

11:28:05

15 "Answer: Either myself or Dr. Wood.

16 "Question: Would it depend on whether the
17 problem would be in surgery or in the clinic?

18 "Answer: Correct.

11:28:17

19 "... if it was in the clinic, she would see you; if
20 it was the surgery, she would see Dr. Wood?

21 "Answer: Correct."

22 Did you give those answers to those questions?

23 A. Yes.

11:28:41

24 Q. Now, moving to 1999, do you recall all the different people
25 who might have been interviewed for various positions at the

1 VA, Jesse Brown VA?

2 A. I'm unaware of any of that.

3 Q. Okay. In 1999, was it your position that at the request of
4 Dr. Elias, who was chairman of OB-GYN at U. of I., that you had
5 a lunch with Dr. Gilliam?

11:29:08

6 A. Yes.

7 Q. Have you read Dr. Elias' deposition?

8 A. Yes.

9 Q. Okay. Do you have any notes you made contemporaneously
10 with that meeting?

11:29:26

11 A. I don't recall.

12 Q. You were asked to produce notes at your deposition. You
13 did not produce any notes of such a meeting, does that refresh
14 your recollection in any way?

11:29:41

15 A. No, I'm sorry, it doesn't.

16 Q. Okay. Would it be fair to say that 11 years ago you cannot
17 recall everything you said to Dr. Elias or everything he said
18 to you?

19 A. Correct.

11:29:57

20 Q. Would it be fair to say that 11 years ago you cannot recall
21 everything you said to Dr. Gilliam or everything she said to
22 you?

23 A. At the lunch meeting?

24 Q. Yes.

11:30:08

25 A. Correct.

1 Q. You do not recall any other conversations with Dr. Gilliam
2 prior to her starting at the VA, correct?

3 A. Correct. I don't recall.

11:30:35

4 Q. Okay. And you did not evaluate -- or it's your position
5 you did not evaluate whether Dr. Gilliam was an appropriate
6 candidate, from a medical perspective, to work at the VA,
7 correct?

8 A. Correct.

11:30:51

9 Q. You do not know if the VA sent out or received any
10 documents as to whether Dr. Gilliam had the appropriate
11 credentials to treat patients at the VA, correct?

12 A. Do you mean in order to become credentialed and privileged
13 at the VA? I'm sorry, I don't understand your question.

11:31:21

14 Q. You do not know if the VA sent out or reviewed any
15 documents as to whether Dr. Gilliam had the appropriate
16 credentials to treat patients at the VA, that's true, isn't
17 it?

11:31:35

18 A. Well, let me say that I just know that any physician who
19 treats patients in a hospital or a clinic facility needs to be
20 credentialed and privileged to do so.

21 Q. Okay. Page 23, line 19, were you ask this question and did
22 you give this answer:

11:31:51

23 "Question: Okay. And did the VA send out and review
24 any documents as to whether Dr. Gilliam had the
25 appropriate credentials to treat patients at the VA?

1 "Answer: I don't know."

2 Did you give that answer to that question?

3 A. Yes.

11:32:11

4 Q. To the extent that the VA did review Dr. Gilliam's
5 credentials, that would be done by the credentialing and
6 privileging department, correct?

7 A. Yes.

8 Q. You are not an expert in the procedure of credentialing and
9 privileging as it existing back in 1999 through 2001, correct?

11:32:25

10 A. Correct.

11 Q. You are not a member of the credentialing or privileging
12 committee, correct?

13 A. Correct.

11:32:37

14 Q. You were not a member of the credentialed or privileging
15 committee back in 1999 to 2001, correct?

16 A. Correct.

17 Q. You were not a part of the process of Dr. Gilliam getting
18 privileged or credentialed at all, as far as you could recall,
19 correct?

11:32:49

20 A. Correct.

21 Q. That process was overseen by the Department of Surgery and
22 the Office of Credentialing and Privileging, correct?

23 A. Correct.

11:33:01

24 Q. And from the department of surgery, the person, the
25 reviewer, was Dr. Wood, correct?

1 A. Correct.

2 Q. And you would not know who was involved from the Office of
3 Credentialing and Privileging, correct?

4 A. Correct.

11:33:08

5 Q. All right. Now, Doctor, again, I'm going to just switch
6 topics, so I don't want to lose you here. Just in the
7 referenced contracts with outside providers for various things.

8 You do not know contracting officers for the VA or GS
9 78 type persons, correct?

11:33:29

10 A. What types?

11 Q. GS 78.

12 A. No, I don't know that.

13 Q. Okay. You do not know if such contracting officers or even
14 GS employees, correct?

11:33:44

15 A. Correct.

16 Q. You've never dealt with one face to face, correct?

17 A. Correct.

18 Q. You do not know if the contracts with the vendors are
19 essentially forms, correct?

11:33:58

20 A. Correct.

21 Q. You do not know how they are produced, correct?

22 A. Correct.

23 Q. You do know if they're drafted wholesale new at any point
24 in time, correct?

11:34:06

25 A. Correct.

1 Q. You would not have had any contact with U.I.C. directly
2 regarding any contract with UIC, correct?

3 A. Correct.

4 Q. You are not an expert in the contracting process, are you,
5 Doctor?

11:34:20

6 A. No.

7 Q. You are not an expert in the interpretation of contract
8 terms, are you, Doctor?

9 A. Correct.

11:34:26

10 Q. You could only look at a contract and give your own
11 personal interpretation, correct?

12 A. Correct. Or I could ask questions about it.

13 Q. Okay. Now, switching again, with regard to Dr. Gilliam in
14 particular. You do not know, at least as of the time of your
15 deposition, if Dr. Gilliam was even on the medical staff of the
16 Jesse Brown VA, correct?

11:34:45

17 A. The issue at that time was I wasn't remembering the
18 language in the medical staff bylaws, so I could not answer
19 that I knew it.

11:35:02

20 Q. Well, were you asked this question and did you give this
21 answer, Page 29, line 22:

22 "Question: Was Dr. Gilliam on the medical staff of
23 the VA, Jesse Brown VA?

24 "Answer: I don't know."

11:35:15

25 Did you give that answer to that question?

1 A. Yes.

2 Q. Okay. Dr. Desai was chief of staff, correct?

3 A. Correct.

4 Q. He was an attending, correct?

11:35:31

5 A. Correct.

6 Q. He was on the medical staff, correct?

7 A. Correct.

8 Q. Dr. Wood was chief of surgery, correct?

9 A. Correct.

11:35:38

10 Q. He was an attending, correct?

11 A. Correct.

12 Q. He was on the medical staff, correct?

13 A. Correct.

14 Q. I'm going to show you an exhibit, Defendant's Exhibit 10.

11:35:44

15 (Document tendered to the witness.)

16 BY MR. HICKEY:

17 Q. Have you had a chance to review Exhibit 10?

18 A. Yes.

19 Q. Does that bear your name?

11:36:37

20 A. Yes.

21 Q. Does it bear your signature?

22 A. Yes.

23 Q. Now, it's correct, Doctor, that you do not have any
24 recollection of having any conversations about Dr. Gilliam,

11:36:47

25 about her assignment with anyone at U.I.C., correct?

1 MS. BROCK: Could we have a time frame, Your Honor?

2 THE COURT: Might be helpful.

3 MR. HICKEY: On Page 50, line 21 to 24.

11:37:09

4 MS. WAWZENSKI: No, no, no. It's about your question,
5 could we have a time limit during which you're asking her about
6 contacts with the U. of I.

7 BY MR. HICKEY:

11:37:22

8 Q. As of the time of your deposition, I'm going back and forth
9 to the time when Dr. Gilliam started, do you have any
10 recollection of having any conversations about Dr. Gilliam
11 about her assignment with anyone at U.I.C.?

11:37:52

12 A. Yeah, I recall a meeting with the head of the department,
13 his name is Dr. Sherman, and Dr. Wood was involved, and I'd
14 gone through the agenda with my boss, the chief of staff,
15 Dr. Desai, and I cannot recollect the date of that meeting, but
16 it was to raise issues about the use of our contract time and
17 to address some issues that I felt were emerging needs for
18 women veterans. I can't recall the date.

19 Q. Okay. So that could be any time 1999 through 2002?

11:38:15

20 A. Yes.

21 Q. Okay. Finally, Doctor, you did not know how one became
22 designated as a medical staff member in 2001, correct?

23 A. I couldn't remember the specific language.

11:38:35

24 Q. Okay. And you did not know how one became a designated
25 medical staff member in 1999 or 2000, correct?

1 A. Again, I couldn't remember the specific language in the
2 bylaws.

3 MR. HICKEY: Thank you, Your Honor.

4 CROSS EXAMINATION

11:38:57

5 BY MR. LUMB:

6 Q. Good morning, Doctor. My name is Tim Lumb. I believe I
7 have, I believe, very few questions for you.

8 Are you still a clinical instructor at U.I.C.?

9 A. Yes.

11:39:19

10 Q. And you have been affiliated with U.I.C. since 1991,
11 correct?

12 A. Correct.

13 Q. And are you still the director of women's health at the
14 Westside VA?

11:39:29

15 A. Yes.

16 Q. And you have been a director there since 1994, correct?

17 A. Correct.

18 Q. And when you started in 1994, the Westside VA had already
19 been providing gynecologic services, correct?

11:39:42

20 A. Correct.

21 Q. Your appointment in 2008 was as a part-time attendant,
22 correct?

23 A. Correct.

24 Q. Doctor, I'm going to show you what has been marked

11:40:05

25 Plaintiff's Exhibit Number 5.

1 (Document tendered to the witness).

2 BY MR. LUMB:

3 Q. Do you recognize that, Doctor?

4 A. Yes.

11:40:27

5 Q. And through that document --

6 It's on August 3rd, 1999, correct?

7 A. Correct.

8 Q. -- you recommended that Melissa Gilliam be appointed as a
9 part-time gynecologist at the Westside VA, correct?

11:40:45

10 A. Correct.

11 Q. And to whom was that addressed?

12 A. This was to the Chief of Staff. We had the folder reviewed
13 at that time and the completed folder included the application
14 that was required to determine eligibility for appointment at
15 the VA.

11:41:05

16 Q. And who is the Chief of Staff?

17 A. Chief of staff Dr. Desai.

18 Q. Dr. Desai.

19 And on August 9th of 1999, Dr. Gilliam was appointed
20 to the medical staff of the Westside VA, correct?

11:41:23

21 A. Correct. I subsequently went back to read the language in
22 the bylaws.

23 Q. No, I'm just talking about the appointment letter on
24 August 9th of --

11:41:44

25 A. Oh, I understand.

1 Q. -- 1999.

2 I understand that you have that already.

3 I think you mentioned you were called to a meeting
4 with Dr. Gilliam before she became -- before she started
5 working at the VA, is that correct?

11:41:56

6 A. Yes.

7 Q. And was anyone else present other than you and Dr. Gilliam?

8 A. No, I believe it was just the two of us.

9 Q. And you discussed her potentially working at the VA,
10 correct?

11:42:18

11 A. Correct. Laid a little bit of groundwork about the kind of
12 patients that are at the VA, the kind of needs that there are,
13 a little bit of background about the care that was provided
14 through the previous gynecologist.

11:42:31

15 Q. And I think you mentioned another meeting some time either
16 before or after Dr. Gilliam began working at the VA, correct?

17 A. Meaning with who?

18 Q. I think you mentioned Dr. Elias, Dr. Sherman Elias?

19 A. Correct. That was -- you know, it's coming back to me. It
20 was later, because we had discussed some of the issues
21 regarding Dr. Gilliam's maternity leave and I had to bring over
22 some additional credentialing and privileging packages for
23 gynecologists that would fulfill the contract agreement.

11:42:48

24 Q. Was there a representative of the VA contracting office at
25 either of those meetings?

11:43:10

1 A. No.

2 Q. Was there any participation whatsoever by the VA's
3 contracting office in either of those meetings?

4 A. No.

11:43:21

5 Q. Just one more question, Doctor. If this was already
6 mentioned, I didn't hear it.

7 When Dr. Gilliam worked at the VA between 1999 and
8 2001, was she ever required to sign in or sign out?

11:44:21

9 A. No, we kept track of time with the clinic schedules and
10 with procedures schedules and operating schedules.

11 Q. After the fact?

12 A. Excuse me?

13 Q. After the fact?

11:44:33

14 A. The schedules were available before the fact. I'm not sure
15 of the timing. No, I don't know.

16 Q. Was she ever required by anyone at the VA to either sign in
17 or sign out to keep track of her time?

18 A. No.

19 Q. Thank you.

11:44:44

20 MR. LUMB: That's all I have.

21

22

23 CROSS EXAMINATION

24 BY MS. WAWZENSKI:

11:44:54

25 Q. Dr. Garmon, can you describe for us the genesis of the

1 women's health program at the Jesse Brown VA?

2 A. The beginning of my time there started in 1994, and it was
3 kind of an exciting time at the VA, actually. Congress had
4 developed a couple of new laws to approach the increasing
5 number of women veterans that we were seeing at the Veterans
6 Administration. And one of the public laws allowed for eight
7 comprehensive centers to begin across the country, Chicago was
8 selected as one of those centers.

11:45:21

9 And it really was designed to address the needs of the
10 female veterans. If you recall, the veterans hospitals were
11 really referred to as a male veterans hospital and it still is
12 dominated by male veterans. And women political interest
13 groups and some of the VA organizations were rallying around
14 Congress to begin to meet their needs entirely just like the
15 men. So my task was to address this inequity and assure that
16 we were providing equitable care to males and women alike, and
17 part of that came with this huge grant to begin a comprehensive
18 center for female veterans; that began in Chicago in 1994.

11:45:40

11:45:59

19 The other thing that was truly needed was a what I
20 would call an ultimate advocate for the female veterans. Small
21 fish in a big pond, again, required intensive and active work
22 on my part to ensure that we were meeting their needs. There
23 were a lot of complaints that even simple screening measures
24 weren't available at all the VA's across the country and this
25 provoked these new laws and expanded services in the VA

11:46:24

11:46:45

1 centers.

2 Q. Now, when you first began your work as head of the women's
3 health program, how were obstetrical and gynecological services
4 provided for female veterans?

11:47:05

5 A. It was provided on a consultant basis, on an as-needed
6 basis. If a primary provider identified a complicated
7 gynecology need or obstetrical need, there would be a consult
8 entered for the University of Illinois to address. They would
9 send over a consultant who was credentialed and privileged at
10 the VA on an as-needed basis and that consultant would evaluate
11 that patient and determine the course of action.

11:47:26

12 Many times it would require a procedure, which he
13 would do on station at the VA, or even operating room procedure
14 which he would do on station at the VA.

11:47:40

15 Q. Now, you mentioned you would turn to the University of
16 Illinois for this. Why would Jesse Brown go to the U. of I.
17 for this kind of service?

18 A. There weren't gynecology --

19 MR. HICKEY: Foundation; objection.

11:48:19

20 THE COURT: I think she's addressing institutional
21 policy as opposed to predicting somebody's state of mind, and
22 for that reason, I will accept the answer.

23 You can answer the question, if you remember the
24 question.

11:48:35

25 BY THE WITNESS:

1 A. There weren't gynecologists available at the VA at the
2 time. In fact, there wasn't even a pay scale available to be
3 able to provide a competitive salary for gynecologists.

11:48:52

4 This has been an evolving process and they've made
5 great leaps and bounds in progress in providing care to the
6 female veteran. At that time, there wasn't a pay scale. They
7 were called a scarce specialty and there were a number of
8 strategies to obtain that kind of service outside of the VA,
9 one of which was a consultation with an affiliate such as the
10 University of Illinois.

11:49:13

11 Q. And what do you mean by an affiliate?

12 A. Most VA's are affiliated with an academic institution. The
13 Jesse Brown VA is affiliated with the University of Illinois
14 and also Northwestern.

11:49:28

15 Q. Now, you mentioned that, at the beginning, this process
16 started with consultants from the U. of I. coming to the VA to
17 provide gynecological services. Did that change at some point?

18 THE COURT: I'm going to stop you now.

19 MS. WAWZENSKI: Yes, Your Honor.

11:49:45

20 THE COURT: We're going to take a break to hear
21 another case. Mr. Walker may be able to tell you when we might
22 next resume.

23 The latest we would resume again is about 12:30.

24

25 (Recess.)

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HELEN MONROE, Administrator of the Estate of deceased,)	
)	No. 04 CV 7358
Plaintiff,)	
vs.)	Chicago, Illinois
UNITED STATES OF AMERICA, MELISSA GILLIAM,)	October 12, 2010
Defendants.)	12:47 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

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1 Appearances (continued:)

2

3

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25

1 (Proceedings taken in open court:)

2 THE COURT: You may resume.

3 MS. WAWZENSKI: Can you read back the last question?

4 (Question read.)

12:47:43

5 BY THE WITNESS:

6 A. Yes, it changed after I started, and I don't remember the
7 exact date, but Dr. Kahn was the consultant who spoke with me
8 about the gynecological care that he was providing and actually
9 gave me a little bit of a historical perspective that the
10 numbers were increasing in the VA and he had limited time to
11 provide for the consultative services.

12:48:01

12 So I went to my boss, and I think HR was involved, and
13 said we need more access to a gynecologist, how do we go about
14 doing that. And because gynecology was considered a scarce
15 commodity, a specialty at the time, the suggestion was that we
16 contract with an organization to provide the gynecology
17 services.

12:48:22

18 BY MS. WAWZENSKI:

19 Q. And who was the first gynecologist that became a contract
20 employee at the VA?

12:48:36

21 A. Dr. Dorina Scaunas. And there was quite a bit of an
22 overlapping between Dr. Kahn and Dr. Scaunas. In fact,
23 Dr. Scaunas asked Dr. Kahn to assist her in cases as needed.
24 He actually loved working there. He loved the patient

12:48:59

25 clientele and helped Dorina Scaunas with cases and consultative

1 advice.

2 Q. And with who did the VA contract to provide Dr. Scaunas to
3 the Women's Health Center?

4 A. With the University of Illinois.

12:49:10

5 Q. And at one time were any of these services provided to VA
6 patients at the University of Illinois?

7 A. I don't recall any cases going over to the University of
8 Illinois during Dr. Scaunas' time as a contractor.

12:49:32

9 Q. But in later times, did services get performed at the U. of
10 I.?

11 A. Yes.

12 Q. Now, Dr. Gilliam was the physician who followed Dr. Scaunas
13 in the contract position, correct?

14 MR. HICKEY: Objection the form.

12:49:47

15 THE COURT: Because it's leading?

16 MR. HICKEY: Yes.

17 THE COURT: Okay.

18 MR. HICKEY: And lacks foundation.

19 THE COURT: Sustained.

12:49:53

20 BY MS. WAWZENSKI:

21 Q. Who was the physician who followed Dr. Scaunas as a
22 contract employee for the VA Women's Health Center?

23 A. There's a little bit of a history there. There wasn't a
24 gynecologist that the university could provide for some time
25 after Dr. Scaunas left the university to go to private

12:50:08

12:50:32

1 practice, and at that time Dr. Sherman Elias and myself talked
2 several times about strategies and how to meet the needs of our
3 female veterans, and we came about the strategy to provide the
4 care at the University of Illinois location and then his whole
5 team of providers could enter into caring for the veterans at
6 their location.

12:50:52

7 It was at that time that I contacted our contracting
8 officer. Actually, worked closely with them with any kind of
9 questions or concerns. And it was at that point that she
10 suggested that we re-write and modify the current contract that
11 we had to include both sides for care; in other words, both the
12 VA clinic and the University of Illinois.

12:51:10

13 So the contract was modified at that point. And I
14 don't recall how long veterans were sent over to the university
15 for care, but it was until Dr. Gilliam was available. I think
16 she was newly employed there at that time and came over as the
17 contractor.

12:51:29

18 We also found it quite advantageous, to tell you the
19 truth. We used it more in the future because, for instance, if
20 a specialist happened to see the patient for care, the patient
21 could also be seeing that specialist's outpatient clinic at the
22 University of Illinois. So we maintained that language in our
23 contract even to this date.

12:51:48

24 Q. You mentioned that you dealt with the contracting officer
25 at the VA for these specific contracts for gynecological care.

1 Was there any portion of the contract that you were asked to
2 draft for the contracting officer?

12:52:09

3 A. Yes; she asked me to draft the statement of work; in other
4 words, what were our needs in the VA. She helped me craft it,
5 but wanted to know what specifically our needs were in the VA.

6 Q. Now, when Dr. Gilliam began working at the Women's Health
7 Center, did you yourself ever have to authorize her annual
8 leave or sick leave while she was there?

12:52:31

9 A. I mean, she didn't have any annual leave or sick leave.
10 No, the answer is no.

11 Q. And were the other employees that you supervised in the
12 Women's Health Center, did they need your authorization to take
13 any annual leave or sick leave?

14 A. Oh, yes.

12:52:41

15 Q. And did you perform any type of evaluation of Dr. Gilliam
16 on an annual basis?

17 A. No.

12:53:02

18 Q. Did you do evaluations for the physicians and other staff
19 that were members of the women's health community as a VA
20 employee?

21 MR. HICKEY: Objection; overbroad.

22 THE COURT: Overruled.

23 BY THE WITNESS:

12:53:10

24 A. Yes, the VA has specific requirements for a mid-year review
25 and then an annual performance appraisal.

1 BY MS. WAWZENSKI:

2 Q. Are there annual training requirements for VA employees?

3 A. Yes, they're called mandatory training requirements and
4 they need to be completed on an annual basis.

12:53:23

5 Q. And do you monitor those annual training requirements for
6 your employees?

7 A. I do more so now because it has been decentralized, but at
8 that time I believe it was centralized and the education
9 department tracked the completion of the mandatory training.

12:53:40

10 Q. And could you view whether or not an employee had performed
11 the required training? Could you check that to make sure that
12 they had done it?

13 A. Yes.

14 Q. Was Dr. Gilliam subject to those same training
15 requirements?

12:53:52

16 A. No.

17 Q. Was she subject to any training requirements as a
18 contractor?

19 A. Yes; there were -- there were several having to do with
20 safety and security: Infectious control, cyberspace kind of
21 security, safety in the clinic. I don't recall the exact
22 names, but they all had to do with safety and security.

12:54:01

23 Q. As the service chief, did you approve any employee requests
24 for training outside of the VA facility for continuing medical
25 education?

12:54:25

1 A. Yes.

2 Q. Did your section have a budget for this?

3 A. We had a budget under the education department.

4 Q. And did Dr. Gilliam ever request continuing medical

12:54:39

5 education training from that budget?

6 A. No, not that I recall.

7 Q. If she had submitted a request, would you have approved it?

8 MR. HICKEY: Objection, Your Honor.

9 THE COURT: Overruled.

12:54:50

10 BY THE WITNESS:

11 A. Actually, I remember making a mistake on that. Subsequent
12 to Dr. Gilliam's time there in which one of the contract
13 gynecologists wanted to improve her training in ultrasound, and
14 there was a course offered for a team, and I thought that if
15 they wanted to go and improve their skills. And I thought it
16 was a good idea and I --

12:55:14

17 MR. HICKEY: Objection to the relevance.

18 THE COURT: Well, depending on how it ends, it could
19 be relevant or it could not be relevant. So let's see how it
20 ends.

12:55:27

21 BY THE WITNESS:

22 A. So a team of our providers went, including our contract
23 gynecologist, and when it came time to provide for the bills
24 and receive reimbursement I was told that I was not allowed to
25 reimburse a contract -- a contract like I would an employee.

12:55:44

1 And so I went back to the gynecologist, I apologized
2 profusely, and she thought she could get it covered under her
3 education budget at the university of Illinois but I thought I
4 would cover it in case she couldn't, but she ended up getting
5 it covered.

12:56:06

6 BY MS. WAWZENSKI:

7 Q. Did you distribute earning statements to the employees at
8 the Women's Health Center?

9 A. Yes.

12:56:11

10 Q. Did you ever give an earning statement to Dr. Gilliam?

11 A. No.

12 Q. You talked on direct examination about the issues of
13 credentialing someone like Dr. Gilliam. Is everyone who has
14 any kind of contact with patients as a physician at the VA
15 required to be credentialed?

12:56:31

16 A. Yes.

17 Q. Is everyone who is credentialed at the VA a VA employee, to
18 your knowledge?

19 A. No.

12:56:44

20 MS. WAWZENSKI: I have no further questions.

21 THE COURT: Anything further?

22 REDIRECT EXAMINATION

23 BY MR. HICKEY:

24 Q. Doctor, when I questioned you before, you indicated that

12:56:57

25 you did not review any of the surgeons who were working at that

1 multispecialty clinic area, do you recall that, when I
2 questioned you earlier?

3 A. Do I recall it? Yes.

4 Q. Okay. And has your testimony then changed in any way?

12:57:17

5 A. No.

6 Q. So you wouldn't have reviewed any of the surgeons who were
7 involved in that area of the clinic, correct?

8 A. What do you mean by "reviewed"?

12:57:32

9 Q. You just testified about reviewing nurses, and nurse
10 practitioners, and the administrators as employees in your
11 area, correct?

12 A. Correct. The performance evaluation, in other words.

13 Q. Performance evaluation, yes.

12:57:45

14 Dr. Gilliam was not a nurse practitioner, or a nurse,
15 or an administrator, correct?

16 A. Correct.

17 Q. You did not have the education training to review a surgeon
18 such as Dr. Gilliam, correct?

19 A. Correct. What we have are peer reviews that occur.

12:57:59

20 Q. That's correct.

21 And Dr. Wood would be in charge, as a director of
22 surgery, in performing her evaluation, correct?

23 A. I don't think so. The peer reviews are from peer to peer,
24 as I understand it, but there is some documentation of an

12:58:17

25 annual evaluation that occurs for all staff members, all

1 employees of the VA, and for physicians they're just a little
2 bit different in format as compared to a nurse practitioner or
3 a nurse.

12:58:35

4 Q. Okay. And Dr. Gilliam's credentials were reviewed after
5 the peer review, correct?

6 A. I don't know the sequence.

7 Q. Her credentials were up for review and reinstatement and
8 her credentials were reviewed and reinstated in 2001, correct?

12:58:57

9 A. Part of the contract required that the University of
10 Illinois supervisor --

11 Q. No. My question to you, I'm not asking about your personal
12 interpretation of the contract: Dr. Gilliam was up for review
13 in 2001 and her credentials were renewed in 2001, correct?

14 A. Correct.

12:59:13

15 Q. Thank you.

16 RECCROSS EXAMINATION

17 BY MR. LUMB:

18 Q. Doctor, you testified to your belief that Dr. Gilliam was a
19 contractor, is the word you used, correct?

12:59:36

20 A. Correct.

21 Q. And part of the basis of that belief is that you believed
22 that U.I.C. Hospital was responsible for making sure that
23 Dr. Gilliam complied with the VA's policies and procedures,
24 correct?

12:59:47

25 A. Correct.

1 Q. And another basis of that opinion is that you believed the
2 VA did not set hours for Dr. Gilliam's work or times for her
3 clinics, correct?

01:00:04

4 A. Well, yes and no. There were times for clinic, and there
5 were times for procedures, and there were times for operations,
6 but those were after discussion of preferable days and times
7 with the contractor.

01:00:26

8 Q. Do you believe or was the basis of your opinion regarding
9 Dr. Gilliam's status that the VA, in 1999 and 2001, did not set
10 the hours for Dr. Gilliam's work or the times for her clinics?

11 A. Yes and no.

12 Q. They did but they didn't?

01:00:50

13 A. Right. It's qualified to some degree, because in order to
14 identify support staff or appointment slots you would have to
15 put something into a system, a scheduling system, but as I
16 mentioned, that was after discussion about preferences with the
17 contractor.

01:01:06

18 Q. Doctor, in fact, isn't it true that the sole basis of your
19 belief that Dr. Gilliam was a contract provider -- or a
20 contractor provider is the contracting documents themselves?

21 A. I would say no, the sole belief is not that.

01:01:49

22 Q. Pages 45 and -- well, let me ask you this, in addition to
23 those things that I discussed just a few moments ago, the basis
24 for your opinion regarding Dr. Gilliam's status are the
25 contracting documents themselves, correct?

1 A. No.

2 Q. Starting on line 22 on Page 45, I'm going to ask you if you
3 gave these answers to these questions at your deposition:

4 "Question: Now, you've indicated before that I think
5 you felt that Dr. Gilliam was a contract employee?

01:02:16

6 "Answer: I know she was a contracted employee.

7 "Question: What do you base that on?

8 "Answer: The contractual agreement that the
9 University of Illinois and the VA entered into."

01:02:28

10 Did you give those answers to those questions?

11 A. I did.

12 Q. And, in fact, Dr. Gilliam is not identified anywhere in any
13 of those contracting documents, correct?

14 A. By me, no.

01:02:39

15 Q. By anyone, correct?

16 A. I'm sorry?

17 Q. By anyone, correct?

18 A. What do you mean "by anyone"?

19 Q. You answered my question by -- my question was, Dr. Gilliam
20 is not identified anywhere in the contracting documents by
21 anybody as a contractor, correct?

01:02:50

22 A. No, her name is not in the contract document.

23 Q. And based upon your experience at the VA, where you would
24 expect to see that identification for a contractor, is in a
25 credentialing and privileging form, correct?

01:03:10

1 A. I don't recall that the form has an option for that in all
2 of the earlier forms that the VA has had.

01:03:27

3 Q. That wasn't my question, Doctor. You would expect that a
4 contract provider would be identified as such in the
5 credentialing and privileging form, that's where you would
6 expect to find it as the chief of Women's Health, correct?

7 A. Not the only place.

8 Q. Pardon me?

01:03:40

9 A. No. No, not the only place. We have other standard forms
10 in the VA that I would expect to see it.

11 Q. Is that one of the places you would expect to see it, the
12 credentialing and privileging form?

13 A. Not necessarily but possibly.

01:04:07

14 Q. Again, Page 46 of your deposition, starting at line 7:
15 "Question: Is there any sort of other document that
16 would identify Dr. Gilliam as being the person
17 designated in the contract?

18 "Answer: The contract doesn't designate a name,
19 it just requires a person or two or three.

01:04:21

20 "Question: But am I correct, there's no document
21 that designates Dr. Gilliam as being that employee?

22 "Answer: The credentialing and privileging
23 document would identify her as the gynecologist in
24 this contractual relationship."

01:04:34

25 Did you give those answers to those questions at your

1 deposition?

2 A. Yes.

3 Q. Now, Doctor, you didn't personally provide any direct
4 supervision of Dr. Gilliam's surgical care, correct?

01:04:56

5 A. Correct.

6 Q. But you're not a surgeon, correct?

7 A. Correct.

8 Q. And, indeed, if the VA had hired what you believe was a VA
9 federal employee gynecologist, your supervision of that
10 Doctor likely wouldn't have been any different than your
11 supervision was of Dr. Gilliam, correct?

01:05:08

12 A. Correct.

13 MR. LUMB: That's all I have. Thank you.

14 MS. WAWZENSKI: Nothing further, Your Honor.

01:05:20

15 THE COURT: You may step down.

16 (Witness excused.)

17 MR. HICKEY: Your Honor, may we call as our next
18 witness, Dr. Donald Wood?

19 THE COURT: Absolutely.

01:06:00

20 (Brief pause).

21 MR. HICKEY: He was just right outside.

22 THE COURT: That's okay.

23 (Brief pause)

24 THE COURT: Face me and raise your right hand.

01:06:40

25 (Witness duly sworn.)

1 THE COURT: Please be seated.

2 DONALD CARL WOOD, DEFENDANT GILLIAM WITNESS, SWORN

3 DIRECT EXAMINATION

4 BY MR. HICKEY:

01:06:55

5 Q. Doctor, would you say your full name and spell your last
6 name for the record.

7 A. Donald Carl Wood, W-o-o-d.

8 Q. Doctor, could you explain to the Court your educational
9 background.

01:07:11

10 A. After graduating from high school I went to the University
11 of Illinois, received a Bachelor's Degree in Science in
12 zoology. During the last year I did research at the
13 Oceanographic Institute at Woods Hole and did a project in cell
14 physiology which I continued when I went to medical school
15 following graduating from the university.

01:07:45

16 My medical school education was at the Abraham Lincoln
17 School of Medicine which is the University of Illinois at
18 Chicago now. And in obtaining the medical degree I went to a
19 straight surgical internship and residency at the University of
20 Illinois. And during that time, did research on malignant
21 melanoma and the comparison of melanoma with melanocytomas and
22 discovered a very interesting histologic all-or-none test,
23 which is pretty rare, and that put me into the area of
24 oncology.

01:08:11

01:08:39

25 I studied then as a fellow -- as an attending. I was

1 chosen to be an attending at the University of Illinois in the
2 department of surgery and worked with Dr. Tapas Dasgupta in the
3 division of surgical oncology.

01:09:01

4 He trained me as an American Cancer Society fellow in
5 surgical oncology for 2 years. And I then became an attending
6 at the University of Illinois and an attending at the Westside
7 VA, and also at Cook County Hospital where my responsibilities
8 were for all types of cancer, say for going into the skull,
9 elbow, head and neck, breast, colorectal cancer, and melanoma
10 and sarcomas.

01:09:33

11 Q. Doctor, could you please explain for the Court what
12 positions you held at the Westside VA now known as Jesse Brown
13 VA.

01:09:57

14 A. The first position I held was as a resident in surgery. It
15 was an exchange between the university, and since the VA was
16 across the street we trained there. So I was a junior resident
17 and a senior resident at the VA hospital.

01:10:15

18 Q. All right. Doctor, just so we can move along a little
19 quicker, did you hold any administrative positions at the VA?

20 A. Yes, I was assistant Chief of Surgery from 1975, I believe,
21 I could be wrong, until I became Chief of Surgery which was in
22 1992, and those were all part-time positions.

23 Q. Doctor, were you a staff physician at the VA?

24 A. Yes.

01:10:42

25 Q. Were you an attending?

1 A. Yes.

2 Q. Were you Chief of Surgery as of 1999?

3 A. Yes.

01:10:56

4 Q. Okay. Doctor, given your position at the VA in the late
5 '90s, and most particularly in 1999, was there an effort made
6 to try to recruit physicians to improve quality of care at the
7 VA?

01:11:19

8 A. Quality of care was always an issue, and with the
9 responsibility as being a service chief one had the privilege
10 of not only the support of the department heads at the
11 university, but also I believe it was a mandate from central
12 office that we raise the quality of care and improve that
13 quality of care.

01:11:45

14 And so it was always a priority that we recruit and
15 bring over from the university good people that could not only
16 do the job but add to research, care of the patients, teaching,
17 mentoring, all of that.

01:12:07

18 Q. Doctor, as part of the inducement to get physicians to come
19 and work at the VA, was immunity from being sued an important
20 incentive?

21 A. Well, yes. I always assumed that it would be.

22 Q. Would the loss of immunity from being sued from working at
23 the VA have an impact on your ability to recruit and provide
24 quality physicians at the VA?

01:12:25

25 A. It -- it would not only have an impact, I wouldn't have

1 been there either. That would be -- if I wasn't covered for
2 what I did by the people that employed me, I'd walk away from
3 it because that's my -- my family, my life.

01:12:53

4 Q. Doctor, was that a subject that was often discussed among
5 physicians at the VA, the fact that they had this protection of
6 the immunity?

7 A. It was always assumed. I don't know that we ever discussed
8 it. It was part of our world view in the way we worked. It
9 was a presumption and an assumption.

01:13:11

10 Q. Okay. Now, Doctor, in 1999, you're listed on the
11 credentialing form for Dr. Melissa Gilliam coming to the VA.
12 Did you have an opportunity to speak with Dr. Gilliam as part
13 of this process?

01:13:36

14 A. I can't remember if I was involved in the initial
15 interviews, but certainly when she came with us she worked in
16 the women's clinic and then she also came up to the surgical
17 services for introduction to it and for the things that we were
18 looking for her to do.

01:14:08

19 Q. Doctor, I'm going to show you Defendant's Exhibit Number 3
20 and ask you to take a look this, please.

21 (Document tendered to the witness).

22 (Brief pause).

23 BY MR. HICKEY:

24 Q. First, do you recognize that document?

01:14:41

25 A. Yes, sir.

1 Q. Does your name appear on it?

2 A. Yes.

3 Q. Is that your signature at the bottom of the first page?

4 A. Yes.

01:14:46

5 Q. And is your signature also on the second page?

6 A. Yes, it is.

7 Q. Does this indicate that you had reviewed Dr. Gilliam and
8 recommended her approval as of the date it bears with your
9 signature which is June 14th, 1999?

01:15:10

10 A. Yes, it does.

11 Q. Okay. And, Doctor, if I were to refresh your recollection
12 about Dr. Gilliam's credentials with her receiving her
13 undergraduate at Yale and then a scholarship at Oxford, and the
14 her M.D. at Harvard, was this the type of physician that you
15 were actively trying to recruit to be at the VA to provide
16 healthcare to the vets?

01:15:31

17 A. Absolutely.

18 Q. Was it the type of person who, when you would've spoken
19 with her, you would've talked about the research opportunities
20 and the teaching opportunities?

01:15:50

21 A. Absolutely.

22 Q. Doctor, would you have told Dr. Gilliam, during this period
23 when she was being recruited there, that she would be treated
24 differently than other surgeons under your direction as Chief
25 of Surgery?

01:16:06

1 A. I don't recollect saying that, no.

2 Q. Would you have told her that she would not have the
3 protection of the immunity that other surgeons operating and
4 being on staff as attending physicians that the VA would have?

01:16:23

5 A. I don't know that it was ever a question.

6 Q. Okay. Would you have raised any inference along those
7 lines?

8 MS. BROCK: Objection.

9 (Brief pause).

01:16:41

10 THE COURT: Wrong case; implication. It's the
11 recipient who infers.

12 MR. HICKEY: Okay. May I restate my question, Your
13 Honor?

14 THE COURT: Yes.

01:16:51

15 BY MR. HICKEY:

16 Q. Doctor, would you have made any implication --

17 THE COURT: Would you have implied to her --

18 BY MR. HICKEY:

19 Q. Would you have implied to her that she --

01:17:01

20 THE COURT: -- anything with respect to her status,
21 immunity status?

22 THE WITNESS: I don't believe so, no.

23 BY MR. HICKEY:

24 Q. Now, Doctor, would you have treated her the same as all of
25 the other physicians under your supervision in terms of the way

01:17:19

1 you supervised her?

2 A. I would not have treated her differently. I treat her as a
3 colleague and I would treat her as a very favorable colleague
4 in the area where she held expertise.

01:17:40

5 Q. Okay. Doctor, I'm going to show you a copy of Exhibit 8.

6 MS. BROCK: Your Honor, I would object to this
7 affidavit on hearsay grounds.

8 (Brief pause).

01:18:15

9 THE COURT: Are you using this for its truth or for
10 some other purpose?

11 MR. HICKEY: To have him identify his signature. I'm
12 going to have him testify to the contents but there was --

13 THE COURT: I understand why you want to do this.
14 Overruled.

01:18:24

15 (Document tendered to the witness).

16 BY MR. HICKEY:

17 Q. Doctor, have you had a chance to look at Exhibit 8?

18 A. Yes.

19 Q. Does your signature appear on it?

01:18:33

20 A. Yes.

21 Q. Is that on the last page?

22 A. Yes, it is.

23 Q. And did you make sure that the affidavit was accurate at
24 the time you signed it?

01:18:42

25 A. Yes, I did.

1 Q. All right. Doctor, in your position as Chief of Surgery
2 for Dr. Gilliam and others, were you supervising them in their
3 preoperative and operative and then post-operative care of
4 patients?

01:19:01

5 A. I had the responsibility of oversight.

6 Q. Okay. And as the way you were supervising Dr. Gilliam in
7 particular, were you treating her as an employee of the VA in
8 these circumstances?

9 A. Yes.

01:19:19

10 Q. Doctor, at the time that Dr. Gilliam was treating patients
11 at the VA, would you agree that she was not under supervision
12 by anyone from the University of Illinois?

13 A. She was not under the supervision. She had the privilege
14 of consulting across the street, but when she was at the VA,
15 she was working at the VA as a -- as a practitioner there.

01:19:57

16 Q. Okay. And would she be subject to the policies and
17 procedures of the VA while she was there?

18 A. Absolutely.

19 Q. Was she subject to the disciplinary procedures the same as
20 other employee physicians taking care of patients at that
21 facility?

01:20:14

22 A. Yes.

23 MR. HICKEY: That's all the questions I have of this
24 witness at this time, Your Honor.

01:20:45

25 CROSS EXAMINATION

1 BY MR. LUMB:

2 Q. Good afternoon, Doctor.

3 A. Good afternoon to you.

4 Q. You've been at the University of Illinois Chicago over

01:21:11

5 40 years, correct?

6 A. Yes.

7 Q. At the same time you've been a federal employee at the

8 Jesse Brown or Westside VA Medical Center, correct?

9 A. Yes.

01:21:19

10 Q. And you started there in either 1974 or 1975 as a part time

11 attending, is that correct?

12 A. Yes.

13 Q. And you were a VA employee, correct?

14 A. Yes.

01:21:30

15 Q. In 1993 you became Chief of Surgery, is that right?

16 A. Yes.

17 Q. Now, as Chief of Surgery in 2001, were you responsible for

18 everything that went on in the operating rooms at the Westside

19 VA?

01:21:45

20 A. Yes.

21 Q. And, in fact, you, as the Chief of Surgery, monitored

22 everything that went on in the operating room regardless of who

23 the surgeon was, correct?

24 A. Yes.

01:21:55

25 Q. And was it your practice at that time to look over all of

1 the operative notes dictated by the surgeons under your
2 direction?

3 A. Probably I missed a number, but I -- I had a special desire
4 to make sure that these things were done timely.

01:22:17

5 Q. You attempted to, correct?

6 A. Yes.

7 Q. And you certainly reserved the authority to be able to do
8 that, correct?

9 A. Yes.

01:22:23

10 Q. And, in fact, you countersigned the operative note -- or
11 you signed the operative note regarding the cone biopsy for
12 Regina Romero on July 18th of 2001 and the soon-thereafter
13 hysterectomy, correct?

14 A. Yes.

01:22:45

15 Q. And you weren't involved in the procedure as a --

16 A. No, I was not.

17 Q. Now, in the 1999 to 2001 time frame, were there somewhere
18 around 34 or 35 surgeons at that VA facility?

19 A. Yes.

01:23:07

20 Q. And did you have the authority to direct all of those 35,
21 34 or 35 surgeons in their day-to-day activities?

22 A. Yes, I did.

23 Q. And that authority wasn't any different for Dr. Gilliam
24 than for any other VA employees, correct?

01:23:25

25 A. No, it was not.

1 Q. Now, when Dr. Gilliam was appointed as a part-time
2 attending in 1999, was it your understanding that she was a VA
3 employee?

4 A. Yes, it was.

01:23:44

5 Q. And you specifically talked about her employment status
6 with her soon after she began, correct?

7 A. Yes, I believe we did.

8 Q. And those conversations had to do with her inquiring what
9 was her chain of command, correct?

01:24:01

10 A. That was part of it, yes.

11 Q. Now, do you know or are you familiar with Dr. Scaunas?

12 A. Yes.

13 Q. And was she also affiliated with U.I.C. and with the VA at
14 the time?

01:24:19

15 A. Yes, she was. She was her predecessor.

16 Q. Did you consider her a VA employee?

17 A. Yes.

18 Q. Now, certainly from 1993 on, as the Chief of Surgery, you
19 were familiar with the activities of the surgeons under your
20 supervision, correct?

01:24:44

21 A. Yes.

22 Q. And was it the mode of operation or the custom and practice
23 at the Westside VA to treat them all as employees once they
24 began working at the medical center?

01:24:58

25 A. My oversight was not so much as employees as the fact that

1 we wanted to make sure that there was a high quality of
2 delivery of care pre-op, inter-op, and post-op, and that was my
3 oversight as a professional to my colleagues.

01:25:23

4 Q. Good point. Setting aside the administrative issues, as
5 the Chief of Surgery it was the custom and practice to retain
6 the authority to directly control the surgical activities
7 pre-op, post-op, and during surgery of every surgeon at the
8 Westside VA, correct?

9 A. Yes.

01:25:39

10 Q. Now, you had authority to research and discuss what
11 Dr. Gilliam did on a day-to-day basis and to reprimand and
12 mentor her, correct?

13 A. Yes.

01:25:53

14 Q. And she was subject to all of the same disciplinary
15 procedures as any other VA surgeon, correct?

16 A. Yes.

17 Q. And that's the way it operated on a day-to-day basis,
18 correct?

19 A. Yes, it is.

01:26:01

20 Q. Now, Dr. Gilliam had zero authority to treat any patient
21 outside of the -- any VA patient outside of the Westside VA
22 without your expressed approval, correct, or the chief of
23 staffs?

24 A. I -- I don't understand that question. She -- she was --
25 she could treat any VA patient that came to her through the

01:26:33

1 women's clinic. She was not an independent practitioner in the
2 sense that she could go out into the community and practice in
3 that sense.

01:26:56

4 Q. Let me make that more clear. If Dr. Gilliam believed that
5 a VA patient needed to be transferred to another facility or a
6 civilian facility, she would have to go through the same chain
7 of command to get that permission as any other VA employee,
8 correct?

9 A. Yes; any VA physician or surgeon.

01:27:13

10 Q. Now, before Dr. Gilliam arrives at Westside VA, the number
11 of women patients had been increasing, correct?

12 A. Yes.

01:27:43

13 Q. And it became obvious to you and to the Westside VA that it
14 would make sense to actually procure the equipment and the
15 personnel to provide that kind of care in-house, correct?

16 A. Yes.

17 Q. And so essentially that was the opposite of outsourcing,
18 correct?

01:27:56

19 A. Right. It was a matter of finances, which were always
20 tight. And if we sent -- if she sent a patient over to the
21 University of Illinois who was a VA patient, the University of
22 Illinois would charge the VA for the care given. So after so
23 many things, machine or some instrumentation was needed, it was
24 the collective wisdom of the staff that we would purchase this.

01:28:21

25 And this, I think, I believe, happened under -- when

1 Dr. Gilliam came that we had purchased, and her predecessor
2 also purchased instrumentation and the like.

01:28:45

3 Q. Now, between 1999 and 2001 Dr. Gilliam was required by the
4 VA to be on-site at Westside for several different sets of
5 clinic hours, correct?

6 A. Yes.

7 Q. And the patients that she saw were determined by the VA,
8 correct?

01:29:01

9 A. Yes; they came to the women's clinic and she saw them
10 there.

11 Q. And a VA employee made those appointments³, correct?

12 A. Yes.

01:29:29

13 Q. Now, I think you have in front of you Dr. Gilliam's
14 credentialing and privileging, the initial privileging
15 application.

16 A. Yes.

17 Q. And that form indicates that she applied for and was
18 granted an appointment as a part-time attending physician,
19 correct?

01:29:39

20 A. Yes.

21 Q. That's a category of an employee, correct?

22 A. Yes.

23 Q. And that was the same category you had back in '74 or '75,
24 correct?

01:29:49

25 A. Yes.

1 Q. And were you then or had you ever been aware of any kind of
2 change in her status between 1999 and 2001?

3 A. No.

4 Q. Doctor, I want to turn very quickly to Regina Romero
5 herself.

01:30:20

6 Do you remember that patient?

7 A. Yes.

8 Q. As Chief of Surgery, were you aware of the complication
9 that occurred on July 18th soon after it occurred?

01:30:32

10 A. Yes.

11 Q. And, indeed, before the cone biopsy, Dr. Gilliam discussed
12 with you what she was going to do and what her plan was,
13 correct?

14 A. Yes.

01:30:46

15 Q. And either in the recovery room after that procedure or in
16 the ICU, you were informed of the complication that occurred,
17 correct?

18 A. Yes.

19 Q. And as Dr. Gilliam's supervisor, she informed you that a
20 complication had occurred and you went over with her the
21 options and what should or shouldn't be done, correct?

01:31:11

22 A. I --

23 Q. Or you together went over those things?

24 A. I don't know if it was myself specifically, but several of
25 the attending there went over this with her and I was aware of

01:31:26

1 what went on.

2 Q. And you were aware of her plan --

3 A. Yes.

4 Q. -- and you approved it, correct?

01:31:37

5 A. Yes.

6 Q. Now, setting aside specific gynecological issues for which
7 you might've had to consult another gynecologist, if you had
8 disagreed with her plan, you had the authority, as the Chief of
9 Surgery, to put a stop to it or change it or to delay it,

01:31:53

10 correct?

11 A. We'd discuss it. We would discuss.

12 Q. And, in the end, you got the final vote, correct?

13 A. Yes, but that seldom, if ever, happened.

14 Q. And you had conversations with Dr. Gilliam after that, the
15 second procedure, on July 18th up through the point when Regina
16 Romero passed away, correct?

01:32:19

17 A. Yes.

18 Q. And likely you had a conversation with her every time you
19 saw her, correct? Dr. Gilliam.

01:32:35

20 A. Yes, I believe we did.

21 Q. And that was because you knew, as the Chief of Surgery,
22 that Ms. Romero's case was a serious situation that required
23 competent oversight, correct?

24 A. Yes.

01:32:47

25 Q. And you provided that oversight regarding -- or that

1 oversight of all of the surgeons taking care of Ms. Romero,
2 correct?

3 A. Yes.

01:33:04

4 Q. Doctor, to sum up, was Dr. Gilliam, between 1999 and 2001,
5 subject to the same level of day-to-day direction by you as any
6 other surgeon employed by the VA in working at Westside?

7 A. Yes, she was.

8 Q. One other question. Was Dr. Gilliam subject to peer review
9 procedures in morbidity and mortality --

01:33:27

10 A. Yes, she was.

11 Q. -- procedures at the VA?

12 And only if the VA for care provided by the VA,
13 correct?

14 A. That's right.

01:33:39

15 Q. And I don't want to get into any specifics, but if you or
16 other VA employees felt that it was appropriate that
17 Dr. Gilliam be trained, or suspended, or any type of action
18 taken in response to quality of care, you had authority to do
19 that, correct?

01:33:59

20 A. I had the authority to start the process if that was that
21 onerous.

22 Q. And the same authority with any other VA employee, correct?

23 A. Yes.

24 Q. Thank you, Doctor.

01:34:12

25 MR. LUMB: That's all I have.

CROSS EXAMINATION

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25

BY MS. BROCK:

Q. Hello, Dr. Wood.

A. How are you?

01:34:24

Q. Good. Thanks. How are you?

A. Good.

Q. Did you at one time hold privileges at Michael Reese Hospital?

A. Yes.

01:34:28

Q. Was that between 1991 and 1994?

A. I believe so.

Q. You were never employed by Michael Reese Hospital, were you?

A. No, I never received a paycheck from them.

01:34:38

Q. You never actually were employed by Michael release --

A. No.

Q. -- is that correct?

A. Yes, that is correct.

Q. Thank you.

01:34:45

When you saw patients at Michael Reese Hospital, were you required to comply with all of their procedures and policies and regulations?

A. Yes.

Q. Do you currently receive a pension from the federal government?

01:34:59

1 A. Yes.

2 Q. And when you worked at the VA, did you receive a paycheck
3 from the federal government?

4 A. Yes.

01:35:04

5 Q. When you worked at the VA, did you receive a paycheck from
6 the University of Illinois for work that you did at the VA?

7 A. I received a check from the University of Illinois, but not
8 for work that I did at the VA.

9 Q. What was the check from the University of Illinois for?

01:35:23

10 A. In an academic setting -- if I may explain this?

11 Q. Go ahead.

12 A. In an academic setting, although I'm an attending and a
13 professor of surgery at the University of Illinois, the

01:35:51

14 Department Chief would have to put together my salary or any

15 other attending and it just couldn't be from the university, it
16 would be from our time at the VA, our time at Cook County

17 Hospital, part-time at Michael Reese, and I was never involved

18 in a financial situation -- or who did I leave out? University
19 of Illinois? And in that academic setting, that allowed you to

01:36:19

20 go to these institutions to work there, care for the patients,

21 mentor, teach the students, give the highest quality of care.

22 So it was -- it was a situation where you worked at

23 the institution that you worked at and you did the best you

24 could and you were employed there.

01:36:38

25 Q. Did you receive federal benefits when you worked at the VA?

1 Sick leave, vacation leave --

2 A. Yes.

3 Q. -- insurance and so forth?

4 A. Yes.

01:36:47

5 Q. If you take a look, this is marked Defendant's Exhibit 3.
6 It's the initial clinical privileges application that you were
7 given.

8 A. Yes.

01:37:10

9 Q. Under category number 3, just a minute ago you testified
10 that that was -- that it said "category of employment," it
11 actually says "category of staff membership," doesn't it?

12 A. That's what it says.

13 Q. Okay. And if you take a look at Exhibit Number 8, the
14 affidavit, who wrote this affidavit?

01:37:31

15 A. Who wrote it?

16 Q. Yeah.

17 A. This is a reflection of a conversation that I had with
18 attorney Hofert and myself and this is the sum total of those
19 discussions.

01:37:53

20 Q. And Mr. Hofert is representing Dr. Gilliam in this case?

21 A. I believe so, yes.

22 Q. And he actually typed this up and brought it to you and you
23 reviewed it and corrected it and signed it?

24 A. To be specific, I think his secretary did this.

01:38:08

25 Q. Okay. Thank you.

1 A. Okay.

2 Q. Do you consider any physician who did anything in the
3 operating room at the VA to be a VA employee if they were
4 credentialed?

01:38:22 5 A. Yes, I do.

6 Q. While you were Chief of Surgery at the VA, was it your
7 practice to countersign operating reports to ensure that the
8 physicians complied with the rule to get their dictations of
9 the operations done within a timely fashion?

01:38:41 10 A. Yes, it was.

11 Q. And did your countersignature signify only that you were
12 the Chief of Surgery and responsible for everything that went
13 on in the surgical service?

14 A. Yes.

01:38:56 15 Q. You were not in the operating room when Dr. Gilliam treated
16 Regina Romero, is that correct?

17 A. No, I was not.

18 Q. You have no knowledge of any conversation between yourself
19 and Dr. Gilliam prior to Dr. Gilliam performing a cone biopsy
20 on Regina Romero about the planned procedure, is that correct?

01:39:17

21 A. I do not remember a specific conversation related to that
22 specific case.

23 Q. Before you countersigned the operating report for Regina
24 Romero, did you inquire into Dr. Gilliam's employment status?

01:39:39

25 A. No.

1 Q. Did you ever ask the VA's human resources department about
2 the employment status of Dr. Gilliam?

3 A. No, but the Chief of Staff would have.

4 Q. Did you ever ask Dr. Garmon about Dr. Gilliam's employment
5 status?

01:39:55

6 A. No.

7 Q. You never had a conversation with the VA's Chief of Staff
8 about Dr. Gilliam's employment status, did you?

9 A. In my -- in my purview of this whole situation, her
10 employment status was never a question that I would even raise.
11 That was done by other departments within the VA.

01:40:19

12 Q. At your deposition, Page 18, at your deposition on
13 April 22nd, 2010, were you asked this question and did you
14 given this answer:

01:40:42

15 "Question: Just so I can get it clear on the record,
16 you never had a conversation with the Chief of Staff
17 about Dr. Gilliam's employment status to the best of
18 your memory, is that correct?

19 "Answer: To the best of my memory, yes."

01:40:55

20 MR. HICKEY: Objection.

21

22

23 BY MS. BROCK:

24 Q. Did you give that answer to that question?

01:41:01

25 MR. HICKEY: Objection to the question. In fairness,

1 I would ask if she could read on.

2 THE COURT: Is that okay with you?

3 MS. BROCK: Sure.

4 THE COURT: Go ahead. Start all over from the
5 beginning.

01:41:09

6 BY MS. BROCK:

7 Q. (Reading:)

8 "Question: Did you ever have occasion to inquire
9 about Dr. Gilliam's employment status with the Chief
10 of Staff of the hospital?

01:41:15

11 "Answer: Only when it was in regard to the
12 credentialing which the Chief of Staff would sign off
13 on.

14 "Question: Did you actually have a conversation
15 with the Chief of Staff about Doctor --

01:41:24

16 "Answer: Not in my memory. I can't remember.

17 "Question: Just so I can get it clear on the
18 record, your never had a conversation with the Chief
19 of Staff about Dr. Gilliam's employment status to the
20 best of your memory, is that correct?

01:41:38

21 "Answer: To the best of my memory, yes."

22 Did you give those answers to those questions?

23 MR. HICKEY: Objection. Not impeaching.

24 THE COURT: He can answer it.

01:41:53

25 THE WITNESS: Pardon?

1 THE COURT: You can answer.

2 BY THE WITNESS:

3 A. That -- that was my statement as recorded.

4 BY MS. BROCK:

01:42:07

5 Q. If Dr. Gilliam worked 20 hours a week at the VA pursuant to
6 a contract between the VA and the University of Illinois, would
7 you consider her to be a part time employee?

8 A. Yes.

01:42:29

9 Q. Did you ever tell Dr. Gilliam what hours she had to work at
10 the VA?

11 A. No.

12 Q. Did you ever tell Dr. Gilliam what days of the week she had
13 to work at the VA?

14 A. No.

01:42:36

15 Q. Did you require Dr. Gilliam to punch in or keep track of
16 her hours or anything of this sort?

17 A. Not at that time, no.

18 Q. Did you ever see the contract between the University of
19 Illinois and the VA under which Dr. Gilliam worked at the VA?

01:42:51

20 A. No.

21 Q. Was Dr. Gilliam required to have you approve a procedure
22 before she did it?

23 A. No.

24 Q. Is a cone biopsy considered a surgery?

01:43:14

25 A. Yes.

1 MS. BROCK: No further questions.

2 REDIRECT EXAMINATION

3 BY MR. HICKEY:

01:43:37

4 Q. You were just asked if Dr. Gilliam was required to get your
5 approval before she performed surgery, do you recall that
6 question?

7 A. Yes.

01:43:51

8 Q. You did not require any of your surgeons that were
9 employees at the VA to get approval before they performed
10 surgery, correct?

11 A. That's correct.

12 Q. So she was treated just the same as all the other surgeons
13 under you, is that correct?

14 A. That's right.

01:43:58

15 Q. You were asked questions about if you told Dr. Gilliam her
16 specific days of the week she could operate or be at the VA and
17 things like that, do you recall questions to that effect?

18 A. Yes, I do.

01:44:16

19 Q. You didn't tell any of those other surgeons the days of the
20 week they could operate or be in the facility to see patients
21 pre-op or post-op, or thing likes that, correct?

22 A. No, I didn't, but to put this to it, when they could
23 operate was subject to the chief operating room nurse who did
24 the schedule with myself. So if they Thursdays, they should be
01:44:39 25 there to do cases on Thursday, that's -- that's the only

1 confinement that our service gave with them.

2 Q. Thank you.

3 And that way, she was treated the same as everybody
4 else?

01:44:55

5 A. Yes.

6 Q. Now, you were read a section of the deposition about your
7 inquiry into Dr. Gilliam's employment status. Were you also
8 asked these questions and did you give these answers, Page 14,
9 starting at line 22 on to Page 15. I'll read you the

01:45:14

10 questions:

11 "Question: Have you ever had occasion to inquire into
12 Dr. Gilliam's employment status?

13 "Answer: Yes.

14 "Question: When was that?

01:45:28

15 "Answer: When I was credentialing her."

16 Did you give those answers to those questions, as
17 well?

18 A. Yes.

01:45:47

19 Q. Okay. Doctor, just in summary here, there's been questions
20 about employment status and not. In the way that Dr. Gilliam
21 was controlled, to the extent that a surgeon is controlled, not
22 a clerk who's told exactly what to do it and how to do it but
23 how surgeons are controlled, did the VA control Dr. Gilliam
24 just as if it controlled any other surgeon?

01:46:11

25 A. Yes, she was controlled in that manner.

1 Q. And you did not tell any patients at the VA or hold out to
2 anyone that she was not an employee, is that fair to say?

3 Sorry for the double negative in there. Let me restate it --

4 A. I would have no reason to ever say that to anyone.

01:46:33

5 Q. Okay. Thank you very much.

6 MR. LUMB: Nothing further, Your Honor.

7 MS. BROCK: Nothing further.

8 THE COURT: You can step down.

9 (Witness excused.)

01:47:06

10 MR. LUMB: Your Honor, if we could call Dr. Gilliam to
11 the stand.

12 THE COURT: Face me and raise your right hand.

13 (Witness duly sworn.)

14 THE COURT: Please be seated be seated.

15

16

17

18

19

20

21 MELISSA LYNN GILLIAM, DEFENDANT, SWORN

22 DIRECT EXAMINATION

23 BY MR. HICKEY:

24 Q. Doctor, would you please state your full name and spell

01:47:34

25 your name for the record.

1 A. Melissa Lynn Gilliam.

2 Q. Dr. Gilliam, could you briefly, starting with
3 undergraduate, explaining your educational background to the
4 Court.

01:47:45

5 A. Sure. I did my undergraduate degree at Yale University
6 where I majored in English literature. Then I went to Oxford
7 University for 2 years where I studied philosophy and politics.
8 I then returned to the United States and went to Harvard
9 University for medical school. I began a residency in general
10 surgery at the University of Chicago and decided to change to
11 obstetrics and gynecology. I went to the University of
12 Illinois and did a Master's in Public Health, and then went to
13 Northwestern University for my residency in obstetrics and
14 gynecology.

01:48:09

01:48:30

15 Q. I'm going to show you a copy of Defendant's Exhibit 1.

16 Do you recognize that, Doctor?

17 A. Yes, I do.

18 Q. What is it?

19 A. My curriculum vitae.

01:48:53

20 Q. Was it prepared by you or at your direction?

21 A. Yes.

22 Q. And at least as of the date of it, which I believe is March
23 of 2009, did this fairly and accurately reflect your education
24 and training, your credentials as far as publications and

01:49:17

25 presentations and research --

1 A. Yes.

2 Q. -- to the extent that a CV can?

3 A. Yes, it does.

4 Q. Are you board certified in anything?

01:49:24 5 A. Yes, I am.

6 Q. In what?

7 A. Obstetrics and gynecology.

8 Q. Okay. After you -- well, Doctor, you were in your OB-GYN
9 residency in the beginning of 1999 at Northwestern, when was

01:49:46 10 that scheduled to end?

11 A. At the end of June of 1999.

12 Q. Okay. At that period of time, did you start a process of
13 being recruited to join a particular staff?

14 A. Yes, I did.

01:50:03 15 Q. Can you explain that to the Court for us.

16 A. I had originally plann3d to do a fellowship, but for family
17 reasons wasn't able to leave Chicago. So my chairman at the
18 time at Northwestern contacted the University of Illinois
19 because there was a colleague there who had expertise in the
01:50:23 20 area that I was interested in learning more.

21 Q. Did you speak to a Dr. Sherman Elias?

22 A. Yes, I did.

23 Q. Who was he?

24 A. He was the Chairman at the University of Illinois, chairman
01:50:38 25 of Obstetrics and Gynecology.

1 Q. Was it a single conversation?

2 A. No, it was multiple conversations.

3 Q. Okay. How did the subject of the VA come up?

01:50:50

4 A. The original faculty member that I spoke to was someone
5 named Richard Dorman. And when they started to look for ways
6 to expand my employment or make it possible to employ me, to
7 find the finances for my employment, the idea of the VA as a
8 possible place came up. And so I was contacted and told that
9 this would be an option for me.

01:51:11

10 Q. Did you have a concern at that time about an opportunity to
11 do research?

12 A. I had come with a desire and a plan to be an academic
13 researcher. And so that was one of the things that had come up
14 that would be a place that I could do research.

01:51:31

15 Q. Was it also important to you to have an opportunity to
16 engage in academic pursuits and teach residents and medical
17 students that might be at the VA?

18 A. Yes; I only looked at academic positions.

01:51:54

19 Q. Okay. Doctor, did anyone ever tell you that you were going
20 to have to get independent medical malpractice insurance for
21 the time you were at the VA?

22 A. No.

23 Q. Had you had experience working at a VA environment before
24 that time?

01:52:06

25 A. I worked -- when I was in residency, the Harvard medical

1 students rotated at the -- what's called the West Roxbury VA.

2 Q. And you had discussions at that time of the VA system
3 providing immunity to the physicians who worked in the VA
4 environment?

01:52:27

5 A. Yes, I did.

6 Q. And was that an important consideration to you in
7 considering this opportunity to work at the VA?

8 A. Absolutely.

01:52:41

9 Q. Did anyone ever tell you, regardless of whether it was from
10 the U. of I. or the VA system, that you would not be provided
11 that indemnity when you went to work at the VA?

12 A. No. In fact, I was told that I had coverage from both
13 places.

01:53:00

14 Q. All right. Doctor, at some point in time did you have a
15 lunch meeting with Dr. Garmon?

16 A. I had a lunch meeting with Dr. Garmon and Dr. Elias at the
17 same time, in January of 1999.

18 Q. Okay. Can you just tell us what you recall, given that
19 it's 11 years later.

01:53:14

20 A. Sure. We met in a faculty dining room affiliated with the
21 main university center, and the question was about the
22 potential of the VA as a place for me to work. And I then had
23 some questions -- I don't know if questions more than concerns
24 about what types of opportunities and why I would go to the VA.

01:53:40

25 And so Dr. Garmon explained her own history of

1 initially being at U.I.C. and then working at the VA. And she
2 actually mentioned some of the things that she mentioned today
3 about the history of the VA and the Women's Center. And so we
4 kind of talked about it as a mission. We talked about research
01:53:59 5 opportunities at the VA and grants that were specific to the VA
6 that might be particular to me.

7 We talked about other people who had been at the VA
8 and the advantages for the VA of having somebody on faculty
9 there. Basically, made it sound like it would be a positive
01:54:19 10 opportunity for me.

11 Q. Doctor, in this period of time, then, in early 1999 and
12 extending through the spring, did you have opportunities to
13 speak to other people at the VA?

14 A. I'm sorry, before I went or --

01:54:31 15 Q. Yes. Not before the lunch but this was before the start
16 date at the VA.

17 A. I don't recall specific conversations.

18 Q. Did you get tendered an application to become an employee
19 at the VA?

01:54:49 20 A. Yes, I did.

21 Q. I'm going to show you Defendant's Exhibit Number 2.
22 (Document tendered to the witness).

23 BY MR. HICKEY:

24 Q. Do you have Exhibit 2 in front of you, Doctor?

01:55:15 25 A. Yes, I do.

1 Q. And if you look at the very first page, in one of the top
2 boxes it says the word "instructions" at the left.

3 A. Yes.

01:55:27

4 Q. And on the second line it talks about this is to determine
5 your eligibility for appointment in a Veterans Health
6 Administration, do you see that?

7 A. Yes, I do.

01:55:44

8 Q. And was it your understanding that you were applying for a
9 job as an employee under an appointment to the Veterans Health
10 Administration?

11 MS. BROCK: Objection; leading.

12 THE COURT: I'll let it stand.

13 BY THE WITNESS:

14 A. Yes.

01:55:49

15 BY MR. HICKEY:

16 Q. Doctor, can you turn to Page 3.

17 A. Yes.

18 Q. Do you see where it says --

19 A. I'm sorry. Page 4?

01:56:10

20 Q. Page 3. I'm sorry about that.

21 Do you see the box at the bottom where it says
22 "signature of applicant"?

23 A. Yes.

24 Q. Could you just read that line next to where it says "note."

01:56:23

25 A. (Reading:)

1 "A false statement on any part of your application may
2 be grounds for not hiring you or for terminating you
3 after you begin work. Also, you may be punished by a
4 fine or imprisonment."

01:56:35

5 Q. Doctor, was this consistent with your understanding that
6 you were applying to be hired?

7 A. Yes.

8 Q. Is that your signature that appears on line 3?

9 A. Yes, it is.

01:56:47

10 Q. Doctor, could you turn to Page 4.

11 A. Yes.

12 Q. In the first line, could you read that.

13 A. (Reading:)

01:57:05

14 "In order for the Department of Veterans Affairs to
15 assess and verify my educational background,
16 professional qualifications, and suitability for
17 employment, I -- "

18 and then colon.

01:57:13

19 Q. Is that consistent with your understanding that you were
20 making an application for employment?

21 A. Yes, it was.

22 Q. Do you see the section where it says "purposes and uses"?

23 A. Yes.

01:57:27

24 Q. And in the first sentence, does that similarly refer to the
25 information being collected to determine your qualifications

1 and suitability for employment?

2 A. Yes; it says "suitability for employment."

3 Q. And then under the "effects of nondisclosure," in the last
4 line of that section, does it indicate regulations and VA
5 personnel policies and thus may prevent you from obtaining
6 employment, et cetera?

01:57:51

7 A. Yes.

8 Q. And then under the disclosure for social security numbers,
9 the first line, does it indicate that disclosure of your social
10 security number is mandatory to obtain the employment?

01:58:08

11 A. Yes.

12 Q. Did you disclose your social security number?

13 A. I believe it was on Page 1.

14 Q. Okay. After you filled this out, did you tender it to the
15 VA?

01:58:28

16 A. Yes.

17 Q. Did anyone contact you and tell you that this was not an
18 application for employment, that it was something else?

19 A. No.

01:58:37

20 Q. Did anyone ever contact you and provide you with a revised
21 form that did not contain any references to employment?

22 A. No.

23 Q. Did anyone ever tell you that there would be a position
24 taken at a later time that you were not employed at the VA?

01:58:55

25 A. No.

1 Q. Doctor, just to digress for a minute. You were here in the
2 courtroom when Dr. Garmon referred to a meeting with Dr. Alias
3 regarding your maternity leave; do you recall that testimony?

4 A. Yes.

01:59:15

5 Q. Can you just tell the Judge when that situation about
6 maternity leave took place so that the Court has some
7 understanding of a time frame.

8 A. I don't know when the conversation took place, but my
9 daughter was born in 2002.

01:59:30

10 Q. So an issue concerning your maternity leave would come up
11 shortly before your daughter was born?

12 A. I assume so.

13 Q. Doctor, did you apply for clinical privileges at the VA?

14 A. Yes, I did.

01:59:52

15 Q. We've already marked and identified Exhibit 3 and I believe
16 the Court has a copy of it.

17 Did you sign Exhibit 3?

18 (Brief pause.

19 BY THE WITNESS:

02:00:11

20 A. Yes, I did. Sorry.

21 BY MR. HICKEY:

22 Q. Sure.

23 Was there anything on any of your clinical privilege
24 application which indicated that you would be treated

02:00:24

25 differently than any of the other attending staff physicians in

1 surgery at the VA facility?

2 A. No, there wasn't.

3 MR. HICKEY: If I may, Your Honor. This is
4 plaintiff's 6 which I'll tender it up to you.

02:01:22

5 THE COURT: We're going to break after this exhibit.

6 MR. HICKEY: Okay.

7 THE COURT: Probably to about 2:45.

8 (Document tendered to the Court and witness).

9 BY MR. HICKEY:

02:01:32

10 Q. Doctor, do you see Plaintiff's Exhibit 6?

11 A. Yes, I do.

12 Q. And was this sent to you by the Department of Veteran
13 Affairs?

14 A. Yes, it was.

02:01:40

15 Q. And did this confirm your reappointment to the medical
16 staff of the VA?

17 A. Yes, it does.

18 Q. And does it indicate that the approval is contingent upon
19 continuing faculty appointment at the VA and medical staff
20 participation?

02:01:59

21 A. Yes, it does.

22 Q. And that you have to follow the medical staff bylaws,
23 rules, and regulations of the VA?

24 A. Yes, it does.

02:02:06

25 Q. Okay. Now, does this indicate that you were given a

1 different status than any other surgeons located at the VA?

2 A. No, it does not.

3 Q. Did this indicate that you would be in any way considered
4 less than an employee of the Veteran Affairs?

02:02:27

5 A. No, it does not.

6 MR. HICKEY: Thank you, Your Honor.

7 THE COURT: You can be seated.

8 MR. HICKEY: Pardon?

9 THE COURT: You can be seated. You're not done,

02:02:37

10 but --

11 MR. HICKEY: I'm not done.

12 THE COURT: That's all right.

13 MR. HICKEY: It's a good place to break.

14 THE COURT: You can step down.

02:02:48

15 (Witness temporarily excused).

16 (Recess.)

17

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10:14:56

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HELEN MONROE, Administrator of the Estate of deceased,)	
)	No. 04 CV 7358
Plaintiff,)	
vs.)	Chicago, Illinois
UNITED STATES OF AMERICA, MELISSA GILLIAM,)	October 12, 2010
Defendants.)	2:50 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

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1 Appearances (continued:)

2

3

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5

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1 (Proceedings taken in open court:)

2 THE COURT: You may begin.

3 MR. HICKEY: Thank you, Judge.

4 MELISSA LYNN GILLIAM, DEFENDANT, SWORN

01:47:16

5 DIRECT EXAMINATION (resumed)

6 BY MR. HICKEY:

7 Q. Doctor, when you started working at the VA, on or about the
8 beginning of August 1999, did you sign a written employment
9 agreement with the VA?

02:50:47

10 A. Could you explain employment agreement?

11 Q. A written contract of employment between yourself and the
12 VA.

13 A. No, I did not.

14 Q. Did you sign one between yourself and U.I.C.?

02:50:58

15 A. No, I did not.

16 Q. Okay. Doctor, did it make a difference to you whether all
17 the money, that you were compensated under this arrangement
18 that had been worked out, came from the VA or not?

19 A. No.

02:51:13

20 Q. So did it make a difference if you got a single check and
21 all the money was from the VA?

22 A. No.

23 Q. Did it make a difference if you got one check from the VA
24 and one from U.I.C.?

02:51:24

25 A. No.

1 Q. Did it make a difference if you got one check from U.I.C.?

2 A. No.

3 Q. The benefits that you received, what was your understanding
4 about where the money came from to pay for those benefits?

02:51:38

5 A. Basically the majority of my salary came from the VA and
6 that was what enabled them to have the ability to bring me on.

7 Q. In addition to the salary, the benefits, did the money for
8 the benefits also come from the VA? Again, the majority of it.

9 A. I don't know how they used the money that came from the VA.

02:52:00

10 Q. All right. Now, Doctor, did you participate in negotiating
11 any contract between U.I.C. and the VA?

12 A. No, I did not.

13 Q. Did anyone ever show that to you?

14 A. No.

02:52:16

15 Q. All right. Getting back to your privileges, Doctor. In
16 2001 were you up for examination on your privileges?

17 A. Yes.

18 MR. HICKEY: Exhibit 4.

19 (Document tendered to the witness).

02:52:40

20 BY MR. HICKEY:

21 Q. Have you had a chance to see Exhibit 4?

22 A. Yes.

23 Q. Okay. Was this the application for renewal of privileges?

24 A. Yes.

02:53:13

25 Q. And on the third page, did you sign it?

1 A. Yes.

2 Q. And at the bottom, do you see that it was approved by two
3 different people?

4 A. Yes.

02:53:26

5 Q. Was it your understanding that it would have to be approved
6 by two different people?

7 A. Yes.

8 Q. Can you explain that to the Judge.

02:53:42

9 A. I had, just in terms of the chain of command, I had to
10 raise the reporting for any surgical services, I would report
11 and discuss that with Dr. Wood; for anything to do with the
12 clinic itself, I would discuss that with Dr. Garmon.

13 Q. And then in the last page, was that approved by the chief
14 of the -- the service chief, as well as the medical center
15 director?

02:54:04

16 A. That is correct.

17 Q. Okay.

18 MR. HICKEY: Your Honor, with your permission, this
19 was marked as actually Plaintiff's Exhibit 8 but I was going to
20 use it.

02:54:25

21 THE COURT: That's fine.

22 (Document tendered to the witness).

23 BY MR. HICKEY:

24 Q. Doctor, showing you Exhibit 8.

02:54:38

25 Did you receive actually written notification that

1 your privileges had, in fact, been renewed?

2 A. Yes.

3 Q. Was there any indication, either on your application for
4 renewal of privileges or in that notification that they were
5 renewed, that you were going to be treated differently than
6 other surgeons who were on staff as attendee at the VA?

02:54:56

7 A. No.

8 Q. Was there any indication in any of those documents that you
9 would not benefit from the immunity provided to surgeons
10 treating patients at the VA?

02:55:17

11 A. No.

12 Q. Was there anything in there to indicate that you wouldn't
13 be able to engage in the same sort of academic pursuits with
14 teaching residents and med students for the research
15 activities?

02:55:32

16 A. No.

17 Q. Thank you, Doctor.

18 Doctor, just on a day-to-day basis, would you explain
19 to the Court what kind of uniform would you wear, what type of
20 ID badge would you have when you worked at the VA?

02:55:52

21 A. I would wear my street clothes and then I would have a
22 jacket and I would have a VA badge, and then if I was operating
23 that day I would -- for example, if I was wearing scrubs from
24 the university, I would come over and change into the VA
25 scrubs, which are very distinctive, to do a surgery at the VA.

02:56:12

1 Q. Did you have anything identifying you as a University of
2 Illinois employee when you were actually treating patients at
3 the VA?

4 A. No, I did not.

02:56:30

5 Q. When you interacted with patients at the VA, did you tell
6 them you were a University of Illinois physician?

7 A. No, I told them I was at the VA.

8 Q. When you were assigned patients at the VA, did they come
9 from referrals from VA physicians?

02:56:48

10 A. Yes, or -- yes.

11 Q. And those patients had to be Vets who had VA benefits
12 available to them?

13 A. Or eligibility to have the benefits.

02:57:08

14 Q. Okay. Now, Doctor, you've heard testimony from Dr. Garmon
15 about assistants, people you would work with. I'd like to draw
16 your attention to that for a moment.

17 When you were operating, were you allowed to bring
18 anyone from the University of Illinois to the VA to perform any
19 procedure with you?

02:57:21

20 A. It had to be very specific. So medical students were --
21 were allowed to come to the VA, but I, for example, couldn't
22 bring a gynecology resident, I couldn't bring a resident or
23 another attendant to assist me. So we actually ended up using
24 the general surgery faculty at the VA to do that.

02:57:49

25 Q. Now, the medical students you mentioned, those medical

1 students would be rotating through the VA at various times, is
2 that correct?

3 A. Right.

02:58:06

4 Q. And that was with the agreement that the VA had with the
5 medical school about supplying residents, is that correct?

6 A. Medical students.

7 Q. I'm sorry. Medical students.

8 A. Yes.

02:58:18

9 Q. And that was part of your teaching at the VA was to teach
10 those medical students, is that correct?

11 A. Yes. Specifically, we had -- it was called the fourth year
12 women's health elective, and so those were often the medical
13 students who were focused on women's health.

02:58:35

14 Q. Okay. Now, when you worked at the VA for those number of
15 years, did you interact with other VA surgeons who were at that
16 location? Did you understand how they interacted with policies
17 and procedures at the VA?

18 A. To some extent. I don't know if I had a deep knowledge.

02:58:57

19 Q. Now, other physicians, when they would make decisions to
20 order tests or not, were they in any way restricted by the
21 tests that were allowed by the VA?

22 A. Yes.

23 Q. When you ordered tests, were there restrictions on your
24 ability to order tests?

02:59:12

25 A. Yes.

1 Q. Can you explain that to the Court.

2 A. It was more of a -- it was a menu approach. There would be
3 things that were available to do and things that you were not
4 able to do. So I would do what was permitted at the VA.

02:59:29

5 Q. When you were going to order medicines, were you asked to
6 order them or prescribe them based on the formulary approved by
7 the VA?

8 A. Yes.

02:59:44

9 Q. Is that the same as it was with other physicians and
10 surgeons at the VA?

11 A. Yes.

12 Q. When you were going to use equipment at the VA, was it the
13 VA equipment that you used?

14 A. Yes.

02:59:52

15 Q. Doctor, at times did you make decisions about recommending
16 whether a patient should come back for follow-up visits?

17 A. Yes.

18 Q. Okay. Now, no one at the VA would tell you how to
19 independently exercise your medical judgment --

03:00:09

20 A. No.

21 Q. -- is that fair?

22 A. Yes.

23 Q. But when you were making those recommendations, was that
24 the same as any other physician seeing patients at the VA?

03:00:20

25 A. Yes.

1 Q. Doctor, did you have a title at the VA?

2 A. Yes.

3 Q. What was your title?

4 A. Chief of Gynecology.

03:00:32

5 Q. Doctor, did you actually then work on some of the policies
6 and procedures at the VA?

7 A. Yes, I did.

8 Q. Did you actually work on some templates for approaches to
9 care for patients?

03:00:50

10 A. Yes, I did.

11 Q. Can you explain some of that to the Court.

12 A. I can think of a couple of examples, but one of the issues
13 that came up was, we were providing sterilization services to
14 the women's Vets and some issues came up of fertility services.

03:01:10

15 And there were questions around how do we select who would be
16 eligible for fertility services and what were the implications
17 of providing fertility services. We had to talk about what
18 those services would be and who would be eligible.

03:01:28

19 And so I worked with the staff psychiatrist to develop
20 those procedures, and we even planned some research around the
21 topics. We ended up working also with one of the psychiatrists
22 at Northwestern to try to get her input for how we could design
23 procedures for services.

24 Q. Doctor, you've heard testimony about time for procedures.

03:01:52

25 Were you given a day on which you needed to schedule

1 procedures?

2 A. The surgical procedures?

3 Q. Yes.

4 A. I typically did those on Wednesdays.

03:02:03

5 Q. Okay. And when those would be scheduled, would they be
6 scheduled by the VA scheduling person?

7 A. Right. Yes.

03:02:20

8 Q. Okay. Was this a situation where you could just schedule
9 surgeries on any day of the week or were you to work within the
10 framework of what the VA provided you of when to schedule?

11 A. Yes. Yes, I was subject to their availability, the OR
12 availability of what the nurse, the head nurse said I could do
13 who would be available to assist.

03:02:36

14 Q. Was it the same situation with the clinic, that there were
15 certain set times for your clinic?

16 A. Yes.

03:03:06

17 Q. Doctor, at any time when you seeing a patient either in the
18 clinic or in a surgical setting, did you hold yourself out to
19 them as anything but an employee of the VA?

20 A. No.

21 Q. Did you attend various training sessions as an employee of
22 the VA?

23 A. Yes, I did.

03:03:20

24 Q. Did you attend medical conferences with other employees of
25 the VA?

1 A. Yes, I did.

2 Q. Did you go to staff meetings at the VA?

3 A. Yes, I did.

03:03:37

4 Q. And, Doctor, at all times when you worked at the VA, did
5 you believe yourself to be covered by the immunities provided
6 for physicians working at the VA?

7 A. Yes, I did.

03:03:52

8 Q. Did anyone at any time, during the entire time you worked
9 there, represent to you that you would not be covered by that
10 immunity?

11 A. No. In fact, I specifically asked them and was told that I
12 was covered.

13 MR. HICKEY: Thank you, Your Honor.

14 CROSS EXAMINATION

03:04:22

15 BY MR. LUMB:

16 Q. Good afternoon, Doctor.

17 A. Good afternoon.

03:04:55

18 Q. Between 1999 and 2001, or whenever you left the VA, were
19 you ever required by any VA employee to actually sign in or
20 sign out?

21 A. No, I was not.

22 Q. I want to talk very briefly about Regina Romero
23 specifically.

03:05:21

24 On July 18th of 2001, were you the only physician in
25 the OR during the cone biopsy?

1 A. Yes, I was.

2 Q. On July 26th of 2001, Ms. Romero was taken back to the
3 operating room for an exploratory laparotomy, correct?

4 A. That is correct.

03:05:38

5 MR. LUMB: Your Honor, I'd like to show what's been
6 marked as Plaintiff's Exhibit Number 3.

7 (Document tendered to the witness).

8 BY MR. LUMB:

03:06:04

9 Q. Is that the operating memo from July 26th, exploratory
10 laparotomy?

11 A. That is correct.

12 Q. You are listed as an assistant on that, correct?

13 A. That is correct.

14 Q. Did you participate in the care during that procedure?

03:06:12

15 A. I believe I was about the third assistant, so it was --

16 Q. What does that mean?

17 A. -- fairly minor.

18 I might have helped the suction or -- but the general
19 surgeon had his regular team present.

03:06:31

20 Q. Now, during that procedure -- well, first of all, did you
21 have privileges to perform an exploratory laparotomy other than
22 for an abdominal hysterectomy?

23 A. No, I did not.

24 Q. And, in fact, in performing an abdominal hysterectomy,

03:06:46

25 you're not even going into the peritoneum itself, correct?

1 A. Yes, you are.

2 Q. But other than dealing with the uterus, you did not have
3 privileges for laparotomies, correct?

03:07:03

4 A. If there was a case that required the uterus ovaries, but
5 outside of a gynecological procedure I did not perform
6 laparotomies at the VA.

7 Q. Now, during this procedure a bowel resection was performed,
8 correct?

9 A. Yes, that is correct.

03:07:16

10 Q. A portion of the jejunum was removed?

11 A. That is correct.

12 Q. A portion of the bowel, is that right?

13 A. That is correct.

03:07:25

14 Q. Did you have privileges to perform that type of a
15 procedure?

16 A. No, I did not.

17 Q. Were you acting in everything you did under the
18 supervision, the direct supervision of the surgeon who was
19 performing the resection?

03:07:37

20 A. That is correct.

21 Q. He told you where to put suction and where to hold the
22 retractor, and all that type of thing?

23 A. I don't believe I -- I did not do quite that much, but if
24 -- but yes.

03:07:46

25 Q. You were operating essentially -- or acting essentially at

1 the level of a medical student or a resident, correct?

2 A. That would be correct.

3 Q. Did you have privileges to perform a -- or to insert the
4 type of tube that was inserted?

03:08:05

5 A. No, I did not.

6 Q. That was -- what type of device was that?

7 A. There's a gastric tube and a jejunotomy. So a gastric tube
8 placement.

9 Q. Did you have privileges to perform a primary anastomosis?

03:08:24

10 A. No, I did not.

11 Q. And that was performed during that procedure, is that
12 correct?

13 A. That is correct.

14 Q. I'm going to show you Plaintiff's Exhibit Number 2.

03:08:28

15 (Document tendered to the witness).

16 BY MR. LUMB:

17 Q. You have seen that before, correct?

18 A. Yes, I have.

19 Q. That is Dr. Lipnick's progress notes or a brief operative
20 note after -- or it's progress notes regarding the July 26th
21 surgery, correct?

03:08:54

22 A. That's correct.

23 Q. I don't know if I asked you this before, but Dr. Lipnick
24 was the lead surgeon for the July 26th laparotomy, correct?

03:09:06

25 A. That is correct.

1 Q. He was a VA employee, correct?

2 A. That is correct.

3 Q. And in that note, Dr. Lipnick stated that he supervised the
4 pre-op and operative assessment of the patient and the
5 procedure itself, correct?

03:09:30

6 A. That is correct.

7 Q. And you agree with that statement, he provided the direct
8 supervision of the preoperative care and the operative
9 procedure, correct?

03:09:39

10 A. Yes.

11 Q. Now, I want to get a little more general, from 1999 to the
12 time you left the VA. Did anyone at U.I.C. ever do any kind of
13 morbidity or mortality meeting or procedure, or whatever it's
14 called, regarding any of your care at the VA?

03:10:10

15 A. No, they did not.

16 Q. Did they have any authority to do that?

17 A. No, they did not.

18 Just to be clear, Dr. Wood did invite one of the gyne
19 oncologists to come to the VA for an M&M report.

03:10:30

20 Q. Okay. He invited an additional expert in that area?

21 A. Yes.

22 Q. But the M&M process and the procedure was done at the VA,
23 correct?

24 A. That is correct.

03:10:41

25 Q. Now, at any time after Ms. Romero's injury, did anyone

1 suggest in any way, shape, or form that the U.I.C. lawyer
2 should be informed of the complications?

3 A. I -- not that I'm aware of. Not that I recall.

03:11:09

4 Q. Did anyone suggest that a U.I.C. lawyer should be involved
5 in meeting with the family?

6 A. No.

03:11:46

7 Q. And finally, just to be clear, from the time you first
8 started at the VA until the time you left in 2001 or 2002,
9 regarding any activity at the VA, did Dr. Elias or anyone at
10 U.I.C. provide any kind of supervision, direction, control at
11 all?

12 A. No, this was made very clear that I could not -- that
13 Dr. Elias had no authority. So if I had an issue, I would go
14 to Dr. Wood or to Dr. Garmon.

03:12:04

15 Q. And it was made clear by VA employees that the VA had that
16 control, correct?

17 A. By both Dr. Elias and by the VA that if I needed something
18 in surgery or if I had an issue, that it went to Dr. Wood or to
19 Dr. Garmon.

03:12:22

20 Q. Finally, I want to show you Plaintiff's Exhibit Number 10.

21 MS. BROCK: Again, Your Honor, that is an affidavit.
22 We would object.

23 THE COURT: For what purpose?

24 MR. LUMB: I just want to enter it into evidence.

03:12:46

25 THE COURT: In the evident that the government might

1 want to use it to impeach?

2 MR. LUMB: If they want to.

3 THE COURT: I'm sustaining the objection.

4 MR. LUMB: Then that's all I have. Thank you.

03:13:02

5 THE COURT: I think we're going to take a short break
6 here, but I do have a question for you.

7 THE WITNESS: Yes.

8 THE COURT: About Oxford. What happened to the "e" in
9 PPE?

03:13:15

10 THE WITNESS: What happened to the "e"? The economics
11 part?

12 THE COURT: Yeah.

13 THE WITNESS: Why didn't I do the full PPE?

14 THE COURT: Yes.

03:13:19

15 THE WITNESS: Because you can make a choice --

16 THE COURT: Okay.

17 THE WITNESS: -- which two of the three.

18 THE COURT: In my day, you could not make a choice.

19 THE WITNESS: I was frightened of economics at the
20 time.

03:13:29

21 THE COURT: We'll be back soon.

22 THE CLERK: All rise.

23 (Recess.)

24 THE CLERK: This Court resumes in session.

25 THE COURT: You may begin.

1 MS. BROCK: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MS. BROCK:

03:57:37

4 Q. Dr. Gilliam, let me ask you about the privileges and
5 credentialing process.

6 Before a doctor, any doctor, can treat a patient at a
7 hospital, a VA or any hospital, that physician has -- the
8 hospital has to grant that physician privileges, is that right?

9 A. That's correct.

03:57:55

10 Q. Okay. And what is the procedure for applying for
11 privileges at the VA?

12 A. You complete paperwork.

03:58:10

13 Q. This application that you testified to earlier marked
14 Defendant's Exhibit 2, was that application sent to you by the
15 credentialing department at the VA as part of a packet of
16 information that you should send back in in order to get
17 credentialed and privileges at the VA?

18 A. Could you show me which one you're talking about?

03:58:23

19 Q. Yes. I've written on mine, but it's Defendant's Exhibit 2,
20 the application.

21 A. I don't recall if it was sent to me or if I picked it up.

22 MR. HICKEY: Objection; that is not a privilege
23 application. 3 is the privilege application.

24 MS. BROCK: Well, I've shown her the document that --

03:58:38

25 THE COURT: It doesn't matter, just read me the title

1 of the document.

2 MS. BROCK: Application for positions of podiatrists
3 and optometrists.

4 THE COURT: Okay. Then we don't confuse them.

03:58:49

5 BY MS. BROCK:

6 Q. Did you answer that question? I didn't hear it.

7 A. I don't recall how it was given to me.

8 Q. Okay. Is it possible that it was sent to you by the
9 credentialing department as part of a packet of information

03:59:12

10 that you had to submit to the credentialing department in order
11 to get privileged?

12 A. It's possible.

13 Q. Did your status at the VA, whatever that status was, did
14 that status change in any way between the time that you first

03:59:23

15 applied for privileges and the second time you applied for
16 renewed privileges?

17 A. Not that I'm aware of.

18 Q. When you worked at the University of Illinois -- well, let
19 me back up a minute. When you were working at the VA, were you

03:59:41

20 also working for the University of Illinois?

21 A. Yes.

22 Q. And you spent about 20 hours a week at the VA and the
23 remainder of your time was at the University of Illinois?

24 A. I had a few other places that I -- that I went to. I went
25 to the Board of Health at one point.

03:59:56

1 Q. But the majority of the remainder of your time was spent at
2 the University of Illinois?

3 A. Yes, that is correct.

04:00:06

4 Q. Okay. And when you worked at the University of Illinois,
5 did you have medical malpractice insurance?

6 A. Yes, I did.

7 Q. And who provided you with that?

8 A. The University of Illinois.

04:00:18

9 Q. Okay. I mean, you didn't go out yourself and purchase
10 medical malpractice?

11 A. No, I did not.

12 Q. Okay. And who told you that you had coverage in both
13 places?

14 A. I was told I had coverage at the VA.

04:00:28

15 Q. Who told you that?

16 A. I learned that from Dr. Wood, but I also discussed it with
17 other faculty at the VA.

18 Q. When did you finish your residency at Northwestern?

19 A. 1999.

04:00:43

20 Q. What month?

21 A. June of 1999.

22 Q. Okay. Before you could begin treating patients at the VA,
23 or, for that matter, at the University of Illinois, the
24 credentialing process had been completed, right?

04:01:01

25 A. Yes, that is correct.

1 Q. And when did you receive privileges from the University of
2 Illinois?

3 A. I don't remember the exact date.

4 Q. When did you receive privileges from the VA?

04:01:08

5 A. I don't remember the exact date.

6 Q. Did you receive one paycheck while you were working at the
7 VA and the University of Illinois?

8 A. That is correct.

9 Q. And was that paycheck issued from the University of

04:01:26

10 Illinois?

11 A. That is correct.

12 Q. Did your employee benefits come from the University of
13 Illinois?

14 A. That is correct.

04:01:32

15 Q. And that's sick leave, vacation, insurance, and so forth?

16 A. Yes, that is correct.

17 Q. Okay. Did your W-2 form come from the University of
18 Illinois?

19 A. That is correct.

04:01:40

20 Q. Did you ever treat a VA patient at the University of
21 Illinois?

22 A. Yes, I did.

23 Q. When you treated a VA patient at the University of
24 Illinois, were you required to use U. of I. equipment?

04:02:05

25 A. I was required to get permission from the VA and I was

1 required to get an agreement with the VA that that patient
2 could be seen, if it's -- and then I would take that, then the
3 patient can come and be seen at the U. of I.

04:02:25

4 Q. So my question is, when you treated the VA patient at the
5 University of Illinois, were you required to use University of
6 Illinois equipment?

7 A. You mean as opposed to going to the VA and getting
8 equipment and bringing it to the U. of I.?

9 Q. That's correct.

04:02:36

10 A. That is correct.

11 Q. When you treated a VA patient at the University of
12 Illinois, did you wear a University of Illinois name tag and
13 uniform?

14 A. Yes, that is correct.

04:02:45

15 Q. When you treated a VA patient at the University of
16 Illinois, were you required to follow University of Illinois
17 policy and procedures and regulations?

18 A. It depended specifically on what services I was approved of
19 providing at U. of I. so, for example, I took all the calls
20 for the VA. So once I was off campus and a patient came in
21 with an ectopic, I had to get approval to have her labs drawn
22 at U. of I. So it depended on what had been approved of in
23 advance. So for example, they did obstetrical care at U. of
24 I., and that was doable, you know, the services of obstetrical,
25 but sometimes if that was different, I had to get individual

04:03:05

04:03:30

1 approval.

2 Q. Who made the decision to perform the biopsy on Regina
3 Romero on July 18th, 2001?

4 A. I did.

04:03:55

5 Q. Is a biopsy a surgery?

6 A. When you say "biopsy" which procedure are you referring to?

7 Q. Is a cervical biopsy a surgery?

8 A. Are you referring to the conization as a biopsy?

04:04:27

9 Q. This is just a general question, is a cervical biopsy
10 surgery?

11 THE COURT: Why don't you ask her is a cervical biopsy
12 always a surgery.

13 MS. BROCK: Okay.

14 BY THE WITNESS:

04:04:32

15 A. Yes, it's a surgical procedure.

16 BY MS. BROCK:

17 Q. Page 20, at your deposition, were you asked these questions
18 and did you give these answers:

04:04:48

19 "Question: Was it in an operating room or was it an
20 outpatient procedure?

21 "Answer: Well, you can do outpatient procedures
22 in an operating room, so I would say it was an
23 outpatient, but if it was a procedure done, it's
24 clinic-based procedure.

04:04:59

25 "Question: Is it a surgery?

1 "Answer: No, it's called a colposcopy with biopsy."

2 Did you give those answers?

04:05:09

3 A. Yeah, that's what I'm not clear which procedure you're
4 referring to. So there's a colposcopy, right, which is a
5 verification.

6 Q. Okay.

04:05:29

7 A. So I did a colposcopy. I don't recall if biopsies were
8 done at that time. But the point is, you do a colposcopy and
9 it's an office-based procedure. Whether it's surgery or not,
10 it's just a technical distinction.

11 Q. And did you have privileges to perform that procedure at
12 the VA?

13 A. Yes, I did.

14 Q. And that's why you performed it on July 18th?

04:05:38

15 A. Yes.

16 Q. You were authorized to perform it on that date?

17 A. That is correct.

18 Q. But you didn't have privileges to do a laparotomy that was
19 done later, is that correct?

04:05:49

20 MR. HICKEY: What day? What time?

21 BY THE WITNESS:

04:06:08

22 A. So a laparotomy just means that you open the abdominal
23 cavity. I could absolutely open an abdominal cavity. Could I
24 open an abdominal cavity to do a surgical bowel resection, no,
25 could not. I had many privileges at the VA, including I could

1 open an abdomen.

2 Q. Why were you in the operating room when Dr. Lipnick did the
3 laparotomy and the bowel resection?

04:06:25

4 A. Because I had met the family, I felt that I knew
5 Ms. Monroe, and that this was a patient that I've operated on,
6 and I felt like it was the proper and honorable thing to do was
7 to be present.

8 Q. Thank you.

04:06:40

9 When you were at the Westside VA, was there any other
10 gynecologist at the Westside VA?

11 A. At the same time I was?

12 Q. Correct.

13 A. No.

04:06:58

14 Q. Did you ever see the contract that the University of
15 Illinois entered into with the VA?

16 A. No, I did not.

17 Q. When was your child born? When did you go on your
18 maternity leave?

19 A. She was born in 2002.

04:07:13

20 Q. What month?

21 A. January 5th, 2002.

22 Q. Okay. And did you take a maternity leave?

23 A. Yes, I did.

24 Q. Okay. And when was that maternity leave over?

04:07:24

25 A. I took an initial maternity leave and then I came back, I

1 believe, four days a week, but I don't know the exact date.

2 Q. Was it a month or two months? Can you give any estimation
3 at all?

4 A. It was a few months but not a month.

04:07:47

5 Q. Okay. When you returned to work after the maternity leave,
6 did you return to work at the University of Illinois?

7 A. Yes, I did.

8 Q. Did you return to work at the VA?

9 A. Yes, I did.

04:07:55

10 Q. And how long did you stay at the VA?

11 A. I don't remember the -- I don't remember the exact amount
12 of time I stayed after that.

13 Q. What were the circumstances under which you left the VA?

04:08:14

14 A. I received a Career Development Award from the National
15 Institutes of Health which covered 75 percent of my time for
16 research. So I received that -- I was awarded that in August,
17 and so then I changed my clinical responsibilities.

18 Q. To what?

19 A. So I became 75 percent research and 25 percent clinical.

04:08:30

20 And so I had a much smaller clinical responsibility. I don't
21 remember all of the specifics.

22 Q. Were you still at the University of Illinois?

23 A. Yes, I was.

24 Q. And you weren't doing anything at the VA, is that correct?

04:08:43

25 A. I don't believe so, but I'd have to check. I can't

1 remember exactly when that transition was made. I received a
2 couple of other grants at the same time, so I think by then
3 that's when I stopped.

04:09:00

4 Q. Now, in your view, if I understand you correctly, you
5 believe that, at least in 2001, that you were employed by both
6 by the VA and the University of Illinois, is that right?

7 A. I believe that since 1999 I was employed by both.

8 Q. When did that end, in your mind?

04:09:18

9 A. You know what, I'd have to check the exact date of from
10 when I stopped working at the VA.

11 Q. Did you ever have an exit interview with the VA?

04:09:43

12 A. Around the time of the Ms. Romero case, I had many, many
13 discussions with the VA. It was a real turning point at the VA
14 and about the safety of the setup of the VA. I had multiple
15 entries with multiple people at the VA, and specifically about
16 the services and the systems of care that we had in place.

17 Q. Did you ever have an exit interview? An exit interview
18 with the VA?

19 A. What do you mean by an exit interview?

04:09:56

20 Q. Did you ever submit a letter of resignation to the VA?

21 A. I don't remember what the procedures were for -- as I
22 transitioned.

23 Q. Who did you -- never mind.

04:10:12

24 When you were served with the complaint and summons in
25 this case, in late October or early November of 2005, did you

1 contact the University of Illinois?

2 A. Yes, I believe I did.

3 Q. Why?

4 A. Because I had a -- yeah, I think I had to fill out a form
5 for them.

04:10:31

6 Q. When you got the summons and the complaint, did you
7 understand which patient was suing you?

8 A. Yes.

9 Q. And you contacted the University of Illinois and told them
10 about the lawsuit?

04:10:44

11 A. I believe that's what I did.

12 Q. And yet, at that time you were working with the University
13 of Chicago, is that right?

14 A. Well, what was the year and the date?

04:10:54

15 Q. November 2005.

16 A. Yes, I began at the University of Chicago in August
17 of 2005.

18 Q. And did the University of Illinois provide you with these
19 attorneys who are representing you in this lawsuit?

04:11:08

20 A. That is correct.

21 MR. HICKEY: Your Honor, I object.

22 THE COURT: Well, there's no issue, and the
23 implication, I think, is not binding on the witness.

24 MS. BROCK: No further questions.

04:11:25

25 REDIRECT EXAMINATION

1 BY MR. HICKEY:

2 Q. Doctor, I'd like to see if I can clarify a couple of
3 things. You were asked questions by counsel for the plaintiff
4 about the cone biopsy. So I'm going to refer to that now.

04:11:53 5 A. Okay. Thank you.

6 Q. Cone biopsies have been performed prior to time you were at
7 the VA?

8 A. Yes, that is correct.

9 Q. Okay. They've been performed -- and I meant to say,
04:12:04 10 they've been performed on the VA?

11 A. Yes, that's correct.

12 Q. And then you were asked by counsel for the plaintiff about
13 whether anyone from the VA told you to notify an attorney at
14 the University of Illinois. Do you recall questions to that
04:12:22 15 effect?

16 A. Yes, I do.

17 Q. Back at the time of the Ms. Romero incident, no one from
18 the VA directed you to notify anyone at the U. of I about the
19 incident, is that correct?

04:12:37 20 A. No, they did not.

21 Q. Did they indicate to you that they were handling that
22 matter within the VA?

23 A. Yes, they did. I'm sorry, I don't remember the person's
24 name, but there was someone who was the head of -- I think he
04:12:50 25 was the head of ethics. I think he was a retired physician who

1 was the one who stepped in and then I -- I stepped back.

2 Q. Fine.

3 Doctor, counsel for U.S. asked you questions about
4 your application for privileges and when that was forwarded and
04:13:16 5 when you received privileges. Do you recall questions to that
6 effect?

7 A. Yes, I do.

8 Q. Just to refresh you --

9 MR. HICKEY: If I may, Your Honor. I believe you have
04:13:29 10 copies of these already, Exhibit 3 and Exhibit 6.

11 THE COURT: What are they?

12 MR. HICKEY: That's her application.

13 THE COURT: Yeah, I've seen them.

14 MR. HICKEY: 6 is the letter confirming privileges
04:13:42 15 that had been given.

16 THE COURT: Seen them both.

17 BY MR. HICKEY:

18 Q. Just to refresh you on this.

19 (Document tendered to the witness).

04:13:45 20 BY MR. HICKEY:

21 Q. Your application for privileges were signed by you on or
22 about what date?

23 A. On May 13th, 1999.

24 Q. And you had received a letter dated August 9th, 1999,
04:14:00 25 confirming that you'd already been given privileges by that

1 date?

2 A. Yes, that's correct.

3 Q. Having seen those, does it refresh your recollection that
4 you would've received privileges on or about the beginning of
5 August of 1999?

04:14:14

6 A. That is correct.

7 Q. Okay. And then to further clarify, counsel had actually
8 referred to Exhibit 2.

9 MR. HICKEY: I believe Your Honor has seen this
10 (indicating)?

04:14:33

11 THE COURT: I've seen that, too.

12 BY MR. HICKEY:

13 Q. This is what you identified earlier as your application for
14 employment that you filled out and signed on or about what
15 date?

04:14:46

16 A. April 24th, 1999.

17 Q. Okay. So the application for the employment is different
18 than the credential application?

19 A. Yes, that is correct.

04:15:00

20 Q. And then just to follow up on that, Doctor.

21 MR. HICKEY: Exhibit 4, I believe the Court has
22 already seen it.

23 THE COURT: I've seen that.

24

04:15:18

25 BY MR. HICKEY:

1 Q. When you reapplied for privileges, you reapplied in
2 connection with Exhibit 4, is that correct?

3 A. That is correct.

04:15:55

4 MR. HICKEY: Your Honor, that's all that I have at
5 this point for clarification. Thank you.

6 MR. LUMB: Nothing further, Your Honor.

7 THE COURT: Anything from you?

8 MS. BROCK: Nothing further.

9 THE COURT: You can step down.

04:16:04

10 (Witness excused.)

11 THE COURT: Do you have another witness?

12 MS. WAWZENSKI: Your Honor, we have a witness from
13 Milwaukee.

14 THE COURT: We're going to be here until we're done.

04:16:19

15 MS. WAWZENSKI: Great.

16 (Brief pause).

17 THE COURT: Face me and raise your right hand.

18 (Witness duly sworn.)

19 THE COURT: Please be seated.

04:17:24

20 PATRICE BOND, GOVERNMENT WITNESS, SWORN

21 DIRECT EXAMINATION

22 BY MS. WAWZENSKI:

23 Q. Would you please state your name.

24 A. Patrice Bond.

04:17:31

25 Q. And, Ms. Bond, where are you employed?

1 A. I'm employed for the Department of Veterans Affairs at the
2 Great Lakes Acquisition Center.

3 Q. What is your job title there?

4 A. Supervisory Contract Specialist.

04:17:45

5 Q. And what do you do in that position? What are your duties?

6 A. Primarily I supervise contracting officers in preparation
7 of solicitations for new contracts, and I review solicitation
8 documents before they're issued, and all other supervisory-type
9 functions, hiring, firing, and annual appraisals.

04:18:16

10 Q. What is the jurisdiction of the Great Lakes Acquisition
11 Center? What states do you cover?

12 A. Illinois, Wisconsin, upper Michigan, and then there's seven
13 medical centers within those states.

04:18:37

14 Q. So the Jesse White Medical Center would've been one of the
15 centers that --

16 A. Jesse Brown, yes.

17 Q. Jesse Brown that you covered, correct?

18 A. Yes.

04:18:47

19 Q. Now, can you explain for us what kind of contracts would a
20 VA Medical Center enter into with one of their affiliates?

21 A. We do basically medical sharing contracts with the
22 affiliates, we also do sales, but the majority of our contracts
23 are medical sharing contracts.

24 Q. And what is a medical sharing contract?

04:19:06

25 A. Where we contract services for physicians or any Allied

1 Health professional where the VA might not be able to hire, for
2 whatever reason, and the services are needed. So we do a
3 contract for those services.

04:19:29

4 Q. Now, a contract for a physician's services, how does the
5 process begin for a VA Medical Center to get a contract in
6 place?

04:19:47

7 A. At the facility level it would have to be determined that
8 there is a need. And generally, it goes through a number of
9 chains within the facility, starting with the service line that
10 has the need and then it goes through the medical executive
11 board, it goes through the director and the Chief of Staff.

04:20:11

12 And there's a number of documents that have to be
13 completed. So those documents are completed and then they're
14 forwarded to my office. That would also include HR certifying
15 that this is a particular type field or occupation that they
16 can hire. It also goes through fiscal which would be an
17 indicator to us that there are funds that are available. And
18 for affiliates, that also goes to the director of our VISN and
19 also the medical chief officer, which they're both located at
20 the VISN business office at Hines.

04:20:40

21 Q. Now, what happens when all of that material is gathered
22 together and comes to you at the GLAC?

04:21:01

23 A. Okay. We review it to make sure everything is there that's
24 needed. We do market research, and then we require a statement
25 of work from the end user. So we also work with them to

1 determine that the statement of work is appropriate.

2 From all of those documents, we create a solicitation
3 document, and then we make sure it goes through all the
4 internal reviews and approvals, and then we issue that
5 solicitation document to the potential contractor.

04:21:24

6 Q. Let me hand you what I've marked as Government Exhibit 1.
7 (Document tendered to the witness).

8 BY MS. WAWZENSKI:

9 Q. And ask you to take a look at that and tell me what it is.

04:21:53

10 A. Okay. This is an executed contract. It looks like it was
11 -- I would say it was reviewed and signed by the Board of
12 Trustees of the University of Illinois on June 4th, 1998, and
13 accepted by the contracting officer June 16th of 1998.

14 Q. And do you recognize the name of the contracting officer
15 that signed it on behalf of the United States?

04:22:25

16 A. Yes.

17 Q. And who is that?

18 A. Bruce Blackburn.

19 Q. And did you work with Mr. Blackburn at the GLAC?

04:22:35

20 A. No, he was gone by the time I started working there, but
21 I'm familiar with his name.

22 Q. And for what position is this contract for?

23 MR. HICKEY: Objection, Your Honor. The contract
24 speaks for itself. This witness has no foundation. She wasn't
25 working there at the time, didn't sign it.

04:22:53

1 THE COURT: You can ask the witness what this
2 contracts purports to be for and I would accept that.

3 MS. WAWZENSKI: Thank you.

4 BY MS. WAWZENSKI:

04:23:03

5 Q. What does this contract purport to be for?

6 A. Gynecology services, a .5 FTEE.

7 Q. Which would be 20-hour per week?

8 A. Yes.

9 Q. Is that FTEE?

04:23:26

10 A. Correct.

11 Q. And is this for the Jesse Brown facility?

12 A. Yes, it is.

13 Q. And how do you know that? What is there that tells you
14 that it's Jesse Brown?

04:23:39

15 A. Well, on the first page, VACHCS - WSD, that's VA Chicago
16 Healthcare System, Westside Division. So Jesse Brown was once
17 called Westside.

18 And also on Page 2, Item 4, where it says submit the
19 invoice. Page 3, the first paragraph. I'm sure all throughout
20 the contract document it'll be clear what facility this is for.
21 Page 4, again, I see it references VACHCS - WSD.

04:24:16

22 Q. And what was the duration of this contract? How long was
23 it supposed to last for?

24 A. On Page 3, the second full paragraph says this was for a
25 one-year period, from June 1st, 1998 through May 30th, 1999.

04:24:43

1 Q. Does this contract name a specific physician to fill this
2 position?

3 MR. HICKEY: Your Honor, may I just show a continuing
4 objection to this witness?

04:25:08

5 THE COURT: You may. It's overruled.

6 THE WITNESS: I can answer?

7 THE COURT: Yes.

8 BY THE WITNESS:

04:25:29

9 A. I'm sorry. No, it just references that it has to be a
10 board qualified or certified gynecologist.

11 BY MS. WAWZENSKI:

04:25:53

12 Q. Now, we talked about the contracting process that your
13 section at the GLAC in that you gather all of this material
14 together that you've gotten, the financial information, the
15 statement of work, and everything else, and what happens when
16 your staff completes a solicitation? What happens next with
17 these materials?

04:26:11

18 A. We send the solicitation document, along with a cover
19 letter. In this case, it would have gone to the University of
20 Illinois to their contract area, and they review it and submit
21 to us a proposal.

22 Q. And what happens when the university sends it back to the
23 GLAC?

04:26:29

24 A. If we are in agreement with everything as it's submitted to
25 us, we would move forward and execute the contract. In most

1 cases, we ask that they submit with their proposal different
2 types of submittals. So if everything is intact, we just move
3 forward with executing the contract; by that, we would sign it
4 and then send the signed contract back to the university
5 accepting their terms.

04:26:59

6 Q. Let me hand you now what we've marked as Government
7 Exhibit 2.

8 (Document tendered to the witness).

9 BY MS. WAWZENSKI:

04:27:24

10 Q. And ask you to take a look at that and tell me what this
11 is.

12 A. This is another contract which includes some amendments and
13 modifications to the contract.

14 Q. And when does this contract first go into effect?

04:28:08

15 MR. HICKEY: Your Honor, may I just show the same line
16 of objection?

17 THE COURT: Yes, you may.

18 BY MS. WAWZENSKI:

19 Q. You may answer.

04:28:23

20 A. Oh, okay. This is a 1 year contract for September 1st,
21 2000 through August 31st, 2001.

22 Let's see. There was an amendment. The solicitation
23 was issued for September 1st, 2000 through August 31st, 2001,
24 and then there was an amendment to the solicitation changing it
25 from a 12-month contract to a 9-month contract. That's

04:28:59

1 amendment number 1, at the bottom of it it says is B 0189.

2 Q. So the time period would have been--what?--December 1st of
3 2000 through August 31st of 2001?

4 A. Correct.

04:29:20

5 Q. And I'm going to turn your attention using the numbers at
6 the bottom of the page. They are stamped numbers that are
7 preceded by a "B" and then a number. I'm going to ask you to
8 turn to page B 0192, 192.

9 A. Okay.

04:29:44

10 Q. And ask you what was this contract for?

11 A. Gynecology services. This was also for the Jesse Brown --
12 well, what was then the Westside Division.

13 Q. And what does it say about where the services were to be
14 performed?

04:30:04

15 A. They could be performed either at the Westside Division or
16 at the University of Illinois.

17 Q. And turning to the next page, B 193, does that also say, in
18 the statement of work, that the services could be performed at
19 either location?

04:30:25

20 A. Yes, the first full paragraph, the last sentence says:

21 "Services performed at the VA and/or U.I.C. facility."

22 and further down it also says that:

23 "... services can be at the Women Veterans Health

24 Center and/or the women's Health Associates Clinic at

04:30:54

25 U.I.C."

1 So from this it could be at either medical center or
2 at either of the clinics.

3 Q. Let me ask you to turn to page B 195 of this statement of
4 work and ask you to look at number 5, Personnel Policy. The
5 last sentence in that section says that:

04:31:06

6 "The parties agree that the contractor, its employees,
7 agents, and subcontractors, shall not be considered
8 VA employees for any purpose."

9 Given your position as supervisor at the GLAC, is this
10 standard language in contracts between the VA medical centers
11 and affiliates?

04:31:35

12 MR. HICKEY: Objection, Your Honor.

13 THE COURT: Overruled.

14 MR. HICKEY: Parol evidence.

04:31:46

15 THE COURT: This is somebody presumably fully familiar
16 with practices and she's testifying to that.

17 MR. HICKEY: Your Honor, my position is that the
18 United States has not stipulated that the contract is
19 ambiguous. Until they stipulate, they should not --

04:31:59

20 THE COURT: Read the question back.

21 (Question read.)

22 THE COURT: She's entitled to ask whether this is
23 standard language. We're not talking about what it means.

24 You can answer.

04:32:33

25 BY THE WITNESS:

1 A. Could I answer?

2 BY MS. WAWZENSKI:

3 Q. Yes.

4 A. Yes, it is standard.

04:32:37

5 Q. And why do you put that language in contracts?

6 MR. HICKEY: Objection. Now it's parol evidence,

7 Your Honor.

8 THE COURT: It's still her understanding of the
9 purpose. And this is a contract now, she can testify to that.

04:32:50

10 Whether it effectuates that purpose is one of the issues here.

11 BY THE WITNESS:

12 A. It's standard language because VA contracting officers are
13 not -- they don't have the authority -- or I should say, we
14 don't have the authority to do personal services contracts.

04:33:08

15 And my understanding of the difference between
16 personal services and nonpersonal services is how -- who
17 supervises or oversees the contractor's employee. So by
18 putting this in here, we're letting not just the affiliates, we
19 put it in all of our contracts, that -- so that it is clear
20 that there are no expectations on behalf of the VA that the
21 individual that's placed for services would be considered a VA
22 employee.

04:33:38

23 BY MS. WAWZENSKI:

24 Q. Let me ask you to turn to Page 203 of the contract, which
25 is headed "Indemnification and Medical Liability Insurance"

04:33:59

1 and there are subparts to this.

2 Is this language that you have in all contracts with
3 affiliates who are providing physician services at VA
4 Hospitals?

04:34:19

5 MR. HICKEY: Your Honor, objection, foundation.

6 THE COURT: Overruled.

7 BY THE WITNESS:

8 A. Yes, that's standard.

9 BY MS. WAWZENSKI:

04:34:28

10 Q. And what is your understanding of what this language in
11 this particular contract says?

12 A. It basically is saying that the contractor's employee is
13 not a VA employee and that the contractor is responsible for
14 maintaining their medical liability insurance.

04:34:51

15 Q. Does the VA require some kind of proof from the affiliate
16 of the existence of some kind of malpractice insurance?

17 A. Yes.

18 Q. And in a contract with the University of Illinois, in the
19 contract that you worked on, what kind of proof of insurance
20 does the university provide to the VA?

04:35:10

21 A. We've always been told from them that they're self-insured.
22 So they provide us instead of a certificate of insurance that
23 we get from other types of companies, we get a booklet which
24 goes into detail about them being self-insured, but not a
25 regular certificate.

04:35:36

1 Q. And Government Exhibit 2 that we've been discussing, this
2 would've been in effect, then, in July and August of 2001,
3 correct?

4 A. Yes.

04:35:52

5 MS. WAWZENSKI: I have nothing further, Your Honor.

6 CROSS EXAMINATION

7 BY MR. HICKEY:

8 Q. Ms. Bond, you never contacted Dr. Gilliam before she went
9 to work at the VA, did you?

04:36:24

10 A. No.

11 Q. You never directed anyone to contact Dr. Gilliam, did you?

12 A. No.

13 Q. You have no knowledge of whether anyone from the VA
14 tendered any such document to Dr. Gilliam, correct?

04:36:39

15 A. Such document?

16 Q. It's Government Exhibit 2.

17 Is that correct?

18 A. Well, these typically don't go to employees, they just go
19 to who we're contracting with. So I don't know what happens
20 after we issue it.

04:36:54

21 Q. So it wouldn't go to an employee like Dr. Gilliam, is that
22 what you're saying?

23 A. Never.

24 Q. Okay. Just so I'm clear, you're indicating that Government
25 Exhibit 2 went into effect sometime on or around December 1st,

04:37:06

1 2000?

2 A. Correct.

3 Q. You're not going to be taking the position with this Court
4 that Government Exhibit 2 was in effect in August of 1999?

04:37:30

5 A. No. According to everything that I see here,
6 September 1st, 2000, was the beginning of this contract.

7 Q. Okay. And you have no documents with you that indicate
8 that an employee that had been working for the VA since
9 August 1st of 1999 would've been notified of any change in

04:38:10

10 status as of September 1st, 2000?

11 A. People that work for the VA, all of those communications
12 would go through our HR department. We only handle contract
13 employees.

14 Q. Okay. So you have no knowledge of any notices going out to
15 anyone, any employee of the VA, about a change that would've
16 taken place on or around September 1st, 2000, is that fair to
17 say?

04:38:30

18 A. Not if I understand the question, no. You're saying an
19 employee of the VA being notified about this?

04:38:44

20 Q. Right.

21 A. The contract?

22 Q. Because of your position, you wouldn't have any knowledge
23 of whether anyone would be notified of a change in status, is
24 that fair to say? That would be through HR?

04:38:59

25 A. No, that's not fair to say.

1 Q. All right. Let me ask you a question then. Did you
2 personally sign this contract, Government Exhibit 2, at any
3 time?

4 A. No, I did not.

04:39:17

5 Q. Did you personally talk to anyone at the U. of I. back in
6 August or September of 2000?

7 A. No.

8 Q. Okay. Did you ever contact any physician working at the
9 Jesse White VA to discuss this contract from September 2004?

04:39:50

10 A. No.

11 Q. You had no knowledge as to whether any individual physician
12 at the Jesse White VA was given a copy of this contract, is
13 that correct?

14 A. No, I don't know.

04:40:06

15 Q. And you never had any contract with Dr. Gilliam, is that
16 correct?

17 A. No, I haven't. No.

18 Q. "No" means you agree with me that --

19 A. No, I never had a contract with Dr. Gilliam.

04:40:26

20 Q. And when you say "I," you mean the VA?

21 A. The VA -- well, I never administered a contract that Dr.
22 Gilliam was working on.

23 Q. Thank you.

24

CROSS EXAMINATION

04:40:44

25 BY MR. LUMB:

1 Q. Good afternoon, Ms. Bond.

2 A. Good afternoon.

3 Q. Has any part of your job description at the VA included,
4 from 1998 through 2002, any kind of ongoing administration for
5 enforcement of contracts?

04:41:04

6 A. Yes.

7 Q. Has any part of your job description included any of those
8 types of activities regarding the Westside VA?

9 A. Yes.

04:41:18

10 Q. Any activities included regarding the contract that you've
11 talked about here?

12 A. No.

13 Q. It's fair to say you have no personal knowledge as to the
14 day-to-day relationship and the interactions between 1999 and
15 2001 of Dr. Gilliam and any of the VA employees at the Westside
16 VA, correct?

04:41:37

17 A. Correct.

18 Q. Now, ma'am, it is and was, in 1999 and 2001, the policy of
19 the Veterans Health Administration to hire healthcare clinical
20 staff employees whenever feasible, correct?

04:42:00

21 A. Yes.

22 Q. That's the first answer, correct?

23 A. Yes.

24 Q. And according to VA rules, hiring of staff must be done
25 under appropriate employee appointment authority, including

04:42:15

1 38 USC 7405, correct?

2 A. I have no knowledge of that.

3 Q. Pardon me?

4 A. I have no knowledge of that.

04:42:23

5 Q. Are you familiar with VA directive 1663?

6 A. Yes.

7 Q. And that directive deals with healthcare resources
8 contracting, correct?

9 A. Yes.

04:42:34

10 Q. And that's what you believe these contracts were, correct?

11 A. Yes.

12 Q. Under Title 38, USC 8153, right?

13 A. Yes.

04:42:58

14 Q. And VA directive 1663 requires the VA to hire staff under
15 appropriate appointment authorities, including 38 USC 7405,
16 correct?

17 A. Okay, I didn't know the numbers, but if that's what's in
18 there, that's correct.

04:43:14

19 Q. All right. And that's the provision in federal law that
20 gives the VA the power to hire as employees either full-time
21 attendees or part-time attendees, correct?

22 A. Yes.

23 Q. Okay. And that's the first thing that ought to be tried,
24 correct?

04:43:26

25 A. Yes.

1 Q. The VA is not in the business of outsourcing just to
2 outsource, correct?

3 A. Correct.

04:43:39

4 Q. Now, under VA directive 1663, when a qualified doctor can't
5 be recruited, the medical center must then either send patients
6 to a different VA Medical Center, correct?

7 A. Correct.

8 Q. And then only after those options are exhausted may they --
9 may a contract for services be considered, correct?

04:43:53

10 A. Yes.

11 Q. Now, how did the Westside VA, or how did the VA at all,
12 attempt to recruit an employee gynecologist at the Westside VA?

13 A. Well, the 1663 was not enforced during this time frame.

04:44:25

14 Q. Okay. So requirements for 1663 to attempt to recruit an
15 employee physician, you're saying was not enforced during this
16 time period?

17 A. Correct.

18 Q. So that was not complied with, correct?

19 A. Correct.

04:44:33

20 Q. In this case, did the Westside human resources manger
21 provide written certification of any recruitment efforts?

22 A. I wouldn't know that. We only maintain contracts for
23 6 years and 3 months. So we wouldn't even have a document
24 contract file to look at.

04:44:54

25 Q. Doesn't VA directive 1663 require that certification in

1 this type of contract?

2 A. In this type but it wouldn't apply to this particular
3 contract.

04:45:07

4 Q. Because the VA wasn't complying with that directive in this
5 time period?

6 A. It was implemented yet. We've just been doing it for maybe
7 4 years. There was a draft document that was out maybe
8 4 years, but it's only been maybe 3 or 4 years that we've
9 actually been using the 1663 to contract for healthcare

04:45:33

10 services.

11 Q. 1663 has been in place for more than 4 years, correct?

12 A. The draft maybe, but the signed one, no.

13 Q. Do you know when the first version of 1663 became
14 effective?

04:45:46

15 A. It's been maybe 3 or 4 years.

16 Q. Now, did you mention that this was an FTE-based contract?

17 A. Yes.

18 Q. And were key personnel required to be identified in
19 FTE-based contracts?

04:46:05

20 A. They are now, but back in 2000 it wasn't done, so

21 Q. In fact, you're referring to -- if you turn to page Bravo
22 196 of Exhibit 2.

23 A. You want me to respond to that?

24 Q. I just want you to turn to that page.

04:46:34

25 A. Okay.

1 Q. Do you see at the top?

2 A. Uh-huh.

3 Q. That is a page from the 2001 contract -- or the 2000
4 contract?

04:46:46

5 A. Yes.

6 Q. The second contract, correct?

7 A. Yes.

8 Q. And the top of that page, Paragraph 8, it says:

9 "... key personnel on temporary emergency

04:46:58

10 substitutions: The contractor shall assign to this
11 contract the following key personnel:"

12 and then blank, correct?

13 A. Yes.

14 Q. And at that time period the VA was not requiring compliance
15 with identification of key personnel during this time period,
16 is that your testimony?

04:47:10

17 A. I didn't do this one, so I don't know. I can tell you how
18 we do it now, but I don't know back then what the requirements
19 were.

04:47:28

20 Q. Fair enough.

21 Do you know if there were any conversations between
22 Westside VA officials and any employees at the contractor
23 before the contracting -- the contracting process began?

24 A. No, I wasn't involved in the contracting process at all for
25 this contract.

04:47:47

1 Q. Do you know if there were any discussions between Westside
2 VA officials and the U. of I. officials regarding the contract
3 at which a contracting officer was not present?

4 A. No, I don't know.

04:48:03

5 Q. And, in fact, VA rules prohibit those types of discussions
6 without a contracting officer being present, correct?

7 A. That's true. Yes.

8 Q. And did whoever assigned to this contract from your office
9 provide a written certification that the contracting officer
10 conduct all contracting negotiations?

04:48:26

11 A. No way for me to know from looking at this document.

12 Q. But that is required, the required document in the file,
13 correct?

14 A. Based on the time, I'm not sure. We do have -- prior to
15 1663 we had what we called a director's approval memo, and a
16 director and the Chief of Staff should have signed it saying
17 that they weren't involved in any of the procurement process.
18 If that was done, I don't know.

04:48:48

19 Q. Can you turn to page B 193. The same exhibit, I believe.

04:49:14

20 This is the statement of work for the second contract,
21 correct?

22 A. Yes.

23 Q. And about the middle of the page it requires the physician
24 to be available for consultations on a 24-hour per day basis,
25 correct?

04:49:36

1 A. Yes.

2 Q. Turn to the next page, please.

3 About a quarter of the way down the page, under
4 "special contract requirements," could you read that.

04:49:54

5 A. The first paragraph?

6 Q. Could you just tell us the location in that paragraph
7 specified for where the services were to be provided.

8 A. (Reading:)

04:50:10

9 "To furnish to and at the Department of Veterans
10 Affairs Medical Center, Chicago Healthcare System,
11 Westside Division, for services and prices specified
12 in the section entitled Schedule of Supplies and
13 Services of this contract."

04:50:27

14 Q. Under Paragraph 1 below that, Services, Subsection (d) as
15 in Delta, can you read that for us.

16 A. (Reading:)

17 "... the services to be performed by the contractor
18 would be under the direction of the Chief of Staff
19 and Dr. Gwenn Garmon."

04:50:35

20 Q. And the contract was for 3 years, correct?

21 A. No, it's for -- I thought it was for 1 year.

22 Q. Can you go back to Page 194, Paragraph 2, term of contract.
23 Can you read that first sentence.

24 A. (Reading:)

04:50:54

25 "This contract is effective for 3 years from date of

1 award."

2 Q. Next page, 195. Can you read paragraph A 1, work hours.

3 A. (Reading:)

04:51:19

4 The services covered by this contract shall be
5 furnished by the contractor as defined herein. The
6 contractor will not be required, except in case of
7 emergency, to furnish such services during off-duty
8 hours as described below."

9 Q. And skip down to subparagraph 1, work hours.

04:51:30

10 A. (Reading:)

11 "Monday through Friday, 8:00 a.m. to 4:30 p.m."

12 Q. And I'm not sure if I had it marked, but this contract has
13 a requirement that any contractor providing services under it
14 sign in and sign each time they are providing specific services
15 at the Westside VA, correct?

04:52:03

16 A. Yes, I did see that.

17 Q. Okay. Just to be clear, you have no personal knowledge
18 whether this contract, in terms of control over activity, was
19 complied with, correct?

04:52:34

20 A. No, I don't.

21 Q. And you have no knowledge as to what control VA employees
22 actually exercised over Dr. Gilliam on a day-to-day basis,
23 correct?

24 A. No.

04:52:44

25 Q. Thank you.

1 MR. LUMB: That's all I have.

2 REDIRECT EXAMINATION

3 BY MS. WAWZENSKI:

04:53:03

4 Q. Ms. Bond, you testified that, in your department, contracts
5 are not kept for longer than 6 years at a time, correct?

6 A. Correct.

7 Q. Now, if we look at Government Exhibit 2, this one is
8 obviously older than 6 years.

9 A. Yes.

04:53:14

10 Q. And this one was available to you nevertheless, even though
11 it's older than 6 years.

12 But the other contract, Government Exhibit 1, this is
13 a copy of the contract that is not in your files, is that
14 correct?

04:53:29

15 A. Correct.

16 Q. Do you remember where this one came from?

17 A. We have a building where all the contracts are archived and
18 stored until it's time for them to be destroyed.

04:53:47

19 Q. Okay. And what is the time period covered by Government
20 Exhibit 1?

21 A. June 1st, 1998 through May 30th, 1999.

22 Q. And does this contract, as far as you can tell, include any
23 amendments that extended it?

24 A. No. There are none here, no.

04:54:09

25 Q. Was there anything in this contract that you can see that

1 prohibited it from being extended?

2 A. I do see the bylaws which would allow the VA to extend four
3 an additional 6-month period.

04:55:13

4 Q. Okay. And then the contract that we've got marked as
5 Government Exhibit 2 was originally for a 1 year period,
6 correct?

7 A. Originally, yes.

8 Q. And then it was extended for subsequent periods after that,
9 up to a 3-year time period, correct?

04:55:30

10 A. I see modifications to which exercised option year 1, so I
11 don't know what happened after that period.

12 Q. And then modification 1, which is just prior to that one,
13 is for the earlier time period, correct?

04:56:08

14 MR. HICKEY: Objection to the form of the question,
15 Your Honor.

16 BY THE WITNESS:

17 A. It actually added a FAR clause which --

18 THE COURT: Go ahead. Finish the answer.

19 BY THE WITNESS:

04:56:15

20 A. -- which was -- which was not included in the solicitation,
21 so it was added by a modification.

22 BY MS. WAWZENSKI:

23 Q. Which would allow for the extension of that contract?

24 A. Yes.

04:56:30

25 Q. And that's -- the FAR language is standard language in

1 these kinds of contracts to allow for the extension of the
2 contracts, correct?

3 A. Yes.

4 MS. WAWZENSKI: No further questions, Your Honor.

04:56:50

5 RECROSS EXAMINATION

6 BY MR. HICKEY:

7 Q. Ms. Bond, I'm just trying to understand. You were asked
8 about Exhibit 1, and you were asked a question that suggested
9 it was not from your files, so I'm directing you to that. I'm
10 directing you to that frame of discussion, okay?

04:57:12

11 A. Okay.

12 Q. And you indicated that there's a building where things are
13 archived?

14 A. Yes.

04:57:18

15 Q. All right. Wasn't Exhibit 1 given to you by the U.S.
16 Attorney's Office?

17 A. If I'm not mistaken, this was one that was requested and we
18 pulled it from the archives.

19 Q. Did you personally pull it from the archives?

04:57:34

20 A. No, I did not personally pull it.

21 Q. Did you tell anyone to pull only part of it?

22 A. No, I just gave a contract number and all the contract
23 documents are bound together. So this would be all that was
24 there.

04:57:52

25 Q. So this would've been everything that they found?

1 A. Yes.

2 Q. Okay. And everything there found did not include any
3 extension, correct?

4 A. Correct.

04:58:03

5 Q. And if there had been an extension, there would be evidence
6 of that, correct?

7 A. Correct.

04:58:31

8 Q. Now, for Exhibit 2, again I'm just a little confused. This
9 was originally -- if we went to Page B 189, this was originally
10 signed on January 10th of 2001, is that right?

11 A. By the VA, yes.

12 Q. Okay. And December 29th, 2000, by Michael Thompson's
13 secretary, is that right?

14 A. Correct.

04:58:48

15 Q. And so that was made retroactive back to September 1st,
16 2000 -- or excuse me, December 1st, 2000?

17 A. From what I see, it was issued to the university on
18 November 30th, 2000 for them to accept this change, and it was
19 signed by the university on December 29th, 2000, and then
20 submitted to us, "us" being GLAC, on January 4th, 2001, and
21 then signed by the GLAC contracting officer on January 10th,
22 2001.

04:59:20

23 Q. So you're saying that B 189 is a change form, that's
24 amendment number 1?

04:59:42

25 A. Yes.

1 Q. Okay. There's no -- if we went from Page 190 through the
2 end of Exhibit 2, there's no signature, correct?

3 A. Can I just add something?

4 Q. Ago ahead?

04:59:57

5 A. With this being an amendment, this was before the contract
6 was actually executed. So they are amending the solicitation
7 itself.

8 Q. Okay. So just then so we're clear, the first signature by
9 the VA would be in December 2001, is that correct?

05:00:35

10 A. The first signature from the VA would be January 10th,
11 2001.

12 Q. Okay. And when you say the first contract was for
13 9 months, you're referring to that B 189 page and language in
14 there about 9 months, is that correct?

05:00:57

15 A. Yes.

16 Q. But the language that counsel had you read, about the term
17 that's in the boilerplate on B 194, says 3 years?

18 A. Yes, it does.

19 Q. So there's a direct conflict there, correct?

05:01:23

20 A. Yes, there is. A lot of times when different people do new
21 solicitation documents, they use a boiler and they don't check
22 everything and this appears to be one of those times.

23 MR. HICKEY: Thank you.

24 MR. LUMB: Nothing further, Your Honor.

05:01:46

25 MS. BROCK: Nothing, Your Honor.

1 THE COURT: You can step down.

2 (Witness excused.)

3 MR. LUMB: I believe our last witness is Ms. Monroe.

4 THE COURT: Face me and raise your right hand.

05:02:29

5 (Witness duly sworn.)

6 THE COURT: Please be seated.

7 HELEN MONROE, PLAINTIFF, SWORN

8 DIRECT EXAMINATION

9 BY MR. LUMB:

05:02:38

10 Q. Could you introduce yourself, please.

11 A. My name is Helen Monroe.

12 Q. Mrs. Monroe, you are Regina Romero's mother, correct?

13 A. Yes, I am.

14 Q. In 2001 when she died, how old was Regina?

05:02:53

15 A. 46 years old.

16 Q. And you got three other children, correct?

17 A. Yes, I do.

18 Q. I want to take you directly back to 2001.

19 A. Okay.

05:03:07

20 Q. July and August of 2001 to be specific.

21 Now, Regina went to the Westside VA for a biopsy
22 procedure on July 18th, correct?

23 A. Right.

24 Q. And she remained an inpatient in the Westside facility from

05:03:24

25 that date to the date she died, correct?

1 A. She was to come home that evening.

2 Q. But she was admitted on that date and stayed there until
3 she died?

4 A. Yes.

05:03:35 5 Q. In Early September, correct?

6 A. Yes.

7 Q. How often did you visit her?

8 A. Twice a day.

9 Q. I want to take you now to August 16th, 2001.

05:03:45 10 At that point, were you asked on that day, were you
11 asked to have a meeting with several VA employees?

12 A. Yes, I was.

13 Q. Can you tell us who those employees were by title and name.

14 A. Mr. Americanos asked me and my husband to please come with
05:04:03 15 him to a room so we could have a meeting, and they took us into
16 a big larger room.

17 Q. Who else went in the room with you?

18 A. There was Mr. Lipnick, Mr. Americanos, and I believe they
19 call her a secretary or a case worker.

05:04:24 20 Q. Social worker?

21 A. Social worker, yes.

22 Q. And it was your understanding they were all VA employees,
23 is that correct?

24 A. I'm sorry, I didn't hear you.

05:04:32 25 Q. It was your understanding that they were all VA employees?

1 A. Yes, they were. Uh-huh.

2 Q. What did Mr. American tell you in that meeting?

3 A. Mr. American told me that there was an accident with my
4 daughter and they were going to compensate us for the problem.

05:04:57

5 Q. And when he said an accident, what care was he discussing?

6 A. She was cut wrong.

7 Q. And what date of care was he discussing?

8 A. On the 18th.

05:05:14

9 Q. And was that the first, the very first procedure, the
10 biopsy?

11 A. Yes.

12 Q. Did he state to you anything about Dr. Gilliam being an
13 independent contractor?

14 A. No.

05:05:26

15 Q. Did he tell you that the United States was not going to
16 take responsibility for Dr. Gilliam's care?

17 A. No.

18 Q. Did he direct you to U.I.C.. or anyone other than United
19 States for compensation?

05:05:39

20 A. No.

21 Q. Thank you. That's all I have.

22 THE COURT: Anyone else?

23 MS. BROCK: I have no questions.

24 MR. LUMB: No questions, Your Honor.

05:05:55

25 THE COURT: You may step down. Thank you.

1 (Witness excused.)

2 THE COURT: You have somebody?

3 MS. BROCK: No.

4 THE COURT: Okay. You want to come up here.

05:06:05

5 (Brief pause).

6 THE COURT: There's one thing I would like to clarify,

7 and that is, in the arguments of both the plaintiff and

8 Dr. Gilliam, there's a kind of a flavor of an estoppel-based

9 argument that the government didn't make things clear to

05:06:48

10 Dr. Gilliam, or, for that matter, to anybody else exactly what

11 her status was. And my question to you is, are you actually

12 going to rely on the doctrine of estoppel given the particular

13 status of the government with respect to estoppel arguments?

14 MR. HICKEY: Your Honor, if I may clarify our

05:07:08

15 position. It's our position that Dr. Gilliam had an agreement

16 that she was to be provided indemnity. She worked under that

17 agreement. The government is bringing a contract that's not

18 between Dr. Gilliam and them, but between U. of I. and them.

19 We're saying any agreement they made should not work to the

05:07:31

20 detriment of Dr. Gilliam.

21 THE COURT: Okay.

22 MR. HICKEY: So that's our first position, and if I

23 haven't made that clear, I apologize to the Court.

24 As a fallback, if the Court injected that, we would

05:07:45

25 say if the Court is going to impose this contract for which

1 Dr. Gilliam had no part and no notice, that we would say then
2 -- I understand the case law on estoppel, but there are certain
3 places estoppel which we would say that the government should
4 not be able to hold this to Dr. Gilliam, but that's a fallback
5 position.

05:08:09

6 THE COURT: I got it. I got it.

7 MR. LUMB: Just quickly, Judge. The evidence that's
8 been educed, it does seem estoppel-like evidence or apparent
9 agency-type evidence, isn't produced primarily for that
10 purpose. We believe it shows the belief of the people actually
11 providing the care at the VA what her relationship was and that
12 belies the contract language.

05:08:22

13 Certainly as an alternative theory, I think estoppel
14 may apply, but that is not, in any way, shape, or form, the
15 main argument or the purpose for most of that testimony.

05:08:41

16 THE COURT: You want to make brief closing statements?

17 MS. BROCK: Sure. If you would like to hear them.

18 THE COURT: Sure.

19 MS. BROCK: Who would you like to hear from first?

20 THE COURT: Well, actually you can address the issue
21 since we now heard the evidence of who has the burden here.

05:09:00

22 CLOSING ARGUMENT

23 BY MS. BROCK: At the present time, there's an amended
24 complaint naming Dr. Gilliam individually. Dr. Gilliam wants
25 those counts of the complaint dismissed, that was the purpose

05:09:21

1 of her motion for summary judgment, so claiming that she was
2 actually an employee of the VA. So therefore, because the VA
3 exercised control over her, that was the argument in the
4 summary judgment. Therefore, I believe that plaintiff joins
5 that motion of Dr. Gilliam. So therefore, I believe
6 Dr. Gilliam and the plaintiff are the ones that want to change
7 the status quo and therefore they have the burden to prove.

05:09:37

8 THE COURT: Okay.

9 MS. BROCK: So I just have little to say. I'll just
10 start with your motion for summary judgment -- or your decision
11 on the summary judgment, because you ordered the hearing to
12 take place just to address those issues that had not been
13 decided.

05:09:54

14 I wanted to bring to the Court's attention to an case
15 decided in the Fifth Circuit earlier this year, Creel v. United
16 States, 598 F.3d 210 and I'll hand it up.

05:10:21

17 (Document tendered to the Court).

18 MS. BROCK: I've already given a copy to the other
19 party.

05:10:34

20 That's where the court in that case analyzed the case
21 the same way you did, using the same factors, and decided that
22 the physician that was contracting with the United States was
23 an independent contractor. He went through the same factors
24 that you did.

05:10:52

25 You've already decided that factors A, B, C and D

1 indicate that she was not an employee. And then if we just
2 talk about the others then:

3 "... whether the employer or the workman supplies the
4 tools, instrumentalities, and the place of work for
05:11:05 5 the person doing the
6 work"

7 that was factor E. That's an important factor, as
8 you pointed out in your decision.

9 In this case, the testimony was that Dr. Gilliam saw
05:11:23 10 patients both at the VA and at the University of Illinois. She
11 was authorized to do that under the contract. That while she
12 was seeing VA patients at the University of Illinois, she was
13 using University of Illinois equipment, and so forth. While
14 she was seeing patients at the VA, she was using VA equipment,
05:11:41 15 and so forth.

16 Factor F, the length of time for which she was
17 employed. She worked there, she started there in '99 and she
18 treated this patient, the issue was in 2001, so over a two year
19 period. The Court can decide which way that cuts, if it's
05:12:06 20 short or long, or if it's incisive.

21 The method of payment. The payment, I don't think
22 there was actually any testimony on this. It's under the
23 contractor's testimony that payment is made by the VA to the
24 University of Illinois. And then Dr. Gilliam testified that
05:12:27 25 her payment came from the University of Illinois, and only from

1 the University of Illinois, that she received no employee
2 benefits from VA or salary directly from the VA.

3 "Whether or not the work is a part of the regular
4 business of the employer ..."

05:12:45

5 is factor number H. The hospital, the VA hospital, a
6 doctor working there is exactly what they do. Although she was
7 a specialist, she was a gynecologist, and she testified that
8 she was the only gynecologist employed at the VA during that
9 period of time.

05:13:06

10 And then factor I, I think, has got to go toward the
11 fact that she's not an employee. Whether or not the parties
12 believe they are creating the relation of master and servant,
13 just look at the contract, it's as clear as you can be. I'm
14 not sure if the VA wants to continue to enter into these
15 contracts, I don't know how much more clear they can be than
16 what they say in the contract. If they don't want to create
17 anything more than an independent contractor position, I don't
18 know how they can be anymore clearer than they are in the
19 contract.

05:13:30

05:13:45

20 And then the last one, whether the principal is or is
21 not in business, you know, that, I think, cuts in favor of her
22 not being an employee.

05:14:09

23 A couple of small points I wanted to make. Depending
24 on how you decide, I have different requests for you. If you
25 decide that Dr. Gilliam was controlled by the VA to such an

1 extent that she should be considered an employee for an FTCA
2 purpose, then we would like to leave, under federal of Civil
3 Procedure 14(a)(1), to file a third-party complaint against the
4 University of Illinois.

05:14:29

5 THE COURT: And the truth of the matter is, it's
6 inevitable when this case started that somebody is going to
7 file a coverage case with respect to the U. of I., You,
8 Dr. Gilliam, somebody is going to sue them, unless the time has
9 run, but I don't think it has. They are going to be here.

05:14:51

10 MS. BROCK: Right. If you decide that she is not an
11 employee of the VA, there are -- in the complaint, in the
12 amended complaint, there's an assertion that the VA is
13 nevertheless responsible for her actions under an apparent
14 agency theory, and that's not allowed under the FTCA. So we
15 would ask that you strike those.

05:15:14

16 So that's all I have.

17 THE COURT: Okay.

18 MR. HICKEY: Thank you for your patience, Your Honor,
19 for all of this.

05:15:38

20 THE COURT: Counsel, I do want to remind you of one
21 thing, I am paid to sit here. So I cash the checks. So go
22 ahead.

23

24

CLOSING ARGUMENT

05:15:50

25 BY MR. LUMB: As the Seventh Circuit said in the

1 Quilico case, I think, Your Honor has already cited, and I'll
2 quote from it:

3 "... the legislative history of Section 4116 indicates
4 that it was the intent of Congress that the immunity
5 granted to the VA physicians and surgeons be broad
6 because the benefits of Section 4116 coverage were
7 seen as "an aid in the recruitment of much needed
8 personnel"" and I'm skipping the citation of
9 Congressional record. The Seventh Circuit goes on:

10 "...it's obvious, after reviewing the legislative
11 histories to Sections 4114 and 4116, that Congress in
12 adopting this legislation was attempting to secure
13 the services of the most qualified physicians and
14 surgeons in their respective specialties in a
15 particular geographic area and that immunity from
16 liability was beyond all doubt intended as an
17 inducement. Immunity from liability is a substantial
18 inducement in our litigious society of today. Such a
19 grant of immunity under Section 4116 the physicians
20 and surgeons employed on a temporary basis for a
21 fixed period of time under Section 4114 furthers the
22 Section 4114 goal of improving the recruitment of the
23 most qualified specialized medical personnel and the
24 overall quality of medical care in VA hospitals. It
25 was the obvious intent of Congress that those doctors

05:16:08

05:16:29

05:16:48

05:17:09

05:17:32

1 recruited to serve on a temporary basis for a fixed
2 period of time should also enjoy immunity protection
3 of Section 4116. We hold that Congress intended to
4 extend Section 4116 immunity to all Section 4114
5 physicians and surgeons operating in the VA program."

05:17:50

6 Your Honor, Dr. Gilliam was appointed. Now,
7 Section 4114 has been superseded, but she was appointed
8 pursuant to the successor provisions. Your Honor has now heard
9 from Dr. Woods essentially the same thing, the VA faces a
10 difficult job in recruiting physicians, it won't be able to
11 recruit physicians without an offer of immunity. That offer of
12 immunity was made clear and understood by Dr. Gilliam coming
13 into this agreement.

05:18:17

14 The government has introduced Government Exhibit 1
15 which was a contract that was not in existence when Dr. Gilliam
16 started. She was not bound by that contract. There's no
17 contract between the University of Illinois and the VA at the
18 time she started.

05:18:37

19 They have produced nothing to indicate that she agreed
20 to that. She was told that she would be equivalent to an
21 employee. You heard Dr. Wood refer to her as an employee. You
22 even heard Ms. Bond refer to her as an employee. We've
23 introduced into evidence Defendant's Exhibit 2 which is the VA
24 employment application that throughout it it refers to
25 employment.

05:18:59

05:19:21

1 There's nothing that was ever told to her, given to
2 her in writing, or even implied that she would not be afforded
3 this immunity. It was vital. If she had been told that she
4 didn't have immunity, she would not have worked there the rest
5 of that day. And the U.S. has no evidence to the contrary.

05:19:43

6 It's our belief that the U.S. has the burden of proof
7 because they have submitted the documents, like the employment
8 application. They're taking immunity away from her. Dr.
9 Woods, who is the Chief of Surgery, says she was an employee.
10 He took the position she would be entitled to immunity.

05:20:06

11 They are trying to take something away from Dr.
12 Gilliam that was absolutely the basis of her understanding. I
13 do not believe that they've sustained that burden.

14 Your Honor, counsel says that this contract with U. of
15 I. couldn't be more clear. Plaintiff's counsel pointed out
16 five inconsistencies within the contract. If we had more time,
17 we could point out dozens. Ms. Bond testified that it's
18 boilerplate. There's nothing to indicate that this doctor
19 should be denied this type of immunity.

05:20:27

20 As the Court pointed out in Quilico and has pointed
21 out in Ezekiel with immunity granted to residents and need to
22 provide teaching, that's why they recruited Dr. Gilliam. No
23 one is going to be able to recruit to a VA the quality of
24 Dr. Gilliam if immunity is taken from her. It would be
25 improper.

05:20:50

05:21:15

1 The U.S. says that this contract takes it away, but
2 they have not dealt with the Quilico decision, the Ezechiel
3 decision, the Williams versus United States decision. Even in
4 documents filed in this case, early on in the case when we
5 first filed on behalf of Dr. Gilliam the motion for summary
6 judgment, the government was taking the position that she was
7 an employee back then. In fact, in the opinion issued by this
8 Court, the memorandum opinion and order entered on March 13th,
9 2007, says the facts that Dr. Gilliam, and I'm quoting:

10 "... Dr. Gilliam, a VA employee, performed a cervical
11 biopsy on Regina Romero at the VA hospital"
12 period close quote.

13 The government has only come up with this fact that
14 she's not an employee when we sought to have the case dismissed
15 based on the immunity provision.

16 Your Honor, I believe despite Ms. Bond saying what's
17 normally done in contracts and her understanding of what's
18 done, she has no knowledge as to this particular situation.

19 There's been testimony by Dr. Woods, who was her
20 supervisor, that Dr. Gilliam was treated exactly the same. So
21 again, I would like to make our position clear that Dr. Gilliam
22 should not be deprived of the immunity for which she understood
23 she was applying when she took on this position at the VA and
24 the government has not produced anything.

25 As a fallback or secondary argument, a strict control

1 test, and I know Your Honor discussed that in your decision,
2 but under Ezekiel and the Quilico decision, the strict control
3 test does not apply to professionals such as a physician.

05:23:28

4 Here, Dr. Gilliam had the same level of control over
5 her as everyone else at the VA, all the other surgeons, and
6 therefore, on that ground, the government should fail.

05:23:50

7 And on the third level, Your Honor, again, it's only
8 if the Court would get past our first two positions, I believe
9 the government just should not be able to induce someone to
10 work under the concept of immunity and then take it away. And
11 as been overwhelmingly established, a contract that was entered
12 into more than a year, assigned literally 18 months -- or not
13 18 months, August 1st through December of the following year,
14 so a year and 5 months, shouldn't take away her right. The
15 government should not be allowed to do that.

05:24:20

16 So I believe for all those reasons the Court should
17 not allow the government to induce a situation where they have
18 taken away this immunity from her. Thank you.

05:24:49

19 THE COURT: You want to come up here. Both of you.
20 (Brief pause)

05:25:09

21 THE COURT: I'll give you a written decision fairly
22 soon. A couple of observations. I think the burden of proof
23 is not going to be a significant factor here, because the
24 burden of proof is really important when you end up in a tie,
25 and you're not going to end up in a tie. So it doesn't matter

1 whether the winning side has the burden of proof or not. The
2 winning side will have prevailed and the tie breaker burden of
3 proof won't apply.

05:25:37

4 The second observation I would make is, although this
5 is not a deciding factor and probably may not be a factor at
6 all, it would help sometime if the government actually used
7 plain language in its contracts. You could've used fewer words
8 and made it much clearer to any possible reader of it. And we
9 found this over and over again with people who use the word
10 "contractor" and "employee" which are words that the average
11 person does not understand. And, in fact, there are times when
12 lawyers don't understand it, and, once in a great while, a case
13 where a judge doesn't understand it.

05:26:03

05:26:23

14 But I'll try to get you something within the next week
15 or two. It will probably be in a minute order form since the
16 basic principles has been laid out. And I'm assuming you no
17 longer need to depose the witness which you have not previously
18 deposed.

05:26:41

19 MR. HICKEY: She already testified.

20 THE COURT: Yeah. She answered questions, which I
21 thought was going to happen.

22 With that, the ruling, we'll set another date one way
23 or the other. Thank you.

05:26:55

24 MR. LUMB: Your Honor, plaintiff hasn't had a chance
25 to argue. I'm just going to assume that it's better to shut

1 up.

2 THE COURT: Yeah, I think that's a good idea.

3

4 (Which concluded the proceedings had on this date in
5 the above entitled cause.)

6

7

8

* * * * *

9

10

11 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
12 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER

13

14

15

/s/Blanca I. Lara

August 18, 2014

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