

M A S T E R I N D E X

NOVEMBER 6, 2013; VOLUME 8

CHRONOLOGICAL INDEX OF WITNESSES

<u>PLAINTIFFS'</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RUDNICK, FRANKLIN, M.D.	781	807	837	844
<u>DEFENDANT'S</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
WEINBERGER, ALAN, M.D.	851	892		
AUDELL, LAURA, M.D.	930	938		

ALPHABETICAL INDEX OF WITNESSES

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EXHIBITS

<u>JOINT</u> <u>EXHIBIT</u>	<u>FOR I.D.</u>	<u>IN EVD.</u>	<u>WITHDRAWN</u> <u>OR REJECTED</u>
103-1 TO 103-24	4/11/2009 AND 4/12/2009 CEDARS-SINAI E.R. MEDICAL RECORD FOR TARA DE ROGATIS		813

1 CASE NUMBER: BC457891
2 CASE NAME: DE ROGATIS VS. SHAINSKY
3 PASADENA, CALIFORNIA WEDNESDAY, NOVEMBER 6, 2013
4 DEPARTMENT P HON. JAN A. PLUIM, JUDGE
5 REPORTER: KAREN E. KAY, CSR NO. 3862
6 TIME: A.M. SESSION

7 APPEARANCES:

8 PLAINTIFFS LINDA DE ROGATIS AND PETER DE ROGATIS
9 ARE PRESENT WITH THEIR COUNSEL, GEORGE B. NEWHOUSE,
10 JR., AND KATHERINE C. MC BROOM, ATTORNEYS AT LAW
11 DEFENDANT KAREN MICHELLE SHAINSKY, D.O., IS PRESENT
12 WITH HER COUNSEL, RAYMOND L. BLESSEY, ATTORNEY AT
13 LAW

14
15 (THE FOLLOWING PROCEEDINGS WERE HELD
16 IN OPEN COURT, IN THE PRESENCE OF
17 THE JURY:)

18
19 THE COURT: WELCOME BACK, LADIES AND GENTLEMEN.
20 WE'RE BACK ON THE RECORD. ALL JURORS ARE PRESENT AND IN
21 PLACE, PARTIES ARE PRESENT, LAWYERS ARE PRESENT. DOCTOR,
22 COME ON UP.

23 MR. NEWHOUSE: GOOD MORNING, YOUR HONOR. THIS IS
24 DR. RUDNICK.

25 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

26 DO YOU SOLEMNLY STATE THAT THE TESTIMONY YOU
27 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
28 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,

1 SO HELP YOU GOD?

2 THE WITNESS: I DO.

3 THE CLERK: PLEASE HAVE A SEAT. PLEASE STATE YOUR
4 NAME AND SPELL YOUR NAME FOR THE RECORD.

5 THE WITNESS: FRANKLIN, SPELLED CAPITAL
6 F-R-A-N-K-L-I-N, DAVID, RUDNICK, CAPITAL R-U-D-N-I-C-K.

7 THE COURT: THANK YOU, DOCTOR. YOU MAY PROCEED.

8 MR. NEWHOUSE: THANK YOU, YOUR HONOR.

9 THE JURY WILL BE PLEASED TO KNOW NO DOUBT
10 THAT DR. RUDNICK WILL BE THE FINAL WITNESS FOR THE
11 PLAINTIFF, AND SUBJECT TO SOME LOOSE ENDS, A STIPULATION
12 TO SOME EXHIBITS, WE EXPECT TO REST.

13 THE COURT: VERY GOOD.

14

15 FRANKLIN RUDNICK, M.D.,
16 CALLED AS A WITNESS BY THE PLAINTIFFS, WAS DULY SWORN AND
17 TESTIFIED AS FOLLOWS:

18

19 DIRECT EXAMINATION

20 BY MR. NEWHOUSE:

21 Q GOOD MORNING, DR. RUDNICK.

22 A GOOD MORNING.

23 Q WHAT IS YOUR OCCUPATION?

24 A I AM A PSYCHIATRIST IN PRIVATE PRACTICE IN
25 SANTA MONICA, CALIFORNIA.

26 Q AND YOU JUST ANSWERED THE FIRST THREE
27 QUESTIONS, THANK YOU.

28 A OH, GOOD.

1 Q WHAT IS YOUR EDUCATION AND BACKGROUND, SIR?

2 A I ORIGINALLY RECEIVED A PH.D. IN PHYSICS
3 FROM HARVARD UNIVERSITY AND PRACTICED PHYSICS. THAT WAS
4 AFTER AN UNDERGRADUATE DEGREE IN PHYSICS AT STANFORD.
5 FOLLOWING A PERIOD OF TIME AS A PRACTICING PHYSICIST AT
6 U.C.L.A., I WENT TO MEDICAL SCHOOL AND ACHIEVED THE M.D.
7 FROM THE UNIVERSITY OF MIAMI.

8 FROM THERE I DID AN INTERNSHIP IN GENERAL
9 MEDICINE AT THE WADSWORTH V.A. HOSPITAL, A RESIDENCY IN
10 PSYCHIATRY AT THE U.C.L.A. NEUROPSYCHIATRIC INSTITUTE, AND
11 HAVE BEEN PRACTICING SINCE THEN.

12 Q SO WHAT YEAR DID YOU GO INTO PRIVATE
13 PRACTICE?

14 A 1980.

15 Q AND HAVE YOU HELD ANY TEACHING POSITIONS
16 SINCE GRADUATING FROM MEDICAL SCHOOL IN 1976?

17 A YES. I HAVE BEEN CONTINUOUSLY A MEMBER OF
18 THE CLINICAL FACULTY AND FOR 15 YEARS THE ATTENDING
19 PHYSICIANS STAFF AT U.C.L.A. IN THE DEPARTMENTS OF
20 PSYCHIATRY AND NEUROLOGY.

21 Q AND HAVE YOU SERVED AS A MEDICAL DIRECTOR OF
22 ANY MEDICAL FACILITIES?

23 A YES.

24 Q WHERE?

25 A THAT WAS AT U.C.L.A. IN THE CONTEXT OF MY
26 EMPLOYMENT THERE. I WAS THE MEDICAL DIRECTOR OF THE
27 NEUROBEHAVIORAL CLINIC.

28 Q AND WHAT DID THAT INVOLVE?

1 A IT'S AN INTERDISCIPLINARY CLINIC CONSISTING
2 OF NEUROLOGISTS, PSYCHIATRISTS, AND NEUROPSYCHOLOGISTS.
3 AND WE ARE EVALUATING AND TREATING INDIVIDUALS WHO HAVE
4 NEUROLOGIC ILLNESS OR INJURY AND SUBSEQUENTLY HAVE
5 PSYCHIATRIC OR COGNITIVE COMPLICATIONS OF THAT INJURY OR
6 ILLNESS.

7 Q HAVE YOU EVER SERVED ON A FACULTY MEDICAL
8 SCHOOL OR UNIVERSITY FACULTY AND, IF SO, HOW LONG?

9 A YES. I'M AN ADJUNCT ASSISTANT PROFESSOR OF
10 PSYCHIATRY AT U.C.L.A. AND HAVE BEEN SUCH SINCE I FINISHED
11 MY RESIDENCY IN 1980.

12 Q SO YOU'RE STILL AFFILIATED WITH U.C.L.A. AS
13 WE SPEAK?

14 A YES.

15 Q DO YOU HOLD ANY BOARD CERTIFICATIONS?

16 A YES. I AM CERTIFIED BY THE AMERICAN BOARD
17 OF PSYCHIATRY AND NEUROLOGY.

18 Q ANY SPECIALIZATIONS IN THE FIELD OF
19 PSYCHIATRY?

20 A I HAVE OVER THE YEARS SPECIALIZED IN
21 PROBABLY THREE MAJOR AREAS: NEUROPSYCHIATRY, EATING
22 DISORDERS, AND THE PSYCHOPHARMACOLOGICAL TREATMENT OF
23 PSYCHIATRIC ILLNESSES.

24 Q WHAT IS NEUROPSYCHIATRY?

25 A BASICALLY, IT'S, AGAIN, AN INTERDISCIPLINARY
26 APPROACH BUT WITH A PRIMARILY PSYCHIATRIC ORIENTATION IN
27 WHICH THE MAJOR FOCUS IS ON THE BRAIN BEHAVIOR
28 INTERACTIONS, IN OTHER WORDS, HOW THE BRAIN DICTATES OR

1 INFLUENCES BEHAVIOR AND PERSONALITY.

2 Q ARE YOU AFFILIATED WITH OR ON THE STAFF OF
3 ANY HOSPITALS?

4 A U.C.L.A. NEUROPSYCHIATRIC INSTITUTE AT THIS
5 TIME.

6 Q AND THAT'S LOCATED RIGHT ON THE MAIN CAMPUS,
7 CORRECT?

8 A SORRY. I WAS ABOUT TO ADD ONE. SAINT
9 JOHN'S HOSPITAL AS WELL.

10 Q I APOLOGIZE.

11 PLEASE GIVE A GENERAL DESCRIPTION OF YOUR
12 MEDICAL PRACTICE.

13 A I PRIMARILY PRACTICE OUT OF A PRIVATE
14 OFFICE. I SEE NEARLY EXCLUSIVELY ADULTS. THEY COVER THE
15 ENTIRE RANGE OF PSYCHIATRIC ILLNESS, BUT WITH EMPHASES IN
16 THE AREAS THAT I'VE JUST MENTIONED.

17 AND I PROVIDE EVALUATION SERVICES, ONGOING
18 TREATMENT, BOTH PSYCHOTHERAPY AND MEDICATION MANAGEMENT.
19 AND I ALSO DO A COMPONENT OF MEDICAL-LEGAL EXPERT WORK.

20 Q DO YOU HAVE ANY EXPERIENCE DURING YOUR
21 LENGTHY WORK AS A PSYCHIATRIST AND ACADEMICIAN WITH
22 SUICIDAL OR POTENTIALLY SUICIDAL PATIENTS?

23 A YES.

24 Q PLEASE EXPLAIN IN A NUTSHELL YOUR EXPERIENCE
25 IN THAT REGARD, SIR.

26 A WELL, IT'S PRETTY MUCH A CONTINUING THEME
27 THROUGH ALMOST ANY PSYCHIATRIC PRACTICE. WE ROUTINELY
28 TREAT INDIVIDUALS WHO HAVE PSYCHIATRIC DISORDERS OF

1 VARIOUS TYPES THAT REPRESENT A SUICIDE RISK. SO YOU COULD
2 SAY ON A REGULAR BASIS WE ARE ASSESSING THE RISKS AND
3 THREAT OF SUICIDE, TRYING TO INTERVENE WHEN NECESSARY TO
4 PREVENT IT FROM HAPPENING, AND ALSO TRYING TO UNDERSTAND
5 WHAT FACTORS MIGHT PUT SOMEBODY IN A POSITION TO BE AT
6 RISK.

7 Q LET'S TALK A LITTLE BIT ABOUT YOUR PRACTICE
8 AS A PSYCHIATRIST.

9 IS IT CORRECT THAT THE VAST MAJORITY OF YOUR
10 TIME IS SPENT TREATING PATIENTS?

11 A YES, IT IS.

12 Q GIVE US AN ESTIMATE IN TERMS OF WHAT
13 PERCENTAGE OF TIME TREATING PATIENTS, WHAT PERCENTAGE OF
14 YOUR TIME DOING ACADEMIC AND/OR MEDICOLEGAL TESTIMONY
15 WORK.

16 A I WOULD SAY THAT PROBABLY ABOUT 75 PERCENT
17 OF MY TOTAL TIME IS SPENT TREATING PATIENTS, EVALUATING
18 AND TREATING PATIENTS.

19 THE OTHER 25 PERCENT IS DIVIDED UP MAYBE 15
20 PERCENT OF ACTUAL TIME SPENT DOING MEDICOLEGAL WORK
21 OUTSIDE OF TREATMENT, I SHOULD SAY, OUTSIDE OF TREATMENT
22 AND EVALUATION, AND THEN THE REST IS TEACHING.

23 Q DO YOU PERFORM OR RENDER TALK THERAPY WITH
24 YOUR PATIENTS?

25 A YES, I DO.

26 Q WHAT DOES THAT INVOLVE?

27 A JUST THAT. IT INVOLVES SITTING FACE-TO-FACE
28 WITH AN INDIVIDUAL AND EXPLORING THAT INDIVIDUAL'S

1 THOUGHTS, EXPERIENCES, MEMORIES, ACUTE OR CURRENT
2 PROBLEMS, HELPING TO DEVELOP INSIGHT, HELPING TO DEVELOP
3 PROBLEM-SOLVING OR SOLUTIONS TO THOSE PROBLEMS AND HELPING
4 TO GUIDE AN INDIVIDUAL TOWARDS A MORE SUCCESSFUL,
5 FULFILLING LIFE.

6 Q ALSO KNOWN AS COGNITIVE THERAPY?

7 A NO. THAT'S ONE TYPE OF THERAPY THAT MIGHT
8 BE EMPLOYED.

9 Q AND AT THE SAME TIME YOU ALSO PRESCRIBE
10 DIFFERENT PHARMACEUTICALS TO YOUR PATIENTS; IS THAT RIGHT?

11 A YES.

12 Q HAVE YOU EVER PRESCRIBED NARCOTICS OR WHAT
13 WE'VE REFERRED TO IN THIS CASE AS OPIATES TO PATIENTS?

14 A YES, I HAVE.

15 Q GENERALLY UNDER WHAT CIRCUMSTANCES DO YOU
16 PRESCRIBE OPIATES TO YOUR PATIENTS?

17 A ALMOST EXCLUSIVELY FOR PAIN MANAGEMENT, AND
18 ALWAYS IN CONJUNCTION WITH OTHER PHYSICIANS FOR PURPOSES
19 OF EVALUATING THE SOURCE OF THAT PAIN AND THE NECESSITY OF
20 NARCOTIC MANAGEMENT.

21 Q GENERALLY SPEAKING, DO YOU PRESCRIBE OPIATES
22 TO PATIENTS WHO HAVE PAINFUL ORGANIC CONDITIONS?

23 A THAT WOULD ALMOST BE THE ONLY INDICATION.

24 Q DO MOST OF THE CASES IN WHICH YOU'RE
25 PRESCRIBING OPIATES INVOLVE SOME SORT OF TRAUMATIC INJURY,
26 FOR EXAMPLE?

27 A IN MY PRACTICE, I WOULD SAY A MAJORITY OF
28 PATIENTS MIGHT HAVE THEIR PAIN CONDITIONS IN THE AFTERMATH

1 OF SOME KIND OF PHYSICAL TRAUMA. THAT MAY NOT BE
2 EXCLUSIVELY THE CASE. THERE ARE DEGENERATIVE PROCESSES
3 WITHIN THE BODY THAT CAN PRODUCE PAIN THAT MIGHT
4 CONCEIVABLY INVOLVE MY PARTICIPATION AND MANAGEMENT.

5 Q LET'S TALK A LITTLE BIT ABOUT THE
6 MEDICOLEGAL EXPERIENCE.

7 SO IN ADDITION TO YOUR MEDICAL PRACTICE AND
8 YOUR ACADEMIC WORK, YOU HAVE FROM TIME TO TIME PROVIDED
9 EXPERT TESTIMONY IN COURT CASES, LEGAL MATTERS?

10 A YES.

11 Q CAN YOU GIVE US A BREAKDOWN IN TERMS OF
12 PERCENTAGE OF TIME -- STRIKE THAT.

13 WHEN DID YOU START DOING SUCH EXPERT WORK?

14 A IT MUST HAVE BEEN SOMEWHERE IN THE EARLY
15 '90S.

16 Q AND OVER THE PAST 20, 25 YEARS THAT YOU'VE
17 BEEN DOING WORK AS AN EXPERT, ON HOW MANY CASES WOULD YOU
18 ESTIMATE YOU'VE BEEN RETAINED AS AN EXPERT?

19 A MAYBE YOU NEED TO EXPLAIN TO ME WHAT YOU
20 MEAN BY "RETAINED" VERSUS OTHER CATEGORIES OF INVOLVEMENT.

21 Q WHY DON'T WE START WITH THE BROADEST
22 CATEGORY, WHERE YOU'VE BEEN RETAINED, CONSULTED, YOU'RE
23 WORKING WITH LAWYERS WHO ARE DEALING WITH ISSUES THAT
24 INVOLVE YOUR EXPERTISE.

25 A THAT'S PROBABLY THE ONLY FRAMEWORK IN WHICH
26 I WILL DO ANY KIND OF MEDICOLEGAL WORK.

27 Q I'M TRYING TO GET A GENERAL NUMBER FOR HOW
28 MANY SESSIONS HAVE YOU BEEN ENGAGED?

1 A HOW MANY CASES --

2 Q YEAH, CASES.

3 A -- THAT I MIGHT HAVE BEEN ENGAGED IN?

4 THE COURT: LAWSUITS ARE YOU ASKING?

5 MR. NEWHOUSE: BROADER THAN LAWSUITS.

6 THE WITNESS: WELL, IF I TOOK A GUESS AT HOW MANY
7 TIMES I MIGHT HAVE BEEN ASKED TO PARTICIPATE IN A MATTER
8 THAT INVOLVED ATTORNEYS, MOST OF THE TIME IT IS AT THE
9 REQUEST OF THE ATTORNEYS BUT SOMETIMES AT THE REQUEST OF
10 EITHER EXISTING OR NEW PATIENTS, I WOULD PROBABLY NUMBER
11 IT IN THE MANY HUNDREDS.

12 BY MR. NEWHOUSE:

13 Q AND HAVE YOU BEEN RETAINED SPECIFICALLY AS
14 AN EXPERT IN A MEDICAL MALPRACTICE CASE BEFORE?

15 A YES.

16 Q WHAT PERCENTAGE OF THESE CASES INVOLVE --
17 STRIKE THAT.

18 CAN YOU GIVE US A GENERAL BREAKDOWN IN TERMS
19 OF ON WHICH SIDE, PLAINTIFFS VERSUS DEFENSE, YOU'VE BEEN
20 RETAINED OVER THE LAST FEW YEARS?

21 A IT PROBABLY BOILS DOWN TO ABOUT TWO
22 PLAINTIFF CASES FOR EVERY DEFENSE CASE. SO ABOUT
23 TWO-THIRDS OF THE CASES I'M INVOLVED IN, I WILL BE ASKED
24 TO PARTICIPATE ON BEHALF OF THE PLAINTIFF AND THE OTHER
25 THIRD ON BEHALF OF THE DEFENSE.

26 Q HAVE YOU, IN FACT, PROVIDED OPINIONS ON
27 BEHALF OF THE DEFENSE IN MEDICAL MALPRACTICE CASES TO THE
28 EFFECT THAT THE PHYSICIAN OR PSYCHIATRIST ACTED WITHIN THE

1 STANDARD OF CARE?

2 A I HAVE, YES.

3 Q LET'S TURN OUR ATTENTION NOW TO YOUR OPINION
4 THAT -- OR OPINIONS YOU'LL BE PRESENTING IN THIS CASE.

5 SO, DOCTOR, WERE YOU RETAINED IN THIS CASE
6 BY MY FIRM TO RENDER AN EXPERT OPINION?

7 A YES, I WAS.

8 Q CAN YOU EXPLAIN TO THE JURY WHICH -- WHAT
9 OPINIONS YOU WERE ASKED TO GIVE OR OPINE ON?

10 A I WAS ASKED TO OPINE ON THE MEANING OF THE
11 STANDARD OF CARE IN GENERAL ON THE CONDUCT OF DR. KAREN
12 SHAINSKY IN MANAGING PATIENT TARA DE ROGATIS WITH RESPECT
13 TO HER ASSESSMENT OF MS. DE ROGATIS' SUICIDE POTENTIAL.

14 I'VE BEEN ASKED TO RENDER AN OPINION ON THE
15 FACTORS THAT MIGHT HAVE LED UP TO MS. DE ROGATIS'
16 SUCCESSFUL SUICIDE.

17 AND I'VE BEEN ASKED, AGAIN, TO APPLY THE
18 STANDARD OF CARE CONCEPT TO DR. SHAINSKY'S TREATMENT.

19 Q SO LET'S NOW COVER: WHAT INFORMATION OR
20 DATA HAVE YOU GATHERED AND ANALYZED IN REACHING YOUR
21 OPINIONS AND CONCLUSIONS?

22 A PRIMARILY IT HAS BEEN A REVIEW OF
23 SUBSTANTIAL RECORDS FROM A NUMBER OF SOURCES, PRIMARILY
24 MEDICAL, BUT IF YOU -- NONMEDICAL SOURCES AND ALSO
25 DEPOSITIONS OF PRINCIPALS IN THIS CASE.

26 Q WHAT DEPOSITIONS DID YOU LOOK AT?

27 A I REVIEWED THE DEPOSITION OF DAVID
28 MAC EACHERN; OF KAREN SHAINSKY, D.O.; OF PAUL BOHN, M.D;

1 OF A DR. LUKAS ALEXANIAN, M.D; AND A DR. WEINEBERG -- IS
2 THAT CORRECT? --

3 Q WEINBERGER.

4 A -- WEINBERGER, M.D.

5 Q AND DR. ALEXANIAN IS THE PSYCHIATRIST
6 RETAINED BY THE DEFENSE TO RENDER AN OPINION SIMILAR TO
7 THE OPINION YOU'RE GOING TO BE PROVIDING TODAY?

8 A HE'S BEEN RETAINED TO RENDER AN OPINION. I
9 DOUBT IT'S GOING TO BE SIMILAR TO MINE.

10 Q WELL, I TAKE THE POINT.

11 ON THE SAME TOPIC?

12 A YES.

13 Q OKAY. DO YOU BELIEVE THAT YOU HAVE HAD
14 ACCESS TO SUFFICIENT INFORMATION OR DATA IN ORDER TO
15 RENDER YOUR OPINION?

16 A YES, I DO.

17 Q BASED ON THE RECORDS THAT YOU REVIEWED AND
18 YOUR EXPERIENCE, TRAINING, YOUR EDUCATION AND EXPERTISE
19 GENERALLY, DO YOU BELIEVE YOU HAVE A SUFFICIENT BASIS UPON
20 WHICH TO RENDER THESE OPINIONS REGARDING DR. SHAINSKY'S
21 PERFORMANCE WITHIN OR WITHOUT THE STANDARD OF CARE; IS
22 THAT RIGHT?

23 A I DO.

24 Q IN REACHING YOUR OPINION, I STILL WANT TO
25 COVER A LITTLE BIT ABOUT THE INFORMATION THAT YOU'VE
26 REVIEWED.

27 DID YOU REVIEW TARA'S -- THE RECORDS OF HER
28 PSYCHIATRIC HISTORY?

1 A I DID REVIEW CONSIDERABLE RECORDS ABOUT THAT
2 ASPECT, YES.

3 Q RECORDS OF PSYCHIATRIST BEVERLY FEINSTEIN?

4 A YES.

5 Q AND YOU ALREADY MENTIONED PAUL BOHN'S
6 DEPOSITION.

7 DID YOU ALSO REVIEW DR. BOHN'S MEDICAL
8 CHART, OF HIS NOTES AND HIS TREATMENT OF TARA?

9 A YES, I DID.

10 Q DID YOU REVIEW PSYCHIATRIC RECORDS FROM A
11 DR. LATIMER, WE'VE HEARD SOME TESTIMONY ABOUT, A
12 PSYCHIATRIST IN NEW JERSEY?

13 A I DID, YES.

14 Q WHEN WAS TARA TREATED BY DR. BOHN, TO YOUR
15 UNDERSTANDING? OVER WHAT PERIOD OF TIME?

16 A DR. BOHN DID YOU SAY?

17 Q PAUL BOHN.

18 A I THINK DR. BOHN FIRST SAW TARA IN NOVEMBER
19 OF 2007 AND THEN TREATED HER CONTINUOUSLY, ALBEIT
20 SPORADICALLY, UP UNTIL THE TIME OF HER DEATH.

21 Q AND ARE YOU ALSO AWARE THROUGH YOUR REVIEW
22 OF THE RECORDS THAT TARA WAS ADMITTED TO THE CEDARS-SINAI
23 EMERGENCY ROOM IN APRIL 2009 STATING THAT SHE WANTED TO
24 TAKE PILLS AND/OR DIE DUE TO PAIN?

25 A YES, I AM AWARE OF THAT.

26 Q AND HAVE YOU ALSO REVIEWED THE -- ANY
27 RECORDS OF NEUROLOGICAL EXAMINATIONS OF TARA SUCH AS THOSE
28 TAKEN BY DR. ORFUSS?

1 A I DID REVIEW THAT.

2 Q WERE YOU ABLE TO DETERMINE, AGAIN BASED UPON
3 YOUR EXPERTISE AND YOUR REVIEW OF THESE RECORDS, WHETHER
4 TARA'S MENTAL CONDITION WAS CAUSED BY PSYCHIATRIC CONCERNS
5 AS OPPOSED TO WHAT I WOULD REFER TO AS A STRUCTURAL
6 ORGANIC PROBLEM?

7 A I WOULD SAY THAT THE MAJORITY OF HER
8 PROBLEMS CERTAINLY LAY IN THE PSYCHIATRIC REALM.

9 Q CAN YOU EXPLAIN?

10 A SHE HAS A HISTORY DATING BACK AT LEAST TO
11 1999 OF BEING TREATED FOR ANXIETY AND DEPRESSION. SHE HAS
12 AT LEAST IN THE SEVERAL YEARS PRIOR TO HER DEATH BEEN
13 TREATED BY PSYCHIATRISTS FOR MAJOR PSYCHIATRIC ILLNESSES
14 WITH A VARIETY OF PSYCHIATRIC OR PSYCHOTROPIC MEDICATIONS
15 INCLUDING ANTIDEPRESSANTS, ANTIPSYCHOTICS, MEDICINES TO
16 REDUCE ANXIETY, AND SO FORTH.

17 SHE HAD MANIFESTLY PSYCHIATRIC
18 SYMPTOMATOLOGY THAT WAS AT ONE TIME PERHAPS RELATED TO
19 ANOTHER PSYCHIATRIC PROBLEM, WHICH IS SUBSTANCE ABUSE.
20 SHE ABUSED CRYSTAL METH AND SOME COCAINE IN THE PAST. SO
21 AT TIMES HER PSYCHIATRIC ISSUES MAY HAVE STEMMED FROM THAT
22 SUBSTANCE ABUSE PROBLEM, BUT MANY OF HER SYMPTOMS
23 CONTINUED APPARENTLY INDEPENDENT OF USING SUBSTANCES SO
24 SHE HAD MAJOR PRIMARY PSYCHIATRIC DIAGNOSES GIVEN TO HER
25 FOR -- ON A BASIS OF SEVERAL YEARS.

26 Q DR. BOHN'S PRIMARY DIAGNOSIS WAS
27 SCHIZOAFFECTIVE DISORDER?

28 A HE PROBABLY HAD THREE DIAGNOSES, BUT THAT

1 WAS ONE OF THEM.

2 Q PLEASE LAY OUT HIS DIAGNOSES AND THEN TELL
3 THE JURY WHETHER YOU AGREE OR DISAGREE WITH DR. BOHN'S
4 DIAGNOSIS.

5 A LET ME PREFACE IT BY SAYING THIS WAS A VERY
6 DIFFICULT, COMPLEX PATIENT TO DIAGNOSE. AND SO A LOT OF
7 PEOPLE HAD SPINS ON THAT PARTICULAR ASPECT OF THINGS, BUT
8 DR. BOHN'S THREE MOST COMMONLY EMPLOYED MAJOR PSYCHIATRIC
9 PROBLEMS WERE SCHIZOAFFECTIVE DISORDER, AND I DON'T KNOW
10 IF YOU WANT ME TO GO INTO A DISCUSSION OF WHAT ALL THAT
11 MEANS.

12 Q IT WOULD BE HELPFUL IF YOU TOLD US WHAT THAT
13 MEANS.

14 A I WOULD IMAGINE SO. IT'S NOT A HOUSEHOLD
15 WORD. BUT I'LL LAY OUT THE THREE: SCHIZOAFFECTIVE
16 DISORDER, PSYCHOTIC DISORDER NOT OTHERWISE SPECIFIED, AND
17 DISSOCIATIVE DISORDER.

18 SCHIZOAFFECTIVE DISORDER IS OFTEN USED TO
19 DESCRIBE PEOPLE WHO HAVE PSYCHOTIC SYMPTOMS. THAT IS,
20 THEY'RE OUT OF TOUCH WITH REALITY, MOST COMMONLY IN THE
21 FORM OF HALLUCINATIONS OF ONE TYPE OR ANOTHER OR
22 DELUSIONS, FALSE BELIEFS.

23 BUT IN ADDITION TO THOSE PSYCHOTIC SYMPTOMS,
24 THEY HAVE PRONOUNCED MOOD PROBLEMS, MOST COMMONLY
25 DEPRESSION BUT SOMETIMES MOOD DISORDER THAT RESEMBLE
26 MANIA. SO EITHER VERY HIGH HIGHS OR VERY LOW LOWS. AND
27 THAT BRINGS IN THIS SORT OF HYBRID DIAGNOSIS OF
28 SCHIZOAFFECTIVE DISORDER.

1 PSYCHOTIC DISORDER NOS, OR NOT OTHERWISE
2 SPECIFIED, IS KIND OF A WASTE BASKET DIAGNOSIS THAT THE
3 FORMAL NOMENCLATURE ALLOWS US TO USE WHEN WE CAN'T REALLY
4 BE ABSOLUTELY SURE WHY A PERSON IS PSYCHOTIC. THERE MAY
5 BE MORE THAN ONE REASON OR THERE MAY BE REASONS THAT ARE
6 HARD TO PIN DOWN, BUT IT APPLIES PRIMARILY TO THE
7 PSYCHOTIC SYMPTOMS THAT I DESCRIBED EARLIER.

8 DISSOCIATIVE DISORDER IS WHEN PEOPLE HAVE
9 SORT OF STRANGE EXPERIENCES IN WHICH THEIR FEELINGS SEEM
10 TO BE SEPARATE FROM -- THEIR EMOTIONS SEEM TO BE SEPARATE
11 FROM THEIR ACTUAL PHYSICAL SELF. A GOOD EXAMPLE OF THAT
12 MIGHT BE AN OUT-OF-BODY EXPERIENCE WHERE PEOPLE FEEL
13 THEY'VE RISEN OUT OF THEIR BODY AND ARE LOOKING DOWN ON
14 WHAT THEY'RE ACTUALLY DOING IN LIFE.

15 ANOTHER EXAMPLE OF THAT MIGHT BE WHAT'S
16 CALLED A FUGUE STATE WHERE PEOPLE SORT OF GO INTO A TRANCE
17 AND THEY DON'T REGISTER WHAT'S GOING ON AROUND THEM FOR A
18 WHILE AND AFTERWARD CAN'T REALLY RECITE IT. SO SHE'S HAD
19 ENOUGH SYMPTOMATOLOGY IN THAT AREA TO MERIT THAT DIAGNOSIS
20 AT LEAST AT TIMES.

21 SO LONG STORY SHORT, YES, I AGREE THAT THOSE
22 DIAGNOSES CAN BE APPLIED TO THESE SYMPTOMS AS SHE
23 PRESENTED OVER THE YEARS.

24 Q YOU MENTIONED THERE WAS A DIAGNOSIS THAT
25 DR. BOHN TESTIFIED TO THAT HE BELIEVED THAT THE PSYCHOTIC
26 PROBLEMS, THE THREE DISORDERS THAT YOU'VE REFERENCED,
27 MIGHT HAVE RESULTED FROM PRIOR ABUSE OF METHAMPHETAMINE OR
28 OTHER SIMILAR DRUGS.

1 DID YOU SEE THAT?

2 A YES.

3 Q DO YOU AGREE OR DISAGREE WITH THAT
4 CONCLUSION?

5 A DEPENDS ON THE POINT -- ON WHICH POINT IN
6 TIME WE'RE LOOKING AT. WHEN DR. BOHN FIRST SAW TARA, I
7 BELIEVE THERE HAD BEEN FAIRLY ACTIVE USE OF CRYSTAL METH
8 IN CLOSE PROXIMITY TO THE TIME HE WAS SEEING HER. SO THAT
9 THE SYMPTOMS THAT SHE WAS PRESENTING WITH COULD HAVE BEEN
10 RELATED AT THAT TIME.

11 THERE MAY HAVE BEEN ONE OR TWO OTHER TIMES
12 WHERE HE DOCUMENTED ACTIVE USE OF A MIND-ALTERING ILLICIT
13 DRUG AND, AGAIN, SYMPTOMATOLOGY AT THAT TIME MIGHT HAVE
14 BEEN ATTACHED TO THE SUBSTANCE ABUSE.

15 BUT THERE WAS A LOT OF TIME WHERE THERE WAS
16 NO DOCUMENTED SUBSTANCE ABUSE, AND YET TARA WAS PRESENTING
17 WITH SYMPTOMS THAT FELL INTO THESE CATEGORIES.

18 SO AT THOSE TIMES I THINK SHE WAS
19 MANIFESTING A PRIMARY OR UNDERLYING PSYCHIATRIC DISORDER
20 AND NOT A SUBSTANCE ABUSE-INDUCED DISORDER.

21 Q LET ME SWITCH SOMEWHAT NOW AND ASK YOU A
22 SLIGHTLY DIFFERENT QUESTION.

23 CAN YOU DEFINE FOR THE JURY WHAT THE
24 STANDARD OF CARE MEANS IN TERMS OF EVALUATING PERFORMANCE
25 OF A PHYSICIAN UNDER THE DIFFERENT CIRCUMSTANCES?

26 A AGAIN, I'LL PREFACE IT BY SAYING IT'S KIND
27 OF AN ELUSIVE CONCEPT. IT'S NOT LIKE THERE'S A FORMAL
28 DEFINITION YOU CAN LOOK UP AND FIND REPEATED IN VARIOUS

1 PLACES. BUT WHAT I THINK IS AN APPROPRIATE REPRESENTATION
2 OF THE STANDARD OF CARE IS IT'S THE MANNER IN WHICH A
3 PHYSICIAN WHO IS APPROPRIATELY TRAINED, COMPETENT, AND
4 PRUDENT WOULD PRACTICE.

5 Q AND THAT PARTICULAR APPLICATION HAS TO TAKE
6 IN MIND A PARTICULAR SPECIALITY, FOR EXAMPLE, A PHYSICIAN
7 IS PRACTICING IN; IS THAT RIGHT?

8 A YES. THAT'S WHAT I MEANT BY "APPROPRIATELY
9 TRAINED." I MEAN, YOU HAVE TO BE APPROPRIATELY TRAINED TO
10 PRACTICE IN THE SPECIALTY OR SUBSPECIALTY THAT YOU ARE
11 CLAIMING TO BE COMPETENT. SO IT GOES WITH THE TERRITORY
12 TO BE -- HAVE THAT FOCUS.

13 Q SO NOW I'M GOING TO COME BACK TO THE
14 DIFFERENT, THREE DIFFERENT OPINIONS THAT YOU'VE BEEN ASKED
15 TO OPINE.

16 THE FIRST ONE, GIVEN YOUR EXPERIENCE,
17 EXPERTISE, AND TRAINING, AS WELL AS YOUR REVIEW AND
18 ANALYSIS OF THE RECORDS, DID YOU REACH AN OPINION WHETHER
19 DR. SHAINSKY'S ACTIONS DURING TARA'S -- STRIKE THAT.

20 LET'S START WITH THE FIRST ISSUE, WHICH IS
21 YOUR GENERAL OPINION AS TO WHETHER SHE ACTED WITHIN THE
22 STANDARD OF CARE, AS A GENERAL MATTER, IN HER CARE AND
23 TREATMENT OF TARA.

24 A I DO NOT FEEL SHE DID ACT WITHIN THE
25 STANDARD OF CARE AT THE TIME OF HER LAST -- OF TARA'S LAST
26 PRESENTATION TO HER.

27 Q PLEASE EXPLAIN YOUR ANSWER AND ELABORATE IF
28 YOU FEEL NECESSARY ON THE BASIS FOR YOUR CONCLUSION.

1 A I BELIEVE THAT DR. SHAINSKY WAS PRESENTED ON
2 THAT DAY WITH A PATIENT WHO HAD A MULTITUDE OF SUICIDE
3 RISKS, AND THAT IN PRESCRIBING AN OVERWHELMINGLY LETHAL
4 AMOUNT OF NARCOTIC MEDICATION ON THAT DATE ON TOP OF PRIOR
5 PRESCRIPTIONS OF NARCOTIC MEDICATION WITHIN THE PREVIOUS
6 FOUR WEEKS OR SO, SHE WAS ESSENTIALLY, UNWITTINGLY
7 PERHAPS, HANDING THIS PATIENT THE WEAPON THAT SHE NEEDED
8 SHOULD SUICIDE IMPULSES TAKE OVER.

9 Q CAN YOU COMMENT UPON OR PROVIDE AN OPINION
10 WITH REGARD TO WHETHER DR. SHAINSKY PROVIDED AN ADEQUATE
11 SUICIDE ASSESSMENT GIVEN THE FACTS AND EVIDENCE KNOWN TO
12 YOU THAT OCCURRED ON MARCH 22, 2010, SPECIFICALLY THE
13 INTERACTION THAT HAD OCCURRED WITHIN DR. SHAINSKY'S OFFICE
14 DURING THAT CONSULTATION?

15 A IN TERMS OF THE INTERACTION, I'M NOT SURE
16 THAT THERE WERE ANY OBVIOUS DEPARTURES OTHER THAN THE
17 ULTIMATE CONCLUSION, WHICH WAS THIS WAS A PATIENT WHO WAS
18 SAFE ENOUGH TO BE PRESCRIBED THESE POTENTIALLY LETHAL
19 MEDICATIONS.

20 I'M NOT SURE IN REACHING THAT CONCLUSION
21 WHETHER DR. SHAINSKY COULD BE SAID TO HAVE USED CORRECTLY
22 THE INFORMATION THAT WAS SITTING IN FRONT OF HER THAT
23 WOULD HAVE, NUMBER ONE, IDENTIFIED OR UNDERLINED THE RISKS
24 ASSOCIATED WITH THAT PRESCRIPTION; AND, NUMBER TWO, GIVEN
25 THE PERSONAGE OF THE BOYFRIEND, WOULD HAVE GIVEN HER,
26 DR. SHAINSKY, AN ADDITIONAL TOOL THAT COULD HAVE BEEN USED
27 PROTECTIVELY HAD SHE EMPLOYED HIS POSITION MORE
28 AGGRESSIVELY, LET'S PUT IT THAT WAY.

1 Q LET'S TALK ABOUT: WERE THERE SIGNS IN YOUR
2 OPINION OF SUICIDE RISK FACTORS KNOWN TO DR. SHAINSKY OR
3 SHOULD HAVE BEEN KNOWN TO HER IF SHE HAD EXERCISED
4 REASONABLE DUE DILIGENCE AS OF MARCH 22, 2010?

5 A YES.

6 Q IDENTIFY, PLEASE, IN YOUR OPINION THE SIGNS
7 THAT SHOULD HAVE BEEN EVIDENT TO DR. SHAINSKY ALERTING HER
8 TO THE DANGER THAT SHE WAS SUBJECTING HER PATIENT TO.

9 A WELL, ACUTELY, THIS IS A PATIENT WHO CAME
10 INTO DR. SHAINSKY'S OFFICE ON THAT DAY AND SAID HER PAIN
11 WAS SO GREAT THAT SHE WANTED TO DIE. THIS WAS NOT THE
12 FIRST TIME THAT THE PATIENT PRESENTED IN THIS WAY. ALSO
13 KNOWN TO DR. SHAINSKY WAS THE APRIL 2009 CEDARS-SINAI
14 EMERGENCY ROOM PRESENTATION IN WHICH THE PATIENT CAME IN
15 AGAIN WITH SIMILAR COMMENTS ABOUT WANTING TO DIE AND USING
16 PILLS TO OVERDOSE BECAUSE OF THE INTENSITY OF HER PAIN.

17 SO HERE IS A PATIENT WHO CLEARLY LEAPT TO
18 THE POSSIBILITY OF DYING WHEN PAIN BECAME GREAT, AND THAT
19 WAS FRONT AND CENTER AT THAT PARTICULAR TIME.

20 THE PATIENT HAD, AGAIN, KNOWN TO
21 DR. SHAINSKY, A MAJOR PSYCHIATRIC HISTORY AND WAS IN
22 ONGOING TREATMENT FOR THAT -- FOR HER PSYCHIATRIC PROBLEMS
23 WITH A PSYCHIATRIST, AND THAT PSYCHIATRIC HISTORY
24 CONSISTED, AGAIN, KNOWN TO DR. SHAINSKY, OF A HISTORY OF A
25 MOOD DISORDER AT LEAST AND ALSO AT THAT PARTICULAR TIME
26 OVERT ANXIETY THAT DR. SHAINSKY FELT NEEDED FURTHER
27 PSYCHIATRIC OR MORE AGGRESSIVE PSYCHIATRIC TREATMENT.

28 MOOD DISORDERS AND ANXIETY DISORDERS ARE

1 PART OF THE MAJOR RISK FACTORS ASSOCIATED WITH PEOPLE WHO
2 ARE VULNERABLE TO SUICIDE, SUICIDE IDEATION, INTENTION,
3 ATTEMPTS OR COMPLETED SUICIDE.

4 IN THE SESSION, I THINK AS I UNDERSTOOD IT,
5 THE BOYFRIEND MADE REFERENCE TO THE PATIENT'S SUICIDAL
6 TENDENCIES IN THE CONTEXT OF SOME TELEPHONE CONVERSATION
7 THAT WAS TAKING PLACE, I BELIEVE AT THE TIME WITH THE
8 PATIENT'S MOTHER. SO THAT WAS ANOTHER WARNING SIGN THAT
9 SUICIDE WAS ON THIS PATIENT'S MIND.

10 THE HISTORY OF SUICIDAL IDEATION HAS TO ALSO
11 BE TAKEN VERY SERIOUSLY AS A RISK FACTOR. DATA THAT AT
12 LEAST I'M FAMILIAR WITH SUGGESTS THAT WHEN SOMEONE TALKS
13 ABOUT SUICIDE, EVEN IF THERE'S NO IMMEDIATE INTENT, THAT
14 POSES A RISK THAT HAS TO BE CONSIDERED LONG LASTING, YEARS
15 OR MORE, ACTUALLY COMPRISE THE TIME IN WHICH YOU HAVE TO
16 BE CAREFUL ABOUT THE IMPLICATIONS OF THAT PRIOR STATEMENT
17 OF SUICIDE RISK.

18 ANOTHER RISK FACTOR IN GENERAL IS THE
19 HISTORY OF SUBSTANCE ABUSE. EVEN IF IT WASN'T ACTIVE AT
20 THE TIME, IT REPRESENTS USUALLY A DEGREE OF DISTRESS OR
21 DISORDER IN AN INDIVIDUAL THAT POSES AN ADDITIONAL RISK
22 FOR POSSIBLE SUICIDAL THINKING OR SUICIDE ATTEMPTS.

23 AND THEN QUITE CLEARLY, CHRONIC PAIN IS
24 VERY, VERY HIGHLY CORRELATED WITH SUICIDE ATTEMPTS.

25 THE PAIN INTOLERANCE, THE TREATMENT
26 MECHANISMS THAT ARE USED FOR PAIN, THAT CAN EASILY BE
27 TRANSFORMED INTO A SUICIDE TOOL. AND THE POSSIBILITY THAT
28 THIS INDIVIDUAL HAD BECOME NARCOTIC INTOLERANT, IN OTHER

1 WORDS, SHE HAD BEEN USING NARCOTICS FOR A LONG TIME, THEY
2 WEREN'T CUTTING HER PAIN, IT'S THE REASON THAT
3 DR. SHAINSKY SWITCHED HER TO A DIFFERENT PAIN MEDICATION
4 ON THAT LAST SESSION TO TRY TO SORT OF RECYCLE HER
5 RESPONSE TO NARCOTICS, BUT AN INTOLERANCE TO NARCOTICS
6 MEANS THIS IS A PATIENT AT RISK FOR OVERUSING AND INDEED
7 HAD SOME HISTORY TO THAT EFFECT.

8 Q AND WERE YOU AWARE FROM REVIEW OF
9 DR. SHAINSKY'S PROGRESS NOTE FROM MARCH 22 THAT SHE
10 CLEARLY DOCUMENTED ADDITIONAL ANXIETY THE PATIENT WAS
11 REPORTING ON THAT DATE?

12 A THAT'S WHAT I MADE REFERENCE TO EARLIER. I
13 THINK DR. SHAINSKY PICKED THAT UP, FELT THAT IT NEEDED
14 MORE INTENSIVE PSYCHIATRIC INTERVENTION, AND ACCORDING TO
15 HER NOTE, ACTUALLY MADE A REFERRAL, I DON'T KNOW TO WHOM,
16 FOR PSYCHOTHERAPY FOR THAT PURPOSE ALONE.

17 Q THE EVIDENCE INDICATES THAT THE REFERRAL TO
18 THE PSYCHIATRIST BY DR. SHAINSKY ONLY OCCURRED ON THE LAST
19 VISIT ON MARCH 22ND AND NONE OF THE TWO PRIOR OCCASIONS,
20 FEBRUARY 10TH OR MARCH 1ST, WAS THERE A REFERENCE TO A
21 PSYCHIATRIST.

22 Q GIVEN WHAT YOU REVIEWED IN DR. SHAINSKY'S
23 FILE, DOES THAT SURPRISE YOU?

24 A IT REALLY DEPENDS ON WHETHER DR. SHAINSKY
25 KNEW ABOUT DR. BOHN BEING IN THE PICTURE AT THE TIME. IF
26 SHE THOUGHT THAT THE PATIENT WAS ALREADY UNDER SOME KIND
27 OF TREATMENT, IT MIGHT NOT HAVE BEEN UNTIL SHE FELT THAT
28 THE INTENSITY OF SYMPTOMATOLOGY NEEDED MORE TREATMENT THAT

1 SHE WEIGHED IN WITH POSSIBLY AN ADDITIONAL PROFESSIONAL
2 THAT SHE FELT THE PATIENT COULD SEE. BUT THAT WAS ALL I
3 COULD REALLY PULL OUT OF THE NOTES.

4 Q DR. SHAINSKY'S TESTIMONY IN THIS CASE IS
5 THAT SHE INQUIRED OF THE PATIENT, SAID, "ARE YOU GOING TO
6 KILL YOURSELF? THAT'S A SERIOUS STATEMENT." AND THE
7 PATIENT DENIED SUICIDAL INTENT. THAT WAS THE UPSHOT OF
8 THE CONVERSATION.

9 IN YOUR OPINION, SIR, WAS THAT A SUFFICIENT
10 INTERACTION OR SUICIDE ASSESSMENT BY DR. SHAINSKY BEFORE
11 SHE PROVIDED THE PATIENT WITH A PRESCRIPTION OF 100
12 PERCOCET 10-MILLIGRAM TABLETS?

13 A GIVEN ALL OF THE FACTORS I HAVE DELINEATED
14 THAT I BELIEVE WERE READILY ASSESSABLE BY DR. SHAINSKY,
15 THE ANSWER IS NO. IT SHOULD NOT HAVE LED TO THAT
16 PRESCRIPTION.

17 Q WHAT IN YOUR OPINION SHOULD DR. SHAINSKY,
18 HAD SHE BEEN OPERATING AS A REASONABLE -- REASONABLY --
19 STRIKE THAT -- A REASONABLE PHYSICIAN, DILIGENT, CARING
20 FOR HER PATIENT, WHAT SHOULD SHE HAVE DONE ON THAT
21 OCCASION INSTEAD OF HANDING OVER A PRESCRIPTION FOR 100
22 TABLETS OF PERCOCET?

23 A I BELIEVE THAT A PRUDENT PHYSICIAN, NUMBER
24 ONE, WOULD HAVE LIMITED CONSIDERABLY THE AMOUNT OF ANY
25 POTENTIALLY LETHAL MEDICATION, OF WHICH NARCOTICS ARE IN
26 THAT CATEGORY. EVEN WITH THE INTENT OF TRYING TO MANAGE
27 THE PAIN, WOULD HAVE LIMITED THE AMOUNT PRESCRIBED AND
28 WOULD HAVE TAKEN STEPS TO BE SURE THAT VERY RAPID

1 ASSESSMENT AND FOLLOW-UP, EITHER BY HERSELF OR IN
2 CONJUNCTION WITH HER PSYCHIATRIST, TOOK PLACE BEFORE ANY
3 ADDITIONAL PRESCRIPTION OF MEDICATIONS WERE PROVIDED.

4 I THINK THAT EVEN WITH THAT SMALL AMOUNT
5 THAT WOULD HAVE BEEN HIGHLY PREFERABLE.

6 Q HOW SMALL WOULD YOU SAY SHOULD HAVE BEEN
7 GIVEN?

8 A I PERSONALLY LIKE TO SEE IT LIMITED TO A FEW
9 DAYS BECAUSE THAT'S THE AMOUNT OF TIME IN WHICH ALL THE
10 REST OF THE WHEELS COULD BE PUT IN MOTION AND ANOTHER
11 ASSESSMENT COULD BE TAKEN PLACE.

12 Q AND A PRESCRIPTION THAT WAS LIMITED TO A FEW
13 DAYS IN YOUR OPINION WOULD POSE A MUCH LOWER RISK OF HER
14 COMMITTING SUICIDE BY AN OVERDOSE; IS THAT RIGHT?

15 A OF COURSE.

16 Q WHAT ELSE SHOULD SHE HAVE DONE? SHOULD SHE
17 HAVE TAKEN ANY PROACTIVE STEPS? THE FIANCE WAS PRESENT AT
18 THE APPOINTMENT WITH HER AS HE HAD BEEN ON A PRIOR
19 OCCASION.

20 SHOULD SHE HAVE ENLISTED THE BOYFRIEND OR
21 GIVEN HIM ANY PARTICULAR INSTRUCTIONS?

22 A I THINK THAT THE BOYFRIEND, DAVID, IF I CAN
23 CALL HIM THAT, WOULD HAVE BEEN AN ESSENTIAL TOOL HAD HE
24 BEEN VERY CAREFULLY INSTRUCTED TO KEEP AN EYE ON TARA AND
25 ALSO TO TAKE CONTROL OF MEDICATIONS. AND I THINK IT WOULD
26 HAVE BEEN APPROPRIATE, WITHIN THE STANDARD OF CARE TO HAVE
27 HIM ASSESS WHAT OTHER POSSIBLE TOOLS FOR SUICIDE ATTEMPT
28 WERE READILY AVAILABLE TO HER, IN THE FORM OF OTHER

1 MEDICATIONS THAT SHE MAY HAVE BEEN KEEPING AND EASY ACCESS
2 TO OTHER KINDS OF WEAPONS.

3 SO JUST, YOU KNOW, SORT OF EYEBALLING HER
4 THROUGH THE ACUTE PERIOD OF TIME WITH A EMPHASIS ON THE
5 IMPORTANCE OF THAT, TO NOT NECESSARILY TAKE FOR GRANTED
6 THAT SHE WAS GOING TO BE ABLE TO STAY AWAY FROM THE
7 SUICIDAL THOUGHTS THAT SHE HAD EXPRESSED SO RECENTLY.

8 Q THERE WAS EVIDENCE OF A PHONE CALL, THAT AT
9 SOME POINT DURING THE CONSULTATION DR. SHAINSKY LEFT AND
10 WENT TO TELEPHONE THE PSYCHIATRIST, PAUL BOHN, WHICH, BY
11 THE WAY, WAS THE FIRST TIME SHE HAD EVER CALLED HIM.

12 DO YOU HAVE -- KNOWING WHAT YOU KNOW AS TO
13 WHAT OCCURRED, DO YOU HAVE ANY OPINION AS TO WHETHER OR
14 NOT APPROPRIATE MEASURES WERE TAKEN DURING THAT PHONE CALL
15 TO PROTECT THE PATIENT?

16 A TO THE BEST OF MY ABILITY TO DETERMINE WHAT
17 WAS DONE THERE, THE PHONE CALL WAS NOT LABELED WITH A
18 SENSE OF URGENCY THAT WOULD HAVE CAUGHT THE PHYSICIAN, THE
19 PSYCHIATRIST'S, ATTENTION RIGHT AWAY. INSTEAD, IT WENT
20 THROUGH WHATEVER CHANNELS LED TO A REVIEW BY THE
21 PSYCHIATRIST A DAY LATER.

22 Q YOU'RE A PRACTICING PSYCHIATRIST, CORRECT?

23 A CORRECT.

24 Q AND DO YOUR PATIENTS OR DO OTHER PHYSICIANS
25 FROM TIME TO TIME CALL YOU?

26 MR. BLESSEY: OBJECTION, YOUR HONOR, AS TO HIS
27 PERSONAL PRACTICE. NOT RELEVANT.

28 THE COURT: SUSTAINED.

1 BY MR. NEWHOUSE:

2 Q LET ME ASK YOU, SIR: IF DR. SHAINSKY WERE
3 TO SAY, "WELL, IT'S VERY DIFFICULT TO GET AHOLD OF THE
4 PSYCHIATRIST AND THAT'S WHY, YOU KNOW, I DIDN'T TAKE OTHER
5 MEASURES," WOULD YOU ACCEPT THAT AS AN EXPLANATION AS AN
6 EXPERT?

7 A NO.

8 Q WHY NOT?

9 A I THINK THERE ARE WAYS TO ALERT A
10 PSYCHIATRIST. DEPENDING ON HOW THAT PSYCHIATRIST MAKES
11 THOSE METHODS AVAILABLE, THERE ARE WAYS TO ALERTING A
12 PSYCHIATRIST EVEN IF YOU CAN'T NECESSARILY CONTACT HIM OR
13 HER DIRECTLY. SO UTILIZING WHATEVER TOOLS THERE ARE TO
14 FLAG YOUR URGENCY IS TO MY MIND WHAT THE STANDARD OF CARE
15 WOULD REQUIRE UNDER THESE CIRCUMSTANCES.

16 Q AND WOULD ONE OF THOSE STEPS BE PAGING THE
17 PSYCHIATRIST?

18 A YES.

19 Q AND AS FAR AS YOU COULD SEE, BASED UPON THE
20 RECORDS THAT YOU REVIEWED, DR. SHAINSKY DID NOT IN ANY WAY
21 INDICATE ANY URGENCY IN THIS MESSAGE?

22 A EVIDENTLY NOT, AT LEAST FROM THE STANDPOINT
23 OF THE RECIPIENT OF THE MESSAGE.

24 Q THERE IS EVIDENCE, AND YOU'VE REFERRED TO
25 IT, THAT DR. SHAINSKY BECAME AWARE, EITHER DURING THE
26 FIRST MEETING ON FEBRUARY 10 OR SHORTLY THEREAFTER, SHE
27 BECAME AWARE OF THE RECORDS OF THE CEDARS-SINAI ADMISSION
28 ON FEBRUARY 10, CORRECT?

1 A THAT'S MY UNDERSTANDING, YES.

2 Q AND WHAT -- HAD SHE BEEN OPERATING WITH THE
3 REQUISITE CARE TO BRING HER WITHIN THE STANDARD OF CARE AS
4 A TREATING PHYSICIAN, WAS THERE INFORMATION IN THAT CEDARS
5 RECORD THAT SHOULD HAVE CAUSED HER TO MAKE ADDITIONAL
6 INQUIRIES?

7 A WELL, I THINK THE CEDARS RECORDS AGAIN
8 UNDERLINE THE FACT THAT THIS WAS A PATIENT WHO, IN A STATE
9 OF SEVERE PAIN WHICH SHE EXPERIENCED PERIODICALLY AND
10 RECURRENTLY, LEAPT TO THOUGHTS ABOUT DYING. AND THAT WAS
11 DOCUMENTED IN THE CEDARS RECORDS, EMERGENCY ROOM RECORDS,
12 AND, THEREFORE, ESTABLISHED THAT RISK, BOTH THE CHRONIC
13 SEVERE PAIN AND THE SUICIDAL IDEATION AND THEN, OF COURSE,
14 THE FACT THAT THOSE RECORDS UNDERLINE THE
15 PRIOR -- SORRY -- UNDERLINE THE UNDERLYING PSYCHIATRIC
16 DISORDER AS TOLD TO DR. SHAINSKY.

17 Q NOW, YOU REVIEWED DR. SHAINSKY'S EXPERT,
18 DR. ALEXANIAN'S CRITICISM OF YOUR OPINION IN YOUR
19 ANALYSIS; IS THAT RIGHT?

20 A I HAVE, YES.

21 Q AND YOU'RE AWARE THAT HE'S OFFERING THE
22 OPINION THAT DR. SHAINSKY TOOK APPROPRIATE ACTION BY
23 HAVING A CONVERSATION WITH TARA ABOUT HER STATEMENTS
24 INDICATING THAT TARA WANTED TO DIE?

25 MR. BLESSEY: YOUR HONOR, AT THIS STAGE WE HAVEN'T
26 HEARD FROM DR. ALEXANIAN. IT'S HEARSAY. IT'S AN IMPROPER
27 QUESTION TO ASK THIS EXPERT. THIS IS NOT EVIDENCE THAT IS
28 BEFORE THIS JURY.

1 THE COURT: OVERRULED.

2 THE WITNESS: COULD YOU REPEAT THE QUESTION,
3 PLEASE?

4 BY MR. NEWHOUSE:

5 Q ARE YOU AWARE THAT THE DEFENSE EXPERT'S
6 OPINION -- BASED UPON YOUR REVIEW OF HIS DEPOSITION
7 TRANSCRIPT -- CORRECT?

8 A YES.

9 Q -- THAT DR. SHAINSKY TOOK APPROPRIATE ACTION
10 BY HAVING A CONVERSATION WITH TARA ABOUT HER STATEMENTS
11 REGARDING WANTING TO DIE? YOU'RE AWARE OF THAT?

12 A I AM AWARE OF THAT.

13 Q AND YOU -- DO YOU AGREE OR DISAGREE WITH HIS
14 OPINION?

15 A FOR ALL THE REASONS I'VE BEEN DISCUSSING,
16 NO, I DON'T.

17 Q EXPLAIN.

18 MR. BLESSEY: IT'S NOW CUMULATIVE, YOUR HONOR.

19 THE COURT: SUSTAINED.

20 MR. NEWHOUSE: MAY I HAVE A MOMENT, YOUR HONOR?

21 THE COURT: YES.

22 MR. NEWHOUSE: NO FURTHER QUESTIONS. THANK YOU,
23 YOUR HONOR.

24 THE COURT: CROSS-EXAMINATION?

25 MR. BLESSEY: THANK YOU, YOUR HONOR.

26 THE COURT: JUROR NO. 1? HOW ARE YOU FEELING, ALL
27 RIGHT?

28 JUROR NO. 1: YEAH, I'M OKAY. THANK YOU FOR

1 ASKING.

2

3

CROSS-EXAMINATION

4 BY MR. BLESSEY:

5 Q DON'T FROWN, DR. RUDNICK.

6 A I WAS TRYING TO READ THIS.

7 Q THIS IS STANDARD PROCEDURE.

8 A I'M SQUINTING TO READ. NO FROWN INTENDED.

9 Q OKAY. THIS REALLY DOESN'T PERTAIN TO YOU,

10 ACTUALLY.

11 OKAY. GOOD MORNING, DR. RUDNICK.

12 A GOOD MORNING, SIR.

13 Q HOW ARE YOU, SIR?

14 A OKAY. THANK YOU.

15 Q YOU WOULD AGREE THAT, IN TERMS OF YOUR TASK
16 AS AN EXPERT, YOUR OPINIONS ARE ONLY AS GOOD AS THE
17 INFORMATION THAT YOU HAVE; IN OTHER WORDS, IF YOU TOLD THE
18 JURY SOMETHING THAT WAS INACCURATE AND YOU BASED YOUR
19 OPINION ON THAT, THAT WOULD BE KIND OF A QUESTIONABLE
20 OPINION, WOULD YOU AGREE WITH THAT CONCEPT?

21 A ARE YOU SAYING I KNOW IT'S INACCURATE OR
22 SAYING IT TURNS OUT TO BE INACCURATE UNBEKNOWNST TO ME?

23 Q EITHER ONE.

24 A I WOULD ONLY AGREE TO THE FORMER. IF I KNOW
25 IT'S INACCURATE, THEN IT WOULD BE INAPPROPRIATE FOR ME TO
26 BASE AN OPINION ON IT.

27 Q OKAY. AND SO WHEN YOU REVIEW RECORDS, YOU
28 KNOW WHAT'S IN THE RECORD, CORRECT?

1 A CORRECT.

2 Q THEN YOU WILL TELL THE JURY WHAT YOU FOUND
3 IN THOSE RECORDS THAT YOU THINK IS IMPORTANT TO YOUR
4 OPINION, CORRECT?

5 A YES.

6 Q AND IF YOU KNOW WHAT'S IN THE RECORD OR YOU
7 STATE WHAT'S IN THE RECORD THAT'S INACCURATE AND YOU'RE
8 BASING AN OPINION ON THAT, THERE'S A PROBLEM, WOULD YOU
9 AGREE?

10 MR. NEWHOUSE: OBJECTION. IMPROPER HYPOTHETICAL.
11 ALSO VAGUE AND CONFUSING, YOUR HONOR.

12 THE COURT: OVERRULED.

13 BY MR. BLESSEY:

14 Q WOULD YOU AGREE, SIR?

15 A IF I KNOW IT'S INACCURATE, YES, I WOULD
16 AGREE.

17 Q SO I HEARD YOU SAY TWICE, AND I HEARD
18 MR. NEWHOUSE IN A QUESTION REFERENCE THE CEDARS RECORDS
19 AND YOU TOLD THIS JURY THAT IN THE CEDARS RECORDS THE
20 PATIENT CAME IN AND GAVE A HISTORY THAT SHE WANTED TO DIE
21 AND SHE WAS GOING TO TAKE PILLS TO KILL HERSELF, CORRECT?
22 ISN'T THAT WHAT YOU JUST TOLD HIM?

23 A YES.

24 Q GOOD. ALL RIGHT. WHAT I'D LIKE YOU TO DO,
25 DR. RUDNICK, IS TO -- MAY I APPROACH, YOUR HONOR?

26 THE COURT: YOU MAY.

27 BY MR. BLESSEY:

28 Q WE HAVE EXHIBIT BOOKS HERE. CAN YOU PUT

1 YOUR NOTES AWAY OR AT LEAST TO THE SIDE. YOU ARE GOING TO
2 NEED TO REFER TO THIS. WHICH WATER IS YOURS? WE'LL TRY
3 TO MAKE SOME ROOM FOR YOU.

4 A THIS HAS BEEN UNUSED.

5 THE COURT: IS THERE ONE YOU WANT ME TO THROW AWAY?

6 THE WITNESS: NO, NO; I'M WORKING ON THIS ONE.

7 THE COURT: ALL RIGHT.

8 BY MR. BLESSEY:

9 Q OKAY. SO I'M GOING TO HAVE YOU REFER TO
10 EXHIBIT 103, WHICH ARE THE CEDARS RECORDS, AND WHAT I'D
11 LIKE YOU TO DO IS TO TURN TO PAGE 103-13, ACTUALLY
12 INCLUDING BEYOND THAT. THERE WE GO. 14, I'M SORRY. YOU
13 CAN EITHER LOOK AT THE SCREEN OR THE BOOK, WHATEVER IS
14 EASIEST FOR YOU, DR. RUDNICK. 103-14.

15 A 103-14.

16 MR. NEWHOUSE: IS IT OUT OF FOCUS OR ARE MY EYES
17 GOING BAD?

18 MR. BLESSEY: I THINK IT IS OUT OF FOCUS A LITTLE
19 BIT. HOW IS THAT?

20 Q MY QUESTION TO YOU: YOU'VE SEEN THIS RECORD
21 BEFORE, CORRECT?

22 A THIS PAGE, YES.

23 Q ALL RIGHT. AND THIS IS THE PAGE -- THIS IS
24 THE HISTORY THAT THE EMERGENCY ROOM DOCTOR GOT FROM
25 MS. DE ROGATIS IN APRIL OF 2009, CORRECT?

26 MR. NEWHOUSE: OBJECTION. CALLS FOR SPECULATION.

27 THE COURT: OVERRULED.

28 THE WITNESS: THIS IS ENTITLED "EMERGENCY TREATMENT

1 RECORD" AND IT'S SIGNED BY AN M.D. THAT I KNOW.

2 BY MR. BLESSEY:

3 Q TAKE A LOOK AT THE NEXT PAGE.

4 WHAT'S THE M.D.'S NAME? 103-15.

5 A ZACHARY LUTSKY.

6 Q IS IT YOUR UNDERSTANDING FROM YOUR CAREFUL
7 REVIEW OF THE MEDICAL RECORDS IN THIS CASE IN ORDER TO
8 COME IN AND TELL THE JURY ABOUT YOUR OPINIONS, THAT YOU
9 KNEW THAT DR. LUTSKY WAS THE EMERGENCY ROOM PHYSICIAN?
10 DID YOU KNOW THAT?

11 A I BELIEVE HE'S THE EMERGENCY ROOM PHYSICIAN
12 BECAUSE HE DICTATED THIS REPORT.

13 Q RIGHT. AND ACTUALLY, IT'S A FEMALE, I
14 BELIEVE.

15 A ZACHARY IS A FEMALE?

16 Q IT'S ZACHARY? OKAY, I'M WRONG.

17 CAN YOU TELL US, SIR, WHERE IN THE HISTORY
18 DO YOU SEE EVIDENCE THAT THE PATIENT, OR IN THE CHIEF
19 COMPLAINT THAT THE PATIENT SAID SHE WAS GOING TO KILL
20 HERSELF WITH PILLS?

21 MR. NEWHOUSE: OBJECTION. RELEVANCE, YOUR HONOR.
22 THAT'S NOT THE WHOLE RECORD.

23 MR. BLESSEY: WE'LL GET THERE.

24 MR. NEWHOUSE: YOU SHOULD GET THERE.

25 THE COURT: OVERRULED. THIS PARTICULAR RECORD.

26 THE WITNESS: ON THIS PARTICULAR RECORD, I DO NOT
27 SEE A STATEMENT THAT SHE WANTS TO TAKE PILLS TO KILL
28 HERSELF.

1 BY MR. BLESSEY:

2 Q OKAY. VERY GOOD. AND IS THERE SOME
3 PARTICULAR RECORD THAT YOU SAW, DOCTOR, THAT SAID THAT THE
4 PATIENT WANTED TO TAKE PILLS TO KILL HERSELF?

5 A YES.

6 Q AND WHERE IS THAT?

7 A IT'S LOOKS LIKE THE BATES STAMP, OR WHATEVER
8 IT IS, IS 103-1.

9 Q OKAY. TAKE A LOOK AT THAT.

10 WHERE DO YOU SEE THAT, SIR?

11 A IN THE --

12 MR. BLESSEY: MAY I APPROACH?

13 THE COURT: YOU MAY.

14 THE WITNESS: IN THE HANDWRITTEN --

15 MR. NEWHOUSE: MAY I APPROACH, YOUR HONOR?

16 THE WITNESS: -- HISTORY HERE, "THOUGHT I WAS GOING
17 TO DIE. WANT TO TAKE PILLS TO DIE DUE TO PAIN."

18 BY MR. BLESSEY:

19 Q OKAY. WHOSE HISTORY IS THAT? DO YOU KNOW?

20 A IT'S HARD TO READ THE SIGNATURE, ALTHOUGH IT
21 COULD BE THE SAME PERSON BECAUSE IT LOOKS LIKE THE FIRST
22 NAME BEGINS WITH A "Z" AND THERE'S A BIG "L" HERE, WHAT
23 LOOKS LIKE THE BEGINNING OF THE LAST NAME.

24 Q DO YOU KNOW FOR A FACT THAT THAT'S FROM
25 DR. LUTSKY AS OPPOSED TO THE --

26 A I THINK I JUST TOLD YOU WHAT I KNOW.

27 Q OKAY. NOW, DO YOU KNOW WHY DR. LUTSKY DID
28 NOT INCLUDE THAT STATEMENT IN HIS HISTORY AND PHYSICAL?

1 MR. NEWHOUSE: OBJECTION. IRRELEVANT. CALLS FOR
2 SPECULATION.

3 THE COURT: SUSTAINED.

4 BY MR. BLESSEY:

5 Q NOW, YOU ALSO KNOW, SIR, DO YOU NOT, THAT
6 MS. DE ROGATIS WAS SEEN BY A PSYCHIATRIST ON THIS
7 PARTICULAR DAY, CORRECT?

8 A YES.

9 Q AND YOU'VE SEEN THE PSYCHIATRIST'S NOTE,
10 HAVE YOU NOT?

11 A YES.

12 Q WOULD YOU TURN TO EXHIBIT 103-19, PLEASE.

13 A THAT MUST NOT BE WHAT YOU WANT ME TO LOOK
14 AT.

15 Q HOW ABOUT 9?

16 A THANK YOU. OKAY.

17 Q ARE YOU THERE?

18 A YES, I AM.

19 Q AND DO YOU SEE IN THE PSYCHIATRIST'S HISTORY
20 AND PHYSICAL A COMMENT ABOUT THE PATIENT WANTING TO DIE BY
21 TAKING PILLS?

22 A NO, I DIDN'T SEE THAT.

23 Q WAS THAT IMPORTANT TO YOU THAT THE
24 PSYCHIATRIST DIDN'T GET THAT HISTORY FROM THE PATIENT?

25 A IT MAY BE IMPORTANT, BUT IT DIDN'T OVERRIDE
26 THE OTHER PIECE OF INFORMATION THAT WE'VE ALREADY COVERED.

27 Q ALL RIGHT. LET'S TAKE A LOOK AT THE NEXT
28 PAGE. IN FACT, WE'LL GO BEYOND THAT AND SEE IF WE CAN CUT

1 TO THE CHASE.

2 MR. NEWHOUSE: I'D ASK THIS BE ADMITTED INTO
3 EVIDENCE. IT'S BEING DISPLAYED. OFFER THE ENTIRE RECORD
4 AT THIS TIME.

5 MR. BLESSEY: I HAVE NO OBJECTION, YOUR HONOR.

6 THE COURT: ALL RIGHT. RECEIVED, ALL OF 103.

7

8 (RECEIVED INTO EVIDENCE, JOINT

9 EXHIBITS 103-1 TO 103-24.)

10

11 MR. NEWHOUSE: THANK YOU, YOUR HONOR.

12 BY MR. BLESSEY:

13 Q IN YOUR CAREFUL REVIEW OF THESE FOUR PAGES
14 FROM THE PSYCHIATRIST'S EVALUATION, WHAT WAS THE
15 CONCLUSION OF THE PSYCHIATRIST ON APRIL THE 9TH, 2009?

16 LET ME ASK IT THIS WAY: DID THE
17 PSYCHIATRIST STATE, AGAIN, BASED ON YOUR REVIEW OF THAT
18 RECORD, THAT MS. DE ROGATIS HAD NO INTENT TO TAKE HER OWN
19 LIFE? DID YOU SEE THAT IN THE NOTE, SIR?

20 A WHAT I SEE IN THE NOTE IS THAT HE CONCLUDED
21 BASED ON A RISK ASSESSMENT THAT SHE WAS A LOW TO MODERATE
22 RISK FOR DANGER TO SELF.

23 Q LOW TO MODERATE RISK. WE'LL TAKE THAT AND
24 LET'S TALK MORE SPECIFICALLY.

25 SO YOU WOULD ASSUME THAT THE PSYCHIATRIST ON
26 THIS DATE DID A SIMILAR ASSESSMENT OF HER RISK FACTORS AND
27 CAME TO A CONCLUSION THAT SHE WAS A LOW TO MODERATE RISK,
28 TRUE?

1 A YES.

2 Q OKAY. AND DID THE PSYCHIATRIST IN ANY ONE
3 OF THOSE FOUR PAGES OF HIS NOTE TAKE A MINUTE TO LOOK?
4 DID HE SAY THAT MS. DE ROGATIS HAD NO INTENT TO HARM
5 HERSELF?

6 A WHAT HE SAYS IS THAT THE PATIENT CONTINUED
7 TO DENY SUICIDAL IDEATION, PLAN, OR INTENT.

8 Q THANK YOU. I WAS GOING TO GET TO PLAN, BUT
9 YOU'VE COVERED IT.

10 AND WHAT ACTION, AFTER ASSESSING THE RISK
11 FACTORS THAT YOU ASSUME HE ASSESSED, TALKING TO THE
12 PATIENT, ASSUMING HE KNOWS ABOUT THAT NOTE YOU REFERRED TO
13 ON 103-1, WHAT ACTION DID THE PSYCHIATRIST TAKE WITH
14 MS. DE ROGATIS? DID HE ADMIT HER TO THE HOSPITAL FOR
15 FURTHER EVALUATION?

16 A NO.

17 Q HE DISCHARGED HER, CORRECT?

18 A YEAH, CORRECT.

19 Q BY THE WAY, YOU TOLD THE JURY THAT YOU HAVE
20 SEEN EVERYTHING YOU NEEDED TO SEE TO RENDER YOUR OPINIONS
21 IN THIS CASE, CORRECT?

22 A I'VE SEEN ENOUGH TO RENDER MY OPINIONS, YES.

23 Q ONE THING YOU DIDN'T SEE -- LET ME ASK YOU
24 THIS: WHEN WAS YOUR DEPOSITION TAKEN? DO YOU RECALL THE
25 DATE?

26 A OH, I COULD LOOK THAT UP FOR YOU.

27 Q I CAN TELL YOU. LET ME SEE IF I CAN SAVE
28 TIME.

1 AUGUST 31ST, 2012; IS THAT RIGHT?

2 A HEY, I WAS GOING TO COME UP WITH THAT.

3 Q GOOD FOR YOU.

4 ON THAT PARTICULAR DAY, ACTUALLY THE NIGHT
5 BEFORE, YOU WERE PROVIDED WITH THE DEPOSITION OF DR. BOHN.
6 TELL THE JURY WHO DR. BOHN IS AGAIN.

7 A DR. BOHN --

8 Q BOHN.

9 A -- IS A PSYCHIATRIST WHO WAS TREATING TARA
10 DE ROGATIS AT THE TIME OF THESE INCIDENTS.

11 Q FROM 2007 TO 2010, CORRECT?

12 A YES.

13 Q AND HE HAD SOME 18 VISITS WITH HER, CORRECT?

14 A SOMETHING LIKE THAT. I DIDN'T COUNT THEM.

15 Q NOW, IF DR. BOHN CAME INTO THIS COURTROOM,
16 HYPOTHETICALLY, AND GOT ON THE WITNESS STAND AND TOOK THE
17 OATH AND TOLD THIS JURY THAT AS OF FEBRUARY OF 2010, THE
18 CURRENT TIME PERIOD WE'RE TALKING ABOUT, MS. DE ROGATIS
19 WAS AT LOW RISK OF SUICIDE, IT WAS APPROPRIATE TO GIVE HER
20 OPIATES, THE SUICIDE WAS UNPREDICTABLE, UNPREVENTABLE,
21 WOULD YOU DISAGREE WITH THAT?

22 MR. NEWHOUSE: OBJECTION. THAT MISSTATES THE
23 TESTIMONY. IT'S ARGUMENTATIVE.

24 THE COURT: OVERRULED.

25 BY MR. BLESSEY:

26 Q WOULD YOU DISAGREE WITH THAT OPINION, SIR?

27 A WOULD YOU REPEAT THE QUESTION, PLEASE.

28 Q SURE. IF DR. BOHN CAME INTO THIS COURTROOM

1 UNDER OATH AND TOLD THIS JURY THAT MS. DE ROGATIS WAS AT
2 LOW RISK FOR SUICIDE, THAT HE HAD NO CONCERN THAT SHE WAS
3 GOING TO TAKE TOXIC LEVELS OF THREE MEDICATIONS THAT HE
4 PRESCRIBED, THAT IT WAS APPROPRIATE TO TREAT HER PAIN WITH
5 PERCOCET OR OPIATES, WOULD YOU DISAGREE WITH THAT OPINION?

6 MR. NEWHOUSE: OBJECTION. MISSTATES THE TESTIMONY.

7 THE COURT: OVERRULED.

8 BY MR. BLESSEY:

9 Q IT'S A HYPOTHETICAL. GO AHEAD, SIR. WOULD
10 YOU DISAGREE?

11 A I WOULD DISAGREE IF THE INCLUSION OF 100
12 PERCOCET TABLETS IN ONE FELL SWOOP WAS PART OF WHAT HE WAS
13 AUTHORIZING.

14 Q WHO DO YOU THINK KNOWS THE PATIENT BETTER?

15 MR. NEWHOUSE: OBJECTION. ARGUMENTATIVE, YOUR
16 HONOR.

17 MR. BLESSEY: HANG ON A SECOND. CAN I ASK THE
18 QUESTION?

19 MR. NEWHOUSE: SORRY.

20 BY MR. BLESSEY:

21 Q DR. --

22 MR. NEWHOUSE: OBJECTION. I'M SORRY.

23 BY MR. BLESSEY:

24 Q DR. RUDNICK, WHO DO YOU THINK KNOWS THE
25 PATIENT BETTER, YOU WITHOUT THE BENEFIT OF HIS DEPOSITION
26 TESTIMONY, OR DR. BOHN?

27 MR. NEWHOUSE: OBJECTION. ARGUMENTATIVE.

28 THE COURT: OVERRULED.

1 THE WITNESS: I DON'T KNOW THE PATIENT AT ALL. I
2 KNOW ONLY WHAT I'VE DERIVED FROM THE RECORDS.

3 BY MR. BLESSEY:

4 Q YOU DON'T KNOW THE PATIENT AT ALL?

5 A AS FAR AS FACE-TO-FACE KNOWLEDGE, I HAVE
6 NONE.

7 Q WELL, THERE'S SOME OTHER KNOWLEDGE YOU DON'T
8 HAVE APPARENTLY.

9 MR. NEWHOUSE: OBJECTION, YOUR HONOR. WE DO NOT
10 NEED THE PREFATORY COMMENTS.

11 THE COURT: JUST OBJECT. SUSTAINED.

12 MR. NEWHOUSE: MOVE TO STRIKE.

13 BY MR. BLESSEY:

14 Q YOU JUST TOLD THE JURY THAT IT'S YOUR
15 UNDERSTANDING -- WHAT TIME PERIOD DO YOU HAVE AN
16 UNDERSTANDING OF DURING WHICH MS. DE ROGATIS ABUSED
17 METHAMPHETAMINES? WHAT YEAR OR YEARS?

18 A TO MY KNOWLEDGE, SHE WAS DOING THIS IN THE
19 MID-2000S AND HAD BEEN DOING IT UP CLOSE TO THE TIME THAT
20 DR. BOHN FIRST SAW HER.

21 Q OKAY.

22 A MAY I FINISH, PLEASE?

23 Q COULD YOU BE MORE SPECIFIC?

24 MR. NEWHOUSE: YOUR HONOR, I'D ASK THE WITNESS BE
25 ALLOWED TO COMPLETE HIS ANSWER.

26 THE COURT: GO AHEAD.

27 THE WITNESS: THAT WAS IN 2007. WHEN SHE PRESENTED
28 TO THE CEDARS EMERGENCY ROOM IN 2009, SHE HAD HAD USE OF

1 METHAMPHETAMINE -- REPORTED USE OF METHAMPHETAMINE WITHIN
2 THE PAST WEEK.

3 OVER THE COURSE OF TIME, AND I CAN LOOK UP
4 THE SPECIFIC REFERENCES IF IT'S IMPORTANT TO YOU, BETWEEN
5 2007 AND 2009, I BELIEVE DR. BOHN AT LEAST ON ONE OCCASION
6 MADE A NOTATION OF COCAINE USE.

7 BY MR. BLESSEY:

8 Q OKAY. ARE YOU AWARE, SIR, THAT THERE'S BEEN
9 TESTIMONY IN THIS COURTROOM THAT BETWEEN 2005 AND 2008,
10 MS. DE ROGATIS AND MR. MAC EACHERN WERE ABUSING
11 METHAMPHETAMINES? ARE YOU AWARE OF THAT?

12 A I HAVEN'T BEEN IN THE COURTROOM UNTIL TODAY,
13 SIR, SO I DON'T KNOW WHAT WAS SAID HERE.

14 Q YOU ARE ASSUMING THAT MS. DE ROGATIS WAS NOT
15 ABUSING METHAMPHETAMINES BETWEEN THE TIME PERIOD OF 2005
16 AND 2008?

17 A I WAS NOT ASSUMING ANYTHING ABOUT THAT.

18 Q LET'S TALK A LITTLE BIT MORE ABOUT YOUR
19 BACKGROUND.

20 YOU, SIR, ARE NOT AND HAVE NEVER PRACTICED
21 AS AN INTERNIST, CORRECT?

22 A CORRECT.

23 Q AND YOU HAVE NO ADVANCED TRAINING IN THE
24 FIELD OF RHEUMATOLOGY, CORRECT?

25 A CORRECT.

26 Q YOU DON'T HOLD YOURSELF OUT AS A
27 RHEUMATOLOGIST, DO YOU?

28 A I DON'T REMEMBER EVER DOING THAT.

1 Q AND YOU'RE ALSO NOT A PAIN MANAGEMENT
2 SPECIALIST, CORRECT?

3 A CORRECT.

4 Q IN FACT, FOR A PATIENT LIKE MS. DE ROGATIS,
5 WHAT YOU WOULD DO IS, IF THEY CAME INTO YOUR OFFICE, YOU
6 WOULD REFER THEM TO ANOTHER SPECIALIST TO DEAL WITH THEIR
7 PAIN PROBLEMS, CORRECT?

8 A YES.

9 Q AND YOU WOULD DEFER TO THEM TO MAKE
10 DECISIONS ABOUT WHAT MEDICATIONS WERE NEEDED TO CONTROL
11 THEIR PAIN, TRUE?

12 A CERTAINLY.

13 Q ALL RIGHT. NOW, BEFORE I GET TO THE NEXT
14 SUBJECT, YOU LIKE EVERY EXPERT THAT COMES IN HERE, BECAUSE
15 YOU'RE BEING -- GIVING UP YOUR TIME TO PARTICIPATE IN THE
16 CASE, YOU HAVE CERTAIN FEES THAT YOU CHARGE, CORRECT?

17 A I DO DID.

18 Q AND WHAT IS YOUR FEE FOR MEDICAL RECORD
19 REVIEW?

20 A \$600 PER HOUR.

21 Q HOW MANY HOURS HAVE YOU SPENT IN REVIEWING
22 RECORDS IN THIS CASE? DO YOU HAVE AN INVOICE THERE,
23 DOCTOR?

24 A NO. BUT I HAVE A LIST OF MY SERVICES UP TO
25 THE TIME OF MY DEPOSITION AND A REASONABLE KNOWLEDGE OF
26 WHAT I'VE DONE SINCE. WOULD THAT SUFFICE?

27 Q IT SURE WILL.

28 A GOOD THING. SO IT LOOKS LIKE I SPENT ABOUT

1 14 HOURS REVIEWING RECORDS PRIOR TO MY DEPOSITION AND
2 MAYBE ANOTHER 4 HOURS SINCE.

3 Q SO TOTAL OF 18 HOURS.

4 THAT WOULD BE APPROXIMATELY HOW MUCH MONEY,
5 600 TIMES 18?

6 A YOU WANT ME TO DO IT?

7 Q SURE.

8 A LOOKS LIKE ABOUT 10,000-PLUS.

9 Q OKAY. AND THEN IS THIS THE TOTAL AMOUNT OF
10 TIME UP UNTIL TODAY, 18 HOURS?

11 A FOR RECORD REVIEW, YES.

12 Q NOW, WHAT OTHER SERVICES HAVE YOU CHARGED
13 FOR IN THIS CASE?

14 A I HAVE CHARGED FOR PREPARING FOR THE
15 DEPOSITION, FOR CONFERRING WITH ATTORNEYS, PREPARING FOR
16 TRIAL.

17 Q AND HOW MUCH IN THAT -- IN THOSE THREE
18 CATEGORIES, HOW MUCH MONEY OR HOW MUCH TIME HAVE YOU
19 SPENT?

20 A I WOULD GUESS ANOTHER 8 TO 10 HOURS.

21 Q AT THE SAME RATE?

22 A YES.

23 Q SO IF WE SAID 10, THAT WOULD BE ANOTHER
24 6,000, CORRECT?

25 A CORRECT.

26 Q AND THEN FOR YOUR TIME IN TRIAL, HOW MUCH DO
27 YOU CHARGE?

28 A SAME, \$600 AN HOUR, DEPENDING ON HOW LONG I

1 SPEND HERE.

2 Q OKAY. SO LET'S BREAK THAT DOWN.

3 WHEN DOES THE METER START TO RUN IN TERMS OF
4 THE TIME IN TRIAL FROM YOUR HOUSE?

5 A TODAY IT STARTED AT 8:00 A.M. WHEN I WOULD
6 NORMALLY BE SEEING PATIENTS.

7 Q AND THEN WHEN WILL IT STOP?

8 A WHEN I GET BACK TO THE OFFICE.

9 Q SO IF YOU'RE OUT OF HERE BY, AND I THINK YOU
10 WILL BE, 12:00 --

11 MR. NEWHOUSE: CAN YOU HURRY UP, MR. BLESSEY,
12 PLEASE?

13 MR. BLESSEY: WE'RE WORKING ON IT. THAT WAS SAID
14 IN JEST, YOUR HONOR, FOR THE RECORD.

15 MR. NEWHOUSE: IT WAS.

16 BY MR. BLESSEY:

17 Q IF YOU LEFT ABOUT 12:00, WHEN WOULD THE
18 METER STOP?

19 A ONE O'CLOCK OR SO.

20 Q TAKES ABOUT AN HOUR TO GET TO YOUR PRACTICE?

21 A IF I'M LUCKY.

22 Q RIGHT. YOU GOT TO GET ONE OF THOSE FAST
23 TRACKS.

24 ANYWAY, THAT WOULD BE ABOUT ANOTHER 5 HOURS
25 GIVEN THAT STARTING THE METER AT 8:00, ENDING AT 1:00,
26 DOES THAT SOUND RIGHT?

27 A IT DOES.

28 Q ANOTHER 3,000. OKAY.

1 NOW, IN TERMS OF YOUR OPINIONS -- BEFORE I
2 ASK YOU THAT, YOU'VE HAD THE UNFORTUNATE CIRCUMSTANCE IN
3 YOUR PRACTICE TO HAVE FOUR PATIENTS, FOUR OF YOUR PATIENTS
4 COMMIT SUICIDE.

5 TWO OF THOSE WERE UNDER YOUR ACTIVE CARE AT
6 THE TIME OF THE SUICIDE, CORRECT?

7 A I GUESS TWO WERE UNDER MY ACTIVE CARE, YEAH,
8 IT WAS -- I'LL OWN THAT PART, YEAH.

9 Q OKAY. DID YOU FEEL THAT FOR THOSE TWO THAT
10 WERE UNDER YOUR ACTIVE CARE THAT YOU FELT BELOW THE
11 STANDARD OF CARE?

12 A NO.

13 Q NOW, YOU HAD THIS DEFINITION THAT YOU TOLD
14 THE JURY ABOUT ABOUT THE STANDARD OF CARE, BUT THAT'S NOT
15 THE DEFINITION YOU GAVE US AT YOUR DEPOSITION, WAS IT?

16 A NO, IT WAS NOT IN THOSE TERMS, CORRECT.

17 Q DO YOU RECALL WHAT YOU TOLD US AT YOUR
18 DEPOSITION IN TERMS OF THE STANDARD OF CARE DEFINITION?

19 A I THINK I PROBABLY USED THE TERM LIKE
20 "AVERAGE" WHICH, IN FACT, I'VE BACKED AWAY FROM BECAUSE I
21 DON'T THINK IT REALLY IS APPROPRIATELY INSTRUCTIVE. BUT I
22 ALSO USED A TERM LIKE "PRUDENT" OR "CAUTIOUS."

23 MR. BLESSEY: WELL, YOUR HONOR, AT THIS POINT I'D
24 LIKE TO READ FROM DR. RUDNICK'S DEPOSITION TRANSCRIPT ON
25 PAGE 42, LINE 14 THROUGH 25.

26 THE COURT: ANY OBJECTION?

27 MR. NEWHOUSE: YEAH, 42 TO WHAT? I'M SORRY,
28 COUNSEL.

1 MR. BLESSEY: THAT'S OKAY. PAGE 42, LINES 14
2 THROUGH 25.

3 MR. NEWHOUSE: GIVE ME ONE MOMENT, PLEASE. NO
4 OBJECTION.

5 BY MR. BLESSEY:

6 Q "QUESTION: AND CAN YOU DEFINE FOR ME WHAT
7 THE STANDARD OF CARE IS AS YOU UNDERSTAND IT?

8 "ANSWER: THE STANDARD OF CARE REALLY
9 IS THE LEVEL AT WHICH SOME MYTHICAL AVERAGE
10 PHYSICIAN IN THE COMMUNITY WOULD BE
11 PRACTICING, IN OTHER WORDS, THE TECHNIQUES
12 AND THE KNOWLEDGE AND THE APPLICATION OF THAT
13 KNOWLEDGE WOULD AMOUNT TO. SO IT'S A VERY
14 ELUSIVE KIND OF CONCEPT THAT HAS NO FORMAL
15 DEFINITION OTHER THAN TO SAY SOME SORT OF
16 WINDOW OF PRACTICES THAT CHARACTERIZE THE
17 MAJORITY OF PHYSICIANS PRACTICING IN A NORMAL
18 FASHION AND THAT COMPRISES THE STANDARD OF
19 CARE IN THE COMMUNITY."

20 YOU USED THE PHRASE IN YOUR DEFINITION "THE
21 MAJORITY OF PHYSICIANS," CORRECT?

22 A YES.

23 Q DID YOU GO OUT AND SURVEY, IN ORDER TO
24 RENDER YOUR OPINION, THE MAJORITY OF PHYSICIANS AND
25 WHETHER OR NOT THEY AGREED WITH YOUR OPINION?

26 A NO, I DID NOT.

27 Q IN FACT, YOU KNOW THAT DR. ALEXANIAN DOESN'T
28 AGREE WITH YOUR OPINION, CORRECT?

1 A I CERTAINLY KNOW THAT.

2 Q OKAY. NOW, YOU TOLD US UNDER DIRECT
3 EXAMINATION ON THIS ISSUE ABOUT THE AMOUNT OF PERCOCET,
4 AND THAT'S REALLY, I THINK, YOUR PRIMARY OPINION IN THIS
5 CASE, TOO MUCH PERCOCET GIVEN TO THE PATIENT, CORRECT?

6 A YES.

7 Q UNDER THE CIRCUMSTANCES?

8 A YES.

9 Q WHAT YOU TOLD US WAS, IN THE DEPOSITION,
10 THAT IT WOULD HAVE BEEN OKAY TO GIVE MS. DE ROGATIS UP TO
11 FOUR DAYS OF PERCOCET.

12 MR. NEWHOUSE: OBJECTION. MISSTATES THE TESTIMONY.

13 THE COURT: OVERRULED.

14 BY MR. BLESSEY:

15 Q ISN'T THAT TRUE, SIR?

16 A YES, I DID SAY THAT IN MY DEPOSITION. I
17 SAID "THREE" AND I WOULDN'T ARGUE WITH "FOUR."

18 Q RIGHT. UP TO FOUR DAYS IS WHAT I JUST ASKED
19 YOU, CORRECT?

20 A RIGHT. AND I'M JUST CLARIFYING EXACTLY THE
21 WAY I PUT IT.

22 Q SO FOUR DAYS' WORTH WOULD BE -- IF SHE'S
23 TAKING IT EVERY 4 HOURS AS PRESCRIBED, THAT WOULD BE 16
24 TABLETS.

25 DID I DO THE MATH CORRECT?

26 A YES.

27 Q ARE YOU AWARE, SIR, THAT 16 TABLETS OF
28 PERCOCET IS A LETHAL DOSE? ARE YOU AWARE OF THAT?

1 A IN SOME MEASURES IT IS. IN OTHER WORDS,
2 I'VE REVIEWED THAT AND IT'S A VERY WIDE RANGE THAT PEOPLE
3 CONSIDER LETHAL.

4 Q SO WHAT YOU'RE TELLING US IS THAT IN YOUR
5 OPINION IN SOME MEASURES UP TO FOUR DAYS OF PERCOCET WOULD
6 HAVE BEEN OKAY, WITHIN THE STANDARD OF CARE, EVEN THOUGH
7 IT'S POTENTIALLY LETHAL, TRUE?

8 A AH, BUT I BEG YOUR PARDON BECAUSE PART OF MY
9 RECOMMENDATIONS WAS IMMEDIATE REASSESSMENT.

10 Q WE'LL GET TO THAT. WE'LL GET TO THAT.

11 WHAT YOU TOLD US IN TERMS OF IMMEDIACY WAS
12 THAT IN REGARDS TO THE STANDARD OF CARE IN COMMUNICATION
13 WITH A PSYCHIATRIST, YOU SAID IT WOULD HAVE BEEN WITHIN
14 THE STANDARD OF CARE FOR DR. SHAINSKY TO PLACE THE PHONE
15 CALL TO DR. BOHN THE FOLLOWING DAY AS LONG AS THE PATIENT
16 WENT HOME WITH A SIGNIFICANT OTHER, CORRECT?

17 A WITH A SIGNIFICANT OTHER APPROPRIATELY
18 INSTRUCTED IS WHAT I WAS IMPLYING THERE.

19 Q AHA. AND WHAT YOU SAID IN REGARDS TO THE
20 SIGNIFICANT OTHER, YOU WOULD LEAVE THE JUDGMENT AS TO HOW
21 MUCH SUPERVISION WAS REQUIRED TO THAT PERSON, CORRECT?
22 ISN'T THAT WHAT YOU TOLD US?

23 A I DON'T BELIEVE I SAID THAT AT ALL. I SAID
24 THAT THAT PERSON NEEDS TO BE INSTRUCTED ON HOW TO
25 SUPERVISE THE INDIVIDUAL, WHAT TO LOOK FOR, AND TO
26 MAINTAIN CONSTANT SUPERVISION.

27 MR. BLESSEY: I'D LIKE TO READ FROM DR. RUDNICK'S
28 DEPOSITION TRANSCRIPT, YOUR HONOR, ON PAGE 60, LINES 16

1 CONTINUING ON THROUGH PAGE 61, LINE 5.

2 MR. NEWHOUSE: ONE MOMENT. NO OBJECTION.

3 BY MR. BLESSEY:

4 Q "QUESTION: WHAT DOES THE STANDARD OF CARE
5 REQUIRE IN THE CONTEXT FOR SOMEONE LIKE DAVID
6 TO DO SPECIFICALLY; SIT AND WATCH HER, NOT
7 LEAVE THE ROOM? HOW WOULD YOU EXPRESS IT?

8 "ANSWER: I WOULD SAY BEING IN THE
9 SAME ENVIRONMENT WITH KIND OF PERIODIC
10 CHECKS. I DON'T HAVE A" PERIODIC TIME FRAME
11 -- "I DON'T HAVE A PARTICULAR TIME FRAME. I
12 WOULD HAVE TO LEAVE [IT] TO THE OBSERVER AS
13 TO, YOU KNOW, DETERMINING TO SOME EXTENT WHAT
14 THE STATE OF MIND OF THE INDIVIDUAL IS.
15 THAT'S, OF COURSE, SOMETHING HE HAS TO DO
16 WITHIN HIS LAY ABILITIES OR THE OBSERVER HAS
17 TO DO WITHIN HIS LAY ABILITIES.

18 "IF THERE WERE ANY GUNS IN THE HOUSE,
19 THEY WOULD HAVE TO BE REMOVED. AND OTHER
20 LETHAL WEAPONS IF THERE ARE ANY WOULD BE, YOU
21 KNOW, TAKEN OUT OF THE REACH OF THE
22 INDIVIDUAL."

23 SO WHAT YOU'RE SAYING IS YOU WOULD LEAVE IT
24 UP TO AN EXTENT THE LAY ABILITIES OF MR. MAC EACHERN IN
25 THIS CASE TO DECIDE HOW CLOSELY HE NEEDED TO MONITOR HER,
26 CORRECT?

27 A PROVIDING THE MEANS OF COMMITTING A SUICIDE
28 ACT HAD BEEN PUT UNDER CONTROL, SIR.

1 Q YOU DIDN'T SAY THAT IN YOUR DEPOSITION, DID
2 YOU, SIR?

3 A YOU JUST READ IT TO ME.

4 Q YOU DID NOT SAY IT IN YOUR DEPOSITION?

5 MR. NEWHOUSE: OBJECTION. ARGUMENTATIVE, YOUR
6 HONOR. HE JUST READ THE DEPOSITION.

7 MR. BLESSEY: I'LL WITHDRAW IT. THE JURY HEARD
8 WHAT WAS RIGHT.

9 Q NOW, DID YOU KNOW, DR. RUDNICK, WERE YOU
10 AWARE, WERE YOU TOLD BY COUNSEL THAT MR. MAC EACHERN
11 TESTIFIED -- WELL, LET ME BACK UP.

12 WHAT'S YOUR UNDERSTANDING OF THE FACTS AND
13 CIRCUMSTANCES AFTER MS. DE ROGATIS LEFT DR. SHAINSKY'S
14 OFFICE AND EVENTUALLY RETIRED AT SOME TIME THAT EVENING?
15 WHAT DO YOU KNOW ABOUT THOSE CIRCUMSTANCES?

16 A RELATIVELY LITTLE. I JUST KNOW AS FAR AS I
17 KNOW THAT SHE WAS TAKEN HOME BY DAVID.

18 Q THAT'S ALL YOU KNOW?

19 A THAT'S ALL I CAN RECALL RIGHT NOW.

20 Q WELL, YOU READ AT LEAST A PORTION OF
21 MR. MAC EACHERN'S DEPOSITION TRANSCRIPT, DID YOU NOT?

22 A YES.

23 Q AND HAVE YOU BEEN TOLD ANYTHING ABOUT HIS
24 TESTIMONY HERE IN COURT?

25 A NO.

26 Q ARE YOU AWARE IN HIS DEPOSITION HE
27 TESTIFIED, AND I'M PARAPHRASING BUT THE CONCEPT IS
28 ACCURATE, THAT HE HAD NO INKLING OR SUSPICION THAT SHE WAS

1 GOING TO DO ANYTHING TO HARM HERSELF, THAT HE HAD NO
2 CONCERNS ABOUT ALLOWING HER TO GO INTO THE BEDROOM AND
3 DEAL WITH THE MEDICATION? WERE YOU AWARE OF THAT?

4 A YES.

5 Q NOW, I WANT TO GO BACK TO THE PHONE CALL ON
6 MARCH 22ND BECAUSE I THOUGHT I HEARD SOME CRITICISM FROM
7 YOU ON DIRECT.

8 YOU BELIEVE THAT THE PHONE CALL THAT
9 DR. SHAINSKY MADE ON MARCH 22ND -- THAT'S THE DAY OF THE
10 VISIT, A COMMUNICATION WITH A PSYCHIATRIST -- YOU FELT SHE
11 MET THE STANDARD OF CARE BY THAT PHONE CALL, TRUE?

12 A MAKING THE PHONE CALL WAS WITHIN THE
13 STANDARD OF CARE. WHAT I AM UNSURE OF IS JUST WHAT
14 URGENCY WAS ATTACHED TO THAT PHONE CALL THAT WOULD HAVE
15 ALERTED THE PSYCHIATRIST ON A TIMELY BASIS.

16 Q I'D LIKE TO READ FROM DR. RUDNICK'S
17 DEPOSITION TRANSCRIPT ON PAGE 59, LINES 1 THROUGH 14.

18 MR. BLESSEY: MAY I READ, YOUR HONOR?

19 MR. NEWHOUSE: NO, YOUR HONOR. MAY I READ IT,
20 PLEASE, FIRST?

21 OBJECTION. IT'S NOT OFFERED FOR IMPEACHMENT
22 SO I OBJECT TO THE OFFER.

23 THE COURT: MAY I SEE IT? PAGE AND LINE?

24 MR. BLESSEY: PAGE 59, LINES 1 THROUGH 14.

25 THE COURT: READ IT.

26 MR. BLESSEY: THANK YOU, YOUR HONOR.

27 Q "QUESTION: SO I TAKE IT JUST WITH RESPECT
28 TO THAT PIECE, THAT DR. SHAINSKY PLACING A

1 CALL AND ATTEMPTING TO REACH DR. BOHN, AT
2 LEAST AS FAR AS REACHING OUT TO THE
3 PSYCHIATRIST, CERTAINLY MET THE STANDARD OF
4 CARE?

5 "ANSWER: YOU KNOW, I'M GOING TO GIVE
6 YOU A QUALIFIED ANSWER BECAUSE -- I MEAN, THE
7 ANSWER IS CERTAINLY, YES, THAT'S WHAT THE
8 STANDARD OF CARE I THINK WOULD REQUIRE. BUT
9 THERE'S -- WHAT BOTHERS ME A LITTLE BIT IS
10 THAT DR. SHAINSKY'S VIEW OF WHAT SHE WAS
11 CALLING DR. BOHN ABOUT AND WHAT SHE NEEDED TO
12 CALL DR. BOHN ABOUT WAS A LITTLE BIT
13 DIFFERENT. ON THE OTHER HAND, IF WE TAKE
14 DR. BOHN'S REPORT OF WHAT WAS ON THE MESSAGE,
15 THEN I WOULD SAY SHE MET THE STANDARD OF CARE
16 WITH RESPECT TO THAT MANEUVER."

17 NOW, BACK TO MARCH 22ND AGAIN --

18 MR. NEWHOUSE: YOUR HONOR, I'M SORRY. I'M GOING TO
19 ASK FOR AN INSTRUCTION THAT THE DEPOSITION IS NOT TO PROVE
20 THE TRUTH OF THE MATTER ASSERTED. HE READS IT AND THEN HE
21 DOESN'T ASK A FOLLOW-UP QUESTION ABOUT THAT. THAT'S
22 IMPROPER.

23 THE COURT: YOU CAN ASK THE FOLLOW-UP QUESTION IF
24 YOU WANT.

25 MR. NEWHOUSE: AND I WILL.

26 MR. BLESSEY: YOUR HONOR, I THINK YOU ALREADY READ
27 TO THE JURY WHAT A DEPOSITION IS.

28 THE COURT: WE'VE READ IT.

1 BY MR. BLESSEY:

2 Q YOU BELIEVE THAT CONTACT WITH A PSYCHIATRIST
3 THE FOLLOWING DAY, AS LONG AS THE PATIENT IS ACCOMPANIED
4 THROUGH THE NIGHT, WOULD HAVE BEEN -- WOULD HAVE MET THE
5 STANDARD OF CARE, TRUE?

6 A YES.

7 Q IN ASSESSING -- I'M SORRY. ARE YOU OKAY?
8 DO YOU NEED SOME MORE WATER?

9 A I'VE GOT IT. THANKS.

10 Q IN ASSESSING THE RISK FACTORS FOR SUICIDE AT
11 OR ABOUT THE TIME OF DR. SHAINSKY'S APPOINTMENT, DID YOU
12 TAKE INTO CONSIDERATION THE FACT THAT THE PATIENT DENIED
13 INTENT?

14 A YES, I DID.

15 Q WAS THAT IMPORTANT TO YOU?

16 A OF COURSE.

17 Q AND DID YOU TAKE -- WHAT WAS GOING ON IN
18 MS. DE ROGATIS' LIFE IN TERMS OF HER INVOLVEMENT WITH
19 ACTING? WE'LL START WITH THAT.

20 WHAT DO YOU UNDERSTAND IN THE PERIOD OF TIME
21 BETWEEN FEBRUARY AND MARCH 22, WHAT WAS GOING ON IN HER
22 LIFE AT THAT TIME?

23 A IN THAT PERIOD OF TIME, TO THE EXTENT THAT I
24 HAVE DOCUMENTATION OF IT, SHE WAS HAVING SIGNIFICANT PAIN
25 SYMPTOMS AND WAS SEEKING TREATMENT IN A VARIETY OF
26 LOCATIONS FOR EVALUATION AND MANAGEMENT OF THAT PAIN.

27 SHE WAS SCHEDULED FOR ANOTHER ROUND OF
28 PLASTIC SURGERY, COSMETIC SURGERY, AND WAS PREPARING FOR

1 THAT.

2 I KNOW THAT --

3 Q I'M SORRY. DOCTOR, I THINK YOU WENT A
4 LITTLE BIT BEYOND MY QUESTION. AND I'LL GIVE YOU A CHANCE
5 TO EXPLAIN FURTHER, BUT I SPECIFICALLY ASKED: WHAT DO YOU
6 KNOW ABOUT HER INVOLVEMENT WITH AUDITIONS OR ACTING
7 CLASSES IN FEBRUARY, MARCH OF 2010?

8 A I DON'T RECALL WHAT SHE WAS DOING THERE.

9 Q WOULD YOU HAVE ANY REASON TO DOUBT THE
10 TESTIMONY OF HER MOTHER THAT SHE WAS ENROLLED IN THE
11 STELLA ADLER ACTING SCHOOL, WHICH WAS A RIGOROUS TYPE OF
12 ACTING PROGRAM, SHE WAS INVOLVED IN SPEECH CLASSES? WOULD
13 YOU HAVE ANY DOUBT TO QUESTION THAT TESTIMONY?

14 MR. NEWHOUSE: YOUR HONOR, I'M GOING TO OBJECT.
15 THIS IS TESTIMONY FROM COUNSEL. HE SAID HE DOESN'T KNOW
16 ABOUT THE ACTING. IT'S IRRELEVANT WHETHER HE BELIEVES --

17 THE COURT: COUNSEL, BASICALLY HE'S ASKING THIS
18 WITNESS TO ASSUME CERTAIN FACTS, OF WHICH HE CAN DO.

19 MR. NEWHOUSE: THAT WASN'T THE QUESTION.

20 THE COURT: WELL, HE DOESN'T HAVE TO SAY THE WORD
21 "ASSUME."

22 BY MR. BLESSEY:

23 Q WOULD THAT INFORMATION HAVE BEEN IMPORTANT
24 TO YOU IN ASSESSING THE RISK OF SUICIDE ON OR ABOUT
25 MARCH 22ND, 2010?

26 A NOT PARTICULARLY, NO.

27 Q HOW ABOUT PLASTIC SURGERY, PLANNING FOR
28 PLASTIC SURGERY, WOULD THAT HAVE BEEN IMPORTANT TO YOU IN

1 ASSESSING THE RISK OF SUICIDE?

2 A NOT PARTICULARLY, NO.

3 Q DO YOU KNOW WHETHER OR NOT SHE WAS INVOLVED
4 WITH STUDYING TO CONVERT TO CATHOLICISM AT THIS POINT IN
5 TIME?

6 A I READ THAT SHE HAD BECOME INTERESTED IN
7 MORE RELIGIOUS ACTIVITY IN HER LIFE.

8 Q WAS THAT IMPORTANT TO YOU IN ASSESSING YOUR
9 RISK OF A SUICIDE IN THIS CASE?

10 A NOT PARTICULARLY, NO.

11 Q WHAT'S A LIFE COACH? DO YOU KNOW?

12 A YEAH. IT'S A SELF-STYLED PROFESSIONAL FOR
13 THE MOST PART. I'M NOT SURE HOW CREDENTIALLED PEOPLE ARE
14 THAT ENTER THAT FIELD, BUT THEY BASICALLY ARE EMPLOYED TO
15 TRY TO GUIDE A PERSON IN REVISING OR DEVELOPING A HEALTHY
16 LIFESTYLE.

17 Q AND WHAT DO YOU KNOW ABOUT MS. DE ROGATIS'
18 PLANS ON THE EVENING OF MARCH 22ND IN REGARDS TO HER LIFE
19 COACH?

20 A I DON'T KNOW ABOUT THAT.

21 Q WOULD THAT INFORMATION BE IMPORTANT TO YOU
22 IN ASSESSING HER RISK OF SUICIDE?

23 A NOT THE RISK OF SUICIDE. IT'S IMPORTANT TO
24 KNOW THAT SHE'S IN TREATMENT OR AT LEAST BEING FOLLOWED BY
25 PEOPLE WHO ARE SEMIPROFESSIONAL AT ANY RATE.

26 Q IF SHE HAD PLANS TO MEET WITH -- AND
27 EXPRESSED PLANS TO MEET WITH HER LIFE COACH IN A FEW DAYS
28 ON MARCH 22ND, WOULD THAT AFFECT YOUR ASSESSMENT OF A RISK

1 OF SUICIDE?

2 A NOT WHAT I CALL THE SUICIDE RISK.

3 Q NOT WHAT YOU CALL, IS THAT WHAT YOU SAID?

4 A WELL, I THINK THAT IT'S WHAT I'M CALLING IT,
5 BUT IT'S ALSO SUPPORTED BY LITERATURE.

6 Q WAS THERE A REASON, DOCTOR, THAT YOU'RE
7 AWARE OF THAT YOU DIDN'T READ THE ENTIRE TRANSCRIPT OF
8 DR. BOHN'S DEPOSITION BEFORE YOUR DEPOSITION?

9 A I DIDN'T HAVE IT IN MY POSSESSION AT THAT
10 TIME.

11 Q HAD YOU REQUESTED IT?

12 A YES.

13 Q WHY DID YOU WANT TO SEE IT?

14 A I TYPICALLY WANT TO SEE DEPOSITIONS OF ANY
15 INDIVIDUALS WHO ARE INVOLVED IN TREATING THE PERSON WHO IS
16 A PRINCIPAL IN A CASE I'M PARTICIPATING IN.

17 Q WHY?

18 A IT'S IMPORTANT TO KNOW WHAT TREATING
19 PROFESSIONALS HAVE TO SAY.

20 Q WELL, FOR EXAMPLE, IF THE TREATING
21 PROFESSIONAL SAID THAT HE ASSESSED THE PATIENT FROM 2007
22 THROUGH 2010 AS LOW RISK FOR SUICIDE, THAT WOULD HAVE BEEN
23 IMPORTANT FOR YOU TO KNOW, CORRECT?

24 A YES.

25 Q YOU WOULD AGREE, WOULD YOU NOT, THAT
26 SUICIDES OFTEN ARE IMPULSIVE ACTS?

27 THE COURT: I'M SORRY. I COULDN'T HEAR YOU,
28 COUNSEL.

1 BY MR. BLESSEY:

2 Q YOU WOULD AGREE, WOULD YOU NOT, THAT
3 SUICIDES ARE OFTEN IMPULSIVE ACTS?

4 A CAN BE, YES.

5 Q AND IN THIS CASE YOU REALLY HAVEN'T FORMED A
6 CONCLUSION ONE WAY OR THE OTHER WHETHER OR NOT THE SUICIDE
7 WAS IMPULSIVE, TRUE?

8 A I CANNOT FORM THAT CONCLUSION.

9 Q WHAT WOULD YOU HAVE TO LOOK AT TO MAKE A
10 DECISION ONE WAY OR THE OTHER WHETHER OR NOT THE SUICIDE
11 WAS IMPULSIVE?

12 A QUITE HONESTLY, I'D HAVE TO BE ABLE TO READ
13 A MIND THAT I WAS NOT PRESENTED WITH.

14 Q WELL, WOULD YOU DISAGREE, HYPOTHETICALLY, IF
15 DR. BOHN SAID THAT THIS SUICIDE OF THIS PATIENT WAS
16 IMPULSIVE, UNPREDICTABLE, AND UNPREVENTABLE?

17 MR. NEWHOUSE: OBJECTION. MISSTATES THE TESTIMONY,
18 YOUR HONOR.

19 THE COURT: IT'S UP TO THE JURY. OVERRULED.

20 THE WITNESS: DO I AGREE WITH THAT, NO, I DON'T
21 THINK HE CAN STATE THAT EITHER.

22 BY MR. BLESSEY:

23 Q SO BECAUSE YOU DON'T KNOW, YOU BELIEVE
24 DR. BOHN DOESN'T KNOW; IS THAT --

25 MR. NEWHOUSE: OBJECTION, YOUR HONOR. ASSUMES
26 FACTS NOT IN EVIDENCE.

27 THE WITNESS: I OBJECT TO THAT QUESTION. THAT IS
28 NOT MY REASONING.

1 MR. BLESSEY: IS HIS OBJECTION OVERRULED, YOUR
2 HONOR?

3 THE WITNESS: IT'S ON THE RECORD.

4 THE COURT: SUSTAINED.

5 BY MR. BLESSEY:

6 Q DR. RUDNICK, YOU'RE ONE FOR ONE.

7 A I THINK THERE'S BEEN MORE THAN ONE BALL
8 THROWN UP HERE, BUT GO AHEAD.

9 Q YOU WERE RETAINED IN THIS CASE WHEN, SIR?

10 A OH, GEE WHIZ, MUST HAVE BEEN SOMEWHERE
11 AROUND IN THE MIDDLE OF 2012. ACTUALLY, MAY 22ND, 2012 I
12 THINK WAS THE FIRST CONTACT I HAD.

13 Q ONE OF THE DOCUMENTS THAT YOU RECEIVED IN
14 THIS CASE WAS A COPY OF THE LAWSUIT, WHAT WE CALL THE
15 COMPLAINT, CORRECT?

16 A YEAH, I THINK SO.

17 Q DO YOU HAVE IT THERE WITH YOU?

18 A NO. OH -- I DON'T THINK I DO, ACTUALLY.

19 Q WERE YOU AWARE -- I'LL REPRESENT TO YOU THAT
20 THE LAWSUIT WAS FILED IN MARCH OF 2011.

21 DO YOU REMEMBER SEEING THAT ON THE PAPERS?

22 A NO, I DON'T REMEMBER THAT.

23 Q DO YOU KNOW WHY IT TOOK MORE THAN A YEAR TO
24 FIND YOU AS AN EXPERT FOR THIS CASE?

25 MR. NEWHOUSE: OBJECTION. RELEVANCE.

26 THE COURT: SUSTAINED.

27 BY MR. BLESSEY:

28 Q DO YOU KNOW WHETHER OR NOT YOU WERE THE

1 FIRST PSYCHIATRIST THAT WAS CONSULTED IN THIS CASE A YEAR
2 AND TWO MONTHS AFTER THE COMPLAINT WAS FILED?

3 MR. NEWHOUSE: OBJECTION. RELEVANCE AND CALLS FOR
4 SPECULATION.

5 THE COURT: SUSTAINED.

6 BY MR. BLESSEY:

7 Q YOU WOULD EXPECT, WOULD YOU NOT, THAT BEFORE
8 A PARTY FILES A LAWSUIT BASED ON PSYCHIATRIC ISSUES, THAT
9 THEY WOULD HAVE RETAINED AN EXPERT WITNESS, WOULD YOU NOT?

10 MR. NEWHOUSE: OBJECTION. CALLS FOR SPECULATION
11 AND IRRELEVANT.

12 THE COURT: OVERRULED.

13 BY MR. BLESSEY:

14 Q YOU CAN ANSWER, SIR.

15 A MY INVOLVEMENT AS AN EXPERT WOULD SUGGEST
16 THAT ANYTHING IS POSSIBLE IN TERMS OF DURATION OF TIME
17 BETWEEN FILING AND RETENTION OF APPROPRIATE EXPERTS. SO I
18 DON'T HAVE AN ANSWER TO THAT QUESTION.

19 MR. BLESSEY: MOVE TO STRIKE. WELL --

20 MR. NEWHOUSE: I THINK IT WAS RESPONSIVE.

21 MR. BLESSEY: ACTUALLY, THE LAST SENTENCE WAS. HE
22 DIDN'T HAVE AN ANSWER.

23 YOUR HONOR, NOTHING FURTHER FOR DR. RUDNICK.

24 THE COURT: REDIRECT?

25 MR. NEWHOUSE: YES.

26 THE COURT: HOW WE DOING, EVERYBODY? DO WE NEED A
27 SHORT BREAK? WE HAVE ABOUT 10 MINUTES?

28 MR. NEWHOUSE: VERY SHORT.

1 THE COURT: ALL RIGHT.

2

3

REDIRECT EXAMINATION

4 BY MR. NEWHOUSE:

5 Q GOOD MORNING AGAIN.

6

7 CONSIDERING HOW MUCH WE'RE PAYING YOU FOR
8 YOUR FEES, I'LL DO EVERYTHING I CAN TO GET YOU OUT OF HERE
9 AS QUICKLY AS POSSIBLE, SIR.

10 A I DON'T BLAME YOU.

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A I DON'T BLAME YOU.

Q ALL RIGHT. LET ME START WITH -- YOU WERE
ASKED ABOUT DR. BOHN'S OPINION AT SOME POINT IN 2010,
FEBRUARY OF 2010, THAT TARA WAS LOW TO MODERATE RISK OF
SUICIDE.

DO YOU RECALL THAT?

A YES.

MR. BLESSEY: ACTUALLY, MISSTATES MY QUESTION, BUT
IT'S ALL RIGHT, THE JURY HAS HEARD IT.

THE COURT: OVERRULED.

BY MR. NEWHOUSE:

Q NOW, FEBRUARY OF 2010, IF I TELL YOU THAT
THE EVIDENCE IN THIS CASE IS THAT TARA HAD ONLY BEEN ON
THESE POWERFUL NARCOTICS FOR ABOUT A MONTH OR TWO AT THAT
POINT AND BETWEEN FEBRUARY 10 AND MARCH 22 SHE CONTINUED
RECEIVING INCREASING DOSES OF NORCO, IN YOUR OPINION,
WOULD THAT HAVE AN IMPACT ON HER RISK OF SUICIDE?

A I THINK TO WHATEVER EXTENT SHE HAD TOOLS, IT
HAS AN IMPACT ON THE RISK.

Q AND SO WE'RE CLEAR, YOUR OPINION THAT

1 DR. SHAINSKY ACTED BELOW THE STANDARD OF CARE IN
2 PRESCRIBING 100 PERCOCET TABLETS TO A POTENTIALLY SUICIDAL
3 PATIENT ON MARCH 22ND, YOUR OPINION FOCUSES ON HER ACTIONS
4 ON THE THIRD VISIT ON MARCH 22, CORRECT, NOT
5 FEBRUARY 10TH, THE FIRST VISIT?

6 A THAT'S CORRECT.

7 Q AND IF I TOLD YOU THAT DR. BOHN SAW HER ON
8 FEBRUARY 9TH AND DIDN'T SEE HER AGAIN UNTIL HER DEATH,
9 WHAT DO YOU CONCLUDE FROM THAT?

10 A THAT HE WASN'T REALLY PRIVY TO THE ACUTE
11 ISSUES THAT MIGHT HAVE BEEN DEVELOPING LEADING UP TO THE
12 SUICIDE.

13 Q LET'S TALK ABOUT, YOU WERE ASKED SEVERAL
14 QUESTIONS ABOUT THIS PHONE CALL THAT DR. SHAINSKY MADE TO
15 DR. BOHN OR ATTEMPTED TO PLACE IN THE MIDDLE OF THE
16 CONSULTATION ON MARCH 22ND.

17 DO YOU HAVE THAT IN YOUR MIND?

18 A YES.

19 Q AND WHEN YOU WERE DEPOSED -- EVEN I DON'T
20 KNOW THE DATE -- ON AUGUST 31, 2012, YOU HAD NOT YET HAD
21 AN OPPORTUNITY TO READ DR. BOHN'S DEPOSITION; IS THAT
22 RIGHT?

23 A CORRECT. I'D ONLY READ AN EXCERPT.

24 MR. BLESSEY: YOUR HONOR, IF HE'S GOING TO GET INTO
25 SOMETHING HE'S REVIEWED SINCE HIS DEPOSITION, I WOULD MAKE
26 A KENNEMUR OBJECTION.

27 MR. NEWHOUSE: WHY DON'T WE WAIT UNTIL I ASK THE
28 QUESTION. THAT'S PRELIMINARY.

1 THE COURT: OKAY. GO AHEAD.

2 BY MR. NEWHOUSE:

3 Q IS IT ALSO TRUE YOU DID NOT HAVE A CHANCE TO
4 REVIEW THE EXHIBITS TO DR. BOHN'S -- STRIKE THAT.

5 HAD YOU HAD A CHANCE TO REVIEW DR. BOHN'S
6 CHART, HOWEVER, BY THE TIME OF YOUR DEPOSITION?

7 A YES.

8 Q AND SO -- THIS IN EVIDENCE, YOUR HONOR.
9 THIS IS THE TELEPHONE MESSAGE THAT DR. BOHN TOOK -- STRIKE
10 THAT -- DR. BOHN'S ASSISTANT TOOK ON MARCH 22ND, 2010, AND
11 I'VE HIGHLIGHTED THIS LANGUAGE WHICH I WILL REPRESENT TO
12 YOU IS DR. BOHN IDENTIFIED THAT'S IN HIS HANDWRITING,
13 OKAY?

14 THE CLERK: AND THE EXHIBIT NUMBER IS --

15 MR. NEWHOUSE: THAT IS, THANK YOU, EXHIBIT 115,
16 PAGE 35.

17 Q SO LET ME READ BACK TO YOU AGAIN YOUR ANSWER
18 TO THE QUESTION THAT COUNSEL POSED. LET ME READ IT AGAIN.
19 IT'S PAGE 59, LINES 1 THROUGH 14.

20 THE QUESTION WAS --

21 MR. BLESSEY: HANG ON A SECOND. I WOULD OBJECT.
22 IT'S IMPROPER USE OF A DEPOSITION.

23 THE COURT: WELL, LET ME LOOK. 1 THROUGH 14 AND
24 NOW WHAT DO YOU WANT TO DO?

25 MR. NEWHOUSE: PAGE 59. I WANT TO READ THAT
26 QUESTION AND ANSWER AGAIN BECAUSE I HAVE A FOLLOW-UP
27 QUESTION FOR HIM ABOUT THIS ANSWER THAT COUNSEL READ INTO
28 THE RECORD.

1 THE COURT: SO YOU WANT TO READ FROM WHAT LINE TO
2 WHAT LINE?

3 MR. NEWHOUSE: I WANT THE Q AND A. I WOULD LIKE TO
4 READ, YOUR HONOR, PLEASE, FROM LINE 1 THROUGH LINE 14,
5 WHICH IS WHAT COUNSEL READ.

6 THE COURT: THAT'S ALREADY BEEN READ.

7 MR. NEWHOUSE: IT HAS, BUT I HAVE A FOLLOW-UP
8 QUESTION.

9 THE COURT: THEN JUST READ THE FOLLOW-UP.

10 MR. NEWHOUSE: CAN I JUST READ THE LAST PART OF
11 THAT ANSWER?

12 THE COURT: JUST READ THE QUESTION AND ANSWER.

13 MR. NEWHOUSE: THANK YOU, YOUR HONOR. APPRECIATE
14 IT.

15 Q "QUESTION: SO I TAKE IT JUST WITH
16 RESPECT" --

17 THE COURT: NO, NO, NO. READ STARTING AT LINE 15.
18 "AND WHAT IS IT THAT YOU'RE REFERRING TO?"

19 MR. NEWHOUSE: NO, NO. I'M SORRY. I WANTED TO
20 REREAD FROM 1 TO 14.

21 THE COURT: IT'S CUMULATIVE. IT'S ALREADY BEEN
22 READ.

23 MR. NEWHOUSE: IT'S NOT CUMULATIVE BECAUSE I WANT
24 TO ASK HIM A QUESTION --

25 THE COURT: OBJECTION SUSTAINED.

26 BY MR. NEWHOUSE:

27 Q WHEN YOU SAID IN THE DEPO THAT, "ON THE
28 OTHER HAND, IF WE TAKE DR. BOHN'S REPORT OF WHAT WAS ON

1 THE MESSAGE," AT THAT TIME DID YOU KNOW WHAT DR. BOHN'S
2 REPORT SAID OF WHAT WAS ON THE MESSAGE?

3 A I DON'T THINK SO, NO.

4 Q AND NOW WE KNOW WHAT WAS ON DR. BOHN'S
5 MESSAGE BECAUSE IT'S HERE IN THE EXHIBIT. HE SAID,
6 "FIBROMYALGIA, ANXIETY AND DEPRESSION," AND YOU SEE THE
7 "S/I"?

8 A YES.

9 Q DOES THAT -- NOW, IN YOUR VIEW, IF THAT WAS
10 THE INFORMATION COMMUNICATED FROM DR. SHAINSKY TO DR. BOHN
11 BEFORE THE PRESCRIPTION OF PERCOCET WAS PROVIDED, SPECIFIC
12 REFERENCE TO THE PATIENT HAVING REPORTED SUICIDAL
13 IDEATION, AND IF YOU ALSO ASSUME THAT THAT MESSAGE WAS NOT
14 RECEIVED BY DR. BOHN UNTIL THE NEXT DAY BECAUSE THERE WAS
15 NO URGENCY ATTACHED TO THE MESSAGE, DOES THAT COMPORT WITH
16 THE STANDARD OF CARE?

17 MR. BLESSEY: ACTUALLY, IT'S CUMULATIVE AND
18 COMPOUND.

19 THE COURT: OVERRULED. I'M SORRY. LET'S -- OF
20 DR. SHAINSKY?

21 MR. NEWHOUSE: DR. SHAINSKY. THANK YOU.

22 THE WITNESS: AGAIN I NEED CLARIFICATION.

23 TO MY MIND THE STANDARD OF CARE REQUIRES
24 THAT THE APPROPRIATE AMOUNT OF URGENCY BE ATTACHED TO A
25 MESSAGE OF THAT SORT, AND THAT DEPENDS ON HOW THE DOCTOR
26 MAKES HIMSELF AVAILABLE ON AN URGENT BASIS.

27 SO TO MY MIND THAT MESSAGE WOULD REQUIRE
28 SOME KIND OF AN URGENT TAG ATTACHED TO IT.

1 BY MR. NEWHOUSE:

2 Q AND THERE WAS NO URGENT TAG ATTACHED TO THE
3 MESSAGE, CORRECT?

4 A AS FAR AS I KNOW, NO.

5 Q AND BECAUSE DR. SHAINSKY, ACCORDING TO THIS
6 EVIDENCE, ALTHOUGH RELATING THAT THERE HAD BEEN TALK OF
7 SUICIDE IN HER OFFICE BEFORE SHE HANDED OVER THE 100
8 PERCOCET, SHE DIDN'T IMMEDIATELY SEEK TO SPEAK WITH
9 DR. BOHN BY MARKING THE MESSAGE URGENT, CORRECT?

10 MR. BLESSEY: THIS IS CUMULATIVE, YOUR HONOR.

11 THE COURT: SUSTAINED.

12 BY MR. NEWHOUSE:

13 Q SO GIVEN THIS ADDITIONAL INFORMATION, WOULD
14 YOU MODIFY YOUR ANSWER WITH RESPECT TO WHETHER OR NOT THE
15 STANDARD OF CARE WAS MET WITH RESPECT TO THIS TELEPHONE
16 CALL?

17 MR. BLESSEY: THAT'S NOT RELEVANT AT THIS POINT IN
18 TIME. IT'S BEYOND THE SCOPE.

19 THE COURT: I'M SORRY. WOULD HE CHANGE HIS
20 OPINION?

21 MR. NEWHOUSE: YES.

22 Q WOULD YOU CHANGE THE OPINION, THE TENTATIVE
23 OPINION YOU REFERRED, YOU QUALIFIED IT AT YOUR DEPOSITION,
24 THAT YOU WOULD SAY SHE MET THE STANDARD OF CARE WITH
25 REGARD TO THAT MANEUVER, THE MANEUVER BEING THE PHONE CALL
26 THAT WAS PLACED?

27 MR. BLESSEY: OBJECTION.

28 THE COURT: OVERRULED. YOU CAN ANSWER.

1 THE WITNESS: I WOULD REVISE IT WITH RESPECT TO THE
2 URGENCY ATTACHED TO THE MESSAGE.

3 BY MR. NEWHOUSE:

4 Q NOW, THE OTHER PORTION OF YOUR DEPOSITION
5 THAT COUNSEL READ TO YOU, HE ASKED YOU WHETHER OR NOT
6 SPECIFIC INSTRUCTIONS SHOULD HAVE BEEN PROVIDED TO THE
7 FIANCÉE, DAVID MAC EACHERN, AND YOU ANSWERED:

8 "IF THERE WERE ANY GUNS IN THE HOUSE,
9 THEY WOULD BE REMOVED. AND ANY OTHER LETHAL
10 WEAPONS IF THERE ARE ANY WOULD BE" --

11 MR. BLESSEY: YOUR HONOR, HE'S READING FROM THE
12 DEPOSITION.

13 MR. NEWHOUSE: I HAVE A QUESTION BASED UPON HIS
14 ANSWER THAT WAS READ TO HIM, YOUR HONOR.

15 THE COURT: GO AHEAD.

16 BY MR. NEWHOUSE:

17 Q -- "AND OTHER LETHAL WEAPONS IF THERE ARE
18 ANY WOULD BE, YOU KNOW, TAKEN OUT OF THE
19 REACH OF THE INDIVIDUAL."

20 DO YOU BEAR IN MIND THAT ANSWER?

21 A I DO.

22 Q AND BY LETHAL WEAPONS PLACED IN THE HANDS OF
23 THE INDIVIDUAL, WOULD YOU CONSIDER A PRESCRIPTION FOR 100
24 PERCOCET TO BE A LETHAL WEAPON?

25 A YES.

26 Q AND AS FAR AS YOU KNOW, DID DR. SHAINSKY
27 TAKE ANY EFFORTS WHATSOEVER TO ENSURE THAT MR. MAC EACHERN
28 POSSESSED OR KEPT OR RESTRICTED HER ACCESS, TARA'S ACCESS,

1 TO THOSE PILLS?

2 A NOT TO MY KNOWLEDGE.

3 Q SOME DISCUSSION ABOUT -- I THINK WE CAN ALL
4 AGREE, SUICIDE TENDS TO BE AN IMPULSIVE ACT, DOES IT NOT,
5 DOCTOR?

6 A IT CAN CERTAINLY BE, YES.

7 Q IN YOUR EXPERIENCE AND IN YOUR OPINION, IF
8 AN INDIVIDUAL, HOWEVER, HAS TALKED ABOUT SUICIDE
9 REPEATEDLY OVER A NUMBER OF YEARS, DOES THAT MAKE IT MORE
10 OR LESS LIKELY THAT AT SOME POINT SHE WILL ACT OUT IN THIS
11 IMPULSIVE MANNER?

12 MR. BLESSEY: YOUR HONOR, THIS IS CUMULATIVE. WE
13 WENT OVER THIS AS ONE OF THE RISK FACTORS ON DIRECT.

14 THE COURT: OVERRULED.

15 THE WITNESS: IT WOULD MAKE IT MORE LIKELY WITH
16 THAT HISTORY.

17 MR. NEWHOUSE: NO FURTHER QUESTIONS, YOUR HONOR.
18 THANK YOU.

19 THE COURT: ALL RIGHT. RECROSS.

20 MR. BLESSEY: THANK YOU, YOUR HONOR. BRIEFLY.

21

22

RECROSS-EXAMINATION

23 BY MR. BLESSEY:

24 Q THE NOTE THAT WE SHOWED TO YOU, WHAT
25 ASSUMPTIONS ARE YOU MAKING TO FORMULATE YOUR OPINIONS
26 WHICH SEEM TO VACILLATE ABOUT THE "S/I"? WHAT WAS
27 COMMUNICATED TO DR. BOHN ON THIS MESSAGE, DO YOU KNOW?

28 MR. NEWHOUSE: I OBJECT, YOUR HONOR, AGAIN TO HIS

1 "OPINION SEEMED TO VACILLATE." IT'S IMPROPER.

2 THE COURT: OVERRULED. THIS IS CROSS.

3 THE WITNESS: ARE YOU ASKING ME WHAT DOES "S/I"
4 MEAN TO ME?

5 BY MR. BLESSEY:

6 Q NO, SIR. I'M ASKING YOU WHAT ASSUMPTION --
7 LISTEN CAREFULLY.

8 WHAT ASSUMPTION DID YOU MAKE BASED ON THE
9 "S/I" NOTATION BY DR. BOHN AFTER LISTENING TO THE VOICE
10 MAIL?

11 A THAT THE MESSAGE INDICATED THAT THE PATIENT
12 WAS EXPRESSING SUICIDAL IDEATION.

13 Q THAT'S THE ASSUMPTION YOU MADE?

14 A YES.

15 Q DID YOU CONSIDER THAT THAT "S/I" MEANT THE
16 PATIENT DENIED THAT SHE WAS GOING TO THE PHARMACY? DID
17 YOU CONSIDER THAT AS AN OPTION.

18 A ABSOLUTELY NOT.

19 Q NOW, IN TERMS OF YOUR BREACH OF STANDARD OF
20 CARE OPINIONS, YOU FELT ON THE FIRST VISIT WITH
21 DR. SHAINSKY THERE WERE NO BREACHES OF THE STANDARD OF
22 CARE, TRUE?

23 A I DID NOT SEE ANY BREACHES OF THE STANDARD
24 OF CARE.

25 Q SO LET'S FOR THE JURY BECAUSE I'M GOING TO
26 SAVE TIME.

27 THE FIRST VISIT WAS ON FEBRUARY WHEN?

28 LET ME MOVE IT ALONG. HOW ABOUT

1 FEBRUARY 10, 2010?

2 A I APPRECIATE IT.

3 Q SURE. DOES THAT SOUND RIGHT?

4 A YES.

5 Q NO CRITICISM ABOUT THAT VISIT, CORRECT?

6 A RIGHT.

7 Q AND THE SECOND VISIT WAS MARCH 1ST, 2010,

8 CORRECT?

9 A YES.

10 Q AND NO CRITICISMS OF THAT VISIT, RIGHT?

11 A TO THE EXTENT THAT I HAD RECORDS TO REVIEW,

12 THAT'S CORRECT.

13 Q I'M NOT CLEAR ON YOUR ANSWER.

14 A WHAT WAS NOT CLEAR IN THE NOTES THAT WERE

15 PREPARED AS TO JUST WHAT MEDICATIONS WERE PRESCRIBED AT

16 EACH OF THOSE TWO SESSIONS.

17 Q YOU DIDN'T KNOW THAT?

18 A I DIDN'T SEE IT IN THE NOTES, THAT'S

19 CORRECT.

20 Q WELL, YET WITHOUT THAT INFORMATION YOU TOLD

21 US UNDER OATH AT YOUR DEPOSITION THAT THE FIRST BREACH OF

22 THE STANDARD OF CARE THAT OCCURRED IN THIS CASE IN REGARDS

23 TO DR. SHAINSKY WAS ON MARCH 22ND, 2010, TRUE?

24 A THAT'S CORRECT.

25 Q YOU FELT PERFECTLY COMFORTABLE RENDERING

26 THAT OPINION, RIGHT?

27 A YES.

28 Q AND YOU TOLD US EARLIER THAT YOU HAD

1 REVIEWED EVERYTHING YOU NEEDED TO REVIEW TO FORMULATE YOUR
2 OPINIONS TO THIS JURY?

3 MR. NEWHOUSE: OBJECTION. ASKED AND ANSWERED NOW
4 REPEATEDLY.

5 THE COURT: SUSTAINED.

6 BY MR. BLESSEY:

7 Q NOW, LAST QUESTION, I THINK.

8 YOU MENTIONED TOOLS, THAT IS, TOOLS FOR
9 TAKING ONE'S LIFE.

10 WOULD THE AVAILABILITY OF TOXIC AMOUNTS OF
11 LUNESTA BE A TOOL TO TAKE ONE'S LIFE?

12 A THE AVAILABILITY OF TOXIC AMOUNTS OF ANY
13 MEDICATION, OR LETHAL AMOUNTS, LET'S PUT IT THAT WAY, HAS
14 TO BE CONSIDERED.

15 Q INCLUDING A DRUG LIKE TRAMADOL?

16 A CORRECT.

17 MR. BLESSEY: THANK YOU. NOTHING FURTHER.

18 MR. NEWHOUSE: NOTHING FURTHER. THANK YOU, YOUR
19 HONOR.

20 THE COURT: MAY THE WITNESS BE EXCUSED?

21 MR. NEWHOUSE: YES.

22 THE COURT: ALL RIGHT. LET ME SEE COUNSEL. START
23 AT 1:30?

24 MR. NEWHOUSE: YES, YOUR HONOR.

25 MR. BLESSEY: THAT WILL BE FINE, YOUR HONOR.

26 THE COURT: OKAY. 1:30, LADIES AND GENTLEMEN.

27 AGAIN, PLEASE REMEMBER THE ADMONITION OF THE COURT.

28 WELL, I'LL TELL YOU WHAT, BEFORE YOU LEAVE,

1 LET'S GET THAT STIPULATION BECAUSE YOU'RE READY TO REST,
2 ARE YOU NOT?

3 MR. NEWHOUSE: WE ARE, YOUR HONOR.

4 THE COURT: ALL RIGHT. DO I HAVE THAT NUMBER? SIT
5 DOWN. YOU MIGHT WANT TO WRITE THIS DOWN. GO AHEAD,
6 DOCTOR. I'M TRYING TO WIND THINGS UP HERE.

7 MS. MC BROOM: I HAVE THE NUMBER IF YOU WANT ME TO
8 HAND IT TO THE --

9 THE COURT: I HAVE IT IN THE VERDICT FORM.

10 A CASE LIKE THIS, IN ALL CIVIL CASES, THERE
11 ARE THREE AREAS THAT THE JURY IS ASKED TO CONSIDER: ONE
12 IS LIABILITY; SECOND ONE IS CAUSATION, IN OTHER WORDS, THE
13 BRIDGE FROM LIABILITY OVER TO DAMAGES; AND DAMAGES.

14 THE PARTIES HAVE NOW STIPULATED THAT TARA
15 DE ROGATIS' FUNERAL AND BURIAL EXPENSES OF WHICH THEY'RE
16 SEEKING ARE \$27,229.27. SO STIPULATED?

17 MR. NEWHOUSE: YES, YOUR HONOR. THANK YOU.

18 MR. BLESSEY: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT. AND THAT'S REALLY IT IN
20 REGARDS TO THE FINANCIAL. THE REST OF IT IS WHAT WE CALL
21 GENERAL DAMAGES OR THE LOSS OF CARE, COMFORT, AND SOCIETY.
22 AND WE'LL DEAL WITH THAT WHEN I INSTRUCT YOU ON THE LAW,
23 OKAY? SO WITH THAT NOW AND OTHER THAN SOME EXHIBITS, DOES
24 PLAINTIFF REST?

25 MR. NEWHOUSE: SUBJECT TO THERE MAY BE SOME
26 ADDITIONAL EXHIBITS WE WOULD LIKE IN EVIDENCE.

27 THE COURT: WE CAN PUT THAT ON THE RECORD.

28 MR. NEWHOUSE: SUBJECT TO THAT, THE PLAINTIFF

1 RESTS .

2 THE COURT: PLAINTIFF NOW RESTS. SO WE'LL START
3 WITH THE DEFENSE'S CASE AT 1:30. SEE EVERYBODY AT 1:30.

4

5 (THE NOON RECESS WAS TAKEN UNTIL
6 1:36 P.M. OF THE SAME DAY.)

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1 CASE NUMBER: BC457891
2 CASE NAME: DE ROGATIS VS. SHAINSKY
3 PASADENA, CALIFORNIA WEDNESDAY, NOVEMBER 6, 2013
4 DEPARTMENT P HON. JAN A. PLUIM, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED)
6 REPORTER: KAREN E. KAY, CSR NO. 3862
7 TIME: P.M. SESSION

8
9 (THE FOLLOWING PROCEEDINGS WERE HELD
10 IN OPEN COURT, IN THE PRESENCE OF
11 THE JURY:)

12
13 THE COURT: COME OVER HERE AND STAND BEHIND MY
14 LOVELY COURT REPORTER. RAISE YOUR RIGHT HAND AND MY CLERK
15 WILL SWEAR YOU IN.

16 THE CLERK: DO YOU SOLEMNLY STATE THAT THE
17 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
18 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
19 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

20 THE WITNESS: YES, I DO.

21 THE CLERK: PLEASE HAVE A SEAT IN THE WITNESS
22 STAND.

23 THE WITNESS: THANK YOU.

24 THE CLERK: PLEASE STATE YOUR NAME AND SPELL YOUR
25 NAME FOR THE RECORD.

26 THE WITNESS: MY NAME IS ALAN WEINBERGER, A-L-A-N,
27 W-E-I-N-B-E-R-G-E-R.

28 THE COURT: IT IS DOCTOR?

1 THE WITNESS: YES, SIR.

2 THE COURT: WELCOME, DOCTOR.

3 THE WITNESS: THANK YOU.

4 THE COURT: ALL RIGHT. COUNSEL?

5 MR. BLESSEY: THANK YOU.

6

7 ALAN WEINBERGER, M.D.,

8 CALLED AS A WITNESS BY THE DEFENSE, WAS DULY SWORN AND

9 TESTIFIED AS FOLLOWS:

10

11

DIRECT EXAMINATION

12 BY MR. BLESSEY:

13 Q GOOD AFTERNOON, DR. WEINBERGER.

14 A GOOD AFTERNOON, SIR.

15 Q YOU ARE A MEDICAL DOCTOR LICENSED TO

16 PRACTICE IN THE STATE OF CALIFORNIA, TRUE?

17 A I AM.

18 Q AND CAN YOU TELL THE JURY WHAT YOUR AREA OF
19 SPECIALTY IS?

20 A I'M AN INTERNIST, WHICH IS TAKING CARE OF
21 ADULT MEDICAL PROBLEMS, HYPERTENSION, DIABETES, WHATEVER,
22 AND THEN I AM A SUBSPECIALIST, A RHEUMATOLOGIST.

23 RHEUMATOLOGY IS THE BRANCH OF MEDICINE THAT
24 DEALS WITH AUTOIMMUNE DISEASES, MUSCULOSKELETAL DISEASES,
25 ARTHRITIS, THINGS THAT CAUSE ACHES AND PAINS.

26 Q CAN YOU GIVE THE JURY A BRIEF OVERVIEW OF
27 YOUR EDUCATION IN THE FIELD OF MEDICINE?

28 A I WENT TO MEDICAL SCHOOL AT U.C.L.A. I DID

1 MY INTERNSHIP AND RESIDENCY AT CEDARS-SINAI IN INTERNAL
2 MEDICINE. I DID MY FELLOWSHIP IN RHEUMATOLOGY AT U.C.L.A.
3 AND I'VE BEEN PRACTICING AT CEDARS-SINAI SINCE 1981.

4 THE COURT: SINCE WHEN?

5 THE WITNESS: '81.

6 BY MR. BLESSEY:

7 Q ARE YOU BOARD CERTIFIED, DR. WEINBERGER?

8 A I'M BOARD CERTIFIED.

9 Q IN WHAT AREAS?

10 A INTERNAL MEDICINE AND RHEUMATOLOGY.

11 Q CAN YOU TELL US A LITTLE BIT ABOUT THE
12 NATURE OF YOUR PRACTICE, BOTH HOSPITAL AND OUTPATIENT?

13 A MY OFFICE IS OPEN FIVE DAYS A WEEK. I SEE
14 PATIENTS FROM 9:30 UNTIL USUALLY 5:30 OR 6:00, LATER IF
15 NEED BE. THOSE PATIENTS ARE ABOUT -- I USUALLY USE THE
16 TERM 60 PERCENT INTERNAL MEDICINE PATIENTS, 60 PERCENT
17 RHEUMATOLOGY PATIENTS BECAUSE THERE'S SOME OVERLAP. MOST
18 INTERNAL MEDICINE PATIENTS SOONER OR LATER GET BURSITIS OR
19 BACK PAIN OR SOMETHING THAT'S RHEUMATOLOGICAL. A LOT OF
20 MY RHEUMATOLOGY PATIENTS ASK IF I'LL TAKE CARE OF THEIR
21 BLOOD PRESSURE AND THEIR MEDICAL PROBLEMS, SO I SEE BOTH.

22 SO I SEE PATIENTS FIVE DAYS A WEEK, AND I
23 MAKE ROUNDS SATURDAYS AND SUNDAYS. I GO TO NURSING HOMES
24 OCCASIONALLY. I HAVE MY OWN -- I ADMIT MY OWN PATIENTS TO
25 THE HOSPITAL, WHICH APPARENTLY IS NOT HAPPENING SO
26 COMMONLY ANYMORE, AND THAT'S ABOUT IT.

27 Q I'M GOING TO ASK YOU TO SLOW DOWN JUST A
28 LITTLE BIT FOR THE BENEFIT OF THE COURT REPORTER.

1 A THANK YOU.

2 Q OKAY. DO YOU SEE IN YOUR PRACTICE -- OR HOW
3 OFTEN DO YOU SEE IN YOUR PRACTICE PATIENTS WITH A
4 CONDITION CALLED FIBROMYALGIA?

5 A I DO SEE THAT. IT'S VERY, VERY COMMON. I
6 CAN'T SAY I SEE IT EVERY DAY, BUT THERE'S DAYS WHEN I SEE
7 THREE OR FOUR CASES, AND I SAY MOST DAYS I SEE AT LEAST
8 ONE CASE.

9 Q JUST TO ROUND OUT YOUR BACKGROUND AND YOUR
10 PROFESSIONAL RESPONSIBILITIES, DO YOU HAVE ANY TEACHING
11 APPOINTMENTS?

12 A I DO.

13 Q WHAT ARE THEY?

14 A WELL, TECHNICALLY I'M AN ASSISTANT CLINICAL
15 PROFESSOR OF MEDICINE AT U.C.L.A. CEDARS-SINAI IS A
16 SATELLITE HOSPITAL OF U.C.L.A. I DO MY TEACHING AT
17 CEDARS-SINAI. LAST MONTH I DID TWO WEEKS. STARTING THE
18 14TH OF THIS MONTH, I'LL DO TWO WEEKS ROUNDING WITH THE
19 INTERNS AND RESIDENTS. THEY PRESENT PATIENTS TO ME, WE
20 TALK ABOUT THEIR DISEASES, AND THEN I GIVE THEM LECTURES.
21 THIS SATURDAY I'M GIVING A LECTURE, A 3-HOUR LECTURE, TO
22 THE RESIDENTS ABOUT DIAGNOSIS IN RHEUMATOLOGY.

23 Q WOULD THAT INCLUDE FIBROMYALGIA?

24 A YES.

25 Q DO YOU HOLD ANY BOARD POSITIONS AT U.C.L.A.?

26 A I DO. U.C.L.A. HAD A THING CALLED THE
27 CENTER FOR AGING, WHICH THEY CHANGED TO NAME TO THE
28 LONGEVITY CENTER. DR. GARY SMALL, SOME OF YOU MAY KNOW,

1 IS A WORLD-FAMOUS EXPERT IN ALZHEIMER'S DISEASE. IT
2 LARGELY HAS TO DO WITH RESEARCH IN ALZHEIMER'S DISEASE,
3 AND I'M ON THE BOARD OF DIRECTORS.

4 Q AND DO YOU PRESENTLY HOLD OR ARE YOU
5 PARTICIPATING IN ANY HOSPITAL COMMITTEES AT CEDARS-SINAI
6 MEDICAL CENTER?

7 A CURRENTLY I'M ON THE ETHICS COMMITTEE AT
8 CEDARS-SINAI.

9 Q IN THE PAST YOU'VE SERVED ON THE QUALITY
10 CARE COMMITTEE; IS THAT RIGHT?

11 A I'VE SERVED ON VIRTUALLY EVERY COMMITTEE.
12 I'VE SERVED ON QUALITY OF CARE. I'VE BEEN ON THE BOARD OF
13 DIRECTORS. I'VE DONE THE OUTPATIENT CLINICAL SERVICES
14 COMMITTEE, THE MEDICAL RECORDS COMMITTEE, VIRTUALLY EVERY
15 COMMITTEE.

16 Q ALL RIGHT. NOW, YOU WERE RETAINED BY MY
17 OFFICE AS AN EXPERT WITNESS IN THIS CASE, TRUE?

18 A TRUE.

19 Q AND HOW LONG HAVE YOU BEEN DOING EXPERT
20 WITNESS WORK, DR. WEINBERGER?

21 A PROBABLY SINCE 1982 OR 1983.

22 Q AND YOU LOOK AT CASES FOR BOTH THE
23 PLAINTIFFS AND THE DEFENSE?

24 A I DO.

25 Q WHAT PERCENTAGE OF YOUR TIME, YOUR
26 PROFESSIONAL TIME, IF IT'S POSSIBLE TO BREAK IT DOWN, IS
27 DEDICATED OR INVOLVED WITH MEDICOLEGAL MATTERS SUCH AS A
28 CASE LIKE THIS?

1 A IT VARIES. NORMALLY I SEE PATIENTS MONDAY
2 THROUGH FRIDAY. I GET HOME USUALLY 10:00, 11:00 AT NIGHT.
3 I ONLY DO THIS ON THE WEEKENDS, MAYBE 8 HOURS ON THE
4 WEEKENDS, COMPARED TO 60 OR 70 HOURS OF WORK DURING THE
5 WEEK. THIS WEEK FOR SOME REASON IT'S BEEN BUSIER.
6 SOMETIMES I GO WEEKS WITHOUT DOING ANYTHING MEDICOLEGAL.

7 Q NOW, IN THIS CASE I ASKED YOU TO LOOK AT
8 DEPOSITIONS, MEDICAL RECORDS, AND OTHER MATERIALS IN ORDER
9 TO FORMULATE AN OPINION ABOUT WHETHER OR NOT DR. SHAINSKY
10 COMPLIED WITH THE STANDARD OF CARE UNDER THE
11 CIRCUMSTANCES, TRUE?

12 A YES.

13 Q TELL THE JURY HOW GENERALLY HOW YOU APPROACH
14 THESE TYPES OF CASES.

15 DO YOU LOOK AT IT IN A RETROSPECTOSCOPE
16 KNOWING THE OUTCOME OR DO YOU DO MORE OF A PROSPECTIVE
17 ANALYSIS?

18 A IN A CASE LIKE THIS, I TRY TO PUT MYSELF
19 INTO THE PERSON'S SHOES IN A PROSPECTIVE FASHION, WHAT
20 WOULD I HAVE ASKED, WHAT WOULD I HAVE DONE, WHAT WOULD I
21 HAVE TREATED THE PERSON WITH AT EACH STEP ALONG THE WAY,
22 AND THEN SEE WHETHER THEY HAVE DEVIATED FROM WHAT I
23 CONSIDER THE STANDARD OF PRACTICE.

24 Q DOES THE OUTCOME INFLUENCE YOU IN TERMS OF
25 WHETHER OR NOT THE DOCTOR COMPLIED WITH THE STANDARD OF
26 CARE?

27 A NO.

28 Q WHY NOT?

1 A WELL, I HATE TO SAY IT, BUT ALL OF US ARE
2 GOING TO DIE, AND ALL OF US HAVE DOCTORS, AND SO THAT'S A
3 BAD OUTCOME. IT DOESN'T MEAN IT'S THE DOCTOR'S FAULT.

4 THERE ARE UNTREATABLE ILLNESSES THAT PEOPLE
5 DIE FROM. THERE ARE COMPLICATIONS FROM SURGERY PEOPLE DIE
6 FROM THAT YOU CAN'T HELP. ALLERGIC REACTIONS. THERE'S
7 PLENTY OF BAD OUTCOMES THAT HAVE NOTHING TO DO WITH
8 MALPRACTICE.

9 Q ALL RIGHT. I THINK IN THE INTEREST OF TIME,
10 RATHER THAN HAVE YOU LIST ALL THE THINGS THAT YOU REVIEWED
11 IN THIS CASE, YOU LOOKED AT A NUMBER OF MEDICAL RECORDS,
12 CORRECT?

13 A YES.

14 Q YOU ALSO LOOKED AT DEPOSITION TESTIMONY FROM
15 THE LAY OR NONPHYSICIAN WITNESSES IN THE CASE, INCLUDING
16 THE PLAINTIFFS AND MR. MAC EACHERN, CORRECT?

17 A CORRECT.

18 Q AND YOU LOOKED AT THE DEPOSITIONS OF THE
19 EXPERT WITNESSES IN THIS CASE, CORRECT, ON BOTH SIDES?

20 A I DID.

21 Q IS THAT RIGHT?

22 A I DID.

23 Q ALL RIGHT. NOW, I WANT TO GET INTO YOUR
24 OPINIONS. THE JURY'S BEEN HERE FOR A NUMBER OF DAYS AND
25 I'M GOING TO TRY TO BE AS EFFICIENT AS I CAN TO MOVE
26 THROUGH YOUR TESTIMONY, OKAY?

27 A YES.

28 Q LET'S START, THOUGH, WITH HAVING YOU DEFINE

1 IN YOUR MIND WHAT THE STANDARD OF CARE IS OR HOW IT'S
2 DEFINED.

3 A WELL, THE STANDARD OF CARE IS WHAT A
4 REASONABLE PRACTITIONER WOULD HAVE DONE IN A SIMILAR
5 SITUATION, BASICALLY.

6 Q NOW, IN TERMS OF THE STANDARD OF CARE, IS IT
7 SPECIFIC TO A SPECIALIST; IN OTHER WORDS, LOOKING AT THE
8 STANDARD OF CARE FOR A PATIENT WITH FIBROMYALGIA, DO YOU
9 LOOK AT IT DIFFERENTLY IF THE DOCTOR IS A PAIN MANAGEMENT
10 SPECIALIST VERSUS A RHEUMATOLOGIST?

11 A I THINK I CAN ANSWER YOUR QUESTION TWO WAYS:
12 THERE ARE SPECIFIC STANDARDS OF CARE FOR SPECIALTIES, BUT
13 THEN WHEN IT COMES TO A SPECIFIC DISEASE, THE STANDARD OF
14 CARE RELATES TO THE DISEASE, NOT THE SPECIALTY TAKING CARE
15 OF IT.

16 Q ALL RIGHT. NOW, WHAT I WANT TO DO,
17 DR. WEINBERGER, AGAIN IN THE INTEREST OF TIME, IS TO GO
18 THROUGH DR. SHAINSKY'S CARE AND TREATMENT, THE THREE
19 VISITS, AND SOME OTHER INTERACTIONS WITH THE PATIENT AND
20 ASK YOUR OPINIONS ABOUT THAT, OKAY?

21 A YES.

22 Q ALL RIGHT. WHY DON'T WE START WITH THE
23 FIRST OFFICE VISIT, FEBRUARY THE 10TH, 2010.

24 DO YOU HAVE THAT APPOINTMENT IN MIND?

25 A I DO.

26 Q DID YOU FORMULATE AN IMPRESSION WHETHER OR
27 NOT DR. SHAINSKY'S CARE AND TREATMENT WAS REASONABLE UNDER
28 THE CIRCUMSTANCES OF THIS CASE FOR THE OFFICE VISIT OF

1 FEBRUARY 10, 2010?

2 A I DID.

3 Q AND CAN YOU TELL THE JURY WHAT YOUR OPINION
4 WAS?

5 A HER CARE WAS REASONABLE AND WITHIN THE
6 STANDARD OF CARE.

7 Q WHY DO YOU SAY THAT, DR. WEINBERGER?

8 A THIS WAS A FIRST VISIT. THE STANDARD OF
9 CARE REQUIRES SOMEONE LIKE THIS TO FIND OUT, "WHY ARE YOU
10 HERE? WHAT IS YOUR COMPLAINT? WHAT HAVE YOU TRIED
11 BEFORE? WHAT'S WORKED? WHAT HASN'T WORKED?" SO SHE DID
12 ALL THAT, SPECIFIC COMPLAINTS.

13 "ARE THERE ANY ISSUES OF CONCERN?" FOR
14 EXAMPLE, SHE INCLUDED THE ISSUE OF METHAMPHETAMINE ABUSE.
15 SHE WAS AWARE OF THAT IN THE PAST. ALLERGIES, THINGS LIKE
16 THAT. "WHAT MEDICATIONS ARE YOU TAKING?" SHE ELICITED
17 HER MAJOR COMPLAINTS, WHICH YOU NEED TO DO. SHE DID A
18 PHYSICAL EXAM -- EXCUSE ME -- DID A PHYSICAL EXAM.

19 THEN, ALTHOUGH SHE FORMULATED A PRELIMINARY
20 OPINION, ORDERED SOME BLOOD TESTS JUST TO BE SURE IT
21 WASN'T SOMETHING ELSE THAT SHE MAY NOT HAVE THOUGHT OF,
22 AND BASICALLY DID AN INITIAL TREATMENT, WE CALL TRIGGER
23 POINT INJECTIONS. THE PURPOSE OF THAT IN RHEUMATOLOGY IS
24 TWOFOLD: ONE IS HOPEFULLY TO GIVE THE PATIENT SOME
25 RELIEF, BUT ALSO TO SEE IF THEY GET RELIEF.

26 BECAUSE, FOR EXAMPLE, IF THIS WASN'T
27 FIBROMYALGIA, THE TRIGGER POINTS WOULDN'T HAVE GIVEN
28 RELIEF, AND WHEN SHE CAME BACK, SHE WOULD SAY, "THOSE

1 SHOTS DIDN'T HELP ME." I'D HAVE TO RETHINK THE DIAGNOSIS.
2 SO SHE DID APPROPRIATE LABS AND SHE SCHEDULED APPROPRIATE
3 FOLLOW-UP.

4 Q AT THE TIME OF THIS FIRST VISIT, IS IT YOUR
5 IMPRESSION THAT THE DIFFERENTIAL DIAGNOSIS WAS
6 FIBROMYALGIA?

7 A YES.

8 Q AND YOU'RE AWARE IN HER NOTE THAT SHE ALSO
9 REFERS TO A MOOD DISORDER THAT SHE'S AWARE OF, CORRECT?

10 A YES.

11 Q DO YOU THINK THAT THE DIFFERENTIAL DIAGNOSIS
12 OF FIBROMYALGIA, THAT IS, ATTRIBUTING THE PATIENT'S
13 CHRONIC WIDE-SPREAD PAIN TO FIBROMYALGIA, WAS REASONABLE
14 AND WITHIN THE STANDARD OF CARE?

15 A PERFECTLY.

16 Q WHY DO YOU SAY THAT?

17 A ANYONE WHO HAS A LOT OF EXPERIENCE WITH
18 FIBROMYALGIA WOULD RECOGNIZE, NUMBER ONE, THEY TEND TO BE
19 YOUNGER WOMEN. THEY TEND TO COMPLAIN OF DIFFUSE TOTAL
20 BODY PAIN. THEY TEND TO USE WORDS LIKE "BURNING
21 EVERYWHERE." IT TENDS TO BE SEVERE. IT INTERFERES WITH
22 THEIR ACTIVITIES OF DAILY LIVING. IT'S NOT AN OCCASIONAL
23 THING THAT TYLENOL HELPS.

24 THERE WERE NO OTHER ILLNESSES, SUCH AS
25 RHEUMATOID ARTHRITIS OR SOMETHING THAT COULD HAVE
26 EXPLAINED THE SAME SYMPTOM.

27 SHE HAD A PHYSICAL EXAM THAT WAS CONSISTENT
28 WITH IT, AND THE BLOOD TEST THAT SHE DID TURNED OUT NOT TO

1 SUGGEST ANY OTHER PROBLEMS.

2 Q NOW, ON THIS PARTICULAR DAY OR SOON
3 THEREAFTER -- WELL, STRIKE THAT.

4 WHAT WAS THE PLAN FOR MEDICAL THERAPY FOR
5 THE PATIENT ON THIS PARTICULAR VISIT?

6 A THE MEDICAL THERAPY WAS -- WELL, I MYSELF
7 WOULD COUNT TRIGGER POINT INJECTIONS AS MEDICAL THERAPY.

8 BUT THE OTHER PLAN WAS TO START CYMBALTA.

9 AND I MIGHT MENTION, IF I CAN, THAT THE
10 F.D.A. HAS APPROVED THREE DRUGS TO TREAT FIBROMYALGIA:
11 LYRICA IS ONE, WHICH I LIKE A LOT. SHE ASKED ABOUT
12 LYRICA. THE PATIENT HAD ALREADY TRIED IT. DIDN'T
13 TOLERATE LYRICA, SO LYRICA IS OUT. NEXT IS CYMBALTA, AND
14 SHE THOUGHT, "I'M GOING TO START CYMBALTA AT A LOW DOSE,
15 NOT A HIGH DOSE. WE'LL SEE HOW SHE TOLERATES IT BECAUSE
16 SHE'S HAD SIDE EFFECTS WITH OTHER MEDICATIONS."

17 AND SO THE IDEA WAS TRIGGER POINT
18 INJECTIONS, CYMBALTA, RECOMMENDING SOME NONMEDICAL
19 THERAPY. "I THINK IT WOULD BE GOOD IF YOU EXERCISED IN
20 THE POOL, DID SOME THINGS LIKE THAT, AND THEN COME BACK IN
21 A COUPLE WEEKS."

22 Q DID SHE NOT ALSO PRESCRIBE AN OPIATE CALLED
23 NORCO?

24 A SHE DID.

25 Q AND WAS THAT APPROPRIATE AND WITHIN THE
26 STANDARD OF CARE?

27 A THAT WAS APPROPRIATE FOR A NUMBER OF
28 REASONS, ONE OF WHICH WAS THAT SHE CAME IN ON NORCO. IT

1 WASN'T A NEW PRESCRIPTION. IT WAS SOMETHING SHE HAD
2 ALREADY BEEN TAKING, THAT HAD ALREADY BEEN WORKING FOR
3 HER.

4 THE SECOND ISSUE, WITH FIBROMYALGIA, UNLIKE
5 YOU SPRAIN YOUR ANKLE, THE FIBROMYALGIA PROCESS, IT TAKES
6 MANY, MANY WEEKS OR MONTHS TO GET IMPROVEMENT. THE
7 CYMBALTA WASN'T GOING TO WORK AT LEAST FOR THREE OR FOUR
8 WEEKS. CHANCES ARE SHE'D HAVE TO GO UP TO 60 MILLIGRAMS
9 AND WAIT ANOTHER THREE OR FOUR WEEKS.

10 SO THE QUESTION IS, WHAT DO YOU GIVE THE
11 PATIENT FOR SHORT-TERM PAIN RELIEF? SHE'S COMING IN
12 SAYING, "I'M HAVING TERRIBLE PAIN." YOU NEED TO GIVE
13 SOMETHING THAT WOULD GIVE SHORT-TERM RELIEF WHILE YOU'RE
14 WAITING FOR YOUR LONGER-TERM THINGS TO START WORKING.

15 Q NOW, YOU'RE AWARE, ARE YOU NOT, THAT
16 DR. SHAINSKY MENTIONS IN HER NOTE THAT THE PATIENT WAS
17 STRONGLY DISCOURAGED FOR USING OPIATES TO TREAT HER PAIN
18 SYMPTOMS, CORRECT?

19 A I SAW THAT.

20 Q YET SHE PRESCRIBED AN OPIATE ON THAT VISIT,
21 IN FACT, GAVE THE PATIENT 60 TABLETS OF NORCO, CORRECT?

22 A YES.

23 Q DID YOU SEE THAT AS AN INCONSISTENCY BETWEEN
24 HER CHARTING AND WHAT SHE ACTUALLY DID WITH THE PATIENT?

25 A NO.

26 Q TELL THE JURY WHY NOT.

27 A WELL, WHAT SHE WANTED THE PATIENT TO
28 UNDERSTAND IS, "THIS IS NOT A DISEASE WHERE I'M GOING TO

1 TREAT YOU WITH NARCOTICS. THIS IS A DISEASE WHERE I'M
2 GOING TO USE NARCOTICS UNTIL THE OTHER MEASURES KICK IN,
3 UNTIL THE CYMBALTA KICKS IN, UNTIL YOU'RE EXERCISING.
4 IT'S FOR WHEN YOU CAN'T TAKE IT ANYMORE. IT'S NOT THE
5 MAIN TREATMENT AT ALL. SO I'M GIVING IT TO YOU, BUT I
6 WANT YOU TO UNDERSTAND, IT'S NOT JUST TO TAKE; IT'S TO
7 TAKE WHEN YOU CAN'T TAKE IT ANYMORE."

8 Q DID THE STANDARD OF CARE, EITHER AT THE TIME
9 OF THIS VISIT OR SOMETIME BETWEEN THAT VISIT AND THE NEXT
10 VISIT WHEN DR. SHAINSKY LEARNS ABOUT THE ADMISSION TO
11 CEDARS-SINAI ON APRIL 9, 2009, DID THE STANDARD OF CARE
12 REQUIRE THAT SHE CALL THE PSYCHIATRIST AND CONSULT WITH
13 HIM ABOUT WHETHER OR NOT TO USE OPIATES IN THIS CASE?

14 A I'M SORRY. YOU'RE TALKING ABOUT THE FIRST
15 VISIT?

16 Q EITHER AT THE TIME OF THE FIRST VISIT OR
17 BEFORE THE SECOND VISIT.

18 A BECAUSE AS FAR AS I CAN TELL, AT THE TIME OF
19 THE FIRST VISIT, SHE WAS ALREADY AWARE OF THE CEDARS-SINAI
20 VISIT.

21 Q MY QUESTION TO YOU IS: UNDER THOSE
22 CIRCUMSTANCES, KNOWING ABOUT THE CEDARS-SINAI VISIT OF
23 APRIL 9, 2009, DID THE STANDARD OF CARE REQUIRE
24 DR. SHAINSKY TO CALL THE PSYCHIATRIST AND LEARN MORE ABOUT
25 HER PSYCHIATRIC ISSUES BEFORE SHE CONTINUES THE OPIATES?

26 A I DON'T BELIEVE SO.

27 Q TELL THE JURY WHY NOT.

28 A THE EMERGENCY ROOM VISIT FROM THE PREVIOUS

1 APRIL WAS A VISIT ABOUT PAIN. IT WASN'T A VISIT ABOUT
2 SUBSTANCE ABUSE. IN FACT, THEY DID A URINE TEST TO CHECK
3 HER FOR SUBSTANCE ABUSE, AND THERE WERE NO NARCOTICS IN
4 THE URINE. SHE WASN'T TAKING NARCOTICS.

5 THE OTHER ISSUE IS, IT DOESN'T MATTER WHAT
6 SHE WAS LIKE EIGHT MONTHS AGO. IT MATTERS WHAT SHE WAS
7 LIKE TODAY.

8 AND ALTHOUGH IT'S A BRIEF COMMENT,
9 DR. SHAINSKY SAYS, "THIN FEMALE IN NO DISTRESS BUT
10 ANXIOUS."

11 SO SHE DID MAKE A COMMENT ON HER MOOD.

12 IF SHE WAS DEPRESSED, MOST OF US CAN SPOT A
13 DEPRESSED PERSON, SHE WOULD HAVE SAID, "APPEARS
14 DEPRESSED." SHE DIDN'T SAY THAT. SO WHATEVER SHE DID
15 EIGHT MONTHS AGO, THE ISSUE NOW IS, "IS THERE ANYTHING
16 PSYCHIATRIC GOING ON WITH YOU NOW, TODAY, THAT I SHOULD
17 CALL YOUR PSYCHIATRIST ABOUT?"

18 AND THE ANSWER WAS, "NO, THERE WASN'T."

19 Q LET ME ASK YOU THIS QUESTION:

20 HYPOTHETICALLY, IF DR. BLUESTONE MENTIONED TO THE JURY
21 THAT OPIATES ARE INAPPROPRIATE TREATMENT FOR FIBROMYALGIA
22 BECAUSE THESE PATIENTS DON'T HAVE CERTAIN PAIN RECEPTORS
23 OR RECEPTORS FOR THE MEDICATION, WOULD YOU AGREE WITH THAT
24 OPINION?

25 A NOT AT ALL.

26 Q TELL THE JURY WHY NOT.

27 A OPIATES ARE WHAT WE CALL ANALOGUES OF
28 NATURAL HORMONES THAT WE MAKE TO CONTROL PAIN. YOU'VE ALL

1 HEARD OF PEOPLE THAT GET SHOT DURING WAR AND THEY DON'T
2 EVEN FEEL THE BULLET OR THE MOTHER THAT LIFTS THE CAR
3 BECAUSE THE BABY IS IN TROUBLE AND DOESN'T FEEL THE PAIN.

4 WE HAVE WAYS OF CONTROLLING OUR PAIN. WE
5 REALLY HAVE WAYS OF CONTROLLING OUR PAIN AND SO WE RELEASE
6 SUBSTANCES THAT BIND MU RECEPTORS AND DIAL DOWN PAIN.
7 OPIATES BIND MU RECEPTORS AND DIAL DOWN PAIN.

8 NOW, FIBROMYALGIA PATIENTS IN GENERAL ARE
9 MUCH MORE SENSITIVE TO PAIN AS WELL AS TO ALL KINDS OF
10 THINGS: BRIGHT LIGHT, LOUD SOUNDS, BRUSHING OF THE SKIN.
11 AND SO THEY HAVE DOWN-RATED THEIR MU RECEPTORS. IT'S NOT
12 THAT THEY DON'T HAVE ANY; THEY HAVE FEWER, WHICH IS WHY
13 THEY HAVE MORE PAIN.

14 AND WHAT THAT MEANS IS A DOSE OF NARCOTICS
15 THAT MIGHT WORK WELL ON SOMEONE WITH A NORMAL AMOUNT OF MU
16 RECEPTORS MAY NOT WORK AS WELL ON SOMEONE WHO HAS LESS MU
17 RECEPTORS. BUT THEY WILL WORK. THEY HAVE MU RECEPTORS.

18 Q IS IT YOUR IMPRESSION THAT AT THE TIME OF
19 THIS FIRST VISIT, BASED ON DR. SHAINSKY'S NOTE, THAT SHE
20 WAS AWARE THAT THE PATIENT HAD SOME TYPE OF MOOD DISORDER?

21 A IF I CAN JUST ELABORATE ON MY LAST ANSWER
22 ONE MORE TIME.

23 Q I'M SORRY.

24 A ACCORDING TO DR. BLUESTONE'S THEORY, IF
25 NARCOTICS DON'T WORK BECAUSE FIBROMYALGIA PATIENTS DON'T
26 HAVE MU RECEPTORS, THEN WHEN THE FIBROMYALGIA PATIENT
27 FALLS DOWN THE STAIRS AND BREAKS HER LEGS, NO POINT IN
28 USING NARCOTICS, THEY DON'T WORK. WELL, EVERYBODY KNOWS

1 THAT'S NOT TRUE, THEY WORK FINE. SO I WOULD JUST MAKE
2 THAT POINT.

3 WHAT WAS YOUR NEXT QUESTION?

4 Q LET ME ASK: DR. SHAINSKY -- IS IT YOUR
5 IMPRESSION DR. SHAINSKY WAS AWARE OF A PSYCHIATRIC MOOD
6 DISORDER AT THE TIME OF THE FIRST VISIT?

7 A YES.

8 Q AND DOES THE STANDARD OF CARE -- LET ME ASK
9 IT THIS WAY. LET ME START AGAIN.

10 WAS IT BELOW THE STANDARD OF CARE TO
11 PRESCRIBE AN OPIATE FOR A PATIENT THAT DR. SHAINSKY KNEW
12 HAD A PSYCHIATRIC MOOD DISORDER?

13 A NO.

14 Q WHY NOT?

15 A WELL, FIRST OF ALL, THE IDEA THAT YOU CAN'T
16 TREAT SOMEONE'S PAIN BECAUSE THEY HAVE A PSYCHIATRIC MOOD
17 DISORDER IS FALLACIOUS. THEY'RE JUST AS ENTITLED TO BE
18 TREATED FOR PAIN AS ANYBODY ELSE. NUMBER TWO, WHEN SHE
19 CAME TO SEE DR. SHAINSKY, I THINK THREE OTHER PHYSICIANS
20 HAD ALREADY PRESCRIBED NARCOTICS. AND SO SHE DIDN'T HAVE
21 A HISTORY OF LOSING THEM. THERE WERE NO ISSUES. NO ONE
22 THOUGHT THERE WAS AN ISSUE ABOUT GIVING HER NARCOTICS,
23 INCLUDING HER PSYCHIATRIST WHO KNEW SHE WAS ON NORCO AND
24 WAS FINE WITH THAT.

25 Q I WANT TO SPEND A MINUTE BEFORE WE GO TO THE
26 NEXT VISIT ON THE TRIGGER POINTS ASSESSMENT. THERE'S TWO
27 COMPONENTS TO THE TRIGGER POINT: THE ASSESSMENT PART AND
28 THE TREATMENT PART; IS THAT FAIR TO SAY?

1 A SURE.

2 Q CAN YOU EDUCATE THE JURY A LITTLE BIT ABOUT
3 THE TRIGGER POINT ASSESSMENT AND HOW IT'S USED TO HELP
4 DIAGNOSE FIBROMYALGIA?

5 A THIS IS A LITTLE TRICKY. THERE'S A THING
6 CALLED TENDER POINTS, TRIGGER POINTS. THEY'RE KIND OF
7 USED SYNONYMOUSLY. AND WHAT THEY ARE IS SPECIFIC POINTS
8 IN MUSCLES THAT ARE EXCEPTIONALLY TENDER, MUCH MORE TENDER
9 THAN AN ORDINARY PERSON WOULD BE.

10 IF YOU CAN THINK OF -- IF I CAN USE A LITTLE
11 BIT OF A TECHNICAL TERM, SOMETHING CALLED A STRAIN GAUGE,
12 SOMETHING THAT MEASURES HOW MUCH PULLING IS GOING ON, THE
13 MUSCLES HAVE STRAIN GAUGES RIGHT IN THE MIDDLE OF THE
14 MUSCLES AND IN FIBROMYALGIA THEY GET VERY TENDER BECAUSE
15 THE MUSCLE IS SO TIGHT. AND IF YOU PUSH ON IT, IT HURTS A
16 LOT MORE THAN AN AVERAGE PERSON WOULD HURT, NUMBER ONE.

17 NUMBER TWO, THEY ARE IN VERY SPECIFIC
18 LOCATIONS, VERY SPECIFIC ANATOMICAL LOCATIONS. 1 INCH
19 AWAY, THEY'RE NOT JUMPING WITH PAIN. YOU HAVE TO KNOW
20 WHERE THEY ARE AND WHEN YOU TOUCH THE RIGHT ONES, THEY
21 WILL JUMP.

22 NOW, THE NEWEST CRITERIA FROM THE AMERICAN
23 RHEUMATISM ASSOCIATION DOESN'T USE TRIGGER POINTS. THE
24 REASON IS NOT BECAUSE TRIGGER POINTS ARE NOT WORTHWHILE
25 CHECKING FOR. THEIR LOGIC WAS THE AVERAGE GENERAL
26 PRACTITIONER DOESN'T KNOW WHERE THEY ARE AND DOESN'T DO A
27 GOOD TRIGGER POINT EXAMINATION. RHEUMATOLOGISTS CHECK
28 TRIGGER POINTS AND SO THAT'S A DIAGNOSIS.

1 FIBROMYALGIA PATIENTS WILL HAVE
2 CHARACTERISTIC SYMMETRICAL TRIGGER POINTS, UPPER BODY,
3 LOWER BODY. AND WHAT I DO, AND I'M SURE WHAT MOST DO, IS
4 I'LL FREQUENTLY MOVE AWAY A LITTLE BIT AND SAY, "DOES THAT
5 HURT?" AND IF THEY GO, "YEAH, YEAH, THAT HURTS," THEN I
6 GET A LITTLE SUSPICIOUS. IF THEY GO, "NO, THAT DOESN'T
7 HURT," IT'S CONSISTENT WITH THE DIAGNOSIS.

8 THEN THE SECOND PART OF YOUR QUESTION IS
9 TREATMENT OF TRIGGER POINTS. IT'S VERY COMMON FOR
10 PATIENTS TO COME IN AND WE INJECT THE TRIGGER POINTS WITH
11 LIDOCAINE, WITH ANESTHETIC. AND THE REASON IS YOU
12 ESSENTIALLY PARALYZE THE STRAIN GAUGE WHICH ALLOWS THE
13 ENTIRE MUSCLE TO RELAX.

14 AND IT MAY SOUND STRANGE THAT SOMEONE WOULD
15 COME IN AND ASK FOR INJECTIONS, BUT I HAVE PATIENTS WHO
16 COME EVERY MONTH, "I NEED MORE INJECTIONS." AND WE'RE
17 TALKING ABOUT NOVOCAIN INJECTIONS, NOT NARCOTIC
18 INJECTIONS, BECAUSE THEY GET RELIEF. WHEN YOU HIT THAT
19 TRIGGER POINT, FOR EXAMPLE, THE TRAPEZIUS, THE ENTIRE
20 SHOULDER AND BACK OF THE NECK WILL GET RELIEF FOR TWO TO
21 THREE WEEKS. SO THAT'S TREATMENT OF TRIGGER POINTS.

22 Q HOW DOES ONE, A CAREFUL RHEUMATOLOGIST DOING
23 THIS TRIGGER POINT ASSESSMENT, RULE OUT SOME OTHER CAUSE
24 OF THE TENDERNESS IN THE AREAS THAT YOU'RE ASSESSING?

25 A BY BEING SURE THAT THEY'RE NOT TENDER IN
26 OTHER AREAS. FIBROMYALGIA PATIENTS ARE VERY SPECIFIC.
27 LIKE I SAY, YOU MOVE AN INCH AWAY, "THAT DOESN'T HURT."
28 PATIENTS WITH OTHER CAUSES OF PAIN, WHATEVER, THEY HURT

1 EVERYWHERE. YOU CAN PUSH ANYWHERE YOU WANT, "YES, THAT
2 HURTS, THAT HURTS, THAT HURTS." IT'S WHEN THEY GO, "NO,
3 NO, NO. OH, THAT'S THE ONE," THEN YOU KNOW IT'S FIBRO.

4 Q YOU KNOW IT'S FIBRO IF IT'S IN THE AREA THAT
5 YOU'D EXPECT THEM TO REACT TO?

6 A EXACTLY.

7 Q ALL RIGHT. LET'S --

8 A AND PARDON ME. MY POINT IS THEY DON'T KNOW.
9 PATIENTS DON'T KNOW WHERE THEY'RE SUPPOSED TO BE TENDER
10 AND WHERE THEY'RE NOT. SO IF THEY, WITHOUT ANY KNOWLEDGE
11 ABOUT THOSE POINTS, NO TRAINING IN RHEUMATOLOGY, JUMP AND
12 YELL WHEN YOU HURT CERTAIN POINTS AND YOU MOVE AN INCH
13 AWAY, THEY GO, "NO, THAT DOESN'T HURT," THAT'S A REAL
14 PATIENT.

15 Q DID YOU SEE DOCUMENTATION OF DR. SHAINSKY'S
16 TRIGGER POINT ASSESSMENT ON HER FIRST VISIT OF
17 FEBRUARY 10, 2010?

18 A I'M NOT SURE I DID.

19 Q OKAY. I WANT YOU TO LOOK AT -- THERE'S TWO
20 NOTES FOR 2000 -- THE FIRST VISIT. IN FACT, WHAT I'LL DO
21 IS DIRECT YOU -- I'M GOING TO GIVE YOU THE EXHIBIT BOOK
22 HERE AND I WANT YOU TO TURN TO EXHIBIT 100. I'M GOING TO
23 GIVE YOU THESE FOR A SECOND.

24 DO YOU RECOGNIZE THIS EXHIBIT AS BEING
25 MEDICAL RECORDS OF DR. SHAINSKY?

26 A YES, I DO.

27 Q OKAY. AND DO YOU SEE EXHIBIT 100, PAGE 8?

28 A YES.

1 Q AND DOES THAT HAVE A DATE ON IT?

2 A FEBRUARY 10.

3 Q AND IF YOU GO TO PAGE 11 -- DO YOU HAVE THAT
4 IN YOUR NOTES AS WELL AS IN THE EXHIBIT?

5 A I ONLY HAVE PAGE 10.

6 Q OKAY. TAKE A LOOK AT PAGE 11 AND TELL ME IF
7 YOU SEE DOCUMENTATION OF THE TRIGGER POINT ASSESSMENTS
8 DONE ON FEBRUARY 10, 2010.

9 A OKAY. FOR SOME REASON I DIDN'T HAVE THAT.
10 UNDER "EXTREMITIES" -- FIRST OF ALL, AN IMPORTANT THING IS
11 YOU EXAMINE THE JOINTS. PEOPLE WITH ARTHRITIS --

12 MR. NEWHOUSE: WHAT PAGE ARE WE LOOKING AT?

13 MR. BLESSEY: PAGE 9, 100-9.

14 THE WITNESS: PEOPLE WITH ARTHRITIS CAN LOOK A
15 LITTLE BIT LIKE FIBRO, "I HAVE PAIN EVERYWHERE," BUT THEY
16 HAVE SWOLLEN JOINTS OR TENDER JOINTS. THE FIRST THING SHE
17 SAYS, "FULL RANGE OF MOTION OF ALL JOINTS. NO SYNOVITIS."
18 THAT ELIMINATES THE POSSIBILITY THIS WAS ARTHRITIS. THEN
19 SHE SAYS, "MULTIPLE TENDER POINTS." SAME AS TRIGGER
20 POINTS. AND SHE SPECIFICALLY DESCRIBES THE LOCATIONS.
21 SHE DOESN'T JUST SAY "MULTIPLE POINTS." "OCCIPITAL,
22 SUPRASPINATUS, LOWER CERVICAL, COSTOCHONDRAL, TRAPEZIUS,
23 ANSERINE BURSA."

24 THOSE ARE SPECIFIC POINTS THAT YOU WOULD
25 PRETTY MUCH ONLY SEE IN FIBROMYALGIA.

26 BY MR. BLESSEY:

27 Q YOU USED A LOT OF TERMS.

28 CAN YOU ILLUSTRATE ON YOURSELF WHAT AREAS

1 THAT SHE'S REFERRING TO THERE?

2 A SURE. CAN I STAND UP?

3 Q WITH THE COURT'S PERMISSION.

4 THE COURT: CERTAINLY.

5 THE WITNESS: OKAY. SO IF I COULD JUST TAKE A
6 SECOND, WE HAVE MUSCLES THAT COME HERE AND COME UP TO THE
7 BACK OF THE NECK. AND SO THE TRAPEZIUS IS RIGHT HERE AND
8 SO THAT THERE'S A SPOT THERE, NOT HERE, NOT HERE, BUT
9 RIGHT THERE.

10 BY MR. BLESSEY:

11 Q I'M GOING TO, FOR THE RECORD, WHEN YOU SAY
12 "HERE," "THERE," CAN YOU BE MORE ANATOMICAL WITH --

13 A IN THE MIDBELLY OF MY TRAPEZIUS, WHERE
14 THERE'S THE MOST TENSION. AND OFTEN WE SEE SOMETHING
15 CALLED A TAUT BAND, T-A-U-T, OR TIGHT BAND, YOU FEEL A
16 TIGHT BAND, YOU FOLLOW IT ALONG, "AH," THEY GO, "IT
17 HURTS."

18 BY THE WAY, ANYBODY WILL HURT IF YOU PUSH
19 HARD ENOUGH. THERE'S A CERTAIN PRESSURE THAT WE KNOW FROM
20 EXPERIENCE THAT SHOULDN'T CAUSE NORMAL PEOPLE TO HAVE
21 PAIN. THEY TALK ABOUT 4 KILOGRAMS OF PRESSURE. WHAT
22 MOSTLY WE DO IS ENOUGH PRESSURE TO MAKE THE BLOOD
23 DISAPPEAR FROM THE TIP OF YOUR FINGERNAIL. THAT MUCH
24 PRESSURE SHOULDN'T HURT A NORMAL PERSON.

25 SO THE TRAPEZIUS. THEN WHERE THE MUSCLES
26 ATTACH AT THE BASE OF THE SKULL, WHICH IS THE OCCIPUT.
27 SUPRASPINATUS IS A MUSCLE DOWN HERE. IT'S ANOTHER
28 SHOULDER MUSCLE. LOWER CERVICAL WE TALKED.

1 NOW, WE ALL HAVE RIBS, AND THE RIBS COME
2 TOGETHER AND MAKE JOINTS ALMOST LIKE THIS WITH THE
3 STERNUM. THEY'RE SEPARATE JOINTS. THOSE ARE TRIGGER
4 POINTS, SPECIFICALLY THE JOINTS. SHE CHECKED THOSE.

5 COSTOCHONDRAL JOINTS. WE TALKED ABOUT
6 TRAPEZIUS. AND THEN THE MAJOR MUSCLES OF THE LEGS COME
7 DOWN LIKE THIS, TURN INTO TENDONS, AND ATTACH AT A POINT
8 RIGHT THERE. AND THAT'S A TRIGGER POINT. NOT HERE, NOT
9 HERE, BUT RIGHT EXACTLY THERE. AND SHE DESCRIBED THAT,
10 THE PES ANSERINE BURSAE.

11 Q THANK YOU, DOCTOR. ALL RIGHT. LET'S MOVE
12 INTO THE NEXT I'LL CALL IT ENCOUNTER WITH THE PATIENT.

13 YOU'RE AWARE, ARE YOU NOT -- FIRST OF ALL,
14 BACK TO THE 10TH.

15 THE PRESCRIPTION FOR NORCO WAS FOR WHAT
16 AMOUNT AND HOW MANY PILLS WERE ISSUED OR PRESCRIBED?

17 A SHE GOT NORCO 5/325, 60 PILLS TO TAKE AT
18 EVERY 6 HOURS AS NEEDED FOR PAIN.

19 Q AND ON THE PRESCRIPTION THERE'S SOMETHING
20 WRITTEN, IS IT LIKE A Q.6 HOURS?

21 A Q.6, YEAH, IT'S MEDICAL --

22 Q WHAT DOES THE Q MEAN?

23 A EVERY. IT'S MEDICAL FOR EVERY 6 HOURS.

24 Q IF SHE'S TAKING 60 OR TAKING -- I'M SORRY.
25 IF SHE'S TAKING THE MEDICATION ONE PILL EVERY 6 HOURS,
26 THAT WOULD BE, WHAT, FOUR PILLS A DAY?

27 A FOUR PILLS A DAY.

28 Q AND DOING THE MATH, THAT WOULD BE ABOUT TWO

1 WEEKS' WORTH OF PILLS?

2 A 15 DAYS, RIGHT.

3 Q NOW, ARE YOU AWARE, DOCTOR, THAT THE NEXT
4 PRESCRIPTION FOR NORCO OCCURRED ON FEBRUARY 25TH, 2010?

5 A I AM.

6 Q AND ARE YOU AWARE THAT THAT PRESCRIPTION WAS
7 FOR 56 TABLETS, SAME STRENGTH, 5 MILLIGRAMS/325, SAME
8 FREQUENCY, Q.6 HOURS? ARE YOU AWARE OF THAT?

9 A I AM.

10 Q WAS THAT PRESCRIPTION FOR NORCO UNDER THE
11 CIRCUMSTANCES OF THIS CASE WITHIN THE STANDARD OF CARE?

12 A YES.

13 Q WHY?

14 A WELL, THE FIRST PRESCRIPTION FOR THE 10TH,
15 IF SHE TOOK IT AS INSTRUCTED, WOULD HAVE RUN OUT IN 14
16 DAYS, WHICH WOULD BE THE 24TH OR THE 25TH. SO IT'S TIME
17 FOR THE NEXT PRESCRIPTION.

18 Q WHY NOT JUST DISCONTINUE THE MEDICATION ON
19 THE 25TH? SHE'S RUN OUT OF THE MEDICATION.

20 WHY NOT JUST STOP IT?

21 A IT'S CLEAR FROM THE RECORDS THAT IT WAS VERY
22 HELPFUL FOR HER. SHE WAS ABLE TO DO THINGS, GO TO
23 AUDITIONS ON THE MEDICATION. SHE HADN'T YET RESPONDED TO
24 THE CYMBALTA. SHE HAD A FOLLOW-UP APPOINTMENT. IT WASN'T
25 LIKE SHE WAS LOST. AND THAT WAS TO TIDE HER OVER TO THE
26 NEXT APPOINTMENT.

27 Q OKAY. THE 56 TABLETS WOULD BE FOR HOW MANY
28 DAYS, APPROXIMATELY?

1 A IF MY MATH IS CORRECT, EIGHT DAYS.

2 Q IF SHE TOOK IT EVERY 4 HOURS -- EVERY 6
3 HOURS?

4 A RIGHT.

5 Q NEXT APPOINTMENT IS ON MARCH THE 1ST, 2010,
6 CORRECT?

7 A RIGHT.

8 Q AND LET ME ASK YOU: FOR THIS PARTICULAR
9 APPOINTMENT, WAS -- IN YOUR VIEW, WAS DR. SHAINSKY'S CARE
10 AND TREATMENT REASONABLE AND WITHIN THE STANDARD OF CARE?

11 A YES, IT WAS.

12 Q CAN YOU TELL THE JURY WHY YOU SAY THAT?

13 A WELL, AGAIN, WE HAVE A DESCRIPTION OF HER
14 COMPLAINTS. "WHAT IS THE PAIN LIKE?" WE HAVE GREAT
15 RELIEF WITH NORCO. SO WE HAVE AN ASSESSMENT OF, "HOW DID
16 YOU RESPOND TO WHAT WE'VE DONE SO FAR?"

17 WE HAVE THE RELATED ISSUES OF ANXIETY AND
18 THE FACT THAT THAT'S BEING TREATED. SO SHE ADDRESSED THAT
19 FACT. SHE AGAIN ADDRESSED THE FACT THAT LYRICA DIDN'T
20 WORK. SO WE'RE NOT GOING TO MOVE TO LYRICA. AND THAT SHE
21 IMPROVED WITH THE TRIGGER POINT INJECTIONS.

22 SO IT'S PRETTY MUCH WITHIN THE STANDARD OF
23 CARE TO MAKE A COMMENT ABOUT, "HOW DID WHAT YOU DO BEFORE
24 WORK?" AND SO SHE SAID, "GREAT IMPROVEMENT WITH THE
25 TRIGGER POINT INJECTIONS."

26 AND THEN SHE COMMENTED ON ANOTHER FACTOR
27 THAT'S IMPORTANT IN FIBROMYALGIA WHICH IS, "ARE THERE ANY
28 OUTSIDE STRESSORS GOING ON THAT COULD MAKE YOU WORSE?"

1 BECAUSE TYPICALLY STRESS CAN MAKE FIBROMYALGIA WORSE. SHE
2 COMMENTED ABOUT THE FINANCIAL ISSUES, HAVING TO MOVE OUT
3 OF THE HOUSE, AND SO ON.

4 SHE AGAIN DID A GOOD PHYSICAL EXAMINATION,
5 TALKED ABOUT THE TRIGGER POINTS, AND THEN WHAT SHE DID WAS
6 MORE TRIGGER POINT INJECTIONS AND BUMP UP THE MEDICATION.

7 Q WHY NOT --

8 MR. NEWHOUSE: I'M SORRY, I MISSED THE LAST PART OF
9 THAT ANSWER.

10 THE WITNESS: SHE BUMPED UP THE CYMBALTA.

11 BY MR. BLESSEY:

12 Q WHY NOT -- NOW THAT WE'VE HAD TWO
13 PRESCRIPTIONS FOR NORCO, THE FIRST WAS 60, THE SECOND FOR
14 56, SHE'S BACK ON THE 1ST, WHY NOT JUST STOP THE NORCO AT
15 THIS POINT IN TIME?

16 A SHE WASN'T READY YET.

17 Q WHAT DO YOU MEAN?

18 A THE CYMBALTA HADN'T KICKED IN. SHE WAS
19 STILL REPORTING SIGNIFICANT PAIN INTERFERING WITH
20 ACTIVITIES OF DAILY LIVING.

21 AND I MIGHT POINT OUT IT'S ONE THING TO SAY,
22 "DO YOU HAVE A LOT OF PAIN?" THE APPROPRIATE TREATMENT OF
23 PAIN IS NOT TO SAY, "MY PAIN WENT AWAY." IT'S TO SAY,
24 "YES, I HAVE MY PAIN, BUT I WAS ABLE TO GO TO THE MARKET
25 AND DROP MY KID OFF AT SCHOOL AND DO THINGS I'M SUPPOSED
26 TO DO THAT I COULDN'T DO BEFORE." THAT'S CALLED
27 ACTIVITIES OF DAILY LIVING.

28 Q LET ME ASK YOU THIS QUESTION: AGAIN,

1 DR. SHAINSKY IS AWARE OF THIS MOOD DISORDER CONDITION.

2 DID THE STANDARD OF CARE REQUIRE THAT SHE
3 CALL THE PSYCHIATRIST ON MARCH 1ST, 2010 TO DISCUSS THE
4 ONGOING TREATMENT WITH THE OPIATES?

5 A I DON'T BELIEVE SO.

6 Q WHY NOT?

7 A WELL, FIRST OF ALL, OPIATES IS PART OF THE
8 MEDICAL TREATMENT, NOT PART OF THE PSYCHIATRIC TREATMENT.
9 WE ALL USE OPIATES. IT TURNS OUT HYDROCODONE IS THE MOST
10 COMMONLY PRESCRIBED MEDICINE IN THE UNITED STATES. SO
11 MOST OF US HAVE EXPERIENCE WITH IT.

12 IT'S NOT LIKE SHE'S USING AN UNUSUAL
13 PSYCHIATRIC MEDICATION THAT CAN INTERFERE WITH THE
14 PSYCHIATRIC MEDICATIONS.

15 ALSO, AS I MENTIONED BEFORE, WHEN SOMEONE
16 COMES IN, YOU KIND OF MAKE AN ASSESSMENT ABOUT THEIR MOOD.
17 SHE SAID SHE'S ANXIOUS. SHE DIDN'T SAY SHE WAS DEPRESSED.
18 AND THERE WERE NO PARTICULAR NEW ISSUES. SO I DON'T THINK
19 THERE WAS ANY REASON TO CALL THE PSYCHIATRIST.

20 Q WELL, IT WAS -- HYPOTHETICALLY -- FIRST OF
21 ALL, DO YOU BELIEVE THAT HER PAIN SYMPTOMS, THIS CHRONIC
22 WIDESPREAD PAIN, WAS PSYCHOLOGICALLY INDUCED AS OPPOSED TO
23 BEING DUE TO FIBROMYALGIA?

24 A NO. IT'S FIBROMYALGIA.

25 Q HYPOTHETICALLY, IF DR. BLUESTONE TOLD THIS
26 JURY THAT BECAUSE OF THIS PATIENT'S PSYCHIATRIC HISTORY,
27 THE THING TO DO FOR HER WOULD BE TO SIT BACK AND DO
28 NOTHING AND TO HELP HER COPE AND TO GET HER COGNITIVE

1 THERAPY -- LET'S TAKE THOSE ONE BY ONE.

2 MR. NEWHOUSE: OBJECTION. THAT MISSTATES THE
3 TESTIMONY. IT'S AN IMPROPER HYPOTHETICAL.

4 THE COURT: OVERRULED.

5 BY MR. BLESSEY:

6 Q DO YOU HAVE THOSE SUGGESTIONS IN MIND IN MY
7 HYPOTHETICAL?

8 A MAYBE YOU COULD DO IT ONE MORE TIME.

9 Q SURE. HYPOTHETICALLY, DR. BLUESTONE TOLD
10 THIS JURY THAT BECAUSE THIS PATIENT HAD A PSYCHIATRIC
11 CONDITION, THE WAY TO TREAT HER, FIRST OF ALL, WAS NOT TO
12 USE OPIATES AND, SECOND OF ALL, TO SIT BACK AND DO
13 NOTHING, TO HELP HER COPE, AND TO REFER HER FOR COGNITIVE
14 THERAPY.

15 DO YOU HAVE THOSE THREE THINGS IN MIND?

16 A I DO.

17 Q LET'S TALK ABOUT THE SIT BACK AND DO
18 NOTHING.

19 DO YOU AGREE WITH THAT RECOMMENDATION?

20 A I'VE NEVER HEARD OF THAT. THAT'S NOT WHY
21 PEOPLE GO TO THE DOCTOR, TO SIT BACK AND DO NOTHING. THE
22 POINT OF THE RHEUMATOLOGIST IS, "HOW CAN I HELP YOU REDUCE
23 YOUR PAIN SO YOU CAN CARRY ON WITH YOUR LIFE?" YOU DON'T
24 DO THAT BY DOING NOTHING.

25 Q HOW ABOUT THE SECOND PRONG TO HIS
26 RECOMMENDATION, HELP HER COPE?

27 A WELL, I SUPPOSE -- I MEAN, I GIVE A CERTAIN
28 AMOUNT OF PSYCHOLOGICAL SUPPORT AND COUNSELING TO

1 PATIENTS, BUT I'M NOT A PSYCHIATRIST. BUT IN TERMS OF
2 HELPING COPE, IT'S REDUCING PAIN. HOW DO YOU MAKE IT TO
3 YOUR AUDITION WHEN YOU WAKE UP IN THE MORNING AND YOU
4 CAN'T GET OUT OF BED? I NEED TO GET RID OF YOUR PAIN.

5 Q AND WHAT ABOUT THE RECOMMENDATION FOR
6 COGNITIVE THERAPY IN A CASE LIKE THIS?

7 A I DON'T THINK DR. BLUESTONE SPECIFICALLY
8 MENTIONED IT, BUT HE REFERS PATIENTS TO THE SAME PERSON I
9 REFER MY PATIENTS TO WHO RAN THE FIBROMYALGIA CLINIC AT
10 CEDARS FOR ABOUT 13 YEARS, AND SHE DOES A BUNCH OF
11 NONPHARMACOLOGICAL THINGS TO PROMOTE SLEEP AND RELAXATION
12 AND STUFF. AND THAT'S FINE, I HAVE NO PROBLEM WITH THAT
13 RECOMMENDATION.

14 Q DOES SHE ALSO SEE PATIENTS THAT ARE REFERRED
15 THAT ARE ON OPIATES?

16 A YES.

17 MR. NEWHOUSE: OBJECTION. LACK OF FOUNDATION,
18 CALLS FOR SPECULATION, IRRELEVANT WHAT OTHER DOCTORS ARE
19 TREATING.

20 THE COURT: SUSTAINED.

21 BY MR. BLESSEY:

22 Q ALL RIGHT. LET'S TALK, THEN, ABOUT THE
23 MARCH 1ST VISIT IN THE SENSE THAT WHAT WAS THE MEDICAL
24 THERAPY PLAN ON THAT PARTICULAR VISIT?

25 A I'M SORRY, BUT CAN I JUST FINISH THE
26 PREVIOUS QUESTION?

27 Q SURE.

28 MR. NEWHOUSE: OBJECTION. THERE'S NO QUESTION

1 PENDING.

2 THE COURT: YOU CAN FINISH, DOCTOR.

3 THE WITNESS: YOU'VE ASKED ME ABOUT A PSYCHIATRIC
4 CONDITION. DEPRESSION IS A PSYCHIATRIC CONDITION. FULLY
5 50 PERCENT OF FIBROMYALGIA PATIENTS ARE DEPRESSED. AND SO
6 IF YOU ELIMINATE HALF OF YOUR PATIENTS BECAUSE THEY'RE
7 DEPRESSED AND YOU SIT BACK AND SAY, "I'M GOING TO DO
8 NOTHING," YOU'RE NOT TAKING CARE OF THEM. SO I DON'T BUY
9 THAT AT ALL.

10 BY MR. BLESSEY:

11 Q LET ME DIRECT YOU NOW TO THE MEDICAL THERAPY
12 PLAN FOR DR. SHAINSKY ON MARCH 1ST, 2010, OKAY?

13 A YES.

14 Q WAS THERE A PLAN FOR THIS CYMBALTA AT THAT
15 POINT IN TIME?

16 A YES.

17 Q WHAT WAS IT?

18 A INCREASE IT TO 60 MILLIGRAMS.

19 Q AND WAS THAT RECOMMENDATION, THE
20 PRESCRIPTION FOR 60 MILLIGRAMS, A REASONABLE
21 RECOMMENDATION AND WITHIN THE STANDARD OF CARE?

22 A TOTALLY.

23 Q WHY?

24 A MANY PEOPLE WOULD HAVE -- WELL, CYMBALTA
25 COMES 30 AND 60. WHAT YOU PICK AS A STARTING DOSE DEPENDS
26 ON A NUMBER OF FACTORS: THEIR SIZE. SHE WAS SOMEWHAT
27 PETIT. ALSO, HAVE THEY HAD BAD EXPERIENCES WITH SIMILAR
28 DRUGS. SHE HAD BAD EXPERIENCES WITH LYRICA AND SHE WAS A

1 LITTLE OVER 100 POUNDS, AS I REMEMBER. SO YOU WOULD START
2 WITH A SMALLER DOSE.

3 I WOULD HAVE STARTED WITH THE EXPECTATION
4 IT'S PROBABLY NOT GOING TO BE ENOUGH, BUT LET ME NOT GIVE
5 HER SIDE EFFECTS TO BEGIN WITH. NOW THAT WE KNOW SHE
6 TOLERATES IT, SHE COMES BACK, "I'M NOT HAVING SIDE
7 EFFECTS, BUT I'M NOT BETTER," TIME TO GO UP TO THE HIGHER
8 DOSE.

9 Q IN THIS NOTE ON MARCH 1ST, 2010, ONCE AGAIN
10 THERE'S THIS ENTRY IN THE CHART THAT DR. SHAINSKY IS
11 INDICATING SHE STRONGLY ADVISED THE PATIENT ABOUT THE
12 OPIATES AND THE NEED FOR USING IT FOR HER PAIN.

13 DO YOU REMEMBER THAT?

14 A I DO.

15 Q BUT YET SHE GAVE THE PATIENT NORCO AGAIN,
16 CORRECT?

17 A CORRECT.

18 Q INCONSISTENT, THAT IS, DO YOU VIEW IT AS AN
19 INCONSISTENCY BETWEEN HER NOTE AND WHAT SHE ACTUALLY DID?

20 A NO.

21 Q WHY NOT?

22 A WELL, SHE TALKED ABOUT "REPORTS GREAT RELIEF
23 WITH NORCO" SO WE HAVE A GREAT SHORT-TERM WAY TO GET PAIN
24 RELIEF. I THINK THE POINT SHE'S MAKING IS THIS IS SHORT
25 TERM, IT'S NOT LONG TERM. THE PILL IS GOING TO LAST 3 TO
26 4 HOURS. THE PAIN IS GOING TO COME BACK. WHAT WE NEED TO
27 DO IS HAVE YOU FOCUS -- AND IT'S SO SEDUCTIVE AND TEMPTING
28 TO SAY, "THIS WORKS. MY PAIN GOES AWAY WHEN I TAKE THIS."

1 AND YOU HAVE TO EDUCATE PATIENTS, "YES,
2 THAT'S TRUE, BUT WE HAVE TO LOOK AT THE LONGER TERM. THE
3 CYMBALTA IS GOING TO KICK IN. THE EXERCISE WILL HELP,
4 EVEN THOUGH IT'S HARDER THAN JUST TALKING A PILL. THE
5 BIOFEEDBACK WILL HELP. THE MAIN TREATMENT IS NOT GOING TO
6 BE NARCOTICS. IT'S THE BACKUP TREATMENT. I'M GIVING IT
7 TO YOU, BUT WE'RE GOING TO DO ALL THESE OTHER THINGS IN
8 ADDITION."

9 Q AND THAT RECOMMENDATION WAS WITHIN THE
10 STANDARD OF CARE, CORRECT?

11 A PERFECTLY.

12 Q NOW, SPECIFICALLY TO THE PRESCRIPTION FOR
13 NORCO ON THIS DATE, YOU'RE AWARE, ARE YOU NOT, THAT
14 PRESCRIPTION ON THE 1ST OF MARCH, 2010 FOR NORCO WAS FOR
15 10 MILLIGRAMS Q.6 HOURS, AND THERE WERE -- THE
16 PRESCRIPTION AT LEAST MENTIONED THAT IT WAS GOING TO BE
17 FOR 100 TABLETS?

18 A AND LET'S BE SURE WE WRITE Q.6 HOURS P.R.N.
19 PAIN, WHICH MEANS ONLY IF YOU NEED TO TAKE IT.

20 Q YOU USED THE LETTERS P.R.N.

21 WHAT DOES THAT MEAN?

22 A IT'S LATIN. THAT MEANS AS NEEDED.

23 Q NOW, THE QUESTION FOR YOU IS: UNDER THE
24 CIRCUMSTANCES OF THIS CASE, ON MARCH 1ST, 2010, WAS THE
25 PRESCRIPTION AS WRITTEN BY DR. SHAINSKY FOR NORCO, 100
26 TABLETS, 10 MILLIGRAMS, Q OR EVERY 6 HOURS P.R.N., WAS
27 THAT REASONABLE AND WITHIN THE STANDARD OF CARE?

28 A YES.

1 Q WHY?

2 A AGAIN, REGARDLESS OF THE NAME OF THE
3 DISEASE, HER COMPLAINT WAS PAIN SUFFICIENT TO INTERFERE
4 WITH DAILY ACTIVITIES. SHE WAS GETTING DEPRESSED BECAUSE
5 SHE COULDN'T DO THINGS SHE WANTED TO DO. AND UNTIL THE
6 LONGER-ACTING MEDICATIONS CAME IN, KICKED IN, SHE NEEDS
7 SOMETHING.

8 SO SHE JUMPS IN THE POOL THE FIRST TIME,
9 SHE'S NOT BETTER. IT'S GOING TO BE WEEKS OF WORKING ON
10 THE POOL, FOR EXAMPLE. SHE NEEDS SOMETHING SHORT TERM IN
11 THE MEANTIME. TWO THINGS HAPPEN WAS: NUMBER ONE, NO
12 REFILLS. WE CAN ALWAYS PUT REFILLS ON MEDICINE. YOU CAN
13 ALWAYS GO BACK THREE OR FOUR TIMES AND GET IT. NO
14 REFILLS. WHICH MEANS IF SHE DIDN'T COME BACK, SHE WASN'T
15 GETTING ANY MORE.

16 AND, NUMBER TWO, ANOTHER VISIT WAS
17 SCHEDULED.

18 AND NUMBER THREE, SHE THEN SAID, "I'M GOING
19 TO BUMP UP THE CYMBALTA, WHICH IS WHAT WE'RE REALLY
20 LOOKING TO WORK."

21 "HOW WILL I KNOW THAT'S WORKING?"

22 "YOU'LL COME IN AND SAY, 'YOU KNOW WHAT, I
23 DIDN'T HAVE TO TAKE AS MANY NORCO AS BEFORE.'" BUT SHE
24 HAS THEM IN CASE.

25 Q YOU MENTIONED POOL THERAPY.

26 DO YOU KNOW WHETHER OR NOT THE PATIENT
27 ACTUALLY COMPLIED WITH THE RECOMMENDATION AT ANY POINT IN
28 TIME DURING DR. SHAINSKY'S CARE AND TREATMENT OF

1 MS. DE ROGATIS?

2 A TO MY KNOWLEDGE, SHE DID NOT.

3 Q YOU DON'T HAVE ANY INFORMATION ABOUT WHY
4 NOT, DO YOU?

5 A NO.

6 Q OKAY. DOES THAT CHANGE YOUR VIEW ON WHETHER
7 OR NOT THE CARE AND TREATMENT ON THE FIRST TWO VISITS WAS
8 WITHIN THE STANDARD OF CARE?

9 A NO.

10 Q DO YOU HAVE AN UNDERSTANDING OF WHEN THE
11 PATIENT WAS TOLD TO COME BACK TO BE SEEN AFTER THE
12 MARCH 1ST, 2010 VISIT?

13 A LET ME JUST LOOK AT MY NOTES WITHOUT GETTING
14 THE MICROSCOPE.

15 IT SAYS, "FOLLOW-UP FOUR WEEKS."

16 Q FOLLOW UP IN FOUR WEEKS.

17 IS THAT A REASONABLE RECOMMENDATION AT THIS
18 POINT IN TIME AGAIN UNDER THE CIRCUMSTANCES OF THIS CASE?

19 A I'M NOT SURE WHAT YOU MEAN BY "THE
20 CIRCUMSTANCE OF THIS CASE," BUT IN TERMS OF THE RATE OF
21 ACTION OF CYMBALTA, YES, IT'S GOING TO TAKE SEVERAL WEEKS
22 TO SEE IF THE DOSAGE CHANGE MAKES A DIFFERENCE. COME BACK
23 IN TEN DAYS, TOO SOON TO KNOW.

24 THE TRIGGER POINT INJECTIONS TYPICALLY LAST
25 THREE WEEKS, FOUR WEEKS, SO THEY WOULD BE WEARING OFF JUST
26 ABOUT A MONTH DOWN THE LINE.

27 SO I THINK IT'S PERFECTLY APPROPRIATE.

28 Q LET ME ASK YOU THIS: THIS IS A PATIENT WITH

1 A KNOWN MOOD DISORDER, CORRECT?

2 A CORRECT.

3 Q AT LEAST BASED ON THE HISTORY FROM THE
4 CEDARS RECORDS THAT DR. SHAINSKY WAS AWARE OF, CORRECT?

5 A CORRECT.

6 Q AND NOW SHE'S GIVING THIS PATIENT WITH A
7 MOOD DISORDER 100 TABLETS OF AN OPIATE.

8 ISN'T THAT A BREACH OF THE STANDARD OF CARE?

9 A NUMBER ONE, "MOOD DISORDER" IS A VERY BROAD
10 TERM. I'M NOT EVEN SURE WHAT YOU MEAN BY "MOOD DISORDER."
11 ARE YOU SAYING SHE WAS TOO ANXIOUS ALL THE TIME? TOO
12 NERVOUS ALL THE TIME? SOMETIMES?

13 WHAT WE KNOW -- WHAT I KNOW IS THAT THE DAY
14 BEFORE SHE FIRST SAW DR. SHAINSKY SHE SAW HER PSYCHIATRIST
15 WHO SAID, "NOT DEPRESSED," AND KNEW SHE WAS TAKING THIS
16 MUCH NORCO. SO THERE WASN'T AN ISSUE AS FAR AS THAT.

17 NOW, MOOD DISORDER ANXIETY OR MOOD DISORDER
18 DEPRESSION? IF SHE CAME IN AND CLEARLY WAS DEPRESSED,
19 THERE MIGHT BE SOME ISSUES. ANXIETY, THERE'S NO ISSUES.

20 Q WELL, LET ME ASK YOU THIS: FROM LOOKING AT
21 THE MEDICAL RECORDS, FROM REVIEWING THE DEPOSITION
22 TRANSCRIPTS THAT YOU HAVE SEEN, INCLUDING THAT OF
23 MR. MAC EACHERN, DR. SHAINSKY, AND OTHERS, WAS THERE ANY
24 EVIDENCE THAT YOU'RE AWARE OF THAT THIS PATIENT WAS
25 PRESENTING TO DR. SHAINSKY ON THE FIRST VISIT ON THE 10TH
26 OR THE SECOND VISIT, MARCH 1ST, 2010, DISPLAYING SOME TYPE
27 OF ABNORMAL BEHAVIOR SUGGESTIVE OF A PSYCHIATRIC
28 CONDITION? ARE YOU AWARE OF ANY SUCH EVIDENCE?

1 A ONLY THAT SHE APPEARED ANXIOUS BUT NOTHING
2 ELSE.

3 Q IS THAT UNUSUAL IN A PATIENT WITH
4 FIBROMYALGIA?

5 A NO.

6 Q WAS THERE --

7 A BY THE WAY, NOR IS APPEARING DEPRESSED
8 UNUSUAL. SHE DIDN'T, BUT THAT WOULDN'T BE UNUSUAL.

9 Q WERE YOU AWARE OF ANY EXPLANATION OR
10 POSSIBLE EXPLANATION FOR THE ANXIETY OF THE PATIENT ON
11 MARCH 1ST, 2010?

12 A WELL, IF I RECALL CORRECTLY, SHE AND DAVID
13 WERE LIVING TOGETHER, ENCOUNTERED SOME FINANCIAL
14 SITUATIONS, THEY HAD TO LEAVE THEIR HOUSE, THEY WERE
15 LOOKING FOR A PLACE TO LIVE. THERE WAS THAT KIND OF STUFF
16 GOING ON.

17 Q UNDER THOSE CIRCUMSTANCES, WHEN A PATIENT IS
18 MORE ANXIOUS THAN THEY MIGHT NORMALLY BE, DOES THAT HAVE
19 ANY INFLUENCE ON THEIR SYMPTOMS OF FIBROMYALGIA?

20 A YES.

21 Q WHAT INFLUENCE DOES IT HAVE?

22 A THEY INCREASE.

23 Q LET'S GO DOWN TO THE LAST VISIT OF
24 MARCH 22ND, 2010.

25 DO YOU HAVE THAT OFFICE VISIT OPEN IN FRONT
26 OF YOU, DOCTOR?

27 A I DO.

28 Q AND ON THE DOCUMENTATION OF DR. SHAINSKY

1 PREPARED ON THE DATE OF THE VISIT, IS THE REASON FOR THE
2 APPOINTMENT INDICATED THERE?

3 A YES.

4 Q AND WHAT DOES IT SAY?

5 A THERE ARE SEVERAL REASONS. REASON NO. 1 IS
6 THAT SHE WAS SCHEDULED FOR ELECTIVE SURGERY. SHE WAS
7 SCHEDULED FOR PLASTIC SURGERY.

8 Q WHAT'S NO. 2?

9 A ANXIETY.

10 Q AND NO. 3?

11 A PAIN.

12 Q ANYTHING ELSE?

13 A WELL, SHE, I THINK, INDICATED THAT SHE HAD
14 WRITTEN A LETTER. SHE DICTATED A LETTER.

15 Q OKAY. NOW, ON THIS PARTICULAR VISIT UNDER,
16 AGAIN, THE CIRCUMSTANCES OF THE PATIENT'S PRESENTATION AND
17 EVERYTHING THAT DR. SHAINSKY KNEW ABOUT THIS PATIENT, DO
18 YOU BELIEVE THAT DR. SHAINSKY COMPLIED WITH THE STANDARD
19 OF CARE?

20 A I DO.

21 Q CAN YOU TELL THE JURY WHY YOU BELIEVE THAT?

22 A WELL, FROM THE POINT OF VIEW OF BEING IN HER
23 SHOES LOOKING FORWARD, SHE MADE A COMMENT ABOUT ANXIETY,
24 WHICH MEANS SHE ADDRESSED HER MOOD, WHICH MEANS IF THERE
25 WAS DEPRESSION, SHE WOULD HAVE SAID "ANXIOUS" AND
26 "DEPRESSED," OR SHE MIGHT HAVE JUST SAID "DEPRESSED." SHE
27 ONLY USED THE WORD "ANXIETY." NUMBER ONE.

28 NUMBER TWO, FIBROMYALGIA PATIENTS ARE MORE

1 SUBJECTIVE TO STRESS OF VARIOUS KINDS, PAINFUL DENTAL
2 WORK, SURGERY. THIS WAS COMING UP SO SHE SAID, "OKAY,
3 WE'RE GOING TO HAVE A BUMP IN THE ROAD. I NEED TO THINK
4 ABOUT WHAT WE'RE GOING TO DO." SHE ALSO TALKED ABOUT THE
5 STRESS AGAIN OF MOVING OUT OF THE HOUSE AND SO ON.

6 SHE DID AGAIN KIND OF A REVIEW OF WHERE SHE
7 WAS HAVING PAIN AND SOME IMPORTANT THINGS SHE WASN'T
8 HAVING. AND SHE WROTE -- YOU KNOW, SOME PEOPLE DO THE
9 PAIN ON THE 10 SCALE. "MY PAIN IS 9 OVER 10." SHE DIDN'T
10 DO THAT. SHE WROTE, "INTERFERES WITH ACTIVITIES OF DAILY
11 LIVING," WHICH IS REALLY MUCH MORE RELEVANT AS FAR AS I'M
12 CONCERNED, AND THAT HER PAIN HAD IMPROVED WITH THE TRIGGER
13 POINT INJECTIONS.

14 SO THE THERAPY SHE WAS GETTING WAS WORKING
15 IN TERMS OF THE TRIGGER POINTS. THE NORCO WAS HELPING,
16 ALTHOUGH, AGAIN, IN HER MIND THAT WAS GOING TO BE
17 TEMPORARY. AND THEN SHE WROTE, "IN NO DISTRESS, BUT
18 ANXIOUS." SHE DIDN'T WRITE "CRYING," "TEARFUL," "SAD,"
19 NOTHING LIKE THAT. SO IN TERMS OF THIS VISIT, IT WAS
20 PERFECTLY APPROPRIATE TO DO THIS.

21 SHE DID SAY, "OKAY, LOOK, I THINK YOU NEED A
22 LITTLE MORE HELP THAN I CAN GIVE YOU WITH ANXIETY. WE
23 NEED TO HAVE YOU ADDRESS THAT. I'M GOING TO MAKE A
24 REFERRAL FOR THAT." AND I THINK WHAT HER THINKING IS,
25 "SINCE YOU'RE STILL NOT REALLY RESPONDING YET TO THE
26 CYMBALTA AND STUFF, WE'RE GOING TO SEND YOU TO A PAIN
27 SPECIALIST TO SEE IF THEY CAN COME UP WITH ANYTHING ELSE
28 TO HELP US OUT." SO SHE MADE THOSE RECOMMENDATIONS.

1 AND SHE SPENT SOME TIME COUNSELING THE
2 PATIENT. SHE DID EVERYTHING SHE'S SUPPOSED TO DO.

3 Q NOW, ON THIS VISIT THE PATIENT ADVISED
4 DR. SHAINSKY THAT SHE WASN'T GETTING THE SAME AMOUNT OF
5 RELIEF FROM HER NORCO THAT SHE HAD PREVIOUSLY, CORRECT?

6 A YES.

7 Q IS THAT UNUSUAL IN A PATIENT LIKE THIS?

8 A WELL, THE SENTENCE FOLLOWING THAT SAYS,
9 "PATIENT IS VERY ANXIOUS, WORRIED ABOUT POSTOPERATIVE
10 PAIN," THAT'S NOT UNCOMMON TO SEE FIBROMYALGIA PATIENTS
11 REPORT MORE PAIN WHEN THEY'RE ANXIOUS. SO I SAW THAT AND
12 I THINK THAT'S THE EXPLANATION.

13 Q AND WHAT DID DR. SHAINSKY DO IN REGARDS TO
14 THE REPORT THAT THE NORCO WAS NOT PROVIDING HER THE SAME
15 AMOUNT OF RELIEF THAT IT HAD PREVIOUSLY? DID SHE
16 PRESCRIBE ANOTHER PREDICATION?

17 A YES, SHE DID WHAT WE SOMETIMES DO, WHICH IS
18 SAY, "OKAY, LOOK, LET'S GIVE YOU SOMETHING DIFFERENT."
19 AND SHE PRESCRIBED PERCOCET. IN ACTUAL FACT, PERCOCET AND
20 NORCO ARE ALMOST IDENTICAL, BUT IT'S A DIFFERENT NAME AND
21 IT LOOKS LIKE YOU'RE TRYING SOMETHING DIFFERENT TO SEE
22 WHAT HAPPENS.

23 Q AND SHE PRESCRIBED PERCOCET AT WHAT DOSE?

24 A 10 MILLIGRAMS, 10/325.

25 Q AND HOW MANY TABLETS DID SHE AT LEAST WRITE
26 ON THE PRESCRIPTION?

27 A 100.

28 Q AND WHAT WAS THE DIRECTION FOR THE TALKING

1 OF THAT MEDICATION?

2 A ONE EVERY 6 HOURS AS NEEDED FOR PAIN.

3 Q NOW, DOCTOR, AND YOU FEEL THAT PRESCRIPTION
4 WAS WITHIN THE STANDARD OF CARE?

5 A I DO.

6 Q DOES YOUR OPINION CHANGE IF WE FACTOR IN THE
7 ALLEGATION OR THE EVIDENCE THAT THERE WAS A PHONE CALL OR
8 ATTEMPTS OF THE MOTHER TO TRY TO REACH TARA DURING THIS
9 APPOINTMENT, AND THEN THERE WAS SOME DISCUSSION ALLEGEDLY
10 FROM DAVID SAYING, "IF YOU WOULDN'T KEEP TELLING YOUR
11 MOTHER YOU'RE GOING TO KILL YOURSELF BECAUSE OF YOUR
12 PAIN," THAT LED TO A DISCUSSION WITH DR. SHAINSKY ABOUT
13 THE PATIENT'S MIND-SET, ADDING THAT INTO THE
14 CIRCUMSTANCES, DOES THAT CHANGE YOUR OPINION ABOUT WHETHER
15 OR NOT THE PERCOCET WAS WITHIN THE STANDARD OF CARE?

16 A WELL, I NEED TO GO BACK, IF I CAN, TO
17 PREVIOUS REFERENCES TO WANTING TO DIE AND SO ON.

18 I WAS JOKING AT LUNCH, I SAID, "I'M GOING TO
19 DIE IF I DON'T GET LUNCH." "MY WIFE IS GOING TO KILL ME
20 IF I GET FRENCH FRIES." SOMETIMES PEOPLE USE EXPRESSIONS
21 AND WHEN PATIENTS WANT TO USE EXPRESSIONS OF, "THIS IS
22 REALLY BAD PAIN, I WISH I WERE DEAD, I CAN'T STAND IT
23 ANYMORE," YOU KNOW, WE HEAR THAT ALL THE TIME.

24 SO THE QUESTION IS IF SHE SAID, "I'M GOING
25 BANKRUPT, I DON'T HAVE ANY PAIN, BUT I'M PLANNING TO KILL
26 MYSELF," A WHOLE DIFFERENT STORY THAN WHEN SHE'S USING
27 THAT PHRASE AS A WAY TO EXPRESS HOW MUCH PAIN SHE'S
28 HAVING.

1 AND SHE USED THAT PHRASE TO EXPLAIN HOW MUCH
2 PAIN SHE'S HAVING TO HER MOTHER AND EVEN IN THE EMERGENCY
3 ROOM. SHE DIDN'T SAY, "I'M KILLING MYSELF." SHE SAID,
4 "I'M HAVING SO MUCH PAIN I WANT TO DIE." IT WAS ABOUT HOW
5 MUCH PAIN SHE WAS HAVING. IN THAT CASE IT'S RELIEVING THE
6 PAIN THAT YOU NEED TO DO TO GET THE PERSON TO FEEL BETTER.

7 Q HYPOTHETICALLY, IF DR. BOHN TOLD THIS JURY
8 THAT IN A PATIENT LIKE THIS WITH HER PSYCHIATRIC ISSUES
9 IT'S NOT UNCOMMON FOR THEM TO MAKE STATEMENTS LIKE, "I
10 HAVE SO MUCH PAIN I WANT TO DIE," DO YOU AGREE WITH
11 DR. BOHN?

12 A I AGREE BECAUSE I HEAR THAT ALL THE TIME IN
13 MY OFFICE.

14 Q WHY NOT GIVE THE PATIENT A SMALL AMOUNT OF
15 PERCOCET RATHER THAN THE 100 TO COMPLY WITH THE STANDARD
16 OF CARE?

17 A TYPICALLY WE GIVE PEOPLE A MONTH'S WORTH OF
18 MEDICATION. A MONTH'S WORTH WOULD BE 120.

19 I THINK WHAT DR. SHAINSKY WAS THINKING IS
20 SHE MAY TAKE THREE SOME DAYS, FOUR SOME DAYS. SO 100
21 SHOULD LAST HER FOR A MONTH. ONLY IF YOU REALLY WERE
22 CONTEMPLATING SUICIDE WOULD YOU LIMIT THE AMOUNT OF
23 MEDICINES, BUT IT TAKES VERY FEW PILLS TO -- YOU KNOW,
24 LET'S SAY YOU GIVE HER A WEEK'S WORTH, 28 PILLS, THAT'S
25 ENOUGH TO KILL YOURSELF WITH. IT GETS RIDICULOUS IF YOU
26 SAY, "I'M GOING TO GIVE YOU TWO DAYS' WORTH AND YOU HAVE
27 TO COME BACK." YOU CAN'T DO THAT.

28 Q WERE THERE ANY OTHER RECOMMENDATIONS THAT

1 DR. SHAINSKY MADE ABOUT SEEING OTHER CONSULTANTS OR
2 SPECIALISTS THAT WERE PERTINENT TO YOUR OPINION ABOUT
3 WHETHER OR NOT SHE COMPLIED WITH THE STANDARD OF CARE ON
4 THIS PARTICULAR VISIT?

5 A I HAD MENTIONED WHAT WE DO IN CASES LIKE
6 THIS, CHRONIC-TYPE THINGS, IS WE FIRST TRY TO MAKE A
7 DIAGNOSIS, THEN WE INITIATE TREATMENT, THEN WE PUSH THE
8 TREATMENT A LITTLE BIT, AND THEN WE SAY, "HOW WELL IS IT
9 WORKING?" AND IF IT'S WORKING FABULOUSLY, GREAT. IF IT'S
10 NOT WORKING AS MUCH AS WE WANT, WE SAY, "WELL, WHAT OTHER
11 RESOURCES CAN WE PULL INTO THE PICTURE? IF ANXIETY IS
12 CONTRIBUTING TO THIS, LET'S GET SOME PSYCHIATRIC
13 ASSISTANCE TO DEAL WITH THE ANXIETY. IF THIS IS AN ISSUE
14 WITH YOU NEED MORE PAIN MEDICINE, LET'S GET A PAIN
15 SPECIALIST TO COME TAKE A LOOK AT YOU AND SEE."

16 AND THE REASON FOR THAT, LET ME JUST SAY
17 THERE ARE TWO TYPES OF NARCOTICS. THERE'S SHORT-ACTING:
18 NORCO, VICODIN, PERCOCET. YOU TAKE IT. IT TAKES 45
19 MINUTES TO WORK. IT'S GONE IN 3 OR 4 HOURS. IN CHRONIC
20 PATIENTS, THERE ARE LONG-ACTING DRUGS WHICH STAY IN YOUR
21 SYSTEM 24 HOURS: DURAGESIC, LONG-ACTING MORPHINE.

22 AND IN A PATIENT LIKE THIS WHO IS NOW A
23 COUPLE, THREE MONTHS INTO TAKING IT, SHE MIGHT HAVE BEEN
24 THINKING, "MAYBE THIS PERSON NEEDS LONGER-ACTING
25 NARCOTICS. LET'S SEE WHAT A PAIN SPECIALIST THINKS ABOUT
26 THAT."

27 SO IT'S APPROPRIATE TO SEND THE PERSON TO A
28 PAIN SPECIALIST.

1 Q NOW, YOU'RE AWARE ON THIS VISIT THAT NEAR
2 THE END OF THE VISIT, DR. SHAINSKY CALLS -- PLACES A CALL
3 TO THE PSYCHIATRIST, DR. BOHN, RIGHT?

4 A I'M AWARE OF THAT.

5 Q AND DID YOU PERCEIVE HER ACTIONS IN CALLING
6 DR. BOHN TO BE CONSISTENT WITH THE STANDARD OF CARE?

7 A SURE.

8 Q WHY?

9 A OF COURSE. WELL, I THINK THE ISSUE WAS THAT
10 DR. CASSILETH HAD SAID, "YOU NEED TO STOP YOUR CYMBALTA
11 BEFORE SURGERY." AND THEN THE QUESTION WAS, WAS THAT
12 GOING TO BE OKAY WITH PSYCHIATRY BECAUSE EVEN THOUGH SHE
13 WAS USING THAT MEDICATION FOR FIBROMYALGIA, IT IS ALSO AN
14 ANTIDEPRESSANT. AND SO SHE SHOULD ALERT DR. BOHN OF THE
15 FACT THAT SHE WOULD STOP IT AND WOULD THAT BE OKAY.

16 MR. BLESSEY: VERY GOOD. YOUR HONOR, AT THIS POINT
17 I DON'T BELIEVE I HAVE ANY FURTHER QUESTIONS FOR
18 DR. WEINBERGER.

19 THE COURT: CROSS-EXAMINATION?

20 MR. NEWHOUSE: COULD I TAKE A VERY SHORT BREAK
21 BEFORE WE START?

22 THE COURT: SURE. 5 MINUTES?

23 MR. NEWHOUSE: 5 MINUTES.

24 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, 5
25 MINUTES. PLEASE REMEMBER THE ADMONITION.

26
27 (RECESS.)
28

1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT, IN THE PRESENCE OF
3 THE JURY:)

4
5 THE COURT: WELCOME BACK. BACK ON THE RECORD. ALL
6 JURORS ARE PRESENT IN PLACE, PARTIES ARE PRESENT, LAWYERS
7 ARE PRESENT. DR. WEINBERGER HAS RESUMED THE WITNESS
8 STAND. A REMINDER TO YOU, DOCTOR, THAT YOU REMAIN UNDER
9 OATH. UNDERSTOOD?

10 THE WITNESS: YES, SIR.

11 THE COURT: CROSS.

12 MR. NEWHOUSE: THANK YOU, YOUR HONOR.

13

14 CROSS-EXAMINATION

15 BY MR. NEWHOUSE:

16 Q GOOD AFTERNOON, DR. WEINBERGER. MY NAME IS
17 GEORGE NEWHOUSE.

18 WE'VE NOT MET BEFORE, HAVE WE?

19 A I DON'T BELIEVE SO.

20 Q YOU SAY YOU'RE A PRINCIPAL AT -- THE
21 LOCATION IS THE PRIVATE PRACTICE OF RHEUMATOLOGY, CORRECT?

22 A WELL, OF MEDICINE.

23 Q OF MEDICINE. STRIKE THAT. MEDICINE WITH A
24 SPECIALTY IN RHEUMATOLOGY?

25 A CORRECT.

26 Q AND HOW LONG HAVE YOU BEEN DOING THIS?

27 A SINCE 1981.

28 Q AND YOU'RE CURRENTLY AFFILIATED WITH

1 U.C.L.A.?

2 A IN THE SENSE THAT I'M ON THE BOARD OF
3 DIRECTORS OF THE LONGEVITY CENTER. I DON'T ADMIT PATIENTS
4 THERE.

5 Q YOU GRADUATED FROM U.C.L.A. MEDICAL SCHOOL?

6 A YES.

7 Q AND SO YOU KNOW DR. RODNEY BLUESTONE?

8 A I DO.

9 Q AND, IN FACT, WHILE YOU WERE A RHEUMATOLOGY
10 FELLOW, AM I CORRECT AT U.C.L.A. DR. BLUESTONE WAS A
11 GRADUATE CLINICAL PROFESSOR OF RHEUMATOLOGY, WASN'T HE?

12 A THAT'S TRUE.

13 Q AND HE TRAINED YOU OR ASSISTED IN TRAINING
14 YOU?

15 A HE WAS ONE OF THE ATTENDINGS.

16 Q DON'T THE ATTENDINGS HELP TRAIN THE
17 YOUNGER --

18 A YES.

19 Q -- DOCTORS?

20 A YES.

21 Q YOU THINK HIGHLY OF HIS CAPABILITIES AS A
22 RHEUMATOLOGIST?

23 A I DON'T KNOW ABOUT HIS CAPABILITIES AS A
24 RHEUMATOLOGIST.

25 Q ARE YOU AWARE THAT HE HAS A GOOD -- WELL, DO
26 YOU BELIEVE HE HAS A GOOD REPUTATION AS A RHEUMATOLOGIST?

27 A I HAVE TO SAY THAT MOST OF THE PEOPLE I DEAL
28 WITH DEAL WITH INPATIENT AND OUTPATIENTS. I HAVE NOT HAD

1 ANY PATIENTS THAT HAVE SEEN HIM FOR YEARS. I KNOW HE
2 DOESN'T ADMIT PATIENTS TO THE HOSPITAL.

3 Q IT'S A DIFFERENT QUESTION.

4 DO YOU BELIEVE HE HAS A GOOD REPUTATION,
5 "YES" OR "NO."

6 A I DON'T KNOW HIS REPUTATION.

7 Q NOW, YOU'VE NOT AUTHORED OR COAUTHORED ANY
8 TREATISES OR ARTICLES ABOUT RHEUMATOLOGY, HAVE YOU?

9 A NO.

10 Q YOU'VE NOT DONE ANY CLINICAL RESEARCH ON
11 RHEUMATOLOGY?

12 A NO.

13 Q IN PREPARATION FOR YOUR WORK TODAY, YOUR
14 TESTIMONY TODAY, DID YOU REVIEW -- DO ANY EXTENSIVE REVIEW
15 OF THE MEDICAL LITERATURE CONCERNING RHEUMATOLOGY?

16 A YOU'LL HAVE TO CLARIFY THE WORD "EXTENSIVE."

17 Q LET ME ASK YOU: HOW MUCH -- WHAT DID YOU DO
18 TO PREPARE YOURSELF FOR YOUR TESTIMONY TODAY?

19 A I LOOKED UP CRITERIA, THE OLD AND THE NEWER
20 CRITERIA FOR FIBROMYALGIA AND I LOOKED UP THE MOST COMMON
21 SYMPTOMS AND I LOOKED UP THE ROLE OF DEPRESSION.

22 Q AND HOW LONG DID THAT TAKE YOU?

23 A 5 MINUTES.

24 Q WE'LL COME BACK TO THIS.

25 LET'S TALK ABOUT YOUR MEDICOLEGAL WORK.

26 HOW LONG HAVE YOU BEEN TESTIFYING AS AN
27 EXPERT WITNESS IN SUCH CASES?

28 A IN SUCH CASES, MEDICOLEGAL CASES?

1 Q MEDICAL-LEGAL CASES.

2 A I THINK AROUND 1982, SOMETHING LIKE THAT.

3 Q ABOUT 30 YEARS, THEN?

4 A YES.

5 Q AND AM I CORRECT WITHIN THE LAST TWO YEARS,
6 AND I'M REALLY BASING SOME OF THIS UPON THE INFORMATION IN
7 YOUR DEPOSITION, YOU'VE BEEN DESIGNATED AS AN EXPERT IN 20
8 CASES; IS THAT ABOUT RIGHT?

9 A PROBABLY. I CAN'T TELL YOU I'VE KEPT COUNT.

10 Q WOULD THAT BE A FAIR ESTIMATE?

11 A WELL, AS I MENTIONED, IT WAXES AND WANES.
12 IN THE LAST WEEK I'VE BEEN DESIGNATED IN FIVE NEW CASES,
13 AND SOMETIMES I'LL GO THREE MONTHS WITHOUT ANYTHING.

14 Q ARE WE UP TO 25 THEN?

15 A I DON'T KNOW IF I'M STILL AN EXPERT ON THE
16 OTHER CASES. THE CASE I WAS GOING TO DO THURSDAY SETTLED.
17 TWO CASES SETTLED THIS WEEK SO I'M NOT AN EXPERT.

18 Q AM I RIGHT THAT ALL EXCEPT ONE OF THESE
19 CASES, WHICH IS A PATENT CASE, CONCERNS MEDICAL
20 MALPRACTICE?

21 A YES.

22 Q AM I RIGHT THAT YOU ALMOST ALWAYS TESTIFY
23 FOR THE DEFENDANT DOCTOR?

24 A YES.

25 Q IN FACT, WITHIN THE LAST TWO YEARS YOU'VE
26 NOT SERVED AS AN EXPERT FOR ANY PLAINTIFF IN ANY MEDICAL
27 MALPRACTICE CASE; IS THAT RIGHT?

28 A THAT CORRECT.

1 Q YOU'VE BEEN RETAINED BY THE LAW FIRM OF
2 TAYLOR & BLESSEY, MR. BLESSEY'S FIRM, CORRECT?

3 A YES.

4 Q AND YOU KNOW THAT THEY SPECIALIZE IN THE
5 DEFENSE OF MEDICAL MALPRACTICE CASES, CORRECT?

6 A I DO KNOW THAT.

7 Q IN FACT, YOU'VE WORKED FOR THEM ON A NUMBER
8 OF OCCASIONS IN PRIOR CASES, HAVE YOU NOT?

9 A YES.

10 Q HOW MANY TIMES?

11 A AT THE ROUGHEST SPECULATION, 12 TO 15 TIMES.

12 Q AND IN EACH CASE, IN EACH TIME, THEY HAVE
13 PAID YOU AN EXPERT WITNESS FEE FOR YOUR PREPARATION AND
14 YOUR TESTIMONY, CORRECT?

15 A THAT ASSUMES THAT I GAVE TESTIMONY IN EACH
16 CASE.

17 Q LET ME MAKE IT BROADER, THEN.

18 IN THE PAST 12 TO 15 TIMES THAT BLESSEY --
19 TAYLOR BLESSEY -- I THINK SO HIGHLY OF MR. BLESSEY I
20 NATURALLY PUT HIM FIRST -- MR. BLESSEY'S FIRM HAS HIRED
21 YOU OR ENGAGED YOU TO PERFORM SOME SERVICES, THEY HAVE
22 PAID YOU, HAVE THEY NOT?

23 A YES.

24 Q APPROXIMATELY HOW MUCH MONEY WOULD YOU SAY
25 YOU'VE MADE, TOTAL INCOME RECEIVED, IN THE LAST -- STRIKE
26 THAT.

27 OVER WHAT TIME FRAMES DOES THE 12 TO 15
28 CONSULTATIONS TRANSPIRE? WHAT TIME FRAME ARE WE TALKING

1 ABOUT?

2 A WITH BLESSEY'S FIRM?

3 Q YES.

4 A OH, A DECADE OR MORE.

5 Q A DECADE.

6 SO OVER THAT DECADE HOW MUCH MONEY HAVE THEY

7 PAID YOU?

8 A I HAVE NO IDEA.

9 Q APPROXIMATE NUMBER?

10 A I HAVE NO IDEA.

11 Q \$200,000?

12 A WELL, 15 CASES WOULD BE MORE LIKE PROBABLY
13 60 OR 75 AT THE MOST.

14 Q \$75,000?

15 A RIGHT.

16 Q PER CASE OR TOTAL?

17 A NO, NO, NOT PER CASE. ARE YOU KIDDING ME?

18 Q HOW MUCH --

19 A THAT'S LIKE CHARGING \$1,500 AN HOUR FOR
20 DEPOSITION.

21 Q WOULD I BE RIGHT TO SAY THAT YOU ANTICIPATE
22 THAT THEY WILL HIRE YOU AGAIN THE NEXT TIME A MEDICAL
23 MALPRACTICE ISSUE COMES UP? YOU HOPE THEY HIRE YOU?

24 A WELL, I HOPE THAT THEY WOULD HIRE ME THE
25 NEXT TIME AN ISSUE THAT'S RELEVANT TO WHAT I DO COMES YOU.

26 Q YOU DON'T EXPECT TO BE CALLED AS AN EXPERT
27 IN NEUROLOGY?

28 A CORRECT.

1 Q BUT IF AN ISSUE COMES UP RELATING TO
2 RHEUMATOLOGY THAT MR. BLESSEY OR ANYONE IN HIS FIRM HAS AS
3 REPRESENTING THE DEFENDANT DOCTOR, IT'S YOUR ANTICIPATION
4 YOU WILL RECEIVE FUTURE CALLS, CORRECT?

5 A I WOULD HOPE SO.

6 Q LET'S TALK ABOUT YOUR FEE.

7 SO WHAT ARE YOUR FEES TODAY? STRIKE THAT.

8 FOR THIS ENGAGEMENT, WHAT IS YOUR -- DO YOU
9 HAVE AN ARRANGEMENT, AN AGREEMENT, WITH MR. BLESSEY'S
10 FIRM?

11 A FOR APPEARING IN COURT, IS THAT WHAT YOU ARE
12 TALKING ABOUT?

13 Q LET'S TALK ABOUT PRIOR TO COURT.

14 HOW ABOUT DOCUMENT REVIEW, PREPARATION, ARE
15 YOU CHARGING A RATE --

16 A I DO.

17 Q -- HOURLY RATE?

18 A I DO.

19 Q WHAT'S YOUR HOURLY RATE?

20 A \$400.

21 Q OKAY. AND DO YOU HAVE A HIGHER RATE FOR
22 TESTIMONY?

23 A IN COURT, YOU MEAN, AS OPPOSED TO
24 DEPOSITION?

25 Q LET'S BREAK IT DOWN.

26 DEPOSITIONS, WHAT DO YOU CHARGE PER HOUR FOR
27 A DEPOSITION?

28 A \$500.

1 Q AND HOW MUCH DO YOU CHARGE FOR YOUR COURT
2 APPEARANCE TODAY, YOUR TESTIMONY?

3 A I CHARGE 3,000 FOR HALF DAY OR 5,000 FOR A
4 WHOLE DAY.

5 Q AND HOW MUCH HAVE YOU BILLED MR. BLESSEY'S
6 FIRM SO FAR?

7 A I'M NOT SURE IF I'VE EVEN BILLED HIM YET.

8 Q YOU DON'T THINK YOU'VE RENDERED AN INVOICE?

9 A I DON'T REMEMBER, BUT OFTEN I WAIT UNTIL THE
10 CASE IS OVER.

11 Q AND YOU DON'T BOTHER TO SEND THEM AN INVOICE
12 AS YOU GO ALONG BECAUSE YOU'RE CONFIDENT THAT FOLLOWING
13 THE CONCLUSION OF THE CASE YOU'RE GOING TO RECEIVE A NICE
14 CHECK FROM MR. BLESSEY'S FIRM; IS THAT RIGHT?

15 A WELL, I WOULD DISAGREE WITH YOUR
16 CHARACTERIZATION OF "NICE," BUT I DO EXPECT TO GET PAID,
17 YES.

18 Q YOU'LL GET A CHECK?

19 A THANK YOU.

20 Q AND WHAT DO YOU ANTICIPATE, YOUR BEST
21 ESTIMATE AS YOU SIT HERE TODAY, HOW MUCH DO YOU THINK AT
22 THE CLOSE OF THIS CASE YOU'RE GOING TO RECEIVE FROM
23 MR. BLESSEY'S FIRM IN TERMS OF COMPENSATION?

24 A SPECULATING PROBABLY ON THE ORDER OF 10 TO
25 14,000.

26 Q SO YOU'RE GOING TO MAKE A LOT MORE MONEY IN
27 THIS CASE THAN YOU HAVE THE PRIOR 12 TO 15 CASES, IT
28 SOUNDS LIKE?

1 A WELL, THIS CASE WENT TO COURT. MOST OF THE
2 CASES I DO, I REVIEW THE RECORDS, AND ONE OF THE REASONS I
3 LIKE TO DO DEFENSE CASES IS I CAN CALL UP THE LAWYER AND
4 SAY, "YOU DON'T HAVE A CASE. THIS IS A REALLY BAD CASE."
5 AND THEY GO, "THANK YOU." IT'S OVER. THAT'S A VERY SHORT
6 CASE. SO SOME CASES GO TO COURT AND SOME LAST 10 MINUTES.

7 Q AND WHEN THAT HAPPENS, WHEN YOU CALL
8 MR. BLESSEY OR ANYONE AT HIS FIRM UP AND YOU SAY, "YOU
9 KNOW, I DON'T THINK YOU HAVE A CASE," THEN MR. BLESSEY
10 SAYS, "THANK YOU, WE DO NOT NEED YOUR SERVICES ANYMORE";
11 IS THAT RIGHT?

12 A ANYMORE REGARDING THIS CASE --

13 Q YEAH. IS THAT RIGHT?

14 A WELL, MY EXPERIENCE WITH DEFENSE LAWYERS,
15 THEY'RE VERY GRATEFUL TO HEAR THAT.

16 Q I'M NOT ASKING ABOUT YOUR EXPERIENCE WITH
17 DEFENSE LAWYERS.

18 A OKAY.

19 Q WHAT I'M SEEKING TO ASCERTAIN IS: HAVE YOU
20 EVER RECEIVED A REFERRAL FROM MR. BLESSEY'S FIRM, REVIEWED
21 THE MATERIALS, AND CALLED MR. BLESSEY UP AND SAID -- OR
22 MS. TAYLOR OR ANYONE AT HIS FIRM -- "YOU KNOW WHAT, I
23 DON'T THINK I CAN HELP YOU GUYS WITH THIS ONE"? HAVE YOU
24 EVER DONE THAT?

25 A I'VE NEVER SAID, "I CAN'T HELP YOU." I'VE
26 SAID, "YOU HAVE SOME SIGNIFICANT PROBLEMS," AND I OUTLINE
27 THE PROBLEMS. IT'S UP TO THEM WHETHER THEY WANT TO GO
28 FORWARD WITH IT OR NOT. BUT I'M VERY HONEST ABOUT WHAT

1 THE PROBLEMS ARE. THEY DON'T WANT TO BE CAUGHT WITH THEIR
2 PANTS DOWN, FOR SURE.

3 Q OF THE 12 TO 15 CASES THEY HAVE ENGAGED YOU
4 ON, HOW MANY TIMES HAS THAT HAPPENED?

5 A A FEW. TWO OR THREE.

6 Q YOU CONSIDER YOURSELF AN EXPERT IN THE
7 DIAGNOSIS AND TREATMENT OF FIBROMYALGIA; IS THAT CORRECT?

8 A CORRECT.

9 Q AND YOUR OPINION, YOUR EXPERT OPINION, IS
10 THAT IT WAS PERFECTLY WITHIN THE STANDARD OF CARE FOR
11 DR. SHAINSKY TO ISSUE A PRESCRIPTION, GIVEN ALL THE
12 CIRCUMSTANCES, TO TARA DE ROGATIS ON MARCH 22 OF 100
13 PERCOCET TABLETS? THAT WAS PERFECTLY FINE?

14 A YES.

15 Q LET ME ASK YOU: HOW MUCH TIME DID YOU SPEND
16 REVIEWING ALL THE MEDICAL DOCUMENTS THAT WERE SENT TO YOU?

17 A PROBABLY A TOTAL OF AROUND 14 HOURS.

18 Q 14 HOURS.

19 AND YOU REVIEWED A LOT OF DEPOSITIONS, DID
20 YOU NOT?

21 A YES.

22 Q HOW MANY DEPOSITIONS DID YOU REVIEW?

23 A LET'S SEE, I WAS GIVEN ONE, TWO, THREE,
24 FOUR, FIVE DEPOSITIONS. I DIDN'T REVIEW THEM ALL IN GREAT
25 DETAIL. SOME OF THEM I DID.

26 Q AM I RIGHT ONE OF THE DOCTORS YOU DIDN'T
27 REVIEW IN GREAT DETAIL WAS DR. PAUL BOHN'S DEPOSITION
28 TRANSCRIPT? YOU DIDN'T REVIEW THAT FROM COVER TO COVER,

1 DID YOU?

2 A NO.

3 Q IS THERE A REASON WHY YOU DIDN'T THINK IT
4 WAS PERTINENT TO READ ALL OF PAUL BOHN'S DEPOSITION?

5 A WELL, I THINK I KNEW BY LOOKING AT HIS
6 PROGRESS NOTES HOW HE FELT.

7 Q YOU FOUND HIS HANDWRITING EASY TO READ?

8 A WELL, I'M A DOCTOR. I CAN READ HANDWRITING.

9 Q PERHAPS THAT'S THE CASE.

10 YOU TESTIFIED ON DIRECT UNDER OATH THAT
11 DR. BOHN SAID THAT HE WAS OKAY WITH TARA DE ROGATIS
12 RECEIVING NARCOTICS; IS THAT RIGHT? HE HAD NO PROBLEM
13 WITH IT; IS THAT YOUR TESTIMONY?

14 A THAT'S WHAT I GATHERED FROM THE NOTE OF HIS
15 VISIT THE DAY BEFORE SHE FIRST SAW DR. SHAINSKY WHEN HE
16 NOTED THAT SHE WAS ON NORCO, THAT SHE WAS NOT SUICIDAL,
17 AND HE DIDN'T SAY, "I'M OKAY WITH IT," BUT HE KNEW SHE WAS
18 TAKING IT. HE DIDN'T SAY HE WASN'T OKAY WITH IT AND HE
19 SAID SHE WASN'T DEPRESSED.

20 Q YOU DIDN'T READ HIS DEPOSITION AT PAGE 111
21 WHERE HE SAID REGARDING --

22 MR. BLESSEY: HANG ON A SECOND. I WOULD OBJECT IF
23 HE'S GOING TO READ FROM A DEPOSITION.

24 MR. NEWHOUSE: IT'S CROSS-EXAMINATION.

25 MR. BLESSEY: IT'S IMPROPER USE OF A DEPO. HE'S
26 NOT A PARTY.

27 MR. NEWHOUSE: HE'S TESTIFIED HE REVIEWED BOHN'S
28 DEPOSITION, HE'S TESTIFIED AS TO A COMPLETELY FALSE

1 STATEMENT BY DR. BOHN, AND I'D LIKE TO ELICIT WHETHER HE
2 TOOK THIS STATEMENT INTO ACCOUNT.

3 THE COURT: I'LL LET YOU REFER TO IT.

4 BY MR. NEWHOUSE:

5 Q IN RESPECT TO DR. BOHN'S LAST MEETING -- ARE
6 YOU AWARE OF DR. BOHN MET WITH TARA DE ROGATIS ON
7 FEBRUARY 9, 2010 OF HIS FINAL SESSION WITH HER?

8 A I AM.

9 Q AND IN REVIEWING BUT NOT READING HIS
10 DEPOSITION, DID YOU REVIEW THE FOLLOWING LINE WHERE HE
11 SAYS, "I DID WARN HER ABOUT" -- "I TOLD HER THAT I
12 RECOMMEND SHE NOT TAKE THE NORCO AND WARNED HER ABOUT
13 OVERDOSE IF SHE TOOK IT IN COMBINATION WITH THE KLONOPIN."

14 WERE YOU AWARE OF THAT STATEMENT?

15 A I WAS NOT AWARE AND I'M SURPRISED IT'S NOT
16 IN HIS NOTE IF HE THOUGHT IT WAS RELEVANT ENOUGH TO TALK
17 ABOUT.

18 Q DOES THAT AFFECT YOUR TESTIMONY THAT
19 DR. BOHN WAS OKAY WITH THIS PATIENT TAKING NARCOTICS?

20 A NO. AND I'LL TELL YOU WHY. THE NOTE OF
21 FEBRUARY 9 SAYS, "FEELS OKAY, NOT HEARING VOICES, NOT
22 DEPRESSED. HEAD-TO-TOE PAIN. THE MEDICINE IS HELPING HER
23 GO BACK TO SCHOOL."

24 HE SAYS SHE'S ON NORCO, 2 PILLS 4 TIMES A
25 DAY, AND THEN TO SEE RHEUMATOLOGIST. HE DOESN'T SAY
26 ANYTHING ABOUT, "I'M WARNING HER ABOUT IT. SHE'S
27 DEPRESSED." IT SAYS SHE'S NOT DEPRESSED.

28 Q AND DID YOU READ THIS NOTE RIGHT HERE THAT

1 HE TESTIFIED THAT HE WROTE DOCUMENTED HIS ADVICE TO THE
2 PATIENT ON THE 9TH THAT SHE SHOULD NOT BE TAKING NORCO AND
3 THAT HE DIDN'T PRESCRIBE OPIATES AND THAT THERE WAS A
4 DANGER OF AN OVERDOSE?

5 A YOU'LL JUST HAVE TO TELL ME WHY IT'S NOT IN
6 THE TYPED NOTE. NO, I --

7 Q I CAN'T HELP YOU WITH THAT.

8 I'M ASKING YOU IF YOUR TESTIMONY IS STILL --
9 YOU'RE GOING TO TELL THIS JURY THAT DR. BOHN WAS OKAY WITH
10 HER TAKING NORCO?

11 A COULD YOU READ WHAT THAT SAYS FOR ME?

12 Q YOU'RE THE ONE WHO TOLD ME YOU COULD READ
13 DOCTORS' WRITING.

14 A I DON'T HAVE IT IN FRONT OF ME.

15 Q A LITTLE HARD TO READ, ISN'T IT?

16 THE COURT: WHY DON'T YOU GIVE HIM THE PAGE THAT'S
17 IN THE EXHIBIT BOOK.

18 MR. NEWHOUSE: ABSOLUTELY, YOUR HONOR. GOOD IDEA.
19 IT'S 115 --

20 THE WITNESS: IT'S IN THE OTHER BINDER HERE. COULD
21 I PULL THIS ONE AWAY?

22 MR. NEWHOUSE: YES.

23 WHAT'S THE PAGE, MS. MC BROOM, 115?

24 MS. MC BROOM: 115-34.

25 MR. NEWHOUSE: 155-34. TO THE JURY, THIS IS THE
26 SAME PAGE THAT WE WERE SHOWING UP ON THE BOARD.

27 Q SPECIFICALLY, DR. BOHN TESTIFIED IN THIS
28 TRIAL THAT THAT WAS HIS NOTATION HE MADE WHEN HE WARNED

1 THE PATIENT ABOUT USING NARCOTICS OR NORCO.

2 A I'M SORRY. JUST GIVE ME ONE SECOND TO READ
3 IT.

4 Q SURE.

5 A I JUST CAN'T READ WHAT'S CIRCLED. I CAN
6 READ THAT. "SAW DR. SPIEGEL. DR. SPIEGEL IS GIVING
7 NORCO." HE DIDN'T SAY ANYTHING ABOUT THAT.

8 Q LET ME STOP YOU. MS. MC BROOM CAN READ THIS
9 BETTER.

10 IT READS, DOES IT NOT, "WARNED OF OPIATES,
11 COMBINATION WITH BENZOS"? DO YOU SEE THAT?

12 MR. BLESSEY: OBJECTION. VAGUE AS TO TIME THIS
13 NOTE WAS WRITTEN.

14 THE COURT: SUSTAINED.

15 BY MR. NEWHOUSE:

16 Q THE NOTE -- THE TESTIMONY IS THE NOTE WAS
17 WRITTEN ON FEBRUARY 9TH, 2009, OKAY? THAT'S WHAT HE
18 TESTIFIED TO.

19 AND I'M ASKING YOU WHETHER YOU AGREE WITH ME
20 THAT DR. BOHN MADE A NOTE IN HIS RECORD THAT ON THAT DAY
21 HE WARNED HER OF USING OPIATES AND WAS CONCERNED ABOUT THE
22 COMBINATION OF BENZOS?

23 A I WON'T DISPUTE THAT, AND THAT'S A
24 REASONABLE WARNING.

25 Q OKAY. LET'S MOVE ON.

26 A BUT HE DIDN'T SAY, "DON'T TAKE THEM. GIVE
27 THEM BACK TO ME." HE SAID, "DON'T USE THEM TOGETHER WITH
28 BENZOS."

1 Q WHAT IS KLONOPIN?

2 A KLONOPIN IS A BENZO.

3 Q SO SHE WAS TAKING KLONOPIN AND HE WARNED HER
4 ABOUT TAKING OPIATES IN COMBINATION WITH KLONOPIN?

5 A AND WHO PRESCRIBED THE KLONOPIN?

6 Q I DON'T KNOW.

7 DO YOU KNOW?

8 A HE DID.

9 Q DR. BOHN DID?

10 A YEAH.

11 Q OKAY.

12 A SO IT'S VERY REASONABLE --

13 Q THIS IS FINE, DOCTOR. THANK YOU.

14 MR. BLESSEY: I'M SORRY. HE'S NOT FINISHED.

15 MR. NEWHOUSE: HE'S ANSWERED MY QUESTION.

16 THE COURT: GO AHEAD, DOCTOR. FINISH YOUR THOUGHT.

17 THE WITNESS: IT'S VERY REASONABLE IF I'M GIVING
18 YOU A MEDICATION AND ANOTHER DOCTOR GIVES YOU A MEDICINE
19 THAT MIGHT INTERACT, THAT I WARN YOU THERE COULD BE AN
20 INTERACTION.

21 BY MR. NEWHOUSE:

22 Q LET'S MOVE ON.

23 SO LET ME FIRST ASK YOU: WHAT, AGAIN, IS
24 FIBROMYALGIA, IN YOUR EXPERIENCE?

25 A IT'S A PAIN SYNDROME THAT TENDS TO OCCUR
26 MORE COMMONLY IN YOUNGER WOMEN. IT'S CHARACTERIZED BY
27 SOFT TISSUE PAIN, SYMMETRICALLY UPPER BODY, LOWER BODY,
28 FRONT OF BODY, BACK OF BODY, RIGHT SIDE, LEFT SIDE.

1 VIRTUALLY ALL TESTS YOU DO ARE NORMAL, BLOOD
2 TESTS AND EVERYTHING ELSE, ALTHOUGH THERE ARE NOW SOME
3 VERY SOPHISTICATED TESTS, SPINAL FLUID TESTS, THAT CAN
4 DIFFERENTIATE PEOPLE.

5 IT'S CHARACTERIZED BY HYPERSENSITIVITY TO
6 ENVIRONMENTAL STIMULI, PAIN, SOUND, LIGHT. SOMETIMES
7 PEOPLE SAY, "THE CLOTHES BRUSHING AGAINST MY SKIN IS
8 UNCOMFORTABLE." THEY'RE OFTEN DEPRESSED. AT LEAST HALF
9 OF THEM ARE DEPRESSED. AND ALMOST ALL OF THEM WILL REPORT
10 A SLEEP DEFECT.

11 AND THEN THERE'S A LOT OF PROBLEMS WITH
12 INVOLUNTARY -- HOW CAN I SAY -- AUTONOMIC CONTROL OF
13 ORGANS, SO IRRITABLE BOWEL SYNDROME, BLADDER SYMPTOMS,
14 THINGS LIKE THAT, THAT GO ALONG WITH IT.

15 Q IS IT CORRECT THAT THE CONDITIONS MUST
16 PERSIST, THE PAIN MUST BE OVER THE ENTIRE BODY?

17 A I DON'T KNOW WHAT YOU MEAN BY THAT.

18 Q WELL, IF YOU HAVE PAIN -- IF A PATIENT COMES
19 IN, AS SHE DID ON THE -- YOU SAW THE CEDARS RECORD, RIGHT,
20 APRIL 9TH? APRIL 9TH, 2009?

21 A TO CUT YOU SHORT, THE ONLY RECORD OF LEFT
22 SIDE --

23 Q LET ME ASK YOU THE QUESTION, DOCTOR. WE'RE
24 GOING TO TRY TO GET YOU OUT OF HERE.

25 IF SHE CAME INTO CEDARS AND COMPLAINED OF
26 PAIN ONLY ON ONE SIDE OF HER BODY, WOULD THAT BE
27 CONSISTENT WITH FIBROMYALGIA?

28 A NO.

1 Q AND THE PAIN MUST PERSIST FOR THREE MONTHS
2 OR MORE?

3 A TO MAKE A DIAGNOSIS. YOU CAN HAVE IT LESS
4 THAN THAT, BUT TO MAKE A DIAGNOSIS, IT SHOULD.

5 Q AND IS IT -- I THINK THAT DR. SHAINSKY
6 TESTIFIED THAT IT'S A DIAGNOSIS OF EXCLUSION. WHAT DOES
7 THAT MEAN? YOU'RE RULING OUT ANY OTHER ORGANIC CAUSE,
8 RIGHT?

9 A YES, RULE OUT SOME OTHER EXPLANATION FOR THE
10 SAME THING.

11 Q IS ONE OF THE THINGS THAT YOU SHOULD RULE
12 OUT, A DILIGENT, RESPONSIBLE RHEUMATICIAN OR WHATEVER --
13 MR. BLESSEY: RHEUMATOLOGIST.

14 MR. NEWHOUSE: THANK YOU.

15 Q -- RHEUMATOLOGIST, YOU WOULD LIKE TO RULE
16 OUT THAT THE CAUSE MIGHT BE PURELY PSYCHIATRIC IN ORIGIN,
17 SAY DERIVED FROM A PSYCHOSIS OR OTHER MENTAL ISSUES; WOULD
18 YOU AGREE WITH THAT?

19 A SORT OF. BUT TYPICALLY IF SOMEONE IS
20 PSYCHOTIC, THE FIBRO IS NOT GOING TO BE THE MAJOR ISSUE.
21 IT'S GOING TO BE THEIR PSYCHOSIS. THEY'RE NOT GOING TO
22 COME IN AND SAY, "I'VE GOT PAIN." THEY'RE GOING TO COME
23 IN AND SAY, "I'VE GOT, WHATEVER, I'M HALLUCINATING," OR
24 WHATEVER THEY'RE COMPLAINING ABOUT.

25 Q SHE HAD, IN FACT, COMPLAINED PERSISTENTLY
26 OVER THE YEARS ABOUT BOTH AUDITORY AND TACTICAL -- STRIKE
27 THAT. BAD AFTERNOON.

28 MS. MC BROOM: TACTILE.

1 BY MR. NEWHOUSE:

2 Q TACTILE HALLUCINATIONS.

3 SHE COMPLAINED ABOUT THAT, HAD SHE NOT?

4 A I DON'T KNOW ABOUT PERSISTENTLY.

5 INTERMITTENTLY SHE DID.

6 Q SHE COMPLAINED ABOUT IT TO CEDARS-SINAI THE
7 YEAR BEFORE, RIGHT?

8 A CORRECT.

9 Q AND IN YOUR VIEW -- WELL, LET ME ASK YOU:
10 YOU TESTIFIED THAT DR. SHAINSKY -- IS IT YOUR TESTIMONY
11 SHE REVIEWED THE CEDARS-SINAI RECORD DURING THE FIRST
12 MEETING WITH TARA?

13 A I DON'T KNOW IF IT WAS DURING THE MEETING,
14 BUT I BELIEVE IT WAS BEFORE SHE PREPARED THE NOTE.

15 Q SO YOU THINK IT WAS AFTER THE CONSULTATION
16 BUT BEFORE SHE PREPARED THE PROGRESS NOTE?

17 A THAT WOULD MAKE THE MOST SENSE.

18 Q AND WHEN SHE REVIEWED THE CEDARS RECORD, SHE
19 LEARNED THAT THIS WAS A 29-YEAR-OLD FEMALE WITH SOME TYPE
20 OF PSYCHIATRIC MOOD DISORDER.

21 YOU REFERRED TO MOOD DISORDER, BUT IT WAS
22 MORE SERIOUS THAN A MOOD DISORDER, WASN'T IT? IT WAS A
23 PSYCHIATRIC MOOD DISORDER?

24 A THIS IS A HISTORY SHE GAVE TO THEM. IT'S
25 NOT A HISTORY THEY DETERMINED INDEPENDENTLY.

26 Q HOW DO YOU KNOW THAT? HOW DO YOU KNOW THIS
27 WAS SIMPLY THE HISTORY SHE GAVE THEM?

28 A YOU SEE WHERE IT SAYS "HISTORY OF THE

1 PRESENT ILLNESS"?

2 Q YES.

3 A THAT MEANS THEY ASK HER, "WHAT'S GOING ON
4 WITH YOU?"

5 Q THEN IT SAYS "WITH PSYCHOTIC FEATURES."
6 SO IT'S YOUR TESTIMONY YOU BELIEVE THAT TARA
7 TOLD THEM THAT SHE HAD PSYCHOTIC FEATURES?

8 A WELL, SHE CAME THERE WITH DAVID, AND ONE OF
9 THE TWO OF THEM SAID THAT.

10 Q AND SHE -- COMPLAINING TO CEDARS OF TOTAL
11 LEFT-SIDED BODY PAIN AND WHAT SHE CALLS TACTILE
12 HALLUCINATIONS, CORRECT?

13 A YES.

14 Q SO AM I RIGHT THAT ANY DOCTOR WHO REVIEWED
15 THIS WOULD IMMEDIATELY BE AT LEAST SUSPICIOUS, IF I'M
16 SEEING THIS PATIENT TEN MONTHS LATER, THAT I COULD BE
17 DEALING WITH A PATIENT WHO HAS SERIOUS PSYCHIATRIC ISSUES,
18 CORRECT?

19 A NOT ONLY TEN MONTHS LATER, BUT AT THE TIME
20 YOU'D BE SO CONCERNED THAT YOU'D GET A PSYCHIATRIC CONSULT
21 RIGHT AWAY, AND THAT PSYCHIATRIC CONSULT WAS SO LITTLE
22 CONCERNED THEY SAID, "YOU CAN GO HOME NOW."

23 Q I HAVE A DIFFERENT QUESTION. LISTEN AGAIN.
24 PLEASE ANSWER THE QUESTION IF YOU CAN.

25 ISN'T IT FAIR THAT ANY REASONABLE PHYSICIAN
26 WHO REVIEWED THIS RECORD WOULD HAVE UNDERSTOOD IMMEDIATELY
27 THAT THE PATIENT THAT YOU WERE SEEING TEN MONTHS LATER WAS
28 IN ALL LIKELIHOOD SOMEONE WITH SOME SERIOUS PSYCHIATRIC

1 ISSUES, "YES" OR "NO"?

2 A NO. ALL YOU CAN CONCLUDE IS THAT SOMEONE
3 WHO HAD A HISTORY OF SOME PSYCHIATRIC ISSUES. FOR ALL YOU
4 KNOW SHE'S HAD ELECTROSHOCK THERAPY, SHE'S CURED. YOU
5 CAN'T SAY HOW SHE IS NOW BY LOOKING AT THAT.

6 Q IN OTHER WORDS, BECAUSE TEN MONTHS HAD GONE,
7 NO CONCERN ABOUT THE PATIENT HAVING PSYCHIATRIC ISSUES?

8 A NOT TO GET TOO COMPLICATED, BUT THE RECORDS
9 INDICATE A SUBSTANTIAL ASSOCIATION WITH METHAMPHETAMINE
10 ABUSE AND SOME OF THESE HALLUCINATIONS. THERE'S NO RECORD
11 OF METHAMPHETAMINE ABUSE SUBSEQUENT TO THAT VISIT. SO TO
12 THE EXTENT HER PSYCHIATRIC ISSUES WERE AGGREGATED BY THAT,
13 THAT'S OUT OF THE PICTURE NOW.

14 Q YOU MENTIONED THE METH ABUSE. LET ME ASK
15 YOU A QUESTION. WHEN YOU MEET WITH A PATIENT THE FIRST
16 TIME AND THE PATIENT FILLS OUT THAT FORM THAT ALMOST ALL
17 DOCTORS HAVE -- GO TO 100-1 THROUGH 3. MIGHT BE IN THE
18 OTHER BOOK. IT'S OVER HERE, DOCTOR.

19 CAN YOU DO ME A FAVOR AND PUT SOME OF THESE
20 OTHER RECORDS AWAY FOR RIGHT NOW? I'D LIKE YOU TO USE --

21 A YOU'RE GOING TO SHOW ME THIS, RIGHT?

22 Q I'M GOING TO SHOW YOU WHAT I'M GOING TO SHOW
23 YOU. 100, EXHIBITS -- THESE ARE THE BATES NUMBERS ON THE
24 SIDE. SO 1 TO 3.

25 THIS IS A HISTORY AND PHYSICAL FORM THAT A
26 PATIENT IS TYPICALLY ASKED TO FILL OUT WHEN THEY COME,
27 CORRECT?

28 A NO.

1 Q WELL, IS THIS A FORM THAT TARA FILLED OUT
2 BEFORE HER VISIT WITH DR. SHAINSKY?

3 A THIS IS NOT A HISTORY AND PHYSICAL. THIS IS
4 WHEN WERE YOU BORN, WHAT'S YOUR ADDRESS, WHAT'S YOUR PHONE
5 NUMBER.

6 Q WHAT WE'RE CALLING IT MATTERS LESS THAN WHAT
7 IT IS. IT'S AN OPPORTUNITY FOR THE PATIENT TO DESCRIBE,
8 ANSWER QUESTIONS THAT THE DOCTOR MIGHT HAVE THAT COULD
9 INFORM THE DOCTOR ABOUT POTENTIAL ISSUES THEY NEED
10 FOLLOWING UP ON, CORRECT?

11 A WELL, ONLY BECAUSE WE'RE IN A COURT OF LAW
12 WILL I HOLD YOU TO WHAT YOU SAY. YOU'RE SHOWING ME A
13 PIECE OF PAPER THAT HAS NOTHING TO DO WITH HER COMPLAINTS
14 WHATSOEVER. IT HAS TO DO WITH HER ADDRESS, HER PHONE
15 NUMBER, AND WHO TO CALL IN TERMS OF AN EMERGENCY.

16 THE COURT: I THINK WE'RE ON PAGE 2.

17 THE WITNESS: PAGE 2 WE CAN TALK ABOUT. HE HAD ME
18 ON THIS PAGE.

19 BY MR. NEWHOUSE:

20 Q LOOK AT THE FIRST THREE PAGES OF THAT
21 DOCUMENT. MAYBE YOU CAN TELL US WHAT IT IS.

22 A OKAY. THIS IS THE ONE I SHOWED YOU, THE
23 HEALTH HISTORY. THIS IS A DOCUMENT THAT THE PATIENT
24 FILLED OUT PRESUMABLY BEFORE THE VISIT ACTUALLY TOOK PLACE
25 DESCRIBING HER HISTORY.

26 Q WHAT'S THE PURPOSE OF ASKING THE PATIENT TO
27 FILL THIS FORM OUT?

28 A YOU NEED TO GET A HISTORY OF THEIR GENERAL

1 HEALTH BEFORE YOU SIT DOWN AND TALK WITH THEM OR YOU NEED
2 TO GET IT AS YOU SIT DOWN AND TALK WITH THEM.

3 Q DID THIS FORM -- WAS THERE A PLACE FOR HER
4 TO ANSWER WHETHER SHE HAD USED ILLICIT OR RECREATIONAL
5 DRUGS?

6 A I THOUGHT THERE WAS BUT --

7 Q GO TO PAGE 3 UNDER "HEALTH HABITS."

8 A RIGHT.

9 Q THERE'S SOME SUBSTANCES AND THEN IT LOOKS
10 LIKE --

11 A I SEE THAT.

12 Q -- "NO"?

13 A CORRECT.

14 Q AND YET WHEN DR. SHAINSKY REVIEWED THE
15 EMERGENCY ROOM RECORD FROM CEDARS, SHE IMMEDIATELY
16 REALIZED THE PATIENT HAD NOT BEEN TRUTHFUL OR FORTHCOMING,
17 CORRECT?

18 A NOT CORRECT. THIS IS -- YOU KNOW, YOU'RE
19 MAKING THE ASSUMPTION THAT SHE'S TALKING ABOUT EVER IN MY
20 LIFE AS OPPOSED TO NOW. I BELIEVE THAT THIS QUESTIONNAIRE
21 WAS ANSWERED NOW DO YOU HAVE THIS, NOW DO YOU HAVE THAT,
22 NOT 14 YEARS AGO DID YOU HAVE SOMETHING, AND THERE'S NO
23 EVIDENCE SHE WAS USING ANY ILLICIT SUBSTANCES NOW AT THE
24 TIME THAT SHE SAW DR. SHAINSKY.

25 Q BASED UPON YOUR EXTENSIVE REVIEW OF THIS
26 MEDICAL RECORD, WHEN DO YOU CONCLUDE THAT TARA STOPPED
27 USING METHAMPHETAMINE?

28 A THE LAST DOCUMENTED EPISODE IS THE EMERGENCY

1 ROOM VISIT.

2 Q THAT WAS TEN MONTHS PREVIOUS TO THIS,
3 CORRECT?

4 A CORRECT.

5 Q AND IN THAT DOCUMENT, DID THEY DISCLOSE THAT
6 SHE HAD A HISTORY OF METH ABUSE INCLUDING USE ONE WEEK
7 PRIOR?

8 A YES.

9 Q SO I ASK YOU AGAIN: IF YOU WERE
10 DR. SHAINSKY AND YOU SAW THIS ANSWER AND THEN YOU COMPARED
11 THE CEDARS RECORD, WOULD YOU BE CONCERNED THAT THE PATIENT
12 WASN'T BEING FORTHCOMING ABOUT HER DRUG HISTORY?

13 A THAT'S ONE CONCLUSION. THE OTHER CONCLUSION
14 IS THAT SHE'S NO LONGER DOING WHAT SHE DID BACK THEN.

15 Q LET'S TALK A LITTLE BIT ABOUT THIS TRIGGER
16 POINT TEST THAT YOU TESTIFIED TO.

17 A OKAY.

18 Q YOU ARE AWARE THAT THE AMERICAN COLLEGE OF
19 RHEUMATOLOGY NO LONGER USES THIS TEST, CORRECT?

20 A THE TRIGGER POINT TEST, YES.

21 Q WHAT ARE THE NEW CRITERIA?

22 A THE NEW CRITERIA --

23 MR. BLESSEY: YOUR HONOR, WE'RE TALKING ABOUT 2010.
24 OBJECT ON RELEVANCE. HE'S ASKING FOR THE NEW CRITERIA.

25 MR. NEWHOUSE: HE SPECIFICALLY COVERED THIS. THIS
26 GENTLEMAN PURPORTS TO BE AN EXPERT.

27 THE COURT: LET'S TALK ABOUT WHATEVER TEST WAS
28 RELEVANT AT THE TIME HE SAW HER -- SHE SAW HER.

1 MR. NEWHOUSE: THE TRIGGER POINT TEST --

2 THE COURT: IS THAT '10, FEBRUARY?

3 MR. NEWHOUSE: FEBRUARY '10.

4 THE COURT: 2010.

5 MR. NEWHOUSE: CORRECT.

6 THE WITNESS: I DON'T KNOW WHAT MONTH THE 2010

7 A.C.R. CRITERIA WERE RELEASED. I DOUBT THEY WERE OUT BY

8 FEBRUARY, WHICH MEANS AT THAT POINT PEOPLE WOULD BE USING

9 THE OLD CRITERIA.

10 Q DO YOU KNOW WHAT THE NEW CRITERIA ARE?

11 A YES.

12 Q WHAT ARE THEY?

13 MR. BLESSEY: OBJECTION. RELEVANCE.

14 THE COURT: SUSTAINED.

15 BY MR. NEWHOUSE:

16 Q YOU DISAGREE WITH DR. BLUESTONE'S OPINION
17 THAT FIBROMYALGIA IS A RESULT OF -- OR STRIKE THAT -- THAT
18 CHRONIC BODY PAIN CAN BE CAUSED BY A CONDITION CALLED
19 FIBROMYALGIA OR CAN ALSO BE CAUSED BY PSYCHIATRIC
20 CONDITIONS SUCH AS PSYCHOSIS, HALLUCINATIONS, SOME OF THE
21 SYMPTOMS THAT MS. DE ROGATIS PRESENTED?

22 A ARE YOU PRESENTING THOSE TO ME AS TWO
23 ALTERNATIVE EXPLANATIONS?

24 Q IS THERE A THIRD EX -- ALTERNATIVE?

25 A YEAH. YOU FELL OUT OF A BUILDING, YOU'VE
26 GOT MAJOR THIRD -- I COULD GIVE YOU HUNDREDS OF REASONS
27 WHY SOMEONE WOULD HAVE HEAD-TO-TOE PAIN.

28 Q WELL, LET'S TAKE SOMEONE WHO PRESENTED WITH

1 TARA DE ROGATIS' CLINICAL PRESENTATION ON FEBRUARY 10.

2 WHAT ARE THE POSSIBLE -- WHAT ARE THE
3 POSSIBLE CAUSES OF THIS -- STRIKE THAT, "CAUSES" --
4 DIAGNOSIS FOR THIS PARTICULAR PATIENT? FIBROMYALGIA IS
5 ONE OF THEM, RIGHT?

6 A WELL, THERE'S A NUMBER: HORMONE
7 ABNORMALITIES, THYROID ABNORMALITIES, CORTISONE
8 ABNORMALITIES, SEVERAL DIFFERENT HORMONE ABNORMALITIES.
9 FIBROMYALGIA. OCCASIONALLY DEFINED RHEUMATOLOGICAL
10 DISEASES LIKE LUPUS AND RHEUMATOID ARTHRITIS WILL START
11 OUT LOOKING LIKE FIBROMYALGIA. GENERALLY NOT MUCH TIME
12 HAS TO GO BY BEFORE YOU CAN TELL THE DIFFERENCE.

13 THAT'S ABOUT IT. THEN YOU COULD TALK ABOUT
14 TOXICITIES. HAS SHE BEEN EATING -- ARSENIC POISONING.
15 THERE'S A MILLION TOXICITIES THAT COULD LOOK LIKE THIS.
16 BUT THAT'S ABOUT IT.

17 Q DR. SHAINSKY RAN A FULL, COMPLETE BATTERY OF
18 LABS, DID SHE NOT, AND ALL THOSE CAME BACK NEGATIVE,
19 RIGHT?

20 A RIGHT.

21 Q IS IT YOUR OPINION THAT DESPITE THE FACT
22 THAT DR. SHAINSKY WAS AWARE THAT TARA HAD A HISTORY OF
23 PSYCHIATRIC MOOD DISORDER WITH PSYCHOTIC FEATURES
24 INCLUDING HALLUCINATIONS, THAT HER INITIAL AND CONTINUING
25 DIAGNOSIS OF TARA AS HAVING FIBROMYALGIA AS OPPOSED TO A
26 PSYCHIATRICALY CAUSED CONDITION WAS CORRECT?

27 A YES.

28 Q YOU DISAGREE WITH DR. BLUESTONE ON THAT

1 RESPECT?

2 A YES, I DO.

3 Q WHY?

4 A WELL, DR. BLUESTONE'S OPINION IS THAT YOU
5 CAN ONLY HAVE ONE OR THE OTHER. I DISAGREE WITH THAT
6 COMPLETELY. NUMBER TWO, DEPRESSION IS A PSYCHIATRIC
7 DISORDER AND AT LEAST 50 PERCENT OF FIBROMYALGIA PATIENTS
8 HAVE A PSYCHIATRIC DISORDER WHICH IS CALLED DEPRESSION.
9 IT DOESN'T ELIMINATE THEIR DISEASE, PART OF THEIR DISEASE.

10 I MYSELF DO NOT HAVE MUCH EXPERIENCE WITH
11 PSYCHIATRIC PATIENTS PRESENTING WITH widespread PAIN.
12 THEY USUALLY PRESENT WITH PSYCHIATRIC PROBLEMS. IF YOU
13 MAYBE DO A CAREFUL PHYSICAL, YOU'LL REALIZE THEY HAVE
14 TENDERNESS, BUT THAT'S NOT WHAT THEY COME IN COMPLAINING
15 ABOUT.

16 Q IS IT YOUR TESTIMONY THAT AFTER DR. SHAINSKY
17 REVIEWED THE CEDARS RECORD AND WAS AWARE THAT THIS PATIENT
18 HAD PRESENTED TEN MONTHS BEFORE WITH PSYCHOTIC SYMPTOMS,
19 INDICATIONS OF POSSIBLE PSYCHOSIS, THAT SHE DIDN'T NEED TO
20 FOLLOW UP WITH THE PATIENT'S PSYCHIATRIST? THAT WASN'T --
21 WOULD THAT HAVE BEEN HELPFUL INFORMATION FOR HER TO HAVE
22 AT HER DISPOSAL?

23 A NUMBER ONE, ANY INFORMATION IS HELPFUL.
24 NUMBER TWO, SUPPOSE THAT SHE WAS PREGNANT IN THE E.R. NINE
25 MONTHS AGO. THAT DOESN'T MEAN SHE'S PREGNANT NOW. WHAT'S
26 IMPORTANT IS WHAT'S GOING ON NOW, NOT WHAT'S GOING ON
27 THEN.

28 AND DR. SHAINSKY COULD HAVE MAKE AN

1 INDEPENDENT ASSESSMENT OF WHETHER SHE WAS RATIONAL,
2 ORIENTED, CONVERSANT, YOU KNOW, WHETHER SHE WAS
3 EXCESSIVELY DEPRESSED, EXCESSIVELY ANXIOUS. IF SHE MADE
4 THAT DETERMINATION BASED ON THE VISIT, NOT WHAT SHE HAD
5 EIGHT MONTHS AGO, IT WOULD HAVE BEEN RELEVANT TO CALL, BUT
6 SHE DIDN'T MAKE THAT DETERMINATION.

7 Q DR. SHAINSKY IS NOT A PSYCHIATRIST, IS SHE?

8 A IF IT TOOK A PSYCHIATRIST TO SPOT A
9 PSYCHOTIC PERSON, WE'D BE IN A LOT OF TROUBLE.

10 Q DR. SHAINSKY WAS NOT A PSYCHIATRIST,
11 CORRECT?

12 A CORRECT.

13 Q DR. SHAINSKY WAS PRESENTED WITH INFORMATION
14 AVAILABLE TO HER FROM CEDARS-SINAI THAT TOLD HER THAT HER
15 PATIENT TEN MONTHS BEFORE HAD PSYCHIATRIC ISSUES, CORRECT?

16 A CORRECT.

17 Q AND IN THE FACE OF THAT, WHAT YOU'RE
18 TELLING -- AND WE ALSO KNOW THAT FIBROMYALGIA IS A
19 DIAGNOSIS OF EXCLUSION, CORRECT?

20 A CORRECT.

21 Q WOULDN'T IT HAVE BEEN HELPFUL AND MATERIAL,
22 INDEED IMPORTANT, FOR HER IN DIAGNOSING TARA'S CONDITION
23 TO CONTACT TARA'S PSYCHIATRIST AND OBTAIN HER MEDICAL
24 CHART, "YES" OR "NO"?

25 MR. BLESSEY: ASKED AND ANSWERED.

26 THE WITNESS: I CAN'T ANSWER THAT "YES" OR "NO."

27 THE COURT: OVERRULED. GO AHEAD.

28 THE WITNESS: FIRST OF ALL, DIAGNOSIS OF EXCLUSION

1 MEANS -- DOESN'T MEAN THEY CAN'T HAVE OTHER ILLNESSES. IT
2 MEANS THEY CAN'T HAVE OTHER ILLNESSES CAUSING THESE
3 COMPLAINTS. AND I DISAGREE WITH DR. BLUESTONE THAT
4 WIDESPREAD GENERALIZED PAIN IS A MANIFESTATION OF
5 PSYCHIATRIC ILLNESS. NUMBER ONE.

6 NUMBER TWO, IF IT WAS, SHE WOULD HAVE TO
7 HAVE widespread PSYCHIATRIC ILLNESS AT THE TIME SHE
8 PRESENTED WITH WIDESPREAD ABDOMINAL PAIN AND SHE DIDN'T.
9 BY MR. NEWHOUSE:

10 Q PSYCHIATRIC PATIENTS OR INDIVIDUALS, ARE
11 THEY -- DO THEY ALWAYS APPEAR CRAZY?

12 A WELL, THE TERM "PSYCHIATRIC," THEN, WOULD
13 INCLUDE ANYTHING FROM, "I WAS DEPRESSED A LITTLE BIT WHEN
14 MY MOTHER DIED TWO YEARS AGO," TO, "I'M A RAVING
15 PSYCHOTIC." SO YOU'LL NEED TO BE A LITTLE MORE SPECIFIC.

16 Q DO INDIVIDUALS WHO COMPLAIN ABOUT
17 HALLUCINATIONS, TACTILE AND AUDITORY, AND WHO BEAR SOME OF
18 THE SYMPTOMS THAT DR. BOHN MENTIONED IN HIS REPORT, DO
19 THOSE INDIVIDUALS -- AT TIMES CAN THEY APPEAR, IN YOUR
20 EXPERIENCE, TO BE RELATIVELY NORMAL AND APPROPRIATE, "YES"
21 OR "NO"?

22 A IT WOULD BE SPECULATION, BUT I GUESS THE
23 PROBLEM WITH YOUR QUESTION IS IF THOSE INDIVIDUALS GO INTO
24 REMISSION, ARE THEY SIMPLY APPEARING THAT WAY OR ARE THEY
25 IN REMISSION?

26 Q SO YOUR ANSWER IS "YES," SOMEONE CAN APPEAR
27 NORMAL AND ACTUALLY CONTINUING TO HAVE A BATTERY OF
28 PSYCHIATRIC ISSUES, CORRECT?

1 A I DON'T BELIEVE SO.

2 Q AND YOUR TESTIMONY IS, DESPITE KNOWING ABOUT
3 ALL OF THIS, IT WASN'T -- IT WAS WITHIN THE STANDARD OF
4 CARE FOR DR. SHAINSKY NOT TO OBTAIN ANY INFORMATION FROM
5 HER PSYCHIATRIST?

6 A THE ANSWER IS "YES" BECAUSE THERE'S NO
7 EVIDENCE OF METHAMPHETAMINE ABUSE IN THE PREVIOUS EIGHT
8 MONTHS AND THERE'S PLENTY OF EVIDENCE IN THE CHARTS THAT
9 ALL OF THIS PSYCHIATRIC STUFF WAS ASSOCIATED WITH DRUGS
10 KNOWN TO BE CAPABLE OF CAUSING HALLUCINATIONS.

11 NUMBER TWO, SOME OF HER TACTILE -- USE THE
12 WORD "TACTILE" -- HALLUCINATIONS WERE ACTUALLY PAINS. SHE
13 WOULD CALL THEM TACTILE HALLUCINATIONS, BUT THEY WERE
14 PAINS WITHOUT OBVIOUS CAUSE WHICH IS WHAT FIBROMYALGIA
15 LOOKS LIKE.

16 NUMBER THREE, I CAN TELL YOU FROM MY OWN
17 EXPERIENCE YOU CAN'T CALL A PSYCHIATRIST. THEY WON'T
18 ACKNOWLEDGE THAT THAT PERSON IS A PATIENT OF YOURS AND, IN
19 FACT, THERE'S A NOTE IN THE CHART FROM DR. BOHN TO THE
20 PATIENT SAYING, "IS IT OKAY IF I RETURN DR. SHAINSKY'S
21 CALL?" OTHERWISE THEY WON'T TALK TO YOU. YOU CAN'T JUST
22 CALL A PSYCHIATRIST AND SAY, "TELL ME ALL ABOUT YOUR
23 PATIENT."

24 Q YOU'RE BASING THIS ON YOUR OWN EXPERIENCE?

25 A THIS IS GENERAL EXPERIENCE. A PSYCHIATRIST
26 WHO WILL TALK TO ME ABOUT A PATIENT WITHOUT THEIR
27 PERMISSION IS VIOLATING THE STANDARD OF CARE.

28 Q HOW HARD IS IT TO GET THE PATIENT'S

1 PERMISSION TO TALK TO THE PSYCHIATRIST, DOCTOR?

2 A YOU -- IT MAY BE EASY, MAYBE NOT. THEIR
3 PERMISSION IS NOT GOOD ENOUGH. THEY HAVE TO HAVE WRITTEN
4 PERMISSION TO THE PSYCHIATRIST.

5 Q HOW HARD IS IT TO GET WRITTEN PERMISSION TO
6 SPEAK WITH A PSYCHIATRIST?

7 A IT CAN BE HARD. AND WHAT I DO IS I SAY,
8 "ASK YOUR PSYCHIATRIST TO CALL ME."

9 Q YOU SAY IT CAN BE HARD, BUT IS THERE ANY
10 EVIDENCE IN THIS RECORD THAT DR. SHAINSKY EVEN TRIED, NO?

11 A YES.

12 Q WHAT EVIDENCE IS THERE SHE TRIED TO CONTACT
13 HIM?

14 A IN THIS RECORD?

15 Q YES.

16 A MARCH 22ND.

17 Q SORRY?

18 A MARCH 22ND SHE CALLED DR. BOHN.

19 Q BUT BEFORE FEBRUARY 10 AND MARCH 22ND, THERE
20 WAS NO EFFORT, NO ATTEMPT BY DR. SHAINSKY TO CONTACT
21 DR. BOHN, RIGHT?

22 A CORRECT.

23 Q IN FACT, YOU'RE AWARE THAT SHE DIDN'T EVEN
24 KNOW THE NAME OF DR. BOHN OR HIS PHONE NUMBER UNTIL THE
25 22ND?

26 A I'LL ACCEPT THAT.

27 Q OKAY. WHAT IS IT IN YOUR REVIEW, EXPERT
28 REVIEW, DOCTOR, WHAT IS IT THAT CHANGED ON MARCH 22ND THAT

1 NOW MADE IT APPROPRIATE, INDEED NECESSARY, FOR
2 DR. SHAINSKY TO REACH OUT TO THE PATIENT'S PSYCHIATRIST?
3 WHAT CHANGED?

4 A WELL, TO MY UNDERSTANDING WHAT CHANGED WAS
5 SHE HAD BEEN GETTING ACTUALLY VARIOUS TYPES OF PLASTIC
6 SURGERY ALL ALONG FROM DR. CASSILETH AND DR. CASSILETH WAS
7 PLANNING A MAJOR PROCEDURE AND HAD SAID, "YOU MUST STOP
8 YOUR CYMBALTA BEFOREHAND." AND SHE FELT IT WOULD BE
9 APPROPRIATE IF THE PSYCHIATRIST KNEW THAT.

10 Q WOULD IT HAVE BEEN APPROPRIATE FOR THE
11 PSYCHIATRIST TO KNOW THAT SHE WAS PUTTING THE PATIENT ON
12 CYMBALTA BEFORE SHE DID IT?

13 A IT WOULD BE APPROPRIATE FOR THE -- YES, IT
14 WOULD BE APPROPRIATE, AND IT WOULD BE APPROPRIATE FOR HER
15 TO SAY, "YOU KNOW, THE RHEUMATOLOGIST PUT ME ON CYMBALTA."

16 Q AND THERE'S NO EVIDENCE IN THIS RECORD THAT
17 DR. SHAINSKY EVEN TRIED TO REACH OUT TO THE PSYCHIATRIST
18 BEFORE SHE PUT HER ON CYMBALTA, CORRECT?

19 A CORRECT.

20 Q NOW, YOUR TESTIMONY IS, AS I UNDERSTAND THE
21 GAME PLAN OR THE TREATMENT PLAN, WAS THAT DR. SHAINSKY WAS
22 GOING TO PUT HER ON CYMBALTA AND SHE STRONGLY DISCOURAGED
23 OPIATES, RIGHT?

24 A RIGHT.

25 Q BUT BY STRONGLY DISCOURAGING OPIATES, SHE
26 GAVE HER IN THAT TIME FRAME 216 TABLETS OF NARCOTICS,
27 RIGHT?

28 A RIGHT.

1 Q AND IF I UNDERSTAND YOUR TESTIMONY, THE GAME
2 PLAN WAS THAT AFTER THE CYMBALTA TOOK EFFECT, SHE COULD
3 THEN BEGIN TO TAKE HER OFF THE NARCOTICS; IS THAT RIGHT?

4 A CORRECT.

5 Q AND YOU TESTIFIED THAT WOULD TAKE -- YOU
6 THINK THAT COULD TAKE UP TO SIX WEEKS?

7 A MINIMUM. IT MAY NOT EVER HAPPEN WITH
8 CYMBALTA.

9 Q BUT DID I HEAR YOU RIGHT? DID YOU SAY SIX
10 WEEKS?

11 A MINIMUM.

12 Q SO THAT'S WHAT YOU WOULD EXPECT? IF THIS
13 GAME PLAN IS WORKING AND YOU'RE NOT DEALING WITH A
14 PSYCHIATRIC PATIENT, YOU'RE DEALING WITH FIBROMYALGIA,
15 WITHIN SIX WEEKS WE SHOULD SEE SOME BENEFIT FROM THE
16 CYMBALTA?

17 A MINIMUM.

18 Q IS THAT WHAT YOU TESTIFIED TO?

19 A I'M GOING TO SAY IT ONE MORE TIME. MINIMUM.

20 Q SO AM I RIGHT THAT BETWEEN FEBRUARY 10TH
21 WHEN SHE GOT 60, FEBRUARY 25TH WHEN SHE GOT ANOTHER 56,
22 100 ON MARCH 11, AND MARCH 22ND, THAT'S SIX WEEKS, ISN'T
23 IT?

24 A RIGHT.

25 Q AND HOW WAS THE GAME PLAN WORKING AS OF THAT
26 POINT?

27 A IT WASN'T WORKING VERY WELL.

28 Q AND THAT'S WHAT CAUSED HER TO SAY, IN YOUR

1 OPINION, "GOSH, WE HAVE A PROBLEM, WE BETTER INVOLVE THE
2 PSYCHIATRIST," CORRECT?

3 A WELL, I'M GOING TO SAY IT ONE MORE TIME.
4 MINIMUM. IT COULD BE THREE OR FOUR MONTHS BEFORE YOU SEE
5 AN EFFECT. SO THE FACT THAT SIX WEEKS GO BY AND YOU
6 HAVEN'T SEEN ONE DOESN'T MEAN YOUR APPROACH ISN'T GOING TO
7 WORK. IT MEANS IT HASN'T WORKED YET.

8 YOU WOULDN'T EXPECT ANYTHING BEFORE SIX
9 WEEKS. BUT AT SIX WEEKS SHE REALIZED THERE ARE EVENTS
10 GOING ON IN HER LIFE NOW THAT ARE CAUSING EXCESSIVE
11 ANXIETY. ANXIETY CAN MAKE THIS WORSE. SHE'S USING MORE
12 PAIN MEDICINE. THAT MEANS SHE'S WORSE. LET'S GO SEE A
13 PSYCHIATRIST, DEAL WITH THE ANXIETY. NOT DEAL WITH THE
14 DEPRESSION, DEAL WITH THE ANXIETY.

15 Q YOU CRITICIZED DR. BLUESTONE'S TESTIMONY,
16 BUT I'M NOT SURE YOU FULLY FLESHED OUT WHAT DR. BLUESTONE
17 SAID SHOULD HAVE BEEN DONE. DR. BLUESTONE TESTIFIED THAT
18 THE TREATMENT SHOULD HAVE BEEN CYMBALTA. HE DIDN'T HAVE A
19 PROBLEM WITH CYMBALTA. POOL THERAPY OR AQUA THERAPY
20 BECAUSE THAT GENERATES ENDORPHINS, RIGHT? THAT BENEFITS
21 PEOPLE?

22 A RIGHT.

23 Q AND YOU CALL IT, YOU KNOW, TAKING CARE OF
24 HER, BUT BASICALLY COGNITIVE THERAPY.

25 DR. BLUESTONE ISN'T SAYING IF YOU DON'T DO
26 ANYTHING. HE'S SAYING YOU DON'T GIVE THEM NARCOTICS,
27 CORRECT?

28 A THAT'S WHAT HE SAID.

1 Q THE POOL THERAPY WOULD BE IMPORTANT, THOUGH,
2 WOULDN'T IT, BECAUSE THAT'S GENERATING ENDORPHINS THAT
3 MAKE THIS PERSON FEEL BETTER AND BEGIN TO GET THEM BACK ON
4 THEIR FEET, RIGHT?

5 A WELL, THAT'S PART OF THE REASON. THE OTHER
6 REASON IS THEY TEND TO BE WEAK BECAUSE PAINFUL MUSCLES GET
7 WEAK. THE MORE YOU CAN TEACH THEM THAT USING THE MUSCLE
8 ACTUALLY IS GOOD, IT DOESN'T HURT, THE BETTER THEY ARE.
9 SO IF YOU SAID TO ME, "HOW MANY TIMES DO YOU HAVE TO GO IN
10 THE POOL BEFORE YOU ARE IN GOOD SHAPE," IT'S NOT GOING TO
11 BE ONE OR TWO TIMES. IT'S GOING TO BE WEEKS AND WEEKS.

12 Q WHERE IN THIS RECORD, DOCTOR, DO YOU FIND
13 ANY EVIDENCE THAT DR. SHAINSKY DID ANY FOLLOW-UP WITH
14 RESPECT TO POOL THERAPY? DID SHE EVEN ASK THE PATIENT,
15 "HOW IS THE POOL THERAPY GOING?"

16 A NO.

17 Q WHY NOT?

18 A I THINK SHE WASN'T GOING.

19 Q IT'S CLEAR SHE WASN'T GOING.

20 THE QUESTION IS: WHY DIDN'T DR. SHAINSKY
21 FOLLOW UP WITH HER AND SAY, "HOW'S THE POOL THERAPY GOING?
22 DO YOU NEED THE NAME OF A POOL?"

23 A WHY WOULD YOU ASK HOW THE POOL THERAPY IS
24 GOING IF SHE WASN'T GOING?

25 Q I MIGHT TELL HER, AS DR. BOHN REPEATEDLY
26 TOLD HER, WITH RESPECT TO OPIATES, "DON'T DO IT. YOU NEED
27 TO DO POOL THERAPY."

28 THE COURT: COUNSEL, LET'S MOVE ON. I DON'T KNOW

1 THAT THIS CASE IS ABOUT POOL THERAPY.

2 MR. NEWHOUSE: IT'S NOT ABOUT POOL THERAPY, THAT'S
3 CORRECT.

4 Q DOCTOR, HAVE YOU EVER TREATED A PATIENT WHO
5 PRESENTS WITH SYMPTOMS OF CHRONIC BODY PAIN BUT WHO HAS
6 CLEAR PSYCHIATRIC OR PSYCHOSIS ISSUES, WOULD YOU EVER GIVE
7 THAT PATIENT OPIOIDS, EVER?

8 A THE ANSWER IS "YES, OF COURSE" AND THE
9 REASON IS BECAUSE WHEN YOU USE THE WORD "PSYCHIATRIC
10 ISSUES," THAT IS SUCH A BROAD TERM. ALMOST EVERYONE HAS
11 HAD PSYCHIATRIC ISSUES AT SOME POINT IN TIME.

12 Q FAIR POINT. WE'VE ALL BEEN DEPRESSED?

13 A CORRECT.

14 Q BUT MAYBE NOT -- I'M TALKING ABOUT -- WHEN I
15 SAY "PSYCHIATRIC ISSUES," I MEAN BASED UPON YOUR REVIEW OF
16 THE RECORD, YOU KNOW WHAT'S IN DR. BOHN'S FILE, ALL OF THE
17 CLINICAL ISSUES, THE PSYCHIATRIC ISSUES, SCHIZOAFFECTIVE
18 DISORDER, PSYCHOSIS NOS, NOT OTHERWISE SPECIFIED, WOULD
19 YOU GIVE A PATIENT WHO YOU KNOW PRESENTS ALL OF THOSE
20 SYMPTOMS, EXPERIENCING HALLUCINATIONS, DELUSIONS, BURNING
21 IN THE THROAT, HAIR ON FIRE, WOULD YOU EVER GIVE A PATIENT
22 LIKE THAT 100 PERCOCET TABLETS AND TELL HER, "COME BACK IN
23 FOUR WEEKS"? WOULD YOU EVER DO THAT?

24 MR. BLESSEY: OBJECTION. PERSONAL PRACTICE IS NOT
25 RELEVANT TO THE ISSUES OF STANDARD OF CARE.

26 THE COURT: LET'S JUST ASSUME, WAS THAT WITHIN THE
27 STANDARD OF CARE?

28 THE WITNESS: WILL YOU ALLOW ME TO FINISH MY

1 RESPONSE?

2 BY MR. NEWHOUSE:

3 Q POSSIBLY.

4 A THE ANSWER IS "NO, IT WOULDN'T BE IN THE
5 STANDARD OF CARE" BECAUSE YOU USED THE WORD
6 "EXPERIENCING." IF THEY WERE NOW EXPERIENCING THOSE
7 THINGS, IT WOULD NOT BE. IF THEY HAD EXPERIENCED THOSE
8 THINGS IN THE DISTANT PAST RELATED TO A DRUG THEY'RE NO
9 LONGER USING AND THEY APPEARED NORMAL PSYCHIATRICALY, I
10 WOULD HAVE NO PROBLEM.

11 Q FINAL LINE OF QUESTIONS AND THEN I WILL SIT
12 DOWN.

13 IS IT -- IN YOUR EXPERIENCE, THESE ARE
14 DANGEROUS, GENERALLY SPEAKING, THESE NARCOTICS CAN BE
15 DANGEROUS FOR THE CLIENT, FOR THE PATIENTS, CORRECT? THEY
16 NEED TO BE CLOSELY MONITORED BY THE PHYSICIAN?

17 A LET ME TELL YOU THAT ALCOHOL IS A MAJOR
18 CAUSE OF DEATH IN THIS COUNTRY FROM CIRRHOSIS AND DRUNKEN
19 DRIVING AND SO ON. IF YOU COME TO MY HOUSE AND I OFFER
20 YOU A GLASS OF WINE, AM I TRYING TO KILL YOU? NO.

21 WHEN YOU SAY ARE THESE DRUGS DANGEROUS, WHAT
22 YOU NEED TO SAY IS ARE THEY DANGEROUS WHEN THEY'RE NOT
23 USED APPROPRIATELY, WHEN THEY'RE OVERDOSED, WHEN THEY'RE
24 TAKEN WITH ALCOHOL. THIS IS THE MOST COMMONLY PRESCRIBED
25 DRUG IN THE UNITED STATES, HYDROCODONE. WHY WOULD THE
26 MOST COMMONLY PRESCRIBED DRUG IN THE UNITED STATES BE
27 DANGEROUS?

28 Q YOU DON'T BELIEVE THE NORCO OR PERCOCET CAN

1 BE DANGEROUS IF NOT CLOSELY MONITORED BY THE PHYSICIAN?

2 A I HAVE A LITTLE JOKE I TELL MY PATIENTS. IF
3 I WAS A LAWYER, I'D HAVE TO TELL YOU ON THE WAY TO THE
4 DRUGSTORE YOU COULD GET ROBBED, YOU COULD GET IN A CAR
5 ACCIDENT, YOU COULD GET PARALYZED. THE DRUG STORE COULD
6 GET ROBBED WHILE YOU'RE IN THERE. ALL THESE THINGS HAVE
7 HAPPENED TO SOMEONE. DOES THAT MEAN IT IS DANGEROUS TO GO
8 TO THE DRUG STORE? NO.

9 Q LET ME ASK IT A DIFFERENT WAY.

10 IS IT REQUIRED BY THE STANDARD OF CARE TO A
11 PHYSICIAN WHO IS ADMINISTERING INCREASING QUANTITIES OF
12 NARCOTICS TO A PAIN PATIENT -- IS IT IMPORTANT FOR THAT
13 PHYSICIAN TO KEEP A CAREFUL RECORD OF THE DRUGS,
14 QUANTITIES AND AMOUNTS, THAT SHE IS PRESCRIBED?

15 A YES.

16 Q AND DID THAT HAPPEN IN THIS CASE?

17 A YES.

18 Q WELL, LET ME ASK YOU: THE PRESCRIPTION ON
19 FEBRUARY 25TH, 56 TABS OF NORCO, DO YOU FIND -- DID YOU
20 FIND THAT REFERENCE ANYWHERE IN DR. SHAINSKY'S RECORDS,
21 ANYWHERE?

22 A WHEN YOU SAY "RECORDS," ARE YOU TALKING
23 ABOUT THE HANDWRITTEN -- I MEAN THE ELECTRONIC NOTES?

24 Q EXHIBIT 100, WHICH IS A COMPLETE SET OF
25 DR. SHAINSKY'S CHART FOR TARA DE ROGATIS.

26 THERE'S NO REFERENCE TO THE FEBRUARY 25TH
27 PRESCRIPTION THERE, IS THERE?

28 A I DON'T BELIEVE SO.

1 MR. NEWHOUSE: NO FURTHER QUESTIONS, YOUR HONOR.
2 THANK YOU.

3 THE COURT: REDIRECT.

4 MR. BLESSEY: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: MAY THE WITNESS BE EXCUSED?

6 MR. BLESSEY: YES.

7 THE COURT: DOCTOR, THANK YOU VERY MUCH. YOU'RE
8 EXCUSED.

9 THE WITNESS: THANK YOU, SIR.

10 THE COURT: LET ME SEE COUNSEL AT THE SIDEBAR.

11

12 (UNREPORTED PROCEEDINGS WERE HELD AT
13 SIDEBAR.)

14

15 THE COURT: NEXT WITNESS.

16 MR. BLESSEY: YES, YOUR HONOR. AT THIS POINT THE
17 DEFENSE WOULD LIKE TO CALL DR. LAURA AUDELL.

18 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

19 DO YOU SOLEMNLY STATE THAT THE TESTIMONY YOU
20 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
21 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
22 SO HELP YOU GOD?

23 THE WITNESS: I DO.

24 THE CLERK: PLEASE HAVE A SEAT ON THE WITNESS
25 STAND. PLEASE STATE YOUR NAME AND SPELL YOUR NAME FOR THE
26 RECORD.

27 THE WITNESS: LAURA, L-A-U-R-A, GIFFIN,
28 G-I-F-F-I-N, AUDELL, A-U-D-E-L-L.

1 THE COURT: ALL RIGHT. WELCOME, DOCTOR.

2 THE WITNESS: THANK YOU.

3 MR. BLESSEY: MAY I PROCEED, YOUR HONOR?

4 THE COURT: YES, YOU MAY.

5

6 LAURA AUDELL, M.D.,

7 CALLED AS A WITNESS BY THE DEFENSE, WAS DULY SWORN AND

8 TESTIFIED AS FOLLOWS:

9

10 DIRECT EXAMINATION

11 BY MR. BLESSEY:

12 Q YOU ARE A MEDICAL DOCTOR, CORRECT?

13 A YES.

14 Q TELL THE JURY WHAT YOUR SPECIALTY IS.

15 A PAIN MANAGEMENT.

16 Q AND CAN YOU DESCRIBE FOR THE JURY THE NATURE
17 OF YOUR PRACTICE?

18 A I SEE PATIENTS WITH COMPLAINTS OF ACUTE,
19 CHRONIC, AND CANCER PAIN. SOME PATIENTS I SEE COME TO ME
20 WITHOUT --

21 THE COURT: CAN ALL THE JURORS HEAR THE WITNESS?
22 YOU MIGHT HAVE TO KEEP YOUR VOICE UP A LITTLE BIT MORE,
23 DOCTOR.

24 THE WITNESS: IS THAT OKAY?

25 I SEE PATIENTS WITH ACUTE, CHRONIC, AND
26 CANCER PAIN. I SEE PATIENTS WHO HAVE PAIN WITHOUT
27 DIAGNOSIS. MY PRACTICE IS 100 PERCENT PAIN MANAGEMENT.

28 I TRAINED AT U.C.L.A. IN INTERNAL MEDICINE.

1 I TRAINED FOLLOWING THAT IN ANESTHESIOLOGY AND DID A
2 FELLOWSHIP IN PAIN MANAGEMENT FOLLOWING THAT AND WAS THE
3 CHIEF RESIDENT OF ANESTHESIA AT U.C.L.A. IN 1987 TO '88
4 AND I'VE BEEN AT CEDARS PRACTICING PAIN MANAGEMENT
5 EXCLUSIVELY SINCE 1988.

6 Q IN YOUR PRACTICE, HAVE YOU HAD EXPERIENCE
7 TREATING PATIENTS WITH FIBROMYALGIA?

8 A YES, I HAVE.

9 Q IN FACT, IN YOUR PRACTICE, YOU GET REFERRED
10 PATIENTS FROM A NUMBER OF DIFFERENT PHYSICIANS IN THE
11 COMMUNITY, CORRECT?

12 A THAT'S CORRECT.

13 Q INCLUDING DR. RODNEY BLUESTONE; IS THAT
14 CORRECT?

15 A THAT'S CORRECT.

16 Q HYPOTHETICALLY, IF DR. BLUESTONE HAD
17 REFERRED MS. DE ROGATIS TO YOUR PRACTICE AS HE'S DONE WITH
18 OTHER PATIENTS, WOULD YOU HAVE MADE THE DIAGNOSIS OF
19 FIBROMYALGIA?

20 A I WOULD HAVE.

21 Q AND WHY WOULD YOU HAVE MADE THAT DIAGNOSIS?

22 A WELL, BASED ON THE REVIEW OF THE MEDICAL
23 RECORD, THE PATIENT MET THE CRITERIA FOR FIBROMYALGIA.
24 SHE HAD DIFFUSE GENERALIZED PAIN. SHE HAD EXACERBATIONS
25 OF HER PAIN SYNDROME. SHE HAD NONRESTORATIVE SLEEP. AND
26 SHE BASICALLY, ON THE EXAMINATIONS THAT I SAW IN THE
27 MEDICAL RECORD, HAD THE DIFFUSE PAIN WITH TENDER POINTS
28 THAT ONE WOULD EXPECT TO SEE WITH PATIENTS WITH

1 FIBROMYALGIA.

2 Q HYPOTHETICALLY, IF DR. BLUESTONE HAD
3 REFERRED MS. DE ROGATIS TO YOU AND YOU MADE THE DIAGNOSIS
4 OF FIBROMYALGIA, WOULD YOU HAVE TREATED THIS PATIENT WITH
5 OPIATES?

6 MS. MC BROOM: OBJECTION, YOUR HONOR. INCOMPLETE
7 HYPOTHETICAL IN THIS STATE OF HER TESTIMONY.

8 THE COURT: OVERRULED.

9 THE WITNESS: WELL, SHE CAME TO THE DOCTORS -- WHEN
10 SHE CAME TO THE DOCTOR, SHE WAS ALREADY ON OPIATES. SO
11 WHILE YOU'RE TREATING PATIENTS WITH FIBROMYALGIA, EVEN IF
12 YOU'RE CHOOSING OTHER MEDICATIONS, YOU USUALLY MAINTAIN
13 THEM ON THE MEDICATION THAT THEY CAME TO YOU ON SO THAT IF
14 YOU WERE STOP IT ACUTELY, THEY WOULD HAVE SYMPTOMS OF
15 WITHDRAWAL WHICH WOULD WORSEN THEIR PAIN SYNDROME.

16 SO WHILE YOU'RE TREATING THE PERSON, YOU
17 WOULD CERTAINLY MAINTAIN THEM ON THE MEDICATION AND THEN
18 EITHER TAPER THEM OR SWITCH THE MEDICATIONS AS IT WAS
19 APPROPRIATE.

20 BY MR. BLESSEY:

21 Q NOW, IN YOUR PRACTICE, YOU OBVIOUSLY USE
22 NORCO AND PERCOCET TO TREAT SOME OF YOUR PATIENTS,
23 CORRECT?

24 A YES.

25 Q AND ARE YOU AWARE THAT THERE ARE CERTAIN
26 PATIENTS WHO MIGHT BE, IN YOUR PRACTICE, DRUG SEEKING?

27 A YES.

28 Q AND DO YOU UNDERSTAND THE DISTINCTION

1 BETWEEN DRUG SEEKING AND A PATIENT WHO IS SEEKING RELIEF
2 OF THEIR PAIN?

3 A YES.

4 Q ALL RIGHT. HYPOTHETICALLY -- I'M GOING TO
5 WRITE THIS OUT SO YOU DON'T HAVE TO KEEP IT ALL IN YOUR
6 HEAD.

7 BUT HYPOTHETICALLY, IF A PATIENT LIKE
8 MS. DE ROGATIS WENT TO A PHYSICIAN ON JANUARY THE 11TH,
9 2010, AND THE PHYSICIAN TREATED HER PAIN --

10 MR. NEWHOUSE: YOU WROTE "1."

11 MR. BLESSEY: WE KNOW IT'S 2010. DO YOU WANT TO
12 WRITE IT FOR ME?

13 MR. NEWHOUSE: NO.

14 BY MR. BLESSEY:

15 Q AND THAT DOCTOR PRESCRIBED 20 PILLS, 20
16 TABLETS, OF NORCO, AGAIN 5 MILLIGRAMS OF 325.

17 DO YOU HAVE THAT IN MIND HYPOTHETICALLY?

18 A YES.

19 Q AND THEN ON JANUARY THE 20TH, 2010 -- I'M
20 ONLY GOING TO WRITE THE '10, GEORGE, OKAY?

21 MR. NEWHOUSE: THANK YOU.

22 BY MR. BLESSEY:

23 Q -- ANOTHER DOCTOR WRITES A PRESCRIPTION FOR
24 NORCO, 30 TABLETS.

25 DO YOU HAVE THAT IN MIND?

26 A YES.

27 Q OKAY. SAME -- ACTUALLY, THIS IS 10
28 MILLIGRAMS WITH 325.

1 AND THEN ON FEBRUARY THE 3RD, 2010, THE SAME
2 PHYSICIAN WHO PRESCRIBED THE MEDICATION ON JANUARY 20,
3 2010 WRITES ANOTHER PRESCRIPTION FOR 30 TABLETS, SAME
4 STRENGTH.

5 DO YOU HAVE THAT IN MIND?

6 A YES.

7 Q NOW, PART OF THE HYPOTHETICAL IS IN BETWEEN
8 THESE VISITS, THERE WERE NO PHONE CALLS FROM THE PATIENT
9 REQUESTING ADDITIONAL MEDICATION, OKAY?

10 A OKAY.

11 Q SO LET'S CONTINUE ON.

12 THEN ON FEBRUARY THE 10TH, 2010, THIS
13 PATIENT SEES ANOTHER PHYSICIAN WHO WRITES A PRESCRIPTION
14 FOR 60 TABLETS OF NORCO.

15 DO YOU HAVE THAT IN MIND?

16 A YES.

17 Q AND THEN ON FEBRUARY THE 25TH, 2010, THE
18 PATIENT COMES BACK OR ACTUALLY PHONES IN AND GETS A
19 PRESCRIPTION FOR 56 TABLETS OF NORCO.

20 A OKAY.

21 Q STILL WITH ME?

22 A YEAH.

23 Q AND FINALLY ON MARCH THE 1ST, 2010, THERE'S
24 A PRESCRIPTION WRITTEN FOR 100 TABLETS OF NORCO WITH THE
25 EXPECTATION THE PATIENT WOULD COME BACK IN APPROXIMATELY
26 THREE TO FOUR WEEKS.

27 DO YOU HAVE THAT IN MIND?

28 A YES.

1 Q ALL RIGHT. DOCTOR, WHAT I WANT TO KNOW IS:
2 UNDER MY HYPOTHETICAL OF THIS PATTERN OF PRESCRIPTION, IS
3 THAT A PATIENT BASED, ON YOUR TRAINING, EDUCATION, AND
4 EXPERIENCE, THAT IS DRUG SEEKING?

5 A NO.

6 Q WHY NOT? TELL THE JURY WOULD WHY NOT.

7 A WELL, I MEAN, WHEN YOU LOOK AT THE NUMBERS
8 OF -- THE AMOUNTS OF MEDICATION THAT THE PATIENT IS
9 TAKING, THE DOSES AREN'T -- THE DOSES ARE WHAT WOULD BE
10 CONSIDERED REASONABLE AND CUSTOMARY FOR SOMEBODY WHO HAS A
11 COMPLAINT OF FIBROMYALGIA.

12 WHEN PATIENTS ARE REALLY DRUG SEEKING,
13 OFTENTIMES WHAT WILL HAPPEN IS YOU'LL GET PHONE CALLS
14 AFTER A FEW DAYS OR A WEEK THAT SOMETHING HAPPENED TO
15 THEIR MEDICATION, THEY DROPPED IT DOWN THE TOILET, IT FELL
16 INTO THE SINK, THEY WERE TRAVELING AND THEIR CARRY-ON BAG
17 WAS STOLEN FROM THE AIRPLANE. THOSE ARE THE KINDS OF
18 THINGS THAT YOU SEE WHEN PEOPLE ARE USING WAY MORE THAN
19 WHAT THEY'RE EXPECTED TO USE AND THEY'RE TRYING TO GET
20 EXTRA PRESCRIPTIONS.

21 SHE'S GETTING -- THIS PERSON IS GETTING
22 THEIR MEDICATION ON SCHEDULED VISITS WITH THE EXCEPTION OF
23 ONE WHICH WAS A CALL-IN, BUT THIS DOSING THAT THE PERSON
24 WAS GETTING WAS WHAT ONE WOULD EXPECT FOR THE AMOUNT OF
25 TIME THAT WAS BETWEEN THE TIME THEY RECEIVED THE
26 MEDICATION AND THE TIME THAT THEY GOT ANOTHER
27 PRESCRIPTION.

28 SO WHEN YOU LOOK AT THAT, THAT'S NOT

1 SOMEBODY WHO YOU WOULD CONSIDER DRUG SEEKING. IT'S
2 SOMEONE WHO IS USING THE MEDICATION, BUT IT'S NOT SOMEONE
3 WHO IS ATTEMPTING TO ESCALATE THE MEDICATIONS.

4 Q THANK YOU. LET ME SWITCH TO A LITTLE
5 DIFFERENT AREA AND THEN I THINK I WILL BE DONE.

6 IN ORDER TO PREPARE FOR YOUR OPINIONS IN
7 THIS CASE, YOU READ MEDICAL RECORDS, DID YOU NOT?

8 A YES, I DID.

9 Q AND YOU ALSO READ DEPOSITIONS OF THE
10 PHYSICIANS AND THE EXPERTS IN THIS CASE, CORRECT?

11 A THAT IS CORRECT.

12 Q AND ONE OF THE DEPOSITIONS THAT YOU READ WAS
13 THE PLAINTIFF'S EXPERT, A PAIN MANAGEMENT PERSON BY THE
14 NAME OF DR. STARK, CORRECT?

15 A THAT'S CORRECT.

16 Q AND YOU'RE AWARE, ARE YOU NOT, THAT
17 DR. STARK IN HIS DEPOSITION WENT THROUGH A LIST OF THINGS
18 THAT HE FELT DR. SHAINSKY DID THAT WAS WITHIN THE STANDARD
19 OF CARE, CORRECT?

20 MS. MC BROOM: OBJECTION, YOUR HONOR. IF DR. STARK
21 HAS NOT PROVIDED TESTIMONY, IT'S IMPROPER USE OF HIS
22 DEPOSITION.

23 THE COURT: HE GAVE A DEPOSITION, DIDN'T HE?

24 YOU READ IT AND RELIED UPON IT?

25 THE WITNESS: YES, I DID.

26 THE COURT: OVERRULED.

27 BY MR. BLESSEY:

28 Q ARE YOU AWARE OF THE THINGS THAT DR. STARK

1 SAID THAT DR. SHAINSKY DID THAT WAS WITHIN THE STANDARD OF
2 CARE, CORRECT?

3 A THAT IS CORRECT.

4 Q FOR EXAMPLE, HE SAID THAT DR. SHAINSKY'S
5 WORKUP OF THIS PATIENT WAS REASONABLE AND WITHIN THE
6 STANDARD OF CARE, TRUE?

7 A TRUE.

8 Q NUMBER TWO, HE SAID THAT DR. SHAINSKY NOT
9 ONLY RECOMMENDED MEDICAL THERAPY BUT RECOMMENDED
10 NONMEDICAL THERAPY TO TREAT THE CONDITION OF FIBROMYALGIA
11 AND THAT WAS WITHIN THE STANDARD OF CARE, CORRECT?

12 A THAT IS CORRECT.

13 MR. NEWHOUSE: EXCUSE ME, COULD WE BE HEARD ON A
14 SIDE BAR?

15 THE COURT: NO. I ONLY ONE WANT LAWYER PER
16 WITNESS. ALL RIGHT? GO AHEAD.

17 BY MR. BLESSEY:

18 Q NUMBER THREE, DR. STARK, THE PLAINTIFF'S
19 EXPERT, TESTIFIED THAT IT WAS WITHIN THE STANDARD OF CARE
20 OF DR. SHAINSKY TO TREAT THIS PATIENT WITH NORCO AND
21 CYMBALTA DURING HER VISITS WITH DR. SHAINSKY, TRUE?

22 A TRUE.

23 Q HE ALSO TESTIFIED THAT HE BELIEVED THAT
24 NORCO WAS AN EFFECTIVE DRUG FOR TREATING MS. DE ROGATIS'
25 PAIN SYMPTOMS, TRUE?

26 A TRUE.

27 MR. BLESSEY: THANK YOU. NOTHING FURTHER, YOUR
28 HONOR.

1 THE COURT: ALL RIGHT. CROSS.

2 MS. MC BROOM: YES, THANK YOU.

3

4

CROSS-EXAMINATION

5 BY MS. MC BROOM:

6 Q GOOD AFTERNOON, DR. DOCTOR.

7 A GOOD AFTERNOON.

8 Q WE'VE MET BEFORE, CORRECT?

9 A WE DID.

10 Q THAT WAS AT YOUR DEPOSITION?

11 A CORRECT.

12 Q NOW, YOUR OFFICE HAS A RELATIONSHIP WITH --
13 OR HAD A RELATIONSHIP WITH DR. SHAINSKY'S MEDICAL GROUP AT
14 THE TIME OF OUR DEPOSITION, CORRECT?

15 A I MEAN, THEIR GROUP HAS REFERRED PATIENTS TO
16 US, YES.

17 Q SO HOW MANY PATIENTS A YEAR WOULD YOU SAY
18 DR. SHAINSKY'S MEDICAL GROUP REFERS PATIENTS TO YOUR
19 GROUP?

20 A I HAVE NO WAY OF KNOWING THE ANSWER TO THAT.

21 Q CAN YOU GIVE ME AN ESTIMATE?

22 A I CAN'T BECAUSE THERE'S LIKE SEVEN OR EIGHT
23 PHYSICIANS IN THE GROUP, SO I CAN'T TELL YOU HOW MANY THE
24 OTHER DOCTORS ARE SEEING.

25 Q WHAT ABOUT YOU IN PARTICULAR?

26 A I SAW -- THERE'S DR. VENTURUPALLI WHO REFERS
27 PATIENTS OCCASIONALLY TO ME. MAYBE I SEE FIVE PATIENTS A
28 YEAR.

1 Q AND THAT'S A DOCTOR THAT IS IN THE SAME
2 GROUP AS DR. SHAINSKY, BEVERLY MEDICAL ASSOCIATES?

3 A I BELIEVE SO, YES.

4 Q OKAY. DO YOU EVER REFER PATIENTS TO THAT
5 GROUP?

6 A YES.

7 Q ABOUT HOW MANY A YEAR WOULD YOU SAY YOU
8 REFER?

9 A MAYBE FIVE.

10 Q SO IF YOU WERE TO GIVE AN OPINION THAT
11 SOMEONE FROM THAT GROUP ACTED BELOW THE STANDARD OF CARE
12 IN THEIR TREATMENT OF A PATIENT, THAT WOULD SORT OF HURT
13 THAT RELATIONSHIP, WOULDN'T IT?

14 MR. BLESSEY: ACTUALLY, YOUR HONOR, LET ME OBJECT.
15 THERE WERE NO QUESTIONS ABOUT THE STANDARD OF CARE THAT
16 WERE RAISED ON DIRECT EXAM SO IT'S NOT RELEVANT.

17 THE COURT: I'M SORRY, THE QUESTION GOES TO WHAT,
18 BIAS?

19 MS. MC BROOM: YES, IT DOES.

20 THE COURT: AND WHAT ARE YOU ASKING?

21 MS. MC BROOM: I'M ASKING, YOUR HONOR, THAT IF SHE
22 GIVES AN OPINION -- IF SHE WERE TO GIVE AN OPINION THAT
23 WENT AGAINST DR. SHAINSKY'S CARE OF TARA DE ROGATIS, THAT
24 THAT WOULD CREATE A PROBLEM WITH THE RELATIONSHIP BETWEEN
25 THE TWO PRACTICES.

26 THE COURT: YOU CAN ANSWER THAT.

27 THE WITNESS: I'M NOT SURE THAT IT WOULD, ONLY
28 BECAUSE I THINK THAT THERE'S BEEN SOME CHANGES WITHIN THE

1 PRACTICE. I DON'T KNOW THAT DR. SHAINSKY IS STILL IN
2 PRACTICE WITH DR. VENTURUPALLI. THERE WAS A CHANGE IN THE
3 ASSOCIATIONS. I THINK DR. VENTURUPALLI IS WITH
4 DR. WALLACE. I ACTUALLY HAVE NO IDEA IF DR. SHAINSKY'S IN
5 THAT OFFICE NOW OR NOT.

6 BY MS. MC BROOM:

7 Q OKAY. HOW LONG HAVE YOU BEEN DOING
8 MEDICOLEGAL WORK?

9 A OFF AND ON FOR ABOUT TEN YEARS.

10 Q OKAY. AND YOU'VE PROVIDED TESTIMONY,
11 MEDICOLEGAL TESTIMONY, ON NUMEROUS OCCASIONS, CORRECT?

12 A YES, I HAVE.

13 Q WOULD YOU SAY HUNDREDS OF TIMES?

14 A OH, NO.

15 Q HOW MANY TIMES?

16 A THAT I'VE TESTIFIED IN COURT OR THAT I'VE
17 REVIEWED CASES?

18 Q DEPOSITION OR TRIAL TESTIMONY.

19 A I'VE PROBABLY DONE BETWEEN, IN THE PAST TEN
20 YEARS, MAYBE 50 TO 100 CASES.

21 Q AND WHAT PERCENTAGE OF THOSE CASES HAVE TO
22 DO WITH MEDICAL MALPRACTICE?

23 A PROBABLY ABOUT HALF.

24 Q AND IN THE MAJORITY OF THOSE MEDICAL
25 MALPRACTICE CASES, YOU TESTIFY ON BEHALF OF THE DEFENSE,
26 CORRECT?

27 A MOST OF THEM, YES.

28 Q IN FACT, YOU'VE BEEN RETAINED BY TAYLOR

1 BLESSEY IN THE PAST TO PROVIDE AN OPINION, CORRECT?

2 A YES.

3 Q ON HOW MANY OCCASIONS?

4 A I BELIEVE TWICE.

5 Q AND OVER WHAT TIME PERIOD WAS THAT?

6 A TEN YEARS.

7 Q AND YOU'D LIKE TO BE RETAINED AGAIN BY
8 MR. BLESSEY'S FIRM, CORRECT?

9 A IF THE CASE WAS APPROPRIATE FOR ME, I'D BE
10 INTERESTED IN TAKING A LOOK AT IT.

11 Q NOW, YOU'VE BEEN RETAINED TO PROVIDE AN
12 OPINION -- WELL, TELL ME THIS: YOU'RE NOT A
13 RHEUMATOLOGIST, CORRECT?

14 A NO. I'M AN INTERNIST AND ANESTHESIOLOGIST
15 WITH A SPECIALTY IN PAIN MANAGEMENT.

16 Q SO YOU'RE NOT QUALIFIED TO GIVE AN OPINION
17 AS TO THE STANDARD OF CARE OF A RHEUMATOLOGIST, CORRECT?

18 A I'M NOT TRYING TO GIVE THE OPINION REGARDING
19 THAT.

20 Q THE QUESTION WAS: YOU'RE NOT QUALIFIED TO
21 GIVE AN OPINION --

22 A I'M NOT A TRAINED RHEUMATOLOGIST, THAT'S
23 CORRECT.

24 Q WHAT'S YOUR HOURLY RATE?

25 A FOR?

26 Q REVIEW OF RECORDS.

27 A IT'S \$500 AN HOUR.

28 Q I THOUGHT IT WAS 450.

1 DID IT GO UP?

2 A IT WENT UP A LITTLE BIT, YEAH.

3 Q OKAY. AND DO YOU RECALL AT THE TIME OF YOUR
4 DEPOSITION YOU TOLD ME THAT YOU HAD SPENT ABOUT 20.75
5 HOURS ON THIS CASE UP UNTIL AUGUST OF 2012?

6 A YES, I REMEMBER THAT.

7 Q AND THAT YOU HAD INVOICED APPROXIMATELY
8 \$9,300?

9 A YES, THAT'S CORRECT.

10 Q DO YOU RECALL TELLING ME THAT YOU HAD DONE
11 ABOUT 10 TO 15 ADDITIONAL HOURS OF WORK BETWEEN AUGUST AND
12 SEPTEMBER?

13 A THERE MIGHT HAVE BEEN THAT AMOUNT, YES.

14 Q OKAY. WOULD YOU AGREE THAT GETS YOU TO
15 ABOUT \$16,000?

16 A IF THAT ADDS UP CORRECTLY, YES.

17 Q AND HOW MUCH DO YOU CHARGE FOR DEPOSITION
18 TESTIMONY?

19 A IT WAS 650 AN HOUR. I THINK IT'S 750 AN
20 HOUR NOW.

21 Q SO YOU HAD A DEPOSITION IN THIS CASE, AND
22 THEN WHAT IS YOUR RATE TO TESTIFY AT TRIAL?

23 A \$3,500 FOR A HALF DAY.

24 Q HAVE YOU INVOICED MR. BLESSEY'S FIRM YET?

25 A I BELIEVE FOR ALL THE MEDICAL RECORD REVIEW
26 I DID, BUT -- YOU MEAN FOR TODAY? NO.

27 Q HOW MUCH IS OUTSTANDING?

28 A UP TO NOW, NOTHING.

1 Q WOULD YOU SAY THAT THE TOTAL INVOICE IS
2 GOING TO REACH SOMETHING OVER \$20,000?

3 A I DON'T KNOW. I MEAN, I WOULD HAVE TO LOOK
4 AND SEE.

5 Q SO \$16,000 UP UNTIL THE DATE OF DEPOSITION,
6 3,500 FOR TODAY, INCLUDING YOUR PREP FOR THIS TRIAL, IT'S
7 PROBABLY OVER \$20,000, ISN'T IT?

8 A IT'S -- WE'RE ASSUMING MY NUMBER WAS 16,000,
9 BUT I HAVE NO -- I DON'T HAVE A RECOLLECTION OF THAT. I
10 KNOW FOR SURE THE FIRST LIKE 20 POINT WHATEVER HOURS IT
11 WAS, BUT THE ADDITIONAL HOURS I DON'T KNOW, BUT I'M GOING
12 TO SAY IT'S PROBABLY AROUND 18,000, 16 TO 18,000 TOTAL.

13 Q THANK YOU.

14 YOU TESTIFIED A LITTLE BIT ABOUT AN OPINION
15 OF DR. STARK, AND HIS OPINION WAS THAT DR. SHAINSKY ACTED
16 BELOW THE STANDARD OF CARE IN THE -- WITH REGARD TO THE
17 PRESCRIPTIONS THAT HE PROVIDED TO -- THAT SHE PROVIDED TO
18 TARA, CORRECT?

19 A I'M NOT SURE IT WAS EXACTLY THAT. I MEAN,
20 HE -- WHAT I REMEMBER HIM TESTIFYING TO IS THAT HE THOUGHT
21 THAT SHE SHOULD HAVE DONE SOME ASSESSMENT AND THAT SHE
22 SHOULD HAVE CHECKED THE C.U.R.E.S. REPORT AND THAT BECAUSE
23 THAT WASN'T DONE, THAT WAS THE PART THAT WAS BELOW THE
24 STANDARD OF CARE. NOT THAT SHE WROTE PRESCRIPTIONS FOR
25 THE PATIENT, BUT THAT SHE HADN'T USED TWO TOOLS THAT HE
26 FELT THAT SHE SHOULD HAVE USED.

27 Q SO SHE DIDN'T DO AN APPROPRIATE RISK
28 ASSESSMENT OF TARA'S LIKELIHOOD TO ABUSE OPIATES, CORRECT?

1 A WELL, IT'S AN ASSESSMENT THAT HE FELT THAT
2 SHOULD HAVE BEEN USED, BUT I WOULD TELL YOU THAT IT'S NOT
3 AN ASSESSMENT THAT'S USED AT ALL IN GENERAL MEDICAL
4 PRACTICE WHATSOEVER.

5 Q WELL, THAT WASN'T MY QUESTION.

6 MY QUESTION WAS: IT WAS HIS OPINION THAT
7 DR. SHAINSKY VIOLATED THE STANDARD OF CARE BY FAILING TO
8 APPROPRIATELY ASSESS THE RISK OF TARA ABUSING OPIATES,
9 CORRECT?

10 A HE DID -- HE DID -- HE DID STATE THAT HE
11 FELT THAT SHE SHOULD HAVE USED THIS OPIATE RISK ASSESSMENT
12 TOOL THAT SHE HAD NOT USED.

13 Q SO ASSUMING THE FIBROMYALGIA DIAGNOSIS IS
14 RIGHT, DR. SHAINSKY'S TREATMENT WAS NONETHELESS BELOW THE
15 STANDARD OF CARE ACCORDING TO DR. STARK BECAUSE SHE DIDN'T
16 APPROPRIATELY MONITOR THE USE OF THE OPIATES, CORRECT,
17 ACCORDING TO DR. STARK?

18 A I DON'T KNOW THAT THE ISSUE WAS HOW SHE
19 MONITORED IT AS MUCH AS IT WAS THE TOOLS. I WOULD HAVE
20 TO -- I WOULD HAVE TO LOOK AGAIN AND REREVIEW THAT
21 DEPOSITION TO BE ABLE TO ANSWER THAT QUESTION WITH
22 CERTAINTY.

23 Q SO IT'S YOUR OPINION TODAY THAT DR. SHAINSKY
24 MADE AN APPROPRIATE RISK ASSESSMENT CONCERNING OPIATE USE?

25 A YES.

26 Q OKAY. AND IT'S YOUR OPINION THAT TARA DID
27 NOT APPEAR TO BE OPIATE SEEKING, CORRECT?

28 A THAT'S CORRECT.

1 Q YOU REVIEWED SOME DEPOSITIONS, DID YOU NOT,
2 IN ORDER TO RENDER YOUR OPINION?

3 A YES.

4 Q AND DID YOU REVIEW THE DEPOSITION OF
5 DR. BOHN, TARA'S TREATING PSYCHIATRIST?

6 A YES.

7 MR. BLESSEY: YOUR HONOR, I THINK WE MAY BE GETTING
8 BEYOND THE SCOPE OF DIRECT.

9 THE COURT: SUSTAINED.

10 BY MS. MC BROOM:

11 Q DOCTOR, YOU'RE AWARE THAT TARA'S TREATING
12 PSYCHIATRIST REGARDED HER AS AN OPIATE SEEKER, CORRECT?

13 MR. BLESSEY: YOUR HONOR, AGAIN OBJECT AS BEYOND
14 THE SCOPE.

15 THE COURT: SUSTAINED.

16 BY MS. MC BROOM:

17 Q SO YOU INDICATED THAT THE PRESCRIPTIONS --
18 YOUR OPINION IS THAT GIVEN THE PRESCRIPTIONS THAT TARA WAS
19 GIVEN, THIS DID NOT INDICATE SOMEONE WHO WAS OPIATE
20 SEEKING; IS THAT YOUR OPINION?

21 A YES.

22 Q WOULDN'T THESE PRESCRIPTIONS INDICATE
23 SOMEONE WHO IS NOT IMPROVING WITH THE TREATMENT OF
24 OPIATES?

25 A IT INDICATES THAT IT'S SOMEBODY WHO IS --
26 YOU KNOW, IS STILL EXPERIENCING PAIN. OBVIOUSLY, SHE WAS
27 EXPERIENCING PAIN BECAUSE SHE WAS GOING AND SEEKING
28 TREATMENT FROM THE PHYSICIAN, FROM THE RHEUMATOLOGIST.

1 SHE WAS UTILIZING THE PAIN MEDICATIONS THAT WERE BEING
2 PRESCRIBED, BUT SHE WAS ALSO BEING TREATED THROUGH OTHER
3 MEANS, ALSO. SO IT'S NOT LIKE SHE WAS COMING IN JUST TO
4 GET A PRESCRIPTION OF OPIATES. SHE WAS REALLY LOOKING FOR
5 TREATMENT FOR HER COMPLAINTS OF PAIN.

6 Q RIGHT. BUT YOU DON'T SEEM TO BE TAKING INTO
7 CONSIDERATION THE FACT THAT DR. SHAINSKY'S PRESCRIPTIONS
8 INCREASED IN DOSE. THE FIRST PRESCRIPTION, THE FIRST TWO
9 PRESCRIPTIONS ARE AT 5 MILLIGRAMS, 1 TO 2 EVERY 6 HOURS AS
10 NEEDED; THEREFORE, 5 TO 10.

11 A CORRECT.

12 Q IT COULD BE 5, WHEREAS, THE SECOND
13 PRESCRIPTION IS 10?

14 A RIGHT. I UNDERSTAND THAT.

15 Q THIS IS NOT SOMEONE WHO IS OPIATE SEEKING --

16 A NO. IT'S SOMEONE --

17 Q -- THEY'RE SEEKING A HIGHER DOSE OVER TIME?

18 A I DON'T THINK THE PATIENT WAS COMING IN
19 ASKING FOR THE HIGHER DOSE. THE PATIENT WAS COMING IN
20 STILL HAVING PAIN. THE DOCTOR WAS ASSESSING THE PATIENT'S
21 NEED AND GIVING HER AN APPROPRIATE PRESCRIPTION. THE
22 AMOUNT IN THE PRESCRIPTION AND THE MILLIGRAMS OF OPIATES
23 ARE NOT EXCESSIVE FOR HER COMPLAINT OF PAIN.

24 Q COULDN'T IT BE THAT THE OPIATES WERE
25 ACTUALLY INCREASING HER PAIN?

26 A THAT IS A CONCERN WITH OPIATE USE, BUT IT'S
27 WITH DOSES GREATER THAN WHAT ARE CALLED 100-MILLIGRAM
28 MORPHINE EQUIVALENTS.

1 SO IF SOMEBODY IS RECEIVING OVER A LONG
2 PERIOD OF TIME MORE THAN 100 MILLIGRAMS OF MORPHINE IN A
3 24-HOUR PERIOD OF TIME, THERE IS A PHENOMENON THAT CAN
4 OCCUR CALLED A CENTRALIZATION OF PAIN PHENOMENON WHERE THE
5 PRESENCE OF THE OPIATE CHANGES THE NARCOTIC RECEPTORS AND
6 PERCEPTIONS OF PAIN IN THE BRAIN. THAT HAS NOT BEEN SEEN
7 IN DOSES THAT ARE LOWER THAN 100 MORPHINE EQUIVALENCE, AND
8 THIS IS LOWER THAN 100 MORPHINE EQUIVALENCE BY HALF.

9 Q ASSUMING THAT'S WHAT SHE WAS USING, CORRECT?

10 A IT DOESN'T SEEM THAT THERE'S ANY EVIDENCE
11 THAT SHE WAS USING MORE THAN THAT.

12 Q WELL, SO A PERSON CAN ACTUALLY EXPERIENCE
13 PAIN DUE TO THEIR NARCOTICS USE?

14 A THEY CAN AT MUCH HIGHER DOSES THAN WHAT SHE
15 WAS PRESCRIBED.

16 MS. MC BROOM: NOTHING FURTHER, YOUR HONOR.

17 MR. BLESSEY: NOTHING FURTHER.

18 THE COURT: MAY THE WITNESS BE EXCUSED?

19 MR. BLESSEY: YES, YOUR HONOR.

20 THE COURT: THANK YOU VERY MUCH, DOCTOR.

21 THE WITNESS: THANK YOU.

22 THE COURT: LET ME SEE COUNSEL AT THE SIDEBAR.

23
24 (UNREPORTED PROCEEDINGS WERE HELD AT
25 SIDEBAR.)

26
27 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE'RE
28 DONE FOR THE DAY, BUT WE HAVE TWO FUN-FILLED DAYS COMING

1 UP .

2 MEMORIES QUICKLY SLIP. DEFENSE HAS TWO MORE
3 EXPERTS. GOING TO START WITH OUR FIRST ONE AT 9:00. AND
4 THE SECOND ONE, WE'LL GET STARTED BEFORE NOON AND FINISH
5 UP SHORTLY IN THE EARLY AFTERNOON. THE LAWYERS AND I HAVE
6 TO MEET AND CONFER AND WE'LL PROBABLY TAKE AN EXTENDED
7 BREAK TOMORROW AFTERNOON FOR A HALF AN HOUR RATHER THAN 15
8 MINUTES. WE NEED TO PUT ON THE RECORD ALL OF THE EXHIBITS
9 THAT HAVE NOT OTHERWISE BEEN RECEIVED AND WE NEED TO GO
10 OVER THE JURY INSTRUCTIONS.

11 AND THEN I'M GOING TO -- THEN BOTH SIDES
12 WILL REST UNLESS THERE'S REBUTTAL EVIDENCE, WHICH I
13 SUSPECT, IF ANY, IT WILL BE VERY SHORT. ANYHOW, I'M GOING
14 TO INSTRUCT YOU ON THE LAW TOMORROW AFTERNOON. WE'RE
15 GOING TO THEN BE DONE FOR THE DAY.

16 ON FRIDAY MORNING WE'RE GOING TO HAVE
17 CLOSING ARGUMENTS STARTING AT NINE O'CLOCK AND I WILL
18 FINISH UP THOSE HOWEVER LONG IT TAKES, UNTIL NOON OR
19 12:30. WE SHOULD BE DONE BY NOON I'M THINKING. AND THEN
20 YOU WILL START DELIBERATING ON THE CASE ON FRIDAY
21 AFTERNOON. OKAY?

22 KEEP IN MIND I TELL EVERYBODY MONDAY IS A
23 HOLIDAY, NOT THAT IT'S GOING TO INTERFERE, SO YOU'LL GET
24 IN AT LEAST A FEW HOURS ON FRIDAY AFTERNOON AND THEN COME
25 BACK ON TUESDAY IF NEED BE, OKAY? SO THAT JUST KIND OF
26 GIVES YOU AN IDEA OF WHERE WE'RE GOING.

27 WE ARE ON SCHEDULE. WE WILL COMPLETE THE
28 CASE IN A TIMELY MANNER. AND HOPEFULLY WE'LL GET IT TO

1 YOU ON FRIDAY. ALL RIGHT. HAVE A GOOD EVENING.

2 AGAIN, PLEASE REMEMBER THE ADMONITION OF THE
3 COURT. DO NOT DISCUSS THE FACTS OF THIS CASE AMONGST
4 YOURSELVES OR WITH ANYBODY ELSE. DO NOT FORM ANY OPINIONS
5 OR CONCLUSIONS ON THIS MATTER UNTIL IT'S FINALLY SUBMITTED
6 TO YOU.

7 HAVE A GOOD EVENING. SEE YOU TOMORROW
8 MORNING, 9:00 A.M. HOPEFULLY WE WON'T HAVE A GARAGE
9 PROBLEM.

10

11 (AT 3:50 P.M. THE PROCEEDINGS WERE
12 ADJOURNED UNTIL THURSDAY, NOVEMBER
13 7, 2013, 9:00 A.M.)

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