

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CHANTELLE BAILEY, as)
Guardian Ad Litem of MATEO)
VALLE, a minor,)
)
Plaintiff,)
)
VS.) CASE NO.:
) 50-2010-CA-027289 (AO)
EQUITY RESIDENTIAL)
MANAGEMENT, LLC,)
)
Defendant.)

ORAL AND VIDEOTAPED DEPOSITION OF

DENNIS HOOPER, M.D., Ph.D.

October 4, 2011

Volume 1

ORAL AND VIDEOTAPED DEPOSITION OF DENNIS HOOPER,
M.D., Ph.D., produced as a witness at the instance of the
DEFENDANT, and duly sworn, was taken in the above-styled
and numbered cause on the 4th day of October, 2011, from
10:07 a.m. to 2:04 p.m., before Tonie Thompson, Certified
Shorthand Reporter in and for the State of Texas,
reported by machine shorthand, at the offices of
U.S Legal Support, Dallas, located at 5910 North Central
Expressway, Suite 100, Dallas, Texas, pursuant to the
Florida Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

A P P E A R A N C E S

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ALSO PRESENT:

Ms. Alice George, Videographer

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P R O C E E D I N G S

1
2 THE VIDEOGRAPHER: And we're on the video
3 record. Today is Tuesday, the 4th day of October, 2011.
4 The time is approximately 10:07. We're at the offices of
5 U.S. Legal Support in Dallas, Texas, for the purpose of
6 taking the deposition of Dennis Hooper, M.D., taken by
7 the Defendant with a cross-notice by the Plaintiff, in
8 Case No. 50-2010-CA-027289. The case is Bailey versus
9 Equity Residential Management, filed in the Circuit Court
10 for the 15th Judicial District [sic] in Palm Beach
11 County, Florida.

12 The court reporter is Tonie Thompson; the
13 videographer is Alice George. We're both of U.S. Legal
14 Support, Dallas.

15 Will counsel state their appearances,
16 please.

17 MR. WOLPE: Joel Wolpe --

18 MR. KIMMEL: Scott --

19 MR. WOLPE: Joel --

20 MR. KIMMEL: Yeah, go ahead, Joel.

21 MR. WOLPE: Yeah. Joel Wolpe for Equity
22 Residential.

23 MR. KIMMEL: Scott Kimmel for Plaintiff.

24 THE VIDEOGRAPHER: Would the court
25 reporter, please, swear in the witness.

1 (Witness sworn in.)

2 DENNIS HOOPER, M.D., Ph.D.,

3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. WOLPE:

6 **Q. Good morning, Doctor.**

7 A. Good morning.

8 **Q. Could you give us your name and your**
9 **professional address?**

10 A. Dennis, D-e-n-n-i-s, Glen, G-l-e-n, Hooper,
11 H-o-o-p-e-r. Professional address, 4100 Fairway Drive,
12 No. 600, Carrollton, Texas 7505 -- 75010.

13 **Q. Is that the address of RealTime Laboratories**
14 **Incorporated?**

15 A. Yes, it is.

16 **Q. Okay. I provided you with a Amended Notice of**
17 **Taking Deposition Duces Tecum and asked that you bring**
18 **various documents, a total of 41 different documents.**

19 **You brought a file with you today, correct,**
20 **sir?**

21 A. That is correct.

22 **Q. Okay. To the extent that the subpoena has asked**
23 **you for documents, some of them you have brought, some of**
24 **them you have not?**

25 A. That's correct.

1 Q. Okay. Let's cover, if I can, the documents that
2 you have not brought.

3 Did you bring any and all personal notes,
4 statistics, research, or memoranda pertaining to the
5 treatment of patients such as Mateo Valle?

6 A. No.

7 Q. Okay. Did you bring any logs showing the
8 receipt of samples, including Mateo Valle's sample,
9 including the date and any and all notations as to number
10 of tubes, nature of tubes, amount of urine received from
11 Mateo Valle?

12 A. No.

13 Q. Okay. Did you bring any logs for the
14 performance of the tests that were performed on Mateo
15 Valle with dates of performance and the names or initials
16 of the technicians performing the testing?

17 A. No.

18 Q. Did you bring any employee time sheets for the
19 staff performing any testing for the period of August
20 19th through August 25th, 2011?

21 A. No.

22 Q. Did you bring any original raw data generated
23 from each test involving Mateo Valle's materials, meaning
24 the machine printouts for the ELISA testing that was
25 done?

1 A. No.

2 Q. Did you bring any original ELISA printouts
3 showing the optical density for Mateo Valle's sample as
4 well as the standard curve for each ELISA?

5 A. No.

6 Q. Did you bring the RealTime procedure books
7 detailing the protocol for the performance of each test?

8 A. No.

9 Q. Did you bring the RealTime procedure book
10 showing the technologist's notations about actually
11 performing the actual test involving the specimen from
12 Mateo Valle?

13 A. No.

14 Q. Did you bring the source of the reagents used in
15 testing Mateo Valle's urine, including the order sheets,
16 purchase orders, lot numbers, specification sheets that
17 arrived with the materials that you used in testing Mateo
18 Valle's samples?

19 A. No.

20 Q. Did you bring records reflecting the source of
21 mycotoxin antibodies used in the immunoassay test you did
22 on Mateo Valle?

23 A. No.

24 Q. Did you bring the nature and source of the
25 antibodies used as a detector for the ELISA testing done

1 on Mateo Valle's urine?

2 A. No.

3 Q. Did you bring for RealTime in-house tests, any
4 and all data generated showing the specificity controls
5 for the antigens employed and the immunoassays that were
6 employed for Mateo Valle's urine?

7 A. No.

8 Q. Did you bring the original dated notes showing
9 the preparation and subsequent data showing the analysis
10 of the composition of the material?

11 A. No.

12 Q. Did you bring the data that was employed to
13 generate any and all reference ranges of the tests
14 performed on Mateo Valle's samples?

15 A. No.

16 Q. Did you bring any documents showing the origin
17 of any positive reference or positive control serum used
18 in the immunoassays performed on Mateo Valle's urine?

19 A. No.

20 Q. Did you bring any records for the equipment that
21 was used in analyzing Mateo's urine?

22 A. No.

23 Q. Did you bring any and all state inspection
24 reports or CLIA recertification materials for any labs
25 owned by or run by you within the past 10 years?

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A. No.

Q. Did you bring the actual urine sample of Mateo Valle?

A. No.

Q. Okay. Do you still have it?

A. Yes.

Q. Okay.

A. Well, I don't have it. The lab does.

Q. Okay. Doctor, what is the reason that you didn't bring these materials with you today?

A. These are materials that I don't control, nor do I own or have in my possession. They're owned and held by RealTime Lab, Inc., which is a incorporated laboratory in the State of Texas.

Q. Okay. So that we're clear on this, Doctor, RealTime Laboratories, Inc., is a corporation in the State of Texas, correct?

A. That is correct.

Q. Okay. It is owned by a company called Medical Service Consultation International Incorporated?

A. That is correct.

Q. Okay. You own 41 percent of Medical Service Consultation International, LLC?

A. That's correct.

Q. Okay. Do you own more now?

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A. No.

Q. Okay. You are the medical director of RealTime Laboratories Incorporated?

A. That is correct.

Q. Okay. And you are -- you hold a position -- a corporate position on Medical Service Consultation International, LLC?

A. That's correct.

Q. Okay. And that position is what at the present time?

A. We just changed them. I think I'm secretary. There's only three of us, so...

Q. Okay. And at one time, you were president of Medical Service Consultation International?

A. That's correct.

Q. Okay. So that the records that I've asked for are accessible to you if you want them, are they not, sir?

A. They're accessible to me in the company. They're not accessible for me to release to anybody. The company has to release them. The custodian of records must release them.

Q. I see.

And who do you believe is the custodian of records of those records if you're the medical director?

1 A. Not me.

2 **Q. Who --**

3 A. The CEO.

4 **Q. I see.**

5 **And who's --**

6 A. At present time the CEO [sic] is -- it was
7 Modesto Regina, but he is no longer with us in the
8 company. So it's the CEO, David Murcott.

9 **Q. Okay. But Mr. Murt -- Murcock (phonetic)?**

10 A. Murcott.

11 **Q. Murcock (phonetic)?**

12 A. M-u-r-c-o-t-t.

13 **Q. And Mr. Murcott, he is not even in Texas, is he?**

14 A. Yes.

15 **Q. Oh, is he? Where is he in Texas?**

16 A. He's right here in Carrollton.

17 **Q. Okay. And your position is that even though**
18 **you're the medical director of this lab and even though**
19 **you have a 41 percent ownership interest in the**
20 **corporation that owns the lab, you -- and even though you**
21 **have accessibility to these records, you do not feel you**
22 **had the right to bring them pursuant to a subpoena?**

23 A. I know I have no right to -- it's not how I
24 feel. It's the partners; and in our articles of
25 incorporation, the statement is that the company releases

1 all documents, not the medical director, nor does one
2 owner.

3 Q. Do you have the largest ownership interest in
4 the corporation that owns RealTime labs?

5 A. Yes.

6 Q. Okay. Other than you owning 41 percent of this
7 corporation, Medical Service Consultation International,
8 who else owns this corporation or has an ownership in it?

9 A. Vincent Bolten, M.D.

10 Q. And Mr. Bolten --

11 A. Dr. Bolten, yes.

12 Q. And where is Dr. Bolten?

13 A. In Virginia.

14 Q. Okay. Okay. And so he does not practice
15 medicine in Texas?

16 A. No.

17 Q. He's not involved in the day-to-day operations
18 of the lab?

19 A. He's on the board of directors.

20 Q. But he's not --

21 A. He's the president.

22 Q. But he's not involved in the day-to-day
23 operations of the lab?

24 A. No.

25 Q. Okay. And what is his interest?

1 A. I think it's around 36 or 35 percent.

2 Q. Okay. And other than yourself and Dr. Bolten,
3 who's in Virginia, who else has an ownership interest in
4 the company?

5 A. Modesto Regina, R-e-g-i-n-a.

6 Q. Okay. And Mr. Regina, what is his interest?

7 A. 22 percent.

8 Q. Okay.

9 A. Approximately.

10 Q. And I think you just told me he's no longer with
11 the company?

12 A. That's right.

13 Q. When did he --

14 A. He's an owner, but he is not an employee.

15 Q. Okay. So those are the three owners?

16 A. And then there's a Dr. Fredrick Guilford,
17 G-u-i-l-f-o-r-d, who owns approximately 2 percent, and
18 he's in California.

19 Q. Okay. He also is not involved in the day-to-day
20 operations with this business?

21 A. No.

22 Q. Okay. So of the four owners, you are the only
23 one that is involved in the day-to-day operations of this
24 business?

25 A. Dr. Bolten is very involved in the business.

1 **Q. But he's involved in running the lab on a**
2 **day-to-day basis?**

3 A. He's not in the lab, no.

4 **Q. Okay.**

5 A. But he communicates daily with us.

6 **Q. On the phone?**

7 A. Uh-huh.

8 **Q. Okay. Doctor, the documents that you did --**

9 MR. WOLPE: And just for the record, we're
10 going to mark the subpoena duces tecum that was provided
11 to Dr. Hooper. I thought I put one on this, and now I
12 seemed to have misplaced it. So I'll --

13 THE WITNESS: It was the first one that you
14 had.

15 MR. WOLPE: Yeah, I see that. So I'll just
16 put a one at the top for right now.

17 (Deposition Exhibit No. 1 marked.)

18 **Q. (BY MR. WOLPE) Doctor, let's talk about what you**
19 **did bring with you so we have a record of what is**
20 **included.**

21 **You brought your curriculum vitae, correct?**

22 A. That's correct.

23 **Q. Okay.**

24 MR. WOLPE: We'll mark that as Exhibit 2.

25 (Deposition Exhibit No. 2 marked.)

1 Q. (BY MR. WOLPE) And this is dated March 2011, so
2 it's up-to-date?

3 A. Yes.

4 Q. (BY MR. WOLPE) Okay. You have brought an
5 agreement that you entered into with Mr. Kimmel, titled,
6 "Agreement for Services as Expert Witness of Medical
7 Service Consultation, P.A.," correct?

8 A. That's correct.

9 Q. Okay. And that agreement was entered into on
10 August 8th, 2011?

11 A. That's correct.

12 Q. Okay. Medical Services Consultation, P.A., is
13 that your own P.A.?

14 A. Yes, it is.

15 Q. Okay. So you use that as a business vehicle for
16 your testifying in litigation?

17 A. For all my income for -- as an M.D.

18 Q. Okay. And so that to the extent RealTime
19 Laboratories, Inc., or Medical Services Consultation
20 International pay you if they pay it to your P.A.?

21 A. That is correct.

22 Q. Okay. But to the extent that you review records
23 or testify in this case, the money goes directly to you;
24 does not go either to Medical Services Consultation
25 International or to RealTime Laboratories, Inc.?

1 A. That is correct.

2 Q. Okay.

3 (Deposition Exhibit No. 3 marked.)

4 Q. (BY MR. WOLPE) The next thing that you brought
5 with you is the records of RealTime Laboratories, which
6 include the testing requisition form, the Direct Labs
7 document, which they call their Disclaimer, the mycotoxin
8 panel report form, the instruction kit from Direct Labs,
9 correct, sir?

10 A. That is correct.

11 Q. Okay.

12 MR. WOLPE: We'll mark that Exhibit 4.

13 (Deposition Exhibit No. 4 marked.)

14 Q. (BY MR. WOLPE) Even though that is also a record
15 of RealTime Laboratories, you felt comfortable in
16 bringing that with you?

17 A. That is something that was reported to the
18 doctor and is a public record, so, yes.

19 Q. Well, it's not a public record.

20 A. The doctor did allow me to release that key --
21 the Direct Labs allowed me to bring that with me.

22 Q. Direct Labs allowed you to bring this?

23 A. Yes.

24 Q. Okay. But the RealTime Laboratories' record is
25 not a record of Direct Labs?

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A. No.

Q. Okay.

A. No, but this form was sent to Direct Labs, and so I have to ask Direct Labs if I can put it in my file.

Q. I see. Okay.

A. Unless the doctor who got it in the medical records has it, and there was no record of that in the medical records.

Q. Okay. This report, it was never sent to any of the physicians who have been involved in the care and treatment of Mateo Valle, was it, sir?

A. I don't know. It was only sent to the ordering physician in Direct Labs.

Q. Okay. The physician who ordered it, this (indicating), is employed by Direct Labs?

A. Yes.

Q. Okay. So, then, it was not sent to Dr. Brehmer, Mateo's pediatrician?

A. I don't know.

Q. You didn't send it to her?

A. I didn't send it, no.

Q. Okay.

A. Well, RealTime Labs didn't send it.

Q. Okay. And you didn't?

A. I did not.

1 **Q. Okay. It was never sent to Dr. Ignacio**
2 **Rodriguez, the ear, nose, and throat doctor that**
3 **evaluated Mateo?**

4 A. Not that I know of.

5 **Q. Not by you, not by Direct Labs?**

6 A. No.

7 **Q. Okay.**

8 A. I don't know who Direct Labs sent it to, other
9 than we sent that -- RealTime Labs sent it to Direct
10 Labs.

11 **Q. Let's see if we're clear about this: You did**
12 **not send this record to Dr. Rodriguez, nor did RealTime**
13 **Labs, correct?**

14 A. That is correct. We have no record of sending
15 it to anybody but to Direct Labs, and I believe the
16 physician on that is --

17 **Q. Anna Davis?**

18 A. -- Anna Davis. Yes.

19 **Q. Okay. And do you know who Anna Davis is?**

20 A. No.

21 **Q. Okay. Do you know if she practices law --**
22 **practices medicine in Florida?**

23 A. We know that she has a medical license, and
24 she's approved by CLIA to order tests in that state.

25 **Q. In what state?**

1 A. In Florida.

2 Q. Okay. To your knowledge, she has not been
3 involved in any way in Mateo's care?

4 A. No, she has not, that I -- to my knowledge.

5 Q. Okay. Well, since Dr. Davis was not involved in
6 Mateo's care, do you know why she's shown as the ordering
7 physician?

8 A. She was contacted -- Direct Labs was contacted,
9 and she is the ordering physician on that requisition.

10 Q. Is she the ordering physician on all
11 requisitions from Direct Labs that are sent to your
12 office?

13 A. No.

14 Q. Okay. Do you know what determines whether she's
15 on the documents showing as the Direct Labs' physician
16 when these tests are ordered?

17 A. I do not.

18 Q. Okay. Have you seen her name on other tests?

19 A. Other tests?

20 Q. Other tests that are ordered.

21 A. Through RealTime Lab?

22 Q. Yes.

23 A. Yes.

24 Q. How often?

25 A. I don't know. I don't look at the statistics of

1 that.

2 Q. Okay.

3 A. But I do recognize her name.

4 Q. Okay. Have you ever talked to Dr. Davis?

5 A. No.

6 Q. Okay. Do you know if she even knows who Mateo
7 Valle is?

8 A. I don't know.

9 Q. Have you ever talked to Dr. Brehmer, Mateo's
10 pediatrician?

11 A. No.

12 Q. Have you ever talked to Dr. Rodriguez, Mateo's
13 ear, nose, and throat doctor?

14 A. No.

15 Q. Okay. You've never communicated with any of
16 Mateo's doctors?

17 A. No.

18 Q. Okay. You've never met or seen Mateo?

19 A. No.

20 Q. You've never met or seen his parents?

21 A. No.

22 Q. Okay. You surely haven't ever examined Mateo?

23 A. No.

24 Q. Okay. Because you don't examine patients;
25 you're a pathologist?

1 A. That is right.

2 Q. You're not a clinician; you're not involved in
3 treating patients?

4 A. That's right. You're correct.

5 Q. Okay. The next record that we have, Doctor --
6 we'll mark it as Exhibit 5 -- is a letter from Mr. Kimmel
7 dated September 22nd where he sent you the records of
8 Mateo Valle, correct?

9 A. Yes.

10 Q. And you brought me a CD, which was what he sent
11 you?

12 A. Yes.

13 Q. Okay.

14 MR. WOLPE: We'll mark that as a Composite
15 Exhibit 5.

16 (Deposition Exhibit No. 5 marked.)

17 Q. (BY MR. WOLPE) The next record that you brought
18 with you, as Exhibit 6, which is a check for \$1,000 which
19 Mr. Kimmel advanced you for this deposition, correct?

20 A. Yes.

21 (Deposition Exhibit No. 6 marked.)

22 Q. (BY MR. WOLPE) Okay. And the bill you rendered
23 for these depositions is that you charge \$450 an hour,
24 correct?

25 A. Yes.

1 Q. Okay. And you ask for the money up front?

2 A. Yes.

3 Q. Okay. The next record that you brought with you
4 is a faxed cover sheet from Mr. Kimmel, which contained
5 the medical records from Melanie Berkowitz, the speech
6 therapist caring for Mateo, and Dr. Ignacio Rodriguez,
7 the ear, nose, and throat doctor, correct?

8 A. Yeah. It only contains a few because there were
9 45 pages, and I didn't print them all out.

10 (Deposition Exhibit No. 7 marked.)

11 Q. Okay. You've never talked to Melanie Berkowitz,
12 the speech pathologist, either?

13 A. No.

14 Q. Okay. And you've never sent her your report?

15 A. I don't have a report.

16 Q. You've never sent her the RealTime report?

17 A. Oh, no.

18 Q. Okay. The next document that you have brought
19 with you is a Xeroxed copy of the check that I sent you
20 for your records, a check in the amount of \$65?

21 A. Yes.

22 Q. Okay.

23 A. And it cleared.

24 Q. That's always nice.

25 (Deposition Exhibit No. 8 marked.)

1 **Q. (BY MR. WOLPE) The next document you have**
2 **brought with you appears to be a duplicate, and that is**
3 **the materials -- materials from RealTime Laboratories,**
4 **correct?**

5 A. Yes.

6 **Q. Okay. So --**

7 A. Which was sent to your offices.

8 **Q. To me.**

9 **Okay.**

10 MR. WOLPE: So we'll mark it as Exhibit 9.

11 (Deposition Exhibit No. 9 marked.)

12 **Q. (BY MR. WOLPE) This is the fax you sent me and**
13 **the records you sent me when I requested them, correct?**

14 A. Yes.

15 **Q. And, then, you've printed up some of the records**
16 **from Brehmer Pediatrics, although not all of them?**

17 A. That's right.

18 **Q. Okay. Did you pick these particular records for**
19 **some reason or just randomly printed some records?**

20 A. There were some that were picked on purpose,
21 specifically the ones that, say, associate with mold; but
22 then also to randomly select so that you could see that
23 they're just selections from the disc that Mr. Kimmel
24 sent me.

25 **Q. Okay.**

1 MR. WOLPE: So we'll mark that as a
2 Composite Exhibit 10.

3 (Deposition Exhibit No. 10 marked.)

4 Q. (BY MR. WOLPE) Okay. The next document you have
5 provided me is your article titled, "Mycotoxin Detection
6 in Human Samples from Patients Exposed to Environmental
7 Molds."

8 A. Yes.

9 Q. Okay. And that is the article that you wrote to
10 report on the study that you performed on body fluids
11 from patients, correct?

12 A. Yes.

13 Q. Okay.

14 (Deposition Exhibit No. 11 marked.)

15 Q. (BY MR. WOLPE) Okay. The original records from
16 this study, are those in possession of RealTime Labs?

17 A. Yes, they are.

18 Q. Okay. And, again, your position is that only --
19 only the president can release those?

20 A. Yes.

21 Q. Okay. And then --

22 A. Well, the CEO.

23 Q. The CEO.

24 And then you've brought some W-9 forms and
25 my letter to you?

1 A. Correct.

2 Q. Okay. The last thing you brought, Doctor -- and
3 we'll mark as a Composite Exhibit 12 -- is you brought
4 various literature that you feel support your opinions?

5 A. Yes.

6 Q. Okay.

7 (Deposition Exhibit No. 12 marked.)

8 Q. (BY MR. MR. WOLPE) Okay.

9 A. Now, did you mark the disc --

10 Q. Yes.

11 A. -- as an exhibit?

12 Q. Yes. The disc is a composite exhibit, but I'm
13 going to give it back to you anyway so you'll be able to
14 keep that.

15 A. And the papers I brought, I have a bad
16 experience with releasing my papers to attorneys or to
17 even court reporters; that they say they'll get them back
18 to me, and they don't.

19 Q. Well, we'll make arrangements for that.

20 A. Yeah, I've been told that too.

21 Q. Okay. Well, let's see how we do, Doctor.

22 Okay. Let me give you those records back,
23 Doctor, so we can now cover some of your opinions.

24 MR. WOLPE: And, Ms. Reporter, can I have
25 some more of these (indicating)? And I'll just mark them

1 as we get to them.

2 THE REPORTER: Okay.

3 (Complies.)

4 Q. (BY MR. WOLPE) Doctor, based upon the documents
5 you've provided me, the person who contacted you in this
6 case was Mr. Kimmel?

7 A. Yes.

8 Q. Okay. And based upon your records, when did he
9 first contact you?

10 A. Just prior to being retained, so whatever date
11 that was, wherever that check is.

12 (Witness reviews document.)

13 You did put it in here, right?

14 Q. Yes, sir, I did.

15 A. Oh.

16 (Witness reviews document.)

17 Just prior to August 8th of 2011.

18 Q. Okay. And did he call you?

19 A. Yes.

20 Q. Okay. And what did he say to you?

21 A. I don't recall exactly, other than that he had a
22 case that he was interested in having me review and
23 possibly be retained on.

24 Q. Okay. Did he tell you anything other than he
25 had a case he was interested in having you review?

1 A. I usually ask for the complaint, and I ask for
2 the history of the case.

3 **Q. Okay. And the "complaint" meaning the documents**
4 **that's used to file a lawsuit?**

5 A. Yes.

6 **Q. Okay. You've testified in other cases over a**
7 **period of years?**

8 A. Yes.

9 **Q. Okay. Do you have any estimate as to how many**
10 **cases you've testified in by deposition or by --**

11 A. I provided that list to you and to counsel.

12 **Q. No, sir, I don't have it.**

13 THE WITNESS: Mr. Kimmel?

14 MR. KIMMEL: Yes, sir.

15 THE WITNESS: Did you not supply that to
16 him? Because I gave --

17 MR. KIMMEL: No, I definitely did, and it
18 was forwarded to you.

19 MR. WOLPE: Scott, I don't have it.

20 THE WITNESS: And I didn't bring that with
21 me.

22 MR. KIMMEL: Would you like me to print it
23 and forward it to the deposition?

24 MR. WOLPE: Okay. That's fine.

25 **Q. (BY MR. WOLPE) That's okay, Doctor. We'll --**

1 A. Yeah, I don't know how many. It's about three
2 pages that I've given depositions on.

3 **Q. Okay. And you were provided with the medical**
4 **records of Dr. Brehmer, Dr. Rodriguez, and Melanie**
5 **Berkowitz?**

6 A. Yes.

7 **Q. Okay.**

8 A. Not at the same time.

9 **Q. I understand that.**

10 **Okay. Have you reviewed them?**

11 A. Yes, I have.

12 **Q. Okay. Were you provided with copies of their**
13 **testimony as to what they've testified to?**

14 A. No.

15 **Q. So you've never seen their depositions?**

16 A. No.

17 **Q. Okay. Is it important to you what the opinions**
18 **are of the doctors and the therapists that are taking**
19 **care of Mateo at all in terms of your role in this case?**

20 A. Yes.

21 **Q. Okay. Is there any reason, then, you haven't**
22 **read their testimony?**

23 A. I didn't know there was one.

24 **Q. You didn't know their testimony had been taken?**

25 A. No.

1 Q. Okay. Mr. Kimmel didn't tell you that?

2 A. No.

3 Q. Okay. Okay. In other words, would it be
4 important to you to know that Dr. Brehmer has testified
5 that, in her opinion, Mateo's medical problems for which
6 she has been seeing him were related to bacterial
7 infections documented by culture? Would that be
8 important to you?

9 A. That would be important, but it's not in her
10 records that state that.

11 Q. Okay. Her records reflect that she was treating
12 Mateo with antibiotics?

13 A. Correct.

14 Q. And while you're not a clinician and don't treat
15 patients, you understand that antibiotics are provided to
16 patients for bacterial infections?

17 A. Well, let me clear this up: I am a Ph.D. in
18 microbiology. I thoroughly understand the difference
19 between an antimicrobial agent -- or an antibiotic and a
20 drug that is given or an antimicrobial that is given for
21 fungal infections.

22 Q. Okay.

23 A. She gave a -- multiple drugs or antibiotics for
24 bacterial infections, but there is not a culture in the
25 record that says bacteria is present, other than one time

1 of an infection -- a respiratory infection of Strep
2 pneumoniae.

3 Q. Okay. So you're aware of only one time that
4 there was a bacterial infection documented, correct?

5 A. Documented, taken, yes.

6 Q. Okay. And do you remember when you think that
7 one time occurred?

8 A. I can't recall.

9 Q. Okay. So let me ask you this: Did you see this
10 nasal culture that was done on November 5th, 2009, that
11 grew out Strep and Moraxella catarrhalic [sic]? Did you
12 see this, sir?

13 A. Yes. This is the Strep pneumoniae that I was
14 talking about, and it's Moraxella catarrhalis. And this
15 is from a nasal swab. Yes, I was very aware of that.

16 Q. So you were aware that she did document a
17 bacterial infection, correct?

18 A. One time.

19 Q. Okay. This is only time you noticed she
20 documented it?

21 A. That's the only time I saw in the records.

22 Q. Okay. So then you didn't know that on January
23 22nd, 2010, she again took another nasal culture and this
24 time again grew out Strep pneumoniae?

25 A. Okay. Let's -- I'll make this clear: The strep

1 pneumoniae is an organism that grew in his nose on
2 various occasions. And that's the only bacteria that was
3 a pathogen.

4 **Q. Okay. So you know that she documented a**
5 **bacterial infection a second time on January 22nd, 2010?**

6 A. (Witness nods head.)

7 And let me clarify that: Is that truly an
8 infection or is it a -- was that just normal flora for
9 this boy? Was this what was causing this infection?
10 Because she never seemed to clear it up with the
11 antibiotic that she gave him.

12 **Q. Okay. That was your understanding too?**

13 A. Yes.

14 **Q. Okay. And so we now know that she documented**
15 **the Strep infection both in November of 2009 and in**
16 **February of 2010, correct?**

17 A. Correct.

18 **Q. Okay. And then were you aware of the fact that**
19 **she then documented a bacterial infection again when she**
20 **did a culture on Mateo on June 23rd, 2010, where it grew**
21 **out Moraxella catarrhalis?**

22 A. Yeah. That's normal flora. That's not an
23 infection. Moraxella catarrhalis is a normal bacteria
24 organism in the nose of you and I and probably of this
25 little boy.

1 Q. Okay. So if Dr. Brehmer has testified that this
2 was not a normal flora for this little boy but rather an
3 indication of a bacterial infection, you are both not
4 aware of that and take issue with her testimony?

5 A. I take issue that Moraxella catarrhalis is not a
6 pathogene in a young child like this, yes.

7 Q. Okay. And, again, so you and I are clear on
8 this, your residency was in pathology, anatomical and
9 clinical pathology, correct?

10 A. Yes.

11 Q. You have never practiced clinical medicine other
12 than to the extent in your internship you did pediatrics
13 for 30 days?

14 A. That's correct.

15 Q. Okay. So for over the last 30 years, you have
16 not been involved in seeing patients, evaluating them,
17 doing physical examinations on them, diagnosing them and
18 treating them?

19 A. That's correct. But I don't have to be a
20 clinician to know Moraxella catarrhalis is a normal
21 flora. As a Ph.D. in microbiology and with a history of
22 working in a clinical microbiology lab, that is very
23 common knowledge that that's a normal flora.

24 Q. Okay. Do you think Strep is a normal flora too?

25 A. It can be. Strep pneumoniae can be a normal

1 flora of individuals. In this boy, probably not because
2 it wasn't ever found in previous cultures other than
3 those few times.

4 **Q. Okay. What she never found in any of her nasal**
5 **cultures was any type of mold or mold spores or fungus,**
6 **correct?**

7 A. She found that -- she didn't find that because
8 she didn't order a fungal culture.

9 **Q. Okay. So you're aware of the fact that she was**
10 **diagnosing Mateo with a bacterial infection and treating**
11 **him for it, correct?**

12 A. She was treating him for Strep pneumoniae at
13 that one time. She also gave him antibiotics multiple
14 times prior to that.

15 **Q. Okay.**

16 A. Without any -- any positive cultures for
17 bacteria.

18 **Q. Okay. So I guess the bottom line on this, so**
19 **we're clear on this, is: You don't know what her opinion**
20 **is regarding the cause of Mateo's symptoms; and if, in**
21 **fact, that she was of the opinion he had a bacterial**
22 **infection, you just don't know that because you haven't**
23 **read her deposition?**

24 A. That's correct.

25 **Q. Okay.**

1 in her records.

2 There was another record. And I can't read
3 that signature, but maybe you can. It's from the --
4 where is that from? In the history, they state that it's
5 mold related, "mold in the bedroom" and --

6 **Q. Right. She -- there's a -- the word "mold" is**
7 **written on the record?**

8 A. That's correct.

9 **Q. Okay. But my question to you is: Beyond the**
10 **letter that she wrote for an attorney, you don't know,**
11 **when put under oath, what her testimony was regarding**
12 **whether she felt this was in any way related to mold?**

13 A. Well, I don't know if this was written for an
14 attorney. All I know is this is in her medical record
15 that I reviewed.

16 **Q. Okay.**

17 A. And it's as -- the importance of this letter is
18 as important as the letter that -- or the inserts I read
19 on her performing cultures that showed nothing but normal
20 flora or two or three times showing Strep pneumoniae.

21 **Q. Okay. I guess the only point I'm making,**
22 **Doctor, is that if Dr. Brehmer has testified she is not**
23 **of the opinion that mold was the cause of his conditions**
24 **for which she treated him, that's something you don't**
25 **know because you haven't read her deposition?**

1 A. And I would say that it would have to be hearsay
2 from my point of view right now because I'm only hearing
3 it from you.

4 **Q. Fair enough.**

5 A. Okay.

6 **Q. Okay. You read the records of Dr. Rodriguez,**
7 **correct?**

8 A. Yes.

9 **Q. ENT.**

10 **And you read the fact that they did hearing**
11 **tests on Mateo and found that he had normal hearing?**

12 A. Correct.

13 **Q. Okay. You read the records of Melanie**
14 **Berkowitz, the speech pathologist?**

15 A. Yes.

16 **Q. Okay. And are you aware from her records that**
17 **she's of the opinion that Mateo has what's called a**
18 **childhood apraxia?**

19 A. I'm aware that she believes that.

20 **Q. Okay. So and do you know what childhood apraxia**
21 **is?**

22 A. No.

23 **Q. Okay. And do you know what the cause of it**
24 **is --**

25 A. I think they -- I have read various opinions on

1 that. I don't know what her definition of "apraxia" is.

2 **Q. Okay. My only question is: You're not familiar**
3 **with the diagnosis or what causes it?**

4 A. No.

5 **Q. Okay. So you're not here to express an opinion**
6 **as to why Mateo has childhood apraxia, correct?**

7 A. I am -- my opinion does involve why he's having
8 learning disorder and why he's having speech
9 difficulties.

10 **Q. My question is: Do you question whether he has**
11 **childhood apraxia?**

12 A. It depends on how you define "apraxia."

13 **Q. Okay.**

14 A. And how she defines apraxia.

15 **Q. Okay. How do you define apraxia?**

16 A. To me, apraxia is difficulty in learning
17 disabilities and speech. It involves many different
18 areas, but I don't know what her definition is.

19 **Q. Okay. You're surely no speech pathologist?**

20 A. I'm certainly not, no.

21 **Q. Okay.**

22 A. I must depend on her records, yes.

23 **Q. Okay. And since you're not an ear, nose, and**
24 **throat doctor, you don't take exception with**
25 **Dr. Rodriguez's conclusions and testing that showed that**

1 **Mateo's hearing was normal?**

2 A. I do not take any exception of that.

3 **Q. Okay. And even though you have never evaluated**
4 **Mateo, you have opinions as to why he has speech delay?**

5 A. I do.

6 **Q. Okay. Doctor, let's go over, if we can, the**
7 **test that you performed -- that RealTime Labs performed.**
8 **I'm sorry. Let me provide that to you so you have it.**

9 **You were initially retained by Mr. Kimmel,**
10 **you told us, on or about August 11th, 2011, correct?**

11 A. Or the 8th, I believe. Yeah, the 8th.

12 **Q. The 8th. I apologize.**

13 **Okay. And, then, did you tell Mr. Kimmel**
14 **to order or have his client order a kit from Direct**
15 **Labs?**

16 A. I didn't -- I don't direct people to do any
17 testing. If I'm asked, I will suggest that this may
18 help, may not help.

19 **Q. Okay. Did you suggest to Mr. Kimmel that it may**
20 **help for him to contact Direct Labs and order a kit?**

21 A. Yes, I did.

22 **Q. Okay. Thank you.**

23 **And that recommendation was made to**
24 **Mr. Kimmel, not to the parents of Mateo, correct?**

25 A. That is correct.

1 Q. And when you eventually did your report, which
2 you've told us you did not provide to any of Mateo's
3 doctors, you also didn't provide it to Mateo's parents,
4 did you?

5 A. No. We had no request for that.

6 Q. Okay. So you provided the report to Direct
7 Labs, who sent you through a physician there -- strike
8 that.

9 You sent the report to Direct Labs to
10 Dr. Davis?

11 A. Correct.

12 Q. Okay. And did you send the report to
13 Mr. Kimmel?

14 A. Not that I recall, no.

15 Q. Okay. So do you know how Mr. Kimmel got your
16 report if you never sent it to him?

17 A. The practice of Direct Labs is to provide it to
18 the individual who is requesting the test.

19 Q. Okay. So you then told Mr. Kimmel that it might
20 help if he sent a request from Direct Labs to provide
21 you -- I'm sorry, to obtain a kit for mycotoxin testing,
22 correct?

23 A. Yes.

24 Q. Okay. And does Direct Labs know when someone
25 orders a mycotoxin kit, that you're the physician or the

1 **pathologist involved?**

2 A. They know that I'm the medical director of the
3 clinic -- of RealTime Labs, yes.

4 **Q. Let me see if I can clear this up: Other than**
5 **RealTime Laboratories, LLC, is there any other laboratory**
6 **in the country that is doing urine testing for clinical**
7 **purposes?**

8 A. For commercial business or --

9 **Q. For clinical purposes.**

10 A. Clinical purposes, there are research facilities
11 that are doing them.

12 **Q. Let me stop you there. I'm not talking about**
13 **the research facilities.**

14 **I'm asking you: Are there any other labs**
15 **in the country that are evaluating urine for mycotoxins**
16 **for clinical reasons for the evaluation and treatment of**
17 **patients independent of research?**

18 A. I don't know of any, no.

19 **Q. Okay. You're it?**

20 A. That's it.

21 **Q. Okay.**

22 A. Well, RealTime Labs is.

23 **Q. Okay. And you're the only pathologist at**
24 **RealTime Labs?**

25 A. Correct.

1 **Q. Okay. And so when someone goes to Direct Labs**
2 **and orders a kit as Mr. Kimmel did, they are told to send**
3 **the urine to you, correct?**

4 A. To RealTime Labs.

5 **Q. To RealTime Labs?**

6 A. Yes. I -- yes, that's what the instructions
7 say.

8 **Q. Okay. So that when someone gets a kit from**
9 **RealTime Labs, they get various materials, including the**
10 **instructions that are attached to Exhibit 4, correct?**

11 A. I don't know what Direct Labs gives in their
12 patient kit instructions. I assume this is it because --

13 **Q. Well, you've produced it and it says --**

14 A. No, we don't produce this. Well, this is what
15 comes to us from Direct Labs.

16 **Q. Okay. So when you got the Direct Labs material,**
17 **you got this patient kit instructions?**

18 A. Correct.

19 **Q. Okay. And these are the instructions that would**
20 **have been sent to Mr. Kimmel or his client when Direct**
21 **Labs sent the materials?**

22 A. I believe so.

23 **Q. Okay. And then Direct Labs sends with the kit a**
24 **RealTime Laboratories testing requisition form to be**
25 **filled out?**

1 A. That's correct.

2 Q. Okay. And do you know what else they send?

3 A. (No audible response.)

4 Q. Huh?

5 A. No.

6 Q. Okay. Now, when someone orders a kit from
7 RealTime Lab labs, is RealTime Lab paid for the kit --
8 I'm sorry. Let me strike that.

9 If someone orders a kit from Direct Labs,
10 is Direct Labs paid for the kit?

11 A. I don't know how Direct Labs -- I think --
12 here's what I believes happens, is that the client or
13 patient calls in to Direct Labs, and Direct Labs charges
14 them for the kit; and the kit is sent to the patient, and
15 then the patient sends the work to RealTime Labs.

16 Q. Okay.

17 A. Meanwhile, then, when RealTime Labs get it, then
18 there is a bill to Direct Labs for that.

19 Q. So in Mateo's case, the requisition form says,
20 "Patient paid \$699 to Direct Labs for kit," correct?

21 A. Correct.

22 Q. So the way this worked is you told Mr. Kimmel to
23 order a mycotoxin kit from Direct Labs, correct?

24 A. Correct.

25 Q. You knew in doing that, that since your lab or

1 Direct Lab -- since RealTime Labs is the only lab in the
2 country that does this type of testing clinically, that
3 Direct Labs would refer Mr. Kimmel's patient or client
4 back to you, correct?

5 A. Yes, because it says that's where it is.

6 Q. When Direct Labs sends the kit, they actually
7 send a testing requisition form from RealTime
8 Laboratories?

9 A. Correct.

10 Q. Direct Lab gets \$699?

11 A. Yes.

12 Q. And then RealTime Laboratories bills Direct
13 Labs?

14 A. Correct.

15 Q. And of the \$699 that is paid to Direct Labs, how
16 much does RealTime Laboratories get?

17 A. I don't -- I don't recall.

18 Q. Well, you own 41 percent of the corporation.

19 A. That doesn't mean I should know all of the
20 business.

21 Q. Okay. Okay.

22 A. I've got enough to do without checking every
23 penny.

24 Q. Okay. And also contained with the documents
25 sent by Direct Labs is a RealTime Laboratories price test

1 **[sic] such as this (indicating), isn't it, sir?**

2 A. I don't know what is involved with sending out
3 from Direct Labs.

4 **Q. Do you know why Direct Labs would send a**
5 **RealTime Laboratories price kit?**

6 A. No, I do not.

7 **Q. Okay.**

8 MR. WOLPE: Let me mark this Exhibit 13
9 (Deposition Exhibit No. 13 marked.)

10 **Q. (BY MR. WOLPE) Is this the price kit -- price**
11 **list for Direct Labs?**

12 A. Is this what Direct Labs would charge people?
13 Is that what you're saying?

14 **Q. Yes, sir.**

15 A. I have -- I don't know. I don't know what this
16 is.

17 **Q. What does it say at the top of it, Doctor?**

18 A. "RealTime Laboratories, Inc."

19 **Q. Okay. And what does it say for the price of a**
20 **total mycotoxin panel? What is the price that RealTime**
21 **Labs quotes?**

22 A. \$699.

23 **Q. Okay. The exact amount that Mateo's parents**
24 **and/or Mr. Kimmel paid Direct Labs?**

25 A. Correct.

1 **Q. Okay.**

2 A. I assume that's what they paid. I don't know
3 what RealTime Labs -- or what Direct Labs charges, but I
4 assume it's the same price as ours.

5 **Q. Okay. And so do you understand that Direct Labs
6 passes all their money back to you or whether they only
7 give you a part of it?**

8 A. No, I don't think they pass it all. They
9 practice the same thing they do with LabCorp and Quest
10 and other laboratories throughout the country, but I
11 don't know what that percentage is that comes to
12 RealTime.

13 **Q. Okay. So in the requisition that was sent to --
14 sorry.**

15 **In the kit that was sent by Direct Labs, it
16 says, "The kit includes materials necessary for specimen
17 collection and a prepaid shipping bag to the
18 corresponding company lab for analysis."**

19 A. Yes.

20 **Q. Do you know what they send?**

21 A. No.

22 **Q. Okay. Do you have any knowledge as to how this
23 urine was obtained or by whom?**

24 A. No.

25 **Q. Okay. Do you have any personal knowledge as to**

1 **when the urine was obtained?**

2 A. By looking at the requisition, it says the
3 specimen was collected on 8/18/2011.

4 **Q. Yes, sir.**

5 **Do you have any personal knowledge that**
6 **that's accurate or not?**

7 A. This is the personal knowledge that most
8 laboratories have. Yeah.

9 **Q. Okay. My question is: Do you have any**
10 **knowledge as to who obtained the specimen and when it was**
11 **obtained?**

12 A. No.

13 **Q. Okay. Who filled out the testing requisition**
14 **form?**

15 A. I don't know.

16 **Q. Okay.**

17 A. Somebody before we got it -- before RealTime
18 Labs got it.

19 **Q. So that when this requisition is filled out, it**
20 **would be filled out before the urine was ever sent?**

21 A. Yes.

22 **Q. Okay. Can you explain to us why Anna Davis is**
23 **shown as the person who ordered this test?**

24 A. It's the physician through Direct Labs is all I
25 know.

1 **Q.** So that when anyone orders a test through Direct
2 **Labs, Anna Davis is shown as the ordering physician?**

3 A. On everything? I don't know.

4 **Q.** Okay. Well, let me ask you this, Doctor -- let
5 me give you this. This is a --

6 MR. WOLPE: We'll mark it as Exhibit 14.

7 (Deposition Exhibit No. 14 marked.)

8 **Q.** (BY MR. WOLPE) This is an order that I placed to
9 Direct Labs -- and we'll mark as Exhibit 14 -- can you
10 tell us who the ordering physician is for my mycotoxin
11 panel test?

12 A. It says, "Anna Davis."

13 **Q.** Okay.

14 A. And it gives a number.

15 **Q.** Okay. So can you explain to us why Anna Davis
16 is being shown whenever these tests are being ordered --

17 A. No.

18 **Q.** -- when she has nothing to do with the patient?

19 A. No. You'd have to ask -- you'd have to ask
20 Direct Labs.

21 **Q.** Okay.

22 A. I'm sure it's legal because they are
23 CLIA-certified. We do not deal with anybody who is not
24 CLIA-certified.

25 **Q.** But your understanding is that even though

1 Dr. Davis happens to be a physician practicing in
2 Mandeville, Louisiana, that it's appropriate for her to
3 be shown as an ordering physician of a child that she's
4 never seen, never examined, and has no knowledge of?

5 A. That's right.

6 Q. And so you know when you get these materials
7 that Anna Davis really isn't the person that was involved
8 in treating the patient but just a physician that works
9 with Direct Labs?

10 A. Correct.

11 Q. Okay. How many patients does Direct Labs send
12 you for these mycotoxin panels?

13 A. I don't know.

14 Q. Okay. Who decided -- who decided -- in the test
15 done on Mateo, if you can tell us, who decided the
16 specimen type; that is, who decided urine versus sputum
17 versus nasal wash or anything else?

18 A. I don't know. I would assume that -- well,
19 that's an assumption, so I can't say. I don't know.

20 Q. Okay. Did you tell Mr. Kimmel what type of
21 specimen you wanted to have sent?

22 A. When I talk with clinicians that are calling to
23 ask about our test, as well as attorneys, I refer them to
24 our paper that shows urine, nasal washes, sputums, and
25 tissue. And we have found that urines are a very good

1 source to say if the mycotoxins are there.

2 Q. But you don't know who decides to send urine
3 versus one of the other sources?

4 A. No, I do not.

5 Q. Okay. And you didn't tell Mr. Kimmel that as
6 far as you can recall?

7 A. If I -- I could have.

8 Q. Okay.

9 A. Referring to our paper, yes.

10 Q. And --

11 A. But I don't recall doing that.

12 Q. Okay. And at the time you're directing
13 Mr. Kimmel to Direct Labs, at that point, you have not
14 reviewed any medical records from Mateo and have not
15 talked to any physicians about it?

16 A. Not that I recall, no.

17 Q. Okay. Now, along with your documents that you
18 produced to us, Doctor, is a Direct Labs disclaimer,
19 correct?

20 A. I believe so, yes.

21 Q. Okay. And let's just go over what Direct Labs
22 sends when they send this kit. They say, "If a
23 laboratory is outside normal range" -- "if a laboratory
24 test is outside normal ranges, you may be encouraged to
25 see a physician," correct?

1 A. Yes.

2 Q. Okay. Did you ever encourage Mateo's parents to
3 take him to a physician regarding these results?

4 A. No.

5 Q. Okay. Is there a reason you wouldn't send the
6 results of these tests to any of Mateo's physicians or
7 his parents?

8 A. Yeah. Violation of HIPAA. Unless it's
9 requested by the patient or the custodian of the patient
10 or the -- whatever you call them -- guardian, we cannot
11 release anything to go anybody else by HIPAA rules.

12 Q. Okay. So the reason you didn't send this to
13 Mateo's parents is because they never requested it?

14 A. That's right.

15 Q. Okay. Let's go on. Direct Labs says, "Many
16 tests to be validated will need to be repeated at the
17 discretion of your health care provider," correct?

18 A. Correct.

19 Q. Why is that?

20 A. I don't know. I don't write this. You'll have
21 to ask Direct Labs.

22 Q. Okay. You did not recommend this or any study
23 be repeated?

24 A. No.

25 Q. Okay. "Laboratory test results may vary

1 depending on age, sex, time of day, blood sample that's
2 taken, diet, medications, and the limits of moderate
3 technology." Is that true?

4 A. According to their statement.

5 Q. Is it true with regard to the test you do on
6 urine?

7 A. No.

8 Q. Okay. Okay. "A single laboratory test or group
9 of tests cannot guarantee good health. False positive
10 and false negative test results are possible." Is that
11 true?

12 A. If they say that.

13 Q. Okay. Are false positive and false negative
14 results possible when you do your urine tests?

15 A. We're unaware of any false positives.

16 Q. Okay. Are you saying that it can't happen?

17 A. We're unaware of it.

18 Q. Okay. "Testing by our medical staff only
19 constitutes a partial evaluation of your state of health
20 and does not represent diagnosis or treatment of
21 disease." Is that true?

22 A. If they say that.

23 Q. Okay.

24 A. That's their statement.

25 Q. This is their statement that's sent to the

1 patient, and you're the person that referred them to
2 Direct Labs, correct?

3 A. And you can refer people to LabCorp. I can
4 refer people to LabCorp.

5 Q. Doctor, on your report, again, the ordering
6 physician is shown as Dr. Davis?

7 A. Yes.

8 Q. Okay. Now, when you did this test of Mateo's
9 urine -- I take that back.

10 When RealTime Laboratories did this test,
11 they found no aflatoxin, no trichothecenes; but they
12 found ochratoxin present, correct?

13 A. Correct.

14 Q. Okay. And at the time that this test was done,
15 were you allowed to report actual values of this test or
16 just that there was the presence or absence?

17 A. Just presence or absence.

18 Q. And why is it that you were only allowed to
19 report presence or absence and not the level?

20 A. We had a cleaning inspector who felt that even
21 though we did semiquantitative test validations, that she
22 didn't like the idea of sending these through. So we
23 then -- initially, we were reporting them out as
24 positive, and then we would tell what the values were.

25 Q. Okay.

1 A. But then she informed us she didn't like that,
2 so we stopped that.

3 And, then, we recently had a College of
4 American Pathology inspection and asked if we could put
5 semiquantitative results on the reports, and they said
6 yes. So we now have changed our reports again to give
7 semiquantitative validation results.

8 **Q. What do you mean by "semiquantitative validation**
9 **results"?**

10 A. When you do a validation, you can do
11 qualitative, which is present or not present, which is
12 what we originally did. But then if you have values
13 present and they are repeatable and sustainable in their
14 repeatability, we can then call them semiquantitative by
15 FDA's rules as well as by CLIA rules. We've contacted
16 FDA about that, and they have informed us that we can
17 call it semiquantitative and that we can report out our
18 results that way.

19 **Q. Okay. Do you have any idea what the results**
20 **were on Mateo's urine other than the fact that there was**
21 **ochratoxin present?**

22 A. No, I don't --

23 **Q. Okay.**

24 A. -- not at the present time.

25 **Q. So based on your testing, as long as there was**

1 **2.0 parts per billion, that's the most you can tell us?**

2 A. That is correct.

3 **Q. Okay. Now, and the urine, as you've pointed**
4 **out, that was taken of Mateo, at least according to the**
5 **requisition form, was taken on August 18th, 2011,**
6 **correct?**

7 A. Yes.

8 **Q. Okay.**

9 A. And we received it on 8/19 -- August '11.

10 **Q. And in your report, you write, "Tests such as**
11 **this should only be used in conjunction with other**
12 **metallically established diagnostic elements, symptoms,**
13 **history, clinical impressions, results from other tests,"**
14 **correct?**

15 A. Correct.

16 **Q. Okay. You agree with that?**

17 A. I do agree with that.

18 **Q. Okay. "Physicians should use all the**
19 **information available to them to diagnosis and determine**
20 **appropriate treatment for their patients."**

21 A. Correct.

22 **Q. You agree with that?**

23 A. I do.

24 **Q. Okay. And in this particular case, you have**
25 **not, in any way, advised anyone, not Mateo's parents and**

1 surely not his physicians, that you've come to a
2 diagnosis or treatment plan for him?

3 A. No.

4 Q. Because you haven't?

5 A. I haven't.

6 Q. Okay. Is this test that you performed on
7 Mateo -- was it approved by the FDA at the time you
8 performed it?

9 A. No. As are over 50 percent of all laboratory
10 tests that are conducted in laboratories throughout the
11 country, they're not FDA approved.

12 Q. Okay. This one is not?

13 A. This one is not either.

14 Q. Okay. Let me go through this requisition form,
15 if I can. At the bottom it says, "SC Called Direct Labs
16 to get more information," and then it says something
17 else. Can you tell me what that says?

18 A. "Will refer to DH"

19 Q. What does that mean?

20 A. Well, refer to me.

21 Q. So --

22 A. All problems come to me as a medical director to
23 let me know that there is an issue.

24 Q. What was the issue?

25 A. I don't know. It doesn't say. Let's see.

1 (Witness reviews document.)

2 Let's see. "Requisition was complete?"

3 "No." And it must be -- there was no
4 phone -- I don't know. There's no indication of what was
5 the problem.

6 **Q. Okay. So when this urine came in, there**
7 **apparently was a problem that was directed to your**
8 **attention, and you don't know what it was?**

9 A. No.

10 **Q. Okay. And you don't know what you did about it?**

11 A. I didn't do anything. They probably took care
12 of it at the staff level.

13 **Q. Okay. We've talked about the fact that you have**
14 **no personal knowledge as to how the urine was obtained or**
15 **by whom, correct?**

16 A. Correct.

17 **Q. Okay. When the urine comes into RealTime Labs,**
18 **who receives it?**

19 A. The accessioning technologist.

20 **Q. And the accessioning technologist in August of**
21 **2011 was whom?**

22 A. SC; it stands for Shelby Chapman.

23 **Q. Okay. And what is Shelby Chapman's background**
24 **and training, if any?**

25 A. She is -- we don't hire people without

1 training. There are -- she has a bachelor's degree in
2 molecular biology and laboratory medicine.

3 **Q. Okay. Now, when urine comes in, do you have a**
4 **set of protocols as to how this urine is supposed to be**
5 **handled?**

6 A. Yes.

7 **Q. Okay.**

8 A. They're called standard operating procedures.

9 **Q. And what does your standard operating procedures**
10 **say with regard to what is supposed to be done with this**
11 **urine when it comes in?**

12 A. The specimen container is opened to the envelope
13 and is noted as to what is on the tube, as is the
14 patient's name, date of birth, date of collection; and
15 then there's a space to put our accession number. And
16 then the review of the requisition needs to have the
17 patient's name, date of birth, what type of specimen and
18 if the patient is male or female and if the doctor has
19 signed the request.

20 **Q. And then what does Shelby Chapman do with the**
21 **urine at that time?**

22 A. She takes the tube and makes sure that she puts
23 the accession number on that tube, which is a unique
24 identifying number in the laboratory that only travels
25 with that specimen. And then she also puts the accession

1 number at the very top right-hand corner, and then at the
2 very bottom of the right-hand corner (indicating).

3 **Q. And what does she do with the urine at that**
4 **time.**

5 A. Then she freezes the urine.

6 **Q. In what?**

7 A. In our freezer, in the tube that it came in.

8 **Q. Okay. And while you assume that was what was**
9 **done in this case, you have no personal knowledge as to**
10 **what was done?**

11 A. No. If it wasn't done, it would have been noted
12 in our trouble log; and there was no notification of a
13 trouble log on accessioning the specimen.

14 **Q. My only question to you is: You don't have**
15 **personal knowledge as to what was done with the urine;**
16 **you just know what the protocol was?**

17 A. I have personal knowledge of every specimen that
18 comes in that is a problem; and if there is no problem,
19 it goes through the usual system.

20 **Q. So your testimony is that because you don't**
21 **recall there being a problem, this must have been -- the**
22 **protocol must have been followed?**

23 A. Correct.

24 **Q. Okay. But you're not involved in receiving the**
25 **urine, you're not involved in putting information on it,**

1 you're not involved in putting it in the freezer?

2 A. That's correct.

3 Q. Okay. And with regard to whatever information
4 there was a problem relating to which required Direct
5 Labs to be called, you don't know what that was?

6 A. No.

7 Q. Okay. Then after the urine is put in the
8 freezer -- and this is a freezer like a regular freezer
9 that we all use in our home?

10 A. No.

11 Q. What is it?

12 A. It's a laboratory freezer.

13 Q. Okay. At what temperature?

14 A. It's maintained at minus 15 to minus 24.9
15 degrees centigrade.

16 Q. Okay. What is the next thing that's done with
17 this urine?

18 A. It sits until we do our test.

19 Q. Okay. And in Mateo's case, who did the test?

20 A. We have a technologist that -- either Shelby or
21 we have another tech named Avi, A-v-i, Moore, M-o-o-r-e.

22 Q. Okay. Are you able to tell me who did the test?

23 A. We -- it's usually Avi.

24 Q. From the records you have, are you able to tell
25 me who did the test?

1 A. We have a record in our lab of who does the
2 test. It's not on our requisition.

3 **Q. Okay. And what do you have in your lab that**
4 **shows who did the test?**

5 A. The printout from the machine with Avi's
6 initials as well as the initials on the worksheet.

7 **Q. Those are among the documents that I asked you**
8 **to bring today that you did not?**

9 A. That's right.

10 **Q. Okay.**

11 A. And let me clarify why I did not bring those
12 specific worksheets, is because it would require
13 taking -- because of HIPAA, we cannot release
14 anybody [sic] but the client name of valid, and there are
15 multiple names on these worksheets. So it would require
16 us to, first of all, remove every other name off those
17 worksheets but that one, which is significant time
18 involved; and I don't know who's willing to pay for all
19 that time it would take.

20 **Q. Okay. And when Avi or Shelby did this test, the**
21 **test that they did was the ELISA test?**

22 A. Yes.

23 **Q. Okay. And where was the kit purchased from that**
24 **was used to do this ELISA test?**

25 A. We buy plates and reagents. We don't buy kits.

1 **Q. Where do you buy the plates and the reagents?**

2 A. Depend on who -- which test you want to talk
3 about.

4 **Q. Okay. For doing a total mycotoxin panel, where
5 do you buy the plates and the reagents?**

6 A. I'm going to withhold that, knowing quite well
7 who may be using this, until I have a protective order
8 because your specific experts have used that in and
9 against RealTime in the past to go to our marketing
10 people and our vendors and inform them incorrectly that
11 we are doing things illegally, even when we have CLIA
12 specifications. So I will not answer that question.

13 **Q. The company that you buy the plates from and the
14 reagents, is it the same company? One company?**

15 A. No.

16 **Q. Okay. So there's one company you buy the plates
17 from, and there's another company you buy the reagents
18 from?**

19 A. No. It depends on which company -- which test
20 we're doing.

21 **Q. If you're doing a total mycotoxin panel, do you
22 buy the plates and the reagents from the same company?**

23 A. I said no.

24 **Q. Okay. Okay. So you refuse to tell me the name
25 of the company you buy the plates from, and you refuse to**

1 tell me --

2 A. We buy them from separate companies.

3 Q. My question is: What is the name of the company
4 you buy the plates from?

5 A. From -- on which test?

6 Q. On total mycotoxin panel.

7 A. There is no such company that we buy a plate for
8 total mycotoxin panel.

9 Q. Where do you buy the plates from, Doctor?

10 A. If you ask the question correctly, I will answer
11 it.

12 Q. Doctor, I don't want to go around in circles; I
13 just want to get the information. Can you tell me where
14 you --

15 A. The total mycotoxin panel is made up of three
16 different tests.

17 Q. The three tests are for the three mycotoxins?

18 A. That's correct.

19 Q. And my question to you is: Where do you buy the
20 plates to perform those three tests?

21 A. Each of them are bought from a separate company.

22 Q. Okay. What company do you buy the test for --

23 A. They make them under our direction.

24 Q. You tell them how to make them?

25 A. That's correct.

1 **Q. Okay. And when you get the plates from these**
2 **companies, what is on them already?**

3 A. It's a coated specific antibody on the plates in
4 the wells.

5 **Q. Okay.**

6 A. So in the case of the aflatoxin, there's a
7 specific antibody to aflatoxin B1, B2, G1, G2.

8 **Q. And where do you buy the plates for that study?**

9 A. I'm withholding that information.

10 **Q. Okay. With regard to the plates for**
11 **ochratoxin, is there a specific antibody on that plate?**

12 A. Yes, there is.

13 **Q. Okay.**

14 A. To ochratoxin A.

15 **Q. Okay. So the company that you buy the plates**
16 **from for the ochratoxin A has already put an ochratoxin**
17 **antibody A on the plate?**

18 A. That is correct.

19 **Q. In the well?**

20 A. That is correct.

21 **Q. Okay. And what company do you buy the plates**
22 **for ochratoxin A from?**

23 A. I'm withholding that information.

24 **Q. Okay.**

25 A. That is protected in our -- in our test.

1 **Q. Okay. The other test you do or were doing at**
2 **the time you saw -- you tested Mateo's urine was**
3 **trichothecene, correct?**

4 A. That is correct.

5 **Q. Okay. And you buy a plate there as well?**

6 A. That's correct.

7 And I will clarify who it is not because
8 your experts have gone to that company. It is not
9 EnviroLogix. Your experts have specifically gone to
10 EnviroLogix and threatened them to state that they will
11 turn them in to the FDA if they don't stop making them.
12 So we made our own antibody, and we coat our own wells;
13 and we have all of our procedures set up in that way.

14 **Q. Okay. Again, you've got records for all of**
15 **this, which you haven't brought with you?**

16 A. Which we will not release as to who our
17 manufacturers are.

18 **Q. Okay. But the --**

19 A. Unless a judge tells us we have to.

20 **Q. Okay. For trichothecenes is a third company?**

21 A. That's right.

22 **Q. Okay. And what type of antibodies on that**
23 **plate?**

24 A. It's a specific antibody to satratoxin.

25 **Q. Okay.**

1 A. Which is a macrocyclic trichothecene.

2 Q. Okay. So your testimony is that you buy plates
3 from three different companies, and that they have
4 antibodies to particular mycotoxins in the wells on the
5 plates when you get them?

6 A. That's correct.

7 Q. Okay.

8 A. I don't mean to be difficult on that, but that
9 is protected by the company. And we would have -- if
10 we're forced to, we'll have to have a judge tell us we
11 have to release that under protective order.

12 Q. Okay. Doctor, let me give you what we'll call
13 Exhibit 15 --

14 THE VIDEOGRAPHER: I'm sorry. I need to
15 change tapes. Would this be a good time?

16 MR. WOLPE: Go ahead.

17 THE WITNESS: Yeah, could we go to the
18 restroom too?

19 MR. WOLPE: Go right ahead.

20 THE VIDEOGRAPHER: Going off the record at
21 11:26.

22 (Break taken from 11:26 a.m. to 11:33 a.m.)

23 THE VIDEOGRAPHER: We're back on record at
24 11:33.

25 (Deposition Exhibit No. 15 marked.)

1 **Q. (BY MR. WOLPE) Doctor, let me show you what**
2 **we've marked as Exhibit 15. And could you, please, tell**
3 **us what that document represents? It's two documents,**
4 **really.**

5 A. Yes. This is a laboratory test to be completed
6 and returned to CLIA for HIPAA 116.

7 THE VIDEOGRAPHER: I'm sorry, Doctor, put
8 your microphone on for me. I apologize.

9 THE WITNESS: Oh, okay.

10 A. This is a laboratory test list that was
11 completed to be returned to CLIA for a list of all
12 testing that we do.

13 **Q. (BY MR. WOLPE) Okay. And in that document, did**
14 **you indicate to them that this manufacturer from whom you**
15 **get the materials to do the ochratoxin test was Nugen**
16 **(phonetic), N-e-o-g-e-n?**

17 A. We indicated that. That's not how I say it.

18 **Q. Okay. How do you say it?**

19 A. Neogen.

20 **Q. Okay. Is Neogen the company from whom you**
21 **purchased the plates, antibodies and mycotoxins for the**
22 **test you did on Mateo Valle?**

23 A. Would you repeat that question?

24 MR. WOLPE: Sure. Could you repeat it
25 back, please.

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THE REPORTER: Yes --

Q. (BY MR. WOLPE) Never mind. I'll re-ask it.

Was Neogen the company from whom you purchased the plates, mycotoxin antibodies and mycotoxins that were used in the test on Mateo Valle?

A. Not all of them.

Q. Okay. What did you buy from Neogen with regard to the testing you did on Mateo Valle?

A. We buy the plates for aflatoxin and ochratoxin.

Q. And when you get the plates from Neogen, they already have the ochratoxin antibody in the wells?

A. Correct.

Q. Do you also buy the ochratoxin from Neogen?

A. Yes.

Q. Are there any materials that you used in testing Mateo Valle that were not purchased from Neogen?

A. We buy the conjugate and the substrate and the stop solution from Neogen.

Q. Are there any materials that you don't buy from Neogen that's used in Mateo Valle's test?

A. Yes.

Q. What?

A. The antigen, the controls.

Q. Where do you buy those materials?

A. From various -- Sigma has controls. Trilogy in

1 St. Louis.

2 Q. My question is: With regard to Mateo Valle,
3 where did you buy the controls?

4 A. I don't recall.

5 Q. Do you have records that show that?

6 A. I -- yes.

7 Q. Okay. When you purchased the plates with the
8 ochratoxin antibody and ochratoxin on them from Neogen,
9 did you tell them that you were using those materials to
10 test human urine?

11 A. Yes.

12 Q. Who did you tell?

13 A. I don't know.

14 Q. Who did you tell at Neogen?

15 A. I don't recall.

16 Q. Okay. When you receive those materials from
17 Neogen, do they have manufacturer's instructions with
18 them?

19 A. Yes.

20 Q. Okay. Do the manufacturer's instructions
21 indicate that those plates, with the ochratoxin antibody
22 and the ochratoxin already on them are intended to be
23 used for testing of human urine?

24 A. No, they do not say that.

25 Q. Okay. What do they say, Doctor?

1 A. I don't recall.

2 Q. Okay. Do the instructions from Neogen indicate
3 that these materials are to be used to test corn, barley,
4 green coffee, and various dried fruits?

5 A. Yes.

6 Q. Is this, Doctor, a copy of the instructions that
7 come with the materials you get from Neogen?

8 A. This is a product insert that comes from Neogen,
9 yes.

10 Q. Okay. So that is the product insert that would
11 come with the materials you obtained from Neogen that you
12 used in Mateo Valle's test, correct?

13 A. We used -- we used the plates, the antibody, and
14 the reagents in a different way than Neogen states.

15 (Deposition Exhibit No. 16 marked.)

16 Q. (BY MR. WOLPE) Neogen indicates that they're
17 selling these materials for the testing of foods; you use
18 them to test human urine?

19 A. Correct.

20 Q. Okay. And is it your testimony that Neogen
21 knows you're doing this?

22 A. Yes.

23 Q. Okay. Did you ever talk to the head of product
24 safety at Neogen?

25 A. I believe so.

1 Q. Okay. What is his name?

2 A. I don't know.

3 Q. And it's your testimony that you told the head
4 of product safety at Neogen that you're using their
5 product to test human urine even though the tests were
6 not designed for that purpose?

7 A. We have gone through various avenues of Neogen;
8 and on top of that, we can buy any kit and adapt it to
9 human use under CLIA and FDA rules. So our validations
10 have been associated with these plates.

11 Q. At the time you did your validation study, you
12 were not buying your materials from Neogen, were you?

13 A. No.

14 Q. Okay. You were buying from EnviroLogs [sic]?

15 A. That's not the name of the company.

16 Q. What is the name of the company?

17 A. Well, you seem to know that.

18 Q. EnviroLogix?

19 A. There, that's correct.

20 Q. So at the time you did your --

21 A. For trichothecenes.

22 Q. Okay. At the time you did your validation
23 studies, where were you buying your ochratoxin?

24 A. We bought the -- now I can't remember the name
25 of the company. But they were -- I can't remember the

1 name. I'm sorry.

2 **Q. Okay. So --**

3 A. I'm sure your experts have told you.

4 **Q. Are you saying that you didn't buy from**
5 **EnviroLogix?**

6 A. No, not for aflatoxin and ochratoxin.

7 **Q. Okay. Wherever you bought your materials when**
8 **you did your validation testing, it was from a company**
9 **other than Neogen?**

10 A. That's correct.

11 **Q. Okay.**

12 A. We have subsequently done our own reevaluation
13 of Neogen's. We have not published that.

14 **Q. Do you have records showing that revalidation**
15 **from Neogen?**

16 A. Of course.

17 **Q. I see.**

18 **Now, when you get the ochratoxin kit from**
19 **Neogen, how do you claim that you adapt them to your use?**

20 A. We break -- we get the conjugate, we get the
21 stop, and we get the substrate; we break them apart,
22 separate them all, do our quality control on each lot
23 that comes through and get it ready for doing patient
24 specimens.

25 **Q. Okay. And who was the person that separates the**

1 **conjugate, the stop and the substrate? Who does that?**

2 A. The technician who accepts them.

3 **Q. I see.**

4 **And which tech accepted the kit from -- of**
5 **ochratoxin that you used in Mateo's test?**

6 A. I don't know.

7 **Q. When --**

8 A. I don't even know if we document which tech
9 accepts them because it's -- the acceptance is the lot
10 number of -- and QC of the lot, and that's all documented
11 by technologists.

12 **Q. So you can't tell me when you got the ochratoxin**
13 **kit from --**

14 A. I didn't say that. I said that we have
15 documentation to tell when we get the kits in and when we
16 do the QC.

17 **Q. Okay. So you have documents which show when you**
18 **got this kit in from Neogen that you used on the test for**
19 **Mateo Valle?**

20 A. Correct.

21 **Q. And you would have documents that show the**
22 **quality controls that you used, correct?**

23 A. That is correct.

24 **Q. And you have documents that show the validation**
25 **studies that you have indicated you performed for the**

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Neogen kit?

A. That's correct.

Q. Okay. And when did you do these validation studies, Doctor?

A. Prior to us using the Neogen kit.

Q. When?

A. I don't recall.

Q. Who did the validation studies?

A. I did.

Q. Okay. And it's all documented?

A. That's right. I wouldn't say that if I didn't have it.

Q. Okay.

A. And we've had to provide that to CLIA many times.

Q. Do you know what the half-life of ochratoxin is?

A. No. Intracellular or extracellular?

Q. Intracellular or extracellular.

A. Depending on who you read. I don't know.

Q. Okay. What is your understanding, Doctor?

A. I don't have any.

Q. Okay. Have you read any literature about it?

A. Yes.

Q. Okay. What does the literature say as to the half --

1 A. It varies.

2 Q. Okay. What is the longest half-life you
3 understand in the literature regarding ochratoxin?

4 A. I don't recall.

5 Q. Okay. Would you disagree that it's
6 approximately 36 days?

7 A. I don't know.

8 Q. Okay. And what does it mean when you use the
9 term "half-life"?

10 A. When a sample has, say, a value of 10 and it now
11 has a value of 5; how long did it take to get from 10 to
12 5, that's the half-life.

13 Q. The half-life of ochratoxin would determine how
14 long it remain in a human body, correct?

15 A. (No audible response.)

16 Q. Correct, sir?

17 A. If that's how you define it, yes. And it
18 depends on if you define it intracellular or
19 extracellular.

20 Q. That half-life of the ochratoxin would determine
21 how long it would remain in a body intra- or
22 extracellular, wouldn't it, sir?

23 A. Okay.

24 Q. Correct?

25 A. I would assume that would be, yes.

1 Q. Okay. The urine that was taken of Mateo Valle
2 on approximately August 18th, 2011, would have had to
3 have resulted from exposure that occurred within
4 approximately 35 days prior to that time, wouldn't it,
5 sir?

6 A. No -- I don't know.

7 Q. Okay.

8 A. That's assuming that your time frame that your
9 experts have given you is correct. I'm not familiar with
10 that time frame.

11 Q. Okay. So as you sit here today, you cannot tell
12 us either what the half-life is of ochratoxin or whether
13 the ochratoxin -- I'm sorry, when the ochratoxin you
14 found in Mateo's urine, when he had an exposure to result
15 in that being there, correct?

16 A. No, I cannot.

17 Q. So you can't tell us within reasonable medical
18 probability whether the ochratoxin you found in Mateo's
19 urine was as a result of an exposure that occurred a year
20 before, correct?

21 A. No, that is not correct. I don't know if this
22 ochratoxin was intracellular or extracellular in Mateo
23 Valle.

24 Q. You don't know --

25 A. So I will assume that it has to be -- if he has

1 not had association with ochratoxin or any
2 ochratoxin-producing organisms within the past year,
3 which I'm not aware that that's true, that the ochratoxin
4 may be intracellular, which they do exist
5 intracellularly.

6 **Q. Doctor, put it really to the end result here**
7 **is: You can't tell us when or where Mateo Valle had**
8 **exposure to ochratoxin which would be evidenced by the**
9 **urine sample you took?**

10 A. I can tell you that he was exposed to
11 ochratoxin-producing organisms in a specific site at a
12 specific time by looking at the environmental samples.
13 And I can also tell you that he has ochratoxin present in
14 his urine. Why that is present in his urine now could be
15 that he's releasing it because it was intracellular and
16 it's now being released, or he's got so much of it that
17 it's being released all the time. I don't know.

18 **Q. Okay. Doctor, you can't testify within a**
19 **reasonable medical probability the ochratoxin you found**
20 **in his urine was as a result of exposure in 2005?**

21 A. I can say within a reasonable amount of medical
22 certainty that this child was exposed to Aspergillus and
23 Penicillium, a -- producing ochratoxin, and these
24 organisms produce ochratoxin and that he was exposed to
25 them.

1 This organism can be presented
2 intracellularly as can be shown in renal cell cancers, as
3 can be shown in bladder cancers, and we can take them out
4 of the cells. And this is documented in the literature.

5 So within a high degree of medical
6 certainty, I can say that these organisms create or can
7 create ochratoxin. We found ochratoxin in the patient;
8 and where those ochratoxins have been, I don't know.

9 **Q. Okay. And whether the ochratoxin you found in**
10 **his urine was as a result of exposure in 2005, you don't**
11 **know?**

12 A. I can say within a high degree of medical
13 certainty that he was exposed --

14 MR. KIMMEL: Excuse me, Joel?

15 MR. WOLPE: Yeah.

16 MR. KIMMEL: I don't mean to interrupt, but
17 are you saying 2005?

18 MR. WOLPE: I'm sorry. Yes.

19 MR. KIMMEL: Just so the record is clear.

20 Okay.

21 MR. WOLPE: Yeah.

22 A. So I can say within a high degree of medical
23 certainty that he was exposed to ochratoxin-producing
24 organisms, and that we found them.

25 **Q. (BY MR. WOLPE) Okay.**

1 A. And where they came from, I have no evidence to
2 show that he was exposed to anything else after that or
3 since then.

4 **Q. Doctor, if the half-life of ochratoxin is 35**
5 **days, the ochratoxin you found in his urine in 2011 could**
6 **not have been from an exposure that occurred a year and a**
7 **half previous, correct?**

8 MR. KIMMEL: I'll object; asked and
9 answered with respect to the intracellular or
10 extracellular.

11 **Q. (BY MR. WOLPE) Correct? Correct?**

12 A. That is correct.

13 And let me add something else: The Balkan
14 nephropathies that were documented in the medical
15 literature, peer-reviewed medical literature, cited
16 ochratoxin present, and these patients were involved with
17 ochratoxin over a long period of time and were removed
18 from it; and still the ochratoxin was present in the
19 cells of these kidneys. So I can't say that this patient
20 was not involved with ochratoxin.

21 **Q. Okay. Doctor, you have no evidence that the**
22 **ochratoxin you claim you found in Mateo's urine in your**
23 **testing in 2011 was due to an exposure a year before?**
24 **You don't know one way or the other?**

25 A. I have evidence to show that this individual was

1 exposed to ochratoxin-producing organisms, and I have
2 evidence to show that this person was exposed to -- or
3 has ochratoxin in his urine.

4 **Q. Okay.**

5 A. Therefore, I can draw a medical conclusion at a
6 high degree of medical certainty that this ochratoxin
7 came from those organisms, unless otherwise demonstrated
8 that there was some other exposure.

9 **Q. Is ochratoxin in the environment?**

10 A. It could be.

11 **Q. Okay. Is ochratoxin in the food we eat?**

12 A. It could be. If it was, then I would show every
13 urine that I test as positive for ochratoxin, and it
14 isn't.

15 **Q. Doctor, if, in fact, the half-life of ochratoxin**
16 **is 35 days --**

17 A. Which I will not admit to.

18 **Q. Okay. Because you don't know?**

19 A. Because I don't know if you're talking about
20 extracellular or intracellular half-lives.

21 **Q. Okay. If, in fact, the half-life is 35 days,**
22 **then where do you believe Mateo had exposure to**
23 **ochratoxin?**

24 A. I can't answer that because you're making me
25 assume that the half-life is 35 days.

1 **Q. Do you have any evidence that the half-life of**
2 **ochratoxin, intracellular or extracellular is a year?**

3 A. I have no reason to have any evidence of a
4 half-life. The half-life doesn't matter to me.

5 When I look at renal cell cancers in the
6 literature as well as in my own laboratories, as well as
7 bladder cancers, we found that ochratoxin present.
8 Whether or not that patient was exposed 10 years or 5
9 years or yesterday, it's there. Why is it there? I
10 don't know.

11 **Q. Okay. So with regard to Mateo Valle, you don't**
12 **know why the ochratoxin was in his urine?**

13 A. I don't know, other than the fact that we have
14 an exposure evidence that was done in the environmental
15 study.

16 **Q. And you don't know what his exposure would be to**
17 **ochratoxin, either environmentally or through food, in**
18 **between the -- almost a year and a half from when he left**
19 **the apartment in question until the time you did your**
20 **test?**

21 A. I know that the USDA is very, very concerned
22 about ochratoxin coming into the country in certain
23 foods, i.e., coffee and wines. And I don't think that
24 the history of Mateo Valle indicates that he drinks wine
25 or excessive amounts of coffee. Being in the grains,

1 it's monitored very careful by USDA. And I'm not
2 familiar with even autistic children who have a severe
3 change in their immune system and metabolism who eat
4 grains have increased amounts of ochratoxin.

5 **Q. You're aware of the fact that ochratoxin is**
6 **found in multiple foods other than coffee and wine,**
7 **correct?**

8 A. I don't know what those multiple foods are.

9 **Q. I see.**

10 **Is it found in barley?**

11 A. I have not seen a large amount of ochratoxin
12 present in barley that would be a issue with the USDA --

13 **Q. Okay.**

14 A. -- that would cause a problem in patients like
15 Mateo Valle.

16 **Q. Is it found in barley? Yes or no?**

17 A. I don't know.

18 **Q. Okay. Is it found in corn?**

19 A. I don't know.

20 **Q. Is it found in wheat?**

21 A. I don't know.

22 **Q. Is it found in oats?**

23 A. Oats, I believe so.

24 **Q. Is it found in cereals?**

25 A. By what cereals?

1 **Q. Has it been found in cereals?**

2 A. I don't know.

3 **Q. Has it been documented in infant formula?**

4 A. If it has, I don't see it on the sheets that
5 come with the products. I don't see ochratoxin present
6 in extra -- in parts per billion or parts per million on
7 any type of product inserts or on the cans of infant --
8 and if it is, USDA should be concerned about that.

9 **Q. Are you aware that it's been reported in infant**
10 **formula?**

11 A. No, I'm not.

12 **Q. In bread?**

13 A. No.

14 **Q. In feed for animals?**

15 A. I am familiar with feed in animals.

16 **Q. Are you aware of the fact that it's found to**
17 **carry over into milk and animal tissue?**

18 A. And what would be the half-life of that
19 carryover?

20 **Q. Do you know?**

21 A. No.

22 **Q. Okay.**

23 A. And I'm sure they don't know either.

24 **Q. Okay. So you don't know the half-life of**
25 **ochratoxin in foods, and you don't know the half-life**

1 **intracellular or extracellular in humans?**

2 A. No.

3 **Q. And the half-life of ochratoxin, intracellular**
4 **and extracellular, would determine whether the ochratoxin**
5 **you found in Mateo's urine was related to his exposure a**
6 **year and a half before, correct?**

7 A. I would have to study that. That is not --
8 you're putting words in my mouth again, because I would
9 have to assume that there was no other exposure before I
10 could look at that. Once I was told what the half-life
11 intracellular is, which I don't know if anybody knows,
12 then I would have to know was there any other exposure to
13 ochratoxin-producing organisms.

14 **Q. Okay. What you do know is that there can be**
15 **exposure from the outside environment and from foods that**
16 **we all are exposed to on a daily basis, correct?**

17 A. I can admit that that's possible. If that was
18 possible and I would find ochratoxin -- if it was an
19 issue with the USDA and everybody else, I would find that
20 in every urine that I test, and I don't.

21 **Q. After the test, the ochratoxin test is done with**
22 **the Neogen material, does it report out in a machine?**

23 A. Yes, the optical density reports out in a
24 machine.

25 **Q. Okay. And then what is done with the sample?**

1 A. The urine sample is refrozen.

2 **Q. Okay. And then what's done with it?**

3 A. We just keep it.

4 **Q. Okay. So that the report that you have provided**
5 **us that's part of Exhibit 9 that indicates ochratoxin was**
6 **present, is that as a result of the readout from the**
7 **machine that the urine was placed in?**

8 A. No, no. Huh-uh.

9 **Q. Okay. Where does that result come from, then?**

10 A. We have standards that we use in each of the
11 different tests, aflatoxin, ochratoxin, and
12 trichothecenes. And we draw our curves every time we do
13 this, and standards range from -- anywhere from .2 to 10
14 parts per billion. And then we fit the optical density
15 on that curve. And if it fits within the line of --
16 within the limit of detection, then that's where we say
17 the value is.

18 **Q. Okay. And who does that?**

19 A. The techs and --

20 **Q. Okay.**

21 A. -- with our computer program.

22 **Q. Okay. And which tech did it in Mateo?**

23 A. I don't know. Probably Shelby.

24 **Q. Okay. But this record doesn't tell us?**

25 A. And our records don't say that.

1 **Q. Okay. So you have no record to tell you who did**
2 **the testing with the machine to determine --**

3 A. No, that's not true. I said every time a tech
4 does the work in the ELISA reader, that is -- that goes
5 on our readouts. That tech signs that readout. Then the
6 tech who actually puts the information into the computer
7 and reads it, that comes out and that tech -- I guess
8 that tech does initial that readout too.

9 **Q. Okay. And who is the tech that draws the curve**
10 **to determine whether or not there's ochratoxin present?**

11 A. Well, that's a computer program.

12 **Q. Okay. And a tech does all of that testing with**
13 **the computer you have?**

14 A. That's right.

15 **Q. With the computer program you have?**

16 A. That's right.

17 **Q. Okay. And then does the tech provide you with**
18 **the results that there's ochratoxin present within the**
19 **limit of detection?**

20 A. Yes.

21 **Q. Okay.**

22 A. On our worksheets.

23 **Q. And you have worksheets that document all this?**

24 A. That's correct.

25 **Q. Okay. And other than signing off on this test,**

1 do you recall having any personal involvement, anything
2 that relates to Mateo's urine?

3 A. Not that I recall, no.

4 Q. Okay. So, then, you rely on the techs to do all
5 the testing and to advise you whether there's ochratoxin
6 present within your guidelines?

7 A. (Witness nods head.)

8 And I review the QC.

9 Q. What's QC?

10 A. Quality control.

11 Q. Okay. And do you know when you reviewed the
12 quality controls in this case?

13 A. Every time they do a test, our controls have to
14 come in. And then once a month, we do linearities and
15 reproducibility tests.

16 Q. Okay. So at least with regard to these results,
17 these are -- had been provided by somebody else for you
18 rather than you doing the testing yourself?

19 A. Right.

20 Q. Okay. And you're assuming that these tests are
21 accurate, but you have no personal knowledge whether they
22 are or not?

23 A. I know they're accurate.

24 Q. How's that?

25 A. I just told you I review all quality control,

1 linearity, reproducibility. As a medical director, I'm
2 responsible for that.

3 **Q. Okay. And can you tell me on what date you**
4 **reviewed quality controls in this case?**

5 A. We review quality control before we even release
6 the data.

7 **Q. Okay.**

8 A. All the standards, all the controls must come in
9 within the guidelines or we reject it -- we reject the
10 run.

11 **Q. Now, this test that was done by these techs with**
12 **this computer program, are you ever going to be able to**
13 **produce any documents to tell us which tech did these**
14 **tests?**

15 A. What does that mean?

16 **Q. Are you able to tell us by looking at any**
17 **documents in your lab which tech would have done the test**
18 **on Mateo Valle's urine?**

19 A. Yes. They initial every test.

20 **Q. Okay. And so those are documents you have?**

21 A. Yes.

22 **Q. Okay. So that in summary, from the time that**
23 **Mateo Valle's urine came in until the time that all the**
24 **tests were done, through the entire process, you were not**
25 **personally involved in any part of that, correct?**

1 A. Other than signing this (indicating).

2 **Q. Other than signing this report?**

3 A. And reviewing quality control. So I am
4 personally involved. Nothing goes on without my
5 reviewing.

6 **Q. So other than reviewing quality controls for**
7 **your computer system and signing this document, you had**
8 **nothing personal to do with Mateo Valle's testing result?**

9 A. Not that I recall. On occasions, I sometimes
10 enter data into the computer if the tech is doing
11 something else; but I don't recall in this case if I did.

12 **Q. Okay.**

13 A. I mean, I have done everything on this test from
14 inception, so --

15 **Q. But not with Mateo Valle?**

16 A. Not that I know of.

17 **Q. You can't tell us, Doctor, can you, whether or**
18 **not had Mateo Valle's urine been tested in May or June of**
19 **2010, what it would or would not have shown, could you?**

20 A. No. That would be -- if I could, I would be a
21 genius.

22 **Q. In fact, you can't tell whether or not there**
23 **would have been ochratoxin in Mateo Valle's urine even if**
24 **you were asked what it would have been on August 17th,**
25 **2011? You just don't know? You have no way of knowing?**

1 A. No. I do know that when we retest specimens and
2 we do lot-to-lot checking, if I would go back and
3 retest -- if I would get Mateo Valle's urine and retest
4 it again, the same specimen, it comes within the same
5 area. So that doesn't answer your question. Whether or
6 not he had a different urine is what you're asking. No,
7 I can't answer that.

8 **Q. In other words, you can't tell us whether or not**
9 **had this study, your study, been done one month, two**
10 **months, six months, eight months, or a year after his**
11 **exposure to ochratoxin, whether or not it would have**
12 **shown up in his urine or not?**

13 A. No. And that's the same assumption you can make
14 on lead testing, that you don't know -- if I told you a
15 blood lead was -- level today was at that same
16 yesterday. No, it's not. We don't know.

17 **Q. And it's because you have no way of knowing what**
18 **Mateo's exposure was between May of 2010 and August of**
19 **2011 -- what his exposure was to ochratoxin because you**
20 **don't know what that exposure was or wasn't; you have no**
21 **way of telling which exposure caused the ochratoxin you**
22 **found?**

23 A. No, no. That's not what I've said.

24 I've said I know what we found in the
25 environment prior to the testing, and I know what we

1 found in the testing. So I can relate that back unless I
2 see some other testing to say he was involved with a
3 ochratoxin-producing organism somewhere else, and I have
4 no evidence of saying that.

5 **Q. You have no evidence one way or the other**
6 **whether he was or he wasn't?**

7 A. I have evidence to show that he was exposed
8 before.

9 **Q. Doctor, do you know of any medical literature**
10 **that supports your position that exposure to ochratoxin,**
11 **assuming it took place in May of 2010, would show up in a**
12 **urine sample in August of 2011 or approximately a year**
13 **and three months later?**

14 A. No.

15 **Q. Okay.**

16 A. Other than literature that shows that renal cell
17 carcinomas, which are kidney cancers, and bladder
18 cancers, they found it in those tumor cells.

19 **Q. Okay. But in this case, we know that Mateo**
20 **doesn't have cancer, correct?**

21 A. At the present time, we don't.

22 **Q. And we know that no tissue sample has ever been**
23 **done to show any type of ochratoxin in any cells of his**
24 **body, correct?**

25 A. No. But I would leave this as a question: What

1 happens if this boy has ochratoxin in his urine now and
2 he develops bladder cancer or ochratoxin later? Can you
3 argue that there is half-life that he -- in these cells
4 that isn't going to create a problem for him? I would be
5 very concerned if he has ochratoxin present in his urine
6 now, what is the probability of him getting some kind of
7 disease like the Balkan nephropathy associated with
8 ochratoxin.

9 **Q. Okay. Doctor, you're not testifying this boy's**
10 **more likely than not going to develop bladder cancer, are**
11 **you?**

12 A. I'm saying ochratoxin is a great potential for
13 carcinogenicity.

14 **Q. Okay.**

15 A. It's listed as an MSDS. It's listed by OSHA.
16 It's listed by California regulations.

17 Yes, I could say that there is a
18 possibility that he could develop something if he's not
19 watched carefully.

20 **Q. And that's just a probability that he's going to**
21 **get something? You're surely not telling us that, are**
22 **you, sir?**

23 A. I'm saying there's a high probability that he
24 could develop something if he's not monitored and this
25 ochratoxin is removed from his body.

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Q. I see.

Did you tell any of his doctors that he needed to have ochratoxin removed from his body?

A. No, I haven't told -- I told you -- I've testified to you that I have not talked with his doctors.

Q. Or his parents about this?

A. No.

Q. Didn't think that was necessary?

A. I'm not the treating physician. I've been asked to give a medical opinion at this case.

Q. Okay. Doctor, when I looked up on the Texas Board of Records whether Medical Service Consultation, P.A. was in good standing, they indicate they're not. Do you know why?

A. No. I didn't know that.

Q. Okay. When I looked up Medical Service Consultation International, whether that corporation is in good standing, it shows they are not either. Do you know why?

A. Oh, I bet you I know why.

Q. Why --

A. Because we haven't filed our franchise taxes until October 15th.

Q. Okay. So that's why the State of Texas doesn't show that you're in good standing?

1 A. Right. Until you file those, you're not in good
2 standing.

3 **Q. Okay.**

4 A. Our accountants have finished everything, so --

5 **Q. Okay. Doctor, you graduated from medical school**
6 **in 1983?**

7 A. Yes.

8 **Q. Okay. And you did a residency in anatomical and**
9 **clinical pathology and no other residency, correct?**

10 A. Right. I did an internship in internal medicine
11 for a year.

12 **Q. Okay. And during that one year that you did an**
13 **internship, which year was that?**

14 A. 1983 to 1984.

15 **Q. Okay. And I think you told us you spent one**
16 **month in pediatrics?**

17 A. No. You told me that.

18 **Q. You've testified to that.**

19 A. Well, I agreed that you said that; but that's
20 true, I did.

21 **Q. Okay. And then you were -- you were in the navy**
22 **until 1995?**

23 A. Active duty, yes, and then I was reservist until
24 2001.

25 **Q. And when you were in the navy, you were turned**

1 into the Pentagon for stealing a piece of equipment, a
2 large flow cytometer, correct?

3 A. Flow cytometer, yes.

4 Q. Okay. And while that investigation was ongoing,
5 you asked to be released from active duty?

6 A. No.

7 Q. Didn't you ask to be released from active duty
8 during the time of that investigation?

9 A. No.

10 Q. When did you ask to be released from active
11 duty?

12 A. After that investigation was over.

13 Q. You then went to -- in 1996, to Nevada
14 Bioscience Laboratory in Reno?

15 A. Correct.

16 Q. Okay. As the medical director?

17 A. Yes.

18 Q. And there's an organization called CLIA,
19 correct?

20 A. Correct.

21 Q. And what is CLIA?

22 A. It stands for Clinical Laboratory Improvement
23 Act.

24 Q. Okay. And the Center for Medicare and Medicaid
25 Services regulate all laboratory testing except research

1 through the Clinical Laboratory Improvement Act?

2 A. Correct.

3 Q. And the objective of CLIA is to ensure quality
4 laboratory testing?

5 A. Correct.

6 Q. Okay. And all clinical laboratories have to be
7 CLIA-certified to receive Medicare and Medicaid payments?

8 A. Correct.

9 Q. Okay. At the present time, does RealTime
10 Laboratories receive Medicare or Medicaid payments?

11 A. No.

12 Q. Why don't they receive Medicare or Medicaid
13 payments?

14 A. We don't want to. We have a choice. We don't
15 want to.

16 Q. Okay. And, Doctor --

17 A. We are CLIA-certified, though.

18 Q. Okay. In 1999 when you were operating Nevada
19 Bioscience Laboratories, they revoked your CLIA
20 certificate, did they not?

21 A. They did.

22 Q. Okay. And they indicated that the reason they
23 revoked your certificate, using their words, "the
24 laboratory intentionally" -- I'm sorry.

25 They indicated that the reason that they

1 **revoked your CLIA certificate was "misrepresentation of**
2 **facts in obtaining CLIA certification and failure to**
3 **allow an inspection," correct?**

4 A. Correct.

5 **Q. Okay.**

6 MR. WOLPE: For the record, we're going to
7 mark that document from the State of Nevada as No. 17.

8 (Deposition Exhibit No. 17 marked.)

9 **Q. (BY MR. WOLPE) Okay. Then, Doctor, in the year**
10 **2000, you became a physician specialist in Martin Luther**
11 **King Hospital in the department of pathology, correct?**

12 A. Correct.

13 **Q. For two years?**

14 A. One year and two months.

15 **Q. Okay. And in October of 2003 after you had left**
16 **the state, the Division of Medical Quality for the**
17 **Medical Board of California filed charges against you to**
18 **revoke or suspend your license?**

19 A. No, not in that year. They opened an
20 investigation in that year.

21 **Q. And in October -- October 31st, 2003, they filed**
22 **a complaint against you, did they not?**

23 A. That's correct.

24 **Q. Okay. And the Board of Medicine of the State of**
25 **California, at that time, filed charges to revoke or**

1 **suspend your license?**

2 A. Correct.

3 **Q. Okay. And the basis was that you negligently**
4 **misread slides on six patients?**

5 A. That's correct.

6 **Q. Okay.**

7 MR. WOLPE: And for the record, we'll
8 identify that as Exhibit 18.

9 (Deposition Exhibit No. 18 marked.)

10 **Q. (BY MR. WOLPE) And one of those slides was**
11 **reviewing a urine psychology sample, correct?**

12 A. Correct.

13 **Q. And after those charges were filed by the**
14 **Medical Board of California, a proposed decision came**
15 **down revoking your license to practice medicine in the**
16 **State of California, correct?**

17 A. Revoking and -- what do you call it?

18 **Q. And suspended it?**

19 A. -- suspending it, yes.

20 **Q. Okay. So they revoked your license to practice**
21 **medicine in the State of California, and then they**
22 **suspended --**

23 A. Well, they revoked it, but then they put a
24 probation period of five month -- or five years on there.

25 **Q. They put you on probation?**

1 A. Correct.

2 Q. Okay.

3 A. So I was allowed to practice.

4 Q. Okay. And in that five-year period -- I'm
5 sorry.

6 In those charges that they filed against
7 you which resulted in an order of suspending your
8 license, they found you as committing repeated negligent
9 acts, correct?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes.

13 Q. Incompetence, yes?

14 A. Yes.

15 Q. Finding that your misdiagnosis involve both
16 false positives and false negatives?

17 A. According to them, yes.

18 Q. Okay. And finding that you lacked the requisite
19 level of knowledge in the practice of pathology, correct?

20 A. That's what they said, yes.

21 Q. Okay. And they concluded that you had been
22 grossly negligent, correct?

23 A. That's what they said, yes.

24 Q. And that you engaged in repeated negligent acts,
25 correct?

1 A. That's what they said.

2 **Q. Okay. And they placed a restriction on your**
3 **license saying that you "shall not engage in the clinical**
4 **practice of pathology unless all of your final diagnoses**
5 **are reviewed by a licensed and competent physician who is**
6 **not on probation with the board"?**

7 A. Correct.

8 **Q. So as of that time, they told you you couldn't**
9 **practice the clinical practice of pathology?**

10 A. I couldn't make diagnosis, yes.

11 **Q. You couldn't make diagnosis?**

12 A. Right.

13 **Q. Okay. And they then issued a proposed decision**
14 **which was adopted by the board, correct?**

15 A. Correct.

16 **Q. And as of -- as of this day, is your license in**
17 **California still on probation?**

18 A. Yes.

19 **Q. Okay.**

20 A. Still active, though.

21 **Q. Okay. You still can't practice clinical**
22 **pathology?**

23 A. Anatomic pathology -- I can't make diagnosis in
24 anatomic.

25 **Q. And over the period of time that you were on**

1 **probation, they required that you go to various**
2 **courses --**

3 A. Well, one course.

4 **Q. Okay. And you've never done that?**

5 A. No, because it's in the State of California.

6 **Q. Okay. And then there was an effort made to lift**
7 **the suspension in 2009; they refused to lift the**
8 **suspension?**

9 A. Correct.

10 **Q. Okay.**

11 MR. WOLPE: I'm going to mark the proposed
12 decision and final decision of the State of California as
13 Exhibit 19; and the decision in 2009 and '10 to maintain
14 the probation as Exhibit 20.

15 (Deposition Exhibits No. 19 and 20 marked.)

16 **Q. (BY MR. WOLPE) Now, what does it mean, Doctor,**
17 **when the State of California Medical Board said that your**
18 **misdiagnosis involve both false positives and false**
19 **negatives? What does that mean? What is a false**
20 **positive?**

21 A. They believed that if I said there was cancer
22 there and there wasn't, that's a false positive.

23 **Q. Okay. So you said there was cancer and there**
24 **wasn't?**

25 A. I believe that's true.

1 **Q. Okay. And a false negative is where you say**
2 **there is no disease and there is?**

3 A. That's right.

4 **Q. Okay. And they found that you had in your**
5 **misdiagnosis both false positives and false negatives,**
6 **correct?**

7 A. In my diagnosis, even though it was peer
8 reviewed and other people reviewed it, the State of
9 California didn't agree with that.

10 **Q. Okay. You then, in 2001, moved to the State of**
11 **Texas, correct?**

12 A. Correct.

13 **Q. You formed RealTime Laboratories in 2004 or**
14 **2005?**

15 A. I did.

16 **Q. Okay. And in 2006, CLIA inspected RealTime**
17 **Laboratories for the first time?**

18 A. Yes -- no -- 2006, yeah.

19 **Q. Okay.**

20 A. Yeah. There was a complaint by your expert,
21 Dr. Saxon, and his group stating that we were doing
22 things incorrectly.

23 **Q. And CLIA found, at that time, that you were**
24 **using EnviroLogix kits that were intended for foods in**
25 **the testing of urine, correct?**

1 A. Correct.

2 **Q. Okay. And --**

3 A. But they still allowed us to continue doing the
4 testing.

5 **Q. Okay. And they sanctioned you because of that?**

6 A. No, they did not sanction us. You need to read
7 that carefully and have your experts clarify that. There
8 was no sanctions. There was no major issues in 2006 at
9 all. There were small issues with temperature on our
10 refrigerators that we had to clarify.

11 **Q. Okay. They specifically found that you were not**
12 **following the manufacturer's instructions for the**
13 **EnviroLogix kits, correct?**

14 A. I don't know what you're talking about.

15 **Q. Okay. Well, they indicated, did they not, sir,**
16 **under "Test systems must be selected by the laboratory;**
17 **that testing must be performed following the**
18 **manufacturer's instructions and in a manner that provides**
19 **test results within laboratory's stated performance**
20 **specifications for each test system as determined under**
21 **493.1253"?**

22 A. That's the statute.

23 **Q. Okay.**

24 A. Now, what is the finding that they said was
25 wrong?

1 **Q. "This standard is not met as evidenced by the**
2 **surveyor. The manufacturer specified in writing the**
3 **DNeasy Tissue Kit the laboratory had in use the day of**
4 **the investigation is not to be used for human diagnostic**
5 **purposes."**

6 A. So you're misreading that, as most attorneys
7 do. DNeasy test does not have anything to do with
8 mycotoxin. The DNeasy test is for DNA test Aspergillus.
9 And there was one kit available at the time that the CLIA
10 certification came through, and that was by Qiagen.
11 Qiagen, that's Q-i-a-g-e-n. And that was labeled as
12 "research use only." And they said that we needed to get
13 the Qiagen kit that said "for clinical use only."

14 We were unaware, as was Qiagen, that there
15 was no kit available. So Qiagen subsequently has now had
16 a kit that says "for clinical use only," same reagents.
17 So that was misleading what you were questioning me
18 about.

19 **Q. Doctor, you received a report from CLIA dated**
20 **August 17, 2006, correct?**

21 A. Correct.

22 **Q. Okay.**

23 MR. WOLPE: We'll mark this as --

24 A. I don't know. What is the report?

25 **Q. (BY MR. WOLPE) There you go, sir.**

1 A. This is the complaint investigation.

2 (Deposition Exhibit Nos. 21 and 22 marked.)

3 **Q. (BY MR. WOLPE) And this report stated as**
4 **follows, did it not, sir, "Summary" --**

5 A. I need to read the whole thing.

6 **Q. Go right ahead.**

7 A. Thank you.

8 **Q. Please, do.**

9 A. (Witness reviews document.)

10 I'll repeat this for the record: The
11 allegations were in an e-mail dated 6/20. "The complaint
12 alleges that RealTime Laboratories used an ELISA to test
13 for trichothecene mycotoxins, and the kit has not been
14 FDA approved," which I will add my comment there in that
15 the FDA approval is not necessary in clinical
16 laboratories.

17 And they reviewed a number of the
18 credentials. They found nothing wrong with the
19 credentials. The records, they stated -- and I will read
20 their summary: "The complaint was substantiated with
21 standard level deficiencies cited. RealTime is reporting
22 trichothecene results on human urine that were analyzed
23 using a kit that was not approved by FDA." So they
24 substantiated that that complaint was true.

25 "RealTime Lab presented a validation study

1 adapting EnviroLogix QuantiTox Kit for urine, nasal and
2 mucus secretions. The validation study will be sent to
3 Regional CMS office for further review."

4 So you have taken, as your people have, and
5 said that we did not meet the standards. We did meet the
6 standards. We did the validations, and they sent it to
7 the Regional CMS office, and we have no evidence -- and
8 they have given us our certificate, so we are in
9 compliance with CLIA as of 2006.

10 **Q. Okay. Doctor, they concluded that you had a**
11 **standard level deficiency because you were using**
12 **EnviroLogix kits to test trichothecenes on human urine?**

13 A. I will not admit to that.

14 **Q. Well, the jury will see what it says.**

15 A. Well, we'll see.

16 **Q. Okay. EnviroLogix, Doctor, again, is a company**
17 **by Neogen that sells --**

18 A. Let's say this right. Neogen.

19 **Q. Doctor, EnviroLogix is a company like Neogen --**

20 A. Right.

21 **Q. -- that sells ochratoxin kits for foods, not**
22 **human urine, correct?**

23 A. Correct.

24 **Q. Okay. And back in 2006, you were using their**
25 **kits to test urine?**

1 A. Correct.

2 **Q. Human urine?**

3 A. Correct.

4 **Q. Okay. Now, in 2008, CLIA again inspected your**
5 **lab, correct?**

6 A. Correct.

7 **Q. Okay. And they concluded, based on their survey**
8 **that the lab posed an immediate jeopardy to patients**
9 **served by the laboratory, did they not?**

10 A. That's true.

11 **Q. Okay.**

12 MR. WOLPE: And, again, we'll mark this
13 report, this CLIA report, as Exhibit 23.

14 (Deposition Exhibit No. 23 marked.)

15 **Q. (BY MR. WOLPE) Okay. Doctor, on January 30th --**
16 **sorry, on November 14th, 2008, the Texas Department of**
17 **Health Services suspended your CLIA certificate and**
18 **cancelled or suspended your right to get Medicare**
19 **payments, correct?**

20 MR. WOLPE: If I can have a marker, please,
21 we'll mark that as 24.

22 (Deposition Exhibit No. 24 marked.)

23 **Q. (BY MR. WOLPE) And since 2008, you've been**
24 **receiving no Medicare payments?**

25 A. We have not received any Medicare payments,

1 ever. And this isn't because of this (indicating).

2 Q. Okay. Now, then on January 23rd, 2009, the
3 Department of Health and Human Services wrote a letter to
4 RealTime Labs, did they not, sir?

5 A. Yes.

6 Q. Okay. And that letter advised RealTime Labs
7 that the findings of the survey were an indication that
8 the laboratory poses an immediate jeopardy to patients,
9 right?

10 A. In bacteriology, yes, not in mycotoxins.

11 Q. "The findings of the survey resulted in the
12 determination that systemic and pervasive problems
13 continue to exist in RealTime Laboratories which have
14 caused or could cause serious harm to patients served by
15 the laboratory, or which have endangered or could
16 endanger the health and safety of the general public,"
17 correct?

18 A. That's what it says, yes.

19 Q. Okay. It goes on to say, "In addition, your
20 laboratory now has demonstrated a history of failure to
21 ensure sustained correction of deficiencies based upon
22 the complaint investigation and initial certification"
23 going back to August 15th, 2006, correct, sir?

24 A. I assume that's what you're reading, yes.

25 Q. Okay. Is that what it says, Doctor?

1 A. (Witness reviews document.)

2 Yeah, we'll clarify what this says. That
3 they did a recertification survey -- they came in in
4 August 15th of 2006 and cited that we had deficiencies in
5 some areas that had to do with temperatures. And that is
6 the indication that they are saying that we are repeating
7 changing the temperatures.

8 The other immediate jeopardy was the fact
9 that we have license in reading fungal cultures; and if
10 we had bacteria growing in the fungal culture, we would
11 note that and send it to LabCorp. Because of that, and
12 we weren't licensed in bacteriology, we were told that we
13 couldn't do that, and we had to look through and read
14 through the bacteria.

15 So even if the patient, like Mateo, had a
16 fungal culture ordered and there was nothing growing on
17 the fungal culture but if we saw bacteria, we couldn't
18 say anything. So we agreed that that was an issue, and
19 so we asked them for approval for a bacteriology
20 license. We got that. And because of that, they
21 cancelled anything we did for three weeks until we got
22 that license.

23 So to make this sound bad, it was bad
24 because the issue of reading bact- -- bacteria in fungal
25 cultures was not -- we were jeopardizing things by not

1 having that license. But we were not reading them
2 anyway; we were sending them to our reference lab. So
3 that's the issue. There was nothing about mycotoxins;
4 there was nothing about DNA of Aspergillus or any of the
5 other fungi.

6 **Q. It was just a finding that you posed immediate**
7 **jeopardy to the patients?**

8 A. On bacteriology.

9 MR. WOLPE: We'll mark that as Exhibit 25.

10 (Deposition Exhibit No. 25 marked.)

11 A. I must clarify what they say because they have a
12 lot of words.

13 **Q. (BY MR. WOLPE) Okay. And then they inspected**
14 **you in 2010, and they also found there were deficiencies,**
15 **did they not, sir?**

16 A. No. They found one.

17 And let me clarify what that was: When we
18 send out a specimen to LabCorp or Quest, the rules of
19 CLIA are that you put an address. And so we put, as
20 other laboratories do, "Specimen sent to LabCorp Dallas
21 for further identification." The CLIA surveyor thought
22 we should put, "Specimen sent to LabCorp on Willow
23 Street," or wherever we sent it in Dallas. There's only
24 one address that it's sent to in LabCorp Dallas, so --
25 but we changed that. But that was the only deficiency we

1 had.

2 Q. Okay. Doctor, has RealTime Labs been accredited
3 by CAP at this time?

4 A. Yes. We had our inspection on August 26th --

5 Q. No. My question is: Have they been accredited
6 yet?

7 A. We are waiting for that final accreditation.

8 Q. Okay. So at this point, you don't have
9 accreditation from CAP?

10 A. We have a CAP number, and we were told that we
11 would get that accreditation within the next week or so.

12 Q. My question is: Do you have an accreditation
13 right now?

14 A. I said -- I told you what we have.

15 Q. You've been told you're going to get it?

16 A. Yes.

17 Q. Okay. What's your CAP number?

18 A. I don't have that, but it's -- we have a CAP
19 number.

20 Q. Now, in addition to having your license
21 suspended in the State of California and your license
22 restricted in the State of Texas, the State of Nevada has
23 also -- had also filed a complaint against you, correct?

24 A. Right. I self-reported to them.

25 Q. Okay. In February of 2007, the board of medical

1 **examiners in Nevada filed a complaint to revoke your**
2 **license to practice medicine, correct?**

3 A. And stayed it, yes.

4 **Q. And they, in fact, revoked your license in**
5 **September of 2007, and stayed the revocation until**
6 **initially January of 2011?**

7 A. Right.

8 **Q. Is your license still revoked and stayed in the**
9 **State of Nevada?**

10 A. No. I didn't renew it.

11 **Q. You just never renewed the license?**

12 A. No, huh-uh.

13 **Q. Okay. So they never lifted the suspension?**

14 A. Yes, they did. They suspended it until 2011,
15 and I never renewed it after that.

16 MR. WOLPE: We'll mark the State of Nevada
17 documents as Exhibit 26.

18 (Deposition Exhibit No. 26 marked.)

19 **Q. (BY MR. WOLPE) The revocation in Nevada provided**
20 **that you couldn't practice without notifying the medical**
21 **board at least 30 days in advance?**

22 A. As does California, yes.

23 **Q. Okay. In addition to the State of California**
24 **suspending your license, the State of Nevada suspending**
25 **your license, the State of Texas putting restrictions on**

1 **your license, the state of Arizona, in 1997, board of**
2 **medical examiners sent a letter of concern to you,**
3 **correct?**

4 A. Right.

5 **Q. Okay. And they indicated that -- using their**
6 **words -- that you had "poor and delayed communication**
7 **with a family, excessive billing, and delay in**
8 **reporting," correct?**

9 A. May I see that?

10 **Q. Surely.**

11 A. (Witness reviews document.)

12 Yeah. Let me clarify this: We did a brain
13 biop- -- or brain autopsy on a patient out of Lake
14 Havasu, Arizona, to do -- she had Alzheimer's, and we --
15 in accepting it, we charged \$300, I think, for the
16 autopsy. And we told them we were going to be submitting
17 the specimens to Scripps (phonetic) Clinic for use in
18 their research.

19 And the husband, at that time, agreed; and
20 we told him it would take about a year to get research
21 done on this. And after about eight months, he
22 complained to the Medical Board of Arizona. So we
23 submitted it without any final results.

24 **Q. Doctor --**

25 A. So he got no results.

1 **Q.** **Doctor, the State of Arizona sent you a letter**
2 **of concern for poor and delayed communication with a**
3 **family, excessive billing, and delay of reporting; is**
4 **that correct?**

5 A. That's what they said. I just wanted to clarify
6 why --

7 **Q.** **-- why the state sent you that letter?**

8 A. That's right.

9 (Deposition Exhibit No. 27 marked.)

10 **Q.** **Okay. And then in April of 2007, the State of**
11 **Texas placed you on probation, correct?**

12 A. Because I self-reported California to Texas,
13 yes.

14 **Q.** **Okay. And the reason that the State of Texas**
15 **put you on probation was not only because of the fact**
16 **that the State of California had done so but the fact**
17 **that they investigated your pathology practice at Baptist**
18 **Hospital Systems and Texas Heart Hospital of the Nix**
19 **Health Care System and found that you were misreading**
20 **slides, correct?**

21 A. They said that, but there was no indication of
22 what slides. I didn't even practice at Texas Heart
23 Hospital.

24 **Q.** **Okay.**

25 A. And in discussing this with them, I just didn't

1 have the money to fight them, and I said -- same thing
2 with California, so --

3 **Q. Okay. So that in Texas, you're not allowed to**
4 **practice surgical anatomical pathology?**

5 A. Nor do I want to.

6 **Q. Okay. And surgical anatomical pathology is**
7 **reading slides for patients?**

8 A. Correct.

9 **Q. Okay. The only thing you can do is work in a**
10 **lab, such as RealTime Labs, as you're doing?**

11 A. I can work in clinical laboratories where we
12 look at blood, urine and spinal fluid, things like that,
13 on the clinical side.

14 **Q. But you're not allowed to look at slides?**

15 A. I don't want to look at slides, nor do they -- I
16 could look at them, but it would have to be approved --
17 all my diagnoses would have to be approved by a licensed
18 physician.

19 **Q. You'd have to be supervised?**

20 A. That's right.

21 **Q. Okay.**

22 MR. WOLPE: We're marking Texas Agreed
23 Order as Exhibit 28.

24 THE REPORTER: Off-the-record comment --
25 off-the-written-record comment --

1 THE WITNESS: Can we go off the record a
2 minute?

3 THE VIDEOGRAPHER: Going off the record at
4 12:42.

5 (Break taken from 12:42 p.m. to 12:46 p.m.)

6 (Deposition Exhibit No. 28 marked.)

7 THE VIDEOGRAPHER: We're back on record at
8 12:46.

9 Q. (BY MR. WOLPE) Okay. Doctor, you do not have
10 privileges to practice medicine in any hospital in this
11 country, do you, sir?

12 A. Not now, no.

13 Q. Okay.

14 A. I haven't requested any.

15 Q. (Gestures made to witness to repeat answer.)

16 A. I have not requested any.

17 Q. Have you ever had privileges at any hospitals in
18 this country?

19 A. Have I what?

20 Q. Have you ever had privileges practicing in any
21 hospital?

22 A. Many.

23 Q. When was the last time?

24 A. In San Antonio at Baptist.

25 Q. Okay. When the State of California took away

1 **your license?**

2 A. When they investigated that, yes.

3 **Q. Okay. So since the State of --**

4 A. The credentials in Baptist were never taken
5 away. I left there.

6 **Q. So since you left California, you have not had
7 privileges at any hospitals?**

8 A. No.

9 **Q. Okay. The last time you ever treated a patient
10 was when you finished your internship in 1984?**

11 A. I believe so.

12 **Q. Almost 30 years ago?**

13 A. I believe so.

14 **Q. Okay. And your practice has always been limited
15 to pathology since you completed your training, correct?**

16 A. It hasn't been limited. Pathology is very
17 broad; but it's been in pathology, anatomical and
18 clinical.

19 **Q. Okay. And now your -- because of the State of
20 Texas, your practice is limited to pathology in a
21 laboratory as opposed to anatomic pathology?**

22 A. It is -- no.

23 I'll clarify that. It isn't just because
24 of the State of Texas. I started RealTime Labs in 2004
25 before the State of Texas ever did any movement on my

1 license.

2 Q. Okay. But since the State of Texas has done
3 something on your license, you've got a restriction on it
4 in Texas?

5 A. Is that a question?

6 Q. Yes, sir, it's a question.

7 A. Well, yes. You verified that.

8 Q. Okay. We can agree you're not a clinician,
9 correct?

10 A. That's correct.

11 Q. Okay.

12 A. I'm a pathologist who can read and render
13 medical opinions.

14 Q. Okay. You don't render medical opinions to
15 patients normally, do you, sir?

16 A. Normally, no.

17 Q. You don't --

18 A. I do consult with physicians on issues of
19 mycotoxins and molds.

20 Q. You don't come to diagnoses of patients in your
21 practice?

22 A. No.

23 Q. Okay. You don't recommend treatment of patients
24 in your practice?

25 A. No.

1 **Q. Okay. You surely are not involved in seeing**
2 **children in any practice?**

3 A. No.

4 **Q. What percentage of the urine that you test even**
5 **involve children?**

6 A. I don't know. I'd say maybe 10 percent.

7 **Q. Okay. And what percentage of the urine you**
8 **examine is children less than five?**

9 A. I don't know.

10 **Q. Okay. Have you ever been asked to evaluate the**
11 **urine of a child who was two or less?**

12 A. We've looked at a number of autistic children
13 that are averaged between the ages of 1 1/2 to 12.

14 **Q. Okay. And you're not a clinical immunologist?**

15 A. No. My training is in immunology, but -- and I
16 can defend ELISA testing and immunology testing in a
17 clinical laboratory.

18 **Q. You don't see, treat, or examine patients with**
19 **immune deficiencies?**

20 A. No.

21 **Q. You don't make diagnoses for patients with**
22 **immune deficiencies?**

23 A. No.

24 **Q. Okay. You're never asked to do it, and it you**
25 **don't do it as part of your practice?**

1 A. No.

2 Q. You're not an allergist?

3 A. No.

4 Q. Okay. And you're surely not a toxicologist?

5 A. No.

6 Q. Okay. The only lab that you work in is RealTime
7 Labs?

8 A. Now?

9 Q. Yes, sir.

10 A. Yes.

11 Q. Okay. Now, the validation study that you have
12 testified you performed on your results that were the
13 subject of your paper, when was that study done?

14 A. 2005, 2006, 2007, 2008, 2009, 2010, 2011.

15 Q. You did a paper on this validation study, didn't
16 you, Doctor?

17 A. I did.

18 Q. Okay. And the way you did that study is you
19 questioned patients of 54 of whom told you they had no
20 mold exposure or symptoms, correct?

21 A. No known mold exposure or no known symptoms.

22 Q. Okay. Were they given questionnaires to fill
23 out?

24 A. Yes -- well, no. I would ask them verbally.

25 Q. I see.

1 A. Which is acceptable in a CLIA certification or
2 validation.

3 **Q. Okay. And would you keep notes of the questions**
4 **you asked?**

5 A. (Witness nods head.)

6 And of the ages, the people, their sex,
7 yes.

8 **Q. I see.**

9 **And what questions did you ask them?**

10 A. I don't have the -- it was quite a few years
11 ago.

12 **Q. So you don't remember?**

13 A. No.

14 **Q. Okay. And other than asking these people these**
15 **questions, the specific questions of which you don't**
16 **recall, did you examine their medical records?**

17 A. No.

18 **Q. Okay. Did you determine anything about the**
19 **medical care they had received in the past or were**
20 **receiving at the time?**

21 A. If they -- no. They were not to be receiving
22 any medical care. They were -- there was no complaints
23 of previous history, and there was no exposure that they
24 knew of to mold.

25 **Q. Okay. But you did not ask for pain or medical**

1 **records to see --**

2 A. There would be a reason. They didn't have any
3 because they didn't have an issue.

4 **Q. Do you know if they were on medication?**

5 A. No.

6 **Q. Okay.**

7 A. Wait a minute. Yes, I do because I know what
8 cross-reacts with my test. So I would ask them
9 specific -- if they were on hormones.

10 **Q. What medicines cross-react with your test?**

11 A. The -- well, I thought that tests like -- or
12 hormones like progesterone, testosterone because they
13 look very similar to trichothecenes. But they do not
14 cross-react.

15 **Q. Okay.**

16 A. I have nothing that cross-reacts with my test
17 that I know of.

18 **Q. Have you done any tests to see what**
19 **cross-reacts --**

20 A. Yes.

21 **Q. -- with your tests?**

22 **And what medications have you tested to see**
23 **if they cross- --**

24 A. I've looked at the hormones, anything that have
25 similar structure to that Dilantin, prednisone. And I

1 don't -- I can't get a cross-reaction with that.

2 **Q. Any other medications you've checked?**

3 A. No.

4 **Q. Okay. And as I understand it, you do or don't**
5 **have records of these interviews?**

6 A. I have notes from the interviews as to ages and
7 what they said and if they were male, female.

8 **Q. Okay. And then after you verbally talked to**
9 **these --**

10 A. And I have notes on those. It's not just a
11 verbal recollection.

12 **Q. You just don't remember what you said as we talk**
13 **today?**

14 A. (No audible response.)

15 **Q. You don't remember questions you asked them as**
16 **we talk today?**

17 A. That's right.

18 **Q. Okay. You'd have to look at these notes?**

19 A. That's right.

20 **Q. And then you tested the urine of these people**
21 **who said they had no exposure to mold --**

22 A. Yes.

23 **Q. -- and had no symptoms, correct?**

24 A. That's correct.

25 **Q. Okay. And when you did tests on those people**

1 who told you they had no exposure to mold, you found that
2 some of them had a presence of ochratoxin in their urine,
3 correct?

4 A. No. We found none.

5 Q. I see.

6 You found no ochratoxin in any of their
7 urine?

8 A. That's correct.

9 Q. Okay. And then you tested who told you they did
10 have exposure to urine -- I mean exposure to
11 ochratoxin --

12 A. Uh-huh.

13 Q. -- correct?

14 A. Yes.

15 Q. Okay. Same thing, you verbally talked to them,
16 no questionnaire?

17 A. No. These came from doctors who were seeing
18 patients who had mold exposure.

19 Q. Okay. All of them?

20 A. All of them.

21 Q. Okay. So did you have their medical records?

22 A. We have access to them, yes.

23 Q. Did you review them?

24 A. I did in many cases, yes.

25 Q. Okay. And, now, as I understand your paper, you

1 tested 125 people who were exposed to mold, and 29 of
2 them had positive specimens?

3 A. Correct.

4 Q. Okay. So, then, that means just under 100 of
5 these people who were exposed to ochratoxin had no
6 evidence of it in their urine?

7 A. That's correct.

8 Q. And based upon that study and as you've told us
9 you performed it, you've concluded that the presence of
10 ochratoxin in urine is an indication of exposure to that
11 mycotoxin?

12 A. Correct.

13 Q. Okay. In doing your study, you didn't determine
14 when or where these people were exposed to mycotoxins or
15 ochratoxin?

16 A. No. Our goal was -- the hypothesis was that can
17 we find ochratoxin, and we answered the hypothesis.

18 Q. Okay. Your test does not tell you when the
19 person was exposed to ochratoxin, does it?

20 A. No.

21 Q. Okay. And your test doesn't specifically tell
22 you where or how they were exposed to ochratoxin, does
23 it?

24 A. No.

25 Q. And this that we've marked as Exhibit 29, this

1 **is your paper, correct?**

2 **(Deposition Exhibit No. 29 marked.)**

3 A. Yes. This is labeled Mycotoxin Detection in
4 Human Samples in Patients Exposed to Environmental
5 Molds. It was published in the International Journal of
6 Molecular Sciences in 2009.

7 **Q. (BY MR. WOLPE) And, again, you have records that**
8 **show the controls that were used in this case?**

9 A. Yes, I do.

10 **Q. In this study.**

11 **Okay. When you did the urine testing in**
12 **that study, you didn't use ELISA, did you?**

13 A. For --

14 **Q. In that study.**

15 A. In this study? We used it -- for the
16 trichothecenes, we used the ELISA.

17 **Q. For --**

18 A. For the ochratoxin, we used the VICAM. Now I
19 remember. The VICAM immunoaffinity columns.

20 **Q. So when you tested the urine in this study, you**
21 **used immunoaffinity columns and fluorometer?**

22 A. Correct.

23 **Q. Which is a different technique than ELISA?**

24 A. Than we now use, yes.

25 **Q. Okay. So the technique you used in testing the**

1 urine of Mateo was different than the technique you used
2 when you did your validation study that you published?

3 A. Correct. We have subsequently validated against
4 immunoaffinity columns. So we do a validation against
5 the validated procedure.

6 Q. We're going to end up at least -- why did you
7 change from doing the immunoaffinity columns and
8 fluorometry, which you did when you did this study, to
9 now ELISA?

10 A. It was just an option, and it's all automated --
11 it can be automated. VICAM's can't be automated?

12 Q. And so this paper surely doesn't validate the
13 test you did on Mateo, does it?

14 A. Uh --

15 Q. The study you did in this paper does not
16 validate the test you did on Mateo, does it?

17 A. Yeah, it does on the trichothecenes. The
18 ochras, no. But it -- our validations that we have
19 available are validated against this validation
20 (indicating).

21 Q. Okay. So we're clear on this: The test you did
22 on ochratoxins in this study that's the subject of your
23 article does not validate the test you did on Mateo's
24 urine because you used a different technique, correct?

25 A. That's correct.

1 **Q. Okay. And, in fact, when you did the ochratoxin**
2 **test in your study, you used a different manufacturer of**
3 **the plates and mycotoxins and antibodies, correct?**

4 A. Well, we didn't use plates in ochratoxins.

5 **Q. That's correct; you didn't. So --**

6 A. That doesn't negate the fact that we validated.
7 You must validate to have available for inspections.

8 **Q. Okay.**

9 A. In our validation, we go back to the original
10 test that we did in the VICAM, and we run those against
11 the ELISAs and the Neogens.

12 **Q. I see.**

13 **Again, now you're using a different**
14 **technique, a different manufacturer?**

15 A. A revalidated appropriate technique.

16 **Q. Okay. So you're telling me that you revalidated**
17 **using this new manufacturer and this new technique by**
18 **how? Doing what?**

19 A. We run the sample -- the same samples in the
20 VICAM now, we look at what the VICAM did before, and then
21 we run them in our ELISA; and if they come within a
22 certain standard deviation, then we accept those.

23 **Q. Okay. So the way you feel you validated the**
24 **technique you're using now is by looking at the results**
25 **under ELISA and comparing them with what you had with**

1 **this prior study, correct?**

2 A. Correct.

3 **Q. Okay. And did you assume -- did you assume that**
4 **the studies would work the same way and the same normals**
5 **would apply?**

6 A. We don't assume anything in science. You have
7 to run your controls. You have to set different
8 controls, different standards; and you have a set -- you
9 know what you got before on your validation; say, if we
10 got a one on this, and in our new ELISA test, did we get
11 a one or very near a one, then we can accept that.

12 **Q. Okay. So if the results were similar, even**
13 **though they're not the same when you did the ELISA tests**
14 **of what these results were, you accepted them?**

15 A. We accept them only under the criteria of the
16 CLIA standards that are -- that we note in here of all
17 the Clinical and Laboratory Standards Institute, CLSI,
18 protocols for a determination of limits and then
19 performance and precision and trueness. And so all of
20 those criteria we had to use.

21 **Q. Okay.**

22 THE VIDEOGRAPHER: I'm sorry. I need to
23 change tapes real quick.

24 MR. WOLPE: Okay.

25 THE VIDEOGRAPHER: Going off record at

1 1:03.

2 (Break taken from 1:03 p.m. to 1:04 p.m.)

3 THE VIDEOGRAPHER. Back on the record at

4 1:04.

5 Q. (BY MR. WOLPE) What controls did you use for
6 reference range when you did Mateo's test?

7 A. On which test?

8 Q. On the ochratoxin.

9 A. We buy the ochratoxins from Sigma.

10 Q. S-i-g --

11 A. -- m-a.

12 Q. Okay. Are they sold for evaluation of human
13 urine?

14 A. No. They're just a mycotoxin.

15 Q. So you used a mycotoxin you buy from Sigma to do
16 your controls?

17 A. Correct.

18 Q. And you buy the ochratoxin that you used for the
19 testing from Neogen?

20 A. Correct.

21 Q. Okay. And how many -- how many patients' urine
22 did you run for controls?

23 A. How many in the validation or --

24 Q. Yes, yes. In the validation, how many patients?

25 A. We run about -- as a requirement, it's anywhere

1 from 30 to 50.

2 **Q. My question is: How many did you run?**

3 A. I don't recall.

4 **Q. Okay. Who ran the test?**

5 A. Either -- well, I ran it as long as the tech --
6 but that was a few years ago. I'd have to check.

7 Anywhere between 30 and 50.

8 **Q. Okay. "A few years ago" meaning when?**

9 A. Around 2006, 2007.

10 **Q. So 2006 and 2007 you ran controls for the ELISA**
11 **test?**

12 A. For the validations.

13 **Q. The validation?**

14 A. (Witness nods head.)

15 **Q. And so --**

16 A. And I -- that's pick -- I don't remember what
17 year, but that sounds about right.

18 **Q. You're not sure?**

19 A. No.

20 **Q. Okay. And you're not sure how many patients you**
21 **ran for controls?**

22 A. No.

23 **Q. Okay. And are you sure that you did the ELISA**
24 **test on them, on the controls?**

25 A. Yeah.

1 Q. Okay. And you're not sure --

2 A. No, I'm not sure of that.

3 Q. Okay.

4 A. Especially when we do them all the time. Yeah,
5 I'm sure.

6 Q. Okay. And who was the person that compared the
7 results that you did for controls with the urine of
8 people who had been exposed to mold?

9 A. Would you repeat that?

10 Q. I'll be glad to.

11 When you did the new validation study --

12 A. Yes.

13 Q. -- you said you compared the results and the
14 controls to the results you had in this prior study,
15 correct?

16 A. Yes.

17 Q. Okay. Even though you used a different
18 technique and a different manufacturer, correct?

19 A. Correct.

20 Q. Okay. And so that you ran the urine of people
21 who you believed were not exposed to mold using the Sigma
22 ochratoxin to see whether they showed any evidence of
23 ochratoxin?

24 A. Correct.

25 Q. Okay. And the 30 to 50 people that you ran

1 **resulted in what reference range, if you remember?**

2 A. Reference range?

3 **Q. Yeah. Normal versus abnormal.**

4 A. Well, anything over two is abnormal to us.

5 **Q. Okay.**

6 A. You do not -- normal people do not have
7 ochratoxin in their urine.

8 **Q. Okay.**

9 A. So a reference range is not applicable here.
10 It's not like a regular lab test.

11 **Q. People who are exposed to ochratoxin in food can
12 show evidence of it in their urine?**

13 A. Is that true?

14 **Q. Are there studies that show that, Doctor?**

15 A. I have not seen those studies.

16 **Q. Okay. So you're just assuming that if someone
17 has ochratoxin in their urine, you assume it was not
18 related to food exposure?**

19 A. I don't know. All I know is I have not seen
20 ochratoxin A studies in urine from patients who have
21 eaten foods with ochratoxin. I have seen data coming out
22 of CDC, the Center for Disease Control, on aflatoxin, on
23 patients who eat a lot of corn; and they don't have any
24 aflatoxin in their urine. There was a huge study out of
25 Kenya with CDC. So that kind of negates that idea of

1 food as the major source for toxins.

2 Q. So when you ran the urine of these 30 people --
3 or when your technicians did, using Sigma ochratoxin, do
4 you remember what the results revealed?

5 A. They -- of what kind of patients?

6 Q. The controls. You said there were 30 to 50
7 people.

8 A. Don't be condescending.

9 Q. I'm not.

10 A. Yeah, you were. "The controls," what does that
11 mean? You need to define what controls are.

12 Q. Doctor, when you ran Mateo Valle's test --

13 A. Right.

14 Q. -- you have concluded because he has more than
15 two parts per billion that that is an abnormal finding?

16 A. That's right.

17 Q. The only reason it becomes abnormal is you have
18 to have a basis for what represents normal or not,
19 correct?

20 A. Right.

21 Q. In order to determine what is normal or not, you
22 have to take people who have not been exposed to
23 ochratoxin and see how that reflects in their urine?

24 A. Which I did.

25 Q. And you're telling me you did that, and those

1 **are your controls?**

2 A. That's right.

3 **Q. Okay. And you're telling me you believe you**
4 **tested 30 to 50 people?**

5 A. In the original studies, and I don't know how
6 many we studied -- we did in the comparison.

7 **Q. Okay. So the controls you used were the**
8 **controls from your prior study?**

9 A. Yes.

10 **Q. Okay. You didn't interview additional people**
11 **for this validation of the test you did on Mateo?**

12 A. No.

13 And then I used other specimens that we
14 have done over the years, and I picked 0s, 1s, 4s, 8s,
15 things like that, and ran those in the ELISA test as
16 well.

17 **Q. Okay. Do you have an SOP, or operating**
18 **procedure, for the validation you said that you did?**

19 A. Yes.

20 **Q. It's in your office?**

21 A. Yes.

22 **Q. Okay. It's among the document --**

23 A. It's not in my office.

24 **Q. It's in RealTime Labs?**

25 A. It's in RealTime.

1 **Q.** It's among the documents that I asked for you to
2 **provide, correct?**

3 A. Correct.

4 **Q.** Okay. Do you know one way or another whether or
5 **not ochratoxin can be found in the urine of people who**
6 **have eaten corn, barley, wheat, oats, cereals, infant**
7 **formula, bread, animals that have had feed in it?**

8 A. I know there's theories that have been put
9 forward by your experts as well as others. But there's
10 no scientific knowledge that I have and no laboratory
11 data to show that when the people eat ochratoxin-
12 producing -- or ochratoxin-containing foods that there is
13 ochratoxin in their urine. I have not seen that in the
14 patients that we have followed as well as in the
15 literature.

16 **Q.** Okay. You're not saying that ochratoxin can't
17 **be seen in urine of people who have eaten foods that have**
18 **exposure to it; you just haven't seen it?**

19 A. I just have not seen it, nor do I have
20 literature to show that it exists.

21 **Q.** Okay. Now, clearly, the Food and Drug
22 **Administration is concerned enough about people having**
23 **ochratoxin exposure that they are investigating the**
24 **presence of it in foods, correct?**

25 A. USDA.

1 Q. USDA?

2 A. Yes.

3 Q. Okay. So they clearly are concerned that this
4 mycotoxin can appear in foods and can be transmitted to
5 people?

6 A. I believe that's why they do it.

7 Q. Okay.

8 A. There is -- then, they do stop imports if the
9 ochratoxin is too high.

10 Q. Okay. And, again, because they believe that
11 exposure to ochratoxin through foods can be transmitted
12 to people?

13 A. I don't know. You'd have to ask the USDA that.

14 Q. Okay. There is no studies that establish at
15 what level ochratoxin in humans can cause disease or
16 illness, is there, sir?

17 A. No. But it is our belief at RealTime Lab and my
18 belief that if any ochratoxin is present, that should be
19 a concern and we should err in the area of safety --

20 Q. Okay.

21 A. -- versus nonchalant, putting that off.

22 Q. Okay. But as you have agreed and pointed out,
23 there's no study that says that if you have ochratoxin
24 above 2 parts per billion that that is a sufficient
25 dosage to cause an illness or disease, correct?

1 A. I -- you'd have to repeat that because --

2 **Q. There is no study that establishes the presence**
3 **of ochratoxin at any specific level causes illness or**
4 **disease?**

5 A. That's not true. I brought papers to show that
6 ochratoxin A can cause down-regulation or can inhibit
7 lymphocytes in humans and in animals to lower our immune
8 reactions to certain things. It doesn't mean that it's
9 immune like an HIV patient, but there is -- there is
10 literature to show that the molecular level of cells is
11 inhibited by certain amounts of ochratoxin A.

12 **Q. What amount?**

13 A. I don't -- I don't recall what that is.

14 **Q. Okay. And what paper do you believe says that?**

15 A. (Witness reviews document.)

16 **Q. Just tell me which one.**

17 A. Well, that's what I'm trying to get.

18 (Witness reviews document.)

19 "Ochratoxin A induces apoptosis in human
20 lymphocytes."

21 **Q. Okay.**

22 A. And I'd have to read the whole paper to find
23 that out.

24 **Q. Okay. And the paper you produced, Doctor, says**
25 **that "the half-life of ochratoxin is 35.5 days in**

1 **humans," correct?**

2 A. Right, in -- in the serum, not intracellular.

3 **Q. You don't have any test that shows that Mateo**
4 **Valle has ochratoxin extracellular, do you, Doctor?**

5 A. No, but I haven't got a bladder biopsy either.
6 I don't have any evidence that he doesn't have some
7 lesion in his kidney either.

8 **Q. Okay.**

9 A. I'm not saying he does, and I hope he doesn't.

10 **Q. And is there anywhere in this paper, Doctor,**
11 **that indicates the level of ochratoxin greater than 2**
12 **parts per billion causes illness or disease, if you know?**

13 A. I don't recall.

14 **Q. Okay. Other than this paper, are you aware of**
15 **any paper that even addresses that issue?**

16 A. There are other papers, but I don't recall what
17 they are.

18 **Q. Okay. So even as you sit here today, you don't**
19 **know of any paper that specifically concludes that the**
20 **presence of ochratoxin causes an immune reaction if it's**
21 **above 2 parts per billion?**

22 A. Not that I recall what the percent -- that
23 doesn't mean it doesn't exist. I just don't recall it.

24 **Q. Okay. So you don't have any study or literature**
25 **that supports that the level of ochratoxin that you feel**

1 you found in Mateo's blood would be sufficient to cause
2 an illness or disease, correct, sir?

3 A. No, that's not correct.

4 I believe that any evidence of ochratoxin
5 in urine is a concern.

6 Q. Okay. My --

7 A. Because I don't find it in normal people.

8 Q. My only question is not whether you find it a
9 concern, sir. My question, Doctor, is that you have no
10 evidence or literature today that supports that the
11 presence of ochratoxin at the level that you believe that
12 Mateo had in his urine is a cause of illness or disease.
13 There is no study that supports that fact; you've done no
14 research to support that fact --

15 A. No, there is studies, and I've repeated those on
16 the Balkan nephropathy, huge study on urines in patients
17 who have ochratoxin.

18 Q. At what level, sir?

19 A. That, I don't recall.

20 Q. Okay. The level of a mycotoxin --

21 A. And I don't even know what the level of --

22 Q. Mateo had?

23 A. -- Mateo is.

24 Q. You don't know.

25 A. I didn't bring that with me.

1 **Q. Okay. Doctor, you're, of course, aware of the**
2 **position paper of the American Academy of Allergy, Asthma**
3 **and Immunology, aren't you, sir?**

4 A. I am.

5 **Q. You're aware that they, in their position paper,**
6 **have concluded that studies don't demonstrate a causal**
7 **relationship between airborne mold exposure and immune**
8 **deficiency of any type, correct?**

9 A. I am also aware that your experts are the ones
10 who wrote it. They have been found to be -- by the Wall
11 Street Journal to say that they had that conflict of
12 interest. They have no evidence that they have ever
13 walked in a laboratory to do research. They represent a
14 committee that is -- who knows how you get into it. Is
15 it really a austere group of individuals, or is it run by
16 people like your experts?

17 **Q. Okay.**

18 A. So, no, I don't -- I don't -- that paper is not
19 well looked at anymore because there's -- they should
20 really look at the molecular levels now, and they're
21 referring to things that are much too old; 2006, even
22 2008 is old.

23 **Q. I see.**

24 **And the American Academy of Occupational**
25 **Medicine, as well, they have also concluded that**

1 **mycotoxins don't cause immune deficiencies?**

2 A. Right. And those are all authored by the same
3 individual, Kelman, Hardin, Saxon, Sudakin, et cetera.
4 So take it with the grain of salt that it should be
5 given.

6 **Q. Okay. And you don't disagree with Dr. Brehmer,**
7 **who has testified on page 155, that she has not**
8 **concluded -- she has not concluded that Mateo was**
9 **immune compromised; because if she had, she would have**
10 **referred him out, and she has not done so?**

11 A. I'm not going to comment on this. You're asking
12 me to comment on one sentence out of a deposition, taking
13 it out of context, and I won't do that. Sorry.

14 **Q. So if Dr. Brehmer does not feel he's**
15 **immune compromised, you don't have a comment on that?**

16 A. I need to read the whole deposition.

17 **Q. Doctor, did you find any evidence that Mateo was**
18 **immune compromised?**

19 A. I have not seen any evidence in the medical
20 records of such.

21 **Q. Okay. So you have not concluded within a**
22 **medical reasonable probability that he's**
23 **immune compromised because you found no evidence of it,**
24 **correct?**

25 A. No. Immune compromised, no. Is his immune

1 status jeopardized? I believe that that's a
2 possibility. I don't have evidence to show that, but I
3 do have evidence to show how ochratoxin A does effect the
4 lymphocytes in our immune system.

5 **Q. Okay. But when Mateo cytes were analyzed, they**
6 **were normal, correct?**

7 A. Oh, is that true?

8 **Q. Do you know?**

9 A. I did not see any analyses of lymphocytes.

10 **Q. Okay.**

11 A. I saw CBC, a direct cell count; but that doesn't
12 emphasize whether a lymphocyte is capable of fighting off
13 infection or not.

14 **Q. Okay. So you have not seen anything that**
15 **allowed you to come to an opinion whether it supports an**
16 **opinion that Mateo's immune system is other than normal?**

17 A. No. You're right.

18 **Q. Okay. Okay. And --**

19 A. Let me clarify that last sentence because I
20 believe his immune system is, as we see it on the data
21 that they presented in the medical literature, adequate.
22 But because he's had a history of so many infections, to
23 me and to most clinicians, it would mean that he cannot
24 fight off these bacterial infections well.

25 And why is that? In my medical opinion and

1 my expert opinion, it's that ochratoxin A has down-
2 regulated his lymphocytes who can fight off these
3 infections. So they give him a -- he's not at the same
4 playing level as the rest of us.

5 **Q. Okay. But there is no evidence, objective**
6 **evidence, that you have seen in his medical records to**
7 **substantiate that his immune system is down-regulated?**

8 A. The evidence that I see is that he has much --
9 many, many infections that most children don't have to go
10 through.

11 **Q. Okay. Other than the fact that Mateo had many,**
12 **many infections, to the extent the diagnostic studies**
13 **have been done on Mateo, he did not show any deregulation**
14 **of his immune system?**

15 A. There was no test done. But "other than" is
16 quite a big area. Because if I had a kid who had
17 numerous infections, I'd say -- I'd want to know why is
18 this infection going on.

19 **Q. Okay. And at this point --**

20 A. And the only thing I can explain is the
21 ochratoxin being present.

22 **Q. But, of course, you haven't examined him?**

23 A. No. But I've looked at the medical records.

24 **Q. And the medical records don't show any**
25 **deregulation of his immune system?**

1 A. No.

2 Q. Okay. All they show is he's had a number of
3 infections?

4 A. That's right.

5 Q. Okay.

6 A. So his immune system is jeopardized.

7 Q. Okay. And all they show is that his doctor has
8 been treating him for bacterial infections?

9 A. Correct.

10 Q. And all they show is that whenever they've done
11 nasal cultures and it's growing out anything, what it's
12 growing out is bacteria?

13 A. And if you want to use the "all they show," yes,
14 all they show is they have given an antibiotic that it
15 doesn't cure; the patient is not improving no matter how
16 many antibiotics they give him, and they've given him
17 about eight.

18 Q. Okay.

19 A. He doesn't improve.

20 Q. Okay. That's your understanding, that he hasn't
21 improved when he's been on antibiotics?

22 A. That's right.

23 Q. Okay. So if --

24 A. Well, he keeps coming back.

25 Q. Okay. So if Dr. Brehmer has testified that she

1 has cured his infection with antibiotics -- that he's had
2 recurrences, but she's cured them each time with
3 antibiotics, you disagree with that?

4 A. That's right.

5 Q. Okay. Her records show that she, in fact, did
6 cure his infections when he had bacterial infections.

7 A. Cure? She stopped that one infection; I agree
8 with her there. She stopped that one infection, but he
9 has reoccurring infections --

10 Q. Okay.

11 A. -- that she has to give different antibiotics
12 for.

13 Q. Okay. Doctor, just briefly -- and then I'm
14 done -- when studies like this that are done on Mateo at
15 the request of his lawyer through Direct Labs has a test
16 done, how is the income from those tests distributed to
17 the owners of RealTime Labs?

18 A. Oh.

19 Q. In other words, do you get 41 percent of the
20 income that comes out of RealTime Labs?

21 A. Oh, I wish. No. I don't how that's determined.

22 Q. I see.

23 A. I just know that we have a -- we all have
24 salaries.

25 Q. Well, you get a salary for running the lab,

1 **correct?**

2 A. For being medical director.

3 **Q. Okay. But to the extent that income comes in**
4 **from studies such as this where you call up a lawyer or**
5 **he calls you up and you have them call up Direct Labs and**
6 **they send the patient to you because you're the only lab**
7 **in the country that does this, what happens to the money**
8 **that goes to RealTime Laboratories?**

9 A. It's paid with overhead. I don't know. If
10 you're implying that I get a percent of that, it's not
11 that -- it's not true.

12 **Q. Okay. So you don't know where the money goes?**

13 A. If I get -- if I had to live on the stuff with
14 making money off of patients to do mycotoxins, I'd be --
15 even at a 40 percent, I wouldn't make it.

16 **Q. Okay. Well, and let me ask you this, Doctor:**
17 **Why do you believe that in this entire country, RealTime**
18 **Labs is the only one that does myco testing of human**
19 **urine for clinical reasons as opposed to research? Why**
20 **do you think that?**

21 A. Well, I was hoping you would ask that. I think
22 M.D.s in general are afraid of clients -- or of experts
23 like yours that are paid by high -- they're paid
24 extremely high by insurance companies, and so they will
25 go to any extent to cause that M.D., i.e., me, to be

1 discredited.

2 **Q. Okay.**

3 A. And doctors are afraid of that, and I'm not.

4 **Q. So as I understand it, Doctor, you believe that**
5 **the reason there isn't a single lab in this country that**
6 **tests urine from a clinical standpoint, other than**
7 **RealTime Labs, is because they're afraid of other**
8 **physicians?**

9 A. Well, you're -- there are other labs that test
10 it. Vanderbilt. Vanderbilt has filed a patent in this.

11 **Q. Vanderbilt is not testing urine for clinical**
12 **purposes?**

13 A. Yes, they are. They are looking at ALS
14 patients. So there are a number of people that are
15 looking at this and would like to adapt it to clinical
16 use.

17 **Q. Okay. My question, Doctor, is --**

18 A. I don't know, then. I will answer your
19 question, I don't know. If you don't believe the
20 question I answered, that's why --

21 **Q. My question to you, Doctor, is: You don't know**
22 **why RealTime Labs is the only one that's adapting the**
23 **evaluation of mycotoxins in urine in this country --**

24 A. Well --

25 **Q. -- other than the fact that they're afraid of**

1 **other doctors?**

2 A. Well, I think that's one of them -- no, not --
3 they're afraid of your experts.

4 And the other issue is that if you did
5 that, you would have to look at a number of tests at Mayo
6 Clinic, a number of tests at Focus Laboratories that's --
7 they do -- they're the only ones in the country that do
8 it. There's Genovations who does -- they're the only
9 ones that do certain tests. Why is that? Are they
10 attacked so vehemently as RealTime is and as I am? I
11 don't believe that.

12 **Q. Okay. Doctor, I just need an answer to the**
13 **question; then we --**

14 A. I answered your question.

15 **Q. Okay.**

16 A. There are other laboratories that do other tests
17 that only they do the tests.

18 **Q. Okay. And there's only one laboratory that does**
19 **this myco testing in urine for clinical purposes as**
20 **opposed to research, and that's RealTime?**

21 A. So CDC doing them --

22 **Q. Doctor --**

23 A. -- looking at clinical -- you mean to get paid?
24 Is that what you're saying?

25 MR. WOLPE: I have no further questions,

1 Doctor. Thank you.

2 A. Okay. All I'm asking is for you to clarify your
3 questions. Clinical questions, does that mean getting
4 paid or what?

5 **Q. (BY MR. WOLPE) That means for the treatment of**
6 **patients.**

7 A. Well, CDC did a number of tests to treat
8 patients with aflatoxin. The Vanderbilt people are
9 looking at trichothecenes to treat patients with ALS.
10 Case Western is looking at patients. Harvard looked at
11 patients with Alzheimer's to see if their brain biopsies
12 have mycotoxins present.

13 **Q. Why don't we -- let me just ask you this**
14 **question, and maybe you can answer it: Why is RealTime**
15 **Laboratories the only laboratory in the country that does**
16 **ELISA testing on human urine for the purpose of clinical**
17 **patient management, if you know?**

18 A. I really don't know. You'd have to ask every
19 laboratory why they don't do it.

20 MR. WOLPE: Thank you very much, sir.

21 I have no other questions.

22 Scott, I'm done.

23 MR. KIMMEL: Okay. Does anybody need a
24 break, or no?

25 MR. WOLPE: No.

1 MR. KIMMEL: Okay. Give me one second.

2 MR. WOLPE: Scott, I just want -- for the
3 record, because the doctor did not bring the information
4 that was subpoenaed, I am not completing my questioning,
5 but rather, pending a court order, will continue it.

6 MR. KIMMEL: I understand. And I will call
7 you after the deposition to discuss that.

8 MR. WOLPE: Okay.

9 MR. KIMMEL: Okay?

10 MR. WOLPE: Yeah.

11 MR. KIMMEL: All right. Are we ready?

12 MR. WOLPE: Give me one second, Scott.

13 MR. KIMMEL: Okay.

14 MR. WOLPE: I'm sorry.

15 MR. KIMMEL: No, I heard the door; that's
16 why.

17 MR. WOLPE: No, it wasn't the door. It
18 was -- can we go off the record a second?

19 THE VIDEOGRAPHER: Going off the record at
20 1:32.

21 (Break taken from 1:32 p.m. to 1:35 p.m.)

22 THE VIDEOGRAPHER: We're back on record at
23 1:35.

24 MR. KIMMEL: Ready?

25 MR. WOLPE: Yes.

EXAMINATION

1
2 BY MR. KIMMEL:

3 Q. Dr. Hooper, could you, please, explain to the
4 jury what the difference between clinical pathology and
5 anatomic pathology is?

6 A. Yeah. Anatomic pathology is reading slides,
7 doing autopsies, making diagnosis of cause of death or a
8 cause of a tumor, and reading Pap smears, reading cells
9 that are from fluids and actually giving a diagnosis of a
10 cell.

11 Clinical is the study of blood, urine,
12 spinal fluid, microbiology, blood banking and molecular
13 biology.

14 Q. And your opinions rendered in this case are with
15 respect to clinical pathology of Mateo Valle, correct?

16 A. That is correct.

17 Q. And the investigations that you were questioned
18 about all had to do with anatomic pathology, correct?

19 A. That is correct.

20 Q. Okay. Now, you were kind enough to go ahead and
21 provide me with a copy of your CV. Do you have that in
22 front of you?

23 A. Yes.

24 Q. Okay. Could you just go over with the jury a
25 brief history of your experience and talk a little bit

1 **about your work in San Diego --**

2 A. Yeah.

3 **Q. -- specifically with the navy?**

4 A. Okay. I was educated in the State of Nevada.
5 And then I did my bachelor's at the University of Utah,
6 my master's in microbiology at the University of
7 Missouri, and then a Ph.D. at University California
8 Davis. I then went to med school at the University of
9 Nevada in Reno; that's my home state. And then I did an
10 internship at University of Nevada -- or at the U.S. Navy
11 Hospital, San Diego.

12 And then I did my residency in pathology at
13 Naval Hospital San Diego. At the end of the first -- at
14 the end of when I did my residency, I became staff
15 pathologist at the Naval Hospital San Diego and was put
16 in charge of the microbiology and immunology area.

17 And then after a year, I was selected as
18 chairman of the department, and I was a junior commander
19 or the same as lieutenant colonel. And at that time, I
20 had a number of colonels or captains in the navy. They
21 would answer to me, and I was the chairman for five
22 years. During that --

23 **Q. Okay. Were you -- I'm sorry. Go ahead.**

24 A. During that time, I was able to recruit 25 techs
25 there because of Desert Storm and Desert Shield. And

1 then we also were able to recruit research money in HIV
2 and the rapid diagnosis of infectious disease, which is
3 where I first became involved in molds and learned about
4 mycotoxins.

5 And then in 2000 -- or in 1994, I had an
6 employee who was disgruntled because he wanted to work in
7 our HIV area, and he -- we -- all the people in my
8 department said, "Don't take him." So I put him in
9 another area, and so he turned me in, as well as two
10 other individuals, to the Pentagon for stealing a piece
11 of equipment that was the size of a semi-truck. And he
12 said he had pictures of that.

13 Well, I challenged him on that, and he was
14 never able to give the pictures. And because this was a
15 naval investigation, it was required -- because somebody
16 called the Pentagon on this, it was required that naval
17 criminal investigation continue this. And so it took
18 three years for them to decide that there was nothing
19 wrong. And by that time, I was fed up with it.

20 So in 19 -- he had complained in '92 or
21 '93. And in '95, I finally said, I've had enough. So I
22 requested to be released. I was a captain in '06 at that
23 time and being scheduled to be trained to be an admiral,
24 and I just said, I've had it.

25 So I left and started my own laboratories

1 in San Diego to do preclinical work, which is work on
2 different drugs and different methods of identifying
3 organisms, et cetera. And that's how we got involved
4 with Reno. In Reno, then, we had two labs; one in San
5 Diego, and one in Reno. And the Reno lab did work with
6 monkeys, so we called them the "Monkey Work Lab." And
7 they did preclinical work for people like Pfizer,
8 Genentech, any of these big companies that were looking
9 at different methods of diagnosis, et cetera.

10 And, meanwhile, while I was doing all this,
11 I stayed in the reserves as a captain and ran the
12 clinical research lab out of the Point Loma in San
13 Diego. And we became CAP-certified and -- CAP-certified
14 as well at that time.

15 **Q. Okay.**

16 A. In -- oh, go ahead.

17 **Q. Well, I was going to ask: Did you have to use**
18 **your own money to go ahead and fight the navy**
19 **investigation?**

20 A. Yes.

21 **Q. Okay. All right. Were you done going over your**
22 **CV? I know you mentioned something --**

23 A. Well, I wanted to clarify the issues in Reno
24 that surrounded CLIA. I wasn't the medical director in
25 Reno at the time. We had -- we were present in the

1 Monkey Lab. And the Monkeys wanted to buy Nevada
2 Bioscience, and so we sold that to them with a history of
3 they would give us royalties on that.

4 We had to move out. We moved to a
5 different section of Reno, and we have a medical director
6 named Pat Manalo who was -- subsequent, she was my
7 teacher in med school, and she was a very fine
8 pathologist. But she moved over to the new site, and she
9 didn't want to do any more work. So she told the board
10 of directors, which I was on, that she had applied for
11 CAP certification, College of American Pathology, which
12 then kept CLIA away.

13 And so when she decided to leave in
14 December of that year, 1999, I think, and we got word in
15 January that CLIA was coming back because CAP never got
16 any paperwork from Dr. Manalo. Meanwhile, because
17 Manalo left, I had to take over as being the medical
18 director because I was the only one -- other one that was
19 licensed in Nevada at the time.

20 **Q. Okay.**

21 A. And so we closed because of that, and we
22 notified CLIA in San Francisco and HIPAA, which is the
23 Medicare office, that we closed. So they came over to
24 Reno and we were closed, so we were denying them entrance
25 and denying them an inspection. So we had to admit, yes,

1 we did because we closed, and so they sanctioned Nevada
2 Bioscience for two years. But we were closed anyway so
3 it didn't --

4 **Q. So you never tried to hide anything from any**
5 **governing body or anything, did you?**

6 A. No. In fact, we gave them letters -- and we
7 still have those letters -- saying, "Everything is in our
8 storage unit in Reno. We'll go and open it up. You can
9 look at all the paperwork. We just closed."

10 And they denied it. They said, "No.
11 You're denying us an inspection," so --

12 **Q. Okay. Doc, I want to turn to a little bit of**
13 **your evaluation of the mold inspection report and the**
14 **urine sample you were provided with Mateo Valle.**

15 A. Yes. That was in the --

16 **Q. Do you have the mold inspection report in front**
17 **of you that was completed on April 25th of 2010?**

18 A. Yeah. It's in a doctor's report. It's in --
19 I'm going to have to go through these exhibits. They're
20 somewhere in here.

21 (Witness reviews document.)

22 THE WITNESS: Do you have all the medical
23 papers that I gave you?

24 MR. WOLPE: Doctor, everything you gave me
25 is in front of you (indicating).

1 **Q. (BY MR. KIMMEL) It may have come along with**
2 **Dr. Brehmer's original records, Doctor, for your review.**

3 A. Yeah, here's -- yeah. Here's the Brehmer
4 stuff. Yes, I have it.

5 **Q. Okay.**

6 A. It's in the Brehmer Pediatrics labeled April
7 30th.

8 THE WITNESS: And, by the way, I did find
9 my list of depositions, hearings, and trial testimony.
10 It was in my file.

11 MR. WOLPE: Okay. Well, why don't we mark
12 that, Doctor, since we've got it anyway, as 34.

13 (Deposition Exhibit No. 34 marked.)

14 **Q. (BY MR. KIMMEL) Doctor, specifically referencing**
15 **your attention to the Jakob Kobi Unique Home and Mold**
16 **Inspection report. That is page 1 of 3 on the bottom**
17 **right. And do you have that in front of you?**

18 A. I do.

19 **Q. Okay. Would you explain to the jury what's**
20 **relevant about the findings on that document?**

21 A. Okay. First of all, this is in Exhibit No. --
22 oh, this isn't an exhibit.

23 THE WITNESS: Do you want this to be
24 labeled as one?

25 MR. WOLPE: No, sir. I don't need it

1 labeled.

2 THE WITNESS: Do you want it, Scott, as a
3 label -- as an exhibit?

4 MR. KIMMEL: Yeah. You can do it as P-1.

5 THE WITNESS: Okay.

6 **Q. (BY MR. KIMMEL) Showing your attention to what's**
7 **been marked as P-1 for identification.**

8 THE REPORTER: Hold on just a second,
9 Scott.

10 (Deposition Exhibit No. P-1 marked.)

11 THE REPORTER: Pardon the interruption.
12 Back on the written record.

13 A. Okay. On page 1 of 3 of the report labeled
14 AEML, Inc., Jakob Colby was the inspector. He gives, in
15 the kids' room, a spore trap analysis of
16 Aspergillus/Penicillium 11,840 spores per cubic
17 millimeter. And of that --

18 **Q. (BY MR. KIMMEL) To the right of that, it says,**
19 **"99 percent," correct?**

20 A. Right, because they count 100 percent of the
21 spores, and they said 99 percent of all the spores were
22 do to Aspergillus/Penicillium-like organisms.

23 **Q. In your experience, is that a high reading of**
24 **Aspergillus/Penicillium?**

25 A. That's a -- very high.

1 **Q. Okay.**

2 A. And the reason I say that is because I compare
3 it to the exterior amount that is always a requirement
4 that these people do; and if the exterior amount is
5 higher than the interior, than it isn't a concern. But
6 if the interior is much higher than the exterior, then it
7 is a concern. The exterior only showed 160 spores per
8 cubic millimeter.

9 **Q. And how is this reading of 99 percent of the**
10 **Aspergillus/Penicillium-like related to ochratoxin?**

11 A. Well, it's the organism *Aspergillus ochraceus*,
12 and some of the *Penicillium* also produce ochratoxin. And
13 they --

14 **Q. Now, you've already spoken that you were**
15 **provided with a urine sample, correct?**

16 A. That is correct.

17 **Q. And the urine sample had ochratoxin in it,**
18 **correct?**

19 A. That's correct.

20 **Q. Okay. Do you have an opinion within a**
21 **reasonable degree of medical probability that the**
22 **ochratoxin found in Mateo Valle comes from the**
23 **Aspergillus/Penicillium that was found on April 26, 2010?**

24 A. I believe that --

25 MR. WOLPE: (Sotto voce comment.)

1 A. -- the ochratoxin --

2 THE REPORTER: I'm sorry?

3 MR. WOLPE: Objection; no predicate.

4 A. I believe that the ochratoxin that was found in
5 Mateo Valle's urine is -- it comes from organisms like
6 Aspergillus/Penicillium; and the evidence is very clear
7 that this organism is present in the kids' room at this
8 address. So I believe --

9 Q. (BY MR. KIMMEL) Now, you were also asked about
10 the half-life of ochratoxin. Do you recall that
11 testimony?

12 A. Yes, I do.

13 Q. Okay. And you made a distinction between
14 cellular level --

15 A. And intracellular.

16 Q. And what?

17 A. Intracellular and extracellular, outside and
18 inside.

19 Q. Right. Why is that relevant to the half-life of
20 ochratoxin?

21 A. Because it's shown that these toxins actually
22 invade the cells and they affect the DNA of cells and
23 they affect protein synthesis. So they're sitting inside
24 the cell doing their dirty work. And if they are inside
25 the cell, there's no way of us knowing how long they can

1 exist because they're just chemicals. They can exist
2 there and do whatever they want.

3 Once they get on the outside, then -- in
4 the serum, then, according to -- even the paper I
5 presented, shows a 35-day half-life. But if there's this
6 many organisms in the home, these organisms could be
7 producing high, high amounts of ochratoxin.

8 So let's just say, for example, they're
9 producing 150 parts per billion of ochratoxin, and then
10 over a period of time you could actually go through and
11 determine how much ochratoxin is present in the house.
12 Thirty-five, that's 10 half-lives. So it could be
13 significant still.

14 MR. WOLPE: (Sotto voce comment.)

15 **Q. (BY MR. KIMMEL) So am I correct that your**
16 **testimony --**

17 THE REPORTER: I'm sorry? Wait, wait. I'm
18 sorry?

19 MR. WOLPE: Move to strike.

20 MR. KIMMEL: What?

21 MR. WOLPE: Nothing. I'm making
22 objections, Scott, and she isn't hearing me. I'm trying
23 not to disturb you.

24 MR. KIMMEL: Oh, no, that's okay.

25 THE WITNESS: Well, we can't hear them

1 either. You need to object so I can hear you.

2 **Q. (BY MR. KIMMEL) Doctor, is it your testimony**
3 **that the 35-day half-life that was brought up on direct**
4 **examination is only with respect to extracellular and not**
5 **intracellular half-life?**

6 MR. WOLPE: Objection; predicate.

7 A. Yes.

8 **Q. (BY MR. KIMMEL) Okay. And you also mentioned**
9 **some articles in support of your testimony, correct?**

10 A. That's correct.

11 **Q. Okay. Is it true or are you -- let me strike**
12 **that.**

13 **Are you aware of any reports or articles**
14 **that reference Katrina victims and ochratoxins found**
15 **after that hurricane?**

16 MR. WOLPE: Objection; form. Move to
17 strike. It's inappropriate having the doctor rely on
18 articles to bolster his opinion.

19 **Q. (BY MR. KIMMEL) Go ahead. You can answer,**
20 **Doctor.**

21 A. Yes, I am. I'm also -- I didn't bring those
22 with me, but I am -- or I do have articles available that
23 I did bring showing how chronic pediatric illnesses are
24 affected by asthma, and asthma is certainly caused by
25 mycotoxins and molds.

1 **Q.** Okay. Now, you had mentioned in response to one
2 of the questions on direct examination that you did not
3 believe Mateo was playing at the same level.

4 **What did you mean by that response?**

5 A. The ochratoxin A as presented in this paper by
6 Aschoff et al. in 2004 showed that it causes the
7 lymphocytes -- human lymphocytes to down-regulate; in
8 other words, they stop working as well and -- in certain
9 things. And they -- so they will down-regulate, and you
10 cannot fight off infections as well.

11 MR. WOLPE: Move to strike.

12 **Q.** **(BY MR. KIMMEL)** And so you have been provided
13 with the records of Dr. Brehmer, correct?

14 A. I have.

15 **Q.** And also of Melanie Berkowitz --

16 A. I have.

17 **Q.** -- correct?

18 A. Yes, I have.

19 **Q.** And also of Dr. Ignacio Rodriguez, correct?

20 A. I have.

21 **Q.** Okay. And you are aware that Mateo has had
22 numerous infections in his nose, correct?

23 A. Correct.

24 **Q.** And he's been diagnosed with chronic rhinitis?

25 A. Correct.

1 Q. And otitis media?

2 A. Correct.

3 Q. And also within Melanie Berkowitz's records,
4 there is childhood apraxia as well as delayed onset of
5 speech, correct?

6 A. Correct.

7 Q. Okay. How, in your opinion, do you believe that
8 the ochratoxin relates to any of those diagnosis?

9 MR. WOLPE: Objection; no predicate.

10 THE WITNESS: What was your objection?

11 Q. (BY MR. KIMMEL) Let me take them one by one.

12 Doc, do you have an opinion within a
13 reasonable degree of medical probability as to whether
14 the mold causes the chronic rhinitis in Mateo?

15 MR. WOLPE: Objection; form, no predicate.

16 A. I do believe the chronic rhino sinusitis can be
17 and is in this case caused by molds and/or mycotoxins.

18 Q. (BY MR. KIMMEL) Okay. Do you have an opinion
19 within a reasonable degree of medical probability as to
20 whether the exposure to mold causes the otitis media in
21 Mateo?

22 A. I believe that the down-regulation of
23 lymphocytes has caused him to be not capable of fighting
24 off the infections as well. There is no documentation to
25 show that he has a mold infection; but I believe because

1 of the high exposure in the house as well as his history
2 of otitis media, that it's -- it has a great or high
3 probability that it could exist.

4 **Q. Do you have an opinion within a reasonable**
5 **degree of medical probability --**

6 MR. WOLPE: Move to strike.

7 **Q. (BY MR. KIMMEL) -- as to whether the chronic**
8 **rhinitis and otitis media affects his speech --**

9 MR. WOLPE: Objection; no predicate.

10 **Q. (BY MR. KIMMEL) -- and ability to learn speech?**

11 A. With the evidence I've seen in children who have
12 been exposed to mycotoxins and the history that has been
13 given to me by looking at medical records as well as
14 looking at Mateo's records, I believe within a high
15 degree of certainty that his neurologic system is not
16 able to function as well as normal children and that they
17 have been affected by the ochratoxin A, which show --
18 which has been demonstrated to cause peripheral nerve
19 damage and damage in the brain, especially in the
20 hippocampus.

21 MR. KIMMEL: Thank you. I don't have
22 anything further.

23 FURTHER EXAMINATION

24 BY MR. WOLPE:

25 **Q. Okay. Doctor, just a few things, if we can.**

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Do you do home inspections?

A. No.

Q. Do you have any idea how they're done?

A. Yes, I do.

Q. Okay. Do you know how this one was done?

A. Yes, I do.

Q. Did you read the deposition of Mr. Kobi?

A. No, I did not.

Q. Okay. Do you know where he took the outdoor sample in relationship to the apartment?

A. They don't indicate on that, but they usually are right outside the front door.

Q. Okay. But you don't know whether he did it in this case or not?

A. Whether he did what?

Q. Whether he took the sample right outside the front door or somewhere else, you don't know?

A. No, but it doesn't matter. It's outside. He says "exterior," so it's outside.

Q. So you don't know outside in relationship to the apartment, whether it's in a parking lot or where it is?

A. No. Well, then I reserve the right to read his deposition --

Q. Okay.

A. -- since we are not finished with my deposition.

1 Q. Okay. Clearly, that would be important to you,
2 where the samples were taken, wouldn't it?

3 A. Yes, it would.

4 Q. Okay. But you -- Mr. Kimmel hasn't provided you
5 with that information --

6 A. No.

7 Q. -- right?

8 Okay. Also, Doctor, this study says,
9 "Aspergillus/Penicillium-like". There's no indication as
10 to a culture being done to determine specifically what
11 this was, is there, sir?

12 A. On that case, no. On the one that he submitted
13 called, "Sample Analysis," yes. He's done a swab, so
14 he's put it on media, and he has said that there's
15 Aspergillus/Penicillium-like organisms there.

16 Q. Okay. Again, no culture was done?

17 A. Yes.

18 Q. Okay.

19 A. It says "media" --

20 Q. And so you --

21 A. -- and so that's a culture.

22 Q. I see.

23 And so is there any indication in this
24 study to indicate that there were mycotoxins in that
25 apartment? Any mycotoxins measured?

1 A. No.

2 Q. Okay. So there's no evidence that there were
3 mycotoxins in that apartment when this sample was taken
4 or ever?

5 A. No. But of note, the media culture showed
6 chatomium, c-h-a-t-o-m-i-u-m. That is documented in the
7 medical literature as presenting -- patients presenting
8 with brain tumor, neurologic disorders and learning
9 disabilities.

10 Q. Doctor, the bottom line is they didn't test to
11 see if mycotoxins were in the air, correct, in this
12 apartment?

13 A. No.

14 Q. Okay. And there are tests that can be done to
15 determine that, aren't there?

16 A. Yes.

17 Q. So as you sit here today, you don't know if
18 there were mycotoxins in the air in that apartment
19 because no testing was done for that purpose, correct?

20 A. Correct.

21 Q. Okay. In addition, when you took this one, it
22 was one urine sample, right?

23 A. Yes.

24 Q. Okay. And it was -- no creatinine was done,
25 correct?

1 A. No.

2 Q. So there was no determination as to how diluted
3 or not this urine sample was, correct?

4 A. And the point of that is?

5 Q. Just the point that that determination wasn't
6 made.

7 A. Because we do dilute for matrix effect in our
8 test.

9 Q. Okay. I'm just trying to ask you did you do --

10 A. Well, you asked me about dilutions.

11 Q. Okay. So how concentrated was his urine? Do
12 you know?

13 A. It doesn't matter. We found ochratoxin in it.

14 Q. Okay. Now, again, you were questioned regarding
15 the half-life of ochratoxin. And now do you admit that
16 the extracellular level of half-life of ochratoxin is
17 approximately 35 days based upon what you looked at?

18 A. Just what I saw in that literature. But, no, I
19 will not admit to that in the serum.

20 Q. Okay.

21 A. That's one piece of literature.

22 Q. Okay. So you don't know what the half-life of
23 ochratoxin is intracellularly or extracellularly?

24 A. No.

25 Q. Okay. That surely would be important as to when

1 this exposure took place to -- or how it took place to
2 Mateo, wouldn't it, the half-life?

3 A. Not to me.

4 Q. All right. Okay. Doctor, you have told us that
5 based upon the studies that have been done on Mateo and
6 the records you reviewed, you found no objective evidence
7 that his lymphocytes are down-regulated, correct?

8 A. That's right, except the fact that he was having
9 a lot of infections.

10 Q. Okay. But, again, there are ways to find out if
11 he has a down-regulation of his lymphocytes, and that was
12 never done?

13 A. Correct.

14 Q. Okay. And so there's no evidence of it, at
15 least in this case, correct?

16 A. Of that point.

17 Q. Okay. Of that point.

18 Okay. Likewise, Doctor, the records you
19 reviewed did find an objective cause of his rhinitis,
20 which was Strep pneumoniae, correct?

21 A. On two or three different occasions. She found
22 nothing on many of them.

23 Q. Okay. And are you aware of the most common
24 cause of rhinitis in children?

25 A. Haemophilus influenzae and/or Strep pneumoniae

1 or *Candida albicans* and/or some other fungi.

2 **Q. Okay. So are you aware that *Moraxella***
3 ***catarrhalis* is also one of the most common bacteria found**
4 **in childhood rhinitis?**

5 A. As normal flora.

6 **Q. Okay. So you understand that one of the most**
7 **common causes of childhood rhinitis is *Staph pneumonia***
8 **which was grown out in Mateo?**

9 A. *Strep pneumoniae*, and they never found *Staph* in
10 his -- *Staph* is another organism by the way.

11 **Q. Okay.**

12 A. Thank you for reminding me.

13 **Q. Okay.**

14 A. But *Staph* is one that -- it wasn't found.

15 **Q. *Strep* was found, and it's a common organism in**
16 **childhood rhinitis?**

17 A. It's one of them, yes.

18 **Q. Okay. So that they did document a bacterial**
19 **cause of his rhinitis by the nasal testing they did?**

20 A. In three of eight cultures, yes.

21 **Q. Okay.**

22 A. They never did a fungal culture.

23 **Q. And so they never documented any evidence of**
24 **mold?**

25 A. No.

1 **Q. Okay. Anywhere in his system on any of their**
2 **tests?**

3 A. No. They didn't look for it.

4 **Q. Okay. And in addition to that, Doctor, you**
5 **would surely agree that there is no evidence to show that**
6 **childhood apraxia is caused by ochratoxin, is there, sir?**

7 A. I wouldn't surely agree to that because I don't
8 have enough evidence to say that it doesn't exist.

9 **Q. And you don't have any evidence to show that it**
10 **does?**

11 A. I have pediatric literature that says that these
12 patients are -- they have difficulty in learning and they
13 have difficulty in speaking.

14 **Q. Doctor, can you give me any literature that**
15 **shows that childhood apraxia is caused by ochratoxins?**

16 A. No.

17 **Q. Okay. And you've surely done no studies on**
18 **that?**

19 A. No. But I can give you evidence that asthma is
20 related, and even your own experts say that asthma is
21 related to molds.

22 **Q. But Mateo wasn't diagnosed with asthma, was he?**

23 A. Yes, he was. He had asthma.

24 **Q. Oh, you understand he had asthma?**

25 A. I see that he had asthma at one point, yes.

1 **Q. Okay. Do you understand that he has asthma now?**

2 A. No, not now. I didn't say that.

3 **Q. Okay.**

4 A. But I did see in the medical literature that
5 there was a rule out asthma, and he was admitted for
6 that.

7 **Q. Okay. So do you understand he was diagnosed**
8 **with asthma or not?**

9 A. I don't think he carries that diagnosis yet, but
10 he has a diagnosis at one point of possible asthma.

11 **Q. Okay. And do you know whether that was before**
12 **he was ever living in Fort Lauderdale and was living in**
13 **Sebring or North Florida?**

14 A. No, I don't.

15 **Q. Okay. Doctor, again, you have not attempted to**
16 **come to a diagnosis as to the cause of Mateo's otitis**
17 **media, have you, sir?**

18 A. No.

19 **Q. Okay. And you haven't attempted to come to a**
20 **diagnosis of the cause of his speech delay, have you,**
21 **sir?**

22 A. No. I think ochratoxin A does contribute to
23 that.

24 **Q. But you haven't come to a diagnosis with regard**
25 **to Mateo?**

1 A. I don't make the diagnosis, no.

2 Q. Okay. And you haven't come to a diagnosis as to
3 the cause of his rhinitis either, have you, sir?

4 A. No.

5 Q. Okay.

6 MR. WOLPE: Doctor, thank you very much.

7 Scott, we're done.

8 THE REPORTER: Okay. We're off the record
9 at 2:04 p.m.

10 THE VIDEOGRAPHER: Going off the record.

11 (Proceedings concluded at 2:04 p.m.)

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I, DENNIS HOOPER, M.D., Ph.D., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

DENNIS HOOPER, M.D., Ph.D.

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared DENNIS HOOPER, M.D., Ph.D., known to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

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IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CHANTELLE BAILEY, as)
Guardian Ad Litem of MATEO)
VALLE, a minor,)
)
Plaintiff,)
)
VS.) CASE NO.:
) 50-2010-CA-027289 (AO)
)
EQUITY RESIDENTIAL)
MANAGEMENT, LLC,)
)
)
Defendant.)

REPORTER'S CERTIFICATION/FILING CERTIFICATE
ORAL DEPOSITION OF DENNIS HOOPER, M.D., Ph.D.
TAKEN ON OCTOBER 4, 2011

I, Tonie Thompson, Certified Shorthand Reporter in
and for the State of Texas, hereby certify pursuant to
the Florida Rules of Civil Procedure present to the
following:

That this deposition transcript is a true record of
the testimony given by DENNIS HOOPER, M.D., Ph.D., the
witness named herein, on _____ after said
witness was duly sworn/affirmed by me.

That the deposition transcript was submitted on the
____ day of _____, 2011, to _____, for
examination, signature and return to me by
_____, 2011.

That the deposition transcript _____ was returned
to U.S. Legal Support, Inc., on _____, 2011, was
properly executed by the witness to the deposition

1 officer, and the attached change/correction sheet
2 contains any changes, and the reasons therefor, made by
3 the witness.

4 That the deposition transcript _____ was not
5 returned to the deposition officer by the witness.

6 That the original deposition transcript, or a copy
7 thereof, together with copies of all exhibits, was
8 delivered on the _____ day of _____, 2011 to
9 _____ for the safekeeping and use at trial.

10 That the amount of time used by each party at the
11 deposition is as follows:

12 MR. KIMMEL.....00 HOURS:21 MINUTES

13 MR. WOLPE.....03 HOURS:21 MINUTES

14 That pursuant to information given to the deposition
15 officer at the time said testimony was taken, the
16 following includes counsel for all parties of record:

17 Mr. Scott T. Kimmel, Attorney for Plaintiff;

18 Mr. Joel R. Wolpe, Attorney for Defendant.

19 That a copy of this certification was served on all
20 parties shown herein.
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Certified to by me this _____ day of _____, 2011.

Tonie Thompson _____

Tonie Thompson
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