SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CASEY CONNOR MORSE, Plaintiff, vs. APARTMENT INVESTMENT AND MANAGEMENT COMPANY dba and/or aka AIMCO PROPERTIES, LP; JOHN DOE HUMAN PERSONS and/or ENTITY PERSONS; MAYER BEVERLY PARK, LP, a California limited partnership; OP PROPERTY MANAGEMENT, LP, a Delaware limited partnership; and DOES 1 through 25, inclusive, Defendants.	)	Case No. BC471230

DEPOSITION OF DENNIS HOOPER, M.D.
Los Angeles, California
Wednesday, October 31, 2012

Reported By:
Katherine McCoy, CSR
CSR No. 11157

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

CASEY CONNOR MORSE,)
)
Plaintiff,)
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vs.) Case No. BC471230
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APARTMENT INVESTMENT AND MANAGEMENT) COMPANY dba and/or aka AIMCO) PROPERTIES, LP; JOHN DOE HUMAN) PERSONS and/or ENTITY PERSONS;) MAYER BEVERLY PARK, LP, a) California limited partnership;) OP PROPERTY MANAGEMENT, LP, a) Delaware limited partnership; and) DOES 1 through 25, inclusive,)
)
Defendants.)
_____)

Videotaped Deposition of DENNIS HOOPER, M.D., taken on behalf of the Defendants, at the law office of Wood, Smith, Henning & Berman, 10960 Wilshire Boulevard, 18th Floor, Los Angeles, California, commencing at 9:41 a.m., on Wednesday, October 31, 2012, reported by Katherine McCoy, CSR No. 11157, a Certified Shorthand Reporter in and for the State of California.

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Videographer

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Los Angeles, California, Wednesday, October 31, 2012
9:41 a.m.

THE VIDEOGRAPHER: We are on the record.

Good morning. This is the videotaped deposition of Dennis Hooper, M.D., taken on behalf of the plaintiff in the matter of Casey Connor Morse versus Apartment Investment and Management Company, Case Number BC471230.

Today's date is Wednesday, October 31, 2012 and the time is 9:41 a.m. We are located at 10960 Wilshire Boulevard in Los Angeles, California.

My name is Jon Seidel, a legal video specialist with Alpha Legal Productions located at 236 Adams in Memphis, Tennessee.

Will all counsel please identify themselves for the record.

MR. PARRISH: I'm Larry Parrish. I represent the plaintiff Casey Connor Morse.

MS. ERSOFF: Victoria Ersoff, counsel for defendants.

MR. PARRISH: For the record, the plaintiff is here, Casey Connor Morse, she's sitting with me.

///

DENNIS HOOPER, M.D.,
produced as a witness, and having been first duly sworn by the Certified Shorthand Reporter, was examined and testified as follows:

EXAMINATION

BY MR. PARRISH:

Q. Will you state your full name, please, sir.

A. Dennis Glenn Hooper.

Q. And are you referred to as Dr. Hooper?

A. Yes.

Q. And what -- by what authority do you claim the title Dr. Hooper?

A. I have a Ph.D. in microbiology from the University of California and an M.D. from University of Nevada, Reno.

Q. And your Ph.D. was received when?

A. 1982.

Q. And that was the University of California at where?

A. At Davis, California.

Q. Your Ph.D. is in what field?

A. Microbiology.

Q. And briefly, what is microbiology and what disciplines are included in microbiology?

A. Microbiology is the study of bacteria, viruses, and fungus and parasites and any other protozoa or living organisms that are not human, and it involves their cellar structures as well as their activities intracellular.

Q. And what does it take to earn a Ph.D. in microbiology?

A. You have to take the instructed courses that the committees set forth for you and then you sit for an oral exam and then you write a thesis.

Q. And what -- do you recall what your thesis was entitled?

A. Yes. It was -- I worked on neisseria gonorrhea which was gonorrhea and I worked on the cellular structure of gonorrhea and antibodies that can be used to detect that organism.

Q. You used the word "fungus" when you were describing one of the subject matters of microbiology. What is fungus?

A. Fungus is an organism that has D.N.A. and it has a cell structure and a cell wall and it's most commonly called mold in the layman's term.

Q. And did your work in microbiology toward your Ph.D. include study about mold?

A. My thesis did not, no, but my course work did.

Q. Prior to that time when you were earning your Ph.D. did you have any familiarity from a professional standpoint in mold?

A. Yes.

Q. What was your first experience that involved you professionally in mold?

A. I worked in clinical laboratories that -- as a microbiologist and as a technologist where we looked at different organisms in bacteriology, and that is looking at bacteria and then we had to identify molds.

Q. How do you identify mold in that context?

A. In clinical specimens is specifically from human specimens, you put them on -- you take the specimen, be it a urine specimen, a stool culture, a throat culture, whatever, and you put it on different types of media. And media are plates that have different nutrients in them that the fungi or the molds will grow in.

Q. Now, when did you receive your M.D.?

A. In 1983.

Q. So that was a year after your Ph.D.?

A. That is correct.

Q. Was there any reason why you had a Ph.D. and an M.D.? Do they interrelate in some way?

A. Yes. I joined the Navy in 1976 as a master's.

I had my master's in microbiology and was sent to San Diego Naval Hospital and put in charge of microbiology there and parasitology and mycology which is the study of fungus and molds, and decided I wanted to go to med school and continued to do my Ph.D. work out of U.C. Davis.

I -- prior to joining the Navy I was a Ph.D. candidate at U.C. Davis and joined the Navy, went to San Diego, continued to do my Ph.D. work, and decided at that time I would go to med school at the same time.

So applied to med in 1978 and got in, in 1979 at the University of Nevada, the fall class, and transferred to Reno which was only two hours away from U.C. Davis and so every weekend for two-and-a-half years I traveled from Reno to Davis to work with my committee on my Ph.D. thesis. And then I was able to do my Ph.D. thesis at the University of Nevada, Reno.

So my research was done on campus at Reno and then my thesis was written with the committee at U.C. Davis.

Q. So there was a time when you overlapped in your academic studies working towards your Ph.D. and working towards your medical degree?

A. That's correct.

Q. What is your birth date?

A. November 20, 1949.

Q. And that makes you how old now?

A. 62.

Q. And where were you born and raised?

A. I was born in Ely, E-L-Y, Nevada and I was raised there, went to high school there, and then I went to the University of Utah in Salt Lake City as an undergraduate and got my bachelor's degree in microbiology.

Q. You continued in your education from the time you were a bachelor student through your Ph.D.?

A. Correct.

Q. You said you were in the Navy at some point. Were you in the Navy while you were earning your degrees?

A. Yes.

Q. When did you join the Navy?

A. I joined in 1976.

Q. As what? Were you O.C.S. director?

A. No. I joined as a microbiologist. And they brought me in as a lieutenant in the medical service corps and sent me to San Diego.

Q. And for how long did you have tenure in the Navy?

A. Over all, I've been in 25 years. I retired in

2001.

Q. And track your military career.

A. I joined the Navy in 1976, went to San Diego Naval Hospital as a microbiologist. In 1979 I started med school at the University of Nevada, Reno as an ensign in the medical corps. The Navy paid my way through and paid me a stipend to go through school,

In 1983, I graduated and went back into medical corps as a lieutenant commander at Naval Hospital San Diego in path- -- well, first year was flexible medicine which is the same as general practice. They required that all of us knew every area so if we went on ships.

And then at the end of that year I got accepted to the pathology program and went through pathology until 1988. And then I finished my program 1980- - and then 1988 I was transferred to Naval Hospital of San Diego, the same place, as a head of microbiology, the pathologist running microbiology at that time and blood bank.

And then eight months later I was selected to become chairman of pathology at Naval Hospital San Diego, 1989.

Q. What is chairman of pathology? What does that mine.

A. It's a lot of work. It's overseeing -- we oversaw the entire laboratory. I oversaw the entire laboratory, along with all of my staff. We had 300 med techs and civilians who worked for us throughout San Diego, Palm -- well, 29 Palms and Marine Corps recruit depot, et cetera, and they manned all the laboratory clinics.

And then I had 12 pathologists who I wrote fitness reports on or evaluations, and then we had a pathology program of eight pathology residents, and so I was responsible directly to the admiral of our command to run our department financially and every other way.

Q. And your rank at that time?

A. I was an O5 which is commander. In the Navy officers run from O1 to O6. O6 being a captain which is equivalent to a colonel in the Air Force or Army. I was an O5 when I was selected as a chairman. And O5 is commander which is equivalent to a lieutenant colonel.

And so I wrote fitness reports for colonels or captains.

Q. And did your rank ever change after that?

A. Yes. Two years later I was deselected to captain or colonel to oversee the laboratory, and then immediately I was given the position as director of ancillary services in which all the chairman's from

radiology, physical therapy, pharmacology and pharmacy answered to the director of ancillary services who, then, answered to the admiral of command.

Q. Did your rank remain the same?

A. I was an O6 which is captain.

Q. All right. And did that complete your career in the Navy?

A. No.

Q. What was the remainder?

A. In 1994, I had a complaint registered about me concerning I stole a truck of a large piece of equipment which is about as big as this table and they had supposed pictures of me taking this piece of equipment and which was call a flow cytometer (phonetic). And they put -- I put it in a truck and I transported it out, which was not true.

And I -- because there was a complaint, it registered through the naval criminal investigation services, an issue, and for two years they investigated that and there was nothing, they couldn't find anything. And I was somewhat distraught about that, that they continued this for so long and so I asked to be released from active duty and I went into the reserves in 1994 as an O6 or captain, and I was -- I stayed in the reserves until 2001 where I retired.

And I worked at that time -- during in my reserve time I worked at the naval amphibious basin in Point Loma as an overseer of their college pathology laboratory.

Q. You said they investigated for two years and found nothing.

A. No.

Q. Was that because there was nothing to find?

MS. ERSOFF: Objection, leading.

THE WITNESS: That is true. There was nothing to find.

MS. ERSOFF: Move to strike.

BY MR. PARRISH:

Q. What about the photographs?

A. There was no photograph. They couldn't find any photograph.

MS. ERSOFF: Leading.

BY MR. PARRISH:

Q. In the reserve -- when you went into the reserves, did you have any other occupation or career other than the Navy while you were in the reserves?

A. Yeah. I started a consulting group in San Diego as a consultant in various areas of microbiology.

Q. I asked you about microbiology. Would you

explain what pathology is.

A. Pathology is the study of human organs and human disease processes that effect human organs and human systems and it's divided into two areas. Anatomic pathology and clinical pathology.

Anatomic pathology involves looking at tissues, making diagnosis of tissues, and cells in disease processes, i.e., cancer, any type of inflammatory response. And it involves reading Pap smears. It involves reading tissue of tumors and it involves doing autopsy.

Clinical pathology is the involvement of looking at human specimens, i.e, urine, blood, serum, spinal fluid, cultures and making assessments of those types of specimens.

Q. When you say culture, what do you mean? It's -- you may use that term throughout your deposition, so I'd ask you to define it.

A. A culture is something if -- for an example, if you have a sore throat, you go to your physician, they do a throat culture where they take a cotton swab, put it in your throat, swab the area that hurts, and then they send it to the lab. The laboratory puts it on a media plate with certain nutrients and they put it in an incubator and they grow it for 24 hours to four weeks,

depending on what type of specimen and what they're looking for.

And then they -- the lab tech will look at those and work them up as to doing biochemical reactions, stains, et cetera, to diagnose what they are.

Q. When you say "lab," are you referring to a particular kind of lab?

A. A microbiology or bacteriology or mycology lab. Mycology is the study of fungus.

Q. Have you done all of that yourself personally?

A. Yes.

Q. Plus supervised, as you stated?

A. Yes.

Q. Is there such a thing as a Ph.D. in pathology?

A. Yes.

Q. Is that a medical -- that's not a medical degree or is it a medical?

A. No, it's not a medical degree. They study disease processes, but they do not have a medical degree.

Q. What can a pathologist who does have a medical degree do that a pathologist who has a Ph.D. cannot do?

A. Can anatomic pathic can make diagnoses of malignancies.

Q. "They" being?

A. The pathologist.

Q. P.A.'s?

A. Ph.D.'s cannot. They can do research. They can work on the clinical side as a director in a certain area that they are expertise in.

Q. When you got your medical degree, did you have to become licensed to practice as a pathologist?

A. No. You have to -- you become licensed as an medical doctor.

Q. What's the difference in licensure to practice pathology and licensure to practice medicine?

A. Licensed to practice medicine you can see patients, you can diagnose them, depending on your field of expertise. In pathology you wouldn't want to look at slides if you didn't have that expertise. You wouldn't want to go into a laboratory, nor could you, nobody would give you that authority in a hospital or any business sense if you had no training and no certification in pathology.

Q. Are there any limitations on what a medical doctor can do insofar as practicing?

A. Not that I'm familiar with, no.

Q. So there are specialties, are there not, in medicine?

A. There are.

Q. Is there anything that prohibits a medical doctor from practicing medicine in any of the specialties?

A. Well --

Q. Officially prohibits?

A. Officially, no. Officially, if you're going to want to practice cardiovascular surgery, the hospital that you're going to do surgery in credentials you and you are not going to become credentialed if you're not board certified and you are not trained in the proper training and you're certainly not going to do cardiovascular surgery in your office, so --

Q. So are there practical inhibitions that take hold as to what a particular medical doctor can do and cannot do?

A. I think ethically -- and you're asking me to speculate.

Q. Well, let's don't. Let's just go back.

A. I can't do that.

Q. I'll ask officially, is there anything that would stop you from practicing psychiatry?

A. Officially, no, other than if a state licensure group came in and said you cannot practice psychiatry for any reason.

Q. As a matter of a practical realty, would you

practice psychiatry?

A. No.

Q. Did you have any board certifications or other training that allowed you to practice pathology?

A. I'm -- I was board certified in American Board of Pathology initially in 1989 -- or 1990. And then when I moved to Texas in 2001, because I hadn't taken any boards for ten years, I had to take another board certification in 2001 and got re-boarded, re-certified in American Board of Pathology in 2001, which expired in 2012 and I did not renew that because I do not want to take anymore tests and I don't need the board certification anymore.

Q. And what are the mechanics involved in becoming board certified? What is the American Board of Pathology?

A. Each specialty -- and I think there's 16 throughout the United States -- has regulations and specifications that an individual who wants to become expertise in their field, must participate in a residency program and/or a fellowship program in certain disciplines. And pathology is one them where we as pathologists have to participate in a certified residency program in anatomic and clinical pathology that the American Board of Pathology has deemed as

necessary and qualified.

Q. Did you do a residency?

A. Yes.

Q. Where did you do your residency, how long did it take and what was the result?

A. Naval Hospital San Diego and I started in 1984 and finished in 1988 and sat for my boards in 1990.

Q. Is that a four-year residency? Is that the standard residency?

A. It was a five-year residency. I got exempted because of my Ph.D. in microbiology, so I got exempted by nine months or eight months, something like that.

Q. And you said you sat for your boards. That meant you did what?

A. You traveled to the city that they were given in that year and you sat for three days in a timed convention center, really, where they have monitors and we took slide exams, we took kodochrome exams, we took written exams for three days, eight hours a day.

Q. And that's graded by whom?

A. I don't know. I really don't know. They -- the Gods of pathology somewhere.

Q. And after that you were board certified and that qualified you, practically speaking, to do things that you couldn't have done without that certification?

A. That is correct.

Q. Including what?

A. Reading slides in pathology, reading Pap smears, doing blood banking.

Q. Diagnosing?

A. Diagnosing, yes.

Q. And what is diagnosing? What is the mechanics of diagnosing?

A. For example, a patient who has a tumor found by radiology is seen by the surgeon. The surgeon, then, schedules time to do a biopsy or a radical mastectomy, for example, and they take that off, send that to the pathologist to do a frozen section.

A frozen section is done where the pathologist cuts the tissue, looks at it, and tells the surgeon you've got all this tumor, we're going to make the diagnosis in the next few days what the tumor is, but you can close that patient up now.

And then the pathologist proceeds to take it and put it in formaldehyde, fixes it and then re-hydrates it all back into wax. And the wax, then, is cut and put on slides and stained with various stains to look and see what the structure of the cell is, what the mosaic structure of the cells and how they fit together, and what kind of tumor it is.

Q. So you're being consulted by the surgeon, asking you to tell the surgeon what?

MS. ERSOFF: Leading.

THE WITNESS: Well, you are not being consulted. You are the consultant to the surgeon.

BY MR. PARRISH:

Q. Okay.

A. And the surgeon is saying, do I have a tumor? Did I get it all out? And what is -- what do you think it is? And the majority of the times you defer, you say yes, you have a tumor, it looks like an adenocarcinoma of lung origin but we're going to wait and defer until we look at all the slides.

Q. And then when you look at all the slides?

A. You look at all slides, then you make a diagnosis and you may want to do more special stains and then you finally make a diagnosis. You say this is a renal cell carcinoma or kidney tumor and it's in so many lymph nodes and -- and you can -- depending on what grade we say it is and what histology grade, then we -- that determines what the cancer or oncologist doctors will do as far as treatment.

Q. You said that you started a consulting group when you went into the naval reserve --

A. Yes.

Q. -- is that correct?

Would you track your career from that time forward.

A. I went -- I was doing consulting and I would get -- I don't even remember what the consulting jobs were when I first left the Navy, but then I went in to work at -- I wanted to do H.I.V. work and looking at rapid diagnosis of fungal diseases in H.I.V. patients because I feel they are at extreme risk of these fungal organisms, as I do transplant patients.

So I looked for a hospital that had patients who had H.I.V. -- a lot of H.I.V. patients which we coined in the medical area as virgin H.I.V. patients which meant they had not been treated.

And in 2000, a friend of mine said there was a hospital in Los Angeles called Martin Luther King Hospital that had a significant number of H.I.V. patients who hadn't been treated and I may want to talk with them. And so I talked with the head of H.I.V. and I also talked with pathology and they were looking for a pathologist, and I said I would like to mostly do H.I.V. and fungal research and they hired me, and that's what I started doing.

Q. Your entry level there was hired for what position?

A. Pathologist.
Q. Just a pathologist?
A. Yes.
Q. You said do research. What do you mean when you say do research in the context of the question you just answered?
A. The research I wanted to do -- and research is looking at different cell structures, looking at activities of organs, et cetera. I wanted to look at the development of the these diseases in these H.I.V. patients and how -- what did they do for treatment and how did they improve or what can we do as a group of physicians to help them improve, and that's basically what my proposal was.
Q. You wanted to look at, but I'm trying to get what you mean by "look at."
A. I wanted to study the patients who had H.I.V. and look at their -- and examine their blood cells and their antibody titers and the process of how they fight off infections and why they can't fight off infections.
Q. Were you collecting data from patient to patient so you were accumulating information?
A. That was my proposal. And when you want to do a proposal like that, you go to the university, which was Charles R. Drew Medical School, and you propose a

proposal called an institutional review board proposal and you give that proposal to them and you suggest this is what I'd like to do, and I had submitted that.
Q. Did you follow through with that research?
A. No.
Q. And what happened?
A. When I sent that proposal through, I immediately started getting questions from different board members as well as my own staff --
Q. Board of -- what board?
A. In the Charles R. Drew Medical School, the institutional review board committee as to what why did I want to work on certain individuals in the Martin Luther King area, i.e., Watts. And I explained that and they -- they, the board, asked me if I'd heard of the Tuskegee studies, which I had not.
And subsequently found out that the American government had or U.S. Government had done some work in Tennessee, I think, Tuskegee --
Q. Alabama.
A. Is it Alabama? Okay.
Anyway, they worked on different Black populations of patients who -- and I believe it was with T.B. And so that became a big issue and they blocked the I.R.B. and then the next thing I heard is --

Q. What's A.L.B.? What's that?
A. I.R.B., Institution Review Board request.
And so I left -- when I couldn't do that, I left.
Q. Left what?
A. I left Martin Luther King Hospital and went to Texas.
Q. So you were at Martin Luther King Hospital from when to when?
A. 2000 to 2001.
Q. Now, this Tuskegee study, or whatever you're referring to, that had do with -- what was the implication there?
A. I don't know. I really don't know. All I -- they asked me if I was developing a Tuskegee experiment and I didn't know what that was, so when I found out it had something to do with Black patients and experimentation with the federal government, I went this is not good.
Q. Well, did you ever learn or were you advised that the Tuskegee experiment involved deliberately infecting some patients to determine what reaction they would get?
A. I later found out that, but I didn't know that at the time.

Q. Was the research that you were proposing, research that had included infecting previously uninfected persons?
A. No.
Q. So you left the Martin Luther King employment in 2001?
A. That's right.
Q. And then you went to Texas?
A. I went to Texas as a medical director at East Texas Medical Center in Tyler, Texas.
Q. And did what?
A. I oversaw the clinical laboratory there.
Q. Pathology laboratory?
A. Yes, the clinical pathology. I did not read tissue.
Q. What -- let's go back to the board certifications again.
A. Right.
Q. Are you board certified in either clinical or anatomical, or both, or how does that work?
A. I was board certified in both when I took the exam and when I re-certified in 2001 and I was board certified until this year, and I did not renew it.
Q. Do you sit for different boards in anatomical as opposed to clinical?

A. Yes.
Q. Different separate exams?
A. Yes.
Q. And when is the last time you did any anatomical pathology?
A. In 2001 when I worked for Martin Luther King Hospital.
Q. Is there any benefit to you to be board certified in anatomical?
A. No.
Q. Since 2001, since you left Martin Luther King Hospital, have you done only clinical?
A. No. I did do some anatomic pathology at San Antonio. I went from East Texas Medical Center in 2004 to Baptist Hospital in San Antonio for approximately a year and a half. And I read tissue on occasion, but I was mostly assigned to the blood bank and microbiology section at Baptist Hospital. I occasionally read tissue there.
Q. You mentioned blood bank a couple of times. What involvement -- or what's the pathological necessity for blood banks?
A. When you have surgery -- or when you have anemia, you have to have blood on occasion. So when you donate blood, if you're a patient -- or if you're a

donor, you donate blood and then it's checked for H.I.V. and Hepatitis and various other viral diseases as well as issues with liver problems. And once it's cleared through the F.D.A. specifications in the blood bank, then it is allowed to be put on the shelf at the blood bank in hospitals.

And the hospitals, then, have 35 days to use that blood or discard it. And we give that to patients who have surgery where they're bleeding or they're anemic patients or cancer patients where they need a transfusion.

Q. You were at Baptist Hospital in San Antonio how long?
A. A year and a half.
Q. And that would have taken you up to?
A. 2000- -- let's see. The end of 2004. So I went to Baptist in the middle of 2003.
Q. And stayed there until?
A. Until the middle of 2005.
Q. And in the middle of 2005 your career progressed to what?
A. Well, I had moved to Dallas by that time and started RealTime Laboratories in working with mycotoxins molds.
Q. All right. At this point did do you do any

pathology other than that working with mycotoxins mold?
A. No. We do add on occasion certain blood tests, but they all have to do with looking at antibodies to mold or looking to some disease process associated with mold or mycotoxin patients.
Q. You use the two words separate, that is mold and mycotoxins. Would you say what distinctions you are making when you use those two terms separately?
A. A mold is a living structure. It has D.N.A. and it has the ability to wall off its D.N.A. to protect itself in a substance called spores. So it's sort of like the capsule a spaceship can send out to another planet and maintain its people, so to speak. So it keeps its D.N.A. protected.

At the same time, once the spore regenerates or opens up, it can, then, release chemicals to either protect itself from other individuals --
Q. Individuals?
A. Being spores.
Q. Okay.
A. -- or fungi or bacteria. And these are called -- these chemicals are called mycotoxins. And the reason they're called myco is because they come from the family of mycology or myc- -- fungus, and toxins, they're poisons from -- or they're chemicals from the

actual spores.
Q. So from the time you moved to Dallas and you started RealTime Laboratories, you have continued in the same kind of practice non-stop?
A. Right. And you could say that it's just an extension of what I've always been interested in. From the Navy I was interested in the fungus and why they attack certain patients, and then when I got into King Hospital why I was interested in the fungus and the H.I.V. patients. And then when I get to Texas, I find out the same issues occur there and I took my ideas with me and then started the lab in Dallas.
Q. Let's go back to the Martin Luther King Hospital. Were there some allegations made while you were there, accusing of you certain things?
A. Not while I was there.
Q. Okay.
A. I left and a year later in 2004 when I'm at Baptist Hospital --
Q. In San Antonio.
A. -- in San Antonio, I find out there is a complaint against me at the medical boards of California for misdiagnosing at least six patients on anatomic pathology. And so I challenged that and met with the investigators and the issues were that I had

misdiagnosed cases in tumors and in looking at cytology or similar to a Pap smear.

And which surprised me, because every case that I did, I always had peer review on every one. And all of those cases had diagnosis of peer review. And some of them had gone out to other hospitals in Los Angeles or to Washington D.C. and they verified that we, pathology, Martin Luther King, had -- they agreed with us.

So the allegation was that I had misdiagnosed it, so I just thought that was -- difficult.

Q. You introduced the term peer review. What are you talking about when you say peer review?

A. Peer review is your peers, your other pathologists have -- they look at slides of yours, you look at slides of theirs and you review through a qualify assurance program that there are -- either they agree with you or they disagree, and then they send it back to you, say don't send this out, let's talk about this in our -- we have tumor board meetings or we have departmental meeting where we talk about these issues.

And when I had all these cases, I had sent them out for peer review and they -- before I diagnosed them.

Q. Are all the peers that review them at -- other pathologists at Martin Luther King Hospital?

A. Well, Some of them were at Martin Luther King and some of them -- well, the chairman had looked at them at Martin Luther King.

Q. Chairman of pathology?

A. Chairman of pathology. And then I sent them out to various other laboratories because I wanted verification because they were rough tumors and you always send them out when things like that occur. And they came back agreeing with us. We had documentation of that.

Q. Does all of this occur before the diagnosis gets out of the pathology department, essentially?

A. You hope so, yes.

MS. ERSOFF: Objection, leading.

THE WITNESS: Yes.

BY MR. PARRISH:

Q. So there were six specific cases that the accusation were made?

MS. ERSOFF: Objection, leading.

BY MR. PARRISH:

Q. Isn't that what you said?

A. Yes.

Q. So what happened? You said you challenged, by that I mean -- I mean, you mean what when you say challenged?

MS. ERSOFF: Objection, leading.

THE WITNESS: I looked at the cases and I got my expert to look at the cases and for -- we agreed that I had -- they were rough cases that I had peer reviewed and that we presented that to the medical board.

BY MR. PARRISH:

Q. And what ensued? You said you had your expert. What do you mean your expert?

A. I hired an expert to review my cases to tell me, did I make a mistake or did I it correctly to send these out to what -- is there any recommendation you would have done? And so he agreed and we sent those forward to the medical board.

Q. Who was your expert?

A. I can't remember his name. That's a few years back.

Q. So, then, you did that, submitted that to the California Board of Medical Review and what happened then?

A. We had a hearing here in Los Angeles for four days and at that time Martin Luther King Hospital was being scrutinized for -- they were being called horrible names, most of those --

Q. By whom?

A. By the Los Angeles Times and by various

patients. And Los Angeles Times was doing an expose of the individuals there and there were a number of patients who had died and so they were scrutinizing those patients and those doctors. And so L.A. Times came to -- the day before my hearing, L.A. Times put a large expose in the paper at the L.A. Times about me and that I was doing all these horrible things.

And so then the medical boards had the hearing and I think about a month later they decided that I should be put on probation for five years and limited to if I was going to read anatomic slides, I had to have them all peer reviewed, which I always do anyway. But since that time I haven't had any -- I have not looked at any slides.

Q. Irrespective of or because of the California Medical Board?

A. No, irrespective. The reason I don't look at slides is because I don't like it. I don't want to do it anymore. I find much more enjoyable work in looking at mycology and fungus and mycotoxins.

Q. You had already moved from California at the time?

MS. ERSOFF: Vague and ambiguous as to time.

BY MR. PARRISH:

Q. At the time when you learned of these

complaints before the California Medical Board, had you already moved from California?

MS. ERSOFF: Asked and answered, leading.

THE WITNESS: I learned about them in 2004, the hearing was in 2005 -- the hearing was in 2004, I learned about these in 2003.

I learned about them in 2004, the hearing was, I think, in 2005 and then the probationary period started in 2007. I think those are the right times.

BY MR. PARRISH:

Q. And what effect did the decision of the California Medical Board have in any other jurisdictions?

A. Nothing. I was Nevada board certified -- Nevada licensed. And I had anticipated that my attorney would notify because he said he would, there is a requirement that within 30 days after any decision, you need to notify all of your respective licensure authorities. And so because I was in Texas, I notified Texas myself. And he told me he would notify Nevada, which he didn't do I found out on the 31st day, so I notified immediately myself.

And they, then, gave me a letter of reprimand because I hadn't notified them within the 30 or whatever period of time it was, maybe it was 60. And I stayed

Nevada certified -- or Nevada licensed for a long time, but I don't go back to Nevada except to see my friends in Las Vegas and Ely, so I dropped that license.

But in Texas, I -- I'm allowed to do what I do in RealTime Lab and that's oversee the clinical laboratory, do clinical pathology which is what I want to do, and --

Q. Have there ever been any restrictions on your practice of pathology in Texas?

A. They restrict the same thing as they do in California, and that is, if I read slides, I have to have them reviewed by somebody else before I make a diagnosis, which I don't do anyway, so --

Q. And before the requirement of the California board -- medical review board, you always had them peer reviewed anyway?

A. That's correct.

MS. ERSOFF: Objection, leading.

BY MR. PARRISH:

Q. And so was that requirement by the California Medical Board superfluous requirement as far as you were concerned?

MS. ERSOFF: Objection, leading.

THE WITNESS: I stated that, too. I said I appreciate their concern and I would do that anyway. So

we set up Q.A. programs in the Navy, quality assurance program and we set up quality assurance programs at King to do that exact same thing, so it was not a -- not a big burden.

BY MR. PARRISH:

Q. Was there a lawsuit that came out of your tenure at Martin Luther King Hospital?

A. Yes. The lady that we did a uterus -- we said there was a sarcomatus uterus, and when we got the uterus, we looked at it, we couldn't find any tumor. And ultimately in review, we found out that -- and that we, that is me and the other pathologist -- found out there was a mix up in the histology lab.

That's the laboratory that takes the tissue when we cut the tissue from the tumor and when we get that, we put that in little plastic cassettes, we re-hydrate it, we put it in wax. There was a problem with two of the cassettes where they got mixed up with a tumor -- a brain tumor. And when we saw them, we noticed that. We -- I specifically told the OB/GYN surgeon, do not take this uterus out until we have a clearance from Impath, which is a lab here in Los Angeles, that this is truly a tumor that we see.

We sent that to Impath. Impath came back and said this is a sarcomatus lesion, please review where it

comes from. This is very rare. I called the surgeon, he saws we just took the uterus out.

So when we couldn't find it, I self reported all this stuff the pathology department did, that the surgery department did and that -- on my initial diagnosis and I went to risk management and told them of this. And they said this won't be an issue. Well, it was an issue, because immediately that's -- when I left, that's what the -- was reported to the medical board on that specific case.

And then they decided to look at other cases that even the pathologist had reviewed and they saw that they had agreed with me. Well, the woman sued the L.A. County and cited me the surgeon, the OB/GYN, the pathology -- a hundred John Does and I was executed from the case because they found that it wasn't me, that it was a problem in histology.

And I got that documentation of being -- I don't know what you call it -- it's not you're given because it was all of our issue, but it was a -- I was not cited in the legal case anymore.

When I submitted that to the medical board and said I want you to know that this case was not an issue with me, they said the decision's been made, we're not reserving.

So it is what it is. I dealt with it for years and I learned a lot about quality assurance and making sure that if you say a diagnosis and you have other people back you up, you might want to have other people back you up, too.

I don't know how much that's going to help, but it was a painful experience but it's one that I've hopefully helped in looking at the patients that we look at now because we are much more thorough -- well, I don't know about much more thorough, we were thorough before and I was thorough, but I'm even more tuned into quality assurance than I've ever been.

MS. ERSOFF: Move to strike as nonresponsive.

BY MR. PARRISH:

Q. As far as the acquisitions made against you while you were at Martin Luther King Hospital, as far as your own mental attitude, did you consider those to be false charges?

MS. ERSOFF: Objection, leading, lacks foundation.

THE WITNESS: I believe that in medicine as well as anything, if there's an issue with -- that you have with individuals other M.D.'s, et cetera, you should approach them and talk with them first, not go behind their back like it was with me. And not to go to the newspapers and talk about this. You should approach the individual

and see, is there some problem they're having or what is the issue and -- but that wasn't conducted.

And quality assurance in Martin Luther King, as well as in any hospital, and in that's Navy, there are set standards that you go by. You approach the individual and you talk with them about it. So yes, I believe that this was not dealt with fairly. Now, whether or not those were issues that were problems, yes, they were problems for the patients. Whether they were all my fault, I don't think so, but they adhered to me.

MS. ERSOFF: Move to strike as nonresponsive.

BY MR. PARRISH:

Q. All of that experience that you've had there, that has carried over to your psyche even today, does it not, as far as how you approach medicine, you guard against even being falsely accused?

MS. ERSOFF: Objection, leading.

THE WITNESS: Will you ask that in a different format so I can answer that correctly?

BY MR. PARRISH:

Q. What precautions do you take in your practice of pathology now that you may not have been cognizant to take if you had not had the experience at Martin Luther King?

A. I do the same things that I did when I was at Martin Luther King; however, with that being said, I am much more reticent -- not reticent -- cognizant of the issues involved in quality assurance and quality control.

I -- if -- I surround myself with people I sincerely and utterly and are excellent people, and if they if they tell me that there's something good in the quality assurance and quality control, I believe it, but I still have to see it.

I review every quality control piece of paper that goes through that laboratory. I sit on every quality assurance meeting and I discuss every quality issue with any physician that calls me. And that's something that I did not do all the time in the Navy. I trusted people to do that. I didn't do that at King Hospital, and I was head of quality assurance at King Hospital.

Q. You mentioned -- let me go back.

You used the word histology more than once. Define what you mean when you say histology.

A. It's the study of tissue. When you take a piece of tissue and you look at it under a microscope, it's the stains, you stain it and then you look at whether or not it -- does it have a certain mosaic

structure? Does it have a certain structure that looks like lung? We learn what lung looks like, we learn what kidney looks like, et cetera.

And if that is disrupted, then the histology is disrupted. Histology is the study of normal tissue.

Q. You mentioned articles in the Los Angeles Times. Do you have a copy of that article?

A. I do. I brought that with me because over the years you have a tendency of forgetting everything that you want to say. So when the article came out, I took every sentence that the L.A. Times stated and I rebutted it in bold and I give that to people in depositions, family members who are saying what the heck happened? And I give them that.

And so I brought that and I would like to have that given to you and to opposing counsel.

MR. PARRISH: That was not in my stack of documents.

MS. ERSOFF: No.

THE WITNESS: It's approximately 12, maybe 13 pages of rebuttal.

MS. ERSOFF: Counsel, can you identify which article this is?

MR. PARRISH: Okay. We'll do that.

MR. PARRISH: I need -- that's your only copy; right?

THE WITNESS: That's the only copy I brought.
MS. ERSOFF: Can we go off the record and I'll make a copy?
THE WITNESS: Please. So I can go to the --
MR. PARRISH: Yes.
THE VIDEOGRAPHER: Off the record. The time is 10:37.
(A recess was taken from 10:37 a.m. to 10:43 a.m.)
THE VIDEOGRAPHER: We're back on the record. The time is 10:43.
BY MR. PARRISH:
Q. Dr. Hooper, do you have a copy of what you wrote that you described before we took the break about the L.A. Times article?
A. I do.
Q. And what is the date the article appeared, do you have that, and what page? Give me a description of the article.
A. Well, it was part three of five of a series that was written on the week of December 5, 2004.
Q. Who was the author or the reporter, do you know?
A. Charles Ornstein, O-R-N-S-T-E-I-N.
Q. Did he actually interview you?

A. No.
Q. So that's obviously not a newspaper article that you have in front of you. What is that and how was it created?
A. This was --
MS. ERSOFF: Calls for speculation, lacks foundation.
THE WITNESS: Would you like to reask?
BY MR. PARRISH:
Q. No. You can answer.
A. What I have in front of me is a -- the web presentation of the third of five parts that involved me.
Q. So does that mean the web, for those from Tennessee, what is it you mean by that?
A. Yes. The Internet production of the Los Angeles Times article written on December 7 appeared in the Los Angeles Times web and I printed that out and then I took each sentence and bolded my -- well, my discrepancies with those sentences.
Q. So there's bold type and there's regular type?
A. That's correct.
Q. And the bold type is authored by whom?
A. By me.
Q. And the regular type non-bolded type, shall we say, is the work of whom?

A. The L.A. Times article.
MR. PARRISH: And I'll ask that that be made Exhibit 1 to your testimony.
(Deposition Exhibit Number 1 was marked for identification, a copy is attached hereto.)
BY MR. PARRISH:
Q. I'm not going to ask you to go through that.
A. Thank you.
Q. But you have read that and rechecked that many times since then; is that correct?
A. That is correct.
Q. Have you ever made any amendment to it or made any changes to it since it was originally done?
A. No.
Q. And it was originally done when?
A. When the article came out, about a week later. It was done on December 25th or 26th, 2004. Christmas day.
Q. Now, let's go back into sequence in RealTime Labs.
Is this an entity?
A. Yes, it is.
Q. Did it start out as an entity?
A. Yes, it did.

Q. And what kind of entity is it?
A. Today it's a Texas incorporated Inc. When it first started it was an L.L.C., a limited liability corporation of Texas.
Q. And who were the owners when it started?
A. There's only been one owner of RealTime Labs, LLC and Inc., and that is the mother company, Medical Service Consultation International, LLC.
Q. And when was that founded?
A. That was founded in 2003 in Texas.
Q. Did that entity exist before RealTime Labs existed?
A. Yes, it did.
Q. And who were the owners of that entity?
A. The owners are Dr. Vincent Bolton and Modesto Regina, R-E-G-I-N-A, and myself at that time. There's one owner now added and that's Dr. Tim or Frederick Guilford, G-U-I-L-F-O-R-D.
Q. Why was that company started, the one that predated RealTime?
A. When we first started, we were approached by a laboratory in Dallas named Environmental Health Center Dallas who had a C.L.I.A. certificate. A C.L.I.A. certificate is a Clinical Laboratory Improvement Amendment of 1988 certificate. And that's what is the

regulatory overseer of laboratories.

Q. Is that an agency of some government?

A. It's the agency of the H.H. -- H.S.C., Health Services -- whatever "C" stands for.

Q. United States government?

A. It is. and it's a Medicare -- it's an arm of Medicare and it's -- the assignment has been to each state to oversee the laboratories under the C.L.I.A. name. And so each state has their own C.L.I.A. investigators and C.L.I.A. regulators who, then, grant laboratories the right to do the work that we ask to do.

Q. Now, you were contacted by the C.L.I.A. laboratory in Dallas?

A. Right. Dr. William Rea was the medical -- well, was the owner of that laboratory and he was very interested in mycotoxins and my work that I was doing and research that I was doing. He said, would you like to bring it in and see if you can validate it in our laboratory? And I was very appreciative of that.

We did it -- it took us about seven months to validate it.

Q. Okay. Bring it into where and what?

A. We brought the idea into Environmental Health Center Dallas C.L.I.A. laboratory where we wrote --

Q. At that point was it anything more than an

idea?

A. No.

Q. And you're using the plural pronoun, who do you mean?

A. Medical Service Consultation International.

Q. Did that company have any employees at that time?

A. No. We all were partners that were working on this validation, writing the validation proposal and then approaching Environmental Health Center to do the validation in their lab.

Q. Would you explain the "it," what was the idea that you took into the C.L.I.A. laboratory.

A. The proposal that we wrote in the validation states, can mycotoxins be found in patients who exhibit symptoms and have been exposed to mold in their environment?

Q. Before that time had there been any protocol or any methodology for discovering the answer to that question of which you were aware of?

A. Not that I was aware.

Q. So this was -- was this your idea?

A. Yes, I take credit for it.

Q. When you took it into the laboratory, the C.L.I.A. laboratory in Dallas, what did you do with this

idea? You said you took seven months. What did you do in that seven months?

A. Well, as of federal requirement, you must write a validation plan before you even start doing the work. The validation plan includes what is your question? What's the hypothesis? The hypothesis was we can find mycotoxins in patients. The null hypothesis or it doesn't work is we can't find mycotoxins in patients.

So we had two hypotheses. We had to prove one or the other. And then we collected -- I personally went to patients for about a month and a half -- or individuals who -- the questionnaire was, do you have a history of ever in your -- in your knowledge, do you have a history of exposure to molds in your environment? If the answer was no, do you have symptoms of asthma, sinusitis, et cetera? Those criteria that C.D.C. had.

Q. C.D.C.?

A. C.D.C, Center for Disease Control on their web on their web site, it said --

Q. Is that a federal agency?

A. It's a federal agency in Atlanta, Georgia.

And they had a list of criteria that at that time in 2004, was the criteria that C.D.C. used to say that patients had been exposed to molds causing asthma, et cetera, and sinus problems. And those are the

questions I asked. Do you have these symptoms? Yes or no. If no, have you ever been exposed, to your knowledge, to any molds in your house due to water damage or any kind -- and much to my surprise, there was many that had not.

Q. Had not what?

A. Had not been exposed, had no symptoms. I'm one of them, but I didn't test myself in that study.

Q. Was your question restricted one way or the other as to outdoor mold or indoor mold?

A. Environmental molds in the house.

Q. In the house?

A. In your environment.

Q. As a -- what does the word ubiquitous mean?

A. Everywhere.

Q. And does that word have any application to mold?

A. Molds are --

MS. ERSOFF: Vague and ambiguous.

THE WITNESS: Molds are ubiquitous. They're everywhere and they're outside, they're inside. If we, as individuals and patients, are exposed to huge numbers on these, and we have a predilection for a sensitivity to those antigens or to those surrounding structures in the spores, we can develop a sensitivity to them where

we can sneeze, we can cough, we can produce mucous and that's an allergy response.

It we as individuals take in toxins and the toxins are the poisons that are produced by these organisms, then these toxins have end organ areas that they can go to. When they go there, they can create problems for the patients, be it cognitive problems, they can have skin rashes, they can have urinary problems, they can have peripheral nerve damage, they can have lung damage.

So all those issues are concern if you have a -- not only a ubiquitous or a concentration of organisms that are the same as inside and outside, but if you are a patient who are prone to be effected by those in some way, you've either genetically been predisposed or these toxins have caused you to become predisposed.

Q. Well, a literal answer to your question on the questionnaire, have you ever, to your knowledge, been exposed to mold, there is nobody in the United States that's ever -- could answer that no?

MS. ERSOFF: Objection, leading, relevance, calls for speculation, lacks foundation.

THE WITNESS: Would you ask that question in a better way, then?

BY MR. PARRISH:

Q. Okay. In your experience, do you know of any human persons who have not been exposed to mold?

MS. ERSOFF: Calls for speculation, lacks foundation.

THE WITNESS: I don't think it calls for speculation in that I know of one and he was on Seinfeld and he was called bubble boy. He was protected so much from all the environment, that nothing could hurt him unless you punctured the bubble. That's the only person I've ever heard of that maybe doesn't -- has not been exposed to mold.

The issue is, have you been exposed in your environment? Do you know that you -- the question was, do you know if you had a mold exposure in your environment and were you exposed to that?

MS. ERSOFF: Move to strike as nonresponsive.

BY MR. PARRISH:

Q. And you took the answers that they gave?

A. I did.

Q. And you didn't coach the answers, you didn't advise them, whatever answer they gave, you took?

A. That is correct.

Q. And if they said no, you interpreted or interpolated that to mean what, just to that question?

A. They have not been exposed to mold to their knowledge and they don't have symptoms. Would you please pee in the bottle for me?

Q. By that, you mean give me a specimen of urine?

A. Yes.

MS. ERSOFF: Leading.

THE WITNESS: Yes, that's what it means. But oftentimes you have to say it very colloquially.

BY MR. PARRISH:

Q. All right. And so you would collect from the people urine specimens?

A. Correct.

Q. Why urine as opposed to some other specimen?

A. Dr. Wray gave us blood, urine, and I was able to get tissue from patients who had aspergillus infections when they had cancer. And we were able to find them in the tissue. We were able to find them in the urine. We were never able to find them in the blood.

Q. And "them" being what?

A. The toxins. The mycotoxins.

Q. Okay. So this research goes on for seven months and the same thing over and over, what you just said?

A. That's correct. We did 54 patients which was

about 20 patients over what is required for a validation, but we wanted to make sure. We did 54 patients, every one of them had no mycotoxins in their urine. Then we also looked at tissue from autopsy patients who are killed in car accidents or they were killed -- they died of heart attacks with no history of exposure to mold in their medical history. And then we also looked at murders, some tissue from murders, and we found no mycotoxins in those tissues.

We looked at nasal washes and we found mycotoxins in some. And we published all of that data and we presented that for the validation to C.L.I.A.

Q. What was the significance of these findings?

A. The end result of our validation hypothesis was, yes, we can find mycotoxins in patients, period, who have been exposed to molds in environmental conditions.

Q. I lost something. I didn't understand. I thought you said you did not find mycotoxins except in the nasal secretions. So why would that yield a response?

A. Because in our validations we also took patients from Dr. Wray and other physicians who were giving them to us in this research protocol and we said, can we find them in those patients who have been

exposed? So now we have the negative group that had no history of exposure and we couldn't find them. Now we have a patient group who had a history of exposure and who were -- had sinusitis, had problems with cognitive disorders, they had problems with lesions, et cetera, and we found them in there.

So, then, our end result of our validation was they're not present in normal patients with no history of exposure and they are present in patients who have exposure.

Q. Now, you said 54. Do the 54 include the patients that you got from Dr. Wray or --

A. No. The 54 were the negative patients. And the -- then we did another 120 some that were from Dr. Wray and his colleagues.

Q. In the -- were they called the positive patients or --

A. They were called the disease state patients, because we didn't know, are these patients really -- do they have mycotoxins? We know they have a symptom, but is the symptom due to the mycotoxins?

Q. Did you find mycotoxins in all of those 120?

A. No.

Q. What was the ratio?

A. We published that in our paper in 2009 on our

validations and we have the ratios there and I can't remember. We have a sensitivity and a specificity rating. We're required to tell true prevalence and sensitivity and specificity, and if there's false positives or false negatives, and we publish that.

Q. What's a false positive? What's a false negative?

A. A false positive, if a patient is not sick, let's take example, Mr. Parrish, who does not have any presumed illness due to molds or mycotoxins and he gives us a urine specimen and it's positive. That -- then we have to correlate that to his disease process. He doesn't have a disease that we know of today, so -- but we're saying he's positive. So that does not fit with the true positive.

If you had symptoms and you were positive, you're a true positive when you're doing the lab tests and statistical evaluation. If you are not symptom -- you're symptom free and you have a positive test, that is a false positive as we know it on the day that we do those tests.

Now, those change over time, depending on what symptoms -- you may come up with various symptoms that other patients have when we start correlating those.

Q. What's the significance of a false positive in

the research that you were doing?

A. Well, if we have a number of false positives, the test is not significant.

Q. And did you have -- did you have any false positives in your test in the research that you did?

A. I don't recall. We did have a couple, but not significant statistically.

Q. What makes it not significant statistically?

A. The statisticians tell us that. I don't know.

Q. Was the research you did in that seven-month period of time something that would be called bench research?

A. Yes.

Q. And what is bench research in comparison with other kinds of research?

A. I don't know of any difference. I think bench research and research is the same. If you're going to look at literature, that's literature research. That you can that in the library. Bench research is stuff you do right on the lab bench.

Q. All right. So as to this study, the results published in 2009, what did you do to determine whether or not there was mycotoxins in the urine?

A. Well, in the validations, we're required to say we're going to take known amounts of mycotoxins and put

them in whatever matrix that we are going to test in. Is it nasal mucous? Is it stool sample? Is it urine sample? So we take the toxin, put it in the urine and then we put it on our plates. These are E.L.I.S.A. plates, capital letters E-L-I-S-A, stands for Enzyme Linked Immunosorbent Assay. These are small wells that have various amounts of antibody or antigen in these wells and they're diluted out.

And then we take our urine and we dilute out that urine and we put our toxin in each one. So it's called a blocked titration because there's 96 wells in this tray. And we're doing a titration of the urine, we're diluting it out and we're diluting out the toxins. So if I take 100 parts per billion of a toxin and put it in urine and then I do my test to see, am I going to be able to detect 100 parts per billion?

When we first started doing that, we found if we put 100 parts per billion in undiluted urine, the proteins in the urine caused a false positive test and we were getting like a thousand parts per billion. So, then, we were required, as you do in all urine tests in laboratories, you dilute out the matrix effect. So you take the urine and you dilute it out, dilute it out, dilute it out, then add your 100 parts per billion to each dilution. And when you find that you can -- if you

add 100 parts per billion in this urine and you've diluted it 1 to 10, now you find 100 parts per billion. But if you did it 1 to 100, you can't find it, or 1 to 2, you can't -- it's higher. You've titrated it to that point where you can tell how much dilution it is.

We did that with all our toxins that we do. Aflatoxin and ochratoxin we do a 1 to 7 dilution to dilute out the matrix effect so we don't get false positives. And then we dilute out trichothecenes to 1 to 5. And that's called a block titration and we did that in our validations and we presented that to C.L.I.A.

Q. Do you still use that same methodology?

A. We still use that -- no. I have to backtrack.

When we first did our validations, we did not have a good E.L.I.S.A. test for ochratoxin and aflatoxin. In our first validations and in the publication that we did, we used a small little immune absorbent columns that the food industry was using to find ochratoxin and aflatoxin, and we got very good responses to that.

It's very time consuming, tech time, technician time, my time, and it wasn't cost effective. And as we started looking at E.L.I.S.A. tests and trying to find antibodies that were good to detect these toxins, we

found the proper antibodies in aflatoxin and ochratoxin and we developed that E.L.I.S.A. test for those toxins and we validated those against the immunosorbent. So now we use all E.L.I.S.A. tests in our lab.

Q. Is E.L.I.S.A. testing generally accepted in the scientific community as a methodology to do what you do with E.L.I.S.A. testing?

MS. ERSOFF: Vague and ambiguous, overbroad.

BY MR. PARRISH:

Q. You may answer.

A. E.L.I.S.A. testing -- to be very specific, E.L.I.S.A. testing was -- made it's hay day, a debut in the '80s when H.I.V. testing was an issue. And we were looking for antibody for H.I.V. and we found that. We also use it in Hepatitis A, B and C. We use it for chlamydia testing. We use it for campylobacter that causes problems in the gut. It's -- there's huge amounts of E.L.I.S.A. testing and more and more companies are going to E.L.I.S.A. testing even for food allergies and for looking at gluten sensitivities.

MS. ERSOFF: Move to strike as nonresponsive.

BY MR. PARRISH:

Q. Do you know who invented E.L.I.S.A. testing or was it invented? Where did it come from?

MS. ERSOFF: Lacks foundation, calls for

speculation.

THE WITNESS: It would be -- she's correct. I would be speculating because I'm sure it's around -- it's been around for a long time.

BY MR. PARRISH:

Q. You did not invent the E.L.I.S.A. testing?

A. No. I wish I would have, but no.

Q. So the method that you use to do what you just described had preceded your research?

A. Oh, definitely.

Q. At the completion of this -- were you working during this time? Were you -- who -- were you getting paid? Did you have a grant? Who caused this?

A. We had no funding. We used our I.R.A.'s, we used our savings, we used our credit cards, everything to fund our work.

Q. And, again, you're using the plural pronoun, who are the people that --

A. Dr. Bolton, Mo Regina and myself at that time.

Q. Were all of those people involved in the research in the lab at the time?

A. Well, Dr. Bolton is an anesthesiologist, so he can spell D.N.A. but he doesn't work on the lab bench. But he's very good in the business side and in reviewing literature and helping us write. And Mo Regina is an

M.B.A. who works on the business side. So it was me and then we hired contractors to help us.

Q. What to you mean by "contractors"?

A. People who were lab techs or who knew how to work in the lab that I could direct how to do this test.

Q. As far as in the lab for this seven months, that was you and the techs?

A. That's right. And the tech.

MS. ERSOFF: Leading.

THE WITNESS: The technician.

BY MR. PARRISH:

Q. The technician?

A. (Witness nods head.)

Q. After the publication -- well, what was RealTime Labs doing during this time, if anything?

A. During -- would you be more specific? During what time?

Q. When you were -- the seven months in the C.L.I.A. lab in Dallas, had RealTime Labs been created at that point?

A. No. We were writing procedures for Environmental Health Center because if we were going to bring that in house to test, we had to present to C.L.I.A. the standard operating procedures, the quality assurance, quality control, proficiency testing,

everything that's required to bring a test into the laboratory. So not only were we doing the testing, but we were writing procedures.

And then at the end of -- I think it was in August of 2005 that we finished our validations. We took the first patients in September of 2005, and we started getting specimens from around the country at that time. People started hearing about us, mostly through Dr. Wray, and we outgrew the one bench that we had in Environmental Health Center, so that's when we created RealTime Lab in 2005 and we brought the work out of Environmental Health Center, had to revalidate everything in RealTime Lab.

Q. You've used D.N.A. several times. Presuming we all know what you're talking about, what do you mean when you say D.N.A.?

MS. ERSOFF: Leading.

THE WITNESS: D.N.A. is the cellular ticker tape, so to speak, in each of our cells and in fungus and bacteria that dictate what proteins are going to be made and how the cells lives or dies. And it can be single stranded or it can be double stranded and can be wound around each other.

And it's read and makes -- tells the cell to make proteins, tells the cell what to do, where to exist

and where not to exist. And there are ways you can identify D.N.A. in tumors. You can identify D.N.A. in fungi and in bacteria.

BY MR. PARRISH:

Q. You specifically said that mold has a D.N.A.

A. That is correct.

Q. And you said you can identify the mold -- the D.N.A. in mold?

A. That's right, we can. And we created those D.N.A. probes. They're called probes. And the way I describe these is, so that everybody can understand it, it's like the death star in a famous movie where a certain group of people are driving their jets around to try and land into the jet star -- or the death star.

The death star is a D.N.A. and there may be ten different death stars in the galaxy. And me as Dennis Walker get in one of my little jets and I'm driving around, trying to land in the death star. I'm driving a D.N.A. probe. When I come into -- and I'm an aspergillus probe, an aspergillus fumigatus probe.

I come and try to land in a stachy botyrous death star and I can't do it because my tires, those tires on the probe, they can't land because there's no place to identify so it goes on to another death star.

And I find an aspergillus fumigatus death star

and I can land there. And when I do -- my window opens and I can jump out, the lights come on and I can be detected.

And that's exactly what RealTime P.C.R. is. P.C.R. is preliminary chain reaction detecting D.N.A., or the death star. We use probes to detect those death stars. And there's many different -- there's probes for adenocarcinomas. There's probes for colon cancers. There's probes for aspergillus fumigatus. There's a probe for staph aureus, it's called M.R.S.A. and we use that.

So these are common things that are used all over. We're not unique at all.

Q. You've spoken of validations and are you using that term in a particular way to mean something different than just general validation?

A. Validations are a -- they're a painful word to use as a pathologist and a laboratory because they require so much time and money to make sure that you're doing the right thing and it requires thinking ahead, writing a validation plan. So if it doesn't work, your plan has to be thrown out. So you cannot know what the results are before you do the validations.

So you have to write the plan. You have to have it verified by either your board of directors or

even C.L.I.A., and then you can do the test. And you do all these things to look at sensitivity, specificity. Is this a good test? Is it not? Is it false positive? False negative? Can it be reproduced? All of these things.

And when you finally get the answer and you've heard from your board that you've spent all your retirement money and you've heard from your wife you can't do anymore, and you go, uh, oh. You hope that you have got it.

And we -- after seven months we finally came to that realization that we do have a test that we can do and we present that.

Q. To?

A. To -- well, C.L.I.A. comes in and can look at it at any time unannounced, announced, and we can offer that to them to come look at it, which we did do, and we did have an unannounced visit from them on a complaint that we were doing un-validated tests. And they validated that we were right. We were doing them, and we had validated them.

Q. Without validation, can you -- what are your limitations without validation?

A. If you don't do validations and this test is not F.D.A. approved, your laboratory can be shut down

immediately and you cannot charge anymore to the patients.

Q. Is there anything that you have ever withheld from C.L.I.A.?

A. Never.

Q. How often has C.L.I.A. inspected or re-inspected or examined your validations?

A. C.L.I.A. has inspected us three times and College of American Pathology has inspected us once and we are now in another review of our validations.

Q. And in scientific research, what is the significance of being validated as far as other researchers are concerned?

A. Well, as far as researchers and as far as clinicians, if you don't have a test that can help the patient and show that there is true positivity and true negativity and sensitivity and specificity is good, why do the test? Because the doc ain't going to send it to you after a while, they're going to get upset because they can't see any correlation with that test. F.D.A. is going to be upset with you. C.L.I.A. is going to be upset with you.

So we pride ourselves in looking at those validations. We on go validation all the time in our laboratory. We're reviewing, reviewing, reviewing. We

are now approaching F.D.A. for approval on our D.N.A. probes and subsequently our mycotoxin testing.

Q. What's the significance of F.D.A. approval?

A. F.D.A. approval, the only people that can do your test if you are not F.D.A. approved is yourself. It's called a laboratory validated test, in-house laboratory test. It used to be called some strange name and they did away with that called home brew. Sounded like we were making booze, but they've stopped that and it's called an in-house validation test.

And if we have in-house validations, we cannot give our procedures out to anybody because of the concern from F.D.A. and C.L.I.A. that these will be duplicated and used somewhere else and they can come back to that laboratory and hold them liable for releasing that work because it's not validated anywhere but in your laboratory.

And so we adhere to those rules by only releasing under nondisclosure to C.L.I.A. and College of American Pathology, the actual procedures.

Now, we are criticized -- and I'll say this -- we're criticized by experts in opposing legal cases, specifically Dr. Saxon who I think is in this case as well, who says the validations -- our validations are not correct who has never -- wouldn't know how to look

at a validation if he knew how. I mean, he just doesn't understand validation.

MS. ERSOFF: Move to strike as nonresponsive the portion of his testimony starting with "we are criticized" as nonresponsive.

BY MR. PARRISH:

Q. What is raw data?

A. The data that is generated from the E.L.I.S.A. readers or from our refrigerator temperatures or from our machines showing what the spectrophotometer is reading, et cetera.

Q. And is that raw data revealed to C.L.I.A. to C.A.P. on a nondisclosure basis to others who have a right to use it?

A. Yes, it is.

Q. Is that raw data something can be released since you're an in-house validated -- can it be released without non-disclosures?

MS. ERSOFF: Objection, leading.

THE WITNESS: We would not release it under nondisclosure because it's proprietary and it is protected under what our attorneys believe and have stated by other -- by citing other case law as copyrighted and trade secret.

///

BY MR. PARRISH:

Q. Are there any patents involved in what you do?

A. We file patents on everything we've done. And we've filed --

Q. "We" being?

A. Medical Service Consultation International is an owner of the patents. I was the inventor, I signed rights to M.S.C.I. and they hold all the patents.

Q. As the inventor, was it your responsibility -- were the patents issued to you?

A. No. They are issued to a medical -- they have not been issued. They are pending.

Q. Patent pending means what as far as practical effect?

A. That we can -- we use them. If anybody violates our patents, we can't do anything until they're issued. But the minute they're issued, if they use our procedures, we, then, will discuss that with them.

Q. Patent pending is an official status, is it not?

A. Yes. It's a utility patent that is filed and under review by the U.S. Patent office.

Q. And that there is a patent pending is public knowledge?

A. It's been published, yes.

Q. Did you withhold any information from the patent office about what you invented?
A. No.
Q. Did that include your validations?
A. Yes.
Q. Are you an officer of RealTime Laboratories?
A. I am the medical director. I'm not an officer.
Q. As a medical director, what are your responsibilities for RealTime Labs?
A. To oversee quality assurance and quality control. I do not hire, I do not fire. I report to the board of directors for M.S.C. as to what the quality assurance and quality control is of the board -- of the laboratory.
Q. You're not the chief executive officer?
A. No.
Q. Chief administrative officer?
A. No. I don't want those jobs.
Q. The chief financial officer?
A. No.
Q. In the hierarchy of RealTime Labs, as the medical director, what authority do you have at RealTime Labs?
A. I like to think I have some, but as pointed out by the C.E.O., I really have very little on the legal

side of running this other than I'm an owner of M.S.C.I., but I have responsibilities to show that I need to make sure the quality assurance and quality control of the laboratory are ongoing every minute of the day.
Q. Are you here today as a witness -- as a representative of RealTime Labs in any way?
A. No.
Q. Are you here today as a representative of M.S.C.I.?
A. No.
Q. Who are you here as a representative of, if anybody?
A. Well, I'm representing myself and my company which is very confusing here. Medical Service Consultation P.A. which is a professional association in Texas because I'm the sole owner, I'm the M.D., and all my business on the medical/legal side when I do consulting or when I do expert witness comes through M.S.C.P.A. So I represent myself as the expert witness to interpret data coming out of RealTime Lab or any other place that the counsels give me in their medical records to review.
Q. Are you the only employee of -- I'll just call it the P.A.?

A. Yes. That's by law in Texas I can only be. I'd have to be the president, the vice president, the secretary, the treasurer.
Q. And does the P.A. have a separate bank account from you personally?
A. Yes.
Q. Does the P.A. file tax reporting?
A. Because it's an entity with me, it goes on my Schedule C and it's rolled up into my own personal income.
Q. Do you share that income with anyone other than your wife?
A. Well, I contract to certain people to help me through M.S.C.P.A. so I share that. I pay them.
Q. But that's just a vendor, that's an expense of the P.A.?
A. That's correct.
Q. As far as the net income of the P.A., that's you personally and only?
A. That's true.
Q. And is there a contract for the services that you have rendered in this case?
A. Yes.
Q. Do you have a copy of that contract?
A. Yes. I brought that with me. It's an

agreement as expert witness or Medical Service Consultation P.A. for Robert Morse and it's signed and then I have my legal fee schedule attached.
Q. All right.
A. And then --
Q. You were asked to bring this, were you not, by the notice that you were given by Ms. Ersoff?
A. I was, yes.
MR. PARRISH: All right. And I'll ask that this be made Exhibit 2 to your testimony.
(Deposition Exhibit Number 2 was marked for identification, a copy is attached hereto.)
BY MR. PARRISH:
Q. Are you a custodian of records for RealTime Laboratories?
A. No.
Q. Are you a custodian of records for M.S.C.I?
A. No.
Q. Did you use any of the work product of RealTime Laboratories to do the work that you've done to appear as a witness here?
A. Yes.
Q. And how did you get that work product?
A. I requested it from RealTime Lab to get the results from Casey Morse.

Q. And what did you have to do, if anything, with the test that was done by RealTime Labs?

A. As the medical director, either myself or my designee can review the Q.A. and sign it out. That means there's a director's signature at the bottom and either myself or my designee can sign those.

Q. Was an E.L.I.S.A. test done on a urine specimen from Casey Morse?

A. Yes.

Q. And was it what you just described as to the procedure and the protocol?

A. Yes.

Q. Did you personally administer that E.L.I.S.A. test?

A. Fortunately no, because I don't want to do those tests. They're long and so my techs do them now. I did them years ago.

Q. Do you oversee them?

A. I assure -- I'm assured through Q.A. And I review the Q.A. and the Q.C. before they're signed out and released to the docs. So by overseeing, that's what I do.

Q. In a sense in this case as the medical director for RealTime Labs, did you check the quality assurance before it was released to you to give your expert

testimony?

A. Either I did or my vice president of laboratory operations did. And then he gives those to me to review as well. So yes, it's checked and double checked. And I brought the results. I did sign Casey Morse's results.

Q. As far as the testing that was done on Casey Morse's urine specimen, are you confident that the test was accurately done and the results are accurately shown?

MS. ERSOFF: Lacks foundation, calls for speculation.

BY MR. PARRISH:

Q. You may answer.

A. Yes. And it's not speculation because I know I reviewed the Q.A., the Q.C. proficiency testing and I am positive that these are good results.

Q. As far as your personal interaction with Casey Morse, other than this morning where you met her in this room, have you ever personally seen her?

A. No.

Q. Based on the RealTime Laboratories testing, are you able to make a diagnosis with respect to Casey Morse's health as it's revealed by the testing at RealTime Laboratories?

A. No.

Q. What are you able to determine about Casey Morse personally based on the testing that was done at RealTime Laboratories?

A. As the medical director, I can assure the clinician who ordered the test, that the test was done under proper conditions, under proper quality assurance and quality control and that what we found we feel assured is positive as a mycotoxin.

Q. And you have the RealTime Labs report?

A. I do.

MR. PARRISH: Let's make that Exhibit 3 to your testimony and then I'll hand it back to you.

THE WITNESS: This is -- I guess I'll put all of these together. That's just a fax cover sheet.

MR. PARRISH: You'll hand that back to him, please.

(Deposition Exhibit Number 3 was marked for identification, a copy is attached hereto.)

BY MR. PARRISH:

Q. You're looking at Exhibit 3 to your testimony, are you not?

A. I am.

Q. Are you familiar with that form and what it reports?

A. Yes.

Q. And what was determined by the RealTime Laboratories testing of the urine specimen in Casey Morse?

A. The RealTime Lab results show that aflatoxin is not present, ochratoxin is present at a value of 10.5 parts per billion and trichothecenes are not present.

Q. There are actually -- there's one report and an amendment to the report; is that correct?

A. That is correct.

Q. And what's the amendment part? How did it get to be amended?

A. The original report we signed out as qualitative. In other words, C.L.I.A. in Texas had told us we need to only say present or not present, which is a qualitative report. It's there, it isn't. When we got College of American Pathology certified, we were able to -- we petitioned C.A.P. to do a semi quantitative result which allows us to not only put present, not present, not present, whatever, but we also can put the patient results that are interpreted out of our machines.

Q. So you've always had that information as far as the patient results, but prior to your C.A.P. certification, you were not able to report that?

A. That is correct.

Q. So in this process, the first time you did the report -- which was what date? What was the date of the laboratory report of RealTime?

A. Date of service was 1/10/2011 and we signed it out on 1/13/2011.

Q. Now, at that time did you have the C.A.P. release to report?

A. No. But then we were able to do it in February, released the semi-quantitative results.

Q. So you reissued the same report?

A. Right. We issued the same report, but we now call it amended report and we put at the bottom, amended to add quantitative results.

Q. What's the significance of having quantitative results?

A. Physicians use those to follow how much toxin is in the urine of the patients. And what we have followed over the years is to see that as the patient improves, the toxin levels go up in the urine because they're leaving the body and then they go down to zero. So it's a bell-shaped curve. They're detected at one level, then they are treated and the urine -- they lose them in the urine, so they go up in our test. And then as they are treated more, they go down to zero.

And there's been many patients throughout the

country that have shown that bell-shaped curve.

MR. PARRISH: All right. We're about to the end of the tape and I'm about to go into another area of questioning, so if we can go off the record so you can change your tape.

THE VIDEOGRAPHER: This is the end of disk Number 1. The time is 11:36 and we are off the record.

(A recess was taken from 11:36 a.m. to 11:41 a.m.)

THE VIDEOGRAPHER: We are back on the record. This is the beginning of disk Number 2. The time is 11:41.

BY MR. PARRISH:

Q. Dr. Hooper, referring to Exhibit 3 and the findings from the testing by RealTime Laboratories, what does it mean that there was -- the findings that were made there, not present, present, and the amount?

A. It means that aflatoxin was not found and ochratoxin was found at a certain value, and the trichothecenes were not found. And we have limits of detection that we determine through our validations, anything over that limit of detection is considered positive.

Q. All right. And anything under that is considered what?

A. Not present.

Q. Now, when it says aflatoxins not present, what

is an aflatoxin and what does it mean not to have aflatoxins in the urine?

MS. ERSOFF: Compound.

BY MR. PARRISH:

Q. You may answer.

A. Alfatoxins are toxins produced by aspergillus and/or penicillium species. There have been in the literature certain species that have been identified as making alfatoxins. However, there are many more that are being investigated at present to see if they produce these toxins.

They're multiple carbon structures that are able to invade or go through the cell wall or the cell membranes and actually attach to the D.N.A. of humans. And when it attaches to the D.N.A. of humans, it causes liver cancer.

Q. Let me ask you, though, as far as Casey Morse is concerned. The RealTime Labs test indicated she had none of those?

A. That's correct.

Q. Does that -- is that a positive assurance that she does not have aflatoxins or could she have aflatoxins and they not be detected in the urine?

A. That's speculative. I would -- I would like to say yes, I would like to answer your question yes, but I

think it's too speculative for me to say. I have no proof to say that alfatoxins are present in Casey Morse and we just can't detect them.

Q. Let's go to generally speaking. Are all alfatoxins every time in the human body able to be detected by the assay testing?

MS. ERSOFF: Calls for speculation, lacks foundation.

THE WITNESS: No.

BY MR. PARRISH:

Q. And what would cause it to be -- I'm using aflatoxin. I assume this is true for ochratoxin and trichothecenes; is that correct?

A. That is correct.

Q. So what would be the theme about the human body that would allow those things to exist in the human body and, yet, not be detectable in the urine?

A. The literature has pointed out since the '80s, since 1980 and even before that, that these toxins become intracellular, they become -- invade the cell inside. So they can sit inside the cell. The only way we can detect them at RealTime Lab is if they leave the cell for whatever reason. The cell dies and they don't reinvade other cells or their -- the other cells are protecting themselves in that it's exuded in the urine

or secreted in the urine, or the bile duct.

Q. What do you mean others are protecting themselves?

A. The cell -- there are papers that show that there are certain proteins in the body that act as bricks, so to speak, as I like to think about it, and they're called keep one and nerf one. Nerf one and keep two. Those proteins, they interlock like bricks so they protect the cell from not allowing mycotoxins to come in to the cell.

As these proteins are coming together, sometimes -- and this is not me that's thought of this, this is in the literature -- that the mycotoxins come in and block these bricks from coming together. And when they stop the keep and the nerf proteins from coming together, they can invade cell. And they can sit in the cell and cause proteins changes and D.N.A. changes in the cell. Hence, they can become malignant. The cells can become malignant or they can change their structure in some way that the patient develops a reaction.

Q. And how would any of those mycotoxins get into the urine to be detected by the RealTime Labs E.L.I.S.A. testing?

A. There's a lot -- there's many literature peer reviewed papers that talk about how the mycotoxins are

picked up by the macrophages which the garbage men of the bloodstream and they're taken to end organs and they're released through into the bile so they appear in the gut and the stools, or they can be picked up by the macrophages and delivered to end organs of the kidney and then released into the urine.

Q. And if that is happening, then that can be detected by the E.L.I.S.A. testing at RealTime Labs?

A. In the urine test.

Q. If the macrophages are not picking them up and moving them into the kidney, they remain there and the RealTime Labs E.L.I.S.A. testing would not detect what is, in fact, there?

A. That's speculation, but yes, we don't have proof of all that, what you just said.

Q. But as far as the literature, is that what --

A. The literature backs up what I said so far.

Q. All right. Now, as to what was present in the urine of Casey Morse, it's ochratoxin?

A. Ochratoxin A.

Q. And what is ochratoxin A?

A. Ochratoxin A is a multiple structured, carbon structure chemical that has produced notoriously from an organism called aspergillus ochraceus, O-C-H-R-A-C-E-U-S. And it -- but there's other

organisms that can produce ochratoxin A. Ochratoxin A is released, it can be absorbed through mucus membranes, go to the lung and taken up by the macrophages of the lung and be delivered to end organs.

Famous and very strong literature in the Balkan nephropathies in the -- I don't remember what year -- Balkan nephropathies were caused by ochratoxin A and they cause a lot of urinary problems. They have been isolated in renal cell carcinomas, kidney cancers, and they have been found in patients who have renal problems, not only cancers but kidney problems and they've been found in patients who have urinary tract infections.

RealTime Lab -- in looking at the literature, RealTime Lab's individuals and their staff have found that we -- they can be isolated in brain tumors and in peripheral nerve tissue and we have found them in breast tissue in patients who have breast tumors. We have not published that yet so --

Q. Is still in the process --

A. It's hearsay so far.

Q. Well, is that in the process of being published by you and others?

A. Yes. We also found of significance -- and this is being prepared for publication in a reputable

mainstream journal -- that patients who have chronic illness that have a catchall phrase which M.D.'s give to chronic illness, chronic fibromyalgia, issues that nobody knows what the cause is, we have done patients -- we have looked at over 250 patients now who have chronic fatigue, chronic illness, not just chronic fatigue and not just fibromyalgia, have ochratoxin A in 82 percent of all those patients and we're publishing that. We just finished that to get published. We're submitting that.

MS. ERSOFF: Move to strike as nonrepsonsive all testimony starting with "we have also found."

MR. PARRISH: I'll ask my next question. She's made her record.

BY MR. PARRISH:

Q. Now, the test that was done at RealTime, the specimen, there's been no retesting --

MS. ERSOFF: Vague and ambiguous.

BY MR. PARRISH:

Q. -- of her urine?

A. Of Casey Morse?

Q. Of Casey Morse's test?

A. No.

Q. So far as whether that ochratoxin remains in her body, do you have any way of knowing at all?

A. I do not.

Q. If you retested, another specimen was submitted to RealTime Labs, would the result of that test give you any more or less information?

MS. ERSOFF: Calls for speculation, lacks foundation.

THE WITNESS: She's right. It is speculative because I have seen patients who have been treated and they have no more toxin. I've seen patients who would have been treated and they have high amounts of toxin. So it depends on how much -- what they've been treated with and how long they have been treated and how much toxin they had in their body.

BY MR. PARRISH:

Q. So as far as you sit here today right now, you have no information to make any statement as to whether or not Casey Morse continues to have ochratoxin in her system?

MS. ERSOFF: Objection, leading.

THE WITNESS: My results that I've seen in other patients would help the clinician who sees her to ascertain whether or not he should retest or not. And those findings are that usually we see them going up if they're not treated. We see them staying the same if they're not treated. Let me -- if they're treated, they

go up in the urine usually.

MS. ERSOFF: Move to strike as nonresponsive.

BY MR. PARRISH:

Q. And what would cause that?

MS. ERSOFF: Calls for speculation.

THE WITNESS: Treatment.

MS. ERSOFF: Lacks foundation.

BY MR. PARRISH:

Q. By "treatment" you mean what?

A. What we have found --

MS. ERSOFF: Outside the scope of his designation -- his expertise. Sorry.

BY MR. PARRISH:

Q. You may answer.

A. What we have found by reviewing multiple medical charts in patients, by speaking with physicians who treat these patients, we found that if they use specifically N-acetylcysteine or Glutathione orally and they -- at some times they use an anti-fungal, that these patients improve immensely.

Q. Are any of these medications administered nasally?

A. They can be, yes. Glutathione can be -- and many physicians give oral Glutathione and intranasal Glutathione. And they give a nasal spray that's

anti-fungal.

Q. How does the information that was revealed by the urine specimen relate to fungus that might be within her body?

MS. ERSOFF: Lacks foundation, calls for speculation, outside the scope of his designation and expertise.

BY MR. PARRISH:

Q. You may answer.

A. When we get a result of a toxin like this, the first thing I talk with the clinician about is, do they have environmental fungi involved with them in some way? And have you done environmental tests? And have you done any toxin work other than this?

And then we draw correlations between what fungi are found in the environment with what we know as far as the toxin that that fungi produced and then what is found in the patient and we draw a correlation and a causation association.

Q. Does the RealTime testing of the urine reveal anything about whether there remains in the body, fungus?

MS. ERSOFF: Calls for speculation.

THE WITNESS: No, that is not speculation. That is -- there is no evidence that the fungus is present in

the body with our mycotoxin test. We test for the mycotoxins strictly.

BY MR. PARRISH:

Q. Are there other tests that other laboratories do to determine whether there remains fungus in the body?

A. Right. They can do cultures, as we can. We're licensed to do cultures. Fifty percent of all fungal cultures are negative, even when the organism is there.

MS. ERSOFF: Move to strike as nonresponsive everything starting with "fifty percent."

BY MR. PARRISH:

Q. And so is there any test that you know of that's reliable to determine whether fungus is within the body?

MS. ERSOFF: Calls for speculation.

THE WITNESS: That isn't speculation because I can testify with my degree and my certification as well as my knowledge in P.C.R. that, yes, Preliminary Chain Reaction studies are much more sensitive and specific than are cultures.

So we can do P.C.R. on tissue and we can do them on blood and urine to find out if there's yeast or fungi present at a much different level than the cultures would find.

And that is present in the literature. That isn't speculation at 50 percent.

BY MR. PARRISH:

Q. All right. RealTime Labs has never done that kind of testing with respect to Casey Morse?

A. No, we have not.

MS. ERSOFF: Leading.

BY MR. PARRISH:

Q. Is RealTime Labs able to do that kind of testing?

A. Yes. We're licensed to do molecular testing in fungi.

Q. Are fungi emitted by urine?

A. Emitted?

MS. ERSOFF: Calls for speculation.

BY MR. PARRISH:

Q. Excreted?

A. Yes.

Q. Is there a way to test urine -- or is that what you're talking about, you can tell test the urine to see if there was fungi in the urine?

A. Yes. We can do cultures and we can do P.C.R. And we oftentimes do P.C.R. for a candidate which is a yeast.

Q. You signed an affidavit in this case, did you

not?

A. I did.

Q. And I have a copy of your affidavit.

A. I brought a copy.

Q. Well, you have a copy with exhibits on it. Hand me -- or here it is. Excuse me.

A. Here's this exhibit back (indicating).

Q. I'll hand you a document and ask you if you can identify that.

A. This small piece of work?

Q. Yes. Is that the affidavit that you signed with the exhibits attached to it?

A. That is my affidavit and was signed on 6th of June, 2011.

Q. And does it have Exhibits A through K?

A. It does.

Q. Did you prepare that affidavit at my request?

A. Yes.

MR. PARRISH: Let's have that marked as Exhibit 4, please.

(Deposition Exhibit Number 4 was marked for identification, a copy is attached hereto.)

BY MR. PARRISH:

Q. Does that affidavit -- you tell me what that affidavit reveals. What was its purpose and what have

you done by that affidavit?

MS. ERSOFF: Document speaks for itself.

BY MR. PARRISH:

Q. You may answer.

A. The affidavit is an opinion that I have given regarding Ms. Morse and then I divide my affidavits in qualifications, and then it's a basis for my opinion or the nature of why I did my opinion and what criteria I used to draw those conclusions and then what were the general observations relating to her illness and disease by reviewing the clinician's medical records as well as comparing it to what.

Q. Are these opinions that you have stated here, opinions that you're qualified to give?

A. I am, yes, and they are.

Q. And are they listed one through nine?

A. They are.

Q. And I'll ask you to read the first one.

A. The onset and continuation of the illness of Casey Connor Morse, herein after referred to as Ms. Morse, is most probably directly caused by Ms. Morse's prolonged exposure, more particularly described in her affidavit which documents Ms. Morris's medically relevant personal history and is attached as Exhibit A hereto, to a variety of ochratoxin-producing

molds, including penicillium, aspergillus, or both.

The spores and/or hyphae of which contaminated the environment in Ms. Morse's apartment at Broadcast Center, Los Angeles, California.

Q. What would cause you to say that?

A. From reviewing the environmental studies of Ms. Morse's apartment -- I have to get my train of thought. I've been disrupted a little bit.

Q. Take your time.

A. -- I've reviewed Dr. Kilburn's medical records. I've reviewed Ms. Morse's affidavit and the results of the environmental studies.

Q. Just let me ask. All of the things that you have reviewed to come to your opinions are attached to your affidavit?

A. Yes, correct.

Q. Except -- well, there's literature attached or these are --

A. Well, I don't know what the -- I did list my -- on Exhibit D, I believe I said what the literature is I cited without putting them all in as exhibits, but I -- Exhibit C is long.

Exhibit D was the mycotoxin report. "E" is my resume or C.V. "F" is my paper on mycotoxins. And "G" is the requisition. "H" is my list of cases. And "I,"

"I" is the list of literature that I cited and used to draw my conclusions.

Q. Okay. You have reviewed this affidavit, have you not?

A. Multiple times, yes.

Q. Is there anything in the affidavit that you would now change?

A. No.

Q. The opinions that you have stated, have you stated them to a reasonable degree of medical certainty?

A. Yes.

Q. You've drawn on all of your experience, training and education as well as your prior research and the career that you've had that you've explained this morning?

A. Yes.

Q. Let's just set that aside and let's go to another.

In that conclusionary kind of way, is it your opinion based on the findings of the RealTime Lab's testing of Ms. Morse's urine, that she has an illness that's related to mold exposure?

MS. ERSOFF: Objection. Leading.

THE WITNESS: May I have Exhibit C back? Not C. My results.

Let me state, at the bottom of what this -- what our report -- what RealTime Lab's report says that assist me and the clinicians --

BY MR. PARRISH:

Q. And that's Exhibit 3.

A. Exhibit 3. I'm sorry.

And this should read -- because the clinicians are the ones that make the diagnosis, it is not the medical director of RealTime, it is not RealTime Lab -- "Tests such as this should be used only in conjunction with other medically established diagnostic elements, i.e., symptoms, history, clinical impressions, results from other tests. Physicians should use all the information available to them to diagnose and determine appropriate treatment for their patients."

RealTime Lab's data is significant in that it can help the clinician make a diagnosis. It is very similar to a glucose test. We can do a glucose test on ourselves and we can have a high sugar. We are not considered diabetic by having a glucose test that's high.

If the clinician is looking at the glucose test and he takes all the symptoms that are involved and all the other tests, he can, then, make the diagnosis of diabetes.

Dr. Kilburn and other clinicians who see the patient, Casey Morse, can make the diagnosis of mycotoxicosis with the assistance of RealTime Lab's data.

Q. All right. You looked at all of her medical records --

A. I did.

Q. -- to that date?

You looked at what Dr. Kilburn had said to that date?

A. I did.

Q. And were the reports that those physicians gave, did those medical records that you reviewed, did they -- were they consistent with what you know from your experience and from the literature with illnesses that ochratoxins can cause?

MS. ERSOFF: Objection. Outside the scope of his expertise, calls for speculation.

THE WITNESS: They are consistent by not only me reviewing the literature, but by reviewing other case studies and other legal cases in which people who have reviewed medical reports and medical charts, and also in looking at what clinicians say about treatment plans and how they're accepted in cases, i.e., in New York, that these are not speculative.

I depend as -- I depend on the clinicians; the clinicians depend on RealTime Lab. So it's a --

BY MR. PARRISH:

Q. You explained earlier the function of a pathologist when you get a specimen from a surgeon asking you questions about it and the surgeon is consulting you. Is this any different process here? You're looking at a specimen which happens to be urine and are you consulting with the clinician if the clinician asks?

MS. ERSOFF: Objection. Leading, incomplete hypothetical.

THE WITNESS: This is -- in some ways it's very consistent with that. However, the art of pathology in anatomic pathology is the ability to look at tissue, to recognize tissue patterns in tumor analysis and to give an ultimate diagnosis.

The crown jewel of an anatomic pathologist is he has the ability to make a diagnosis of a disease in a tumor or a malignancy. A pathologist does not have the crown jewel ability to make a diagnosis on the clinical side. He has the ability to give ordering physicians the results of tests they've ordered and to assist the clinician in making a decision about what the diagnosis is.

BY MR. PARRISH:

Q. Was there any assistance to you -- and let me just ask as an example.

Your medical records that you reviewed indicated that Casey Morse had had sinus surgery; is that correct?

A. That's correct.

Q. Did that -- that piece play any part in the opinions that you've rendered and stated in your affidavit?

MR. PARRISH: Assumes facts, incomplete hypothetical, lacks foundation, calls for speculation, outside the scope of his expertise.

THE WITNESS: I'd like to clarify one thing. There is a case in California that it does not limit my expertise to look at medical records. There's a pathology case that was ruled.

BY MR. PARRISH:

Q. Okay. But you did look at the medical records?

A. I did.

Q. And was looking at her medical records an important part of the opinions that you state in your affidavit?

A. Yes, it was.

Q. And what part did looking at her medical

records play in the opinions that you stated in your affidavit?

A. Very important part. By looking at the history and what they found and then correlating them with what toxin we found from the fungi. Because the sinusitis can be caused and probably was caused by an infection related to molds and/or bacteria.

Q. When you used -- let me just go just through and ask.

You looked at the environmental studies that had been done in her apartment, did you not?

A. I have.

Q. And what part did the environmental studies that you looked at play in the opinions that you rendered and stated in your affidavit?

A. A major part.

Q. In what way?

A. In looking at what types of bacteria were found and what types of bacteria were not found.

Q. And what did you find that were found that related --

A. I need to see that environmental study.

(Examining documents.)

Q. I think that's exhibit -- I just saw it.

A. I think it's in Exhibit C. I'll find it.

Here it is. Page 86, page 84.

Q. Part of Exhibit C?

A. Right.

Q. Okay. Refer to that and explain to me what part that played.

A. It goes through Page 90.

I looked at all these, whether -- what the fungus spores are, the hyphy and other contaminates that they find. In the one study that was done on the 21st of January, 2009, they found a high components of stachy botyrous and hyphal fragments. And hyphal fragments they don't describe.

However, on Page 89 of Exhibit C, they go on and they talk about this limited preliminary microbial assessment. Collected from the foyer, they find aspergillus, penicillium, stachy botyrous, and most important to me is the organism chaetomium, C-H-A-E-T-O-M-I-U-M. This was found in two of the three areas that they talk about. This is documented in literature to cause brain tumors and has been isolated in brain tumors.

Aspergillus and penicillium is found in every one of them. And they talk about -- they compare this in the foyer and the living room, and these are significant findings. And I use that, I look at those

and I find -- I look at what the ochratoxin value was in the urine because they come from aspergillus and penicillium patients. They're a species.

Q. What's important about that chaetomium?

A. Chaetomium is an organism that should not be in an environment. It is found in -- and in the literature and the peer reviewed literature it states chaetomium is found in water-induced environments. In other words, contaminated environments with water. Chaetomium has been isolated and multiple brain tumors have shown this and in nerve tissue that chaetomium should not be there. It doesn't produce -- we cannot find the toxin it produces yet. There are pieces in the literature that say what toxins are produced, but we have not been able to find them.

Q. As far as the toxins that RealTime Labs tested for, did they test for any more than just the three?

A. No.

Q. So there could be toxins in the urine that were just not tested for?

A. Correct.

Q. Now, you didn't collect these samples, did you?

A. No.

Q. So you're assuming that the samples were correctly collected and reported?

MS. ERSOFF: Calls for speculation.
BY MR. PARRISH:
Q. In relying on those reports, you're assuming that; is that correct?
A. That is correct.
Q. As far as the organisms that are reported as having been found, do you have intimate familiarity with those organisms?
MS. ERSOFF: Calls for --
MR. PARRISH: Strike the intimate.
BY MR. PARRISH:
Q. Are you familiar with it?
A. I'm familiar with the org- --
MS. ERSOFF: Vague and ambiguous.
BY MR. PARRISH:
Q. And you're familiar with the organisms enough to know their structure and what the result of the -- of those organisms are on the human body --
A. Correct.
Q. -- in susceptible people?
A. And non-susceptible people.
Q. What's the difference there? Some people would be effected or not effected, or how is the effect proposition?
A. If we are con- -- if we are not -- I work with

these all the time and I don't consider myself as a susceptible type of individual, but I work under the hood, I wear a mask, I wear gloves and I wear a gown. Now -- and so do my techs.

But if I was sitting there and breathing this in, in a carpet, or if I was in the -- if there was a wall that was wet and it had the organisms growing behind the wall and the toxins and/or the organism spores were being elaborated, or whatever word you want to use to get out into the air, I can breath them in and my filter -- my lung filter picks those things up.

So I become susceptible because the longer I breathe these in and have a higher exposure to them, I can get sick.

Now, if I am extremely susceptible for any reason, I had a history of allergies, I have a history of my lymphocytes not being able to be activated to fight off these infections, I have a higher tendency of being able to not fight these off, just like an H.I.V. patient.

MS. ERSOFF: And I'm going to interpose a late objection that it's outside the scope of his expertise and it lacks foundation.
BY MR. PARRISH:
Q. Now, you say in your affidavit that you relied

on Casey Morse's affidavit that you attached; is that correct?
A. That's correct.
Q. And so for the purposes of your analysis, you presumed what she said was accurate?
A. That's correct.
Q. On what -- of what significance was Casey Morse's affidavit to your opinions that you reached?
A. Well, if we go back to her affidavit, which is in Exhibit A, she talks about what she did, but then what her allergies were and what -- where she lived and what experience she had while she was in this environment and what happened when there was a water leak.

Now, as physicians, we are trained to look at patients and their stories and ascertain whether or not they appear to be within the normal realm of understanding. When I look at Casey Morse's affidavit taken under oath, I believe what she says is true. She talks about a water leak, she talks about she had problems and --
Q. Was that equivalent to a history for a clinician?
A. It's equivalent to her history, yes. Not to a

clinician's history, but --
Q. But to a clinician is the patient's history an important part of the treatment process?
A. Yes.
Q. What you read from Casey Morse's affidavit, was that consistent with the other findings that you relied on to reach your opinion?
A. It was.
Q. And Exhibit D is the mycotoxin panel report. That's what's been admitted as Exhibit 3 this morning, is it not?
A. It is.
Q. And Exhibit E is your curriculum vitae?
A. It is.
Q. Is that up to date, accurate?
A. Yes.
Q. You said that there was -- there were some papers that were under -- at the point of being published; is that right?
A. That is correct.
Q. And is one of those in collaboration with or as co-authoring with a Dr. Brewer?
A. Dr. Joseph Brewer, yes.
Q. How did the two of you all begin to research this issue together?

A. I'm interested in looking at these toxins and why they kill transplant patients. And Dr. Brewer is mainstream medicine M.D. infectious disease doc head of transplant service at Kansas City Hospital. It's -- I think it's Baptist, but -- Presbyterian. I knew it was -- it wasn't Lutheran.

So -- and he is very interested in sending us transplant specimens. And when we started talking, we talked about his chronic illness patients and how they can't get better. They're diagnosed with Lyme disease, they're diagnosed with chronic fatigue and perhaps we can look at these patients. And so we looked at over 250 patient now and not only through him, but through others, to see if they do have toxins and 82 percent of them do have those toxins, so he's treating them.

Q. When you say "looked at" --

A. They send us urines. They sent RealTime Lab, urine.

Q. So that's the nature of that publication?

A. That is correct.

Q. All right. Exhibit G says testing requisition. Is that just a business form?

A. It's not a business form. That's the medical order that the doctor -- we cannot do a test without the medical physician signing our form. It's like writing a

prescription.

Q. Was that Dr. Kilburn?

A. That is Dr. Kilburn, yes.

Q. Then exhibits, articles, citations, those are published peer reviewed articles?

A. Yes.

Q. And there has been much additional literature since this, has there not?

A. Oh, yes, that's true.

And then you forgot Exhibit H which is my hearing and trial testimony.

Q. Okay. Has there been more hearing and trial testimony since that time?

A. I don't know.

Q. All right. Now, this issue about validation, you mentioned Dr. Saxon, did you not --

A. Yes.

Q. -- in that regard?

And have you been an expert witness in the case of Sugar Creek Interior versus Aquarium Design involving illness to Cindy Hunter?

A. Yes.

Q. And was there a deposition given by Dr. Saxon for the defense in that case?

A. Yes.

Q. And did he attack the validation of the testing that RealTime Labs does?

A. He did he that at this instance and he's done it at other instances in the past.

Q. Okay. were you called on in the context of the Sugar Creek case to give an affidavit responding to Dr. Saxon's complaint that your testing -- or the testing of RealTime Labs was not validated?

A. I was.

Q. I want to hand you -- in the process of that, did you gather together certain documents that verified the validation that you've previously related earlier in your testimony today?

A. I did, yes.

Q. I want to hand you some documents. First I'll hand you this (indicating), and ask if you can identify that as an affidavit you gave in the Sugar Creek case.

MS. ERSOFF: Counsel, do I have a copy of that?

MR. PARRISH: You may. I thought it was in this stack, but you certainly can have a copy.

MS. ERSOFF: No, I don't have this. Is there else you're going to be questioning Dr. Hooper on that I don't have a copy of?

MR. PARRISH: You just made a copy of everything in this and so that's where I'm going to. I thought I

would find that in there.

MS. ERSOFF: It's not in there. Is there anything else that I should copy before we go forward? Because I want to make sure that I'm able look at anything you're questioning the witness on.

MR. PARRISH: Let's go off the record so I can answer counsel's questions.

THE VIDEOGRAPHER: Off the record. The time is 12:26.

(A recess was taken from 12:26 p.m. to 12:35 p.m.)

THE VIDEOGRAPHER: We're back on the record. The time is 12:35.

BY MR. PARRISH:

Q. Dr. Hooper, I handed you a document and ask if you can identify that, please.

A. Yes. The document you just handed me is an affidavit that I prepared on the Sugar Creek Interiors versus Aquarium Design Group.

Q What is the date of that affidavit?

A. 28 March, 2012.

Q. And the title of that affidavit is?

A. Affidavit of Dennis Hooper on validation.

Q. It's on validation.

Is that -- what was the -- what does that affidavit do as far as what you're making oath to today?

MS. ERSOFF: Objection. Document speaks for itself.
THE WITNESS: The reason that I wrote this is because this is a document against Dr. Kelman who testified about validations in his incorrect assumptions and conclusions and I gave evidence to show why he was wrong, in my opinion and in the literature opinion.
BY MR. PARRISH:
Q. And that's -- does that also make reference to testimony about Dr. Saxon?
MS. ERSOFF: Objection. Leading. The document speaks for itself.
THE WITNESS: This is -- yes. There are two transcript that I referred to. Dr. Kelman's dated October 18, 2011 and Dr. Saxon dated October 19, 2011.
MR. PARRISH: I'll ask that that be made Exhibit 5.
(Deposition Exhibit Number 5 was marked for identification, a copy is attached hereto.)
BY MR. PARRISH:
Q. Did you have in support of the oath that you made in that affidavit, certain documents that you submitted?
A. That I supplied you as well, yes.
Q. And I'll hand you first what is a transcript dated April 22, 2010 in the case of Ricardo Rivera versus Aimco Pathfinder Village Apartments,

Superior Court in the State of California, County of Alameda.
Did you testify in a 402 hearing in that case?
A. I did.
Q. And I'll ask you if you can identify that as a transcript of that 402 hearing where you gave testimony.
A. Yes, it is.
Q. And the testimony that's reported in that transcript, is it under oath?
A. Oh, yes.
Q. And were you examined and cross-examined?
A. Yes, yes. Painfully so.
Q. Was the -- did the judge participate in the examination?
A. Painfully so.
Q. All right. And was one of the questions that would put in that examining process the validation of the RealTime Lab's testing?
A. Yes, it was.
MS. ERSOFF: Counsel, before you go any further, did you identify this as a transcript of the 402 hearing? Am I looking at the wrong document?
MR. PARRISH: Yes.
MS. ERSOFF: Can you show me which one you're looking at?

MR. PARRISH: (Indicating.)
MS. ERSOFF: Okay. Thank you. I was looking at the deposition.
MR. PARRISH: Okay. And I'll ask that be made Exhibit 6.
(Deposition Exhibit Number 6 was marked for identification, a copy is attached hereto.)
BY MR. PARRISH:
Q. The transcript speaks for itself, does it not?
A. It does.
Q. The end result that the judge ruled that there was nothing that excluded your testimony because of invalidation of the tests used by RealTime?
A. That is correct.
MS. ERSOFF: Lacks foundation, hearsay.
BY MR. PARRISH:
Q. Okay. I'll hand you another document and ask if you can identify that. This is a document that's entitled "Measurement of mycotoxins in patients with chronic rhinosinusitis."
Did you submit that up support of your testimony through the affidavit that your tests were validated?
A. I did. This paper relied on our data from RealTime Lab.

Q. Okay. Would you say -- identify it as far as the journal and when it was published.
A. It was a -- in the American Academy of Otolaryngology, head and neck surgery, of 2011 and it's called measurement of mycotoxin patients with chronic rhinosinusitis, R-H-I-N-O-S-I-N-U-S-I-T-I-S, and it's by Leiberman, et al.
Q. What is the significance of that about validation of the testing that RealTime does?
MS. ERSOFF: Speculation.
THE WITNESS: A laboratory such as RealTime Lab use the findings in patients that physicians use to further -- not only do we use our own validations, but we use findings inpatient to validate our tests further.
BY MR. PARRISH:
Q. And that article reports that kind of information?
A. Correct.
MR. PARRISH: Okay, now let's make that Exhibit 7.
(Deposition Exhibit Number 7 was marked for identification, a copy is attached hereto.)
BY MR. PARRISH:
Q. Now, you have referred and used the term main line in reference to physicians a few times in your testimony.

A. Mainstream.
Q. Mainstream.
A. Main line is (indicating).
Q. What do you mean when you use term main line --
A. Okay.
Q. -- in that context?
A. In the past, we as M.D.'s have thought anybody who's doing everything that the medical schools teach and only think in that box are mainstream physicians. And anybody who is outside that is a weirdo, including I used to think that, until I started thinking outside the box a little bit.

Then I found out that the only way that you can move ahead in medicine or in anything else is start thinking outside the box. So, now, in medicine, there are the mainstream docs and the integrate activity medicine docs.

The two think differently. They do not think wrongly, either one of them don't think in a wrong fashion. There are some extremists, just like in politics. But there are mainstream integrated medicine and there are mainstream medicine -- mainstream medicine people.

And that's what I mean. If we're taught in mainstream to think inside the box and if we find a

patient who doesn't have -- we can't fit them into what's wrong with them, well, it's in their head or they're just -- we don't know what's wrong.
Q. Adverse effects on the human body attributable to mold and fungi and mycotoxins, is that an in the box or outside the box, or either?
A. It's both. Mold is documented to cause problems in immuno compromised patients.
Q. In the box?
A. In the box.
Q. Okay.
A. They're in the infectious disease box. When you have an H.I.V. case or when you have a transplant case or you're being treated with chemotherapy, you become so immuno compromised, you have to put yourself in a room where everybody who comes in to see wears a mask, because anything they have, normal flora, strep, staph, even if there's a fungus in the hospital vents, they can get sick. The docs know that. The integrated medicine docs over here in this box believe that you can get molds from a lot of different things.

Now, infectious disease people are starting to think that, gee, even though we can't find these molds, there's other reasons why they're dying and why they're getting sick from the toxins.

Q. So is there a merging?
A. Well, I would like to think that and I would like to think that RealTime Lab is helping them think in that -- in those regards.
Q. From the experience of RealTime Labs today versus last year versus the year before, have you seen changes that are indicative to you that there's a merging in the process?
A. I believe there is a -- I don't want to call it merging, but there is a movement of commonality between the two boxes in that they're starting to believe in the infectious disease, pulmonology area, internal medicine and even in the neurology area, that -- and in psychiatry, that these toxins cause problems. And you see this in their literature.
Q. Well, do you speak to medical society groups and medical meetings around the country?
A. I do.
Q. How frequently?
A. In the past we only did maybe two or three -- I only did two or three a year. We have taken it upon ourselves and I've been directed by the board to do at least seven a year now.
Q. And as far as invitations are concerned, you are invited?

A. Yes.
Q. And do you have more invitations than you can fulfill?
A. Yes. I'm tired.
Q. And are you speaking to mainstream physicians?
A. We are. And we're speaking to -- we're speaking to pulmonologists, internists, infectious disease people, transplant people. We're also speaking to integrated medicine people.
Q. And when you attend these meetings and you make your presentation, present your work, do things come out of them every time?
A. Yes. We have more patients who the docs to send us.
Q. Did your interaction with Dr. Brewer come out of one of these meetings?
A. It may have. I think the major reason is because he went to a meeting that RealTime Labs data was discussed, not -- I wasn't at that meeting.
Q. Approximately how many physicians from where are now referring specimens to RealTime Labs for E.L.I.S.A. testing?
A. As of the 1st of October, we had 520 physicians who refer. Now, those are mainstream, there are integrated medicine people and there are licensed

caregivers in different states, natural paths, et cetera. The majority of our people are M.D.'s and D.O.'s

Q. "Our people" you mean persons who --

A. That are clients. Docs who send us specimens.

Q. And who pays for the E.L.I.S.A. testing that RealTime Labs does?

A. We are a Medicare licensed laboratory. We do not accept assignment from Medicare. We are -- we do not accept assignment from any insurance companies like Blue Cross, Blue Shield. However, we do billing for the patient and we have the assignment sent directly to the patient. And the insurance companies are paying for this. Medicare is not yet because it is not F.D.A. approved. However, recently we got an instruction from Medicare saying that we should resubmit to Medicare for approval because they are doing non-F.D.A. approved testing they're paying for.

Q. Meaning they're paying for it?

A. Surprisingly.

MS. ERSOFF: Move to strike as nonresponsive.

BY MR. PARRISH:

Q. All right. Now, you're saying 500 and some odd physicians. Now, how does that compare with the number of physicians this time last year?

A. It was -- I think we had about 300. That's speculation, but I think we had about 300 last year.

Q. Have you seen it change?

A. Yes. Oh, definitely.

Q. And is the change in progress right now, meaning continuing to pick up new doctors?

A. Uh-huh.

Q. Now, back to where I was. I'll hand you a document that says Clinical Laboratory Standard Institute, Volume 24, Number 34.

And did you submit that in support of your affidavit relative to validation of the RealTime Lab's testing?

A. Yes. This is only a few pages of this EP117 -- or EP17-A which is the guidelines to laboratories on how to determine limit of detection in validations.

Q. Does that -- has RealTime Laboratories withstood that checklist or that those criteria that set out there by C.L.I.A., not just in those few pages, but all of them?

A. Right. The document is very thick, and yes, we've withstood those investigations. And we have also withstood this because we cite this in our peer review paper on mycotoxins.

Q. I'll hand you another document that says --

well, let's mark that as the exhibit, and that's eight.

(Deposition Exhibit Number 8 was marked for identification, a copy is attached hereto.)

BY MR. PARRISH:

Q. I'll hand you another document. It says 2010 Lab Accreditation Program Audio Conference.

And is this a document you can identify as you having used to support your validation affidavit?

A. That is correct, yes

MR. PARRISH: Okay. Let's mark that as Exhibit 9.

(Deposition Exhibit Number 9 was marked for identification, a copy is attached hereto.)

BY MR. PARRISH:

Q. What's the significance of that?

A. This is a PowerPoint presentation that is on the American College of Pathology web site that talks about how laboratory developed tests should be validated.

And this physician, Dr. Castellani, describes in great detail how validation should be done. He cites every piece of literature there is on what the checklists are for C.A.P., what F.D.A. wants, and what the terminology means, everything that has to do with validation.

Q. And has RealTime Labs met the criteria that are

spoken of in that Exhibit 9?

A. Yes. We meet the criteria that Dr. Castellani talks about, keeping in mind he is summarizing all the validation procedures that the C.A.P. and C.L.I.A. use. So he did not -- he's not the authoritative person on this, but he is summarizing individual for College of American pathology.

Q. I'll hand you another document that's says International Journal of Molecular Science, 2009, mycotoxin detection in human samples and other -- rest of the title.

I'll ask you if you submitted that in support of your affidavit regarding validation of RealTime Labs?

A. Yes.

MR. PARRISH: And let's mark this as Exhibit 10.

(Deposition Exhibit Number 10 was marked for identification, a copy is attached hereto.)

BY MR. PARRISH:

Q. What is the significance of that document relative to validation of RealTime Laboratories?

A. This is the paper that -- peer reviewed paper that we submitted and, that is, myself, Dr. Bolton, Dr. Guilford and David Straus from Texas Tech on mycotoxin detection in human samples, and this was talking about our validations.

Q. And I'll hand you another document, the top line of which says, 12 international applications published under the patent cooperative treaty P.C.T.

And I'll ask you, can identify that as something that you be submitted in support of your validation affidavit?

A. Yes.

Q. What's the significance of that relative to validation of RealTime Lab?

MR. PARRISH: And that will be marked as Exhibit 11.

(Deposition Exhibit Number 11 was marked for identification, a copy is attached hereto.)

THE WITNESS: This is a patent that was submitted in February of '08 after RealTime Lab has submitted theirs and this has to do with treatment of motor neuron disease in inflammatory diseases. And their patent was to talk about trichothecenes in Lou Gehrig's disease, or A.L.S.

And this comes out of inventors at Vanderbilt University where they originally sent RealTime Lab's specimens from their A.L.S. patients. We found trichothecenes. And unbeknownst to them that we had filed our patent prior to then, so they have not had theirs approved, nor have we had our approved. But once they get theirs approved, we will be talking to them.

BY MR. PARRISH:

Q. But you're talking about patent applications?

A. Correct.

Q. RealTime Labs -- you as the inventor had submitted --

A. Through M.S.C.I., yes.

Q. -- to your -- your patent application?

A. (Witness nods head.)

Q. "Yes"?

A. Yes.

Q. And then after that RealTime Labs had done lab work on A.L.S. patients submitted from the Vanderbilt researcher?

A. Right.

MS. ERSOFF: Leading.

BY MR. PARRISH:

Q. And then the Vanderbilt researchers, apparently unaware of your patent pending, submitted an application for a patent for what you already had asked for a patent?

MS. ERSOFF: Leading.

THE WITNESS: Two years after we did.

BY MR. PARRISH:

Q. But the research that you had done, the methodologies that you used at RealTime Laboratories are the subject matter of that patent application which is Exhibit 11?

MS. ERSOFF: Leading.

THE WITNESS: We believe so.

BY MR. PARRISH:

Q. Okay. I'll hand you another document that's International Journal of Molecular Science, 2011, assessment of aspergillus fumigatus and other parts of the title.

Is that a document that you can identify that you submitted in support of your validation affidavit?

A. Yes.

MR. PARRISH: I'm going to mark that as Exhibit 12.

(Deposition Exhibit Number 12 was marked for identification, a copy is attached hereto.)

BY MR. PARRISH:

Q. What is significance of that document relative to RealTime Lab's validation of its testing?

A. The D.N.A. probes we have for aspergillus fumigatus we believe are sensitive and specific enough to find very small amounts of aspergillus in patients who have transplant. And the only way we could prove that is to work with National Institute of Health in their animal model, so we approached -- well, N.I.H. approached us in a Toronto meeting three years ago and told us we should work with the animal model.

The animal model is centered in San Antonio at the University of Texas Health Center and Dr. Thomas Patterson who's an infectious disease, slash, N.I.H. individual has the animal model in guinea pigs and he infected the animals with aspergillus. We detected them in very small amounts and so we published that.

And now that's what we're going to F.D.A. with to say we want to detect very, very small amounts in transplant patients.

Q. What's the significance of very, very small amounts? You're making -- is that a good thing or a bad thing?

A. When a patient has a transplant, 33 percent of solid organ transplants, after 13 to 15 months -- this is out of World Health Organization data -- die from an infection. And of those 33 percent, about 24 to 26 percent of them die from fungal inspections.

So we believe at the RealTime Lab level, that these probes, if you do the work -- if you probe the patient before he has transplant and you don't have any D.N.A. to aspergillus, then as he progresses and he -- after he has the transplant, he does fine for the first six months unless he's a kid. If he's a kid, less than eight years old, he gets sick within the first three to

four months. And if those kids -- we can detect those D.N.A. components quickly, we can ask the docs to give them anti-fungals in a much lower level, lower dose that is not detrimental to their tissues. And so we believe that that can help.

And F.D.A. is very interested in this.

Q. Are you one of the authors of that paper?

A. I'm the first author, yes.

Q. And that was published in a peer reviewed journal?

A. Peer reviewed journal in 2011.

Q. I'll hand you the next document. At the top is says 42 USC 263-A and I'll ask if that's a document that you submitted in support of your validation --

A. It is.

Q. -- affidavit?

MR. PARRISH: And let's mark that was Exhibit 13.

(Deposition Exhibit Number 13 was marked for identification, a copy is attached hereto.)

BY MR. PARRISH:

Q. And if you look at Exhibit 13, and what is -- what does that have to do with validation of RealTime Lab's testing?

A. This is from the public health and welfare chapter title 42 and it talks about how clinical

laboratories are licensed and giving certifications through C.L.I.A.

Q. That's the statutory basis for C.L.I.A.'s existence; is that correct?

A. Title 42.

MS. ERSOFF: Leading.

THE WITNESS: It's the statutory title for C.L.I.A. to exist, yes.

BY MR. PARRISH:

Q. Okay. I'll hand you another document. It says C.A.P., every patient deserves to gold standard. I'll ask if that is a document that you submitted in support of the validation of RealTime Lab's testing?

A. It is.

MR. PARRISH: Let's mark that as Exhibit 14.

(Deposition Exhibit Number 14 was marked for identification, a copy is attached hereto.)

BY MR. PARRISH:

Q. And what does that have to do with RealTime Lab's testing validation?

A. All of College of American Pathology -- all of the laboratories must review their procedures through what they call checklists and this is an all common checklist that talks about quality management and quality control and test method validation and what are

the validation questions that a C.A.P. inspector will ask to review that we must have available at any given moment if an inspector walks in.

Q. And is C.A.P. a government agency?

A. Well, it's -- originally, no. It was set up by pathologists to help the pathologists be not overrun by the government. But ultimately in the '80s when C.L.I.A. was set up, C.L.I.A., then, was set up through Medicare. C.L.I.A., then, was in every state, C.A.P. decided, hum, we better work with C.L.I.A. So now C.A.P. works hand in hand with C.L.I.A.

So as a laboratory, you can be C.L.I.A. certified only, or you can be C.A.P., C.L.I.A. And we are C.A.P, C.L.I.A. We're both certifications.

Q. Does C.A.P. have more rigorous standards or is that a higher level of certification, or is there no way to compare?

A. Depends on who you talk with. They're the same standards. I think they're all rough.

Q. All right. I'll hand you the next document and this has handwritten at the top, Harvard, Yale, U.S. Navy, Portsmouth and it says C.B.R.N.E.-T2 mycotoxins. And there's highlighting and underlining on this, but that was obviously not a part of the original document. Can you identify that document.

A. I can. This is a --

MR. PARRISH: Let's mark that as Exhibit 15.

(Deposition Exhibit Number 15 was marked for identification, a copy is attached hereto.)

THE WITNESS: This is a document that's on the web site that we get -- the we, as physicians get continuing medical education credit for by reading and then taking a test for it. It's a Med Scape is what -- it's a Med Scape reference that physicians can look at and keep to be updated.

And this is concerning trichothecene mycotoxins and how the people at Portsmouth Naval Hospital found these toxins in some patients in the emergency room. The individual, Dr. Park is a pulmonologist in Chicago now and he believes in these toxins as well.

BY MR. PARRISH:

Q. All right. And is this any testing or methodology used there that's the same as --

A. They talk --

MS. ERSOFF: Lacks foundation, calls for speculation.

THE WITNESS: Under -- on Page 6 of this, they talk about laboratory studies they talk about E.L.I.S.A. testing.

///

BY MR. PARRISH:
Q. Do you have anything to do with that testing at all?
A. No.
MS. ERSOFF: Move to strike as responsive the previous answer to the previous question.
BY MR. PARRISH:
Q. On the front page of that do you see handwriting?
A. Harvard, Yale, U.S. Navy, Portsmouth.
Q. Did you write that?
A. I did.
Q. That's your handwriting, you gave that to me?
A. I did.
Q. I'll hand you another document, a final one in this series. I'll ask you if you can -- nope, next to the last.
What is that one?
A. Okay. What is this? Oh, this is another -- oh this is a trial testimony in the Superior Court of California in a case called Rankin versus Kerston Trust that I was a witness on the stand in 2008 concerning a mycotoxin.
Q. So that's your trial testimony?
A. It is.

Q. And was there --
MR. PARRISH: Let's mark that as Exhibit 16.
(Deposition Exhibit Number 16 was marked for identification, a copy is attached hereto.)
BY MR. PARRISH:
Q. And, again, in that trial were you challenged as to the validation of the tests?
A. I was.
Q. And were you allowed to testify?
A. I was.
Q. Okay. And the testimony speaks for itself?
A. It does.
Q And the judge's ruling is announced from the bench there?
A. It is.
Q. I'll hand you now the final and this is Volume 24, Number 25, it's a C.L.I.A. document. It says evaluation of precision performance and it has some physician's names there and I'll ask if you can identify that.
MR. PARRISH: We'll mark it as Exhibit 17.
(Deposition Exhibit Number 17 was marked for identification, a copy is attached hereto.)
THE WITNESS: They're coming fast.
This, Mr. --

BY MR. PARRISH:
Q. Parrish.
A. -- Parrish
Q. I don't want to lead you.
A. Yeah. Don't lead me.
This is a document called EP5-A2, which I use as well as other pathologists and other people use in precision performance of validations. And this is put out by the Clinical Laboratory Standard Institute and that's only the first few pages because there's multiple, multiple pages of this, but this is what we use and we cited this in our paper that we published on mycotoxins and we cite that in our validations.
Q. And so you conform to the standards that are published in that publication as far as the necessity for your work to be validated --
A. That's correct.
Q. -- with the RealTime Lab's testing; is that correct?
A. That is correct.
Q. All right. And as far as literature that you have relied on to reach the conclusions and to state the opinions that you stated concerning Casey Morse, you attached some of that literature -- or citations to some of that literature to your affidavit; is that correct?

A. That is correct.
Q. And what is the state of the literature on the subject of mycotoxins mold right now? And I'm talking about the scientific literature.
A. In general?
Q. Yes.
A. In general, it's fluid in that it's moving in a direction of showing not only in the peer reviewed literature, but in the courts, that patients are exposed to mold and specifically mycotoxins and that these do cause issues with patients.
Q. Health issues?
A. Health issues in different areas of the body. There have been decisions made in New York state and I cite the Rosatti (phonetic) case recently of clinicians citing their findings in reviewing patients who have mycotoxins and molds.
Q. Let me ask you another question. As far as the quantity of literature on this subject, since 2006, relative to the amount that was published from 2000 to 2006 and the amount that has been published since 2006 to 2012, has it increased, decreased? Is it moving one direction? What's --
A. Well, it's definitely increased in the area of demonstrating that these do -- there is causation.

There's issues with the mycotoxins and mold causing problems. How much? There's so much, that we can't keep up with it.

Q. Is there --

A. I can't estimate how much, though.

Q. Is Pub Med a place that peer reviewed literature is able to be accessed?

A. Definitely.

Q. So if one goes on to Pub Med and you put in mycotoxins, is the idea the computer will give you all the literature that's been produced in a certain period of time?

A. The issue with that is if you put mycotoxins, it will come out mycotoxins in food, mycotoxins in animals, mycotoxin in everything. So if you put mycotoxins in human disease, then it limits it and there's still a lot.

Q. But that's how one would monitor quantity and quality and look at the review?

A. That's how I monitor it.

Q. And what is your practice as far as staying up with the peer reviewed literature on this subject?

A. There's alerts on Pub Med or there's alerts in Medscape and there's is alerts on all these sites that you can either pay for or you can just hope that they

alert you. But then also, we -- as a group we participate in different scientific groups that we tell them the site, go find the literature on this. And we get those papers.

Q. Do you read papers regularly?

A. Yes.

Q. Do you feel that you're current on medical literature on this subject?

MS. ERSOFF: Overbroad, vague and ambiguous.

THE WITNESS: I hope to be. You never know what's coming out so it's very hard, but you try and keep up, but there's so much.

BY MR. PARRISH:

Q. When you say alerts, do you mean your computer is set so if there's literature on a particular subject, it flashes on your computer and you know to go get it?

A. That's right. And then I have Ph.D. friends who -- and the universities who -- did you see this paper? Did you see this? And usually I've seen them, but --

Q. All right. What is scientific literature and what is peer reviewed scientific literature?

A. Somewhat the same, but if I want to find something on mycotoxins and I really want to be able to sound like I'm an authority, I can go right to the

Internet and type in mycotoxins under Google and I can read and read and read all these people who tout that they know a lot about mycotoxins, but they're not peer reviewed.

So they're giving scientific literature, some of them are M.D.'s who cite this. But if I want to find peer reviewed literature that has gone through the scrutiny any of other individuals looking at this, other M.D.'s, other Ph.D.'s who have looked at this to tell me yes, we believe that this is founded in good science, then I go to Pub Med and look for peer reviewed literature.

Q. And you bring to reading that literature all of the experience and education and training that you related here today?

A. Yes.

Q. There's a sense in which you are much more qualified to read it and assess it than I am?

MS. ERSOFF: Objection, leading.

THE WITNESS: I don't want to be insulting.

BY MR. PARRISH:

Q. Never mind.

But --

A. That's why I underline things for you.

Q. But it takes a certain amount of skill and

knowledge to be able to appreciate what's written in scientific literature?

MS. ERSOFF: Leading.

THE WITNESS: Yes.

BY MR. PARRISH:

Q. And it's not a Reader's Digest article that's produced for general readers?

MS. ERSOFF: Leading.

THE WITNESS: No.

BY MR. PARRISH:

Q. Okay. And --

MS. ERSOFF: Can we go off the record for a second?

MR. PARRISH: We may.

THE VIDEOGRAPHER: Off the record. The time is 1:12.

(Lunch recess was taken from 1:12 p.m. to 1:56 p.m.)

THE VIDEOGRAPHER: We're back on the record. The time is 1:56.

MR. PARRISH: I have no further questions. I'll pass the witness.

EXAMINATION

BY MS. ERSOFF:

Q. Good afternoon, Dr. Hooper.

A. Hello.

Q. I represent the defendants in this case.

Mr. Parrish didn't go over the admonitions with you. I'm sure that you quite familiar with the deposition process; correct?

A. I believe so.

Q. Okay. The only thing I ask is that if you don't understand a question, let me know and I'll rephrase it. Because if you answer my questions, I'll assume you that understood what I was asking of you.

Fair enough?

A. Fair.

Q. Okay. How many times have you been deposed?

A. I would say at least 25.

Q. And of those approximately 25 prior depositions, how many were in the context of an expert witness?

A. I would say all of them.

Q. Now, we already touched on your professional background. With regard to your residency, that was at the Naval Hospital in San Diego; correct?

A. Yes.

Q. How long was your residency?

A. From 1984 to 1988.

Q. And did you do a fellowship?

A. No.

Q. Do you have any board certifications that are recognized by the American Board of Medical Specialties?

A. I did until this year.

Q. Okay. And that's the one that you chose not to renew; correct?

A. That is correct.

Q. And do you have any other board certifications?

A. No.

Q. Okay. And you're not board certified in internal medicine; correct?

A. No.

Q. Have you ever practiced clinical medicine?

A. In our internship in the Navy we practiced -- we do -- we see patients in that one year.

Q. Aside from the medical -- that aspect of your medical training, have you ever practiced clinical medicine?

A. No.

Q. So is it fair to say that over the past 30 years, you've never seen patients, evaluated patients, performed physical examinations, diagnosed or treated them?

A. No, that is not fair to say.

Q. What part of that is not fair?

A. In pathology we do bone marrows, so we see

patients and we interview them beforehand. We also -- if we're going to do fine elapses (phonetic), we discuss things with patients. And other than that, we don't see patients in general.

Q. Doctor, do you recall having your deposition taken in the Bailey versus Equity Residential Management case on October 4, 2011?

A. Bailey, no, I don't.

Q. Okay. This was a deposition that was taken of you in Dallas, Texas, approximately a year ago and you were asked the exact same question.

And the question was: So for over the last 30 years, you have not been involved in seeing patients, evaluating them, doing physical examinations on them, diagnosing them and treating them?

And your answer was: That's correct.

Is there any reason that your answer to me was different here today than the answer that you gave under penalty of perjury one year ago?

A. The reason is because of the fact that the pathologists do -- at that time I probably didn't think about talking with patients about bone marrows and finding elapses (phonetic), but that's the only reason.

Q. What states do you have a current active license to practice medicine in?

A. In California and Texas.

Q. Do you have any specialized education, training and experience in allergy and immunology?

A. Would you clarify what you mean by "immunology."

Q. What's your definition of immunology?

A. Immunology is the study of lymphocytes, the reaction to cells in patients who have allergens or antigens touching those cells, and then immunology is the study of those. So we -- in the laboratory we have an immunology lab that we do immunology tests.

Q. And is it fair to say that board certification in allergy and immunology go hand in hand?

A. If you're going to see patients. If you're going to work in pathology, you have -- you're covering immunology in your pathology residency and training.

Q. Did you do a residency in allergy and immunology?

A. No.

Q. Are you board certified in allergy and immunology?

A. No.

Q. Are you board eligible in allergy and immunology?

A. No.
Q. Aside from the generalized training you received in medical school in allergy and immunology, do you have any specialized education, training and experience in allergy and immunology?
A. Other than the fact of evaluating cells for the immunology patients, no.
Q. Do you have any specialized education, training or experience in pulmonology?
A. No.
Q. Are you board certified in pulmonology?
A. No.
Q. Are you board eligible in pulmonology?
A. No.
Q. Do you have any specialized education, training or experience in occupational medicine?
A. No.
Q. Are you board certified in occupational medicine?
A. No.
Q. Are you board eligible in occupational medicine?
A. No.
Q. Do you have any specialized education, training and experience in infectious disease?

A. No.
Q. Are you board certified in infectious disease?
A. No.
Q. Are you board eligible in infectious disease?
A. No.
Q. Do you have specialized education, training or experience in toxicology?
A. Other than what a pathologist learns in running the toxicology lab, no.
Q. Did you do a residency in toxicology?
A. No.
Q. Are you board certified in toxicology?
A. No.
Q. Are you board eligible in toxicology?
A. No.
Q. Do you have any specialized education, training or experience in mycology?
A. Yes.
Q. And what would that be?
A. I'm a Ph.D. in microbiology that covers the areas of fungus and mold.
Q. Do you consider yourself to be a microbiologist?
A. Yes.
Q. Do you consider yourself to be a mycologist?

A. Yes.
Q. Have you ever been designated as an expert specifically in the field of mycology?
A. No.
Q. Do you have any specialized education, training or experience in epidemiology?
A. No.
Q. Do you have any specialized education, training or experience in neurology?
A. No.
Q. Are you board certified in neurology?
A. No.
Q. Are you board eligible in neurology?
A. No.
Q. Do you have any specialized education, training or experience in otolaryngology?
A. No.
Q. And you're not board certified in otolaryngology?
A. No. Correct.
Q. Not board eligible?
A. I'm not board eligible.
Q. Do you have any specialized education, training or experience in how mold assessments are performed?
A. Would you clarify that question further.

Q. You're not a trained certified industrial hygienist, are you?
A. No.
Q. You are -- do you have any specialized education, training and experience in the field of industrial hygiene?
A. No.
Q. Have you ever personally conducted any tests on indoor sampling for the presence of toxins or mold?
A. Yes.
Q. Can you describe for me your experience in conducting tests on indoor sampling for the presence of toxins or mold.
A. There are many ways to do it that I have evaluated. I've used a Redcon 3500 which is a vacuum that has little water cupules in it and it's approved by the E.P.A. to look at so many liters of air that filters through this machine, and then we get 9 C.C.'s of water and we can culture it or we can do mycotoxins on it or we can do evaluations of special stains.
The other thing is a spore trap that I have -- I learned to use because the C.I.H.'s use which are those Certified Industrial Hygienists, and then we have done tape lifts that I have looked at with special stains and with just doing the tape lifts and looking at

them under the microscope and cultures.

Q. On how many occasions have you performed air sampling in an indoor environment?

A. Oh, I don't know. More than 10, less than 20.

Q. And in what context did you perform air sampling?

A. In looking at -- I went to a government building for one and we sampled approximately 20 rooms in a building in Sante Fe. And then we've looked at homes, we've looked at buildings and we've done those exact tests that I mentioned. And then we also have since that time evaluated the filters on houses to look at mycotoxins on the air exchange filters.

Q. When you say "we've looked at," do you mean you specifically performed the environmental assessment of the premises that you're describing, or are you saying we, other people did it?

A. I go with the C.I.H.'s and look at them. And I can -- on occasion I have done them myself.

Q. On how many occasions have you personally by yourself performed indoor air quality assessments of an indoor environment?

A. 10, less than 20.

Q. Were you hired as an indoor air quality assessor to perform this analysis?

A. No.

Q. Have you ever been hired as an indoor air quality assessor to perform that type of analysis?

A. No, not every state has them.

MS. ERSOFF: Move to strike as nonresponsive everything starting with "not every state."

BY MS. ERSOFF:

Q. What formal education and training -- strike that.

How many cases have you been hired as an expert in that relate that mold bodily injury claims?

A. I don't have an exact number. I've listed them on my -- on the sheet that I gave in my affidavit.

Q. Okay. I'm entitled to your best estimate, so can you provide me with your best estimate as to the number of mold bodily injury cases in which you've been retained as an expert.

A. In what time frame?

Q. Over the course of your career.

A. I'd say 20.

Q. And of those approximate 20 cases that you've been hired as an expert, how many of those cases were you hired to evaluate the plaintiff versus hired on behalf of the defense?

A. Two.

Q. So you have only been hired by the plaintiff on two cases?

A. No. I'm sorry. The defendant two, the plaintiff the rest.

Q. When was the last time you were hired on behalf of a defendant in a mold bodily injury case?

A. It was in the -- I don't recall exactly, but I think it was in the early 2000s.

Q. Do you recall either of the names of the cases in which you were hired on behalf of the defendants?

A. No.

Q. Do you recall either of the names of the lawyers who hired you on behalf of defendants in those two cases?

A. No.

Q. Do you recall the jurisdictions in which those cases were venued?

A. One of them was in Orange County here in California. That's the only thing I can remember.

Q. What percentage of your medical practice involves medical/legal claims?

A. Maybe 5 percent.

Q. And of that 5 percent, what percentage of those claims relate to claims of toxic exposure?

A. All of them.

Q. Of that 5 percent, what percentage of those claims relate to mold exposure?

A. All of them.

Q. How many times have you testified at trial?

A. Two. Twice.

Q. And can you tell me approximately the date of each time you testified at trial?

A. You have the one and I can't remember it, but they're -- the first one was in 1998 in San Bernardino.

Q. And do you recall the name of the case?

A. No, I do not.

Q. Do you recall the name of the lawyer who hired you?

A. No.

Q. Do you know the outcome of that case?

A. No.

Q. And what was the name of the second case that you said I have the one?

A. If you show me my deposition -- or my affidavit, maybe I can -- it's the one in Marin County. I think it's in Marin County.

Q. And who hired you in that case?

A. It's a female attorney and she had a partner, but it's -- it's in there. I'm sorry. I can't remember.

Q. Approximately when did you testify at trial in that case?
A. I think it was 2006. These are all guesses.
Q. Do you know -- you mean your best estimate?
A. Okay. My best estimate.
Q. Okay. You understand the difference between a guess and an estimate; correct?
A. No. You'd have to explain that to me.
Q. Okay. Because I am entitled to your best estimate. I do not ever want you to guess. So if you have an independent basis upon which to give me an answer, that would be an estimate.
For example, if I asked you to estimate the length of this table, you may not be good at giving me approximations, but you have something to base it on since you're sitting here. If I asked you to estimate the length of my dining room table, that would be a guess, because you have no -- you've never seen it, you have no idea if it's round, square or rectangle.
A. Okay.
Q. That's the difference.
A. Okay. Thank you.
Q. The case in 2006, do you know the outcome of that trial?
A. Yes. The jury decided in the favor of the

plaintiff.
Q. Have you ever worked with Mr. Parrish before?
A. Before this case?
Q. Before this case.
A. Yes.
Q. On how many occasions?
A. At least one other one that I can remember. Cindy Hunter case.
Q. Have you ever worked with Casey Morse's father before?
A. No. There have been others that I just remembered. I don't remember the names of the patients or the cases, but there have been others I've worked with Mr. Parrish.
Q. Approximately how many others?
A. I think -- I believe two more.
Q. And are all of those cases resolved? Are they still ongoing?
A. I don't know.
Q. How much do you charge per hour for deposition testimony?
A. $450 an hour.
Q. How much do you charge per hour for trial testimony?
A. $450 an hour.

Q. Have you been paid to date for all your work on this case?
A. I have.
Q. And who paid you?
A. Mr. Morse.
Q. How much have you charged to date in this case?
A. I charged -- to write the affidavit, it was 2250, $2,500, and for the retainer was 5,000 and then for this deposition in preparation, 3,600.
Q. Can you tell me approximately how many hours you've spent on this case to date?
A. I believe about 18 to 20.
Q. And can you tell me approximately how much time you expect to spend on this case from now until trial?
A. You're asking me to guess.
Q. You don't have an estimate?
A. Because I have no idea what you and Mr. Parrish are going to do.
Q Okay. Have you ever been qualified by the court as an expert?
A. No.
Q. Has your testimony ever been limited in any way by the court?
A. No.
Q. How many mycotoxin mold panel tests do you

estimate that you do per year?
A. Do you want -- in 2012 or 2011 or 2010?
Q. Okay. Let's start with 2012. 2012?
A. 2012 we've done approximately 4,000 panels this year up to November 1.
Q. And how about in 2011?
A. I don't know.
Q. What's your best estimate?
A. I can't. That's guessing. I can't estimate.
Q. You have no --
A. I don't have those papers in front of me to say and it would be a guess if you push me to do that.
MS. ERSOFF: What exhibit?
THE REPORTER: We're on 18.
MS. ERSOFF: I'm going to attach as Exhibit 18 to the deposition plaintiff's second amended designation of expert witness.
(Deposition Exhibit Number 18 was marked for identification, a copy is attached hereto.)
BY MS. ERSOFF:
Q. Can you please a look at that.
A. (Examining document.)
Q. Dr. Hooper, have you seen this before?
A. No.
Q. Okay.

A. Oh, I don't -- no, I have not seen this.
Q. Can you turn to Page 6.
A. (Witness complies.)
Q. Do you see where it says your name Dennis Hooper?
A. Yes.
Q. Okay. Can you turn to Page 7.
A. (Witness complies.)
Q. Under Paragraph B it says, "Dr. Hooper is the physician engaged as the pathologist to examine urine from plaintiff's body by laboratory methods and discovered in the fluids what Dr. Hooper will testify to be mycotoxins. In addition, Dr. Hooper will state expert opinions concerning the source and effect of the identified mycotoxins on the present health of plaintiff, the medical prognosis for plaintiff's health, and opine that the sickness plaintiff now suffers is caused by toxic mold at Broadcast Center Apartments."
Do you see that?
A. I do.
Q. Is this an accurate description of the scope of the expert testimony that you intend on rendering at the trial in this case?
A. Yes.
Q. Let's break this down. The first sentence

says -- actually, the second sentence says, "Dr. Hooper will state expert opinions concerning the source and effect of identified mycotoxins on the present health of plaintiff."
And these are opinions that you intend on rendering; correct?
A. That is correct.
Q. The second part is that you intend on stating expert opinions concerning the medical prognosis for plaintiff's health.
Do you intend on providing expert opinion concerning Casey Morse's medical prognosis for her health?
A. Yes.
Q. Okay. And then it says, "And opine that the sickness plaintiff now suffers is caused by toxic mold at Broadcast Center Apartments."
Will you also be opining that the sickness that Casey Morse suffers was caused by toxic mold at Broadcast Center?
A. Yes.
Q. Okay.
A. Do you want this back (indicating)? I'll keep it over here (indicating).
MS. ERSOFF: Keep it right there for now.

I'm going to identify as Exhibit 19, the notice of taking of deposition of plaintiff's expert Dennis Hooper, M.D. and production of documents thereat. And I'll just briefly go over this.
(Deposition Exhibit Number 19 was marked for identification, a copy is attached hereto.)
BY MS. ERSOFF:
Q. And you -- have you seen a copy of this before?
A. Yes, I have.
Q. Okay. Can you turn to Page -- the second page which is Exhibit A.
Did you review the documents to be produced which is Exhibit A to the deposition notice?
A. I did.
Q. Have you brought with you all documents that you have in your possession, custody or control responsive to this document demand?
A. I brought the ones I can bring.
Q. Okay. With regard to Number 1, it asks for all documents that have been provided to you by plaintiff, plaintiff's representatives or plaintiff's attorneys.
Have you brought all documents responsive to this request?
A. Yes. Mr. Parrish had those in his exhibits.
Q. Correct.

And any documents that I've been given, I'm assuming they were either produced by you or Mr. Parrish on your behalf?
A. You're correct, yes.
Q. Number 2 asks for all documents that you reviewed, consulted or relied upon in forming an opinion concerning any issue in this action.
Did you bring all such documents here with you?
A. Yes. Or Mr. Parrish did, yes.
Q. Okay. And when I say you, I mean collectively you or Mr. Parrish.
A. Okay.
Q. Number 3 asked for all documents that evidence, reflect or refer to any opinions formed by you or any other witness or consultant concerning any issue in this action or the basis for any such opinion.
Did you bring those documents?
A. Yes, I did.
Q. Number 4, any documents prepared by you in connection with the performance of your duties as a consultant or expert in this action.
Did you bring those documents?
A. Yes, I did.
Q. Number 5 asks for documents regarding communications between you and any other person

regarding this action.

Did you bring those documents?

A. I didn't have any other than what he has.

Q. Number 6 relates to a contractor engagement letter and I believe one was already marked for the record; correct?

A. Correct.

Q. Number 7 asks for time and billing records. Did you bring those with you?

A. There's only one that I have so far, and that is for the invoice that -- for writing the affidavit.

MR. PARRISH: We're going to mark the invoice as Exhibit Number 20.

(Deposition Exhibit Number 20 was marked for identification, a copy is attached hereto.)

BY MS. ERSOFF:

Q. Now, you just referred to a binder. Can you tell me what's in that binder.

A. Yeah. It's my -- it's the paper that we gave as an exhibit and then -- for the L.A. Times, my legal fee schedule that I don't know if -- I think that was in my affidavit.

Q I'm not sure it is.

MS. ERSOFF: So we're going to mark that as 21.

(Deposition Exhibit Number 21 was marked for

identification, a copy is attached hereto.)

THE WITNESS: My C.V.

BY MS. ERSOFF:

Q. I have that.

A. Your notice of deposition.

Q. Okay.

A. And my affidavit.

Q. Okay. Anything else?

A. And then I have one paper in here that I read on the plane, Correlation between the prevalence of certain fungi and sick building syndrome that I don't think Mr. Parrish has.

MS. ERSOFF: We'll mark that as Exhibit 22. Thank you.

(Deposition Exhibit Number 22 was marked for identification, a copy is attached hereto.)

BY MS. ERSOFF:

Q. Are there any other documents that you have in your bag --

A. Bag of tricks here?

Q. Yes.

A. I have something about somebody asking for records and I think it's on Casey Morse. It was a fax Beck 'N Call, I don't know who they are, but I didn't know if it was -- it was in her file at my office and I

have that, but it didn't say anything about who.

Wood, Smith, Henning and Berman. Is that you?

Q. That is part of me.

A. Well, that's who asked for those papers, so that's --

MS. ERSOFF: Okay. We'll mark this group collectively as Exhibit 23. Thank you.

(Deposition Exhibit Number 23 was marked for identification, a copy is attached hereto.)

THE WITNESS: I have a copy of that, so --

And then my deposition, hearings and trial testimony that's in my affidavit, which you probably have seen.

MS. ERSOFF: I've seen that. Thank you.

THE WITNESS: That's it. Not much left.

BY MS. ERSOFF:

Q. Number 18 asks for all transcripts of testimony written or oral given by you under oath in any proceeding other than your own personal injury or domestic relations matters.

A. Everything I have I've given to Mr. Parrish.

Q. And has been produced here today?

A. That is correct.

Q. Okay. Number 19 asks for all documents authored by you in your professional expertise.

Have you produced all such documents here today?

A. Yes.

Q. And you've provided the current list of lawsuits in which you've testified, correct, Number 24?

A. That is correct. That's in the affidavit.

Q. Number 37 asks for all x-rays, laboratory reports, office notes, records, signed reports, test reports and documentation that have been prepared by you or other subspecialists who have examined and/or treated and/or tested the plaintiff.

Did you bring all such records with you today?

A. The only things we have are the labs report, but yes.

Q. So you brought everything that you have here today?

A. That's true.

Q. Okay. Number 49 asks for logs showing the receipt of samples including plaintiff Casey Morse's sample, E.G. date and any and all notations as to the number of tubes, nature of tubes and the amount of urine received or saliva received.

Did you bring those logs here with you today?

A. No.

Q. Why not?

A. They're not mine to bring. They are owned and controlled by RealTime Labs.

THE VIDEOGRAPHER: Would this be a good point to change disks?

MS. ERSOFF: Okay. Go ahead.

THE VIDEOGRAPHER: This is the end of disk Number 2. The time is 2:27 and we are off the record.

(Recess was taken from 2:27 p.m. to 2:38 p.m.)

THE VIDEOGRAPHER: We are back on the record. This is the beginning of disk Number 3. The time is 2:38.

BY MS. ERSOFF:

Q. Okay. Dr. Hooper, with regard to request for production Number 49, you testified before we went off the record that you did not bring the log sheets demonstrating receipt of Casey Morse's urine samples because they belong to RealTime Laboratories; correct?

A. That is correct.

Q. You would have the ability to make Xerox copies of those log sheets so that you can comply with this document demand; correct?

A. No.

Q. Did you bring with you logs for performance of each test done on Casey Morse with the dates of performance and the name or initials of the technician performing the test pursuant to demand production

Number 50?

A. No.

Q. And is it your position that you didn't bring those because they belong to the lab for which you are the director of?

A. I am the director as a contractor.

Q. Right. And Number 50 -- 51 asks for employee time sheets for the staff who performed the testing for the period of January 1st, 2011 through January 31st, 2011.

Did you bring the documents requested in Number 51?

A. No.

Q. 52 asks for the original raw data generated from each test involving Casey Morse's materials. This means the actual machine printout of numbers E.G. for the E.L.I.S.A. testing, that will be optimal density readouts.

Did you bring these documents with you here today?

A. No.

Q. 53 asks for E.L.I.S.A. solid phase or liquid phase, immunoassay testing, E.G. antibodies to fungi and toxins, et cetera. This means the original E.L.I.S.A. printout showing optical density for Casey Morse's

samples as well as the standard curve for each E.L.I.S.A., the normal day control and the calibers for the assay in which Casey Morse's sample was run.

Did you bring the documentation requested in Number 53?

A. No.

Q. Number 54 asks for the RealTime procedure books detailing the protocol for the performance of each test list -- for the technologist to follow when performing each test on Casey Morse's urine.

Did you bring these procedure books?

A. No.

Q. Okay. 55 asks for the RealTime procedure books showing the technologist's notations about actually performing the tests involving the specimens derived from Casey Morse.

Did you bring that documentation?

A. No.

Q. 56 asks for the production of the RealTime in-house tests, the source of the reagents used in testing Casey Morse's urine including the border sheets, lot numbers and specification sheets that arrived with all materials used in the testing of Casey Morse's samples and the medications by E.L.I.S.A.

Did you bring those?

A. No.

Q. 57 asks for the source of the mycotoxin antibodies used in immunoassay tests including the order sheets, lot numbers, specification sheets that arrived with all materials used in the testing of Casey Morse's materials.

Did you bring those documents?

A. No.

Q. 58 asks for the nature and source of the antibody used as the detector for the E.L.I.S.A. testing including the order sheets, lot numbers, specification sheets that arrived with all materials used in the testing of Casey Morse's urine.

Did you bring those documents?

A. No.

Q. 59 asks for the RealTime in-house tests, any and all data generated showing the specificity controls for the antigens employed and the immunoassays that were employed for Casey Morse's urine.

Did you bring this documentation?

A. No.

Q. 60 asks for any reagents prepared in-house by RealTime used in testing Casey Morse's urine, the original dated notes showing the preparation and subsequent data, showing the analysis of the composition

of this derived material.

Did you bring this documentation?

A. No.

Q. 61 asks for the original data that was employed to generate any and all reference ranges for each test performed on Casey Morse's sample, including any and all data, evidence showing the raw data.

Did you bring this documentation?

A. No.

Q. And 62 asks for the documents showing the origin of any positive reference or positive control serum used in immunoassays performed on Casey Morse's urine.

Did you bring that documentation?

A. No.

Q. 63 asks for the names, serial numbers and service records for the equipment used in the analysis of Casey Morse's samples.

Did you bring that documentation?

A. No.

Q. 64 asks for all any and all state inspection reports or CLIA recertification materials for any lab owned or run by you within the past ten years.

Did you bring that documentation?

A. No.

Q. 68 asks for any and all literature that supports your contention that the testing performed by you indicates a causal relationship to any mold exposure that Casey Morse may have received from 2007 to 2009.

Did you bring that documentation with you?

A. Yes. And it's been given to you through exhibits.

Q. Can you tell me which of the exhibits specifically found a causal connection between exposure to mold or mycotoxins and the type of injuries that Casey Morse is complaining of in this case.

A. The documents I gave do not indicate -- they don't sit there and say -- or they're not present to say Casey Morse's urine and her condition is the causation.

The documents I gave and the documents that were given to me by the result of the environmental studies and the results from RealTime Lab are all brought together with my expertise to write a causation affidavit.

Q. You produced in the documents that I have in the front of me several articles; correct?

A. Correct.

Q. Can you tell me which of these articles found a causal connection between exposure to mycotoxins and human health effects?

A. I -- I specifically wanted to give you one and I sent it by E-mail to you early this morning or -- it was 248 pages, and it's from the World Health -- oh, I didn't want to print all that out and carry it to my -- on my suit case, but this is from the World Health Organization and it's a representation of issues that involve dampness and mold and it's a guide for indoor air quality.

And it talks -- and it gives explicit studies that talk about how patient -- or how exposures occur and what the mycotoxins are and what they do to patients.

There's another study I gave that is by Eduard -- I think is how you say his last name -- from Sweden and it's present in one of these documents Mr. Parrish has that I think -- or has given that.

Q. Let's just focus on the World Health Organization's article entitled "Dampness and mold" which we've identified for the record.

First of all, how did you get my E-mail address?

A. Mr. Parrish gave it to me.

Q. That's why you E-mailed me --

A. Yeah. Because I didn't know how to get it to you. And I apologize for clogging your E-mail.

Q. That's okay. I'm familiar with this article.

Can you specifically tell me where in this lengthy article it states that the World Health Organization has found a causal connection between exposure to mold and/or mycotoxins and human health effects.

A. On Chapter 4, Page 63, the health effects associated with dampness and mold, it goes into specific databases obtained from Pub Med searched up to July 2007 is what it states. And for inclusion, they said a study had to meet the following criteria and they met all this criteria that they cited. The citings are publication in a peer review journal. It had to be reporting of original data from a study that was either an experimental intervention, a prospective cohort, a retrospective cohort or case control. Then the next bullet is no minimum study size, so it could be small, it could be large.

It included risk factors related to dampness. It included upper respiratory tract symptoms. And the last bullet it provided adequate control through the study design and the analytical strategies on selected bias and confounding of key variables.

Those are the criteria that I looked for. And throughout this there is on Page 67, Table 5, findings

of the review of the Institute of Medicine in 2004.

And I need to clarify what the Institute of Medicine paper of 2004 did. It cited certain papers that said nothing about causation. And when this World Health Organization reviewed 45 other papers that I.O.M. cited, they said there is sufficient evidence of a causal association. They said, exposure to damp indoor environments, no outcomes met this definition by the I.O.M. 2004.

Q. Which page are you on?

A. I'm on Page 67.

Q. Okay.

A. And there were a number of papers that -- there were only four papers that the I.O.M. cited on causation that said there is no causation. However, in this World Health Organization paper -- and I can't remember where it is, but they cited 45 other papers that said there is a causation. And I'll have to find that and I'll bring it when we come to the next --

Q. Doctor, isn't it true that the World Health Organization in this paper agreed with the conclusion set forth in the Institute of Medicine damp indoor spaces?

A. No, it is not true.

Q. Okay. Can you please turn to Page 77 and I'd

like to draw your attention to Section 4.1.5 which is conclusions.

Do you see that?

A. Yes.

Q. Now, turn to Page 78. And I would like you to read the first sentence up through the word "reviewed" into the record.

A. Would you tell me where this is again?

Q. Do you see the first full paragraph, "In agreement with the Institute of Medicine"?

A. I think this whole -- this whole conclusion needs to be read.

Q. Okay. I'm going to do it for you, then. Okay?

A. Fine.

Q. Okay. "In agreement with the Institute of Medicine," in parenthesis, "(2004), we consider that there is insufficient evidence of a causal relationship with any of the health outcomes reviewed."

And they also said, in concluding, "Thus, although it is plausible that heavy exposure to indoor mould or other microbial agents plays a causal role, this has not been established conclusively."

Do you see that?

A. I see that.

Q. Okay. Can you --

A. It's taken out of context.

Q. Can you cite anywhere in the World Health Organization article where they stated to the contrary, that they have found evidence, conclusive evidence of a causal connection between mycotoxins and human adverse health symptoms?

A. They cite the Fisk papers and the Fisk papers are specific in talking about causation.

MS. ERSOFF: Move to strike as nonresponsive.

Can you read my question back, please.

(The Reporter read the requested portion of the testimony as follows:)

Q. Can you cite anywhere in the World Health Organization article where they stated to the contrary, that they have found evidence, conclusive evidence of a causal connection between mycotoxins and human adverse health symptoms?

MS. ERSOFF: It's mycotoxins, M-Y-C-O-T-O-X-I-N-S. not microtoxins. Thank you.

BY MS. ERSOFF:

Q. Okay. You can answer.

A. And what am I supposed to answer? That question?

Q. Yes.

A. Okay. So, now, let's go back to this paragraph

that you went over and let me read the conclusions on Page 77.

Starting with the middle 4.1.5 conclusions: Our review of the epidemiological evidence presented in this report, the previous report (sic) by the Institute of Medicine and the quantitative meta-analysis of Fisk, Lei-Gomez and Mendell of 2007, lead us to conclude that there is sufficient evidence of an association between indoor dampness-related factors -- which they cite in this paper as mycotoxins -- and a wide range of respiratory health effects, Table 8, including asthma development, asthma exacerbation, current asthma, respiratory infections, upper respiratory tract symptoms, cough, wheeze and dyspnoea.

Q. Doctor, you understand that an association does not equal causal connection, don't you?

A. No, I do not.

MS. ERSOFF: Okay. I'm going to go grab the Institute of Medicine, Damp Indoor Spaces and Health. I'll be right back.

THE WITNESS: Are we off the record?

MS. ERSOFF: Yes.

THE VIDEOGRAPHER: Off the record. The time is 2:54.

(A recess was taken from 2:54 p.m. to 2:56 p.m.)

THE VIDEOGRAPHER: We're back in record. The time is 2:56.

MS. ERSOFF: Doctor, I'm going to copy as next in order the cover page of the Institute of Medicine's, Damp Indoor Spaces and Health and Table 5.12 and Table 5.13 as next in order.

(Deposition Exhibit Number 24 was marked for identification, a copy is attached hereto.)

BY MS. ERSOFF:

Q. Are you familiar with the book published by the Institute of Medicine called Damp Indoor Spaces and Health?

A. I'm familiar with that.

Q. Okay. Have you reviewed Table 5-12 which is the Institute of Medicine's summary of findings regarding the association between health outcomes and exposure to damp indoor environments?

A. I'd have to see that before I can answer that.

Q. Okay. And then I'd like you to look at the next page which is Table 5-13, which is the summary of findings regarding the association between health outcomes and the presence of mold or other agents in damp indoor environments.

Have you ever heard of that table?

A. I've heard of this subject and I'd need to

review these.

Q. So take a look at these two tables, then I'm going to ask you a few questions about them.

A. Are these going to be become exhibits?

Q. I've just identified them as next in order.

A. Okay.

(Examining documents.)

Okay.

Q. Now, with regard to the association between health outcomes and exposure to damp indoor environments, the Institute of Medicine concluded that there were no outcomes that met the definition of sufficient evidence of a causal relationship.

Do you agree with that?

A. Do I agree with what they say?

Q. Do you agree that this was the conclusion of the Institute of Medicine?

A. I agree that that's what's written in their conclusion.

Q. Okay. And this was also their conclusion with regard to the association between health outcomes and the presence of mold; correct?

A. I believe they said that.

Q. Did the Institute of Medicine distinguish between a causal connection and evidence of an association?

A. Um --

Q. Do you need to look at the book?

A. No, I don't need to look at the book.

Q. It's right here (indicating).

A. I know.

Q. And you're disputing the fact that they say sufficient evidence of a causal relationship and sufficient evidence of an association?

A. Let me explain why I dispute that. They did not use enough evidence. They cited a very minimal amount of paper -- of papers and peer reviewed journals to talk about this trade paper of the I.O.M. 2004, and that's what I consider it and that's what many of my colleagues the I.O.M. paper of 2004. It was a lackluster exam of very few proper peer reviewed papers.

MS. ERSOFF: Move to strike as nonresponsive.

BY MS. ERSOFF:

Q. Yet, you cite to the World Health Organization dampness and mold as support for your opinions in this case; correct?

A. That's correct.

Q. And in Section 4.1.5 conclusions, the World Health Organization stated that they agreed with the Institute of Medicine that there was insufficient evidence of a causal relationship with any of the health outcomes reviewed; correct?

A. In that one sentence, yes.

Q. Thank you.

Did you bring any other peer reviewed articles or scientific data with you which specifically states that there has been an established causal connection between exposure to mycotoxins and adverse human health effects?

A. Yes. The second article Eduard and it's called molds.

Q. Can you show it to me, please?

A. I think it's somewhere in this group of papers (indicating).

THE WITNESS: Larry, on your list, I think it's 37 or 31.

MR. PARRISH: (Handed papers to the witness.)

THE WITNESS: You have a copy of this?

MS. ERSOFF: I just don't know which one you're referring to.

BY MS. ERSOFF:

Q. Can you show me specifically where it says that causal connection has been established between exposure to mycotoxins and human health effects.

A. On Page 806 of Eduard, it's a review article of

fungal spores. A critical review of toxicologic and epidemiologic evidence on a basis of occupational exposure limit setting.

On Page 806 they talk about metabolites and explaining what mycotoxins are. And then they talk about being -- that they're potent toxins on Page 807. They go through what they are, which organisms produce the toxins, and how they have been shown to be aspergillus flavus produces aflatoxin which is carcinogenic. One example.

MS. ERSOFF: Move to strike as nonresponsive.

THE WITNESS: Well, you asked that.

BY MS. ERSOFF:

Q. No. I want to know where it specifically says that a causal connection between exposure to mycotoxins and human health effects has been conclusively established.

A. Throughout this whole Page 806, 807, and Page 809, they talk about all the exposures of these toxins and these molds. And then they actually go through on Page 813 how these organisms are eliminated and the number of spores that they have contaminated these animals with, and they get sick. These are animal studies.

Q. They're not human studies; right?

A. There are no human studies that would done with fungal.

Q. So you cannot read into the record where it says that exposure to mycotoxins has been conclusively established to be causally connected to human health effects?

A. Yes, I can.

Q. Okay. Great.

A. And I want to cite --

Q. Because I've asked it three times, four times.

A. Well, it finally -- you asked it enough that it tickled my memory.

Q. Oh, I'm so glad.

A. I am happy, too.

Q. Okay.

A. On my paper on mycotoxins --

Q. No. I'm asking about this paper.

A. No, I'm going to refer to my paper and then which will refer to this.

They talk about Anguidine. Anguidine was used in the 1970s. It's a mycotoxin. It was used in cancer patients to use for chemotherapy. It's a trichothecene. It caused -- it caused as a causation the same problems that trichothecenes do in patients like the one we have in this case. It causes the same problems that we have

in other patients.

Anguidine was taken off the market by F.D.A. because it showed a causation as a mycotoxin causing the same problems in these patients.

MS. ERSOFF: Move to strike as nonresponsive.

THE WITNESS: Well, they cite Anguidine in this page.

BY MS. ERSOFF:

Q. I just want to know where the exact language is in that paper that I asked you about or something really close to it.

A. I can't recall that right now.

Q. Well, you have the paper in front of you. Do you want to take a few moments to look at it?

A. I can read it for hours and tell you, but I would prefer not to.

Q. Well, I would prefer that you give me an answer to my question.

A. I don't know where it is.

Q. Either it's there or it's not there, because you really know this paper quite well.

A. I don't know where it is.

Q. Is it there or isn't it there?

A. I don't know.

Q Okay. We're going to go off the record and

you're going to look for it. Okay? Because I'm entitled to know.

A. You can stay here for hours.

Q. It's not going to take you hours to see if that language is in there.

You said that this paper supports --

A. Ma'am, we don't need to fight. I'm just telling you. It's up to you, I'll just --

Q. You know, we can come back tomorrow, so that's just fine.

A. I'm not going to be here tomorrow.

Q. The deposition is noticed to go day to day, so if you feel you need to take hours, that's fine.

MR. PARRISH: Are we off the record you said?

MS. ERSOFF: We can go off the record while he reads that article. That's fine.

MR. PARRISH: You said we were going off the record. Are we going off the record?

MS. ERSOFF: That's fine.

THE VIDEOGRAPHER: Off the record. The time is 3:06.

(A recess was taken from 3:06 p.m. to 3:10 p.m.)

THE VIDEOGRAPHER: We're back on record. The time is 3:10.

///

BY MS. ERSOFF:

Q. Okay. Have you had an opportunity to peruse the articles "Fungal spores, a critical review of the toxilogical and epidemiological evidence as a basis for occupational exposure limit setting"?

A. I have.

Q. Okay. And have you had an opportunity to find for me references to conclusive findings of a causal connection between exposure to mycotoxins and adverse human health effects?

A. I believe I have.

Q. Okay. Can you refer me to that language, please.

A. I believe I will. On Page 807 under summary, they're talking about fungal spores being different from chemical agents, as spores contain multiple components such as allergens, antigens, polysaccharides.

And then they talk -- they go down to the middle of the page, "Many fungi produce large numbers of spores that are adapted to aerial dispersion. High-exposure situations are therefore often related to handling of moldy material. Fungi may produce mycotoxins, MVOC, and enzymes, which often are allergenic. Actinomycetes are Gram-positive bacteria for which the growth and sporulation resemble that of

filamentous fungi, but they have smaller spores."

And then I would go on --

MS. ERSOFF: Move to strike as nonresponsive.

THE WITNESS: Well, on Page 810, common indoor environments, Section 6.2, second paragraph -- we'll talk about first paragraph.

"Fungal levels in common indoor environments without fungal problems are much lower than in the highly contaminated environments described above." In the previous paper or previous paragraphs.

Second paragraph, "The main source of fungi in office environments is outdoor air. As outdoor air often is filtered before it enters the ventilation system."

And they talk about spores being easily dispersed by heating ventilation and air-conditioning systems. And then they talk -- they bring in, in the third paragraph, in a non-problem indoor environment outdoor fungi dominate. They talk about how these organisms effect the respiratory system of patients.

That is causation.

MS. ERSOFF: Move to strike as nonresponsive.

BY MS. ERSOFF:

Q. Anything else, Doctor?

A. Yes, I have more.

Q. Okay.

A. On Page 812, in a rabbit study -- the third paragraph, in a rabbit study, Thurston, et al., found a small fraction of spores in the digestive system and no fungi could be cultured in a week after exposure.

And they're talking about how these rabbits got ill. In summary, they show different results even for the same species of fumigatus. Dissemination in other organs than the lung and the digestive system were observed only for the facultative pathogenic organisms.

And they talk about the presence and the elimination of these organisms.

MS. ERSOFF: Move to strike as nonresponsive.

THE WITNESS: On Page 817, "The inflammatory response to spores is mainly nonallergenic in occupational populations," -- this is under 8.4. -- "although, allergic diseases such as allergic asthma, allergic rhinoconjunctivitis, and hypersensitivity pneumonitis can be induced by exposure to fungi.

MS. ERSOFF: Move to strike as nonresponsive.

THE WITNESS: I'm citing the things that you asked me to.

BY MS. ERSOFF:

Q. I asked you for specific language that states that there has been a conclusive finding of a causal

connection between exposure to mycotoxins and human health effects.

Can you show me anything in this article that has that language?

MR. PARRISH: I'll object to the form. I didn't hear a question. That's a comment.

BY MS. ERSOFF:

Q. He didn't instruct you not to answer. Can you answer the question, please.

A. Will you say -- what's the question again?

Q. Can you cite to any specific language which states the following: There has been a conclusive finding of a causal connection between exposure to mycotoxins and adverse human health effects?

A. No.

Q. Do you have any article in the slew of articles that you have produced in support of your opinions today which support that finding?

A. No.

Q. Okay. Thank you.

When were you first retained as an expert in this case?

A. You have the papers.

Q. When were you first retained as an expert in this case?

A. I don't recall.
Q. What's your --
A. I don't know.
Q. -- approximation?
A. I don't know.
Q. 2009?
A. In this case?
Q. Yes.
A. No.
Q. 2011?
A. I have to review my document that shows -- that I gave you. My contract.
Q. Okay.
MS. ERSOFF: Do you have a copy of his file that he can look at?
THE WITNESS: I brought everything.
MR. PARRISH: It's already in.
MS. ERSOFF: Okay.
THE WITNESS: The contract. It shows -- it's from my M.S.C.P.A., it showed when Mr. Morse signed the contract.
Oh, you want me to go through this?
(Examining documents.)
Didn't we make that an exhibit? It's not here. I can't find it.

MR. PARRISH: Let's see.
THE WITNESS: This is what I did -- oh, here it is.
It's Exhibit 2 at the very bottom. And your question is?
BY MS. ERSOFF:
Q. When were you first retained as an expert in this case?
A. The 7th of August of 2012.
Q. And --
A. I'm sorry?
Q. -- who were you retained by?
A. Mr. Morse, my contractor.
Q. What were you asked to do in regards to your retention in this case?
A. My contract states I would review and recommend laboratory testing as it pertains to mold and mycotoxin testing in human beings, and opine on the relationship between these tests in the human environment to determine causation, review the medical records of Casey Connor Morse to determine past medical relationships, present medical relationships, and causation of these relationships with mold, mycotoxins and exposures.
Advise legal counsel regarding mold and mycotoxin relationships and how it relates to the

subject patient. And to act as a legal/medical expert for any type of hearings, depositions and court trials.
Q. Did you speak with Mr. Morse on or about August 7, 2012?
A. I have talked with him once concerning this contract.
Q. And do you recall generally the discussion that you had with him regarding the contract?
A. No.
Q. Now, you have reviewed some of Casey Morse's medical records; correct?
A. Yes.
Q. Can you tell me generally which medical records you reviewed.
A. I'd have to get them out --
Q. Okay.
A. -- and review them. They're in my --
Q. They're attached to your affidavit.
A. That's right.
(Examining documents.)
Do you want me to list all of them?
Q. Yes, I do.
A. Okay. I have Kaye Kilburn's notes dated December 8, 2010. And then I have all of his work, all of -- everything that came out of his files. And then I

have the Balance Disorder Institute findings. And I have notes on Casey Morse from that Balance Disorder Institute of Los Angeles.
I have notes on Consolidated Medical Bioanalysts. They're testing laboratories that was ordered by Dr. Granoff (phonetic). I have more notes for
Dr. Kilburn, his studies.
And I have notes from Cedars-Sinai, Dr. -- I guess this is Dr. -- this is a surgical report that was done on Casey and the pathologist gave the surgical pathology report, so I have that.
And then I have the environmental H2 studies that were done and in that file. And more notes from Cedars-Sinai. Beverly Hills Imaging, most of the -- all the laboratory parts that were used by Dr. Kilburn and others to give Dr. Kilburn his ideas and his decisions and his opinions.
And C.T. scans that were done at Cedars-Sinai.
Q. Have you now described for me the universe of medical documentation and records that you've reviewed in association with this case?
A. I believe so.
Q. Have you ever spoken with any of Casey Morse's treating physicians?

A. No.
Q. Have you reviewed --
A. Oh, wait a minute. Spoken. I've talked with Kaye Kilburn in the past, but not about Casey Morse that I recall.
Q. Did you review any of Casey Morse's medical records which predated the exposure?
A. Other than -- I think the nasal biopsy was -- I don't recall when that was done for sure, but there was some thought by the clinicians that this was related to her environmental testing, but I don't believe I did.
Q. So is your answer no?
A. I don't know.
Q. What other documentation did you review in association with your work on this case?
A. Other than what I've said in my affidavit and what you and I have discussed right now, nothing else.
Q. Did you review Ms. Morse's deposition in this case?
A. I did review that.
Q. Did you bring it with you?
A. It's in this affidavit.
Q. Will you show me where her deposition is?
A. Exhibit A of my affidavit.
Q. What's the date of the deposition?

A. Let's see. It was signed -- oh, of her deposition. I'm talking about her affidavit. No, I have not seen her deposition.
Q. Okay. Did you ever ask to review Casey Morse's deposition in this case?
A. No.
Q. Is there any reason why you didn't ask to review Ms. Morse's deposition in this case?
A. No.
Q. Did you speak with Mr. Parrish in preparation for your deposition?
A. I spoke with him last night, yes.
Q. What was the subject matter of the discussion you had with him last night?
A. Did he have all the papers that I have given him. And I got in quite late and we had dinner and we just discussed what papers he had, and that was it.
Q. Did you discuss your testimony with Mr. Parrish?
A. Other than be honest and tell you what needs to be addressed.
Q. Anything else?
A. No.
Q. And you're prepared to give your final opinions here today; correct?

A. I am.
Q. Do you feel that there's any information that you have not had an opportunity to review which is hindering your ability to give your final opinions in this case?
A. No.
Q. Now, we already talked about the Institute of Medicine's findings in -- that were memorialized in the book Damp Indoor Spaces and Health; correct?
A. Yes.
Q. Do you know of any peer reviewed scientific literature which refuted the findings of the Institute of Medicines 2000 Damp Indoor Spaces and Health report?
A. I have given what I believe refutes that. You and I have had discussions about that, so I believe the World Health Organization refutes that.
Q. Okay. Despite the fact that the World Health Organization states that they are in agreement with the Institute of Medicine that there are insufficient -- that there is insufficient evidence of a causal relationship with any of the health outcomes reviewed?
A. Yes.
Q. Health outcomes reviewed, excuse me.
A. Yes.

Q. Are you familiar with the A.A.A.A.I.?
A. Yes.
Q. You're not a member of the A.A.A.A.I.; correct?
A. Correct.
Q. And are you familiar with the A.A.A.A.I.'s official position statement entitled "The medical effects of mold exposure" which was published in February of 2006?
A. Yes.
Q. And would you agree that the A.A.A.A.I. concluded following extensive research in their position statement that the occurrence of mold-related toxicity from exposure to inhaled mycotoxins in the non-occupational setting is not supported by the current data and it's occurrence is improbable?
MR. PARRISH: Object to the form.
THE WITNESS: No, I do not agree with that.
BY MS. ERSOFF:
Q. What part of that do you not agree with?
A. Your first sentence, extensive research.
Q. And you disagree with how I'm quoting it or you disagree with their findings?
A. I disagree with their statement, extensive research, extensive findings. They didn't have extensive findings. They published this trade paper

that is authored by individuals who had no research background and were very selective in how they picked evidence of papers.

Q. Now, with regard to mycotoxins, you would agree with me that no mycotoxin testing was ever performed at Casey Morse's apartment; correct?

A. Correct.

Q. What are mycotoxins?

A. Mycotoxins, as I explained earlier in this deposition, are metabolites that are produced by microgan- -- by the fungi and they can be present in the spores or they can be present in the hyphy or the root structures of these organisms.

Q. And you would agree, then, not all molds produce mycotoxins; correct?

A. Would you say that one more time.

Q. You would agree with me that not all molds produce mycotoxins?

A. I have no evidence to back that statement up, that not all molds. The studies reflect at the present time that molds produce mycotoxins. There are not extensive studies to show that all molds do not produce or any molds do not produce toxins.

Q. Are there studies that have conclusively established that all molds produce mycotoxins?

A. No. But that doesn't -- well, I won't -- no.

Q. And even molds that are capable of producing mycotoxins do not always produce them; correct?

A. That is correct.

Q. Okay. And it's also a correct statement that mycotoxin production does not always occur and it's depending on many things including the physiology and genetics of the organism, as well as the amount of moisture, light and temperature; correct?

A. Correct.

Q. For example, not all species of stachy botyrous produce mycotoxins; correct?

A. I'm not familiar with being that inclusive.

Q. Well, can you point to any scientific literature which supports the position that all species of stachy botyrous produce mycotoxins?

A. No.

Q. Would you agree with me that the species capable -- the species of stachy botyrous capable of producing mycotoxins do not always produce mycotoxins?

A. Yes.

Q. And you would agree that absent mycotoxin testing, there's no way to establish the presence of mycotoxins; right?

A. Yes.

Q. You would agree with that?

A. Yes.

Q. And you would also agree that the strength of association between exposure to mycotoxins and human health effects has not yet been established; right?

A. No. That's -- I would not agree with that.

Q. And what scientific literature can you point to, and I mean peer reviewed scientific literature, that has established the strength of association between exposure to mycotoxins and human health effects?

A. I can give you the example that I did earlier of Anguidine which is a mycotoxin that was actually injected into humans.

MS. ERSOFF: Move to strike as nonresponsive.

Can you read back my question.

And I'm focusing on peer reviewed scientific literature.

THE WITNESS: That is a peer reviewed scientific literature.

BY MS. ERSOFF:

Q. Okay. Did you bring it with you?

A. I cited that in my paper.

Q. Did you bring the paper with you?

A. No.

Q. Okay.

A. But I cite the paper in my documents of my exhibits. I didn't bring all of those papers either.

MR. PARRISH: Move to strike as nonresponsive everything after "no."

BY MS. ERSOFF:

Q. Now, you were first contacted by Casey Morse's attorney, Larry Parrish, in December 2010; correct?

A. It could have been around there. I don't recall exactly when. Yes, I was -- no, it was --

MS. ERSOFF: What's the next exhibit number?

THE REPORTER: We are on 25. The book is going to be Number 24.

MS. ERSOFF: Thank you.

MS. ERSOFF: I'm going to identify for the record Exhibit Number 25 which is a December 30, 2010 E-mail from Dennis Hooper to Kaye Kilburn.

(Deposition Exhibit Number 25 was marked for identification, a copy is attached hereto.)

BY MS. ERSOFF:

Q. Can you please take a look at Exhibit 25.

A. (Witness complies.)

Q. Do you recall sending this E-mail to Dr. Kilburn on December 30, 2010?

A. I do.

Q. Okay. And this is the same E-mail address you

used to send me the World Health Organization article; correct?

A. That's correct.

Q. Okay. And this E-mail to Dr. Kilburn says, "Kaye, I was contacted by Larry Parrish, attorney, concerning the above patient. He said you would order the total mycotoxin test if I sent the requisition to you. So here it is. Hope you are well and are enjoying the holidays. We can ship a kit to this patient if you send me the address. Thanks, Dennis."

And then in handwriting with an asterisk, it says, "E-mailed Casey's mailing address to Dr. Hooper and faxed him filled out requisition form, 12/30/2010."

And in the subject line of the E-mail, it says "Casey Morse."

So does this refresh your recollection that you were contacted by attorney Larry Parrish in or about December 2010 regarding Casey Morse?

A. It does refresh my memory.

Q. How often do you work with Dr. Kaye Kilburn?

A. I think we've done maybe four or five cases. We published a paper together.

Q. And pursuant to your representations in this E-mail, did you ship the mycotoxin test kit directly to Casey Morse once you received her address?

A. I don't ship anything. The lab would if they had her address.

Q. Okay. So based upon the contents of this E-mail, do you believe that the lab shipped the mycotoxin test to Casey Morse?

A. I would want to believe so, yes.

Q. What does the kit consist of?

A. It consists of the requisition, which is what you see on the second page. It consists of instructions to the patient on how to collect the urine sample. It consists a tube of -- a plastic tube that contains the name of RealTime Lab on the tube. It contains a credit card authorization -- method of payment, in other words. And I said the instructions. And then there's an envelope that the specimen is placed in to -- it's placed in a biohazard bag and then it's placed in this envelope and sent to the lab.

Q. Okay. And so when a patient such as Casey Morse receives this kit, there's instructions on how she's supposed to take her own urine sample?

A. That is correct.

Q. And how would Casey Morse take her own urine sample?

A. I don't know how Casey Morse would do it, but our instructions are to collect this urine sample -- we

give a cup and it can be a clean catch or it can be just a catch and it doesn't have to be early morning. It can be any time during the day. And three-fourths full be placed in the tube and closed up. The tube be identified as to patient's name, date of birth and date collected, and sent in.

Q. You have -- strike that.

When did Casey Morse collect her urine pursuant to these instructions?

A. I would have to go to the actual results of the test.

(Examining documents.)

Okay. On Exhibit D, I think. I had the requisition.

Q. The requisition is attached to this E-mail.

A. Yeah, this is the unsigned requisition.

A requisition has to be signed and then at the very bottom when we -- when the RealTime Lab gets it back, at the very bottom there's notes that the lab tech says when it was received.

Q. Can you pull out that signed copy for me.

A. Well, where is it? Where is the results?

(Examining documents.)

It's Exhibit 3. Do you need --

Q. Exhibit 3. Let me -- I'm getting all my stacks

mixed up.

A. Yep. I can understand that.

Q. Is it part of your affidavit that --

A. No.

Q. -- that is attached to it?

A. No. Exhibit 3 doesn't have all the -- Exhibit 3 isn't in my affidavit.

Q. I'm not sure. Was that in one of the folders or was this --

A. That's what I brought.

Q. Oh, okay. I'm going to want to get a copy of that as well.

Now, what does the bottom portion of the requisition form tell you?

A. Okay. This tells us that the date that this specimen was received was the 10th of January of 2011 and it was sent to us by Fed Ex and we received it 11:30 a.m. And it gave the tracking number of the Fed Ex.

Then it -- was a requisition complete, we circle yes. The payment was by credit card. And the note says that -- because I was checking to see who the credit card was billed to. We always have that issue. As D. Hooper billed credit card on 1/7/11 per cardholder's request.

And the cardholder was Robert Morse because we had the paid receipt and we have the RealTime Lab personnel who signed for this and then the excession number, which is our specific identifying number of the patient's specimen.

Q. Now, under R.T.L. personnel, whose initials was that?

A. I think that is -- I don't recall. I don't know. We have eight personnel staff that can excession and bill, so I would be guessing.

Q. So you have no idea, as you sit here today, who received Casey Morse's sample; correct?

A. No. What we have to do is if we -- we have initials that -- the tech's initial and they sign their name and we have that in our lab. So I have an idea who that is, but I can't tell you for sure.

Q. So as you sit here today, you cannot tell me who received Casey Morse's sample; correct?

A. You're correct.

Q. What is R.T.L. a session number mean?

A. That is our unique identifying number that starts with an "R" to stand for RealTime, then 01 was the first, that's the month, 11 is the year, and the 20 -- Number 20 was the specimen number.

Q. Who filled out the requisition form with regard

to the bottom part of it?

A. Under RealTime Lab?

Q. Yes.

A. It's that tech who received it.

Q. The mystery tech?

A. Well, I'll tell you who I think it is.

Q. I don't want you to speculate.

A. It's not a mystery tech. We do not have mystery techs there.

Q. Okay. But it's a tech who --

A. That's inappropriate to say.

Q. Thank you.

It's the tech whose name you don't know, as you sit here today; correct?

A. That's right.

Q. Okay. How long after Casey Morse took her urine sample did she send it back to you?

A. She said that the date that she collected it is up in the middle portion is the date specimen was collected it says, the 10th of January 2011. And that can't be, so I don't know.

Q. Okay. So you don't --

A. So that's an error, because if it was received on the 11th and it came from California, it couldn't have been collected on --

Q. So you have no way of knowing, as you sit here today, what date Casey Morse took her urine sample; correct?

A. That is correct.

Q. And you can't tell me, as you sit here today, how long after Casey Morse took her urine sample she sent it back to RealTime Laboratories; correct?

A. That's correct. Other than the fact we know it was by Fed Ex.

Q. Can you tell me what Casey Morse did with her urine sample after -- between the time she took her urine and she sent it to RealTime Laboratories?

A. I don't know.

Q. Okay. Can you show me the chain of custody form documenting the handling of Casey Morse's urine sample?

A. There is no chain of custody form. In a clinical specimen, the chain of custody form is a requisition, unless it's a drug test. Every laboratory has requisitions only, unless a parental or paternity test or maternity test -- well, paternity test, and/or a drug test. That's the only ones that require by law a chain of custody.

Q. So where on this requisition form does it indicate who actually tested Casey Morse's urine?

A. It doesn't.

Q. Who tested Casey Morse's urine?

A. I don't know. It would be in our reqs.

Q. So as you sit here today, you have no way of telling me who tested Casey Morse's urine; correct?

A. No.

Q. Is that correct?

A. That is correct.

Q. What evidence do you have with you here today that the urine sample that was received by your lab was the urine sample that was actually tested pursuant to the mycotoxin panel report form?

A. Say that again.

Q. Well, typically a chain of custody form is used so that there is a chain of custody documenting the fact that the sample that was received by the lab is the same sample that was tested by the lab.

What evidence do you have, as you sit here today, which confirms that the sample received by Casey Morse is the same sample that was analyzed by RealTime Laboratories?

MR. PARRISH: Object to the form. No foundation.

THE WITNESS: First of all, your presumption that every urine that goes into a clinical lab has a chain of custody is incorrect. Only -- and I stated that

before -- a drug test and a paternity test are the only ones that are required a chain of custody. A clinical requisition is considered the important part of a clinical patient, so we do not -- and no laboratory -- no clinical lab has chain of custody unless it's for those two tests.

BY MS. ERSOFF:

Q. So what evidence do you have that you can show me that the mycotoxin panel report form is based upon the testing of Casey Morse's urine?

A. Would you -- that's difficult to understand your question.

Q. Well, someone's urine was tested; right?

A. That's correct.

Q. What evidence do you have that it was Casey Morse's urine?

A. It's identified on the tube that comes with the requisition, and we as a clinical lab, trust that result -- trust that statement that's on the tube and that's the chain of custody. That's a legal chain of custody for clinical specimens.

Q. And I requested that you bring that documentation here with you today.

A. This is it (indicating).

Q. I requested that you bring that specific

documentation here with you today pursuant to the request for production of documents, didn't I, Doctor?

A. You did.

Q. And you didn't bring it with you, did you?

A. No, I did not.

Q. Okay. Thank you.

How did Casey Morse store her urine sample until she sent it to you?

A. We don't know.

Q. When a urine sample comes into RealTime Laboratories, do you have a set of protocols as to how that urine is supposed to be handled?

A. Yes.

Q. Was Casey Morse's urine handled in accordance with this custom and practice?

A. Yes.

Q. Where is that documented?

A. In the lab.

Q. Can you show me where it's documented that Casey Morse's urine was handled in accordance with RealTime Laboratories's documented set of protocols?

A. No.

Q. And so as you sit here today, you're assuming that RealTime Laboratories' protocols were followed with regard to the handling of Casey Morse's urine; correct?

A. No.

Q. Well, you can't show me any evidence --

A. I don't need to show you. I as the medical director, review quality assurance, quality control and I know when I review those results that come out, or my designee, that those results have been handled correctly by the standard operating procedures.

If there's any deviation, we have a deviation in our S.O.P.'s that are listed, and there were no deviations in the S.O.P.'s for Casey Morse's state of testing.

MS. ERSOFF: Move to strike as nonresponsive.

BY MS. ERSOFF:

Q. You personally didn't handle Casey Morse's urine when it came into the laboratory; correct?

A. No.

Q. So you would have to assume that the urine was handled in accordance with RealTime Laboratories' set of protocols; correct?

MR. PARRISH: Object to the form.

THE WITNESS: No.

BY MS. ERSOFF:

Q. Can you tell me what personal knowledge you have with regard to how Casey Morse's urine was handled from the time the Fed Ex package was received by

RealTime Laboratories, specifically who received it and what did they to with it?

A. That's in RealTime Lab's documentation.

Q. Can you tell me, as you sit here today, specifically who received it and what did they do with it?

A. I cannot.

Q. Okay. With regard to the mycotoxin panel test that was performed on Casey Morse's urine, you didn't actually perform that test; correct?

A. Correct.

Q. Okay. And with regard to the specific mycotoxin panel test that was performed on Casey Morse's urine, where were the plates, the mycotoxin antibodies, and the mycotoxins purchased from?

A. I'm not at liberty to talk about that.

Q. Was it Neogen?

A. I'm not at liberty to talk about that.

Q. Do you want me to read your deposition where you testified that these specific plates, mycotoxin antibodies and mycotoxins were purchased from Neogen?

A. And it may be. I don't know where -- I can't tell you where they were purchased.

Q. In 2011, where was RealTime Laboratories purchasing the plates and mycotoxin antibodies and

mycotoxins from?
A. I don't know.
Q. Doctor, you understand your testimony is under penalty of perjury; correct?
A. Correct.
Q. Was Neogen one of companies that you were purchasing plates, mycotoxin antibodies and mycotoxins from in or about January of 2011?
A. I believe so.
Q. Okay.
A. To clarify previously, I do not know which plates were used with Casey Morse's urine, which product.
Q. And you have no way of confirming it, as you sit here today; correct?
A. Correct.
Q. With regard to the ochratoxin, were those plates purchased from Neogen in January of 2011?
A. I don't know.
Q. Where else would those plates have been purchased from?
A. There's a number of companies that make ochratoxin A plates.
Q. And you purchased the ochratoxin and aflatoxin plates from Neogen in January of 2011; correct?

A. I don't know for sure.
Q. Where do you buy the controls from?
A. I don't know.
Q. Is there any reason you don't have this information?
A. I don't do the work that much anymore.
Q. In 2011 were you doing the work?
A. I don't recall what it was back then. I don't know what -- where we bought the controls from.
Q. With regard to the ochratoxin plates that you have purchased from Neogen, were you telling them you were using the materials to test human urine?
A. Yes.
Q. And who did you tell this to at Neogen?
A. I don't recall.
Q. And when you received the materials from Neogen, did they have manufacturer instructions with them?
A. I don't know.
Q. Have you ever read the manufacturer instructions with the materials you received from Neogen?
A. Yes.
Q. And do you recall if the manufacturer instructions indicate that the plates with the

ochratoxin antibody and the ochratoxin already on them are intended to be used for the testing of human urine?
A. No.
Q. Do they state that they are specifically not intended to be used for the testing of human urine?
A. I don't believe so.
Q. Do they say anything like that?
A. I don't know.
Q. Do you instructions from Neogen indicate that the materials are used to test corn, barley, green coffee and various dried fruits?
A. Yes.
Q. And the product inserts from Neogen indicates that they're selling these materials specifically for the testing of foods; correct?
A. I don't -- I don't know that for sure.
MS. ERSOFF: I'm going to attach as Exhibit 26, a product insert from Neogen for the detection of mycotoxins.
(Deposition Exhibit Number 26 was marked for identification, a copy is attached hereto.)
BY MS. ERSOFF:
Q. Will you take a look at this, please.
A. Thank you.
Q. You've seen this product insert before or one

that closely resembles it?
A. I believe I've seen this a long time ago, yes.
Q. Do you see the pictures of all the foods on each of the pages, picture --
A. I do.
Q. Yes?
A. I do, yes.
Q. -- pictures of corn and coffee and barley and wheat and peanuts?
A. Yes.
Q. Does this product insert from Neogen state anywhere that it's to be used for the testing of human urine?
A. No. It's also not the test we do.
MR. PARRISH: Did you make that an exhibit?
MS. ERSOFF: I did.
MR. PARRISH: What's the number?
THE REPORTER: 26.
BY MS. ERSOFF:
Q. Have you ever spoken with the head of product safety at Neogen regarding your use of their product to test human urine?
A. No.
Q. I'm going to read from your deposition in Bailey versus Equity Residential taken October 4, 2011.

Question -- and it's on Page 71, Line 20 to 25.
Question: "And it is your testimony that Neogen -- strike that.
I'm going to go from Line 16 through 25 on Page 71.
"Neogen indicates that they're selling these materials for the testing of foods. You use them to test human urine?"
Answer: "Correct."
Question: "Okay. And is it your testimony that Neogen knows you're doing this?"
Answer: "Yes."
Question: "Okay. Did you ever talk to the head of product safety at Neogen?"
Answer: "I believe so."
A. My answer was, I believe so.
MS. ERSOFF: There's no question pending. Move to strike.
MR. PARRISH: Well, did he answer the question that was pending?
MS. ERSOFF: Oh, he said no. It's on the record when I asked him. I'm just reading his testimony now.
MR. PARRISH: And you asked him a question about that testimony?
MS. ERSOFF: No, I didn't. I just read it into the

record, Counsel. I wasn't asking him any question.
MR. PARRISH: Well, you didn't ask him whether he said that or not.
MS. ERSOFF: Counsel, I don't have to. The code says I can read deposition testimony at any time. That's what I was doing.
MR. PARRISH: Okay. There was no question on the floor. I object to that. I move that that be stricken.
BY MS. ERSOFF:
Q. At the time you did your validation study, you were not using the materials -- strike that.
At the time you did your validation study, you were not buying your materials from Neogen, were you?
A. That's correct.
Q. You were buying the materials from Enviro Logics; correct?
A. We bought them for doing the validations from Enviro Logics and then we converted to our own product for our validations because we had a complaint from Dr. Saxon to Enviro Logics saying that he was going to call the F.D.A. if Enviro Logics kept selling them to us.
MS. ERSOFF: Move to strike as nonresponsive the testimony starting with "we had a complaint."
///

BY MS. ERSOFF:
Q. Do you have records showing revalidation from Neogen and the other companies that you're currently buying your materials from?
A. Yes.
Q. Did you produce those here today?
A. No.
Q. Those were requested as part our document demand, weren't they?
A. I don't control those.
Q. And do you also have documents showing the validation studies that you've performed on the Neogen kit?
A. Do I personally have those?
Q. Yes.
A. No, I don't have them. RealTime Lab does.
Q. Right. And you're the director of RealTime Laboratories; correct?
A. I am the contracted director. I'm not the owner of RealTime Labs and I cannot release those without --
Q. When did you do those validation studies?
A. 2005.
Q. And that was prior to using the Neogen kit; correct?

A. That was the original validations and we have continued to validate.
Q. Who did those validation studies?
A. I oversaw them and the techs, technicians.
Q. Which technicians did those validation studies?
A. I don't know.
Q. Can you name any of them, as you sit here today?
A. No.
Q. And what controls did you use for the reference range when you did Casey Morse's ochratoxin test?
A. I don't know.
Q. And you can't tell me, as you sit here today?
A. No.
Q. How many patient's urine did you run in the validation study?
A. In the negative validations, we ran 56, I believe. And in the validations for showing sensitivity and specificity, it was well over 120.
Q. And the people that you ran the results in the reference range -- strike that.
What is a normal versus abnormal?
A. It is our contention by the validations that anything over the limit of detection is abnormal or present.

Q. And what's the limit of detection?

A. In aflatoxin it's 1.0 parts per billion, ochratoxin it's 2.0 parts per billion and trychothecene is 0.2 parts per billion.

I need to take a break.

MS. ERSOFF: Let's go off the record.

THE VIDEOGRAPHER: Off the record. The time is 4:04.

(A recess was taken from 4:04 p.m. to 4:09 p.m.)

THE VIDEOGRAPHER: We're back on the record. The time is 4:09.

MS. ERSOFF: Okay. We have agreed to suspend this session of the deposition. We have not finished with Dr. Hooper. We will return for Volume II to my Los Angeles office on November 12, which is a Monday, at 9:00 o'clock in the morning to hopefully conclude the deposition.

With regard to Volume I, the court reporter is relieved of her duties under the code with regard to the handling of the transcript. The original transcript will be forwarded to counsel for Ms. Morse who will make the transcript available to Dr. Hooper to review, to make any changes that he deems necessary and to sign under penalty of perjury.

Dr. Hooper will notify his counsel and his

counsel notify me of any changes to the transcript and of the signing of the transcript within seven days of receipt of the transcript.

If the original transcript is lost, stolen, misplaced or otherwise unavailable, a certified unsigned copy can be used in its place as the original.

Mr. Parrish agrees to produce the original transcript upon reasonable request and to produce the original transcript at trial.

So stipulated?

MR. PARRISH: So stipulated.

MS. ERSOFF: Okay.

THE VIDEOGRAPHER: This is the end of disk Number 3 of Volume Number I. The time is 4:11 and we're off the record.

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(Deposition Exhibit Number 27 was marked for identification, a copy is attached hereto.)

(The deposition of DENNIS HOOPER, M.D, Volume I, was continued at 4:11 p.m, October 31, 2012.)

(End of Volume I. Declaration under penalty of perjury on the following page hereof.)

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I do solemnly declare under penalty of perjury, under the laws of the State of California, that the foregoing is my deposition under oath; that these are the questions asked of me and my answers thereto; that I have read same and have made the necessary corrections, additions, or changes to my answers that I deem necessary.

In witness whereof, I hereby subscribe my name this _____ day of _____, 2012.

_____

WITNESS SIGNATURE

CERTIFICATION
OF
CERTIFIED SHORTHAND REPORTER

I, the undersigned, a Certified Shorthand Reporter of the State of California do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name Katherine McCoy.

Dated: _____

Certificate Number 11157