

<p style="text-align: right;">34</p> <p>1 the reference times are different.</p> <p>2 Q. Well, we know if you look at the code sheet</p> <p>3 that there was no pulse noted and there was a tamponade</p> <p>4 noted; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And the tamponade, by definition, had to occur</p> <p>7 when the hemodynamic instability occurred, would you</p> <p>8 agree or disagree?</p> <p>9 A. I would agree.</p> <p>10 Q. And so the time of -- the start of that</p> <p>11 hemodynamic instability would be 12:39; is that correct?</p> <p>12 A. By the time line on this particular code sheet</p> <p>13 record, that would be correct.</p> <p>14 Q. Okay. Now, let's keep going through this</p> <p>15 letter, which is Exhibit Number 2. We've already</p> <p>16 established that Dr. Smith, according to his deposition,</p> <p>17 immediately inserted the needle and drained into the</p> <p>18 pericardial sac; is that correct? That's what he said</p> <p>19 he did?</p> <p>20 A. We established that that's what he said he</p> <p>21 did, yes.</p> <p>22 Q. And then followed by a pericardiocentesis; is</p> <p>23 that correct?</p> <p>24 A. That's what he said he did, yes.</p> <p>25 Q. Okay. And then I think it's your opinion that</p>	<p style="text-align: right;">36</p> <p>1 computerized log. I don't know if his wristwatch was</p> <p>2 five minutes fast or ten minutes slow, but I believe,</p> <p>3 relative to whatever reference he was taking notes to,</p> <p>4 that his records are likely to be correct.</p> <p>5 Q. And you're saying his records are correct even</p> <p>6 though they're five, ten minutes off?</p> <p>7 A. It depends on what his time reference is. If</p> <p>8 he was using his wristwatch -- we know that the computer</p> <p>9 logs can be incorrect. They can be set off five or ten</p> <p>10 minutes from one to the other, or from another</p> <p>11 reference. So, I think whenever you're looking at times</p> <p>12 that are entered in a record one has to know what we are</p> <p>13 comparing that to.</p> <p>14 The computer log may be off relative to the --</p> <p>15 Q. Tell me --</p> <p>16 A. -- local time, but it will be correct relative</p> <p>17 to its own entries one to the next.</p> <p>18 Q. Let's look at the computer log. What time</p> <p>19 does the computer log indicate that there was</p> <p>20 hemodynamic compromise?</p> <p>21 A. It does not note the time there was</p> <p>22 hemodynamic compromise, it notes that CPR started at</p> <p>23 12:39, so we can infer that the hemodynamic compromise</p> <p>24 should have very shortly preceded that time.</p> <p>25 Q. What is the next thing that the log notates</p>
<p style="text-align: right;">35</p> <p>1 he used the echocardiogram to confirm that there had</p> <p>2 been a tamponade; is that your opinion?</p> <p>3 A. Well, it appears that the anesthesia notes</p> <p>4 state that a cardiac arrest occurred. There was CPR and</p> <p>5 drug therapy. 10 minutes later a transthoracic echo</p> <p>6 showed a large pericardial effusion. So, that seems to</p> <p>7 infer that the effusion was present for at least 10</p> <p>8 minutes before being evacuated.</p> <p>9 Q. But Dr. Smith said that's not true; isn't that</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. So, the anesthesiologist's records could be</p> <p>13 incorrect; isn't that correct?</p> <p>14 A. I suppose anything could be incorrect.</p> <p>15 Q. Okay.</p> <p>16 A. The patient could even still be alive. I</p> <p>17 haven't seen a dead body.</p> <p>18 Q. Do you really believe he's still alive?</p> <p>19 A. No, nor do I really believe that the time</p> <p>20 delays are incorrect.</p> <p>21 Q. So, you don't believe that the</p> <p>22 anesthesiologist's records are incorrect?</p> <p>23 A. I don't believe they're incorrect to the time</p> <p>24 reference he was using. Now, I don't know if there was</p> <p>25 a clock on the wall in the room that was off from the</p>	<p style="text-align: right;">37</p> <p>1 that you believe is relevant to this time line?</p> <p>2 A. Epinephrine, two doses one minute apart.</p> <p>3 Q. At what time?</p> <p>4 A. At 12:41 and 12:42.</p> <p>5 Q. Okay. Keep going.</p> <p>6 A. Atropine at 12:43. Stat echo paged at 12:44,</p> <p>7 which we know from the anesthesiologist's notes that</p> <p>8 whatever time they arrived still demonstrated a large</p> <p>9 pericardial effusion.</p> <p>10 Q. Okay. By his interpretation, not the</p> <p>11 cardiologist's?</p> <p>12 A. I would infer that the anesthesiologist</p> <p>13 doesn't routinely interpret echos. I would infer that</p> <p>14 he's relating whatever the echo technician or the</p> <p>15 cardiologist interpreted the echo as.</p> <p>16 Q. Where did you get that information?</p> <p>17 A. I don't. That is an inference.</p> <p>18 Q. Okay. An assumption that you made?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. What's the next one, the next entry?</p> <p>21 A. There's an additional entry for CPR started at</p> <p>22 12:44.</p> <p>23 Q. Okay.</p> <p>24 A. There is an entry for bicarbonate being given</p> <p>25 at 12:45. There is an entry for another dose of</p>

<p style="text-align: right;">38</p> <p>1 Epinephrine given at the same time.</p> <p>2 Q. Again, those would be given by the</p> <p>3 anesthesiologist; is that correct?</p> <p>4 A. Or a nurse. Either one typically.</p> <p>5 Q. Who's generally in charge of doing these types</p> <p>6 of medications during a procedure if you have an</p> <p>7 anesthesiologist in the room?</p> <p>8 A. In my lab there's a call-out procedure that if</p> <p>9 I ask for something, for example, heparin, the nurse</p> <p>10 will say, "Would you like me to give that, Doctor, to</p> <p>11 the anesthesiologist or should I give it?" So, it can</p> <p>12 vary.</p> <p>13 Q. What is the procedure in this particular lab?</p> <p>14 A. It appears that the anesthesiologist was</p> <p>15 pushing meds.</p> <p>16 Q. Okay. What's the next entry in the computer</p> <p>17 log that you think is relevant?</p> <p>18 A. Pacing from the coronary sinus at the proximal</p> <p>19 poles at 12:45. Another dose of Epinephrine at 12:45.</p> <p>20 Another dose of bicarbonate at 12:45. Another dose of</p> <p>21 Epinephrine at 12:47. Another dose of Atropine at</p> <p>22 12:47. Another dose of Epinephrine at 12:47:52, almost</p> <p>23 12:48.</p> <p>24 At 12:48:49 CPR is continuing and a note is</p> <p>25 made that the echo is at the bedside at that time,</p>	<p style="text-align: right;">40</p> <p>1 And it tells us that there was a gap from the</p> <p>2 onset of the event to the echo being paged and the echo</p> <p>3 arriving, and then a further time interval during which</p> <p>4 CPR was continued until a pulse was again detected.</p> <p>5 Q. Okay. Now, are you contending that when you</p> <p>6 have an adverse problem during this ablation procedure</p> <p>7 that you would not initiate CPR when there's a drop in</p> <p>8 blood pressure?</p> <p>9 A. One could initiate CPR -- can we go off the</p> <p>10 record for just a moment?</p> <p>11 (Recess taken to allow Dr. Seifert to take a</p> <p>12 phone call.)</p> <p>13 MS. PISCEVICH: Would you please read the</p> <p>14 question and the beginning of his answer.</p> <p>15 (Record read.)</p> <p>16 THE WITNESS: Although, it is unlikely to be</p> <p>17 helpful, the mainstay of therapy for pericardial</p> <p>18 tamponade is increasing intravascular fluid volume,</p> <p>19 which would be done by opening all IVs wide open and</p> <p>20 removing the pericardial fluid.</p> <p>21 Q. BY MS. PISCEVICH: My question is, are you</p> <p>22 contending that you would not do CPR simultaneously with</p> <p>23 the pericardiocentesis?</p> <p>24 A. Yes.</p> <p>25 Q. You should not use CPR, is that your</p>
<p style="text-align: right;">39</p> <p>1 approximately 10 minutes after the onset of the event</p> <p>2 and approximately five minutes after the event started,</p> <p>3 consistent with the gap in times noted on the</p> <p>4 anesthesiology record.</p> <p>5 At 12:49:28, bicarbonate. At 12:50:48,</p> <p>6 Atropine. At 12:51:03, Vasopressin. At 12:51:31,</p> <p>7 Atropine. At 12:52:05, bicarbonate. At 12:52:18, CPR</p> <p>8 is continuing and there is still no pulse. At 12:53:08,</p> <p>9 Atropine. And at 12:54:53 a pulse is noted as detected</p> <p>10 once again.</p> <p>11 Q. Anything else that you can consider relevant</p> <p>12 on the computer log?</p> <p>13 A. I don't consider anything else present on the</p> <p>14 computer log as relevant.</p> <p>15 Q. Now, based on the computer log alone and</p> <p>16 discarding all the other evidence, what does this tell</p> <p>17 you, as the expert witness, this particular computer</p> <p>18 log?</p> <p>19 A. It suggests that CPR was being done during</p> <p>20 this event for at least 10 minutes or so, which is a</p> <p>21 therapy unlikely to be effective without removing the</p> <p>22 fluid from the pericardial space.</p> <p>23 It demonstrates that the typical ACLS protocol</p> <p>24 was instituted, which is unlikely to be particularly</p> <p>25 helpful in pericardial tamponade.</p>	<p style="text-align: right;">41</p> <p>1 contention?</p> <p>2 A. Not while putting a needle into the heart.</p> <p>3 It's hard to hit a moving target, as a general</p> <p>4 construct.</p> <p>5 The coronary arteries, unfortunately for us,</p> <p>6 lie on the epicardial, or outside, surface of the heart.</p> <p>7 If one is trying to stick a needle into the small space</p> <p>8 between the pericardial sac and the epicardial surface</p> <p>9 on which sit the coronary arteries, the motion of the</p> <p>10 heart during CPR could easily cause the tip of the</p> <p>11 needle to lacerate those arteries.</p> <p>12 Q. Did it?</p> <p>13 A. It did not. However, as a general construct,</p> <p>14 in answer to your question, one would stop compressions</p> <p>15 while doing a pericardiocentesis and not continue them.</p> <p>16 Q. So, it's not below the standard of care to</p> <p>17 order CPR?</p> <p>18 A. I don't think it was harmful in this case,</p> <p>19 other than it was a portion of those events that, in</p> <p>20 total, seemed to have delayed the definitive therapy.</p> <p>21 Q. Based upon your assumptions?</p> <p>22 A. Based upon what's in the record about delays</p> <p>23 from the blood pressures being restored, how long the</p> <p>24 effusion was persisting in the pericardial sac after the</p> <p>25 onset of events as noted by the echo demonstrating a</p>

<p style="text-align: right;">42</p> <p>1 large pericardial effusion.</p> <p>2 Q. Doctor, Mr. Kozar (sic) indicates that</p> <p>3 confirmation of cardiac tamponade using transthoracic</p> <p>4 echo prior to pericardiocentesis resulted in an</p> <p>5 unnecessary and harmful delay.</p> <p>6 Do you agree that Dr. Smith says that he</p> <p>7 didn't wait for the echo? Do you agree with that?</p> <p>8 A. I find that difficult to believe.</p> <p>9 Q. No. My question is, do you believe that's</p> <p>10 what he said?</p> <p>11 A. Oh, I agree that that's what he said.</p> <p>12 Q. And he said that that did not occur about</p> <p>13 three times in his deposition; is that correct?</p> <p>14 A. I'm sorry, could you be more specific about</p> <p>15 what did not occur?</p> <p>16 Q. That he did not wait for the echocardio</p> <p>17 machine before he did the pericardiocentesis.</p> <p>18 A. That's correct.</p> <p>19 Q. And why do you disagree with his testimony</p> <p>20 when he was the one present?</p> <p>21 A. Well, because someone else present, namely,</p> <p>22 the anesthesiologist in this matter, documents a</p> <p>23 10-minute delay between cardiac arrest and a</p> <p>24 transthoracic echo showing a large pericardial effusion.</p> <p>25 Q. He also shows a V-tach; isn't that correct?</p>	<p style="text-align: right;">44</p> <p>1 A. Incorrect.</p> <p>2 Q. Okay. Tell me why.</p> <p>3 A. The first things I would do if I have</p> <p>4 tamponade -- and this has happened to me -- is not call</p> <p>5 for a stat echo. I, too, perform procedures routinely</p> <p>6 with intracardiac echo catheters within the heart. It</p> <p>7 takes a matter of only a few seconds to rotate the shaft</p> <p>8 of the catheter and use the handle control to deflect it</p> <p>9 to confirm or eliminate the diagnosis of pericardial</p> <p>10 fluid, blood in this case, causing tamponade.</p> <p>11 Once that is strongly suspected or confirmed,</p> <p>12 the things that are most likely to be helpful are</p> <p>13 administering Protamine immediately to reverse the</p> <p>14 anticoagulation, removing catheters from the left atrium</p> <p>15 where clots could cause strokes once anticoagulation was</p> <p>16 reversed, opening fluids wide open to increase return of</p> <p>17 blood to the heart so that it can pump, which is</p> <p>18 impaired by the pericardial fluid, and removing fluid</p> <p>19 itself.</p> <p>20 CPR tends not to be helpful. Pressor</p> <p>21 medications such as Vasopressin or Epinephrine tend not</p> <p>22 to be helpful. And if one can pace the heart, Atropine</p> <p>23 is unlikely to be particularly helpful.</p> <p>24 Q. Okay. Did Dr. Smith order Epinephrine,</p> <p>25 Atropine, et cetera?</p>
<p style="text-align: right;">43</p> <p>1 A. He does state that there was a V-tach.</p> <p>2 Q. And he also shows that he was doing other</p> <p>3 things, not watching Dr. Smith, isn't that correct, by</p> <p>4 giving all of those drugs every couple of minutes?</p> <p>5 A. That's correct.</p> <p>6 Q. So, he really doesn't know, from his</p> <p>7 perspective, what Dr. Smith was or was not doing?</p> <p>8 A. I'm not sure that is correct. I think that</p> <p>9 there is a delay between the time the event occurred and</p> <p>10 the time the echo arrived, which is unavoidable. And</p> <p>11 the echo apparently showed persistent fluid which</p> <p>12 strongly suggests, to a reasonable degree of certainty,</p> <p>13 that the pericardiocentesis could not have preceded the</p> <p>14 echo, because if it had the echo could not have shown a</p> <p>15 large pericardial effusion.</p> <p>16 Q. Why not?</p> <p>17 A. Because it would have been gone.</p> <p>18 Q. Well, if he's continuing to bleed, it wouldn't</p> <p>19 have been gone? He took out 300 cc's of blood.</p> <p>20 A. 300 cc's isn't all that much, but the</p> <p>21 continued bleeding is concerning, as well. Since the</p> <p>22 computer log suggests that Protamine to reverse the</p> <p>23 heparin wasn't administered until 12:58.</p> <p>24 Q. Well, and that won't happen until you got the</p> <p>25 crisis under control, the hemodynamic instability?</p>	<p style="text-align: right;">45</p> <p>1 A. It appears they were given. It's not clear</p> <p>2 whether they were given at his initiation or the</p> <p>3 initiation of the anesthesiologist.</p> <p>4 Q. Do you have an opinion as to how that</p> <p>5 happened?</p> <p>6 A. I don't, nor do I find it particularly</p> <p>7 relevant.</p> <p>8 Q. So, if you were in this situation and had the</p> <p>9 hemodynamic stability (sic) that occurred at about</p> <p>10 12:39, what would you have done?</p> <p>11 A. I assume you mean "instability," and I'll --</p> <p>12 Q. Yeah.</p> <p>13 A. -- answer the question as if you had.</p> <p>14 Q. I thought I had said instability. Let me</p> <p>15 rephrase the question.</p> <p>16 If you had encountered this patient with</p> <p>17 hemodynamic instability at 12:39, what would you have</p> <p>18 done?</p> <p>19 A. This has, in fact, happened to me from time to</p> <p>20 time, and what I do is ask the anesthesiologist or the</p> <p>21 nurses to open all fluids wide open, immediately pull</p> <p>22 the catheters out of the left atrium and order</p> <p>23 Protamine, ask for a pericardiocentesis kit to be</p> <p>24 opened, and image the pericardial fluid with my existing</p> <p>25 intracardiac echo catheter which is in the right atrium.</p>

<p style="text-align: right;">46</p> <p>1 Q. Are you contending that that equipment was not 2 in the room?</p> <p>3 A. Oh, I'm contenting that it was in the room.</p> <p>4 Q. And you are contending that Dr. Smith didn't 5 do that with respect to the kit?</p> <p>6 A. It doesn't appear that the blood pressure was 7 restored for 15 minutes or so, and it appears that the 8 fluid was still present 10 minutes after the event. So, 9 it does not appear that a pericardiocentesis was done 10 properly.</p> <p>11 Q. So, the blood pressure was not restored for 15 12 minutes. And what was your second thing?</p> <p>13 A. The transthoracic echo, which was ordered and 14 the machine -- the technician had to arrive from 15 elsewhere in the facility, arrived in the room. The 16 technician had to plug it in. The technician had to do 17 imaging. And even after that delay for paging, 18 traveling to the room, plugging in the equipment and 19 initiating the study, the fluid was still in the heart, 20 in the sac around the heart, the pericardial space.</p> <p>21 Q. So, you don't believe that Dr. Smith acted 22 within the standard of care because he did not 23 immediately do the pericardiocentesis?</p> <p>24 A. That's correct. It seems to me that a lot of 25 other stuff was being done, but not these things that I</p>	<p style="text-align: right;">48</p> <p>1 needle to be inserted under the rib cage with the proper 2 angle, because one would have to have the angle between 3 the syringe and the needle and the chest and abdominal 4 in a roughly 40 to 45 degree angle. And if the abdomen 5 is protuberant, one might not be able to attain that 6 angle. If one is doing CPR during the attempt at 7 pericardiocentesis, in a general sense, it is hard to 8 hit a moving target in this business. The likelihood of 9 success of a procedure goes down and the likelihood of 10 attending complications of the procedure goes up.</p> <p>11 Q. Any other explanations why it would not be 12 successful on the first attempt?</p> <p>13 A. The needle could be placed too high or too 14 low. These are procedures that are done based on 15 anatomical landmarks of the rib cage and other portions 16 of the skeletal anatomy.</p> <p>17 These can vary from patient to patient. It 18 might take one or two attempts of inserting the needle, 19 typically in the hands of a skilled operator, to enter 20 the pericardial space.</p> <p>21 Q. Any other explanation for why this procedure 22 would not be successful? You talked about blood clots, 23 prior heart surgery, an obese patient, success rate goes 24 down with CPR, the needle may be high or low depending 25 on the patient's anatomy.</p>
<p style="text-align: right;">47</p> <p>1 would view as the most likely to result in a successful 2 resuscitation.</p> <p>3 Q. Tell me some reasons why you sometimes 4 don't get a successful resuscitation even doing a 5 pericardiocentesis.</p> <p>6 A. Well, if the pericardiocentesis is 7 unsuccessful and fluid can't be removed from the heart, 8 can't be removed from the sac around the heart, for 9 example, if the blood has clotted already, if the 10 effusion is loculated, that means it's compartmentalized 11 in certain areas, we often see this in patients who had 12 a prior open heart surgery where portions of the sac 13 around the heart are scarred down. And if the fluid 14 isn't in those locations that would be accessed by the 15 needle typically inserted from below the rib cage aiming 16 up toward the pericardial sac, if fluid is in the 17 interior portion of the heart at the pericardial space, 18 we can access that area with a needle. But if that area 19 of the sac happens to be scarred down from a prior 20 surgery and the fluid is behind the heart, we might not 21 be able to access that space with a pericardiocentesis.</p> <p>22 Q. Other than a blood clot or a prior surgery are 23 there any other reasons it may not be successful?</p> <p>24 A. If the patient is morbidly obese, the 25 distention of the abdomen with fat may not allow the</p>	<p style="text-align: right;">49</p> <p>1 A. Or the technique of the operator.</p> <p>2 None that I can think of at this time off the 3 top of my head.</p> <p>4 Q. How did you arrive in this letter that 15 5 minutes had elapsed without oxygen to Neil's brain?</p> <p>6 A. The time the CPR started is listed in the log 7 at 12:39. And on the same log with the same time 8 reference, the pulse is restored at 12:54:53, almost 9 12:55. The restoration of the pulse would have been 10 first opportunity for oxygenated blood to have 11 meaningfully perfused the brain.</p> <p>12 Q. And is that a known complication of this 13 procedure, blood not getting to the brain?</p> <p>14 A. Oh, death and cardiac arrest or perforation 15 are known complications of the procedure. I don't 16 dispute that.</p> <p>17 Q. And then you indicate in here one of your 18 other opinions is that he should not have waited for the 19 technician and the transthoracic echo machine to have 20 arrived before doing a pericardiocentesis. Dr. Smith 21 said that did not occur; is that correct?</p> <p>22 A. It is correct that Dr. Smith said that did not 23 occur.</p> <p>24 Q. And it's also correct that there are 25 variations in the record as to when the echo tech</p>

<p style="text-align: right;">50</p> <p>1 arrived; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And then I believe you go on to indicate that</p> <p>4 there are, quote, published guidelines for atrial</p> <p>5 fibrillation. Are those in the e-mails or in your</p> <p>6 computer?</p> <p>7 A. I don't believe I have downloaded those files,</p> <p>8 but they're readily accessible on the internet.</p> <p>9 Q. Well, according to this it says "published</p> <p>10 guidelines for atrial fibrillation in the relevant</p> <p>11 period of time state that a severe drop in blood</p> <p>12 pressure, quote, should be assumed to represent cardiac</p> <p>13 tamponade until proven otherwise, unquote. What</p> <p>14 guidelines are you referencing?</p> <p>15 A. The 2000, I believe it's seven, ACC, AHA, HRS</p> <p>16 guidelines on atrial fibrillation, ablation. I believe</p> <p>17 those were updated on or about 2012.</p> <p>18 Q. Okay. And who publishes them?</p> <p>19 A. The American College of Cardiology, the</p> <p>20 American Heart Association, and the Heart Rhythm Society</p> <p>21 jointly. ACC, AHA, HRS.</p> <p>22 Q. And are those guidelines contained in your</p> <p>23 computer?</p> <p>24 A. I suspect they probably are in a cache</p> <p>25 somewhere.</p>	<p style="text-align: right;">52</p> <p>1 So, the entry is made. The time is generated</p> <p>2 automatically as the entry is made.</p> <p>3 Q. Correct. And it's made by a person?</p> <p>4 A. Correct.</p> <p>5 Q. It's not like the ablation procedure itself</p> <p>6 that tells you how many ablations you did or how many</p> <p>7 seconds went by, that's done by the machine itself?</p> <p>8 A. That's typically correct. It varies from lab</p> <p>9 to lab.</p> <p>10 Q. Okay. Now, with respect to the reports of the</p> <p>11 other experts that you reviewed -- and I believe we're</p> <p>12 starting with Dr. Rahul Doshi, D-o-s-h-i, do you happen</p> <p>13 to have those handy? If not, I probably have those.</p> <p>14 A. I don't have it handy. It might be quicker if</p> <p>15 you simply hand me a copy.</p> <p>16 Q. Okay. I should have this somewhere.</p> <p>17 THE WITNESS: Can we go off the record?</p> <p>18 MS. PISCEVICH: Sure.</p> <p>19 (Recess taken from 10:05 a.m. to 10:09 a.m.)</p> <p>20 (Deposition Exhibit 6 was marked for</p> <p>21 identification.)</p> <p>22 Q. BY MS. PISCEVICH: Back on the record.</p> <p>23 Doctor, I've had marked as Exhibit 6 the</p> <p>24 expert reports that you reviewed of Dr. Doshi,</p> <p>25 D-o-s-h-i, Dr. Calkins, C-a-l-k-i-n-s, Dr. Bhandari,</p>
<p style="text-align: right;">51</p> <p>1 Q. Did you provide them to counsel, Mr. Kozak?</p> <p>2 A. I don't believe I actually printed those out.</p> <p>3 I think I merely referred to them.</p> <p>4 Q. And then you indicate that the nurse's</p> <p>5 minute-by-minute notes are very reliable. Where do you</p> <p>6 get the information to back up that conclusion?</p> <p>7 A. As an industry we rely on these logs to</p> <p>8 document when things occur. The common adage in</p> <p>9 American medicine is "Not charted, not done."</p> <p>10 Q. Okay.</p> <p>11 A. We infer that the records are reliable as a</p> <p>12 self-contained, self-consistent record of a procedure.</p> <p>13 Q. And a lot of these notes are done after the</p> <p>14 fact; is that correct?</p> <p>15 A. Not the procedure log. That actually --</p> <p>16 Q. Well, the procedure log itself is put in when</p> <p>17 they actually -- the heart goes beep, beep, or whenever</p> <p>18 the ablations are done and the time is in seconds on the</p> <p>19 procedure log. The other comments are put in by hand;</p> <p>20 is that correct?</p> <p>21 A. Which comments are you referring to?</p> <p>22 Q. Like when the pericardiocentesis or the blood</p> <p>23 pressure dropped, those are put in by hand, that's not</p> <p>24 the log saying, oh, the blood pressure went down?</p> <p>25 A. Well, these are put in by hand on the log.</p>	<p style="text-align: right;">53</p> <p>1 B-h-a-n-d-a-r-i, and Dr. Pearl, P-e-a-r-l.</p> <p>2 And if I understand, you reviewed these</p> <p>3 reports prior to giving your opinion in this October 12</p> <p>4 report.</p> <p>5 A. With the exception that I had no knowledge</p> <p>6 that Dr. Calkins had rendered an opinion until last</p> <p>7 night, nor have I seen it.</p> <p>8 Q. Oh, okay. Well, then let's go through these.</p> <p>9 First of all, with respect to Dr. Doshi, have you ever</p> <p>10 heard of him or know of him?</p> <p>11 A. I've heard the name.</p> <p>12 Q. And it indicates that -- he goes through a</p> <p>13 recitation of the facts, and he says that in his opinion</p> <p>14 it was complicated, that the ablation procedure was</p> <p>15 complicated by a cardiac tamponade resulting in</p> <p>16 hemodynamic compromise and ultimately collapsed, and he</p> <p>17 suffered anoxic encephalopathy.</p> <p>18 And this was talking about Dr. Kang, the</p> <p>19 anesthesiologist, indicating that Dr. Kang would not</p> <p>20 have had procedures generally to do this procedure. Do</p> <p>21 you agree that an anesthesiologist wouldn't do a</p> <p>22 pericardiocentesis?</p> <p>23 A. That would be, in my opinion, unusual although</p> <p>24 I, too, am not an anesthesiologist.</p> <p>25 Q. And according to the information in the</p>

<p style="text-align: right;">54</p> <p>1 record, Dr. Kang did not have the procedures (sic) to do</p> <p>2 pericardiocentesis?</p> <p>3 A. Did not have "procedures"? I'm not sure I --</p> <p>4 Q. Privileges, excuse me. He did not have</p> <p>5 privileges.</p> <p>6 A. I saw nothing in the record to suggest that,</p> <p>7 and I would suspect it to be the case.</p> <p>8 Q. And next is the declaration of Dr. Calkins</p> <p>9 from John -- first of all, before I move on, you're not</p> <p>10 critical of the anesthesiologist in this case, are you?</p> <p>11 A. I am not.</p> <p>12 Q. And you're not going to be giving any opinions</p> <p>13 about that?</p> <p>14 A. I am not.</p> <p>15 Q. When you reviewed the records of the hospital,</p> <p>16 did you find anything inappropriately done by any of the</p> <p>17 technicians or nurses in the catheter lab?</p> <p>18 A. Not that I can think of at this point in time.</p> <p>19 Q. And did you find any inappropriate care on the</p> <p>20 floor?</p> <p>21 A. Not that I can think of.</p> <p>22 Q. All right. Let's go to the declaration of</p> <p>23 Dr. Calkins. Do you know or have you heard of</p> <p>24 Dr. Calkins?</p> <p>25 A. I know Hugh Calkins.</p>	<p style="text-align: right;">56</p> <p>1 his death.</p> <p>2 And his comments are that Mr. DeChambeau was</p> <p>3 an appropriate candidate for a catheter ablation of</p> <p>4 atrial fibrillation. Do you agree with that?</p> <p>5 A. I do.</p> <p>6 Q. Informed consent was appropriately obtained.</p> <p>7 Do you agree with that?</p> <p>8 A. I do.</p> <p>9 Q. Dr. Smith performed the AF ablation procedure</p> <p>10 appropriately. I take it you disagree with that?</p> <p>11 A. No, I don't necessarily disagree with the</p> <p>12 procedure having been performed appropriately. One can</p> <p>13 do an appropriate procedure and, nonetheless, still have</p> <p>14 a complication.</p> <p>15 Q. So, you would agree, then, that Dr. Smith</p> <p>16 performed the AF ablation procedure appropriately?</p> <p>17 A. I have no reason to suspect otherwise.</p> <p>18 Q. Cardiac tamponade is a well-established</p> <p>19 complication of all EP procedures and also of catheter</p> <p>20 ablation of atrial fibrillation. The diagnosis and</p> <p>21 treatment of the patient's cardiac arrest resulted from</p> <p>22 cardiac tamponade was appropriate. I take it that's the</p> <p>23 one you disagree with?</p> <p>24 A. That is correct.</p> <p>25 Q. And, of course --</p>
<p style="text-align: right;">55</p> <p>1 Q. And how do you know Dr. Calkins?</p> <p>2 A. When I was a medical student at Johns Hopkins</p> <p>3 he was a cardiology fellow in training. In the summer</p> <p>4 of 1989 when I finished medical school, he was also</p> <p>5 finishing his cardiology training at Hopkins.</p> <p>6 And when I went to the University of Michigan</p> <p>7 to be an internal medicine resident, Hugh went to</p> <p>8 Michigan to be a junior faculty member in Fred Morady's</p> <p>9 department in Ann Arbor. And during those three years</p> <p>10 that I was there, I had occasion on, I think one month,</p> <p>11 to do a cardiology rotation where Dr. Calkins was my</p> <p>12 attending physician and would round with us on a daily</p> <p>13 basis for that one month.</p> <p>14 Q. He indicates he's performed -- and this was in</p> <p>15 2010 -- about a thousand catheter ablations of atrial</p> <p>16 fibrillation procedures. In 2010 about how many did you</p> <p>17 perform?</p> <p>18 A. I was probably doing 75 a year. I imagine in</p> <p>19 2010 the number would have probably been around 500.</p> <p>20 Q. And, basically, he talks about the cardiac</p> <p>21 tamponade was diagnosed, appropriate measures were</p> <p>22 undertaken, including an immediate code, a</p> <p>23 pericardiocentesis was successfully performed. During</p> <p>24 the cardiac arrest, the patient experienced significant</p> <p>25 anoxic injury to his brain which ultimately resulted in</p>	<p style="text-align: right;">57</p> <p>1 A. And -- and I would specifically say that the</p> <p>2 disagreement is subtle, because I don't agree -- I don't</p> <p>3 disagree with the statement that the diagnosis and</p> <p>4 treatment were appropriate, my point is the timing of</p> <p>5 the treatment was inappropriate and late.</p> <p>6 Q. Okay. And let's look at the affidavit of</p> <p>7 Dr. Bhandari. Do you know who he is or have you heard</p> <p>8 of him?</p> <p>9 A. I've heard of him. I don't remember whether</p> <p>10 I've met him.</p> <p>11 Q. Okay. He indicates that he had also reviewed</p> <p>12 the DVD in his affidavit on Page 2 -- I mean, excuse me,</p> <p>13 Paragraph 2. And then he goes on to talk about what he</p> <p>14 does. And then he talks about the transesophageal echo</p> <p>15 cardiogram was performed by Dr. Kolli which did not show</p> <p>16 any arterial clots. Do you agree with that?</p> <p>17 A. I'm sorry. There's a number of things I'm</p> <p>18 losing you on.</p> <p>19 Q. I'm on Page --</p> <p>20 A. On Page 2 you mentioned that he reviewed --</p> <p>21 Q. No. On Page 1 --</p> <p>22 A. -- a disk.</p> <p>23 Q. -- Paragraph 2, he reviewed the disk.</p> <p>24 A. Okay. Very good.</p> <p>25 And the second part of your question?</p>

<p style="text-align: right;">58</p> <p>1 Q. The next part is on Page 3, Paragraph 7. Do</p> <p>2 you agree that the transesophageal echocardiogram was</p> <p>3 performed by Dr. Kolli which did not show any arterial</p> <p>4 clots?</p> <p>5 A. It would be "atrial" clots.</p> <p>6 Q. Excuse me.</p> <p>7 A. And that reversal of letters has some</p> <p>8 importance. Arterial is in the arteries.</p> <p>9 Q. Right.</p> <p>10 A. And atrial would be in the left upper chamber</p> <p>11 of the heart.</p> <p>12 But, yes, I agree with that.</p> <p>13 Q. And for purposes of this deposition, Dr. Smith</p> <p>14 indicated that Dr. Kolli performed this procedure and</p> <p>15 left the room and that he did not have an assistant. Is</p> <p>16 that generally how it's done, you don't have an</p> <p>17 assistant during the procedure?</p> <p>18 A. That is exactly how I do it. The only</p> <p>19 exception I would typically envision would be, for</p> <p>20 example, in the case of Dr. Calkins, where, as the</p> <p>21 director of a training program, I would assume that most</p> <p>22 of the procedures are actually predominantly done by the</p> <p>23 fellowship trainees under his supervision.</p> <p>24 Q. But I'm talking about the transesophageal echo</p> <p>25 performed by Dr. Kolli and then he left. That would be</p>	<p style="text-align: right;">60</p> <p>1 on a computer keyboard triggering pacing from a</p> <p>2 previously placed catheter in the ventricle. The</p> <p>3 keyboard was in the control room. We were in the room</p> <p>4 with the patient. And for one or two seconds the</p> <p>5 immediate diagnosis was VT until we realized that an</p> <p>6 outside company rep had inadvertently caused</p> <p>7 inappropriate pacing.</p> <p>8 Q. No, I appreciate that. My question's a little</p> <p>9 different, Doctor.</p> <p>10 If a VT occurs, would the standard of care</p> <p>11 require stopping the procedure?</p> <p>12 A. Not necessarily unless it was thought that the</p> <p>13 VT was in some way pathologic and not readily</p> <p>14 explainable.</p> <p>15 Q. And then he goes on to talk about, he says</p> <p>16 that the tamponade was listed as a diagnosis in the code</p> <p>17 sheet at 12:41 p.m. And I'm reading from Paragraph 10.</p> <p>18 And it appears that the pericardiocentesis was formed</p> <p>19 around this time -- do you agree or disagree with that</p> <p>20 -- regaining blood pressure at 12:54?</p> <p>21 A. I don't find any data on the code sheet to</p> <p>22 support that.</p> <p>23 Q. Well, it says the patient was noted to have</p> <p>24 regained a blood pressure at 12:54 p.m. and the code</p> <p>25 appears to have ended. Tamponade was listed as a</p>
<p style="text-align: right;">59</p> <p>1 consistent?</p> <p>2 A. That's exactly how I do it.</p> <p>3 Q. Okay. Then he indicates in Paragraph 8 that</p> <p>4 there was no VT based upon his review of the disk. And,</p> <p>5 obviously, you haven't reviewed it so you can't comment</p> <p>6 on that one way or another.</p> <p>7 Speaking of the VT, what was the basis of</p> <p>8 Dr. Morady's opinion in his affidavit, the initial one?</p> <p>9 A. I don't know. I assume he had not yet at that</p> <p>10 time reviewed the disk since I was the one who sent it</p> <p>11 to him.</p> <p>12 Q. Correct.</p> <p>13 A. So, I assume it may have been some of the</p> <p>14 records.</p> <p>15 Q. That there had been a VT?</p> <p>16 A. Correct.</p> <p>17 Q. If there had been a VT one would not continue</p> <p>18 on with the procedure?</p> <p>19 A. Well, that's not necessarily true. One would</p> <p>20 like to at least have a reasonable idea as to why that</p> <p>21 started. For example, it's not uncommon that there</p> <p>22 might be catheters in the ventricle during such a</p> <p>23 procedure, and that if the catheter's pushing on the</p> <p>24 heart it could trigger VT by virtue of contact.</p> <p>25 I have had a company rep set a clipboard down</p>	<p style="text-align: right;">61</p> <p>1 diagnosis on the code sheet at 12:41 p.m., and it</p> <p>2 appears that pericardiocentesis was performed around</p> <p>3 that time. Approximately 300 cc's of blood was</p> <p>4 aspirated from the pericardial sac. Do you agree or</p> <p>5 disagree with that paragraph?</p> <p>6 A. I disagree with portions of it. The tamponade</p> <p>7 was noted as a diagnosis at 12:42, but in the space on</p> <p>8 the same line for the energy of the fibrillation, the</p> <p>9 time 12:41 is entered in the wrong column. And there's</p> <p>10 no notation on the code sheet as to when</p> <p>11 pericardiocentesis was performed.</p> <p>12 Q. Well, if a tamponade is listed as a diagnosis</p> <p>13 isn't the first thing the doctor's supposed to do is</p> <p>14 assume the worst and do the pericardiocentesis?</p> <p>15 A. I think that's exactly the point.</p> <p>16 Q. And then it says, according to Dr. Bhandari --</p> <p>17 A. Pardon me. Can we go off the record for a</p> <p>18 moment?</p> <p>19 MS. PISCEVICH: Sure.</p> <p>20 (Recess taken to allow Dr. Seifert to take a</p> <p>21 phone call.)</p> <p>22 Q. BY MS. PISCEVICH: I'll just start over.</p> <p>23 A. I'm sorry about the interruption. Back on the</p> <p>24 record.</p> <p>25 Q. I'll start over.</p>

<p>62</p> <p>1 It says -- he puts in his affidavit, although, 2 that hemodynamic condition of the patient stabilized he 3 could not be awakened. And he goes on and talks about 4 that, and then concludes on Paragraph 12 that Dr. Smith 5 met the standard of care, meaning that there were 6 appropriate indications to undertake the ablation 7 procedure, informed consent. And the procedure was 8 performed appropriately, and he says, as described in 9 his record, Dr. Smith's record, and that the hemodynamic 10 emergency was addressed without unreasonable delay. 11 I assume that you would agree with all of his 12 conclusions except the delay? 13 A. That's correct. 14 Q. And tell me in your opinion why you believe 15 that Dr. Smith delayed in doing the pericardiocentesis 16 when he says he did not. 17 A. Well, looking at the totality of the record, 18 there are several different people in the room at the 19 same time, each of them keeping their own records. The 20 times may not reference one another accurately, but the 21 records in and of themselves appear to be fairly 22 self-consistent, each one in itself. 23 The anesthesiologist's record records a 24 10-minute delay between CPR starting or cardiac arrest 25 and obtaining an echo, at 10 minutes after the event</p>	<p>64</p> <p>1 A. I do not. 2 Q. And he indicates that the procedure continued 3 until approximately 12 -- I'm on page -- it's right 4 before his opinions. It doesn't have a pagination, but 5 it would be Page SB01851. 6 The procedure continued to approximately 7 12:39, according to the cath lab log, at which point CPR 8 was initiated. The code blue indicates CPR was at 9 12:42. 10 And then it indicates that -- the cath lab 11 indicates the stat echo was ordered at 12:44. CPA was 12 started and bicarbonate given. And then the log shows 13 that the echo at bedside and CPR was continuing at 14 12:48, and pulse was at 12:44, confirmed by the code. 15 Do you agree with that? 16 A. Up to the end of the third paragraph? 17 Q. No, the second paragraph on Page 1851. Do you 18 agree with that? 19 A. Yes. 20 Q. He indicates a totally different conclusion 21 from you in the next paragraph. It says, "I do not 22 believe that the log is accurate with respect to the 23 timing of the pericardiocentesis, especially given that 24 pulses were restored at 12:54," because the path log 25 indicates it was done at 13:38. Do you see that</p>
<p>63</p> <p>1 still showed a large pericardial effusion. 2 The nursing log shows a lot of interventions 3 taking place over a period of 15 minutes or so, none of 4 which included reversal anticoagulation with Protamine, 5 none of which included wide open fluid boluses, and none 6 of which included pericardiocentesis. 7 Since the only thing that would have restored 8 the blood pressure would be the pericardiocentesis, and 9 since in my experience having had this complication and 10 dealt with it on multiple occasions, I know that within 11 a matter of a few seconds or a minute or so, in 12 evacuating that fluid the blood pressure increases. It 13 is reasonable and most consistent with the records to 14 believe that the pericardiocentesis immediately preceded 15 the restoration of a pulse by seconds and not by many 16 minutes. 17 And so we have a couple of different concepts 18 of what took place in the room by a number of different 19 observers, one of whom is Dr. Smith. But his assertion 20 as to the sequence and timing seems, to me, to be at 21 odds with the majority. 22 Q. Okay. So, I guess this case is who the jury 23 believes, you or Dr. Smith? 24 A. Or the medical records. 25 Q. And then do you know Dr. Pearl from Stanford?</p>	<p>65</p> <p>1 paragraph? 2 A. Is that one of the numbered paragraphs? 3 Q. It's just the -- it starts -- the paragraph 4 starts "The cath lab." I'm still on Page 1851. It 5 says, "The cath lab log indicates that the 6 pericardiocentesis was done at 13:38, but this was 7 likely the result of the entries being made at the 8 conclusion of the entire procedure. I do not believe 9 that log is accurate with respect to the timing of the 10 pericardiocentesis, especially given the pulses were 11 restored at 12:54." 12 A. I don't see the log that I'm looking at 13 showing the 13 -- 14 Q. I think it's at the very beginning of it. I 15 didn't bring the log with me or I would have pointed it 16 out to you, Doctor. But if you can't find it quickly -- 17 A. Pardon me for just a moment. 18 Q. Please take your time. 19 A. Can I go off the record to find this? 20 MS. PISCEVICH: Sure. 21 (Discussion off the record.) 22 THE WITNESS: Can we go back on the record? 23 I think it's important to answer your question 24 to define what we're looking at when we're looking at 25 the log.</p>

<p style="text-align: right;">66</p> <p>1 There are the minute-by-minute entries that</p> <p>2 are entered during the procedure and are automatically</p> <p>3 computer tagged by the person making entries. And then</p> <p>4 there are summary entries and they are noted in a</p> <p>5 different block of the log.</p> <p>6 And in medical records of Washoe Medical</p> <p>7 Center there are summary entries for the staff, who was</p> <p>8 managing the monitoring, who was monitoring the</p> <p>9 circulating of tools and equipment, who was acting as</p> <p>10 the scrub nurse.</p> <p>11 There's another area of the log which is</p> <p>12 simply a list of procedures performed. And</p> <p>13 pericardiocentesis is the last entry of that list. That</p> <p>14 appears not to be the minute-by-minute log of the</p> <p>15 procedure as it occurred, but some sort of summary of</p> <p>16 events during the procedure.</p> <p>17 Q. BY MS. PISCEVICH: And would you agree that</p> <p>18 the pericardiocentesis was not done at 1338?</p> <p>19 A. I believe it's 1335. But, yes, I would agree</p> <p>20 it was not done at that time.</p> <p>21 Q. And that's because of the restoration of the</p> <p>22 pulses; is that correct?</p> <p>23 A. That's because I would agree with Dr. Pearl</p> <p>24 that the pericardiocentesis is the event that was</p> <p>25 immediately followed by the restoration of pulse.</p>	<p style="text-align: right;">68</p> <p>1 initiated. In addition, cardiac surgery was called.</p> <p>2 The exact time of the pericardiocentesis is not</p> <p>3 recorded. Dr. Kang noted it to be at 1:00 p.m., but we</p> <p>4 know that can't be correct because the patient regained</p> <p>5 blood pressure no later than 12:54." And this is</p> <p>6 representation from Mr. Lemons to Mr. Balkenbush.</p> <p>7 "As for Dr. Morady's criticism regarding an</p> <p>8 EKG finding at 12:22, he appears to have relied on</p> <p>9 another misstatement by Dr. Kang. Dr. Kang's note says</p> <p>10 it was a VT but that is wrong. If Dr. Morady looks at</p> <p>11 the EKG, he will" -- I think it's supposed to be "note"</p> <p>12 -- "that this was an induced arterial flutter, atypical,</p> <p>13 without aberrancy, which Dr. Smith cardioverted at</p> <p>14 12:21." [Quoted as read.]</p> <p>15 Okay. These are the representations made by</p> <p>16 Dr. Smith's lawyer to Mr. Balkenbush.</p> <p>17 Do you agree with any of these</p> <p>18 misrepresentations other than the pericardiocentesis was</p> <p>19 initiated around 12:41?</p> <p>20 A. I agree that Dr. Kang's note says that it was</p> <p>21 a VT. That is not correct, but, for the information he</p> <p>22 would have had in hand, would be the best he could do</p> <p>23 under the circumstances.</p> <p>24 The disk that Dr. Morady looked at and that</p> <p>25 Dr. Smith would have had available would have had</p>
<p style="text-align: right;">67</p> <p>1 Q. And he also states, "Although he has not been</p> <p>2 deposed, I understand that Dr. Kang does/did not have</p> <p>3 privileges at Washoe Medical Center to perform a</p> <p>4 pericardiocentesis." That's where it is in the record.</p> <p>5 A. I find that unsurprising.</p> <p>6 Q. I mean, you would agree with that?</p> <p>7 A. I have no reason to disagree with it.</p> <p>8 Q. Okay. In your review -- I'm going to have</p> <p>9 this marked as Exhibit 7.</p> <p>10 (Deposition Exhibit 7 was marked for</p> <p>11 identification.)</p> <p>12 Q. BY MS. PISCEVICH: Exhibit 7 is SB 2920, which</p> <p>13 is an e-mail from Mr. Lemons, who represented Dr. Smith,</p> <p>14 to Mr. Balkenbush who is representing the DeChambeau</p> <p>15 family.</p> <p>16 I'm just going to ask you, have you ever seen</p> <p>17 this e-mail before?</p> <p>18 A. I don't recall seeing this.</p> <p>19 Q. Okay. According to the representations of</p> <p>20 Mr. Lemons to Mr. Balkenbush it states that, "Dr. Smith</p> <p>21 finished the last ablation, right side, at 12:35. The</p> <p>22 first indication of hemodynamic compromise was at 12:39.</p> <p>23 As soon as tamponade was diagnosed, appears to have been</p> <p>24 at 12:41, heparin reversal, immediate stat echo, ACLS</p> <p>25 with drugs and CPR and pericardiocentesis were</p>	<p style="text-align: right;">69</p> <p>1 intracardiac recordings from within the heart, and those</p> <p>2 can tell quite easily at a glance definitively whether</p> <p>3 the rhythm is coming from the upper or lower chambers</p> <p>4 bears.</p> <p>5 Dr. Kang would not have had those available on</p> <p>6 his monitor. On his monitor he would have had surface</p> <p>7 EKG tracings, most likely. And if the complex of the</p> <p>8 QRS signal is wide and the rhythm is fast, it is the</p> <p>9 reasonable, correct diagnosis to assume it is</p> <p>10 ventricular tachycardia, which will be more often than</p> <p>11 not correct. In this case we know from the intracardiac</p> <p>12 recordings it was incorrect. But based on his training</p> <p>13 and what information was available, he made the right</p> <p>14 notation.</p> <p>15 Q. But it was incorrect --</p> <p>16 A. It was incorrect.</p> <p>17 Q. -- in terms of a procedure?</p> <p>18 A. Correct. That's correct.</p> <p>19 Q. And with the other representation, what</p> <p>20 Mr. Lemons represents, that as soon as the tamponade was</p> <p>21 diagnosed, appears to have been at 12:41 p.m., heparin</p> <p>22 reversal, immediate stat echo, ACLS, with drugs and CPR</p> <p>23 and pericardiocentesis were initiated, do you agree with</p> <p>24 that statement? In addition, cardiac surgery was</p> <p>25 called.</p>

<p style="text-align: right;">70</p> <p>1 A. I don't think the record reflects all of those 2 events occurring with that time frame. 3 Q. Okay. Well, are you contending that Dr. Smith 4 didn't order all of those things at the same time and do 5 the pericardiocentesis at the same time he asked for 6 those things to be done? 7 A. That's what the record would indicate, yes. 8 Q. Well, let's talk about custom and procedure of 9 a surgeon such as Dr. Smith and yourself. If you come 10 into this situation, don't you immediately say, all 11 right, you know, let's start the CPR, let's get a 12 pericardiocentesis. There's a kit in the room, correct? 13 A. There should be. 14 Q. And you have no facts or information it wasn't 15 there, correct? 16 A. That's correct. 17 Q. Okay. And that he wanted heparin reversal, 18 stat echo, ACLS with drugs, and CPR and 19 pericardiocentesis, and cardiac surgery called. Now, 20 isn't -- aren't those generally the orders that someone 21 such as you and Dr. Smith would bark out? 22 A. One would hope. 23 Q. Do you have any reason to believe that he 24 wasn't well trained and didn't know to bark out those 25 orders?</p>	<p style="text-align: right;">72</p> <p>1 A. I believe that in a general sense his 2 deposition is consistent with the e-mail. 3 Q. And Dr. Smith testified that he did the 4 pericardiocentesis immediately. And assuming that's the 5 case, is that within standard of care? 6 A. If that occurred that would be within standard 7 of care. 8 Q. And he also testified he did not wait for the 9 echo before he did the pericardiocentesis. Is that 10 within standard of care? 11 A. Not waiting for the echo? 12 Q. Yes. 13 A. Absolutely. 14 Q. Okay. And he also testified that he did not 15 use the echo prior to doing the pericardiocentesis. Do 16 you disagree with that? 17 A. Well, the anesthesiologist's note reflects a 18 roughly 10-minute delay from the event beginning with no 19 pulse or CPR, cardiac arrest, to the echo arriving and 20 demonstrating a large effusion. And so the 21 anesthesiologist's records suggest, to a reasonable 22 degree of certainty, that at least 10 minutes after the 23 event the pericardiocentesis had not yet occurred. 24 Q. Well, how would the anesthesiologist know what 25 the echocardiogram revealed?</p>
<p style="text-align: right;">71</p> <p>1 A. I have no reason to believe he wasn't well 2 trained, no. 3 Q. Do you have any reason to believe he didn't do 4 it? 5 A. Yes. 6 Q. Based on the records? 7 A. Correct. 8 Q. Not his training, education, and the person 9 being there? 10 A. Correct. 11 Q. To your knowledge, did Dr. Smith testify 12 consistently with the information contained in this 13 e-mail from Mr. Lemons to Mr. Balkenbush? 14 A. I don't remember the details of his testimony 15 but I think in a general sense that is correct. 16 Q. Well, he indicates on Page 26 of his 17 deposition that he did order CPR, ACLS, called for a 18 stat echo, got the pericardiocentesis tray, stuck the 19 needle and called for a cardiac surgeon. He believes he 20 did all of that within standard of care. This is 21 Dr. Smith's deposition. 22 A. Oh, I'm sorry. 23 Q. It's basically what -- his deposition 24 substantiates the facts contained in this e-mail, as you 25 understand the procedure?</p>	<p style="text-align: right;">73</p> <p>1 A. We all talk to one another in the room because 2 the anesthesiologist needs to know what's going on, as 3 well. 4 Q. I understand that, but he would not have seen 5 it? He would not have seen the echocardiogram. 6 A. He may or may not, depending on the 7 orientation of the machine in the room. 8 Q. You don't have any facts or information that 9 Dr. Kang saw the results of the echocardiogram, do you? 10 A. I don't know that he was able to see the 11 images specifically, no. I routinely show the 12 anesthesiologist my images. 13 Q. Well, what you do is not particularly the 14 standard of care, what your practice is. 15 A. No, that would be my standard of practice. We 16 hope that that is the standard of care. 17 Q. Okay. Well, you try to practice within the 18 standard of care, but how you interact with your 19 anesthesiologist is not a standard of care issue. Is 20 that correct? 21 A. No, I think that is correct -- that is 22 incorrect. I think the communication is paramount in 23 this business. 24 Q. In your opinion is there any standard of care 25 as to how long a code should take? Like five minutes,</p>

<p style="text-align: right;">74</p> <p>1 fifty minutes, whatever?</p> <p>2 A. No. There is no standard of care in general</p> <p>3 as to how long a code progresses. Generally speaking,</p> <p>4 if it goes on beyond 20 or 30 minutes we start to think</p> <p>5 that our chance of resuscitation becomes pretty minimal.</p> <p>6 Q. And if I understand correctly, all you're</p> <p>7 contending in this particular case is that Dr. Smith did</p> <p>8 the timing of the procedure incorrectly?</p> <p>9 A. I believe so.</p> <p>10 Q. Based upon your review of the records?</p> <p>11 A. Correct.</p> <p>12 Q. And I assume that other physicians could</p> <p>13 disagree with you based on your review of the records?</p> <p>14 A. Everyone is entitled to their opinion. I</p> <p>15 believe my opinion is consistent with the totality of</p> <p>16 the records.</p> <p>17 Q. Well, not being there, it's a little more</p> <p>18 difficult to say, isn't it?</p> <p>19 A. Well, I suppose one could take that approach</p> <p>20 in any malpractice litigation. That's why we have</p> <p>21 medical records.</p> <p>22 Q. I've been doing this work for a long time in</p> <p>23 the medical mal arena and I've never seen a perfect</p> <p>24 chart. I've always seen problems with the records.</p> <p>25 So, have you seen entries that have been</p>	<p style="text-align: right;">76</p> <p>1 entire file, including your billing, your whatever</p> <p>2 e-mail entries you have with Mr. Kozar (sic), et cetera,</p> <p>3 et cetera.</p> <p>4 THE WITNESS: "Kozak," yes.</p> <p>5 MS. PISCEVICH: Sorry about that.</p> <p>6 THE WITNESS: There's something to be said for</p> <p>7 consistency.</p> <p>8 MS. PISCEVICH: Yes, exactly.</p> <p>9 And that should be marked, then, as exhibit --</p> <p>10 I think we made that Exhibit 1, so when you get that</p> <p>11 information, if you would attach it to Exhibit 1. Thank</p> <p>12 you.</p> <p>13 (Discussion off the record.)</p> <p>14 MS. PISCEVICH: I need it transcribed, and I</p> <p>15 would like a condensed copy with exhibits and an e-tran</p> <p>16 with exhibits.</p> <p>17 COURT REPORTER: And do you need a copy of the</p> <p>18 transcript?</p> <p>19 MR. KOZAK: Yeah, just a hard copy is all I</p> <p>20 need. And give us the big one.</p> <p>21 MS. PISCEVICH: And I'd like the word index</p> <p>22 and all of that.</p> <p>23 THE WITNESS: And could I get my copy as a pdf</p> <p>24 in the big format?</p> <p>25 MS. PISCEVICH: Sure, however you want it.</p>
<p style="text-align: right;">75</p> <p>1 incorrect in the records?</p> <p>2 A. Generally not all consistently.</p> <p>3 Q. Well, no, but I've never seen a perfect chart.</p> <p>4 Have you?</p> <p>5 A. I would be hard pressed to say that I have.</p> <p>6 MS. PISCEVICH: I don't think I have any more</p> <p>7 questions, Doctor. Let's go off the record for a</p> <p>8 second.</p> <p>9 (Discussion off the record.)</p> <p>10 MS. PISCEVICH: Let's go back on the record.</p> <p>11 It's been agreed with counsel that the</p> <p>12 original deposition will be sent to my office and that a</p> <p>13 copy of the deposition will be sent to the doctor with</p> <p>14 the original correction sheet and signature sheet.</p> <p>15 Then once that has been reviewed and signed,</p> <p>16 if you would just send that directly to Mr. Kozar (sic)</p> <p>17 and we can take care of it that way.</p> <p>18 THE WITNESS: "Mr. Kozak." Yes, I'll be happy</p> <p>19 to do that.</p> <p>20 MS. PISCEVICH: Thank you.</p> <p>21 (Discussion off the record.)</p> <p>22 MS. PISCEVICH: It's also been agreed that the</p> <p>23 doctor's electronic file is going to be sent to --</p> <p>24 e-mailed to Ms. Tucker.</p> <p>25 And, Doctor, what I'm assuming will be your</p>	<p style="text-align: right;">77</p> <p>1 MS. PISCEVICH: Thank you, Doctor.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 (The deposition concluded at 10:50 a.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p style="text-align: center;">* * *</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 STATE OF ARIZONA)
2) ss.

3 COUNTY OF MARICOPA)

4 BE IT KNOWN that the foregoing deposition
5 was taken before me, Deborah L. Tucker, Certified
6 Reporter No. 50464 and Notary Public in and for the
7 County of Maricopa, State of Arizona; that the witness
8 before testifying was duly sworn by me to testify to the
9 whole truth; that the questions propounded to the
10 witness and the answers of the witness thereto were
11 taken down by me in shorthand and thereafter reduced to
12 typewriting under my direction; that pursuant to
13 request, notification was provided that the deposition
14 is available for review and signature; that the
15 foregoing pages are a true and correct transcript of all
16 proceedings had upon the taking of said deposition, all
17 done to the best of my skill and ability.

18 I FURTHER CERTIFY that I am in no way
19 related to any of the parties hereto nor am I in any way
20 interested in the outcome hereof.

21 DATED at Phoenix, Arizona, this ____ day of
22 _____, 2013.

23 _____
24 Notary Public
CSR #50464

25 My Commission expires:
October 29, 2016

FILED

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08-14-2013:09:46:11 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3921386

EXHIBIT "7"

EXHIBIT "7"

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGLEA DECHAMBEAU and JEAN-PAUL)
DECHAMBEAU, both Individually)
and as SPECIAL ADMINISTRATORS of)
the ESTATE OF NEIL DECHAMBEAU,)

)
Plaintiffs,)

vs.) Case No. CV12-00571

)
STEPHEN C. BALKENBUSH, ESQ.,)
THORNDAL, ARMSTRONG, DELK,)
BALKENBUSH and EISINGER, A Nevada)
Professional Corporation, and)
DOES I through X, inclusive,)

)
Defendants.)

DEPOSITION OF MARK SEIFERT, M.D.

Phoenix, Arizona

July 1, 2013

Prepared by:
Deborah L. Tucker, RPR
Certified Reporter
No. 50464

(Copy)

<p>1 INDEX</p> <p>2 EXAMINATION PAGE</p> <p>3 By: Ms. Piscevich 4</p> <p>4</p> <p>5</p> <p>6 EXHIBITS PAGE</p> <p>7 Exhibit 1 Notice of Taking Deposition of</p> <p>8 Mark Seifert, M.D. 6</p> <p>9 Exhibit 2 October 10, 2012 letter to</p> <p>10 Margo Piscevich from Charles Kozak 13</p> <p>11 Exhibit 3 December 3, 2012 letter to Fred Morady,</p> <p>12 M.D., from Mark Seifert, M.D. 16</p> <p>13 Exhibit 4 9-7-06 Anesthesia records 31</p> <p>14 Exhibit 5 9-7-06 Code Blue document 32</p> <p>15 Exhibit 6 Expert Witness Reports of Dr. Doshi,</p> <p>16 Dr. Calkins, Dr. Bhandari, Dr. Pearl .. 52</p> <p>17 Exhibit 7 February 7, 2010 e-mail from Edward</p> <p>18 Lemons to Stephen Balkenbush</p> <p>19 Re: DeChambeau 67</p> <p>20</p> <p>21 ITEMS REQUESTED TO BE PRODUCED</p> <p>22 Page 75, Line 22</p> <p>23 (Not received at time of production of transcript.)</p> <p>24</p> <p>25</p>	<p>2</p> <p>4</p> <p>1 Phoenix, Arizona</p> <p>2 July 1, 2013</p> <p>3 8:56 o'clock a.m.</p> <p>4</p> <p>5 KEITH SEIFERT, M.D.,</p> <p>6 called as a witness herein, having been first duly</p> <p>7 sworn, was examined and testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MS. PISCEVICH:</p> <p>11 Q. Would you please state your name for the</p> <p>12 record?</p> <p>13 A. Mark Seifert.</p> <p>14 Q. And, Dr. Seifert, have you ever given a</p> <p>15 deposition before?</p> <p>16 A. I have.</p> <p>17 Q. And on how many occasions?</p> <p>18 A. I would say probably eight or nine.</p> <p>19 Q. Do I need to go over the rules of the</p> <p>20 deposition with you?</p> <p>21 A. Not for my benefit.</p> <p>22 Q. Okay. For the court reporter's benefit, my</p> <p>23 name is Margo Piscevich. I am representing the</p> <p>24 defendants in this action, and this deposition will be</p> <p>25 taken pursuant to the Nevada Rules of Civil Procedure.</p> <p>Doctor, I've always said "Seifert." It is</p>
<p>3</p> <p>1 DEPOSITION OF MARK SEIFERT, M.D.</p> <p>2 commenced at 8:56 a.m. on July 1, 2013, at the offices</p> <p>3 of Mark Seifert, M.D., 9250 North Third Street, Suite</p> <p>4 3010, Phoenix, Arizona, before Deborah L. Tucker,</p> <p>5 Certified Reporter No. 50464, and Notary Public in and</p> <p>6 for the County of Maricopa, State of Arizona.</p> <p>7</p> <p>8 * * *</p> <p>9</p> <p>10 APPEARANCES:</p> <p>11 For the Plaintiffs:</p> <p>12 CHARLES R. KOZAK, ATTORNEY AT LAW</p> <p>13 By: Charles R. Kozak, Esq.</p> <p>14 1225 Tarleton Way</p> <p>15 Reno, Nevada 89523</p> <p>16 (775) 622-0711</p> <p>17 Kozak131@charter.net</p> <p>18 For the Defendants:</p> <p>19 PISCEVICH & FENNER</p> <p>20 By: Margo Piscevich, Esq.</p> <p>21 499 West Plumb Lane</p> <p>22 Suite 201</p> <p>23 Reno, Nevada 89509</p> <p>24 (775) 329-0958</p> <p>25 margo@pf-reno.com</p>	<p>5</p> <p>1 "Seifert"?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Dr. Seifert, what is your profession or</p> <p>4 occupation?</p> <p>5 A. I'm a cardiologist specializing in clinical</p> <p>6 cardiac electrophysiology.</p> <p>7 Q. And what is your business address?</p> <p>8 A. 9250 North Third Street, Suite 3010, Phoenix,</p> <p>9 Arizona. And I don't recall the zip off the top of my</p> <p>10 head.</p> <p>11 Q. Doctor, when did you first begin working in</p> <p>12 private practice in the Phoenix area?</p> <p>13 A. That would have been on or about October 2004.</p> <p>14 Q. And you've been in the Phoenix area since</p> <p>15 2004?</p> <p>16 A. Yes.</p> <p>17 Q. When were you first contacted by Mr. Kozar</p> <p>18 (sic)?</p> <p>19 A. I don't recall the exact date. I think we're</p> <p>20 probably talking about maybe eight or nine months ago.</p> <p>21 Q. So, it would be the summer or fall of 2012?</p> <p>22 A. If you'd like me to review some of my computer</p> <p>23 files, I can give you an exact date.</p> <p>24 Q. That would be great. In fact, before we do</p> <p>25 that, Doctor, did you see -- I'm going to have this</p>

<p>1 marked as Exhibit 1 to this deposition. 2 (Deposition Exhibit 1 was marked for 3 identification.) 4 Q. BY MS. PISCEVICH: Did you receive a copy of 5 Exhibit 1 before coming here today? 6 A. I don't recall specifically but I assume I 7 did. 8 Q. Okay. It's the notice to take your 9 deposition. And attached to the second page are a 10 series of documents that I have asked you to bring with 11 you. And may I borrow the exhibit one second? 12 I asked you to bring your current curriculum 13 vitae. Do you have that? 14 A. I have, I believe, all of those documents on 15 my hard drive on my computer, which I can deliver in 16 electronic format immediately, or by e-mail if you 17 prefer. 18 Q. Well, I think what we're going to have to do, 19 since this is a record and these will be the attachment 20 to Exhibit 1, we will need to make arrangements with the 21 court reporter, and probably e-mail is fine with her, 22 but we'll make those arrangements at the end of the 23 deposition. 24 And I take it on your hard drive is your 25 complete file concerning this matter.</p>	<p>6</p>	<p>8</p> <p>1 Q. And I assume you received a telephone call? 2 A. I believe so, but I don't recall whether it 3 was telephone or e-mail communication. 4 Q. And did Mr. Kozar (sic) tell you how he found 5 your name? 6 A. I think he mentioned specifically -- and this 7 sticks in my mind only because we spoke briefly last 8 night and he mentioned it again -- that they found me in 9 a 20-minute cruise over the internet. 10 Q. So, I take it you didn't know him before this 11 case? 12 A. That's correct. 13 Q. And you hadn't worked with him or his firm 14 prior to this case? 15 A. That's correct. 16 Q. Now, with respect to your prior testimony you 17 indicated that you have given eight or nine depositions. 18 Over what period of time? 19 A. I would imagine eight or nine years. 20 Q. And have any of those been as expert witnesses 21 in a -- strike that. 22 In any of those depositions, was your role as 23 an expert witness in a medical malpractice action? 24 A. I believe so. 25 Q. And how many times have you given a deposition</p>
<p>1 A. That's correct. 2 Q. Your billing records? 3 A. That's correct. 4 Q. Any scientific, technical or any professional 5 texts or treatises that you referred to or replied upon? 6 A. That's correct. 7 Q. And then I guess the general information, like 8 contacts and letters and correspondence, you have that 9 on the e-drive, as well? 10 A. E-mail -- 11 Q. E-mail? 12 A. -- correspondence, yes, ma'am. 13 Q. All right. And do you have records concerning 14 other medical malpractice actions in which you've been 15 retained as an expert witness? 16 A. I should have, in a general sense. I don't 17 know if they're entirely complete, but, certainly, the 18 more recent years should be. 19 Q. Would you look in your electronic file and see 20 if you can give me approximately when you were first 21 contacted by Mr. Kozar (sic)? 22 A. As far as that, my first review of the records 23 was on or about September 30th. I would assume the 24 initial contact was probably earlier in the same month. 25 And that was in 2012.</p>	<p>7</p>	<p>9</p> <p>1 in a medical malpractice action? 2 A. I believe that would have been one or two. 3 Q. And have you ever testified in court in a 4 medical malpractice action? 5 A. Only as a defendant on one occasion. 6 Q. So, I take it in one of those two cases you 7 were the defendant? 8 A. That's correct. 9 Q. Have you ever testified in Nevada? 10 A. I have not. 11 Q. And did you receive a defense verdict in that 12 case? 13 A. I did not. 14 Q. And on the other time that you were an expert 15 witness, do you recall what type of case it was? 16 A. Actually, there were two cases in which I was 17 a named defendant that I provided deposition testimony, 18 and the second case was settled. 19 Q. Other than -- 20 A. I believe there may have been one or two cases 21 in which I wasn't personally involved, but was an expert 22 for medical malpractice. But there have also been 23 several others that were product liability or an expert 24 in another context that weren't specifically medical 25 malpractice.</p>

<p style="text-align: right;">10</p> <p>1 Q. And I want to focus in on the medical 2 malpractice cases. What type of cases were those other 3 one or two cases? 4 A. Pardon me for just a moment. 5 Q. And I assume all this information will be 6 provided, but -- 7 A. One of them was a medical malpractice matter 8 in which I was recently deposed within the last month or 9 two. That related specifically to electrophysiology. 10 Q. And you were testifying on whose behalf? 11 A. I was testifying on behalf of the plaintiff. 12 Q. And was that here in Arizona? 13 A. The case wasn't here in Arizona, but the 14 deposition was in Arizona. 15 Q. Where was the case filed? 16 A. The case was filed in Oklahoma. 17 Q. And who was the attorney that retained you? 18 A. Dan Holloway. 19 Q. And what city was he from? 20 A. I believe Oklahoma City. 21 Q. And other than the medical malpractice case in 22 which you testified on behalf of the plaintiff a month 23 or so ago, have you testified in any other medical 24 malpractice cases? 25 A. I don't believe there's actually been</p>	<p style="text-align: right;">12</p> <p>1 Q. And then were the other cases as a treating 2 physician? 3 A. One of them was as a fact witness in a case in 4 which I wasn't named as a treating physician. One of 5 them was a matrimonial issue in which I was a party. 6 And one of them I was a defense expert in a suit against 7 a, I believe it was a drug rehabilitation facility in 8 which a patient drowned in a pool. 9 Q. And currently what are your fees for reviewing 10 a file? 11 A. They are in the range of \$600 hourly, 12 depending on the hours expended. 13 Q. So, you charge the same fee for reviewing as 14 you do deposition, et cetera? 15 A. With the only exception that reviewing can be 16 done on my own schedule and, in my view, requires no 17 specific minimum, as I can schedule that at will. 18 Deposition or trial testimony requires that I block off 19 time and forgo clinical revenue and clinical 20 productivity, which is how my employer assesses my 21 salary. So, I have minimum blocks of time required when 22 specific blocks of time are required by court 23 appearances, deposition, et cetera. 24 Q. And what do you charge an hour for deposition? 25 A. The same.</p>
<p style="text-align: right;">11</p> <p>1 deposition testimony or trial testimony in other cases. 2 Q. And you indicated that you'd done eight or 3 nine depositions, and obviously a couple of them were 4 your own, and you indicated you did product work. What 5 do you mean by that? 6 A. In one case there was a suit against Taser 7 International involving a young man who had repeated 8 application of a Taser device and died at the scene. I 9 was an expert relating to the electrical effects of hypo 10 voltage discharges on cardiac tissue. 11 Q. And was that for the plaintiff? 12 A. That was. 13 On another case it involved a catheter 14 manufacturer of a catheter that had been inserted into 15 the heart for atrial fibrillation that became entangled 16 in the mitral valve apparatus, and the operator pulled 17 on the catheter hard enough to break it into two pieces. 18 Unsurprisingly, the valve was damaged. 19 And I was a defense expert for the 20 manufacturer stating that the damage was due, more 21 likely than not, to the force applied to the catheter 22 rather than to a manufacturing or design defect in the 23 cath per se. 24 Q. Any other product cases that you recall? 25 A. I don't.</p>	<p style="text-align: right;">13</p> <p>1 Q. And it is also \$600 an hour for trial time? 2 A. It is. And there are some exceptions. My fee 3 can vary. 4 For example, I was recently retained as an 5 expert relating to a pacemaker implant that was alleged 6 to be inappropriate. The defendant physician is serving 7 jail time for sexual misconduct in the setting of their 8 medical practice. And I increased my rates rather 9 generously because, as a general philosophy, even though 10 I think the pacemaker implant was not unreasonable, I 11 think there was a downside to having my name associated 12 with that case on any level. 13 Q. Okay. How much time have you spent on this 14 case to date? 15 A. I think we're talking in the range of five and 16 a half hours. 17 Q. And does that include your time for 18 preparation for the deposition, as well? 19 A. It does. 20 Q. I'm going to have marked as Exhibit 2 two 21 pages of a letter I received from Mr. Kozak. 22 (Deposition Exhibit 2 was marked for 23 identification.) 24 Q. BY MS. PISCEVICH: And I'm only showing you 25 the letter because this is representations that</p>

<p style="text-align: right;">14</p> <p>1 apparently you made to Mr. Kozak, I'm assuming before</p> <p>2 October 10th, 2012.</p> <p>3 Do you recall if you spoke to Mr. Kozar (sic)</p> <p>4 about these opinions or how these opinions -- how he</p> <p>5 received these opinions, meaning by telephone call,</p> <p>6 e-mail or whatever?</p> <p>7 A. I believe it would have been telephone call.</p> <p>8 Q. And do you know how long that call lasted?</p> <p>9 A. I don't recall.</p> <p>10 Q. Would that be on your billing record?</p> <p>11 A. It might be.</p> <p>12 Q. It's not important to look it up, but can you</p> <p>13 give me an estimate? Was it a half hour?</p> <p>14 A. I can't imagine it was less than 20 minutes or</p> <p>15 more than an hour.</p> <p>16 Q. Now, before October 10th of 2012, what had you</p> <p>17 reviewed to arrive at certain opinions?</p> <p>18 A. I reviewed multiple records provided by the</p> <p>19 plaintiffs in this matter, procedure reports, opinions</p> <p>20 of Dr. Anil Bhandari, B-h-a-n-d-a-r-i; the first name is</p> <p>21 A-n-i-l, some medical records from, I believe it's</p> <p>22 Washoe Medical Center, opinions of Dr. Pearl and</p> <p>23 Dr. Doshi, D-o-s-h-i.</p> <p>24 Q. This is before October 10th?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">16</p> <p>1 fibrillations yourself?</p> <p>2 A. I do. Ablations, that is. I hope that I</p> <p>3 haven't performed atrial fibrillation myself</p> <p>4 Q. Exactly. I'm sorry.</p> <p>5 A. I'm not.</p> <p>6 Q. Did you review Dr. Morady's affidavit?</p> <p>7 A. I did.</p> <p>8 Q. And did you review -- it's been called a prupa</p> <p>9 disk, an EPS tape, did you review that tape before</p> <p>10 October 10 of 2012?</p> <p>11 A. I did not.</p> <p>12 Q. Have you reviewed it since November 10, 2012?</p> <p>13 A. I have not.</p> <p>14 Q. Why not?</p> <p>15 A. It was felt unlikely to provide significant</p> <p>16 additional information. The time involved seemed, to</p> <p>17 me, to be quite substantial to review the tape since it</p> <p>18 would require obtaining additional copies in different</p> <p>19 formats, the format of the existing magneto optical disk</p> <p>20 no longer being in widespread use. And in order that I</p> <p>21 save the retaining attorney's fees, I suggested that it</p> <p>22 was unlikely to be particularly important in the matter.</p> <p>23 (Deposition Exhibit 3 was marked for</p> <p>24 identification.)</p> <p>25 Q. BY MS. PISCEVICH: Let me hand you what is</p>
<p style="text-align: right;">15</p> <p>1 An opinion of Dr. Mazzei, M-a-z-z-e-i, and an</p> <p>2 opinion of Dr. Fred Morady, M-o-r-a-d-y.</p> <p>3 Q. So, you did have the experts' affidavits from</p> <p>4 the underlying case?</p> <p>5 A. I don't know if I had all of them but I</p> <p>6 certainly had those that I mentioned.</p> <p>7 Q. Did you have any records, medical records,</p> <p>8 other than the records of Washoe Medical Center? Those</p> <p>9 would include procedure reports.</p> <p>10 A. I don't believe I had other records. I can't</p> <p>11 recall off the top of my head.</p> <p>12 Q. So, other than reviewing the five affidavits</p> <p>13 and the medical records, did you do anything else before</p> <p>14 you arrived at your opinions?</p> <p>15 A. I believe there were some notes contained in</p> <p>16 the medical records, and I don't know whether these were</p> <p>17 a portion of the Washoe Medical Records or separate,</p> <p>18 that related to outpatient visits that serve as the</p> <p>19 basis for the procedure.</p> <p>20 I reviewed the existing American Heart</p> <p>21 Association, American College of Cardiology and Heart</p> <p>22 Rhythm Society published guidelines on atrial</p> <p>23 fibrillation ablation, which I had some preexisting</p> <p>24 familiarity.</p> <p>25 Q. And I take it you performed atrial</p>	<p style="text-align: right;">17</p> <p>1 marked as Exhibit Number 3. I take it this is the</p> <p>2 letter from you to Dr. Morady?</p> <p>3 A. It is.</p> <p>4 Q. And do you know Dr. Morady?</p> <p>5 A. I do.</p> <p>6 Q. And how do you know Dr. Morady?</p> <p>7 A. When I was an internal medicine resident at</p> <p>8 the University of Michigan from 1989 to 1992, Dr. Morady</p> <p>9 was, as he still is, the director of the</p> <p>10 electrophysiology program at that institution.</p> <p>11 Q. And did you have classes under him or training</p> <p>12 under him?</p> <p>13 A. I don't believe I had any direct rotations</p> <p>14 with him. I would run into him occasionally as our care</p> <p>15 of different patients overlapped. And I published one</p> <p>16 brief case report with him.</p> <p>17 Q. And according to this letter of December 3rd,</p> <p>18 2012, at my request you were asked to send the disk and</p> <p>19 the recordings to him. And it says, "The attorney</p> <p>20 retaining me has asked me to hold off on reviewing the</p> <p>21 discs until after you have had another opportunity to</p> <p>22 review them yourself."</p> <p>23 So, I take it that as of December '12 you were</p> <p>24 asked not to review them by the attorney; is that</p> <p>25 correct?</p>

<p>18</p> <p>1 A. I don't remember the specific date, but that</p> <p>2 is, as an approximation, correct.</p> <p>3 Q. And, obviously, the disks were returned to</p> <p>4 you, I assume?</p> <p>5 A. They were.</p> <p>6 Q. And is it your decision today that it wouldn't</p> <p>7 be worth your time, or is it the lawyer's decision today</p> <p>8 that it wouldn't be worth your time to review the disk?</p> <p>9 A. I think we both have the same opinion.</p> <p>10 Q. And why don't you need to review the disk?</p> <p>11 I'm just curious.</p> <p>12 A. In my view, the issue of the case revolves</p> <p>13 around bleeding in the sac around the heart, paracardial</p> <p>14 tamponade, and information about that specific event is</p> <p>15 unlikely to be included in the disk.</p> <p>16 Q. Now, I assume that since December of 2012,</p> <p>17 have you -- well, strike that.</p> <p>18 Have you been made aware since December 2012</p> <p>19 that Dr. Morady -- strike that one, too.</p> <p>20 When you met with Dr. Kozar -- Mr. Kozar</p> <p>21 (sic), did he advise you that Dr. Morady in the</p> <p>22 underlying case had changed his opinion based upon this</p> <p>23 disk?</p> <p>24 A. I have been advised that the opinion changed.</p> <p>25 I don't know the basis for that change.</p>	<p>20</p> <p>1 A. My understanding -- and this may not be</p> <p>2 entirely accurate -- is that he was retained as a</p> <p>3 plaintiff's expert in the initial matter, and at some</p> <p>4 point had a change of opinion prior to the matter being</p> <p>5 dropped.</p> <p>6 Q. Okay. So, he didn't change his opinion in the</p> <p>7 last couple of months, he changed his opinion several</p> <p>8 years ago?</p> <p>9 A. That's my understanding. I don't know whether</p> <p>10 that is indeed true.</p> <p>11 Q. Did you read Dr. Morady's deposition?</p> <p>12 A. I did.</p> <p>13 Q. Did you read Dr. Smith's deposition?</p> <p>14 A. I did.</p> <p>15 Q. Did you read anybody else's deposition?</p> <p>16 A. I read some other expert opinions. I can't</p> <p>17 recall off the top of my head eight or nine months down</p> <p>18 the line whether they were depositions or affidavits.</p> <p>19 Q. Well, they would have been -- the ones that</p> <p>20 you just talked about, I would assume, are affidavits;</p> <p>21 Dr. Pearl, Dr. Doshi, Dr. Mazzei, Dr. Bhandari. Those</p> <p>22 are affidavits.</p> <p>23 So, have you read any other depositions other</p> <p>24 than Dr. Morady's and Dr. Smith's? Others have been</p> <p>25 taken. That's the only reason I'm asking.</p>
<p>19</p> <p>1 Q. Where did you get that information from?</p> <p>2 A. From Mr. Kozak.</p> <p>3 Q. And what did Mr. Kozak tell you?</p> <p>4 A. That Dr. Morady was now a defense expert</p> <p>5 rather than a plaintiff expert.</p> <p>6 Q. When did he tell you that Dr. Morady changed</p> <p>7 his opinion?</p> <p>8 A. I think it was in the last couple of months,</p> <p>9 but I don't remember an exact date.</p> <p>10 Q. What is your understanding of Dr. Morady's</p> <p>11 role in the underlying case?</p> <p>12 A. I don't believe he was involved in the case.</p> <p>13 Q. In the underlying case?</p> <p>14 A. Are you --</p> <p>15 Q. Let me make a -- this is a legal malpractice</p> <p>16 case that involves a medical malpractice case. What is</p> <p>17 your -- and the "underlying case," I'm referring to the</p> <p>18 medical malpractice case. I mean -- I know you're not</p> <p>19 going to give any opinions about the conduct of an</p> <p>20 attorney. Is that safe to say?</p> <p>21 A. It is. I apologize. When you said the word</p> <p>22 "case," I assumed you were talking about the procedure.</p> <p>23 Q. No. So, my question is, what is your</p> <p>24 understanding of Dr. Morady's role in the underlying</p> <p>25 medical malpractice case?</p>	<p>21</p> <p>1 A. I don't -- I don't believe so.</p> <p>2 Q. Did you and Dr. Kozar (sic) have any -- excuse</p> <p>3 me. Did you and Mr. Kozar (sic) have any discussions</p> <p>4 about his conversations with Dr. Morady before he filed</p> <p>5 this case? And by "this" case I mean the legal</p> <p>6 malpractice case.</p> <p>7 A. I'm sorry, could you repeat the question?</p> <p>8 Q. Sure. Did you and Mr. Kozar (sic) have any</p> <p>9 discussions about Mr. Kozar's (sic) direct contact with</p> <p>10 Dr. Morady?</p> <p>11 A. Not that I specifically recall.</p> <p>12 Q. Okay. Going back to Exhibit 2, this liability</p> <p>13 of Dr. Smith, he indicates that in the first sentence or</p> <p>14 so he's retained you. And it says "he," meaning you,</p> <p>15 has informed us that Dr. Smith violated the standard of</p> <p>16 care basically.</p> <p>17 Do you know who "us" is? Did you talk to</p> <p>18 anyone other than Mr. Kozar (sic)?</p> <p>19 A. Yes. Mr. Kozar (sic) has a colleague whose</p> <p>20 name is, I believe, Earl Ralph Walker.</p> <p>21 Can we go off the record for the moment,</p> <p>22 please.</p> <p>23 MS. PISCEVICH: Sure.</p> <p>24 (Recess taken to allow Dr. Seifert to answer a</p> <p>25 phone call.)</p>

<p style="text-align: right;">22</p> <p>1 THE WITNESS: Back on the record. Sorry about 2 the interruption. Could you repeat the question once 3 again, please? 4 Q. BY MS. PISCEVICH: Do you recall any 5 discussions between Mr. Kozar (sic), Mr. Walker, and 6 yourself regarding the contents of this letter of 7 October 10th, 2012? 8 A. I believe this letter generally relates to the 9 contents of those discussions. 10 Q. Since Mr. Kozar (sic) had the disk, did you 11 discuss reviewing it before October 10, 2012? 12 A. I believe we discussed it. 13 Q. And you decided it wasn't necessary? 14 A. I decided that it was unlikely to add 15 substantial pertinent facts to the case, but that I was 16 willing to review it if he wanted me to. 17 Q. And I take it to this day you have not 18 reviewed it? 19 A. That's correct. 20 Q. Do you have any intentions of doing so in the 21 future? 22 A. If Mr. Kozak or Mr. Walker request that I do, 23 I am happy to. 24 Q. I take it at this point you haven't been asked 25 to?</p>	<p style="text-align: right;">24</p> <p>1 restored roughly 15 minutes to 20 minutes after the 2 initial event. 3 Q. What else did Dr. Smith do other than follow 4 the ACLS protocol? 5 A. It looks like at some point a 6 pericardiocentesis was performed. 7 Q. When did Dr. Smith say he did the 8 pericardiocentesis? 9 A. Dr. Smith said that he did pericardiocentesis 10 immediately. 11 Q. Is that what you're supposed to do? 12 A. It is what you're supposed to do. 13 Q. And you're saying he's lying? 14 A. I'm not sure that I view his testimony as 15 consistent with the entirety of the remaining medical 16 record. 17 Q. Well, the pericardiocentesis is not timed 18 anywhere in the records, is it? 19 A. Well, there are some places where it's timed. 20 As a indirect indicator -- and that is that it is the 21 only thing that would have restored the pulse, one can 22 reasonably infer that the pulse was restored immediately 23 following the pericardiocentesis. 24 Q. So, you're saying that when you do a 25 pericardiocentesis the pulse is immediately restored?</p>
<p style="text-align: right;">23</p> <p>1 A. That's correct. 2 Q. In your letter you indicated that 3 Mr. DeChambeau's pulse within, at most, four to five 4 minutes from the time he went into cardiac arrest and 5 failed to restore it, I take it the code started at 6 12:39; is that correct? 7 A. Firstly, it's Mr. Kozak's letter and not my 8 letter. But the records are slightly inconsistent about 9 the exact time. As best I can ascertain reviewing the 10 records in total, that appears to be correct. 11 Q. The code was called at 12:39; is that correct? 12 A. That appears to be correct. 13 Q. And what is your understanding of what 14 Dr. Smith did once he found the hemodynamic instability? 15 A. It appears from the record that CPR was 16 initiated. 17 Q. I'm asking you based on everything. You've 18 read his deposition. What did he do once he recognized 19 he had hemodynamic instability? 20 A. It appears that he started following what 21 would typically be ACLS protocol, including CPR, 22 Epinephrine, and Atropine. CPR seemed to have continued 23 for a substantial period of time. There was some 24 bicarbonate doses given to combat acidosis. And echo 25 was requested and stat paged. And the pulse was</p>	<p style="text-align: right;">25</p> <p>1 A. Essentially, that's correct. 2 Q. In all cases? 3 A. No. In some cases the patient dies. In some 4 cases the patient has to go to surgery. 5 Q. Dr. Smith is indicating that he did the 6 pericardiocentesis immediately upon recognizing the 7 hemodynamic instability or when the code was called. 8 And you disagree that he did that? 9 A. It doesn't appear it was the done as promptly 10 as his testimony would suggest. 11 Q. Okay. And you weren't there, correct? 12 A. That is correct. 13 Q. And so tell me what else you base that opinion 14 on that it wasn't done upon recognizing the hemodynamic 15 instability. 16 A. Well, CPR appears to be one of the first 17 things started, though that also seems to have been done 18 in conjunction with the attempt at pharmacologic 19 resuscitation. 20 Q. Well, pharmacologic resuscitation is done by 21 the anesthesiologist, is it not? 22 A. It typically is done by an anesthesiologist or 23 a nurse. 24 Q. In this case there was an anesthesiologist in 25 the room. Do you understand that?</p>

<p style="text-align: right;">26</p> <p>1 A. I do.</p> <p>2 Q. And the anesthesiologist would automatically</p> <p>3 know to get Epinephrine, et cetera?</p> <p>4 A. One would hope.</p> <p>5 Q. So, what was Dr. Smith doing -- well, first of</p> <p>6 all, who was doing the CPR?</p> <p>7 A. It's not stated in the record.</p> <p>8 Q. What did Dr. Smith say?</p> <p>9 A. I don't recall who was doing the CPR,</p> <p>10 according to Dr. Smith's testimony.</p> <p>11 Q. Dr. Smith says that he immediately did the</p> <p>12 pericentesis -- pericardiocentesis; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. So, when one does a pericardiocentesis, if</p> <p>15 it's not successful what does that tell you?</p> <p>16 A. That tells me that the patient is dead.</p> <p>17 Q. And they continue to do CPR and resuscitative</p> <p>18 effects, correct?</p> <p>19 A. I'm sorry, say that again, please.</p> <p>20 Q. They did -- in this particular case the</p> <p>21 patient wasn't dead. He did the pericardiocentesis.</p> <p>22 They continued to do CPR. They continued -- the</p> <p>23 anesthesiologist continued to work on him. Is that</p> <p>24 correct?</p> <p>25 A. It appears to be correct, though not</p>	<p style="text-align: right;">28</p> <p>1 Q. Followed by a pericardiocentesis, meaning</p> <p>2 removal of the blood in the sac; is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And then he used the echo machine, if I</p> <p>5 understand correctly, to see how much blood he had</p> <p>6 removed or where the blood was located to make sure he</p> <p>7 got it all; is that your understanding?</p> <p>8 A. I'm not entirely clear on the benefit of</p> <p>9 ordering an echo in general in this matter.</p> <p>10 Q. Well, does that tell you whether you got all</p> <p>11 the blood out of the --</p> <p>12 A. It does if you don't already have an</p> <p>13 intracardiac echo catheter sitting in the heart allowing</p> <p>14 you to visualize that immediately without the delay,</p> <p>15 which, in this case, was present.</p> <p>16 Q. What was present?</p> <p>17 A. An intracardiac echo catheter that would have</p> <p>18 allowed Dr. Smith to make that assessment in a matter of</p> <p>19 seconds without the need to stat page an echo technician</p> <p>20 and the machine.</p> <p>21 Q. He indicated he got 300 cc's of blood out of</p> <p>22 the pericardial sac and that he had the echocardio come</p> <p>23 in to see if he had got gotten it all. Is that below</p> <p>24 standard of care?</p> <p>25 A. No. It's simply unnecessary when one has</p>
<p style="text-align: right;">27</p> <p>1 necessarily in the order you relate.</p> <p>2 Q. Well, isn't one of the risks of doing this</p> <p>3 ablation procedure death --</p> <p>4 A. It is.</p> <p>5 Q. -- or other issues?</p> <p>6 A. There are other complications, as well.</p> <p>7 Q. Did the patient have any complications?</p> <p>8 A. They did.</p> <p>9 Q. What complications did the patient have?</p> <p>10 A. Pericardial tamponade, anoxic brain injury</p> <p>11 and, ultimately, death.</p> <p>12 Q. Now, according to this letter it says</p> <p>13 Dr. Smith should have assumed the worst, a cardiac</p> <p>14 tamponade. According to his deposition he did assume</p> <p>15 that; is that correct?</p> <p>16 A. According to his deposition, that is correct.</p> <p>17 Q. And you disagree with his deposition, if I</p> <p>18 understand it?</p> <p>19 A. It seems to be at odds with the remainder of</p> <p>20 the record in its totality.</p> <p>21 Q. And we'll go into that in a minute.</p> <p>22 And then it says he should have immediately</p> <p>23 inserted a needle to drain the pericardial sac.</p> <p>24 According to Dr. Smith, he did that; is that correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">29</p> <p>1 another echo imaging technology present.</p> <p>2 Q. I understand, but he did it at the end of the</p> <p>3 procedure to see if he had all of the blood. So, that</p> <p>4 would not be below standard of care?</p> <p>5 A. It would not be if that's the order events</p> <p>6 occurred in.</p> <p>7 Q. Well, who else can tell us the order other</p> <p>8 than Dr. Smith?</p> <p>9 A. Well, we have a log that tells us when the</p> <p>10 stat echo was paged. And we have a time that the pulse</p> <p>11 was restored, which, to a reasonable degree of medical</p> <p>12 certainty, was immediately following the removal of the</p> <p>13 blood from the pericardial space.</p> <p>14 Q. With respect to that record, do you believe it</p> <p>15 to be a correct record, or do you believe there are</p> <p>16 inconsistencies in the records that you reviewed?</p> <p>17 A. I believe both to be true. I believe that the</p> <p>18 records are overall correct. And I believe that there</p> <p>19 are, indeed, some inconsistencies within them.</p> <p>20 Q. All right. Tell me what was overall -- what</p> <p>21 do you -- what do you mean by the -- what time does the</p> <p>22 record even show a pericentesis being -- a</p> <p>23 pericardiocentesis being done?</p> <p>24 A. I don't see the specific time entry for the</p> <p>25 pericardiocentesis.</p>

<p style="text-align: right;">30</p> <p>1 Q. And what time does it show the blood pressure 2 being restored for the pulse?</p> <p>3 A. There are different time lines depending on 4 which record we refer to. Within each record they seem 5 to be fairly consistent from one point in time to the 6 next. In the log from Washoe Medical Center, which is a 7 computer entered log, it appears that CPR was started on 8 or about 12:39. And the blood pressure restored at or 9 about 12:54 or 12:55.</p> <p>10 Q. Okay. Those are manual entries; is that 11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. And that means that they're done after the 14 procedure?</p> <p>15 A. That is not correct.</p> <p>16 Q. Okay. How do you know?</p> <p>17 A. I think it would be impossible to generate a 18 detailed record of when specific medicines were 19 administered during special such a procedure. The 20 typical way of entering these is that a nurse is at the 21 console and as events occur enter them in the log.</p> <p>22 Q. If I understand correctly, the anesthesia 23 record was incorrect; is that correct?</p> <p>24 A. I'm not sure I would say it was incorrect, I 25 would say that the time line appears to be shifted from</p>	<p style="text-align: right;">32</p> <p>1 seems to be fairly consistent between the two records, 2 even if the reference time is shifted.</p> <p>3 Q. I'm going to have this marked as Exhibit 4 Number 5, which is a code sheet. 5 (Deposition Exhibit 5 was marked for 6 identification.)</p> <p>7 Q. BY MS. PISCEVICH: This shows the time of the 8 code as 12:39; is that correct?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay. Is that the same as a cardiac arrest?</p> <p>11 A. Generally speaking, yes.</p> <p>12 Q. Okay. And then it shows on this particular 13 document, Exhibit 5, that the pulse was detected at 14 12:54. Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Is that what the anesthesiologist record 17 reveals?</p> <p>18 A. It is not.</p> <p>19 Q. What does the anesthesiologist record reveal?</p> <p>20 A. The anesthesiologist record reveals that at 21 12:50 there was a cardiac arrest and ACLS protocol was 22 initiated, including CPR, Epinephrine, Atropine, and 23 Vasopressin.</p> <p>24 Q. And that's what would have been his role in 25 the medications; is that correct?</p>
<p style="text-align: right;">31</p> <p>1 some of the other records.</p> <p>2 Q. I am going to have this marked as exhibit next 3 in order. 4 (Deposition Exhibit 4 was marked for 5 identification.)</p> <p>6 Q. BY MS. PISCEVICH: And if you look at the 7 anesthesia record, first of all, this doctor indicates 8 that there was a V-tach that occurred at 12:22. Do you 9 see that on the second page? It would be SB01248.</p> <p>10 A. I'm not seeing a reference to SB01248. Oh. 11 Yes, I do see that entry.</p> <p>12 Q. Do you believe there was a V-tach?</p> <p>13 A. I do not.</p> <p>14 Q. Then he has 12:50, cardiac arrest. Is that 15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Do you agree with that time?</p> <p>18 A. I have no reason to doubt that that is the 19 time that the anesthesia was referencing, but there may 20 have been multiple time-keeping devices in the room. 21 The computer may not have agreed with the clock on the 22 wall. Anesthesia could have been using that, or the 23 wristwatch on his wrist.</p> <p>24 It appears that the time delay from that to 25 the echo being done and the aspiration of the fluid</p>	<p style="text-align: right;">33</p> <p>1 A. That's correct.</p> <p>2 Q. Okay.</p> <p>3 A. Except that traditionally the things that are 4 beneficial for tamponade, which is what this was and 5 which is what that should have been assumed to be until 6 proven otherwise, would have been to administer large 7 fluid boluses and remove the fluid. Both of those 8 things appear not to have been done at the 12:50 time 9 entry.</p> <p>10 There's an entry at 1300, 10 minutes later, 11 stating that a transthoracic echo was obtained and that 12 a large pericardial effusion was present. And that 13 suggests that the fluid was still present in the 14 pericardial sac after the stat echo was paged, after the 15 tech arrived, and after the tech would have obtained 16 images.</p> <p>17 Q. Well, the problem with the 1300 time line is 18 the fact that the pulse was restored by 12:54, isn't 19 that correct, on the code sheet?</p> <p>20 A. It's correct on the code sheet. That has a 21 different start time for the event. So, I think when we 22 compare apples to apples in one time line, we seem to 23 get a consistent time interval from the onset of events 24 to the resolution of the low blood pressure. When we 25 compare them from one document to the next, it appears</p>

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<p style="text-align: right;">Page 37</p> <p>1 A Not really, no.</p> <p>2 Q Okay.</p> <p>3 A It's the most abused rule in the Eighth Judicial</p> <p>4 and the Second Judicial District Courts. People take a look at</p> <p>5 it, and whatever they happen to have in their hand is what they</p> <p>6 list.</p> <p>7 Q And in a medical malpractice case, what do you</p> <p>8 need first to review it?</p> <p>9 A You need a set of records.</p> <p>10 Q They're the main piece of evidence, correct?</p> <p>11 A You need those to review before you file, in order</p> <p>12 to get your affidavit on file.</p> <p>13 Q And the medical records are what you primarily</p> <p>14 base your case on when you start this investigation; is that</p> <p>15 correct?</p> <p>16 A Medical records, and in many instances we have to</p> <p>17 also utilize the factual versions given by a client. Even</p> <p>18 though that may be subject to change later, you have such</p> <p>19 limited information, and the rule requires an affidavit, so we</p> <p>20 sometimes have to do that.</p> <p>21 Q And as a result of the 16.1 rule, if I understand</p> <p>22 correctly, all of the parties exchange medical records; is that</p> <p>23 correct?</p> <p>24 A Correct.</p> <p>25 Q Are you in any way contending that there are</p>	<p style="text-align: right;">Page 39</p> <p>1 that they were going to exchange expert witness reports, and --</p> <p>2 under the expert disclosures, which they did in March of 2010.</p> <p>3 And I'm not sure. It's not real clear where they were going</p> <p>4 from there.</p> <p>5 Q You don't have any understanding from reading</p> <p>6 Mr. Balkenbush's, Mr. Lemons' or Mr. Navratil's deposition what</p> <p>7 they were going to do next?</p> <p>8 A Well, I read that.</p> <p>9 Q What is your understanding --</p> <p>10 A But, I'm talking about based upon the documents</p> <p>11 that existed in 2010 and based upon the contents of the files in</p> <p>12 the underlying action, you couldn't look at those files and say,</p> <p>13 oh, they didn't take the nurse's deposition, they didn't take</p> <p>14 the tech's deposition that did the resuscitation, they didn't</p> <p>15 take any of the hospital employees' depositions, and now we know</p> <p>16 it's too late.</p> <p>17 So, it looked like they were going to set</p> <p>18 depositions after they exchanged expert reports, even though</p> <p>19 they were looking at a July trial date.</p> <p>20 Q Well, he had two-and-a-half months to take them.</p> <p>21 That's plenty of time to take the depositions.</p> <p>22 A Well, maybe you haven't tried to set depositions</p> <p>23 with Mr. Lemons or --</p> <p>24 Q Well, I have done that. But, you get plenty of</p> <p>25 time to do the depositions. I'm not worried about that.</p>
<p style="text-align: right;">Page 38</p> <p>1 missing records or anything like that in that exchange?</p> <p>2 A No.</p> <p>3 Q So all the parties have the medical records?</p> <p>4 A Except for this phantom tape.</p> <p>5 Q Well, the phantom tape is around. Mr. Kozak has</p> <p>6 it in his possession.</p> <p>7 A Now.</p> <p>8 Q Since he took the file over, and Mr. Lemons had it</p> <p>9 before that.</p> <p>10 A Mr. Balkenbush didn't have it until 2010, I think,</p> <p>11 April.</p> <p>12 Q Exactly. And he did have the factual version from</p> <p>13 his client, correct?</p> <p>14 A Yes.</p> <p>15 Q And they did take her deposition eventually,</p> <p>16 correct?</p> <p>17 A Eventually, yes.</p> <p>18 Q And that was because she had moved to Arizona, she</p> <p>19 had had some health issues, et cetera, correct?</p> <p>20 A Correct.</p> <p>21 Q And what was your understanding toward the end of</p> <p>22 the case what the parties were going to do, the attorneys? What</p> <p>23 was the discovery plan?</p> <p>24 A The discovery plan, if there was a plan, as</p> <p>25 evidenced by some correspondence and e-mails, was going to be</p>	<p style="text-align: right;">Page 40</p> <p>1 But, is it your understanding they were going to</p> <p>2 set the depositions after the exchange of the report and the review of</p> <p>3 the EPS tape or the PruKa disk, whatever it's called?</p> <p>4 A They were going to do some depositions of the</p> <p>5 experts afterwards.</p> <p>6 Q And the parties?</p> <p>7 A Well, I'm not sure where you're getting that</p> <p>8 information. But, Mr. Lemons said yes, of the parties. But,</p> <p>9 I don't think Mr. Balkenbush did. I'd have to look and see.</p> <p>10 Q I'm not going to make you do that at this second.</p> <p>11 A No, that's all right.</p> <p>12 Q Are you contending that it is a standard-of-care</p> <p>13 issue to send Interrogatories in a medical malpractice case?</p> <p>14 A Absolutely.</p> <p>15 Q Well, isn't there reasons when you've had cases</p> <p>16 with me you have not sent Interrogatories?</p> <p>17 A No, cases I've had with you I did send</p> <p>18 Interrogatories, because I just checked. And the case that I</p> <p>19 had with you was Toll, and Interrogatories were sent in Toll to</p> <p>20 you, along with requests for production of documents, and they</p> <p>21 were sent to defendant -- other defendant. And then also in</p> <p>22 most recent case up there, Hokes, multiple Interrogatories were</p> <p>23 sent to Mr. Lemons.</p> <p>24 Q But, not to me?</p> <p>25 A In Hokes.</p>

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1 Q In Hokes. Correct.

2 A Correct.

3 Q All right. So are you saying it's a standard of

4 care that you must send written Interrogatories in a medical

5 malpractice case for a plaintiff?

6 A I wouldn't say "must." But, I would say in a case

7 like this where you need to identify the players, you have to

8 totally identify all of the people that participated in the Code

9 and so forth, you need to send those Interrogatories so that you

10 can identify and depose those people.

11 Q Well, the hospital wasn't a party, was it?

12 A I have a little bit of an issue with that, too.

13 Q Oh, really? What's the issue with the hospital?

14 A They didn't have the proper equipment in the room

15 for a resuscitation, they didn't have the proper equipment in

16 there for the echocardiogram, in the room, which resulted in a

17 five-minute delay. And it's my understanding that in a Code

18 situation, when a Code is called, the hospital is also supposed

19 to have the emergency room doctor respond to the Code to be sure

20 that it's being conducted in accordance with the procedures.

21 Q Well, they don't respond in an operating room.

22 A You're telling me that.

23 Q Well, I've never seen it at Renown. So, my

24 question is you're contending that he should have sued the

25 hospital?

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1 A I'm thinking -- I don't know. But, I think it's

2 something that he should have investigated. And he should have

3 determined if the hospital had liability for not having the

4 proper equipment in the operating room to determine whether or

5 not there had been a tamponade or not.

6 Q What equipment should that have been?

7 A An echocardiogram machine. Took five minutes to

8 get it there after it was called for.

9 Q Did any doctor, Dr. Smith or any other doctor

10 indicate -- or Dr. Seifert -- that there was something improper

11 about the hospital equipment?

12 A I don't think they were asked that, because it

13 would have been --

14 Q Ask Dr. Seifert specifically.

15 A I think it would have -- it was a moot point,

16 because they weren't named as a defendant. Don't forget, one of

17 the very difficult things to deal with in Nevada is the fact

18 that we do not have joint and several liability. So if the

19 hospital was even one percent or ten percent negligent, they

20 would still have to be brought in as a party to the case.

21 Q But, how many expert witnesses reviewed this file

22 in the underlying case?

23 A I'm not sure six.

24 Q Did any of the six indicate there was a problem

25 with the hospital?

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1 A No.

2 Q Did Dr. Morady indicate there was a problem with

3 the hospital?

4 A No.

5 Q Did Dr. Mazzei, the other plaintiffs' expert,

6 indicate there was a problem with the hospital?

7 A No. So, I guess my question would be does that

8 mean there wasn't a problem with the hospital?

9 Q Well, somebody's got to identify it, other than

10 some lawyer thinking "I think there's a problem." We have to

11 have a basis for the suit.

12 A Okay. Well, we can -- I'll respond to your

13 questions. You don't have to respond to mine.

14 Q And do you know when an ablation procedure is done

15 if an echocardiogram machine is in the room?

16 A Supposed to be.

17 Q Says who?

18 A I think -- I don't think any expert has said it in

19 this case.

20 Q Okay. Well, we're going with this case.

21 A Okay. So no doctor has said so in this case,

22 although a couple of doctors have opined that there should have

23 been a thoracic cardiogram being taken at the time the ablation

24 was being done.

25 Q It was taken right before, was it not?

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1 A Supposed to be continuing. Supposed to still be

2 in place.

3 Q Did you find the report of the thoracic cardiogram

4 being done immediately before the procedure?

5 A Yes.

6 Q And it's your understanding that that particular

7 doctor stays there through the procedure?

8 A No.

9 Q And that didn't happen in this case, correct?

10 A Correct.

11 Q So, I want to get back to this question. Is it

12 your opinion that the standard of care in a medical malpractice

13 case requires the sending of Interrogatories?

14 A Not in every case.

15 Q Is it your opinion that the standard of care

16 requires taking the depositions of the medical malpractice

17 experts? And I'm talking in cases where there's written

18 reports.

19 A In cases -- I can't just answer that yes or no.

20 Because in cases where there are factual discrepancies in the

21 time lines set forth by the experts in their reports, then the

22 answer to the question would be yes, depositions are required of

23 the experts.

24 If all the experts agree on the factual

25 representations as to the timing of events in a Code procedure,

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<p>1 and everybody is on the same page, then you might not take the</p> <p>2 experts' reports if you have the depositions and sworn testimony</p> <p>3 from the defendants.</p> <p>4 Q Well, I'm going to break it down.</p> <p>5 A Absent testimony from the defendants and any</p> <p>6 percipient witnesses whatsoever, you would definitely have to</p> <p>7 take the depositions of the experts.</p> <p>8 Q And was it your understanding from reading the</p> <p>9 depositions of the attorneys in the underlying case that the</p> <p>10 depositions of the defendant doctors were going to be taken</p> <p>11 after Dr. Morady's review of the EPS tape?</p> <p>12 A That's what they said. And I agree that it's the</p> <p>13 representations. I disagree that that's timely, and I disagree</p> <p>14 that that would conform with the standard of care required of an</p> <p>15 attorney handling the case. The case was filed in 2007.</p> <p>16 Q Assuming Dr. Morady did not change his mind, do</p> <p>17 you have any doubt that those depositions would have been taken?</p> <p>18 A I have no reason to doubt that they would have</p> <p>19 been taken.</p> <p>20 Q And is there any standard of care as when to take</p> <p>21 depositions in any case?</p> <p>22 A I think there's rules that determine --</p> <p>23 Q Scheduling orders?</p> <p>24 A -- scheduling orders that determine when discovery</p> <p>25 is to be completed, and that would include the taking of</p>	<p>1 Q Well, to your knowledge, did Dr. Morady change his</p> <p>2 mind for anything that Dr. Smith may or may not have said, or</p> <p>3 Dr. Kang may or may not have said?</p> <p>4 A We don't know.</p> <p>5 Q Yeah, it was never asked of Dr. Morady, was it?</p> <p>6 A It wasn't. Which is extremely -- it's extremely</p> <p>7 troubling to me that Dr. Morady is serving as an expert in this</p> <p>8 case on behalf of their defendant, Mr. Balkenbush. I think he</p> <p>9 has a -- since he apparently did not reveal the reasons for his</p> <p>10 change of opinion to the plaintiffs, DeChambeau, I think he's in</p> <p>11 a very precarious position being an expert witness in this case</p> <p>12 and it shows a bias on his part.</p> <p>13 Q Well, that can be your opinion.</p> <p>14 A Yeah, it is.</p> <p>15 Q And doesn't relate to anything in the case, but,</p> <p>16 that's okay.</p> <p>17 A I find it also very unusual that Mr. Lemons</p> <p>18 and Mr. Navratil were named as experts. Don't you?</p> <p>19 Q Well, they are not going to be giving, per se,</p> <p>20 standard of care, but, we all do the same work, and if they do</p> <p>21 it the same, then by definition it's then within the standard,</p> <p>22 don't you believe?</p> <p>23 A No, because they're defense attorneys, and it's</p> <p>24 within their best interest to delay, delay, and to lull the</p> <p>25 plaintiff into a sense of complacency like they did in this</p>
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<p>1 depositions. In this case, those deadlines passed twice, and</p> <p>2 the depositions weren't taken.</p> <p>3 Q I understand the deadlines passed twice. But, was</p> <p>4 there any understanding between the parties that these</p> <p>5 depositions would not go forward after the discovery deadlines?</p> <p>6 A Well, I kind of think that after -- that</p> <p>7 Dr. Kang's counsel was thinking that this case would just go</p> <p>8 away, because it wasn't being pursued. So, I'm not sure -- I'm</p> <p>9 not sure that there was an agreement as to all the depositions</p> <p>10 that would be taken.</p> <p>11 Q Well, did you read anything in the depositions of</p> <p>12 Mr. Balkenbush, Mr. Lemons, and Mr. Navratil that they were</p> <p>13 going to do anything other than cooperate to get these depos</p> <p>14 done if Dr. Morady did not change his mind?</p> <p>15 A There was nothing to indicate that they wouldn't</p> <p>16 cooperate.</p> <p>17 Q Now, have you ever taken depositions and done</p> <p>18 discovery after the discovery cutoff date and then ordered based</p> <p>19 upon representations with counsel?</p> <p>20 A Many times. Of experts. I've never waited until</p> <p>21 the last three months to take a party's deposition or a</p> <p>22 percipient witness's deposition, to my knowledge. I think that</p> <p>23 was -- I don't think that you can get accurate expert reports if</p> <p>24 they don't have sworn testimony of the parties. And I think</p> <p>25 that happened here.</p>	<p>1 case.</p> <p>2 Q I want to go back to, uh, you indicated that you</p> <p>3 never should agree to take a party's deposition after the</p> <p>4 discovery cutoff date, or a percipient witness's deposition</p> <p>5 after the discovery cutoff date. Is that a standard-of-care</p> <p>6 issue?</p> <p>7 A I believe it is, yes. Because, for example, let's</p> <p>8 assume a case is filed --</p> <p>9 Q Let's stick with this case.</p> <p>10 A Okay. Let's assume this case was filed in 2007.</p> <p>11 Let's assume that there was 1200 days before the discovery</p> <p>12 cutoff. And the depositions of the parties weren't taken?</p> <p>13 And then discovery cutoff ends, and you have to</p> <p>14 depend upon the good will of the attorneys towards each other to</p> <p>15 violate the scheduling order and then proceed to take</p> <p>16 depositions two-and-a-half months before trial?</p> <p>17 Experts I don't have that much of a problem with</p> <p>18 taking after discovery cutoff. I have a very big problem with</p> <p>19 not taking sworn testimony either by Interrogatory or request</p> <p>20 for admission or anything meaningful and substantive that you</p> <p>21 can use in a courtroom or use with an expert witness not being</p> <p>22 done before the cut-off of discovery.</p> <p>23 Q Mr. Gillock, when you ask a doctor in</p> <p>24 Interrogatories, you know, "Please indicate what you did in this</p> <p>25 case," you know, however you want to phrase it, but, that's the</p>

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<p style="text-align: right;">Page 49</p> <p>1 gist of the question, do you ever get anything back other than, 2 "Please review the records?" 3 A Oh, yes, I do. And if I get back "Please review 4 the records," we're in the discovery commissioner's courtroom 5 within ten days. I do a meet-and-confer letter and file a 6 motion with the discovery commissioner for proper answering. 7 I admit, dealing with Mr. Lemons, you don't get much back. As 8 he testified to in his deposition. 9 Q And you really don't with any physician lawyer, do 10 you? 11 A You're supposed to. 12 Q But, you don't. They say, "Review the records." 13 I don't have to do a narrative and the rules don't require you 14 to go through and do a narrative. 15 A That's not true. 16 Q Well, it is in the Second Judicial District. 17 A Okay. So you all sandbag. What can I tell you. 18 You're not supposed to. 19 Q You don't down here? 20 A We file motions with our discovery commissioner, 21 and our discovery commissioner sanctions the lawyers if they 22 provide those kind of meaningless answers. Every single time 23 she does. 24 Q Well, it doesn't happen in the Second Judicial 25 District Court. Have you ever gotten an order with sanctions</p>	<p style="text-align: right;">Page 51</p> <p>1 communication with the clients? 2 A I don't see a lot of communication there. I think 3 that it would be -- whether it violated the standard of care is 4 really not material to the issues here in this case. If he 5 would have been actively pursuing the case, actively handling 6 the case, doing his discovery, doing the depositions of the 7 witnesses, doing the depositions of the defendants, then the 8 fact that he didn't tell the plaintiffs every single move, I 9 wouldn't have a big problem with. 10 I think it would have been nice if he would have 11 told them if January of 2010 "I haven't done anything in this 12 case since I filed it except file a 16.1 disclosure and make 13 some informal efforts to obtain the tape, I think that might 14 have alarmed them in time to do something different. 15 Q Are you contending that there was a violation of 16 the standard of care with respect to the communication with the 17 clients? 18 A No. 19 Q Okay. Now, I think we've covered this a little 20 bit. Uh, is it -- you indicated you were not giving an opinion 21 on the medicine in this case. You have given several. But, are 22 you contending that Mr. Balkenbush violated the standard of care 23 by not suing Washoe Medical Center? 24 A I don't think we have enough information for me to 25 draw that conclusion. But, I think he violated the standard of</p>
<p style="text-align: right;">Page 50</p> <p>1 out of the Second Judicial District Court? 2 A I never have. 3 Q Okay. We have talked about the key pieces of 4 evidence are going to be the records and maybe x-rays or 5 whatever the testing materials may be. And then, obviously, an 6 expert reviews them to determine if there's a violation of the 7 standard of care and causation; is that correct? 8 A Correct. 9 Q And that, of course, happened in this case in the 10 initial beginning; is that correct? 11 A Yes. 12 Q How much time did White and Meany have the case 13 before it was filed, if you recall? 14 A It's not clear. Because White and Meany was 15 working on another case for her relative to some pharmaceutical 16 issue. And it appears that they had the case during 17 two-thousand -- up -- 2006, and I'm not sure at what point in 18 time they got it, but, the death occurred in 2006. And then she 19 was meeting with Mr. Balkenbush in October of 2006, while she 20 was still represented by Meany. Or White and Meany. 21 Q What period of time did they have them, do you 22 know? 23 A Two months. And that's just an estimate. 24 Q Okay. Are you contending that Mr. Balkenbush 25 failed to coming comply with the standard of care regarding his</p>	<p style="text-align: right;">Page 52</p> <p>1 care by not taking the depositions of the hospital to see 2 whether or not he needed to bring them into the case. 3 Q And how much time would he have -- how much time 4 would have passed from the time he received the case, got the 5 affidavit, and filed, before the statute ran? 6 A He would have had -- his first communication with 7 Dr. Morady was in March of 2007. He started working on 8 affidavits with Dr. Morady as early as June, July of 2007. 9 So -- 10 Q When was the complaint filed? 11 A The complaint was filed September 5th of 2007. 12 But, it's not clear to me when the statute of limitations would 13 have expired. The statute of limitations would not have expired 14 September '7, because you have a statute of limitations from 15 when you knew or should have known. 16 And it would be my position that they didn't know 17 or should not have known that there was malpractice until he had 18 communications back from Dr. Morady. So, in my opinion, the 19 statute of limitations in this case with respect to the hospital 20 would not have run until early 2008. 21 Q Well, if Dr. Morady reviewed the file and 22 Dr. Mazzei reviewed the file, they did not bring anything to 23 Mr. Balkenbush's attention that there was a problem with the 24 hospital or the operating room or the equipment or anything to 25 that effect?</p>

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1 A No, we don't know if they were even asked. But,
2 the fact that the case was filed in September of 2007, there
3 could have been -- after the 16.1 disclosure, there was ample
4 time for depositions to be taken prior to the expiration of the
5 statute of limitations. So, they would have had time to bring
6 the hospital into the case.
7 Q But, you don't have any facts or information that
8 the hospital should have been brought into the case.
9 A No, because Mr. Balkenbush didn't develop the
10 facts of this case. He doesn't know to this day if there was
11 negligence on behalf of the hospital. He doesn't know if this
12 Code sheet was a rewritten Code sheet that would take place
13 after the Code. And the original Code sheet being lost,
14 destroyed or whatever. He doesn't know when the entries were
15 made on that Code sheet, or whether that's even an original Code
16 sheet.
17 Q Well, everybody got the same record from the
18 hospital, so are you contending the Code sheet is not an
19 original Code sheet?
20 A I don't know if it is or not. I know that I have
21 had instances where -- in many cases where I've taken the
22 deposition of the recorder on the Code sheet that I've found
23 that the original Code sheet was destroyed this was a reprint.
24 Q Well, are you contending that this is not the
25 correct Code sheet?

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1 A I'm contending that I don't know.
2 Q Okay. Fine.
3 A Because I do know that the times on there don't
4 match the times that Dr. Kang says or anything else.
5 Q No, there's a lot of inconsistency with Dr. Kang's
6 recordation, is there not?
7 A I guess I have to say there's a lot of
8 inconsistencies that should have been cleared up with
9 depositions early in the case.
10 Q Are you contending that the Code sheet is not a
11 correct copy of the Code sheet?
12 A No, I have no way of knowing. And that's
13 something that should have been determined by Mr. Balkenbush.
14 Q And according to the Code sheet, with the Code,
15 there is a person that comes into the room that does the
16 recording; is that correct?
17 A Correct.
18 Q And that person picks up the form and tries to
19 fill it out to his or her knowledge as to what is going on when
20 people yell out certain stuff or they look at a clock or
21 whatever, correct?
22 A Right.
23 Q So are you contending that, for example, the time
24 is not correct, or when the pulse was detected is not correct,
25 or when the paracentesis was noted, are you contending these are

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1 all wrong?
2 A I have no way of knowing. Because they weren't
3 deposed, the recorder wasn't deposed.
4 Q And are the names on this sheet?
5 A They are, but, oftentimes, as we all know, the
6 names on the sheet are very difficult to discern, and there
7 should have been Interrogatories sent to someone to determine,
8 in fact, the identity of those people.
9 Q Well, Dr. Kang would not give you the identity of
10 the people, and neither would Dr. Smith, because they weren't
11 employees of those two physicians; is that correct?
12 A So what's your point?
13 Q My point is where are you going to get this
14 information in answers to Interrogatories?
15 A Well, I think you ask the defendants. Because
16 even though they are employees of the hospital, the defendants
17 have a duty to know who they are, and they would have the
18 ability to get that information. And if they didn't, I would
19 immediately notice the deposition of the recorder.
20 I'm not sure why you're -- I'm not sure why we're
21 not finding out before the statute of limitations runs against
22 the hospital, why we are not finding out more about these
23 timelines and time inconsistencies that we see in summaries and
24 records and so forth.
25 Q Did you review Dr. Seifert's deposition?

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1 A I did.
2 Q And did you indicate that he found no evidence of
3 problems as to the staff of Washoe Medical Center or the
4 anesthesiologist?
5 A He did not.
6 Q He did not find any problems?
7 A That's correct.
8 Q Are you aware if any of the other physicians found
9 any issues that they said to Mr. Balkenbush you might want to
10 check into?
11 A You mean -- by "any other physicians," you're
12 talking about Mazzel and Morady?
13 Q Sure. Morady. Any of them.
14 A I don't know if they were even asked.
15 Q It doesn't matter if they're asked. Have you had
16 cases review when a doctor calls you and says, you know, you
17 might want to go down this avenue or you might think about this
18 avenue?
19 A I have. Yes.
20 Q And when those doctors bring that up to your
21 attention, then you go down that avenue?
22 A No. I go down a separate avenue if I've got a
23 hospital case. I have it reviewed by a hospital person, someone
24 with experience in hospitals. I don't ask my doctor to give
25 opinions on the nursing staff of the hospital or on --

14 (Pages 53 to 56)

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1 Q No, but, a doctor would know if there was a
2 problem in the OR or if a nurse screwed up. They could tell by
3 the timing. I mean they would know by looking at the records
4 themselves.

5 A Is that a question?

6 Q Haven't you found that in your experience?

7 A No, I have not.

8 Q I guess we have different experts.

9 A In my experience, I have had doctors amazingly
10 unfamiliar with hospital regulations, hospital procedures,
11 hospital policies, hospital equipment.

12 Q On the equipment that they're working with?

13 A With the equipment that is required by their
14 procedures or by accreditation agencies. I find doctors very
15 uneducated.

16 Q I'm not worried about accreditation and I'm not
17 worried about the policies. Are you contending that doctors
18 don't know if the equipment that they are working with is
19 working or not working, or there or not there?

20 A No, Margo.

21 Q All right. Thank you. So all of these doctors
22 are electro-cardio physiologists, correct? That there are
23 experts on both sides of this case?

24 A There's experts on both sides of the case.

25 Q That are in that particular specialty?

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1 A Yes.

2 Q And if something was inappropriately done during
3 that procedure in terms of a lack of equipment or something
4 malfunctioning or whatever, don't you think there would be
5 something in a record somewhere, including from Dr. Kang or
6 Dr. Smith?

7 A If the equipment malfunctioned in the procedure,
8 yes. If the equipment is required for resuscitation, not
9 necessarily.

10 Q Well, are you contending that the crash cart
11 wasn't properly equipped?

12 A Margo, I'm not contending that, because I don't
13 know, because Mr. Balkenbush didn't develop that information.
14 He did not investigate the Code or the way it was handled.

15 Q But, why would you?

16 A Because we have a 15-minute delay between Code
17 being called and pulse being detected. We have a brain-dead
18 individual laying there on the table as a result of this
19 15-minute delay.

20 Q Okay. And let's go into the 15-minute delay
21 between the Code and the pulse. What was being done, to your
22 understanding of the review of the records, during that
23 15 minutes?

24 A Not having -- at the time, Mr. Balkenbush did not
25 have sworn testimony or sworn answers to Interrogatories about

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1 the Code and the question you just asked me. But, what we see
2 now, with the exception of Dr. Smith, who testified that he
3 immediately did a pericardiocentesis, we know that they called
4 for the echo, the echo arrived, the echo was done, showed 300
5 cc's of blood in the pericardium, and then that was taken out
6 and the pulse was restored. And the timing, the best we have on
7 that is at 12:54 there was a pulse, and at 12:39 there wasn't.

8 Q Okay. And again, you're not commenting though on
9 the medicine, of what somebody should or shouldn't have done in
10 that room. You're saying that Mr. Balkenbush should have asked
11 questions about that?

12 A I think the duty of the attorney is to resolve the
13 conflict in the facts so that he can have a meaningful analysis
14 made by the appropriate people.

15 Q Okay.

16 A I've seen hospitals named because of
17 inconsistencies on Code sheets that are not consistent with the
18 two doctors present in the room. We know that Dr. Kang was
19 there -- we don't know, but we know from his attorney's
20 representation, which is worth nothing, that at 12:39 there was
21 a Code and the pulse wasn't restored until 12:54.

22 And we know that in his attorney's letter to
23 Mr. Balkenbush he says that the pericardium had 300 cc's of
24 blood in it during, uh -- until it was removed after the
25 echocardiogram. So we know -- and we know that we have

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1 Dr. Smith over saying, "Oh, that can't be. I went in right away
2 and did it." We have two board certified physicians with
3 different numbers than we have on the Code sheet.

4 Q Correct.

5 A So why wasn't this reviewed by a nursing person
6 or someone who knows about Code sheets to see whether or not the
7 hospital, if they put in accurate numbers on the Code sheet,
8 shouldn't have been named as a defendant in the case?

9 Q Well, how would that have changed the outcome if
10 the code sheet is incorrect?

11 A You mean how would it have changed the death?

12 Q Yeah. How would it have changed the outcome of
13 the case if the Code sheet is incorrect?

14 A It wouldn't have.

15 Q Exactly.

16 A Nothing was going to change the outcome of this
17 case because he went 15 minutes without oxygen.

18 Q And the bottom line is that, really, if somebody
19 had the wrong number on a Code sheet or not, that had nothing to
20 do with the outcome of the case, did it?

21 A I'm not sure I can answer that question.

22 Q All right.

23 THE COURT REPORTER: Margo, could we take a quick break?

24 MS. PISCEVICH: Sure. You tell me when you need a break.

25 (Recess taken.)

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<p style="text-align: right;">Page 61</p> <p>1 Q BY MS. PISCIVICH: Before the break, you made the</p> <p>2 representation that, quote, "An attorney's representation is</p> <p>3 worth nothing," unquote. Is that your opinion?</p> <p>4 A No, I didn't say an attorney's representation is</p> <p>5 worth nothing. I said the representation as to what your doctor</p> <p>6 is going to say is not worth anything in terms of the trial or</p> <p>7 the handling of the case because you can't use it.</p> <p>8 Q I understand you can't use it, but, are you</p> <p>9 contending that an attorney's representation to you in a case is</p> <p>10 worth nothing?</p> <p>11 A No. Let me rephrase what I meant. What I meant</p> <p>12 is it's worth nothing in terms of the formal needs that you have</p> <p>13 as a plaintiff's attorney at the time of trial or for working</p> <p>14 with your experts.</p> <p>15 I can have attorneys say my doctor is going to say</p> <p>16 such and such. I trust the attorney, what he's telling me is</p> <p>17 true. I don't distrust him. I certainly don't distrust Mr.</p> <p>18 Lemons, and I certainly don't distrust Mr. Navratil. But, the</p> <p>19 value of what they say their doctor is going to say is zero.</p> <p>20 Q I understand what you're saying. So, you are</p> <p>21 saying though, if somebody tells you something, like Mr. Lemons</p> <p>22 or Mr. Navratil, you would believe what they told you; then you</p> <p>23 would go follow up to see if that's true?</p> <p>24 A I would believe they're telling me that.</p> <p>25 Q And you would believe that they are telling you</p>	<p style="text-align: right;">Page 63</p> <p>1 A Well, the allegation is -- the failure of</p> <p>2 Mr. Balkenbush to develop the information to get to his expert</p> <p>3 before it became too late is a problem here.</p> <p>4 Q Well, I guess I disagree with your interpretation</p> <p>5 of the facts, because, uh -- I guess because I do defense work,</p> <p>6 and I see plaintiffs' lawyers all the time saying, "I need some</p> <p>7 extra time, can we go beyond the discovery rule," and it's</p> <p>8 agreed to.</p> <p>9 And I don't put anything in writing. I tell the</p> <p>10 lawyer, "Fine. We'll take these depositions?"</p> <p>11 A I understand.</p> <p>12 Q I mean do you have that kind of relationship with</p> <p>13 lawyers down in Las Vegas?</p> <p>14 A I do.</p> <p>15 Q And so in this particular case, Dr. Morady wanted</p> <p>16 the EPS tape, it took some time to get it because a proprietor</p> <p>17 had to come in to get it, to the hospital, at great expense.</p> <p>18 And then the attorneys all agreed, hey, let's have Morady review</p> <p>19 this. If he changes his mind, great, the case goes away. If</p> <p>20 not, we gotta go do all of these depositions. And everybody</p> <p>21 agreed to that. Including Jean-Paul's deposition. Are you</p> <p>22 contending that it was too late to do that?</p> <p>23 A I'm contending that to take -- for a plaintiff to</p> <p>24 allow the case to get to the point that you're two-and-a-half</p> <p>25 months before trial, in the third year of the case after filing,</p>
<p style="text-align: right;">Page 62</p> <p>1 that because they believe that to be correct?</p> <p>2 A That they believe it to be correct.</p> <p>3 Q Correct. Yes.</p> <p>4 A But, that's not what their doctor is going to say</p> <p>5 in many instances.</p> <p>6 Q Did Dr. Smith vary at all from the e-mail that</p> <p>7 Mr. Lemons sent Mr. Balkenbush? I want to say that was in</p> <p>8 March.</p> <p>9 A No, I don't believe he did. March 22.</p> <p>10 Q Are you contending in any way that a plaintiff's</p> <p>11 attorney, once they receive a favorable opinion, are required to</p> <p>12 have two experts on the same subject that are favorable at the</p> <p>13 same time?</p> <p>14 A No.</p> <p>15 Q And, in fact, once you get a favorable opinion,</p> <p>16 you stop with that particular doctor?</p> <p>17 A Many times.</p> <p>18 Q I mean you don't go on and ask three or four</p> <p>19 doctors to review the same subject?</p> <p>20 A Not generally.</p> <p>21 Q It would be cost prohibitive?</p> <p>22 A It's expensive, yes. I don't think that's the</p> <p>23 issue here though.</p> <p>24 Q Well, there is an allegation that Mr. Balkenbush</p> <p>25 should have had other experts in his hip pocket.</p>	<p style="text-align: right;">Page 64</p> <p>1 without obtaining a piece of information that he knew that his</p> <p>2 expert wanted in the first two months of the case, in early 2007</p> <p>3 he knew his expert wanted that tape, and not to get it before</p> <p>4 March or April of 2010 is negligence.</p> <p>5 Q Yeah, I understand your contention. My question</p> <p>6 was a little bit different. Are you contending that by working</p> <p>7 with counsel, that they could not do these depositions that they</p> <p>8 agreed to do in two-and-a-half months, and they could not get</p> <p>9 this case ready for trial?</p> <p>10 A That's two different questions. The answer is</p> <p>11 yes, they could have had the depositions that they agreed to</p> <p>12 take I think within two months. No, the case would not have</p> <p>13 been ready for trial.</p> <p>14 Q What would have been missing?</p> <p>15 A All the percipient witness, all the fact witness,</p> <p>16 what went on in the Code room. It's my understanding that by</p> <p>17 not doing it timely, two of the people died. Or one of the</p> <p>18 people died before 2010.</p> <p>19 Q But, if the Code is not considered to be an issue</p> <p>20 for Mr. Balkenbush because his doctors don't contend it's an</p> <p>21 issue, what's the issue with the percipient witnesses?</p> <p>22 A I guess I'm having to -- I guess I'm having</p> <p>23 trouble with the fact that you're saying Mr. Balkenbush didn't</p> <p>24 think the Code was an issue. How could you not think the Code</p> <p>25 is an issue when it takes 15 minutes to restore a pulse. And if</p>

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<p>1 Mr. Balkenbush didn't think the Code was an issue, then</p> <p>2 Mr. Balkenbush I don't think had a handle on his case.</p> <p>3 Q Do you have any facts --</p> <p>4 A The Code is the issue.</p> <p>5 Q Do you have any facts or information that</p> <p>6 Dr. Morady believes the Code is an issue?</p> <p>7 A Yeah, I believe he does.</p> <p>8 Q Okay. And what are those facts?</p> <p>9 A Well, I don't have any facts other than as</p> <p>10 represented by his attorney. But, his attorney has indicated</p> <p>11 that Dr., uh -- oh, you're saying Dr. Morady?</p> <p>12 Q Correct.</p> <p>13 A Oh, I was thinking of Dr. Kang. Repeat the</p> <p>14 question.</p> <p>15 MS. PISCEVICH: You want to read it back?</p> <p>16 (Record read.)</p> <p>17 THE WITNESS: Dr. Morady's original affidavit.</p> <p>18 Q BY MS. PISCEVICH: I'm talking about today. I</p> <p>19 understand what the original affidavit said. Do you have any</p> <p>20 facts today that he believes the Code is an issue? I know what</p> <p>21 his affidavit said. I'm talking about today, since he changed</p> <p>22 his mind. Do you have any facts or information?</p> <p>23 A So which do we believe, huh? Do we believe what</p> <p>24 he said when he had the records or what he says after you hired</p> <p>25 him?</p>	<p>1 Q And who was performing this procedure?</p> <p>2 A Are you talking about the pericardiocentesis, or</p> <p>3 are you talking about the echocardiogram, or are you talking</p> <p>4 about the Code?</p> <p>5 Q I'm talking about the pericardiocentesis, I'm</p> <p>6 talking about the ablation procedure, I'm talking about the</p> <p>7 entire procedure before the Code.</p> <p>8 A Dr. Smith was performing the procedure. The Code,</p> <p>9 a lot of the resuscitation was directed by Kang in terms of the</p> <p>10 medications. So they both were performing the Code.</p> <p>11 Q And is it your opinion that Dr. Kang would not</p> <p>12 have privileges to do a pericardiocentesis?</p> <p>13 A His privileges did not extend to that.</p> <p>14 Q I'm just curious. In your experience, have you</p> <p>15 ever had an expert change their mind after going through</p> <p>16 discovery?</p> <p>17 A Yes.</p> <p>18 Q What have you done?</p> <p>19 A I've applied to the discovery commissioner to</p> <p>20 allow a different expert to come in to review the case. Uh --</p> <p>21 Q Have you ever dismissed a case? Or a party out of</p> <p>22 the case?</p> <p>23 A I don't think so. I've dismissed parties out of</p> <p>24 cases when the facts I developed didn't establish a basis that I</p> <p>25 thought would go to the jury.</p>
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<p>1 Q He actually changed his mind before I hired him.</p> <p>2 I have to ride that horse, Mr. Gillock.</p> <p>3 A Did he change his mind?</p> <p>4 Q Before I hired him.</p> <p>5 A How do we know that?</p> <p>6 Q Well, even Mr. Balkenbush talked about it, in</p> <p>7 their billing records about it. Give me a break.</p> <p>8 A I think that he doesn't address the Code one way</p> <p>9 or the other.</p> <p>10 Q What about Dr. Kang?</p> <p>11 A See, he also -- I say he doesn't address the Code.</p> <p>12 But Dr. Morady says in his deposition that the</p> <p>13 pericardiocentesis was performed even before the transthoracic</p> <p>14 echocardiogram was performed. So he's assuming a fact that's in</p> <p>15 conflict to be true.</p> <p>16 He's decided not to believe Dr. Doshi, Dr. Mazzei,</p> <p>17 Dr. Kang, that the echocardiogram was performed before the</p> <p>18 pericardiocentesis. So he's setting aside that and going with</p> <p>19 Dr. Smith. So, yes, he does have -- he is dealing with the</p> <p>20 Code. Because that is part of the Code.</p> <p>21 Q Okay. What about Dr. Kang?</p> <p>22 A Dr. Kang's version of what happened --</p> <p>23 Q Is in the records.</p> <p>24 A -- is in the records. And in the letter from</p> <p>25 Mr. Navratil. Which is different than Dr. Smith's version.</p>	<p>1 Q No, I'm asking specifically in a situation where</p> <p>2 an expert witness changed their mind. Have you ever dismissed</p> <p>3 out a physician or a nurse or someone else?</p> <p>4 A No, I don't think I have.</p> <p>5 Q So did you take those cases to trial then once</p> <p>6 your expert changes his mind?</p> <p>7 A I don't think I've taken a case to trial where the</p> <p>8 expert has changed his mind. I have made an immediate motion</p> <p>9 for the Court to set a settlement conference.</p> <p>10 Q Without the other side knowing that the expert</p> <p>11 changed their mind?</p> <p>12 A That's right. And then at the settlement</p> <p>13 conference I've -- at the bottom line, I've revealed to the</p> <p>14 mediator or the settlement judge that we've got to do what we</p> <p>15 have to do here today because my expert is not on board.</p> <p>16 Q But, you weren't up front with the defense lawyer,</p> <p>17 saying that your expert's not on board?</p> <p>18 A Not without first taking my expert's deposition.</p> <p>19 I would want to know why he changed his mind; I would want to</p> <p>20 know if there were communications with Dr. Smith.</p> <p>21 Q No, no, not you taking the deposition. I'm asking</p> <p>22 when the doctors calls you and says, hey, I've reviewed</p> <p>23 whatever; I've changed my mind. Do you tell the defense lawyer</p> <p>24 that?</p> <p>25 A I've only had it happen one time.</p>

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1 Q And were you candid with the defense lawyer?

2 A I think I was more than candid, because I set the

3 deposition of my own expert and cross-examined him on his

4 changed opinion. While my motion for a new expert was pending.

5 Q Have you ever been able to get -- obtain a

6 continuance after the disclosure of expert reports?

7 A Yes.

8 Q On what basis?

9 A Any number of bases. The most recent was with Ed

10 Lemons. Uh, that was a case in Carson City.

11 Q What was the reason for the continuance?

12 A I think it was another one of those cases where

13 Mr. Lemons was starting another trial somewhere else.

14 Q Well, that would be a calendaring conflict.

15 A Yeah, a calendaring conflict.

16 Q But, have you ever been able to get a continuance

17 from a judge after the disclosure of expert witnesses? I'm not

18 talking about calendaring conflicts or professional courtesy.

19 A I don't believe I have, because I haven't tried.

20 I'm not a big believer in continuances.

21 Q Now, are you contending that Mr. Balkenbush did

22 not obtain his clients' permission to dismiss this case?

23 A No. He obtained it. I don't know that he had her

24 permission to dismiss the case before he discussed dismissing

25 the case with defense counsel.

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1 Q I'm not following what you just said.

2 A I'm not sure which came first. I'm not sure if he

3 didn't discuss the fact that he was going to dismiss the case

4 with defense counsel, and then talk to his client, and then talk

5 to defense counsel again, or if he talked to his client first,

6 before he mentioned the fact that he might dismiss his case with

7 defense counsel.

8 Q And do you contend that either one of those

9 positions is below the standard of care?

10 A One would have been below the standard of care.

11 If he discussed dismissing the case with defense counsel before

12 you talk to your client, that would be below the standard of

13 care.

14 If you talk to your client and say, look, our

15 expert has caved. I don't have a telephone, so I can't call

16 another expert. I don't have a computer, so I can't find

17 another expert. I'm not going to file a motion with the court.

18 So, we've agreed that we'll dismiss it if the expert doesn't

19 uphold it. So I'm going to talk to defense counsel and work the

20 best deal I can, i.e., waiver of costs, et cetera.

21 Q Do you know what happened in this case?

22 A It's not real clear. I think Mr. Balkenbush

23 talked to defense counsel about dismissing this case if

24 Dr. Morady didn't -- after he reviewed the tape, before he --

25 before Mr. Balkenbush talked to his client. It appears that

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1 way.

2 Q So you think that Mr. Balkenbush said if

3 Dr. Morady changes his mind, I'm going to dismiss the case?

4 A It kind of appears that way, but, I don't know for

5 sure. I can't really comment on exactly what he said, when he

6 said it. It's not clear from the records.

7 Q But, you do believe that he had his client's

8 permission to dismiss the case when he spoke with her?

9 A I believe he had his client's permission to

10 dismiss the case when he dismissed it. Based on his

11 representations to her.

12 Q And were you aware from reading his deposition

13 that he offered to have Dr. Morady even talk to the client?

14 A Yes.

15 Q And that she refused?

16 A Yes.

17 Q I guess I need to ask this a different way. Are

18 you going to be giving some kind of an opinion that it was below

19 standard of care because Mr. Balkenbush did not obtain his

20 client's permission to dismiss this case?

21 A No.

22 Q So that's not an issue in this case?

23 A Right.

24 Q Okay. For the record, what is your definition of

25 standard of care for an attorney?

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1 A An attorney's standard of care would be to handle

2 the case the way a duly qualified attorney would handle it in

3 the same or similar circumstances.

4 Q I think we've already agreed that Mr. Balkenbush

5 is a qualified attorney; that, however, he violated the standard

6 of care?

7 A I think he's qualified. I'm not sure about

8 anything that would say that he wasn't.

9 Q In your experience over the last 40-plus years

10 when you've been doing malpractice cases -- what did you say,

11 about 30 years you've been doing malpractice?

12 A Since 1978, yes.

13 Q What percentage of malpractice cases tried to a

14 jury do the plaintiffs prevail?

15 A My cases or --

16 Q Overall.

17 A Probably 20 to 25 percent.

18 Q Have you ever lost a medical malpractice trial?

19 A Oh, yes.

20 Q Everybody does. Uh, with respect to your opinion

21 of 20 to 25 percent of the cases the plaintiffs prevail, is that

22 statewide, or primarily in Clark County, or do you follow this?

23 A I follow it pretty closely. In Clark County from

24 2004 to 2008, it was about 90 percent defense verdicts because

25 of the publicity that the doctors and the hospitals put out

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<p style="text-align: right;">Page 73</p> <p>1 there during the tort reform era. And it was hard to get a jury</p> <p>2 pool in Clark County. Then in 2008, we had an incident in Las</p> <p>3 Vegas that resulted in a --</p> <p>4 Q Is that the hypodermic needle case?</p> <p>5 A Right. There was 40,000 people exposed to</p> <p>6 Hepatitis C as a result of a doctor's negligence. And so that's</p> <p>7 been in the papers for four years. So we have a little easier</p> <p>8 time, and it's gone back up to where we're probably 20,</p> <p>9 25 percent plaintiffs' verdicts.</p> <p>10 Reno, I think it's about the same, from what I can</p> <p>11 see. And I would agree with Mr. Lemons on that. I think he</p> <p>12 testified to that.</p> <p>13 Q It's difficult for a plaintiff in an med mal case.</p> <p>14 A Right.</p> <p>15 Q Are you giving any opinions with respect to the</p> <p>16 damages in this case?</p> <p>17 A No. I haven't reviewed the damages.</p> <p>18 Q Do you have any other areas other than we</p> <p>19 discussed earlier in this deposition where you believe</p> <p>20 Mr. Balkenbush violated the standard of care? We went over five</p> <p>21 or six areas. Maybe I can go over it. Lack of diligence in</p> <p>22 handling; the written discovery not being done; depositions of</p> <p>23 the defendants not being done in the first three years; not</p> <p>24 taking formal steps to get the tape; uh --</p> <p>25 A Not taking the percipient witness depositions.</p>	<p style="text-align: right;">Page 75</p> <p>1 in the underlying case regarding this case?</p> <p>2 A No.</p> <p>3 Q Now, I assume you have ongoing cases with</p> <p>4 Mr. Lemons and Mr. Navratil?</p> <p>5 A Oh, yes.</p> <p>6 Q In the, uh -- I think it's February 7th e-mail</p> <p>7 that Mr. Lemons sent to Mr. Balkenbush, he makes some factual</p> <p>8 representations about his client's conduct. Do you recall</p> <p>9 reviewing that e-mail?</p> <p>10 A Yes.</p> <p>11 Q And I think you said earlier that Dr. Smith did</p> <p>12 testify consistent with the representations made by Mr. Lemons;</p> <p>13 is that correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. I'm going to ask you: I assume though,</p> <p>16 uh, even -- you know, Dr. Smith testified to that under oath as</p> <p>17 well. Is it still your opinion that Dr. Smith committed</p> <p>18 malpractice? Or that should have been investigated more?</p> <p>19 A Well, I think there are sufficient facts for the</p> <p>20 case against Dr. Smith to go to the jury. I think that</p> <p>21 Dr. Seifert -- I think that in the underlying case, as in any</p> <p>22 case, you're going to get experts on both sides, both of which</p> <p>23 have to be medical experts. So I think whether I think he</p> <p>24 committed malpractice or not is immaterial.</p> <p>25 Q True.</p>
<p style="text-align: right;">Page 74</p> <p>1 Q Correct. Uh --</p> <p>2 A And, uh --</p> <p>3 Q And not investigating the Code.</p> <p>4 A I believe that covers it.</p> <p>5 Q I'm looking at what you're looking at. Is that a</p> <p>6 set of notes that you put together in order to give your</p> <p>7 testimony today?</p> <p>8 A It's just some notes of -- that you would have a</p> <p>9 hard time reading, but, you're welcome to.</p> <p>10 Q Are all of your opinions there?</p> <p>11 A Some of them are set forth, yes.</p> <p>12 Q What else do the notes contain?</p> <p>13 A Uh, basically, it's some outlines, page and line</p> <p>14 of depositions, and reference to certain documents.</p> <p>15 MS. PISCEVICH: I'll just mark this -- have them make</p> <p>16 copies of it and just mark it as Exhibit --</p> <p>17 THE COURT REPORTER: 8.</p> <p>18 MS. PISCEVICH: -- 8.</p> <p>19 (Exhibit 8 was marked for Identification.)</p> <p>20 Q BY MS. PISCEVICH: Have you yourself spoken to</p> <p>21 Dr. Seifert?</p> <p>22 A No, I have not.</p> <p>23 Q Do you know him or of him?</p> <p>24 A No, I don't.</p> <p>25 Q Have you spoken with any of the attorney witnesses</p>	<p style="text-align: right;">Page 76</p> <p>1 A Whether I think that there was sufficient</p> <p>2 questions of fact to go to the jury I think is probably a legal</p> <p>3 conclusion as opposed to a medical conclusion. But, it's a</p> <p>4 legal conclusion based upon medical information, and I think it</p> <p>5 would have gone to the jury for sure.</p> <p>6 Q Even though Dr. Morady changed his opinion?</p> <p>7 A Well, I think that Dr. Morady changing his opinion</p> <p>8 might not have been fatal. But, Dr. Morady changing his opinion</p> <p>9 when he did affected the likelihood that the plaintiff could</p> <p>10 have prevailed, absent the jury believing Dr. Doshi's timeline.</p> <p>11 And Dr. Doshi had already set forth a timeline</p> <p>12 that showed the 15 minutes, showed that the echocardiogram was</p> <p>13 done before the pericardiocentesis.</p> <p>14 Q And that timeline's based on the records, correct?</p> <p>15 A Yes.</p> <p>16 Q And that's where there's the controversy, is on</p> <p>17 the records?</p> <p>18 A Correct.</p> <p>19 Q Okay. You have any understanding of what</p> <p>20 Mr. Balkenbush did, if anything, with respect to the</p> <p>21 February 2010 e-mail from Mr. Lemons?</p> <p>22 A I don't think I understand the question.</p> <p>23 Q You know what Mr. Balkenbush did, if anything,</p> <p>24 what his reaction was to the e-mail of February 7th, 2010 by</p> <p>25 Mr. Lemons?</p>

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<p>1 A No.</p> <p>2 Q Do you know if he'd discussed that with</p> <p>3 Dr. Morady?</p> <p>4 A Let me look at his -- One thing that</p> <p>5 Mr. Balkenbush did was keep fairly accurate time -- or I assume</p> <p>6 he did. He had a -- after he got that e-mail, he had two</p> <p>7 telephone conferences with Ed Lemons. But, I don't see where</p> <p>8 there was any communication with Dr. Morady at that point.</p> <p>9 Q If I understand correctly, you have not received</p> <p>10 the complete file from Mr. Balkenbush's office; is that correct?</p> <p>11 A Correct.</p> <p>12 Q And I'll represent to you it's close to 3,000</p> <p>13 pages.</p> <p>14 MS. PISCEVICH: And Counsel, I don't know, is that CD the</p> <p>15 3,000 pages in his records?</p> <p>16 MR. KOZAK: Are you saying you gave that to us?</p> <p>17 MS. PISCEVICH: No, no. I gave you the actual records.</p> <p>18 But, there is a CD here from your office that says "Records."</p> <p>19 MR. KOZAK: Oh, okay.</p> <p>20 MS. PISCEVICH: Do you know if that's the 3,000 pages or</p> <p>21 not?</p> <p>22 MR. KOZAK: I don't. I don't.</p> <p>23 MS. PISCEVICH: I don't know what you have on the CD.</p> <p>24 THE WITNESS: It says "Pleadings."</p> <p>25 Q BY MS. PISCEVICH: Just pleadings on the CD?</p>	<p>1 (Discussion off the record.)</p> <p>2 MS. PISCEVICH: I forgot to get his medical records that</p> <p>3 he marked up, and I'd like these marked as Exhibit 9, and copied</p> <p>4 in color.</p> <p>5 (Exhibit 9 was marked for Identification.)</p> <p>6 (ENDING TIME: 12:05 P.M.)</p>
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<p>1 A That's what it says.</p> <p>2 Q Did you actually review the CD to see what was on</p> <p>3 it?</p> <p>4 A No.</p> <p>5 Q Did your paralegal?</p> <p>6 A I don't believe so.</p> <p>7 MS. PISCEVICH: Okay. I don't have any other questions.</p> <p>8 Let's go off the record a second.</p> <p>9 (Discussion off the record.)</p> <p>10 MS. PISCEVICH: Back on the record.</p> <p>11 It's been agreed that the original deposition will</p> <p>12 be sent to my office with the eight exhibits that you and</p> <p>13 Mr. Gillock will make arrangements to try to figure out how to</p> <p>14 get them; and that a copy of the deposition and the original</p> <p>15 signature page and correction page will be sent to Mr. Gillock;</p> <p>16 and then you can forward it to Mr. Kozak, and he'll get it to</p> <p>17 me.</p> <p>18 THE WITNESS: Okay. That works.</p> <p>19 MS. PISCEVICH: Thank you.</p> <p>20 THE COURT REPORTER: Did you want a copy of this,</p> <p>21 Mr. Kozak?</p> <p>22 MR. KOZAK: Yes.</p> <p>23 MS. PISCEVICH: And you know what, I would like -- for</p> <p>24 mine I'll take the condensed copy, an index, all of the</p> <p>25 exhibits, and an e-tran.</p>	<p>1 STATE OF _____)</p> <p>2) ss.</p> <p>3 COUNTY OF _____)</p> <p>4</p> <p>5</p> <p>6 I, the undersigned, declare under penalty of perjury that</p> <p>7 I have read the foregoing transcript, and I have made any</p> <p>8 corrections, additions, or deletions that I was desirous of</p> <p>9 making; that the foregoing is a true and correct transcript of</p> <p>10 my testimony contained therein.</p> <p>11 EXECUTED this _____ day of _____, 20 _____,</p> <p>12 at _____, _____</p> <p>13 City State</p> <p>14</p> <p>15 _____</p> <p>16 GERALD GILLOCK</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 STATE OF _____)
2) ss.
3 COUNTY OF _____)
4 I, _____, a notary
5 public in and for the County of _____,
6 State of _____, do hereby certify:
7 That on the _____ day of _____,
8 20____, before me personally appeared GERALD GILLOCK, whose
9 deposition appears herein;
10 That any changes in form or substance desired by
11 the witness were entered upon the deposition by the witness;
12 That the witness thereupon signed the deposition
13 under penalty of perjury.
14
15 Dated: At _____,
16 this _____ day of _____, 20____.
17
18 _____
19 Notary Public
20
21
22
23
24
25

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1 REPORTER'S CERTIFICATE
2
3 I, MILLIE TERRY HOENSHELL, NV CCR No. 303, Certified
4 Court Reporter, certify:
5 That the foregoing proceedings were taken before me at
6 the time and place therein set forth, at which time the witness
7 was put under oath by me;
8 That the testimony of the witness and all objections made
9 at the time of the examination were recorded stenographically by
10 me and were thereafter transcribed;
11 That the foregoing is a true and correct transcript of my
12 shorthand notes so taken.
13 I further certify that I am not a relative nor an
14 employee of any attorney or of any of the parties, nor am I
15 financially interested in this action.
16 I declare under penalty of perjury under the laws of the
17 State of Nevada that the foregoing is true and correct.
18 Dated this 8th day of August, 2010.
19
20
21 _____
22 MILLIE HOENSHELL
23 NV CCR No. 303, CA CSR No. 8913
24
25

21 (Pages 81 to 82)

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Clerk of the Court

Transaction # 3921386

EXHIBIT "6"

EXHIBIT "6"

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<p>1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA</p> <p>2 IN AND FOR THE COUNTY OF WASHOE</p> <p>3</p> <p>4 ANGELA DECHAMBEAU and JEAN-PAUL)</p> <p>5 DECHAMBEAU, both individually)</p> <p>6 and as SPECIAL ADMINISTRATORS of)</p> <p>7 the ESTATE of NEIL DECHAMBEAU,)</p> <p>8)</p> <p>9 Plaintiffs,)</p> <p>10)</p> <p>11 vs.) Case No. CV12-00571</p> <p>12)</p> <p>13 STEPHEN C. BALKENBUSH, ESQ.,) Dept. No. 7</p> <p>14 THORNDAL, ARMSTRONG, DELK,)</p> <p>15 BALKENBUSH AND EISINGER, a)</p> <p>16 Nevada professional corporation,)</p> <p>17 and DOES I through X, inclusive,)</p> <p>18)</p> <p>19 Defendants.)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>DEPOSITION OF</p> <p>GERALD GILLOCK</p> <p>LAS VEGAS, NEVADA</p> <p>JULY 31, 2013</p> <p>Reported by: MILLIE HOENSHELL</p> <p>NV CCR NO. 303; CA CSR NO. 5913</p>	<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 CHARLES R. KOZAK</p> <p>5 Attorney at Law</p> <p>6 1225 Tarleton Way</p> <p>7 Reno, Nevada 89523</p> <p>8</p> <p>9 FOR THE DEFENDANTS:</p> <p>10</p> <p>11 PISCEVICH & FENNER</p> <p>12 BY: MARGO PISCEVICH, ESQ.</p> <p>13 499 West Plumb Lane</p> <p>14 Suite 201</p> <p>15 Reno, Nevada 89509</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA</p> <p>2 IN AND FOR THE COUNTY OF WASHOE</p> <p>3</p> <p>4 ANGELA DeChambeau and JEAN-PAUL)</p> <p>5 DeChambeau, both individually)</p> <p>6 and as SPECIAL ADMINISTRATORS of)</p> <p>7 the ESTATE of NEIL DeChambeau,)</p> <p>8)</p> <p>9 Plaintiffs,)</p> <p>10)</p> <p>11 vs.) Case No. CV12-00571</p> <p>12)</p> <p>13 STEPHEN C. Balkenbush, ESQ.,) Dept. No. 7</p> <p>14 Thorndal, ARMSTRONG, DELK,)</p> <p>15 Balkenbush AND EISINGER, a)</p> <p>16 Nevada professional corporation,)</p> <p>17 and DOES I through X, inclusive,)</p> <p>18)</p> <p>19 Defendants.)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>Deposition of GERALD GILLOCK, taken on behalf</p> <p>of the Defendants, at 428 South 4th Street, Las Vegas, Nevada,</p> <p>commencing at 10:01 a.m., Wednesday, July 31, 2013, before</p> <p>Millie Hoenshell, NV CCR No. 303, CA CSR No. 5913.</p>	<p>1 INDEX</p> <p>2</p> <p>3 WITNESS: GERALD GILLOCK</p> <p>4 EXAMINATION PAGE</p> <p>5 BY MS. PISCEVICH 5</p> <p>6</p> <p>7 EXHIBITS:</p> <p>8 1 Timeline; 7/9/13 e-mail w/attachment; 9</p> <p>9 two 6/26/13 e-mails; 10/10/12 letter</p> <p>10 from Mr. Kozak to Ms. Piscevich;</p> <p>11 Mr. Gillock's timeline</p> <p>12</p> <p>13 2 Tab 1 of "Documents for Consultant 17</p> <p>14 Review"</p> <p>15 3 Document entitled Washoe Medical 17</p> <p>16 Center, Renown-Cath Lab 0015</p> <p>17</p> <p>18 4 Highlighted pages from depositions of 18</p> <p>19 Mr. Lemons and Mr. Navratil</p> <p>20 5 Green folder, Tab 9, court minutes 21</p> <p>21 6 Various timelines and documents 22</p> <p>22 7 7/16/13 Letter to Mr. Kozak from 35</p> <p>23 Renown Health, Thomas Vallas</p> <p>24</p> <p>25 8 Mr. Gillock's handwritten notes 74</p> <p>9 Marked-up medical records from 79</p> <p>Washoe Medical Center</p>

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1 GERALD GILLOCK,
2 having first been duly sworn, was
3 examined and testified as follows:
4 EXAMINATION
5 BY MS. PISCEVICH:
6 Q Would you please state your full name for the
7 record.
8 A Gerald, with a G, I. Gillock, G-i-l-l-o-c-k.
9 Q And I know you've taken a zillion depositions.
10 So, are you familiar with this process?
11 A Very familiar.
12 Q Is there anything I need to go over with you?
13 A No, I don't believe so.
14 Q How many times have you been retained as an expert
15 witness in any capacity?
16 A I would say 20.
17 Q And in what capacity have you been retained as an
18 expert witness?
19 A I have testified in legal malpractice cases; I've
20 been retained as an expert in insurance bad faith cases; and
21 qualified by the court in insurance bad faith and also in legal
22 malpractice cases.
23 Q How many legal malpractice cases have you been
24 retained?
25 A I'm going to say six. I don't have -- I'll have

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1 A Yes.
2 Q Okay. Any others that you recall?
3 A Yes. There's one where I testified in Reno, but,
4 I can't remember the name of the parties. For some reason it
5 escapes me. But, I have a record of it.
6 And then I've been retained as an expert in a
7 legal malpractice case other than the Mandelbaum matter here in
8 Las Vegas, Allen versus -- I can't remember.
9 Q Who were you retained by in that case?
10 A The plaintiff.
11 Q And in the Reno case, who were you retained by?
12 A The Plaintiff.
13 Q And then this case?
14 A The plaintiff.
15 Q Any others that you recall?
16 A Not right offhand. I may have reviewed a couple
17 more that I would have on my list, and I'll have my paralegal
18 pull up those.
19 Q In any of the five cases that we've just
20 discussed, were depositions given?
21 A Yes.
22 Q In which cases?
23 A Langerman, and then the one I testified in in
24 Reno, and, uh, that's it.
25 Q And today?

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1 to have my paralegal pull that list unless she attached it.
2 But, I think around six.
3 Q And have those all been in state of Nevada?
4 A Yes.
5 Q And where have those -- Okay. Let's start with
6 the six retentions. About those six retentions, do you recall
7 with whom you were retained, or by whom you were retained?
8 A I, uh -- I was retained in a case involving
9 Langerman in Reno.
10 Q What's this Langerman's first name?
11 A Amy I believe.
12 Q Okay.
13 A And I was retained by an attorney by the name of
14 Kim Mandelbaum in Las Vegas. I did not give depositions or
15 trial testimony in the Mandelbaum issue.
16 Q Is Kim Mandelbaum a lawyer that retained you, or
17 is that the lawyer that you were working for?
18 A No. That was the lawyer that I had been retained
19 on behalf of.
20 Q And Amy Langerman, also the lawyer --
21 A Who was the defendant.
22 Q -- who was the defendant? And were you for the
23 defense?
24 A Yes.
25 Q And Kim Mandelbaum, you were for the defense?

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1 A And today.
2 Q And I notice in one of these things you had your
3 billing sheet in here; is that correct?
4 A Sort of.
5 Q I'm going to take part of this and mark it as
6 exhibits as we go along.
7 A Okay.
8 Q What I'd like to do is get -- is probably your
9 timeline and this group of documents would probably be
10 Exhibit 1, because it appears to be your correspondence,
11 e-mails, timeline and billing. Would that be fair?
12 A No. The exhibits that are in there I might have
13 reviewed, but, wouldn't be part of my billing record. I just
14 reviewed them. I'm not used to keeping time sheets.
15 Q Okay. Well, I'm going to have these exhibits
16 marked as Exhibit 1 to your deposition. And for the court
17 reporter, it's a timeline; it looks like there is an e-mail
18 from, uh -- dated July 9th, 2013.
19 By the way, who is Mandi Zambai?
20 A She's my paralegal.
21 Q Okay. It looks like you're cc'd on this. An
22 e-mail from her dated June 26, 2013; a letter from Mr. Kozak
23 dated October 10, 2012; and your timeline.
24 A Correct.
25 Q Your billing timeline. And I assume that this,

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<p>1 uh -- this contains sort of an outline of what you've done?</p> <p>2 A Right.</p> <p>3 Q And shows the number of hours?</p> <p>4 A Correct.</p> <p>5 (Exhibit 1 was marked for Identification.)</p> <p>6 Q And what do you charge an hour?</p> <p>7 A 400 for reviewing documents and teleconferences,</p> <p>8 and 500 for deposition, per hour.</p> <p>9 Q Then why did I have to bring you a check for 1600?</p> <p>10 A I thought you brought me a check for 1,000.</p> <p>11 Q Check that, would you? Maybe I have the other</p> <p>12 witness mixed up with this.</p> <p>13 A 1,000.</p> <p>14 Q Okay.</p> <p>15 A But, I would take 1600.</p> <p>16 Q You'd be happy to, I'm sure.</p> <p>17 So I take it in two of the cases, you testified in</p> <p>18 court?</p> <p>19 A Yes.</p> <p>20 Q Do you remember whose court you were in in Reno?</p> <p>21 A Oh, no.</p> <p>22 Q Okay. I know that you've been practicing, because</p> <p>23 you took the bar with me, for about 42, 43 years; is that</p> <p>24 correct?</p> <p>25 A Correct.</p>	<p>1 policies and billing practices and reporting requirements and</p> <p>2 different things that require you to meet more stringent</p> <p>3 deadlines in a lot of respects.</p> <p>4 Q And what's the difference then with the</p> <p>5 plaintiffs' work?</p> <p>6 A The plaintiffs' work, your communications are</p> <p>7 directly with your client more than, a lot of times, in the</p> <p>8 defense work. And, also, you have in many instances a more</p> <p>9 limited budget, depending on who the plaintiff's attorney is.</p> <p>10 In my practice we front the costs and then collect them from the</p> <p>11 clients at the conclusion of the litigation.</p> <p>12 Q And if you lose the litigation or decide to</p> <p>13 dismiss the litigation, do you still collect the costs?</p> <p>14 A Not generally. State bar allows us to write them</p> <p>15 off.</p> <p>16 Q So if you don't prevail, then you don't -- your</p> <p>17 firm does not bother to sue the client for costs?</p> <p>18 A Not one time in 43 years.</p> <p>19 Q And in your plaintiffs' work, do you routinely</p> <p>20 keep time slips?</p> <p>21 A No. I don't. Uh, some plaintiffs' attorneys do,</p> <p>22 depending on the organization. Like if they work in a firm,</p> <p>23 sometimes a plaintiff's attorney's compensation on a particular</p> <p>24 case will have some type of formula involving time and different</p> <p>25 issues. But, I personally do not keep time sheets.</p>
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<p>1 Q All right. For a number of years did you do</p> <p>2 defense work?</p> <p>3 A I did.</p> <p>4 Q For how many years?</p> <p>5 A I did exclusively defense work until 1985, from</p> <p>6 1970. And I did defense work and plaintiffs' work from 1985 to</p> <p>7 1993. And in 1993 I believe is when I stopped doing any defense</p> <p>8 work other than reviewing cases for doctors as their private</p> <p>9 counsel.</p> <p>10 Q And so since 1993 then, primarily, you would say</p> <p>11 you're a plaintiff's lawyer?</p> <p>12 A A plaintiff's attorney -- right. Primarily,</p> <p>13 plaintiff's attorney, and primarily, medical malpractice.</p> <p>14 Q And with respect to your defense practice</p> <p>15 versus -- from 1985 to -- from 1970 to 1985 versus your</p> <p>16 plaintiffs' practice, is there a difference in the way you have</p> <p>17 to handle the cases?</p> <p>18 A I'm not sure I understand the question.</p> <p>19 Q You have different procedures that you have to</p> <p>20 follow for various clients from the defense world?</p> <p>21 A Oh, yes.</p> <p>22 Q What's the difference between doing defense work</p> <p>23 and plaintiffs' work?</p> <p>24 A The primary difference is that with defense work</p> <p>25 most organizations that you represent have procedures and</p>	<p>1 Q With respect to the plaintiffs' work, is most of</p> <p>2 your communication with your client verbal except for key things</p> <p>3 like trial dates or depositions or whatever?</p> <p>4 A Well, having a defense background, I try to make</p> <p>5 sure that each case has a -- what I would call a summary, a case</p> <p>6 summary, to the client. And then all settlement demands, all</p> <p>7 settlement letters are signed off by the client before we send</p> <p>8 them. But, we do have a significant amount of phone</p> <p>9 conversation.</p> <p>10 Q So, basically, one of the differences in the</p> <p>11 communication is the plaintiffs' would be less formal than in a</p> <p>12 defense firm?</p> <p>13 A That would be accurate.</p> <p>14 Q Uh, have you ever been disciplined in any manner?</p> <p>15 A By whom?</p> <p>16 (Discussion off the record.)</p> <p>17 THE WITNESS: So, by the State Bar, I have not been</p> <p>18 disciplined. There was a complaint filed with the State Bar in</p> <p>19 2008.</p> <p>20 Q BY MS. PISCEVICH: Did that result in a dismissal,</p> <p>21 a private reprimand? What happened?</p> <p>22 A None of the above. It was an interesting --</p> <p>23 Q I don't need to go into it.</p> <p>24 A Well, I can tell you.</p> <p>25 Q I don't need to know that. I just want to know,</p>

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<p>1 did you respond --</p> <p>2 A I did a response to the State Bar --</p> <p>3 Q And then it went away?</p> <p>4 A -- they said it was fine. I didn't do anything</p> <p>5 wrong.</p> <p>6 Q So you didn't have to go any further than that?</p> <p>7 A Correct.</p> <p>8 Q So there's been one complaint.</p> <p>9 Have you ever been sued for any reason?</p> <p>10 A Yes.</p> <p>11 Q How many times?</p> <p>12 A I'm not sure. Probably two, maybe three.</p> <p>13 Q And what type of cases were those?</p> <p>14 A One was a landlord tenant issue in 1982 where I</p> <p>15 was the defendant. And one was -- I was sued over a block wall.</p> <p>16 Q A block wall?</p> <p>17 A Yeah, a block wall fence. And one -- I've been</p> <p>18 sued for legal negligence, professional negligence, on one</p> <p>19 occasion.</p> <p>20 Q And how did your legal negligence come out?</p> <p>21 A It came out with the codefendant paying all</p> <p>22 damages, and it was settled, and I did not have to contribute to</p> <p>23 the settlement.</p> <p>24 Q And I'm just curious the number of cases you think</p> <p>25 you've tried to a conclusion. And I'll break down, plaintiff</p>	<p>1 could describe for me -- and I think the easiest way to do it is</p> <p>2 just make copies of the cover tabs, and that might be the</p> <p>3 easiest way, because I assume I have copies of all of these</p> <p>4 documents?</p> <p>5 A I would assume.</p> <p>6 Q So let's just start, and if you would tell me --</p> <p>7 let's start with this white binder, and that contains how many</p> <p>8 documents?</p> <p>9 A Uh, thirteen documents.</p> <p>10 Q And what do they consist of?</p> <p>11 A They primarily consist of documents that pertain</p> <p>12 to this Complaint of DeChambeau versus Balkenbush. And it</p> <p>13 starts out with the, uh, complaint in the underlying action;</p> <p>14 then the complaint in the instant action; the discovery and</p> <p>15 discovery responses in this case.</p> <p>16 Q Can you identify them for me?</p> <p>17 A Oh, sure. The complaint, and then -- the</p> <p>18 complaint in the instant action; the defendants' answer to the</p> <p>19 complaint; the plaintiffs' responses to defendants' first set of</p> <p>20 Interrogatories to Angela as an individual; and plaintiffs'</p> <p>21 responses to defendants' first set of Interrogatories to</p> <p>22 Plaintiff Angela as special administrator for the estate of Neil</p> <p>23 DeChambeau; defendants' answers to first set of Interrogatories;</p> <p>24 defendants' responses to requests for admissions; and</p> <p>25 defendants' third supplemental Rule 16 disclosure; copy of file</p>
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<p>1 and defense.</p> <p>2 A I think it's around 300.</p> <p>3 Q And can you break those down for me?</p> <p>4 A Yes. Uh, 200 defense between 1970 and 1985 -- or</p> <p>5 not 1985, 1993. And the others have been plaintiffs' cases.</p> <p>6 Q About 100 plaintiff?</p> <p>7 A About 100 plaintiffs' cases.</p> <p>8 Q And these are all cases to a conclusion?</p> <p>9 A Yes.</p> <p>10 Q And would they all be jury?</p> <p>11 A Yes. 99.9 percent.</p> <p>12 Q Do you advertise your services?</p> <p>13 A I do not. I have a telephone book listing.</p> <p>14 Q And do you have to pay in any type of journal for</p> <p>15 your name to be in it, like Nevada Lawyers. I mean it's not --</p> <p>16 A I have an ad in the directory and an ad in the</p> <p>17 communique for mediation arbitration. I do those, as well, now.</p> <p>18 Q I assume that you have met Mr. Kozak before this</p> <p>19 case?</p> <p>20 A That's correct.</p> <p>21 Q Do you know how he located you?</p> <p>22 A I think through a recommendation from another</p> <p>23 attorney, but, I'm not sure who.</p> <p>24 Q Okay. We've marked as Exhibit 1 a few of your</p> <p>25 documents. I am going to give you back your binder, and if you</p>	<p>1 from White, Meany & Wetherall; the notes -- the Number 10</p> <p>2 document is notes from Angela DeChambeau reference Neil's</p> <p>3 condition; and then the 11 was a demand letter that Mr. Kozak</p> <p>4 sent to yourself, dated October 10th, '12; and Number 12 was</p> <p>5 Dr. Doshi's expert witness report that he submitted in the</p> <p>6 underlying action; and Number 13 is Washoe Medical Center</p> <p>7 medication events summary. MAR.</p> <p>8 Q Can I see that binder for one second?</p> <p>9 A That's that binder.</p> <p>10 Q It looks like there's a letter in this binder</p> <p>11 dated February 4, 2013. It says, "Dear Jerry, sorry for the</p> <p>12 informality, but, I'm rushing to get these out to you today."</p> <p>13 And this is a letter from Ralph, who I believe is Mr. Kozak's</p> <p>14 assistant. Did this binder come to you in this form?</p> <p>15 A My paralegal put it in the binder and did the</p> <p>16 separation and the tabs and the index. It came in a box.</p> <p>17 Q Because the first document appears to be documents</p> <p>18 from Mr. Balkenbush's file.</p> <p>19 A Correct. Well, the complaint.</p> <p>20 Q Well, there's more than the complaint. There</p> <p>21 seems to be --</p> <p>22 A Okay. Yeah, the transmittals. Right. The</p> <p>23 e-mails.</p> <p>24 Q It looks like -- I'm hoping these are in order.</p> <p>25 A That's Tab 1.</p>

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<p>1 Q We're going to have to make Tab 1 of "Documents 2 for Consultant Review" file as Exhibit Number 2. 3 (Exhibit 2 was marked for Identification.) 4 A I think maybe that document also has at the end of 5 it -- let's see. One of these binders has his billing records. 6 I mean his time sheets. Mr. Balkenbush. I think it's that one. 7 Q Okay. You have a document, the end of it is 8 called Renown Cath Lab 0015. Do you know from whose file that 9 came from? 10 A I don't. It came with those documents. 11 Q Okay. I'm going to attach as Exhibit 3 the very 12 last page, that says Page 12 of 25, Washoe Medical Center 13 Renown-Cath Lab 0015. 14 (Exhibit 3 was marked for Identification.) 15 It looks like Exhibit 2 contains e-mails from 16 Mr. Navratil, various e-mails from Mr. Balkenbush, stipulations 17 from during the trial, et cetera; is that correct? 18 A Yes. 19 Q Okay. That's Binder Number 1. Let's look at 20 Binder Number 2. 21 A Okay. Binder Number 2 is Jean-Paul DeChambeau's 22 deposition -- 23 Q Okay. 24 A -- dated October 4th of '12; Angela DeChambeau's 25 deposition, dated October 4th of '12; and Ed Lemons,</p>	<p>1 A I got it yesterday. 2 Q So you read it last night? 3 A This morning. 4 Q This morning. Okay. 5 And we have the green file, and the green file is 6 basically your work product; is that correct? 7 A Well, it's got some documents in it, at the back 8 especially, that I used. Mr. Balkenbush's time sheets are in 9 that binder. 10 Q Okay. 11 A And they are something I looked at and considered. 12 Q And it looks like Number 1 is in the underlying 13 case, plaintiffs' request, 16.1 request? 14 A Correct. 15 Q Number 2 is plaintiffs' 16.1 request to 16 Mr. Smith -- Dr. Smith, first one's to Dr. Kang. Number 3 is 17 the joint case conference report; is that correct? 18 A That's correct. 19 Q Four is the stipulation regarding discovery 20 deadlines from the underlying case? 21 A Correct. 22 Q And five is the order to amend the discovery 23 schedule in the underlying case? 24 A Yes. I think so. 25 Q And I'm reading off of your -- Then six is the</p>
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<p>1 November 9th, '12; Navratil's deposition, dated 12/12/12; and 2 Dr. Morady's deposition, 6/12/13. 3 Q May I just see the binder? I noticed you 4 highlighted information in Mr. Lemons' deposition, but, not in 5 DeChambeau's; is that correct? 6 A Yeah, I don't ordinarily highlight depositions, 7 because I never know when I'm going to have to copy them. But, 8 there was just some of the information that Mr. Lemons testified 9 to that I highlighted. 10 Q It also looks like some in Mr. Navratil's; is that 11 correct? 12 A Correct. 13 Q The court reporter is not going to like this 14 request, but I'm going to have marked as Exhibit 4 the 15 highlighted pages from Mr. Lemons and Mr. Navratil. There are 16 not many. 17 (Exhibit 4 was marked for Identification.) 18 Then we have a third binder, which is a smaller 19 binder. What's in Binder Number 3? 20 A The deposition of Stephen Balkenbush. 21 Q Thank you. And the deposition of Dr. Seifert? 22 A Correct. 23 Q And I take it that was just sent to you recently? 24 A Yes. 25 Q Was it e-mailed?</p>	<p>1 application for the trial setting? 2 A Yes. 3 Q In the underlying case. Seven is plaintiffs' 4 designation of experts, which is Dr. Morady and Dr. Mazzei. 5 And Number 8 is the Thorndal invoices; is that correct? 6 A I believe so. 7 Q And -- 8 A I'm not sure they're invoices. They're time 9 sheets. 10 Q Time sheets? 11 A Yeah. 12 Q Do you have any information why these documents 13 weren't, uh, the ones that were provided with the SB or Steve 14 Balkenbush Bates stamp on them? These have no Bates stamp on 15 them. 16 A I don't have any idea why. 17 Q Okay. And then there seems to be a series of 18 notes in the back, Number 9. 19 A Yeah, right. Those look like interoffice notes or 20 something from the Balkenbush file. Oh, no, wait. Are those 21 court minute orders? 22 Q I don't know what this is. I haven't seen it. 23 That's why I'm asking. These are under Exhibit 9 of the green 24 file. 25 A Okay. Let me see if I can discern what they are.</p>

5 (Pages 17 to 20)

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<p>1 It's Washoe Court minutes.</p> <p>2 Q All right.</p> <p>3 A One May 21st, 2008.</p> <p>4 Q And the rest of them are minutes?</p> <p>5 A Yeah. Yes.</p> <p>6 MS. PISCEVICH: What number are we on?</p> <p>7 THE COURT REPORTER: Five.</p> <p>8 MS. PISCEVICH: I'm going to ask that Exhibit Number 5</p> <p>9 be taken from the green folder, and it's marked as Number 9 and</p> <p>10 consists as four or five pages of court minutes.</p> <p>11 THE WITNESS: Okay.</p> <p>12 (Exhibit 5 was marked for Identification.)</p> <p>13 Q BY MS. PISCEVICH: And then if I understand, the</p> <p>14 timeline contained in here is a timeline of both tabs inside the</p> <p>15 green binder?</p> <p>16 A I believe so. And there may be some documents</p> <p>17 that she added. The timeline on the white sheet is probably the</p> <p>18 most complete.</p> <p>19 Q Okay. And you have a CD of the pleadings. Do you</p> <p>20 know which pleadings you're talking about?</p> <p>21 A I don't. More than likely, they're some of the</p> <p>22 ones referred to that weren't copied, but, are referred to in</p> <p>23 the index.</p> <p>24 Q Can you tell me -- I'm assuming that this pleading</p> <p>25 index is from the underlying case, as it's in Department 4?</p>	<p>1 medical malpractice plaintiffs' case.</p> <p>2 Q And who were the lawyers?</p> <p>3 A Balkenbush. Steve Balkenbush.</p> <p>4 Q And do you know Mr. Balkenbush?</p> <p>5 A No.</p> <p>6 Q Do you know people in his firm?</p> <p>7 A Yes.</p> <p>8 Q Because they have an office here in Las Vegas,</p> <p>9 right?</p> <p>10 A Correct.</p> <p>11 Q And I assume you've litigated against that firm?</p> <p>12 A Right.</p> <p>13 Q On about how many occasions?</p> <p>14 A When I was -- probably 15.</p> <p>15 Q Have you had subsequent conversations with</p> <p>16 Mr. Kozak?</p> <p>17 A Yes.</p> <p>18 Q Okay. And can you tell me approximately when the</p> <p>19 first -- I mean I know from the file that you received it looks</p> <p>20 like the documents in --</p> <p>21 A My timeline billing I think would set forth the</p> <p>22 day or pretty much the day that I had a telephone conversation.</p> <p>23 I only really had two telephone conversations in which I</p> <p>24 outlined the, uh -- one would have been April 24th, and I</p> <p>25 believe there was one the first week of May.</p>
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<p>1 A I believe so.</p> <p>2 Q And then timelines are a combination of what?</p> <p>3 A The timeline that I asked for to be put into the</p> <p>4 white sheets that you have was to combine the discovery</p> <p>5 activities and the handling issues that were formalized by</p> <p>6 request for production, et cetera, et cetera, in the underlying</p> <p>7 action.</p> <p>8 MS. PISCEVICH: What I would like to have done is, as</p> <p>9 Exhibit 6, is to take a copy of the timeline on the right-hand</p> <p>10 side, the timeline on the left, with a copy of all the</p> <p>11 documents, but, I don't need a CD. This will say "CD of</p> <p>12 Pleadings." And put the white timeline on top. This will be</p> <p>13 Exhibit 6. So you'll probably be here a little bit of time.</p> <p>14 I'm sorry.</p> <p>15 (Exhibit 6 was marked for Identification.)</p> <p>16 THE WITNESS: She can take them with her, too. I don't</p> <p>17 care.</p> <p>18 Q BY MS. PISCEVICH: You guys can work that out.</p> <p>19 A Whatever is best for her.</p> <p>20 Q Did you have any telephone conversations with</p> <p>21 Mr. Kozak about this case before you received it?</p> <p>22 A A short conversation with Mr. Kozak and Mr. Walker</p> <p>23 asking if I had any conflict or I would agree to review the</p> <p>24 matter. And it was very brief. I did know that from the result</p> <p>25 of that conversation that it was a -- involved the handling of</p>	<p>1 Q This year?</p> <p>2 A Yes.</p> <p>3 Q Okay. And what was discussed on April 24th?</p> <p>4 A We discussed my review of the underlying action</p> <p>5 and my request for the additional depositions when they got them</p> <p>6 in this case, i.e., the Lemons, the Navratil, so forth.</p> <p>7 Q And he would have had them by April 13th, right?</p> <p>8 A Right. But, I didn't have them at that point.</p> <p>9 Q Gotcha. And then what did you discuss on May 1?</p> <p>10 A We discussed basically some of my tentative</p> <p>11 observations and some of my tentative conclusions.</p> <p>12 Q And as of May 1 of 2012, what were your tentative</p> <p>13 observations?</p> <p>14 A That there were aspects of the handling of this</p> <p>15 case where Attorney Balkenbush fell below the standard required</p> <p>16 of him?</p> <p>17 Q Okay. And what were those aspects?</p> <p>18 A Well, at that time I hadn't reviewed everything.</p> <p>19 But, it was my opinion that, uh, there was an issue with respect</p> <p>20 to him actively pursuing the case. And I felt that there was a</p> <p>21 lack of diligence and lack of timeliness in pursuing and</p> <p>22 handling the discovery in this case and trying to get it ready</p> <p>23 for trial.</p> <p>24 Q Okay. Anything else?</p> <p>25 A Uh, I was very concerned about the written</p>

6 (Pages 21 to 24)

1 discovery not being present, and I was always concerned about
2 there not being any depositions of any fact witnesses or any
3 defendants. I felt that the failure to take the depositions of
4 the defendants within the first three years of handling fell
5 below the standard of care.

6 I felt that him not taking formal steps to get the
7 tape -- everybody seemed to be hung up on this EPS tape, and it
8 seemed to be a document that everybody felt was necessary to
9 obtain. And he didn't make any formal efforts with subpoenas or
10 court orders or motions before the Court to get that tape, and,
11 in fact, did not get it until 2010, when the case was filed in
12 2007. And Attorney Balkenbush knew about the existence of the
13 tape as early as 2007.

14 Q Okay. Anything else?

15 A Uh, I felt that it was below the standard for him
16 not to get it before a mandatory settlement conference, in the
17 time before the case was dismissed or before that discovery ran.

18 And I thought that, uh, there should have been
19 more communications with his expert witnesses, to find out what
20 they needed that they didn't have and to determine what facts
21 they needed to help support or disavow their opinions.

22 Q Okay. Any other tentative observations and
23 conclusions. You've got the issue of not actively pursuing the
24 case; and then number two, the written discovery not being
25 present, the depositions, pursuing the EPS tape, and more

1 conversations with experts.

2 A Right. And no depositions of the percipient
3 witnesses or the Code team, people participating in the
4 resuscitation. There was not any testimony if them. And there
5 wasn't any sworn testimony from the defendants as to their
6 version of what was happening.

7 I thought it was below the standard of care for
8 him to rely on a letter from Mr. Lemons concerning what
9 Dr. Smith was going to say. And then he seemed to place a great
10 deal of emphasis on a letter from Mr. Navratil which represented
11 what Mr. Navratil thought his client would testify to.

12 And I thought that that should have been
13 information that he got either by answers to Interrogatories or
14 deposition. And I thought that those constituted, uh,
15 negligence.

16 Q Okay.

17 A In the handling.

18 Q Any other tentative opinions or conclusions as of
19 May 1?

20 A No. Those were the general, uh -- those were the
21 general opinions as of May 1.

22 Q Have any of these opinions changed since May 1?

23 A No.

24 Q Okay. Have you formed any new opinions since
25 May 1?

1 A Uh, I -- I -- I think that there should have been
2 some effort to determine why Dr. Morady was all of a sudden not
3 going to testify, and it's not been cleared nor is it clear now
4 as to why Dr. Morady decided that Dr. Smith had met the standard
5 of care when he was very specific in his criticisms when he did
6 his original affidavit.

7 And I think that there were some remedies
8 available to Mr. Balkenbush that he should have undertaken at
9 the time Dr. Morady crashed and burned.

10 Q What were those remedies available?

11 A Well, he could have filed a motion with the Court
12 to obtain a new expert. Might not have been granted, but -- and
13 there are cases where it is granted. There is, uh -- he should
14 have taken the deposition of Dr. Morady and pinned him down as
15 to why he was not going to testify so that he could use that
16 testimony in support of his motion.

17 It's been my experience that there's always a
18 number of reasons, many of which are not apparent, when an
19 expert decides he doesn't want to testify. There's all kinds of
20 other issues other than I saw this fact and I don't want to
21 testify.

22 Q Did you obtain any particular information from the
23 deposition of Dr. Morady that was taken in this case?

24 A No. I think Dr. Morady's deposition in this case,
25 it was very evasive. I mean he just said, "I didn't want to

1 testify, I think Dr. Smith did what I would have done," or
2 something to that effect.

3 Q Have you ever taken the expert -- an expert
4 physician deposition upon written questions?

5 A I don't believe so.

6 Q And on Dr. Morady's deposition, it was on written
7 questions; is that correct?

8 A That's correct.

9 Q And there wasn't an opportunity to follow up by
10 the person taking the deposition; is that correct?

11 A That's correct.

12 Q Do you have any information today as to what
13 Dr. Morady's reasoning was?

14 A Nothing more than what is reflected in the
15 communications between Steve Balkenbush and Ed Lemons and
16 Michael Navratil when they were talking and discussing the
17 dismissing of the case. After he reviewed this EPS tape.

18 Q Okay. So today you really don't know Dr. Morady's
19 position; is that correct?

20 A I just know that Dr. Morady was -- told
21 Mr. Balkenbush he was withdrawing, or didn't want to testify.
22 Didn't really say he was withdrawing.

23 Q No. He said he changed his opinion.

24 A He said he changed his opinion, and we don't
25 really know what he changed his opinion to. And I don't know

Deposition of Gerald Gillock, 7/31/2013

<p style="text-align: right;">Page 29</p> <p>1 the real basis other than what -- I know that there were several</p> <p>2 phone calls between Balkenbush and Dr. Morady on the 22nd of</p> <p>3 April of 2010, and I don't know exactly what the contents of</p> <p>4 those were.</p> <p>5 Q Now, if I understand correctly, your first one,</p> <p>6 that he lacked diligence, and the other reasons, the reasons for</p> <p>7 the lack of diligence, meaning depositions, not deposing, are</p> <p>8 those the reasons for that opinion?</p> <p>9 A No. Those are separate opinions.</p> <p>10 Q Okay. Tell me what the lack of diligence was?</p> <p>11 A The failure to pursue his case. There's</p> <p>12 significant lapses of time. And after the 16.1 conference and</p> <p>13 the submission of the joint case conference report, it appears</p> <p>14 as though this case went into a black hole and that's where it</p> <p>15 stayed for several years.</p> <p>16 There's some efforts to -- apparently, according</p> <p>17 to his time sheets that he kept, there were some efforts to</p> <p>18 obtain this tape. And he talked to various people, and he</p> <p>19 talked to Mr. Lemons, and he talked to different people, but, he</p> <p>20 didn't do what was necessary to get it if it's this important.</p> <p>21 It sounded to me like Dr. Morady wanted the tape</p> <p>22 early, like as in 2007. And I get that from an entry in</p> <p>23 Mr. Balkenbush's time records where he refers to discussion with</p> <p>24 Dr. Morady wanting additional record. And I think it was the</p> <p>25 tape, is the only thing missing at that point.</p>	<p style="text-align: right;">Page 31</p> <p>1 experts had passed?</p> <p>2 A Right.</p> <p>3 Q And they were about two-and-a-half months from</p> <p>4 trial?</p> <p>5 A Right.</p> <p>6 Q So what do you think the likelihood of a</p> <p>7 continuance would have been?</p> <p>8 A Well, there had already been three. Or two.</p> <p>9 There had been two. This was the third trial date.</p> <p>10 Q No, a second trial date.</p> <p>11 A The first trial date was set in two-thousand --</p> <p>12 Q Feel free to use --</p> <p>13 A Okay. You're right. There were two trial dates,</p> <p>14 but, there were three discovery orders, or three amended orders.</p> <p>15 Q Right. There was a first trial date, and that got</p> <p>16 continued because the judge wanted it continued, correct?</p> <p>17 A It got continued because the parties said that</p> <p>18 they needed more discovery I believe.</p> <p>19 Q I think the judge also continued the trial date;</p> <p>20 is that correct?</p> <p>21 A Yes. Okay.</p> <p>22 Q Okay. So then there was a second trial date that</p> <p>23 was supposed to be in July of 2010; is that correct?</p> <p>24 A Yes.</p> <p>25 Q Okay. And so if I understand correctly, you're</p>
<p style="text-align: right;">Page 30</p> <p>1 Q And so that's the reasons for the lack of</p> <p>2 diligence?</p> <p>3 A Well, the reasons -- I mean I don't know what the</p> <p>4 reasons were, other than the fact that he didn't do anything.</p> <p>5 Q No, I'm trying to get the foundation for this</p> <p>6 opinion.</p> <p>7 A Okay. Well --</p> <p>8 Q That's why I'm asking are the other issues, like</p> <p>9 not doing the written discovery of the fact witnesses, not</p> <p>10 taking formal steps to get the tape, et cetera, are those also</p> <p>11 the basis of your opinion that there is a lack of diligence?</p> <p>12 A Yes.</p> <p>13 Q And are all of those reasons -- and I'll just go</p> <p>14 through them. The failure, for example, to get the tape, you're</p> <p>15 saying that that's below standard of care?</p> <p>16 A Yes.</p> <p>17 Q And not formally going after it is below the</p> <p>18 standard of care?</p> <p>19 A If your expert needs it and if it's important.</p> <p>20 Because in this case, for example, failure to do that resulted</p> <p>21 in him getting the information at such a late date that -- and</p> <p>22 only when the defendants' attorney decided he wanted to give it</p> <p>23 to him -- that he was up against the wall. His client was up</p> <p>24 against the wall.</p> <p>25 Q They both were. The time for disclosure of</p>	<p style="text-align: right;">Page 32</p> <p>1 critical of not doing anything until 2010?</p> <p>2 A I don't think he did anything in 2010.</p> <p>3 Q All right. What was your understanding of the</p> <p>4 working relationship between Mr. Balkenbush, Mr. Navratil, and</p> <p>5 Mr. Lemons?</p> <p>6 A That's interesting. It appears that</p> <p>7 Mr. Balkenbush just acquiesced in anything that Mr. Lemons</p> <p>8 wanted him to do or not do. And said -- for example, they're</p> <p>9 talking about the EPS tape. There were discussions with them as</p> <p>10 early as 2007. And he didn't get the tape from Ed Lemons until</p> <p>11 2010.</p> <p>12 And they talked about that it was expensive, it</p> <p>13 was a different type of tape, all of this going on. So I think</p> <p>14 they had a real cozy working relationship.</p> <p>15 Q You think they got along?</p> <p>16 A Apparently, sure. They got along, but, they got</p> <p>17 along because Balkenbush wasn't pushing.</p> <p>18 Q Well, I have a question for you. Are you in any</p> <p>19 way contending that Steve Balkenbush was not qualified or</p> <p>20 competent to handle this case? I understand your issues of</p> <p>21 mishandling. But, was he, in your opinion, competent and</p> <p>22 qualified to handle the case?</p> <p>23 A I'm hesitating because I don't have any basis to</p> <p>24 say that he was not competent or qualified. But, I do know that</p> <p>25 he hadn't had any plaintiffs' medical malpractice cases.</p>

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<p>1 Q Well, everybody's got to have their first</p> <p>2 plaintiffs' case along the way, right?</p> <p>3 A Right. And --</p> <p>4 Q Because you have X number of trials as a defense</p> <p>5 lawyer, are you contending you can't try a plaintiffs' case?</p> <p>6 A No, I'm not saying that. I'm saying that a</p> <p>7 medical malpractice case is different and unique. And, in fact,</p> <p>8 if you'll look at Mr. Balkenbush's time sheets, you'll see where</p> <p>9 he's looking at the Nevada statute to see what the requirements</p> <p>10 are because he doesn't know what they are. Statute of</p> <p>11 limitations, et cetera, et cetera.</p> <p>12 So, it takes a certain amount of expertise to</p> <p>13 handle medical malpractice cases, and it's extremely</p> <p>14 complicated. I would say that he's qualified. I would say that</p> <p>15 he tries cases as far as I know. And I don't have any basis to</p> <p>16 say that he's incompetent. But, I think that he's made some</p> <p>17 very basic mistakes by not doing formal discovery and not taking</p> <p>18 percipient witness depositions.</p> <p>19 Q And we've talked about that, and that's the basis</p> <p>20 of your opinions on the standards of care, correct?</p> <p>21 A That's the basis of my opinions on standard of</p> <p>22 care.</p> <p>23 Q Mine is a little different.</p> <p>24 A Okay.</p> <p>25 Q Are you contending he's not qualified or competent</p>	<p>1 would assume that it's authentic?</p> <p>2 A Of course.</p> <p>3 Q I'll give you another document we'll mark as</p> <p>4 Exhibit next in order, and this was in response to Mr. Kozak.</p> <p>5 MS. PISCEVICH: Which will be Exhibit what?</p> <p>6 THE COURT REPORTER: 7.</p> <p>7 (Exhibit 7 was marked for Identification.)</p> <p>8 Q BY MS. PISCEVICH: Would you mind putting a little</p> <p>9 7 on the bottom of that, Jerry. And what the letter basically</p> <p>10 says is that somebody got the disk, it cost 3- to \$5,000, and we</p> <p>11 had to have the manufacturer come in and make the copy. So</p> <p>12 that's why I'm asking, are you contending in any manner that</p> <p>13 that disk is not authentic?</p> <p>14 A No. No. No. I think the existence of the disk</p> <p>15 and the importance of the disk became a red herring throughout</p> <p>16 the course of this handling.</p> <p>17 Q Okay. And why is that?</p> <p>18 A Because I think when you look at Dr. Doshi's</p> <p>19 timeline, and you look at the computerized printout timeline,</p> <p>20 and you look at the code sheets, I don't think that the tape can</p> <p>21 shed much light on the case.</p> <p>22 Q Okay. Are you going to be giving opinions on the</p> <p>23 medicine in this case?</p> <p>24 A No.</p> <p>25 Q That was going to be one of my questions down the</p>
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<p>1 to handle the case, and I think you said you had no basis to</p> <p>2 make that opinion.</p> <p>3 A I have no basis because I don't know what his</p> <p>4 competency level is. Even after his deposition, I don't know</p> <p>5 how many medical cases he handled from the defense. I think a</p> <p>6 person could handle a medical malpractice plaintiffs' case if he</p> <p>7 was experienced in medical malpractice defense cases. But, I</p> <p>8 don't have too much information on that issue.</p> <p>9 Q Are you contending in any manner that an attorney</p> <p>10 who does primarily defense work cannot do plaintiffs' work?</p> <p>11 A No.</p> <p>12 Q You can do both sides if you haven't got a</p> <p>13 conflict?</p> <p>14 A You can.</p> <p>15 Q Are you contending that, uh, Mr. Balkenbush should</p> <p>16 not have accepted this case initially?</p> <p>17 A No. I don't like the fact that he did, but, I</p> <p>18 don't think it's negligence that he did.</p> <p>19 Q Are you contending that the EPS tape or the PruKa</p> <p>20 disk or whatever it is is not authentic?</p> <p>21 A Is not what?</p> <p>22 Q Authentic.</p> <p>23 A No, I'm not saying it's not authentic. I haven't</p> <p>24 looked at it, and I wouldn't understand it if I did.</p> <p>25 Q But, if they obtained it directly from Renown, you</p>	<p>1 road, but, we'll get it out of the way now.</p> <p>2 Are you contending that Dr. Morady did not change</p> <p>3 his mind?</p> <p>4 A No.</p> <p>5 Q And I understand you are contending that</p> <p>6 Mr. Balkenbush didn't do sufficient discovery in this case,</p> <p>7 correct?</p> <p>8 A Yes.</p> <p>9 Q Are you contending he did no discovery?</p> <p>10 A Yes.</p> <p>11 Q Okay. And what is that based upon?</p> <p>12 A Based on the fact that there were no</p> <p>13 Interrogatories sent to either defendant, no request for</p> <p>14 production of documents sent to any defendant, there were no</p> <p>15 depositions taken of percipient witnesses, there were no</p> <p>16 depositions taken, most importantly, of the defendants to find</p> <p>17 out what the order of -- what their recollections were and what</p> <p>18 their testimony was going to be with respect to the handling of</p> <p>19 the code.</p> <p>20 And there was a major difference here that we see</p> <p>21 now between what Dr. Smith says and what Dr. Kang said, and</p> <p>22 then -- so none of those depositions were taken. And then none</p> <p>23 of the depositions were taken from the experts.</p> <p>24 Q Okay. And we'll come back to this, I promise.</p> <p>25 Do you consider Rule 16.1 to be a discovery tool?</p>

FILED

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3921386

EXHIBIT "5"

EXHIBIT "5"

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGELA DeCHAMBEAU and
JEAN-PAUL DeCHAMBEAU, both
Individually and as SPECIAL
ADMINISTRATORS of the ESTATE
of NEIL DeCHAMBEAU,
Plaintiffs,

-v-

Case No. CV12-00571

STEPHEN C. BALKENBUSH, ESQ.,
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH and EISINGER, a
Nevada Professional
Corporation, & DOES I
through X, inclusive,
Defendants.

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The deposition of FRED J. MORADY, M.D.,
Taken at 623 West Huron Street,
Ann Arbor, Michigan,
Commencing at 10:00 a.m.,
Wednesday, June 12, 2013,
Before Cheryl McDowell, CSR-2662, RPR.

1 **APPEARANCES:**

2

3 MS. MARGO PISCEVICH

4 Piscévich & Fenner

5 499 West Plumb Lane, Suite 201

6 Reno, Nevada 89509

7 (775) 329-0958

8 Appearing by videoconference on behalf of the
9 Plaintiff.

10

11 **ALSO PRESENT:** MR. STEPHEN C. BALKENBUSH,
 appearing by videoconference

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1 Ann Arbor, Michigan

2 Wednesday, June 12, 2013

3 About 10:00 a.m.

4 FRED J. MORADY, M.D.,

5 having first been duly sworn, was examined and testified
6 on his oath as follows:

7 EXAMINATION BY WRITTEN QUESTIONS:

8 Q. 1. Were you ever retained as an expert witness in the
9 case of Dechambeau et al v. David Smith, M.D., et al,
10 Case No. CV07 02028 filed in the Second Judicial
11 District Court of the State of Nevada in and for the
12 County of Washoe ("DeChambeau case")?

13 A. Yes.

14 Q. 2. Did you ever sign an affidavit for use in the
15 Dechambeau case wherein you expressed an expert
16 opinion that Dr. David E. Smith rendered treatment to
17 Neil DeChambeau on or about September 7, 2006 that was
18 beneath the acceptable standard of care by a treating
19 cardiologist/electrophysiologist?

20 A. Yes.

21 Q. 3. Is the document identified as "Morady Deposition
22 Exhibit 1" the affidavit which you signed on August
23 29, 2007 setting forth your opinion of Dr. David E.
24 Smith's care of Neil DeChambeau on or about
25 September 7, 2006?

1 A. Yes.

2 Q. 4. Do you still stand by your opinions expressed in
3 paragraph 10 subsections 1) and b) of your above
4 described affidavit in which you state:

5 a) David Smith, M.D., failed to timely diagnosis
6 [sic] that Neil DeChambeau was experiencing
7 cardiac tamponade.

8 A. No.

9 b) David Smith, M.D., failed to timely
10 perform a pericardiocentesis procedure on
11 Neil DeChambeau.

12 A. No.

13 Q. 5. State if you changed your expert opinion in the
14 DeChambeau case after reviewing an EPS tape recorded
15 in the operating room during an ablation procedure on
16 Neil Dechambeau on or about September 7, 2006.

17 A. Yes.

18 Q. 6. Please state the number of cases in the last ten
19 years in which you have been retained to testify in as
20 an expert witness for a plaintiff.

21 A. Approximately twenty-five.

22 Q. 7. Please state the number of cases in the last ten
23 years in which you have been retained to testify in as
24 an expert witness for a defendant.

25 A. Approximately fifty.

1 Q. 8. State what you observed on the DeChambeau EPS tape
2 that caused you to change your opinion.

3 A. I observed an arrhythmia that was atrial flutter and
4 not ventricular tachycardia as noted on the record of
5 the anesthesiologist during the procedure.

6 Q. 9. After reviewing the DeChambeau EPS tape did you
7 change your opinion given in your affidavit report
8 that David Smith, M.D. was "negligent and breached the
9 standard of care owed to Neil DeChambeau in the
10 following particulars: ...b) David Smith, M.D. failed
11 to timely perform a pericardiocentesis procedure on
12 Neil DeChambeau?

13 A. It's difficult to answer this question because of the
14 way the sentence is structured, the question is
15 structured.

16 I did change my opinion on whether or not
17 there was failure to timely perform a
18 pericardiocentesis, yes, I did change my mind, but the
19 change in opinion wasn't based on review of only that
20 electrophysiology recording.

21 Q. 10. Is so, state what you observed on the EPS
22 tape that caused you to tell Mr. Balkenbush (the
23 DeChambeau's attorney) that you changed the opinion
24 given in your affidavit previously supplied to
25 Mr. Balkenbush.

1 A. In other words, it wasn't only reviewing the
2 electrophysiology recording that caused me to change
3 my mind about whether or not the pericardiocentesis
4 had been performed in a timely fashion.

5 An important, an important observation that
6 originally led me to conclude that there was a breach
7 of standard of care was a notation in the
8 anesthesiology record that at 12:22 p.m., there was
9 defibrillation for ventricular tachycardia.

10 It turns out that after reviewing the
11 recordings of the electrophysiology procedure
12 that this was an incorrect notation, that the
13 defibrillation was not for ventricular tachycardia,
14 it was actually atrial flutter, which has
15 completely different implications than ventricular
16 tachycardia.

17 Q. 11. Do the nurses' notes in the medical records of
18 Neil DeChambeau's ablation procedure indicate that the
19 following events occurred at the times listed with
20 each:

21 a. Cardiac Arrest at 12:39:50 PM?

22 A. Yes.

23 Q. b. Stat Echocardiogram performed at 12:49 PM?

24 A. Yes.

25 Q. c. Pulse restored at 12:54:53 PM?

1 A. Well, according to the notes I'm looking at, it
2 doesn't say pulse restored at 12:54. It says pulse
3 detected at 12:54.

4 Q. 12. According to the EPS tape did each of the three
5 events listed in Question No. 11 occur at the times
6 set forth in Question 11?

7 A. The timing of those events cannot be known by looking
8 at the electrophysiology recordings.

9 Q. a. If not, please set forth the time of each
10 listed event in Question No. 11 according to
11 the EPS tape.

12 A. You can't tell by looking at the electrophysiology
13 recording.

14 And the terminology is incorrect. It's not
15 a tape. It's the recording of the electrophysiology
16 procedure.

17 Q. 13. What was the date you last observed the EPS
18 tape?

19 A. This morning. I didn't look at the whole tape. I
20 looked at printouts of relevant parts of it.

21 Q. 14. Did your last review of the EPS tape cause you to
22 change your opinions in the case once again?

23 A. I changed my opinions when I first, when I looked at
24 the recordings a long time ago. I didn't -- I have
25 not changed my opinion from the original change.

1 Q. 15. If so state how your opinions have changed, if at
2 all, after your last observation of the EPS tape?

3 A. There have been no further changes in my opinions.

4 Q. 16. Have you communicated about the contents of
5 the EPS tape with any person at any time besides
6 Stephen C. Balkenbush or anyone in the offices of
7 Piscevich & Fenner?

8 A. No.

9 Q. 17. If so, please state the names of any such
10 individuals, the dates of any communications and the
11 substance of any such communications.

12 A. None.

13 Q. 18. In what states have you been licensed?

14 A. Michigan.

15 Q. 19. Have you been disciplined in any state in
16 which you have been licensed? If so, please state
17 the nature, date and circumstances of such
18 discipline.

19 A. No.

20 Q. 20. Have you ever had a negative report filed against
21 you in the National Practitioners' data base?

22 A. No.

23 Q. 21. Have you ever had privileges withdrawn at any
24 hospital? If so, state the reasons, dates and
25 circumstances.

1 A. No.

2 Q. 22. Did you tell attorney, Stephen C. Balkenbush,
3 shortly after reviewing the EPS tape for the first
4 time, that you would have done exactly what Dr. Smith
5 did in the Cath Lab (operating room) on September 7,
6 2006?

7 A. I don't remember exactly what I told Mr. Balkenbush.

8 Q. a. To the best of your ability, state what you
9 meant by "exactly what Dr. Smith did".

10 A. I don't remember saying that, so I can't say what I
11 meant. I mean, I know what I would mean if I said it
12 now, but I can't tell you what I meant on September
13 when I allegedly told Mr. Balkenbush that. I don't
14 remember saying that, so I can't say.

15 Q. b. Please state your reasons for saying this to
16 Mr. Balkenbush.

17 A. Well, I don't remember saying it.

18 Q. 23. Did you at any time communicate about the
19 substance of your expert witness report sworn to on
20 August 29, 2007 with any of the medical experts for
21 the defense in the DeChambeau case? If so, state the
22 approximate date, parties to and substance of any such
23 communications.

24 A. No.

25 Q. 24. Did you state in your affidavit at paragraph

1 10.e) that "A transthoracic echocardiogram was not
2 ordered until approximately 12:44 p.m. on September 7,
3 2006 and did not arrive until approximately 12:49 p.m.
4 The transthoracic echocardiogram was performed too
5 late to benefit Neil DeChambeau. All of the
6 aforementioned conduct of David Smith, M.D. caused
7 Neil DeChambeau to suffer irreversible brain damage
8 and death"?

9 A. Yes.

10 Q. a. Do you now disagree with anything in the
11 above statements?

12 A. Yes.

13 Q. b. Please set forth what you now disagree with
14 in these statements.

15 A. I disagree that the conduct of David Smith caused
16 Mr. DeChambeau to suffer irreversible brain damage and
17 death.

18 Q. c. Please state your reasons for any such
19 disagreement disclosed.

20 A. Because the pericardiocentesis was performed even
21 before the transthoracic echocardiogram was performed,
22 the statement that the transthoracic echocardiogram
23 was performed too late to benefit Mr. DeChambeau is
24 incorrect.

25 Q. 25. Have you ever testified or been retained as an

1 expert witness in a case involving an atrial ablation
2 procedure? Is so, state the name, date and location
3 of each case.

4 A. Yes. And I don't remember the names, dates, or
5 locations of each case.

6 Q. 26. Other than your personal counsel or attorneys
7 with the firm of Piscevich & Fenner, have you
8 discussed the substance of your projected testimony to
9 be given in response to these questions with anyone?

10 A. No.

11 Q. a. If so, please state when and with whom any
12 such conversations took place.

13 A. None.

14 Q. b. Also, please state in detail the substance
15 of each of these conversations.

16 A. Not applicable.

17 Q. 27. Other than your personal counsel or attorneys
18 with the firm of Piscevich & Fenner, have you
19 discussed the substance of your projected expert
20 testimony to be given in the case of DeChambeau et al
21 v. Balkenbush et al with anyone?

22 A. No.

23 Q. a. If so, please state when and with whom any
24 such conversations took place.

25 A. None.

1 Q. b. Also, please state in detail to the best of
2 your ability the substance of each of these
3 conversations.

4 A. None.

5

6 (Deposition concluded at 10:14 a.m.)

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1 STATE OF MICHIGAN)
) SS.
2 COUNTY OF LIVINGSTON)

3 CERTIFICATE OF NOTARY PUBLIC

4 I certify that this transcript
5 is a complete, true, and correct record of the
6 testimony of the deponent to the best of my ability
7 taken on Wednesday, June 12, 2013.

8 I also certify that prior to
9 taking this deposition, the witness was duly sworn by
10 me to tell the truth.

11 I also certify that I am not a
12 relative or employee of a party, or a relative or
13 employee of an attorney for a party, have a contract
14 with a party, or am financially interested in the
15 action.

16
17
18
19
20 *Cheryl McDowell*

21 Cheryl McDowell, CSR-2662, RPR
22 Notary Public, Livingston County
23 State of Michigan
24 Commission Expires September 13, 2013
25



FILED

Electronically

08-14-2013:09:46:11 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3921386

EXHIBIT "4"

EXHIBIT "4"

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

-o0o-

ANGELA DECHAMBEAU and JEAN PAUL
DECHAMBEAU, both individually and
as SPECIAL ADMINISTRATORS of the
ESTATE of NEIL DECHAMBEAU,

Plaintiffs,

Case No. CV12-00571

vs.

Dept. No. 7

STEPHEN C. BALKENBUSH, ESQ.,
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH and EISINGER, A
Nevada Professional Corporation,
et al.,

Defendants.

DEPOSITION OF

STEPHEN C. BALKENBUSH

Wednesday, February 20, 2013

Reno, Nevada

Reported by: Lesley A. Clarkson, CCR #182

JOB NO. 175763

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A P P E A R A N C E S

For the Plaintiffs: CHARLES R. KOZAK, ESQ.
1225 Tarleton Way
Reno, Nevada 89523
775-622-0711
kozak131@charter.net

For the Defendants: MARGO PISCEVICH, ESQ.
PISCEVICH & FENNER
499 West Plumb Lane, Ste. 201
Reno, Nevada 89509
775-329-2666
margo@pf-reno.com

Also present: Angela DeChambeau
Jean Paul DeChambeau

Page 4

BE IT REMEMBERED that on Wednesday, February 20, 2013, at the hour of 9:57 a.m. of said day, at the offices of Sunshine Litigation Services, 151 Country Estates Circle, Reno, Nevada, before me, Lesley A. Clarkson, certified court reporter, personally appeared STEPHEN C. BALKENBUSH, who was by me first duly sworn and was examined as a witness in said cause.

-000-

STEPHEN C. BALKENBUSH,
having been duly sworn, testified as follows:

EXAMINATION

BY MR. KOZAK:

Q Good morning, Mr. Balkenbush. You probably know, I'm Charles Kozak representing the DeChambeau family against you and your law firm for legal malpractice.

Have you ever had your deposition taken before?

A No.

Q But you have given I would assume hundreds of depositions over the course of a career?

A I have participated in those as counsel, yes.

Q And so is it necessary to give you all the admonitions?

A No.

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I N D E X

Examination by Mr. Kozak Page 4

EXHIBITS: PAGE:
Exhibit 1 - Plaintiffs' Designation of Expert
Witnesses 8

Page 5

Q First of all, I want to go to when you first met Angela DeChambeau. Can you tell me under what circumstances that occurred?

A My best recollection is that she came to my office concerning the death of her husband.

Q And do you know how she got your name and came to your office?

A I don't.

Q Okay. So what transpired at that first meeting?

A She explained to me that her husband had died, and she explained to me what she knew about what had happened, and talked about his life, those types of things.

Q Out of that meeting, did an attorney-client relationship evolve?

A Yes.

Q At that first meeting?

A Yes.

Q And did you in your own mind determine something about the merits of her case when she was talking to you?

A I really, that's, no. I mean it -- no.

Q And your firm primarily does defense of health care providers; is that correct?

A No.

Q What do you do primarily?

A Primarily I'm involved in civil litigation.

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1 Q As part of that, do you represent health care
2 providers?
3 A Not, no. I mean I have at times, but it's not a
4 general part of our practice.
5 Q Okay. How would you characterize the general part
6 of your practice?
7 A It's civil litigation, defense of civil
8 litigation.
9 Q Do you primarily work for insurance companies?
10 A I would say probably that's true.
11 Q Okay. And when you say civil litigation, is that
12 construction defect cases, or can you give me some idea of
13 what your specialty is?
14 A I have done construction defect litigation, I've
15 done employment litigation, I've done real estate
16 litigation, I have done commercial litigation, I have done
17 personal injury litigation, I have done medical malpractice
18 litigation, I have done constitutional litigation, I've done
19 civil rights litigation, I've done products liability
20 litigation.
21 Q And is it primarily on the defense side that you
22 practice?
23 A Yes, sir, that would be correct.
24 Q Okay. Now, this case involved a plaintiff
25 bringing a lawsuit; is that correct?

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1 A Yes, sir.
2 Q Why did you decide to take this case, since most
3 of your work is on the defense side?
4 A Well, I had done plaintiffs' work before. She
5 came to me, she had a problem, or an issue, and I told her I
6 would take a look at it and to see what the merits of the
7 case would be.
8 Q What investigation did you do after that?
9 A Well, we went about accumulating the medical
10 records in the case, and then proceeded from there to
11 finding someone who was competent to review those records to
12 determine whether there was any case.
13 Q Who did you consult about being an expert in this
14 case?
15 A The primary person would have been Dr. Morady.
16 Q How did you learn about Dr. Morady?
17 A I received a recommendation from someone about his
18 expertise in the area of electrophysiology.
19 Q And I believe you eventually retained a Dr.
20 Mazzei?
21 A Mazzei, yes.
22 Q Mazzei.
23 A Yes.
24 Q How did you come to learn about him?
25 A I think he was recommended to me as well by

1 somebody.
2 Q Now, did you eventually get expert witness reports
3 from these two experts?
4 A I did.
5 MR. KOZAK: Let me ask have this marked as
6 Exhibit 1.
7 (Exhibit 1 marked.)
8 BY MR. KOZAK:
9 Q I'm showing you now what has been marked
10 Plaintiffs' Exhibit 1 for identification. Have you seen
11 that before?
12 A (Reviewing document.)
13 Yes.
14 Q After you reviewed that, did you draft a complaint
15 and attach those affidavits to the complaint?
16 A No. No, that wouldn't have been the sequence of
17 things.
18 Q Can you explain what the sequence was.
19 A Sure. This plaintiffs' designation of expert
20 witnesses, by virtue of the date on it, which is March 25,
21 2010, occurred far after the case started, which was in
22 2007.
23 Q Okay. And why was there this lag time between
24 getting the affidavit and filing the complaint?
25 A Well, there wasn't a lag time. We had to have

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1 these affidavits prior to filing the complaint, and these
2 affidavits which are attached to Exhibit A were attached to
3 the complaint when it was filed. But Exhibit A is a
4 discovery document, and of course the complaint and a
5 pleading.
6 Q After you reviewed these affidavits, did you come
7 to an understanding in your own mind that Dr. Smith had done
8 something wrong?
9 A I, after reviewing these affidavits, I came to the
10 understanding that there was a physician who believed that
11 the standard of care was not met in this case.
12 Q And that was with regards to both Dr. Morady and
13 Dr. Kang?
14 A That would have been Dr. Morady and Mr. Mazzei,
15 not Dr. Kang.
16 Q I mean the two physicians that had not met the
17 standard of care were Dr. Smith and --
18 A That would be correct. Dr. Smith was the
19 electrophysiologist, and the anesthesiologist was Dr. Kang.
20 Q Okay. What was your understanding of how Dr. Kang
21 had failed to meet the standard of care?
22 MS. PISCEVICH: You are talking, this is a little
23 vague. Are you talking at the time he did his initial
24 evaluation and got the affidavits?
25 MR. KOZAK: Right. And looked at the affidavits.

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Page 12

1 MS. PISCEVICH: This is the initial phase.

2 THE WITNESS: Yeah. I guess I didn't have, I'm
3 not a doctor, so I don't know. I mean these individuals
4 looked at the file, looked at the medical records, these two
5 physicians, and determined that the standard of care was not
6 met. That would be Dr. Morady and Dr. Mazzei.

7 BY MR. KOZAK:

8 Q Okay. In your own mind, though, after you
9 reviewed these two affidavits, did you come to the
10 conclusion that there was evidence that Dr., let's take Dr.
11 Morady, Dr. Morady had failed to meet the standard of care?

12 MS. PISCEVICH: Dr. Morady is not the person.

13 BY MR. KOZAK:

14 Q I'm sorry, Dr. Smith had failed to meet the
15 standard of care?

16 A After reviewing their affidavits I believed there
17 were two competent physicians who had made that
18 determination.

19 Q Okay. Let's take Dr. Smith first. How did Dr.
20 Morady allege that Dr. Smith had failed to meet the standard
21 of care?

22 Let's first take the standard of care. What was
23 the standard of care here as far as Dr. Morady was
24 concerned?

25 A Well, the affidavit speaks for itself. Dr.

Page 11

Page 13

1 Morady's affidavit recites what he believes were issues
2 concerning this ablation procedure. And for me, I mean,
3 he's the one that provided the affidavit, and I believed he
4 was a competent physician, and used this to support the
5 complaint.

6 Q Okay. And as far as Dr. Kang is concerned, did
7 you form an opinion as to what the standard of care was for
8 Dr. Kang and how he had breached that standard of care?

9 A Again, Dr. Mazzei provided his opinion, I believed
10 he was a competent physician, concerning where he believed
11 that Dr. Kang's conduct fell below the standard of care.

12 Q And did you have any reason to doubt the
13 affidavits of these two expert witnesses?

14 A No, sir.

15 Q In regards to Dr. -- excuse me.

16 MS. PISCEVICH: You are talking at the time.

17 MR. KOZAK: Yes, at the time.

18 BY MR. KOZAK:

19 Q Dr. Morady felt that Dr. Smith had failed to
20 restore the blood pressure and pulse of Neil DeChambeau in a
21 timely fashion, isn't that correct, after he underwent
22 cardiac arrest?

23 A I would, yeah, I believe that he mentioned
24 something to that effect in his affidavit. He said a number
25 of things in his affidavit, and felt that the conduct of Dr.

1 Smith fell below the standard of care for this procedure.

2 He's got five or six pages of stuff here, so.

3 Q Well, on page, on paragraph 10 --

4 A Okay.

5 Q -- subsection A, he said David Smith, M.D., failed
6 to timely diagnose that Neil DeChambeau was experiencing
7 cardiac tamponade?

8 A That's what he said.

9 Q What is your understanding of what cardiac
10 tamponade is?

11 A I'm not a physician. But my understanding is that
12 it is a bleeding from the heart into the pericardium.
13 That's what a tamponade is, a hole in the wall of the heart,
14 which is enclosed in the pericardium.

15 Q And David Smith, he states, M.D., failed to timely
16 perform a pericardiocentesis procedure on Neil DeChambeau?

17 A That's what he said in his affidavit, yes, sir.

18 Q When you read that, in your own mind did you form
19 an opinion that Dr. Morady was rendering an opinion that Dr.
20 Smith had failed to perform a pericardiocentesis procedure
21 in a timely fashion on Neil DeChambeau?

22 A What I discerned from reading this is what it
23 says, that that was his opinion. And again, I respected him
24 as an experienced electrophysiologist, one of the best in
25 the country.

1 Q What records did you provide to Dr. Morady so that
2 he could review them?

3 A I provided Dr. Morady every medical record that I
4 had.

5 Q Did you have discussions with him prior to his
6 writing this affidavit?

7 A Yes, sir.

8 Q Did you help him write this affidavit?

9 A I think that he wrote it, and then we made some,
10 refined it, but I believe that's the way it occurred.

11 Q At the time that he wrote this did you have any
12 disagreements with any of the opinions that he recited in
13 his affidavit?

14 A Well, I'm not a doctor, so I don't, you know, this
15 is a lot of medicine in here. And I believed he was
16 competent, and I retained him because of his competency.

17 Q Okay. Did you have communications with Dr. Mazzei
18 about his affidavit before he wrote it up and signed it?

19 A I -- yes, sir.

20 Q Now, he states in paragraph 5 that Mr. DeChambeau
21 clearly suffered irreversible brain damage and death as a
22 result of cardiac arrest that occurred during the ablation
23 procedure performed by Dr. Smith at Washoe Medical Center;
24 is that correct?

25 A Yes, sir, that appears to be part of what he says

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1 in paragraph 5 of his affidavit.

2 Q And then down at the middle of the paragraph he
3 states the standard of care required that the cardiologist
4 perform a pericardiocentesis within minutes of the onset of
5 the cardiac arrest.

6 A Yes, sir. That's what he says.

7 Q Did you form an opinion, then, that Dr. Smith and
8 Dr. Kang had failed to meet the standard of care by not
9 performing a pericardiocentesis within minutes of the onset
10 of the cardiac arrest?

11 A I came to the understanding that that was the
12 opinion of Dr. Morady and Dr. Mazzei.

13 Q Based upon these two opinions, you felt confident
14 then in going forward and filing a complaint against Dr.
15 Kang and Dr. Smith?

16 A I felt that we, yes, sir, that we had competent
17 physicians who believed that there, the standard of care of
18 both Dr. Kang and Dr. Smith fell below the acceptable
19 standard of care.

20 Q And what was your understanding of why this
21 pericardiocentesis procedure needs to be performed within
22 minutes of cardiac arrest?

23 A Well, I'm not a physician, and I don't purport to
24 understand all of the medicine involved, but my
25 understanding is that if you do have a bleed out of the

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1 heart into the pericardium, that in order to relieve the
2 pressure around the heart, that you can drain the
3 pericardium with a procedure called a pericardiocentesis.

4 Q Did you form an opinion as to why it's necessary
5 to do that within minutes?

6 A If in fact -- I didn't. I mean, I didn't really
7 form any opinions in this case, any medical opinions,
8 because I'm not a doctor. But I think I understood what
9 they were saying.

10 Q Okay. And what were they saying as far as the
11 necessity of performing this procedure within minutes of the
12 cardiac arrest?

13 A Well, if you have a tamponade and you do have a
14 filling of the sack, the pericardium, then the way to
15 relieve or to get that blood out of the pericardium is
16 through a procedure called a pericardiocentesis.

17 Q And if you don't do that, what can happen?

18 A Well, I don't know all that can happen. I do know
19 that that is the called-for procedure in the event of a
20 tamponade.

21 Q Did either Dr. Mazzei or Dr. Morady ever tell you
22 or did you come to an understanding that failure to do that
23 can lead to a lack of oxygen going to the brain?

24 A I don't know if that is the exact medicine, but I
25 do know that it can cause a pressure on the heart, and the

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1 heart will not work as it normally would.

2 Q So you had never discussed with Dr. Mazzei and Dr.
3 Morady the fact that failure to do the pericardiocentesis
4 within minutes of cardiac arrest can result in anoxia?

5 A I believe that, I believe that Dr. Morady told me
6 that that can be an outcome.

7 Q And did Dr. Mazzei tell you that also?

8 A I don't recall.

9 Q Did Dr. Mazzei put that in his report, his
10 affidavit?

11 A I don't recall.

12 Q Do you want take a minute and review it and see
13 whether he did or didn't.

14 A Maybe you can point it out to me, if you know
15 where it is.

16 Q Bottom, it's the bottom of paragraph 6. It said,
17 "Drs. Smith and Kang should not have waited for the
18 echocardiogram but should have performed a
19 pericardiocentesis fairly shortly after the cardiac arrest
20 occurred. Failure to do so was below the standard of care
21 and was a proximate cause of the failure to revive
22 Mr. DeChambeau before he suffered permanent brain damage."

23 A I see that.

24 Q Does that refresh your recollection about the
25 effects of not moving quickly with the pericardiocentesis

Page 17

1 immediately after cardiac arrest?

2 A Well, it refreshes my recollection that that is
3 what Dr. Mazzei said in his affidavit.

4 Q Okay. And did you form an opinion that that was a
5 substantial cause in the death of Neil DeChambeau?

6 A Well, what I determined from that is that was the
7 opinion of Dr. Mazzei from his affidavit.

8 Q Okay. And did you have any reason to doubt Dr.
9 Mazzei, the accuracy of Dr. Mazzei's opinion in this
10 affidavit?

11 A I believed he was a competent physician, and
12 that's why he was retained.

13 Q Okay. During the course of this entire case did
14 you ever hear any expert refute that opinion of Dr. Mazzei?

15 A Yes. Yes, I did.

16 Q And who did that?

17 A Well, Dr. Morady did. The other two, the other
18 four experts retained by the defendants did as well.

19 Q And when you say they did as well, what portion of
20 that opinion by Dr. Mazzei did they dispute?

21 A Well, all of the physicians retained by the
22 defense offered opinions that the conduct of Dr. Smith, two
23 physicians, both of them electrophysiologists, that his
24 conduct did not fall below the standard of care concerning
25 this atrial fibrillation ablation procedure.

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Also, there was a cardiologist and an anesthesiologist that were offered as experts by Dr. Kang who said that his conduct did not fall below the standard of care for this procedure on this day.

Q But did they refute or dispute the fact that Neil DeChambeau died of anoxia?

A I don't recall. I mean I just don't recall everything they said in all of their opinions. But I do recall their saying that his conduct, Dr. Kang's, as I just explained, and Dr. Smith by the other physicians, did not fall below the standard of care.

Q When you reviewed the medical records, did you make a determination as to how long Neil DeChambeau was without oxygen in accordance with the medical records?

A No.

Q Do you know how long a person's brain can -- let me put it this way. Do you know how long it takes for anoxia to be at high risk for a patient without oxygen?

A I guess I don't understand the question.

Q How long can the brain be deprived of oxygen and not suffer severe damage or anoxia?

A I guess I still don't understand the question, because I don't know what the brain being deprived of oxygen means in your hypothetical question to me.

Q It's not a hypothetical. I'm asking do you know

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how long the brain can survive without suffering serious injury when it's deprived of oxygen?

A Completely deprived of oxygen?

Q Yes.

A I just don't know.

Q Did you ever know during the course of this litigation how long that period of time is?

A I recall that, I think Dr. Morady indicated to me that five to seven minutes, somewhere in that area, I believe.

Q Do you recall that the medical records reflected that Neil DeChambeau was without oxygen from approximately 12:39 a.m. to 12:55 a.m.?

A No.

Q Do you think you ever knew that?

A I don't know that that was the case.

Q Could you explain what you mean by you don't know whether that was the case, that he was deprived of oxygen?

A I wasn't there, I don't know.

Q Was that information available in Neil DeChambeau's medical records?

A There was, the records were unclear as to how long he was deprived of oxygen.

Q How were they unclear?

A Well, there were, the anesthesiologist's records

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said one thing, the nursing notes said another thing, the narratives done by some people said another thing. They did not all match up.

Q Okay. Did you form an opinion as to which were the most reliable recording of the sequence of events in the operating room, the nurses' notes, Dr. Kang's notes, or anything else you just referred to?

A No, I didn't. I didn't make an opinion on that.

Q Okay. And did you ask any of your expert witnesses to render an opinion on that?

A No. I asked them to look at the medical records and tell me whether the standard of care of these two physicians fell below that which the industry requires.

Q Did you review the medical literature on what the standard of care is when a patient is undergoing an ablation, as Neil DeChambeau was, and he suddenly goes into cardiac arrest?

A No. I mean I relied on my experts for that, for that issue.

Q Okay. And in your opinion did the experts take the position that when a patient goes into cardiac arrest during an ablation procedure, that an immediate pericardiocentesis must be performed?

A That could be part of the protocol, a pericardiocentesis, if there's a tamponade. I mean if

Page 21

there's a cardiac arrest, what's the cause of it. I mean it's kind of a wide-ranging hypothetical.

Q Well, isn't it true that the standard of care when a patient undergoes cardiac arrest during an ablation procedure is to perform an immediate pericardiocentesis, isn't that the standard of care?

A Not to my knowledge.

Q What is the standard of care, do you know?

A It depends upon the circumstances.

Q What are those?

A Well, it depends upon what caused the cardiac arrest. I mean that's why I hired these physicians to look at these issues, for them to offer their opinions on that.

Q What is the most serious cause of pericardiocentesis -- what is the most serious cause of cardiac arrest during an ablation procedure?

MS. PISCEVICH: I don't think you have a proper foundation here. I'm going to object on foundation and overly broad. He's already said he didn't review the medical records, I mean he didn't review the medical literature, he relied on the people.

So if it's in the affidavit, he can talk about it, but he's not here as an expert witness in medicine.

MR. KOZAK: Okay.

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Page 24

1 BY MR. KOZAK:
 2 Q You can answer if you can. Or read that back.
 3 THE WITNESS: Yeah, could you read that back for
 4 me, please.
 5 (Record read.)
 6 THE WITNESS: I just don't understand the
 7 question. What is the most serious cause, I don't even
 8 understand what you are asking.
 9 BY MR. KOZAK:
 10 Q Do you understand the term differential diagnosis?
 11 A Yes, sir.
 12 Q What does that mean?
 13 A Well, there's certain things that could have
 14 caused something to happen, and you try to determine which
 15 one it is.
 16 Q And as part of that process, do you not try to
 17 determine what the most, what the most serious cause of the
 18 cardiac arrest could be?
 19 MS. PISCEVICH: Well, again --
 20 THE WITNESS: I don't do that.
 21 MS. PISCEVICH: Again, this is a question for an
 22 expert witness, not a lawyer. If we are going to keep going
 23 down this road, I'll just instruct him not to answer,
 24 because he's not an expert witness in medicine.
 25 //

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Page 25

1 BY MR. KOZAK:
 2 Q After the, I assume that after the affidavits of
 3 Dr. Mazzei and Dr. Morady were shown to the defense lawyers,
 4 did they produce expert witnesses' affidavits contrary to
 5 what these two doctors said?
 6 A Yes, sir, they did.
 7 Q Did you show those reports to Dr. Morady and Dr.
 8 Mazzei?
 9 A Yes, sir.
 10 Q And what did they tell you about those reports?
 11 Let's take Dr. Morady first.
 12 A Well, Dr. Morady, after he reviewed the expert
 13 reports, told me that he wasn't overly concerned about them.
 14 Q And did he say why?
 15 A No. I mean he had read them, and I think what
 16 he -- I believe that he told me that one of the people who
 17 was their expert was somebody that he mentored along the
 18 way.
 19 Q And did he tell you why he disagreed with that
 20 expert?
 21 A No, he just said he didn't, he wasn't troubled by
 22 the expert reports of the two cardiologists he reviewed.
 23 Q Dr. Mazzei, did you show him the contrary expert
 24 witness reports from the defense?
 25 A Yes.

1 Q What were his comments about them?
 2 A I don't recall.
 3 Q When did you become aware of this EPS tape?
 4 A From talking with Dr. Morady, it would have been
 5 early on, it would have been in 2007.
 6 Q Who brought that to your attention?
 7 A Dr. Morady.
 8 Q And what did you do when Dr. Morady made you aware
 9 of this tape?
 10 A Well, he told me he wanted a copy of it.
 11 Q Did he tell you why?
 12 A He said there has to be one, I want to review it,
 13 that's an important piece of evidence.
 14 Q But did he tell you why it was an important piece
 15 of evidence?
 16 A No. He said it's -- I don't recall. I just think
 17 he told me it was a real time piece of information, and they
 18 have those in all of these ablation procedures, there's that
 19 tape, the EPS tape.
 20 Q Did Dr. Mazzei request to review the EPS tape?
 21 A I don't recall that he did.
 22 Q Did you make him aware of the fact that there was
 23 an EPS tape?
 24 A Well, I was trying to, through the course of this
 25 litigation I was trying to determine whether there was one

1 and how we would get it.
 2 Q What steps did you take to get it?
 3 A I worked with the hospital, Washoe Medical Center,
 4 I worked with counsel for the plaintiff, Mr. Lemons.
 5 MS. PISCEVICH: Defendant.
 6 THE WITNESS: I mean --
 7 BY MR. KOZAK:
 8 Q Defendant.
 9 A Oh, yeah, counsel for Dr. Smith, to obtain that.
 10 Q When did you obtain it?
 11 A I believe I obtained that March, late March of
 12 2010.
 13 Q How long did it take you to obtain that EPS tape?
 14 A Well, from the time I was looking for it, a couple
 15 of years to get it.
 16 Q Why did it take two years to get the EPS tape?
 17 A Because I kept getting, because Washoe Med had no
 18 way of reproducing that EPS tape. It's some proprietary,
 19 proprietary procedure from the company, the company who owns
 20 the machine. So they, while they gave me all their
 21 documents, and I kept providing documents to Dr. Morady, Dr.
 22 Morady kept telling me that isn't what he needed. So we
 23 eventually got it.
 24 Q Exactly what steps did you have to take to get it,
 25 over the two years?

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1 A The, somebody from the company had to come out and
2 pull that information off the machine.

3 Q Were those people available sooner than two years?

4 A I don't know. I mean we had to figure that out
5 first and then find them. And there's nobody local that
6 does that as well.

7 Q Now, during the procuring of this EPS tape, was
8 any discovery done by you as to the defendants?

9 A Yes.

10 Q What did you do?

11 A Well, I obtained all of the information from each
12 of the defendants, all the medical records, all the
13 documents that would support anything that they had done in
14 the procedure, any office notes that they had. I also
15 obtained that, all the medical records from each of the
16 providers of medical care for Mr. DeChambeau so we would
17 have a full and complete history of him. And then we, we
18 subpoenaed records from certain medical care providers as
19 well so we would have a complete medical picture of
20 Mr. DeChambeau.

21 Q Did you serve any requests for admissions,
22 interrogatories, on the defendants during this two years
23 that you were trying to get ahold of the EPS tape?

24 A No.

25 Q And why not?

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1 A Generally interrogatories are not propounded in
2 these types of cases by the plaintiff. What you do is if
3 you need that information, you can do it through a
4 deposition. And generally what you get is nothing back in
5 interrogatories from physicians and in medical malpractice
6 cases. You will get their CV and reference to medical
7 records. And so that's the primary reason that we didn't
8 use that, those avenues of discovery.

9 Q Did you consider taking the deposition of Mr.
10 Smith during this period of time?

11 A No. Yes, I did consider taking his deposition,
12 but not until we had a complete and full medical picture.

13 Q And you considered that you did not have a
14 complete and full medical picture until you had the EPS
15 tape?

16 A Yes, that's, Dr. Morady kept telling me he needed
17 that. So I wanted to have that first. And everybody
18 believed that, too, in the case. The other attorneys
19 believed that, at least Mr. Lemons. And so we all had an
20 agreement that once we got that we could proceed if people
21 wanted to take the depositions of the experts or the
22 physicians that were sued in the case.

23 Q Did Mr. Lemons tell you why he thought the EPS
24 tape was critical and should hold up the taking of
25 depositions of experts until you had the EPS tape?

1 A I don't recall. I don't recall. All I know is we
2 had conversations amongst ourselves, that would be
3 Mr. Navratil, Mr. Lemons, and myself, regarding that issue
4 and putting off the depositions until that tape was produced
5 to all who wanted to review it.

6 Q Did you consider sending request for admissions to
7 Dr. Smith regarding what the standard of care was in the OR
8 if a patient suffers sudden cardiac arrest?

9 A I didn't consider doing any written discovery
10 other than what we have discussed. I was going to do that
11 during his deposition.

12 Q And likewise, did you consider sending him an
13 interrogatory confirming the sequence of events in the OR
14 after Neil DeChambeau suffered from cardiac arrest?

15 A No. I mean I did not consider that, because I was
16 going to take care of that issue, to the extent that it
17 needed to be taken care of, during his deposition.

18 Q Have you ever personally examined the EPS tape or
19 had one of your experts tell you exactly what was on the
20 tape after they reviewed it?

21 A Compound. I mean I don't quite understand what
22 you are saying.

23 Q Objection taken. I'll break that down into two
24 questions. Have you ever personally reviewed what was on
25 the EPS tape?

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1 A No, sir.

2 Q Have any of your experts ever told you exactly
3 what was on the tape after they reviewed it?

4 A I discussed the EPS tape with Dr. Morady after he
5 reviewed it, if that's what you are asking.

6 Q Yes.

7 A Yes.

8 Q What did Dr. Morady tell you was on the EPS tape?

9 A One of the things he did tell me is that he
10 believed there was a ventricular tachycardia event at 12:22
11 p.m. on the day of the ablation procedure. That was his
12 initial impression from the records. From having reviewed
13 the EPS tape, that was not a ventricular tachycardia event,
14 that he was wrong. The EPS tape clearly showed that that
15 was not a ventricular tachycardia event.

16 Q What else did he tell that the tape revealed?

17 A I don't, I didn't go in to any more, he just told
18 me what he had learned, that's one of the things that he had
19 learned. And so with respect to more, additional
20 specificity on the tape, I don't recall what else I
21 discussed with him about the tape. That was one thing I
22 recall him telling me.

23 Q Okay. Did he tell you that he had changed his
24 opinion as to Dr. Smith's failure to meet the standard of
25 care after reviewing the EPS tape?

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1 A He told me after reviewing the EPS tape and
2 reviewing the records that he had, that he had changed his
3 opinion.

4 Q Did he tell you specifically in what respect he
5 had changed his opinion, besides the tachycardia?

6 A Yes. He told me that in, after reviewing the EPS
7 tape, and after reviewing the records, that he didn't
8 believe that there was any malpractice in the action by Dr.
9 Smith.

10 Q Did he tell you specifically why he didn't, he no
11 longer felt that there was any malpractice by Dr. Smith?

12 A One of the things that he did tell me is that he
13 wouldn't have done anything any differently and he didn't
14 think there was any malpractice.

15 Q Did you refer him back to his expert witness
16 report and ask him specifically what portions of that report
17 he would change based on his review of the EPS tape?

18 A It wasn't just his review of the EPS tape. It was
19 also the review of the medical records that were in his
20 possession. I think he looked at all of those. And I
21 specifically recollect talking with him about the
22 pericardiocentesis procedure, and again he told me that he
23 would not have done anything any differently and that he did
24 not believe there was any malpractice.

25 Q Did he tell you that -- well, after he reviewed

1 Q Did he cite any other places in the medical
2 records where he had found inaccuracies that resulted in him
3 changing his opinion as to Dr. Smith's negligence?

4 A I don't recall. I just don't recall that. I do
5 recall my specifically asking him about what happened from
6 12:39 forward, and he told me, and his response was he would
7 not have done anything any differently with that record in
8 front of him.

9 Q So in your mind was he then changing his opinion
10 as to standard of care and the need to perform a
11 pericardiocentesis immediately upon the patient going into
12 cardiac arrest?

13 A He believed that Dr. Smith met the standard of
14 care in terms of doing what he needed to do under the
15 circumstances that existed.

16 Q Did it occur to you that if he had done the same
17 things that Dr. Smith had done, that Neil DeChambeau would
18 have gone into, would have been deprived of oxygen and died
19 of anoxia?

20 MS. PISCEVICH: Are you talking at the time of the
21 conversation in 2010?

22 BY MR. KOZAK:

23 Q Or after.

24 A I'm not a doctor. I've told you that this guy is
25 an experienced, Dr. Morady is one of the preeminent

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1 the medical records, did he tell you that he had changed his
2 opinion as to what the medical records revealed?

3 MS. PISCEVICH: I'm going to object to the form of
4 the question. I'm not sure I'm understanding. Are you
5 saying after he looked at the --

6 MR. KOZAK: I'll try to fine tune that a little
7 bit.

8 BY MR. KOZAK:

9 Q After he reviewed the EPS tape, you said he also
10 came to the conclusion that the medical records were
11 inaccurate in certain respects, so therefore he was changing
12 his opinion as to malpractice?

13 A No, that's not what I remember him telling me.

14 Q So he was not saying the medical records were
15 inaccurate and therefore he had changed his opinion?

16 A Well, he clearly did tell me, I mean I want to, I
17 have already told you that he said the medical records were
18 inaccurate with respect to one item, and that would be the
19 ventricular tachycardia event that was reported by the
20 anesthesiologist and also on the nurses' notes.

21 That simply wasn't accurate. He said it wasn't,
22 because it wasn't a ventricular tachycardia event, and he
23 was very critical of that in his initial analysis of this
24 whole case. So he told me that was wrong, that was one
25 thing that was wrong in the records in a number of places.

1 electrophysiologists in the United States, probably in the
2 country. He told me what I just told you, and he told me it
3 more than one time, that there was no malpractice in the
4 case. And I have done the best I can to describe to you
5 what he told me. I respect him eminently.

6 Q Did you discuss Dr. Morady's change of opinion
7 with Dr. Mazzei?

8 A I believe I did.

9 Q What did Dr. Mazzei tell you?

10 A I don't recall.

11 Q After this conversation with Dr. Morady, did you
12 consider getting another opinion from an electrophysiologist
13 about whether or not Dr. Smith had committed malpractice?

14 A No.

15 Q Why not?

16 A One, I believed that he was the preeminent
17 electrophysiologist in the country.

18 Two, when I discussed this case at the beginning
19 with my clients, I told them we would hire the best we could
20 find with respect to this issue, and the case would rise or
21 fall based upon that expert's opinion. They agreed.

22 Three, there was no time in the case to do that.
23 The time for designating expert witnesses had already
24 expired.

25 So those are three reasons that I didn't, and I

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1 didn't, I just simply could not go forward with the case
 2 with my electrophysiologist taking the position that he
 3 took.
 4 Q When did Dr. Morady inform you of this change in
 5 his opinion?
 6 A I believe I spoke with him on April 22, 2010. I
 7 had sent him the tape about a month prior.
 8 Q Trial of this case was set for what date?
 9 A It was set in July.
 10 Q Of 2010?
 11 A Yes, sir.
 12 Q In your mind was there anybody in this case
 13 disputing the facts that were stated in the medical records,
 14 including the defense experts or your experts?
 15 MS. PISCEVICH: That's been asked and answered.
 16 But go ahead and do it again. We have already gone over
 17 the --
 18 THE WITNESS: Yes.
 19 MS. PISCEVICH: -- medical records were
 20 inaccurate, the V-tach, the nurses' notes. Are you talking
 21 about other areas?
 22 BY MR. KOZAK:
 23 Q Yeah. Other than that were there any other areas
 24 of dispute as far as the medical records are concerned?
 25 MS. PISCEVICH: I think you have emails in your

notes?

2 A Well, that there was a V-tach event for one.
 3 There was not a V-tach event. I don't know all the
 4 particulars, I can't recite each one of them. But there
 5 were some inconsistencies, I do remember that one
 6 specifically, because Dr. Morady brought that to my
 7 attention. And all I can tell you is Dr. Morady initially
 8 had the opinions that are set forth in his affidavit, but
 9 after reviewing all of those other things, he completely
 10 changed his opinion, not just in a small way, he completely
 11 changed his opinion with regard to the medical malpractice
 12 issue, completely.
 13 Q Was there any substantial dispute that Neil
 14 DeChambeau was without oxygen from 12:39 until approximately
 15 12:55?
 16 MS. PISCEVICH: I'm not going to allow him to
 17 answer that without looking at records and the other emails
 18 and letters, because I think there is an outline in one of
 19 the emails or letters. And if you have that for him to
 20 review, happy to do it. I mean if you have those available,
 21 he can review them, because I think that was set out.
 22 BY MR. KOZAK:
 23 Q I believe that's in the experts' reports, is it
 24 not?
 25 A What's that?

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1 file somewhere.
 2 THE WITNESS: Yeah. I just don't remember. I
 3 mean I've told you what my conversations were with Dr.
 4 Morady. I know all the experts offered their opinions, two
 5 for each of the defendants.
 6 MS. PISCEVICH: And I'm going to call your
 7 attention, I think there's an email from Mr. Lemons to
 8 Mr. Balkenbush and some letters from Mr. Navratil to
 9 Mr. Balkenbush regarding their perceptions of what occurred.
 10 THE WITNESS: Yeah, there was a letter that I got
 11 from Mr. Lemons February 5, I think, of 2010, there was one
 12 I got from counsel, Mr. Navratil for Dr. Kang dated the same
 13 date, or dated I think February 10, 2010. And both of them
 14 also commented on some inaccuracies that were in the medical
 15 records, they simply didn't match, which I have told you
 16 earlier.
 17 BY MR. KOZAK:
 18 Q Right.
 19 A So those were two other.
 20 Q And those were the discrepancies between Dr.
 21 Kang's notes and the nurses' notes, correct?
 22 A Dr. Kang's notes, the nurses' notes, also the EPS
 23 tape was also inconsistent with the notes as well, all of
 24 that.
 25 Q How was the EPS tape inconsistent with the nurses'

1 Q The length of time that Neil DeChambeau was
 2 deprived of oxygen.

3 MS. PISCEVICH: Those got changed is what I'm
 4 saying, based on the EPS tape and the records. The EPS is
 5 real time. The records are done after the fact. They are
 6 not done contemporaneously when they are trying to save the
 7 man's life.

8 MR. KOZAK: Well, aren't the nurses' notes done
 9 contemporaneously?

10 MS. PISCEVICH: No, absolutely not.

11 MR. KOZAK: I see.

12 THE WITNESS: That's correct.

13 MS. PISCEVICH: They chart after the fact, the end
 14 of the shift or whenever they get a chance.

15 BY MR. KOZAK:

16 Q My question is, do you remember what the
 17 discrepancy was then between the nurses' notes and the EPS
 18 tape?

19 A Well, I have articulated three or four times
 20 already --

21 Q Besides the tachycardia, yeah.

22 A The V-tach. And then I can also just tell you
 23 that Dr. Morady, his position was there was no malpractice
 24 by Dr. Smith. After having reviewed the medical records
 25 that he had and after having reviewed the tape that he had,

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1 he said that his conduct did not fall below the standard of
2 care, and that he wouldn't have done anything any different.
3 That was pretty strong.

4 And I tried to probe him on that, and essentially
5 he told me that he simply would not have done anything any
6 differently in terms of the sequence of events that
7 occurred, after having reviewed all of the information. I
8 respect him, I trust him, that's why he was hired.

9 Q Okay. So as we sit here today, you don't have an
10 understanding of, besides the tachycardia, the discrepancies
11 between the nurses' notes and the EPS tape.

12 A Well, I do have some of that, because, from other
13 sources, and that would be the source from Mr. Lemons on
14 behalf of Dr. Smith, that after the cardiac event occurred
15 he did everything immediately. He ordered the advanced
16 cardiac life support, the anesthesiologist started inducing
17 drugs immediately, stat echo was called for immediately,
18 pericardiocentesis was called for immediately, all of those
19 things, which are not consistent with the records, all of
20 those things. So.

21 Q So Mr. Lemons told you that the EPS tape confirmed
22 that pericardiocentesis was performed immediately after
23 cardiac arrest?

24 A No. No, all of those were ordered, everything was
25 ordered immediately, that his reaction was immediate, that

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1 Dr. Smith's was. You have the letter. There's a letter to
2 that effect from Mr. Lemons.

3 MS. PISCEVICH: I believe it's an email.

4 THE WITNESS: It's an email. It's February 5,
5 2010.

6 BY MR. KOZAK:

7 Q Did the EPS tape reflect when pericardiocentesis
8 was performed?

9 MS. PISCEVICH: Object. He can't answer. He
10 didn't see it.

11 THE WITNESS: Right.

12 BY MR. KOZAK:

13 Q So you don't know?

14 MS. PISCEVICH: Yeah, the answer is he doesn't
15 know. He didn't see it.

16 BY MR. KOZAK:

17 Q Fine. Just say you don't know.

18 A You are just asking for some particulars. And
19 also I would refer you to Mr. Navratil's letter as well,
20 because obviously the anesthesiologist, his timing sequence
21 was completely at odds with all the other records in terms
22 of what happened. And that's what he said, too, he said
23 that his guy just mischarted the stuff.

24 Q Okay. If you had taken this case to trial, were
25 you anticipating that there would have been an instruction

1 by the judge as to what the standard of care was when a
2 patient undergoes cardiac arrest during an ablation
3 procedure?

4 MS. PISCEVICH: I'm going to object to the form.
5 You mean for that particular procedure there would be a
6 particular instruction?

7 MR. KOZAK: Yes, as to the standard of care.

8 MS. PISCEVICH: Well, there would be an
9 instruction as to the standard of care, but not for a
10 procedure. I don't know how to explain that.

11 Have you looked at our pattern jury instructions?

12 MR. KOZAK: Let's stay with that. I want to --

13 MS. PISCEVICH: The way it's formed. I'm going to
14 object to the form of the question.

15 MR. KOZAK: All right.

16 BY MR. KOZAK:

17 Q Were you anticipating that the jury would be
18 instructed as to what the standard of care was with regards
19 to this case?

20 A The jury would have received an instruction
21 concerning the standard of care. Under the circumstances
22 there was, you said had taken the case to trial. There was
23 no way I could take the case to trial.

24 Q But as an experienced lawyer in the malpractice
25 area, you would have expected the judge would instruct the

1 jury as to what the standard of care was; isn't that
2 correct?

3 A If the case had gone to trial, and if I had an
4 expert who told me that there was malpractice in this case,
5 yes. But without him we simply had no case.

6 Q Okay. Would you have anticipated, based on the
7 affidavits of your experts, that the standard of care that
8 the jury would have been instructed to abide by would have
9 been that there had to be an immediate pericardiocentesis?

10 MS. PISCEVICH: Objection.

11 THE WITNESS: That's -- well --

12 MS. PISCEVICH: Objection as to form, lack of
13 foundation. And he's not here as an expert witness on his
14 own behalf.

15 If you are asking him if that's the standard for
16 an attorney, there is a standard of care instruction, end of
17 hunt. There's not a standard of care instruction for
18 procedure.

19 MR. KOZAK: Okay.

20 BY MR. KOZAK:

21 Q After you got this information from Dr. Morady
22 about his change of opinion, did you discuss it with Angela
23 DeChambeau?

24 A Yes, sir, I did.

25 Q When did you do that?

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1 A As soon as I got off the phone with him, I
2 contacted Mrs. DeChambeau. I think I talked with him on the
3 22nd, I talked with her either on the 22nd or the 23rd,
4 which was a Friday. The 22nd was Thursday. And I met with
5 her on Monday, which would have been April 26, 2010.

6 Q And what did you tell her?

7 A What I told her was, and she was aware that we
8 were trying to find this tape and that the tape was found,
9 and we had provided it to Dr. Morady, that Dr. Morady had
10 reviewed the tape. I told her specifically that one of the
11 things that he was troubled by was that there was a
12 ventricular tachycardia event at about 12:22. And his
13 opinion in his affidavit was that he should have, Dr. Smith
14 should have stopped ablating at that time, that he was wrong
15 on that, because there wasn't a ventricular tachycardia
16 event at that time, so he saw that this EPS tape showed that
17 clearly. I told her that.

18 I also told her that he told me that, having
19 reviewed the records and reviewed the EPS tape, that he
20 wouldn't have done anything any differently. He did not
21 believe there was any medical malpractice.

22 The other thing that I told her and offered her
23 was to speak with him. And she understood that, she
24 understood it, she says we don't have an expert, we don't
25 have a case, she understood that. I offered her the ability

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1 to speak with him on the phone about any of the medicine in
2 the case at all, anything, and that he would respond to her.

3 I also told her that if she wanted to do it in her
4 privacy with him as opposed to with me, I provided the phone
5 number to her. She said that wouldn't be necessary.

6 Q Did you offer her the option of getting another
7 expert besides Dr. Morady?

8 A No, because it wasn't necessary. Because she had
9 agreed without the expert we had no case. She agreed with
10 me.

11 Q Did you tell her that a continuance in the case
12 was possible if she wanted to get another expert?

13 MS. PISCEVICH: Objection, calls for lack of
14 foundation and total speculation.

15 MR. KOZAK: I'll withdraw the question.
16 BY MR. KOZAK:

17 Q Did you consider a continuance in the case or
18 request to the court for time to get another expert?

19 A It was too late to request a continuance, one.
20 But two, and more importantly, we discussed at the beginning
21 of the case that we were going to hire the best expert that
22 we could find in the area of electrophysiology, and the case
23 would either rise or fall based upon the expert's opinion.
24 If the expert didn't support a malpractice case, and she
25 said if the expert didn't support the malpractice case, then

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1 that was fine, she would walk away from the case.

2 This was at the very outset of the case. I said
3 listen, I'm not a doctor, we will hire the best, and we will
4 ride with that doctor. And that's what we did, until he
5 changed his opinions.

6 And she was satisfied with that when we spoke. I
7 mean she wasn't happy for sure, but I did all that I could
8 to, I thought, to provide comfort to her, and also to make
9 available the doctor to her to explain any question that she
10 would have about anything that happened. And she just said
11 that wouldn't be necessary.

12 Q Did you then have a conversation with Jean Paul?

13 A Yes, sir, I did.

14 Q How long after your conversation with Angela?

15 A I, my best recollection is that I met with him on
16 May 3. I got ahold of him right away, but he works, and so
17 I would have met with him either on April 30, that Friday,
18 or the following Monday, and explained to him what had
19 happened, that the tape, the EPS tape, we obtained it, it
20 had been reviewed by Dr. Morady. I explained the, talked to
21 him about the ventricular tachycardia issue, but also the
22 issue that he simply believed, more importantly, that there
23 was no malpractice on Dr. Smith's part.

24 And he seemed satisfied with that explanation, and
25 then we had a discussion about another issue in his life at

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1 the time.

2 Q Did you offer him the same opportunity to discuss
3 this case with Dr. Morady?

4 A I believe I did. I believe I did.

5 Q Did you offer him the possible option of getting
6 another expert?

7 A No, for the reason that at the outset of the case
8 we discussed that we were going to get an expert, we were
9 going to get one of the best experts, and the case would
10 either be a case or not a case depending upon what our
11 experts said. And that's essentially, and he understood
12 that. If we didn't have an expert, you know, that our
13 expert had changed his opinion, then we don't have a case.
14 He understood that as well.

15 Q Did you, have you or your firm ever represented
16 Washoe Medical Center?

17 A Not to my knowledge.

18 Q Have you ever represented Renown Heart?

19 A No, sir.

20 Q What was the reason that you never met with Jean
21 Paul or Angela at the same time?

22 A There was no reason. There was just no reason. I
23 mean Angela, Mrs. DeChambeau came in and spoke to me, and I
24 think she may have mentioned Jean Paul, so it just went from
25 there. And I don't recall that either one of them

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1 necessarily said I'd just as soon meet with you and not the
2 other.

3 In hindsight it was probably a good idea, so what
4 one said couldn't be used, you know, against the other, if
5 we had met together. But there wasn't any specific reason,
6 and they had separate issues for sure, but there wasn't any
7 specific reason that it was done that way. It just fit
8 their schedules, it seems.

9 Q Did you tell Angela DeChambeau on any occasion
10 that she had a strong case?

11 A I told, I told her that based upon what, Dr.
12 Morady's review of the records, initial review of the
13 records, that I believed we had a strong case, based upon
14 his affidavit, you know, his record review and his
15 affidavit.

16 I want you --

17 MS. PISCEVICH: You've answered it.

18 THE WITNESS: Okay. But I did meet with her again
19 later after Dr. Morady reviewed the EPS tape and the records
20 and we had had that other conversation. I just didn't want
21 to leave that unclear.

22 BY MR. KOZAK:

23 Q Did you request that Dr. Morady provide you a
24 written communication with regards to his change of opinion?

25 A No.

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1 Q Why not?

2 A It didn't, it wasn't necessary. I mean when I met
3 with my clients, they understood what I had told them. I
4 offered their ability to speak to him directly, Mrs.
5 DeChambeau in particular, and she didn't think it was
6 necessary. She just told me it wasn't necessary.

7 Q Okay.

8 MR. KOZAK: Let's take a five- or ten-minute break
9 and then we will conclude.

10 THE WITNESS: Okay.

11 (Recess taken.)

12 MR. KOZAK: Back on the record.

13 BY MR. KOZAK:

14 Q Mr. Balkenbush, did you ever express concerns
15 about Angela DeChambeau's health to her and her ability to
16 withstand the pressures of a trial?

17 A Yes, sir.

18 Q Would you tell us what occurred?

19 A Sure. She had gone through, I was more concerned
20 about, I was very concerned about her health and didn't want
21 the events of the litigation to somehow impact those
22 adversely.

23 Q Okay. And you expressed that to her on several
24 occasions?

25 A Yes, sir. She went through a number of medical

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1 procedures during the course of this case, including some
2 back surgery, including some heart procedures as well, and
3 she had a number of physical issues. And I was very
4 concerned about those.

5 Q Did you ever tell Angela DeChambeau and Jean Paul
6 DeChambeau that there were a number of experts in this case
7 besides Dr. Morady?

8 A No. I told, I told Mrs. DeChambeau that there was
9 an anesthesiologist and there was an electrophysiologist, a
10 heart expert, that we had one of each. That's what I
11 recall.

12 Q Did Dr. Mazzei, as far as you know, ever change
13 the opinions that he rendered in his affidavit?

14 A Dr., I don't recall, but what I do recall is that
15 the anesthesiologist in this case had no ability to do what
16 Dr. Mazzei indicated he should have done. That is, be
17 involved in the pericardiocentesis procedure. He wasn't
18 privileged to do that at Washoe Med. We did know that at
19 the outset of the case.

20 Q Do you know if Dr. Mazzei ever changed his opinion
21 that he rendered in paragraph 6, and I'm quoting directly
22 now, apparently both Drs. Smith and Kang waited for the
23 echocardiogram of the heart before performing
24 pericardiocentesis. This was below the standard of care.

25 MS. PISCEVICH: Just answer if you know or not.

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1 THE WITNESS: What was the question again, sir?

2 BY MR. KOZAK:

3 Q Did Dr. Mazzei ever change this opinion that he
4 gave in his affidavit in paragraph 6?

5 A I don't know. Let me just read it real quick.

6 Q Sure.

7 A (Reviewing document.)

8 I don't know whether he changed his position, but
9 the facts of what the anesthesiologist did changed
10 dramatically during the course of the case.

11 Q Okay. And then going to paragraph 7, Dr. Mazzei
12 stated that during the procedure a cardiac tamponade
13 occurred, causing a sudden cardiac arrest. Neither Dr.
14 Smith nor Dr. Kang performed the required lifesaving
15 maneuver of pericardiocentesis soon enough to prevent
16 permanent and life-ending brain damage. These actions were
17 below the standard of care and led to the death of
18 Mr. DeChambeau. If either Dr. Smith or Dr. Kang had
19 performed pericardiocentesis within minutes of the onset of
20 the cardiac arrest, Mr. DeChambeau would not have suffered
21 any brain damage and would have survived to leave the
22 hospital.

23 Do you know if Dr. Mazzei ever changed this
24 opinion?

25 A I don't, but these were based upon records that

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1 existed at the time that he did this affidavit, which was
2 back in September 2007, and the facts of the case and the
3 medical records changed during the course of the case.

4 Q Did you bring the change in facts to the attention
5 of Dr. Mazzei that you are referring to?

6 A I believe I sent him all the expert reports of the
7 other physicians. I don't recall whether I discussed with
8 him that the anesthesiologist didn't have privileges to do a
9 pericardiocentesis, nor was he trained to do a
10 pericardiocentesis.

11 Q Okay. And can you recall specifically what facts
12 that were important had changed from the time that he wrote
13 this report until Dr. Morady changed his opinion?

14 A Well, he didn't have the benefit of the EPS tape,
15 I don't believe that Dr. Mazzei did. And also, so that's
16 one thing. And I believe I did tell him that the
17 cardiologist, the electrophysiologist had changed his
18 opinion regarding whether the conduct of Dr. Smith fell
19 below the standard of care, so those were new facts.

20 MR. KOZAK: I have no further questions. Thank
21 you.

22 MS. PISCEVICH: Let's go off the record.

23 (Off the record.)

24 MS. PISCEVICH: Back on the record.

25 It's agreed that the original deposition

CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

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16 * * * * *

17 I, STEPHEN BALKENBUSH, deponent herein, do
18 hereby certify and declare the within and foregoing
19 transcription to be my deposition in said action,
20 under penalty of perjury; that I have read, corrected
21 and do hereby affix my signature to said deposition.
22

23 _____
24 STEPHEN BALKENBUSH, Deponent Date
25

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1 transcript will go to Mr. Kozak and that I will get a copy.
2 And then I would like the original correction page and
3 signature page, and I'll take care of getting it reviewed
4 and signed.

5 (11:17 a.m., deposition concluded.)

6 -o0o-

CERTIFICATE OF REPORTER

2 STATE OF NEVADA,)

3) ss.

4 COUNTY OF WASHOE.)

5
6 I, LESLEY A. CLARKSON, Certified Court Reporter
7 for the State of Nevada, do hereby certify:

8 That on Wednesday, February 20, 2013, at the
9 offices of Sunshine Litigation Services, 151 Country Estates
10 Circle, Reno, Nevada, I was present and took stenotype notes
11 of the deposition of STEPHEN C. BALKENBUSH, who personally
12 appeared and was duly sworn by me, and thereafter
13 transcribed the same into typewriting as herein appears;

14 That the foregoing transcript is a full, true and
15 correct transcript of my stenotype notes of said deposition.

16 I further certify that I am not a relative or
17 employee of an attorney or counsel of any of the parties,
18 nor a relative or employee of an attorney or counsel
19 involved in said action, nor a person financially
20 interested in the action.

21 Dated at Reno, Nevada, this 28th day of February,
22 2013.
23

24 _____
25 Lesley A. Clarkson, CCR #182

In the
SUPREME COURT
For the
STATE OF NEVADA

Electronically Filed
Apr 18 2014 01:30 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**ANGELA DECHAMBEAU AND JEAN-PAUL DECHAMBEAU,
BOTH INDIVIDUALLY AND
AS SPECIAL ADMINISTRATORS OF THE
ESTATE OF NEIL DECHAMBEAU**

Appellants,

v.

**STEPHEN C. BALKENBUSH, ESQ.; AND
THORNDahl ARMSTRONG DELK
BALKENBUSH & EISINGER, A NEVADA
PROFESSIONAL CORPORATION**

Respondents

Appeal from a Decision of the Second Judicial District of the State of Nevada,
Washoe County, Court Case No. CV12-00571

APPELLANT'S JOINT INDEX OF EXHIBITS, Vol I

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