

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

KIMBERLY TAYLOR,

Appellant,

v.

KEITH BRILL, M.D. and WOMEN'S
HEALTH ASSOCIATES OF
SOUTHERN NEVADA-MARTIN,
PLLC,

Respondents

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Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE NO. 83847

Dist. Court Case No. A-18-773472-C

APPELLANT'S APPENDIX

VOLUME VIII

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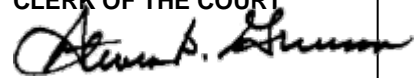
CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. 25, I hereby certify that on the 10th day of March, 2022, a copy of the foregoing **APPELLANT'S APPENDIX, VOLUME VIII** via the method indicated below:

X	Pursuant to NRAP 25(c), by electronically serving all counsel and e-mails registered to this matter on the Supreme Court Electronic Filing System.
	Pursuant to NRCP 5, by placing a copy in the US mail, postage pre-paid to the following counsel of record or parties in proper person:
	Via receipt of copy (proof of service to follow)

An Attorney or Employee of the firm:

/s/ Sarah Daniels
BREEDEN & ASSOCIATES PLLC



1 **JJ**
2 **ADAM J. BREEDEN, ESQ.**
3 Nevada Bar No. 008768
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

9 KIMBERLY TAYLOR, an individual,

10 Plaintiff,

11 v.

12 KEITH BRILL, M.D., FACOG, FACS, an
13 individual; WOMEN'S HEALTH
14 ASSOCIATES OF SOUTHERN NEVADA –
15 MARTIN, PLLC, a Nevada Professional
16 Limited Liability Company;

Defendants.

CASE NO.: A-18-773472-C

DEPT NO.: III

**PLAINTIFF'S FIRST AMENDED
PROPOSED JURY INSTRUCTIONS**

17 Plaintiff Kimberly Taylor hereby submits the following proposed jury instructions. This
18 submission may be added to or amended as needed and as ordered by the Court.
19

20 DATED this 9th day of October, 2021.

BREEDEN & ASSOCIATES, PLLC



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Attorneys for Plaintiff

VIII APPX001527

DUTY OF JUDGE AND JURY

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as Judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

NEV. J.I. 1.0

General Pattern Instruction Pre-2011

DISCUSSION OF TRIAL AND MEDIA COVERAGE

Again, let me remind you that until this case is submitted to you:

1. Do not talk to each other or anyone else about it or about anyone who has anything to do with it until the end of the case when you go to the jury room to decide on your verdict.

2. “Anyone else” includes members of your family and your friends. You may tell them that you are a juror in a civil case, but don’t tell them anything else about it until after you have been discharged as jurors by myself.

3. Do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately by contacting the bailiff/marshal.

4. Do not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it.

5. Do not post anything on social media or the internet such as facts of the case or that you are serving as a juror in this case. This includes Facebook, Twitter, Instagram, chat rooms and other sites.

We must ask you to do this to assure that the parties receive a fair trial, and an impartial jury.

GENERAL INSTRUCTION 1GI.9 (2011)

This instruction is similar to the requirement in criminal cases. *See NRS 175.401*. Some minor adjustments have been made as to Social Media.

USE OF INSTRUCTIONS

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me, and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

NEV. J.I. 1.01

General Pattern Instruction Pre-2011

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PURPOSE OF THE TRIAL

The purpose of the trial is to ascertain the truth.

NRS 50.115(1)(a).

GENERAL INSTRUCTION 1GI.1 (2011)

EVIDENCE, STATEMENTS OF LAWYERS AND RULINGS

Your purpose as jurors is to find and determine the facts. Under our system of civil procedure, you are the sole judge of the facts. You determine the facts from the testimony you hear and the other evidence, including exhibits introduced in court. It is up to you to determine the inferences which you feel may be properly drawn from the evidence. It is especially important that you perform your duty of determining the facts diligently and conscientiously, for ordinarily, there is no means of correcting an erroneous determination of facts by the jury.

The parties may sometimes present objections to some of the testimony or other evidence. It is the duty of a lawyer to object to evidence which he or she believes may not properly be offered and you should not be prejudiced in any way against the lawyer who makes objections on behalf of the party he or she represents. At times I may sustain objections or direct that you disregard certain testimony or exhibits. You must not consider any evidence to which an objection has been sustained or which I have instructed you to disregard.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

If counsel for the parties have stipulated to any fact, you will regard that fact as being conclusively proved as to the party or parties making the stipulation.

You must not speculate to be true any insinuations suggested by a question asked the witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the plaintiff or defendant. Both sides are entitled to the same fair and impartial consideration.

GENERAL INSTRUCTION 1GI.5 (2011)

STIPULATIONS AS EVIDENCE

If counsel for the parties have stipulated to any fact, you will regard that fact as being conclusively proved. In this case the Parties have stipulated to the following:

At the time of the medical procedure in this case, Defendant Dr. Keith Brill was acting as member of, or on behalf of, Defendant Women's Health Associates of Southern Nevada- Martin, PLLC. Therefore, if you return a verdict in favor of the Plaintiff, you should hold Defendant Women's Health Associates of Southern Nevada- Martin, PLLC vicariously liable for the same amount you award against Dr. Brill.

NEV. J.I. 2.06- MODIFIED

BAJI 1.02

General Pattern Instruction Pre-2011- MODIFIED

CLAIMS MADE AND ISSUES TO BE PROVED

The credibility or “believability” of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

Many of the doctors and experts presented to you have been paid or compensated for their appearance. You can give this fact as much or as little weight as you see fit when you assess the credibility of the witnesses.

U.S. v. Lizarraga-Cedano, 191 Fed.Appx. 586 (9th Cir. 2006); *Young Ah Chor v. Dulles*, 270 F.2d 338 (9th Cir. 1959).

GENERAL INSTRUCTION 1GI.6 (2011)

DEPOSITION EVIDENCE

During trial, if certain testimony has been read into evidence from a deposition or the deposition testimony has been recorded by video and played for you. A deposition is testimony taken under oath before the trial and preserved in writing or on video. You are to consider that testimony the same as if it had been given in court by a live witness. You must not make any speculation as to why the witness did not personally appear in court. There are many reasons such as cost and convenience for out of state witnesses that the witness was not here live. You must not give the testimony less weight simply because the testimony was presented to you by means other than by a live witness. All parties or their attorneys were given the opportunity to attend the deposition and cross-examine the witness.

NEV. J.I. 2.03

General Pattern Instruction Pre-2011

EVIDENCE TO BE CONSIDERED GENERALLY;
DIRECT AND CIRCUMSTANTIAL EVIDENCE

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits and any facts admitted or agreed to by counsel.

There are two types of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is the proof of one or more facts from which you could find another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation of evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must also disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court. Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

See, MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT (April 2007), Instruction 1.6: "What is Evidence"; see also, Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980); Crawford v. State, 92 Nev. 456, 552 P.2d 1378 (1976) (circumstantial evidence alone may sustain a conviction).

EVIDENCE INSTRUCTION 2EV.3 (2011)

CHARTS AND SUMMARIES

Certain charts and summaries have been received into evidence to illustrate facts brought out in the testimony of some witnesses. Charts and summaries are only as good as the underlying evidence that supports them. You should therefore give them only such weight as you think the underlying evidence deserves.

See, Federal Rules of Evidence, Rule 1006, 28 U.S.C.A.: “Summaries”; *see also*, *United States v. Nguyen*, 267 Fed.Appx. 699 (9th Cir. 2008) (the court noted that the District Court properly instructed the jury that the charts and summaries were only as good as the underlying evidence on which they were based); *United States v. Poschwatta*, 829 F.2d 1477 (9th Cir. 1987) (holding that admission of a chart summarizing income figures already admitted into evidence, while perhaps not the best practice, was not an abuse of discretion); *United States v. Gardner*, 611 F.2d 770 (9th Cir. 1980) (holding that admission of a chart summarizing the defendant's financial status was well within the discretion of the trial court pursuant to Fed.R.Evid. 611(a)); *United States v. Krasn*, 614 F.2d 1229 (9th Cir. 1980) (holding that charts should not have been admitted, but that it was harmless error as the defendant had an opportunity to challenge the facts and data upon which the charts were based and the court gave a limiting instruction); *United States v. Gardner*, 611 F.2d 770 at *776 (noting the defendant's opportunity to cross-examine the government witness who prepared the chart and finding no reversible error in admission of chart).

EVIDENCE INSTRUCTION 2EV.14 (2011)

ATTORNEY’S RIGHT TO INTERVIEW WITNESS

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told that attorney what he or she would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

Cacoperdo v. Demosthenes, 37 F.3d 504 (9th Cir.1994) (“[B]oth sides have the right to interview witnesses before trial.”); *United States v. Rich*, 580 F.2d 929 (9th Cir. 1978) (“Abuses can easily result when officials elect to inform potential witnesses of their right not to speak with defense counsel.”); *United States v. Black*, 767 F.2d 1334 (9th Cir. 1985) (“Absent a fairly compelling justification, the government may not interfere with defense access to witnesses.”) cert. denied, 474 U.S. 1022, 106 S.Ct. 574, 88 L.Ed.2d 557 (1985).

EVIDENCE INSTRUCTION 2EV.15 (2011)

CREDIBILITY OF WITNESS; WITNESS THAT HAS TESTIFIED FALSELY

The credibility or “believability” of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

NEV. J.I. 2.07

BAJI 2.22

General Pattern Instruction Pre-2011

DISCREPANCIES IN A WITNESS'S TESTIMONY

Discrepancies in a witness's testimony or between his testimony and that of others, if there were any discrepancies, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently.

Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

NEV. J.I. 2.08

BAJI 2.21

General Pattern Instruction Pre-2011

JURORS NOT TO CONDUCT INDEPENDENT INVESTIGATION

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments or consult reference works for additional information.

Rowbottom v. State, 105 Nev. 472, 779 P.2d 934 (1989) (juror misconduct, in which juror conducted independent investigation of crime, which was a prejudicial error which entitled defendant to new trial even though juror did not share her findings with other jurors until penalty phase of trial); *Meyer v. State*, 119 Nev. 554, 80 P.3d 447 (2003) (jurors are prohibited from conducting an independent investigation and informing other jurors of the results of that investigation).

EVIDENCE INSTRUCTION 2EV.16 (2011)

EXPERT WITNESS: GENERAL

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his or her opinion as to any matter in which he or she is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

Many of the doctors and experts presented to you have been paid or compensated for their appearance. You can give this fact as much or as little weight as you see fit when you assess the credibility of the witness.

EXPERTS INSTRUCTION 3EX.1 (2011)- MODIFIED

EXPERT WITNESS: HYPOTHETICAL QUESTION

A hypothetical question has been asked of an expert witness. In a hypothetical question, the expert witness is told to assume the truth of certain facts, and the expert witness is asked to give an opinion based upon those assumed facts. You must decide if all of the facts assumed in the hypothetical question have been established by the evidence. You can determine the effect of that admission upon the value of the opinion.

Wrenn v. State, 89 Nev. 71, 506 P.2d 418 (1973) (rejecting expert opinion testimony because assumed facts were not established).

EXPERTS INSTRUCTION 3EX.4 (2011)

NUMBER OF WITNESSES

The preponderance, or weight of evidence, is not necessarily with the greater number of witnesses.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of the one witness, you should accept his or her testimony.

Baker v. Morton, 79 U.S. 150 (1870)

NEGLIGENCE INSTRUCTION 4NG.3 (2011)

INTRODUCTORY INSTRUCTION; SINGLE LEGAL BASIS

The plaintiff Kimberly Taylor seeks to establish a claim of professional negligence. This is also sometimes called “medical malpractice.” I will now instruct you on the law relating to this claim.

RESTATEMENT (SECOND) OF TORTS §§ 281, 284

NEGLIGENCE INSTRUCTION 4NG.9 (2011)- MODIFIED

**DEFINITIONS: MEDICAL MALPRACTICE, PROFESSIONAL NEGLIGENCE, AND
PROVIDER OF HEALTH CARE**

“Professional negligence” means the failure of a provider of health care, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care.

“Provider of health care” includes a physician.

NRS 41A.009; NRS 41A.015; NRS 41A.017; NRS 630.091; NRS 633.014; NRS 7.095; *Perez v. Las Vegas Medical Ctr.*, 107 Nev. 1, 805 P.2d 589 (1991); *Orcutt v. Miller*, 95 Nev. 408, 595 P.2d 1191 (1979).

MEDICAL MALPRACTICE INSTRUCTION 9MM.1- HEAVILY MODIFIED DUE TO CHANGES IN THE STATUTORY DEFINITIONS ENACTED FOLLOWING 2011

PLAINTIFF'S BURDEN OF PROOF

The plaintiff Kimberly Taylor has the burden to prove by a preponderance of the evidence:

1. The accepted standard of medical care or practice;
2. That a doctor's conduct departed from the standard,;
3. That the doctor's conduct was the proximate (legal) cause of injury and/or death;
- and
4. The plaintiff's damages.

Prabhu v. Levine, 112 Nev. 1538, 930 P.2d 103 (1996); *Perez v. Las Vegas Medical Ctr.*, 107 Nev. 1, 4, 805 P.2d 589, 590-91 (1991); *Orcutt v. Miller*, 95 Nev. 408, 411, 595 P.2d 1191, 1193 (1979); NRS 41.

MEDICAL MALPRACTICE INSTRUCTION 9MM.2- MODIFIED, PARTS REGARDING CONTRIBUTORY NEGLIGENCE ARE REMOVED

BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by that party, the meaning of such an instruction is this: that unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same to be not true.

The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.

SOURCE/AUTHORITY

NEGLIGENCE INSTRUCTION 4NG.2:

RESTATEMENT (SECOND) OF TORTS § 433B (Burden of Proof); *Spaulding v. United States.*, 455 F.2d 222, 225-226 (9th Cir. 1972).

DUTY OF PHYSICIAN AND SURGEON; HOLDING OUT AS SPECIALIST

It is the duty of a physician or surgeon who holds himself out as a specialist in a particular field of medical, surgical, or other healing science to have the knowledge and skill ordinarily possessed, and to use the care and skill ordinarily used, by reasonably well-qualified specialists practicing in the same field.

A failure to perform such duty is negligence.

Stevens v. Duxbury, 97 Nev. 517, 519, 634 P.2d 1212 (1981); *Orcutt v. Miller*, 95 Nev. 408, 595 P.2d 1191 (1979).

MEDICAL MALPRACTICE INSTRUCTION 9MM.5:

**DUTY OF PHYSICIAN AND SURGEON: BOARD-CERTIFIED
SPECIALIST**

It is the duty of a physician or surgeon who is a board-certified specialist to have the knowledge and skill ordinarily possessed, and to use the care and skill ordinarily used, by reasonably well-qualified specialists practicing in the same field.

A failure to perform such duty is negligence.

Stevens v. Duxbury, 97 Nev. 517, 519, 634 P.2d 1212 (1981); *Orcutt v. Miller*, 95 Nev. 408, 595 P.2d 1191 (1979).

MEDICAL MALPRACTICE INSTRUCTION 9MM.6

STANDARD OF SKILL AND CARE: NATIONAL

The standard of skill and care required of a physician or surgeon should be determined by reference to the practice within his field of practice nationally, rather than by the practice among a more geographically circumscribed subset of his colleagues.

Stevens v. Duxbury, 97 Nev. 517, 519, 634 P.2d 1212, 1213-14 (1981); *Orcutt v. Miller*, 95 Nev. 408, 413, 595 P.2d 1191, 1194 (1979); *Mishler v. State of Nev. Bd of Medical Examiners*, 109 Nev. 287, 849 P.2d 291 (1993).

MEDICAL MALPRACTICE INSTRUCTION 9MM.7

“RISK” OR “COMPLICATION” OF PROCEDURE

The mere fact that a provider of health care considers an injury to a patient to be a “risk” or a known “complication” of a procedure does not mean that the defendant is not liable or did not breach the standard of care.

The mere fact that a patient was advised of a potential “risk” or “complication” also does not mean that the defendant is not liable or did not breach the standard of care.

A patient cannot consent to negligence of the physician.

Instead, a physician must use reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care to avoid known “risks” or “complications” to the extent possible and this is the issue you must resolve in this case.

NON-STANDARD INSTRUCTION

For a patient cannot consent to negligence, see *Busick v. Trainor*, Case # 72966, 2019 WL 1422712 437 P.3d 1050 (Nev. 2019) (unpublished)

NEGLIGENCE: ADDITIONAL LIABILITY

A physician liable for negligent medical treatment or negligent failure to render medical treatment is likewise liable for injury or death resulting from any additional medical treatment to which the patient is exposed as a proximate (legal) result of the original physician's negligence irrespective of whether such subsequent treatment is rendered in a proper or in a negligent manner.

RESTATEMENT OF TORTS § 457 (modified); *Lindquist v. Dengel*, 92 Wash.2d 257, 595 P.2d 934 (1979).

MEDICAL MALPRACTICE INSTRUCTION 9MM.8

NEGLIGENCE: PROXIMATE CAUSE: DEFINITION

When I use the expression "proximate cause," I mean a cause which, in foreseeable and continuous sequence, unbroken by any efficient intervening cause, produces the injury complained of and without which the result would not have occurred. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

Goodrich & Pennington Mortgage Fund, Inc. v. J.R. Woolard Inc., 120 Nev. 777, 784, 101 P.3d 792, 797 (2004) *citing Taylor v. Silva*, 96 Nev. 738, 741, 615 P.2d 970, 971 (1980) (*quoting Mahan v. Hafen*, 76 Nev. 220, 225, 351 P.2d 617, 620 (1960)); *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1481, 970 P.2d 98, 107 (1998); RESTATEMENT (SECOND) OF TORTS § 431.

NEGLIGENCE INSTRUCTION 4NG.13 (2011)

MEASURE OF DAMAGES

In determining the amount of losses, if any, suffered by Plaintiff Kimberly Taylor as a proximate result of the accident in question, you will take into consideration the nature, extent and duration of the injuries you believe from the evidence plaintiff has sustained, and you will decide upon a sum of money sufficient to reasonably and fairly compensate the Plaintiff for the following items:

1. The reasonable medical expenses Plaintiff has necessarily incurred as a result of the accident and the medical expenses which you believe she is reasonably certain to incur in the future as a result of the accident, discounted to present value;

[Non applicable parts omitted]

2. The physical and mental pain, suffering, anguish and disability endured by the plaintiff from the date of the accident to the present; and

3. The physical and mental pain, suffering, anguish and disability which you believe plaintiff is reasonably certain to experience in the future.

Arnold v. Mt. Wheeler Power Co., 101 Nev. 612, 707 P.2d 1137 (1985); *Shere v. Davis*, 95 Nev. 491, 596 P.2d 499 (1979); *Sierra Pac. Power Co. v. Anderson*, 77 Nev. 68, 358 P.2d 892 (1961);

PERSONAL INJURY DAMAGES INSTRUCTION 5PID.1 (2011)- MODIFIED TO REMOVE NON-APPLICABLE DAMAGES INSTRUCTIONS

REASONABLE VALUE OF MEDICAL EXPENSES

The Plaintiff is entitled to recover the usual, customary and reasonable value of medical expenses that you find to be causally related to the accident.

The mere fact that a health insurer actually paid the medical expenses for a lesser amount is not evidence of the usual, customary and reasonable value of the services provided.

Evidence of payments showing medical provider discounts, or write-downs, to third-party insurance providers is irrelevant to your determination of the usual, customary and reasonable value of the medical services.

Curti v. Franceschi, 60 Nev. 422, 428 (1941) (physician’s testimony is substantial evidence of reasonable value of medical services); *Khoury v. Seastrand*, 377 P.3d 81, 93 (Nev. 2016). “Evidence of payments showing medical provider discounts, or write-downs, to third-party insurance providers ‘is irrelevant to a jury’s determination of the reasonable value of the medical services and will likely lead to jury confusion.’” Citing *Tri-Cty. Equip. & Leasing v. Klinke*, 128 Nev. 352, 360, 286 P.3d 593, 598 (2012) (Gibbons, J., concurring).

Khoury v. Seastrand, 377 P.3d 81, 93 (Nev. 2016) that “[e]vidence of payments showing medical provider discounts, or write-downs, to third-party insurance providers” is irrelevant to a jury’s determination of the reasonable value of the medical services and will “likely lead to jury confusion.”

Non-standard instruction.

PAIN AND SUFFERING: NO DEFINITE STANDARD

No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation. In making an award for pain and suffering, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence.

Canterino v. The Mirage Casino-Hotel, 117 Nev. 19, 16 P.3d 415 (2001); *Stackiewicz v. Nissan Motor Corp. in U.S.A.*, 100 Nev. 443, 686 P.2d 925 (1984).

PERSONAL INJURY DAMAGES INSTRUCTION 5PID.2 (2011)

DAMAGES: UNCERTAINTY AS TO AMOUNT

A party seeking damages has the burden of proving both that they did, in fact, suffer injury and the amount of damages resulting from that injury. The amount of damages need not be proved with mathematical exactitude, but the party seeking damages must provide an evidentiary basis for determining a reasonably accurate amount of damages. There is no requirement that absolute certainty be achieved; once evidence establishes that the party seeking damages did, in fact, suffer injury, some uncertainty as to the amount of damages is permissible. However, even if it is provided by an expert, testimony that constitutes speculation not supported by evidence is not sufficient to provide the required evidentiary basis for determining a reasonably accurate award of damage.

Gramanz v. T-Shirts and Souvenirs, Inc., 111 Nev. 478, 484-85, 894 P.2d 342, 346-47 (1955); *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co. Inc.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989); see also *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995).

CONTRACTS INSTRUCTION 13CN.48

OPINIONS REGARDING OTHER AWARDS AND CASES
MUST BE SET ASIDE

Some jurors have had experiences with other cases or read about jury awards in other cases and considered the award too high or too low. As a juror, you must disregard any opinion you have of other cases when determining your award. In other words, if you feel the plaintiff is entitled to a certain dollar amount, you should not *reduce* that amount or award less because you believe from other cases that juries award too much money. Similarly, if you feel the plaintiff is entitled to a certain dollar amount, you should not *increase* that amount or award because you believe from other cases that juries do not award enough money. Please consider only the case and facts before you and not the impact your award may or may not have on other cases in our community.

Non-standard instruction.

INSURANCE:
COLLATERAL SOURCES

You are not to discuss or even consider whether or not the defendant was carrying insurance that would reimburse him for whatever sum of money it may be called upon to pay to the plaintiff.

Whether or not the defendant was insured is immaterial and should make no difference in any verdict you may render in this case.

NEV. J.I. 1.07

General Pattern Instruction Pre-2011 (Modified)

NON-PARTIES ON VERDICT FORM/PIROOZI-[ALTERNATE ONE]

You will be provided with a verdict form that allows you to apportion damages to either Dr. Brill solely or to Dr. Brill and other providers of health care. If you determine that some damages were not solely caused by Dr. Brill, you are to indicate what other provider of health care you find responsible for those damages, the amount of those damages and the percentage of fault you attribute between Dr. Brill and those other providers of health care for those specific damages.

Non Standard Instruction

Cite: Piroozi v. Eighth Judicial Dist. Court, 131 Nev. 1004, 363 P.3d 1168 (2015)

NON-PARTIES ON VERDICT FORM/PIROOZI-[ALTERNATE TWO]

If you believe some other provider of health care and not Dr. Brill was the sole cause of any of Plaintiff's damages, you should not award those damages against Dr. Brill.

If you believe some other provider of health care and Dr. Brill combined to create a part of Plaintiff's damages, you should indicate the amount of those damages separately on the verdict form and indicate what percentage of fault you find Dr. Brill liable for those damages.

Non Standard Instruction

Cite: Piroozi v. Eighth Judicial Dist. Court, 131 Nev. 1004, 363 P.3d 1168 (2015)

CLOSING INSTRUCTION

Whether any of these elements of damage have been proven by the evidence is for you to determine. Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that plaintiff prove each item of damage by a preponderance of the evidence.

Quintero v. McDonald, 116 Nev. 1181, 14 P.3d 522 (2000).

PERSONAL INJURY DAMAGES INSTRUCTION 5PID.9 (2011)

ALL INSTRUCTIONS NOT NECESSARILY APPLICABLE

The court has given you instructions embodying various rules of law to help guide you to a just and lawful verdict. Whether some of these instructions will apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects in this case must not be taken as indicating an opinion of the court as to what you should find to be the facts or as to which party is entitled to your verdict.

NEV. J.I. 11.00

BAJI 15.22

General Pattern Instruction Pre-2011

DUTY OF JUROR TO CONSULT

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any questions submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.

NEV. J.I. 11.01

General Pattern Instruction Pre-2011

READING BACK TESTIMONY

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreman. The officer will then return you to court where the information sought will be given to you in the presence of the parties or their attorneys.

Read backs of testimony are time consuming and are not encouraged unless you deem it a necessity. Should you require a read back, you must carefully describe the testimony to be read back so that the court reporter can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

NEV. J.I. 11.02

General Pattern Instruction Pre-2011

GENERAL VERDICT WITH SPECIAL FINDINGS

After the closing arguments, when you retire to consider your verdict, you must select one of your number to act as foreperson, who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. Your verdict does not have to be unanimous. If your verdict is in favor of the plaintiff, you are directed to make special findings of fact consisting of written answers to the questions in a form that will be given to you.

You shall answer the questions in accordance with the directions in the form and all of the instructions of the court. As soon as six or more of you have agreed upon every answer in the special findings, you must have the verdict and special findings signed and dated by your foreperson, and then return with them to this room. Even if one juror disagrees as to an answer that six or more jurors agree upon, that juror should still participate in answering subsequent questions on the verdict form.

NEV. J.I. 11.06

General Pattern Instruction Pre-2011

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EXPLANATION OF VERDICT READING

After you decide on your verdict, you will be called back one last time for the reading of your verdict in open court.

Following the reading of your verdict, you will be discharged as jurors and allowed to leave. On occasion, attorneys will try to interview or contact jurors to discuss the case and your verdict. Sometimes attorneys do this out of curiosity or to learn more about how juries arrive at a verdict. Sometimes attorneys do this to try to obtain information with which they can challenge your verdict or move for a new trial. The decision as to whether you wish to speak to the attorneys or anyone from their office after your verdict is entirely yours. You are under no obligation to do so.

NON-PATTERN INSTRUCTION

ARGUMENTS OF COUNSEL

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence, as you understand it and remember it to be, and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

NEV. J.I. 11.03

General Pattern Instruction Pre-2011

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VER

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

KIMBERLY TAYLOR, an individual,

Plaintiff,

v.

KEITH BRILL, M.D., FACOG, FACS, an
individual; WOMEN’S HEALTH
ASSOCIATES OF SOUTHERN NEVADA –
MARTIN, PLLC, a Nevada Professional
Limited Liability Company;

Defendants.

CASE NO.: A-18-773472-C

DEPT NO.: III

VERDICT FOR PLAINTIFF

We, the jury in the above-entitled action, find in favor of Plaintiff Kimberly Taylor and
against Defendants Keith Brill, M.D. and Women’s Health Associates of Southern Nevada-Martin,
PLLC, and award the following damages:

Past Medical Expenses \$ _____

Pain & Suffering, Mental Anguish and
Loss of Enjoyment of Life (past and future) \$ _____

TOTAL \$ _____

JURY FOREPERSON

DATE

1 VER

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 KIMBERLY TAYLOR, an individual,

CASE NO.: A-18-773472-C

5 Plaintiff,

DEPT NO.: III

6 v.

7 KEITH BRILL, M.D., FACOG, FACS, an
8 individual; WOMEN'S HEALTH
9 ASSOCIATES OF SOUTHERN NEVADA –
MARTIN, PLLC, a Nevada Professional
Limited Liability Company;

**VERDICT FOR PLAINTIFF-
SOME DAMAGES APPORTIONED TO
OTHER PROVIDERS OF HEALTH
CARE**

10 Defendants.
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12
13 We, the jury in the above-entitled action, find in favor of Plaintiff Kimberly Taylor and
14 against Defendants Keith Brill, M.D. and Women's Health Associates of Southern Nevada-Martin,
15 PLLC, and award the following damages:

16 Past Medical Expenses \$ _____

17 Pain & Suffering, Mental Anguish and

18 Loss of Enjoyment of Life (past and future) \$ _____

19
20 TOTAL \$ _____

21 Regarding the Damage above, we find that damages in the following amount were caused
22 in some part by other providers of health care:

23 \$ _____

24 Of these damages, we would apportion the fault of the Defendants and the other providers
25 of health care as follows (please write the name of the other provider of health care and the
percentages that add to 100%, you need not use all "other provider" blanks):

26 Defendant Dr. Brill: % _____

27 Other Provider _____ % _____
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Other Provider _____ % _____
Other Provider _____ % _____
Other Provider _____ % _____

JURY FOREPERSON

DATE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 9th day of October, 2021, I served a copy of the foregoing legal
3 document **PLAINTIFF KIMBERLY TAYLOR'S FIRST AMENDED PROPOSED JURY**
4 **INSTRUCTIONS** via the method indicated below:

5

6 X	Pursuant to NRCP 5 and NEFCR 9, by electronically serving all counsel and 7 e-mails registered to this matter on the Court's official service, Wiznet 8 system.
9	Pursuant to NRCP 5, by email using a Dropbox link and/or by placing a copy 10 in the US mail, postage pre-paid to the following counsel of record or parties 11 in proper person: 12 Heather S. Hall, Esq. 13 Robert McBride, Esq. 14 McBRIDE HALL 8329 W. Sunset Road, Suite 260 Las Vegas, Nevada 89113 <i>Attorneys for Defendants Keith Brill, M.D. and Women's Health Associates</i>
15	Via receipt of copy (proof of service to follow)

16

17 An Attorney or Employee of the following firm:

18 /s/ Adam J. Breeden

19 **BREEDEN & ASSOCIATES, PLLC**

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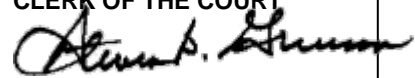
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10 *Attorneys for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 KIMBERLY TAYLOR, an individual,
14
15 Plaintiff,

CASE NO.: A-18-773472-C

DEPT NO.: III

16 v.

17 **NOTICE OF ENTRY OF ORDER**
18 **REGARDING PLAINTIFF'S MOTIONS**
19 **IN LIMINE**

20 KEITH BRILL, M.D., FACOG, FACS, an
21 individual; WOMEN'S HEALTH
22 ASSOCIATES OF SOUTHERN NEVADA –
23 MARTIN, PLLC, a Nevada Professional
24 Limited Liability Company; BRUCE
25 HUTCHINS, RN, an individual;
26 HENDERSON HOSPITAL and/or VALLEY
27 HEALTH SYSTEMS, LLC, a Foreign LLC
28 d/b/a HENDERSON HOSPITAL, a subsidiary
of UNITED HEALTH SERVICES, a Foreign
LLC; TODD W. CHRISTENSEN, M.D., an
individual; DIGNITY HEALTH d/b/a ST.
ROSE DOMINICAN HOSPITAL; DOES I
through XXX, inclusive; and ROE
CORPORATIONS I through XXX, inclusive,

Defendants.

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YOU AND EACH OF YOU please take notice that an *Order Regarding Plaintiff's Motions in Limine* was entered in the above-captioned matter on the 7th day of October, 2021. A true and correct copy of the same is attached hereto.

DATED this 11th day of October, 2021.

BREIDEN & ASSOCIATES, PLLC

ADAM J. BREFFEN, ESQ.

Nevada Bar No. 008768

376 E. Warm Springs Road, Suite 120

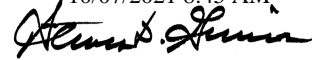
Las Vegas, Nevada 89119

Phone: (702) 819-7770

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Attorneys for Plaintiff


CLERK OF THE COURT

ORDR
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KIMBERLY TAYLOR, an individual,

Plaintiff,

CASE NO.: A-18-773472-C

DEPT NO.: III

v.

**ORDER REGARDING PLAINTIFF'S
MOTIONS IN LIMINE**

KEITH BRILL, M.D., FACOG, FACS, an
individual; WOMEN'S HEALTH
ASSOCIATES OF SOUTHERN NEVADA –
MARTIN, PLLC, a Nevada Professional
Limited Liability Company; BRUCE
HUTCHINS, RN, an individual;
HENDERSON HOSPITAL and/or VALLEY
HEALTH SYSTEM, LLC, a Foreign LLC dba
HENDERSON HOSPITAL, and/or
HENDERSON HOSPITAL, a subsidiary of
UNITED HEALTH SERVICES, a Foreign
LLC; TODD W. CHRISTENSEN, M.D., an
individual; DIGNITY HEALTH d/b/a ST.
ROSE DOMINICAN HOSPITAL; DOES I
through XXX, inclusive; and ROE
CORPORATIONS I through XXX, inclusive,

Defendants.

Plaintiff's Motions in Limine #1-4 came for oral argument on September 27, 2021 at 2:00 p.m. Plaintiff, KIMBERLY TAYLOR was represented by her counsel Adam J. Breeden, Esq. of BREEDEN & ASSOCIATES, PLLC. Defendants, KEITH BRILL, M.D. and WOMEN'S HEALTH ASSOCIATES OF SOUTHERN NEVADA- MARTIN, PLLC were represented by their counsel Heather Hall, Esq. of McBRIDE HALL. Having reviewed the pleadings and papers on file

VIII APPX001576

1 and heard oral argument;

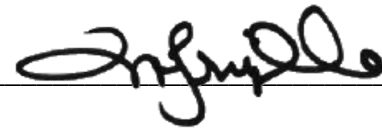
2 **IT IS HEREBY ORDERED, ADJUDICATE AND DECREED** that Plaintiff's Motion in
3 Limine #1 is DENIED. Plaintiff shall not be permitted to use the phrase "send a message," reference
4 news media, reference the conscience of the community, use the Want Ad technique or make per
5 diem arguments in closing argument.

6 **IT IS FURTHER ORDERED** that Plaintiff's Motion in Limine #2 is granted in part and
7 denied in part. Evidence, argument or reference to the informed consent form the Plaintiff signed
8 or discussions about risks and complications had with the Plaintiff are barred. However, the Defense
9 may refer to perforations as known "risks" or "complications" during their defense.

10 **IT IS FURTHER ORDERED** that Plaintiff's Motion in Limine #3 is DENIED. Pursuant
11 to the Piroozi case, the Defense will be allowed to question witnesses as to the liability of non-party
12 medical care providers and the jury will be allowed to apportion asserted negligence to those parties.
13 The Court reserves how this will be addressed in jury instructions and the verdict form for trial.

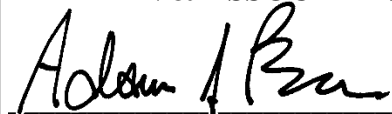
14 **IT IS FURTHER ORDERED** that Plaintiff's Motion in Limine #4 is DENIED. The Court
15 finds that NRS § 42.021 is constitutional under the rational basis test to keep doctors in Nevada.
16 The Court further finds that evidence of collateral source payments by Plaintiff's health insurer may
17 be admitted at trial. The Court reserves issues of what instructions on this issue will be provided to
18 the jury for trial.

Dated this 7th day of October, 2021



21 Submitted by:

22 **BREEDEN & ASSOCIATES, PLLC**

23 
24 **ADAM J. BREEDEN, ESQ.**
25 Nevada Bar No. 008768
26 376 E. Warm Springs Road, Suite 120
27 Las Vegas, Nevada 89119
28 Phone: (702) 819-7770
adam@Breedendassociates.com
Attorneys for Plaintiff

3BA-13A-903E-C193
Approved for Entry and Content by:
Monica Trujillo
District Court Judge
McBRIDE HALL

/s/ Heather S. Hall, Esq.
HEATHER S. HALL, ESQ.
Nevada Bar No. 010608
8329 W. Sunset Rd., Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendants
Keith Brill, M.D. and
Women's Health Assoc. of S. Nev.

Kristy Johnson

From: Heather S. Hall <hshall@mcbridehall.com> on behalf of Heather S. Hall
Sent: Tuesday, October 5, 2021 11:37 AM
To: Adam Breeden
Cc: Kristy Johnson; Yianna Reizakis; Robert McBride; Candace P. Cullina; Kristine Herpin
Subject: RE: Taylor v. Brill, M.D.- Plaintiff's MIL order

You may use my e-signature on this Order.

Thank you,

Heather S. Hall, Esq.
hshall@mcbridehall.com | www.mcbridehall.com
8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
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MCBRIDE HALL
ATTORNEYS AT LAW

NOTICE: THIS MESSAGE IS CONFIDENTIAL, INTENDED FOR THE NAMED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS (I) PROPRIETARY TO THE SENDER, AND/OR, (II) PRIVILEGED, CONFIDENTIAL, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE STATE AND FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, PRIVACY STANDARDS IMPOSED PURSUANT TO THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"). IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLY E-MAIL OR BY TELEPHONE AT (702) 792-5855, AND DESTROY THE ORIGINAL TRANSMISSION AND ITS ATTACHMENTS WITHOUT READING OR SAVING THEM TO DISK. THANK YOU.

From: Adam Breeden <adam@breedenandassociates.com>
Sent: Tuesday, October 5, 2021 9:29 AM
To: Heather S. Hall <hshall@mcbridehall.com>
Cc: Kristy Johnson <kristy@breedenandassociates.com>; Yianna Reizakis <mail@legalangel.com>; Robert McBride <rcmcbride@mcbridehall.com>; Candace P. Cullina <ccullina@mcbridehall.com>; Kristine Herpin <kherpin@mcbridehall.com>
Subject: Re: Taylor v. Brill, M.D.- Plaintiff's MIL order

Heather,

Please see the attached with your changes and send another "I approve" email. I have had orders kicked back if the approval email says "make changes and we approve" since the court has a hard time knowing if the changes were made.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Kimberly Taylor, Plaintiff(s) CASE NO: A-18-773472-C
7 vs. DEPT. NO. Department 3
8 Keith Brill, M.D., Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/7/2021

15 Adam Breeden	adam@breedenandassociates.com
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Natalie Jones	njones@mcbridehall.com

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 11th day of October, 2021, I served a copy of the foregoing legal
3 document **NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFF'S MOTIONS IN**
4 **LIMINE** via the method indicated below:

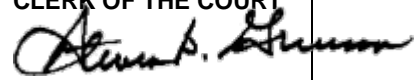
5

6 X	Pursuant to NRCP 5 and NEFCR 9, by electronically serving all counsel and e-mails registered to this matter on the Court's official service, Wiznet system.
7	Pursuant to NRCP 5, by placing a copy in the US mail, postage pre-paid to
8	the following counsel of record or parties in proper person:
9	Robert C. McBride, Esq.
10	Heather S. Hall, Esq.
11	McBRIDE HALL
12	8329 W. Sunset Road, Suite 260
13	Las Vegas, Nevada 89113
14	<i>Attorneys for Defendants Keith Brill, M.D. and</i> <i>Women's Health Associates of Southern Nevada</i>
15	Via receipt of copy (proof of service to follow)

16 An Attorney or Employee of the following firm:

17 /s/ Kristy Johnson

18 **BREEDEN & ASSOCIATES, PLLC**



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 KIMBERLY D. TAYLOR,
9 Plaintiff,

) CASE#: A-18-773472-C
)
) DEPT. III
)

10 vs.

11 KEITH BRILL, M.D., ET AL.,
12 Defendants.

13 BEFORE THE HONORABLE MONICA TRUJILLO
14 DISTRICT COURT JUDGE
TUESDAY, OCTOBER 12, 2021

15 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 3**

16
17 APPEARANCES:

18 For the Plaintiff:

ADAM J. BREEDEN, ESQ.

19 For the Defendants:

ROBERT C. MCBRIDE, ESQ.
HEATHER S. HALL, ESQ.

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25 RECORDED BY: DELORIS SCOTT, COURT RECORDER

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<u>FOR THE PLAINTIFF</u>	<u>MARKED</u>	<u>RECEIVED</u>
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None		
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<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
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None		
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<u>JOINT</u>	<u>MARKED</u>	<u>RECEIVED</u>
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Las Vegas, Nevada, Tuesday, October 12, 2021

[Case called at 12:32 p.m.]

[Outside the presence of the Jury]

THE MARSHAL: Please come to order. Courtroom 3 is now in session.

THE COURT: All right. We're on the record in case number A-18-773472-C, Kimberly Taylor v. Keith Brill, M.D. and Women's Health Associates of Southern Nevada - Martin PLLC. Counsel for both sides are present. We're outside the presence of the jury.

And to begin, we have a COVID issue. I know my law clerk sent you guys an email. Over the weekend, a juror tested positive for COVID. So now we have to individually question every juror and ask them without asking them if they've been vaccinated, and then follow the protocol thereafter.

So it's a little different than if they would have been experiencing symptoms here, because had it been here, we would have called UMC and done the testing on everyone.

So that being said, after we determine whether or not each juror can proceed, then I have to decide whether or not we can proceed with the alternates, I have a declare a mistrial, or suspend the proceedings. So --

MS. HALL: Oh, my goodness.

THE COURT: Yeah. So they're coming at 1. We still other issues to address that we can do so.

1 [Court and Clerk confer]

2 MS. ALBERTSON: Your Honor, can we ask a couple more
3 questions on that?

4 THE COURT: Yeah.

5 MS. ALBERTSON: Okay. So the testing -- Do you mind if I
6 stay seated?

7 THE COURT: Oh, no. Go ahead.

8 MS. ALBERTSON: So the testing is done how then? Of
9 every one of these people that are going to come in?

10 THE COURT: They're not going to do that. So that would
11 have been done if it happened while they were here. So now because it
12 happened over the weekend, and she got her own testing -- thank you --
13 and she got her own test -- she actually did two. She did an at home test
14 Saturday that was positive, then went to the pharmacy, did another one,
15 got the results today. We were going to send her to UMC today for a
16 faster result, but then they came in and they were positive.

17 MS. ALBERTSON: And this was one of the people that
18 actually got seated?

19 THE COURT: That got sworn in.

20 MS. ALBERTSON: Okay. So the procedure is -- next move is
21 all the jurors are going to get their own tests?

22 THE COURT: I have to question them. And so basically the
23 rules are if you have been fully vaccinated, which means 14 days after
24 Pfizer, Moderna second dose or 28 days after Johnson & Johnson, and
25 you've been in close contact, there's no quarantine requirement, but if

1 you haven't been vaccinated, there's a mandatory ten-day requirement.

2 MR. MCBRIDE: A mandatory how many day?

3 THE COURT: Ten day.

4 MR. MCBRIDE: Wow.

5 THE COURT: So --

6 MR. MCBRIDE: Okay.

7 THE COURT: Yeah. So --

8 MR. MCBRIDE: So then we could only lose --

9 MS. ALBERTSON: We could lose this jury --

10 MR. MCBRIDE: Yeah.

11 MS. ALBERTSON: -- if they haven't been vaccinated?

12 THE COURT: Yeah. So --

13 MS. ALBERTSON: But if everybody's been vaccinated --

14 THE COURT: But I can't directly --

15 MS. ALBERTSON: -- we're good to go?

16 THE COURT: I can't directly ask them, so I have to just say,
17 these are the rules. Can you -- knowing the rules, can you proceed? And
18 then we have to make a determination after that. And it has to be done
19 individually.

20 MR. MCBRIDE: Can you imagine if Mr. Grant had been
21 picked on this jury? He would have --

22 THE COURT: Oh, my gosh.

23 MS. ALBERTSON: His concerns actually seemed much more
24 worse than that.

25 MR. MCBRIDE: Yeah. Well, I think that's the reason why I

1 suggested we have like two extra -- or three jurors, you know. Yeah.

2 THE COURT: So -- and, obviously, I can't disclose who it
3 was --

4 MR. MCBRIDE: Sure.

5 THE COURT: -- to anybody. So --

6 MS. ALBERTSON: She's not going to be here though, right?

7 THE COURT: Yeah. So everyone's going to know.

8 MS. ALBERTSON: It will be obvious.

9 THE COURT: But either way, it seems like they were all there
10 together being sworn in. That's close in -- I mean it's technical six feet
11 for 15 minutes, but we were all here for two whole days.

12 MS. ALBERTSON: Yeah.

13 THE COURT: And then they were in the back together for a
14 while.

15 MS. ALBERTSON: And they sit next to each other out there
16 like --

17 THE COURT: So --

18 MS. ALBERTSON: -- as close as --

19 THE COURT: Yeah. Okay. So that's going to happen
20 starting at 1. And we'll just bring them in one by one. You know, I asked
21 for guidance on whether or not I should do it outside the presence of
22 counsel, and I think there has only happened twice. So judges have
23 done it different ways. I don't have a problem asking in front of counsel.
24 I mean, obviously, if they don't want to answer, then I'll probably take
25 them out in the hall or something since it's health information. But I'm

1 going to start off just bringing them one by one in here.

2 MS. ALBERTSON: Oh, you're going to bring them in
3 individually to --

4 THE COURT: Uh-huh.

5 MS. ALBERTSON: -- ask them -- oh. Okay.

6 THE COURT: Yes.

7 MS. ALBERTSON: So how long do you expect -- have you
8 done this already?

9 THE COURT: No.

10 MS. ALBERTSON: Okay. Had someone else done it? Do you
11 have any idea of what we can expect for time? Because are we pretty
12 much -- I mean are we getting to opening today?

13 THE COURT: I don't -- I mean it depends on what happens
14 and what the answers are.

15 MS. ALBERTSON: Okay. Thank you very much.

16 THE COURT: So I have no idea.

17 MR. MCBRIDE: Yeah, I guess my concern is these jurors, if
18 they find out someone tested positive, it's a way for them off this jury.

19 THE COURT: I know.

20 MR. MCBRIDE: That's the real -- but there's not much you
21 can do about it.

22 MR. BREEDEN: Well, more so it seems like if we have more
23 than two unvaccinated jurors, then also it's going to be a mistrial.

24 MR. MCBRIDE: Yeah.

25 MR. BREEDEN: Okay.

1 MR. MCBRIDE: Well, it's always fun; isn't it?

2 MS. HALL: I'm just so glad I've had no anxiety throughout
3 the last 18 months about this.

4 MR. MCBRIDE: Yeah.

5 MS. HALL: I was actually calm.

6 THE COURT: All right. So do you guys want to address the
7 trial briefs now or?

8 [Counsel confer]

9 MR. BREEDEN: Your Honor, I'm ready to proceed on
10 whether you -- whatever you think we should proceed on.

11 THE COURT: All right. Let's start with the trial briefs.

12 So you filed a trial brief on October 6, 2021, and then
13 Defendants filed a response to that trial brief. Mr. Breedon, anything
14 further from that?

15 MR. BREEDEN: Yeah, I don't really understand, Your Honor.
16 Are you treating that as it's -- as if it's some sort of motion?

17 THE COURT: Well, I mean you are saying -- if we're talking
18 about evidentiary objections and you're kind of previewing and asking
19 for my opinion, I mean I understand you're calling it a trial brief, but
20 you're also saying this is what you intend to do to which they're
21 responding.

22 MR. BREEDEN: Well --

23 THE COURT: So --

24 MR. BREEDEN: -- no. It's simply a trial brief. It's for your
25 reference if these things come up, so that I put applicable case law in

1 front of you. This is nothing really that was particular to this case. I just
2 file something to this effect in every case. And actually, when I looked at
3 it, I normally put in some of the case law on jury selection and sympathy
4 and things like that too, and for some reason it didn't get in here.
5 There's no reason it was left in or left out. But I just put some applicable
6 law in front of you. I wasn't seeking any ruling.

7 THE COURT: Well, it almost --

8 MR. BREEDEN: If you're going to --

9 THE COURT: -- seems like you're saying that you don't want
10 them to be able to object. So --

11 MR. BREEDEN: No.

12 THE COURT: -- is that --

13 MR. BREEDEN: No. That was not my intent.

14 THE COURT: Okay.

15 MR. BREEDEN: This --

16 THE COURT: All right.

17 MR. BREEDEN: This was not intended to be a motion. This
18 was just a --

19 THE COURT: Then --

20 MR. BREEDEN: -- trial brief.

21 THE COURT: -- when every -- then when the
22 contemporaneous objections occur, then I'll rule on them.

23 MR. BREEDEN: I would agree. That's perfect.

24 MS. HALL: And I think that makes sense for both the
25 opening statement issues that were raised in the trial brief and

1 responded to by the Defense as well as the medical bills. I think it may
2 be premature. And certainly Your Honor will want to see that -- their
3 expert today has not offered any opinion about the medical bills in this
4 case, and I don't believe that's testimony that's appropriate for a
5 layperson. It is an expert opinion. Once that has been made clear to the
6 Court, the Defense will be asking for a ruling on that issue, the medical
7 bills.

8 THE COURT: Okay.

9 MS. HALL: The one issue though, Your Honor, that's not in
10 the trial brief that I think we were still kind of holding in abeyance and
11 waiting to decide on was the discharge instructions from Henderson
12 Hospital.

13 THE COURT: Which I did review, and I think indicated in my
14 inclination was that the discharge instructions were different from the
15 informed consent. And just to be clear, the discharge instructions only
16 discuss the risk -- I don't have it in front of me -- but the risk of the
17 perforation of the uterus. It doesn't include the additional -- is it the
18 bladder or the small intestine?

19 MS. HALL: The bowel, that's correct.

20 THE COURT: Correct. Okay.

21 MS. HALL: There is a reference to internal -- injury to internal
22 organs, but nothing specific to bowel in that section, Your Honor.

23 THE COURT: Okay. So subject to a foundation objection or
24 any other appropriate evidentiary objection, I'll allow the discharge as
25 different from the informed consent.

1 MS. HALL: Thank you, Your Honor.

2 MR. BREEDEN: And that was just HH-15 I think was the Bates
3 on that.

4 THE COURT: It was HH-13 through 19, and you objected to
5 15.

6 MR. BREEDEN: Oh, Your Honor, I guess since we're waiting
7 another 20 minutes for the jury anyway, a couple of other kind of
8 housekeeping issues. I'm sorry. I forgot to mention this Friday, but
9 there was a discussion about peremptory challenges that occurred
10 during the sidebar. And I just want to make this clear for the record.

11 THE COURT: Uh-huh.

12 MR. BREEDEN: What happened was you had directed
13 challenges to be made in a -- in a manner that was a little unique or
14 unusual to me. I didn't fully understand, you know, what your desire
15 was when we began. But the way the challenges proceeded was it
16 became apparent that -- that there was a juror that we wanted to
17 exercise a peremptory challenge on, but if we exercised all of our
18 peremptory challenges on the regular panel first, then that juror would
19 have been switched from the alternate panel to the regular panel, and
20 we would have had no more challenges for the regular panel.

21 So we tried to strike that juror when he was still in the
22 alternate panel, and you said, no, you can't do that. We were only doing
23 regular at this time. So the way that it hashed out was strategically we
24 had to pass on one of our peremptory challenges so that that juror
25 would remain in the alternate pool so that we could strike him. And I do

1 think that denied us one of our peremptory challenges. That was
2 discussed on the record, and you indicated that we couldn't challenge in
3 that manner. I'm sorry. It was discussed at sidebar, and I just wanted to
4 put that on the record.

5 THE COURT: Okay.

6 MR. BREEDEN: The other issue -- and that was juror
7 Blanche, B-L-A-N-C-H-E. And the other issue was we've had a lot of
8 litigation over informed consent issues, and my understanding is that
9 your ruling -- and please stop me if I'm wrong -- the informed consent
10 form itself cannot be introduced into evidence --

11 THE COURT: Correct.

12 MR. BREEDEN: -- but counsel may ask the doctor and the
13 Plaintiff about what was told about risks prior to the procedure. And I
14 want to make sure that the discussions we've already had and the
15 motions in limine ruling, that it is not necessary for me to continuously
16 object when this evidence and argument comes in, that I've already put
17 objections on the record. Do you agree with that, or do you want me to
18 object contemporaneously?

19 THE COURT: Contemporaneously. You -- I mean for the
20 purposes of continued questioning, you don't, but at the time of the
21 witness, at least the first one object, and then we can stip -- have a --

22 MR. BREEDEN: Okay. So --

23 THE COURT: -- standing objection --

24 MR. BREEDEN: -- I --

25 THE COURT: -- during that testimony.

1 MR. BREEDEN: I will be objecting then. And part of the basis
2 for the objection will be an incorrect statement of the law or a misleading
3 statement of the law. I will make the objections on your direction.

4 THE COURT: Thank you. And then as far as the -- and I
5 believe I asked this at the time you guys were saying that there was an
6 issue with the peremptory challenges. I asked you specifically, well, how
7 do you do jury selection in other cases, because pursuant to NRS 16, you
8 have -- you're only entitled to four peremptories. And then under the
9 Nevada Rules of Civil Procedure with regard to selecting alternate jurors,
10 each side is entitled to one additional peremptory challenge for every
11 two alternates. That must be exercised against the alternate.

12 So I'm not sure what you're referencing when you're saying
13 it's done differently.

14 MR. BREEDEN: Well, all I can tell you is I -- is I was
15 unfamiliar with how you did that process. And you say that, well, so
16 many strikes for people in the panel and so many strikes for alternates.
17 Well, when -- because of the strikes, people move from the alternate
18 panel into the regular panel, it creates a scenario where that one
19 particular juror would have been unchallengeable had we exercised our
20 -- I believe it was our fourth peremptory challenge. That's all I wish to
21 note for the record.

22 THE COURT: Okay. Anything in response? All right.
23 Anything else?

24 On behalf of Plaintiff, do you guys intend to respond to the
25 objection to the trial subpoena on behalf of St. Rose Dominican?

1 MR. BREEDEN: Your Honor, I've not seen them -- oh, are you
2 talking about an objection that was filed last week?

3 THE COURT: Yes.

4 MR. BREEDEN: What I can tell you is we've subpoenaed a
5 witness to appear. My understanding is they're going to bring a witness.
6 They told me they thought they might file a motion to quash, but I
7 haven't seen anything filed, and here we are a day before this witness is
8 supposed to appear. So if there's some objections that need to be ruled
9 on tomorrow, I guess that would be the time, when this witness appears.

10 THE COURT: Okay. All right. If there's nothing else, then we
11 can go off the record until the jury gets back, and then we'll start calling
12 them in one by one. Do you just want to start with Number 1?

13 [Recess taken from 12:46 p.m. to 1:04 p.m.]

14 [Outside the presence of the jury]

15 THE CLERK: We're on record now.

16 THE COURT: All right. We're back on the record in A-18-
17 773472-C; Taylor v. Brill. Counsel for sides are present. We're outside
18 the presence the jury, and we're going to individually discuss the
19 positive COVID test of one of our jurors with each other juror, starting
20 with Number 1, Badge 309, Trisha Difuntorum.

21 [Pause]

22 THE MARSHAL: Ready, Judge?

23 THE COURT: Yes.

24 THE MARSHAL: All rise.

25 THE MARSHAL: Please be seated.

1 THE COURT: Thank you. Hi, Ms. Difuntorum. How are you
2 today?

3 JUROR NO. 1: I'm well. Thank you.

4 THE COURT: Okay. So I have to let you know some
5 information. And we had a juror test positive for COVID over the
6 weekend. So guidelines that we need to follow. And I need to inform
7 you of the rules and then ask you whether or not you're able to proceed.
8 Okay? So for -- she's -- the person's already been released to quarantine
9 for ten days, just to let you know that portion, but because you were in
10 close contact, I'm going to go over these rules.

11 So for any person who has been fully vaccinated. That
12 means 14 days after a Pfizer or Moderna second dose, or 28 days after
13 the Johnson & Johnson single dose, if you have been vaccinated, then
14 there's no quarantine requirement. If you have not been vaccinated, a
15 person has to have a ten-day quarantine unless the unvaccinated person
16 has tested positive for COVID in the last 90 days, and then no quarantine
17 is necessary.

18 So based on that disclosure -- I also have to tell you that if
19 the end vaccinated person tests negative five days after exposure, then
20 the quarantine period will be reduced to seven days.

21 So knowing those guidelines as disclosed by the Southern
22 Nevada Health District, can you continue, or do you need to quarantine?

23 JUROR NO. 1: I can continue. I've received my vaccine
24 already.

25 THE COURT: Okay. Thank you. And I'm going to ask that

1 you not speak about this with anybody else. We're calling everyone in
2 individually.

3 JUROR NO. 1: Okay.

4 THE COURT: Thank you.

5 JUROR NO. 1: Thank you.

6 THE MARSHAL: All rise. Next will be Don Meoli.

7 [Pause]

8 THE MARSHAL: Please be seated.

9 THE COURT: Hello, Mr. Meoli.

10 JUROR NO. 2: Good morning -- or afternoon.

11 THE COURT: So I have to disclose to you that one of our
12 jurors tested positive over the weekend for COVID. And so I have to
13 inform you basically of the guidelines. The juror's already been released
14 to do a ten-day quarantine. So because you were in close contact, I need
15 to inform you what the Southern Nevada Health District advises.

16 And they advise that for fully vaccinated persons, meaning
17 14 days after a Pfizer or Moderna second dose or 28 days after a
18 Johnson & Johnson single dose who have been in close contact, there is
19 no quarantine requirement unless you're symptomatic. And for
20 unvaccinated persons who have had close contact, there's a
21 recommended ten-day quarantine period unless the unvaccinated
22 person has tested positive for COVID in the last 90 days. Then no
23 quarantine period is required. However, if the unvaccinated person tests
24 negative five days after exposure, the quarantine period is reduced to
25 seven days.

1 So knowing those guidelines, are you able to continue with
2 your services or do you need to quarantine?

3 JUROR NO. 2: I'm okay. I'm vaccinated.

4 THE COURT: Okay. Thank you, Mr. Meoli. And I'm going to
5 ask that you not speak with anyone about this because we're going to
6 talk to everyone individually.

7 JUROR NO. 2: Sure.

8 THE COURT: Thank you.

9 THE MARSHAL: All rise. Next will be Nicholo Castro. Please
10 be seated.

11 THE COURT: Hello.

12 JUROR NO. 3: Hi.

13 THE COURT: So I would like to inform you that one of our
14 jurors tested positive for COVID over the weekend and that person has
15 already been released to do a 10-day quarantine. So I just wanted to
16 discuss with you the guidelines by the Southern Nevada Health District,
17 and then ask you a question thereafter, okay.

18 JUROR No. 3: Okay.

19 THE COURT: So the Health District recommends that for a
20 fully vaccinated person, meaning 14 days after a Pfizer or Moderna
21 second dose or 28 days after a single dose of Johnson & Johnson
22 vaccine who have been in close contact, there's no quarantine
23 requirement unless you're symptomatic. And for unvaccinated persons
24 who have been in close contact, there's a recommended 10-day
25 quarantine, unless the unvaccinated person has tested positive for

1 COVID in the last 90 days, then no quarantine is necessary. However, if
2 the unvaccinated person tests negative five days after exposure, the
3 quarantine period is reduced to seven days.

4 So based on those guidelines by the Health District, are you
5 able to continue with jury service, or do you need to quarantine based on
6 the guidelines?

7 JUROR NO. 3: I can continue.

8 THE COURT: Okay. Thank you. And then I'm going to ask
9 that you not discuss this with anyone else. Thank you.

10 JUROR NO. 3: All right.

11 THE MARSHAL: All rise. Next will be Nichole Keyes. Please
12 be seated.

13 THE COURT: Hi, Ms. Keyes.

14 JUROR NO. 4: Hi, good morning.

15 THE COURT: I have to inform you that a -- one of our jurors
16 tested positive for COVID over the weekend, and that person has already
17 been released to a 10-day quarantine. So I wanted to discuss with the
18 guidelines by the Southern Nevada Health District --

19 JUROR NO. 4: Okay.

20 THE COURT: -- and then ask you a question after that. For
21 fully vaccinated persons, meaning 14 days after a Pfizer or Moderna
22 second dose or 28 days after a single dose of Johnson & Johnson
23 vaccine, people who have been in close contact, don't need to
24 quarantine unless they're symptomatic of COVID. For unvaccinated
25 persons who have been in close contact, the Health District recommends

1 a 10-day quarantine, unless the unvaccinated person has tested positive
2 for COVID in the last 90 days. Additionally, if the unvaccinated person
3 tests negative five days after exposure, the quarantine period is reduced
4 to seven days.

5 So based on those guidelines, are you able to continue with
6 service or do you need to quarantine?

7 JUROR NO. 4: No, I'm able to continue with service.

8 THE COURT: Thank you, Ms. Keyes. And I'll ask that you not
9 speak about this with anyone else because we're questioning everyone
10 individually.

11 JUROR NO. 4: Of course.

12 THE COURT: Thank you.

13 JUROR NO. 4: You're welcome.

14 THE MARSHAL: All rise. Next will be Cecilia Caudle. Please
15 be seated.

16 THE COURT: Hi, Ms. Caudle. Over the weekend one of our
17 jurors tested positive for COVID, and that person has already been
18 released to do the 10-day quarantine. So I'm going to just advise you of
19 the guidelines by the Southern Nevada Health District and then ask you a
20 question.

21 The guidelines require that a vaccinated person, meaning 14
22 days after a Pfizer or Moderna second dose or 28 days after a single of
23 Johnson & Johnson vaccination who have been in close contact with
24 someone who's tested positive, there's no quarantine requirement
25 unless you're symptomatic of COVID. For unvaccinated persons who

1 have been in close contact, the Health District recommends a 10-day
2 quarantine period, unless you have tested positive for COVID in the last
3 90 days, then no quarantine is necessary. Additionally, if the
4 unvaccinated person tests negative five days after exposure, the
5 quarantine period is reduced to seven days.

6 So based on those guidelines as set forth by the Health
7 District, are you able to continue with service or do you need to
8 quarantine?

9 JUROR NO. 5: I can continue with service.

10 THE COURT: Okay. Thank you. And please don't speak
11 about this with any of the other jurors.

12 JUROR NO. 5: Okay.

13 THE COURT: Thank you.

14 THE MARSHAL: All rise. Next will be Trevor Prindiville.
15 Please be seated.

16 THE COURT: Hello, Mr. Prindiville.

17 JUROR NO. 6: Hi.

18 THE COURT: Over the weekend one of our jurors tested
19 positive for COVID and they've been released to do the 10-day
20 quarantine, so I'm going to advise you of the Southern Nevada Health
21 District recommendations, and they are as follows.

22 For a fully vaccinated person, meaning 14 days after a Pfizer
23 or Moderna second dose or 28 days after a Johnson & Johnson single
24 dose vaccine, any person who has been in close contact with someone
25 who tests positive for COVID does not need to quarantine, unless they're

1 symptomatic of COVID. For unvaccinated persons who have had close
2 contact, the Health District recommends 10-day quarantine, unless the
3 unvaccinated person has tested positive in the last 90 days, then no
4 quarantine is necessary. Furthermore, if the unvaccinated person tests
5 negative five days after exposure, the quarantine period is reduced to
6 seven days.

7 So based on those guidelines, are you able to continue with
8 service or do you need to quarantine?

9 JUROR NO. 6: I can continue.

10 THE COURT: Okay. Thank you so much. And please don't
11 speak about this with the other jurors.

12 THE MARSHAL: All rise. Next will be Ayman Lockhart.
13 Please be seated.

14 THE COURT: Hello, Mr. Lockhart.

15 JUROR NO. 7: Hello.

16 THE COURT: Over the weekend one of our jurors tested
17 positive for COVID, so they have been released to do a 10-day quarantine
18 and I'm going to advise you of the Southern Nevada Health District
19 guidelines, and they are as follows.

20 For a fully vaccinated person, meaning 14 days after a Pfizer
21 or Moderna second dose of the vaccine or 28 days after a single dose of
22 Johnson & Johnson vaccine, those who have been in close contact with
23 someone testing positive for COVID, does not need to quarantine for 10
24 days unless they have symptoms of COVID. For unvaccinated persons
25 who have had close contact, there's a recommended 10-day quarantine,

1 unless the unvaccinated person has tested positive for COVID within the
2 last 90 days, then no quarantine is necessary. If the unvaccinated person
3 tests negative five days after exposure, the quarantine period is reduced
4 to seven days.

5 So based on those guidelines, do you need to quarantine, or
6 can you continue with service?

7 JUROR NO. 7: I can continue.

8 THE COURT: Okay. Thank you, Mr. Lockhart. Please don't
9 talk about this with the other jurors.

10 THE MARSHAL: All rise. Next will be Tom Biggerstaff.
11 Please be seated.

12 THE COURT: Hi, Mr. Biggerstaff.

13 JUROR NO. 8: Hello.

14 THE COURT: Over the weekend one of our jurors tested
15 positive for COVID. And so, I have to disclose that to you, and they've
16 already been released to do their 10-day quarantine. So I wanted to
17 discuss the Southern Nevada Health District guidelines with you and
18 then I'm going to ask you a question after that.

19 For a fully vaccinated person, meaning 14 days after a Pfizer
20 or Moderna second dose or 28 days after a single dose of Johnson &
21 Johnson vaccine, anyone whose been in close contact within someone
22 who has tested positive for COVID, does not need to quarantine unless
23 they are symptomatic of COVID. For unvaccinated persons who have
24 had close contact, there's a 10-day quarantine requirement, unless the
25 unvaccinated person has tested positive for COVID within the last 90

1 days, then no quarantine is necessary. If the unvaccinated person tests
2 negative five days after exposure, the quarantine period is reduced to
3 seven days.

4 So based on those guidelines, can you continue with service,
5 or do you need to quarantine?

6 JUROR NO. 8: Continue the service.

7 THE COURT: Thank you, Mr. Biggerstaff. And please don't
8 speak about this with the other jurors.

9 THE MARSHAL: All rise. Next will be Samuel Martinez.
10 Please be seated.

11 THE COURT: Hi, Mr. Martinez.

12 JUROR NO. 9: Hello.

13 THE COURT: Over the weekend one of our jurors tested
14 positive for COVID so I have to disclose that information to you, and they
15 have been released to do their 10-day quarantine as required by the
16 Southern Nevada Health District. And then I want to discuss some
17 guidelines with you and then I'll ask you a question.

18 Some of the guidelines include for vaccinated persons,
19 meaning 14 days after a Pfizer or Moderna second dose of the vaccine or
20 28 days after a single dose of Johnson & Johnson vaccine, people who
21 have been in close contact within someone who has tested positive for
22 COVID, does not need to quarantine unless they are symptomatic of
23 COVID. For unvaccinated persons who have had close contact, the
24 Health District recommends 10-day quarantine, unless the unvaccinated
25 person has tested positive for COVID within the last 90 days, then no

1 quarantine period is necessary. If the unvaccinated person tests
2 negative five days after exposure, then the quarantine period is reduced
3 to seven days.

4 Based on those guidelines, can you continue with your
5 service, or do you need to quarantine?

6 JUROR NO. 9: No. I can continue.

7 THE COURT: Okay. Thank you so much, and please don't
8 speak about this with your fellow jurors.

9 THE MARSHAL: All rise. Next will be Vincent Rodriguez.
10 Please be seated.

11 THE COURT: Hi, Mr. Rodriguez.

12 JUROR NO. 10: Good afternoon.

13 THE COURT: Over the weekend one of our jurors tested
14 positive for COVID, so I have to disclose that information to you and
15 they've already been released to do the 10-day quarantine as required by
16 the Southern Nevada Health District. So I'm going to discuss a couple of
17 guidelines with you and then ask you a question.

18 For a fully vaccinated person, which means 14 days after a
19 Pfizer or Moderna second dose or 28 days after a single Johnson &
20 Johnson dose of the vaccine, those who have been in close contact
21 within someone who has tested positive for COVID, don't need to
22 quarantine unless they are symptomatic of COVID. For unvaccinated
23 persons who have been in close contact, the Health District recommends
24 a 10-day quarantine period, unless the unvaccinated person has tested
25 positive for COVID in the last 90 days, then no quarantine period is

1 necessary. If the unvaccinated person tests negative five days after
2 exposure, the quarantine period is reduced to seven days.

3 So based on those guidelines by the Health District, can you
4 continue with service, or do you need to quarantine?

5 JUROR NO. 10: Yes, I can continue. I'm fully vaccinated.

6 THE COURT: Okay. Thank you. And then I'm going to ask
7 that you not discuss it with your fellow jurors.

8 JUROR NO. 10: Absolutely.

9 THE COURT: And then I'll bring you back in shortly.

10 THE MARSHAL: All rise. And he was the last one, Judge.

11 THE COURT: Thank you.

12 THE MARSHAL: And the jury is clear of the courtroom.
13 Please be seated.

14 THE COURT: So everyone's good. I'm going to take a break
15 and call Jury Services just to update them and make sure that we can
16 still proceed and there's no other issues. But before I do that, they did
17 ask me, are we -- are parties okay with me releasing 518, Elizabeth
18 Martinez, who was an alternate juror, the person, obviously --

19 MR. BREEDEN: I can't imagine I could object to that.

20 THE COURT: I just want to make sure before I tell jury
21 services it's okay that counsel is saying the person who tested positive
22 can be released from service.

23 MS. HALL: Yes to the Defense.

24 THE COURT: Okay, great. And then so, Ray, can you tell
25 them -- just give them a 15-minute break. They can, you know, be back

1 in 15 minutes and then we'll start.

2 THE MARSHAL: Yes, Your Honor.

3 THE COURT: And then you guys -- did IT resolve the issue?

4 MS. HALL: Yes.

5 THE COURT: Okay. And then I'll be right back. I'm just
6 going to go make the call.

7 [Recess taken from 1:27 p.m. to 1:42 p.m.]

8 [Outside the presence of the jury]

9 THE COURT: All right. We're back on the record in case
10 number A-18-773472-C, Taylor v. Brill. Counsel for both sides are
11 present. We're outside the presence of the jury. And before we proceed,
12 I just want to confirm that neither side wants the complaint or answer
13 read, correct?

14 MR. BREEDEN: Correct from Plaintiff, Your Honor.

15 MS. HALL: Correct for Defense.

16 THE COURT: All right. Any other matters outside the
17 presence? We were okayed by Jury Services to proceed.

18 MS. HALL: Yes, Your Honor. Just one thing. Mr. Breeden
19 and I had discussed putting on the record that we have stipulated to the
20 admission of Joint Exhibit 5, which is the Henderson Hospital chart.

21 THE COURT: The Henderson Hospital chart?

22 MS. HALL: Yes, Your Honor.

23 THE COURT: All right. Is that correct, Mr. Breeden?

24 MR. BREEDEN: That's correct, Your Honor.

25 [Joint Exhibit 5 admitted into evidence]

1 THE COURT: And anything else outside the presence?

2 MR. BREEDEN: Nothing from Plaintiff.

3 MS. HALL: Nothing from Defense.

4 THE COURT: All right. Are they ready, Ray?

5 THE MARSHAL: Yes, Your Honor.

6 THE COURT: All right. We can bring them in.

7 THE MARSHAL: All rise for the jury.

8 [Jury in at 1:45 p.m.]

9 THE MARSHAL: The jury is all present, Your Honor.

10 THE COURT: Thank you. You may be seated. Welcome
11 back and sorry for the slight delay. And now we're going to begin with
12 some preliminary instructions.

13 So what I will say to you now will intend to serve as an
14 introduction of the trial of this case. It's not a substitute for the detailed
15 instructions that I will give you at the close of this case when you retire
16 to deliberate your verdict with each other.

17 This case is a case based upon a complaint filed by the
18 Plaintiff in a civil action to which the Defendant has responded and
19 which we call an answer. You have no way of knowing the facts of this
20 case and what will be presented to you during this trial. No juror may
21 discuss with any other juror any facts relating to this case from his or her
22 own personal knowledge.

23 If you discover at any time during this trial or after the jury
24 has retired that you or any other juror has a personal knowledge of the
25 facts of this case, you must disclose that to me through Officer Enriquez.

1 Excuse me. This means that if, during the course of your trial, you
2 realize that you're acquainted either the facts or any of the witnesses that
3 end up coming up that you didn't recognize by name, but you recognize
4 by viewing them, that you have to disclose those facts to us.

5 And I have already told you this before, but I just want to
6 remind you that parties are not allowed to speak with you outside of
7 what happens in the courtroom. And again, this is not meant as any
8 disrespect. It's just to ensure that everything is fair and that no one is
9 being told anything improperly. Any information that you seek or
10 questions that you have, you will talk to Officer Enriquez.

11 While you're in the courthouse, please always be sure to
12 wear your badge, and as also ask that you wear it if you're going to eat
13 at the local spots around here just so any attorneys who are there or any
14 witnesses who may be there know that you're a juror in an active case.
15 During the breaks during the day, when you're in the elevators and when
16 you're walking around the hall, again, people need to be able to readily
17 identify you as jurors in this case. And a lot of times, people start talking
18 about the case if they don't know that you're a prospective juror or that
19 you're a juror in the current trial, and then inadvertently, people find out
20 information which we don't want to happen.

21 I already mentioned the fact of recognizing witnesses. As far
22 as researching the case, and you notice that I've been reading the
23 admonishment before any breaks, and I will continue to read that on
24 every break because as jurors, it's your duty to listen to the evidence as
25 presented in this courtroom solely. You're not to investigate anything on

1 your own, whether that be related to legal research or personal
2 information about any witnesses who may be presented to you, or any
3 other question or facts related to this case. You're also not to speak with
4 each other or anyone else outside of this case, even people at home,
5 about anything related to this case until your service is concluded.
6 Obviously, I know that a lot of times loved ones want to know, hey, what
7 are you doing, what's happening in the case? It's not appropriate to talk
8 about the facts of this case until it's time for you to speak about it with
9 your fellow jurors back in the deliberation room.

10 I think I've mentioned this before, but just to reiterate, as far
11 as objections, it is part of counsels' duty to object on behalf of their
12 clients, and sometimes, you know, it may seem that it's either weird to
13 you or there's something you want to know about it. But anything we
14 discuss -- legal issues -- has to be outside of your presence. So you'll
15 notice that when they object, they'll come up here and talk to me about it
16 because it's legal issues that really, you don't need to be concerned
17 about. You just need to be concerned about the ruling. So please don't
18 hold it against them for doing their job and objecting.

19 As jurors in this case, you are able to ask questions. Now,
20 it's the primary responsibility of the attorneys to question the witnesses
21 in this case, so obviously, that's their job, and they have reasons that
22 they ask certain questions. But once a witness is up here, after
23 cross-examination, if you have questions, I will ask you to raise your
24 hand, and you will write down your Badge Number, your last name, and
25 the question, and then my marshal will get it from you. We'll come up to

1 the bench, and we'll talk about whether or not the question is
2 appropriate based on the rules of evidence, and then it can be asked to
3 the witnesses.

4 I think he gave you your -- I can't see all the -- oh, there you
5 go. He gave you the notepads, so you're able to take notes throughout
6 the whole trial, but please don't let notetaking distract you from actually
7 listening to the evidence as it's presented to you. And make sure that
8 when you do go back and deliberate, you consider your own notes and
9 your recollection of the testimony rather than considering other people's
10 notes.

11 I think I've already addressed this, too, taking breaks. If at
12 any time, you need to take a break, you can see, obviously, just raise
13 your hand. My marshal will come over and we'll all take a break,
14 whether that's 10 or 15 minutes. Just a reminder, though, that we all
15 have to take it together. I can't let one person go.

16 All right. So as far as procedure, the case is going to proceed
17 in the following manner. The Plaintiff is going to have the opportunity to
18 make an opening statement for his or her case. After the Plaintiff goes
19 with an opening statement, the Defense has a right to make an opening
20 statement if they so choose. Opening statements are basically an
21 overview of the case as told by the attorneys. And after -- the attorneys
22 are not witnesses. They're not talking about -- excuse me. They're not
23 talking about -- they're talking about witnesses and facts that they see in
24 controversy. Again, it's just an overview of the evidence as they see it.

25 After opening statements, Plaintiffs will then introduce

1 evidence and call witnesses. And at the conclusion of that evidence, the
2 Defense has the right, if they so choose, to also present evidence and
3 witnesses as testimony. Then finally, Plaintiff has the right to call
4 rebuttal witnesses since it's their case.

5 At the conclusion of the evidence, I will read you some
6 instructions on the law which you're obligated to follow. Regardless of
7 any opinion that you may have about the law, you're obligated to follow
8 my instructions. After instructions are read to you, we'll proceed with
9 closing arguments. And at that time, it will be the turn for the attorneys,
10 Plaintiff first, then Defendant, then Plaintiff again, to basically wrap up
11 the case for you, explain their arguments in light of the evidence that
12 they've already presented to you. And after that, you will retire to select
13 the foreperson, and then you will begin deliberations in the back.

14 There are two types of evidence that you will consider.
15 There are -- there's direct evidence and circumstantial evidence. You will
16 consider them just as if there's any other evidence in the case. An
17 example of direct evidence is you walk outside, and it's raining, so you
18 know it's raining. An example of circumstantial evidence is you go to
19 bed at night; it's clear, it's dry. You wake up in the morning -- excuse
20 me -- you wake up in the morning and the floor is wet, the ground it wet.
21 So you know it was raining. I'm sorry, I'm having a hard time breathing
22 with this mask. So that's circumstantial evidence that it rained. There's
23 also deposition testimony. Deposition is an examination of the witness
24 at a prior date under oath with the attorneys present where testimony
25 was taken down in a written format.

1 I also want to remind you, and I think I addressed this
2 already, you saw me during jury selection taking notes. Please don't any
3 consideration as to the notes that I take. I'm simply taking notes so that I
4 am under -- I understand what's being presented, and I'm able to
5 respond to any appropriate objections. So don't give any weight to
6 anything I'm taking notes. I'm also at times responding to stuff related
7 to other cases and what's happening outside the courtroom.

8 All right. I'm going to remind you, finally, again, because it's
9 very important, that until this case is submitted to you, do not talk with
10 each other about the case or anything that has to do with it until you
11 retire to the jury room to deliberate. Don't let anyone else talk to you
12 about the case, and if anybody does attempt to talk to you about the
13 case, please notify our marshal. And again, you might have to tell your
14 significant other or boss that you have been ordered not to speak about
15 the case outside of the jury deliberation room. Finally, you're not to
16 make up your mind until you go back there and deliver your verdict.

17 We do have time at the end of trial, and I'll instruct this to
18 you as part of the instructions, we have, as you know, and I told you
19 before, our recorder is taking down everything that's being said. So you
20 do have the ability -- if you have any questions about testimony that was
21 presented, we have a limited ability to review what was said, and we will
22 bring you back in together to go over that evidence with counsel for both
23 sides present.

24 All right. Does any party wish to invoke the exclusionary
25 rule?

1 MR. BREEDEN: I'm not exactly sure. There's no one in the
2 courtroom at this time.

3 THE COURT: Okay. I'm just checking.

4 MS. HALL: And on behalf of the Defense, we would like to
5 invoke the exclusionary rule, Your Honor.

6 THE COURT: Okay. If anyone is in here that has been
7 noticed as a witness or intends to testify at this trial, then I'm going to
8 ask that you leave the courtroom.

9 And not seeing anybody. All right. We will proceed with
10 opening statements on behalf of Plaintiff. Do you wish to give an
11 opening statement?

12 MR. BREEDEN: Yes, Your Honor. I'm ready. Ready to
13 proceed, Your Honor?

14 THE COURT: Yes, go ahead.

15 MR. BREEDEN: Thank you, Your Honor.

16 PLAINTIFF'S OPENING STATEMENT

17 MR. BREEDEN: Good afternoon, members of the jury. What
18 brings us to the Clark County Regional Justice Center this afternoon is a
19 terrible injury to my client, Kimberly Taylor, which occurred on April 26th
20 of 2017, during a medical procedure called a hysteroscopy and fibroid
21 tumor resection. Now, I'm going to be using some medical terms here
22 during opening statement. Just a moment. Kirstin?

23 MS. JOHNSON: I'm trying.

24 MR. BREEDEN: Give me the next slide.

25 MS. JOHNSON: Sure.

1 MR. BREEDEN: I'm going to be using some medical terms
2 during this opening statement. And for now, I don't want you to worry
3 too much about what they mean because I'm going to go back and
4 explain them to you, and I'm going to show you more pictures. But for
5 right now, all I need you to know is that during this procedure, an
6 instrument called a resectoscope is inserted into a woman's body, and it
7 has a cutting tip. And during the procedure, that cutting tip is inserted
8 into the woman's uterus and it's activated and used to cut at polyps or
9 fibroid tumors that are within the uterus.

10 Now there are a few rules for this procedure that the doctor
11 has to follow. I'm going to go over them now. First, the physician must
12 be able to see what he or she is cutting before they begin to cut.
13 Second, if the physician does not know where he or she is cutting or
14 cannot see within the uterus or the body, the physician shouldn't be
15 cutting at all. And third, excessive cutting and excessive force must be
16 avoided during the surgery to prevent holes or perforations to the uterus
17 and other organs.

18 Now, during this trial, we're going to prove to you that Dr.
19 Brill, the Defendant, failed to abide by these safety rules. And as a result,
20 during the procedure, he put the instrument -- he either burnt through or
21 pushed through the uterus and all the way into Kim's small intestine,
22 where he caused another hole or perforation. And as a result, body
23 fluids from inside Kim's intestine began to flow out on the inside of her
24 body. These are digestive juices, bile, bodily fluids, liquid stool and
25 bowel. And she began to acquire an extremely bad infection.

1 Now, Kim woke up from the procedure, she was under
2 complete anesthesia while it was going on, and Dr. Brill did not tell her
3 that he had caused a perforation during the procedure. So although she
4 was in intense pain in the recovery room, she didn't understand why
5 initially. Instead of spending about an hour in the recovery room, Kim
6 was in such intense pain and discomfort that she spent around seven
7 and a half hours in the hospital recovery room. She was in such intense
8 pain that the medical nurse there in charge of her at that time didn't
9 know there was a perforation either, so he just kept giving her pain
10 drugs. He gave her powerful pain drugs like fentanyl, Dilaudid, Percocet.
11 And eventually, after those seven and a half hours, full of pain
12 medication, they released her home.

13 Around six hours after that, Kim was feeling so bad, she tried
14 to reach out and speak to Dr. Brill. He was unavailable. So she did the
15 only other thing she could do, she called 911, and she went to the
16 emergency room. At the emergency room, they were not aware there
17 were perforations inside Kim either, and they didn't understand how
18 serious her condition was. They gave her more pain medication, and
19 they released her at 3:00 a.m. in the morning. Kim had an acquaintance
20 from work take her home at that time. And around six hours after that,
21 her pain was so intense, she had to call 911 again and go back to the
22 same hospital emergency room, where this time a different doctor saw
23 her and diagnosed that she had a very serious condition, and she needed
24 to go undergo emergency surgery.

25 So Kim was taken into surgery. She was operated on, and

1 the doctor found a one-centimeter perforation in her uterus and a
2 perforation that appeared to the surgeon to be as large as three
3 centimeters in her intestine. And literally, infection and fluid had to be
4 washed out of her body during that procedure. Kim had to spend -- to
5 repair the perforation in the intestine, a seven-centimeter portion of
6 Kim's small intestine had to be cut out and then the two ends were
7 pushed back together and sewn together so she would have a
8 functioning digestive system.

9 Kim had to spend a total of nine days in the hospital because
10 of this, and she'll tell you all the pain and the discomfort of the
11 perforations and the bowel resection surgery. She had to do 30 days of
12 home antibiotics afterward, and to this day she occasionally feels some
13 discomfort with bowel movements. So this is why we're here today at
14 the Regional Justice Center today; Kimberly Taylor is looking for justice.

15 Now, at this point, I'm going to take a step back, and I'm
16 going to sort of explain to you where we are in this trial. As the Judge
17 just explained to you, what I'm doing right now is called opening
18 statements. This is an opportunity for the attorneys to get up and
19 explain to you as the jury the evidence and the witnesses that they
20 intend to present to you during this trial.

21 Now, the Judge did talk about your juror notebooks. These
22 are very important. You can take as many or as few notes as you wish,
23 but I will warn you just from my past experience with this, that we're
24 expected to go about a week in this trial. And sometimes after a week,
25 people forget their impressions and what they found important about

1 some of the witnesses. So I would encourage you to take notes so you
2 can recall that when we come back and finish this trial next week.

3 Also, as the Judge informed you, you actually have the
4 opportunity after witnesses are done testifying to write down questions
5 and then if the judge sees those questions as appropriate, she will ask
6 them to the witness for you. So you have an opportunity to actively
7 participate in questions that are asked of witnesses.

8 Now, it is also traditional during opening statements for the
9 attorneys to introduce themselves and the folks in the courtroom. So I
10 know that you met me before during jury selection, but once again, my
11 name is Adam Breeden. I am an attorney that represents people that
12 have been injured in medical malpractice and other incidents. Over here
13 at the table on the end in the black mask is my client, Kimberly Taylor.
14 She's the plaintiff in this case, the person who was injured and the
15 person who filed this lawsuit.

16 To her right or your left as you're looking at her is Kristy
17 Johnson. Kristy is a certified paralegal from my office, and she helps us
18 with some of these technical issues and other things in court. And then
19 in red is Anna Albertson. Anna is another attorney associated with my
20 office, and she'll be helping us present this trial and present some of the
21 evidence to you.

22 You've already met the deputy marshal and the judge has
23 introduced herself and her staff so I'm not going to do that again.

24 Over at this table, Defendant Dr. Brill, is at the end and his
25 counsel is also present. I will let them introduce themselves during their

1 opening statements.

2 But for now, I want to go back to some of the medical terms
3 that you're going to hear in this trial. I told you that I would try to
4 explain them to you so that the evidence you're about to hear makes a
5 little more sense. So there's a few terms I want to introduce to you that
6 have to do with women's health.

7 The first term is menorrhagia. You're going to hear that Kim
8 suffered from menorrhagia for several years. That is simply abnormally
9 heavy menstrual bleeding in a woman. Okay.

10 You're going to hear the term retroverted uterus. We have a
11 simple diagram up there on the left as to what a normal uterus in a
12 woman looks like versus a retroverted uterus. A normal uterus inside
13 the body tilts a little forward towards the belly button whereas a
14 retroverted uterus leans a little further back towards the spine.

15 You're also going to hear the term bicornuate uterus. And
16 this is a simple model of the uterus on the screen here now on the right-
17 hand side and the image to the left is what we would call a typical or
18 normal uterus. It has a T type of shape. And on the right you're going to
19 see an example of what a bicornuate uterus might look like. A
20 bicornuate uterus is shaped more like a heart and has sort of two
21 separate chambers. And this area here in the middle, they refer to as a
22 septum. And it's the septum that divides the two chambers.

23 Now, critical to your understanding of this case is something
24 called the Symphon RF resection device. Now, I want to tell you what
25 all that means. So Symphon is just the manufacturer of the device,

1 okay. You know, you like have a Ford automobile or a Caterpillar heavy
2 equipment. Symphion is just the manufacturer. RF means radio
3 frequency and that means that it is generating heat from electricity that
4 is applied to the instrument. And when I say resection device, you might
5 also hear me refer to this as a resectoscope. Resection is just a fancy
6 medical term for cutting. Okay. So if you say resecting or cutting, it
7 means the same thing. And I have a video here that's going to show you
8 sort of how the Symphion system works to resect or cut away tumors
9 inside a woman's uterus and what sort of the doctor sees while he's
10 performing this procedure. If I could direct your attention.

11 [Whereupon, a video was played in open court from 2:08 p.m. to
12 2:10 p.m., and not transcribed]

13 MR. BREEDEN: This is actual resection of a tumor going on
14 right now on the video.

15 MR. BREEDEN: I'm going to stop the video at this time
16 because the rest doesn't really concern the part of the procedure that
17 Kim's injury occurred during. But it is important that you understand
18 exactly what this Symphion resectoscope looks like and what it does. So
19 we actually have an exemplar of the kind of resectoscope that was used
20 on Kim, and I'm going to approach a little closer than I normally might,
21 and I want to explain to you how this is used during a procedure.

22 So the doctor is going to be seated during the procedure and
23 the patient is going to be in front of him on an operating table, again
24 under total anesthesia. An instrument called an endoscope is inserted
25 through the vagina, into the uterus. The endoscope is actually a very

1 long, hollow tube that other instruments can fit through. And it has a
2 camera and a light on the end of it. And what happens is then the
3 resectoscope is slid through the endoscope such that only the tip of the
4 resectoscope comes out of the end. And that's what the doctor is
5 looking at with the camera and the light when he is using the
6 resectoscope.

7 So this resectoscope has a number of features on it that are
8 important to your understanding of the case. The first is a safety feature
9 that has a blunt tip. In other words, it's hard to cause perforations with a
10 blunt tip. Some other models have prongs on the end and a little wire
11 loop and it's easier to cause perforations, but the very design of this
12 resectoscope makes it more difficult to cause the type of injury that
13 happened in this case.

14 Another feature you might notice is it has a resecting
15 window as opposed to some sort of mechanical blade on the end as if
16 this instrument maybe had a razor blade that if you touched it, that it
17 would cut you. This instrument doesn't have anything like that. I can
18 touch it. I can run my hand along it, and it's not going to hurt me at all
19 because it's not energized; it doesn't cut unless the doctor uses a yellow
20 pedal with his foot and that sends electricity to the instrument and that's
21 what causes it to cut as you saw in the video illustration.

22 Now, during this lawsuit our office consulted with an expert
23 OB/GYN physician, a Dr. David Berke, and he'll testify during this action.
24 And Dr. Berke is a doctor that does reviews for the Osteopathic Medical
25 Board of California, and he's done them for a hospital in the past. And

1 he reviews the work of other OB/GYNS to determine whether they fell
2 below the standard of care. And that's sort of the legal term for whether
3 the doctor made an error that they shouldn't have. And I want to show
4 you some additional illustrations so that you understand what Dr. Berke
5 is going to tell you happened during this procedure and how Kimberly
6 Taylor got injured.

7 So this is for hysteroscopy and fibroid resection procedure.
8 The first slide is just going to be a general illustration of the uterus. As
9 you can tell, this shows what we call the bicornuate uterus with two
10 chambers and a septum in the middle. And here you can see there's a
11 fibroid tumor shown, and the idea of the procedure is that the
12 resectoscope will be placed over that fibroid, and it will be cut away at to
13 reduce it in the hope that this helps stop the menorrhagia or the painful
14 bleeding and the menstrual cycles of the patient.

15 Here we see a sagittal view of the same thing. Sagittal view
16 just basically means from the side. So this is as if the patient is laying
17 down. And you can see this instrument here is called a speculum. It's
18 inserted so that it gives the physician more room to work.

19 Here we see an example of the endoscope being inserted.
20 So there's a camera on the tip here and a light so that the physician can
21 see what they're doing inside the uterus. And by the way, just for some
22 of the anatomy here, so this patient is laying down. This is the patient's
23 tailbone down here and their spine. This would be their bladder here
24 and here -- this is the uterus. It's quite thick with the tissue and then we
25 have the intestines here that are on the other side. And these star-like

1 things, this is just a cross-section so this is what it would look like if you
2 did a cross-section and the intestines were open, and you could see
3 inside them like you were looking down into them.

4 And so on the next slide, we see that the resectoscope has
5 been inserted through the endoscope. So there's the tip of the
6 resectoscope there and uterine tissue is beginning to cut. And we see
7 attempted resection of the fibroid tumor. Now, there's a resection
8 window on the resectoscope and that's where you need to place
9 whatever you intend to be cutting.

10 Now, Dr. Berke will explain to you that during the procedure,
11 one way or another, Dr. Brill went too far. And there's some dispute
12 between the experts whether Dr. Brill actually cut too far with the
13 resecting window or whether he just mechanically pushed the end of the
14 resectoscope too far. But it's undisputed that he caused a perforation in
15 the uterus; in other words, a hole. He put the instrument right through
16 the uterus.

17 On the other side of the uterus, of course, is a small bowel.
18 And unfortunately, the instrument went so far or there was such burning
19 with the instrument that it caused a large perforation in the small bowel
20 as well, and you see that here.

21 And finally, because of that perforation of the small intestine,
22 enteric contents began to leak into Kim's abdomen. Enteric just means
23 of the intestines. So if you think about the types of fluids that are in your
24 intestines that are going to leak out, those are digestive fluids, body
25 fluids, water, and liquid stool and feces. And because of that, Kim

1 acquired a massive infection and extreme pain very quickly.

2 Now, we're going to present several witnesses to you during
3 the trial. I'm going to explain to you very briefly who you can expect to
4 hear from and what they might testify to. One of the first witnesses, and
5 it might be tomorrow before my client Kim takes the stand, but Kim is
6 going to testify. She'll testify that she was approximately 46 years old
7 when she had this procedure. Dr. Brill had been her OB/GYN doctor for
8 about two years before the procedure.

9 Kim had a long history of menorrhagia, that heavy menstrual
10 bleeding, and she'll explain to you some of the challenges she went
11 through with work and home life because of that. And she had tried
12 some different things like changing birth control pills to control that, but
13 ultimately, it was decided that she would try this procedure with Dr. Brill,
14 which was hysteroscopy with fibroid tumor resection and a
15 hydrothermal ablation. And she'll explain to you that everything
16 seemed to go well the day of the surgery, but when she woke up from
17 anesthesia, she was in the recovery room. She was in tremendous ten-
18 out-of-ten pain. It felt like her insides were a wet towel that someone
19 was trying to wring out to get dry.

20 And she met with Dr. Brill. She recalls speaking with Dr. Brill
21 and she was simply told that he couldn't complete the procedure. Dr.
22 Brill didn't tell her at that time that he had actually injured her during the
23 procedure and caused a perforation. He merely said we couldn't
24 continue, and I'll have to follow-up with you in my office. So he actually
25 left that day to tend to other patients rather than Kim.

1 So Kim was supposed to be out of that recovery room in the
2 hospital in about an hour. And instead she was in excruciating pain and
3 received serious pain medication drugs over the next seven-and-a-half
4 hours. As I explained to you earlier, she went then -- was discharged
5 and sent home. She had to return to another hospital by ambulance to
6 the emergency room where she was again discharged and sent home.
7 And then back again to the same emergency room and hospital. This
8 time, that would be the third visit she had had in roughly 24 to 48 hours.
9 And that's when they correctly diagnosed her with these serious
10 perforations, and she had to undergo bowel resection surgery.

11 You're going to hear -- and I believe these are the first
12 witnesses that are going to be called this afternoon that you're going to
13 hear from. You're going to hear from Barbara and Clyde Olson. Barbara
14 is Kim's mother and Clyde is Kim's stepfather. And they're going to
15 explain to you the extreme pain and distress that they saw Kim in during
16 this fiasco where she tried to figure out what was wrong with her and get
17 better. But perhaps one of the main reasons they're being called is that
18 earlier in this case, Dr. Brill testified at something called a deposition that
19 he did not advise Kim that she had a perforation and that he had injured
20 her because he was concerned that when patients come out of
21 anesthesia, they may be groggy and not remember things.

22 So he indicated under sworn deposition testimony, that he
23 had told Kim's mother, Barbara, that Kim had this perforation. So we're
24 going to call Barbara and her husband, Clyde. They're going to tell you
25 they were in the hospital that day and that never happened. Not only did

1 Dr. Brill not tell them that Kim had a serious perforation, they're going to
2 tell you they never met with or spoke with Dr. Brill and the first time
3 they're ever going to see Dr. Brill is when we call him in here on the
4 courtroom, and they're looking at him across the table.

5 You're going to hear from Dr. Elizabeth Hamilton tomorrow
6 morning. She's the doctor that performed the emergency surgery on
7 Kim. She's going to testify that she's a general surgeon. She was
8 working at St. Rose Hospital when Kim's case came in through the
9 emergency room, and surgery was urgently needed. It was an
10 exploratory surgery just to figure out what had gone wrong, and during
11 that surgery she discovered the one-centimeter perforation in Kim's
12 uterus. And then she discovered a perforation in the small intestine that
13 was leaking contents into the abdomen and causing serious infection
14 that she estimated as three centimeters long initially.

15 And she's going to tell you that she had to fix that by literally
16 washing out the abdomen and the infection and then removing a seven-
17 centimeter portion of Kim's small intestine and then pushing the ends
18 back together after the bad part is removed and sewing them together.
19 And she's going to tell you about Kim's recovery time of nine days in the
20 hospital.

21 You're going to hear from Dr. Yeh briefly. Dr. Yeh is an
22 anesthesiologist. He was the anesthesiologist that put Kim under for her
23 original hysteroscopy procedure. Dr. Yeh frequently works with Mr. Brill.
24 He'll testify that, as an anesthesiologist, it's important for him to know if
25 there are injuries or complications during the procedure, because he's

1 responsible for the patient afterward when they're recovering from
2 anesthesia. And he's going to tell you that neither in his records nor in
3 his personal recollection did Dr. Brill say anything to him about injuring
4 Kim during the procedure and causing a perforation.

5 You're going to hear from Nurse Bruce Hutchins. Nurse
6 Hutchins is the anesthesia recovery unit nurse where Kim was at
7 Henderson Hospital as she was recovering from the hysterectomy
8 procedure. He will tell you that he was not advised that Kim sustained
9 an injury or a perforation during the procedure. He will tell you that he
10 did not know why she was having such severe pain. He merely tried to
11 treat that as best as he could with multiple doses of very powerful pain
12 medications. He's also going to say that his records reflect that, per the
13 surgeon, Dr. Brill, there were no complications during the procedure.
14 And we will show you that that is untrue from Dr. Brill.

15 Lastly, you will hear from Dr. Berke. Dr. Berke is an expert
16 OB/GYN physician that we have retained for this case. And he's going to
17 explain to you the medicine and the anatomy behind everything. And
18 we asked Dr. Berke to review this case and tell us Dr. Berke, did Dr. Brill
19 really make an error during this surgery? Did he violate the standard of
20 care or is this something that was unavoidable?

21 And you'll hear Dr. Berke explain that, indeed, Dr. Brill fell
22 beneath the standard of care for this procedure, that he failed to properly
23 use the resection device. He failed to properly identify the body part
24 upon which he was operating. Dr. Brill failed to immediately terminate
25 the procedure after noticing the perforation, which is the standard of

1 care. He'll testify to you that Dr. Brill failed to properly diagnose the
2 intestinal perforation, and he failed to do that because he failed to
3 laparoscopically explore the other side of the uterus to determine
4 whether he had caused additional injury. And he's also going to testify
5 to you that Dr. Brill failed to meet the standard of care when he failed to
6 advise Kim and other medical providers that she had this perforation and
7 that she may need additional care.

8 Now during this trial, many of the Plaintiff's witnesses are
9 going to tell a common tale. Everyone is going to testify Kim sustained a
10 serious perforation in this injury to her uterus and her small intestine.
11 Witnesses are going to tell you that, without question, Dr. Brill caused
12 those injuries during this procedure. They're going to tell you that Dr.
13 Brill told no one of the injuries, not Kim, not her parents or any other
14 medical professionals. They're going to tell you that Kim was subjected
15 to extreme pain, vomiting, sweating, difficulty standing, walking. She's
16 going to tell you she had double vision.

17 She's going to tell you about all the pain that she had just
18 with simple bowel movements and the bowel resection surgery that she
19 had to go through, and even the home intravenous medication she had
20 to do for 30 days after she was released from the hospital, so that she
21 didn't get a recurrence of her serious infection. And she's going to tell
22 you all about -- pardon me. She's going to tell you all about the seven
23 centimeter portion of her bowel that had to be removed, so that she
24 could have a functioning digestive system again.

25 So what will Dr. Brill say about this? Well, Dr. Brill was

1 deposed earlier in this case. So we generally know what he's prepared
2 to say. He's going to tell you that the procedure started out normally.
3 And then when he went to do the fibroid tumor resection, he could not
4 visually locate the tumor. So he made a very fateful decision. He started
5 to simply cut at the white tissue he believed was the septum of the
6 uterus in an attempt to find the tumor. And we know that, one way or
7 another, he went with that instrument all the way through the uterus and
8 into the small intestine. And he's going to tell you that he actually
9 observed the uterus perforation while he was performing the surgery
10 just after he'd finished using that yellow pedal to do the cutting.

11 Dr. Brill is going to admit all sorts of facts in this case. He's
12 going to admit he knew he perforated the uterus. He saw it during the
13 procedure. He's going to admit he failed to find any intestinal injury,
14 because he didn't look beyond the uterus for any other organs that he
15 may have injured. He's going to admit he did not tell Kim of the injury,
16 that she had a perforation. He's going to say that he told Kim's mother,
17 Barbara. You're going to hear from Barbara in about an hour, and she's
18 going to tell you that that is not true.

19 He's going to admit he never followed-up with Kim later that
20 day to check in on her. Not even a nurse or other staff from his office
21 contacted her to follow-up on how she was doing in light of this
22 perforation. And he will not contest the reasonableness of any of the
23 care Kim received afterward. You know, the bowel resection surgery, all
24 the time she had to spend in the hospital, all the emergency room visits,
25 and the ambulances that had to come and get Kim.

1 So what is Dr. Brill going to say about this? Why are we
2 having this trial? Well, Dr. Brill is just going to tell you he doesn't think
3 he did anything wrong, so you shouldn't hold him responsible. He's
4 going to tell you that this is just a risk of surgery. And since he deems it
5 a risk of surgery, he doesn't think he should have to make this right.

6 Now I'm coming to the end of my opening statement. I want
7 to tell you all that I appreciate your time and attention during this trial. I
8 know that few people are really truly excited about jury duty. That's
9 something that we have to overcome as attorneys. We will be here for
10 likely a little over a week. You're going to hear from a lot of witnesses.
11 Sometimes there'll be objections by the attorneys. Sometimes we may
12 need to have meetings with the judge while you're out in the hall. I
13 apologize in advance if that happens. We're all trying to be respectful of
14 your time and present a professional case for you as quickly as we can.

15 I want you to know that sometime next week I'm going to be
16 standing here in front of you just like I am right now. And I'm going to
17 be asking you to hold Dr. Brill responsible for the injuries that he caused
18 Kim. And I'm going to ask you all, as a jury, to deliver what only you the
19 jury can for Kim, and that is justice in this case. Thank you.

20 THE COURT: Thank you, Mr. Breedon.

21 On behalf of the Defense, would you like to present an
22 opening statement?

23 MS. HALL: Thank you, Your Honor. If I could have Court's
24 indulgence just one moment to get set up.

25 THE COURT: Sure.

1 DEFENDANTS' OPENING STATEMENT

2 MS. HALL: May it please the Court, opposing counsel, and
3 ladies and gentlemen of the jury. I introduced myself to you a few days
4 ago. And for those whose memory is like mine, I'm going to tell you
5 again that my name is Heather Hall. I'm here with Robert McBride, and
6 I'm representing Dr. Brill and Women's Health Associates of Southern
7 Nevada in this case. And I speak for both myself as well as Mr. McBride
8 when I tell you that it is truly an honor and a privilege to be here
9 representing Dr. Brill in this case. And I want to thank each and every
10 one of you. I know two days of jury selection can be quite tedious, but I
11 appreciate that you paid attention.

12 And today is the one and only time that I am allowed, as
13 Defense counsel, to speak directly to each of you until we get to the
14 conclusion of the case. And because of that, I want to do my best to give
15 you a good overview of what the Defense believes the evidence will
16 show in this case. And first, I think it's very important for you to get
17 some information about Dr. Brill and what his background and training is
18 before we get to the procedure that he did for Kim Taylor on April 26,
19 2017.

20 So Dr. Brill, he will testify in this case. He will be here every
21 day of this trial, barring any unexpected deliveries of babies. And Dr.
22 Brill will tell you that he did a six-year combined program. He knew in
23 high school that he intended to be a physician. And so, he got accepted
24 to a very prestigious program at University of Miami. And it was a
25 six-year combined program that allowed him to get his undergraduate

1 degree as well as his medical degree. And he got a Bachelor of Science
2 in 1992, and graduated magna cum laude. And then once he completed
3 that degree, he went on as part of that program to get his medical
4 degree, where he graduated with honors from medical school.

5 When he graduated in 1995, he went on to do what's called a
6 residency. And Dr. Brill, as well as some of the other medical experts in
7 this case will explain to you what a residency is.

8 Sorry. Are you able to hear me? Okay. Perfect.

9 And a residency basically -- you can do it in various different
10 specialties. But Dr. Brill did a residency in obstetrics and gynecology.
11 And that residency was from '95 to '99. The last year of his residency, he
12 was chosen as chief resident. And once he completed that, what
13 brought him to Las Vegas is he joined the United State Air Force as a
14 major, and he served for four years at Dulles Air Force Base in the
15 medical unit there. And following his honorable discharge in 2003, he
16 then began private practice here in Las Vegas. And so, since being
17 honorably discharged from the military, he's been in private practice
18 here in the Las Vegas community since 2003.

19 He'll explain to you that he is a fellow of the American
20 College of Obstetricians and Gynecologists and what you have to do to
21 become a fellow, how you maintain that distinction. He also is
22 board-certified in obstetrics and gynecology. And he obtained that
23 board certification in 2001.

24 In addition to Dr. Brill's private practice with Women's Health
25 Associates of Southern Nevada, he's also held several leadership

1 positions, both here in Clark County as well as Nevada at large. He is the
2 past president of the Clark County Medical Society and the immediate
3 past president of the Nevada State Medical Association.

4 And the care that we are here to talk about, the surgery that
5 Dr. Brill did in April 2017, that surgery occurred at Henderson Hospital.
6 And since that hospital opened its doors in 2016 and to the present, Dr.
7 Brill has been the chief of staff at Henderson Hospital. And he'll describe
8 for you when he testifies what it means to be chief of staff and what is
9 expected of him in that role.

10 He's also served on peer review and ethics committees for
11 Valley Health System here in Las Vegas. And part of that requires Dr.
12 Brill to evaluate the medical decision-making of other physicians as well
13 as the ethical decision-making, and then offer a recommendation as to
14 whether there's any action that needs to be taken against a physician.

15 Now Dr. Brill will tell you that before he did this surgery in
16 April 2017, he had performed over 1000 hysteroscopies, which is the
17 procedure he performed for Ms. Taylor. And since that time -- so since
18 2017, he continues to regularly perform hysteroscopies as part of his
19 practice. And he'll tell you that of the thousand that he had done before,
20 he had seen a uterine perforation about 5 to 10 times, or less than 1
21 percent was the occurrence rate of that. And never before this operation,
22 the surgery that he did for Ms. Taylor, never had he seen a bowel
23 perforation for hysteroscopy, and he's never seen one since.

24 Now Mr. Breeden went over some of the medical terms. And
25 I won't -- I'll do my best not to repeat those. But I do want to show you

1 the terms retroverted uterus and bicornuate uterus. Those two terms are
2 important, because the evidence in this case will show you that Ms.
3 Taylor did not have a normal uterus. She had what's called a retroverted
4 uterus that was bicornuate in shape. And I want to show you a diagram
5 of what exactly that is.

6 May I approach, Your Honor?

7 THE COURT: Yes.

8 MS. HALL: So if you see on this diagram here -- so the
9 diagram to the left, this is a diagram of a regular uterus. And the
10 uterus -- I'm a little petite here, but the uterus is the thing in the middle
11 that's curving to the front. And in a regular or normal uterus, it curves to
12 the front. It's anteverted. In the case of Ms. Taylor, she had what's
13 called a retroverted uterus. And if you see the arrow, the white arrow in
14 the middle of this diagram, it shows you that her uterus tilted to the
15 back, meaning that it's retroverted. It's bicornuate in shape, meaning
16 that heart shape that you can see just below the arrow. And that's
17 important in this case.

18 And this is an anterior view of a bicornuate uterus and a
19 regular uterus. The regular is on your right hand, and the bicornuate is
20 on the left. And that is important in this case, because all of the experts
21 agree that uterine and bowel perforation and known risks and
22 complications of this procedure. And those risks are increased when you
23 have a patient who has a bicornuate uterus like Ms. Taylor.

24 Some other terms -- I won't repeat anything you heard from
25 opposing counsel. But some terms that I want to make sure to cover are

1 the term ablation. And essentially, an endometrial ablation, that's a
2 burning of the lining of the uterus. And the point of doing a procedure
3 like that is to hopefully stop this abnormal heavy bleeding that Ms.
4 Taylor will tell you she had dealt with for many, many years before this
5 surgery that she had with Dr. Brill.

6 Now you'll hear from the evidence that Dr. Brill never got to
7 the ablation portion of the procedure. And that is because he found the
8 uterine perforation and repaired it and stopped. You've heard the term
9 uterine perforation. You've heard the term bowel perforation. Those are
10 basically tears in those organs. And I want to make sure to mention to
11 you and describe what a laparoscopy is and how that differs from a
12 hysteroscopy. And to do that, I want to show you.

13 So, first of all, in a hysteroscopy, there's a specific type of
14 scope that they use, and it's called a hysteroscope. And the
15 hysteroscope basically looks like this. And if you see that the metal rod
16 or channel that goes into the patient's body, that is the hysteroscope.
17 And the distal lens is on the tip of the hysteroscope. There is also a
18 camera that projects up onto a screen just like what you see in front of
19 you. That camera is actually attached to that proximal lens that you see
20 on the left side of this diagram. And throughout the procedure, Dr. Brill
21 has his hands on the camera, which is attached to the proximal lens, as
22 well as the Symphon. And I want to show you -- I know you were
23 shown this, but -- may I approach, Your Honor?

24 THE COURT: Yes.

25 MS. HALL: I want to just show you. This -- I wish I could

1 pass it around, but, unfortunately, because of COVID, I can't. But this is
2 what the Symphion looks like. The Symphion has a cord. This cord
3 attaches to that yellow pedal that was referred to. This device goes
4 inside of that hysteroscope. So on the end of the proximal lens, you
5 have this part of the Symphion. You have the camera that Dr. Brill has
6 his hands on the entire procedure. And this is the only part of the
7 Symphion which is capable of resecting tissue. And there's a very
8 narrow window -- if you can see that there without me passing it around.
9 This will not cut. This will not resect any tissue unless the surgeon steps
10 on the yellow pedal with this device against the tissue.

11 Dr. Brill will explain to you that during the surgery that he
12 performed for Ms. Taylor, he encountered white tissue that did not allow
13 him to access the fibroid, which was all the way up in her right uterine
14 horn. And he'll explain to you that the only time that he stepped on the
15 yellow pedal and activated the Symphion resection feature is when he
16 encountered that white tissue. After he did that, he then tried to advance
17 the entire unit, the camera to where the fibroid was. There was never
18 another occurrence of him stepping on the yellow pedal. It is not
19 activated while he is moving the camera unit to the next area where he
20 would like to use the Symphion device.

21 Now, I want to talk to you a little bit about the care and
22 treatment that Ms. Taylor received from Dr. Brill before her April surgery.
23 Her first visit with Dr. Brill was actually November the 30th, 2015, and
24 she'll tell you that she has no complaints about any of the care that she
25 received before her April surgery.

1 But I think it's important, and the evidence in this case will
2 show you that the care that is the subject of this litigation began in
3 February of 2017, and that is when Ms. Taylor, she came to Dr. Brill for
4 her annual exam, as many women do; you get your annual exam. And
5 at that visit, she discussed with Dr. Brill that she had this abnormal,
6 heavy uterine bleeding, and she wanted to know what her treatment
7 options were.

8 One of the recommendations that Dr. Brill had at that time is,
9 because often when a woman has heavy uterine bleeding, it can be a
10 sign of uterine cancer. So one of the things he wanted to do first is
11 evaluate her and make sure that she didn't have any malignancy. And
12 so the first thing that Dr. Brill did is on March the 6th, he had her come to
13 the office, and he did an in-office procedure that is called an endometrial
14 biopsy. And the point of that was to, again, screen her for cancer and
15 sample the lining of her endometrium and just make sure that the
16 pathology was benign or non-cancer.

17 He then did something called a colposcopy, and that
18 procedure was on March the 9th, 2017. And the purpose of the
19 colposcopy was to evaluate her cervix, and again, make sure that she
20 had no cancer cells on the lining of her cervix.

21 The third thing -- the third evaluation that Dr. Brill
22 recommended was a pelvic ultrasound to get imaging of her uterus and
23 as much information as possible before proceeding to any type of
24 surgery.

25 Now, after he did all three of those evaluations, the pelvic

1 ultrasound, I think was done at Steinberg Diagnostics, but the other two
2 were in-office procedures, which Dr. Brill performed. He had her return
3 to the office on April the 4th.

4 Now, at this visit, Ms. Taylor will tell you that she had
5 discussed doing a hysteroscopy with fibroid resection and a dilation and
6 curettage, or D&C. And the experts will explain to you what that is, but
7 basically, a D&C is just a cleaning out of the uterus. And she will tell you
8 that she had discussed that with Dr. Brill before she even had the March
9 the 6th endometrial biopsy.

10 So when she comes to see him on April the 4th, she's
11 already had some discussion with him about his recommendation for
12 surgery. She's had these three studies that he recommended to further
13 evaluate her, make sure that she had no cancer or malignancy. And at
14 this time, he discusses with her that that pelvic ultrasound showed that
15 she had this bicornuate uterus, and -- meaning it was heart-shaped, and
16 she had a fibroid present in the right uterine horn, and he recommended
17 the resection of that fibroid. He also went over the results of the
18 pathology from those two procedures and that it did not show any
19 cancer cells.

20 He counseled her on her options at that time, and one of the
21 options that Dr. Brill counseled her on is that she can have no surgery,
22 and she could just continue to deal with the bleeding that she had dealt
23 with for many years, since I think when she gave birth in 2003. He went
24 over the potential risks and benefits of the surgery.

25 MR. BREEDEN: Object, Your Honor. I object to the slide as

1 well.

2 THE COURT: Counsel, approach.

3 [Sidebar at 2:47 p.m., ending at 2:48 p.m., not transcribed]

4 MS. HALL: So at this April 4th visit, Dr. Brill went over with
5 her, in addition to having no surgery, had -- if she chose to go forward
6 with the surgery, he went over what the risk and potential benefits of
7 that surgery were. And it's important to note that when he talked to her
8 about the likelihood of this procedure alleviating the bleeding, and you
9 know, the symptoms that she was having, he explained to her that the
10 data that they had about how successful this surgery could be in
11 stopping the heavy bleeding, but that was all based on a normal uterus
12 that didn't tilt to the back, that wasn't heart-shaped. So he didn't really
13 know, you know, what -- there were -- there is no data on what the
14 success rate for this procedure is when you have a retroverted,
15 bicornuate uterus.

16 Now, after all that discussion, Ms. Taylor decided to go
17 forward with the surgery, and the surgery was scheduled by the time
18 that she came back to her pre-op visit with Dr. Brill on April the 21st.
19 And at this pre-op visit, he again went over, you know, why he
20 recommended she have the surgery, what the indications for the
21 procedure were, and the risks and complications and benefits were
22 discussed, and Ms. Taylor was given educational materials to take home
23 and told to call Dr. Brill if she had any additional questions that were not
24 asked at this visit.

25 After these two detailed informative visits with the patient,

1 Ms. Taylor did present to Henderson Hospital on April the 26th for the
2 surgery. And again, the evidence in this case, and both the operative
3 report that Dr. Brill wrote just after the procedure he did for Ms. Taylor,
4 as well as the testimony in this case, will be that Dr. Brill did not do any
5 resection of any tissue, other than the white tissue that he removed in
6 order to advance the camera to attempt to get to where the fibroid was.

7 And it was when he was advancing the camera, so that
8 entire -- that entire unit that we'll just call the resectoscope, it includes
9 both the hysteroscope with this Symphion device inside of it, as well as
10 the lens that's on the end, projecting to the camera that's on the outside
11 of the patient's body. It's while Dr. Brill is advancing the camera that he
12 notes that there's a uterine perforation.

13 He called out to the operating room that there was a uterine
14 perforation. He immediately removed the resectoscope, so that entire
15 device. The hysteroscope, the Symphion, all of that was removed and
16 replaced with something called a diagnostic hysteroscope. A diagnostic
17 hysteroscope, the evidence will show you, cannot resect tissue. There is
18 no yellow pedal attached that would allow the surgeon to cut or resect
19 any tissue.

20 Now, an important case in this case, and there was some
21 discussion of the radio frequency energy that is used with that Symphion
22 device. That is thermal energy. That is how the Symphion cuts. The
23 thermal energy that's required in order to remove the tissue, you saw
24 that video of the Symphion. What you didn't see, and you will see in this
25 trial, is that the Symphion is attached, in addition to the cord that goes to

1 the yellow pedal, there's also a tubing that connects to the Symphion to
2 a canister.

3 So any tissue that is resected or cut with that Symphion
4 device, it goes into a canister and into a medical receptacle or canister.
5 That is then sent to pathology. And the surgical pathology for Dr. Brill's
6 surgery does not show any tissue that is consistent with bowel. Had he
7 used and activated the Symphion and cut bowel during the surgery, that
8 would have been described on the surgical pathology that we have
9 following the surgery.

10 And he'll explain to you that when he is moving the
11 camera -- so moving to a different area of the uterus to get to a new
12 place where he may need to resect. He's not resecting or activating the
13 yellow pedal while moving the device. His foot is off the pedal, and he's
14 simply advancing the camera to get a better view before ever activating
15 the pedal again.

16 He'll also tell you that when this uterine perforation occurred,
17 he immediately, again, called it out, noted it, replaced the device with a
18 diagnostic tool to allow him to repair it. He used that diagnostic
19 hysteroscope to inspect the uterine perforation. He did not see any
20 evidence of any organ whatsoever in the area of the uterine perforation,
21 other than the uterus, no evidence of bowel, no evidence of that enteric
22 content that you heard about, and no evidence that there was any injury
23 to any organs whatsoever.

24 And because of that, he decided, in his medical judgment,
25 that it was not necessary to subject the patient to a diagnostic

1 laparoscopy. And you'll hear from the experts that a laparoscopy has
2 additional potential risks and complications that are not associated with
3 a hysteroscopy.

4 You saw on that diagram; a hysteroscopy allows the surgeon
5 direct access to the uterus. A laparoscopy is -- basically, it's a surgery
6 that requires the surgeon to make three different incisions in the
7 patient's abdomen. He has to insufflate or inflate the abdomen with air
8 in order to get a camera inside, and there are additional risks to that
9 procedure, a laparoscopy, that are not associated with hysteroscopy. So
10 in his medical judgment, there was no medical reason to run her entire
11 bowel when he saw no evidence that there had been any injury to the
12 bowel or any other organs.

13 He -- after repairing the uterine perforation, and the evidence
14 will show you that the uterine perforation, it was fully repaired during Dr.
15 Brill's surgery. So after he did that repair, he then did a small portion
16 of -- he did the C portion of the D&C, the curettage, and that's basically,
17 it's a spoon-like device. It's kind of a curbed device that he can scrape
18 the side of her uterus, and the reason, he'll explain why he did that, but
19 basically it was to further evaluate her for cancer. Also doing a curettage
20 is something that could potentially stop the bleeding, even though he
21 never did an ablation or the burrowing of the inside of the uterus.

22 The curettage that Dr. Brill did, it was nowhere near where
23 the perforation to the uterus has occurred. The uterine perforation was
24 on the anterior wall. So if you remember that diagram, the anterior wall
25 is this way. Where Dr. Brill did the curettage or used that spoon-like

1 device was in a completely different area in the uterus, and no one in this
2 trial will tell you that the curettage caused the uterine perforation or the
3 bowel perforation.

4 Now, you'll hear from Dr. Brill, the Defense expert in this
5 case, as well as Plaintiff's expert that uterine perforation is a known risk
6 and complication of the hysteroscopy.

7 MR. BREEDEN: Objection, Your Honor.

8 THE COURT: So noted. Overruled.

9 MS. HALL: Thank you, Your Honor.

10 And in the case of Ms. Taylor, bowel perforation is also a
11 known risk and complication. It's less common than uterine perforation,
12 but in the case of Ms. Taylor, the bowel and uterine perforation that she
13 experienced is a direct result of her unusual anatomy, that retroverted
14 bicornuate uterus.

15 And again, the surgical pathology, and you'll see that
16 pathology report, where the pathologist examined the tissue that was in
17 the canister from the Symphon. He put that under a microscope and
18 analyzed it and rendered, you know, his description of the tissue. None
19 of that pathology shows any evidence of any bowel, any tissue that
20 would be consistent with bowel. It shows nothing to indicate any kind of
21 thermal energy injury to the uterus.

22 Now, the suggestion that Dr. Brill was trying to hide this
23 uterine perforation; first of all, his -- and in a moment, I'll go over, kind of
24 a timeline of events, but Ms. Taylor was taken to the recovery area about
25 9:50 a.m. that morning. And the suggestion that Dr. Brill was trying to

1 hide this uterine perforation is not supported by the evidence.

2 He dictated his operative report and signed it, and it was
3 available in the chart at 10:08 a.m. that morning. He very clearly
4 documents in multiple areas of his operative report that there was a
5 uterine perforation. He describes what he did to visualize, examine, and
6 repair that uterine perforation. And this was all available to any of the
7 providers at Henderson Hospital at 10:08 on. It's immediately available
8 in the electronic medical record. It's also available to the PACU nurse,
9 who took over Ms. Taylor's care once she got to the PACU and the
10 recovery area.

11 Now, Dr. Brill gave a deposition in this case in April of 2021,
12 so about four years after the surgery that he did. And what he testified
13 to is that he does not remember if he spoke with Ms. Taylor in the
14 recovery area. That generally, it isn't his practice to go to recovery and
15 talk with the patient, because they're coming out of anesthesia. He
16 usually talks to them at their post-op visit about the procedure, and
17 instead, goes to the family area and speaks with a member of the family,
18 if there's someone there waiting for the patient, and there typically is.

19 He had a very vague memory of speaking to a female. He
20 thought it was a family member of Ms. Taylor's, and not the patient
21 herself, and advising them that there had been a complication during the
22 surgery, and he wasn't able to perform the ablation portion because of
23 the uterine perforation.

24 Now, Ms. Taylor will tell you that when she got to the
25 recovery area at about 9:50 a.m., that some time that morning, and she's

1 sure that it was morning, Dr. Brill did come to the recovery area and
2 speak with her. And Dr. Brill, according to Ms. Taylor, said that it was
3 complicated, and he wasn't able to do the surgery. That is Ms. Taylor's
4 recollection.

5 Now, Bruce Hutchins is the nurse who took over the care in
6 the PACU, and I think this was mentioned very briefly, but it was
7 anticipated when Ms. Taylor was taken to recovery, it was anticipated
8 that she would be there for about one to two hours. And at the time that
9 Ms. Taylor remembers Dr. Brill coming and speaking to her, she said she
10 wasn't in any pain, so she didn't discuss that with Dr. Brill because she
11 wasn't yet having any pain.

12 After Dr. Brill left the recovery area, and he did go on to do
13 one additional procedure at Henderson Hospital, after he left the
14 recovery area and left Ms. Taylor in the very capable hands of the PACU
15 nurse, as well as the anesthesiologist, Dr. Yeh, who had assisted in
16 transporting her to the PACU, and left her in the capable hands of Nurse
17 Hutchins, Nurse Hutchins then proceeds to give her multiple doses of
18 narcotics.

19 He will tell you that never once did he contact a physician
20 about the pain complaints that Ms. Taylor was having. And although
21 everyone expected her to be there one to two hours, she ultimately
22 didn't get discharged until about 5:30 p.m. that evening. Again, Bruce
23 Hutchins never called Dr. Brill, never called any other physician about
24 the patient's pain complaints.

25 And one of the reasons, you'll hear from the evidence, that

1 she wasn't discharged until that time is she wasn't able to urinate until
2 about 3:00 in the afternoon, and they expect that the patient will urinate
3 before they'll discharge her.

4 I do want to mention one thing about Dr. Yeh. Dr. Yeh was
5 deposed in this case, and Dr. Yeh, assuming that he testifies consistently
6 with what he said at his deposition, he will tell you that he is an
7 anesthesiologist. He does not remember this specific case. He does not
8 remember if Dr. Brill sat -- or specifically said anything to him about the
9 perforation that occurred that he found in the surgery because he
10 doesn't remember this case. He does, however, know that his
11 anesthesia record, it has no area to document surgical complications. He
12 is not expected to document surgical complications even if he's aware
13 that one had occurred. And in fact, there isn't even a spot on the record
14 that Dr. Yeh prepares that would even allow him to do that.

15 Now, after Ms. Taylor was discharged from the hospital at
16 about 5:30, she went home. And she was home until about 11 p.m. and
17 was doing pretty well. At 11 p.m. is when she began having this severe
18 abdominal pain. And at 11 p.m., she knew to call Mr. Brill's office if she
19 had any complaints or any severe pain that wasn't relieved with
20 medication. So by 11:00 at night, Dr. Brill's office was closed. And she'll
21 tell you that she did call his answering service, but she hung up before
22 leaving a message and instead, chose to call 9-1-1 and was taken to --
23 was taken to St. Rose for the first time.

24 And so the first time that Ms. Taylor went to St. Rose
25 Hospital was about 12:30 in the morning on April the 27th. And she was

1 taken by ambulance. She was treated in the emergency department by
2 an emergency room physician named Dr. Christensen. And Dr.
3 Christensen did a CT scan. And the evidence will show you that that CT
4 scan that Dr. Christensen did, it showed free fluid and free air in the
5 abdomen, which can be signs of a possible bowel injury. That was never
6 relayed to Ms. Taylor and instead, Dr. Christensen treated her for
7 nausea. He did not obtain a consult from an OB/GYN. He did not obtain
8 a consult from the general surgeon to further assess whether this free
9 fluid and free air that was seen on CT scan, whether that might be a sign
10 of a possible injury to the bowel.

11 So after Ms. Taylor goes home -- she's released from the
12 hospital around 3:30 in the morning -- and she goes home, and again she
13 does well for several hours. At around 11 a.m., she gets up. She tries to
14 eat some breakfast or lunch, and that pain in her abdomen returned. So
15 she called 9-1-1 for a second time. And this time, she is taken to the
16 same hospital, St. Rose - Siena. And once there, she is seen by a
17 different emergency room physician, a Dr. Frank.

18 Now, Dr. Frank, he took one look at that CT scan that had
19 been performed several hours earlier in the emergency department, and
20 he did immediately consult an OB/GYN, and also consulted a general
21 surgeon. And so about, I think, 6 p.m., Dr. Schoenhaus, who is a
22 colleague of Dr. Brill's, saw Ms. Taylor. She had her admitted. She
23 noted that it -- there was already a surgical consult pending.

24 And shortly thereafter, Ms. Taylor was seen by the general
25 surgeon, Dr. Hamilton. Dr. Hamilton met with the patient and took her

1 for an exploratory surgery, and that is when she noted the bowel
2 perforation. The uterine perforation that is noted in Dr. Hamilton's
3 operative report is described as repaired. So there was no further repair
4 of the uterine perforation that was noted on the April 26th surgery.

5 She spent -- Ms. Taylor spent nine days in the hospital, and
6 the evidence will show you that the documentation reflects that Dr. Brill,
7 he saw her on -- so the surgery she had with Dr. Hamilton is April the
8 27th, late in the evening on April the 27th. And Dr. Brill saw her on at
9 least four occasions while she was hospitalized at St. Rose, and the first
10 being April the 28th, so the day -- the morning after her surgery.

11 She was discharged home on IV antibiotics on May the 6th.
12 And the records reflect that she was feeling much better, that her pain
13 was much improved. And she completed a four-week course of IV
14 antibiotics and has needed no further medical treatment related to either
15 her uterine perforation or the bowel perforation that found on April the
16 27th.

17 Now, I want to talk to you just a little bit about someone that
18 you haven't really heard anything about, and that is Dr. Steven McCarus.
19 Dr. McCarus is the Defense's OB/GYN expert in this case. And he'll be
20 here, I think, on Friday the 15th. And he'll testify, and he'll go over with
21 you his background and his training, and what he does as an OB/GYN
22 who has been board certified since 1989 in obstetrics and gynecology. In
23 addition to that, he'll also talk to you about his current practice. He is the
24 chief of the division of gynecologic surgery at Advent Hospital System in
25 Florida. And he also trained thousands of physicians on minimally

1 invasive surgery, including hysteroscopy.

2 Now, Dr. McCarus will tell you that based on all the evidence
3 and deposition testimony that he's reviewed in this case, that Dr. Brill
4 fully complied with the standard of care. And he did the appropriate
5 thing when he noted the uterine perforation while advancing the camera.
6 He removed -- he stopped the procedure. He switched to a diagnostic
7 tool and was able to directly visualize that perforation. And because Dr.
8 Brill had clear visualization, he saw no other organs in the area, no injury
9 to other organs, no -- those other signs that you would look for to
10 indicate bowel injury or injury to other organs. No fluid, no interior
11 content, nothing that indicated anything other than a simple uterine
12 perforation, that it was appropriate for Dr. Brill to not subject the patient
13 to a laparoscopy at that time. And it was not required by the standard of
14 care that he do that procedure when he had no medical indication that it
15 was needed.

16 He will also tell you that the spoon device, the curette that Dr.
17 Brill used after noting and repairing the uterine perforation, had no
18 impact on this patient's outcome. It was completely unrelated to the
19 perforation.

20 Now, this is where the experts in this case disagree. Unlike
21 Dr. Berke, the Plaintiff's expert, Dr. McCarus is certain that the blunt tip of
22 the unit, so that entire unit that I described for you, that it was it the blunt
23 tip of the device, when Dr. Brill was advancing it to get to the next area,
24 that caused this uterine perforation, and also the bowel perforation that
25 was not found until April the 27th. He will also explain to you that in a

1 normal uterus, the most common perforation is to an area of the uterus
2 called the fundal area of the uterus. But when you have a retroverted
3 bicornuate uterus like Ms. Taylor, the most common injury that is caused
4 by the blunt tip of the device is to the anterior wall. And that is exactly
5 where Ms. Taylor's perforations occurred, the anterior wall of the uterus.
6 And there was no sign during that surgery that there was any injury to
7 the bowel. And again, the -- both surgeries, so Dr. Brill's surgery on
8 April the 26th, as well as that surgery that Dr. Hamilton did on the 27th,
9 both have pathology results that were sent and examined by a
10 pathologist.

11 The surgical pathology is consistent with injury from the
12 blunt tip of the device. There's no thermal artifact. There's no thermal
13 injury to the tissue that is described. And you would expect to see that if
14 this was an injury that had occurred from activating the thermal device
15 to cut tissue.

16 Now, let's talk just a bit about Plaintiff's expert, Dr. Berke. Dr.
17 Berke is a D.O., and he is critical of Dr. Brill for the very fact that a uterine
18 and bowel perforation occurred. Now, Dr. Berke will tell you, he will
19 acknowledge, that both are known risks and complications of
20 hysteroscopy.

21 MR. BREEDEN: Object, Your Honor.

22 THE COURT: Thank you. Overruled.

23 MS. HALL: Thank you, Your Honor.

24 He will also tell you that in his practice, he practices in a
25 private practice in Riverside, California, and he'll tell you that in his

1 practice, he's performed about 5 to 600 hysteroscopies. And Dr. Berke
2 has caused a uterine perforation 10 to 20 times. And he will tell you that
3 in every circumstance, every instance where Dr. Berke caused a uterine
4 perforation, he complied with the standard of care. And the reason is
5 because his bowel -- or his uterine perforations always occurred from the
6 blunt tip of the device. He'll also tell you that when you cause this
7 known complication, this uterine perforation, when you cause it with a
8 blunt injury or the blunt tip of the resectoscope, that you are not required
9 by the standard of care to do a diagnostic laparoscopy.

10 He is also critical of Dr. Brill for not informing the PACU
11 nurse that there was a complication. But he does acknowledge that Dr.
12 Brill's operative report fully describing the uterine perforation was
13 available in the electronic medical record at about 10:08 a.m. He also
14 acknowledges that a PACU nurse, regardless of whether there is any
15 uterine complication relayed, that a PACU nurse is trained to look for
16 signs and symptoms of injuries to other organs, including bowel injury
17 when a patient is recovering in the PACU.

18 Now, Dr. Berke is not just critical of Dr. Brill in this case. Dr.
19 Berke is also critical of several other providers involved in Ms. Taylor's
20 care.

21 MR. BREEDEN: I would object, Your Honor.

22 MS. HALL: Do you want us to approach, Your Honor?

23 THE COURT: Yeah, I'm just trying to read this. Thank you.
24 Yes, please.

25 [Sidebar at 3:14 p.m., ending at 3:14 p.m., not transcribed]

1 MS. HALL: So let's talk just a bit about Dr. Berke and the
2 criticisms that he has of other medical providers who treated Ms. Taylor.
3 He's critical of Nurse Hutchins, the nurse who cared for Ms. Taylor for
4 seven-and-a-half hours in the PACU, as well as Henderson Hospital for
5 failing to ever contact Dr. Brill or another OB/GYN, or frankly, any
6 physician, about this increasing abdominal pain that Ms. Taylor was
7 having, which a trained PACU nurse like Nurse Hutchins, is aware can be
8 a sign of a developing bowel injury.

9 He is also critical of Dr. Christensen, the emergency room
10 physician, who saw Ms. Taylor in the early morning hours of April the
11 27th for not consulting an OB/GYN, not calling Dr. Brill or some other
12 OB, not calling a general surgeon, and not diagnosing a developing
13 bowel injury at the time that she went to the ER the first time. And Dr.
14 Berke will tell you that the criticism that he has of these other providers,
15 he thinks that this led to a delay in treating her bowel perforation, and it
16 caused Ms. Taylor further pain and suffering.

17 Now, just to kind of, you know, sum up in summation, the
18 complications that the patient had, they are known risks and
19 complications of hysteroscopy. They -- the risk of these occurring is
20 increased when you have the type of anatomy that Ms. Taylor had. And
21 Dr. Brill, at all times, was aware of her anatomy. He did everything he
22 could, he took every precaution that he could, to avoid these
23 complications occurring. And despite that, despite him fully complying
24 with the standard of care, the complication happened.

25 At the conclusion of the evidence in this case, we believe that

1 the evidence will show you that Dr. Brill and Women's Health Associates
2 of Southern Nevada fully complied with the standard of care. And based
3 on that evidence, that there was no negligence on the part of Dr. Brill.
4 And we will ask you to return a defense verdict in favor of Dr. Brill and
5 Women's Health Associates of Southern Nevada.

6 Thank you all very much for your time and attention.

7 THE COURT: Thank you, Ms. Hall.

8 All right. Ladies and gentlemen, it's been about 90 minutes,
9 so I promised you I would give you an afternoon restroom break. And
10 before the break, I'm going to read you the admonishment.

11 You're expected not to talk to each other or anyone else
12 about any subject or issue connected with this trial. You're not read,
13 watch, or listen to any report or commentary on the trial by any person
14 connected with this case or by any means of information, including,
15 without limitation newspapers, television, internet, or radio.

16 You're not to conduct any research on your own related to
17 this state -- case, such as consulting a dictionary, using the internet, or
18 reference material to test any theory of the case, research any aspect of
19 the case, or in any other way investigate or learn about the case on your
20 own. You're not to talk to others, text others, tweet others, Google
21 issues, or conduct any type of computer or book research with regard to
22 any issue, party, witness, or attorney involved in this case.

23 And finally, you are not to form or express any opinion until
24 -- connected to anything on this subject until the matter is finally
25 submitted to you for deliberation.

1 So we'll take a 15-minute break.

2 THE MARSHAL: All rise for the jury. Jurors, please close
3 your notepads and leave them on your chairs and come this way.

4 [Jury out at 3:18 p.m.]

5 THE MARSHAL: The jury is cleared from the courtroom,
6 Your Honor.

7 THE COURT: Thank you.

8 [Outside the presence of the jury]

9 We are outside the presence of the jury. Any -- well, Mr.
10 Breeden, will you want to put the two objections on the record?

11 MR. BREEDEN: Yes, Your Honor.

12 THE COURT: Please go ahead.

13 MR. BREEDEN: The sidebars are not being record. So just
14 for the record, I'll indicate that on several occasions during the Defense's
15 opening statement, I did make objections to discussions of risks and
16 benefits and complications. You know, the extent of which those are
17 admissible or can be referenced is highly disputed in this case. We also
18 saw slides that explicitly stated that and what amounts to argument that
19 because the risks and complications were disclosed, that they should not
20 find in favor of the Plaintiff. And I've objected to that, and you previously
21 ruled on that issue. I was simply making a contemporaneous objection.

22 Also, I made an objection when, quote, "criticisms of other
23 providers" was made. This concerns *Peruzzi* issues, and this has been
24 litigated in motions in limine already. You have made a ruling. I am
25 simply making contemporaneous objections for the record.

1 THE COURT: Thank you, Mr. Breeden.

2 And Ms. Hall, any response to either of those?

3 MS. HALL: All I would say, Your Honor, is that the purpose
4 of giving the patient the risks and potential complications is because
5 those can and do occur in the absence of negligence. And I think what
6 was shown in my opening statement is what the Defense believes the
7 evidence will be, and I think it's consistent with Your Honor's prior
8 ruling.

9 THE COURT: Okay. Thank you.

10 Anything else outside the presence before we go on break?

11 MR. BREEDEN: Nothing further at this time from Plaintiff.

12 THE COURT: And, Mr. Breeden, I just wanted to check with
13 you. Based on how we're going now, we're not going to take anymore
14 breaks until 5, until it's time to take the evening recess. But do you still
15 think that your witness via BlueJeans will testify tomorrow or?

16 MR. BREEDEN: Your Honor, here's what I foresee. We had
17 originally had three witnesses scheduled for today, but obviously, there's
18 been a lot of delay.

19 THE COURT: Uh-huh.

20 MR. BREEDEN: I think what I am inclined to do is call
21 Barbara and Clyde Olson. And then our next witness would be my client.
22 And I don't know if that makes a lot of sense to start that testimony, you
23 know, depending on what time it is here, maybe we should break early
24 today, and just get to Ms. Taylor on another day. I will say, early
25 tomorrow morning, I have a doctor scheduled to testify first at 10:30.

1 And that's by BlueJeans, and that's essentially kind of a firm time. So I
2 have anticipated concluding today's testimony and then picking up with
3 Dr. Hamilton first thing tomorrow morning.

4 THE COURT: Okay. But it sounds like, if you're going to --
5 you want to call up Ms. Taylor before the doctor or are you going to call
6 the doctor and then Ms. Taylor?

7 MR. BREEDEN: Well, I anticipate that Ms. Taylor's testimony
8 might be moved to a whole other day later in this trial.

9 THE COURT: Okay. Ms. Albertson, did you want to ask
10 anything?

11 MS. ALBERTSON: Yeah. I talked to your Bailiff. We have a --
12 we need a ramp or something to get our witness up to the stand.

13 THE MARSHAL: I've got it taken care of.

14 MR. BREEDEN: Okay.

15 MS. ALBERTSON: Awesome. Thank you.

16 MS. HALL: The only thing I would ask, Your Honor, and I
17 think they're amenable to do it is that obviously, witness lists change,
18 but I would like to know this evening who they intend to call tomorrow,
19 so that we can be prepared for the witnesses.

20 MR. BREEDEN: I don't think the schedule for tomorrow will
21 change. If we have additional time tomorrow, I would call Ms. Taylor to
22 begin her testimony. But I think, most likely now, Ms. Taylor will testify
23 Thursday afternoon in the slot where previously I had anticipated calling
24 Dr. Brill.

25 THE COURT: Okay. So -- and tomorrow, we start at 10:30

1 and we'll go to 5. So in addition to that, any other witnesses? I am
2 going to tell them to keep the BlueJeans -- to go ahead and send you
3 guys the BlueJeans links for tomorrow then.

4 MR. BREEDEN: Please do. There will be several other
5 witnesses tomorrow.

6 THE COURT: All right. Anything else?

7 MR. BREEDEN: Nothing further from Plaintiff.

8 THE COURT: All right. Oh, yeah. I did want to say, the
9 Dignity Health did file a motion to quash the subpoena on an OSC. Do
10 you want to look that up? I mean --

11 MR. BREEDEN: They're supposed to testify tomorrow. I
12 don't know how you could hear that.

13 THE COURT: Yeah. Well, I'm sure you knew it was coming,
14 based on the objection. So I'm sure they're going to address it
15 tomorrow. I would assume that they're going to appear.

16 MR. BREEDEN: I would guess we'll have to do something
17 outside the presence of the jury then.

18 THE COURT: Okay. Then we'll be back at -- in -- I'll give you
19 -- I'll give you guys ten minutes. Thank you.

20 THE MARSHAL: The court is now in recess.

21 [Recess taken from 3.23 p.m. to 3:35 p.m.]

22 [Outside the presence of the jury]

23 MS. HALL: Before we bring the jury back in, could we just
24 put on the record two additional exhibits which we've stipulated to
25 admitting.

1 THE COURT RECORDER: Are we back on the back on the
2 record, Your Honor?

3 THE COURT: Yeah, let me get back on the record.

4 Back on the record in case number A-18-773472-C, Taylor v.
5 Brill. Counsel for both sides present, are present. We're outside the
6 presence of the jury. And go ahead, Ms. Hall.

7 MS. HALL: And on the break, Plaintiff's counsel and I were
8 able to agree to admit Joint Exhibit 1, which is the St. Rose Hospital
9 medical records, and Joint Exhibit 3, which is Dr. Brill's office chart,
10 minus the consent forms.

11 MR. BREEDEN: Stipulated by Plaintiff, and we earlier
12 stipulated to Joint Exhibit 5 into evidence.

13 THE COURT: Yes. All right.

14 [Joint Exhibits 1 and 3 admitted into evidence]

15 THE COURT: And that was the Henderson Hospital records,
16 right?

17 MR. BREEDEN: Correct.

18 MS. HALL: Yes.

19 THE COURT: All right. We're ready. Go ahead, Ray.

20 THE MARSHAL: All rise for the jury.

21 [Jury in at 3:36 p.m.]

22 THE MARSHAL: The jury is all present, Your Honor.

23 THE COURT: Thank you. You may be seated. On behalf of
24 Plaintiff, do you wish to call any witnesses?

25 MS. ALBERTSON: Yes, Your Honor.

1 THE COURT: Go ahead.

2 MS. ALBERTSON: We're going to call our first witness,
3 Barbara Olsen.

4 BARBARA OLSEN, PLAINTIFF'S WITNESS, SWORN

5 THE CLERK: Please state and spell your name for the record.

6 THE WITNESS: Barbara Olsen, B-A-R-B-A-R-A, Olsen, O-L-S-
7 E-N.

8 DIRECT EXAMINATION

9 BY MS. ALBERTSON:

10 Q Hi, Ms. Olsen.

11 A Hello.

12 MS. ALBERTSON: Okay. Are you able to kind of redirect a
13 little bit so --

14 THE WITNESS: Well, I was going to try.

15 MS. ALBERTSON: Yeah, go ahead. Because at least -- I'd
16 like to at least give the jury --

17 THE WITNESS: So I can -- I can move this.

18 MS. ALBERTSON: Yeah.

19 MR. BREEDEN: Let me -- let's do this. There we go.

20 THE WITNESS: Thanks. I have two. Very nice. Thank you
21 so much. Is that okay?

22 MR. BREEDEN: Is that better?

23 MS. ALBERTSON: If you're comfortable, I'm fine.

24 THE WITNESS: I'm comfortable.

25 MS. ALBERTSON: Is it -- are you okay if she's this close to

1 me? I won't get any closer than this because I know --

2 THE COURT: Yeah, just stay there.

3 MS. ALBERTSON: We've had enough scares.

4 THE COURT: Okay.

5 THE WITNESS: We can move this down. That's fine.

6 BY MS. ALBERTSON:

7 Q Okay. Ms. Olson, I know you just gave your name, but can
8 you just give it one more time for the record?

9 A Barbara Olsen.

10 Q Okay. And how do you know Kimberly Taylor, the Plaintiff?

11 A She's my daughter.

12 Q Okay. How long have you lived in Las Vegas, Ms. Olsen?

13 A Five years.

14 Q And why did you come to Las Vegas?

15 A To be with my daughter.

16 Q Are you currently married?

17 A Yes.

18 Q And who are you married to?

19 A Clyde Olsen.

20 Q And how long have you been married?

21 A Twenty-nine, will be next month 30.

22 Q Do you know the date? I always get it wrong and my
23 husband -- my husband goes nuts on me.

24 A November 30th.

25 Q And he hasn't, like, well --

1 A He never remembers.

2 Q I know he's got it in his phone, so he cheats a little, he's got it
3 written down.

4 A Oh, yeah, I have it written down.

5 Q Yeah. But I -- last year we both forgot, so --

6 THE MARSHAL: One person talking at a time.

7 MS. ALBERTSON: Okay.

8 THE MARSHAL: Thank you.

9 BY MS. ALBERTSON:

10 Q So he's just reminding me that we have to talk one at a time,
11 so I'll try to be careful, too. And do you currently live with Kimberly?

12 A No.

13 Q And how often do you see or speak to Kim?

14 A We try to text each other and call. She calls sometimes from
15 after work, and --

16 Q Would you define your relationship as close?

17 A Very.

18 Q And before I get into too many questions, I want to talk a
19 little bit about your own personal condition. I'm not trying to pry, but I
20 just want the jury to understand, I guess why you're in the scooter.

21 A I'm a polio survivor, and it's -- it started out probably around
22 40 years old, I got the symptoms back, and it's a degenerative disease,
23 so it -- the progress is going down instead of up. There's nothing they
24 can do. There's no cure. I just -- doctor told me to save my steps, so I
25 have to be in a scooter, and I can no longer walk without my walker.

1 Q Okay. What parts of your body does it affect?

2 A It affects if I stand --

3 MR. MCBRIDE: Object, Your Honor. Relevance.

4 THE COURT: Sustained.

5 MR. MCBRIDE: Thank you.

6 MS. ALBERTSON: Can we approach for a second?

7 THE COURT: Sure.

8 [Sidebar at 3:42 p.m., ending at 3:42 p.m., not transcribed]

9 BY MS. ALBERTSON:

10 Q So I just want to confirm that your health status doesn't
11 affect your mind, right?

12 A Oh, no.

13 Q Any problem thinking clearly?

14 A No.

15 Q Any problems with memory?

16 A No.

17 Q Now I'd like to ask you to go back in your mind a little bit to
18 April of 2017, when Kim was having a procedure done that brings us
19 here today, okay. What did you know about that procedure before she
20 had it done?

21 A Just that she was going in for a fibroid to be removed, to my
22 understanding, and I wasn't --

23 Q And were you given any kind of idea of how long you
24 thought the surgery was supposed to be?

25 A Only a couple of hours to -- and then pick up. We just --

1 Q Were you going to go pick her up?

2 A No. I can't drive.

3 Q Who was going to pick her up?

4 A My husband, Clyde.

5 Q And to your knowledge, who dropped her off?

6 A My husband, Clyde.

7 Q And I know I asked you about the length of surgery, but were
8 you given any information about her expected recovery?

9 A No, [indiscernible].

10 THE COURT RECORDER: I'm sorry, I didn't hear that.

11 THE WITNESS: Oh, no, I mean, it --

12 THE COURT RECORDER: Can you have the witness speak
13 up.

14 THE COURT: That was really loud, but yeah.

15 THE WITNESS: Just for [indiscernible] --

16 UNIDENTIFIED SPEAKER: [Indiscernible - speaking at the
17 same time as the witness]

18 THE WITNESS: -- pick her up at.

19 THE COURT: All right. Hold on, sorry.

20 THE WITNESS: I'm sorry.

21 MS. ALBERTSON: Do you want me to move the microphone
22 closer?

23 THE COURT RECORDER: Yes, please.

24 MS. ALBERTSON: Okay. I'm going to move the microphone
25 closer to you.

1 THE WITNESS: I've never done --

2 THE COURT: And please stop talking at the same time. It's
3 being recorded. Everyone try to hold off until --

4 THE WITNESS: Okay.

5 THE COURT: -- the other person stops, please.

6 THE WITNESS: I'm just nervous.

7 THE COURT: It's okay.

8 MS. ALBERTSON: I'm going to move it close, but let me
9 know if I get too close.

10 THE WITNESS: Okay. I'm all right.

11 THE COURT RECORDER: That's fine.

12 MS. ALBERTSON: Is that better?

13 THE COURT RECORDER: Yes.

14 THE COURT: Okay. Go ahead, Ms. Albertson. I'm sorry.

15 BY MS. ALBERTSON:

16 Q Okay. So were you at -- were you with Kim at the hospital
17 during that procedure?

18 A No, I -- afterwards.

19 Q Okay. And you said you don't drive?

20 A No.

21 Q So to your knowledge, who was dropping her off?

22 A My husband, Clyde.

23 Q And what was his understanding of when he would have to
24 return to pick her up --

25 MR. MCBRIDE: Objection.

1 BY MS. ALBERTSON:

2 Q -- to your knowledge?

3 MR. MCBRIDE: Calls for speculation.

4 THE COURT: Sustained.

5 BY MS. ALBERTSON:

6 Q Were you aware of when he would have to pick her up?

7 A About 10:30.

8 Q And how long was that from when he dropped her off, to
9 your knowledge?

10 A Dropped her off?

11 Q For the surgery, originally?

12 A It was 5:30, 6, I can't remember.

13 Q So three or four hours total?

14 A Sounds right.

15 Q Okay. Now after he dropped her off, after your husband --
16 your husband is Clyde, right?

17 A Yes.

18 Q Okay. So after Clyde dropped off Kim for the surgery, did he
19 wait at the hospital for her?

20 A No. We were told he could go home and that they would call
21 us.

22 Q And did they call you?

23 A No. My husband had to call around noontime to find out
24 when to come get her?

25 Q And what happened when your husband called around

1 noontime, to your knowledge?

2 A They said that she was in recovery and that we could come
3 in, we could come in and be with her.

4 Q And then did you go to the hospital?

5 A Yes.

6 Q Did you go alone?

7 A No.

8 Q Who went with you?

9 A My husband, Clyde.

10 Q And about what time did you arrive at the hospital?

11 A Around 1 or 1:30.

12 Q And was that a few hours later than what you were expect --
13 what time you expected to be picking up Kim?

14 A Yes.

15 Q And when you came to the hospital, did you see Kim?

16 A Yes.

17 Q And what condition did she seem to be in?

18 A My daughter was in a lot of pain, very much pain.

19 Q Did you ever talk to Dr. Brill at the hospital?

20 A No.

21 Q Okay. And Dr. Brill, I'll represent to you is sitting right at
22 counsel table at the end.

23 A Okay.

24 Q To your knowledge, have you ever seen him before?

25 A I never met him. No. I've never seen him.

1 Q Okay. I'm going to try to finish my question. I don't want to
2 rush my question.

3 A Okay.

4 Q If you want, just take a breath before you answer, if you don't
5 mind?

6 A Okay.

7 Q And I will do my best to be real short at the end.

8 A Okay.

9 Q Be real short at the end and not mumble, okay? Okay. So
10 looking at Dr. Brill, are you able to see him from where you're sitting
11 right now?

12 A Uh-huh. Yes.

13 Q Do you recognize him at all?

14 A No.

15 Q Did you ever talk to him at the hospital?

16 A No.

17 Q Did he ever talk to you at the hospital?

18 A No.

19 Q Do you believe you ever met him before?

20 A No.

21 Q If you had talked to him at the hospital that day you went to
22 go pick up Kim, do you think you'd remember?

23 A Absolutely.

24 Q And you haven't had any injury or accident between April of
25 2017 and today that would affect your memory or ability to remember

1 meeting him, correct?

2 A Correct.

3 Q Okay. Let's go back to talking a little bit about the condition
4 Kim was in in the hospital, when you came to the hospital to pick her up.
5 Could she stand?

6 A No.

7 Q Did she look like the procedure had gone well?

8 A No. She -- I mean, I didn't know, but she looked bad.

9 Q Okay. And were you in the PACU with her?

10 A What's that mean?

11 Q The aftercare?

12 A Aftercare, yes.

13 Q Did you go into the family area of the aftercare?

14 A No, we were back where she was.

15 Q So were you able to sit with Kim and wait with her?

16 A Yes.

17 Q And at any time that you were sitting with Kim and waiting
18 with her, did you ever see Dr. Brill?

19 A No.

20 Q Did you ever talk to Dr. Brill?

21 A No.

22 Q Did Dr. Brill ever tell you that Kim had sustained a perforated
23 uterus or small -- or rupture -- excuse me, perforation to her small
24 intestine or bowel during the surgery?

25 A No.

1 Q And I'll represent to you that earlier in this case, or actually,
2 excuse me, not earlier in this case, but we expect to hear testimony in
3 this case that Dr. Brill will state that he believes he spoke with you --

4 MR. MCBRIDE: Objection. That lacks foundation and
5 assumes facts.

6 THE COURT: Sustained.

7 MS. ALBERTSON: Thanks.

8 BY MS. ALBERTSON:

9 Q Did anyone at the hospital, such as nurses or any medical
10 professionals, ever tell Kim where -- while you were near her, that she
11 had sustained a perforated uterus or any kind of injury to her small
12 intestine during the surgery?

13 A No.

14 Q If anyone had told Kim that while you were near her, do you
15 think you'd be likely to remember it?

16 A Yes, I would.

17 Q When did you leave the hospital with Kim after that first
18 procedure?

19 A About 4, 4:30, something around there.

20 Q Okay. And where did you go next?

21 A Took her to get some prescription filled.

22 Q And why did you do that?

23 A Because that's what -- it was pain medicine, she needed it to
24 go home.

25 Q And then where did you go next?

1 A We took her home to her house.

2 Q What condition was Kim in at that time?

3 A She was in bad shape. She was in a lot of pain.

4 Q And then what happened at her house?

5 A After she took her medicine, and we got her comfortable on
6 the sofa because she was going to stay downstairs, she said Mom, I'm
7 going to go to -- try to get some rest. You can go on home. I'm going to
8 be okay, and so we left around 11:00.

9 Q Okay. Where did you go next?

10 A To our house.

11 Q What did you do at your house?

12 A We went to bed.

13 Q Did you later receive any kind of phone call from Kim that
14 night?

15 A No.

16 Q Do you know why not?

17 A Because we made the mistake as we were tired, we forgot to
18 turn our phones off, I mean, put them back on, so we didn't -- never got a
19 call.

20 Q Why were your phones off?

21 A Because we were in the hospital, and we didn't want to
22 disturb anything. We just turned them off.

23 Q When you woke up in the morning, did you hear from Kim?

24 A I don't recall talking to her right after. I know that she had
25 called us several hours after we got home, we were already asleep. No,

1 that was the next day. I'm sorry. I apologize. She was -- called, she told
2 us she called the ambulance and had to go back into the hospital
3 because she was in a lot of pain.

4 Q So did you understand that to mean she had been in the
5 hospital already once again the night before?

6 A Yes.

7 Q While you were sleeping?

8 A Yes.

9 Q Okay. And then did you go with her to the hospital the
10 second time?

11 A Yes.

12 Q Who else went with her?

13 A My husband, Clyde.

14 Q What kind of condition was Kim in at that time?

15 A She was screaming at that point, and my husband had to call
16 the ambulance. She wasn't able to, but she was -- she was bad.

17 Q Take your time if something is painful or you need a break.
18 Now that second visit to the ER that we're talking about right now, were
19 you -- did you stay right by Kim, or did you go off and do something
20 else?

21 A I stayed right by her.

22 Q And while you were right by her, what happened?

23 A A doctor -- are we -- I'm a little confused, is she -- because
24 this is the second time? Okay. The second time we were back there, and
25 a physician came in. I don't know the name, I just remember what he

1 looked like, and said that --

2 MR. MCBRIDE: Excuse me. It's hearsay.

3 MS. ALBERTSON: I can ask her in a different way.

4 THE COURT: Sustained.

5 BY MS. ALBERTSON:

6 Q What happened next while you were -- and I don't want to
7 know exactly what the doctor said, but what did you -- was Kim taken
8 somewhere else as far --

9 A Surgery.

10 Q Okay. And that was going to be my next question. Did you
11 know where she was being taken?

12 A Yes.

13 Q Okay. And why was she be taken into surgery, to your
14 understanding, not a medical --

15 A To my understanding, she was talking with a doctor on the
16 phone, and they told her she needed surgery.

17 MR. MCBRIDE: Objection, Your Honor. That's hearsay.

18 THE COURT: Sustained.

19 BY MS. ALBERTSON:

20 Q Okay. The surgery that she received when she went back to
21 the ER the second time, did you stay at the hospital while that was
22 happening?

23 A Yes.

24 Q Did you pick Kim up at -- or did you take Kim home after
25 that?

1 A Take who home?

2 Q Kim. Oh, excuse me. After the second surgery that was at
3 the ER, that you and your husband were there for, correct?

4 A Yes.

5 Q Okay. What happened when Kim got out of surgery?

6 A A physician came out and talked to us and said that there --

7 MR. MCBRIDE: Again, Your Honor, it's hearsay.

8 MS. ALBERTSON: Okay.

9 THE COURT: Sustained.

10 BY MS. ALBERTSON:

11 Q I don't need to know what the physician said, but what I will
12 ask -- okay. Were you ever informed how the surgery went, that second
13 surgery?

14 A Yes.

15 Q Okay.

16 MS. ALBERTSON: And can we approach for a moment,
17 because I think I should be able to ask the question. It was not offered
18 for the truth of the matter asserted.

19 [Sidebar at 3:55 p.m., ending at 3:57 p.m., not transcribed]

20 BY MS. ALBERTSON:

21 Q After you spoke with the surgeon at St. Rose, what do you
22 recall happening next?

23 A Said that her surgery went well, and that we could go -- we
24 would go home and get some rest and come back tomorrow because
25 she was going to be in recovery.

1 Q Okay. Did you -- and you say "we". It's you and your
2 husband, Clyde?

3 A My husband, Clyde. Yes.

4 Q Did you go home and get some rest?

5 A Yes.

6 Q Okay. Then what did you do the next day?

7 A We came back and found her. We knew where they were put
8 her, so we went right to her room and there we stayed.

9 Q And how long was Kim in the hospital at that point?

10 A I believe it was nine days. Nine.

11 Q Did you and Clyde go there every day?

12 A Every single day, we were beside her.

13 Q Okay. And how was Kim? How did she seem
14 [indiscernible]?

15 A After she -- when we saw her the next morning, she was
16 feeling much -- not much better. She was in pain, but not to the point
17 where I was that concerned anymore because she just looked better
18 [indiscernible].

19 Q Did she progressively get better?

20 A Yes.

21 Q And then you said she stayed in the hospital for eight or nine
22 days?

23 A Somewhere around there. Yes. I don't remember for sure.

24 Q When she was ready to be discharged, did you take her
25 home?

1 A Yes, my husband and I.

2 Q And did you drive her to her house?

3 A Yes. She went -- I'm sorry. She went home with us for a
4 week because she was on IV, and we had to help her.

5 Q So she came home to stay with you?

6 A Yes.

7 Q And I think you just told me about how long did she end up
8 staying with you?

9 A About four days, five days. Four days.

10 Q And what kind of help did you give her while she was there?

11 A Made sure she was eating, which she didn't do very much of.
12 And my husband helped her with the IVs.

13 Q Can you explain what you mean by helped her with the IVs?

14 A Setting it up for her, showing her what he was doing. He
15 was getting it off the instructions that was given to her. So he was able
16 to start up -- start on letting her see how everything was done.

17 Q Now, after that week or so of having her at your house, did
18 you take her back to her home?

19 A Yes.

20 Q And to your knowledge, did anyone help her at her home
21 with the IVs?

22 A Her son. Her son.

23 Q Did you start to see gradual improvement with Kim?

24 A Yes.

25 Q And as we sit here today, have you seen her get back to at

1 least close to what she was before the surgery with Dr. Brill?

2 A Yes.

3 MS. ALBERTSON: Thank you very much.

4 THE COURT: Cross-examination?

5 MR. MCBRIDE: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. MCBRIDE:

8 Q Ms. Olsen, good afternoon. How are you?

9 A Yes. Yes, I'm fine.

10 Q Good. Ms. Olsen, were you aware that your daughter had
11 listed you as the contact person at Henderson Hospital for her surgery?

12 A Not right away. But yes, she did tell me.

13 Q Okay. And also at some point, did the hospital contact you to
14 tell you that it was okay to come pick her up or at least come see her in
15 the PACU?

16 A Did not call me.

17 Q Okay. Who did they call?

18 A They did not call. My husband had to call around noon to
19 find out what was happening.

20 Q And do you know who he spoke with?

21 A I don't.

22 Q All right. Do you know if he spoke to a doctor?

23 A No.

24 Q Now, you had indicated that you had been in St. Rose
25 Hospital after her surgery, and you were there every day, correct?

1 A Correct.

2 Q Okay. And you were at the bedside with your husband,
3 correct?

4 A Correct.

5 Q And it's your testimony that you never recall seeing Dr. Brill;
6 is that right?

7 A That's right.

8 Q Okay. I want to show you what's been admitted as Joint
9 Exhibit Number 1.

10 MR. MCBRIDE: And can I get the -- is the power on?

11 THE MARSHAL: Yes.

12 MR. MCBRIDE: Just hit that?

13 THE MARSHAL: Yes.

14 BY MR. MCBRIDE:

15 Q And it's at page -- the end of page 100. So what I'll show you
16 a document. Can you read that back there, ma'am? I mean, there's
17 nothing on there yet, but let me show it to you. Can you see that okay?

18 A No, it --

19 Q I'm trying to get it a little bit -- trying to autotune here. Can
20 you see that?

21 A Barely.

22 Q Okay.

23 A It's a little blurry.

24 Q Well, I'll represent to you it's a record from progress notes
25 authored by Dr. Brill for May 3rd, 2017. Now, were you there at St. Rose

1 that day?

2 A Yes.

3 Q All right. Now, Dr. Brill authored this note. And did your
4 daughter tell you that Dr. Brill had visited her every day at St. Rose?

5 A No.

6 Q Okay. And did you -- I'm going to show you. This is page
7 103. And this is in his note. I'm going to try to read it to you. "I
8 spoke" -- right down here. Patient care time. "I spoke to Kimberly and
9 her parents at length again about the hysteroscopy last week and the
10 nature of her uterus". Now, it's your testimony, ma'am, that you never
11 spoke with Dr. Brill in the presence of your daughter and your husband?

12 A No, I did not talk to him; I did not see him.

13 Q Okay. So do you have any reason to suspect why this note
14 would appear?

15 A I do not.

16 Q Okay. The -- and actually, I want to go over it real quick. It
17 says, "During the resection procedure, there was a perforation, and I
18 cannot proceed with the myomectomy and endometrial ablation". At
19 any point in time before May 3, 2017, had your daughter informed you
20 what happened with the surgery?

21 A No.

22 Q Okay. Okay, great. When you were there at Henderson
23 Hospital, and you said you arrived approximately 1:30 in the afternoon?

24 A Yes.

25 Q And you had under -- and you testified earlier you

1 understood it was only going to be an hour or two procedure that she
2 was going to be in recovery, correct?

3 A Yes, correct.

4 Q At any point in time, did you raise a concern with the nurses
5 or attempt to get ahold of any physician to ask why she was there so
6 long?

7 A I did not ask the question, but I was very concerned. And I
8 was getting to the point where I was going to say, why hasn't anybody
9 seen her?

10 Q Okay. But you never made that comment to the nurses?

11 A No.

12 Q And ultimately, you said you were dis -- your daughter was
13 discharged around 4:30?

14 A Yes.

15 Q Okay. There has been some testimony -- or at least in your
16 daughter's deposition that she recalled leaving at 5:30.

17 A Well, it's four years ago, so it could have been 5:30, 4:30. I
18 can't recall the next time.

19 Q Okay. But at any rate, it was longer than you had expected
20 her to be there?

21 A Yes.

22 Q At any point in time, do you recall speaking with a nurse, a
23 PACU nurse, by the name of Bruce Hutchins?

24 A I don't know his name, but there was a male nurse there.

25 Q Okay. And this male nurse, did you see him give your

1 daughter medications?

2 A Yes.

3 Q Okay. How many times did you see that?

4 A I can't recall how many times.

5 Q Multiple times?

6 A Yes.

7 Q Do you know if -- did you ever see Kim talk to Bruce

8 Hutchins -- or this nurse -- and ask why she was getting these

9 medications?

10 A No.

11 Q Did you ever see or hear your daughter contact this nurse to
12 ask where a physician is?

13 A No.

14 Q Did you know that she was going to see -- she was having
15 the surgery with Dr. Brill?

16 A I know his name because she told me.

17 Q Okay. And then at any point when your daughter was
18 discharged, you and your husband were both present when she was
19 discharged?

20 A Yes.

21 Q And do you recall your daughter being given discharge
22 instructions upon discharge?

23 A I didn't see them, but she -- I don't know.

24 Q Okay, you don't know. But was she given paperwork that
25 you saw she took with her?

1 A I did not see the paperwork.

2 Q Okay. You didn't look at the paperwork?

3 A No, I did not.

4 Q Okay. Do you know -- did your daughter tell you she had
5 looked at the paperwork?

6 A No.

7 MR. MCBRIDE: Ms. Olsen, that's all the questions I have.
8 Thank you very much.

9 THE WITNESS: You're welcome.

10 THE COURT: Any redirect on behalf of Plaintiff?

11 MS. ALBERTSON: Yeah, just a couple.

12 REDIRECT EXAMINATION

13 BY MS. ALBERTSON:

14 Q I asked you some questions about your communication with
15 Dr. Brill -- or lack of communication, actually, with Dr. Brill following the
16 Henderson Hospital surgery, correct?

17 A Correct.

18 Q Okay. That's where Dr. Brill performed the surgery, right?

19 A Yes.

20 Q And you were just shown some records by opposing
21 counsel. And I just want to put the pages of reference up that shows
22 where those records are from. St. Rose Dominican Hospital - Siena.
23 That's different than Henderson Hospital, correct?

24 A Correct.

25 Q Those are two different locations, right?

1 A Yes.

2 Q Okay. And the records opposing counsel just showed you
3 were the St. Rose Dominican records; not the Henderson Hospital
4 records, correct?

5 A Correct.

6 MS. ALBERTSON: Thank you.

7 RECROSS-EXAMINATION

8 BY MR. MCBRIDE:

9 Q Ms. Olsen, just a follow-up to that. I told you the date of the
10 admission, which was May 3. And you understood that by then, your
11 daughter had been admitted to St. Rose, right? She was at St. Rose for a
12 couple days for that surgery, that second surgery, correct?

13 A Yes.

14 Q All right. So you weren't confused by my representation that
15 this was May 3, and I was showing the records from St. Rose, were
16 you --

17 A No.

18 Q -- to your responses?

19 MR. MCBRIDE: Okay. Thank you.

20 THE COURT: All right. Thank you.

21 And do we have any questions from the jury? All right, I see
22 no hands. Ms. Olsen, you may be excused. Thank you so much.

23 And on behalf of Plaintiff, who will be your next witness?

24 MS. ALBERTSON: Oh. Clyde Olsen, please. He should be
25 right outside there.

1 THE MARSHAL: Please step up and watch your step. Please
2 [indiscernible] to your left and please raise your right hand.

3 CLYDE OLSEN, PLAINTIFF'S WITNESS, SWORN
4

5 THE CLERK: Thank you. Please be seated. Please state and
6 spell your name for the record.

7 THE WITNESS: My name is Clyde Olsen. C-L-Y-D-E. Last
8 name is O-L-S-E-N.

9 DIRECT EXAMINATION

10 BY MS. ALBERTSON:

11 Q Hi, Mr. Olsen. I'm Anna Albertson. I am co-counsel
12 for -- well, who is Kimberly Taylor to you?

13 A My step-daughter.

14 Q Okay. And how long have you known her?

15 A About 35 years.

16 Q How long have you lived in Las Vegas, sir?

17 A Five years.

18 Q And are you currently married?

19 A Yes.

20 Q Okay. And I think we just heard from your wife, correct?

21 A You did.

22 Q What is your relationship with Kim?

23 A As a step-daughter. We moved out -- when we moved out
24 here, we haven't been able to see her as much as we'd like because
25 she's very, very busy. And I spend most of my time with my wife, who

1 has some very serious physical issues I try to help with. My relationship
2 with Kim is excellent. We just don't see her as much as we'd like.

3 Q Okay. I want to bring you back to April of 2017 when Kim
4 was having a hysteroscopy done. Do you recall that procedure?

5 A I -- oh, I recall the day. I recall taking her to the hospital. I
6 didn't know exactly at that time what the procedure was going to be
7 other than it was gynecologically related.

8 Q Okay. So you took her to the hospital in the morning?

9 A About 6:30 in the morning.

10 Q And then did you stay?

11 A Did I stay? No, I did not.

12 Q Why didn't you stay?

13 A I checked at the desk on the way out and asked them how
14 long it would be. And they said about four hours. They gave me the
15 time, as I recall, of about 10:30 that they expected her to go to the
16 recovery room. And the -- I think they said they were going to call me,
17 but I never did get a call.

18 Q Okay. So did you -- what did you do next because you never
19 got that call?

20 A Yeah. My wife and I were both getting very concerned and
21 figured maybe it slipped through the cracks. When we -- I called the
22 hospital myself, and they said I was --

23 MR. MCBRIDE: Objection, Your Honor. It's hearsay.

24 THE COURT: Sustained.

25 MR. BREEDEN: Your Honor, may I approach?

1 THE COURT: Uh-huh.

2 [Sidebar at 4:12 p.m., ending at 4:16 p.m., not transcribed]

3 BY MS. ALBERTSON:

4 Q Okay. Did you ultimately return to the hospital to pick up
5 Kim?

6 A Yes.

7 Q When did you do that, to the best of your memory? Or
8 approximately?

9 A I would say between 1:00 and 1:30, approximately.

10 Q Okay. And when you got to the hospital, and we're talking
11 about Henderson Hospital now, correct?

12 A Yes.

13 Q Okay. Did you see Kim?

14 A Yes, we -- yes, I did.

15 Q What kind of condition was she in?

16 A She was in recovery. She was moaning and considered --
17 seemed to be in considerable amount of pain at that point.

18 Q Did you say moaning?

19 A Yes.

20 Q So there was an actual verbal expression of pain?

21 A Oh, yes.

22 Q Was she able to stand?

23 A I don't -- I don't know. I would not think so. I can't swear to
24 that.

25 Q Was she lying in the bed?

1 A She was lying in the bed.

2 Q And how long then did you wait with her in that condition?

3 A My wife and I stayed with her until maybe 4:00, 4:30.

4 Q Okay. Now were you at Henderson Hospital with your wife
5 the whole time she was there?

6 A Yes.

7 Q Okay. At Henderson Hospital -- I want to be clear now. Did
8 you ever talk to Dr. Brill?

9 A No.

10 Q Okay. And just to be clear, Dr. Brill is the man sitting right
11 over here at this table at the table at the end?

12 A Did not.

13 Q Okay. Do you recall him ever talking to you at Henderson
14 Hospital?

15 A No, I do not.

16 Q Okay. Do you ever call -- do you recall him approaching you?

17 A No, I do not.

18 Q Okay. Do you recall him telling you that there was any kind
19 of perforations to Kim's uterus in the surgery?

20 A No.

21 Q Or that there was any problems with the surgery?

22 A None at all.

23 Q If you had had such a conversation with Dr. Brill, do you
24 think you would remember it?

25 A Absolutely.

1 Q Did anyone at Henderson Hospital, nurses or any medical
2 professionals, ever tell you that Kim had sustained a perforated uterus or
3 any kind of perforation to her bowel?

4 A No, they did not.

5 Q Did you eventually leave Henderson Hospital?

6 A Yes.

7 Q And who left with you when you left Henderson Hospital?

8 A My wife and Kim.

9 Q And what condition was Kim in at that time?

10 A She was -- she was -- we have a van. And I was trying to get
11 her into the van. And she was hurting to a point where it was very
12 difficult to get her into the van.

13 Q Did you have to physically help her?

14 A Oh, yes.

15 Q And then where did you go when you left the hospital?

16 A We had to stop and pick up pain medication. Her
17 prescription pain medication enroute to her house. And then we took
18 her to her house.

19 Q And what happened at her house, to the best of your
20 memory?

21 A She was in pain. She took the pain medication. We stayed
22 there until about 11:00 that night. She at that point was curled -- kind of
23 curled up on the sofa, on the first floor, because she could not get up the
24 stairs. And had she told us that she thought she was going to be okay,
25 the pain medicine was going to do its thing. And she said, you guys can

1 go home. Which is what we did.

2 Q And then at home, what did you do?

3 A Well, for us it was extremely late, so we retired for the
4 evening. That's what we did when we went home.

5 Q Did you go to sleep?

6 A Sure.

7 Q Okay. And then when did you hear from Kim again?

8 A It was sometime the next morning. I think it was late
9 morning. I had a doctor appointment myself, that morning. And
10 somewhere along that process she got ahold of me. And it -- and then
11 that's when we spoke next.

12 Q Now I don't want you to tell me exactly what she said to you,
13 but what did you find out at that point?

14 A She told us that she had had to go to the emergency room
15 after -- a couple of hours or a few hours after we left her. Well, after we
16 had taken her home. Because she was in a great deal of pain, and she
17 had called an ambulance. And that she had tried to call us, but we had
18 both left our phones on mute, or off completely because we had been in
19 the hospital environment and basically we didn't use our phones.

20 Q And then what happened next that you remember?

21 A She was asking us to please hurry up and come over to her.
22 She needed -- I think the way she said it was she needed her mother.
23 But she needed us to come over because she was in a lot of pain.

24 Q That was going to be my next question. Why was she asking
25 for her mother?

1 A Yeah, because she was in a lot of agony at that point, and
2 she needed us right away.

3 Q Did you thereafter go to Kim's house?

4 A Certainly did.

5 Q And what happened at Kim's house?

6 A When we got to her house there was another friend of hers, a
7 female friend. I don't know who it was. At this point I can't remember.
8 Who had either -- was there already or was just getting there. And we
9 observed Kim on the sofa literally screaming.

10 Q Screaming?

11 A In pain. Oh, yeah, she was screaming in pain.

12 Q And then what do you recall happening next?

13 A We made -- it was a very quick decision that we made that
14 we could not get her into our vehicle. She was in no condition to get up.
15 So I called an ambulance.

16 Q Were you at Kim's house when the ambulance arrived?

17 A Yes.

18 Q Okay. Did you see Kim get in the ambulance?

19 A I saw them take her out of the house. I suppose I saw her go
20 into -- physically go in the ambulance.

21 Q I guess what I'm getting at is did they take -- to your
22 knowledge, did they take Kim to the hospital?

23 A Absolutely, yes.

24 Q What hospital did they take her to then?

25 A St. Rose - Siena, I believe is the name.

1 Q Okay. So a different hospital than where the procedure that
2 Dr. Brill did, was performed?

3 A That's correct.

4 Q Okay. Did you go to St. Rose - Siena as well?

5 A We do -- we followed her over.

6 Q And when you say we, who is we?

7 A My wife and I.

8 Q And what condition was Kim in when you got to St. Rose
9 Siena?

10 A Well, she was -- immediately went in and a doctor -- with a
11 doctor, so I would have to sense that she was in the same condition that
12 she was when she was picked up in an ambulance, at that point. We
13 didn't get to see her right away. It was a while before we got to see her
14 at St. Rose.

15 Q When you say see her, does that mean you eventually went
16 back and sat with her next -- in a hospital bed?

17 A Yes. Yes.

18 Q And by that, she was the one in the hospital bed, correct?

19 A Yes.

20 Q Okay. And then what do you recall happening next?

21 A A doctor -- a doctor there, a male doctor, indicated that he
22 had seen something that was concerning --

23 MR. MCBRIDE: Objection, Your Honor. That's hearsay.

24 MS. ALBERTSON: The gist of it is, I'm just trying to get a
25 chronology. So I'll move on and ask a different way.

1 THE COURT: All right. Sustained.

2 BY MS. ALBERTSON:

3 Q Was Kim taken into surgery then at St. Rose?

4 A After a period of time she was, yes.

5 Q Okay. And were you and your wife there when that
6 happened?

7 A Yes, we were.

8 Q Were you and your wife there when Kim came out of
9 surgery?

10 A Yes.

11 Q Did -- and I don't know want to know what was said.

12 A Okay.

13 Q Did anyone talk to you when Kim came out of surgery?

14 A Yes.

15 Q Who talked to you when Kim came out of surgery?

16 A It was a female doctor. I don't -- I have no idea what her
17 name was.

18 Q It wasn't Dr. Brook, correct?

19 A That's correct.

20 Q Okay. And again, I don't want to know what the doctor said
21 to you. I'm just confirming that she talked to you. After the doctor talked
22 to you, what did you and your wife do?

23 A Well, at that point we understood that she was in recovery
24 and the doctor indicated to us there's no need for us to stay --

25 MR. MCBRIDE: Objection, Your Honor. This is hearsay.

1 BY MS. ALBERTSON:

2 Q Were you under the impression it was okay for you and your
3 wife to then go home and get some rest?

4 A Absolutely, yes.

5 Q And then did you and your wife do that thereafter?

6 A We did.

7 Q Okay. Did you and your wife ever return to St. Rose?

8 A We did.

9 Q Was Kim awake when you returned?

10 A Yes.

11 Q Okay. Did you go to Kim's bedside?

12 A Yes.

13 Q Okay. What kind of condition was Kim in?

14 A She was in much better condition. She wasn't crying out in
15 pain anymore.

16 Q When you say better, we're comparing it to how she was
17 after that surgery at Henderson Hospital, correct?

18 A Yes. Yes.

19 Q Okay. Did you stay with her for any prolonged period of time
20 at St. Rose?

21 A Yes, we visited -- we stayed most of the day, every day, while
22 she was there.

23 Q Now, when you say most of the day, how many days did you
24 go there? Every day or --

25 A Yes.

1 Q Okay. You and your wife, or just you?

2 A The two of us.

3 Q Okay. Not a medical opinion, but in a layperson's opinion,
4 did you witness gradual improvement over the multiple days that you
5 went?

6 A Yes.

7 Q Do you think you went there for every day for more than a
8 week?

9 A About a week. Maybe a little bit more.

10 Q Okay. If records show it was eight or nine days; is that
11 accurate?

12 A That would seem right.

13 Q Okay. After that eight or nine days, is it your understanding
14 that Kim was released to go home?

15 A Yes.

16 Q And your wife just testified that at that point you and your
17 wife took Kim home to your house; is that correct?

18 A That's correct.

19 Q And by your, I mean you and your wife's.

20 A Correct.

21 Q And did you assist Kim with, I'm going to call them activities
22 of daily living, at your house?

23 A Absolutely, yes.

24 Q Things like eating, cooking?

25 A Yes.

1 Q Cleaning. Okay. Your wife also discussed that you were
2 assisting Kim with the picc line that was in her body; is that correct?

3 A Yes.

4 Q Okay. How did you learn how to do that?

5 A There was an instruction sheet. If I recall there was an
6 instruction sheet that was provided to us.

7 Q Okay. Did you witness Kim gradually improving --

8 A Yeah.

9 Q -- when she was at your house?

10 A Absolutely, yes.

11 Q Okay. Your wife testified that after about seven days --
12 somewhere in the range of four to seven days, you then took her home
13 to her home; is that correct?

14 A That's right.

15 Q Okay. And at that point, did Kim live with anybody else?

16 A Her son.

17 Q Okay. And is it your understanding that her son took over
18 some of the assisting work with some of those assistance with activities
19 of daily living?

20 A That's right.

21 Q Now as we sit here today, have you seen Kim gradually
22 recover over time to the point that she's at the status she has -- she was,
23 or at least close to where she was prior to the surgery at Henderson
24 Hospital?

25 A That's fair, yes.

1 MS. ALBERTSON: Thank you, very much.

2 THE COURT: Cross-examination.

3 MR. MCBRIDE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. MCBRIDE:

6 Q Mr. Olsen, I just have a few questions for you, sir.

7 A Yes, sir.

8 Q Your wife just testified here, as you know, a few minutes
9 before you. When you went to Henderson Hospital, I think it was around
10 1:30 in the afternoon, that you and your wife arrived?

11 A That's about right.

12 Q And when you arrived, did Kim tell you that there had been
13 complications in her surgery and that she -- and that Dr. Brill was not
14 able to complete the procedure at Henderson Hospital?

15 A Not that I recall.

16 Q Okay. When you were leaving with Kim that day, did you
17 happen to see if she was given any discharge instructions from the
18 nurses, as to follow up?

19 A No. I don't recall that.

20 Q Okay. You never saw those?

21 A I didn't see them.

22 Q Okay. When you found out that Kim had been taken
23 overnight to St. Rose Hospital and was seen in the E.R., did Kim ever tell
24 you what had happened when she went to the E.R.?

25 A Yes.

1 Q Did Kim tell you that -- why she had been discharged?

2 A What she said was --

3 MS. ALBERTSON: I'm going to --

4 THE WITNESS: -- what might have --

5 THE COURT: Anything? Ms. Albertson?

6 MS. ALBERTSON: I mean I'm just going to put an objection
7 on the record, for the same reason why he was objecting to some of my
8 questions.

9 MR. MCBRIDE: It's a different admission of party opponent.

10 THE COURT: Can you approach, please?

11 MR. MCBRIDE: Sure.

12 [Sidebar at 4:30 p.m., ending at 4:30, not transcribed]

13 BY MR. MCBRIDE:

14 Q Mr. Olsen, did you ever find out why she was discharged that
15 evening from St. Rose?

16 A My understanding was she said some tests were run. I knew
17 nothing beyond that.

18 Q Okay. Your wife had also told us that you and she had seen
19 Kim at St. Rose Hospital every day that you were there?

20 A That's correct.

21 Q And I think you testified to that as well, correct?

22 A Yes.

23 Q And I wanted to show you an exhibit that's been previously
24 marked as Exhibit 1. So I want to make sure it's clear. This is from St.
25 Rose Dominican Hospital. Not Henderson Hospital. And if you can see

1 that -- it's right in front of you, too, as well, sir. It should be over there.
2 Maybe not.

3 A Nope.

4 Q Nope, it's not? Okay. Can you see it there?

5 A Yes.

6 Q All right. And so you see here at the top, this is St. Rose
7 Dominican Hospital Siena Campus. That's where Kim was on May
8 6th -- excuse me, on this date, which is May 3, 2017, correct?

9 A Yes.

10 Q And this is a note from Dr. Brill of that day. And do you
11 recall seeing Dr. Brill in St. Rose on May 3rd?

12 A We did not.

13 Q Okay. I'm going to show you a document. This is page 103
14 of his note. Under the patient care time it says, "I spoke to Kimberly and
15 her parents at length again about the hysteroscopy last week in the
16 nature of her uterus. The CT read the shape as bicornuate. And during
17 the hysteroscopy there was a large septum noted, which made seeing
18 the right horn where the fibroid was located difficult. During the
19 resection procedure, there was a perforation, and I could not proceed
20 with a myomectomy and endometrial ablation."

21 Now, sir, is it your testimony then that Dr. Brill never spoke to you,
22 your daughter, and in the presence of your wife?

23 MS. ALBERTSON: Objection. Asked and answered.

24 THE COURT: I'll allow it. Go ahead.

25 THE WITNESS: Yes. That would -- that's my testimony.

1 BY MR. MCBRIDE:

2 Q Okay. And with regard to the procedure that Kim had at
3 Henderson Hospital, do you recall what -- who the physician was who
4 was going to be seeing her before you knew that she was going to have
5 the procedure?

6 A So could you repeat that?

7 Q Sure. Now -- you understand now that Dr. Brill was the one
8 who operated on her?

9 A Right. Right.

10 Q Did you know that Dr. Brill was going to be the surgeon
11 operating on her?

12 A No, I did not.

13 Q Okay. And while you were at Henderson Hospital in the
14 recovery room or at her bedside, your expectation was that she was
15 going to be discharged almost around the time that you arrived there,
16 correct?

17 A Yeah. I would say yes, or maybe within an hour.

18 Q Okay. And over that period of time, did you ever see your
19 daughter being attended to by a male nurse?

20 A Yes, I did.

21 Q Okay. Multiple occasions?

22 A Yes.

23 Q And did you see this male nurse give her medications for her
24 pain?

25 A Yes.

1 Q Okay. Did you see this male nurse --

2 MR. MCBRIDE: Strike that.

3 BY MR. MCBRIDE:

4 Q Did you ever see or ask this male nurse whether or not that --
5 why she was still there?

6 A I don't specifically remember asking that.

7 Q Okay. At any point when she was -- your daughter was
8 discharged, do you remember, did your daughter have any questions of
9 this male nurse while she was there?

10 A I don't recall.

11 MR. MCBRIDE: Okay. That's all I have. Thank you.

12 THE COURT: Redirect?

13 MS. ALBERTSON: No, Your Honor. Thank you so much for
14 your testimony.

15 THE COURT: Do we -- hold on, sir.

16 THE WITNESS: Yes.

17 THE COURT: Do we have any questions from our jury?
18 Ma'am, your hand's not up, is it?

19 UNIDENTIFIED JUROR: Huh?

20 THE COURT: You don't have any questions?

21 UNIDENTIFIED JUROR: No.

22 THE COURT: Okay. All right. Mr. Olsen, you may be
23 excused. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Counsel, approach, please.

1 [Sidebar at 4:35 p.m., ending at 4:36 p.m., not transcribed]

2 THE COURT: All right. Ladies and gentlemen, we're going to
3 go ahead and take our evening recess. And tomorrow, we're going to
4 resume in this courtroom at 10:30 in the morning. So that's Courtroom
5 11C.

6 And during this recess, you're instructed not to talk to each
7 other or anyone else about any subject or issue connected with this trial.
8 You're not to read, watch, or listen to any report or commentary on the
9 trial by any person connected with this case by any medium of
10 information including without limitation newspapers, television, internet,
11 or radio.

12 You're not to conduct any research on your own related to
13 this case such as consulting a dictionary, using the internet, or reference
14 materials, test any theory of the case, recreate any aspect of the case, or
15 in any way learn about the case on your own. You're instructed not to
16 talk with others, text others, Tweet others, Google issues, or conduct any
17 other type of work or computer research with regard to any issue, party,
18 witness, or attorney related to this case. And finally, you are not to form
19 or express any opinion on any subject connected to this trial until the
20 case is finally submitted to you.

21 Thank you so much. And I'll see you at 10:30.

22 THE MARSHAL: All rise for the jury. Jurors, please leave
23 your notepads closed on your chairs.

24 [Jury out at 4:37 p.m.]

25 THE MARSHAL: The jury has cleared the courtroom, Your

1 Honor.

2 [Outside the presence of the jury]

3 THE COURT: Thank you. You may be seated. We're outside
4 the presence of the jury. And we're going to go ahead and put all the
5 objections on the record. So during -- just the ones that we discussed at
6 the bench. Obviously, the other ones were already on the record.

7 As to the testimony of Barbara Olsen, during Plaintiff's
8 questioning there was discussion about Ms. Olsen's polio. And counsel
9 for Plaintiff began to ask about specific body parts and issues. I guess
10 what was effected by the polio. Counsel raised an objection. Do you
11 want to put that on the record, Mr. McBride?

12 MR. MCBRIDE: Yes, Your Honor. It was simply on the basis
13 of relevance. There really was no basis or relevance to that question to
14 the witness.

15 THE COURT: And any response on behalf of Plaintiff?

16 MR. BREEDEN: Well, I think the response was those
17 questions were being asked to establish that her condition did not affect
18 her mental state or her memory. And that's where the questions picked
19 up when we came out of that sidebar.

20 THE COURT: Okay. And the Court sustained the objection
21 because I thought it went a little bit farther than asking when you could
22 have just asked, and as a result of being impacted by polio, you don't
23 have any issues with your memory. I think we were going a little too far
24 into her own diagnoses.

25 Secondly, the next objection was with regard to statements

1 by physician told to Kimberly. And Plaintiff was trying to elicit them
2 through Barbara Olsen, which is her mother. And then there was an
3 objection. And Mr. McBride?

4 MR. MCBRIDE: Yes, Your Honor. Simply, the question was
5 hearsay. It was a statement -- out of court statement offered for the truth
6 of the matter asserted. This was -- as Your Honor correctly pointed out,
7 if there was a third person involved, this is not any statement or an
8 exception to the hearsay rule for the purposes of seeking medical
9 treatment or conferring to a medical treatment.

10 So given the question was directed to Ms. Olsen, that's
11 something that they can elicit from their client, from the Plaintiff directly.
12 But as to this witness, it was inappropriate as hearsay.

13 THE COURT: All right. And Mr. Breeden?

14 MR. BREEDEN: Yes, Your Honor. This exception to the
15 hearsay rule is clearly covered in NRS 51.115, which deals with
16 statements for purposes of a medical diagnosis or treatment. And so
17 that allows those statements, for example, made by a patient or a doctor
18 or a third person speaking to the patient or a doctor about medical
19 diagnosis or treatment and describing medical history, your past or
20 present symptoms, pain sensations, or the inception of the general
21 character or cause of the external source.

22 I won't read the entire statute, I guess. But the purpose of
23 that statute -- and indeed, everything behind the hearsay rule is to
24 establish that certain statements are made under conditions that they are
25 more reliable. And the law says, look, statements that are made by

1 physicians or patients fall into that category and therefore should not be
2 covered by the hearsay rule or excluded by the hearsay rule.

3 And my understanding is the Court's interpretation is that
4 that rule will only apply to conversations between the patient and the
5 doctor, but does not encompass third parties. And if that is your
6 interpretation, all I would say is that is clearly not a limitation that is
7 placed in the statute. I think it is very fair to ask a witness what did a
8 doctor tell you about the medical condition of your loved one. You
9 know, what did you hear a doctor tell the patient about their medical
10 condition. I think that is clearly not hearsay under the Rule. You have
11 made a different ruling.

12 I think there were also some arguments there that some of
13 the statements would not necessarily be offered for the truth of the
14 matter asserted. I do think there were some arguments there. But I think
15 this is clearly addressed by NRS 51.115. And those objections should
16 clearly not have been sustained in our opinion.

17 THE COURT: Okay. And the Court sustained those
18 objections. And the Court disagrees with your interpretation of NRS
19 51.115. And just to read it for the record, since that's what you wanted to
20 do earlier, "Statements made for purposes of medical diagnosis or
21 treatment and describing medical history or past or present symptoms of
22 pain or sensations, or the inception or general character of the cause or
23 external source thereof are not inadmissible under the hearsay rule."

24 And so clearly, that's from a patient's point of view. It's for
25 the purposes of diagnosis and treatment. And I don't understand how

1 the physician statements you were trying to get into were for the
2 purposes of diagnosis and treatment. Furthermore, they were related by
3 a third party and not by Ms. Taylor. So there was two bases that I
4 sustained it under.

5 MR. MCBRIDE: And I'm sorry, I think I should put on the
6 record that the statements were not -- or the questions were not, what
7 did Kim tell you about what her doctor said. The doctors were to the
8 witness, "What did the doctor say to you?"

9 THE COURT: And that's my point. The exception doesn't
10 apply to the physician's statement. It would apply to Ms. Taylor's
11 statements for the purposes of medical diagnosis, which the statute says
12 relating or describing medical history, past or present symptoms. So it
13 doesn't fall under the exception. It was my ruling.

14 MR. MCBRIDE: Okay. We've put it on the record.

15 THE COURT: Thank you.

16 MR. BREEDEN: Thank you, Your Honor.

17 THE COURT: And your next objection was during -- one
18 second -- Mr. Olsen -- what's his first name? And I apologize.

19 THE CLERK: Clyde.

20 THE COURT: Clyde Olsen's testimony. It was I think the
21 same objection. One second. I'm trying to read my notes here. Oh, no,
22 my apologies. It was during cross-examination of Mr. Olsen as to why --
23 I guess, I'm not sure if it was the hearsay objection about why Ms. Taylor
24 was discharged. Was that your objection, Mr. Breedon?

25 MR. BREEDEN: Mr. McBride essentially asked the same type

1 of question of Mr. Olsen that you had been sustaining his objections on
2 for other witnesses.

3 THE COURT: Right. And he -- I think his response was that it
4 was an admission of a party opponent. I sustained the objection. But I
5 was asking you what was your basis, for the record, since we talked
6 about it up here.

7 MR. BREEDEN: Yes. And I -- I mean, for the record, that's all
8 I wish to state for the record.

9 THE COURT: Okay. Anything further, Mr. McBride?

10 MR. MCBRIDE: For the record, that you did sustain that
11 objection, and I moved on. So that was -- even though I objected that it
12 was an admission of a party opponent. But it was sustained.

13 THE COURT: All right. Anything further? I think those are
14 the only three.

15 MR. BREEDEN: Your Honor, I did wish to state -- of course, I
16 had to do this in court. We've had several sidebars. And I apologize, I'm
17 having quite a bit of difficulty hearing over the white noise and the
18 masks and everything. So if I ask you to repeat yourself or clarify, please
19 be patient with me.

20 And I will say that this experience of everyone wearing
21 masks has made me realize that I have some hearing issues. And it is
22 helping me to read lips. And without being able to do that, I struggle a
23 bit occasionally.

24 THE COURT: It's fine. I mean, I think we're all struggling. I
25 can't even breathe up here as you all could tell by pre-trial. It's very

1 difficult to breathe in this mask, along with what's going on down here.
2 So it's a little rough. So I totally understand. Not a problem.

3 MR. BREEDEN: Okay.

4 THE COURT: I don't mind repeating myself. I think we're all
5 getting a little loud. So hopefully, we can bring it down a little because I
6 really don't want the jury to hear. But I think that's because we can't
7 hear.

8 MR. BREEDEN: You know, and I almost caught myself, and I
9 do think it's because of my hearing. So if I'm too loud, please let me
10 know and I'll try to tone it down.

11 THE COURT: Okay. No worries. Anything else on behalf
12 of --

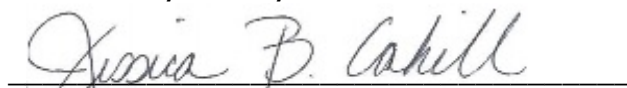
13 MR. MCBRIDE: Nothing, Your Honor. Thank you.

14 THE COURT: All right. So we will see each other at 10:30
15 tomorrow. And hopefully no issues will come up before then.

16 MR. MCBRIDE: Yes. Hopefully no more.

17 [Proceedings adjourned at 4:46 p.m.]
18
19

20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 Maukele Transcribers, LLC
25 Jessica B. Cahill, Transcriber, CER/CET-708