

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

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Plaintiffs,
vs.

Case No.

[REDACTED]

BARBARA HA-SUI SHANG, and
DOES 1 through 100,
inclusive,

(Volume II, Pages 98 - 247)

Defendants.

Videotaped Volume II Deposition of BARBARA
HA-SUI SHANG, M.D., taken on behalf of Plaintiffs, at
Carroll, Kelly, Trotter, Franzen, McKenna & Peabody,
111 West Ocean Boulevard, 15th Floor, California,
commencing at 8:39 a.m., Saturday, March 14, 2015,
before Karla L. Beard, Certified Shorthand Reporter 13036.

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A P P E A R A N C E S:

For the Plaintiffs:

LAW OFFICES OF RONALD C. COLTON

[REDACTED]

For the Defendants:

CARROLL, KELLY, TROTTER, FRANZEN, MCKENNA & PEABODY
BY: ROBERT L. MCKENNA, III
Attorney at Law
111 West Ocean Boulevard
14th Floor
Long Beach, California 90801
Phone: (562) 432-5855

The Videographer:

[REDACTED]

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I N D E X

WITNESS: BARBARA HA-SUI SHANG

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THE VIDEOGRAPHER: Good morning. I am [REDACTED]
your videographer. And I represent [REDACTED]
[REDACTED] I am not
financially interested in this action nor am I a relative 08:39:35
or employee of any attorney or any of the parties.

The date is March 14th, 2015 and the time is
8:39 a.m. This deposition is taking place at 111
West Ocean Boulevard, 15th floor, Long Beach, California,
90801. This is case number 30-2012-00591704, entitled 08:39:56
Alai vs. Shang and DOES 1 through 100, inclusive.

The deponent is Dr. Barbara Shang. This
deposition is being taken on behalf of the plaintiff.
Your court reporter is Karla Beard from Atkinson-Baker.

Counsel will now please introduce themselves. 08:40:23
After all counsel, present, have introduced themselves
then the witness gets sworn in by the court reporter.

MR. McKENNA: Robert McKenna, on behalf of the
deponent, Dr. Barbara Shang.

MR. COLTON: Roland Colton, for the plaintiffs. 08:40:33

THE REPORTER: Doctor, raise your right hand.

You do solemnly state, under penalty of perjury,
that the evidence that you shall give in this issue or
matter shall be the truth, the whole truth, and nothing
but the truth?

1 THE WITNESS: I do.

2

3 BARBARA HA-SUI SHANG,

4 called as a witness by and on behalf of the Plaintiffs,

5 and having been first duly sworn, was examined and

6 testified as follows:

7

8 EXAMINATION

9 BY MR. COLTON:

10 Q Good morning, Dr. Shang. 08:40:48

11 A Good morning.

12 Q As I am sure you know, I represent the plaintiffs

13 in this action. And I wanted to resume your deposition

14 that, apparently, began October 30th, 2014. I won't go

15 over all of the admonitions that were brought to your 08:41:08

16 attention at the beginning of that deposition, but there

17 is a few things that I would like to just mention to you.

18 One is that, it's important that only one of us

19 speak at a time if possible, and sometimes, as lawyers, we

20 pause in the middle of a question searching, perhaps, for 08:41:27

21 the right words to use, and if you'll try to allow me the

22 courtesy to complete a question before answering, that

23 would be appreciated.

24 At the same time, I will not interrupt you, if I

25 can avoid it, if you have any answers that you wish to 08:41:47

1 give. And I probably will not, at any time, want to
2 prevent you from completing an answer, even a narrative,
3 if that's your desire because I am interested in knowing
4 what your testimony is.

5 My whole purpose, in this deposition, is to 08:42:09
6 understand what you are going to say and how you are going
7 to testify at trial on important questions or issues in
8 this case. Do you understand that?

9 A Yes.

10 Q And it's important to respond audibly with a 08:42:18
11 "yes" or "no" as opposed to a shake or nod of the head. I
12 am sure you know that already.

13 I would also ask the courtesy of -- if you -- if
14 you, at any time, feel the need to talk to your lawyer or
15 have a break for a few minutes, I understand that, and 08:42:37
16 we'll accommodate that where possible. But I would like
17 you to complete or respond to a pending question and
18 provide an answer before seeking a break if at all
19 possible.

20 Have you consumed any type of a substance that 08:42:57
21 would, in any way, impair your ability to testify
22 accurately and truthfully today?

23 A No.

24 Q Okay. Well, let's proceed then.

25 First of all, I would just like to ask you how 08:43:10

1 you characterize your own memory or ability to recall
2 events. Do you characterize yourself, Dr. Shang, as
3 having a good memory in terms of generally being able to
4 recall events pretty well from the past in, let's say, the
5 last couple of years? 08:43:37

6 MR. MCKENNA: Okay. I'll just object, it's a compound
7 question. It's also vague and unintelligible and maybe
8 even calls for an expert opinion. But to the extent, as a
9 layperson, she can answer that, she can.

10 Are you able to answer the question? 08:43:55

11 THE WITNESS: The question is?

12 MR. MCKENNA: It's in the broadest sense possible,
13 how --

14 BY MR. COLTON:

15 Q How -- how do you characterize your memory of 08:43:59
16 being able to recall events from the past?

17 MR. MCKENNA: Same objections.

18 THE WITNESS: I'd like to think it's good.

19 BY MR. COLTON:

20 Q Okay. And if you're trying to recall events, 08:44:06
21 that took place within the last six months, are you
22 usually able to identify the time that events occurred? I
23 am not talking about what you had for breakfast but
24 something significant that occurred to you.

25 MR. MCKENNA: Again, it would call for complete 08:44:22

1 speculation. It's compound. Lacks foundation. Go ahead.

2 THE WITNESS: If it's -- something is that
3 significant, then, yes, I think I would be able to recall.

4 BY MR. COLTON:

5 Q Okay. And if we go back a little longer, let's 08:44:34
6 say, two, three years ago, would you say the same is true?

7 MR. MCKENNA: Same objections.

8 THE WITNESS: If it's something out of the ordinary,
9 then, yes, I would remember.

10 BY MR. COLTON: 08:44:47

11 Q Okay. Do you recall the first time you met

12 [REDACTED]

13 MR. MCKENNA: And you mean under any circumstance, not
14 just professionally?

15 MR. COLTON: The very first time you met her, period. 08:45:04

16 MR. MCKENNA: Okay.

17 THE WITNESS: That was in Mission Viejo.

18 BY MR. COLTON:

19 Q Okay. What year and month if you know?

20 A I believe 2001 or 2002. 08:45:10

21 Q And under what circumstances?

22 A My employer, at that time, had asked me to visit
23 doctors in the adjacent medical building. And I believe
24 that was the first time that --

25 Q Who was your employer at the time? 08:45:36

1 A Louise Chanes.

2 Q Can you spell that? Could you spell the doctor's
3 name?

4 A C-H-A-N-E-S.

5 Q Louise was the first name? 08:45:46

6 A Yes.

7 Q So what was the purpose of you going to see her,
8 then, specifically?

9 A I had started at that practice and he wanted me
10 to introduce myself to -- 08:46:06

11 Q So --

12 A -- some of the other doctors.

13 Q -- it was in the goal of trying to acquire more
14 business and maybe referral?

15 MR. MCKENNA: May call for speculation. You may 08:46:16
16 answer to your understanding, if any, of why he asked you
17 to do that.

18 THE WITNESS: I believe so.

19 BY MR. COLTON:

20 Q Okay. And as a result, you did, in fact, meet 08:46:23
21 [REDACTED] then; correct?

22 A I am pretty certain that was the first time.

23 Q All right. And as a result of that meeting, was
24 there some exchange of business, referrals from her to you
25 or the employer you had? 08:46:41

1 A Because I was an employee in that practice, I am
2 not aware of all the referrals that go in.

3 Q How long did you work there?

4 A Approximately, one and a half years.

5 Q And, let's see, when did you start private 08:47:02
6 practice? I think it's probably been asked, but just
7 foundational, when did you open up your own business?

8 A My own practice was in 2003.

9 Q Was it after leaving Dr. Chanes' employment?

10 A Yes. 08:47:23

11 Q Okay. So during the time that you worked for
12 Dr. Chanes, after seeing [REDACTED] are you aware of any
13 referrals that [REDACTED] provided to Dr. Chanes' practice?

14 A They do not advise me of referrals to the
15 practice. 08:47:40

16 Q So the answer is "no"?

17 A I'm not sure.

18 Q After you opened your own practice, did you start
19 receiving referrals from [REDACTED]

20 A Yes, with my own practice, I am aware of 08:47:49
21 referrals.

22 Q Okay. And during the first, let's say, three
23 years of your own practice, how many referrals did
24 [REDACTED] provide you?

25 MR. MCKENNA: May call for speculation. You can 08:48:07

1 answer if you know.

2 THE WITNESS: I'm not sure.

3 BY MR. COLTON:

4 Q Do you have an estimate?

5 A This would be a guess: Six to ten. 08:48:11

6 Q Six to ten for the three years or six to ten per
7 year?

8 A For the three years.

9 Q Okay. And did it -- did the referral rate
10 continue about the same up until about 2011? 08:48:33

11 MR. McKENNA: If you know.

12 THE WITNESS: Perhaps.

13 BY MR. COLTON:

14 Q Prior to the August 17th, 2011 visit, did you
15 interact socially with [REDACTED] 08:48:49

16 A Yes, I saw her outside the office.

17 Q Okay. How often, let's say, during the first
18 year or the -- 2010, if you are able to quantify it in
19 that time frame, how many times did you see [REDACTED]
20 socially outside the office? 08:49:07

21 A I'm not sure.

22 Q More than five?

23 A Maybe approximately, five.

24 Q What would be some of the types of activities
25 that you would have with her outside the office? 08:49:23

1 A [REDACTED] [REDACTED]
[REDACTED]
3 This is before 2010 --
4 Q What -- what --
5 A -- which is the date you asked. 08:49:51
6 Q What is the date of your wedding?
7 A 2003.
8 Q The party you are referring to, what year --
9 MR. McKENNA: The --
10 MR. COLTON: -- did that take place? 08:50:03
11 THE WITNESS: I'm not certain.
12 BY MR. COLTON:
13 Q Was that within a year before the August 17, 2011
14 visit?
15 A No. 08:50:16
16 Q So within five years?
17 A Perhaps.
18 Q Do you recall other significant activities with
19 her besides the wedding and the party?
20 MR. McKENNA: May call for speculation as to the 08:50:30
21 meaning of the term "significant" as it relates to the
22 topic, but she can answer.
23 THE WITNESS: I've seen her in her office, and she's
24 seen me in my office.
25 /// 08:50:43

1 BY MR. COLTON:

2 Q Okay. Those would be in a professional setting,
3 though; correct, where you saw her for a dermatological
4 consult and she saw you for ophthalmological consult;
5 correct? 08:50:55

6 A Correct.

7 Q Okay. So I'm still seeking information where you
8 interacted with [REDACTED] outside of a professional
9 setting. You mentioned two different events. Are there
10 any other ones that stand out in your mind? 08:51:07

11 A No.

12 Q Did you go to dinner, with her, from time to
13 time, socially?

14 A What time span?

15 Q Any time before the 2011 visit in August. 08:51:18

16 A Yes.

17 Q Okay. Was that once a year? Was it less than
18 that? Was it more than that?

19 A Less than once a year.

20 Q Did you go to lunch with her from time to time? 08:51:30

21 A I believe it was dinner and not lunch.

22 Q Did you also interact with [REDACTED]

23 MR. MCKENNA: You mean socially?

24 MR. COLTON: Socially, yeah.

25 THE WITNESS: He was present at his house for the 08:51:55

1 party.

2 BY MR. COLTON:

3 Q Okay. But other than just him being present at
4 the time you went to [REDACTED] did you ever go out
5 to dinner with [REDACTED] for example? 08:52:06

6 A No.

7 Q Now, you do recall seeing [REDACTED] on
8 August 17th, 2011?

9 A Yes.

10 Q And let me ask you just a few questions about 08:52:22
11 your office at that time. So now I'm focusing these
12 questions on or about August 17th, 2011. How many people
13 did you have that worked there?

14 A I had one full-time employee.

15 Q Okay. I notice that your counsel has handed you 08:52:48
16 a document. What is that you are looking at?

17 MR. McKENNA: It's a progress note from August 17th,
18 2011. I'm assuming that, at some point, you will ask her
19 questions about it.

20 MR. COLTON: More than likely. But before you do, 08:53:01
21 could you set that aside? I want to ask your recollection
22 of events without reference to that progress note first
23 and then, you know, if we need to do -- use it to refresh
24 your memory --

25 MR. McKENNA: So -- 08:53:13

1 MR. COLTON: -- I'll be happy to do that.

2 MR. McKENNA: I apologize. She's reviewed it in
3 preparation for her deposition, so --

4 MR. COLTON: That's fine. I have no problem.

5 MR. McKENNA: I don't know if there's some separation, 08:53:20
6 in her mind, between recollection and refreshing
7 recollection.

8 MR. COLTON: It doesn't matter to me.

9 BY MR. COLTON:

10 Q Is there any other documents that you reviewed in 08:53:25
11 connection or in preparation for today's deposition
12 besides [REDACTED]

13 A No.

14 Q Okay. Again, Dr. Chang if I -- Shang, if I may,
15 set that aside, just over to the left, that document. 08:53:39
16 Because I don't want you to refer to it specifically --

17 MR. McKENNA: She's -- she's allowed to look at her
18 chart and I'm not going to order her to move records
19 around --

20 MR. COLTON: I -- I -- 08:53:51

21 MR. McKENNA: -- so it can sit where it's at.

22 MR. COLTON: That's fine. But what I am trying to do
23 is determine your recall without reference to the chart.
24 Okay?

25 And if you need to look at that, I have no 08:53:57

1 problem with you doing so, but I would like to maintain
2 eye contact with you, if I can, in terms of seeing if you
3 have some recollection that is independent of reviewing
4 records.

5 MR. McKENNA: Okay. She's not required to maintain 08:54:12
6 eye contact with you.

7 MR. COLTON: No, she is.

8 MR. McKENNA: I know it's nice and it's polite and
9 everything but that's, as far as I know, not in the Code.
10 Maybe it should be. In any -- 08:54:20

11 MR. COLTON: I didn't say it was.

12 MR. McKENNA: In any event, if she wants to look at
13 the records, at any time, she is free to do so. She is
14 not prevented from doing so, nor can you prevent her from
15 doing so, so she's free to look at it. 08:54:32

16 She's also reviewed this in preparation, so how
17 you are going to parse out independent recollection versus
18 recollection refreshed, versus reviewing the record, I
19 have no clue. There has been no foundation even
20 attempting to do that. So why don't you go ahead and ask 08:54:41
21 the questions and we'll move forward.

22 BY MR. COLTON:

23 Q Dr. Shang, do you recall how long the examination
24 was with [REDACTED] on August 17th, 2011?

25 A For both [REDACTED] mom? 08:54:55

1 MR. MCKENNA: Well --

2 MR. COLTON: Yes.

3 MR. MCKENNA: Hold on. Hold on. You cannot discuss
4 any other person's identity that was present with
5 Dr. Shang on that visit. The issues related to HIPAA and 08:55:09
6 the privacy concerns that were raised in the first session
7 of her deposition haven't been resolved by either our
8 discovery referee or the court.

9 So in the absence of that, I have to continue to
10 make the objection and instruct her not to answer 08:55:27
11 questions as to any identifying criteria, people with

12 [REDACTED]

13 She can, for purposes of making the deposition
14 work as it were, for describing what happened on the 17th,
15 she can say, "and the other person present," or some such 08:55:44
16 arbitrary thing that doesn't identify the person with
17 [REDACTED] since we don't have a waiver of that person's
18 privacy rights.

19 MR. COLTON: Okay. And I assume that, without an
20 order from the court or the discovery referee, at trial, 08:56:01
21 you are going to assert the same privacy right?

22 MR. MCKENNA: I have to. Yeah.

23 MR. COLTON: I just want to make sure that we're not
24 going to have Dr. Shang, all of sudden, spouting off names
25 and -- and persons at a later time at trial, that we 08:56:18

1 haven't had an opportunity to inquire into during her
2 deposition.

3 MR. MCKENNA: Well, and my hope was that this issue
4 would have been resolved by -- and that -- this isn't on
5 your watch. I was hoping that this issue would have been 08:56:29
6 resolved by somebody prior to today, but --

7 MR. COLTON: Well, maybe we'll do it --

8 MR. MCKENNA: Excuse me. I'm not -- I'm not done.

9 MR. COLTON: Please.

10 MR. MCKENNA: -- would have been resolved prior to 08:56:36
11 today, but that didn't happen and that's okay, too.

12 Like I said, what -- what I think she can do is
13 when referencing that visit and referencing [REDACTED] she
14 can say [REDACTED] and another person or the other person,
15 without using that person's name. 08:56:51

16 If you are okay with that, I am okay with that
17 because otherwise, from a testimony standpoint, it becomes
18 untenable to pretend that only one person was in the room,
19 as best I can tell, but why don't we try -- please bear,
20 in mind, that you can't identify the person that was with 08:57:10

21 [REDACTED] at the visit, but you can talk about that person
22 in the -- as nothing more than quote/unquote, that person
23 or the other person when answering the questions posed to
24 you.

25 /// 08:57:28

1 BY MR. COLTON:

2 Q Dr. Shang, you recall [REDACTED] and there
3 was another person present with [REDACTED] at the time;
4 correct?

5 A Correct. 08:57:38

6 Q How long did the examination of [REDACTED] take,
7 forgetting about the other person for the time being?

8 A Approximately, 15 minutes.

9 Q Okay. And if we include the other person, how
10 long did the joint examination or the examination of both 08:57:58
11 of them take?

12 A Approximately, 30 minutes.

13 Q Okay. Which of the persons was examined first,
14 [REDACTED] or the person that was accompanying h[REDACTED]?

15 A I believe it was the person that was accompanying 08:58:14
16 her.

17 Q Okay. And -- so on August 17th, you mentioned
18 there was one person in the office; correct, working with
19 you?

20 A Correct. 08:58:25

21 Q What was that person's name?

22 MR. McKENNA: She was deposed --

23 MR. COLTON: Employee --

24 MR. McKENNA: She was deposed --

25 MR. COLTON: I know. If I could ask her a question, 08:58:33

1 please, Counsel.

2 MR. McKENNA: I think she just doesn't re- -- do you
3 remember the name off the top of your head?

4 MR. COLTON: Could you allow her to answer?

5 MR. McKENNA: I am allowing her to answer. 08:58:41

6 MR. COLTON: Well, I need to know --

7 THE REPORTER: Whoa. Whoa.

8 MR. McKENNA: Excuse me, Roland. I didn't know what
9 the pause was because she didn't have the name off the top
10 of her head. She can answer the question. I'm not 08:58:48
11 instructing her not to answer the question.

12 MR. COLTON: I didn't say you were. I just thought it
13 was a simple question.

14 MR. McKENNA: It is.

15 MR. COLTON: What was -- 08:58:53

16 MR. McKENNA: Do you remember the person's name?

17 THE WITNESS: Jessica.

18 MR. McKENNA: Okay.

19 MR. COLTON: All right.

20 BY MR. COLTON: 08:59:01

21 Q And could you briefly inform me of what her
22 duties were on that date or at that time frame?

23 A She is the front office receptionist.

24 Q What does that mean in terms of what she actually
25 does? 08:59:16

1 A She answers phone calls, schedules appointments,
2 relays important messages back to me.

3 Q Anything else meaningful?

4 A And --

5 MR. McKENNA: May call for speculation as to 08:59:45
6 "meaningful." Go ahead.

7 THE WITNESS: -- verifies insurance.

8 BY MR. COLTON:

9 Q Did Jessica perform any back office services on
10 or about that time frame? 08:59:56

11 A No.

12 Q Was there anyone else that performed any back
13 office services on or about the time that you saw
14 [REDACTED] again, with reference to the August 17th, 2011
15 visit? 09:00:08

16 A Yes, I did.

17 Q You did? Okay. And how would you characterize
18 the back office services that you performed?

19 A Specifically, for that visit?

20 Q Let's talk about that visit first and then I will 09:00:22
21 ask you to broaden that response.

22 A I call the patients back. I check their vision.

23 And to test that -- our tailor to that particular
24 patient's needs.

25 Q With regard to [REDACTED] itself -- strike 09:00:52

1 that.

2 Let's talk about the other person that was
3 accompanying [REDACTED]. First of all, do you have -- describe
4 the office for me. You have a reception area; right?

5 MR. McKENNA: The question pending is you have a 09:01:29
6 reception area?

7 MR. COLTON: That's correct.

8 MR. McKENNA: Okay.

9 BY MR. COLTON:

10 Q Is that right? 09:01:33

11 A Yes.

12 Q And how many other rooms do you have besides the
13 reception?

14 A Six.

15 Q Okay. Can you identify what each room is? 09:01:44

16 A There is the reception area.

17 Q Uh-huh.

18 A There is the -- which is the waiting room. There
19 is also the area where the front office person sits.

20 There is two exam rooms on your left. There is an office, 09:02:04
21 my office, an equipment room, a storage room, a bathroom.

22 Q So when -- let's talk, now, about a typical eye
23 exam of a patient on or about 2011. After the patient is
24 invited in, where do they go? In other words, they start
25 in the waiting room; right? 09:02:44

1 A Yes.

2 Q And now, it's time for them to be examined, where
3 do you take them?

4 A It depends on what the purpose of the visit is.

5 Q Okay. Let's talk about the type of visit that 09:02:53
6 Dr. Alai had.

7 A So if they are a routine visit --

8 Q Yes.

9 A -- they are brought to the exam room.

10 Q And that's one of the two rooms on the left; 09:03:01
11 right?

12 A I utilize one of them for the exam.

13 Q Okay. But you have two exam rooms; right?

14 A Correct.

15 Q And do all patients first come into one of the 09:03:14
16 exam rooms or could it be either one of those two?

17 MR. MCKENNA: Or is there some distinction made
18 between them? Go ahead.

19 THE WITNESS: Yes, they go to Exam Room 2.

20 BY MR. COLTON: 09:03:28

21 Q Exam Room No. 2?

22 A (Witness nods head.)

23 Q So as you walk in to the waiting room, is this
24 the first exam room on your left or is it the second one?

25 A As you're walking in, it's the second one. 09:03:36

1 Q Okay. And do you have equipment in that exam
2 room?

3 A Yes.

4 Q What kind of equipment?

5 MR. MCKENNA: It's a little overbroad. Go ahead. 09:03:46

6 THE WITNESS: There is the exam chair, a refractor, a
7 slit lamp, a keratometer, a projector. Those are the main
8 pieces of equipment.

9 BY MR. COLTON:

10 Q Okay. And in the -- is the -- does the patient, 09:04:14
11 on a routine visit, then go also to the first exam room?

12 A No.

13 Q So they only, generally, spend time in the second
14 exam room; is that correct?

15 A Correct. 09:04:27

16 Q In the case of the person who accompanied
17 [REDACTED] did they only spend time in the second exam
18 room?

19 A Yes.

20 Q In the case of [REDACTED] did she only 09:04:34
21 spend time in the second exam room?

22 A For the exam, yes.

23 Q Okay. Did at some point in time, did she go to
24 the first exam room?

25 A No. 09:04:44

1 Q Did either [REDACTED] or the person accompanying
2 [REDACTED], go to the first exam room, at any time, during the
3 August 17th, 2011 visit?

4 A No.

5 Q What is the first exam room for? 09:04:53

6 A In 20 and --

7 Q '11?

8 A -- 11 it was used as an extra storage room.

9 Q So in 2011, you didn't use it for patients,
10 period? 09:05:09

11 A Correct.

12 Q In 2011, you only used one exam room in
13 connection with routine or other exams of patients;
14 correct?

15 A Correct. 09:05:19

16 Q Now, you may have answered this, forgive me. It
17 was the person accompanying [REDACTED] who was examined by
18 you first; is that right?

19 A I believe so.

20 Q Okay. And was [REDACTED] also present in the exam 09:05:34
21 room when you performed the examination on the person who
22 accompanied her?

23 A I believe so.

24 Q So you mentioned each exam was about 15 minutes,
25 would it, then, be accurate that [REDACTED] was present for 09:05:50

1 the full 30 minutes, of which included the person that was
2 being examined, that accompanied [REDACTED] being
3 examined; is that right?

4 A Correct.

5 Q When you examined the person -- strike that. 09:06:04

6 Do you recall the day that you examined [REDACTED]
7 and the person accompanying her, that you were running
8 behind schedule?

9 A No.

10 Q What is the normal waiting period for a patient 09:06:28

11 that comes into your office? What was it in 2011 before
12 they came into the exam room?

13 MR. McKENNA: I'll just object, it assumes there is
14 some thing as a normal waiting period, other than it
15 varies from day-to-day and patient to patient, but go 09:06:50
16 ahead.

17 THE WITNESS: You mean the average?

18 MR. COLTON: Average.

19 THE WITNESS: Zero to fifteen minutes.

20 Q As you sit here today, are there any records that 09:06:57
21 would indicate how long -- strike that.

22 Do you know the specific time of the appointment
23 for [REDACTED] and the person accompanying [REDACTED] on
24 August 17th, 2011?

25 A I can look up that information. 09:07:16

1 Q Okay. Go ahead.

2 A It's not on the chart.

3 Q What is it in?

4 A Scheduling.

5 Q Okay. Do you have that -- access to that 09:07:24
6 information here?

7 A No.

8 Q Would you have any documents that would
9 indicate in -- strike that.

10 What was the information, you just referred to, 09:07:38
11 that would be able to identify the actual time that
12 [REDACTED] and the person accompanying her, arri- -- or
13 were scheduled for an appointment? What's the document
14 itself called?

15 A The schedule. 09:07:53

16 Q And what does it -- what does it look like? Is
17 it a calendar? Is it something else?

18 A It's a printout.

19 Q Would you receive a printout at the beginning of
20 each day? 09:08:07

21 A No.

22 Q How would you receive a printout?

23 A If I made a printout.

24 Q Okay. So were you the one that handled the
25 printouts themselves? 09:08:19

1 A Generally, there is no printout.

2 Q Why would -- under what circumstances would you
3 have a printout?

4 A The printout was made at the request of the
5 initial -- 09:08:43

6 MR. McKENNA: He's asking you -- do you want her to
7 just describe how she uses the schedule, because I am
8 getting the sense that she just looks at the monitor as
9 opposed to printing things everyday, but I don't know,
10 so... 09:08:53

11 MR. COLTON: Well, if you can finish what you were
12 going to say first and then --

13 MR. McKENNA: Make sure you are answering his
14 question.

15 THE WITNESS: Okay. In general, I see patients in the 09:08:57
16 order that they arrive or the order that the receptionist
17 hands me the chart. So there are days I see patients
18 without referring to the schedule.

19 BY MR. COLTON:

20 Q Does somebody make a schedule, a daily schedule? 09:09:22
21 And I am again referring to 2011.

22 MR. McKENNA: And it's only vague in the sense that,
23 are you saying a printed version of it or an electronic
24 version? Go ahead.

25 MR. COLTON: I don't know. Any kind of a schedule. 09:09:34

1 BY MR. COLTON:

2 Q Does someone make a schedule?

3 A The patients are scheduled in advance.

4 Q And who schedules the patients?

5 A Jessica. 09:09:42

6 Q Okay. So --

7 A Or whoever the front office receptionist is.

8 Q So how is -- how did she keep track of who was
9 coming in on a given day?

10 A She puts it into the scheduler. 09:09:53

11 Q Into the schedule?

12 A Yes.

13 Q Okay. And how is that done? Is it done
14 electronically? Is it done in writing? How is it done?

15 A She types it into the schedule. 09:10:03

16 Q Into the computer?

17 A Correct.

18 Q So would -- at the beginning of a day, would you
19 and Jessica talk about which patients are going to be
20 seen, or would you just take them as they came in? 09:10:28

21 MR. MCKENNA: Or anything else. She can answer.

22 THE WITNESS: She schedules the appointments. I find
23 out the details of the visit when I see the patient.

24 BY MR. COLTON:

25 Q Okay. Back in 2011, when you would arrive at 09:10:47

1 office, would you have any discussion with Jessica about
2 who -- which patients were going to be seen that day?

3 MR. MCKENNA: It's vague in terms of time.

4 MR. COLTON: Back in 2011.

5 MR. MCKENNA: I meant before visits, during visits? 09:11:02

6 MR. COLTON: The beginning of the day.

7 BY MR. COLTON:

8 Q Would you have a discussion with Jessica about
9 which patients were going to be seen that day?

10 A Only if she had questions for me. 09:11:14

11 Q So is it -- is it accurate that you just take
12 patients as they arrived without -- your normal practice
13 was not to interact or discuss, with Jessica, in the
14 beginning of the day, which patients would be coming in
15 rather that, as each patient arrived in the waiting room, 09:11:35
16 you would -- they would be ushered in when you would have
17 time to see them; is that right?

18 A What would we discuss?

19 Q No. I'm saying, as opposed to discussing, with
20 Jessica, at the beginning of each day who you were going 09:11:50
21 to see, you didn't really have advanced knowledge of that,
22 as I understand your answer, you would just take patients
23 as they came in; is that right?

24 A I can view the schedule, on the monitor, any
25 time, so I can view the scheduler on the monitor and know 09:12:07

1 the names of the people coming in.

2 Q And you are talking about monitor in your office
3 or a monitor at the front desk?

4 MR. MCKENNA: Or both. Go ahead.

5 THE WITNESS: Both. 09:12:21

6 BY MR. COLTON:

7 Q Okay. But was it your custom and practice,
8 normally, to do that, to view the monitor at the beginning
9 of the day to see what patients you had coming in?

10 A Yes, I would glance at it. 09:12:31

11 Q Okay. So is it also accurate to say that you
12 probably knew, the morning of the 17th of August, that
13 among patients you were going to see, one [REDACTED]

14 A Perhaps.

15 Q You don't recall? 09:12:48

16 A I don't recall if I looked at all the names of
17 the patients coming in on August 17th, that morning.

18 Q Okay. Do you recall, on August 17th, on or about
19 the time that [REDACTED] was going to be seen by you, that
20 you were on an extended telephone call with someone? 09:13:05

21 A No.

22 Q [REDACTED] has indicated, in [REDACTED] deposition
23 testimony, that she recalls that you were on the phone for
24 possibly 20 or 30 minutes. Do you have any recollection
25 of that? 09:13:24

1 MR. MCKENNA: He's not asking if you have a
2 recollection of her testifying to that, he is asking does
3 that information refresh your recollection about being on
4 the phone. You can answer.

5 THE WITNESS: I don't recall being on an extended 09:13:37
6 conversation.

7 BY MR. COLTON:

8 Q Do you recall being distracted, at all, just
9 immediately prior to having seen [REDACTED] and the person
10 accompanying her? And when I say "distracted," distracted 09:13:53
11 in the sense that there was something on your mind that
12 was distracting you from your work at the office.

13 A No.

14 Q Do you recall apologizing [REDACTED] that, "I'm
15 sorry that you had to wait so long to come in and see me." 09:14:10
16 Anything like that?

17 A I rarely run behind more than 15 to 20 minutes.
18 And when I do run behind 15 to 20 minutes, I do apologize
19 to the patient.

20 Q Okay. My question is: Do you recall apologizing 09:14:25
21 [REDACTED] on August 17th, 2011, about the fact that she
22 had to wait in your waiting room for an extended period of
23 time?

24 MR. MCKENNA: It's vague and ambiguous as to the use
25 of the term "extended period of time." She can answer. 09:14:40

1 THE WITNESS: I don't recall being late.

2 BY MR. COLTON:

3 Q And you don't recall being distracted before
4 seeing her?

5 MR. MCKENNA: It's been asked and answered. She 09:14:49
6 already said she was not. Go ahead.

7 THE WITNESS: Correct.

8 BY MR. COLTON:

9 Q Was there anything going on in your personal
10 life -- I am not asking you specifically about what it 09:14:57
11 was, but was there anything going on in your personal
12 life, on or about August 17th, 2011, that was distracting
13 you?

14 MR. MCKENNA: Okay. She already indicated she was not
15 distracted for the visit. This is an invasion of her 09:15:11
16 privacy. If Judge Jameson says it's okay to ask her about
17 her personal life, then she will answer questions about
18 it, but --

19 MR. COLTON: (Indicating.)

20 MR. MCKENNA: Excuse -- but until then, she is not 09:15:21
21 going to answer questions about her personal life.

22 MR. COLTON: Well, I am not asking her any details. I
23 am entitled to find out if there was something going on
24 that affected her ability to function as a doctor.

25 MR. MCKENNA: Yeah, she she's answered the question 09:15:33

1 that she wasn't distracted at time, and so you are not
2 going to pry into her personal life.

3 MR. COLTON: No luck. Could you make a note of this
4 for a possible motion to compel further responses.

5 THE REPORTER: Yes. 09:15:48

6 MR. COLTON: And for meet and confer, I'm not asking
7 about any details, at all. I am asking if there was
8 something going on in her personal life that was, in some
9 way, during this time frame, and not necessarily just
10 August 17th but during the August 2011 causing her to be 09:16:01
11 distracted in a sense that she felt that it affected her
12 ability to perform services as a doctor.

13 MR. MCKENNA: She's already answered the question
14 twice that she was not distracted on August 17th, 2011.
15 All you're doing, regardless of whether you want to call 09:16:19
16 it not getting into specifics, just answering the
17 question, it's all an invasion of her privacy and plays no
18 role in a medical negligence case that has been filed. If
19 Judge Jameson disagrees with me, so be it.

20 MR. COLTON: All right. We'll take that up later. 09:16:37

21 BY MR. COLTON:

22 Q Dr. Shang, have you reviewed the schedule of
23 August 17th, 2011 prior to today? And I mean, since the
24 litigation.

25 A I reviewed it with the initial interrogatories. 09:16:58

1 Q Are you able to tell me, approximately, how many
2 patients you saw that day?

3 A I reviewed it back in 2012.

4 Q Yes or no?

5 MR. McKENNA: If you don't remember, just tell him. 09:17:15

6 If you recall --

7 MR. COLTON: Do you recall --

8 MR. McKENNA: -- let him know.

9 THE WITNESS: I don't recall.

10 BY MR. COLTON: 09:17:21

11 Q What was your normal or your average number of
12 patients that you saw during 2011?

13 A Per day?

14 Q Per day.

15 A It varies from day-to-day, and what the patients 09:17:32
16 are coming in for, how much time we block. I would say
17 approximately a dozen.

18 Q And your typical workday in 2011 was what?

19 A 9:00 to 5:00.

20 Q So on the average, in 2011, if you are able to 09:18:00
21 tell me, how many patients would you typically see for
22 simply a routine visit?

23 A How many patients -- what percentage of patients
24 is being seen for a routine visit?

25 Q That's fine. If you want to do it by percentage, 09:18:25

1 yes. You say the average is about 12 a day, what
2 percentage of those would be for a routine office visit?

3 A Again, that varies from day-to-day and week to
4 week. Perhaps, less than half or approximately,
5 50 percent. 09:18:53

6 Q Okay. And the other 50 percent, what
7 types -- give me some idea of the types of visits they
8 would have.

9 A People usually come in when their eyes are
10 bothering them for any variety of reasons. 09:19:05

11 Q Prior to August 17th, 2011, had you ever seen a
12 patient that had signs and symptoms of EKC?

13 A What time frame?

14 Q Any time before August 17th, 2011, had you ever
15 seen a patient with signs of EKC? 09:19:35

16 A Yes.

17 Q On how many occasions approximately?

18 MR. McKENNA: That may be overbroad. Are you talking
19 about in her office, throughout her training, the course
20 of life. 09:19:49

21 BY MR. COLTON:

22 Q Let's limit it to when you were in practice,
23 yourself, in your office, how many times prior to
24 August 17th, 2011 had you seen patients with signs and
25 symptoms of EKC? 09:19:58

1 A I'm not sure I know the exact number.

2 Q I understand. Give me an estimate.

3 A Perhaps, around five.

4 Q Okay. And can you tell me the date, to the best

5 of your ability, that you saw the most recent patient with 09:20:26

6 EKC prior to August 17th, 2011?

7 MR. MCKENNA: I think that would call for speculation.

8 If you know, go ahead.

9 THE WITNESS: I don't know.

10 MR. MCKENNA: Okay.

09:20:44

11 BY MR. COLTON:

12 Q Can you give me a time frame when you saw the

13 very first patient that had signs or symptoms of EKC when

14 you were in your -- when you had your own office?

15 MR. MCKENNA: My call for speculation. If you know, 09:21:03

16 you can let him know.

17 THE WITNESS: This is spanning over a period of ten

18 years. I don't recall.

19 BY MR. COLTON:

20 Q Were they five or so patients that you saw that 09:21:14

21 had EKC within a short time span, or was that throughout

22 the approximate, I guess, ten years we are talking about,

23 or eight years we are talking about?

24 MR. MCKENNA: Well -- all right. To 2012. Okay.

25 THE REPORTER: I'm sorry. Repeat that, Counsel. 09:21:31

1 MR. MCKENNA: I wasn't sure of the -- you are talking
2 about a time frame that goes --

3 MR. COLTON: From the time --

4 MR. MCKENNA: -- 2001 or -2, to 2011 then that would
5 be either 9 or 8 years. 09:21:43

6 MR. COLTON: Well, I'm talking about the time you
7 opened up your office in 2003 to 2011, that's about eight
8 years; right?

9 MR. MCKENNA: Okay. All right.

10 BY MR. COLTON: 09:21:54

11 Q Those five or so patients, and I am -- granted
12 the number may be a little different than five, do you
13 recall them being on or about the same time frame or
14 randomly dispersed during that eight-year period?

15 A I saw them, to the best of my recollection, 09:22:10
16 throughout the eight years.

17 Q Do you -- are you able to tell me whether you saw
18 an EKC patient in 2011 from January 1, 2011 until
19 August 17th, 2011?

20 A The time span I looked at was from August 1st to 09:22:38
21 August 17th.

22 Q I am not asking you about the time span you
23 looked at in terms of your records, I am asking you if you
24 recall today, whether you saw any patient that had signs
25 and symptoms of EKC from January 1st, 2011 until 09:22:54

1 August 17th, 2011?

2 MR. MCKENNA: He's just asking if you remember seeing
3 any EKC patients during that time frame.

4 THE WITNESS: I don't recall. It's over three years
5 ago. 09:23:10

6 BY MR. COLTON:

7 Q Okay. Tell me what, based on your experience,
8 what the signs and symptoms of EKC are.

9 A There are a long list of signs and symptoms. For
10 signs -- for symptoms, they include, but are not limited 09:23:26
11 to blurred vision.

12 Q I'm sorry? Blurred -- oh, blurred vision. Thank
13 you.

14 A Redness of the eyes. Irritation. Pain.
15 Photophobia. 09:23:50

16 Q What is photophobia?

17 MR. MCKENNA: Can you if she is the middle of
18 answering can you just give her a second. And I'm not --

19 MR. COLTON: I don't have a problem. If you want to
20 give all your signs, then I'll come back to it. Go ahead. 09:24:02

21 MR. MCKENNA: Including but not limited to, Roland.
22 So she'll give you -- she'll give you a list and if you
23 have questions about that list, have had it, but --

24 MR. COLTON: Go ahead.

25 MR. MCKENNA: -- go ahead. 09:24:08

1 THE WITNESS: Watery eyes. Itching. Foreign body
2 sensation.

3 THE REPORTER: I'm sorry?

4 MR. MCKENNA: Foreign body sensation.

5 THE WITNESS: Swelling of the lids. Redness of the 09:24:25
6 lids.

7 BY MR. COLTON:

8 Q Redness of the lids?

9 A (Witness nods head.) Those are the symptoms that
10 come to mind now. 09:24:40

11 Q Now, may I inquire as to what photophobia is,
12 please.

13 A Light sensitivity.

14 Q That's what I thought. Are these signs, in your
15 words, signs and symptoms or just symptoms? 09:24:55

16 A Those are the symptoms.

17 Q What are the signs?

18 A The signs also correlate with the symptoms,
19 decreased visual acuity, swelling, redness of the
20 conjunctiva, lid edema, lid erythema, watery discharge, 09:25:18
21 chemosis.

22 Q Can you spell that?

23 A C-H-E-M-O-S-I-S.

24 Membrane formation. Pseudomembrane formation.
25 Corneal involvement. 09:26:11

1 Those are the signs that come to mind now.

2 Q Can you tell me what **chemosis** is?

3 A **Swelling of the conjunctiva.**

4 MR. MCKENNA: And Roland, when you're at a good spot,
5 after this, if we can just take a quick two-minute 09:26:34
6 restroom break, please.

7 MR. COLTON: No problem.

8 BY MR. COLTON:

9 Q When you say, "**swelling of the conjunctiva,**"
10 explain to me what conjunctiva is. 09:26:44

11 A It is the tissue, thin layer, that overlies the
12 **sclera for the bulbar conjunctiva and the lid for the**
13 **palpebral conjunctiva.**

14 Q You mentioned "membrane -- " I can't read my own
15 notes -- "formation?" Is that what you said? "Membrane 09:27:09
16 formation," what do you mean by that, if you can
17 ex- -- give me a little more detail?

18 A **Membrane formation occurs underneath the upper or**
19 **lower lids.**

20 Q So it's the formation of a membrane that wasn't 09:27:28
21 there before; is that what you are saying?

22 A Actually, **it's a pseudomembrane.**

23 Q Okay. What does -- what do you mean by the term
24 "pseudo"?

25 A P-S-E--- 09:27:45

1 Q No, I know the word --

2 A -- -U-D-O.

3 Q -- but what do you mean by that? What do you --
4 you mean a pseudomembrane? Can you explain.

5 A That is the official term for that type of 09:27:56
6 membrane. It is called a pseudomembrane.

7 Q Okay. I understand that. But can you identify
8 or explain, in more in detail, what a pseudomembrane is,
9 in fact?

10 A A pseudomembrane is a membrane that forms 09:28:12
11 underneath the upper or lower lids.

12 MR. COLTON: Okay. We can go off the record for a
13 couple of minutes.

14 MR. MCKENNA: Thanks very much.

15 THE VIDEOGRAPHER: The DVD is being paused. And we 09:28:30
16 are going off the record at 9:28 a.m. Please don't forget
17 your mics.

18 (Recess taken.)

19 THE VIDEOGRAPHER: The DVD has been restarted and we
20 back on the record at 9:38 a.m. 09:38:37

21 BY MR. COLTON:

22 Q Dr. Shang, in connection with EKC, you mentioned
23 about five patients, or approximately that many, that you
24 had seen, prior to August 17, 2011. Do you recall seeing
25 any patients that signs and/or symptoms of EKC prior to 09:38:51

1 opening up your own practice?

2 A While I was in training and while I was employed
3 by the other office?

4 Q Yes.

5 A Yes. 09:39:11

6 Q How many?

7 A This is recalling back to over ten years ago.

8 Q Understood.

9 A Perhaps, a dozen.

10 Q And are you able to identify how many of those 09:39:32
11 patients, of those dozen, approximately, a dozen, that you
12 saw at Dr. Chanes' while working for him?

13 A They were mostly during training.

14 Q Based on your experience and understanding, is
15 EKC a highly contagious virus? 09:39:56

16 A Yes.

17 Q Are you trained or were you trained how to deal
18 with a patient that had a highly contained -- contagious
19 virus like EKC?

20 A Yes. 09:40:19

21 Q How? How were you instructed?

22 A What specifically? In terms of the examination?
23 In terms of disinfection?

24 Q Let's talk about to prevent it from spreading to
25 others, so, I guess, disinfection. 09:40:37

1 A There is the disinfection that we follow for
2 routine patients and also for any form of suspected
3 conjunctivitis, including EKC.

4 Q So it is the same regardless?

5 A No, it is not the same. 09:42:36

6 Q Okay. Explain to me the difference.

7 A So for routine visits, the contact surfaces, that
8 I named earlier, are wiped down with 70 percent alcohol.

9 In cases a patient is suspected with EKC, the
10 tonometer tip is soaked in diluted bleach for 09:43:05
11 approximately five minutes, rinsed with tap water and
12 dried. So I have two tonometer tips for that exam room
13 that I can switch off. And the contact surfaces are wiped
14 down with diluted bleach.

15 Q So in a routine visit, you wouldn't soak the 09:43:32
16 tonometer tip between patients; correct?

17 A Correct.

18 Q And when would you -- since you have two tips,
19 the only time you would change the tip would be when you
20 were soaking the other one? 09:44:03

21 MR. McKENNA: You mean --

22 THE WITNESS: Or --

23 MR. McKENNA: -- during regular office hours?

24 MR. COLTON: Yes.

25 MR. McKENNA: Okay. 09:44:09

1 THE WITNESS: Or at the end of the day.

2 BY MR. COLTON:

3 Q So would -- correct me if I am wrong.

4 Would it be accurate to say if -- assuming you
5 had just seen five patients with EKC, you know, from 2003 09:44:21
6 to 2011, that -- only five times, then you would have
7 soaked the tonometer tip between patients?

8 MR. MCKENNA: That misstates her testimony. Go ahead.

9 THE WITNESS: That is incorrect.

10 MR. COLTON: Okay. 09:44:41

11 THE WITNESS: It is for all types of suspected,
12 infectious conjunctivitis, which would include EKC.

13 BY MR. COLTON:

14 Q Okay. Now, that you have expanded the population
15 a little bit, are you talking any possible conjuncti- -- 09:45:01
16 any conjunctivitis strain, at all, or are you limiting it
17 to strains of conjunctivitis that are more contagious than
18 others?

19 A There are well over a dozen types of
20 conjunctivitis. 09:45:24

21 Q In your estimation, which is the most contagious
22 virus?

23 A Many types of conjunctivitis are not contagious.

24 Q Okay. How many types are there that are
25 contagious based on your understanding? 09:45:39

1 A So, for example, there is allergic, seasonal
2 conjunctivitis, vernal conjunctivitis, atopic
3 conjunctivitis, giant papillary conjunctivitis, immune
4 mediated conjunctivitis, neoplastic conjunctivitis,
5 irritative, mechanical and toxic conjunctivitis, bacterial 09:46:08
6 conjunctivitis, and many forms of viral conjunctivitis.

7 Q And of those, which are the most highly
8 contagious based on your experience?

9 A So allergic conjunctivitis and neoplastic immune
10 mediated conjunctivitis, many forms of those 09:46:37
11 conjunctivitis and subsets, in general, are considered
12 noncontagious.

13 Q So the ones that -- the conjunctivitis strains,
14 that you would soak a tonometer tip, include which strains
15 of conjunctivitis? 09:46:54

16 A Any type that is suspected to be infectious.

17 Q All of those that you've just indicated or just
18 some of them?

19 A Allergic seasonal conjunctivitis, atopic, vernal
20 conjunctivitis, giant papillary conjunctivitis, various 09:47:10
21 forms of immune medial, neoplastic are generally not
22 considered infectious.

23 Q Okay. Well, which ones are? That's my question.

24 Which ones would you actually soak the tonometer
25 tip? Which strains of conjunctivitis would you soak it 09:47:26

1 for?

2 A Any form of suspected viral or bacterial.

3 Q And identify specifically what those are.

4 A So for bacterial, we usually, for both viral and
5 bacterial conjunctivitis, it usually is not cultured, but 09:47:41
6 the different strains can include Neisseria, Chlamydia,
7 poxvirus, coronaviruses, coxsackievirus. MMR viruses, in
8 addition to adenovirus.

9 THE REPORTER: I'm sorry. In addition to? Which
10 virus? 09:47:57

11 MR. McKENNA: Adeno, A-D-E-N-O, virus.

12 THE REPORTER: Thank you.

13 BY MR. COLTON:

14 Q The ones you just mentioned, are the ones that
15 you would soak the tonometer for; correct? 09:48:12

16 A Any form of suspected infectious conjunctivitis.

17 Q Okay. But going back to your prior response, my
18 question is: The ones that you identified, are those the
19 ones that you would soak the tonometer tip for?

20 MR. McKENNA: I think she was giving you a list. I 09:48:32
21 don't know that she listed all the types of infection
22 known to mankind. Go ahead.

23 THE WITNESS: We don't typically culture to see
24 exactly what type of cold virus the patient has, but that
25 is a list of potential viruses that can cause 09:48:47

1 conjunctivitis. So any type that is suspected to be
2 infectious, we do soak the tonometer tip.

3 BY MR. COLTON:

4 Q In 2011, on an average month, how many times
5 would you soak the tonometer tip? 09:49:15

6 A I would estimate at least at the end of every
7 clinic day. And in addition, sometimes during the day as
8 well.

9 Q Okay. That's what I am asking about. I know at
10 the end of each day you soak it, but during the day, in 09:49:46
11 2011, if you can tell me, what was the average number of
12 times a month that you would soak the tonometer tip?

13 A So during the day, excluding the end of the day?

14 Q Correct.

15 MR. MCKENNA: In a month, that's what he's asking. 09:50:03

16 THE WITNESS: Again, this would be an estimate, and it
17 does vary from week to week and it varies from
18 month-to-month. Probably, anywhere from 15 to 30, but it
19 could be less and it could be more.

20 BY MR. COLTON: 09:50:35

21 Q Okay. So now that I have that number, it sounds,
22 to me, like it would have been --

23 A In addition to, the approximately, 20 times or so
24 at the end of the day.

25 Q Understood. And again, I am not asking about the 09:50:47

1 end of the day. But it sounds to me like during the day
2 it averages, maybe, about once a day if you look at a
3 given month; right?

4 MR. MCKENNA: Or once every other day if you take the
5 lower number. 09:51:00

6 BY MR. COLTON:

7 Q Well, you work, on the average, 20 days a month;
8 is that what you are saying?

9 A Approximately.

10 Q Okay. 15 to 30 times, once, maybe twice, one and 09:51:08
11 a half-times a day, is that the average, excluding at the
12 end of business, that you would have soaked the tonometer
13 tip?

14 A Approximately, but, again, that number can vary
15 from time to time. 09:51:21

16 Q Do you remember seeing any patients, that had a
17 contagious form of conjunctivitis, during the month before
18 you saw [REDACTED] that caused you to soak the tonometer
19 tip?

20 A In July -- 09:51:44

21 Q July. We can --

22 A -- of 2011?

23 Q We can look at July 2011.

24 A I'm sure, because on average, it would be about
25 the 15 to -- plus times a month. 09:51:55

1 Q Okay. Do you remember anyone, let's say, in
2 July, that had a particularly severe case of
3 conjunctivitis?

4 A No, I do not recall.

5 Q Okay. Do you recall in August of 2017 -- or 09:52:12
6 2011, seeing anyone, in your office, that had a
7 particularly severe case of conjunctivitis?

8 A Which time frame?

9 Q August of 2011.

10 A I'm sure I saw conjunctivitis patients during 09:52:36
11 August of 2011.

12 Q You --

13 A I don't recall specifically all the patients over
14 three and a half years ago I saw with conjunctivitis.

15 Q Well, it would be your testimony, would it not, 09:52:52
16 that you see conjunctivitis every month in some form;
17 right?

18 A In some -- some form --

19 Q Okay.

20 A -- of conjunctivitis, correct. 09:53:01

21 Q And now, what I am asking about is not just
22 routine conjunctivitis, but someone that had some very
23 severe symptoms and signs of conjunctivitis. Can you
24 think of whether or not that occurred with any patients
25 that you saw in August of 2011? 09:53:17

1 MR. MCKENNA: Vague and ambiguous as to your use of
2 the term "severe." It also may call for speculation as to
3 specific patients that long ago. If you can recall one
4 way or the other, you can answer.

5 THE WITNESS: I don't recall anyone with symptoms 09:53:31
6 lasting more than a few weeks.

7 BY MR. COLTON:

8 Q Do you recall seeing any patients in your office,
9 in August of 2011, that had EKC?

10 A I do not recall. 09:53:45

11 Q Do you recall telling ██████████ that a patient
12 had -- that you had recently seen, before her, had one of
13 the most worse cases you've ever seen of EKC or words to
14 that effect?

15 A I don't discuss any of my patients with other 09:54:10
16 patients, so it would be highly unlikely.

17 Q Okay. And I'm not, again, suggesting, for
18 purposes of this question, that you identified any patient
19 by name, but do you recall whether or not telling ██████████
20 that you had recently seen a patient who had one of the 09:54:31
21 most serious cases of EKC you had ever seen?

22 A No, I do not recall.

23 Q And your -- have you read ██████████ deposition?

24 A No, I have not.

25 Q Are you aware that she testified that you told 09:54:47

1 her that you had seen a patient, just before her, that had
2 had a serious case of EKC, or words to that effect?

3 MR. McKENNA: Okay. So she said she didn't read the
4 depo, so any conversations she had with Counsel would be
5 privileged, so I will instruct her not to answer the 09:55:09
6 question as phrased.

7 BY MR. COLTON:

8 Q Okay. I am going to read a question and answer
9 from the deposition. I don't know if you have ██████████
10 deposition, but you can look over my shoulder or -- 09:56:04

11 MR. McKENNA: This isn't a trial, so if you want to
12 ask a question and say, "if that refreshes your
13 recollection --"

14 MR. COLTON: That's what I was going to do.

15 MR. McKENNA: -- you're free to do that, but -- 09:56:11

16 BY MR. COLTON:

17 Q I am going to read a question and answer so that
18 you can understand what ██████████ testified to. And I am
19 going to ask you if that refreshes your memory.

20 MR. McKENNA: It's argumentative to suggest that she 09:56:20
21 needs to understand what ██████████ said. You can say, read
22 anything or say anything, any words you want, in any
23 combination to say, "and does that refresh fresh your
24 recollection. Have at it.

25 MR. COLTON: That's what I am going to do. 09:56:32

1 BY MR. COLTON:

2 Q In her deposition, [REDACTED] was asked the
3 following question by your counsel, Mr. McKenna.

4 (Reading:

5 "Anything else you recall discussing 09:56:39
6 with Jessica in that telephone
7 conversation?

8 "ANSWER: I don't recall if, on
9 August 26th, I was able to speak with
10 Dr. Shang at the same time or she 09:56:48
11 talked to me later.

12 I believe we had a conversation, later,
13 on the 26th and, at that time, she
14 reassured me, this is going around,
15 this EKC, and Dr. Shang mentioned there 09:57:00

16 was another patient, Cherri, who had a
17 really bad case of it. I don't recall
18 if that was on the 26th or 25th, but
19 she also gave me a second person,
20 quote, you are not alone, this is going 09:57:15
21 around and lots of people have it. She
22 has a really terrible case of it, end
23 quote, and that she would see me, but
24 it should go -- should go away.")

25 Do you recall -- first of all, do you re- -- does the 09:57:33

1 comments, that I've indicated [REDACTED] made at her
2 deposition, does that refresh your memory as to whether or
3 not you told [REDACTED] that you had recently seen a patient
4 who had a very bad case of EKC?

5 A No. 09:57:55

6 MR. McKENNA: There's a little groove that it sits in.

7 MR. COLTON: So that it stays. Let's see if I can get
8 it in there.

9 (Pause in the proceedings.)

10 BY MR. COLTON: 09:58:25

11 Q Do you recall telling [REDACTED] that there is a
12 lot of EKC going around?

13 A No.

14 Q After August 17th, 2011, and let's go on for the
15 next 30 days, did you see any patient at your office that 09:58:53
16 had EKC?

17 MR. McKENNA: May call for speculation. If she has a
18 memory, she can answer.

19 THE WITNESS: I don't recall.

20 BY MR. COLTON: 09:59:04

21 Q Let's expand that period even longer, from
22 August 17th, 2011, let's go out until the end of the year,
23 December 31st, 2011. As you sit here today, do you recall
24 seeing any patient, in your office, that had EKC?

25 MR. McKENNA: Same objection. Go ahead. 09:59:20

1 THE WITNESS: I don't recall. And this is over three
2 years ago.

3 BY MR. COLTON:

4 Q I asked you before about how many patients you
5 had seen with EKC prior to August 17th, 2011 in your 09:59:31
6 office and you mentioned about five or so. How many
7 patients, if any, after August 2000 -- August 17th, 2011,
8 do you recall having seen in your office that had EKC?

9 A That would be speculation.

10 Q Well, you were able to give me an answer for an 09:59:55
11 eight-year period. Now, I am asking you to give an answer
12 for a period that's only -- that's more recent than the
13 eight years that we were talking about before. Can you
14 give me an approximation?

15 A So this would be an approximation: 10:00:06
16 Approximately, two to three.

17 Q When was the last time you saw a patient, in your
18 office, that had EKC?

19 MR. McKENNA: May call for speculation. If you know
20 any greater specificity than the timeframe you just gave, 10:00:35
21 go ahead.

22 THE WITNESS: I don't remember.

23 BY MR. COLTON:

24 Q Do you recall seeing a patient with EKC during
25 2015? 10:00:50

1 A No.

2 Q Do you recall seeing a patient with EKC during
3 2014?

4 A Perhaps.

5 Q 2013?

10:00:57

6 A I may have.

7 Q 2012?

8 A It's possible.

9 Q After August 17th, 2011, do you recall -- let's
10 go forward in time, maybe until the end of the year. Do 10:01:28
11 you recall seeing any patients that had a very severe case
12 of conjunctivitis that left an impression in your mind?

13 A I see conjunctivitis patients all the time.
14 What's considered severe?

15 Q Well, are there mild cases, moderate and severe 10:01:50
16 cases?

17 MR. MCKENNA: Do you characterize them as such, I
18 guess, is the question.

19 THE WITNESS: The cases I've seen have resolved over a
20 few weeks. 10:02:07

21 BY MR. COLTON:

22 Q You've never had a patient with a severe form of
23 conjunctivitis that took longer than a few weeks to
24 resolve?

25 A Correct.

10:02:15

1 Q Never?

2 MR. MCKENNA: May call for --

3 THE WITNESS: In residency --

4 MR. MCKENNA: Well, excuse me. Excuse me.

5 "Never" is a pretty big concept, so -- and it may call 10:02:20
6 for speculation as to patients that may have gone
7 someplace else so, to your knowledge, just based on your
8 practice --

9 MR. COLTON: Let me ask the question.

10 BY MR. COLTON: 10:02:35

11 Q Do you recall, ever, since you had your own
12 office, seeing a patient that had conjunctivitis that
13 lasted more than a few weeks?

14 A I do not recall.

15 Q Based on what your testimony has been thus far, 10:02:47
16 it would be accurate to say that you did not soak the
17 tonometer tip between the exam and the person who
18 accompanied [REDACTED] exam; correct?

19 A It was wiped down with 70 percent alcohol.

20 Q The tonometer tip was? 10:03:23

21 A Absolutely.

22 Q Now, how can you be certain of that?

23 A Because I always do.

24 Q How big is a tonometer tip, do you know, in terms
25 of centimeters, millimeters? 10:03:39

1 MR. MCKENNA: How about this: How would she estimate
2 the size of her tonometer tip.

3 MR. COLTON: That's fine.

4 MR. MCKENNA: Okay.

5 THE WITNESS: The diameter or the length? 10:03:51

6 BY MR. COLTON:

7 Q Give me the diameter first.

8 A Probably about one centimeter.

9 Q Length?

10 A About three centimeters. 10:04:00

11 Q What kind of material is it made out of, if you
12 know?

13 A I would have to consult the manufacturer.

14 Q What color is it?

15 A It's an opaque color. 10:04:14

16 Q Is it transparent, you can see through it?

17 A It is opaque.

18 Q So light comes through it?

19 A It's not transparent.

20 Q Okay. Do you ever change tonometer tips? 10:04:28

21 MR. MCKENNA: By change, you mean like buy new ones?

22 MR. COLTON: Replacement.

23 MR. MCKENNA: Okay. I wasn't sure what you were
24 driving at.

25 THE WITNESS: I switch tonometer tips when I'm 10:04:44

1 soaking.

2 MR. MCKENNA: No. His question was, does there ever
3 come a time, in your practice, where you go, "Okay, I am
4 done with these," and I'm buying some new ones?

5 THE WITNESS: Oh, it's a permanent -- 10:04:58

6 MR. MCKENNA: Okay.

7 THE WITNESS: -- equipment. It is considered
8 permanent ophthalmic equipment.

9 BY MR. COLTON:

10 Q Okay. So you don't really replace it? 10:05:05

11 A Unless it's defective, no.

12 Q So you talked about instances when you -- where
13 you soak a tonometer tip. In the case of the interval
14 between the person accompanying [REDACTED] in
15 terms of being examined with a tonometer, that was not an 10:05:26
16 instance; correct, where you soaked the tonometer tip?

17 A Correct.

18 Q Instead you wiped it; right?

19 A Correct.

20 Q How long does it take to wipe the tip? 10:05:37

21 A Three seconds. Two seconds.

22 Q I know this is a little bit bigger than a
23 tonometer tip, but that's the best I am going to do.

24 Let's assume that's a tonometer tip. Go ahead
25 and hold it and just show me, with your hands, how you 10:06:05

1 would wipe it.

2 MR. MCKENNA: Well --

3 MR. COLTON: And recognizing it is not the same size.

4 MR. MCKENNA: Nor does she have the things that she

5 wipes it with. 10:06:16

6 MR. COLTON: Understood.

7 MR. MCKENNA: I'm assuming she doesn't have magic

8 hands, so...

9 MR. COLTON: Understood.

10 BY MR. COLTON: 10:06:21

11 Q Just show me, roughly, how you would do it, if
12 you can. Okay.

13 MR. MCKENNA: Are you capable of doing it without the
14 actual material that you are using?

15 THE WITNESS: It's a rather odd request. 10:06:30

16 MR. MCKENNA: I'm -- I'm just saying --

17 BY MR. COLTON:

18 Q Maybe. But if you want, we can get some tissue
19 from the toilet or a paper towel. I am just trying to
20 understand your method of doing it. 10:06:40

21 In fact, I've just been handed what looks like a
22 little wipe.

23 MR. MCKENNA: Why don't you ask her what she cleans
24 the tonometer tip with. I mean, there's no foundation --

25 MR. COLTON: That was coming. 10:06:51

1 MR. MCKENNA: Okay.

2 BY MR. COLTON:

3 Q What do you clean it with?

4 A It depends under what circumstance --

5 Q Well -- 10:06:58

6 A -- so for --

7 Q -- between routine examinations.

8 A With 70 percent alcohol.

9 Q Okay. What kind of a device, a swab, a tissue,

10 what? 10:07:07

11 A 70 percent alcohol prep.

12 Q And -- and what is it applied to?

13 A It's applied to the contact surfaces.

14 Q How is it applied?

15 A It's wiped. 10:07:19

16 Q Okay. But you had -- it's wiped with what,

17 something like a wipe that's -- do you administer some

18 alcohol onto that?

19 A It's presoaked.

20 Q It's presoaked. Okay. So how big is the wipe 10:07:33

21 that you use? You can show me with hands if you can --

22 A It's about this big.

23 Q Okay. Well, this isn't quite the same size, but

24 let's assume that's the alcohol wipe, how would you wipe

25 the tip, assuming the tip of the marker is the tonometer? 10:07:49

1 Can you show me?

2 MR. McKENNA: Is the tip on the machine when you are
3 wiping it?

4 THE WITNESS: Correct. I'm not holding it.

5 MR. McKENNA: Okay. 10:08:02

6 MR. COLTON: Okay.

7 BY MR. COLTON:

8 Q So do you use one hand to wipe it or two hands?

9 A I would say I generally use one.

10 Q Okay. If you don't mind, just hold it as if the 10:08:16
11 machine were holding it with one hand, and then with the
12 other hand, show me how you would wipe the tonometer using
13 the marker cap as an example?

14 A So the tonometer prism is already washed in the
15 device. 10:08:35

16 Q Sure.

17 A So it's standing. I'm not actually holding the
18 tonometer tip.

19 Q Okay.

20 A And it's wiped. 10:08:42

21 Q So if you are wiping it right now, show me how
22 long you would take wiping it, recognizing this isn't the
23 exact size, of course?

24 A Oh, yes. So you would be wiping the front and
25 the side. But, yes, the size is very different. 10:08:55

1 Q I understand. You mentioned one centimeter by
2 three length.

3 A Uh-huh.

4 Q Okay. Thank you.

5 And how much do the wipes cost, do you know? 10:09:08

6 A I don't know.

7 Q Do you get them in bulk sale? We are talking an
8 insignificant price for the wipes; correct?

9 MR. MCKENNA: It's two questions, but you're just
10 asking the second one? 10:09:23

11 MR. COLTON: Yes.

12 MR. MCKENNA: Okay.

13 THE WITNESS: Which question?

14 MR. MCKENNA: It's an insignificant amount for the
15 wipes? 10:09:27

16 THE WITNESS: Correct.

17 BY MR. COLTON:

18 Q Okay. Where do you buy them from?

19 A Any number of sources.

20 Q Is there a particular brand name? 10:09:34

21 A No.

22 Q If I were going to the store to buy one, would I
23 be able to find one, or do you have to buy them through
24 certain medical channels?

25 A You do not have to buy them through certain 10:09:48

1 medical channels.

2 Q Okay. So how would you identify it as a product,
3 is it -- is it some generic name for them, the wipes?

4 A It's generally termed 70 percent alcohol prep.

5 Q Do you know anyone that makes them by name? 10:10:11

6 A I don't recall. There's so many manufacturers.

7 Q Are -- do they come individually packaged?

8 A Yes.

9 Q So that when you use one, do you tear the
10 container -- or the packaging off, first, before applying 10:10:29
11 it?

12 A Yes, you would need to.

13 Q And do you do that immediately before you apply
14 the wipe to the tonometer or do you take them out of their
15 packaging well in advance and just having the wipes lying 10:10:48
16 around somewhere?

17 A They are opened before use.

18 Q Immediately before use?

19 A Within a few seconds.

20 Q Okay. That's what I am trying to get at. 10:11:02

21 And so is it your testimony that between routine
22 visits, you always wipe the tonometer tip with a
23 70 percent alcohol prep wipe?

24 A Yes.

25 Q And if, in fact, you didn't wipe the tonometer 10:11:28

1 tip with a 70 percent alcohol prep wipe, you don't think
2 you would be doing your job correctly; right?

3 MR. MCKENNA: So that's a kind of a more vague way of
4 asking for an expert opinion under CCP 2034. If I
5 designate her as a retained expert, she can -- you can 10:11:56
6 depose her again on issues involving the standard of care
7 which is, essentially, what your question is asking for,
8 so...

9 MR. COLTON: You're right. I concur with Counsel,
10 there. 10:12:11

11 MR. MCKENNA: Okay.

12 MR. COLTON: Okay.

13 MR. MCKENNA: It might be one of the few times we
14 agree. So like I said, if I -- if I designate her as a
15 retained expert to comment on these things, I will make 10:12:16
16 her available again.

17 MR. COLTON: And I assume, since you haven't
18 designated her as a retained expert, that --

19 MR. MCKENNA: That is a safe bet.

20 MR. COLTON: -- you're probably not going to designate 10:12:25
21 her?

22 MR. MCKENNA: Yeah, I don't know when supplemental
23 time runs; but, yeah, that's fair.

24 MR. COLTON: Okay.

25 /// 10:12:34

1 BY MR. COLTON:

2 Q The tonometer tip, actually, does that touch any
3 part of the eye during a routine examination?

4 A Yes.

5 Q And the tonometer is to check pressure; is that 10:12:52
6 right?

7 A Correct.

8 Q Okay. What portion of the eye does the tip touch
9 when you are using it on a patient?

10 A The tear film. 10:13:08

11 Q I'm sorry?

12 A The tear film.

13 Q Tear film?

14 A (Witness nods head.)

15 Q Is that the outermost layer of the eye? 10:13:18

16 A It overlies the outermost layer of the eye.

17 Q In your training and study, did you ever learn
18 that a tonometer tip could be a means of transmitting a
19 contagious virus?

20 A Anything that touches the patient can potentially 10:13:46
21 transmit viruses. And even things that don't touch the
22 patient can potentially transmit viruses.

23 MR. COLTON: Can I have the question read back again,
24 please.

25 THE REPORTER: Oh, yes. 10:14:28

1 (Whereupon the record was read as
2 follows:
3 "QUESTION: In your training and study,
4 did you ever learn that a tonometer tip
5 could be a means of transmitting a 10:13:38
6 contagious virus?
7 "ANSWER: Anything that touches the
8 patient can potentially transmit
9 viruses --")
10 BY MR. COLTON: 10:14:28
11 Q So --
12 MR. COLTON: Go -- I'm sorry.
13 (Whereupon the record was read as
14 follows:
15 "ANSWER: -- and even things that 10:13:50
16 don't touch the patient can potentially
17 transmit viruses.")
18 BY MR. COLTON:
19 Q Okay. So to my initial question, the answer
20 would be yes, that a tonometer tip could transmit a virus; 10:14:38
21 correct?
22 MR. McKENNA: It' argumentative. She answered. She
23 can answer it again.
24 THE WITNESS: Correct.
25 /// 10:14:48

1 BY MR. COLTON:

2 Q Okay. Based on your training, as a doctor, did
3 you learn that one of the most common ways of spreading a
4 conjunctivitis strain was through an ophthalmologist
5 office? 10:15:30

6 A Did they specifically state that?

7 Q Is that something that, during your training, was
8 told to you in some way?

9 A Can you ask that question again?

10 MR. COLTON: Go ahead and read it back. 10:15:41

11 (Whereupon the record was read as
12 follows:

13 "QUESTION: Is that something that,
14 during your training, was told to you
15 in some way?") 10:15:38

16 MR. McKENNA: I think she probably --

17 MR. COLTON: The one before that.

18 MR. McKENNA: -- wanted the one before that.

19 THE REPORTER: Excuse me.

20 (Whereupon the record was read as 10:15:56
21 follows:

22 "QUESTION: Based on your training, as
23 a doctor, did you learn that one of the
24 most common ways of spreading a
25 conjunctivitis strain was through an 10:15:23

1 ophthalmologist office?")

2 THE WITNESS: They never stated so specifically, but I
3 would assume that that's a point of contact.

4 BY MR. COLTON:

5 Q Well, weren't you instructed, in the fact, that 10:16:06
6 you had to take extreme precautions, as a practicing
7 ophthalmologist, to ensure that you did not infect
8 patients with conjunctivitis from others?

9 MR. McKENNA: It's -- I will object as to vague and
10 ambiguous as to the use of the term "extreme precautions," 10:16:27
11 as it's never been used or defined here.

12 Also, calls for speculation, lacks foundation,
13 and assumes that you can prevent infections despite doing
14 the protocols she described in the first section.

15 Go ahead. 10:16:43

16 THE WITNESS: State the question again.

17 MR. COLTON: Go ahead and read it back.

18 THE REPORTER: Uh-huh.

19 (Whereupon the record was read as
20 follows: 10:16:44

21 "QUESTION: Well, weren't you
22 instructed in the fact that you had to
23 take extreme precautions, as a
24 practicing ophthalmologist, to ensure
25 that you did not infect patients 10:16:16

1 with conjunctivitis from others?")

2 MR. McKENNA: Do you understand what the term "extreme
3 precautions" is?

4 THE WITNESS: Extreme -- well, maybe you can define
5 "extreme precautions." 10:17:11

6 BY MR. COLTON:

7 Q Well, let me put it this way. Were you advised
8 and instructed to take precautions to ensure that patients
9 were not infected from others in your office?

10 MR. McKENNA: Object. It assumes that such things can 10:17:23
11 be prevented under all circumstances, but go ahead.

12 THE WITNESS: Yes.

13 BY MR. COLTON:

14 Q Okay. And did they educate you on the types of
15 precautions to undertake to prevent the spread of eye 10:17:40
16 infections?

17 A In fact, during training, we room our own
18 patients.

19 Q You what?

20 A We bring the patients into the room and often act 10:17:54
21 as our own back office person. So in training,
22 oftentimes, we are the ones who wipe down in between
23 patients, following the same protocol.

24 Q Okay. Now, in your case, you were always the
25 back office person that wiped down instruments; correct, 10:18:30

1 between patients?

2 A In my practice; correct.

3 Q And even today, do you have a back office person
4 or is it -- are you the one that performs that function?

5 A For the purposes of my practice, I find that I 10:18:47
6 render the best care. When I bring the patients back, I
7 elicit the history myself and I check the vision myself,
8 which are the biggest part of the back office staff's
9 function. Wiping down the equipment is a small peripheral
10 part. 10:19:11

11 Q But an important part nonetheless?

12 A Absolutely.

13 Q Let's go back to [REDACTED] Do you recall the
14 first time you spoke to [REDACTED] after the August 17th,
15 2011 visit -- well, first of all, may I ask: Dr. Shang, 10:19:29
16 do you have a recollection of that, independent of the
17 records in front of you?

18 A Yes.

19 MR. McKENNA: She's reviewed the records in
20 preparation for her deposition, so she's not going to be 10:19:46
21 prohibited from looking at them if she wants to.

22 MR. COLTON: I'm -- let the record reflect, I'm not
23 going to prohibit her, at any time, from looking at any
24 records, but I'm entitled to ask her questions.

25 /// 10:19:54

1 BY MR. COLTON:

2 Q My question is: Independent of looking at the
3 records, are you able to tell me what you recall from the
4 first time you talked to [REDACTED] after August 17th,
5 2011? 10:20:05

6 A She called the office on August 25th --

7 Q Okay.

8 A -- 2011.

9 Q And as you sit here today, do you recall what she
10 told you and what you said to her? 10:20:17

11 A She said that her eyes were bothering her. And I
12 advised her to come in the very next morning.

13 She had called at the end of the day.

14 Q Do you recall if anyone else was present on the
15 line with her, meaning someone that you knew was present 10:20:40
16 because it was on a speakerphone or otherwise?

17 MR. McKENNA: You mean on her end of the line?

18 MR. COLTON: On [REDACTED]

19 MR. McKENNA: Okay.

20 THE WITNESS: I don't know what is on her end of the 10:20:54
21 line.

22 BY MR. COLTON:

23 Q Okay. You don't recall whether or not she said
24 [REDACTED] was also listening to the call?

25 A Unlikely, but she can state so. 10:21:08

1 Q You say, "unlikely." Why?

2 A Because I had advised her, specifically, to come
3 in the next morning, so she would've had a reminder, too,
4 to come in and she did not come in the next day.

5 Q Okay. My question is: It was unlikely that her 10:21:31
6 husband was also on the phone call, perhaps on a
7 speakerphone; is that what you are saying?

8 A I don't know what goes on, on her end, but I
9 would assume, in general, conversations between two people
10 are not on speaker, but it definitely could be on speaker. 10:21:51

11 Q Okay. I'm just curious why you had said
12 "unlikely." I think, now, you've answered that.

13 Do you recall how long the conversation was?

14 A It was not exceedingly long.

15 Q Give me an idea, if you know. 10:22:12

16 A Less than ten minutes.

17 Q What did [REDACTED] tell you about her eye issues
18 during that phone call?

19 A She said that she was feeling run down for
20 approximately a week, and she had soreness and crusting, 10:22:33
21 along with watering of her eyes, for two to three days
22 prior to the phone call.

23 Q Okay. What I'd like to know is -- I recognize
24 you're looking at your chart. Do you have an independent
25 recollection, Dr. Shang, of that phone call today? 10:22:55

1 MR. MCKENNA: She's already indicated that she did.
2 She can answer the question again.

3 BY MR. COLTON:

4 Q Do you have an independent recollection, today,
5 of that phone call? 10:23:08

6 MR. MCKENNA: You've asked that exact --

7 MR. COLTON: She didn't answer the question I just
8 asked.

9 MR. MCKENNA: No. But, you know, it's one of these
10 things where we've just got to exercise a little bit of 10:23:15
11 patience for one another, and allow them to answer the
12 question. The question is pending. You and I are both in
13 agreement. You've answered it before, you can answer it
14 again. He's -- He's allowed to ans- -- ask the same
15 question a couple of times, that's the beauty of 10:23:28
16 discovery.

17 THE WITNESS: Yes.

18 BY MR. COLTON:

19 Q Okay. Is there -- I saw that you were --
20 appeared to be reading from the chart note a few seconds 10:23:40
21 ago; correct, in terms of describing some of the issues
22 that she was having; right?

23 A Correct.

24 Q Is there anything, besides what's written in the
25 chart, that you recall her telling you about her eye 10:23:57

1 issues?

2 MR. McKENNA: From that conversation, on that day.

3 MR. COLTON: August 26th, 2011.

4 THE WITNESS: Yes.

5 BY MR. COLTON: 10:24:07

6 Q What else do you recall?

7 A I recall stating for her to come in the very next
8 morning and that I would see her before any of my other
9 patients.

10 Q Okay. Do you recall her describing any other 10:24:19
11 signs or symptoms that she was having with her eyes?

12 A I recall her stating that she was coming the next
13 morning in a few hours.

14 Q Okay, but listen to my question.

15 MR. McKENNA: You don't need to say that. You might 10:24:35
16 not like the answer, and --

17 MR. COLTON: I'm trying to be polite in doing that,
18 Robert. I want you to listen to the question I'm asking.

19 BY MR. COLTON:

20 Q Do you recall her discussing any other signs or 10:24:47
21 symptoms that she was having with her eyes?

22 A If you refresh my memory, I might recall.

23 Q Well, do you remember her saying anything about
24 her having redness in her eyes?

25 A Redness would be a common symptom for irritated 10:25:13

1 eyes.

2 Q Okay. Do you recall her saying that she had
3 redness in her eyes?

4 A I believe so.

5 Q Do you recall her saying she had irritation in 10:25:31
6 her eyes?

7 A Yes.

8 Q Do you recall her saying she had blurred vision?

9 A No.

10 Q Do you recall her saying she had sensitivity to 10:25:44
11 light?

12 A Those, again, are common symptoms.

13 Q I understand. But do you recall her saying that
14 to you?

15 A I'm not certain. 10:25:59

16 Q Do you recall her saying she had itching in her
17 eyes?

18 A I believe I recall itching.

19 Q Do you recall her saying that she felt like her
20 eyes were a bit swollen? 10:26:18

21 A Perhaps.

22 Q What do you mean by "perhaps," maybe she did,
23 maybe she didn't? Or do you think she said something
24 about her eyes being swollen?

25 MR. McKENNA: If you know. 10:26:36

1 THE WITNESS: She may --

2 MR. McKENNA: Don't speculate. If you know, let him
3 know.

4 THE WITNESS: She may have.

5 MR. McKENNA: Okay. He just -- he's going through a 10:26:46
6 big long list. Just because it may be consistent, doesn't
7 mean she told you. He just wants to know do you remember
8 saying X, Y, Z, or the other thing. That's all he's
9 doing.

10 BY MR. COLTON: 10:26:56

11 Q Do you remember [REDACTED] telling you that her
12 eyes were swollen during that conversation?

13 A On the August 25th conversation?

14 Q Yes.

15 A Perhaps. 10:27:05

16 Q I presume you formed, at least, some preliminary
17 opinion as to what conditions she had; correct, based on
18 that conversation?

19 A There's a differential.

20 Q Okay. What was your differential? 10:27:27

21 A She started with an upper respiratory infection,
22 with general malaise. That can manifest, also, in the
23 eyes.

24 Q Okay. So did you consider that, possibly, it
25 might be something else? 10:27:54

1 A Yes, I was waiting to see her the next morning.

2 Q What did your differential diagnosis involve?

3 What other possible diagnoses?

4 MR. MCKENNA: If you recall, as you sit here today,
5 what other things you entertained before the opportunity 10:28:08
6 to actually see her the following morning, go ahead.

7 THE WITNESS: It could be upper respiratory
8 infection-related conjunctivitis. It could be allergic
9 conjunctivitis. It could be an exacerbation of dry eyes.
10 It could be a combination of all of the above. But 10:28:28
11 generally, I like to formulate an opinion after I exam the
12 patient.

13 BY MR. COLTON:

14 Q Do you recall using the term "conjunctivitis"
15 when you talked to her, saying such as, "You might have 10:28:43
16 conjunctivitis"?

17 A Allergic conjunctivitis, infectious
18 conjunctivitis, and any inflammation of the conjunctiva is
19 conjunctivitis. So, yes, by definition, if her
20 conjunctiva are swollen, she has some form of 10:29:08
21 conjunctivitis.

22 Q My question, though, is, do you recall, during
23 the conversation, telling [REDACTED] that she might have
24 some form of conjunctivitis?

25 A Perhaps, but I am certain I told her to come in 10:29:22

1 the next morning.

2 Q I know -- I'm confident you did tell her to come
3 in the next morning. But can you be any more specific on
4 whether or not you did, in fact, tell her, during the
5 conversation, on or about August 25th or 26th, that she 10:29:38
6 might have conjunctivitis?

7 A Perhaps I mentioned it. I don't recall.

8 Q Okay. So you don't really recall whether you
9 mentioned it or not; is that a fair statement?

10 A On August 26th -- on August 25th, 2011, correct. 10:29:55

11 Q Okay. Do you recall any time after that talking
12 to [REDACTED] and mentioning to her that she might have
13 conjunctivitis?

14 A Again, my general practice is to formulate a
15 diagnosis after I exam the patient. At no time was she 10:30:17
16 ever examined in my office for said condition.

17 Q The question I am asking is a little different
18 than that.

19 Do you recall any time, after August 25th,
20 telling [REDACTED] that she might have conjunctivitis? 10:30:36

21 A Perhaps. I don't recall.

22 Q Okay. So it would be fair to say you don't
23 recall either way? You don't recall whether you ever told
24 her that she might have conjunctivitis after August 25th,
25 2011; is that correct? 10:30:55

1 A Correct.

2 MR. McKENNA: When you are at a good stopping point,
3 we are just at hour two. And not that I am trying to set
4 a standing 60-minute restroom break.

5 MR. COLTON: Just set an alarm, so it goes off. 10:31:07

6 MR. McKENNA: I am sitting patiently, watching my
7 watch. If now is a good time, otherwise, we can --

8 MR. COLTON: Let me just see if I have a follow-up on
9 that.

10 MR. McKENNA: Sure. 10:31:19

11 BY MR. COLTON:

12 Q Let's just spend another minute or two on
13 the -- on the phone conversation. You mentioned that you
14 told her to come in. And I'm trying to determine if you
15 gave her any kind of differential diagnosis, at all, 10:31:40
16 during that phone conversation, or any kind of indication
17 of what her problem might be to your -- to the best of
18 your recollection?

19 A I don't recall.

20 Q Okay. Is it accurate to say that you don't 10:31:59
21 recall anything you said to [REDACTED] during that phone
22 conversation, other than the fact that she needed to come
23 in the next day?

24 MR. McKENNA: Well, she's already testified to what
25 she said and she's referenced her notes. So beyond those 10:32:16

1 things as well, fine.

2 MR. COLTON: Go ahead, answer.

3 THE WITNESS: I'm not sure. As I sit here today, I
4 don't recall.

5 BY MR. COLTON: 10:32:28

6 Q And are you certain that you did not tell her,
7 during that phone conversation, that she had EKC?

8 A Am I certain I did not tell her?

9 Q Well, let me ask it a different way, maybe it's
10 confusing with a double negative. 10:32:46

11 Did you tell [REDACTED] on or about August 25th or
12 26th, 2011, that you believed she had EKC?

13 A I do not.

14 Q You did not or you do not recall saying that?

15 MR. MCKENNA: The question was, "Do you recall," and 10:33:02
16 she just said, "I do not."

17 MR. COLTON: Okay. Thank you, Counsel.

18 BY MR. COLTON:

19 Q Do you recall, at any time, [REDACTED] asking you
20 what EKC meant? 10:33:15

21 A She did not.

22 MR. COLTON: Okay. Let's take a break.

23 MR. MCKENNA: Thanks very much.

24 THE VIDEOGRAPHER: This completes DVD 1, Volume II, in
25 the continuing testimony of Dr. Barbara Shang. We are 10:33:27

1 going off the record at 10:33 a.m. Please don't forget
2 your mics.

3 (Recess taken.)

4 THE VIDEOGRAPHER: This is the beginning of DVD 2,
5 Volume II in the continuing testimony of Dr. Barbara 10:44:47
6 Shang. We are back on the record at 10:44.

7 BY MR. COLTON:

8 Q Dr. Shang, I previously asked you about patients
9 of yours that you've seen that have had EKC before and
10 after the incident, here. I would like to ask you a 10:45:08
11 little different question, along the same lines, though.

12 Have there been any patients -- I am not asking
13 you to identify who -- who called you, on the phone, after
14 a visit, that you did not see later, who advised you they
15 believe they had -- that the patient had EKC? 10:45:33

16 MR. McKENNA: May call for speculation. If you can
17 recall such an instance, let him know.

18 THE WITNESS: I don't answer the phone calls, so I
19 would need to get a message to that effect. I don't
20 recall receiving any such message. 10:45:55

21 BY MR. COLTON:

22 Q But from time to time, patients call you
23 directly; don't they? Maybe they have to go through the
24 receptionist first? Don't you field calls from patients
25 directly from time to time? 10:46:13

1 MR. McKENNA: It's three questions. And I'm happy to
2 have her read it back.

3 MR. COLTON: We'll -- we'll do the last one.

4 MR. McKENNA: Okay.

5 THE WITNESS: In general, I'm not the one that picks 10:46:18
6 up the phone. So if I am not in a patient exam room and a
7 patient calls in with a medical-related question, there
8 are times that I pick up directly. Otherwise, I return a
9 phone call once I get their message.

10 BY MR. COLTON: 10:46:47

11 Q Okay. That's what I'm talking about, times when
12 you've actually talked to a patient on the phone. Do you
13 recall times, after August 17th, 2011, where a patient
14 indicated to you that the patient believed he or she had
15 EKC? 10:47:01

16 MR. McKENNA: Same objection. May call for
17 speculation. If you recall such an instance, that's fine.

18 THE WITNESS: I don't recall.

19 BY MR. COLTON:

20 Q If there had been a patient with a severe form of 10:47:18
21 EKC, in your office, would you normally take any steps to
22 alert the health authorities?

23 MR. McKENNA: Okay. It's a hypothetical question, so,
24 again, I didn't designate her under 2034, and so she's not
25 going to answer hypothetical questions because it's not 10:47:45

1 basis or percipient witness testimony.

2 BY MR. COLTON:

3 Q Were you trained, in your education, to notify
4 health authorities if you saw a severe case of EKC?

5 A No. 10:47:57

6 Q Were there circumstances where you were educated
7 to advise the health authorities involving contagious
8 viruses that you would see as an eye doctor?

9 A Which conditions are you referring to
10 specifically? 10:48:27

11 Q Well, are there any instances, during your
12 training, you were told to contact health authorities if
13 you saw some type of a virulent form of a contagion?

14 A Like Ebola virus?

15 Q Something related, pertaining to the eyes, let's
16 say. 10:48:44

17 A For pink eye, it's not a reportable condition.

18 Q What about for EKC?

19 A Likewise.

20 Q Not reportable? You were not taught to report
21 that? 10:48:58

22 A My understanding is the CDC determines that it's
23 not a reportable condition.

24 Q Okay. That may be what the CDC understands.

25 What did you understand, based on your training? 10:49:17

1 MR. MCKENNA: I think she answered it, but she can
2 answer it again.

3 THE WITNESS: During training, we see various forms of
4 conjunctivitis, including EKC. And at no training
5 institute that I have been at, have we ever been advised, 10:49:37
6 nor have the administration ever reported conjunctivitis.

7 BY MR. COLTON:

8 Q Were you trained that if there was an outbreak of
9 EKC, that appeared to emanate from an ophthalmologist
10 office, that you should notify the health authorities? 10:49:54

11 A That the institution specifically instructed us
12 to do so?

13 Q During your training process, did they ever
14 discuss that, the fact -- or talked to you about the fact
15 that if there was an outbreak of some type of a contagious 10:50:10
16 eye -- eye infection that you were supposed to notify the
17 health authorities?

18 A No, it was not discussed.

19 Q So I take it, during your entire career, as an
20 ophthalmologist, you have never been involved in a 10:50:29
21 situation where either working for Dr. -- I forget his
22 name. Chasen?

23 A Chan- -- Chanés.

24 Q Chanés -- or in your own practice, where the
25 health authorities were notified in connection with an eye 10:50:44

1 infection?

2 A I don't believe Dr. Chanes ever reported an eye
3 infection. But that would be his office and his
4 administration so I can't speak to that.

5 Q You said, earlier this morning, that all the 10:51:09
6 patients that you know of that had conjunctivitis, their
7 symptoms were resolved within a few weeks; correct?

8 A The ones that I've seen, correct.

9 Q Are there some patients that sought care
10 elsewhere that were your patients but sought care for 10:51:30
11 their conjunctivitis elsewhere that did not resolve within
12 a few weeks?

13 MR. McKENNA: That she's aware of?

14 MR. COLTON: That you're aware of.

15 THE WITNESS: No. 10:51:43

16 BY MR. COLTON:

17 Q Now, I guess, we could say ██████ might be an
18 example of someone who alleges to have had persisting
19 symptoms of conjunctivitis after seeing you; is that
20 correct? 10:51:57

21 MR. McKENNA: Well, she's not going to comment on
22 ██████ or any of her care and treatment after her
23 involvement ended, so...

24 MR. COLTON: That's fine.

25 MR. McKENNA: Okay. 10:52:06

1 BY MR. COLTON:

2 Q Are you aware of any other patients, though, who
3 after leaving your care, went to obtain treatment for EKC?

4 A No, I'm not aware.

5 Q Is there a corneal specialist that you refer your
6 EKC patients to?

7 A EKC is generally not referred to a corneal
8 specialist.

9 Q Okay. Would there be instances when you have
10 referred a patient to a corneal specialist? 10:52:56

11 A For different diagnosis.

12 Q Okay. But not for an EKC diagnosis?

13 A Correct.

14 Q Is there one particular corneal specialist that
15 you have referred patients to? 10:53:12

16 A Not one in particular.

17 Q Can you mention some of them that you have made
18 referrals to?

19 A I have referred to the university system.

20 Q Is that UCI or something else? 10:53:26

21 A Not just UCI.

22 Q Okay.

23 A Both UCLA and UCI.

24 Q Are there any specialists by name that you had
25 made referen- -- referrals to? 10:53:43

1 A I can't remember the names.

2 Q But it would be accurate that you have, in fact,
3 made references to corneal specialists by name before?

4 A I refer them to the institution.

5 Q As opposed to a name? 10:54:04

6 A Correct. Because in the past, I've noticed
7 they're -- they sometimes do their own triage in terms of
8 who the patient sees.

9 Q During 2011, did you ever have an ophthalmologist
10 that was just on call if you were unavailable or on 10:54:33
11 vacation?

12 A I'm usually on call for my practice.

13 Q But I assume you go on vacation occasionally?

14 A Rarely.

15 Q Okay. On a rare instance, where you go on a 10:54:53
16 vacation, how does it work, do you have someone else that
17 fields your calls or are they all forwarded to you?

18 A If I'm within a 50-mile radius, it's referred to
19 me.

20 Q What if you're not? 10:55:10

21 A I'm not sure if that happened in 2011.

22 Q Well, in the last four years has that happened?

23 MR. McKENNA: That would be irrelevant to the last
24 four years. But you can --

25 MR. COLTON: I don't know when it is. 10:55:20

1 MR. MCKENNA: Well, just -- I'm trying to make a
2 point. You're -- anything that happened in terms of her
3 call and coverage up to 2011, have at it, but what she's
4 done in terms of vacations --

5 MR. COLTON: You're right -- 10:55:33

6 MR. MCKENNA: -- since then --

7 MR. COLTON: Let's broaden the scope before the 2011
8 time frame.

9 BY MR. COLTON:

10 Q If you are on vacation, beyond a 50-mile radius, 10:55:40
11 what did you do about having someone else field calls?

12 A My receptionist still -- still fielded the calls.

13 She would contact me and, on an individual basis, we would
14 determine when the patient needed to be seen and who was
15 the best person to refer the patient to. 10:56:04

16 Q Okay. Let's talk about a three-year period or so
17 before August 17th, 2011, did you have an ophthalmologist
18 that would, at any time, assist you in the event you were
19 not available?

20 MR. MCKENNA: She just indicated the circumstances 10:56:22
21 under which that happened. She's free to --

22 MR. COLTON: Okay.

23 MR. MCKENNA: -- tell you that again.

24 MR. COLTON: That's fine.

25 /// 10:56:29

1 BY MR. COLTON:

2 Q And, if so, who was that person?

3 MR. MCKENNA: She told you there was more than one
4 person, but she can go ahead and answer the question
5 again. 10:56:36

6 MR. COLTON: Go ahead.

7 THE WITNESS: Yes. So it depends on the condition
8 that they have.

9 BY MR. COLTON:

10 Q Okay. If they have conjunctivitis, who would 10:56:41
11 that be?

12 A They can see Dr. Ge.

13 Q Can you spell the name.

14 A G-E.

15 Q What is the first name? 10:56:52

16 A In general, conjunctivitis --

17 MR. MCKENNA: He's asking you the first name of
18 Dr. Ge.

19 THE WITNESS: Oh. Jayne.

20 BY MR. COLTON: 10:57:05

21 Q Jayne?

22 A Correct.

23 Q J-A-N-I-E?

24 A J-A-Y-N-E.

25 Q And when did you use her as someone that might 10:57:15

1 assist you when you are unavailable, what period of time?

2 A So when I'm not in the office, my receptionist is
3 in the office or my live answering service picks up. I'm
4 then paged and advised of the patient's condition.

5 Depending on what the situation is, they may or may not 10:57:51
6 need an immediate referral, and they may need a referral
7 to a different type of specialist, depending on what the
8 condition is.

9 Q So my question is a little different than that.
10 Over what time frame has Dr. Jayne Ge been someone that 10:58:18
11 you would utilize if you were unavailable for a
12 conjunctivitis issue, from what month and year to what
13 month and year?

14 A For quite some time. I don't know the exact
15 month and year. 10:58:40

16 Q How many years has she been doing that?

17 A She does not -- are you saying she takes a call
18 for me? So the --

19 MR. McKENNA: The question was simply --

20 THE WITNESS: Huh? 10:58:54

21 MR. McKENNA: -- when -- when did you first start
22 referring patients to Dr. Ge and how long has that been
23 going on?

24 THE WITNESS: Perhaps, ten years.

25 /// 10:59:04

1 BY MR. COLTON:

2 Q Anyone else besides Dr. Ge that you would use for
3 the same purposes besides -- besides her for
4 conjunctivitis?

5 A For conjunctivitis, in general, that's 10:59:13
6 not --

7 MR. MCKENNA: Go ahead. He's just asking other
8 people, but if that's part of your answer --

9 THE WITNESS: Okay.

10 MR. MCKENNA: -- go ahead. 10:59:31

11 THE WITNESS: She is the primary person if the patient
12 were to present with those symptoms.

13 BY MR. COLTON:

14 Q And when I say "conjunctivitis," I am including,
15 of course, EKC, so she would have been the same person if 10:59:44
16 there would have been an EKC event; correct?

17 MR. MCKENNA: Under the hypothetical circumstance --

18 MR. COLTON: Yes.

19 MR. MCKENNA: -- you laid out of when she was outside
20 of a 50-mile radius from her office in the years before 10:59:56
21 2011?

22 MR. COLTON: Correct.

23 MR. MCKENNA: Okay.

24 THE WITNESS: If I'm not in the office, and I haven't
25 seen the patient, then I'm not making a diagnosis. For 11:00:07

1 red, irritated eyes, yes, she sees them.

2 BY MR. COLTON:

3 Q Are you aware of any patients of yours that

4 Dr. Ge ever saw that had EKC?

5 A No.

11:00:26

6 Q With the patients you have --

7 MR. MCKENNA: Yeah. Hold on a second. She has a
8 brief question, so give us just one sec, please.

9 THE VIDEOGRAPHER: Off the record?

10 MR. MCKENNA: Off the record.

11:00:48

11 MR. COLTON: The DVD is being paused. We are going
12 off the record at 11:00 a.m. Please don't forget your
13 mics.

14 (Recess taken.)

15 THE VIDEOGRAPHER: The DVD has been restarted. We are 11:06:40
16 back on the record at 11:06 a.m.

17 BY MR. COLTON:

18 Q Dr. Shang, you had patients that had EKC, are

19 there any particular prescriptions that you customarily

20 provide to these patients?

11:06:57

21 A It depends on the clinical findings.

22 Q Okay. Tell me some of the medications you
23 prescribe -- would prescribe?

24 A So this would depend on the clinical findings

25 and, in addition, patient history and clinical course.

11:07:16

1 Q Okay.

2 A Did you want me to describe different scenarios?

3 Q You can do that.

4 MR. MCKENNA: He's just asking for the types of
5 medications that you've given in the past for patients 11:07:33
6 with EKC, so...

7 THE WITNESS: Okay. In the absence of the clinical
8 history, or in absence of any subjective complaints of
9 blurred vision, usually I recommend preservative-free
10 artificial tears. 11:08:06

11 MR. COLTON: Okay.

12 THE WITNESS: In cases where they have a history of
13 blepharitis or there may be an overlap with bacterial
14 conjunctivitis, they may be prescribed, not for the EKC,
15 but for other symptoms, antibiotic eyedrops. 11:08:34

16 BY MR. COLTON:

17 Q Antibiotic eyedrops?

18 A Correct, under those circumstances.

19 In cases where the patient complains of blurred
20 vision and have corneal findings, they may be put on an 11:08:51
21 anti-inflammatory steroid eyedrop.

22 Q Anything else?

23 A Those are the main eyedrops.

24 Q Do you ever prescribe TobraDex to any of your
25 patients with EKC? 11:09:25

1 A TobraDex is a combination of an antibiotic with
2 an anti-inflammatory.

3 Q So is that a medication that you might prescribe
4 to a patient with EKC?

5 A Yes, depending on their particular circumstance. 11:09:46

6 Q Do you recall prescribing TobraDex to a patient,
7 of yours, in August of 2011?

8 A I don't recall.

9 Q When you talked to [REDACTED] on the phone, did
10 you recommend any form of medication, either in the way of 11:10:18
11 artificial tears, antibiotics or steroids or anything?

12 A I believe I advised her to take artificial tears
13 even prior to the phone call, on the August 17th visit.

14 When she called on August 25th, she was
15 self-medicating with Ciloxan eyedrops; I did not put her 11:11:02
16 on those.

17 Q How did you learn she was self-medicating?

18 A She mentioned it during the phone call.

19 Q And what did you think about that? What was your
20 reaction to the fact that she was using Ciloxan? 11:11:22

21 A She started it the evening of the 24th. And I
22 was planning on seeing her in a few hours, the morning of
23 the 26th. I don't recall what I said about Ciloxan. I
24 was assuming I was going to see her in a few hours.

25 Q Do you recall being concerned that that was 11:11:46

1 something she shouldn't be doing?

2 A Ciloxan is an antibiotic eyedrop.

3 Q Do you recall whether you made any comment that
4 she should not be using it [REDACTED]

5 A I don't recall one way or the other. 11:12:03

6 Q Okay. But would it have been your custom and
7 practice, under the circumstances that you became aware
8 of, in terms of her eye issues, that you would have
9 responded in some fashion to her using an antibiotic?

10 MR. MCKENNA: That would assume that as her customary 11:12:20
11 part of her practice, she has medical doctors as patients
12 more often than occasionally, but she can answer.

13 THE WITNESS: So most of my patients, the vast
14 majority, are taking medicated eyedrops, either prescribed
15 by me or prescribed by another ophthalmologist, so I 11:12:37
16 usually wait until I see the patient to determine if it is
17 correct or not, or if I concur or not.

18 BY MR. COLTON:

19 Q But it's accurate to say that one of the possible
20 courses of medication you would have prescribed for [REDACTED]
[REDACTED] would have been antibiotic eyedrops; correct?

22 MR. MCKENNA: Calls for speculation because she hasn't
23 had a chance to evaluate or determine if such was
24 indicated. Go ahead.

25 THE WITNESS: Most likely, I would have not prescribed 11:13:09

1 that drop.

2 BY MR. COLTON:

3 Q Why not?

4 A For her case, I can't state because I did not see

5 her. For general viral conjunctivitis patients, I usually 11:13:23

6 don't prescribe antibiotic eyedrops.

7 Q Why not?

8 A Antibiotics don't cover viral etiology.

9 Q They don't help; is that what you are saying?

10 A Only under certain circumstances. 11:13:56

11 Q Would it have been your feeling, at the time,
12 that her use of the antibiotic would have been harmful to
13 her in any way?

14 MR. MCKENNA: Well, you can ask her if she formed that
15 opinion, but you can't ask her to speculate on a 11:14:09
16 hypothetical basis, so if you formed that opinion, let him
17 know.

18 THE WITNESS: She took it for one day. She started it
19 the evening of August 24th. I was talking to her end of
20 business day, August 25th, and I was planning on seeing 11:14:27
21 her 9:00 a.m., August 26th.

22 BY MR. COLTON:

23 Q So it's accurate to say it was not a concern to
24 you at the time that she had used an antibiotic eyedrop?

25 A She already used it for one day. 11:14:44

1 Q But it was not a cause of concern, to you, that
2 she had used it?

3 MR. MCKENNA: As you recall, you can answer.

4 THE WITNESS: Correct, because I was seeing her the
5 next day. 11:14:58

6 BY MR. COLTON:

7 Q If it had been something dangerous, you
8 would've -- you probably would've remembered that she was
9 doing something she shouldn't have; right?

10 MR. MCKENNA: That's a bit of an incomplete 11:15:09
11 hypothetical. That lacks foundation.

12 You know, if you want to ask her if she thought
13 she did anything dangerous, go ahead, but...

14 THE WITNESS: I did recall her saying she did
15 something dangerous. 11:15:25

16 BY MR. COLTON:

17 Q Oh. What do you recall her saying?

18 A 

19 Q Is that reflected in your chart?

20 A That's not on that phone call. 11:15:33

21 Q Is it somewhere in your records?

22 A No.

23 Q Okay. When do you remember her telling you that?

24 A I do not remember the exact date.

25 Q Was it in a phone call or in person? 11:15:48

1 A Not in person.

2 Q So your -- your recollection would be that you
3 had this conversation with [REDACTED] after the August 17th,
4 2011 visit?

5 A After. 11:16:03

6 Q Okay. How many phone conversations did you have
7 with [REDACTED] after the August 17th, 2011 visit?

8 MR. MCKENNA: May call for speculation. Answer if you
9 know.

10 THE WITNESS: I'm not sure. 11:16:15

11 BY MR. COLTON:

12 Q Well, you obviously charted one; correct?

13 A Yes.

14 Q And no more than one. We only have in the file,
15 as I understand it, one record you charted with a phone 11:16:24
16 call from [REDACTED] correct?

17 MR. MCKENNA: That's three questions, but you can
18 answer the last one. Go ahead.

19 THE WITNESS: Yes.

20 BY MR. COLTON: 11:16:37

21 Q Why is it that you charted this particular phone
22 call?

23 A This was the phone call she was calling in to
24 report symptoms for which we were scheduling her for a
25 follow-up appointment. 11:16:59

1 Q Did she ever place any phone calls to you where
2 she reported symptoms besides this one, following
3 August 17th, 2011?

4 MR. MCKENNA: I apologize. I just lost the question.
5 Could you just read it back. 11:17:12

6 (Whereupon the record was read as
7 follows:

8 "QUESTION: Did she ever place any
9 phone calls to you where she reported
10 symptoms besides this one, following 11:17:05
11 August 17th, 2011?")

12 MR. MCKENNA: You're not talking about besides these
13 symptoms, you are talking about besides this phone call?

14 MR. COLTON: Besides this phone call, correct.

15 MR. MCKENNA: Okay. So other phone calls where she is 11:17:28
16 talking about her eyes.

17 THE WITNESS: Yes, I believe there -- there were.

18 BY MR. COLTON:

19 Q Okay. And is there a reason why you didn't chart
20 the other phone calls where she talked about her eyes? 11:17:42

21 A I make every attempt to document phone calls with
22 patients. However, sometimes not every single phone call
23 is documented. The most important thing, I believe, is to
24 communicate with the patient and emphasize the importance
25 of being seen and being evaluated, which I did with every 11:18:11

1 phone call.

2 Q And can you tell me how many other phone calls
3 you had [REDACTED] that were not charted where she
4 talked about her eyes after August 17th, 2011?

5 MR. McKENNA: It's been asked and answered. She can 11:18:35
6 answer it again.

7 THE WITNESS: Perhaps, one or two. I'm not sure the
8 exact number.

9 BY MR. COLTON:

10 Q And as you sit here today, you don't recall, 11:18:48
11 specifically, why you did not chart those other one or two
12 phone calls?

13 A I make every attempt, even when I'm outside the
14 office, to chart phone calls, but sometimes not every
15 conversation, not every note is charted. 11:19:14

16 Q And my question is a little different than that.
17 Do you recall, specifically, why you did not
18 chart other phone calls [REDACTED] regarding her eyes,
19 after August 17th, 2011?

20 MR. McKENNA: You mean after August 25th, 2011? 11:19:33

21 MR. COLTON: August 25th, 2011.

22 MR. McKENNA: Do you recall the circumstances is what
23 he's asking.

24 THE WITNESS: I just recall emphasizing, to her, the
25 importance of actually being seen and evaluated. 11:19:45

1 BY MR. COLTON:

2 Q Okay. Now, I'd like to ask you if you could tell
3 me what you recall about the one or two other phone
4 conversations you had with [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

7 Q What do you recall -- [REDACTED]
[REDACTED]

9 A The exact words, no.

10 Q Or the context in which she conveyed to you? 11:20:21

11 [REDACTED] [REDACTED]
[REDACTED]

13 MR. COLTON: Or maybe there was some reason she
14 explained why she was doing it.

15 THE WITNESS: No, I don't recall. 11:20:35

16 BY MR. COLTON:

17 Q Did she say [REDACTED] what
18 part of the body?

19 A No.

20 Q How did [REDACTED]
[REDACTED]

22 A I told her that is not the standard of care for
23 any form of eye infection.

24 Q Okay. And did you say anything else to her about
25 that? 11:21:00

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[REDACTED]

Q How did she respond back to you when you said that?

A I don't recall. 11:21:12

Q You don't recall her trying to explain to you the purpose for her doing it, or -- or suggesting that it might be beneficial, anything like that?

A I don't recall specifically. My understanding is that it may be a [REDACTED] 11:21:32

Q Do you recall her saying that she had looked at any medical literature about what she should be doing as it [REDACTED]

A No, I do not recall.

Q So the one or two other times when you talked to her, did you ask her why she had not come in to see you the day after the August 25, or 26th phone call? 11:21:55

A Yes.

Q What did she say?

A [REDACTED] 11:22:14

Q [REDACTED] ever call you up on her -- on your cell phone and tell you that she was available to come see you for a follow-up appointment, following the August 25th phone call you've charted?

A Yes, she had another appointment that was 11:22:47

1 scheduled.

2 Q And did you indicate to her that you were not
3 available to see her for some reason or another?

4 MR. McKENNA: She indicated that there was another
5 appointment scheduled, so there's no foundation to assume 11:23:01
6 she wasn't available for a scheduled appointment --

7 MR. COLTON: Let --

8 MR. McKENNA: -- so I am not understanding the
9 question.

10 MR. COLTON: Let me start over again. 11:23:08

11 BY MR. COLTON:

12 Q Do you recall [REDACTED] -- or strike that.

13 Do you recall telling [REDACTED] that you could see
14 her over -- during a weekend?

15 MR. McKENNA: May call for speculation. You can 11:23:20
16 answer if you know.

17 THE WITNESS: I have to check the calendar. I believe
18 August 26th, 2011 --

19 MR. McKENNA: Hold on.

20 THE WITNESS: -- was a Friday. 11:23:29

21 MR. McKENNA: Let's not guess at what day of the week
22 that is, but -- listen to his question.

23 Do -- do you remember talking to her about seeing
24 the patient over the weekend or not? That's the question.

25 MR. COLTON: Let me check the calendar, too, that 11:23:45

1 might put it into context.

2 MR. MCKENNA: Okay, then I'll take your word for it.

3 Actually, this one is easier on this model. 2011.

4 August what?

5 THE WITNESS: 26th, I believe is a Friday. 11:24:01

6 MR. MCKENNA: It is a Friday.

7 MR. COLTON: Okay.

8 MR. MCKENNA: 26th, Friday. Yeah.

9 MR. COLTON: Okay. We --

10 THE WITNESS: So she was scheduled to come in, I'm 11:24:18

11 fairly certain, Monday --

12 BY MR. COLTON:

13 Q Well, Dr. Shang, let me ask you this question.

14 A -- the 29th of August.

15 Q Does your chart indicate that you wanted her to 11:24:31
16 come in the next day, in a few hours?

17 A August 25th, yes. "Advise patient to follow up
18 in clinic tomorrow a.m. Scheduled August 26th at
19 9:00 a.m."

20 Q Okay. She didn't show up on August 26th; 11:24:49
21 correct?

22 A Correct.

23 Q Do you recall [REDACTED] calling you -- calling you

24 on your cell phone during the weekend, which would have

25 been August 27th or 28th, about seeing you then? 11:25:06

1 A Yes, I believe so, that was that weekend.

2 Q Okay. And was there discussion wherein you were
3 going to see her at your office over the weekend?

4 A I don't recall that. I do recall having her come
5 in any time on Monday August 29th. 11:25:32

6 Q Okay. Now, do you recall inviting [REDACTED] to
7 come see you the weekend of the 27th and 28th or possibly
8 the following weekend? But let's confine it, first, to
9 the 27th or 28th.

10 A I don't recall. 11:25:55

11 Q Do you recall, in that time frame, ever saying,
12 [REDACTED] I know you are busy, if you're not free during
13 the week, you can come see me during the weekend,"
14 anything like that?

15 MR. MCKENNA: It's asked and answered. You can answer 11:26:08
16 it again.

17 A I am thinking that because she's busy, I would
18 see her anytime Monday.

19 Q But not during the weekend?

20 A I believe the call was on the weekend then it 11:26:18
21 would be in the next 24 hours or so, so any time Monday,
22 August 29th.

23 Q So if I were to ask you if you [REDACTED]
24 calling you to see you on a Saturday or Sunday, and you
25 informing her that you could not do that, do you recall 11:26:46

1 any discussion like that with her?

2 A Not specifically, no.

3 Q Do you recall telling [REDACTED] that you couldn't
4 see her because you had EKC?

5 A I did not have any form of conjunctivitis, so I 11:27:03
6 don't recall saying that.

7 Q Did you ever [REDACTED] that you had been
8 infected by a young boy with conjunctivitis or some strain
9 of it?

10 A No. 11:27:26

11 Q Do you recall [REDACTED] that you couldn't
12 see her during the weekend because you couldn't drive due
13 to your eye condition?

14 MR. McKENNA: Don't worry about how ridiculous the
15 questions may seem to you. He's allowed to -- 11:27:47

16 THE WITNESS: No.

17 MR. McKENNA: -- ask any question he wants, so just
18 answer his question.

19 MR. COLTON: I would respectfully --

20 MR. McKENNA: I am not saying they are ridiculous. 11:27:56

21 MR. COLTON: We'll admonish you not to make that
22 reference with regards to --

23 MR. McKENNA: Roland, I am not saying you are asking
24 ridiculous questions. I am saying if she, in her mind,
25 feels the question is ridiculous, she needs to put that 11:28:09

1 feeling aside and answer your question. So that was, in
2 no way, a characterization of the question itself. I
3 would not mean to --

4 MR. COLTON: Accepted.

5 MR. McKENNA: -- insult you in that manner. 11:28:18

6 BY MR. COLTON:

7 Q Dr. Shang, do you recall ever obtaining an eye
8 infection from a young boy?

9 A No.

10 Q A patient who -- something from his eye splashed 11:28:29
11 into yours, do you recall anything like that occurring to
12 you in the last ten years?

13 A No.

14 Q Being a little bit more specific in this regard,
15 do you recall ever [REDACTED] that you had gotten 11:29:02
16 EKC from a little boy whose eyelid you had scraped in your
17 office?

18 A No.

19 Q In your training of EKC, did you ever learn what
20 the incubation period is for the time a person is infected 11:29:32
21 until signs and symptoms are manifested?

22 A Yes.

23 Q What is that?

24 A It can vary.

25 Q (Indicating.) 11:29:47

1 A Generally, a few days to a week. Theoretically,
2 longer.

3 Q Did you ever mention [REDACTED] that you had a
4 patient, named Cherri, who had come down with some form of
5 EKC or conjunctivitis? 11:30:20

6 A No, I do not recall.

7 Q Or that had SEIs?

8 A No, I do not recall.

9 Q Or that had corneal ulcers?

10 A No. 11:30:46

11 Q Did you ever mention, to [REDACTED] that
12 John [REDACTED] had come down with an eye infection? To
13 [REDACTED]

14 MR. McKENNA: Again, you are asking patient's specific
15 information, so -- 11:31:00

16 MR. COLTON: I am asking if -- go ahead.

17 MR. McKENNA: Please, Roland. I -- I'm not trying --

18 MR. COLTON: Go ahead.

19 MR. McKENNA: We can't identify, by name, any patient
20 of Dr. Shang's, other than the patients who are suing her. 11:31:09

21 BY MR. COLTON:

22 Q What I'd like to determine whether or not she
23 told [REDACTED] that [REDACTED] had come down with a serious
24 eye infection? And all I am asking for is a yes-or-no
25 answer. 11:31:30

1 MR. MCKENNA: So -- not to tell you how to do your
2 job, I am not going to let her answer that question
3 because you put patient-identifying information in the
4 question.

5 If you want to ask, did you tell her any of 11:31:40
6 your -- did you tell [REDACTED] that any of your patients
7 came down with a serious eye infection, that's okay
8 because we are not putting patient-identifying
9 information in. I think that covers your issue with
10 regard to [REDACTED] and anybody else. 11:31:52

11 MR. COLTON: It may, but let's certify that for a
12 possible motion. I will ask it since you're not -- you're
13 going to instruct her not to answer the question about
14 [REDACTED] correct?

15 MR. MCKENNA: Correct. As it relates to identifying 11:32:06
16 any patients other than the plaintiffs, in this case, I
17 will instruct her not to answer the question.

18 I also tried to talk to her beforehand about not
19 just volunteering that information and, so far, pretty
20 good. So that's just the position that I -- that I 11:32:21
21 believe I'm required to take --

22 MR. COLTON: Okay.

23 MR. MCKENNA: -- until Jameson or the court tells me
24 otherwise.

25 MR. COLTON: The only comment I would make, in 11:32:29

1 purposes of meeting and conferring, is she has already
2 indicated that she did not tell [REDACTED] that she had
3 talked to her about a patient named Cherri, and you
4 permitted to respond to that.

5 MR. McKENNA: Well, because you know, I think, in the 11:32:43
6 grand scale -- and I apologize, if I interrupted you I'll
7 stop.

8 MR. COLTON: Go ahead.

9 MR. McKENNA: In the grand scheme of
10 patient-identifying information, the name, Cherri, is 11:32:52
11 pretty innocuous, so I didn't see that as -- as being a
12 HIPAA violation. But when you say, did you tell her that
13 [REDACTED] who is an identifiable person, would be
14 identifiable from the public record, this deposition, I
15 think, you know -- I'm having to use my good faith efforts 11:33:09
16 in determining what a judge would think would be a HIPAA
17 violation or not a HIPAA violation. I'm not clairvoyant
18 and I'm not claiming to be 100 percent right. I am simply
19 saying under the circumstances we find ourselves, I feel
20 that I'm required to -- to make the objection and make the 11:33:27
21 instruction.

22 MR. COLTON: Okay. Just for the record, what we're
23 asking her to disclose is an allegation [REDACTED] has
24 made with regard to conversations she had with Dr. Shang.
25 I believe I am entitled to inquire as to whether or not 11:33:40

1 those conversations took place. And if they did not, then
2 we don't have a problem. If they did, I think I am
3 entitled to know if she, in fact, had a conversation with

4 [REDACTED]

5 MR. McKENNA: Right. So here's the catch-22 of that. 11:33:58
6 I think you are entitled to everything that the two of
7 them discussed, but until we get the issue resolved of
8 whether identifying [REDACTED] as a patient, is or is not
9 a HIPAA violation, I've gotta instruct her not to answer
10 the question. 11:34:14

11 MR. COLTON: Okay.

12 BY MR. COLTON:

13 Q Well, let me ask you this question Dr. Shang: Do
14 you recall telling [REDACTED] about a recent patient who had
15 infected -- who had contracted a serious form of some 11:34:22
16 type of an eye infection, either EKC or some other form of
17 conjunctivitis?

18 A I don't discuss other patients with other
19 patients, so highly unlikely, and I do not recall that.

20 Q Do you have any type of a written protocol, 11:34:46
21 procedures, that you use in connection with sterilization
22 of cleaning equipment?

23 A No.

24 Q We provided a Notice of Deposition for today's
25 continuance or resumption, and I'd like to mark that as 11:36:57

1 Exhibit 5, in sequence to the exhibits that were
2 previously marked in your first deposition.

3 I see Counsel has given you a copy of that. It
4 asks for a couple of records. The --

5 MR. McKENNA: Can I mark this? 11:37:24

6 MR. COLTON: Those are some objections. Pardon?

7 MR. McKENNA: Fair enough. I was just going to see if
8 I can mark the objections as 6, just so we have --

9 MR. COLTON: Yes, that's fine.

10 MR. McKENNA: Okay. 11:37:34

11 MR. COLTON: Um --

12 MR. McKENNA: Can I -- can I offer a suggestion? I
13 can make available the original chart [REDACTED] at a
14 time that's mutually convenient. If you want -- if it's a
15 simple matter of inspecting the chart, we -- you can do 11:37:50
16 that.

17 MR. COLTON: I would've liked to have seen it today
18 for her deposition. It's not available today?

19 MR. McKENNA: It's not, and I apologize. I don't have
20 it.

21 MR. COLTON: Okay. All right. Well, I'll take you up
22 on your kind offer.

23 (Deposition Exhibit 5 was marked for
24 identification by the court reporter.)

25 ///

1 (Deposition Exhibit 6 was marked for
2 identification by the court reporter.)

3 BY MR. COLTON:

4 Q As far as No. 1, are there any documents -- this
5 is part of Exhibit 5, reflected on Category 1, on page 2. 11:38:06

6 Dr. Shang, did you bring, with you, any documents
7 reflecting the policies, procedures and/or protocol for
8 sanitizing and/or cleaning equipment, fixtures, devices
9 and other materials used in connection with the eye
10 examination, care and treatment of patients in the medical 11:38:25
11 offices -- at your medical offices?

12 A I did not bring any documents.

13 Q Do you have any documents in your possession that
14 reflect policies or procedures or protocol for sanitizing
15 or cleaning equipment in your office? 11:38:40

16 MR. McKENNA: It's been asked and answered in the
17 first session. It's been asked and answered in the
18 second. Go ahead and answer again.

19 THE WITNESS: No.

20 BY MR. COLTON: 11:38:49

21 Q Okay. So there are no procedures or written
22 guidelines that you have created yourself --

23 MR. McKENNA: Well, she's --

24 MR. COLTON: -- after ten years of practice, that
25 pertain to the steriliz- -- sterilization or cleaning of 11:39:06

1 equipment; is that correct?

2 MR. McKENNA: She's already indicated she has
3 procedures. She told you she has nothing written in terms
4 of policies and procedures, so those are two different
5 questions. 11:39:17

6 BY MR. COLTON:

7 Q Have you, at any time, created any policies or
8 procedures concerning the sterilization of cleaning of
9 equipment, that you may not use today or don't have it in
10 the office, have you done that at any time? 11:39:25

11 MR. McKENNA: You are talking about a written policy
12 or procedure?

13 MR. COLTON: Yes.

14 MR. McKENNA: Okay.

15 THE WITNESS: I follow policies. 11:39:32

16 MR. McKENNA: No. His question is: Did you put
17 something in writing? That's the question.

18 THE WITNESS: No documents.

19 BY MR. COLTON:

20 Q At any time, during the time you've had your 11:39:41
21 office, over the last 11 years or so, you have never
22 prepared any written documents or procedures pertaining to
23 cleaning and sterilization of equipment; is that correct?

24 MR. McKENNA: It's been asked five times. You can
25 answer it again. 11:39:57

1 MR. COLTON: It may be the sixth time, actually.

2 MR. McKENNA: Okay, fair. I stand corrected.

3 THE WITNESS: Correct.

4 MR. COLTON: You have never done that?

5 MR. McKENNA: Eight. All right. 11:40:03

6 MR. COLTON: You skipped seven.

7 BY MR. COLTON:

8 Q After this litigation ensued, have you had a
9 phone call concerning this litigation with a lady named
10 Cheryl L [REDACTED] 11:40:35

11 THE WITNESS: I thought I wasn't supposed to answer --

12 MR. McKENNA: Hold on. Okay. Let me find out who
13 Cheryl is and then we'll go from there.

14 THE VIDEOGRAPHER: The DVD is being paused and we're
15 going off the record at 11:40 a.m. Please don't forget 11:40:56
16 your mics.

17 (Off the record.)

18 THE VIDEOGRAPHER: The DVD has been restarted and we
19 are back on the record at 11:44 a.m.

20 MR. COLTON: There was a question pending. May I have 11:44:30
21 the court reporter read that back.

22 (Whereupon the record was read as
23 follows:

24 "QUESTION: After this litigation
25 ensued, have you had a phone call, 11:40:27

1 concerning this litigation, with a lady
2 named Cheryl [REDACTED]

3 MR. MCKENNA: Okay. So based on information I've
4 obtained, the question would necessarily involve
5 patient-protected information. And since this hasn't been 11:44:50
6 resolved with the court, I'm not going to be able to allow
7 her to answer the question.

8 MR. COLTON: Okay. And you are going to instruct your
9 witness not to answer that?

10 MR. MCKENNA: Yeah. I'm sorry if I didn't make that 11:45:02
11 clear by the last statement. She's not going to answer
12 the question.

13 BY MR. COLTON:

14 Q And Dr. Shang, you are going to follow your
15 attorney's recommendation -- 11:45:11

16 A Yes.

17 Q -- or instruction, I should say?

18 MR. COLTON: I am going to ask it a little differently
19 this time in hopes that your objection won't apply.

20 MR. MCKENNA: Are you using a person's name? 11:45:17

21 MR. COLTON: I am.

22 MR. MCKENNA: Okay.

23 MR. COLTON: I'll explain the question. I know.

24 MR. MCKENNA: Okay.

25 MR. COLTON: Let me ask the question. 11:45:23

1 BY MR. COLTON:

2 Q I am not inquiring, in this question, about any
3 care or treatment that you had with a patient. I am
4 asking you if you've had any communication with
5 Cheryl Leggett about the litigation involving yourself and 11:45:33
6 Dr. Alai that does not relate to Cheryl Leggett's or
7 Leggett's own care or treatment?

8 MR. MCKENNA: The question, as phrased, I will
9 instruct her not to answer for the reasons I previously
10 articulated. 11:45:55

11 MR. COLTON: Okay. For meet and confer purposes,
12 let's certify this for a motion to compel with
13 Judge Jameson.

14 BY MR. COLTON:

15 Q To the extent that there has been discussions 11:46:04
16 between your client and a patient that relate to the
17 litigation aspect of this case only, such as comments that
18 Dr. Shang may have made about Dr. Alai, I think I'm
19 entitled to know that. As with any witness who may or may
20 not be called at trial, I think I am entitled to inquire 11:46:33
21 about discussions that do not pertain to care and
22 treatment but pertain to litigation.

23 MR. MCKENNA: So the unique aspects of this case that
24 not only involve this lawsuit, but a second lawsuit and
25 potential medical board action and other administrative 11:46:49

1 hearings and other potential claims in the future,
2 relating to HIPAA violations, all those considerations
3 taken into the context of the question that you are asking
4 necessarily involve conduct taken by persons other than
5 Dr. Shang that are still under investigation, being 11:47:09
6 reviewed. And until a court, you know, Jameson or our
7 trial judge, says that Dr. Shang can talk about anybody
8 who happens to be her patient -- and there are
9 circumstances under which Dr. Shang's patients were
10 contacted, not by Dr. Shang. So until all that gets 11:47:34
11 sorted out by a judge -- and that's what I asked Dan Hodes
12 to do before this second session -- until that gets sorted
13 out, she's not going to answer any of those questions.
14 That's my proffer and meet and confer for you.

15 MR. COLTON: Okay. 11:47:48

16 MR. McKENNA: You may very well be right, but until
17 such time such as a court gives legal protection, to me
18 and Dr. Shang, to talk about these things, they simply
19 can't be spoken of.

20 MR. COLTON: Okay. So I will make a proffer that I 11:48:02
21 would be asking questions not only about Cheryl Leggett,
22 but also with regard to Rebecca Kort, Vincent Gargus and
23 Mark Richter.

24 MR. McKENNA: Could you spell those names for the
25 record, too, so we can get a clear record. 11:48:24

1 MR. COLTON: Mark Richter is -- Richter is
2 R-I-C-H-T-E-R. Rebecca Kort. Last name is Kort, K-O-R-T.
3 Vincent Gargas. Last name is G-A-R-G-A-S.

4 And my inquiry, again, would not be with regard
5 to any patient care involving Dr. Shang, in any way, 11:48:45
6 shape, or form but, rather, if there were communications
7 post-litigation that pertain strictly to the fact that
8 there is a lawsuit and comments that may have been made by
9 Dr. Shang regarding ~~Dr. Alai.~~

10 MR. MCKENNA: And until the issue is resolved as to 11:49:05
11 how those patients were initially contacted in the first
12 place, and the conduct that lead to that occurring, there
13 is still a HIPAA violation that exists for her to
14 acknowledge anyone that was a patient of hers. This is a
15 unique circumstances -- a unique circumstance that 11:49:24
16 requires court and board intervention.

17 MR. COLTON: And you're instructing her not to answer
18 questions --

19 MR. MCKENNA: For -- for all of those reasons.

20 MR. COLTON: For all of those reasons. 11:49:35

21 MR. MCKENNA: Yeah. And I -- I appreciate you giving
22 me the list of the people because that will be an
23 important list.

24 BY MR. COLTON:

25 Q Dr. Shang, have you made any derogatory comments 11:49:43

1 to anyone concerning Dr. Alai?

2 MR. MCKENNA: Well, I'm going to say that she can't
3 talk about comments that she shares with her lawyer, and I
4 am not suggesting that she's made any derogatory comments,
5 but she's not going to waive the attorney-client 11:50:04
6 privilege.

7 MR. COLTON: Of course not.

8 MR. MCKENNA: Outside of Counsel, she can answer the
9 question.

10 THE WITNESS: No. 11:50:11

11 BY MR. COLTON:

12 Q Independent of your lawyers, have you reviewed
13 any materials -- strike that.

14 Have you been given any materials independent of
15 your lawyers that pertain to an entity called 11:50:36

16 ~~EKC Foundation, dot org?~~

17 A I'm not sure I understand the question.

18 Q Have you received any documents pertaining to
19 EKC Foundation dot org, other than documents that your
20 lawyer may have shown to you? 11:50:58

21 A Was I sent a package?

22 Q Have you seen any -- or have you received -- have
23 your received them from any person other than your lawyer?

24 A Yes.

25 Q Okay. Who has -- who has given you those 11:51:13

1 documents?

2 MR. McKENNA: And that question would also involve a
3 HIPAA violation, in my estimation, and I'll instruct her
4 not to answer.

5 MR. COLTON: And certify that for a motion to compel. 11:51:30
6 The same meet and confer applies to that, and what we just
7 said -- said before.

8 MR. McKENNA: You can certify the whole transcript, as
9 far as I am concerned, Roland.

10 MR. COLTON: Uh, well, not the whole transcript. 11:51:37

11 BY MR. COLTON:

12 Q Dr. Shang, did you receive any documents
13 pertaining to EKC Foundation dot org that did not come
14 from your lawyer or a former patient?

15 A The website was up for public viewing. 11:51:57

16 Q So you looked at it?

17 A So I did view the website, yes.

18 Q And did you, yourself, print out any pages of the
19 website?

20 A No. 11:52:16

21 Q How much time did you spend looking at the
22 website?

23 A I'm not sure.

24 Q When did you look at it?

25 A When it was up. 11:52:26

1 Q Give me a time frame.

2 A So that was November 2014.

3 Q Okay. Did you discuss the website with anyone
4 other than your lawyers or former patients?

5 A No, I do not recall. 11:52:48

6 Q Isn't it true, Dr. Shang, that at the time you
7 met with Dr. Alai, in August 17th, 2011, you were
8 concerned about a case of identity theft involving
9 yourself?

10 MR. McKENNA: It's irrelevant. It's an invasion of 11:54:05
11 privacy. I don't know if it's true or not, but it's not
12 pertinent to discussion, and the claims that are being
13 brought in this lawsuit, so I will instruct her not to
14 answer.

15 MR. COLTON: The -- for meet and confer purposes, if, 11:54:21
16 in fact, it were true and if it, in fact, were a matter
17 that was of significant concern to her, it might impact
18 her alertness at the time she was examining patients on
19 that date.

20 MR. McKENNA: So she's already indicated she was not 11:54:38
21 distracted by anything on the date that she saw your
22 client.

23 MR. COLTON: Right.

24 MR. McKENNA: Being sued for malpractice is probably a
25 pretty bad thing, But doctors manage to handle it every 11:54:50

1 day and continue to see patients, do surgeries and go
2 about their life. So a case of identity theft,
3 it's -- she's already answered the question for all
4 aspects, so anything beyond that, would be an invasion of
5 her privacy. 11:55:08

6 MR. COLTON: Well, I'm trying to probe a little
7 deeper. I understand your objection. You are going to
8 instruct her not to answer.

9 MR. MCKENNA: Yeah.

10 BY MR. COLTON: 11:55:18

11 Q Were you instructed, in your training, to have a
12 room or an exam room that would be, let's say, called a
13 pink room, something that would be set aside specifically
14 for patients with infections?

15 A No. 11:56:18

16 Q Are you aware of that practice among your
17 colleagues?

18 A No.

19 Q Is there a billing code you use with regard to
20 EKC infections? 11:57:45

21 A Yes.

22 Q Do you know what that is offhand?

23 A No.

24 Q Is that for Medicare or for insurance companies?

25 Or how is it used, the billing code? 11:57:57

1 A It is used to -- it is used for billing purposes.

2 Q For which providers?

3 A For any.

4 Q Insurance or Medicare, or anyone?

5 A Correct. 11:58:22

6 Q Is that a billing code that you developed
7 yourself or is that one that's regulated?

8 A It's not determined by myself.

9 Q Okay. Is it ICD-9. Does that ring a bell?

10 A That's a diagnosis code. 11:58:38

11 Q Diagnosis code for EKC?

12 A For any -- for any condition.

13 MR. McKENNA: That's the big book.

14 MR. COLTON: Any condition. Okay.

15 BY MR. COLTON: 11:58:47

16 Q So your records with regard to a patient, if
17 there is services rendered that pertain to EKC, there
18 would be a specific billing code for EKC?

19 A Correct.

20 Q As opposed to some other form of conjunctivitis? 11:59:05

21 A Correct.

22 Q Did you have any family members who came down
23 with EKC during 2011?

24 MR. McKENNA: So until a court says that she needs to
25 waive the privacy rights of her family members, I will 11:59:42

1 instruct her not to answer that question.

2 BY MR. COLTON:

3 Q Dr. Shang, do you recall any time, during July or
4 August of 2011, having been exposed to a patient with EKC?

5 A For the period of August 1st to August 17th, when 12:00:06
6 I looked at the chart records, no.

7 Q Let's go back a month before that, July. I know
8 you didn't look at the chart records for that, but do you
9 know whether or not you were exposed to a patient with EKC
10 during that month? 12:00:23

11 A I don't know.

12 Q Are you able to recall any person that had EKC,
13 the two months preceding Dr. Alai, that you had contact
14 with?

15 MR. MCKENNA: She just answered it. She can answer it 12:00:42
16 again.

17 THE WITNESS: No.

18 BY MR. COLTON:

19 Q Now expanding beyond patients, any person --

20 MR. MCKENNA: Oh. 12:00:50

21 MR. COLTON: -- socially or outside the office?

22 THE WITNESS: No, not that I recall.

23 BY MR. COLTON:

24 Q Based on your training, did you learn ways in
25 which EKC might be spread other than through an 12:01:08

1 ophthalmologist office?

2 A Yes.

3 Q What ways?

4 A It can be transmitted by hand to eye contact, by
5 respiratory droplets, so coughing or sneezing, all the 12:01:24
6 ways that a common cold can be transmitted, but in
7 addition, it can also survive on dry surfaces.

8 Q For how long?

9 A So you can contaminate a doorknob or elevator
10 button, touch your eyes and not even know you are exposed. 12:01:49

11 Q In your training, did you learn how long it might
12 survive on a dry surface?

13 A It can survive for a few weeks.

14 Q I asked you about EKC. Let me expand it to other
15 forms of conjunctivitis. Do you recall being exposed to 12:02:20
16 anyone, patients or otherwise, that had conjunctivitis
17 during the two-month period preceding your visit with
18 Dr. Alai?

19 MR. McKENNA: She's already answered that and told you
20 how many times, on average, that occurred, so you are 12:02:39
21 asking her a specific recollection beyond just her
22 statistics in that regard.

23 MR. COLTON: Well, I asked about EKC. Now, I'm asking
24 about a two-month period when she may have been exposed
25 either with patients or anyone outside the office. 12:02:51

1 MR. MCKENNA: But you're saying conjunctivitis, and
2 you already asked her about conjunctivitis, and she says
3 that's 15 to 30 times a month, so I'm not sure if you're
4 asking beyond the statistics that she gave you, like an
5 independent recollection of, "Ah-ha, yeah, that Billy had 12:03:03
6 conjunctivitis"?

7 MR. COLTON: Okay. That's -- that's a valid point.
8 Let me do this.

9 BY MR. COLTON:

10 Q Dr. Shang, do you recall, outside of the office, 12:03:11
11 any time, when you were exposed to a person with
12 conjunctivitis during the two-month period preceding your
13 visit with Dr. Alai?

14 A No.

15 Q Did you, at any time, refer your patients to 12:03:25
16 Dr. Pirnazar. Am I pronouncing that correctly?

17 MR. MCKENNA: Could you spell that for the record.

18 MR. COLTON: I have it P-I-R-N-A-Z-A-R.

19 THE WITNESS: Yes, I've referred patients to him.

20 BY MR. COLTON: 12:04:13

21 Q And for what period of time have you referred
22 patients to him?

23 A The time that he's been in private practice,
24 which is approximately, I'm not sure, maybe close to ten
25 years. 12:04:32

1 Q Is he an ophthalmologist also?

2 A Yes.

3 Q Did he ever fill in for you and you were
4 unavailable?

5 A He didn't cover for me, no. 12:04:40

6 Q Never covered for you?

7 A No.

8 Q Okay. I understood you took a leave of absence
9 for personal reasons, I won't go into, for a period of
10 time. Did you refer your patients to him during that 12:04:54
11 period of time?

12 MR. McKENNA: This -- this postdates 2011?

13 MR. COLTON: I'm not sure.

14 MR. McKENNA: Well, if it -- if it -- if it's
15 before -- if it was sometime in 2011, or earlier, she can 12:05:03
16 answer the question. If it's after that, then I will
17 instruct her not to.

18 MR. COLTON: All right.

19 MR. McKENNA: Did you take --

20 THE WITNESS: It was after. 12:05:14

21 MR. McKENNA: It was after 2011. Okay. And Roland,
22 just --

23 MR. COLTON: That's fine.

24 MR. McKENNA: No, no. I was just going to say, in
25 terms of time management, we have about 40 minutes left 12:05:19

1 before we hit the seven-hour mark.

2 MR. COLTON: Off the record. How much time did we use
3 today?

4 THE REPORTER: Do you want to go off the record?

5 MR. COLTON: Just for a second. 12:05:28

6 THE VIDEOGRAPHER: The DVD is being paused. We are
7 going off the record at 12:05 p.m.

8 (Off-the-record discussion.)

9 THE VIDEOGRAPHER: The DVD has been restarted. We are
10 back on the record at 12:05. 12:06:11

11 BY MR. COLTON:

12 Q I'd like to ask you some questions about your
13 custom and practice, in 2011, as it pertains to yourself
14 and examining patients. For example, do you have a custom
15 and practice as to the frequency in which you wash your 12:06:34
16 hands?

17 A I wash my hands after every patient and more.

18 Q And what kind of soap do you use when you wash
19 your hands? Is there anything in particular?

20 A Our janitorial service supplies the soap. 12:06:59

21 Q Do you know what it is?

22 A No.

23 Q Do you know how long you actually take washing,
24 in terms of seconds or minutes, between patients?

25 MR. MCKENNA: Well, it assumes a regular set amount of 12:07:15

1 time, but --

2 THE WITNESS: I --

3 MR. COLTON: Custom and practice.

4 MR. McKENNA: That assumes that there is.

5 THE WITNESS: I wash with soap every time. 12:07:24

6 BY MR. COLTON:

7 Q Okay. And how long, on the average?

8 A Let me think. Maybe 20 seconds. I'm not sure.

9 Q And after that, do you dry your hands?

10 A Yes. 12:07:45

11 Q How do you dry them?

12 A With a paper towel.

13 Q Do you use a different paper towel each time you
14 dry your hands, a new paper towel, or do you use a cloth
15 towel? 12:07:57

16 A I use several disposable paper towels.

17 Q You mentioned a number of patients you see with

18 EKC. I think if we include the before and after

19 Dr. Alai's visit, we are maybe up to about eight or nine;

20 is that about right? 12:08:51

21 MR. McKENNA: That was --

22 MR. COLTON: During --

23 MR. McKENNA: I apologize. I thought you were done

24 with the question.

25 /// 12:08:52

1 BY MR. COLTON:

2 Q Let me just refresh your memory and mine. I
3 think you testified about approximately five. And, again,
4 we know that's not an exact number before Dr. Alai's
5 visit, and two or three after. Does that sound about 12:09:02
6 right?

7 MR. MCKENNA: In terms of her -- the private practice
8 that she owns?

9 MR. COLTON: Yes.

10 MR. MCKENNA: That was the time frame? Yeah. Okay. 12:09:09

11 THE WITNESS: Approximately, yes.

12 BY MR. COLTON:

13 Q By the way, have you seen other EKC patients
14 elsewhere, outside of your private practice?

15 MR. MCKENNA: She indicated during her residency and 12:09:16
16 talked about those circumstances.

17 MR. COLTON: Understood.

18 BY MR. COLTON:

19 Q And what I'm asking now is: Have you ever worked
20 for any other doctor, on-call or otherwise, yourself, 12:09:25
21 outside of your own private practice during the last eight
22 years or, I guess, now, 10 or 11 years, where you have
23 gone to someone else's office and seen a patient?

24 A I've worked at Dr. Chanes' office.

25 Q Other than that -- you stopped working there in 12:09:44

1 2003; right?

2 A Yes.

3 Q So from -- after you left Dr. Chanes' office,
4 have there ever been any times where you've --

5 A No. 12:09:56

6 Q -- seen a patient elsewhere besides your office?

7 A No.

8 Q I want to make that clear.

9 A Well, I'm sorry, let me modify that. Sometimes
10 when you're on call, at a hospital, but not in a clinic 12:10:06
11 setting.

12 Q Okay.

13 A But I did not actually see EKC patients on call
14 at a hospital.

15 Q Okay. So I'm referring, again, to the eight or 12:10:16
16 nine that you've had in the last ten years that had EKC.

17 Understood?

18 A Okay.

19 Q The question is: Have any of them developed any
20 complications such as SEI to your knowledge? 12:10:32

21 MR. MCKENNA: And, again, we're leaving Dr. Alai's --

22 MR. COLTON: Right.

23 MR. MCKENNA: -- out of the --

24 MR. COLTON: Excluding Dr. Alai.

25 MR. MCKENNA: Yeah. Okay. If you know. 12:10:42

1 THE WITNESS: S -- SEI is a sign, it's not a
2 complication.

3 BY MR. COLTON:

4 Q Okay. Well, we'll call it a sign. Have any of
5 them developed an SEI that had EKC? 12:10:49

6 A During the one to two weeks following infection?

7 Q During any time following the infection.

8 A I don't quite understand the question.

9 MR. McKENNA: He's just stating, of those patients
10 that you had with EKC, did any of them, to your knowledge, 12:11:10
11 develop SEI as well.

12 THE WITNESS: Immediately afterwards, yes.

13 BY MR. COLTON:

14 Q How many of them?

15 A Eight or nine possibly. Probably most of the 12:11:24
16 eight or nine.

17 Q Okay. And did you determine whether or not the
18 SEI condition persisted or did it completely clear up in
19 those conditions?

20 A It completely cleared up. 12:11:46

21 Q No sign or trace of SEI at all; is that what you
22 are saying?

23 MR. McKENNA: Based on her treatment of the patient.

24 She's not --

25 MR. COLTON: Correct. 12:11:57

1 MR. McKENNA: -- going to speculate beyond that.

2 BY MR. COLTON:

3 Q And just to make it clear, you didn't refer any
4 of those patients to someone else to deal with SEI issues;
5 is that correct? 12:12:04

6 A Correct.

7 Q Do you remember any of those eight or nine
8 patients developing any complications when they had EKC,
9 some other complication besides the normal signs and
10 symptoms that would occur with an EKC infection? 12:12:25

11 MR. McKENNA: Complications that in her mind were
12 related to EKC?

13 MR. COLTON: Related, but, in addition to the normal
14 signs and symptoms.

15 THE WITNESS: No. 12:12:38

16 MR. COLTON: Let's take a brief break.

17 MR. McKENNA: Okay.

18 THE VIDEOGRAPHER: The DVD is being paused and we are
19 going off the record at 12:12 p.m. Please don't forget
20 your mics. 12:13:23

21 (Recess taken.)

22 THE VIDEOGRAPHER: The DVD has been restarted and we
23 are back on the record at 12:22 p.m.

24 BY MR. COLTON:

25 Q Dr. Shang, Jessica Berry worked in your front 12:23:12

1 office. She no longer works there; right?

2 A Correct.

3 Q When did she leave approximately?

4 A I have to check my records for the exact time.

5 Q Just an approximate. 12:23:28

6 A 2013.

7 Q Have you had any conversations, outside the

8 presence of Counsel, with Jessica Berry regarding this

9 litigation?

10 A That was asked during my first deposition. 12:23:47

11 Q It may have been. I'm asking it now. I'm sorry.

12 I don't know the answer.

13 A Okay. Yes.

14 Q How many conversations with her?

15 A One. 12:23:57

16 Q Okay. How long was that conversation?

17 A Two minutes.

18 Q What was it about?

19 A Did she violate HIPAA regulation.

20 Q You asked her that question? 12:24:08

21 A Yes.

22 Q Why did you ask her that question?

23 A Because it had come to our attention that our

24 patients were being contacted.

25 Q And you told her that; right? 12:24:21

1 A I probably prefaced the question that way, yes.

2 Q Did you tell her how they were being contacted?

3 A I -- it was a very short conversation. I don't
4 recall going into any details with her.

5 Q Okay. And what did she say back to you? 12:24:38

6 A She said, no.

7 Q And did that satisfy you?

8 A Yes.

9 Q Did you ever have any further follow-up
10 conversations with her about that issue? 12:24:48

11 A No.

12 Q Other than that one conversation, have you ever
13 had any other discussions with her, outside of Counsel,
14 concerning this litigation?

15 A I'm pretty certain, no. 12:24:59

16 Q Have you had telephone conversations with a
17 Dr. Zahn? Z-A-H-N.

18 A Yes.

19 Q What were those pertaining to?

20 A He is the person -- he is the doctor overseeing 12:25:15
21 the Orange County Health Care Agency.

22 Q And when did you have those conversations?

23 A I don't recall the exact dates. I would say --

24 MR. McKENNA: Is this -- I just need to find out if
25 this involved any kind of investigation about something 12:25:39

1 because there might be privileges that need to be
2 asserted, so -- I just don't know what the context was.

3 MR. COLTON: I don't know.

4 MR. MCKENNA: Can you give me a second to ask her what
5 the context was so -- 12:25:52

6 BY MR. COLTON:

7 Q Well, can I ask: Did you have any discussions
8 with Dr. Zahn independent of any investigation pertaining
9 to this case?

10 MR. MCKENNA: She may not know the answer to that 12:26:03
11 question.

12 MR. COLTON: Let me see if I can -- if she can --

13 BY MR. COLTON:

14 Q Do you understand the question?

15 A Independent? I'm not sure I understand the 12:26:10
16 "independent to this case."

17 Q That did not deal with this case.

18 MR. MCKENNA: Give me a second.

19 BY MR. COLTON:

20 Q The DVD is paused. We are going off the record 12:26:24
21 at 12:25 p.m.

22 (Off the record.)

23 THE VIDEOGRAPHER: The DVD has been restarted. We are
24 back on the record at 12:27 p.m.

25 MR. MCKENNA: So among the many complaints I am aware 12:28:05

1 of, this is a complaint that was filed by **Dr. Alai,** and an
2 investigation was done in his -- Dr. Zahn's official
3 capacity with the department of -- what's the name of
4 the --

5 THE WITNESS: **Orange County Health Care Agency.** **12:28:21**

6 **MR. McKENNA: Yeah. So that -- that investigation is**
7 **a privileged investigation and she's not going to answer**
8 **questions about it.**

9 BY MR. COLTON:

10 Q So is it -- let me just ask again. Did you have **12:28:34**
11 any conversations with Dr. Zahn that did not pertain to
12 the investigation?

13 A That did not pertain to the investigation?

14 Q That did not pertain to the investigation.

15 A No. **12:28:50**

16 Q According to your recollection, **Dr. Alai** failed
17 to show for an appointment on the 26th of August 2011;
18 correct?

19 A Correct.

20 Q Okay. And you made a notation that she was a **12:29:20**
21 no-show; is that right?

22 A Correct.

23 Q What did you actually write with regard to that?
24 Did you say no-show or something else?

25 MR. McKENNA: Here. **12:29:37**

1 THE WITNESS: Yes.

2 MR. COLTON: "No show for appointment." Good.

3 BY MR. COLTON:

4 Q Do you recall Jessica Berry explaining, to you,
5 the reason why Dr. Alai wasn't going to be able to come on 12:29:53
6 August 26th, 2011 for her appointment?

7 A Dr. Alai told me herself.

8 Q That she was not coming?

9 A After the fact.

10 Q Before the fact, did Jessica Berry tell you the 12:30:09
11 reason that Dr. Alai was going to be able to come for
12 her appointment on the 26th of August 2011?

13 A No.

14 Q And to help refresh your memory, do you recall
15 Jessica Berry telling you that Dr. Alai had called and 12:30:24
16 couldn't see, therefore couldn't drive, and was unable to
17 come to her appointment for that reason? Does that ring a
18 bell?

19 A No.

20 Q You don't remember anything about that? 12:30:44

21 A No.

22 Q Outside of your lawyer and any patients, and any
23 doctors investigating any allegations pertaining to this
24 lawsuit, have you talked to anyone else about Dr. Alai's
25 lawsuit? 12:31:10

1 MR. McKENNA: You can throw her husband in the mix,
2 and then we are good to go.

3 MR. COLTON: Exclude your husband, as well.

4 THE WITNESS: My malpractice insurance carrier.

5 BY MR. COLTON: 12:31:20

6 Q Any colleagues?

7 A I think people had the record subpoena so I think
8 they probably found out that way.

9 Q But do you recall speaking to anyone, outside of
10 those people I excluded, about this litigation, and if 12:31:33
11 so -- first of all, yes or no?

12 MR. McKENNA: Well, and she -- there was also a big
13 laundry list of names that were gone through in the first
14 volume, so you're saying --

15 MR. COLTON: Let's exclude -- 12:31:46

16 MR. McKENNA: -- apart from that to?

17 MR. COLTON: -- those, too. Okay. Anyone that you
18 haven't already testified, either about -- or either today
19 or on October 30th, 2014. Anyone else that you've talked
20 with concerning this litigation. 12:31:56

21 MR. McKENNA: May call for speculation. Go ahead.

22 THE WITNESS: No, just the ones that were previously
23 listed in my first deposition.

24 BY MR. COLTON:

25 Q Did you have any conversations with news 12:32:11

1 reporters regarding this litigation?

2 A I did not.

3 Q Nobody ever called you up, any journalist, anyone
4 from any newspaper or TV program, or anyone else about
5 this litigation? 12:32:25

6 A No.

7 Q Based on the eight or nine EKC patients that you
8 have seen over the years in your office, obviously,
9 without identifying names, what is the worst case you ever
10 saw in terms of manifestation? 12:32:47

11 MR. McKENNA: It's a little vague. Overbroad. If
12 there is a worse case or, you know, just, if you see one
13 that jumps out above all the others, let him know,
14 otherwise --

15 THE WITNESS: No, they're all about the same. 12:33:02

16 MR. McKENNA: Okay.

17 BY MR. COLTON:

18 Q So if we were to analyze all eight or nine that
19 you saw, there wasn't one on a spectrum that was very mild
20 and another one that you recall being extremely severe? 12:33:13

21 A There was not a big difference in any of those.

22 Q You mentioned that you soak the tonometer -- I'm
23 not talking about now, but the time frame, 2011 -- at the
24 end of each day; correct?

25 A Correct. 12:33:42

1 Q Did anyone assist you with that?

2 A No, I put the tonometer tip in the diluted bleach
3 myself.

4 Q And you did it without anyone else around?

5 A I don't know if there was anyone else around. 12:33:55

6 Q Well, generally, there was no one else around
7 when you did that?

8 A I'm not sure.

9 Q What I'm trying to get at is, was the front
10 office person usually observing you doing that at the end 12:34:08
11 of workday or not?

12 A No, I was not proctored.

13 Q Not proctored, but observed.

14 MR. McKENNA: To your knowledge, nobody was watching
15 you; right? 12:34:20

16 THE WITNESS: Correct.

17 MR. McKENNA: Okay.

18 BY MR. COLTON:

19 Q Likewise, when you were wiping the tonometer
20 between patients, would that be done outside the patient's 12:34:33
21 presence or while the patient was there?

22 MR. McKENNA: Are you talking about the circumstance
23 of a Dr. Alai situation, when there's two people in the
24 room at the same time or different people in the room at
25 different times? 12:34:54

1 MR. COLTON: Let's talk about different people.

2 BY MR. COLTON:

3 Q Most of the time there's not two people in the
4 room; right?

5 A Correct. 12:35:01

6 Q Okay. So in the instances where you are seeing a
7 single patient at a time, does the patient generally
8 observe you wiping off the tonometer or is that done
9 outside their presence?

10 A It's done after the exam, generally outside of 12:35:21
11 their presence.

12 Q Would it be accurate to say that in the vast
13 majority of times, when you wipe off a tonometer, there is
14 nobody observing you doing it?

15 A The front office staff walks back and forth. I'm 12:35:38
16 sure they observe it all the time.

17 Q Okay. From time to time, if someone is there,
18 they would observe; but, again, the majority of time,
19 there isn't a person walking back and forth every time you
20 wipe down the tonometer; correct? 12:35:53

21 A Correct.

22 MR. COLTON: That's all I have.

23 MR. McKENNA: Do you want to just go with the same
24 stip from the prior depo, or do you want to --

25 MR. COLTON: What was the time frame? That's the only 12:36:07

1 question I have. I've probably got it, too.

2 MR. MCKENNA: Let's see.

3 THE REPORTER: And Counsel --

4 MR. MCKENNA: It would be faster to just do a stip.

5 What time frame do you want to do? Do you want to go 12:36:15
6 off the video record and it will just be on the --

7 MR. COLTON: That's fine.

8 MR. MCKENNA: -- court reporter at this point.

9 MR. COLTON: Yeah, we can go off the video?

10 THE VIDEOGRAPHER: This completes -- do you want to go 12:36:21
11 back on the video after this?

12 MR. MCKENNA: We'll be done with the video.

13 THE VIDEOGRAPHER: This completes DVD 2, Volume II and
14 concludes the recorded testimony of Dr. Barbara Shang. We
15 will be going off the record at 12:36 p.m. 12:36:34

16 MR. MCKENNA: I propose the following stipulation: To
17 relieve the court reporter of her duties under the Code so
18 she can prepare the transcript of today's proceeding. The
19 transcript will be expedited for one week's time. Both
20 parties will share the cost for that expedite. The 12:37:50
21 original transcript will be sent directly to me. And
22 within two weeks time, I will notify opposing counsel of
23 the fact that the deposition has been signed under penalty
24 of perjury and of any changes made, if any.

25 I will maintain custody of the original, make it 12:38:07

1 available upon reasonable request and lodge it with the
2 court at the time of trial. If the original is not
3 available, a certified copy can be used, instead, for all
4 purposes.

5 MR. COLTON: With the only caveat: Let's have the 12:38:20
6 expedited completed by Friday instead of Saturday.

7 THE REPORTER: Friday the 20th.

8 MR. MCKENNA: And I will take a copy in addition to
9 the original.

10 (Deposition proceedings concluded at 12:38 p.m.)

11 (Declaration under Penalty of Perjury

12 attached on the following page hereto.)

13 (Certificate of Reporter attached on
14 the following page hereto.)

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DECLARATION UNDER PENALTY OF PERJURY

I, BARBARA HA-SUI SHANG, M.D., do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on Saturday, March 14, 2015; that I have made such corrections as appear noted herein; that my testimony as contained herein, as corrected, is true and correct.

DATED this _____ day of _____, 20____, at _____, California.

BARBARA HA-SUI SHANG, M.D.

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CERTIFICATE
OF
CERTIFIED SHORTHAND REPORTER

* * * *

The undersigned Certified Shorthand Reporter
and Deposition Notary Public of the State of California
does hereby certify:

That the foregoing Deposition was taken before
me at the time and place therein set forth, at which time
the Witness was duly sworn by me.

That the testimony of the Witness and all
objections made at the time of the Deposition were
recorded stenographically by me and were thereafter
transcribed, said transcript being a true and correct copy
of the proceedings thereof.

In witness whereof, I have subscribed my name,
this 19th day of March, 2015.

Karla L. Beard, CSR No. 13036