

In The Matter Of:
Board of Registration in Medicine v.
Padmanabhan, M.D.

Bharanidharan Padmanabhan, M.D.
January 29, 2015

Jones & Fuller Reporting
10 High Street, Suite 702
Boston, MA 02110



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1 **VOLUME: VI**
 2 **PAGES: 805 - 941**
 3 **EXHIBITS: 0**
 4
 5 COMMONWEALTH OF MASSACHUSETTS
 6 DIVISION OF ADMINISTRATIVE LAW APPEALS
 7 -----X
 8 BOARD OF REGISTRATION IN MEDICINE
 9 v DOCKET NO.
 10 BHARANIDHARAN PADMANABHAN, M.D. RM-14-363
 11 -----X
 12
 13 **BEFORE: Kenneth Bresler**
 14 **Administrative Magistrate**
 15
 16
 17 Held at
 18 Office of the Civil Service Commission
 19 One Ashburton Place - Room 503
 20 Boston, Massachusetts 02108
 21 Thursday, January 29, 2015
 22 11:09 a.m. - 3:28 p.m.
 23
 24 Reporter: Carole M. Wallace, CSR

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1 **APPEARANCES:**
 2
 3 James Paikos, Complaint Counsel
 4 Board of Registration in Medicine
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 8 On behalf of the Petitioner
 9
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 14 Pro Se
 15
 16 **ALSO PRESENT:**
 17 Loretta Cooke, Nurse Investigator
 18
 19
 20
 21
 22
 23
 24

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22	NO EXHIBITS WERE MARKED ON THIS HEARING DATE				
23					
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1
 2 **THE MAGISTRATE:** We're on the record.
 3 Ms. Wallace, if anybody talks too fast, please
 4 let us know. If anybody accidentally uses a
 5 patient's actual name, if you would insert the
 6 pseudonym of the patient.
 7 Are we all here and ready to go?
 8 **MR. PAIKOS:** My apologies for the late
 9 arrival.
 10 **THE MAGISTRATE:** Everybody is late and
 11 it's not within anyone's control.
 12 **MR. PAIKOS:** Can we start with the one
 13 patient that we have and continue with
 14 Dr. Levin?
 15 **THE MAGISTRATE:** Let me go on the record
 16 with more preliminaries and then proceed with
 17 your witness.
 18 Dr. Padmanabhan.
 19 **DR. PADMANABHAN:** Good morning, Your
 20 Honor.
 21 **THE MAGISTRATE:** Good morning.
 22 **DR. PADMANABHAN:** After their witness I
 23 have a witness who actually was just rear-ended
 24 on the highway and he needs to go for

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1 evaluation, so I would ask you to examine him
2 after your witness.
3 **THE MAGISTRATE:** Take him first?
4 **DR. PADMANABHAN:** He can wait for your
5 patient. You can see he is pretty shaken up.
6 **THE MAGISTRATE:** If he needs to go now,
7 we'll reschedule.
8 **PATIENT C:** I can last a little while.
9 **THE MAGISTRATE:** Let's put this on the
10 record and let's talk to Dr. Padmanabhan's
11 witness.
12 **MR. PAIKOS:** That's fine.
13 **THE MAGISTRATE:** Today is January 29,
14 2015. This is a hearing of the Division of
15 Administrative Law Appeals held at the Civil
16 Service Commission, One Ashburton Place, Boston,
17 Massachusetts. This appeal has the Docket No.
18 RM-14-363. The petitioner is the Board of
19 Registration in Medicine and the respondent is
20 Bharanidharan Padmanabhan, MD. I am
21 Administrative Magistrate Kenneth Bresler.
22 James Paikos, Esq. represents the petitioner,
23 Dr. Padmanabhan represents himself. The
24 parties' representatives are present.

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1 All electronic devices that make noise
2 should be off. There should not be and should
3 not have been any recording devices or cameras
4 used in the hearing room. The hearing today is
5 ending at 3:30.
6 Today we are here because the Civil
7 Service Commission has graciously accommodated
8 our request for the hearing room. We are the
9 Commission's guests and do not have the run of
10 the premises. I understand from the Civil
11 Service Commission one party has not only been
12 lingering but not acceding to requests to
13 vacate. That cannot happen. We cannot abuse
14 the hospitality of the Civil Service Commission.
15 Anything else that I should know about
16 the Civil Service Commission and the use of the
17 premises?
18 [Pause]
19 **THE MAGISTRATE:** Both parties are shaking
20 their heads no.
21 I have some other preliminary matters,
22 but unless the parties say otherwise, let's hear
23 from Dr. Padmanabhan's witness.
24 **MR. PAIKOS:** Do you want me to show him

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1 the Pseudonym Order as I did with the other
2 patient?
3 **THE MAGISTRATE:** Yes. This is a patient?
4 **DR. PADMANABHAN:** Patient C, Your Honor.
5 **THE MAGISTRATE:** If we could close the
6 door to the hearing room as well.
7 Are you ready to call Patient C?
8 **DR. PADMANABHAN:** Yes.
9 **THE MAGISTRATE:** If you are Patient C, I
10 ask you to come and stand in front of the chair,
11 raise your right hand.
12 **PATIENT C, SWORN**
13 **THE MAGISTRATE:** Mr. Paikos who is a
14 lawyer with the Board of Registration in
15 Medicine will have some preliminary questions
16 for you and then Dr. Padmanabhan will have some
17 questions for you.
18 **MR. PAIKOS:** I want to show you a list
19 which is the Board's Order to Impound and Use
20 Pseudonyms. Is that your name as Patient C?
21 **THE WITNESS:** Yes, is it.
22 **MR. PAIKOS:** There are other people here
23 in the room. Any objection to having them
24 continue to stay in here other than the parties?

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1 **THE WITNESS:** No, not at all.
2 **THE MAGISTRATE:** Do you know them?
3 **THE WITNESS:** I just was introduced to
4 them right now, yes.
5 **THE MAGISTRATE:** So I'm going to ask you
6 not to refer to your real name, either.
7 **THE WITNESS:** Yes.
8 **THE MAGISTRATE:** Dr. Padmanabhan.
9 **DIRECT EXAMINATION BY DR. PADMANABHAN**
10 Q. Good morning.
11 A. **Good morning.**
12 Q. How long have you been my patient, Mr. C?
13 A. **Since maybe 2004, I believe.**
14 Q. About seven years?
15 A. **Yes.**
16 Q. Did you see me prior to my moving to Whidden
17 Hospital in Everett?
18 A. **Yes.**
19 Q. Where did you see me?
20 A. **Angels Neurologic Center.**
21 Q. Where is that?
22 A. **Located in Taunton and one in Abington as well,**
23 **I believe.**
24 Q. And what brought you to see me?

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1 **A. I was in a rollover car accident.**
2 Q. Could you describe to the Magistrate the car
3 accident.
4 **A. Yes. I was going through an intersection and a**
5 **car ran the stop sign and he hit me and spun me**
6 **over twice and I landed wheels down on my car.**
7 **And I blacked out for -- I don't remember**
8 **rolling over to be honest with you, I just**
9 **remember being upright in the car. I was going**
10 **by what witnesses said happened.**
11 **The police came, towed the cars. Mine**
12 **was totaled, asked me if I want to go to the**
13 **hospital. I said no because I was only about a**
14 **mile and a half from my house, so the officer**
15 **gave me a ride home.**
16 **When I woke up in the morning, that's**
17 **when the trauma hit where I really felt**
18 **everything. I couldn't pick my head up off the**
19 **pillow, my knees were sore and about every part**
20 **of me was sore. And I went, they did MRIs of my**
21 **neck, my shoulder, and then they told me to make**
22 **an appointment with a neurologist. That's how I**
23 **got to Angels Neurology and Medical. I call him**
24 **Dr. Bharani. I can't pronounce his last name,**

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1 **I'm sorry.**
2 **THE MAGISTRATE:** No problem.
3 **THE WITNESS:** That's how it all happened.
4 Q. When you first visited Angels, did you receive a
5 full neurologic exam?
6 **A. Yes.**
7 Q. Did you have EMG testing done?
8 **A. Yes.**
9 Q. Did you have any image studies done such as MRI?
10 **A. Yes, I did.**
11 Q. Were you placed on pain medicine for helping you
12 deal with everyday life?
13 **A. Yes, I was.**
14 Q. What did the pain medication do for you, if you
15 remember?
16 **A. Make me be able to pick my head off the pillow.**
17 **THE MAGISTRATE:** Who gave him the
18 neurologic exam and prescribed him the medicine?
19 **DR. PADMANABHAN:** It was me.
20 Q. (By Dr. Padmanabhan) Who prescribed pain
21 medication for you first?
22 **A. You yourself.**
23 Q. Who did the neurological examination and the
24 EMGs and MRIs?

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1 **A. You yourself, sir.**
2 **DR. PADMANABHAN:** Sorry.
3 **THE MAGISTRATE:** You don't have to
4 apologize.
5 Q. Have you seen other people for a second or third
6 opinion for what happened to you?
7 **A. Yes, I have.**
8 Q. And do you recall what you were told?
9 **A. That I had trauma to the nerves in my neck**
10 **probably from the sideways hit. I was wearing**
11 **a seatbelt and I was told that it can either**
12 **last a month, three months, a year or the rest**
13 **of your life. And gave me, took some images**
14 **there as well and which I brought back to you,**
15 **showed you.**
16 **I seen another doctor who is a friend of**
17 **my uncle who is a radiologist, a neurosurgeon.**
18 **He had me pick up two buckets, one with water**
19 **and one that didn't. When I picked them up, the**
20 **one on my left hand immediately let go, I had**
21 **that sharp of a pain. He is the one that said I**
22 **had nerves in my neck that have probably been**
23 **stretched and frayed. That is why I'm getting**
24 **the burning feeling and the pain in my neck. He**

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1 **said there is nothing they can do for it. He**
2 **said if the pain medicine is working, continue**
3 **on it. He goes the only time to worry is if the**
4 **pain medication stops working. And I told**
5 **Dr. Bharani the same thing that I was told.**
6 Q. At some point did you start to feel better?
7 **A. Well, I thought I did, so I spoke to you. I**
8 **stopped taking the medicine, and it was like two**
9 **days after that the burning sensation came right**
10 **back in my neck again. And he told me never to**
11 **stop the medicine again which I did a couple**
12 **times after that but, because I just thought I**
13 **was feeling better. The medicine does make you**
14 **feel better. It kind of leads you into a false**
15 **pretense of well-being.**
16 **THE MAGISTRATE:** Dr. Padmanabhan, if you
17 think the exact medicine is important to your
18 case, you need to get it on the record.
19 **DR. PADMANABHAN:** Yes.
20 Q. What medicines are you on, Patient C?
21 **A. Oxycodone.**
22 Q. Were you previously on Oxycontin?
23 **A. Yes, I was.**
24 Q. Were you previously on other pain medication

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1 before settling on the oxycodone?
2 **A. Percocet. I think that is what I started out**
3 **with was Percocet, I believe.**
4 Q. Did you try other medicines along the way?
5 **A. I had Neurontin and all the other ones. I don't**
6 **remember how many we went through.**
7 Q. And how long have you been on the oxycodone?
8 **A. Two years now.**
9 Q. How do you feel on the oxycodone?
10 **A. I feel on a scale of 1 to 10 painwise probably a**
11 **3 to 4.**
12 Q. Does that allow you to get your work done?
13 **A. Yes, it allows me to be a father.**
14 Q. How old is your son?
15 **A. Ten years old.**
16 Q. And so he has been your son throughout the ten
17 years that you had this neck pain?
18 **A. Yes.**
19 Q. Would you say that being on the pain medication
20 helps you those ten years?
21 **A. Without a doubt.**
22 Q. I'm going to refer to a phone message here where
23 you went to a pharmacy to have a refill
24 prescription, follow-on prescription for

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1 Oxycontin pills. Do you remember that?
2 **A. Yes, I do.**
3 Q. Please describe what that was about.
4 **A. Dr. Padmanabhan told me as a long-term pain care**
5 **patient he can write me for my prescriptions --**
6 **At the time I only had to be seen once every**
7 **three months, so he would write me three**
8 **prescriptions. On the top it would say the date**
9 **that I would see him and beneath that it was a**
10 **fill-on date. Say I seen him January 1 and it**
11 **said fill on January 15, the next one would say**
12 **February 1 but fill on 2-2, and the next one**
13 **would say January 1, fill on 3-1 or every 28**
14 **days I believe it is.**
15 **When I went to the pharmacist and gave**
16 **her the prescription, she said you can't**
17 **continue to do that. I said what do you mean I**
18 **can't do that. She said the prescription is**
19 **only good for 30 days out, she told me.**
20 **So I called the doctor up and I told him**
21 **that. He spoke with the pharmacy and told her**
22 **the law. When I went back there, again she**
23 **apologized that she wasn't aware of that law and**
24 **she proceeded to fill the prescription.**

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1 Q. Have you had any trouble with filling your
2 prescriptions at the pharmacy ever since?
3 **A. I think maybe we did like six months later it**
4 **was a new pharmacist that did the same thing**
5 **again, said that it's past 30 days. And I**
6 **explained a law to her because now I was**
7 **familiar with, and she ended up I believe**
8 **calling Dr. Bharani up and they filled it again.**
9 **But I was never there early to get my**
10 **prescription filled, I was there on the exact**
11 **date that was on the prescription.**
12 **THE MAGISTRATE:** For the record if I
13 could interrupt, Patient C is referring to you
14 by your first name.
15 **DR. PADMANABHAN:** I'm Dr. Bharani to
16 everybody, actually.
17 **THE MAGISTRATE:** Just for the record.
18 And that is a variation of your first name?
19 **DR. PADMANABHAN:** It's half of my first
20 name. The only person who calls me by my full
21 name is my mother when she gets mad at me.
22 **THE WITNESS:** I actually call him Dr. B.
23 Q. (By Dr. Padmanabhan) Have you had any concerns
24 about the way I have treated you these years?

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1 **A. Never. To be honest with you, you are the only**
2 **one I trust.**
3 Q. Is there anything else that you would like to
4 tell Magistrate Bresler about the care in these
5 ten years?
6 **THE MAGISTRATE:** The question needs to be
7 more specific than that. That is a little too
8 open ended.
9 Q. Is there anything else that you would like to
10 add with the prescriptions, the pain management,
11 the neurological evaluations?
12 **A. No. I mean I have had second opinions.**
13 **Everything you have done I have been told by**
14 **others that follows the path. I mean without**
15 **him, seriously I wouldn't be able to function.**
16 **DR. PADMANABHAN:** Thank you.
17 **THE MAGISTRATE:** Patient C, Mr. Paikos
18 will probably have some questions for you.
19 Before he does, Dr. Padmanabhan, you are allowed
20 to testify to these facts as well.
21 **DR. PADMANABHAN:** I shall.
22 **CROSS EXAMINATION BY MR. PAIKOS**
23 Q. What was the name of the neurosurgeon that you
24 had seen?

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1 **A. I really don't remember, it was so long ago to**
2 **be honest with you. It was, I think it was at**
3 **Tufts. It was one of the hospitals in Boston,**
4 **that's all I can remember. It was literally**
5 **2004, 2005.**
6 Q. Do you remember who you had second opinions
7 with?
8 **A. That neurosurgeon and the other guy. His name**
9 **was Lenny. I don't remember the last name, but**
10 **he was a friend of my uncle Frank Speranzo,**
11 **S P E R A N Z O. A radiologist.**
12 Q. Do you remember what hospital the second
13 opinions were, what facility?
14 **A. I seen -- My uncle called me up and said his**
15 **buddy was there if I wanted to swing by, and I**
16 **did at Good Samaritan and spoke briefly for five**
17 **minutes, told him what happened, what medicine I**
18 **was taking, so on and so forth, and he did a**
19 **little bucket test with me. That's when he told**
20 **me if the pain medication is working, stay on**
21 **it, the only time to worry is when it stops**
22 **working.**
23 Q. Do you know what specialty that person was?
24 **A. He was a neurosurgeon, I believe.**

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1 Q. How --
2 **A. He told me not to let anybody operate on my**
3 **neck. That is just what he said.**
4 Q. Did he -- When you originally saw
5 Dr. Padmanabhan at Angels Neurological, --
6 **A. Yes.**
7 Q. -- was there a gap where you stopped seeing him
8 and saw anyone else in between?
9 **A. No.**
10 Q. And you remember an issue with a pharmacy having
11 to do with medicine being a big jump from what
12 you had been previously taking?
13 **A. No, it was the same medicine all along.**
14 Q. You don't remember anything relative to a
15 pharmacy concerning a big jump?
16 **A. Not that I remember, not that I'm telling you at**
17 **least. He never told me anything.**
18 Q. How often do you get prescriptions from
19 Dr. Padmanabhan?
20 **A. Once a month.**
21 Q. Are you getting prescriptions from any other
22 provider?
23 **A. No, sir.**
24 **MR. PAIKOS: I have no further questions.**

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1 **THE MAGISTRATE: Do you have any**
2 follow-up to questions for Mr. Paikos'
3 questions?
4 **DR. PADMANABHAN: No, sir.**
5 **THE MAGISTRATE: Patient C, thank you**
6 very much for coming in and telling us what you
7 know. You are free to go.
8 **THE WITNESS: Thank you.**
9 [The witness is excused]
10 **THE MAGISTRATE: Next substantively will**
11 be Dr. Levin?
12 **MR. PAIKOS: Patient H and back to**
13 Dr. Levin.
14 **THE MAGISTRATE: Before we do Patient H,**
15 some procedural matters now that Patient C has
16 left. If we need a break, if the parties need a
17 break, let me know; otherwise, we are aiming for
18 1:00 o'clock for a lunch break.
19 Dr. Padmanabhan has moved to have me
20 report Dr. Nardin for felony perjury. I advised
21 Dr. Padmanabhan already that I expected him to
22 be familiar with what I can and cannot do. You
23 filed more than one motion asking me to take
24 action that I'm not authorized to do. This is

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1 such a motion, and I deny it.
2 For the record when I walked in this
3 morning, Ms. Wallace was here, Ms. Cooke was
4 here. That is not a problem. I understand why
5 that is the case. I did have a conversation
6 with Ms. Cooke asking what you knew and whether
7 things were going to proceed and what she knew
8 about the location of people who would be
9 attending, and I'm putting it on the record and
10 letting Dr. Padmanabhan know that.
11 Unless there is anything else
12 preliminarily, we are ready for Patient H?
13 **MR. PAIKOS: Yes.**
14 **THE MAGISTRATE: Do you want the hearing**
15 room cleared for Patient H?
16 **MR. PAIKOS: I think we may.**
17 **THE MAGISTRATE: Can you enlighten me on**
18 the law on that. Am I supposed to be clearing
19 it?
20 **MR. PAIKOS: There is a pseudonym request**
21 or pseudonym order relative to identifying
22 individuals. No one up to now has had an issue.
23 There is a potential as she is testifying, there
24 may be information that could potentially

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1 identify her. So I know in the past some
2 hearings when patients testify, no one is in the
3 room. Typically there is no one who wants to be
4 in the room, but it's a precaution I would
5 suggest or request that if there is an issue
6 with patients' identity potentially as is always
7 the case coming through, that it would be best
8 if the person is here unless they have an
9 objection -- unless they don't have an
10 objection.
11 **THE MAGISTRATE:** Your position is that
12 the hearing room should be cleared unless the
13 patient has an objection?
14 **MR. PAIKOS:** Yes.
15 **THE MAGISTRATE:** Does that comport with
16 your understanding of the law?
17 **MR. PAIKOS:** Comports with the Order to
18 Use Pseudonyms, I think.
19 **THE MAGISTRATE:** With that I'm going to
20 swear in Patient H. I don't know, I assume that
21 Mr. Paikos and Ms. Cooke have told you I'm
22 Administrative Magistrate Kenneth Bresler. This
23 is a hearing before the Division of
24 Administrative Law Appeals. At this point I'm

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1 going to ask you to raise your right hand.
2 **PATIENT H, SWORN**
3 **THE MAGISTRATE:** I turn the questions to
4 Mr. Paikos.
5 **DIRECT EXAMINATION BY MR. PAIKOS**
6 Q. Do you see your name next to Patient H?
7 **A. Yes.**
8 Q. Is it next to Patient H?
9 **A. I can't read it. Yes.**
10 **MR. PAIKOS:** Your name has been kept out
11 of the public record. Do you have any issue
12 with others attending the hearing who are not
13 parties to the hearing?
14 **THE WITNESS:** No.
15 **THE MAGISTRATE:** I observed that
16 Patient H's demeanor, her answer was given
17 freely, willingly and she even shrugged her
18 shoulders as she said it.
19 Q. (By Mr. Paikos) Patient H, were you ever treated
20 by Dr. Padmanabhan?
21 **A. Dr. Bharani, yes.**
22 Q. Was he a neurologist at Cambridge Health
23 Alliance?
24 **A. At the Whidden Hospital, yes.**

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1 **THE MAGISTRATE:** Your doctor is the
2 doctor who is sitting here in the right?
3 **THE WITNESS:** He is right there.
4 Q. (By Mr. Paikos) Do you remember why you
5 initially went to him?
6 **A. Well, I had taken a slight stroke in South**
7 **Carolina and I recovered fast for what I had**
8 **lost. When I moved back to Massachusetts, my**
9 **primary care had sent, recommended that I go see**
10 **a neurologist because I was having a lot of**
11 **trouble with headaches and for some reason my**
12 **left side wasn't functioning and they couldn't**
13 **understand why. And that's how I met**
14 **Dr. Bharani.**
15 Q. Were you prescribed medications by him?
16 **A. Yes.**
17 Q. Do you remember any of their names?
18 **A. No, but one was, I was told by the insurance**
19 **company that they weren't going to pay for it**
20 **because it had something to do with kidney**
21 **transplants, not MS.**
22 Q. And did you end up taking some medications while
23 being treated by the respondent?
24 **A. After that I went on Avonex, and I was on that**

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1 **for two and a half years.**
2 Q. Did your insurance cover it all or was there a
3 cost to you?
4 **A. I had to have a supplement and prescription drug**
5 **plan to pay my share, plus I had co-pays.**
6 Q. Was there a monthly expense to you?
7 **A. Yes.**
8 Q. Do you remember what that was, about?
9 **A. Oh, God, I don't remember now.**
10 Q. At some point did you see another neurologist
11 after you saw Dr. Padmanabhan?
12 **A. When I got a letter in the mail from the Whidden**
13 **Hospital, they told me he was no longer there**
14 **and the date that he had left and that they were**
15 **getting a new neurologist in. So when I went,**
16 **the new neurologist was there.**
17 Q. What, do you remember what Dr. Padmanabhan had
18 diagnosed you with?
19 **A. Yes, he told me I had MS.**
20 Q. And the Avonex was for MS?
21 **A. Yes.**
22 Q. And the neurologist, did they diagnose you with
23 anything?
24 **A. No. When I walked in to meet the new**

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1 **neurologist, he had said he had been going over**
2 **all my files and my MRIs and he said that -- How**
3 **did he put it? He foresees no MS and he felt**
4 **that if I didn't believe him to go and get a**
5 **second opinion. I was like shocked. I said no,**
6 **that's it. But when I went home, and I told my**
7 **husband. He called the MS clinic in Brookline**
8 **Ave. and I guess they are affiliated with Peter**
9 **Bent Brigham.**
10 Q. Did you see a neurologist there?
11 A. Yes.
12 Q. And did they assess whether you had MS?
13 A. **He went over my MRIs that I had brought but**
14 **there was one missing and that was the last one**
15 **that I had taken before I saw, before**
16 **Dr. Bharani left. And he told me no way did I**
17 **have MS. He said I see that you took a stroke.**
18 **I said yes, I took a stroke a long time ago, and**
19 **I had mentioned, and he said no.**
20 MR. PAIKOS: I have no further questions.
21 THE MAGISTRATE: Is this already in the
22 records, in the exhibits?
23 MR. PAIKOS: The information about post
24 care from the neurologist, the second

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1 neurologist at Whidden Hospital and neurologist
2 at what Patient H believes is at Brigham and
3 Women's is not in the record.
4 THE MAGISTRATE: If it's important to
5 your case, if it's important to your case, I am
6 disinclined to take medical evaluations second
7 hand from a patient.
8 The doctor may have some questions for
9 you.
10 CROSS EXAMINATION BY DR. PADMANABHAN
11 Q. Are you on any medicines for MS now?
12 A. No.
13 Q. Are you on any medicines for stroke?
14 A. No.
15 Q. Were you ever seen by Rachel Nardin?
16 A. **No, that I know of.**
17 Q. Who is your neurologist now?
18 A. **I'm not seeing anybody.**
19 Q. When was your last MRI?
20 A. **When you, the last one I had was when you told**
21 **me to take it, and it was right after that.**
22 Q. So you haven't had an MRI in four years, then,
23 correct?
24 A. **Yes, maybe.**

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1 Q. Have you had any stroke like episodes or bouts
2 of worsening --
3 A. No.
4 Q. -- since I last saw you four years ago?
5 A. No.
6 Q. Mr. Paikos informed the court that you took a
7 fall about ten days ago?
8 A. **I slipped on the ice.**
9 Q. You don't normally fall, then?
10 A. No.
11 DR. PADMANABHAN: Thank you.
12 THE MAGISTRATE: Is that it for your
13 questions?
14 MR. PAIKOS: Nothing further.
15 THE MAGISTRATE: Patient H, thank you
16 very much for coming in and telling us what you
17 know. You are free to go.
18 [The witness is excused]
19 THE MAGISTRATE: If you are ready to call
20 Dr. Levin.
21 [Pause]
22 THE MAGISTRATE: Dr. Levin, when you are
23 ready I'll swear you in again.
24

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1 BARRY LEVIN, MD, SWORN
2 THE MAGISTRATE: Dr. Padmanabhan, your
3 witness. Cross examination.
4 CONTINUED CROSS EXAMINATION BY DR. PADMANABHAN
5 Q. Good morning, Dr. Levin.
6 A. **Good morning.**
7 THE MAGISTRATE: Tell me which exhibit
8 you are showing him.
9 DR. PADMANABHAN: I was going to give it
10 to him.
11 THE MAGISTRATE: You may.
12 DR. PADMANABHAN: (Document handed.) This
13 is my binder. In the exhibit binder it's MR70,
14 Bates 22, Patient A.
15 THE MAGISTRATE: Can you give me a tab
16 first.
17 DR. PADMANABHAN: Tab 2.
18 THE MAGISTRATE: And now the Bates number
19 again.
20 DR. PADMANABHAN: 22.
21 THE WITNESS: Which patient are you
22 referring to?
23 DR. PADMANABHAN: Patient A.
24 THE WITNESS: As in apple?

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1 **DR. PADMANABHAN:** Yes.
2 Q. (By Dr. Padmanabhan) You had told Magistrate
3 Bresler that this failure of a progress note
4 fell below the standard of care. Would you be
5 able to specifically tell me what it is you are
6 actually looking at?
7 **A. I don't understand your question.**
8 Q. You had testified that this is a progress note?
9 **A. I'm sorry, sir, which, are you directing me to**
10 **look at something?**
11 Q. MR --
12 **THE MAGISTRATE:** MR80, Bates 22.
13 **DR. PADMANABHAN:** Patient A.
14 **A. I do have page 80.**
15 Q. Is that a progress note?
16 **A. The note states progress notes.**
17 Q. Please now turn to MR70, Bates 19.
18 **A. I do have that.**
19 Q. Is that a progress note?
20 **A. Yes.**
21 Q. Thank you. Now go to MR112 Bates 26. The
22 social history says history of drug abuse in the
23 past, denies any drug abuse at present. Do you
24 see that?

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1 **A. Yes.**
2 Q. Would you say that this report of drug abuse was
3 self-reported?
4 **A. I'm sorry, I don't understand your question.**
5 Q. Social history, is that something that a patient
6 self-reports?
7 **A. Yes.**
8 Q. Did you look Patient A up on the internet?
9 **A. Once again, sir, I didn't understand your**
10 **question.**
11 Q. Did you look Patient A up on the internet --
12 **A. No.**
13 Q. -- to see anything more about Patient A?
14 **A. No.**
15 Q. Were you aware, Dr. Levin, that he worked with
16 at-risk youth to reduce teenage drug use?
17 **A. I don't recall that. I did review the available**
18 **record to me, but I don't recall that**
19 **specifically.**
20 Q. Do you document teenage drug use on every
21 progress note when you see a patient?
22 **A. No.**
23 Q. Please go to MR143, Bates 30. At the top of the
24 page do you see two drugs listed?

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1 **A. Yes.**
2 Q. It says "discontinued"?
3 **A. Yes.**
4 Q. What does "discontinued" mean to you, Dr. Levin?
5 **A. That the medication was stopped at that**
6 **particular time.**
7 Q. When Magistrate Bresler asked you that, do you
8 recall your testimony that you said no possible
9 explanation comes to mind. Would you have a
10 better idea today?
11 **A. You need to review the specific question. Do**
12 **you have a specific question that was asked of**
13 **me?**
14 Q. Yes, what does "discontinue" mean?
15 **A. Sorry, that was your question or --**
16 Q. Was Magistrate Bresler's question.
17 **THE MAGISTRATE:** As far as
18 Dr. Padmanabhan remembers. It is not, it may be
19 in evidence in the transcription, but that is
20 Dr. Padmanabhan, the basis of his question.
21 Q. Go to page 151, sir.
22 **THE MAGISTRATE:** Did you want to complete
23 that question?
24 **DR. PADMANABHAN:** No.

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1 **THE MAGISTRATE:** Bates 34.
2 Q. At the same time please refer to MR144, Bates
3 31. The question to you is do you know how hard
4 it is, Dr. Levin, to get in to see a pain
5 specialist?
6 **A. That is a very general question, sir. I don't**
7 **believe I can answer that.**
8 Q. Have you had experience referring patients to
9 pain specialists?
10 **A. Yes.**
11 Q. How long does it usually take you?
12 **A. Sometimes it can take a long time, sometimes it**
13 **can be quite fast.**
14 **THE MAGISTRATE:** Can I ask for days or
15 weeks?
16 **THE WITNESS:** It would depend on the
17 patient, depend on the pain problem, would
18 depend on the practitioner that I'm referring
19 them to.
20 **THE MAGISTRATE:** Short time or long time
21 would refer to what?
22 **THE WITNESS:** It can be days or it can be
23 months.
24 **THE MAGISTRATE:** It could be three days

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1 or it could be three months?
2 **THE WITNESS:** Correct.
3 **THE MAGISTRATE:** Could it be shorter than
4 three days and longer than three months?
5 **THE WITNESS:** It's possible if I call up
6 a colleague who is a pain specialist and say
7 that I have a patient who needs to be seen right
8 away, that it could be shorter than three
9 months. If I'm referring a patient to a pain
10 center, it could certainly be longer than three
11 months.
12 **THE MAGISTRATE:** How much longer?
13 **THE WITNESS:** I don't know.
14 Q. (By Dr. Padmanabhan) Supposing you have a
15 patient with pain and it takes more than three
16 months to see a pain center, do you give them
17 prescriptions in the meantime to cover their
18 pain?
19 **A. I don't prescribe chronic pain medication.**
20 Q. Does three months qualify as chronic, Dr. Levin?
21 **A. Yes.**
22 Q. So who would take care of that patient's pain
23 those three to four months while the patient is
24 waiting for an appointment?

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1 **A. The assumption would be that the prescribing**
2 **physician who originally was taking care of the**
3 **chronic pain would be taking care of their pain**
4 **medication.**
5 Q. Supposing a patient had a car accident and is in
6 pain and comes to see you, would you continue
7 that patient's pain prescription until the
8 patient sees a pain center?
9 **A. Would depend on the specifics of their pain. If**
10 **they are taking a narcotic, then I would not**
11 **prescribe that medication.**
12 Q. Who would you expect to prescribe that
13 medication for that patient until he or she is
14 seen at a pain center?
15 **A. Could you be more specific in terms of clinical**
16 **circumstance, please.**
17 Q. Pain, severe pain.
18 **A. In order for me to answer your question, I would**
19 **need to know a lot more about the patient. I**
20 **would need to know how long the patient had the**
21 **pain, what the cause of pain is, what their**
22 **examination showed, what the evaluation of the**
23 **patient had been, what their social**
24 **circumstances were, which medications they were**

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1 **prescribed in the past, what medicines are they**
2 **most recently prescribed and what is their abuse**
3 **potential. There would be a large number of**
4 **clinical factors that would go into the**
5 **decisionmaking process.**
6 Q. Supposing you do evaluate everything and the
7 patient has a legitimate reason for chronic pain
8 and the appointment is four months away, would
9 you give that patient a prescription?
10 **A. No.**
11 Q. I now refer you to the respondent's binder, tab
12 2, please, page 216. We are still discussing
13 Patient A. I would be grateful if you could
14 review page 216, Dr. Levin.
15 **THE MAGISTRATE:** Medical record 216?
16 **DR. PADMANABHAN:** Respondent's binder
17 exhibits, tab 2, page 216.
18 **THE MAGISTRATE:** We're talking about the
19 transcript?
20 **DR. PADMANABHAN:** Yes.
21 **THE MAGISTRATE:** Let me ask a preliminary
22 question if I may. Dr. Levin, have you seen
23 this before?
24 **THE WITNESS:** No.

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1 **THE MAGISTRATE:** Do you have questions?
2 **DR. PADMANABHAN:** Yes.
3 Q. (By Dr. Padmanabhan) Dr. Levin, you had
4 previously told Magistrate Bresler that progress
5 notes and visit notes are inadequate because
6 they did not mention the name of drugs, how many
7 refills, what the prescription was authorized
8 for, what the side effects were discussed and so
9 on. I would be grateful if you could look at
10 this page and see if you agree with this opinion
11 here.
12 **A. May I go back to the previous page to complete**
13 **the sentence?**
14 **THE MAGISTRATE:** I'm not going to allow
15 the question. Here is why: Dr. Levin has not
16 seen this before. This is in effect asking one
17 witness to comment on the testimony of another
18 witness. If you want to ask Dr. Levin
19 substance, I will allow that, but not whether he
20 agrees or disagrees with a witness who is
21 testifying in a transcript.
22 **DR. PADMANABHAN:** Can I read out from
23 this, Your Honor?
24 **THE MAGISTRATE:** No. You can ask him the

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1 substance whether he agrees with certain
2 procedures, certain forms of care, certain ways
3 of approaching patient care, but not what
4 another witness testified to and is transcribed.
5 As I said at the beginning of the hearing, I'm
6 not going to allow cross examination about a
7 witness, about what another witness may have
8 said. I'm not going to allow a witness to
9 compare testimony to another witness. All the
10 more stronger, I'm not going to allow one
11 witness to comment on someone not under oath,
12 not in front of me, not subject to cross
13 examination in this tribunal. I'm not going to
14 allow the witness to testify on the transcript.
15 **DR. PADMANABHAN:** Dr. Levin has testified
16 this is the standard of care and is followed by
17 all physicians. I think that is worth
18 challenging.
19 **THE MAGISTRATE:** You can challenge that
20 by asking him the substance but not by asking
21 him to comment on another witness' testimony in
22 a transcript.
23 Q. (By Dr. Padmanabhan) Dr. Levin, is it true that
24 all physicians feel that every progress note

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1 should list every medicine prescribed whether
2 the side effects were discussed and so on even
3 if the patient has been on that same medicine
4 for years?
5 **A. I can't comment upon what all physicians feel.**
6 Q. When you come to testify in a professional
7 license hearing about the standard of care, the
8 standard, does that not apply to all physicians,
9 Dr. Levin?
10 **A. The standard of care would -- Yes.**
11 Q. So if one testifies that the standard of care
12 requires that every progress note list every
13 medicine, how many pills, how many refills,
14 whether the side effects are discussed or not,
15 even if the patient has been on the same
16 medicine for ten years, does that not suggest in
17 your opinion all physicians feel that way?
18 **A. Could you be more specific in your question,
19 please? I don't understand your question, sir.**
20 Q. What is your definition, Dr. Levin, of standard
21 of care?
22 **A. Standard of care would be the usual care that
23 one would expect from the physician according to
24 the community standards for that physician**

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1 **specifically with regard to his specialty and
2 background, education and experience.**
3 **THE MAGISTRATE:** Mr. Paikos, if the
4 definitions are important to your case, please
5 submit a legal definition.
6 Q. (By Dr. Padmanabhan) Does that apply to all
7 physicians in a particular field?
8 **A. Yes.**
9 **THE MAGISTRATE:** Dr. Padmanabhan, with
10 you as well, if the definition is important to
11 your case and you can submit something.
12 Q. If one says that the standard of care is
13 something that is usual and accepted by
14 everybody in a field, then everybody in the
15 field necessarily should share that opinion,
16 correct?
17 **A. Yes.**
18 Q. Do you have any evidence that other people in
19 your field share your opinion, Dr. Levin?
20 **A. The only evidence I would have would be standard
21 usage, my experience in my practice working with
22 fellow physicians in reviewing records and
23 discussing with other physicians and reviewing
24 the literature.**

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1 Q. Please look at MR212, Bates 44. Is this a
2 progress note?
3 **A. Yes.**
4 Q. Does it meet your standard for a progress note?
5 **A. Under these circumstances, yes.**
6 Q. Is it not important for a physician to find out
7 what the actual medicines were before putting it
8 in a progress note?
9 **A. Are you referring to this specific progress
10 note?**
11 Q. This specific progress note, MR212, Bates 44.
12 **A. Yes.**
13 Q. Is that standard met?
14 **A. I don't understand your question.**
15 Q. Has that standard been met by this progress
16 note?
17 **A. Yes.**
18 Q. Is there anything in the record that actually
19 demonstrates what medicine the patient was on at
20 the time of his demise?
21 **A. I would have to review the records once again to
22 answer your question.**
23 Q. When you did review the records between October
24 and January, did you find anything in the record

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1 to show what the patient was on at that time of
2 his demise?
3 **A. Yes.**
4 Q. What was he on?
5 **A. I would need to review the records once again to**
6 **refresh my memory.**
7 Q. Please do.
8 **A. It is impossible for me to tell you specifically**
9 **what medicines the patient was taking, the date**
10 **of his overdose; however, reviewing the records,**
11 **there is a notification on October 1, 2010,**
12 **which date there was a progress note from**
13 **yourself, patient comes in for Oxycontin refill.**
14 **Medications listed the patient is taking on that**
15 **date are Adderall, Gabapentin, Oxycontin,**
16 **clonidine, Seroquel, Xanax, baclofen.**
17 **Similarly on October 18 there is a**
18 **notification or says medications at start of**
19 **encounter, Oxycontin, Adderall, Gabapentin,**
20 **clonidine, Seroquel, Xanax and baclofen.**
21 Q. Thank you. But my question remains do you know
22 what medicine he was on the day he died?
23 **A. No.**
24 Q. Is there anything that, in the chart that tells

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1 you that?
2 **A. Not that I can see.**
3 Q. Please move to respondent's exhibit binder tab
4 6, page 1.
5 Have you seen this before, Dr. Levin?
6 **THE MAGISTRATE:** Dr. Padmanabhan, what is
7 Exhibit 6?
8 **DR. PADMANABHAN:** It's a sworn affidavit
9 from patient's pharmacist.
10 **THE MAGISTRATE:** What is Exhibit 7?
11 **DR. PADMANABHAN:** Tab 7.
12 **THE MAGISTRATE:** What is Exhibit 7? I'm
13 looking at an unmarked exhibit in my binder
14 which is the affidavit.
15 **DR. PADMANABHAN:** Tab 6 has two pages to
16 it, Your Honor, so the second page is tab 6 is
17 the printout from the pharmacy that shows what
18 medicines the patient was receiving and from
19 whom and how many pills.
20 **THE MAGISTRATE:** What is Exhibit 7?
21 **DR. PADMANABHAN:** Exhibit 7 was something
22 that my Visa form.
23 **THE MAGISTRATE:** Just confirming, there
24 is no Exhibit 7, and this is 6. Thank you.

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1 **THE WITNESS:** I have reviewed the page.
2 Q. (By Dr. Padmanabhan) What conclusion do you
3 draw, Dr. Levin, from this sworn evidence?
4 **A. That the pharmacist, the pharmacy filled**
5 **prescriptions for a patient that were written by**
6 **you. The prescriptions were for Oxycontin. The**
7 **patient had been receiving prescriptions from**
8 **you for several years. On September 4, 2010;**
9 **October 1, 2010 and November 2, 2010. Excuse**
10 **me. September 4, 2010 and October 1, 2010 the**
11 **patient filled a prescription that was written**
12 **by yourself for Oxycontin, for 80 milligrams**
13 **tablets, 120 tablets. November 2, 2010 he gave**
14 **the pharmacist a similar prescription written by**
15 **yourself.**
16 **THE MAGISTRATE:** Dr. Levin, I'm going to
17 cut you off.
18 Dr. Padmanabhan, I'm looking at the
19 affidavit and I see what the information is. Do
20 you have a specific question for Dr. Levin?
21 Q. (By Dr. Padmanabhan) If he had not filled the
22 prescription, Dr. Levin, how would he have
23 overdosed on it in November?
24 **A. If he had not filled the prescription, he would**

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1 **not have overdosed from that specific**
2 **prescription in November.**
3 Q. Thank you. What conclusion do you draw from the
4 fact that Patient A did not fill any
5 prescription from me the last month of his life?
6 You can see the list on the next page.
7 **MR. PAIKOS:** Objection. I don't know if
8 it has been established that Dr. Levin has even
9 seen this document before today.
10 **THE MAGISTRATE:** I'm going to allow it,
11 but let me ask a preliminary question. The
12 second page of the exhibit, does that indicate
13 to you that Dr. Padmanabhan did not prescribe
14 anything for Patient A in the last month of his
15 life?
16 **THE WITNESS:** Would you repeat your
17 question, please?
18 Q. (By Dr. Padmanabhan) There is no notation on
19 this list that he filed my prescription in
20 November, correct?
21 **A. There is no notation on this list that he filled**
22 **a prescription from you for a controlled**
23 **substance in November, that's correct.**
24 Q. And the sworn evidence that accompanies this

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1 list notes they returned the pills to stock
2 because he did not come and pick up his pills,
3 correct?
4 **A. Yes.**
5 Q. He had prescription and had pills waiting and he
6 did not pick them up, correct?
7 **A. Correct.**
8 Q. Did you take 20 bucks and go down to the vital
9 records office and get a copy of the death
10 certificate which is a public document?
11 **A. No.**
12 Q. Do you know what it says?
13 **A. No.**
14 Q. Did you ask the Board if they did so?
15 **A. No.**
16 Q. Was it not important for you to know why he
17 died?
18 **A. The only information I had available to me was**
19 **the information in the records. I have no**
20 **reason to doubt the information that was in the**
21 **records.**
22 Q. Why did you not ask for details, Dr. Levin?
23 **A. The materials that I reviewed appeared to be**
24 **sufficient for the purposes of this review.**

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1 Q. What was the purpose of this review?
2 **A. To review the records and to offer an opinion in**
3 **terms of the, whether or not you had been within**
4 **the standard of care for the different patients'**
5 **record that I reviewed.**
6 **DR. PADMANABHAN:** Your Honor, may I ask
7 him to review tab 10 page 157, the
8 qualifications of the person who gave the sworn
9 testimony?
10 **THE MAGISTRATE:** I'll allow it
11 preliminarily and we'll see where the questions
12 go. In general I will allow Dr. Padmanabhan to
13 ask Dr. Levin to take a look at documents he
14 hasn't seen before because he is the expert
15 witness in this case, and that was the purpose
16 of the previous line of inquiry on Exhibit 6.
17 Let's see where your questions go, Dr.
18 Padmanabhan, about Exhibit 2, the transcript.
19 Q. (By Dr. Padmanabhan) Please turn to Exhibit 2,
20 127 line 22 onwards and finishing at page 159
21 line 19.
22 **A. I have reviewed the records.**
23 Q. Would you consider such a person qualified to
24 express an opinion on pain management?

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1 **MR. PAIKOS:** Objection.
2 **THE MAGISTRATE:** I'll allow it.
3 **A. Yes.**
4 Q. Would you agree that you have no qualifications
5 to express an opinion on the management of
6 complex cases by trained specialists?
7 **MR. PAIKOS:** Objection.
8 **A. No.**
9 **THE MAGISTRATE:** I'll allow the question
10 and answer.
11 Q. Would you then by saying "no," then you agree
12 that any neurologist is qualified to express an
13 opinion on the pain management of complex cases
14 by trained specialists?
15 **A. No.**
16 Q. Please clarify your answer, Dr. Levin.
17 **A. I can't speak for every neurologist, I can only**
18 **speak for myself.**
19 Q. So it is your testimony, sir, that you feel
20 qualified to express an opinion on the
21 management of complex cases by trained
22 specialists?
23 **A. Yes, if the specialist is within my area of**
24 **expertise.**

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1 Q. Would you define yourself as a specialist,
2 Dr. Levin?
3 **A. I'm a general neurologist. As a neurologist I**
4 **am a medical specialist but I am not a**
5 **specialist within neurology.**
6 Q. Why do people do subspecialty training within
7 neurology, Dr. Levin?
8 **A. Because they have a particular interest.**
9 Q. Do general neurologists refer patients to
10 specialty trained neurologists?
11 **A. Yes.**
12 Q. Why do they do that?
13 **A. To take advantage of the particular expertise**
14 **that the individual with the patient that they**
15 **feel they can use more help on.**
16 Q. So you would agree there is a difference between
17 a general neurologist and a specialty trained
18 neurologist?
19 **A. Yes, in terms of the specific expertise.**
20 Q. The last time we had cross examination you
21 mentioned that you had not looked up my CV and
22 credentials. Have you had an opportunity to
23 look it up since?
24 **A. No.**

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1 Q. It's in the binder.
2 **MR. PAIKOS:** Objection. That is not a
3 question.
4 **THE MAGISTRATE:** Sustained.
5 Do you have a question for Dr. Levin?
6 **DR. PADMANABHAN:** Yes.
7 Q. We now go to the government's binder, Patient C,
8 that is Bates 81 MR3. You had previously stated
9 to Magistrate Bresler that you were unaware of
10 the root stretch injury?
11 **A. I don't believe I -- Excuse me, I don't recall**
12 **stating that.**
13 Q. Are you aware of the term root stretch injury?
14 **A. Yes.**
15 Q. What does it refer to?
16 **A. Nerve root refers to the nerves as they come out**
17 **of the spinal cord.**
18 Q. Yes, Dr. Levin. The root stretch injuries is
19 what I was asking you.
20 **A. Nerve roots refers to the nerves as they come**
21 **out of the spinal cord. It can be any portions**
22 **of the spinal cord from the upper spinal cord,**
23 **the cervical region, typically cervical,**
24 **sometimes in the lumbosacral region. If there**

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1 **is a pulling or stretching on a particular**
2 **nerve, it can result in injury to the nerve**
3 **specifically, and more specifically in the**
4 **cervical or sacral region.**
5 Q. Have you come across patients with root stretch
6 injuries?
7 **A. Yes.**
8 Q. How do you treat them?
9 **A. Depends on the specific patient.**
10 Q. Every root stretch injury certainly has some
11 standard treatment protocols?
12 **A. It would depend on where the injury is, would**
13 **depend on the degree of the injury, the cause of**
14 **the injury, what the result of the injury is.**
15 **Specifically if it's cervical or a**
16 **lumbosacral --**
17 Q. Thank you. If it is --
18 **MR. PAIKOS:** Objection. There was a
19 question and it wasn't, the answer wasn't
20 completed.
21 **THE MAGISTRATE:** It's okay. I'll allow
22 the next question.
23 Q. (By Dr. Padmanabhan) Specifically for a cervical
24 root stretch injury what are the typical

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1 treatments offered?
2 **A. Possible treatments can include rest, physical**
3 **therapy, anti-inflammatory medication, pain**
4 **medication.**
5 Q. Thank you. Please turn to MR74, Bates 73, same
6 patient, Patient C. You remember seeing this
7 note, Dr. Levin?
8 **A. Yes.**
9 Q. If you refer to MR71 is the previous page, Bates
10 92, there had been some concern you said that
11 the phone message and the pharmacist about a big
12 jump from what he was taking previously raised a
13 red flag. Do you recall that?
14 **A. Yes.**
15 Q. If you look at the note on page 74, Bates 93 it
16 says that change Oxycontin 80 milligrams four
17 times and decrease oxycodone to zero. What does
18 that normally mean to you, Dr. Levin?
19 **THE MAGISTRATE:** Let's do a preliminary
20 question. That is what it says. You see that
21 in front of you?
22 **THE WITNESS:** I do.
23 **THE MAGISTRATE:** The question what does
24 it usually mean to you.

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1 **THE WITNESS:** That the patient required
2 an adjustment of his pain medication.
3 Q. (By Dr. Padmanabhan) What does the decrease
4 oxycodone to zero mean to you?
5 **A. That you stopped the oxycodone shortly before.**
6 Q. So I had switched the patient from a long-acting
7 and breakthrough to just a long-acting medicine,
8 correct?
9 **A. I don't know from looking at this particular**
10 **note what you had the patient on previously, but**
11 **what you just stated would seem to make sense.**
12 Q. The previous dose was 40 milligrams four times a
13 day and he was also on breakthrough pain.
14 **THE MAGISTRATE:** Is that a question?
15 **DR. PADMANABHAN:** It's in the record.
16 **THE MAGISTRATE:** You need to pose a
17 question, please.
18 Q. (By Dr. Padmanabhan) Do you recall reading in
19 this chart while testifying at direct testimony
20 that the patient was previously on Oxycontin
21 40 milligrams four times a day?
22 **A. I don't recall. I would have to review the**
23 **records once again.**
24 **THE MAGISTRATE:** Do you want Dr. Levin to

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1 do that?

2 **DR. PADMANABHAN:** Yes, please. Thank

3 you.

4 Q. I can give you Bates 95, MR88, for example.

5 **A. I do have a record here, a prescription from**

6 **January 8, 2008 indicating Oxycontin 40**

7 **milligrams t.i.d. and Percocet 10.25, one, three**

8 **times a day.**

9 Q. For 45 pills, correct?

10 **A. Correct.**

11 Q. Normally if a pill is three times a day, how

12 many pills does that make for a month?

13 **A. 90.**

14 Q. This is half the number of pills, correct?

15 **A. Correct.**

16 Q. So when one goes from 40 milligrams to

17 80 milligrams and decreases the oxycodone to

18 zero, what does, is that normally called?

19 **A. An adjustment in medication.**

20 Q. Would a phone call from a pharmacist confirming

21 this change raise a red flag?

22 **A. It would.**

23 Q. Please explain why it raises a red flag.

24 **A. A red flag is, as we discussed previously, is a**

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1 **nonspecific term indicating that something has**

2 **occurred that makes you at least think about the**

3 **possibility of a problem with a patient, either**

4 **in the patient's care or in the patient's**

5 **medications. For example, when a pharmacist**

6 **calls and questions a big jump, a large increase**

7 **in the medication, that would at least cause you**

8 **to rethink to examine, to see if what was**

9 **occurring was correct and make sure it wasn't a**

10 **problem with the patient's care.**

11 Q. The pharmacist called the prescriber, meaning

12 me, correct?

13 **A. Yes, correct.**

14 Q. So I wrote the prescription changing from 40 to

15 80 and the pharmacist called to confirm,

16 correct?

17 **A. Correct.**

18 Q. Where is the problem, Dr. Levin?

19 **A. There is no problem.**

20 Q. Why is that a red flag?

21 **A. Because of the call from the pharmacist. Any**

22 **time I get a call from the pharmacist**

23 **questioning a medication, wondering if the**

24 **increase in the medication is correct, it causes**

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1 **me to stop and think about the patient, look to**

2 **see what was done, if it was correct, and**

3 **examine the situation.**

4 Q. Dr. Levin, you previously testified that you

5 have never written a prescription for oxycodone

6 or Oxycontin, correct?

7 **A. Correct.**

8 Q. So you have never had any experience of

9 adjusting doses of narcotic pain medication,

10 correct?

11 **A. Correct.**

12 Q. You agree that someone who is familiar with the

13 process of managing complex chronic pain cases

14 would not feel that it's a red flag?

15 **A. I couldn't comment on that.**

16 Q. Thank you. Go to MR82, Bates 94. What are we

17 looking at, Dr. Levin?

18 **A. The top of the page states Telephone**

19 **Consultation Form. It has the logistics in**

20 **terms of the patient including the date,**

21 **June 16, 2008.**

22 **THE MAGISTRATE:** Dr. Levin, I want to cut

23 you off.

24 Dr. Padmanabhan, ask your next question,

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1 please.

2 Q. (By Dr. Padmanabhan) You had told Magistrate

3 Bresler that this phone message raised a red

4 flag because the patient was calling back and

5 the pharmacist was refusing to fill a

6 prescription. We have previously discussed

7 Title 21, Chapter 2, CFR 1306.12. Correct?

8 **A. Could you repeat your question, please.**

9 Q. Yes. We had previously discussed Title 21

10 Chapter 2, CFR 1306.12, correct?

11 **A. Yes.**

12 Q. Would you agree that the patient in this case

13 was more aware of the law than the pharmacist?

14 **MR. PAIKOS:** Objection.

15 **THE MAGISTRATE:** I'll allow it for what

16 it's worth. I'm skeptical that it's going to be

17 useful, but I will allow the question.

18 **DR. PADMANABHAN:** The question, yes or

19 no, is raising a red flag?

20 **THE MAGISTRATE:** You can ask. I am

21 allowing you to ask. You can ask this question

22 and a follow-up question.

23 **A. The question supposes that I know, I have**

24 **information about the knowledge of the patient**

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1 and knowledge about the information of the
2 pharmacist that I can compare the two, and I
3 don't believe that I can do that.
4 Q. Please turn to MR100, Bates 101. MR102, please,
5 Bates 103. Do you see the Oxycontin
6 prescription in the right corner?
7 A. Yes.
8 Q. Could you read what it states underneath the
9 date.
10 A. **Fill on 1-24-2009 per CFR 1306-12.**
11 Q. Have you ever written a prescription with that
12 particular law reference on it, Dr. Levin?
13 A. No.
14 Q. Would you retract your statement that this phone
15 message raised a red flag?
16 A. **Which phone message are we referring to?**
17 Q. This phone message that we are talking about,
18 Bates 94, MR82.
19 **THE MAGISTRATE:** The Bates number again
20 is?
21 **DR. PADMANABHAN:** 94, Your Honor.
22 **THE WITNESS:** And the Bates number?
23 **DR. PADMANABHAN:** 82.
24 A. **I'm sorry, I don't seem to find page 82. Could**

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1 you direct me to someplace else where I might
2 find it?
3 **DR. PADMANABHAN:** You just had it, sir.
4 **THE MAGISTRATE:** Mr. Paikos, can you help
5 out?
6 **MR. PAIKOS:** Yes. (Document handed.)
7 Q. (By Dr. Padmanabhan) You testified that this
8 phone message raised a red flag.
9 A. No. No.
10 Q. It does not raise a red flag any more?
11 A. **It would still raise a red flag for me.**
12 Q. Why, sir?
13 A. **Any time a patient is on a controlled substance**
14 **and there is anything at all unusual that occurs**
15 **with regard to the medication, that would at**
16 **least raise some level of concern, some red flag**
17 **that would draw attention to what is occurring.**
18 **It does not mean that something incorrect is**
19 **occurring, but it would draw attention to that**
20 **fact when a patient is on narcotic, on opioid**
21 **and there is a call that the pharmacy wouldn't**
22 **accept the prescription because it is dated over**
23 **30 days, again that would raise a red flag.**
24 **Doesn't mean there is anything wrong occurring,**

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1 but it would draw my attention to the fact and I
2 would want to at least examine a circumstance to
3 see if there is a problem.
4 Q. Given that you don't write any opioid
5 prescriptions at all, is it fair to say that you
6 never encountered the situation in your life?
7 A. **Not with regard to opioids that I have**
8 **specifically written for myself.**
9 Q. You previously told Magistrate Bresler that you
10 have never written follow-on hard copy
11 prescriptions for controlled substances for pain
12 medication?
13 A. **I don't believe I said that.**
14 **THE MAGISTRATE:** He doesn't believe he
15 said it. Ask your next question.
16 Q. Have you ever written follow-on hard copy
17 prescriptions for opioids?
18 A. **I'm sorry, perhaps I didn't understand the**
19 **question entirely. I didn't understand the --**
20 **You said have I ever written, and I didn't**
21 **understand the word you said.**
22 Q. Follow-on prescriptions, hard copies for
23 opioids.
24 A. **"Follow-on"?**

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1 Q. Yes. Yes.
2 A. **I don't know what that means.**
3 Q. Dr. Levin, have you completed the state-mandated
4 opioid credit course?
5 A. Yes.
6 Q. Why, then, do you not know what "follow-on"
7 means?
8 **MR. PAIKOS:** Objection.
9 **THE MAGISTRATE:** I'll allow it.
10 A. **Since I don't know what it means, it's difficult**
11 **for me to answer your question.**
12 Q. Dr. Levin, how many hours of opioid credits did
13 you get prior to renewing your license in 2013?
14 A. **I don't recall the specific number of hours. I**
15 **did what was required.**
16 Q. What was required, Dr. Levin, what is the
17 state-mandated requirement?
18 **THE MAGISTRATE:** Whatever it is, he just
19 testified that he complied with it. So next
20 question, Dr. Padmanabhan, please.
21 Q. Dr. Levin, what is taught to physicians in the
22 state-mandated opioid training course?
23 A. **I can't give you any specific information about**
24 **that. I did complete the course. I have it**

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1 available to me if I need to review it.
2 Q. What did you take away from that course when you
3 finished that course?
4 **A. It could be difficult for me to give you**
5 **specifics relating to the course.**
6 Q. Did you learn anything new, Dr. Levin, in that
7 state-mandated course?
8 **A. Yes.**
9 Q. What did you learn new, Dr. Levin?
10 **A. I learned many, but I can't off the top of my**
11 **head give you specifics about what I learned.**
12 Q. Do you recall at all being taught how to write
13 follow-on pain prescriptions?
14 **A. I don't recall the term "follow-on." I don't**
15 **know what that means.**
16 Q. Please turn to MR60 Bates 89, these pages going
17 to 60, 61 and 65. You had previously testified
18 that my note on page 65 fell below the standard
19 of care. That is what you told Magistrate
20 Bresler.
21 **THE MAGISTRATE:** Bates 91.
22 **THE WITNESS:** Your Honor, I don't have
23 the page.
24 **THE MAGISTRATE:** Let's slow down the

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1 questions and let Dr. Levin catch up.
2 **DR. PADMANABHAN:** Page 65.
3 **THE WITNESS:** Are there multiple pages
4 that you would like me to look at?
5 Q. Start with page 65.
6 **A. May I confirm with you that states his neck pain**
7 **was worsened?**
8 Q. That is the page. What is the encounter date,
9 Dr. Levin?
10 **A. June 28, 2010.**
11 Q. Please move to page 61 which is the previous
12 page in the binder. What's the encounter date
13 for that?
14 **THE MAGISTRATE:** Bates 90.
15 **A. June 28, 2010.**
16 Q. And the previous page, page of 60, Bates 89,
17 what is the encounter date for that?
18 **A. June 28, 2010.**
19 Q. On page 60 and 61 is there anything that says
20 what kind of encounter we are talking about?
21 **THE MAGISTRATE:** Page 89 and 90
22 identifying the Bates numbers.
23 Q. This encounter on June 28, what kind of
24 encounter does the computer list-out say?

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1 **A. Specifically we're talking about pages 60 and**
2 **61, is that right?**
3 Q. Yes.
4 **A. A telephone encounter.**
5 Q. And returning to page 65, that is the same date.
6 Would you call this a progress note?
7 **A. Refer to page 46, the page prior to page 65?**
8 **DR. PADMANABHAN:** Which is not in the
9 binder.
10 **THE MAGISTRATE:** If you need to refer to
11 it to answer.
12 **A. Page 64 which is the page just prior to page 65,**
13 **this is listed as progress notes.**
14 Q. And can one have a telephone encounter and a
15 progress note at the same time?
16 **A. Typically you would not.**
17 Q. Thank you. So if it's listed as a telephone
18 encounter and the same date, which is more
19 likely?
20 **A. I don't know.**
21 Q. Reason for the call on page 60, what does it
22 say?
23 **A. Refill request.**
24 Q. Is that typical for a phone call from a patient

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1 to ask for a refill?
2 **A. Yes.**
3 Q. What standard of care do general neurologists
4 such as yourself employ for telephone encounter
5 notes?
6 **A. Could you be more specific in your question,**
7 **please?**
8 Q. You had testified previously that page 85 the
9 note was below the standard of care because it
10 was a progress note. It is now clear this was a
11 telephone encounter. So what standard of care
12 do nonspecialists such as yourself employ for
13 telephone encounter notes?
14 **THE MAGISTRATE:** I'm going to strike the
15 part of the question that it was clear it was a
16 telephone encounter. That has not been
17 established. But you can answer the question.
18 **DR. PADMANABHAN:** It says telephone
19 encounter.
20 **THE MAGISTRATE:** The document says
21 telephone encounter. That is my ruling. You
22 can ask that question without that piece of the
23 question.
24 Q. I'll rephrase. What standard of care do general

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1 neurologists employ for telephone encounter
2 notes?
3 **A. The question is overly broad, and I couldn't**
4 **answer it.**
5 Q. What would you, Dr. Levin, expect to see in a
6 telephone encounter note to say it meets the
7 standard of care?
8 **A. Who called, typically the phone number, the date**
9 **of the call, when they called, what the purpose**
10 **of the call is from the patient, and the request**
11 **or required response to the call. That would be**
12 **the original information from the patient's**
13 **call.**
14 **Then it could include the response of the**
15 **person who responded, a physician or some other**
16 **caregiver within the practice stating**
17 **specifically what they had done. What I would**
18 **do is state that I called the patient back,**
19 **spoke to the patient or some other individual, I**
20 **would put in specifically what we discussed. If**
21 **there was information about the patient's care**
22 **in the encounter, I would list that as well, and**
23 **I would put in my impressions and my plan, what**
24 **I was going to be doing in terms of follow up**

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1 **with the patient for further testing,**
2 **medications. If I was going to prescribe**
3 **medication or did prescribe medication, I would**
4 **put in very specifically what I prescribed**
5 **including giving the dosage, the number of**
6 **pills, the number of refills --**
7 Q. Thank you. Within these three pages in the
8 binder --
9 **MR. PAIKOS:** I would object.
10 **THE MAGISTRATE:** There is no formula.
11 I'm going to allow the question to stand as it
12 is because it is for Dr. Padmanabhan's purposes
13 and he is done with the answer, so --
14 Q. (By Dr. Padmanabhan) Looking at page 60, 61 and
15 65 which are the pages --
16 **THE MAGISTRATE:** Mr. Paikos, you can ask
17 on redirect.
18 Q. -- you say all those elements that you mentioned
19 are present and the reason for the call, the
20 medicine approved, the medicine discontinued,
21 the discussion with the physician, any plan?
22 **A. Once again the records do seem to indicate that**
23 **your report from June 28, 2010 is a progress**
24 **note. Given what I can see in the records, your**

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1 **note would not meet the standard of care for a**
2 **progress note.**
3 Q. Does it meet the standard of care for a
4 telephone encounter?
5 **A. The standard of care for a telephone encounter**
6 **would be very lose. I don't know that generally**
7 **there is a lot of material required for a**
8 **telephone encounter. That being said, I would**
9 **have at least expected to know what medications**
10 **you prescribed for the patient --**
11 Q. It is on page 60, Dr. --
12 **MR. PAIKOS:** Objection. Again I think
13 there's questions being asked and then follow-up
14 questions based on the --
15 **THE MAGISTRATE:** I understand,
16 Mr. Paikos. I'll allow the question and allow
17 Dr. Padmanabhan to decide that he has the
18 information he needs, and you can ask a
19 follow-up question if it is important to your
20 case.
21 Q. On page 60 do you see at the bottom of the page
22 "medicines approved"?
23 **A. Yes.**
24 Q. What is the date on that medicine?

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1 **A. June 28, 2010.**
2 Q. Is that the same date as the encounter?
3 **A. Yes.**
4 Q. Is it reasonable, sir, given you have a basic
5 exposure to the medical record that this means
6 the prescription is written at that time?
7 **A. Yes.**
8 Q. Would this meet the standard that the patient
9 phoned and the prescription was written in
10 response?
11 **A. The standard of care would be met for the**
12 **prescription medication, it would not be met for**
13 **the note.**
14 Q. For a telephone encounter note?
15 **A. Yes.**
16 Q. So this does not meet the standard of a
17 telephone encounter note?
18 **A. That is correct.**
19 Q. Again what standard are we applying, Dr. Levin?
20 **A. In your particular note you mentioned his neck**
21 **pain has worsened recently after his son jumped**
22 **on him. There was no plan for further**
23 **evaluation of this. There is no plan to see the**
24 **patient. He did not refer the patient to the**

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1 **emergency room. We don't know if the neck pain**
2 **is serious or mild, only follow-up care is "will**
3 **see Dr. Gorski at Norwood Pain Center from now**
4 **on," and that would be below the standard of**
5 **care.**
6 Q. For a phone call?
7 **A. For any patient, yes, for a phone call encounter**
8 **with a patient who presents with an acute**
9 **problem.**
10 Q. Is there anything here that suggests this is an
11 acute problem?
12 **A. Yes.**
13 Q. Where does it say it's an acute problem?
14 **A. Neck pain is worsened recently after his son**
15 **jumped on him.**
16 Q. In what way does it show it's an acute problem?
17 **A. The statement that his neck pain has worsened**
18 **recently suggested this is acute, plus the**
19 **statement that his son jumped on him indicating**
20 **that something new had occurred and the patient**
21 **is indeed worse.**
22 **THE MAGISTRATE:** For the record Dr. Levin
23 has emphasized the word "recently."
24 Q. We now move to Patient D. That is the next tab.

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1 **A. D as in David?**
2 Q. Yes. MR3, Bates 110 -- Bates 109. MR4, I
3 apologize.
4 **A. Repeat the page?**
5 Q. Medical record 4, Bates 110, Patient D. You
6 told Magistrate Bresler that a rhizotomy is done
7 for retractable pain. How many rhizotomies have
8 you done, Dr. Levin?
9 **A. None.**
10 Q. Who usually does them, Dr. Levin?
11 **A. May I confirm that I'm looking at the correct**
12 **page?**
13 Q. Patient D, medical record 4.
14 **A. Typically I believe it would be a neurosurgeon**
15 **or some other surgical team specialist.**
16 Q. Would a neurosurgeon or surgical pain specialist
17 do a rhizotomy for an illegitimate purpose?
18 **A. Was the question "an illegitimate purpose"?**
19 Q. Yes, a nonmedical reason.
20 **A. No.**
21 Q. Once again you as you did for most of the notes,
22 you told Magistrate Bresler that my note is
23 below the standard of care because it does not
24 state the number of refills, number of pills, it

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1 is important to know how much you are giving the
2 patient. You do realize in an EMR note the
3 pills and refills are listed separately and
4 printed out on a different page, Dr. Levin?
5 **A. I believe that is the case in some EMRs.**
6 Q. Specifically the charges that were given to me
7 in October, was that the case for these EMR
8 notes?
9 **A. The EMR notes that I received, EMR system notes**
10 **that I received in many cases are very difficult**
11 **to follow, and it's difficult to specifically**
12 **understand how prescriptions and records of**
13 **prescriptions and medications are organized.**
14 Q. Did you make any effort to understand this
15 process?
16 **A. I did.**
17 Q. What have you learned?
18 **THE MAGISTRATE:** Dr. Levin, EMR stands
19 for?
20 **THE WITNESS:** Electronic medical records.
21 **A. I have learned that the system that is being**
22 **used is confusing and that in some cases it was**
23 **hard for me to understand specifically what had**
24 **been discontinued and what was being prescribed.**

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1 Q. Is it also not standard practice when giving
2 hard copies prescriptions to patients to make a
3 photocopy of the prescription handing them to a
4 patient?
5 **A. Not in every case.**
6 Q. Are you familiar that many doctors do that?
7 **A. I'm not specifically familiar with that. I**
8 **would have no cause to believe that is untrue.**
9 Q. Do you write any controlled substances at all as
10 prescriptions, Dr. Levin?
11 **A. Yes.**
12 Q. What medicines do you prescribe?
13 **A. Very infrequently I prescribe Tylenol with**
14 **Codeine, I prescribe Provigil, Ativan. Those**
15 **are the other ones that come to mind.**
16 Q. Do you prescribe any hard copy prescriptions
17 that cannot be refilled?
18 **A. Yes.**
19 Q. Such as?
20 **A. Tylenol with Codeine.**
21 Q. Is it your practice to make a photocopy of the
22 prescription before handing it to the patient?
23 **A. Frequently.**
24 Q. Thank you. So would it be reasonable to look

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1 through the chart for a copy of that photocopy
2 to see what the patient has been given?
3 **A. Depending on the circumstances of the clinical**
4 **encounter, I may.**
5 Q. Is it standard practice among the general
6 neurologist community both inpatient and
7 outpatient especially in the outpatient field to
8 have a paper chart with photocopies of
9 prescriptions that are given on a monthly basis?
10 **A. No.**
11 Q. On the basis of what do you make that statement,
12 Dr. Levin?
13 **A. Given the changes that have occurred with**
14 **electronic medical records, many doctors don't**
15 **keep a paper chart, and I think that doctors who**
16 **are using electronic medical records the**
17 **majority of them no longer keep a paper copy of**
18 **their prescription.**
19 Q. What about physicians in the outpatient realm
20 who still use paper charts and have not yet
21 switched to electronic medical records, what do
22 they do?
23 **A. I can't comment what all physicians do or many**
24 **physicians do.**

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1 Q. Prior to moving to electronic medical records
2 yourself, Dr. Levin, did you keep Xeroxed copies
3 of prescriptions?
4 **A. Infrequently.**
5 Q. But you are aware that it is done?
6 **A. Yes.**
7 Q. For Bates 110, MR4 you told Magistrate Bresler
8 that my note was below the standard of care
9 because it does not give the number of pills and
10 the number of refills. Do you retract that
11 statement given that is found elsewhere in the
12 electronic medical record for that same
13 encounter?
14 **A. Would you direct me, please, to where it is**
15 **found in the medical record?**
16 **DR. PADMANABHAN:** If I had the full
17 chart, I would be delighted to, Dr. Levin, but
18 it is you who selected these pages.
19 **THE MAGISTRATE:** Dr. Padmanabhan, you are
20 asking a question that seems to have no basis in
21 evidence yet, and Dr. Levin is asking you for
22 pages. So next question, please.
23 **DR. PADMANABHAN:** Dr. Levin has
24 testified --

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1 **THE MAGISTRATE:** Dr. Padmanabhan, next
2 question, please.
3 **DR. PADMANABHAN:** May I introduce that as
4 part of my testimony?
5 **THE MAGISTRATE:** You certainly may. You
6 may testify about that, and you can ask
7 Dr. Levin more about this topic, but if you
8 can't direct him to a page number for documents
9 that you were provided electronically, I may
10 add. But next question, whether you decide it's
11 on this topic or another line of inquiry.
12 **DR. PADMANABHAN:** Dr. Levin has
13 testified --
14 **THE MAGISTRATE:** Next question for
15 Dr. Levin.
16 Q. (By Dr. Padmanabhan) Dr. Levin, why did you not
17 include the entire electronic medical record for
18 a certain encounter in the official binder?
19 **THE MAGISTRATE:** We have the answer to
20 that. Next question.
21 Q. Dr. Levin, given that the encounter record is
22 incomplete, would it not be irresponsible to
23 state that the number of pills was not written
24 down?

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1 **MR. PAIKOS:** Objection.
2 **THE MAGISTRATE:** I'll allow the question.
3 **A. I don't recall specifically the records that I**
4 **reviewed. Whether or not I reviewed records**
5 **that gave additional information about this**
6 **prescription is unknown to me at this time.**
7 Q. If you look at, if you look at medical record 3
8 Bates 109, at the top it says "other orders."
9 What does that mean to you, Dr. Levin?
10 **A. Once again what is the page number?**
11 Q. 3.
12 **THE MAGISTRATE:** Ask Dr. Levin first
13 whether he sees "other orders."
14 Q. Dr. Levin, do you see the words "other orders"
15 on the top of the page?
16 **A. I do.**
17 Q. Page 3. Please tell us what that means.
18 **A. It would appear to be the place where**
19 **unspecified types of orders would be indicated.**
20 Q. Where would this specified types of orders be in
21 this record?
22 **A. I don't know.**
23 Q. Would they precede other orders or come after
24 them?

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1 **A. Once again I did find the medical record system,**
2 **the MR system to be somewhat confusing and**
3 **oftentimes had difficulty understanding the**
4 **placement of different orders.**
5 Q. The question, Dr. Levin, is whether the orders
6 were present at all regardless of the placement,
7 so is it not important to actually have the
8 entire encounter record before expressing an
9 opinion on the absence of certain data?
10 **A. Yes.**
11 Q. Why, then, did you say that the number of pills
12 was not recorded?
13 **A. Once again I have no independent memory of**
14 **whether I reviewed such information or not. I**
15 **may have indeed reviewed it or may have received**
16 **that information, but I can't comment on it**
17 **since I have no independent memory. I would be**
18 **glad to review any record that you would like to**
19 **direct me to.**
20 Q. We are looking at page 3. These are the pages
21 that you selected for testifying. And your
22 testimony was my note is below the standard of
23 care because it does not say the numbers of
24 pills and refills and it's important to know how

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1 much you are giving a patient. My question to
2 you is would that not be found in the page
3 preceding "other orders"?
4 **A. I don't know.**
5 **THE MAGISTRATE:** Again for the record I'm
6 assuming that Dr. Levin selected the records
7 based on working with Mr. Paikos, and Mr. Paikos
8 was under my orders not to provide a document
9 dump.
10 **DR. PADMANABHAN:** May I speak on that?
11 **THE MAGISTRATE:** You may.
12 **DR. PADMANABHAN:** If one is to give an
13 opinion, especially an adverse opinion on the
14 absence of a certain piece of data and the data
15 was present in a preceding page that has been
16 kept out, I find that mind-boggling.
17 **THE MAGISTRATE:** I understand that is the
18 basis of your question. You can ask questions,
19 but I'm restating the reason that the records
20 are incomplete.
21 Q. (By Dr. Padmanabhan) Dr. Levin, would you say
22 that it would be unwise to say that this note is
23 below the standard of care because it does not
24 give the number of pills and refills, given the

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1 structure of electronic medical record these
2 days?
3 **A. No.**
4 Q. Why would you not say it's unwise that the
5 number of pills is missing when they are on a
6 different page?
7 **A. I would be glad to review any page that you**
8 **direct me to.**
9 Q. Please answer the question, Dr. Levin.
10 **THE MAGISTRATE:** I'm accepting his
11 question, and I'm going to allow him to
12 continue.
13 **A. I have no independent information that I can**
14 **recall that indicates that there was the number**
15 **of pills indicated in the records, and I would**
16 **be glad to review those pages if you can direct**
17 **me to them.**
18 Q. Dr. Levin, you have the pages that are not in
19 this binder. I don't have the pages.
20 **THE MAGISTRATE:** Dr. Padmanabhan, no more
21 statements from you. You can ask Dr. Levin a
22 question on this matter, you can ask another
23 question on this matter. I will allow you to
24 stay on it.

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1 Q. MR175, Bates 136, please.
2 **THE MAGISTRATE:** The Bates again?
3 **DR. PADMANABHAN:** 136.
4 **THE MAGISTRATE:** A couple of minutes
5 before 1:00 o'clock. You can continue, but I
6 want you to time yourself accordingly.
7 **THE WITNESS:** Did you say MR 175?
8 **DR. PADMANABHAN:** 175.
9 **THE WITNESS:** The last page that I see is
10 167.
11 **DR. PADMANABHAN:** Page 136, MR175,
12 Patient D. You have previously testified on
13 this.
14 **THE MAGISTRATE:** We are getting
15 organized. Dr. Levin I think will be able to
16 testify about it again.
17 **THE WITNESS:** The pages are out of order.
18 Excuse me, I do have page 175.
19 Q. (By Dr. Padmanabhan) You previously told
20 Magistrate Bresler that again we don't know what
21 dose, what medicine, how many pills, how many
22 refills, and we don't know who Dr. Rettig is.
23 Did you look for the Xeroxed photocopies of the
24 prescriptions that went with this encounter?

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1 **A. I don't recall specifically looking for Xeroxed**
2 **prescriptions for this encounter. I did review**
3 **the Xeroxed prescriptions as well.**
4 Q. Once again, Dr. Levin, is it correct to condemn
5 the absence of a piece of data when it is
6 present elsewhere in the record?
7 **A. The record typically will speak for itself. In**
8 **looking at the note, there is a statement severe**
9 **back pain, chronic; his worker's compensation**
10 **has suddenly decided he does not need pain**
11 **medication any more, refills given. There is no**
12 **indication of what refills were given, there is**
13 **no information at all about medication other**
14 **than refills given.**
15 Q. Correct. What does "refills given" mean to you,
16 Dr. Levin?
17 **A. That medications that has previously been**
18 **prescribed were being prescribed again.**
19 Q. Thank you. In the absence of Xeroxed
20 photocopies, is it possible to render a credible
21 opinion on the absence of pills?
22 **A. Yes.**
23 Q. How so, Dr. Levin?
24 **A. The standard of care for a progress note would**

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1 **be to indicate which medications, at the very**
2 **least which medications are being prescribed.**
3 **If that information, very specific information**
4 **about the pills is going to be listed elsewhere,**
5 **perhaps something like "prescriptions were given**
6 **for medications X, Y and Z" with details about**
7 **the prescriptions on the attached copies of**
8 **those prescriptions. Under usual circumstances**
9 **most people would state the medications, the**
10 **dosage, how it is to be given, the number of**
11 **pills given and the number of refills in the**
12 **progress note.**
13 Q. When a prescription is a refill and the patient
14 has been on the same medicine for ten years, is
15 it necessary to explain all about the medicines
16 each time?
17 **A. Yes.**
18 Q. Thank you. Given that you have never managed
19 complex chronic pain patients, how do you know
20 that is the standard of care, Dr. Levin?
21 **A. That is the standard of care in general for**
22 **neurologists.**
23 Q. Have you ever come across physicians within the
24 field of neurology who attached Xeroxed copies

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1 of prescriptions to their progress note?
2 **A. I believe so.**
3 Q. Thank you. Would you agree a Xeroxed photocopy
4 is more credible than a handwritten note?
5 **A. A handwritten prescription?**
6 Q. Than a handwritten progress note.
7 **A. I'm sorry, repeat the question, please?**
8 Q. Would you agree that a Xeroxed follow-up of the
9 actual prescriptions given a patient is more
10 credible than what is written in a progress
11 note?
12 **A. I wouldn't say it was more credible. It would**
13 **be more specific in terms of indicating the**
14 **information about the milligrams that was**
15 **prescribed.**
16 Q. Thank you. Please turn to MR191, Bates 594.
17 **THE MAGISTRATE:** At this point I'm going
18 to call a lunch break. Back in an hour.
19 [Lunch Recess]
20 **MR. PAIKOS:** I spoke briefly with
21 Dr. Padmanabhan about timing, that it makes
22 sense to put DPH on next, so we are in
23 agreement.
24 **THE MAGISTRATE:** That is agreeable.

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1 ADELE AUDET, SWORN
2 DIRECT EXAMINATION BY MR. PAIKOS
3 Q. Would you please state your name and spell your
4 last name for the record.
5 **A. Adele Audet, A D E L E, A U D E T.**
6 Q. Where do you currently work?
7 **A. I work at the Massachusetts Department of Public**
8 **Health office, 99 Chauncy Street on the 11th**
9 **floor.**
10 Q. What is your title?
11 **A. Assistant director of the Prescription**
12 **Monitoring and Drug Control Program.**
13 Q. And how long have you worked for the Department
14 of Public Health?
15 **A. A little over 19 years.**
16 Q. What is the Mass. Controlled Substance
17 Registration?
18 **A. The Mass. Controlled Substance Registration is**
19 **issued to practitioners so that they can legally**
20 **prescribe, dispense, obtain, sample and**
21 **administer controlled substances.**
22 Q. Does that include doctors, physicians?
23 **A. Yes, physicians are a type of practitioner.**
24 Q. Does the Massachusetts Controlled Substances

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1 Registration get what is called recall?
2 **A. For physicians, yes. The term is recall.**
3 Q. If I could direct your attention to the
4 binder --
5 **THE MAGISTRATE:** What does that term
6 mean, "recall"?
7 **THE WITNESS:** The statutory language does
8 not have an expiration date like for a term of
9 three years, but for a term of a year. It's
10 recalled at the will of the commissioner, so --
11 **THE MAGISTRATE:** In other words
12 withdrawn, suspended, canceled?
13 **THE WITNESS:** Well, we recall it for
14 renewal.
15 **THE MAGISTRATE:** Recall it instead of
16 renewal?
17 **THE WITNESS:** We can't call it renewal,
18 but that's what it -- Recall for renewal, but we
19 don't call it a renewal.
20 **THE MAGISTRATE:** Can you explain --
21 **THE WITNESS:** We reissue it.
22 **THE MAGISTRATE:** Does "recall for
23 renewal" mean reissue it?
24 **THE WITNESS:** Yes.

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1 **THE MAGISTRATE:** Does "recall" mean to
2 take it away from the doctor?
3 **THE WITNESS:** If they are not responsive
4 or if they tell us that they no longer want it.
5 **THE MAGISTRATE:** What is the verb you use
6 when your office takes it away from a doctor?
7 **THE WITNESS:** Takes it away. We will
8 expire somebody or terminate, and occasionally
9 depending on an action of a Board of
10 Registration or DEA we may ask for the person to
11 return their registration.
12 **THE MAGISTRATE:** Thank you.
13 Q. (By Mr. Paikos) If I could direct your attention
14 to tab 19 which is in front of you. What does
15 that appear to you?
16 **A. This is, these are columns from our database,
17 and the columns have the heading for the person
18 and the addresses etc. listed upon that sheet.**
19 Q. Is it for Dr. Padmanabhan?
20 **A. Yes.**
21 Q. Does it show whether his Massachusetts
22 Controlled Substances Registration expired?
23 **A. It was expired due to marked "expired mailing
24 undeliverable."**

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1 Q. If I can direct your attention to tab 16 of that
2 same binder.
3 **THE MAGISTRATE:** Are you going to get
4 back to this?
5 **MR. PAIKOS:** No.
6 **THE MAGISTRATE:** Let me ask Ms. Audet
7 some questions, if I could. This is an excerpt
8 from a database in your office?
9 **THE WITNESS:** Yes.
10 **THE MAGISTRATE:** And you are familiar
11 with the database?
12 **THE WITNESS:** Technically no, I'm not a
13 very good technical person; but the contents,
14 yes.
15 **THE MAGISTRATE:** That is what I mean, you
16 are familiar with the contents of the database?
17 **THE WITNESS:** Yes.
18 **THE MAGISTRATE:** In your experience what
19 does "expired mailing undeliverable" mean?
20 **THE WITNESS:** That is the entry that the
21 clerk made to indicate that the, the
22 registration was no longer valid due to an
23 undeliverable mailing, so a nonresponse to a
24 recall letter.

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1 **THE MAGISTRATE:** This indicates to you
2 that your office sent out a recall letter to
3 Dr. Padmanabhan?
4 **THE WITNESS:** Yes.
5 **THE MAGISTRATE:** And it was not
6 deliverable?
7 **THE WITNESS:** Correct.
8 **THE MAGISTRATE:** And, therefore, the
9 registration was expired?
10 **THE WITNESS:** That's the term they use in
11 the database, yes.
12 **THE MAGISTRATE:** And the information
13 about the expiration was entered on 1-6-12?
14 **THE WITNESS:** Yes.
15 **THE MAGISTRATE:** What does the second row
16 indicate with Dr. Padmanabhan at 30 Gardner Road
17 in Brookline?
18 **THE WITNESS:** There is an active
19 registration. It was issued on 4-8-2014.
20 **THE MAGISTRATE:** So what does it indicate
21 to you between January 6, 2012 and April 8,
22 2014?
23 **THE WITNESS:** That the physician was not
24 in possession of a current and valid

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1 Massachusetts Controlled Substance Registration
2 according to the database.
3 **THE MAGISTRATE:** Do you have more
4 information other than this printout?
5 **THE WITNESS:** What kind of information?
6 **THE MAGISTRATE:** About Dr. Padmanabhan's
7 registration.
8 **THE WITNESS:** Yes.
9 **THE MAGISTRATE:** And you are planning on
10 getting to it?
11 **MR. PAIKOS:** Yes.
12 **THE MAGISTRATE:** Thank you.
13 Q. (By Mr. Paikos) If you go to tab 16 that is in
14 the binder. What is that?
15 **A. That is a printout of the information for the**
16 **registrant, Dr. Padmanabhan.**
17 Q. Does it show -- What activity does it show at
18 the bottom?
19 **A. There was a fee charged on 9-18-2012. There was**
20 **a fee charged on 3-17-2006. There was a recall.**
21 **THE MAGISTRATE:** This is Bates 546?
22 **MR. PAIKOS:** 547, tab 16.
23 Q. (By Mr. Paikos) What is this document?
24 **A. It is information on the registrant with the**

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1 **transactions which would be checks that came in**
2 **and who they entered by.**
3 Q. Does this show when the Mass. Controlled
4 Substance Registration was issued to this
5 physician above the chart area?
6 **A. Above the chart? The registration MP 0950320A**
7 **was issued on 4-8-2014.**
8 Q. So can you tell based on this information if
9 there was, when the registration was active
10 until? I'm not -- That is not a fair question.
11 The information below where it says
12 "transaction" shows a recall. What does that
13 mean?
14 **A. That would have been a receipt of a check for**
15 **\$150 to be issued the registration that was**
16 **recalled.**
17 Q. And the other page that we had seen showed a
18 previous expiration. Was this practitioner's
19 Mass. Control Registration active or did it go
20 inactive for a period or was it recalled or
21 rescinded for a period of time?
22 **A. It was recalled in 2012. What page was that?**
23 Q. Tab 19.
24 **A. Thank you. The recall would have been around,**

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1 **would have been, the letter would have been**
2 **sometime probably December or January, and it**
3 **came back to us as mailing undeliverable and the**
4 **clerk noted that as expired mailing**
5 **undeliverable on the first, I'm sorry, on**
6 **January 6, 2012. So there was a period of time**
7 **between January 6, 2012 and April 8, 2014 there**
8 **was no record of a current and valid**
9 **registration.**
10 Q. If we could go to tab 18 that you have in front
11 of you. What is this?
12 **A. This is a copy of the certificate of**
13 **registration.**
14 Q. Is that tab 18 or 17?
15 **A. I'm sorry. This is a copy of the application as**
16 **a new applicant.**
17 Q. What is that dated?
18 **A. The date received in the office is April 10,**
19 **2014.**
20 Q. How do you know that date?
21 **A. It's stamped on the right-hand side of the page.**
22 Q. Is there a signature on what is listed as Bates
23 550 on the back of the second page of that?
24 **A. Yes, there is.**

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1 Q. What is the date on that?
2 **A. 4-10-2014.**
3 Q. So if we go to, now go to Exhibit 17, back from
4 that, and is that a registration for April 8,
5 2014?
6 **A. Yes.**
7 Q. So based on your review of the records, did a
8 registration that was expired as we saw
9 previously, did that come back into being in
10 April of 2014?
11 **A. This is a new registration. You don't -- If it**
12 **was expired, it doesn't get re-upped. You get a**
13 **new number.**
14 Q. From April 2008 -- 2014, this physician had an
15 active registration?
16 **A. As of that date, yes.**
17 Q. If we go to tab 17, Bates 546.
18 **A. Yes.**
19 Q. Are you familiar with this document?
20 **A. I don't issue them, but I know that, I know that**
21 **they are requested. And this is the form that**
22 **is sent when hospitals, employers, need to**
23 **verify the registration of a practitioner.**
24 Q. It's for one particular date?

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1 **A. (No response).**
2 Q. Let me direct your attention to the second
3 paragraph where it says DCP on this document.
4 **A. Yes.**
5 Q. What is the status on that specific date?
6 **A. Status code is listed as expired, and**
7 **undeliverable status indicates this individual**
8 **does not possess a currently active MCS license.**
9 **MR. PAIKOS:** No further questions.
10 **THE MAGISTRATE:** Dr. Padmanabhan, do you
11 have any questions for Ms. Audet?
12 **DR. PADMANABHAN:** Indeed.
13 CROSS EXAMINATION BY DR. PADMANABHAN
14 Q. Good afternoon, Ms. Audet.
15 **A. Good afternoon.**
16 Q. Do you recall meeting me and having long
17 conversations?
18 **A. No, not at all.**
19 Q. Have you ever seen me before?
20 **A. Not that I remember.**
21 Q. Here is a photograph that I took of you with
22 Steve Hoffman, Assistant Attorney General, --
23 **THE MAGISTRATE:** You can't testify, you
24 can ask this witness questions.

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1 Q. Do you normally attend the state-mandated opioid
2 training course, the Safe and Effective
3 Treatment with Opioids run by Boston University
4 at the Mass. Medical Society?
5 **A. I have been invited to some of them. I don't**
6 **normally attend them.**
7 Q. When you attend them, do you talk to the
8 doctors?
9 **A. If I'm, someone requests to speak to me, I try**
10 **to.**
11 Q. Has that happened ever?
12 **A. Has what happened?**
13 Q. Some doctor requested to talk to you?
14 **A. Yes.**
15 Q. Do you recall any of the conversations?
16 **A. Not specifically, no.**
17 Q. How many years have you been assistant director
18 in the Drug Control Program?
19 **A. A little over 19.**
20 Q. Is that normal to be in the same post for 19
21 years?
22 **A. I don't know if it's normal compared to --**
23 Q. How long has the director been the director?
24 **MR. PAIKOS:** Objection as to relevance.

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1 **THE MAGISTRATE:** I'll allow the question.
2 **A. The previous director retired and the director**
3 **position was eliminated, and it was just**
4 **reposted and allowed to be hired sometime this**
5 **fall, and the new director has been in his**
6 **position since I believe December 15.**
7 Q. How long has the previous director held that
8 position?
9 **THE MAGISTRATE:** That I'm not going to
10 allow. It is getting too far afield.
11 Q. What is your job description?
12 **A. My job description?**
13 Q. Yes.
14 **A. In general policy research as requested,**
15 **drafting letters, responses, drafting responses**
16 **to testimony on proposed legislation. And I**
17 **work with the Prescription Monitoring Program in**
18 **many roles. I help draft and approve**
19 **applications for registrants among other things.**
20 Q. What is your annual salary?
21 **MR. PAIKOS:** Objection.
22 **THE MAGISTRATE:** Sustained.
23 Q. Who at the Board of Registration in Medicine
24 first contacted you about my registration

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1 certificate?
2 **A. I believe it was Jim Paikos.**
3 Q. Do you remember just about what time?
4 **A. No, I don't.**
5 Q. Was it the past year, past two years?
6 **A. I think it was in the past maybe six months, a**
7 **year.**
8 Q. Do you recall the conversation with Mr. Paikos?
9 **A. No.**
10 Q. Did you contact the Federal Drug Enforcement
11 Registration about my controlled substance
12 registration?
13 **A. Personally, no.**
14 Q. Do you know if it was, if they were informed or
15 contacted?
16 **A. We used to provide them with a database of**
17 **active registrants.**
18 Q. How often do you provide them with the list of
19 active registrants?
20 **A. I am not sure of that. That function has moved**
21 **to another, under another person, so I'm not**
22 **sure.**
23 Q. When you were in charge of that, how often would
24 you do it?

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1 **A. I believe it was, I believe it was every week or**
2 **two weeks.**
3 Q. You have previously read the document presented
4 here in tab 19?
5 **A. Which page number?**
6 Q. Bates 551, tab 19.
7 **A. Yes.**
8 Q. Would you read the date on the top line, the two
9 dates.
10 **A. Log date 1-6-2012 --**
11 **THE MAGISTRATE:** I can see the dates.
12 Doctor. Just ask your next question.
13 Q. The date January 6, 2012, what does that stand
14 for?
15 **A. It's the date the person logged into the system,**
16 **logged onto that particular registrant.**
17 Q. So you are saying this date January 6, 2012 has
18 no significance other than a person logged into
19 the database?
20 **A. Logged into the database and they made that**
21 **notation.**
22 Q. When there is no response to a recall letter,
23 what happens?
24 **A. We receive the letter from the post office.**

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1 **Sometimes it had a stamp from the post office,**
2 **sometimes it had a stamp from wherever it was**
3 **delivered -- a notation from wherever it was**
4 **delivered and the person not here, addressee,**
5 **whatever. And then we make notation in the**
6 **database and we file the returned letter.**
7 Q. Do you have that letter?
8 **A. Um-hum.**
9 Q. Where is the letter?
10 **A. From 2009 -- 2012?**
11 Q. Yes, ma'am. The returned letter?
12 **THE WITNESS:** (Indicating).
13 **THE MAGISTRATE:** Do you have that in
14 front of you?
15 **THE WITNESS:** (Indicating).
16 Q. Where was that letter sent?
17 **A. Cambridge Health Alliance, 103 Garland Street,**
18 **Level B, Everett, Mass.**
19 Q. You have before you here in this binder with the
20 purple square the respondent's exhibits binder.
21 Please turn to tab 4. Please tell Magistrate
22 Bresler what it is you are seeing.
23 **A. I'm seeing a sheet that says Amended**
24 **Information.**

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1 Q. Please tell Magistrate Bresler what does that
2 mean?
3 **THE MAGISTRATE:** Are you familiar with
4 this kind of form?
5 **THE WITNESS:** Yes.
6 **A. When a person changes information on their**
7 **registration, address, name, they are required**
8 **to report it to the department Drug Control**
9 **Program, and they fill out an application form**
10 **and indicate they are changing information by**
11 **checking amended information.**
12 Q. What happens when this form is sent in?
13 **A. It's date stamped and the clerk would log on and**
14 **enter the information, enter a change.**
15 Q. Did that happen in this case.
16 **A. Are you asking me about this sheet? I don't**
17 **know anything about this sheet.**
18 Q. Have you ever seen this amended information
19 sheet before?
20 **A. From you?**
21 Q. Yes, ma'am.
22 **A. No.**
23 Q. May I ask why?
24 **A. Not in the folder.**

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1 Q. Why?
2 **A. From what I can tell -- I can't tell that we**
3 **ever received it.**
4 Q. Please read out the rest of the address on top
5 of the form.
6 **THE MAGISTRATE:** You can bring it to my
7 attention and ask her a question about the
8 address.
9 Q. Is that your current address?
10 **A. No, that was our address until May of 2013.**
11 Q. What happened that made you change address?
12 **A. The office moved.**
13 Q. Okay. Did all of your records move with you?
14 **A. Yes.**
15 Q. Did my form move with you?
16 **A. Your folder moved.**
17 Q. If a physician sends in a form, what else is
18 legally required of a physician?
19 **A. If you send in a form, what else is required? I**
20 **don't understand the question.**
21 Q. Yes. In other words, to make the Department of
22 Public Health record this amended information,
23 what else is a physician expected to do?
24 **A. Usually we ask for a copy of the wallet card.**

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1 Q. Is there any record that you contacted me to get
2 a copy of my wallet card in March of 2011?
3 **A. I don't have any indication of that, no.**
4 **THE MAGISTRATE:** What is a wallet card?
5 **THE WITNESS:** The Board of Registration
6 in Medicine issues a small card like a security
7 card, cardboard wallet card.
8 **THE MAGISTRATE:** Showing the
9 registration?
10 **THE WITNESS:** Yes.
11 Q. (By Dr. Padmanabhan) When you looked at my
12 registration folder, Ms. Audet, did you call any
13 pharmacies to see if I was still prescribing?
14 **A. No.**
15 Q. Did you look me up on the Prescription
16 Monitoring Program?
17 **A. I don't recall.**
18 **THE MAGISTRATE:** What is the Prescription
19 Monitoring Program?
20 **THE WITNESS:** Prescription Monitoring
21 Program is a statutory program that collects
22 information on prescriptions dispensed by
23 retail, clinic, hospital, ambulatory,
24 pharmacies, pharmacies from out of state that

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1 deliver to Massachusetts residents on controlled
2 substance prescriptions.
3 **THE MAGISTRATE:** It's searchable by
4 various fields?
5 **THE WITNESS:** Yes.
6 **THE MAGISTRATE:** Including by prescriber?
7 **THE WITNESS:** Yes.
8 Q. (By Dr. Padmanabhan) Turning to the January 6,
9 2012 date, in your testimony just now you
10 indicated that my controlled substance license
11 was considered to be expired at that date?
12 **A. Um-hum.**
13 Q. Do you recall that?
14 **A. Yes.**
15 Q. Because the mailing was undeliverable?
16 **A. Yes.**
17 Q. At that point did you send that information to
18 the Federal Drug Enforcement Administration?
19 **A. Whatever the procedure was about making**
20 **notations and informing the DEA it would have**
21 **been followed. I didn't personally do it, no.**
22 Q. Did you double check before you came in to
23 testify here today?
24 **A. No, I did not.**

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1 Q. Did you contact any of the patients that I was
2 writing prescriptions for?
3 **A. I am not allowed to as far as I know contact**
4 **patients. I have no need.**
5 Q. When this amended form is sent in, there is no
6 requirement to pay a fee, correct?
7 **A. Correct.**
8 Q. So there would be no double checking of that,
9 either, correct, logging a check separately as
10 in the binder here?
11 **A. Which page are you referring to?**
12 Q. Tab 16 in the big binder.
13 **A. This is a transaction page, so since there was**
14 **no cash, there was no fee, it wouldn't be**
15 **recorded on this type of a, in this database.**
16 Q. Correct. If you look at this list of
17 transactions at the bottom of the page where it
18 says "recall" and there is \$150 sum entered, --
19 **A. Yes.**
20 Q. -- what does that mean?
21 **A. "Recall" indicates there was a letter sent to**
22 **recall the MCSR to be reissued, and a fee of**
23 **\$150 was sent and recorded by the department on**
24 **3-31-2009.**

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1 Q. Would you explain what that means, check 8002.
2 What is check number 8002?
3 **A. That would have been the number on the check we**
4 **received.**
5 Q. Did you receive a check?
6 **A. Personally no, but it was recorded by the clerk**
7 **that a check was received.**
8 Q. Is there any way to tell if the check was
9 received or not?
10 **A. We recorded that we received a check.**
11 Q. If you received a check, how did the
12 registration expire, Ms. Audet?
13 **A. There was no response to the periodic recall as**
14 **of January 6, 2012.**
15 Q. What does this \$150 check represent?
16 **A. It represents a fee associated with the recall**
17 **to be issued the registration.**
18 Q. This 8002 is not the actual number of the check,
19 then?
20 **A. They record the check numbers. That would have**
21 **been what they recorded as the check number that**
22 **was received with that recall application.**
23 Q. So there was a check number 8002 received for
24 \$150 --

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1 **A. It was recorded.**
2 Q. -- and logged in. Okay. How reliable are your
3 records in the drug control program, Ms. Audet?
4 **A. The Prescription Monitoring Program has the**
5 **information. We rely on data that is submitted**
6 **by the pharmacies as told to them by patients or**
7 **an agent of the patient. Some of that**
8 **information is not 100 percent. Any information**
9 **that is recorded according from applications is**
10 **to the best interpretation of the clerks of the**
11 **handwriting or on the application. Our records**
12 **because they concern fees, our records of fees**
13 **are very accurate.**
14 Q. So there was the check received for \$150?
15 **A. That is what is indicated.**
16 Q. If a fee was received, why was a new certificate
17 not issued?
18 **A. Certificate was issued (indicating). 3109.**
19 **THE MAGISTRATE:** You are holding up
20 another document, right?
21 **THE WITNESS:** Yes.
22 Q. And the fee was recorded as having been sent in?
23 **A. That is what you said, yes.**
24 Q. No, ma'am, I am quoting your department's

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1 records --
2 **THE MAGISTRATE:** Dr. Padmanabhan, please
3 ask a question.
4 Q. Please return to Bates 551 tab 19, Ms. Audet.
5 **A. Yes.**
6 Q. Please read what it says under "status" for the
7 first line.
8 **THE MAGISTRATE:** Please ask her a
9 question about what it says on the line.
10 **DR. PADMANABHAN:** Sorry.
11 Q. What does the first line say under "status"?
12 **THE MAGISTRATE:** We can see and she can
13 see. You can give her time to look at it and
14 ask her a question, please.
15 Are you asking a question about status?
16 **DR. PADMANABHAN:** Yes, ma'am.
17 Q. Have you seen this document?
18 **A. Yes.**
19 Q. Please tell us what it says under "status."
20 **THE MAGISTRATE:** Dr. Padmanabhan, we see
21 it, she sees it. Ask her a question about what
22 it means.
23 **DR. PADMANABHAN:** Okay.
24 Q. Ms. Audet, your internal department document

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1 states that the license expired --
2 **THE MAGISTRATE:** Dr. Padmanabhan, ask her
3 a question about it. We see what the document
4 says.
5 Q. Ms. Audet, please compare Bates 551 and tab 19
6 with your internal document in tab 16 which
7 records the transaction. How do you reconcile
8 the two?
9 **A. Define "reconcile."**
10 **THE MAGISTRATE:** Answer it on the best
11 understanding of "reconcile."
12 **A. A check was received on 3-31-2009. A check was**
13 **received on 4-8-2014. Registration was marked**
14 **as mainly undeliverable, expired on 1-6-2012 and**
15 **active on 4-18-2014.**
16 **THE MAGISTRATE:** How do the two documents
17 relate to each other, Exhibit 16 and Exhibit 19?
18 **THE WITNESS:** They are different aspects
19 of the history of the registrant's MCSR.
20 Q. (By Dr. Padmanabhan) From your documents was a
21 check received in 2012?
22 **A. No.**
23 Q. Thank you. When you send in information to the
24 DEA, does the DEA send information back to you?

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1 **A. I don't know.**
2 Q. Please turn to a small binder, tab 5.
3 **A. Yes.**
4 Q. On page 2?
5 **THE MAGISTRATE:** Are you familiar with
6 this document?
7 **THE WITNESS:** This, no. Which document?
8 I'm sorry.
9 **DR. PADMANABHAN:** Tab 5. You are right.
10 Please tell Magistrate Bresler what document we
11 are looking at.
12 **THE MAGISTRATE:** If you will allow me to
13 ask the question first. Are you familiar with
14 this document?
15 **THE WITNESS:** It's a web page, a printout
16 from a web page. I have seen it.
17 **THE MAGISTRATE:** Thank you.
18 Q. (By Dr. Padmanabhan) Did you write this?
19 **A. No, I did not write this.**
20 Q. Are you familiar with this page?
21 **A. Yes.**
22 Q. Please turn to page 2. The question is when
23 will my MCSR expire. Are you familiar with that
24 answer?

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1 **A. Yes.**
2 Q. The question to you, Ms. Audet, is if a
3 physician sends in an amended information form
4 and DPH fails to handle it properly, how is a
5 physician to know?
6 **A. Most practitioners are aware of, well, dentists,**
7 **podiatrists, physicians are aware that the cycle**
8 **for the MCSR and DEA registration is**
9 **approximately every three years, so they are**
10 **current every -- Close enough. So if one is**
11 **issued and another not, then they will call and**
12 **ask why.**
13 Q. Do you know when my DEA expired, Ms. Audet, when
14 it's due for renewal?
15 **A. No, I don't.**
16 **THE MAGISTRATE:** Before you move on --
17 Are you moving on to another exhibit?
18 **DR. PADMANABHAN:** Same book, yes.
19 **THE MAGISTRATE:** If I could ask Ms. Audet
20 a question. The answer when will my MCSR
21 expire, do you see the answer there?
22 **THE WITNESS:** Yes.
23 **THE MAGISTRATE:** Is the information about
24 the registration remaining valid, is that

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1 correct information?
2 **THE WITNESS:** Yes, as it pertains to the
3 issuance and the person is maintaining
4 continuous practice in the state, yes.
5 **THE MAGISTRATE:** And no -- Under what
6 circumstances? When is that not correct
7 information?
8 **THE WITNESS:** Our regulation -- I'm --
9 **THE MAGISTRATE:** Is that information
10 always true? Does it depend upon valid mailings
11 being received?
12 **THE WITNESS:** On the registrant's part or
13 my part?
14 **THE MAGISTRATE:** Your part.
15 **THE WITNESS:** I'm sorry, I don't
16 understand the question.
17 **THE MAGISTRATE:** Mr. Paikos, I trust you
18 understand where I'm going with this. If you
19 think it's important, will you ask on redirect,
20 please.
21 **MR. PAIKOS:** Yes.
22 Q. (By Dr. Padmanabhan) If I may follow up on the
23 Magistrate's question. Are you familiar with
24 the legal statute that is underlying Mass.

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1 Controlled Substance License registrations?
2 **A. Somewhat. I haven't memorized them.**
3 Q. The statement that Magistrate Bresler reported
4 to you is lifted straight from the Massachusetts
5 General Laws, correct?
6 **A. I do not recall seeing that in the Massachusetts**
7 **General Laws.**
8 Q. Ms. Audet, the page in question is from the
9 Department of Public Health's own website.
10 Would a document purporting to be frequently
11 asked questions about a Massachusetts Controlled
12 Substances Registration not be based on
13 Massachusetts General Law?
14 **A. Insofar as our regulations are based on the law.**
15 Q. Is it correct that a practitioner once issued a
16 Massachusetts Controlled Substance Registration
17 can continue to maintain that same registration
18 until the end of his career or her career as
19 long as he or she maintains active practice in
20 this Commonwealth?
21 **A. No.**
22 Q. Is that what the regulation, is that what the
23 law says?
24 **THE MAGISTRATE:** We've already been

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1 through this, so next question.
2 Q. (By Dr. Padmanabhan) One final question on this:
3 The DPH website says, "Until you receive a
4 recall notice from the department, your
5 registration is valid as long as you maintain
6 continuous practice in this state." If a
7 physician does not receive a recall notice, can
8 a physician rely on this government's answer to
9 continue practicing?
10 **A. No, I don't believe so.**
11 Q. Why is this question there, then, on the
12 government website, Ms. Audet?
13 **A. The question when will my MCSR expire comes up**
14 **frequently because on the certificate that is**
15 **issued, there is a --**
16 **THE MAGISTRATE:** Ms. Audet is referring
17 to his file which is okay.
18 **A. -- there is an issue date, but there is no**
19 **expiration date. Many registrations, Board of**
20 **Registration in Medicine, DEA, other**
21 **registration, driver's license have an**
22 **expiration date. There is no examination date**
23 **on the registration because this statute**
24 **indicates that they will be recalled by the**

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1 **commissioner. There is no examination date.**
2 **The term is recalled.**
3 **DR. PADMANABHAN:** Your Honor, you can see
4 it on tab 4.
5 **THE MAGISTRATE:** Dr. Padmanabhan, if you
6 are bringing something to my attention, you can
7 bring it in your case. Are you asking me a
8 question or asking the witness a question?
9 **DR. PADMANABHAN:** You mentioned she is
10 referring to a document that you don't have, but
11 you actually do have it.
12 **THE MAGISTRATE:** I didn't know which
13 document she has. As long as you know.
14 **DR. PADMANABHAN:** It is the certificate.
15 **THE MAGISTRATE:** As long as you know what
16 she is referring to.
17 Q. (By Dr. Padmanabhan) Is it your testimony, then,
18 Ms. Audet, that you do not agree with what is
19 listed on the FAQs?
20 **A. I don't agree with your interpretation.**
21 Q. What is my interpretation, Ms. Audet?
22 **THE MAGISTRATE:** I'm not going to allow
23 that question.
24 Q. In 2012 when you decided that my license had

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1 expired, did you contact the Board of
2 Registration in Medicine?
3 **A. I did not, and it was not the practice of the**
4 **clerical staff to do that.**
5 Q. Can you explain why it was not the practice to
6 look at the Board's website or give them a phone
7 call?
8 **A. Our registrants are based on the Massachusetts**
9 **Controlled Substance Registration, and the Board**
10 **of Registration in Medicine is a separate entity**
11 **and their registrations are separate.**
12 Q. But you are both part of the Executive Office of
13 Health and Human Services, you both accommodate
14 with the same Secretary of Health?
15 **A. Yes.**
16 Q. Please turn to the small binder, tab 3. What is
17 the date on this letter, ma'am?
18 **A. February 16, 2011.**
19 Q. What does this letter say?
20 **THE MAGISTRATE:** Dr. Padmanabhan, I see
21 the letter. Do you want to ask the witness
22 questions about it.
23 Q. Ms. Audet, you had previously explained to
24 Magistrate Bresler that the federal DEA license

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1 renewal and the Massachusetts --
2 **THE MAGISTRATE:** If you could ask a
3 question of the witness. I'm asking you to move
4 into the question.
5 Q. (By Dr. Padmanabhan) If the federal DEA license
6 was expiring in 2011, should the physician
7 expect that the Massachusetts Controlled
8 Substance License would also expire in 2011?
9 **A. Not necessarily. They run on a three-year,**
10 **approximately a three-year cycle.**
11 Q. How approximate is approximate, Ms. Audet?
12 **A. Every three years.**
13 Q. No, I mean the staggering between the DEA
14 license expiring and the Massachusetts license
15 being recalled.
16 **A. Varies with the registrant.**
17 Q. So if you look at this date, February 2011 and
18 you look at the form for the information sent to
19 you in March of 2011, what would you conclude?
20 **MR. PAIKOS:** Objection. I think it
21 hasn't been established that this letter from
22 Cambridge Health is something that this witness
23 has seen.
24 **THE MAGISTRATE:** That's okay. On the

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1 basis -- I'll allow the question.
2 **THE WITNESS:** What was the question?
3 Q. Ms. Audet, if you look at this page, February
4 2011 letter saying my license from the DEA is up
5 for renewal and you look at the next tab, tab 4,
6 and you have the amended form information that
7 you send to your department in March of 2011,
8 what would one conclude?
9 **A. I can't conclude anything because I can't say**
10 **that we ever received this.**
11 Q. Whose fault is that, Ms. Audet?
12 **A. We did not receive something, and you are asking**
13 **me whose fault it is?**
14 Q. Correct, since I have sent it.
15 **THE MAGISTRATE:** I'm going to strike
16 that. Dr. Padmanabhan, you can ask a question.
17 You will get a chance to testify and put things
18 on the record.
19 Q. Do you have any information that the federal DEA
20 did not renew my license in 2011?
21 **A. No, I do not.**
22 Q. The big binder, please turn to tab 15.
23 **A. Yes.**
24 Q. When was this document produced?

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1 **A. This credentialing document?**
2 Q. Yes.
3 **A. Says as of 3-27-2014.**
4 Q. Thank you. Would you also look at tab 18.
5 **A. Yes.**
6 Q. What is the date on this document?
7 **A. 4-10-2014.**
8 Q. Do you have any background, Ms. Audet, as to why
9 this credentialing verification document was
10 produced on March 27?
11 **A. Usually it's at the request of a business or**
12 **practice seeking verification of the**
13 **registration.**
14 Q. Can you tell who the requester was?
15 **A. I don't see where that is indicated.**
16 Q. Have you seen this document before today?
17 **A. I might have. I don't recall.**
18 **DR. PADMANABHAN:** Thank you.
19 **THE MAGISTRATE:** That's it for your
20 questions, Doctor?
21 **DR. PADMANABHAN:** Yes.
22 Mr. Paikos, do you have any follow-up
23 questions?
24

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1 REDIRECT EXAMINATION BY MR. PAIKOS
2 Q. Can we go to the small binder tab 5.
3 **A. Yes.**
4 Q. Page 2 of that, frequently asked questions.
5 **A. Yes.**
6 Q. Do you see where it has been highlighted?
7 **A. Yes.**
8 Q. Is there a portion of that answer not
9 highlighted?
10 **A. Two portions.**
11 Q. Taken together is that correct in that it
12 recalls approximately every three years?
13 **A. Yes.**
14 Q. What is the duty of the practitioner when a
15 recall is issued?
16 **A. To respond to the recall.**
17 Q. And when the practitioner responds, is there
18 always the \$150 fee that they have to pay?
19 **A. Yes.**
20 **MR. PAIKOS:** I have no further questions.
21 **THE MAGISTRATE:** Dr. Padmanabhan, do you
22 have any follow-up questions to Mr. Paikos'
23 questions?
24

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1 RE-CROSS EXAMINATION BY DR. PADMANABHAN
2 Q. What are the duties of the staff of the
3 Department of Public Health when receiving an
4 amended information form?
5 **A. To stamp it, to log it.**
6 Q. Is it always done?
7 **A. And to put the form in the file.**
8 Q. Is it always done?
9 **A. I am not sure what the process is. Since May of**
10 **2013 I am not part of that administrative**
11 **process. Before May of 2013, yes, it was done.**
12 **DR. PADMANABHAN:** Thank you.
13 **THE MAGISTRATE:** Are you aware of change
14 of address forms not making it into the file?
15 **THE WITNESS:** After May of 2013 a change
16 of address form would probably not have been
17 included in the file. Prior to that it would
18 have been upon receipt stamped, logged and put
19 into the file.
20 **THE MAGISTRATE:** What was the difference?
21 What happened in May of 2013?
22 **THE WITNESS:** We moved from 305 South
23 Street in Jamaica Plain to Chauncy Street, and
24 the administrative clerical staff is under

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1 another supervisor. Their procedures are
2 different.
3 **THE MAGISTRATE:** Are you testifying that
4 you are not familiar with the procedure or that
5 the procedure changed, that you are familiar
6 with it and the procedure changed?
7 **THE WITNESS:** I'm familiar with the
8 procedure that existed before the offices moved.
9 I am not familiar with the procedure now.
10 **THE MAGISTRATE:** In or around 2011 are
11 you aware of applications, well, what I call
12 change of address forms not ending up in the
13 doctors' files?
14 **THE WITNESS:** No. The forms would come
15 in with a copy of the registrant's wallet card
16 and that would all, if it was a fax, it would
17 all have a clerk's name on it or Department of
18 Public Health would have come into the fax
19 machine. It was about six feet away from the
20 clerk who would take it and date stamp it.
21 **THE MAGISTRATE:** So that is what would
22 have happened and should have happened. Are you
23 aware of any change of address forms, hearing
24 about address change forms that did not make it

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1 into the registrant's files?
2 **THE WITNESS:** I don't recall that from
3 2011, no.
4 **THE MAGISTRATE:** Any other year?
5 **THE WITNESS:** No.
6 **THE MAGISTRATE:** Are there any follow-up
7 questions to my questions?
8 **MR. PAIKOS:** No.
9 **THE MAGISTRATE:** Ms. Audet, thank you for
10 your testimony.
11 [The witness is excused]
12 **THE MAGISTRATE:** Dr. Levin is going to
13 resume testimony?
14 **MR. PAIKOS:** Yes.
15 **THE MAGISTRATE:** How long will it take
16 you to arrange for another day of testimony?
17 **MR. PAIKOS:** Probably five minutes.
18 **THE MAGISTRATE:** We'll go to 3:25 which
19 is only 20 minutes away, and if we end at 3:30,
20 will that be enough time to pack up and go?
21 **MR. PAIKOS:** It may be better because we
22 can check our schedules online, but it takes a
23 few minutes to get into the system, so maybe ten
24 minutes at the end of the day.

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1 **THE MAGISTRATE:** We'll end testimony at
2 30:20, 15 minutes.
3 Dr. Levin, you are still under oath.
4 **THE WITNESS:** Yes.
5 **THE MAGISTRATE:** Dr. Padmanabhan.
6 **DR. LEVIN:** May I take off my jacket?
7 **THE MAGISTRATE:** You may. Anyone may
8 take off their jackets if they wish.
9 **BARRY LEVIN, MD, RESUMED**
10 **CONTINUED CROSS EXAMINATION BY DR. PADMANABHAN**
11 Q. Dr. Levin, we were at MR 174 Bates 135,
12 Patient D. You had told Magistrate Bresler that
13 everybody has access to outpatient paper charts
14 namely on-call doctors and therefore it was
15 important for every note to be a standalone
16 note. How many times have on-call doctors had
17 access to paper charts?
18 **A. Infrequently.**
19 Q. Why has there been a national push to electronic
20 charts?
21 **A. It's a complex question with many, many**
22 **different answers to it.**
23 Q. Okay. Can you name some?
24 **A. The hope is that it will improve patient care,**

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1 **that by having standardized charts, that the**
2 **type of information that is available in**
3 **recordkeeping will be standardized. Among other**
4 **things, it's easy to track information about**
5 **patients with standardized records. It's easier**
6 **to have a standardized history, examination**
7 **format where you expect to have impressions, to**
8 **have plans. One of the things that we**
9 **discussed --**
10 Q. Thank you. Isn't access to the, physical access
11 to the charts one of the attractions of an
12 electronic medical record system that they are
13 not paper charts locked up in some office, they
14 are available on every computer terminal?
15 **A. Yes.**
16 Q. Regarding this old paper chart note, why did you
17 tell the Magistrate Bresler that the note would
18 have been available to on-call doctors?
19 **A. I don't recall stating that.**
20 Q. Dr. Levin, you told Magistrate Bresler that this
21 note, Bates 135, MR 174 on a paper chart could
22 have caused the death of a patient if he was
23 prescribed pain medication on top of what he was
24 already prescribed.

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1 **THE MAGISTRATE:** You have to pose a
2 question.
3 Q. How often does that happen?
4 **A. I don't understand your question.**
5 Q. Dr. Levin, you had told Magistrate Bresler that
6 this paper chart note would have caused the
7 death of a patient if he was prescribed pain
8 medication on top of what he was prescribed.
9 Those were your words. My question so is --
10 **THE MAGISTRATE:** We're taking that as
11 background for the question.
12 Q. How often does that happen?
13 **A. I still don't understand your question, sir.**
14 **How often does what happen?**
15 Q. That an on-call physician would be misled by
16 this paper chart and give a patient a dose of a
17 pain medication and the patient dies.
18 **A. I can't specifically answer that. I don't know.**
19 Q. Okay. What is the leeway in patients on chronic
20 opiate therapy? What is their level of
21 tolerance? How much higher can they go without
22 any serious side effects?
23 **A. It's a very general question that I can't**
24 **answer.**

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1 Q. Would you be surprised if an experienced pain
2 specialist actually said 25 percent of the
3 dose --
4 **THE MAGISTRATE:** Doctor, at the beginning
5 of the hearing and since then I have said if you
6 ask a question starting with "would it surprise
7 you," I said I would stop you, so I'm stopping
8 you.
9 Q. (By Dr. Padmanabhan) Have you looked at the
10 scientific data and how much higher of a dose a
11 chronic opiate patient can be on?
12 **A. No.**
13 Q. We now move to the previous page, 169, Bates
14 133. Dr. Levin, why did you select this note
15 for the government's binder?
16 **A. The note appeared to be of interest.**
17 Q. What interested you in this note, Doctor?
18 **A. It appeared to have significant clinical
19 information.**
20 Q. Have you come across other letters of this type
21 in this patient's medical record?
22 **A. I don't recall. I went through a large number
23 of records, and I don't recall for this
24 particular patient if I saw other letters**

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1 **similar to this.**
2 Q. We had previously heard testimony about his
3 worker's compensation claim people denying his
4 care.
5 **THE MAGISTRATE:** Excuse me. You cannot
6 ask one witness to comment on another witness'
7 testimony if that is where you are going.
8 Q. Have you come across other letters or notes
9 related to that event?
10 **A. Which event are we talking about?**
11 Q. He was ordered by his worker's compensation firm
12 that they were no longer going to pay for his
13 pain medication.
14 **A. I do recall seeing a previous note or seeing
15 another note and discussed that.**
16 Q. Have you heard of Dr. Scott Rubin?
17 **A. No.**
18 Q. We now turn to MR44 Bates 118. Magistrate
19 Bresler asked you if Kcal was a standard
20 notation. Have you now looked it up?
21 **A. Could you please direct me to where.**
22 Q. MR44, Bates 118, last line, Patient D.
23 **A. I do know what Kcal means.**
24 Q. What is Kcal?

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1 **A. I assume it means kilocalories.**
2 Q. Have you heard of something called the metric
3 system?
4 **A. Yes.**
5 Q. Are you aware that the metric system is official
6 system of medicine in the United States?
7 **A. I was under the impression it was not the
8 official system in the United States.**
9 Q. Have you heard of the 1893 Mendenhall Order from
10 Congress?
11 **THE MAGISTRATE:** Dr. Padmanabhan, ask
12 another question.
13 Q. As part of your testimony you told Magistrate
14 Bresler that you wanted more information on why
15 the diagnosis of cervical and lumbar
16 radiculopathy is being made. Is there any
17 indication that these diagnoses are being made
18 today at the time of this visit?
19 **A. Yes.**
20 Q. What indication is that?
21 **A. A/P, cervical and lumbar radiculopathy. "A"
22 typically stands for the impression.**
23 Q. When a patient has a diagnosis of migraine, MS,
24 cervical radiculopathy and the patient comes in

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1 for a subsequent visit, what does one write in
2 the impression?
3 **A. I don't understand the question.**
4 Q. When a patient has a diagnosis for migraine or
5 cervical headaches or cervical radiculopathy and
6 comes in for subsequent visits, is it not
7 standard practice to write down that particular
8 diagnosis at the end of the note?
9 **A. Yes.**
10 **THE MAGISTRATE:** If I could interject
11 before your next question. Dr. Levin, remind me
12 how we get from letter A to the impression.
13 **THE WITNESS:** I was trying to figure that
14 out myself. I don't recall.
15 **THE MAGISTRATE:** But when you see "A" in
16 a medical record, it often or always means
17 impression?
18 **THE WITNESS:** Correct.
19 **THE MAGISTRATE:** And impression means
20 current impression?
21 **THE WITNESS:** Yes.
22 **DR. PADMANABHAN:** A is assessment and
23 plan.
24 **THE MAGISTRATE:** You can testify to that,

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1 Dr. Padmanabhan, but that is not in front of me
2 now.
3 Q. (By Dr. Padmanabhan) When a patient comes in for
4 a follow-up visit, is it normal then to see a
5 preexisting diagnosis in the location of the
6 impression?
7 A. Yes.
8 Q. So seeing a diagnose in, associated with
9 impression or assessment and plan would not
10 normally automatically make one to conclude that
11 this is a new diagnosis, correct?
12 A. No.
13 Q. Thank you. MR185 Bates 588.
14 THE MAGISTRATE: Dr. Padmanabhan, you can
15 ask about this, although I'm looking at the
16 clock and there is only a minute and a half.
17 DR. PADMANABHAN: Please stop me.
18 THE MAGISTRATE: We can stop now or in
19 the middle of a line of inquiry.
20 DR. PADMANABHAN: We can stop.
21 THE MAGISTRATE: Does it make sense to
22 stop now?
23 DR. PADMANABHAN: I didn't notice the
24 time.

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1 THE MAGISTRATE: I'm asking you whether
2 you wanted to continue and get cut off or wait
3 and complete the inquiry later.
4 Mr. Paikos, I understand you are going to
5 draw up your calendar on the computer, and that
6 will be it for Dr. Levin for your testimony
7 today. Thank you.
8 MR. PAIKOS: Dr. Levin may have his
9 calendar with him as well, and that may be
10 helpful.
11 THE MAGISTRATE: We have the cross
12 examination of Dr. Levin to continue.
13 Dr. Padmanabhan, based on your notes and I see
14 you have notes, and based on how long it has
15 taken so far to get through them, what is your
16 best guess as to how much more cross examination
17 you have?
18 DR. PADMANABHAN: We have a ways.
19 THE MAGISTRATE: What is your best guess?
20 DR. PADMANABHAN: Four hours I would say.
21 Time goes quickly.
22 THE MAGISTRATE: I'm asking for your best
23 guess, and you provided it. Thank you.
24 We'll set aside four hours for cross

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1 examination. That's it for the Board's case,
2 right? No other witness to call?
3 MR. PAIKOS: Yes.
4 THE MAGISTRATE: Dr. Padmanabhan, you
5 have another witness to call?
6 DR. PADMANABHAN: One patient, Patient I.
7 THE MAGISTRATE: What is your best
8 estimate how long it will take Patient I?
9 DR. PADMANABHAN: Half an hour.
10 THE MAGISTRATE: What is your best
11 estimate of how long it will take for you to
12 testify?
13 DR. PADMANABHAN: As long as it takes.
14 THE MAGISTRATE: I need your best
15 estimate.
16 DR. PADMANABHAN: Two hours.
17 MR. PAIKOS: I may have I think on the
18 outside an hour for redirect of Dr. Levin.
19 THE MAGISTRATE: Thank you. Sounds like
20 we have two more days of hearing --
21 DR. PADMANABHAN: Your Honor, --
22 THE MAGISTRATE: -- completing
23 Dr. Levin's testimony.
24 Yes.

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1 DR. PADMANABHAN: The government has
2 included report unsworn for Dr. Horowitz. I
3 would love it if we could ask Dr. Horowitz to
4 testify.
5 THE MAGISTRATE: If you are moving --
6 DR. PADMANABHAN: I can fax it to your
7 office.
8 THE MAGISTRATE: If you are orally
9 moving, I'm denying it.
10 Let's get back to scheduling. It looks
11 like we have approximately five hours for
12 Dr. Levin's testimony to conclude. Does it make
13 sense to schedule just -- How about this:
14 Schedule Dr. Levin's testimony if it ends before
15 3:30, Dr. Padmanabhan are you ready to testify
16 and call Patient I on another day?
17 DR. PADMANABHAN: Yes.
18 THE MAGISTRATE: So let's schedule two
19 days. We'll schedule Dr. Levin first and wrap
20 up his testimony. That may be that first day
21 entirely but if there is room, Dr. Padmanabhan
22 will begin his direct testimony and Patient I
23 will be called on another day. Let's look at
24 two days.

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1 Shall I go first in terms of
2 availability? Or actually Dr. Levin should go
3 first.
4 **DR. LEVIN:** I'm on call the third, but if
5 that's the only day that works for everybody
6 else, I can try to change my call.
7 **THE MAGISTRATE:** Right now you cannot
8 testify February 3?
9 **DR. LEVIN:** Correct.
10 **THE MAGISTRATE:** Another day would work?
11 **DR. LEVIN:** Correct.
12 **THE MAGISTRATE:** Does February 2 work for
13 people?
14 **DR. PADMANABHAN:** Yes.
15 **DR. LEVIN:** Could work for me. I'm on
16 call next weekend, so -- On the first as well.
17 There is always the potential that I could be up
18 until two or three or four in the morning, but I
19 could do it if Mr. Paikos would like me here.
20 **MR. PAIKOS:** I think it would be less
21 productive if he hasn't slept the night before.
22 **THE MAGISTRATE:** How is Friday February 6
23 for the first day of the rest of the hearing?
24 **MR. PAIKOS:** That works for Ms. Cooke and

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1 I.
2 **DR. LEVIN:** That would be okay.
3 **DR. PADMANABHAN:** (Nodding.)
4 **THE MAGISTRATE:** Before we go, I will
5 check with the Civil Service Commission to make
6 sure that a hearing room is available. And
7 let's schedule a second day of hearing.
8 **MR. PAIKOS:** The only thing Dr. Levin
9 mentioned he would have to confirm with his
10 secretary, his office if it doesn't, before
11 committing.
12 **THE MAGISTRATE:** If it doesn't work,
13 Dr. Levin, you let Mr. Paikos know; and,
14 Mr. Paikos, you let us know.
15 Second day of hearing, Friday
16 February 13?
17 **DR. PADMANABHAN:** Yes.
18 **MR. PAIKOS:** I have a prehearing on that
19 day which I think the attorney is actually
20 trying to move but hasn't moved yet, but he is
21 out of town that day, so I anticipate that I
22 would be freed up.
23 **THE MAGISTRATE:** Let's schedule
24 February 6 and February 13 from 10:00 to 3:30.

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1 We can move it a little bit earlier than 10:00
2 if the parties want.
3 **MR. PAIKOS:** 9:30 would work.
4 **THE MAGISTRATE:** Dr. Levin and
5 Dr. Padmanabhan, 9:30?
6 **DR. LEVIN:** Yes.
7 **DR. PADMANABHAN:** Yes.
8 **MR. PAIKOS:** Is it anticipated that
9 Dr. Levin's testimony will be done on the sixth?
10 **THE MAGISTRATE:** That is the best we can
11 anticipate based on Dr. Padmanabhan's estimate
12 of four hours remaining cross examination, and
13 your estimate of one hour of redirect
14 examination. And I believe 9:30 to 3:30 with
15 one-hour lunch break is five hours.
16 Anything else in terms of scheduling?
17 With that, let me touch base with the Civil
18 Service Commission and I'll be back.
19 [Pause]
20 **THE MAGISTRATE:** We do have a hearing
21 room for the Civil Service Commission. We are
22 scheduled for February 6 and February 13, both
23 dates here from 9:30 to 3:30. I may or may not
24 send out a written notice depending how much

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1 other paperwork I have. If I don't send out a
2 notice, we are still here, February 6 and
3 February 13, 9:30 to 3:30. Anything else?
4 (No response).
5 **THE MAGISTRATE:** I thank everyone.
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1 C E R T I F I C A T E
2 I, Carole M. Wallace, Certified Shorthand
3 Reporter, do hereby certify that the foregoing
4 transcript is a true and accurate record of my
5 stenographic notes taken to the best of my skill and
6 ability on January 29, 2015.

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Carole M. Wallace, CSR

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