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COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DEPARTMENT 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE

RAFAELINA DUVAL,)	
)	
PLAINTIFF,)	CASE NO. BC470714
)	B281326
VS.)	
)	
COUNTY OF LOS ANGELES, ET AL.,)	
INCLUSIVE,)	REPORTER'S
)	CERTIFICATE
DEFENDANTS.)	
_____)	

I, ALISIA PATRICIO, CSR NO. 13606, OFFICIAL REPORTER PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1201-1500, 2101 TO 2215-2400, 2701 TO 2823-3000, 3601 TO 3771-3900, 3994 TO 4066-4200, 4201 TO 4351-4500, 5101 TO 5340-5400, 5701 TO 5864-6000, 6001 TO 6173-6300, 6301 TO 6481-6600, 7501 TO 7689-7800, 8101 TO 8277-8400, 8806 TO 8903-9000, 9001 TO 9119-9300, 9601 TO 9777-9900, AND 10801 TO 10843-11000 COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE ABOVE-ENTITLED CAUSE ON SEPTEMBER 14, 20, 22, 27, 28, 29; OCTOBER 4, 6, 11, 12, 18, 20, 24, 25, 27; NOVEMBER 4, 2016.

DATED THIS 26TH DAY OF AUGUST, 2017.

ALISIA PATRICIO, CSR NO. 13606
OFFICIAL REPORTER PRO TEMPORE

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M A S T E R I N D E X

SEPTEMBER 20, 2016

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M A S T E R I N D E X

SEPTEMBER 20, 2016

EXHIBITS

<u>PLAINTIFF'S</u>	<u>MARKED</u>	<u>RECEIVED</u>	<u>WITHDRAWN REJECTED</u>
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8.1264-1266		2103	
168	2109	89	

1 CASE NUMBER: BC470714
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES, ET AL
3 LOS ANGELES, CALIFORNIA TUESDAY, SEPTEMBER 20, 2016
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: ALISIA PATRICIO, CSR NO. 13606
7 TIME: 8:40 A.M.

8

9

---000---

10

11 MR. GUTERRES: YOUR HONOR, AS I UNDERSTAND IT,
12 IF WE STIPULATE, IT'S IN. IF IT'S GOING TO GET
13 PUBLISHED, IT'S BEEN ADMITTED INTO EVIDENCE BY
14 STIPULATION.

15 THE COURT: WELL, THAT'S MY VIEW. IF HE'S
16 SAYING YOU CAN SHOW IT, I BELIEVE HE'S -- I BELIEVE
17 THERE'S A STIPULATION, AND IT MAY BE RECEIVED IN
18 EVIDENCE. I THINK THAT SOLVES YOUR PROBLEM.

19 MR. MCMILLAN: OKAY. AND THEN AS TO THE OTHER
20 EXHIBITS -- AND LIKE, FOR EXAMPLE, YESTERDAY WE HAD
21 DR. SODERBERG'S MEDICAL RECORD. AND IT'S MY
22 UNDERSTANDING -- AND PLEASE CORRECT ME IF I
23 MISUNDERSTOOD -- A MEDICAL RECORD LIKE THAT, THE WAY
24 YOU WOULD LIKE TO HANDLE THAT IN TERMS OF MOVING IT
25 INTO EVIDENCE IS AT SOME POINT LATER. I'M NOT SURE
26 WHEN, WHETHER YOU LIKE TO HEAR THAT AT THE END OF THE
27 DAY OR --

28 THE COURT: LIKE THIS MORNING.

1 MR. MCMILLAN: LIKE THIS MORNING, OKAY.

2 THE COURT: THAT'S WHAT I -- I JUST READ THE
3 EXHIBIT.

4 MR. MCMILLAN: OKAY. OKAY. THAT'S WHAT I WAS
5 CONCERNED ABOUT. I HAVE ALL THESE DOCUMENTS. I'M
6 WONDERING, "OH, MY GOD, HOW ARE WE GOING TO GET THEM
7 INTO EVIDENCE?"

8 THE COURT: IF YOU HAVE A STIPULATION AGREED
9 THAT A DOCUMENT CAN BE SHOWN, UNLESS -- I WOULD DEEM
10 THAT, AND MR. GUTERRES DOES TOO, IF HE AGREES IT CAN BE
11 SHOWN, OR YOU AGREE THEY CAN SHOW A DOCUMENT, THAT THAT
12 IS, IN EFFECT, A STIPULATION IT MAY BE RECEIVED INTO
13 EVIDENCE. AND ALL WE HAVE TO DO IS PLACE IT ON THE
14 RECORD, AS WE HAVE. AND 168, THE ONE PAGE --

15 MR. MCMILLAN: YEAH, AND I'LL GIVE YOU THE
16 BATES NUMBER SINCE WE ARE ON THE RECORD. IT'S 002044.

17 THE COURT: ALL RIGHT. IN LIGHT OF THE
18 STIPULATION YOU HAVE, THAT WILL BE RECEIVED IN
19 EVIDENCE.

20 NOW, AS TO 12- -- EXCUSE ME -- EXHIBIT 8,
21 PAGES 1264, -65, AND -66 THAT WITNESS YESTERDAY
22 TESTIFIED ARE TRUE COPIES OF HER CHART, AND SHE SAYS
23 THESE WERE NOTES MADE AT THE TIME OF THE VISIT. AND IN
24 THAT SITUATION, WHICH HAS NOT BEEN DISCLOSED TO THE
25 JURY, THIS WOULD BE A GOOD TIME -- AND I'LL DO IT
26 PERIODICALLY THROUGHOUT THE TRIAL -- FOR THOSE THAT
27 HAVE NOT BEEN SHOWN TO THE JURY AND THEREFORE THERE IS
28 NO STIPULATION, YOU SHOULD TALK WITH THE OTHER SIDE.

1 THAT'S ONE REASON I HAVE YOU COME IN IN THE MORNING, TO
2 FIND OUT: CAN PAGES 8.1264 THROUGH 1266 BE RECEIVED?

3 MR. MCMILLAN: OKAY.

4 THE COURT: I WAS JUST TAKING A LOOK AT THEM,
5 SO THAT'S THE QUESTION.

6 MR. GUTERRES: NO OBJECTION, YOUR HONOR.

7 THE COURT: THEY WILL BE RECEIVED.

8 (PLAINTIFF'S EXHIBIT NOS. 8.1264-1266
9 WERE RECEIVED INTO EVIDENCE BY THE
10 COURT.)

11 MR. MCMILLAN: EXCELLENT. I DIDN'T SLEEP GOOD
12 LAST NIGHT; I WAS SO WORRIED ABOUT WHAT WE WERE GOING
13 TO DO WITH THE DOCUMENTS.

14 THE COURT: WELL, I HOPE WE'RE RELIEVING YOUR
15 STRESS.

16 MR. MCMILLAN: THANK YOU. I WAS SWEATING OVER
17 IT.

18 THE COURT: OF COURSE, I'M LAUGHING, BUT IT'S
19 EASIER FOR ME TO LAUGH ABOUT IT BECAUSE I'M NOT THE ONE
20 WHO'S EXPERIENCING THE STRESS. AND, LOOK, I READILY
21 RECOGNIZE, EVEN AFTER ALL THESE YEARS, I CAN STILL
22 REMEMBER THE STRESS OF TRYING CASES. SO I'M NOT MAKING
23 LIGHT OF IT.

24 BUT THE BEST THING TO DO, AND ONE OF THE
25 REASONS I HAVE YOU COME IN IN THE MORNING, IS SO WE CAN
26 HAVE THIS DISCUSSION. AND AT THE END OF THE DAY, AS
27 YOU NOTICE, DON GIVES YOU A LIST OF WHAT'S BEEN MARKED
28 FOR IDENTIFICATION. AND THAT WOULD BE A GOOD TIME TO

1 AT LEAST TAKE A LOOK AT IT OR HAVE A QUICK
2 CONVERSATION, CAN WE STIPULATE THAT THESE BE RECEIVED
3 INTO EVIDENCE? AND YOU CAN TELL ME THE NEXT MORNING
4 WHICH ONES THERE'S A STIPULATION MAY BE RECEIVED, AND
5 FOR ANY THERE'S A QUESTION, THEN I'LL RULE ON IT AT
6 THAT TIME, IF WE HAVE TIME. SOMETIMES WE HAVE OTHER
7 THINGS TO DO.

8 BUT ALSO -- AND THE REASON YOU COME IN, YOU
9 SHOW, AS YOU HAVE DONE, A DOCUMENT YOU WANT TO USE, AND
10 MR. GUTERRES HAS SAID, "FINE, GO AHEAD," AND STIPULATES
11 IT MAY BE RECEIVED. SO THAT'S HOW I INTEND TO GO ABOUT
12 IT.

13 I'M HAPPY TO DO THIS SOME OTHER WAY BUT I
14 THINK THIS WORKS PRETTY WELL. I'VE BEEN DOING IT FOR
15 MANY YEARS, AND IT SEEMS TO WORK PRETTY WELL.

16 MR. MCMILLAN: NOW THAT I HAVE AN
17 UNDERSTANDING, OR A BETTER -- ACTUALLY, I CAN'T SAY
18 THAT I HAD A GOOD UNDERSTANDING BECAUSE THAT'S WHAT WAS
19 CAUSING ME STRESS. BUT NOW THAT I HAVE A BETTER
20 UNDERSTANDING OF THE WAY IT'S GOING TO FLOW, I THINK
21 WE'RE GOING TO BE OKAY.

22 THE COURT: OKAY. THAT'S WHY -- I WAS LOOKING
23 AT SOME OTHER THINGS THAT I'M GOING TO TALK TO YOU
24 ABOUT OFF THE RECORD IN JUST A MOMENT, BUT ONE OF THE
25 REASONS I CAME OUT WAS TO READ THE EXHIBIT BECAUSE I
26 KNEW WE NEEDED TO ADDRESS IT.

27 AND WE WON'T ALWAYS GET IT DONE -- THERE'S NO
28 SPECIFIC TIME WHEN WE'LL ADDRESS IT, BUT MY RULE OF

1 THUMB IS I DON'T SPEND JURY TIME ADDRESSING
2 ADMISSIBILITY OF EXHIBITS. SO THAT'S THE REASON I HAVE
3 YOU COME IN THE MORNING. IT'S A GOOD TIME -- IF YOU'RE
4 GOING TO BE USING OTHER EXHIBITS, OR PROPOSE TO DURING
5 THE DAY, THAT YOU'RE GOING TO, AS OPPOSED TO HAVE
6 IDENTIFIED ON THE RECORD, TO ACTUALLY BE SHOWN TO THE
7 JURY, THAT'S A GOOD TIME TO TALK TO MS. SWISS AND
8 MR. GUTERRES AND SAY, "HERE'S WHAT I INTEND TO USE
9 TODAY; CAN WE STIPULATE TO THEM?"

10 MR. MCMILLAN: OKAY. EXCELLENT.

11 THE COURT: AND IF NOT, AND YOU WANT TO
12 PUBLISH IT, AS I TOLD YOU WHEN WE STARTED, AND THEY
13 DON'T AGREE THAT'S SOMETHING THAT CAN BE SHOWN TO THE
14 JURY AND THEREFORE ARE NOT AGREEING IT MAY BE RECEIVED
15 INTO EVIDENCE, AGAIN, THAT'S SOMETHING WE CAN DISCUSS
16 BETWEEN 8:30 AND 9:00 IN THE MORNING.

17 MR. MCMILLAN: PERFECT.

18 THE COURT: OR AT OTHER TIMES DURING THE DAY.
19 YOU KNOW, WE CAN DO IT DURING RECESSES DURING THE DAY
20 AS WELL.

21 BUT THAT'S ONE OF THE REASONS I HAVE YOU COME
22 IN AT 8:30. IT'S NOT JUST BECAUSE I WANT TO MAKE SURE
23 YOU'RE HERE AND READY TO GO, BUT I ACTUALLY TRY TO USE
24 THE TIME TO ADVANTAGE IF WE CAN.

25 MR. MCMILLAN: EXCELLENT. THANK YOU VERY
26 MUCH, YOUR HONOR, I APPRECIATE IT.

27 THE COURT: OKAY. SO NOW WHAT I WANT TO DO,
28 IF I COULD, IS I WANT TO TALK TO YOU, SPEND A LITTLE

1 BIT OF TIME, NOT AS MUCH AS I INTEND TO, BUT WITH THE
2 VERDICT FORMS THAT HAVE BEEN SUBMITTED BY THE PARTIES.
3 AND THIS DISCUSSION DOES NOT NEED TO BE ON THE RECORD.

4 (A DISCUSSION WAS HELD OFF THE RECORD.)

5 (JURY PRESENT)

6 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
7 EVERYBODY IS PRESENT. ALL OF OUR JURORS ARE HERE.
8 EVERYONE MAY BE SEATED.

9 GOOD MORNING TO ALL OF OUR JURORS.

10 THE FIRST, OR THE NEXT WITNESS TO TESTIFY IS
11 ALSO GOING TO BE THROUGH A VIDEO DEPOSITION. I WILL
12 TELL YOU THAT WHILE YOU WERE OUT IN THE HALLWAY, WE
13 WERE DISCUSSING WHETHER WE SHOULD SERVE POPCORN AND
14 SOFT DRINKS. AND WHILE WE WOULD LIKE TO, WE'RE NOT.

15 BUT IT DID REMIND ME OF SOMETHING I WANTED TO
16 MENTION TO YOU, THAT I PERMIT YOU TO BRING WITH YOU
17 INTO COURT SOMETHING TO DRINK IF YOU NEED TO HAVE WATER
18 OR SOMETHING. ALSO, IF YOU NEED TO HAVE SOMETHING TO
19 BE ABLE TO NIBBLE ON OR EAT DURING THE DAY WHEN YOU'RE
20 IN THE JURY BOX, I PERMIT THAT. AND I PUT A
21 NONSPECIFIC LIMIT ON THAT. I'M NOT SUGGESTING WE'RE
22 GOING TO HAVE PICNICS GOING ON IN THE JURY BOX, BUT I
23 DO RECOGNIZE THAT THE HOURS ARE PRETTY REGULAR WHILE
24 YOU'RE HERE. WE TRY TO GET STARTED AS CLOSE TO 9:00 AS
25 WE CAN. WE'LL TAKE A BREAK TYPICALLY AT MID-MORNING
26 AND THEN AGAIN AT NOON. AND THE TIMES THAT WE BREAK
27 AREN'T NECESSARILY THE TIMES THAT WOULD SUIT ANY NEEDS
28 YOU MIGHT HAVE.

1 SO IN PARTICULAR, SOME PEOPLE HAVE HEALTH
2 SITUATIONS WHERE SOMETIMES THEY NEED TO BE HAVING
3 SOMETHING ON A DIFFERENT SCHEDULE, AND THAT'S FINE IF
4 YOU DO. IF YOU WANT TO BRING WATER OR COFFEE IN, YOU
5 CAN DO SO. I WANT IT TO BE UNOBTRUSIVE AND NOT
6 DISTRACTING TO ANYONE, INCLUDING YOU. IF YOU BRING
7 SOMETHING IN, MAKE SURE THAT WHENEVER YOU MAY BE
8 CONSUMING IT, IT DOESN'T IN ANY WAY DISTRACT YOU FROM
9 WATCHING AND LISTENING TO THE EVIDENCE AS IT'S
10 PRESENTED. BUT I JUST WANTED TO LET YOU KNOW THAT YOU
11 CAN BRING SOMETHING IN IF YOU'D LIKE. WE HOPE TO MAKE
12 YOU AS COMFORTABLE AS WE CAN.

13 SO WITH THAT, MR. MCMILLAN, YOUR FIRST WITNESS
14 BY VIDEO DEPOSITION WILL BE?

15 MR. MCMILLAN: IT WOULD BE DEFENDANT SUSAN
16 PENDER, YOUR HONOR.

17 THE COURT: ALL RIGHT. YOU MAY PROCEED.

18 MR. MCMILLAN: THANK YOU.

19 (WHEREUPON AN EXCERPT OF THE VIDEOTAPED
20 DEPOSITION OF SUSAN PENDER WAS PLAYED.)

21 MS. CHUNG: YOUR HONOR, WE'D LIKE TO CALL
22 DR. ALLISON YIM OUT OF ORDER BEFORE THE NEXT
23 DEPOSITION.

24 THE COURT: YES.

25 AS FAR AS OUR JURORS, JUST TO ADVISE YOU, THIS
26 DEPOSITION TESTIMONY OF MS. PENDER IS NOT COMPLETED,
27 BUT WE DO HAVE A WITNESS PRESENT IN THE HALLWAY THAT
28 WE'RE GOING TO INTERRUPT THE SHOWING OF THE DEPOSITION

1 TO CALL THAT WITNESS.

2 GO AHEAD.

3

4

ALLISON R. YIM, M.D.,

5

WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY

6

SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

7

8

THE CLERK: FOR THE RECORD, PLEASE STATE YOUR
9 NAME AND SPELL YOUR FIRST AND LAST NAME.

10

THE WITNESS: ALLISON R. YIM, A-L-L-I-S-O-N, R
11 IS THE MIDDLE INITIAL, AND YIM, Y-I-M.

12

THE COURT: THANK YOU. GO AHEAD.

13

14

DIRECT EXAMINATION

15

BY MS. CHUNG:

16

Q GOOD MORNING, DR. YIM.

17

A GOOD MORNING.

18

Q CAN YOU PLEASE TELL US WHAT KIND OF DOCTOR YOU
19 ARE?

20

A I'M A GENERAL PEDIATRICIAN.

21

Q AND A PEDIATRICIAN, WHAT KIND OF PATIENTS DO
22 YOU TREAT?

23

A I TREAT PATIENTS FROM BIRTH TO AGE 18, OR
24 THROUGH HIGH SCHOOL, GRADUATION OF HIGH SCHOOL.

25

Q CAN YOU GIVE US A LITTLE BIT OF A BACKGROUND
26 ON YOUR EDUCATION?

27

A I TRAINED AT LOYOLA STRITCH MEDICAL SCHOOL AND
28 THEN DID MY RESIDENCY IN PEDIATRICS AT CHILDREN'S

1 HOSPITAL IN LOS ANGELES FOR THREE YEARS.

2 Q ARE THERE BOARDS THAT YOU HAVE TO TAKE?

3 A YES. THE AMERICAN ACADEMY OF PEDIATRICS HAS A
4 BOARD THAT I'VE TAKEN AND BEEN RECERTIFIED.

5 Q HOW LONG HAVE YOU BEEN A PEDIATRICIAN?

6 A OUT OF RESIDENCY, 20 YEARS THIS YEAR.

7 Q HAVE YOU EVER TESTIFIED IN COURT BEFORE?

8 A NO.

9 Q HOPEFULLY WE WON'T KEEP YOU TOO LONG.

10 WE'RE HERE FOR BABY RYAN. AND I'D LIKE TO
11 TALK TO YOU ABOUT HIM, OKAY?

12 A OKAY.

13 Q ACTUALLY, BEFORE I DO THAT, THERE'S A BINDER
14 BEHIND YOU -- LET ME HELP YOU GRAB IT.

15 OKAY. IF YOU CAN TURN TO EXHIBIT 168 THERE?

16 (PLAINTIFF'S EXHIBIT NO. 168, WAS

17 MARKED FOR IDENTIFICATION.)

18 BY MS. CHUNG:

19 Q DO YOU RECOGNIZE THOSE DOCUMENTS IN
20 EXHIBIT 168?

21 A YES, THEY ARE OUR MEDICAL RECORDS FROM THE
22 OFFICE.

23 Q THOSE ARE YOUR MEDICAL RECORDS?

24 A YES.

25 Q THOSE MEDICAL RECORDS, WHO PREPARES THEM?

26 A WELL, AFTER I SEE A PATIENT, I WRITE MY NOTES,
27 AND THEN WE HAVE AN ELECTRONIC MEDICAL RECORD SYSTEM
28 THAT WE GENERATE THE NOTES ON. AND IF THEY NEED TO BE

1 COPIED FOR ONE REASON OR ANOTHER, THE NURSES WILL COPY
2 THEM AND SEND THEM OFF TO A DIFFERENT SPECIALIST OR A
3 PARENT IF NEEDED.

4 Q AND THESE MEDICAL RECORDS, WHAT'S THE PURPOSE
5 OF CREATING THESE MEDICAL RECORDS?

6 A SO THAT I CAN DOCUMENT MY VISITS WITH MY
7 PATIENTS.

8 Q AND THESE RECORDS, EACH ONE YOU CREATE WHEN
9 YOU SEE YOUR PATIENT?

10 A IT DEPENDS ON HOW MUCH TIME I HAVE AFTER I SEE
11 THE PATIENT. SOMETIMES I WILL GENERATE THEM A FEW
12 HOURS LATER WHEN I HAVE SPACE IN MY SCHEDULE; SOMETIMES
13 IT'S IMMEDIATELY AFTER I SEE THE PATIENT.

14 Q SO YOU SAID EARLIER THAT SOMETIMES YOU
15 HANDWRITE THE NOTE AND SOMETIMES IT GOES INTO THE
16 COMPUTER SYSTEM?

17 A WE NORMALLY WILL HANDWRITE SOME NOTES TO MAKE
18 SURE WE DON'T FORGET, WHEN WE'RE IN THE ROOM WITH THE
19 PATIENT. AND THEN I'LL COME OUT OF THE ROOM AND THOSE
20 NOTES WILL REMIND ME ABOUT OUR VISIT, AND THEN I'LL SIT
21 AND TYPE OUT THE FINAL NOTE.

22 Q SO YOU MANUALLY ENTER IN YOUR NOTES INTO A
23 COMPUTER SYSTEM?

24 A THAT'S CORRECT; I MANUALLY ENTER THE NOTES.

25 Q AND BASED ON WHAT YOU'RE SEEING THERE IN
26 EXHIBIT 168, DO THOSE RECORDS ACCURATELY REFLECT YOUR
27 INTERACTIONS WITH BABY RYAN?

28 PLEASE TAKE THE TIME TO REVIEW IT. SO

1 EXHIBIT 168 STARTS AT 2040 AND I BELIEVE ENDS AT 2103.
2 LET ME KNOW WHEN YOU'VE HAD A CHANCE TO REVIEW THOSE.

3 A YES, THIS ACCURATELY REFLECTS OUR MEDICAL
4 RECORD.

5 Q AFTER THESE RECORDS ARE CREATED, WHAT DO YOU
6 DO WITH THEM? ARE THEY PUT SOMEWHERE?

7 A THESE ARE ELECTRONIC MEDICAL RECORDS, SO
8 THEY'RE STORED IN A MAIN COMPUTER SYSTEM THAT WE CAN
9 ACCESS IF WE NEED TO LOOK BACK AT THE RECORDS.

10 Q CAN YOU TELL ME IF YOU EVER RECEIVED A
11 SUBPOENA FOR RECORDS FROM THE PLAINTIFF TO OBTAIN THESE
12 RECORDS BEFORE TODAY?

13 A YES, I HAVE.

14 Q DID YOU RESPOND TO THAT SUBPOENA?

15 A YES, I DID.

16 Q AND DID YOU PROVIDE ALL OF THE RECORDS TO THAT
17 SUBPOENA?

18 A YES, I DID.

19 Q AND THESE RECORDS, THEY APPEAR TO BE A TRUE
20 AND ACCURATE AND COMPLETE COPY OF THE MEDICAL FILE FOR
21 BABY RYAN THAT YOU PROVIDED IN THE COURSE AND SCOPE OF
22 YOUR BUSINESS?

23 A YES.

24 Q DR. YIM, I'D LIKE TO REFER YOU TO PAGE --
25 EXHIBIT NUMBER 168, PAGE 2058.

26 A OKAY.

27 Q CAN YOU TELL ME, IS THIS YOUR FIRST VISIT WITH
28 BABY RYAN?

1 A THAT'S CORRECT; IT'S THE FIRST VISIT.

2 Q TELL US ABOUT THAT VISIT.

3 A I REMEMBER MS. DUVAL COMING IN WITH BABY RYAN
4 FOR THE FIRST TIME. SHE WAS AN EXCITED NEW MOM; HE WAS
5 TWO MONTHS AT THE TIME. HE HAD JUST MOVED FROM ANOTHER
6 PEDIATRICIAN TO OUR PRACTICE. IT WAS A WELL VISIT. WE
7 TALKED ABOUT ROUTINE WELL-BABY CARE, AND I GAVE HER
8 ADVICE AND MADE A FOLLOW-UP APPOINTMENT FOR THE NEXT
9 VISIT.

10 Q AND A WELL-BABY VISIT, WHAT IS THE PURPOSE OF
11 A WELL-BABY VISIT?

12 A A WELL-BABY VISIT IS WHERE WE DISCUSS FEEDING
13 WITH THE PARENTS, SAFETY ISSUES, IMMUNIZATIONS, THOSE
14 SORTS OF THINGS.

15 Q ON THIS VISIT, YOU DISCUSSED IMMUNIZATIONS
16 WITH MS. DUVAL?

17 A WE DID.

18 Q WHAT DID YOU DISCUSS WITH HER ABOUT THOSE
19 IMMUNIZATIONS?

20 A I DISCUSSED THE TYPE OF IMMUNIZATIONS THAT WE
21 NORMALLY GIVE AT TWO MONTHS OF AGE, AND EXPLAINED WHAT
22 VACCINATIONS WERE. THEY'RE MEDICATIONS THAT WE GIVE
23 CHILDREN TO PROTECT THEM FROM DISEASES. AND SHE
24 DECIDED ON THIS DATE TO NOT VACCINATE.

25 Q WAS THAT A CONCERN FOR YOU ON THIS DAY, TO NOT
26 VACCINATE?

27 A NO.

28 Q WHY?

1 A WE HAD A GOOD DISCUSSION ABOUT IT, AND I FELT
2 THAT WE WOULD CONTINUE TO TALK ABOUT IT DURING THE
3 COURSE OF OUR TIME TOGETHER. AND I DO HAVE FAMILIES
4 THAT CHOOSE NOT TO VACCINATE INITIALLY AND THEY MAY
5 WAIT UNTIL A LATER DATE.

6 Q SO YOU DIDN'T HAVE A PROBLEM WITH MS. DUVAL
7 NOT VACCINATING HER SON THIS DAY?

8 A NO.

9 Q DOCTOR, CAN YOU TELL ME A LITTLE BIT ABOUT
10 WHAT TUMMY TIME IS?

11 A THAT'S WHAT WE RECOMMEND SO THAT BABIES CAN
12 STRENGTHEN THEIR NECK. WE LAY THEM DOWN IN A PRONE
13 POSITION, ON THEIR BELLY, SO THEY CAN STRENGTHEN THEIR
14 NECK.

15 Q AND WITH BABY RYAN, DID HE -- IS THERE ANY
16 MENTION ABOUT HIS TUMMY TIME IN THIS VISIT?

17 A LET ME TAKE A LOOK.

18 THERE IS. IT LOOKS LIKE I NOTED THAT HE
19 DIDN'T LIKE TUMMY TIME.

20 Q IS THAT ABNORMAL OR NORMAL FOR A CHILD WHO'S
21 TWO MONTHS?

22 A IT CAN BE VERY NORMAL.

23 Q I ALSO SEE HE PREFERRED SLEEPING ON HIS RIGHT
24 SIDE; IS THAT CORRECT?

25 A YES, IT LOOKS LIKE THAT ON THE DOCUMENT.

26 Q IS THERE ANYTHING ABNORMAL TO YOU ABOUT THAT?

27 A NO.

28 Q IS IT SIGNIFICANT TO YOU THAT HIS RIGHT SIDE

1 WAS FLATTER -- THAT NOTATION THAT THE RIGHT SIDE WAS
2 FLATTER, WHAT ARE YOU REFERRING TO, ON PAGE 2058?

3 A USUALLY WHEN I REFER TO THAT, I'M LOOKING AT
4 SORT OF THE SYMMETRY OF WHAT THE HEAD LOOKS LIKE. AND
5 SOMETIMES WHEN BABIES HAVE A PREFERENCE FOR WHICH WAY
6 THEY LIE, YOU CAN GET SORT OF A FLATTER SIDE WHEN YOU
7 LOOK AT IT COMPARED TO THE OTHER SIDE. THAT'S WHAT I
8 WAS MENTIONING.

9 Q OKAY. BUT RELATIVELY NORMAL FOR THE FIRST
10 WELL-BABY VISIT, TO YOU?

11 A YES.

12 Q AND HOW MUCH DID HE WEIGH AT THE TIME?

13 A LET ME LOOK.

14 LOOKS LIKE 10.1 POUNDS, ACCORDING TO THE
15 CHART.

16 Q DID YOU NOTICE ANY AREAS OF ANY DEVELOPMENTAL
17 DEFICIENCIES ON THIS VISIT?

18 A LET ME LOOK.

19 NO. EVERYTHING WAS NORMAL.

20 Q TELL US WHEN IS THE NEXT TIME YOU SEE BABY
21 RYAN?

22 A THE NEXT VISIT WAS NOVEMBER 11, 2008.

23 Q AND WHAT WAS THE PURPOSE OF THAT VISIT?

24 A IT WAS WHAT WE CALL A SICK VISIT.

25 Q IN LOOKING AT YOUR NOTE, IS THERE ANYTHING
26 SIGNIFICANT ABOUT THIS VISIT?

27 A MOM WAS CONCERNED THAT THE BABY WAS SPITTING
28 AND ARCHING A BIT AFTER FEEDING, SO WE WERE TRYING TO

1 DETERMINE THE CAUSE OF THAT. HIS EXAM WAS NORMAL. HE
2 LOOKED WELL-HYDRATED; HE WASN'T DEHYDRATED. AND WE
3 DISCUSSED OPTIONS AND WE DECIDED TO OBSERVE AND RECHECK
4 HIM.

5 Q HOW MUCH DID HE WEIGH AT THIS VISIT?

6 A LET ME SEE.

7 11.72 POUNDS, ACCORDING TO THE CHART.

8 Q SO HE GAINED ABOUT A POUND AND A HALF?

9 A LOOKS LIKE THAT, YES.

10 Q AT THIS VISIT, THERE'S A NOTATION THAT YOU
11 JUST INDICATED ABOUT HIM ARCHING HIS BACK DURING
12 BREAST-FEEDING.

13 IS THERE INDICATION AT THIS TIME THAT
14 THERE'S -- BABY RYAN HAS TROUBLE FEEDING?

15 A HE HAD ADEQUATE WEIGHT GAIN AND HIS EXAM WAS
16 NORMAL, SO I WASN'T CONCERNED. I WANTED TO JUST WATCH
17 HIM.

18 Q LET'S DISCUSS THE NEXT VISIT.

19 WHAT WAS THE PURPOSE OF THIS VISIT?

20 A THIS WAS A WELL VISIT, A FOUR-MONTH WELL VISIT
21 IN NOVEMBER.

22 Q WAS THERE ANY SIGNIFICANT DIAGNOSIS AT THE
23 TIME OF THIS VISIT?

24 A LET ME LOOK.

25 IT WAS A ROUTINE VISIT. HIS EXAM LOOKED
26 NORMAL. WE DISCUSSED VACCINES AND STARTING SOLIDS
27 AFTER SIX MONTHS OF AGE. IT WAS A ROUTINE VISIT.

28 Q SO YOU DISCUSSED VACCINES AGAIN.

1 WAS BABY RYAN VACCINATED THEN?

2 A ACCORDING TO THE CHART, NO.

3 Q DO YOU KNOW WHY MS. DUVAL DECIDED NOT TO
4 VACCINATE HER SON?

5 A I DON'T REMEMBER.

6 Q BUT YOU HAVE PATIENTS THAT CHOOSE NOT TO
7 VACCINATE THEIR CHILDREN?

8 A THERE ARE A SUBSET OF PATIENTS THAT CHOOSE NOT
9 TO VACCINATE ON SCHEDULE; THAT'S CORRECT.

10 Q WHEN YOU SAY "ON SCHEDULE," IS THERE A SET
11 SCHEDULE TO VACCINATE?

12 A THERE'S A SCHEDULE WE FOLLOW PUT OUT BY THE
13 AMERICAN ACADEMY OF PEDIATRICS, BUT I DO HAVE SEVERAL
14 FAMILIES THAT HAVE AN ALTERNATIVE SCHEDULE AND WILL
15 VACCINATE AT A DIFFERENT TIME.

16 Q SO THE BABIES STILL GET VACCINATIONS, JUST
17 LATER IN TIME?

18 A THAT'S CORRECT.

19 Q DR. YIM, WHEN IS YOUR NEXT VISIT WITH BABY
20 RYAN?

21 A THE NEXT VISIT IS DECEMBER, AND IT LOOKS LIKE
22 IT WAS A FOLLOW-UP VISIT, A SICK VISIT.

23 Q YOU SAW HIM FOR THIS VISIT; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q DID YOU PROVIDE ANY RECOMMENDATIONS TO
26 MS. DUVAL AT THE TIME OF THIS VISIT?

27 A I DID. IT LOOKS LIKE HE WAS SEEN IN THE
28 EMERGENCY ROOM. SHE HAD CALLED, AND THE PHYSICIAN ON

1 CALL SUGGESTED THAT HE WAS EVALUATED, WHICH SHE HAD HIM
2 LOOKED AT, AND HE CAME IN FOR A FOLLOW-UP WITH ME. AND
3 HE LOOKED FAIRLY WELL. HE HAD A COLD, BUT OTHER THAN
4 THAT, I REASSURED MOM THAT HE LOOKED FINE AND JUST
5 CLOSELY MONITOR HIM AND FOLLOW-UP AS NEEDED.

6 Q IT LOOKS LIKE YOU SEE BABY RYAN AGAIN?

7 A YES, HIS NEXT VISIT WAS JANUARY, FOR A SICK
8 VISIT.

9 Q ANOTHER SICK VISIT?

10 A YES, THAT'S CORRECT.

11 Q TELL US WHAT ARE THE CHIEF COMPLAINTS DURING
12 THIS VISIT?

13 A IT LOOKS LIKE HE HAD A COUGH AND FEVER, COLD
14 SYMPTOMS.

15 Q DID MS. DUVAL INDICATE THAT HE WASN'T EATING
16 OR ANYTHING LIKE THAT?

17 A LET ME CHECK THE CHART.

18 IT LOOKS LIKE SHE MENTIONED THAT HE HAD
19 TROUBLE FEEDING OVERNIGHT, BUT THAT MORNING, HIS
20 FEEDING WAS FINE.

21 Q WHAT WAS YOUR RECOMMENDATION FOR MS. DUVAL
22 AFTER THIS VISIT?

23 A REASSURANCE, CONTINUE TO BREAST-FEED, MONITOR
24 HOW WELL HE WAS DRINKING. IF SHE NEEDED TYLENOL, SHE
25 COULD USE THAT FOR A TEMPERATURE. AND CALL IN A FEW
26 DAYS IF HE WAS WORSE.

27 Q DO YOU KNOW IF SHE WAS GIVING HER SON TYLENOL
28 AT THIS VISIT, OR DURING THE TIME OF THIS VISIT?

1 A LET ME LOOK AGAIN.

2 IT LOOKED LIKE THAT SHE DID GIVE HIM A DOSE OF
3 TYLENOL, WHICH SEEMED TO HELP.

4 Q SO BABY RYAN IS ABOUT FIVE MONTHS NOW; IS THAT
5 CORRECT?

6 A THAT'S CORRECT.

7 Q AND IT'S OKAY TO GIVE BABIES TYLENOL AT FIVE
8 MONTHS?

9 A YES, AT THE RIGHT DOSAGE, IT'S OKAY TO GIVE.

10 Q IS LOOKS LIKE THE NEXT VISIT IS ON JANUARY 26,
11 2009, BUT THAT'S NOT BY YOU?

12 A NO, THIS VISIT WAS MY PARTNER, DR. COLLO.

13 Q AND WHAT WAS THE PURPOSE OF THIS VISIT?

14 A LET ME LOOK.

15 IT LOOKS LIKE BABY RYAN WAS ILL AGAIN. HE HAD
16 A FEVER AND A COUGH. MY PARTNER'S EXAM WAS
17 UNREMARKABLE. IT LOOKED LIKE HE HAD A COLD, AND SHE
18 DISCUSSED OBSERVATION AND SALINE AND SUCTIONING HIS
19 NOSE AS NEEDED, AND HUMIDIFIER.

20 Q JUST A REGULAR SICKNESS?

21 A THAT'S CORRECT.

22 Q LET'S GO ON TO THE NEXT VISIT. THAT'S
23 MARCH 9, 2009.

24 DO YOU SEE THAT?

25 A I DO.

26 Q TELL US WHAT'S THE REASON FOR THE VISIT?

27 A LOOKS LIKE MOM WAS VERY CONCERNED ABOUT HIS
28 WEIGHT AND BEHAVIOR OVER THE LAST COUPLE OF WEEKS.

1 Q WHAT KIND OF BEHAVIOR?

2 A SHE MENTIONED THAT HER AND BABY RYAN'S FATHER
3 WERE APART, AND RECENTLY, HE WANTED TO SHARE CUSTODY OF
4 RYAN -- BABY RYAN. SO HE WAS STARTING TO HAVE VISITS
5 WITH THE BABY. BUT IT LOOKED LIKE, ACCORDING TO THE
6 CHART, BABY RYAN WASN'T SLEEPING WELL AND HAS SOME
7 TROUBLE FEEDING.

8 Q I CAN SEE IN THE NOTE THAT IT SAYS "NURSING
9 STRIKES."

10 WHAT ARE NURSING STRIKES?

11 A NURSING STRIKES ARE WHEN INFANTS REFUSE TO
12 BREAST-FEED FOR ONE REASON OR ANOTHER.

13 Q IS THAT COMMON FOR BABIES?

14 A IT CAN HAPPEN, YES.

15 Q WHAT ARE SOME OF THE CAUSES FOR BABIES TO GO
16 ON NURSING STRIKES?

17 A IF THEY'RE SICK, IF THE PARENTS ARE STRESSED,
18 IF THEY'RE HAVING SLEEPING ISSUES. THERE ARE ALL SORTS
19 OF DIFFERENT REASONS WHY.

20 Q HOW MUCH DID BABY RYAN WEIGH ON THIS DAY?

21 A IT LOOKS LIKE 13.97 POUNDS.

22 Q CAN YOU TELL US, IS THAT NORMAL FOR HIS AGE?

23 A LET ME LOOK AT THE GROWTH CHART.

24 IT LOOKED LIKE HE WAS UNDERNEATH THE 5TH
25 PERCENTILE ON THE GROWTH CHART. SO HE WAS STARTING TO
26 BECOME UNDERWEIGHT AT THIS POINT.

27 Q AND THE PAGE YOU'RE REFERRING TO IS 2044?

28 A THAT'S CORRECT.

1 MS. CHUNG: YOUR HONOR, 2044, THE GROWTH
2 CHART, WE'D LIKE TO PUBLISH.

3 MR. GUTERRES: NO OBJECTION, YOUR HONOR.

4 THE COURT: ALL RIGHT. GO AHEAD.

5 BY MS. CHUNG:

6 Q DR. YIM, I'VE GOT THIS EXHIBIT UP HERE.

7 IS IT YOUR UNDERSTANDING THIS IS BABY RYAN'S
8 GROWTH CHART FROM YOUR MEDICAL FILE?

9 A THAT'S CORRECT.

10 Q TELL US WHAT DOES THE LOWER HALF OF THIS CHART
11 SHOW US?

12 A THE LOWER HALF OF THE CHART SHOWS WEIGHT AND
13 THE PERCENTILES OF WEIGHT. THOSE ARE THE LINES.

14 Q SO THE WEIGHT'S ON THE RIGHT SIDE; IS THAT
15 CORRECT?

16 A BOTH SIDES.

17 Q OH.

18 A LEFT AND RIGHT.

19 Q WHY IS THIS CHART IMPORTANT TO YOU AS A
20 DOCTOR?

21 A IT GIVES US A GAUGE OF HOW WELL THE BABY IS
22 GROWING.

23 Q WHAT ABOUT THE TOP PART OF THE CHART?

24 A THE TOP PART OF THE CHART REFLECTS THE LENGTH.

25 Q ACCORDING TO THIS CHART -- TELL US ABOUT THIS
26 VERY FIRST DOT ON THE WEIGHT CHART.

27 A THE VERY FIRST DOT ON THE CHART WAS BABY
28 RYAN'S TWO-MONTH WELL VISIT.

1 Q CAN YOU TELL US WHAT PERCENTILE HE'S AT RIGHT
2 THERE?

3 A 25TH PERCENTILE, ACCORDING TO THIS CHART.

4 Q THESE LINES, WHAT DO THOSE MEAN?

5 A THOSE ARE PERCENTILES WHERE PATIENTS FALL. SO
6 ON THIS CHART, THE LOWEST PERCENTILE IS 5TH AND THE
7 HIGHEST PERCENTILE IS 95TH. SO IF YOU WERE ON THE 25TH
8 PERCENTILE FOR WEIGHT, IT MEANS APPROXIMATELY ONE
9 QUARTER OF PATIENTS YOUR AGE. SO IF BABY RYAN WAS TWO
10 MONTHS, A QUARTER OF PATIENTS THAT ARE TWO MONTHS OF
11 AGE WEIGH LESS THAN HE DID AND THREE QUARTERS OF
12 PATIENTS WEIGH MORE THAN HE DID.

13 Q SO HE WAS ON THE LOWER END OF THE SPECTRUM?

14 A THAT'S CORRECT.

15 Q THE NEXT DOT, CAN YOU TELL US WHAT AGE HE IS
16 APPROXIMATELY THERE?

17 A IT LOOKS LIKE THREE AND A HALF MONTHS.

18 Q AND IT LOOKS LIKE HE DROPS FROM ONE LINE ON
19 THE GROWTH CHART TO A LOWER LINE.

20 DO YOU SEE THAT?

21 A YES.

22 Q WHAT DOES THAT MEAN?

23 A IT COULD MEAN A NUMBER OF THINGS. HE COULD
24 HAVE BEEN SICK IN THE INTERIM AND THAT'S WHY HE FELL.
25 IT LOOKS LIKE HE WASN'T GAINING AS RAPIDLY AS HE DID
26 INITIALLY, BUT I DON'T KNOW FOR SURE WHY HE FELL THAT
27 SPECIFIC TIME.

28 Q WHERE IS THE NEXT DOT OR PLOT?

1 A IT LOOKS LIKE THE NEXT PLOT IS AT FOUR MONTHS.

2 Q THE ONE RIGHT NEXT TO IT?

3 A YES, THE ONE RIGHT NEXT TO IT.

4 Q WHAT PERCENTILE IS HE THERE?

5 A 10TH PERCENT.

6 Q SO HE'S DROPPING?

7 A HE WAS THE SAME PERCENTILE AS HE WAS AT THREE
8 AND A HALF MONTHS, SO 10TH AT THREE AND A HALF MONTHS
9 AND THEN TENTH AGAIN AT FOUR MONTHS.

10 Q AND AT TWO MONTHS HE WAS AT 25?

11 A THAT'S CORRECT.

12 Q WHAT ABOUT THE NEXT ONE? HOW OLD IS HE THEN?

13 A LOOKS LIKE FIVE AND A HALF MONTHS.

14 Q LOOKS LIKE HE'S AT THE VERY BOTTOM OF THAT
15 LAST LINE OR OFF THE CHART?

16 A YES.

17 Q WHAT DOES THAT MEAN?

18 A IT LOOKS LIKE HE'S STARTING TO BECOME
19 UNDERWEIGHT. HE'S FALLING OFF THE CURVE OF THE CHART A
20 BIT.

21 Q AND THE PURPOSE OF THIS GROWTH CHART AND
22 PLOTTING THESE DOTS IS SIGNIFICANT TO YOU TO KIND OF
23 SEE A BROAD PICTURE OF BABY RYAN'S GROWTH; IS THAT
24 CORRECT?

25 A YES.

26 Q SO IS IT SIGNIFICANT TO YOU THAT HE'S NOW ON
27 THE BOTTOM OF THESE GROWTH CHART LINES?

28 A HE WAS STARTING TO HAVE SOME PROBLEMS FEEDING

1 AFTER THIS POINT, BUT I BELIEVE HE HAD A COUPLE OF SICK
2 VISITS IN BETWEEN HERE THAT COULD HAVE CAUSED HIS
3 WEIGHT TO FALL.

4 Q AND AFTER THAT, THERE'S THREE MORE DOTS?

5 A UH-HUH.

6 Q IT'S CLEAR NOW HE'S COMPLETELY OFF THE CHART?

7 A RIGHT.

8 Q IN TREATING BABY RYAN DURING THIS TIME, IS
9 THIS NORMAL FOR A BABY?

10 A HE SHOULD BE ON THE CHART.

11 Q DID SEEING THIS CAUSE ANY CONCERN FOR YOU AS
12 HIS DOCTOR?

13 A YES. I RECALL THE SEVEN AND A HALF MONTH
14 VISIT -- THAT WAS, LIKE, HIS SIX-MONTH VISIT -- AND HE
15 HAD FALLEN OFF. AND WE HAD TALKED ABOUT SOLIDS AT THE
16 TIME, AND I BELIEVE SHE AGREED TO -- WE WERE GOING TO
17 START.

18 Q AT SEVEN AND A HALF MONTHS?

19 A YES, CLOSE TO THAT.

20 Q IS THAT APPROPRIATE AT SEVEN AND A HALF
21 MONTHS?

22 A WE USUALLY RECOMMEND STARTING SOLIDS AT SIX
23 MONTHS OF AGE, BUT DEPENDING ON HOW THE BABY'S DOING
24 AND THE PARENTS, SOMETIMES WE START AT A LATER DATE,
25 SOMETIMES AT A SLIGHTLY EARLIER DATE.

26 Q AND YOU DIDN'T HAVE A PROBLEM WITH MS. DUVAL
27 DOING IT AT SEVEN AND A HALF MONTHS, DID YOU?

28 A NO.

1 Q SO GOING BACK TO THE MARCH 9, 2009, VISIT,
2 WHAT WERE YOUR RECOMMENDATIONS FOR MS. DUVAL AT THIS
3 TIME?

4 A LET ME CHECK THE CHART AGAIN.

5 IT LOOKS LIKE BABY RYAN MIGHT HAVE HAD SOME
6 SEPARATION ANXIETY AND PERHAPS THAT'S WHY HE WAS GOING
7 ON NURSING STRIKES AND HAVING SOME BEHAVIORAL ISSUES.
8 ALSO, MOM WAS STARTING TO SEE A LACTATION CONSULTANT
9 AND WE WANTED TO ORDER SOME LABS TO MAKE SURE THAT
10 EVERYTHING WAS OKAY.

11 Q DID YOU GET THOSE LAB RESULTS BACK?

12 A I DID.

13 Q WAS THERE ANYTHING SIGNIFICANT ABOUT THOSE LAB
14 RESULTS?

15 A LET ME LOOK.

16 IT LOOKS LIKE BABY RYAN HAD LABS DONE
17 MARCH 11TH, AND THE ONLY THING OF SIGNIFICANCE WAS THAT
18 HE WAS SLIGHTLY ANEMIC. BUT HE LOOKED PRETTY
19 WELL-HYDRATED, THE LEAD WAS NORMAL, SO NOTHING TOO
20 SIGNIFICANT ON THOSE INITIAL LABS.

21 Q DOCTOR, CAN YOU TELL ME WHAT PAGE YOU'RE
22 LOOKING AT?

23 A OH, I'M SORRY. 2054.

24 Q IS IT TYPICAL FOR BABIES TO BE SLIGHTLY ANEMIC
25 AT SIX, SEVEN MONTHS OF AGE?

26 A IT IS, ESPECIALLY WHEN THEY'RE BREAST-FEEDING,
27 SOMETIMES THEY WILL BE A LITTLE BIT ANEMIC.

28 Q SO IT'S -- IS IT YOUR UNDERSTANDING THAT

1 MS. DUVAL WAS STRICTLY BREAST-FEEDING UP UNTIL ABOUT
2 SEVEN AND A HALF MONTHS?

3 A I BELIEVE SO, YES.

4 Q AND SHE STARTED INTRODUCING SOLID FOODS AFTER
5 THAT?

6 A YES, I BELIEVE SO.

7 Q DID YOU GIVE HER ANY RECOMMENDATIONS ON WHAT
8 KINDS OF SOLID FOODS TO GIVE THE BABY?

9 A I DON'T REMEMBER SPECIFICALLY, BUT WE HAVE
10 HANDOUTS THAT WE GIVE PARENTS AND WE TALK ABOUT THE
11 FOODS THAT WE START. SINGLE-STAGE FOODS LIKE CEREALS
12 AND VEGETABLES, FRUITS, THINGS LIKE THAT.

13 Q WE FINISHED OFF WITH THE MARCH 9, 2009, VISIT.
14 AND I SEE THE NEXT NOTE FROM YOUR FILE IS A
15 TELEPHONE MESSAGE?

16 A YES.

17 Q IS THIS WHEN YOU START HAVING CONTACT WITH
18 MR. RYAN MILLS?

19 A YES. ACCORDING TO THE CHART, IT LOOKS LIKE I
20 SPOKE WITH MR. MILLS REGARDING THE LAB TESTS.

21 Q TELL US ABOUT YOUR NEXT VISIT WITH BABY RYAN.

22 A THE NEXT VISIT WAS A WELL VISIT. HE WAS ABOUT
23 SEVEN AND A HALF MONTHS AT THE TIME.

24 Q THAT VISIT -- ARE WE LOOKING AT PAGE NO. 2075?

25 A YES, PAGE 2075.

26 THE COURT: BEFORE WE GET INTO THAT, I THINK I
27 NEED TO TAKE A SHORT RECESS FOR THE SAKE OF THE JURY.

28 SO WE'LL BE AT RECESS FOR ABOUT 10 MINUTES.

1 AND ALL JURORS, PLEASE REMEMBER THE ADMONITION
2 ABOUT NO CONTACT WITH ANYONE ABOUT THIS CASE AND NOT
3 EXPRESSING OPINIONS. ABOUT 10 MINUTES.

4 WE ARE NOW IN RECESS.

5 (JURY EXCUSED)

6 (RECESS)

7 (JURY PRESENT)

8 THE COURT: WE'RE ON THE RECORD. EVERYBODY IS
9 PRESENT. MS. CHUNG, YOU MAY CONTINUE.
10 BY MS. CHUNG:

11 Q DR. YIM, BEFORE THE BREAK, WE WERE TALKING
12 ABOUT THE SIX-MONTH WELL VISIT.

13 DO YOU HAVE THAT NOTE IN FRONT OF YOU?

14 A YES.

15 Q AND WHICH PAGE ARE YOU LOOKING AT?

16 A 2075.

17 Q AND TELL US WHAT'S SIGNIFICANT ABOUT THIS
18 PARTICULAR VISIT.

19 A IT LOOKS LIKE THE -- BABY RYAN HAS BEEN SEEN
20 BY HIS FATHER NOW. AND THE PATIENT -- BABY RYAN,
21 EXCUSE ME, IS STILL GOING ON SOME NURSING STRIKES AND
22 NOT SLEEPING AS WELL.

23 Q ANYTHING ELSE?

24 A MS. DUVAL WAS TALKING ABOUT HOW BABY RYAN'S
25 BEEN FEEDING WITH HER, AND SHE'S BEEN GETTING SOME HELP
26 FROM A LACTATION CONSULTANT. SHE STARTED TO WORK.

27 Q I'M SORRY, SHE STARTED TO WORK?

28 A IT LOOKS LIKE MS. DUVAL HAD STARTED WORKING AT

1 THIS TIME.

2 Q OH, GOING BACK TO WORK?

3 A I BELIEVE SO.

4 Q WAS THERE ANYTHING ABOUT THE BABY'S
5 DEVELOPMENTAL STATUS AT THIS TIME?

6 A LET ME LOOK.

7 IT LOOKS LIKE HE WAS NOT YET ROLLING BOTH
8 WAYS, ACCORDING TO THIS CHART.

9 Q IS THAT TYPICAL FOR A SIX-MONTH-OLD, TO ROLL
10 LEFT AND RIGHT?

11 A MANY SIX-MONTH-OLDS DO ROLL LEFT AND RIGHT BUT
12 NOT ALL SIX-MONTH-OLDS WILL DO IT ON TIME.

13 Q DID HE MEET THE OTHER DEVELOPMENTAL
14 MILESTONES?

15 A ACCORDING TO THE CHART, YES.

16 Q HOW MUCH DID HE WEIGH AT THIS TIME?

17 A LET ME LOOK.

18 HE WAS 13.88 POUNDS.

19 Q AND WE'VE ALREADY DISCUSSED, ON THE GROWTH
20 CHART, HE'S ALREADY OFF THE CHART BY NOW?

21 A THAT'S CORRECT.

22 Q AT THIS WELL-BABY VISIT WITH THE DEVELOPMENTAL
23 MILESTONE OF NOT ROLLING BACK AND FORTH AND BEING OFF
24 THE GROWTH CHART, DID THAT CONCERN YOU?

25 A IT DID, BECAUSE I ASKED FOR BABY RYAN TO COME
26 BACK FOR A WEIGHT CHECK IN A FEW WEEKS AND WE DISCUSSED
27 SOLIDS AGAIN WITH MOM, WITH MS. DUVAL.

28 Q DID SHE COME BACK IN TWO WEEKS?

1 A LET ME LOOK.

2 SHE DID HAVE A WEIGHT CHECK ON THE 31ST OF
3 MARCH.

4 Q HOW MUCH DID THE BABY WEIGH AT THAT TIME?

5 A 14.06 POUNDS.

6 Q AND ARE YOU LOOKING AT PAGE 2080?

7 A YES, 2080.

8 Q SO HE'S GAINED A LITTLE BIT OF WEIGHT IN A
9 COUPLE WEEKS?

10 A YES.

11 Q WHAT RECOMMENDATIONS DID YOU GIVE TO HER AT
12 THIS TIME?

13 A I ENCOURAGED SOLID FEEDING AND DISCUSSED THE
14 FOODS TO START -- AGAIN, CEREALS AND VEGETABLES AND
15 FRUITS. AND I WANTED TO BRING BABY RYAN BACK IN TO
16 CHECK HIS WEIGHT TO SEE IF WE'VE MADE PROGRESS.

17 Q AT THIS TIME, AT THE END OF MARCH 2009, HOW
18 DID BABY LOOK PHYSICALLY? DID HE LOOK MALNOURISHED,
19 SUPER SKINNY?

20 A I DIDN'T NOTE A PHYSICAL EXAM ON THE 31ST, BUT
21 WHEN HE CAME IN TWO WEEKS PRIOR, HIS EXAM WAS NORMAL
22 ACCORDING TO MY NOTES, OTHER THAN BEING OFF THE CHART
23 FOR WEIGHT.

24 Q SO OTHER THAN BEING UNDERWEIGHT, HE LOOKED,
25 PHYSICALLY, LIKE A NORMAL BABY?

26 A YES, AT THE TIME, YES.

27 Q AND YOU'RE REFERRING TO YOUR CHART, PAGE
28 NO. 2075?

1 A LET ME SEE.

2 2075, CORRECT.

3 Q DID YOU NOTE ANY ALLERGIES OF THE BABY AT THIS
4 TIME?

5 A I DID NOT SPECIFICALLY NOTE ANY ALLERGIES WITH
6 THE BABY AT THIS TIME.

7 Q WHAT DOES DERMATOLOGIC MEAN?

8 A SKIN.

9 Q DID YOU MAKE A NOTATION ON MARCH 16, 2009,
10 UNDER DERMATOLOGIC, FOR THE BABY?

11 A CAN YOU TELL ME THE PAGE YOU'RE AT?

12 Q SURE. 2076.

13 A OKAY. I THINK I'D MADE A COMMENT THAT
14 MS. DUVAL HAD NOTED A LITTLE RED SPOT ON THE OUTER PART
15 OF HIS RIGHT ARM, THAT SHE HAD MENTIONED THAT TO ME.

16 Q DID YOU OBSERVE THAT SPOT?

17 A I DID, ACCORDING TO THE NOTE. IT WAS A SMALL,
18 PINK, ROUND SPOT, ON PAGE 2077 UNDER SKIN.

19 Q THANK YOU. SO WE'VE GONE THROUGH THE
20 SIX-MONTH WELL-BABY VISIT.

21 DID YOU GET ANOTHER PHONE CALL FROM MR. MILLS?

22 A LET ME LOOK.

23 ON THE 16TH OF MARCH -- PAGE 2074 -- I SPOKE
24 TO MR. MILLS ABOUT THE LABS THAT WERE DONE A FEW DAYS
25 PRIOR. AND ACCORDING TO MY NOTE, HE HAD QUESTIONS
26 REGARDING WHAT SOLID FOODS HE COULD GIVE BABY RYAN.

27 Q DID YOU HAVE -- DID YOU MAINTAIN PHONE CONTACT
28 WITH MR. MILLS AFTER MARCH 16, 2009?

1 A I ATTEMPTED TO CALL HIM ON THE 31ST, ACCORDING
2 TO MY NOTE, PAGE 2079. AND I LEFT A VOICEMAIL
3 REGARDING A WEIGHT CHECK APPOINTMENT AND A CHECKUP
4 APPOINTMENT, BUT I DIDN'T SPEAK WITH HIM DIRECTLY.

5 Q I'M SORRY, I DIDN'T HEAR THAT LAST PART.
6 YOU DID SPEAK WITH HIM?

7 A I DID NOT SPEAK WITH HIM DIRECTLY. I LEFT A
8 MESSAGE ON HIS VOICEMAIL.

9 Q LET'S MOVE ON TO THE NEXT VISIT.
10 I'M SORRY. WE'RE GOING TO BACKTRACK A LITTLE
11 BIT BACK TO 2080.

12 A OKAY.

13 Q AT THE VERY BOTTOM, THERE'S A NOTATION UNDER
14 ASSESSMENT AND PLAN:

15 "WEIGHT CHECK IN TEN DAYS AND
16 ASSURANCE GIVEN."

17 WHAT DOES THAT MEAN?

18 A WELL, THE DIAGNOSIS WAS UNDERWEIGHT BECAUSE HE
19 HAD FALLEN OFF THE CHART, AND MOM'S STARTING SOLIDS
20 NOW, ACCORDING TO THIS. AND I WANTED TO RELOOK AT
21 WHERE HE WAS GOING ON THE CHART IN TEN DAYS. AND I
22 SUPPORTED MS. DUVAL THROUGH HER DECISION TO START
23 SOLIDS AT THIS POINT. THAT'S WHAT REASSURANCE MEANS.
24 I REASSURED HER.

25 Q OKAY. I THINK THE NEXT VISIT IS ON PAGE 2083?

26 A YES. THIS WAS BABY RYAN'S NINE-MONTH VISIT IN
27 APRIL.

28 Q SO BY NOW, WAS HE ALREADY EATING SOLID FOODS?

1 A YES, ACCORDING TO THE CHART, HE WAS STARTING
2 TO EAT SOLID FOODS.

3 Q IS THERE ANYTHING SIGNIFICANT ABOUT THIS
4 PARTICULAR VISIT?

5 A LET ME LOOK.

6 WE JUST HAD DISCUSSIONS ABOUT THE APPROPRIATE
7 FOODS TO FEED HIM, ENCOURAGING MORE FIBER. I THINK HE
8 WAS A BIT CONSTIPATED. I THINK HE HAD ANOTHER COLD, SO
9 WE DISCUSSED THAT. AND I WANTED TO CONTINUE FOLLOWING
10 HIS WEIGHT.

11 Q AT THIS POINT IN TIME, A NINE-MONTH WELL
12 VISIT, WHAT KIND OF SOLID FOODS WERE YOU RECOMMENDING
13 FOR BABY RYAN?

14 A AT NINE MONTHS, YOU CAN START SOFT TABLE FOODS
15 THAT ARE IRON-ENRICHED CEREALS, GRAINS, FRUITS, EVEN
16 MEAT IF YOU'VE DONE SOME OF THE OTHERS BEFOREHAND.

17 Q AND IT SAYS THAT HE'S CURRENTLY EATING
18 AVOCADO; IS THAT CORRECT?

19 A YES, I SEE THAT.

20 Q WHAT ELSE WAS HE EATING?

21 A IT LOOKS LIKE, ACCORDING TO THE CHART,
22 CHICKEN, TURKEY, BANANAS, CORN, PRUNES, SQUASH, AND HE
23 WAS TAKING SOME PUMPED BREAST MILK.

24 Q WHAT WAS HIS DEVELOPMENTAL -- WHAT WAS THE
25 STATUS OF HIS DEVELOPMENTAL MILESTONES AT THIS TIME?

26 A LET ME LOOK UNDER HIS DEVELOPMENTAL HISTORY ON
27 2084.

28 LOOKS LIKE HE HAD NOT YET STARTED CRAWLING OR

1 CRUISING, BUT HE WAS NOW ROLLING.

2 Q WHAT'S CRUISING?

3 A IT'S WHERE A BABY IS STANDING WITH SUPPORT AND
4 CAN MOVE A FOOT OVER AND AN ARM OVER BUT HOLDING ON.
5 SO NOT INDEPENDENTLY WALKING BUT SUPPORTED WALKING.

6 Q HOW MUCH DID HE WEIGH AT THIS TIME?

7 A LET ME SEE.

8 14.55 POUNDS, ACCORDING TO THIS CHART.

9 Q SO HE HAD GAINED ABOUT A HALF A POUND SINCE
10 THE MONTH PRIOR; IS THAT CORRECT?

11 A YES.

12 Q LET'S DISCUSS THE NEXT VISIT, DR. YIM.

13 WHEN WAS THAT VISIT?

14 A LOOKS LIKE MAY 28TH.

15 IS THAT 2087?

16 Q PAGE NO. 2087?

17 A IS THAT CORRECT?

18 Q WHAT'S THE PURPOSE OF THIS VISIT?

19 A IT'S ANOTHER WEIGHT CHECK. MOM WAS CONCERNED
20 THAT BABY RYAN HADN'T BEEN EATING SOLIDS AS WELL. IT
21 LOOKS LIKE HE HAD VISITED HIS FATHER ON THE WEEKEND AND
22 WASN'T EATING AS WELL. HE WAS STILL NURSING. AND SHE
23 WAS ATTEMPTING TO -- EXCUSE ME. SHE WAS ATTEMPTING TO
24 GIVE HIM SOLID FOODS AGAIN.

25 Q SO BY NOW HE HAD BEEN EATING SOLID FOODS, JUST
26 AT THE TIME YOU SAW HIM, ON MAY 28TH, HE JUST WASN'T
27 EATING AS MUCH; IS THAT CORRECT?

28 A AT THIS VISIT, IT DOESN'T LOOK LIKE HE WAS

1 EATING AS MUCH AS HE HAD BEEN BEFORE.

2 Q HOW MUCH DID HE WEIGH AT THIS VISIT?

3 A IT LOOKS LIKE 15.19 POUNDS.

4 Q YOU MENTIONED SEPARATION ANXIETY EARLIER, AT
5 ONE OF THE EARLIER VISITS.

6 DO YOU REMEMBER THAT?

7 A YES, I DO.

8 Q AND CAN YOU TELL US A LITTLE BIT ABOUT WHAT
9 THAT MEANS?

10 A SEPARATION ANXIETY IS SORT OF A DEVELOPMENTAL
11 STAGE THAT MOST, IF NOT ALL, CHILDREN GO THROUGH. SO
12 THEY HAVE THEIR PRIMARY CARETAKERS THAT THEY'RE USED TO
13 SEEING AND THEY'RE COMFORTABLE WITH THEM. AND THEN
14 WHEN THEY SEE SOMEONE THEY'RE NOT USED TO SEEING, MAYBE
15 A NEIGHBOR OR A FRIEND, THEY ARE VERY ATTACHED TO THEIR
16 PRIMARY CARETAKER. SO THEY OFTEN WILL CRY OR FUSS WITH
17 OTHER PEOPLE OTHER THAN THEIR PARENTS OR PERHAPS THEIR
18 GRANDPARENTS.

19 Q CAN THAT CAUSE STRESS FOR A BABY?

20 A WELL, I BELIEVE IT CAUSES STRESS FOR THE
21 PARENTS, NOT NECESSARILY FOR THE INFANT.

22 Q IF A BABY HAS SEPARATION ANXIETY, WHAT WOULD
23 YOU RECOMMEND FOR A PARENT?

24 A TIME USUALLY HEALS MOST THINGS, AND OVER TIME,
25 MOST CHILDREN GET USED TO SEEING OTHER PEOPLE OTHER
26 THAN THE CORE FAMILY. SO THERE'S NOT MUCH INTERVENTION
27 THAT YOU NEED TO DO OTHER THAN REASSURANCE AND
28 COMFORTING THE CHILD APPROPRIATELY.

1 Q CAN THAT ANXIETY CAUSE EATING ISSUES?

2 A I SUPPOSE IF IT'S OUT OF THE REALM OF NORMAL
3 IT MAY, BUT MOST CHILDREN I SEE, SEPARATION ANXIETY IS
4 VERY NORMAL.

5 Q WHAT RECOMMENDATIONS DID YOU GIVE TO MS. DUVAL
6 AT THIS TIME OF THIS VISIT?

7 A ON PAGE 2087, THIS VISIT?

8 Q YES. YES, THANK YOU.

9 A OKAY. WE -- LET'S SEE, HIS WEIGHT WAS 15.19.
10 SO I WANTED, ACCORDING TO THE CHART, TO MONITOR HIS
11 DEVELOPMENT BECAUSE IT LOOKED LIKE HE HADN'T STARTED
12 CRUISING AT THE PRIOR VISIT, AND WE DISCUSSED POSSIBLY
13 SENDING BABY RYAN TO REGIONAL CENTER FOR EVALUATION.

14 Q SO IF -- IS THAT SOMETHING YOU TYPICALLY DO
15 WITH A BABY WHO'S UNDERWEIGHT?

16 A WE CAN SEND TO REGIONAL CENTER. IT'S A
17 STATE-FUNDED CENTER THAT CAN DEAL WITH DEVELOPMENTAL
18 ISSUES, FEEDING ISSUES. SO WE CAN DO THAT, YES.

19 Q OKAY. AND YOU MADE THAT RECOMMENDATION TO
20 MS. DUVAL?

21 A I DISCUSSED IT WITH MS. DUVAL AT THIS VISIT,
22 ACCORDING TO THE CHART.

23 Q DO YOU KNOW IF SHE EVER WENT TO THE REGIONAL
24 CENTER?

25 A I DON'T KNOW THAT.

26 Q DR. YIM, WERE THERE ANY ADDITIONAL PHONE
27 CONVERSATIONS YOU HAD WITH MR. MILLS?

28 A LET ME LOOK.

1 FOR CLARIFICATION, DO YOU MEAN AFTER THE 28TH
2 OF MAY?

3 Q YES.

4 A LET ME LOOK.

5 I DID CALL MR. MILLS JUNE 17TH, AND I SPOKE
6 WITH HIM, ACCORDING TO THE CHART, TO LET HIM KNOW OF
7 RYAN'S APPOINTMENT -- BABY RYAN'S APPOINTMENT AT 2:00
8 THAT DAY.

9 Q HAVE YOU EVER SEEN MR. MILLS AT ANY OF THE
10 ACTUAL DOCTOR'S APPOINTMENTS PRIOR TO JUNE 17, 2009?

11 A I DID SEE MR. MILLS ONCE IN APRIL, AND BABY
12 RYAN WAS NOT PRESENT. HE HAD COME IN TO TALK ABOUT
13 SOLID FEEDING, I BELIEVE, JUST WHAT HE COULD GIVE BABY
14 RYAN.

15 Q SO MR. MILLS JUST CAME BY TO TALK TO YOU
16 WITHOUT THE BABY?

17 A THAT'S CORRECT. WE JUST HAD A LITTLE CONSULT
18 IN THE OFFICE.

19 Q SO YOUR PRIMARY CONTACT WITH MR. MILLS IS
20 MOSTLY PHONE CALLS; IS THAT CORRECT?

21 A YES, THAT'S CORRECT.

22 Q AND DURING THESE PHONE CALLS, CAN YOU TELL ME
23 A LITTLE BIT ABOUT WHAT THE PURPOSE OF THE PHONE CALLS
24 WERE?

25 A I BELIEVE SOME OF THEM WERE JUST REMINDERS
26 ABOUT WHEN BABY RYAN'S APPOINTMENTS WERE. OTHERS WERE
27 DISCUSSING WITH MR. MILLS BABY RYAN'S LAB RESULTS. AND
28 I BELIEVE THAT WAS THE EXTENT. WE TALKED ABOUT SOLID

1 FEEDING AND WHAT BABY RYAN COULD HAVE FOR SOLID FOODS.
2 THAT WAS ANOTHER CONVERSATION THAT I RECALL.

3 Q IS THERE ANOTHER VISIT BABY RYAN HAS WITH YOUR
4 OFFICE AFTER MAY 28, 2009?

5 A YES. PAGE 2091.

6 Q OKAY. THANK YOU.

7 A BABY RYAN WAS HAVING SOME FEEDING
8 DIFFICULTIES, ON JUNE 17TH, AND CAME INTO THE OFFICE
9 AND SAW MY PARTNER, DR. COLLO.

10 Q OKAY. SO HE'S STILL HAVING FEEDING PROBLEMS
11 AT THIS TIME.

12 AND ARE THERE ANY SPECIFIC FEEDING PROBLEMS
13 THAT'S NOTED?

14 A LET ME LOOK AT HER NOTES BECAUSE I DIDN'T SEE
15 THE PATIENT THAT DAY.

16 ACCORDING TO DR. COLLO'S NOTES, HE WAS HAVING
17 SOME TROUBLE WITH THE SOLIDS, BUT BREAST-FEEDING. HIS
18 EXAM LOOKED NORMAL OTHER THAN HIM BEING SMALLER BECAUSE
19 HE WAS UNDERWEIGHT, ACCORDING TO HER ASSESSMENT. HE
20 WAS NOT DEHYDRATED. AND HE WAS TEETHING, HE WAS
21 GETTING A NEW TOOTH, SO DR. COLLO FELT THAT PERHAPS THE
22 REDUCTION IN SOLIDS MAY BE SECONDARY TO THE TOOTH
23 COMING IN. SHE SUGGESTED HAVING A FEEDING EVALUATION
24 AT THE CHILD DEVELOPMENTAL CENTER AND GAVE THE NUMBER
25 TO MS. DUVAL.

26 Q DO WE KNOW HOW MUCH THE BABY WEIGHED AT THE
27 TIME OF THIS VISIT?

28 A LET ME LOOK.

1 I DON'T ACTUALLY SEE THE WEIGHT ON THE CHART.

2 Q DID DR. COLLO RECOMMEND ANY TYPES OF FOODS FOR
3 MS. DUVAL TO GIVE BABY RYAN AT THE TIME OF THIS VISIT?

4 A I DON'T KNOW, BASED ON THE NOTES. THIS IS ALL
5 I KNOW THAT THEY DISCUSSED, ARE THE NOTES.

6 Q BASED ON YOUR LOOKING AT THAT NOTE, DO WE KNOW
7 WHAT MS. DUVAL WAS FEEDING HER BABY?

8 A BASED ON THE NOTE, IT LOOKS LIKE SHE WAS
9 OFFERING SOLIDS FOUR TO FIVE TIMES A DAY, CHOPPED
10 FOODS, CHICKEN, PEAS, BANANA, APPLE; BREAST-FEEDING
11 FIVE TO SIX TIMES A DAY, THREE TIMES AT NIGHT. SO THEY
12 MUST HAVE HAD A DISCUSSION IN THE OFFICE.

13 Q SO THE REFERRAL TO THE REGIONAL CENTER, THAT
14 WAS MADE BY DR. COLLO; IS THAT CORRECT?

15 A IT LOOKS LIKE THE CHILD DEVELOPMENTAL --
16 DEVELOPMENT CENTER, WHICH IS A DIFFERENT PLACE, FOR A
17 FEEDING EVALUATION. ANOTHER RESOURCE FOR PARENTS THAT
18 HAVE CHILDREN THAT HAVE FEEDING ISSUES.

19 Q IT'S NOT THE REGIONAL CENTER; IT'S A
20 COMPLETELY DIFFERENT OFFICE?

21 A THIS WAS A DIFFERENT OFFICE, I BELIEVE, THAT
22 SHE WAS REFERRING TO.

23 Q THIS CHILD DEVELOPMENT CENTER WOULD OFFER WHAT
24 KIND OF SERVICES?

25 A THEY OFFER OCCUPATIONAL THERAPY, PHYSICAL
26 THERAPY, THINGS LIKE THAT.

27 Q IS THERE ANY ADDITIONAL VISIT AFTER JUNE 17TH,
28 2009?

1 A LET ME SEE.

2 THAT WAS THE LAST VISIT.

3 Q AND DR. COLLO'S RECOMMENDATION TO THE CHILD
4 DEVELOPMENT CENTER, YOU SAID IT WAS FOR OCCUPATIONAL
5 THERAPY.

6 WHAT WOULD THE OCCUPATIONAL THERAPY BE?

7 A THEY EVALUATE PATIENTS THAT HAVE DIFFICULTY
8 WITH FEEDING, WHETHER OR NOT IT'S MUSCLE TONE,
9 STRENGTH, HOW THEY'RE POSITIONED WHEN THEY'RE FED, THAT
10 SORT OF THING.

11 Q "PHYSICAL THERAPY," IT MEANS WHAT?

12 A IT'S SIMILAR. IT EVALUATES PATIENTS THAT HAVE
13 TROUBLE WITH MOTOR SKILLS -- WALKING, SITTING,
14 ROLLING -- THAT HAVE TO DO WITH THE LARGER MUSCLE,
15 LEGS, ARMS, THINGS LIKE THAT.

16 Q WERE YOU SUPPORTIVE OF DR. COLLO'S
17 RECOMMENDATION TO MS. DUVAL TO GET TO THE CHILD
18 DEVELOPMENT CENTER?

19 A YES.

20 Q AND IS THAT BASED ON YOUR OWN PERSONAL
21 OBSERVATIONS AND HIS FALLING OFF THE GROWTH CHART?

22 A YES, I BELIEVE SO.

23 Q DR. YIM, CAN YOU TURN TO PAGE 2093, PLEASE.

24 A YES.

25 Q CAN YOU PLEASE TELL US WHAT'S HERE IN YOUR
26 CHART.

27 A THIS WAS A PHONE CALL TO MS. DUVAL. LOOKS
28 LIKE MS. DUVAL ATTEMPTED TO CALL FOR OCCUPATIONAL

1 THERAPY TO SCHEDULE AN APPOINTMENT, BUT SHE WAS HAVING
2 DIFFICULTY GETTING THROUGH. WE ALSO DISCUSSED THE NEED
3 FOR POSSIBLE NUTRITIONIST AND OTHER STUDIES TO EVALUATE
4 WHY BABY RYAN WAS NOT GAINING WEIGHT.

5 Q SO THIS IS JUST A FOLLOW-UP FOR MS. DUVAL
6 BECAUSE SHE HADN'T GOTTEN AHOLD OF ANYONE; IS THAT
7 CORRECT?

8 A YES, I BELIEVE SO.

9 Q AND THE CHILD DEVELOPMENT CENTER'S PHYSICAL
10 THERAPY, OCCUPATIONAL THERAPY, IS THAT A
11 MULTIDISCIPLINARY ASSESSMENT?

12 A I BELIEVE THEY JUST DO OCCUPATIONAL THERAPY
13 AND PHYSICAL THERAPY. I DON'T RECALL IF THEY ALSO DO
14 SPEECH AND LANGUAGE.

15 Q DOES MS. DUVAL CONTINUE TO HAVE ANY TROUBLE
16 GETTING INTO THE CHILD DEVELOPMENT CENTER?

17 A IT LOOKS LIKE ON MY NOTE, PAGE 2093, THAT I --
18 I WAS GOING TO TRY TO CALL OCCUPATIONAL THERAPY MYSELF
19 TO SEE IF I COULD SCHEDULE AN APPOINTMENT FOR HER
20 BECAUSE SHE WAS HAVING DIFFICULTY.

21 Q AND DO YOU?

22 A I'M SORRY. CAN YOU REPEAT THAT?

23 Q DO YOU CALL?

24 A DO I NORMALLY CALL OR DID I CALL --

25 Q DID YOU CALL AFTER THAT NOTE?

26 A DID I CALL THE OCCUPATIONAL THERAPIST?

27 Q YES?

28 A YES, I DID, I BELIEVE, CALLED.

1 Q NOW --

2 A AND -- SORRY.

3 Q I'M SORRY. GO AHEAD.

4 A I DID CALL AND I GOT -- I BELIEVE I GOT
5 THROUGH TO THEM, AND ASKED MOM TO CALL TO MAKE HER
6 APPOINTMENT.

7 Q DO WE KNOW IF SHE EVER GOT INTO THAT FACILITY?

8 A I DON'T KNOW.

9 Q DR. YIM, DO YOU SPEAK WITH MR. MILLS AGAIN?

10 A AFTER JUNE 18TH, YOU MEAN?

11 Q AFTER JUNE 18TH, YES.

12 A LET ME LOOK.

13 IT LOOKS LIKE I DID SPEAK WITH MR. MILLS ON
14 JUNE 23RD.

15 Q AND ARE YOU REFERRING TO PAGE 2097?

16 A YES.

17 Q AND WHAT WAS THAT CONVERSATION ABOUT?

18 A I'M SORRY. LET ME CORRECT MYSELF. I LEFT A
19 MESSAGE ON HIS VOICEMAIL; I DIDN'T ACTUALLY SPEAK WITH
20 HIM, ACCORDING TO MY NOTE.

21 Q OKAY.

22 A I WAS -- I WANTED TO CALL HIM TO LET HIM KNOW
23 THAT WE HAD SUGGESTED OUTPATIENT EVALUATION OF BABY
24 RYAN'S FEEDING. I WANTED TO NOTIFY HIM THAT HE HAD
25 BEEN -- BABY RYAN HAD BEEN SEEN BY MY PARTNER THE WEEK
26 BEFORE AND WE HAD MADE RECOMMENDATIONS TO MS. DUVAL FOR
27 OCCUPATIONAL THERAPY EVALUATION. AND I ASKED HIM TO
28 CALL ME IF HE HAD ANY QUESTIONS.

1 Q IT SEEMS LIKE YOU'RE DOING A LOT OF PHONE
2 CONTACT WITH MR. MILLS IN THE PAST COUPLE OF MONTHS.

3 IS THAT ACCURATE TO SAY?

4 A YES, THAT'S ACCURATE.

5 Q IS IT A PART OF YOUR PRACTICE TO SORT OF BE
6 THE MESSAGE SENDER FOR PARENTS?

7 A USUALLY -- IDEALLY, BOTH PARENTS ARE PRESENT
8 SO I DON'T NEED TO DO THAT BECAUSE IT IS DIFFICULT WITH
9 THE AMOUNT OF TIME I HAVE DURING THE DAY. BUT I TRY MY
10 BEST TO BE ABLE TO COMMUNICATE WHAT NEEDS TO BE
11 COMMUNICATED TO THE PARENTS IF THEY'RE NOT AVAILABLE.
12 I STARTED SPEAKING WITH MR. MILLS, I BELIEVE IN MARCH,
13 AND HAD A NUMBER OF CONVERSATIONS WITH HIM, OR AT LEAST
14 ATTEMPTED TO CALL HIM BETWEEN THEN AND JUNE. SO IT WAS
15 A LOT OF PHONE TAG.

16 Q DR. YIM, AT SOME POINT YOU STOPPED TREATING
17 BABY RYAN; IS THAT TRUE?

18 A THAT'S TRUE.

19 Q CAN YOU TELL US WHEN THAT WAS?

20 A LET ME LOOK AT THE NOTES AGAIN.

21 IT LOOKS LIKE I SENT A LETTER TO MS. DUVAL ON
22 JUNE 24 DISMISSING BABY RYAN FROM THE PRACTICE BUT
23 STILL ABLE TO SEE HIM FOR EMERGENCY VISITS IF NEEDED.

24 Q CAN I ASK WHAT PAGE YOU'RE LOOKING AT?

25 A OH, I'M SORRY. 2056.

26 Q AND WHY DID YOU FEEL THAT YOU NEEDED TO
27 DISCHARGE BABY RYAN FROM THE PRACTICE?

28 A I FELT THAT I WAS BEING PULLED BETWEEN THE

1 PARENTS, AND IT WAS A VERY DIFFICULT SPOT TO BE IN. I
2 TRIED TO COMMUNICATE WITH BOTH OF THEM REGARDING THE
3 VISITS AND THE RECOMMENDATIONS, BUT I FOUND MYSELF
4 STRUGGLING TO REMAIN NEUTRAL. I WAS UNHAPPY WITH OUR
5 RELATIONSHIP AT THAT POINT.

6 Q AND THIS LETTER THAT YOU WROTE ON JUNE 24,
7 2009 --

8 A YES.

9 Q -- WERE THERE RECENT EVENTS THAT HAPPENED FOR
10 YOU TO MAKE THIS DECISION?

11 A I THINK IT WAS A -- I'M SORRY.

12 Q ANYTHING SPECIFIC?

13 A I THINK IT WAS AN ACCUMULATION OF ALL THE TIME
14 AND EFFORT PUT IN. IT WAS FRUSTRATING AND EMOTIONALLY
15 EXHAUSTING TO HAVE TO TALK TO BOTH THE PARENTS AND FIND
16 A COMMON GROUND. IT WASN'T ONE SPECIFIC INCIDENT, I
17 DON'T BELIEVE.

18 Q DURING THE TIME THAT YOU TREATED BABY RYAN AND
19 YOUR INTERACTIONS WITH MS. DUVAL, DID SHE DO WHAT A
20 TYPICAL MOM WOULD DO, IN YOUR OPINION?

21 MR. GUTERRES: OBJECTION. IT'S OVERBROAD,
22 VAGUE.

23 THE COURT: SUSTAINED. YOU CAN ASK THAT
24 DIFFERENTLY.

25 BY MS. CHUNG:

26 Q DR. YIM, WHAT WAS YOUR IMPRESSION OF MS. DUVAL
27 DURING THE TIME THAT YOU INTERACTED WITH HER?

28 A I REMEMBER HER BEING AN EXCITED NEW PARENT. A

1 LITTLE BIT ANXIOUS, BUT THAT'S VERY NORMAL. SHE SHOWED
2 APPROPRIATE CONCERN FOR THE CHILD, CARING. SHE WAS
3 BONDED TO HIM, OBVIOUSLY.

4 Q WAS THERE ANYTHING THAT YOU INFORMED MS. DUVAL
5 TO DO THAT SHE DIDN'T DO?

6 A NO, I DON'T BELIEVE SO.

7 Q AND WE TALKED A LITTLE BIT ABOUT THE
8 VACCINATIONS EARLIER; DO YOU REMEMBER THAT?

9 A YES.

10 Q WERE YOU SUPPORTIVE OF MS. DUVAL'S DECISION TO
11 DELAY VACCINATIONS?

12 A AGAIN, I RECOMMENDED VACCINATIONS AT EVERY
13 VISIT, BUT FELT I WAS SUPPORTIVE OF HER DECISION AND
14 FELT THAT AT SOME POINT SHE WOULD VACCINATE BABY RYAN.

15 Q DID MR. MILLS EVER COMPLAIN TO YOU THAT
16 MS. DUVAL WAS TAKING THE BABY TO THE DOCTOR TOO MUCH?

17 A I BELIEVE HE ASKED ME IN A PHONE CONVERSATION
18 IF BABY RYAN'S VISITS WERE TOO EXCESSIVE, BUT I
19 REASSURED HIM THAT I FELT THAT WE NEEDED TO SEE THE
20 BABY TO FOLLOW HIS WEIGHT, TO MAKE SURE THAT HIS
21 DEVELOPMENT WAS TRACKING.

22 Q THAT WAS THE ONLY PHONE CALL YOU HAD ABOUT
23 EXCESSIVE VISITS FROM MR. MILLS?

24 A I BELIEVE SO. FROM MY MEMORY, THAT ONE PHONE
25 CALL.

26 Q AT ANY POINT IN TIME, DID YOU EVER FEEL THAT
27 MS. DUVAL WAS NOT FEEDING HER BABY?

28 A NO.

1 Q SHE FOLLOWED YOUR INSTRUCTIONS TO PROVIDE HIM
2 SOLID FOODS; IS THAT TRUE?

3 A YES.

4 Q IN REGARDS TO THIS CASE, CAN YOU TELL US IF
5 ANY SOCIAL WORKER HAS EVER CONTACTED YOU ABOUT BABY
6 RYAN?

7 A NO.

8 Q HOW DO YOU KNOW THAT?

9 A NORMALLY, IN ORDER TO SHARE PATIENT
10 INFORMATION, WE NEED TO HAVE A RELEASE FORM, A HIPAA
11 FORM. IT'S TO PROTECT PATIENT PRIVACY WITH THEIR
12 MEDICAL INFORMATION. AND I DID NOT RECEIVE A HIPAA
13 FORM FOR BABY RYAN TO RELEASE THAT KIND OF INFORMATION
14 TO ANYONE.

15 Q DO YOU EVER RECALL TALKING TO ANYONE ASIDE
16 FROM MS. DUVAL AND MR. MILLS ABOUT BABY RYAN?

17 A OTHER THAN MY PARTNER, DISCUSSING VISITS, NO.

18 Q AND ARE YOU TALKING ABOUT DR. COLLO?

19 A I'M SORRY, YES, I'M TALKING ABOUT DR. COLLO.

20 Q WHAT ABOUT A PUBLIC HEALTH NURSE? HAVE YOU
21 EVER SPOKEN TO ANY OTHER NURSE OUTSIDE OF YOUR PRACTICE
22 ABOUT BABY RYAN?

23 A NO.

24 Q IF YOU DID, WOULD THAT BE IN YOUR CHART?

25 A YES, IT SHOULD BE IN THE CHART.

26 Q SO -- AND I JUST WANT TO BE SURE I UNDERSTAND
27 THIS -- DID YOU DISMISS MS. DUVAL AND BABY RYAN FROM
28 YOUR PRACTICE BECAUSE SHE WASN'T FOLLOWING YOUR

1 DIRECTIONS?

2 A NO, I DIDN'T DISMISS HER BECAUSE SHE WASN'T
3 FOLLOWING DIRECTIONS.

4 Q SO IF SOMEONE SAID THAT, WOULD THAT BE A LIE?

5 MR. GUTERRES: OBJECTION.

6 THE COURT: SUSTAINED.

7 BY MS. CHUNG:

8 Q DO YOU REMEMBER HAVING A CONVERSATION WITH
9 MR. SEAN MCMILLAN?

10 A YES, I DO.

11 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT
12 CONVERSATION?

13 A WE DISCUSSED ME BEING A WITNESS TO THIS CASE
14 AND WHAT IT ENTAILED AND JUST GOING OVER MY
15 INTERACTIONS WITH BABY RYAN AND MS. DUVAL.

16 Q DID MR. MCMILLAN ASK YOU ABOUT ANY CONTACTS
17 YOU HAD WITH THE SOCIAL WORKERS IN THIS CASE?

18 A HE DID ASK ME, AND I SAID I HAD NO CONTACT
19 WITH THEM.

20 MS. CHUNG: SORRY, YOUR HONOR.

21 YOUR HONOR, THAT'S ALL I HAVE.

22 THE COURT: ALL RIGHT.

23 MR. GUTERRES?

24 MR. GUTERRES: THANK YOU, YOUR HONOR.

25

26 CROSS-EXAMINATION

27 BY MR. GUTERRES:

28 Q GOOD MORNING, DOCTOR.

1 A GOOD MORNING.

2 Q NOW, I HAVE NOTED THAT IN RESPONDING TO A LOT
3 OF THE QUESTIONS OF MS. CHUNG, YOU'VE BEEN REFERRING TO
4 YOUR NOTES, OR EXHIBIT 168 I BELIEVE IT IS, THAT'S IN
5 FRONT OF YOU?

6 A YES.

7 Q AND PRIOR TO TODAY, WHEN WAS THE LAST TIME YOU
8 HAD SEEN EXHIBIT 168?

9 A PRIOR TO TODAY, LET ME THINK.

10 CAN I CLARIFY? MY NOTES, YOU MEAN? WHEN DID
11 I LAST SEE MY NOTES?

12 Q YES, OR YOUR CHART?

13 A OKAY. PROBABLY A WEEK AGO.

14 Q AND WHAT CAUSED YOU TO LOOK AT YOUR CHART A
15 WEEK AGO?

16 A I JUST WANTED TO REVIEW THE DETAILS OF WHAT
17 HAD OCCURRED. IT'S BEEN A LONG TIME AND I KNEW I WAS
18 GOING TO BE A WITNESS AT THE TRIAL, SO I WANTED TO MAKE
19 SURE THAT I RECALLED WHAT HAD HAPPENED.

20 Q DID ANYONE ASK YOU TO REVIEW THAT?

21 A NO, NO ONE ASKED ME TO REVIEW IT.

22 Q AND THIS DISCUSSION YOU HAD WITH MR. MCMILLAN,
23 WAS THIS TELEPHONIC OR IN PERSON?

24 A I BELIEVE I SPOKE TO HIM ON THE PHONE.

25 Q AND WHEN WAS THAT CONVERSATION?

26 A I DON'T RECALL THE EXACT DATE, BUT IT WAS
27 PROBABLY A FEW WEEKS AGO.

28 Q WHAT ELSE DID YOU DISCUSS?

1 A THAT I WOULD MEET WITH THE OTHER ATTORNEY TO
2 JUST GO OVER THE BASICS OF WHAT'S GOING TO HAPPEN AT
3 THE TRIAL. I'VE NEVER BEEN A WITNESS BEFORE.

4 Q AND DID YOU IN FACT MEET WITH ANOTHER
5 ATTORNEY?

6 A I SAW MS. CHUNG ABOUT A WEEK AND A HALF AGO
7 FOR A SHORT PERIOD OF TIME.

8 Q YOU HAD A MEETING?

9 A A SHORT MEETING, YES.

10 Q WHERE WAS THAT?

11 A I'M SORRY. WHERE WAS THAT?

12 Q WHERE WAS YOUR MEETING?

13 A IN MY OFFICE.

14 Q AND WERE YOU PAID FOR YOUR TIME?

15 A LET ME -- CAN YOU CLARIFY? DURING THE MEETING
16 WITH MS. CHUNG?

17 Q OR AT ANY TIME?

18 A I WAS NOT PAID FOR THAT TIME, NO.

19 Q SO YOU JUST VOLUNTARILY MET WITH HER?

20 A YES.

21 Q ARE YOU BEING PAID TO APPEAR HERE TODAY?

22 A YES.

23 Q AND HOW MUCH ARE YOU BEING PAID?

24 A \$500.

25 Q FOR THE ENTIRE TIME OR PER HOUR?

26 A THE ENTIRE TIME.

27 Q SO AT THE TIME THAT YOU WERE SEEING BABY RYAN,
28 IT WAS YOU AND -- DR. COLLO, IS IT?

1 A THAT'S --

2 Q THAT WERE PART OF YOUR PRACTICE?

3 A YES, THAT'S CORRECT.

4 Q THERE ARE JUST THE TWO PEDIATRICIANS?

5 A YES, THAT'S CORRECT.

6 Q WAS THERE A DR. GILL?

7 A DR. GILL WAS SHARING SPACE IN OUR BUILDING BUT
8 SHE WAS NOT PART OF OUR PRACTICE.

9 Q BUT ON OCCASION -- WHEN YOU SAY SHE WAS IN
10 YOUR BUILDING BUT NOT PART OF YOUR PRACTICE, CAN YOU
11 TELL ME A LITTLE MORE ABOUT HOW THAT RELATIONSHIP
12 WORKS, RELATIVE TO SEEING YOUR PATIENTS?

13 A OKAY. WE SHARED OFFICE SPACE, AND SHE HAD HER
14 OWN PEDIATRIC PRACTICE AND DR. COLLO AND I HAD OUR OWN
15 PRACTICE. AND SOMETIMES WHEN WE ARE SEEING A LOT OF
16 PATIENTS, LIKE WINTERTIME WHEN EVERYONE IS SICK, SHE
17 OFTEN WOULD HELP US SEE SOME OF OUR OVERFLOW PATIENTS
18 TO HELP WITH THE AMOUNT OF PATIENTS. SO WE WOULD HELP
19 EACH OTHER IF NEEDED.

20 Q AND DO YOU KNOW IF SHE EVER SAW BABY RYAN?

21 A I DON'T KNOW.

22 Q AND IF SHE HAD CONTACT WITH ANY PATIENT THAT
23 WAS PRIMARILY YOUR PATIENT, OR YOUR PATIENTS, YOU WOULD
24 EXPECT THAT TO BE DOCUMENTED IN YOUR CHART?

25 A TYPICALLY, YES.

26 Q SO THERE MIGHT BE AN OCCASION WHERE THAT MIGHT
27 NOT OCCUR?

28 A I HOPE NOT. IT SHOULD OCCUR BECAUSE THAT'S

1 WHAT WE DO FOR EACH OTHER. IF WE SEE EACH OTHER'S
2 PATIENTS, USUALLY WE WOULD WRITE IN THE CHART. AT THAT
3 TIME, WE DIDN'T HAVE ELECTRONIC MEDICAL RECORDS, WE
4 JUST HAD THE PAPER CHART. SO IF WE WERE TO SEE HER
5 PATIENTS, WE WOULD WRITE A NOTE AND SHE WOULD SEE THAT
6 IN THE CHART.

7 Q AND IT WOULD BE YOUR EXPECTATION THAT ANY
8 CONTACTS THAT YOU MAY HAVE HAD REGARDING BABY RYAN
9 WOULD HAVE BEEN DOCUMENTED IN YOUR CHART; IS THAT TRUE?

10 A IT WOULD BE MY EXPECTATION THAT IT WOULD BE
11 THERE.

12 Q AND IN REVIEWING YOUR CHART, CAN YOU SAY WITH
13 A HUNDRED PERCENT CERTAINTY THAT EVERY SINGLE CONTACT
14 THAT YOU'VE HAD RELATIVE TO BABY RYAN IS IN FACT
15 DOCUMENTED IN YOUR CHART?

16 A I DON'T KNOW IF I COULD SAY WITH A HUNDRED
17 PERCENT CERTAINTY ANYTHING.

18 Q OKAY. SO THERE MAY BE A CONTACT THAT YOU MAY
19 HAVE HAD WITH A PARENT, LET'S SAY, THAT MIGHT NOT HAVE
20 NECESSARILY MADE IT INTO A PAPER MEMORIALIZATION IN
21 YOUR CHART; IS THAT TRUE?

22 A CAN YOU CLARIFY THAT AGAIN?

23 Q SURE. AS I UNDERSTAND YOUR ANSWER, THERE
24 COULD BE AN OCCASION THAT YOU MAY HAVE HAD A CONTACT
25 WITH ONE OR THE OTHER PARENT THAT MIGHT NOT HAVE GOTTEN
26 DOCUMENTED IN YOUR CHART; TRUE?

27 A THERE -- EXCUSE ME. IN THE CHART, I BELIEVE
28 ALL THE INTERACTIONS WERE DOCUMENTED BECAUSE THAT'S

1 WHAT WE'RE EXPECTED TO DO. THAT'S WHAT WE TRAIN OUR
2 STAFF TO DO. IF THERE WAS ANY COMMUNICATION, IT SHOULD
3 HAVE BEEN IN THE CHART.

4 Q NOW, THERE ARE CERTAIN VACCINES THAT YOU
5 RECOMMEND DEPENDING UPON THE AGE OF THE CHILD; CORRECT?

6 A THAT'S CORRECT.

7 Q AND THAT'S BASED ON YOUR STANDARD PRACTICE AND
8 THE BOARD OF PEDIATRICS?

9 A YES, AMERICAN ACADEMY OF PEDIATRICS.

10 Q AND SO THIS WAS A SUBJECT MATTER THAT YOU
11 DISCUSSED WITH MS. DUVAL AT EACH OF THOSE VISITS,
12 CORRECT, THAT WE'VE JUST COVERED WITH MS. CHUNG?

13 A IF IT'S DOCUMENTED THAT I DISCUSSED THEM, THEN
14 YES, I DISCUSSED THEM WITH MS. DUVAL.

15 Q AND MS. DUVAL DID NOT FOLLOW YOUR
16 RECOMMENDATIONS AS TO WHEN THOSE VACCINATIONS SHOULD
17 TAKE PLACE; CORRECT?

18 A I RECOMMENDED VACCINES AT THE WELL VISITS AND
19 SHE CHOSE TO VACCINATE AT A DIFFERENT TIME.

20 Q SO SHE DIDN'T FOLLOW YOUR RECOMMENDATIONS;
21 TRUE?

22 A NO --

23 MS. CHUNG: OBJECTION. ASKED AND ANSWERED.
24 BY MR. GUTERRES:

25 Q NO?

26 A I'M SORRY. I DIDN'T HEAR YOU.

27 MS. CHUNG: I'M SORRY. OBJECTION. ASKED AND
28 ANSWERED.

1 THE COURT: OVERRULED.

2 BY MR. GUTERRES:

3 Q SO YOU HAD CERTAIN VACCINATIONS YOU
4 RECOMMENDED THAT MS. DUVAL HAVE BABY RYAN UNDERTAKE;
5 YES?

6 A YES.

7 Q AT, FOR EXAMPLE, SIX MONTHS; YES?

8 A YES. YES.

9 Q OKAY. AND MS. DUVAL DIDN'T FOLLOW THAT
10 RECOMMENDATION AT SIX MONTHS; CORRECT?

11 A AT THAT TIME, SHE DID NOT.

12 Q AND BABY RYAN'S WEIGHT WAS A CONCERN THAT WAS
13 BROUGHT TO YOUR ATTENTION EARLY ON; TRUE?

14 A YES.

15 Q WELL, WE'VE GOT THIS GROWTH CHART. YOU PUT
16 TOGETHER THIS GROWTH CHART; CORRECT?

17 A I PUT THE DOTS ON THE GROWTH CHART, YES.

18 Q AND IT LOOKS LIKE, AT LEAST AS OF -- WHAT IS
19 IT, 4, OR JUST UNDER -- I'M NOT SURE IF THAT'S A 5 OR A
20 6 BETWEEN THE 3 -- BUT HE STARTS TO FALL OFF THE GROWTH
21 CHART; CORRECT?

22 A YES.

23 Q HELP ME OUT. WHAT AGE?

24 A OKAY. IT LOOKS LIKE HE'S OFF THE CHART BY
25 SEVEN AND A HALF MONTHS, THAT PLOT.

26 Q OKAY.

27 A DO YOU WANT ME TO POINT TO IT?

28 Q I THINK I CAN FIGURE IT OUT, BUT THANK YOU.

1 A OKAY.

2 Q AND THEN HE CONTINUES TO KIND OF REMAIN OFF
3 THE CHART UP UNTIL THE LAST DAY YOU SAW HIM; CORRECT?

4 A YES.

5 Q AND GENERALLY IT WOULD BE YOUR RECOMMENDATION
6 TO HAVE A PARENT INTRODUCE SOLIDS AT SIX MONTHS;
7 CORRECT?

8 A THAT'S THE TYPICAL RECOMMENDATION, IS SOLIDS
9 AT SIX MONTHS.

10 Q AND WHY IS THAT?

11 A BECAUSE WE FEEL THAT IT'S HELPFUL TO ENCOURAGE
12 OTHER FOODS BESIDES BREAST MILK TO COMPLIMENT NUTRITION
13 FOR AN INFANT.

14 Q DID YOU EVER TELL MS. DUVAL THAT SHE SHOULD
15 NOT BREAST-FEED?

16 A NO, I DID NOT SAY THAT.

17 Q AND IN FACT, DO YOU GIVE ANY RECOMMENDATIONS
18 TO PARENTS ON HOW BEST TO INTRODUCE SOLIDS AT THE
19 SIX-MONTH STAGE?

20 A WE DO GIVE THEM SOME ADVICE ON HOW TO START
21 SOLIDS.

22 Q LIKE WHAT?

23 A WE USUALLY START WITH CEREAL, GRAINS THAT ARE
24 IRON-FORTIFIED, AND MIX THAT WITH FORMULA OR BREAST
25 MILK AND SLOWLY INTRODUCE THE FOODS OVER TIME TO MAKE
26 SURE THAT THE CHILD DOESN'T HAVE A REACTION.

27 Q AND THAT WOULD BE -- WHEN YOU SAY "THE CHILD
28 DOESN'T HAVE A REACTION," WHAT DO YOU MEAN BY THAT?

1 A DIARRHEA, RASH, GAS. THERE'S ALL SORTS OF
2 DIFFERENT REACTIONS.

3 Q AND HAVE YOU FOUND IN YOUR PRACTICE THAT IT
4 MIGHT TAKE SOME TIME FOR A BABY TO GET USED TO CERTAIN
5 SOLID FOODS?

6 A YES, IT CAN.

7 Q AND THAT MIGHT BE ONE OF THE -- IS THAT ONE OF
8 THE REASONS YOU GENERALLY HAVE A PARENT INTRODUCE
9 CERTAIN SOLIDS KIND OF ONE OR TWO AT A TIME AS OPPOSED
10 TO JUST THROWING THE WHOLE CAN OF WORMS IN AT THE SAME
11 TIME?

12 A YES, THAT'S CORRECT.

13 THE COURT: CAN OF WORMS ARE NOT PART OF THE
14 SOLIDS.

15 THE WITNESS: NOT SO FAR AS I KNOW.

16 MR. GUTERRES: THANK YOU FOR THE
17 CLARIFICATION, YOUR HONOR.

18 BY MR. GUTERRES:

19 Q STARTING TUMMY TIME, YOU WANT THAT TO --
20 WITHDRAWN.

21 YOU MAKE RECOMMENDATIONS OF PARENTS TO HAVE --
22 TO START TUMMY TIME WITH THEIR INFANTS AS SOON AS THEY
23 CAN?

24 A USUALLY WE RECOMMEND IT AFTER THEIR UMBILICAL
25 CORD FALLS OFF, SO IT'S PRETTY SOON AFTER BIRTH.

26 Q AND THERE'S A REASON FOR THAT; CORRECT?

27 A WELL, NORMALLY WE RECOMMEND BABIES SLEEP ON
28 THEIR BACKS NOW BECAUSE OF THE RISK OF SUDDEN INFANT

1 DEATH SYNDROME. SO BECAUSE OF ALL THE SLEEPING ON
2 THEIR BACKS, THE HEADS OFTEN WILL GET FLATTER. AND SO,
3 THEREFORE, WE RECOMMEND TUMMY TIME -- OBSERVED BY THE
4 PARENTS, THEY SHOULDN'T BE SLEEPING, SO THEY'RE
5 AWAKE -- TO HELP PREVENT A LOT OF THE PRESSURE ON THE
6 BACK OF THEIR HEAD, AND SO IT CAN STRENGTHEN THEIR NECK
7 ALSO.

8 Q SO IN PART IT'S TO ASSIST WITH CHILD
9 DEVELOPMENT AND STRENGTH?

10 A YES.

11 Q AND BY ONE YEAR OF AGE, YOU WOULD EXPECT MOST
12 CHILDREN TO HAVE TRIPLED IN WEIGHT?

13 A THEY SHOULD.

14 Q AT EACH OF YOUR VISITS WITH BABY RYAN, ONE OF
15 THE THINGS THAT YOU WERE LOOKING AT WERE DEVELOPMENTAL
16 MILESTONES; CORRECT?

17 A YES.

18 Q AND IN FACT, I THINK WE SAW ON SOME OF YOUR
19 NOTES KIND OF THESE PASS/FAIL TESTS, FOR LACK OF A
20 BETTER WORD?

21 A YES.

22 Q AND ARE THESE TESTS BASED ON YOUR OBSERVATION
23 OR ARE THEY BASED ON SOMEONE REPORTING THIS TO YOU?

24 A THEY COULD BE BOTH.

25 Q OKAY. AND HOW WOULD I KNOW THAT, BASED ON
26 LOOKING AT YOUR NOTES?

27 A UNLESS IT'S DOCUMENTED, IT'S HARD TO SAY.
28 BECAUSE IN OUR MEDICAL RECORDS, THE DEVELOPMENTAL

1 MILESTONES ARE JUST QUESTIONS. SO WE GO THROUGH THE
2 QUESTIONS WITH THE PARENT AND SEE IF THEY ANSWER YES OR
3 NO, AND THEN, AS WE'RE EXAMINING THE INFANT, WE
4 OBSERVE --

5 Q OKAY.

6 A -- WHAT THEY CAN DO.

7 Q SO IT COULD BE ACTUALLY BOTH?

8 A IT COULD BE BOTH.

9 THE COURT: MR. GUTERRES, HOW MUCH LONGER DO
10 YOU HAVE?

11 MR. GUTERRES: I STILL HAVE A BIT, YOUR HONOR.
12 I'M SORRY.

13 THE COURT: LET ME TALK TO THE DOCTOR FOR A
14 MOMENT OFF THE RECORD.

15 (A DISCUSSION WAS HELD OFF THE RECORD.)

16 THE COURT: WHEN YOU SAY YOU HAVE A BIT, I'M
17 NOT GOING TO BE ABLE TO HAVE THE DOCTOR COME BACK THIS
18 AFTERNOON.

19 (A DISCUSSION WAS HELD OFF THE RECORD.)

20 THE COURT: LET ME SEE COUNSEL AT SIDEBAR.

21 (THE FOLLOWING PROCEEDINGS WERE HELD AT
22 SIDEBAR.)

23 THE COURT: WE'RE AT SIDEBAR AND COUNSEL ARE
24 PRESENT.

25 THIS IS THE LAST -- I'M OBSERVANT OF THE CLOCK
26 FOR EVERYONE. WHEN YOU SAY YOU HAVE MORE TO GO, TELL
27 ME HOW MUCH MORE.

28 MR. GUTERRES: AT LEAST A HALF-HOUR, YOUR

1 HONOR.

2 THE COURT: ANOTHER HALF-HOUR?

3 MR. GUTERRES: I NEED TO COVER --

4 THE COURT: NO, I'M NOT QUESTIONING IT. IF
5 IT'S A HALF-HOUR, THEN WE'RE NOT GOING ANY FURTHER INTO
6 THE LUNCH HOUR. SO I'M GOING TO TALK WITH THE DOCTOR
7 TO FIND OUT IF SHE HAS PATIENTS THIS AFTERNOON.

8 AND, YOU KNOW, WHEN WE BRING SOMEBODY IN, THE
9 PERSON WHO BRINGS THAT WITNESS IN NEEDS TO ADJUST THEIR
10 QUESTIONING TO MAKE SURE THERE'S ADEQUATE TIME. AND
11 WHEN THE PERSON WHO'S CROSS-EXAMINING -- IT'S QUITE
12 INCONVENIENT TO AN EXPERT TO BE HELD OVER A HALF-DAY,
13 ESPECIALLY SOMEONE LIKE A DOCTOR BECAUSE THEY MAKE
14 THEIR LIVING IN THEIR OFFICE.

15 SO LET ME TALK TO HER AND FIND OUT WHAT SHE
16 CAN DO. SHE SAID SHE MIGHT BE ABLE TO MAKE A CALL TO
17 HAVE SOMEONE COVER, BUT WE'LL HAVE TO BREAK. BUT IF
18 SHE CAN'T DO THAT, I'M GOING TO HAVE TO EXCUSE HER FOR
19 THE DAY.

20 MR. MCMILLAN: YOUR HONOR, IN ALL FAIRNESS, WE
21 MADE GOOD FAITH ESTIMATES ON THE TIMES. I THINK IN THE
22 DEFENDANTS', THEY ONLY PUT DOWN LIKE 15 MINUTES.

23 THE COURT: WELL, MAYBE. I'M NOT GOING TO
24 CHECK THE LIST AT THIS TIME. I HAVE TO TAKE CARE OF
25 THE DOCTOR SITUATION.

26 MR. GUTERRES: SURE.

27 (THE FOLLOWING PROCEEDINGS WERE HELD IN
28 OPEN COURT IN THE PRESENCE OF THE

1 JURY.)

2 THE COURT: AS FAR AS THE JURORS ARE
3 CONCERNED, WE'RE GOING TO RECESS AT THIS TIME. WE
4 WILL -- AS FAR AS YOU'RE CONCERNED, WE WILL RESUME AT
5 1:30.

6 PLEASE REMEMBER THE COURT'S ADMONITION TO HAVE
7 NO COMMUNICATION WITH ANYONE ABOUT ANY SUBJECT OR ISSUE
8 OR PERSON INVOLVED IN THIS CASE, AND DO NOT UNDERTAKE
9 ANY KIND OF INVESTIGATION OF YOUR OWN OR LET ANYONE
10 ELSE PROVIDE YOU WITH ANY INFORMATION THAT'S OUTSIDE
11 THE EVIDENCE. AND ANYTHING ANYONE ELSE TELLS YOU, IF
12 YOU HAVEN'T HEARD IT IN THE COURTROOM, IS OUTSIDE THE
13 EVIDENCE. ALSO, DON'T FORM NOR EXPRESS ANY OPINION ON
14 ANY SUBJECT MATTER.

15 YOU ARE NOW IN RECESS UNTIL 1:30.

16 (JURY EXCUSED)

17 THE COURT: ALL RIGHT. WE ARE ON THE RECORD
18 AND COUNSEL ARE PRESENT, AND DR. YIM IS PRESENT. ALL
19 JURORS HAVE LEFT THE COURTROOM.

20 WE'RE GOING TO DO WHATEVER WORKS BEST FOR YOU,
21 AND I THINK THE POSSIBLE SOLUTIONS I HAVE ARE NOT VERY
22 GOOD ONES.

23 THE WITNESS: OKAY.

24 THE COURT: I CAN HAVE YOU BACK AT 1:30, BUT I
25 KNOW YOU HAVE PATIENTS. AND IF YOU CAN MAKE A CALL, IF
26 THERE'S SOMEONE THAT CAN COVER YOU, I'M TOLD THERE'S
27 APPROXIMATELY ANOTHER 30 MINUTES OF EXAMINATION, WHICH
28 MEANS IF WE START AT 1:30, IT WOULD BE 2:00 OR SO BY

1 THE TIME YOU GET OUT.

2 THE WITNESS: OKAY.

3 THE COURT: IF YOU'RE UNABLE TO GET COVERAGE,
4 AND/OR FROM YOUR POINT OF VIEW PROFESSIONALLY IT JUST
5 WOULDN'T WORK FOR YOU, THEN I'M GOING TO EXCUSE YOU
6 FROM COMING BACK THIS AFTERNOON, AND THEY'LL JUST HAVE
7 TO ARRANGE FOR YOU TO COME BACK ANOTHER TIME TO FINISH
8 YOUR TESTIMONY.

9 THE WITNESS: I PROBABLY WOULD LIKE TO HAVE IT
10 COMPLETED TODAY BECAUSE I'VE GOT PATIENTS BOOKED
11 TOMORROW, AND IT WOULD JUST BE HARD FOR ME TO COME BACK
12 ANOTHER TIME.

13 THE COURT: OKAY. I WOULDN'T NECESSARILY
14 BRING YOU BACK TOMORROW, BY THE WAY. LOOK, I SUSPECT
15 EVERY DAY IS PRETTY BUSY.

16 THE WITNESS: RIGHT.

17 THE COURT: AND I KNOW THE NATURE OF A
18 PEDIATRICIAN'S PRACTICE IS AN OFFICE PRACTICE, PRETTY
19 MUCH, IN THE TIME. SO WHEN I SAY I'D HAVE YOU COME
20 BACK ANOTHER TIME, IT WOULD BE A TIME THAT BEST SUITED
21 YOUR SCHEDULE.

22 SO I GIVE THE CHOICE TO YOU. AS I TOLD YOU, I
23 STARTED OUT RECOGNIZING THAT PROBABLY THE OPTIONS I WAS
24 GIVING YOU WERE NOT -- NEITHER ONE IS A PERFECT OPTION.
25 BUT I'LL LET YOU DECIDE WHAT WOULD WORK BEST FOR YOU
26 BETWEEN THOSE TWO.

27 THE WITNESS: I APPRECIATE THAT. I WILL MAKE
28 A CALL AND SEE IF I CAN PUSH MY AFTERNOON PATIENTS TO

1 LATER.

2 THE COURT: ALL RIGHT.

3 THE WITNESS: AND JUST HAVE -- IT WOULD BE
4 EASIER FOR ME -- IT TAKES A LONG TIME TO GET HERE.

5 THE COURT: YES, I KNOW.

6 THE WITNESS: SO I'D RATHER HAVE IT COMPLETED
7 TODAY AND THEN I WILL JUST DEAL WITH IT.

8 THE COURT: ALL RIGHT. AND I'LL GIVE YOU THE
9 OPTION: IF YOU HAVE YOUR CELL PHONE WITH YOU, YOU CAN
10 STEP OUT IN THE HALLWAY TO MAKE THE CALL. BUT I CAN
11 ALSO -- YOU CAN GO INTO MY CHAMBERS WHERE THE PHONE
12 RECEPTION IS BETTER AND YOU CAN CALL FROM THERE IF YOU
13 WANT.

14 THE WITNESS: I'LL STEP OUT AND MAKE THE CALL.

15 THE COURT: OKAY. AND WE'LL WAIT.

16 THE WITNESS: OKAY. THANK YOU.

17 THE COURT: THANKS VERY MUCH.

18 (A DISCUSSION WAS HELD OFF THE RECORD.)

19 THE COURT: OKAY, DOCTOR, WHAT CAN YOU DO?

20 THE WITNESS: I CAN POSTPONE. THEY'RE GOING
21 TO RESCHEDULE OR JUST APOLOGIZE, AND THEY'LL COME BACK.

22 THE COURT: SO YOU'D RATHER --

23 THE WITNESS: I'D RATHER JUST FINISH TODAY, IF
24 I CAN.

25 THE COURT: ALL RIGHT. WELL, AS YOU CAN TELL,
26 YOU'VE ALREADY SUFFERED THE HARDSHIP, BUT YOU ARE
27 ORDERED TO RETURN HERE, THEN, AT 1:30.

28 THE WITNESS: OKAY.

1 THE COURT: OKAY. THANKS VERY MUCH.

2 ALL RIGHT. I'LL SEE COUNSEL BACK AT 1:30.

3 MR. GUTERRES: THANK YOU, YOUR HONOR.

4 (LUNCH RECESS)

5 THE COURT: WE'RE ON THE RECORD. COUNSEL ARE
6 PRESENT OUTSIDE THE PRESENCE OF THE JURY.

7 GO AHEAD.

8 MR. MCMILLAN: THE LAST THING I WANTED TO
9 COVER, YOUR HONOR, IS PLAINTIFFS WOULD LIKE TO MOVE
10 EXHIBIT 168 INTO EVIDENCE. THAT WOULD BE DR. YIM'S
11 MEDICAL RECORD.

12 AND WOULD YOU LIKE TO DEAL WITH SODERBERG'S AS
13 WELL RIGHT NOW, OR SHOULD WE FORESTALL THAT UNTIL
14 LATER?

15 THE COURT: WHAT I'D LIKE TO DO IS HAVE US GET
16 THE JURORS IN SO WE CAN FINISH UP WITH THE DOCTOR AND
17 GET HER OUT OF HERE.

18 MR. MCMILLAN: OKAY. THEN, YOUR HONOR, WOULD
19 IT BE PERMISSIBLE THEN TO, WHEN WE'RE DONE WITH
20 DR. YIM, TO RELEASE HER BUT SUBJECT TO RECALL IN CASE
21 WE HAVE SOME FOUNDATIONAL ISSUES OR SOMETHING?

22 THE COURT: WELL, LET'S FIND OUT.

23 MR. GUTERRES, THEY'RE GOING TO WANT TO OFFER
24 DR. YIM'S RECORDS INTO EVIDENCE.

25 IS THERE ANY OBJECTION?

26 MR. GUTERRES: WELL, I HAVE NO OBJECTION TO
27 THE ONES THAT WE'VE ALREADY COVERED, BUT IF THERE'S
28 STUFF IN THERE THAT WE HAVEN'T COVERED, THEN I JUST

1 WANT TO MAKE SURE WHAT ELSE IS IN THERE. SO THOSE THAT
2 HAVE BEEN REFERENCED, IN OTHER WORDS, THAT DR. YIM HAS
3 BEEN QUESTIONED ABOUT AND HAVE BEEN IDENTIFIED, I DON'T
4 HAVE A PROBLEM. BUT THERE'S A NUMBER OF ALSO PAGES
5 THAT HAVEN'T EVEN BEEN TOUCHED, SO.

6

7 (A DISCUSSION WAS HELD OFF THE RECORD.)

8

9 THE COURT: WELL, I'M NOT SURE WHAT PAGES ARE
10 BEING REFERRED TO. SO I'VE LOOKED AT THE DOCUMENT --
11 PAGE -- REFERRING TO THE SINGLE PAGE OF 002044, THE
12 BATES NUMBER, THAT'S THE CHART WHICH IS UP HERE. YOU
13 ALREADY HAVE A STIPULATION AS TO THAT.

14 MR. MCMILLAN: CORRECT.

15 THE COURT: THE NEXT PAGE THAT -- ACCORDING TO
16 MY EITHER RECOLLECTION OR NOTES -- WAS REFERRED TO IN
17 THE TESTIMONY BEGINS WITH BATES NUMBER 002058 AND GOES
18 TO 002098. AND IT'S POSSIBLE THOSE LAST PHONE MESSAGES
19 WHICH ARE AT THE END OF THAT, SOME OF THEM WERE NOT
20 REFERRED TO. SO I DON'T KNOW.

21 MR. MCMILLAN: YOUR HONOR, IF IT'S HELPFUL AT
22 ALL, WHEN SHE FIRST INTRODUCED THE EXHIBIT, MS. CHUNG
23 DID HAVE DR. YIM IDENTIFY BY BATES RANGE, BEGINNING
24 WITH 2040, CONTINUING ALL THE WAY THROUGH 2103, THAT
25 THIS WAS, IN FACT, THE ENTIRE CONTENTS OF THE MEDICAL
26 RECORD THAT SHE PRODUCED PURSUANT TO SUBPOENA, THAT IT
27 WAS KEPT, MAINTAINED, CREATED IN THE ORDINARY COURSE OF
28 BUSINESS, AND THAT UPON HER REVIEW FROM THE STAND, THAT

1 IT DID APPEAR, IN FACT, TO BE A TRUE, COMPLETE, AND
2 ACCURATE DEPICTION OF THE MEDICAL RECORD THAT SHE
3 MAINTAINS IN HER OFFICE.

4 THE COURT: YES, I'M AWARE OF THAT. BUT
5 MR. GUTERRES INDICATED THAT HE WOULD STIPULATE TO THOSE
6 PAGES THAT HAVE BEEN ADDRESSED. AND NOT ALL OF THOSE
7 PAGES HAVE BEEN ADDRESSED.

8 MR. MCMILLAN: I UNDERSTAND.

9 THE COURT: SO THAT'S STEP NUMBER ONE.

10 STEP NUMBER TWO IS: IF THERE'S NOT A
11 STIPULATION AS TO THE ENTIRETY, FOR THOSE PORTIONS YOU
12 WANT TO GET INTO EVIDENCE, IT APPEARS YOU'RE GOING TO
13 HAVE TO HAVE SOMETHING ON THE RECORD IN ORDER TO BE --
14 PROVIDE A FOUNDATION.

15 PLEASE REMEMBER ALSO THAT IF YOU'RE ATTEMPTING
16 TO QUALIFY THESE RECORDS AS A BUSINESS RECORD, A
17 BUSINESS RECORD IS ADMISSIBLE ONLY TO THE EXTENT IT IS
18 A RECORD OF AN ACT, CONDITION, OR EVENT. THEREFORE,
19 SOME OF THESE PAGES -- EVEN THOUGH THE DOCUMENTS COULD
20 BE MARKED FOR IDENTIFICATION, SOME OF THESE PAGES ARE
21 NOT SUCH A RECORD AND WILL NOT BE ADMISSIBLE ABSENT THE
22 STIPULATION.

23 MR. MCMILLAN: THANK YOU, YOUR HONOR.

24 THE COURT: THEY'RE ALL PRETTY BENIGN. I
25 MEAN, THERE'S SOME LAB REPORTS AND THERE'S A RECORD --
26 NOTATION OF PHONE CALLS, A NUMBER OF WHICH HAVE BEEN
27 REFERRED TO, BUT I'M NOT SURE EVERY ONE HAS BECAUSE I
28 WASN'T KEEPING TRACK OF THAT.

1 SO, BUT MORE IMPORTANTLY -- I DON'T KNOW WHAT
2 YOU WANT TO DO WITH THAT, BUT I WANT TO GET THE JURY
3 IN. I DON'T WANT TO HAVE THE JURY WAITING.

4 MR. GUTERRES: I MIGHT NOT ACTUALLY HAVE A
5 PROBLEM. I JUST NEED A LITTLE MORE TIME TO REVIEW IT.
6 HE JUST TOLD ME RIGHT NOW, SO.

7 THE COURT: OKAY.

8 (JURY PRESENT)

9 THE COURT: EVERYONE IS PRESENT. EVERYONE MAY
10 BE SEATED.

11 MR. GUTERRES, YOU MAY CONTINUE.

12 MR. GUTERRES: THANK YOU, YOUR HONOR.

13 BY MR. GUTERRES:

14 Q GOOD AFTERNOON, DR. YIM.

15 A GOOD AFTERNOON.

16 Q GOING THROUGH YOUR NOTES, IF YOU COULD -- DO
17 YOU HAVE THAT IN FRONT OF YOU, EXHIBIT 168?

18 A YES, I DO.

19 Q IF YOU COULD JUST TURN TO BATES LABEL 2075,
20 THE TOP RIGHT.

21 A YES, I HAVE IT.

22 Q AND THIS IS YOUR SIX-MONTH WELL VISIT;
23 CORRECT?

24 A YES.

25 Q AND YOU WOULD HAVE BEEN THE DOCTOR WHO IN FACT
26 SAW BABY RYAN ON THIS OCCASION, CORRECT, MARCH 16,
27 2009?

28 A YES, I WAS THE PHYSICIAN THAT SAW BABY RYAN ON

1 THIS DATE.

2 Q OKAY. AND ON THIS OCCASION, FOR THE REASONS
3 FOR THE VISIT, YOU NOTED DOWN CERTAIN REPORTS THAT MOM
4 GAVE YOU SUCH AS THE FACT THAT BABY RYAN WAS GOING ON
5 NURSING STRIKES; CORRECT?

6 A YES, THAT'S CORRECT.

7 Q OKAY. THE INFORMATION THAT MOTHER PROVIDED
8 YOU WITH REGARD TO THE NURSING STRIKES, THAT'S
9 SOMETHING THAT YOU ACCEPTED BASED ON THE REPORTING BY
10 MS. DUVAL; CORRECT?

11 A YES, I DID.

12 Q YOU DIDN'T DO ANYTHING TO INDEPENDENTLY
13 INVESTIGATE OR VERIFY THAT; CORRECT?

14 A NO, I WAS JUST TAKING A HISTORY AT THE TIME
15 AND I WROTE DOWN WHAT SHE HAD RELAYED TO ME.

16 Q AND AS A MEDICAL DOCTOR, YOU WOULD GENERALLY
17 JUST ACCEPT WHATEVER A PARENT WOULD TELL YOU WITH
18 REGARD TO THEIR CHILD; TRUE?

19 A YES, IF IT SEEMED REASONABLE. YES.

20 Q NOW, SHORTLY AFTER THIS MARCH VISIT, THE NEXT
21 TIME YOU SAW BABY RYAN WOULD HAVE BEEN AT THE END OF
22 MARCH; IS THAT CORRECT?

23 A LET ME CHECK, PLEASE.

24 IT LOOKS LIKE THE NEXT TIME I SAW BABY RYAN
25 WAS MARCH 31ST.

26 Q AND THAT WAS -- THE PURPOSE WAS SIMPLY TO
27 CHECK ON HIS WEIGHT?

28 A YES, ACCORDING TO THE CHART, TO CHECK HIS

1 WEIGHT.

2 Q AND WOULD IT HAVE BEEN YOUR PRACTICE ON EACH
3 OCCASION THAT BABY RYAN WOULD HAVE COME IN TO CHECK HIS
4 WEIGHT?

5 A CAN YOU CLARIFY THAT? I'M SORRY.

6 Q SURE. DURING THE QUESTIONING BY MS. CHUNG, WE
7 COVERED A NUMBER OF VISITS WHERE YOU DID, IN FACT, SEE
8 BABY RYAN -- YOU OR YOUR COLLEAGUE; CORRECT?

9 A THAT'S CORRECT.

10 Q AND ON SOME OF THOSE OCCASIONS WE COVERED, I
11 THINK MS. CHUNG ASKED YOU ABOUT WHAT BABY RYAN'S WEIGHT
12 WAS. AND I THINK YOU ACTUALLY LOOKED -- REFERRED TO
13 AND GAVE US THAT?

14 A YES, I DID.

15 Q WOULD IT HAVE BEEN YOUR CUSTOM AND PRACTICE TO
16 WEIGH BABY RYAN AT EACH ONE OF THE VISITS?

17 A IF IT WAS A WEIGHT CHECK, THEN YES, I WOULD
18 HOPE THAT WE'D WEIGH HIM DURING THAT VISIT.

19 Q I'M NOT LIMITING IT TO A WEIGHT CHECK.

20 A OH, OKAY.

21 Q I'M JUST ASKING YOU IF -- YOU HAD CONCERNS
22 ABOUT BABY RYAN GAINING WEIGHT; TRUE?

23 A YES.

24 Q SO WOULD IT HAVE BEEN YOUR CUSTOM AND
25 PRACTICE, THEREFORE, TO HAVE RECORDED OR TRIED TO
26 RECORD HIS WEIGHT EACH TIME THAT YOU SAW BABY RYAN?

27 A I MAY NOT HAVE PERSONALLY WEIGHED HIM, BUT
28 SOME OF THE STAFF MIGHT HAVE HELPED US DO THAT.

1 Q AND YOU WOULD HAVE EXPECTED THAT THAT WOULD
2 HAVE BEEN DONE AT EACH VISIT?

3 A USUALLY, YES.

4 Q AND IF IN FACT DONE AT EACH VISIT, YOU WOULD
5 EXPECT THAT IT WOULD HAVE BEEN RECORDED ON SOMEWHERE;
6 CORRECT?

7 A I WOULD HAVE EXPECTED.

8 Q AND AS I UNDERSTAND YOUR OFFICE'S PRACTICES,
9 SOMETIMES YOU MIGHT JUST TAKE HANDWRITTEN NOTES AND AT
10 A LATER POINT IN TIME TRANSFER THOSE INTO WHAT IS
11 TYPED, SO WHAT WE'VE BEEN REVIEWING, THESE REPORTS?

12 A YES.

13 Q OKAY. BUT THERE ARE OCCASIONS WHERE WE DON'T
14 FIND BABY RYAN'S WEIGHT, WOULD YOU AGREE WITH THAT, IN
15 YOUR CHART?

16 A YES.

17 Q OKAY. SO DOES THAT MEAN THAT YOU DID NOT
18 WEIGH BABY RYAN ON THAT OCCASION, OR COULD IT BE THAT
19 SIMPLY, PERHAPS, THE WEIGHT DIDN'T GET TRANSFERRED ONTO
20 THE TYPEWRITTEN NOTES?

21 A IT COULD HAVE BEEN EITHER.

22 Q OKAY.

23 DO YOU REMEMBER BEING CONTACTED AT SOME POINT
24 IN TIME BY MS. DUVAL'S LACTATION CONSULTANT?

25 A CAN YOU CLARIFY "CONTACTED"?

26 Q DID SHE CALL YOU?

27 A NO.

28 Q DID SHE FAX YOU OR MAIL YOU A LETTER?

1 A I BELIEVE SHE FAXED SOMETHING TO ME.

2 Q AND DO YOU REMEMBER HAVING ANY COMMUNICATION
3 OR CONTACT WITH THAT LACTATION EXPERT OTHER THAN THE
4 FAX?

5 A I DON'T REMEMBER ANY OTHER CONTACT OTHER THAN
6 THE FAX.

7 Q DO YOU REMEMBER MS. BAGHDASSARIAN?

8 A THE NAME SOUNDS FAMILIAR.

9 Q AND DOES THAT NAME SOUND FAMILIAR BECAUSE SHE
10 WAS MS. DUVAL'S LACTATION CONSULTANT?

11 A THERE'S A NOTE IN THE CHART FROM HER.

12 Q OKAY. LET'S TURN TO THAT. I BELIEVE THAT'S
13 2045 OF EXHIBIT 168.

14 DO YOU HAVE THAT IN FRONT OF YOU, DOCTOR?

15 A YES, I DO.

16 Q AND THAT LOOKS TO BE A FAX COVER SHEET WITH A
17 DATE BEARING APRIL 9TH OF 2009; CORRECT?

18 A YES, IT LOOKS LIKE THAT.

19 Q NOW, DO YOU KNOW WHY YOU WERE BEING SENT THIS
20 INFORMATION FROM MS. BAGHDASSARIAN AT THIS TIME?

21 MS. CHUNG: OBJECTION. SPECULATION. LACKS
22 FOUNDATION.

23 THE COURT: OVERRULED.

24 HE'S JUST ASKING IF YOU KNOW. SO THAT'S
25 EITHER A "YES" OR "NO" ANSWER, IF YOU DO OR DON'T.

26 THE WITNESS: COULD YOU CLARIFY THE QUESTION
27 AGAIN?

28 ///

1 BY MR. GUTERRES:

2 Q DO YOU KNOW WHAT PRECIPITATED THE SENDING OF
3 THIS LETTER FROM MS. DUVAL'S LACTATION CONSULTANT TO
4 YOU IN APRIL 9TH OF 2009?

5 A I DON'T REMEMBER WHAT PRECIPITATED THE FAX.

6 Q AND OTHER THAN THIS CONTACT, YOU HAVE NO
7 MEMORY OF EVER HAVING ANY OTHER COMMUNICATION WITH
8 MS. BAGHDASSARIAN; IS THAT CORRECT?

9 A YES, FROM MY MEMORY.

10 Q AND MS. BAGHDASSARIAN, IN THIS FAX, HAS
11 INDICATED TO YOU THAT SHE HAS BEEN CONSULTING WITH
12 MS. DUVAL FOR THE LAST EIGHT MONTHS; CORRECT?

13 A ACCORDING TO THE FAX, YES.

14 Q OKAY. WELL, YOU HAVE NO REASON TO DOUBT THAT
15 THAT WOULD NOT BE ACCURATE; CORRECT?

16 A RIGHT. NO.

17 Q OKAY. AND SHE'S ALSO INDICATES IN THAT FIRST
18 PARAGRAPH THAT, IN FACT, MS. DUVAL IS HAVING SOME
19 ISSUES GENERATING THE BREAST MILK; TRUE?

20 A LET ME LOOK HERE.

21 IT DOES SAY THAT MS. DUVAL RENTED A BREAST
22 PUMP TO INCREASE HER SUPPLY. YES, IT DOES SAY THAT
23 HERE.

24 Q AND SHE SAYS THAT THE -- IF I MAY QUOTE IT --
25 SAYS:

26 "LINA DID, IN FACT, RENT A BREAST
27 PUMP, AS HER SUPPLY IS DROPPING
28 SECONDARY TO HER PERSONAL STRESS."

1 DO YOU SEE THAT?

2 A I DO SEE THAT.

3 Q OKAY. SO YOU ACCEPTED THAT AS A FACT?

4 A I ACCEPTED THAT THAT WAS THE LACTATION
5 CONSULTANT'S OPINION.

6 Q OKAY. AND MS. BAGHDASSARIAN ALSO INDICATED
7 SHE WAS SUPPORTIVE OF EXCLUSIVELY BREAST-FEEDING A
8 CHILD; CORRECT?

9 A IT LOOKS -- CORRECT, YES.

10 Q AND THIS WAS AT THE SAME TIME -- OR PERIOD OF
11 TIME THAT YOU WERE SUGGESTING MS. DUVAL ACTUALLY TRY TO
12 INTRODUCE SOME SOLIDS?

13 A YES, IT WAS ABOUT THE SAME TIME.

14 Q DID YOU HAVE ANY DISCUSSION WITH MS. DUVAL
15 ABOUT THAT POTENTIAL CONFLICT IN THE RECOMMENDATIONS
16 BETWEEN WHAT YOU WERE SUGGESTING AND WHAT
17 MS. BAGHDASSARIAN WAS SUGGESTING?

18 A I DON'T RECALL HAVING THAT CONVERSATION WITH
19 MS. DUVAL.

20 Q IN FACT, IF YOU LOOK AT THE LAST SENTENCE
21 THERE AT THE BOTTOM OF THAT PAGE ON 2045,
22 MS. BAGHDASSARIAN INDICATES:

23 "I AM FULLY SUPPORTIVE OF THE
24 MOTHER'S BREAST-FEEDING GOALS TO
25 BREAST-FEED BEYOND A YEAR IF SO DESIRED
26 BY HER AND HER BABY."

27 DID I READ THAT RIGHT?

28 A YES, I SEE THAT.

1 Q AND WAS THAT A GOAL THAT MS. DUVAL SHARED WITH
2 YOU?

3 A I REMEMBER US TALKING ABOUT STARTING SOLIDS AT
4 SOME POINT AND THEN SHE WOULD CONTINUE TO BREAST-FEED,
5 WHICH IS RECOMMENDED BY PEDIATRICIANS.

6 Q CAN YOU TURN TO YOUR NINE-MONTH WELL-CHECK
7 VISIT?

8 A WHICH NUMBER IS THAT? SORRY.

9 Q I WILL GET TO IT IF I CAN. I BELIEVE THAT'S
10 2083.

11 A OKAY.

12 Q AND THAT WAS APRIL 30TH, 2009?

13 A YES, THAT'S CORRECT.

14 Q AND THIS WOULD HAVE BEEN AT OR ABOUT THE END
15 OF THE TIME PERIOD THAT YOU WOULD HAVE LAST SEEN BABY
16 RYAN, ROUGHLY?

17 A I BELIEVE SO, YES.

18 Q AND AS PART OF YOUR EXAMINATION, YOU WOULD
19 HAVE DONE A FULL, KIND OF, EXAM OF BABY RYAN; IS THAT
20 CORRECT?

21 A YES.

22 Q AND YOU WOULD HAVE CHECKED HIS EYES AND
23 EYELIDS; YES?

24 A I WOULD HAVE CHECKED ALL HIS BODY PARTS, YES.

25 Q HIS EYES AND EYELIDS WERE NORMAL?

26 A ACCORDING TO THIS -- LET ME LOOK.

27 ACCORDING TO THIS, YES.

28 Q AND NO REFERENCES TO ALLERGIES; CORRECT?

1 A LET ME LOOK AGAIN.

2 I DON'T SEE A REFERENCE, NO.

3 Q OKAY. AND IT'S YOUR UNDERSTANDING DURING THIS
4 PERIOD OF TIME, ROUGHLY APRIL 30, 2009, FATHER,
5 MR. MILLS, ONLY HAS VISITATION THREE TIMES A WEEK, FOUR
6 HOURS A DAY; TRUE?

7 A IF THAT'S WHAT IT SAID IN THE CHART, THEN YES.
8 I DON'T RECALL THE EXACT TIME.

9 Q OKAY. FIRST PAGE AT THE BOTTOM, UNDER
10 COMMENTS.

11 A OH, YES, SORRY. I SEE THAT, YES.

12 Q AND FURTHER UP, IF YOU LOOK UNDER CHILD CARE,
13 HE SPENT SEVEN DAYS PER WEEK WITH MOTHER, THREE DAYS
14 PER WEEK WITH FATHER, AND FIVE DAYS PER WEEK WITH
15 GRANDPARENTS; CORRECT?

16 A THAT'S WHAT THAT SAYS, YES.

17 Q ON JUNE 24TH, 2009, YOU WERE CONTACTED BY
18 MILLS -- PARDON ME.

19 ON JUNE 24TH, 2009, YOU WERE CONTACTED BY
20 MS. DUVAL'S ATTORNEY.

21 DO YOU REMEMBER THAT?

22 A I DO.

23 DO YOU HAVE THE PAGE NUMBER FOR THAT?

24 Q YES.

25 A OH, 2098.

26 Q THIS ALSO HAPPENS TO BE THE DATE, IF I
27 REMEMBER CORRECTLY, THAT YOU WROTE THAT LETTER
28 BASICALLY DISCHARGING BABY RYAN AS YOUR PATIENT?

1 A YES, IT WAS THE SAME DATE.

2 Q DOES THIS REFRESH YOUR RECOLLECTION IF THIS
3 WAS ONE OF THE REASONS THAT PRECIPITATED YOUR LETTER,
4 THE INVOLVEMENT OF LAWYERS?

5 MS. CHUNG: OBJECTION. MISSTATES TESTIMONY,
6 YOUR HONOR.

7 THE COURT: OVERRULED.

8 THE WITNESS: I'M ALLOWED TO ANSWER? I'M
9 SORRY.

10 THE COURT: YES.

11 THE WITNESS: I THINK THERE ARE SEVERAL THINGS
12 THAT LED TO THE DISMISSAL OF THE PATIENT, NOT
13 SPECIFICALLY THIS CONVERSATION THAT WE HAD.
14 BY MR. GUTERRES:

15 Q YOU WERE ASKED BY MS. CHUNG WHETHER OR NOT YOU
16 HAD ANY SOCIAL WORKER CONTACT YOU, OR ANY PUBLIC HEALTH
17 NURSE, AND YOUR ANSWER WAS THAT YOU WERE NOT CONTACTED?

18 A I DON'T BELIEVE I WAS CONTACTED, NO.

19 Q AND THE REASON YOU DON'T BELIEVE YOU WERE
20 CONTACTED, IF I UNDERSTAND YOUR ANSWER CORRECTLY, IS
21 THAT YOU -- IN GOING THROUGH YOUR CHART, YOU COULDN'T
22 FIND A HIPAA RELEASE.

23 IS THAT CORRECT?

24 A YES, I COULDN'T FIND A HIPAA RELEASE.

25 Q AND HIPAA IS ACTUALLY AN ACRONYM; RIGHT?

26 A YES.

27 Q OKAY. DO YOU KNOW WHAT IT STANDS FOR?

28 A HEALTH INSURANCE PORTABILITY AND

1 ACCOUNTABILITY ACT.

2 Q AND HAVE YOU HAD ANY -- OTHER THAN IN THIS --
3 WELL, WITHDRAWN.

4 HAVE YOU HAD ANY CONTACT WITH DCFS IN YOUR
5 CAREER?

6 A FOR CLARIFICATION, WITH THIS PATIENT OR OTHER
7 PATIENTS?

8 Q WELL, IT LOOKS -- YOU'RE TELLING ME THAT YOU
9 DON'T REMEMBER A CONTACT --

10 A RIGHT, I DON'T.

11 SO WITH OTHER PATIENTS, I HAVE HAD FORMS SENT
12 TO ME FOR RELEASE OF RECORDS.

13 Q AND DO YOU KNOW IF CHILD PROTECTIVE SERVICES
14 IS IN FACT ONE OF THOSE ENTITIES THAT REQUIRES A HIPAA
15 RELEASE FORM BEFORE THEY ARE GIVEN MEDICAL INFORMATION?

16 A I DON'T KNOW THAT FOR A FACT, BUT I'VE BEEN
17 GIVEN HIPAA RELEASE FORMS BY THEM.

18 Q AND IF I WERE TO REPRESENT TO YOU THAT,
19 BECAUSE THEY'RE A PUBLIC AGENCY CHARGED WITH
20 INVESTIGATING CHILD ABUSE, THAT THEY ARE NOT REQUIRED
21 TO HAVE ONE IN ORDER FOR A MEDICAL PROVIDER TO RELEASE
22 RECORDS --

23 MS. CHUNG: OBJECTION. ARGUMENT LACKS
24 FOUNDATION.

25 MR. GUTERRES: I HADN'T COMPLETED MY QUESTION,
26 BUT.

27 THE COURT: JUST A MOMENT. THE OBJECTIONS ARE
28 OVERRULED.

1 GO AHEAD.

2 THE WITNESS: I'M SORRY. CAN YOU RESTATE
3 THAT? I'M GETTING CONFUSED WITH WHO'S ASKING THE
4 QUESTION.

5 THE COURT: WE'LL HAVE THE REPORTER READ THE
6 QUESTION BACK, PLEASE.

7 (THE PREVIOUS QUESTION WAS READ BACK BY
8 THE COURT REPORTER AS FOLLOWS:

9 "QUESTION: AND IF I WERE TO
10 REPRESENT TO YOU THAT, BECAUSE THEY'RE
11 A PUBLIC AGENCY CHARGED WITH
12 INVESTIGATING CHILD ABUSE, THAT THEY
13 ARE NOT REQUIRED TO HAVE ONE IN ORDER
14 FOR A MEDICAL PROVIDER TO RELEASE
15 RECORDS" --)

16 THE COURT: DON'T ANSWER ANY OF THAT BECAUSE
17 THERE WAS NO QUESTION.

18 MR. GUTERRES: YES, I WILL WITHDRAW THAT AND I
19 WILL START AGAIN.

20 BY MR. GUTERRES:

21 Q IF I WERE TO REPRESENT TO YOU THAT, BECAUSE
22 CHILD PROTECTIVE SERVICES IS A PUBLIC AGENCY THAT IS
23 CHARGED WITH INVESTIGATING CHILD ABUSE, THAT THEY ARE
24 NOT REQUIRED TO HAVE A HIPAA RELEASE IN ORDER TO OBTAIN
25 MEDICAL RECORDS, WOULD YOU STILL EXPECT THERE TO BE A
26 HIPAA RELEASE FORM IN YOUR CHART?

27 A I THINK I NEED MORE CLARIFICATION ON WHAT
28 YOU'RE TRYING TO ASK ME.

1 Q LET ME WITHDRAW THAT, TRY DIFFERENTLY.

2 AS YOU SIT HERE TODAY, YOU HAVE NO MEMORY OF
3 HAVING ANY CONTACT WITH ANYONE FROM DCFS; CORRECT?

4 A I DON'T HAVE ANY MEMORY OF HAVING CONTACT WITH
5 THEM REGARDING BABY DUVAL'S CASE, YES.

6 Q THANK YOU. IS IT POSSIBLE THAT YOU DID HAVE
7 CONTACT WITH DCFS AND IT SIMPLY WASN'T DOCUMENTED?

8 A I THINK ANYTHING IS POSSIBLE, BUT I WOULD HOPE
9 THAT WE WOULD BE ABLE TO DOCUMENT THOSE IMPORTANT FACTS
10 IN THE CHART.

11 Q OKAY. BUT YOU'VE ACKNOWLEDGED THAT THERE MAY
12 BE CERTAIN THINGS IN YOUR CHART THAT ARE MISSING;
13 CORRECT?

14 A THAT'S TRUE.

15 Q AND SO YOU WOULD AGREE THAT THERE COULD BE A
16 POSSIBILITY THAT THAT CONTACT, IF ANY, WOULD NOT --
17 MIGHT NOT NECESSARILY HAVE MADE IT TO YOUR CHART.

18 WOULD YOU AGREE WITH THAT?

19 A I WOULD SAY THAT AS A STANDARD OF PRACTICE WE
20 TRY TO PUT IMPORTANT THINGS INTO THE CHART, AND WE TALK
21 TO OUR STAFF ABOUT DOING THE SAME THING. SO IF
22 SOMETHING HAD HAPPENED, THEY MISSED A PIECE OF PAPER OR
23 SOME SORT OF RELEASE FORM, AND I FOUND OUT ABOUT IT, I
24 WOULD NEED TO TALK TO THEM TO MAKE SURE THAT IT DOESN'T
25 HAPPEN AGAIN BECAUSE, OBVIOUSLY, IT NEEDS TO BE PLACED
26 IN THE APPROPRIATE PLACE. AND THAT NEVER OCCURRED IN
27 OUR OFFICE SO, THEREFORE, I DON'T THINK THAT FORM WAS
28 MISSING.

1 Q AND AS YOU SIT HERE TODAY, YOU CAN SAY
2 UNEQUIVOCALLY THAT THAT NEVER HAS HAPPENED?

3 A I GUESS I CAN'T SAY IT UNEQUIVOCALLY.

4 Q SO THE POSSIBILITY EXISTS; TRUE?

5 A I WOULD HAVE TO SAY THE POSSIBILITY FOR
6 ANYTHING CAN EXIST.

7 MR. GUTERRES: ONE MINUTE, PLEASE.

8 BY MR. GUTERRES:

9 Q LAST QUESTION.

10 A THANK YOU.

11 Q DID YOU TESTIFY AT THE DEPENDENCY PROCEEDINGS
12 INVOLVING MS. DUVAL?

13 A CAN YOU CLARIFY WHAT PROCEEDINGS THOSE WERE?

14 Q THE DEPENDENCY PROCEEDINGS IN CHILDREN'S COURT
15 AT MONTEREY PARK.

16 A I DID NOT TESTIFY THERE.

17 Q THANK YOU.

18 THE COURT: MS. CHUNG, ANY REDIRECT?

19 MS. CHUNG: YES, YOUR HONOR.

20

21 REDIRECT EXAMINATION

22 BY MS. CHUNG:

23 Q DR. YIM, WERE YOU SUPPORTIVE OF MS. DUVAL'S
24 DECISIONS ON THE DELAYED VACCINATIONS?

25 A I SUPPORTED HER DECISIONS AND CONTINUED TO
26 RECOMMEND VACCINATIONS WHEN SHE FELT READY.

27 Q AND IS THAT SOMETHING THAT'S OUT OF THE
28 ORDINARY, FOR PARENTS TO DELAY VACCINATIONS, IN YOUR

1 PRACTICE?

2 A NO. I DO SEE A NUMBER OF FAMILIES THAT DECIDE
3 TO GO ON AN ALTERNATIVE VACCINE SCHEDULE WHICH DOESN'T
4 NECESSARILY MATCH THE SCHEDULE THAT WE RECOMMEND, BUT
5 WE WORK WITH EACH OTHER, AND AT SOME POINT, THE
6 CHILDREN GET VACCINATED.

7 Q WHAT PERCENTAGE OF PATIENTS WOULD YOU SAY THAT
8 IS, IN YOUR EXPERIENCE?

9 A IT'S DIFFICULT TO SAY. WE HAVE A COUPLE
10 THOUSAND PATIENTS IN OUR PRACTICE. I WOULD SAY IN THE
11 PAST TEN YEARS, THERE HAVE BEEN MANY MORE FAMILIES THAT
12 DON'T THAN WHEN I STARTED 20 YEARS AGO, FOR SEVERAL
13 DIFFERENT REASONS. I DON'T HAVE THE NUMBERS FOR YOU; I
14 DON'T KNOW HOW EXACT I CAN BE.

15 Q WHAT WOULD SOME OF THOSE REASONS BE?

16 A PERHAPS THEY FEEL THAT THERE ARE TOO MANY
17 MEDICATIONS GIVEN AT ONCE AND THEY WANT TO SPREAD
18 THINGS OUT. MAYBE A CHILD IS ILL DURING A WELL VISIT
19 AND THEY WANT TO POSTPONE THOSE VACCINES. THAT HAPPENS
20 A LOT. THERE ARE ALSO INDIVIDUALS THAT FEEL THAT
21 CERTAIN VACCINES CAN BE GIVEN AT A LATER DATE THAN AT
22 THE TIME WE DISCUSSED. THERE'S NUMEROUS AMOUNTS OF
23 REASONS.

24 Q AND IS THERE ANY REASON WHY A PARENT SHOULDN'T
25 START SOLID FOODS WITH A BABY AT SIX MONTHS?

26 A WELL, THERE ARE. IF THE CHILD HAD REALLY
27 HORRIBLE ALLERGIES AND THE PARENT WAS CONCERNED, THEN
28 WE WOULD RECOMMEND PERHAPS BREAST-FEEDING THEM LONGER

1 UNTIL WE COULD FIGURE OUT AND EVALUATE WHAT'S GOING ON
2 WITH THE CHILD. IF THERE'S OTHER MEDICAL ISSUES GOING
3 ON, AND THEN WE FEEL THAT THAT WOULD JUST COMPLICATE
4 MATTERS, THEN SOMETIMES WE WOULD DELAY IT.

5 Q YOU WERE ASKED EARLIER ABOUT A FAX YOU
6 RECEIVED FROM A LACTATION CONSULTANT, ROZA
7 BAGHDASSARIAN, PAGE 2045 AND 2046?

8 A OKAY.

9 Q AT THE VERY BOTTOM OF PAGE 2045, CAN YOU READ
10 THAT LAST LINE TO YOURSELF?

11 A OKAY.

12 Q AND IT SAYS:

13 "I AM FULLY SUPPORTIVE OF THE
14 MOTHER'S BREAST-FEEDING GOALS TO
15 BREAST-FEED BEYOND A YEAR IF SO DESIRED
16 BY HER AND HER BABY."

17 IS THAT CORRECT?

18 A THAT'S WHAT THAT SAYS, YES. THAT'S CORRECT.

19 Q IN THAT LINE, IT DOESN'T SAY ANYWHERE
20 "BREAST-FEEDING EXCLUSIVELY," DOES IT?

21 A IT DOES NOT, NO.

22 Q AND IF YOU LOOK AT THE TOP OF THE NEXT PAGE,
23 2046, MS. BAGHDASSARIAN GOES ON TO STATE THAT SHE'S:

24 "ADVISED THE MOTHER TO OFFER
25 NUTRITIOUS COMPLIMENTARY FOODS IN
26 ADDITION TO THE BREAST MILK."

27 DO YOU SEE THAT?

28 A I DO SEE THAT.

1 Q SO BASED ON YOUR REVIEW NOW OF THIS FAX, IS
2 THERE ANY -- YOUR UNDERSTANDING THAT MS. BAGHDASSARIAN
3 WAS SAYING THAT MOM SHOULD EXCLUSIVELY DO BREAST MILK?

4 A NO. ACCORDING TO THE NOTES, IT LOOKS LIKE SHE
5 WAS RECOMMENDING BREAST-FEEDING IN ADDITION TO
6 COMPLIMENTARY FOODS.

7 Q HAVE YOU EVER RECEIVED ANY OTHER TYPES OF
8 MEDICAL RELEASES, OTHER THAN A HIPAA WAIVER, FOR A
9 PATIENT?

10 A TRANSFER OF RECORD FORMS TO SEE ANOTHER
11 PHYSICIAN, HOSPITAL RECORD RELEASE FORMS, THINGS LIKE
12 THAT. BUT I BELIEVE THOSE ARE HIPAA.

13 Q SO WITH OR WITHOUT A WAIVER, IF YOU SPOKE WITH
14 A CHILDREN'S SOCIAL WORKER, YOU WOULD REFLECT THAT
15 CONVERSATION IN YOUR CHART; IS THAT CORRECT?

16 A IT SHOULD BE REFLECTED IN THE CHART; THAT'S
17 CORRECT.

18 Q AND IS THERE ANY SUCH ENTRY?

19 A NO, THERE'S NO SUCH ENTRY IN THIS CHART.

20 Q DR. YIM, YOU MENTIONED EARLIER THAT YOU
21 ACTUALLY HAD INTERACTIONS WITH SOCIAL WORKERS IN OTHER
22 CASES; IS THAT CORRECT?

23 A I HAVE NOT HAD AN INTERACTION WITH A SOCIAL
24 WORKER IN OTHER CASES, TO MY MEMORY. THEY WOULD HAVE
25 REQUESTED -- THEY REQUESTED, PERHAPS, RECORDS,
26 DOCUMENTATION OF A VISIT THAT WE HAD EXAMINED, LIKE, A
27 PATIENT, THEY WANTED DOCUMENTATION TO SEE HOW THE
28 PATIENT IS DOING. BUT I DON'T THINK I'VE HAD

1 INTERACTION WITH A SOCIAL WORKER SINCE I WAS IN
2 RESIDENCY.

3 Q SO YOU'VE NEVER SPOKEN WITH ANY SOCIAL WORKER
4 ABOUT ANY OF YOUR PATIENTS, TO THE BEST OF YOUR
5 KNOWLEDGE?

6 A I HAVE EARLIER, BUT NOT RECENTLY. DEFINITELY
7 AT CHILDREN'S. WHEN I WAS AT CHILDREN'S WE DID BECAUSE
8 THEY WERE READILY AVAILABLE.

9 Q AND WHEN YOU SAID WHEN YOU WERE AT CHILDREN'S?

10 A WHEN I DID MY RESIDENCY, OVER 20 YEARS AGO.

11 Q SO YOU WOULD DEFINITELY REMEMBER A
12 CONVERSATION WITH A SOCIAL WORKER IN YOUR PRIVATE
13 PRACTICE, SINCE RESIDENCY?

14 A I WOULD BECAUSE IT DOESN'T HAPPEN THAT OFTEN.

15 Q AND YOU DON'T REMEMBER THAT HAPPENING IN THIS
16 PARTICULAR CASE WITH BABY RYAN?

17 A I DON'T REMEMBER THAT HAPPENING IN THIS CASE,
18 NO.

19 Q GOING BACK TO PAGE NO. 2098, THE TELEPHONE
20 CALL YOU HAD WITH MS. DUVAL'S ATTORNEY, CAN YOU TELL ME
21 WHO THAT WAS?

22 A LOOKS LIKE I DOCUMENTED MR. JINGOZIAN
23 (PHONETIC), IF I'M SAYING THAT CORRECTLY.

24 Q AND THE CONVERSATION THAT YOU HAD WITH
25 MR. JINGOZIAN, WHAT WAS IT ABOUT?

26 A IT LOOKS LIKE IT WAS ABOUT STATEMENTS MADE BY
27 BABY RYAN'S FATHER, MR. MILLS.

28 Q AND WHAT KINDS OF STATEMENTS WAS MR. MILLS

1 MAKING?

2 A ACCORDING TO THIS, IT LOOKS LIKE MR. JINGOZIAN
3 HAD ASKED MY WHY NAME WAS MENTIONED SEVERAL TIMES, AND
4 I TOLD HIM I WASN'T SURE WHY. I TOLD THE ATTORNEY THAT
5 I MET WITH MR. MILLS ONCE AND SPOKE WITH HIM SEVERAL
6 TIMES.

7 HE ASKED ABOUT MY OPINION ABOUT OVERNIGHT
8 STAYS FOR BABY RYAN WITH, I BELIEVE, HIS FATHER, AND I
9 TOLD HIM THAT I HAD NO OPINION ON THOSE.

10 HE ASKED ABOUT THE LAB WORK, ABOUT FOODS,
11 ABOUT FEEDING THE BABY.

12 Q AND WERE THE QUESTIONS THAT MR. JINGOZIAN WAS
13 ASKING YOU ABOUT STATEMENTS MR. MILLS HAD MADE TO YOU
14 STATEMENTS YOU ACTUALLY MADE?

15 A I MADE GENERAL STATEMENTS, BUT PERHAPS NOT
16 EXACTLY AS MR. MILLS STATED.

17 Q THANK YOU, DR. YIM.

18 A THANK YOU.

19 THE COURT: ANYTHING ELSE, MR. GUTERRES?

20 MR. GUTERRES: JUST BRIEFLY, YOUR HONOR.

21

22 RECROSS-EXAMINATION

23 BY MR. GUTERRES:

24 Q DOCTOR, JUST COULD YOU TURN TO YOUR WELL-CHILD
25 SIX-MONTH, BATES-LABELED 2075, EXHIBIT 168. THAT'S THE
26 MARCH 16, 2009, INCIDENT -- PARDON ME, WELL VISIT.

27 MS. CHUNG: YOUR HONOR, BEYOND THE SCOPE.

28 THE COURT: I DON'T KNOW YET. IT COULD BE,

1 BUT HE HASN'T FINISHED HIS QUESTION.

2 MR. GUTERRES: I HAVEN'T STARTED MY QUESTION.

3 THE COURT: I UNDERSTAND THAT.

4 THE WITNESS: I'M SORRY, WHAT WAS THE PAGE
5 NUMBER AGAIN?

6 BY MR. GUTERRES:

7 Q YES, 2075.

8 A OKAY. YES.

9 Q DO YOU REMEMBER AT SOME POINT MAKING A
10 RECOMMENDATION FOR MS. DUVAL TO SEE A COUNSELOR?

11 MS. CHUNG: OBJECTION. BEYOND THE SCOPE, YOUR
12 HONOR.

13 THE COURT: SUSTAINED.

14 MR. GUTERRES: I'M DONE.

15 THE COURT: ALL RIGHT. THANK YOU.

16 THAT MEANS THAT YOU'RE FINISHED ALSO.

17 THE WITNESS: I'M NOT GOING TO BE CALLED --

18 THE COURT: I DON'T KNOW ABOUT THAT, BUT I'M
19 EXCUSING YOU AT THIS TIME.

20 THANK YOU VERY MUCH, AND YOU ARE EXCUSED.

21 THE WITNESS: THANK YOU.

22 MS. CHUNG: YOUR HONOR, WE'D LIKE TO RELEASE
23 DR. YIM, SUBJECT TO RECALL IF NECESSARY.

24 THE COURT: OH, WELL --

25 YOU ARE EXCUSED. YOU CAN LEAVE.

26 THE WITNESS: OKAY, THANK YOU.

27 MR. MCMILLAN: ONE MOMENT, YOUR HONOR. IT
28 TAKES JUST A SECOND TO COME UP.

1 THE COURT: THIS IS THE FURTHER DEPOSITION?

2 MR. MCMILLAN: THAT'S CORRECT, YOUR HONOR. IT
3 WOULD BE VOLUME II OF DEFENDANT SUSAN PENDER.

4 THE COURT: ALL RIGHT.

5 MR. MCMILLAN: YOUR HONOR, DO YOU MIND IF I
6 START THAT OVER?

7 THE COURT: START IT OVER, PLEASE.

8 MR. MCMILLAN: THANK YOU.

9 (WHEREUPON AN EXCERPT OF THE VIDEOTAPED
10 DEPOSITION OF SUSAN PENDER WAS PLAYED.)

11 MR. MCMILLAN: YOUR HONOR, I'VE BEEN ADVISED
12 THAT THE NEXT LIVE WITNESS MAY VERY WELL BE OUT IN THE
13 HALL, AND IT'S BEEN SUGGESTED TO ME THAT I SUGGEST THAT
14 PERHAPS WE CAN TAKE OUR AFTERNOON BREAK AND GO CHECK
15 AND FIGURE IT OUT. AND IF NOT, THEN WE'LL BE READY TO
16 PUT UP ANOTHER READER VIDEO.

17 THE COURT: THAT WILL BE FINE. WE'LL TAKE
18 APPROXIMATELY A 10-MINUTE BREAK.

19 ALL JURORS, PLEASE REMEMBER THE ADMONITION:
20 NO CONTACT WITH ANYONE; DON'T FORM ANY OPINIONS OR
21 EXPRESS ANY.

22 (JURY EXCUSED)

23 (RECESS)

24 THE COURT: SO ON THE RECORD.

25 YOU HAD ASKED PREVIOUSLY ABOUT RECEIVING
26 DR. YIM'S NOTES, EXHIBIT 168, INTO EVIDENCE, AND
27 MR. GUTERRES, YOU WERE GOING TO RESERVE FOR THE TIME.

28 MR. GUTERRES: AS -- DURING THE BREAK, I WAS

1 ABLE TO GO THROUGH THE REMAINDER OF THE PAGES. WE HAVE
2 NO OBJECTION TO 168 BEING RECEIVED.

3 THE COURT: ALL RIGHT. IT WILL BE RECEIVED.

4 (PLAINTIFF'S EXHIBIT NO. 168 WAS
5 RECEIVED INTO EVIDENCE BY THE COURT.)

6 MR. MCMILLAN: THANK YOU, YOUR HONOR.

7 MR. GUTERRES: THANK YOU, YOUR HONOR.

8 (JURY PRESENT)

9 THE COURT: WE ARE BACK ON THE RECORD.
10 EVERYONE IS PRESENT. EVERYONE MAY BE SEATED.

11 AND MS. CHUNG, DO YOU WANT TO CALL YOUR NEXT
12 WITNESS?

13 MS. CHUNG: YES, YOUR HONOR. ROZA
14 BAGHDASSARIAN.

15

16 ROZA BAGHDASSARIAN,
17 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY
18 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

19

20 THE CLERK: FOR THE RECORD, PLEASE STATE YOUR
21 NAME AND SPELL YOUR FIRST AND LAST NAME.

22 THE WITNESS: ROZA BAGHDASSARIAN. R-O-Z-A,
23 B-A-G-H-D-A-S-S-A-R-I-A-N.

24 THE COURT: THANK YOU. GO AHEAD, MS. CHUNG.

25

26 DIRECT EXAMINATION

27 BY MS. CHUNG:

28 Q GOOD AFTERNOON, MS. BAGHDASSARIAN.

1 COULD YOU PLEASE TELL US WHAT YOU DO FOR A
2 LIVING?

3 A I'M A LACTATION CONSULTANT.

4 Q AND WHAT'S A LACTATION CONSULTANT?

5 A A LACTATION CONSULTANT IS AN ALLIED HEALTHCARE
6 WORKER THAT DEALS WITH BREAST-FEEDING MANAGEMENT.

7 Q I'M NOT SURE WHAT YOU MEAN, ALLIED
8 HEALTHCARE --

9 A I WORK WITH NEW MOTHERS AND THEIR BABIES AS IT
10 RELATES TO BREAST-FEEDING ISSUES.

11 Q AND IS THERE ANY KIND OF EDUCATION OR TRAINING
12 FOR SOMETHING LIKE THAT?

13 A THERE IS. MY BACKGROUND IS AN UNDERGRADUATE
14 DEGREE FOLLOWED BY A MASTER'S IN HUMAN LACTATION --
15 SPECIALIZATION IN HUMAN LACTATION AND ONGOING EDUCATION
16 TO BE ABLE TO CONTINUE WORKING AS A LACTATION
17 CONSULTANT.

18 Q SO YOU HAVE ONGOING CLASSES?

19 A THAT'S RIGHT.

20 Q HOW LONG HAVE YOU BEEN A LACTATION CONSULTANT?

21 A ABOUT 15 YEARS.

22 Q AND WE'RE HERE FOR A CASE INVOLVING
23 MS. RAFAELINA DUVAL.

24 DO YOU REMEMBER MS. RAFAELINA DUVAL?

25 A YES, I DO.

26 Q AND HOW IS IT THAT YOU BECAME INVOLVED WITH
27 MS. RAFAELINA DUVAL?

28 A SHE WAS A CLIENT. SHE SOUGHT OUT MY SERVICES

1 AFTER HER INFANT WAS BORN.

2 Q SO LACTATION CONSULTANTS GET HIRED ON AN
3 INDEPENDENT CONTRACTING BASIS? TELL ME A LITTLE BIT
4 ABOUT THAT.

5 A YES. SO THERE ARE LACTATION CONSULTANTS WHO
6 WORK IN A HOSPITAL SETTING AND THERE ARE LACTATION
7 CONSULTANTS WHO WORK IN PRIVATE PRACTICE, AND I WAS
8 WORKING IN BOTH. AND SHE CONTACTED ME IN MY PRIVATE
9 PRACTICE BECAUSE SHE NEEDED SUPPORT WITH
10 BREAST-FEEDING.

11 Q YOU DON'T KNOW MS. DUVAL PRIOR TO HER HIRING
12 YOU?

13 A SHE HAD ATTENDED ONE OF THE PRENATAL CLASSES
14 IN WHICH I HAD PRESENTED PRIOR TO HER DELIVERY, AND
15 THAT'S HOW SHE HAD LEARNED ABOUT ME AND MY SERVICES.

16 Q SO THE MOTHERS THAT CONTACT YOU, OR YOUR
17 CLIENTS, DO THEY ALWAYS HAVE ISSUES --

18 A THAT'S WHY THEY'RE CONTACTING ME, BECAUSE
19 THEY'RE HAVING ISSUES FEEDING THEIR BABY.

20 Q WOULD YOU SAY THAT'S A NORMAL TYPE OF THING
21 FOR A NEW PARENT, NEW MOTHERS?

22 A YES.

23 Q WHAT DOES "SUPPORT IN BREAST-FEEDING" MEAN?

24 A IT MEANS MOTHERS GAINING SKILLS TO BUILD UP
25 THEIR CONFIDENCE IN KNOWING HOW TO EFFECTIVELY FEED
26 THEIR BABIES AND KNOW THEIR BABIES ARE GETTING ENOUGH
27 INTAKE.

28 Q HOW DO YOU TRAIN NEW MOTHERS TO DO THAT?

1 A SO MOTHERS OFTEN NEED TO FEEL MORE COMFORTABLE
2 IN HANDLING THEIR NEWBORNS, WHAT POSITIONS TO USE, HOW
3 TO GET THE BABY EFFECTIVELY LATCHED ONTO THE BREAST SO
4 THE BABY IS ABLE TO COMFORTABLY REMOVE MILK. SO AS A
5 CLINICIAN, I'M USING MY SKILLS TO TEACH HER HOW TO FIND
6 THE MOST SUITABLE AND OPTIMAL POSITIONS TO ENSURE THAT
7 HER BABY IS ABLE TO LATCH AND FEED PROPERLY.

8 Q BREAST-FEEDING, CAN YOU TELL US SOME OF THE
9 BENEFITS FOR AN INFANT?

10 A BREAST-FEEDING -- BREAST MILK IS
11 SPECIES-SPECIFIC. SO IT'S HUMAN MILK DESIGNED FOR A
12 HUMAN BABY. AND WE KNOW THAT THERE ARE 50 AND MORE
13 WELL-KNOWN IMMUNITIES FOUND IN HUMAN MILK THAT PROTECT
14 THE INFANT FROM ALL KINDS OF BACTERIA AND VIRUSES.

15 WHEN WE HAVE A YOUNG INFANT THAT'S DEVELOPING
16 THEIR IMMUNE SYSTEM, WE KNOW THAT HUMAN MILK IS
17 SUPERIOR FOR THAT INFANT. THERE'S CERTAIN IMMUNE
18 FACTORS FOUND WITHIN HUMAN MILK CALLED IMMUNOGLOBULINS,
19 AND THESE ACTUALLY HELP PROTECT THE LINING OF THE
20 INFANT'S GUT, SO IT PREVENTS THE INFANT'S GUT FROM
21 OTHER FOREIGN PROTEINS GOING IN AND POSSIBLY CAUSING
22 IRRITATION, AND OTHER THINGS THAT HE MIGHT BE AT RISK
23 FOR, THINGS LIKE RESPIRATORY ILLNESSES, OR DIARRHEA,
24 EAR INFECTIONS. SO HUMAN MILK CAN HELP PROTECT THE
25 BABY FROM THOSE KNOWN RISK FACTORS. PARTICULARLY
26 EXCLUSIVE BREAST-FEEDING, MEANING ONLY MOTHER'S MILK IN
27 THAT INFANT'S DIET, THEN THOSE BENEFITS ARE INCREASED.

28 Q HOW LONG IS IT RECOMMENDED FOR A MOTHER TO

1 BREAST-FEED?

2 A EXCLUSIVE BREAST-FEEDING RECOMMENDATIONS ARE
3 ABOUT SIX TO EIGHT MONTHS. SO FOR THE FIRST SIX TO
4 EIGHT MONTHS, AN INFANT CAN GET ALL THE NUTRITION IT
5 NEEDS FROM ITS MOTHER'S MILK. AROUND SIX TO EIGHT
6 MONTHS, INFANTS NEED TO EXHIBIT SIGNS OF READINESS TO
7 BEGIN COMPLEMENTARY FOODS, BABY FOOD -- OTHER FOODS IN
8 THEIR DIET.

9 Q WHAT KINDS OF SIGNS OF READINESS SHOULD A
10 PARENT BE LOOKING FOR?

11 A SO WE EDUCATE MOTHERS, PARENTS ON OBSERVING TO
12 SEE IF THE CHILD CAN SIT UP UNSUPPORTED -- BECAUSE THE
13 CHILD NEEDS TO BE ABLE TO HOLD FOOD, BRING IT TO ITS
14 MOUTH -- TO PREVENT ISSUES LIKE CHOKING BY TOPPLING
15 OVER. SO THEY NEED TO HAVE THAT COORDINATION, SITTING
16 UP STRAIGHT, USING THEIR PINCER GRASP, THEIR INDEX AND
17 THEIR THUMB, TO PICK SOMETHING UP AND BRING IT TO THEIR
18 MOUTH TO BE ABLE TO EAT IT. SHOWING INTEREST, SO NO
19 PROMPTING. THE CHILD SHOWS SIGNS THEY ARE READY TO
20 ACTUALLY TAKE IN OTHER FOODS.

21 Q AND YOU WOULD EXPECT A BABY BETWEEN SIX TO
22 EIGHT MONTHS TO BE ABLE TO DO THOSE TYPES OF THINGS?

23 A YES. THAT'S BASED ON EVIDENCE RESEARCHED BY
24 NAYLOR AND MORROW, SIX TO EIGHT MONTHS.

25 Q AFTER SIX TO EIGHT MONTHS, CAN A MOTHER STILL
26 BREAST-FEED SOLELY?

27 A YES. THE RECOMMENDATIONS SET BY THE AMERICAN
28 ACADEMY OF PEDIATRICS IS TO HAVE BABIES CONTINUE

1 BREAST-FEEDING AND SLOWLY BEGINNING TO INTRODUCE
2 COMPLIMENTARY FOODS. SO THE MINIMUM RECOMMENDATION IS
3 FOR THE FIRST YEAR OF THAT INFANT'S LIFE TO RECEIVE ITS
4 MOTHER'S MILK, OR BEYOND.

5 Q CAN A MOTHER CONTINUE TO BREAST-FEED BEYOND
6 ONE YEAR?

7 A YES. IN FACT, THE AMERICAN ACADEMY OF
8 PEDIATRICS, THE WORLD HEALTH ORGANIZATION, OTHER
9 ORGANIZATIONS RECOMMEND ADVISING BREAST-FEEDING INTO
10 THE SECOND OR EVEN THIRD YEAR OF LIFE.

11 Q AND THAT'S TO BUILD THEIR IMMUNE SYSTEM LIKE
12 YOU WERE TALKING ABOUT EARLIER?

13 A YES. A CHILD'S IMMUNE SYSTEM IS NOT DEVELOPED
14 UNTIL BEYOND THE AGES OF THREE OR FOUR, SO THE CHILD
15 CONTINUES TO GET THOSE BENEFITS THROUGH ITS MOTHER'S
16 MILK IN ADDITION TO OTHER COMPLIMENTARY FOODS.

17 Q SO GOING BACK TO YOUR WORK WITH MS. DUVAL,
18 OKAY, CAN YOU -- DO YOU RECALL WHEN SHE FIRST CONTACTED
19 YOU TO HIRE YOU TO HELP HER WITH BABY RYAN?

20 A IT WAS ABOUT EIGHT YEARS AGO, AND SHE
21 CONTACTED ME IN THE EVENING. HER BABY WAS UNDER
22 24 HOURS, I BELIEVE, AT THE TIME. SHE WAS VERY
23 CONCERNED THAT THE INFANT WAS NOT FEEDING WELL, FEEDING
24 POORLY, AND WANTED TO SEEK MY SERVICES IN BEING ABLE TO
25 WORK THROUGH THOSE ISSUES.

26 Q SO THE BABY WAS LESS THAN 24 HOURS OLD, YOU
27 SAID?

28 A WHEN SHE CONTACTED ME, YES.

1 Q IS THAT A TYPICAL THING IN YOUR PROFESSION?

2 A YES.

3 Q WHERE A MOTHER CONTACTS YOU RIGHT AWAY?

4 A YES.

5 Q WHAT KIND OF RECOMMENDATIONS DID YOU GIVE TO
6 MS. DUVAL ON THAT FIRST CONTACT?

7 A MY RECOMMENDATIONS WERE TO PROTECT HER MILK
8 SUPPLY AND TO ENSURE THAT HER BABY WAS ABLE TO TAKE IN
9 NUTRIENTS WITHIN THE FIRST 24 HOURS. SO THAT INCLUDED
10 EXPRESSION OF MILK, HOW TO PUMP HER MILK AND FEED THAT
11 BACK TO HER INFANT.

12 Q SO DID MS. DUVAL HAVE, ALREADY, A BREAST PUMP?

13 A AS I RECALL, I BELIEVE SHE RENTED A BREAST
14 PUMP AT THE TIME.

15 Q DID SHE GET THAT FROM YOU OR SOMEONE ELSE?

16 A I CAN'T REMEMBER.

17 Q AND THE BREAST PUMP, IS THAT -- CAN THAT
18 GENERATE AS MUCH MILK AS A BABY?

19 A NO.

20 Q WHY?

21 A WELL, WHEN A BABY IS LATCHED ON, THE BABY
22 TAKES IN MORE TISSUE INTO ITS MOUTH AND IS MORE
23 EFFICIENT, WHEN IT FEEDS WELL, TO REMOVE MILK THAN A
24 MACHINE. A MACHINE IS ONLY SUCTION. YOU CAN GET SOME
25 MILK OUT, BUT NOT AS MUCH AS AN EFFICIENT BABY.

26 Q WHEN MS. DUVAL CONTACTED YOU WITHIN THE
27 24 HOURS OF HER BABY'S BIRTH, WHAT ARE SOME OF THE
28 THINGS THAT YOU WANTED TO KNOW ABOUT HER AND BABY RYAN?

1 A INITIALLY, I WANT TO LEARN ABOUT THE MOTHER'S
2 HISTORY, THE INFANT'S HISTORY, HOW FEEDINGS ARE
3 PROGRESSING, SO THAT I CAN DETERMINE A FEEDING PLAN.
4 SO I MAY HAVE ASKED HER ABOUT HER HEALTH HISTORY, HER
5 LABOR -- HER PREGNANCY, HER LABOR, HER DELIVERY. AND
6 BASED ON THAT, MAKE RECOMMENDATIONS.

7 Q DID MS. DUVAL GIVE YOU ALL THAT INFORMATION?

8 A I BELIEVE IT WASN'T THE FIRST ENCOUNTER. I
9 THINK BY A COUPLE OF DAYS LATER WE HAD MADE AN
10 APPOINTMENT FOR A CONSULTATION, WHICH OFTEN TAKES A
11 COUPLE OF HOURS. BUT IN THAT CONSULT, I PROBABLY
12 GATHERED MOST OF THAT INFORMATION FROM HER.

13 Q AND THAT'S YOUR CUSTOM AND PRACTICE, TO TAKE A
14 COUPLE OF HOURS WITH A NEW CLIENT AND GATHER THAT
15 INFORMATION?

16 A YES. MOST OF MY CONSULTATIONS ARE ANYWHERE
17 BETWEEN AN HOUR, HOUR AND A HALF, TO SOMETIMES
18 THREE HOURS, DEPENDING ON THE COMPLEXITY OF THE CASE.

19 Q AND FROM YOUR OWN RECOLLECTION, WHAT, IF
20 ANYTHING, DO YOU RECALL WITH MS. DUVAL ABOUT HER ISSUES
21 WITH BREAST-FEEDING?

22 A LIKE ANY MOTHER, SHE WAS CONCERNED ABOUT
23 MAKING ENOUGH MILK -- MAKING ENOUGH MILK TO BE ABLE TO
24 OFFER TO HER BABY AND HOW TO GET BREAST-FEEDING OFF TO
25 A GOOD START, HOW TO ESTABLISH A COPIOUS MILK SUPPLY.
26 THAT WAS HER PRIMARY ISSUE. AND HOW TO FEED THAT MILK
27 BACK TO HER BABY.

28 Q DO YOU RECALL MS. DUVAL BEING ABLE TO PROVIDE

1 ENOUGH BREAST MILK?

2 A YES, ONCE SHE STARTED PUMPING, SHE WAS ABLE TO
3 PROVIDE THAT MILK TO HER BABY.

4 Q YOU SAY "ONCE SHE STARTED PUMPING," BUT WHAT
5 ABOUT THE BABY ACTUALLY LATCHING ON AND GETTING THE
6 MILK HIMSELF?

7 A YES. YES, ONCE SHE WAS ABLE TO PRODUCE MORE
8 MILK, THE BABY WAS ABLE TO LATCH AND REMOVE MILK.

9 Q SO ARE YOU SAYING THAT IN THE FIRST PART UP
10 UNTIL THE TIME SHE WAS ABLE TO PUMP MORE MILK, THE BABY
11 HAD SOME DIFFICULTY LATCHING ON, OR THERE WAS SOME
12 FEEDING PROBLEMS? I'M NOT SURE WHAT YOU'RE SAYING.

13 A WHAT I'M SAYING IS THAT BY PUMPING SHE
14 INCREASED HER MILK SUPPLY, AND AS SHE INCREASED HER
15 MILK SUPPLY, IT MOTIVATED THE BABY TO LATCH ON AND FEED
16 MORE EFFECTIVELY.

17 Q OTHER THAN THE BREAST PUMP, DID YOU MAKE ANY
18 OTHER RECOMMENDATIONS WITH MS. RAFAELINA DUVAL?

19 A I MAY HAVE.

20 Q YOU DON'T RECALL IT?

21 A I DON'T RECALL, BUT I GENERALLY DISCUSS DIET
22 AND ENCOURAGE MOTHERS TO HAVE A HEALTHY, BALANCED DIET.
23 I ENCOURAGE DRINKING TO THIRST. I MEAN, I HAVE GENERAL
24 RECOMMENDATIONS THAT I PROBABLY WOULD HAVE MADE TO HER
25 THAT I MAKE TO MOST MOTHERS. I DON'T REMEMBER
26 SPECIFICALLY, OFF THE TOP OF MY HEAD.

27 Q DO YOU RECALL SHOWING MS. DUVAL HOW TO
28 SYRINGE-FEED HER BABY?

1 A YES.

2 Q WHAT IS SYRINGE-FEEDING?

3 A SYRINGE-FEEDING IS USING A PERIODONTAL
4 SYRINGE. IT HAS A CURVED TIP. AND WHEN WE HAVE LOW
5 MILK VOLUME IN THE FIRST DAYS OF LIFE -- WHICH IS
6 TYPICAL, MOTHERS HAVE LOW MILK VOLUME TO MATCH THE
7 BABY'S STOMACH'S SMALL CAPACITY -- WE CAN USE A SYRINGE
8 TO COLLECT ALL OF THE EXPRESSED BREAST MILK AND USE
9 THAT TO FEED BACK, AS AN ALTERNATIVE FEEDING DEVICE, TO
10 THE BABY, VERSUS USING OTHER TOOLS.

11 Q AND WHY DID SHE NEED TO DO THAT WITH BABY
12 RYAN?

13 A WELL, IF A BABY IS NOT SUCKING EFFECTIVELY,
14 IT'S EASIER TO GET MILK INTO A BABY USING A SYRINGE
15 THAN USING SOMETHING LIKE A BOTTLE. AND WHEN WE HAVE
16 LOW MILK VOLUME, WE WANT TO BE ABLE TO USE ALL OF THE
17 MILK THAT'S AVAILABLE.

18 SO I RECOMMENDED THAT SHE USE THE SYRINGE TO
19 GET ALL OF HER MILK INTO THE BABY VERSUS USING A BOTTLE
20 SO THAT WE WOULDN'T LOSE ANY OF THE MILK IN THE
21 ARTIFICIAL NIPPLE. WE WANTED TO USE EVERY DROP OF HER
22 MILK.

23 Q AND WHY WOULD THE BABY HAVE ANY SUCKING
24 PROBLEMS?

25 A GIVEN THE BABY'S ENTRY INTO THE WORLD, SOME
26 BABIES NEED MORE TIME TO FIGURE OUT HOW TO BREAST-FEED.
27 SO IT'S NOT UNUSUAL TO SEE A BABY, IN THE FIRST
28 24 HOURS, BE DISORGANIZED. BUT WE WANT TO ENSURE THE

1 BABY GETS ENOUGH INTAKE, SO WE CAN USE TOOLS LIKE
2 SYRINGES TO GET SOME NUTRITION INTO THE BABY AS WE
3 ASSIST THE MOTHER IN LEARNING HOW TO BREAST-FEED HER
4 BABY.

5 Q YOU TALKED EARLIER ABOUT BREAST MILK PROVIDING
6 SOME OF THOSE IMMUNE BOOSTERS.

7 WHAT KIND OF DISEASES WOULD BREAST MILK BE
8 PREVENTING WITH AN INFANT?

9 A GASTROINTESTINAL DISEASES. WE KNOW THAT
10 BABIES WHO ARE BREAST-FED LATER IN LIFE POSSIBLY CAN
11 HAVE REDUCED RISK FOR STROKES, HEART DISEASE, OBESITY,
12 RESPIRATORY ILLNESSES.

13 Q DO YOU RECALL HOW LONG YOU MAINTAINED CONTACT
14 WITH MS. RAFAELINA DUVAL AFTER THE FIRST CONTACT?

15 A PROBABLY ABOUT A YEAR.

16 Q SO SHE CONTINUED TO CONSULT WITH YOU FOR ABOUT
17 A YEAR?

18 A SHE HAD SOMEWHERE BETWEEN FOUR AND FIVE VISITS
19 WITH ME, BUT WOULD PERIODICALLY CHECK IN, AS MANY
20 MOTHERS DO.

21 Q AND WHEN YOU SAY "CHECK IN," ARE WE TALKING
22 ABOUT PHYSICAL APPOINTMENTS?

23 A NO. NO.

24 Q WHAT ARE YOU TALKING ABOUT?

25 A IT COULD BE A MOTHER CALLING ME. SHE MIGHT
26 HAVE A GENERAL QUESTION ABOUT HER BABY. SHE MIGHT HAVE
27 QUESTIONS ABOUT ATTENDING A BREAST-FEEDING SUPPORT
28 GROUP. I MEAN, MOTHERS WILL OFTEN JUST HAVE A QUESTION

1 THAT COMES UP THROUGHOUT THAT FIRST YEAR OF THE BABY'S
2 LIFE.

3 Q DID YOU ACTUALLY SEE MS. DUVAL WITH HER SON,
4 BABY RYAN?

5 A YES.

6 Q AND WHEN YOU DID SEE BABY RYAN, WAS MS. DUVAL
7 TRYING TO BREAST-FEED HIM?

8 A YES, SHE BREAST-FED IN MY OFFICE.

9 Q AND CAN YOU TELL US A LITTLE BIT ABOUT HOW YOU
10 HELPED MS. RAFAELINA DUVAL BREAST-FEED IN THAT
11 APPOINTMENT?

12 A I WOULD HAVE GIVEN INSTRUCTIONS ON HER
13 POSITIONING, HOW TO GET COMFORTABLE, HOW TO ENSURE THAT
14 RYAN WOULD LATCH ON DEEPLY TO REMOVE THE MOST AMOUNT OF
15 MILK. SOMETIMES I WEIGH THE BABY BEFORE AND AFTER A
16 FEED TO SEE HOW MUCH MILK IS BEING TRANSFERRED, AND
17 THAT GIVES ME AN IDEA OF WHERE THE MOTHER'S MILK SUPPLY
18 IS. SO MORE OF THE MECHANICAL HELP OF ENSURING THAT
19 SHE'S FEELING CONFIDENT IN LATCHING HER BABY.

20 Q AND WAS SHE ABLE TO BREAST-FEED HIM
21 PRODUCTIVELY IN THE TIME THAT YOU'VE SEEN HER?

22 A YES.

23 Q AND HE WAS ABLE TO LATCH ON AFTER SOME
24 PRACTICE?

25 A YES.

26 Q DO YOU RECALL HOW LONG THAT TOOK, FOR BABY
27 RYAN TO ACTUALLY BE ABLE TO LATCH ON?

28 A I DON'T REMEMBER.

1 Q WERE THERE ANY DIRECTIONS THAT YOU GAVE
2 MS. DUVAL ABOUT BREAST-FEEDING THAT SHE DID NOT FOLLOW?

3 A NO. AS I REMEMBER, SHE WAS VERY COMPLIANT.

4 Q I WANT YOU TO TAKE A LOOK AT EXHIBIT NO. 168.
5 IT'S RIGHT IN FRONT OF YOU. AND WE'RE LOOKING -- IF
6 YOU LOOK AT THE UPPER RIGHT-HAND CORNER, PAGE NO. 2045.

7 DO YOU SEE THAT THERE?

8 A YES.

9 Q THIS APPEARS TO BE A FAX BY YOU; IS THAT
10 CORRECT?

11 A YES.

12 Q DO YOU RECALL WRITING THIS FAX?

13 A YES.

14 Q WHY DID YOU PREPARE THIS FAX?

15 A AT THE REQUEST OF MS. DUVAL.

16 Q AND THIS FAX WAS SUPPOSED TO BE SENT TO WHO?

17 A RYAN'S PEDIATRICIAN.

18 Q DR. YIM?

19 A YES.

20 Q IT STATES HERE THAT YOU SAW THE BABY ON
21 APRIL 9, 2009; IS THAT CORRECT?

22 A YES.

23 Q AND YOU FOUND HIM TO BE HEALTHY, HAPPY, AND
24 SECURE WITH HIS MOTHER; TRUE?

25 A YES.

26 Q HOW DID YOU COME TO THAT OPINION?

27 A WHAT I MEANT, AND WHAT I WAS ALLUDING TO IN
28 THAT STATEMENT, WAS THE INTERACTIONS BETWEEN RYAN AND

1 HIS MOTHER. SO THE CONTACT THAT HE WAS MAKING, THE
2 INTERACTIONS BETWEEN THEM APPEARED NORMAL AND TYPICAL
3 TO ME.

4 Q DID YOU -- DO YOU WEIGH BABIES YOURSELF WHEN
5 YOU ARE WORKING WITH MOTHERS?

6 A YES.

7 Q DO YOU KNOW IF YOU WEIGHED BABY RYAN ON THIS
8 VISIT?

9 A I DON'T REMEMBER IF I WEIGHED HIM ON THIS
10 PARTICULAR VISIT, BUT I DO REMEMBER WEIGHING HIM A
11 COUPLE OF TIMES.

12 Q AND WAS HIS -- WAS ANYONE ELSE PRESENT?

13 A NO.

14 Q THE MATERNAL GRANDMOTHER WAS NOT PRESENT
15 DURING THAT APRIL 9, 2009, VISIT?

16 A OH, SHE MAY HAVE BEEN PRESENT FOR ONE OF THE
17 VISITS, BUT I CAN'T REMEMBER.

18 Q DO YOU REMEMBER MEETING THE MATERNAL
19 GRANDMOTHER?

20 A I DO.

21 Q OKAY. WAS THAT DURING ONE OF THE VISITS?

22 A IT MAY HAVE BEEN. I CAN'T REMEMBER.

23 Q TELL US ABOUT THE MEETING THAT YOU RECALL WITH
24 BABY RYAN'S GRANDMOTHER?

25 A I JUST REMEMBER HOW MUCH LOVE THERE WAS, HOW
26 MUCH THEY REALLY ADORED -- SHE ADORED HER GRANDCHILD,
27 AND THOSE INTERACTIONS. AND I COULD SEE HOW RYAN
28 RESPONDED TO HIS MOTHER AND GRANDMOTHER. SO I JUST

1 NOTED HEALTHY ATTACHMENTS.

2 Q DID YOU EVER RENT MS. DUVAL A BREAST PUMP?

3 A I MAY HAVE, BUT I CAN'T RECALL. THAT'S
4 SOMETHING THAT I DID DO IN MY PRIVATE PRACTICE; I DO
5 RENT OUT BREAST PUMPS TO MOTHERS.

6 Q WOULD PERSONAL STRESS AFFECT A MOTHER'S
7 ABILITY TO PRODUCE BREAST MILK?

8 A IT CAN.

9 Q HOW SO?

10 A WELL, MILK SUPPLY IS DRIVEN BY HORMONES. AND
11 THERE'S A COUPLE OF HORMONES INVOLVED IN HUMAN
12 LACTATION: OXYTOCIN AND PROLACTIN. AND IF A MOTHER IS
13 STRESSED, IT CAN INHIBIT THOSE HORMONES FROM BEING
14 RELEASED. SO IF A MOTHER IS STRESSED, THEN SHE MIGHT
15 HAVE LESS OF A MILK EJECTION REFLEX, SO SHE MIGHT
16 COLLECT LESS MILK THAN SHE MIGHT HAVE OTHERWISE.

17 Q GOING BACK TO APRIL 9, 2009, DO YOU RECALL IF
18 MS. DUVAL WAS HAVING A STRESSFUL SITUATION THAT MAYBE
19 PREVENTED HER FROM PRODUCING BREAST MILK?

20 A YES.

21 Q AND WHAT WAS THAT STRESSOR?

22 A IT WAS ISSUES WITH THE INFANT'S FATHER.

23 Q AND DO YOU RECALL WHAT ISSUES THOSE WERE?

24 A I THINK IT HAD TO DO WITH CUSTODY ISSUES. I
25 DON'T QUITE RECALL.

26 Q DO YOU KNOW IF IT HAD TO DO WITH HIS -- STRIKE
27 THAT.

28 HOW WOULD YOU HAVE ADVISED MS. DUVAL TO

1 INCREASE HER MILK SUPPLY?

2 A I WOULD HAVE ADVISED HER TO DO MORE
3 SKIN-TO-SKIN CONTACT WITH RYAN. WE KNOW WHEN A BABY IS
4 IN SKIN-TO-SKIN CONTACT, IT CAN HELP INCREASE THE
5 HORMONES.

6 I WOULD HAVE RECOMMENDED BREAST-FEEDING ON
7 DEMAND, LOOKING FOR THOSE CUES THAT INFANTS SHOW WHEN
8 THEY WANT TO GO TO BREAST.

9 I WOULD HAVE ADVISED PUMPING TO HELP BOOST HER
10 SUPPLY, AND POSSIBLY SOME FOODS OR GALACTAGOGUES, HERBS
11 THAT HELP PROMOTE MILK SUPPLY.

12 Q GOING BACK TO PAGE 2045, MS. BAGHDASSARIAN, AT
13 THIS TIME IN APRIL 2009, WERE YOU RECOMMENDING TO
14 MS. DUVAL TO SOLELY BREAST-FEED?

15 A MY RECOMMENDATIONS WERE TO BREAST-FEED
16 EXCLUSIVELY FOR THE FIRST SIX TO EIGHT MONTHS, BASED ON
17 THE RECOMMENDATIONS OF THE AMERICAN ACADEMY OF
18 PEDIATRICS AND THE WORLD HEALTH ORGANIZATION, AND TO
19 BEGIN OFFERING COMPLIMENTARY FOODS ONCE SHE SAW THOSE
20 SIGNS OF READINESS IN RYAN.

21 Q DO YOU KNOW IF SHE DID SEE THOSE SIGNS OF
22 READINESS IN BABY RYAN?

23 A FROM WHAT I RECALL, THAT SHE HAD REPORTED BACK
24 TO ME THAT SHE WASN'T SEEING THOSE SIGNS OF READINESS.

25 Q WHAT WAS YOUR RECOMMENDATION IF SHE DIDN'T SEE
26 THOSE SIGNS OF READINESS?

27 A TO ENSURE THAT RYAN CONTINUED TO GET HER
28 BREAST MILK.

1 Q DO YOU KNOW IF, AT THE TIME, BABY RYAN WAS
2 SUFFERING FROM ANY OTHER ISSUES --

3 A NO.

4 Q -- WHEN YOU SAW HIM?

5 WHAT KIND OF FOODS SHOULD MS. DUVAL HAVE BEEN
6 PROVIDING BABY RYAN IF HE WAS READY?

7 A RECOMMENDATIONS INCLUDE FOODS WRAPPED IN
8 NATURE'S SKIN -- AVOCADOS, BANANAS, PAPAYAS; FOODS IN
9 THE MOTHER'S OWN DIET THAT THE BABY HAS BECOME
10 ACCUSTOMED TO THROUGH HER BREAST MILK; OFFERING ONE
11 FOOD AT A TIME TO ENSURE THAT THE BABY COULD TOLERATE
12 WHATEVER SHE WAS OFFERING.

13 Q SO YOU WOULD NEVER JUST GIVE A BABY A WHOLE
14 BUNCH OF DIFFERENT TYPES OF FOOD ALL AT ONCE?

15 A NO. MOST INFANTS, WHEN THEY FIRST START TO
16 EXPERIMENT WITH COMPLIMENTARY SOLID FOODS, IT'S MORE OF
17 A SENSORIAL EXPERIENCE. THEY'RE NOT PICKING UP A WHOLE
18 LOT OF NUTRITION. SO THE SOLE NUTRITION AT THAT TIME
19 IS STILL COMING FROM EITHER A MOTHER'S MILK OR FORMULA,
20 IF THE MOTHER IS FORMULA-FEEDING. WE WOULDN'T EXPECT
21 THE BABY TO GET A WHOLE LOT OF NUTRITION INITIALLY WHEN
22 THEY START TO EAT COMPLIMENTARY FOODS. SO IT'S SMALL
23 AMOUNTS TO ENSURE THAT THE BABY IS ABLE TO DIGEST IT.

24 Q SHOULD A MOTHER BE CONCERNED ABOUT PROVIDING
25 THE BABY A LOT OF PROTEIN WHEN HE'S FIRST STARTING TO
26 EAT?

27 A SHE CAN BE OFFERING FOODS THAT HAVE PROTEIN IN
28 THEM, BUT NOTHING IS SUPERIOR TO THE MILK THAT SHE'S

1 PROVIDING WHEN SHE FIRST STARTS TO OFFER COMPLIMENTARY
2 FOODS.

3 Q DO YOU RECALL EVER HAVING BEEN IN CONTACT WITH
4 ANY SOCIAL WORKER REGARDING MS. DUVAL OR BABY RYAN?

5 A NO.

6 Q NO SOCIAL WORKER EVER CALLED YOU OR SENT YOU
7 AN E-MAIL?

8 A NO.

9 Q AND HOW DO YOU KNOW THAT THAT NEVER HAPPENED?

10 A I WOULD HAVE REMEMBERED SOMETHING LIKE THAT.

11 Q YOU SEE A LOT OF MOTHERS?

12 A I DO.

13 Q AND WHY WOULD YOU HAVE REMEMBERED SOMETHING
14 LIKE THAT?

15 A WELL, I KNOW THAT MS. DUVAL HAS BEEN DEALING
16 WITH THE COURTS FOR QUITE SOME TIME. SO IF THE SOCIAL
17 WORKER HAD CONTACTED ME, I THINK THAT WOULD HAVE BEEN
18 SOMETHING THAT I WOULD HAVE REMEMBERED.

19 Q DO YOU KNOW IF MAYBE A NURSE OR ANYBODY ELSE
20 EVER CONTACTED YOU REGARDING BABY RYAN?

21 A NO, NOBODY EVER CONTACTED ME.

22 Q DID YOU EVER TALK TO DR. YIM?

23 A NO.

24 Q YOU JUST SENT THIS FAX TO DR. YIM?

25 A YES.

26 Q HAVE YOU EVER HAD ANY CONTACT WITH THE BABY'S
27 FATHER, RYAN MILLS?

28 A NO.

1 Q DID THAT STRIKE YOU AS ODD, HAVING NO CONTACT
2 WITH THE BABY'S FATHER?

3 A NO.

4 Q AT APRIL 9, 2009, HOW -- EIGHT MONTHS,
5 BASICALLY -- HOW MUCH SHOULD AN AVERAGE BABY WEIGH?

6 A IT DEPENDS ON THEIR BIRTH WEIGHT. SO WE WOULD
7 EXPECT A BABY, BY ABOUT SIX MONTHS, TO HAVE DOUBLED
8 THEIR BIRTH WEIGHT, AND AFTER SIX MONTHS, MAYBE GAIN A
9 POUND A MONTH.

10 Q IF A BABY WAS 6 POUNDS, 12 OUNCES AT BIRTH, AT
11 EIGHT MONTHS?

12 A 14, 15 POUNDS, MAYBE.

13 Q SO IN APRIL 2009, IF HE WAS ABOUT -- JUST OVER
14 14 POUNDS, THAT WOULDN'T STRIKE YOU AS ODD AT ALL?

15 A NO. NO.

16 Q MS. BAGHDASSARIAN, I HAD ASKED YOU ABOUT THE
17 BABY'S GRANDMOTHER, URBANA DUVAL.

18 AND YOU RECALL A GRANDMOTHER; IS THAT CORRECT?

19 A YES.

20 Q AND AM I CORRECT IN SAYING THAT EARLIER YOU
21 TESTIFIED THAT THERE WAS SOME KIND OF LOVING BOND, IN
22 YOUR -- WHAT YOU SAW WITH THE BABY AND HIS GRANDMOTHER?

23 A YES.

24 Q WHAT DID YOU SEE THAT MAKES YOU COME TO THAT
25 CONCLUSION?

26 A I SAW HER HOLDING THE BABY, KISSING THE BABY,
27 HUGGING THE BABY. JUST THE OVERALL SENSE I GOT WAS IT
28 WAS A HEALTHY ATTACHMENT.

1 MS. CHUNG: THANK YOU.

2 THE COURT: MS. SWISS?

3 MS. SWISS: THANK YOU, YOUR HONOR.

4

5

CROSS-EXAMINATION

6

BY MS. SWISS:

7

Q GOOD AFTERNOON, MS. BAGHDASSARIAN.

8

YOU ARE NOT A MEDICAL DOCTOR; CORRECT?

9

A I'M NOT A MEDICAL DOCTOR. CORRECT.

10

Q AND YOU WERE LOOKING AT EXHIBIT 168 THAT

11

MS. CHUNG SHOWED YOU, BATES -- AT THE TOP -- 2045.

12

DO YOU SEE THAT?

13

A YES.

14

Q AND YOU SENT THIS LETTER TO DR. YIM BECAUSE

15

MS. DUVAL ASKED YOU TO DO SO; CORRECT?

16

A CORRECT.

17

Q AND DR. YIM NEVER RESPONDED TO THIS LETTER; IS

18

THAT CORRECT?

19

A CORRECT.

20

Q AND THE LAST TIME YOU SAW THE BABY, WAS THIS

21

IN APRIL OF 2009?

22

A I CAN'T RECALL THE LAST TIME I SAW THE BABY.

23

Q BUT AT THAT POINT IN TIME, HE WAS ABOUT EIGHT

24

MONTHS OLD; IS THAT ACCURATE?

25

A YES.

26

Q OKAY. AND YOU SAID HE APPEARED HAPPY AND

27

HEALTHY?

28

A YES.

1 Q WERE YOU AWARE AT THAT POINT THAT HE HAD
2 ACTUALLY DROPPED WEIGHT TO THE POINT THAT HE'D FALLEN
3 OFF OF THE GROWTH CHART?

4 A I WAS NOT AWARE.

5 Q WERE YOU AWARE AT THAT TIME THAT DR. YIM
6 RECOMMENDED THAT SOLID FOODS BE OFFERED TO HIM AS EARLY
7 AS SIX MONTHS IN ADDITION TO THE BREAST MILK?

8 A I CAN'T RECALL.

9 Q IF DR. YIM HAD RECOMMENDED THAT THE BABY START
10 TO BE FED FOOD AT SIX MONTHS, WOULD YOU BE DISAGREEING
11 WITH THAT RECOMMENDATION?

12 A I WOULD BE DISAGREEING IF THE BABY WASN'T
13 SHOWING SIGNS OF READINESS.

14 Q OKAY. AND TO YOUR KNOWLEDGE, WAS THE BABY
15 SHOWING ANY SIGNS OF READINESS AT THE EIGHT-MONTH
16 CHECKUP FOR SOLID FOODS?

17 A I CAN'T RECALL.

18 Q OKAY. NOW, YOU TESTIFIED AT -- STRIKE THAT.
19 AT THE TIME YOU WROTE THIS LETTER, DID YOU
20 KNOW HOW MANY OUNCES OF BREAST MILK MS. DUVAL WAS
21 PRODUCING EACH DAY?

22 A NO.

23 Q DID YOU KNOW WHETHER MOM WAS PRODUCING ENOUGH
24 MILK AT THAT TIME TO NOURISH HER SON?

25 A I CAN'T REMEMBER.

26 Q NOW, YOU TESTIFIED ABOUT THE BENEFITS OF
27 BREAST-FEEDING VERSUS PUMPING, AND THE BEST WAY TO
28 REMOVE THE MILK IS ACTUALLY BREAST-FEEDING INSTEAD OF

1 THE PUMP; CORRECT?

2 A CORRECT.

3 Q AND AT THE TIME YOU WROTE THIS LETTER TALKING
4 ABOUT EXCLUSIVE BREAST-FEEDING INSTEAD OF PUMPING TO
5 DR. YIM, DID YOU KNOW THAT MS. DUVAL WAS ALREADY BACK
6 TO WORK OUTSIDE OF THE HOME?

7 A YES.

8 Q AND YOU KNEW THAT GRANDMA WAS WATCHING THE
9 BABY WHILE MOM WAS WORKING?

10 A I CAN'T RECALL WHO WAS WATCHING THE BABY.

11 Q AND IF MOM WAS WORKING OUTSIDE THE HOME, IN
12 ORDER TO FEED HER SON THE BREAST MILK, SHE WOULD HAVE
13 TO PUMP; CORRECT?

14 A YES.

15 Q AND YOU SAY IN THE LETTER THAT SHE HAD
16 ACTUALLY RENTED A PUMP TO INCREASE HER SUPPLY?

17 A YES.

18 Q AND DO YOU KNOW WHEN SHE -- DID SHE RENT THAT
19 RECENTLY AS OF THE EIGHT-MONTH-OLD AGE OF THE CHILD, OR
20 WAS THAT EARLY ON?

21 DO YOU RECALL THAT?

22 A I DON'T RECALL EXACTLY WHEN SHE RENTED THE
23 PUMP.

24 Q OKAY. NOW, DO YOU RECALL TESTIFYING ON BEHALF
25 OF MS. DUVAL AT AN ADJUDICATION PROCEEDING IN THE
26 DEPENDENCY COURT?

27 A YES.

28 Q AND ISN'T IT TRUE, MS. BAGHDASSARIAN, THAT YOU

1 TESTIFIED IN THE DEPENDENCY PROCEEDING THAT AT THE TIME
2 YOU WROTE THIS LETTER, WHEN THE BABY WAS EIGHT MONTHS
3 OLD, THAT YOU WERE RECOMMENDING THAT THE CHILD ONLY BE
4 FED BREAST MILK UNTIL HE WAS 12 MONTHS OF AGE?

5 MS. CHUNG: OBJECTION, YOUR HONOR.

6 THE WITNESS: NO.

7 THE COURT: JUST A MOMENT.

8 MS. CHUNG: ARGUMENT. IMPROPER USE OF PRIOR
9 TESTIMONY. AND LACKS FOUNDATION.

10 THE COURT: OVERRULED.

11 BY MS. SWISS:

12 Q THE ANSWER? YOU DON'T REMEMBER?

13 THE COURT: NO, SHE ANSWERED.

14 THE WITNESS: MY ANSWER IS NO, THAT I WOULDN'T
15 HAVE RECOMMENDED ONLY BREAST MILK. I HAD GIVEN HER
16 ADVICE ABOUT OFFERING COMPLEMENTARY FOODS WHEN RYAN WAS
17 READY.

18 MS. SWISS: YOUR HONOR, I HAVE THE TRANSCRIPT
19 FROM THE ADJUDICATION PROCEEDING. MAY I PROVIDE THE
20 COURT AND COUNSEL WITH THAT?

21 THE COURT: YES.

22 MR. MCMILLAN: YOUR HONOR, CAN WE HAVE A
23 SIDEBAR?

24 THE COURT: YES.

25 (THE FOLLOWING PROCEEDINGS WERE HELD AT
26 SIDEBAR.)

27 THE COURT: WE ARE AT SIDEBAR, COUNSEL ARE
28 PRESENT.

1 MS. CHUNG: YOUR HONOR, IT'S NOT A CERTIFIED
2 TRANSCRIPT.

3 THE COURT: PARDON?

4 MS. CHUNG: IT'S NOT A CERTIFIED TRANSCRIPT.

5 MR. MCMILLAN: WITHOUT THE REPORTER'S
6 CERTIFICATION, IT'S NOT ADMISSIBLE AS A CERTIFIED
7 TRANSCRIPT. WE DON'T HAVE ORIGINAL OR EVEN A COPY OF
8 THE CERTIFICATION.

9 THE COURT: WELL, I DON'T KNOW WHAT SHE'S
10 GOING DO WITH IT AT THIS POINT. SHE HASN'T READ
11 ANYTHING YET. GIVE A COPY TO THE WITNESS -- DID YOU
12 JUST GIVE A COPY TO THE WITNESS?

13 MS. SWISS: I DID.

14 THE COURT: WELL, IS IT A CERTIFIED COPY?

15 MS. SWISS: IT IS THE COPY THAT WE RECEIVED
16 FROM THE COURT REPORTER IN THE JUVENILE CASE, AND IT
17 WAS PRODUCED YEARS AGO. THIS WAS THE ELECTRONIC
18 VERSION OF IT.

19 MR. MCMILLAN: DO YOU HAVE THE CERTIFIED
20 SIGNATURE PAGE?

21 MS. SWISS: NOT HERE IN COURT TODAY.

22 MR. MCMILLAN: WE STAND WITH THE OBJECTION.

23 THE COURT: WELL, THEIR OBJECTION IS THAT IT'S
24 NOT CERTIFIED. I DON'T KNOW WHAT YOU'RE INTENDING TO
25 DO WITH IT BECAUSE THERE ARE POTENTIALLY OTHER USES
26 THAN READING IT. I'LL JUST HAVE TO WAIT AND SEE WHAT
27 HAPPENS.

28 MS. SWISS: OKAY. THANK YOU.

1 (THE FOLLOWING PROCEEDINGS WERE HELD IN
2 OPEN COURT IN THE PRESENCE OF THE
3 JURY.)

4 MS. SWISS: MAY I PROCEED, YOUR HONOR?

5 THE COURT: YES.

6 BY MS. SWISS:

7 Q MS. BAGHDASSARIAN, I SHOWED YOU PAGE 138.

8 DO YOU SEE THAT?

9 A I DO.

10 Q AND CAN YOU READ TO YOURSELF, STARTING FROM
11 LINE 20, TO 28?

12 THE COURT: HAVE YOU READ IT?

13 THE WITNESS: YES, I HAVE.

14 THE COURT: OKAY.

15 YOU CAN GO AHEAD, MS. SWISS.

16 MS. SWISS: THANK YOU.

17 BY MS. SWISS:

18 Q DOES THAT REFRESH YOUR RECOLLECTION THAT YOU
19 TESTIFIED IN THE ADJUDICATION PROCEEDING THAT YOU WERE
20 RECOMMENDING THE BABY ONLY RECEIVE BREAST MILK FOR THE
21 FIRST YEAR?

22 A YES.

23 Q THANK YOU.

24 IF THE MOTHER WAS TO FOLLOW YOUR
25 RECOMMENDATION AND ONLY FEED THE BABY BREAST MILK AT
26 EIGHT MONTHS, THE LAST TIME THAT WE KNOW YOU SAW HIM,
27 HOW MANY OUNCES OF BREAST MILK PER DAY WOULD THE BABY
28 NEED TO MAKE SURE HE WAS GETTING ENOUGH TO EAT?

1 A SOMEWHERE BETWEEN 25 TO 35 OUNCES PER
2 24 HOURS.

3 Q AND DO YOU KNOW IF MS. DUVAL WAS ABLE TO
4 PRODUCE THAT MUCH MILK AT THAT TIME?

5 A I CAN'T REMEMBER.

6 Q AND IF THE BABY WAS 12 MONTHS OF AGE AND ONLY
7 RECEIVING BREAST MILK, HOW MANY OUNCES WOULD THE BABY
8 NEED TO RECEIVE AT THAT AGE IN ORDER TO BE FULLY
9 NOURISHED?

10 A ABOUT THE SAME AMOUNT.

11 Q AND DO YOU KNOW IF MS. DUVAL WAS PUMPING THAT
12 AMOUNT WHEN BABY WAS 12 MONTHS?

13 A I DON'T REMEMBER.

14 Q DO YOU RECALL MS. DUVAL COMPLAINING TO YOU
15 THAT SHE DID NOT WANT TO FEED THE BABY SOLIDS BECAUSE
16 SHE WAS CONCERNED WITH FOOD ALLERGIES?

17 A NO.

18 Q IF YOU COULD TAKE A LOOK AT THE NEXT PAGE,
19 PAGE 139. COULD YOU READ TO YOURSELF LINE 16 DOWN TO
20 LINE 25, AND LET ME KNOW WHEN YOU'VE FINISHED READING
21 THAT.

22 A OKAY.

23 Q DOES THAT REFRESH YOUR RECOLLECTION THAT
24 MS. DUVAL COMPLAINED TO YOU THAT SHE HAD A FAMILY
25 HISTORY OF FOOD ALLERGIES?

26 A YES.

27 Q AND THIS -- THESE FOOD ALLERGIES, WAS THAT
28 PART OF THE -- YOUR RECOMMENDATION AS TO WHY THE BABY

1 SHOULD RECEIVE ONLY BREAST MILK FOR A YEAR?

2 A IT WAS PARTLY -- IT WAS PART OF THE REASON.

3 Q AND WHAT'S THE REST OF THAT REASON?

4 A THAT HE JUST DIDN'T SHOW SIGNS OF READINESS.

5 Q DID YOU EVER OBSERVE THE MOTHER TRYING TO FEED
6 THE BABY SOLID FOODS?

7 A NO.

8 Q AND DID YOU EVER SEE FOR YOURSELF THAT HE
9 EXHIBITED READINESS SIGNS OR DIDN'T EXHIBIT READINESS
10 SIGNS?

11 A I CAN'T RECALL.

12 Q ARE YOU AWARE IF THE BABY WAS EVER DIAGNOSED
13 WITH ANY ALLERGIES?

14 A NO.

15 Q AND ALL OF THE INFORMATION ABOUT THE MOTHER'S
16 ABILITY TO FEED THE BABY IS BASED ON HER REPORTING TO
17 YOU; IS THAT CORRECT?

18 A YES.

19 Q THANK YOU.

20 HOW WOULD YOU DETERMINE IF BABY RYAN WAS
21 SHOWING SIGNS OF READINESS FOR SOLIDS, IF YOU WERE TO
22 OBSERVE HIM?

23 A THAT HE COULD SIT UP UNSUPPORTED AND BRING
24 FOOD TO HIS MOUTH AND SHOW INTEREST IN FEEDING.

25 Q AND YOU NEVER SAW ANY OF THAT; CORRECT?

26 A NEVER SAW ANY OF THAT.

27 Q AND SO YOU TOOK MS. DUVAL'S WORD THAT THE BABY
28 WASN'T ABLE TO DO THOSE THINGS?

1 A YES.

2 Q WERE YOU SUBPOENAED BY PLAINTIFF'S COUNSEL TO
3 APPEAR HERE TODAY?

4 A YES.

5 Q DID THEY PAY YOU ANYTHING TO TESTIFY HERE
6 TODAY?

7 A NO.

8 Q DID YOU MEET WITH MS. DUVAL'S ATTORNEYS PRIOR
9 TO COMING TO COURT TODAY?

10 A YES.

11 Q WHO DID YOU MEET WITH?

12 A MS. TIFFANY.

13 Q AND WHEN WAS THIS?

14 A LAST WEEK.

15 Q OKAY. AND WHAT DID YOU DISCUSS?

16 A SHE JUST UPDATED ME THAT I WOULD BE COMING
17 HERE TODAY, IT'S A BRIEF ENCOUNTER, AND JUST -- THAT
18 WAS ABOUT IT.

19 Q OKAY. I'M TRYING TO KEEP IT BRIEF, SO THANK
20 YOU.

21 A THANK YOU.

22 MS. SWISS: NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: ALL RIGHT. MS. CHUNG?

24

25 REDIRECT EXAMINATION

26 BY MS. CHUNG:

27 Q MS. BAGHDASSARIAN, DID YOU FORM ANY OPINION
28 ABOUT MS. RAFAELINA DUVAL'S MOTHER'S ABILITY TO TAKE

1 CARE OF BABY RYAN AFTER YOU SAW THEIR INTERACTION?

2 A NO.

3 Q YOU WERE ASKED ABOUT YOUR PRIOR TESTIMONY.

4 IS IT TYPICAL IN YOUR EXPERIENCE THAT A MOTHER
5 WHO HAS A HISTORY OF ALLERGIES HERSELF AND PRIOR FAMILY
6 HISTORY -- COULD THAT BE PASSED ON TO THE BABY?

7 A YES.

8 Q AND DID MS. DUVAL REPORT A PRIOR HISTORY TO
9 YOU OF FAMILY ALLERGIES?

10 A YES.

11 Q AND THAT'S WHAT YOU TESTIFIED AT THE PRIOR
12 HEARING; IS THAT CORRECT?

13 A YES.

14 Q AND THAT'S ALSO PART OF THE REASON WHY YOU
15 RECOMMENDED TO MS. RAFAELINA DUVAL THAT SHE STRICTLY
16 BREAST-FEED, TO PREVENT THOSE ALLERGIES?

17 A YES.

18 Q AS ONE OF THE REASONS?

19 A ONE OF THE REASONS.

20 MS. CHUNG: THAT'S ALL I HAVE, YOUR HONOR.

21 THE COURT: ANYTHING FURTHER?

22 MS. SWISS: ONE QUICK FOLLOW-UP.

23

24 RE-CROSS-EXAMINATION

25 BY MS. SWISS:

26 Q MS. BAGHDASSARIAN, DID YOU EVER TALK TO BABY
27 RYAN'S ALLERGIST, DR. SODERBERG?

28 A NO.

1 Q WERE YOU EVER MADE AWARE THAT DR. SODERBERG'S
2 DIAGNOSIS DID NOT DIAGNOSE ANY FOOD ALLERGIES?

3 A NO.

4 MS. CHUNG: OBJECTION. EXCEEDS THE SCOPE.

5 MS. SWISS: THANK YOU.

6 THE COURT: IS THAT AN OBJECTION YOU WANT
7 RULED ON? ALL RIGHT.

8 AND ARE WE FINISHED WITH MS. BAGHDASSARIAN,
9 THEN?

10 MS. CHUNG: YES.

11 THE COURT: WELL, I WANT TO THANK YOU VERY
12 MUCH FOR BEING HERE, AND YOU ARE EXCUSED. THANK YOU.

13 MR. MCMILLAN: ONE MOMENT, YOUR HONOR.

14 THE COURT: IS THIS -- AND THIS IS?

15 MR. MCMILLAN: WE'LL BE PLAYING THE MATERNAL
16 GRANDMOTHER, MS. URBANA DUVAL.

17 THE COURT: OKAY. AND IN THIS REGARD, BEFORE
18 YOU START IT, THIS, AGAIN, IS A VIDEO DEPOSITION BEING
19 PRESENTED TO THE JURY. AND IT'S MY UNDERSTANDING THAT
20 THE WITNESS TESTIFIED THROUGH AN INTERPRETER.

21 THAT'S CORRECT; ISN'T IT?

22 MR. MCMILLAN: THAT IS CORRECT, YOUR HONOR.

23 THE COURT: AND SO WHAT YOU'LL SEE IN THE
24 VIDEO DEPOSITION: YOU'LL HEAR QUESTIONS ASKED OF A
25 WITNESS, THE INTERPRETER WILL THEN REPEAT THE QUESTION
26 IN SPANISH TO THE WITNESS, THE WITNESS WILL ANSWER IN
27 SPANISH, AND THEN THE INTERPRETER OR TRANSLATOR WILL
28 TRANSLATE THE ANSWER IN ENGLISH. SO IT TAKES A LITTLE

1 LONGER TO HEAR THE TESTIMONY.

2 AND YOU RECALL THAT IN THE PRELIMINARY
3 INSTRUCTIONS I MENTIONED TO YOU THAT THERE WOULD BE
4 SOME TESTIMONY THROUGH A SPANISH INTERPRETER. AND I
5 WANT TO REMIND YOU OF THAT, THAT YOU MUST ACCEPT THE
6 ANSWER -- FOR THOSE OF YOU WHO SPEAK SPANISH, YOU MUST
7 ACCEPT THE ANSWER AS GIVEN BY THE PERSON DOING THE
8 TRANSLATION AS THE WITNESS'S ANSWER. THAT IS THE
9 ANSWER AS FAR AS THE LAW IS CONCERNED.

10 EVERYBODY UNDERSTAND? ALL RIGHT.

11 SO WITH THAT, WE'LL GO AHEAD.

12 MR. MCMILLAN: THANK YOU, YOUR HONOR.

13 (WHEREUPON AN EXCERPT OF THE VIDEOTAPED
14 DEPOSITION OF URBANA DUVAL WAS PLAYED.)

15 MR. MCMILLAN: YOUR HONOR, CAN I TAKE A QUICK
16 BREAK? I'M NOT SURE IF THAT INTERFERENCE IS THE VIDEO
17 OR THE -- I THINK IT MIGHT BE THE VIDEO ITSELF. WELL,
18 MAYBE NOT.

19 CAN I TAKE A QUICK BREAK?

20 THE COURT: SURE.

21 (A DISCUSSION WAS HELD OFF THE RECORD.)

22 (WHEREUPON AN EXCERPT OF THE VIDEOTAPED
23 DEPOSITION OF URBANA DUVAL WAS PLAYED.)

24 THE COURT: ALL RIGHT. WE'RE GOING TO RECESS
25 AT THIS TIME. WE'RE GOING TO RESUME AT 9:00 A.M.
26 TOMORROW MORNING.

27 ALL JURORS, PLEASE REMEMBER THE ADMONITION
28 BETWEEN NOW AND THEN TO HAVE NO COMMUNICATION WITH

1 ANYONE, WHETHER INITIATED BY THEM OR BY YOU, ABOUT ANY
2 ISSUE OR SUBJECT INVOLVED IN THIS CASE. DO NOT RECEIVE
3 NOR SEEK ANY INFORMATION ABOUT A PERSON INVOLVED IN
4 THIS CASE OR ANY SUBJECT OR ISSUE, AND DO NOT FORM ANY
5 OPINIONS NOR EXPRESS ANY OPINIONS.

6 WE'RE NOW IN RECESS. WE'LL SEE YOU BACK
7 TOMORROW AT 9:00 A.M.

8 (JURY EXCUSED)

9 THE COURT: COUNSEL ARE PRESENT AND OUTSIDE
10 THE PRESENCE OF JURY.

11 AND I'LL SEE COUNSEL AT 8:30.

12 MR. MCMILLAN: 8:30, YOUR HONOR, THANK YOU.

13 MR. GUTERRES: THANK YOU, YOUR HONOR.

14 (RECESS)

15

16 (WHEREUPON, AT THE HOUR OF 4:31 P.M.,

17 THE PROCEEDING ADJOURNED.)

18

19 ---OOO---

20

21

22

23

24

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27

28

(NEXT PAGE IS 2401.)