

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

* * * * *

RE: DECLARATORY RULING PROCEEDING JANUARY 19, 2010
 REGARDING INFORMED CONSENT

* * * * *

STATE BOARD OF CHIROPRACTIC EXAMINERS

BEFORE: MATTHEW SCOTT, D.C., CHAIRMAN
 PAUL POWERS, D.C., BOARD MEMBER
 SEAN ROBOTHAM, D.C., BOARD MEMBER
 MICHELE IMOSI, D.C., BOARD MEMBER
 JEAN REXFORD, PUBLIC MEMBER
 VINCENT A. PACILEO, PUBLIC MEMBER

FOR THE BOARD:

DANIEL SHAPIRO, ASSISTANT ATTORNEY GENERAL

APPEARANCES:

FOR THE CONNECTICUT CHIROPRACTIC ASSOCIATION:

MOORE LEONHARDT & ASSOCIATES
67 Russ Street
Hartford, CT 06106
BY: MARY ALICE MOORE LEONHARDT, ATTORNEY

FOR THE CHIROPRACTIC STROKE AWARENESS ORGANIZATION:

LAW OFFICES OF NORMAN A. PATTIS, LLC
P. O. Box 280, 649 Amity Road
Bethany, CT 06524
BY: NORMAN A. PATTIS, ESQUIRE

FOR THE VICTIMS OF CHIROPRACTIC ABUSE, INC.:

JAY MALCYNKY, ESQUIRE
One Liberty Square
New Britain, CT 06051

POST REPORTING SERVICE
HAMDEN, CT (800) 262-4102

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 . . .Continued verbatim proceedings of a
2 hearing before the State of Connecticut, State Board of
3 Chiropractic Examiners, in the matter of the Declaratory
4 Ruling Proceeding Regarding Informed Consent, held at the
5 Department of Public Health, 300 Capitol Avenue, Hartford,
6 Connecticut, on January 19, 2010 at 9:22 a.m. . . .

7
8
9
10 CHAIRMAN MATTHEW SCOTT: Attorney Shapiro
11 is going to have a few words for us.

12 MR. DANIEL SHAPIRO: As a preliminary
13 matter, I have some documents to mark as exhibits. The
14 first document is dated January 7th. It's a Notice of
15 Continued Hearing, signed by Mr. Kardys. Are there any
16 objections from the parties?

17 MS. MARY ALICE MOORE LEONHARDT: No
18 objection.

19 MR. JAY MALCYNISKY: No objection.

20 MR. NORMAN PATTIS: None.

21 MR. SHAPIRO: Okay. This will be marked as
22 Exhibit 60.

23 (Whereupon, the above-mentioned document
24 was marked as Exhibit No. 60.)

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. SHAPIRO: The next document is an order
2 regarding hearing protocol, signed by Mr. Kardys, noticing
3 that it's been rescheduled for today. It's a two-page
4 document. I've marked it as Exhibit 61. Any objection?

5 MR. MALCYNSKY: None.

6 MS. MOORE LEONHARDT: No objection.

7 MR. PATTIS: None.

8 (Whereupon, the above-mentioned document
9 was marked as Exhibit No. 61.)

10 MR. SHAPIRO: The next document is a
11 request that was made from the Medical Board, dated
12 January 12th, to testify out of turn, and I've marked that
13 as Exhibit 62. Any objection?

14 MS. MOORE LEONHARDT: No objection.

15 MR. MALCYNSKY: None.

16 MR. PATTIS: No objection.

17 (Whereupon, the above-mentioned document
18 was marked as Exhibit No. 62.)

19 MR. SHAPIRO: The next document is a ruling
20 on the request to testify out of turn, granting the motion
21 and allowing Dr. Fellows to testify first thing this
22 morning. I've marked it as Exhibit 63. Is there any
23 objection?

24 MS. MOORE LEONHARDT: No objection.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. MALCYNKY: None.

2 MR. PATTIS: No objection.

3 (Whereupon, the above-mentioned document
4 was marked as Exhibit No. 63.)

5 MR. SHAPIRO: The final document is I
6 received a letter from Attorney Malcynsky on -- I received
7 it this morning, and it's dated January 18th. It's a two-
8 page document. I believe it's been provided to counsel,
9 although my understanding is that counsel hasn't had an
10 opportunity to read it.

11 There's also a January 18th e-mail that was
12 sent from Dr. Walsman (phonetic) to Mr. Kardys, and,
13 finally, an e-mail that I received from Susan Hoffman,
14 dated January 17th. I do have copies for the parties if
15 they don't have that. My plan is to mark this just as
16 Exhibit 64 for identification only, meaning it will not be
17 considered as evidence by the Board.

18 Although there are some requests in the
19 letters, I am not taking these requests as a motion, or
20 that there's anything properly before the Board, and, so,
21 if there's anything, any relief requested pursuant to
22 these e-mails, it will have to be brought up as a motion.

23 Do the parties have copies of the documents
24 that I just identified?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. MALCYNKY: I do.

2 MS. MOORE LEONHARDT: I don't have the e-
3 mail from Ms. Hoffman that Attorney Malcynsky refers to in
4 his letter, dated January 18, 2010.

5 MR. SHAPIRO: I will provide you a copy
6 right now, and, as I mentioned, it's only marked for
7 identification, but let me hand you a copy of that.

8 MR. PATTIS: I've seen the e-mail.

9 (Whereupon, the above-mentioned document
10 was marked as Exhibit No. 64 for identification only.)

11 MR. SHAPIRO: If there are no preliminary
12 matters, I would suggest we get into the testimony of Dr.
13 Fellows. I have copies of what I've marked as Exhibit 64,
14 if anyone else needs them, and we'll put them near the
15 podium there for anyone that wants copies.

16 MS. MOORE LEONHARDT: Attorney Shapiro?

17 MR. SHAPIRO: Yes.

18 MS. MOORE LEONHARDT: I believe there was a
19 notification made to Mr. Kardys. I received a copy, and
20 my e-mail indicates that copies were distributed to all
21 parties and intervenors on the certification list
22 regarding the proposed testimony from the International
23 Chiropractic Association, designating Dr. David Cassidy as
24 their representative at the hearing, and I wondered if you

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 had received a copy of that and were planning to mark it
2 for identification today.

3 MR. SHAPIRO: Is that the one-page letter
4 from Dr. Walsman?

5 MS. MOORE LEONHARDT: Yes, it is, but I
6 note that the only copy I have, which was not attached to
7 the copy that was given to me by Attorney Malcynsky.
8 Attached to the copy of Attorney Malcynsky's letter that
9 you just delivered to me is a copy of an e-mail to you
10 from R. Hendrickson, but I don't see that marked as a
11 separate communication, and I was wondering, because,
12 behind that one, it appears is this e-mail from Ms.
13 Hoffman, which I also hadn't received, so I wondered if
14 the communication from R. Hendrickson from the
15 International Chiropractic Association should be marked
16 separately for identification.

17 MR. SHAPIRO: I think we may be talking
18 about the same document, but I'm not sure. There was an
19 e-mail that was sent from R. Hendrickson. I was one of
20 the recipients on it. It's dated January 18th, and it was
21 sent at 10:27 a.m.

22 I believe that's the only one that I've
23 received, although I'm not 100 percent sure, but if that's
24 what you're talking about, it's been marked as part of

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Exhibit 64 for identification.

2 MS. MOORE LEONHARDT: All right. My
3 question was whether it ought to be marked as a separate
4 communication, because it was not originally sent to you
5 as part of a series of communications from Attorney
6 Malcynsky. It should stand on its own as a communication
7 from the International Chiropractic Association, is my
8 point.

9 MR. MALCYNKY: Mr. Shapiro?

10 MR. SHAPIRO: Yes?

11 MR. MALCYNKY: I'm getting a little dazed
12 and confused here. I mean the only thing that I sent was
13 my letter.

14 MR. SHAPIRO: That's fine. Maybe it makes
15 most sense to mark them separately. Why don't I do that?

16 MS. MOORE LEONHARDT: Thank you.

17 MR. SHAPIRO: I'm going to mark the January
18 18, 2010 e-mail from R. Hendrickson, dated Monday, January
19 18, 2010 at 10:27 a.m., as Exhibit 65 for identification,
20 and the one-page e-mail, sent January 17, 2010 at 11:08
21 p.m. from Ms. Hoffman, is going to be marked as Exhibit 66
22 for identification only.

23 (Whereupon, the above-mentioned documents
24 were marked as Exhibit Nos. 65 and 66 for identification

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 only.)

2 MR. SHAPIRO: Are we all set to proceed to
3 Dr. Fellows?

4 MS. MOORE LEONHARDT: Yes, we are.

5 MR. MALCYNKY: I just didn't know whether
6 we wanted to try to settle the issues we had discussed in
7 the hallway prior to --

8 MR. SHAPIRO: You know, I think we'll
9 settle it after Dr. Fellows or as they arise. I, just for
10 the record, had attempted to meet with counsel to discuss
11 some of the issues regarding order of witnesses and see if
12 something could be worked out where there was an agreement
13 regarding some of the scheduling issues today, and,
14 apparently, there's not, so we'll have to do that on the
15 record and hear what parties have to say, and the Board
16 can make any final decisions on that.

17 I think we should hear from Dr. Fellows
18 now. I would remind the parties that we're really going
19 to try to abbreviate the part where the individual witness
20 is identified, and allow them to adopt their testimony
21 under oath, and then allow parties to Cross-Examine and
22 move on from there.

23 MS. MOORE LEONHARDT: If I may just
24 interject, the Connecticut Chiropractic Association, the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Connecticut Chiropractic Council and the International
2 Chiropractic Association do not object to Ms. Hoffman
3 testifying today.

4 I was not presented with a request prior to
5 arriving here and just receiving a copy of that e-mail,
6 but we have no problem if Ms. Hoffman, Susan Hoffman that
7 is, who is pre-filed with testimony for VOICES, USA,
8 testifies today. No objection to that.

9 MR. SHAPIRO: Okay, thank you. We can
10 address that as it arises. Good morning, Dr. Fellows.

11 DR. DOUGLAS FELLOWS: Good morning.

12 MR. SHAPIRO: If the court reporter could
13 swear him in?

14

15 DR. DOUGLAS FELLOWS
16 having been called as a witness, having been duly sworn,
17 testified on his oath as follows:

18

19 COURT REPORTER: Please state and spell
20 your name for the record, please?

21 THE WITNESS: Douglas Fellows.

22 MR. SHAPIRO: Dr. Fellows, maybe you could
23 just briefly identify yourself and then adopt your
24 testimony under oath, and, if you have any brief remarks

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 you'd like to make, you can, and then we'll allow the
2 parties to Cross-Examine you.

3 THE WITNESS: Thank you. I'm Dr. Douglas
4 Fellows. I'm currently Chairman of Diagnostic Imaging and
5 Therapeutics at the University of Connecticut Health
6 Center and a member of the Connecticut Medical Examining
7 Board.

8 I'd like to thank you for allowing me to
9 testify out of turn, and I would also like to adopt the
10 Connecticut Medical Examining Board's testimony under oath
11 at this time.

12 MR. SHAPIRO: Okay. If you have no further
13 remarks, Attorney Moore Leonhardt, do you have any
14 questions for Dr. Fellows?

15 MS. MOORE LEONHARDT: Yes, I do. Thank
16 you.

17

18 CROSS-EXAMINATION

19 BY MS. MOORE LEONHARDT:

20 Q Good morning, Dr. Fellows.

21 A Good morning.

22 Q According to your physician profile on the
23 Connecticut Department of Public Health website, you are a
24 radiologist by training?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A I am.

2 Q And do you have any background in treating -- in
3 performing neck manipulations?

4 A I do.

5 Q And what is that background?

6 A I was trained initially at the University of
7 Connecticut as a physical therapist, received additional
8 training in manual therapy for spinal manipulation and
9 other joints, as well, but, specific to this, spinal
10 manipulation.

11 Q So just to understand you, you were trained
12 initially as a physical therapist, and, as part of the
13 training, you were trained to perform spinal manipulation,
14 is that correct?

15 A Not quite. I'm sorry. I misled. I was trained
16 in undergraduate. We did not learn it. It was
17 postgraduate training that I received training in manual
18 therapy.

19 Q And could you describe to me what you mean by
20 manual therapy?

21 A Manual therapy is I think just a different word
22 for what DOs and chiropractors call manipulation. I was
23 trained by Stanley Paris from New Zealand and, also, had
24 some, of course, with Syriacs. Basically, what we do is

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 we do an evaluation of the spine, and then, in appropriate
2 cases, do manual therapy, but I'm actually here to
3 represent the Medical Board, not as a physical therapist.

4 Q I understand that, and I appreciate that. Just
5 one more question in that regard. So with your training
6 as a physical therapist, that manual therapy that you
7 described would be similar, as you stated, to the same
8 thing that osteopaths do, is that correct?

9 A It is my understanding that's correct.

10 Q And chiropractors, as well?

11 A That is my understanding.

12 Q All right and the same would apply to
13 manipulation of the neck, is that correct?

14 A Yes. It was of the entire spine.

15 Q And as a physical therapist, did you actually
16 manipulate the neck?

17 A For about 10 years.

18 Q Okay, thank you. Now --

19 MR. SHAPIRO: Attorney Moore Leonhardt, let
20 me just interrupt for just one second. I think we should
21 have the testimony admitted as a full exhibit, unless
22 there's any objection.

23 MS. MOORE LEONHARDT: I have no objection.

24 MR. MALCYNKY: No objection.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. PATTIS: No objection.

2 MR. SHAPIRO: Okay, so, Exhibit 37, which
3 is the pre-filed testimony of the Medical Board, is
4 admitted as a full exhibit.

5 (Whereupon, the above-mentioned document
6 was marked as Exhibit No. 37.)

7 MR. SHAPIRO: Thank you. You can continue.

8 MS. MOORE LEONHARDT: Thank you.

9 Q Did you participate in a meeting at the Medical
10 Examining Board when this issue was taken up, as to
11 whether to chime in, if you will, at this hearing before
12 the Chiropractic Board about the issue that's before the
13 Board?

14 A Yes. I was present.

15 Q And how many members of the Board were present
16 at that time?

17 A I would have to consult the minutes. I don't
18 know offhand.

19 Q Okay. Was it a quorum?

20 A It was definitely a quorum.

21 Q And this was a formal meeting of the Board?

22 A It was a formal meeting of the Board.

23 Q All right and what evidence or information was
24 considered by the Board when the Board arrived at its

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 conclusion and opinion, as stated in the pre-filed
2 testimony, if you recall?

3 A You mean the opinion stated in the pre-filed
4 testimony? Is that what you're asking, or what the
5 discussion was?

6 Q Let me back up.

7 A I'm sorry.

8 Q It's your purpose here today to adopt the
9 testimony that was pre-filed by the Connecticut Medical
10 Examining Board and present it as the official position of
11 the Medical Examining Board, is that correct?

12 A That's correct.

13 Q And you are hereby doing so, is that correct?

14 A That's correct.

15 Q All right and when that position was arrived at
16 by the Connecticut Medical Examining Board at the meeting
17 you attended, was there specific scientific evidence or
18 information that was considered by the Board in developing
19 its opinion?

20 A The way the conclusions are typically made in
21 the Board, I'm trying to answer this, is that each
22 individual will vote an opinion. If there is discussion,
23 if there's disagreement, then it will resort to scientific
24 opinion, so, basically, each one of us reviewed it on our

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 own and came to our conclusion.

2 Since there was no disagreement, there was
3 no discussion of the scientific facts.

4 Q All right, so, there was no consideration of any
5 reliable scientific facts at the time that the Board
6 developed its opinion with regard to the testimony you're
7 presenting today, is that correct?

8 A That's not quite correct. There was no group
9 discussion of the scientific facts. There was individual
10 discovery and analysis, and then there was a group
11 consensus.

12 Q Okay. What reliable scientific evidence, if
13 any, was considered by the Board when it arrived at its
14 opinion, as presented in its testimony today?

15 A Once again, I can't speak for each individual
16 how they went through it, but the typical discussion was
17 that they went through a review of the literature, trying
18 to balance what the different articles said, and they made
19 contact with whomever they thought appropriate.

20 Q Are you certain that that process was followed
21 in the case by the individual members of the Board prior
22 to that meeting?

23 A No. As I said earlier, this is the typical
24 process.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q All right.

2 A I can't speak for what each individual did.

3 Q And you don't know whether that process, that
4 typical process was followed with regard to the question
5 before the Board today, do you?

6 A I cannot assure that every individual made that
7 exhaustive search, no.

8 Q All right and just so I'm clear, there was no
9 reliable scientific evidence presented at that Board
10 meeting when the issue was discussed by any particular
11 member of the Board, was there?

12 A It was not presented at the meeting, no.

13 Q All right and are you prepared to state, with a
14 substantial degree of medical certainty, that a vertebral
15 artery dissection can be caused by cervical adjustment by
16 a chiropractor today?

17 A Are you asking for my personal opinion?

18 Q I'm asking whether the Board has an opinion,
19 with a substantial degree of medical certainty, that a
20 vertebral artery dissection can be caused by a cervical
21 adjustment by a chiropractor?

22 A I would answer, yes, we feel that there is a
23 possibility.

24 Q A possibility?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A Would you ask your question again?

2 Q My question asked for has the Medical Board
3 reached an opinion, with a substantial degree of medical
4 certainty, that a vertebral artery dissection can be
5 caused by a cervical adjustment by a chiropractor?

6 A Yes.

7 Q And what is the basis for that opinion?

8 A The same answer that you asked earlier, about
9 how did we come to our conclusions. It was review of
10 literature, discussion with other individuals we thought
11 appropriate, personal experience, etcetera.

12 Q And do you know what literature was reviewed by
13 the members of the Board?

14 MR. MALCYNISKY: Objection. Asked and
15 answered.

16 MS. MOORE LEONHARDT: No, I did not ask
17 that question.

18 MR. PATTIS: I join in Attorney Malcynsky's
19 objection and ask for a ruling.

20 MR. SHAPIRO: Can you ask the question
21 again?

22 MS. MOORE LEONHARDT: Yes.

23 Q What specific literature was reviewed by the
24 members of the Board who considered this question and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 prepared the testimony that was to be filed and presented
2 to the Board today?

3 MR. MALCYNSKY: I renew my objection. It's
4 been asked and answered.

5 MR. SHAPIRO: I would recommend to the
6 Board they sustain the objection. I think it's been asked
7 and answered.

8 MS. MOORE LEONHARDT: Okay.

9 Q Dr. Fellows, are you a member of the Connecticut
10 State Medical Society?

11 A No, I'm not.

12 Q Okay. Are you familiar with Connecticut
13 Medicine, the Journal of the Connecticut State Medical
14 Society?

15 A I'm familiar with it. I don't read it
16 regularly.

17 Q But do you read it from time-to-time?

18 A Occasionally.

19 MR. MALCYNSKY: Mr. Shapiro, I would just
20 ask if this is part of the pre-filed testimony.

21 MS. MOORE LEONHARDT: I'm conducting Cross-
22 Examination, and I'm inquiring of the witness with regard
23 to the issue of informed consent, which is exactly what
24 their pre-filed testimony directs.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. MALCYNKY: I think that the procedure
2 has been clear thus far that we are allowed to ask about
3 documents that are part of the pre-filed testimony, but
4 not documents which have not been reviewed by everyone who
5 has been participating thus far.

6 MS. MOORE LEONHARDT: If I may just address
7 that? Attorney Pattis, from time-to-time presented
8 documents and information to witnesses under his Cross-
9 Examination, which were not pre-filed, and it's my
10 understanding that the right to Cross-Examination is
11 inveterate, and by not allowing me to conduct full Cross-
12 Examination my hands are being tied, and we're being
13 denied due process, Attorney Malcynsky.

14 I'm simply showing a document to a witness,
15 and I'm going to ask him a question about it.

16 MR. MALCYNKY: I think it would be fair
17 game for you to ask him if he has knowledge of the
18 article, but I think to try and introduce the article
19 through a process that's not been adopted by this Board I
20 think is prejudicial to the rest of the parties, and it
21 could lead us to being here forever.

22 MS. MOORE LEONHARDT: I'm not offering the
23 article.

24 MR. SHAPIRO: Attorney Malcynsky, let's see

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 where it goes here. I think your objection may be
2 premature.

3 MR. PATTIS: I have a different objection,
4 and I'd ask the Board again to admonish us to address our
5 comments to you and not to one another. If the proponent
6 is going to show the witness a document, I believe we're
7 obliged -- she's obliged to show us a copy of it.

8 I don't know what she's showing him, what
9 article, what journal. There may be rule of completeness
10 concerns, so I'd simply ask that we be permitted to see
11 it, as well.

12 MR. SHAPIRO: Attorney Moore Leonhardt, I
13 do tend to agree with that and would recommend to the
14 Board that you provide copies to the other parties, so
15 that they can understand at least what you're showing to
16 him.

17 I mean, so far, this witness has identified
18 that, if you're talking about the journal that you were
19 just previously discussing, that he, although familiar
20 with it, has only reviewed it occasionally, at best.

21 MS. MOORE LEONHARDT: I'm not offering the
22 article. I'm simply going to ask the witness a question
23 about something that is said within the article, and it
24 calls for a yes or no answer.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. PATTIS: I renew my request to be shown
2 a copy of it for rule of completeness concerns.

3 MS. MOORE LEONHARDT: All right. I do have
4 copies. If I may take a moment, I will get them.

5 MR. SHAPIRO: Okay.

6 (Off the record)

7 MR. SHAPIRO: Are we all set, counsel?

8 MS. MOORE LEONHARDT: Yes, I am.

9 MR. SHAPIRO: Attorney Pattis?

10 MR. PATTIS: Yes, sir.

11 MR. SHAPIRO: Okay. Why don't you ask your
12 question?

13 Q Dr. Fellows, would you agree with the statement
14 made by Dr. Howard Spiro, a gastroenterologist, that
15 reads, "You can explain," on the topic of informed consent
16 and what physicians should know, that "You can explain too
17 much. Risks and benefits are not always easy for some
18 patients or some physicians to comprehend. They can be
19 shaped in so many ways that we cannot always be sure of
20 the long-term results in the real world.

21 To list every possible contingency
22 paralyzes decisions or decision making in the current
23 parlance." Would you agree or disagree with that
24 statement?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A In a general sense, I would agree with it,
2 specifically of listing every possible contingency. I
3 agree with that.

4 Q You agree that listing every possible
5 contingency would not be appropriate?

6 A It may not be appropriate.

7 Q It may not be appropriate. And is that because
8 you share Dr. Spiro's views, that it could paralyze the
9 decision making process?

10 MR. PATTIS: Objection, as to form. As to
11 what? That's a general statement, detached from any sort
12 of care. Are we talking about heartburn or the risk of
13 potentially fatal stroke? So I'd ask for a better
14 foundation.

15 MS. MOORE LEONHARDT: Attorney Shapiro, I
16 think the question is appropriate.

17 MR. PATTIS: May I have a ruling, please.

18 MS. MOORE LEONHARDT: And I believe you
19 gave us some guidance on making proper objections earlier,
20 and I would appreciate your further direction. Thank you.

21 MR. PATTIS: Foundation.

22 MR. SHAPIRO: Thank you. Could you
23 rephrase the question? I was a little unclear about the
24 foundation, as well.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MS. MOORE LEONHARDT: I'll withdraw it,
2 because I was working off of the witness's answer, and
3 there's no necessity in pursuing that at this time.

4 Q Dr. Fellows, you would agree, wouldn't you, that
5 physical therapy manipulative treatment of the cervical
6 spine, including high velocity, low amplitude treatment,
7 is effective for neck pain and is safe?

8 A Wow.

9 MR. PATTIS: Compound.

10 MR. SHAPIRO: Yeah. I would recommend
11 sustaining the objection.

12 Q Well is effective for neck pain?

13 A Say it one last time?

14 Q Would you agree that physical therapy
15 manipulative treatment of the cervical spine, including
16 high velocity, low amplitude treatment, is effective?

17 A It may be effective for certain disorders of the
18 cervical spine.

19 Q Including neck pain?

20 A Some types of neck pain, yes.

21 Q Would you also agree that osteopathic
22 manipulative treatment of the cervical spine, including
23 high velocity, low amplitude treatment, is effective?

24 A Again, the same answers as I said for physical

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 therapists, that, for some cases, for some types of neck
2 pain.

3 Q Okay. Would you also agree that chiropractic
4 manipulative treatment of the cervical spine, including
5 high velocity, low amplitude treatment, is effective?

6 A Again, I would also agree with that, with the
7 restriction that it is for some types of neck pain, not
8 all neck pain.

9 Q All right and you would agree that all three of
10 those types of health care practitioners perform neck
11 manipulation treatment of the cervical spine?

12 A To my knowledge, yes.

13 Q All right, therefore, with regard to the
14 position that the Connecticut Medical Examining Board has
15 taken on the issue of informed consent, would the same
16 opinion apply to the members of the medical profession,
17 that is the osteopaths, that they should be mandated to
18 include a warning during informed consent that informs the
19 patient of the risk and possibility of the occurrence of a
20 stroke or cervical artery dissection as a side effect of
21 the procedure?

22 A Again, I'm not a lawyer, but my understanding
23 was that we were asked a specific question about the issue
24 before the Chiropractic Board, and, so, that's why we

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 addressed it this way, and we acknowledge that there are
2 among other licensed health care providers, so the reason
3 we worded it this way and why I'm saying it is because we
4 thought that they were only asking about chiropractic
5 manipulation.

6 And then the second answer would be, if
7 there were a reluctance by the other medical professionals
8 to include this in their informed consent, then I would
9 also recommend that for them on a personal level. We did
10 not discuss that as a Medical Board, however.

11 Q Okay, so, I take it, then, the Medical Board has
12 not --

13 A Does that answer the question?

14 Q Yes, it does. Thank you.

15 A Okay.

16 Q I take it, then, that the Medical Examining
17 Board has not issued a statement with regard to the
18 physician and osteopaths' duty in securing informed
19 consent to inform the patient of the risk and possibility,
20 or possibility of the occurrence of a stroke or cervical
21 artery dissection as a side effect of the procedure?

22 A Nobody made us aware that it was being omitted
23 in their informed consent.

24 Q But it's not a requirement at the current time,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 is it?

2 MR. PATTIS: Argumentative and calls for a
3 legal conclusion.

4 MS. MOORE LEONHARDT: It's proper Cross-
5 Examination.

6 MR. PATTIS: My objection remains,
7 argumentative and calls for a legal conclusion from a lay
8 witness.

9 MR. SHAPIRO: I would overrule the
10 objection. You can ask your question.

11 MS. MOORE LEONHARDT: I'm sorry.

12 MR. SHAPIRO: I said you can ask your
13 question. The objection has been overruled.

14 MS. MOORE LEONHARDT: I've lost the
15 question, so could we have it played back, please? Thank
16 you.

17 (Whereupon, the question was played back.)

18 A I am not aware that it is a requirement.

19 Q It is not currently a requirement, to the best
20 of your knowledge?

21 A Correct.

22 Q Thank you. One last question. I'm a little
23 curious. You used the term "chiropractic manipulation,"
24 and I thought I heard you earlier testify that neck

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 manipulations are done by physical therapists, like
2 yourself prior to becoming a radiologist, osteopaths and
3 chiropractors, so all three of those professions, the
4 chiropractic doctors, the osteopathic doctors, orthopedic
5 doctors I would take it?

6 A I'm not aware.

7 Q All right, but physical therapists all perform a
8 neck manipulation, correct?

9 A That's correct.

10 Q So, by using the term "chiropractic
11 manipulation," are you singling out the chiropractors for
12 performing the same type of neck manipulation that these
13 other professionals perform? Am I understanding you
14 correctly?

15 A Singling them out? No. What I was trying to
16 say, maybe clumsily, but what I was acknowledging that they
17 are trained in this, but they have specific schools. Those
18 schools are different than the osteopathic schools, which
19 are different than the way the physical therapists, and it
20 would be presumptuous of me to say that I was trained to
21 do it the same way as a chiropractor.

22 I don't know. Maybe they have a lot more
23 training.

24 Q I understand.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A I really don't know. I just didn't want to
2 assume I had as much training as they did.

3 Q Thank you. I think what my question was getting
4 at, though, was you would agree that your use of the term
5 "chiropractic manipulation" is really referring to a neck
6 manipulation performed by a chiropractor.

7 A Correct.

8 Q As opposed to a neck manipulation performed by a
9 physical therapist, correct?

10 A Correct.

11 Q Thank you.

12 A I'm not sure I thought it through that clearly.

13 MS. MOORE LEONHARDT: I have nothing
14 further. Thank you very much for your time today, Dr.
15 Fellows.

16 THE WITNESS: You're welcome.

17 MR. SHAPIRO: Attorney Malcynsky?

18 MR. MALCYNKY: Thank you.

19 MR. SHAPIRO: Dr. Fellows? Oh --

20 MR. MALCYNKY: I thought you were doing
21 what I want to do.

22

23 CROSS-EXAMINATION

24 BY MR. MALCYNKY:

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Good morning, Dr. Fellows.

2 A Good morning. Sorry about that.

3 Q No problem. You did testify that you're
4 personally familiar with spinal manipulation?

5 A Yes.

6 Q And your opinion is that it carries with it the
7 risk of stroke, is that true?

8 A That's true.

9 Q And are you familiar with other medical research
10 and information that supports your opinion?

11 A Well I tried to read the literature, and it was
12 fairly well split, and, often times, depending on the
13 author's training, and that's frequently the case, and I
14 could see conflicting articles that some would say that it
15 is this incident rate, and others would say that's far
16 off. I could not make a hard and fast conclusion, based
17 on the literature.

18 Q But you are aware of literature that does
19 support your opinion?

20 A That's correct.

21 Q I just wanted to show you an article from the
22 Chiropractic Report that's part of the pre-filed testimony
23 that's been the subject of questioning several times so
24 far in this hearing and just ask you to read a paragraph

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 and then give me your opinion.

2 MS. MOORE LEONHARDT: I'm going to object,
3 because it's beyond the scope of Direct.

4 MR. SHAPIRO: I'd recommend it be
5 overruled.

6 Q Dr. Fellows, would you please read me the
7 highlighted --

8 DR. PAUL POWERS: Attorney Malcynsky, what
9 exhibit is that contained in?

10 MR. MALCYNKY: This is the Chiropractic
11 Report.

12 DR. POWERS: But what number is the
13 exhibit?

14 MR. MALCYNKY: One second, please.

15 DR. POWERS: If you could give that to me?

16 MR. MALCYNKY: It's an appendage to VOCA's
17 pre-filed testimony.

18 DR. POWERS: Okay, thank you.

19 MR. MALCYNKY: You're welcome.

20 Q Dr. Fellows, would you please read that for me?

21 A This is in quotations, "A patient consent to
22 treatment is always necessary. It is often implied,
23 rather than expressed, however, where there is risk of
24 significant harm from treatment proposed, the risk must be

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 disclosed, understood and accepted by the patient. Such
2 informed consent is required for ethical and legal
3 reasons. The best record of consent is one that is
4 objectively documented," and, parenthetically, they say
5 "(e.g. A witness consent or videotape.)"

6 Q And would you agree with that statement?

7 A Yes.

8 Q Okay. Would you turn to the second page,
9 please? Excuse me, Doctor. Just one question about what
10 you just read. It says, "Risk of significant harm," not
11 significant risk, correct?

12 A Did I misread that?

13 Q No, you did not. I just wanted to emphasize.
14 Would you agree that it's the presence of the risk of
15 significant harm that's the key?

16 A Correct, and I think that's what our statement
17 suggests.

18 Q Would you turn to the second page, please? In
19 the middle column, under B, Disclosure of Material Risks?

20 A Yes.

21 Q Would you just read for me what it says there?

22 A "Disclosure of Material Risk, Key item for
23 disclosure include "material risk." These include known
24 significant complications that are quite common or likely

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 following treatment. Importantly, they also include very
2 remote or unlikely complications that are serious, such as
3 paralysis or death."

4 MR. MALCYNKY: Thank you. I don't have
5 any further questions. Thank you.

6 MR. SHAPIRO: Attorney Pattis?

7 MR. PATTIS: Yes.

8

9

CROSS-EXAMINATION

10 BY MR. PATTIS:

11 Q Good morning, Dr. Fellows. My name is Norm
12 Pattis. How are you?

13 A Quite well, thank you.

14 Q I have very few questions for you, I think. You
15 mentioned that you were part of a deliberative process by
16 the Connecticut Medical Society, Medical Examining Board,
17 excuse me, that reason together to come up with the pre-
18 filed testimony that has been marked as an exhibit in this
19 case?

20 A Yes.

21 Q Were you personally, at the time of your
22 participation in the deliberations, aware of any recent
23 changes in Connecticut law regarding to the reporting of
24 adverse events?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A No.

2 Q No?

3 MS. MOORE LEONHARDT: Objection. Beyond
4 the scope of Direct. There's nothing in the testimony
5 that was pre-filed by the Medical Examining Board, which
6 relates in any way to that matter or issue, and that issue
7 is not before the Board.

8 MR. PATTIS: There was no Direct in this
9 instance, so I take exception with that objection. We're
10 all Cross-Examining. He was questioned extensively by my
11 adversary about the basis of his opinion and the basis of
12 the Board's opinion, and I'm trying to determine whether
13 he's aware of this information.

14 MR. SHAPIRO: How is that relevant, though?

15 MR. PATTIS: It's relevant if he says he
16 was aware of it, because the National Quality Forum has
17 recognized the risk of -- give me just one moment. Death
18 or disability, due to spinal manipulative therapies as a
19 never event that should never occur, that hospitals are
20 mandated under Connecticut law to report, and that may or
21 may not be relevant to this Board's consideration of
22 whether the risk is significant enough to warrant informed
23 consent.

24 I refer the Board to Section 19a 127n, the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Adverse Events Reporting requirement of the Department of
2 Public Health Code. I believe, Attorney Kardys, or
3 Shapiro, excuse me, that the witness testified he was not
4 familiar with it, which probably moots out that whole line
5 of questioning, but I'm not sure.

6 I believe it has relevance, insofar as the
7 Board may or may not give weight to this if it chooses, if
8 the witness has relied upon it.

9 MR. SHAPIRO: I know there's been some
10 questioning about that section before. Dr. Fellows, was
11 your answer that you're not familiar with it?

12 THE WITNESS: Not in that form.

13 MR. SHAPIRO: Okay.

14 Q Are you familiar with the Adverse Event
15 Reporting law recently enacted in Connecticut as
16 applicable to Connecticut's hospitals?

17 MS. MOORE LEONHARDT: Objection,
18 irrelevant.

19 MR. SHAPIRO: I would overrule the
20 objection, but with a small amount of latitude for this
21 line of questioning.

22 MR. PATTIS: May I proceed?

23 MR. SHAPIRO: Sure.

24 Q Are you familiar with the recent passage of an

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Adverse Event Reporting requirement for Connecticut
2 hospitals?

3 A Yes.

4 Q And do you know whether Connecticut hospitals
5 are obliged, as a matter of law, to report any death or
6 disability due to spinal manipulation?

7 A I wasn't aware of that specific part of it.

8 Q The pre-filed testimony offered by the Medical
9 Examining Board draws no distinction between those who
10 perform a neck manipulation, correct?

11 A Correct.

12 Q Would it be your testimony that the Board's
13 position is that anyone who performs a class of
14 manipulations or adjustments to the cervical spine that
15 carries with it a risk of paralysis or death is required
16 to give informed consent?

17 A That would be our opinion.

18 Q And is that the question you were asked to
19 address before this tribunal?

20 A Not that I was aware of.

21 Q No, no. Is the question of whether -- I'm sorry
22 to be unclear. Is whether chiropractors ought to be
23 obliged to provide such a warning, is that the particular
24 question you were asked to address here?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A Right.

2 Q You were asked to review an article. Withdrawn.

3 Do you draw a distinction between the sort of injuries a
4 patient might sustain as a result of a neck manipulation
5 and the sort of injuries a patient might sustain as a
6 result of treatment for irritable bowel syndrome?

7 MS. MOORE LEONHARDT: Objection,
8 irrelevant.

9 MR. PATTIS: The witness was Cross-Examined
10 off of isolated statements from a document I asked to see,
11 What Should Doctors Believe? Dr. Spiro was opining about
12 the troublesome nature of the trade, medicine, in that
13 they are required now to make extensive disclosures about
14 irritable bowel syndrome and heartburn.

15 The statements were taken in isolation. I
16 objected to showing a document I hadn't seen, for fear
17 that it would be something much like this, and I simply
18 want the Board to know what that article was talking
19 about, so I believe it's within the scope of the prior
20 examination.

21 MS. MOORE LEONHARDT: The article wasn't
22 offered as a hearsay to prove a point. The article was
23 offered simply for the proposition that was stated in the
24 article by Dr. Spiro, and the witness agreed with it.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Thank you. Therefore, my objection stands.

2 MR. PATTIS: An isolated statement, about
3 perhaps the sinking of the Titanic --

4 MR. SHAPIRO: Can you ask the question
5 again, so I can hear it?

6 Q Do you believe that the sort of risks attendant
7 to treatment of something like irritable bowel syndrome or
8 heartburn are equivalent to the risk of serious disability
9 or death that may arise from cervical manipulation?

10 MR. SHAPIRO: I would recommend overruling
11 the objection. I think they can answer that, but the
12 Board can certainly do as it sees fit.

13 DR. POWERS: Attorney Pattis?

14 MR. PATTIS: Yes, sir?

15 DR. POWERS: Could you just give me an idea
16 of where you're going with this, because if it's just an
17 isolated question or so that you want to say, I think it's
18 something we'd allow, but if you're going to go down a
19 large path, I don't think it is.

20 MR. PATTIS: Frankly, I'd offer the article
21 for the Board's consideration. That might save a lot of
22 time, just so the Board can see the context in which that
23 quotation was taken, so I would make as an offer
24 Reflections on Medicine, What Doctors Should Believe, an

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 editorial that appeared in a medical journal by Howard
2 Spiro, and then I don't need to ask any questions.

3 So if the Board would receive that, I would
4 move it as a full exhibit.

5 MR. SHAPIRO: Is there any objection?

6 MS. MOORE LEONHARDT: I have no objection
7 to the Board reading the article.

8 MR. SHAPIRO: Okay. Attorney Malcynsky?

9 MS. MOORE LEONHARDT: Will it be allowed in
10 as a full exhibit, then?

11 MR. SHAPIRO: I'm just about to find out.
12 Attorney Malcynsky, do you have any objection?

13 MR. MALCYNKY: No, I have no objection.

14 MR. SHAPIRO: Okay. This document will be
15 admitted as Exhibit 67.

16 (Whereupon, the above-mentioned document
17 was marked as Exhibit No. 67.)

18 MR. PATTIS: May I approach?

19 MR. SHAPIRO: You may.

20 MS. MOORE LEONHARDT: I have the original,
21 if you would prefer the original.

22 MR. SHAPIRO: I don't believe I need the
23 whole magazine. If you are certain that this is a copy,
24 I'd rather just take this two-page document, unless

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 there's any questions.

2 MS. MOORE LEONHARDT: I can represent to
3 the Board with a degree of legal certainty that the copy
4 that's been given to you is an exact copy of what I made
5 from the Connecticut Medicine Journal, dated September
6 2009.

7 And if you'd like the front of the journal,
8 I'd be happy to give that to you, so that it's associated
9 with the copy of the article.

10 MR. SHAPIRO: I think we're all set. We
11 have marked this two-page document as Exhibit 67.

12 MR. PATTIS: No further questions.

13 MR. SHAPIRO: Any questions from the Board?

14 EXAMINATION BY DR. POWERS:

15 Q Good morning, Doctor.

16 A Good morning.

17 Q Now, remember, we're both on licensing Boards,
18 and our job here is to protect the public, correct?

19 A Correct.

20 Q I only have one question, really, and it
21 pertains to what we're being asked to do. As you know,
22 informed consent is part of the law in Connecticut, and
23 we're all supposed to do it with every procedure, or any
24 therapy that we recommend to a patient.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 What's being asked of this Board is whether
2 we should mandate that a particular procedure carries a
3 particular risk that every person should be notified on,
4 rather than just the normal informed consent process,
5 which we determine with a patient what the material risks
6 are to that particular patient.

7 My question is has the Medical Board ever
8 made such a mandate regarding informed consent? Have they
9 ever isolated a particular procedure and said this
10 particular risk has to be, you know, disclosed to every
11 patient?

12 A First of all, let me be frank, that I've only
13 been on the Medical Board for about 18 months, so I really
14 can't speak outside of that range, and I'm not aware of
15 any mandate.

16 I think that, as a corollary to that,
17 though, is that I'm trained as a neuroradiologist and
18 neurointerventionalist, and there is simply no procedure
19 that I do when I'm an interventionist that doesn't have a
20 remote risk of stroke or death, so every single time I get
21 informed consent from a patient, which is every patient, I
22 include that.

23 And I think what the Medical Board was
24 responding to was not that there was anything in

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 particular about the chiropractors, or DOs, or anybody
2 else --

3 (Off the record)

4 A If a group, through whatever mechanisms, either
5 ethical standards or what have you, has as its routine
6 that they would include it, then it doesn't need to be
7 addressed.

8 It's only, we feel, important to address
9 that if there is a reluctance to inform the patient, and,
10 as you said earlier, we felt that our mandate was to
11 protect the public. If a group said that they were not
12 happy informing the public about this remote risk, we took
13 exception to that.

14 Q How long have you been a licensed medical
15 physician?

16 A Since 1986.

17 Q And just to go back on my question, have you
18 ever been aware of the licensing Board in Connecticut
19 mandating a particular procedure carries an inherent risk
20 that they put a formal decision out, saying they had to do
21 that? Are you aware of anything like that?

22 A I am not aware of anything like that.

23 Q So it's more an issue of, shall we say, a
24 standard of care issue in informing everyone of a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 particular risk with a particular procedure?

2 A I think it could be worded that way.

3 DR. POWERS: Thank you very much.

4 THE WITNESS: Certainly.

5 MR. SHAPIRO: We're all set with Dr.

6 Fellows?

7 MS. MOORE LEONHARDT: I have no questions.

8 Thank you.

9 EXAMINATION BY DR. MICHELE IMOSI:

10 Q Dr. Fellows, just to remind you, in Exhibit 11,
11 the request to participate as an intervenor, the
12 Connecticut Medical Examining Board did state that
13 communication and consensus between Boards would be an
14 important goal in resolving the issue raised in the
15 petition.

16 I know, when Attorney Moore Leonhardt was
17 questioning you about whether the Medical Board of
18 Examiners would also be requiring us, depending on what
19 our decision was, if they would basically agree to enforce
20 the same ruling to any medical doctors that perform this
21 procedure, you said we were just talking about
22 chiropractors, but I just wanted to remind you that -- I
23 agree with that statement.

24 It really is important to have consensus,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 and if we mandate it for one profession for one procedure,
2 I think we need to look at then it opens up a can of worms
3 looking at other professions and recommending other Boards
4 look at the risk of procedures.

5 One more thing that hasn't been brought up,
6 and I'm wondering how you feel, would you feel that
7 there's an inherent risk to a procedure if the risk of an
8 event happening after the procedure is actually less than
9 the natural incidence of that procedure happening in the
10 public?

11 A When you word it that way -- let's see. So
12 you're implying that there's no causality? Is that what
13 you're saying?

14 Q Or the research. We haven't established any
15 causality. At most, we've established a temporal
16 relationship, but just crunching the numbers that anyone
17 could look up on the internet in a few minutes, as far as
18 the incidence of stroke in America, which is huge, it's a
19 huge problem, and I think that might be the bigger problem
20 that across the board all the medical health profession
21 Boards need to look at detecting this undiagnosed form of
22 stroke.

23 A Well, but to answer that, I think part of the
24 problem is that we're both speaking professionally and as

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 lay people at the same time, and we introduce a concept,
2 like stroke, as if it is a homogeneous population.

3 Stroke is a very heterogeneous population,
4 and that some strokes, natural incidence of a certain type
5 of stroke, may be extremely high, but the incidence of
6 another type of stroke is extremely low, and I think it's
7 important to do that.

8 I think that, also, one needs to be
9 cautious about scientific evidence. This is sort of the
10 argument that was used by the tobacco industry for
11 decades, as to why we should never, you know, discourage
12 the use of tobacco.

13 Lastly, I think that there is a certain
14 type of compelling circumstantial evidence. I think
15 there's an old quote by Thoreau, that is some
16 circumstantial evidence can't be ignored, like a trout in
17 the milk.

18 I think that we have to look at that and
19 just say, no, I don't have scientific evidence. I used to
20 be a, when I was working on my Ph.D., the research, a
21 bench research scientist, and I know what hard proof is,
22 but, in a clinical setting, that is, when we're dealing
23 with patients walking in and out of our, all of our
24 departments, or offices, the crucible of that type of

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 proof is extremely hard to achieve, extremely hard to
2 achieve, so I think one has to be just a little cautious,
3 and that's why we stated -- we're not talking about risk.

4 We don't know what the risk is, as far as
5 the percentage risk, but it's the harm that we worry
6 about, the potential, the devastating effect of paralysis
7 or death, and that's what we do. So I think we have to be
8 cautious about the terminology here. Does that answer the
9 question or no?

10 Q Not exactly. I mean I think the impression
11 throughout this hearing is we're looking into whether
12 there's enough of a risk of vertebral artery or stroke
13 after a chiropractic or spinal manipulation that we need
14 to specifically address that in informed consent. Right
15 now, informed consent should be practiced. There is a
16 law, it's a very good law, and we need to look and see if
17 we just need to go about enforcing that law, do we have to
18 now specifically make this one item brought up?

19 Again, looking at the numbers, which,
20 again, like I said, is available for anyone to look at in
21 the CDC, according to the CDC website, stroke is the
22 number three killer, 795,000 people a year die of stroke,
23 and, according to the U.S. Census Department, there's 310
24 million people in our country.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 You crunch those numbers, and everybody in
2 America there's a one in 390 chance of having a stroke a
3 year.

4 A Yes, that's true, but, as I said, that's not a
5 heterogeneous population. How many of those people have a
6 vertebrobasilar stroke? How many of those people have
7 dissection and those kind of things? I can't read from
8 this distance. I think it's Dr. Powers was saying about a
9 standard of care.

10 I'm not trained legally, so I don't really
11 understand what's statutory and what's standard of care
12 and all this kind of thing, but what we're really aiming
13 for is this standard that we apply to all our patients
14 that protect them, and whether or not this has to be a
15 statute, whether this is a regulation, whether this is an
16 ethical guideline, I can't address that particular aspect
17 of it, but I think that the devastating effect on the
18 individual in the family from a stroke or death is such
19 that we need to mention that.

20 Q I agree that's the ultimate goal of this Board,
21 is to see if we can catch that and prevent it across the
22 board and to see if it actually is, with something like
23 informing a person, it's possibly creating unnecessary
24 alarm.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Would that do more good than perhaps all of
2 us across the board becoming better diagnosticians and
3 perhaps warning people better of a contraindication to a
4 spinal manipulation, which might also be a
5 contraindication in the medical field for just sending a
6 person home and not treating them, because sometimes doing
7 nothing is just as harmful.

8 A I think that's an excellent point. We take this
9 as an isolated event, and I'm sure, you know, because I've
10 read about chiropractic schools, and they train their
11 students well, and when they do train their students, what
12 they talk about is, look, there are certain symptoms that
13 these people will have, or certain characteristics. Is
14 this person a smoker? Are they hypertensive? Then
15 they'll look for certain signs, and then they'll do a
16 certain maneuver, to see whether or not it can provoke a
17 response.

18 All of those things acknowledge that there
19 is some association with this type of pathology. And
20 since there is, although ill defined as far as rate of
21 occurrence, there must be some association, because the
22 schools actually teach this.

23 They teach them to be mindful of the fact
24 that your patient, who is a smoker, is at greater risk, be

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 mindful of the fact someone who is hypertensive, and then,
2 if you see someone with diplopia, you know, amaurosis
3 fugax, those kind of things, that it's important to
4 acknowledge that this is someone that you need to be a
5 little more cautious when you're doing that manipulative
6 therapy.

7 I think the therapy is great. Used it for
8 years, had a loyal clientele, loved the stuff, use it on
9 my family, but I always test to make sure that it's safe,
10 and still not 100 percent safe in my mind.

11 Do I have the scientific proof of that? I
12 can't give you a scientific, you know, research project
13 with loads of human beings, where we've tested that. No,
14 I don't have that.

15 EXAMINATION BY DR. POWERS:

16 Q Based on what you just said, are you saying that
17 -- I don't want to put words in your mouth. I'll ask a
18 question.

19 A Go ahead.

20 Q What the heck? Certainly, there are known red
21 flags for people that are more likely to have strokes. If
22 I'm dealing with a patient that has one of those red
23 flags, it's definitely my duty to inform the patient that
24 because of diabetes or high blood pressure there's a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 greater incidence of stroke normally for you, correct?

2 A I would think so.

3 Q So isn't it those patients that are in our
4 offices that we really need to focus on, or is it the
5 broad group of everybody, even though they have absolutely
6 no red flag?

7 A That's a --

8 Q Yeah. I apologize. It's something that I'm
9 very interested in hearing your take on, because that's
10 patient selection. It's the same issue we deal with --
11 not we deal with, but when surgeons deal with in properly
12 selecting a person for surgery, giving them a type of
13 medication, etcetera.

14 A I think that's actually a very good question.
15 Again, I acknowledged earlier probably chiropractic
16 training was better than mine, okay, but what we did when
17 we had those signs, symptoms, or provocative test, those
18 were exclusionary. They weren't those people that we said
19 now, okay, here's your risk. They were exclusionary for
20 us. I wouldn't do the manipulation.

21 I think it speaks to a very difficult
22 aspect of doing patient care, is that it's always sort of
23 this wedge, you know, and way up here is obvious, and down
24 here seems imperceptible, then we are always somewhere on

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 that gray scale in between, and, so, I don't think I could
2 convert in a meaningful way, meaning from a statistical
3 standpoint, if somebody is hypertensive, but a non-smoker,
4 what does that mean, or if he's hypertensive and a smoker,
5 and I'm not sure what to tell them.

6 I think that there are varied degrees of
7 incidence on those people, but I cannot tell you what
8 those degrees are. Does that make sense?

9 Q Yeah. It absolutely answers the question.
10 Thank you.

11 A Sure.

12 MR. MALCYNKY: Mr. Chairman, I just had a
13 couple of brief questions stemming from Board member
14 Imossi's comment, that shouldn't we be warning people
15 better, and I think that's really what we're talking about
16 here.

17 BY MR. MALCYNKY:

18 Q Are you aware of any definitive test that's
19 available to identify someone as at risk for stroke?

20 A Do you mean related to a cervical manipulation?

21 Q If somebody presents themselves in a
22 chiropractor's office and the chiropractor is recommending
23 a neck manipulation, is there any test or protocol that
24 can be administered that will definitively identify

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 someone as at risk for stroke?

2 A No, there's no one test that will definitively
3 say that.

4 Q So what's the harm in providing everyone with
5 the information about the risks of stroke?

6 A Well I think it's, now going back to, if I have
7 the name right, Connecticut Medicine Journal that we
8 looked at, that Xeroxed page, I think the risk is that you
9 can obfuscate. You have to be selective in what you tell
10 a patient.

11 That is, I can give you a list of risks to
12 a procedure that could go on for pages and pages and
13 pages, and you actually obscure some of the serious ones
14 in that long list, so that's why, you know, that paragraph
15 it was difficult to say yes or no, do I agree with it?

16 Yes, I agree with it, in that you can
17 overwhelm a patient. No, I don't agree with it, in the
18 sense that I'm not going to tell the patient really the
19 very harmful risks, so what I do is I select those risks
20 that I think are most appropriate to tell the patient,
21 and, again, it's that difficulty of being a clinician.

22 Part of it is frequency. When I'm sticking
23 a femoral artery, I know it's very common I can get a
24 hematoma. Now the bad outcome from a hematoma is very

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 low, but the rate at which that occurs is very high, so I
2 tell them about it.

3 Now a stroke or death the incidence may be
4 very, very low, but the consequence is huge, and, so,
5 there's a whole theorem about this and how you multiply
6 frequency times severity and those kind of things, and
7 that's how we come up with it, but you can't tell them
8 everything, but I think you need to, through professional
9 judgment and keeping in mind what it is that the patient
10 might fear most, and then that's what you need to include.

11 Q And you believe that stroke is a significant
12 risk?

13 A Again, every single one of my patients that I do
14 a procedure on I tell them that there is a risk of stroke
15 and/or death.

16 Q Getting to Ms. Imossi's comment about wanting
17 people better, what's your view about a discharge summary?

18 In other words, giving somebody, who has had a neck
19 manipulation, a piece of paper to take with them that
20 would inform them of the symptoms of stroke and what they
21 can or should do should they find themselves presented
22 with those symptoms?

23 A Again, the vehicle by which they're informed is
24 up to the practitioner. It doesn't necessarily have to be

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 a paper or something, but I think the topic needs to be
2 discussed.

3 When I do, for example, a myelogram, you
4 know, a risk, as I'm sure most people have heard, is you
5 get this spinal headache that is ferocious, so we warn
6 them this is what you should look for. I don't
7 necessarily give them a printed piece of paper, however.

8 Q But if your objective is sufficiently warning
9 the public, giving them a discharge summary could be a
10 good way to do that?

11 A It is a way of doing it, yes.

12 MR. MALCYNSKY: Thank you.

13 MS. MOORE LEONHARDT: May I? Thank you.

14 BY MS. MOORE LEONHARDT:

15 Q First of all, Dr. Fellows, you would acknowledge
16 that Dr. Imossi is a doctor, would you not?

17 MR. PATTIS: Objection --

18 Q I believe Attorney Malcynsky was referring to a
19 Ms. Imossi, and I just want to clarify the record, that I
20 believe he was referring to Dr. Imossi. Was that your
21 understanding?

22 MR. MALCYNSKY: My apologies, Dr. Imossi.

23 MS. MOORE LEONHARDT: Thank you.

24 Q Secondly, Dr. Imossi was concerned and raised

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 the issue of warning people better. Do you recall that?

2 A I do.

3 Q And I think you agreed that if the concern is
4 for the safety of patients, then the standard of warning
5 patients about any association, however extremely rare, of
6 the risk of stroke with a neck manipulation should be made
7 to all patients. Would you agree with that?

8 A I'm trying to follow your question. If I
9 understand it correctly, what you're saying is the
10 patients that we're giving cervical manipulation to,
11 correct?

12 Q Yes.

13 A Right. I think it should be mentioned.

14 Q And you would apply that standard, then, I take
15 it, to physical therapists, osteopaths and any other
16 health care practitioners who are performing cervical
17 manipulations if you're going to include all patients and
18 protect all patients for safety reasons, wouldn't you?

19 A I would apply that standard. How they achieve
20 it is up to them, and I said, if this is a -- if their
21 profession already informs people, then they don't need to
22 be mandated to inform people. If it's part of their
23 ethical approach towards patient care that it's done, or
24 if their Board chooses to do it that way, then that's the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 vehicle which they can use.

2 Q But your testimony on behalf of the Connecticut
3 Medical Examining Board is that, in order to properly and
4 adequately protect patient safety, that chiropractors
5 should be required to warn patients prior to the
6 performance of a cervical neck manipulation of the
7 association of stroke with that procedure, correct?

8 A Correct.

9 Q And you would apply the same standard, then, to
10 physical therapists and physicians, osteopaths, perhaps
11 physiatrists even, would you not?

12 A Yes.

13 Q Your answer is yes?

14 A Yes.

15 MS. MOORE LEONHARDT: Thank you.

16 EXAMINATION BY DR. IMOSI:

17 Q Okay. Back to my number crunching again.
18 Again, it's real important to talk about risks, because
19 risks taken out of context means nothing. Like if you
20 tell someone don't buy a red car, because one in a million
21 red cars gets in a car accident, what does that matter?
22 It means nothing, unless you know how many cars a day
23 actually get in a car accident.

24 And, again, a quote from Stevenson and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Ernst, who has been brought up a lot on studies from the
2 American Journal of Medicine 2002. "Without reliable data
3 about the incidence of specific risk, it is difficult to
4 achieve the correct balance between providing adequate
5 information and causing unnecessary alarm."

6 Again, unnecessary alarm could have
7 dangerous repercussions to a patient, would you not agree,
8 Dr. Fellows?

9 A In my personal experience as a physician, I've
10 never seen that alarm that people are talking about.
11 Again, I have done hundreds of procedures, where I've told
12 people that they may have a stroke, or they may die, and
13 never once since 1991, not one time has a patient declined
14 the procedure, not once.

15 Q All right, well, we heard from Dr. Carucci's
16 testimony, that, when she explains stroke to patients,
17 she's actually had three patients walk out, which, again,
18 is their choice, but my concern is, again, where are those
19 patients going and how dangerous are any other alternative
20 treatments for neck pain?

21 Even if they go back home and continue to
22 take Motrin, or NSAIDs, or decide to have neck surgery,
23 how much more dangerous would that be?

24 A Well I think that, too, is unknown, and I think

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 that maybe what we are talking about is the method in
2 which you inform people, and I think that you see this
3 with almost any branch of medicine, is that informed
4 consent is as much a personality test as anything else in
5 medicine.

6 Each of us have our own way of talking to
7 the patients and describing things, and, in some way, the
8 patient is looking at us, trying to sense how confident we
9 are, and, so, I think, depending on that, you may get
10 varied responses, but I don't think the actual informing
11 of the patient is necessarily going to set off undue
12 alarm.

13 Q Okay. Getting back to the -- finishing what I
14 was trying to get across with the numbers and the
15 statistics, according to, again, the numbers from the CDC
16 and the U.S. Census, the actual risk is seven per million
17 people will have a stroke a day, and, again, that's just
18 crunching the numbers.

19 At the most, we've heard the average is
20 about one to two million, one to two chance per million of
21 a stroke. No. One in a million to one in two million. I
22 think one in two million is a better number, because that
23 comes from the --

24 MR. MALCYNKY: Objection. I'm not trying

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 to be argumentative, but I think, if Dr. Imossi is going
2 to get into in depth the statistics, we ought to have, you
3 know, the documents in front of us that she's referring
4 to, so we can properly frame potential questions to the
5 witness after she's finished.

6 I mean she's spewing out a lot of numbers
7 here. I don't know what the basis for those numbers are.

8 MR. PATTIS: I join in that objection.

9 MS. MOORE LEONHARDT: If I might just
10 comment, I think that the line of questioning --

11 MR. PATTIS: I'd ask the Board to enforce
12 the rule about colloquies.

13 MR. SHAPIRO: Yeah.

14 MS. MOORE LEONHARDT: I don't object,
15 because the witness --

16 MR. PATTIS: There's no objection --

17 MR. SHAPIRO: Attorney Moore Leonhardt,
18 there's an objection that's pending. The fact that you
19 don't object is not going to be relevant to the Board's
20 determination of whether that objection is, in fact,
21 relevant.

22 MR. MALCYNKY: Mr. Shapiro, or Attorney
23 Shapiro, maybe I could -- I guess, if Dr. Imossi is
24 referring to documents that are in evidence, then, if she

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 would just refer us to those documents, we may be able to
2 get through it quickly.

3 If she's quoting from documents that we
4 don't have, I would just request that we be provided with
5 those documents.

6 MR. SHAPIRO: No, I understood your
7 objection.

8 MR. MALCYNKY: Thank you.

9 DR. IMOSI: All right. I was just talking
10 to Dr. Fellows as a fellow physician. I was assuming he
11 might be aware of these numbers. Again, as I said, they
12 were directly taken off of the Center for Disease Control
13 website and the U.S. Census Bureau website, but we can
14 move on.

15 A Well, to answer that, is that, yeah, I am aware
16 of those numbers, but, again, you are presenting stroke as
17 if it were a homogeneous population. When you really look
18 at it and using such things as a composite health care
19 study, the six most common causes of stroke are, in order,
20 number one, ischemic small vessel disease. This is in 100
21 percent of people over 65, and it involves vessels less
22 than 200 microns.

23 Next in frequency is hypertensive
24 vasculopathy that may either be bland or hemorrhagic.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Those are vessels between two in 400 or 500 microns.

2 The third most common is going to be branch
3 vessel infarct. That's what we normally think of as
4 stroke, you know, Grandma can't move the left side of her
5 body, or the right side of her body, something like that.

6 Then fourth after that is embolic stroke.
7 The fifth is then going to be a border zone, which is a
8 hypoxemic episode, and sixth is going to be a venous
9 infarct.

10 Okay. We still haven't gotten, okay, to
11 the vertebrobasilar infarcts that we're talking about or
12 vertebral artery dissection, so I don't dispute the
13 numbers, but I just don't think they're relevant the way
14 they're being presented.

15 This is a unique event, and this can happen
16 in a lot of people. I was in the Army for 30 years, and
17 one of the things that we would see very now and again is
18 a soldier, fit to fight, okay, would get a dissection,
19 okay, and, boom, out of nowhere, so we don't always know
20 when it's going to happen, because there's certain
21 exercises that would twist his head around or something
22 like that.

23 These actually were done on the campus at
24 Walter Reed one of these happened, and we witnessed it

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 right there, so we do understand that these things do
2 happen. They happen with you or without you, but they're
3 going to happen.

4 If we do something that may impact the
5 frequency of that, which we have reason to believe,
6 circumstantial, but there's reason to believe it will
7 happen, then we just wanted to warn the patients. That's
8 all.

9 Q Okay. I agree with you what we're talking about
10 is a small subset of a small subset of stroke.

11 A Right.

12 Q When looking at the big picture, though, I mean
13 it's been publicized highly throughout this whole event,
14 that chiropractic, meaning chiropractic has been used
15 synonymously with spinal manipulation, but chiropractic as
16 a whole is being -- the association of stroke, but, in
17 general, the actual numbers don't seem to prove out.

18 And, in fact, from the numbers,
19 chiropractors might almost be preventing as many strokes
20 as, you know, supposedly those in association with, you
21 know, because chiropractic is more than just a procedure.
22 We talk to patients incredibly about --

23 MR. PATTIS: Is there a question? I'm
24 going to object on the grounds that this is really a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 closing statement and not a question. Is there a question
2 buried in there?

3 Q Let's get back to the actual numbers. I think
4 the big issue we should be dealing with is vertebral
5 artery dissection. This is a big substantive stroke that
6 is missed, and it hits a younger population, and it's
7 often women, and I think, again, that's the big problem.

8 No one suspects it, and the symptoms are
9 often missed by physicians of all specialties, just like
10 heart disease is often missed by doctors. These people
11 appear healthy and active, and when a vertebrobasilar
12 stroke stops them in their prime, of course we're looking
13 for answers and someone to blame.

14 MR. PATTIS: Objection, again. It's
15 argumentative. Is there a question?

16 DR. IMOSI: Yes.

17 MR. PATTIS: We don't have the right to
18 Cross-Examine --

19 Q As a scientist, when a certain condition tends
20 to strike the young, a younger subset of the population,
21 do you tend to think that perhaps it's more of a genetic
22 or development predisposition?

23 A That could be one of the explanations. It could
24 be.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q According to the Rothwell Study, they kind of
2 came up with a conclusion. One of the quotes was, "It
3 remains to be explained why an association between
4 chiropractic manipulation and vertebrobasilar accident was
5 observed only in the young. If an association were to
6 exist, one would expect that it would exist regardless of
7 age." Would you agree with that statement?

8 A I don't know that author, but are you asking do
9 I agree with his opinion?

10 MR. MALCYNSKY: Objection. She hasn't
11 shown him the study she's talking about. She's throwing
12 the material out there at him, and he's fending it off as
13 best he can, but there's got to be some rhyme or reason
14 here.

15 MS. MOORE LEONHARDT: Well I object to
16 counsel cutting off the Board member, because under the
17 Uniform Administrative Procedure Act, 4-178, the Board is
18 entitled to utilize its expertise, apply its expertise,
19 and consider its expertise in examining the witnesses,
20 including its technical competence and specialized
21 knowledge, which may be used in the evaluation of the
22 evidence, and I believe that is what Dr. Imossi is
23 attempting to do here.

24 MR. PATTIS: I object to the form of the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 question. It's compound, argumentative, taking statements
2 in isolation. We're talking about things that kind of
3 sort of do things, and I simply don't know that that's
4 science.

5 Q Since you appear not to be familiar with the
6 Rothwell Study, I can make a few comments maybe about the
7 Cassidy Study, but we had spoken in depth the last dates
8 we had hearings that there are three controlled randomized
9 studies of this issue, spinal manipulation and its
10 association with stroke, and that was the Smith Study, the
11 Rothwell Study and the Cassidy Study.

12 Is it your opinion, I think you've already
13 said it, that there is an association of a certain disease
14 or event happening with a certain physician, should that
15 be included in the informed consent?

16 If there was an associating with greater
17 risk and event coming after being treated by a certain
18 physician, that should be included in the informed consent
19 if it was of a grave risk to the patient?

20 A I believe that's what I was saying.

21 Q Okay, so, from the Cassidy Study, the Cassidy
22 Study was really interesting, that it did show, in a small
23 subset of the stroke, the vertebrobasilar stroke, which is
24 only I think we've seen numbers about 1.3 per thousand

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 strokes is a vertebrobasilar stroke, so it's a small
2 subset of a stroke, and then, when we're dealing with just
3 a smaller subset of that, only 12 percent of these strokes
4 happen in the under 45 age group.

5 In the 88 percent, which is over 45, there
6 appear to be no association between spinal manipulation --

7 MR. PATTIS: Can we have a question? I'm
8 not sure. It's compound at this point.

9 DR. IMOSI: I'm trying to bring you up-to-
10 date, but the statement was made that he wasn't aware of
11 the studies.

12 Q My question is that there's actually a much
13 greater association with these patients having seen a
14 primary care physician, and, again, we learn as physicians
15 when we take our oath to do no harm, and sometimes, would
16 you agree, doing no harm sometimes doctors can err on the
17 more aggressive side, and sometimes we can err on the more
18 conservative side?

19 MR. PATTIS: Objection, compound. Is he
20 supposed to comment on the recitation and its accuracy?
21 Which question is he to ask?

22 Q Were you aware that there was a greater incident
23 of -- there's an increased association with doctors having
24 had, patients having had a vertebrobasilar stroke within a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 day of seeing their primary care physician? There was
2 actually a seven times increased chance they would have
3 seen their primary care physician the day before having
4 this type of stroke in the under 45 age group?

5 A I heard that discussed on the first morning of
6 testimony.

7 Q So would your Board be willing to look into
8 that, if this association seems present, maybe discussing
9 with primary care physicians picking up on this and doing
10 something, instead of just, if somebody comes in with
11 this?

12 It looks like, in 80 to 92 percent of these
13 cases, the patients are presenting with neck pain and
14 headache, severe neck pain and headache, maybe giving
15 those patients a warning that this might become a stroke
16 and just doing nothing and going home and taking some
17 Advil and resting might also lead to stroke?

18 A Well I think, if I followed the logic, what
19 you're saying is that seeing the primary care physician
20 had a greater incidence than seeing a chiropractor, who
21 got -- this is the Cassidy Study, is that right?

22 Q Yes.

23 A But I don't believe that the primary care
24 physician did any intervention.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Well that's my point. Again, sometimes doing
2 nothing can be just as harmful as doing something, and the
3 big question is are these patients a time bomb waiting to
4 happen? Do these patients have the vertebral artery
5 dissection first, like even that man in the military? Did
6 he have that dissection, because, again, that's the age
7 group that it can happen, and just turning the neck
8 brought it on.

9 A I think it's a reasonable question, and I think
10 that really, instead of making it incumbent upon the
11 Connecticut Medical Examining Board then to warn the
12 primary care physicians, I think what we need to do is
13 collect data regarding what's going on, and I think it's
14 difficult, and no criticism of any therapist, you know,
15 physiatrist, or anybody else, osteopath, chiropractor
16 doing this, but we probably don't all do it the same way,
17 so maybe the stimulus is different, so maybe we need to
18 look at that.

19 Secondly, we don't know what the presenting
20 symptoms were necessarily. Are they identical? We really
21 don't know. You're right. Many people do go to their
22 physician with signs of something that are actually a
23 subclinical presentation as we try to do an exam, and we
24 can't really find out what the cause is, but there were

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 herald signs, and that, in retrospect, when we look back,
2 a certain percentage of the people we see actually had a
3 low level version of what we were worried about, but it
4 was so small we couldn't detect it, and that was a
5 problem.

6 Medicine, as you're pointing out, is not
7 perfect. Sometimes we over treat, sometimes we under
8 treat, and I would acknowledge that that point is a fair
9 point. I think, if we had a better controlled study, that
10 is the stimulus of a more standardized way of recording
11 how people responded after therapy and whatnot, then I
12 think we can make a more clear statement, but, until that
13 time, I think we just have to each of us make our own
14 opinion on, each group make their own opinion.

15 It is our group's opinion that we feel the
16 patient should be warned.

17 Q As an alternative kind of solution to doing the
18 greatest good to the most people, instead of, again, just
19 focusing on the patients that walk into the chiropractic
20 office with this possibly predisposing factor or vertebral
21 artery dissection, which is this pre-stroke, if we, as
22 Medical Boards, promoted greater continuing education for
23 physicians across the board, and, again, looking and
24 dissecting and becoming more aware of this vertebral

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 artery dissection in progress, so that we all can be
2 astute and prepared to do some emergency intervention,
3 because it does not look like the typical emergency case,
4 but it actually is, and that person really needs to be
5 sent to the emergency room for further studies, which,
6 again, will bring the insurance companies into the loop,
7 because they'll have to be on board with this, too,
8 allowing these expensive tests to be done when we suspect
9 this dissection in progress.

10 So my question is that's another thing to
11 bring to the table. I'm wondering what you think, as a
12 fellow Board member, if that would perhaps do the greatest
13 good, if doctors in general across the board were made
14 more aware of this, because it seems in the literature
15 that the incidence of vertebral artery dissection is
16 rising in the American population.

17 A I would agree the incidence is rising. I would
18 agree that education of all health care providers, as to
19 the possibility of this, is one facet of the solution, but
20 I think that another facet would be making sure the
21 patients are aware, so they understand what risk it is.

22 We typically in the Emergency Department
23 will ask, if someone comes in with certain things, have
24 you had a recent manipulation, so we are at least mindful

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 of that. That's not accusatory. We're just saying
2 there's a whole list of things that we look at, but I
3 think education both of the physician and of the patient
4 is appropriate. I agree.

5 Q All right. You actually brought up an
6 interesting point about asking about the spinal
7 manipulation. I almost feel like that's become a testing
8 for vertebral artery dissection. If somebody comes into
9 the emergency room with neck pain, stroke symptoms,
10 generally the protocol, and I've seen this over and over
11 again with patients, they'll get sent for a head CT scan.
12 The head is the only thing looked at.

13 If the head is negative, they're not
14 reevaluated again, unless the symptoms get worse, and
15 we're not being keyed into the neck, unless, as you said,
16 the emergency room physicians ask about the spinal
17 manipulation, and then that keys them in.

18 A Right.

19 Q So it might, in some cases, be that the
20 chiropractor could be helping them get care quicker?

21 A I'm not sure. It certainly could be, but,
22 typically, we do not, with the syndrome you're talking
23 about, we would actually recommend an MRI, and a vertebral
24 artery dissection can be detected on an MRI very reliably,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 and I do it all the time, being a neuro imager.

2 Q A cervical MRI?

3 A Well cervical MRI, or even an MRI of the brain,
4 because it goes down far enough. What happens is the vast
5 majority of these dissections occur just as it penetrates
6 through the dura, so we will actually have that included
7 on the MRI of the brain, so we don't have to -- it's
8 better to do an MRI of the cervical spine, but we don't
9 have to.

10 We, often times, can spot that, because, if
11 I can just turn, when we do an MRI of the brain, we go
12 down to about C-3/4 to make sure that we include all of
13 the brain stem, so we do a little bit of an overreach,
14 and, so, we will actually see the vertebral arteries in
15 the foramen transversarium, then as it loops around and
16 then penetrates the dura through the foramen magnum.

17 DR. IMOSSE: Okay. No further questions.

18 EXAMINATION BY MR. PACILEO:

19 Q Thank you, Doctor. In response to a question
20 earlier, I believe it was from Attorney Moore Leonhardt
21 with regard to informed consent, you broke it down into
22 two categories, if I recall. You mentioned ethical and
23 mandatory.

24 I'm trying to understand why did you make

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 that distinction? Was there an implication there in your
2 answer that you were trying to communicate?

3 A I must not be speaking clearly. This is the
4 second time people have asked if I was trying to
5 communicate something. I'm not that clever.

6 Q Neither am I, then.

7 A What I was trying to say is be all inclusive, in
8 the sense that there are several ways we are mandated to
9 do things, and I already conceded I don't have legal
10 training, but some things are mandated, and they can be
11 like joint commission mandates, it could be state
12 regulations, state law, FDA and all those kind of things,
13 but there are also some things that aren't mandated that
14 we do just as a standard of care that our profession,
15 whatever it is, you know, has agreed, you know, usually
16 fairly informally, but that we're going to do this a
17 certain way. Is that more clear?

18 Q Right. Just a brief follow-up.

19 A Sure.

20 Q So, then, you weren't suggesting, then, in
21 separating those in those two categories that there was
22 unethical behavior occurring?

23 A No. Again, I have to apologize. I don't speak
24 like I'm normally in a courtroom. Do you know what I

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 mean? And I just sort of, you know, use common
2 conversational discussion, so I wasn't implying anything
3 unethical.

4 Q Okay. I was just trying to understand the
5 distinction that you were trying to make. Thank you,
6 Doctor.

7 A Okay. My pleasure.

8 MR. SHAPIRO: Anything further? Thank you,
9 Dr. Fellows.

10 THE WITNESS: Thank you.

11 CHAIRMAN SCOTT: At this time, we're going
12 to take a 10-minute break, and we'll return.

13 (Off the record)

14 CHAIRMAN SCOTT: All right. We're going
15 back on. Quiet, please. Thank you. All right, we're
16 going to begin again. Next witness?

17 MR. SHAPIRO: Attorney Moore Leonhardt, I
18 guess the concern that was raised by Attorney Malcynsky
19 was that certain witnesses be able to go before Friday.
20 Now we're just going to have to see whether or not that
21 happens, and I appreciate your suggestion to take Ms.
22 Hoffman out of order, but it would really become taking
23 more people out of order, and my understanding is that Ms.
24 Hoffman is going to be here for the next -- today and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Friday either way, so I don't necessarily think it makes
2 sense to take her right now, because there's a whole group
3 of people that Attorney Malcynsky was concerned about not
4 testifying by Friday.

5 Frankly, while I'd be interested in
6 accommodating them and having the hearing wrapped up by
7 Friday, I don't know if it will or it won't. It depends
8 on how fast it goes.

9 I guess I would suggest -- I mean I
10 understand you're representing both parties. Are the
11 witnesses for the Connecticut Chiropractic Association
12 done, is that correct, except for any rebuttal witnesses?

13 MS. MOORE LEONHARDT: Yes. We did,
14 Attorney Shapiro, complete our Direct testimony of our
15 pre-filed direct case.

16 MR. SHAPIRO: Okay.

17 MS. MOORE LEONHARDT: With Dr. Carucci.
18 The next witness that I understood from your directive and
19 order of witnesses was the Connecticut Chiropractic
20 Council, and Dr. George Curry is here on their behalf.

21 I simply noted that I had received just
22 this morning the request or e-mail copy from Ms. Hoffman
23 about her desire to have her testimony done this week, and
24 I wanted to represent to all here, especially the Board,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 that the chiropractic organizations that I represent, the
2 Connecticut Chiropractic Association, the Connecticut
3 Chiropractic Council and the International Chiropractic
4 Association, have no objection at all if Ms. Hoffman would
5 like to go next. That way, she would be surely assured
6 that her testimony was heard today, and there wouldn't be
7 a need for her to have to come back on Friday even.

8 MR. SHAPIRO: Attorney Malcynsky?

9 MR. MALCYNKY: Yes. And I appreciate
10 Attorney Moore Leonhardt's accommodation in that regard,
11 and maybe, Attorney Shapiro, you could just give us an
12 understanding of what the current order of witnesses is
13 from your understanding, and then we could, you know,
14 assess whether we're going to get these folks in by the
15 end of Friday.

16 MR. SHAPIRO: I mean I don't -- the Board,
17 nor I, have no preference, in terms of what the order of
18 the witnesses between each party go. Attorney Moore
19 Leonhardt, just to refresh my recollection, how many
20 witnesses on behalf of the Connecticut Chiropractic
21 Council on your direct case will you be offering?

22 MS. MOORE LEONHARDT: One, Dr. George
23 Curry.

24 MR. SHAPIRO: Okay and then, after that,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 then the Victims of Chiropractic Abuse will put on their
2 direct witnesses, and then the Chiropractic Stroke
3 Awareness Group will put on their witnesses, and then
4 we'll move to intervenors after that, so that's just the
5 normal order of proceeding, and I don't think the Board
6 has any strong preference whether Ms. Hoffman goes now, or
7 after Dr. Curry, or whenever, frankly.

8 DR. POWERS: Ms. Hoffman is part of --
9 she's not an intervenor. She's part of what party?

10 MS. MOORE LEONHARDT: I believe she
11 represents the VOICES, intervenor.

12 MR. SHAPIRO: She is an intervenor.

13 MR. MALCYNKY: She is an intervenor,
14 correct.

15 MR. SHAPIRO: She's the last of the 10
16 intervenors.

17 DR. POWERS: Okay.

18 MS. MOORE LEONHARDT: That's why I'm
19 suggesting that she go today, because she's here, and,
20 also, she would, instead of being at the bottom of the
21 list, which might jeopardize her ability to testify, it
22 might make sense to have her go at this time.

23 MR. SHAPIRO: I would just take her.

24 DR. POWERS: Okay. Here's my thought. My

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 thought is I wasn't sure of this. I thought she was part
2 of one of the parties, and, if it was, we can go in order
3 and we'd be there, but I recommend we definitely take Ms.
4 Hoffman out of order today and then proceed with the order
5 that's been outlined.

6 MR. SHAPIRO: Is that fine, Attorney
7 Malcynsky?

8 MR. MALCYNKY: One second, please.

9 MR. SHAPIRO: Attorney Pattis?

10 MR. PATTIS: I take no position on that.

11 MR. SHAPIRO: Okay.

12 MR. MALCYNKY: Our preference would be
13 that, if we're going to get to intervenors today, that we
14 move Ms. Hoffman to be the first one to testify as an
15 intervenor.

16 MR. SHAPIRO: All right. I think what
17 you're saying is that we're going to put Ms. Hoffman on
18 now. Why don't we do that?

19 MR. MALCYNKY: No. We're going to stick
20 with the plan, I mean to the extent that there's ever been
21 a plan that we've stuck to. I mean maybe this is a good
22 time for me to renew my concern about, you know,
23 substituting parties for intervenors, etcetera.

24 MR. SHAPIRO: Attorney Malcynsky, on behalf

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 of the Board, we're not particularly interested in hearing
2 about concerns. If you have an objection and you have a
3 motion and you want to make it, then make it. If not -- I
4 mean I wasn't the one that suggested that Ms. Hoffman be
5 taken out of order. It was my understanding that you did,
6 and we've now --

7 MR. MALCYNSKY: My suggestion --

8 MR. SHAPIRO: Let me just finish.

9 MR. MALCYNSKY: Yup.

10 MR. SHAPIRO: And now we've accommodated
11 your request, and the Board and Attorney Moore Leonhardt
12 have agreed to take Ms. Hoffman out of order, and now you
13 don't want to put her on right now, so, you know, at some
14 point, we just need to move on and get to the next
15 witness.

16 So if you have an objection or a motion you
17 want to make, then make it now. If not, then we'll start
18 with Dr. Curry and go from there.

19 MR. MALCYNSKY: Just in response to your
20 comment, I did not request that she go now. My letter was
21 specific that they be accommodated before close of
22 business on Friday, so, you know, I'm not trying to -- I'm
23 not the one trying to turn this proceeding on its head, in
24 terms of when the witnesses are being allowed to testify.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 My understanding was what you were
2 suggesting a minute ago was that we proceed with Curry,
3 and then we get into the intervenor witnesses.

4 MR. PATTIS: We take --

5 MR. MALCYNKY: -- Curry, and then VOCA,
6 and then the intervenor witnesses, which we're fine with.

7 MR. PATTIS: -- why don't we just cut to
8 the chase?

9 MR. SHAPIRO: Okay, so, are we going to
10 take Dr. Curry now? Is that correct?

11 MR. MALCYNKY: That would be fine with us.

12 MR. SHAPIRO: Why don't we do that?

13 MS. MOORE LEONHARDT: May I call Dr. Curry,
14 please? May I just have a moment, because, in the midst
15 of all this, I need to just capture my file for Dr. Curry?
16 Thank you.

17 MR. SHAPIRO: That's fine.

18 CHAIRMAN SCOTT: Would you swear in the
19 witness, please?

20

21 DR. GEORGE CURRY

22 having been called as a witness, having been duly sworn,
23 testified on his oath as follows:

24

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 COURT REPORTER: Can you state your name
2 for the record?

3 THE WITNESS: George B. Curry.

4 MR. SHAPIRO: And, Attorney Leonhardt,
5 we're just going to try to keep a brief introduction,
6 allow him to adopt his testimony, and then be Cross-
7 Examined.

8 MS. MOORE LEONHARDT: I understand that.
9 If I may just take a moment? I believe my file is in the
10 hallway.

11 MR. SHAPIRO: Okay.

12 MS. MOORE LEONHARDT: Thank you. The case
13 of what is possible is not always probable. It was not in
14 the hall, but I'm prepared to proceed. Thank you.

15 MR. SHAPIRO: Thank you. Why don't you
16 proceed?

17

18 DIRECT EXAMINATION

19 BY MS. MOORE LEONHARDT:

20 Q Good morning, Dr. Curry.

21 A Good morning.

22 Q You are testifying today on behalf of the
23 Connecticut Chiropractic Council, are you not?

24 A Yes, I am.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q And what is your connection with the Connecticut
2 Chiropractic Council?

3 A I serve as the Chairman of the Board.

4 Q And how long have you served in that capacity?

5 A Three years.

6 Q All right and were you involved in the
7 preparation of testimony, which was pre-filed today, with
8 regard to the question before the Board and the
9 organization's position relative to that question?

10 A Yes.

11 Q And do you have a copy of that testimony in
12 front of you today?

13 A Yes, I do.

14 Q All right and is it your intention to adopt that
15 testimony today?

16 A Yes, it is.

17 Q And would you briefly summarize for the Board
18 the basis for the Connecticut Chiropractic Council's
19 opinion with regard to the issue at hand?

20 A Thank you. I would like to thank the Board for
21 allowing us to submit this testimony today. It is the
22 opinion of the Connecticut Chiropractic Council is that
23 when a Doctor of Chiropractic obtains informed consent
24 from a patient prior to the performance of a joint

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 mobilization, manipulation, or adjustment of the cervical
2 spine, it is not necessary to address the risk or
3 possibility of the occurrence of stroke or cervical artery
4 dissection as a side effect, and this is based primarily
5 upon the fact that there is no reliable scientific
6 evidence that demonstrates that chiropractic adjustments
7 causes strokes.

8 Q Thank you. In arriving at that position, was
9 there any reliable credible scientific data that the
10 Council considered when it formulated that opinion?

11 A Certainly. The most current reliable study was
12 the Cassidy Study that we reference in our pre-filed
13 testimony.

14 Q And were there any other studies that you
15 considered to be reliable and scientifically reporting on
16 the issue in arriving at that opinion?

17 MR. SHAPIRO: Attorney Moore Leonhardt, at
18 this point, I'd rather have him adopt his testimony and be
19 subject to Cross-Examination than have you do a Direct of
20 this witness, and that's how it was contemplated in the
21 rulings that have been issued by the Board.

22 Dr. Curry, are you adopting this testimony
23 under oath that you submitted on behalf of the Connecticut
24 Chiropractic Council?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 THE WITNESS: Yes, I am.

2 MR. SHAPIRO: Okay. I would suggest that
3 Attorney Malcynsky continue with Cross-Examination.

4 MS. MOORE LEONHARDT: May I just finish one
5 more step in my presentation of this witness, Attorney
6 Shapiro? We've identified him as an expert, and if
7 counsel wants to stipulate that Dr. Curry is an expert, we
8 can facilitate that process, otherwise, I feel compelled
9 to review very briefly Dr. Curry's qualifications.

10 MR. SHAPIRO: I think that's a fair point.
11 Attorney Malcynsky?

12 MR. MALCYNKY: Maybe, if you could just
13 clarify for me specifically what are you trying to
14 establish him as an expert in?

15 MS. MOORE LEONHARDT: I believe we filed an
16 expert disclosure, and Dr. Curry has been disclosed as an
17 expert in the area of providing chiropractic care as a
18 Doctor of Chiropractic.

19 In addition, he is an expert with regard to
20 the issues before the Board, specifically the issue of
21 informed consent and as a representative of the
22 Connecticut Chiropractic Council.

23 His curriculum vitae has been circulated
24 and filed and provided to all parties and intervenors of

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 record.

2 MR. MALCYNKY: Thank you. One moment,
3 please. I have no problem with his qualifications as an
4 expert.

5 MR. PATTIS: Whether I do or not, I take
6 the position that it's not necessary to qualify him for
7 purposes of testimony at this hearing, so I take no
8 position.

9 MR. SHAPIRO: Thank you.

10 MS. MOORE LEONHARDT: Thank you. I, then,
11 turn the witness over to Attorney Malcynsky.

12

13

CROSS-EXAMINATION

14 BY MR. MALCYNKY:

15 Q Good morning, Dr. Curry.

16 A Good morning.

17 Q You stated that, in your testimony, that this
18 CCC is a trade association charged with promoting, quote,
19 quote, "science, philosophy and the art of chiropracty."
20 Can you explain what that means?

21 A Which part of the question?

22 Q Well is there a difference between science and
23 philosophy and art?

24 A Certainly.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Can you explain to me what they are?

2 A The difference between science and art?

3 Q Well your testimony is that the CCC is charged
4 with promoting, quote, "science, philosophy and the art of
5 chiropracty." Can you explain what that means?

6 A Yes. Chiropractic science, as taught in the
7 chiropractic curriculum in an accredited chiropractic
8 college, involves the scientific aspects of the study of
9 the human body and the science of detection and correction
10 of the vertebral subluxation complex.

11 The art refers to the particular technique
12 that a Doctor of Chiropractic would choose to reduce or
13 correct a subluxation, and the philosophy is the whereby
14 or rationale that someone would investigate the spine as a
15 cause of ill health.

16 The very basis upon which the profession
17 was founded was that the body is a self-healing, self-
18 regulating mechanism and has inherent recuperative powers,
19 and that if those recuperative powers are interfered with,
20 then it could cause a loss of health.

21 Q So the art is the mechanics of how to actually
22 perform the manipulation?

23 A The actual technique, yes.

24 Q Right, and the philosophy is a belief that the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 human body is a self-healing entity?

2 A Correct.

3 Q Is there any other philosophy that applies to
4 the profession of chiropractic?

5 A Well there's more to it than that, but I don't
6 know if time permits me to expound upon it --

7 Q Maybe just a little --

8 A -- relevance to the issue at hand, I kind of
9 question that.

10 Q Well what would be the philosophy relative to
11 the issue at hand, the issue at hand being whether someone
12 should be -- whether you should acquire informed consent
13 from someone or provide them with a discharge summary when
14 they present themselves for a cervical manipulation?

15 MS. MOORE LEONHARDT: Objection.

16 Q What's the philosophy of the CCC with regard to
17 that?

18 A I don't think --

19 MR. SHAPIRO: Wait. I want to hear what
20 the objection is.

21 MS. MOORE LEONHARDT: The objection is that
22 counsel has misstated the question that's before the
23 Board. The question is not whether there is informed
24 consent.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. SHAPIRO: Okay.

2 MS. MOORE LEONHARDT: I think you know what
3 the question is.

4 MR. SHAPIRO: Yeah. I would recommend
5 sustaining the objection. I think that the question is
6 misleading.

7 Q What is the philosophy of the CCC regarding
8 informed consent?

9 A The Connecticut Chiropractic Council recognizes
10 that informed consent is, by case law, part of the
11 standard practice of chiropractic in the State of
12 Connecticut.

13 Q In the pre-filed testimony, you also state that
14 the CCC promotes, quote, "the highest standards of ethics
15 in patient care for the profession." Would that include
16 providing informed consent?

17 A Informed consent is certainly part of the
18 ethics.

19 Q And in what circumstances would you advise a
20 chiropractor to seek informed consent from a patient?

21 A Any time that the chiropractor is going to offer
22 any type of a care, any care or treatment procedure,
23 informed consent would apply.

24 MR. SHAPIRO: Attorney Malcynsky, just

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 before you continue your next question, I just want to
2 make sure that we keep the record straight, that this
3 testimony be admitted as a full exhibit. Is there any
4 objection to that?

5 MR. PATTIS: No, sir.

6 MR. MALCYNSKY: No, sir.

7 MR. SHAPIRO: Okay.

8 MS. MOORE LEONHARDT: No objection.

9 MR. SHAPIRO: The testimony of the
10 Connecticut Chiropractic Council will be admitted as a
11 full exhibit as Exhibit 33.

12 (Whereupon, the above-mentioned document
13 was marked as Exhibit No. 33.)

14 Q Dr. Curry, the testimony also specifically
15 states, as you said in your opening remarks, that it is
16 not necessary to address the risk and/or possibility of
17 the occurrence of a stroke or cervical artery dissection
18 as a side effect.

19 You, obviously, have heard the many times
20 during -- you sat here for most of the testimony, have you
21 not?

22 A Yes, I have.

23 Q Have you heard me refer and other witnesses
24 refer to the Chiropractic Report?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A Yes.

2 Q Were you here when the previous witnesses read
3 the paragraph that I asked them to read from the
4 Chiropractic Report? I'm going to ask you to read the
5 same paragraph.

6 A Yes.

7 Q Would you read the highlighted paragraph for me,
8 please?

9 A Yes, sir. "Patient consent to treatment is
10 always necessary. It is often implied, rather than
11 expressed, however, when there is risk of significant harm
12 from the treatment proposed, this risk must be disclosed,
13 understood and accepted by the patient.

14 Such informed consent is required for
15 ethical and legal reasons. The best record of consent is
16 one that is objectively documented, example, a witness
17 written consent or videotape."

18 Q Do you agree or disagree with that statement?

19 A I agree with the statement.

20 Q Okay. How can you square that statement with
21 your statement, that it is not necessary to address the
22 risk and/or possibility of the occurrence of a stroke or
23 cervical artery dissection as a side effect?

24 A Well that's simple enough. The chiropractic

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 procedure, which is the adjustment, does not have inherent
2 with it a risk of stroke, because, as I stated before,
3 there has been no scientific reliable data that has shown
4 a cause and effect between the chiropractic adjustment and
5 the event of stroke.

6 Q So it's your testimony that there's no risk of
7 stroke, none?

8 A My testimony is that there has been yet to have
9 any reliable scientific data that demonstrates that
10 chiropractic has a cause and effect with strokes. The
11 science does not show that. That's my testimony.

12 Q Have you heard testimony concerning the
13 association of stroke with cervical manipulation?

14 A Yes.

15 Q Would you agree that there has been a great deal
16 of testimony that there is an association between
17 chiropractic manipulation and stroke?

18 A I would not classify it as a great deal of
19 association, but, as you know and has been testified
20 earlier, association does not mean risk. There's an
21 association with stroke and going to a physician's office,
22 but I would not say that the risk of stroke is caused by
23 the physician, no more so than it is with the chiropractic
24 adjustment.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Would you turn to the second page of that
2 article that I asked you to read from, please? In the
3 second column, I believe there's a highlighted paragraph.
4 Would you read that for me, please?

5 A Well there's a couple here.

6 Q Starting with "key items."

7 A Okay. "Key items for disclosure include
8 material risks. These include known significant
9 complications that are quite common or likely following
10 treatment. Importantly, they also include very remote or
11 unlikely paralysis or death. Current best evidence is
12 that the risk of vertebral injury in stroke associated
13 with cervical manipulation is about one in one million
14 treatments, in other words, an extremely remote risk.

15 However, because the risk is potentially a
16 serious one, it is a material risk, which should be
17 disclosed."

18 Q And do you agree or disagree with that?

19 A I disagree with this.

20 Q Okay. Can you tell me why you disagree?

21 A Well this document was produced by an attorney
22 back in 2006, and I don't think he had the best reliable
23 evidence to go on, so the current scientific literature
24 would certainly rebuff that remark.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q And can you refer me to what scientific
2 literature you're talking about?

3 A The Cassidy Study.

4 Q Okay, so, it's your opinion that the Cassidy
5 Study eradicates and eliminates the credibility of all of
6 the entire body of evidence that was available up to that
7 point?

8 A My opinion is that the Cassidy Study is the most
9 recent peer reviewed indexed scientific study that speaks
10 to this issue.

11 Q But would you agree that there are other
12 articles, other research, both prior to and subsequent to
13 the Cassidy Study, that speak to this issue?

14 A Certainly, there are lots of articles, but an
15 article doesn't compare to a research study that's been
16 vetted by a peer reviewed journal.

17 Q I just wanted to show you an excerpt from the
18 Cassidy Study. Dr. Curry, would you read for me the
19 highlighted sentence, please?

20 A "Our results should be interpreted cautiously
21 and placed into clinical perspective. We have not ruled
22 out neck manipulation as a potential cause of some VBA
23 strokes."

24 Q So the Cassidy Study does not conclude that

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 cervical neck manipulation cannot lead to a stroke, does
2 it?

3 A Well it hasn't ruled it out, and it hasn't ruled
4 it in. What it does say --

5 Q But it hasn't ruled it out?

6 A It hasn't ruled it out.

7 Q Okay, thank you. Dr. Curry, you're a practicing
8 chiropractor?

9 A Yes, sir.

10 Q And what is your personal policy with regard to
11 informed consent prior to administrating a neck
12 manipulation?

13 A My personal policy is that before anyone
14 undergoes any procedure in my office, that we perform
15 informed consent.

16 Q I'm sorry. Could you repeat that for me? I was
17 exchanging a document with my colleague here.

18 A Ready?

19 Q Yes, I am ready. Thank you.

20 A My personal policy is that informed consent is
21 performed before any procedure that I do in the office.

22 Q Okay, so, if somebody comes in and presents a
23 problem to you and you're going to recommend to that
24 patient that you proceed with a cervical neck adjustment,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 would you then inform that person, based on your personal
2 policy, of the risk of stroke associated with the
3 manipulation of the neck?

4 A No, I would not.

5 Q And why is it that you don't feel it's
6 necessary?

7 A Because, in my opinion, from 27 years of
8 experience and from the latest scientific literature, that
9 there has been no association or causal effect with a
10 chiropractic adjustment and stroke, therefore, I don't
11 mention it in my informed consent.

12 Q So you disagree with Dr. Lauretti, who said that
13 he believes there is an association?

14 A Well there's a difference between an association
15 and risk in an informed consent. We talk about the risks
16 and harmful effects that may come from any procedure, but
17 an association and risk is different, and the informed
18 consent doctrine that we go by in case law it doesn't say
19 you're bound to list any association with the risks and
20 harms.

21 Q Well would you say association has a bearing on
22 whether or not there's risk? If something is associated
23 with something else, is there a bearing on risk?

24 A I don't know.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Specifically with regard to cervical
2 manipulation. There's been much testimony here that
3 cervical manipulation has been associated with stroke.
4 We've had a lot of disagreement on what the likelihood is,
5 or what the statistics are, but it's been fairly well
6 established that there's an association between cervical
7 manipulation and risk, so is it your testimony that
8 association has no bearing on risk?

9 A What my testimony is and for clarification is
10 that prior to the Cassidy Study, there were incidents of
11 people who reported strokes after seeing a chiropractor,
12 sometimes 24 hours, sometimes maybe weeks later, and it
13 was drawn a conclusion that perhaps it was the
14 chiropractic procedure, adjustment, that was responsible
15 for those strokes, but the Cassidy Study looked at the
16 data and crunched the numbers, and they found that the
17 same amount of people having these strokes were going to
18 their family physician.

19 Now the family physician, to the best of my
20 knowledge, wasn't performing chiropractic adjustments.

21 MR. PATTIS: Move to strike. That's
22 essentially speculative.

23 MS. MOORE LEONHARDT: I object. I think
24 the witness ought to be able to complete his answer.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A So, therefore --

2 MR. PATTIS: There's an objection.

3 MR. SHAPIRO: I would recommend overruling
4 the objection. Attorney Pattis, you'll be able to Cross-
5 Examine him on that statement.

6 MR. PATTIS: Thank you, sir.

7 Q Proceed, please.

8 A So, therefore, if the chiropractic adjustment
9 was going to be attributed to causing the stroke and the
10 family physicians are not performing chiropractic
11 adjustments, then why does the data show that they're just
12 as likely or more likely to have the stroke after visiting
13 their family physician?

14 Q But the Cassidy Study also, as you just read
15 from their conclusion, is very careful to say that they
16 are not concluding that chiropractic manipulations doesn't
17 cause a stroke, correct?

18 A Yes --

19 MS. MOORE LEONHARDT: Objection. Asked and
20 answered.

21 MR. SHAPIRO: I would recommend sustaining
22 the objection. I think it's been asked and answered.

23 Q So, Dr. Curry, what would the harm be, while I
24 understand that you believe it can't be proven that a neck

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 manipulation will cause a stroke, what's the -- because
2 there's been testimony on the association between cervical
3 manipulation and stroke, what's the harm in telling a
4 patient that it's a possibility, however remote?

5 A Well I believe that it's poor public policy, and
6 it's not necessarily in the public's best interest to
7 mention something that would perhaps cause unnecessary
8 alarm. I don't think it's in the patient's best interest
9 to put something in there. It's like maybe listing that
10 the patient might have a heart attack when there's been no
11 research that shows that chiropractic adjustments are
12 associated with heart attacks, or cause heart attacks.

13 Q Well I would agree with you about the heart
14 attacks, but there is a lot of testimony and a lot of, you
15 know, articles and other evidence that there is an
16 association between chiropractic manipulation and stroke,
17 so why would it be against public policy to warn somebody
18 that that's a possibility?

19 A Well, once again, if I just refer to the Cassidy
20 Study, which is the most current literature, it kind of
21 takes that association away, considering the data that
22 shows the same number of people having strokes were going
23 to their family physician.

24 Q Could you refer me to what portion of the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Cassidy Study says that there's no association between
2 cervical manipulation and stroke?

3 A I don't have the Cassidy Study in front of me
4 right now.

5 MS. MOORE LEONHARDT: May the witness be
6 given a copy of the study?

7 Q Are you aware of any specific conclusion with
8 regard to the Cassidy Study?

9 A Yes, I'm aware of the conclusion, and I may not
10 be quoting it correctly, but that the likelihood of
11 someone having a stroke in a chiropractor's office was the
12 same as going to the family physician.

13 Q Right, but that's not the same as what you just
14 said, that they concluded that there's no association
15 between chiropractic manipulation and stroke, is it?

16 A Could you repeat that question, please?

17 Q You just testified that the Cassidy Study offers
18 the supposition that there's no more of a likelihood of a
19 stroke occurring after seeing a chiropractor than seeing a
20 family physician, correct?

21 A Yes.

22 Q That's not the same as saying there's no
23 association between cervical manipulation and stroke, is
24 it?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A I'm looking at the Cassidy Study here.

2 Q Yes.

3 A And the word "association" is used. It does not
4 say that it's a risk or that it's caused by chiropractic
5 adjustment, but it does say, "Because the association
6 between chiropractic visits and VBA stroke is not greater
7 than the association between primary care visits and VBA
8 stroke, there's no excess risk of VBA stroke from
9 chiropractic care."

10 In other words, there isn't an excess
11 association with the chiropractic care than there is from
12 a family physician.

13 Q Can you find in the Cassidy Study the heading of
14 discussion? You have the study in front of you?

15 A Yes, I do.

16 Q Can you turn to the discussion portion of the
17 study? It's under Table Seven. Have you found it?

18 A No, I have not.

19 Q Can you just read for me what Attorney Clark
20 presented you under discussion, the highlighted sentence,
21 please, starting with the first sentence?

22 A The highlighted portion?

23 Q No. Starting with the first sentence under
24 discussion, including the highlighted sentence.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A "Our study advances knowledge about the
2 association between chiropractic care and VBA stroke in
3 two respects."

4 Q Continue, please.

5 A "First, our case control results agree with past
6 control studies that found an association between
7 chiropractic care and vertebral artery dissection and VBA
8 stroke. Second, our case crossover results confirmed that
9 these findings using a stronger research design with
10 better control of confounding variables."

11 Q Thank you. So even though your Bible, the
12 Cassidy Study, is careful to say that there is an
13 association between cervical manipulation and stroke, you
14 still don't think it's good public policy to inform your
15 patients of that possibility?

16 MS. MOORE LEONHARDT: Objection,
17 argumentative, and the question has been asked and
18 answered.

19 MR. MALCYNSKY: I claim the question.

20 MR. SHAPIRO: I would recommend overruling
21 it. I think you can answer the question, but that's up to
22 the Board. Let's take vote, then, because there seems to
23 be some --

24 DR. POWERS: Motion to sustain the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 objection?

2 CHAIRMAN SCOTT: Second.

3 MR. SHAPIRO: Discussion?

4 DR. POWERS: Any discussion?

5 MS. JEAN REXFORD: I'm not going to support
6 the sustaining. I think that the more we learn today as a
7 panel the better off we're going to be, and I thought it
8 was a very interesting question.

9 DR. POWERS: Agreed, but the thoughts at
10 this end are that it's been asked and answered so many
11 times that the redundancy precludes it being asked again.

12 CHAIRMAN SCOTT: Okay. We're going to take
13 a vote on this. All in favor?

14 VOICES: Aye.

15 CHAIRMAN SCOTT: Any opposed?

16 MS. REXFORD: Opposed.

17 CHAIRMAN SCOTT: Okay.

18 MR. SHAPIRO: The objection is sustained.

19 MR. MALCYNKY: I have no further
20 questions. Thank you.

21 MR. SHAPIRO: Attorney Pattis?

22 CROSS-EXAMINATION

23 BY MR. PATTIS:

24 Q It's still morning. Good morning, Dr. Curry.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 How are you?

2 A Very well, thank you.

3 Q I just wanted to review some fundamentals to
4 make sure I understand them. In response to Attorney
5 Malcynsky's questions, you discussed briefly the
6 scientific technical or artistic and philosophical bases
7 of chiropractic care, and you talked about the scientific
8 aspect being devoted to something called vertebral
9 subluxation complex, and can you just give me a brief
10 discussion? What is vertebral subluxation complex?

11 MS. MOORE LEONHARDT: Objection,
12 irrelevant.

13 MR. SHAPIRO: And I would overrule the
14 objection, because he did testify to that on Direct, so he
15 is allowed to inquire on something he's already testified
16 to.

17 Q What is, and, again, I know you can't educate me
18 to your standards in the brief time we have here today,
19 but what is a vertebral subluxation complex?

20 A Vertebral subluxation complex is a term used to
21 describe a condition of the spine, whereby one of the
22 bones of the spine has lost its normal position in
23 relationship to the vertebrae above and below, causing an
24 occlusion and a soliloquy of events, which leads to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 interference of communication from the brain cell to the
2 tissue cell.

3 It's called a complex, because there are
4 different component parts. There's a neurological
5 component, osseous component, muscle component, and this
6 is what, of course, we're licensed in the State of
7 Connecticut to detect and correct the vertebral
8 subluxation.

9 Q And as I understand it, then, and I may not, is
10 the vertebral subluxation complex then closely related to
11 the philosophy of chiropracty that you have articulated,
12 that is -- spine is a cause of ill health? Are those
13 related concepts?

14 A They're related, in the fact that the concept is
15 that if the body -- the philosophy is the body is a self-
16 healing, self-regulating organism, and the master control
17 system is the nervous system, and any interference of that
18 nervous system at the level of the spine could cause a
19 loss of health.

20 Q A loss of health on any of a number of
21 dimensions, correct?

22 A That's correct.

23 Q And the role of a chiropractor, then, as I
24 understand it from the CCC's perspective, is to reduce or

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 eliminate those interferences in a body that preclude or
2 prevent the body's inherent recuperative powers from
3 expressing themselves. Is that a fair statement?

4 MS. MOORE LEONHARDT: Objection,
5 argumentative, and I think the Board has the necessary
6 expertise to take official notice of what chiropractors do
7 and don't do and the role of a chiropractor, and I think
8 we're going awfully far a field here of what ought to be
9 the narrow issue of informed consent and whether there's a
10 need for disclosure of an extremely rare association of
11 stroke with neck manipulations.

12 MR. PATTIS: I'll take that to be a long
13 speaking objection. I claim it to be relevant, insofar as
14 it is within the scope of prior questions, and it is a
15 foundation for the informed consent requirement and an
16 inquiry with this physician with respect to causation
17 association and risk, so I claim it as a necessary
18 foundation.

19 MS. MOORE LEONHARDT: If I may, I believe
20 the only --

21 MR. PATTIS: Objection. I thought that the
22 rule we were going to proceed on this morning is that
23 there would be short speaking -- non-speaking objections,
24 and that if further argument was necessary, the Board

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 would ask for it, so I'd ask for a ruling.

2 DR. POWERS: I'm going to make a motion
3 that the Board sustain the objection. I just think we're
4 getting a little bit far a field here, but I'm going to
5 reserve any other comments on this, unless and if there's
6 discussion.

7 CHAIRMAN SCOTT: Okay. We're going to call
8 for a vote. First of all, do we have a second?

9 A MALE VOICE: Second.

10 CHAIRMAN SCOTT: All right. All in favor?
11 Discussion? I'm sorry.

12 MS. REXFORD: I, actually, would like to
13 have the question answered. As a Public Member, I need
14 this to be addressed, and the reality is, if it's not
15 answered now, as a Board member, I'm going to ask that
16 same question later.

17 DR. IMOSI: What exactly was the question?

18 MR. PATTIS: My recollection of it was --

19 DR. POWERS: Hang on, Attorney. We're in
20 discussion right now.

21 MR. PATTIS: I apologize. I was just
22 answering her question.

23 DR. POWERS: I'd love to hear from the
24 other Public Member on this.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. PACILEO: Now I don't necessarily
2 object to the question. I think my concern is more of the
3 repetitive nature of getting the same question being asked
4 in multiple ways, and I think if we, as a Board, and I'm
5 going to rely on my colleagues here, in order to kind of
6 separate the wheat from the chaff here, is this particular
7 question additive to our knowledge, or is it repetitive to
8 our knowledge, based on the testimony that we've heard?

9 If it's additive, I would certainly like to
10 hear it, but, if it is repetitive, I think there's a need
11 to proceed, so I would just offer that comment.

12 DR. IMOSI: I would just like to see -- I
13 can see it's going on a little long. I'll just make it
14 brief and get to the point of his questioning. I
15 understand the Public Members need to understand the
16 subluxation complex.

17 DR. POWERS: Certainly, on Direct, or
18 during his Cross-Examination, rather, he did bring up
19 vertebral subluxation complex. I think it's been defined,
20 and I just have a hard time, and this is where we need to
21 stay kind of centered to the single one question we have,
22 and if we start going far a field, I have difficulty with
23 that.

24 The definition is in place. I just, in my

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 professional knowledge, you know, going over 24 years, I
2 don't see how vertebral subluxation complex and philosophy
3 is going to lead us back to the question, therefore, I
4 call for a vote at this point on sustaining the objection.

5 MR. PACILEO: I'll move the question.

6 CHAIRMAN SCOTT: Okay. We're going to take
7 a vote now. All in favor?

8 VOICES: Aye.

9 CHAIRMAN SCOTT: Any opposition?

10 MS. REXFORD: I object.

11 MR. PATTIS: Can we have a tally on the
12 vote? I'm confused.

13 MR. SHAPIRO: I believe the vote was three
14 to three, so the motion fails.

15 Q Sir, is it your testimony that the philosophy of
16 chiropractic care is to eliminate barriers to the body's
17 inherent healing process? That's all the question was.

18 A Yes.

19 Q Okay and is a cervical adjustment one means by
20 which that is done?

21 A It's one way that it's done.

22 Q And what is a cervical adjustment? We've heard
23 a lot about it. I'm a non-chiropractor and new to the
24 case. What exactly is a cervical adjustment?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A A cervical adjustment is when there is a
2 specific applied force to the spine for the purpose of
3 creating normal motion, normal alignment and reducing
4 neurological irritation.

5 Q And a cervical adjustment can be done for any of
6 a number of conditions, including a headache, fair enough?

7 A The purpose of the --

8 Q Sir, it calls for a yes or no. Can it be done
9 for a number of conditions, including a headache?

10 MS. MOORE LEONHARDT: Objection to form.

11 COURT REPORTER: One second.

12 MR. SHAPIRO: I would recommend overruling
13 the objection. You can answer the question.

14 A What's the question?

15 Q Among the things that a cervical adjustment may
16 be performed to address, would that include a headache,
17 yes or no?

18 A I can't answer that question in the way it was
19 posed.

20 Q Would it include backaches, yes or no?

21 A Once again, I can't answer the way it was posed.
22 It's not a yes or no answer.

23 Q Would it include such conditions, for example,
24 as bedwetting, enuresis? I think we both got turned off

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 again. They're trying to tell us something.

2 CHAIRMAN SCOTT: I think we're just getting
3 a little off field on this.

4 MR. PATTIS: Maybe.

5 CHAIRMAN SCOTT: Especially with the
6 bedwetting stuff.

7 MR. PATTIS: Well I'll tie it up in just a
8 moment, if given permission to, but I understand it's your
9 hearing, and you'll tell me what I can and can't do, but I
10 would seek a little bit of latitude. I'm about two
11 minutes away from where I need to be, and I'll make it a
12 minute, if I can have the latitude. Please?

13 CHAIRMAN SCOTT: All right. I'm going to
14 allow it. One minute.

15 MR. PATTIS: That gives me 55 seconds.

16 Q Is it fair to say, sir, that people present to a
17 chiropractor's office complaining of many different
18 ailments?

19 A Yes.

20 Q And many of the conditions that they come to be
21 treated for can be treated by way of a cervical alignment,
22 correct?

23 A I don't understand that question.

24 Q Okay. Which part is confusing, sir?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A The whole question.

2 Q Is it fair to say that many of the conditions
3 that a patient comes to you for treatment regarding can be
4 treated by means of a cervical adjustment?

5 A No, it's not fair to say that.

6 Q Okay. What conditions can be treated by a
7 cervical adjustment?

8 A The purpose of the cervical adjustment is to
9 correct the vertebral subluxation.

10 Q Understood, and the vertebral subluxation you
11 told me earlier was present as a means of interfering with
12 the body's ability to heal itself, and, thus, the
13 philosophy of the CCC is that chiropractors get the body
14 out of it's own way, so that its self-restorative powers
15 are released, and we can all live happily. My question is
16 --

17 MS. MOORE LEONHARDT: Objection,
18 argumentative.

19 Q My question is a simple one, and it is, when you
20 are engaged in vertebral subluxation and you are trying to
21 promote what you called a soliloquy of events, or
22 intercommunication between the brain, what sorts of
23 conditions are you treating?

24 MS. MOORE LEONHARDT: Objection,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 argumentative, and I object to form. I'm not sure that
2 the witness --

3 DR. POWERS: We're just getting really,
4 really far a field. We have a question before us,
5 cervical manipulation.

6 MR. PATTIS: I'll withdraw the question,
7 and I'll cut right to the chase.

8 DR. POWERS: Thank you.

9 Q The Cassidy Study, you're familiar with the
10 Cassidy Study, correct?

11 A Yes.

12 Q And do you still have a copy of it in front of
13 you?

14 A Yes.

15 Q The Cassidy Study relied on certain diagnostic
16 codes, did it not?

17 A Yes.

18 Q In terms of capturing its data, and those were
19 what were known as ICD 9433 and 433.2, correct? Again, if
20 you look at the portion of the study that has got the
21 caption "cases," it's on S-177 of the copy that I have.

22 A It might be better if you brought it to me and
23 showed me.

24 Q There is a section that says "methods," then

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 "study design," "source population" and "cases." Do you
2 see that?

3 DR. POWERS: It's on the second page of the
4 study, if that helps at all.

5 THE WITNESS: The study was given to me out
6 of order, so --

7 DR. POWERS: All right, then, up in the
8 right corner, it would be S-177.

9 THE WITNESS: Okay. All right. I got it.
10 This helps.

11 Q We included all incident vertebrobasilar
12 occlusion and stenosis strokes resulting in an acute care
13 hospital admission from a certain period, a nine-year
14 period, correct?

15 A Correct.

16 Q Who gave those diagnostic codes, ICD 9433 and
17 433.2, do you know? In other words, how were those
18 generated?

19 A Those were part of the patient record, I
20 believe.

21 Q Those were billing records, correct?

22 A I believe so.

23 Q That's how a hospital chose to bill an insurance
24 company for payment, correct?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MS. MOORE LEONHARDT: Objection. Calls for
2 speculation. I don't see its relevance.

3 MR. SHAPIRO: Attorney Pattis, why do you
4 claim that's relevant?

5 MR. PATTIS: Am I given permission to make
6 my argument? The claim is that with regard to the Cassidy
7 Study a subclass of persons complaining of discreet harms
8 were selected. The care rendered is rendered for a broad
9 class of people, and these codes may or may not have
10 captured the class of people treated, thus, the Cassidy
11 Study, to the degree that it's reliable, understates the
12 risk.

13 MS. MOORE LEONHARDT: May I just chime in
14 here?

15 MR. SHAPIRO: Briefly.

16 MS. MOORE LEONHARDT: Thank you. I'd just
17 like to point out that the Cassidy Study and the codes
18 that are selected and identified in the study, itself, are
19 based on a Canadian code system, as the records all
20 related to the, I believe, if you turn to various pages,
21 it indicates that they looked at any DC visits and any PCP
22 visits, and those codes relate to what's used in Canada,
23 not in the United States, I believe.

24 So if any of this is at all relevant to the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 question at hand, I would ask that the Board take that
2 under consideration. Thank you.

3 MR. SHAPIRO: I'm not sure if Dr. Curry
4 knows the answer. I mean, if you're familiar with it, I
5 think I would recommend to the Board that he be allowed to
6 answer, but I'm not sure he knows the answer.

7 MR. PATTIS: I'm not sure I remember the
8 question. I think it was something along the following
9 lines.

10 Q Sir, isn't it the case that these ICD numbers
11 were billing codes that were applied by hospital discharge
12 planners, or billing clerks, in order to assure payment by
13 health insurance in Canada, if you know?

14 A I don't know.

15 Q Do you know, sir, whether the Canadian National
16 Health Insurance System has recently ceased providing
17 reimbursement for certain forms of chiropractic care?

18 MS. MOORE LEONHARDT: Objection,
19 irrelevant.

20 MR. PATTIS: It goes to the -- well, I
21 mean, I think it goes to the standard of care.

22 MR. SHAPIRO: I would recommend the Board
23 sustaining the objection.

24 MR. PATTIS: I'll take that as sustained?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Okay.

2 Q I'd like to review your testimony about cause,
3 risk and association. You would agree, would you not,
4 sir, that science, human science -- well, withdrawn. That
5 science, chiropractic science, much like general medical
6 science, is an ongoing and collaborative effort, would you
7 not?

8 A Yeah, it sounds reasonable.

9 Q And clinical trials and the testing of
10 hypotheses and whatnot, that's a good part of what goes
11 on, or what is reported in medical journals, correct?

12 A Correct.

13 Q And your expert opinion is informed on your
14 review of the literature that you are aware of, correct?

15 A Correct.

16 Q And you make an effort to be comprehensive in
17 your review of the literature. In other words, not just
18 simply to read what you agree with, but to become fully
19 informed about the full range of debate, correct?

20 A Correct.

21 Q The Cassidy Study did not -- there's one thing
22 you neglected to tell the Board about the Cassidy Study.
23 Isn't it true, sir, that the Cassidy Study found that
24 there was an association between vertebrobasilar artery

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 stroke in chiropractic visits in those under the age of
2 45? Do you recall reading that in the key points portion
3 of the Cassidy Study?

4 A I do recall reading that.

5 Q And it goes on to say, "There is also an
6 association between vertebrobasilar artery stroke and the
7 use of primary care physicians in all age groups,"
8 correct?

9 A Correct.

10 Q But with respect to primary care physicians, the
11 Cassidy Study didn't go on to single out an increased
12 risk, or -- withdrawn. An association in those under the
13 age of 45, did it?

14 A I'm not familiar. I'd have to review it again.

15 Q Take a look at the key points. It will be on
16 the last page, just above the section called
17 "acknowledgments." I don't mean to sound like the Verizon
18 ad, but are you with me?

19 A Acknowledgements, I got it.

20 Q I beg your pardon, sir?

21 A Key points?

22 Q Yes, sir. Can you read the first three to the
23 Board, please?

24 A "Vertebrobasilar artery stroke is a rare event

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 in the population." Is that what you meant?

2 Q Yes, sir, and then the next two, the next two
3 bullet points?

4 A "There's an association between vertebrobasilar
5 artery stroke in chiropractic visits in those under 45
6 years of age. There's also an association between
7 vertebrobasilar artery stroke in the use of primary care
8 physicians in all age groups."

9 Q Now Dr. Imossi raised certain questions of the
10 Medical Board examiner earlier in the day about the
11 incidence of stroke in the general population. You were
12 present while those questions were asked, correct?

13 A Yes, I was.

14 Q And that she relied upon data from the Center
15 for Disease Control and the United States Census Bureau,
16 correct?

17 A Yes.

18 Q Isn't it a fair statement to say, sir, that
19 among the variables that are important in medical review
20 of the literature is the concept known as an age cohort?
21 You've heard that in your education, have you not?

22 A Yes, I have.

23 Q And an age cohort, that is an attempt to draw
24 statistically significant associations between an event

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 and the age group of the population being studied,
2 correct?

3 A Correct.

4 Q Raw data, simply looking at the Census Bureau
5 and saying there are 310 million of us and then, you know,
6 dividing the number of strokes per person per day, that
7 doesn't tell us anything about age cohorts, does it?

8 A I don't believe the raw data, if it doesn't
9 break it down per age, does speak to that.

10 Q In the literature with regard to vertebral
11 artery, vertebrobasilar artery stroke, there is a
12 recognized distinction in age cohorts that distinguishes
13 people below the age of 45 from those older than 45,
14 correct?

15 A Correct.

16 MR. PATTIS: May I have a moment, please?
17 Who is it up there that keeps turning me off? Is that
18 you, Dr. Powers? (Laughter)

19 Q With respect to the concepts of causation,
20 association and risk, would you disagree or agree with the
21 following, that association of events can yield
22 information about risk? Would you agree or disagree with
23 that?

24 Let me give you an example to guide your

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 thoughts. We would both agree that walking across the
2 street does not cause me to be hit by a car, fair enough?

3 A Um-hum.

4 Q But, yet, the people who govern our cities put
5 street lights at certain areas, because there is an
6 association between risks and behaviors. You would agree
7 with that, would you not?

8 A I can agree with that.

9 Q Street lights aren't placed at random. They're
10 typically at corners, where things can occur, fair enough?

11 A Right.

12 Q Now one of the things that -- and, as a doctor,
13 part of your medical education, I presume, included a
14 course in epidemiology, correct?

15 A There were courses that included epidemiology in
16 them.

17 Q And what epidemiology is is the study of
18 associations across broad populations, fair enough?

19 A Yes.

20 Q With an aim or a goal of recognizing patterns
21 that may or may not be significant, fair enough?

22 A Fair enough.

23 Q Thus, in looking at vertebrobasilar artery
24 dissections, there have been studies that have attempted

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 to associate those with factors that may or may not yield
2 data about causation, fair enough?

3 A Fair.

4 Q If you look at the world as a giant existential
5 haystack, associations are what alert us, how we decide
6 where to look for the needle in the haystack, fair enough?

7 A Fair.

8 Q And an association, to say that something is
9 merely an association does not say that it rules out risk.
10 You would agree with that, fair enough?

11 A I would agree that it doesn't rule in or out
12 risk.

13 Q No, and it doesn't prove or disprove risk. It
14 simply says this bears further analysis, fair enough?

15 A Yes.

16 Q And the goal of science is to demonstrate
17 causation if causation can be shown, correct?

18 A Correct.

19 Q And you're aware of the fallacy, the logical
20 fallacy that just because something follows a prior event
21 doesn't mean the prior event caused it, correct?

22 A Yes.

23 Q In law school, we're taught that's post hoc ergo
24 propter hoc.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A Ergo propter hoc.

2 Q There you go.

3 A I'm familiar with that, yes.

4 Q We're reading the same books. And is it your
5 view, sir, that the association between strokes and VBA is
6 post hoc ergo propter hoc? Is that your claim?

7 MS. MOORE LEONHARDT: I'm going to object
8 to the extent that the question lacks proper form, and
9 perhaps, if counsel --

10 MR. PATTIS: Is that a speaking objection?
11 I thought we were going to make, you know, we were going
12 to resort to legal objections. I'd ask for a ruling. The
13 witness clearly understands the concept.

14 DR. POWERS: I really didn't understand the
15 question either.

16 MR. PATTIS: All right. Let me break it
17 down again.

18 DR. POWERS: If you could take away the
19 Latin portion and put it in English, I'd get it.

20 MR. PATTIS: How is your Greek?

21 DR. POWERS: A little shaky.

22 Q I don't think I'm trying to trick you, although
23 I can understand how it may look that way. Merely because
24 something happened prior in time, that does not mean the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 event occurring prior in time caused the latter event,
2 correct?

3 A Correct.

4 Q The two events may be coincidental, correct?

5 A Correct.

6 Q And one of the things that epidemiology does is
7 it aggregates large data of relevant factors with an
8 effort to distinguish those events that are merely
9 coincidental and rare from those that occur with some
10 regularity, correct?

11 A Correct.

12 Q And the degree of regularity promotes what
13 statisticians call confidence levels about the strength of
14 the association, correct?

15 A I'm not familiar with that term.

16 Q Are you familiar with the term standard
17 deviations, in other words, how far a person is from the
18 mean of an expected result? Are you familiar with that
19 term?

20 A I've heard that, yes.

21 Q Okay, now, the statistical analysis, then --
22 okay let's bracket that for a moment. Is it your
23 testimony, sir -- and we talked about some Latin mumbo
24 jumbo, and, translated, it means the following. Just

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 because something happened first, doesn't mean it caused
2 the latter thing. You would agree with that, right?

3 A Yes.

4 Q Is it your testimony that a vertebrobasilar
5 artery stroke is one of those things, something that just
6 happens afterwards and no rational account can be given
7 for it? It's just a coincidence, sort of like lightening
8 at the farmhouse? Yes or no?

9 A My testimony and my understanding is that any
10 association from the Cassidy Study, once again, with
11 chiropractic and this event, vertebrobasilar dissection,
12 was because the patient presented themselves with the
13 event already occurring with neck pain and headache, and,
14 so, the association was if the people who were undergoing
15 this rare, extremely rare event, some of them went to see
16 the chiropractor and some of them went to see their family
17 physician and the unfortunate incident happened,
18 irregardless of which practitioner they went to, so the
19 association is merely that they chose a chiropractor as
20 opposed to their family physician when they were hit with
21 the advent of a headache and severe neck pain.

22 Q So it was just a random choice they made? I
23 don't feel well, and I went to the MD, rather than the DC,
24 and I would have died in either case, is that what you're

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 saying?

2 MS. MOORE LEONHARDT: Objection,
3 argumentative.

4 MR. SHAPIRO: I would recommend sustaining
5 that.

6 Q That's well beyond what you've just said what
7 Cassidy said. Cassidy didn't rule out neck manipulation
8 as the potential cause of some strokes, isn't that right?

9 A He stated that he did not rule it out, however,
10 the facts remain that the likelihood of the stroke was
11 just the same as in the family physician.

12 Q Let's talk about that. What went on in the
13 family physician waiting rooms?

14 A I have no idea.

15 Q What went on in the treatment rooms with the
16 family physicians?

17 A I don't know.

18 Q What goes on in a neck manipulation at a
19 chiropractor's office?

20 A In the study you're referring to?

21 Q No, as a general matter. What goes on --

22 A Oh, in a general matter? I'm sorry. I thought
23 you were referring to the study.

24 Q What goes on in a general matter in a neck

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 manipulation in a chiropractor's office?

2 A What goes on?

3 Q What do you do? I mean, for example, somebody
4 comes to me and says my wife turned up dead in the
5 bathroom, and there's a jar of empty pills next to her.
6 They're charging me with murder. What do I do? I've got
7 a pretty good idea of how to defend that case.

8 I tell him what the law is, what the state
9 has to prove, we evaluate the evidence, I look for an
10 alibi, so there are certain things that are expected of me
11 in advising a client.

12 A person comes in to you and you perform a
13 neck manipulation. What physical maneuvers do you perform
14 on that patient?

15 A Well there wouldn't be any physical maneuvers
16 performed on the patient prior to a detailed history,
17 intake form.

18 Q I didn't ask that question. I asked you what a
19 neck manipulation is.

20 A I thought you asked what goes on with a neck
21 adjustment.

22 Q What is a neck manipulation? What goes on? How
23 do you perform one? Do you lay hands on the body?

24 DR. SEAN ROBOTHAM: Counsel, may I

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 interject for a second? He needs more specificity to the
2 question.

3 MR. PATTIS: Fair enough.

4 Q Do you touch a person in performing a neck
5 manipulation?

6 A What goes on when I touch a person?

7 Q Do you touch a person when you perform a neck
8 manipulation?

9 A When I perform a chiropractic adjustment --

10 Q Can you answer that with a yes or no? Do you
11 touch them, yes or no? I mean you don't do it
12 telepathically, do you? Does (indiscernible) somehow jump
13 across the existential divide, tickle the other person's
14 spine and make them well? We're not talking about Anton
15 Mesmer. We're talking about a physical manipulation of
16 the body, aren't we?

17 MS. MOORE LEONHARDT: Objection,
18 argumentative and misleading.

19 Q You were talking about the physical manipulation
20 of the body, are we not, yes or no?

21 A I don't know what you're talking about, but in a
22 chiropractor's office --

23 Q Sir, I would like a yes or no answer to my
24 question. When you are performing a neck manipulation, do

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 you physically touch the patient's body, yes or no?

2 MS. MOORE LEONHARDT: I object to counsel
3 badgering this witness and being disrespectful of Dr.
4 Curry and disrespectful to members of the Board.

5 MR. PATTIS: Again, if we're having
6 speaking objections, I'll simply say I'm entitled to a yes
7 or no answer.

8 MR. SHAPIRO: Counsel, the problem is that
9 the witness has not answered the question. There hasn't
10 been an objection to the question. I would ask the
11 witness to answer the question that's been asked.

12 Q Can you answer that yes or no? Do you touch the
13 person when you perform a neck manipulation, yes or no?

14 A The question cannot be answered yes or no, and
15 if I were allowed to explain why, I could tell you why.

16 MR. SHAPIRO: If you can't answer yes or
17 no, then that's a different story.

18 Q So you can't answer yes or no whether a neck
19 manipulation -- does a neck manipulation require touching
20 of the person, yes or no, if you can answer that?

21 MS. MOORE LEONHARDT: Objection. Asked and
22 answered. I think the witness has indicated --

23 MR. PATTIS: No. The first question was
24 did he? The second one is, and it wasn't answered, the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 first question was did he, and I don't remember what the
2 second question was, but that it's different than did he.

3 MR. SHAPIRO: Dr. Curry, can you answer
4 that question yes or no?

5 THE WITNESS: The way it's posed, no, I
6 cannot.

7 MR. SHAPIRO: Okay.

8 Q A neck manipulation of the upper cervical spine,
9 that refers to the area of C-1 and C-2, does it not?

10 A Yes.

11 Q And is that the area where the vertebral artery
12 is located, the vertebrobasilar artery? Excuse me.

13 A Yes.

14 Q Is that an area of particular susceptibility for
15 patients? In other words, is that an area that is
16 vulnerable to injury more so than other areas of the body?

17 A Yes.

18 Q That is the area that is manipulated in an upper
19 cervical spine manipulation, correct?

20 A That is an area that a chiropractor could
21 adjust, yes.

22 Q And it's your testimony I believe with respect
23 to the Cassidy Study that that study supports an inference
24 that people who present to chiropractors with certain

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 ailments might also present to physicians and the outcome
2 is more or less the same, correct?

3 A Yes, I believe the data showed that the
4 incidence of stroke --

5 Q Is a --

6 MR. SHAPIRO: Counsel, you have to let him
7 finish the answer.

8 MR. PATTIS: It called for a yes or no, not
9 a narrative.

10 MR. SHAPIRO: I understand that, but --

11 MR. PATTIS: Okay. I'll withdraw the
12 question.

13 Q Sir, with respect to -- is a vertebrobasilar
14 artery stroke related to a vertebrobasilar artery
15 dissection in your opinion?

16 A It can be, yes.

17 Q And, then, is it your testimony, sir, that a
18 manipulation of the area of C-1, C-2 together in this
19 vulnerable area, in the area of the vertebrobasilar
20 artery, that that plays no role in increasing the risk of
21 a dissection or compounding the harm caused by a
22 preexisting dissection? Is that your testimony?

23 MS. MOORE LEONHARDT: Objection to form.
24 He's asked two questions.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. PATTIS: That's a fair objection.

2 Q Is it your testimony, sir, that a manipulation
3 of the upper cervical spine in the area of C-1, C-2 and
4 the vertebrobasilar artery that that would play no role,
5 whatsoever, in compounding a preexisting condition?

6 A What type of preexisting condition?

7 Q Beats me. Which one was Cassidy talking about?
8 He never said. You're relying on Cassidy saying, oh,
9 these people just had bad luck, so which ones was Cassidy
10 talking about, do you know? Don't look over there. Do
11 you know?

12 A Do I know what?

13 Q What Cassidy was talking about when he talked
14 about these people having conditions that they were
15 suffering from when they got to the doctor's office. It
16 didn't matter whether they went to the DC or the MD. What
17 conditions was Cassidy talking about, if you know?

18 A I believe the study points out, Cassidy points
19 out that the patients who were reporting to the offices
20 had headache and severe neck pain.

21 Q And were any of those related to dissections?
22 Do you know?

23 A The papers spoke about that that's why they were
24 having the headache and the neck pain, because of an

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 occurring dissection.

2 Q Are you aware of any clinical data that supports
3 that assumption by Mr. Cassidy, yes or no?

4 A Dr. Cassidy?

5 Q Yes. Are you aware of any clinical data that
6 supports that assumption of his?

7 A I am not aware of any.

8 Q Do you take the position, sir, that if a person
9 presents in your office with a preexisting condition, you
10 can't compound the harm by the laying on of hands in the
11 performing of an upper cervical spine adjustment?

12 A I wouldn't say that.

13 Q Okay. Now causation, you would agree that
14 causation requires the ability to do a number of things.
15 First, to test a variable, an unknown against known
16 variables, fair enough?

17 A Okay.

18 Q Thus, the best scientific data comes from those
19 experiments in which every variable can be controlled but
20 the one that the experimenter is looking at, fair enough?
21 You would agree with that as a matter of Science 101?

22 A Sounds logical.

23 Q And not just logical, because science simply
24 isn't a matter of logic. It's a matter of experience.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 That's the art form, correct?

2 A Science is a matter of experience?

3 Q Correct. Lab tests, clinical trials, things
4 that we've talked about before, correlating those things
5 which are known with those that are unknown, so that you
6 can come up with associations that at some point give you
7 some degree of confidence that you found a causal link.
8 Isn't that what really happens in the progression of
9 knowledge in the chiropractic science?

10 A Yes.

11 Q Do you agree with the following assertion, that,
12 at this point in time, due to the rarity with which VBAs
13 occur, experimental evidence in humans and prospective
14 cohort studies examining the hypothesis that chiropractic
15 adjustments cause strokes do not exist? You agree with
16 that?

17 A Repeat it again?

18 Q That, at this point in time, due to the rarity
19 with which VBAs occur, experimental evidence in humans and
20 perspective cohort studies examining the hypothesis that
21 chiropractic adjustments cause stroke do not exist?

22 A Correct.

23 Q That comes from your position paper, correct?

24 A Yes.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q So the question of causation has not been proven
2 or disproven, correct?

3 A Correct.

4 Q What the literature reflects are attempts to
5 understand the strength of the association, fair enough?

6 A Yes.

7 Q And you are aware of the danger of relying on
8 anecdotal reports, fair enough?

9 A Fair enough.

10 Q And the concept anecdotal reports in the medical
11 literature is one you're familiar with, is it not?

12 A It's when someone claims that something happened
13 to them without any scientific evidence to back it up.
14 It's merely like a story that someone says.

15 Q No, but it's not just a story that someone says.
16 The medical journals are filled with peer review reports
17 of anecdotal information, correct? I saw six patients.
18 They presented with these things. I performed the
19 following tests and ruled out the following conditions.
20 I'm concerned that X, Y, or Z may, nonetheless, be the
21 case. You've read that sort of article more times than I
22 have gray hairs on my head, haven't you?

23 MS. MOORE LEONHARDT: Objection,
24 argumentative.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Have you read those sort of articles, sir?

2 A I think you're referring to --

3 Q Have you read those sort of articles, sir?

4 A What sort of articles?

5 Q Anecdotal studies about the suspicion of fellow
6 clinicians.

7 A No. I've read case studies, but not --

8 DR. POWERS: Excuse me. There was an
9 objection.

10 MR. PATTIS: I withdrew the question and
11 asked another one. I'm sorry if it was unclear.

12 DR. POWERS: Thank you very much.

13 MS. MOORE LEONHARDT: I would ask that, if
14 I raise an objection, and I have been inclined not to do
15 so on many occasions, so we could move this hearing along,
16 in accordance with the request of Attorney Shapiro --

17 MR. PATTIS: If there's an objection, can
18 we hear it, because if the goal is to move the hearing
19 along, we're not doing a very good job of it right now.
20 If there's an objection, I'll withdraw the question and
21 move it along.

22 MR. SHAPIRO: Counsel, in that particular
23 situation, he withdrew the question and asked another one.
24 That's why I didn't insist that there was a ruling on it.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MS. MOORE LEONHARDT: But I feel compelled
2 that, if I raise an objection, I'm merely asking for the
3 courtesy of a ruling before we proceed any further. Thank
4 you.

5 Q Now, sir, a case study is a physician's
6 impressions, the impressions of what he or she regards as
7 clinically significant in the treatment of a patient or
8 class of patients, is it not?

9 A Yes.

10 Q And would you agree or disagree with the
11 following, that there is a divide in the literature about
12 whether there is a significant association between VBA
13 dissection and stroke and cervical manipulation? Would
14 you agree that that is an ongoing debate in the
15 literature?

16 A Yes.

17 Q I guess my question is, you know, at what point
18 -- withdrawn. You take the position on behalf of the CCC
19 and I believe you said personally, that you don't feel
20 that you are obliged as a matter of law, given your
21 understanding of the law, or ethics to advise a patient of
22 every conceivable risk, correct?

23 A Correct.

24 Q And, as you understand the law, only requires

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 you to advise people of material risks, fair enough?

2 A Fair enough.

3 Q And did you review the submissions of the other
4 chiropractic associations prior to testifying in this
5 hearing?

6 A Yes.

7 Q And you understand a material risk might be one
8 that carries with it the risk of serious harm or even
9 death, no matter how remote the possibility. You've seen
10 that language, have you not?

11 A Yes, I have.

12 Q I guess my final question for you is the
13 following. How many people have to die or suffer a
14 disabling stroke before you think the risk is material,
15 based on the anecdotal and case study evidence that you're
16 reading? How many people?

17 MS. MOORE LEONHARDT: I'm going to object
18 on the basis that it's improper form, argumentative and
19 inflammatory.

20 MR. PATTIS: It probably is. No further
21 questions.

22 EXAMINATION BY MS. REXFORD:

23 Q Dr. Curry, I'm Jean Rexford, and I'm a Public
24 Member. So I bet you saw the New York Times Science

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 section this morning, where they talked about increased
2 percentages of children who were having stroke, and they
3 believe it's because of a better reporting system.

4 And it struck me that it's fragile. I
5 mean, you know, we are fragile as human beings. Would you
6 recommend sending everybody home? We heard a lot today
7 about the numbers of strokes and the importance of strokes
8 and the severity of strokes. Do you think it would be a
9 good idea to send everybody home with a discharge summary,
10 so that people would have in their hand the warning signs
11 of stroke?

12 A Given the nature of the severity of the issue of
13 stroke and the fact that it's, you know, up to 2,000 times
14 a day someone will be suffering a stroke, you know, we're
15 here, the chiropractic profession is united, because we
16 take this very seriously, and we're bringing this question
17 up before the Board, because we know of its devastating
18 effects, and I think it would be good public policy for
19 all physicians in the healing arts to better educate their
20 patients about this occurrence and the signs and symptoms
21 and some of the risk factors that may be involved with
22 stroke.

23 Q The last time we were all together, I asked
24 about a reporting mechanism for chiropractors, and I was

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 told that there was none, so if somebody has an untoward
2 event in a chiropractor's office and there's no reporting
3 mechanism, I think the thing that concerns me, maybe you
4 could better inform me, how can we learn from better
5 documentation and putting all the data together?

6 What mechanism do we need to put in place
7 to do that?

8 A I believe that there was a bill that was passed
9 in 2008, the Physician Profiling Bill, but has not been
10 enacted by the Public Health Department as a mechanism to
11 find out information with regards to problems that occur
12 in a doctor's office.

13 Q I meant for the professional organizations to
14 better inform the professional organizations, so that you
15 all can learn about things that happen as a result of
16 treatment and what mechanism you all had.

17 A Well, personally, I'm an advocate of, you know,
18 continuing education, and I believe that all professions,
19 including our profession, need to be aware of the fact
20 that, you know, up to, you know, 3,000 times a year
21 someone is going to suffer a vertebrobasilar incident and
22 to recognize the signs and symptoms that might accompany
23 that to become more in tune with the fact that it's going
24 to happen.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q And just one last question. Thank you. Your
2 answers have been informative. I'm into comparative
3 effectiveness right now, so let's say somebody comes -- do
4 you have a series of different things that you do if
5 somebody presents with certain symptoms in your office? Do
6 you know that what you do is more effective than what
7 might happen by taking Advil or by doing yoga? I mean do
8 you have a way of figuring out what is the best practice?

9 A Well that's a great question, but there are best
10 practice guidelines, and the continuing search for
11 knowledge is to find out what particular procedures work
12 better than others, and the federal government does
13 studies to find out effectiveness of certain procedures.

14 As an example, in low back pain, they did
15 an extensive study to find out what was the most effective
16 procedure, so we continue to stay abreast with the current
17 science and literature to find out what best methods work
18 on behalf of the patient.

19 MR. PATTIS: Can that be struck as non-
20 responsive and the question repeated? We wanted to know
21 if he had one.

22 MR. SHAPIRO: Yeah. I would overrule the
23 objection and not strike the testimony.

24 EXAMINATION BY DR. POWERS:

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Dr. Curry, just one very brief clarification.
2 When Attorney Pattis asked you before does, and I'm
3 paraphrasing, does chiropractic adjustment of the cervical
4 spine include touching the neck and you said you couldn't
5 answer that yes or no, I'd like to hear what your answer
6 is not being limited to yes or no.

7 A Yes, thank you. There are specific chiropractic
8 adjustments that are performed with an adjusting
9 instrument, whereby the instrument contacts the spine and
10 not the practitioner's hand, so when he asked about
11 touching the neck and making adjustment, he was ruling out
12 the instrument adjusting that's very popular in the
13 profession.

14 DR. POWERS: Thank you.

15 MR. PATTIS: Is that like saying guns don't
16 kill people, people do?

17 MS. MOORE LEONHARDT: Move to strike.

18 DR. POWERS: Okay, Attorney Pattis. I know
19 you were dying to, and I'm very proud that you didn't
20 bring up the fire truck today.

21 MR. PATTIS: It wasn't my analogy.

22 MR. MALCYNKY: The day is not over.

23 DR. IMOSI: I just have a couple.

24 EXAMINATION BY DR. IMOSI:

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Dr. Curry, I'm sorry. I'm going to bring up the
2 Cassidy Study one more time, just to reiterate. Do you
3 have any explanation, I'm not sure if you totally made
4 this clear, as to why the researchers in the Cassidy Study
5 may have found an association with chiropractic and this
6 rare form of stroke called vertebrobasilar stroke?

7 A Yeah. My understanding is that the association
8 is that the prelude to the vertebrobasilar dissection is
9 neck pain and a severe headache, and when this occurs, the
10 patient is going to try to seek some type of help, so the
11 association is that the people with the neck pain and the
12 headaches are going to go see a chiropractor, not all.
13 Some are going to go see their family physician, but
14 therein lies the association, that they're going to see
15 the chiropractor for some care with the initial perceived
16 neck pain and headache.

17 Q All right, thank you. And you're aware that the
18 literature supports the fact that neck pain and headache
19 are a very common symptom of vertebral artery dissection?

20 A Yes, I'm aware of that.

21 Q All right, then, would you say that vertebral
22 artery dissection is better termed a risk or a
23 contraindication to spinal manipulation?

24 A Definitely a contraindication.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 DR. IMOSI: Okay, thank you.

2 MR. SHAPIRO: Anything further?

3 MS. MOORE LEONHARDT: No questions.

4 MR. SHAPIRO: Okay.

5 MR. PATTIS: Nothing further.

6 MR. SHAPIRO: Thank you, Dr. Curry.

7 THE WITNESS: Okay.

8 MR. SHAPIRO: Attorney Moore Leonhardt, is
9 your case on behalf of the Connecticut Chiropractic
10 Council done?

11 MS. MOORE LEONHARDT: Yes, it is.

12 MR. SHAPIRO: Okay. Attorney Malcynsky?
13 Is he -- okay.

14 MR. PATTIS: May I be excused to look for
15 him?

16 MR. SHAPIRO: Sure.

17 (Off the record)

18 MS. MOORE LEONHARDT: -- Shapiro to ask
19 whether it makes sense to proceed with a witness and then
20 break in the middle of Cross-Examination in the interest
21 of integrity, or shall we -- would it make sense to break
22 now, so that we don't separate the testimony?

23 MR. SHAPIRO: I think we should go until
24 1:00, so that we maximize our time. Attorney Malcynsky?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. MALCYNKY: That's fine with me, as
2 well.

3 MR. SHAPIRO: Okay. You can call your
4 witness.

5 MR. MALCYNKY: I assume that we'll be
6 proceeding with Janet Levy at this point?

7 MR. SHAPIRO: Yes.

8 MR. MALCYNKY: Okay.

9

10

JANET LEVY

11 having been called as a witness, having been duly sworn,
12 testified on her oath as follows:

13

14

COURT REPORTER: Can you spell Levy for me,
15 please?

16

THE WITNESS: L-E-V-Y.

17

18

MR. MALCYNKY: Attorney Shapiro, I'm
19 assuming that the Board is amenable to Janet testifying in
20 a manner similar to Mrs. Mathiason the other day. I've
21 instructed Janet, rather than reading her entire pre-filed
22 testimony, to try and summarize her position, particularly
23 in her role as the president of VOCA, and to proceed on
that basis.

24

MR. SHAPIRO: I'm not exactly sure what

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 you're asking. On behalf of the Board, she can make a
2 brief statement, as to what her --

3 THE WITNESS: I think what he's saying is
4 that because I am a stroke victim, I know I look so good
5 and everything, I need to read something, as opposed to
6 just off-the-cuff tell you something without getting my
7 points in, and they're very valid points, and that's what
8 we're here for.

9 MR. MALCYNKY: I've instructed her to keep
10 it brief, and I think she has kept it brief.

11 THE WITNESS: I have about two pages.

12 MR. SHAPIRO: Okay. First of all, the
13 record can only pick up one person, so, Ms. Levy, I'm just
14 trying to understand what you're saying, is that because
15 you suffered a stroke, you may need to read some of your
16 testimony in order to properly submit it?

17 THE WITNESS: Two and a half pages of
18 points from VOCA's standpoint, obviously.

19 MR. SHAPIRO: Okay and, as you know, the
20 Board has all of your pre-filed testimony.

21 THE WITNESS: Right.

22 MR. SHAPIRO: And has reviewed it and will
23 review it again prior.

24 THE WITNESS: Right. That was 20 some

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 pages. This is not. This is only two and a half pages.

2 MR. SHAPIRO: Okay. Why don't we first
3 have you just introduce yourself and then adopt your
4 testimony and your rebuttal testimony under oath, and then
5 we can admit those documents into the record?

6 THE WITNESS: Sure.

7 MS. MOORE LEONHARDT: Excuse me. Attorney
8 Shapiro, before the witness proceeds, may we see a copy of
9 the document that she intends to read from? I have not
10 seen it, and we have seen the lengthy pre-filed testimony,
11 but I feel obliged to review a new document before it's
12 presented, since we haven't seen it before.

13 And, again, I apologize. I don't mean any
14 ill will toward Ms. Levy. I am just concerned that we
15 haven't seen the document.

16 MR. MALCYNISKY: I would object to that,
17 because we are not trying to admit her notes from which
18 she's speaking as evidence. Her speaking will be the
19 evidence, so I think we could proceed on that basis.

20 MR. SHAPIRO: My understanding is that Ms.
21 Levy's notes are a summary or some notes that will help
22 her explain the points that are in her pre-filed
23 testimony.

24 If her comments went far a field from what

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 her pre-filed testimony is, I certainly think there might
2 be justification for that, but, in this situation, I'll
3 recommend to the Board that Ms. Levy be allowed to use her
4 notes, given her statements that she's already made today.

5 MS. MOORE LEONHARDT: May I raise another
6 point? I just would like to make a standing objection as
7 we proceed into the lay witness testimony here and hear
8 from Ms. Levy and others, who will come after her, my
9 motion to strike opinion testimony by any lay witness, and
10 I've raised it before, and I would just like it to be
11 noted on the record as a standing objection.

12 It is improper for a lay witness to render
13 an expert opinion. It would be inappropriate. They don't
14 have the requisite knowledge, training, or skill to render
15 an expert opinion, and I believe that the Board is well
16 aware of that.

17 The pre-filed testimony submitted by Ms.
18 Levy I recognize is replete with references to medical
19 opinions and statements that have been made by other
20 individuals, including some doctors, who are not here to
21 be Cross-Examined, and, as such, I don't believe that any
22 weight should be given to any opinion testimony that's
23 offered by this witness.

24 To the extent that she has an opinion,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 obviously, on informed consent from a patient's point of
2 view, we certainly respect that she is entitled to give
3 that and welcome her informing the Board in that regard.

4 MR. SHAPIRO: Okay. Your standing
5 objection is noted.

6 MS. MOORE LEONHARDT: Thank you. Also,
7 before we proceed further, there is an autopsy report from
8 the State of Maryland, dated 8/4/2004, that is contained
9 toward the end of her submitted testimony.

10 This document does not relate or refer in
11 any way to a Connecticut chiropractic event, number one.
12 It does not relate or refer in any way to this particular
13 witness, and this witness is not identified anywhere on
14 the document as having been the author of the document,
15 having provided any information that's contained in the
16 document, and, as such, I move to strike it. It is
17 inflammatory and irrelevant.

18 MR. PATTIS: We object to that and claim
19 that it is admissible before these proceedings. We're
20 governed by the UAPA, and the Board has discretion to
21 apply the rules of evidence in a way that a Superior Court
22 or District Court might not.

23 The assurances of reliability that the
24 report have are as follows. It is a public record,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 prepared by another entity, a State entity, by a person
2 who was obliged to produce a record about the manner and
3 means and cause of death.

4 I don't recall whether it has a raised seal
5 on it, so it may or may not be self-authenticating. The
6 lack of self-authentication by way of a raised seal may be
7 fatal in a Superior Court proceeding, but need not be in a
8 proceeding of this sort.

9 Additionally, if there were concerns about
10 the legitimacy of the document, or its truthfulness, or
11 that it reflects what it says it reflects to a finding of
12 cause of death for a person, the Chiropractic Association
13 and its counsel has been aware of the existence of this
14 document for three months.

15 MR. SHAPIRO: Counsel, that's fine. I'm
16 going to recommend that the Board accept the document and
17 give it whatever weight it's due. I think that's what we
18 did with the other documents. It's already been ruled on
19 generally and specifically now with this issue, if the
20 Board so chooses.

21 MS. MOORE LEONHARDT: Thank you.

22 MR. SHAPIRO: Ms. Levy, you can continue
23 and adopt your testimony under oath.

24 THE WITNESS: Who do I do that to? I adopt

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 my testimony and my rebuttal testimony.

2 MR. SHAPIRO: I would suggest that Exhibits
3 34 and 46 be admitted as full exhibits. Any objection?

4 MR. MALCYNSKY: No objection.

5 MR. PATTIS: None.

6 MS. MOORE LEONHARDT: Only my standing
7 objections. Thank you.

8 MR. SHAPIRO: Thank you. So Exhibits 34
9 and 46 are now full exhibits.

10 (Whereupon, the above-mentioned documents
11 were marked as Exhibit Nos. 34 and 46.)

12 MR. SHAPIRO: You may proceed, Ms. Levy.

13 THE WITNESS: Thank you. My name is Janet
14 Levy, not Levy, please. I am president of VOCA, Victims
15 of Chiropractic Abuse. I think everyone here would like
16 to know why we're here, so it was important for me to say
17 what I have to say.

18 In 2002, I had a stroke as a direct result
19 of a chiropractic manipulation. I also ended up having
20 emergency brain surgery as the result of a clot that went
21 up to my cerebellum.

22 I was as close to death as one could get.
23 It took two years and seven hours a day of therapy to get
24 to where you see me today. What I thought happened to me

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 was just a fluke and accident, but about two and a half
2 years after I had a stroke, I learned that I wasn't the
3 only one.

4 I couldn't believe the stories I heard from
5 the victims who had been severely maimed by chiropractic
6 adjustment, and I couldn't believe that my chiropractor
7 never told me there was a risk with a chiropractic
8 manipulation, so I decided to form VOCA and hopefully get
9 some laws passed that could help patients of chiropractic.

10 I didn't realize that chiropractic was
11 considered healing arts and alternative and that the
12 chiropractic profession was and is divided in their
13 philosophies, and they don't have mandates placed upon
14 them, like their insurance carriers, their associations,
15 their colleges, or hospitals and clinics, like the medical
16 profession has.

17 And never in a million years did I think I
18 was going to end up in this battle with chiropractors and
19 attempt to have patient safety come first. I never
20 thought that health care providers, who use the title
21 doctor, would be opposed to a law, which told the patients
22 about the maybe rare, but severe risk of stroke.

23 I mean it only made sense, since there have
24 been articles written and patients harmed since 1947. I

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 mean I naively thought that chiropractors today calling
2 themselves doctors would embrace informed consent and want
3 to have the responsibility and ethically put their
4 patients first.

5 And since chiropractors know that a risk of
6 stroke exists among themselves, I thought for sure they
7 wouldn't be opposed to sharing this important with their
8 own patients.

9 I was not and I still am not against
10 chiropractors. Even though everyone would like to say I'm
11 anti-chiropractic, I am not, and I even continue to
12 maintain my friendships in the chiropractic community
13 today.

14 In fact, they help me all the time with
15 advice, and they inform their patients about the risk of
16 stroke with a chiropractic manipulation, and they have
17 good practices, and their patients respect them, and they
18 go to them, and they hand their patients a discharge
19 summary when they leave their office, informing them what
20 to do in the case if their patients experience the signs
21 of a stroke.

22 I guess I thought that's what all
23 chiropractors would want to do. I had no idea that
24 chiropractors would soon, once I started this, began

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 harassing me, threatening me, threatening my life, my
2 family's safety, as well as calling me names, KKK leader,
3 Nazi. I mean, you name it. I have it on tape. I have it
4 on e-mails.

5 These are doctors, people that call
6 themselves doctors. I had no idea that they were going to
7 harass me, just because I had a stroke from a chiropractor
8 and I found out that there was a lot of people that did.

9 We even had to go to the FBI once, and the
10 FBI told us what to do. They said, you know, if we got
11 one arrested, that maybe they would stop and stop
12 harassing not only ourselves, but victims of stroke, so
13 they wouldn't get sued.

14 So, eventually, we were successful, and we
15 got one arrested. And you know what? They did stop. So
16 the FBI was right, and they were watching this whole
17 thing.

18 So chiropractors as health care providers,
19 who are allowed to use the title doctor, have a
20 responsibility to their patients about the risk of stroke,
21 no matter how rare they think it is.

22 And Steven Pearl, who is in this room,
23 wrote, "No matter how rare the risk is and no matter how
24 tenuous or strong the cause and effect relationship is

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 between manipulation and stroke, the patient has the right
2 to know."

3 I mean some chiropractors have stated that
4 when a patient has a stroke, it's not their fault, because
5 they may already come to them with a VAD, they might have
6 a weakened artery already.

7 Well if a highly trained chiropractic
8 professional cannot determine with 100 percent certainty
9 which patient is going to come in and going to walk out
10 with a stroke that has a head or neck pain, how are they
11 going to determine anything?

12 I mean chiropractors should either have the
13 responsibility to their patients, who present signs of
14 head and neck pain, to either not adjust their neck, or
15 suggest that they seek medical intervention and seek
16 medical intervention, or they must tell their patients
17 that manipulation could cause a stroke, and, after
18 receiving the adjustment, make sure that the patient goes
19 home with some kind of paper having the signs of stroke on
20 it, so they could potentially save their life if an artery
21 was torn and something indeed goes wrong later, because it
22 doesn't, when they tear an artery, it doesn't always
23 happen right at the chiropractor's office, although I can
24 tell you we have many victims that go from the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 chiropractor's office, right from the chiropractor to the
2 hospital, so they can't say it doesn't exist.

3 It goes right from there. They walked in,
4 they were fine, everything was fine, they're just getting
5 an adjustment for wellness or whatever, and they end up in
6 the hospital with a stroke and paralyzed.

7 I still don't understand. How many people
8 have to die or become paralyzed from a chiropractic
9 adjustment, do you need to have, in order to be
10 responsible and tell your patients that there is a stroke
11 risk?

12 Even Louis Bortelli (phonetic), president of
13 the largest insurance company, says even one cerebral
14 vascular incident that could have been prevented or
15 detected is one too many.

16 Dr. Scott, in the beginning of this
17 hearing, you stated that the purpose of this hearing is to
18 gather relevant facts and scientific data, as pertained to
19 the question before us.

20 Well, for decades, articles, books,
21 studies, we all know about them, have talked about the
22 risk of stroke with chiropractic manipulation. Risk of
23 stroke is not only what we talk about here in the United
24 States, but countries around the world.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Everyone can't be wrong. It can't be wrong
2 for all these years. There must be something to it. I
3 mean don't we want to err on the side of caution here? I
4 mention some of this in my pre-filed testimony. Yeah, I
5 know the attorney doesn't want me to mention these
6 articles and whatever, but it's not just medical articles.
7 There were articles written by chiropractors, themselves.

8 I mean Preston Long, who isn't here and I
9 did mention in my pre-filed testimony, and he says there
10 is evidence that chiropractic neck manipulation may damage
11 arteries and lead to increased chance of stroke.

12 Even your very own former chairman, when we
13 came here a year or two ago, Agostino Villani, admitted
14 and testified under oath that obviously the problem with
15 it is the severity, the potential consequence, and much
16 examination of this has been done over the last 10 to 15
17 years, and, indeed, I think it has been established that
18 there's a very small, but very real risk of this type of
19 event occurring, and, by all standards, medical standards,
20 this risk has not been determined to obviate the use of
21 the procedure.

22 It should be something that's disclosed to
23 the patient as part of due diligence with the doctor
24 before the procedure is done.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 I mean, so far, you've heard from the CCA
2 and the CCC. They presented their relevant facts and
3 scientific data, and most of it is based on this spine
4 study, so they're going to say that years and years and
5 years of victims and papers and books and stuff is all
6 done, because May 2008 they came out with this spine
7 study.

8 Even in the spine study it says, "The
9 results must be interpreted cautiously and placed into
10 clinical perspective. We have not ruled out neck
11 manipulation as a potential cause of strokes."

12 I mean how can they ignore all this massive
13 amount of stuff? And they want to base it all on the
14 spine study, or they could bring up a cadaver study, where
15 they did it on five cadavers, actually, or eight canines.

16 The spine study concludes that saying that
17 the association between the chiropractic visits and VBA
18 stroke is no greater than the association between primary
19 care physician visits and VBA stroke, and, therefore,
20 there is no risk, excessive risk of VBA stroke from
21 chiropractic.

22 But the whole problem is, when you go to a
23 physician and you have a head or neck pain, they don't
24 touch you. They suggest you go to a hospital or something

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 and get an MRI, MRA, a CAT scan, something.

2 When you go to a chiropractor's office and
3 you have head or neck pain, they adjust you, so they take
4 your neck and they adjust it.

5 Attorney Pattis didn't make the analogy
6 about the fire truck. It was one of the chiropractors,
7 and I can't remember, and he said chiropractors are like
8 the fire truck that comes to the scene. No, that's not a
9 correct analogy.

10 If you put it in perspective, they are the
11 fire truck that comes to the scene that pours gasoline on
12 the fire. I mean I don't understand why we can't see
13 this. I mean there's enough evidence that there's
14 association between chiropractic manipulation and stroke.

15 In fact, most chiropractic witnesses at
16 these hearings have admitted that although they think it's
17 rare, stroke can happen as a result of a chiropractic
18 manipulation.

19 And we can debate all day long about how
20 often it happens, we could do statistics all day long, we
21 compare this risk to airplanes and how you were in a car
22 and all kinds of things, but none if it truly matters,
23 because, let's face it, if it was you that had the stroke,
24 or your family member that had the stroke, it would mean

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 something, and you would want to know this.

2 I mean if somebody in your family died
3 because of someone not telling the risk of stroke, I mean
4 it would matter to you. You wouldn't be a statistic. You
5 wouldn't want to be a statistic. You would want to know,
6 and I doubt that any of you would not want to know a risk,
7 because if it was a medical procedure, by golly, you'd be
8 saying why don't we know the risk?

9 But because it's a chiropractic one -- and
10 chiropractors all they do, their dominant thing is
11 adjustments. It's not like you can compare it to doctors,
12 because doctors do a plethora of things. Chiropractors
13 don't, especially the CCC. They do adjustments. That's
14 their primary thing. That's what they do. They do the
15 manipulation. (Whistle)

16 And you can whistle and do all the stuff
17 that you do and the heckle. And I've seen what you do to
18 the witnesses that were here the other day, and you
19 heckled them all the way out of the room. You think
20 that's right? You call yourselves doctors? How is that
21 fair? How is that right? You're doctors. You have the
22 title.

23 Even though you may not have all the
24 education and all the clinical experience as medical

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 doctors, you still use the title doctor, and it should be
2 respected, and I don't understand, quite frankly, why you
3 don't.

4 The mission of a Regulatory Board is to
5 protect the public, not advocate for the profession
6 according to the Federation of Chiropractic Licensing
7 Boards, and I certainly hope that you will remember this
8 when you make your decision, and I thank you very much for
9 tolerating me.

10 MR. SHAPIRO: Thank you, Ms. Levy. So the
11 Board is going to take a break until 1:45, and then you'll
12 be subject to Cross-Examination.

13 (Lunch recess)

14 CHAIRMAN SCOTT: Call the witness, and I
15 guess we're going to begin Cross.

16 MS. MOORE LEONHARDT: May I proceed? Thank
17 you.

18
19 CROSS-EXAMINATION

20 BY MS. MOORE LEONHARDT:

21 Q Good afternoon, Ms. Levy.

22 A Levy.

23 Q Is it Levy? I'm sorry. I don't want to
24 mispronounce your name. First of all, I'd like to tell

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 you that I feel very badly for you for the stroke that you
2 suffered. I was a neurosurgery nurse for a year.

3 MR. PATTIS: Objection. Can we have a
4 question?

5 Q And I --

6 MR. SHAPIRO: Attorney Leonhardt, why don't
7 you just ask her some questions?

8 MS. MOORE LEONHARDT: Well I would like to
9 at least express my admiration to her for the
10 rehabilitative effort she's gone to.

11 MR. PATTIS: Done. Can we have a question?
12 Objection.

13 MR. SHAPIRO: I'd rather have you just ask
14 her a question, please.

15 THE WITNESS: I appreciate that. Thank
16 you.

17 Q I've read through all of your pre-filed
18 testimony very carefully, as I'm sure you would expect,
19 and I have to say that you would probably agree with me
20 that --

21 MR. PATTIS: Objection. Can we have a
22 question? These are speeches and closing arguments and
23 pandering.

24 MR. SHAPIRO: Okay. I didn't hear a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 question. If you can ask her a question?

2 MS. MOORE LEONHARDT: I was starting my
3 question before I was interrupted.

4 MR. SHAPIRO: Okay.

5 MS. MOORE LEONHARDT: I'll proceed.

6 Q Is there anything contained in your pre-filed
7 testimony that constitutes reliable scientific evidence
8 that proves with a substantial degree of medical certainty
9 that your stroke was caused by a manipulation by a
10 chiropractor?

11 A By medical people you mean? Is that what you're
12 asking?

13 Q No. Is there anything in your pre-filed
14 testimony, the documents that you submitted and pre-filed
15 with the Board and submitted to all of the parties here
16 today, which proves with a degree of medical certainty
17 that your stroke was caused by the manipulation by your
18 chiropractor?

19 A I said it in my testimony, yes.

20 Q Yes?

21 A Yes.

22 Q What is that scientific evidence that you claim
23 proves, with a substantial degree of medical certainty,
24 that your stroke was caused by a chiropractor manipulating

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 your neck?

2 A Because when a chiropractor did the neck
3 adjustment, I got this terrible headache, and the
4 chiropractor admitted that he gave me the stroke.

5 Q Do you have that proof submitted in the --

6 A The doctors in the hospital, also.

7 Q Is there anything --

8 MR. SHAPIRO: Counsel and Ms. Levy, we just
9 have to be really careful about talking over each other,
10 even by accident, because the court reporter and the
11 record won't reflect that, so just allow her to finish her
12 question, and then she's going to allow you, hopefully, to
13 finish your answer.

14 THE WITNESS: Okay.

15 Q I understand, from your pre-filed testimony,
16 that when you got to the hospital, someone at the hospital
17 did an MRI?

18 A Um-hum.

19 Q And a diagnosis was made that you had suffered a
20 stroke, is that correct?

21 A No. I had a torn artery.

22 Q So someone identified a torn artery?

23 A Correct.

24 Q And that was shown on the MRI scan?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A Correct.

2 Q All right, but do you have any scientific proof
3 that the actual chiropractor manipulating your neck caused
4 that tear?

5 A How do you define proof? I mean is it something
6 that the chiropractor wrote up, or the medical doctor
7 wrote up, or is it something that they wrote on their
8 chart? I mean what do you mean by scientific proof? I
9 don't understand.

10 Q I'm asking you for some scientific evidence,
11 expert opinion evidence, some scientific data in your pre-
12 filed testimony that would prove that, for example, you
13 weren't already having the stroke before you had the
14 manipulation.

15 A I did not include in my testimony that the
16 chiropractor told me that he had caused my stroke, no.

17 Q It's not in your pre-filed testimony and it's
18 not before the Board?

19 A I did not mention that in my testimony that he
20 did say that, yes.

21 Q All right. Is there a reason why you didn't put
22 that in your pre-filed testimony?

23 A That he admitted that he caused the stroke?

24 Q Yes.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A Actually, I have in my testimony the paperwork
2 where he did say that I had a TIA.

3 Q Okay. He said that you had a TIA?

4 A Yes.

5 Q Now let me ask you a question about that. Just
6 because you had a TIA, according to that doctor, doesn't
7 mean that he admitted to causing the TIA, does it?

8 A That's not when he admitted it, no.

9 Q Thank you.

10 A But he admitted it.

11 MS. MOORE LEONHARDT: Nothing further.

12 MR. SHAPIRO: Attorney Pattis?

13 MR. MALCYNKY: I think we both missed
14 something, because we were talking to each other. Can you
15 --

16 MR. SHAPIRO: Attorney Moore Leonhardt is
17 done with her Cross-Examination.

18 MR. MALCYNKY: Okay. Thank you.

19

20 REDIRECT EXAMINATION

21 BY MR. MALCYNKY:

22 Q Good afternoon, Janet. We've heard testimony
23 from chiropractors over the last two and a half days about
24 why it's not a good idea for the Board to issue a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Declaratory Ruling. Why do you think it's a good idea?

2 A Because why should they do a discharge summary
3 and inform people about the risk of stroke?

4 Q Right. We're asking this Board for relief in
5 the form of a Declaratory Ruling that would direct all
6 chiropractors to do that. Why do you think that's a good
7 idea?

8 A Because it would have saved my life, and it
9 would have saved all the victims lives that I have come
10 across over these years that have had a stroke after a
11 chiropractic manipulation.

12 I mean if they gave me a paper, the doctor,
13 when I went to him, and he -- well going back the first
14 day, he just did -- I had a stiff neck from sleeping on a
15 new pillow, so the first day all he did was just kind of
16 massage it, whatever, and he made it feel better.

17 I wasn't going to go back to him, but he
18 kept insisting that I should. Insurance pays for it five
19 times. Please come back, whatever. He was a very nice
20 guy, told me to call him doctor by his first name, so I
21 said, "No, no, no. You know what? I'm fine. I don't
22 need to come back," and whatever.

23 As I was driving by the opposite day,
24 because it was like Wednesday, then the Friday, I said,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 you know what? I forgot to tell that guy that I wasn't
2 going to come, so I stopped there. And then, when I
3 walked in the office to tell the girl that, you know what,
4 canceling the appointment, he came out and he said, "Let's
5 look at it." And I said, "No, I'm fine." He goes, "No,
6 no. You might have some subluxations." I said, "No, I
7 don't. I'm fine now. I'm just fine."

8 And he said, "No, no. Let's go look at
9 it," and, with that, we went into his -- he was very nice.

10 "Let's go in the office," and then he talked to me. He
11 said, "Are you relaxed?" I said, "Yes," and then he
12 twisted my neck. Am I getting off track?

13 Q No, that's fine.

14 A He never -- the first day when I went there and
15 he was doing my thing, he gave me like three or four
16 papers to sign, and said, "Here, sign those." I was
17 already on the table.

18 And, so, when I signed all those, he said,
19 "Those are just insurance things. Not a big deal." And
20 then he gave me this other paper that said "Consent to
21 Chiropractic Service," and it was small writing, and I
22 said, "What is that?" And he said, "Well it's consenting
23 that you're here for chiropractic treatment." I said,
24 well, yeah, I guess I'll sign it, because that's why I'm

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 here, for chiropractic treatment, otherwise, I wouldn't
2 have come there, so I signed it.

3 Little did I know that any risk was there.
4 He didn't talk to me about any risk. After that day when
5 he did this neck manipulation, I was like, "What did you
6 do that for?" And I told him, explicitly on the first
7 day, not to touch my neck, but, obviously, I didn't tell
8 him the second time, because I didn't know he was supposed
9 to do something.

10 When he did it, you get like a headache,
11 and then he said, "Well I could make that go away." And I
12 was like, "Oh, so, you didn't do something to it?" And he
13 goes, "No," and he put me on this machine with electrodes
14 and these hot towels, and the headache did seem to
15 subside, so it made sense what he said.

16 But, in the meantime, when I went back to
17 him a few times, he said, "Now we have to work on it,
18 because this was subluxations. I was right all along,
19 that this is what you have." So then I went back to him
20 now on Monday and Wednesday, and then, on the night of
21 that Wednesday, I had gone home that night, and he did an
22 adjustment that day, and I was in bed at night, and I got
23 out of bed, and I was feeling really dizzy, like the room
24 was spinning, and I went into the bathroom, and I just

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 laid there.

2 My whole left side went out. I couldn't
3 speak. I had blurred vision, everything. I was throwing
4 up all over the place. My husband didn't know even what
5 happened to me. I was in the bathroom, the door was
6 closed. He didn't know.

7 It was probably like an hour, hour and 15
8 minutes or something that this was going on. Finally, my
9 husband came and says, "Oh, my God. What's the matter?"
10 And I said, "I don't know. I can't move." And he goes,
11 "I'm going to call the hospital." I said, "No, no, wait.
12 You know what? I'm starting to feel better. I'm getting
13 everything okay. I don't know what happened."

14 So the next morning I obviously called the
15 chiropractor. I said -- oh, and before I left the
16 chiropractor's office, by the way, he had said, "Look, you
17 may get some headache, you may feel like a little sick,
18 and that's just your body releasing toxins, but if you
19 take some over-the-counter medicines, like Aleve, or
20 Advil, you'll feel fine," so I did.

21 So, then, I called him, and he said to me,
22 "Did you take any over-the-counter medicines?" I said,
23 "Yeah. I took the Aleve, like you told me to." And he
24 said, "Oh, well then it's probably a reaction to the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Aleve. Don't worry about it. You're okay. Come see me
2 tomorrow." So, that day, I didn't really feel that good,
3 I stayed in bed, and the next day I went to his office.

4 I went on Friday, and he asked me what's
5 wrong, whatever. In fact, he said, "I'm not going to even
6 adjust you today," he said, "because we want to make sure
7 the toxins are really getting out of your body," but he
8 wrote on my form had severe dizziness, nauseous last
9 night, severe dizziness, nauseous.

10 He wrote the whole thing down, and then he
11 wrote -- oh, he also made a deal with me, and I kept
12 saying, "Maybe I'm not going to be okay. Maybe something
13 is wrong." And he said, "You know what? We'll make a
14 deal. You come back on Monday, and I'll have my partner
15 do acupuncture on you, and I guarantee you, within a week,
16 you're going to feel like a brand new person, but in a
17 week's time, if that doesn't happen, I will order an MRI
18 for you by the end of the week, if, in fact, the
19 acupuncture doesn't work."

20 Well, by Saturday, I was in the emergency
21 room, and they did the MRI and found out that I had a torn
22 artery. Unfortunately, they didn't catch the clot and all
23 that fast enough, and I ended up with emergency brain
24 surgery.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q So, at any point in time, prior to the
2 manipulation of your neck, did he discuss with you the
3 risk of stroke?

4 A No, absolutely not. As a matter of fact, that
5 night when it did that, I was all upset with everything
6 and my husband, like I said, wanted me to go to the
7 hospital, but the next day, when I was home all day, I
8 have like books of symptoms of things, and I was looking
9 up, and when I talked to him on the phone I said, "Do you
10 think maybe I had encephalitis, or meningitis or
11 something, or how about a stroke?" He goes, "No, you're
12 too young."

13 I said, "Yeah, but I fit the criteria for a
14 stroke or a TIA." He said, "There is no way that I could
15 cause a stroke. No way ever. I'm a doctor. I know what
16 I'm doing." I said, "Are you sure?" And he said, "Yes,
17 I'm positive."

18 Q Did he ever at any point in time give you
19 anything to read regarding the symptoms of stroke or a
20 discharge summary, such as we're asking for?

21 A No. He gave me nothing to go home with. That
22 was the problem. If he had given me something to go home
23 with, I would have looked.

24 Q Even after you presented yourself in his office

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 more than once?

2 A Right. I would have looked on it, and if it
3 said stroke, I would have know that what he said to me
4 wasn't true. A stroke. Get to a hospital.

5 Q Mrs. Levy, you've heard testimony from the CCC
6 today, that, in their belief, there are no findings or
7 evidence that cervical manipulations can cause a stroke.
8 Do you agree with that, that there's no evidence that
9 cervical manipulation can cause a stroke?

10 A Well what am I, chopped liver? I mean all these
11 people. There's books from victims all over. Aren't we
12 the proof? Isn't that the evidence? How could they say
13 there's no evidence when people are dying, and we have
14 proof on it, and we have autopsy reports and death
15 certificates? It's happening.

16 Q You mentioned, in response to a question from
17 Attorney Moore Leonhardt, that your chiropractor told you
18 that he believed he caused the stroke?

19 A Yes, because, afterwards, when we went to
20 arbitration when we were suing the chiropractor, in the
21 arbitration, where you sit around with the attorneys and
22 everything, it wasn't like they said they didn't cause the
23 stroke. It was like, well, we told you there was a risk
24 of stroke, and he threw this paper across to me, and he

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 said, "Read it. Read that little line." And if you see
2 the small print, it does say there's a risk of stroke and
3 death, so he was blaming me for not knowing, and that was
4 how they did it.

5 Q But he had never read that to you or verbally
6 explained what that was?

7 A Absolutely not. He said, in fact, because it
8 says on top "Consent to Chiropractic Service." It's not
9 informed consent. It's not telling you the risk. It's
10 telling you to consent, so if anybody was going to be
11 handed this and it said just Consent to Chiropractic
12 Service, why wouldn't anybody sign this, because you have
13 to consent?

14 Why would you walk into an office if you
15 didn't consent for anything?

16 Q Did you have an opinion from a treating
17 physician that the chiropractic manipulation caused your
18 stroke?

19 A Yes. In fact, he was the one that saved my
20 life.

21 Q Mrs. Levy, are you familiar with Dr. Cyril
22 Wecht?

23 A Yes.

24 Q Who is he?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A He's one of the leading pathologists in the
2 country.

3 Q And did you have occasion to contact Dr. Cyril
4 Wecht?

5 A Actually, Henry Lee contacted me.

6 Q And who is Henry Lee?

7 A He's a well-known pathologist.

8 Q In Connecticut?

9 A Forensic pathologist. And he told me that this
10 Cyril Wecht was someone that I should contact, because he
11 had done a lot of autopsies on people, patients, who have
12 had neck manipulations. He had talked to many
13 neurologists regarding it, and that it does happen, and he
14 wanted to help me.

15 MS. MOORE LEONHARDT: I'd like to object
16 and move to strike that testimony. It's beyond anything
17 that's contained in the pre-filed testimony. I have moved
18 for Dr. Wecht's letter to be not given any weight, and it
19 relates to a medical opinion of a physician who did not
20 treat Ms. Levy, and it's irrelevant. It's not probative
21 of the issue here.

22 MR. MALCYNKY: I would claim the question.
23 The letter has been part of the pre-filed testimony for
24 months. I would remind the Board that the objection

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 should be overruled under the same grounds that they
2 overruled the objection to the admissibility of the
3 autopsy records.

4 I believe Attorney Shapiro advised the
5 Board that the record in that case speaks for itself, and
6 they can draw whatever weight and probative value from it
7 that they so choose, and I would state that that also
8 applies to this letter.

9 The letter does not go to her stroke
10 individually, and I didn't ask her about that. It goes to
11 whether there's evidence that cerebral manipulation can
12 cause stroke.

13 MS. MOORE LEONHARDT: That's my point.
14 He's offering an expert opinion, which is hearsay, through
15 a lay witness and it's inappropriate.

16 MR. PATTIS: I thought the Board was only
17 going to entertain argument if it asked for it. I join in
18 Attorney Malcynsky's remarks.

19 MR. SHAPIRO: I would recommend that the
20 Board overrule the objection and give it whatever weight
21 it deems proper.

22 Q Mrs. Levy, do you have the letter in front of
23 you?

24 A No, I don't.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Would you read for me, please, just the
2 paragraphs that are highlighted there that go to this
3 issue?

4 MS. MOORE LEONHARDT: I'd like to object
5 again. It's inappropriate for this witness to present a
6 medical opinion.

7 MR. SHAPIRO: Counsel, she's not presenting
8 a medical opinion.

9 MS. MOORE LEONHARDT: Well she is by virtue
10 of reading it.

11 MR. SHAPIRO: This is a document that's
12 part of the pre-filed testimony. Your objection has
13 already been ruled on.

14 MS. MOORE LEONHARDT: Well to the extent
15 that the -- counsel, this is a letter from a medical
16 provider --

17 MR. PATTIS: -- earlier ruling about
18 objections. There is nothing pending.

19 MR. SHAPIRO: Counsel, the Board is
20 familiar with what the document is, and your objection has
21 been ruled on and noted.

22 MS. MOORE LEONHARDT: As long as the
23 letter has attached to it the basis for the expert
24 testimony, the qualifications of the expert and all of the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 requisite foundation for expert testimony, which would
2 have to be subject to Cross-Examination --

3 MR. PATTIS: This issue has been decided
4 and is --

5 MS. MOORE LEONHARDT: -- and I think --

6 MR. PATTIS: I object on behalf of my
7 client and the grounds that this is an uncalled for legal
8 argument. We've all been admonished to avoid speaking
9 objections. We've been told argument would be asked for,
10 if required, and counsel has a standing objection. I'd
11 ask that the next question be posed to the witness.

12 MS. MOORE LEONHARDT: I would just like to
13 ask the Board if there's a reason why I'm not permitted to
14 argue my objections in due course and counsel for, Mr.
15 Pattis, for example, and Mr. Malcynsky, once they raise
16 their objection, are given an opportunity to support their
17 objection with legal argument and I'm consistently in this
18 hearing being denied that opportunity.

19 And I thought that the Public Member, Ms.
20 Rexford, was very astute when she said that let's let it
21 all in, we need to hear everything, and yet I'm having my
22 hands tied from making a proper legal argument and
23 insisting that this hearing be conducted in a fair fashion
24 in accordance with the Uniform Administrative Procedures

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Act.

2 MR. PATTIS: Mr. Shapiro, I'd ask that
3 counsel be admonished to stop making speeches. She's
4 experienced. She knows what an objection is. She's got
5 her standing objection, but she persists. I'd ask for
6 sanctions.

7 MR. MALCYNKY: And I would say that I
8 agree with Attorney Moore Leonhardt and Board Member
9 Rexford, that we should let it all in.

10 MR. SHAPIRO: Counsel, you have been given
11 the opportunity to argue this particular objection, and
12 the Board has ruled on it, and I would ask that you abide
13 by the ruling and allow this witness to answer the
14 question, please.

15 MS. MOORE LEONHARDT: Please note my
16 exception.

17 MR. SHAPIRO: It's noted.

18 Q Mrs. Levy, would you please read the relevant
19 portions of that letter?

20 A It says, "I have personally performed autopsies
21 on individuals who died as a result of vertebral artery
22 damage that occurred directly as a result of chiropractic
23 manipulation. I've also had fatal cases involving
24 structural damage to the cervical vertebral column, caused

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 by chiropractic manipulation. Without getting into any
2 discussion regarding questions of professional negligence,
3 malpractice, etcetera, the point I wish to make -- the
4 context of this letter is that patients have a definite
5 legal right to be informed of such potential serious
6 complications before they agree to undergo any particular
7 chiropractic manipulative procedure."

8 Q Thank you, Mrs. Levy. Do you have a copy of
9 your pre-filed testimony in front of you?

10 A Yes.

11 Q Would you turn to page five, please?

12 A Yes.

13 Q And are you familiar with the case of Mason
14 versus Fordee(phonetic)? I believe you quoted it.

15 A Yes.

16 Q Would you please read for me the --

17 MR. SHAPIRO: Counsel, I would ask, we have
18 the pre-filed testimony in the record. There's no need
19 for her to read from anything that's been pre-filed.

20 MR. MALCYNSKY: Well it's one line,
21 counsel, and it goes to the earlier testimony from the
22 CCC, that there's no findings or evidence that cervical
23 manipulations can cause stroke.

24 MR. SHAPIRO: You can ask her a question

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 about her pre-filed testimony, but there's no need for the
2 Board to hear the testimony, because they've read it, and
3 they will read it again.

4 Q Mrs. Levy, what was the court's finding in Mason
5 versus Fordee?

6 A They said that even if there was a certain risk,
7 there's a mere possibility that ordinary not be disclosed,
8 that because the occurrence carries such a severe serious
9 consequence, like paralysis or death, that it should be
10 disclosed to the patient.

11 Q Thank you.

12 MS. MOORE LEONHARDT: I'd like to just note
13 that that was written, that was read verbatim from the
14 testimony.

15 THE WITNESS: No, it wasn't.

16 MR. PATTIS: Objection. That's not a
17 cognizable form of speech in a hearing of this sort. I'd
18 ask that it be struck.

19 MR. SHAPIRO: Okay. You can continue.

20 MR. MALCYNKY: Thank you.

21 Q Mrs. Levy, are you familiar with an article
22 written by Harriet Hall, entitled Chiropractic and Stroke?

23 A Yes.

24 Q And did you read that article in preparation for

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 your testimony and the filing of your pre-filed testimony?

2 A Yes.

3 Q And I believe you reference that article on page
4 10 of your pre-filed testimony. Can you tell me what
5 Harriet Hall had to say about the incidence of --

6 A Well she believes that, you know, chiropractors
7 are -- well she says that chiropractors are well aware of
8 the risk. There's no simple test that chiropractors can
9 do to tell who has more of a risk to come in, who might
10 have weakened arteries, who might have VADs coming into
11 them, so people should be aware of the risk and be told of
12 that risk.

13 Q Did she speak in that article to the
14 relationship between chiropractic malpractice and neck
15 manipulations?

16 A Yes. She was saying that nine percent of claims
17 paid by the major chiropractic insurer was the only year
18 for which she was able to find statistics, but it was
19 strokes were a major reason for chiropractic malpractice
20 insurance payouts.

21 Q Thank you. Just specifically to your case, did
22 your case go to trial, your case against your
23 chiropractor?

24 A No. It was settled out of court.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q There was a settlement in your case? Thank you.

2 MR. MALCYNKY: I don't have any further
3 questions.

4 MR. SHAPIRO: Attorney Pattis?

5 MR. PATTIS: Thank you.

6

7

REDIRECT EXAMINATION

8 BY MR. PATTIS:

9 Q Ms. Levy, are you at liberty to share with the
10 counsel how much you were paid to have your case avoid
11 going to a public trial?

12 A No.

13 Q Why not?

14 A Because I have a gag order.

15 MR. PATTIS: I'd ask that the Commission
16 consider releasing her from the order, so that she can
17 share with this body how much she was paid on the theory
18 that you don't pay substantial sums of money for an event
19 that wasn't caused by your own misconduct.

20 MS. MOORE LEONHARDT: Objection to
21 counsel's closing argument.

22 MR. SHAPIRO: Well I'm not sure -- first of
23 all, there's not a law that this Board has the authority
24 to release her from a gag order, which I don't even know

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 who issued or when it was issued, so I would ask you to
2 move on, if you can.

3 Q How did that gag order arise?

4 A Well you mean what were the circumstances behind
5 it you mean?

6 Q Yes.

7 A Well, at first, they wanted me to sign a gag
8 order. When I met these victims and the people had gone
9 to court and settled things, I mean there were gag orders
10 that said, you know, they couldn't even say they went to a
11 chiropractor, or they couldn't talk about they had a
12 chiropractic manipulation, and they couldn't talk about a
13 whole series of things.

14 And I told my attorney in the beginning
15 that I wasn't going to sign one of those things, because I
16 can't help anybody if my hands are tied, and it came down
17 to where the chiropractor and the attorney just delayed,
18 delayed, delayed, and, so, my attorney was like, okay,
19 well maybe you should just even settle this now, and I'm
20 like, no, I can't settle this. I have to be able to talk,
21 and, so, then they agreed that I just have to say the name
22 -- I can't say the name of the person or the amount.

23 Q So you can't tell us who the chiropractor was or
24 how much he paid you?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A No.

2 Q Are you familiar with the concept of so-called
3 Never Events?

4 A Yes.

5 Q And what are they?

6 A Those are things that the National Quality Forum
7 came up with, like 28 Never Events, things that should
8 never happen, like doctors should never -- it's in the
9 hospital settings. They should never take off a limb.
10 Patients shouldn't die or have permanent disability, due
11 to a spinal manipulative therapy.

12 Q Well that was my next question. First, what is
13 the National Quality Forum, if you know?

14 A What is it?

15 Q Yes.

16 A It is the -- they set it up in the hospital. I
17 mean the government set it up. In fact, the ACA was part
18 of that, so that they could come up with a bunch of Never
19 Events that things should never happen, so that Medicare
20 would not have to pay for those events when they happened.

21 Q And do you know whether Connecticut has enacted
22 any statutes --

23 A Yes. They adopted those.

24 Q Let me finish my question.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A I'm sorry.

2 Q Do you know whether Connecticut has enacted any
3 statutes or regulations requiring the reporting of so-
4 called Never Events or Adverse Events?

5 A Yes, they adopted them a couple of years ago.

6 Q Do you know whether one of the events that
7 hospitals are required to report is death or disability,
8 due to a spinal manipulative therapy?

9 A Correct.

10 MR. PATTIS: Nothing further.

11 MR. SHAPIRO: Any questions from the Board?
12 Any other questions? Thank you, Ms. Levy.

13 THE WITNESS: Thank you.

14 MR. SHAPIRO: Attorney Malcynsky, is that
15 your -- do you have any other witnesses?

16 MR. MALCYNKY: No. That's it for our
17 witness. Thank you.

18 MR. SHAPIRO: Okay. Attorney Pattis? I'm
19 sorry. I didn't hear what you said.

20 MR. PATTIS: Britt Harwe, please.

21 DR. POWERS: Attorney Pattis, what's the
22 number of this exhibit for us? What is it, 35?

23 MR. PATTIS: That's correct.

24 DR. POWERS: Thank you.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1

2

BRITT HARWE

3

having been called as a witness, having been duly sworn,

4

testified on her oath as follows:

5

6

COURT REPORTER: Can you state and spell

7

your name for the record, please?

8

THE WITNESS: Britt Harwe, B-R-I-T-T H-A-R-

9

W-E.

10

COURT REPORTER: One second.

11

MR. PATTIS: Also, 47 is the rebuttal

12

testimony.

13

THE WITNESS: Can I just start?

14

MR. SHAPIRO: If you could just wait one

15

second?

16

THE WITNESS: Okay. Sure.

17

MR. SHAPIRO: Okay. Attorney Pattis, you

18

can continue.

19

DIRECT EXAMINATION

20

BY MR. PATTIS:

21

Q Good afternoon, Ms. Harwe. Are you here on

22

behalf of the Chiropractic Stroke Awareness Group, LLC?

23

A Yes, I am.

24

Q And what is that group?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A It's a support and advocacy group formed to
2 raise awareness of the risk of stroke after a
3 manipulation.

4 Q Have you prepared both direct testimony, which
5 was submitted and pre-filed in this case, and rebuttal
6 testimony?

7 A Yes, I have.

8 Q Are you adopting that testimony under oath here
9 today as your own sworn testimony?

10 A Yes, I am.

11 Q Do you have a brief statement that you have
12 prepared, or that you would like to make to the Board?

13 A Yes, I do.

14 MR. PATTIS: May she do so, please?

15 MR. SHAPIRO: She may. Prior to that, I
16 suggest that we admit these documents into evidence.
17 Attorney Moore Leonhardt, is there any objection?

18 MS. MOORE LEONHARDT: My only objection is
19 -- if I may just ask a voir dire question, whether she was
20 the author of the rebuttal testimony, or if any of the
21 witnesses that have been excluded from the hearing
22 prepared the testimony?

23 MR. PATTIS: I object to the relevance. If
24 she's prepared to adopt it --

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. SHAPIRO: I think she said she prepared
2 both the direct and the rebuttal, and, if she's adopting
3 it and she's pre-filed it, I'm not sure why it's relevant.

4 MS. MOORE LEONHARDT: As long as she's not
5 adopting Dr. Long's testimony, I have no problem with the
6 testimony coming in.

7 MR. SHAPIRO: I don't see any reason to
8 believe that she's adopting Dr. Long's testimony. Okay.
9 Attorney Malcynsky, is there any objection?

10 MR. MALCYNKY: No objection.

11 MR. SHAPIRO: Okay, so, Exhibits 35 and 47
12 will be admitted as full exhibits.

13 (Whereupon, the above-mentioned documents
14 were marked as Exhibit Nos. 35 and 47.)

15 MR. SHAPIRO: You may continue.

16 A I think it's very important to not only discuss
17 all these causations versus associations. What you need
18 to know what actually happens to people. Now what
19 actually happened to me, I worked in an office on the
20 computer, on the phone, like many people these days. I
21 developed a severe shoulder pain. I went to a
22 chiropractor.

23 The second visit, he did a manipulation.
24 Immediately, his hands were still touching my head, I felt

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 this rushing sound in my head. I couldn't speak. I
2 couldn't sit up. I couldn't focus my eyes.

3 He called 9-1-1. He didn't tell them that
4 he had just done a manipulation. He didn't tell them any
5 of the symptoms that he observed firsthand. All he told
6 the 9-1-1 was my patient is having a reaction.

7 The ambulance came, brought me directly
8 from the chiropractor's office to the hospital. Just as a
9 little background, I had worked a full day and gone
10 directly from work to the chiropractor's office. Never
11 had any neurological symptoms, just a pain in my shoulder.

12 By the time I got to the hospital -- I was
13 a 26-year-old woman, with no other health complaints,
14 other than extreme pain in my shoulder. They had no idea
15 what was wrong with me. I was in the hospital for like
16 six days before they did an MRI. They were trying to rule
17 out encephalitis, meningitis. They had no idea what was
18 wrong. The MRI showed my left vertebral artery had been
19 crushed.

20 From what the doctors told me, there's no
21 way you can have a crushed artery and not exhibit any
22 neurological symptoms, which I did not at work that day.

23 I didn't know whether I was going to live
24 or die. I was told at the age of 26 I would probably

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 never walk or talk again. They put a feeding tube in me,
2 because I lost the ability to swallow.

3 This happened the day before my daughter
4 was two. The point here is this is happening to young
5 people, primarily under the age of 45. There's been a lot
6 of discussion about strokes, strokes happen to a lot of
7 people, but not torn or crushed arteries in young people.

8 Had the hospital or the 9-1-1 operator, the
9 ambulance been given any information of what procedure had
10 been done to me and any description of the symptoms that I
11 was clearly exhibiting, perhaps I could have received
12 treatment, and I wouldn't be left with these disabilities.

13 Excuse my voice, because, also, one of my
14 disabilities is a paralyzed vocal chord, so my voice can
15 get very gravelly.

16 I met another woman, Linda
17 Solesbury(phonetic), through Janet Levy. She had also
18 suffered a stroke immediately following a chiropractic
19 manipulation, and treatment was delayed, and she was left
20 with locked-in syndrome.

21 When we met and we had heard so many
22 others, up until I met her, I thought I was rare, one in a
23 million, I learned I wasn't. And to hear that this is
24 happening again and again, that is easily preventable.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Just give people some indication of what to do when things
2 go horribly wrong. That's all we're asking.

3 What I find unbelievable is the people here
4 don't know about the Never Events, the Adverse Event
5 Reporting. The centers for Medicare and Medicaid turned
6 to the National Quality Forum and asked them to come up
7 with lists of events that should never happen, like
8 amputating a wrong leg, releasing someone that shouldn't
9 be, operating on the wrong body part, and death or serious
10 disability from spinal manipulative therapy.

11 If it was never an issue, it never would
12 have been there, but the loophole, the adverse events that
13 Connecticut has adopted all of them and requires
14 reporting, but only from hospitals and outpatient
15 facilities.

16 I don't know of any chiropractors
17 practicing in hospitals, so if there are strokes, they're
18 not being reported, so then everybody returns to look at
19 this. There's no reports of any. I'm saying how do you
20 know, and how does a chiropractor know that the person who
21 just had a manipulation they said it's a reaction? Don't
22 worry about it.

23 How do you know it's not a neurological
24 symptom, because sometimes dizziness is? And to tell

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 people don't worry about it, ignore it, you'll be okay in
2 the morning?

3 Dave McDonald testified before a public
4 hearing, a Public Health Committee in February of last
5 year. He had gone to a chiropractor. He had had a neck
6 manipulation. He went to work later and had a severe
7 headache, so severe he thought he was going to die.

8 He called the chiropractor, and they told
9 him to come the next morning. He didn't go to the
10 hospital. He waited until the next morning. He went to
11 the office, they took his blood pressure, it was 250 over
12 100. What that chiropractor did is they manipulated his
13 neck three more times to get that blood pressure down.

14 It didn't go down. He still experienced
15 dizziness, headache, nausea. They let him drive home. He
16 got home and he collapsed. He had dissections of both
17 carotid arteries. Not one side. Both.

18 A lot has been said about how do you know
19 it happens? Well, if I walked into that chiropractor's
20 office and I was fine, had no neurological symptoms, had
21 shoulder pain, and then I had a crushed artery, that's
22 pretty conclusive.

23 And it hasn't only happened to me. It's
24 happened to hundreds of others. And all I'm asking for is

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 I don't want to ban chiropractic, I don't want to ban
2 manipulations, people find them beneficial, but give them
3 the knowledge, so if something goes wrong, they can get
4 treatment, because had I known, there is so much medical
5 intervention these days if a person gets to the hospital
6 and a stroke can be prevented, and that's what we're
7 asking for today, something simple. Just give the patient
8 some info to avoid all of this unnecessary suffering.
9 Thank you.

10 MR. SHAPIRO: Attorney Moore Leonhardt?

11
12 CROSS-EXAMINATION

13 BY MS. MOORE LEONHARDT:

14 Q Good afternoon, Ms. Harwe. Am I saying your
15 name correctly?

16 A Harwe.

17 Q Harwe. Thank you. Again, I apologize to you
18 for what you've been through, and I admire the effort
19 you've gone to to rehabilitate yourself and be here today
20 and present your side of the story to the Board.

21 I have a couple of questions for you. I
22 understand that, and correct me if I'm wrong, my
23 understanding from your testimony that I've read and what
24 you had to say was that you were taken by an ambulance to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 the hospital to an emergency room, is that correct?

2 A That is correct.

3 Q And at the emergency room, no one diagnosed that
4 you were suffering a stroke?

5 A They did not have the information to do so, no.

6 Q No one did a neurological workup on you in the
7 emergency room to diagnose the signs and symptoms of a
8 stroke?

9 A That's the crucial problem. I was 26 years old.
10 Stroke was not suspected at that time. Hartford
11 Hospital, the hospital I was brought to in 1993, was not a
12 stroke center. They are now a certified stroke center.

13 Q Do you mean to tell me there was no one in that
14 emergency room that could do a neurological evaluation of
15 you at that time --

16 A They didn't think it was necessary.

17 Q -- and determine what was happening?

18 A I'm sorry for speaking over her. They didn't
19 feel it was necessary, given my age.

20 Q I see.

21 A At the time, they didn't feel it was necessary.

22 Q I see, so no one worked you up neurologically at
23 that time?

24 A No, they didn't. Because of my age and because

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 they were given absolutely no information from the health
2 care provider that brought me to the hospital that called
3 the ambulance, no.

4 Q And, forgive me, I don't mean to intrude on your
5 privacy here, but were you awake and alert during that
6 ambulance ride to the hospital?

7 A I was awake and alert until we got onto I-91,
8 yes.

9 Q All right and did you talk with the ambulance
10 attendant during that trip?

11 A I was unable to speak.

12 Q I see. Okay, now, once you arrived at the
13 hospital, you were there for how long before someone
14 diagnosed the stroke?

15 A It was six days before an MRI was done.

16 Q So for a period of six days you had symptoms of
17 what before a stroke was diagnosed?

18 A I was intubated, because I couldn't speak, I
19 couldn't breathe. They had no idea, so I was just laying
20 there. I couldn't speak. I couldn't move. They didn't
21 know what was wrong with me.

22 Q None of the doctors at the hospital knew what
23 was wrong with you for a period of six days?

24 A Correct.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Is that right?

2 A Um-hum.

3 Q Well that's very unfortunate.

4 A Yes.

5 Q Given that, which, I don't know, wouldn't you
6 agree with me that's rather shocking?

7 MR. MALCYNKY: Objection.

8 MR. SHAPIRO: I would recommend it be
9 sustained.

10 A I would say it's rather shocking the
11 chiropractor didn't explain what he did or any of the
12 symptoms he observed. That is most shocking to me, yes.

13 Q All right. Thank you. Let me ask you another
14 question. When you pre-filed your evidence and your
15 testimony here with the Board, did you bring any reliable
16 scientific evidence with you that proves that the actual
17 adjustment by the chiropractor caused the vertebral artery
18 dissection that you suffered?

19 A I don't know what kind of evidence you want. No,
20 I didn't file it in my testimony.

21 Q If you had that kind of proof, you would have
22 filed it, though, wouldn't you have?

23 A I don't think that kind of proof is ever given.
24 I have the MRI.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Okay. Thank you. I understand that when you're
2 here today, you've appeared on behalf of a Stroke
3 Awareness organization, and you've turned a bad thing into
4 a good thing, and your purpose is to get the word out to
5 members of the public about stroke, is that correct?

6 A Correct.

7 Q And I also understand that your target audience
8 is anyone who is seeking help with neck or headache pain
9 and is considering having a neck manipulation, is that
10 correct?

11 A No, that's not correct. I went primarily for
12 shoulder pain, so it's not just neck pain and headache. My
13 pain radiated from my shoulder, so anyone undergoing a
14 manipulation needs to be aware that this can happen.

15 Q All right, so, then you would agree with me,
16 then, that Dr. Fellows testified that physical therapists,
17 osteopaths, chiropractors perform neck manipulations and
18 manipulations of the spine, correct?

19 A It's my understanding by Connecticut state law
20 that physical therapists are not allowed to perform any
21 chiropractic manipulation, so what they do is different.

22 Q Well I'm asking about a neck manipulation, which
23 is different than a neck manipulation by a chiropractor,
24 aren't they?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A Yeah, so, I don't know if that would carry the
2 same risk. I don't know if it's range of motion. I'm not
3 an expert on that, so I can't answer your questions.

4 Q But I'm trying to get to the nub of this. I
5 think that your good intent to increase public awareness -
6 -

7 MR. PATTIS: Argumentative. Can there be a
8 question?

9 MR. SHAPIRO: Counsel, I agree about your
10 thoughts on that.

11 MS. MOORE LEONHARDT: If counsel would let
12 me put my question to the witness, I'd be happy to put the
13 question to the witness.

14 MR. PATTIS: Objection. The objection was
15 it wasn't a question.

16 MR. SHAPIRO: Ask your question, please.

17 Q Is it or is it not your goal to increase patient
18 safety by requiring all practitioners who perform
19 manipulations of the spine to inform patients about the
20 association of stroke with spinal manipulations?

21 MR. PATTIS: Relevance. We're here for
22 chiropractors. Other Boards are other days.

23 MS. MOORE LEONHARDT: May I? The witness
24 testified --

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. PATTIS: May I have a ruling on my
2 objection?

3 MR. SHAPIRO: I'll hear it. You can
4 proceed. I want to hear your rationale behind the
5 question.

6 MS. MOORE LEONHARDT: The witness testified
7 that she has an advocacy group about cervical
8 manipulation. That was not specific to chiropractic, it
9 was a much broader terminology that she used, and I'm
10 merely trying to explore questions along that line.

11 MR. SHAPIRO: I would recommend that the
12 Board allow it. I think that they've allowed other
13 questions with respect to what other professions can do.
14 Boards have done that. Okay.

15 MS. MOORE LEONHARDT: Thank you.

16 A The name of my group is the Chiropractic Stroke
17 Awareness Group. I was injured by a licensed
18 chiropractor, and the hundreds of people that I have
19 spoken to and dealt with over the years have all been
20 injured by licensed chiropractors, so that is why we're
21 before the Board today, the Chiropractic Board.

22 Q My understanding was that you've been in touch
23 with these other persons, who claim to have been injured
24 by a chiropractor, is that correct?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A They haven't claimed to been injured. They have
2 been injured, yes.

3 Q Do you have any scientific evidence that you
4 pre-filed in this hearing that demonstrates that there's a
5 causal connection between the stroke that those people
6 suffered and a chiropractic -- a manipulation by a
7 chiropractor? That calls for a yes or no answer. I'm
8 sorry.

9 A No.

10 MS. MOORE LEONHARDT: Thank you. Nothing
11 further.

12 MR. SHAPIRO: Any questions from the Board?
13 Attorney Malcynsky, Attorney Pattis, can this witness be
14 excused?

15 MR. MALCYNKY: I have nothing at this
16 time.

17

18 REDIRECT EXAMINATION

19 BY MR. PATTIS:

20 Q Are you at liberty to disclose the name of the
21 chiropractor who injured you?

22 A Yes. Dr. Robert L. Fritz.

23 Q And was a settlement paid to you in
24 contemplation of litigation?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A Yes.

2 Q And are you able to disclose that sum?

3 A Yes.

4 Q What was that sum?

5 A Nine hundred thousand.

6 MR. PATTIS: Nothing further.

7 MR. SHAPIRO: Thank you. You can step
8 down. Just reviewing the hearing protocol, we'll now move
9 to the intervenors or other designated parties. The first
10 intervenor, Campaign for Science-Based Healthcare, has
11 already completed their testimony.

12 The second intervenor, ChiroSecure, never
13 filed pre-filed testimony. There's a letter that was sent
14 via fax on December 9th. I'm just going to read that, and
15 I'm going to ask that it be put into the record, and I'm
16 going to ask Mr. Kardys tomorrow to send out an e-mail
17 with this letter attached.

18 It's directed to ChiroSecure, dated
19 December 9th. It says, "Dear Mr. Hoffman, On September
20 14, 2009, the Connecticut State Board of Chiropractic
21 Examiners granted ChiroSecure intervenor status in the
22 above-referenced matter.

23 Participants were instructed to pre-file
24 their testimony by October 27, 2009. Since testimony of

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 ChiroSecure has not been pre-filed, please confirm by
2 December 11, 2009 that you're withdrawing" it says "form,"
3 but I think it means "from participating in this matter."
4 And my understanding is that there hasn't been any
5 further communication.

6 I'm going to mark this document as Exhibit
7 68. Attorney Moore Leonhardt, is there any objection to
8 this document?

9 MS. MOORE LEONHARDT: Are you marking it
10 only for ID?

11 MR. SHAPIRO: No. I was marking it as a
12 full exhibit.

13 MS. MOORE LEONHARDT: No objection.

14 MR. MALCYNSKY: No objection.

15 MR. PATTIS: None.

16 MR. SHAPIRO: This document will be marked
17 as a full exhibit, No. 68.

18 (Whereupon, the above-mentioned document
19 was marked as Exhibit No. 68.)

20 MR. SHAPIRO: The next intervenor is the
21 Chiropractic Stroke Awareness Organization.

22 MS. MOORE LEONHARDT: Excuse me.

23 MR. PATTIS: I think that was us. I think
24 we're --

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MS. MOORE LEONHARDT: Attorney Shapiro,
2 were we having Ms. Hoffman next?

3 MR. SHAPIRO: I'm not sure about that. Let
4 me look at the record. That's what it says on the hearing
5 protocol, but let me see what the testimony was pre-filed.

6 DR. POWERS: This was a Ms. Christa Heck?
7 So she's next?

8 MR. SHAPIRO: Yes. Ms. Heck, did you file
9 rebuttal testimony, as well, or just the pre-filed
10 testimony on October 22nd?

11 MS. CHRISTA HECK: Just the pre-filed
12 testimony.

13 MR. SHAPIRO: Okay. I just wanted to make
14 sure. Just one moment, please. If she could be sworn in
15 by the court reporter?

16
17 CHRISTA HECK
18 having been called as a witness, having been duly sworn,
19 testified on her oath as follows:

20
21 COURT REPORTER: Please state and spell
22 your name for the record, please?

23 THE WITNESS: Christa Heck, C-H-R-I-S-T-A,
24 last name is H-E-C-K.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. SHAPIRO: And, Ms. Heck, is this
2 testimony that you drafted that's dated October 22, 2009?

3 THE WITNESS: Yes.

4 MR. SHAPIRO: And are you adopting this
5 testimony that you pre-filed as your sworn testimony?

6 THE WITNESS: Yes.

7 MR. SHAPIRO: Okay. I would suggest that
8 this document be admitted as a full exhibit. Attorney
9 Moore Leonhardt, do you have any objection?

10 MS. MOORE LEONHARDT: No objection.

11 MR. SHAPIRO: Attorney Malcynsky?

12 MR. MALCYNKY: No objection.

13 MR. SHAPIRO: Attorney Pattis?

14 A MALE VOICE: No objection. I'm standing
15 in for Pattis. He just stepped out.

16 MR. SHAPIRO: Okay. I'm going to wait for
17 him. Why don't we just take a few moment recess?

18 (Off the record)

19 MR. SHAPIRO: -- which is Exhibit 40 being
20 admitted as a full exhibit?

21 MR. PATTIS: No, and I apologize to the
22 Board. I had given my marker, as it were, to Attorney
23 Malcynsky. I'm sorry for the disruption.

24 MR. SHAPIRO: That's no problem.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. PATTIS: I have no objection.

2 MR. SHAPIRO: Okay. Exhibit 40, then, is
3 the testimony of Ms. Christa Heck, and that will be
4 admitted as a full exhibit.

5 (Whereupon, the above-mentioned document
6 was marked as Exhibit No. 40.)

7 MR. SHAPIRO: Ms. Heck, if you want to make
8 a brief statement, you may, or you can just go into Cross-
9 Examination, or whatever you prefer.

10 THE WITNESS: I'd like to make a brief
11 statement.

12 MR. SHAPIRO: Please proceed.

13 THE WITNESS: I also suffered a vertebral
14 dissection and stroke after having an upper neck
15 manipulation. I was 39 years old. I did not have a
16 severe headache, or dizziness, or any signs of a stroke in
17 progress.

18 I listened to everyone's testimony over the
19 last days of this, and I used chiropractic as health
20 maintenance. I believed it was good for me, so I went,
21 just because I thought I was doing something good for my
22 body.

23 I ended up on the side of the road minutes
24 after having an upper neck adjustment with such severe

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 vertigo and nausea that I couldn't sit up straight. I was
2 slumped over the console of my car. Unfortunately, I was
3 below eye level of any passers by, because I was in an
4 SUV, and I laid there, spinning, unable to move.

5 I did not know what was happening to me.
6 Honestly, I did not think I was having a stroke. It never
7 occurred to me. I had never heard, throughout the 20
8 years or so that I used chiropractic, not one chiropractor
9 ever told me there was a risk, or an association, or a
10 correlation, or whatever you want to call it, of a
11 vertebral dissection and stroke after having a neck
12 manipulation, so I didn't know.

13 After 45 minutes or so, the symptoms eased
14 up, and this is the tricky part about these types of
15 strokes. Often, your symptoms will get a little bit
16 better, so you think, wow, whatever that was passed. I'm
17 all better. I'm getting better. But that's just the
18 stopping of the blood flow. That's not the stroke.

19 The stroke is yet to come, and that's why
20 this informed consent and discharge summary are so
21 important, because I truly thought I was having -- I had
22 an inner ear infection. That's what I thought. It gave
23 me severe vertigo, and that's what caused me to slump
24 over, and I was getting a little bit better, and I went

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 home.

2 The next morning, I woke up, and I had no
3 speech, no feeling on my right side, and a drooping face.
4 If I had gone to the emergency room right from the side of
5 the road, instead of going home, I might have made a full
6 recovery.

7 I am very, very lucky. I have recovered
8 dramatically from my stroke. I lost speech. I lost
9 feeling on my right side. That's come back. I have what
10 would be considered a mild traumatic brain injury. It is
11 anything but mild. My brain is forever changed, but, that
12 being said, I am one of the lucky ones.

13 And the reason that I am here today talking
14 to you all is to let you know, to let everyone in this
15 room know I have been in touch with hundreds of people
16 that have the same story that I do.

17 No, they were not strokes in progress.
18 They did not have risk factors for stroke. They're young
19 people. They're healthy people. They're athletes, who
20 are using chiropractic as a means of health maintenance,
21 and none of them, not one person have I been in contact
22 with who has said to me I knew about the risk or the
23 association of stroke, but I ignored it. No one knew.
24 Everybody was shocked, and no one knew the signs and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 symptoms of stroke.

2 This can mean the difference between life
3 and death, between total paralysis and recovery. I've
4 worked in health care, or I worked in health care until
5 this happened to me most of my life. I knew the risk
6 factors for the most bizarre things just working in a
7 hospital.

8 I trusted every chiropractor that I went to
9 that I was safe, that if there was a -- if there was some
10 kind of a risk, I would know. You guys would tell me. My
11 government would tell me. But I nearly lost my life, and,
12 since then, I started my organization.

13 People have found me. I haven't
14 advertised. I haven't sought people out. They have found
15 me, and I have been in touch with 187 people without
16 advertising, young people, or family members of those who
17 died.

18 So, please, don't tell me that this doesn't
19 happen. That's ludicrous. It happens, and it's
20 happening, and it shouldn't be happening, and all that
21 we're asking for is let people know and make their own
22 decision about whether they want to have their necks
23 manipulated or not, and at least let them know to get help
24 immediately if something does go wrong. That's all that

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 we're asking. Thank you.

2 MR. SHAPIRO: Attorney Moore Leonhardt?

3 MS. MOORE LEONHARDT: Thank you.

4

5

CROSS-EXAMINATION

6 BY MS. MOORE LEONHARDT:

7 Q Good afternoon.

8 A Good afternoon.

9 A I, again, express my sympathy on behalf of the
10 chiropractic organizations that I represent and myself,
11 personally, for what you went through, and I respect and
12 admire where you're at today. It took a lot of hard work.

13 A Thank you.

14 Q My understanding is that you have had some
15 chiropractic care over a number of years that worked for
16 you, is that correct?

17 A Yes.

18 Q And then you had a chiropractic experience or
19 visit with a chiropractic doctor, and the doctor
20 manipulated your cervical spine, is that correct?

21 A Yes.

22 Q And after you left the office and were in your
23 car, you began to suffer some signs and symptoms as you've
24 described, and that was after you left the doctor's

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 office, is that correct?

2 A Yes.

3 Q All right, now, do you have any scientific
4 evidence that you've pre-filed or submitted to the Board
5 or any of the attorneys in this room that proves that the
6 manipulation by the chiropractor actually caused your
7 stroke?

8 A None that I've submitted.

9 Q All right, but you believe there's an
10 association, though, between the stroke that you
11 experienced and your visit to the chiropractor, correct?

12 A And I have what I would consider scientific
13 proof. I just didn't know that's what you wanted me to
14 submit as part of my testimony today.

15 Q I see, but you didn't pre-file it, and you
16 didn't submit it, so it's not before this Board?

17 A Right.

18 Q Thank you. I also understand that your
19 organization, and I commend you for this organization,
20 it's called VOICES, is an acronym, is that correct?

21 A No, that's not my --

22 Q No. You're called -- I'm sorry. I apologize.

23 A Chiropractic Stroke Awareness Organization.

24 Q Chiropractic Stroke Awareness Organization, and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 that's located in New York State?

2 A That's correct.

3 Q And did your chiropractor practice in New York
4 State?

5 A Yes, he did.

6 Q And that's where your stroke occurred, in New
7 York State?

8 A Yes.

9 Q I see. And you have a website, do you not, that
10 you maintain for this Chiropractic Stroke Awareness
11 Organization?

12 A Yes.

13 Q And is this website affiliated with an
14 attorney's office by chance?

15 A No.

16 Q On the website, at the bottom of the website,
17 there seems to be some connection with an attorney's
18 office. That's not so?

19 A My current website is not affiliated with any
20 attorney's office. At one point, I had asked for
21 assistance from the attorney who was representing me in
22 constructing my website, but that is no longer in
23 existence.

24 Q All right and are you currently working with a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 new attorney?

2 A No.

3 Q Did you ever send an e-mail to a Christa Orsenio
4 Heck?

5 A That's me.

6 Q Okay. Did you send an e-mail, I'm sorry, to
7 Sandy Net (phonetic)?

8 A Yes.

9 Q And would you tell me if this is what you e-
10 mailed to Sandy Net? Quote, "I'm working with a new
11 attorney now, who is passionate about stopping this. We
12 have been working on a website and, although a class
13 action lawsuit is not plausible within the American
14 structure, he is forming a national committee to educate
15 and guide attorneys on what is happening and how to
16 process chiropractic lawsuits.

17 As I said in one of my internet blogs, we,
18 victims, have asked, begged and demanded, but have been
19 ignored and/or berated by the chiropractic community, so
20 we'll get their attention by being compensated for the
21 debilitating harm and/or deaths they're causing and empty
22 their pockets." Is that something you wrote to Sandy?

23 A It sounds correct.

24 MS. MOORE LEONHARDT: Thank you. Nothing

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 further.

2 MR. SHAPIRO: Attorney Malcynsky?

3 MR. MALCYNKY: Thank you.

4

5 CROSS-EXAMINATION

6 BY MR. MALCYNKY:

7 Q Good afternoon.

8 A Good afternoon.

9 Q You said that you've been contacted by roughly
10 187 people since forming your awareness group, is that
11 correct?

12 A That's correct.

13 Q And over what period of time would that have
14 been? You had your stroke in 2003, I think, and when did
15 you actually form the group?

16 A The group actually wasn't formed until 2007.

17 Q So you've had 187 people contact you since 2007,
18 two years, basically?

19 A That's correct.

20 Q Are most of those people residents of the State
21 of New York?

22 A No.

23 Q That covers the whole country?

24 A The entire country and some outside of the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 country.

2 Q Okay and would these be people that have
3 recently been afflicted with a stroke, or people that have
4 had a history of a chiropractic stroke that may predate
5 the formation of your organization?

6 MS. MOORE LEONHARDT: Objection to form.

7 MR. MALCYNSKY: Withdrawn.

8 Q Do these people, who have contacted you, include
9 people who had a stroke before you formed your
10 organization?

11 A Yes.

12 Q Okay. You mentioned you had a lawsuit pending?

13 A Yes.

14 Q Do you have an opinion from a treating
15 physician, as to the cause of your injuries?

16 A Yes, I do.

17 Q And what is that opinion?

18 MS. MOORE LEONHARDT: Objection, and I'd
19 just like to insert, without disrespecting you, counsel,
20 my standing objection with regard to lay opinion and
21 expert testimony.

22 MR. MALCYNSKY: I would just say the same
23 question has been asked of previous victims and it was
24 admissible. I would claim it on the same basis.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. SHAPIRO: I think, based on the prior
2 rulings, you can take it and give it whatever weight you
3 deem appropriate at the right time.

4 DR. POWERS: Can you repeat the question
5 again?

6 Q Do you have an opinion from a treating
7 physician, as to the cause of your injuries?

8 A Yes.

9 Q And what does that opinion state?

10 A It states that I suffered a 4.5 centimeter
11 vertebral dissection, caused by upper neck manipulation.

12 Q Thank you.

13 A Very clearly.

14 MR. MALCYNKY: I have no further
15 questions. Thank you very much.

16

17 CROSS-EXAMINATION

18 BY MR. PATTIS:

19 Q Ms. Heck, is that lawsuit of yours still
20 pending, or has it settled?

21 A No. It's settled, and I am not allowed to speak
22 about it, and I am to state, I have memory problems, that
23 it was contested.

24 Q And are you at liberty of sharing with us the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 name of the chiropractor?

2 A No, I'm not.

3 Q Are you at liberty to share with us the amount
4 that you were paid?

5 A No, I'm not.

6 MR. PATTIS: Nothing further.

7 MR. SHAPIRO: Anything further from the
8 Board? Thank you, Ms. Heck. You can step down. Is
9 Senator Fasano here?

10 SENATOR LEONARD FASANO: Good afternoon.

11 MR. SHAPIRO: Good afternoon, Senator. If
12 you could swear in the witness?

13

14 SENATOR LEONARD FASANO

15 having been called as a witness, having been duly sworn,
16 testified on his oath as follows:

17

18 COURT REPORTER: Could you state and spell
19 your name for the record, please?

20 THE WITNESS: Sure. It's Leonard Fasano,
21 State Senator, 34th District, representing Wallingford,
22 North Haven and East Haven.

23 MR. SHAPIRO: Senator Fasano, I have in
24 front of me your pre-filed written statement, dated

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 October 27, 2009. Are you adopting this statement under
2 oath?

3 THE WITNESS: Yes, I am, Mr. Chairman.

4 MR. SHAPIRO: I would suggest that this
5 document be admitted as a full exhibit. Attorney Moore
6 Leonhardt, is there any objection?

7 MS. MOORE LEONHARDT: No objection.

8 MR. SHAPIRO: Attorney Malczynsky?

9 MR. MALCZYNSKY: No.

10 MR. SHAPIRO: Attorney Pattis?

11 MR. PATTIS: No objection.

12 MR. SHAPIRO: Okay. This document,
13 document 38, will be admitted as a full exhibit.

14 (Whereupon, the above-mentioned document
15 was marked as Exhibit No. 38.)

16 MR. SHAPIRO: Senator Fasano, if you wanted
17 to make brief remarks, please feel free to do so.

18 THE WITNESS: Thank you, Mr. Chairman.
19 Just briefly, I would just like to put a little bit in
20 context of how we are here in this hearing.

21 I proposed legislation to the Public Health
22 Committee, which legislation sought that some sort of
23 informed consent be given by chiropractors to patients
24 upon the manipulation of a neck, manipulation of the neck

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 being a word of art.

2 There was numerous discussions on both
3 sides of that legislation, if I may, and it was sort of
4 determined that perhaps the best way of handling this
5 would be what we call a Take Away Form, where, for the
6 first time that you treated for the manipulation of a
7 neck, the chiropractor would give you a Take Away Form,
8 which discussed the risks and, also, symptoms, should you
9 have some issues with respect to a stroke. These are the
10 things you look at, and you should seek treatment right
11 away.

12 However, it was impressed upon Senator
13 Harris, who is the Chairman of the Public Health
14 Committee, and myself, as the proponent, that rather than
15 putting in state statute, the better way of doing this is
16 to allow this Board to govern itself, and, as a result,
17 the matter was not pressed forward at the senate circle by
18 being placed as an addendum to some other pending public
19 health legislation.

20 I cannot express enough the conversations
21 that took place and the agreements that were the
22 understanding that this is what we would do, and then a
23 Declaratory Ruling by this Board with respect to what I
24 believed.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 And I can tell you I've talked to Senator
2 Harris about this last week, after watching the first
3 couple of days of this hearing, to see if I was under a
4 misimpression, but what Senator Harris also to believe to
5 be an understanding on both sides that this would be a
6 ruling, which both sides were proponents for.

7 Both sides agreed that a Take Away once a
8 year upon the manipulation of the neck is reasonable,
9 however, we not put in state statute, because we believe
10 it was better governed by the policing body. So Senator
11 Harris and I talked, and we were sort of taken back at the
12 contentiousness and, to some extent, the hostility that
13 has taken place with respect to this hearing and what we
14 thought was a fairly routine request made to this Board.

15 So I wanted to put in context of how it got
16 here. I also want to place in context the fact that
17 Senator Harris and I believe this was the best place. As
18 legislators, you never want to exert your authority on a
19 municipality, or a body, or committee. You want them to
20 do their own policing, but be not mistaken that the public
21 policy that Senator Harris and I viewed was protection of
22 the patient, and that's where we were coming from, and
23 that's the public policy, but, as we said, we believe this
24 was the forum.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 I'll just give you that sort of context
2 from my point of view. We hope that you will look at this
3 issue, informed consent, agree that it should be done, and
4 that would sort of end the matter and rest it in your
5 hands, as we believe it should be in your hands.

6 However, if it proceeds from here and you
7 decide not to, I assure you, and just my view as a
8 legislator, and I'm only one of 36 the state senate and of
9 257 in the state, will look to try to make sure this
10 public policy becomes --

11 (Off the record)

12 THE WITNESS: All set? What I think is
13 better served with this body, who knows this issue.
14 That's all I want to say. Thank you, Mr. Chairman.

15 MR. SHAPIRO: Just so the record is clear,
16 I'm not the Chairman.

17 THE WITNESS: Oh, okay.

18 CHAIRMAN SCOTT: I am.

19 THE WITNESS: I can't see from here. My
20 glasses are not that strong.

21 MR. SHAPIRO: I'm just providing legal
22 counsel to the Board.

23 THE WITNESS: Oh, okay. I couldn't see
24 from this distance.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. SHAPIRO: But thank you. Attorney
2 Moore Leonhardt, do you have any questions?

3 MS. MOORE LEONHARDT: Thank you. I'd just
4 like to thank Senator Fasano for his interest in the
5 issue, and I have no questions.

6 THE WITNESS: Thank you.

7 MR. SHAPIRO: Attorney Malcynsky?

8 MR. MALCYNKY: Just a couple of quick
9 questions, Senator.

10

11 CROSS-EXAMINATION

12 BY MR. MALCYNKY:

13 Q So you testified that you were operating under
14 the impression, after all the back and forth during the
15 legislature last year, that the chiropractors and the
16 victims were coming to this Board in unison to ask for a
17 Declaratory Ruling, correct?

18 A That's clearly my understanding, and I also may
19 say, Attorney Malcynsky, that in conference with Senator
20 Harris either last Wednesday or Thursday, I asked him if
21 that was his impression, and he said yes.

22 Q Are you aware that that agreement was actually
23 committed to writing?

24 A You know I saw the M.U., the Memorandum of

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Understanding. I remember seeing that agreement. I read
2 through it after it was executed. I can't tell you what I
3 remember the verbiage was in there, but that was my
4 general understanding.

5 Q And have you watched any of this hearing up
6 until your testimony today?

7 A I have watched the first two hours of the first
8 day, and then I picked up a couple of days in and out. I
9 didn't watch anything today.

10 Q From what you've seen, would you observe that
11 this has been a cooperative effort by the representatives
12 of the chiropractors to promote the Declaratory Ruling?

13 A I think it's been a contentious hearing.

14 Q And they've been in opposition, from what you
15 could see?

16 A I did not hear them testify, in candor. I did
17 listen to the questions from counsel, and that led me to
18 believe that they're probably not in favor of this.

19 MR. MALCYNSKY: Thank you, Senator. I
20 don't have any other questions.

21

22

CROSS-EXAMINATION

23 BY MR. PATTIS:

24 Q You thought all this was contentious? (Laughter)

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 That Memorandum of Understanding, do you know whether it
2 required VOCA and the Chiropractic Stroke Awareness
3 Organization to cease and desist from their efforts to try
4 to educate the public about the risk of chiropractic
5 stroke during the pendency of these proceedings? Do you
6 know whether that was a provision of the MOU?

7 A I understand that to be.

8 Q And my understanding from your testimony is, on
9 behalf of your constituents, you are prepared to offer
10 legislation if this body does not act?

11 A Personally, I have not talked to them about it,
12 but I am prepared to do that, yes, sir.

13 Q And, so, you understand that you've now come to
14 the Executive Branch for relief? You represent the
15 Legislative Branch. Do you see any barrier to turning to
16 the courts for common law relief?

17 A I'm sorry. Somebody coughed, so I didn't hear
18 the whole question.

19 Q You're in front of an Executive Branch agency.
20 You represent the Legislative Branch. Do you see any
21 barriers to these groups turning to the courts for common
22 law relief in case you can't get a bill passed and this
23 Board disagrees with your perception of what is good
24 public policy?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 In other words, you wouldn't fault us for
2 going to court if we can't get the answer we like from you
3 or from the regulatory body, would you?

4 A I wouldn't fault you, but I have no stake in
5 that.

6 Q Okay.

7 A My issue is purely public policy, and
8 irrespective of what happens in the courts, I'll still
9 pursue the public policy.

10 Q And your view is it is good public policy to
11 give patients the information they need to avoid harm and
12 to respond to harm if they fall victim to it?

13 A I do, and I do that on analysis of risk versus
14 harm, and, from a legislator's point, what can you do to
15 minimize or reduce that risk, and it seems to me this is a
16 small act that could minimize the risk and alleviate a
17 tremendous harm.

18 Q Do you have any specific recollection of recent
19 legislation regarding the requirement that hospitals
20 report adverse events?

21 A Yes.

22 Q And do those adverse events -- withdrawn. Were
23 you involved in any discussion or debate about what
24 adverse events to include in the list of those mandated to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 be reported?

2 A I don't recall.

3 Q Do you know whether or not death or disability,
4 due to spinal manipulative therapy, is required as a
5 mandated reported event by hospitals?

6 A Now that you talk about that, yes, I do recall
7 that.

8 Q Why wasn't any consideration given to requiring
9 chiropractors to report these events?

10 A I do not know.

11 Q Was it the strength of the chiropractic lobby?

12 A I, frankly, was not as involved in that
13 legislation, so I cannot answer that question. I don't
14 understand.

15 MR. PATTIS: Thank you, sir.

16 MR. SHAPIRO: Any questions from the Board?

17 EXAMINATION BY MR. PACILEO:

18 Q Hi, Senator. Thank you for coming this
19 afternoon.

20 A Good afternoon.

21 Q Good afternoon. You mentioned in your
22 discussions with Senator Harris that you were speaking
23 about public policy, and you're here in front of a
24 Chiropractic Board. Is public policy defined as something

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 beyond chiropractic practice?

2 A Public policy is a general term we use to
3 describe what we believe is a -- should be a societal
4 feeling of what public policy we want to happen as
5 legislators.

6 Q Okay, so, then, using that definition, in terms
7 of translating what we're hearing about during these
8 hearings, is that, in terms of informed consent and good
9 public policy, would also be to make other medical
10 professions to have a similar standard and a similar best
11 practice I would assume. Is that a correct assumption on
12 my part?

13 A It's a little convoluted question, because I
14 think everything, no matter what happens, there's a risk
15 associated with everything, whether you're a doctor, or a
16 lawyer, engineer. There's a certain amount of risks. I
17 think that's the balance test, where you say what are
18 those risks versus what are those harms?

19 The harm I see from a neck manipulation
20 says we need to look at it. How do we reduce that risk?
21 Is it minimal, and is that a good public policy to have?

22 Q Right.

23 A So it's sort of a case-by-case. So if someone
24 were to come up to me and say, you know what, if an eye

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 doctor puts an eye drop in your eye and you could go
2 blind, well then I think that that risk should be
3 minimized by a notice, so it's almost a case-by-case.

4 I don't think you can do a blanket, because
5 I'm not sure that would make logical sense.

6 Q Right. Okay, so, I guess what I'm hearing you
7 say, then, is that, in terms of public policy, the good
8 public's policy expands beyond this Board and to other
9 professions, as well, in the example you gave, putting eye
10 drops in someone's eyes, for example?

11 A Correct.

12 MR. PACILEO: Okay, thank you. Thank you,
13 Senator.

14 EXAMINATION BY DR. ROBOTHAM:

15 Q Good afternoon, Senator.

16 A Good afternoon.

17 Q So let's say that the Board were to accept the
18 fact that chiropractors have to give a Take Away Notice.
19 Would this now set precedents for, like my colleague here
20 was saying, other disciplines now would have to come up
21 with this Take Away Notice, as well, that any discipline
22 that touches a cervical spine or manipulates a cervical
23 spine is now held to the same responsibility?

24 A The answer would be that a manipulation of the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 neck, as I understand, is a term of art. I'm here in
2 front of your Board. You can't govern orthopedic
3 specialists, etcetera. You can govern chiropractors. I'm
4 here on the issue of chiropractor.

5 I think that to look at outside your field
6 is to take other people's obligations. I think if you do
7 the right thing, which is to say a Take Away Form for
8 consent and notice of stroke, so people can get the right
9 medical attention.

10 If I were to find out tomorrow, someone
11 calls me and said they were at an orthopedic specialist
12 and they had the same problem, I'd be in front of the
13 Orthopedic Board saying we have this issue.

14 I've seen this issue, as I can tell, relate
15 to chiropractic manipulation of a neck. I don't think you
16 could, if I may, say, well, maybe we're not going to do
17 this, because there's other professions who aren't doing
18 that. You have to look at your profession and maybe you
19 set the standard.

20 DR. ROBOTHAM: Thank you.

21 EXAMINATION BY DR. POWERS:

22 Q Good afternoon. I've been sitting up here,
23 listening to a lot of testimony. It's our third day, and
24 we got a lot of information. One of the questions I have

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 for you is how long have you been a Senator?

2 A Eight years, I think. Eight years coming up
3 this November.

4 Q Now, in these eight years, have you ever taken
5 up a matter like this, where a single profession is being
6 looked at for a single procedure having this public risk?
7 I mean, you know, there's tons of procedures done by all
8 health care providers that have risk of paralysis or
9 death, and I'm just curious, have you ever taken one up
10 and passed legislation mandating a profession with regard
11 to a particular procedure to a particular body part?

12 A Well when you say have we ever taken a
13 particular warning with a particular body part, I can't
14 recall, but we have done warnings for particular
15 industries, such as we did in 2009, a ban on certain PBA
16 bottles, because of the potential, although not proven,
17 risk when you put formula or milk in a bottle, plastic
18 bottle made out of PBA. There could be a risk of cancer,
19 so we asked that warnings go on those canisters, because
20 there was a risk of that happening. We put --

21 Q Excuse me, Senator. I'm sorry. I apologize for
22 interrupting, but I'm just kind of curious, just for the
23 singular point of what we're dealing with. I'm talking
24 about health care. Have you ever went and said we need to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 take up the issue of death during surgery? We need to go
2 to the Medical Board and talk about this.

3 I'm just trying to look. Is this a brand
4 new thing? In other words, has the legislature in your
5 eight years never taken up an issue like this before?

6 A Well I don't think -- well I'll put it that way,
7 saying no, with the caveat that no one has come to me and
8 said here's an issue, here's a problem, it's related to
9 this particular medical procedure, that there wasn't a
10 warning given. If there was, I'd be passing the same
11 legislation. There's no axe to grind. Look, chiropractic
12 medicine is good in the health care system. It's needed in
13 the health care system.

14 We have this one incident, in which there
15 is a risk, although slight. Harm could be great that
16 you've heard some testimony on. The resolution is a
17 notice. I don't get it, but that's me. I don't get what
18 the problem is. I don't get why the notice is such a hard
19 issue, but that's where I sit on it as a public policy.

20 And if someone came up with the identical
21 situation, I would submit the identical bill.

22 Q I apologize if in any way I made it sound like
23 there was an -- implying that you had an axe to grind
24 against chiropractic, and if anyone else felt that way, I

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 want to be very clear that's not what my question
2 entailed.

3 I was just curious regarding the
4 legislature taking up an issue like this. You know
5 there's already informed consent, and I guess the
6 implication regarding the informed consent is it's not
7 done all the time, and I'm sure that it's not done all the
8 time in every case of every person that sees every medical
9 provider, or osteopathic provider, and I certainly
10 understand that.

11 So your main point is this post document.
12 That's what you're mainly saying should be given to the
13 patient?

14 A The Take Away.

15 Q I apologize for stuttering through that. I was
16 trying to make it sound right. The post-manipulation
17 paperwork, saying, if you have these type of --

18 A That's correct. That's correct.

19 DR. POWERS: Thanks very much, and, again,
20 I apologize if there was an implication on that, and I am
21 a voting person in the Wallingford district, just so you
22 know. (Laughter)

23 THE WITNESS: Thank you for your questions.

24 EXAMINATION BY CHAIRMAN SCOTT:

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q I'm Dr. Scott. Now when you're saying the take
2 home scare sheet, whatever, is it once a year, or after
3 every adjustment, cervical adjustment?

4 A Initially, I think the legislation talked about
5 it being after every manipulation, and then, when we
6 discussed the bill further in trying to reach -- this
7 building is one of compromise, and trying to reach a
8 compromise, it would be done on a yearly basis, and
9 that's, as I understood, I don't know if we actually
10 amended the bill, but Senator Harris and I talked about it
11 being a yearly basis.

12 CHAIRMAN SCOTT: Okay, thank you.

13 EXAMINATION DR. POWERS:

14 Q I have a question in follow-up to that, and I'm
15 not trying to be picky on this at all.

16 A Sure.

17 Q But if we did have this post-therapy sheet that
18 was done, is it needed once a year? Is it something that,
19 realistically, once the patient has been made aware of
20 before they have the procedure the first time that they're
21 well aware of it for future events, and do you see a real
22 need to do it on a yearly basis?

23 A That's a tough question to answer. I guess just
24 yearly as a reminder. I think every single time might be

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 a bit too much. I think yearly as a reminder, just to
2 say, hey, don't forget, so, I mean, pick a date, you know?

3 DR. POWERS: Understood.

4 EXAMINATION BY CHAIRMAN SCOTT:

5 Q Would that be similar to, since this is a new
6 year, we all have to sign, all the new patients that come
7 in have to sign new HIPPA forms? It could be like an
8 addendum to that?

9 A I missed the first part of the question. I
10 apologize.

11 Q Since, as you're saying, it's once a year, as of
12 this time of the year, everybody usually signs new,
13 whenever you go to a physician the beginning part of the
14 year, you'll sign new HIPPA forms, could that be included
15 with the HIPPA form scenario?

16 A I don't know enough about that part of the
17 practice that I could answer that question. As long as
18 it's done yearly, if you do it with the HIPPA for the
19 person who is getting the manipulation, then I guess that
20 would make sense.

21 CHAIRMAN SCOTT: At this time, we're going
22 to take a five-minute break. Just five minutes. Thank
23 you.

24 (Off the record)

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. MALCYNKY: Just one 30-second follow-
2 up.

3 BY MR. MALCYNKY:

4 Q Senator, what you're talking about is advocating
5 that folks are given something to take away with them when
6 they leave the office, correct?

7 A Right. I call it a Take Away Form.

8 Q Right. Discharge summary or whatever.

9 A Discharge summary, Take Away Form.

10 MR. MALCYNKY: Thank you.

11 MS. MOORE LEONHARDT: May I just ask a
12 quick question, and then we don't have to hold the Senator
13 up?

14 MR. SHAPIRO: Sure.

15 MS. MOORE LEONHARDT: Thank you.

16

17 CROSS-EXAMINATION

18 BY MS. MOORE LEONHARDT:

19 Q Senator, I understand that you've had an
20 opportunity to hear some of the testimony, is that
21 correct?

22 A Yes.

23 Q Were you able to hear Dr. Fellows this morning
24 when he testified on behalf of the Connecticut Medical

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Examining Board?

2 A No, I did not hear his testimony.

3 Q All right, well, if you'd allow me to inform
4 you, I believe Dr. Fellows testified that he was a former
5 physical therapist, and, in that capacity, he had
6 performed neck manipulations. He then went on and became
7 a radiologist and had a great deal of information to offer
8 with regard to the specific type of vertebral artery
9 dissection that's the subject of this hearing, and he did
10 inform us that physical therapists, osteopaths, MDs and
11 chiropractors all perform neck manipulations. Are you
12 aware of that?

13 A No, and let me, if I can, explain why.

14 Q Yes.

15 A Two things. One, I have a number of friends who
16 are physical therapists, and I asked them early on, maybe
17 two years ago when I began this issue, if, in fact, they
18 ever manipulated a neck as a term of art within the
19 statute. Those people that I knew, and I would say
20 there's six or seven of them that I talked to, say they
21 never did.

22 My father is a family physician. He's been
23 a family physician for 52 years, still practicing, I won't
24 say how old, but still practicing medicine today, and I

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 asked him have you ever in your 52 years manipulated a
2 neck, and he answered no.

3 It is based upon those two factors that I
4 realized that most, if not all manipulations, and I can't
5 say with certainty 100 percent, but most, more than 90
6 percent are probably done at the chiropractic level. If
7 this body were to do this Take Away Form, I assure you
8 that I will now read that testimony and listen to that
9 tape, but I will go to the Physical Therapy Board that's
10 under control and ask them for the same consideration.

11 And if this Board passes this Take Away
12 From, as I call it, I would then ask that that happen at
13 that level in my view.

14 Q Thank you. Just one follow-up. I understand
15 that you have a public policy purpose here and seek to
16 have a broad reach with any public policy that you promote
17 in the State of Connecticut to protect patients.

18 Are you concerned that there may be
19 hundreds of thousands of patients who get neck
20 manipulations by other providers besides chiropractors,
21 who wouldn't have the information sheet or the information
22 about signs and symptoms of stroke provided to them if
23 this was the only forum where this is brought up?

24 A You know I guess the way to answer that question

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 is I don't think that this Board can solve all ills. The
2 Board can solve the ill that's in front of them today, in
3 my view. I don't mean it disrespectfully to
4 chiropractors.

5 I meant to say, in terms of notice, they
6 can solve that with respect to chiropractors, and they can
7 solve that with that issue here. If this issue, and, as
8 I've said, I've not had an experience where I've read,
9 seen where a neurologist, an orthopedic person, or a
10 physical therapist has had this issue, but at a prevalent,
11 well I'll just say have had this issue, I've not seen it.

12 If that were to be true, and I find that
13 out to be true, I don't have a problem when pursuing those
14 local Boards to view what we should be doing here today.
15 Does that make sense?

16 Q Yes, it does. It would also include the
17 patients of the osteopaths, as well, would it not?

18 A I know nothing about osteopaths.

19 MR. PATTIS: Relevance.

20 Q And then, finally, the information sheet, just
21 so that we're clear, that you're promoting here, I think
22 you called it a Take Away Form, you're suggesting that or
23 recommending and promoting that a form that describes the
24 signs and symptoms of stroke be given to a patient who has

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 a neck manipulation. Is that what your policy drive is
2 here?

3 A Yes, ma'am.

4 Q All right and that would be, in the context of
5 this hearing, as part of an informed consent process,
6 because you consider that to be important, correct?

7 A Correct.

8 Q So is it your view that giving the patient that
9 information, that is the signs and symptoms of stroke,
10 ought to occur prior to the performance of the neck
11 manipulation, so that they have all pertinent information
12 available to them before they decide whether to undergo a
13 neck manipulation?

14 A I think that I don't know enough to determine if
15 it should be given with -- I think it's a two-step process
16 in my mind, so let me see if I can answer your question.

17 One should be the informed consent, that
18 there is a slight risk, and I don't care if they put the
19 percentages, there could be a slight risk of stroke or
20 whatever as a result of chiropractic manipulation of the
21 neck, however they phrase it, and then, if they agreed to
22 that risk and say I understand it and that's okay, then
23 they have the manipulation, then they give them a form
24 that says, if you go home and you have these symptoms,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 whatever they are, to seek some medical attention.

2 Now if they do that all in one step and
3 they take that away, that's fine with me, too. As long as
4 they have all the information, I don't care. As long as
5 the first one is consent before, and then the Take Away
6 could be given then or after, whichever this Board of the
7 Chiropractors want to do. I don't really care.

8 MS. MOORE LEONHARDT: Thank you.

9 THE WITNESS: Thank you.

10 MR. MALCYNKY: Excuse me. Mr. Chairman,
11 Attorney Moore Leonhardt just brought up this subject of
12 other disciplines. I just had one quick question, Senator
13 Fasano.

14 BY MR. MALCYNKY:

15 Q Are you aware of statute 20-73c?

16 A That's the --

17 Q I think Attorney Clark just put a copy of it on
18 your --

19 A I didn't get a chance to kind of look down.

20 Q Doesn't that statute specifically preclude
21 physical therapists from engaging in the --

22 A Yes.

23 Q Can you read that for me? It's very brief.

24 A That's correct.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Can you read the statute for me? It's very
2 brief.

3 A Oh, I'm sorry. "No physical therapist or
4 physical therapist assistants licensed to practice under
5 the provisions of this Chapter may use the term
6 chiropractic adjustment or chiropractic manipulation to
7 indicate or imply the application of these techniques as a
8 part of their practice of physical therapy."

9 MR. MALCYNKY: Thank you, Senator.

10 MS. MOORE LEONHARDT: May I just ask one
11 follow-up question?

12 MR. SHAPIRO: Yes.

13 MS. MOORE LEONHARDT: Thank you.

14 BY MS. MOORE LEONHARDT:

15 Q Senator Fasano, there's nothing in that --

16 A I've exhausted my medical knowledge. I want you
17 to know.

18 Q I'm back to the statute.

19 A Oh, okay.

20 Q And I think you're an expert on laws, given your
21 many years here on behalf of the constituents of the State
22 of Connecticut and in your district. There's nothing in
23 that statute that says a physical therapist cannot perform
24 a neck manipulation, is there? That's something

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 different, isn't it?

2 A You know, without doing research, because I
3 don't know, it says "chiropractic adjustment or
4 chiropractic manipulation" in quotes, which means that's a
5 term of art, so I'd have to go back to the statute to see
6 if there's a definition of that, so I don't know the
7 answer to the question.

8 MS. MOORE LEONHARDT: Okay, thank you.

9 THE WITNESS: Thank you.

10 BY MR. MALCYNISKY:

11 Q But it does imply that there's something special
12 about the chiropractic manipulation that cannot be applied
13 by physical therapists?

14 MS. MOORE LEONHARDT: Objection to form.

15 MR. MALCYNISKY: Withdrawn.

16 MR. SHAPIRO: Thank you, Senator.

17 THE WITNESS: Did I say contentious? Never
18 mind. Okay.

19 MR. PATTIS: You want to argue about that?

20 (Laughter)

21 CHAIRMAN SCOTT: We're going to take a
22 five-minute break now, please. Thank you.

23 THE WITNESS: Am I excused, Mr. Chairman or
24 counsel?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 (Off the record)

2 MR. SHAPIRO: So just to give the parties
3 another sense of where we are, in terms of the hearing,
4 the plan is to take Ms. Hoffman now, and then, if Mr.
5 McCormick arrives, to hear Mr. McCormick today, and then,
6 on Friday, do Dr. Katz, Dr. Cassidy and Dr. Pearl, and Dr.
7 Cassidy's CV will be provided to Victims of Chiropractic
8 Abuse and the Chiropractic Stroke Awareness Group prior to
9 the end of the hearing today.

10 And then, if we're able to finish on Friday
11 with Dr. Katz, Dr. Cassidy and Dr. Pearl and possibly Mr.
12 McCormick, if he doesn't go forward today, there will not
13 be closing remarks, and briefs will be due 10 calendar
14 days, which would be February 1st. Any questions just
15 about the scheduling?

16 MS. MOORE LEONHARDT: No. Just to clarify,
17 there will not be any closing argument presented at the
18 hearing. It will be what's contained in our briefs.

19 MR. SHAPIRO: That's right.

20 MS. MOORE LEONHARDT: Thank you.

21 MR. MALCYNKY: That's agreeable to us.

22 MR. SHAPIRO: And the briefs are 15-page,
23 double-spaced, limit. Is Ms. Hoffman here? Could you
24 come to the podium?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MS. MOORE LEONHARDT: Before we proceed
2 with Ms. Hoffman, may I have my standing objections noted?
3 Thank you.

4 MR. SHAPIRO: Yes, they're noted.

5
6 SUSAN HOFFMAN
7 having been called as a witness, having been duly sworn,
8 testified on her oath as follows:

9
10 COURT REPORTER: Can you state and spell
11 your name for the record, please?

12 THE WITNESS: Susan Hoffman, H-O-F-F-M-A-N.

13 MR. SHAPIRO: Ms. Hoffman, I'm holding in
14 my hand what's been marked as Exhibit 39, which appears to
15 be the pre-filed testimony you submitted on October 26th.

16 Are you adopting this testimony under oath?

17 THE WITNESS: Yes, I am.

18 MR. SHAPIRO: Okay. I would suggest that
19 Exhibit 39 be admitted as a full exhibit. Attorney Moore
20 Leonhardt?

21 MS. MOORE LEONHARDT: No objection, other
22 than my standing objections.

23 MR. SHAPIRO: Thank you. Attorney
24 Malcynsky?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 MR. MALCYNKY: No objection.

2 MR. SHAPIRO: Attorney Pattis?

3 MR. PATTIS: None, sir.

4 MR. SHAPIRO: Okay. Exhibit 39 will be
5 admitted as a full exhibit.

6 (Whereupon, the above-mentioned document
7 was marked as Exhibit No. 39.)

8 MR. SHAPIRO: Ms. Hoffman, if you wanted to
9 make a brief statement of your position, you may, and then
10 be subject to Cross-Examination.

11 THE WITNESS: Okay, thank you. I'm here
12 today as a concerned citizen, but also as the widow of
13 John Hoffman. My husband, John, was a carpenter by trade
14 and went to a chiropractor out of desperation for lower
15 back pain.

16 At that time, when he made his first visit,
17 I was really reluctant for him to see this chiropractor,
18 because he came home and he told me the chiropractor had
19 already contacted my insurance company. He knew everything
20 about my deductibles, what I had met to date, what John
21 would need to pay per visit, so John and I had a
22 disagreement over treatment.

23 I didn't think he should go. I told him
24 I've never been to a doctor that has contacted my

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 insurance company ahead of time.

2 Out of desperation, as I said, John went,
3 and he started seeing a chiropractor on May 5th of 2004.
4 On August 5, 2004, I came home late from work, and I found
5 John fully conscious, but unable to move his left side or
6 unable to speak, on the landing of our stairs.

7 When I asked him what was wrong, or what
8 happened, he said, "I don't know." I said, "Do you need
9 help?" He said, "I don't know," all of which was in a
10 very slurred voice, but there were no physical signs that
11 anything was wrong, other than he's sitting on the landing
12 of the stairs.

13 I ran to the phone, and I got 9-1-1
14 operator on the line, and I told her that my husband was
15 unable to talk to me. All he could say was "I don't
16 know," and I needed an ambulance.

17 I hung up the phone with her and called my
18 neighbor, who I knew knew CPR, just in case, because I had
19 no idea what was wrong. I hung up the phone, I went back
20 to the landing -- well I went to the door, let my neighbor
21 in, we both went to the landing, and my husband's face had
22 started to droop on the left side.

23 It was obvious to me that he was having a
24 stroke, so my neighbor sat down with him, asked him to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 squeeze her hand with his right hand. He did. She said,
2 "Okay, can you squeeze it with your left hand?" He
3 couldn't.

4 We carried him up the stairs, and when the
5 ambulance got there, they started performing tests on him,
6 looking for diabetes, sugar problems. In the meantime, I
7 was walked through my house with the paramedics. They
8 wanted to examine I guess the contents of my home to see
9 what he was doing, what we were doing when all of this
10 happened.

11 While I was walking around with the
12 paramedic, I made my own mental notes on what I was
13 seeing, and I explained them all to the paramedics. I was
14 like he must have made himself dinner, he must have done
15 this, he must have done that.

16 So then I get to the hospital. John went
17 to the hospital before me. I followed behind. And when I
18 got there, he had already been in for an MRI, and the
19 doctor came to me and said, "Has your husband been in a
20 car accident?" And I said, "No." He said, "Are you
21 sure?" I said, "I'm absolutely positive."

22 He said, "Okay," he said, "We need to
23 figure out when he had the stroke." I said, "I came in, I
24 found him, but I can tell you, when I opened my front

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 door, I heard a dragging sound." To me, in the position
2 John was in, that meant that he put his hands out to the
3 wall to catch himself as that stroke happened, because he
4 didn't fall down the stairs. He was sitting on the
5 stairs.

6 I then went through with the doctor about
7 finding the pan on the stove, how he had dinner, how he
8 had dirt on his shirt, so that meant he had been doing his
9 gardening. Neighbors saw him when he came home. So I'm
10 trying to narrow down the time, because they said that I
11 needed to narrow it down for him to get help, for them to
12 treat his stroke.

13 During this time, someone came to me and
14 said they wanted to admit my husband and they needed his
15 insurance card, so I had been handed John's wallet, and I
16 went into my purse, and, as I pulled out that card, I
17 noticed the appointment card for the chiropractor right
18 next to his insurance card.

19 On the appointment card it said that he had
20 an appointment at 5:00 p.m. August 5th. I didn't know
21 chiropractors could hurt anybody, so I'm all excited,
22 thinking I have now narrowed down this time. I'm going to
23 be able to get John help.

24 As soon as I said to the doctor, I said,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 "Oh, look. He went to the chiropractor. That means he
2 got home an hour later than I thought." And, at that
3 point, the doctor just looked at me and he starts shaking
4 his head, and I was like "What? What's wrong?" And he
5 says, "Everybody knows you never let them near your neck."

6 And I asked him, I said, "What are you talking about?"
7 And that's when he explained to me that they had been
8 told, as emergency room doctors at a conference they had
9 gone to, about strokes being caused by chiropractors.

10 I still couldn't believe it. I mean how is
11 it that I had never heard of that? So my husband laid in
12 a hospital for six days. This is a man, who skydived,
13 played volleyball, did anything and everything you can
14 think of. He then is laying in this bed, unable to speak
15 to me, because it took away his ability to talk.

16 He's unable to move his left side. John is
17 left-handed. I know he's fully aware, because every time
18 somebody walks in, he's trying to straighten himself, so
19 he's presentable to people coming in the room.

20 The doctors told me I needed to tell my
21 husband what happened to him and why he was in the
22 hospital, so I sat down with him, and we communicated
23 through squeezing of the hands, and I asked him if he
24 understood. One squeeze was yes, two squeezes, no. He

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 said yes. I said, "Do you know why you're here?" Two
2 squeezes, no.

3 Then I told him that I really needed him to
4 work hard. He had to go through rehabilitation. It was
5 going to be hard, but I needed him to fight, and if
6 anybody could do it, my husband could.

7 And I said, "You had a stroke, and it
8 wasn't anything you did. It wasn't anything wrong with
9 you. They believe the chiropractor caused your stroke."
10 At that point, my husband squeezed my hand so hard I
11 thought my hand was going to break.

12 And, for the first time in four days, my
13 husband said to me, "I will survive." He knew, as soon as
14 I told him, he put two and two together and he knew.

15 I left my husband on August 3rd, the
16 evening of August 3rd or 4th. I'm sorry. I've got that
17 wrong, too. August 9th. I left him in ICU, trying to
18 watch the Red Skins play football, because that was his
19 team.

20 I received a phone call about 6:30 a.m. the
21 next morning that I needed to get back to the hospital,
22 that my husband had taken a turn. When I got to the
23 hospital, my husband was on life support.

24 I, along with Sharon Mathiason, opted to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 donate my husband's organs, but I had stipulations, that I
2 had to be with my husband to the end, because that's what
3 my marriage vows said, until death do us part. So for a
4 day and a half, I sat and watched my husband as he
5 deteriorated, and I made a promise to him.

6 I laid in his room with him, and I promised
7 him I would make something good come from this. I had no
8 idea what it was going to be, but I was going to make
9 something good happen.

10 I went into the operating room with him on
11 August 11th, and I stayed with him and tried to convince
12 him to fight, to come back to me and not to leave me, and
13 I listened to his heart monitor slow until it stopped, and
14 then I was escorted out, and that was the last time I saw
15 my husband.

16 I went home and I looked up dissected
17 carotid artery, which is what my husband had. The website
18 I came across said there were three causes, three top
19 causes, one being whiplash, which makes sense, since they
20 asked me if he had a car accident, the second was neck
21 manipulation, and the third was severe cough.

22 I was shocked. Even though the doctors had
23 told me, how could people not know? So then I started
24 doing my own research. My research led me to the other

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 victims. It led me to Janet. It led me to Britt, to
2 Christa. I was so angry, and I knew I had to stop
3 somebody else from being hurt. I was 41 years old, and I
4 became a widow. At 41. I mean my husband was 39 and full
5 of life, and, in six days, I watched him go from full of
6 life to dead, and I have come here, I've been here every
7 day, and I've listened, and I've listened to the
8 chiropractors say there's no proof.

9 I have a Death Certificate, and that Death
10 Certificate says that my husband's death was an accident.
11 The cause was an intracerebral infarct, dissection of the
12 carotic artery, caused by cervical manipulation. The
13 address for my husband's accident is the address of the
14 chiropractor's office.

15 I've listened to the Board ask questions
16 about birth control causing stroke. Yes, birth control
17 does cause strokes, but everybody here knows that. Why do
18 they know that? Because we were warned. We were told.
19 Me, personally, when I was married and I had to worry
20 about something like that, I was told. My doctor made me
21 sign a consent form. They also did a full examination to
22 see what other health issues I might have that would cause
23 a stroke.

24 I've listened to the chiropractors come in

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 here and say that somebody must have been having the
2 stroke when they walked into the office, because they had
3 a headache. They had neck pain. Well John didn't. John
4 had lower back pain. John is dead.

5 I do want to change something in my
6 testimony, where I mention another victim that was 32
7 years old named Kim. I apologize. The name is not Kim.
8 It's Wendy.

9 And the reason that I'm bringing this up is
10 I received an e-mail from Michael McCormick after I
11 submitted my testimony to this Board, and he mentioned to
12 me that he noticed that I talked about his wife in my
13 testimony, and that he was very sorry for my loss, and
14 what really struck me and made me very sad was that I
15 wasn't talking about his wife. I was talking about
16 another woman in California.

17 So no matter how many victims we come
18 across, all of us still feel like it was a fluke. It had
19 to be. How could it not be? If it wasn't, why aren't we
20 being told? Why aren't you guys admitting it? Why not
21 tell me and let me decide if my life is worth it? Maybe
22 I'd rather live with lower back pain than be dead. I know
23 my husband would have wanted that.

24 As far as a discharge summary, if John had

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 been told that there was a chance he could have a stroke,
2 as soon as he started feeling any type of symptom, he
3 could have called for help. John did not know. He had no
4 idea, so when that hit, he didn't call anybody, and, as I
5 said, John is dead. Thank you.

6 MR. SHAPIRO: Attorney Moore Leonhardt, do
7 you have any questions?

8 MS. MOORE LEONHARDT: Thank you. I'm very
9 sorry for your loss, Mrs. Hoffman. I have no questions,
10 but I'd like to just direct the Board's attention to the
11 exhibit, which is the Certificate of Death from --

12 MR. SHAPIRO: Attorney Moore Leonhardt, if
13 you don't have a question of this witness, I don't --

14 MS. MOORE LEONHARDT: Well I just want the
15 record to be clear, that there was not a statement on the
16 certificate --

17 MR. SHAPIRO: Okay. That's for closing
18 argument. That's not for making points after witnesses
19 testify. If you don't have questions for this witness --

20 MS. MOORE LEONHARDT: I will ask the
21 witness a question, then.

22 MR. SHAPIRO: Okay.

23 MS. MOORE LEONHARDT: To clarify it,
24 because I was a little confused, and I don't mean to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 belabor the point.

2

3

CROSS-EXAMINATION

4

BY MS. MOORE LEONHARDT:

5

Q Mrs. Hoffman, I'm very sorry to have to ask you
6 this, but I don't want to misunderstand your testimony,
7 and I think you've been through a great deal, so it's not
8 my intent to put you through much more, but if you would
9 take a look at the Death Certificate, please?

10

A Yes.

11

Q Under the category 23A, it indicates the cause
12 of death, and there are three things listed, are there
13 not?

14

A Yes, there are.

15

Q But there's nothing in that category that says
16 the cervical manipulation caused the dissection of carotid
17 artery, is there?

18

A Yes. It gives you the order. It tells you that
19 it was a stroke, which is the infarct. The stroke, which
20 is B, it was caused by the dissection of the carotid
21 artery, and a dissection of the carotid artery is C, which
22 is cervical manipulation.

23

Q And that's your interpretation of that, just so
24 I understand that?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A Actually, no. That's the Medical Examiner's
2 interpretation of that when I was contacted and given the
3 information.

4 Q But in terms of the causation, I'm asking your
5 understanding is that they're in that order, that the
6 cervical manipulation causation statement is not actually
7 contained on that document, is it?

8 A Yes, it is.

9 MS. MOORE LEONHARDT: Thank you. No
10 further questions.

11 COURT REPORTER: One moment.

12 MR. SHAPIRO: Attorney Malcynsky, any
13 questions?

14 MR. MALCYNKY: Just a couple of quick
15 ones, please. Thank you.

16

17 CROSS-EXAMINATION

18 BY MR. MALCYNKY:

19 Q Good afternoon, Ms. Hoffman.

20 A Good afternoon.

21 Q You mentioned the Death Certificate. Did the
22 chiropractor who performed the neck manipulation on your
23 husband, John, admit that he was the cause of the stroke?

24 A No.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Q Did you have a treating physician that offered
2 an opinion on the cause of the stroke?

3 A Yes, I did.

4 Q And what was his opinion?

5 A His opinion --

6 MS. MOORE LEONHARDT: I'd like to just
7 interject, if I may, my standing objection. Thank you.

8 MR. MALCYNSKY: Noted.

9 Q Could you answer the question, please?

10 A His opinion was that the stroke was caused by
11 the neck manipulation.

12 Q Okay and is there a pending lawsuit, or was
13 there a lawsuit against the chiropractor?

14 A Yes, there was.

15 Q Is it pending, or is it settled?

16 A It has been resolved.

17 Q It's been resolved. And did you receive a
18 monetary payment as a result of the resolution of the
19 lawsuit?

20 A Yes, I did.

21 Q Are you free to tell us the amount of money that
22 was recovered?

23 A No, I am not.

24 Q And the reason is?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 A It's part of the gag order.

2 Q So you're prohibited from sharing that
3 information?

4 A Yes.

5 MR. MALCYNKY: Thank you.

6 MR. SHAPIRO: Attorney Pattis?

7 MR. PATTIS: No questions.

8 MR. SHAPIRO: Questions from the Board?

9 Thank you for your testimony. Is Mr. McCormick here?
10 Please swear the witness in.

11

12

MICHAEL McCORMICK

13 having been called as a witness, having been duly sworn,
14 testified on his oath as follows:

15

16 COURT REPORTER: Can you state and spell
17 your name for the record, please?

18 THE WITNESS: I'm sorry?

19 COURT REPORTER: Can you state and spell
20 your name for the record, please.

21 THE WITNESS: Michael McCormick.

22 MR. SHAPIRO: Mr. McCormick, I have in
23 front of me what's been marked as Exhibit 43, which is
24 entitled Pre-Filed Testimony of Michael McCormick,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 Intervenor, October 23, 2009. Are you adopting this
2 testimony as your sworn testimony in this matter?

3 THE WITNESS: I am.

4 MR. SHAPIRO: Okay. If you'd like to make
5 a brief statement before Cross-Examination, you may.

6 MS. MOORE LEONHARDT: Excuse me, Attorney
7 Shapiro. I'd just like to lodge my standing objection.
8 Thank you.

9 MR. SHAPIRO: Thank you. Your standing
10 objection is noted. It doesn't need to be relogged. It's
11 noted for the record. Do you have any objection to
12 Exhibit 43 coming in as a full exhibit, Attorney Moore
13 Leonhardt?

14 MS. MOORE LEONHARDT: Along with my
15 standing objections, no. Thank you.

16 MR. SHAPIRO: Attorney Malcynsky?

17 MR. MALCYNKY: I'm all set. Thank you.

18 MR. PATTIS: None.

19 MR. SHAPIRO: Thank you. Exhibit 43 is
20 admitted as a full exhibit.

21 (Whereupon, the above-mentioned document
22 was marked as Exhibit No. 43.)

23 MR. SHAPIRO: Mr. McCormick, you can
24 proceed.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 THE WITNESS: Okay. Good afternoon. My
2 name is Michael McCormick, and this is my testimony to the
3 State Board of Chiropractic Examiners in support of a
4 Declaratory Ruling on Informed Consent and a Discharge
5 Summary.

6 On July 16, 2006, my wife, Kim, died of a
7 stroke as a result of a chiropractic neck adjustment. She
8 was just 32 years old. Our three children, Sean, Kyle and
9 Abigail, were between the ages of seven months and five
10 years old when their mother died.

11 My testimony is on behalf of myself, my
12 wife, Kim, and our three children to urge you to require
13 that when a chiropractor performs a joint mobilization,
14 manipulation, or an adjustment of the cervical spine, he
15 or she obtains informed consent from a patient and offers
16 a discharge summary prior to the procedure, recognizing
17 the risk and/or possibility of the occurrence of a stroke
18 or cervical artery dissection as a side effect.

19 Such a requirement will help to insure that
20 patients are properly advised of the risks of this type of
21 procedure, including the risks of chiropractic stroke and
22 death.

23 My wife, Kim, had been suffering from
24 headaches in July of 2006, which her primary care

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 physician diagnosed as tension headaches caused by stress.

2

3 This made sense to us, as Kim had recently
4 decided to leave work after the birth of our third child
5 to care for the kids full-time. She consulted with a
6 chiropractor and was considering a cervical spine
7 manipulation.

8 I was with Kim as the chiropractor
9 explained to her the benefits of the procedure and how it
10 could help with her headaches. Not once did the
11 chiropractor mention that the procedure carried with it a
12 risk of stroke or possibly death.

13 I can assure you that had my wife known
14 that there was even a remote possibility that she could
15 die from the procedure, leaving her three children without
16 a mother, she never would have taken that risk.

17 I was also with Kim on the evening of July
18 15, 2006 when she suffered her stroke. It was less than
19 an hour after the chiropractic adjustment. I found her in
20 a chair with her head resting on the table and a cold
21 compress on her neck.

22 She told me she felt nauseous and that she
23 was going to be sick. I helped walk her to the bathroom,
24 but all she could do is dry heave. Within minutes, she

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 was unconscious. By 6:00 the following morning, I was
2 told that my wife was legally brain dead, due to the lack
3 of oxygen to her brain.

4 An autopsy determined that the cause of
5 death was a stroke, resulting from the dissection of both
6 of her vertebral arteries during the cervical spine
7 manipulation.

8 You likely have heard testimony that the
9 cervical spine manipulations are safe and that
10 chiropractic stroke is a rare occurrence. I have heard
11 chiropractors claim that it never happens, or that it
12 happens maybe once in millions of adjustments.

13 I do not know what the statistics are
14 exactly, but I do know that if that one person was your
15 wife, your mother, your child, your sister, or your
16 friend, those statistics would provide little comfort.

17 How many times does this have to happen?
18 How many lives need to be altered, disrupted, or, in my
19 family's case, changed forever before something is done?

20 I have been a single dad for over three
21 years now, and while it has gotten easier, I'm still
22 heartbroken for my children over the loss of their mother.

23 She was an exceptional person, and they will never really
24 get to know how much they meant to her.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 With this in mind, I urge you to vote to
2 issue a Declaratory Ruling on Informed Consent and a
3 discharge summary to help insure that what happened to my
4 family does not happen to someone else's. Thank you.

5 MR. SHAPIRO: Thank you. Attorney Moore
6 Leonhardt, do you have any questions?

7 MS. MOORE LEONHARDT: Thank you. Good
8 afternoon, Mr. McCormick.

9 THE WITNESS: Good afternoon.

10 MS. MOORE LEONHARDT: Sorry for your loss.

11 THE WITNESS: Thank you.

12 MS. MOORE LEONHARDT: I have no questions.

13 MR. SHAPIRO: Attorney Malcynsky?

14 MR. MALCYNKY: I have no questions at this
15 time. Thank you.

16 MR. SHAPIRO: Attorney Pattis?

17 MR. PATTIS: None.

18 MR. SHAPIRO: Thank you, Mr. McCormick, for
19 your testimony.

20 THE WITNESS: Thank you very much.

21 MR. SHAPIRO: One recordkeeping matter. I
22 have marked Exhibit 42, which is the testimony of Dr.
23 Long, as an exhibit for ID only.

24 (Whereupon, the above-mentioned document

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 was marked as Exhibit No. 42 for identification only.)

2 MR. SHAPIRO: It's my understanding that
3 there are no further witnesses today, and that we will
4 have Dr. Katz, Dr. Cassidy and Dr. Pearl on Friday, and
5 that briefs will be due on February 1st if we finish the
6 hearing on Friday.

7 Also, as a courtesy of the Board, if the
8 briefs can also be e-mailed to Mr. Kardys, in addition to
9 being filed in the regular course, it would be
10 appreciated. Is there anything further, Attorney Moore
11 Leonhardt?

12 MS. MOORE LEONHARDT: Yes. Attorney
13 Shapiro, you asked me to bring the curriculum vitae for
14 Dr. David Cassidy, who authored the Cassidy Study that
15 we've heard much about, and I do have that to submit to
16 the Board and to the parties and intervenors.

17 MR. SHAPIRO: Okay. Why don't you put it
18 at the podium where people are testifying? And, also,
19 bring one copy to Mr. Kardys, and then we can offer it
20 into evidence on Friday.

21 Attorney Malcynsky, is there anything
22 further?

23 MR. MALCYNKY: No. I have nothing further
24 at this point. I believe we have an excepted order of

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

1 witnesses for Friday, and we're ready to proceed on that
2 basis.

3 MR. SHAPIRO: Okay. Attorney Pattis?

4 MR. PATTIS: Don't ask again. I might
5 think of something. Nothing.

6 MR. SHAPIRO: We all set? Okay.

7 MS. MOORE LEONHARDT: Nothing further.

8 MR. SHAPIRO: Okay, thank you.

9 (Whereupon, the hearing adjourned at 4:26
10 p.m.)

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

INDEX OF WITNESSES

	PAGE
DR. DOUGLAS FELLOWS	
Testimony of Dr. Fellows	10
Cross-Examination by Ms. Moore Leonhardt	10, 54
Cross-Examination by Mr. Malcynsky	29, 51
Cross-Examination by Mr. Pattis	32
Examination by Dr. Powers	40, 49
Examination by Dr. Imossi	42, 56
Examination by Mr. Pacileo	72
DR. GEORGE CURRY	
Direct Examination by Ms. Moore Leonhardt	81
Cross-Examination by Mr. Malcynsky	85
Cross-Examination by Mr. Pattis	103
Examination by Ms. Rexford	138
Examination by Dr. Powers	141
Examination by Dr. Imossi	142
JANET LEVY	
Testimony of Janet Levy	151
Cross-Examination by Ms. Moore Leonhardt	161
Redirect Examination by Mr. Malcynsky	166
Redirect Examination by Mr. Pattis	183
BRITT HARWE	
Direct Examination by Mr. Pattis	188
Cross-Examination by Ms. Moore Leonhardt	194
Redirect Examination by Mr. Pattis	202
CHRISTA HECK	
Testimony of Christa Heck	207
Cross-Examination by Ms. Moore Leonhardt	210
Cross-Examination by Mr. Malcynsky	214
Cross-Examination by Mr. Pattis	217

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

SENATOR LEONARD FASANO		
Testimony of Senator Leonard Fasano		219
Cross-Examination by Mr. Malcynsky	223, 235,	241, 243
Cross-Examination by Mr. Pattis		224
Examination by Mr. Pacileo		227
Examination by Dr. Robotham		229
Examination by Dr. Powers	230,	234
Examination by Chairman Scott	233,	234
Cross-Examination by Ms. Moore Leonhardt	236,	242
SUSAN HOFFMAN		
Testimony of Susan Hoffman		246
Cross-Examination by Ms. Moore Leonhardt		256
Cross-Examination by Mr. Malcynsky		257
MICHAEL McCORMICK		
Testimony of Michael McCormick		261

INDEX OF EXHIBITS

DESCRIPTION	NUMBER	PAGE
Notice of Continued Hearing, 1/7/10	60	2
Order Regarding Hearing Protocol, Two Pages	61	3
Request from Medical Board to Testify Out of Turn, 1/12/10	62	3
Ruling on Request to Testify Out of Turn	63	4
Letter from Attorney Malcynsky, Two Pages, 1/18/10, & E-Mail, 1/18/10, from Dr. Walsman to Mr. Kardys & E-Mail from Susan Hoffman, 1/17/10 (ID)	64	5
E-Mail from R. Hendrickson, 1/18/10 (ID)	65	8
E-Mail from Ms. Hoffman, 1/17/10 (ID)	66	8

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT
JANUARY 19, 2010

Pre-Filed Testimony of the Medical Board	37	13
Article, What Doctors Should Believe	67	39
Testimony of the Connecticut Chiropractic Council	33	89
Pre-Filed Testimony, Victims of Chiropractic Abuse	34	151
Rebuttal Testimony, Victims of Chiropractic Abuse	46	151
Pre-Filed Testimony, CSAG	35	189
Rebuttal Testimony, CSAG	47	189
Letter to ChiroSecure, 12/9/09	68	204
Testimony of Christa Heck	40	206
Pre-Filed Testimony of Senator Fasano	38	219
Pre-Filed Testimony of Susan Hoffman	39	246
Pre-Filed Testimony of Michael McCormick	43	260
Testimony of Dr. Long (ID)	42	265