

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

\* \* \* \* \*

RE: DECLARATORY RULING PROCEEDING JANUARY 6, 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 6, 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 6, 2010 at 9:00 a.m. . . .

7  
8  
9  
10 CHAIRMAN MATTHEW SCOTT: The schedule for  
11 today will be very similar to the one yesterday. During  
12 the course of the morning, we'll have a 10-minute break.

13 (Off the record)

14 COURT REPORTER: Try it again.

15 CHAIRMAN SCOTT: Good morning. We're about  
16 ready to begin.

17 (Off the record)

18 CHAIRMAN SCOTT: Okay? Good morning,  
19 again. My name is Dr. Matthew Scott, and our agenda today  
20 is going to be followed very similar as we did yesterday.

21 During the course of the morning, we'll have a 10-minute  
22 break. We'll have lunch at between 12:00 and 12:30 again,  
23 and then we'll be concluding at 4:45. So, at this time,  
24 we're going to begin.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. DANIEL SHAPIRO: As we discussed at the  
2 end of the hearing yesterday, we're going to go out of  
3 order to accommodate the schedule of Attorney Bellamy, who  
4 has traveled from afar to be here today, and the parties  
5 have all agreed to do that, so we're going to take the  
6 first testimony of an intervenor, the Campaign for  
7 Science-Based Healthcare. Attorney Bellamy, you can go  
8 ahead.

9 MS. MARY ALICE MOORE LEONHARDT: Excuse me,  
10 Assistant Attorney General Shapiro. For the record, my  
11 name is Mary Alice Moore Leonhardt, and I represent the  
12 Connecticut Chiropractic Association and the Connecticut  
13 Chiropractic Council.

14 At this time, I would like to renew my  
15 motion in limine to preclude evidence or strike evidence  
16 that has been pre-filed to the extent that it makes any  
17 reference to the terminology subluxation. May I proceed  
18 on my motion?

19 MR. SHAPIRO: You may.

20 MS. JANN BELLAMY: Excuse me. Mr. Shapiro,  
21 I don't know what motion she's talking about. I did not  
22 receive a copy of any motion.

23 MR. SHAPIRO: I received a copy just  
24 minutes before the hearing. I don't know if counsel has

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 provided a copy to all intervenors or not.

2 MS. MOORE LEONHARDT: My question is  
3 whether this intervenor is represented by counsel today.

4 MS. BELLAMY: I thought we were  
5 entertaining a motion about subluxation.

6 MS. MOORE LEONHARDT: But may I just  
7 inquire if you are represented by counsel?

8 MS. BELLAMY: I am an attorney, but I'm  
9 here as President of Campaign for Science-Based  
10 Healthcare.

11 MS. MOORE LEONHARDT: Okay.

12 MR. SHAPIRO: Okay. Attorney Moore  
13 Leonhardt, did you provide the intervenors with copies of  
14 your motion?

15 MS. MOORE LEONHARDT: I have a copy that  
16 I'm providing now to the intervenor. I was directed  
17 yesterday not to proceed with my motions and to refrain  
18 from filing them until the witness appeared that had the  
19 testimony or evidence that was pertinent to my motion, and  
20 I have not filed it because of that reason.

21 MR. SHAPIRO: I think there's some  
22 miscommunication about what the directions were or if  
23 there were directions on that issue, but, at any rate, I  
24 have the motion. I don't know if the other parties have

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the motion or not. Attorney Pattis?

2 MR. NORMAN PATTIS: The Chiropractic Stroke  
3 Awareness Group has the motions, Judge, but I would  
4 request that the relief be denied for failure to comply  
5 with the customary rules of an adversarial proceeding and  
6 even the courtesies of one.

7 If this intervenor has not been provided  
8 with copies of the motion, she clearly can't respond to  
9 them. The argument on the merits of the motion was  
10 deferred, but I don't think the responsibility to provide  
11 those who have an interest in the proceeding with notice  
12 and timely notice of legal positions taken, was waived, or  
13 otherwise excused, so I would ask that the failure to  
14 provide these motions to the intervenor be used as grounds  
15 for denying them.

16 MR. SHAPIRO: Attorney Malcynsky, do you  
17 have a --

18 MR. JAY MALCYNKY: Yeah. I would join in  
19 that objection.

20 MS. MOORE LEONHARDT: Well this is entirely  
21 proper to raise a motion to exclude an objection in the  
22 course of any administrative proceeding, so if the Board  
23 would prefer that I proceed with it as an oral motion, as  
24 I'm certainly entitled to do and is customary and usual in

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the course of any administrative proceeding, civil  
2 proceeding, or criminal proceeding, for that matter, as  
3 both counsel to my right and left are well aware, I'd be  
4 happy to proceed as an oral motion.

5 MR. PATTIS: The orders of these  
6 proceedings were crystal clear, that all pleadings were to  
7 be certified to all parties. These weren't. They were  
8 provided to me. I had certainly seen them yesterday  
9 morning, but they weren't apparently provided to the  
10 intervenors, and this now amounts to trial by ambush.

11 MS. MOORE LEONHARDT: Not really. It's a  
12 proper motion that I'm raising as the evidence is  
13 attempting to be offered, and I ask that we have an  
14 opportunity to proceed with the motion.

15 MR. PATTIS: The testimony was pre-filed in  
16 October. There's been months of notice. This is an  
17 attempt to conduct trial by ambush.

18 MR. MALCYNSKY: And, clearly, the person  
19 most prejudiced by your failure to provide the motion in a  
20 timely manner is the witness, who has already expressed  
21 her concern that she has not had a chance to review the  
22 motion in a timely way. I would join in the objection.

23 MS. MOORE LEONHARDT: Actually, the motion  
24 was raised yesterday, so the witness was on notice.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. MALCYNSKY: The witness was never  
2 presented with a copy of the motion.

3 MS. MOORE LEONHARDT: I move my oral  
4 motion, then.

5 MR. SHAPIRO: Okay.

6 MS. MOORE LEONHARDT: If the Board is not  
7 inclined to hear the written motion, I move my oral  
8 motion.

9 MR. SHAPIRO: And will note, and I think  
10 Attorney Pattis' comment is well taken, it was what I was  
11 about to say, is that part of the reason that testimony  
12 was required to be pre-filed in this matter is that so all  
13 interested persons had an opportunity to review it, so  
14 that there was some -- the Board was aware of what  
15 testimony would be coming in, the parties would be aware,  
16 the intervenors would be aware of what the nature of the  
17 testimony was, and if there are objections to that, I  
18 certainly think it would be appropriate, given that it was  
19 received on or about October 27th to file motions in  
20 limine or to file other objections long before yesterday,  
21 at the earliest, and today, at the latest, so I think  
22 that's an important thing for the Board to note.

23 And I think, based on the fact that  
24 Attorney Bellamy has not had an opportunity to read these

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 motions, there's case law cited in these motions, she's  
2 not had an opportunity to look at those cases to really  
3 understand. To give her, you know, 10, 15 minutes to read  
4 these motions and respond I think would be inadequate from  
5 her perspective and maybe from the perspective of other  
6 intervenors, as well.

7 So, counsel, if you want to make a motion  
8 orally, there's no bar to doing that.

9 MS. MOORE LEONHARDT: Thank you.

10 MR. SHAPIRO: And we'll hear it. And it  
11 may be that the Board ends up ruling on a question-by-  
12 question basis, in terms of relevancy issues and hearing  
13 arguments of the party, but if you want to make brief  
14 remarks with respect to a motion, you can do that.

15 I will mark these motions for  
16 identification only for the record, and I'll indicate to  
17 the parties and intervenors what those markings have been  
18 a few minutes later.

19 MS. MOORE LEONHARDT: Thank you, Assistant  
20 Attorney General Shapiro and members of the Board. I  
21 would hereby note in the record that the Notice of Hearing  
22 does not speak to any deadline for pre-filing motions.

23 The rules of practice for the Department of  
24 Public Health do not set forth any requirements, in terms



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 of a time frame for filing motions, and I appreciate the  
2 opportunity to file this oral motion at this time, which  
3 is also an objection.

4 The objection is based on the following.  
5 Throughout the materials and the proposed testimony of  
6 this witness, who is not an expert, the materials and  
7 proposed testimony are replete with relation to references  
8 to the term subluxation, an indictment, or an attempt to  
9 indict the efficacy of chiropractic care, the necessity of  
10 chiropractic care, the effectiveness of chiropractic care.

11 And in view of the limited nature and scope  
12 of this hearing, I propose to you, members of the Board  
13 and counsel, that any such testimony would be irrelevant,  
14 immaterial and not probative of the matter before the  
15 Board, and, for that reason, I would suggest that it be  
16 excluded.

17 Furthermore, the concept and notion and  
18 practicality and use of the term subluxation in connection  
19 with chiropractic care is not specifically within the  
20 notice of this hearing, and to the extent that the Board  
21 permits this witness to proceed with testimony on that  
22 topic, it is beyond the scope of matters noticed and would  
23 be in excess of this Board's authority at this time and  
24 violative of the constitutionality of notice and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 opportunity to be heard that is implicit and protected  
2 under the Uniform Administrative Procedures Act.

3 For those reasons, I move to exclude any  
4 such testimony at this time. Thank you.

5 MS. BELLAMY: Mr. Shapiro, may I reply?

6 MR. SHAPIRO: What I'm going to do is I'm  
7 going to allow the parties to reply first, and then I'm  
8 going to allow you to reply right after that.

9 MS. BELLAMY: Yes, sir. Thank you.

10 MR. SHAPIRO: Attorney Malcynsky, do you  
11 have a response?

12 MR. MALCYNKY: I continue to feel that  
13 this is, you know, a tactic, you know, to continue this  
14 delay of the issues that are required to get before this  
15 panel.

16 I would encourage Attorney Moore Leonhardt  
17 to allow us to proceed to hear evidence, evidence that she  
18 has been aware since the pre-filing of the evidence, and  
19 the pre-filing of the testimony, and the rebuttal  
20 testimony, and just end this charade.

21 MR. SHAPIRO: Attorney Pattis?

22 MR. PATTIS: I think there's broad  
23 agreement among counsel, that what is important for this  
24 tribunal to consider is the scope of informed consent and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 that there is broad agreement that, in Connecticut, that  
2 is governed by the lead case of Logan versus Greenwich  
3 Hospital, and that talks about four things that an  
4 informed consent disclosure should cover, first, the  
5 nature of the procedure, second, the risks and hazards of  
6 the procedure, third, the alternatives of any given  
7 procedure, and, four, the anticipated benefits of the  
8 procedure.

9 To the degree that this witness's or this  
10 intervenor's testimony relates to efficacy, it's not  
11 intended, at least as I read the testimony, to be an  
12 invitation for this Board to disband the practice of  
13 chiropractic medicine in Connecticut.

14 It is, however, an important consideration  
15 to hear, insofar as the scope of informed consent is  
16 concerned. The chiropractors and the industry believes  
17 that there is a great efficacy to the treatment, and many  
18 patients swear by the treatment that they've received.

19 Our statute speaks of subluxation, so to  
20 contend that somehow we're not on notice that that might  
21 be an issue flies in the face, quite frankly, of reason.

22 I do think it is important in evaluating  
23 what a consumer of these services needs to know is whether  
24 a consumer is informed about, in the nature of the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 proceeding, about the contested value of some of the  
2 proceedings as regards some procedures. I attempted  
3 yesterday to get into bedwetting as an example.

4 There are chiropractors who believe that  
5 their services can effectively remediate that. There are  
6 others and other physicians who don't. So I believe that  
7 this witness's testimony is foursquare within the factors  
8 recited by Logan versus Greenwich Hospital.

9 She's not here to indict the industry, or  
10 to ask that it be disbanded, although that may be a secret  
11 fantasy she harbors. She can be asked that on Cross-  
12 Examination.

13 I think she is here to illuminate the Board  
14 on her industry's or on her perspective about informed  
15 consent, and efficacy is relevant, insofar as a patient is  
16 advised or not advised about whether they should place  
17 their health at risk for something that is of debatable  
18 value, so I oppose the motion in limine on those grounds.

19 MS. MOORE LEONHARDT: Before Ms. Bellamy  
20 proceeds, is she presenting as an attorney?

21 MS. BELLAMY: Mr. Shapiro, I think you  
22 said, after the parties spoke, that I could speak.

23 MR. SHAPIRO: That's correct.

24 MS. BELLAMY: So I'd like to proceed.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: You can go ahead.

2 MS. BELLAMY: I would like to basically  
3 adopt Mr. Pattis' argument and only add a couple of  
4 additional things. This argument was made, as you,  
5 yourself, have noted, in a pleading filed in October of  
6 last year.

7 We were given about a month to file  
8 rebuttal. This was not mentioned, to my knowledge, in any  
9 party's rebuttal testimony. Third, I'm reading from the  
10 motion that was just handed to me.

11 "This is to certify that an original and  
12 seven copies were served on the Board and copies were  
13 hand-delivered on this fifth day of January 2010 to the  
14 following. Campaign for Science-Based Healthcare."

15 I think it's most unfair to allow Ms. Moore  
16 Leonhardt to continue with her argument. Basically,  
17 you're allowing her to violate the rule that documents be  
18 served by arguing it orally, and I think that's just  
19 basically unfair to the parties.

20 MS. MOORE LEONHARDT: If I may just respond  
21 to that, I was directed by Attorney General Shapiro not to  
22 move on these motions yesterday, and, for that reason,  
23 although they were prepared to be filed and served  
24 yesterday and I had my certification done for the 5th of

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 January, we abided by the direction from counsel to the  
2 Board, and we renew it today, which is entirely  
3 appropriate and often occurs in these proceedings.

4 I would just simply state that to the  
5 extent that Attorney Pattis has certainly agreed that one  
6 of the offers of proof for the sublaxation argument is to  
7 contest the value of chiropractic, that is not why we are  
8 here, and it's an effort on the part of your group and the  
9 other groups that are here before the Board and other  
10 parties before the Board to expand the scope of this  
11 hearing way beyond the very narrow issue that the Board  
12 set up at a meeting last summer, and we object to that.

13 And to the extent that the Board is going  
14 to expand the hearing, then we are going to ask for  
15 additional days and additional opportunities to pre-file  
16 testimony to respond to the expanded scope of the hearing.

17 Thank you.

18 MR. PATTIS: May I respond briefly? First,  
19 there was adequate opportunities to respond to the  
20 Campaign for Science-Based Healthcare's pre-filed  
21 testimony and there wasn't any rebuttal.

22 Second, I take Attorney Bellamy to  
23 effectively be asking for a sanction and that sanction to  
24 preclude the chiropractors from proceeding on this

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 argument for willful failure to abide by an order, a  
2 standing order of every tribunal in Connecticut.

3 When you certify that you've given  
4 something to someone, it doesn't matter whether the motion  
5 is going forward that day. That certification is, in  
6 effect, an oath that you have done or refrained from doing  
7 a certain act.

8 The act wasn't done. Ms. Bellamy is being  
9 sandbagged. Ms. Bellamy's testimony has been in the  
10 possession of the chiropractors for months now. If they  
11 had issues, they could have timely raised them, or they  
12 could have even given her the courtesy of rebutting her.

13 MR. MALCYNSKY: And I would also remind the  
14 Board that I think it's irrelevant and only actually makes  
15 Mr. Pattis' and Ms. Bellamy's point more emphatic, that  
16 Attorney Leonhardt said that she filed the motions  
17 yesterday.

18 That's the point. The point is you filed  
19 the motions yesterday. The pre-filed testimony and the  
20 direct testimony has been on file for months. I do think  
21 this is a tactic, as I said earlier, and Ms. Bellamy is  
22 available for Cross-Examination if you have any  
23 objections. We certainly know you're not shy in  
24 exercising them, and we'll have an opportunity to hear

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 them during her testimony.

2 MR. PATTIS: Mr. Chairman, may I make a  
3 request? I was admonished privately by one member of the  
4 Board yesterday to avoid side chatter with counsel, and I  
5 take that to heart. Can we all be reminded to address our  
6 comments to the tribunal, rather than one another? That  
7 would help depersonalize things.

8 MR. SHAPIRO: I think that makes sense.  
9 Attorney Bellamy, I agree with the substance of the  
10 comments that you've made, and that's one of the reasons  
11 that we've rejected admitting those motions into evidence.

12 I wouldn't recommend to the Board that  
13 objections, as to relevance, be precluded, but I do think  
14 that your point is well-taken and the point of the other  
15 party is well-taken, about the timeliness of these  
16 motions, given that pre-filed testimony was done months  
17 ago, and rebuttal testimony was also due months ago.

18 So, with that said, would you like to make  
19 any comments regarding the substance of the motion,  
20 itself? I don't know if you were finished with your  
21 comments.

22 MS. BELLAMY: Well only that the very issue  
23 of efficacy and effectiveness were brought up in the  
24 petition, itself, to intervene. The party, Ms.



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Leonhardt's, I'm sorry, Moore Leonhardt's party that she  
2 represents in their petition goes through these four  
3 factors as being relevant to the decision on informed  
4 consent, and, in fact, the Supreme Court of Connecticut  
5 has said -- you look at the four factors, but what you are  
6 going for is an informed patient, and that is the ultimate  
7 goal of informed consent.

8 It's not just a laundry list, and one  
9 cannot be considered without the other. Risk can never be  
10 considered in a vacuum. It's always compared to benefit  
11 in any sort of consideration, medical, chiropractic,  
12 dental, any other kind of health care practice.

13 MS. MOORE LEONHARDT: I object and move to  
14 strike that as an attempt by a lay witness to testify and  
15 to offer some aspect of some expertise on risk. This  
16 witness is not presenting a legal argument. To the extent  
17 that she's presenting a legal argument, I would ask that  
18 she present herself and her legal credentials to the Board  
19 before she proceeds any further.

20 Finally, the petition for Declaratory  
21 Ruling was, indeed, presented to this Board long ago. The  
22 Board took it, the Board reviewed the four questions that  
23 were raised by the petition, and then disregarded the four  
24 and narrowed the questions and created its own question,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 so we are now proceeding on a question that was developed  
2 and written by the Board and we're ready to go.

3 MR. PATTIS: I would request that the  
4 Hearing Officer, whoever is in charge here, in fact, act  
5 in charge. We've had multiple objections, and  
6 interruptions, and comments, and speeches, and testimonial  
7 narrative from a non-witness in this case, and Ms. Bellamy  
8 was just cut off from making her offer of proof.

9 I think these hearings would go far more  
10 smoothly if we had the leadership of a quasi judicial  
11 officer, who admonished counsel not to interrupt a witness  
12 in the middle of a sentence when they're making an offer  
13 of proof with what amounts, frankly, to legal chatter.

14 MR. SHAPIRO: I would recommend to the  
15 Board that they overrule the objection of Attorney Moore  
16 Leonhardt with respect to the testimony that Attorney  
17 Bellamy has given.

18 I think, in this situation, I certainly  
19 will defer to the Board on relevancy grounds. It may, in  
20 fact, be easier and necessary, given the complexity of the  
21 issues, to rule on relevancy issues on a case-by-case and  
22 question-by-question basis, rather than to make a blanket  
23 statement, as to what topics can or cannot be discussed.

24 I think that the Board's intent, as I

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 understand it, is to insure that the hearing is both fair  
2 and it is on relevant grounds, and I think that's the goal  
3 of the Board, is to hear relevant evidence, but it may be  
4 necessary to do it on a question-by-question basis, rather  
5 than making blanket statements about topics. I'll let the  
6 Board decide that.

7 MR. MALCYNSKY: If I could be heard? I  
8 would agree with Attorney Shapiro on his suggestion, and  
9 if the Board is going to entertain Attorney Moore  
10 Leonhardt's objection to getting into the subject of risk,  
11 I would just remind the Board that we heard hours of  
12 testimony yesterday, which was replete with a discussion  
13 of risk and the assessment of risk of a stroke from neck  
14 manipulation from every witness that appeared yesterday.

15 I think she's clearly as qualified as  
16 anyone that discussed the topic yesterday, and it's a  
17 central topic to the subject matter of this hearing. It's  
18 absurd for her to try to disqualify a discussion of risk.

19 MS. MOORE LEONHARDT: Excuse me. I'd like  
20 to clarify my objection. My objection was not with regard  
21 to risk. It was that the witness has not yet been sworn,  
22 she has not been presented under Direct, and we are simply  
23 engaging in an argument with regard to the proposed  
24 admission of testimony, which she proposes to offer.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   So for her to try to sneak in her testimony  
2 during what is argument and legal argument is  
3 inappropriate. That's my objection. She's a lawyer,  
4 apparently, although I've asked several times, and she  
5 hasn't answered the question of whether she's licensed to  
6 practice law, or whether she's --

7                   MR. MALCYNISKY: Attorney Shapiro?

8                   MR. SHAPIRO: Attorney Leonhardt, excuse  
9 me. You'll have an opportunity to Cross-Examine this  
10 witness after.

11                   MS. MOORE LEONHARDT: I --

12                   MR. SHAPIRO: Attorney Leonhardt, she  
13 doesn't have any independent responsibility to answer your  
14 questions in this context at this point in time.

15                   MS. MOORE LEONHARDT: Thank you, Attorney  
16 Shapiro. My other --

17                   MR. SHAPIRO: I would recommend to the --

18                   MS. MOORE LEONHARDT: If I may just finish?

19                   MR. SHAPIRO: You may not just finish right  
20 now. You may not just finish right now. I would  
21 recommend to the Board that that objection be overruled,  
22 and that I'd like the witness to be sworn, again, just  
23 procedurally.

24                   We need to make sure each witness is sworn

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 at the time they assume a position up at the table, and  
2 we'll have you adopt anything that you said and certify  
3 that that was also made under oath and you swear to the  
4 accuracy of it.

5 MS. MOORE LEONHARDT: Attorney Shapiro, I  
6 don't mean to belabor the point, but may I just understand  
7 your ruling?

8 MR. SHAPIRO: It's not my ruling. It's the  
9 ruling of the --

10 MS. MOORE LEONHARDT: Has the issue --

11 DR. PAUL POWERS: I'd like to make a  
12 motion. Before I make the motion, I want to remind  
13 everybody to stop talking over each other. This is  
14 getting ridiculous. Talk to the Board. We'll make the  
15 determinations. Once someone stops talking, if you could  
16 pause for three seconds, so the Board has an opportunity  
17 to either make a ruling, or ask for continuing, we'd  
18 appreciate it.

19 At this point, I'd like to make a motion to  
20 overrule the objection, and, in the process of that, I'd  
21 like to remind everybody that we have a very narrow  
22 question in front of us, and that any issues pertaining to  
23 this are narrowed to relevant topics to the question.

24 So my motion is to overrule the objection,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 and we'll handle it on a case-by-case basis during the  
2 questioning. Thank you.

3 MR. SHAPIRO: Okay. Could we have the  
4 witness sworn in, please? Oh, I'm sorry.

5 CHAIRMAN SCOTT: Do we have a second?

6 A MALE VOICE: Yes, I'll second the motion.

7 CHAIRMAN SCOTT: Do we have any discussion?  
8 Okay. All in favor?

9 ALL: Aye.

10 CHAIRMAN SCOTT: Any opposed? So carried.  
11 Swear in the witness.

12

13

JANN BELLAMY

14 having been called as a witness, having been duly sworn,  
15 testified on her oath as follows:

16

17 MR. SHAPIRO: And, Attorney Bellamy, do you  
18 also swear under oath that the testimony you've already  
19 provided was true and accurate to the best of your  
20 knowledge?

21 MS. BELLAMY: Yes, sir.

22 MR. SHAPIRO: You may proceed with a brief  
23 position statement, and then, following that, adopt your  
24 testimony under oath and be subject to Cross-Examination.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: I'm sorry to  
2 interrupt, Mr. Shapiro, but I understand that the witness  
3 may be in the process of offering a PowerPoint  
4 presentation. Forgive me if I'm wrong.

5 MR. SHAPIRO: You're wrong, counsel.

6 MS. MOORE LEONHARDT: Thank you.

7 MR. SHAPIRO: There will be no PowerPoint  
8 presentation.

9 MS. MOORE LEONHARDT: Thank you.

10 MS. BELLAMY: I'd just like to get in my  
11 name at this point, if that would be okay. My name is  
12 Jann Bellamy. I'm the founder and president of the  
13 Campaign for Science-Based Healthcare.

14 I want to thank the Board for allowing my  
15 presence here and, also, for the consideration given by  
16 Dr. Scott and the members of the Board, Mr. Shapiro,  
17 counsel and other parties, to my schedule.

18 I'd like to just make a brief summary of my  
19 testimony, so we can move along. And, no, I'm not giving  
20 a PowerPoint, because it doesn't work. I'm going to start  
21 with what I'll call Basic Anatomy I. We've heard some  
22 testimony about this yesterday briefly.

23 According to the neurological literature --

24 MS. MOORE LEONHARDT: I'd like to object

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 before this witness presents anything on Basic Anatomy I.  
2 I don't believe that there's a foundation that's been laid  
3 to qualify her in any capacity as an expert to produce  
4 testimony on anatomy.

5 She represents herself as a J.D., and we  
6 haven't reviewed her qualifications at all, and until and  
7 unless she is qualified as an expert, she is not in a  
8 position to give a presentation on basic anatomy or  
9 anything scientific that would call for some expert  
10 involvement. Thank you.

11 MR. SHAPIRO: It's my understanding that  
12 Attorney Bellamy is not attempting to offer expert  
13 testimony, you'll have an opportunity to Cross that, and  
14 that the Board understands that this is not expert  
15 testimony. Is that accurate, Attorney Bellamy?

16 MS. BELLAMY: Before I was interrupted, I  
17 was going to quote from a book, called Samuel's Office  
18 Practice of Neurology, 2003. It is a basic neurology  
19 textbook.

20 MR. SHAPIRO: Yeah. I would recommend to  
21 the Board that the objection be overruled and that  
22 Attorney Bellamy be allowed to summarize her testimony.

23 CHAIRMAN SCOTT: So carried.

24 MS. BELLAMY: And I will just summarize



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 this and not actually quote it, if I'd be permitted to do  
2 so. We talked a bit about the biology and the biological  
3 plausibility of rotation injuring the vertebral artery,  
4 and, according to Dr. Samuels and his basic textbook on  
5 neurology, the vertebral artery is susceptible to  
6 traumatic injury, because it's encased in the bony part of  
7 the cervical canal.

8 And either spontaneously or after minor  
9 trauma from neck manipulation, the artery may be injured  
10 and a section with luminal compromise and clot  
11 immunization may occur. This is a common cause of stroke,  
12 especially in younger patients without other vascular risk  
13 factors.

14 Moving further along in the basic anatomy  
15 text, this from Mohr, Stroke, Pathophysiology, Diagnosis  
16 and Management, 2004. I'm sorry. I said anatomy. I  
17 meant neurology. The vertebral artery is the most mobile  
18 and most susceptible to mechanical injury at the C-1, C-2  
19 level, as it leaves the transverse foramen of the axis and  
20 abruptly turns to enter the intercranial cavity. The C-1,  
21 C-2 site is involved in one-half to two-thirds of all  
22 vertebral artery dissections.

23 Now on to the point here. What are the  
24 risks? Now prior to --

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: I'd like to object to  
2 this witness rendering any opinion, expert opinion  
3 testimony on risk. To the extent that she is citing to  
4 journal articles that she has collected and they're  
5 reflected in the document that she's pre-filed, I think  
6 the Board certainly can read those articles and can read  
7 the excerpts within the testimony.

8 It's not necessary for this witness to  
9 recite those and belabor this hearing. Furthermore, if  
10 she is attempting to issue an opinion, she hasn't been  
11 qualified as an expert, and it would be improper to permit  
12 her to do so now.

13 MR. MALCYNSKY: Excuse me. If I may be  
14 heard?

15 MR. SHAPIRO: I think I may be able to  
16 solve this issue, without you being heard. It's my  
17 understanding that Attorney Bellamy's testimony is not  
18 being offered as expert testimony. She's not being  
19 considered by this Board as an expert, that all parties  
20 will have an opportunity to Cross-Examine, and that the  
21 Board can give her testimony whatever weight it deems  
22 proper, and, for those reasons, I would recommend to the  
23 Board that they overrule the objection of Attorney Moore  
24 Leonhardt.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 CHAIRMAN SCOTT: So carried. Please  
2 continue.

3 MS. BELLAMY: What are the risks? And I am  
4 referring to the literature here, and I'd like to do a  
5 brief summary, as I am permitted to do, according to the  
6 procedures established by the Board.

7 In the Journal of Neurology, 1999, there is  
8 an article, Cervical Manipulation is an Independent Risk  
9 Factor for Artery Dissection and Stroke. 2002, American  
10 Journal of Public Health, between a high, I'm sorry, a low  
11 of one in 3.85 million manipulations to one in 400,000  
12 manipulations cause vertebral artery dissection. There is  
13 a high incidence of underreporting, meaning you cannot  
14 really trust the estimates of risk.

15 And the Journal of the Royal Society of  
16 Medicine in 2001, they estimated the incidence of  
17 underreporting of vertebral artery dissection and  
18 subsequent stroke following cervical manipulation as up to  
19 100 percent, therefore, in the American Journal of Public  
20 Health, in an article in 2002, the authors concluded the  
21 existing estimates of risk are meaningless.

22 In a stroke, an article in the Journal of  
23 Stroke, patients under 45 are five times more likely to  
24 have made greater than three cervical treatment visits in

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the preceding month. The article Spine in the Cassidy  
2 Study, itself, confirms this increased risk of stroke in  
3 patients under 45.

4 Neurosurgical Review, 1999, goes over the  
5 case reports and the medical literature injury due to  
6 cervical manipulation, including dissection, for the past  
7 70 years.

8 So we come to February 15th and the Cassidy  
9 Study and Spine, and these are some of the interpretations  
10 of the various parties to this action regarding what the  
11 study says, and these have been submitted in their  
12 testimony.

13 MS. MOORE LEONHARDT: I object, then, to  
14 this witness presenting the testimony of other parties in  
15 this hearing, because if it's already been presented, then  
16 her presentation would be redundant and unnecessary. The  
17 Board has been extremely attentive, the Board has its own  
18 expertise to bring to bear, and it would seem to me not to  
19 be of assistance to the Board to have the prior testimony  
20 of other witnesses repeated at this time.

21 MR. SHAPIRO: Attorney Moore Leonhardt,  
22 it's my understanding that Attorney Bellamy was pointing  
23 out the fact that there's been testimony on the Cassidy  
24 report and was going to make her own comments with respect

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 to her thoughts on the Cassidy report, and possibly  
2 comment on the comments that were made by your party in  
3 this matter, which I think are wholly appropriate.

4 And I would suggest that you make some  
5 effort to make sure that the objections that you're making  
6 are based on substantive legal grounds, rather than an  
7 attempt to be disruptive to this particular witness, and I  
8 think the Board is growing intolerant of interruptions  
9 that are seeming to be more based on an inappropriate use  
10 of the process, rather than substantive legal grounds for  
11 your objections.

12 MS. MOORE LEONHARDT: Counsel, if I may  
13 respectfully reply, I understand your point, and I respect  
14 and appreciate it. Yesterday, we were pressed and I was  
15 pressed to put a witness on, have them adopt their  
16 testimony and move on, and the idea was that we didn't  
17 need to belabor points that were made in pre-filed  
18 testimony and delay the movement over to Cross-  
19 Examination, and I simply was applying the rule that was  
20 applied to me yesterday, but I certainly respect what you  
21 have to say.

22 My objections are made with all sincerity.  
23 This is an administrative hearing and proceeding. I'm  
24 trying to make proper objections, so they can be preserved

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 in the record. That is what I'm bound to do as an  
2 advocate for my client.

3 My intent is not to disrupt this proceeding  
4 or create any undue delays, and I don't intend to do that  
5 today.

6 MR. SHAPIRO: I'm glad to hear it. It's  
7 my, according to my calculations, this witness has had  
8 approximately five or six minutes in total to summarize  
9 her testimony, which I certainly think is reasonable, and,  
10 hopefully, we'll be able to get into Cross-Examination  
11 very shortly. Attorney Bellamy, you can continue.

12 MS. BELLAMY: Thank you, Mr. Shapiro. I'm  
13 trying to find where I was. Okay. According to Dr.  
14 Steinberg of the Connecticut Chiropractic Association, the  
15 Cassidy Study says that there's no excess risk of stroke  
16 following chiropractic manipulation. I think I'm  
17 pronouncing this right. Dr. Photos of the ICA, no  
18 evidence of excess risk of stroke following chiropractic  
19 manipulation.

20 Lauretti from the CCA, any relationship  
21 between chiropractic cervical manipulation, cervical  
22 treatment and a stroke is based on coincidence, rather  
23 than causality.

24 Dr. Clum for the CCA, cervical spine

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 adjusting and vertebral artery issues indicate no excess  
2 risk. American Chiropractic Association, through Dr.  
3 Marceaux, the risk of the study confirm that chiropractic  
4 manipulation is a safe and appropriate course of  
5 treatment. He bases that on the Cassidy Study.

6 The International Chiropractic Association  
7 has said that the risk of cervical manipulation, as it  
8 relates to vertebral artery dissection and stroke, is a  
9 smear campaign. It was never based upon any scientific  
10 evidence.

11 So what does the Cassidy Study say about  
12 cervical manipulation, or adjustment, if you prefer, and  
13 the risk of vertebral artery dissection and stroke? What  
14 does it actually say? Excuse me.

15 And I'd like to point out that is the issue  
16 before the Board today, exactly as identified by the Board  
17 in previous rulings. Nothing. Nothing. There is no data  
18 in the Cassidy Study showing what treatment, if any, was  
19 received by any patient, whether they went to a  
20 chiropractor or their PCP.

21 There's no recording in the data of what  
22 treatment any patient received. They could have all  
23 received cervical manipulation. They could have had hot  
24 packs, cold packs. They could have had no treatment.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Perhaps the chiropractor was aware, or assumed, or  
2 suspected that a vertebral artery dissection was in  
3 progress and referred the patient to the emergency room.

4 I don't think anyone can conclude that  
5 there was any particular treatment performed by a  
6 chiropractor or a PCP based on the data in the Cassidy  
7 Study.

8 I apologize. I'm taking some medication  
9 that makes my mouth extremely dry, and it's sometimes hard  
10 to speak.

11 Also, there is no conclusion in the study  
12 regarding the risk of stroke following cervical  
13 manipulation or adjustment. Again, no conclusion in the  
14 study regarding the risk of stroke following cervical  
15 manipulation or adjustment.

16 Okay. What does the study say? What is  
17 the data in the study? The study looked at a diagnosis  
18 using ICD 9 coding of chiropractic visits and PCP visits  
19 for headache or neck pain, those two conditions, headache  
20 or neck pain.

21 They then looked at discharge codes from  
22 the hospital and recorded the ICD 9 diagnosis, I'm sorry,  
23 discharge code for vertebrobasilar stroke.

24 And what did the authors conclude? This is



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 what they say in the abstract. The increased risk of VBA  
2 stroke associated with chiropractic and PCP visits is  
3 likely due to patients with headache and neck pain from  
4 VBA dissection seeking care before their stroke. That was  
5 a conclusion recorded in the abstract.

6 Now perhaps they used vertebral artery, I'm  
7 sorry, vertebrobasilar stroke as a proxy for vertebral  
8 artery dissection, but that is not possible, because  
9 vertebrobasilar stroke causes other than vertebral artery  
10 dissection.

11 There's also no data in the Cassidy Study,  
12 as to the cause of any patient stroke. Again, the cause  
13 of the patient's stroke was not recorded in the data in  
14 the study.

15 Another problem with their data, they lose,  
16 they don't pick up vertebral artery dissections not  
17 resulting in a stroke, and, as you all know, VAD, in and  
18 of itself, is a medical emergency requiring immediate  
19 medical attention in an emergency room, so none of those  
20 cases were reported.

21 COURT REPORTER: One moment, please.

22 MS. BELLAMY: It would also -- they also  
23 did not record any diagnosis codes related to other than  
24 neck pain or headache, therefore, they would not pick up

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 cervical manipulations, which resulted in VAD or stroke,  
2 which were caused by cervical manipulations for treatment,  
3 other than headache or neck pain.

4 So they are losing many instances, or they  
5 would lose all instances --

6 DR. POWERS: Attorney Bellamy?

7 MS. BELLAMY: Yes, sir?

8 DR. POWERS: Dr. Powers here.

9 MS. BELLAMY: Yes, sir?

10 DR. POWERS: I feel like you're reading a  
11 little too much out of your pre-filed testimony at this  
12 point. I've read all this. The Board members have. The  
13 brief statement is supposed to just let you encompass an  
14 overall understanding of the question in front of us, and  
15 we're reading a little too much at this point, and I'd  
16 just ask you to maybe wrap up your brief statement, so we  
17 can move into Cross-Examination on the facts. Thank you.

18 MS. BELLAMY: Thank you, sir. I will try  
19 to move on quickly. Without interruption, this would  
20 probably take three minutes, but we have not been able to  
21 do that today.

22 The Cassidy Study does say, it's been  
23 previously pointed out, that they have not ruled out neck  
24 manipulation as a potential cause of stroke, and, for

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 those under 45, there was an increased association between  
2 chiropractic visits and VBA stroke.

3 The Cassidy Study's final words, and I  
4 think this is important in the context of what the Board  
5 decides today, the decision of how to treat a patient with  
6 neck pain and/or headache should be driven by  
7 effectiveness and patient preference.

8 And here it comes. Speaking of  
9 effectiveness, there's no evidence that cervical  
10 manipulation is effective for subluxations, and cervical  
11 manipulation is physical therapy. The evidence is either  
12 unconvincing, or does not show it superior to other  
13 treatments. Thank you.

14 MR. SHAPIRO: Attorney Bellamy, if you  
15 could just adopt your testimony under oath, or just  
16 indicate that you're adopting your testimony under oath?

17 MS. BELLAMY: I'm adopting my testimony.

18 MR. SHAPIRO: Your pre-filed testimony.  
19 You understand what I'm saying?

20 MS. BELLAMY: Yes, sir.

21 MR. SHAPIRO: Okay.

22 MS. BELLAMY: I do.

23 MR. SHAPIRO: Attorney Moore Leonhardt, do  
24 you have Cross-Examination?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: Yes, I do. Thank  
2 you.

3

4

CROSS-EXAMINATION

5

BY MS. MOORE LEONHARDT:

6

Q Good morning, Attorney Bellamy.

7

A Good morning.

8

Q Before I get started, I note that, in your pre-

9

filed testimony, you indicated that you're an attorney.

10

Is that correct?

11

A It is.

12

Q And are you now or have you ever been licensed

13

to practice in any state?

14

A Yes.

15

Q And are you currently licensed to practice in

16

any state?

17

A I am.

18

Q Where are you licensed to practice?

19

A I'm licensed to practice in Florida, and I have

20

an inactive license in the state of Georgia, which I could

21

activate if I so choose.

22

Q Thank you. How long have you been practicing in

23

Florida?

24

A Since 1980.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q And what are the areas of practice?

2 A The areas of practice are civil litigation, some  
3 administrative litigation, and office practice advising  
4 clients regarding the equal employment laws, and a little  
5 bit of trust and estates.

6 Q All right and are you affiliated with any law  
7 firm?

8 A No. I have retired from the active practice of  
9 law.

10 Q And when did you retire?

11 A In 2005.

12 Q Okay. Prior to that, though, you did practice  
13 in the area of civil litigation?

14 A I did.

15 Q And were you a Plaintiffs' attorney?

16 A I did handle a couple of Plaintiffs' cases.  
17 Most of my cases were defense.

18 Q Okay and what type of cases?

19 A I would say the general area of corporate law,  
20 some emphasis on equal employment litigation.

21 Q Have you ever been involved in malpractice  
22 litigation?

23 A Yes.

24 Q And in what capacity?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     There are many cases I'm trying to go over in my  
2 head, not malpractice. Only peripherally in malpractice.

3           I'm sorry. I was thinking of Plaintiffs' personal  
4 injury.

5           Q     Okay. With regard to malpractice involvement,  
6 what role have you played in those cases?

7           A     I think I just clarified that they weren't  
8 malpractice cases.

9           Q     Oh.

10          A     They were Plaintiffs' personal injury cases.

11          Q     Okay, so, nothing in the medical malpractice  
12 area, then?

13          A     No.

14          Q     All right. Are you a member of the Connecticut  
15 Bar, or have you ever been?

16          A     No.

17          Q     Okay. Are you a member of the Victims of  
18 Chiropractic Abuse?

19          A     No.

20          Q     Are you a member of the Connecticut Stroke  
21 Awareness Group?

22          A     No.

23          Q     And does your organization work with either of  
24 those groups in promoting health care issues in

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Connecticut?

2 A What do you mean by "work with?"

3 Q Do you have any collaborative effort that you've  
4 engaged in with regard to the efforts of VOCA to promote  
5 legislation in Connecticut?

6 A To promote legislation?

7 Q Yes.

8 A No.

9 Q To promote any regulatory efforts with regard to  
10 health care issues in Connecticut?

11 A This proceeding.

12 Q All right and you're working with VOCA in that  
13 regard?

14 A Well I'm not so sure I'd say I'm working with  
15 VOCA. We're all on the same side. Let's put it that way.

16 Q All right. Have you collaborated with them in  
17 this effort?

18 A Yes.

19 Q You'd agree with me that you also have  
20 collaborated with the representatives of the Connecticut  
21 Stroke Awareness Group?

22 A In this proceeding?

23 Q Yes.

24 A Yes.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Have you collaborated with anyone representing  
2 the Connecticut Center for Patient Safety with regard to  
3 health care issues in Connecticut?

4 A No.

5 Q Never?

6 A Never.

7 Q Okay and, your organization, has it filed a  
8 registration with the Secretary of State's Office to do  
9 business in Connecticut?

10 A We have not.

11 Q All right. You're a non-profit corporation  
12 established in Florida?

13 A We are.

14 Q According to your website?

15 A We are.

16 Q And what type of non-profit organization are  
17 you?

18 A What type?

19 Q Yes.

20 A Under Florida law, we're a non-member  
21 organization.

22 Q So you're registered as a non-member, non-profit  
23 organization under the corporate statutes of organization  
24 in the state of Florida, is that correct?



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     I thought you were asking what kind of  
2 corporation we formed. I'm sorry. We are just registered  
3 as a not-for-profit corporation with the Secretary of  
4 State of Florida.

5           Q     All right and do you also have non-profit status  
6 granted to that organization by the Internal Revenue  
7 Service?

8           A     No, and we haven't applied for it.

9           Q     All right, so, you don't take donations?

10          A     We do not.

11          Q     I see. I believe that's published on your  
12 website, as well. Now with regard to your organization --

13                   MR. SHAPIRO: Counsel, I'm not interested  
14 in comments. If you have a question for the witness, ask  
15 the question.

16                   MS. MOORE LEONHARDT: I do. Thank you.  
17 I'm just getting to it.

18                   MR. SHAPIRO: Okay, but the comment about  
19 what you've noticed on her website is not relevant, unless  
20 you have a question for her.

21                   MS. MOORE LEONHARDT: Thank you.

22          Q     With regard to the website and the mission that  
23 has been articulated on your website, would you please  
24 tell me what the organization's mission is?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     Well I'm not looking at the website, so I'm not  
2     sure exactly how it's worded there, but the mission of the  
3     organization is to insure that patients have -- their  
4     health care has a plausible basis in science and it's  
5     based on the best evidence of effectiveness and safety.

6           Q     Okay. According to the Mission Statement on  
7     your website, it specifies that that mission is directed  
8     toward Florida and health care issues in Florida. Has  
9     this been expanded to Connecticut?

10          A     Actually, that was my original intent. Most of  
11     the work the organization has done since its formation has  
12     been national in scope.

13          Q     How much time do you spend in Connecticut doing  
14     business?

15          A     What kind of business?

16                   MR. PATTIS: Objection to the form.  
17     There's no testimony that she's doing any business in  
18     Connecticut.

19                   MS. MOORE LEONHARDT: She just testified  
20     that she practices on a national basis with regard to the  
21     issues in the mission of her organization, so I think it's  
22     proper follow-up to ask how much time she spends in her  
23     business activities in Connecticut.

24                   MR. SHAPIRO: Counsel, what's the relevancy

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 of the question?

2 MS. MOORE LEONHARDT: The relevancy is it's  
3 relevant to proper impeachment questions in areas with  
4 regard to attacking the witness for her beliefs that the  
5 chiropractors are engaged in quackery, and that she's  
6 making unfounded attacks against chiropractors when I'm  
7 attempting to delve into whether she, herself, and how she  
8 operates her business is in compliance with the law,  
9 particularly where she's a lawyer.

10 A Let me make a distinction here. I don't operate  
11 a business. I operate a non-profit corporation.

12 Q Are you suggesting that your non-profit  
13 corporation doesn't conduct business?

14 A It's not the understanding of business I have.  
15 It's a non-profit organization. I didn't want the  
16 implication to be there that --

17 CHAIRMAN SCOTT: We're getting a little off  
18 field on this.

19 THE WITNESS: Yes, sir, we are.

20 CHAIRMAN SCOTT: Let's get back on track.  
21 Thank you.

22 Q I'm trying to understand, then, the role that  
23 you play with regard to this Campaign for Science-Based  
24 Healthcare, Inc. organization.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. PATTIS: Relevance.

2 MS. MOORE LEONHARDT: If you could please  
3 describe what her role is. It's relevant to the  
4 submission she made and how she's presenting herself today  
5 as a witness on behalf of that organization.

6 MR. PATTIS: The question is vague,  
7 unformed, undirected to anything the hearing is related  
8 to, and I would object on relevance grounds.

9 MR. SHAPIRO: Unless the question is more  
10 focused, I would recommend that the Board sustain that  
11 objection on relevance grounds. I mean I think we've  
12 heard some testimony regarding her role. It's possible  
13 that some more testimony on that issue may be relevant to  
14 the Board, but I would suggest that be limited in scope.

15 CHAIRMAN SCOTT: So ordered. Please  
16 continue.

17 Q Attorney Bellamy?

18 A Yes, sir. Yes, ma'am.

19 Q Did you prepare this testimony that was  
20 presented to the Board today?

21 A I did.

22 Q And did you prepare that in accordance with your  
23 usual duties and responsibilities associated with your  
24 position at the Campaign for Science-Based Healthcare,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Inc.?

2 A I did.

3 Q All right and what are your specific duties that  
4 relate to your position there?

5 A I am the founder, and I'm the president.

6 Q How many employees do you have?

7 A None.

8 Q All right.

9 MR. PATTIS: Relevance.

10 MS. MOORE LEONHARDT: She's asked and  
11 answered the question.

12 Q Now with regard to preparing this report --

13 MR. PATTIS: I'd ask for a ruling and move  
14 to strike it if the Board deems it irrelevant.

15 MR. SHAPIRO: I think she can ask the  
16 question. I would recommend overruling that question,  
17 but, Attorney Moore Leonhardt, I would suggest that you  
18 move on to topics that are more related to the topic in  
19 question today.

20 MS. MOORE LEONHARDT: Thank you. I intend  
21 to do so.

22 Q Now you prepared this report?

23 A A report?

24 Q This report that you submitted.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     The testimony?

2           Q     Yes.

3           A     Yes.

4                     MR. PATTIS: Asked and answered, adopted.

5           Q     And would you please describe for me the  
6 procedure that you went through to prepare this report and  
7 testimony that you submitted today?

8                     MR. PATTIS: Vague. Objection.

9                     MR. SHAPIRO: I would sustain the objection  
10 on vagueness.

11          Q     Did you understand the question?

12                     MR. PATTIS: It's been ruled objectionable.

13          Can we have another question, please, Mr. Hearing  
14 Officer?

15                     MS. MOORE LEONHARDT: Surely.

16          Q     Ms. Bellamy, you've testified that you prepared  
17 this report, and I would like to know what procedures you  
18 engaged in in collecting the data that you refer to in the  
19 report in determining what to present to this Board and  
20 what not to present to the Board. Can you do that?

21                     MR. PATTIS: Objection, insofar as the  
22 court previously sustained a vagueness objection. If the  
23 question is what literature did she rely on, that may be a  
24 different question.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: No. Before I get to  
2 the literature that she relied upon, I'd like to get to  
3 what is a proper question, which is how did she gather and  
4 select the literature that is included in the report  
5 that's being presented to the Board for its review?

6 MR. SHAPIRO: I think that's a relevant  
7 question. You can answer that.

8 MS. MOORE LEONHARDT: Thank you.

9 CHAIRMAN SCOTT: We'll allow it.

10 A Some of the research I already had in my  
11 possession from other research I had done. The remainder,  
12 if I recall correctly, I know it involved literature  
13 searches of the medical literature on Pub Med.

14 Q Pardon me? On what?

15 A Pub Med.

16 Q Pub Mend?

17 A Med.

18 Q Okay. Pub Med?

19 A Yes, ma'am.

20 Q Okay and do you have background and training in  
21 conducting research on medical issues?

22 A Training, no.

23 Q What about background?

24 A Well I've done it for a long time.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q All right and can you describe what that  
2 background is?

3 A Well, as far as searches on scientific issues  
4 generally, I did that when I was a lawyer, and then  
5 probably since 2004 I've been doing Pub Med searches.

6 Q And have you done any Pub Med searches for VOCA?

7 A I have not.

8 Q How about for CSAG?

9 A I have not.

10 Q All right, now, when you've done these Pub Med  
11 searches, have you been trained to do them to insure that  
12 you've been all inclusive?

13 A All inclusive of what?

14 Q That you're gathering all articles on a  
15 particular topic upon which you're searching?

16 A Well Pub Med sort of does that automatically.  
17 It depends on what term you put in, and it will come up  
18 with journal articles.

19 Q All right, so, the articles you derive from Pub  
20 Med depend upon whether or not you're submitting a proper  
21 term, correct?

22 A Well it uses a term search, yes.

23 Q Yes, so, you decide what terms to put in there,  
24 and then that prompts a collection of articles for your



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 review. Would that be fair to say?

2 A Yes.

3 Q Thank you. And it's possible that if you don't  
4 put in the right term, you might not be including all the  
5 articles in your review of a particular topic, isn't that  
6 true?

7 MR. PATTIS: Speculative. Argumentative.  
8 Objection. Ask for a ruling.

9 MS. MOORE LEONHARDT: It's proper Cross-  
10 Examination.

11 MR. PATTIS: I'd ask for a ruling, please.

12 MR. SHAPIRO: Can you repeat the question,  
13 please?

14 Q Isn't it possible that if you don't put in a  
15 proper term, that you're not, then, collecting all the  
16 relevant articles on a particular topic that you're  
17 searching on?

18 MR. PATTIS: Foundation. Speculative.  
19 Argumentative.

20 MR. SHAPIRO: I would recommend the Board  
21 overrule the objection and allow this question.

22 MS. MOORE LEONHARDT: Thank you.

23 CHAIRMAN SCOTT: So overruled.

24 A Well I don't think I've ever done a search with

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 just one term.

2 Q Well that doesn't answer my question. I'd ask  
3 that you answer my question, which calls for a yes or no  
4 answer.

5 A So what is your question again?

6 Q My question is isn't it possible that if you  
7 don't put in all pertinent terms in the conducting of a  
8 search, that you would miss certain articles that are  
9 pertinent to the topic?

10 MR. MALCYNSKY: Objection. What's  
11 important here is the documentation she's testifying on,  
12 and you have the right to Cross-Examine her on that  
13 documentation.

14 MS. MOORE LEONHARDT: I am. I'm attempting  
15 to do so, and I believe that the Board just ruled that my  
16 line of questioning is proper, counsel.

17 MR. PATTIS: May I remind the Board that we  
18 should direct our comments to the tribunal, otherwise,  
19 we're going to get out of control again?

20 MR. SHAPIRO: I agree with that. Attorney  
21 Malcynsky, I don't really understand the nature of your  
22 objection. She's allowed to ask.

23 MR. MALCYNSKY: She's testifying in the  
24 same manner that the witnesses testified yesterday, and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 when they refer to a document, or a piece of a report, or  
2 any materials that they've relied on for their testimony,  
3 they're available to be Cross-Examined on that.

4 I don't understand the relevance of  
5 pursuing lines of questioning like what key words did you  
6 put into the computer when you were doing your search?  
7 The information should stand on its own and should stand  
8 up under Cross-Examination or fail under Cross-  
9 Examination.

10 I mean the issue before this Board is not,  
11 you know, the extent to which people did research. It's  
12 the information that's being presented.

13 MR. PATTIS: I adopt Attorney Malcynsky's  
14 argument and note that there was no effort to rebut this  
15 in the rebuttal papers filed. If there were claims that  
16 there was some sort of ineffective research and whatnot, I  
17 would have expected to see it at that point.

18 MR. SHAPIRO: The Board can take a vote  
19 with respect to whether or not this line of questioning  
20 regarding the research and the research searches that  
21 Attorney Bellamy did is relevant in their opinion.

22 DR. POWERS: I'm going to make a motion  
23 that we sustain the objection, and I'll stop there and see  
24 what happens in discussion.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 CHAIRMAN SCOTT: All in favor?

2 MR. VINCENT PACILEO: You need a second.  
3 I'll second that motion.

4 MS. JEAN REXFORD: Discussion? I want to  
5 be clear. You are suggesting that we -- say it another  
6 way.

7 DR. POWERS: Okay. The problem we have  
8 here is that we'd like to hear the Cross-Examination on  
9 her sworn and submitted testimony. We're getting into  
10 what search terms were put in. My concern is that what  
11 the attorney is trying to bring out is that she kind of  
12 chose documents that support her position.

13 Well I think everybody did that, so let's  
14 let what she put into testimony, pre-filed, stand on its  
15 merit, and then other -- you know, the attorneys can  
16 certainly refute it with other pre-filed testimony from  
17 other people, but sitting here, saying that I used the  
18 term spinal manipulation stroke versus spinal manipulation  
19 vertebrobasilar, is an exercise in futility. Thank you.

20 CHAIRMAN SCOTT: So we've had a second, and  
21 now we're going to have a vote. All in favor?

22 ALL: Aye.

23 CHAIRMAN SCOTT: Any opposition? So  
24 carried.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q After you did your search for purposes of  
2 preparing this submission, were there articles that you  
3 chose not to include and report to the Board on?

4 MR. PATTIS: I would renew my objection.

5 MS. MOORE LEONHARDT: I think it's asking a  
6 different question.

7 MR. SHAPIRO: I would recommend to the  
8 Board they sustain the objection.

9 CHAIRMAN SCOTT: So ruled.

10 Q Once again, the name of your organization is the  
11 Campaign for Science-Based Healthcare, Inc. I take it  
12 that you would agree with me that it's important to have  
13 all significant signs -- studies that have any validity or  
14 reliability presented by a proponent of a particular  
15 position, particularly that that you're presenting to the  
16 Board at this point in time.

17 A That I present all the studies that -- what?  
18 Say that again?

19 Q That you consider reliable and valid.

20 A That I must? I'm sorry. I just don't  
21 understand the question.

22 Q All right. Let me ask you again. Your effort  
23 here today with your testimony was to present to the Board  
24 those studies and journal articles that you believe to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 have a degree of reliability and validity, is that  
2 correct?

3 A Right.

4 Q And you cited those articles and you presented  
5 them, because you believe that they would be of assistance  
6 to the Board in probing the issue of whether or not the  
7 Board should rule and require that chiropractors disclose  
8 the risk of stroke to their patients when they're  
9 performing certain cervical manipulations, correct?

10 A I'm sorry. I got totally lost in that question.

11 Q I'm sorry about that. Let's focus on the  
12 Cassidy Study, then.

13 A Okay.

14 Q All right? I was particularly interested in  
15 your criticism in your pre-filed testimony of the Cassidy  
16 Study and yet surprised that you chose to rely on the  
17 study in your remarks when you presented to the Board this  
18 morning. Was there a reason for that?

19 MR. PATTIS: Objection. Can we move -- I  
20 move to strike the personal observations and testimonial  
21 comments of counsel.

22 MR. MALCYNSKY: Agreed.

23 MR. PATTIS: And ask that she be directed  
24 to ask questions.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: I would sustain the  
2 objection. I wouldn't strike it, but I would sustain the  
3 objection and ask counsel to -- if you have a question.  
4 Whether or not you were surprised by her testimony I don't  
5 believe is relevant for the Board's consideration.

6 Q What test did you apply to the articles that you  
7 included in your submission to determine that they had a  
8 degree of reliability and validity worth asking this Board  
9 to consider?

10 A Well, when you do a literature search on Pub  
11 Med, you will come out with certain articles. Certainly,  
12 you don't cite everything, because it becomes repetitive.  
13 It's just like legal research. You don't cite cases over  
14 and over and over again to make a point. You cite the  
15 ones you think are best.

16 Q And that's the process that you applied here in  
17 selecting those articles?

18 MR. PATTIS: Objection. I thought we had -  
19 - the Board had sustained an objection, as to the process  
20 by which articles were selected and indicated a request to  
21 focus on those that were.

22 MR. SHAPIRO: I agree with that objection.  
23 I would sustain the objection.

24 MS. MOORE LEONHARDT: Thank you.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Turning to page two of your testimony, Attorney  
2 Bellamy, at the top of the page, you are promoting the use  
3 of a specific form in connection with informed consent  
4 conducted by chiropractors in the State of Connecticut, is  
5 that correct?

6 A I am.

7 Q And you did a survey of the existing Connecticut  
8 law with regard to informed consent, did you not?

9 A A survey?

10 Q Yes.

11 A I did research. I don't know if I'd call it a  
12 survey.

13 Q All right, but you did include your pertinent  
14 findings on the research of the current Connecticut law on  
15 informed consent on page two of your presentation, did you  
16 not?

17 A Well I cited from the case Logan versus  
18 Greenwich Hospital Association.

19 Q And when you did that, you did that with your  
20 belief that that was the current state of law on informed  
21 consent as it applied to chiropractors in the State of  
22 Connecticut, did you not?

23 MR. PATTIS: Objection, as to form. What  
24 kind of law? I believe that's a common law decision.



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1       Objection, as to form.

2                       MS. MOORE LEONHARDT: I object to counsel  
3       trying to coach his witness with this objection. It's not  
4       a proper objection.

5                       MR. PATTIS: I object, as to form,  
6       vagueness, and would request a ruling.

7                       MR. SHAPIRO: I would sustain the  
8       objection, also. I would recommend that.

9               Q       Attorney Bellamy, would you agree that the Logan  
10       case sets forth the standard of care with regard to  
11       informed consent in Connecticut applicable to  
12       chiropractors?

13              A       That's my understanding.

14              Q       Thank you. Now above the section that you title  
15       Informed Consent under Connecticut Law, there's a  
16       paragraph. Would you read that, please?

17              A       Starting with "This action?"

18              Q       Yes.

19              A       "This action is necessary, because chiropractors  
20       are currently ignoring their ethical and legal duties to  
21       inform patients about the risk of artery dissection,  
22       stroke and death following cervical manipulation, and, in  
23       fact, several chiropractic organizations have issued  
24       misleading information to the public."

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q All right and what did you base that statement  
2 on?

3 A I'm just going to look for it in the submission  
4 here. I go into further detail on page 14 of the section  
5 See Misinterpretation of the Cassidy Study.

6 Q All right, thank you. And that's really what  
7 caused you to make that conclusion that you state at the  
8 front end of your paper at page two, your belief that the  
9 Cassidy Study misrepresents the actuality?

10 A Well two things. I think the conclusion the  
11 author has reached in the Cassidy Study are not supported  
12 by their data, one. Number two, I think some  
13 chiropractors and chiropractic organizations are  
14 misrepresenting what the study says, even if you accept  
15 the conclusion of the study.

16 Q And with regard to that statement that you just  
17 made, what research have you done in Connecticut as it  
18 pertains to the chiropractors' practice in Connecticut and  
19 whether or not they're actually committing those acts?

20 A Well I have relied on the statements submitted  
21 in support of the submission of your client. I'm not sure  
22 who all you represent, but your client or clients and  
23 other chiropractic organizations.

24 Q All right, but you, yourself, have not done an

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1       investigative study to back up that statement, have you,  
2       in Connecticut?

3                   MR. PATTIS:  Objection, as form.  Vague.  
4       She relied on the statements of her adversaries.  What  
5       more investigation does she need to do?

6                   MR. SHAPIRO:  I would recommend to the  
7       Board they overrule the objection.

8                   MS. MOORE LEONHARDT:  Thank you.

9           A        Could I have the question again?

10          Q        You, yourself, did not perform any investigative  
11       study with regard to chiropractors' practice in  
12       Connecticut to determine whether or not they were making  
13       specific misrepresentations to their patients?

14          A        Other than reading the ones that were already --  
15       that I've already mentioned.

16          Q        All right and did you actually interview those  
17       patients?

18          A        Patients?

19          Q        Are you referring to patients or chiropractors?

20          A        Chiropractors.

21          Q        Did you interview the chiropractors?

22          A        I did not.

23          Q        Thank you.  So wouldn't you agree that you  
24       really don't know, based on reliable evidence, whether or

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 not there is a misrepresentation being made by  
2 chiropractors or that chiropractors in Connecticut are  
3 ignoring their ethical and legal duties with respect to  
4 informed consent?

5 MR. MALCYNSKY: Objection. She's already  
6 testified on what basis she's put forth this proposition.

7 MR. PATTIS: I would add an objection that  
8 it's compound, that she's impeaching about a paragraph  
9 that talked about ignoring ethical and legal duties to  
10 inform patients, and that paragraph also contains the  
11 organizations making misleading statements to the public,  
12 so this is a compound question, and I'm not sure which one  
13 the witness is being directed to answer.

14 MR. SHAPIRO: Counsel, can you rephrase the  
15 question?

16 MS. MOORE LEONHARDT: At this point, I  
17 believe she's asked and answered my question, so I'm  
18 prepared to move on.

19 MR. SHAPIRO: Okay.

20 MS. MOORE LEONHARDT: Thank you.

21 Q You would agree with me that you're not an  
22 expert on the topic of subluxation, wouldn't you?

23 A I don't know. I've read a lot about it. I  
24 don't guess you'd call me an expert.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q All right. Do you have any medical background?

2 A I do not.

3 Q Do you have any training at all in the medical  
4 field?

5 A I do not.

6 Q Do you have any training in statistics?

7 A I took one course in college.

8 Q And when was that?

9 A Oh, you would ask.

10 MR. MALCYNSKY: Objection.

11 A 1973.

12 Q Thank you. Have you taken any coursework in  
13 health care data analysis?

14 A No.

15 Q Taking a look at page 11 of your submission, if  
16 you would, you quote the Neurology 2003 article.

17 A On page what now?

18 Q Page 11 of your submission.

19 A I think I'm quoting --

20 MR. PATTIS: Which article is that? I  
21 would object. There were presumably more than one article  
22 in Neurology. Can we have the title of these articles,  
23 please?

24 MS. MOORE LEONHARDT: I'm sorry. I'm

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 looking at page 11 under item four, Smith Articles, Spinal  
2 Manipulative Therapies and Independent Risk Factor for  
3 VAD.

4 Q Do you see that, Neurology 2003?

5 A I do.

6 Q All right and, in reviewing that article, I  
7 assume you did so before you submitted it into this  
8 testimony?

9 A I did.

10 Q All right. You read it carefully?

11 A Did I read it carefully? Yes.

12 Q Okay. Wouldn't you agree that the information  
13 imparted there did not specifically limit the data to  
14 chiropractic treatment?

15 MR. PATTIS: Relevance. That's all we're  
16 here to consider.

17 MS. MOORE LEONHARDT: She's presenting data  
18 and information that goes beyond procedures done just  
19 simply by chiropractors, so I'm asking her to clarify that  
20 for the Board.

21 MR. MALCYNSKY: I would join that  
22 objection.

23 MR. PATTIS: There was testimony yesterday  
24 from the industry that they might be willing to reform

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 their practices, so long as everyone else did, and I don't  
2 think that's a relevant question here, and I think the  
3 objections were sustained to my inquiries about that.

4 This is the flip side of that. The sole  
5 question before the Board is whether informed consent in  
6 Connecticut should require a discreet warning about a  
7 particular form of care, and the only warning that this  
8 Board could authorize or order would be an order to  
9 chiropractors.

10 So insofar as data talked about risk that  
11 other providers may engage in, that may be true. It  
12 simply isn't relevant. If chiropractors are engaged in  
13 practices that expose Connecticut residents to material  
14 risks of harm, the question before the Board is whether  
15 there should be a discreet warning, and I believe that's  
16 the sole question.

17 MS. MOORE LEONHARDT: I believe counsel is  
18 misstating the question before the Board, but I don't  
19 think it's necessary for me to remind the Board what the  
20 question is, but, secondly, if it's not relevant, then I  
21 would move to strike the article to the extent that it  
22 goes beyond the issue before the Board, and it's not  
23 pertinent and not probative.

24 MR. PATTIS: There's no foundation for the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 motion to strike. By counsel's own terms, the risk  
2 encompassed that provided by chiropractors and others.  
3 I'm simply trying to focus the Board's attention on  
4 chiropractic care.

5 MR. SHAPIRO: I would recommend that the  
6 objection be sustained.

7 CHAIRMAN SCOTT: Objection sustained.  
8 Please carry on.

9 Q With regard to the article by Ernst, E.,  
10 Chiropractic Care: Attempting a Risk-Benefit Analysis, do  
11 you recall that article?

12 A I do.

13 Q Now there was never a conclusion that there was  
14 a cause and effect relationship between a manipulation by  
15 a chiropractor of a cervical spine and a stroke, was  
16 there, as reported in that article?

17 A Well, as you might well imagine, I don't have  
18 all the articles memorized, so I'm going to look at it  
19 first, please.

20 Q Please.

21 A So which Ernst article is that?

22 Q The one you cited in your paper at page 11.

23 A I know, but I'm asking for the title.

24 Q It's entitled Chiropractic Care: Attempting a



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Risk-Benefit Analysis, American Journal of Public Health,  
2 2002, and I believe you highlighted it in your  
3 presentation this morning.

4 A Okay. I've got it.

5 Q The 2002 article?

6 A I have Chiropractic Care: Attempting a Risk-  
7 Benefit Analysis, by Ernst.

8 Q Correct. There's nothing in that article, which  
9 incidentally predates the Cassidy Study to which you  
10 refer, which produces a scientific basis for a conclusion  
11 that there's a cause and effect relationship between  
12 chiropractic manipulation of the neck and stroke, is  
13 there?

14 MR. PATTIS: I would object and ask that  
15 the editorial portion of that question be struck and  
16 counsel be admonished to ask questions and not testify.

17 MS. MOORE LEONHARDT: I believe it's proper  
18 Cross-Examination.

19 MR. PATTIS: The editorial comments, about  
20 her belief and predates and this and so forth, simply have  
21 no place in this hearing.

22 MR. SHAPIRO: I agree with that. I would  
23 recommend to the Board that the objection be sustained on  
24 that issue, but the question, I think, is proper.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 CHAIRMAN SCOTT: Objection sustained.

2 COURT REPORTER: One moment, please.

3 A Is there a question pending?

4 Q Yes.

5 A I thought the objection was sustained.

6 MR. SHAPIRO: It was sustained just with  
7 respect to editorial remarks, but, counsel, why don't you  
8 ask the question again, so the witness understands?

9 Q Is there anything --

10 MS. MOORE LEONHARDT: Thank you.

11 Q Is there anything in that article, Attorney  
12 Bellamy, which indicates that there is evidence-based data  
13 supporting a cause and effect relationship between  
14 cervical spine manipulation and a stroke?

15 A Causation?

16 Q Yes.

17 A No.

18 Q Thank you. Now were there parts of the Cassidy  
19 Study that you agreed with?

20 A Parts of it? Well I don't necessarily agree  
21 with or disagree with his underlying data collection,  
22 which I should probably make that clear. That's not part  
23 of my --

24 Q So you felt the data collection methodology was

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 appropriate?

2 A No. I don't have any opinion on it.

3 Q So you're not in a position to attack that,  
4 then?

5 A I'm talking about the actual number crunching.

6 Q What about the data collection methodology? Did  
7 you review that and critique it and form an opinion, one  
8 way or the other, as to whether it was appropriate under  
9 your standards?

10 A Well my objection to their methodology is I  
11 think they looked at the wrong things to try to make a  
12 determination that would support their conclusion.

13 Q And what do you think was the thing that they  
14 should have looked at that they didn't look at when they  
15 were conducting that study?

16 A Well I think it's fine that they looked at the  
17 things they did look at. I have no problem with that.

18 Q Right.

19 A My problem is the conclusion they reached from  
20 that data.

21 Q Well let me take you back to my question. What  
22 was it that they didn't look at that you thought they  
23 should have looked at?

24 A To reach the conclusion they did?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Yes.

2 A Well, as I said earlier, I think they should  
3 have looked, if they wanted to come to a conclusion about  
4 cervical artery dissection or vertebral artery dissection  
5 and the risk of stroke, you'd have to look at vertebral  
6 artery dissection, and they didn't.

7 Q All right, so, if Cassidy's group had included a  
8 review of VAD associated strokes, then you would find the  
9 conclusions more reliable and with a greater degree of  
10 validity, would you not?

11 A Well not necessarily.

12 Q Why not?

13 A If they had looked at what treatment the  
14 patients received and if they had actually looked at  
15 vertebral artery dissection as related to those  
16 treatments, I would have a lot more confidence in their  
17 conclusions.

18 Q All right, now, let me just follow-up with that,  
19 and I'm not going to belabor this, because I'm almost  
20 finished. When you say that if they had looked at the  
21 treatment they had received, how do you know that they  
22 didn't?

23 A It's not reported in their data.

24 Q All right, but you don't know that they didn't

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 look at the treatment they received. You're just stating  
2 that it's not reported in the report.

3 MR. PATTIS: Objection, speculative. If  
4 it's not in the report, we don't know what they did.

5 MS. MOORE LEONHARDT: Well that's counsel's  
6 opinion.

7 MR. PATTIS: I'd ask for a ruling on my  
8 objection, please.

9 MR. SHAPIRO: Can you repeat the question,  
10 please?

11 MS. MOORE LEONHARDT: I'll ask it another  
12 way. We can just keep going here.

13 MR. SHAPIRO: Thank you.

14 MS. MOORE LEONHARDT: Withdraw the  
15 question.

16 Q Ms. Bellamy, just because they haven't reported  
17 whether or not they reviewed the patient treatment in this  
18 particular report doesn't mean they didn't do it, does it?

19 MR. PATTIS: That's speculative. We don't  
20 know what they did if they didn't report it.

21 MS. MOORE LEONHARDT: That's not a proper  
22 objection.

23 MR. PATTIS: It is. I'd ask for a ruling,  
24 please.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: I agree, that it calls for  
2 speculation and that the objection should be sustained on  
3 that ground.

4 Q What would you expect, Ms. Bellamy --

5 CHAIRMAN SCOTT: The objection is  
6 sustained.

7 MS. MOORE LEONHARDT: Thank you. I'm  
8 proceeding to another question.

9 Q Attorney Bellamy, when you conduct your review  
10 of research studies and posted articles in scientifically-  
11 based journals and you evaluate those journal articles to  
12 see whether or not the treatment of a particular group of  
13 patients has been reviewed, what do you look for?

14 A What do you look for?

15 Q Yes.

16 MR. PATTIS: I believe this is the same  
17 question that was sustained, an objection, which was  
18 sustained twice about 20 minutes ago, simply in a  
19 different form, so I would object on relevance grounds.

20 MR. MALCYNKY: Agreed.

21 MS. MOORE LEONHARDT: I claim the question.  
22 It's a different question. I'm asking her to describe  
23 the information that she would look for to determine  
24 whether or not patient treatment had been evaluated.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. PATTIS: I'd ask for a ruling on my  
2 objection, please.

3 MR. SHAPIRO: I'm not sure I understand the  
4 question, to be perfectly honest. Could you explain to me  
5 what you're trying to ask?

6 MR. MALCYNSKY: May I be heard, please? I  
7 would join in the objection, and maybe this goes to, I  
8 think, your issue, Attorney Shapiro, as well. All we can  
9 refer to is what's in the Cassidy Study, and to speculate  
10 on what they looked at and didn't include in their study  
11 is not instructive and is totally speculative.

12 As Attorney Pattis indicated, the Board has  
13 already ruled that she's not allowed to go down these dead  
14 ends. I mean we're going to be here until, you know, it's  
15 70 degrees again if we keep going on like this.

16 MR. SHAPIRO: Attorney Leonhardt, do you  
17 want to explain to me what you're trying to ask?

18 MS. MOORE LEONHARDT: I'm trying to ask the  
19 witness what it is she would look for that would  
20 demonstrate to her that the Cassidy Group evaluated  
21 patient treatment or not.

22 MR. PATTIS: Again --

23 MS. MOORE LEONHARDT: Maybe I can ask it  
24 another way. I can ask it another way.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: Why don't you do that?

2 MR. MALCYNSKY: There's only so many ways  
3 to ask a lousy question.

4 MS. MOORE LEONHARDT: I would ask that the  
5 same --

6 MR. SHAPIRO: Counsel --

7 DR. POWERS: Hang on a second.

8 MR. MALCYNSKY: I apologize.

9 DR. POWERS: First of all, that's what we  
10 talked about. It's not professional. Second of all,  
11 again, for the forty-seventh time today, direct comments  
12 to this Board, please, and not to fellow attorneys.

13 MS. MOORE LEONHARDT: Thank you.

14 Q Attorney Bellamy, did you, in reviewing the  
15 report, determine whether or not the patient charts were  
16 reviewed by the researchers in the Cassidy Study?

17 A The study does not indicate that patient charts  
18 were reviewed.

19 Q All right. If the patient charts had been  
20 reviewed, would you consider the conclusions of the  
21 Cassidy Study to be more reliable?

22 MR. PATTIS: Speculative. Objection.

23 MS. MOORE LEONHARDT: Well I believe there  
24 was testimony yesterday that the chart review was



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 important, and I'm following up on that with this witness,  
2 because it appears that within her own pre-filed testimony  
3 she has specifically taken issue with the fact that charts  
4 weren't reviewed.

5 MR. PATTIS: And the report speaks for  
6 itself. What could have been done, should have been done,  
7 wasn't done, but was reported and maybe should have been  
8 done and could have been reported, speculative.

9 MR. SHAPIRO: I think she's asking a  
10 hypothetical question, and I would allow it in these  
11 circumstances, so I recommend to the Board this particular  
12 question be allowed.

13 CHAIRMAN SCOTT: I'll allow it.

14 MS. MOORE LEONHARDT: Thank you.

15 A Could you repeat the question, please?

16 Q Chart review, would that have been pertinent to  
17 you with regard to the Cassidy Study's group's research in  
18 determining whether or not you would ascribe a degree of  
19 reliability to the study?

20 A Would chart review?

21 Q Yes.

22 A No.

23 Q Why not?

24 A Because they don't report it in the study. You

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 can only draw conclusions in a study from the data in the  
2 study.

3 Q Isn't that one of the reasons why you criticized  
4 the reliability of the Cassidy Study, that they didn't do  
5 a chart review?

6 A Yes.

7 Q Thank you. So if you were provided evidence  
8 that a chart review was, in fact, done to support the  
9 study, would you change your view, as to the reliability  
10 of the study?

11 MR. PATTIS: Objection. Essentially,  
12 speculative. It would depend on what charts were  
13 reviewed, what methods were applied and so forth, so it's  
14 a meaningless question. Speculative and relevance.

15 DR. POWERS: So this is my comment to the  
16 Board. I think we've realized the chart reviews in the  
17 study were done or not done. They were not done, so I'm  
18 having a little trouble with this line of questioning on  
19 if, if, if.

20 I mean, maybe, if there's a particular  
21 question or point, we could get to it, so let's move on.

22 MS. MOORE LEONHARDT: I'm reluctant to go  
23 further, because of prior rulings that limit the area of  
24 Cross-Examination that I can get into. I was trying to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 earlier lay a foundation to have this witness describe why  
2 she has attacked the Cassidy Study and the components of  
3 that, but I was restricted, and, therefore, I don't want  
4 to belabor the point, so I'm prepared to move on.

5 MR. SHAPIRO: Thank you. Why don't you do  
6 that?

7 Q Was there a prior Canadian study that you  
8 reported to the Board that you feel has a degree of  
9 reliability to compel the Board in its determination of  
10 the issue before it?

11 A That I referred to?

12 Q Yes.

13 A Well, if you want to talk about a particular  
14 study, if you could tell me the name and the author and  
15 the journal, I could look it up and follow along.

16 Q No. That's not my question. My question to you  
17 is, among the articles that you cited to the Board, is  
18 there a particular Canadian study that you like that you  
19 feel demonstrates the position in support of your claim,  
20 that the Board should require specific disclosure of the  
21 risk of stroke?

22 MR. SHAPIRO: Counsel, we have the -- the  
23 Board has the pre-filed testimony. I think the question  
24 is vague.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: I'd like an  
2 opportunity to pursue it, because the presentation has  
3 cited to so many articles, many of which go way beyond  
4 cervical manipulation by chiropractors.

5 MR. PATTIS: I'm going to object to the  
6 non-testimonial character of this argument. I think the  
7 question is -- the objection is vague, and the witness has  
8 requested that her attention be directed to the articles.

9  
10 Counsel has indicated that there are so  
11 many in the study. I think, as a simple matter of  
12 courtesy, is there a study? Do you want to tell about it?  
13 And that might be the question to ask the witness.

14 I don't mean to advise counsel, but I would  
15 object on vagueness grounds and object to the non-  
16 testimonial argument of counsel at this point.

17 MR. SHAPIRO: I agree with that.

18 DR. POWERS: And, on a follow-up to that,  
19 you know, we know we're in Exhibit 41 right now. I mean  
20 the best thing to do would be to say, Exhibit 41, page so  
21 and so, paragraph, and then we can all turn to it and have  
22 an idea what the question is pertaining to, rather than us  
23 having to dig through and find it.

24 MS. MOORE LEONHARDT: Okay.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Page 18 of the testimony that you pre-filed, do  
2 you see the last paragraph there?

3 A I do.

4 Q Now you're referring to a study done by  
5 Alacantara?

6 A I am.

7 Q Published in a survey, published a survey in the  
8 journal Explore. Do you see that?

9 A I do.

10 Q The article, The Safety and Effectiveness of  
11 Pediatric Chiropractic. Now was that an article that was  
12 limited to an evaluation of cervical manipulation of the  
13 spine by chiropractors?

14 A Limited to? Well the study was a questionnaire  
15 about adverse effects and effectiveness of chiropractic  
16 manipulation in children.

17 Q And was it limited to manipulation of the  
18 cervical spine?

19 A It was not.

20 Q Thank you.

21 A It had many --

22 Q Next question is, further down in your comments  
23 on that, you referred to ratings criteria being fuzzy. Do  
24 you see that?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     I do.

2           Q     And what do you mean by using the terminology  
3 "fuzzy?"

4           A     Well this, quote, unquote, "study" didn't have  
5 any controls, and several types of manipulation were used.

6           I'm just reading here. "Presenting complaints and  
7 diagnoses were not limited to any one condition, but  
8 covered in a range." So, I mean, the study was  
9 essentially meaningless.

10          Q     All right, then, why did you choose to present  
11 that study to the Board?

12          A     Because I am pointing out that certain  
13 chiropractors, not all, are misrepresenting data, or  
14 misrepresenting studies to the public.

15          Q     This study is not specific to the issue before  
16 this Board, therefore, wouldn't you agree that it's not  
17 relevant?

18          A     It's relevant --

19                   MR. PATTIS: Argumentative. I would object  
20 on that ground.

21                   MS. MOORE LEONHARDT: I'll move on.

22          Q     Now you've got a statement on page 19 of your  
23 testimony, Attorney Bellamy, and I quote, "If major  
24 chiropractic organizations are unable to accurately

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 evaluate the data from the literature and disseminate it  
2 to the public, as demonstrated above, the Board must act  
3 to prevent this sort of misleading information from being  
4 disclosed to patients by Connecticut chiropractors." Do  
5 you see that statement? It's in the middle of the page of  
6 your testimony on page 19.

7 A Oh, 19. I thought you said 20. Yeah, I see it.

8 Q All right. That's your statement?

9 A Yes.

10 Q That's your opinion?

11 A Yes.

12 Q All right, so, what is the basis for that  
13 opinion?

14 A The evidence I put into my presentation, which  
15 is specific chiropractors and chiropractic organizations,  
16 are misrepresenting the evidence to the public.

17 Q And what criteria do you use to evaluate whether  
18 or not the chiropractic organizations are able to  
19 accurately evaluate the data from the literature and  
20 disseminate it to the public?

21 A Because they're not doing it.

22 Q No. What specific criteria do you use to serve  
23 as a basis of measuring whether or not chiropractors are  
24 accurately evaluating data from the literature and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 disseminating it to the public?

2 A You look at the literature, you look what  
3 they're saying, and what they're saying is not supported  
4 by the literature.

5 Q That's your opinion?

6 A That is correct.

7 MR. PATTIS: Argumentative.

8 MR. SHAPIRO: Counsel, can you --

9 MS. MOORE LEONHARDT: I'm asking for her  
10 criteria.

11 MR. SHAPIRO: Please. Of course it's her  
12 opinion. Who else's opinion would it be? She's  
13 testifying.

14 MS. MOORE LEONHARDT: Well I'm trying to  
15 get to the criteria that she uses in coming to that  
16 opinion.

17 MR. SHAPIRO: But she answered that  
18 question.

19 Q Those are the only two criteria that you apply?

20 A The only two?

21 Q Yes. Do you test the statistical significance  
22 of the data reported upon in each of those articles when  
23 you evaluate whether or not the report is accurate?

24 MR. SHAPIRO: I don't understand the



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 question. Counsel, you're asking if she does an  
2 independent test of some sort?

3 MS. MOORE LEONHARDT: I'm asking the  
4 witness, who has made the statement, the bald statement,  
5 that major chiropractic organizations --

6 MR. SHAPIRO: Counsel, if you could refrain  
7 from the editorial remarks, it would be appreciated.

8 MS. MOORE LEONHARDT: All right.

9 MR. SHAPIRO: She testified that the reason  
10 for her testimony was there was a difference between what  
11 the literature reports and what chiropractors are telling  
12 their patients. That's what her testimony was. So do you  
13 have a question to this witness?

14 MS. MOORE LEONHARDT: Yes.

15 Q Give me an example of where the chiropractic  
16 organizations in Connecticut are misinforming Connecticut  
17 patients with regard to the informed consent law currently  
18 in effect?

19 A With regard to what?

20 Q The informed consent law currently in effect.

21 A I didn't say they were misrepresenting the  
22 informed consent law. I said they are misrepresenting the  
23 studies.

24 Q All right, so, you don't take issue with the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 chiropractors in Connecticut complying with the informed  
2 consent laws that currently exist?

3 MR. PATTIS: Objection. No foundation.  
4 That's not what she's testifying to. Irrelevant.  
5 Argumentative. I'd ask for a ruling, please.

6 MR. SHAPIRO: I would sustain the  
7 objection.

8 MS. MOORE LEONHARDT: Before there's a  
9 ruling, may I make an offer of proof?

10 MR. SHAPIRO: You can, counsel.

11 MS. MOORE LEONHARDT: Thank you. The  
12 witness's testimony at page two and three refers  
13 specifically to informed consent under Connecticut law.  
14 She makes statements at the top of the page that the  
15 evidence will show, the evidence being the evidence that  
16 she has cited to in her testimony, that, number one, a  
17 specific form is necessary, etcetera, and a discharge  
18 summary must be given, and that it's necessary, because  
19 chiropractors are currently ignoring their ethical and  
20 legal duties to inform patients, so I believe it's a  
21 proper question under Cross-Examination.

22 MR. PATTIS: That is a closing argument and  
23 may be coherent or may not, I can't quite tell, but it's  
24 an improper question, and it's argumentative in form and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 in substance.

2 MR. SHAPIRO: Can you rephrase the  
3 question, please, and we'll rule on it?

4 Q Wouldn't you agree that the chiropractors in  
5 Connecticut are currently complying with the Connecticut  
6 informed consent law?

7 MR. PATTIS: Foundation. Relevance. The  
8 question here is whether the law needs to be changed, not  
9 whether they're complying with what is currently in place.

10 MS. MOORE LEONHARDT: Well --

11 MR. SHAPIRO: Hold on, counsel, for a  
12 minute. I'll let the Board take a vote, in terms of the  
13 relevancy of whether or not Connecticut chiropractors are  
14 currently complying with informed consent laws, in terms  
15 of this witness's testimony, whether that's an answer  
16 that's going to help the Board, in terms of being a  
17 relevant answer to answering the question they have before  
18 it.

19 DR. POWERS: I have to, once again, refer  
20 back to the question being asked of the Board, which is  
21 whether we need to basically mandate the risk or  
22 possibility of the occurrence of a stroke or cervical  
23 artery dissection as a side effect of the procedure.

24 I didn't realize that we were potentially

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 adjudicating whether informed consent was being done in  
2 Connecticut, so I have to sustain the objection. I'll  
3 make a motion that we sustain the objection.

4 CHAIRMAN SCOTT: Do we have a second?

5 A MALE VOICE: Second.

6 CHAIRMAN SCOTT: Is there any discussion?  
7 All in favor?

8 ALL: Aye.

9 CHAIRMAN SCOTT: Any opposition? So ruled.

10 MS. MOORE LEONHARDT: I'd like to make an  
11 offer of proof.

12 MR. PATTIS: The objection has been  
13 sustained. I object it would be a non-testimonial  
14 argument in the form of testimony.

15 MS. MOORE LEONHARDT: I wasn't given an  
16 opportunity to make an offer of proof, so I'd like to  
17 renew a question with regard to informed consent.

18 Q Ms. Bellamy, the whole point of your being here  
19 today is to ask this Board to change the current law on  
20 informed consent, as it applies to chiropractors in  
21 Connecticut, is it not?

22 A I'm asking the Board to mandate a full and fair  
23 disclosure of the risk of cervical artery dissection and  
24 stroke following cervical manipulation.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Would you please answer my question?

2 MR. PATTIS: Objection, argumentative.

3 Asked and answered. It was answered.

4 MS. MOORE LEONHARDT: She did not answer my  
5 question. I asked her, as to the purpose of why she was  
6 here, not what she was asking the Board to do.

7 MR. SHAPIRO: I would sustain the  
8 objection. I think it's been asked and answered.

9 CHAIRMAN SCOTT: Sustained. Asked and  
10 answered.

11 Q You indicate in page three of your testimony why  
12 you are here, do you not?

13 MR. PATTIS: Objection. May the witness be  
14 given -- as she's told us why she's here twice now, may  
15 the witness be directed to something, other than telling  
16 us why you're here in page three? Objection, vague and  
17 relevance.

18 MS. MOORE LEONHARDT: Yes.

19 Q Was your purpose in preparing this testimony  
20 today to explain to the Board why you believe it was  
21 necessary to have the current law on informed consent  
22 applicable to chiropractors changed?

23 A I don't understand this to be a change in the  
24 law. The law of informed consent would remain the same.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Basically, they would just mandate a particular  
2 disclosure.

3 Q So you don't consider that a change?

4 MR. PATTIS: Relevance. Whether it is or  
5 not isn't pertinent to what the Board has to decide.

6 MR. SHAPIRO: I would sustain the  
7 objection. Counsel, you need to move on from this line of  
8 questioning.

9 Q On page three of your testimony, Attorney  
10 Bellamy, you state, as a reason for promoting your  
11 position here today, quote, "It would be impossible" --  
12 excuse me. Let me back up.

13 "In a hypothetical, let us say that the  
14 evidence discloses the risk of death as one percent and,  
15 other than the fact that the Plaintiff suffered injury, no  
16 further evidence is admitted." You're talking about a  
17 court case. "It would be impossible for the jury to  
18 decide whether the" --

19 MR. PATTIS: Objection to the narrative  
20 portion of this. If she's asking is she talking about a  
21 court case, the witness should be permitted to answer that  
22 question. Again, we're in non-testimonial narratives.

23 MS. MOORE LEONHARDT: All right. Let me  
24 back up. I'll withdraw the question, and I'll back up to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the beginning of the statement.

2 Q Top of the page, your statement to the Board is  
3 that "It is impossible to determine whether informed  
4 consent has been accomplished without consideration of all  
5 four required elements. Indeed, to do so would be legally  
6 insufficient under Logan," correct?

7 A Correct.

8 Q And Logan, pursuant to your testimony, is the  
9 current standard of care relative to informed consent for  
10 chiropractors in Connecticut, correct?

11 A I don't know if it's a standard of care. It's  
12 required.

13 Q All right. It sets forth the elements of  
14 informed consent applicable to chiropractic care, does it  
15 not?

16 A It does.

17 Q All right. Your next paragraph, quote, "This is  
18 easily demonstrated by a simple example. The unusual  
19 situation for" --

20 MR. PATTIS: Objection. Objection.  
21 Objection. Misstating it. It's the usual, not unusual.

22 MS. MOORE LEONHARDT: I'm sorry.

23 Q "The usual situation for application of the  
24 reasonable patient standard is in an action brought by a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 patient against his physician for failure to obtain  
2 informed consent prior to a certain procedure. In a  
3 hypothetical, let's say the evidence discloses the risk of  
4 death as one percent, and, other than the fact that the  
5 patient suffered injury, no further evidence is admitted.

6 It would be impossible for the jury to  
7 decide whether the physician's disclosure was adequate  
8 without further information. What was the anticipated  
9 benefit of the treatment, what alternatives were there,  
10 and what kind of procedure was to be performed?

11 Thus, in this case, it is mandatory that we  
12 answer the following four questions. What is the nature  
13 of cervical manipulation? What are the anticipated  
14 benefits of cervical manipulation? What are the  
15 alternatives to cervical manipulation? What are the risks  
16 and hazards of cervical manipulation? Do you agree with  
17 that?

18 A Yes.

19 MR. PATTIS: Objection. That's her  
20 testimony. It's argumentative and meaningless and not  
21 relevant.

22 MS. MOORE LEONHARDT: But that would be  
23 covered under the --

24 MR. SHAPIRO: Counsel, I would recommend to



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the Board they sustain that objection. You're reading a  
2 passage in her testimony and then asking her if she agrees  
3 with her testimony?

4 MS. MOORE LEONHARDT: I'm trying to lay the  
5 foundation and direct the witness to her testimony, so I  
6 can ask a follow-up question.

7 MR. SHAPIRO: Why don't you ask the follow-  
8 up question?

9 Q Wouldn't you agree that that is the current law  
10 in the State of Connecticut as it pertains to  
11 chiropractors?

12 MR. SHAPIRO: Counsel, that's been asked  
13 and answered I think three times now.

14 MS. MOORE LEONHARDT: I don't believe she  
15 has.

16 MR. SHAPIRO: Well I would recommend to the  
17 Board that that question not be answered again.

18 MS. MOORE LEONHARDT: If I may, I don't  
19 believe she has answered it with regard to these  
20 particular four questions, unless she wants to stipulate  
21 that that is what her representation on this page means.

22 MR. PATTIS: I'd ask the Board to adhere by  
23 its previous ruling and admonish counsel to move on.

24 CHAIRMAN SCOTT: Please move on.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: I have nothing  
2 further. Thank you.

3 CHAIRMAN SCOTT: Right now, we're going to  
4 take a 10-minute break.

5 MR. SHAPIRO: Attorney Malcynsky, you'll be  
6 permitted to conduct Cross-Examination when we return.

7 MR. MALCYNKY: Thank you.

8 (Off the record)

9 CHAIRMAN SCOTT: All right. We're back on.  
10 Let's start with Cross, please.

11 MR. PATTIS: I want to make the record  
12 clear. We're permitted to lead, even if we have a unity  
13 of interest with the witness?

14 MR. SHAPIRO: That's correct, yes.

15 CROSS-EXAMINATION

16 BY MR. MALCYNKY:

17 Q Good morning, Ms. Bellamy.

18 A Good morning.

19 MS. MOORE LEONHARDT: Before we go any  
20 further, I object to counsel leading this witness. This  
21 is Cross-Examination. The witness presented herself under  
22 Direct, she converted to Cross, and I object to counsel,  
23 who are not representing this witness, leading the  
24 witness.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: Counsel, I'm just affording  
2 all parties the same opportunity to Cross-Examine a  
3 witness, so I would recommend to the Board --

4 MS. MOORE LEONHARDT: I believe counsel  
5 just made a representation, which was just made for the  
6 first time in this proceeding, was a unity of interest.

7 Now no written appearance has been filed by  
8 either attorneys, although the rules require it. I  
9 understand that that requirement was waived yesterday, and  
10 I didn't contest it.

11 There has been no appearance made by either  
12 attorney on behalf of this organization or this witness,  
13 and, therefore, I don't believe there is a unity of  
14 interest, unless this is something new.

15 MR. SHAPIRO: Whether or not there's a  
16 unity of interest is, frankly, irrelevant, I think, to  
17 whether or not the other parties are allowed to conduct  
18 Cross-Examination.

19 In the notice, there's an order of Cross-  
20 Examination, unless it's your witness, meaning a party's  
21 own witness. My recommendation to the Board is that they  
22 permit normal Cross-Examination, which includes leading a  
23 witness, so, for example, you're permitted to Cross-  
24 Examine the witness, just as you did.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   My understanding is that Attorney Bellamy  
2 is from the Campaign for Science-Based Healthcare, and  
3 whether or not she happens to agree with other parties or  
4 intervenors in this group is really not relevant to  
5 whether or not those other parties can Cross-Examine her  
6 or not.

7                   MS. MOORE LEONHARDT: I just would -- I  
8 understand where you're going, counsel, but I, again,  
9 raise the issue of unity of interest, because I believe I  
10 just heard Attorney Pattis state that there is a unity of  
11 interest, and, if there is a unity of interest, then it  
12 wouldn't be proper for either attorney to conduct Cross-  
13 Examination of this witness, because their proper role  
14 would be to be unified as a participant in the Direct  
15 presentation of the witness, as opposed to Cross-  
16 Examination.

17                   MR. SHAPIRO: Okay and what I told you is  
18 that, in my opinion, it's not relevant that Attorney  
19 Pattis believes that there's a unity of interest with this  
20 particular witness, in terms of the order of Cross-  
21 Examination in the nature of these proceedings.

22                   If Attorney Pattis thinks that there's a  
23 unity of interest, that's fine. If he doesn't think  
24 there's a unity of interest, that's also fine. My

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 recommendation to the Board is that they allow normal  
2 Cross-Examination of this witness, beginning with Attorney  
3 Malcynsky.

4 MS. MOORE LEONHARDT: Okay. I, obviously,  
5 will have to accept your recommendation, but I simply  
6 would state this, that if --

7 MR. PATTIS: I would object to counsel  
8 being permitted to make speeches after a ruling has been  
9 made and accepted.

10 MR. SHAPIRO: Counsel, I agree with that,  
11 in the nature of moving this along. I've allowed you to  
12 make your objection, I've allowed you to state your  
13 opinion about what you think the standard should be, and  
14 I've made a recommendation to the Board regarding that,  
15 and I think we should move on.

16 MS. MOORE LEONHARDT: Attorney Shapiro, may  
17 we just have the ruling, then, on the record, because I  
18 was not of the understanding that a ruling had been made,  
19 and I was simply replying to the legal argument being put  
20 forth by Attorney Pattis and hoping that I would have the  
21 same opportunity to present my legal argument, as well.

22 MR. SHAPIRO: You have, and I would  
23 recommend to the Board that they permit Cross-Examination,  
24 as indicated in the rulings that they've issued so far.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 DR. POWERS: Motion to allow Cross-  
2 Examination, as Attorney Shapiro has just described.

3 CHAIRMAN SCOTT: Second.

4 DR. POWERS: Do we have any discussion?  
5 All in favor?

6 ALL: Aye.

7 DR. POWERS: Any opposition? No? So  
8 carried.

9 Q Good morning, Attorney Bellamy. Try again. The  
10 thrust of your testimony, as submitted in writing and as  
11 you attempted to testify to this morning, surrounds the  
12 Cassidy Study and what you feel are fundamental flaws with  
13 the Cassidy Study, is that correct?

14 A Fundamental flaws with the conclusion.

15 Q Can you just summarize those for me, please?

16 A Yes. The Cassidy authors came to a conclusion,  
17 reading from the abstract here, we found no evidence of  
18 excess risk of VBA stroke. No. I'm sorry. That's not  
19 correct.

20 Okay. The increased risk of VBA stroke  
21 associated with chiropractic and PCP visits is likely due  
22 to patients with headache and neck pain from VBA  
23 dissection seeking care before their stroke. That's my  
24 problem.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           Q     And we've heard a lot of discussion over the  
2 last day and a half or so about coding, and the Cassidy  
3 Study primarily concerned itself with coding and the study  
4 of codes, in terms of their methodology?

5           A     Yes, sir.

6           Q     And what's your level of comfort with the codes  
7 that they used in their study?

8           A     I think they used the wrong codes to look for  
9 what they were trying to look for and to reach the  
10 conclusion they did.

11          Q     Can you elaborate for me, please?

12          A     Well, if you wanted to look for VBA dissections,  
13 you could look for VBA dissections, the code for VBA  
14 dissections. They did not.

15          Q     Did they employ -- they did not, okay. Thank  
16 you.

17          A     And the other problems were they looked at  
18 vertebrobasilar stroke. Vertebrobasilar stroke has  
19 causes, other than vertebral artery dissection, and you  
20 can sort of see this in the title, the kind of hedging I  
21 think, because the title of the article is Risk of  
22 Vertebrobasilar Stroke and Chiropractic Care, neither of  
23 which is focused on the issue we're trying to -- the Board  
24 is trying to determine today.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: I object, and I move  
2 to strike. I believe the witness previously testified  
3 that this article and these articles were all pertinent  
4 and relevant to the Board's consideration of the issue  
5 today, so her testimony is inconsistent.

6 MR. SHAPIRO: Counsel, there's no legal  
7 basis for making a motion to strike on objection, based on  
8 the fact that testimony is inconsistent, and I would trust  
9 that you're aware of that. I'd recommend to the Board  
10 that they overrule the objection.

11 MS. MOORE LEONHARDT: If it's not  
12 inconsistent, it's inflammatory and irrelevant.

13 MR. PATTIS: I would ask that counsel be  
14 admonished from attempting to give her closing argument  
15 when she hears an answer that she dislikes and be asked to  
16 state a legal basis for which there is some sound basis in  
17 law for an objection, other than not liking it.

18 MR. SHAPIRO: Counsel, I would agree to  
19 that. I've been very patient with asking you to respond  
20 with legal objections, and, certainly, the fact that you  
21 think a particular witness is testifying in an  
22 inconsistent way, that's for Cross-Examination and closing  
23 remarks, not a basis for an objection and disruption of  
24 the hearing.



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: Thank you. Attorney  
2 Shapiro, you have my unabashed commitment to raising  
3 proper objections before this Board, and I trust that the  
4 same commitment will be observed by counsel. Thank you.

5 A I think I was sort of in the middle of my answer  
6 to counsel, so let me pick up where I left off, if I can  
7 remember that. Okay, so, the risk -- I'm sorry. VBA  
8 stroke is not caused only by vertebral artery dissection.

9  
10 They failed to capture any vertebral artery  
11 dissections that did not result in stroke. They looked  
12 only at headache and neck pain as a diagnosis and did not  
13 consider the fact that cervical manipulation is done by  
14 chiropractors for other than headache and neck pain, so  
15 any vertebral artery dissection caused by cervical  
16 manipulation for other than head and neck pain was not  
17 captured in this study.

18 Finally, head and neck pain are symptoms of  
19 many types of diseases and other conditions, and,  
20 therefore, you cannot use head and neck pain as a proxy  
21 for a presenting condition of vertebral artery dissection,  
22 which is what the authors did.

23 MS. MOORE LEONHARDT: I object and move to  
24 strike that last statement, as this witness has not been

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 qualified as an expert to render such an opinion. To the  
2 extent that the Board is not going to strike it, I ask  
3 that the Board give it little weight, in view of the fact  
4 that this is a lay witness.

5 MR. PATTIS: Again, I'd ask that counsel be  
6 admonished not to give her closing argument in the middle  
7 of this witness's testimony.

8 MR. MALCYNSKY: I would also add that this  
9 witness is testifying on her assessment of the Cassidy  
10 Study. She's clearly capable and qualified to do that.

11 MR. PATTIS: And that was within the scope  
12 of the prior counsel's questioning.

13 MS. MOORE LEONHARDT: I'd like an  
14 opportunity to reply to that, if I may?

15 MR. PATTIS: I'd ask for a ruling, simply  
16 that it compounds the prejudice and delay in this hearing  
17 by hearing repetitive closing arguments unrelated to any  
18 conceivable legal basis for the objection and ask that the  
19 motion to strike be denied for the reason that the  
20 previous motion to strike was denied.

21 Merely not liking an answer is legally  
22 insufficient.

23 MR. MALCYNSKY: And I would add that the  
24 sole reason that I'm even required to ask these questions

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 to try to clarify what she attempted to testify to earlier  
2 is that these constant interruptions are merely a tactic  
3 to confuse the witness and to confuse the testimony.  
4 Let's get it on the record, then you have an opportunity  
5 to Cross-Examine.

6 MS. MOORE LEONHARDT: Attorney Shapiro, may  
7 I have an opportunity to speak?

8 MR. SHAPIRO: You may have a brief  
9 opportunity to speak.

10 MS. MOORE LEONHARDT: Thank you. I have  
11 raised a proper objection under the rules of evidence, the  
12 code of evidence that is routinely applied in proceedings  
13 such as these.

14 Counsel are improperly representing that my  
15 objections are not appropriate. They absolutely are under  
16 the rules of evidence, and I am prepared to cite to you  
17 the propriety of raising an objection against a lay  
18 witness, who is offering what appears to be an expert  
19 opinion, when, number one, the witness has not been  
20 qualified as an expert, number two, it has already been  
21 settled that the witness's testimony is presented as a lay  
22 witness presentation only, and, number three, the opinions  
23 are highly inflammatory and prejudicial and should not be  
24 given any weight.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   It is appropriate line of objection. This  
2 is not closing argument.

3                   MR. MALCYNSKY: With all due respect,  
4 counsel --

5                   DR. POWERS: All right. This is Board  
6 member Powers. Please, everyone stop for a minute. We've  
7 already covered this 20 some odd minutes ago, that we will  
8 decide the weight we give the witness.

9                   We already acknowledged that she was not  
10 offered as an expert, and we will hear her opinion, so my  
11 recommendation is to overrule the objection. I'm making a  
12 motion we overrule the objection.

13                   CHAIRMAN SCOTT: Do we have a second?

14                   A MALE VOICE: Second.

15                   CHAIRMAN SCOTT: Any discussion? Okay.  
16 All in favor?

17                   ALL: Aye.

18                   CHAIRMAN SCOTT: Any opposition? No? So  
19 ruled. Please continue.

20                   COURT REPORTER: One moment, please.

21                   MR. PATTIS: Dr. Powers, is it possible to  
22 have the question repeated? I've forgotten it.

23                   DR. POWERS: If you'd repeat the question,  
24 because I have no idea what it is either?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. MALCYNKY: If I could even remember at  
2 this point.

3 Q We were talking about the conclusions or what  
4 you view as flaws in the Cassidy report and their  
5 methodology, and I think you were in the middle of a  
6 discussion about why you thought that one of the flaws was  
7 that they only studied head and neck pain, and you were  
8 explaining, I believe, why that was, in your opinion, a  
9 flawed methodology.

10 A Because head and neck pain cannot be used as a  
11 proxy for vertebral artery dissection. Head and neck pain  
12 are symptoms of many other conditions. Just to clarify,  
13 this is based on other articles cited in my testimony.

14 Q You were here yesterday when Dr. Lauretti  
15 testified, is that correct?

16 A Yes, sir.

17 Q And did you hear me ask him the difference  
18 between occlusion, stenosis and vertebral dissection?

19 A I did.

20 Q And did you hear his answer to my question,  
21 about, in his opinion, which one of those three would be  
22 most likely caused by neck manipulation, and he answered  
23 VAD? Would you agree?

24 MS. MOORE LEONHARDT: Same objection.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     I'm sorry. I'm not sure I understand your  
2 question.

3           Q     Do you understand --

4                     DR. POWERS: Hang on a second. We have an  
5 objection pending, please.

6                     MR. SHAPIRO: The objection has already  
7 been ruled upon, so if she wants to make a note for the  
8 record, that --

9                     MS. MOORE LEONHARDT: Thank you. That's  
10 all I'm trying to do. I'm not trying to bog this down,  
11 but I feel compelled.

12                    MR. PATTIS: May counsel have a standing  
13 objection, so that we're not interrupted?

14                    MS. MOORE LEONHARDT: I will agree to a  
15 standing objection, and I note the Board's ruling in that  
16 regard. Thank you.

17                    MR. SHAPIRO: Thank you.

18           Q     Do you understand the difference between  
19 occlusion, stenosis and VAD?

20           A     Yes.

21           Q     Can you just state, briefly, what the difference  
22 is?

23           A     Stenosis is the narrowing of the artery,  
24 occlusion is the complete blockage, and VAD is dissection

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 of the vertebral artery.

2 Q And yesterday Dr. Lauretti testified that he  
3 thought of those three. If any of those three were likely  
4 to occur from a neck manipulation, it would most likely be  
5 VAD. Would you agree with that?

6 A Okay. What I think you're asking is can VAD  
7 cause occlusion and stenosis?

8 Q Or is it more likely -- is VAD more likely to be  
9 the result of a neck manipulation than stenosis or  
10 occlusion?

11 A I don't know. I'm sorry. I don't know.

12 Q But would you agree that VAD is one of the  
13 potential results of a neck manipulation?

14 A Yes. Just to go back to your earlier question,  
15 maybe I understand it better now. VAD can cause occlusion  
16 and stenosis, or stenosis.

17 Q Did the, to your knowledge, from reviewing the  
18 Cassidy Study, did the Cassidy Study include the proper  
19 coding for VAD?

20 A They did not look at the coding. I mean they  
21 did not look at vertebral artery dissection at all,  
22 including the code for VAD.

23 Q Did the Cassidy Study include a review of coding  
24 for admissions to the hospitals, to your knowledge?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     It did not.

2           Q     In your opinion, is that a flaw in their  
3 methodology?

4           A     It would have -- yes. I mean it was one thing -  
5 - it was one way they could have looked at additional data  
6 to support or refute any association between VAD and  
7 cervical artery manipulation.

8           Q     And, based on your review and study of the  
9 Cassidy material, is there any indication that they  
10 reviewed patient medical records?

11          A     There is not. I'm sorry. Let me go back.

12          Q     Go ahead.

13          A     I didn't mean cervical artery manipulation. I  
14 meant cervical manipulation.

15                   DR. POWERS: Excuse me. We seem to be  
16 going over the same questions on the same study and  
17 getting the same answers. Attorney Bellamy has submitted  
18 her comprehensive analysis of the study, and we've read  
19 it, and we've heard it. Can we possibly move on to some  
20 other areas that may be different for this Cross?

21                   MR. MALCYNSKY: I appreciate your concern.  
22 I was merely trying to clarify what I thought was some  
23 confusion that ensued from some of the questioning earlier  
24 on with regard to her testimony. I appreciate your



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 concern and try and avoid any repetitive questioning.

2 DR. POWERS: Agreed, but we also have to  
3 remember that, you know, we did mention this is not an  
4 expert, this is a layperson, and, you know, getting into a  
5 lot of medical terms with her is probably not going to  
6 carry much weight with the Board.

7 I'm speaking on my own behalf and the sense  
8 of the Board, but we've heard from doctors. I'm sure  
9 we're going to hear from more on both sides. Please, just  
10 let's move forward a little bit.

11 Q Attorney Bellamy, you were also asked a question  
12 by Attorney Moore Leonhardt concerning causation and risk.

13 In your opinion, do you need to show causation to  
14 establish risk?

15 A No, and that's not just my opinion. It's in the  
16 literature cited in my submission, I believe.

17 Q Can you just briefly refer to, specifically,  
18 what you're talking about?

19 A Boy, I'll try.

20 Q Is it the American Journal article we heard  
21 testimony about earlier?

22 A I'm not sure it's in that article, and, frankly,  
23 I'd have to really look through this.

24 MR. SHAPIRO: Counsel, we have her

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 testimony. I think we're good.

2 MR. MALCYNKY: That's fine. I don't have  
3 anything further. Thank you.

4 MR. SHAPIRO: Attorney Pattis?

5

6 CROSS-EXAMINATION

7 BY MR. PATTIS:

8 Q My name is Norm Pattis. I represent the  
9 Chiropractic Stroke Awareness Group. I have very few  
10 questions. You testified, in response to questions  
11 earlier today, about relying on something called Pub Med  
12 as a data source for identification of articles. Can you  
13 describe for the panel briefly what Pub Med is?

14 A Yes. It's a service of the National Library of  
15 Medicine, and it allows one to search for journal articles  
16 in the literature.

17 Q I would ask you to turn to page 11 through 13 of  
18 your pre-filed testimony. Please let me know when you've  
19 gotten there.

20 A I've got it.

21 Q I see a number of articles, beginning with  
22 Spinal Manipulative Therapy is an Independent Risk Factor  
23 for Vertebral Artery Dissection Neurology. Is that an  
24 article you found in Pub Med?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 A I believe I did.

2 Q And do you know, ma'am, whether the articles  
3 that are in the Pub Med database have all been peer  
4 reviewed?

5 A I do not know whether all articles have been  
6 peer reviewed. In Neurology, they are peer reviewed.

7 Q Okay. I was hoping to avoid asking on an  
8 article-by-article basis, but because of that, I'll ask.  
9 You know that Neurology is peer reviewed?

10 A I do.

11 Q Do you know whether the Neurosurgical Review is  
12 peer reviewed? That's the second article on page 11.

13 A It is.

14 Q And the American Journal of Public Health?

15 A It is.

16 Q I'm not going to ask about each, but just a  
17 couple more. Do you know whether the journal Stroke is a  
18 peer reviewed article?

19 A It is.

20 Q And, Geology, is that a peer reviewed article?

21 A Yes.

22 Q Now, the Cassidy Study, that was also in a peer  
23 review journal, as well, correct?

24 A Correct.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Would you please turn to page 18 of your pre-  
2 filed testimony?

3 A Okay.

4 Q You were asked questions by prior counsel about  
5 the Alacantara Study, correct?

6 A Correct.

7 Q You were not endorsing the findings -- and you  
8 were asked whether you used the Alacantara Study to  
9 support your conclusions about something or other. Do you  
10 recall a line of questions to that effect?

11 A I do.

12 Q Is it your opinion that the Alacantara Study was  
13 informative or misleading, as to the risks of chiropractic  
14 stroke?

15 A As to the risk of chiropractic stroke?

16 Q Um-hum.

17 A It was neither. It was worthless.

18 Q Explain the significance of the following line.  
19 "Misrepresentation of study results to the public is not  
20 limited to the Cassidy Study. Recently, Alacantara, et  
21 al, published a survey in the journal Explore," comma.  
22 What were you referring to by that reference to the  
23 Alacantara Study?

24 A The fact that misrepresentation of the Cassidy

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Study was not limited to that one study. Other articles  
2 in the literature were being misrepresented.

3 Q And in the literature survey -- well, withdrawn.

4 MR. PATTIS: No further questions.

5 MR. SHAPIRO: Any questions from the Board?

6 EXAMINATION BY DR. POWERS:

7 Q Good morning, or, actually, almost good  
8 afternoon. I just have a couple of questions for you.

9 A Yes, sir.

10 Q I was hoping someone would ask these and not  
11 necessitate me having to, but it really wasn't answered.  
12 First of all, is it your opinion that there's a quantified  
13 or an unquantified risk of vertebral artery dissection  
14 from cervical neck manipulation? And what I'm looking for  
15 is the word "quantified" or "unquantified."

16 A You're asking for my opinion on that?

17 Q Yes.

18 A Or the literature?

19 Q No, your opinion.

20 A I think it is unknown.

21 Q So it's unquantified?

22 A If that's what you mean by unquantified.

23 Q I'm going to be the nice guy here. I'm easy.

24 A Okay.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           Q     Is it quantified or is it unquantified? Your  
2 opinion.

3                   MR. PATTIS: I'm going to object on the  
4 grounds that it's been asked and answered. I'm not being  
5 nice, I know.

6                   DR. POWERS: She never actually answered,  
7 and I'm certainly not going to object to my own question.  
8 (Laughter)

9                   MR. PATTIS: No, but the rest of the Board  
10 may.

11                   DR. POWERS: Hey, listen. I've been  
12 sitting here, listening to everyone's questions, for hours  
13 on end.

14           Q     I just want to know, do you feel it's quantified  
15 or unquantified?

16           A     I feel it has been quantified in several  
17 studies, but the risk is unknown.

18           Q     Okay, thank you. The next question I have is  
19 this, and I want to really bring us back to the center of  
20 this entire hearing, which is there's already informed  
21 consent in Connecticut, and the question is should we  
22 mandate chiropractors to have to specifically discuss  
23 stroke and vertebral artery dissection as a side effect of  
24 the procedure?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   One of the things that I'm wrestling with,  
2                   and I have no opinion either way, I've been sitting here,  
3                   as my Chairman said, like a blank sheet of paper, and I've  
4                   been absorbing this all and trying to come up with a  
5                   consensus in my own mind to go into deliberations, but  
6                   we've got a long way before that happens, I'm trying to  
7                   figure out where, and if you have any opinion or thoughts  
8                   on this from your research as the head of your group, are  
9                   there any mandated levels that a specific percentage risk  
10                  of something would require a warning?

11                  I mean I looked across the medical field,  
12                  the dental field. I'm trying to find something that says,  
13                  when something becomes one in 100,000, or one in a  
14                  million, or one in four million, that's the point at which  
15                  disclosure has to happen.

16                  A        I'm not aware of any, and I would say probably  
17                  not, because risk is always compared to benefit.

18                  Q        Well I agree, risk is compared to benefit, but  
19                  what I'm trying to figure out is, you know, if we're going  
20                  to mandate the chiropractors to do this in Connecticut,  
21                  what's the threshold here?

22                  I mean no one has offered any testimony  
23                  pertaining to, you know, at what level the FDA -- people  
24                  brought up vaccinations and drug warnings. At what level

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 is that mandate required, otherwise, you're asking us to  
2 make a ruling on new ground, something that doesn't exist  
3 anywhere in health care.

4 We're trying to find an incident rate or  
5 threshold level at which it becomes valid, a valid  
6 concern. Any comment on that?

7 MR. PATTIS: I think it's an unfair  
8 question. I'd object, in the grounds that when we  
9 attempted to produce analogical information about the  
10 pharmaceutical industry, the very Board sustained  
11 objections to those questions as irrelevant.

12 If the Board is now inviting us to present  
13 analogical data from other industries, we'll accept the  
14 invitation, but I'm confused by the law of the case in  
15 this case. It's either relevant or it's not.

16 MS. MOORE LEONHARDT: I'd like to just  
17 state for the record that it appears that counsel is  
18 advocating on behalf of the witness and just note that the  
19 witness is under Cross-Examination, and it was my  
20 understanding that he wasn't representing this witness.  
21 Thank you.

22 MR. PATTIS: I'm simply asking for  
23 clarification of the relevancy of the topic suggested in  
24 the question. That's all.



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 DR. POWERS: I think my question is clear.

2 MR. PATTIS: But what's unclear is whether  
3 we're being permitted to offer analogical information  
4 about what's permitted in other industries. Yesterday,  
5 there was a specific question about pharmaceuticals and  
6 risk levels, and the objection to the question or the line  
7 of questioning was sustained as irrelevant.

8 The question from the Board at this point  
9 invites an answer to that question, and I'm wondering  
10 whether the Board has changed course with regard to the  
11 relevance of that information.

12 DR. POWERS: I have no further questions.

13 MR. MALCYNISKY: Can I be permitted to ask  
14 one question as a response?

15 BY MR. MALCYNISKY:

16 Q Attorney Bellamy, in response to a question from  
17 Commissioner Powers, you made the statement that the risk  
18 is unknown. By that, did you mean that there's no risk?

19 A No. By that, I mean that the various estimates  
20 of risk in the literature go all over the board, and  
21 that's not my opinion about the level of certainty about  
22 the risk. That is from the Ernst article.

23 Q Right.

24 A So, certainly, I think the association is there,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 I think the causation evidence is there, but the actual  
2 level of risk is unknown.

3 Q And the article you cite at page 11 in your  
4 testimony says that various studies and reviews estimate  
5 the risk from a low of one in 3.8 million to a high of one  
6 in 400,000 manipulations, is that correct?

7 A Yes. Again, that's from the Ernst article.

8 MR. MALCYNSKY: Thank you.

9 MR. PATTIS: May I have one follow-up  
10 question, please?

11 MS. MOORE LEONHARDT: I'd also like a  
12 follow-up question in proper order. Thank you.

13 MR. SHAPIRO: Attorney Pattis, why don't we  
14 -- well we've sort of gone out of order a little bit. I  
15 didn't realize there was a question from Attorney Moore  
16 Leonhardt. Attorney Moore Leonhardt, why don't you ask  
17 your question, and then, Attorney Pattis, I'll let you go  
18 from there.

19 MS. MOORE LEONHARDT: I don't mind if  
20 Attorney Pattis wishes to proceed, because he, apparently,  
21 has a question in mind.

22 MR. PATTIS: I presumed that, when counsel  
23 said she had one, there was one in mind. I'll wait.

24 MS. MOORE LEONHARDT: Thank you.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 BY MS. MOORE LEONHARDT:

2 Q Just by way of follow-up, the articles that  
3 related to risk that you referred to on page 11 included  
4 the Rothwell article I take it?

5 A Included the Rothwell article?

6 Q Yes.

7 A Could you just point out where on the page you  
8 are?

9 Q I'm just taking a moment to scan. Among your  
10 materials, you considered various science-based journal  
11 reports, and I believe that among them was listed the  
12 Rothwell report, was it not?

13 A You're correct.

14 Q Yes, and if I'm directing you to the wrong page,  
15 I apologize.

16 MR. SHAPIRO: I believe it's on page 12, if  
17 that helps.

18 MS. MOORE LEONHARDT: Page 12. Thank you.

19 Q Now with regard to that particular report, was  
20 that a peer reviewed study?

21 A Is Stroke a peer reviewed journal? Is that what  
22 you're asking me?

23 Q Yes.

24 A Yes, it is.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q And, so, the Rothwell article I take it you give  
2 some degree of reliability?

3 A To its conclusion?

4 Q Yes.

5 A Yes.

6 MS. MOORE LEONHARDT: Thank you.

7 MR. SHAPIRO: Attorney Pattis, do you have  
8 any follow-up?

9 MR. PATTIS: Yes.

10 BY MR. PATTIS:

11 Q Do you have a copy of the Rothwell Study in  
12 front of you, ma'am?

13 A I do.

14 Q Okay.

15 A I've got to find it, though. Okay.

16 Q Will you read the fourth full paragraph of the  
17 study to the Board, please? "A review of case reports."

18 A Yes. Could you tell me the specific page?

19 Q You're looking at a computer copy. I don't know  
20 what page it is. There is a paragraph that begins, "A  
21 review of case reports to the end of 1993 found."

22 A Page one? Oh, I'm sorry. Okay.

23 Q The fourth full paragraph of the narrative  
24 portion.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     Yes, okay. I'm there.

2           Q     Would you please read that paragraph to the  
3 Board, please?

4           A     "A review of the case reports to the end of 1993  
5 found 165 vertebrobasilar complications from spinal  
6 manipulation of which 27 percent made a full recovery, 52  
7 percent suffered residual effects, and 18 percent died as  
8 a result. Other case reports and surveys have estimated  
9 the risk of VBA after cervical manipulation to be between  
10 one in 1.3 million and one in 400,000 manipulations."

11          Q     And does that rely upon other peer reviewed  
12 articles? In other words, you see a subscript there, or  
13 superscript, rather, of five, nine, 11 and 12, referring  
14 to references. Is that conclusion supported by reference  
15 to other peer review articles, if you know?

16                   DR. POWERS: I'm sorry. I don't mean to  
17 interrupt, but could you tell me what page we're on?

18                   MR. PATTIS: Yes, sir. I don't know that  
19 you have a complete -- excuse me. I don't mean to be  
20 informal. I don't know that the Board has a complete copy  
21 of the article in front of it. It's referred to the  
22 citation, so I'm unpacking one of the references to it  
23 with your permission.

24                   DR. POWERS: That's fine. I thought that

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 we were going off a certain page. I'm sorry.

2 MR. PATTIS: No, sir. On page 12 of the  
3 pre-filed testimony, there is reference to the Rothwell  
4 Report, and I'm having the witness --

5 DR. POWERS: But that wasn't included as an  
6 attachment?

7 MR. PATTIS: Correct, sir.

8 DR. POWERS: Okay, thank you. I'm sorry  
9 for the interruption.

10 Q With respect to the assessment of risk of  
11 between one in 1.3 million to one in 400,000, that refers  
12 to a literature review of other peer reviewed articles,  
13 does it not?

14 A Could you give me the notes of reference it's  
15 cited to?

16 Q The copy of the article I have there is a  
17 sentence that reads as follows. "Other case reports and  
18 surveys have estimated the risk of VBA after cervical  
19 manipulation to be between one in 1.3 million to one in  
20 400,000 manipulations."

21 And, then, following that is a superscript  
22 that indicates "five, nine, 11 and 12." Does the article  
23 you're looking at have that?

24 A Yes, it does.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Five, nine, 11 and 12 refer to other peer  
2 reviewed studies, does it not?

3 A I'm looking. Yes.

4 Q Five, for example, comes from the Journal of  
5 Family Practice, correct?

6 A Correct.

7 Q Nine comes from the journal Spine, correct?

8 A Correct.

9 Q Eleven comes from a journal that I don't know,  
10 Man Med, correct?

11 A Manual Medicine.

12 Q Okay and 12 comes from a journal called the  
13 Journal of Manipulative Physiological Therapy, correct?

14 A Correct.

15 Q The first sentence of that study reads as  
16 follows, does it not, "Recent high publicity deaths of  
17 young adults after chiropractic manipulation have  
18 increased public attention toward the safety of  
19 chiropractic manipulation of the cervical spine," correct?

20 A The article by Rothwell?

21 Q Yes.

22 A Yes.

23 Q And then it goes on to say, "The apparent  
24 association between cervical manipulation and arterial

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 dissection has been reported several times in the  
2 literature with increasing frequency in the last 20 years,  
3 coinciding with the rising popularity of chiropractic  
4 treatment," correct?

5 A Correct.

6 Q Now one final question. I'm going to read you  
7 something and ask you if you agree or disagree with it.  
8 "If a certain risk is a mere possibility, which ordinarily  
9 need not be disclosed, yet if its occurrence carries  
10 serious consequences, as, for example, paralysis or even  
11 death, it should be regarded as a material risk requiring  
12 disclosure." Do you agree or disagree with that?

13 A Agree.

14 Q And do you recognize that to be a policy  
15 statement from the Association of Chiropractic Colleges  
16 Guidelines on Informed Consent?

17 A I believe, yes, from yesterday's testimony.

18 MR. PATTIS: Nothing further.

19 MR. SHAPIRO: Anything further from the  
20 Board?

21 DR. SEAN ROBOTHAM: Robotham here. I just  
22 want to close and say that we should all remember that  
23 this person is not an expert witness, and that, you know,  
24 this is all her lay opinion.



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 THE WITNESS: May I respond, sir? It's not  
2 my lay opinion. Everything I've said is supported by the  
3 literature cited in my study. I'm relying on the  
4 literature.

5 MR. SHAPIRO: Thank you.

6 DR. MICHELE IMOSSI: I have one more  
7 question.

8 EXAMINATION BY DR. IMOSSI:

9 Q Attorney Bellamy, one of your largest criticisms  
10 of the Cassidy Study is that they used the wrong codes to  
11 look for vertebral artery dissection, but what makes you  
12 think that they were looking for vertebral artery  
13 dissection?

14 A They weren't. They just made a conclusion  
15 regarding vertebral artery dissection, but they didn't  
16 look at data on vertebral artery dissection.

17 Q Do you agree with the introductory comments in  
18 the Cassidy Study that reference the New England Journal  
19 of Medicine study, that "The true incidence of  
20 vertebrobasilar dissection is unknown, since many cases  
21 are probably asymptomatic or the dissection produces mild  
22 symptoms." Do you agree with that?

23 A Yes.

24 Q And then they further go on, again, referencing

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the New England Journal of Medicine, "The cases that are  
2 most likely to be diagnosed are those that result in  
3 stroke."

4 A Yes.

5 DR. POWERS: Just bear with me just one  
6 second, please. I didn't have really the opportunity to  
7 read this Rothwell Study that you just discussed on,  
8 because it wasn't included in here, so I wanted to just  
9 scan this as a final moment.

10 DR. IMOSSI: I just have, in the meantime,  
11 one more follow-up question on that.

12 Q Are you aware of any other type of strokes that  
13 vertebral artery dissection would be likely to cause  
14 besides the vertebrobasilar stroke cited in these  
15 articles?

16 A Yes.

17 DR. IMOSSI: Okay.

18 EXAMINATION BY DR. POWERS:

19 Q So this Rothwell Study continues by stating,  
20 "Despite the significant results, the authors are  
21 extremely cautious in their conclusion, stressing the fact  
22 that the demonstration of this association still does not  
23 provide conclusive evidence." Is that correct?

24 A Were you reading from the study?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           Q     I'm reading right from the end at the editorial  
2 comment.

3           A     Well the reason for my question is I didn't want  
4 to have to look through and find it. I would just agree  
5 with you if you're saying you're reading from the study,  
6 that, yes, that's what it says.

7           Q     All right and I'll just have one more quick  
8 question, as well. Do you agree or disagree with this  
9 statement. Some complications are so extremely rare that  
10 they need not be routinely mentioned, however, if asked a  
11 direct question concerning the possible occurrence of such  
12 a complication, the doctor must answer truthfully.

13          A     Are you, again, sir, are you reading from the  
14 study?

15          Q     No. I'm just making a statement.

16          A     Okay. Could you make it again, please?

17          Q     Some complications are so extremely rare that  
18 they need not be routinely mentioned, however, if asked a  
19 direct question concerning the possible occurrence of a  
20 complication, the doctor must answer truthfully.

21          A     Yes.

22                     DR. POWERS: Thank you very much for your  
23 testimony today. We appreciate your time coming up from  
24 Florida.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 BY MR. MALCYNSKY:

2 Q Just one question, if I might, in direct  
3 relation to the question you were just asked by  
4 Commissioner Powers. I believe his question was, if asked  
5 a direct question by the patient, do you believe that  
6 there are circumstances where, if there's a risk, they  
7 should inform the patient, irrespective of whether the  
8 patient asks first?

9 A Sure. Yes.

10 MR. MALCYNSKY: Thank you.

11 BY MR. PATTIS:

12 Q Ma'am, is it your recommendation that, as a  
13 matter of public policy, Connecticut adopt a course that  
14 places on the physician the responsibility to advise a  
15 patient of a possibility of death, rather than leaving it  
16 for the patient to learn that perhaps the fatal way?

17 MS. MOORE LEONHARDT: Objection. It's way  
18 beyond the scope of the witness's Direct testimony and  
19 Cross at this point.

20 MR. PATTIS: It's within the scope of  
21 Commissioner Powers' question, so that is the reason for  
22 the offer. I'd ask for a ruling.

23 MR. SHAPIRO: I would recommend sustaining  
24 the objection, although could you repeat the question

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 again?

2 MR. PATTIS: Yes.

3 Q Do you believe that, as a matter of public  
4 policy, Connecticut should adopt a course, consistent with  
5 the Association of Chiropractic Colleges, that talks about  
6 warning of a risk, even if it's merely possible, or do you  
7 believe, a risk of death, let's say, or do you believe it  
8 should be the patient's responsibility to know that before  
9 visiting the doctor?

10 MS. MOORE LEONHARDT: I'd also like to  
11 object on grounds that the witness has already admitted  
12 she has no background or experience as a public policy  
13 expert and renew my objection with regard to expert  
14 opinion and defer to the Board's prior ruling.

15 MR. MALCYNSKY: If I could be heard on  
16 that, please?

17 MR. SHAPIRO: The objection is noted.  
18 There's no ruling that's going to be issued.

19 MR. PATTIS: Let me try it again, and maybe  
20 I'll get more elegant this time.

21 Q Whose responsibility should it be to warn a  
22 patient about the prospect of serious injury or death,  
23 even if remote? Should it be the patient's responsibility  
24 to know that before seeing the doctor, or should the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 doctor inform the patient?

2 MS. MOORE LEONHARDT: Objection, asked and  
3 answered. The witness has testified extensively about the  
4 law of informed consent that currently exists in the State  
5 of Connecticut, and I think that this is intended to be an  
6 inflammatory, irrelevant question, which shouldn't be  
7 permitted.

8 MR. PATTIS: Within the scope of Dr.  
9 Powers' limited inquiry.

10 MR. SHAPIRO: I would recommend the  
11 objection be overruled, and that I don't think it's been  
12 asked and answered, and the witness be allowed to answer  
13 it.

14 MR. PATTIS: This will be my fourth pass at  
15 it. Let me see if I can get it better.

16 MR. SHAPIRO: Let me see if the witness --  
17 did you understand the question?

18 THE WITNESS: Well it's not a matter of  
19 understanding. It's a matter of remembering.

20 A Yes, I think the literature and the law of  
21 informed consent supports the principle, that it is the  
22 physician's duty to advise the patient of known risk,  
23 especially in the case -- well, and if -- oh, boy. Yes.  
24 I'm just going to say yes. Thank you.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: If there's nothing further,  
2 I'll excuse this witness. Thank you for your testimony.  
3 Oh, there's one other thing. Attorney Bellamy, you sent a  
4 letter to the Board and all parties on December 21st,  
5 which cited to an article that was published since your  
6 pre-filed testimony and made certain corrections to your  
7 testimony, is that accurate?

8 MS. BELLAMY: I sent two articles. Are you  
9 talking about -- yeah. After the rebuttal testimony,  
10 there were two additional articles that came out in the  
11 literature, and I sent them to all parties, intervenors  
12 and the Board.

13 MS. MOORE LEONHARDT: And I think my  
14 question for the Board is have those been admitted into  
15 evidence, since they were filed after the pre-filed  
16 rebuttal testimony due date?

17 MR. SHAPIRO: Counsel, if you'll just give  
18 me a minute? We can cross that bridge when we get to it.  
19 Attorney Bellamy, why don't I show you this letter,  
20 because my reading of it is that there's one article that  
21 you're referring to, and maybe you can take a look at this  
22 and see if there's something different that you submitted  
23 that I'm not aware of.

24 MS. BELLAMY: I would appreciate that,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 because, actually, I don't have a copy with me.

2 MR. SHAPIRO: That's fine.

3 MS. BELLAMY: Oh, I'm sorry. Yes, you're  
4 correct.

5 MR. SHAPIRO: Okay.

6 MS. MOORE LEONHARDT: Attorney Shapiro, may  
7 I have just an identification of what the article is that  
8 is attached to that letter?

9 MR. SHAPIRO: Sure.

10 MS. MOORE LEONHARDT: Thank you.

11 MR. SHAPIRO: There isn't an article  
12 attached to the letter. It's my understanding that the  
13 letter has a reference to an article. You can certainly -  
14 - you should have a copy, because it was sent to you by  
15 Attorney Bellamy, but, if you don't, you can take a quick  
16 look at it and see if there's any objection to the letter  
17 being admitted into evidence.

18 And I also wanted to hear if there's any  
19 objection to admitting Attorney Bellamy's pre-filed  
20 testimony into the record. It's Exhibit 41.

21 MR. PATTIS: No objection.

22 MS. MOORE LEONHARDT: May we have the  
23 article, the name of the article, because I don't have a  
24 copy of that letter.



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: Attorney Bellamy, could you  
2 just read that, please?

3 MS. BELLAMY: Yes. The article is Mirtz,  
4 Morgan, Wyatt, Green, An Epidemiological Examination of  
5 the Subluxation Construct Using Hill's Criteria of  
6 Causation, Chiropractic and Osteopathy, 2009.

7 MS. MOORE LEONHARDT: Thank you.

8 MR. SHAPIRO: Attorney Moore Leonhardt, is  
9 there any objection to Attorney Bellamy's pre-filed  
10 testimony as an intervenor being admitted into the record?

11 MS. MOORE LEONHARDT: My objection that  
12 I've made all along stands. To the extent that she's  
13 seeking to step into the shoes of an expert, I object.

14 MR. SHAPIRO: Thank you.

15 MS. MOORE LEONHARDT: Other than that, I  
16 recognize the Board has ruled, and I accept the Board's  
17 ruling.

18 MR. SHAPIRO: Thank you. Attorney  
19 Malcynsky?

20 MR. MALCYNKY: No objection.

21 MR. SHAPIRO: Okay. Without objection, the  
22 pre-filed testimony filed by Attorney Bellamy, which is  
23 Exhibit 41, will be admitted as a full exhibit.

24 (Whereupon, the above-mentioned document

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 was marked as Exhibit No. 41.)

2 MR. SHAPIRO: Is there any objection from  
3 the parties, Attorney Moore Leonhardt first, to the letter  
4 with the reference, etcetera, submitted by Attorney  
5 Bellamy?

6 MS. MOORE LEONHARDT: No.

7 MR. SHAPIRO: Attorney Malcynsky?

8 MR. MALCYNKY: No objection.

9 MR. SHAPIRO: Attorney Pattis?

10 MR. PATTIS: None.

11 MR. SHAPIRO: Okay. This document, dated  
12 December 21st, will be admitted as Exhibit 57. It also  
13 contains an errata sheet with some corrections that were  
14 sent to all the parties.

15 (Whereupon, the above-mentioned document  
16 was marked as Exhibit No. 57.)

17 MR. SHAPIRO: And, just for the record, the  
18 three motions that were filed by Attorney Moore Leonhardt  
19 were marked for identification only. The one with respect  
20 to subluxation was marked as Exhibit 54 for identification  
21 only, the one regarding the Model Code of Ethics was  
22 marked as Exhibit 55 for identification, and the one with  
23 respect to Dr. Wecht was marked as Exhibit 56 for  
24 identification only.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   (Whereupon, the above-mentioned documents  
2 were marked as Exhibit Nos. 54, 55 and 56 for  
3 identification only.)

4                   MR. PATTIS: My understanding, sir, is  
5 there were five motions.

6                   MR. SHAPIRO: There were only three that  
7 were filed with the Board, and those are the ones that  
8 have been marked.

9                   MR. PATTIS: May I have the topics of those  
10 again, please? I'm sorry. The subluxation?

11                   MR. SHAPIRO: The subluxation motion was  
12 Exhibit 54 for identification only, the motion regarding  
13 the Model Code of Ethics was Exhibit 55 for identification  
14 only, and the motion with respect to Dr. Wecht was Exhibit  
15 56 for identification only.

16                   MR. PATTIS: Thank you.

17                   MS. MOORE LEONHARDT: Just to clarify,  
18 there is a motion with regard to death certificates. It  
19 has been served on counsel. It relates to death  
20 certificates and autopsy reports, and it was -- our  
21 understanding was that it was filed with the Board. It  
22 was hand-delivered to counsel who represent the parties  
23 that are seeking to introduce it.

24                   MR. SHAPIRO: I've never seen a copy, nor

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 has the Board liaison ever seen a copy, so, as of right  
2 now, it has not been filed with the Board.

3 MS. MOORE LEONHARDT: May I file it?

4 MR. SHAPIRO: You may.

5 COURT REPORTER: One moment, please.

6 MR. SHAPIRO: I would suggest that we  
7 continue with the next witness, unless the Board wants to  
8 break now.

9 MR. PATTIS: May I raise one question,  
10 please?

11 MR. SHAPIRO: Yes.

12 MR. PATTIS: Sharon Mathiason is a lay  
13 witness, who has traveled from Western Canada. I do not  
14 know whether the Board would permit her to briefly adopt  
15 her testimony under oath and not return at the adjourned  
16 proceedings.

17 We didn't discuss this yesterday. I became  
18 aware of it after the close of the proceedings.

19 MR. SHAPIRO: On behalf of the Board, I  
20 think the Board is willing to accommodate requests. The  
21 only concern I have is that the requests are going to  
22 become too numerous with respect to people's schedules,  
23 and I know that Attorney Malcynsky mentioned that there  
24 was a witness that he had that had some conflicts.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   We are in the middle of Attorney Moore  
2 Leonhardt's case in the sense of her turn at this hearing,  
3 so --

4                   MR. MALCYNSKY: Attorney Shapiro, just for  
5 --

6                   MR. SHAPIRO: -- may be possible to talk  
7 about this off the record with counsel to see if we can  
8 agree to some order.

9                   MS. MOORE LEONHARDT: Well I would just  
10 like the record to note that my witness, Dr. Clum, who  
11 came all the way from California, has been sitting here  
12 now for two days, and he's got a plane to get at 3:00 this  
13 afternoon.

14                  MR. SHAPIRO: Okay.

15                  MS. MOORE LEONHARDT: So while I certainly  
16 was willing and didn't object at all to accommodating  
17 Attorney Bellamy's request, I'm now in the position of  
18 perhaps counsel would consider me being difficult, but I  
19 feel that I owe a degree of respect to Dr. Clum, and take  
20 the position that we should be permitted to proceed with  
21 our next witness. Thank you.

22                  MR. MALCYNSKY: I would take the position  
23 that we should accommodate Dr. Clum, as well, but I was  
24 going to point out to the Board that the witness I

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 referred to earlier today is the same witness that  
2 Attorney Pattis refers to.

3 MR. SHAPIRO: Okay.

4 MR. MALCYNSKY: So if there's a way to  
5 accommodate everyone who has traveled far and wide to be  
6 here today, I would be in favor of doing that, whether  
7 it's our witness or Ms. Moore Leonhardt's.

8 MR. SHAPIRO: Hold on one second. The  
9 Board decided they're going to break now and come back at  
10 quarter of 1:00 and then have Dr. Clum begin. I didn't  
11 hear the name correctly. Is it Dr.?

12 MS. MOORE LEONHARDT: Dr. Clum.

13 MR. SHAPIRO: Clum. Then Dr. Clum will  
14 start promptly at 12:45, and then we'll try to accommodate  
15 the other witness and deal with that issue at the time.

16 MS. MOORE LEONHARDT: Thank you very much.

17 MR. SHAPIRO: This witness is excused.

18 Thank you.

19 MR. MALCYNSKY: I just have a quick  
20 question procedurally. Is Dr. Clum testifying as an  
21 intervenor or as part of Ms. Moore Leonhardt's case in  
22 chief, because I think he originally filed as an  
23 intervenor representing the ICA, and, in that case --

24 MR. SHAPIRO: I don't think that's

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 accurate, counsel.

2 MR. MALCYNSKY: Okay. That was my  
3 information.

4 MS. MOORE LEONHARDT: Dr. Clum is a witness  
5 who was called and pre-filed originally by the Connecticut  
6 Chiropractic Association, and today he will be called by  
7 the Connecticut Chiropractic Association and the  
8 Connecticut Chiropractic Council.

9 MR. MALCYNSKY: My concern was not in  
10 preventing him from testifying, just in trying to figure  
11 out where he fit in. Thank you.

12 (Lunch recess)

13 CHAIRMAN SCOTT: Good afternoon. We're  
14 back on. Attorney Shapiro will be making a statement,  
15 please?

16 MR. SHAPIRO: With respect to the witness,  
17 I think the best procedure would be to have the witness  
18 identify themselves, have the witness adopt their  
19 testimony under oath, and then move on from there.

20 In terms of the qualification, unless the  
21 parties are unwilling to stipulate to someone being an  
22 expert, then let's not qualify them, that the Board will  
23 accept him as an expert and get right into a brief -- you  
24 have to speak so you can hear on the record.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: What I suggest is  
2 I'll give you the CV or point it out. It was pre-filed.

3 MR. SHAPIRO: Right. We have it.

4 MS. MOORE LEONHARDT: And then we can just  
5 mark it and offer it in as a full exhibit and then have  
6 the witness adopt the testimony and just move on.

7 MR. SHAPIRO: What I plan to do with  
8 respect, because I -- my understanding is that your pre-  
9 filed testimony is all contained in one packet, is that  
10 after all of the witnesses that you have go, that we'll  
11 admit the entire packet, unless there's any objections,  
12 and then we'll hear the objection at that time. I mean --

13 MS. MOORE LEONHARDT: I don't have a  
14 problem with that procedure, as long as counsel doesn't  
15 object that the witness might be testifying from a  
16 document that's not in evidence, you know, just to get  
17 totally technical about the rules of evidence and  
18 procedure, which, obviously, are relaxed here, and it's up  
19 to the Board's discretion on how they want to relax the  
20 rules, so whatever facilitates this hearing I'm happy to  
21 do so.

22 MR. MALCYNKY: I apologize. I didn't hear  
23 what was proposed.

24 MR. SHAPIRO: Okay. Let me ask you this.



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 This might simplify things. Do you have any objection to  
2 Exhibit 32, which is the Connecticut Chiropractic  
3 Association's submission of pre-filed testimony, being  
4 admitted as a full exhibit?

5 MR. MALCYNISKY: I have no objection.

6 MR. SHAPIRO: Okay. Attorney Pattis, do  
7 you have any objection?

8 MR. PATTIS: None.

9 MR. SHAPIRO: Okay, so, Exhibit 32 is  
10 admitted as a full exhibit.

11 (Whereupon, the above-mentioned document  
12 was marked as Exhibit No. 32.)

13 MR. SHAPIRO: Now, Attorney Moore  
14 Leonhardt, you filed CVs under different document, is that  
15 correct?

16 MS. MOORE LEONHARDT: Yes, I did. Expert  
17 disclosure and a second expert disclosure, so if we could  
18 take those up?

19 MR. SHAPIRO: Okay. Just hold on for one  
20 second. Okay. What's been pre-marked as Exhibit 50 as  
21 the Connecticut Chiropractic Association's Disclosure of  
22 Expert Witnesses, which contains the CVs of the various  
23 witnesses, Attorney Malcynsky, do you have any objection  
24 to this document?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. MALCYNSKY: None.

2 MR. SHAPIRO: Okay. Attorney Pattis?

3 MR. MALCYNSKY: Only insofar as I'm not  
4 objecting might be taken to be a concession on our part  
5 that there was any obligation to notice an expert. I'm  
6 sorry. I don't object to the CVs being admitted as full,  
7 but I don't concede that there was a requirement to file  
8 former notices of expert witnesses.

9 MR. SHAPIRO: Okay. With that noted, the  
10 Board will admit Exhibit 50 as a full exhibit, so,  
11 therefore, Attorney Moore Leonhardt, all of the pre-filed  
12 testimony and CVs are in evidence.

13 MS. MOORE LEONHARDT: Thank you.

14 (Whereupon, the above-mentioned document  
15 was marked as Exhibit No. 50.)

16 MS. MOORE LEONHARDT: And I'd just like to  
17 direct Attorney Pattis, if I may, to 19a-9-29 of the  
18 Public Health Code for the Department of Public Health,  
19 which refers to the pre-filing of expert testimony.

20 MR. PATTIS: I'd ask that Attorney  
21 Leonhardt call her next witness. It's been awhile since  
22 I've needed any tutoring on the law.

23 MR. SHAPIRO: Okay. We'll deal with any  
24 objections at that time. The only other document, which I

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 think is unmarked at this time, is the Connecticut  
2 Chiropractic Council, Incorporated's Disclosure of Expert  
3 Witness.

4 MS. MOORE LEONHARDT: That's correct.

5 MR. SHAPIRO: Attorney Malczynsky, do you  
6 have a copy of that, and do you have any objection to it  
7 being admitted as evidence?

8 MR. MALCZYNSKY: I have a copy of everything  
9 that's on the pre-filed testimony.

10 MR. SHAPIRO: Hold on one second. This was  
11 a document that was filed on Monday, which discloses Dr.  
12 Curry.

13 MR. MALCZYNSKY: Yes, we have that.

14 MR. SHAPIRO: Okay. Do you have any  
15 objection to that document?

16 MR. MALCZYNSKY: No.

17 MR. SHAPIRO: Attorney Pattis?

18 MR. PATTIS: Subject to the same comments I  
19 made at Exhibit 50.

20 MR. SHAPIRO: Okay, thank you. That  
21 document will also be admitted as a full exhibit.

22 MS. MOORE LEONHARDT: Thank you.

23 MR. SHAPIRO: And I'll tell you the number  
24 in one second. The January 4, 2010 Connecticut

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Chiropractic Council's Disclosure of Expert Witnesses is  
2 Exhibit 58 and a full exhibit.

3 (Whereupon, the above-mentioned document  
4 was marked as Exhibit No. 58.)

5 MS. MOORE LEONHARDT: Thank you.

6 MR. SHAPIRO: Okay. Dr. Clum, you can take  
7 the podium.

8

9

DR. GERARD W. CLUM

10 having been called as a witness, having been duly sworn,  
11 testified on his oath as follows:

12

13 COURT REPORTER: Please state and spell  
14 your name for the record.

15 THE WITNESS: Gerard, G-E-R-A-R-D, W. Clum,  
16 C-L-U-M.

17

COURT REPORTER: Thank you.

18

MS. MOORE LEONHARDT: May I proceed?

19

MR. SHAPIRO: Yes, you may.

20

MS. MOORE LEONHARDT: Thank you.

21

22

DIRECT EXAMINATION

23

BY MS. MOORE LEONHARDT:

24

Q Good afternoon, Dr. Clum.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     Good afternoon, ma'am.

2           Q     Thank you very much for coming in and spending  
3 the past two days here on this issue. You're here on  
4 behalf of the Connecticut Chiropractic Association and the  
5 Connecticut Chiropractic Council?

6           A     Yes, ma'am.

7           Q     All right. You have submitted a curriculum  
8 vitae, and that's been accepted into evidence as a full  
9 exhibit. Is there anything in particular with regard to  
10 your background and experience that you feel is important  
11 for the Board to be aware of that informs your decision in  
12 your testimony today?

13          A     The fact that I have been active with the  
14 Association of Chiropractic Colleges in the development of  
15 a curriculum for the profession, both on their  
16 undergraduate and a postgraduate level relative to the  
17 subject of vertebral artery issues and cervical spine  
18 adjusting, and, also, was a committee member on the task  
19 force that Dr. McDonald chaired for the Association of  
20 Chiropractic Colleges relative to the development of the  
21 Association's informed consent policy that was reviewed in  
22 detail yesterday.

23          Q     Thank you. Now you pre-filed testimony with  
24 this Board, did you not?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     I did.

2           Q     And that testimony is before you. Is it your  
3 intent to adopt that testimony today as your testimony  
4 presenting to the Board?

5           A     Yes, ma'am. If I might, I realized, in  
6 reviewing it earlier today, that there's a typo on the  
7 second page, the last line. It reads, "Relationship  
8 between grade four or," and it should say, "grade five." I  
9 just says, "Grade manipulation/mobilization." My  
10 apologies for the oversight that I didn't correct that  
11 earlier.

12                   MS. MOORE LEONHARDT: Would the correction  
13 please be accepted by the Board?

14                   MR. SHAPIRO: Any objection?

15                   MR. PATTIS: None.

16                   MR. SHAPIRO: Attorney Malcynsky?

17                   MR. MALCYNKY: No objection.

18                   MS. MOORE LEONHARDT: Thank you.

19           A     Then, with that being said, I do offer the  
20 testimony, as submitted, for the record.

21                   MS. MOORE LEONHARDT: Thank you. I turn  
22 the witness over to Cross-Examination.

23                   MR. SHAPIRO: Thank you very much.

24           Attorney Malcynsky, do you have questions?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: Before we proceed, I  
2 believe Mr. Clum would like to address the Board with a  
3 procedural matter.

4 THE WITNESS: I appreciate the fact that  
5 you acknowledge that I have travel plans for later this  
6 afternoon. I think my travel plans are relatively  
7 inconsequential in relationship to the import of this  
8 discussion and activity. I'm prepared to change my plans.

9  
10 I'm sure there's another hotel room here  
11 tonight and another plane tomorrow, so, if necessary, I  
12 would not want any party to feel constrained because of my  
13 flight schedule, that I need to be out of here at a  
14 certain point, so I appreciate the consideration, but I'm  
15 prepared to stay, if necessary, but, for the record, would  
16 like to go home tonight. (Laughter)

17 MS. MOORE LEONHARDT: Thank you.

18 MR. SHAPIRO: Okay. Why don't we proceed  
19 with your testimony? I think it's certainly a positive  
20 sign that we're moving to Cross-Examination right away.

21 MS. MOORE LEONHARDT: Thank you. Attorney  
22 Shapiro, did the Board wish to entertain a summary from  
23 this witness, or to merely move into Cross-Examination?

24 MR. SHAPIRO: Unless the Board needs a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 summary, I would suggest, given that there's pre-filed  
2 testimony that the Board has reviewed, it may make the  
3 most sense just to proceed into Cross-Examination. Is  
4 that fine with everyone? Okay. Attorney Malczynsky?

5  
6 CROSS-EXAMINATION

7 BY MR. MALCZYNSKY:

8 Q Good afternoon, Doctor. Doctor, are you  
9 familiar with the Association of Chiropractic Colleges  
10 Guideline on Informed Consent?

11 A I am.

12 Q Could I just show you a copy of that and ask you  
13 to read one paragraph for me?

14 A If you'd like me to.

15 Q Could you please read me the paragraph on the  
16 first page? And, for the rest of us, that's part of the  
17 pre-filed testimony for Dr. Carucci on page 11.

18 A You'd like me to read the highlighted area?

19 Q The entire first paragraph, if you would.

20 A Entire first paragraph. "In determining what  
21 information the doctor should convey to a patient  
22 concerning risks involved in a particular procedure or  
23 care," care is misspelled, "the doctor must take into  
24 consideration both, one, the potential severity of the



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 injury or adverse consequences that may result, and, two,  
2 the likelihood that the injury or consequences will  
3 occur." The rest of the paragraph, as well?

4 Q Yes.

5 A Thank you, sir. "No doctor is required to  
6 disclose every single conceivable risk of a proposed  
7 procedure, regardless of how remote that risk of injury  
8 might be, however, if a certain risk is a mere  
9 possibility, which ordinarily need not be disclosed, yet,  
10 if its occurrence carries serious consequences, as, for  
11 example, paralysis or even death, it should be regarded as  
12 a material risk requiring disclosure. When in doubt, the  
13 doctor is urged to err on the side of disclosure, rather  
14 than non-disclosure," emphasis added.

15 Q Okay, thank you. Can you also read the  
16 paragraph next to the arrow that I indicated? Well,  
17 first, do you agree with that statement?

18 A I do.

19 Q Okay and would you read the second part, please?

20 A "In states that employ the," quote, "reasonable  
21 patient standard," close quote, "the safest approach for  
22 the doctor is to disclose material risks, which are  
23 inherent to the procedure, if either a reasonable doctor  
24 would disclose those risks as being material, or a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 reasonable patient would think those risks are material,  
2 and, thus, should have been part of his or her election  
3 before accepting care," again, emphasis added.

4 Q Do you agree with that statement?

5 A I do, sir.

6 Q Okay. Are you a practicing chiropractor?

7 A I am not.

8 Q You are not. You're just a teacher?

9 A Just a teacher.

10 Q I don't mean just a teacher. Excuse me.

11 A Just a teacher.

12 Q You are a teacher. Do you teach informed  
13 consent to your students?

14 A I do.

15 Q Do you teach them practice consistent with what  
16 you just read?

17 A I do.

18 Q Would you expect them in their practice to seek  
19 informed consent from a patient before they administer a  
20 neck manipulation?

21 A I would hope they do.

22 Q Would you advise them to?

23 A I do.

24 Q And would you advise that they include in

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 whatever informed consent they administer a discussion of  
2 the possible risks of stroke?

3 A I think that's prudent.

4 Q Thank you. And do you believe that it is also  
5 prudent to include a written explanation of those risks?

6 A Not necessarily.

7 Q Can you explain why?

8 A I can. The tendency for I think probably most  
9 of us in this room have had some kind of procedure  
10 someplace, from the dentist, to an emergency room, or  
11 whatever, and a form is filled out, and some information  
12 is put on it, and stuck in front of you, and you sign it,  
13 and you get on with it.

14 When the process is reduced down to a --  
15 when the circumstances reduce down to a form, as opposed  
16 to being an ongoing process and exchange of information  
17 along the way with the patient, there is a tendency for it  
18 to become rote, routine and not paid any attention to.  
19 Even though the paperwork is there, even though the  
20 signature is there, it becomes automatic, and it becomes  
21 less effective, in terms of conveying information to the  
22 patient, gaining the patient's understanding of that  
23 information, and gaining feedback regarding those  
24 understandings on the part of the patient.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   So the idea of documentation for the  
2 record, certainly wise, good to have. The idea that a  
3 form is better than an ongoing discussion and process I  
4 don't agree with at all.

5           Q       What about the concept of informing people of  
6 the potential symptoms? You said you agreed that it's  
7 wise for them to advise of the risk of a stroke. Would  
8 you also agree that it would be wise for them to advise  
9 what symptoms they might experience if they were having  
10 that difficulty?

11          A       It would depend upon the presentation of the  
12 patient, period.

13          Q       So you don't -- do you think it's -- I believe  
14 what you said earlier was you thought it was advisable, or  
15 you advise your students to inform people of the potential  
16 risk of stroke.

17          A       I did.

18          Q       You did. But you don't think it's also  
19 advisable to inform them how they might know that they're  
20 having a stroke?

21          A       I said it may be.

22          Q       It may be, okay. When would it not be?

23          A       When there's clearly no indication or no  
24 potential relationship between the care being rendered and

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 that patient and that potential reality.

2 Q And when would it be?

3 A When those were present.

4 Q So if somebody came into one of your student's  
5 offices when they're out in practice and they presented  
6 themselves as being a candidate that might be having a  
7 stroke, that's when they should be warned they might be  
8 having a stroke?

9 A No. They should be sent to an emergency room at  
10 that point.

11 Q Okay, so, you're confusing me, or, better, maybe  
12 I'm confusing you. You don't believe that warning people  
13 of the symptoms of the risk of stroke is appropriate, even  
14 though you think warning them that stroke is a risk is  
15 appropriate?

16 A No. What I said was not in every case, or that  
17 isn't the language I used, but that's the effect of what I  
18 meant. Not in every case do I think that that's  
19 necessary, no.

20 Q But what harm is there in having a patient  
21 discussion with regard to the procedures, the risks, as  
22 you indicated, the potential risk for stroke, etcetera,  
23 and then performing the procedure once you have the  
24 informed consent and the patient's permission, and then

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 just letting them take something home with them, which  
2 might help them become aware of what problem they're  
3 having if they do experience the rare and unlikely event  
4 of a stroke? What's the harm?

5 A Well I don't know that there's any harm beyond  
6 the idea that if we're in a situation where there's no  
7 biological plausibility between the care that's being  
8 provided and that concern, I see raising that concern for  
9 that patient as an unnecessary circumstance that doesn't  
10 accrue to anyone's well being.

11 Q So you believe there's no biological possibility  
12 of a stroke occurring after a neck manipulation?

13 A I didn't say that at all, sir.

14 Q Well I thought that's what you just said in  
15 response to my question. You said you don't believe that  
16 where there's any biological possibility that it would be  
17 warranted to give somebody a warning.

18 A That's what I said.

19 Q Okay. Which is it?

20 A You've asked me two different questions, and  
21 I've given you two different answers.

22 Q Do you believe that where there's a biological  
23 possibility of somebody having a stroke that it's  
24 appropriate to warn them of the symptoms?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     It would be prudent, yes.

2           Q     Okay and would you also agree, albeit rare, that  
3     in every neck manipulation there is the remote possibility  
4     that someone could experience a stroke thereafter?

5           A     That's a very important point, so, obviously,  
6     ask me that again, please, sir.

7           Q     You've said that you thought it was prudent to  
8     warn people of the possible outcome of stroke from a neck  
9     manipulation. I assume that by saying that you're  
10    acknowledging that there's some possibility, albeit rare,  
11    that that could be the consequence of a neck manipulation.

12  
13          A     With the exception of one word in your question.  
14    I wouldn't necessarily say "consequence." I would say  
15    that there's a potential that it could be associated with  
16    it, yes.

17          Q     Okay, so, then why would it be unwise public  
18    policy to warn people that they could be someone that  
19    comes down with that outcome?

20          A     I don't think I said it was.

21          Q     So do you think it's sound public policy to warn  
22    everybody and give them something to take with them that  
23    would indicate the symptoms?

24          A     I go back to the point of biological

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1       plausibility.  When the care for the patient is such that  
2       there would be a biological plausibility, yes, I would.  
3       Where there isn't, no, there isn't.

4               Q       So how do you know the difference?

5               A       Well if you've come in for a fifth lumbar -- if  
6       you come in with low back pain and I address a fifth  
7       lumbar problem --

8               Q       Let's just stick with the neck manipulation.

9               A       That changes the parameter.

10              Q       We're talking about the cervical manipulation of  
11       the neck.

12              A       Your question wasn't confined to that.

13              Q       All right.  Let me clarify that it is confined  
14       to situations where you're administering manipulation to  
15       the cervical spine.

16              A       Yes, sir.

17              Q       In all of those cases, do you think it's  
18       appropriate that someone be issued a warning of the risk,  
19       as well as the indication of the symptoms that might  
20       occur?

21              A       The warning of the association and possible  
22       sequelae and symptoms to be aware of, yes.

23              Q       So you would support someone having that  
24       information in writing?



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     Sure.     Yes.

2           Q     Thank you.  You also mention in your testimony,  
3 I believe, that you think it's against public policy to  
4 specifically identify procedures or circumstances where  
5 informed consent should be required, correct?

6           A     Yes, sir.

7           Q     Okay.  Can you explain to me, you know, why you  
8 have that opinion?

9           A     Because it's an endless litany of things that  
10 with that open-ended relationship, or open-ended  
11 circumstance it has the potential to bring health care to  
12 a grinding halt.

13          Q     How so?

14          A     You can't possibly meet that standard with every  
15 possibility.

16          Q     But we already have heard a lot of testimony,  
17 and I believe yours, as well, that the standard in  
18 Connecticut is appropriate, if followed, correct?

19          A     Um-hum.

20          Q     That's your opinion, correct?

21          A     It is, sir.

22          Q     Okay, so, couldn't you envision a situation,  
23 where the consequences would be so significant, even if  
24 the occurrence might be rare, where it's prudent to warn

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 everybody of the potential consequences?

2 A Are we still talking about cervical adjustment?

3 Q Yes.

4 A Yes.

5 Q Okay, so, isn't it possible that this Board or  
6 the legislature, if not this Board, could construct a  
7 directive that would be appropriate, so it didn't have the  
8 consequences that you're concerned with, that it wouldn't  
9 be limiting with regard to other procedures?

10 Couldn't they say something, such as  
11 including, but not limited to, or nothing in this ruling  
12 shall be deemed to imply that informed consent is not  
13 appropriate to the performance of other chiropractic  
14 treatment? Wouldn't that address your concern?

15 A No.

16 Q Why?

17 A Because that's different than my concern.

18 Q Okay. Maybe I'm confused. Could you tell me  
19 what your concern is again?

20 A My concern is enabling legislation or enabling  
21 language that you just talked about, that not limited to  
22 and so on, certainly does get beyond the question of it's  
23 not this one thing and this one thing only. It goes from  
24 there. The problem is that if this body were to adopt a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 requirement for a specific statement, that specific  
2 statement would have to be developed, I would assume,  
3 under the procedures of the Board of Chiropractic  
4 Examiners under the Department of Health in the  
5 requirements of the State of Connecticut, and, as such, as  
6 soon as that document is published, the next piece of  
7 literature that comes along that better informs that  
8 policy or changes those circumstances in either direction,  
9 now what the Board has processed provided to the  
10 profession and required of the profession is inaccurate  
11 and out of date, and now we have to go through the entire  
12 regulatory process again to change that notice to get to  
13 that point. That's where I think the public policy is not  
14 served.

15 Q So you're not in favor of the legislature or  
16 this Board ever codifying certain practices that the  
17 discipline should follow?

18 A I don't believe I said that, sir.

19 Q Well you just said that they should never put  
20 anything in writing, because you might have to come back  
21 and change it later on.

22 A If the issue is the best service of public  
23 policy, then by enacting into regulation requirements of  
24 notification and because of the mechanisms necessary for

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 that enactment, causing a situation where current -- the  
2 most updated information available is not available to  
3 provide to that patient under that requirement, that is  
4 not good public policy.

5 Q I mean isn't that what the legislature and these  
6 governing boards do all the time? Don't they issue  
7 guidelines and rules and regulations governing the  
8 practice of medicine, or chiropractic, or law, or, you  
9 know, various disciplines?

10 A They do.

11 Q And they come in and they amend and change those  
12 things all the time, don't they?

13 A They do.

14 Q So why wouldn't it be appropriate in the case of  
15 a warning, such as I've been discussing with you?

16 A I think I've answered that three times now. The  
17 reality is that the information-based changes upon which  
18 that advisement rests, then that advisement is faulty at  
19 that point.

20 Q So you'd change it?

21 A But you have to go back through the regulatory  
22 process to change it, and maybe I'm bringing a California  
23 perspective to it, it's going to take six to 12 months to  
24 change that regulation. During that time, in that window

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 of time, you now have a flawed notice to people that is  
2 not serving the public interest.

3 Q But couldn't you have circumstances where the  
4 public policy is such that warning the public of a certain  
5 situation is more important than worrying about whether it  
6 takes six months or 12 months to amend, you know, the  
7 regulation if there's a change in the science?

8 Isn't the public policy what we should be  
9 concerned, protecting the public?

10 A That's what I'm talking about.

11 Q So it's better not to warn the public, because  
12 of some need to change the regulation potentially, you  
13 know, six months, two months, two years, five years down  
14 the road than to issue a warning that would benefit the  
15 public?

16 MS. MOORE LEONHARDT: Objection,  
17 argumentative.

18 MR. MALCYNSKY: I don't have any other  
19 questions. Thank you.

20 MR. SHAPIRO: Attorney Pattis?

21

22 CROSS-EXAMINATION

23 BY MR. PATTIS:

24 Q Hi, Dr. Clum. How are you?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     Good, sir.

2           Q     I won't have many questions. I'm going to  
3 recite to you something and ask you if you're familiar  
4 with it, and it's not a personal challenge, so don't take  
5 it personally, and it goes something like the following.

6                     You have the right to remain silent.  
7 Anything that you choose to say can be used against you.  
8 If you'd like to stop the questioning at any time, you  
9 can. You can have a lawyer present during this  
10 questioning, and, if you can't afford a lawyer, one will  
11 be appointed for you. Are you familiar with that general  
12 statement?

13          A     Never heard it.

14          Q     Never heard the Miranda warning on television or  
15 anything like that?

16          A     Oh, on television I have, yes. (Laughter)  
17 That's all I meant.

18          Q     And I'm not suggesting you need it here, but I  
19 use that by way of an analogy. That's a general warning  
20 that the United States Supreme Court requires police  
21 officers to give to a person whenever they're interrogated  
22 while in custody. I'm not sure if you're familiar with  
23 that, but accept that, if you will, for the moment. Are  
24 you willing to accept that as a hypothetical?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     Yes, sir.

2                           MS. MOORE LEONHARDT:   Could we have an  
3 offer of proof, as to the relevance of this line of  
4 questioning?

5                           MR. PATTIS:   In terms of the flexibility of  
6 a warning and circumstances changing, yes.

7           Q     If I understand your testimony, sir, and I  
8 notice that you're very careful with words, and I know  
9 you'll correct me if I get something wrong, so please do,  
10 you oppose a written informed consent requirement.  Am I  
11 understanding that?  It's against public policy?

12           A     I'm against a Board-mandated specific form of  
13 written informed consent.  If a practitioner chooses to  
14 use written informed consent in their office, I'm not  
15 opposed to that.

16           Q     That is odd to me, in the sense that --

17                           MR. PATTIS:   Withdrawn, as to the personal  
18 comment, and I apologize to the Board.

19           Q     If there were no uniform standards, but merely  
20 idiosyncratic decisions on the part of individual  
21 practitioners, wouldn't that contribute to the lack of  
22 uniformity for consumers, rather than to uniformity for  
23 consumers of health care services?

24           A     That's the balance that has to be created in

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 that environment.

2 Q Okay.

3 A In terms -- may I finish?

4 Q Yeah.

5 A Thank you. In terms of being adequate to be  
6 meaningful and flexible enough to be realistic.

7 Q Now you did mention, in response to Attorney  
8 Malcynsky's questioning, that you believe with the College  
9 that physicians should err on the side of caution, as it  
10 comes to informing patients of risk, correct?

11 A I did, sir.

12 Q Now with regard to -- and you do not regard a  
13 verbal discussion and a written memorialization of  
14 informed consent as mutually exclusive, do you?

15 A No, sir.

16 Q Okay. Are you open to the possibility that if  
17 there were a requirement, as to a writing, there could  
18 also be a requirement that a physician or chiropractor  
19 discuss that writing with the patient and get them to  
20 initiate things on a -- initial things, rather, on a  
21 paragraph-by-paragraph basis?

22 A Yes, sir.

23 Q Thus, with respect -- are you aware, and you may  
24 not be, with respect to the Miranda warnings that we began



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 this with, that it is customary in the United States for  
2 Police Departments to have forms that require a suspect, a  
3 person in custodial interrogation, to initial each warning  
4 as the officer discusses it with them? Are you aware of  
5 that?

6 MS. MOORE LEONHARDT: I'm going to object  
7 to this continued comparison to constitutional law and  
8 rights that were long established, because the evidence  
9 that's been presented in this hearing is that the science  
10 of medicine is continuously evolving and not static.

11 I think counsel is referred to rights that  
12 have been long-established and hasn't required an  
13 amendment of the Constitution.

14 MR. PATTIS: I have much regard for  
15 Attorney Moore Leonhardt, but she betrays a lack of  
16 familiarity with criminal law. Every week, there are new  
17 decisions coming out, and there are many, many decisions  
18 interpreting the Bill of Rights and custodial  
19 interrogation.

20 MR. SHAPIRO: Attorney Pattis, I think the  
21 Board's feeling is that you're getting a little far a  
22 field, and, so, if you could tighten things up, I'd  
23 appreciate it.

24 MR. PATTIS: I will, sir.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q What would be wrong with requiring that there be  
2 a written warning that patients discuss with their  
3 physician that requires a patient to initial in the  
4 physician's presence a warning when received?

5 A What would be wrong with the procedure?

6 Q Would that be against public policy in your  
7 view?

8 A From a procedural standpoint, or a content  
9 standpoint?

10 Q From a procedural standpoint.

11 A It would be a procedure that one could follow to  
12 fulfill that obligation.

13 Q Okay and that would be a procedure that would  
14 satisfy both the need to have an ongoing discussion and  
15 process with the patient and documentation, would it not?

16 A It seems like it could.

17 Q Okay, so, your real objection to it is the  
18 substantive objection, correct?

19 A The content objection.

20 Q Yeah. And that is that medicine or chiropractic  
21 changes month-to-month, year-to-year, such that a warning  
22 given today might be outdated tomorrow, correct?

23 A Correct.

24 Q Is it your view, sir, then, that chiropractors,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 individual chiropractors, should be given absolute  
2 discretion about when to warn and whether to warn about  
3 the risks of a procedure, of a particular procedure?

4 A I think the matter has been well established,  
5 that there is a responsibility under the law in the State  
6 of Connecticut to provide informed consent, and that is a  
7 matter of required law at this point, so the discretion  
8 that you're talking about I don't think exists if you're  
9 going to be lawful in Connecticut, but, again, the content  
10 issue and the methodology are the things that I would be  
11 concerned about.

12 Q But the methodology, would you agree or  
13 disagree, that we've already disposed of that? That could  
14 be a question of reviewing a pre-printed form with  
15 initials or not, but really I'd like to focus solely on  
16 the content basis at this point. Would you agree with me  
17 that we can do that?

18 A If you'd like.

19 Q And your testimony is that there is an informed  
20 consent requirement, correct?

21 A Yes.

22 Q And that informed consent requirement is  
23 grounded in a concern with patient rights, is it not?

24 A It is.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           Q     And it shifted the paradigm in medicine from a  
2 doctor-centered regime to a patient-centered regime,  
3 correct?

4           A     Correct.

5           Q     And with the standards articulated by the  
6 Association of Chiropractic Colleges, doctors are urged to  
7 err on the side of caution, correct?

8           A     Correct.

9           Q     In particular, in those cases, where there's  
10 even a possibility of death or paralysis, correct?

11          A     That's the language from the ACC statement, yes.

12          Q     How many procedures carry with them in the  
13 practice of chiropractic medicine the possibility of death  
14 or paralysis in your view?

15                   MS. MOORE LEONHARDT:  Would counsel please  
16 clarify whether this is directed to a particular  
17 procedure, as is before the Board?

18                   MR. PATTIS:  Again, I'd ask the Board to  
19 admonish counsel that, if there's a legal objection, to  
20 state the basis.  I don't hear an objection.  If the  
21 witness doesn't understand the question, I'll be happy to  
22 rephrase it.

23                   MS. MOORE LEONHARDT:  My objection is not  
24 meant to be disrespectful.  It's not any different from

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the objection that counsel raised when I was attempting to  
2 Cross-Examine his witness.

3 MR. PATTIS: Again, if there's a legal  
4 basis for the objection, I haven't heard it. If the  
5 witness doesn't understand it, that's pertinent,  
6 otherwise, I don't know what we're doing, but engaging in  
7 prohibited colloquy. I'd ask the Board for a ruling.

8 MS. MOORE LEONHARDT: I'll use the term  
9 vague, and I think counsel has used that term, and it  
10 should, I hope, be satisfactory to the Board.

11 MR. PATTIS: Again, I'd ask the Board to  
12 admonish counsel, that recitation or incantation of terms,  
13 whether understood properly or not, isn't an objection.

14 If the witness doesn't understand the  
15 question, that's one thing. If counsel doesn't, I can't  
16 help her on that.

17 MR. SHAPIRO: Why don't you repeat the  
18 question?

19 Q How many procedures does a chiropractor engage  
20 in that carry the possibility of a serious consequence,  
21 for example, paralysis or even death, if any?

22 DR. POWERS: We have to rule on that  
23 objection, so just hang on a second.

24 MR. SHAPIRO: I'm not sure there is an

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 objection. Is there an objection?

2 MS. MOORE LEONHARDT: Yes. My objection is  
3 that the question is vague. Thank you. I can speak  
4 again.

5 MR. SHAPIRO: Okay. We'll overrule the  
6 objection.

7 Q That means you can answer, if you can remember.

8 A I got that part. Give me yours again.

9 Q How many procedures, if any, does a chiropractor  
10 engage in in his office that carry with it a serious  
11 consequence? For example, paralysis or even death, if  
12 any, and I stress that.

13 A I can't think of any.

14 Q If you can't think of any circumstances under  
15 which a chiropractor would engage in a procedure that  
16 carries with it the risk of a serious consequence, such as  
17 paralysis or death, why did you participate in drafting  
18 guidelines of the Association of Chiropractic Colleges for  
19 doing just that thing?

20 A Because the literature associated with health  
21 care had, just as you talked about the transition from a  
22 physician-based standard to a patient-based standard, the  
23 literature transitioned in health care from one of  
24 possible or stronger orientation toward causation to one

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 of recognition of a process underway as it enters the  
2 office, and, as a result, the concern of the Association  
3 in developing those standards was to bring greater clarity  
4 to the responsibility -- to the practitioner of the  
5 responsibility relative to informed consent and to address  
6 the balance between frequency and severity that's  
7 involved.

8 Q I'm going to read you the statement from the  
9 Association of Chiropractic Colleges Guidelines.  
10 "However, if a certain risk is a mere possibility, which  
11 ordinarily need not be disclosed, yet, if its occurrence  
12 causes serious consequences, as, for example, paralysis or  
13 even death, it should be regarded as a material risk  
14 requiring disclosure, and doctors are urged to err on the  
15 side of caution." That's from the Colleges Guidelines,  
16 correct?

17 A Yes, it is, sir.

18 Q And you participated in drafting those  
19 guidelines?

20 A Yes, I did, sir.

21 Q You drafted those guidelines in contemplation  
22 that they would be used by chiropractors, correct?

23 A Yes, sir.

24 Q And understood that by promulgating them under

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the banner of the Association of Chiropractic Colleges, it  
2 carried with it a certain moral authority, persuasive  
3 authority, because you're not just a teacher, you're a  
4 scholar in your area of expertise, correct?

5 A You're generous, but thank you.

6 Q No, but I mean it was expected that this wasn't  
7 just go Yankees, I mean waiving a banner in the air.

8 A That's correct.

9 Q This was something that was meant to guide  
10 behavior, but you're testifying before the Board there's  
11 no behavior that that language was intended to guide.

12 A I think we have a problem with, as you said, my  
13 appreciation for being careful in the words and your  
14 question initially.

15 Q Understood.

16 A I believe your question had to do with is there  
17 anything that a chiropractor does or performs -- if you  
18 could repeat the question for me again, it would be  
19 helpful to me at this point that I get the language  
20 exactly.

21 Q Okay. I'm going to rephrase it slightly, with  
22 your permission. May I have that?

23 A See if we get there.

24 Q Is there anything that a chiropractor does to a



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 patient in the course of an examination, manipulation,  
2 treatment, or what reasonably and customarily goes on in  
3 the office, that carries with it any mere possibility of  
4 serious consequences, for example, paralysis or even  
5 death?

6 A Okay. That's the point. Thank you for  
7 rephrasing that. It's helpful to me. The difference --

8 Q No, no. I don't mean to be rude to you, sir.  
9 I'd like an answer to my question. Is there anything that  
10 meets that standard that customarily goes on in a  
11 chiropractor's office, yes or no?

12 A I can't answer that as a yes or no.

13 Q Okay. Are you willing to acknowledge, sir, that  
14 there are things that go on in a chiropractor's office  
15 that could result in paralysis or even death?

16 A I can't answer that yes or no.

17 Q Why not?

18 A Because simply yes or no doesn't answer the  
19 question.

20 Q Okay, then, answer it anyway you like.

21 A Thank you, sir. The point that I was trying to  
22 get at before, and, again, I apologize for this, but --

23 Q Don't worry about it.

24 A Give me your question again.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           Q     The problem with asking me to do that is it gets  
2 a little different each time, but let me see if I can  
3 remember it. Is there anything that goes on in a  
4 chiropractor's office on a foreseeable basis, in other  
5 words, what is expected, in terms of the care rendered,  
6 the treatment received and all, that carries with it the  
7 risk of a mere possibility that there may be serious  
8 consequences, as, for example, paralysis or even death?

9           A     Okay. The point that --

10          Q     And that's the question you can't answer with a  
11 yes or no, correct?

12          A     Correct.

13          Q     Okay. Answer it anyway you like.

14          A     Thank you, sir. I try to keep the question  
15 fresh in my mind, and you add another statement in the  
16 middle and take me off the question again.

17                     The point that I'm trying to get at is that  
18 the way the question is worded speaks to me of the idea of  
19 causation.

20          Q     Didn't use that word. Talked about your words,  
21 "consequences."

22          A     I understand, sir. I said the way the question  
23 was worded speaks to me, it's how I hear it from you, is  
24 one of causation, and what I'm talking about is that there

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 are circumstances where the patient walks into the office  
2 in progress, with a dissection in progress, and that  
3 patient may very well end up where they're going to end  
4 up, whether they've ever crossed paths with the  
5 chiropractor or not.

6 In relationship to your question, is there  
7 anything that's done in the office that yields, or, excuse  
8 me, the exact word I want to get back to, that -- you  
9 didn't use the word causes, but I'm trying to come back to  
10 the exact word you had.

11 Q Go to page 11 of the -- withdrawn. Do you have  
12 the submission of the Connecticut Chiropractic Association  
13 before you?

14 A I have the two pages that the gentleman to my  
15 right gave me.

16 Q And does that include page -- there should be a  
17 page number 11.

18 A I have a page 11, yes, sir.

19 Q Okay. I'd like to focus on the language that is  
20 in the single-spaced block quote at the top of the page.

21 A I see it, sir.

22 MR. PATTIS: And I don't know whether the  
23 Committee has it in front of it, or if it bears rereading.

24 I don't mean to be tedious.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 DR. POWERS: You're talking about the top  
2 of page 11?

3 MR. PATTIS: Yes, sir.

4 DR. POWERS: Both attorneys have read this  
5 into the record, so I don't believe we need to do it a  
6 third time.

7 MR. PATTIS: Okay. I'm sorry, sir.

8 COURT REPORTER: One moment, please.

9 Q If I'm reading it correctly, it says, "In  
10 determining what information the doctor should convey to a  
11 patient concerning risks involved in a particular  
12 procedure or care." Did I read that correctly?

13 A It's got a typo in it, but you read it.

14 Q It's not "procedures or cars," but we'll agree  
15 that there are not cars involved here, and everybody makes  
16 mistakes, except -- well, everyone makes mistakes. Now  
17 that clause introduces the rest of the text to follow,  
18 does it not?

19 A It does.

20 Q And isn't it fair to say, sir, that the business  
21 about "if a risk is a mere possibility, which ordinarily  
22 need not be disclosed, yet its occurrence carries serious  
23 consequences, as, for example, paralysis or even death,"  
24 that comes in a paragraph that is devoted to talking about

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 risks involved in particular procedures or care, does it  
2 not?

3 A It does.

4 Q It doesn't draw the distinction that you're  
5 drawing in your testimony here to a distinction between a  
6 person presenting with a preexisting condition that may or  
7 may not be aggravated and something that may or may not be  
8 caused by a chiropractor. That distinction is not present  
9 in the paragraph you're looking at, is it?

10 A It is not.

11 Q So is it your testimony, sir, then, that there  
12 are no procedures or care that a chiropractor renders or  
13 foreseeably renders that carries with it serious  
14 consequences, however remote, the mere possibility of  
15 serious consequences, as, for example, paralysis or even  
16 death? Is it your testimony that there's nothing that  
17 meets that criteria?

18 MS. MOORE LEONHARDT: Object to form.  
19 There are multiple questions being posed to this witness.  
20 I'm not sure that he's able to answer the question.

21 MR. PATTIS: Actually, it's one question,  
22 sir. I'd ask for a ruling.

23 MR. SHAPIRO: I would sustain the  
24 objection. I also thought it was a compound question.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: Thank you.

2 Q Is it your testimony, sir, that there is no  
3 procedure or care that a chiropractor offers that carries  
4 with it the mere possibility of paralysis or even death?

5 A If your question does not include causation, the  
6 answer is yes.

7 Q The language that the College used never talked  
8 about causation. It talked about occurrence, correct?

9 A It did.

10 Q And I don't have your CV in front of me. You're  
11 a chiropractic physician, correct?

12 A I'm a chiropractor.

13 Q And your undergraduate training was in?

14 A I did not have any.

15 Q You didn't go to college as an undergraduate?

16 A I'm an old-timer.

17 Q Okay.

18 A Forty years.

19 Q Okay. You are a scientist?

20 A I'm a teacher.

21 Q I'm not trying to be a smart aleck. I realize  
22 that I may appear to be adverse to you. You teach  
23 science?

24 A I do.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q You have some comprehension of scientific  
2 concepts?

3 A I do.

4 Q You understand the difference between something  
5 that is statistically significant, things being related,  
6 and something that's caused, correct?

7 A I do.

8 Q And you understand that, in the business of  
9 science, drawing associations between events and  
10 determining what events cause one other, that's what the  
11 business of science is typically engaged in, correct?

12 A Causing or associated, yes.

13 Q And they're related, but they're not synonyms,  
14 or they're not identical, correct?

15 A That's correct.

16 Q Occurrence encompasses both, doesn't it? An  
17 occurrence.

18 A Not necessarily.

19 Q No, not necessarily, but it can, can't it? For  
20 example, you might see a --

21 MR. SHAPIRO: I want the witness to be able  
22 to -- you asked a question that there wasn't an answer to.

23 Q It may. It encompasses both, doesn't it?

24 A It may.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Okay. For example, the analogy used here  
2 yesterday is that, you know, there's a fire at a house,  
3 and you see a truck. Well the truck didn't cause the  
4 fire, correct?

5 A Yes.

6 Q But it's not untypical to see the two occurring  
7 together, a house on fire and a fire truck, correct?

8 A Correct.

9 Q Science, then, as it develops and progresses,  
10 seeks to draw a distinction between those things that  
11 merely coincidentally occur together and those things that  
12 cause one another, correct?

13 A Yes, sir.

14 Q The language that the Association of  
15 Chiropractic Colleges used with respect to informed  
16 consent and that you have before you does not rely on the  
17 language of causation, does it?

18 A It does not.

19 Q It does not rely on the language of mere  
20 association either, does it?

21 A No, sir.

22 Q It relies on this concept of occurrence,  
23 correct?

24 A Has the potential to be either.



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           Q     And when you object on public policy grounds to  
2     an informed consent policy that is nailed down with great  
3     specificity, your concern is that we might be locking  
4     ourselves into language that is quickly outstripped, or  
5     outgrown as our understanding of causation develops,  
6     correct?

7           A     Yes, sir.

8           Q     As the Association of Chiropractic Colleges was  
9     debating this guideline -- and I assume it was the subject  
10    of debate among other serious-minded professionals?

11          A     Yes, sir.

12          Q     And how many people were in that committee?

13          A     The central committee, the original committee,  
14    there were five, and then there was a final distillation  
15    committee of three.

16          Q     And were you on both committees?

17          A     Yes, I was, sir.

18          Q     In the course of those discussions, what sorts  
19    of care did either committee discuss when the language  
20    regarding an occurrence carrying serious consequences, as,  
21    for example, paralysis or even death, what sorts of care  
22    informed the decision to put that language in the  
23    guidelines?

24          A     Without being facetious, I would say the full

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 range of chiropractic care and the services available from  
2 a chiropractor.

3 Q So you're saying even the application of a hot  
4 pack to the lower back might carry serious consequences,  
5 as, for example, paralysis or even death? Can you cite  
6 one case in which that happened?

7 A I don't believe I said that.

8 Q Well you said the full range of care.

9 A Perhaps I didn't hear your question properly.

10 Q Let me rephrase it.

11 A Okay.

12 Q This was a collaborative process of other people  
13 with great experience in chiropractic, I assume?

14 A Yes, sir.

15 Q No rookies allowed on this committee?

16 A Yes, sir.

17 Q And the language that went into the guidelines  
18 was the result of a lot of work, correct?

19 A Yes, sir.

20 Q You participated in those discussions, a give  
21 and take sort of exchange, correct?

22 A Yes, sir.

23 Q And I presume the first draft of this language  
24 wasn't the one that was approved, that there were multiple

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 drafts, correct?

2 A Yes, sir.

3 Q And that the principle of parsimony applied,  
4 that is, you wanted to say as little as possible to be as  
5 meaningful as possible, fair enough?

6 A Okay.

7 Q Unlike lawyers. The language, about an  
8 occurrence carrying serious consequences, as, for example,  
9 paralysis or even death, that was regarded as necessary  
10 language, correct?

11 A Yes, sir.

12 Q And the question I asked, I think, was, as this  
13 language was being debated, what types of chiropractic  
14 care, if any, informed the discussion?

15 A I'm not trying to be difficult in answering  
16 this, but, again, I would come back to, across the  
17 spectrum of circumstances in a practice, the entire range  
18 of activities were involved.

19 Q Did anyone in -- was anyone assigned to review  
20 literature regarding chiropractic care and to report on  
21 the findings of their study as these guidelines were  
22 drafted?

23 A No. There was not a separate analysis of that.

24 Q Was the discussion, Spinal Manipulative Therapy

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 is an Independent Risk Factor for Vertebral Artery  
2 Dissection from Neurology, was that article -- did that  
3 inform your decision?

4 A I was certainly aware of it.

5 Q Did it come up? Did the topic of vertebral  
6 artery dissections come up in the deliberations?

7 A Yes.

8 Q Is that one of the reasons why the committee  
9 counseled on providing a risk, a notice of risk, if the  
10 consequences were especially serious, up to and included  
11 paralysis and even death?

12 A Yes.

13 MR. PATTIS: May I have one moment, please?

14 I have nothing further, Doctor. Thank you very much.

15 THE WITNESS: Thank you, sir.

16 MR. SHAPIRO: Thank you. Any questions  
17 from the Board?

18 EXAMINATION BY MS. REXFORD:

19 Q Thank you. I'm neither a lawyer, nor a  
20 chiropractor, but I am the Public Member, and I have  
21 served on statewide committees, talking about the quality  
22 of care and health care reform in Connecticut.

23 One of the things that I learned was that,  
24 often times, it takes 17 years when there's a new finding

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 to actually have it implemented within general practices  
2 within physicians' offices, so I'm just wondering, when  
3 you said you're worried that, you know, you might have  
4 more information that would change the informed consent,  
5 how now is that information distributed to chiropractors  
6 in the state, and because there are not just one  
7 Association, what if they disagree on what should be said  
8 and what the best practices are?

9 A I'm sorry. I lost your first question. In  
10 terms of the time frame, how do things move so quickly?

11 Q Well you're worried about the new science moving  
12 quickly.

13 A Yes.

14 Q In my experiences with health care, it doesn't.

15 A What I'm worried about is the information  
16 available to patients. That's a different question than  
17 changing physician or provider behaviors. Physician and  
18 provider behaviors, as you say, the literature is long and  
19 lengthy, and they take a long time to change.

20 If we're talking about a notice that goes  
21 to a patient, providing them with the most recent and  
22 current information on a given subject, that's a different  
23 level of behavior than a clinical procedure or things of  
24 that nature, or changing how a surgeon does a procedure,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 or doesn't do, or whatever, so I don't know that there's a  
2 direct comparison.

3 Let me answer what I think you're asking,  
4 is that what could change that would require that notice  
5 to be that flexible? Forgive me for posing a question.

6 Q What I'm suggesting is, increasingly, the  
7 patient has to take an increased role in his or her own  
8 health care. I'll just give you an example of mammograms,  
9 completely off the topic, but now we have a spectrum from  
10 A to Z on what is the proper thing, and, so, more and more  
11 the decision making process is put back into the  
12 consumer's lap.

13 So the consumer can get information, and  
14 I'm just concerned how is the consumer getting warnings,  
15 getting information within one -- if there's one  
16 chiropractic association that does it one way and another  
17 that does it another way, how is the consumer to know,  
18 because it could vary?

19 A It could.

20 Q And, so, why are you so concerned? I mean I  
21 just am curious why you're so concerned that new science  
22 is somehow going to change something within two or three  
23 months? And, also, I'm really curious on how  
24 chiropractors do get the most current information.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A       Okay. I'm concerned about the issue and the  
2 gentleman's question that started down this path was about  
3 the best public policy relative to this area, and my  
4 concern is, and I think I've said it before a number of  
5 times, that when you lock public policy into a regulatory  
6 process product, it takes time and is difficult to change.

7                       If the facts and the circumstances, to go  
8 back to your example of mammograms, change and the Board  
9 of Medicine in Connecticut had said, you know, every woman  
10 at this point requires a mammogram, or should be advised  
11 to get a mammogram, and that guideline changes, now those  
12 two things are out of sync. Now that doesn't serve the  
13 public at all either.

14                      My point is that, rather than codifying it  
15 at a regulatory level that takes a regulatory proceeding  
16 to change, the requirement can be articulated, and the  
17 practitioner has the responsibility to meet the  
18 requirement as they see fit, just as it happens in every  
19 dentist, in every physician's office across the country.

20           Q       But, as a consumer, I'm often given a lot of  
21 information, which I actually read and I always read the  
22 discharge papers, too, so I guess I am talking about how  
23 we can best inform the health care consumer about --  
24 you're saying that there are no risks with this, but we

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 have heard testimony that there are, so how are you -- how  
2 is your group always informing itself of changing science?

3 A Well by paying attention to the changing  
4 science, and the most recent and the most robust changing  
5 science has indicated that there is no excess risk  
6 associated with chiropractic care versus medical care in  
7 relationship to vertebrobasilar artery stroke.

8 Q I was actually curious about that study, and I  
9 was wondering, only because today the New York Times had  
10 an article, where there was yet a new study of an old  
11 study, and it disproved the original study, so, I mean,  
12 how is the consumer to know? And I was actually sort of  
13 curious about who had funded that first study and the  
14 second study.

15 A The first study being? Which one are we talking  
16 about, ma'am?

17 Q This one that we seem to --

18 A Can you tell me an author's name on it?

19 Q Cassidy.

20 A Cassidy. I think, if you -- the funding was  
21 from the Province of Ontario and a number of different  
22 agencies that are listed on the article in the lower left-  
23 hand corner.

24 Q Does Canada have a more transparent process than



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the United States does on funding?

2 A On research funding?

3 Q Yes.

4 A I think they're both reasonably transparent.

5 Q Excuse me. I think Senator Grassle in the  
6 United States has really addressed that issue, but it's a  
7 different topic today, but I was just curious. And, so,  
8 then the -- that was the original funding, and then it was  
9 restudied, and a new report came out, correct?

10 A No.

11 Q Okay.

12 A Well let me go back and say, if you're talking  
13 about what you're calling the first study was the Rothwell  
14 Study, and the second study was the Cassidy Study, is that  
15 what you're suggesting?

16 Q Yes.

17 A Okay.

18 Q Didn't they look at the same populations?

19 A They did. They did. The Rothwell was funded by  
20 the Institute for Clinical Evaluative Science, sponsored  
21 by the Ontario Ministry of Health, who has provided the  
22 funding for the Rothwell Study.

23 Now the Rothwell Study and the Cassidy  
24 Study did look at a continuing question over time. The

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Rothwell Study looked at the relationship and the  
2 occurrence of vertebrobasilar artery dissection and the  
3 frequency with which patients sought chiropractic  
4 services.

5                   The Cassidy Study looked at that same  
6 question, plus added the question of what was the  
7 frequency with which they sought medical services at the  
8 same time? The first consideration, the Rothwell Study,  
9 found an association, but the association was just by  
10 itself. There was nothing to say, relative to what, what  
11 did this mean? It was this association exists.

12                   Now let's apply meaning to it. The Cassidy  
13 data took the Rothwell approach of these persons have had  
14 a VBA, these persons have seen a chiropractor, and, at the  
15 same time, these persons have had a VBA, and these persons  
16 have seen their medical doctor, and the third group of  
17 people were the people that saw both within that window of  
18 time.

19                   And it was the conclusion in the context of  
20 the perspective of something to compare it to, the  
21 chiropractic experience relative to stroke and the medical  
22 office experience relative to stroke, that there was no  
23 excess risk associated with chiropractic visits in  
24 relationship to VBA in Ontario over a nine-year period

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 with 110 million person years in the most sophisticated  
2 data collection and analysis system pretty much on the  
3 planet relative to health care.

4 The Cassidy Study was a very, very robust  
5 study, and, with all due respect to Attorney Bellamy,  
6 couldn't disagree more with the criticisms associated with  
7 the feedback and testimony she offered in that regard, and  
8 that the Cassidy Study is a very solid study, and it  
9 indicates that there is a level of risk for a person who  
10 sees a chiropractor and has a VBA and a person who sees a  
11 medical doctor and has a VBA, and they don't differ, and,  
12 in fact, in some situations, it's considerably less when  
13 they see a chiropractor.

14 And the conclusion is that if there's not  
15 an increase in risk, then it can't be attributable to the  
16 procedure in the office if the same risk was in both  
17 offices or the relationship didn't change between the risk  
18 over time in those circumstances, so --

19 Q A --

20 A I'm sorry, ma'am.

21 Q You know I've just been involved with the  
22 pharmaceutical industry, so I am really worried about one  
23 study being a global example, so perhaps, offline, we can  
24 talk about other studies that you might have access to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 that would support the same findings as Cassidy.

2 A Well there has never been a more robust study,  
3 there has never been a more extensive study, and there has  
4 never been a more thoroughly analyzed study on this  
5 subject.

6 There have only been two other randomized  
7 clinical trials in this area, the Rothwell Study that we  
8 talked about, that the Cassidy was a continuation and  
9 expansion of, and the Smith Study from Stroke in 2002.  
10 The Smith Study is the one that talked about the  
11 chiropractic being an independent risk factor, and Smith  
12 also talked about the concept that they controlled for  
13 headache and neck pain and still found it to be a risk  
14 factor.

15 Cassidy controlled for neck pain and  
16 headache, and they did not find it to be a risk factor.

17 Q Is there another study that's being done now or  
18 not?

19 A I, personally, am not involved in or have  
20 knowledge of, but I'm quite confident that there are other  
21 studies, just simply because of the interest in this area.

22 MR. SHAPIRO: Are there any other questions  
23 before this witness is excused?

24 MR. PATTIS: Yes. May I?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 BY MR. PATTIS:

2 Q What did you mean when you referred to the  
3 Cassidy Study as a clinical trial?

4 A If I spoke of it as a clinical trial, I  
5 shouldn't have.

6 Q No, it's not at all, is it?

7 A No.

8 Q In fact, your testimony is, when there is no  
9 excessive risk of stroke for chiropractic care, that was a  
10 conclusion that the Cassidy Study drew, correct?

11 A Well let me read it.

12 Q There's no reason to read it. I'm simply asking  
13 you about the testimony you just gave. There is no  
14 excessive. Isn't that what you just said?

15 A There's no excess risk, yes.

16 Q And the study, as I understand it, took a look  
17 at a large number of patients over a long period of time  
18 and used discharge summaries, or billing codes I should  
19 say, to aggregate patients, correct?

20 A Yes, sir.

21 Q And then it divided them by age and then by type  
22 of care sought, correct?

23 A Yes, sir.

24 Q What sort of care, laying on of hands, went on

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 in the doctor's office, if you know?

2 A Well the introductory commentary of Cassidy  
3 speaks to the fact that 80 percent of the office visits  
4 involving chiropractic services involved spinal  
5 manipulation.

6 Q And what took place in the physician's office,  
7 the medical doctor's --

8 A The --

9 Q Do you know?

10 A I do not know.

11 Q Okay. That's my question. This Cassidy Study  
12 doesn't report on what went on there, does it?

13 A It does not. No, sir.

14 Q Would you agree or disagree with the following,  
15 that any health care provider, who performs a service, or  
16 a manipulation, or whatever, on a patient and exposes that  
17 patient to a possibility of serious stroke, or serious  
18 injury, or death, should provide an informed consent  
19 warning? Would you agree with that proposition,  
20 regardless of whether they're a doctor or a chiropractor?

21 A Well I disagree with the characterizations you  
22 just offered. A chiropractor is a doctor. I presume you  
23 mean medical doctor and a chiropractor.

24 Q I do.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     Okay, good. The consideration is that anybody  
2 who is providing a similar service should have a similar  
3 requirement.

4           Q     And, thus, we don't -- and we don't know what  
5 went on. I mean we can infer that medical doctors aren't  
6 giving chiropractic adjustments, can't we?

7           A     I think that's a logical inference.

8           Q     But we don't know exactly what went on in that  
9 office, do we, in those physicians' office?

10          A     I think it's a very safe assumption to say that  
11 they didn't get a chiropractic adjustment from their  
12 physician.

13          Q     I think that's pretty safe, too, but we don't  
14 know what else went on, do we?

15          A     No, we don't.

16                   MR. PATTIS: Nothing further.

17                   MR. SHAPIRO: Okay. If there are no  
18 further questions, thank you for your testimony.

19                   THE WITNESS: Thank you very much.

20                   MS. MOORE LEONHARDT: Thank you, Dr. Clum.

21                   THE WITNESS: Thank you.

22                   MR. PATTIS: With the Board's permission,  
23 can we revisit the issue of Ms. Mathiason? I don't know  
24 if there's other witnesses from Ms. Moore Leonhardt that

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 may be prejudiced on time.

2 MS. MOORE LEONHARDT: I would ask that I be  
3 permitted to continue with my Direct case.

4 MR. PATTIS: The only concern I have is  
5 that if Ms. Mathiason cannot afford to return, given  
6 travel expenses and that she's not institutionally  
7 supported, her contribution may be struck by her inability  
8 to be present to adopt her testimony.

9 We anticipate that her active adopting the  
10 testimony and her comments will take no more than five  
11 minutes.

12 MR. SHAPIRO: Attorney Moore Leonhardt, do  
13 you have a position on it?

14 MS. MOORE LEONHARDT: My position is that  
15 the order was established for witnesses in this case. The  
16 witnesses who have presented on behalf of the Connecticut  
17 Chiropractic Association and the Connecticut Chiropractic  
18 Council are all professionals with tremendous  
19 responsibilities.

20 Many of them have traveled very far, have  
21 flown in, have driven from Upstate New York, and have very  
22 pressing schedules, as well.

23 We were directed to proceed with our case,  
24 and my witnesses are here, prepared to proceed. To permit



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 other witnesses, yet again, out of order under these  
2 circumstances I think is an unfair burden on the  
3 petitioner in this matter.

4 MR. MALCYNSKY: May I be heard, please?

5 DR. POWERS: I'm going to make a motion  
6 that we take Ms. -- is it Mathiason?

7 MR. PATTIS: Yes, sir.

8 DR. POWERS: Out of order at this point.

9 MS. MOORE LEONHARDT: May I have a few  
10 moments to prepare myself for the Cross-Examination of  
11 that witness, since I was anticipating proceeding with  
12 Attorney Carucci, with Dr. Carucci.

13 DR. POWERS: Attorney Moore?

14 MS. MOORE LEONHARDT: Yes.

15 DR. POWERS: Maybe we could vote on the  
16 motion first, and then, if it's applicable, we can take  
17 that question up?

18 MS. MOORE LEONHARDT: Thank you. I  
19 apologize for interrupting.

20 DR. POWERS: Thank you very much.

21 CHAIRMAN SCOTT: Okay. Do we have a second  
22 on the motion before us?

23 A MALE VOICE: Second.

24 CHAIRMAN SCOTT: Any discussion? All in

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 favor?

2 ALL: Aye.

3 CHAIRMAN SCOTT: Any opposition? So ruled.

4 At this point, we will take a 10-minute break, exactly 10  
5 minutes.

6 MS. MOORE LEONHARDT: Thank you.

7 (Off the record)

8 CHAIRMAN SCOTT: We're going back on now.

9 MR. SHAPIRO: The only thing that I wanted  
10 to say to all counsel is that with respect to lay  
11 witnesses, we've discussed this before, the Board  
12 understands the difference between a lay witness and an  
13 expert witness. The Board will give the lay witnesses  
14 whatever weight, in terms of their testimony, that the  
15 Board deems appropriate, and the Board is going to give  
16 some latitude to lay witnesses, as this is a Declaratory  
17 Ruling Proceeding, and the Board did encourage people to  
18 participate if they wanted their thoughts heard on these  
19 important issues.

20 The objections regarding the fact that  
21 they're not experts and they may be discussing things that  
22 are of a medical nature may be noted one time. The Board  
23 is not looking for repetitive objections on that issue,  
24 and the Board is going to give lay witnesses some latitude

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 with respect to their testimony.

2 MS. MOORE LEONHARDT: Attorney Shapiro,  
3 thank you, since I was one of the most vocal on that type  
4 of objection. May I just note that --

5 MR. SHAPIRO: I hadn't noticed.

6 MS. MOORE LEONHARDT: -- I'm willing to --  
7 over time, to know me is to love me, some people say.

8 MR. PATTIS: Objection. (Laughter)

9 MS. MOORE LEONHARDT: I'm not done with you  
10 yet. I'd appreciate an opportunity at the right moment to  
11 put on the record my standing objection, just so that it's  
12 noted in the record. Thank you.

13 MR. SHAPIRO: That's fine.

14 DR. POWERS: Can we swear in the witness,  
15 please?

16

17

SHARON MATHIASON

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.

23 THE WITNESS: Sharon Mathiason. It's  
24 spelled, last name spelled M-A-T-H-I-A-S-O-N.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 COURT REPORTER: Thank you.

2 MR. SHAPIRO: And, also, just with respect  
3 to this particular witness, the testimony was submitted  
4 under both Ms. Mathiason and Dr. Katz, and it's my  
5 understanding that Dr. Katz is going to testify at a later  
6 date, so she can adopt the testimony for herself.

7 MR. MALCYNSKY: That's correct.

8 MR. SHAPIRO: And Dr. Katz will testify at  
9 a later date and certainly be subject to Cross-  
10 Examination. If, for example, Dr. Katz is not available,  
11 then he will be taken off of this testimony. Thank you.

12 MS. MOORE LEONHARDT: Attorney Shapiro,  
13 excuse me. If I may?

14 MR. SHAPIRO: Yes.

15 MS. MOORE LEONHARDT: If Dr. Katz were not  
16 to appear to adopt this testimony, as well, and we don't  
17 have an opportunity to Cross-Examine him, then I take it  
18 this submission that's been put into a pre-filed evidence  
19 form would be given the due weight that the Board, as  
20 experts in its own wisdom, deems appropriate, given the  
21 fact that the only witness who would have adopted it is a  
22 lay witness. Is that a correct understanding?

23 MR. SHAPIRO: I think that's fair to say,  
24 but we'll deal with that contingency when it occurs.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: Thank you.

2 MR. SHAPIRO: If it does. Thank you.

3 MS. MOORE LEONHARDT: And before the  
4 testimony is actually accepted into evidence, I do have an  
5 objection, which I will make verbally, although I have  
6 previously filed a motion, and I would ask permission to  
7 present it, because it relates to the inclusion of death  
8 certificates and autopsy reports, which I would argue do  
9 not belong in this hearing, due to the lack of  
10 availability of the medical experts who completed them and  
11 the lack of opportunity on the part of the attorneys here  
12 to Cross-Examine the witnesses who completed those  
13 records.

14 MR. SHAPIRO: All right. Let me first say  
15 that we're going to mark your motion in limine to preclude  
16 evidence as Exhibit 59 for identification only, as it was  
17 not served, and there are concerns about its timeliness,  
18 but you can certainly make the motion, and I will hear, I  
19 will suggest to the Board that they hear a brief argument  
20 with respect to your motion.

21 MS. MOORE LEONHARDT: Thank you.

22 (Whereupon, the above-mentioned document  
23 was marked as Exhibit No. 59 for identification only.)

24 MS. MOORE LEONHARDT: May I proceed at this

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 point?

2 MR. SHAPIRO: Yes.

3 MS. MOORE LEONHARDT: Thank you. Included  
4 in the proposed pre-filed testimony submitted by Ms.  
5 Sharon Mathiason and the Dr. Murray S. Katz, who  
6 apparently collaborated on this submission, are a couple  
7 of reports. Midway through the submission, or toward the  
8 end, rather, there's a page, which has a dark number 25 on  
9 it, and it's a document with the title of County of San  
10 Diego, Office of the Medical Examiner.

11 This appears to be an autopsy report, I  
12 won't name the name on it, and I would suggest that anyone  
13 who has a copy of this be mindful of protecting the  
14 identity of the deceased, it's an autopsy report, and it  
15 appears to be a two-page document with a medical opinion  
16 on the second page, as well as a medical opinion expressed  
17 on the first page in the autopsy summary, and it's been  
18 completed by what appears to be identified as the Deputy  
19 Medical Examiner, Christopher Swalwell, signed on 8/25/99.

20 The preparation of an autopsy report, as no  
21 doubt many of the medical experts in this room are aware,  
22 involves very specific adherence to standards, and this  
23 report, itself, reflects the performance of an autopsy,  
24 and, unfortunately, none of us in this room will have an

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 opportunity to Cross-Examine the preparer of this document  
2 to insure the reliability of the information that's  
3 contained in the report, or that it should be given any  
4 validity, whatsoever.

5           Given that, it's our position that this  
6 autopsy report, in and of itself, has little probative, if  
7 any, value to the issue before the Board. It cannot be  
8 established with any agree of reliability that the  
9 information contained in the report is reliable. It  
10 doesn't even have an official certificate from the Medical  
11 Examiner's Office, and, as a result, I would move to  
12 exclude this document from evidence.

13           MR. SHAPIRO: Attorney Malcynsky and Ms.  
14 Mathiason, I'll allow you to speak to this, if you want,  
15 as well, after the parties.

16           MR. MALCYNKY: Yes. I would just offer  
17 the following, that this falls into the same category as  
18 the other objections, motions, rather, that she dropped on  
19 our chairs yesterday at 9:00 a.m.

20           This document has been part of the record  
21 since it was filed several months ago. There was never  
22 any objection to its admissibility notice prior to  
23 yesterday morning.

24           If we knew that there was an objection to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 it, we could have made arrangements to have other  
2 witnesses testify, as to the document, if necessary, or  
3 otherwise authenticate it, but I think, again, this is  
4 just another tactic to prevent the Board from having the  
5 benefit of the full review of all the evidence.

6 MR. SHAPIRO: Attorney Pattis?

7 MR. PATTIS: I have three, or four, rather,  
8 observations on that. I'll adopt Attorney Malcynsky's  
9 claim of timeliness, but, more to the point, Connecticut  
10 recognizes -- I'll take my adversary's objection to be a  
11 hearsay objection.

12 Connecticut's Code of Evidence recognizes  
13 23 exceptions to the hearsay rule. The last one is the  
14 catchall exception, making it potentially infinite, but  
15 two exceptions are pertinent here.

16 First, is the so-called public record  
17 exception, and the second is the business record  
18 exception. Every exception to the hearsay rule carries  
19 with it common law and now statutory findings of  
20 reliability.

21 The concern about hearsay typically is that  
22 an out of court statement is being offered in court for  
23 the truth of the matters asserted, thus, somebody wanders  
24 in and says fire. We don't know that it's burning out



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1       there.

2                   An autopsy report is a public record  
3 prepared by a public official. It's also a business  
4 record, prepared by a person who is in the business of  
5 concluding about manner and cause of death. They prepare  
6 the documents contemporaneously, and they have a duty to  
7 preserve those.

8                   I will conceded that, as to the business  
9 record and public record function, we do not have a  
10 witness here to authenticate, and the document, as  
11 proffered is not self-authenticating, and, thus, the point  
12 of Attorney Malcynsky's argument.

13                   The document has been part of the public  
14 record now for several months. We could have gotten one  
15 with a raised seal, or Ms. Mathiason and Dr. Katz, more to  
16 the point, could have gotten one with a raised seal, and  
17 that would have been admissible under the evidence code,  
18 but independent of that, we're here on a proceeding under  
19 Section Four of the Connecticut General Statutes, which  
20 adopts the Uniform Administrative Procedures Act, which  
21 makes strict adherence to the rules of evidence in this  
22 body's discretion, so I would urge the tribunal to accept  
23 the document as admissible.

24                   If, on Cross-Examination, our adversaries

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 believe it important somehow to impeach the proponent,  
2 they have always had the opportunity to try to reach out  
3 to him or to induce him to come here if they have reasons  
4 to believe that the document is not authentic.

5           They could have provided us with notice, so  
6 I would ask the court, for all of the reasons previously  
7 stated, first, the untimely character of the objection,  
8 second, the recognition of the public record and business  
9 record exceptions to the hearsay rule, fourth, the  
10 existence of the Uniform Administrative Procedures Act,  
11 and the fifth one I'm embarrassed to say I forgot, and  
12 that is, under statute in Connecticut, autopsy records are  
13 admissible in homicide trials, for example, merely by  
14 presentation to the court, at least in a hearing in  
15 probable cause, not necessarily in a jury proceeding.

16           And, so, my view is, if these records are  
17 admissible for limited purposes in other proceedings,  
18 where the full rules of evidence apply to a probable cause  
19 hearing in a murder case, they're certainly admissible in  
20 an administrative proceeding, where the UAPA relaxes  
21 strict adherence to the rules of evidence.

22           MR. SHAPIRO: Given the -- I would  
23 recommend to the Board that they accept these documents.  
24 Hearsay is admissible in an administrative proceeding,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 such as this, and I think there is some indication of  
2 reliability with respect to the letterhead of the  
3 documents, and, certainly, this witness can be questioned  
4 about how she obtained those documents, or other questions  
5 with respect to those documents, and the Board can give it  
6 whatever weight they deem appropriate after reviewing all  
7 the documents and testimony, so, for those reasons, I  
8 would suggest that the Board accept this document and its  
9 pre-filed testimony, which was filed months ago.

10 DR. POWERS: We're going to accept this  
11 document, based on Attorney Shapiro's recommendations,  
12 with, also, the understanding that this Board -- you can  
13 trust this Board will give all evidence its due weight,  
14 based on what's been submitted, so let's just move forward  
15 from here.

16 MS. MOORE LEONHARDT: May I just note for  
17 the record I have the same motion and objection to the  
18 death certificate that accompanies or is behind that  
19 document, and I would assume that the Board's ruling is  
20 the same.

21 MR. SHAPIRO: That's correct.

22 MS. MOORE LEONHARDT: I just would like my  
23 objection noted in the record. Thank you.

24 MR. SHAPIRO: It has been. Thank you. You

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 can go forward, Ms. Mathiason. Thank you.

2 TESTIMONY OF SHARON MATHIASON:

3 MS. MATHIASON: Thank you, Daniel Shapiro.

4 I would just like to tell the Board of Chiropractic  
5 Examiners what happened to my daughter nearly 11 years  
6 ago, on February 4th, 1948, pardon me, 1998, when she  
7 attended on her chiropractor in my city of Saskatoon  
8 Saskatchewan.

9 She had been to the chiropractor the  
10 previous day, had her neck manipulated, both to the left  
11 and the right at C-1/C-2, and immediately upon that  
12 manipulation, her neck became immobile. She could neither  
13 move it to the left or move it to the right.

14 She was in great pain. The chiropractor,  
15 when she suggested to the chiropractor that it would be  
16 impossible for her to go to work, where she was supposed  
17 to go within the next two hours, the chiropractor said,  
18 "Oh, don't worry about it. It will be all right, and, if  
19 not, come and see me tomorrow."

20 The following day, on February 4th, Laurie  
21 Jean went to the chiropractor again, she was put on the  
22 chiropractic table with her neck still immobile, and the  
23 chiropractor twisted her neck over to the left, and,  
24 according to her boyfriend, who was with her, she

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 announced she was in great pain, her eyes rolled into the  
2 back of her head, and she fell back.

3 She began to seizure and stroke, and  
4 nothing was being done for my daughter. 9-1-1 was not  
5 called. Doyle, who was only 19 years old, didn't quite  
6 know what to do, so he ran to my workplace, which was in  
7 the same mall, and he yelled to me from the hallway that  
8 Laurie was unconscious, and I said, "Where is she?" I  
9 thought she must have been hit by a car in the parking  
10 lot.

11 He said, "She's at the chiropractor's  
12 office." I said, "How on earth could she be unconscious  
13 at the chiropractor's office?" He said, "Beats me."

14 COURT REPORTER: One moment, please.

15 MS. MATHIASON: So I ran with him to the  
16 chiropractor's office, and what I saw was a horror story,  
17 burned into my brain forever, which I shall never forget.

18 My beloved child, laying on that table,  
19 with her head twisting left and right, seizing, having  
20 foamed at the mouth, which it had now stopped, laying on  
21 her back, with her arm going up and down like this, with  
22 her left foot, I'm saying that this was her ankle and  
23 these were her toes, going back and forth like this, in a  
24 situation that, if all of you tried it, would never be

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 able to do it. It was going so fast.

2 Her eyes were closed. Her chin was tucked  
3 deeply into her neck. I tried to speak to her. She could  
4 not respond. I took her by the hand. Her hand did not  
5 close on mine for the first time ever in our 20 years  
6 together.

7 I said to the chiropractor, "What did you  
8 do to her?" She said, "Oh, I didn't do anything,"  
9 whereupon Doyle said, "That is not true. You manipulated  
10 her neck." I wondered why 9-1-1 was not called. I knew  
11 my daughter was dying as soon as I saw her, and I'm just a  
12 mother. I'm not a medical person.

13 She told me that she had called 9-1-1, but  
14 she didn't, because when we got the tapes, there was only  
15 one call, and it did not happen until after I arrived.

16 I asked to use the phone, so that I could  
17 call her dad, and I was told to use the payphone down the  
18 hall. Finally, the Fire Department came, the Saskatoon  
19 Police service came, the ambulance came, which was only a  
20 two-minute drive, I could drive there myself in that time,  
21 and we transported to Royal University Hospital in  
22 Saskatoon.

23 And as soon as the trauma physician looked  
24 at her with his light, he wheeled around to me and he

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 said, "She's having a stroke," and he said, "Somebody has  
2 done this to her," and proceeded to instruct his assistant  
3 to call the authorities.

4 I said, "The only person who touched her  
5 was the chiropractor," and then they proceeded to do  
6 whatever they could to preserve my daughter's life.

7 At every procedure that happened, we were  
8 given full informed and written consent. Everything was  
9 explained to us, including the risk of angiography when  
10 they had to determine the damage to her left vertebral  
11 artery. Everything was explained to us, every procedure,  
12 the risk that it carried, and we consented with full  
13 consent and signed our signatures, along with the medical  
14 profession.

15 The following day, we were also told upon  
16 admission that had the paramedics not arrived, she would  
17 have succumbed on the chiropractor's table within 10  
18 minutes. It took them a long time to get her stabilized.

19 The following day, on February 5th, she was  
20 brain dead, and the Saskatchewan transplant people came  
21 and spoke to us and asked if we would consider donating  
22 her organs. Have we agreed, and then they made a valiant  
23 effort to keep her body alive, so that those organs could  
24 be transplanted, and her official time of death after

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 organ removal was February 7th at 6:50 in the morning.

2 My daughter was perfectly healthy,  
3 perfectly normal, in the prime of her life, attended a  
4 chiropractor for lower back tailbone pain, had her neck  
5 manipulated 54 times at C-1/C-2, 20 years of age, by a  
6 person, who is supposedly a health care professional, who  
7 believed that they couldn't fix any part of her spinal  
8 column unless they manipulated the neck.

9 The subluxation, the phantom menace, the  
10 subluxation word that you don't want to be used in here,  
11 also known was dysfunction. I have looked at hundreds of  
12 chiropractic records since my daughter was killed, and I  
13 will use that word, I use it in Canada, and every time I  
14 look at the word dysfunction, it makes me want to vomit.

15 Dysfunction has nothing to do with whether  
16 you have a bruise on your tailbone. After I saw what the  
17 medical profession did to try and preserve my daughter's  
18 life, I do not need chiropractors telling any of these  
19 stroke victims here that they died or had a stroke because  
20 of a medical conspiracy against chiropractors.

21 My daughter died because of something  
22 chiropractors do, manipulate the highest neck on just  
23 about everyone for everything. No real physician wants to  
24 compete with chiropractors and manipulate the highest neck



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 to treat tailbone pain, ear infections, autism, or any of  
2 the other myriad of musculoskeletal or visceral diseases  
3 that are listed anywhere in a medical textbook.

4 I do not need to be told that stroke and  
5 death are rare, because it is not rare for the victim.  
6 Adding tens of millions of neck manipulations together,  
7 even the ones done on babies, as if they are all the same,  
8 as if the spine is all the same on any individual, is like  
9 prescribing one medication for all of that, and we know  
10 that's not true.

11 There's 10,000 drugs out there for 10,000  
12 different medical problems, not one like the phantom  
13 subluxation, not visible under a test of any sort, figment  
14 of a chiropractor's manipulation, his fingers, where  
15 probably, if you put two of them together on the same  
16 patient, they wouldn't find it in the same spot, and I  
17 guess that would go along with the chiropractor's  
18 testimony at my daughter's inquest, which is not an  
19 autopsy and it's not a death certificate, has said the  
20 spine changes every minute, every minute, so what is the  
21 point of even one single manipulation?

22 We do not need chiropractors doing studies  
23 on people who are already dead, such as the Hertzog study  
24 that was done in Calgary, Alberta in my country, where I

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 believe it was seven elderly people in their late 80s and  
2 early 90s, who had succumbed probably to old age or some  
3 other problem, where chiropractors twisted their neck  
4 again, blood that is not running under pressure and  
5 arteries that are already in the process of decomposition.

6 We do not need to sit here, victims of  
7 chiropractic do not need to sit here and listen to  
8 chiropractors talk about canine/dog studies done at a  
9 different vertebrae than the highest part of the neck at  
10 C-1/C-2, dogs, who don't have a head sitting on top of  
11 their spinal column, one that hangs off the end.

12 The dog studies were done by some  
13 individual, who supposedly made a lesion in the vertebral  
14 artery, and then the necks were supposedly cranked right  
15 over. And we certainly do not need David Cassidy looking  
16 at billing codes when we have neurologists, and  
17 neuroradiologists, and, finally, pathologists in our  
18 finest hospitals telling us what really happens.

19 If chiropractor, David Cassidy, had checked  
20 the billing records of my daughter, he would have left her  
21 out, because she fell on her tailbone and did not have  
22 neck pain, neither would he have listed her as having a  
23 vertebral artery dissection, because in his entire paper,  
24 he never listed a code for such a diagnosis.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           In an earlier testimony by the chiropractor  
2 who sat in this chair prior to me, he announced that the  
3 funding was done by the Province of Ontario in my country.

4       The only funding that came into that study from the  
5 Province of Ontario, as far as I know, was what they paid  
6 to have extra staff to dig into all of the billing codes.

7           We do not need billing numbers by David  
8 Cassidy or the Connecticut Chiropractic Association to  
9 tell me that it was all a coincidence that my daughter  
10 walked into the office, had her neck manipulated, and  
11 basically died right there.

12           Her death was caused, as the Chief Coroner  
13 of the Province of Saskatchewan, Dr. John Nyssen, stated,  
14 by traumatic rupture of the left vertebral artery not only  
15 torn and mashed up inside, but a hole poked clear through,  
16 so that blood and eventually contrast fluid leaked through  
17 into her brain.

18           Laurie Jean did not have any underlying  
19 defect discovered at her autopsy, only trauma, trauma  
20 caused by the chiropractor. The definition of the word  
21 trauma is done by violence from an outside source,  
22 extrinsic, not inherent, not from within, not within her,  
23 not in her. Let's make that perfectly clear, because we  
24 have had to endure years now of chiropractors putting

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 their spin onto her death.

2 Without the neck manipulation, she would  
3 have lived to be a grandmother. Physicians suspect that  
4 some people have a perfectly normal artery that is perhaps  
5 a little tight, and the only cause of death is the  
6 chiropractor taking their heads and suddenly rotating it.

7 None of us need the ghost of old dad chiro  
8 mystics killing our daughters, and our sisters, and our  
9 mothers, and our older fathers, because they become a  
10 risk, as well. We do not need chiropractic councils  
11 claiming they can use these ideas to do neck manipulation  
12 on anyone.

13 I am in 100 percent in favor of an informed  
14 consent and a warning about stroke, and had my daughter  
15 had that written informed consent prior to February 4th,  
16 she would probably be alive today.

17 Had she been given a discharge summary  
18 prepared properly by experts, who can recognize the signs  
19 of stroke, such as the equivalent to the Canadian Heart  
20 and Stroke Association, which I think in the United States  
21 here we have an American Heart and Stroke Association,  
22 those are the people to prepare a discharge summary.

23 In Canada, we don't just have words. We  
24 also have visuals, so that when they talk about blurred

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 vision, you see the word stroke in a blurry situation on  
2 that form.

3 If chiropractors won't be accountable and  
4 responsible for what they do and stop making excuses, put  
5 the patient first. The patient counts first. In  
6 Saskatchewan, we have what's called the Health Quality  
7 Council. Every single adverse situation that may happen  
8 to any patient is run through that council. That does not  
9 include chiropractors. For some reason, I think they  
10 don't want this known.

11 May I also say that when highest neck  
12 manipulation is done to someone who has lower back  
13 tailbone pain and they are killed or they are injured,  
14 there is no benefit to this procedure when you have a risk  
15 that is completely and totally catastrophic.

16 Even one death or one injury should never  
17 happen for an individual with headache, any visceral  
18 disease, or tailbone pain, such as happened to my  
19 daughter.

20 And let me also say that I seriously  
21 believe that the reason we're having such problems here  
22 getting chiropractors to agree to such a simple thing that  
23 should be the most important thing for them to protect  
24 their patient, that if they don't fall in line with us,

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 they are, in my opinion, perpetuating a campaign of fraud  
2 and deceit.

3 I would also like to reinforce what I said  
4 earlier, about having the American Heart and Stroke  
5 Association or its equivalent to preparing this document,  
6 because in the case of my daughter, when I saw her  
7 seizing, foaming at the mouth, making this horrible  
8 noise coming out of her chest, her chin tucked into her  
9 chest with me wanting to lift it out, because her  
10 breathing was not very well at all, but seeing this  
11 chiropractor leaving it down in there, this individual,  
12 who called herself a doctor and had no clue what was going  
13 on when I said "Why is she doing this," she said, "I don't  
14 know, but she'll be all right," this individual, called a  
15 doctor, who very briefly I put my faith in, and after this  
16 horror story of my life, we cannot have this happen to  
17 anyone else.

18 There have been far too many people killed,  
19 there have been far too many people hurt, and all you have  
20 to do, chiropractors, is look around this room and see it  
21 for yourself. Get in the literature and read it.

22 And if you want to maintain your business,  
23 because I really think that what you're worried about is  
24 that customers will leave your offices in droves. That's

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 all I have to say.

2 MR. SHAPIRO: Thank you. Attorney Moore  
3 Leonhardt, do you have Cross-Examination for this witness?

4 MS. MOORE LEONHARDT: I would simply like  
5 to tell the witness that I am very sorry for her loss, and  
6 I have no questions.

7 MR. SHAPIRO: Thank you. Attorney  
8 Malcynsky, do you have any?

9 MR. MALCYNKY: I have no questions. Thank  
10 you very much for your testimony. I think it's very  
11 insightful.

12 MR. SHAPIRO: Attorney Pattis, do you have  
13 any questions?

14 MR. PATTIS: No questions.

15 MR. SHAPIRO: Are there any questions from  
16 members of the Board? Thank you very much for your  
17 testimony.

18 MS. MATHIASON: Thank you, Your Honor.  
19 Pardon me. I'm in the States.

20 MR. SHAPIRO: I guess it makes sense to  
21 wait to admit the pre-filed testimony until after Dr. Katz  
22 testifies, as well. It may just simplify things. I'm  
23 aware that Dr. Long is part of the rebuttal testimony, and  
24 my recommendation to the Board will be that his name be

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 removed from that rebuttal testimony, but we can discuss  
2 that at the time.

3 I guess the next order of business is to  
4 continue with the Connecticut Chiropractic Association's  
5 next witness.

6 MS. MOORE LEONHARDT: Thank you. Out of  
7 respect for the witness who just spoke, I would ask that  
8 we take a five-minute recess and then begin to proceed.

9 CHAIRMAN SCOTT: That's okay. We'll do  
10 five minutes.

11 (Off the record)

12 CHAIRMAN SCOTT: All right. We're going to  
13 go back on now, and we're going to use the same procedure.

14 MS. MOORE LEONHARDT: Would you like me to  
15 proceed?

16 CHAIRMAN SCOTT: Please.

17 MS. MOORE LEONHARDT: Thank you. Good  
18 afternoon, Dr. Carucci.

19 DR. GINA CARUCCI: Good afternoon.

20 MS. MOORE LEONHARDT: May the witness  
21 please be sworn?

22

23 DR. GINA CARUCCI

24 having been called as a witness, having been duly sworn,



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 testified on her oath as follows:

2

3

4

COURT REPORTER: Please state and spell  
your name for the record.

5

6

THE WITNESS: Gina M. Carucci, C-A-R-U-C-C-I.

7

COURT REPORTER: Thank you.

8

9

10

11

MS. MOORE LEONHARDT: I'd like to call the  
Board's attention to the curriculum vitae that has been  
previously filed with the Board and served on the parties  
for Dr. Gina Carucci.

12

13

14

15

It was pre-filed in connection with an  
expert witness disclosure, and I would move the document  
in as a full exhibit and ask that Dr. Carucci be qualified  
as an expert at this time.

16

17

18

MR. SHAPIRO: If I'm not mistaken, the  
document is already in evidence, but is there any  
objection to Dr. Carucci testifying as an expert?

19

20

21

22

MR. PATTIS: Insofar as there was a notice,  
we're not agreeing that one was necessary, but if it's  
within the scope of that expertise, I don't have an  
objection.

23

MR. MALCYNKY: No objection.

24

MR. SHAPIRO: Okay.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MS. MOORE LEONHARDT: I believe it's  
2 Exhibit 50. Thank you, counsel.

3

4

DIRECT EXAMINATION

5 BY MS. MOORE LEONHARDT:

6 Q Dr. Carucci, you pre-filed testimony with this  
7 Board in anticipation of your appearance here today?

8 A Yes, I did.

9 Q And do you have a copy of that testimony in  
10 front of you?

11 A I do.

12 Q Is it your intent to adopt that testimony as  
13 your testimony today?

14 A I do.

15 Q Do you have any changes to the testimony, or do  
16 you fully embrace what is presented to the Board?

17 A I fully embrace what is presented to the Board.

18 Q Thank you. Would you please, briefly, very  
19 briefly, summarize the points of your testimony?

20 A The point of my testimony is that the  
21 Connecticut Chiropractic Association is aware that the  
22 standard of care that already is in place is informed  
23 consent.

24 Our doctors regularly have discussions with

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 their patients about the nature of the condition, the  
2 anticipated therapeutic benefits of the treatments that  
3 they're being offered, the risks and hazards associated  
4 with them, as well as the alternatives to care.

5 Our doctors take their responsibility for  
6 informed consent very seriously. They're very dedicated  
7 professionals, who work to provide their patients with the  
8 various highest quality of health care.

9 Q Did you want to summarize, briefly, the opinion  
10 that the CCA, Connecticut Chiropractic Association, has  
11 with regard to the issue before the Board?

12 A Our position is that the Board should affirm,  
13 should not affirm the question before them, that the  
14 standard of care already is informed consent.

15 Q Is there anything that you would like to add to  
16 that before we go on to Cross-Examination?

17 A That the current standard of care that is in  
18 place is broad, and offers the broadest protections to  
19 patients presently, and that potentially modifying or  
20 attempting to modify would not be in the patient's best  
21 interest, because by limiting one condition or one  
22 procedure would, by definition, exclude everything else,  
23 and, so, we believe that they should reaffirm the current  
24 standard and perhaps visit a method of enforcing the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 existing standard, rather than trying to apply another  
2 standard.

3 MS. MOORE LEONHARDT: Thank you. Nothing  
4 further.

5 MR. SHAPIRO: Attorney Malcynsky?

6

7

CROSS-EXAMINATION

8 BY MR. MALCYNKY:

9 Q Good afternoon, Dr. Carucci.

10 A Good afternoon.

11 Q You testified that the current form consent  
12 standard of care for all Connecticut health care providers  
13 affords patients the broadest protection, is that correct?

14 A That's correct.

15 Q With regard to chiropractors, is that standard  
16 of care regarding informed consent is there a requirement  
17 that every chiropractor seek informed consent where  
18 they're proposing a neck manipulation as part of the  
19 treatment?

20 A I believe that that current standard would speak  
21 to that, given the appropriate clinical situation. I  
22 believe that a doctor is to be just that, a doctor, and  
23 apply standards and treatments, based on the patient  
24 that's before them.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q So does that mean -- excuse me. You're the  
2 president of the Connecticut Chiropractic Association?

3 A Yes, I am.

4 Q To your knowledge, does every chiropractor in  
5 your Association inform their patients of the risk of  
6 stroke prior to a neck manipulation?

7 A I cannot speak to what each doctor in my  
8 Association does.

9 Q Do you?

10 A I do.

11 Q Do you do that verbally or in writing?

12 A Presently, it is in writing. I have a verbal  
13 discussion with the patient if I feel that the clinical  
14 situation warrants that.

15 Q So you give each and every one of your patients  
16 to whom you're going to administer a neck manipulation a  
17 written informed consent, which includes the risk of  
18 stroke?

19 A I do.

20 Q Do you have a copy of that with you?

21 A I do not. I used it in legislative testimony  
22 previously, the last few years.

23 Q Can you paraphrase for me what it says with  
24 regard to the risk of stroke?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     I could attempt to paraphrase that for you.

2           Q     Please.

3           A     That cervical spine manipulation there is an  
4           association between cervical spine manipulation and  
5           stroke, and I give the reference of one in I believe it's  
6           400,000, because my form has not been updated, based on  
7           Cassidy, to one in two or three million.

8           Q     Do you give them something to take with them  
9           when you leave your office that would be indicative of the  
10          symptoms of a stroke if they were unfortunate enough to be  
11          one of those one in 400,000?

12          A     I do not.

13          Q     Why don't you do that?

14          A     I believe, again, based on a patient-by-patient  
15          basis, that that's not warranted across the board, and  
16          based on a clinical situation of a particular patient, if  
17          I felt that that was warranted, that would be my practice.

18          Q     Are you familiar with the International  
19          Chiropractic Association?

20          A     By the fact that it's a trade Association, yes.

21          Q     Are you a member?

22          A     I'm a member of a subdivision of it, and I'm a  
23          member of the Council on Clinical Pediatrics.

24          Q     Are you familiar with their website?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     I can't say I'm really familiar with it. I've  
2     been on it a time or two.

3           Q     Let me just read you a sentence that appears on  
4     their website, and then I'll show it to you, if you'd like  
5     to see it. It says, "The process of chiropractic  
6     adjustments is a safe, efficient procedure, which is  
7     performed nearly one million times every working day in  
8     the United States." Would you agree with that? You have  
9     no reason to say it's not true?

10          A     That would be true.

11          Q     Okay, so, using your own math from what's on the  
12     disclosure that you provide to your patients, it could be  
13     from one in 400,000 people who have a cervical neck  
14     manipulation could experience a stroke, and there's,  
15     according to the ICA, there's a million procedures done  
16     every business day. That could be as many as two and a  
17     half incidents of stroke per day in this country as a  
18     result of cervical neck manipulation, correct?

19                   DR. POWERS: Attorney Malcynsky, I have a  
20     quick question. I don't have that website in front of me  
21     or the information. Does it say that there's a million --

22                   MR. MALCYNKY: It's in the pre-filed  
23     testimony, sir.

24                   DR. POWERS: Understood. Just a quick

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 question.

2 MR. MALCYNSKY: Yeah.

3 DR. POWERS: Does it say that there's a  
4 million cervical adjustments a day, or a million  
5 adjustments a day? Just for clarification.

6 MR. MALCYNSKY: In this particular website,  
7 it says, "The process of chiropractic adjustment."

8 DR. POWERS: Okay.

9 MR. MALCYNSKY: I can read the paragraph  
10 above it to see if it clarifies it, but, in other  
11 literature that's pre-filed, it's pretty uniform, that  
12 it's around a million cervical neck manipulations per day.  
13 That's my understanding, and the witness does not dispute  
14 that, as far as I know.

15 A Well, no, that's not what I said. You asked me  
16 if I would dispute the fact that the ICA says there are a  
17 million manipulations a day.

18 Q Okay, well, but you tell your own patients that  
19 it's possible that one in 400,000 of people, who get a  
20 neck manipulation, could have a stroke?

21 A At the high end, and that's based on outdated  
22 data, as I expressed to you, prior to the Cassidy Study. I  
23 have not contemporized that form as of yet.

24 Q But would you agree that if you apply that



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 figure across the country, that could happen, to use your  
2 figure, between two and two and a half times a day if you  
3 use 400,000?

4 A Applying it to the chiropractor, yes, but we  
5 could use the same standard with the same patient  
6 presenting to the medical doctor --

7 Q So assume it happens once a day. Excuse me.  
8 I'm sorry.

9 A Well, as I said, I attempted to complete that we  
10 could apply the same numbers to the primary care  
11 physician.

12 Q Assume it happens once a day, not twice a day,  
13 not 400,000, just assume it happens one every million,  
14 assuming the million number is right, and it may be right,  
15 it may be wrong, we'll look into that, but --

16 MS. MOORE LEONHARDT: I object, then.  
17 Either counsel has a figure that is solid that is not  
18 going to mislead the witness or not. A proper question,  
19 proper form, proper basis and foundation to put a  
20 hypothetical question to this witness must be laid prior  
21 to asking the witness to answer a question, such as that,  
22 so I'd ask that a proper foundation be laid. Thank you.

23 MR. SHAPIRO: I would overrule the  
24 objection. I think that he's asking the witness to assume

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 a certain set of factual circumstances, and, in that  
2 particular case, and you can correct me if I'm wrong,  
3 Attorney Malcynsky, that you're asking this witness a  
4 hypothetical.

5 MR. MALCYNSKY: Correct.

6 MR. SHAPIRO: Assuming there's one per  
7 million and one per day.

8 MR. MALCYNSKY: Correct.

9 MR. SHAPIRO: Okay, so, I would recommend  
10 overruling the objection, then.

11 Q My question is really a simple one, and that is,  
12 if it were to happen once a day, hypothetically, in this  
13 country every business day, that's a couple hundred people  
14 a year that would experience a stroke as a result of neck  
15 manipulation.

16 Shouldn't we be constructing a public  
17 policy that would err on the side of informing people that  
18 they could be one of those people that has a stroke prior  
19 to having the neck manipulation?

20 MS. MOORE LEONHARDT: Objection,  
21 misleading. The testimony, I believe, was that the figure  
22 upon which Attorney Malcynsky is basing his hypothetical  
23 was an all-inclusive figure and was not specific to  
24 cervical manipulation.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. MALCYNISKY: I think they've already  
2 ruled that my question is hypothetical in nature, and  
3 she's permitted to answer to the hypothetical proposed.

4 MS. MOORE LEONHARDT: Well the figures  
5 you're using were based on a broader --

6 MR. PATTIS: I'd ask the tribunal to  
7 overrule the objection on the grounds that misleading is  
8 not a cognizable objection under the code of evidence.

9 DR. POWERS: Okay. Listen, we did already  
10 rule on it, and it's something that you can aptly bring up  
11 on Redirect, okay?

12 MS. MOORE LEONHARDT: Thank you.

13 Q Assuming, hypothetically, it were to happen in  
14 this country a couple of hundred times a day. Excuse me.  
15 That would be horrible. If it happened a couple of  
16 hundred times a year, which is once every business day,  
17 according to the trade journals. Given the fact that  
18 that's a couple hundred people a year and the fact that  
19 you choose to do it in your practice, why doesn't the  
20 industry insist that it's done?

21 A Because it's creating a standard of care, trying  
22 to create a separate standard of care when there's an  
23 excellent standard for informed consent that already  
24 exists, and, again, I would go to the fact that really

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 working towards enforcing the current standard we wouldn't  
2 need to be here today.

3 Q Okay. How would we enforce the current  
4 standard?

5 A That could be up to the Board. I'm sure there  
6 are a number of ways that they could create methods of  
7 enforcement.

8 Q But isn't part of the problem -- you testified a  
9 few minutes ago that you don't know if everyone in your  
10 Association does what you do, in terms of informed  
11 consent, correct?

12 A That would be true, and I believe that imposing  
13 another law or another standard would not capture those  
14 people that are violating their obligation as a doctor.

15 Q So are you saying that, in your opinion,  
16 everyone who doesn't provide informed consent that  
17 specifically mentions the risk of stroke is violating  
18 their obligation as a doctor?

19 A I'm saying a physician that does not provide  
20 their patient with the information that they deem  
21 necessary to make an informed decision would be in  
22 violation of the standard.

23 Q All right and you testified earlier that you  
24 believe that they ought to include the information about

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the risk of stroke?

2 A I testified that I believe a physician should  
3 include the information of stroke when the clinical  
4 presentation presents itself on a case-by-case basis. As  
5 doctors, we are advocates for our patients, we will go to  
6 the mat for our patients, we take their health care very  
7 seriously, and we will advocate for them when it's  
8 appropriate.

9 Q But you don't know if everyone does it?

10 A I do not. I'm not in every practice every day.

11 Q All right, but you do it in your practice,  
12 because you think it's prudent?

13 MS. MOORE LEONHARDT: Objection, asked and  
14 answered. Badgering the witness.

15 MR. MALCYNSKY: Agreed.

16 Q I guess my question is, I don't understand how  
17 you could oppose, or how do you oppose a public policy  
18 that would err on the side of patients having all the  
19 information they need?

20 MS. MOORE LEONHARDT: Objection, lack of  
21 foundation.

22 MR. SHAPIRO: Counsel, why don't you  
23 rephrase that question? I have some concerns about it, as  
24 well.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. MALCYNKY: Withdrawn.

2 Q We've established that there is a risk to  
3 stroke, and we talked about the possibility of it  
4 happening, you know, to several hundred patients a year in  
5 this country, if you use the industry statistics. Why  
6 don't we err on the side of making sure that everyone  
7 that's going to have that manipulation be informed that  
8 there's that risk?

9 A Well, to answer that question, in this case, if,  
10 truly if the groups that have facilitated this question  
11 being brought to the Board were concerned about patient  
12 safety, specifically, patients that would receive cervical  
13 spine manipulation or adjustment, then it would need to be  
14 applied equally across the board.

15 And I understand this is the Board of  
16 Chiropractic Examiners, and their purview is the  
17 chiropractic profession, but the ramifications or the  
18 implication, that a procedure that is not specific to this  
19 profession, doesn't warrant the equal protection to the  
20 patient with other licensed health care professionals in  
21 the state, who also provide the procedure.

22 Q But we're only talking about chiropractors, and  
23 we're only talking about this procedure and this  
24 proceeding.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     Agree, but this proceeding came forth out of the  
2 interest of other parties, and, so, again, as I say, if a  
3 patient advocacy mode is truly the mode of operation, then  
4 all patients, regardless whether the chiropractic  
5 patients, physical therapy patients, or osteopathic  
6 patients, should be within the reasonable confines of  
7 patient advocacy.

8           Q     But this Board can only -- only has  
9 jurisdiction, as you said, over chiropractors.

10          A     As I said, I acknowledge that, but I'm saying,  
11 hypothetically, from a patient advocacy perspective, all  
12 patients -- just because -- an osteopathic patient should  
13 have no less significance than a chiropractic patient.

14          Q     So we shouldn't be obligated to do something  
15 that's good public policy unless they do it?

16          A     That's not what I'm saying. What I'm saying is  
17 that a good public policy would be applied across the  
18 board, as the current public policy, the current standard  
19 on informed consent already exists. All health care  
20 providers in the State of Connecticut are obligated to a  
21 standard that's broadly applied and broadly protects all  
22 the patients of Connecticut.

23          Q     Are you aware of a Stroke Awareness Group that  
24 was formed, based on bad results from orthopedics?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     I do not.

2           Q     Are you aware of a Stroke Awareness Group that  
3 was formed from bad results from physical therapists?

4           A     I do not.

5           Q     Okay. Do you know of any group that promotes  
6 the practice of cervical neck manipulation as broadly as  
7 chiropractic?

8           A     I do not.

9           Q     Okay, so, we're here really because of this  
10 cervical neck manipulation that chiropractors do, and  
11 because this is the Chiropractic Board?

12          A     Those are your words. Those are your words.  
13 From a patient advocacy perspective, I think that there  
14 are many who would think otherwise.

15          Q     Why do you think that some chiropractors, like  
16 yourself, are responsible to include the informed consent  
17 and the risk of stroke and some don't?

18                   MS. MOORE LEONHARDT: Objection. That is  
19 not the witness's testimony. The witness testified about  
20 an association, not a risk.

21                   MR. MALCYNKY: No. She said that she does  
22 --

23                   MS. MOORE LEONHARDT: She said that she  
24 reveals to patients --



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: Attorney Moore Leonhardt, the  
2 witness can correct counsel.

3 MS. MOORE LEONHARDT: Thank you.

4 A I used the word association.

5 Q Right. My question is, why do you think that  
6 some choose to do it one way, in terms of informed  
7 consent, and some choose to do it another?

8 MS. MOORE LEONHARDT: Objection. Calls for  
9 speculation. Previously, this Board has ruled that  
10 speculation has no place in this hearing.

11 MR. PATTIS: On the other hand, she's  
12 testified about the practices of her organization and her  
13 membership.

14 MR. MALCYNSKY: Correct.

15 MR. PATTIS: Thereby implying some  
16 familiarity with practices.

17 Q Can you please answer the question?

18 A Could you repeat the question?

19 Q Why do you think that some chiropractors --

20 MS. MOORE LEONHARDT: Can we please have a  
21 ruling on the objection before we go further?

22 MR. SHAPIRO: I want to hear the question  
23 again. I heard your argument.

24 Q Can you tell me why you think, as a chiropractor

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 yourself and as president of the Association, why do you  
2 think that some chiropractors choose to utilize informed  
3 consent in one fashion and others in another way?

4 MR. SHAPIRO: Hold on.

5 THE WITNESS: Am I answering this question?

6 MR. SHAPIRO: I'm not sure.

7 Q Is there a uniform standard for the use of  
8 informed consent?

9 MR. SHAPIRO: That, you can answer.

10 THE WITNESS: Okay.

11 MS. MOORE LEONHARDT: No objection to that  
12 question.

13 A There is no uniform standard.

14 Q Okay, so, what's wrong with a policy to protect  
15 those couple of hundred people that have strokes every  
16 year after neck manipulation that will err on the side of  
17 giving them the information that they need to decide to go  
18 forward or not? You testified that you do it in your  
19 practice. Has it harmed your practice?

20 A It has not.

21 Q Okay, so, what's wrong with a public policy that  
22 errs on the side of making sure that they all do it the  
23 same way?

24 A Because the current standard already requires a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 doctor to do that, and, again, I move to the fact that  
2 enforcing the current standard would solve the problem.

3 Q But we've heard testimony from people today that  
4 have not been provided informed consent, and you're going  
5 to hear more testimony from victims, who were never given  
6 informed consent, so if we know people aren't getting it  
7 uniformly, what's wrong with a policy to insure that?  
8 What harm would be done?

9 A I don't believe any harm would be done.

10 Q Would you support it?

11 A My testimony is that I support enforcing the  
12 current standard of care.

13 Q And one way to enforce it would be to require it  
14 through a Declaratory Ruling of this Board, is that not  
15 true?

16 A I believe that that's one of the actions the  
17 Board could take.

18 Q Just briefly, you mentioned earlier that you  
19 testified before the legislature. I've seen you up here  
20 many times testifying before the legislature. Do you  
21 recall your testimony in the hearing before the Public  
22 Health Committee on this issue last session?

23 A I remember being here, yes.

24 Q Do you recall Senator Harris asking you this

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 question?

2 MR. MALCYNISKY: And I'll be glad to share  
3 this with Attorney Moore Leonhardt at the appropriate  
4 time, and if she thinks that's now, that's okay. I'd be  
5 glad to share it with her right now.

6 Q Senator Harris asked you the question, "The  
7 informed consent process that you use," comma, "is that on  
8 the front end?" And your response was, "Yes." Then he  
9 said, "Telling, advising of the risks, and then is there a  
10 signoff of some kind?" And you said, "Absolutely." And  
11 he said, "How about the backend notion? You take away  
12 information, explaining what the risks are?" And your  
13 response was, "That's an interesting concept."

14 Now this is a discussion about the  
15 discharge summary. And then you went on to say, "It's  
16 certainly something that I have never thought of. The  
17 informed consent process, based on my understanding, is  
18 something that has come out of the legal world and out of  
19 the malpractice carrier world, and that's how we, as an  
20 Association, as educational institution, had begun to  
21 implement and use this procedure."

22 And then you said, "I'm certainly not  
23 opposed to doing something like that." The topic was the  
24 discharge summary, and I'll gladly review this, if you'd

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 like. How do you feel about that statement today? Do you  
2 still believe that you would be supportive of a discharge  
3 summary?

4 A If a discharge summary was something that was  
5 mandated, then I'd be obligated to do it, but I feel that  
6 a patient, informing a patient of something that occurs  
7 before any procedure is done, and, in fact, having a well-  
8 done informed consent would disclose to the patient any  
9 signs that would be a negative outcome.

10 Q When you say "signs that would be a negative  
11 outcome," you're talking about symptoms of a stroke?

12 A Symptoms of a stroke, muscle soreness, as a  
13 routine --

14 Q And is that what you --

15 A -- common finding.

16 Q Is that what you provide?

17 A What's that?

18 Q In your informed consent process, do you provide  
19 written notification of the symptoms of a stroke?

20 A I do not.

21 Q You do not.

22 COURT REPORTER: One moment, please.

23 Q Would you be supportive of a policy that would  
24 require every chiropractor to provide patients with

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 information indicative of the symptoms of a stroke to take  
2 with them when they leave?

3 A Well, again, it goes back to the concept of  
4 informed consent prior to treating, working, even  
5 examining a patient, and it's a case-by-case basis.  
6 Doctors are required currently to disclose information to  
7 a patient prior to their consent, and, in the process of  
8 disclosure, as we know, it's a discussion, and I have  
9 discussions with my patients, as do my colleagues, on a  
10 daily basis about the care they received whenever the  
11 previous treatment was, and how we can improve that, and  
12 what their participation should be in that.

13 Q And you indicated that you do inform people in  
14 your office of the risks of stroke?

15 A I do.

16 Q Would you agree that someone leaving a doctor's  
17 office would be well-served to have something to refer to  
18 if they fell ill later, to look at those symptoms and see  
19 if they were having a stroke? Would there be any harm in  
20 doing that?

21 A There wouldn't be any harm in doing that.

22 Q Would there be any benefit?

23 A There could be a benefit.

24 Q Okay, so, as you said to Senator Harris, you're

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 not opposed to exploring something along those lines?

2 A I'm not opposed to exploring it.

3 MR. MALCYNSKY: Thank you.

4 MR. SHAPIRO: Attorney Pattis?

5

6

CROSS-EXAMINATION

7

BY MR. PATTIS:

8 Q Good afternoon, Dr. Carucci. How are you?

9 A I'm very well, thank you.

10 Q If I understood your testimony correctly, and  
11 I'm sure you'll correct me if I didn't, you do provide  
12 patients with a written informed consent, as to the  
13 potential for stroke arising from cervical manipulation?

14 A I do.

15 MS. MOORE LEONHARDT: I'd like to object  
16 and move to strike, that if the Board would prefer that I  
17 correct that on Redirect. Again, we went through this  
18 before.

19 MR. SHAPIRO: Counsel, the question asked  
20 and the question was answered. There's nothing to object  
21 to.

22 MS. MOORE LEONHARDT: It's argumentative,  
23 counsel, because the witness was very clear earlier.

24 MR. SHAPIRO: Okay. Argumentative is not a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 legal objection. He just asked her a question.

2 MS. MOORE LEONHARDT: It absolutely is.

3 MR. SHAPIRO: She's an expert witness. He  
4 asked her a question, she apparently understood the  
5 question, and she answered the question. If you don't  
6 like the answer to that question, that's a different  
7 story, but that's not a legal objection to the testimony.

8 He asked her a question, and she answered  
9 it. There's nothing to object to right now. If you want  
10 to ask her a different question on Redirect, that's your  
11 choice.

12 MS. MOORE LEONHARDT: Attorney Shapiro,  
13 with all due respect, the witness previously testified and  
14 asked and answered that question.

15 MR. PATTIS: Object to this. The court has  
16 ruled. I'd ask that counsel be admonished. The fact of  
17 the matter is this now becomes witness coaching. The  
18 witness heard the question. She agreed. Counsel doesn't  
19 like the answer.

20 MR. SHAPIRO: I agree to that, and if she  
21 testified to something previously, she can testify to  
22 something new right now, and she just answered a question  
23 that there's no indication she didn't understand the  
24 question, so I would ask Attorney Pattis to continue.



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. PATTIS: Thank you.

2 Q Did I also understand you to say that one reason  
3 for opposing your -- the practice that you engage in as an  
4 industry standard is that you think the law already  
5 requires you to do this, fair enough?

6 A Yes.

7 Q And that as president of the Connecticut  
8 Chiropractic Association, I'm assuming you have adopted  
9 that position, because of your care and love for your  
10 profession?

11 A I adopted that position, because that was my  
12 education when I was in chiropractic college and because  
13 it's the standard of care.

14 Q And that's what I get for asking a bad question.  
15 I apologize to you. You're president of a professional  
16 Association?

17 A That's correct.

18 Q And you've chosen to adopt a leadership role in  
19 that Association and profession out of your love for the  
20 profession?

21 A Oh, yes.

22 Q And not withstanding that love, you realize that  
23 not everyone adheres to the same high standards that you  
24 do, correct?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     I would have to disagree with that.

2           Q     Then why do you think that this Board should  
3 consider ways to enforce the current informed consent  
4 regimen? You've talked about you'd be open to the  
5 possibility of creating methods of enforcement, you were  
6 asked like what, and you said you'd leave that to the  
7 Board's determination. What should be enforced that is  
8 not being adhered to now? What additional enforcement is  
9 necessary?

10          A     Well we're here discussing the concept of  
11 informed consent, and, clearly, there have been patients  
12 who have had that right or privilege violated.

13          Q     Okay.

14          A     Now I cannot be responsible to mandate all of my  
15 member doctors to do that. We can make recommendations,  
16 and they're obligated under the current standard and the  
17 Board of Chiropractic Examiners. I believe their purview  
18 is to review doctors, who are negligent in their  
19 obligation under the health care law of the scope of  
20 chiropractic practice.

21          Q     Are you saying, then, ma'am, that you believe  
22 that informed consent in Connecticut now requires that a  
23 patient be given a written notice of the risk of harm  
24 arising from cervical manipulation?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     I did not say that.

2           Q     But you do it?

3           A     I personally do it.

4           Q     Okay, now, when you talk about -- would you  
5 agree or disagree with the following proposition, that the  
6 practice of chiropractic care is a regulated profession?

7           A     Yes.

8           Q     And would you disagree or agree with the  
9 following, that requiring a person regulated to do  
10 something or refrain from doing something gives the  
11 regulators power, as it were, to police the profession?  
12 Would you agree with that?

13          A     I would agree with that.

14          Q     Would you agree that one of the powers of -- and  
15 if there are known standards of what's required and what's  
16 not, that gives the profession a greater ability to police  
17 non-compliance. Would you agree with that?

18          A     What do you mean by "the profession?"

19          Q     Fair enough. Would you agree with the following  
20 or disagree, that when there is a known standard, in other  
21 words, when there is a rule promulgated that all  
22 professionals have to adhere to, that known rule gives the  
23 regulators power to police compliance, fair enough?

24          A     Yes.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Right now, isn't it your position, ma'am, that  
2 the only place you really get answers to the question of  
3 what a material risk is, for example, is in a courtroom,  
4 fair enough?

5 MS. MOORE LEONHARDT: Objection. Lack of  
6 foundation.

7 MR. PATTIS: It's in her pre-filed  
8 testimony.

9 Q Isn't that true, ma'am? Unfortunately, the only  
10 place you get answers to the question of what is material,  
11 in terms of risk, is in a courtroom?

12 A Well I would say that, based on what's in my  
13 testimony, what's material is patient-by-patient. You're  
14 making the assumption that everything is determined in a  
15 court of law, and I would contend that it's determined in  
16 a doctor's office, case-by-case, on what a patient deems  
17 significant for their ability to make an informed decision  
18 about how they wish to proceed or not.

19 Q Do you have your testimony in front of you?

20 A I do.

21 Q Would you please turn to page nine? And, by the  
22 way, ma'am, this is a 17-page document, is it not?

23 A Yes.

24 Q Did you write this document?

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 A Personally, no.

2 Q Who wrote it?

3 A It was a committee. It was a formulation of my  
4 colleagues assembled to prepare for this.

5 Q But you have signed it, and you have adopted it  
6 as your own, correct?

7 A Yes.

8 Q I'm going to direct your attention to the bottom  
9 of page nine. There's a paragraph that reads as follows.  
10 "When examining any materiality issue," and that refers  
11 to the materiality of a risk, thus implicating a patient's  
12 right to informed consent, correct?

13 A Yes.

14 Q "One must look at two important aspects. One,  
15 the frequency occurrence rate of harm," correct?

16 A Correct.

17 Q "Two, the severity or magnitude or nature of the  
18 occurrence," correct?

19 A Correct.

20 Q It goes on to say, "A patient may consider it  
21 material if it will frequently cause minor scarring,"  
22 correct?

23 A Correct.

24 Q "And a patient may consider it material if a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 procedure will rarely cause death or a serious permanent  
2 injury," correct?

3 A Correct.

4 Q "Unfortunately, the only place you get answers  
5 to the question of what is material is in a courtroom,"  
6 correct?

7 A Correct.

8 Q "The answers come from juries in individual  
9 cases, and there is no guarantee the results will be  
10 consistent from one state to the next," correct?

11 A One case to the next.

12 Q Thank you. Correct?

13 A Correct.

14 Q Wouldn't one way to eliminate inconsistency, as  
15 regards the risk of death or serious permanent injury, be  
16 to require all chiropractors to do what you do, and that  
17 is to give a written warning? Wouldn't that be one way to  
18 assure uniformity?

19 A That would be one way.

20 Q And wouldn't it also enhance enforcement of a  
21 requirement that currently exists in the law, such that a  
22 patient wouldn't have to wait until they were seriously  
23 injured or perhaps killed to have them or their estates  
24 bring an action for harm? They could simply come to this

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Board and say impose a 500-dollar fine. The person did  
2 not give me my warning. Wouldn't that make sense, in  
3 terms of enforcement?

4 A That's certainly a way that it could be done. It  
5 could also be handled that way currently, if the Board  
6 chose to enforce the current standard of care.

7 Q How is it going to do that in the absence of a  
8 writing, ma'am? Is it simply going to bring -- is it  
9 simply going to say to a chiropractor come in and state  
10 under oath have you given informed consent in every case  
11 where you thought it was appropriate? Do you think that  
12 would be an effective enforcement mechanism?

13 A I do not, but I believe that there are other  
14 mechanisms available to them to exert.

15 Q Well I'll repeat Attorney Malcynsky's question.  
16 Like what?

17 A Education.

18 Q So educating chiropractors about what's  
19 required?

20 A Currently, the standard in Connecticut is 48  
21 hours of continuing education every two years.

22 Q So you, yourself, have concluded that,  
23 consistent with the informed consent requirement, you're  
24 comfortable giving a written warning? Others of your

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 colleagues had reached different conclusions, correct?

2 A I cannot speak for what others do independently.

3 Q But you have here. You have here in your  
4 testimony. You've talked about the ideals that the  
5 profession seeks and how patient-centered and non-self-  
6 serving chiropractors are.

7 A That would be true, but you asked me a question,  
8 as to what I do in my office, and I answered that  
9 question.

10 Q No, I didn't. You tried to tell us you didn't  
11 know what others did, and I'm trying to ask you a  
12 question, if the Board were to adopt the proposed  
13 regulation here, wouldn't that solve many of the problems  
14 and bring your fellow members of your Association into  
15 compliance with what you're already doing?

16 A Hypothetically, if the Board were to do that,  
17 yes.

18 Q One of the objections you have is that, unless  
19 everybody is required to do it, you shouldn't be, all  
20 professionals, who provide similar care, correct?

21 A Well, in a short answer to that, yes, but,  
22 again, going back to patient safety, why is the  
23 osteopathic patient any less significant than the  
24 chiropractic patient?



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q Would you agree that that's a topic that can be  
2 pursued with equal passion by this very group on a  
3 different day, in a different way, in a different Board?

4 A That would be reasonable.

5 Q And would you agree, ma'am, that that's no  
6 reason for this Board not to do the right thing, that this  
7 would be an opportunity for your profession to take a  
8 leadership role among the healing arts?

9 A That's certainly what's available to them.

10 MR. PATTIS: May I have one moment, please?

11 MR. SHAPIRO: While you're taking a moment,  
12 I wanted to suggest that Exhibit 48, which is the rebuttal  
13 testimony of Attorney Bellamy, be admitted into evidence,  
14 unless there's objections.

15 MS. MOORE LEONHARDT: It hasn't been  
16 adopted, and I was under the understanding that, so I do  
17 object, I was under the understanding that Attorney  
18 Bellamy had to leave, and that's why we put her first  
19 today and disrupted the order of my presentation of my  
20 case, and I would just note, for the record, that Attorney  
21 Bellamy is still sitting in this room at 3:40. At 3:35.  
22 Excuse me.

23 MR. SHAPIRO: Attorney Moore Leonhardt, my  
24 understanding was that Attorney Bellamy was going to be

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 here for the two days today, and that she unable to return  
2 on the other days, due to a surgery out of state, and,  
3 therefore, we took her out of order with your consent.

4 My understanding was that it was  
5 anticipated that she would be here for the entire day.  
6 It's also my understanding that she did adopt her  
7 testimony under oath, and that's why I was suggesting that  
8 it be admitted as an exhibit.

9 MR. MALCYNKY: That's my understanding.

10 MS. MOORE LEONHARDT: Was the testimony  
11 adopted or the letter adopted, because I recall a letter  
12 being identified and a late-filed article relating to the  
13 Hill criteria being submitted in December and that that  
14 was admitted.

15 MR. SHAPIRO: She also adopted her  
16 testimony under oath, unless I'm incorrect, and we can  
17 look back in the record, or I can call her, and we can  
18 have her adopt her testimony.

19 MS. MOORE LEONHARDT: We'll just proceed  
20 with marking it as a full exhibit. I don't want to bog  
21 down the Board any further.

22 MR. PATTIS: Well I don't want to create an  
23 unnecessary appellate issue, sir. My recollection is that  
24 it was adopted, but if counsel has a good-faith basis to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 believe it wasn't, I would ask that Ms. Bellamy be re-  
2 sworn, or counsel waive the claim, so that the issue  
3 doesn't come back and haunt us on appeal.

4 MR. MALCYNSKY: I would concur on that.

5 MS. MOORE LEONHARDT: I think we should  
6 just proceed. There's no need to waive anything. The  
7 record stands for itself.

8 MR. PATTIS: I would ask for an expressed  
9 wavier. The issue has been raised, or I'd seek permission  
10 to call Attorney Bellamy. I don't trust my memory. I'm  
11 over 50.

12 MR. SHAPIRO: Attorney Moore Leonhardt, I  
13 would agree with Attorney Pattis. If you have any reason  
14 to object to this rebuttal testimony being admitted as an  
15 exhibit, you're more than welcome to do so, but, if not, I  
16 would suggest that it be admitted.

17 It's my understanding that she adopted it.  
18 If you have reason to doubt that, then she's here now, and  
19 we can call her. It will take about a minute.

20 MR. MALCYNSKY: I suggest we just do that.

21 MS. MOORE LEONHARDT: Why don't we do that,  
22 and, as I understand it, I would then have an opportunity  
23 to Cross-Examine her again?

24 MR. PATTIS: I don't believe that's the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 case. There was ample Cross-Examination. Unless she's  
2 going to Cross-Examine her on the topic of whether she  
3 means really to adopt it, or she's actually Jann Bellamy,  
4 there's no door that's been opened.

5 MR. SHAPIRO: I agree with that. I think  
6 we're about at the end of this witness, so let's see if  
7 this witness finishes up in the next few minutes, and then  
8 we'll call Attorney Bellamy.

9 MR. PATTIS: I have no further questions of  
10 this witness.

11 MR. SHAPIRO: Okay.

12 MR. MALCYNKY: I have no further questions  
13 either.

14 MR. SHAPIRO: Does the Board have any  
15 questions of this witness? Any other questions?

16 MS. MOORE LEONHARDT: I have some Redirect  
17 after the Board is through.

18 MR. SHAPIRO: Okay. The Board is going to  
19 have some questions.

20 DR. ROBOTHAM: I just wanted to reiterate  
21 the fact that counsel here with VOCA he had made a  
22 hypothetical situation in regards to 300, 200, 300 strokes  
23 happening per day, per year he was saying, and just make  
24 sure that that is the record that it's hypothetical. We

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 don't want that to be misconstrued.

2 MR. MALCYNSKY: Well what's in the record,  
3 I think, is the trade periodicals or articles that I took  
4 the information from, which are also in the pre-filed  
5 testimony.

6 EXAMINATION BY DR. POWERS:

7 Q Okay. I think the question was, and I had  
8 raised it earlier, and why don't we just go there for a  
9 minute? The number that was thrown out that I've read is  
10 that a million chiropractic adjustments a day are rendered  
11 in the United States.

12 Dr. Carucci, do you have any knowledge at  
13 all to how many of those are cervical?

14 A I have no knowledge of that.

15 Q Okay, so, hypothetical basis, if we divided the  
16 spine into three areas and hypothetically said that each  
17 area was 333,000 and applied your numbers, which I believe  
18 you were going to update your own form to be with the  
19 Cassidy Study, number of strokes per year would not be 200  
20 or 300. It would be at a point less. I think that's what  
21 my colleague was bringing out, correct?

22 DR. ROBOTHAM: Along those lines.

23 DR. POWERS: Along those lines.

24 Q I had one other question for you. When Attorney

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Malcynsky was Cross-Examining you, I typically follow  
2 everything that he says, but I got a little muddled in one  
3 area, and, if you don't mind, I just want to ask a  
4 question on that.

5 Is it your opinion that there's currently  
6 an informed consent law in Connecticut?

7 A Yes.

8 Q Okay and Attorney Malcynsky had asked that, by  
9 putting this standard in place, which would require  
10 disclosure specifically of stroke, and I think he said  
11 something to the effect of how would it be bad policy to  
12 do that, and you said it wouldn't be, but, at the same  
13 time, how would this policy make sure that the person that  
14 didn't get informed consent got informed consent now that  
15 the policy is just bigger?

16 A It doesn't. That's my point, that enforcing a  
17 current good standard, broadly applied informed consent  
18 standard I believe is a much better issue than trying to  
19 put another layer on top of something that may not fix it.

20 Q All right and my last question is this, and this  
21 only came up earlier out of someone's testimony, and,  
22 forgive me, I don't remember exactly whose, because this  
23 much concentration for two days in a row is starting to  
24 tax my brain slightly, and this is more of a personal

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 question out of your practice, because you brought it up  
2 earlier.

3                   You said that you warn patients about the  
4 possibility of stroke. Have you ever had a patient walk  
5 out of your office and say, no, I don't want to subject  
6 myself to this procedure, based on the information you  
7 gave me?

8           A     I have.

9           Q     And did they stay and do other forms of therapy  
10 with you?

11          A     Yes. They currently are patients, as are their  
12 family members.

13          Q     And do you have a rough percentage for how many  
14 people said no?

15          A     Three in 15 years.

16          Q     Three patients or three percent?

17          A     Three patients.

18                   DR. POWERS: It's interesting. Thank you.  
19 Appreciate your testimony.

20 EXAMINATION BY MS. REXFORD:

21          Q     I have a quick question, Dr. Carucci. What is  
22 the mechanism in Connecticut for chiropractors to report  
23 adverse events?

24          A     I believe that there was a law put in place a

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 couple of legislative sessions ago that require all  
2 physicians, and I believe it's all physicians, I don't  
3 recall if it's beyond the physician level, to report  
4 events. I believe it's a website through the Department  
5 of Public Health.

6 Q I think it's with hospitals, so I didn't know if  
7 there was another mechanism for individual practices.

8 A Just as I stated, I believe that's the  
9 mechanism.

10 Q Okay. I was just wondering how we know what we  
11 know.

12 A How we know what we know about what?

13 Q How do we know if things aren't reported? If  
14 there isn't a mechanism for reporting, how do we know what  
15 exact numbers might be in Connecticut, except in the cases  
16 of I think did you mention earlier people going to court?

17 A I don't recall if I mentioned that or not.

18 MS. REXFORD: Okay, thank you. It's  
19 another topic, but I was just curious.

20 MS. MOORE LEONHARDT: Perhaps I can follow-  
21 up on that, if the Board has any other questions?

22

23

REDIRECT EXAMINATION

24 BY MS. MOORE LEONHARDT:



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           Q     Dr. Carucci, as an Association, does the  
2 Association interact with the malpractice carriers from  
3 time-to-time to review the types of cases that are  
4 reported for claims against chiropractors?

5           A     Yes.

6           Q     And is the information currently available to  
7 you as president of the Connecticut Chiropractic  
8 Association?

9           A     Yes.

10          Q     And do you have some familiarity with the number  
11 of complaints, if any, with regard to adverse events  
12 associated with a cervical manipulation of the spine in  
13 the past five years?

14          A     Yes.

15                   MR. PATTIS: I have one objection, and I'd  
16 like to be heard. We have persons present here, who have  
17 settled claims and are under confidentiality agreements. I  
18 don't know whether there are confidentiality agreements in  
19 place here.

20                               Certainly, some of the intervenors have  
21 been instructed by their counsel they cannot identify the  
22 chiropractor who injured them, nor the sum that they  
23 received for injury.

24                               Is the Association -- has the Association

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1       been provided this information, subject to a waiver of the  
2       confidentiality of agreements, and I would ask that that  
3       be determined by the Board as a threshold matter,  
4       otherwise, arguably, patients' rights to confidentiality  
5       are being compromised, and, certainly, we're prejudiced,  
6       in the sense that we've instructed our witnesses that,  
7       absent a waiver or order of this tribunal, they cannot  
8       disclose the terms of confidential settlements.

9                   MS. MOORE LEONHARDT: I hesitate to say  
10       this, but I don't think that's a proper objection under  
11       the rules of evidence applicable in these proceedings.

12                   MR. PATTIS: If there is a confidentiality  
13       agreement, and certainly HIPPA has been alluded to here, I  
14       think that there needs to be a threshold determination  
15       made about whether there has been a waiver of  
16       confidentiality, and I renew my objection to the Board.

17                   MS. REXFORD: And I'm really sorry that I  
18       got us sidetracked.

19                   MS. MOORE LEONHARDT: I could respectfully  
20       say I'm not trying to intrude on any patient  
21       confidentiality information. I'm merely asking for  
22       statistical information, not names of patients, or amounts  
23       of money paid, whether it was large or small in sum.

24                   MR. SHAPIRO: Maybe you could ask the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 question again.

2 Q Dr. Carucci, did you understand the question  
3 that I posed to you?

4 A Yes, I did.

5 Q Can you answer it, please?

6 A There were no cases reported over the last five  
7 years.

8 Q All right and is that based on -- how current is  
9 that information that you've just made available?

10 A I would say the fall of last year.

11 Q All right and with regard to your addressing a  
12 question that was raised earlier by Ms. Rexford, the  
13 Public Member of the Board, about how the profession  
14 educates and disseminates information in an effort to keep  
15 chiropractors informed about current research data  
16 information and the development of diagnostic and  
17 treatment options, is this something that the Connecticut  
18 Chiropractic Association engages in?

19 A Regularly.

20 Q And how do you do that?

21 A We have a variety of mechanisms. We have a  
22 website. We send out member directories regularly. We  
23 have continuing education programs, which are offered  
24 continually throughout the year.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q How frequently do you offer continuing education  
2 programs?

3 A Could be several times a month.

4 Q And do these programs from time-to-time include  
5 the topic of informed consent?

6 A Yes.

7 Q And do you have a program scheduled in the next  
8 month or two?

9 A On informed consent?

10 Q Yes.

11 A I believe it's in the next three months.

12 Q I see. And do you also have other programs in  
13 the offering for this early part of this year?

14 A Yes.

15 Q And those are on clinical issues I take it?

16 A Yes.

17 Q And is this a program that is solely available  
18 to members of the CCA, or is it offered to all  
19 chiropractors in the State of Connecticut?

20 A It's open to all chiropractors.

21 Q All right and you mentioned that there's a  
22 continuing education requirement for all chiropractors in  
23 the State of Connecticut, did you not?

24 A Yes, I did.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Q And do these programs qualify for continuing  
2 education credits for the doctors who participate?

3 A They do.

4 Q Isn't it also true that the CCA offers webinars  
5 on topical subjects of interest to the doctors on a  
6 regular basis?

7 A We do.

8 Q And have you performed or provided these  
9 seminars as a joint effort from time-to-time with the  
10 other chiropractic associations in the State of  
11 Connecticut?

12 A We have.

13 Q And isn't it true that you are planning to  
14 provide a joint seminar on standard of care issues  
15 relative to clinical practice in January of this month as  
16 a united effort with the Association known as the  
17 Connecticut Chiropractic Council?

18 A That's correct.

19 MR. PATTIS: It only feels like forever,  
20 but I mean January of this year, I presume?

21 MS. MOORE LEONHARDT: Is that an objection,  
22 counsel?

23 MR. PATTIS: I'd ask the Board to just take  
24 note of the fact that January of this year. I think the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 intention was to say January -- January of this month. I  
2 think the intention was to say January of this year, so  
3 I'd just ask that the record be corrected.

4 CHAIRMAN SCOTT: So noted.

5 MS. MOORE LEONHARDT: Thank you. A couple  
6 of follow-up.

7 Q When Attorney Malcynsky was Cross-Examining you,  
8 there were occasions when you stated that you had advised  
9 your patients in writing of -- I believe you testified  
10 that you have a written document that specifically advises  
11 your patients that there is a risk of stroke associated  
12 with the chiropractic manipulation that you perform on the  
13 cervical spine, is that correct?

14 A That's correct.

15 Q All right and you were not -- do you direct your  
16 patients that there's been an established cause and effect  
17 relationship between the manipulation of the cervical  
18 spine and the occurrence or association of a stroke event?

19 MR. PATTIS: Objection, relevance. Whether  
20 she teaches her clients science is not relevant. Whether  
21 she warns them of associations or occurrences is, so the  
22 objection is relevance.

23 MS. MOORE LEONHARDT: I think it's very  
24 relevant. This is what this hearing is about, and I claim

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 the question.

2 MR. PATTIS: Again, the hearing is not  
3 about whether patients are taught chiropractic science or  
4 the lack thereof, but whether they're informed of  
5 occurrences, associations, causations, or risks.

6 MR. SHAPIRO: I think it was actually a  
7 compound question. Maybe you can rephrase it again, so  
8 it's a little more clear.

9 Q Dr. Carucci, when you perform the informed  
10 consent component of your interaction with your patients,  
11 isn't it true that your practice is to have an open  
12 discussion with the patient to actually perform the  
13 informed consent process?

14 A Yes, I testified to that.

15 Q All right and I believe your testimony was that,  
16 in the context of that discussion, you do not discuss the  
17 association between a cervical manipulation and stroke  
18 with all patients, is that correct?

19 A That's correct.

20 Q And why don't you do that?

21 A Because as the seven-year-old that presented  
22 with an ulnar fracture yesterday did not require such a  
23 disclosure, or two days ago.

24 Q But there are patients who would require you to

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 have a discussion about the association of stroke, are  
2 there not, from time-to-time?

3 A Yes.

4 Q And I believe you testified that you make a  
5 determination on a case-by-case basis?

6 A I do.

7 Q All right, but, nevertheless, you have a written  
8 form that you have a patient sign that mentions the  
9 reported association between stroke and cervical  
10 manipulation, do you not?

11 A I do.

12 Q And I believe you've made it clear to the Board  
13 that the information that you have contained on there is  
14 outdated at this time?

15 A That's correct.

16 Q And you consider it outdated, because you put  
17 great weight on the Cassidy Study results that have been  
18 reported here and discussed here for two days, is that not  
19 true?

20 A I do.

21 Q And what is it about the Cassidy Study that  
22 compels you to believe that you should update your form to  
23 reflect the new information in this study that was  
24 published in 2008?



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1           A     Well there are a couple of things. One is cause  
2     and effect, and the other would be the fact that there's  
3     an equal occurrence of stroke for the patient with the  
4     presentation of headache or neck pain whether they visited  
5     the chiropractor or the primary care physician.

6           Q     Occurrence or association?

7           A     Association.

8           Q     Okay, so, you're correcting yourself?

9           A     Yes.

10          Q     Now you also testified to, in answer to a  
11     question put to you by Attorney Malcynsky -- forgive me.  
12     It's been a long day, Attorney Malcynsky. That I believe,  
13     at one point, where you used a connection between the  
14     performance of a cervical manipulation and the risk or  
15     occurrence of stroke. Do you recall that?

16          A     No.

17          Q     All right. You disagree that there is a cause  
18     and effect relationship between the cervical manipulation  
19     and the occurrence of a stroke, is that correct?

20          A     I do.

21          Q     Just so the record is clear. And is that the  
22     position of the Connecticut Chiropractic Association?

23          A     Yes, it is.

24          Q     All right and, just to reiterate, the position

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 of the --

2 MR. PATTIS: Objection. This is  
3 testifying. She's also leading her own -- counsel is also  
4 leading her own witness. I'd ask the court to --

5 MR. SHAPIRO: I'll sustain that objection.

6 MS. MOORE LEONHARDT: All right. I have  
7 nothing further.

8 MR. MALCYNSKY: I just had two quick things  
9 in response to Commissioner Powers, as well as  
10 Commissioner Robotham, if I might? I would just direct  
11 Board Member Robotham to the chiropractic report of July  
12 2006, which we've talked about quite a bit here over the  
13 last two days, and it's also part of the pre-filed  
14 testimony, regarding the statistics, in which it says, in  
15 part, on page two in the center --

16 MR. SHAPIRO: Counsel, I'm not going to  
17 allow other counsel to make points about the evidence  
18 that's already been submitted.

19 MR. MALCYNSKY: But he had a specific  
20 question.

21 MR. SHAPIRO: I know, but he didn't have  
22 the question -- there's a witness here that can answer  
23 questions. If you don't have a question for this witness.  
24 These are closing remarks about the sufficiency of

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 evidence, or where the evidence is. That's not for this  
2 time right now with a witness on the stand.

3 MS. MOORE LEONHARDT: Thank you, Mr.  
4 Shapiro.

5 MR. MALCYNISKY: I just didn't want the  
6 Board to be confused.

7 MR. SHAPIRO: Okay.

8 MR. PATTIS: May I?

9 MR. SHAPIRO: Do you have a question for  
10 this witness?

11 MR. PATTIS: I do, yes.

12

13 RE-CROSS-EXAMINATION

14 BY MR. PATTIS:

15 Q You're aware, ma'am, of something called the  
16 National Quality Forum?

17 A National Quality what?

18 Q Forum.

19 A No.

20 Q You talked about adverse, reporting adverse  
21 events in response to a question from one of the  
22 Commissioners, correct?

23 A I did.

24 Q And you're aware that under 19a-127n of the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 regulations of the Department of Public Health only  
2 hospitals or outpatient surgical facilities are required  
3 to report adverse events, isn't that right?

4 A I have no knowledge of that.

5 Q Are you aware, ma'am, that among the adverse  
6 events that are to be reported is the patient death or  
7 serious disability, due to spinal manipulative therapy?  
8 Are you aware of that?

9 MS. MOORE LEONHARDT: Objection,  
10 irrelevant. The witness has testified she's unaware of  
11 it. Counsel has already identified to the witness that  
12 this applies to hospitals and outpatient clinics, so it's  
13 irrelevant.

14 MR. PATTIS: The claim, as to relevance --  
15 I don't know what the "it" is to which my adversary  
16 refers. This witness is unaware of the National Quality  
17 Forum. Fine. She was aware of the adverse events  
18 reporting requirement, appears not to be aware of who is  
19 required to report, and I'm asking her simply whether  
20 she's aware that a reportable event, according to this  
21 statute, is a patient death or serious disability, due to  
22 spinal manipulative therapy. It simply calls for a yes or  
23 no.

24 MS. MOORE LEONHARDT: My objection is that

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 it's been asked and answered.

2 MR. PATTIS: I'd like to finish. That  
3 wasn't the objection. That's a new objection, it hasn't  
4 been answered, and I would request permission to ask the  
5 question and ask for an answer of yes or no.

6 MR. SHAPIRO: Let me see if the Board finds  
7 that relevant, the answer to that question.

8 DR. POWERS: What's the question?

9 MR. PATTIS: Are you aware of whether --  
10 whether the witness -- I'm sorry, sir. Whether the  
11 witness is aware that one of the adverse events that is  
12 required to be reported is patient death or serious  
13 disability, due to spinal manipulative therapy.

14 MR. SHAPIRO: By hospitals you said, right?

15 MR. PATTIS: Yes.

16 DR. POWERS: I think she already testified  
17 she wasn't aware of the content, correct?

18 THE WITNESS: Correct.

19 MR. PATTIS: No. She wasn't aware of the  
20 National Quality Forum. She wasn't aware of whether only  
21 hospitals or surgical facilities were required to report.  
22 In response to a question from a Board member, she  
23 suggested that chiropractors may or may not be required to  
24 report.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   This question is entirely different, and it  
2                   may inform this Board's decision. If another group,  
3                   assessing what is or is not required to be reported as an  
4                   adverse event, has determined that patient death or  
5                   serious disability, due to spinal manipulative therapy, is  
6                   so important that there's a mandated reporter requirement,  
7                   that may have some impact on this Board's decision about  
8                   whether it should be included as a risk factor patients  
9                   should be aware of.

10                   MS. MOORE LEONHARDT: I object, because  
11                   counsel is making closing argument, and it doesn't belong  
12                   in here.

13                   MR. PATTIS: The reason for it is  
14                   relevance, and my argument would be that if another group  
15                   of regulators thought it was sufficiently serious to  
16                   report as an adverse event, it undermines the industry's  
17                   position, that there's no causation. It's just an unhappy  
18                   circumstance when a person has a stroke and potentially  
19                   dies on a chiropractor's table.

20                   MR. SHAPIRO: I'll let the Board make the  
21                   decision with respect to whether the answer to this  
22                   question is relevant to its determination.

23                   DR. POWERS: I make a motion to overrule  
24                   the objection, which means we'll let the question come in.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 CHAIRMAN SCOTT: We're going to ask for a  
2 second.

3 MS. REXFORD: Second.

4 CHAIRMAN SCOTT: Discussion? Any  
5 discussion? All right. All in favor?

6 ALL: Aye.

7 CHAIRMAN SCOTT: Anybody opposing? So  
8 ruled.

9 Q Are you aware, ma'am, of whether an adverse  
10 event that is required to be reported by hospitals or  
11 outpatient surgical facilities is a patient death or  
12 serious physical disability, due to spinal manipulative  
13 therapy?

14 A No.

15 Q The contact that you have with the malpractice  
16 industry, in what forum does that take place? Are you in  
17 contact with the Insurance Association of Connecticut, for  
18 example?

19 A I'm sorry. Could you repeat that?

20 Q Yes, ma'am. If I understood your testimony  
21 correctly, it is that, in your capacity as president of  
22 the Connecticut Chiropractic Association, you have some  
23 sort of contact with representatives of the insurance  
24 industry, at which point claims against chiropractors are

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 -- you're made aware of claims against chiropractors,  
2 correct?

3 A If we inquire about that, yes. It's not a  
4 reporting that goes from them to us.

5 Q Understood. When is the last time you inquired  
6 of them about the claims against chiropractors?

7 A As I testified to, I believe it was the fall of  
8 last year.

9 Q And there were no claims at all against any  
10 chiropractor within the past five years?

11 A That's what was reported to us.

12 Q And do you know whether any claims were reported  
13 prior to the filing of a lawsuit?

14 A I do not.

15 Q Do you know how many chiropractors paid out of  
16 pocket to avoid reporting a claim to an insurer, if any?

17 A I have no knowledge of that.

18 Q As a chiropractor and president of the CCC --

19 A CCA.

20 Q CCA. Thank you. You're obviously very attune  
21 to the need to assure the best possible patient care,  
22 correct?

23 A Yes.

24 Q Are you aware or unaware of whether



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 chiropractors are required to report adverse events to the  
2 National Practitioner Databank?

3 A I'm not 100 percent certain on that.

4 Q If I were to make the following assertion, would  
5 you have any basis for agreement or disagreement?  
6 Chiropractors lobbied against being reported, being  
7 required to report adverse events.

8 A I would have to take your word on that.

9 Q Don't.

10 MR. PATTIS: No further questions.

11 EXAMINATION BY DR. POWERS:

12 Q Dr. Carucci, Attorney Pattis brought up this  
13 reporting with the adverse events, and I happened to pull  
14 this up myself to read it, and it says, "Patient death or  
15 serious disability, due to spinal manipulative therapy,"  
16 and the only question I have is, based on what I just  
17 read, which I know you don't have in front of you, so you  
18 can either take me at my word or not, is there any mention  
19 in there of what practitioner provided that from what I  
20 just read to you?

21 A No.

22 Q Is there any description in there of what region  
23 of the spine in what I just read to you?

24 A No.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 DR. POWERS: Thank you.

2 BY MR. PATTIS:

3 Q Does that matter to you, Doctor? If a person is  
4 injured or seriously physically injured, whether it's the  
5 neck or not, does that matter? I mean you would agree  
6 that there's a requirement that that adverse event be  
7 reported, would you not?

8 MS. MOORE LEONHARDT: Objection. The  
9 witness testified she doesn't know what the law is.

10 MR. PATTIS: I would ask for a ruling on my  
11 question. I think it's relevant, insofar as the  
12 suggestion of a Board member was, well, gee, if other  
13 people are reporting it, I guess it doesn't matter.

14 MS. MOORE LEONHARDT: Well I renew --

15 DR. POWERS: Hang on a minute. That's not  
16 what I said. That's not what I said. I want to be clear.

17 MR. PATTIS: That's the inference that I  
18 drew from it.

19 DR. POWERS: Attorney Pattis?

20 MR. PATTIS: I'm listening.

21 DR. POWERS: Thank you so much. All I  
22 wanted to point out was some accuracy there, because I  
23 looked it up, and I wasn't aware of it either. This  
24 hearing is about cervical spine and stroke. This

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 particular entry doesn't talk about anything I just  
2 mentioned or asked. That's my only point.

3 MR. PATTIS: And I guess my argument for  
4 the relevance of the question is, and I'm glad we had the  
5 opportunity to bring that requirement to the Board's  
6 attention, but the fact that it doesn't specify that  
7 chiropractors needn't do it doesn't exclude chiropractors.

8  
9 It suggests that everyone should, and that  
10 this Board should take note of the fact that another body  
11 studying adverse events has concluded that serious death  
12 and injury are caused, due to spinal manipulation.

13 MS. MOORE LEONHARDT: I move to strike  
14 counsel's legal argument and closing attempt.

15 MR. SHAPIRO: I recommend overruling the  
16 objection.

17 CHAIRMAN SCOTT: Overruled.

18 MR. SHAPIRO: Is there anything further for  
19 this witness?

20 MR. PATTIS: Nothing further, sir.

21 MR. SHAPIRO: Thank you for your testimony.

22 MR. MALCYNSKY: Thank you.

23 COURT REPORTER: One moment, please.

24 MR. SHAPIRO: With respect to that

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 discussion that we had earlier, about Attorney Bellamy's  
2 rebuttal testimony, in fact, going through my notes and  
3 the notes of the Board liaison, we realized that she did,  
4 in fact, as I thought, adopt her testimony under oath, and  
5 the Board is going to take the position that, with respect  
6 to all of the witnesses, that adopting their testimony  
7 encompasses their rebuttal testimony, as well, as they  
8 were all pre-filed with the documents, so I don't believe  
9 that there's any need to call Attorney Bellamy to testify  
10 or adopt it, because our records indicate that she adopted  
11 her testimony under oath.

12 MS. BELLAMY: Mr. Shapiro, may I ask a  
13 question?

14 MR. SHAPIRO: Sure.

15 MS. BELLAMY: This is directed to you and  
16 to the Chairman and the members of the Board. There seems  
17 to be some confusion in some minds about the circumstances  
18 under which I asked to have my testimony presented today.

19 I just want to make sure that the Board and  
20 you understand that the reason I'm here through the end of  
21 the day is because I originally said I would be here  
22 through the end of the day, and I did not ask to go first  
23 today. I simply asked that my testimony be given today  
24 and explained why I would not be able to return.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   MR. SHAPIRO: I appreciate your comments,  
2 and I understood that, and it was actually my suggestion  
3 that you go first today.

4                   MS. BELLAMY: Thank you.

5                   MR. SHAPIRO: Okay. Counsel, you can call  
6 your next witness.

7                   MS. MOORE LEONHARDT: Thank you, Attorney  
8 Shapiro. I would like to call George Curry on behalf of  
9 the Connecticut Chiropractic Council.

10                  MR. MALCYNSKY: Just a procedural inquiry,  
11 if I might?

12                  MR. SHAPIRO: Hold on just one second, if  
13 you would? Attorney Moore Leonhardt?

14                  MS. MOORE LEONHARDT: Yes.

15                  MR. SHAPIRO: I understand that you  
16 represent two parties here, and maybe, to some extent,  
17 it's not relevant, but have you finished witnesses, in  
18 terms of the Connecticut Chiropractic Association, before  
19 you move on to the Connecticut Chiropractic Council?

20                  MS. MOORE LEONHARDT: I have finished my  
21 witnesses in my direct case. I intend to call Dr. Pearl  
22 as a rebuttal witness following the testimony that's  
23 presented by the remaining parties and the intervenors,  
24 who have pre-filed their testimony.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1                   My understanding was that the rebuttal  
2 witnesses would come after the direct cases were  
3 presented.

4                   MR. SHAPIRO: I'm not sure that that's the  
5 case. My understanding was that this was not a situation  
6 where there were rebuttal witnesses, in the sense that  
7 there was rebuttal testimony that was also pre-filed,  
8 which gave parties and intervenors the opportunity to  
9 rebut testimony that was pre-filed by the other parties,  
10 but not that there would be people making cases in chief  
11 and then rebuttal testimony.

12                  MR. MALCYNISKY: For the record, that was  
13 our understanding, as well.

14                  MR. SHAPIRO: Attorney Pattis, did you have  
15 a thought on that, as well, just before?

16                  MR. PATTIS: I join in Attorney Malcynsky's  
17 remark. My understanding of the order was that we would  
18 present our cases, and then, if there was an opportunity  
19 to rebut, we would rebut from the pool of witnesses. The  
20 danger of holding a witness in abeyance, in my view at  
21 least, is, A, surprise, and then the need for us to recall  
22 witnesses that we've already had to address issues we  
23 haven't heard.

24                  I don't think there can be strategic

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 rebuttal, that is anticipatory rebuttal of what had not  
2 yet been heard, so I believe that the Association has an  
3 obligation to tender its witnesses in its case in chief or  
4 abandon the right to call them at all.

5 MS. MOORE LEONHARDT: Well I disagree with  
6 that.

7 MR. SHAPIRO: I'm not sure if the Board is  
8 going to entertain rebuttal witnesses at all. That's what  
9 I'm trying to say.

10 MS. MOORE LEONHARDT: The Notice of Hearing  
11 asked for the filing, the pre-filing of testimony, and  
12 then the parties were given an opportunity to file  
13 rebuttal testimony.

14 In my communications with the Board's  
15 liaison, I was asking the specific question, as to order  
16 of witnesses and when would our witnesses be permitted to  
17 be presented, because I was trying to schedule many of the  
18 witnesses who came from far away.

19 I think Mr. Kardys would agree that my  
20 understanding was that Dr. Pearl would be called toward  
21 the end of the hearing, because he is our rebuttal  
22 witness.

23 Dr. Pearl's testimony rebuts testimony of  
24 witnesses who had not yet testified, so to have me call

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Dr. Pearl at this time would be to tie my hands, to limit  
2 my rebuttal case, and it would violate the basic tenets of  
3 the Uniform Administrative Procedures Act, which allow us  
4 an ample and fair opportunity to meet and respond to all  
5 evidence presented, given the fact that not all of the  
6 parties and the intervenors, certainly, we've only had I  
7 believe one or two now have presented their testimony, it  
8 would be premature to present Dr. Pearl at this time, and  
9 because of my reliance on Mr. Kardys' advisement, I'm not  
10 prepared to call Dr. Pearl at this time.

11 I apologize if that creates an  
12 inconvenience for the Board, however, I am prepared to go  
13 forward. And I believe the Connecticut Chiropractic  
14 Council has been given party status, and I am the attorney  
15 of record, I filed an appearance on their behalf, and I  
16 would like the opportunity to proceed with Dr. Curry.  
17 He's ready to go.

18 MR. PATTIS: I'd like the opportunity to  
19 respond to the argument suggesting somehow that the  
20 industry's due process rights have been violated.

21 MS. MOORE LEONHARDT: First of all --

22 MR. PATTIS: That's the second time that  
23 argument has --

24 MS. MOORE LEONHARDT: -- I would like



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 counsel not to refer to them as an industry. This is a  
2 profession.

3 MR. PATTIS: That is the second time --

4 MS. MOORE LEONHARDT: And it's  
5 disrespectful to the Board --

6 MR. PATTIS: That is the second time --

7 MS. MOORE LEONHARDT: -- to be referring to  
8 a group of chiropractors as an industry. This is a  
9 licensed health care profession.

10 CHAIRMAN SCOTT: That's enough, please.

11 MR. PATTIS: That is the second time that -  
12 -

13 CHAIRMAN SCOTT: Both parties?

14 MR. PATTIS: Yes.

15 CHAIRMAN SCOTT: Thank you. We'd just like  
16 a minute to review paperwork, and we'll be to you. No  
17 more comments, please, just until we get to look.

18 While we're sorting a few things out, we're  
19 going to take a quick five-minute break, no more. Thank  
20 you.

21 (Off the record)

22 CHAIRMAN SCOTT: Back on now, and Mr.  
23 Shapiro is going to --

24 MR. SHAPIRO: I don't think there's any

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 clearer discussion of that issue in the notices that I've  
2 looked at, and I don't really think it matters that much,  
3 to be totally honest, but I think that, if you want to  
4 call that person as a rebuttal witness after, that's fine,  
5 so we'll continue, then, and you can put on who you want.

6 MR. MALCYNKY: Question. Attorney  
7 Shapiro, are you saying that we're changing the procedures  
8 to now include rebuttal witnesses at a later date?

9 MR. SHAPIRO: Not rebuttal. All the  
10 witnesses that are going to testify during this whole  
11 process will have had to file testimony. There's not  
12 going to be anybody that comes up now and says I'm going  
13 to be a rebuttal witness to something that was said that  
14 hasn't been disclosed previously.

15 All I'm saying is that I don't think it  
16 matters, in terms of the order, and if it was Attorney  
17 Moore Leonhardt's understanding that that person she did  
18 disclose him as a rebuttal witness, which might lead to  
19 conclude that she thought that there was sort of a  
20 different process, and I don't think, in all fairness,  
21 from reviewing the notices that there was any clear  
22 indication about the order.

23 I mean we're trying to do the whole hearing  
24 in as orderly and logical a fashion as possible.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. MALCYNSKY: And I'm not trying to pick  
2 a fight with the Board, or anybody else, or not even  
3 Attorney Moore Leonhardt, to be honest with you, but I do  
4 think it's fairly clear from the hearing protocol what the  
5 order of witnesses and the order of presentation of  
6 testimony would be.

7 I think both Attorney Pattis and myself and  
8 Attorney Leonhardt have been flexible, in terms of  
9 accommodating people's schedules with regard to traveling  
10 long distances, but I think, to now create a potential  
11 process, where --

12 MR. SHAPIRO: There aren't that many  
13 rebuttal witnesses overall. There really aren't.

14 MR. MALCYNSKY: But it does change the  
15 manner in which you prepared to present your case, much  
16 the same way that Attorney Moore Leonhardt has said that  
17 she wants you to allow her rebuttal witness, because  
18 that's how she prepared.

19 MR. PATTIS: May I be heard? My concern is  
20 that the rules didn't contemplate a surrebuttal process,  
21 and, thus --

22 MR. SHAPIRO: A what? I'm sorry?

23 MR. PATTIS: A surrebuttal process. In  
24 other words, there were two stages of briefs required, the

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 opening briefs and then rebuttal briefs. Introducing a  
2 new witness at the rebuttal stage, without contemplating a  
3 surrebuttal, is, in effect, giving a witness an  
4 opportunity to adopt and put testimony in the record,  
5 without our having notice of that testimony or a  
6 foreseeable opportunity to respond in kind, so, for that  
7 reason and that reason only, I object.

8 To the degree that there's a claim of  
9 prejudice, the UAPA, the seminal case in that regard, is  
10 Matthew V. Eldridge, and that is a due process case that  
11 holds that there is the need for some minimal due process  
12 notice and an opportunity to be heard.

13 I think the orders of this tribunal, in  
14 preparation for the proceeding, were designed to eliminate  
15 the opportunity of trial by ambush to provide both sides  
16 with ample notice of the claims of the others, and the  
17 fact that no surrebuttal was contemplated suggests that  
18 there was at least constructive notice that you couldn't  
19 slip witnesses in at the eleventh hour without the other  
20 side having an opportunity to respond with a written  
21 objection.

22 MS. MOORE LEONHARDT: May I please have an  
23 opportunity to reply to that?

24 MR. SHAPIRO: In a second. In a second.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 Attorney Pattis, I want to make sure I understand what  
2 your point is. Are you suggesting that the filing of the  
3 Connecticut Chiropractic Association, Incorporated's  
4 submission of pre-filed rebuttal testimony did not comply  
5 with the rules?

6 MR. PATTIS: I didn't raise it at the time,  
7 and, so, if the tribunal wants to claim waiver, I don't  
8 have a response to that, but I think, in terms of the  
9 order of witnesses, we would claim surprise here.

10 I'm suggesting that, as I understood the  
11 order, we were to submit our testimony in chief by a date  
12 certain, and then, 30 days beyond, we had an opportunity  
13 to rebut one another's testimony.

14 There was no opportunity for a surrebuttal,  
15 so, as I contemplated preparing for this hearing, I  
16 thought, okay, in round one, I'll get a look at what I'm  
17 attacking, and, in round two, I'll attack it. There was no  
18 opportunity for a round three with respect to sworn  
19 testimony to be submitted to the Board.

20 I'll concede that we did not seek an  
21 opportunity to do so, and I didn't view as prejudice, in  
22 the sense that I viewed myself as on notice of what Dr.  
23 Pearl was going to say, however, what's occurring in the  
24 hearing is that witnesses are testifying and amplifying on

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 their sworn testimony and offering additional information.

2 We didn't have any way of knowing that Dr.  
3 Pearl was going to be held until the very end, such that  
4 we may have to bring back our own witnesses at great  
5 expense for rebuttal rebuttal testimony, or surrebuttal  
6 testimony, so I took the order to mean that this tribunal  
7 was trying to simplify things.

8 Here, round one was this is the target. Aim  
9 at it as best you can. Everybody, ready, aim, fire. Round  
10 two, your adversary is taking your best shot. Remove the  
11 arrows if you can. There was no contemplation for a round  
12 three, so introducing a new witness at round two we didn't  
13 think there was prejudice, because our view was it was  
14 largely the same material that the others had done. It  
15 was repetitive.

16 I would claim that there is surprise to us  
17 in the order of witnesses contemplated here, because we  
18 did not think that we would have to bring in another  
19 witness to rebut the rebuttal witness.

20 MS. MOORE LEONHARDT: May I?

21 MR. SHAPIRO: Yup.

22 MS. MOORE LEONHARDT: Thank you. There's  
23 no surprise here. Dr. Pearl's testimony was pre-filed on  
24 time as rebuttal testimony. All the testimony in this

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 hearing was pre-filed, and Dr. Pearl will testify in  
2 accordance with his pre-filed testimony, of which counsel  
3 is well apprised. There is no surprise.

4 The witness testimony that is submitted  
5 into this hearing has been submitted witness-by-witness.  
6 To date, several of the witnesses to whom Dr. Pearl will  
7 be rebutting and responding have not yet appeared before  
8 the Board to adopt their testimony under oath and have it  
9 be presented to the Board and subjected to Cross-  
10 Examination, therefore, Dr. Pearl is not presented as a  
11 surrebuttal witness.

12 Counsel seeks to expand the purpose and  
13 intent of our presentation of Dr. Pearl. We are not  
14 intending to present him as a surprise witness. There are  
15 no surprises. He is here to rebut testimony. The  
16 testimony he's here to rebut is the same testimony that's  
17 been filed by counsel's witness, and the other attorney's  
18 witnesses, and the intervenors, and they shouldn't be  
19 allowed to expand their testimony, unless, unless the  
20 Board, which, in its due discretion, has the ability to  
21 permit.

22 To the extent that testimony has been  
23 expanded upon here today, I would venture it is  
24 appropriate to say that the witnesses, who were asked

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 questions by members of the Board, properly responded and  
2 attempted to answer the Board's question to the best of  
3 their ability.

4 So, again, I would ask that if the Board  
5 would like me to produce Dr. Pearl at this time, we  
6 certainly will do so. I have spoken with Dr. Pearl, Dr.  
7 Pearl is willing to assume the witness seat, and we are  
8 presently prepared to proceed with Dr. Pearl, if that's  
9 what the Board would like.

10 I had spoken previously about this very  
11 order of witness issue with Mr. Kardys from the Board in  
12 an anticipation of this and in an effort to understand the  
13 order of witness, and my understanding was that Dr. Pearl  
14 would be called after the other witness' testimony had  
15 been submitted and presented to the Board, that is, those  
16 witnesses that Dr. Pearl will be rebutting will have gone  
17 before him, and it seems to me that that's a fair and  
18 orderly way and certainly appropriate, has been a  
19 procedure followed by courts and by administrative  
20 agencies in conducting administrative hearings during the  
21 past 25 years that I've been in practice. Thank you.

22 MR. PATTIS: I didn't hear anything that  
23 really addressed my argument, which I'll repeat, and that  
24 is --



DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: I don't want you to repeat  
2 your argument. If you have something different to add,  
3 you can add it.

4 MR. PATTIS: Yes. We would request that  
5 Dr. Pearl be called now, because what was contemplated in  
6 the scheduling order, as to briefs, is that the parties  
7 evaluate one another's briefs and respond to them.

8 We do not object, nor do we claim surprise  
9 to Dr. Pearl's rebuttal testimony. We simply think that  
10 because it was rebutting the pre-filed testimony, they're  
11 being given a strategic advantage by letting him listen to  
12 the witnesses and then respond, because, inevitably,  
13 things come up which was not in the pre-filed testimony.

14 MR. SHAPIRO: Certainly, I don't think  
15 that, in this proceeding, there's any right to rebuttal  
16 witnesses in the sense of a contested case, and I think  
17 the due process issues don't attach in the same way,  
18 because we're not talking about a property interest,  
19 however, I think what the Board has decided to do is to  
20 table this issue and to issue a ruling on Monday, which  
21 will give the revised scheduling order.

22 And given that there's approximately seven  
23 minutes left before we're supposed to end for the day  
24 anyways, I think the Board is going to stop now and then

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 issue a revised order and clarification on this issue by  
2 Monday to all parties.

3 MS. MOORE LEONHARDT: Thank you. May I  
4 make a request, then, since the Board has taken up that  
5 issue? We've already had a partial submission of  
6 testimony by an intervenor, and perhaps it might make  
7 sense, since there's a partial submission of that  
8 testimony, to have the entire testimony adopted and  
9 submitted and complete with that intervenor before we  
10 proceed with any of the other witnesses.

11 The testimony that came in through Ms.  
12 Mathiason is combined testimony with that of Dr. Katz, and  
13 the testimony has been left hanging, because Dr. Katz has  
14 not adopted the testimony.

15 MR. SHAPIRO: Okay. Can I respond to that?

16 MS. MOORE LEONHARDT: So since we would be  
17 coming back, perhaps it would make sense to leave that  
18 dangling testimony, have that be addressed, and then we  
19 can proceed from there.

20 MR. PATTIS: I'd ask the Board to take note  
21 that's just a concession, that this was gamesmanship, and  
22 that they want to save the rebuttal witness until after  
23 Dr. Katz, and that was a simple and more elegant way of  
24 saying that.

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 MR. SHAPIRO: Attorney Pattis, first of  
2 all, the parties and intervenors should assume, and I  
3 think they have, that all of the pre-filed testimony will  
4 be admitted into evidence.

5 If it's not, then it's not for some other  
6 reason or some other objection, but the parties, I'm sure,  
7 and intervenors, I'm sure, have assumed that that  
8 testimony is going to be in evidence, and, so, rebuttal  
9 testimony and rebuttal remarks can be made even, for  
10 example, if that person hasn't testified yet.

11 You can comment on something that's not in  
12 evidence, because you can assume that it's going to be in  
13 evidence, because it's pre-filed testimony.

14 With that said, so, Attorney Moore  
15 Leonhardt, briefly, your suggestion is that Dr. Katz be  
16 called for one minute right now, just to adopt his  
17 testimony? Do you have any objection to this testimony?

18 MS. MOORE LEONHARDT: Dr. Katz is here, and  
19 I've already rendered my objections on the testimony,  
20 itself, and my objections were overruled, so I don't think  
21 we need to go down that road again.

22 MR. SHAPIRO: Okay.

23 MS. MOORE LEONHARDT: But I think, if he's  
24 here, he can adopt it, and then we can put him under Cross

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 when we come back.

2 MR. SHAPIRO: Well there will be an order,  
3 because he's not going to go right when we start again,  
4 because that's not the order that --

5 MS. MOORE LEONHARDT: Well we already  
6 brought his -- my point is this, that we already brought  
7 his testimony forward when we brought forward the  
8 testimony of Mrs. Mathiason, because the testimony is  
9 combined, and, if you look at it, there's no way to  
10 delineated between Dr. Katz's testimony and Mrs.  
11 Mathiason's testimony, so it's combined testimony, and  
12 it's already been adopted by one who has offered the  
13 testimony, and my proposal is that we get the co-  
14 testimonial in and then proceed from there.

15 This is not a strategic tactic. I'm ready  
16 to put Dr. Katz on now, but we've run out of time. I'm  
17 sorry. Dr. Pearl on now. I've offered that to the Board.

18 I've offered to put Dr. Curry on, if that's the Board's  
19 pleasure, and I understand where the Board has ended up  
20 today.

21 I'm not trying to disrupt these  
22 proceedings. I'm trying to preserve a degree of  
23 integrity. And since we have testimony that is dangling,  
24 one co-author of that testimony has adopted it, the other

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

1 has not, it seems to me to make sense from an integrity  
2 point of view for the record to have the other witness,  
3 Dr. Katz, come while we still have time and be sworn in  
4 and adopt the testimony.

5 At least, at that point, that testimony is  
6 in, and it is my --

7 MR. SHAPIRO: Okay, counsel? Counsel?

8 MS. MOORE LEONHARDT: -- intent to rebut it  
9 with Dr. Pearl.

10 MR. SHAPIRO: Okay, thank you. The Board  
11 will issue a ruling on Monday.

12 CHAIRMAN SCOTT: At this time, the  
13 proceeding is closed, and we're adjourned until January  
14 19th at 9:00.

15 MS. MOORE LEONHARDT: Thank you.

16 (Whereupon, the hearing adjourned at 4:40  
17 p.m.)

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

INDEX OF WITNESSES

	PAGE
JANN BELLAMY	
Testimony of Jann Bellamy	23
Cross-Examination by Ms. Moore Leonhardt	36, 116
Cross-Examination by Mr. Malcynsky	92, 115, 126
Cross-Examination by Mr. Pattis	108, 118, 126
Examination by Dr. Powers	111, 124
Examination by Dr. Imossi	123
DR. GERARD W. CLUM	
Direct Examination by Ms. Moore Leonhardt	143
Cross-Examination by Mr. Malcynsky	146
Cross-Examination by Mr. Pattis	160, 191
Examination by Ms. Rexford	183
SHARON MATHIASON	
Testimony of Sharon Mathiason	206
DR. GINA CARUCCI	
Direct Examination by Ms. Moore Leonhardt	221
Cross-Examination by Mr. Malcynsky	223
Cross-Examination Mr. Pattis	242
Examination by Dr. Powers	257, 277
Examination by Ms. Rexford	259
Redirect Examination by Ms. Moore Leonhardt	260
Recross-Examination by Mr. Pattis	271, 278

INDEX OF EXHIBITS

DESCRIPTION	NUMBER	PAGE
Attorney Bellamy's Pre-filed Testimony	41	132
Letter & Article Submitted by Attorney Bellamy, 12/21/09, and Errata Sheet	57	132
Motion Regarding Subluxation (ID)	54	133

DECLARATORY RULING PROCEEDING REGARDING INFORMED CONSENT  
JANUARY 6, 2010

Motion Regarding Model Code of Ethics (ID)	55	133
Motion Regarding Dr. Wecht (ID)	56	133
CCA's Submission of Pre-filed Testimony	32	139
CCA's Disclosure of Expert Witnesses	50	140
CCC's Disclosure of Expert Witnesses, 1/4/10	58	142
Motion in Limine to Preclude Evidence (ID)	59	200