IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)
	)
Plaintiff,	)
	)
vs.	)
	)
ELI LILLY AND COMPANY,	)
	)
Defendant.	)
	)

Case No. 3AN-06-05630 CI

VOLUME 8

TRANSCRIPT OF PROCEEDINGS

March 12, 2008 - Pages 1 through 198

BEFORE THE HONORABLE MARK RINDNER
Superior Court Judge

A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff:

STATE OF ALASKA
Department of Law, Civil Division
Commercial/Fair Business Section
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
BY: CLYDE "ED" SNIFFEN, JR.
Assistant Attorney General
(907) 269-5200
FIBICH, HAMPTON & LEEBRON LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, Texas 77010
BY: TOMMY FIBICH
(713) 751-0025

CRUSE, SCOTT, HENDERSON & ALLEN, LLP
2777 Allen Parkway, 7th Floor
Houston, Texas 77019-2133
BY: SCOTT ALLEN
(713) 650-6600

RICHARDSON, PATRICK,
WESTBROOK & BRICKMAN
1037 Chuck Dawley Boulevard, Building A
Mount Pleasant, South Carolina 29464
BY: DAVID L. SUGGS, Of Counsel
(843) 727-6522

A-P-P-E-A-R-A-N-C-E-S, continued

For Defendant:

PEPPER HAMILTON LLP
301 Carnegie Center, Suite 400
Princeton, New Jersey 08543
BY: JOHN F. BRENNER
GEORGE LEHNER
NINA GUSSACK
(609) 452-0808
LANE POWELL, LLC
301 West Northern Lights Boulevard
Suite 301
Anchorage, Alaska 99503-2648
BY: BREWSTER H. JAMIESON
(907) 277-9511

PROCEEDINGS

THE COURT: We're back on the record in State versus Eli Lilly and Company, 3AN-06-5630. We're outside the presence of the jury. Counsel are all present.

I understand there's some pretrial issues?

MR. LEHNER: Yes, Your Honor, a couple things.

First, with respect to the PDR document that the Plaintiffs produced yesterday. We've determined that there was a supplement at least to the 2004, which is pertinent because the 2004 supplement actually included the information that Dr. Gueriguian said he didn't find in the 2004 PDR. We're looking for and believe there is an additional supplement at least to the 2001 PDR that may be pertinent as well.

And in response to the jury -- and what I would suggest to the Court is that in response to the question that the jury asked, we prepare a stipulation that will lay out just sort of what the PDR is, how Lilly doesn't control the PDR, that information is submitted to it and the publication schedule. And we could put it in

front of this with a complete set of the PDRs and then the jury can have this. But since this is not now complete, I think it would be erroneous to provide this to the jury.

THE COURT: Well, if we're going to give it to the jury, I want it to be complete. If we can reach a stipulation as to what the PDR is and stuff like that, we'll include that, too. If we can't, you both can give me what you think should be included and stuff, but I think it's fair to let the jury know at least the schedule that the PDR comes out on.

MR. ALLEN: Your Honor, I don't think I can hear already we're going to reach a stipulation with the PDR. And the PDR -- there's a front cover page that tells everybody what it is, but the notebook is complete on the PDRs. He's saying that he thinks there is a supplement --

MR. LEHNER: No, there is a 2004 supplement.

MR. ALLEN: Wait a minute. He said he thinks there's a supplement for 2001. If he thinks so and he finds it, he can put it in there. He said there's one for 2004, put it in

there now. I mean, I have no problem --
THE COURT: Well, I'm not giving this to the jury until I know that we got a complete thing and I want the jury at least to know what the publication schedule is with the PDR. I'm not going to leave the jury with the impression that somehow the package inserts that may have been done are automatically in the PDR the next day.
MR. ALLEN: They're not.
THE COURT: There's a lag time. That's right and I just want them to be told what the lag time is. And we don't have to do much more than that, but I want them to know -- I just think that it's fair that they know how long the lead time is from when a label -- a package label is approved to when it finds its way into the PDR. And that's all I want and I assume that by tomorrow you're going to know whether there's a 2001?
MR. LEHNER: That's correct.
THE COURT: So we'll get the 2004 in. If there's a 2001 supplement, we'll get that in tomorrow, and we'll have a short explanation as to the publication schedule and the lead time.

MR. LEHNER: Your Honor, if I can make one other brief motion. And this would be to strike the first 12 pages of Mr. Jordan's testimony that was played on videotape yesterday. And very briefly, if you look at the first 12 pages, you will see that they go to profit sales force. There's not a word about warnings or risks whatsoever in there, and I think the reason for that is very clear and it goes a little bit to what Mr. Allen said yesterday. And if I may just use the ELMO very briefly.
The reason that the Plaintiffs now want to put that evidence into the record, I think, is very clear from the statement that Mr. Allen made yesterday. He said, I'm entitled to produce evidence of what they, meaning Lilly, told physicians about mood -- and it's interrupted, we know -- mood, thought, behavior and disturbances. And the reason why they want to do that is very clear, because one of our theories in our case of failure to warn is that they overemphasized the benefits. That's really news to us, Your Honor. I believe, at least with respect to your ruling, that's exactly the claim and that's exactly the theory that you have

struck out of the case.
Overpromotion, promoting the product for uses off-label, for benefits, in essence, has been thrown out. And if we're now going to have to defend upon that, I think it's really a very different claim. It's very clear why this evidence is being tried to -- they're trying to introduce this evidence. They told you yesterday that's exactly the claim that was struck and if you look again in their responses, their fourth response to our request to tell us what this case is about, they very clearly enumerate the claims they're advancing.
And the fourth claim, the one that you struck, goes exactly to this particular issue. And this evidence about profits, this evidence about promoting the product for mood, thought and behavior has nothing to do with the warning whatsoever.
THE COURT: I'll deny the motion. My understanding is that the reason this is coming in has to go with motive and that -- there's already been testimony from at least one witness about putting profits over safety, and that the argument that has been made strongly and

been supported by some evidence is that Lilly was losing its Prozac -- Prozac was going to go generic. It was the big moneymaker. They were going to, therefore, have a -- they needed to come up with a product that was going to replace Prozac for profits.
And the argument is is that the reason that Lilly did the things that its alleged to have done in terms of improper warnings was that Lilly was trying to make sure they didn't lose business and that Zyprexa was going to be the big moneymaker. And that to the extent that more risks were warned about, profits would diminish and that's what the argument is. And so that's what I've allowed that evidence in for, is the motive aspect, which I do find to be relevant for the case.
I think there's also an element of risk/benefit that has been raised in opening statement and suggested by the Defendants, that doctors have to weigh risks against benefits. And to the extent you're talking about different kinds of uses for the drug, the benefits may be lesser and so you might want to know more about the risks. I think that's the relevance that has

been asserted here.
Now again, I'm concerned about the order of that presentation, and not letting in evidence at least on these other uses until I see what -- see more than just an opening statement in terms of what the evidence is going to be from the defense.
MR. LEHNER: Your Honor, if I could just address that second point very briefly because again, Mr. Allen in his argument yesterday I think made that very point and he said, The jury is going to be asked: Did they give adequate warnings and when ordered to determine that, if they gave adequate warnings, we have to look at who they knew they were warning, which I think goes to just the point you were making. Who we were warning was the --
THE COURT: I'm not making the point, I'm --
MR. LEHNER: Well, the point you were articulating.
THE COURT: -- articulating what I understand to be their point.
MR. LEHNER: The warning was given to physicians, doctors, given to medical

professionals, people who are licensed to practice medicine. If Lilly has to calibrate the warning every time it learns, for example, that the product is being used in a fashion that a doctor decides in his own independent judgment that it might be prescribed for somebody who has something -- some problem the doctor believes is beneficial, that the product would be beneficial to treat, then I think you're putting a company like Lilly and any pharmaceutical company in an absolutely untenable position.
That can't be the law.
That can't be the requirement that Lilly has, to calibrate its warning based on what doctors decide are the benefits -- because doctors decide what are the benefits of the product. What the label does is spell out that these tests that the company has conducted --
THE COURT: Well, if doctors decide what the benefits of the product are; isn't that going to open the door for seeing what Lilly was promoting the benefits were to those very doctors?
MR. LEHNER: I don't see how that would be relevant to the claim of whether or not

the warning itself is adequate. The warning and the definition of the risks and the spelling out of the risks in the label is completely independent in that sense from what a doctor may independently decide, having reviewed the label, having seen the medicine work in various contexts, what the doctor decides is the benefit.
THE COURT: Again, at this point the risk/benefit issue and these other uses is -- I'm not allowing -- I haven't been allowing the Plaintiffs to put in that evidence. What I'll do when I hear what evidence Lilly puts in, either on cross-examination or rebuttal -- I'll wait and hear what Lilly puts in. I think I've made that clear.
The question, though, goes to, in many ways the issues of profits and those kinds of things, and I think my rulings have made clear on that issue and stuff that I'm not going to get into profits as per se as profits, and I've tried to keep out evidence of that. But those questions in Mr. Jordan's deposition are a little more general than that, I thought, and went to the question of motive.
And I definitely recall the

questions about losing the Prozac -- was about that Prozac was about to go generic and this becoming the big moneymaker and we needed to -- Zyprexa, and the current year needed to be lifted up, and that's the basis for admitting that stuff. I think it goes to motive, which I think Plaintiffs -- I think is relevant.
MR. LEHNER: There were questions certainly about the Prozac patent, but there were equal number of questions about, for example, when Mr. Allen was questioning and reading a document. Need to focus on symptoms. Even if the doctor does not have a diagnosis, he should treat anyways. That has nothing to do with the warning, Your Honor. That has nothing to do with the failure to warn.
If the failure to warn claim, as Mr. Allen suggested in his argument yesterday equals emphasizing -- overemphasizing the benefits, then we're not in a box. We're really in Alice in Wonderland. The words really have to mean something. And overemphasizing the benefit is not a failure to warn claim. I just don't -- those two things just don't compute, but that's what he said their theory of their case is now

and that's one of their theories they want to advance. And I think it needs to be clarified that that is not a claim that is going to be advanced in this case.

THE COURT: Well, if you want to give me a limiting instruction, I'm happy to look at a limiting instruction as to particular evidence that you think does that. But I think to the extent you're asking me to reconsider and strike the first 12 pages, I'll deny that request. But if you think there needs to be a limiting instruction at any point on any evidence, I tell everybody that on my rulings. Just because I've denied a ruling, I'm willing to consider limiting instructions, if anybody wants to propose them in a way that I believe is appropriate.

MR. ALLEN: Your Honor, Scott Allen for the State, for the record. I don't know how you want this marked. I have a blank exhibit sticker on it. This is the rejected cuts of my offer of Mr. Jordan that I'd like to offer. How would you like this marked, first of all? I can mark it Court Exhibit No. 1. Do we have a Court exhibit yet?

THE COURT: I don't think we have any Court exhibits. I don't really care how you mark it, to tell you the truth, as long as the record is clear as to what it is. My concern is the clarity and not whether it's considered a Court exhibit or something like that.

Why don't we just call it a Plaintiff's exhibit, since that's kind of what it is. It's not going to be admitted, but it will be -- Plaintiff's exhibit for the purpose of making a clear record on those portions of the Jordan cut that I've rejected. We probably should talk at some point -- I've got all these binders with cuts and other things, and if everyone wants to make those binders part of the record or the material that's in those binders part of the record, I'm happy to do that.

I would prefer at some point I'd give you back all your binders themselves rather -- and keep the paper, if that's what we're going to do. But if we want to assemble or reassemble or put together all of the cuts that were initially proposed, you've -- there is sort of a record because I went -- well -- to the extent I rejected portions of your thing, there's

an S -- each of those documents I handed you which listed Lilly's objections to particular things, and I either -- wrote sustained and overruled in handwriting or I wrote -- or I wrote an O and an S. Those -- those are part of the record. And to the extent I sustained an objection, the lines and -- you know, the page and line numbers are sustained, and so you may already have your record there.

MR. ALLEN: Your Honor, that's always the main point. I guess I'm a belt and suspenders man. I have marked this Plaintiff's Exhibit 1061, Your Honor, and I would tender it to the Court.

THE COURT: The record should reflect that what's been marked as Plaintiff's Exhibit 10161 is the Plaintiff's listing of those portions of the Jordan -- the Jordan deposition that I sustained objections to and, therefore, they weren't playing for the jury, and the purpose for this is not that it's come into evidence, as much as it is to make a record. Again, I think that we have a record as to what I've given you as to my sustaining or overruling objections that I've written out, which is also

part of the record, but I certainly have no objections to making records as clear as possible.

MR. ALLEN: 10161 --

THE COURT: It's 10161 is the exhibit number that's got the mark on for this, and it's headed Annotation Report Jordan Rejected Offers, March 10, 2008.

MR. ALLEN: I just missed a zero. Your Honor, it may be an old-fashioned matter of my training. I'll offer each question in 10161, each question individually, and I guess each question and answer individually is rejected?

THE COURT: Those portions that I've indicated are rejected, including each question individually and answer, I sustained objections to that the Defendants made to the use of that exhibit, and so that's what I'm doing.

MR. ALLEN: Right. I just wanted to make clear for the record, 10161 is offered not just as a group, but each question individually and each answer individually is offered.

THE COURT: That's fine.

MR. ALLEN: That's all I wanted to

do is make a record; Your Honor. You've already sustained it.

I just want to point out that -- the statement that, Go ahead and treat anyway and the mood, thought and behavior disorder. Mood, thought and behavior is on the label, and do not treat anyway -- go ahead and treat anyway. Ms. Gussack said on opening statements sometimes it takes eight or nine years to make the diagnosis and that's where those statements came from. Thank you, Your Honor.

MS. GUSSACK: Your Honor, if I might take a moment to seek a proffer before Dr. Hopson called by the State takes the stand, because based on the arguments made by Mr. Allen yesterday, Lilly is sensitive to what is being elicited here and their intent to try to use the lobbying efforts testified to by Ms. Eski as evidence here over our objection, and that they are as Mr. Allen was suggesting, conditionally linking up evidence and presumably are going to ask Dr. Hopson about whatever lobbying efforts, and then offer information subsequently from Ms. Eski's deposition designations.

And I think that the Court's well

aware of our First Amendment Noerr-Pennington concerns about that, but I also wanted to bring to the Court's attention the remoteness issue, which is that the evidence that Mr. Allen has been referencing as a result of the Eski testimony, is activity that dates back to 2003.

There's no evidence in the record, and I'm concerned about testimony being elicited this morning that would suggest that there was any activity since that time, and that the suggestion that there was some impact by Lilly's conduct from 2003 as to any current State action would be misleading and inappropriate. And so -- and since the State never had Dr. Hopson on their witness list, it would be helpful if we could get some guidance as to the scope of the testimony being elicited this morning.

MR. ALLEN: I can provide that guidance, Your Honor.

THE COURT: Please.

MR. ALLEN: I'm not going to be talking about lobbying. You told me I couldn't yesterday. If I do, they can object, but I'm not.

THE COURT: Right. And to the

extent there's issues of remoteness, although it sounds like if we're not going to get into lobbying there, cross-examination can certainly develop that.

MR. ALLEN: And I guess since we need guidance, if they feel something is too remote, and again, I don't intend to do it, they have within their control Ms. Eski, their witness and their employee.

THE COURT: Well, again, we'll take Dr. Hopson, who I guess is going to be our first witness, and people are free to ask to approach if they think that it's going over the bounds of my previous rulings and then I'll decide whether I think it is. Or if it isn't, whether I think matters can be developed on cross-examination and everybody can feel free to approach. I don't know what Dr. Hopson will be saying, obviously.

MR. ALLEN: We'll find that out shortly.

Actually, Your Honor, Ms. Eski's deposition is going to be the first witness. It will be videotape, and it's 22 or -3 or -4 minutes --

A SPEAKER: 30 minutes.

MR. ALLEN: Well, 30 minutes. I don't know what happened between when I had it at 22 until now, but it's 30 minutes evidently. Then we'll call Dr. Hopson.

THE COURT: Okay. Anything else?

MR. JAMIESON: A 30-second issue, Your Honor.

Your Honor, mindful as I am of my obligations to the Court under Rule 81 as well as ethics being No. 6095, there will be times during these proceedings that I will not be in court. I assume that's fine with Your Honor and --

THE COURT: Certainly.

MR. JAMIESON: -- I'm asking to be excused during those times.

THE COURT: All attorneys, I mean, as long as I've got one of you here that's doing the work, the rest of you can get up when you need to and leave. Again, you guys are -- I will say this probably three or four more times. But the professionalism and the skills that are in front of me are really high rate, and I have a lot of respect for both sides and everybody on both sides, and as long as you continue to act the way you are, you've got a lot of leave with

me to come and go and do what you need to do.
MR. JAMIESON: Thank you, Your Honor.
THE COURT: We'll see if we've got -- it's a little snowy and sometimes the people out in the Valley or Eagle River have a little bit longer time getting in -- did we have everybody when we went on record?
THE CLERK: Negative.
THE COURT: We'll give them a heads up if they're all here. If not, I'll ask Mr. Borneman to let you know we're waiting for a few people.
We'll be off record.
(Off record.)
THE COURT: Please be seated.
We're back on the record outside the presence of the jury just to make a record of what happened.
Just as we're about ready to resume with the jury, Juror No. 13, Mr. Van Huizen suffered what appears to be a heart attack. Paramedics were probably called, as was JS, and he's been taken to the hospital. The -- I want to commend everybody for how they handled it, in

a very appropriate way.
Seems that Mr. Van Huizen is going to be okay.
It seems the jurors are ready to proceed, so I'm ready to proceed unless people think that we shouldn't.
MR. FIBICH: Your Honor, the State's ready to proceed if the jurors are. I think we should be listening to them and if they're ready to go, we're ready to call our witness.
MS. GUSSACK: Your Honor, Lilly would like to make an application, preferably in chambers outside of the broader group in the room, if we might, about the effect of this.
MR. FIBICH: Why can't we do it in here?
THE COURT: What about it needs to be taken up in chambers?
MS. GUSSACK: Recognizing that there is coverage, perhaps, of the individual jurors involved here, and that's one of the issues that we'd like to address with the Court, we thought it was best done in chambers.
MR. FIBICH: Your Honor, I don't

see any -- I mean, I'm not big on this issue, but I don't think there's confidential information. I don't think -- I mean, it's a public trial.
THE COURT: Why don't you approach?
(Bench conference.)
THE COURT: What do we need to take up in chambers?
MR. BRENNER: I have the application right here, Your Honor.
Appropriately, Dr. Wirshing, one of the State's experts and Dr. Hopson, who is being called as a witness went to the aid of the ill juror. All the other jurors observed that. That having happened, we -- I don't want to say regrettably, but we feel constrained to move for a mistrial.
These jurors in our view cannot now be objective regarding at lease one of the experts and one of the State's witnesses whom they observed assisting one of the other jurors.
MR. FIBICH: May I respond, Your Honor?
THE COURT: Sure.
MR. FIBICH: First of all, Your Honor, my observation was that they did go

to his aid appropriately, and I'm glad they did.
I don't believe the man had a heart attack from what the medical information is we got. But that's irrelevant as well. The issue in this case is whether the involvement of these individuals is such to influence the jurors. That is a decision that I think you ought to make by independently questioning them separately in your chambers.
First of all, I think in the controversy and the chaos that happened immediately that I'm not sure they even knew who they were or anything else. But whether I'm right or wrong is irrelevant. The question is, have they been influenced to such a degree that they cannot continue to sit in this case? And I would ask that you make that inquiry before you make any determination. As you know, we have invested a tremendous amount of --
THE COURT: I understand that. It's fair to individually question the jurors to see if anyone would be influenced by this.
MS. GUSSACK: Your Honor, there's another issue, which is really what I wanted to be seen at sidebar, which is that there

apparently was coverage during this event, and I think it's really quite likely that individual jurors who know this juror who had the heart attack or his family would be inclined to seek out information about how he was doing, information that would be available in the newspaper. So we have an additional concern that jurors not --

THE COURT: Well, again, I've given them instructions about doing that and I will certainly instruct --

THE COURT REPORTER: Excuse me. Excuse me, Judge. I think that -- is this off the record?

THE COURT: Yes.

THE COURT REPORTER: We need to close the computers down.

THE COURT: It's not off the record as such, but it's a side bench --

THE COURT REPORTER: Can they read it?

THE COURT: No, the gallery should not be reading this.

THE COURT REPORTER: Okay. Can you put something over the screens? Okay. I'm sorry.

THE COURT: I will certainly instruct the jury again about the newspaper thing, and to the extent that they're concerned about that, I'll even make it clearer that to the extent that they're concerned about Mr. Van Huizen and stuff. It's possible but I don't know that there might be something in the paper about his condition, and I'll let them know updates about his condition, but they should stay away from the newspaper.

MR. FIBICH: I think we'd all like to know how he is doing as well. If there's a way for the Court to inquire --

THE COURT: As long as you were here, what I was actually thinking about doing was having my secretary getting a get-well card that the jurors could sign, and, quite frankly, you all could sign and we could send it to Mr. Van Huizen as well, unless somebody has any problems was that.

MR. FIBICH: I would like that very much.

MS. GUSSACK: We want to be mindful, Your Honor, as you question the witnesses individually, that we're not elevating the acts of the State's experts by asking the question. So, you know, obviously, this presents a problem for us because in the hubbub of the --

THE COURT: Do you want to ask the questions individually? I have no problem with that, if you have concerns about that. I want to make sure -- I think it's fair to question the jurors individually and make sure no one is going to see what the doctors do and that they will get favorable treatment as a witness because of that. That's a fair thing to ask them and then if some people say, I will give them favorable treatment, we'll have to figure out what to do about that.

MS. GUSSACK: The questions are best put by the Court.

THE COURT: Again, I was just going to tell them that, you know, it appears that two of the witnesses that will be testifying for the State were the doctors who attended. Is that going to affect -- when these witnesses testify, does the fact that they saw him come to Mr. Van Huizen's aid affect their ability to fairly

judge? That's the question that I would put to them.

MR. BRENNER: That's an appropriate question, Your Honor.

THE COURT: I agree we can't take it up as a group, so we'll take them one at a time.

We can -- well, let's do it in chambers. It's probably just as easy there.

MR. FIBICH: We want to limit the lawyers in your chambers?

THE COURT: Yes.

MR. FIBICH: How many?

THE COURT: Do we need more than one for this?

MR. BRENNER: Fine, Your Honor.

THE COURT: Mark, we're going to go on record in chambers.

MR. FIBICH: Do I understand that the Court will be the only person to question the jurors?

THE COURT: Well, if somebody feels that because of questions some additional follow-up is needed, I'll probably allow that. But I might be the one to ask -- if people give

me a question, I'll ask it.
MR. ALLEN: I think that would be the best way to go.
(End of bench conference.)
(Jury in.)
THE COURT: Ladies and gentlemen of the jury, we're going to start our presentation of the evidence in a second. I'm sure that everybody will want to know what's going on with Mr. Van Huizen, and if I get any information, I'll pass it on to you. It's possible in the stories that may be about -- if there's any stories about this trial, there may be some mention of this and his condition. If I read it, I'll pass it on to you. But, again, I'll remind you, please don't read any stories about this case even if you're looking for information about Mr. Van Huizen.
I'll also tell you that it's my intent to get a card or cards that could be -- get-well card that can be signed by all members of the jury, and the lawyers have indicated on both sides that they would sign it and I certainly will, too. So I'll try to have that for you tomorrow. We can all send him our best

regards and prayers. And so I just want you to let you know that's going to be coming. Are the parties ready to proceed?
MR. ALLEN: Yes, Your Honor.
THE COURT: Why don't you call your first witness, Mr. Allen.
MR. ALLEN: Yes, Your Honor. We call to the stand via oral videotaped deposition, Ms. Joey L. Eski.
Excuse me for a second while we get set up.
He said they need the lights dimmed, please.

VIDEOTAPE TESTIMONY OF JOEY L. ESKI

Q. Would you raise your right hand, please.
(Joey Eski sworn.)
Q. Good morning.
A. Good morning.
Q. How are you today?
A. I'm fine. How are you?
Q. Fine. Can you tell the jury your name, please?
A. Joey L. Eski. Joey L. Eski.
Q. For whom do you work?
A. Eli Lilly and Company.

Q. And what is your current job for Eli Lilly and Company?
A. I am currently an executive sales representative with the neuroscience division and I am a specialty rep in the community mental health centers.
Q. Tell the jury, please, the contact that you either have had personally or coordinated for Eli Lilly in the contacts in the State of Alaska, please?
A. Of any sort. Okay. I've had minimal contact with the director of Medicaid, State Medicaid, Dave Campana, over the last ten-year span. Interactions as far as introducing myself so he has a contact with Lilly. That's my main interactions with him.
I infrequently called on him before we had public health people that came up here and did that.
Q. Frequently?
A. Infrequently.
Q. Called on Dave Campana?
A. Very infrequently. Probably, as I can remember, maybe two or three times.
Q. You've told us about your contact with

Mr. Campana.
A. Uh-huh.
Q. Now can you tell the jury the remaining contacts you've had with the State of Alaska or the representatives of State of Alaska involving your duties at Eli Lilly?
A. Do you consider the State hospital, State employees? I mean --
Q. Ma'am, I just -- really -- I can only get your testimony.
A. Okay. My primary responsibility would have been for Alaska Psychiatric Institution, which is our State hospital for the entire state. And I would work with the medical director and all the physicians and the pharmacy in that facility.
Q. How long have you worked for Eli Lilly?
A. This is my tenth year of service with Eli Lilly.
Q. You moved up here to Alaska in '97 or '98 time period?
A. Yes.
Q. And what -- what was your job when you were hired in September of '98?
A. Sales representative in neuroscience.

Q. Ms. Cramer is what you said?
A. Yes.
Q. Would Ms. Cramer also detail the same doctors as you did?
A. Exactly same doctors.
Q. You all would make different visits at different times?
A. That's correct. We had what we called routing.
Q. And you both promoted Zyprexa?
A. We did.
Q. That was your job as a sales rep, to promote Zyprexa?
A. That was part of it, yes.
Q. What was the other part?
A. To be a resource to the physicians, a face for Eli Lilly.
Q. When you walk in, you have detail pieces in your hand, do you not?
A. Not always.
Q. Okay. Not always. You often have detail pieces in hand?
A. Probably not as much as you think I do. I mean, it's not -- it depends where I'm going, what physician I'm seeing. A detail piece is

something that I use as a -- a guide, if someone has a question and there's -- there's an answer to their question in my detail piece, then I'll pull it out and use it.
Q. When new detail pieces come out or changes are made to detail pieces, Eli Lilly doesn't just leave it to you to try to figure it out; they provide you with training materials about how to talk about that detail piece, right?
A. Sure.
Q. And they give you written material that instructs you as how you're supposed to speak about that detail piece, correct?
A. It's a guide. It was a guide, an idea.
Q. They're called resource guides?
A. Sometimes.
Q. Or they're called implementation guides?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. Ma'am, I handed you what's been marked as Exhibit 1. This is -- you recognize this as LillyUSA Sales Good Promotional Practice, Definition of a Sales Call and Call Notes Eli Lilly and Company, February, 2001?

A. Uh-huh.
Q. Have you seen this before?
A. I have.
Q. Now, we go under the definitions, you see the definition of a call note?
A. I do.
Q. It's a business record documented within a call system that accurately reflects all aspects of a sales call. Did I read that correctly?
A. You did. Yes, you did.
Q. And in the information and procedures section I want you to read you the goal. Do you see the goal of a sales call?
A. Yes.
Q. This is Eli Lilly's words, not Scott Allen's. The goal of a sales call is to appropriately influence a health care professional using the approved Lilly product information to allow him or her to choose the best therapy for his or her patients and ultimately to increase the sales of Lilly's products.
Did I read that correctly?
A. You did.

Q. As previously marked as Noesges Exhibit No. 8, I'll hand you one to you and one to your counsel. I appreciate your attention to that matter. This is also a Lilly Good Promotional Practices document.
Do you see that?
A. I do.
Q. All right. Off-label information, I'm going to read the definition given to you: Any information about a Lilly product that is not contained in or is not consistent with the package insert labeling approved by the FDA. Examples include, but are not limited to indications, dosage forms, dosing schedules, combination therapy, and safety information.
Do you see that?
A. Uh-huh.
Q. Is that a yes?
A. That is a yes.
Q. So whatever information you gave to the health care professionals concerning the safety profile and side effect information on Zyprexa was within the label, correct?
A. Yes, I would have given whatever was available to me at the time.

MR. LEHNER: Your Honor, can we just stop here for a minute and just approach the bench?
THE COURT: Sure.
(Bench discussion.)
MR. LEHNER: You had this on the need to discuss. We're about to enter into this whole thing. I know we had a discussion about it yesterday. I don't know whether there was a ruling. I thought there was ruling was going to depend on whether we open the door and all that kind of thing.
MR. ALLEN: You'd overruled the objection. There was nothing about lobbying.
MR. LEHNER: There wasn't an objection. That was a need to discuss.
THE COURT: I thought that the State Action Team and all of that stuff was out?
MR. LEHNER: I did too.
MR. ALLEN: I honestly didn't. So do you want me to skip to --
THE COURT: All the things that I said need to discuss --
MR. ALLEN: Your Honor, can you read the answer? The reason is it's talking

about hyperglycemia and diabetes. That's the question.
THE COURT: Which is the question?
MR. LEHNER: Need to discuss just begins. I don't think there was a ruling on everything that he marked as need to discuss.
MR. ALLEN: If we read the answer, it's nothing to do with lobbying. It has to do with -- it's talking about hyperglycemia and diabetes. That's all it's talking about.
THE COURT: No, the need to discuss was --
MR. ALLEN: I actually don't know -- I wouldn't have cut this deposition had it not been overruled. Can I look at what we're talking about, because I would not have done that. Okay. Here --
THE COURT: All these things about need to discuss that I said let's discuss when we had the conversation and again, my conversation was because it wasn't readily apparent to me the relevance, and we had a conversation about them and I ultimately concluded at least for now --
MR. ALLEN: This is the diabetes -- maybe -- let me see. I don't have all that in

there. Let me go get what I have. That's not what's in my -- I think you have the wrong exhibit --
MR. LEHNER: Well, this is what you all provided to us last night.
MR. ALLEN: I agree with that. I didn't put that in there.
MR. LEHNER: This is what you provided to us last evening.
MR. ALLEN: Please don't indicate that -- here's -- here's where we are, and this is -- this is the diabetes -- this is what it's talking about right here. We're on page 119 and 120. I don't have all that in there, George. I took it out.
MR. LEHNER: We can't run this. You all run this for us.
MR. ALLEN: George --
MR. LEHNER: I'm not -- I'm just saying that's why I raised it --
MR. ALLEN: That's not within my cuts.
THE COURT: So I think this stuff was out, too.
MR. ALLEN: Hyperglycemia and

diabetes?
THE COURT: This stuff was out.
MR. ALLEN: Let me pick back up, Judge. I can -- if you give it to me --
THE COURT: I think we jumped from this stuff. There was certainly a bunch of stuff down at the end.
MR. ALLEN: Your Honor, I wouldn't have done this .

THE COURT: This 122, 17 stuff. Back in April, were there issues about diabetes and hyperglycemia --
MR. ALLEN: Whatever happened, can I have your pen so I can get it to my people?
Okay. I apologize to the Court if it happened. I mean, it was -- I mean --
THE COURT: Get it straight.
MR. ALLEN: We're going to start at --
MR. LEHNER: 122, 17.
THE COURT: 122, 17.
MR. ALLEN: Thank you, Your Honor. I apologize to the Court.
THE COURT: That's okay.

MR. ALLEN: Can we pick back up at cut 24, Page 122, Line 17? I don't know how you do what.

You can go to cut 24? Yes, if you can.

Sorry, Your Honor.

THE COURT: It's okay.

MR. ALLEN: We're ready.

(End bench discussion.)

THE VIDEOGRAPHER: Ready?

MR. ALLEN: Yes, sir.

CONTINUED VIDEOTAPE TESTIMONY OF JOEY L. ESKI

Q. Back in April and May of 2004, were there issues involving hyperglycemia and diabetes surrounding Zyprexa?

A. Don't know anything about issues. I mean, are you -- can you be more specific or not? I mean, there was a lot of things -- there were media, there were, you know, physicians, there were -- there were all kinds of communications from Lilly. I mean, there were a number of things. I don't know exactly what you're asking me, though. I mean -- am I answering you? Is that what you're looking for? Yes or no?

I'm asking for clarification.

You said ask you for help, so I did.

Q. Were there concerns about diabetes and hyperglycemia surrounding Zyprexa in April or May of 2004?

A. There was lots of uncertainty around atypicals and diabetes and hyperglycemia and -- certainly.

Q. My question is particularly directed at Zyprexa. Were there concerns --

A. Sure.

Q. -- or issues --

A. Yes, yes.

Q. Do you remember giving doctors the comparable rates message and handouts? You remember that --

A. Vaguely, yes.

Q. DOes it bring it back to you for at least during the time period we identified in these brief excerpts of notes from 2001 to 2003. You were involved in the comparable rates message?

A. Around diabetes, yes.

Q. Yes. I'm going to hand you Exhibit 10. Maybe this will help clear up the confusion. You

recognize this, don't you?

A. I do recognize this.

Q. And doesn't it say comparable rates of diabetes and hyperglycemia among psychotropics?

A. It does.

Q. And isn't this something that you gave to doctors?

A. I can't remember if we left it with doctors or not.

Q. Does this not appear to you to be -- let me ask this question first: Does this document, Exhibit No. 10, refresh your recollection that you were out detailing doctors and health care providers with the comparable rates of diabetes and hyperglycemia among psychotropics? Does that refresh your recollection?

A. No. I remember using this, but I don't know that I actually ever gave this as a message. I've always told my providers we don't know about diabetes. It's so multi-factorial, diabetes is. And you can -- when I'm interacting with a physician, I don't -- I just give them the data that we have, but we've never told them either way whether Zyprexa causes or doesn't cause diabetes. It's never been a comfort level for

me. I think that they have to watch their patients.

So I've never -- you know, I've never given them this kind of -- I mean, I just have always told them we don't really know. This is what we know, but it's not much, because that's what I believe.

Q. This is a Lilly document, isn't it?

A. It is, yes.

Q. And let me read what Lilly said. It has a number up here, 1, doesn't it? The No. 1, you see it?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Comparable rates of diabetes and hyperglycemia among psychotropics. Patients treated with Zyprexa had rates of diabetes and hyperglycemia comparable to those with patients treated with risperidone, haloperidol, divalproex sodium in clinical trials.

Did I read that correctly?

A. Yes.

Q. Let's see Exhibit 11. Maybe it will help you recall. Exhibit No. 11, you see that?

Do you recognize this document now? By the way, it's poorly stapled together. We got it upside down, don't we?
A. I remember the concept of it. I don't know that I remember the document per se as it's presented here.
Q. So if you look at the third page of this document, how did the medications you used compare rates of diabetes were comparable for commonly-prescribed psychotropics during longer-term clinical trials.
Do you see that?
A. Uh-huh.
Q. Ma'am?
A. I do see that, yes.
Q. Okay. So you do agree that currently you must tell the physicians and health care providers that Zyprexa carries a higher rate of hyperglycemia than Seroquel or Risperdal or Abilify or Geodon?
A. Of hyperglycemia, yes.
Q. When did they first tell you in Eli Lilly, your superiors, that they knew that the risk of hyperglycemia in regard to second-generation antipsychotics fell on a

continuum? When did they first tell you that?
A. Same label change.
Q. When was that?
A. I think it was October of '07, but I can't remember exactly.
Q. What year -- so the first time they told you there was a continuum and the first time they told you that Zyprexa had a higher rate of hyperglycemia was October of 2007?
A. That is the first time I've ever seen that wording.
Q. And prior to that time, you were told that there was comparable rates, correct?
A. Of --
Q. Of what?
A. I'm asking you. Comparable rates of what?
Q. What were you told there were comparable rates of?
A. We were told that there were comparable rates -- I mean, of diabetes, but specifically -- I mean, it says it here for hyperglycemia, but I'm not sure. I need to think about what your question is. I'm sorry. Say it again. Prior to 2007 -- what was I told about comparable rates

prior to 2007?
Diabetes and I guess we thought there were comparable rates of hyperglycemia given the older data. So --
Q. So prior to October, 2007, Eli Lilly informed you that there was comparable rates of diabetes and hyperglycemia between Zyprexa and the other second-generation antipsychotics?
A. Yes.
Q. Doctors, when you detailed on Zyprexa, they were interested in the risk of Zyprexa, were they not?
A. They are interested in everything about Zyprexa, all of the available data. So, if you're asking me specifically to this -- they're interested in everything about the drug. They need to know everything to make their decision.
Q. Why do they need to know everything?
A. Because they need to look at their patient and -- and look at the patient profile and -- and look at the risk factors of a patient to decide what is going to work for them or what, you know, they think might be an inappropriate choice for them, so -- so that they can customize their decision to the patient.

Q. It's in order to make an informed choice, right?
A. Yes.
Q. Ma'am?
A. Yes.
Q. And why do you want them to make an informed choice?
A. So that they have a better outcome for their patient.
Q. Right. Tell the jury the difference between a warning and an adverse reaction.
A. Typically it's the rate of incidence, as I understand it, and a likelihood of the -- of the occurrence.
Q. Warnings are more severe, greater incidence and more likely; is that correct?
A. As I understand.
Q. As you understand?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. How long have you had that understanding as a sales representative for Eli Lilly?
A. The entire time I worked for the company.

Q. Since 1998?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. So you clearly understood there was a distinction in the label and you're claiming there was a distinction in the label between a warning and an adverse reaction?
A. Yes.
Q. Ma'am?
A. Yes.
Q. Difference between a warning and adverse reaction, the difference was the severity or the frequency of the rate of the side effect; is that right?
A. Yes.
Q. And that's -- was consistent with your training?
A. Yes.
Q. And if anybody had asked you that, not just me, up until today, from 1998 to 2008, that's what you'd testify to today?
A. Yes.
Q. Do you see in Exhibit 13, which is the 2007 label --

A. Yes.
Q. -- it says -- it's in the warning section?
A. Right.
Q. It's the first time it's ever appeared in the warning section, right?
A. Yes, hyperlipidemia.
Q. It says undesirable -- it's on page 9. It says, undesirable alterations in lipids have been observed in the olanzapine use.
Did I read that correct?
A. Yes.
Q. What is undesirable about these alterations in lipids that have been observed in olanzapine use?
A. I can't answer that. I don't -- I don't know.
Q. Yes, ma'am, you've told us in the first 30 minutes of this deposition or thereabouts that part of your job as reflected in the policies was to detail within the label on the risks of the product, correct?
A. Uh-huh.
Q. Is that a yes?
A. Yes, yes.

Q. And you were supposed to receive materials and training to do that, to answer questions accurately, correct?
A. Yes.
Q. And what does the sentence in 2007 October label changes, where it says undesirable alterations in lipids have been observed in olanzapine use. What does the undesirable portion of that mean?
A. I don't know.
Q. Did you ever pass on to doctors prior to October, 2007 that undesirable alterations in lipids have been observed with olanzapine use?
A. No.
Q. Okay. What you're telling us is, Mr. Allen, I want you to clearly understand --
A. Right.
Q. -- I as a sales representative will focus on the details in the warning and I will pass that along to the doctors?
A. Yes.
Q. And then that way the doctors can make a better informed choice?
A. Uh-huh.
Q. Is that a yes?

A. Yes.
Q. And the patients can get better information?
A. Yes.
Q. I'll just ask you this question: Did you know back in 1995 that Eli Lilly knew that there is a statistically significant elevation in cholesterol on the high side when Zyprexa was compared to haloperidol? Did you know that?
A. No.
Q. Ma'am?
A. No.
Q. Did anybody every tell you in a clinical trial that Eli Lilly was in charge of that Zyprexa was shown back in the mid-'90s to have increased levels of cholesterol than haloperidol?
A. No, I don't have that information.
Q. Was weight gain in the warning section of the label, by the way?
A. No.
Q. Was it in the warning section of the label before October of 2007?
A. As a warning?
Q. That's what I asked.
A. No.

Q. I've marked as Exhibit 16 the 2003 PDR reference adverse reactions. I'm going to highlight it for you so we can find it together. I think I have one here for counsel. I do. I gave away my last one, so you're going to have to share it with your counsel. Exhibit 16, adverse reaction section. You see that?
A. I do.
Q. You see the adverse reaction section on page 4, right?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. You see the highlighted language that says, It is important to emphasize that although the events occurred during treatment with olanzapine, they were not necessarily caused by it. The entire label should be read to gain a complete understanding of the safety profile of olanzapine.
Is that true?
A. Does it say that? Yes.
Q. You see a listing of other --
A. Yes.
Q. And do you see body as a whole?

A. Yes.
Q. Let me just read body as a whole. Frequent dental pain and flu syndrome.
Did I read that correctly?
A. Yes.
Q. Frequent -- under cardiovascular system, hypotension.
Did I read that correctly?
A. Yes.
Q. Frequent, under digestive system is flatulence. That's gas, is it not?
A. I believe so.
Q. Increased salivation and thirst. Did I read that correctly?
A. Yes.
Q. Are all those frequent or adverse reactions to Zyprexa?
A. Are they all related to Zyprexa?
Q. Yes, ma'am.
A. I can't say.
Q. Why can't you say?
A. Because of the nature of -- of the reporting in the clinical trial.
Q. So tell me about that. Explain that to me. I don't understand.

A. As I understand it, the participants in the clinical trial are required to report every single thing that happens to them, and then it should be reported. And whether it makes sense to be attributed to the drug or not, it's still reported.
Q. And it's stuck in the adverse reaction section; is that right?
MR. BRENNER: Objection to form.
A. This is the other adverse events.
Q. Yes, ma'am. What you're saying is based on what you've been trained, anything that happened in the clinical trial the patient is supposed to report and it's put in the other adverse events section, right?
A. Anything -- I mean, they also look at the occurrence of it versus placebo or the control group, whatever they are.
Q. Let's go down to digestive -- excuse me -- we did infrequent under digestive system includes fecal impaction and you said you just don't know about that either.
A. No, I don't.
Q. Okay. Let's go to hemic and lymphatic system. Infrequent is listed anemia, you see

that?
A. Yes.
Q. How is that related to Zyprexa?
A. I don't know.
Q. Let's go down to musculoskeletal system, it says infrequent, arthritis.
How is that related to Zyprexa?
A. I don't know.
Q. Is abdomen being enlarged related Zyprexa?
A. I can't say.
Q. Is atrial fibrillation related to Zyprexa?
A. I don't know.
Q. All those are infrequent reactions under other under adverse reactions, right?
A. Yes.
Q. I see another one. Look at the endocrine system. Do you see that?
A. I do.
Q. Diabetes mellitus?
A. Uh-huh.
Q. Doesn't it say infrequent? Ma'am?
A. Yes.
Q. Is that related to Zyprexa?

A. I don't know.
Q. If a doctor asked you all these listings in the other adverse events section, whether it's gas or dental pain or joint stiffness, you'd give the same answer as you did on diabetes, right?
A. It's a matter of -- of occurrence, what comes up more. So, diabetes, I would say, it's infrequent. I would reference it as an adverse event in infrequent. I would say you need to report it if you feel it is attributed to Zyprexa and I'll get you a medical letter on any of the company information that we have. So that's how I would handle that. And I would do that with all of these things.
Q. The adverse -- the other adverse events section is not a warning to anybody, is it?
A. I can't answer that. I mean, to me, yes.
Q. Oh?
A. It's not a warning -- it's a -- sorry.
Q. It's not a warning; it's a what?
A. It's an awareness.
Q. It's not a warning, it's an awareness, right?
A. Uh-huh.

Q. Is that a yes?
A. Yes.
Q. You didn't go around warning doctors of dental pain, did you?
A. No, I didn't.
Q. You didn't go around warning them of increased salivation and gas, did you?
A. No, I did not.
Q. Okay. They're listed there under the adverse events section more frequently than diabetes, right?
A. Yes.
Q. Okay. Thanks.
Now, matter of fact, your company and you went around saying if there is an issue of diabetes, it's comparable to the other antipsychotics. Isn't that what you did -- ma'am?
A. I've always said with diabetes it's uncertain. It's still multi-factorial.
Q. Ma'am, you're called to say the words comparable rates. Are you not willing to admit that you went around and talked about comparable rates?
A. I just didn't do it in the way you're

describing it.
Q. If the warning's different, as you told us, that's significant, isn't it?
A. Uh-huh.
Q. Is that yes -- is that yes?
A. If the warning's different --
Q. It's significant, isn't it?
A. We're going to communicate it. I want them to know that it changed.
Q. You said it's an agenda if it changes, right?
A. I said that it's -- we're directed to do that, yes.
Q. You have a warning change that just occurred within the last five months on weight gain, right?
A. The whole label change, yes.
Q. And weight gain was included for the first time ever in the warnings section, right?
A. Uh-huh.
Q. Is that yes?
A. Yes.
Q. That's a significant difference, isn't it?
A. It wasn't a surprise to my providers,

but it -- it is in the warnings section and we brought that to their attention.
Q. So it's a big difference when something is in the warning section, right?
A. It's a big difference in terms of -- that we go and practically alert people, yes.
Q. You go alert people, right?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. And in the warnings section there's a whole warning on tardive dyskinesia, is there not?
A. Yes.
Q. Can you hand that back, please. I'm looking for a particular sentence.
And in the warnings section, in the 2003 PDR concerning tardive dyskinesia it states, Whether antipsychotic drug products differ in their potential to cause tardive dyskinesia is unknown.
Do you see that?
A. Yes.
Q. Just so the record's clear, since the very dawn of Zyprexa being on the market, it has

always carried the risk of tardive dyskinesia, has it not?
A. Yes.
Q. Does the label support any superior efficacy of Zyprexa over the first-generation antipsychotics?
A. I would have to look through.
Q. Yes, ma'am. Take your time and look through. The question on the table is whether or not the label that is current supports superior efficacy of Zyprexa over the first-generation antipsychotics. We'll go off the record and let you look.
In the label, as we sit here today, is there any data or information in the label that supports the fact that Zyprexa is superior to any first-generation antipsychotic?
A. In the package insert, no.
Q. Now, next question: Is there anything within the label, as we sit here today, that supports the fact that Zyprexa is superior in efficacy to any second-generation antipsychotic?
A. No.
Q. Is there anything in the current label that supports a superior safety profile of

Zyprexa over any other antipsychotics other than Clozaril?
A. Just in this label?
Q. Yes, ma'am.
A. No.
Q. Okay. So, in the label there's no superior efficacy and there's no superior safety, correct?
A. Yes.
Q. Okay. Okay. Now, not only is there an increased risk of hyperlipidemia and hyperglycemia in the Zyprexa label, there's an increased risk of weight gain in the warnings section of the current label, correct?
A. Yes.
Q. I'm trying to figure out what in the label of Zyprexa gives it an advantage over any other antipsychotic in safety or efficacy. Is there anything in the label you can find?
A. In the label? In this -- in the package insert?
Q. Yes, ma'am.
A. No.
Q. There's not, is there?
A. (Witness shakes head.)

Q. Ma'am?
A. No.
Q. My only question is: Would you ever give doctors, you as a detail person for Eli Lilly on Zyprexa, information orally or in writing that was inconsistent with a label? Yes or no?
A. I would only give physicians things that Lilly has given me that I -- I think are consistent with the label if I received it from Lilly.
Q. The last ten years since you started working as a detail representative, have you ever detailed any other products besides Zyprexa and Symbyax?
A. Yes.
Q. What other products?
A. Prozac and Strattera.
Q. When did you quit detailing Prozac?
A. Uh -- the year when it went off patent.
MR. ALLEN: Your Honor, that concludes our offer of Ms. Eski's deposition.
THE COURT: Can we take down the screen?
Does Eli Lilly wish at this time --

MR. LEHNER: Your Honor, we'll reserve our right to play portions for our own case. Thank you.
THE COURT: Who is the State's next witness?
MR. ALLEN: Your Honor, can you give me -- we call Dr. Duane Hopson to the stand who's been subpoenaed.
Mr. Borneman, turn the lights back on -- are the lights back on? I guess so.
THE COURT: Dr. Hopson, if you can come forward, please, to the witness chair, and if you can remain standing behind it, we'll put you under oath.
R. DUANE HOPSON, M.D.,
Having been duly sworn, testified as follows:
THE CLERK: For the record, Doctor, would you please state your first and last name, spelling both.
THE WITNESS: First name is Raymond, R-a-y-m-o-n-d, Hopson, H-o-p-s-o-n.
THE CLERK: Thank you, sir.
THE COURT: Mr. Allen.
DIRECT EXAMINATION

Q. (BY MR. ALLEN) Good morning.
A. Good morning.
Q. Dr. Hopson, I'm Scott Allen. You and I have never met before, have we?
A. No.
Q. We've never spoken before, is that correct?
A. No.
Q. Can you tell the jury your occupation, please?
A. I'm a psychiatrist. I'm medical director at Alaska Psychiatric Institute.
Q. Here in Anchorage?
A. Yes.
Q. Dr. Hopson, have you ever testified in court before?
A. For civil court mental health commitments.
Q. Other than that, have you ever testified?
A. No, sir.
Q. If at any time during the examination you do not understand a question I ask or need to take a break, we'll ask the Judge. But if you don't feel comfortable, let me know, okay?

A. I will.
Q. Dr. Hopson, you said you're a psychiatrist. I'd like you to briefly describe for the jury your educational background and training, if you would, please?
A. Okay. I obtained a Bachelor of Science degree from a university in Arkansas. Following that, four years of medical school at University of Arkansas for Medical Sciences, and then I returned to Texas and completed a four-year general psychiatry residency at Timberlawn Psychiatric Hospital, followed by two years of child and adolescent fellowship at Timberlawn.
Q. Yes, sir. And fellowship -- let me see, residency in psychiatry, did it last two years?
A. General psychiatry is four, total. And then fellowship, two additional.
Q. So that's four years of residency after medical school, right?
A. Yes, sir.
Q. And then you have two additional years of training in a subspecialty to get your fellowship?
A. Yes, sir.
Q. And then you -- after you completed your

fellowship, did you go to work in Texas or where?
A. Actually, I joined the staff at Timberlawn Psychiatric Hospital and was on staff there approximately six years in their outpatient department.
Q. And that is in what city, sir?
A. Dallas, Texas.
Q. From approximately what year to what year were you at Timberlawn in Dallas?
A. From -- I joined staff in 1990 and was there approximately six years to '96.
Q. And in 19- -- what did you do, just generally? What was your duties and job responsibilities there at Timberlawn?
A. I was the lead psychiatrist in an outpatient clinic in North Dallas, just seeing general adult and adolescent and children outpatients.
Q. And then did you leave the Lower 48 in '96, sir?
A. I did. I was in private practice at that time. And actually not in '96. I left the Lower 48 in 2000.
Q. Okay. So I'm missing four years. What did you do from '96 to 2000?

A. After I left Timberlawn in '96, I joined a group practice in North Dallas and remained there for a couple of years, and then went into private practice in Garland, Texas, a suburb of Dallas, and was in private practice in December of 2000, at which time I came to Fairbanks and worked there for three years.
Q. Okay. Small world. My sister used to live in Garland.
So you worked in Texas from '96 to 2000, and I think you said you came to Fairbanks, Alaska?
A. That's correct.
Q. Can you tell the jury, please, what you did as a practicing psychiatrist in Fairbanks starting in 2000?
A. Yes. They -- Fairbanks Memorial Hospital built an adult psychiatric facility and were recruiting -- they did a nationwide recruitment for medical director of mental health, and I took that position.
So I was part-time administrative, part-time clinical. I did have a patient load, and did some administrative duties on the unit as well.

Q. And maybe I missed it and I apologize. What was the name of the unit or the facility in Fairbanks?
A. Fairbanks Memorial Hospital, their mental health unit.
Q. And you said you were medical director of that unit, sir?
A. Yes, sir.
Q. Can you describe for the jury and for me what kind of job responsibilities, what kind of patients did you treat and things of that nature when you were in Fairbanks at the Fairbanks Memorial Hospital?
A. Yes. It's a 20-bed, all-adult unit, ages 16 and up, actually, we would take. And just -- pretty much a general psychiatric facility. Patients generally came in involuntarily and were converted into a voluntary status, usually within a day or two. It is a locked psychiatric unit. General diagnoses; depression, schizophrenia, bipolar.
Q. Twenty beds?
A. Yes, sir.
Q. You said in addition to your administrative responsibilities you also had

treatment duties in Fairbanks?
A. Some administrative duties as well.
Q. Yes, sir. We're going to get into more detail in a minute but we just heard the testimony or the jury heard of Ms. Joey L. Eski, a sales representative from Eli Lilly. I have some notes we're going to go over in a minute, but, Ms. Eski, for example, as a representative of Eli Lilly, would call upon you when you were in Fairbanks?
A. Yes, sir.
Q. And, in fact, since you left Fairbanks, she has called upon you and she and other representatives of Eli Lilly have called upon you here at the API here in Anchorage?
A. That is correct.
Q. Okay, sir. And I don't need you to give an exhaustive list, and you may not recall the names, but you recall Ms. Cramer that also would have called upon you for Eli Lilly?
A. I can't place her last name.
Q. I think -- okay. And I don't know her first name. I can find out. I apologize. We'll move on.
Sir, now, you left -- I think you

said you left Fairbanks and came to Anchorage in 2003; is that right?
A. That's correct.
Q. And where did you go to work in 2003 here in Anchorage?
A. I was recruited to be the medical director at Alaska Psychiatric Institute.
Q. And how large a facility is Alaska Psychiatric Institute?
A. API -- we're an 80-bed facility. We're the State's only State mental health facility.
Q. And can you briefly describe for the jury -- do you have -- by the way, do you have the same types of job responsibilities at API as you had in Fairbanks?
A. Actually very different.
Q. Okay.
A. My role is primarily administrative at API.
I have clinical supervision of -- and responsible for all clinical services within the hospital, including physicians, nurses, psychology, all clinical services.
Q. And clinical services in laymen's terms means treatment services?

A. That's correct.
Q. Do you help establish the protocols and the types of procedures that must be in place for the treatment of patients there at API?
A. I do.
Q. And do the people at API, as the medical director, look to you to -- for guidance in establishing those protocols and procedures?
A. I do play a lead role in that, yes.
Q. Now, Doctor, I don't -- I know it's sometimes embarrassing to brag on yourself but can you tell the jury some honors you've received -- I know, I've read your deposition that was taken by the -- the attorneys for Eli Lilly took your deposition last December 11th, about three months ago; is that right?
A. That's correct.
Q. I read in that deposition you are currently the president of the Alaska Psychiatric Association, sir?
A. That's correct.
Q. And -- excuse me -- you were elected by your peers, I take it, in that area?
A. I was.
Q. Any other honors or -- that you feel --

would you like to tell us about or -- at all?
A. Well, I wear a couple of other hats --
Q. Yes, sir.
A. -- as well. In addition, I'm -- another role that I play, I'm the lead psychiatrist in the Behavioral Pharmacy Management System for the State of Alaska. And I'm on the -- I was selected to be on the Pharmacy and Therapeutics committee for the State of Alaska as well.
Q. Yes, sir. Okay, sir.
Now, at the Alaska Psychiatric Institute, do you all treat the most acutely ill psychiatric patients in the state?
A. We do.
Q. And would those be patients with acute schizophrenia?
A. Oftentimes.
Q. Yes, sir. Now, would you agree that at least in your facility here in Alaska that you are on the cutting edge of psychiatry as opposed to a community-based psychiatrist who has an office practice?
A. I would hope so. That is our goal, yes.
Q. Yes, sir. And your -- you would have here at Alaska Psychiatric Institute and based

upon the facilities and your position, you would be in a position, I guess, cutting edge, you would even know more than the average practicing psychiatrist in a community office setting here in Alaska or any other state for that matter?
A. We would hope so, yes.
Q. Yes, sir. And you certainly would have more knowledge than a primary-care doctor or family doctor that would use Zyprexa; is that true?
MS. GUSSACK: Objection, Your Honor. Leading.
THE COURT: Could you rephrase it?
MR. ALLEN: Yes, sir, let me just rephrase it.
Q. Would you have more knowledge than a primary-care doctor or family doctor who -- either here in Alaska or in the United States, in all 50 states, that would treat psychiatric patients?
A. Because of our specialty training, we would consider ourselves specialists in that area, yes.
Q. Doctor, do you -- are you familiar with a package insert?

A. Yes.
Q. Okay. Do you have an opinion as to whether or not the warnings section of a package insert is important to a prescriber concerning a description of the risk of a product you were going to prescribe?
MS. GUSSACK: Your Honor, may we approach?
(Bench discussion.)
MS. GUSSACK: We object to opinions being elicited from the witness who plainly has not been identified as an expert on the subject --
MR. ALLEN: I'll ask him as a fact.
THE COURT: You can -- I'm not going to let you ask him as an expert per expert, but he can be asked questions as a hybrid witness that -- in describing what he does as his work, he can explain things to the jury and explain how those things affect him for his work.
(End of bench discussion.)
Q. (BY MR. ALLEN) Doctor, occasionally we'll have these interruptions and that's fine. I apologize.
Doctor, to you, as a practicing

psychiatrist at the Alaska Psychiatric Institute, is a warning in a package insert, in general, and on Zyprexa, in particular, important to you?
A. Yes.
Q. And can you tell the jury why that is?
A. The -- the PDR is the Physicians' Desk Reference. It's a large book that's updated every year by the pharmaceutical companies and it tells all about the drug, its chemical structure, indications for use, general prescribing recommendations. And then there are sections also that include warnings and then adverse side effects.
And the warnings section generally comes first in the PDR section, and it's an area that really stands out first. It's usually bolded. Sometimes has a little black outline or box around it. So it's something that you can very quickly, if you're going to prescribe something, check to see what the general major warnings are for a drug, as opposed to moving on later on, further into the data, to the adverse side effects section that's generally broken down to frequent, severe, less frequent and then rare or occasional.

And those are paragraphs that group different adverse side effects together based upon the severity and general frequency or incidence that you might experience.

Q. Thank you. I didn't interrupt you, did I?

A. No.

Q. Sir, I'm going to put on the screen --

MR. ALLEN: Sorry.

Q. (BY MR. ALLEN) Sir, I'm going to put on the screen a statement from counsel for Eli Lilly that was made in opening statement. She said --

MS. GUSSACK: Your Honor, may we approach?

THE COURT: Sure.

(Bench discussion.)

MS. GUSSACK: This is plainly improper to have opening statements by counsel be used. It's not evidence in the case.

THE COURT: Well, that's not evidence but his testimony -- I mean, I assume he's going to ask him if he agrees and that's something he does. Actually, I don't want you to ask him if he agrees, I want you to ask him if it's something he uses in his practice.

MS. GUSSACK: He doesn't need to use opening statement to raise the question.

THE COURT: But that's -- I think that's -- I'll allow it.

(End of bench discussion.)

Q. (BY MR. ALLEN) And I think you have a screen in front of you, so you can -- on opening statement, counsel for Eli Lilly says, They -- referring to doctors -- are weighing the risks against the benefits. There is no one medication that is perfect for everybody, and there is no medication that doesn't have risks. But our physicians are making that hard choice every day to try to make sure that the prescriptions they're making is the best one for us.

Do you see that, sir?

A. Yes.

Q. Do you agree that you have to make a hard choice every day when you prescribe medication to patients?

A. I think when you prescribe any medication you have to weigh all of the risks and benefits, yes.

Q. And so in making that decision, would you like more or would you like less information

from the manufacturer concerning the product of their drug?

A. More.

Q. I think that's self-explanatory, but can you tell us why you would prefer more as opposed to less information?

A. Well, you know, it comes down to basically physicians try to do the best thing for their patients. If they're specialists in their field, you might even consider them scientists in some way. And, you know, it's very important that they be given all the information available and correct information so that you can weigh those risks versus the benefits to make the correct decision to prescribe that for your patients.

Q. Doctor, in making this hard decision, in weighing the risks and benefits, would you want Eli Lilly to withhold information that they have on Zyprexa from you?

A. Absolutely not.

Q. And can you briefly explain why that is?

A. I think that puts you at a significant disadvantage to make the decisions for your patients if you're not given all the correct

information in a timely manner that the manufacturer understands and learns that information about their product.

Q. And, sir, that's -- sometimes I think we get lost in this trial. Ultimately, it is about patients, isn't it, sir?

A. Yes.

Q. It's about real people?

A. That's correct.

Q. And they're the people that may or may not suffer the real consequences of the medication?

A. That is correct.

Q. And I know we have been over it, but would you agree or do you have an opinion as to whether or not diabetes is a bad disease?

MS. GUSSACK: Objection. Eliciting an opinion from Dr. Hopson here.

THE COURT: I'll allow that, because I think it's within his medical expertise and as part of a doctor explaining things.

Q. (BY MR. ALLEN) Is diabetes bad to you, Doctor?

A. Yes.

Q. Thank you.

Doctor, in obtaining information from a pharmaceutical company, would you want a pharmaceutical company to have as one of its written goals the elimination of a health risk from a doctor's mind when the doctor is weighing the risks and benefits of the product?
A. No, I would not.
Q. Can you explain why you would not want as a written policy for a drug company to try to eliminate from your mind the health risk of a product?
A. I think, if anything, the manufacturer would want to be making us aware of the risks rather than trying to eliminate any concern, and almost to the point of making us ignore or not be cognizant and aware of the risk.
Q. Doctor, we've heard from Ms. Eski. She had testified just within the last few minutes that she as a representative of Eli Lilly would act as a resource for you. Is that true?
A. Yes.
Q. And do you look upon the sales representatives from Eli Lilly when they provide you information about the -- both the benefits and the risks of a product as a resource?

A. Yes.
Q. Do you depend upon them to be truthful and accurate?
A. I do.
Q. Yes. And Ms. Eski has testified that she obtains her information that she gives you from the company. Do you understand that?
A. Yes.
Q. And you like Ms. Eski, I take it? She's a very nice lady.
A. Yes.
Q. And you're not here, and I don't want anybody to suspect you are, criticizing Ms. Eski, are you, sir?
A. No.
Q. Thank you, sir.
Now, sir, are you -- are you a law enforcement officer in this state?
A. No.
Q. I know that's obvious, but I have to get things for the record.
Are you familiar with, sir, the Alaska Unfair Trade Practices and Consumer Protection Act?
A. No.

Q. Do you have any law enforcement responsibilities under that Act?
A. No.
Q. Do you understand that the Attorney General of the State of Alaska is the person that enforces the laws in this state?
A. Yes.
Q. Yes, sir and I've been hired by the attorney general to represent the State of Alaska. Do you have any criticisms or complaints or beliefs that the Attorney General should not have brought this case that we're in -- in this courtroom on today?
A. No.
Q. Do you oppose the attorney general's action in this courthouse that he has filed against Eli Lilly?
A. No.
Q. Now, we've talked about it briefly, but the lawyers for Eli Lilly took your deposition in December. We've already talked about that; is that correct?
A. That's correct.
Q. I was not present, was I?
A. No.

Q. I read the deposition. Did the -- I didn't see, but if they did, did the lawyers for Eli Lilly provide you any of their internal correspondence, their internal e-mails, their internal memos or their internal safety data prior to the time you gave your deposition?
A. No, they did not.
Q. Have they ever provided you their internal memos, their internal e-mails, their internal reports? Have they ever provided you those -- that material?
A. No, they have not.
Q. Now, I noted in your deposition that was taken in December, again -- I noticed that the -- no one discussed with you in that deposition the October, 2007 label change. Had Ms. Eski by that time even delivered to you the new label on Zyprexa?
A. Not that I recall.
Q. At the time you gave your deposition in December -- excuse me, Doctor.
At the time you gave your deposition in December of 2007, were you familiar at that time yet, with the October, 2007 label change that the FDA had told Lilly to make?

A. No, I was not.
Q. As of the time of your deposition in December of 2007, had you seen correspondence between Eli Lilly and the FDA that had taken place back and forth in the year 2007?
A. No, I had not.
Q. Doctor, have you ever seen the correspondence that the FDA sent Eli Lilly in October of 2000 concerning an amendment that Eli Lilly had made to their adverse reaction section? Have you ever seen that correspondence from October, 2000?
A. I have more recently.
Q. Okay. We'll talk about that.
All right, sir. I want to talk about your current practice and how you treat patients and things of that nature in a little more detail. You gave us some background. Before I do that, would you agree or -- is it true or not that how you currently treat patients with schizophrenia and Zyprexa is different than how you used to treat them?
A. Yes, I think so.
Q. Okay. First, can you tell us the types of patients that you treat with Zyprexa at the

Alaska Psychiatric Institute?
A. Typical patients would be someone with acute or chronic schizophrenia, bipolar disorder. Those are the -- the primary indications for it.
Q. Do you treat patients with mood, thought and behavior disorders with Zyprexa at the Alaska Psychiatric Institute?
A. Well, I think you have to be careful grouping it into that category. Certainly a thought disorder is a schizophrenia diagnosis, so in that category, yes. Behavior disorders, you have to be careful -- you would be utilizing the drug off-label if you were to prescribe it for just a pure behavioral.
Q. Okay, sir. Now, you talked about the acute versus chronic. What does acute mean for the jury, please?
A. Acute would be like the early onset of symptoms. Perhaps first episode, first hospitalization, it's acute. Someone who has chronic illness, had it for years, had been hospitalized multiple times perhaps. Someone with a chronic illness can have an acute exacerbation of it or symptoms come back acutely. They have to go back in the hospital. So it's a

course that fluctuates on and off through the years.
Q. Now, in addition to Zyprexa, do you also utilize other second-generation antipsychotics?
A. Yes, we do.
Q. Can you tell the jury, please, what those are?
A. We essentially utilize all of them. Abilify, Geodon, Seroquel, Clozaril, on occasion.
Q. Yes, sir. Let me -- over here.
In making the decision about which second-generation antipsychotic to use, do you look at the various risk profiles and the patient you're treating in order to make that decision?
A. We do.
Q. And in that process, would the warnings that are contained within the various package inserts on the drug be important to you in weighing -- to make the decision which patients are appropriate?
A. It would be.
Q. And this phrase -- I think I used on opening statement in a memo -- is there a difference between first-line and second-line therapy?

A. Yes.
Q. Okay. In your deposition, you were asked a question by Mr. Rogoff -- you recognize Mr. Rogoff, the attorney back here on the back row that took your deposition for Eli Lilly?
A. I do.
Q. Mr. Rogoff asked you this question: Why is it that you would continue to prescribe Zyprexa --
MS. GUSSACK: Excuse me, Your Honor. I'm not sure why we're using testimony from a deposition unless Mr. Allen is inpeaching the witness.
MR. ALLEN: I'm not impeaching the witness.
THE COURT: Are you going to ask him that question?
MR. ALLEN: Yes, sir.
THE COURT: Okay.
MS. GUSSACK: Well, then we don't need the deposition transcript to ask him the question, right?
THE COURT: You don't need the deposition to ask him the question. I just don't want to imply that he's just agreeing --

MR. ALLEN: I'll do whatever the Court tells me to do.
THE COURT: Ask the question. Don't use the deposition unless you need to refresh his recollection or something like that.
Q. (BY MR. ALLEN) If you need your recollection refreshed, ask me and I'll do that, okay?
A. Okay.
Q. The question would be: Why is it that you would continue to prescribe Zyprexa given that -- and this is Mr. Rogoff -- given that higher risk of weight gain, lipids and diabetes -- let me see if I can rephrase it, because maybe it's a little unclear.
Why is it that you would continue to prescribe Zyprexa given that higher risk of weight gain, lipids and diabetes? Can you explain?
A. Well, we have to -- as I said earlier, we have to always weigh the risks and benefits, and oftentimes you have a patient that perhaps has not responded to other medications with a less serious side effect profile, and you might need to use Zyprexa in that case.

Q. Yes, sir. And so when you're weighing the risks and benefits, the drug that you use first is your first-line therapy?
A. That's correct.
Q. And you prefer, if you can, to use a medication with less risk as opposed to more risk and see if that's effective; is that correct?
A. That's correct.
Q. Now, if someone were to tell you and you were to believe that the risks were comparable among all the antipsychotics, you would not be able to make that decision; is that correct?
A. It would make it more difficult, yes, sir.
Q. Yes, sir. And that's why it's important not to tell someone that the risks are comparable when the risks are not comparable --
THE COURT: Mr. Allen, you're getting. There's much too much leading going on.
Q. (BY MR. ALLEN) Is that why it's important not to tell somebody if it's comparable versus -- when it's not, about the risk?
A. Yes.
Q. Thank you, sir.
You were asked in your deposition

whether there were doctors in your group at API who treated Zyprexa -- who used Zyprexa first-line today. Are there any that use Zyprexa first-line today?
A. Yes.
Q. Okay. And you said at the time, sir, that that's possible? Yes.
Is there some particular subset of patients where Zyprexa is used first-line?
A. Is there a subset of patients?
Q. Yes or is there a particular type?
A. Yes. A patient, as I said earlier, that perhaps has not responded to a medication with a lesser side-effect profile.
Q. Okay. And, sir, I'd like for more detail to describe this type of patient. You've said acute or chronically schizophrenic, and I'd like just to give an understanding so we can actually better understand what that is, acutely schizophrenic.
A. Someone -- an individual who is experiencing hallucinations, hearing voices in their head, perhaps experiencing paranoid delusions, feeling that someone is plotting against them, someone is trying to harm them.

That causes the individual a great deal of anxiety, fear. They may do something dangerous and impulsive. They can act out aggressively. They can act out self-destructively, but most important they're in a great deal of psychic turmoil and a lot of psychic pain as a result of these symptoms.
Q. Now, do those patients or their families still deserve to have the ability to be informed about the risks and side effects of a product?
A. Yes.
Q. And after -- in your current practice, after you explain the risk of Zyprexa, do some patients and families refuse Zyprexa?
A. They do.
Q. And so when you explain -- do you explain to the families and their patients at Alaska's API, do you explain to them the different risks with Zyprexa from the other second-generation antipsychotics?
A. We do.
Q. And so it has, in fact, made a difference to patients and families when you explain the risk?
A. It does.

Q. Thank you, sir.
Now, when you do prescribe Zyprexa -- and you do, right?
A. That's correct.
Q. Do you monitor those patients?
A. We do.
Q. And can you describe for the jury, please, the monitoring that you conduct on these patients?
A. We now obtain -- when a patient comes in the hospital, we obtain their weight. We obtain their baseline fasting blood sugar. We obtain fasting lipid levels. And we document that data when they come in the hospital. And should they come back in the hospital at a subsequent point in time, we compare those rates. So we, in essence, now monitor that.
Q. And is one of the things that you monitor -- maybe you said it and I missed it and I apologize -- is one of the things that you monitor blood glucose?
A. Yes, fasting blood sugar.
Q. And why do you do that?
A. Because we now know that patients that take Zyprexa are -- have a significantly high,

increased risk of developing high fasting blood glucose levels.
Q. Now, do you take a baseline blood glucose before you administer the Zyprexa?
A. Yes.
Q. And can you briefly describe for the jury what a baseline blood glucose is?
A. Well, it would be if the patient is not taking any medication, we try to get a fasting, which would be first blood draw in the morning after nothing by mouth for 12 hours, minimum, the night before.
Q. And that tells you what their blood glucose is before they start on Zyprexa?
A. Before they start on Zyprexa or before they have any food to eat, which could also raise it, so we get a really good baseline.
Q. If you determine that the patient's blood glucose is elevated and/or if the patient's blood glucose is diabetic prior to the time of Zyprexa, do you -- do you start the patient on Zyprexa?
A. More than likely, we would not.
Q. And go ahead. I'm sorry.
A. Well, I think we would take that into

account. Now that we know that Zyprexa's going to raise the blood glucose level even further, if they're already baseline or have diabetic levels of blood sugar, that would not be the best choice for them.
Q. Why would it not be the best choice?
A. Because it could make their diabetes worse. It could push them possibly into frank diabetes.
Q. Is that in the warning in the package insert concerning the risk of diabetes is important to doctors?
A. Yes.
THE COURT: Doctor, you used the term frank diabetes, and I'm not sure we've heard that before. What does that mean?
THE WITNESS: Just a term that -- to mean that it establishes the diagnosis. It would establish the symptoms, and the person thereafter would have that diagnosis.
MR. ALLEN: Thank you.
Q. (BY MR. ALLEN) Now, that was not always your procedure, was it, sir?
A. No, it was not.
Q. When did you change to begin this

monitoring process that you just discussed with the jury?
A. I think it's been -- our more structured process has actually been in place since around October of 2004.
Q. And can you tell me how you know that?
A. Because at -- that's the point in time when I hired a new family practice physician to come on board and as part of her implementing new protocols, that, coupled with our increasing concern about the risk of this medication, and so we began monitoring that.
Q. So you did not use this procedure when you first got to API; is that correct?
A. That's correct.
Q. And you did not use this procedure when you were in Fairbanks; is that correct?
A. Not in a structured way. No, we did not.
Q. Now, you said it was 2004. If you look on your screen, Doctor -- I'm going to -- I'm going to put up on the screen what's been marked as State of Alaska Exhibit -- I can't even read these numbers.
MR. SUGGS: 2368.

MR. ALLEN: 23 --
MR. SUGGS: -- 68. I'm trying to focus this.
THE COURT: You're going the wrong way.
Q. (BY MR. ALLEN) All right. 2368.
This is -- I'll try to zoom out now -- the ConSensus development conference on Antipsychotic Drugs and Obesity and Diabetes.
Have you seen this before, sir?
A. Yes.
Q. And it was published -- let me get my finger on it -- February of 2004. Do you see that, sir?
A. Yes.
Q. Has this been utilized by you and other psychiatrists at Alaska -- have protocols and findings in this publication been utilized by you and other psychiatrists at API?
A. Yes. The recommendations that are listed, they are the standard protocols that are generally followed now.
Q. Yes, sir. And I'll try to get one -- and by the way, before I do that.
Table 2 in the ConSensus statement

lists the second-generation antipsychotics and their metabolic abnormalities and risks. Have you seen this table before?
A. Yes, I have.
Q. Do you feel that table is authoritative and do you agree with it?
A. I do.
Q. Now, within the ConSensus statement it says: Given the above risks, how should patients be monitored for the development of significant weight gain, dyslipidemia and diabetes, and how should they be treated if diabetes develops?
And it says: Given the serious health risks, patients taking SGAs should receive appropriate baseline screening and ongoing monitoring.
Is that correct?
A. That is correct.
Q. Is that precisely what you do at API?
A. It is.
Q. Sir, you said if the patient has elevated glucose or is already diabetic you don't administer the medication because you're concerned about them developing frank diabetes.
Do you recall that?

A. Yes.
Q. Now, you said you continued to monitor the patients -- if they don't have that problem and you put them on Zyprexa, you then -- do you continue to monitor the patient's blood glucose after they're on Zyprexa?
A. The recommendation is to do that. You would do it at specified intervals, four weeks, quarterly, that sort of thing, but our length of stay being what it is, they are -- that followup is generally done by the outpatient provider.
Q. That's something I forgot to ask you about. I'm glad you made that clear.
What is the average length of stay of these patients that you put on Zyprexa?
A. Thirteen days in the hospital.
Q. Is that generally the length of time that you have them on Zyprexa?
A. Roughly, yes.
Q. So approximately a little less than two weeks?
A. Yes.
Q. Okay. Doctor, would you permit the administration of Zyprexa at API without blood monitoring?

A. No.
Q. Can you tell the jury why you would not permit that?
A. It's part of our standard protocol. Before our prescribing psychotropic medications, antipsychotic medications like Zyprexa.
Q. Doctor, you told us you did not always follow that protocol when you got to API and back at the time you were in Fairbanks? Do you recall that?
A. That's correct.
Q. Did the manufacturer Eli Lilly ever come to you before you changed your practice in 2004 and recommend to you either through Ms. Eski or the -- any material that you got, did they ever tell you that you should be blood monitoring all the patients?
A. Not that I recall.
THE COURT: Let me just try to clear something up, Doctor. I think you said that length of stay was about 13 days for these patients.
THE WITNESS: Yes.
THE COURT: And if they're on Zyprexa for 13 days and Zyprexa is relieving

symptoms of their schizophrenia, what happens to them then after the 13 days?

THE WITNESS: They're referred to an outpatient provider, local community or their home community. We would convey to them what medications they are and recommend the followup bloodwork.

Q. (BY MR. ALLEN) And do you leave it to the doctors who follow up with the patient to make their own decisions about what type of medication to put them on?

A. Yes. It's a community standard.

Q. Yes, sir.

I can't remember where I was. Oh, yes, blood monitoring.

Prior to the time you began this protocol -- and by the way, we use that word. Tell the jury what a protocol is, if I hadn't explained it already.

A. It's a standardized treatment process, certain things you do. Certain labs you draw. Certain things you monitor. We have all sorts of protocols in medicine, things we follow. Our process, procedural for doing things.

Q. And you would be, in essence, part of

your role as the medical director both at API and in Fairbanks is to help establish those protocols?

A. That's correct.

Q. That's really one of your lead roles and primary roles?

A. That's correct.

Q. Sir, I'm going to show you what's been marked and admitted into evidence as Exhibit 320, a Japanese Dear Doctor letter.

Let me zoom out, if I can do it. Doctor, right here, I'll put my finger on it on -- can you see -- let me zoom in, I guess. I'm going to make everybody dizzy.

All right. April 2002. Do you see that, sir?

A. Yes, sir.

Q. This would have been prior to the time that you began your routine protocol blood monitoring, true?

A. Yes.

Q. Did Eli Lilly or any of its representatives ever come to you in 2002 or ever and inform you about the Japanese label change concerning Zyprexa?

A. Not that I recall, no.

Q. Did any representative from Eli Lilly or any information from Eli Lilly inform you about the change in the special warnings and precautions section concerning Zyprexa and diabetes that took place in 1999?

A. Not that I recall, no.

Q. Okay. Doctor, in 2002, the Japanese required these three things: Do not administer to patients with diabetes mellitus and those who have a history of diabetes mellitus.

Do you see that?

A. I do.

Q. That's precisely what you're doing today, is it not?

A. It is.

Q. And prior to the time of your changing the protocol in the fall of 2004, that is not what you did, is it?

A. That's correct.

Q. Doctor, do you -- let me go on.

The Japanese also told Eli Lilly on their Zyprexa in Japan that during the administration of this product, observe sufficiently with such as measurement of blood

glucose.

Do you see that?

A. Yes.

Q. That's exactly what you do now?

A. It is.

Q. Did anybody from Eli Lilly come to you in April of 2002 and tell you that?

A. Not that I recall.

Q. Did you do that back in --

A. At that time, we did not do it on a regular basis for the monitoring of Zyprexa.

Q. And, finally, they said: Explain sufficiently to the patient and family members the risks of serious adverse reactions such as diabetic ketoacidosis and diabetic coma.

Do you see that?

A. Yes.

Q. And you explain those risks to patients today, do you not?

A. We do.

Q. And you in fact have found that some patients refuse those med- -- Zyprexa now?

A. That's correct.

Q. Doctor, prior to the time that you have instituted this policy and protocol at Alaska

Psychiatric Institute, do you believe that some patients, schizophrenics, developed diabetes because of Zyprexa's administration since you didn't have the protocol that you have now?

MS. GUSSACK: Objection. Your Honor -- may we be seen?

THE COURT: You may.

(Bench conference.)

MS. GUSSACK: I think the question just posed really is a Phase 2 question; it's a damage question. And we haven't been given opportunity to obtain the information that would allow us to have cross-examination on this issue.

THE COURT: I'm going to overrule that objection, but I want you to establish that he's got sufficient information to ask that question. In other words, I've got concerns about whether -- what the basis is going to be and where this is coming from and whether it's -- if it's coming from his practice, personal practice, I'll allow him to answer the question if it's coming from the literature he's becoming an expert --

MS. GUSSACK: I want to make sure that the objection is clear that in the absence

of being provided information about the patients he's speaking to, we have been deprived the opportunity to cross-examine him fairly effectively as to his cause between Zyprexa and diabetes. We're without information that would allow us to challenge that as to risk factors in prior years --

THE COURT: I understand the objection.

(End of bench conference.)

Q. (BY MR. ALLEN) Sir, let me go back to where I was.

The protocol that you currently have, you've discussed it with us?

A. Yes.

Q. Do you wish you had instituted that protocol earlier based upon what you know about the risk of Zyprexa today?

MS. GUSSACK: Objection. Your Honor, I don't think we're here to establish wishes --

MR. ALLEN: I could change the word to believe -- what word -- whatever word --

THE COURT: No, you pick the word. Change it.

Q. (BY MR. ALLEN) Wish -- okay. Do you -- let me see what the question was --

In your professional judgment, do you believe that the protocol that you have now is a better protocol for patients' health than it used to be?

A. I do.

Q. And why is that?

A. Because I think with our current understanding of the risks, we are better equipped to monitor for the potential side effects.

MR. ALLEN: You know, it's funny. Mr. Fibich always gets mad at me for whispering in his ear. What's my next question?

THE COURT: You're being a little loud, Mr. Fibich.

MR. ALLEN: We've tried four cases together and we do this all the time. What was my next question?

Q. (BY MR. ALLEN) And what does this achieve, this new protocol?

A. Well, it achieves consistent monitoring of the recommended blood values, if you will, to monitor the patient for the development of

potentially dangerous side effects.

Q. Doctor, I'm going to put up on the screen Exhibit 7971 that's been admitted in this case, which is a Zyprexa Implementation Guide.

Do you see that, sir?

A. Yes.

Q. And we've heard Ms. Eski tell the jury that implementation guides are used to train sales representatives, and I want to ask you whether or not you think it is an appropriate key message from Eli Lilly that with Zyprexa there is no need for blood monitoring?

A. I do not think that's appropriate.

Q. And, in fact, they have a frequently asked questions and answers and it says: Do I need to do any blood monitoring with Zyprexa? Eli Lilly answers, no.

Do you see that?

A. I do.

Q. Do you disagree with that statement, sir?

A. I disagree with it.

Q. Yes, sir.

Sir, I'm going to put up on the screen Exhibit 5846. Zyprexa launch meeting,

Viva Zyprexa PowerPoint.
Key message elements --
MR. LEHNER: Your Honor --
MR. ALLEN: Is it too -- I don't --
MS. GUSSACK: Can we check whether this has been admitted over objection.
MR. ALLEN: It's admitted yesterday.
THE COURT: Has 5846 been admitted?
THE CLERK: I had it done on 3/3.
MR. ALLEN: I'll take it off.
THE COURT: We've got it listed as admitted.
MS. GUSSACK: Thank you, Your Honor.
MR. ALLEN: May I proceed?
THE COURT: You may.
Q. (BY MR. ALLEN) Zyprexa Primary-care Key Message Elements, ease of use, no blood monitoring.
Do you see that, sir?
A. I do.
Q. Do you think it would be an appropriate thing to tell primary-care physicians who may decide to prescribe Zyprexa that there is no need

for blood monitoring?
A. I do not.
Q. Would that create the potential for danger to patients who took Zyprexa if they did not do blood monitoring?
A. It could, yes.
Q. And what would the dangers that it would create for patients, for patients who took Zyprexa if there is no blood monitoring?
A. They could be developing diabetes or other serious side effects and not be aware of it.
Q. Yes, sir.
That was -- the document is going to be shown is October of 2000, 5846. Back in October, 2000, you were not doing blood monitoring either, regularly, were you, sir?
A. Not specifically for those side effects, no.
Q. Eli Lilly had not -- had Eli Lilly told you in October of 2000 that they had statistically significant elevations in blood glucose in their original clinical trials done on Zyprexa?
A. Not that I recall, no.

Q. Sir, I'm going to show you, in fact, the 2001 PDR. Again, you've told us -- I messed up something -- and you've told us what the PDR is -- do we have a PDR here?
I'm sorry. All right. But this is the book -- it's a big book, isn't it?
A. That's correct.
Q. And in the 2001 PDR I'm going to go to the laboratory changes section which is within the adverse reaction section.
You follow me, sir? I know it's hard to follow me with the change. Do you see that up there, sir?
A. Yes.
Q. I apologize for my lengthy reading here, sir, and I have a question on the end. I have to get it where I can read it. It says: In the olanzapine clinical trial database, as of September the 30th, 1999, 4,577 olanzapine-treated patients, (representing approximately 2,255 patient years of exposure), and 445 placebo-treated patients who had no history of diabetes mellitus and whose baseline random glucose levels were 140 milligrams per deciliter or lower, were identified. Persistent

random glucose levels greater than or equal to 200 milligrams per deciliter, (suggestive of possible diabetes), were observed in 0.8 percent of olanzapine-treated patients, (placebo 0.7 percent) of patients. Transient, i.e., resolved while the patients remained on treatment, random glucose levels greater than or equal to 200 milligrams per deciliter were found in 0.3 percent olanzapine-treated patients, placebo 0.2 percent.
Persistent random glucose levels greater than or equal to 160 milligrams per deciliter, but less than 200 milligrams per deciliter, possibly hyperglycemia, not necessarily diabetes, were observed in 1 percent of olanzapine-treated patients, placebo, 1.1 percent. Transient random glucose levels greater than or equal to 160 milligrams per deciliter, but less than 200 milligrams per deciliter were found in 1 percent of olanzapine-treated patients, placebo 0.4 percent.
Did I read that correctly, sir?
A. You did.
Q. Now, in this package insert, this information that was contained in the 2001 PDR,

did that information relay -- make it appear that the glucose levels for placebo and olanzapine were approximately the same?
A. It does make it appear that way.
Q. Would that be reassuring information if you were to receive that information?
A. If you were to read that, you would think that olanzapine would not significantly increase random glucose levels.
Q. When compared to placebo?
A. That's correct.
Q. It would be like an implied safety message?
A. It could be.
MS. GUSSACK: Objection, Your Honor.
THE COURT: What was --
MS. GUSSACK: Objection, it was leading.
THE COURT: It's been answered, but -- go on.
Q. (BY MR. ALLEN) Okay. Do you have an opinion as to whether or not this would be like an implied safety message or not?
MS. GUSSACK: Your Honor, we're

repeating the offending --
MR. ALLEN: I didn't hear the answer.
THE COURT: What was your answer?
A. I believe I said that it could possibly be construed as a safety message.
Q. Yes. And that -- does this language show any statistically significant -- differences between -- a significant clinical differences, significant clinical differences between Zyprexa and a placebo in glucose?
A. No.
Q. I think you said you have seen this letter before, the October, 2000 letter that came from the FDA to Eli Lilly?
A. Yes.
Q. Okay. And this --
MS. GUSSACK: Your Honor, I don't believe there's been any testimony that this letter was seen by Dr. Hopson. Not here today. Certainly there's been no testimony about an October, 2000 letter.
THE COURT: Again, my notes don't reflect there was one document that early on in his testimony Mr. Allen asked the doctor about,

and he said he had seen it and Mr. Allen said we'll get back to that and there was a pause.
MR. ALLEN: That was it.
THE COURT: And he circled his notes. I don't know if this is the document or not.
MR. ALLEN: You can look at my notes, if you'd like.
MS. GUSSACK: Is there an exhibit number we're referencing?
MR. ALLEN: Yes, it's Exhibit 195.
MS. GUSSACK: I'm not aware of any testimony by the witness about the document.
THE COURT: Again, I do recall that he went through and asked him a bunch of questions. Had you seen these things from Lilly? Were you told this? Did you see that? And there was one document that he indicated he had previously -- he had seen at some point. I'm not sure when.
MR. ALLEN: That's what I recall, but I'll be glad to rephrase it.
Q. (BY MR. ALLEN) Sir, this is -- Doctor, this is Exhibit 195 that's been admitted in evidence in this case. And it concerns the

language from the 2001 PDR that we just read.
Let me zoom out.
Do you see this same language -- is my highlighter working? Can you see it, sir?
A. Yes.
Q. Tell me when you flip the page. I'll represent to you that it's the same language.
A. Yes, it is.
Q. You see it's the same language?
A. Uh-huh.
Q. The FDA, upon reviewing this language says -- it looks like it was working over here. Is there a backlight or something that's making it now -- yeah, there it is.
It says -- the FDA after looking at that language said: The descriptive data that is provided expresses a certain level of implied safety with respect to treatment-emergent hyperglycemia. This reassuring language is not appropriate for submission under fancy code federal regulations, special supplement Changes Being Affected.
Do you see that, sir?
A. I do.
Q. Now, my only question to you is: Do you

agree that that language as contained in the 2001 PDR is reassuring language?
A. Yes.
Q. Do you agree that it presents a certain level of implied safety with Zyprexa?
A. Yes.
Q. And is that consistent with or inconsistent with your experience with Zyprexa?
A. Inconsistent.
Q. Is this language, sir, as contained within the 2001 PDR, in fact, false, in your experience?
MS. GUSSACK: Objection.
THE COURT: Overruled.
A. Yes.
Q. (BY MR. ALLEN) Thank you, sir.
Now, sir, you said that you would like more information from a manufacturer as opposed to less.
Do you recall that testimony?
A. Yes.
Q. I'm going to show you what's been marked as Exhibit 990 in this case.
Attachment E to the global operations labeling department in Indianapolis.

I'll represent to you this is an internal Eli Lilly document. Do you see that, sir?
A. I do.
Q. Again, at the time Mr. Rogoff back here took your deposition, did he provide you with this document?
A. No, he did not.
Q. Has anybody from Eli Lilly ever provided you this document?
A. No, they have not.
Q. And it was concerning a labeling -- a labeling -- and by the way, I talked to the jury about this on opening. Labeling, package insert, PDR, you understand those terms?
A. Yes, I do.
Q. And are they often used in medicine in vernacular interchangeably?
A. They are.
Q. Yes, sir. And this concerned an internal labeling committee meeting at Eli Lilly's headquarters in Indiana in February of 2000. Do you see that, sir?
A. I do.
Q. And I won't go through the entire document. But they were talking about changing

the package insert information in the adverse reaction section on hyperglycemia from rare to common or frequent. But I want to get this language, how is -- how has this proposal arisen? They say: Recent review of random glucose levels of patients in olanzapine clinical trials revealed that the incidence of treatment-emergent hyperglycemia in olanzapine group, 3.6 percent, was higher than that in the placebo group, 1.05 percent. For common events, incidences from clinical trials provides more meaningful information.
Did you read that, sir?
A. Yes, I did.
Q. And this was, in fact, meaningful information from a clinical trial. Do you see that, sir?
A. I do.
Q. Do you see that, in fact, in internal Lilly documents in February of 2000, they had information indicating that patients on Zyprexa experienced elevations of blood glucose over 3 and a half -- over 3 and a half times that of placebo patients?
A. I do.

Q. Isn't that completely inconsistent with this data placement of 2001 PDR?
A. It is inconsistent with it.
Q. Yes, sir.
Now, assume, Doctor, that Eli Lilly has a reason they wanted to put this data in the 2001 PDR. Will you assume that for me?
A. Okay.
Q. Shouldn't they also share with you all of the information that they have?
A. They should.
Q. And if Eli Lilly has information on, let's say the right hand and they have information on the left hand, would you like to have all that information?
A. Absolutely, so you can make an informed decision.
Q. And if Eli Lilly disagrees with the information, can they provide that information to you anyway?
A. Yes.
Q. And they can tell you they disagree?
A. Yes.
Q. Did anybody from Eli Lilly, Ms. Eski or any of the other sales representatives or in a

letter or in a warning, come to you back in 2000 and tell you -- you were in Alaska in 2000, were you not?
A. 2001, January.
Q. I'm sorry. Back when you were in Texas, my home state. Is that where you were before --
A. Yeah.
Q. Did they come to you and tell you that we have seen statistically significant elevations in blood glucose comparing Zyprexa to placebo? Did they ever tell you that?
A. Not that I recall.
Q. Sir, I am going to show you what has been marked -- I can't read this one either.
MR. HAHN: 7802. 7802.
MR. ALLEN: I want to see it.
7802.
Q. (BY MR. ALLEN) Let me zoom out. It doesn't have a date on it, but we've been told from their database -- I don't recall the exact date. I think it was June -- I think it was June or July -- I know it was 2002 in the summer. I think it was either June or July -- June 24th, as I recall.
I think it's June 24th -- assume

with me the evidence will show it's in the summer of 2000. Either June or July.
And this is an internal study called the HGFU study. And it's a listing of treatment-emergent abnormal lab findings in olanzapine-treated patients.
THE COURT: What's the exhibit number again?
A SPEAKER: 7802.
MR. ALLEN: 7802, Your Honor.
THE COURT: Thank you.
Q. (BY MR. ALLEN) Olanzapine-treated patients. Placebo-controlled F1D-MC-HGFU and I'll stop, okay.
But it's lab results. Do you see that, sir?
A. Yes.
Q. Okay. I'm going to zoom out again. I apologize.
And it compares olanzapine and a placebo, and I think the olanzapine is in combination with a mood-stabilizer and placebo is in combination with a mood stabilizer.
But what I want to focus on is the nonfasting high glucose. Do you see that column,

sir?
A. Yes.
Q. And it indicated that for the olanzapine patients, there was nonfasting high glucose in 2.2 percent and in the placebo 0 percent.
Do you see that?
A. I do.
Q. And then it has a code out here under these columns and the code is A.
Do you see that, sir?
A. I do.
Q. And then they provide a legend to the code. Event probably causally related.
Do you see that, sir?
A. I do.
Q. My question to you is, sir: By the summer of 2002, had any representative from Eli Lilly, any letter from Eli Lilly, any correspondence, phone call, anything come to you and told you that the Eli Lilly Company had evidence in their files that elevations in blood glucose were probably causally related to Zyprexa?
A. Not that I recall, no.
Q. And would that be the type of important

information you would like to have?
A. Absolutely.
Q. And if they disagreed with it, would you still want to know that information?
A. I would.
Q. And why is that?
A. Because, again, it would allow me to make an informed decision as to whether or not to go ahead and prescribe that medication.
Q. Okay, sir.
I am going to show you what has been marked as Exhibit 10094. As an aside, sir, that's just proves we've been through the last 10,094. Do you see that?
A. I do.
Q. This is a letter we saw yesterday in the deposition of Robin Wojcieszek, who works for Eli Lilly, and it's a letter that Eli Lilly received from the FDA in March of 2007.
You see it's addressed to Eli Lilly?
A. Yes.
Q. In fact, I didn't notice that, but it's attention to Ms. Wojcieszek.
I want to point your attention to,

sir, page 2 of this letter.
I need some water. I apologize.
And the FDA was reviewing information on blood glucose on olanzapine and Symbyax. Do you know what Symbyax is, sir?
A. Yes.
Q. And the jury heard this yesterday, but it's a combination of olanzapine, which is Zyprexa, and fluoxetine, which is Prozac?
A. That's correct.
Q. Okay, sir. And FDA said: Regarding data displays -- again, I apologize for reading -- an overall strategy will be no subgroup patients on the basis of their status at baseline so that clinicians can better understand the risks associated with treatment of patients following into different risk categories.
Going on -- here's what I want to focus on: For example, we note that your proposed Symbyax -- Symbyax label includes information only on proportions of patients who are relatively normal at baseline with regard to random glucose. Less than 140 milligrams per deciliter, i.e., 2.9 percent of such patients receiving OFC -- that's olanzapine and fluoxetine

combination, that's Symbyax, right?
A. That's right.
Q. I'm sorry. I'm mangling this.
Are you following me?
A. Yes.
Q. 2.9 percent of such patients receiving OFY had greater levels compared to 200 patients, compared to 0.3 percent of placebo-treated patients.
Do you see that, sir?
A. I do.
Q. Now, after I mangled that all up, what that's saying is that patients who are on olanzapine have approximately ten times the amount of elevation in blood glucose as opposed to the placebo patients; is that correct?
A. That's correct.
Q. And is that completely inconsistent with what was in the 2001 PDR, sir?
A. Completely, yes.
Q. And even though different numbers are achieved, we see in the FDA letter, Exhibit 1094 -- somebody is saying something to me.
Q. (BY MR. ALLEN) We see in the Exhibit 10094 and Exhibit 990 from February of 2000 and

in Exhibit 7802, we see significant differences in elevations of blood glucose between olanzapine and placebo, do we not, sir?
A. We do.
Q. Does the fact that -- does that fact mean anything, that we see several data analyses that indicates there's a significant elevation in blood glucose between olanzapine and the placebo? Does that mean anything to you?
A. It does. It means that that is a problem, that it does occur.
Q. Yes, sir. And I want to go back to this letter --
MR. ALLEN: Your Honor, is now a good time for a break?
THE COURT: Sure, this would be a great time for a break.
MR. ALLEN: I'm sorry.
THE COURT: Ladies and gentlemen, we'll take our morning break at this point for about 15 minutes. Once again, please don't discuss this case with anyone or let anyone discuss it with you. Please try to keep an open mind until you hear all the evidence in this case.

We'll be in recess for about 15 minutes.
(Off record.)
(Break.)
(Jury in.)
THE COURT: Please be seated.
We're back on record. All members of the jury are present. Mr. Allen.
Q. (BY MR. ALLEN) Dr. Hopson. I'm going through my exam, and I'm going to try to get this done as quick as possible. I apologize.
A. You're welcome.
Q. We're on the letter from March of 2007 from the FDA to Eli Lilly, and we had finished this data of 2.9 percent of OFC patients compared to 0.3 placebo patients. Remember we were there; is that right?
A. That's correct.
Q. I want to read just a hair more. It says: However, we note that 46 percent of patients who were borderline to high at baseline, 140 to 200, had such on-treatment levels compared to only 5 percent of placebo-treated patients.
Did I read that correctly, sir?
A. You did.

Q. Is that almost a tenfold increase --
A. It is.
Q. -- between placebo and Zyprexa patients?
A. That's correct.
Q. Now, if I heard you correctly, and correct me if I'm wrong, when you have this type of patient, now -- whose baseline and before you start is above baseline. Do you start those patients on Zyprexa now, or do you treat them differently?
A. We would first attempt to treat them differently, yes.
Q. And why do you do that?
A. Because you're always going to choose a medication with the lowest side-effect profile, and they're at risk because of their elevated baseline.
Q. And is that why the disclosure of risk and findings in a warning section are so important in regard to medication?
A. Absolutely, yes.
Q. And do you see -- or not see a pattern -- we have a February, 2000 report from Eli Lilly showing statistically significant elevations in blood glucose between Zyprexa and a

placebo. We have a report from the summer of 2002 showing the same thing. And we have this report showing the same thing -- does that lead you to any conclusion as to whether or not Zyprexa is causally related to elevated blood glucose?
A. I would say that it is causally related, yes.
Q. Now, sir, in a drug label -- let me ask you this just medically -- doesn't it often take years, if not decades, to sometimes prove absolute causation?
A. Yes.
Q. And when you're evaluating a patient, when you're talking about a risk factor for a disease, if it's a deadly or serious disease, does the patient have decades to wait to see what the ultimate result will be?
A. No, no.
Q. And, in fact, to the patient, to the individual patient who is taking a medication, they don't have decades and decades, and time to go over all the literature and hope it doesn't happen to them, do they, sir?
A. No, they do not.

Q. And so when something is a risk factor for a disease, isn't it best for the patient that they be informed right away?
A. Yes.
Q. Even if they're not certain?
A. Yes.
Q. Because patients are real people, are they not, sir?
A. That's correct.
Q. They're not numbers, are they, sir?
A. No.
Q. Lastly, sir, on this point -- and by the way, sir, I represent the State of Alaska. Do you understand that?
A. Yes.
Q. And I represent the Medicaid Department who has to pay for the Medicaid bills.
Do you understand that?
A. Yes.
Q. And diabetes, you know, is a serious medical condition?
A. Yes.
Q. And certainly, you as the director of the Alaska Psychiatric Institute do not blame the State Medicaid Department for trying to recover

money if they think it's due them, do you, sir?
A. No.
Q. That's the very American way of life, isn't it, sir, to enforce --
MS. GUSSACK: Your Honor -- is that a question?
THE COURT: It wasn't finished, so...
MR. ALLEN: I'll withdraw the question.
THE COURT: Thank you.
Q. (BY MR. ALLEN) Sir, let's go to the Zyprexa -- this is the 2007 label change. You've seen it now, have you not, sir?
A. I have.
Q. Now, again, at the time Mr. Rogoff, one of the counsel back here for Eli Lilly took your deposition, he did not provide this to you, did he, sir?
A. No, he did not.
Q. Okay. Sir, well, I want to show it to you now. Just some of the information on hyperglycemia. Here it is. Warnings. I just want to get a broad view, first, if you don't mind. In the 2007 PDR. It's one page, two

pages, three pages, four pages and a half.
You see that, sir?
A. Yes, I do.
Q. Would you agree with me this is significantly more information than you had ever been provided about Zyprexa before this label change?
A. Yes.
Q. We've heard -- let's go to the data first, the numbers.
Under hyperglycemia warning and -- again, I apologize for reading, and I'm not going to read this whole thing, but we need to get it into the record, sir.
Olanzapine monotherapy in adults. In an analysis of 5 placebo-controlled adult olanzapine monotherapy studies with treatment duration up to 12 weeks -- that's three months, right, sir?
A. Right.
Q. -- olanzapine was associated with a greater mean change in fasting glucose levels compared to placebo, 2.76 milligrams per deciliter versus 0.17 milligrams per deciliter.
Did I read that correctly, sir?

A. Yes, you did.
Q. And I did the math last night, and the difference there is 16, is approximately a little over 16 times greater elevations in blood glucose on Zyprexa versus placebo; is that correct, sir?
A. That is correct.
Q. Do you see a fairly consistent pattern developing, sir?
A. Yes.
Q. Now, I want to talk to you briefly -- let me just put this on the board. This is Exhibit 10095. This is -- it's been admitted. This a letter from Eli Lilly dated October the 5th, 2007 and I think -- and I don't mean any criticism by this, Doctor, so don't take it as such.
You're saying by the time you gave your deposition in December you hadn't received this yet; is that correct?
A. That is correct.
Q. And that's -- and no one from Eli Lilly had placed it -- the sales reps had not brought it to your office; is that correct?
A. That is correct.
Q. Now, I think it's important to

understand, and I don't want to leave the impression -- how much mail do you get, Doctor? Can you describe how much mail you get on a daily basis, how much mail you get at API?
A. Maybe 30 to 50 pieces per day.
Q. And does it sometimes take -- and do you get it from just one medical company, one drug company?
A. No.
Q. Okay. And do you -- does it take a while, if the letter goes out, to get the information to you, sir?
A. Yes.
Q. Okay. Now, of course, we've seen that -- we've heard Ms. Eski testify, though, she can come by and bring you information if she wishes, right, sir?
A. Yes.
Q. And you do not recall that by December of -- 11th of 2007 when Mr. Rogoff took your deposition, you don't recall any Eli representative having brought you this yet; is that true?
A. Not that I recall.
Q. Sir, the evidence will show in this case

that in approximately December of 2003 the FDA had ordered another label change on Zyprexa, but the letter to doctors regarding that label change did not go out until March of 2004.
Do you remember the March, 2004 letter?
A. Yes, I believe I do.
Q. Yes, sir. And, in fact, in your deposition you indicated that you, upon receipt of the -- or the -- of the 2003 label change, that that had also affected your practice; is that true, sir?
A. Yes.
Q. Again, when a drug company lets you know new warnings and information and it can affect and -- in fact, you can testify to this jury, it does affect your practice?
A. It does.
Q. Thank you, sir.
All right. One more -- let's talk about comparable rates, okay, sir? Comparable rates.
You were in Fairbanks back on November the 14th, 2001, right?
A. That's correct.

Q. Now, you had the sales representatives come by your office -- by the way, not just from Eli Lilly, do sale representatives from other pharmaceutical companies come to you?
A. They do. Yes.
Q. And by the way, I don't want to pick on you. Is that common? They come to all doctors, do they not?
A. They do.
Q. You obviously can't remember each and every conversation that you've had with a sales representative over the last -- how long have you been a doctor? 12, 14 years?
A. Yes. No, I do not.
Q. You don't take notes in a computer of those calls, do you, sir?
A. No. I do not.
Q. And do you know that the sales reps actually do record what they talk to you about?
A. Yes.
Q. Sir, I'm going to show you a page out of Ms. Eski's deposition, Exhibit 8, a call note of November the 14th, 2001. Let me see if I can focus. All right.
Joey Eski, and this is you, sir,

November 14th. There's the date. You see it?
A. Yes.
Q. Duane Hopson in Fairbanks, Alaska; is that right?
A. That's correct.
Q. All right, sir. It says here -- I'm not going to read the whole thing. Stopped in quick -- and we can read it -- FBMH, that's Fairbanks Memorial Hospital where you work, right -- where you worked at the time?
A. That's correct.
Q. Let's see where I want to get to. It says they are at maximum capacity and Dr. Carroll -- who is Carroll?
A. William Carroll was a physician working with me at the time.
Q. Okay. He is still there as locum -- I'm familiar with that -- locum tenens, is that right?
A. That's correct.
Q. That is a Latin word, I think?
A. That's right.
Q. And tell the jury what locum tenens is, please.
A. Locum tenens is like a traveling

physician that moves from place to place based on need. They may practice here for three months and then move to another state for three months.
Q. Often -- I guess -- do you deserve a vacation every now and then; right?
A. Every now and then.
Q. When doctors go on vacation, you can hire locum tenens doctors and they'll come and replace people?
A. That's correct.
Q. Dr. Carroll is still there as locum. They seem to use Zyprexa first line, hard to tell from TCR report data. He doesn't really give much pushback, seems to agree with data showed him -- that is a call note on you, right, sir?
A. Right.
Q. You don't remember November the 14th, 2001, do you, sir?
A. No, I do not.
Q. Showed him diabetes data. He agreed that it made sense there are comparable rates across agents.
Do you see that?
A. I do.
Q. Does that help refresh your recollection

that back in the 2001 time period and other time periods the message that you were getting from Eli Lilly concerning diabetes and hyperglycemia was their drug was no different than the other second-generations?
A. Yes.
Q. And, in fact, Ms. Eski has testified, and we introduced in her deposition, Eski 10, which was also introduced in Mr. Noesges', another witness, Exhibit 4, that they had detail pieces with comparable rates message.
Do you see that?
A. I do.
Q. Do you recall being given this type of information from Eli Lilly sales representatives here in Alaska when they detailed you on Zyprexa?
A. I don't recall specifically.
Q. Yes, sir. Do you recall -- you don't recall the specific handout?
A. That's correct.
Q. Okay. Do you recall handouts such as this or detail pieces that they would leave you?
A. Yes.
Q. Okay. Let me show you just briefly -- let me get my glasses.

I'll just show you one. Get down there, focus.
Zyprexa versus risperidone. You see 0.6, 0.6?
A. Yes.
Q. That's self-explanatory; that's comparable rates, right?
A. Right.
Q. Now, that is, of course, different than the ConSensus statement findings which we discussed earlier?
A. Yes.
Q. Is it also different in your clinical experience now?
A. Yes, sir.
Q. Thank you. Sir, you had heard, prior to 2003, just in the community or in seminars or things of that nature, the issue of diabetes and possible hyperglycemia, had you not?
A. Yes.
Q. But isn't it a fact that until the company warned you about it -- let me get this -- when you hear those things, you only suspect things as a potential side effect, you're not sure; is that right?

A. That's right.
Q. But when the company comes forward and admits it to you, it makes a big difference, does it not, sir?
A. Yes.
Q. And when they admit something to you, it affects how you make a judgment about whether or not their product is related to a disease or not, right?
A. It does.
Q. So is that another reason why a warning is important in a drug?
A. Yes.
Q. Sir, we've heard -- by the way, on comparable rates, one more thing. In the current package insert on Zyprexa, under hyperglycemia, there's this statement: While relative risk estimates are inconsistent, the association between atypical antipsychotics and increases in glucose levels appears to fall on a continuum -- you see that, sir?
A. Yes.
Q. And a continuum is -- is from top to bottom; is that a continuum?
A. Yes.

Q. Appears to fall on a continuum and olanzapine appears to have a greater association than some other atypical antipsychotics.
Do you see that, sir?
A. Yes.
Q. Did anybody from Eli Lilly, prior to this label change in October of 2000, ever come and tell you that?
A. Not that I recall, no.
Q. Again, that's why a warning change is significant?
A. Yes.
MR. ALLEN: I'm almost through, Your Honor.
Q. (BY MR. ALLEN) Doctor, we've heard in this courtroom that there are patients at API who are so sick that court orders are sought to force medication administration. Are you familiar with that?
A. Yes.
Q. And, in fact, when that occurs, is it not true that the Attorney General's office, the man who hired me, has to get involved?
A. Yes.
Q. Not only must the Attorney General's

office get involved, but they must come to a court and hear evidence before this medication is administered; is that true?
A. Yes.
Q. Do you believe it is a good idea or a bad idea for the Attorney General to try to seek as much information as he can concerning the potential health risks associated with the drug Zyprexa for the Medicaid system and the people of Alaska? What's your opinion on that?
A. I think it's a good idea.
Q. And, in fact, when you -- and have you ever had to come testify at these court proceedings concerning forced administration?
A. I have in the past, yes.
Q. Yes, sir. And would you want to present the Court and the Attorney General with as much information as you are aware of?
A. I would, yes.
Q. And will the labeling changes that have been made in regard to Zyprexa, will that effect a change concerning your testimony surrounding the risks of Zyprexa?
A. Yes.
Q. And will it affect your decision-making

process as to whether or not to try Zyprexa first as opposed to second or third or somewhere else?
A. Yes.
Q. Sir, I don't know if I asked you this earlier, but I want something clear here. You can say whatever you want.
Do you think that the Attorney General of the State of Alaska by hiring me and Mr. Fibich and Mr. Suggs to pursue an action against Eli Lilly, are you opposed to that?
A. No.
Q. And by the way, sir, remember the difficult task of informed consent and weighing the risk and benefit?
A. Yes.
Q. In getting informed consent, isn't it best to have as much information as possible?
A. Yes.
Q. One other -- I have two other quick topics.
Diabetes and schizophrenics. Sir, if -- you're familiar from your medical training and background and your personal experience at API with diabetes, are you not?
A. I am.

Q. Diabetes, if you develop it, requires a -- I'm trying to think of the word I'm using -- it requires the patient who develops diabetes to be able to comply with treatment for the condition of diabetes, right?
A. Yes.
Q. And we've heard testimony from Dr. Beasley, Eli Lilly's -- I think they call it his professor emeritus and global Zyprexa physician, that diabetes can be a devastatingly progressive disease leading to retinopathies, amputations and things of that nature.
Are you generally familiar with that?
A. Yes.
Q. And hopefully when a person develops diabetes, they hope to not have that happen; you understand that?
A. That's correct.
Q. But one of the things in order for that not to happen, the patient who develops diabetes, first, a lot of times they try diet restrictions and strict dietary elements; is that right?
A. Yes.
Q. Now, in your experience, are acute

schizophrenics or chronic schizophrenics the types of patients if they develop diabetes they can follow a strict diet and things of that nature?
A. No.
Q. And even if that doesn't work or if the diabetes has progressed far enough, if that's not -- if diet doesn't work, they have to be on medications; is that right?
A. Yes.
Q. Things like Metformin and insulin and things of that nature?
A. That's correct.
Q. First of all, those are all expensive medications?
A. Yes.
Q. But in addition to medications, they have to monitor daily and more than one time a day their blood glucose?
A. That's correct.
Q. And we've seen on TV, or I've seen them advertised, the things you stick and you have the meter, right?
A. Right.
Q. And you also have to follow if you

develop diabetes, not only taking medication and taking daily multiple blood glucose, you have to go back to your doctor?
A. Right.
Q. And in addition to that, you also have to be on a strict diet at that times, right?
A. Yes.
Q. Are schizophrenics the type of people that -- and we've heard from the defense that the schizophrenic population, according to them, is at a greater risk of diabetes than the normal population?
A. It is.
Q. Yes, sir. So do you want, as a physician, to put this population, in particular, at risk for developing diabetes if you don't need to?
A. No, I do not.
Q. And is that another reason why the need for Eli Lilly to warn about the risk of diabetes and hyperglycemia so important?
A. Yes.
Q. Sir, I want to talk about frontal lobotomies. Were you ever trained -- do you know anything -- tell the jury what a frontal lobotomy

is.
A. It was a technique that was used many years ago to -- it was felt that it would control aggressive behaviors or even psychotic disorders. It's not a procedure that's really done anymore. Very, very rare for very rare types of illnesses, but it's not a regular -- a regularly-practiced psychiatric treatment.
Q. Doctor, assume with me -- you see the board behind you. We had written up there, clozapine, risperidone, Zyprexa, Seroquel, Geodon and Abilify. You see that?
A. Yes.
Q. Assume we took Zyprexa just right off the map, it wasn't on Planet Earth, would we have people running around needing to get frontal lobotomies -- if Zyprexa was no longer on earth, would people need to then get frontal lobotomies?
A. No.
Q. Do you know one patient in your entire time you've been a licensed doctor, that if it wasn't for Zyprexa, they would need a frontal lobotomy?
A. No, that would be an outlandish thought.
Q. If anybody suggested, in this courtroom,

that Zyprexa is saving people from frontal lobotomies, would that be true or false?
A. I would have to say false.
Q. Doctor, based upon your personal experience and your practice, do you believe, prior to the time that you have learned what you know about Zyprexa -- and it's much different today than it was even a year ago; is that true?
A. Yes.
Q. Do you believe patients who are placed on Zyprexa develop diabetes who otherwise would not have developed diabetes if you knew then what you've been told now?
A. I think there are --
MS. GUSSACK: Objection -- I said objection, for the reasons we expressed earlier.
THE COURT: That's overruled.
Q. (BY MR. ALLEN) You could answer the question, Doctor.
A. I think there are instances, yes, where it is developed.
Q. That would not have had you known?
A. That would not, yes.
Q. Thank you for your time, Doctor, and I appreciate your patience.

THE WITNESS: Thank you.
THE COURT: Ms. Gussack.
MS. GUSSACK: Thank you, sir.

CROSS-EXAMINATION

Q. (BY MS. GUSSACK) Good morning, Dr. Hopson?
A. Good morning.
Q. Nina Gussack for Eli Lilly.
Doctor, Mr. Allen said that you were here pursuant to a subpoena. When did you get the good news that you were being subpoenaed to appear here today?
A. I believe yesterday -- or the day before. I'm sorry.
Q. The day before?
A. Yes.
Q. At the deposition that was taken of you in this case, you were represented by counsel, right?
A. Yes.
Q. Okay. And that counsel was Mr. Sniffen and Mr. Steele, correct?
A. Yes.
Q. Okay. Mr. Steele's in the courtroom

today?
A. Yes.
Q. Where is he?
A. On the back row.
Q. He's in the back row. And did you meet with Mr. Steele in the past week or two to talk about some of the issues that you'd be testifying to today?
A. Yes.
Q. Okay. And he showed you some documents from Lilly's internal files?
A. Yes.
Q. Dr. Hopson, tell me, at any time before that meeting with Mr. Steele, had the State's attorneys ever come to you since they filed this lawsuit and shared with you any of the Lilly documents they had in their possession?
A. No.
Q. Okay. Now, you know this lawsuit has been pending since March, '06, right?
A. Yes.
Q. Okay. And you told us at your deposition that you didn't know anything about this lawsuit until after it was filed; is that right?

MR. ALLEN: Your Honor, again, it's improper impeachment. If she's intending to try to impeach the witness -- can we approach?
THE COURT: Sure.
(Bench discussion.)
MR. ALLEN: I just want to point out the very thing that you said I couldn't do in my depositions, which is talk about counsel meeting with the witness, you struck it --
THE COURT: I didn't get an objection to it and you asked the same question on your direct. But I didn't get an objection to it and so that's the real thing.
MS. GUSSACK: You opened the door.
THE COURT: To the talking -- we're talking about improper impeachment. The way she asked the question is to let the doctor answer, so I don't think it's improper impeachment, and she's allowed to lead at this point.
MR. ALLEN: I agree. I just want the same rules.
(End of bench discussion.)
MS. GUSSACK: While you get your water. I'm going to find my reading glasses.
MR. ALLEN: Here are mine. You

want mine?
MS. GUSSACK: No, thanks.
VENIREPERSON: They're on your shirt.
MS. GUSSACK: Thank you very much. Not the first time that's happened. May I hear the question that was pending?
(Question read by the reporter.)
Q. (BY MS. GUSSACK) Is that right, Dr. Hopson?
A. That's correct.
Q. And, in fact, when you learned about the lawsuit, it wasn't through the State Attorney General's office; is that correct?
A. That's correct.
Q. You learned about it after reading it in the newspaper; is that right?
A. Right.
Q. And at no time prior to the State filing this lawsuit did they come and ask you for your views about Zyprexa, right?
A. That's correct.
Q. Now, let's just -- I want to go back a little bit, because I know you are completing your two-year tenure as president of the Alaska

Psychiatric Association, right?
A. That's correct.
Q. That comes to an end in May?
A. That's correct.
Q. Probably not too soon for you. You are also a member of the American Psychiatric Association?
A. That's correct.
Q. In the five or so years that you have been the medical director of the Alaska Psychiatric Institute, you have overseen seven or eight psychiatrists?
A. Yes.
Q. Okay. So you have a lot of administrative duties, as you told us?
A. Yes.
Q. But you also care for patients?
A. Yes.
Q. And you consult with those psychiatrists as to their care?
A. Yes.
Q. And you told us, I believe at your deposition, that you make rounds regularly?
A. Yes.
Q. And so that you are aware of what's

going on with patients at Alaska Psychiatric Institute, right?
A. Yes.
Q. Okay. You also have had experience personally with Zyprexa since it was first brought to the market in 1996, haven't you?
A. I have.
Q. Okay. And one of the first things you knew about Zyprexa when you started prescribing it in 1996 was that it caused significant weight gain in a number of patients; isn't that right?
A. Yes, we began seeing that after we began using it when it came out.
Q. As early as 1996?
A. Yes.
Q. Okay. And you told us, I believe, at your deposition that you knew about the risks of weight gain for diabetes and cardiovascular disease and other issues from your training in medical school; isn't that right?
MR. ALLEN: Your Honor, page and line to the deposition to show the witness if he allegedly said that. Page and line. That's an objection.
THE COURT: That objection is

overruled. If the doctor doesn't recall saying it in the deposition, then she can show him page and line.

If he can recall it as he sits here, then we'll just go with the question.

A. I think we were aware of those -- you know, as potential risks and side effects.

Q. (BY MS. GUSSACK) As a result of substantial weight gain.

A. I don't really recall that it was necessarily tied to the weight gain.

Q. Let me be clear, Dr. Hopson. Maybe because we had the interruption of the question, I want to make sure that you're answering my question. And the question I had was: As -- as a result of your training in medical school, you're familiar with the risks for diabetes and cardiovascular disease from substantial weight gain or being overweight?

A. Yes.

Q. Okay. So, as a result of your prescribing of Zyprexa since 1996, and your time as medical director at API, were you consulted by the Commissioner of the Department of Health & Social Services of Alaska before the lawsuit was

brought?

A. No, I was not.

Q. Okay. Did you share your views about Zyprexa with anybody from the State Attorney General's office before this lawsuit was brought?

A. No.

Q. Okay. But you have had experience prescribing Zyprexa and overseeing those who have prescribed Zyprexa since 1996 up until the time that this lawsuit was brought in March, 2006; is that right?

A. Yes.

Q. Okay. Now, Doctor, it's true, isn't it, that long before there was a class label change made for all of the atypical antipsychotics, you were of the view that Zyprexa caused more weight gain than the other atypical antipsychotics and had an increased risk for blood glucose and lipid abnormalities; isn't that right?

A. I think we were -- again, before the label change -- aware initially of the weight gain and then over time we began to see the other clinical indicators in our patients, yes.

Q. And that was before the 2003 label change for all the class members?

A. I think it was a gradual learning curve, yes.

Q. Okay. All of the patients at Alaska -- I'm sorry -- at API suffer from serious mental illnesses, don't they?

A. They do.

Q. You would agree with me, wouldn't you, that there is no one medication that will be effective for all of those patients?

A. That is correct.

Q. And you believe it's important to have a variety of choices of medications to treat seriously mentally ill patients, don't you?

A. Absolutely, yes.

Q. And you don't have any restrictions on Zyprexa at API, do you?

A. We do not.

Q. And what I mean by restrictions, you understand, is that any doctor at API can prescribe Zyprexa for -- in their best medical judgment even as we sit here today, correct?

A. Yes.

Q. Okay. Now, some of the psychiatrists that you are supervising at API are prescribing Zyprexa as their first choice, correct?

A. They may be.

Q. Okay. And some may be using it as an alternative -- when another medication hasn't been effective, right?

A. Yes.

Q. You would agree with me, wouldn't you, Doctor, that no medication can help any patient unless they are taking it, unless they're compliant with their medication, correct?

A. Correct.

Q. You are familiar with the CATIE studied that was published in the New England Journal of Medicine?

A. Yes.

MS. GUSSACK: Nick, could we pull that up.

Q. (BY MS. GUSSACK) Now, Doctor, that CATIE study that was published in the New England Journal of Medicine in September 2005 is on the screen before you.

Do you recall that one of the significant findings in that study was the fact that patients stayed on Zyprexa or olanzapine, as it's referred to in the article, longer than any other medication being used in that study?

A. Yes.
Q. Okay. And you would agree with me, wouldn't you, that one of the most significant challenges in treating seriously mentally ill patients is having them become -- is having them stay compliant with their medication regimen, isn't it?
A. Yes.
Q. So when a medication like olanzapine is demonstrated to have longer duration of patients staying on it, that's an important finding, isn't it?
A. Yes.
Q. Okay.
MS. GUSSACK: Could you bring up, Nick, the page -- I'm sorry, on the bottom, if you would bring up the page at the bottom there where it says -- can you bring it under conclusions second sentence.
Q. (BY MS. GUSSACK) Olanzapine was the most effective in terms of the rates of discontinuation. That's your experience, isn't it, Doctor?
A. From this study, that was the conclusion of that, yes.

Q. Okay. And the CATIE --
MS. GUSSACK: You can take that off, Nick.
Q. (BY MS. GUSSACK) This CATIE is one of the articles that you told us that you had maintained in your files at API, isn't it?
A. Yes.
Q. That was a study that was conducted by the National Institutes of Mental Health?
A. Yes.
Q. That wasn't a study sponsored by Eli Lilly?
A. No.
Q. The API, I think you told us, is a State-run mental health facility, isn't it?
A. Yes.
Q. Is it the only State-run mental health facility in Alaska?
A. It's the only State mental health facility, yes.
Q. Doctor, before I forget, there was -- Mr. Allen made a reference to mood, thought and behavior as bases for prescribing Zyprexa. You would agree with me, wouldn't you, that the reference to mood is related to bipolar disorder

or bipolar disease, isn't it?
A. Yes.
Q. And you certainly describe for us, I think, in a very extensive and compelling way that the acute schizophrenic patient has many behavioral disturbances, don't they?
A. Yes.
Q. And, in fact, a bipolar patient, a manic bipolar patient has behavioral disturbances as well, don't they?
A. Yes.
Q. Let's talk for a minute, if we might, about what you were describing earlier, which is that there are circumstances in which API has sought court orders to medicate patients against their will, right?
A. Yes.
Q. That happens occasionally when a patient doesn't recognize that they are in need of medication or they refuse the recommendation of a physician?
A. Yes.
Q. Okay. And you have to seek out the services of the State, the Attorney General's Office, to come to court and seek medication for

those patients because you believe it is in their best interest?
A. Yes.
Q. And you have done that, haven't you?
A. Yes.
Q. And psychiatrists at API have done it as well?
A. Yes.
Q. And sometimes those requests for medication to be required or ordered for patients in Alaska have requested Zyprexa to be administered, correct?
A. Yes.
Q. Okay --
MS. GUSSACK: Could we bring up the --
Q. (BY MS. GUSSACK) Dr. Hopson, we're bringing up this -- what you see before the screen. I've looked on the Internet, that API has a dashboard of key performance measures. Can you tell us what that is?
A. They're just quality improvement performance measures. The majority of them are ones we benchmarked against other facilities like our own and use it as kind of the template of our

quality improvement program. Things that we need to work on, things that we're doing better across the board than other facilities similar to our own.

MS. GUSSACK: Nick, if you bring that document up a bit, you'll see a heading under hospital measures and about, I don't know four or five lines down.

Q. (BY MS. GUSSACK) Dr. Hopson, do you see where it says court-ordered medications?

A. Yes.

Q. Okay. API is telling us in this report of key information that on a quarterly basis, is it, you are seeking court-ordered medication of patients for API patients, right?

A. Yes.

Q. Okay. That's been pretty constant and continues to this day, doesn't it?

A. Yes.

Q. And to this day it is within the province of any API psychiatrist to seek the support of the State Attorney General to medicate patients with Zyprexa medically?

A. Or other drugs, yes.

Q. Zyprexa is one that is court-ordered,

sought to seek for patients?

A. Yes.

Q. And that continues to today?

A. Yes.

Q. Let me go back to what I was asking about earlier. In the time since the lawsuit was filed in this case, March, '06, has the State Attorney General, other than the last ten days, two weeks, ever brought to you any of the millions of documents that have been produced to them from Eli Lilly?

A. No.

Q. Have they shared with you -- first of all, do you know how many millions of documents Eli Lilly has produced to the State here in this case?

A. I have no idea.

Q. Okay. But you know that the State has substantial amounts of information from Eli Lilly in this matter?

A. Yes.

Q. Okay. And did they ever bring to you documents that reflected the State's concern --

MR. ALLEN: Your Honor, can we approach?

THE COURT: Sure.

(Bench discussion.)

MR. ALLEN: Confidential court order; we can't go disclosing documents. We can't tell anybody. She's opened the door. I'm going to show that he couldn't share with them.

MS. GUSSACK: He's a party representative. I'll be glad to ask. He is a party representative from the State and if they want to share the documents, they could have easily --

THE COURT: I'm not sure whether he's a party representative from the State. I'll have to look at the confidential court order.

MR. ALLEN: We'll get to MDL --

MS. GUSSACK: This has nothing to do with any other state. I prefaced the question.

THE COURT: You can ask the question. You can ask the questions on cross. I'll deal with the objections when you ask the questions.

(End of bench discussion.)

Q. (BY MS. GUSSACK) Dr. Hopson, have you ever asked anyone from the State about any of the

information in their possession from Lilly?

A. No.

Q. Now, Dr. Karleen Jackson is the commissioner of the Department of Health & Social Services, correct?

A. Yes.

Q. Okay. Did you ever have a conversation with Dr. Jackson about your views of Zyprexa prior to this lawsuit being filed?

A. No.

THE COURT: Could counsel approach a second?

(Bench discussion.)

THE COURT: It doesn't make any difference to me because he's -- can come back, but I'm told that one of the jurors has a 2:00 o'clock meeting, so we're going to end at 1:30. I just want everyone to know that.

MS. GUSSACK: Okay.

(End of bench discussion.)

Q. (BY MS. GUSSACK) Okay. Just to conclude on this subject, Dr. Hopson, so I'm clear, until you were notified about your deposition in -- that was taken in December, 2007, did anyone from the Alaska Attorney

General's Office ever seek your views or any information from you about Zyprexa?
A. No.
Q. Okay.
MS. GUSSACK: Now, if we could bring up the -- I'm sorry, Nick, hold up for one second.
Q. (BY MS. GUSSACK) Doctor, currently at API, you have placed a restriction on one atypical antipsychotic; isn't that right?
A. Yes.
Q. And that atypical antipsychotic is not Zyprexa, correct?
A. That is correct.
Q. Can you tell the jury what restriction you have placed on the use of atypical antipsychotics at API?
A. I just asked -- it's Risperdal Consta. It's an injectable form of Risperdal. It's extremely costly and so I just ask my doctors if they're going to prescribe it, call me, and we discussed that other things have been tried, but that it's clinically appropriate to begin that medication.
Q. If you wanted to, in your role as

medical director of API, you could have put a restriction on Zyprexa, correct?
A. I could have.
Q. Okay. You have had experience as a prescriber of Zyprexa in seeing weight gain with patients, right?
A. Yes.
Q. And you have always believed -- you personally, that there was an increased incidence of weight gain and blood glucose elevations with patients on Zyprexa as opposed to the other atypical antipsychotics; isn't that right?
A. Yes. We began seeing that. I believe that.
Q. Now, I know that as both part of your professional position at API and certainly as -- in your role on the Alaska Psychiatric Association and the APA you are on the front or in the lead on learning about information about medications. You also conduct -- isn't that right?
A. Yes.
Q. Okay. And you conduct staff meetings regularly at API?
A. Yes.

Q. Okay. So, in December, 2007, when your deposition was taken, is it your testimony that no one had discussed with you -- put aside Lilly. That no one had discussed with you at Alaska Psychiatric Association or API or in the hospital an October, 2007 label change from Lilly?
MR. ALLEN: Your Honor, to the extent any of this calls for hearsay, out-of-court statements, I would object to hearsay.
MS. GUSSACK: It goes to notice, Your Honor.
THE COURT: I think it does go to notice. I'll allow it.
MR. ALLEN: Can I have a limiting instruction? I don't know what the answer is going to be -- the answer is hearsay, if it goes to notice, I want a limiting instruction.
THE COURT: Ladies and gentlemen of the jury, the purpose of this question is to establish what the doctor knew and what sources and that he was aware of things or wasn't aware of certain things. You may consider his answer to this question for that purpose rather than for whether in fact it's true that what he knew was

truthful.
THE WITNESS: Could you ask the question again?
Q. (BY MS. GUSSACK) What the question, I think, was: From your discussions at the Alaska Psychiatric Association or the American Psychiatric Association, or from your staff meetings that you hold at API, did you have information about the label change -- did others give you information about the label change that Lilly made in October, 2007?
A. Not that I recall.
MR. ALLEN: I withdraw my objection, Your Honor.
Q. (BY MS. GUSSACK) Doctor, you receive information about the medications that you prescribe from a variety of sources, don't you?
A. Yes.
Q. Okay. One source, obviously, is the experience that you have clinically with patients, right?
A. Correct.
Q. You use the medication and you observe what happens in your patients and that's an important source of information about how the

medication is working?
A. Yes.
Q. Both about its efficacy and about any side effects that you observe or the patient reports, right?
A. Yes.
Q. Another source of information of information you have about medications you prescribe are from discussions with your colleagues, correct?
A. Yes.
Q. And that's one of the reasons you have staff meetings, isn't it?
A. Part of it.
Q. Because your colleagues share information about their experiences with medications that they're using, right?
A. Yes.
Q. It's an important source of learning about how patients are doing on different medications?
A. Correct.
Q. Another source of information you have about medications and their side-effect profile comes from medical meetings you attend, right?

A. Yes.
Q. And certainly the APA has medical meetings, and presumably the Alaska Psychiatric Association has medical meetings?
A. Yes.
Q. And these are meetings in which physicians come and you discuss subjects including side-effect profiles of medications?
A. Yes.
Q. You also have been the recipient -- I'm sorry -- you've been the attendee at various sessions in which speakers are presenting, experts in the field?
A. Yes.
Q. Okay. You also follow the published literature, the medical journals in the psychiatric field, right?
A. Yes.
Q. Those publish articles about medications and their side-effect profile, right?
A. Yes.
Q. Okay. We've seen some of those articles here in court already. For instance, Dr. Allison's article -- if you want to bring that up.

MS. GUSSACK: Let me give you a better -- EL2559.
Q. (BY MS. GUSSACK) Do you know Dr. Allison, Dr. Hopson, one of the State's expert witnesses that's coming to testify here?
A. No, I do not.
Q. Okay. Are you familiar with this article from the American Journal of Psychiatry published in November, 1999?
A. Not that I recall.
Q. Okay. But this is one of the kinds of articles that's published in one of the journals -- do you follow the American Journal of Psychiatry?
A. Yes.
Q. Okay. So in 1999 it wouldn't surprise you that an article about Antipsychotic Induced Weight Gain, a Comprehensive Research Synthesis would be published and describe the effects of antipsychotics on body weight -- excuse me -- correct?
A. That's correct.
Q. And if you look, in fact, at the objective -- if you can blow that up, Nick -- that was the purpose of this particular article

by Dr. Allison, the lead author, right?
A. Yes.
Q. And CATIE is another such article that you've already told us you followed in the medical literature, correct?
A. Right.
Q. In addition to all of those sources of information that we've talked about, you also get called upon by sales representatives from different pharmaceutical companies, right?
A. Yes.
Q. Okay. Not just Lilly about Zyprexa, right?
A. Right.
Q. You get called upon by the sales representatives of all the competitor products that compete in the atypical antipsychotic market, right?
A. Yes.
Q. And each of those sales representatives is proud to tell you about their product, correct?
A. Yes.
Q. And you don't believe everything they tell you about their product, do you, because you

know they're there to sell the product?
A. Yes.
Q. In fact, you greet the sales representatives information with some skepticism; isn't that right?
A. Sure, sure.
Q. Of all the sources of information that you have about a medication, is the sales representatives' information the most valuable or somewhere towards the bottom of the continuum of information?
A. I think I would consider it extremely valuable, and I -- you know, would expect that it would be timely and accurate.
Q. Okay. And certainly when they -- the sales representative is providing you with information, you ask questions on occasion if you want more information, right?
A. Yes.
Q. And, in fact, you have done that with your sales representative, Joey Eski, about Zyprexa, haven't you?
A. I'm sure I have.
Q. Okay. And she has provided to you medical letters on occasion, about subjects that

you had particular interest in, correct?
A. I'm sure she has, yes.
MS. GUSSACK: Can we bring up --
MR. ALLEN: Your Honor, can I -- I just need a copy of these letters. I haven't had an opportunity to see a copy, and I'd like to move to have them admitted into evidence.
THE COURT: If they're going to be shown to the doctor, they ought to be admitted into evidence.
MS. GUSSACK: Your Honor, these have been identified and have not been objected to, although Lilly would not be moving evidence in until its case.
THE COURT: If they're going to be shown to the doctor, then they ought to be moved to be admitted.
MR. ALLEN: We move to admit these in evidence, Your Honor.
THE COURT: Do you have any objection to admitting your own --
MS. GUSSACK: No, Your Honor. Just simply procedurally in our case we would move to admit them. If Mr. Allen would --
MR. ALLEN: I'd like to move to be

admitted, and I'd like a copy provided to me.
THE COURT: You need to provide a copy to Mr. Allen and let's get the numbers so they can be admitted.
MS. GUSSACK: EL2990, a medical letter about Zyprexa weight reduction and management, which I think has been previously provided to counsel.
THE COURT: Any others?
MR. ALLEN: Your Honor, we move that Eli Lilly's 2990 be admitted.
THE COURT: 2990 will be admitted.
MR. ALLEN: Thank you, Your Honor.
MS. GUSSACK: Thank you, Your Honor.
Q. (BY MS. GUSSACK) Dr. Hopson, is this one of the medical letters that you can recall receiving from your Lilly sales representative about a subject that you had some interest in, namely: Zyprexa weight reduction and management?
A. I don't recall receiving this one. Again, I receive a lot of things. What date?
Q. Doctor, if -- you wouldn't quarrel with me if the records reflect that you received this, would you --

A. I likely did.
THE COURT: Something I'd like to know. What's the date on this document?
MS. GUSSACK: There is no date on the document that we have, Your Honor. It references -- we only know based on the literature here that's referenced at the end. If you would go to the references.
MR. ALLEN: There's not only no date, there's no address or signature.
THE COURT: Well, you can cross-examine if you want to, Mr. Allen, and point out what you want to about this document. I want to get a sense about what the date is. If there's statements made that the records reflect that the doctor received this particular document, then we ought to establish at some point when the doctor received the document because that will at least give us some idea of the date.
MS. GUSSACK: Your Honor, if --
MR. ALLEN: Your Honor, I think a predicate has to be laid for a document --
THE COURT: No, it's been admitted, and you were the one that wanted it admitted.

MR. ALLEN: A document can be admitted but not used to cross-examine the witness on claiming he received it.
THE COURT: Again, the doctor has testified that he is not sure that he received it. The only evidence -- it's not evidence -- we've got a statement from Ms. Gussack that records will show. Either the records are going to be introduced or not introduced. The jury is again reminded that questions of lawyers is not evidence; it's the testimony of witnesses that are evidence. The document is -- is evidence, and you're free to talk about the document as you want to, but the document is admitted and it may be used.
MS. GUSSACK: Nick, if you would bring up TG176.
MR. ALLEN: What page? It's a different --
MS. GUSSACK: Yes, I'm sorry. It's a different document.
MR. ALLEN: Your Honor, I need to make the same motion to have the letter produced to me.
THE COURT: Please, if you're

going -- if you're going to use an exhibit and somebody needs to have a copy of it, please give it to them. What's the exhibit number?
MS. GUSSACK: Absolutely TG176.
THE COURT: T as in Tom?
MS. GUSSACK: G.
THE COURT: G176. Are you asking that it be admitted. Mr. Allen?
MR. ALLEN: I don't see an exhibit sticker. I don't think this one was on the exhibit list.
MS. GUSSACK: I believe it is.
MR. ALLEN: I don't see it. I don't see an exhibit sticker, Your Honor.
THE COURT: Just --
MS. GUSSACK: Just a minute --
THE COURT: It may not have an exhibit sticker on it but that's curable if it's on the exhibit list.
MS. GUSSACK: The exhibit number is 3898A.
MR. ALLEN: 3898A.
THE COURT: So it's not TG176? It's 3898, capital A?
MS. GUSSACK: Right.

Q. (BY MS. GUSSACK) Dr. Hopson --
THE COURT: Before we do this, is it being -- are you offering it?
MR. ALLEN: Your Honor, I haven't seen this before. I didn't know it was on the exhibit list. I'm not going to offer it until I know what it is. I knew what the other one is. We'll go with that.
Q. (BY MS. GUSSACK) I only have one question for you, Dr. Hopson.
This is a medical letter also from Lilly about recommendations for screening and monitoring. Is this the kind of medical letter that you would have received --
MR. ALLEN: I object to it being on the screen until he's identified that he even received the letter.
THE COURT: At this point it shouldn't be shown to the jury until it's going to be admitted into evidence. So if you want to have it admitted or you want to lay the predicate, you can do that.
MS. GUSSACK: I believe the predicate was laid.
Q. (BY MS. GUSSACK) Dr. Hopson, I'll

certainly be glad to ask again.
Dr. Hopson, you have told us that on occasion you have received information, medical letters that were of interest to you from your Lilly sales representatives, correct?
A. Yes.
Q. And would this -- a letter on recommendations for screening and monitoring of antipsychotic medications, including Zyprexa, be one such letter?
A. It could have been. Again, I don't recall the specific letter.
Q. Okay.
MR. ALLEN: She can't cross-examine on a letter he doesn't recall receiving and there's no address, name, signature, anything.
THE COURT: You're going to have to get this letter in through somebody else.
Q. (BY MS. GUSSACK) Okay. Dr. Hopson, can you recall conversations that you had with your Lilly sales representative about what the company's recommendations for screening and monitoring were?
A. I can't recall a particular conversation. No.

Q. Well, do you recall having conversations with Joey Eski, the Lilly sales representative that called on you at various times, in which she shared with you the view that patients should be monitored for blood -- blood glucose levels?
A. Again, I can't recall specific conversation about that.
Q. Now, Doctor, you described to us that in the last ten days, two weeks, I can't -- I can't recall the time frame -- you said that the State Attorney General came and shared with you some internal Lilly documents, correct?
A. Correct.
Q. Okay. Did they share with you --
MS. GUSSACK: Your Honor, may we approach for a moment?
THE COURT: You may.
(Bench discussion.)
MS. GUSSACK: I want to be very clear that they -- to the extent they claim there is a protective order, that they've already showed him internal company documents, and I am not opening the door. I am following what they share or didn't share.
MR. ALLEN: I didn't share anything

with him.
THE COURT: Somebody from the State. Mr. Steele --
MS. GUSSACK: We're not talking about protective order violations.
MR. ALLEN: You know, Nina --
THE COURT: It seems clear to me that if you shared with him now, you could have shared it with him before -- you can share it with him now without violating the protective order --
MR. ALLEN: When you say you --
THE COURT: I'm talking about the State. I'm not -- that is clear.
(End of bench discussion.)
Q. (BY MS. GUSSACK) Sorry, Dr. Hopson.
I wanted to ask you whether the State had shared with you the -- all of the information about the clinical trials that were done on Zyprexa.
A. All of them? I wouldn't know if all were shared.
Q. Do you know how many clinical trials Lilly has done on Zyprexa?
A. No.

Q. Do you know how many statistical analyses of data relating to Zyprexa and blood glucose have been done by the company?
A. No.
Q. Did they share with you the submissions that Lilly made to FDA between 2000 and 2003 with respect to Zyprexa and blood glucose abnormalities and diabetes?
A. I believe I've seen that.
Q. What do you believe you've seen?
A. Well, if that was some of the documents that we saw earlier, communication with the FDA.
Q. We saw a page or two of some data. I'm asking you whether you were shown the submissions that Lilly made to FDA in a three-year period about Zyprexa and blood glucose abnormalities and diabetes.
A. No.
Q. Okay. Doctor, I believe you mentioned during Mr. Allen's questioning that you are doing blood glucose monitoring of all your patients on atypical antipsychotics; is that right?
A. Yes.
Q. Okay. And is that something that was recommended in the class label that Lilly

implemented in 2003?
A. I'd have to see it again, the recommendation.
Q. Okay.
MS. GUSSACK: Can we bring up the September, 2003 label? Just to be clear -- Nick, could you go to the last page so we can show Dr. Hopson?
Q. (BY MS. GUSSACK) We're talking about at the bottom. You'll see there, Dr. Hopson, where it says September 16th, 2003?
A. Yes.
Q. So you know that we're talking about the label that was implemented at that time, right?
A. Yes.
Q. Okay. And if I can take you in to page EL2953A, page 5, you'll see that's where the warnings section starts, right?
A. Yes.
Q. And if we go to the next page, page 6, under the heading of Hyperglycemia and Diabetes Mellitus. Okay. First you'll see, Doctor, as you read through this with me that this label -- and, you know, this was the label that applied to all members of the atypical antipsychotic class,

right?
A. That's correct.
Q. So all the medications listed behind you implemented this label, right?
A. Yes.
Q. And that was at FDA's direction?
A. Yes.
Q. And it says here that assessment of the relationship, if you'll see the second sentence -- between atypical antipsychotic use and glucose abnormalities is complicated by the possibility of an increased background risk of diabetes mellitus in patients with schizophrenia and the increasing incidence of diabetes mellitus in the general population.
So let's just break that down for a minute. You would agree, sir, that the patients with schizophrenia are at increased risk of diabetes regardless of medication?
A. Yes.
Q. And you would also agree that there is an increasing incidence of diabetes in the population at large?
A. Yes.
Q. In fact, there are those who have called

it an epidemic of diabetes, correct?
A. Yes.
Q. Of course we know that there's equally challenging of the American population an epidemic of obesity as well?
A. Correct.
Q. And you tell us you were well aware of the connection of being obese or overweight and the risk for diabetes?
A. Yes.
Q. There are a lot of things going on that make it hard to figure out what causes diabetes, isn't there?
A. Yes.
Q. Particularly in a patient with schizophrenia?
A. Yes.
Q. Now, it goes on to say: Given these confounding pieces that we've just talked about, the relationship between atypical antipsychotic use and hyperglycemia-related adverse events is not completely understood.
You'd agree with that, wouldn't you, sir?
A. Yes.

Q. Okay. Now, if we go to page 7 of that warning regarding hyperglycemia and diabetes mellitus, at the top of the page it says: At that time, in the September, 2003 label, that precise risk estimates for hyperglycemia-related adverse events in patients treated with atypical antipsychotics are not available, okay.
And it goes on to say: The available data are insufficient to provide estimates of differences in hyperglycemia-related adverse event risk among the marketed atypical antipsychotics.
So, from this language in the warning of September, 2003, what physicians were being told is, there's insufficient information to make distinctions between the various atypical antipsychotics, correct?
A. Yes.
Q. Okay. And that was language that was directed by FDA to be implemented for all members of the atypical antipsychotic class of medications, right?
A. That's my understanding.
Q. Okay. And then it goes on, this is the question that we had, I think at the start before

we put the label up to refresh your recollection: Patients with an established diagnosis of diabetes mellitus who are started on atypical antipsychotics should be monitored regularly for worsening of glucose control, correct?
A. Yes.
Q. So you've been monitoring patients who you use atypical antipsychotics with?
A. Yes.
Q. And were you monitoring them even before the September, '03 label recommendation?
A. Yes, because it's a standard part of just our admission protocol.
Q. Okay. Thank you.
We can take that off.
MS. GUSSACK: Your Honor, mindful of the time, this would be a good stopping point.
THE COURT: Ladies and gentlemen of the jury, I know that at least some members of the jury have appointments. I want to make sure you get to them, so we're going to stop at 1:30 and end our trial day at this time.
Once again, I will remind you, please do not discuss this case with anyone or let anyone discuss it with you. Please try to

keep an open mind until you hear all the evidence in this case. I am advised there is an article in the Daily News -- whether it will be out or not -- but it's on the web, that deals with what happened this morning. So I would again remind you, please do not view any articles concerning this trial, listen to any TV news concerning this trial, or do anything on the Internet to research matters concerning the subject matter of this trial or the trial itself.

I'll see everybody tomorrow at 8:30.

(Jury out.)

THE COURT: Please be seated.

MR. ALLEN: You can leave.

THE COURT: We are outside the presence of the jury, and we'll resume with the doctor tomorrow morning and then pick up with the rest of the trial.

Anything we need to talk about before we break?

MR. LEHNER: Yeah. I know we've been warned that there may be some other witnesses. I'd just like to know whether or not they are in fact now coming or not. I know Dr.

Campana going to be here tomorrow or I guess it's Mr. Campana and Dr. Wirshing, I know is here. Can you give us the lineup, at least, less than 24 hours in advance?

MR. FIBICH: We didn't get started as early as we thought. We're going with Dr. Hopson longer than I thought. I'm not sure what we're going to do tomorrow, quite frankly. However, the next two anticipated witnesses are Dr. Campana and Dr. Wirshing, but I'm uncertain as to whether we're going to --

THE COURT: So the next two witnesses are live witnesses?

MR. FIBICH: We're going to go back and talk, Judge and I'll let Mr. Lehner know by 2:30 what our plans are.

THE COURT: This is what I don't want to happen. If those are the next two, or if you put in deposition testimony, which is everybody won't have to worry about it and stuff. I want to have an opportunity to prepare their crosses of any witnesses, so don't be sticking any different live witnesses in on them --

MR. FIBICH: There will be no new live witnesses. We do have other depositions,

but we've got to go back and think about where we are, Judge. We're not going to call any other live witnesses besides Dr. Campana and Dr. Wirshing. After we meet, I will advise Mr. Lehner more specifically what we anticipate we will do.

THE COURT: Is that okay with you, Mr. Lehner?

MR. LEHNER: That's fine.

THE COURT: Okay. Anything else?

MR. LEHNER: No, sir.

MS. GUSSACK: No.

MR. ALLEN: No. Ms. Gussack and I were -- were here being very friendly to each other.

THE COURT: I saw that and I appreciate that people -- I very much appreciate that people can be adversaries in front of the jury and be friendly outside the presence of the jury.

MR. FIBICH: We'd like a picture of it.

MS. GUSSACK: I was going to say appearances can be deceiving, Your Honor.

MR. ALLEN: Now you're making me

feel bad.

THE COURT: We'll be off record, then.

(Off record.)

REPORTER'S CERTIFICATE

I, SANDRA M. MIEROP, Certified Realtime Reporter and Notary Public in and for the State of Alaska do hereby certify:

That the proceedings were taken before me at the time and place herein set forth; that the proceedings were reported stenographically by me and later transcribed under my direction by computer transcription; that the foregoing is a true record of the proceedings taken at that time; and that I am not a party to, nor do I have any interest in, the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal this 12th day of March, 2008.

_____

SANDRA M. MIEROP, CRR, CCP
Notary Public for Alaska
My commission expires: 9/18/11