we're getting there.
THE WITNESS: We're getting there. Then I will specify.
Secondly, the performance of discography really just based on the MRI showing multilevel degenerative disk changes at more than two disks based on professional medical association recommendations would have stated that a discography would not even be necessary because the patient already has too many levels of disk degeneration and more than the maximum two that would be recommended as a potential indication for spinal fusion. Discography is performed nonetheless and based --
THE COURT: Before you get to that, why was it not necessary?
THE WITNESS: Because if you recall, Wednesday, the recommendations are MRI alone is a reasonable diagnostic test. But if there are more than two levels of degenerative disk change on MRI, because the recommendation is only supported up to two levels, then there would be no reason to treat more than two levels. But a discography is done and that discography showed two levels of concordant pain. And if you believe the diagnostic validity of the discography, then one would logically follow that a two-level fusion at

those two levels would be performed when, in fact, a three-level fusion is performed.
Before that fusion is performed, the third deviation was the history and physical of the patient GH on the day of surgery in which there is really no neurologic examination described. I would describe that as a moderate deviation. Dr. Kaul does have an initial consultation that has at least a more detailed neurologic examination. Had that been referenced in this history and physical or included with it, then that would cover the additional details that should be included in such a document, but I did not see that reference. And the consent forms, one of which was titled pain management procedure, if I recall correctly, and the other for spinal surgery, do not have signatures, at least on the documents that I have, to describe whether GH gave consent for this and who asked for that consent and verified that that consent was given.
THE COURT: Is that number four or are we still on number three?
THE WITNESS: That was a combination of things in number three in terms of documentation.
THE COURT: And getting back to number two, what did we -- if any, degree of deviation did you

consider number two?
THE WITNESS: I would consider number two -- it's a little bit more difficult to describe this between moderate and severe deviation. I don't think any harm came to the patient as a result of it, but he did undergo unnecessary invasive procedure so I think it rises somewhat above the moderate. And because it is associated with the potential risk of harm, I would have to conclude that it is a gross deviation but not of the similar level of the actual surgery itself.
So I think we're at number four.
THE COURT: Starting number four.
THE WITNESS: Thank you, sir.
The fourth is in the performance of an open procedure itself. This is an operation that based on the training of Dr. Kaul in terms of residency and fellowship that he would not have the training to do nor would he have privileges at a hospital to do this based on the documentations that we have reviewed. And nonetheless that operation is performed. It included at two levels the performance of an interbody fusion using a device in an off-label use in which it is not providing structural support. And so the performance of the operation in and of itself is a gross deviation.
Q. Dr. Przybylski, what risk, if any, of patient

harm arises out of deviations you just described?
A. Well, there's the risk of neurologic injury that can occur. I personally saw this patient in my office subsequent to this surgery and he did have some foot numbness indicating that there was some neurologic consequence still present albeit mild. He also still had back pain at the time. But this is a man who is in his mid 50s who you would estimate would probably live in the neighborhood of 20 years or more beyond this surgery and he has a three-level spinal fusion which makes his spine very stiff and he, in fact, described to me that his back was stiff.
And as a result of this stiffness, what we observed is that adjacent disk joint levels will tend to degenerate more quickly and potentially result in instability and additional back pain and the potential need for additional surgery.
For example, it would not be uncommon in a period of five to ten years outside of a lengthy spinal fusion like this from L3 to S1 that someone would develop stenosis or a narrowing of the spinal canal at the adjacent level that is still mobile which would be the L2-3 level.
So in an operation that was simply not indicated based on our guidelines, the patient ends up with a

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