

KAUL v BCBS

K11-11

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RICHARD ARJUN KAUL, MD

Plaintiff

v.

HORIZON BLUE CROSS BLUE SHIELD
ROBERT A. MARINO

Defendants

CIVIL ACTION: NO.:

COMPLAINT

FILED
JAN 27 2023
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY

Parties

Plaintiff

RICHARD ARJUN KAUL, MD ("**Kaul**") – 24 Washington Valley Road, Morristown, NJ 07960: 973
876 2877

DRRICHARDKAUL@GMAIL.COM

Defendants

1. Horizon Blue Cross Blue Shield of New Jersey ("**BCBS**") – 3 Penn Plaza East, Newark, NJ 07105
2. Robert A. Marino ("**Marino**") – 1 Liberty Plaza, Suite 1300, New York, NY 10006

Jurisdiction + Venue

Jurisdiction:

General:

28 U.S.C. § 1331 – Kaul’s allegations arise pursuant to Section 1983 claims of violations of Kaul’s Constitutional rights and U.S.C. § 1964(a)(b)(c)(d) and 1962.

U.S.C. § 337 – Kaul’s alleges violations of an Act of Congress regulating commerce and monopolies.

28 U.S.C. § 1332 – 28 U.S.C. § 1332(d)(2)(A) – Kaul is a citizen of a different state to certain Defendants and the aggregate amount in controversy exceeds seventy-five thousand dollars (\$75,000).

Personal:

The Court has personal jurisdiction over all Defendants, as each Defendant has transacted business, maintained substantial contacts, and/or committed acts in furtherance of the illegal scheme and conspiracy throughout the United States, including in this district. The scheme and conspiracy have been directed at and have had the intended effect of causing injury to persons residing in, located in, or doing business throughout the United States including this District. This Court also has personal jurisdiction over all Defendants pursuant to Fed. R. Civ. P. 4(k)(1)(A) because they would be subject to a court of general jurisdiction in New Jersey.

Venue:

28 U.S.C. § 1391(b)(1) – A civil action may be brought in (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located and (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.

Preliminary Statement

1. Plaintiff RICHARD ARJUN KAUL (“Kaul”) brings this case (K11-11) against Defendants Horizon Blue Cross Blue Shield and its ex-CEO, Robert A. Marino (employed with Empire BCBS New York since 2017) on charges of having perpetrated and continuing to perpetrate, amongst other things, massive nationwide schemes of racketeering, anti-trust infractions and civil rights violations, in which they have targeted and continue to target principally ethnic minority physicians (Indians, African-Americans, Hispanics), to whom they owe money and whom they victimize, in collusion/conspiracy with state/federal agencies, by causing the illegal revocation of their medical licenses, the incarceration of their person and the illegal seizure of their assets.
2. The Defendants perpetrated such a scheme against Kaul, and it was not until December 2022, that evidence emerged of this scheme and it did so through two related cases, one a civil matter pending in the Eastern District of Pennsylvania (Anand v Independence Blue Cross: 20-cv-06246) and the other a criminal matter tried in the Eastern District of Michigan (USA v Leslie Pompy: 18-cr-20454) (**Exhibit 1**) in which Defendant, Dr. Lesly Pompy, was acquitted by a jury of all thirty-eight (38) charges on January 4, 2023 (**Exhibit 2**). This “new” evidence did not come into Kaul’s possession until recently, and was not available to Kaul nor reasonably could have been, as it remained in the guarded possession of investigators employed by the Defendants and other members of the Blue Cross Blue Shield family.
3. In addition to the emergence of the highly incriminating Pompy-Anand body of evidence, there now exists that over at least the last two (2) decades, the Defendants have submitted knowingly false data to the New Jersey Department of Banking and Insurance in support of their annual applications to increase the public’s cost of health insurance premiums, and evidence that this state agency was either willfully blind and or failed to conduct proper due diligence in its verification of the accuracy and truthfulness of the Defendants fraudulent data.
4. K11-11 seeks, amongst other things, to publicly expose the Defendants crimes and cause the State of New Jersey to either investigate and prosecute those responsible for these crimes, but if the State is conflicted, to then have appointed a special prosecutor, in order that the public and ethnic minority physicians be protected from the persecution that would continue if the Defendants are not held criminally liable.

Evidence + Related Cases

5. UNITED STATES OF AMERICA v. LESLY POMPY: 18-cr-20454 – UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN: Dr. Pompy was criminally charged on June 26, 2016, with a thirty-seven (37) count indictment in which he was accused of allegedly having dispensed opiates and other commonly prescribed pain reducing medications on certain dates to approximately fifteen (15) patients in 2016. Dr. Pompy, who had been in practice for over thirty (30) years was the largest provider of pain management services in his county, and had successfully treated tens of thousands of patients. The criminal trial commenced on November 28, 2022, and concluded on January 4, 2023, with an acquittal by the jury on all thirty-seven (37) counts. The trial resulted in the production by a BCBS investigator of testimony highly to the insurance company's "**ongoing pattern of racketeering**", in which with it, with its state-co-conspirators, has perpetrated through and under state-cover hundreds of RICO predicate acts, that include wire fraud/entrapment/evidence tampering/falsification medical records/issuance of fraudulent of state driving licenses by state police/subornation re production of fraudulent medical documents by physician employees of Defendant BCBS/formalization and education at special undercover training units for BCBS investigators of tactics of entrapment and their subsequent propagation against physicians.

On December 2/3, 2022, testimony was provided by Mr. James Stewart Howell, a person who after having retired from the police force, was hired and trained by BCBS to conduct undercover operations, targeting principally ethnic minority/foreign trained physicians whom BCBS wanted eliminated (license revocation/incarceration/suicide/death) in order to eradicate their debt to the physician, and eliminate the competitive threat posed by their continued practice in the relevant healthcare market.

Excerpts of Mr. Howell's testimony are included below, and the entire two (2) day transcript is enclosed (**Exhibit 3** December 1, 2022 – Direct Examination) (**Exhibit 4** December 2, 2022 – Direct + Cross Examination):

Conspiracy to commit fraud

BY MR. CHAPMAN – Page 99 Line 11-25 (Howell defense cross examination) (Exhibit 4):

Q. All right. So, let's start with January 5th. Your goal is to go into Dr. Pompy's office and see if you can get seen? A. Yes, sir.

Q. You were told by the front desk that you need to have a referral for pain management? A. That's correct.

Q. You go to Blue Cross Blue Shield and say, "He won't see me without a referral," right? A. Right.

Q. They set you up with Dr. Robertson? A. Yeah.

Q. Now, you understand how the referral system of medicine works, right? Doctors refer patients to other doctors when they're not able to help that specific issue?

A. It -- I -- yeah, I understand the basic sense of that, but ...

Evidential Falsification/Tampering with medical records/Wire fraud

BY MR. CHAPMAN - Page 101 Lines 1-25 + Page 102 Lines 1-25 + Page 3 Lines 1-17 (Howell defense cross examination) (Exhibit 4):

MR. CHAPMAN –Government Exhibit on page 7, Government Exhibit 1, page 7?

MS. OUELETTE: Is that page 7?

MR. CHAPMAN: Yes, please.

BY MR. CHAPMAN:

Q So I think you were correct that the – the other documents said back and nerve problems, but here we have a prescription, right?

A. Yes.

Q. And this is from Dr. Robertson?

A. It is, yes.

Q. And it says for pain management, right?

A. Yep, it just says the words "pain management."

Q. And that's Dr. Robertson's signature?

A. Yes.

Q. Now, that was dated December 10th, 2015, correct?

A. It was.

Q. You had Dr. Robertson backdate this referral to make it look like it was made before you showed up on January 5th?

A. I -- I don't recall the -- the timeline of that being signed or dated.

Q. Mr. Howell, there must have been some discussion about this. This is a medical record, right?

A. It is.

Q. You're aware that falsification of a medical record is a felony in the State of Michigan?

A. It is, yeah.

Q. Did you have any special authorization to commit a felony in the State of Michigan, to create that false medical record?

A. No, my intent was -- no intent to commit a felony. My intent was to further the investigation and get a pain management referral. There was no --

Q. The question was did you have any special permission to commit a felony in the State of Michigan and alter a medical record?

A. I -- I didn't alter that document.

Q. You had Dr. Robertson do that, right?

A. He wrote that pain management referral. I didn't write it.

Q. Was your conversation with Dr. Robertson to receive pain management on December 5th or was it after January -- on December 10th or was it after January 5th?

A. It was after January 5th.

Q. That date's false?

A. That date's false. I talked to him after January 5th, 2016.

Q. The need for pain management is also false?

A. Right.

Q. Okay.

A. It's -- yeah.

Q. Did you talk to any health care professionals about whether getting a referral for pain management would give a doctor an indication that you have a legitimate medical injury?

A. No. Just I talked to Dr. Robertson about this referral. It's -- didn't go anywhere else.

Q. Did you talk to Blue Cross Blue Shield about this referral?

A. I think my manager knew I did this, yeah.

Q. Your manager said it was, okay?

A. Yeah.

Q. Did you have Dr. Robertson date that referral on December 10th or did he just do that himself?

A. I don't remember any discussion about what the date was. Q. So it just magically happened to be backdated to before you ever stepped foot in Dr. Pompy's office?

A. I didn't say that.

Q. Okay.

Evidential Falsification/Tampering with medical records/Wire fraud/Entrapment/Conspiracy to commit fraud

BY MR. CHAPMAN - Page 143 Line 7-20 + Page 144 Line 1-25 (Howell defense cross examination) (Exhibit 4):

Q. In fact, during the entire time you saw Dr. Pompy, there are many of those tests that you didn't complete?

A. Many of them that I did not do, that's correct.

Q. You informed his office staff that insurance wouldn't cover it?

A. The discussion about what was not covered was in regard to an MRI, which is expensive.

Q. Was it true that Blue Cross Blue Shield wouldn't cover the test that was ordered by Dr. Pompy?

A. I don't know if it would have been or not. I didn't discuss it with anyone really.

Q. Just like you did with the X-ray, you had the ability to go to Dr. Robertson and falsify another MRI study, right?

A. I -- sure, I guess I could have ...

A. He would have probably assisted like he did on the other one.

Q. Because he's willing to falsify medical records for you, right?

A. He's willing to assist me.

Q. Okay. But you didn't do that, you didn't present a normal MRI. You said, "My insurance won't cover it."

A. I did, yep.

Q. Because you were concerned that if you came into that office with a normal MRI, Dr. Pompy would say, "I don't see anything wrong with you."

A. Yeah, I just did not want to -- didn't want to get an MRI and bring it in there or falsify one.

Q. Then that's the end of the operation, right?

A. I don't --

Q. You don't get your man?

A. I don't think so.

Q. Okay. Same thing with the referral. You don't falsify that referral to get into Dr. Pompy's office, that's the end of the operation?

A. Yeah, if you didn't come up with a pain management referral, I don't think they would accept you there.

Q. The only reason you got treated by Dr. Pompy was because you were willing to go so far as to falsify medical records to get in?

Evidential falsification/Diversions drugs by undercover agent

BY MR. CHAPMAN - Page 157 Line 17-25 + Page 158 Line 1-25 + Page 159 Line 1-25 + Page 160 Line 1-25 + Page 161 Line 1-7 (Howell defense cross examination) (Exhibit 4):

Q. Now, during that April 26th visit, you also tested positive in a point of care cup for benzodiazepines, isn't that, right?

A. I don't think that's right. I don't think there was a point of care test.

MR. CHAPMAN: Can we take a look at Government's 1, page 59? Can you blow up the box where it says

"Benzodiazepines"?

BY MR. CHAPMAN:

Q. You see a positive for benzodiazepine, sir?

A. I see that.

Q. Okay. And this is an indication that the point of care cup that you dropped a sample in showed positive for benzodiazepines?

A. If you could back that out so I can see -- I don't -- I don't recall that saying point of care above that.

Q. We can do that.

You're aware from reviewing these tests that if there's a confirmation study, usually it shows the metabolite levels in the urine?

A. I have seen that, yes.

Q. And if it's a point of care cup, it's usually filled out by hand?

A. Usually, yeah, 'cuz it's done on the spot.

Q. Somebody's trying to interpret that test?

A. Right.

Q. And you're aware from your knowledge as an investigator that these point of care cups can be very inaccurate?

A. I can't really talk about the accuracy of those. I -- I don't know the -- the total -- the accuracy of them.

Q. After you had a positive test for barbiturates and also benzodiazepines, did you think that these tests are accurate?

A. Those particular ones are not, no.

Q. Okay. So, in your experience there's inaccuracies?

A. Oh -- on -- yeah, on this case for sure there's inaccuracies.

Q. You also went over --

MR. CHAPMAN: And we can take that down. Thank you. BY MR. CHAPMAN:

Q. -- a positive barbiturate test from your urine sample, I believe it was from March 22nd, right?

A. That's correct.

Q. And you were informed of those results on April 26th?

A. That's right.

Q. Over a month later?

A. Yes.

Q. Okay. At that point you hadn't received any medications from Dr. Pompy?

A. Right. At the time they were discussing the results of the test I had not been prescribed any medication.

Q. So --

A. Is that what you're asking?

Q. Yes.

A. Okay.

Q. I don't mean to be redundant, but you dropped a sample on March 22nd, you learn of the results on April 26th?

A. That's correct, yes.

Q. You also mentioned that at that time, within 48 hours you went to Blue Cross and got your own test done?

A. I did.

Q. Had you taken a barbiturate, that would have been long gone from your system a month later, right?

A. I don't know.

Q. I imagine the positive test caused quite a stir at Blue Cross Blue Shield?

A. I -- it had me pretty upset but I don't know about causing a stir. I -- I definitely thought it was important to address it immediately.

Q. Without going over the whole thing, that same day, 4-26-26, you filled out a pre-visit questionnaire?

A. Yes.

Q. You again said your pain began ten years ago?

A. I believe so, yes.

Q. You said it was a level 5?

A. Yes.

Q. You said it stayed the same and is continuous?

A. Yeah. I kept indicating stiffness and circling 5s and continuous and --

Q. You said it was -- I'm sorry I cut you off. You said it was worse in the morning?

A. Yeah.

Q. You said you were using physical therapy to cope?

A. Yes.

Q. You did not indicate any other new symptoms?

A. Correct.

Q. And then you also indicated that you were taking Xanax at that time, right?

A. I did, yes.

Q. But that was a false statement because you weren't prescribed any Xanax?

A. That's true.

Conspiracy to entrap and illegal concealment/non-contractual disclosure from public of health premium fund diversion to 'Blues Academy'

BY MR. LIEVENSE – Page 8 Line 3-25 (Howell direct examination) (Exhibit 3):

Q. And what type of in-house training did they provide you? A. We did a training as far as we did a -- like a -- we called it a Blues Academy which -- which covered an entire range of health care investigations. We talked about undercover activities and things like that.

Q. Did you also have to learn how to become familiar with like Blue Cross Blue Shield data and information?

A. Yes.

Q. At some point did you become an accredited health care fraud investigator?

A. Yes.

Q. Is that a program -- was that a program kind of outside of Blue Cross training?

A. Yes.

Q. And what -- what -- what did that training entail?

A. That is -- to be an accredited health care fraud investigator, you had to be a member of the NHCAA, which is National Health Care Antifraud Association, and then you have to have five years' experience doing health care investigations, and then you also had to pass 150-question test to be -- to get that certification.

Conspiracy with state to commit fraud/issue fraudulent official documents

BY MR. LIEVENSE – Page 14 Line 11-25 (Howell direct examination) (Exhibit 3):

Q. Now, do you use your normal driver's license that's issued by the Secretary of State that you've had since you turned 16 years old?

A. No.

Q. All right. Do you -- are you able to get an undercover driver's license?

A. Yes.

Q. Now, how do you go about getting one of those?

A. There's a process we go through. I would -- I submit it to my manager and then it goes to the Michigan State Police, from there to the Secretary of State of Michigan.

Q. And so when you want to get an undercover driver's license, do you have to go to a special location, or do you just go to the local Secretary of State?

A. Both ...

Conspiracy with state to commit fraud/issue fraudulent official documents

BY MR. LIEVENSE – Page 16 Line 4-15 (Howell direct examination) (Exhibit 3):

Q. And would you need an insurance card that matched your undercover driver's license?

A. Yes.

Q. And so once you received an undercover driver's license from the State of Michigan, what would you need to do to get an undercover insurance card?

A. Submit -- submit a form under that same name to someone who reviews it and then they actually get a physical, actual plastic card made.

Q. And why do you use an undercover driver's license and undercover Blue Cross Blue Shield insurance card instead of your personal ones?

Conspiracy with state in furtherance of schemes of fraud and entrapment/unaccounted for diversion of prescription drugs

BY MR. LIEVENSE – Page 45 Line 7-23 (Howell direct examination) (Exhibit 4):

Q. Like to show you Government's Exhibit 1A.

After you received the prescription from Dr. Pompy on April -- the two prescriptions on April -- well, the Norco and the Lyrica prescriptions on April 26th, what did you do with them?

A. I went and filled them, and I was with the Michigan State Police and turned them over to them.

Q. So you first went to a pharmacy?

A. That's correct.

Q. And you filled the prescription?

A. Yep.

Q. And then once you got the prescription and the pills, what did you do?

A. Turned them over to them immediately, had them count them just to make sure.

Q. By them, you said it was the Michigan State Police?

A. Yes.

6. NEIL ANAND v. INDEPENDENCE BLUE CROSS: 20-cv-062456 – UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA:

Dr. Neil Anand, an Indian origin Pennsylvania based interventional pain physician, who established a highly successful interventional pain practice, was indicted by the US Government in 2019, on almost exactly the same charges as those levied against Dr. Pompy and many other ethnic minority physicians. In these cases, there is either no evidence or fraudulent 'evidence', and most charged physicians plead guilty, even though they know they are not guilty, but they are unable to fund a defense, as their assets are illegally seized. Dr. Anand attended D. Pompy's trial on every day. In late 2020, Dr. Anand, having calculated that Defendant Independence BCBS had conspired with state/federal investigative/prosecutorial/adjudicative agencies to manufacture the indictment against him, did then initiate a civil suit against BCBS. However, his efforts to prosecute the case and procure further evidence was obstructed by Defendant BCBS, and the case was eventually dismissed. Dr. Anand appealed to the Third Circuit Court of Appeals, and on June 29, 2021, the Appellate Court remanded the case to the district court (**Exhibit 5**). Consequent to the January 4, 2023, widely publicized acquittal of Dr. Pompy, the district court in Dr. Anand's case dismissed Defendant Independent BCBS's motion to dismiss, and ordered it to answer the claims (**Exhibit 6**). The lower court's decision was also based on argument/fact/law submitted by Dr. Anand in his January 4, 2023, responsive brief to Defendant motion to dismiss (**Exhibit 7**), in which he submits binding case law, in which the United States District Court has conclusively found that BCBS is a recalcitrant and chronic antitrust violator. BCBS's "patterns" of ongoing misconduct commenced against Kaul in 2005/2006, but were concealed from Kaul until

recently, who only came into their possession as a consequence of Dr. Anand's extensive state/federal Freedom of Information (FOI) requests in 2022 that exposed the Defendants' so called 'Health Fraud Partnership'. Dr. Anand's evidence was conclusively corroborated during Dr. Pompy's trial and acquittal. A jury of twelve (12) people believed that there does indeed exist a "vast conspiracy" between government agencies and private/corporate interests, that targets successful ethnic minority physicians. The referenced section of Anand's January 4, 2023, submission is:

"Plaintiff [ANAND] Has A Valid Sherman and Clayton Act Anti-trust Claim.

The monopolistic and price fixing activity of the Blue Cross Blue Shield Companies is of common public awareness due to its recent antitrust settlement, arising from a class action antitrust lawsuit called In re: Blue Cross Blue Shield Antitrust Litigation MDL 2406, which was reached on behalf of individuals and companies that purchased or received health insurance provided or administered by a Blue Cross Blue Shield company. The Class Representatives reached a Settlement on October 16, 2020, with the Blue Cross Blue Shield Association and settling Individual Blue Plans that knowingly violated antitrust laws by entering into an agreement not to compete with each other and to limit competition among themselves in selling health insurance and administrative services for health insurance. See <https://www.bcbssettlement.com/>. Pursuant to collateral estoppel, the restraint of trade by Blue Cross Blue Shield Association and its franchisees has been determined under In re Blue Cross Blue Shield Antitrust Litig., FINAL ORDER, Master File No.: 2:13-CV-20000-RDP (MDL NO.: 2406) (N.D. Ala. 2018). The FINAL ORDER provides on Pages 1-2: "This litigation began more than nine years ago and involves the consolidation of a number of actions filed by Subscriber Plaintiffs against the Blue Cross and Blue Shield Association ("BCBSA") and its Member Plans (the "Member Plans" or "Blue Plans") (collectively, "Defendants" or "Blues"). Subscriber Plaintiffs allege, among other things, that Defendants violated Sections 1, 2, and 3 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-3, by entering into an unlawful agreement that restrained competition between them in the markets for selling health insurance and the administration of Commercial Health Benefit Products in the United States and its territories. Subscriber Plaintiffs contend that the Blues: (1) allocated geographic territories; (2) limited the Member Plans from competing against each other, even when not using a Blue name, by mandating a minimum percentage of business that each Member Plan must do under that name, both inside and outside each Member Plan's territory; (3) restricted the right of any Member Plan to be sold to a company that is not a member of BCBSA; and (4) further agreed to other ancillary restraints on competition. (Doc. # 1082).

IBC is utilizing its monopoly market power to increase insurance premium prices and deductibles for its Members negatively. IBC and its "most favored" groups of health providers through Facilitated Health Networks (FHN), engage in anticompetitive conducts, i.e. price fixing, geographic market division, and group boycott (attack of non-white physicians prescribing controlled substances) which are causing market injury to individual physicians and small groups and are illegal per se. IBC in their own public announcements claim they are the largest and leading health insurer in Philadelphia (supported by USDOJ findings supra), and is utilizing its monopsony market power by substantially controlling physician treatment plans and reducing physician fee schedules, as IBC is the major purchaser of health services

offered by Philadelphia physicians. The per se rule is violated here, “by a price restraint that tends to provide the same economic rewards to all practitioners regardless of their skill, experience, training, or willingness to employ innovative and difficult procedures in individual cases. Such a restraint may also discourage entry into the market, and may deter experimentation and new developments by individual entrepreneurs”. quoting P.457 U. S. 348 Arizona v. Maricopa County Med. Soc'y, 457 U.S. 332 (1982); and Group Life & Health Ins. Co. v. Royal Drug Co., Inc., 440 U.S. 205 (1979). Anand’s Complaint’s Claims, distinguishes between “restraints with an anticompetitive”

In this case, K11-11, the question of whether the Defendants can raise any defenses to Kaul’s antitrust claims has been affirmatively answered in In re Blue Cross Blue Shield Antitrust Litig., FINAL ORDER, Master File No.: 2:13-CV-20000-RDP (MDL NO.: 2406) (N.D. Ala. 2018), and it is no; the law has foreclosed the Defendants, and thus the law permits Kaul to move for Summary Judgment.

Dr. Anand’s September 9, 2021, 3rd Amended Complaint painstakingly details the method, that has been, and continues to be uniformly utilized across the country by BCBS against principally ethnic minority physicians, in what is effectively a bureaucratic scheme of ‘slave-like’ labor and ethnic cleansing, perpetrated through the American courts and jails (**Exhibit 8**):

“IBC and its employees engaged in racial discrimination against Anand and other Philadelphia and Pennsylvania physicians because of their race, heritage, skin color or religion”

“to its recent antitrust settlement, arising from a class action antitrust lawsuit called In re: Blue Cross Blue Shield Antitrust Litigation MDL 2406, N.D. Ala. Master File No. 2:13-cv-20000-RDP, which was reached on behalf of individuals and companies that purchased or received health insurance provided or administered by a Blue Cross Blue Shield company.”

“IBC uses its “police power” via the Health Care Fraud Prevention Partnership to induce criminal proceedings against other physicians through coordination with OIG, FBI, and USDOJ which causes a chilling effect of proper medical treatments of patients.”

7. ANAND STATE/FEDERAL FOI REQUESTS: In a period commencing in or around late early 2021, Dr. Anand began submitting FOI requests to state/federal governmental agencies, that sought, amongst other things, any and all information pertaining/relevant to any agreements/contracts/communications between the insurance industry and the government regarding conspiracies as to what Dr. Anand was ultimately able to establish as the so called **“Health Fraud Partnership”**. This illegal agreement, is misleadingly titled, in order to provide ‘cover’ and apparent legitimacy for an illegal scheme concocted by the insurance industry, in which governmental agencies have provided it unfettered access and control of governmental investigative/prosecutorial/adjudicative functions with which they have manufactured knowingly false civil/criminal cases against principally ethnic minority physicians, for license revocation/asset seizure/incarceration, in order to eradicate their debit and eliminate the future threat of competition that the physician’s continued practice would pose. Within the

extensive volumes of highly incriminating evidence received by Dr. Anand, are two (2) affidavits from the Office of the Pennsylvania AG (May 20, 2022/November 3, 2022), in which there is an effective admission that the insurance industry acts in conspiracy with the state in the aforementioned manner (**Exhibits 9 + 10**):

“In that specific case, although an initial referral was received from an Independence Company regarding Dr. Bloom and his chiropractic office ... After receiving the referral, from Independence Blue Cross, the Insurance Fraud Section opened an investigation into the allegations and after the investigation was completed, both Dr. Bloom and Weathervane were charged and prosecuted for the following crimes

- a. **Insurance Fraud 18 P.C.S.A. §4117 (a)(2)(3) and**
- b. **Theft by Deception 18 Pa.C.S.A. §3922 (a).”**

“The IFS [Insurance Fraud Section of PAOAG] was able to readily identify three investigations that fit the parameters [Referral from BCBS] of Mr. Anand’s request. All three investigations were conducted before the Grand Jury and clean slate/limited access provisions of CHRIA are applicable to criminal cases filed as a result of all three investigations.”

Chronology of Relevant Fact

8. In a period from approximately 2004 to 2012, Kaul provided interventional pain and minimally invasive spine surgery care to thousands of patients with healthcare policies provided by Defendant BCBS.

9. The care provided to these patients was clinically indicated, and based on the patients' history, physical examination, and diagnostic studies, and was purposed to, and did in fact, reduce the patients' pain disability. These facts were supported in the documentation within the patient's clinical file.

10. Kaul submitted invoices to Defendant BCBS for payment of these services, and in over ninety (90%) of these pre-certified points of care, Defendant BCBS fraudulently refused payment, in order to increase compensation to their corporate executives and bribes to corrupted politicians/judges on their 'payroll'.

11. The approximate amounts of unpaid fees were not less than seven million dollars (\$7,000,000), and in the period from 2004 to 2012, Kaul became obligated to file suit on two (2) occasions against Defendant BCBS.

12. In retaliation, Defendant BCBS, in collusion/conspiracy with **The Kaul Cases** Defendants coopted, within the State of New Jersey, both state/federal investigative/prosecutorial/judicial agencies to have Kaul's physician license revoked and to attempt to have him indicted and incarcerated, according to the rules of their 'Elimination Scheme' final-solution-esque manifesto.

(The insurance industry was born in London in the 1600s on the back of the British trans-Atlantic slaving industry, through Lloyd's of London, an insurance conglomerate that today ultimately underwrites every insurance policy, and that has since its ignominious beginnings profited from human suffering, including that associated with the Nazi Holocaust. As a consequence of Kaul's persistence within **The Kaul Cases** of exposing the American insurance industry's connection to Lloyd's dark slaving profiteering (**Exhibit 1**) this British corporation did, for the first time in its history, and unquestionably in a public relations 'damage-mitigation' effort, did publicly admit to these crimes against humanity: <https://www.lloyds.com/about-lloyds/history/the-trans-atlantic-slave-trade/lloyds-marine-insurance-and-slavery>. The insurance industry, which includes the Defendants, has replaced shipping slaves with the human trafficking of Indian/African American physicians into the modern-day plantation equivalent, that of the American jails.)

13. In a period from approximately 2012 to 2016, Kaul, after having had his license illegally revoked in 2014, continued to be subjected to state/federal criminal investigations, orchestrated/conducted by Defendant BCBS in collusion/conspiracy with **The Kaul Cases**

Defendants. None of these investigations produced any evidence of wrongdoing, the lack of which undermines the entirety of the case that caused the illegal revocation of Kaul's license.

14. From February 22, 2016, to August 19, 2021, Kaul filed suit in the United States District Court, against the individuals and corporations that had conspired to commit and did commit a **"pattern of racketeering"** against Kaul.

15. On June 17, 2013, consequent to the suspension of Kaul's license, highly defamatory press coverage and Defendant BCBS's scheme to refuse to pay Kaul's invoices, Kaul's corporations became obligated to file for Chapter 11 bankruptcy, a case in which Defendant BCBS was identified as a debtor.

16. During the bankruptcy proceedings, the trustee and his lawyer, the latter, Daniel Stolz, Esq, a Defendant in **The Kaul Cases**, conspired with insurance carriers to not file claims to collect the monies owed to Kaul's estate by these entities, in return for which Defendant Stolz received bribes, disguised as 'legal fees' (**Exhibit 11**).

17. Upon information recently provided to Kaul, he now asserts that Defendant BCBS conspired with Defendant Stolz in the scheme to not collect monies owed to Kaul's estate, as part of the quid pro quo scheme in which Defendant Stolz received bribes from Defendant BCBS, disguised as 'legal fees'.

18. In approximately 2019, Kaul was contacted by a Dr. Neil Anand, a physician of Indian origin, who had recently been indicted by the federal government on charges of healthcare fraud. In late 2020 Kaul suggested Anand seek legal redress against the insurance carrier that owed him the most money, as this entity was likely the instigator of the indictment.

19. On December 11, 2020, Anand initiated suit against Independence Blue Cross, the Pennsylvania subsidiary of the Blue Cross Blue Shield corporate collective.

20. On September 27, 2022, Anand filed a 'Third Amended Complaint' (D.E. 57), in which he details the scheme perpetrated by BCBS, that involved, amongst other things, the use of the US wires to transmit knowingly fraudulent information in furtherance of its scheme to destroy Anand 's career and have him indicted and incarcerated.

21. In 2018, Dr. Lesly Pompy, a Michigan based interventional pain physician of Haitian origin, was indicted by the US Government on charges of healthcare fraud, in a case almost identical to that filed against Dr. Anand.

22. Dr. Pompy, upon being indicted, did initially consider pleading guilty, as he believed, that despite his innocence, it would be impossible to successfully contest the case. However, he was persuaded by Dr. Anand to **"fight"** the charges.

23. The criminal trial of Dr. Pompy commenced on November 28, 2022, and concluded on January 4, 2023, with the jury acquitting him on all thirty-seven (37) charges.

24. However, during the trial evidence emerged of the fraudulent schemes perpetrated by the Blue Cross Blue Shield corporations in their efforts to entrap knowingly innocent physicians, mostly of whom belonged to ethnic minorities.

25. During the testimony of a James Howell, an ex-police officer employed by Blue Cross Blue Shield to manufacture entrapment schemes, Howell testified that in furtherance of these schemes he was provided fraudulent medical documents, driving licenses and other official documents by agencies/persons of the State of Michigan and physicians employed by Blue Cross Blue Shield.

26. Howell's prior testimony in various other prior court proceedings had resulted in the wrongful conviction and incarceration of other ethnic minority physicians, all of whom continue to languish in jail.

27. The trial of Dr. Pompy unequivocally establishes the "**pattern of racketeering**" being perpetrated by the American insurance industry and specifically the Blue Cross Blue Shield corporations, and corroborates the claims that Kaul has asserted within The Kaul Cases, since 2016.

28. Dr. Pompy's widely publicized verdict was announced on January 4, 2023, and on January 6, 2023, the district judge in Dr. Anand's suit against Independence Blue Cross Blue Shield, entered an order denying the Defendant's motion to dismiss, and ordering it to file answer to Dr. Anand's opposition to their motion.

Legal Claims

COUNT ONE

RICO

Defendants: Robert Marino, BCBS

Co-conspirators: New Jersey Department Banking and Insurance/Office of the New Jersey AG

RICO Predicate Acts: Mail fraud, wire fraud, theft, public corruption

Association-In-Fact Enterprise: "State of New Jersey -BCBS Association-In-Fact Enterprise"

Overview:

29. In a period commencing approximately 2003/2004, Defendant BCBS commenced conspiring to commit and did commit a fraudulent scheme that targeted Kaul, an Indian physician, with concerted misrepresentations that caused him to provide clinical care to their clients, with the pre-certification promise of remuneration, but to then defraud him of his services by refusing to pay Kaul's invoices, after he had provided the service in good faith. In the perpetration of this scheme, Defendant BCBS, conducted a "**pattern of racketeering**" through the willful and knowingly illegal commission of the RICO predicate acts of wire fraud, mail fraud and theft, in which its corporate officers, including Defendant Marino, converted the State of New Jersey and the BCBS corporation into the "**State of New Jersey-BCBS Association-In-Fact Enterprise**" ("**NJ-BCBS AIF Enterprise**) through which Defendants Marino/BCBS funneled bribes to multiple New Jersey based politicians, including The Kaul Cases Defendant, Christie, who, in exchange for these bribes, abused his executive power to order the state medical board to revoke Kaul's license and commence criminal investigations. The revocation was purposed to eliminate Defendant BCBS's debt to Kaul and the legal liability posed by the lawsuit Kaul filed in February 2012, while the criminal investigations sought to incarcerate Kaul, in order to prevent him from exposing their crimes.

The "pattern of racketeering":

30. To carry out, or attempt to carry out, the fraudulent scheme, the Defendants, each of whom is associated-in-fact with the "**NJ-BCBS AIF Enterprise**" did knowingly conduct or participate, directly or indirectly, in the affairs of the enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c), and employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

31. Specifically, the Defendants have committed, conspired to commit, and/or aided and abetted in the commission of, at least two predicate acts of racketeering activity (i.e., violations of 18 U.S.C. §§ 1341 and 1343), within the past ten years.

32. The multiple acts of racketeering activity which the Defendants committed, or aided or abetted in the commission of, were related to each other, posed a threat of continued racketeering activity, and therefore constitute a “**pattern of racketeering activity**”. The racketeering activity was and is facilitated by the Defendants’ regular use of the state-corporate facilities, services, distribution channels, and employees of the “**NJ-BCBS AIF Enterprise**”. The Defendants participated in the fraudulent scheme by using mail, telephone, and the Internet to transmit mailing and wires in interstate or foreign commerce.

33. The Defendants used, directed the use of, and/or caused to be used, thousands of interstate mail and wire communications in furtherance of their scheme through virtually uniform misrepresentations, concealments, and material omissions.

34. In devising and executing the illegal scheme, the Defendants devised and knowingly carried out a material scheme and/or artifice to defraud Kaul of the property rights of his reputation, medical license, and healthcare business, by communicating to the public, Kaul’s patients, and his professional colleagues, that the Plaintiff was not qualified to perform minimally invasive spine surgery and had committed insurance and bank fraud, materially false representations, and would be indicted. For the purpose of executing the illegal scheme, the Defendants committed these RICO predicate acts on hundreds of occasions, with the specific intent to advance the knowingly illegal scheme.

RICO Predicate Acts

35. **Mail Fraud**: Defendants Marino/BCBS did, in the relevant period, with knowing illegality conspire to use and did use the US mail to transmit knowingly fraudulent information to Kaul that he would be remunerated for the pre-certified provision of care to patients with health insurance provided by Defendant BCBS. In rendering these representations, Defendants Marino BCBS knew the statements were materially false, and that they had no intention of paying Kaul, consistent with their schemes of theft of service and contractual derogation.

36. **Wire Fraud**: Defendants Marino/BCBS did, in the relevant period, with knowing illegality conspire to use and did use the US wires to transmit, during phone calls and other digital communications, knowingly fraudulent information to third parties, that included agents of the executive, investigative, prosecutorial, and adjudicative arms of state and federal government, and the knowing fraud was that Kaul had committed health insurance fraud. The purpose of the Defendants scheme was to have Kaul’s license revoked, his reputation destroyed, his economic standing destroyed, to have him ostracized, to have him indicted/incarcerated and then to have him either leave the US and or be deported; in order to eradicate their debt to Kaul and to eliminate the competition he presented to their commercial agenda. In the digital and non-digital communications surrounding the scheme, the Defendants discussed with each other and with third party ‘state actors’ the various tactics that would be used to effectuate

the scheme, and these included: **(i)** Use of the US mail and wires to organize and further schemes to bribe Defendant Christie, in order to have him order the medical board revoke Kaul's license and have him indicted; **(ii)** Use of law and public relation firms to funnel bribes to Christie as part of quid pro quo schemes to revoke Kaul's license, destroy his reputation and cause him to leave the United States; **(iii)** Use of the US mails and wires to transmit written, telephone, or electronic communications regarding discussions between the Defendants/co-conspirators and state and federal politicians/prosecutors/investigators about the illegal scheme to revoke Kaul's license and have him indicted/incarcerated;**(iv)** Use of US mail and wires to file knowingly false complaints against him with the medical board; **(v)** Use of US mail and wires to send patients letters encouraging them to file frivolous lawsuits against Kaul; **(vi)** Use of the US mail and wires to communicate false information to patients, that he was not qualified to perform minimally invasive spine surgery; **(vii)** Use of the US mail and wires to send false information to personal injury lawyers that Kaul was not qualified to perform minimally invasive spine surgery, had committed insurance fraud, that his accounts receivable could not be collected and that the legal cases had no monetary value; **(vii)** Use of the US mail and wires to send false information to New Jersey politicians, encouraging them, with the promise of political campaign 'donations' to coerce the medical board/state prosecutors to have Kaul's license revoked and have him indicted; **(viii)** Use of the US mail and wires to organize and further schemes to bribe Defendant Christie, in order to have him order Defendant NJBME to revoke Kaul's license; **(ix)** Use of the US mails and wires to transmit letters, emails and other materials indicating that the Defendants co-conspirator lawyers/physicians had been instructed to inform their colleague not to support Kaul in any litigation, in any form, be it financial and or professional; **(x)** Use of the US mails and wires to disseminate written, telephone, or electronic communications regarding the knowingly fraudulent events surrounding the revocation and indictment investigations, in order to ostracize Kaul; **(xi)** Use of the US mails and wires to collect the increased revenues that flowed from the illegal elimination of Kaul from the practice of medicine; **(xii)** Use of the US mail and wires to transmit information in furtherance of their scheme of converting the United States Bankruptcy Court into a racketeering enterprise; **(xiii)** Use of the US mails and wires to transmit false information that Kaul has committed insurance fraud, was not qualified to perform minimally invasive spine surgery, had committed bank fraud and was going to be criminally indicted for Medicare fraud; **(xiv)** + Obstruction of justice and evidence tampering ('The Solomon Critique' + 'The Solomon Critique 2'); **(xv)** Use of the US mail and wires to transmit the illegal consequences of the obstruction of justice/evidence tampering ('The Solomon Critique' + 'The Solomon Critique 2')/indictment investigations to the public, national (state + federal) and international healthcare agencies and regulatory bodies, in furtherance of the defendants scheme to destroy Kaul's reputation globally, his livelihood, his economic standing and prevent him from obtaining a medical license anywhere in the world, or indeed any form of employment.

37. Theft: In a period commencing in or around 2004/2005, Defendants Marino/BCBS did conspire to commit and did commit thousands of separate instances of the RICO predicate act

of theft against Kaul, in which the Defendants knowingly, and with malice aforethought, deceived Kaul into believing he would be paid for the rendering of life-saving care to their pain-ridden clients, but to then refuse to pay/honor the agreement, and to then coerce state/federal investigators/prosecutors to file knowingly false administrative/civil/criminal charges to have Kaul's license revoked and have him incarcerated, and to then use the US wires to propagate these fraudulent charges in order to ostracize/isolate Kaul from any financial/professional support; with the ultimate purpose being to destroy Kaul's economic standing, his reputation, his life and his liberty, in order to advance their economic agenda by eliminating their debt to Kaul and the market competition he presented. The intent and effect of the Defendants scheme, one that is **"ongoing"**, has been to deprive Kaul and many other ethnic minority physicians of their right to a livelihood and life, and to secure their services and effectively enslave them through schemes of false promises/inducements.

38. Public Corruption: In a period commencing in or around 2000, the year in which The Kaul Cases Defendant, Christie, was appointed to the office of the US Attorney – DNJ, the Defendants, already entrenched in schemes of political/judicial corruption within the State of New Jersey, did, in collusion/conspiracy with Defendant Christie, convert the office of the US Attorney – DNJ into a **"racketeering enterprise"** in which they engaged in a series of quid pro quo schemes with Defendant Christie, in which they funneled him bribes in exchange for him filing knowingly fraudulent criminal charges of healthcare insurance fraud against cardiologists, most of whom were Indian. Many of these innocent physicians were jailed, bankrupted and or committed suicide. The Defendants profited by eliminating their debt to these physicians and eradicating the threat to the interventional cardiac market of their business competition, thus increasing, albeit fraudulently, corporate and shareholder compensation.

Description of the "State of New Jersey - BCBS Association-In-Fact Enterprise":

39. RICO defines an enterprise as **"any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."** 18 U.S.C. § 1961(4). An association-in-fact enterprise requires three structural features **(1)** a purpose; **(2)** relationships among those associated with the enterprise; and **(3)** longevity sufficient to permit those associates to pursue the enterprise's purpose.

40. The Defendants have, through the increased revenue generated through their decades old scheme of kickbacks and bribery, increased their control of the state government, its agencies, its legislature, and certain members of its judiciary. The Defendants have perpetrated this scheme through the **"NJ-BCBS AIF Enterprise"**, a criminal scheme that is **"ongoing"** and one that continues to funnel its criminal proceeds into the New York State Exchange. It was with this scheme and through this enterprise, that the Defendants exerted illegal control over the mechanism of physician regulation, a control they used to illegally revoke not only Kaul's medical license, but that of other physicians, in order to eliminate their debt and eradicate the competitive threats posed by Kaul and other physicians.

41. The elements of the **"NJ-BCBS AIF Enterprise"** consist of:

(i) the persons – the Defendants/**The Kaul Cases** co-conspirators/agencies and persons associated and or employed by the State of New Jersey/persons associated and or employed by Defendant BCBS; (ii) the motives – the elimination of debt and competition for the finite insurance premium ‘pool’/procurement of increased political power and control of government (iii) the mechanics and method – the structure is hierarchical in nature, in that the corporate Defendants, consequent to their financial superiority, are situated at the ‘top’ of the power pyramid, and issue orders/effectuate bribery related control to and of the subjugate public servants within the executive/judicial/legislative branches of government. Defendant Christie, an individual who had complete control of state/federal functions, provided the **“NJ-BCBS AIF Enterprise”** with the use of state/federal agencies and personnel necessary to revoke the Plaintiff’s license and have him indicted. Defendant Christie provided these services in return for bribes and monies disguised as ‘campaign donations’. The monies were part of a quid pro quo scheme, not protected by Noerr-Pennington, in which there was an explicit understanding that the bribes were payment for the revocation of the Plaintiff’s license and potential indictment. Central to the scheme and operation of the **“NJ-BCBS AIF Enterprise”**, is the fact that the Defendants each affirmatively misrepresented or concealed from their shareholders and the public, the existence of bribes, and the fraudulent nature and purpose of the scheme to revoke Kaul’s license and have him, and other ethnic minority physicians wrongfully indicted. The Defendants understood that if their shareholders had become aware of the scheme, they would have passed a vote against it, realizing the liability it would incur. The Defendants understood that if the public became aware of the illegal use of the public’s taxes to fund their illegal scheme of revocation/indictment they would have demanded an investigation and not voted for Defendant Christie in the 2013 New Jersey Gubernatorial election. Specifically, the Defendants claimed that the bribes paid were intended to assist them in their legislative efforts, when in fact they were quid pro quo payments to Defendant Christie, in order to have Kaul’s license revoked and attempt to have him indicted.

(iv) the distinctness – at all relevant times, including the present, the **“NJ-BCBS AIF Enterprise”** had an existence separate and distinct from each of the Defendants, and was separate and distinct from the **“pattern of racketeering”**; (iv) the longevity – the **“NJ-BCBS AIF Enterprise”** and the schemes perpetrated through it, have been in existence for over two (2) decades, and are currently **“ongoing”**, as evidenced by the testimony adduced in the trial of Dr. Pompy, and involve other corporate and state related co-conspirators; (v) the **“open”** or **“closed ended”** continuity – the scheme and the **“NJ-BCBS AIF Enterprise”** remain **“open ended”** and there continue to remain pending indictments against many other innocent ethnic minority physicians, whose only ‘crime’ was to practice medicine and operate medical businesses.

42. The activities of the **“NJ-BCBS AIF Enterprise”** affected, interstate and foreign commerce because it involved commercial activities across state boundaries, such as the commercialization of risk and the investment of fraudulent proceeds into the NYSE, the consequences of which have generated enormous profits.

43. The **“NJ-BCBS AIF Enterprise”** used its common communication network to promote false information that Kaul was not qualified to perform minimally invasive spine surgery, had committed insurance fraud, Medicare fraud and bank fraud and was going to be criminally indicted. The purpose of this propaganda campaign was to isolate Kaul from the medico-legal community and any source of capital, and to dissuade him from pursuing his accounts receivable, in order to deprive him of his right to a legal defense. This permitted the Defendants to improperly profit from a scheme polluted with bribes, fraud, kickbacks, obstruction of justice and perjury.

44. Within the **“NJ-BCBS AIF Enterprise”** the Defendants and their co-conspirators maintain/conduct communication with each other through corporate-state channels, contractual relationships, financial ties, and a continuing coordination of activities. Through this enterprise, the Defendants continue to function as an **“ongoing”** unit with the purpose of furthering their profit purposed ethnic minority physician eradication and cleansing schemes.

45. The Defendants participated in the operation and management of the **“NJ-BCBS AIF Enterprise”** by directing the exchange of information and monies, as described herein. While the Defendants participated in, and are members of, the enterprise, they have a separate existence from the enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers, directors, employees, individual personhood, reporting requirements, and financial statements.

46. The Defendants exerted and exert substantial control over the **“NJ-BCBS AIF Enterprise”** and participate in the affairs of the enterprise by: **(a)** deciding how monies were dispersed from the political action committees; **(b)** communicating directly with lawyers, public relation agents and political lobbyists with direct connections to Defendant Christie, and state/federal investigators and prosecutors; **(c)** developing policies, guidelines and fee schedules for clinical care, in which the Defendants colluded with other insurance corporations to fix the prices paid to physicians; **(d)** procuring appointments to regulatory state agencies, which they abuse to further their corporate economic agendas; **(e)** writing healthcare related legislation; **(f)** funding state/federal administered prosecutions against physicians to whom they owed substantial monies; **(g)** misrepresenting and/or concealing from the public the true nature of the relationship and agreements between the members of the enterprise and the scheme to bribe Defendant Christie in order to attempt to indict and revoke Kaul’s license; **(h)** otherwise misrepresenting and/or concealing the increased personal profits that inured to their benefit as a consequence of the illegal elimination of Kaul from the practice of medicine; **(i)** ensuring that the other unnamed co-conspirators complied with and concealed the fraudulent scheme.

47. Without each of the Defendants and co-conspirators willing participation, the scheme and common course of conduct would not have been successful. The

Defendants directed and controlled the ongoing organization necessary to implement the scheme at meetings and through digital communications.

Antitrust

Overview:

48. In a period commencing in at least, if not before 2005/2006, the Defendants did conspire to commit and did commit a scheme of ongoing per se antitrust violations, in which they continue, in conjunction with other members of the Blue Cross Blue Shield corporations, to further their illegal monopoly of the finite financial 'pool' of the American health insurance industry, not through the provision of a superior service, but through grand schemes of corruption of the executive/legislative/judicial branches of both state and federal government. The Defendants have directed their monopoly power towards the engineering of physician elimination schemes, that are perpetrated, in collusion and conspiracy with the investigative/prosecutorial/adjudicative branches of government, through state and federal courts, that continue to result in the filing of false indictments, convictions and incarcerations. These illegal elimination schemes, the principal targets of which are ethnic minority physicians, are purposed to reduce the competitive threat posed to the market by these physicians. The Defendants false constriction of the market has caused a drastic nationwide physician shortage, and in reducing competition has caused the public a market injury, in that the price of healthcare has arbitrarily risen and its supply declined.

Relevant Chronological and Contextual Fact:

49. In February 2005, Kaul revolutionized the field of minimally invasive spine surgery, by inventing and successfully performing the first outpatient minimally invasive spinal fusion, in a same-day surgical center. This event proved that such a surgery could be safely and effectively conducted in an outpatient surgical center by a non-orthopedic/neurosurgical physician with training in interventional pain/minimally invasive spine surgery. This event also presented a market threat to hospitals, insurance companies and the orthopedic-neurosurgical community, who reacted not by attempting to deliver a competitive service based on price/quality, but instead directed their efforts toward corrupting the political/judicial/legislative processes to have their competition eliminated through the introduction of sham anti-competitive legislation and administrative/civil/criminal prosecutions, that resulted in restriction of hospital privileges/license revocations/incarcerations. Kaul was the principal and primary target in this scheme, a scheme in which the Defendants were principal perpetrators, and a scheme orchestrated by Defendant Christie, in collusion and conspiracy with The Kaul Cases Defendants.

Specific Anticompetitive Tactics:

50. As a consequence of the expansion and increase in competition in the minimally invasive spine surgery market, the Defendants, in collusion and conspiracy with The

Kaul Cases Defendants, did, in 2011, illegally manipulate the AMA CPT coding system to downgrade the relative value units for endoscopic discectomy, which injured the commercial potential of Kaul's minimally invasive spine surgery practice. The scheme, in which the Defendants played a central role, was concocted by a group of neurosurgeons, that included the then 2011 President of the North American Spine Society, Gregory Przybylski. These individuals, because of their influential positions within their professional societies, had the codes' RVUs reduced with the understanding that the majority of minimally invasive spine surgeons, from interventional pain backgrounds, would be unable to perform open micro-discectomies. The neurosurgeons effectuated the change without publicizing it for comment, thus denying Kaul and other minimally invasive spine surgeons the opportunity to object.

51. These changes lowered the reimbursement rate for endoscopic discectomies, which caused a larger percentage of the insurance health fund to be diverted to the Defendants, who did not share the profit with the public reduced premiums.

52. As a consequence, Kaul sustained substantial losses and damage to his business and property, because of the reduced reimbursement associated with outpatient minimally invasive spine surgery.

53. The Defendants have, through the bribing of politicians, effectuated legislation and regulatory changes that harmed Kaul's minimally invasive spine surgery practice. These included **(i)** a downgrading in the Relative Value Unit associated with the CPT code for endoscopic discectomy **(ii)** the veto of a bill in 2011 by Defendant Christie, that was designed to permit state licensure of one-room surgical centers and **(iii)** the refusal of the Defendants to reimburse surgical centers for minimally invasive spine surgery. These acts artificially and arbitrarily reduced the availability to the public, of outpatient minimally invasive spine surgery.

54. The aforementioned acts constituted in an illegal monopolistic effect on the healthcare premium-based fund element of the minimally invasive spine surgery market, and caused an illegal diversion of monopolistic profits to Defendants, at the expense of, and injury to Kaul and the healthcare premium paying public.

55. The Defendants scheme of non-reimbursement to Kaul and his surgical center for minimally invasive spine surgery, caused him to file suit against the Defendants, who retaliated by scheming with Defendant Christie/NJ state agencies to have Kaul's license revoked, and with the NJ US Attorney/FBI to attempt to have Kaul indicted and incarcerated, as they have done with many other ethnic minority physicians.

56. The Defendants illegal monopolization and availability reduction of the minimally invasive spine market resulted in a rise in opiate consumption as patients' options for pain relief became constricted. Consequently, the Defendants reaped larger profits, at the expense of their clients and the public, and these grossly elevated profits increased Defendants corporate/executive profits, but did not result in a reduction in their clients' premiums, that have in fact continued to rise.

57. The rise in the Defendants profits, since the implementation of the aforesaid changes, is the product of nothing but bribery and legal chicanery.

58. The Defendants illegal per monopolization of the aforementioned market has injured the public by reducing the availability and increasing the price of minimally invasive spine surgery. Corporate greed and malfeasance continue to cause injury to the American public, an injury unabated by the dearth of government prosecutions, a dearth that is a consequence of political corruption, that is itself a consequence of how the political campaign finance system has legalized bribery, in a manner that, incredulously, violates the Foreign Corrupt Practices Act.

59. The Defendants anticompetitive conduct enabled it to indirectly charge consumers and third-party payors, prices in excess of what they would otherwise would have been able to charge, absent their unlawful actions, and excessive prices not related to the provision of a superior service.

60. The Defendants, in their annual applications to the state to increase the cost of healthcare premiums, employed their illegal monopolization of the market, by arguing that the billed cost of minimally invasive spine surgery had increased, itself an improper consequence of the fact that outpatient surgery centers and non-neurosurgical/orthopedic physicians had been illegally eliminated from the market, which permitted hospitals/neurosurgeon-orthopedic surgeons to increase their billed amounts. Thus, in submitting that the average billed amount had increased, the Defendants, in collusion/conspiracy with the state, were permitted to raise, albeit illegally, the cost of premiums, while having substantially reduced service. The end-result is that the public pays more for less, while the Defendants corporate/executive profits continue to rise.

Definition of market

61. From 2000 to 2012, an increasing number of patients chose to have minimally invasive spine surgery performed in outpatient surgical centers by non-neurosurgical/orthopedic physicians, for reasons that included superior clinical service. Hospitals and neurosurgeon-orthopedic groups were unable to compete, and the Defendants perceived this evolution of care as a threat to their corporate/executive profits. Kaul's 0% post-operative infection rate evidenced the superior patient outcomes that were one of the reasons for the clinical and commercial success of his practice and to his knowledge similar outcomes were achieved across the United States by other similarly trained physicians within the outpatient setting. The illegal suspension/revocation in 2012/2014 of Kaul's license caused an anti-trust like injury to the American minimally invasive spine surgery market, which caused it to contract, one consequence of which has been the exponential rise in opiate consumption and heroin use. Patients with spinal injuries, deprived of access to the contracted and more expensive American minimally invasive spine surgery market, have resorted to increased opiate use.

62. The market in which the so called "**Spine Turf Wars**" erupted in approximately 2000 is the American market for minimally invasive spine surgery, which includes the following procedures: 1. Cervical endoscopic discectomy; 2. Thoracic endoscopic discectomy; 3. Lumbar endoscopic discectomy; 4. Anterior cervical discectomy and fusion; 4. Interbody lumbar fusion; 5. Vertebroplasty; 6. Kyphoplasty; 7. Percutaneous pedicle screw placement; 8. Percutaneous facet screw placement; 9. Interspinous distraction; 10. Interspinous fusion; 11. Facet fusion; 12. Sacro-iliac joint fusion; 13. Cervical lateral mass screws; 14. Dorsal column stimulators; 15. Interlaminar decompression.

63. These clinical services are provided to the public to treat degenerative and traumatic spinal conditions that cause pain and functional disability, and are provided by physicians with training in the following areas of medicine and surgery: 1. Interventional pain; 2. Interventional radiology; 3. Neurosurgery; 4. Orthopedics; 5. Physiatry.

64. The locations in which the clinical services can be provided are hospitals and outpatient surgical centers, with the latter being associated with a lower cost and incidence of post-operative infection and complications. The Defendants alleged anti-trust violations, as detailed within, have artificially reduced the availability of minimally invasive spine surgery, and has permitted a substantially greater percentage of the premium healthcare related fund to be illegally diverted to the Defendants, and to hospitals/neurosurgeons, their co-conspirators in the scheme to have Kaul's license revoked, whose ill-gotten profits are derived not from the provision of a superior service, but from having engaged in an antitrust purposed "**pattern of racketeering**", in which they, in collusion/conspiracy with Defendant Christie, converted the State of New Jersey into a "**racketeering enterprise**".

65. The Defendants competed with Kaul for the reservoir of capital derived from the public/patients who purchased health insurance policies, with the understanding that if they required medical care, these monies would fund such care. The Defendants bribed Defendant Christie and other New Jersey legislators to enact laws that either prohibited the provision of minimally invasive spine surgery in outpatient surgical centers or substantially reduced the reimbursements, through the introduction of fee schedules, which effectively prevented surgical centers from providing minimally invasive spine surgery. The fee schedules did not apply to hospitals and discriminated against surgical centers, in which Kaul conducted his procedures.

66. However, the Defendants fee restriction/legislative/sham litigation restricting anticompetitive misconduct escalated into a scheme that caused the administrative/judicial apparatus of the State of New Jersey to be illegally used, in an orchestrated effort by Defendant Christie in collusion/conspiracy with state actors, to have Kaul's license illegally revoked. The state scheme was perpetrated in conjunction with the federal scheme, in which the Defendants conspired with the FBI and the NJ US Attorney's office to attempt, albeit unsuccessful, to indict and incarcerate Kaul on alleged charges of healthcare fraud. Kaul asserts that his case was the first conducted pursuant to the 'playbook' developed as part of the Health Insurance Fraud Partnership (HFPP), a pact entered into in approximately 2012 by the insurance industry and government, in which Indian/African American/Hispanic physicians were targeted for elimination and asset seizure. This scheme, the federal scheme, has since been employed against many innocent ethnic minority physicians in all sectors of healthcare, the majority of whom continue to languish in American jails.

67. Since 2000, the year of emergence of minimally invasive spine surgery, the Defendants have competed within the American minimally invasive spine surgery market, for the revenue associated with the deliverance of these services to afflicted patients and as such, they are deemed to belong to the same “**relevant product/service market**”. See U.S. v. E. I. du Pont de Nemours & Co., 351 U.S. 377, 395, 76 S.Ct 994, 1007 (1956). See also Queen City Pizza, Inc. v. Domino’s Pizza, Inc. 124 F.3d 430, 436 (3rd Cir. 1997) (“**The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it.**”). The Defendants alleged anti-trust violations, as detailed within, caused an artificial reduction in the supply of services, an artificial rise in price and a reduction in the outer boundaries of the market, due to a reduction in the level of interchangeable services and cross-elasticity of demand.

68. Within the American minimally invasive spine surgery market, the cross elasticity and interchangeability of the services rendered by Kaul and similarly trained physicians, provided the public with the same healthcare based premium service as that from which the Defendants profited through restriction of provision. The Defendants' monopolization of the fund underpinning the provision of minimally invasive spine surgery and their widely publicized and illegal elimination of Kaul, with its intended sentient effects on other non-neurosurgical/orthopedic physicians, caused a per se monopolization of the actual market for this service.

The Relevant Geographic Market:

69. The relevant geographic market in which Kaul competed with Defendants was the United States. From approximately 2006 onwards Kaul had been referred patients from physicians in almost every other state in the Union, this being partly a consequence of the publicity surrounding his work, and partly a consequence of his superior clinical outcomes. In attracting these patients from other states, Kaul entered into competition with the Defendants for the finite healthcare insurance premium-based fund. The relevant geographic market in this case is the intersectional area from which the public pays healthcare premiums to the Defendants, that are intended to, and should be used to fund the provision of minimally invasive spine surgery. See Tampa Elec. Co. v. Nashville Coal Co., 365 U.S. 320, 327 (U.S. 1961) (“**the area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates, and to which the purchaser can practicably turn for supplies.**”). Defining the relevant market is a question of fact for the jury unless a party's proposed markets are so unsupported by the evidence or proper antitrust economics that no reasonable jury could properly find in favor of the party on the issue. See Sportservice, Inc. v. Charles O. Finley, 676 F.2d 1291, 1299 (9th Cir., 1982). Also see:

70. Defendant Kaufman: “**That motherfucker Richard Kaul is trying to take over the spine business and we are going to put a stop to it.**” K2-(D.E. 2 Page ID 140).

71. Third-Party Witness Anthony Yeung, MD: “**There is a doctor in New Jersey, Richard Kaul, who is performing fusions, but they are going to get him.**” (K2-D.E. 53-1 Page ID 1107)

COUNT TWO

For Declaratory and Injunctive Relief Under Section 16 of the Clayton Act for Defendants' Violations of Sections 1 and 2 of the Sherman Act

72. Plaintiff incorporates by reference the preceding allegations.

73. Defendants knowingly and intentionally engaged in an anticompetitive scheme designed to block the Plaintiff, his surgical center, and similarly trained physicians, from incorporating minimally invasive spine surgery into their outpatient practices. This scheme included, amongst other things **(i)** obtaining through fraud a downgrading of the relative value unit associated with outpatient endoscopic discectomy; **(ii)** procuring through bribery the veto of a bill in 2009 by Governor Christie, that would have permitted one operating room surgical centers to become licensed, the licensing of which would have removed the principal reason employed by the Defendants to deny payment to Kaul, similarly trained physicians and outpatient facilities; **(iii)** the procuring through bribery of the introduction of arbitrarily restricted fees that denied payment for the performance of outpatient minimally invasive spine surgery in free standing surgical centers; **(iv)** encouraging patients to initiate civil litigation and medical board complaints against Kaul and similarly trained physicians; **(v)** obtaining through bribery a moratorium in 2009 that prevented the issuance of licenses for one room outpatient surgical centers, unless they were commercially partnered with a hospital; **(vi)** otherwise engaging in an overarching scheme to unlawfully monopolize, conspire to monopolize, and/or, allocate the market for minimally invasive spine surgery.

74. Defendants conspired to monopolize, and did wrongfully and intentionally maintain monopoly power, with respect to minimally invasive spine surgery in violation of Section 2 of the Sherman Act. As a result of this unlawful maintenance of monopoly power, Kaul and his surgical center were excluded from the minimally invasive spine fusion market, as were similarly trained physicians and the New Jersey surgical center community. By their agreements, Defendants intentionally and wrongfully conspired and combined in an unreasonable restraint of trade in violation of Section 1 of the Sherman Act. As a result of this unreasonable restraint on competition, Kaul and his surgical center were excluded from the minimally invasive spine surgery market, as were similarly trained physicians and the New Jersey surgical center community.

75. Defendant BCBS + Defendant Marino:

Date range: 2006 to 2016.

Mode of Communications: US mail + E-mail + Voice message + SMS (text) + Face to face.

Substance of communications: Scheme to have Kaul indicted and incarcerated on false charges of healthcare insurance fraud + Scheme to downgrade the relative value unit associated with outpatient endoscopic discectomy + Scheme to bribe Defendant Christie to veto a bill in 2009 that would have permitted one operating room surgical centers to become licensed, the licensing of which would have removed the principal reason employed by Defendant BCBS to deny payment to outpatient facilities and physicians + Scheme to bribe Defendant Christie in

order to sign into law in 2011 a fee schedule that denied or reduced payment for the performance of outpatient minimally invasive spine surgery in free standing surgical centers + Scheme to encourage patients to initiate civil litigation and medical board complaints against Kaul and similarly trained physicians + Scheme to obtain through bribing Defendant Christie a moratorium in 2009 that prevented the issuance of licenses for one-room outpatient surgical centers, unless they were commercially partnered with a hospital + Scheme to engage in knowingly unlawful agreements to divide the minimally invasive spine surgery market in such a way, that physicians with similar training as Kaul, would be limited to performing only discectomies, and not fusions + Scheme to engage in an overarching conspiracy to unlawfully monopolize, conspire to monopolize, and/or, artificially allocate the market for minimally invasive spine surgery + Scheme to unlawfully conspire and combine to intentionally and arbitrarily restrict, restrain and or prohibit Kaul's ability to trade in the American minimally invasive spine surgery market + Scheme to restrict, restrain and or exclude Kaul from participating in the American minimally invasive spine surgery market.

Tactics employed: Conspired to, and did bribe Defendant Christie as part of a series of quid pro quo schemes to have Defendant NJBME revoke Kaul's license + Conspired to, and did encourage patients to file lawsuits and complaints with Defendant NJBME against Kaul + Conspired to, and did encourage patients to file complaints with state and federal regulatory/investigative/prosecutorial authorities + Conspired to encourage, and did encourage sham litigation and knowingly false testimony that caused the revocation of Kaul's license + Conspired to encourage, and did encourage sham litigation and knowingly false testimony that caused the entry of false judgments against Kaul in civil malpractice cases + Conspired to encourage, and did encourage sham litigation against Kaul's physician employees, with false testimony that they were not qualified to perform minimally invasive spine surgery and had committed insurance fraud + Conspired to encourage, and did encourage sham litigation against the medical licenses of Kaul's physician employees

Location: Newark offices of Defendant BCBS + Christie/Republican political fund raisers + Office of the New Jersey Governor.

76. Kaul and his surgical center were injured in their business or property by Defendants' antitrust violations. The injury consists of, amongst other things, the deprivation of the ability to incorporate minimally invasive spine surgery into his commercial strategy. Such an injury of "exclusion" is of the type antitrust laws were designed to prevent and flows from that which makes Defendants conduct unlawful, and Kaul is the proper entity to bring a case concerning the Defendants misconduct.

77. Kaul continues to suffer and will continue to suffer in the future from being excluded from the minimally invasive spine surgery market, more than he would have absent the Defendants' anticompetitive conduct.

78. Defendants' anticompetitive conduct, pursued in the context of bribery, kickbacks, obstruction of justice, fraud, and falsified legal documents, is absolutely not entitled to

Noerr-Pennington protection, a shield not for those with criminal intent.

79. Kaul, pursuant to Fed. R. Civ. P. 57 and U.S.C. § 2201(a) hereby seek a declaratory judgment that Defendants' conduct in seeking to prevent competition as described herein violates Sections 1 and 2 of the Sherman Act.

80. Kaul further seeks equitable and injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. §26, and other applicable law, to correct for the anticompetitive market effects caused by the unlawful conduct of Defendants, and other relief so as to assure that similar anticompetitive conduct does not occur in the future.

COUNT THREE

For Monopolization of the Minimally Invasive Spine Surgery Market, under state law

81. Plaintiff incorporates by reference the preceding allegations described above.

82. Since at least 1990, the Defendants, in conjunction with neuro-orthopedic spine surgeons and hospitals maintained a monopoly on the spine surgical market. However, in 2005, this monopoly became threatened when Kaul successfully performed the first minimally invasive outpatient lumbar fusion, which allowed patients to be discharged the same day. This case proved that such surgeries could be safely and effectively performed by non-neuro-orthopedic physicians in a same-day surgical center.

83. The Defendants, in seeking to retain their monopoly, retaliated, not by delivering a superior service, but by perpetrating an illegal anticompetitive scheme that involved “**patterns of racketeering**” in the commission of multiple RICO predicate acts, such as bribery, fraud, evidential falsification, false arrest, false imprisonment, judicial corruption and public corruption. The Defendants engaged in a quid pro quo scheme with Defendant Christie, in which he received bribes, disguised as ‘campaign donations’ in return for having the medical board revoke Kaul’s medical license, and initiate state/federal criminal investigations, in order to attempt to have Kaul indicted and incarcerated. In addition, the Defendants misconduct caused the economic collapse of six medium sized corporations, and the commencement of Chapter 11 proceedings on June 17, 2013, and several medical emergencies that threatened Kaul’s life.

84. The Defendants knowingly and intentionally engaged in an anticompetitive scheme to monopolize the minimally invasive spine surgery market. The Defendants accomplished this scheme by, amongst other things, encouraging patients to file lawsuits against the Plaintiff, and filing complaints against the Plaintiff, with state and federal investigative/prosecutorial/regulatory authorities.

85. The substance of the Defendants communications, and their tactics in furtherance of their anticompetitive scheme, as relevant this Count, are the same as those perpetrated and pled in Count 6

86. The goal, purpose and effect of the Defendants’ scheme was to prevent Kaul and similarly trained physicians from increasing the availability of outpatient minimally invasive spine surgery, and from increasing the number of physicians able to provide the service. The Defendants illegal scheme allowed them to divert a greater percentage of the public’s health insurance premiums into corporate/executive compensation, thus reaping substantial unlawful monopoly profits, while reducing the availability of the service to patients with spinal pain/disability.

87. The Defendants knowingly and intentionally encouraged sham litigation against Kaul, that included encouraging patients to file lawsuits and complaints with the medical board, and then encouraged fraudulent 'expert' testimony in the subsequent legal proceedings, in which Kaul was repeatedly, and fraudulently, accused of not being qualified to perform minimally invasive spine surgery. The Defendants re-repeated and publicly disseminated the false allegations that Kaul had deviated from the standard of care because he did not possess hospital or alternative privileges. The Defendants re-repeated and publicly disseminated the false allegations that Kaul had deviated from the standard of care because his training did not involve a neurosurgical residency. These claims were false and designed to protect and further the monopoly held by the Defendants on the fund underpinning the minimally invasive spine surgery market. The Defendants aided and abetted these sham lawsuits for the purposes of using a governmental process as an anticompetitive weapon, to keep Kaul and similarly trained physicians out of the minimally invasive spine surgery market.

88. The Defendants knowingly and intentionally aided and abetted sham litigation that resulted in the revocation of Kaul's medical license. The Defendants encouraged the provision of knowingly false testimony that Kaul had deviated from a supposed standard of care for minimally invasive spine surgery. The Defendants aided and abetted these falsehoods in multiple courts and in the public domain for the purpose of protecting their monopoly on minimally invasive spine surgery. The knowingly false testimony encouraged by the Defendants during the licensing proceedings, fabricated a basis for to revoke Kaul's license. The revocation caused the collapse of six medium sized corporations, the loss of jobs, the loss of tax revenue, the loss of healthcare to hundreds of patients with no insurance, which forced a number of these patients to seek pain relief through street grade heroin. The Defendants co-opted Kaul's patients into their monopolistic scheme, by encouraging them to provide false testimony in the legal proceedings that caused the illegal revocation of Kaul's license.

89. The goal, purpose and effect of the Defendant's scheme was to prevent Kaul, his surgical center and those of similarly trained physicians from continuing to provide outpatient minimally invasive spine surgery. This restricted the availability of the service to permitted them to illegally reduce competition and divert a greater percentage of the public's healthcare related premiums into corporate/executive profit. The Defendants knew that Kaul had, in 2009, obtained one of the last surgical center licenses issued by the state, and had plans to develop a thirty-six thousand (36,000) square foot, four (4) operating room, multi-disciplinary surgical center, that was to provide the template for a national, and then global expansion program in minimally invasive spine surgery.

90. The goal, purpose and effect of the Defendants schemes were to maintain and extend their monopoly power in minimally invasive spine surgery. The Defendants illegal scheme permitted them to continue diverting a greater percentage of the public's

healthcare related premiums into corporate/executive profit This harmed the public by reducing the availability of the service, caused injury to Kaul's economic standing and permitted the Defendants to reap substantial unlawful monopoly profits.

91. The Defendants knowingly, intentionally and with malice aforethought aided and abetted sham litigation against Kaul's physician employees. The Defendants fraudulently asserted that the employees were not qualified to assist Kaul in the performance of minimally invasive spine surgery, and that they had engaged in insurance fraud. The purpose of the sham litigation was to manufacture an excuse to not pay Kaul for the minimally invasive spine surgery services he had provided to the Defendants' clients. The Defendants participated in these sham lawsuits for the purposes of using a governmental process as an anti-competitive weapon to exclude Kaul's employees and similarly trained physicians from the minimally invasive spine surgery market.

92. The Defendants also knowingly, intentionally and with malice aforethought engaged in sham litigation against Kaul's employees' medical licenses, initiating medical board investigations that were intended to ostracize Kaul from his professional colleagues, the purpose of which was to force Kaul to leave the country, and forego the opportunity to seek legal redress. The Defendants abused governmental process to extend their monopoly power.

93. As a result of Defendants' illegal conduct, Kaul and his physician employees were excluded from the minimally invasive spine surgery market and were compelled to incur substantial legal fees in the defense of the sham board investigations. But for the Defendants' illegal conduct and consequent revocation, Kaul would have continued to expand his scope of practice, increase the availability of minimally invasive spine surgery services, reduce the price of the service, and mitigate the severity of the opiate epidemic, as more patients would have had access to non-opiate modalities of spine care.

94. Had Kaul not been targeted by the Defendants, he would have continued to legitimately expand his scope of practice in minimally invasive spine surgery, and lawfully compete with the Defendants within the finite healthcare premium funded and professional elements of the minimally invasive spine surgery market and the public would not have been denied the benefits of competition.

95. By engaging in the within detailed felonies and specifically the bribing of persons associated with the investigative/prosecutorial/adjudicative elements of state/government, the Defendants have knowingly and with malice aforethought violated the following state antitrust laws; and have intentionally and wrongfully maintained monopoly power in the relevant market in violation of antitrust law the

following states with respect to the availability of minimally invasive spine surgery, in the knowledge that Kaul had plans to expand nationally: (i) Arizona Rev. Stat. §§ 44-1401, et seq; (ii) Cal. Bus. Code §§ 16700, et seq., and Code §§ 17200, et seq; (iii) D.C. Code Ann. §§ 28-45031, et seq; (iv) Fla. Stat. §§ 501. Part II et seq; (v) Kan. Stat Ann. §§ 50-101 et seq; (vi) Me. Rev. Stat. Ann. 10, § 1101, et seq; (vii) Mich. Comp. Laws Ann. §§ 445.771, et seq; (viii) Minn. Stat. §§ 325D.52, et seq; (ix) Miss. Code Ann. §§ 59-801, et seq; (x) Neb. Code Ann. §§598A, et seq; (xi) Nev. Ret. Stat. Ann. § 598A, et seq; (xii) N.M. Stat. Ann. §§ 57-1-1, et seq; (xiii) New York General Business Law § 340, et seq; (xiv) N.C. Gen. Stat. §§ 75-1, et seq; (xv) N.D. Cent. Code § 51-08.1-01, et seq; (xvi) Or. Rev. Stat. §§ 646.705, et seq; (xvii) S.D. Codified Laws Ann. § 37-1, et seq; (xviii) S.D. Codified Laws Ann. § 37-1, et seq; (xix) S.D. Codified Laws Ann. § 37-1, et seq; (xx) Tenn. Code Ann. §§ 47-25-101, et seq; (xxi) Utah Code Ann. §§ 76-10-911, et seq; (xxii) Vt. Stat. Ann. 9, § 2453, et seq; (xxiii) W.Va. Code §§ 47-18-1, et seq; (xxiv) Wis Stat. § 133.01, et seq

96. Kaul has been injured, and continues to be injured in his business and property by Defendants' anti-trust violations. The injuries consist of: (1) the illegal revocation of Kaul's New Jersey medical license and the loss to his patients of their ability to receive minimally invasive spine care; (2) exclusion of Kaul from the minimally invasive spine surgery market, from which the Defendants have illegally, and continue to illegally profit; (3) the loss into bankruptcy of Kaul's healthcare corporations, to which were attached \$45 million in accounts receivable, a surgical center license and real estate; (4) the loss of Kaul's professional reputation developed over thirty (30) years. These injuries are of the nature for which the antitrust laws of the above States and the District of Columbia were designed to prevent, and flow from that which makes Defendants' conduct unlawful.

COUNT FOUR
For Conspiracy to Monopolize under State Law

97. Plaintiff incorporates by reference the preceding allegations

98. As previously pled, and up until March 2005, the Defendants co-controlled monopoly power in the market for traditional inpatient 'open' spine surgery. This changed in March 2005 when Kaul performed the first minimally invasive outpatient spinal fusion, which caused the Defendants to willfully commence conspiring to extend their monopoly power to the outpatient minimally invasive spine surgery market. To achieve this goal, they perpetrated, in collusion/conspiracy with state actors/agencies, a knowingly illegal anticompetitive scheme to exclude Kaul and similarly trained physicians from incorporating minimally invasive spine surgery into their practices, and not as a result of providing a superior service, legitimate business acumen or historical accident.

99. The Defendants knowingly and intentionally conspired to monopolize the minimally invasive spine surgery market, through a scheme that involved: **(i)** obtaining through fraud a downgrading of the relative value unit associated with outpatient endoscopic discectomy, **(ii)** procuring through bribery the veto of a bill that would have permitted one operating room surgical centers to become licensed, the licensing of which would have removed the principal reason employed by the Defendant Insurance Carriers to deny payment to physicians and one operating room outpatient facilities, **(iii)** procuring through bribery the introduction of a fee schedule in 2011 that denied payment for the performance of outpatient minimally invasive spine surgery, **(iv)** encouraging patients to initiate civil litigation and medical board complaints against the Plaintiff and similarly trained physicians, **(v)** obtaining through bribery a moratorium in 2009 that prevented the issuance of licenses for free standing outpatient surgical centers, unless they were commercially partnered with a hospital, **(vi)** Defendant Neurosurgeons unlawfully agreeing with representatives of Defendant ASIPP that the market for minimally invasive spine surgery would only be divided in a way, that physicians such as the Plaintiff would be limited to performing only discectomies and not fusions, and **(vii)** otherwise engaging in an overarching scheme to unlawfully monopolize, conspire to monopolize, and allocate the market for minimally invasive spine surgery.

100. The substance of the Defendants communications, and their tactics in furtherance of their anticompetitive scheme, as relevant this Count, are the same as those perpetrated and pled in Count 2

101. The goal, purpose and effect of the Defendants' scheme was to extend its monopoly power to include minimally invasive spine surgery market. Defendants' illegal scheme allowed them to divert a greater percentage of the public's premium related healthcare fund to

corporate/executive profit due simply to the illegal suppression of competition. This allowed the Defendants to reap substantial unlawful monopoly profits.

102. The agreements between the Defendants and their neurosurgical-hospital co-conspirators are overt acts between separate economic entities-actual and potential competitors-and are illegal per se under state antitrust laws. The agreements made between the Defendants and their neurosurgical-hospital co-conspirators were that payment for minimally invasive spine surgery, would be limited to cases performed in hospitals or their attached surgical centers, and not to independently owned surgical centers. The Defendants co-conspirators conspired not to credential minimally invasive spine surgeons, such as Kaul, for minimally invasive spine surgery. The effect of these agreements was to arbitrarily exclude Kaul and his surgical center from participating minimally invasive spine surgery market. Thus, the Defendants illegally profited at the expense of Kaul and other independent surgical centers, that incurred substantial losses, which caused a severe contraction in the number of surgical centers in New Jersey, and a reduction of availability of service to the public, that persists to this day.

103. Alternatively, Kaul alleges that the agreements and conspiracy to monopolize are a violation of state antitrust law under a “**quick look**” or “**rule of reason**” analysis. The Defendants knowingly and intentionally aided and abetted sham litigation against Kaul that included encouraging patients to file lawsuits and complaints with the medical board, and then encouraging fraudulent testimony from so called ‘experts’ and patients in legal proceedings with the medical board/administrative courts. The Defendants repeatedly and fraudulently re-asserted that Kaul was not qualified to perform minimally invasive spine surgery. The Defendants repeatedly and fraudulently re-asserted that Kaul had deviated from a supposed standard of care because he did not possess hospital or alternative privileges. The Defendants repeatedly and fraudulently re-asserted that Kaul had deviated from the standard of care because his training did not involve a neurosurgical residency. These claims were false and designed to further the Defendants monopoly to include minimally invasive spine surgery, a scheme that has constricted, and continues to constrict the availability of the service to the public’s detriment. The Defendants perpetrated their knowingly illegal anticompetitive scheme, in collusion/conspiracy with the NJ state government, and NJ based federal agencies, over which Defendant Christie had exerted control.

104. The Defendants participated in these sham lawsuits for the purposes of using a governmental process as an anticompetitive weapon, to keep the Plaintiff and similarly trained physicians out of the minimally invasive spine surgery market.

105. In furtherance of the scheme to monopolize the minimally invasive spine surgery market, the Defendants encouraged and aided/abetted massive schemes of evidential falsification, fraud, perjury and judicial corruption in the NJ administrative proceedings (April 9 to June 28, 2013), that caused the illegal revocation of Kaul’s license IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF RICHARD A. KAUL, M.D. TO PRACTICE MEDICINE AND

SURGERY IN NEW JERSEY (April 9, 2013, to June 28, 2013).

106. The Defendants perpetrated the knowing fraud of the revocation in a coordinated campaign that commenced on December 13, 2013, and continues today, with a global dissemination of this falsehood across the US and international wires to healthcare/regulatory related agencies, including the DEA, Medicare, the FBI, the OIG and all state medical boards and associated entities, the purpose being to attempt to continue the illegal elimination of Kaul from medicine, in the belief that it will prevent Kaul from exposing the Defendants and The Kaul Cases Defendants decades-plus-long criminal enterprise. In April 2012, one of Kaul's lawyers, shocked at the never-before witnessed intensity and level of attack from NJ state/NJ federal agencies/persons, communicated to Kaul his belief that Kaul was being attacked as if he were "**public enemy number one**". The Defendants, in keeping with their 'mafia-like' tactics of racketeering and per se antitrust violations, wanted to ensure an absolute elimination of Kaul, be it through professional/reputational destruction, incarceration, suicide and or death.

107. The Defendants, in collusion and conspiracy with The Kaul Cases Defendants both aided and abetted and facilitated the filing and wide publicization of knowingly fraudulent claims against Kaul that he was not qualified to perform minimally invasive spine surgery. These falsehoods were purposed to permit the Defendants and their co-conspirators to monopolize not only the healthcare premium related fund, but the professional procedural aspect of the minimally invasive spine surgery market

108. The Defendants participated in these sham lawsuits for the purposes of using a governmental process as an anticompetitive weapon, to keep Kaul and similarly trained physicians out of the minimally invasive spine surgery market. The Defendants and their state/federal co-conspirators coopted Kaul's patients into their scheme, and 'coached' them to provide perjurious testimony, with the promise that if Kaul's license was revoked, they would be guaranteed money from a malpractice claim, despite knowing that the illegality of the revocation would render any revocation-based claim/judgment a fraud on the court.

109. The Defendants criminal-state-of-mind, and the facilitation of their felonies by state agencies/persons became subsequently exposed in USA v Pompy, and constitutes conclusive evidence of not just a "**vast conspiracy**", but a long-standing "**open ended pattern of racketeering**" that is being conducted by the Defendants through the investigative/prosecutorial/adjudicative elements of American state/federal governments, with the assistance of the US corporate media. This grand scheme of never-before witnessed corruption, has caused mass incarceration of innocent Indian/African America/Hispanic and other ethnic minority physicians, and many physicians who delivered care in poverty-stricken areas, in which the public's healthcare related net balance to the insurance industry is negative, and the elimination of these physicians causes the eradication of these net negative patient units.

110. The goal, purpose, and effect of the Defendants' scheme, in collusion/conspiracy with The Kaul Cases Defendants, was to maintain and extend monopoly power with respect to the

minimally invasive spine surgery market, and to prevent Kaul and similarly trained physicians from continuing to provide outpatient minimally invasive spine surgery. This restricted availability and suppressed competition, entirely consequent to their illegal scheme, permitted Defendants BCBS/Marino to artificially raise the cost of their premiums with the argument that because neuro-ortho surgeons were now the only providers within the minimally invasive spine surgery market, albeit through illegal tactics, they had raised their prices, and so Defendants BCBS/Marino had to raise their annual premiums to continue to provide the service to their clients. In this conspiratorial way, the Defendants further reaped illegal anticompetitive profits.

111. The effect of this scheme was purely anticompetitive in that it artificially and detrimentally reduced to the public, the availability of lifesaving/changing minimally invasive spine surgery, while simultaneously and artificially raising the cost to those that could still afford the service, in the form of increased provider/hospital fees and increased annual premiums with larger co-pays. This scheme (2006-2020) permitted the Defendants and The Kaul Cases Defendants to reap substantial unlawful monopoly profits, and represents a prototypical-like variation of the illegal scheme (2016-2023) perpetrated against Dr. Pompy, but an illegal scheme that was a massive public failure, in that Dr. Pompy was acquitted by a jury on all thirty-nine (39) counts. The trial caused the emergence of “**new evidence**”, previously unknown or knowable to Kaul, of the Defendants state-sponsored systemic “**pattern of racketeering**” within the investigative/prosecutorial/adjudicative arms of American state/federal governments.

112. The Defendants, in seeking to ostracize Kaul, did aid/abet and encourage the filing by state agencies/actors of knowingly illegal sham litigation against the medical licenses of Kaul’s physician associates. The initiation of these fraudulent medical board investigations was purposed to isolate Kaul from his professional colleagues, in the belief that he would leave the country, and forego the opportunity to seek legal redress and have exposed the Defendants crimes, ones in which they abused governmental process to extend their monopoly to the premium related healthcare fund underpinning minimally invasive spine surgery. The exposition of the Defendants long-standing “**open ended pattern**” of ongoing criminal conduct occurred in the trial of Dr. Pompy.

113. As a direct consequence of the Defendants knowingly illegal anticompetitive per violations, Kaul and his physician associates were artificially excluded from the minimally invasive spine surgery market, were caused to incur substantial legal fees in their defense of sham legal proceedings, and would, but for the Defendants wrongdoing, have continued to expand their scope of practice, increase the availability of minimally invasive spine surgery services, reduce the price of the service, and mitigate the severity of the opiate epidemic, as more patients would have had access to non-opiate modalities of spine care. The public was denied the benefits of competition, as became evident from testimony adduced from the patients caused to become abandoned by the BCBS family Defendants’ mafia-like conspiracy related indictment of Dr. Pompy. The related legal cases of Drs. Lesly Pompy and Neil Anand, constitute and contain further conclusive evidence of the claims Kaul has asserted since February 22, 2016, the filing date of K1, the first of The Kaul Cases.

114. The Defendants anticompetitive scheme, perpetrated in collusion/conspiracy with The Kaul Cases Defendants, increased their monopoly of the minimally invasive spine surgery market, the deleterious consequences to the public of which have been a reduction in the availability of services, an artificial elevation of healthcare premium price, reduced competition, and a reduction in the rate of innovation. The last ten (10) years have witnessed a decrease in the development of new spinal techniques, with the majority of innovations originating outside the United States. These are the exact problems for which the antitrust laws were designed, and for which the Defendants' violations are responsible. The reduced availability of service contributed to the opiate epidemic.

115. The Defendants, in conjunction with other members of the insurance industry and with the aiding/abetting of state/federal investigative/prosecutorial/adjudicative agencies/persons have engineered a system of totalitarian-esque tyrannical bureaucratic oppression, whose only purpose is the generation of profit through the usury-like exploitation of the public and slave-like manipulation of physicians, forced to work under the ever-looming threat of incarceration, if they dare to practice medicine and bill the insurance industry. This "pattern" of human exploitation commenced in the 1600s with the insurance industry's critical involvement in and profiteering from the trans-Atlantic slaving industry. The slave plantations initially moved from the fields to the jails, but are now evident in American corporate healthcare, where the principal concern is the maximal exploitation of patients/physicians in the furtherance of corporate/executive profit.

116. By engaging in the within detailed felonies and specifically the bribing of persons associated with the investigative/prosecutorial/adjudicative elements of state/government, the Defendants have knowingly and with malice aforethought violated the following state antitrust laws; and have intentionally and wrongfully maintained monopoly power in the relevant market in violation of antitrust law the following states with respect to the availability of minimally invasive spine surgery, in the knowledge that Kaul had plans to expand nationally: (i) Arizona Rev. Stat. §§ 44-1401, et seq; (ii) Cal. Bus. Code §§ 16700, et seq., and Code §§ 17200, et seq; (iii) D.C. Code Ann. §§ 28-45031, et seq; (iv) Fla. Stat. §§ 501. Part II et seq; (v) Kan. Stat Ann. §§ 50-101 et seq; (vi) Me. Rev. Stat. Ann. 10, § 1101, et seq; (vii) Mich. Comp. Laws Ann. §§ 445.771, et seq; (viii) Minn. Stat. §§ 325D.52, et seq; (ix) Miss. Code Ann. §§ 59-801, et seq; (x) Neb. Code Ann. §§598A, et seq; (xi) Nev. Rev. Stat. Ann. § 598A, et seq; (xii) N.M. Stat. Ann. §§ 57-1-1, et seq; (xiii) New York General Business Law § 340, et seq; (xiv) N.C. Gen. Stat. §§ 75-1, et seq; (xv) N.D. Cent. Code § 51-08.1-01, et seq; (xvi) Or. Rev. Stat. §§ 646.705, et seq; (xvii) S.D. Codified Laws Ann. § 37-1, et seq; (xviii) S.D. Codified Laws Ann. § 37-1, et seq; (xix) S.D. Codified Laws Ann. § 37-1, et seq; (xx) Tenn. Code Ann. §§ 47-25-101, et seq; (xxi) Utah Code Ann. §§ 76-10-911, et seq; (xxii) Vt. Stat. Ann. 9, § 2453, et seq; (xxiii) W.Va. Code §§ 47-18-1, et seq; (xxiv) Wis Stat. § 133.01, et seq

117. Kaul has been, and continues to be injured in his business and property by reason of Defendants' anti-trust violations, as alleged in this claim. The injuries consist of: **(1)** the illegal revocation of Kaul's New Jersey medical license and the loss to his patients of their ability to

receive minimally invasive spine care and, **(2)** exclusion of Kaul and other similarly trained physicians from the minimally invasive spine surgery market which has caused an increase in the Defendants monopolization of the premium related healthcare field and **(3)** the loss into bankruptcy of Kaul's healthcare corporations, to which were attached \$45 million in accounts receivable, a surgical center license, real estate, and **(4)** loss of Kaul's professional reputation developed over thirty years. These injuries are the type for which the antitrust laws of the above States and the District of Columbia were designed to prevent, and are injuries that flow from the Defendants misconduct, and which make the Defendants' misconduct unlawful.

COUNT FIVE

For Conspiracy and Combination in Restraint of Trade Under State Law

118. Plaintiff incorporates by reference the preceding allegations.

119. The Defendants willfully and unlawfully engaged in a continuing illegal contract, combination, and conspiracy to restrain trade in the minimally invasive spine surgery market, by engaging in an anticompetitive scheme to exclude Kaul and similarly trained physicians from the market, and to allocate the market funds between horizontal competitors.

120. Defendants BCBS/Marino aided, abetted, and encouraged the commission of a massive scheme of fraud and judicial corruption within the 2013 NJ administrative proceedings that caused the illegal revocation of Kaul's medical license. Specifically, and as was their "**pattern**" in USA v Pompy, they conspired with state agencies/actors including **The Kaul Cases** Defendant, Christie, to commit two hundred and seventy-eight (278) separate instances of perjury, misrepresentation, evidential omission and gross mischaracterization IN THE MATTER OF THE SUSPENSION OR REVOCATION THE LICENSE OF RICHARD A. KAUL TO PRACTICE MEDICINE AND SURGERY IN NEW JERSEY (April 9, 2013 to June 28, 2013), in the knowledge that **The Kaul Cases** Defendant Solomon's fraudulent Final Opinion (issued December 13, 2013) would cause the revocation of Kaul's license, eliminate him from the practice of medicine, eradicate their debt, eliminate the threat of future billing submissions and have a chilling sentinel effect on other similarly trained physicians and outpatient surgical centers, an effect that did illegally increase corporate/executive profit, at the expense of the public and medical profession.

121. In a period commencing in approximately 2006 the Defendants, as evidenced by internal memorandum obtained through FOI requests, began conspiring to develop a policy whereby they schemed to target the most successful ethnic minority physicians, for license revocation and incarceration, in order to intimidate the medical community into not submitting professional fee invoices to Defendant BCBS. In 2006, Defendant Christie was part of a such a scheme, when he, in his capacity as the US Attorney for the District of New Jersey, indicted/convicted/incarcerated multiple Indian cardiologists whose patient populations were covered by Defendant BCBS.

122. The agreements between the Defendants were/are horizontal market allocation and price fixing agreements between actual or potential competitors and are illegal per se under state antitrust laws. Defendants BCBS conspired with **The Kaul Cases** hospital/neuro-ortho surgeons Defendants to restrict payment for minimally invasive spine surgery to neuro-ortho surgeons, hospitals, and or surgical centers owned by hospitals. This contract constituted an illegal horizontal market allocation agreement.

123. The substance of the Defendants communications, and their tactics in furtherance of their anticompetitive scheme, as relevant this Count, are the same as those perpetrated and pled in Count 2

124. Alternatively, Kaul alleges that these agreements are an unreasonable restraint of trade, in violation of state antitrust law, under a “**quick look**” or “**rule of reason**” analysis. The consequence of these improper agreements was the exclusion from the minimally invasive spine fusion market of Kaul and his surgical center, with regards to treating patients who possessed insurance issued by Defendant BCBS.

125. The Defendants aided, abetted, and facilitated sham litigation against Kaul that included encouraging Kaul’s patients to file lawsuits and complaints with the medical board, and encouraging Kaul’s physician competitors to provide fraudulent ‘expert’ testimony for the patients and the medical board. The Defendants repeatedly and fraudulently asserted that Kaul was not qualified to perform minimally invasive spine surgery, that he had deviated from the standard of care because he did not possess hospital or alternative privileges and that he had deviated from the standard of care because his training did not involve a neurosurgical residency. The Defendants knew these claims were false and were designed to further their monopoly of the minimally invasive spine surgery related healthcare fund. The Defendants participated in these sham lawsuits for the purposes of using a governmental process as an anticompetitive weapon, to keep Kaul and similarly trained physicians out of the minimally invasive spine surgery market.

126. **The Kaul Cases** Defendant Solomon played a pivotal role in the perpetration of the Defendants’ illegal schemes to have Kaul’s license revoked. Solomon, having received bribes from Defendant BCBS/others, committed and conspired to commit obstruction of justice and evidence tampering in the administrative board proceeding (April 9 to June 28, 2013). Solomon aided and abetted perjury and other acts of official malfeasance, and in doing so, he converted his bench, and the New Jersey Office of Administrative Law, into a racketeering enterprise that has illegally deprived Kaul of his trade and livelihood for over a decade.

127. The goal, purpose and effect of the Defendant’s scheme was to prevent Kaul, his surgical center and those of similarly trained physicians from continuing to provide outpatient minimally invasive spine surgery, and thus restrict the availability of the service to **The Kaul Cases** neuro-ortho surgeons and hospital Defendants, which has permitted, in the absence of competition, an artificial price elevation, which Defendants BCBS/Marino used, with knowingly falsity, to improperly raise the public’s annual healthcare premiums. This scheme of illegal profiteering caused a reduction in availability of minimally invasive spine surgery and an increase in corporate/executive profit, a scheme in which the Defendants exploited and continue to exploit the public/medical profession.

128. The Defendants knowingly and intentionally engaged in sham litigation against Kaul’s physician associates, and repeatedly and fraudulently asserted that they were not qualified to assist Kaul in the performance of minimally invasive spinesurgery, and that Kaul had engaged in insurance fraud.

129. The Defendants knowingly and intentionally engaged in sham litigation against Kaul's physician employees, initiated medical board investigations that sought to ostracize Kaul from his professional colleagues, and to force Kaul to leave the country and relinquish the opportunity to seek legal redress. The Defendants abused governmental process to extend their monopoly.

130. As a consequence of Defendants' illegal conduct, Kaul and his physician employees were excluded from the minimally invasive spine surgery market and were compelled to incur substantial legal fees in the defense of the sham board investigations. Had it not been for the Defendants' illegal conduct, Kaul and his employees would have continued to expand their scope of practice, increase the availability of minimally invasive spine surgery services, reduce the price of the service, and mitigate the severity of the opiate epidemic, as more patients would have had access to non-opiate modalities of spine care. The Defendants' decade-plus-long campaign of financial misconduct contributed to the opiate epidemic in New Jersey.

131. Had Kaul and similarly trained physicians been allowed to continue expanding their scope of practice in minimally invasive spine surgery, and lawfully compete with the Defendants, then the public would not have been denied the benefits of competition.

132. By engaging in the within detailed felonies and specifically the bribing of persons associated with the investigative/prosecutorial/adjudicative elements of state/government, the Defendants have knowingly and with malice aforethought violated the following state antitrust laws; and have intentionally and wrongfully maintained monopoly power in the relevant market in violation of antitrust law the following states with respect to the availability of minimally invasive spine surgery, in the knowledge that Kaul had plans to expand nationally: (i) Arizona Rev. Stat. §§ 44-1401, et seq; (ii) Cal. Bus. Code §§ 16700, et seq., and Code §§ 17200, et seq; (iii) D.C. Code Ann. §§ 28-45031, et seq; (iv) Fla. Stat. §§ 501. Part II et seq; (v) Kan. Stat Ann. §§ 50-101 et seq; (vi) Me. Rev. Stat. Ann. 10, § 1101, et seq; (vii) Mich. Comp. Laws Ann. §§ 445.771, et seq; (viii) Minn. Stat. §§ 325D.52, et seq; (ix) Miss. Code Ann. §§ 59-801, et seq; (x) Neb. Code Ann. §§598A, et seq; (xi) Nev. Ret. Stat. Ann. § 598A, et seq; (xii) N.M. Stat. Ann. §§ 57-1-1, et seq; (xiii) New York General Business Law § 340, et seq; (xiv) N.C. Gen. Stat. §§ 75-1, et seq; (xv) N.D. Cent. Code § 51-08.1-01, et seq; (xvi) Or. Rev. Stat. §§ 646.705, et seq; (xvii) S.D. Codified Laws Ann. § 37-1, et seq; (xviii) S.D. Codified Laws Ann. § 37-1, et seq; (xix) S.D. Codified Laws Ann. § 37-1, et seq; (xx) Tenn. Code Ann. §§ 47-25-101, et seq; (xxi) Utah Code Ann. §§ 76-10-911, et seq; (xxii) Vt. Stat. Ann. 9, § 2453, et seq; (xxiii) W.Va. Code §§ 47-18-1, et seq; (xxiv) Wis Stat. § 133.01, et seq

133. Kaul has been, and continues to be injured in his business and property by reason of Defendants' anti-trust violations, as alleged in this claim. The injuries consist of: **(1)** the illegal revocation of Kaul's New Jersey medical license and the loss to his patients of their ability to

receive minimally invasive spine care and, **(2)** exclusion of Kaul and other similarly trained physicians from the minimally invasive spine surgery market which has caused an increase in the Defendants monopolization of the premium related healthcare fund and **(3)** the loss into bankruptcy of Kaul's healthcare corporations, to which were attached \$45 million in accounts receivable, a surgical center license, real estate, and **(4)** loss of Kaul's professional reputation developed over thirty years. These injuries are the type for which the antitrust laws of the above States and the District of Columbia were designed to prevent, and are injuries that flow from the Defendants misconduct, and which make the Defendants' misconduct unlawful.

134. Plaintiff seeks damages and treble damages as permitted by law for their injuries by Defendants' violation of the aforementioned statutes.

COUNT SIX

For Unfair and Deceptive Trade Practices Under State Law

135. Plaintiff incorporates by reference the preceding allegations.

136. Defendants engaged in unfair competition or unfair, unconscionable, deceptive, and or fraudulent acts or practices in violation of the state consumer protection statutes.

137. As a direct and proximate result of the Defendants' anticompetitive, deceptive, unfair, unconscionable, and fraudulent conduct, Kaul was prevented from nationally developing his outpatient minimally invasive spine surgery business because the market had been illegally monopolized by Defendant BCBS and their neuro-ortho surgeon/hospital co-conspirators. Kaul, a recognized innovator in the field, commenced training other minimally invasive spine surgeons in approximately 2007, and had plans to develop a fellowship and standards, that would have increased the number of minimally invasive surgeons in the national market. The Defendants' racketeering and illegal anticompetitive conduct derailed Kaul's plans for economic and educational expansion. The Defendants' illegal suppression of competition has restricted the public's access to minimally invasive spine surgery, has caused a reduction in innovation, an elevation in price and contributed to the opiate epidemic.

138. The illegal revocation of Kaul's license was disseminated over the US wires to every state medical board and was widely publicized on the Internet with stories that commenced in April 2012 and whose effects persist to this day. These events have caused permanent/irreparable damage to Kaul's reputation and caused the regulatory agencies and public in all states to be deceived by the Defendants' fraudulent and anticompetitive scheme against Kaul.

139. The substance of the Defendants communications, and their tactics in furtherance of their anticompetitive scheme, as relevant this Count, are the same as those perpetrated and pled in Count 2

140. By engaging in the within detailed felonies and specifically the bribing of persons associated with the investigative/prosecutorial/adjudicative elements of state/government, the Defendants have knowingly and with malice aforethought violated the following state antitrust laws; and have intentionally and wrongfully maintained monopoly power in the relevant market in violation of antitrust law the following states with respect to the availability of minimally invasive spine surgery, in the knowledge that Kaul had plans to expand nationally: (i) Arizona Rev. Stat. §§ 44-1401, et seq; (ii) Cal. Bus. Code §§ 16700, et seq., and Code §§ 17200, et seq; (iii) D.C. Code Ann. §§ 28-45031, et seq; (iv) Fla. Stat. §§ 501. Part II et seq; (v) Kan. Stat Ann. §§ 50-101 et seq; (vi) Me. Rev. Stat. Ann. 10, § 1101, et seq; (vii) Mich. Comp. Laws Ann. §§ 445.771, et seq; (viii) Minn. Stat. §§ 325D.52, et seq; (ix) Miss. Code Ann. §§ 59-801, et seq; (x) Neb. Code Ann. §§598A, et seq; (xi) Nev. Ret. Stat. Ann. § 598A, et seq; (xii) N.M. Stat. Ann. §§ 57-1-1, et seq; (xiii) New York General Business Law § 340, et seq; (xiv) N.C. Gen. Stat. §§ 75-1, et seq; (xv) N.D. Cent. Code § 51-08.1-01, et seq; (xvi) Or. Rev. Stat. §§ 646.705, et seq; (xvii)

S.D. Codified Laws Ann. § 37-1, et seq; (xviii) S.D. Codified Laws Ann. § 37-1, et seq; (xix) S.D. Codified Laws Ann. § 37-1, et seq; (xx) Tenn. Code Ann. §§ 47-25-101, et seq; (xxi) Utah Code Ann. §§ 76-10-911, et seq; (xxii) Vt. Stat. Ann. 9, § 2453, et seq; (xxiii) W.Va. Code §§ 47-18-1, et seq; (xxiv) Wis Stat. § 133.01, et seq

141. Kaul has been, and continues to be injured in his business and property by reason of Defendants' anti-trust violations, as alleged in this claim. The injuries consist of: **(1)** the illegal revocation of Kaul's New Jersey medical license and the loss to his patients of their ability to receive minimally invasive spine care and, **(2)** exclusion of Kaul and other similarly trained physicians from the minimally invasive spine surgery market which has caused an increase in the Defendants monopolization of the premium related healthcare find and **(3)** the loss into bankruptcy of Kaul's healthcare corporations, to which were attached \$45 million in accounts receivable, a surgical center license, real estate, and **(4)** loss of Kaul's professional reputation developed over thirty years. These injuries are the type for which the antitrust laws of the above States and the District of Columbia were designed to prevent, and are injuries that flow from the Defendants misconduct, and which make the Defendants' misconduct unlawful.

142. Kaul seeks damages and treble damages as permitted by law for their injuries by Defendants' violation of the aforementioned statutes.

COUNT SEVEN
Unjust enrichment

143. Plaintiff incorporates by reference the preceding allegations.

144. The Defendants have benefited from the monopoly profits on the increased revenues that have flowed from the illegal elimination of the competition presented by Kaul and similarly trained physicians.

145. The Defendants unjust profits result from their unlawful and inequitable conduct that facilitated a falsely substantiated increase in the public's healthcare insurance premiums, consequent to the elimination of the competition presented by Kaul and similarly trained physicians. The Defendants misconduct conferred on them an economic benefit attributable to monopoly profits and a benefit to the economic detriment of Kaul and similarly trained physicians. It would be futile for Kaul to seek a remedy from any party with whom they had privity of contract. Defendants have paid *no legal* consideration to anyone for any benefits received indirectly from Kaul. Defendants engaged in the bribing of public officials in furtherance of their illegal anticompetitive scheme.

146. The substance of the Defendants communications, and their tactics in furtherance of their anticompetitive scheme, as relevant this Count, are the same as those perpetrated and pled in Count 2

147. The profits that flowed, and continue to flow to the Defendants from their illegal scheme rightfully belong to Kaul, because the monies were illegally diverted from the revenues consequent to the provision of minimally invasive spine surgery to patients, and monies that should have been paid to Kaul, and would have been paid to Kaul if he had continued to perform minimally invasive spine surgery.

148. It is inequitable under the laws of all states and jurisdictions within the United States for the Defendants to be permitted to retain, to the grave detriment and continued expense of Kaul, any of these illegally procured profits that are derived from their unfair and unconscionable methods, acts and trade practices, as are alleged in this Complaint. Defendants should be compelled to disgorge in a common fund for the benefit of Kaul all unlawful or inequitable proceeds received by them.

149. The Defendants conspired with The Kaul Cases Defendant, and counsel for the bankruptcy trustee to defraud Kaul and the creditors of his estate, by willfully failing to collect monies owed to Kaul by Defendant BCBS for the provision of interventional pain and minimally invasive spine surgery.

150. The Defendants procured monies through fraud and deceit at the expense of Kaul, his corporations, and the majority of his creditors
A constructive trust should be imposed upon all unlawful or inequitable sums received

by Defendants traceable to Kaul.

COUNT EIGHT
Deprivation of Right pursuant to Defendants violation
of Section 1981/1983

151. Plaintiff hereby repeats and incorporates by reference each and every one of the foregoing paragraphs as though fully set forth.

152. The Defendants aided, abetted, and encouraged a deprivation of Kaul's human/constitutional right to due process by: (i) on December 13, 2013, causing to be published, in collusion/conspiracy with **The Kaul Cases** Defendant, Solomon, a knowingly false opinion that furthered the scheme to illegally revoke Kaul's license; (ii) encouraging the commission of two hundred and seventy-eight (278) separate instances of perjury, misrepresentation, evidential omission and gross mischaracterization in the administrative law proceeding (April 9 – June 28, 2013), that resulted in the revocation of Kaul's license; (iii) encouraging the medical board to refuse to have conducted an independent analysis and comparison of the state authored transcripts, the independent transcripts, the court audio recordings, and Defendant Solomon's Final Opinion; (iv) encouraging the medical board to not respond to Kaul's written pleas for an investigation of the tampered evidence and witness perjury; (v) encouraging the medical board to refuse to acknowledge its corrupted partiality in adjudicating Kaul's complaint of evidence tampering, in knowing violation of Kaul's Fourteenth Amendment right to an impartial tribunal. The Defendants facilitated this act with malicious and reckless disregard for Kaul's due process rights, in the knowledge that Kaul had, on June 7, 2012, requested that the Mercer County Court appoint a special prosecutor and ad hoc medical board. The latter request was submitted as a consequence of **The Kaul Cases** Defendant, and then NJ AG, Jeffrey Chiesa's prejudicial comments to the media on May 9, 2012, and the illegal suspension of Kaul's CDS prescribing license on May 22, 2012, by AG Chiesa's subordinate, and acting director of the Division of Consumer Affairs, Eric Kanefsky, Esq; (vi) encouraging the medical board to not exclude **The Kaul Cases** Defendant, and then deputy AG Doreen Hafner from any involvement in Kaul's application for license reinstatement in 2014, on the basis that Kaul had filed an ethics complaint against Hafner, in September 2013; (vii) encouraging the medical board to not suspend the reinstatement application, until Hafner had recused herself from the matter. Hafner's personal animus towards Kaul, and her personal relationship with **The Kaul Cases** Defendant Andrew Kaufman, violated Kaul's right to an impartial tribunal. This violation was magnified by the unconstitutional configuration of the mechanism of physician regulation.

152. The Defendants aided, abetted, and facilitated the commission of fraud and perjury in legal proceedings conducted in administrative/state/bankruptcy/federal courts within the geographic boundaries of the State of New Jersey, in a period that commenced in at least 2010 and continued into 2021.

153. The Defendants knew that Kaul was qualified, credentialed, and licensed to

perform minimally invasive spine surgery. The Defendants caused their co-conspirator public officials to abuse their positions of public authority to mislead the public into believing their lies about Kaul, and thus violated, and continue to violate Kaul's human and constitutional right to life, liberty and property and due process.

154. The Defendants aided, abetted, and encouraged a conspiracy to commit a knowingly false interpretation of the alternative privileges regulation, that was used by The Kaul Cases Defendant, Solomon, as one of the knowingly false bases to revoke Kaul's license.

155. The Defendants knew the regulation was not required for the performance of minimally invasive spine surgery, and in fact, during the administrative proceedings, when The Kaul Cases Defendant Hafner was unable to articulate an argument in support of her contention, her co-conspirator, The Kaul Cases Defendant Solomon interjected with his own corrupt interpretation. The Defendants committed and conspired to commit a knowingly dishonest interpretation of the rights afforded to Kaul by his plenary medical license that permitted him to practice both medicine and SURGERY.

156. The Defendants committed and conspired to commit a concealment of the truth of the clinical effectiveness of Kaul's minimally invasive spine surgery practice, by encouraging the medical board to refuse with fraudulent intent, Kaul's suggestion to have his practice independently analyzed and monitored.

157. The substance of the Defendants communications, and their tactics in furtherance of their anticompetitive scheme, as relevant this Count, are the same as those perpetrated and pled in Count 2

158. The Defendants are "**persons**" under 42 U.S.C. § 1981 and have funded and continue to fund the NJ Office of the Insurance Fraud Prosecutor, the Office of the NJ Attorney, with whom they share a common and private non-state server. The Defendants drafted and continue to draft healthcare legislation for the state, a function that is governmental in nature, and for which the law prohibits the involvement of non-governmental entities.

159. In 2009, the Seventh Circuit summarized the US Supreme Court's criteria, to determine whether the actions of private parties constituted governmental functions. The tests were (i) the symbiotic relationship test (Burton v Wilmington Parking Suth., 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed2d 45 (1961)), (ii) the state command and encouragement test (Moose Lodge No. 107, 407 U.S. at 176-77, 92 S.Ct (1965)), (iii) the joint participation doctrine (Lugar v Edmonton Oil Co., 1982), (iv) the public function test (Jackson v Metro Edison Co., 419 U.S. 345, 353 95 S.Ct 449, 42 L.Ed2d 477 (1974)).

160. The State Actor Tests that confirm that although this claim is filed pursuant to section 1981, the Defendants do possess section 1983 "**person**" status pursuant to the

(i) symbiotic test, (ii) joint participation doctrine, (iii) state command and encouragement test, (iv) public function test, (v) pervasive entwinement.

161. State action is found when a private corporation or actor provides a “**public function**” i.e., the drafting of healthcare legislation, as in Marsh v Alabama, 326 U.S. 501 (1946). See ~~also~~ Terry v Adams 345 U.S. 461 (1953); Evans v Newton, 382 U.S. 296 (1966) (“**That is to say, when private individuals or groups are endowed by the State with powers or function governmental in nature, they become agencies or instrumentalities of the State and subject to Constitutional limitations.**”). State action is found when the private corporation is heavily regulated by the state i.e., the Department of Banking and Insurance, thereby giving the state control of the corporations’ acts.

162. Defendant BCBS, if further evidence of its ‘state actor’ status was required under a section 1983 claim, has engaged, and continues to engage in the conception, construction and perpetration of state/federal criminal investigations and prosecutions ostensibly ‘spearheaded’ by the NJ Division of the FBI/US Attorney and the NJ Office of the Insurance Fraud Prosecutor. The latter avenue to incarceration of innocent physicians to whom Defendant BCBS owes money is disguised as a civil matter, in order to deceive parties into believing that they do not need to take the usual legal precautions, associated with criminal investigations.

163. Lawyers for Defendant BCBS in assisting in the co-drafting of The Kaul Cases Defendant Solomon’s Final Opinion, issued on December 13, 2013, did conduct a state function, and in doing so did adopt ‘state actor’ status for Kaul’s purpose of claiming a violation of his civil rights, under both sections 1983 and 1981.

164. Alternatively under section 1981 or section 1983, the Defendants abused their ‘state actor’ position to advance their private commercial interests, at the expense of Kaul’s Constitutional right to due process, in that amongst other things, they, in collusion/conspiracy with The Kaul Cases Defendants public officials (Christie/Hafner/Chiesa/Kanefsky/Solomon/Kaufman/Przybylski/NJBME/Lomazow) aided, abetted and facilitated the commission of two hundred and seventy-eight (278) separate instances of perjury, misrepresentation, evidential omission, and mischaracterization in the MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF RICHARD A. KAUL, M.D. TO PRACTICE MEDICINE AND SURGERY IN NEW JERSEY (April 9, 2013, to June 28, 2013).

165. The Defendants conspired with The Kaul Cases Defendant Solomon to issue a fraudulent opinion (December 13, 2013) regarding the administrative proceeding that caused the revocation of Kaul’s license, an opinion that contains two hundred and

seventy-eight (278) separate acts of perjury and evidential omissions, misrepresentations, and gross mischaracterizations, and an opinion published on a document that was transmitted, and continues to be transmitted, with knowing fraudulence across the US wires.

166. The Defendants abused the power of their public function for personal gain, in the knowledge that they competed with Kaul for the public's healthcare premium related fund, in which the Defendants only function, under the law and as per their contracts with Kaul's patients, was that of premium collection. However, the Defendants, as with many other such entities in the insurance industry, developed schemes to illegally divert an unauthorized percentage of these monies into corporate/executive profits and private investment funds, and in furtherance of these schemes perpetrated grand schemes of political and judicial corruption in an attempt to insulate themselves from prosecution for amongst other things, theft, and embezzlement.

167. The Defendants, in seeking to violate Kaul's right to due process, but in wanting to ensure that they wrongful conduct and long-standing conspiracy with public agencies/officials was concealed by the ostensible acts of public officials, and in wanting to particularly mitigate against section 1983 claims, aided, abetted, and facilitated the fraudulent testimony of The Kaul Cases Defendants Przybylski/Kaufman in the administrative proceedings (April 9 to June 28, 2013). Specifically, and as evidenced by 'The Solomon Critique' and 'The Solomon Critique 2', there were committed two hundred and seventy-eight (278) separate acts of perjury and evidential omissions, misrepresentations, and gross mischaracterizations.

168. Within The Kaul Cases, Kaul exposed the architecture and function of these state-corporate schemes of political/judicial/legislative corruption, but the evidence adduced in USA v Pompy and Anand v Independence BCBS has unequivocally un-buttressed and undermined this now shaky edifice of 21st century American corporate greed and corruption.

COUNT NINE
Commercial disparagement

169. Plaintiff hereby repeats and incorporates by reference each and every one of the foregoing paragraphs as though fully set forth.

170. Commencing in approximately 2005/2006, the Defendants knowingly and with malice commenced perpetrating anticompetitive purposed schemes of defamation and derogation, in which they used the US wires and face-to-face interactions to propagate false statements to Kaul's patients (e.g., Richard Barbetta), referring physicians, medical device suppliers and lawyers that Kaul was not qualified to perform minimally invasive spine surgery.

171. As a consequence of these schemes, the Defendants illegally diverted an uncontractually supported greater percentage of the public's healthcare premiums into corporate/executive profit and unauthorized investment vehicles, the profits of which were not translated into the reduced healthcare premiums, but were instead funneled into to the Defendants trusts/accounts and into their schemes of political/judicial corruption, to reduce, by cooption, the threat of criminal prosecution.

172. The Defendants false statements were intended to cause financial damage to Kaul and his business and did in fact cause, and continue to cause immense harm to Kaul's reputation and business, for which the Defendants are directly liable, as the Defendants knew that Kaul was qualified to perform minimally invasive spine surgery but nonetheless acted with a malicious disregard of its truth.

173. The Defendants encouraged patients to file lawsuits against Kaul, and criticized Kaul's work, the purpose of which was to attack Kaul's reputation and economic standing, and to have Kaul's medical license revoked.

174. The substance of the Defendants communications, and their tactics in furtherance of their anticompetitive scheme, as relevant this Count, are the same as those perpetrated and pled in Count 6

175. The Defendants' wrongful acts caused immense and permanent harm to the Plaintiff's economic standing and reputation.

COUNT TEN

Intentional Interference with prospective economic advantage

176. Plaintiff hereby repeats and incorporates by reference each and every one of the foregoing paragraphs as though fully set forth herein.

177. In approximately 2005/2006, the Defendants commenced filing complaints against Kaul with the medical board, the purpose of which was to eliminate him from the minimally invasive spine surgery market, in order to increase their share of the public's healthcare premium related fund. As a consequence of these complaints, the medical board conducted a hearing before a preliminary evaluation committee in 2006 regarding Kaul's practice of minimally invasive spine surgery, and took no action, nor required Kaul to limit his practice nor take a neurosurgical/orthopedic residency.

178. In this same time period, the Defendants, in concert with **The Kaul Cases** Defendants commenced encouraging Kaul's patients to file lawsuits and complaints with the medical board against Kaul, in furtherance of their scheme to have Kaul's license revoked and to cause him to leave the United States, as was incorrectly predicted by a member of the office of the NJ attorney general, who in April 2012, commented to one of Kaul's lawyers: **"He [Kaul] is probably going to pack his bags and leave"**

179. In this same time period, the Defendants in collusion/conspiracy with **The Kaul Cases** neuro-ortho surgeons/hospital Defendants encouraged spine device representatives to cease supplying Kaul and his surgical center with the devices he required to perform minimally invasive spine surgery.

180. From 2005 to 2012 the Defendants encouraged physicians in their network to not to refer patients to Kaul and slandered Kaul's reputation by stating, amongst other things, that he was not qualified to perform minimally invasive spine surgery.

181. Commencing in approximately 2005, the Defendants met with Defendant Christie and other New Jersey politicians on multiple occasions, during which they planned their schemes to not only have have Kaul's license revoked, but those of other ethnic minority physicians to whom they owed money. By 2005, the Defendants were perpetrating this scheme of revocation/incarceration across the country in multiple states, with a particular focus on successful ethnic minority physicians in New Jersey, California, Pennsylvania, and Michigan. The January 4, 2023, acquittal of Dr. Lesly

Pompy exposed the inner machinations of the scheme, and caused Dr. Neil Anand to seek an injunction against the BCBS family, from any further perpetration of this scheme (Exhibit 11)

182. The substance of the Defendants communications, and their tactics in furtherance of their anticompetitive scheme, as relevant this Count, are the same as those perpetrated and pled in Count 2.

183. The Defendant's aforesaid actions constituted knowing, intentional and voluntary interference with Kaul's minimally invasive spine surgery practice.

184. The Defendant's aforesaid actions constituted negligent interference with Kaul's minimally invasive spine surgery practice and caused the illegal revocation of Kaul's license in 2014.

185. The Defendant actions constitute unjustified and wrongful interference with Kaul's minimally invasive spine surgery, and a reasonable expectation of economic advantage as aforesaid. The Defendants wrongful interference did not rest upon a legitimate interest or have a legitimate purpose, and was fraudulently perpetrated in collusion/conspiracy with investigative/prosecutorial/adjudicative agencies and persons associated with the state/federal governments, that sought to eliminate Kaul from the relevant market, through license revocation/reputational destruction/incarceration/suicide/death, in order to ensure he was prevented/dissuaded from seeking legal redress and exposing the truth of the Defendants long-standing criminal state-corporate "pattern" of human rights violations.

187. As a result of the Defendants' actions, the Defendants are liable for the permanent damages caused by their interference with Kaul's life/liberty/livelihood/career/reputation/property, in both a retroactive and prospective manner.

188. Kaul had a reasonable expectation of economic advantage or benefit flowing from the revenues of not just his minimally invasive spine surgery practice in New Jersey, but from his planned expansion across the United States, and globally, of this service and others, such as intellectual property development and education. The calculated damages are identified in the 'Settlement Terms' filed in K1 on February 22, 2016.

189. The Defendants knew or should have known of the expectancy of the aforesaid economic advantage of Kaul's New Jersey minimally invasive spine surgery practice and its attendant expansion.

190. In the absence of the Defendant's wrongful acts as aforesaid, it is highly likely, based on Kaul's immensely successful commercial history in the period from 2005 to 2012, that he would have actualized its aforesaid economic advantage or benefit with respect

to his ongoing NJ minimally invasive spine surgery practice and its attendant national/global expansion.

191. As a result of the Defendant's aforesaid wrongful acts, Kaul has suffered, and continues to suffer immense and permanent damage to his life/liberty/livelihood/career/reputation/property, and recognizing the American courts have thus far denied him access to justice, he is moving in the Indian Courts against American corporations and the State of New Jersey. Kaul is not the only Indian physician pursuing this international course of action (Exhibit 11).

COUNT ELEVEN

Violation of Kaul's due process rights pursuant to the Excessive Fines Clause of the Eight Amendment and due process Clause of the Fourteenth Amendment

192. The Defendants, in furtherance of their state-corporate scheme, did aid, abet, and encourage **The Kaul Cases** Defendant, New Jersey Medical Board to, on March 12, 2014, enter a knowingly illegal order that not only unlawfully revoked Kaul's license to practice medicine and surgery in New Jersey, but fined Kaul over \$475,000. The Defendants were motivated to have such an illegal 'fine' entered, that further violated Kaul's fundamental human/constitutional rights, as they wanted to eliminate Kaul, and attempt to render impossible his return, in order to stymie his right to legal redress and his exposition of their criminal scheme.

193. The Defendants efforts failed, in that there has emerged in USA v Pompy and Anand v Independence BCBS highly incriminating "new" evidence of their state sponsored "**pattern of racketeering**", evidence that corroborates the claims asserted in **The Kaul Cases**, and directly implicates the Defendants in the same crimes, and evidence that only recently came into Kaul's possession.

194. On February 28, 2019, the United States Supreme Court in Timbs v. Indiana, 586 U.S. 139 S.Ct. 682; 203 L.Ed. 2d 11 held that the State of Indiana, in confiscating a car worth no more than \$42,000 from an individual convicted of drug dealing, had violated his constitutional rights.

195. Defendants conspired with **The Kaul Cases** Defendant, New Jersey Board of Medical Examiners, to use the illegal fine of \$475,000 to obstruct Kaul's application for reinstatement of his medical license, denying him the right to even present his case for reinstatement, until he had paid the knowingly illegal fine. The purpose of such an obstruction was the Defendants motivation to eliminate Kaul, and attempt to render impossible his return, in order to stymie his right to legal redress and his exposition of their criminal scheme.

196. In early 2019, Kaul submitted another application to **The Kaul Cases** Defendant NJBME in order to obtain his license in New Jersey. The application, with a money order for \$325.00 was delivered to the offices of Defendant NJBME by Fedex in mid-March. In late May, Kaul was informed by an employee of Defendant NJBME, that his application had not been processed because it had to be submitted online through a website administered by Defendant NJBME. Kaul attempted on several occasions to initiate the process, but after having submitted his name, the website prevented him from filing his application. Kaul contacted the employee ("Maisha") at Defendant NJBME and explained that his online application had been blocked. Kaul was routed through to another employee, who communicated to Kaul that he would have to talk with an individual by the name of "**Jacqueline Johnson**" in order to ascertain what steps were required of him to submit his application.

197. The Defendants, for the above stated reasons, not only continued to conspire with NJBME to obstruct Kaul's efforts to have returned the illegally seized property of his license, but continue to the present in the perpetration of this scheme, in a manner that violates Kaul's right to his life/liberty/property/livelihood/reputation.

198. From late May 2019 to late 2021, Kaul has continued to attempt to have his NJ license reinstated, and the Defendants, Kaul now asserts in light of the "**new evidence**" have continued to obstruct his efforts, in order to attempt to eliminate Kaul, and to render impossible his return, in order to stymie his right to legal redress and his exposition of their criminal scheme.

COUNT TWELVE
Aid in the Commission of Tort

199. The Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs and incorporates same as if set forth fully herein

200. The Defendants pursued a common plan or design to commit a series of torts upon Kaul, through their active participation, encouragement, or ratification of the harm committed, and continuing to be committed against Kaul.

201. The Defendant common plan is also causing a grave and ongoing detriment to the public, whose access to lifesaving minimally invasive spine surgery remains illegally restricted, while the Defendants profiteering continues unabated with increased profits from fraudulently procured raised healthcare premiums, and illegal diversion of premium related healthcare funds into corporate/executive profits and unauthorized investment funds. The self-serving insurance industry 'fox' cannot be permitted to remain in charge of the 'henhouse' of the lives and health of the American people, and this case, along with USA v Pompy and Anand v Independence BCBS establish the factual/legal basis on which to place the lives of Americans, before the greed and profits of corporations/executives, such as Defendants BCBS and Marino.

202. The Defendants are jointly and severally liable to Kaul for his damages suffered as a consequence of all of the aforementioned torts, claims and counts.

Demand for Judgment

WHEREFORE, Kaul seeks judgment against the Defendants jointly and severally, as follows:

1. Compensatory + Consequential + Punitive Damages.
2. Declaring that the revocation of the Plaintiff's medical license was procured through illegal means and was an illegal act.
3. Declaring that the conduct alleged herein is in violation of Sections 1 and 2 of the Sherman Act, of the other statutes set forth above, and of the common law of unjust enrichment under the laws of all states and jurisdictions within the United States.
4. Enjoining Defendants from continuing the illegal activities alleged herein.
5. Granting Kaul equitable relief in the nature of disgorgement, restitution, and the creation of a constructive trust to remedy Defendants' unjust enrichment.
6. Awarding Kaul treble, multiple, punitive and/or other damages.
7. Awarding Kaul the costs of suit, including reasonable attorneys' fees as provided by law.
8. Granting such other relief as is necessary to correct for the anti-competitive effects caused by the unlawful conduct of Defendants, and as the Court deems just.

Jury Demand

Plaintiff demands trial by jury on all issues so triable.

Demand for Insurance

Demand is hereby made for all insurance policies, which may cover the damages alleged in this Complaint.

I certify that the above statements are true and accurate to the best of my knowledge, and that if it is proved that I willfully and knowingly misrepresented the facts, then I am subject to punishment.

Respectfully submitted on this 27th day of 2023

By: R. K.

Richard Arjun Kaul, MD

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
2023 JAN 27 P 1:57

Exhibit 1

Case 1:21-cv-06992-JPO Document 14 Filed 09/13/21 Page 9 of 432

The Slaving-Nazi-COVID-Insurance Axis

7. In K11-2 Kaul exposed the motivation and method for the adding and abetting of the perpetration of the slaving industry and Holocaust, by the insurance industry, of which Defendants Allstate/Geico are members (**Exhibit 6**). In 2021, the insurance industry controls the pharmaceutical industry, and is the principal financial beneficiary of the billions of dollars generated from forced mass global vaccination programs, that violate fundamental human rights and the Nuremberg Code. The insurance industry holds substantial controlling shares in Pfizer (USA) and Astra Zeneca (UK) and are continuing the same **"pattern of racketeering"** that commenced in the 1600s with the Trans-Atlantic slaving trade, and which involved the commission of the RICO predicate act of murder, through the United States, a colony that the British Empire/Insurance Industry converted into a **"racketeering enterprise"** for the purpose of profit.
8. The forced/coerced mass vaccination programs/passports are the chains and whips of the COVID enslavement program, the strings of which are being pulled by the British controlled insurance industry. Dominion never ended. It simply switched hats.
9. In K11-2, the Defendants and the Court devoted inordinate page space to Kaul's exposition of the insurance industry's four hundred (400) year-long genocide, and in doing so, did betray their conviction of the absolute truth of the matter.
10. In K11-7, Kaul identifies how, in 2021, the **"pattern"**, like the COVID-19 virus, has mutated into a purported mission to save humanity, the calling card of which is a supposed **"vaccine"**. The vaccine is more than useless, as it was the cause of the viral mutation, as Kaul explained it would be (**Exhibit 7**).

Case 2:18-cr-20454-SJM-RSW ECF No. 1, PageID.1 Filed 06/26/18 Page 1 of 17 **17**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

D-1 LESLY POMPY, M.D.

Defendant.

Case:2:18-cr-20454
Judge: Tarnow, Arthur J.
MJ: Whalen, R. Steven
Filed: 06-26-2018 At 04:21 PM
INDI USA v. POMPY (EK)

VIO: 21 U.S.C. § 841(a)(1)
18 U.S.C. § 1347
18 U.S.C. § 2

INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this Indictment:

1. Beginning in or about January 2012 and continuing through in or about October 2016, in the Eastern District of Michigan, the defendant, Dr. LESLY POMPY created and executed a scheme or pattern of illegal conduct involving the unlawful prescribing and distribution of prescription drug controlled substances and fraudulent health care billings. Dr. LESLY POMPY and others, both known and unknown to the grand jury, played different roles and engaged in different aspects of the overall scheme.

Case 2:18-cr-20454-SJM-RSW ECF No. 1, PageID.2 Filed 06/26/18 Page 2 of 17

2. During the time period of this Indictment, the Defendant owned and operated a medical practice, Interventional Pain Management Associates, P.C. in Monroe, Michigan. While the Defendant represented himself as a pain management specialist, his actual conduct involved knowingly prescribing massive amounts of prescription opioids, outside the usual course of professional medical practice.

3. The primary prescription drug controlled substances illegally prescribed and distributed were the Schedule II drugs oxycodone (Percocet), hydrocodone (Vicodin, Norco), morphine, methadone, oxymorphone (Opana), fentanyl (Subsys) and tapentadol (Nucynta); the Schedule III drug buprenorphine (Suboxone, Zubsolv), and the Schedule IV drug tramadol. Many of these drugs are commonly abused opioids.

4. The Defendant would prescribe or continue to prescribe addictive controlled substances to patients, (i) despite documentation showing the patients were receiving controlled substance prescriptions from multiple providers at the same time; (ii) despite abnormal urine drug screens (e.g. testing positive of illicit substances or testing negative for the prescribed medication); (iii) in combinations known to have no medical justification or benefit; (iv) without properly titrating to

Case 2:18-cr-20454-SJM-RSW ECF No. 1, PageID.3 Filed 06/26/18 Page 3 of 17

the prescribed medication; and/or (v) while concurrently prescribing medication to treat addiction.

5. During the time frame of the scheme, the Defendant prescribed more than 4,221,892 dosage units of Schedule II controlled substances and over 6,196,642 total dosage units of all controlled substances. On any given day, the Defendant's office would service at least 60 patients and some days would see as many as 200 to 300 patients. Patients typically received only a cursory examination or no physical examination at all. The Defendant employed nurses and medical assistants to assist in the distribution of the controlled substances.

6. Defendant Dr. LESLY POMPY submitted claims to Medicare, Medicaid and Blue Cross Blue Shield of Michigan ("Blue Cross") seeking reimbursement for the cost of physician services purportedly furnished to patients under his care, including those patients receiving prescription controlled substances.

7. The Defendant would bill Medicare, Medicaid or Blue Cross for "office visits" and other unnecessary medical procedures. Billing for a more expensive procedure than the one actually conducted, is referred to as "upcoding" and it occurred for much of the billing submitted by the Defendant. This included the practice of billing for a more expensive doctor visit which lasted approximately 15-20 minutes, when the defendant, on average, would spend less than two-three

Case 2:18-cr-20454-SJM-RSW ECF No. 1, PageID.4 Filed 06/26/18 Page 4 of 17

minutes with each patient. In addition to the office visits, the Defendant would bill for referred “pain blocks” (a procedure that requires medication to be injected into the spine of a patient, similar to an epidural), which he himself performed. He also billed for urine drug screens which were conducted in his office.

8. From January 2012 to October 2016, Defendant Dr. LESLY POMPY caused the submission of approximately \$16,856,683 in claims to Medicare, Medicaid, and Blue Cross, a majority of which were seeking reimbursement for the costs of office visits and other services that were not medically necessary or the Defendant never rendered.

9. Defendant Dr. LESLY POMPY fraudulently and intentionally billed Medicare, Medicaid, and Blue Cross for: (i) office visits that used billing codes that exceeded the amount of services provided; (ii) office visits that totaled more than 24 hours billed in one single day; and (iii) other procedures that were medically unnecessary.

10. Defendant Dr. LESLY POMPY received approximately \$5,224,078 from Medicare, Medicaid and Blue Cross as payment for the claims submitted. Additionally, the Medicare program paid approximately \$5,361,451 for prescription medications issued by the Defendant and filled during the timeframe of this scheme.

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11. These general allegations are adopted and incorporated in each count of this Indictment.

COUNTS 1-22
Distribution of Controlled Substances, Aiding and Abetting,
(21 U.S.C. § 841(a)(1), 18 U.S.C. § 2)
D-1 LESLY POMPY, M.D.

12. Beginning in or about January 2012 and continuing through in or about October 2016, in the Eastern District of Michigan, Defendant Dr. LESLY POMPY did knowingly, intentionally and unlawfully distribute controlled substances in violation of 21 U.S.C. § 841(a)(1), including but not limited to the Schedule II drugs oxycodone (Percocet), hydrocodone (Vicodin, Norco), morphine, methadone, oxymorphone (Opana), fentanyl (Subsys) and tapentadol (Nucynta); the Schedule III drug buprenorphine (Suboxone, Zubsolv), and the Schedule IV drug tramadol. These controlled substances were distributed outside the usual course of professional medical practice, including but not limited to the following:

COUNT	ON OR ABOUT DATE	PATIENT	CONTROLLED SUBSTANCE	DOSAGE UNIT
1	5/9/2016	J.St.	HYDROCODONE BITARTRATE- ACETAMINOPHEN	21
2	5/17/2016	J.St.	HYDROCODONE BITARTRATE- ACETAMINOPHEN	21

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3	3/31/2016	R.B.	FENTANYL (SUBSYS)	120
4	9/12/2016	R.B.	MORPHINE SULFATE	42
5	9/12/2016	T.L.	OXYCODONE HCL- ACETAMINOPHEN	14
6	6/2/2016	D.K.	HYDROCODONE- ACETAMINOPHEN	90
7	6/2/2016	D.K.	DEXTROAMP-AMPHETAMINE	60
8	3/21/2016	S.S.	OXYCODONE HCL- ACETAMINOPHEN	63
9	3/21/2016	S.S.	METHADONE HCL	21
10	3/21/2016	S.S.	MORPHINE SULFATE	42
11	3/21/2016	S.S.	OXYMORPHONE HCL	21
12	3/21/2016	S.S.	TRAMADOL HCL	120
13	3/28/2016	F.E.	BUPRENORPHINE/NALOXONE (ZUBSOLV)	60
14	3/28/2016	F.E.	OXYCODONE HCL- ACETAMINOPHEN	120
15	5/16/2016	R.O.	OXYCODONE- ACETAMINOPHEN	24
16	5/24/2016	R.O.	OXYCODONE HCL- ACETAMINOPHEN	21
17	8/25/2016	L.K.	TAPENTADOL (NUCYNTA)	90

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18	8/25/2016	L.K.	METHADONE HCL	60
19	9/22/2016	G.T.	MORPHINE SULFATE	30
20	9/22/2016	G.T.	METHADONE HCL	60
21	4/12/2016	J.Sh.	OXYCODONE HCL- ACETAMINOPHEN	63
22	4/12/2016	J.Sh.	METHADONE HCL	21

All in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

COUNTS 23 - 37

**Health Care Fraud, Aiding and Abetting
(18 U.S.C. § 1347, 18 U.S.C. § 2)
D-1 LESLY POMPY, M.D.**

The Federal Health Benefit Programs

13. The Medicare program was a federal health care benefit program providing benefits to persons who are over the age of 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (CMS), a federal agency under the United States Department of Health and Human Services.

14. The Michigan Medicaid program ("Medicaid") was a federal and state funded health care program providing benefits to individuals and families who met specified financial and other eligibility requirements, and certain other individuals who lacked adequate resources to pay for medical care. Medicaid covered the costs

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of medical services and products ranging from routine preventive medical care for children to institutional care for the elderly and disabled. CMS was responsible for overseeing the Medicaid program in participating states, including Michigan.

15. Blue Cross was a private health insurer that provided health benefits to individuals qualified under their health insurance plans.

16. Medicare, Medicaid, and Blue Cross were "health care benefit programs" as defined by Title 18, United States Code, Section 24(b).

17. The Medicare Program includes coverage under four primary components, hospital insurance (Part A), medical insurance (Part B), Medicare Advantage (Part C), and prescription drug benefits (Part D).

18. The physician services at issue in this Indictment were covered by Part B. Part B of the Medicare Program was a medical insurance program that covered, among other things, certain office visits, and other health care benefits, items, and services, that were medically necessary and ordered by licensed medical doctors or other qualified health care providers.

19. Some of the prescriptions at issue in this Indictment were covered by Part D. Part D of the Medicare program was a subsidized prescription plan for Medicare beneficiaries, often administered by private insurance plans but reimbursed by Medicare through CMS.

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20. Participants in Medicare, Medicaid, and Blue Cross Insurance programs agreed to abide by the policies and procedures, rules, and regulations governing reimbursement under these plans. In order to receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, are required to abide by all the provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies and procedures, rules, and regulations, issued by CMS and its authorized agents and contractors.

21. Participating providers were given and/or provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Providers can only submit claims to Medicare for services they rendered and providers must maintain patient records to verify that the services were provided as described on the claim.

22. Payments under the Medicare, Medicaid, and Blue Cross programs were often made directly to a provider of the goods or services, rather than to the beneficiary. This occurred when the provider submitted the claim to Medicare, Medicaid, or Blue Cross for payment, either directly or through a billing company.

23. All claims submitted to Medicare, Medicaid, or Blue Cross for reimbursement were required to set forth, among other things, the beneficiary's name, the date the services were provided, the cost of the services, and the name and

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identification number of the physician or other health care provider who had ordered the services.

24. The Defendant Dr. LESLY POMPY was a Medicare, Medicaid and Blue Cross provider that purported to provide physician services to patients in an office setting at his medical clinic, Interventional Pain Management, Associates, P.C. in Monroe County, Michigan. The Defendant submitted claims to Medicare, Medicaid and Blue Cross.

25. From in or about January 2012 and continuing through in or about October 2016, in the Eastern District of Michigan, the Defendant, Dr. LESLY POMPY, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, Medicaid and Blue Cross, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Scheme and Artifice

26. It was the purpose of the scheme and artifice for the Defendant Dr. LESLY POMPY to unlawfully enrich himself through the submission of false and

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fraudulent Medicare, Medicaid and Blue Cross claims for services that were not rendered or were not medically necessary.

Acts in Execution of the Scheme and Artifice

27. In execution of the scheme and artifice, the Defendant Dr. LESLY POMPY submitted or caused the submission of claims to Medicare, Medicaid and Blue Cross for services that were not rendered or medically unnecessary, including, but not limited to, the following:

COUNT	PURPORTED DATE OF SERVICE	PATIENT	FEDERAL HEALTH PLAN	AMOUNT BILLED	DESCRIPTION OF PURPORTED SERVICE
23	5/9/2016	J.St.	BCBS	\$90.00	99213 - Office or other outpatient visit for evaluation and management of an established patient
24	5/9/2016	J.St.	BCBS	\$236.75	G0483 - Drug test(s), definitive
25	5/17/2016	J.St.	BCBS	\$90.00	99213 - Office or other outpatient visit for evaluation and management of an established patient
26	3/31/2016	R.B.	BCBS	\$195.00	99215 - Office or other outpatient visit for evaluation and management of an established patient
27	6/2/2016	D.K.	BCBS	\$90.00	99213 - Office or other outpatient visit for evaluation and management of an established patient

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28	9/12/2016	T.L.	BCBS	\$90.00	99213 - Office or other outpatient visit for evaluation and management of an established patient
29	3/21/2016	S.S.	Medicare	\$90.00	99213 - Established patient office or other outpatient visit, typically 15 minutes
30	5/26/2016	A.M.	Medicare	\$236.75	G0483 - Drug test(s), definitive
31	5/26/2016	A.M.	Medicare	\$90.00	99213 - Established patient office or other outpatient visit, typically 15 minutes
32	5/26/2016	K.R.	Medicaid	\$195.00	99215 - Office or other outpatient visit for evaluation and management of an established patient
33	5/26/2016	M.B.	Medicare	\$90.00	99213 - Established patient office or other outpatient visit, typically 15 minutes
34	5/26/2016	K.W.	Medicare	\$90.00	99213 - Established patient office or other outpatient visit, typically 15 minutes
35	9/12/2016	K.R.	Medicaid	\$195.00	99215 - Office or other outpatient visit for evaluation and management of an established patient
36	9/12/2016	B.L.	Medicare	\$90.00	99213 - Established patient office or other outpatient visit, typically 15 minutes
37	1/18/2016	K.R.	Medicaid	\$195.00	99215 - Office or other outpatient visit for evaluation and management of an established patient

All in violation of Title 18, United States Code, Section 1347 and Title 18,

Case 2:18-cr-20454-SJM-RSW ECF No. 1, PageID.13 Filed 06/26/18 Page 13 of 17

United States Code, Section 2.

CRIMINAL FORFEITURE
(21 U.S.C. § 853; 18 U.S.C. § 981(a)(1)(C)
and 28 U.S.C. § 2461; 18 U.S.C. §§982(a)(7))

28. The allegations contained in Counts 1-37 of this Indictment are hereby incorporated by reference for the purpose of alleging forfeiture against the defendant pursuant to the provisions of Title 21, United States Code, Section 853; Title 18, United States Code, Sections 981(a)(1)(C) and 982; and Title 28, United States Code, Section 2461.

29. As a result of the foregoing violations of Title 21, United States Code, Section 841(a)(1), as charged in Counts 1-22 of this Indictment, defendant shall forfeit to the United States (a) any property constituting, or derived from, any proceeds Defendant obtained, directly or indirectly, as the result of the violations, and (b) any property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of such violations, pursuant to Title 21, United States Code, Section 853(a).

30. As a result of the foregoing violations of Title 18, United States Code, Section 1347, as charged in Counts 23-37 of this Indictment, defendant shall forfeit to the United States: (a) any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such violations, pursuant to Title 18,

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United States Code, Section 981(a)(1)(C), together with Title 28, United States Code, Section 2461, and (b) any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, pursuant to Title 18; United States Code, Section 982(a)(7).

31. Such property includes, but is not limited to, the following assets:

- a. All Funds on Deposit and All Other Items of Value Up to \$3.6 Million in Monroe Bank and Trust, Account No. [REDACTED]147 (Approximately \$55,937.45 value, as of March 16, 2018);
- b. All Funds on Deposit and All Other Items of Value Up to \$3.6 Million in Monroe Bank and Trust, Account No. [REDACTED]049 (Approximately \$221,400.41 value, as of March 16, 2018);
- c. All Funds on Deposit and All Other Items of Value in Monroe Bank and Trust, Account No. 206042147 (Approximately \$85,667.53 value, as of March 16, 2018);
- d. All Funds on Deposit and All Other Items of Value in Merrill Lynch, Pierce, Fenner & Smith, Account No. [REDACTED]235 (Approximately \$289,941.66 value, as of March 16, 2018);
- e. All Funds on Deposit and All Other Items of Value in Merrill Lynch, Pierce, Fenner & Smith, Account No. [REDACTED]234 (Approximately \$62,335.85 value, as of);
- f. All Funds on Deposit and All Other Items of Value in E Trade Securities, LLC, Account No. [REDACTED]412 (Approximately \$755,826.12 value, as of March 16, 2018);
- g. All Funds on Deposit and All Other Items of Value in E Trade Securities, LLC, Account No. [REDACTED]195 (Approximately \$92,965.74 value, as of March 16, 2018).

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32. Such property also includes a money judgment, and all traceable interest and proceeds for which the defendants are jointly and severally liable. Such sum in aggregate is property representing the proceeds of the aforementioned offenses, or is traceable to such property, and/or is involved in violations of Title 21, United States Code, Section 841 and Title 18, United States Code, Section 1347.

33. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), defendants shall forfeit substitute property (i.e. any other property of Defendant), up to the value of the properties described above or identified in any subsequent forfeiture bills of particular, if, by any act or omission of the defendant, the property cannot be located upon the exercise of due diligence; has been transferred, sold to or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty.

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THIS IS A TRUE BILL

s/GRAND JURY FOREPERSON

MATTHEW SCHNEIDER
United States Attorney

s/WAYNE F. PRATT
CHIEF, Health Care Fraud Unit
Assistant United States Attorney

s/BRANDY R. McMILLION
Assistant United States Attorney
211 W. Fort Street, Suite 2001
Detroit, MI 48226
Phone: (313) 226-9622
Email: brandy.mcmillion@usdoj.gov

Dated: June 26, 2018

Case 2:18-cr-20454-SJM-RSW ECF No. 1, PageID 17 Filed 06/26/18 Page 17 of 17

ORIGINAL

United States District Court Eastern District of Michigan	Criminal Case C	Case: 2:18-cr-20454 Judge: Tamow, Arthur J. MJ: Whalen, R. Steven Filed: 06-26-2018 At 04:21 PM INDI USA v. POMPY (EK)
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NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to

Companion Case Information	Companion Case Number:
This may be a companion case based upon LCR 57.10 (b)(4) ¹ :	Judge Assigned:
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	AUSA's Initials: <i>CPM</i>

Case Title: USA v. LESLEY POMPY

County where offense occurred : MONROE

Check One: **Felony** **Misdemeanor** **Petty**

- Indictment/ ___ Information --- no prior complaint.
- Indictment/ ___ Information --- based upon prior complaint [Case number: _____]
- Indictment/ ___ Information --- based upon LCR 57.10 (d) [Complete Superseding section below].

Superseding Case Information

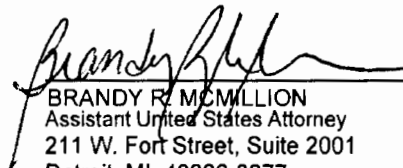
Superseding to Case No: _____ Judge: _____

- Corrects errors; no additional charges or defendants.
- Involves, for plea purposes, different charges or adds counts.
- Embraces same subject matter but adds the additional defendants or charges below:

Defendant name	Charges	Prior Complaint (if applicable)
----------------	---------	---------------------------------

Please take notice that the below listed Assistant United States Attorney is the attorney of record for the above captioned case.

June 26, 2018
Date



 BRANDY R. MCMILLION
 Assistant United States Attorney
 211 W. Fort Street, Suite 2001
 Detroit, MI 48226-3277
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 Fax: (313) 226-2621
 E-Mail address: brandy.mcmillion@usdoj.gov
 Attorney Bar #: P69838

¹ Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, or (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.

CLERK
U.S. DISTRICT COURT
NEW JERSEY

7/3 JAN 27 P 1:59

Exhibit 2

Case 2:18-cr-20454-SJM-RSW ECF No. 93, PageID.1901 Filed 01/04/23 Page 1 of 6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:18-cr-20454

HONORABLE STEPHEN J. MURPHY, III

v.

LESLY POMPY,

Defendant.

_____ /

VERDICT FORM

We, the jury, unanimously find the following:

COUNT ONE

Unlawful Distribution of Controlled Substances

Patient J.St., Hydrocodone bitartrate-acetaminophen (Norco), May 9, 2016

X Not Guilty _____ Guilty

COUNT TWO

Unlawful Distribution of Controlled Substances

Patient J.St., Hydrocodone bitartrate-acetaminophen (Norco), May 17, 2016

X Not Guilty _____ Guilty

COUNT THREE

Unlawful Distribution of Controlled Substances

Patient R.B., Fentanyl (Subsys), March 31, 2016

X Not Guilty _____ Guilty

COUNT FOUR

Unlawful Distribution of Controlled Substances

Patient R.B., Morphine sulfate (MS Contin), September 12, 2016

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 X Not Guilty _____ Guilty

COUNT FIVE

Unlawful Distribution of Controlled Substances

Patient T.L., Oxycodone HCL-acetaminophen (Percocet), September 12, 2016

 X Not Guilty _____ Guilty

COUNT SIX

Unlawful Distribution of Controlled Substances

Patient D.K., Hydrocodone-acetaminophen (Norco), June 2, 2016

 X Not Guilty _____ Guilty

COUNT SEVEN

Unlawful Distribution of Controlled Substances

Patient D.K., Dextroamp-amphetamine (Adderall), June 2, 2016

 X Not Guilty _____ Guilty

COUNT EIGHT

Unlawful Distribution of Controlled Substances

Patient S.S., Oxycodone-acetaminophen (Percocet), March 21, 2016

 X Not Guilty _____ Guilty

COUNT NINE

Unlawful Distribution of Controlled Substances

Patient S.S., Methadone, March 21, 2016

 X Not Guilty _____ Guilty

COUNT TEN

Unlawful Distribution of Controlled Substances

Patient S.S., Morphine Sulfate, March 21, 2016

 X Not Guilty _____ Guilty

COUNT ELEVEN

Unlawful Distribution of Controlled Substances

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Patient S.S., Oxymorphone HCL (Opana), March 21, 2016

Not Guilty Guilty

COUNT TWELVE

Unlawful Distribution of Controlled Substances
Patient S.S., Tramadol (Ultram), March 21, 2016

Not Guilty Guilty

COUNT THIRTEEN

Unlawful Distribution of Controlled Substances
Patient F.E., Buprenorphine/Naloxone (Zubsolv), March 28, 2016

Not Guilty Guilty

COUNT FOURTEEN

Unlawful Distribution of Controlled Substances
Patient F.E., Oxycodone HCL-acetaminophen (Percocet), March 28, 2016

Not Guilty Guilty

COUNT FIFTEEN

Unlawful Distribution of Controlled Substances
Patient R.O., Oxycodone HCL-acetaminophen (Percocet), May 16, 2016

Not Guilty Guilty

COUNT SIXTEEN

Unlawful Distribution of Controlled Substances
Patient R.O., Oxycodone HCL-acetaminophen (Percocet), May 24, 2016

Not Guilty Guilty

COUNT SEVENTEEN

Unlawful Distribution of the Controlled Substance
Patient L.K., Tapentadol (Nucynta), August 25, 2016

Not Guilty Guilty

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COUNT EIGHTEEN

Unlawful Distribution of the Controlled Substance
Patient L.K., Methadone, August 25, 2016

 X Not Guilty _____ Guilty

COUNT NINETEEN

Unlawful Distribution of the Controlled Substance
Patient G.T., Morphine Sulfate (MS Contin), September 22, 2016

 X Not Guilty _____ Guilty

COUNT TWENTY

Unlawful Distribution of the Controlled Substance
Patient G.T., Methadone, September 22, 2016

 X Not Guilty _____ Guilty

COUNT TWENTY-ONE

Unlawful Distribution of the Controlled Substance
Patient J.Sh., Oxycodone HCL-acetaminophen (Percocet), April 12, 2016

 X Not Guilty _____ Guilty

COUNT TWENTY-TWO

Unlawful Distribution of the Controlled Substance
Patient J.Sh., Methadone HCL, April 12, 2016

 X Not Guilty _____ Guilty

COUNT TWENTY-THREE

Health Care Fraud
Patient J.St., Office Visit 99213, May 9, 2016

 X Not Guilty _____ Guilty

COUNT TWENTY-FOUR

Health Care Fraud
Patient J.St., Drug Test G0483, May 9, 2016

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 X Not Guilty _____ Guilty

COUNT TWENTY-FIVE

Health Care Fraud

Patient J.St., Office Visit 99213, May 17, 2016

 X Not Guilty _____ Guilty

COUNT TWENTY-SEVEN

Health Care Fraud

Patient D.K., Office Visit 99213, June 2, 2016

 X Not Guilty _____ Guilty

COUNT TWENTY-EIGHT

Health Care Fraud

Patient T.L., Office Visit 99213, September 12, 2016

 X Not Guilty _____ Guilty

COUNT TWENTY-NINE

Health Care Fraud

Patient S.S., Office Visit 99213, March 21, 2016

 X Not Guilty _____ Guilty

COUNT THIRTY-TWO

Health Care Fraud

Patient K.R., Office Visit 99215, May 26, 2016

 X Not Guilty _____ Guilty

COUNT THIRTY-THREE

Health Care Fraud

Patient M.B., Office Visit 99213, May 26, 2016

 X Not Guilty _____ Guilty

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COUNT THIRTY-FIVE

Health Care Fraud

Patient K.R., Office Visit 99215, September 12, 2016

 X Not Guilty _____ Guilty

COUNT THIRTY-SIX

Health Care Fraud

Patient B.L., Office Visit 99215, September 12, 2016

 X Not Guilty _____ Guilty

COUNT THIRTY-SEVEN

Health Care Fraud

Patient K.R., Office Visit 99215, January 18, 2016

 X Not Guilty _____ Guilty

COUNT THIRTY-EIGHT

Maintaining Drug-Involved Premises, 730 North Macomb, Suite 222, Monroe, MI

 X Not Guilty _____ Guilty

s/Jury Foreperson

Date: 1/4/23

In compliance with the Privacy Policy Adopted by the Judicial Conference, the verdict form with the original signature has been filed under seal.

CLERK
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2023 JAN 27 PM 1:10

Exhibit 3

Jury Trial Excerpt: Volume 5 • Thursday, December 1, 2022

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 18-20454
Hon. Stephen J. Murphy, III

LESLY POMPY,

Defendant.

JURY TRIAL EXCERPT: VOLUME 5

BEFORE THE HONORABLE STEPHEN J. MURPHY, III
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226
Thursday, December 1, 2022

APPEARANCES:

For the Plaintiff
United States of America:

WAYNE F. PRATT
ANDREW J. LIEVENSE
U.S. Attorney's Office
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Detroit, Michigan 48226
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Also Present:

CHRISTINE OUELLETTE
Paralegal Specialist

For the Defendant
Lesly Pompy:

GEORGE B. DONNINI
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Suite 1200
Troy, Michigan 48084
313-225-7000

(Appearances continued next page)

1 APPEARANCES: Continued

2 For the Defendant RONALD WILLIAM CHAPMAN, II
3 Lesly Pompy: Chapman Law Group
1441 West Long Lake Road
4 Suite 310
Troy, Michigan 48098
248-644-6326

5 Also Present: VICTORIA MURDOCH
6 Senior Paralegal

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Government Witnesses:

JAMES STEWART HOWELL

Direct Examination by Mr. Lievense

4

EXHIBITS

Identification

Offered

Received

NONE

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4

1 Detroit, Michigan

2 Thursday, December 1, 2022

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-- --

4 (Proceedings in progress at 1:22 p.m., all parties
5 present, jury present)

6 THE COURT: Okay, government, who's going to be our
7 next witness?

8 MR. LIEVENSE: Our next witness is James Stewart
9 Howell.

10 THE COURT: Okay. You're Mr. Howell?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 J A M E S S T E W A R T H O W E L L

14 was called as a witness herein, and after being first duly
15 sworn to tell the truth and nothing but the truth, testified on
16 his oath as follows:

17 THE WITNESS: I do.

18 THE COURT: Okay. Go ahead and have a seat --

19 THE WITNESS: Thank you.

20 THE COURT: -- in the black chair, make yourself
21 comfortable as possible. Speak toward the mic so it picks you
22 up.

23 And Mr. Lievense, go right ahead.

24 DIRECT EXAMINATION

25 BY MR. LIEVENSE:

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1 Q. Mr. Howell, could you please state your full name and
2 spell your last name for the record?

3 A. Yeah. James S. Howell. It's H-o-w-e-l-l.

4 Q. And your middle name is Stewart?

5 A. Yes.

6 Q. And I -- I mention all three of your names because I think
7 three of them are going to be kind of mentioned here today.

8 What -- your full name is James Stewart Howell, is that right?

9 A. Jr., yes.

10 Q. Jr. My apologies to your father.

11 And what role did you have in this case?

12 A. I was an employee of Blue Cross doing undercover visits.

13 Q. And so you were an undercover investigator for Blue Cross
14 Blue Shield?

15 A. Yes.

16 Q. The insurance company?

17 A. Yes.

18 Q. You may just call them Blue Cross at times, is that fair?

19 A. Yes. Yes.

20 Q. And -- and you were the -- were you the person who did the
21 undercover visits with Dr. Pompy?

22 A. Yes.

23 Q. And what type of patient were you posing as when you went
24 to see Dr. Pompy?

25 A. I was posing as an undercover patient seeking drugs or

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1 pills or medication.

2 Q. And did Dr. Pompy prescribe those pills to you?

3 A. Yes.

4 Q. Did he -- what -- what did he prescribe to you?

5 A. Norco.

6 Q. I want to back up a little bit. Did you go to college?

7 A. I did.

8 Q. Where did you go to college?

9 A. Grand Valley State.

10 Q. And after that -- well, what type of degree did you get?

11 A. I got a bachelor's degree.

12 Q. With what emphasis?

13 A. Science.

14 Q. Was there any sort of law enforcement certification as
15 part of that program?

16 A. Yes, it was criminal justice.

17 Q. And did you then become a police officer?

18 A. Yes.

19 Q. Where did you work?

20 A. City of Lincoln Park, Michigan.

21 Q. And how long did you work for the City of Lincoln Park?

22 A. Almost 23 years.

23 Q. And without going over year by year, what -- what titles
24 did you have as a City of Lincoln Park police officer?

25 A. I had the titles of corporal, sergeant, and I ended as a

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1 lieutenant when I retired, and I guess detective would be
2 another title.
3 Q. And what were your general responsibilities at Lincoln
4 Park?
5 A. I did all like what you would consider general police
6 activities as far as I did patrol division, I supervised a
7 patrol division, I did undercover narcotics, I did detective
8 work, I have training in -- in all those areas, training as a
9 detective, training in narcotics, did --
10 Q. And just to -- just to mention, one thing you mentioned is
11 you did some undercover work?
12 A. Yes.
13 Q. When did you retire from Lincoln Park Police Department?
14 A. I retired from there in 2013.
15 Q. And what did you do next in terms of your profession?
16 A. I went directly the following week after I retired from
17 Lincoln Park and started to work at Blue Cross Blue Shield of
18 Michigan.
19 Q. And what was your -- what was your title or
20 responsibilities at Blue Cross?
21 A. Working the investigations area. It's called Corporate
22 Financial Investigations.
23 Q. And did they provide any special training for you?
24 A. Yeah.
25 Q. Was that just -- was that inhouse training or did they

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1 send you to an additional training program?

2 A. There's been both.

3 Q. And what type of inhouse training did they provide you?

4 A. We did a training as far as we did a -- like a -- we
5 called it a Blues Academy which -- which covered a entire range
6 of health care investigations. We talked about undercover
7 activities and things like that.

8 Q. Did you also have to learn how to become familiar with
9 like Blue Cross Blue Shield data and information?

10 A. Yes.

11 Q. At some point did you become an accredited health care
12 fraud investigator?

13 A. Yes.

14 Q. Is that a program -- was that a program kind of outside of
15 Blue Cross training?

16 A. Yes.

17 Q. And what -- what -- what did that training entail?

18 A. That is -- to be an accredited health care fraud
19 investigator, you had to be a member of the NHCAA, which is
20 National Health Care Antifraud Association, and then you have
21 to have five years experience doing health care investigations,
22 and then you also had to pass 150-question test to be -- to get
23 that certification.

24 Q. Was there a minimum number of hours of training required?

25 A. There is, yeah.

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1 Q. How long -- since when have you been a member of -- an
2 accredited health care fraud investigator?
3 A. I got that certification in 20 -- 2020.
4 Q. Are you --
5 A. So like two years.
6 Q. Are you a member of any other health care investigation
7 organizations?
8 A. Yes.
9 Q. What would that be?
10 A. That's -- that's a group called the -- NADDI is the
11 acronym for National Association of Drug Diversion
12 Investigators.
13 Q. And how long have you been a member of that organization?
14 A. Since 2011, so about 11 years.
15 Q. Did that organization -- does that organization provide
16 training opportunities?
17 A. Yes.
18 Q. Have you attended any of those?
19 A. Yes.
20 Q. Any idea of how many hours of training through that
21 organization, if you know?
22 A. It's -- it's around a hundred, approximately.
23 Q. Now, in your role with Blue Cross Blue Shield, how do you
24 identify people to investigate?
25 A. We have a variety of ways that we get -- that we get our

1 cases. One of them is we have an antifraud hotline. We get
2 cases from law enforcement. We get cases from other areas
3 within the company. We get cases from -- based on information
4 from people within our company. We get cases from employees of
5 former -- former employees of like providers, doctors' offices,
6 things like that.

7 Q. So it sounds like some of them -- some of your -- the
8 people that would come to you or people that potentially
9 investigate come from outside tips or, you know, whether it's
10 law enforcement or former employees or something like that?

11 A. Yes.

12 Q. And then sometimes things are identified internally?

13 A. Correct.

14 Q. People are identified internally?

15 A. Yes.

16 Q. Does Blue Cross have an audit department?

17 A. Yes.

18 Q. And does Blue Cross Blue Shield have people who are
19 engaged in -- in data mining? Do you know what that means?

20 A. Yes.

21 Q. What does that mean?

22 A. Data mining is when you search for particular things
23 within data that you have possession of.

24 Q. And does Blue Cross Blue Shield have people who engage in
25 this type of analysis?

1 A. Yes.

2 Q. And do you know what -- what does Blue Cross look for when
3 they engage in data mining, if you know?

4 MR. CHAPMAN: Your Honor, objection to foundation. I
5 don't think we know that this witness is an expert in data
6 mining or data processing.

7 THE COURT: Well, I'll note that, but he defined data
8 mining and he does work for Blue Cross so I'll let him answer
9 that -- that question. What does Blue Cross look for when they
10 engage in data mining, if you know? Go ahead, sir.

11 THE WITNESS: I don't do data mining myself, but --
12 and I guess all different kinds of things can be data mined
13 for, depending on what the topic is at hand.

14 BY MR. LIEVENSE:

15 Q. And so other people do that and then they present
16 potential practices or individuals for you to then investigate?

17 A. Yes, we -- we receive cases that are created by data
18 mining.

19 Q. And so you would see the results of their work?

20 A. Yes.

21 Q. And based on your review of the results of that work, do
22 the people that are referred to you, are they just randomly
23 drawn out of the databases?

24 A. No.

25 Q. Based of the results of work that you received from them,

1 are the people referred to you kind of outliers in some way?

2 A. Yes.

3 Q. In what ways might a health care provider be an outlier?

4 A. They could be an outlier based on the fact they compare
5 them against peers of similar practice size, et cetera. They
6 kind of compare apples to apples and orange to oranges, if you
7 will, and if somebody's outside of the peer comparisons, they
8 would be considered an outlier. Does -- does that answer the
9 question?

10 Q. It does. Thank you.

11 What types of methods do you employ as a health care
12 fraud investigator for Blue Cross?

13 A. Um, I'm -- could you --

14 Q. What types of things can you do? So you get these leads,
15 you get these ideas. What type of work, what options do you
16 have?

17 A. There's -- there's multiple options to do an
18 investigation. We -- we use undercover techniques, we use
19 record review techniques, we use audits, and there's other
20 ways.

21 Q. Record review, would that be both -- would that be Blue
22 Cross Blue Shield records or maybe physician records?

23 A. Both.

24 Q. In your role at Blue Cross Blue Shield, how many different
25 investigations have you been involved with?

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1 A. In the hundreds. I don't know the exact number.

2 Q. I want to ask you about -- describe your experience
3 working -- doing undercover work at Blue Cross. How many
4 undercover investigations have you worked at for Blue Cross?

5 A. Investigations, I would estimate 30 to 40 investigations.
6 If you're asking about individual investigations, I would say
7 30 to 40ish.

8 Q. Of the hundreds you worked on, 30 to 40 involve undercover
9 work?

10 A. Correct.

11 Q. And again, you're -- are you approximating?

12 A. Yes, I am. I don't know the exact number.

13 Q. For some investigations where you use undercover
14 techniques, do you -- do you go back to the location more than
15 once?

16 A. Yes.

17 Q. When you work as an undercover investigator, do you always
18 find people that are doing things wrong?

19 A. No.

20 Q. Or at least that you think might be wrong?

21 A. Not every time, no.

22 Q. Why does Blue Cross or why do you as an investigator for
23 Blue Cross use undercover work as one of your techniques?

24 A. The reason I like to use them is that it gives you an
25 inside view of actually what's going on at a particular place.

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1 Q. Is there information you can get from an undercover
2 operation that you can't otherwise get?

3 A. Yes.

4 Q. What types of things can you get from an undercover visit
5 that maybe a record review wouldn't show?

6 A. You get a more clear view of the -- exactly what's going
7 on such as the time spent or like what transpires, the number
8 of employees, exactly what -- how the practice works.

9 Q. Now, when you do undercover work, what, if anything, do
10 you do to prepare -- once -- once -- say you have maybe a
11 person you want to visit in an undercover capacity. What do
12 you do to prepare for that?

13 A. Start by reviewing data and do a further dive into like
14 what kind of practice it is and -- and get some more
15 information on where you're going to go and what you're going
16 to do.

17 Q. Now, do you use your normal driver's license that's issued
18 by the Secretary of State that you've had since you turned
19 16 years old?

20 A. No.

21 Q. All right. Do you -- are you able to get an undercover
22 driver's license?

23 A. Yes.

24 Q. Now, how do you go about getting one of those?

25 A. There's a process we go through. I would -- I submit it

1 to my manager and then it goes to the Michigan State Police,
2 from there to the Secretary of State of Michigan.

3 Q. And so when you want to get a undercover driver's license,
4 do you have to go to a special location or do you just go to
5 the local Secretary of State?

6 A. Both.

7 Q. Okay. Well, tell me how -- you've explained the
8 application process. Is this a process that you go through --
9 I mean you go through the Michigan State Police to get this, is
10 that correct?

11 A. Yes.

12 Q. It's not something that you just and Blue -- you and Blue
13 Cross decide to do on your own?

14 A. Correct.

15 Q. And what was your -- what was the name on your undercover
16 driver's license for your -- during your investigation of Dr.
17 Pompy?

18 A. It was James Stewart.

19 Q. So that's your first and middle name?

20 A. That's my real first and middle name, correct.

21 Q. All right. So if we see at times you reference -- you
22 being referred to as James Stewart, that would be you, James
23 Stewart Howell, Jr.?

24 A. That's me.

25 Q. Now, do you -- I would imagine then you would need a --

1 when you went in to do an undercover investigation, would you
2 need an insurance card?

3 A. Yes.

4 Q. And would you need an insurance card that matched your
5 undercover driver's license?

6 A. Yes.

7 Q. And so once you received an undercover driver's license
8 from the State of Michigan, what would you need to do to get an
9 undercover insurance card?

10 A. Submit -- submit a form under that same name to someone
11 who reviews it and then they actually get a physical, actual
12 plastic card made.

13 Q. And why do you use an undercover driver's license and
14 undercover Blue Cross Blue Shield insurance card instead of
15 your personal ones?

16 A. You don't want to -- you don't want to give your own
17 personal information out.

18 Q. And is that similar to when you were a police officer,
19 would you use your real name when you were a police officer
20 doing undercover work?

21 A. No.

22 Q. At some point did you come to learn about Dr. Lesly Pompy?

23 A. I did.

24 Q. And how did that -- if you know, how did he come to your
25 attention, if you recall?

1 A. Came to my attention from another investigator within the
2 area where I work.

3 Q. A colleague?

4 A. That's correct, yeah, it's a colleague.

5 Q. Was he your boss?

6 A. No.

7 Q. Okay. So somebody else said -- so were you assigned to
8 conduct an investigation of Dr. Pompy?

9 A. Yes.

10 Q. And that was for part of your employment with Blue Cross
11 Blue Shield?

12 A. Yes.

13 Q. And in that early stage did you also -- did you then
14 receive information from, like you said, the audit department
15 or something like that, if you recall?

16 A. I did not get anything from the audit department.

17 Q. And do you know how -- do you know how your colleague
18 learned of Dr. Pompy?

19 A. Yes.

20 Q. And was that -- what -- what was -- how did -- how did
21 essentially you and Blue Cross learn about Dr. Pompy?

22 MR. CHAPMAN: Objection, Your Honor. Calls for
23 hearsay.

24 THE COURT: That's sustained. But in -- in general,
25 how did this come to your colleague's attention, word of mouth

1 or...

2 THE WITNESS: Yes, word of mouth.

3 THE COURT: Okay. All right. So somebody called in
4 a complaint, your -- your colleague received it and turned it
5 over to you?

6 THE WITNESS: More or less. I think it was a
7 face-to-face meeting between him and whoever -- who gave him
8 the information, and -- and then I was --

9 THE COURT: Okay. All right. Fair enough.

10 Go ahead, Mr. Lievense.

11 BY MR. LIEVENSE:

12 Q. I guess where I was going with this, Your Honor, and for
13 this witness, if I may, do you know whether the initial
14 complaint came from -- or -- or Dr. Pompy getting on your radar
15 came from law enforcement or not?

16 A. I do.

17 Q. Which one?

18 A. Law enforcement.

19 Q. All right. And at some point did you decide to -- when
20 you were beginning the investigation, did you decide to use
21 undercover techniques as one of your tools in your toolbox, so
22 to speak?

23 A. Yes.

24 Q. All right. And I'd like to direct your attention to
25 January 5th, 2006. Do you recall what happened that day with

1 respect to your investigation of Dr. Pompy?

2 MR. PRATT: You said 2006.

3 Q. Sorry. January 5th, 2016. I don't know what I said but I
4 meant January 5th, 2016.

5 A. Yes.

6 Q. All right. Could you -- could you tell the jury what
7 happened that day?

8 A. So on January 5th, 2016 I did go to Dr. Pompy's office to
9 inquire about becoming a new patient there in an undercover
10 capacity.

11 Q. And was his office located inside the hospital?

12 A. Yes.

13 Q. And was that on -- in Seventh -- was that on 730 North
14 Macomb in Monroe, Michigan?

15 A. Yes.

16 Q. And did you know the name of his practice?

17 A. Interventional Pain Management Associates.

18 Q. And even though it was inside a -- a hospital, was -- was
19 it like a -- how would it compare to a normal doctor's office
20 in terms of the physical space?

21 A. I would say it's very similar to many other doctors'
22 offices I've been at, and it was within the hospital.

23 Q. And can you describe what you do -- did when you entered
24 the office?

25 A. I spoke with the person on the desk.

1 Q. And so this was in the reception area?

2 A. I spoke -- yes.

3 Q. And did you ask about becoming a new patient?

4 A. Yes.

5 Q. And did the person there ask you whether you had any
6 insurance?

7 A. Yes.

8 Q. And did they provide you a new patient questionnaire and
9 paperwork?

10 A. Yes.

11 Q. In addition, did the person there at the reception area
12 say anything else that you needed to fill out or have with you
13 besides just the -- the paperwork, the new patient
14 questionnaire?

15 A. Yes.

16 Q. What was that?

17 A. Told me I needed a referral from a doctor for pain
18 management.

19 Q. And did the person explain the -- kind of the process of
20 what would happen next?

21 A. Yes.

22 Q. What was that?

23 A. The explanation I remember was to fill out the new patient
24 paperwork and return it when it was completed fully and bring
25 that referral from another doctor back when I had it all filled

1 out.

2 Q. And so were your interactions only with that reception
3 person that day?

4 A. Yes.

5 Q. And so was this kind of what you would call a patient
6 visit with the doctor?

7 A. I would not consider that a patient visit.

8 Q. All right. So that was your first visit to his office but
9 it wasn't really a patient visit?

10 A. Yes.

11 Q. Do you recall when the next time you went to Dr. Pompy's
12 office was?

13 A. Yes.

14 Q. When was that?

15 A. That was also on January 26th of 2016.

16 Q. Do you remember approximately what time?

17 A. Afternoon.

18 Q. And why'd you go back?

19 A. I went back to turn in the paperwork that I had initially
20 picked up on January 5th.

21 Q. Can you describe Dr. Pompy's office as you arrived?

22 A. When I got there on January 26th it was -- it was pretty
23 busy, and I went down the hallway, saw some people in the
24 hallway waiting, and then I went through the lobby and turned
25 in the paperwork.

1 Q. I'd like to show you -- and this has been preadmitted.
2 This is Government's Exhibit 91.

3 THE COURT: Okay.

4 Q. And it's specifically a -- a clip from 91.

5 MR. LIEVENSE: I can -- for the Court -- for the
6 record, would you like me to recite the approximate minute
7 mark?

8 THE COURT: You -- you -- you -- you should identify
9 it and ask the witness if he's familiar with it, and then if
10 you want to play it or show it for the jury since it's in
11 evidence, you can do that. Go right ahead.

12 BY MR. LIEVENSE:

13 Q. All right. And were you the person who -- we're going to
14 be showing you a series of videos from the undercover
15 investigation. Were you the person who made those video
16 recordings?

17 A. Yes.

18 Q. And where is the camera? So when you're -- how does that
19 work for an undercover visit?

20 A. It's in my hand recording, handheld or it can be set down,
21 but it's portable, it's handheld.

22 Q. It's not a video camera like just holding out, right, it's
23 not obvious a video camera?

24 A. No, it's a covert camera.

25 Q. And where is -- where is this camera hidden?

1 A. It's hidden -- the camera's hidden in the top of a coffee
2 mug.

3 Q. Is this a special coffee mug that has this equipped?

4 A. It's a camera mug, yes.

5 Q. All right. And in -- in preparation for -- in addition to
6 being part of the recording, did you all -- have you also
7 reviewed all those videos?

8 A. Yes.

9 Q. All right.

10 MR. LIEVENSE: I'd like to play for the jury
11 Government's Exhibit 91, and it's a clip beginning at video 1
12 at the approximately 2 minute and 45 second mark.

13 (Video being played)

14 BY MR. LIEVENSE:

15 Q. All right. So the audio didn't play there. There's -- I
16 think there was no conversation, but have we just seen what
17 you've described there in terms of your arrival at Dr. Pompy's
18 office?

19 A. Yes.

20 Q. And upon your arrival, especially in the -- in the
21 hallway, could you describe some of the patients that you saw
22 at Dr. Pompy's office that day?

23 A. My description would be that there was a -- like a variety
24 of people there, variety of ages. Most people were adults. I
25 don't recall seeing any children there. Most people were able

1 to walk on their own. There was some people in wheelchairs,
2 but for the most part people were walking and talking, more or
3 less, like I was.

4 Q. And once you entered the -- the -- the waiting room area,
5 what did you do?

6 A. I turned in my paperwork.

7 Q. You went to the reception area?

8 A. Went to the reception area, turned in my paperwork.

9 Q. All right.

10 MR. LIEVENSE: Can we play Exhibit 91, the next
11 section? It's clip 82 please.

12 (Video being played)

13 MR. CHAPMAN: Can we pause?

14 MR. LIEVENSE: Can you pause one second?

15 MR. CHAPMAN: Your Honor, I asked for the video to be
16 paused so I can lodge an objection. We have stipulated to
17 admissibility of the video.

18 THE COURT: All right.

19 MR. CHAPMAN: We have not stipulated to admissibility
20 of the transcript.

21 THE COURT: Right.

22 MR. CHAPMAN: We now see that there's the transcript
23 playing below the video. We have serious concerns with
24 accuracy related to the transcripts here, Your Honor.

25 THE COURT: Okay. All right. I'm going to sustain

1 the objection in part and overrule it in part and make an
2 instruction to the jury. The witness apparently made certain
3 tapes of certain behaviors he was involved in in this case.
4 One's been shown to you and one's before you right now. That
5 is the evidence in the case to which the lawyers on both sides
6 of the case have agreed, and that is the evidence that you will
7 see and consider in your deliberations.

8 Now, the transcripts at the bottom of the page are
9 not evidence. However, they are visual aids that presumably
10 government agents have prepared to -- to help you along with
11 the understanding of the actual evidence. There's a chance,
12 and Mr. Chapman viably argues, that there is discrepancy
13 perhaps between the transcript and the tape. You have to
14 consider what's on the tape and not what's on the transcript
15 when you deliberate.

16 I do think -- and that's my instruction to the jury.
17 I do think given that there's an objection, we ought to get a
18 bit of foundation, to the extent we can, for the transcripts,
19 Mr. Lievense. And then if -- if that's properly established,
20 I'll -- I'll admit the -- the -- the transcripts at the bottom
21 of the screen as visual aids subject to my instruction to the
22 jury that they're not evidence, okay?

23 MR. LIEVENSE: Yes, Your Honor. In order to fully
24 establish that foundation, I -- I wouldn't be able to do it
25 with this witness.

1 THE COURT: Well, why don't you go as far as you can
2 with this witness, and then if you have a paralegal or a law
3 enforcement agent or whoever prepared the transcripts, you can
4 tie that up later. But I'd like to get on the record at least
5 some sort of representation for the comfort of all that -- that
6 you did your best to make these as accurate as possible before
7 we show them to the jury, okay?

8 MR. LIEVENSE: Sure. I can do this right now. I
9 didn't know if you wanted me to do it in the presence of the
10 jury, Your Honor.

11 THE COURT: Yeah, if you just ask this fellow, to the
12 extent he knows, right? Does he? Can you -- can you establish
13 the accuracy of the transcripts?

14 THE WITNESS: Yes, I believe so.

15 MR. LIEVENSE: Well, Your Honor, I don't think Mr.
16 Howell was involved in the preparation of them and so that's my
17 concern there.

18 THE COURT: Right. That's my concern too. Let me
19 just ask the witness, did you review these tapes with the
20 transcripts?

21 THE WITNESS: Not tape with transcript.

22 THE COURT: You haven't reviewed --

23 THE WITNESS: I have reviewed -- I'm sorry.

24 THE COURT: You never did that?

25 THE WITNESS: I've reviewed those transcripts. If --

1 if that's the one -- if that's the same one that I've reviewed,
2 I have reviewed a transcript of the visits.

3 THE COURT: Okay. Well, all I want to know is did
4 you ever look at this, for instance, this tape with this
5 transcript, and adjudge that it was accurate, largely?

6 THE WITNESS: To answer that, I've never seen the two
7 played simultaneously --

8 THE COURT: Okay. All right.

9 THE WITNESS: -- to compare, but I have read
10 transcripts.

11 THE COURT: All right. Are you representing to the
12 Court you'll later be able to establish accuracy?

13 MR. LIEVENSE: Yes.

14 THE COURT: Okay. Then I'll sustain the objection to
15 the extent that these are not evidence and can't be considered
16 by the jury as evidence. Subject to later authentication of
17 the transcripts' preparation and their accuracy, I'll admit
18 them as a visual aid to the jury at this time, okay? Go right
19 ahead.

20 MR. LIEVENSE: One moment, Your Honor.

21 THE COURT: Okay.

22 MR. LIEVENSE: All right. If you can play this clip
23 again from the beginning.

24 (Video being played)

25 BY MR. LIEVENSE:

1 Q. Now, like to ask about a couple of details during this
2 video. It looks like that the reception worker made a copy of
3 your driver's license, is that correct?

4 A. Yes.

5 Q. All right. And was that the undercover driver's license
6 we talked about before?

7 A. Yes.

8 Q. And why were you asking the receptionist how busy the
9 office was?

10 A. I wanted to get an idea how long I was going to be there.

11 Q. Was that just for your schedule or for any other reason?

12 A. Mainly for scheduling and see how long it was going to
13 take.

14 Q. And I think you asked whether the office was always that
15 busy?

16 A. I did ask that.

17 Q. All right. And why did you ask that?

18 A. I kind of wanted to know if that was going to be -- like
19 the crowd of people I saw there would be the normal routine or
20 if that was an excessively busy day or if it was normal. She
21 said it was normal.

22 Q. All right. Did you also provide a referral on this date?

23 A. Yes.

24 MR. LIEVENSE: And could we call up Government's
25 Exhibit 1, page 7?

1 BY MR. LIEVENSE:

2 Q. And what is this?

3 A. That is the referral that I turned in on January 26th,
4 2016.

5 Q. And how did you get this?

6 A. I had a cooperating doctor wrote that for me.

7 Q. And did that cooperating doctor understand what you were
8 going -- how were you going -- you were going to be using it?

9 A. Yes.

10 Q. When you say cooperating doctor, is that someone who
11 cooperates with Blue Cross Blue Shield?

12 A. Yes.

13 Q. Did you ever bring any additional medical records from
14 this physician during this visit to Dr. Pompy?

15 A. No.

16 Q. Just -- just this referral?

17 A. Yes.

18 Q. Like to show you Government's Exhibit 1, page 9. Did the
19 receptionist also ask for and make a copy of your insurance
20 card?

21 A. Yes.

22 Q. And is that what we're looking at on page 9?

23 A. Yes.

24 Q. It looks like the numbering system in the middle there
25 is -- is maybe from the government's numbering system, but is

1 this the Blue Cross Blue Shield undercover insurance card?

2 A. Yes.

3 Q. And did you also turn in the new patient questionnaire?

4 A. Yes.

5 MR. LIEVENSE: I'd like to call up Exhibit 1, page
6 10.

7 BY MR. LIEVENSE:

8 Q. And what are we looking at here?

9 A. That is one of the pages of the document that I filled out
10 and turned in that day.

11 Q. Is that the first page?

12 A. I -- I don't know what page number that would be.

13 MR. LIEVENSE: Could Ms. Ouellette expand the first
14 half of the page please?

15 BY MR. LIEVENSE:

16 Q. What is the title of this document?

17 A. Title is "New Information" -- "New Patient Information
18 Packet."

19 Q. And what does it say underneath "New Patient Information
20 Packet"?

21 A. "Please be advised that during your initial evaluation for
22 pain management narcotic medications will not be prescribed.
23 Testing and evaluations will be performed to determine the best
24 treatment for your condition."

25 Q. All right. Did anybody help you fill out the new patient

1 packet?

2 A. No.

3 Q. And when you --

4 MR. LIEVENSE: You could go back.

5 BY MR. LIEVENSE:

6 Q. When you filled it out, what was your goal, what was your
7 purpose?

8 A. My goal was to get -- get in as a new patient.

9 Q. Was your goal to present as a new patient who was
10 completely healthy?

11 A. No. My goal is to get in as a -- as a pain patient and be
12 seen as a normal patient that was being seen there.

13 Q. All right. So did you know you had to present as someone
14 who had some level of discomfort?

15 A. Yes.

16 Q. And did you also, I think you talked about it earlier,
17 mention you were coming as a pill-seeking patient or a
18 drug-seeking patient?

19 A. Drug-seeking patient, yeah.

20 Q. And how would you -- how would you show as someone who had
21 some discomfort but also showed that you were a -- a drug or
22 pill-seeking patient?

23 A. I don't under -- I don't understand exactly what the
24 question is.

25 Q. Do you understand what it means to be a drug-seeking

1 patient?

2 A. Yes.

3 Q. All right. Are there things based on your years of
4 experience that drug-seeking patients do, characteristics they
5 have?

6 A. Yes.

7 Q. And so was it your goal to -- to exhibit some of those
8 things, those characteristics?

9 MR. CHAPMAN: Your Honor, object to foundation. It
10 appears that this witness is trying to get profile evidence as
11 to the profile of the, quote-unquote, drug-seeking patient. I
12 think we would need a lot more testimony to establish how that
13 patient is different from a normal pain patient and perhaps
14 expert testimony.

15 THE COURT: Well, I'll sustain the objection 'cuz
16 I'm -- I'm not sure that he has or or can necessarily explain
17 those characteristics, especially since he doesn't appear to be
18 a drug seeker. But I might recommend just some open-ended
19 questions that ask him how he was going in, why and -- and --
20 and what he was trying to do as opposed to sculpting the
21 questions to get him to answer one way or another. I think
22 that would help.

23 Go ahead, Mr. Lievense.

24 BY MR. LIEVENSE:

25 Q. All right. I'd like to -- on this page that we're seeing

1 right now, page 10, which part did you fill out?

2 A. I filled out the signature, name, printed signature and
3 both the dates where it says "Print Name and Signature."

4 Q. And so all of the other handwriting from -- is that
5 somebody else's?

6 A. That's someone else's, correct.

7 Q. All right.

8 MR. LIEVENSE: Let's go to page 11, if we can blow up
9 the top, expand the top half please.

10 BY MR. LIEVENSE:

11 Q. And is this your handwriting?

12 A. Yes.

13 Q. All right. What address did you put down as your address?
14 You don't have to read it, but what city is it in?

15 A. It's in Dearborn, Michigan?

16 Q. And if you know, approximately how far away is that from
17 Monroe, Michigan?

18 A. I'm going to estimate 25 miles.

19 Q. All right. Would it be -- in your experience, are
20 there -- are there a lot of doctors in the Dearborn, Michigan
21 area?

22 A. There are a lot.

23 MR. CHAPMAN: Objection, Your Honor, foundation. I
24 think we should stay away from opinion testimony from this
25 witness.

1 THE COURT: Okay. Well, I think his personal
2 knowledge or testimony as to the number of doctors, high, low
3 or medium, in -- in -- in -- in Dearborn is -- is -- is fair
4 game, but go ahead and answer that, witness, and we can move
5 forward.

6 BY MR. LIEVENSE:

7 Q. Are you aware there's --

8 THE COURT: Maybe you did answer. You think there's
9 a lot of -- lot of doctors in -- in Dearborn, witness?

10 THE WITNESS: I would -- yes, I would say yes.

11 THE COURT: All right. Okay. Go ahead, Mr.
12 Lievense.

13 BY MR. LIEVENSE:

14 Q. So my question is why would you write Dearborn down
15 instead of saying you lived in Monroe? Did you live in
16 Dearborn, Michigan at the time?

17 A. No.

18 Q. So was that an undercover address?

19 A. Yes.

20 THE COURT: Well, just ask him. You were on the
21 right path there.

22 MR. LIEVENSE: I understand.

23 THE COURT: Why did you write it down this way,
24 witness?

25 THE WITNESS: Why did I write it down that way?

1 THE COURT: Yeah, why did you say Dearborn instead
2 of -- of -- of Monroe?

3 THE WITNESS: Just to give an address that wasn't too
4 close to Monroe or was in Monroe.

5 THE COURT: Why did you do that, what -- what was --
6 what was reason for that?

7 THE WITNESS: Being a distance away from where I was
8 seeking services.

9 THE COURT: Well, you said that, but why is that
10 important?

11 THE WITNESS: I -- because I was trying to appear to
12 be a drug-seeking patient not from the area.

13 THE COURT: Oh, okay. Go ahead, Mr. Lievense.

14 BY MR. LIEVENSE:

15 Q. And under "Referring Physician," what -- did you write in
16 Dr. Robertson, which is consistent with the referral?

17 A. Yes.

18 Q. And what did you write for Dr. Robertson's city in which
19 he lived in?

20 A. Eastpointe. No, not lived in. His practice is
21 Eastpointe --

22 Q. Thank you.

23 A. -- Michigan.

24 Q. And is there a reason that you noted Eastpointe or
25 included Eastpointe there and the significance to your

1 investigation as it relates to the investigation of a doctor in
2 Monroe?

3 A. I listed Eastpointe mainly because that's where he's --
4 his practice is.

5 Q. And is that a farther distance from Monroe?

6 A. Yes.

7 Q. Like to move to page 12. And it looks like there's a --
8 is there a phone number and an email address written there?

9 A. Yes.

10 Q. And what phone number and email addresses are those?

11 A. Those are numbers that I -- a number and an email that I
12 used in an undercover capacity.

13 MR. LIEVENSE: And if we move to page 13, and if you
14 could emphasize the top half please, Ms. Ouelette.

15 BY MR. LIEVENSE:

16 Q. What is this page called at the top? What's the title of
17 this page of the document?

18 A. Title of the page is "Review of Symptoms-Circle All that
19 Apply to your current condition."

20 Q. And the fourth one down is -- you circled
21 "Musculoskeletal," is that correct?

22 A. It is, yes.

23 Q. And next to -- of that list of musculoskeletal symptoms,
24 which one did you circle?

25 A. I circled "stiffness."

1 Q. Why did you circle "stiffness"?

2 A. I was indicating stiffness, not really pain.

3 Q. All right. And it looks like underneath "Musculoskeletal"

4 there's "Neurological." What did you circle next to

5 "Neurological"?

6 A. Back, back problems.

7 Q. And below that under "Psychiatric," did you circle one of

8 the symptoms under "Psychiatric"?

9 A. I did.

10 Q. What did you circle?

11 A. "Personality changes."

12 Q. And why did you circle that?

13 A. I don't remember the purpose of circling that.

14 Q. And if you go further down, right at the bottom, did you

15 circle "Addiction"?

16 A. Yes.

17 Q. And what did you write on the form?

18 A. I wrote "Booze weekends."

19 Q. And why did you write that on the new patient

20 questionnaire?

21 A. I was giving indications of not only drug seeking but

22 alcohol abuse or use.

23 Q. So in terms of this review of symptoms -- well, okay. Let

24 me skip ahead to page 14. This is the next page under "Review

25 of Symptoms." Did you write anything on this page?

1 A. I did.

2 Q. What did you write?

3 A. I wrote my name and undercover birth date on the top, and
4 then I wrote -- under "List Past-Current Medical Diagnosis and
5 Doctor Name and Date That Diagnosed With Condition," I wrote
6 "Back and Nerves."

7 Q. And I guess why did you write back?

8 A. I had -- was indicating stiff back, so I was directing it
9 towards back.

10 Q. And what did you mean by nerves?

11 A. I was -- I was open-endedly just saying nerves, meaning
12 could be nervousness, could be nerve, anything nerve-related.

13 MR. LIEVENSE: And I'd like to go to page 15 and the
14 stop -- top half please.

15 BY MR. LIEVENSE:

16 Q. And what did you write on this page? Is this still part
17 of the new patient questionnaire?

18 A. Yes.

19 Q. And looks the date on there is -- what is the date?

20 A. Same date we've been discussing, which is January 26th,
21 2016.

22 Q. And is that the date you turned in this new patient
23 packet?

24 A. Yes.

25 Q. All right. And what did you write on this page in terms

1 of your wishes -- under your personal information when talking
2 about -- asking the questions about what you're looking for,
3 what did you indicate?

4 A. I indicated "help with back" in two different spots.

5 Q. All right. So on these two pages you did report some
6 symptoms consistent with discomfort, is that right?

7 A. Yes.

8 Q. And you also -- and you also mentioned the alcohol abuse,
9 is that right?

10 A. I did, yes.

11 Q. On page 15 further down, the lower half, there -- there
12 looks to be one word that's written several times on the bottom
13 of the page. What -- what is that?

14 A. I wrote the word "stiffness" one, two, three times and
15 then the word "stiff" twice.

16 Q. And -- and also when you said "stiff," you wrote "stiff
17 back"?

18 A. Twice, yes.

19 Q. And, in fact, under Question 4 it says, "Use the Following
20 Scales to Indicate How Severe Your Pain is." Did you circle
21 anything?

22 A. No.

23 Q. What did you write?

24 A. I wrote "stiffness mostly."

25 Q. And under number 5, "Which Statement Best Describes Your

1 Pain?," what did you check?

2 A. I checked "Always Present, Always Same Intensity," and
3 wrote "stiffness" next to it.

4 Q. Like to go to page 16.

5 THE COURT: How many more intake forms do you have,
6 Mr. Lievense.

7 MR. LIEVENSE: This is a long form, Your Honor. I'm
8 trying to go efficiently, but I will go more efficiently.

9 THE COURT: Well, I -- I think if we finish the
10 intake forms, which you've been through quite a bit of, the
11 jury can appreciate what he was trying to do on the first day
12 he went, and then you'll have what, 20, 30 minutes after that I
13 take it?

14 MR. LIEVENSE: For this witness?

15 THE COURT: Yeah.

16 MR. LIEVENSE: We expect this witness to go into
17 tomorrow, Your Honor.

18 THE COURT: Yeah, that's what I'm asking.

19 MR. LIEVENSE: Okay. You're telling me how much time
20 is available. I understand. Thank you.

21 THE COURT: Why don't you take five or ten minutes
22 and finish out these forms and then we'll break for the day.
23 That's what I'm saying explicitly. I'm also trying to commit
24 you to a reasonable time to complete this tomorrow morning.

25 Go right ahead.

1 BY MR. LIEVENSE:

2 Q. All right. And on page 16 at the top half were you asked
3 to circle anything indicating -- well, what were you asked to
4 circle?

5 A. On that form I was asked to "Indicate on the Diagram Where
6 Your Pain Occurs by Shading the Painful Areas," and which I
7 circled low back.

8 Q. And under Question 8 is the question -- is there a
9 question, "What Makes Your Pain Feel Worse?"

10 A. Yes.

11 Q. And what did you check?

12 A. I checked "Other: driving."

13 Q. And you didn't check anything else under -- none of the
14 other 12 options listed?

15 A. Correct.

16 Q. And driving, did you report that you had a particular
17 occupation in your undercover capacity?

18 A. Yes.

19 Q. What was that?

20 A. I told -- indicated that I was a driver.

21 Q. All right. And under Question Number 9, when it says,
22 "What makes your pain feel better?," what did you check there?

23 A. I checked "alcoholic drinks" and "medicines."

24 Q. All right.

25 MR. LIEVENSE: If we could move to page 17, if you

1 could highlight the top half, Ms. Ouelette.

2 BY MR. LIEVENSE:

3 Q. And Question 23, is that where you indicated your
4 employment?

5 A. Yes.

6 Q. You checked the box next to "Driving"?

7 A. Yes, I did.

8 Q. Was there a reason that you mentioned your driving, your
9 alcohol use and pill use on this form all together?

10 A. What was the question? I'm sorry.

11 Q. By mentioning that you were a driver and also mentioning
12 your alcohol use and also mentioning that you took medications
13 for pain, were you intending to communicate anything about you
14 as a patient?

15 A. Yes.

16 Q. What was that?

17 A. Just that, well, I was -- kept referring to stiffness and
18 indicating that stiffness could be caused by driving.

19 Q. All right.

20 MR. LIEVENSE: Could we go to page 19 please and the
21 middle half please?

22 BY MR. LIEVENSE:

23 Q. Now, the questionnaire asks you to "List All Pain
24 Medication You're Currently Taking." Do you see that?

25 A. I do.

1 Q. What did you write?

2 A. I wrote "Norco 7.5, Soma 350 and Ativan .5."

3 Q. And do you understand Norco to be a -- an opioid, a
4 narcotic?

5 A. Yes.

6 Q. What is -- do you know what Soma is?

7 A. Yes.

8 Q. What is it?

9 A. It's a muscle relaxer.

10 Q. And do you know what Ativan is?

11 A. Yes.

12 Q. What is it?

13 A. It's a benzodiazepine.

14 Q. And either -- in -- in your undercover capacity, you know,
15 in terms of the investigations you were operating, had anybody,
16 any physician been prescribing those three medications for you?

17 A. No, not those three together, no.

18 Q. And you are aware of something called MAPS, right?

19 A. I am.

20 Q. All right. And so when you listed those, were you aware
21 whether Dr. Pompy or anyone else could check to see whether
22 that was accurate?

23 A. Yes.

24 MR. LIEVENSE: Like to go to page 24 please, like to
25 go under the bolded sections, numbers 1 and 2, or the bottom

1 half works.

2 BY MR. LIEVENSE:

3 Q. Well, actually let me first show you the -- the top. Was
4 this also still part of the patient -- new patient
5 questionnaire?

6 A. Yes.

7 Q. And I think at the top it says it's the "Initial
8 Evaluation." Do you see that?

9 A. I see that, yes.

10 Q. And then the bottom half it looks like there's a bolded
11 section. When you were preparing this, did you read this form
12 before turning it in to Dr. Pompy?

13 A. Yes.

14 Q. Did anyone ever talk to you to make sure that you read
15 this form?

16 A. No.

17 MR. LIEVENSE: And on page -- could you go to page
18 20 -- 26?

19 BY MR. LIEVENSE:

20 Q. And were -- did the new patient questionnaire also include
21 I guess a couple pages of additional paragraphs that you had to
22 initial?

23 A. Yes.

24 Q. And did you do that?

25 A. I did.

1 Q. And I'd like to show you -- in addition to page 26, can I
2 also show you page 27? And did you -- both for page 26 and
3 page 27, did you spend any time reading those sections?

4 A. Yes.

5 Q. Did anyone ever talk to you or ask you to make sure you
6 had reviewed those pages?

7 A. No.

8 MR. LIEVENSE: I'd like to go back to page 26 and
9 highlight page -- paragraph number 20 -- paragraph 6.

10 BY MR. LIEVENSE:

11 Q. What did paragraph 6 of this document advise you? Could
12 you read it to the jury?

13 A. Paragraph 6 says that "I -- I agree to disclose all pain
14 medications that I receive. I agree to receive my pain
15 medications from one doctor only. I agree not to misrepresent
16 my pain medication intake or my physical status to any of my
17 health care providers."

18 THE COURT: Okay. And you acknowledged all those,
19 which the jury's reading right now, by putting your initials to
20 the lower right of those three statements, right?

21 THE WITNESS: Yes.

22 THE COURT: Okay. Go ahead, Mr. Lievense.

23 MR. LIEVENSE: Page 27, if you could highlight
24 paragraphs 10 and 11 please.

25 BY MR. LIEVENSE:

1 Q. And what is the first I guess sentence of paragraph 10,
2 what did that sentence of this paragraph advise you on this
3 questionnaire?

4 A. It says, "I will not share, sell or trade my medication
5 for money, goods or services."

6 Q. And the next one says what?

7 A. The next sentence?

8 Q. Correct.

9 A. It says, "I agree not to doctor shop, street shop, conceal
10 or divert prescribed medications for additional drugs."

11 Q. And what about the next sentence?

12 A. "Any illegal diversion or questionable use of opioids will
13 result in weaning and discontinuance of narcotics with the
14 potential for clinic discharge."

15 Q. And if you could read the last two sentences.

16 THE COURT: All right. Well, this is the narcotics
17 contract that all the other patients who had them signed and
18 testified to, and it's essentially the same thing that this
19 witness --

20 MR. LIEVENSE: I understand.

21 THE COURT: -- signed and agreed to at -- at intake,
22 correct?

23 MR. LIEVENSE: Yes, Your Honor.

24 THE COURT: And I think the other side agrees to that
25 so we can probably move on.

1 BY MR. LIEVENSE:

2 Q. All right. As part of this agreement, did you also sign
3 saying you agreed to take your medications as directed by Dr.
4 Pompy?

5 A. Yes.

6 Q. Given that these paragraphs were part of the narcotics
7 contract that you were provided, were these things that you
8 were looking to see whether Dr. Pompy enforced them?

9 A. Yes.

10 Q. Was that one of the goals of your investigation?

11 A. Yes.

12 Q. And if you didn't comply with these requirements, what did
13 you expect him to do?

14 A. I expected to be either questioned, called out or
15 discharged.

16 Q. All right. On this date on January 26th, 2016, after
17 turning in the questionnaire, did you then leave the office?

18 A. Yes.

19 Q. And as you were leaving, did you talk to other people who
20 were in the hallway?

21 A. Yes.

22 Q. Were you -- did you learn anything during those
23 conversations that impacted your investigation?

24 MR. CHAPMAN: Your Honor, I'm going to object to the
25 relevance of these statements. They're from patients out in

1 the hallway. There's no indication Dr. Pompey knew these things
2 were said.

3 THE COURT: Right, but I think he can testify as to
4 how they affected his next steps in the investigation, bearing
5 in mind, jury, as Mr. Chapman properly says, the doctor had no
6 way of participating in or hearing these conversations.

7 Go ahead. What did you learn in the hallway that led
8 you to take next steps, witness?

9 THE WITNESS: What I learned in the hallway from
10 talking to some people was that it would take multiple visits
11 to get medications, and I got various answers that it would
12 take either two or three visits before you would get any
13 medication.

14 THE COURT: Okay.

15 THE WITNESS: And also that you may be required to
16 submit to some testing.

17 THE COURT: All right. That was the opinions of some
18 other witness, of some other patients that were in the hallway,
19 right?

20 THE WITNESS: Yes.

21 THE COURT: Okay. All right. Good. I think we
22 ought to break there for the day. It's 2:22. We got through
23 the intake form and we're going to move on to the investigation
24 of this witness after his first visit or second visit, first
25 upon intake at the management clinic, so that's where we'll

1 break for the day.

2 Thank you all very much. Ladies and gentlemen, 2:23.
3 Sorry for going a little late. I wanted to break earlier, but
4 I also wanted, and I know we all wanted, to get as far as we
5 could, and I think we did.

6 Enjoy your night tonight. I think Thursday night
7 football is on from what my son tells me. I don't know if that
8 interests any of you, but if it does, have fun with that. Be
9 safe and careful when you're driving.

10 We will see you back here -- come before 8:30. I
11 think we have something special for you from the law clerks
12 tomorrow morning. And then we'll start at our usual 8:30 or
13 8:45, have another good day and break for the weekend.

14 Don't talk about the case. Tell us if anybody tries
15 to talk to you.

16 And let's all rise for our jurors now.

17 (Jury excused at 2:24 p.m.)

18 THE COURT: All righty. Good day, day four. We'll
19 see you tomorrow morning.

20 MR. CHAPMAN: Thank you, Your Honor.

21 THE COURT: Thank you.

22 THE LAW CLERK: Court is now in recess.

23 (Court in recess at 2:24 p.m.)

24 (Proceedings in the above-entitled matter adjourned
25 to Friday, December 2, 2022)

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C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 50 comprise a full, true and correct excerpt of proceedings taken in the matter of United States of America vs. Lesly Pompy, Case No. 18-20454, on Thursday, December 1, 2022.

s/Linda M. Cavanagh
Linda M. Cavanagh, CRR, RMR, RDR, CRC
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: January 20, 2023
Detroit, Michigan

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
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Exhibit 4

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 18-20454
Hon. Stephen J. Murphy, III

LESLY POMPY,

Defendant.

JURY TRIAL: VOLUME 6

BEFORE THE HONORABLE STEPHEN J. MURPHY, III
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226
Friday, December 2, 2022

APPEARANCES:

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United States of America: WAYNE F. PRATT
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Also Present: CHRISTINE OUELLETTE
Paralegal Specialist

For the Defendant
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(Appearances continued next page)

1 APPEARANCES: Continued

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8 Also Present: VICTORIA MURDOCH
9 Senior Paralegal
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Detroit, Michigan

Friday, December 2, 2022

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(Proceedings commenced at 8:55 a.m., all parties present)

THE LAW CLERK: All rise for the jury. United States District Court for the Eastern District of Michigan is now in session, the Honorable Stephen J. Murphy, III presiding.

(Jury entered the courtroom at 8:56 a.m.)

THE COURT: Jurors are back, everybody's in their spots. Everybody may be seated. We've got the finest CSO imaginable here, Craig Cooper. How are you, sir?

OFFICER COOPER: I'm blessed. How are you?

THE COURT: Let's get our appearances, Mr. Philbrick.

THE CLERK: Calling Case 18-20454, United States of America versus Lesly Pompy.

Counsel, please state your names for the record.

MR. PRATT: Good morning, Your Honor. Wayne F. Pratt appearing on behalf of the United States.

MR. LIEVENSE: And Andrew Lievense, Your Honor, also on behalf of the United States.

MR. CHAPMAN: Good morning, Your Honor. Ronald Chapman on behalf of Dr. Pompy who is standing to my left.

THE COURT: Good morning.

MR. RICHOTTE: Good morning, Your Honor. Joe

1 Richotte also appearing for Dr. Pompy.

2 THE COURT: Morning.

3 MR. DONNINI: And good morning, Your Honor. Happy
4 Friday. Gorge Donnini appearing on behalf of Dr. Pompy.

5 THE COURT: Thank you, sir. Everybody may be seated.
6 We appreciate that.

7 The jurors have had some confections, courtesy of our
8 law clerks. That's an effort to keep you alert, stimulated and
9 well fed, so thank you for your service and thanks to Mr.
10 Philbrick for coordinating some Friday morning doughnuts for
11 our -- for our jurors. That was very nice.

12 Now, Mr. James Stewart Howell I believe is here.
13 Come on up and you're going to resume the stand, and I think
14 Mr. Lievense said he's going to go about 20 or 30 more minutes,
15 right?

16 MR. LIEVENSE: There'll be a series of 20 to 30 or
17 40 minutes.

18 THE COURT: Let's not -- let's not take advantage of
19 the jurors' good will here, all right? Okay. Go right ahead.

20 MR. LIEVENSE: Thank you, Your Honor.

21 J A M E S S T E W A R T H O W E L L
22 was recalled as a witness herein, and after being previously
23 first duly sworn to tell the truth and nothing but the truth,
24 resumed the stand and testified on his oath as follows:

25 DIRECT EXAMINATION CONTINUED

Jury Trial: Volume 6 • Friday, December 2, 2022

6

1 BY MR. LIEVENSE:

2 Q. I think we were finishing up yesterday about -- talking
3 about the narcotics agreement. Do you recall that?

4 A. Yes.

5 Q. And also we discussed your interactions with some people
6 in the hallway as you were leaving. Do you recall that?

7 A. Yes.

8 Q. During those conversations did you confirm whether those
9 patients were there to see Dr. Pompy as compared with some
10 other physician?

11 A. Yes.

12 Q. What -- which was it?

13 A. I talked to them and they said they were patients of Dr.
14 Pompy's.

15 Q. All right. I'd look to now move along to your next visit
16 at Dr. Pompy's office. Was that on February 18, 2016?

17 A. Yes.

18 Q. Can you tell the jury what happened when you arrived on
19 that -- down that hallway on this date?

20 A. Yes. So I arrived in the afternoon and I had a
21 appointment scheduled for that day, and the hallway was a
22 little busy and the lob -- the lobby, the waiting room was also
23 a little bit busy so -- and I checked in, got my paperwork and
24 just followed their instructions from the receptionist there.

25 Q. And did they tell you to do a drug test?

1 A. Yes.

2 Q. Was that a urine drug screen?

3 A. That was a urine drug screen, yep.

4 Q. All right?

5 MR. LIEVENSE: Could we play a video, Exhibit 92A1-1?

6 BY MR. LIEVENSE:

7 Q. And is this a video from that date on February 18, 2016,
8 is that your understanding?

9 A. Yes.

10 Q. Are the videos date and timestamped?

11 A. They are.

12 (Video being played)

13 Q. Now, I think you said you waited in line and got a --
14 paperwork to do a urine drug screen. When you got that
15 paperwork, what did you have to do?

16 A. I had to take it down the hallway and then go submit to a
17 urine drug screen which was -- it was a -- one door down in the
18 same hallway.

19 Q. So you had to leave the waiting room and go down the hall?

20 A. Yes.

21 Q. And can you describe how that urine drug screen went,
22 what's that process like?

23 A. I walked down the hall. There's a separate entry door off
24 the hallway. I entered through that door, talked to the person
25 that was administering the urine drug screens, handed them my

1 paperwork to show them who I was, and then they told me --
2 directed me to go give a sample. It was unsupervised urine
3 drug screen where I went in the -- into the bathroom by myself,
4 submitted a urine drug screen, walked back out and handed it to
5 that lab person I guess it would be.

6 Q. Essentially a standard kind of peeing in a cup situation?

7 A. Correct.

8 Q. And during your interactions with the urine drug screen
9 person, did you mention anything about your alcohol use?

10 A. I did, yeah.

11 Q. Why did you say that?

12 A. I was just again indicating more of like a drug seeker,
13 kind of throwing up red flag indications that things were like
14 amiss, just to see kind of what would happen.

15 MR. LIEVENSE: Can we play the next video, 92A1-2,
16 please?

17 (Video being played)

18 BY MR. LIEVENSE:

19 Q. Now, during your interactions what medications did you say
20 that you were on?

21 A. I told them I was on Norco and Xanax.

22 Q. And at the time had you been prescribed those drugs?

23 A. No.

24 Q. Why did you request those drugs by name?

25 A. I was trying to again throw up indicators of drug-seeking

1 behavior such as asking for drugs by brand name as Norco is a
2 brand name for hydrocodone, and then I was also trying to give
3 off the indication that I was already getting those medications
4 from somewhere.

5 Q. And why did you mention moonshine?

6 A. Again, indicating like alcohol abuse in addition to taking
7 controlled medications, which I -- it's a dangerous thing.

8 Q. I'd like to fast forward then. At some point were you
9 called back by a medical assistant?

10 A. Yes.

11 Q. And were you asked why you were there?

12 A. Yes.

13 Q. What -- were you asked whether you were there for refills?

14 A. Yes, I was. I told them I was there for refills.

15 Q. And why would you say that?

16 A. Indicating that I was already getting medication, and I
17 didn't really specify from where but I was just indicating that
18 I was already getting pills.

19 Q. And while waiting -- while interacting with the medical
20 assistants, did you ask the medical assistant about kind of the
21 office operations?

22 A. Yes, I did.

23 Q. And -- all right.

24 MR. LIEVENSE: Let's -- we're going to skip one of
25 these. Go to Exhibit 92A2-2 please.

1 (Video being played)
2 BY MR. LIEVENSE:
3 Q. Why did you ask the medical assistant these -- that
4 question?
5 A. I was trying to see how the operation worked and see if
6 the fact that they were submitting like a high number of office
7 visit claims kind of matched up with how many office -- or I'm
8 sorry, exam rooms they had and employees and things like that.
9 Q. Now, during this office visit -- well, let me get to this.
10 Was -- was this the first day you had what you would consider a
11 full office visit with Dr. Pompy's office?
12 A. Yes.
13 Q. All right. And did you have interaction with someone
14 named Kayla?
15 A. Yes.
16 Q. And do you know what her job was?
17 A. I do, yeah. She was like in the role of like a medical
18 assistant or a nurse type role. I don't know what -- exactly
19 what her level of training was, but that's -- she was acting as
20 like a nurse or medical assistant.
21 Q. And did she take your vital signs?
22 A. Yes.
23 Q. Blood pressure, weight, those types of things?
24 A. Yes.
25 Q. And did she also conduct a physical exam of you?

1 A. Yes.

2 Q. And during your interactions with her did you also mention
3 stiffness to her?

4 A. Yes.

5 Q. Was that consistent with your -- your first patient
6 questionnaire?

7 A. Yes, it was.

8 Q. And did you also make any comments about consuming alcohol
9 during your interactions with Kayla?

10 A. Yes, I did.

11 Q. Do you recall what you told her?

12 A. Yes, yeah, I do. She -- when she was talking to me about
13 my -- during the exam time I guess it would be, I told her
14 that -- she asked about tingling, if I ever get tingling, I
15 can't remember if it was my arms or legs, but I said only when
16 I drink like 12 Bud Lights.

17 Q. And did she also ask you whether you ever get headaches?

18 A. I don't remember that.

19 Q. All right. Did you make a reference to moonshine again to
20 Kayla?

21 A. I did, yeah. And that refreshes my memory to the previous
22 question that I told her I only get headaches when I drink
23 moonshine.

24 Q. During this visit to Dr. Pompy's office did you see Dr.
25 Pompy?

1 A. Yes.

2 Q. And please describe for the jury what happened when he
3 first came in and saw you.

4 A. He came in and asked a couple of questions and then he
5 started in to do an exam.

6 Q. And during this interaction with him did you repeat the
7 stiffness phrase that you had used earlier?

8 A. Yes, I did.

9 Q. All right.

10 MR. LIEVENSE: Can we play for the jury
11 Exhibit 92A2-3 please? And this video is a little bit longer
12 and I may have Ms. Ouellette pause at various points and ask
13 some questions.

14 (Video being played)

15 BY MR. LIEVENSE:

16 Q. I'd like to highlight two things. First of all, did you
17 tell Dr. Pompy where this Dr. Robertson was?

18 A. Yes.

19 Q. And where did you mention he was based out of?

20 A. Eastpointe, Michigan.

21 Q. And I think we discussed this a little bit yesterday. Was
22 there a significance to the referral from Dr. Robertson being
23 in Eastpointe which is a significant distance from Monroe?

24 A. That is where he's from and it is a significant distance,
25 yeah.

1 Q. Is there a reason that's noteworthy though?

2 A. Just that it's a long ways away from where I was at.

3 Q. And I think at the end there you just told him that you
4 had lower back stiffness and you drive a lot. Was there any
5 significance to noting that you're driving?

6 A. I was just trying to correlate the driving and stiffness
7 kind of together.

8 Q. All right.

9 MR. LIEVENSE: Please continue.

10 (Video being played)

11 Please pause it here.

12 BY MR. LIEVENSE:

13 Q. There's a mention of a wire. What was Dr. Pompy doing
14 when he asked you about what -- you know, what you got there?

15 A. It was during the exam and he kind of reached -- kind of
16 reached to my left pocket and kind of frisk -- frisked it and
17 said, "What is that?"

18 Q. And when he mentioned that he thought you might have a
19 wire, what was the significance to that for your investigation?

20 A. I -- I thought it was strange that he would think that I
21 had a wire on me, and I couldn't -- I was wondering why he
22 thought somebody would come in there with a wire.

23 MR. LIEVENSE: Can we continue please?

24 (Video being played)

25 Can we pause it here?

1 BY MR. LIEVENSE:

2 Q. There's a reference to "not our first rodeo." Are you
3 familiar with that expression?

4 A. Yes.

5 Q. What does that expression mean?

6 A. To me it means you've experienced something before.

7 Q. All right. And what was that -- what did that mean in the
8 context of your conversation about after you had asked for
9 Norco?

10 A. I felt that he was indicating that he's had undercovers in
11 there before where people looking at him and -- and that.

12 Q. And so was he being cautious?

13 A. He was.

14 Q. Why did you ask for Norco by name?

15 A. Well, that's a commonly known thing that drug seekers do
16 is ask for drugs by brand name.

17 Q. All right.

18 MR. LIEVENSE: Can we continue to the end of the
19 page?

20 (Video being played)

21 BY MR. LIEVENSE:

22 Q. Now, at this point you had made several comments to other
23 people about your alcohol use, is that right?

24 A. Yeah, that's right.

25 Q. Did Dr. Pompy talk to you about your alcohol use?

1 A. No.

2 Q. After he accused you of wearing a wire and being an
3 undercover, what did you expect to happen?

4 A. I expected there was at least going to be a chance that he
5 ejected me from the practice and told me to basically get lost.

6 Q. At some point did you ask later on the medical assistant
7 about why Dr. Pompy reacted the way he did when you asked for
8 Norco?

9 A. I did ask the medical assistant that.

10 Q. And what did the medical assistant say?

11 A. He -- I -- I can't quote exactly what he said, but it was
12 something along the lines of "the feds are on him, the feds are
13 on the doctors around here, he's got to kind of watch it."

14 MR. CHAPMAN: Your Honor, I've got to object to this
15 testimony as hearsay. We -- we do have a video of the
16 conversation. That's the best evidence.

17 THE COURT: Okay. That's -- well, that's sustained
18 in any event.

19 Go right ahead.

20 MR. LIEVENSE: Can we play Exhibit 92A3-1 please?

21 (Video being played)

22 BY MR. LIEVENSE:

23 Q. There was a reference to you asking whether "he was not
24 done messing with me." What did you mean by that?

25 A. I was indicating -- I was basically asking, "Do you think

1 he's going to kick me out of here or -- or make me leave?"

2 Q. Or whether he would see you again?

3 A. Or whether he'd see me again, all part of the same
4 thought.

5 Q. And did they indicate that they thought he would see you
6 again?

7 A. They -- yeah, they said, "No, you -- you're -- you're
8 good."

9 Q. Did you come to find out later in your patient chart that
10 Dr. Pompy's office had run a MAPS report of you?

11 A. Yes.

12 Q. And what is a MAPS report?

13 A. So MAPS is an acronym for a -- for the term Michigan
14 Automated Prescribing System, and that's a -- that's a system
15 that the state uses to track controlled medications that the
16 patients receive so they can determine who's getting what
17 and...

18 MR. LIEVENSE: I'd like to call up Exhibit 1, page 33
19 please.

20 BY MR. LIEVENSE:

21 Q. We talked yesterday how you had an undercover driver's
22 license and undercover Blue Cross Blue Shield insurance card.

23 MR. LIEVENSE: Is there a way to rotate it or not?

24 (Brief pause)

25 BY MR. LIEVENSE:

1 Q. Is -- and -- and you've talked about the process you went
2 through to get that. Was there a process you had to go to get
3 a MAPS report like this or how -- how does this MAPS report
4 come into existence?

5 A. So the MAPS report generated in -- in my undercover name
6 is generated by filling actual prescriptions with other
7 doctors. So the -- the MAPS report that was on the screen
8 there was actual other investigations I did where I got
9 controlled medications from other doctors in various parts of
10 the State of Michigan.

11 Q. So it wasn't an undercover MAPS report; it was a real MAPS
12 report?

13 A. It was a real MAPS report under my investigative driver's
14 license name, yes.

15 Q. I don't know, because we have to do this on the -- not on
16 the computer, another way, are you able to see --

17 MR. CHAPMAN: I think we could use it a little
18 bigger.

19 MR. LIEVENSE: What's that?

20 MR. CHAPMAN: I can't see it. I think we need it a
21 little bigger for the jury.

22 MR. LIEVENSE: Set that to look at the practitioner
23 names.

24 BY MR. LIEVENSE:

25 Q. These other undercover prescriptions you received, where

1 were the -- the -- don't -- without saying the name of the
2 doctors, where were the doctors located?

3 A. There's two different doctors listed on there. One was in
4 Lathrup Village, which lies within Southfield, Michigan, and
5 the other one at the bottom is the doctor out of Mount
6 Pleasant, Michigan. Those are both locations where I had seen
7 doctors and got prescriptions and filled them, which is why
8 they're on my MAPS report.

9 Q. And it looks like -- what is the date range of these
10 prescriptions? I think on the -- is it the left -- where on
11 the -- on the sheet does it say the date that the prescriptions
12 were issued or filled?

13 A. So I -- well, I guess on your screen, it would be the
14 first column where it says "Issue Date," "Date Filled,"
15 "Dispense Date." So those were dispensed, all of them, in
16 2015, around a year before this investigation.

17 Q. And on the second page, which, for the record -- also for
18 the record I'm showing pages 33 and 34 of Exhibit 1. What was
19 the last prescription that would have showed up -- that showed
20 up on your MAPS record in your medical chart, in Dr. Pompy's
21 medical chart for you?

22 A. The last individual prescription on this list was
23 alprazolam in Oct -- I'm sorry, August of 2015, and it was in
24 Mount Pleasant, Michigan.

25 Q. And what is alprazolam more commonly known as?

1 A. It's also known as Xanax.

2 Q. And what about the one right before that, it was also
3 issued on August of 2015, what is that a prescription for?

4 A. That's hydrocodone with acetaminophen.

5 Q. Is that Norco?

6 A. Also known as Norco brand name.

7 Q. But at this point, those were issued in August of 2015 and
8 we're now in March of 2015, is that right?

9 A. No.

10 Q. '16, March 2016.

11 A. We were in March of '16.

12 Q. Thank you.

13 A. Yeah, so it was -- those were August of '15, and then we
14 are now into March of '16 is what we're talking about now.

15 Q. And so was this patient visit for you, by which I mean did
16 you receive medical services from Dr. Pompy?

17 A. Yes.

18 MR. LIEVENSE: Now, I'd like to go to Exhibit 1, page
19 185, if you could highlight the top half of the page.

20 BY MR. LIEVENSE:

21 Q. And is this the visit note from your visit on August -- on
22 February 18, 2016?

23 A. Yes.

24 Q. And under "Chief Complaint," could you read what is
25 entered there please?

1 A. "Chief Complaint:" My name, "Stewart, James," first name,
2 "presents today for initial pain management consultation and
3 new pain. Patient counseled as to point of care urine drug
4 screen on 2-18-16 and shows positive for appropriate prescribed
5 substances."

6 Q. During your visit with Dr. Pompy on that date were you --
7 was your urine drug screen discussed with you?

8 A. No.

9 Q. Like to look under the subjective notes. What does the
10 last sentence talk about there, what does that say in the
11 chart?

12 A. Under "Subjective," the last sentence says, "Patient
13 states pain is alleviated by alcoholic drinks and medicines."

14 MR. LIEVENSE: And if we could move to page 186,
15 under "Social History," highlight "Social History" and through
16 "Current Medications" where the "PFSH" through "Current
17 Medications" section.

18 BY MR. LIEVENSE:

19 Q. What is indicated under "Social History" in the first
20 sentence?

21 A. "He is addicted to alcohol use."

22 Q. And what is listed under "Current Medications"?

23 A. "Norco, Soma, Ativan."

24 Q. At the time -- well, and under that, what does the last
25 line under "Current Medications" say?

1 A. "All medications reviewed and reconciliation performed by:
2 Lesly Pompy, MD on 2-18 of '16."

3 Q. In February of 2016 had you currently been prescribed any
4 of those medications?

5 A. No.

6 Q. Did Dr. Pompy talk to you about any of those medications?

7 A. No.

8 Q. Did Dr. Pompy bill Blue Cross Blue Shield for this office
9 visit?

10 A. Yes.

11 Q. Do you know what he billed?

12 A. He billed a new patient office visit, and the code for
13 that's a 99205 if that matters.

14 MR. CHAPMAN: No, it's not.

15 Q. And do you know how much -- and 99205, do you know
16 anything about what that means?

17 A. I know that it's the highest new patient office code that
18 can be billed, the most complex and highest -- highest paying
19 visit you can bill for a new patient.

20 Q. Is there a typical amount of time associated with that
21 code?

22 A. Typical amount of time for the entire encounter --

23 MR. CHAPMAN: Your Honor, objection to foundation.

24 This person has not been proposed as a billing and coding
25 expert, and as the Court's aware, we have concerns with using

1 time as a factor in billing.

2 THE COURT: Right. If you can get some foundation
3 for his knowledge about the time and the coding, that would be
4 fine, and then Mr. Chapman can cross-examine on that point.

5 Go right ahead, Mr. Lievense.

6 MR. LIEVENSE: I'll tie that up with another witness
7 later on, Your Honor. Thank you.

8 THE COURT: All righty.

9 BY MR. LIEVENSE:

10 Q. Do you know how much Dr. Pompy billed Blue Cross Blue
11 Shield for this visit?

12 A. I -- I don't know the exact amount billed.

13 Q. Do you know how much Blue Cross Blue Shield paid?

14 A. \$224.

15 Q. And approximately how much time did Dr. Pompy spend with
16 you on this first office visit, this new patient visit?

17 A. It was approximately ten minutes.

18 Q. All right. So if he spent about ten minutes with you and
19 Blue Cross paid about \$224, what would his hourly rate be for
20 if he did those types of office visits?

21 A. Roughly it would be over \$1,200 an hour.

22 Q. All right. I'd like to move to your next -- do you --
23 office visit. Did you have another appointment on March 9,
24 2016?

25 A. I did, yes.

1 Q. And could you tell the jury what happened on this date?

2 A. So that was the day that I had scheduled -- when I left on
3 the 18th, they scheduled for March 9th. Somebody on staff from
4 Dr. Pompy's office called me on the phone and said, "He's busy
5 during your appointment time, can you come in earlier?" And I
6 told them yes, and then I told them I'd be there as soon as
7 possible and I proceeded to the office.

8 Q. And did you -- did you see Dr. Pompy that day?

9 Let me ask a better question. Did you have an office
10 visit with Dr. Pompy that day?

11 A. I did not, no.

12 Q. What happened?

13 A. He was busy doing other procedures and I saw him pass by
14 me in the hallway and he said hello and good-bye and that was
15 it, he -- he just passed through, so I did not have any medical
16 services that day.

17 Q. So this wouldn't be a patient visit?

18 A. I don't consider that a patient visit, no.

19 Q. All right. Did you make another appointment with Dr.
20 Pompy?

21 A. Yes. So on the 9th, then I scheduled another appointment
22 to follow up.

23 Q. And was that on March 22nd, 2016?

24 A. Yes.

25 Q. Could you tell the jury what happened when you arrived in

1 the hallway and at Dr. Pompy's office?

2 A. So on March 22nd, 2016 when I arrived it was -- again, it
3 was pretty busy. I checked in. I was directed to give a urine
4 drug screen, which I did in similar fashion to the previous
5 visit, filled out a questionnaire that you have -- they have
6 you fill out every time you go, and then I waited in the lobby
7 and then was called back.

8 Q. At this point I think during your prior visit with Dr.
9 Pompy he had mentioned physical therapy. Had -- in the interim
10 had you gone to physical therapy?

11 A. Yes, I did.

12 Q. And did you bring in a business card from the place where
13 you went for physical therapy?

14 A. Yes.

15 Q. Did you bring in any medical records actually proving that
16 you had gone to physical therapy?

17 A. No, I -- no.

18 Q. Just the business card?

19 A. Just the business card. I didn't have any records to
20 bring in. I just brought a card to show them that I had been
21 there.

22 MR. LIEVENSE: I'd like to put up on the screen

23 Exhibit 1, page 53.

24 BY MR. LIEVENSE:

25 Q. Is this the patient questionnaire you filled out on

1 March 22nd, 2016?

2 A. Yes.

3 Q. And what did you indicate under "Circle the Level/
4 Intensity That Best Applies to You"?

5 A. I circled 5 on all of them.

6 Q. And what did you write next to the "Circle the
7 Level/Intensity"?

8 A. I wrote "stiff."

9 MR. LIEVENSE: And can we move to page 54 please?

10 BY MR. LIEVENSE:

11 Q. Were you asked at the bottom to list all the medications
12 you were on?

13 A. Yes.

14 Q. And what did you list?

15 A. I listed Norco and Xanax.

16 Q. And did you indicate who was prescribing those drugs?

17 A. Yes.

18 Q. Who was that?

19 A. I wrote Dr. Zao.

20 Q. Is that one of the doctors who had prescribed to you back
21 eight months earlier in August of 2015?

22 A. Yes.

23 Q. Was there a reason you mentioned Dr. Zao as prescribing
24 you Norco and Xanax?

25 A. I was just -- it was going -- I -- I knew it would

1 coincide with my MAPS report.

2 Q. Are -- are you aware of the idea of -- the concept of
3 doctor shoppers?

4 A. I am.

5 Q. How does that concept relate to how you -- why you put Dr.
6 Zao's name on this list?

7 A. That ties in because Dr. Zao is located in Mount Pleasant,
8 Michigan, which is a good couple hours away from Dr. Pompy's
9 office in Monroe, indicating that I would have had to travel a
10 long distance between the two to see both doctors.

11 Q. And if I could show you Exhibit 1, page 57, I think you
12 mentioned you did a urine drug screen?

13 A. Yes.

14 Q. And is that --

15 MR. LIEVENSE: If you could highlight the bottom left
16 corner -- quarter of the screen. Thank you. Actually the
17 first -- actually could you first do the top please?

18 BY MR. LIEVENSE:

19 Q. And what is the order date on this urine drug screen?

20 A. Order date is the date that I was in the office, which was
21 March 22nd, 2016.

22 Q. And who was this order to, what is the name of the company
23 on this?

24 A. The name of the lab company is American Clinical
25 Solutions, LLC.

1 Q. And who filled out the top? There's some handwriting on
2 there. Who would have filled that out, do you know?

3 A. I don't know. It wasn't me.

4 Q. After the urine drug screen, were you called back to the
5 exam room?

6 A. Yes.

7 Q. And did you have a conversation with a medical assistant
8 how you were going to need more testing done?

9 A. Yes.

10 Q. And eventually did Dr. Pompy come in and see you?

11 A. Yes.

12 MR. LIEVENSE: I'd like to play Exhibit 94A2-1
13 please.

14 (Video being played)

15 BY MR. LIEVENSE:

16 Q. Was that your entire interaction with Dr. Pompy that day?

17 A. Yes.

18 Q. Did he ask you any questions about physical therapy?

19 A. No.

20 Q. Did he ask you how many times you went to physical
21 therapy?

22 A. No.

23 Q. Did he ever ask you for any records to confirm that you
24 had gone to physical therapy?

25 A. No.

1 Q. Did Dr. Pompy bill an office visit for this interaction
2 with you?

3 A. Yes.

4 Q. And was this a patient visit? In other words, you had
5 done the urine drug screen, you had done the check and you had
6 seen Dr. Pompy. Is that a patient visit by which I mean you
7 received purported medical services?

8 A. Yes, I saw the doctor that day.

9 Q. And what did Dr. Pompy bill for that visit?

10 A. He billed established patient office visit.

11 Q. Do you know the code he billed?

12 A. I do. It's a 99213.

13 Q. And do you know how much Blue Cross Blue Shield paid Dr.
14 Pompy for that office visit?

15 A. I do. On that day they paid him \$71 and some change.

16 Q. And how long was Dr. Pompy in the exam room with you?

17 A. About -- about 37 seconds.

18 Q. And so if you round that up and say you'd been there for a
19 full minute and Blue Cross Blue Shield paid about \$71, what
20 would Dr. Pompy's hourly rate be?

21 MR. CHAPMAN: Your Honor, I -- I've got to object to
22 the relevance of this question. I mean it -- it's -- it's
23 assuming that medical billing is based on time only spent with
24 the doctor and not all of the services rendered during a visit.

25 THE COURT: Relevance, Mr. Lievense?

1 MR. LIEVENSE: I don't think it is based on the fact
2 that office visits are based on time. It's to show how much
3 money he would get per hour if he received a certain amount for
4 a certain amount of time that he spent with the patients, but
5 it doesn't mean that the billing is -- has to be that amount of
6 time.

7 THE COURT: Okay. All right. I'll permit the
8 question for that purpose, remind the jury that the -- the
9 evidence of the case is the testimony of the witness about the
10 billing, and Mr. Chapman will have a full opportunity to
11 contest what it means and why in terms of the relevance to the
12 charges on trial.

13 Go ahead, Mr. Lee-ven-see [phonetic], Lee-vens-ee
14 [phonetic].

15 MR. LIEVENSE: Either way.

16 THE COURT: Right?

17 MR. LIEVENSE: People that have known me longer than
18 you have messed it up, Your Honor. It's okay.

19 THE COURT: Well, look, I never called you Li-vens
20 [phonetic], okay? All right. Go right ahead.

21 BY MR. LIEVENSE:

22 Q. What would --

23 THE COURT: I'm just kidding. Go right ahead. I'm
24 sorry.

25 Q. What would Dr. Pompy's hourly be if -- for a minute-long

1 visit where he received \$71?

2 A. If you broke that down by the minute and multiplied it by
3 an hour, it would be over \$4,000 per hour.

4 MR. LIEVENSE: I'd like to go to Exhibit 1, page 191
5 please, and highlight "Chief Complaint" in the middle.

6 BY MR. LIEVENSE:

7 Q. And could you read what's reported in your -- is this the
8 medical record from March 22, 2016 and Dr. Pompy's visit with
9 you?

10 A. It is, yes.

11 Q. All right. What was reported in your patient chart under
12 this office visit, your chief complaint?

13 A. It has my undercover name and then it says, "Presents
14 today for detoxification, medication refill, pain and drug
15 counseling as to therapy and pending testing. Patient
16 counseled as to point of care urine drug screen on 3-22-16 and
17 shows positive for appropriate prescribed medication --
18 substances." Excuse me.

19 Q. Had you presented that day for detoxification?

20 A. The word "detoxification" was never used.

21 Q. Were you there for a medication refill?

22 A. No. I had not gotten any medication from Dr. Pompy.

23 Q. Were you there for drug counseling?

24 A. I was not there for drug counseling. I didn't get any
25 drug counseling.

1 Q. Were you counseled as to the results of your point of care
2 drug -- urine drug screen?

3 A. No.

4 Q. And it said that it shows you were positive for
5 appropriate prescribed substances, is that right?

6 A. That's what it says, yes.

7 Q. Did you come to find out later that you actually had
8 tested positive for a inappropriate prescribed substance, at
9 least according to their drug test results?

10 A. I did, yes.

11 Q. So that would be incorrect on this?

12 A. Yes.

13 Q. After seeing Dr. Pompy, did you have additional
14 interactions with a medical assistant?

15 A. Yes.

16 Q. And did you discuss the need for potential other testing?

17 A. Yes.

18 Q. And did you discuss a potential MRI or an X-ray?

19 A. Yes.

20 MR. LIEVENSE: I'd like to play Exhibit 94A2-2
21 please.

22 (Video being played)

23 BY MR. LIEVENSE:

24 Q. During this conversation what was your impression as to
25 why you needed to get an X-ray?

1 A. Need to get an X-ray so they can put it in the file and
2 show that you need the medication.

3 Q. Were you given the impression that whether they would
4 prescribe to you would depend on the results of that X-ray?

5 MR. CHAPMAN: Your Honor, objection to this witness's
6 impression.

7 MR. LIEVENSE: In terms of --

8 THE COURT: I think that that could lead to an --
9 speculative answer, so if you want to tighten it up and ask
10 about his knowledge --

11 MR. LIEVENSE: Yes.

12 THE COURT: -- of what he knew, that would be good.
13 Go ahead, Mr. Lievense.

14 BY MR. LIEVENSE:

15 Q. How did that information guide your investigation?

16 A. I knew that to -- to move forward I had to bring in some
17 documentation.

18 Q. During this time did you make an appoint -- another
19 appointment with Dr. Pompy?

20 A. Yes.

21 Q. All right. Let's go to -- was your next appointment on
22 April 26th, 2016?

23 A. Yes.

24 Q. Could you tell the jury what happened on this visit?

25 A. So I -- I had the appointment set up that day. It was the

1 afternoon again. I showed up, I checked in, I was told to fill
2 out the paperwork again, and then I was also told to go give a
3 urine drug screen.

4 Q. And were you eventually -- and did you bring an X-ray
5 report with you that day?

6 A. Yes.

7 Q. Not a -- did you bring an actual X-ray or a report
8 discussing the X-ray?

9 A. I did not bring the film of an X-ray. I brought an
10 actual -- a written --

11 Q. All right.

12 A. -- a written report of the results of an X-ray.

13 Q. All right. And were you eventually brought back into the
14 exam room area?

15 A. Yes.

16 Q. And I'd first like -- were you asked about what
17 prescriptions you were on?

18 A. Yes.

19 Q. And at that point had Dr. Pompy prescribed anything for
20 you?

21 A. Yes.

22 MR. LIEVENSE: Could we play Exhibit 95A2-1 please?

23 (Video being played)

24 BY MR. LIEVENSE:

25 Q. Sir, why did you say you had been prescribed Norco when

1 you hadn't?

2 A. Just to try to get it on this date.

3 Q. I'd like to next play this clip at -- were there also
4 discussions about the X-ray report with this medical assistant?

5 A. I don't recall discussion with her. There was some but I
6 don't remember with her.

7 Q. All right.

8 MR. LIEVENSE: Can we play Exhibit 95A2-2 please?

9 (Video being played)

10 BY MR. LIEVENSE:

11 Q. All right. I'd like to also then show Exhibit 1, page 63.
12 What is this document?

13 A. That is the previously referenced X-ray report. That's
14 the written -- that's the written part of the report and
15 that's --

16 Q. And -- and --

17 A. -- what I turned in.

18 Q. I'm sorry for interrupting you.

19 How did that X-ray report come about?

20 A. Dr. Robertson wrote that for me.

21 Q. And what was the goal in providing an X-ray report? What
22 was your intent in providing this report?

23 A. The intent was to show an X-ray that -- or show a written
24 X-ray report that didn't indicate any problems or fractures or
25 any -- any -- anything wrong with my -- with my back.

1 Q. Now, I think later on we realized that -- was this X-ray
2 report one page long or two pages long?

3 A. The original was two pages long and I -- only one page got
4 turned in that day by me I guess. I don't -- I don't know if I
5 turned in one or two pages but it's a two-page document.

6 Q. So there -- it was originally a two-page document?

7 A. That's correct, yeah.

8 Q. All right. And we now know from looking at your patient
9 chart that only -- there was only one page in the file, is that
10 right?

11 A. That's what I know now, yeah.

12 Q. Do you know whether you turned -- just turned in one page
13 or whether you turned in two pages and they only scanned in one
14 page?

15 A. I -- my intention was to turn in two pages. I don't know
16 exactly what I did. I don't -- I don't -- I don't know. My
17 intention was to turn in both pages of it.

18 Q. But what we do know is there's only one page in the file?

19 A. That's right.

20 Q. All right. If I could direct your attention to the bottom
21 under "Impression."

22 MR. LIEVENSE: Could Ms. Ouellette highlight or scan
23 that please?

24 BY MR. LIEVENSE:

25 Q. What is the impression on this X-ray chart?

1 A. It says, number 1, "No evidence of fracture or
2 dislocation."

3 Q. Is that what you mean by a report showing no problems?

4 A. That's what I mean.

5 Q. At some point during this visit did Dr. Pompy come in?

6 A. Yes.

7 Q. And did he greet you?

8 A. He did.

9 Q. And did he discuss the results of a blood test you had
10 done?

11 A. He did, yes.

12 Q. Did he talk about a gall bladder issue?

13 A. He -- yep, he said might have a potential gall bladder
14 issue, had some -- a little bit of discussion about that.

15 MR. LIEVENSE: All right. Could we play
16 Exhibit 95A2-3 please?

17 (Video being played)

18 BY MR. LIEVENSE:

19 Q. It looks like the medical assist -- assistant said, "It's
20 his third visit with us." Do you recall that?

21 A. Yes, she did say that.

22 Q. What was the significance of that to you?

23 A. It was significant because I expected to get a
24 prescription that day because I had previous information that
25 it takes two or three visits to get medications for the first

1 time.

2 Q. All right.

3 MR. LIEVENSE: Could we play again?

4 (Video being played)

5 That's good, that's good.

6 (Video being played)

7 Could we pause it there?

8 BY MR. LIEVENSE:

9 Q. When Dr. Pompy says, "What are you looking for?," how did
10 you respond?

11 A. I told him I was looking for Norco.

12 Q. Had you previously asked him for Norco in the past?

13 A. I did.

14 Q. And when you asked for Norco in the past, what did he do?

15 A. Accused me of being an undercover, trying to trap him, and
16 told me no.

17 Q. And you actually say here that you usually get Norco to
18 help your back, is that right?

19 A. Yeah.

20 Q. At that time, according to your MAPS report, had you
21 usually gotten Norco from anybody?

22 A. No.

23 Q. All right.

24 MR. LIEVENSE: Can we keep playing?

25 (Video being played)

1 BY MR. LIEVENSE:

2 Q. So at that point Dr. -- did Dr. Pompy leave the exam room?

3 A. Yes.

4 Q. And he mentioned "I'll be back." Did you hear that?

5 A. I did.

6 Q. What was your understanding as to what was going to happen
7 next?

8 A. I wasn't exactly sure what was going to happen next based
9 on where we were at in the visit at that time.

10 Q. Did you at that point talk to the medical assistant about
11 urine drug screens?

12 A. Yes.

13 Q. And did you ask about a prior urine drug screen?

14 A. Yes.

15 Q. And at that point did you learn about your results from
16 the March 22 urine drug screen?

17 A. Yes.

18 Q. And what did you learn?

19 A. They told me that I had tested positive for barbiturates
20 and they didn't list any other medications or anything. They
21 just said, "You're positive for barbiturates."

22 Q. And at that point did they indeed have the confirming test
23 of barbiturates, if you know?

24 A. I don't know what test they had exactly. I just know she
25 told me that "you're positive for barbiturates is what your

1 your lab report shows."

2 Q. All right.

3 MR. LIEVENSE: Could you play Exhibit 95A2-4 please?

4 (Video being played)

5 BY MR. LIEVENSE:

6 Q. Sir, is -- to your knowledge, is Xanax a barbiturate?

7 A. No.

8 Q. Had you been taking barbiturates?

9 A. No.

10 Q. After this date did you report what had happened to Blue
11 Cross Blue Shield?

12 A. Yes.

13 Q. And what did they have you do?

14 A. I went and took an independent drug test of my own, an
15 actual supervised one with work, and then got the results of
16 that and it showed negative for everything. That was within
17 about 48 hours of this notification here.

18 Q. And the medical assistant said something about seeing what
19 the next urine drug screen said?

20 A. Yeah.

21 Q. Did Dr. Pompy ever talk to you about the drug screen that
22 suggested you had barbiturates?

23 A. No.

24 Q. And did you indeed take another urine drug screen that
25 day?

1 A. Yes.

2 Q. At some point did Dr. Pompy come back into the exam room?

3 A. Yes.

4 Q. All right.

5 MR. LIEVENSE: Could we play Exhibit 95A3-1 please?

6 (Video being played)

7 BY MR. LIEVENSE:

8 Q. During this snippet did the medical assistant again say
9 something about this being your third visit?

10 A. Yes.

11 Q. That was the second time she had said that?

12 A. I believe so, yeah.

13 Q. And at the end of this interaction what did Dr. Pompy
14 prescribe to you?

15 A. Norco, Lyra -- Lyrica and Zanaflex.

16 Q. And that was a two-week supply?

17 A. Yes.

18 MR. LIEVENSE: I'd like to call up Government's
19 Exhibit 1A-1.

20 BY MR. LIEVENSE:

21 Q. What is this?

22 A. That is the prescription written to me for Norco 5, 5
23 milligrams, 42 tablets.

24 Q. So 5 milligrams -- it's a 14-day supply. How many pills
25 per day are you supposed to take?

1 A. Three per day.

2 Q. So a 14-day supply times three pills a day is 42 pills, is
3 that right?

4 A. That's right, yes.

5 MR. LIEVENSE: And if we can go to Government's
6 Exhibit 1D please.

7 BY MR. LIEVENSE:

8 Q. And do you know what that is?

9 A. Yes.

10 Q. What is it?

11 A. That is the prescription written to me for Lyrica 50
12 milligram capsules. It says take one twice a day for 30 days.

13 Q. All right. During the last visit your conversation with
14 Dr. Pompy had mentioned physical therapy. Did that topic come
15 up again?

16 A. It did not, no.

17 Q. Did he suggest that you should maybe keep trying that for
18 another month?

19 A. No.

20 Q. Did he ask you how many times you went to physical
21 therapy?

22 A. No, we had no discussions about physical --

23 Q. Did he -- did he ask you for any records proving that you
24 actually had gone to physical therapy?

25 A. No.

1 Q. You had previously told Dr. Pompy that you drive for your
2 work, is that right?

3 A. Yes.

4 Q. Did Dr. Pompy ever talk to you about the risks of taking
5 Norco or hydrocodone and driving?

6 A. No.

7 Q. And your patient chart indicated alcohol abuse as well,
8 didn't it?

9 A. It did, yeah.

10 Q. Did Dr. Pompy ever talk to you about the risks of driving,
11 opioids and alcohol?

12 A. No.

13 Q. Was this April 26, 2016 visit what you consider a -- a --
14 a full patient visit?

15 A. Yes.

16 Q. And I'd like to direct your attention to page --
17 Exhibit 1, page 196. Was a -- a visit note generated in your
18 medical record?

19 A. Yes.

20 Q. For the April 26th, 2016 date?

21 A. Yes.

22 MR. LIEVENSE: And could you highlight the "Chief
23 Complaint"?

24 BY MR. LIEVENSE:

25 Q. And could you read for the jury what it says after your

1 name there?

2 A. It says, "Presents today for medication refill and pain.
3 Patient counseled as to point of care urine drug screen on
4 4-26-2016 and shows positive for appropriate prescribed
5 substances."

6 Q. Were you there for a prescription refill that day?

7 A. No, that was my initial prescription that day.

8 Q. And were you counseled about your urine drug screen?

9 A. Not by Dr. Pompy I was not counseled.

10 MR. LIEVENSE: If we could go to page 197 and
11 highlight the section "PFSH" through "Current Medications."

12 BY MR. LIEVENSE:

13 Q. I -- I asked you about this section with the last visit.
14 Do you see any differences in these sections from your
15 April 26th, 2016 visit as compared to the prior one or do they
16 look the same?

17 A. I'm sorry, you're referring to the "Current Medication"
18 section?

19 Q. And the -- the section under "Social History" and "He is
20 addicted to alcohol use."

21 A. There's a little difference maybe under the "Social
22 History," but I don't believe there's any difference under the
23 "Current Medications."

24 Q. And indeed it says, "All medications reviewed and
25 reconciliation performed by Lesly Pompy on April 26th, 2016"?

1 A. Yes, that's what it says.

2 Q. Had Dr. Pompy discussed Norco, Soma and Ativan with you on
3 that date?

4 A. No.

5 Q. During your interactions with Dr. Pompy on April 26th,
6 2016 did Dr. Pompy ever talk to you about the barbiturate test?

7 A. No.

8 Q. Did he ever talk to you about how testing positive for a
9 drug like that would be a violation of your narcotic agreement?

10 A. No.

11 Q. Did he ever talk to you about how a positive result for a
12 barbiturate might result or impact how he would prescribe to
13 you?

14 A. He did not discuss that at all.

15 Q. Before April 26th, 2016 he hadn't prescribed anything to
16 you, had he?

17 A. That's correct, he had not.

18 Q. But now, even though you had a abnormal urine drug screen
19 for barbiturates, something you hadn't been prescribed, what
20 did he do?

21 A. He wrote me a prescription for Norco.

22 Q. You had two encounters with Dr. Pompy that day. Do you
23 recall how long those interactions were?

24 A. I mean the total added together is about three and a half
25 minutes or so, approximately.

1 Q. And I'll make this brief. Did -- did Blue Cross Blue
2 Shield pay Dr. Pompy for an office visit that he billed under
3 the 99213 code?

4 A. Yes.

5 Q. And how much did Blue Cross Blue Shield pay?

6 A. \$67.50.

7 Q. Like to show you Government's Exhibit 1A.

8 After you received the prescription from Dr. Pompy on
9 April -- the two prescriptions on April -- well, the Norco and
10 the Lyrica prescriptions on April 26th, what did you do with
11 them?

12 A. I went and filled them, and I was with the Michigan State
13 Police and turned them over to them.

14 Q. So you first went to a pharmacy?

15 A. That's correct.

16 Q. And you filled the prescription?

17 A. Yep.

18 Q. And then once you got the prescription and the pills, what
19 did you do?

20 A. Turned them over to them immediately, had them count them
21 just to make sure.

22 Q. By them, you said it was the Michigan State Police?

23 A. Yes.

24 Q. And I'm going to also show you Government's Exhibit 1D;
25 well, first 1.A. are you able to identify what those -- what

1 that is?

2 A. That's a bottle of pills that I got from the pharmacy that
3 day.

4 Q. Are those the 42 Norco pills?

5 A. Yes.

6 Q. And Government's Exhibit 1D, do you know what those are?

7 A. Yes.

8 Q. What are those?

9 A. That is the Lyrica pills that I filled at the Walgreen's
10 pharmacy and turned over to the state police that day.

11 Q. Let's turn to your next appointment on May 9th, 2016.
12 Could you describe for the jury what happened?

13 A. Yeah. May 9th, 2016, it was another day. I -- I came to
14 the office in the afternoon for a prescheduled appointment that
15 I had scheduled for -- on the previous date, showed up. It
16 was -- it was -- it was pretty busy again. I checked in,
17 standard procedure that I'd been doing, and I was directed to
18 go submit to a urine drug screen so I walked down the hall and
19 did that.

20 MR. LIEVENSE: Can we play Exhibit 96A1-1 please?

21 (Video being played)

22 BY MR. LIEVENSE:

23 Q. And did we see your arrival in Dr. Pompy's office?

24 A. That was me videotaping myself arriving in the office,
25 yes.

1 Q. And you then went to check in?
2 A. Correct, yes.
3 Q. And you were provided and you filled out the questionnaire
4 again?
5 A. Yes.
6 Q. And did you go to -- to do the urine drug screen?
7 A. I did, yeah.
8 Q. Now, I'd like to talk to you about the different types of
9 urine drug screens. Are you aware that Dr. Pompy commonly did
10 two types of screens?
11 A. Yes.
12 Q. And who are those two types?
13 A. In its most basicest [sic], most basic form, there's a
14 point of care test which gives you an immediate result, and
15 then there's a confirmation test which is done by a lab.
16 Q. And the confirmation results come later?
17 A. Right. They come from a lab at a later point.
18 Q. But the point of care drug screens, those results are
19 immediate?
20 A. That's yes, that's correct.
21 Q. And would Dr. Pompy be able to bill insurance for both
22 types of urine drug screens?
23 A. If he performed them, then yes, he could bill for them.
24 Q. All right. And did you go and -- did you get the results
25 of your point of care urine drug screens immediately when you

1 went for your urine drug screen?

2 A. Yes.

3 Q. And what were you told your result was?

4 A. Told I was negative for everything.

5 Q. Were you supposed to be negative for everything?

6 A. At that point I should have been positive for Norco if
7 they're testing for just controlled medications because I had
8 been prescribed that on the visit before. So that would be
9 incorrect if they told me I was negative.

10 Q. It'd be an inconsistent or abnormal?

11 A. That's correct, it would be an inconsistent result.

12 MR. LIEVENSE: Could I -- could you put up on the
13 screen Exhibit 1, page 60 please?

14 BY MR. LIEVENSE:

15 Q. Now, previously I showed you a drug test order that had a
16 lab name on it. Do you recall that?

17 A. I do, yeah.

18 Q. Did you learn that at some point in time Dr. Pompy changed
19 who was doing the urine drug screens?

20 A. Yes.

21 Q. What did you learn?

22 A. I later learned that on this May visit that the lab claims
23 were being billed by Dr. Pompy's business, Interventional Pain
24 Management.

25 Q. And is that what this is on page 60?

1 A. That's a lab form with his -- his name and company name on
2 the top.

3 MR. LIEVENSE: And if you expand the lower half.

4 BY MR. LIEVENSE:

5 Q. Do you see where it says "POC" is written on there?

6 A. I see that, yes.

7 Q. Do you understand that to mean point of care, if you know?

8 A. That's what it means to me.

9 Q. All right. And what is written next to that?

10 A. "Neg," indicating to me negative.

11 Q. All right. Based on your review of Blue Cross Blue
12 Shield's records, did Dr. Pompy indeed bill for both types of
13 urine drug screens for May 9th, 2016?

14 A. Yes.

15 Q. At some point did the medical assistant call you back to
16 the exam room area?

17 A. Yes.

18 Q. And did the medical assistants -- did you engage that
19 medical assistant in the conversation again about the office
20 and its operations?

21 A. I did, yes.

22 Q. On this date did you actually discuss the drug called
23 Subsys?

24 A. I did, yes.

25 Q. All right.

1 MR. LIEVENSE: Could we play Exhibit 96A2-1 please?

2 (Video being played)

3 BY MR. LIEVENSE:

4 Q. Why did you ask the medical assistant about the
5 representative?

6 A. I had some curiosity as far as who they were.

7 Q. And why did you ask -- when you learned that the person
8 was there regarding the drug Subsys, why did you ask followup
9 questions regarding the Subsys?

10 A. Because I was aware of its expense, which is a very
11 expensive drug, and its potential for abuse and things like
12 that.

13 Q. Based on your experience, was it a drug that was -- and I
14 think even based on your questions, that was about people
15 following those delivery trucks around, it's abuse and also
16 addiction?

17 A. I knew that it was, yeah, a potential for abuse and
18 addiction based on its strength and the dangers associated with
19 it.

20 Q. Was it significant to you that a Subsys representative
21 worked in the office?

22 A. It -- yes, it was -- it definitely got my interest.

23 Q. Why is that?

24 A. I -- I wanted to know what -- what role that played in
25 this -- this office and why they were there, what was going on

1 with it, if it needed to be further looked into or what was
2 going on with it.

3 Q. And did Dr. Pompy eventually come in and see you?

4 A. He did, yes.

5 Q. All right. And during his interactions with you did
6 your -- the medical assistant set another appointment for you
7 for the following week?

8 A. Correct.

9 Q. And during this interaction did Dr. Pompy note the lack of
10 hydrocodone in your urine drug screen?

11 A. Yes.

12 Q. Well, what did he say?

13 A. He said he was -- he said, "No hydrocodone, problem," and
14 he was referring to my urine drug screen.

15 Q. All right.

16 MR. LIEVENSE: Can we play Exhibit 96A2-2 please?

17 (Video being played)

18 BY MR. LIEVENSE:

19 Q. All right. What did that mean to you when Dr. Pompy said,
20 "No hydrocodone, that's a problem"?

21 A. What it meant to me was that he had looked at my drug
22 screen, saw -- known that he -- he knew that he had prescribed
23 me hydrocodone but yet it wasn't in my urine drug screen, which
24 is -- should be a problem and it would be a violation, excuse
25 me, of the pain contract.

1 Q. And were you taking the Norco?

2 A. No.

3 Q. And so at that point Dr. Pompy knows it's not in your
4 system?

5 A. He acknowledged that he knew it was not because he said
6 so.

7 Q. Did he talk to you about that?

8 A. He did not talk to me about that.

9 Q. Did he counsel you?

10 A. No.

11 Q. Did he ask you why it wasn't in your system?

12 A. He did not.

13 Q. Did he ask you if you were in so much pain that you were
14 taking the drugs too fast?

15 A. He didn't discuss that.

16 THE COURT: We -- we -- we just saw the tape, Mr.
17 Lievense, and we know he didn't ask any of that. Keep going
18 please.

19 MR. LIEVENSE: I will.

20 THE COURT: All right.

21 BY MR. LIEVENSE:

22 Q. Based on your experience, especially how -- and how that
23 test violated the narcotics contract, what were you expecting
24 him to do when he said that?

25 A. I was expecting to be told to get lost or be ejected from

1 the practice or discharged as a patient, whatever term you want
2 to use, but I -- I pretty much thought that might be the end,
3 the way he said it.

4 Q. And you also heard him say 2A. Do you remember that?

5 A. I did hear him say 2A, yes.

6 Q. Did that mean anything to you at the time?

7 A. No.

8 Q. I'd like to show you Exhibit 1, page 61. This is from
9 May 17, 2016 because I didn't see one in the record for
10 May 9th, but did you come to learn what 2A meant?

11 A. Yes.

12 Q. Based on the urine drug screen results, what does 2A mean?

13 A. 2A would be a negative for appropriately -- for
14 appropriate prescribed substances, in other words, an
15 inconsistent drug test based on the point of care urine drug
16 screen.

17 Q. And did Dr. Pompy, when made known of all this
18 information, were you prescribed medication that day?

19 A. Yes.

20 Q. What were you prescribed?

21 A. Norco.

22 Q. How many pills?

23 A. Twenty-one.

24 Q. So was it a seven-day supply, three times a day?

25 A. It was 21 pills, it was one-week supply, so seven days,

1 three per day, 21.

2 Q. All right. And I'll show you Government's Exhibit 1B1.
3 And is that the prescription you left with that day? It's a
4 little -- little fuzzy.

5 A. That is the prescription, yes.

6 Q. All right. And again, I won't use the overhead --

7 MR. LIEVENSE: May I approach the witness, Your
8 Honor?

9 THE COURT: Yeah. How much -- how long you think
10 you're going to have total left?

11 MR. LIEVENSE: Maybe a half an hour.

12 THE COURT: Okay. Let's take our morning break then,
13 all right, folks? It's 10:22. And before Mr. Lievensen
14 approaches the witness, we'll take a brief break. It's 10:22.
15 Let's try to be back 10:30, 10:35. Morning break for the
16 jurors, comfort break, short. Don't talk about the case while
17 you're on your break.

18 Let's all rise and we'll see you back here briefly.

19 (Jury excused at 10:23 a.m.)

20 Okay. We'll have a short comfort break.

21 THE LAW CLERK: Court is now in recess.

22 (Court in recess at 10:23 a.m.)

23 (Proceedings resumed at 10:32 a.m., all parties
24 present)

25 THE LAW CLERK: All rise for the jury.

1 (Jury entered the courtroom at 10:32 a.m.)
2 THE COURT: Okay. Everybody's back. Another good
3 tight break and I'm so grateful everybody's staying on time.
4 Please be seated.
5 I just want you to know, I told Philbrick no chichi
6 doughnuts, you know, none of this nonsense, not even Tim
7 Horton's. You've got to go get them at a gas station, right,
8 Thomas?
9 THE LAW CLERK: Yes.
10 THE COURT: All right. Okay. Go ahead, Mr.
11 Lievense.
12 MR. LIEVENSE: Your Honor, I was asking to approach.
13 THE COURT: Yes.
14 MR. LIEVENSE: We have the witness here now.
15 THE COURT: Yes, yes, yes. Sorry, I didn't know you
16 were still out, but that's fine. Everybody's back. You may
17 certainly approach the witness. Go right ahead.
18 BY MR. LIEVENSE:
19 Q. I'm handing you what's been marked Government's Exhibit 1B
20 I believe, is that correct?
21 A. Yes, it's 1B.
22 Q. All right. And what is that?
23 A. That is the physical pills, the hydrocodone pills that I
24 got on May 9th of 2016. There's 21 hydrocodone here.
25 MR. LIEVENSE: All right. I -- may I retrieve them,

1 that exhibit, Your Honor?

2 THE COURT: Yeah, of course. No further need to
3 request permission. Go right ahead.

4 MR. LIEVENSE: Thank you.

5 THE COURT: Mm-hmm.

6 MR. LIEVENSE: Like to pull up Exhibit 1, page 203
7 please.

8 BY MR. LIEVENSE:

9 Q. And is this your visit note from May 9th, 2016?

10 A. Yes.

11 MR. LIEVENSE: And actually I'd like to here -- just
12 for efficiency's sake, can we pull up 2 -- page 203 and page
13 196, which was the visit note from April 26th, 2016, have those
14 next to each other.

15 BY MR. LIEVENSE:

16 Q. Which visit note is on the left there, sir?

17 A. That's April 26th, 2016.

18 Q. And which one's on the right?

19 A. On the right is May 9th, 2016.

20 MR. LIEVENSE: And can we highlight "Chief Complaint"
21 from both documents, Ms. Ouellette, please?

22 BY MR. LIEVENSE:

23 Q. And it looks like she highlighted, expanded the "Chief
24 Complaint" from both and that the "Chief Complaint" for May 9,
25 2016 is at the bottom. Would you agree with that, sir?

1 A. Yes.

2 Q. And what does the chief complaint from the May 9, 2016
3 visit say?

4 A. "Presents today for medication refill and pain. Patient
5 counseled as to point of care urine drug screen on 4-26-16,
6 2016, sorry, and shows positive for appropriate prescribed
7 controlled substance."

8 Q. And if you --

9 A. I'm sorry, I misspoke. "Appropriate prescribed
10 substances" is what it says.

11 Q. And if you compare those two chief complaints from the
12 April 26th visit and the May 9th, 2016 visit, what are they?

13 A. Those are identical.

14 Q. And on May 9, 2016 were you counseled as to the point of
15 care urine drug screen that had happened on April 26th, 2016?

16 A. I was not counseled by Dr. Pompy at all about that.

17 Q. You weren't even counseled about the May 9, 2016?

18 A. I was not, no.

19 Q. And, in fact, where it says here that you showed positive
20 for appropriate provide -- prescribed substances, what did you
21 actually test?

22 A. I actual did not test positive for appropriate test. I
23 was negative for any prescribed substances.

24 MR. LIEVENSE: And if we could back out and also
25 highlight the "Subjective" sections of both patient notes.

1 BY MR. LIEVENSE:

2 Q. And if you could review them to yourself. I'm not going
3 to have you read them. How do these two compare?

4 A. Those are identical.

5 Q. On May 9, 2016, was that another visit that you would
6 consider a full patient visit?

7 A. Yes.

8 Q. And do you know how much time Dr. Pompy spent with you
9 that day?

10 A. It was under two minutes.

11 Q. And did he bill for an office visit?

12 A. He did.

13 Q. Did he bill that same established patient visit, 99213?

14 A. Same, same, yeah, same claim.

15 Q. And did Blue Cross Blue Shield pay \$67.50?

16 A. Yes, paid the same amount as last time, correct.

17 Q. And, again, if we do the same calculations for a
18 two-minute office visit and he received 67.50, do you know the
19 hourly wage, hourly rate?

20 A. I mean well over a thousand dollars hourly.

21 Q. And did Dr. Pompy also bill for a point of care and
22 confirmation drug test that day?

23 A. He did.

24 Q. Like to go to May 17, 2016. Was this your last visit with
25 Dr. Pompy?

1 A. Yes.

2 Q. And could you tell the jury what happened on this visit?

3 A. The beginning was similar to the other visit, other
4 visits. I showed up as scheduled in the afternoon, went
5 through the hallway to the lobby, saw it was -- it was pretty
6 busy again, checked in, did the same procedure, was directed to
7 go give a urine drug screen, which I went down, stood in line.
8 This time it was a little bit busy. As I was waiting to get
9 the urine drug screen, they called me back for my patient visit
10 with the doctor before I could give my urine drug screen.

11 Q. All right. So this time it was so busy even in the urine
12 drug screen line that you got called back before you even gave
13 a sample?

14 A. That's right. There was multiple people in that line.

15 Q. All right. And did you have a normal encounter with a
16 medical assistant where he or she went over things like your
17 vital signs, et cetera?

18 A. Yes.

19 Q. And did the medical assistant ask if you had already done
20 the urine drug screen?

21 A. Yes.

22 Q. And what'd you explain?

23 A. I just told her what happened, that I got called out of
24 line before I got to chance to submit my urine drug screen.

25 Q. All right.

1 MR. LIEVENSE: Could we play Exhibit 97A3-1 please?
2 (Video being played)
3 BY MR. LIEVENSE:
4 Q. So during this interaction did the medical assistant
5 confirm your prescriptions for Norco and Lyrica?
6 A. Yes.
7 Q. And she indicated you have to come back in another week?
8 A. Yes.
9 Q. And did you indeed make an appointment for May 24, 2016?
10 A. I don't recall if I scheduled that appointment or not but
11 I would have.
12 Q. All right. Now, at this point you're -- you're back
13 waiting to see Dr. Pompy and you had not yet done a urine drug
14 screen, right?
15 A. That's right.
16 Q. What did you expect him to do during this visit if you
17 hadn't had a urine drug screen yet?
18 A. I expected him to tell me to go get one or ask a question
19 about it or at least address it.
20 Q. Because the week before you had had an inconsistent drug
21 screen, right?
22 A. Right.
23 Q. And so he wanted to make sure you came back in a week?
24 A. He said to come back in a week, yeah, because of that.
25 Q. At some point during your interactions with the medical

1 assistant did you ask whether Dr. Pompy might give you
2 something stronger?

3 A. Yes, I did talk to her about that.

4 Q. Why did you do that?

5 A. Just kind of to see what would happen, see if I could
6 actually get something stronger or what -- what her thoughts
7 were, if it was even a possibility.

8 Q. And based on that conversation, what did you decide?

9 A. I decided not to. She said, "You're -- based on your drug
10 screens and whatever, you're probably not going to get anything
11 stronger," so I decided not to even try it.

12 Q. And at that point you hadn't even given your urine drug
13 test, right?

14 A. Right.

15 Q. Yet. Okay.

16 A. That's correct.

17 MR. LIEVENSE: Like to show Exhibit 1, page 65
18 please, and highlight the top half please.

19 BY MR. LIEVENSE:

20 Q. And is this your -- if you can look at the collection
21 date, it's May 9th, 2016. Do you see that?

22 A. I do see that, yeah.

23 Q. Is this your -- the results of your confirming drug test
24 from the prior week on May 9?

25 A. Yes.

1 MR. LIEVENSE: And if you could highlight the bottom
2 half.

3 BY MR. LIEVENSE:

4 Q. Does this confirming drug test confirm that you were
5 negative for prescribed substances the week before?

6 A. Yes. Everything on there says negative.

7 Q. And at some point Dr. Pompy came in to see you, is that
8 right?

9 A. Yes.

10 Q. And did he mention the need for you to do a urine drug
11 screen?

12 A. Yes.

13 Q. All right.

14 MR. LIEVENSE: Could I play Exhibit -- could we
15 please play Exhibit 97A3-3 please?

16 (Video being played)

17 BY MR. LIEVENSE:

18 Q. Sir, did we see Dr. Pompy hand you a piece of paper there?

19 A. We did.

20 Q. What did he hand you?

21 A. A prescription.

22 Q. For what?

23 A. Norco.

24 Q. Had you provided a urine drug screen sample yet?

25 A. No.

1 Q. Had he asked you about your confirmation drug screen from
2 the week before?

3 A. He did not discuss urine drug screens.

4 Q. Is what we saw your entire interaction with Dr. Pompy on
5 May 17, 2016 or did he come back?

6 A. That was the entire encounter with Dr. Pompy that day.

7 MR. LIEVENSE: And could I show -- could we pull up
8 Exhibit 1C please?

9 BY MR. LIEVENSE:

10 Q. What is this, sir?

11 A. That is the original prescription written on May 17th,
12 2016, and it is for Norco, 21 tablets, and it's one three times
13 a day for one week, so it's a total of 21 tablets.

14 Q. And so the week before when you had that -- he mentioned
15 that 1A, right, "No hydrocodone, that's a problem," right, and
16 he brought you back a week later, had he done any additional
17 testing of you before issuing that prescription?

18 A. No. I think you said 1A but he had said 2A. But, yeah,
19 there was no...

20 Q. I'm sorry, 2A. All right. Thank you for correcting me.

21 A. No.

22 Q. Did you actually give a urine drug sample that day,
23 May 17, 2016?

24 A. I did, yes.

25 Q. But you did that after he gave you the prescription?

1 A. After the prescription I went down the hall and gave a
2 urine drug screen.

3 Q. I don't want to go through the whole list of questions,
4 but again -- 'cuz we saw the interactions. Did Dr. Pompy
5 during your interactions with him give you any indication he
6 was going to enforce the terms of the narcotic agreement?

7 A. He did not, no.

8 MR. LIEVENSE: And let's pull up Exhibit 1, page 61.

9 BY MR. LIEVENSE:

10 Q. Is this the result of your urine drug screen on May 17,
11 2016?

12 A. Yes.

13 Q. And you indeed tested again negative for the appropriate
14 prescribed substances?

15 A. Correct, negative for appropriate substances.

16 Q. But by the point that happened, Dr. Pompy had already
17 prescribed to you, hadn't he?

18 A. That's right.

19 MR. LIEVENSE: Let's go to Exhibit 1, page 209
20 please, and the "Chief Complaint" area.

21 BY MR. LIEVENSE:

22 Q. It indicates that you were counseled as to your point of
23 care urine drug screen on May 17, 2016, doesn't it?

24 A. That's what it says, yes.

25 Q. And it says that you showed negative for appropriate

1 prescribed substances?

2 A. That's what it says, yes.

3 Q. Were you counseled as to your -- during your interactions
4 with Dr. Pompy were you counseled as to your May 17, 2016 point
5 of care drug test?

6 A. No, there was no counseling.

7 Q. Could there have been?

8 A. No.

9 Q. Because it hadn't happened yet?

10 A. That's correct.

11 Q. Approximately how long did you interact with Dr. Pompy
12 during this visit?

13 A. It was around a minute.

14 Q. And did he bill once again the code for an established
15 patient of 99213?

16 A. Yes, same code, same payment of 67.50.

17 Q. And again, if we're a one-minute visit for that amount,
18 how much would Dr. Pompy receive per hour?

19 A. It would be over \$4,000 an hour if you broke it down by
20 the minute.

21 Q. And did Dr. Pompy also bill for a urine drug screen that
22 day?

23 A. Yes.

24 Q. Did he also bill Blue Cross Blue Shield for both a point
25 of care test and a confirmation test?

1 A. He did, yes.

2 Q. And did he bill for that point of care drug test even
3 though it happened after he had already prescribed?

4 A. Yes.

5 Q. Did you make another appointment with Dr. Pompy?

6 A. I -- I don't recall if I set up another appointment or
7 not. I did not go back, but I don't -- I don't know if there
8 was appointment arranged or not, I don't remember.

9 Q. Why didn't you go back?

10 A. There was no need to go back. That -- there's no need to
11 go back.

12 Q. Based on your I guess -- you were conducting an
13 investigation?

14 A. Yes.

15 Q. And based on your -- the results of that investigation at
16 that point, who decided there was no reason to go back?

17 A. I think it was a group decision with my -- whoever I
18 talked to about it.

19 THE COURT: All right. Okay. We got the answer. Go
20 ahead, Mr. Lievense.

21 BY MR. LIEVENSE:

22 Q. Had Dr. Pompy discharged you?

23 A. No.

24 Q. Did he -- did anyone from his office call to say that you
25 couldn't come back because your May 17, 2016 drug test results

1 were abnormal?

2 A. No.

3 Q. Had anyone, Dr. Pompy or his employee, ever suggested
4 that?

5 A. No.

6 Q. Your undercover identity as James Stewart, I think you've
7 already testified you had used that in other undercover
8 investigations, is that right?

9 A. That's right.

10 Q. Which is why the MAPS report showed those prescriptions?

11 A. That's right.

12 Q. Remember talking about that?

13 A. Yeah.

14 Q. Because those are actual prescriptions you had -- that had
15 been issued to you and you had filled?

16 MR. CHAPMAN: Your Honor, I think we've covered this
17 and we're leading.

18 THE COURT: Move on please. Thank you.

19 BY MR. LIEVENSE:

20 Q. As part of those other investigations, was your undercover
21 identity ever disclosed or compromised?

22 A. It was.

23 Q. No, other investigations before Dr. Pompy.

24 A. No, there was never compromise before that, no.

25 Q. As a result of your investigation here, was your identity,

1 undercover identity blown?

2 MR. CHAPMAN: Objection, Your Honor. Relevance.

3 A. Yes.

4 THE COURT: What's the relevance, Mr. Lievense?

5 MR. LIEVENSE: Your Honor, I was going to ask -- I
6 wanted to establish that -- I wanted to establish how his
7 relevance -- his undercover identity was blown because we have
8 evidence that it was blown by Dr. Pompy.

9 MR. CHAPMAN: I don't think that has anything to do
10 with the charged conduct, Your Honor.

11 MR. LIEVENSE: I think it goes to his state of mind
12 and --

13 THE COURT: If it shows a consciousness of -- of
14 guilt, I could -- I could see that. Let's see where it goes
15 before I rule. Go -- go ahead. What happened with the cover?

16 BY MR. LIEVENSE:

17 Q. What happened, sir?

18 A. There was a tweet on --

19 MR. CHAPMAN: Your Honor, I'm sorry to interrupt
20 again. We haven't been provided any information that I can
21 recall related to this line of questioning in discovery. I've
22 now just been handed an exhibit I -- I've never seen before.
23 I'd ask that we take up this issue outside the presence of the
24 jury so we can establish exactly what Mr. Lievense's getting
25 at.

1 THE COURT: I would agree. Let's table this
2 particular issue till we can get at it. The jury will
3 disregard the questioning. Remember that the evidence in the
4 case is the testimony of the witness who hasn't spoken much
5 about the topic, but we're going to defer it for later.

6 Go ahead, Mr. Lievense.

7 MR. LIEVENSE: I have no further -- I'll address it
8 on redirect if appropriate, Your Honor. No further questions
9 at this time.

10 THE COURT: Okay. Good. Go ahead. Are you all
11 finished?

12 MR. LIEVENSE: I have no further questions at this
13 time, yes.

14 THE COURT: All right. Okay. Good. Very well.
15 Well, then next is Mr. Chapman on behalf of Dr.
16 Pompy. Go right ahead, sir.

17 MR. CHAPMAN: Thank you, Your Honor.

18 THE COURT: Yep.

19 CROSS-EXAMINATION

20 BY MR. CHAPMAN:

21 Q. Good morning, Mr. Howell. My name is Ron Chapman. Good
22 to see you.

23 A. Good to see you, sir.

24 Q. Let's start where you started. Let's talk about your
25 training a bit. First you indicated that you were trained by

1 the National Association of Drug Diversion Investigators?

2 A. I have attended their training, yes.

3 Q. About a hundred hours?

4 A. Approximately, yeah.

5 Q. And -- and how much of that training was specifically
6 related to undercover operations?

7 A. Minimal.

8 Q. Minimal?

9 A. Minimal, yeah.

10 Q. And during that training did they tell you the type of
11 persona that you could develop during an undercover operation?

12 A. No.

13 Q. You were also trained by Blue Cross Blue Shield?

14 A. Yes.

15 Q. And did any of that training involve undercover
16 operations?

17 A. It did, yes.

18 Q. And did they specifically tell what you sort of persona
19 you could develop during an undercover operation?

20 A. I don't recall being directed on how to develop a persona.
21 I think it was kind of left up to the individual person or me.

22 Q. You can make it up as you went along?

23 A. Right.

24 Q. Okay. Are you familiar with the phrase legitimate medical
25 purpose?

1 A. Yes.

2 Q. And you know through going undercover in these operations,
3 your goal is to ensure that you don't give the doctor the
4 impression that you have a legitimate medical purpose, right?

5 A. That's the goal, yes.

6 Q. Because if you did have a legitimate medical purpose, then
7 you'd be receiving controlled substance medications
8 appropriately, right?

9 A. Potentially, yeah.

10 Q. Potentially.

11 So you're going into Dr. Pompy's office trying to
12 show that you're a drug-seeking patient but avoiding showing
13 that you have a legitimate medical purpose?

14 A. Correct.

15 Q. Okay. And that's why you straddled the line during this
16 operation, right? You talk about stiffness?

17 A. That's why I talk about stiffness. I'm not -- yeah, I'm
18 not indicating pain.

19 Q. And -- and -- and you're -- you're trying to avoid saying
20 pain to the doctor?

21 A. That's correct.

22 Q. Okay. Did you do any research about this phrase stiffness
23 that you developed before using it in Dr. Pompy's paperwork and
24 to his staff?

25 A. I didn't do any research on that.

1 Q. You didn't look at the literature to see if stiffness
2 could be an indication of sciatica or a disk problem in the
3 lower back?

4 A. I did not, no.

5 Q. You talked to Dr. Robertson about this phrase stiffness?

6 A. No, I didn't need to. I know what stiffness is to me so
7 I -- I didn't feel a need to do any further research on it.

8 Q. And according to Mr. Howell, stiffness is not an
9 indication of a legitimate pain complaint?

10 A. My opinion or I feel that stiffness is an indication of
11 stiffness. It really has nothing to do with pain. Those two
12 are kind of separate things.

13 Q. Have you ever had lower back pain before?

14 A. I have, yeah.

15 Q. You've had sciatica before?

16 A. I've never been diagnosed with sciatica but I've had back
17 pain, yes.

18 Q. Did it manifest itself as stiffness while you were getting
19 up in the morning?

20 A. I've had stiff -- yeah, I -- I would say so, yeah.

21 Q. Yeah. Did you ever get an MRI on your back?

22 A. I did.

23 Q. And what did it show?

24 A. No -- nothing.

25 Q. No problem. But you still had the --

1 A. No significant -- I'm sorry.

2 Q. But you still had the stiffness, right?

3 A. I had that stiffness, yeah.

4 Q. Yeah. And still had pain, right?

5 A. I have had pain, I have had pain in my back, yeah. I
6 think every human's had pain in their back.

7 Q. Sure, sure, lots of humans, but no indications on the MRI?

8 A. None.

9 Q. No.

10 So you mentioned earlier that you tried to develop
11 this persona of a drug-seeking patient. I want to understand
12 that a little bit more. What does your training indicate to
13 you are the signs -- well, let me back up. It seems to me we
14 have sort of three categories of patients: the drug diverter,
15 the person who's just getting drugs to sell, right, that's one
16 category?

17 A. That could be one, yeah.

18 Q. Could be one.

19 And then we might have a category in the middle of
20 patients who may have pain or a diagnosis but sell or misuse
21 some of their medication, that could be another category?

22 A. That's true, yeah.

23 Q. And then we might have this third category of patients who
24 have legitimate pain and don't misuse or do anything wrong with
25 their medication?

1 A. I agree with that, yes.

2 Q. Right.

3 A. Yes.

4 Q. And you would agree that the second and third category
5 that I just talked about, those people could have legitimate
6 painful medical conditions, right?

7 A. Sure.

8 Q. And you would agree that those people could receive
9 medication appropriately from a doctor?

10 A. Well, I -- again, there's a lot of variables before you
11 get to that point, but, yeah, that's -- there's -- possibly,
12 yes.

13 Q. Okay. So really what you're trying to do is show yourself
14 as the first category of patient, the person who's just getting
15 medications to sell them, right?

16 A. I -- I -- not -- not -- not necessarily, no.

17 Q. You -- you could cross over into category two or three?

18 A. Well, you could be selling them, you could be using them
19 inappropriately, you could be giving them away. There's
20 different ways you could abuse them or divert them.

21 Q. Okay. Well, when you created this persona in how to act
22 in Dr. Pompy's office, it was your goal to create a persona
23 that didn't give him the belief that there was a legitimate
24 medical complaint, right?

25 A. Right.

1 Q. And to look like a drug-seeking patient, right?

2 A. Yes.

3 Q. Somebody who didn't have a legitimate medical injury,
4 right?

5 A. That's -- that's it, yes.

6 Q. Okay. Now, when you're at the front desk, I remember
7 maybe even a few times you said something about how you can't
8 read well and you're not so good at paperwork?

9 A. I did say that, yes.

10 Q. And did you do that to look like a drug-seeking patient?

11 A. No.

12 Q. No. You did that to cover the fact that you didn't fill
13 out your entire document, right?

14 A. That's right.

15 Q. And do you believe that there may be some people in Monroe
16 who have difficulty reading and writing?

17 A. There's people everywhere that have difficulty reading and
18 writing.

19 Q. And are those people drug-seeking patients?

20 A. I don't think those two issues are related necessarily.

21 Q. You also posed yourself as a truck driver, right?

22 A. I don't think I said truck, but a driver I said, yeah.

23 Q. Do you think it's reasonable to conclude that if you list
24 your profession as a driver, you're not driving Ms. Daisy
25 around, you're driving a truck?

1 A. I was indicating I was a car driver but I never said so.
2 But I guess, you know, if you say you're a driver, sure, you
3 could -- somebody could assume you drive trucks if that's what
4 you're asking me.

5 Q. Do you think that drivers are more likely to be
6 drug-seeking patients?

7 A. I don't know if there's a correlation there or not. I was
8 indicating driving for stiffness.

9 Q. Drive -- drivers are more likely to experience lower back
10 pain, right?

11 A. No, that's -- no.

12 Q. You don't think so?

13 A. I was indicating driving equals stiffness in my case.

14 Q. Yeah, but my question is you wrote driver down because you
15 wanted to make it look more likely that you sat for long
16 periods of the day and could be experiencing pain?

17 A. That's -- no.

18 Q. Okay.

19 A. I -- I said stiffness, driving and stiffness. That was
20 what -- my indication, sir.

21 Q. I understand what you said, but that was -- my question
22 was different.

23 A. Okay.

24 Q. You also received a referral, which we'll go over in a
25 minute, but you were able to get another doctor to write you a

1 referral to pain management?

2 A. Yes.

3 Q. Do you think that that's something that diversion patients
4 would have the ability to do?

5 A. To do it the way I did it? Probably not, no.

6 Q. No, they don't have connections with doctors who can write
7 referrals and X-ray reports, right?

8 A. I doubt it, yeah. I don't think so.

9 Q. Yeah. You also had a MAPS report indicating prior
10 prescriptions for controlled substances, right?

11 A. I did, yes.

12 Q. Do you think that diversion patients generally have the
13 ability to have the State of Michigan create a fake I.D. for
14 you and a fake MAPS profile?

15 A. I think diversion patients actually have MAPS reports that
16 indicate they're shopping around for drugs by different --
17 seeing different doctors in different parts of the state.
18 That's what I think.

19 Q. Understood. Just want you to answer my question.

20 A. Okay.

21 Q. Do they have the ability to do that, to get a fake ID and
22 a fake MAPS?

23 MR. LIEVENSE: Objection, Your Honor. That's not Mr.
24 Howell's testimony about the MAPS.

25 THE COURT: Well, I think the question is what his

1 understanding is regarding other certain types of patients'
2 ability to end up or not end up -- or -- or the information
3 that ends up on their MAPS.

4 But anyway, I'll allow you to answer the question if
5 you understand it. Go ahead, Mr. Howell.

6 THE WITNESS: I don't think other drug diverters have
7 the ability to make up fake MAPS. If that answers your
8 questions, that's -- that's my answer.

9 BY MR. CHAPMAN:

10 Q. Yep.

11 A. Okay.

12 Q. All right. So your prior prescription for hydrocodone
13 from a previous doctor, Dr. Zao, was from August of 2015,
14 right?

15 A. Yes.

16 Q. First time you were tested by Dr. Pompy's office was in
17 January of 2016, right?

18 A. Actually I think it was February of 2016, yes.

19 Q. February, yes.

20 You were negative on that test?

21 A. Correct, yeah.

22 Q. And no controlled substances in your system, right?

23 A. That's right.

24 Q. Yeah. The -- the typical drug-seeking patient, do you
25 think that they would have a negative urine drug screen on

1 their first visit like that?

2 A. I -- I can't answer that question.

3 Q. You know from your experience that people who abuse drugs
4 can go into withdrawals if they don't have the drug in their
5 system?

6 A. I am familiar with that, yes, that's true.

7 Q. You know that if somebody is addicted to a medication,
8 they would need to continue using that medication in order to
9 feed their addiction?

10 A. Right, yeah.

11 Q. You had a negative urinalysis which indicated that you
12 weren't currently using medications and had no problematic use
13 of medications, right?

14 A. All I can say is it indicated I was negative for those
15 tests. I don't know what else it indicates.

16 Q. Okay.

17 A. Just that I didn't have it in my system that day when I
18 took the test.

19 Q. You also mentioned that part of your persona was going to
20 a doctor in Monroe while living in Dearborn, right?

21 A. I did, yes.

22 Q. And then going to another doctor in Eastpointe, right?

23 A. I did, yes.

24 Q. And the reason why you did that was because it's your
25 belief that drug-seeking patients, doctor shoppers travel long

1 distances to go to the physician of choice, right?

2 A. That's -- that is one of the reasons. That's not the only
3 reason. I didn't intend to indicate that. That's not what I
4 intended.

5 Q. Well, then I'll let you answer that. What's your other
6 reason for indicating long distance to the doctor?

7 A. That -- that was my reason but --

8 Q. Okay.

9 A. Yeah.

10 Q. Got it. So to give that impression, you show an I.D. that
11 shows you live in Dearborn and you go to Dr. Pompy 25 miles
12 away?

13 A. Actually my I.D. says the address is in Flint. I told
14 them I use an address in Dearborn. So there's a couple
15 different addresses there, to answer that question.

16 Q. That was what I was just about to ask you. You told them
17 at the front desk that you'd actually moved to Dearborn, right?

18 A. I did, yeah.

19 Q. And you told them that the address you provided on the
20 paperwork was the right address?

21 A. I did, yes.

22 Q. You did, right?

23 You also told them that you have a girlfriend in
24 Monroe and that's why you don't have to drive so far for care,
25 right?

1 A. I did -- I did make a comment about that, yes.

2 MR. CHAPMAN: Can we see, and if the government can
3 please pull this up, Government Exhibit 97A, page 4? I believe
4 it's a transcript.

5 THE COURT: Are you admitting those?

6 MR. CHAPMAN: No. They're not admitted?

7 MR. LIEVENSE: No, you guys didn't agree to them.

8 MR. CHAPMAN: We -- we can -- we can move past that.
9 So -- no, it's okay. I don't -- I don't need it.

10 BY MR. CHAPMAN:

11 Q. So you wanted to look like you were driving far for care,
12 but when confronted by the front desk or asked about it, you
13 said you actually lived locally?

14 A. I told one person on staff that I had a girlfriend in the
15 area.

16 Q. Which would be a completely legitimate reason for you
17 seeking treatment in Monroe?

18 A. That was just the reason that I used in that -- in that
19 line of questioning from that -- I think it was a medical
20 assistant that I had that discussion with.

21 Q. Let's now talk about the origin of your investigation.
22 You indicated during direct that you were approached by a
23 colleague about doing an undercover investigation into Dr.
24 Pompy's office, right?

25 A. That's right.

1 Q. Prior to you being approached, had Blue Cross Blue Shield
2 done any investigation into Dr. Pompy?

3 A. I don't know.

4 Q. If they had, would you have been provided that information
5 prior to starting your investigation?

6 A. I -- I don't know.

7 Q. What's your practice at Blue Cross Blue Shield? Prior to
8 starting an investigation, you want to learn as much as you can
9 about the practice, right?

10 A. That's correct, yeah.

11 Q. You would want to look into your system and see if there's
12 any prior information that would be helpful, right?

13 A. I agree, yes.

14 Q. And you did that in this case?

15 A. At some point I did that, yeah. I don't know if it was at
16 the very beginning or at what point, but yeah, for sure.

17 Q. You didn't see any evidence of prior investigation?

18 A. Not that I recall, but it wasn't my investigation. I was
19 just assisting the other investigator.

20 Q. Who was the other investigator?

21 A. His name is Brian Zasadny.

22 Q. Is Brian Zasadny an employee of Blue Cross Blue Shield of
23 Michigan?

24 A. Yes, sir.

25 Q. Do you know if Brian Zasadny is going to testify in this

1 case and talk to the jury here?

2 A. I don't -- I don't --

3 MR. LIEVENSE: Objection, Your Honor. Relevance.

4 THE COURT: He doesn't know. Go ahead, Mr. Chapman.

5 BY MR. CHAPMAN:

6 Q. And Brian Zasadny, the prior investigator, didn't provide
7 you any investigation about his findings?

8 MR. LIEVENSE: Objection. Asked and answered.

9 MR. CHAPMAN: Now we're asking specifically about Mr.
10 Zasadny, not --

11 THE COURT: Yep, I think he can answer that. Go
12 ahead.

13 A. He asked for help with the investigation at the initial
14 time. I don't know exactly what I was told.

15 BY MR. CHAPMAN:

16 Q. Okay. You also mentioned that law enforcement had
17 something to do with the origin of this investigation, correct?

18 A. Yes.

19 Q. And did you receive any information that law enforcement
20 had done any undercover investigations into Dr. Pompy prior to
21 you starting your investigation?

22 A. I was not aware of any.

23 Q. To your knowledge, you were the first and only undercover
24 patient to go into Dr. Pompy's practice?

25 A. That's correct. That's my knowledge anyway. I don't know

1 if that's correct or not.

2 Q. Sure. Now, you also mentioned that Blue Cross Blue Shield
3 has the ability to data mine, right?

4 A. Yes.

5 Q. And data mining is the process of looking into the billing
6 and claims data to see if there's markers of health care fraud
7 or diversion?

8 A. Yes.

9 Q. There was no data mining done before you started your
10 investigation, to your knowledge?

11 A. There was.

12 Q. There was.

13 Were you provided that information?

14 A. Yes.

15 Q. So it's different than your testimony just a few moments
16 ago where you said that you weren't provided any information
17 prior to starting your investigation?

18 A. That's -- that's -- no, that's not correct.

19 Q. Okay. Your -- your testimony is not different? What
20 specific information were you provided?

21 A. Well, I -- let's back up. What was the exact question you
22 asked me before? We were talking about the origin of the
23 investigation. I was asked to assist by the other
24 investigator.

25 Q. Let me ask it again. Prior to starting your

1 investigation, were you given any information about Dr. Pompy?

2 A. Yes.

3 Q. And that information was from data mining?

4 A. Yes.

5 Q. And you studied that information?

6 A. Yes.

7 Q. Blue Cross Blue Shield has the ability to request patient
8 records from a physician, right?

9 A. Yes.

10 Q. They can just send a request out and the physician has to
11 respond?

12 A. Yes.

13 Q. So prior to conducting an undercover visit, you could
14 actually see how Dr. Pompy's treating his patients?

15 A. That wouldn't be the normal practice, no.

16 Q. Okay. You don't do that but you could, right?

17 A. You could ask for records before if you wanted to but
18 that's not the normal procedure.

19 Q. Is that because you don't want to tip off the doctor to a
20 potential investigation?

21 A. Yeah, correct.

22 Q. You're concerned about a doctor having knowledge that
23 there's an undercover investigation into his practice?

24 A. Right.

25 Q. So is it fair to assume that there were no medical records

1 requested or reviewed prior to you going into the practice?

2 A. I don't know if there was or not. That would not be the
3 normal procedure, but I -- honestly I can't answer that.

4 Q. Okay. Are you familiar with the term physician extenders?

5 A. No.

6 Q. No. You do know from going -- well, let's back up.
7 You've done 30 investigations into doctors' offices, right?

8 A. That's right.

9 Q. Thirty undercover visits, right?

10 A. I've done over a hundred undercover visits, 30 different
11 probably investigations. I'm using approximate numbers, but
12 yeah.

13 Q. Prior to starting your undercover investigation into Dr.
14 Pompy, how many individual doctors' practices had you visited?

15 A. Probably 30 or 40 different individual practices for a
16 total of, like, multiple visits per individual, over a hundred.

17 Q. And you're aware from your undercover operations that it's
18 very common for health care providers to use other staff to
19 help them with the assistance of a patient?

20 A. Yes.

21 Q. You routinely see medical assistants help with urine drug
22 screens, paperwork and even assessments?

23 A. I would say that's pretty standard.

24 Q. Pretty standard.

25 Nothing unusual about Dr. Pompy's use of those

1 people, right?

2 A. The only unusual thing was there was more of them there.

3 Q. Okay. Now, in those 30 undercover operations that you
4 conducted, how -- for how many of them did you get a referral
5 to that doctor for the purpose of pain management?

6 A. I don't remember that number.

7 Q. Prior to going into Dr. Pompy's office, had you ever
8 contacted a Blue Cross physician to get a fake referral to go
9 into a practice?

10 A. Yes.

11 Q. And how many times had you done that?

12 A. I don't know the number.

13 Q. You made some mention during your testimony yesterday that
14 the waiting room was busy when you went in there, right?

15 A. Yes.

16 Q. And so the first waiting room video that we saw was
17 January 26th, 2016?

18 A. I actually think it was January 5th.

19 Q. Well, I think we went out of order, but we can --

20 A. Okay. Thank you. Yes, so we did see one on January 26th.

21 Q. In fact, let -- let me back up. The -- the videos that we
22 saw today and yesterday, those were all clips of your longer
23 videos that you took, right?

24 A. That's correct.

25 Q. In fact, from the time that you entered Dr. Pompy's office

1 to the time that you left, you were continuously recording on
2 video, right?

3 A. I don't -- I -- I don't know.

4 Q. There were some times where you may have paused the video?

5 A. There -- there could be, yes.

6 Q. Is that usually when you're in the waiting room and
7 there's nothing going on?

8 A. The only time I would pause the video is when there's no
9 interaction with any staff and it's done just to conserve the
10 battery life, I would...

11 Q. Understood. But you tried to record every single
12 interaction you had with every single person there, right?

13 A. With -- well, no.

14 Q. No. Okay.

15 And so the clips that we saw were actually shorter
16 clips of those longer videos?

17 A. That's true, yes.

18 MR. CHAPMAN: Your Honor, at this time the -- the
19 government's introduced clips of videos. We'd like to go ahead
20 and introduce the entire video.

21 MR. LIEVENSE: Your Honor, the government's actually
22 offered the entire videos. We've only presented clips of the
23 videos. So we have no objection, and, in fact, the parties had
24 previously --

25 THE COURT: I think the whole -- the whole video is

1 in evidence. I don't want, unless there's some specific
2 element of it that you can focus in on, these jurors to have to
3 sit through, you know, an hour, whatever, while he's sitting in
4 the waiting room, but if you want to play some parts of the
5 entire video that's in evidence, that would be just fine.

6 MR. CHAPMAN: Yes, Your Honor. We have no intent on
7 playing the entire videos.

8 THE COURT: Okay.

9 MR. CHAPMAN: We just want the jury to be able to see
10 them if they'd like.

11 THE COURT: Okay. All right. Yeah, absolutely. The
12 jury should know that the evidence received was the complete
13 video of the -- of the visits, and when you deliberate you can
14 watch the entire video. Mr. Lievense played snippets or
15 selections of it, Mr. Chapman may do the same, but you can
16 watch whatever you want, okay? All right.

17 Go ahead, Mr. Chapman. Thank you both.

18 MR. CHAPMAN: Thank you.

19 BY MR. CHAPMAN:

20 Q. Sir, instead of playing the videos to indicate the
21 busyness of the waiting room, I'd just like to show you some
22 stills so that we -- we can see what it looked like during
23 various dates. But it was your testimony that the waiting room
24 was busy every single time you went in?

25 A. No.

1 Q. In fact, in some cases it was completely empty, right?

2 A. There was one time when it was pretty empty. There was
3 two times it was actually quite empty.

4 Q. Let's talk about the size of the waiting room. We're not
5 talking about a big waiting room with 50 or a hundred chairs in
6 it, right?

7 A. That's correct, yes.

8 Q. And could you estimate for us the approximate size of this
9 room that we're talking about here?

10 A. Sure. I would say the room is about maybe 20 -- maybe 20
11 by 15ish.

12 Q. And -- and how many people do you think this room could
13 hold if it was completely full?

14 A. If every chair was full?

15 Q. Yeah.

16 A. Twenty-plus people.

17 Q. Twenty-plus people.

18 And you never saw 20-plus people sitting in that
19 waiting room, right?

20 A. I saw it mostly full at times.

21 Q. Mostly.

22 MR. CHAPMAN: Can we see the still of shots from the
23 hallway on January 26th? That's time code 14:13 on the
24 January 26th video.

25 BY MR. CHAPMAN:

1 Q. Does this look like the hallway as it appeared to you in
2 the video on January 26th?

3 A. Yes, sir, that is the hallway on January 26th.

4 Q. Okay. And so here we can see it looks like four people in
5 the hallway with one in the wheelchair that are in the --
6 the -- the near part of the frame, right?

7 A. I see one, two, three, four, five, I see about six.

8 Q. I was going to get to the two in the back in a second.

9 A. Okay. I see -- yeah, okay. I see a different total than
10 what you're saying.

11 Q. Sure. So we see -- let's start with this. We see two
12 people all the way in the back that appear to be standing in
13 line, right?

14 A. I see those two, yeah, there's two standing.

15 Q. And that's the line that you would stand in if you were
16 waiting to go in and get your urine drug screen, right?

17 A. That's correct, yes.

18 Q. So the door that they're going to walk through is the door
19 where you're usually with the provider alone conducting your
20 drug screen. Other patients weren't with you when you were
21 behind that door?

22 A. Right. But that door opens into the office and you can
23 see into the exam rooms, et cetera, so they're at all
24 connected.

25 Q. Understood. So it's a little bit blurry, but other than

1 those two people that are waiting, we have five people if that
2 thing in the red is a person?

3 A. I would agree with that, yeah.

4 Q. Okay. Let's go to the second image, time code 14:13:57 on
5 January 26th. All right. So here you said the waiting room
6 was mostly full, right?

7 A. Which time? I said at times it was mostly full.

8 Q. At times.

9 Well, this is an image from January 26th, and here we
10 only see four people and a few open chairs, right?

11 A. That's what I see in that picture.

12 Q. Let's go to the very next image, 14:15:05, just a couple
13 minutes later. This is the other side of the waiting room,
14 right?

15 A. Yes.

16 Q. Yep. And how many people do we have here?

17 A. I see six and possibly a seventh sitting next to the
18 plant.

19 Q. So we've got about ten people in that waiting room?

20 A. Approximately, yeah. It -- it -- the number fluctuated.
21 I mean you can't -- so if you look at a snapshot, yeah, I can
22 tell you how many were there at that moment, and then the
23 number fluctuated, it got bigger and smaller at times.

24 Q. Understood. Now, prior to January 26th, you were in the
25 office on January 5th, right?

1 A. Yes.

2 MR. CHAPMAN: Can we see the first image of
3 January 5th?

4 BY MR. CHAPMAN:

5 Q. Empty hallway, right?

6 A. Yes.

7 Q. That's how it appeared to you while you were going into
8 the office?

9 A. Yes, sir.

10 Q. On your very first attempted visit?

11 A. Yes, sir.

12 Q. Now, that visit you were told you need a referral and you
13 have to come back, right?

14 A. Yes.

15 Q. Let's go to the next image, the waiting room on
16 January 5th. Also not busy, right?

17 A. Correct, yeah, not busy at all.

18 Q. Doesn't appear to be anybody there.

19 A. Not in that picture.

20 Q. Yeah. Now, you also appeared for your third let's just
21 say appearance as opposed to using the word visit because I
22 know you didn't see the doctor the first time.

23 A. I understand.

24 Q. Your third appearance.

25 MR. CHAPMAN: Let's see the hallway from

1 January 18th, 2016.

2 MS. MURDOCH: February?

3 MR. CHAPMAN: February, yes.

4 BY MR. CHAPMAN:

5 Q. You've got two people in the hallway?

6 A. Appears to be.

7 Q. One of them appears to have a cane?

8 A. It might be a third person there too. I'm -- I'm looking
9 at the feet on the floor.

10 Q. Oh, you -- you're a better detective than I am.

11 A. There's two or three people there.

12 Q. Okay. So we've got three people in the hallway.

13 Let's go to the next image, time code 15:45 on that
14 day. Now, I want you to pay attention here to this guy in the
15 gray hoodie, okay? We -- we have in this image two, four and
16 then maybe there's a fifth person behind him, right?

17 A. Yes.

18 Q. All right.

19 MR. CHAPMAN: Let's go to the next image. I think we
20 skipped over one here. There should be one from 15:45:25
21 seconds. You don't have that one?

22 MS. MURDOCH: Unh-unh.

23 BY MR. CHAPMAN:

24 Q. Okay. So here this is still February 18th. We've got
25 four more people that you see here on the other side of the

1 waiting room, right?

2 A. Right.

3 Q. Let's go to February 18th. Now, this is after your visit
4 at 17:27, at 5:27 p.m.

5 Next.

6 (Brief pause)

7 MS. MURDOCH: Give me the time.

8 MR. CHAPMAN: 5:27:47.

9 (Brief pause)

10 MR. CHAPMAN: I'm sorry about the delay, Your Honor.
11 We're just trying to work out an issue

12 THE COURT: That's okay.

13 MR. CHAPMAN: We'll just pivot and show it on the
14 Elmo.

15 BY MR. CHAPMAN:

16 Q. Okay. Let's go back for a second. We had a little
17 technical glitch there. Remember the prior video I -- or the
18 prior image I asked you to pay attention to the guy in the gray
19 hoodie?

20 A. I remember you telling me that, yeah, and I saw him.

21 Q. You -- you saw maybe five people in the frame to the left
22 of this in that last image?

23 A. Yeah. I kind of lost track of -- kind of got twisted
24 around where we're facing in the office here.

25 Q. Sure. But does that look like the same hoodie in the very

1 near part of the frame, that same guy I told you to take a look
2 at?

3 A. The color looks the same.

4 Q. And you remember seeing that guy in the black vest as well
5 in that last image?

6 A. Yeah.

7 Q. Yeah. So we had -- we had five people there and we've got
8 a total of three more, right? That's seven total people in the
9 waiting room at that time?

10 A. At that time, yeah.

11 Q. At that time.

12 A. I -- I would also say it fluctuated all the time.

13 Q. So let's go to February 18th, again at 5:27:47. We've
14 got it. Okay. She beat me. Here we've got just three people
15 in the waiting room if we count the baby as a full -- full
16 person, even though probably not a patient, right?

17 A. Probably not a patient.

18 Q. Okay. And then let's go to just a few seconds later, the
19 other side of the waiting room, 7:27 -- I'm sorry, 5:27 and
20 50 seconds. It's the bottom image, 5:27:50 seconds. So we've
21 got an additional three people, right? That's a few seconds
22 later?

23 A. Yeah, I see three additional people around the same time.

24 Q. So if we don't count the baby, we've got five total in the
25 waiting room at that time?

1 A. Right.

2 Q. Not going to do this to you too much longer. We're almost
3 at the end.

4 Let's take a look at March 9th at 10:01. Empty
5 hallway, right?

6 A. At 10:01:53, empty hallway, yes, I see it.

7 Q. Yep.

8 A. Yes.

9 Q. And then March 9th at 10:02, one person?

10 A. I see one person in that picture.

11 Q. Not busy, right?

12 A. At that moment, not busy.

13 Q. March 22nd, do we have to show it or would you agree with
14 me that the waiting room is completely empty on March 22nd?

15 A. Well, you'd have to tell me which time because I can tell
16 you right now there was times when I showed up when it got
17 increasingly busier and busier as I -- as I was there. So you
18 didn't give me a time so it's hard to answer.

19 Q. We'll go ahead and show it. So March 22nd at 4:19, empty?

20 A. In that picture, I don't see anyone in the picture.

21 Q. Okay. Let's go to the other side of the waiting room,
22 March 19th at 4:21, just two minutes later, empty?

23 A. In that picture it is empty, correct.

24 Q. April 26th, 5:21:37, let's take a look at that and see if
25 it's busy or empty. Two people?

1 A. I see two people in that picture.

2 Q. And let's go to the next one.

3 A. I don't -- again, I don't see the whole lobby; I only see
4 just a portion of it.

5 Q. And the next image taken just a few seconds later, the
6 other side of the waiting room, you've got that same person
7 with that gray sweater on and we've got three additional
8 people, right? Pretty empty, right?

9 A. I would say there -- yeah, there was five people in the
10 two pictures that I saw.

11 Q. You've -- you've watched the videos that you took in this
12 case?

13 A. I have, yes.

14 Q. And during any of those videos did you see 25 people in
15 the waiting room?

16 A. I -- I don't remember the exact number of people in the
17 lobby.

18 Q. Well, you said it was busy and the government has tried to
19 elicit from just about every witness here that it was busy. Do
20 you have any evidence that there was a significant amount of
21 people in Dr. Pompy's waiting room?

22 A. I do.

23 Q. Okay. If Dr. Pompy slotted patients at -- in 15-minute
24 slots, I think the most we saw here was ten, how long would it
25 take him to get through ten patients?

1 A. Two and a half hours.

2 Q. Two and a half hours.

3 Would you consider ten patients to be busy for a
4 practice like this with 20 people on staff?

5 A. I would not consider that busy, but that's not really what
6 I saw.

7 Q. Okay. Okay. So let's start talking about the visits in
8 order and I think we can move quite quickly through this.

9 MR. CHAPMAN: We can block this out.

10 BY MR. CHAPMAN:

11 Q. All right. So let's start with January 5th. Your goal is
12 to go into Dr. Pompy's office and see if you can get seen?

13 A. Yes, sir.

14 Q. You were told by the front desk that you need to have a
15 referral for pain management?

16 A. That's correct.

17 Q. You go to Blue Cross Blue Shield and say, "He won't see me
18 without a referral," right?

19 A. Right.

20 Q. They set you up with Dr. Robertson?

21 A. Yeah.

22 Q. Now, you understand how the referral system of medicine
23 works, right? Doctors refer patients to other doctors when
24 they're not able to help that specific issue?

25 A. It -- I -- yeah, I understand the basic sense of that, but

1 I don't have great detail on how referrals work, but yeah,
2 that's my basic understanding of it.

3 Q. And you also know that when one referral -- when one
4 physician communicates a referral to another physician, they're
5 indicating that your level of service is necessary for this
6 patient, right?

7 MR. LIEVENSE: Objection. Calls for speculation.

8 MR. CHAPMAN: He works for Blue Cross Blue Shield,
9 Your Honor. They certainly know how referrals work.

10 THE COURT: With that knowledge based on his
11 experience, he can answer. Go ahead.

12 A. I think that a pain -- that a referral indicates that
13 they're referring for something they can't treat themselves.
14 That's my understanding of the -- a referral.

15 BY MR. CHAPMAN:

16 Q. And your referral in this case, and we can show it to you
17 again if you need it, indicated that you had back and nerve
18 problems, right?

19 A. I don't think the referral said that.

20 Q. The X-ray also said that?

21 A. There are two different things. The X-ray did say that.
22 The pain re -- or the pain management referral did not say
23 that.

24 MR. CHAPMAN: Can we look at --

25 A. That's my recollection.

1 MR. CHAPMAN: -- Government Exhibit on page 7,
2 Government Exhibit 1, page 7?
3 MS. OUELETTE: Is that page 7?
4 MR. CHAPMAN: Yes, please.
5 BY MR. CHAPMAN:
6 Q. So I think you were correct that the -- the other
7 documents said back and nerve problems, but here we have a
8 prescription, right?
9 A. Yes.
10 Q. And this is from Dr. Robertson?
11 A. It is, yes.
12 Q. And it says for pain management, right?
13 A. Yep, it just says the words "pain management."
14 Q. And that's Dr. Robertson's signature?
15 A. Yes.
16 Q. Now, that was dated December 10th, 2015, correct?
17 A. It was.
18 Q. You had Dr. Robertson backdate this referral to make it
19 look like it was made before you showed up on January 5th?
20 A. I -- I don't recall the -- the timeline of that being
21 signed or dated.
22 Q. Mr. Howell, there must have been some discussion about
23 this. This is a medical record, right?
24 A. It is.
25 Q. You're aware that falsification of a medical record is a

1 felony in the State of Michigan?

2 A. It is, yeah.

3 Q. Did you have any special authorization to commit a felony
4 in the State of Michigan, to create that false medical record?

5 A. No, my intent was -- no intent to commit a felony. My
6 intent was to further the investigation and get a pain
7 management referral. There was no --

8 Q. The question was did you have any special permission to
9 commit a felony in the State of Michigan and alter a medical
10 record?

11 A. I -- I didn't alter that document.

12 Q. You had Dr. Robertson do that, right?

13 A. He wrote that pain management referral. I didn't write
14 it.

15 Q. Was your conversation with Dr. Robertson to receive pain
16 management on December 5th or was it after January -- on
17 December 10th or was it after January 5th?

18 A. It was after January 5th.

19 Q. That date's false?

20 A. That date's false. I talked to him after January 5th,
21 2016.

22 Q. The need for pain management is also false?

23 A. Right.

24 Q. Okay.

25 A. It's -- yeah.

1 Q. Did you talk to any health care professionals about
2 whether getting a referral for pain management would give a
3 doctor an indication that you have a legitimate medical injury?

4 A. No. Just I talked to Dr. Robertson about this referral.
5 It's -- didn't go anywhere else.

6 Q. Did you talk to Blue Cross Blue Shield about this
7 referral?

8 A. I think my manager knew I did this, yeah.

9 Q. Your manager said it was okay?

10 A. Yeah.

11 Q. Did you have Dr. Robertson date that referral on
12 December 10th or did he just do that himself?

13 A. I don't remember any discussion about what the date was.

14 Q. So it just magically happened to be backdated to before
15 you ever stepped foot in Dr. Pompy's office?

16 A. I didn't say that.

17 Q. Okay.

18 MR. CHAPMAN: Can we please pull up page 10 of the
19 same exhibit? Thank you.

20 BY MR. CHAPMAN:

21 Q. Okay. So this was the patient packet you filled out and
22 dropped off to Dr. Pompy's practice on January 26th?

23 A. That's one page of the document, yes.

24 Q. And a staff member went over that packet with you when you
25 arrived at the office that day?

1 A. No.

2 Q. You -- you didn't sit at the counter while somebody was
3 reviewing that information?

4 A. When you said reviewed it with me, I watched her kind of
5 review it. She didn't review it with me.

6 Q. All right. And you -- you signed this new patient packet?

7 A. I did, yes.

8 Q. There was also a warning there saying "Please be advised
9 during your initial evaluation narcotic medication will not be
10 prescribed," right?

11 A. Right.

12 Q. Now, you mentioned that it took three visits to get pain
13 medication at Dr. Pompy's practice, you said that?

14 A. I did, yeah.

15 Q. Yeah. And you said you -- you believed, based on
16 information you had, that it would take that long?

17 A. Yes.

18 Q. Right?

19 So you think that -- well, is it your testimony that
20 you believe that this three visits was sort of a standard
21 process for Dr. Pompy, you automatically get it after three
22 visits?

23 A. You know, I -- that was the information I had, that it
24 takes three visits to get medication.

25 Q. All right. But if you receive medication on the first

1 visit, that would be considered potential red flag for you,
2 right?

3 A. That would be outside of the information that I knew.

4 Q. Okay. But my question's a little bit different.

5 A. Okay.

6 Q. If Dr. Pompy prescribed you without evaluating your pain
7 or ordering tests, that would be unusual to you, right?

8 A. Yes.

9 Q. Okay. Now, there's also this mention of a document --

10 MR. CHAPMAN: And can we please blow up "Pain Equals
11 9," that portion, "Pain Equals 9 Every Time He Drives."

12 BY MR. CHAPMAN:

13 Q. Now, you said you were a driver, right?

14 A. Yes.

15 Q. And, in fact, you previously testified that you only said
16 you were a driver, just a car driver, right?

17 A. Yeah, I said I was a driver, yeah.

18 Q. All right. At any point in time did you inform the staff
19 that you were an automobile transport driver?

20 A. I may have.

21 Q. And you understand an automobile transport driver is a
22 truck driver, they drive trucks that carry cars?

23 A. No.

24 Q. No?

25 Is there some different definition?

1 A. There is.

2 Q. Can you tell us because I might be mistaken.

3 A. Yeah, they do car -- like car convoys where one car
4 follows another and they transport them in lines of cars --

5 Q. Okay.

6 A. -- being driven.

7 Q. And that's called automobile transport?

8 A. I guess it could be, yeah.

9 Q. Okay.

10 MR. CHAPMAN: And can we please take that down and
11 just go back to the full document?

12 BY MR. CHAPMAN:

13 Q. Did you inform the staff that you have a level pain when
14 you're drive -- a level 9 pain when you're driving?

15 A. No.

16 Q. Because that's not your handwriting, right?

17 A. That's not my handwriting.

18 Q. That's not Dr. Pompy's handwriting, right?

19 A. I don't know whose handwriting that is. I know it's not
20 mine.

21 Q. Do you think you might have given a medical assistant an
22 impression that you have that level of pain when you're
23 driving?

24 A. I think she asked about pain and I responded with
25 stiffness.

1 Q. That's all you think you said?

2 A. That's all I -- that's all I remember saying.

3 Q. Okay.

4 A. I continuously said stiffness when they mentioned pain,
5 and I may have agreed with something she said but I continued
6 to say stiffness.

7 Q. Okay. I appreciate that. Thank you.

8 Let's go to the next page of that document. Now,
9 here you put some biographical information including I believe,
10 it's hard for me to see, Dr. Robertson's address in Eastpointe?

11 A. I did, yeah.

12 Q. And that's Dr. Robertson's actual address, right?

13 A. I believe so. I can't say that for sure. I -- I believe
14 that's it. I know it's in Eastpointe.

15 Q. Okay.

16 A. Or it was. I don't know where it is now.

17 Q. And you put down I think a Social Security number
18 somewhere on this form?

19 A. Yeah.

20 Q. Very top?

21 A. Right.

22 Q. That's not your Social Security number?

23 A. Right.

24 Q. Okay.

25 MR. CHAPMAN: We go to the next page please? And the

1 next page? Should be on 13.

2 BY MR. CHAPMAN:

3 Q. All right. So now during your testimony on direct
4 examination you indicated that when you were asked about
5 musculoskeletal complaints, you only circled the word
6 "stiffness," right?

7 A. That's right.

8 MR. CHAPMAN: Can we blow up the "Musculoskeletal"
9 line?

10 BY MR. CHAPMAN:

11 Q. Now, here you also circled part of the word "pain," isn't
12 that right?

13 A. Two letters of the word pain are part of the circle of
14 stiffness.

15 Q. Okay. You think this could lead a reasonable person to
16 conclude that you're saying you have pain and stiffness, joint
17 pain and stiffness?

18 A. Well, I think that it -- it says "joint pain," and I
19 didn't even circle just about a little over half of one of the
20 two words in that. So my indication was to be stiffness, so I
21 think it would be kind of a stretch to assume that I was trying
22 to circle the "joint pain."

23 Q. This is really what you did every time you were at Dr.
24 Pompy's office, you tried to straddle the line, didn't you?
25 You -- you tried to not fully indicate that you have pain, keep

1 on stiffness, but sometimes you had to give the impression you
2 were in pain, right?

3 A. I don't -- no, I don't -- I disagree with that.

4 Q. You do.

5 A. I was --

6 Q. Okay.

7 A. -- I was not straddling the line. I was staying towards
8 stiffness.

9 Q. Okay.

10 MR. CHAPMAN: Let's back out of that. And then I
11 believe there's -- let's look at "Neurological." I think
12 that's the next line. My eyes are terrible, I'm sorry.

13 BY MR. CHAPMAN:

14 Q. You circled "back problems," right?

15 A. I circled "back problems" there under "Neurological."

16 Q. Okay.

17 MR. CHAPMAN: Let's back out of that please and let's
18 go to the "booze on the weekends."

19 BY MR. CHAPMAN:

20 Q. Now, I know James Stewart indicates that he has booze on
21 the weekends, but let me ask about James Howell. Do you
22 occasionally drink on the weekends?

23 A. Yeah.

24 Q. And I believe on your paperwork here you indicated about
25 one to three drinks a day is what you would take, right? It's

1 not on this form but I'm just asking from your memory.

2 A. I don't remember what I put for that answer.

3 Q. I can show it to you. That's okay.

4 A. Okay.

5 Q. But occasionally you drink booze on the weekends?

6 A. Me myself?

7 Q. Yeah.

8 A. Very occasionally.

9 Q. Very occasionally.

10 But people do, very common practice, right?

11 A. That's true.

12 Q. And do you think that that's the marker of an alcoholic?

13 A. I guess I would say there'd have to be further questions
14 asked to determine that.

15 Q. Well, that's your impression of what a doctor should do.
16 I'm asking what you think. If somebody has booze on the
17 weekends sometimes, does that make them an alcoholic?

18 A. No.

19 Q. No. You're aware that alcoholism is repeated use despite
20 adverse consequences?

21 A. I was not aware that's the definition of that but...

22 Q. Okay. Confining drinking to the weekends appears to be
23 trying to avoid adverse consequences of alcohol use, right?

24 A. It could -- that could be said.

25 Q. Right. Now, you were also tested for alcohol levels when

1 you went into Dr. Pompy's office. I can show you the form

2 later if you need to, but did you have EtOH, ethanol?

3 A. I did recall seeing that one time.

4 Q. Now, you didn't drink before you went into his office,
5 right?

6 A. No.

7 Q. That would be improper as a Blue Cross Blue Shield
8 investigator?

9 A. Yeah, I don't drink when I'm working.

10 Q. And so your ethanol levels, if that was your urine or
11 blood, would be negative?

12 A. That's correct.

13 Q. And so every time Dr. Pompy tested that, it would have
14 shown up that you didn't have alcohol in your system?

15 A. That's correct.

16 Q. Indicating you weren't actively engaged in alcohol abuse?

17 A. That is correct, yeah.

18 Q. Is there a reason why you're trying to paint yourself as
19 an alcohol abuser but you don't put down that you drink every
20 day or you have a drinking problem?

21 A. Yeah, because I continuously indicated that I was taking
22 controlled medications in addition to alcohol, which is --
23 that's a very dangerous thing, and every single controlled
24 medication container says don't -- don't combine with alcohol
25 and I continuously told them that.

1 Q. And -- and did you give Dr. Pompy any reason to believe
2 that you were combining medications with alcohol?

3 A. Yes.

4 Q. Your alcohol levels were negative every time you came in,
5 right?

6 A. Alcohol levels were negative, but most times I mentioned
7 that I was into drinking.

8 Q. In fact, you told an employee that you have sometimes a
9 little bit of moonshine, right?

10 A. I did, yeah.

11 Q. Or you drink 12 Bud Lights, right?

12 A. I did say that.

13 Q. And --

14 A. I don't really do that but that's what I said.

15 Q. You made repeated use of the word moonshine, right?

16 A. I did.

17 Q. But not once did you ever say to Dr. Pompy's face that you
18 suffered from an alcohol addiction, right?

19 A. I did not say that to him. I gave it to him in writing.

20 Q. Not once did you ever say to Dr. Pompy that you drink
21 moonshine, right?

22 A. I did not verbally not say that to him. I just put it in
23 writing.

24 Q. And your testing results were negative for alcohol, right?

25 A. They were.

1 MR. CHAPMAN: Let's go to page 18 of the same exhibit
2 please, and I really appreciate your help.

3 BY MR. CHAPMAN:

4 Q. Again, this is really difficult for me to see, but I
5 believe there's a part that talks about drinking and it
6 indicates one to three drinks. And here you check off on the
7 new patient packet that you consume about one to three drinks
8 per day, right?

9 A. I did, yeah.

10 Q. Now, do you know the definition of alcoholism according to
11 the National Institute for Alcohol Abuse?

12 A. No.

13 Q. No. You never looked that up before you decided how to
14 mark this, right?

15 A. I did not look that up, no.

16 Q. Do you think that one to three drinks per day is a marker
17 of an alcohol addiction?

18 A. I don't know the answer to that.

19 Q. Do you think that there's a reason why this form says
20 occasional drinking, one to three or four or more? Four or
21 more would indicate alcohol abuse, right?

22 A. I guess, honestly, if you -- if you drank one drink a day
23 and it was one gallon, then you could say you only had one
24 drink but you're still abusing alcohol. So it's kind of -- for
25 me it's hard to say based on those two numbers there.

1 Q. Mr. Howell, you can't seriously tell us that the level of
2 the -- the amount that's measured for drink isn't a standard
3 amount that is indicated by this physician's practice, meaning
4 a specific -- one drink is a specific amount of alcohol, right?
5 You know that.

6 A. I -- I guess -- I was kind of making an assumption there
7 but...

8 Q. Okay. Are you saying that when you were filling out this
9 form, you think that one drink could be a gallon?

10 A. I'm saying when I filled out that form, I expected maybe
11 to get some more questions about that because potentially --

12 Q. You're answering different questions. I'd like you to
13 answer my question.

14 A. Okay. Go ahead.

15 Q. When you filled out that form, were you indicating to Dr.
16 Pompy's office that you were drinking one gallon drink?

17 A. No.

18 Q. Or three gallon drinks?

19 A. No.

20 Q. No.

21 One to three drinks of a standard amount of alcohol,
22 depending on if you're drinking beer or liquor, right?

23 A. Right.

24 MR. CHAPMAN: Can we go to page 14 please, and
25 highlight the area that discusses prior medical diagnoses and

1 indicates back or nerves.

2 BY MR. CHAPMAN:

3 Q. Here you're indicating to Dr. Pompy that you have a prior
4 diagnosis of back and nerve issues, correct?

5 A. Yeah. That's why I wrote back and nerves.

6 Q. Now, we know that you complained of back stiffness but I
7 want to focus on the nerve issue. Where did you get the idea
8 to indicate that you had some nerve issues?

9 A. I got the idea that -- I had told him I was taking Xanax
10 and Ativan and different drugs for -- for that, indicating it
11 could be a nerve -- nervousness problem or -- I expected more
12 questions to arise from that. That's why I put nerves.

13 Q. You think nerve in this context, the context that you're
14 presenting to Dr. Pompy, means nervousness, not nerve pain?

15 A. That's -- that was my intention, yeah.

16 Q. Well, let me see if you know about this, but are you aware
17 that some patients, like one that we heard about in this case,
18 can have injuries to their nerves which cause them pain?

19 A. I am aware of that, yeah, injuries to nerves can cause
20 pain. Not aware of any patients in this case at all.

21 Q. Are you aware that those injuries to the nerves can be
22 very difficult to diagnose use an MRI or an X-ray?

23 A. I am aware of that. I -- I put nerves indicating --

24 Q. I -- don't -- answer my question. You've already answered
25 it. We don't need to go any further.

1 Okay. Now, understanding that you're aware that
2 there is something called nerve pain and that damages to nerves
3 are difficult to see, isn't it true that you're giving Dr.
4 Pompy and his staff the impression that you have a very
5 difficult to diagnose injury?

6 A. No.

7 Q. No.

8 Okay. Now, Dr. Robertson also prepared an X-ray for
9 you, right?

10 A. That's right.

11 Q. And that was presented to Dr. Pompy's office?

12 A. Yes.

13 Q. And that X-ray also indicated that you had back and nerve
14 problems, right?

15 A. Yes.

16 Q. And that X-ray was solely drafted by Dr. Robertson?

17 A. That's correct.

18 Q. Now, do you know if Dr. Robertson was using nerves in the
19 context that you are nervous and need Xanax or nerves in the
20 context of you need an interventional pain management physician
21 for neuropathic pain?

22 A. I don't know what his -- what the intention was, but I --
23 I feel that more questions would be needed to be asked in
24 regards to that.

25 Q. I don't think we're interested in your impression of what

1 a doctor should do. We're more interested in what you put down
2 on the forms, okay?

3 A. Do you want me to answer it that way?

4 Q. No, let -- let's go to page 15. We'll just move on.

5 A. Okay.

6 THE COURT: Want to break in about five minutes or
7 so, Mr. Chapman, for our lunch recess?

8 MR. CHAPMAN: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. CHAPMAN: Let's go to the driving makes your pain
11 worse. I think that's on this page if I have it right.

12 Well, never mind that. Let's -- can we please
13 highlight "help with back"?

14 BY MR. CHAPMAN:

15 Q. So you're informing Dr. Pompy here that what you're
16 interested in is help with your back pain that flares up when
17 you're driving, right?

18 A. No.

19 Q. No, you're not asking for help with your back?

20 A. You said pain. I never said pain.

21 Q. Oh.

22 A. I said help with back.

23 Q. Help with back.

24 So we omit the pain part and magically we're giving
25 Dr. Pompy the impression that you don't have pain, you just

1 want help with your back.

2 A. We didn't omit the pain part. It was never there.

3 Q. All right.

4 A. I put "help with back."

5 MR. CHAPMAN: Let's go to page 19. And just to get
6 through this form quickly, if we can highlight the portion that
7 indicates medications provide relief for two to four hours.

8 BY MR. CHAPMAN:

9 Q. All right. So here you're asked very specifically "How
10 Long Does Medicine Provide Relief?," right?

11 A. Yes, sir.

12 Q. And you know the type of medicine we're talking about here
13 is pain medicine?

14 A. Yes.

15 Q. You're at a pain management practice?

16 A. Right.

17 Q. You're asked about the medicines that you take and you're
18 asked how long they provide you relief?

19 A. That's right.

20 Q. And you indicate here that they provide you relief for two
21 to four hours, right?

22 A. That's right.

23 Q. Relief from what?

24 A. I answered the question, "How Long Does the Medicine
25 Provide Relief? 2-4 hours."

1 Q. I want to know what Mr. Stewart thinks that means.

2 A. Well, since I had written stiffness everywhere else on
3 here, that was what I was indicating.

4 Q. Okay. So the -- the hydrocodone that you were taking
5 relieves your stiffness for two to four hours, that's what
6 you're saying here, right?

7 A. Right.

8 Q. Okay.

9 MR. CHAPMAN: Can we blow up the medications portion?

10 Thank you.

11 BY MR. CHAPMAN:

12 Q. Okay. So here you indicate you were previously taking --
13 well, you said, I'm sorry, currently taking Norco, Soma and
14 Ativan, correct?

15 A. Yes.

16 Q. Now, you weren't actually currently taking those
17 medications?

18 A. That's right.

19 Q. But you were previously prescribed some of them, right?

20 A. Correct.

21 Q. Okay. You were previously prescribed Norco by Dr. Zao,
22 7.5?

23 A. Oh, yeah, a long -- long -- a long time previous to that,
24 yes.

25 Q. August 2015?

1 A. That's right.

2 Q. Yeah. Now, 7.5 is a higher strength than you were
3 prescribed by Dr. Pompy?

4 A. That's correct.

5 Q. Okay. You weren't prescribed Soma or Ativan by the -- by
6 the prior doctors, correct?

7 A. Correct.

8 Q. All right. So this statement was false about the
9 medication that you were taking?

10 A. That's right. I was not taking those.

11 Q. Now, you wanted to see if Dr. Pompy or his staff would
12 just write you new prescriptions for what you claimed you were
13 on before without evaluating you?

14 A. My reason for writing that was to see if more questions
15 would be asked about where I was getting them from. That's
16 what I thought would happen.

17 MR. CHAPMAN: Let's go to page 19. I'm sorry, we're
18 on 19. There's a question indicating that pain has increased
19 since it began. It's line 57 I think.

20 BY MR. CHAPMAN:

21 Q. Okay. Now, you mentioned that you were trying to avoid
22 using the word pain, but it appears here on the form that
23 you're telling Dr. Pompy and his staff that since your pain
24 began it has increased, correct?

25 A. That's what I circled there, yeah.

1 Q. You think that this indicates that you're describing a
2 painful condition?

3 A. Yeah, that's the answer to the questions. I put increase,
4 yeah.

5 Q. You said previously that the pain had lasted for ten
6 years?

7 A. Yeah.

8 Q. And then on another form you said it lasted for 20 years?

9 A. That's right.

10 Q. And here you're telling us that it's increased?

11 A. That's right.

12 Q. And "How Well Do You Cope with Your Pain?" You provided a
13 mid-range response, not -- not cope very well, right?

14 A. That's right.

15 MR. CHAPMAN: We can take that down.

16 Your Honor, I'm about to move to a different
17 document. We can either break now or I can push forward.

18 THE COURT: Let's -- let's break now. It's 11:55.
19 We can go till about 12:25. Try to be back at 12:30 for our
20 last session of the week, ladies and gentlemen. We'll declare
21 our lunch break now.

22 Please do feel free to go outside the building if you
23 want to get some fresh air or food or whatever. If you do
24 that, make sure you wear your juror badge, and don't talk about
25 the case with anybody in the jury room or otherwise. Try to be

1 back by about 12:25 and we'll get going for the afternoon
2 session.

3 Let's all rise for our jurors now.

4 (Jury excused at 11:55 a.m.)

5 Okay. Good. We'll take our lunch break now. Thank
6 you.

7 (Court in recess at 11:56 a.m.)

8 (Proceedings resumed at 12:32 p.m., all parties
9 present)

10 THE LAW CLERK: All rise for the jury.

11 (Jury entered the courtroom at 12:32 p.m.)

12 THE COURT: Okay. All may be seated. Welcome back.
13 Mr. Chapman, go right ahead, sir.

14 MR. CHAPMAN: Thank you, Your Honor. I just need a
15 witness before I start.

16 THE COURT: Oh, we don't have our witness?

17 MR. PRATT: I thought we were going to argue. I
18 thought we were going to argue

19 MR. LIEVENSE: I know. Your Honor, before we
20 commence, do we want to I guess outside the presence of the
21 jury address those other issues or do we want to do that later?

22 THE COURT: Well, I thought about the final line of
23 questioning that you brought up, and I would not be inclined,
24 based on some reflection, to have the government go into that
25 after I thought about it.

1 Other than that, I don't know what you want to talk
2 about.

3 MR. LIEVENSE: Understood.

4 THE COURT: Okay. Go ahead. We'll -- we'll see if
5 you want to bring that up on -- on redirect, but -- but anyway,
6 go right ahead.

7 BY MR. CHAPMAN:

8 Q. Mr. Howell, I am going to start speeding things up so we
9 can get you out of here, okay?

10 Let's -- let's take a look at video 1 from
11 January 26th, 2016. And while we're queuing that up, January
12 26th was the visit where you dropped off your new patient
13 paperwork and scheduled your first visit, is that right?

14 A. That's right.

15 Q. And you talked mostly to the front desk people there, you
16 didn't see Dr. Pompy?

17 A. That's correct.

18 Q. Okay.

19 MR. CHAPMAN: Let's play minute 13:21, looks like
20 we're already there, of that video.

21 (Video being played)

22 I'm going to replay that so that we can make sure we
23 get all of the audio.

24 (Video being played)

25 BY MR. CHAPMAN:

1 Q. Okay. So during this interaction you were speaking with a
2 patient out in the hallway?

3 A. Yes.

4 Q. Okay. Of course, you're not entirely sure who the
5 identity of that person is, right?

6 A. That's correct, yeah.

7 Q. And this person informed you that in your first visit you
8 won't get any medication?

9 A. Right.

10 Q. They'll do your tests and then develop a plan of attack,
11 right?

12 A. That's the -- the gist of what she said, yes.

13 Q. Is that one of the things that you were relying on when
14 you generated the belief that you wouldn't get medication on
15 the first visit?

16 A. That's one of them, yes.

17 Q. Okay. And so you were also aware after that conversation
18 that it was Dr. Pompy's general practice to see a patient,
19 order tests and develop a plan of attack, that's what the
20 patient said?

21 A. I don't know -- yeah, I don't -- I -- at that time I
22 didn't know what his practice was going to be. I know that's
23 what she said, yes.

24 Q. That's a fair answer.

25 A. Okay.

1 Q. So let's now take a look at Government Exhibit 1, page 33,
2 and I think we can bring that up. You were aware that a MAPS
3 report was pulled after that January 26th visit?

4 A. Yes.

5 Q. Okay.

6 MR. CHAPMAN: And let's blow up the last hydrocodone
7 prescription we see here.

8 BY MR. CHAPMAN:

9 Q. We have one on June 10th, 2015.

10 A. I see that.

11 Q. Okay.

12 MR. CHAPMAN: Can we -- can you blow that up, is that
13 possible?

14 BY MR. CHAPMAN:

15 Q. Okay. So in order to receive this prescription, you were
16 doing an undercover visit on Dr. Zao's office?

17 A. That's right.

18 Q. And Dr. Zao elected to prescribe you hydrocodone
19 7.5 milligrams?

20 A. Correct.

21 Q. And do we have the amount? You received 30 pills from Dr.
22 Zao?

23 A. Correct.

24 Q. And how many days of supply was that, if you know?

25 A. I don't know.

1 Q. Were you also wearing a camera during this visit?

2 A. Yes.

3 Q. And was this your first visit to Dr. Zao?

4 A. I -- I don't recall.

5 MR. CHAPMAN: Let's go to the next page, the next
6 page.

7 BY MR. CHAPMAN:

8 Q. You then received another prescription in August from that
9 same doctor?

10 A. Yes.

11 Q. It was hydrocodone as well?

12 A. Yes.

13 Q. Is it fair to assume you wouldn't have taken the
14 hydrocodone that you received from the first visit?

15 A. That's fair to say. I never took any hydrocodone.

16 Q. Do you recall if you got a urine drug screen from Dr. Zao?

17 A. I recall that I did not get one.

18 Q. So he would have had -- he or she would have had no way of
19 knowing that you were negative for the drugs?

20 A. That's right.

21 Q. Okay.

22 A. Well -- well, I didn't do a urine drug screen so I don't
23 know if -- if there's any other independent confirmation or
24 discussion about that. I don't -- I don't really recall that.
25 But there was no urine drug screen there that I remember.

1 Q. Okay. Now, you indicated that you -- because of your MAPS
2 history, you were appearing as a doctor shopper, right?

3 A. Yes.

4 Q. But in the X-ray that you provided to Dr. Pompy's office,
5 Dr. Roberts [sic] indicates that you have been treat -- you
6 have been treating with various physicians, right?

7 A. I think that's what it says, yeah.

8 Q. And let me -- let me show it to you just to make sure your
9 recollection...

10 A. Okay.

11 MR. CHAPMAN: It's just the paper copy, the consent
12 form.

13 May I approach the witness, Your Honor?

14 THE COURT: Yes, sir. Go right ahead.

15 A. Thank you. Okay. I see that part. I only read that
16 part, unless you want me to read the rest of it.

17 Q. No, that's okay.

18 So here it says, "He stated that he has treated with
19 various physicians," right?

20 A. That's what it says, yes.

21 Q. Indicating that Dr. Robertson was aware that you'd seen
22 multiple physicians as of at least December 10th, 2015?

23 A. I don't know what his awareness was. I think that that's
24 what he put on there. I don't know what his -- what our
25 discussions were about previous physicians or any of that.

1 MR. CHAPMAN: We can -- we can take those down.
2 BY MR. CHAPMAN:
3 Q. So you return then for your first visit hoping to see Dr.
4 Pompy on February 18th, 2016?
5 A. I -- yes, I did see him on that date.
6 Q. At that point you had already stopped by his office twice?
7 A. Yes.
8 Q. You hadn't received medications at all, right?
9 A. That's right.
10 Q. Okay. Now, you testified that you mentioned alcohol use
11 to the person who was doing your urine drug screen, right?
12 A. That's right.
13 Q. But you didn't mention it to Dr. Pompy during that visit?
14 A. I did not.
15 Q. Okay.
16 A. Not verbally. I -- I put it in writing but I did not
17 verbally mention that, no.
18 Q. And the person that you were talking to who was collecting
19 your urine drug sample, her name is Heather?
20 A. I don't -- I don't remember her name.
21 Q. You informed her that you were currently taking Norco and
22 Xanax, is that right?
23 A. Which date are you talking about please?
24 Q. February 18th.
25 A. Okay. I did tell her that, yes.

1 Q. And it's not my intention to make you guess. I'm just
2 trying to save time by not always showing the video for you,
3 so -- but if you need to see it, just let me know and we -- we
4 can do that.

5 A. Okay.

6 Q. So you tell Heather that you're taking Norco and Xanax?

7 A. I -- yeah. I don't know her name but I told the female
8 lab person that.

9 Q. Now, the reason why somebody like Heather who's working
10 the urine drug screen part of the practice is asking about your
11 current medications is because they want to write down what the
12 patient is currently taking, right?

13 A. I -- I don't know what her exact purpose is. That's
14 probably one of them.

15 Q. Okay. Well, you have experience with these sorts of
16 practices, and when somebody's collecting a urine drug sample
17 and they want to know what you're on, it's so they can compare
18 it to the sample, right?

19 A. And also to put it in the patient chart I would assume.
20 It all goes into one. So yeah, I -- I assume it's a
21 multi-purpose question and that is one of them.

22 Q. Is it reasonable for the urine drug screen person to
23 expect that a patient would tell the truth about their current
24 medications?

25 A. I -- I can't answer that.

1 Q. Okay. But you lied, right?

2 A. I did tell her -- yeah.

3 Q. You lied to deceive her, right?

4 A. I did.

5 Q. To deceive her into thinking you were actually currently
6 prescribed Norco and Xanax and you were taking it?

7 A. That's not totally accurate, no.

8 Q. Okay. You also falsely claimed during that visit that you
9 were there for refills?

10 A. I did, yes, I did say that.

11 Q. And the reason why you said that you were there for
12 refills is hoping that it would truncate the visit and not
13 fully examine you and just represcribe?

14 A. Yeah, I thought that might help facilitate that, yeah,
15 that I was already getting them. I didn't even really say
16 where. I just said I was already there -- I was there for
17 refills, not saying where from.

18 Q. And multiple times you told people at this practice that
19 you were simply there for refills?

20 A. True, yes.

21 Q. That didn't change their behavior, did it?

22 A. It did not, no.

23 Q. No.

24 In fact, one employee, I can't recall the visit,
25 actually confronted you and said, "But you haven't been

1 prescribed anything by Dr. Pompy," right?

2 A. That's true.

3 Q. So you're not here for refills?

4 A. That is true.

5 Q. So on -- on that visit, February 18th, you were also
6 examined by a medical assistant?

7 A. Yes, I was examined, yeah. If she -- I don't know her --
8 I think I said this before. I don't know her level of
9 training, but, yeah, it was a female employee, staff member. I
10 think she could have been a medical assistant or a nurse.
11 That's the role she was working in that day.

12 Q. Understood.

13 And during that conversation you mentioned you -- I
14 think you only get weak when you drink 12 Bud Lights?

15 A. I don't -- that's not -- not exactly how that came out,
16 no.

17 Q. Okay. But you did mention alcohol use?

18 A. I did mention 12 Bud Lights that day to her.

19 Q. Okay. But isn't it true though that you were coming off a
20 little bit more as a wise guy than somebody who was seriously
21 talking about drinking?

22 A. There was times I did both. I did make kind of, you know,
23 smart comments, wise guy comments.

24 Q. In fact, you referred to yourself as a wise guy during
25 that visit, right?

1 A. I don't -- I don't remember that.

2 Q. You said to the male medical assistant, "She doesn't --
3 she doesn't like having wise guys in the practice" or something
4 like that?

5 A. That's correct, yeah, no. Thank you. Yeah.

6 MR. CHAPMAN: Can we go to video 2 of February 18th,
7 2016 at minute 6 and 20 seconds.

8 (Video being played)

9 Six minutes and 20 seconds.

10 BY MR. CHAPMAN:

11 Q. Now, just to set this up, you're back in an exam room and
12 there's a male medical assistant or -- or male employee let's
13 say and a female there, right?

14 A. That's correct, yeah.

15 Q. Okay. And this is the first time anybody in the practice
16 has laid hands on you, right?

17 A. That's right.

18 Q. Okay. And we didn't see this video during your direct
19 exam, right?

20 A. We did not.

21 Q. Let's go ahead and watch and see what happens.

22 (Video being played)

23 Okay. So she asked you about various areas of your
24 body, she asked how your shoulders are?

25 A. Yeah.

1 Q. And you said good?

2 A. Yeah.

3 Q. She says, "Are you sure?"

4 A. Yeah.

5 Q. And then now she's about to examine your shoulders, right?

6 A. That's right.

7 Q. Now, a lot of this happens off camera, but are her hands
8 actually on you, touching you at this time?

9 A. Yes.

10 Q. And is she recording the information that she's getting?

11 A. Well, I don't know. She -- she had her hands on me so she
12 wasn't recording.

13 Q. I understand. But after did she?

14 A. I -- I saw her writing after that.

15 Q. Okay.

16 MR. CHAPMAN: Let's keep playing.

17 (Video being played)

18 Let's pause and then go to 10:30. That's perfect.

19 (Video being played)

20 BY MR. CHAPMAN:

21 Q. Now, during this part is she doing a motor reflex test or
22 at least a test on your reflexes?

23 A. I -- I don't think it was reflex testing. I would call it
24 like strength testing.

25 Q. Strength. Okay.

1 A. Like resistance.

2 Q. All right. And at some point she says, "You seem a little
3 weaker over here. Are you weaker over here on one side of your
4 body?"

5 A. Not to my knowledge.

6 Q. You don't recall her saying that?

7 A. I do recall her saying that, yes. Sorry, I thought you
8 were asking me if I was.

9 Q. Oh, no, no. That was probably a poor question.

10 A. I'm sorry.

11 MR. CHAPMAN: Let's go to -- let's fast forward to
12 12:40, and if you can drag it slowly so that we can see Kayla's
13 movements, that would be great.

14 (Brief pause)

15 And we can stop.

16 BY MR. CHAPMAN:

17 Q. So during that whole time that we just saw she's actively
18 examining you, right?

19 A. Yes.

20 Q. All right.

21 MR. CHAPMAN: Now, let's start the video here.

22 (Video being played)

23 37 is fine.

24 (Video being played)

25 Please pause.

1 BY MR. CHAPMAN:

2 Q. And you -- you told this person that your back was stiff
3 as always?

4 A. Yeah, I said -- I said something about stiff.

5 Q. And that was during a hands-on examination of your back?

6 A. Yes.

7 Q. Okay. And at -- at another point you said, "All that
8 stuff is stiffer than shit," right?

9 A. I don't know if I -- I don't know about the "all that
10 stuff," but I -- yeah, I was referring to my back and I said --
11 yeah, I said what you said.

12 Q. And you said that when her hands were on you?

13 A. I think so, yeah.

14 Q. Okay. And based on your experience, you know that she's
15 looking to help determine the source of your injury?

16 A. That's what I believe she was doing, yes.

17 MR. CHAPMAN: And we can take that down. Thank you.
18 We can just black it out actually.

19 BY MR. CHAPMAN:

20 Q. Okay. So I won't go through Dr. Pompy's entire video
21 since we just watched it, but I want to hit some highlights.
22 You again reiterated to Dr. Pompy that you were stiffer than
23 shit down there during the examination, right?

24 A. Yeah.

25 Q. Okay. And you actually asked Dr. Pompy something to the

1 effect of why he needed to examine you when the other person
2 had already done that?

3 A. Right. I said she -- she already did this or -- yes.

4 Q. Yes.

5 A. Paraphrasing.

6 Q. And he says something to the effect of she looks at
7 everything but he does a more focused examination?

8 A. I don't remember the exact words, but that's the gist of
9 what he said was she did it and he did it again, yeah.

10 Q. And he also physically examined your back area?

11 A. He did.

12 Q. He had you move your legs and bend?

13 A. He did, yeah.

14 Q. But at the end of his examination he says something to the
15 effect of "this is pretty straightforward but it's possible you
16 may have some disk disease," right?

17 A. That's what he said.

18 Q. Now, only if you know this, but do you think disk disease
19 is something that would turn up on an MRI?

20 A. I don't know.

21 Q. You've had an MRI before, right?

22 A. Yeah.

23 Q. Dr. Pompy also suggests aqua therapy for you?

24 A. He did, yeah.

25 Q. And he did not prescribe any medication?

1 A. Correct.

2 Q. And the start of your examination with the female medical
3 assistant that you saw, was that 6:20 in the video? Do you
4 remember us looking at that?

5 A. I -- I do remember looking at that. I don't remember the
6 exact time.

7 Q. Is it fair to say you were being examined by her for about
8 nine minutes?

9 A. That's fair to say.

10 Q. Okay. And is it fair to say that with Dr. Pompy's
11 examination, he was there for about six minutes examining you?

12 A. Yeah, it's fair to say. It's approximate.

13 Q. Okay. Then Dr. Pompy informs you, "Let's get everything
14 done, we'll check the testing and see what's going on."

15 A. That's what he said.

16 Q. All right. And then after that he issues a significant
17 number of orders for you, right?

18 A. Yes.

19 Q. He ordered you an X-ray?

20 A. Correct.

21 Q. He ordered an EKG?

22 A. He did.

23 Q. He ordered a bone scan?

24 A. I don't remember if that was on the list.

25 MR. CHAPMAN: Can we pull up Government's Exhibit 1,

1 page 3? Might be better if we went to that side for it or do
2 you have it?

3 MS. MURDOCH: (Inaudible)

4 MR. CHAPMAN: What's that?

5 MS. MURDOCK: Have her do it.

6 MR. CHAPMAN: Can you pull up page 3 for me? Thanks.

7 A. There was five tests on that order. I don't remember if
8 bone scan was one of them. There was about five as I recall.

9 BY MR. CHAPMAN:

10 Q. I understand. It's a lot to remember. We'll show you
11 here.

12 A. Thank you.

13 MR. CHAPMAN: Can you blow up the -- the line that
14 indicates total body bone scan?

15 BY MR. CHAPMAN:

16 Q. Do you have any idea what this test is for?

17 A. It's for a bone scan. I don't -- I don't know anything
18 further about a bone scan.

19 Q. No, I'm -- a little deeper than that. Do you know what a
20 bone scan does?

21 A. I don't.

22 Q. Okay. And there's a note there, it says for pain, right?

23 A. That's what it says, yeah.

24 Q. There was a bone scan ordered to diagnose your pain?

25 A. I'm sorry.

1 Q. A bone scan was ordered to diagnose your pain?

2 A. I -- I don't know the purpose of it. It says "Bone Scan -
3 Total Body" and then under notes it says "pain," so --

4 Q. Okay.

5 A. -- I guess.

6 MR. CHAPMAN: We can take that down.

7 BY MR. CHAPMAN:

8 Q. An MRI was also ordered?

9 A. Yes.

10 Q. And a -- a series of blood tests were ordered, without
11 going into all of them?

12 A. That's correct, yeah.

13 Q. And one of them included a rheumatoid profile?

14 A. I believe so, yeah, it did.

15 Q. Do you -- do you know whether or not rheumatoid is related
16 to arthritis?

17 A. I have heard those terms related together. That's all I
18 know.

19 Q. And do you know whether or not arthritis manifests itself
20 as stiffness in the joints?

21 A. I don't know.

22 Q. Do you know whether or not truck drivers are more prone to
23 some sort of arthritis?

24 A. I don't know.

25 Q. Now, you were asked a few times on direct examination to

1 calculate Dr. Pompy's hourly rate I think it was based on how
2 much time he spent with you?

3 A. Yes.

4 Q. Well, you're aware from being a Blue Cross Blue Shield
5 employee that when a doctor is compensated for their service,
6 they're not just compensated for the face-to-face time they
7 spend with the patient, right?

8 A. Right.

9 Q. Blue Cross Blue Shield doesn't pay doctors an hourly rate
10 or a minute rate for their time, right?

11 A. That's right. It's paid by the claim.

12 Q. Because out of that payment, Dr. Pompy is required to pay
13 for his medical assistants, right?

14 A. Yeah. I don't know how that money flow goes. I just know
15 that Blue Cross pays claims based on what's submitted.

16 Q. Sure. He has to pay for his office staff, his front
17 office staff out of that receipt?

18 A. Yeah. Again, I don't know how the money flow goes. I
19 understand that they are paid for employees.

20 Q. Office space, copy machines, office equipment gets paid
21 out of that?

22 A. I'm sure it's all -- yeah, I'm sure it does.

23 Q. And at I think on the March 22nd visit, you calculated Dr.
24 Pompy's hourly rate at a thousand dollars an hour, right?

25 A. On March 22nd? Yeah.

1 Q. At a thousand dollars an hour, assuming Dr. Pompy works
2 2,000 hours a year, \$2 million?

3 A. That's a -- yeah.

4 Q. Do you know whether or not Blue Cross Blue Shield
5 compensated Dr. Pompy \$2 million for 2016?

6 A. I don't remember the payment made to him.

7 Q. Did you look up to see how much Dr. Pompy was paid for E&M
8 visit codes for all of 2016?

9 A. So that was on the -- that was on the document that I
10 looked at. I don't remember what the number was.

11 Q. Isn't it true that over a four-year period Dr. Pompy only
12 received \$445,000 for evaluation and management claims?

13 A. I don't know the answer to that.

14 Q. Given that you have the information and could have looked
15 at it, wouldn't it have been better to talk about what Dr.
16 Pompy was actually paid as opposed to creating a fictitious
17 hourly rate for him?

18 A. I -- I don't -- I don't understand the question exactly.

19 Q. Well, it would be more accurate to calculate how much Dr.
20 Pompy was actually paid from Blue Cross Blue Shield, right?

21 A. Sure, that's another way to do it, yeah, I could -- could
22 do it that way.

23 Q. So you show up again on March 9th, right?

24 A. I did, yeah, March 9th.

25 Q. And my recollection is hazy here, but did you say you were

1 called by somebody to show up early?

2 A. I did say that, yeah.

3 Q. Because Dr. Pompy was going to be busy doing procedures?

4 A. Yes.

5 Q. And you're aware that Dr. Pompy does interventional pain
6 procedures?

7 A. I am aware of that.

8 Q. He does that at another location?

9 A. Yes.

10 Q. And when that's happening, he's not seeing patients in his
11 clinic that you visited?

12 A. Yeah. I don't -- I don't know the logistics of what's
13 exactly done where and when, but I'm aware that he does
14 procedures. And I don't know exactly where he does them. I
15 know he does have another office or did have another office.

16 Q. So you showed up as instructed?

17 A. I did.

18 Q. And at that point in time you again indicated you were
19 there for refills?

20 A. I did.

21 Q. And you were told by somebody at the office that Dr. Pompy
22 would not start you on medication because he was about to go
23 out of town and wanted to be available in case something
24 happens?

25 A. Yes, that's correct.

1 Q. And so at that visit you didn't see Dr. Pompy, you didn't
2 get any medication?

3 A. That's correct.

4 Q. Now, at that point in time had you done any of the testing
5 that Dr. Pompy ordered?

6 A. I -- I don't think I had done any.

7 Q. In fact, during the entire time you saw Dr. Pompy, there
8 are many of those tests that you didn't complete?

9 A. Many of them that I did not do, that's correct.

10 Q. You informed his office staff that insurance wouldn't
11 cover it?

12 A. The discussion about what was not covered was in regards
13 to an MRI, which is expensive.

14 Q. Was it true that Blue Cross Blue Shield wouldn't cover the
15 test that was ordered by Dr. Pompy?

16 A. I don't know if it would have been or not. I didn't
17 discuss it with anyone really.

18 Q. Just like you did with the X-ray, you had the ability to
19 go to Dr. Robertson and falsify another MRI study, right?

20 A. I -- sure, I guess I could have.

21 Q. He could have put down there that everything was normal
22 with your back?

23 A. I -- I don't know what he could have put down. We could
24 have had a discussion about that.

25 Q. He would have put down what you told him, right?

1 A. He would have probably assisted like he did on the other
2 one.

3 Q. Because he's willing to falsify medical records for you,
4 right?

5 A. He's willing to assist me.

6 Q. Okay. But you didn't do that, you didn't present a normal
7 MRI. You said, "My insurance won't cover it."

8 A. I did, yep.

9 Q. Because you were concerned that if you came into that
10 office with a normal MRI, Dr. Pompy would say, "I don't see
11 anything wrong with you."

12 A. Yeah, I just did not want to -- didn't want to get an MRI
13 and bring it in there or falsify one.

14 Q. Then that's the end of the operation, right?

15 A. I don't --

16 Q. You don't get your man?

17 A. I don't think so.

18 Q. Okay. Same thing with the referral. You don't falsify
19 that referral to get into Dr. Pompy's office, that's the end of
20 the operation?

21 A. Yeah, if you didn't come up with a pain management
22 referral, I don't think they would accept you there.

23 Q. The only reason you got treated by Dr. Pompy was because
24 you were willing to go so far as to falsify medical records to
25 get in?

1 A. I just got the assistance of a doctor. I didn't falsify
2 anything.

3 Q. He did it for you?

4 A. He gave me a pain management referral.

5 Q. Okay. You did get the blood work done, right?

6 A. Yes.

7 Q. And where did you go for that?

8 A. I went to the lab pretty much across the street from the
9 ProMedica Hospital there.

10 Q. And Dr. Pompey's practice informs you that your bilirubin
11 was a little high?

12 A. Yes. Yes.

13 Q. They paid attention to the lab report, the blood work?

14 A. They did. They addressed it with me.

15 Q. Yeah. So you come back to Dr. Pompey's office on
16 March 22nd, 2016?

17 A. Yes.

18 Q. Again, just like you always do, you fill out a previsit
19 questionnaire?

20 A. I did, yeah, on March 22nd.

21 Q. And in that questionnaire you indicated you were pending
22 testing?

23 A. I -- I don't recall exactly what I indicated then.

24 MR. CHAPMAN: Can we have Government Exhibit 1, page
25 53?

1 A. So what I do recall is I am --

2 BY MR. CHAPMAN:

3 Q. Just wait one second.

4 A. Okay. Yes, sir.

5 Q. I just want to make sure there's a question pending.

6 A. Yes.

7 MR. CHAPMAN: And can we blow up the whole box,
8 "Reason for Today's Visit"?

9 BY MR. CHAPMAN:

10 Q. So Dr. Pompy says, "I need these tests to figure out
11 what's wrong with you." You don't get them done, right?

12 A. One of the --

13 Q. Just this question. We can go to that in a minute, but
14 this question. Dr. Pompy asked you to get testing done, you
15 don't get it done?

16 A. I did get test -- well, I got physical therapy done.

17 Q. You did.

18 A. If that falls under the testing list or not, but I got
19 physical therapy.

20 Q. Could have been a better question. You don't get the MRI
21 done?

22 A. I did not get the MRI done.

23 Q. You don't get the X-ray done, right?

24 A. I did turn in an X-ray. I didn't -- yes.

25 Q. Eventually, right?

1 A. Correct.

2 Q. Okay. And here on your paperwork it says "Pending

3 Testing," right?

4 A. Yes, that's what it says.

5 Q. Did you write that down?

6 A. No.

7 Q. And somebody else wrote that down then, right?

8 A. Yes, sir.

9 Q. And the "Drug counseling" box is checked, correct?

10 A. It is, yeah.

11 Q. And the word "therapy" is written in there?

12 A. It -- it is, yeah.

13 Q. Now, there were a number of times where you were shown

14 your medical record from Dr. Pompy's office and asked to

15 compare it with others, right?

16 A. Yes.

17 Q. Okay. Isn't it true that the information that was

18 contained in that medical record came directly from the

19 information -- at least with respect to chief complaint, came

20 directly from the information on this form?

21 A. I don't -- I don't know where it came from. It wasn't

22 written by me.

23 Q. Okay. We -- we can go over that. But it is true that you

24 were pending testing?

25 A. That's true, I had pending testing, yes.

1 Q. Now -- now, did you check "Renew medication at same dose"?

2 A. No.

3 Q. You don't think you did that?

4 A. I'm sorry, I may have.

5 Q. You signed this form, right?

6 A. I did. I -- I may have checked that box. That's -- I may
7 have checked that box 'cuz I wrote Walgreen's above that,
8 indicating that I may have checked that box right below it.

9 Q. So again you're giving the false impression that you've
10 already been prescribed medication and you just want it renewed
11 at the same dose?

12 A. I -- I don't think I ever said I was prescribed
13 medication. I just said I was taking it.

14 Q. Well, you're saying here renew medication. Wouldn't that
15 indicate to any reasonable observer that you've received it and
16 you just want the same thing?

17 A. Sure, it could.

18 Q. Okay.

19 MR. CHAPMAN: Can we see -- back out of this and then
20 the pain box, pain intensity, pain activity. We could also
21 capture the 20 years in there as well please.

22 BY MR. CHAPMAN:

23 Q. So here you say your back pain's been going on for
24 20 years?

25 A. I did, yeah, I did.

1 Q. Still at a level 5?

2 A. Yes.

3 MR. CHAPMAN: Can we please back that out?

4 BY MR. CHAPMAN:

5 Q. And then you also indicated on the form that your pain has
6 stayed the same?

7 A. I did, yes.

8 Q. It's continuous?

9 A. Continuous and stayed the same, yes.

10 Q. And it's in your low back?

11 A. Yeah. I wrote "stiff" and then it says "low back."

12 Q. Okay.

13 A. That's what I was indicating.

14 Q. So then Dr. Pompy comes into the room but you hadn't had
15 your testing done, right?

16 MR. CHAPMAN: Please take that down for us. Thank
17 you.

18 A. On March 22nd all I had done -- yeah, I had not done the
19 testing other than the PT, physical therapy.

20 BY MR. CHAPMAN:

21 Q. And the medical assistant informs you -- and just for the
22 purpose of these questions, if I say medical assistant, I'm not
23 asking you to determine that they have a certain level of
24 certification; just a way of referring to a person wearing
25 scrubs, okay?

1 A. I understand.

2 Q. The medical assistant says, "I don't know how he's going
3 to feel about the testing not being done," right?

4 A. She said that, yeah.

5 Q. You talk about how insurance won't cover it and you can't
6 afford it?

7 A. We did talk about that, yes.

8 Q. That's true for some patients, right?

9 A. Yes.

10 Q. Testing's expensive?

11 A. It is.

12 Q. And Blue Cross Blue Shield doesn't cover everything,
13 right?

14 A. That's correct.

15 Q. She also says he at least needs the MRI to be done for him
16 to be able to prescribe something?

17 A. Yes.

18 Q. She offers to do a prior authorization for insurance to
19 see if they'll cover it?

20 A. She did offer that, yeah, she did offer that.

21 Q. Now, you've already at this point had a physical exam from
22 two people?

23 A. Yeah, on the previous visit I did, yes.

24 Q. And your testing wasn't completed, right?

25 A. That's right.

1 Q. There was nothing else for Dr. Pompy to be able to do
2 during that visit, right?

3 A. Yeah. I -- I don't know what else he could have done. I
4 mean I'm sure there are other things he could have done; I
5 don't know what.

6 Q. So all visits are over and you come back on April 26th,
7 2016?

8 A. Yeah. Is that a question?

9 Q. Yes.

10 A. Then yes, it is when I came back.

11 Q. You mentioned that you turned in that X-ray at that visit,
12 right?

13 A. I did.

14 Q. And you said you turned in one page?

15 A. I don't know what I -- I don't -- my intention was to turn
16 in two pages. I don't know what actually got -- what I handed
17 to them.

18 Q. Okay. Well, let's look at Government's 95A2-2 please,
19 which I think is that video.

20 (Video being played)

21 She waved the document and said, "Is this your
22 copy?" right.

23 A. She did, yeah.

24 Q. Single-page document, right?

25 A. That's what it looked like to me, yeah, single page.

1 Q. But, in fact, what you received from Dr. Robertson was not
2 a single-page document?

3 A. Right.

4 Q. It was a two-page document?

5 A. I believe so, yes.

6 Q. And you handed half of it in?

7 A. I believe so. I -- I don't know what I handed in. I
8 intended to hand in two pages but I only seen one.

9 Q. If you saw page 2 of that document, would you recognize
10 it?

11 A. Probably.

12 Q. Let's take a look.

13 MR. CHAPMAN: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 MR. CHAPMAN: Thank you.

16 BY MR. CHAPMAN:

17 Q. Would you take a look at the first page and the second
18 page and see if that's the complete document that you received
19 from Dr. Robertson.

20 A. It's -- it looks like it is. I think there -- there may
21 have been more than one version of this, but I think -- pretty
22 sure that's it.

23 MR. CHAPMAN: Your Honor, I'd like to admit this
24 document as the next exhibit in order for us. I don't have
25 that number yet but I can provide that to the Court.

1 THE COURT: Let me take a look at your list here,
2 which is -- and as I do that, I think you showed that to Mr.
3 Lievense and I would ask if the government's going to have any
4 objection to it.

5 MR. LIEVENSE: No objection to admitting the
6 document, obviously subject to its proper identification.

7 THE COURT: Okay. We'll get that identified. If I'm
8 not mistaken, it's the second page of the document that he
9 passed to the medical assistant on the tape, correct? Can I
10 call that 528, which is reserved, 528, Defense 528?

11 MR. CHAPMAN: That's works for us, Your Honor. Thank
12 you.

13 THE COURT: Okay. 528 is received subject to the
14 witness's identification of it. Go right ahead.

15 MR. CHAPMAN: Okay, Your Honor. I believe he's
16 already identified the document as -- as page 1 and 2 now.

17 THE COURT: Oh, I'm sorry. If you could tell me
18 then. That's page 2 or the complete document of the referral
19 from Dr. Robinson, Robertson?

20 MR. CHAPMAN: X-ray, Your Honor.

21 THE COURT: X-ray. Okay. All right. Go right
22 ahead.

23 BY MR. CHAPMAN:

24 Q. Okay. So you testified earlier that -- you testified
25 earlier that you couldn't recall whether you turned page 1 or

1 both pages in?

2 A. That's right.

3 Q. Okay. There's a note on top of this document which has
4 now been admitted. It says "Only turned in this page on 4/26,"
5 right?

6 A. Yes, sir, that's what it says.

7 Q. Who wrote that note?

8 A. I did.

9 Q. You did.

10 So you know that you only turned a single page in to
11 Dr. Pompy?

12 A. That's what it says, yep.

13 Q. Let's see what that second page said. You agree with me
14 that Dr. Pompy never saw this second page?

15 A. I don't know if he did or not. I -- I intended to turn in
16 both pages, so if I didn't, it's a mistake by me.

17 Q. But if you didn't, he never saw it, right?

18 A. If I didn't turn it in, he didn't see it, I would agree
19 with that.

20 Q. And just to follow up on that, this second page then would
21 have just been in Blue Cross's files which Dr. Pompy doesn't
22 have access to, right?

23 A. That's right. If I didn't turn it in, he definitely
24 didn't have access to it.

25 Q. So let's see what you omitted from Dr. Pompy's view. It

1 says, "I advised Mr. Stewart that I do not consider him a
2 surgical candidate," right?

3 A. That's what it says, yeah.

4 Q. He urged you to consult with a neurologist, physical
5 medicine specialist or a family practitioner, right?

6 A. That's what it says, yeah.

7 Q. Do you see pain specialist included in that list?

8 A. No.

9 Q. But he did write you a prescription for a pain specialist,
10 right?

11 A. That's true.

12 Q. But in the paperwork that you omitted he doesn't include
13 his recommendation for a referral to a pain specialist?

14 A. It does not -- yeah, it doesn't mention a pain specialist
15 on there.

16 Q. He also says that he didn't want to issue you any
17 prescriptions because he only prescribes if he does surgery,
18 right?

19 A. That's what he said, yeah.

20 Q. He also indicates you're a automobile transport driver?

21 A. Yes.

22 Q. And in any case, that you're discharged from his care?

23 A. Correct.

24 Q. Mr. Howell, you omitted this document because if Dr. Pompy
25 saw this, he may not have continued to treat you, isn't that

1 right?

2 A. That's not right. I omitted it because I either made a
3 mistake or I just didn't turn in page 2. It was not
4 intentional.

5 Q. You shielded this from Dr. Pompy's view?

6 A. Not intentionally.

7 Q. So let's take a look at what Dr. Pompy did see. Page 1,
8 Dr. Robertson indicates that he was seeing you secondary to
9 back and nerve problems, right?

10 A. That's right.

11 Q. And you -- you know that Dr. Robertson here wasn't talking
12 about nervousness; he was talking about nerve pain, right?

13 A. It says nerve problems, not pain.

14 Q. Says that you've had these back and nerve problems for
15 several years.

16 A. Yes.

17 Q. And then he indicates the result of a lumbar spine X-ray
18 that appears relatively normal, right?

19 A. Yes.

20 Q. Okay.

21 A. I'm reading that while you're asking.

22 Q. Now, if you know this, what do doctors typically do if an
23 X-ray appears normal but somebody still continues to complain
24 of pain?

25 A. I don't know.

1 Q. Do you think they would ask for an MRI, a more detailed
2 study?

3 A. I don't -- they may. I don't know.

4 Q. At that visit you also indicated that you went to the
5 physical therapy that Dr. Pompy prescribed for you?

6 A. Yes. We're still on March 22nd, right?

7 Q. Okay.

8 A. Thank you.

9 Q. And Dr. Robertson suggested physical therapy as well,
10 right?

11 A. He did. That was one of...

12 Q. Dr. Pompy never saw that suggestion because that was on
13 page 2.

14 A. That's right. He did it on his own, right.

15 Q. He suggested the same course of action?

16 A. That's right.

17 Q. Now, during that April 26th visit, you also tested
18 positive in a point of care cup for benzodiazepines, isn't that
19 right?

20 A. I don't think that's right. I don't think there was a
21 point of care test.

22 MR. CHAPMAN: Can we take a look at Government's 1,
23 page 59? Can you blow up the box where it says
24 "Benzodiazepines"?

25 BY MR. CHAPMAN:

1 Q. You see a positive for benzodiazepine, sir?

2 A. I see that.

3 Q. Okay. And this is a indication that the point of care cup
4 that you dropped a sample in showed positive for
5 benzodiazepines?

6 A. If you could back that out so I can see -- I don't -- I
7 don't recall that saying point of care above that.

8 Q. We can do that.

9 You're aware from reviewing these tests that if
10 there's a confirmation study, usually it shows the metabolite
11 levels in the urine?

12 A. I have seen that, yes.

13 Q. And if it's a point of care cup, it's usually filled out
14 by hand?

15 A. Usually, yeah, 'cuz it's done on the spot.

16 Q. Somebody's trying to interpret that test?

17 A. Right.

18 Q. And you're aware from your knowledge as an investigator
19 that these point of care cups can be very inaccurate?

20 A. I can't really talk about the accuracy of those. I -- I
21 don't know the -- the total -- the accuracy of them.

22 Q. After you had a positive test for barbiturates and also
23 benzodiazepines, did you think that these tests are accurate?

24 A. Those particular ones are not, no.

25 Q. Okay. So in your experience there's inaccuracies?

1 A. Oh -- on -- yeah, on this case for sure there's
2 inaccuracies.

3 Q. You also went over --

4 MR. CHAPMAN: And we can take that down. Thank you.

5 BY MR. CHAPMAN:

6 Q. -- a positive barbiturate test from your urine sample, I
7 believe it was from March 22nd, right?

8 A. That's correct.

9 Q. And you were informed of those results on April 26th?

10 A. That's right.

11 Q. Over a month later?

12 A. Yes.

13 Q. Okay. At that point you hadn't received any medications
14 from Dr. Pompy?

15 A. Right. At the time they were discussing the results of
16 the test I had not been prescribed any medication.

17 Q. So --

18 A. Is that what you're asking?

19 Q. Yes.

20 A. Okay.

21 Q. I don't mean to be redundant, but you dropped a sample on
22 March 22nd, you learn of the results on April 26th?

23 A. That's correct, yes.

24 Q. You also mentioned that at that time, within 48 hours you
25 went to Blue Cross and got your own test done?

1 A. I did.

2 Q. Had you taken a barbiturate, that would have been long
3 gone from your system a month later, right?

4 A. I don't know.

5 Q. I imagine the positive test caused quite a stir at Blue
6 Cross Blue Shield?

7 A. I -- it had me pretty upset but I don't know about causing
8 a stir. I -- I definitely thought it was important to address
9 it immediately.

10 Q. Without going over the whole thing, that same day,
11 4-26-26, you filled out a previsit questionnaire?

12 A. Yes.

13 Q. You again said your pain began ten years ago?

14 A. I believe so, yes.

15 Q. You said it was a level 5?

16 A. Yes.

17 Q. You said it stayed the same and is continuous?

18 A. Yeah. I kept indicating stiffness and circling 5s and
19 continuous and --

20 Q. You said it was -- I'm sorry I cut you off. You said it
21 was worse in the morning?

22 A. Yeah.

23 Q. You said you were using physical therapy to cope?

24 A. Yes.

25 Q. You did not indicate any other new symptoms?

1 A. Correct.

2 Q. And then you also indicated that you were taking Xanax at
3 that time, right?

4 A. I did, yes.

5 Q. But that was a false statement because you weren't
6 prescribed any Xanax?

7 A. That's true.

8 Q. At that point in time Dr. Pompy evaluates you. Well, at
9 that point Dr. Pompy prescribes you hydrocodone for two weeks?

10 A. Yes.

11 Q. And you're aware that a doctor can write a prescription
12 for up to 30 days?

13 A. Yes.

14 Q. Dr. Pompy only prescribed for two weeks?

15 A. He only prescribed me two weeks, yes.

16 Q. So that you could get your testing done and he could see
17 what's going on?

18 A. Yeah. I don't know what the purpose of the two weeks, if
19 that's what you're specifically asking about. I just know it
20 was two weeks.

21 Q. He also prescribed you Lyrica, right?

22 A. Yes.

23 Q. Do you know whether or not Lyrica is a drug that's used to
24 treat nerve pain?

25 A. I believe it is.

1 Q. You come back to Dr. Pompy within that two-week period on
2 May 9th, 2016?
3 A. Yes, I did.
4 Q. You fill out another previsit questionnaire?
5 A. Yes, sir.
6 Q. You indicate again a level 5 pain?
7 A. Yes.
8 Q. Daily?
9 A. I think I indicated level 5 stiffness, if I could back up.
10 I'm sorry.
11 Q. The question read, "What Level is Your Pain?"
12 A. And I wrote "stiffness" and circled 5.
13 Q. And you circled 5?
14 A. Right.
15 Q. You said it had been going on for ten years again?
16 A. I did.
17 Q. It's in your low back?
18 A. I did.
19 Q. Dr. Pompy appears to be, many times when you see him,
20 reviewing paperwork, right?
21 A. Yes, sir.
22 Q. Flipping through pages?
23 A. Yes.
24 Q. Do you believe him to be flipping through your medical
25 file and reviewing that?

1 A. It's a combination. There was times when he was going
2 into a folder. I don't know if it was my stuff. I -- there
3 was times when I felt like he was going over my individual pile
4 of paperwork.

5 Q. So on that visit, May 9th, he says, "No hydrocodone,
6 that's a problem," right?

7 A. He did.

8 Q. Says, "I want to see you in one week"?

9 A. He did.

10 Q. And -- and you know from your experience that when you
11 take a point of care sample, it can be sent out to the lab to
12 get confirmed, right?

13 A. Yes.

14 Q. And that can take some time to come back?

15 A. That's correct.

16 Q. So he issues you a new prescription?

17 A. Yes.

18 Q. Has you come back on May 17th?

19 A. Yes, sir.

20 Q. And that's actually exactly seven days from your prior
21 visit, right?

22 A. It's -- I think that's eight days, but yeah.

23 Q. Okay.

24 MR. CHAPMAN: Can we take a look at Government's 1,
25 page 62?

1 BY MR. CHAPMAN:

2 Q. On that visit Dr. Pompy notes --

3 MR. CHAPMAN: Just blow up the date so everybody can
4 see what date that was taken on. I think it might be on the
5 label up top.

6 BY MR. CHAPMAN:

7 Q. So a sample was drawn 5-17-2016. Do you see that?

8 A. I see that, yes.

9 Q. Okay. And just to go back, whenever you would provide a
10 sample, whether it was with Heather or somebody else, she would
11 fill out a label, right?

12 A. I did -- I can't say that I saw that every time. In fact,
13 there was one time when I didn't see him fill out a label and I
14 had concern about the validity of the test and how it was being
15 handled.

16 Q. Let's just talk about the first time. So there was a -- a
17 page with stickers on it and she would fill some information
18 out, right?

19 A. I -- I don't remember that form. I don't remember that
20 much about the stickers. At times there were stickers.

21 Q. That's fine.

22 MR. CHAPMAN: Can we back out of this?

23 BY MR. CHAPMAN:

24 Q. And so for this sample, it indicates that you were
25 negative for hydrocodone?

1 MR. CHAPMAN: You have to blow it up. Thank you.
2 A. Okay. Was that a question, sir?
3 BY MR. CHAPMAN:
4 Q. Yes. You were negative for hydrocodone?
5 A. I don't see where it says hydrocodone anywhere.
6 Q. I think we can?
7 A. I just see a "Neg," which indicates negative to me, but...
8 Q. You agree that you were negative for hydrocodone on that
9 date?
10 A. I do.
11 MR. CHAPMAN: And let's -- let's blow up the bottom
12 part, the full panel, "Confirm All" part.
13 BY MR. CHAPMAN:
14 Q. And these are instructions to confirm the results from
15 that day, right?
16 A. Yeah. It says "DOA Confirmation" and then it says "Full
17 Panel" circled. I'm not sure what that indicates.
18 Q. And you're aware from your experience that confirmation
19 means sending this to a separate lab for analysis?
20 A. Correct.
21 Q. To ensure that the result is accurate?
22 A. That's correct. It's a double-check.
23 Q. So ensure that if medical decisions are made, they're
24 based off of accurate information?
25 A. I don't know what they do with the results. I know that

1 the purpose is to send it to a lab and have further analysis.

2 I don't know what they do with the results.

3 MR. CHAPMAN: Can we go to I believe page 31? Can we
4 go to the -- have the -- the date that it -- it was recorded
5 blown up? I believe that's the top right side underneath the
6 header, or just blow up that whole line is fine.

7 BY MR. CHAPMAN:

8 Q. Okay. So this is a -- a confirmation report, right?

9 A. Yes.

10 Q. From AccuLab LLC?

11 A. Correct, yep.

12 Q. From a sample that was collected on May 17th?

13 A. Yes.

14 Q. And it wasn't reported to Dr. Pompy's office until
15 May 25th, 2016?

16 A. That's what it says, yeah.

17 Q. How many --

18 A. No, it doesn't say -- I'm sorry, that's not what it says.

19 Q. I'm sorry. Received to the lab May 25th?

20 A. Yeah, it says "Received in Lab." Doesn't say reported to
21 Dr. Pompy on May 25th, 2016.

22 Q. Thank you for correcting me. That's helpful.

23 To show the day that it came to Dr. Pompy's office,
24 let's look at the fax header at the very top. Says here
25 reported to Dr. Pompy's office on May 31st, 2016?

1 A. That -- I don't -- I don't know what that means. I don't
2 know what fax number that's -- that is or -- I do see the date
3 May 31st, 2016, 4:47 p.m. I don't know where that was sent, by
4 whom to whom.

5 Q. Okay. Do you have any information to suggest that this
6 was reported to Dr. Pompy's office earlier than May 31st?

7 A. No, I don't have any information at all on how and when it
8 was reported at all.

9 Q. Mr. Howell, how many visits did you have with Dr. Pompy's
10 office between May 17th and May 31st, 2016?

11 A. I had none.

12 Q. None. Because you ended your operation?

13 A. That's true.

14 Q. You say that there was nothing else to do, right?

15 A. Yeah, there -- yeah.

16 Q. Okay. But let's go back over the facts. Dr. Pompy gives
17 you a two-week supply of medication, right?

18 A. Well, which -- which --

19 Q. First.

20 A. The first prescription was for two weeks, correct.

21 Q. And then he gives you a week's supply of medication when
22 your sample is negative, right?

23 A. On the subsequent visit, yeah, I got a week.

24 Q. And he warns you at the last visit, "You're going to drop
25 a sample and I want to see what happens when you come back,"

1 right?

2 A. I didn't take that as a warning. It was more of a
3 statement.

4 Q. Fair. And then you end your operation?

5 A. Correct.

6 Q. You end the undercover visit?

7 A. Yes, sir?

8 Q. Blue Cross Blue Shield does not send a single person in
9 there?

10 A. That's true.

11 Q. MANTIS doesn't send a single person in there?

12 A. I can't -- I can't answer that.

13 Q. Mr. Howell, you ended your undercover operation because
14 you knew if you came back and Dr. Pompy saw that result, you
15 wouldn't have received any medication, you likely would have
16 been discharged from the practice?

17 A. That's not true.

18 Q. It's not true.

19 But it is true, sir, that you actually scheduled an
20 appointment to come see Dr. Pompy after your last visit on
21 May 17th, isn't that true?

22 A. I don't remember if I scheduled a followup appointment or
23 not.

24 Q. Isn't it true that you even had a scheduled appointment to
25 come see Dr. Pompy the day the search warrant was executed?

1 A. I don't recall that at all.

2 Q. Certainly you would recall if you scheduled another
3 undercover visit, right?

4 A. I -- I don't remember if I did or not.

5 Q. You just don't remember?

6 A. That's right.

7 Q. So you can't say for certain that you didn't schedule
8 another appointment?

9 A. I can't say if I did or didn't. I know the last time I
10 went there was May 17th, 2016.

11 Q. Did you get a chance to review your Blue Cross Blue Shield
12 reports and internal documents before you came to testify
13 today?

14 A. I did.

15 Q. Do you think it would have been important to review and
16 look up in your documents whether or not you scheduled another
17 appointment to come see Dr. Pompy?

18 A. I didn't. I don't remember seeing that or -- I -- I just
19 don't remember.

20 Q. Okay.

21 A. I don't even know if it's documented if -- if it even
22 exists.

23 Q. Just one final topic. While you were going into Dr.
24 Pompy's office armed with your coffee mug and camera, there
25 were other people watching and waiting outside, right?

1 A. Yes.

2 Q. That was the Michigan State Police?

3 A. Yes.

4 Q. It was Lieutenant Moore who I believe is in the courtroom
5 here?

6 A. I -- I can't say that. There was at least one time that
7 Lieutenant Moore was. I don't -- I don't know. There was
8 various members of his team that assisted.

9 Q. And you were in there, in Dr. Pompy's office, at their
10 request?

11 A. I was in there working with them, assisting them.

12 Q. Mm-hmm.

13 A. On my own, more or less.

14 Q. You know that MANTIS has the ability to do their own
15 undercover operations, right?

16 A. Yes.

17 Q. You know that they could get an actual patient of Dr.
18 Pompy's to go in with a camera, right?

19 A. Oh, I don't know about that.

20 Q. You know they could send their own undercover detective in
21 there, right?

22 A. I -- I don't know what -- how they operate as far as that
23 goes.

24 Q. You know they have DEA task force officers who are trained
25 by the DEA who can go in there, right?

1 A. Are you talking about the state police has DEA?

2 Q. Yeah.

3 A. Oh, I don't -- I don't know -- I don't know how that
4 works.

5 Q. But you know they have narcotics detectives who can do the
6 same thing?

7 A. I do know they have that. I don't know that they do do
8 that. I know they have undercover detectives, of course I do.

9 Q. And they have some people that are trained by NADDI,
10 right?

11 A. I don't know anyone from state police at the NADDI.

12 Q. But instead of using those resources, resources of the
13 police, they send Blue Cross Blue Shield in, right?

14 A. I went in, yes.

15 Q. Yeah. They did that because they don't have the ability
16 to fake referrals, do they?

17 A. If they were working with us, they would have that ability
18 'cuz we could help them with that.

19 Q. You do it for them?

20 They don't have the ability to fake an MRI, right?

21 A. I -- I don't know if they do or not.

22 Q. They don't have people who've done 30 undercover visits
23 like you or hundreds I should say?

24 A. I'm not aware of any. They may, they may have them.

25 Q. And they're bound by different rules than you are, right?

1 A. I would assume so, yes.

2 Q. Okay. Now, Blue Cross Blue Shield is not a nonprofit

3 entity, is it?

4 A. Right. It's a nonprofit mutual.

5 Q. Yeah. People at Blue Cross Blue Shield make money, watch

6 their bottom line?

7 A. That's true.

8 Q. And Dr. Pompy costs Blue Cross Blue Shield money, right?

9 A. He received payments for services he did.

10 Q. Sure. But those full body scans are expensive, right?

11 A. They are expensive. I don't know -- that doesn't have

12 anything to do with...

13 Q. I didn't ask that. I asked if they're expensive.

14 A. Okay.

15 Q. MRIs are expensive?

16 A. They are.

17 Q. And Blue Cross Blue Shield is interested in making sure

18 that it saves money, right?

19 A. That's being efficient with the money, yeah, cost

20 containment, et cetera, yeah.

21 Q. In fact, the department that you work in is a financial

22 investigations department?

23 A. That's true, yes.

24 Q. It's a stop-loss measure for Blue Cross Blue Shield?

25 A. It's -- it's, yeah, cost containment.

1 Q. Your operations directly help Blue Cross Blue Shield with
2 their bottom line?

3 A. Sure, yes.

4 Q. Your company has a financial interest in the outcome of
5 this case?

6 A. Of this case?

7 Q. Yes.

8 A. Our -- our company has an interest in all -- all cases of
9 cost that involve cost containment, fraud, waste, abuse, et
10 cetera.

11 Q. Well, you know Blue Cross Blue Shield's going to try to
12 get money from Dr. Pompy, right?

13 A. I don't know that.

14 Q. You don't. Okay.

15 A. In fact, I -- I -- haven't seen anything --

16 Q. No, there's no question pending, sir.

17 MR. CHAPMAN: May I have one second, Your Honor?

18 THE COURT: Of course.

19 MR. CHAPMAN: Thank you.

20 (Brief pause)

21 Your Honor, I don't have any further questions.

22 Thank you. Thank you, sir.

23 THE COURT: Okay. Thank you.

24 Before you sit down, let me ask the defense table,
25 could you check for me, I don't know from the identification,

1 was 528, which I received during that cross-examination, the
2 same as 613 which was admitted and received by agreement on
3 Monday? Can you make a quick check on that?

4 (Brief pause)

5 MR. CHAPMAN: You -- you are correct, Your Honor, and
6 you've -- you've got us. That actually does include both pages
7 so --

8 THE COURT: Okay.

9 MR. CHAPMAN: -- we can -- we can strike the --

10 THE COURT: Exhibit 528?

11 MR. CHAPMAN: -- admitted exhibit.

12 Yes. Thank you, Your Honor.

13 THE COURT: All right. Well, I just want our jurors
14 to know that I am indeed paying attention up here and not
15 playing video games.

16 So Mr. Lievense.

17 REDIRECT EXAMINATION

18 BY MR. LIEVENSE:

19 Q. Sir, on cross-examination you were asked about false
20 statements that were in some of the records that you submitted
21 to Dr. Pompy's office as part of -- is that part of your
22 undercover investigation?

23 A. Yes.

24 Q. And you're an -- experienced both in law enforcement
25 before and now. Do people who've engaged in undercover

1 investigations use or make false statements at times to induce
2 reactions?

3 A. Yes.

4 MR. LIEVENSE: If we could pull up Government's
5 Exhibit 1, page 191.

6 BY MR. LIEVENSE:

7 Q. I think on direct I asked you about under "Chief
8 Complaint," this was the office visit on March 22, 2016, and
9 how it says "presents today for detoxification." Do you see
10 that?

11 A. I do.

12 Q. And I think you asked -- I asked you whether that was
13 accurate. Do you remember that?

14 A. I do.

15 Q. Would that indeed be a falsified medical record?

16 MR. CHAPMAN: Your Honor, this is outside the scope
17 of cross. I don't think we touched this record at all.

18 MR. LIEVENSE: Your Honor, I think it goes to the
19 direct falsification of records that counsel raised.

20 THE COURT: Yeah, but he didn't -- he didn't ask
21 about this one, so I would sustain the objection.

22 BY MR. LIEVENSE:

23 Q. On cross-examination you were asked about the point of
24 care urine drug screen on May 17th, 2016. Do you recall that?

25 A. Yes.

1 Q. And you were told -- shown the -- the fax that had a fax
2 date of May 31st, 2016?

3 A. Yes.

4 Q. But -- and you were also shown I think the point of care
5 results that showed negative for prescribed medication?

6 A. Yes.

7 Q. Was that the date that Dr. Pompy issued the prescription
8 before you ever did the urine drug screen?

9 A. Yes.

10 Q. Near the end you were asked about your role in Blue Cross
11 Blue Shield and you mentioned fraud, waste and abuse. Could
12 you explain to the jury what it means to -- as part of your job
13 to be involved in fraud, waste and abuse investigations?

14 A. So yeah. We -- we get -- we do get a variety of all those
15 listed, fraud, waste and abuse, and we investigate all
16 different types of fraud, waste and abuse, and -- and the goal
17 is cost containment for the company. We try to do the best we
18 can for our members to -- to avoid excessive costs that fall
19 under fraud, waste and abuse.

20 Q. So you said you -- cost containment for the company, but
21 then you also said do your best for your members. What's the
22 difference there?

23 A. It -- it's kind of one in the same really. Our members
24 are the company, so we -- we're trying to keep costs down as in
25 cost containment, which saves the members money and saves the

1 company money.

2 Q. And by members, do you mean people who have their
3 insurance through Blue Cross Blue Shield?

4 A. I'm sorry, yes. To explain that, so a member is a person
5 that has a Blue Cross Blue Shield insurance card that uses Blue
6 Cross insurance, so our goal is to try to -- to do cost
7 containment to keep the costs down.

8 Q. So both Blue Cross Blue Shield the company as well as your
9 policy holders, the members, both have an interest in having
10 Blue Cross only pay for legitimate medical claims?

11 A. That's true.

12 Q. And they both, the company and the members, have an
13 interest in Blue Cross only paying for medically necessary
14 claims?

15 A. That's true.

16 MR. LIEVENSE: Nothing further, Your Honor. Thank
17 you.

18 THE COURT: Okay. Great. Anything else from Mr.
19 Chapman to respond to that?

20 MR. CHAPMAN: No, Your Honor. Thank you.

21 THE COURT: Okay. Very good. All right. James
22 Stewart Howell, your testimony is complete and you may step
23 down and be on your way. Thanks for being here for most of the
24 past two days and I hope you have a good weekend.

25 THE WITNESS: Thank you, Your Honor.

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THE COURT: Thank you.

(Witness excused at 1:46 p.m.)

(Testimony of James Stewart Howell concluded)

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C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 178 comprise a full, true and correct transcript of the proceedings taken in the matter of United States of America vs. Lesly Pompy, Case No. 18-20454, on Friday, December 2, 2022.

s/Linda M. Cavanagh
Linda M. Cavanagh, CRR, RMR, RDR, CRC
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: January 20, 2023
Detroit, Michigan

CLERK
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
JAN 27 2023 3:00 PM

Exhibit 5

21-2679

Neil Anand
1313 Cheltenham Drive
Eddington, PA 19020

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2679

NEIL ANAND, M.D., on behalf of himself
Appellant

v.

INDEPENDENCE BLUE CROSS

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-20-cv-6246)
District Judge: Honorable Chad F. Kenney

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on June 8, 2022

Before: KRAUSE, BIBAS, and SCIRICA, Circuit Judges

(Opinion filed: June 29, 2022)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2679

NEIL ANAND, M.D., on behalf of himself
Appellant

v.

INDEPENDENCE BLUE CROSS

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-20-cv-6246)
District Judge: Honorable Chad F. Kenney

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on June 8, 2022

Before: KRAUSE, BIBAS, and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on June 8, 2022.

On consideration whereof, it is now hereby **ORDERED** and **ADJUDGED** by this Court that the judgment of the District Court entered August 20, 2021, be and the same hereby is **AFFIRMED IN PART, VACATED IN PART, and REMANDED** for further proceedings. No costs will be taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszeit
Clerk

Dated: June 29, 2022

PATRICIA S. DODSZUWEIT

CLERK



OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

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June 29, 2022

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RE: Neil Anand v. Independence Blue Cross
Case Number: 21-2679
District Court Case Number: 2-20-cv-6246

ENTRY OF JUDGMENT

Today, **June 29, 2022** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/Stephanie/AMR
Case Manager
267-299-4926

OPINION*

PER CURIAM

Neil Anand, M.D., appeals from an order of the District Court sua sponte dismissing his second amended complaint with prejudice for failure to comply with Fed. R. Civ. P. 8. He challenges some of the court's previous rulings as well. We will affirm in part, vacate in part, and remand for further proceedings.

I.

Anand is an anesthesiologist who entered into a Provider Agreement with Independence Blue Cross, LLC ("IBX"). Anand filed suit pro se against IBX in Pennsylvania state court asserting both federal and state-law claims. IBX removed the suit to federal court, and Anand later filed pro se a 181-page amended complaint. In that complaint, Anand asserted a breach of contract claim alleging that IBX breached the Provider Agreement in numerous ways, including by failing to pay for medically necessary treatment. Anand also asserted 63 other state and federal claims.

IBX did not argue that the amended complaint violated Rule 8, and it did not claim to require a more definite statement before responding. Instead, it filed a motion to dismiss portions of the amended complaint on two other grounds. First, IBX moved under Fed. R. Civ. P. 12(b)(1) to dismiss for lack of standing claims that Anand asserted pro se on behalf

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

of various entities. Second, IBX moved under Fed. R. Civ. P. 12(b)(6) to dismiss for failure to state a claim most—but not all—of Anand’s personal claims.

The District Court scheduled oral argument and sua sponte directed Anand to address whether his amended complaint complied with Rule 8. After argument, the court entered a three-part order. First, the court sua sponte dismissed Anand’s entire amended complaint for failure to comply with Rule 8, but it did so without prejudice and with leave to further amend. Second, the court granted IBX’s Rule 12(b)(1) motion and dismissed claims that Anand asserted on behalf of his entities. Third, the court dismissed 32 of Anand’s claims under Rule 12(b)(6), some with prejudice and some without. The court declined to address the other claims on which IBX sought dismissal but stated that it would consider those claims if Anand filed a second amended complaint in compliance with Rule 8 and if IBX moved to dismiss that complaint too.

Anand then filed a second amended complaint, which is titled and docketed as a “third amended complaint” at ECF No. 48. Anand reduced the number of his claims to 41, but the complaint as a whole grew to 188 pages. Three days later, the District Court sua sponte dismissed that complaint too for failure to comply with Rule 8. In doing so, the court concluded that the differences between the amended and second amended complaints were “immaterial” for Rule 8 purposes and that the second amended complaint was subject to dismissal for the same reasons. This time, however, the court dismissed the second amended complaint with prejudice. Anand appeals pro se. We have jurisdiction under 28 U.S.C. § 1291.

Anand's primary argument on appeal is that the District Court erred in dismissing his second amended complaint for failure to comply with Rule 8. In evaluating this argument, we review the dismissal of both Anand's amended complaint and his second amended complaint. See Hearns v. San Bernardino Police Dep't, 530 F.3d 1124, 1129 (9th Cir. 2008); In re Westinghouse Sec. Litig., 90 F.3d 696, 702-04, 706 (3d Cir. 1996). We do so for abuse of discretion. See Garrett v. Wexford Health, 938 F.3d 69, 91 (3d Cir. 2019). "[I]t is an abuse of discretion to dismiss an entire complaint if it contains some claims that satisfy Rule 8." Id. Such is the case here.

We begin with Anand's amended complaint. Rule 8 requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The purpose of these requirements is to "provide fair notice of what the . . . claim is and the grounds upon which it rests." Garrett, 938 F.3d at 92 (ellipses in original) (quotation marks omitted). We apply this standard more leniently for pro se litigants. See id.

Anand's amended complaint provided fair notice of at least some of his claims. In concluding otherwise, the District Court reasoned that the complaint was too long and included conclusory allegations and irrelevant detail. We agree, but "verbosity or length is not by itself a basis for dismissing a complaint based on Rule 8(a)." Hearns, 530 F.3d at 1131; cf. Westinghouse, 90 F.3d at 703 (affirming dismissal of counseled 240-page complaint that counsel failed to narrow following "two rounds of difficult motions"). Neither is the inclusion of "repetitious and irrelevant matter." Garrett, 938 F.3d at 94 (quotation marks omitted). Instead, the touchstone is notice. See id. at 92. Thus, dismissal for failure to comply with Rule 8 "is usually reserved for those cases in which the complaint is so confused,

ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.” Id. at 94 (quotation marks omitted).

This is not such a case. For the most part, Anand’s amended complaint is clearly written and reveals the nature of his claims (albeit a great many of them).¹ Indeed, the length of the amended complaint is partly a function of the number of claims asserted. See Ciralsky v. CIA, 355 F.3d 661, 670 (D.C. Cir. 2004). Anand may have asserted far more claims than a trained lawyer would have asserted, and many of those claims may be legally deficient, but his amended complaint gave IBX fair notice of at least some of those claims. IBX itself has not argued otherwise. To the contrary, IBX’s ability to identify and respond to many of Anand’s claims in its Rule 12(b)(6) motion shows that it had notice of those claims. See Garrett, 938 F.3d at 94. Equally telling is IBX’s identification in that motion of claims that it did not move to dismiss.

Thus, the District Court should not have dismissed Anand’s entire amended complaint without prejudice for failure to comply with Rule 8. It follows that the court should not have taken the more drastic step of dismissing the second amended complaint with prejudice. Courts may dismiss a complaint under Fed. R. Civ. P. 41(b) as a sanction for failure to comply with Rule 8, see Hearns, 530 F.3d at 1129, but dismissal with prejudice is an “extreme” and “drastic” sanction of last resort. Hildebrand v. Allegheny County, 923 F.3d 128, 132 (3d Cir. 2019) (quotation marks omitted). Before taking that step, courts typically

¹ To take one example, Anand alleged that IBC breached the Provider Agreement by failing to pay for medically necessary treatment and then terminating the agreement in response to Anand’s advocacy for such treatment on behalf of patients he identifies as K.T. and W.S. (ECF No. 22 ¶¶ 2, 16, 58-59, 96-103, 229, 232-35.) We express no opinion on the merits of these claims or any other not specifically addressed herein.

must consider several factors, including the merits of the plaintiff's claims and the effectiveness of less drastic alternatives. See id.; cf. Westinghouse, 90 F.3d at 703-04 (affirming dismissal with prejudice where plaintiffs refused to file an amended complaint).² In the Rule 8 context, such alternatives include striking surplusage or excusing the defendant from answering it. See Hearns, 530 F.3d at 1132. And IBX, of course, need not answer any claims that are dismissed under Rule 12(b)(6). The District Court already has dismissed 32 claims under Rule 12(b)(6), and IBX moved for dismissal of others. Nothing herein prevents the court from further narrowing Anand's claims under Rule 12(b)(6) if warranted in the future.

In sum, we agree with the District Court that Anand's complaints are a far cry from the simple notice pleading contemplated by Rule 8, and we appreciate the burden that such complaints place on courts and defendants alike. Ultimately, however, Anand's complaints provided fair notice of at least some of his claims and thus were not subject to dismissal in their entirety for failure to comply with Rule 8.

III.

Anand's other arguments lack merit. We address two of them. First, Anand argues that the District Court erred in dismissing certain of his federal claims under Rule 12(b)(6). He argues, for example, that the court erred in dismissing federal claims that he asserted under 42 U.S.C. § 1983 and various provisions of the Constitution. We will review the dismissal

² Unlike the plaintiffs in Westinghouse, Anand did not refuse to proceed with the case after the court's initial Rule 8 dismissal and instead filed his second amended complaint. Anand asserted therein that he had attempted to comply with the court's directives. Leaving aside the merits and bona fides of that assertion (which the court did not address), Anand's filing of the second amended complaint does not represent the kind of outright refusal to proceed that might have warranted dismissal with prejudice without consideration of the factors summarized above.

of these claims, even though Anand did not reassert them in his second amended complaint, because the District Court previously dismissed them with prejudice. See Estate of Roman v. City of Newark, 914 F.3d 789, 803 (3d Cir. 2019). The court dismissed these claims on the ground that IBX is not a state actor. See Kach v. Hose, 589 F.3d 626, 646 (3d Cir. 2009). The court thoroughly explained its reasons for that ruling, but Anand does not meaningfully challenge those reasons on appeal. In any event, we agree that IBX's alleged conduct cannot be attributed to the state and will affirm the dismissal of these claims for the reasons that the court explained. We also will affirm as to all other federal claims that the court dismissed under Rule 12(b)(6).³

Second, Anand argues that the court erred in denying his motion to sever his state-law claims and remand them to state court. We disagree. Anand relies on a statute that requires severance and remand of "a claim not within the original or supplemental jurisdiction of the district court." 28 U.S.C. § 1441(c)(1)(B). Anand argues that his state-law claims were not within supplemental jurisdiction of the District Court for several reasons, including that they raise novel issues of state law. See 28 U.S.C. § 1367(c). But those are reasons why a court might decline to exercise supplemental jurisdiction. See id. They do not mean that the court lacked such jurisdiction.

The court went on to exercise supplemental jurisdiction when it dismissed some of Anand's state-law claims under Rule 12(b)(6). Anand's specific challenges to that exercise

³ Anand mentions the Rule 12(b)(6) dismissal of his federal claims under ERISA, RICO, the Sherman Act, and the Controlled Substances Act. Anand has forfeited appellate review of his ERISA claim because he did not replead it in his second amended complaint after the court dismissed it without prejudice. See Estate of Roman, 914 F.3d at 803. In any event, Anand has not meaningfully challenged the dismissal of these claims either.

of jurisdiction lack merit. Nevertheless, the court's exercise of supplemental jurisdiction in this case may be inconsistent with its dismissal of Anand's entire amended complaint under Rule 8 because the exercise of supplemental jurisdiction requires courts to identify a plaintiff's state and federal claims with enough particularity to determine that they "form part of the same case or controversy." 28 U.S.C. § 1367(a). Thus, we will vacate the Rule 12(b)(6) dismissal of Anand's state-law claims so that the court can reconsider its exercise of supplemental jurisdiction as may be appropriate on remand.⁴

IV.

For these reasons, we will vacate the District Court's orders (1) dismissing Anand's amended and second amended complaints under Rule 8, and (2) dismissing Anand's state-law claims under Rule 12(b)(6). We will otherwise affirm. Anand's motion for correction or modification of the record is denied.⁵

⁴ We express no opinion on the merits of these state-law claims or the court's reasons for dismissing them. Thus, our ruling does not prevent the court from relying on its previous analysis if it again reaches these claims in the future. Our ruling also does not prevent the court from reconsidering its decision to exercise supplemental jurisdiction over Anand's state-law claims if, for example, his remaining federal claims are subject to dismissal. See 28 U.S.C. § 1367(c)(3). We express no opinion on that issue either.

⁵ Anand asks to supplement the record with information he expects to obtain in a separate lawsuit. He has not shown any basis for supplementing the record on appeal. He asks in the alternative that we remand for further amendment of his complaint. The District Court can consider allowing Anand to file an all-inclusive amended complaint on remand.

CLERK
U.S. DISTRICT COURT
NORTH DISTRICT OF JERSEY

2023 JAN 27 P 2:00

Exhibit 6

Case 2:20-cv-06246-CFK Document 77 Filed 01/06/23 Page 1 of 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NEIL ANAND	:	CIVIL ACTION
<i>Plaintiff,</i>	:	
	:	
v.	:	
INDEPENDENCE BLUE CROSS	:	No. 20-6246
<i>Defendant.</i>	:	

ORDER

AND NOW, this **6th** day of **January 2023**, upon consideration of:

(i) Defendant's Motion to Dismiss (ECF No. 71), Plaintiff's Response thereto (ECF No. 76), and the Third Circuit's prior Remand (ECF No. 53); (ii) Plaintiff's Motion to Bifurcate and Remand (ECF No. 74); and (iii) Plaintiff's Motion for a Preliminary Injunction (ECF No. 75), it is hereby **ORDERED** as follows:

1. Defendant's Motion to Dismiss (ECF No. 71) is **DENIED**;
 2. Defendant shall file an Answer to Plaintiff's Third Amended Complaint (ECF No. 57) on or before **February 7, 2023 at 12:00 p.m.**;
 3. Plaintiff's Motion to Bifurcate and Remand (ECF No. 74) is **DENIED**;
- and

Case 2:20-cv-06246-CFK Document 77 Filed 01/06/23 Page 2 of 2

4. Defendant shall Respond to Plaintiff's Motion for an Injunction (ECF No. 75) on or before **February 7, 2023 at 12:00 p.m.**

BY THE COURT:

/s/ Chad F. Kenney

CHAD F. KENNEY, JUDGE

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY

2023 JAN 27 P 3:01

Exhibit 7

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facts of its fraudulent activities. IBC via mail or wire fraud delivered materially false spreadsheets to the USDOJ for use in the criminal proceedings to obtain improper criminal asset forfeiture and restitution. IBC through its CFID engaged in the deliberate fraud of their experience rated premium payers and clients, who have not been reimbursed for monies obtained by IBC CFID from criminal restitutions and/or asset forfeitures. IBC has intentionally submitted fraudulent numbers concerning the need for premium increases of its experience rated clients, Members or insureds to the Pennsylvania Insurance Department for a consecutive number of years, allowing IBC to increase their premiums and profits unlawfully. The “non-profit” IBC, and its purposeful arrangement with for-profit Amerihealth, allows IBC’s executive class to exceed the salary caps of non-profit IBC, by also being executives of the for-profit Amerihealth. Non-profit, IBC, absorbs shifted costs and expenses of the for-profit, Amerihealth, to allow IBC to unlawfully compete against small medical practitioners like Anand through predatory pricing and other Sherman Clayton Act violations. The predatory pricing allows IBC’s Facilitated Health Networks to eliminate small competing medical practices and Amerihealth’s PerformSpecialty Pharmacy, to eliminate small competing pharmacies. IBC also committed intentional violations of patient confidential information including deliberate violations of 42 CFR Part 2 which pertains to the confidentiality of substance use disorder patient records, the Health Insurance Portability and Accountability Act (“HIPAA”) Privacy Rule, and interfered with legitimate treatment of disease and numerous other predicate acts of racketeering activity. See *National Treasury Employees Union v. Von Raab*; and *Thornburgh v. American College of Obstetricians; and Gynecologists; & Douglas v. Dobbs*.

IBC has been engaged in a pattern of these criminal activities for years inclusive of schemes calculated to deceive and defraud physicians who are merely in possession of ordinary prudence and comprehension. IBC committed fraud intentionally and with reckless disregard including false or improperly calculated Explanation of Benefit reports. IBC through the HFPP joint enterprise, acted with the common goals of: 1) achieving pecuniary gain, 2) premeditated acts undermining the 4th and 14th Const. Amend. through illegal data mining of confidential patient records from numerous physicians around the country, 3) racial targeting of dark skin, non-white physicians with unproven data analytic programs, 4) surreptitious duping of Medicare, Office of Inspector General, and Pennsylvania Attorney General Office, into prosecuting innocent physicians who legitimately prescribe controlled substances, through utilization of defectively constructed mathematical algorithms, for the sole purpose of obtaining improper criminal restitution. *Carpenter v. United States*; and *Katz v. United States*.

M. Plaintiff Has A Valid Sherman and Clayton Act Anti-trust Claim.

The monopolistic and price fixing activity of the Blue Cross Blue Shield Companies is of common public awareness due to its recent antitrust settlement, arising from a class action antitrust lawsuit called *In re: Blue Cross Blue Shield Antitrust Litigation MDL 2406*, which was reached on behalf of individuals and

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companies that purchased or received health insurance provided or administered by a Blue Cross Blue Shield company. The Class Representatives reached a Settlement on October 16, 2020, with the Blue Cross Blue Shield Association and settling Individual Blue Plans that knowingly violated antitrust laws by entering into an agreement not to compete with each other and to limit competition among themselves in selling health insurance and administrative services for health insurance. See <https://www.bcbssettlement.com/>. Pursuant to **collateral estoppel**, the restraint of trade by Blue Cross Blue Shield Association and its franchisees has been determined under *In re Blue Cross Blue Shield Antitrust Litig.*, FINAL ORDER, Master File No.: 2:13-CV-20000-RDP (MDL NO.: 2406) (N.D. Ala. 2018). The FINAL ORDER provides on Pages 1-2: “This litigation began more than nine years ago and involves the consolidation of a number of actions filed by Subscriber Plaintiffs against the Blue Cross and Blue Shield Association (“BCBSA”) and its Member Plans (the “Member Plans” or “Blue Plans”) (collectively, “Defendants” or “Blues”). Subscriber Plaintiffs allege, among other things, that Defendants violated Sections 1, 2, and 3 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-3, by entering into an unlawful agreement that restrained competition between them in the markets for selling health insurance and the administration of Commercial Health Benefit Products in the United States and its territories. Subscriber Plaintiffs contend that the Blues: (1) allocated geographic territories; (2) limited the Member Plans from competing against each other, even when not using a Blue name, by mandating a minimum percentage of business that each Member Plan must do under that name, both inside and outside each Member Plan’s territory; (3) restricted the right of any Member Plan to be sold to a company that is not a member of BCBSA; and (4) further agreed to other ancillary restraints on competition. (Doc. # 1082).

IBC is utilizing its monopoly market power to increase insurance premium prices and deductibles for its Members negatively. IBC and its “most favored” groups of health providers through Facilitated Health Networks (FHN), engage in anticompetitive conducts, i.e. price fixing, geographic market division, and group boycott (attack of non-white physicians prescribing controlled substances) which are causing market injury to individual physicians and small groups and are illegal per se. IBC in their own public announcements claim they are the largest and leading health insurer in Philadelphia (supported by USDOJ findings *supra*), and is utilizing its monopsony market power by substantially controlling physician treatment plans and reducing physician fee schedules, as IBC is the major purchaser of health services offered by Philadelphia physicians. The per se rule is violated here, “by a price restraint that tends to provide the same economic rewards to all practitioners regardless of their skill, experience, training, or willingness to employ innovative and difficult procedures in individual cases. Such a restraint may also discourage entry into the market, and may deter experimentation and new developments by individual entrepreneurs”. quoting P.457 U. S. 348 *Arizona v. Maricopa County Med.Soc’y*, 457 U.S. 332 (1982) ; and *Group Life & Health Ins. Co. v. Royal Drug Co., Inc.*, 440 U.S. 205 (1979). Anand’s Complaint’s Claims, distinguishes between “restraints with an anticompetitive

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203. IBC actions against physicians can cause injuries or harms that are “per se” irreparable as unrecoverable harms are “per se” irreparable.
204. IBC through a private-public partnership with HFPP, engages in a deliberate indifference or conscious disregard to a physicians’ rights under the Due Process Clause of the 5th U.S. Constitutional Amendment and the Stigma Plus test.
205. The U.S. Constitution’s Fifth Amendment’s Due Process Clause protects individuals from the deprivations of ‘life, liberty, or property, without due process of law.
206. IBC has developed formal relationships with state and federal law enforcement for assistance in convicting physicians and other healthcare professionals.
207. IBC’s formal relationships with state and federal law enforcement allows IBC to eliminate its business competitors.
208. IBC’s numerous criminal referrals of individual, small, and upstart health entities to state and federal law enforcement allows IBC to eliminate competition, restrain trade, and monopolize the Pennsylvania and Philadelphia healthcare markets.
209. IBC in concert with the HFPP violates the per se rule by discouraging entry into the Philadelphia and Pennsylvania healthcare markets and may deter experimentation, new technologies, new inventions and new developments by individual healthcare entrepreneurs.
210. Anand was born in Media, Pennsylvania, a Philadelphia suburb and was trained in Philadelphia’s finest institutions and trained by the greatest physicians of Philadelphia’s Academic University Hospitals and by the greatest military physicians in the United States Armed Forces.
211. Anand’s mentors in Philadelphia’s finest hospitals and Anand’s commanding officers of the U.S. physician armed forces were infinitely more knowledgeable, honorable and competent than IBC employees including but not limited to Victor Caraballo.
212. IBC and its employees engaged in racial discrimination against Anand and other Philadelphia and Pennsylvania physicians because of their race, heritage, skin color or religion.
213. W.S. never actually received the cancer pain medication, Subsys, as IBC denied 2 or more appeals, and therefore IBC and Caraballo terminated Anand solely for zealously advocating for patients including those who were experiencing cancer related pain.
214. IBC and Loraine Stewart also removed Anand’s access from Navinet.
215. Navinet is co-owned by Independence Blue Cross, Highmark, and Horizon Blue Cross Blue Shield among other investors.

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1619. IBC pays different wages to different groups of workers (i.e. through Independence Blue Cross, Amerihealth Caritas) higher wages through its “most favored” Facilitated Health Networks and lower wages paid to disfavored healthcare providers.
1620. The simpler explanation of monopsony power in labor markets is barriers to entry on the demand side. Such barriers to entry would result in a limited number of companies competing for labor (oligopsony).
1621. The IBC monopsony attempts to control the Philadelphia healthcare industry through consolidation and aims to reduce independent physicians and healthcare practitioners.
1622. IBC engages in captive supply to maximize its own profits often at the unknowing expense due to the concealment of the collusion of the HFPP.
1623. This is usually a characteristic of a market that is dominated by one firm or a few firms and implicit collusion between those firms. Often captive supply is called a beneficial market agreement by those controlling the supply but the actions of those controlling that supply reveal otherwise. Captive supply is used to subvert the natural forces of market price determination to accrue more economic benefits to those who control it. It circumvents the typically price-moderating market force of supply and demand by artificially restricting the supply.
1624. IBC engages in the criminal prosecution of healthcare professionals and physicians to eliminate their respective business competitors and induce fear in the remaining independent, physician, business competitors.
1625. The alleged monopolistic and price fixing activity of IBC is of common public awareness due to its recent antitrust settlement, arising from a class action antitrust lawsuit called *In re: Blue Cross Blue Shield Antitrust Litigation MDL 2406*, N.D. Ala. Master File No. 2:13-cv-20000-RDP, which was reached on behalf of individuals and companies that purchased or received health insurance provided or administered by a Blue Cross Blue Shield company.
1626. The Class Representatives reached a Settlement on October 16, 2020, with the Blue Cross Blue Shield Association (BCBSA) and settling Individual Blue Plans that knowingly violated antitrust laws by entering into an agreement not to compete with each other and to limit competition among themselves in selling health insurance and administrative services for health insurance.
1627. IBC engaged in anticompetitive and deceptive conduct; willfully maintained monopoly and monopsony power through such conduct; had a specific intent to monopolize; had a dangerous probability of achieving monopoly and monopsony power; have offered a non-pretextual

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1660. IBC, BCBSA, and HFPP intertwined themselves in traditional police functions under the color of law to influence the treatment by its physician contractors with respect to controlled substance medications and other healthcare treatments.
1661. BCBSA produced a document with the Governing Institute titled Confronting A Crisis: A Practical Guide For Policymakers To Mitigate the Opioid Epidemic.
1662. IBC and BCBSA instituted these policies with HFPP and USDOJ.
1663. IBC and BCBSA health care policies or computerized data algorithms, and criminal forensic tools were not scientifically, statistically or medically validated.
1664. IBC, BCBSA, and HFPP health care policies are causing a multiyear continuous and exponential increase in overdose deaths in the United States.
1665. IBC's, BCBSA's, and HFPP's restraint of trade by discouraging effective treatments by pain management and substance abuse physicians are causing increased overdose death in the United States.
1666. IBC's, BCBSA's, and HFPP's restraint of trade by actively aiding USDOJ in the prosecution of pain management and substance abuse physicians are causing increased overdose deaths in the United States.
1667. IBC has no absolute or qualified immunity.
1668. It is not common for other health insurance companies to assume traditional police functions thereby attempting to regulate the same health care market that they participate in.
1669. IBC is able to use its "police power" or Special Investigation Units to exclude physicians that are outside IBC's "Most Favored" Facilitated Health Care Network.
1670. IBC is able to use its "police power" or Special Investigation Units to exclude pharmacies that compete with PerformRx and PerformSpecialty Pharmacy.
1671. Via its combined health care market dominance, IBC, BCBSA and HFPP exercise undue influence on physicians who prescribe controlled substance medications or deliver expensive or experimental treatments.
1672. Independent Philadelphia physicians including Plaintiff Anand must accept lower payments from health plans, owned or operated by Defendant IBC without the opportunity to join Defendant IBC's "Most Favored" Facilitated Health Care Network.
1673. IBC's, BCBS of Michigan and BCBSA recent publicly announced antitrust settlement of over 2000 million dollars implies a negative inference of improper conduct by Defendant IBC.

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1674. IBC uses its “police power” via the Health Care Fraud Prevention Partnership to induce criminal proceedings against other physicians through coordination with OIG, FBI, and USDOJ which causes a chilling effect of proper medical treatments of patients.
1675. IBC is causing the mass abandonment of patients by physicians in its pursuit of the restraint of trade.
1676. IBC is engaged in the dangerous monopolization of the relevant controlled substance medications and medical treatments of patients within the Philadelphia area.
1677. IBC is engaged in the unreasonable-restraint element in a conspiracy with HFPP and BCBSA that produced anticompetitive effects in the relevant chronic pain and substance abuse treatment markets. *W. Penn Allegheny Health Sys., Inc. v. UPMC*, 627 F.3d at 100.
1678. IBC’s anticompetitive effects is causing injuries to physicians and patients which is causing a reduction of output and deterioration in quality of goods and services with respect to chronic pain management and substance use disorder diseases. *Lifewatch Servs. Inc.*, 902 F.3d at 340 (quoting *Deborah Heart & Lung Ctr. v. Virtua Health, Inc.*, 833 F.3d 399, 403 (3d Cir. 2016)).
1679. “In order to determine whether there is a dangerous probability of monopolization, a court must inquire “into the relevant product and geographic market and the Defendant’s economic power in that market.” *Spectrum Sports, Inc. v McQuillan*, 506 US 447, 459, 113 S. Ct 884, 892, 122 L.Ed.2d 247 (1993); *Pastore v. Bell Telephone Co. of Pennsylvania*, 24 F. 3d 508, 512 (3d Cir. 1994).
1680. Antitrust claims are construed liberally...Where the specific facts and details are “largely in the hands of the alleged monopolists. See *Poller*, 368 US at 473, 82 S.Ct 486.
1681. In *Jefferson Parish Hosp. Dist. No. 2 v Hyde*, 466 US 2, 29 (1984) The Supreme Court reversed the appellate court finding that the critical question pertained more readily to the anesthesia market, and whether, if at all, Jefferson Roux had restrained competition in the state/local anesthesia market.
1682. IBC is restraining competition in the anesthesia, pain management, and substance abuse treatment markets particularly in the Philadelphia markets.
1683. IBC is restraining competition in pharmacy within the Philadelphia markets.
1684. IBC in its restraint of trade also denied other interchangeable treatments advocated by Anand for patients suffering from chronic pain or substance use disorders, including non-pharmacological treatments, physical therapy, durable medical equipment, diagnostic and therapeutic injections, and preventative smoking cessation treatments.

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Exhibit 9

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL**

**UNSWORN AFFIDAVIT OF
ROBERT G. LABAR**

I, Robert G. LaBar, the undersigned, make this statement subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities:

A. Employment Background

1. I have been employed in the Insurance Fraud Section of the Pennsylvania Office of Attorney General (PAOAG) since September of 2007. I was hired as a Senior Deputy Attorney General and served as a Senior Deputy Attorney General until July of 2020. I am currently employed as the Chief Deputy Attorney General for the Insurance Fraud Statute and have been in that position since July of 2020.
2. The Pennsylvania Insurance Fraud statute is located at 18 Pa.C.S.A § 4117 and pursuant to 18 Pa.C.S.A §4117 (h), the PAOAG is vested with the authority to investigate and institute criminal proceedings in all the counties in the State of Pennsylvania for violations of the Insurance Fraud statute and other related criminal violations.
3. The Insurance Fraud Section's official duties include, but are not limited to, conducting criminal investigations into all types of insurance fraud which includes Auto, Homeowners, Health, Life, Disability, Agent/Industry and Workers' Compensation Fraud.
4. My duties as the Chief Deputy Attorney General for the Insurance Fraud Section include reviewing referrals submitted to the Insurance Fraud Section, opening up

criminal investigations, overseeing the criminal investigations, and approving criminal arrests and charges.

5. As the Chief Deputy Attorney General for the Insurance Fraud Section, I am aware that the PAOAG does not civilly prosecute Insurance Fraud cases and only brings criminal prosecutions.
6. As the Chief Deputy Attorney General for the Insurance Fraud Section, I am aware that the PAOAG does not enforce or have any regulatory authority over insurance companies. To the contrary, regulatory oversight of insurance companies is vested within the Pennsylvania Insurance Department and any referrals that may be received by the Insurance Fraud Section for regulatory violations would be referred directly to the Pennsylvania Insurance Department for investigation.

B. Review of Neil Anand's request #2022-061

7. On March 1, 2022, the Insurance Fraud Section received Right to Know ("RTK") request #2022-061 from the Right to Know Law Officer
8. As a result of the request, I reviewed the records maintained by the Insurance Fraud Section and made a determination that the requested records did not exist. § 65 P.S. 67.705.
9. Request #2022-061 specifically sought data and documents concerning referrals from any Independence Company that resulted in prosecutions of physicians or health care providers for fifteen specifically enumerated criminal statutes (both state and federal).
10. As Chief Deputy Attorney General for the Insurance Fraud Section, I am aware that the Insurance Fraud Section has previously prosecuted physicians and health care

providers; however, in reviewing Request #2022-061, I determined that there were not any prosecutions of physicians and health care providers that were referred by an Independence Company which were arrested/prosecuted for the crimes enumerated in the request.

11. I have reviewed Mr. Anand's appeal of the PAOAG's Denial of Request Right to Know Request 2022-061 and specifically his assertions that documentation from the prosecutions of Dr. Howard Bloom (p.38) and Liberation Way (Dr. Bracchia) (p. 40) should have been provided in response to his request.

12. I am familiar with both of those prosecutions and none of the physicians/health care providers in each of those cases were arrested or prosecuted for the crimes enumerated in Mr. Anand's request.

13. In the case of Dr. Howard Bloom, neither Dr. Bloom, nor Weathervane were charged with crimes enumerated by Mr. Anand's request. In that specific case, although an initial referral was received from an Independence Company regarding Dr. Bloom and his chiropractic office, Weathervane Chiropractic, neither Dr. Bloom nor Weathervane Chiropractic were arrested or prosecuted for the crimes enumerated in Mr. Anand's request. After receiving the referral, from Independence Blue Cross, the Insurance Fraud Section opened an investigation into the allegations and after the investigation was completed, both Dr. Bloom and Weathervane were charged and prosecuted for the following crimes

- a. Insurance Fraud 18 P.C.S.A. §4117 (a)(2)(3) and
- b. Theft by Deception 18 Pa.C.S.A. §3922 (a).

14. In the case of Liberation Way, again no physicians or providers were charged with crimes enumerated by Mr. Anand's request. Additionally, although an investigator

from Independence Blue Cross testified before the Grand Jury, there was not a referral received by the Insurance Fraud Section from an Independence Company. To contrary, the initial referral was received by the Pennsylvania Department of Drug and Alcohol Programs (DDAP) stemming from complaints from current and former employees of Liberation Way, a drug treatment center. The Insurance Fraud Section opened an investigation into the allegations and after the investigation was completed numerous individuals involved with Liberation Way were charged and prosecuted, including two doctors (Dr. Domenic Bracchia and Dr. Ramesh Sarvaiya). Both Dr. Bracchia and Dr. Sarvaiya subsequently were charged with the following crimes:

- a. Corrupt Organizations, 18 Pa.C.S.A. § 911 (b)(3),(4)
- b. Dealing in Proceeds of Unlawful Activities, 18 Pa.C.S.A. § 5111 (a)(1),(2)
- c. Insurance Fraud, 18 Pa.C.S.A. § 4117 (a)(2)(3),(5) and (6)
- d. Theft by Deception, 18 Pa.C.S.A. § 3922(a)(1)
- e. Criminal Conspiracy, 18 Pa.C.S.A. § 903(a)(1)

Both Dr. Bracchia and Dr. Sarvaiya eventually entered guilty pleas in Federal Court to the crime of Conspiracy 18 USC §371.

15. As the Chief Deputy Attorney General for the Insurance Fraud Section, I am aware that the Insurance Fraud Section does not have jurisdiction to enforce the things enumerated in numbers 6-9 of Mr. Anand's request and that any enforcement of these duties would belong to the Pennsylvania Insurance Department and/or relevant federal government agency . Specifically,

- a. The Insurance Fraud Section does not have jurisdiction to issue reprimands, warnings, fines or other pertinent regulatory sanctions against Independence Blue Cross and/or the Independence Companies;

- b. The Insurance Fraud Section does not have jurisdiction to evaluate or examine Independence Blue Cross and/or the Independence Companies with regards to its Facilitated Health Networks;
- c. The Insurance Fraud Section does not have jurisdiction to evaluate or examine Independence Blue Cross and/or the Independence Companies with regards investments of unpaid insurance claims or other improperly obtained monies into registered or unregistered securities;
- d. The Insurance Fraud Section does not have jurisdiction to evaluate or examine Independence Blue Cross and/or the Independence Companies with regards to monopoly, monopsony, price fixing of medical services and treatments, or restraint of trade within the greater Philadelphia area.

C. Conclusion

16. In conclusion, as Chief Deputy Attorney General for the Insurance Fraud Section, I have reviewed Mr. Anand's Request #2022-061, the Bloom and Liberation Way prosecutions cited by Mr. Anand in his appeal, and prosecutions of physicians and health care providers by the Insurance Fraud Section and I determined that there were not any prosecutions of physicians and health care providers that were referred by an Independence Company which were arrested/prosecuted for the crimes enumerated in the request and that there are no records that meet the parameters of his request

By: Robert G. LaBar

Robert G. LaBar
Chief Deputy Attorney General
Office of Attorney General
Criminal Law Division
Insurance Fraud Section
16th Floor, Strawberry Square
Harrisburg, PA 17120

May 20, 2022

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Exhibit 10

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL**

**AFFIDAVIT OF CHIEF DEPUTY ATTORNEY
GENERAL ROBERT G. LABAR**

1. I, Robert G. LaBar, the undersigned, make this statement subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.
2. I have been employed in the Insurance Fraud Section (IFS) of the Pennsylvania Office of Attorney General (PAOAG) since September of 2007. I was hired as a Senior Deputy Attorney General and served as a Senior Deputy Attorney General until July of 2020. I am currently employed as the Chief Deputy Attorney General for the IFS and have been in that position since July of 2020.
3. The Pennsylvania Insurance Fraud statute is located at 18 Pa.C.S.A § 4117 and pursuant to 18 Pa.C.S.A §4117 (h), the PAOAG is vested with the authority to investigate and institute criminal proceedings in all the counties in the State of Pennsylvania for violations of the Insurance Fraud statute and other related criminal violations.
4. The Insurance Fraud Section's official duties include, but are not limited to, conducting criminal investigations into all types of insurance fraud which includes Auto, Homeowners, Health, Life, Disability, Agent/Industry and Workers' Compensation Fraud.
5. My duties as the Chief Deputy Attorney General for the IFS include reviewing referrals submitted to the IFS, opening up criminal investigations, overseeing the criminal investigations, and approving criminal arrests and charges.

6. As the Chief Deputy Attorney General for the IFS, I am aware that the PAOAG prosecutes Insurance Fraud cases and brings criminal prosecutions.
7. Although some states Insurance Fraud Sections have both criminal and civil authority, the PA IFS only investigates and prosecutes criminal matters. Therefore, all records within the possession of the PA IFS are protected by pertinent criminal investigation provisions in the Right to Know Law and Criminal History Records Information Act.
8. As the Chief Deputy Attorney General for the IFS, I am aware that the PAOAG does not enforce or have any regulatory authority over insurance companies. To the contrary, regulatory oversight of insurance companies is vested within the Pennsylvania Insurance Department and any referrals that may be received by the IFS for regulatory violations would be referred directly to the Pennsylvania Insurance Department for investigation.

Review of Neil Anand's request #2022-284

9. On August 12, 2022, the OAG Right to Know Law Officer forwarded request #2022-284 from Neil Anand to the Insurance Fraud Section and other OAG Criminal Law Division sections. Request #2022-284 sought several categories of records, enumerated in 71 separate requests, many of which had numerous subsections with additional requests.
10. Mr. Anand's records request sought an unmanageable volume of records from 2005 to the present, the overwhelming majority of which were requests for records pertinent to IFS criminal investigations and prosecutions.
11. Sixty-eight of Mr. Anand's seventy-one requests reference Independence Company documents. The IFS does not have any written contracts with any Independence

Company and Independence Companies do not perform state criminal government functions on behalf of the IFS.

12. At the time of Mr. Anand's first related request, the IFS conducted an initial review to determine if responsive records existed concerning referrals from an Independence Company and then a good faith search to determine the scope of the records. The search for requested records in IFS files revealed that all requested records relate to criminal investigations conducted by the IFS or other criminal sections of the OAG. The IFS was able to readily identify three investigations that fit the parameters of Mr. Anand's request. All three investigations were conducted before the Grand Jury and clean slate/limited access provisions of CHRIA are applicable to criminal cases filed as a result of all three investigations.
13. Next, for the first related request, the IFS reviewed potentially responsive records to determine whether or not records could be released, were exempt pursuant to the Right to Know Law, or barred from release under any other law.
14. In the second supplemental request, Mr. Anand also sought, since year 1990, records concerning "the identities of past and/or present, physicians or health care providers that have been arrested or, prosecuted criminally, or convicted after provision of controlled substance medication prescribing data by an Independence Company and/or provision of health care billing data by an Independence Company." (Emphasis added)
15. In this third request, Mr. Anand seeks voluminous records from 2005 to the present, the overwhelming majority of which were requests for records pertinent to IFS criminal investigations and prosecutions.

16. The IFS receives approximately 3,000 referrals and prosecutes approximately 150 to 200 cases per year. Mr. Anand's most current request seeks records for a period of 17 plus years. A hand search for all cases fitting Mr. Anand's parameters would require the Insurance Fraud Section to search through approximately over 2,500 prosecutions. A typical file would contain hundreds of pages of documents including court filings, insurance claim files, witness interviews and investigative reports, etc. At a minimum that would require an employee or employees to hand search hundreds of pages of records per file.
17. For the time period of 17 years, the IFS arrested over 2,500 individuals or entities. In just one investigative case file pertinent to one of those arrests, contained tens of thousands of documents totaling several terabytes of data.
18. The IFS would have to review every internal file, folder, and data in over 2,500 investigative case files to determine if the IFS obtained documents related to his over 71 enumerated requests. Any pertinent records discovered during said search would then have to be further searched to determine if the data was responsive to Mr. Anand's requests. This would be an unreasonably burdensome process that would take months of staff time. Additionally, as detailed below, if the search were to be conducted, the OAG and IFS would not be able disseminate any requested records to a noncriminal justice agency or person due to the pertinent provisions of the Right to Know Law, the Criminal History Records Information Act, the Health Insurance Portability and Accountability Act, State and Federal drug and alcohol/mental health statutes and grand jury secrecy provisions.

19. Although the assigned IFS prosecutor enters his or her appearance in the official public record, often neither the Deputy Attorney General nor the IFS receive timely notice of all proceedings or orders entered in his or her case, including, but not limited to, expungements and pardons.
20. Pursuant to the procedural provisions of the Criminal History Records Information Act ("CHRIA"), 18 Pa.C.S. §9101 *et. seq.*, the OAG does not receive notice of the clean slate and limited access actions.
21. The Administrative Office of Pennsylvania Courts ("AOPC") and the Pennsylvania State Police ("PSP") maintain and regularly update statewide databases containing criminal history record information, which is constantly subject to change daily based on the legal requirements of CHRIA relative to inactive cases, clean slate, expungement and limited access. This is information the IFS does not possess or maintain. At some point in time, the clean slate and limited access provisions of CHRIA impact almost every criminal case filed by the IFS.
22. Further, the items requested are information assembled as a result of the IFS inquiry into a criminal incident or an allegation of criminal wrongdoing. See 18 Pa. C.S. §9102 for the definition of "investigative information."
23. As such, the records cannot be released subject to the Criminal Investigative exemption in the Right to Know Law, 65 P.S. §67.708(b)(16), and CHRIA, 18 Pa.C.S. §9101 *et seq.* Specifically, pursuant to section 9106(c)(4) of CHRIA, "[i]nvestigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties."

24. Some of the requested records contain grand jury information. The OAG and IFS cannot release grand jury information without a court order issued by the Supervising Judge of the pertinent grand jury. See 42 Pa.C.S. §4541 *et. seq.*
25. In addition, certain of the records are not considered public records under the Right to Know Law because they are exempt under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 42 U.S.C § 300gg. Additionally, Section 67.708(b)(5) of the Right to Know Law specifically excludes “individually identifiable health information.” In this instance, some of the records responsive to Mr. Anand’s request contain medical records obtained as part of the criminal investigation. These records are not “public records” subject to release because the disclosure of the medical records would reveal information about the health of an individual, which constitutes a HIPAA violation. The records include information regarding drug and alcohol use, mental health concerns, and other medical conditions, all of which are protected under various Federal and State confidentiality statutes and regulations, including the Pennsylvania Mental Health Procedures Act. See 42 U.S.C.A. § 290dd-2; 42 C.F.R. § 2.1; 42 C.F.R. § 2.2, 42 C.F.R. § 2.64; 42 C.F.R. § 2.66; 71 P.S. § 1690.108 and 55 Pa. Code 5100 *et seq.*
26. The OAG and IFS have a legal obligation to comply with the Right to Know Law. The OAG and IFS have a legal obligation to comply with CHRIA and uphold the rights of those individuals CHRIA protects. The OAG and IFS have a legal obligation to comply with the secrecy provisions regarding grand jury investigations. The OAG and IFS have a legal obligation to comply with HIPAA, State and Federal drug and alcohol and mental health statutes.

27. Relying on the pertinent provisions of the Right to Know Law, CHRIA, HIPAA, State and Federal drug and alcohol/mental health statutes and grand jury secrecy provisions, the OAG's legal conclusion is that the OAG and IFS cannot disseminate the requested records to a noncriminal justice agency or person and/or IFS does not have records.

Conclusion

28. In conclusion, as Chief Deputy Attorney General for the IFS, I have reviewed Mr. Anand's Request #2022-284, and determined certain of the investigative information requested by Mr. Anand cannot be disseminated and certain of the investigative information should be protected from disclosure.

By: Robert G. LaBar
Robert G. LaBar
Chief Deputy Attorney General
Office of Attorney General
Criminal Law Division
Insurance Fraud Section
16th Floor, Strawberry Square

November 3, 2022

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Exhibit 11

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

RICHARD ARJUN KAUL, MD
440c SOMERSET DRIVE
PEARL RIVER, NY 10965
201 989 2299

U.S. BANKRUPTCY COURT
FILED
NEWARK, NJ
2018 SEP 20 P 2: 12
JEANNE Y. KASHTON
BY: *[Signature]*
DEPUTY CLERK

In Re:

NEW JERSEY SPINE AND REHABILITATION
P.C., et als.

Case No.: 13-23366(JKS)
Jointly Adminlstered

Judge: John K. Sherwood

Debtor

RICHARD ARJUN KAUL, MD
Debtor's Principal

Chapter: 7

Hearing Date:

Plaintiff

Adv. Proc. No.

v.

DANIEL STOLZ, ESQ

**ADVERSARY COMPLAINT TO (1) REVOKE +
REVERSE ALL ORDERS/JUDGMENTS/
SETTLEMENTS; (2) AWARD KAUL FORTY-FIVE
MILLION DOLLARS (\$45,000,000.00);
(3) REFER CASE TO U.S TRUSTEE + UNITED
STATES DEPARTMENT OF JUSTICE: FRAUD +
PUBLIC CORRUPTION UNIT; (4) DISQUALIFY
TRUSTEE/DEFENDANT STOLZ.**

Defendant

Richard Arjun Kaul, MD, Debtor's Principal ("Kaul") as and for his Complaint against
Trustee/Defendant Stolz states as follows:

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[The creditors received nothing from the \$45 million accounts receivable. Stolz collected less than 0.1% of the \$45 million accounts receivable.]

'The Kaul Cases'
(1998 – 2018)

A sequence of administrative + civil + criminal legal events that commenced in 1998 in the United Kingdom and continued from 2001 to the present in the United States. The compendium will be provided upon written request.

Jurisdiction + Venue

This is an Adversary Proceeding pursuant to Fed. R. Bank. P. 7001, 11 U.S.C. §105 + 11 U.S.C. §541 + 11 U.S.C. §544 + 11 U.S.C. §548 + 11 U.S.C. §550 + 11 U.S.C. §551

This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157.

This civil action arises in and relates to the (i) Bankruptcy Cases of New Jersey Spine & Rehabilitation, P.C., Pompton Anesthesia, P.C., Interventional Pain Associates, P.C. and NJSR Surgical Center, LLC, Jointly Administered Case No. 13-23366(JKS); (ii) **'The Kaul Cases'**.

This is a "core" proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (E), (F), (h), (K) and (O).

Venue is properly fixed in this Court pursuant to 28 U.S.C. §1409(a).

The applicable statutory basis for the claims asserted herein include, but are not limited to, 11 U.S.C. §§ 105 + 544 + 548 + 550 + 551.

①

**IN THE COURT OF THE PRINCIPAL CITY CIVIL AND
SESSIONS JUDGE, BENGALURU**

ORIGINAL SUIT NO. _____/2022

DR. RICHARD ARJUN KAUL

S/o Late, Richard Arun Kaul,
Aged 57 years,
Mundomthanath House
Poothrikka P.O.
Puthencruz via
Ernakulam
Kerala 682308
India.

Also at:

440C, Somerset Drive
Pearl River, New York
NY 10965
USA

Represented by his Power of Attorney

Mr. Ankit Gupta,
S/o. Ramesh Gupta.
Residing at D 193, Main Road,
West Vinod Nagar, Mandawali,
Fazalpur, East Delhi -110 092.

.....**PLAINTIFF**

Versus

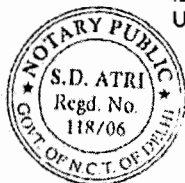
1. ALLSTATE SOLUTIONS PRIVATE LIMITED

The Indian subsidiary of Allstate Corporation Inc., USA
Having its registered office at, RMZ Ecoworld,
7th Floor, Building No. 1
Devarabeesanahalli Village,
VarthurHobli,
Bengaluru - 560103
Karnataka, India.
Represented by its Directors.

Also at:

Allstate Corporation
3100 Sanders Road
Northbrook, Illinois
IL 60062
USA

.....**DEFENDANT No. 1**



Ankit

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2. THE STATE OF NEW JERSEY

122 W State Street, Trenton
New Jersey.
NJ 08608
USA

Office of Governor of New JerseyDEFENDANT No.2

3. MR. CHRISTOPHER J. CHRISTIE

(Father's name not known to the Plaintiff)
Aged major,
47 Corey Lane, Mendham
New Jersey, NJ 07945
USA

....DEFENDANT No. 3

4. THE NATIONAL MEDICAL COMMISSION OF INDIA (NMC)

Formerly known as the Medical Council of India (MCI)
Phase-I, Dada Dev Mandir Road
Block P, Sector 8
Dwarka,
New Delhi-110077
India.

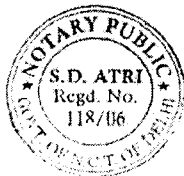
....DEFENDANT No. 4

(The above-described Defendant Nos. 1 to 3 are proper Defendants, while the Defendant No. 4, being the regulatory body of medical profession in India, is a formal Defendant only and no material relief is sought against Defendant No. 4)

**MEMORANDUM OF PLAINT UNDER ORDER VII, RULE I,
R/W SECTION 26 OF THE CODE OF CIVIL PROCEDURE,
1908.**

The plaintiff submits as follows:

1. The address of the plaintiff for issuance of court notice, summons, etc., is as mentioned in the cause title and that of his counsels, Manjunath N., Brijesh M. Singh, Amit Anand, Nitin Bhatnagar, Advocates Adroit, No. 158, 1st Floor, Sheshadripuram, 1st Main Road, Bengaluru – 560 020.



Amit

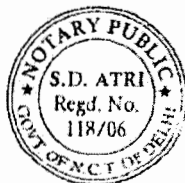
(3)

2. The address of the defendant for the above said purpose is as mentioned in the cause title.

3. PLAINTIFF'S INTRODUCTION:

The Plaintiff named herein, i.e., Dr. Richard Arjun Kaul is a citizen of India, having Indian Passport Number Z2284953 (dated 20.11.2012 issued at New York) and a resident of the United States of America (USA). The Plaintiff was born in India in the city of Hyderabad in the year 1964 and emigrated to the UK with his family in the year 1966, where the family settled in the county of Kent. The Plaintiff graduated in Medicine at the Royal Free Hospital School of Medicine in the year 1988 in UK, and then completed his Post Graduation in the UK and subsequently in USA, having emigrated to the USA 1989. Copies of the Indian Passport and the Medical Degrees attained by the Plaintiff in the UK and USA are attached with this Plaint as ANNEXURE - A.

4. The Plaintiff has filed the present Suit and sued the Defendants herein, through his duly constituted Power of Attorney Mr. Ankit Gupta, Son of Mr. Rakesh Gupta, Resident of D 193, Main Road, West Vinod Nagar, Mandawali, Fazalpur, East Delhi-110092, duly executed and notarized in the USA, on 15.03.2022, and attached with this Plaint along with the Vakalatnama. The Plaintiff however undertakes to present himself for answering any material questions or presentations of facts, before this Court in person, as and when directed to

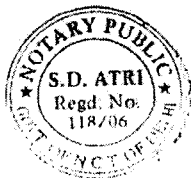


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do so. Copy of the Power of Attorney is attached herewith as
ANNEXURE – B.

5. The Plaintiff is an Indian born and British raised Doctor who successfully emerged as a Surgeon. After of surgical internships in New York, USA, in the early 90s, the Plaintiff began a three-year fellowship in anesthesia, and was certified by the American Board of Anesthesiology in the year 1996. The Plaintiff started an independent practice in the early 2000s and soon became a very successful Medical Practitioner and a minimally invasive spine surgeon and made a mark for himself in the United States. The Plaintiff was soon acknowledged and lauded as pioneer in minimally invasive spine surgery. The Plaintiff successfully performed the first outpatient spinal fusion in New Jersey in February 2005 and became internationally recognized as a specialist and a pioneer in this emerging specialty. The Plaintiff continued to achieve greater professional heights but the rise and feat of the Plaintiff did not go down well with a powerful league and lobby of competitive practitioners, who colluded with the Defendant Nos. 1 to 3 and pulled down the Plaintiff by filing multiple and knowingly false cases against the him, that caused a loss of his vocation, career progression and amongst other things, pecuniary, social and reputational losses, for which the Plaintiff has now been contesting, with other issues, in various legal cases in the Courts in USA.

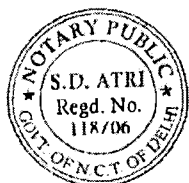


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DEFENDANTS' INTRODUCTION:

6. The Defendant No. 1 is the Indian Subsidiary of Allstate Corporation, which is one of the largest publicly held Insurance providers in the United States of America. It has also spread its operations in Canada and owns and operates 18 companies around the USA, Canada and India. The Defendant No. 1, Allstate Solutions Private Limited (ASPL) is also known as Allstate India and is a subsidiary of Allstate Corporation. It was incorporated in the year 2012 and serves as a strategic business services branch for the Corporation and operates under the overall administration and control of the Allstate Corporation, USA. Copy of the Master Data downloaded from the website of MCA21 is attached herewith as ANNEXURE- C.
7. Defendant No. 2 is the State of New Jersey, USA. The State is sued through the Office of the Governor of the State of New Jersey. The Defendant No. 2 is a necessary and proper party to the present case. It is the Plaintiff's case that the Defendant Nos. 1,2 and 3 have colluded to defame the Plaintiff under the guise of false charges of medical negligence which were inflicted upon the Plaintiff, under the influence and control of a powerful lobby of local medical practitioners, as the Plaintiff's success in the field of minimally invasive spine surgery did not go down well with these individuals who influenced the State, i.e., the Defendant No. 2 and other colluding Defendants, with the motive of inflicting false charges on the Plaintiff to

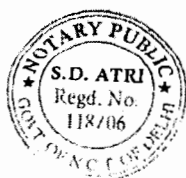


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intentionally destroy his career. The Plaintiff submits that the State of New Jersey has a major role in causing severe irreparable loss and damages to the Plaintiff, in conspiracy and collusion with the other Defendants.

8. Defendant No. 3, Mr. Christopher James Christie, born on 6th September 1962, is an American Politician, lobbyist and a former federal prosecutor who served as the 55th Governor of New Jersey from the year 2010 to 2018. It is the case of the Plaintiff that during his stint in the office of the Governor of New Jersey, he was one of the colluding Defendants, who acted against the pecuniary, professional, and social interests of the Plaintiff and had been instrumental in inflicting monetary, social and reputational losses upon the Plaintiff and hence the Defendant No. 3 has been rightly impleaded as a necessary and proper party to the present Suit.
9. Defendant No. 4 is the National Medical Commission, which came into being on 25 September 2020 and has replaced the Medical Council of India. The NMC has been impleaded as a formal Defendant and no pecuniary or material relief has been sought against it. The Defendant No. 4 is regulator for medical education and medical professionals in the country (India) and regulates the registration and enrolment of doctors and medical professionals in the country and grants them the license to practice medicine in India. It is the case of the Plaintiff that the colluding Defendants have, through the Indian

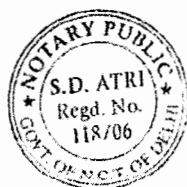


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office of the Defendant No. 1, published and communicated negative and adverse material against the Plaintiff to prejudice the Defendant No.4 against the Plaintiff with their false narratives, owing to which, the Plaintiff is not in a position to get registered with the Defendant No. 4 who is likely to adopt a biased approach against the Plaintiff and deprive him of his medical registration in India, thereby causing a position where the Plaintiff shall not be able to practice and settle in his own country as well. The Defendant No. 4 has thus been impleaded as a formal Defendant for the purposes of information and compliance of necessary direction which this Hon'ble may be pleased to pass in the present case.

10. The Plaintiff has for now impleaded only the above described four Defendants. The Plaintiff craves the leave of this Hon'ble Court to add or delete any Defendant, if so, needed at any stage of this case.
11. The impleadment of Defendant No. 4 is essential in order to ensure the rights of the Plaintiff, as guaranteed to every Citizen of India under Article 19(1)(g) of the Constitution of India, which provides the Right to practice any profession or to carry out any occupation, trade or business to all Citizens subject to Article 19(6) which enumerates the nature of restriction that can be imposed by the State upon the above right of the Citizens. It is the case of the Plaintiff that he is being wrongly restricted from exercising his right to practice the medical



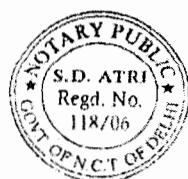
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profession. The Plaintiff submits that restriction, if any, has to be tangible and sustainable in law and the same cannot be heaped upon the Citizen simply on the basis of surmises and conjectures, as has been happening in case of the Plaintiff. The Plaintiff submits that the colluding Defendants have been able to build an adverse and negative narrative around the Plaintiff and this has deprived the Plaintiff from getting himself registered with the Defendant No. 4 and the only relief sought against the Defendant No. 4 is in the form of a direction to the said Defendant to allow the Plaintiff to apply for registration and consider his application with unbiased approach and allow the registration in all fairness. Besides this, no other relief is sought against the Defendant No. 4 and accordingly, the Defendant No. 4 is impleaded as a formal Defendant only.

FACTS OF THE CASE:

12. It is the case of the Plaintiff that the Defendants, led by the Defendant No. 1 had lately adopted a practice of racial discrimination and conspiracy against Indian physicians, Doctors, Medical Professionals and Healthcare providers. The Defendants collude and conspire at international level and inter-alia use the internet and other media platforms to propagate adverse and negative narratives against successful Medical Professionals of Indian origin and cause excessive damage to their professional and social reputation and inflict financial losses to prevent them from finding work or



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Case 2:20-cv-06246-CFK Document 75 Filed 12/23/22 Page 1 of 27

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

Neil Anand,	:	:
	:	CASE NO. 20-6246-CFK
Plaintiff,	:	
v.	:	
	:	
Independence Blue Cross	:	
	:	
Defendant.	:	

PLAINTIFF’S MOTION FOR INJUNCTION

Dr. Neil Anand (“Plaintiff”) moves for a national injunction, restraining order, monetary relief, civil penalties, and other relief against Independence Blue Cross (“IBC”; “Defendant”), pursuant to Rule 65 of the Federal Rules of Civil Procedure requesting as follows: Plaintiff seeks a national injunction against IBC on two grounds: (1) IBC’s massive collusion and organized fraud against Plaintiff as well as U.S. physicians and U.S. healthcare entities nationwide through a public-private, Healthcare Fraud Preventive Partnership (HFPP) violating 15 U.S. Code § 26, 42 U.S.C. § 1983, and 28 U.S.C. § 1343; (2) IBC’s deliberate corruption of the justice system through inducement of tainted criminal proceedings against Plaintiff and then subsequent introduction of materially false evidentiary documents in *United States v. Anand* criminal trial against Plaintiff for purposes of unlawful pecuniary gain subject to relief under 28 U.S.C. § 1651(a).

LEGAL STANDARDS FOR PRELIMINARY INJUNCTION

Federal Rule of Civil Procedure 65 provides that a court may issue a preliminary injunction only on notice to the adverse party. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and

IN THE CITY CIVIL COURT, HYDERABAD METROPOLITAN
REGION, HYDERABAD, TELANGANA
(ORIGINAL JURISDICTION)

CIVIL SUIT NO. _____/2023

Ravinder Rao Akula & Anr. PLAINTIFFS

Versus

The State of Louisiana & Ors. DEFENDANTS

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5.		
6.	Verifying affidavits of Plaintiff	
7.	ANNEXURE – P1, Copy of the UID Card of the Plaintiff.	
8.	ANNEXURE – P2, Copy of the Articles of Association of Akula Foundation along with Letter of Appointment in favor of the Plaintiff appointed as its General Secretary.	
9.	ANNEXURE – P3, Photographs showing the Community Service / Community Welfare Schemes run by the Akula Foundation.	
10.	ANNEXURE – P4, Copy of the Notice of the 10 th day ceremony of the Late Smt. Lalitha Bai Akula along with a copy of her UID.	
11.	Power of Attorney	

12.	Vakalathnama	
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Plaintiff No. 1 (Mr. Ravinder Rao Akula)

Plaintiff No. 2 (Akula Foundation – India, through its General Secretary and AR Mr. Ravinder Rao Akula)

Place: Hyderabad
Date: __.01.2023

THROUGH:
ADVOCATES FOR PLAINTIFF

IN THE CITY CIVIL COURT, HYDERABAD METROPOLITAN
 REGION, HYDERABAD, TELANGANA
 (ORIGINAL JURISDICTION)

CIVIL SUIT NO. _____/2023

Ravinder Rao Akula & Anr. PLAINTIFFS

Versus

The State of Louisiana & Ors. DEFENDANTS

LIST OF DATES AND EVENTS WITH SYNOPSIS

DATE	DESCRIPTION OF EVENTS
05.08.2021	Dr. Shiva Akula, the nephew of Plaintiff No. 1 and the Chief Patron of the Plaintiff No. 2 was charged with indictment of 23 accounts inter alia for purported instances of financial irregularities in Medical Billing through his Company Canon Hospice operating in Louisiana, USA. The charges include those of health care fraud and Dr. Shiva Akula, an Indian turned American medical graduate from Osmania University in Hyderabad and emigrated to the US in 1983 faces legal action on multiple counts in the US since August 2021.
Early 2000s	Dr. Shiva Akula Founded the Akula Foundation in the US in the year 1994 and an Indian Chapter of the same under the name of Akula India Foundation is floated and launched in the early 2000s and the Foundation takes up community welfare and Social welfare activities in and around Hyderabad particularly, medical camps and health camps for the poor. The Foundation receives most of its funds through grant-in-aid from the Akula Foundation USA

<p>05.11.2021 and immediately thereafter</p>	<p>Late Smt. Lalitha Bai Akula, who was the mother of Dr. Shiva Akula and the Sister-in-law of the Plaintiff No. 1 dies in Hyderabad and her remains await the arrival of her son Dr. Shiva Akula from the US to come over and perform the last rights and funeral of the departed soul. However, the colluding Defendants built a false narrative and vehemently oppose his legitimate travel to Hyderabad and even question the genuineness of the incident of death and deprived the Plaintiff No. 1 and his nephew of his legitimate rights to bid a graceful and respectful farewell to his deceased mother. The Defendant No. 2 meanwhile illegally freezes and holds on to a significant amount of more than USD 30,000 meant for the grant to the Plaintiff No. 2 thereby bringing the activities and operations of the Plaintiff No. 2 to a near halt and makes its existence difficult.</p>
<p>November 2021 to till date</p>	<p>Plaintiffs are struggling to come to terms with the damages inflicted upon them and the Plaintiff No. 1 particularly, being the eldest member of the Akula Family now continues to be struggling with the serve agony to see how his nephew failed to adieu a graceful farewell to his mother all because of wrong charges bringing anm irreparable and permanent loss to the family and leaving an indelible scar.</p>
	<p>Cause of action: The Cause of action in the present Suit is a perpetual and ongoing continuous cause of action and continues to arise with each day perpetually. Not only the Defendants have caused irreparable</p>

	damage to the Plaintiff's reputation and legal rights but have caused a general human rights violation as well.
Present day	In the present day, the Plaintiff No. 1 suffers mentally and personally while the Plaintiff No. 2 continues to suffer financially and operationally. The Defendants have caused the said misery to the Plaintiffs and therefore the Plaintiffs have decided to file the present Suit and fight for their bona fide rights and liberties.

Plaintiff No. 1 (Mr. Ravinder Rao Akula)

Plaintiff No. 2 (Akula Foundation – India, through its General Secretary and AR Mr. Ravinder Rao Akula)

Place: Hyderabad
Date: __.01.2023

THROUGH:
ADVOCATES FOR PLAINTIFF

CIVIL SUIT NO. _____/2023

Ravinder Rao Akula & Anr.

PLAINTIFFS

Versus

The State of Louisiana & Ors.

DEFENDANTS

MEMO OF PARTIES

1. Ravinder Rao Akula
13-2-368, Jai Hanuman
Rashimpura
Asihnagar
Hyderabad
Telangana
India 520006

2. The Akula Foundation – India Chapter
C/o The Akula Foundation USA
through its General Secretary
13-2-368 Jai Hanuman
Rashimpura
Asihnagar
Hyderabad
Telangana
India 520006

VERSUS

1. The State of Louisiana
through the Secretary of State
8585 Archives Avenue, Baton Rouge
LA 70809,
USA

.....Defendant No. 1

2. Capital One Bank
through its Officer-in-Charge

St Cloud
MN 56301
USA

.....Defendant No. 2

3. Kathryn McHugh
Attorney – US Department of Justice
650 Poydras St Ste 1600
New Orleans, LA, 70130-7212
USA

....Defendant No.3

Plaintiff No. 1 (Mr. Ravinder Rao
Akula)

Plaintiff No. 2 (Akula Foundation –
India, through its General Secretary
and AR Mr. Ravinder Rao Akula)

Place: Hyderabad
Date: __.01.2023

THROUGH:
ADVOCATES FOR PLAINTIFF