

Dr. Richard Tozer Cross Examination – Highlights

- Tozer asked by CPSO to review 25 of Khan's patient charts
- He was provided with 2 boxes of documents (paper charts) and 4 DVDs (digital parts of charts e.g. emails, lab reports, scan images) with retainer letter explaining what was provided
- **Tozer issues 1st report** based on only 7 charts in **June 2015** *without looking at DVDs*
- Issues an opinion based on just 7 charts, no indication that report was incomplete and 18 more charts were still to be reviewed
- **Tozer issues 2nd report Aug 2016**, also does not include all 25 charts
- 2nd report does not answer questions posed by CPSO about Khan meeting standards of practice
- **Tozer issues supplemental report Sep 2016**
- CPSO asked Tozer to answer specific questions again about Khan's patient care on Sep 27, 2016
- Only 21 charts had been reviewed (4 still missed)
- Tozer made an assumption that patients were harmed by Khan (by allegedly being deflected away from standard approved cancer therapies), then admitted under oath that he did not have enough information to reach those conclusions
- Tozer knew that it was his duty to express when he did not have enough info to reach a conclusion (provided to him by CPSO in a document "Obligations of an Expert in Providing Reports and Testimony")
- CPSO emailed Tozer Dec 2016, advised that he missed 4 patients in his review (names given), and was reminded of the patient records on 4 DVDs, and asked to clarify about patients being harmed
- CPSO asked Tozer to forget about 2 of the 4 and just give an opinion on the other 2
- Tozer advises CPSO he was not initially aware of the digital records on DVDs
- Tozer admitted under oath that when he realized what was on the DVDs, he never went back and revised his report based on the additional information
- **Tozer issued 3rd report Feb 2017**
- Tozer attributed multiple deficiencies to Khan simply due to the fact that he had not seen the entirety of all the patient charts
- And he never corrected his report, even after Dr. Khan had pointed out his errors early on during the course of the investigation
- **DR. TOZER INTENTIONALLY DID NOT CORRECT HIS REPORT LEAVING CPSO WITH FALSE EVIDENCE THAT DR. KHAN HAD MANY DEFICIENCIES IN HIS PATIENT CARE**
- **CPSO RELIED HEAVILY ON TOZER'S REPORT TO INITIATE SEF CHEMO DISCIPLINE PROCEEDINGS, KNOWING THAT DR. TOZER HAD NOT PROPERLY REVIEWED THE PATIENT DOCUMENTATION**
- **CPSO NEVER ASKED DR. TOZER TO SIGN THE ACKNOWLEDGEMENT OF HIS RESPONSIBILITIES AS AN EXPERT REVIEWER, SO HE WAS NOT UNDER ANY OBLIGATION TO WRITE A FAIR AND HONEST REPORT (LETTER WAS SIGNED YEARS AFTER HE WROTE HIS REPORTS, IN PREPARATION FOR Dr. KHAN'S HEARING)**

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Cr-Ex
(Henein)

R. Tozer - 6-145

1 Q. All right. Can I take a look at
2 Exhibit 29, please? Do you have Exhibit 29 in front
3 of you?

4 A. Yes.

5 Q. I'm just going to wait for the
6 panel to get the exhibit.

7 **MS. HENEIN:** Actually, just for the
8 assistance of the panel, you should have Exhibit 29
9 and all the reports of Dr. Tozer in front of you for
10 the next portion of the cross.

11 **DR. HELLYER:** Can I ask a question? So,
12 it's Exhibit 29, 30, 31, 32. Any other?

13 **MS. HENEIN:** I think that's it, Dr.
14 Hellyer.

15 **DR. HELLYER:** Okay. Thank you.

16
17 BY MS. HENEIN:

18 Q. So, if we take a look at Exhibit
19 29, that's the letter to you, Dr. Tozer, from the
20 College, dated February 8, 2016?

21 A. Yes.

22 Q. All right. And, if you take a look
23 at page 6 of that letter, do you see there that the
24 material -- the College lists all the material that is
25 sent to you?

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Cr-Ex
(Henein)

R. Tozer - 6-146

1 A. Yes.

2 Q. And, in terms of patient charts,
3 they say that they've sent to you four DVDs and paper
4 charts?

5 A. Yes.

6 Q. All right. And so, they've sent
7 you 25 patient charts that are listed there.

8 A. Yes.

9 Q. And, they sent you emails?

10 A. Yes.

11 Q. And then at the bottom, they say,
12 "Additional information for the following patients is
13 also contained on CDs".

14 A. Yes.

15 Q. And, you begin drafting your
16 report, and you send a final report, which I gather is
17 Exhibit 30, to the College some seven months later?

18 A. Yes.

19 Q. And, that is dated August 29, 2016?

20 A. Okay. Yes.

21 Q. So, let me just stop there. In
22 terms of how you drafted your report ---

23 A. Yes.

24 Q. --- how did you go about doing
25 that?

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Cr-Ex
(Henein)

R. Tozer - 6-147

1 A. So, the way I draft all reports.
2 So, I read through each patient chart, basically came
3 down with the history, came down with the treatments
4 that were offered, came down -- reviewed the
5 investigations, both radiologic and laboratory, and
6 did a summation of them. And then, basically, I then
7 would terminate each section with the -- you know
8 what.

9 Q. The conclusions?

10 A. The conclusions.

11 Q. So, did you do a draft?

12 A. Yes.

13 Q. Okay. And, where is the draft copy
14 of your report?

15 A. I wasn't asked to send the draft.

16 Q. What did you do ---

17 A. In fact, no, this is -- there was
18 no draft. This is -- I would go through the thing,
19 and proofread, and proofread, and proofread. So, this
20 is -- so, no, I did not do a separate draft and then
21 retype it.

22 Q. Okay. And so, I'm going to show
23 you a document that we found in the file, and it's
24 dated June 29, 2015. So, can you just take a look at
25 that, doctor, for me?

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Cr-Ex
(Henein)

R. Tozer - 6-148

1 A. Yes.

2 Q. So, if we take a look at what's
3 been marked as Exhibit 30, you see there that that is
4 your initial report?

5 A. Yes.

6 Q. That's the first one that you sent
7 to the College. And, can I ask you to take a look at
8 what I've shown you? Do you see that? It's dated
9 June 29th ---

10 A. Yes.

11 Q. --- 2015?

12 A. Yes.

13 Q. Okay. Is that a draft report that
14 you ---

15 A. That would have been -- I guess
16 that would be an earlier version of the report.

17 Q. Right. Okay. I'm going to just
18 ask you some questions about it.

19 **MS. HENEIN:** And, perhaps I can give it
20 to the panel. If that could be marked as the next
21 exhibit?

22 **THE CHAIRPERSON:** We are up to Exhibit
23 65 here, which is a letter -- this is dated 2015, I
24 think, isn't it?

25 **MS. HENEIN:** Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-149

1 **THE CHAIRPERSON:** Okay. I thought we
2 read it as 2016, but okay. So, it is a letter to the
3 investigator at the College from Dr. Tozer, dated June
4 19, 2015.

5
6 --- EXHIBIT NO. 65: Letter to Investigator at the
7 College, from Dr. Tozer, dated
8 June 19, 2015

9
10 BY MS. HENEIN:

11 Q. So, this report seems to find its
12 way to the College of Physicians and Surgeons. Can
13 you help us with how that happens?

14 A. I can't remember. Oh, I always
15 courier it.

16 Q. Okay. And, just walk through this
17 report with me, just quickly. Can you see that on the
18 first page it is, sort of, a general summary?

19 A. Yes.

20 Q. And then the second page, it deals
21 with YP; right?

22 A. Yes.

23 Q. And then, patient TM?

24 A. Yes.

25 Q. Then, the next page, patient FH?

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Cr-Ex
(Henein)

R. Tozer - 6-150

1 A. Yes.

2 Q. And then, the next page, patient

3 JF?

4 A. Yes.

5 Q. And then, the next one is LL?

6 A. Yes.

7 Q. And then patient AY?

8 A. Yes.

9 Q. And then your summary, your
10 conclusion?

11 A. Right.

12 Q. Okay. And, can I ask you to read
13 along with me, on the very first page it says, "The
14 opinion provided" -- so, you see that third paragraph?

15 A. Yes.

16 Q. "The opinion provided in this
17 report is based on review of seven charts provided";
18 right?

19 A. Yes.

20 Q. All right. So, the very first
21 thing that you do is, if we just go back, the College
22 sends you a letter and says, "We need your opinion,
23 your expert opinion, in respect of 25 patients";
24 right?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-151

1 Q. And, you send a report reviewing
2 only seven, initially?

3 A. Yes. So, this was preliminary.
4 So, I hadn't done all of them yet.

5 Q. No, no, you summarize it.

6 A. Okay.

7 Q. You don't say there is more to
8 come; right?

9 A. Yes, I -- again, this is four and a
10 half years ago.

11 Q. Right. Well, what I'm going to
12 suggest to you is, you keep missing patients; right?
13 I'll take you through all of it. You keep missing the
14 documents that have been given to you. And, that the
15 very first thing you do is that on June 29, 2015, you
16 send the College a final report, and you've only
17 reviewed seven patient charts. Is that right? Do you
18 recall doing that?

19 A. I recall doing the charts. I don't
20 remember what the specific instructions from the
21 College were at that time.

22 Q. Okay. Why don't I take you back to
23 the instructions, because it's there? Let's look at
24 the letter. The letter says, "We thank you for
25 agreeing to act as a medical inspector for the ICRC."

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Cr-Ex
(Henein)

R. Tozer - 6-152

1 Right?

2 A. Yes.

3 Q. And then can you look at the second
4 page?

5 A. I am looking at the second page.

6 Q. Do you see the third paragraph down
7 under "Opinion and Reporting Requirements"?

8 A. Yes.

9 Q. It says:

10 "For each chart reviewed, please
11 provide a brief summary of medical
12 care provided, with the patient
13 identified by initials and date of
14 birth only, and answers for each of
15 the following questions."

16 (as read)

17 And then they set out the questions.

18 Sorry, I just want to make a correction. This was
19 found in your file.

20 A. Right.

21 Q. Okay. And so, you're asked to
22 provide a report for each chart.

23 A. Right.

24 Q. Okay. And then ---

25 **MR. WARDLE:** Just so that we're clear, I

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Cr-Ex
(Henein)

R. Tozer - 6-153

1 wasn't sure I understood the clarification.

2 **MS. HENEIN:** We found it in his file.

3 **MR. WARDLE:** So, I think the witness had
4 agreed with you that this was sent to the College.

5 **MS. HENEIN:** Right. So, let's go back.

6 **MR. WARDLE:** That's where I'm not clear.

7 **MS. HENEIN:** Yes. All right.

8 **MR. WARDLE:** That's what I'm not clear
9 about.

10 **MS. HENEIN:** Well, we found it -- just
11 one sec. Your indulgence.

12
13 BY MS. HENEIN:

14 Q. So, we located this in your file.

15 A. Yes.

16 Q. Okay. And so, it's dated June 29,
17 2015. Can we just continue on with the letter that is
18 sent to you?

19 A. Right.

20 Q. So, the College asks you to review
21 25 patient files; right?

22 A. Right.

23 Q. All right. And, this report that
24 has a conclusion ---

25 A. On the seven charts that had been

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Cr-Ex
(Henein)

R. Tozer - 6-154

1 reviewed.

2 Q. Look at page 7. You've expressed
3 an opinion without having concluded your review; is
4 that what you're saying?

5 A. Right.

6 Q. Mm-hmm.

7 A. I guess.

8 Q. Yes. And so, you say, "The opinion
9 provided in this report is based upon a review of
10 seven charts provided"?

11 A. Right.

12 Q. That's wrong though, you know that,
13 because you were provided with 25 charts.

14 A. They were provided in two sets,
15 yes.

16 Q. I'm sorry?

17 A. They were provided in two boxes,
18 yes.

19 Q. Yes, so 25 charts, though, in two
20 boxes; yes?

21 A. Yes.

22 Q. Okay. Now, on August 29, 2016, you
23 send a report to the College, which has been filed as
24 an exhibit; right?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-155

1 Q. Okay. And, that report is also a
2 report that doesn't include all the patient charts;
3 right?

4 A. Right.

5 Q. And, your report is incomplete, I'm
6 going to suggest to you, because although you've spent
7 seven months on it, you actually do not end up
8 answering the questions that the College had posed in
9 their retainer letter to you; right?

10 A. Yes.

11 Q. Okay. And so, let's just go back
12 to that. If we look at the retainer letter, if you
13 could look with me at page 2 of that letter, which is
14 Exhibit 29, do you see there that the College poses
15 very specific questions about the standard of care?

16 A. Yes.

17 Q. And, they're asking you about --
18 let me just be very clear. They're asking you to read
19 or address the standard of practice of the profession.
20 And, it says, "Please have regard to whether the
21 member's practice accords with the College's
22 complementary/alternative medicine policy."

23 A. Yes.

24 Q. And then they set out a list of
25 questions. And then on page 3, they have another set

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Cr-Ex
(Henein)

R. Tozer - 6-156

1 of questions in number 2 and number 3; right?

2 A. Yes.

3 Q. All right. So, on August 29th, you
4 send this report to the College, but as you've
5 accepted, you don't answer the questions they've
6 identified; right?

7 A. Okay.

8 Q. Okay. So, let's go and look at the
9 next thing that happens. You provide a supplemental
10 report on September 2016; right? Exhibit 31. Do you
11 want to take a look at that?

12 So, if you take a look at Exhibit 31,
13 you now answer the questions that were posed in the
14 original retainer letter; right?

15 A. Right.

16 Q. And, you provide a chart summary of
17 your assessment?

18 A. Right.

19 Q. Okay. When you respond to the
20 College, who have asked you to answer the specific
21 questions that were posed to you on September 27,
22 2016, one of the questions you are asked to answer is
23 the question of the harm posed to the patients.

24 A. Yes.

25 Q. And, what you do, in response to

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Cr-Ex
(Henein)

R. Tozer - 6-157

1 that, is that you give a general answer; right?

2 A. Yes.

3 Q. Okay. So, take a look with me at
4 page 3. You say, "Of the 21 charts reviewed", this is
5 on Exhibit 31. You say, "Of the 21 charts reviewed",
6 first of all, I just want to stop you there. You were
7 given 25 charts ---

8 A. Okay.

9 Q. --- not 21; right? Yes?

10 A. So, yes, because some of them were
11 on DVDs; I may not have found them.

12 Q. Right. Well, you missed a lot of
13 records that were on DVD, didn't you?

14 A. I missed some, possibly.

15 Q. I'm going to suggest, you missed
16 quite a few.

17 A. Okay.

18 Q. Let's continue on though.

19 "Of the 21 charts reviewed, six
20 patients were clearly exposed to
21 harm, and an additional seven were
22 exposed to possible harm. Harm
23 resulted when patients were exposed
24 needlessly to chemotherapy when
25 there was no evidence of active

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Cr-Ex
(Henein)

R. Tozer - 6-158

disease. Harm resulted when
patients deflected from
conventional therapies with known
efficacy." (as read)

Let me just stop you there. That
assumes the patient didn't decline conventional
therapy.

A. We don't know that.

Q. We don't know. Well, you don't
know.

A. Right.

Q. All right.

"Harm also resulted when patients
who clearly had evidence of disease
progression and had become clearly
palliative were told that their
worsening symptoms and worsening
findings on radiology were the
result of the treatment working.
These patients were denied the
opportunity for proper end-of-life
planning and palliative care."

(as read)

And then you attach a table; right?

A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-159

1 Q. Okay. So, let me just stop at this
2 one point. "Harm resulted when patients were
3 deflected from conventional therapy with known
4 efficacy." You indicated that you don't know if the
5 patients were patients that had declined conventional
6 therapy; right?

7 A. Right.

8 Q. Okay. And, can I ask you to turn
9 up Exhibit 63, which is the obligations of an expert
10 in providing reports and testimony?

11 A. Yes.

12 Q. Okay. You see there at 23 of that
13 document on page 3 it says:

14 "Physicians must clearly express
15 when they do not have enough
16 information to arrive at a
17 conclusion on a particular point,
18 or where their opinions are
19 otherwise qualified." (as read)

20 Right?

21 A. Yes.

22 Q. Can you show me where in your broad
23 statement about harm you qualify your opinion in any
24 way, or indicate that you don't have relevant
25 information?

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Cr-Ex
(Henein)

R. Tozer - 6-160

1 A. No.

2 Q. You don't?

3 A. No.

4 Q. All right. So, is it fair to say,
5 Dr. Tozer, that one of the things that you could have
6 said is, "I don't know whether these patients declined
7 conventional therapy or not"?

8 A. Yes.

9 Q. But, here, you assume they were
10 harmed because it was Dr. Khan who deflected them from
11 conventional therapy. Isn't that what you assume in
12 that sentence, "harm resulted when patients deflected
13 from conventional therapies with known efficacy"?

14 A. That part I'm not so sure about.

15 Q. Okay. In terms of telling patients
16 that were clearly palliative that their symptoms were
17 improving, and that caused harm to them, I take it you
18 don't know what the extent of the conversations were
19 that Dr. Khan had with either their patients or the
20 family members?

21 A. I can only relate from what I see
22 on paper.

23 Q. Right. So, when you are asked to
24 express your opinion on the question of harm, you
25 express that in a very general way; right?

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Cr-Ex
(Henein)

R. Tozer - 6-161

1 A. Yes.

2 Q. And then, when we look at this last
3 page, this chart you put together of harm, where you
4 say, yes, yes, no, possible, you don't tell us which
5 category of harm, or why you come to that opinion?

6 A. It was just a chart.

7 Q. It was just a chart. And so, the
8 very first time we hear about that is when you've
9 testified before the panel, and Mr. Wardle is asking
10 you specific questions about it; right? But, you
11 don't put it in your report, initially?

12 A. No.

13 Q. All right. And, do you recall that
14 the College asks you specifically to address these
15 questions of harm on December 8th, in an email to you?
16 Do you recall receiving an email from the College?

17 A. No.

18 Q. Okay. Let me show that to you.
19 Your indulgence, please.

20 **MS. HENEIN:** May I just have a few
21 moments of the panel's indulgence? We actually have a
22 photocopier. I just need to get a copy of this email
23 to put to the witness. Can I just have a five-minute
24 break?

25 **THE CHAIRPERSON:** Sure.

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Cr-Ex
(Henein)

R. Tozer - 6-162

1 **MS. HENEIN:** Thank you.

2
3 --- Whereupon the hearing is in recess
4 from 1:25 p.m. to 1:39 p.m.

5
6 **THE CHAIRPERSON:** Please be seated.

7
8 BY MS. HENEIN:

9 Q. Dr. Tozer, just before the break, I
10 was going to put to you an email, dated December 15,
11 2016, from Lisa Mueller to you. So, can I just show
12 you this document, and tell me whether you recall
13 receiving it? Is that your email address?

14 A. Yes.

15 Q. All right. So, you would have
16 received this email?

17 A. Yes, I would have.

18 Q. Okay.

19 **MS. HENEIN:** Could that be marked as the
20 next exhibit, Dr. King, please?

21 **THE CHAIRPERSON:** Okay. So, we're at
22 Exhibit 66, and that is an email, dated December 15,
23 2016, from Dr. Tozer to Lisa Mueller, or vice versa.

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Cr-Ex
(Henein)

R. Tozer - 6-163

1 --- EXHIBIT NO. 66: Email exchange between Dr.
2 Tozer and Lisa Mueller, dated
3 December 15, 2016
4

5 BY MS. HENEIN:

6 Q. So, if we start at the bottom of
7 this page, Dr. Tozer, or actually, over on the next
8 page, do you see on December 8, 2016, at 8:18, Lisa
9 Mueller ---

10 A. Right.

11 Q. --- who is with the College, says
12 this. And, you've now sent to her what you say are
13 your final reports, which is the one dated August 26th,
14 the one dated August 31st -- sorry, September 27th.
15 You've sent her your two reports; right?

16 A. Yes.

17 Q. Okay. And so, Ms. Mueller writes
18 to you and says that:

19 "The retainer letter and documents
20 sent to you by Ms. Obermeyer
21 indicated there were four DVDs and
22 paper charts that contained 25
23 patient records, but in your
24 report, you mentioned there were
25 only 21 patients. I've cross-

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Cr-Ex
(Henein)

R. Tozer - 6-164

1 referenced your report to the
2 patient names set out in the
3 retainer letter and I have no RB -
4 24/06/1946. He was the second last
5 patient listed on the chart you
6 provided. Could this patient have
7 been RT? We need you to opine on
8 all 25, so would you mind taking a
9 look through the information we
10 provided again? We need opinions
11 on patients KB, EJ, GK, RT and MN."
12 (as read)

13 And then, you are asked:

14 "Would you be able to provide more
15 detail with respect to your answer
16 to the risk of harm question?
17 Which patients ought to have been
18 provided conventional treatment
19 that missed out because they were
20 receiving SEF chemo?" (as read)

21 So, on December 8, 2016, this is after
22 you've now submitted two reports, you're asked, again,
23 about things you missed; right? Okay.

24 So, let's just go back so we have the
25 sequence of events. You are retained by the College,

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Cr-Ex
(Henein)

R. Tozer - 6-165

1 and sent 25 patient charts, and you are asked a
2 specific set of questions. And, we see that you have
3 a draft report in June that covers seven patients;
4 right? Yes?

5 A. Yes.

6 Q. Okay. And then August 29, 2016,
7 you send a report, but the report is incomplete,
8 because you only canvassed 21 patients, you've missed
9 four.

10 A. Okay.

11 Q. Right?

12 A. Yes.

13 Q. Okay. And then your report is also
14 incomplete because you don't answer the questions that
15 the College has asked you to answer. And so, on
16 September 27, 2016, you send the letter answering the
17 questions that the College had asked you to answer;
18 right?

19 A. Yes.

20 Q. And, you attach a chart; right?

21 A. Yes.

22 Q. And then your report is still
23 incomplete, because on December 8, 2016, the College
24 says to you, well, you missed four patients, you
25 didn't say anything about those, and you're not

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Cr-Ex
(Henein)

R. Tozer - 6-166

1 providing specifics around the risk of harm question;
2 right?

3 A. Right.

4 Q. So, what happens next is that on
5 February 26, 2017, you submit another report, and this
6 is Exhibit No. 32. And, just so we're clear here, the
7 College tells you that of the four or five patients
8 that you've not included, they only want you to opine
9 on two. And so, that's what you do in this report.

10 Oh, that's not right? Okay. Sorry.

11 Just one sec.

12 So, of the five that are identified in
13 the December 8th email, the College then says, forget
14 it, just give us an opinion on two; right?

15 A. Right.

16 Q. [REDACTED] and [REDACTED]
17 [REDACTED]

18 A. Yes.

19 Q. Okay. So, you send that in on
20 February 26, 2017, and you never, I'm going to suggest
21 to you, at least in anything I have seen, respond to
22 the College's request to flesh out the question of
23 risk of harm and what you mean by that; right?

24 A. Yes.

25 Q. Okay. So, am I right, then, that

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Cr-Ex
(Henein)

R. Tozer - 6-167

1 we've gone through Exhibit 30, 31 and 32, that in the
2 course of responding to the College, you missed
3 addressing a number of patients? You just missed
4 those patient records?

5 A. Okay. Four.

6 Q. Five. Right? And, you missed
7 responding to questions that the College had asked you
8 to address?

9 A. Okay.

10 Q. And, when they ask you to address
11 it again, you still don't respond to that; right?

12 A. Yes.

13 Q. Okay. Now -- your indulgence,
14 please.

15 When you write to the College in that
16 email that we just referred to, you tell the College
17 that you didn't even know that the file that they had
18 sent you actually included digital patient records;
19 right?

20 A. Right.

21 Q. And, you say you accidentally
22 discover that when you look at the DVD.

23 A. Right.

24 Q. And, that's the case,
25 notwithstanding that in their retainer letter to you,

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Cr-Ex
(Henein)

R. Tozer - 6-168

1 they tell you that the digital records are on the
2 DVDs; right? You just missed that?

3 A. I missed that.

4 Q. Yes. When you do your draft
5 report, or the initial report that we looked at, and
6 you initially say, here's my response on seven patient
7 charts -- can I just see that exhibit?

8 MR. WARDLE: Exhibit 65.

9 MS. HENEIN: Thank you.

10
11 BY MS. HENEIN:

12 Q. In Exhibit 65, which is in front of
13 you, do you see where it says there, and we went
14 through it, "The opinion provided in this report is
15 based upon a review of seven charts provided"? Do you
16 see that, right on the first page?

17 A. Yes.

18 Q. I'm going to suggest to you that
19 what happened is, when you initially wrote the report,
20 those were the ones that were paper charts.

21 A. Correct.

22 Q. And so, what really happens is, you
23 prepare the report, and you only look at the paper
24 charts. And, you express an opinion, and then you
25 realize, well, wait a second, there is a whole bunch

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Cr-Ex
(Henein)

R. Tozer - 6-169

1 of other stuff on the DVDs, and you go back and redo
2 it?

3 A. Right.

4 Q. Right? But, am I right that when
5 you write this initial report, the June 29th report,
6 and you refer to the seven charts, you express an
7 opinion not having reviewed the medical records on the
8 DVDs?

9 A. Right.

10 Q. All right. And, when you now go
11 back, and you have reviewed the DVDs, you don't add
12 any information, additional information, from the
13 medical records that you review on the DVDs; right?

14 A. Pardon me?

15 Q. You don't add any additional
16 information. After you realize you've made a mistake,
17 that you missed all of the charts, the notes, and the
18 numerous notes that Dr. Khan had, you don't go back to
19 that report that deals with these patients, and add
20 any additional information from your review?

21 A. No.

22 Q. Okay. Can you take a look at
23 Exhibit 30, which is your report? And, I want to
24 focus now on [REDACTED].

25 MS. HENEIN: And, can I ask the panel to

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Cr-Ex
(Henein)

R. Tozer - 6-170

1 also pull up the additional book of documents that I
2 filed for [REDACTED] Exhibit 53? And, actually, can
3 I also ask you to pull up Exhibit 50, which is the
4 record that the College filed, the excerpt book that
5 they filed.

6 Okay. So, for the panel, just so that
7 it's clear, and for the witness, can I just make sure
8 that everyone has the relevant documents? You should
9 have before you Exhibit No. 30, which is the report of
10 Dr. Tozer, dated August 29, 2016. You should have in
11 front of you Exhibit 50. Do you have that, Dr. Tozer?

12 **THE WITNESS:** No.

13 **MS. HENEIN:** So, we've got the
14 supplementary book, Exhibit 53, the original one, and
15 I just want to make sure you have the report that I'm
16 going to be referring to, which is Exhibit 30.

17
18 BY MS. HENEIN:

19 Q. So, can you look with me at your
20 report, at page 4 of your report, under patient JF,
21 Mrs. [REDACTED]?

22 A. Yes.

23 Q. And, I'm going to read to you the
24 first line. This is a patient with metastatic
25 melanoma. The first note is from May 9, 2013. "And,

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Cr-Ex
(Henein)

R. Tozer - 6-171

1 I see no consultation note, and can only infer that
2 she had been treated with" -- how do you pronounce
3 that?

4 A. Ipilimumab.

5 Q. "Ipilimumab. Patient seems to have
6 issues with depression, and body image. Patient was
7 initially started on DCA."

8 So, according to your report, the first
9 note that you see, and what you base your opinion on,
10 is starting on May 9, 2003 [sic]. And, there is no
11 consultation note. And, you can only infer that she
12 was treated with ipilimumab; right?

13 A. Yes.

14 Q. All right. And, when you testify,
15 the College puts to you, and if you can look at
16 Exhibit 50 ---

17 A. Yes.

18 Q. --- at Tab 1, the College puts to
19 you a note that is April 7, 2011; right?

20 A. Right.

21 Q. Two years earlier than the note
22 that -- the first note that you identify; right?

23 A. Right.

24 Q. So, you say, in your report, that
25 the very first time that you see a note to review, and

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Cr-Ex
(Henein)

R. Tozer - 6-172

1 what your base your opinion on, is this note from May
2 9, 2013; right?

3 A. Yes.

4 Q. You never correct that; right? You
5 never correct your report?

6 A. Okay. Yes.

7 Q. All right. And, in fact, I'm going
8 to suggest to you, Mr. Wardle put to you one date that
9 shows, in fact, that she had been seen for some two
10 years before you express your opinion. There is a
11 two-year gap, 2011 to 2013; right?

12 A. Okay.

13 Q. Do you, at that point, ever say to
14 Mr. Wardle, or to the College, that "maybe I need to
15 look at all those notes"?

16 A. No.

17 Q. And, you never seek to correct your
18 opinion; right?

19 A. Right.

20 Q. And so, is it fair to say that you
21 miss -- well, I'm going to tell you what you miss,
22 seventy appointment notes with Dr. Khan that are
23 completely not considered by you?

24 A. I'm going to say yes.

25 Q. Well, let me take you through it.

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Cr-Ex
(Henein)

R. Tozer - 6-173

1 Can you please take a look at Exhibit No. 53?

2 A. Yes, I'm there.

3 Q. Thank you. And, can I ask you to
4 look at page 29? So, starting actually at page 30,
5 it's just incorrectly organized, is the April 7, 2011
6 note; right?

7 A. Okay.

8 Q. So, two years before you refer to
9 any note; right?

10 A. Yes.

11 Q. Okay. Can you look at page 31 and
12 32? You will see there that it is two pages of notes,
13 that are detailed, describing her condition, dated
14 April 19, 2011. You don't refer to that?

15 A. No.

16 Q. Okay. Can I ask you to look at
17 page 34 and 33? Notes from May 9, 2011, your report
18 does not consider these notes. Am I right?

19 A. Yes.

20 Q. Okay. Can you turn to page 35 and
21 36? Those are notes dated June 23, 2011. You don't
22 refer to them?

23 A. No.

24 Q. Can you turn to page 38 and 37?
25 Notes from February 22, 2012, you don't refer to them

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Cr-Ex
(Henein)

R. Tozer - 6-174

1 or review them before expressing your opinion?

2 A. No.

3 Q. Page 40 and 39, notes dated March
4 23, 2011, you don't review them or refer to them
5 before expressing your opinion?

6 A. No.

7 Q. Page 42 and 41, notes from April
8 30, 2012, detailed notes from Dr. Khan. You don't
9 review them or refer to them before expressing your
10 opinion?

11 A. No.

12 Q. Can I ask you to turn with me to
13 the next page? Notes dated May 3, 2012, you did not
14 review them?

15 A. No.

16 Q. Can I ask you to turn to page 46?
17 Notes dated May 24, 2012, you didn't review them?

18 A. I don't -- so, at this point, I'm
19 going to say I'm not entirely sure that I didn't
20 review them. I may not have referred to them. I may
21 not have given a visit-by-visit summary of everything.

22 Q. No, you didn't refer to them, and
23 you didn't review them, because you say the first note
24 is from May 9, 2013.

25 A. Yes, and I'm wondering whether

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Cr-Ex
(Henein)

R. Tozer - 6-175

1 that's not actually May 9, 2011.

2 Q. I'm going to suggest it's not,
3 because when I take you through the notes, you're
4 going to see, Dr. Tozer, that you miss a lot of things
5 that were going on with this patient.

6 Let's go through. We're going to just
7 jump around a little bit. Can you turn to page 52 and
8 51? Just so it's sequential, May 7, 2012, notes there
9 of the patient being seen?

10 A. Yes.

11 Q. Right? May 10, 2012, can you turn
12 to page 55 and 56? Right?

13 A. Yes.

14 Q. Notes from May 14, 2012, page 49
15 and 50. Do you see that?

16 A. Yes.

17 Q. Okay. Can I ask you to turn to
18 page 47 and 48? Those are the notes of May 17, 2012;
19 right?

20 A. Yes.

21 Q. Can I ask you to turn to page 43
22 and 44, which are the notes of May 31, 2012? Do you
23 see that?

24 A. Yes.

25 Q. Pretty detailed notes; right? Do

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Cr-Ex
(Henein)

R. Tozer - 6-176

1 you see there that there is references to a doctor who
2 is going to do a resection?

3 A. What page?

4 Q. Page 44. All right, we'll come
5 back to the details of these notes. But, can we just
6 stop here, that in May alone, Dr. Khan has seen this
7 patient six times?

8 A. Right.

9 Q. How often do you see patients that
10 are being given palliative treatment? What's the
11 usual?

12 A. So, it's going to depend on their
13 symptoms.

14 Q. Mm-hmm. Usually, what's the
15 average?

16 A. So, if they're on immunotherapy, at
17 least every two weeks, sometimes three times a week.

18 Q. Can we go to the rest of the notes?
19 Page 65 and 66, July 9, 2012, I'm going to suggest to
20 you, is a note you did not review. Page 65 and 66.
21 Can you read the second line on page 66?

22 A. "Liver tumour removed with clear
23 margins."

24 Q. Right. Can you look at page 64 and
25 63? Notes from July 12, 2012. Can you read the fifth

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Cr-Ex
(Henein)

R. Tozer - 6-177

1 line down on page 64?

2 A. "Much better."

3 Q. And, the line after that?

4 A. "Considering experimental laser
5 therapy."

6 Q. Page 62 and 61, those are notes
7 dated July 16, 2012; right?

8 A. Mm-hmm.

9 Q. Page 68 and 67, those are notes
10 dated July 19, 2012; right?

11 A. Right.

12 Q. And, just so I'm clear, and the
13 record is clear, these are all Dr. Khan's notes;
14 right?

15 A. Yes.

16 Q. Can I ask you to look at page 59
17 and 60, notes dated July 23, 2012; right?

18 A. Yes.

19 Q. Okay. Page 69 and 70, notes dated
20 July 26, 2012; right?

21 A. Right.

22 Q. July 30, 2012, can you look at
23 pages 57 and 58? Those are July 30, 2012. Can you
24 look at pages 79 and 80, notes dated August 1, 2012?
25 Can you take a look at the next page 81 and 82? Can

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Cr-Ex
(Henein)

R. Tozer - 6-178

1 you see there, right at the top, the patient is
2 getting -- it says, "getting fed up ---"

3 A. Yes.

4 Q. --- "with her treatment"; right?
5 She's seeing a dietician. She's spoken to a
6 specialist regarding liver findings; right? Do you
7 see that, on the fourth line from the bottom there, on
8 page 82?

9 A. Where?

10 Q. Under "Med Review". "Spoke to
11 specialist re: new liver findings."

12 A. Okay.

13 Q. Yes.

14 A. Yes.

15 Q. All right. And, there's also a
16 suspicion there of a misdiagnosis post-op? Do you see
17 that?

18 A. Yes.

19 Q. So, I'm going to keep going, but
20 August 8, 2012, there are references to this patient
21 seeing conventional doctors; right?

22 A. Right.

23 Q. Getting conventional treatments for
24 cancer; right?

25 A. But, we knew that.

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Cr-Ex
(Henein)

R. Tozer - 6-179

1 Q. No. In 2012 ---

2 A. Right.

3 Q. --- when Dr. Khan is making notes
4 of that ---

5 A. Right.

6 Q. --- there are notes here of how
7 she's responding to the therapy he's providing, right,
8 and how she's feeling?

9 A. Or, the conventional therapy that's
10 being described.

11 Q. Well, you don't know. You haven't
12 reviewed all the notes as to when she's starting the
13 conventional therapy and when she's not. Are you
14 prepared to concede, I'm going to suggest to you, the
15 obvious, Dr. Tozer, because you said it in your
16 report, you just missed two years or notes?

17 A. Okay.

18 Q. Okay. So, let's just go through.
19 On page 77 and 78, August -- Dr. Khan has notes of his
20 meeting and assessment of the patient, August 13,
21 2012; right? And, do you see there, on the left-hand
22 side, it says, under "Problem list", "meeting doctor
23 today [something] liver mass."

24 A. How about "liver masses"?

25 Q. Liver masses? All right. Can you

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Cr-Ex
(Henein)

R. Tozer - 6-180

1 look with me at page 75 and 76, notes on August 27th?
2 Notes of his meeting with, again, this patient; right?

3 A. Yes.

4 Q. All right. And, in there it says,
5 in the second line down, "the patient continues
6 to...", can you read the next word?

7 A. No.

8 Q. Okay. Something "have a better
9 outlook and self-esteem"?

10 A. Yes.

11 Q. Can I ask you to look at page 71
12 and 72? And, these are notes from August 30, 2012.
13 And, can I ask you to look at the left-hand side,
14 please, under "Plan"? It says, point 3, "patient to
15 review RFA with specialist. No contraindication while
16 on DCA."

17 A. Yes.

18 Q. All right. So, it appears there
19 that there is a specialist also involved ---

20 A. Right.

21 Q. --- that's aware of the DCA
22 treatment. Yes?

23 A. Yes.

24 Q. All right. So, in August, once
25 again, Dr. Khan appears to have seen that patient six

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Cr-Ex
(Henein)

R. Tozer - 6-181

1 times? All right. Can I ask you to look at page 91
2 and 92? These are patient notes from Dr. Khan, dated
3 September 4, 2012; right? Yes?

4 A. Yes.

5 Q. Okay. Can you turn to page 89 and
6 90? These are notes dated September 10, 2012 of the
7 meeting with the patient?

8 A. Yes.

9 Q. Can you turn to page 87 and 88?
10 Notes dated September 20, 2012; right?

11 A. Yes.

12 Q. Can you turn to page 85 and 86?
13 Notes dated September 24, 2012; right?

14 A. Yes.

15 Q. Page 83 and 84, please? Notes
16 dated September 27, 2012?

17 A. Yes.

18 Q. All right. Can you turn now over
19 to October, page 105? Page 105 and 106, notes from
20 October, it looks either like 4th or 7th, 2012, of the
21 patient; right?

22 A. Right.

23 Q. Okay. October 9, 2012, can you
24 look at page 103 and 104? That's an interaction with
25 the patient; right?

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Cr-Ex
(Henein)

R. Tozer - 6-182

1 A. Right.

2 Q. Okay. Page 101 and 102, Dr. Khan's
3 notes dated October 15, 2012; right?

4 A. Yes.

5 Q. Okay. Can you look at page 99 to
6 100, Dr. Khan's notes dated October 18, 2012?

7 A. Yes.

8 Q. Okay, 97 and 98, notes dated
9 October 22, 2012?

10 A. Yes.

11 Q. Page 95 and 96, notes dated October
12 25, 2012?

13 A. Yes.

14 Q. Page 93 and 94, it looks like
15 October 29, 2012; right?

16 A. Yes.

17 Q. Can you look at page 111 and 112?
18 Those are notes of November 19, 2012. Can you read
19 the second line, please?

20 A. "Remains on YERVOY."

21 Q. I'm sorry?

22 A. "Remains on YERVOY."

23 Q. What is that?

24 A. Ipilimumab.

25 Q. Which?

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Cr-Ex
(Henein)

R. Tozer - 6-183

1 A. Ipilimumab.

2 Q. Which is a conventional
3 chemotherapy?

4 A. Right.

5 Q. Right? Immunotherapy, sorry. When
6 you, as a general statement, conclude that patients
7 suffered harm because they deflected from conventional
8 therapies with known efficacy, I take it a review of
9 these notes would show, for example, that [REDACTED]
10 was receiving conventional therapies right?

11 A. Right. It doesn't apply to her.

12 Q. Well, you didn't say that, though,
13 because you hadn't read the notes; right?

14 A. Right.

15 Q. Page 111 and 112 are the November
16 19th notes. Can I ask you to look at 109 and 110,
17 which are the notes for November 22, 2012? And, can I
18 ask you to look now at page 107 and 109, notes dated
19 November 26?

20 Can I ask you to look at page 113 and
21 114, which are notes dated November 10, 2012, where
22 he's continuing to make notes of the conventional
23 therapy she's taken; right?

24 A. Right.

25 Q. All right. Page 115 and 116,

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Cr-Ex
(Henein)

R. Tozer - 6-184

1 December 13, 2012, he references reports, the CT
2 reports; right? And, can I ask you to look with me
3 please at page 117 and 118, notes dated December 17,
4 2012; right?

5 A. Yes.

6 Q. And, page 121 and 122, those are
7 the notes of December 20, 2012, and can you read the
8 third line there, for me, on page 122?

9 A. Is it mother -- oh, which line?

10 Q. Sorry. You can start with that
11 line, mother ---

12 A. "...advised about plan follow up."

13 Q. Mm-hmm. For?

14 A. "Ongoing therapy while YERVOY
15 stopped."

16 Q. While YERVOY stopped; right? All
17 right. So, it looks like there are other therapies
18 that are being considered, conventional therapies, as
19 of December 20, 2012?

20 A. No.

21 Q. Well, what is the ongoing therapy?

22 A. YERVOY is stopped.

23 Q. What is the plan for ongoing
24 therapy?

25 A. There is no plan for ongoing

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Cr-Ex
(Henein)

R. Tozer - 6-185

1 therapy.

2 Q. Well, there's a note, "Mother
3 reviewed" ---

4 A. "About plan follow up."

5 Q. "Plan for ongoing therapy."

6 A. Right, but that's ---

7 Q. "While YERVOY stopped."

8 A. Right.

9 Q. So, what is the ongoing therapy?

10 A. It's not a conventional therapy.
11 The conventional therapy has stopped.

12 Q. But, at that point, she's been
13 taking conventional therapy now for ---

14 A. Yes.

15 Q. --- what, over a year and a bit;
16 right?

17 A. Yes.

18 Q. Mm-hmm. Can I ask you to look at
19 page 119 and 120? Those are the notes of December, it
20 appears either 23rd or 27th, 2012, and it's noting that
21 the patient is feeling well; right?

22 A. Right.

23 Q. Okay. Page 133 and 134, notes
24 dated January 3, 2013; right?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-186

1 Q. Okay. 135 and 136, can we look at
2 those, please? Those are notes dated January 10,
3 2013?

4 A. Yes.

5 Q. And so, some of the things I take
6 it you are now seeing, is that Dr. Khan is trying to
7 deal with some emotional concerns that the patient
8 has, understandably so, while she is going through
9 this; right? She's anxious. Do you see that in the
10 second line?

11 A. Yes.

12 Q. All right. Page 137 and 138, notes
13 dated January 14, 2013. And, he is noting that she
14 is, on the third line, able to eat, feeling better
15 about her anxiety; right?

16 A. "Feeling better after eating."

17 Q. After eating, sorry. "Able to eat.
18 Feels better after eating."

19 A. "Patient still feels some anxiety."

20 Q. And, some anxiety, right. Can you
21 take a look at page 131 and 132? Do you see the notes
22 for January 17, 2013?

23 A. Yes.

24 Q. Can you take a look at the left-
25 hand side there, under "Plan"? What does number 2

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Cr-Ex
(Henein)

R. Tozer - 6-187

1 say?

2 A. Something about my chart re:
3 cortisol and thyroid levels. Note to endocrinologist.

4 Q. Endocrinologist. All right. Can I
5 ask you to take a look please at page 129 and 130,
6 again, notes of interaction with the patient; right?

7 A. Yes.

8 Q. Okay. Can I ask you to take a look
9 at page 127 and 128?

10 A. I'm just kind of curious, though,
11 it's a very brief note for an hour-long appointment
12 that got billed as a palliative care visit. What page
13 are we on now, page 127?

14 Q. We are on page 127 and 128. And,
15 that is dated January 24, 2013. On the left-hand
16 side, can you read point 2, under "Plan"?

17 A. "Note to endocrinologist, patient
18 see as soon as possible."

19 Q. All right. And so, it appears that
20 there has been a referral to the endocrinologist to
21 deal with her thyroid levels; right?

22 A. Right.

23 Q. Okay. Can I ask you to look at
24 page 125 and 126? And, those are notes, dated January
25 28, 2013; right?

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Cr-Ex
(Henein)

R. Tozer - 6-188

1 A. Yes.

2 Q. And, can you take a look at the
3 second line on page 126? Does that not say, "To see
4 endo next week"?

5 A. It looks like it.

6 Q. All right. Can I ask you to look
7 at page 123 and 124? These are notes for January 31,
8 2013; right?

9 A. Yes.

10 Q. Okay. Page 139, can you look at
11 page 139 and 140, please? That's notes for February
12 4, 2013; right?

13 A. Yes.

14 Q. And, can you take a look, please,
15 on the left-hand side, on page 139, under "Plan Number
16 1", what does that say?

17 A. To see Dr. Kis re: increasing
18 dexamethasone.

19 Q. What is that? Is that ---

20 A. Steroid.

21 Q. I'm sorry?

22 A. Steroid.

23 Q. All right. Can I ask you to turn
24 to page 141 and 142? The second note there, what does
25 it say?

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Cr-Ex
(Henein)

R. Tozer - 6-189

1 A. "Consider Dr. Kis' advice."

2 Q. Yes. And, on page 141, under "Plan
3 Number 1", what does it say?

4 A. Sorry, which page?

5 Q. Page 141, under "Plan Number 1",
6 does it say, "Taken Dr. Kis' advice"?

7 A. Yes.

8 Q. So, that's a conventional therapy?

9 A. Yes.

10 Q. Page 143 and 144, those are notes
11 of an appointment on February 19, 2013; right?

12 A. Yes.

13 Q. Okay. Can I ask you to look at
14 page 145 and 146? And, at 146, can I ask you to look
15 at the fourth note there, the fourth line? Can you
16 help us with what that says?

17 A. "Has increased thyroxin per Dr.
18 Kis."

19 Q. Right. Can I ask you to look at
20 the next page, page 147 and 148? These are notes
21 dated February 25, 2013; right?

22 A. Yes.

23 Q. The next page, 149 and 150, notes
24 of Dr. Khan, dated February 28, 2013?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-190

1 Q. Can I ask you to look at the next
2 page 151 and 152, those are notes dated March 11,
3 2013?

4 A. Yes.

5 Q. All right. Can you please look at
6 page 151?

7 A. I am looking at page 151.

8 Q. And, under the problem list, can
9 you please read 3?

10 A. "Specialist advised patient to
11 restart YERVOY now."

12 Q. And, that is?

13 A. Ipilimumab.

14 Q. Right. And, can I ask for Number
15 1, the plan?

16 A. Starting YERVOY.

17 Q. Right. So, starting conventional
18 therapy.

19 A. Yes.

20 Q. Can I ask you to look at page 153
21 and 154? Those are notes of March 14, 2013; right?

22 A. Yes.

23 Q. Can you turn the page over to page
24 155 and 156? These are notes of March 18, 2013?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-191

1 Q. And, on the left-hand side, at page
2 155, can you read, under "Plan Number 2"?

3 A. "Patient to discuss with
4 neurologist about decreasing antiepileptics."

5 Q. Right. So, a neurologist is also
6 involved ---

7 A. Yes.

8 Q. --- in her care? Can you look at
9 page 157 and 158? Those are notes from March 21,
10 2013; right?

11 A. Yes.

12 Q. Can you look at page 159 and 160?
13 Notes from March 28, 2013; right?

14 A. Yes.

15 Q. Can I ask you to look at page 161
16 and 162, notes for April 4, 2013?

17 A. Yes.

18 Q. And, 163 and 164, notes for April
19 8, 2013. Can you please look at the fourth line down
20 on page 164? Can you tell us what that says?

21 A. Something overall did well in
22 studies.

23 Q. Okay. And then the next line?

24 A. "visit at Toronto Sunnybrook
25 Regional Cancer Centre, bloodwork for thyroid and

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Cr-Ex
(Henein)

R. Tozer - 6-192

1 cortisol have improved. Patient feeling more energy
2 now."

3 Q. Sunnybrook is a cancer centre that
4 provides conventional cancer treatments?

5 A. That's where she has been going.
6 That's where Dr. Petrella is.

7 Q. Can you look at 165 and 166? Those
8 are notes dated April 11, 2013. And, finally, can you
9 look at page 167 and 168? Those are notes dated April
10 8, 2013; right?

11 A. Yes.

12 Q. Okay. Now, I want to go back to
13 your report. Can you look at Exhibit 30 with me,
14 please, on page 4? The first note is from May 9,
15 2013, and I can see no consultation note, and can only
16 infer that she has been treated with ipilimumab";
17 right?

18 A. Yes.

19 Q. So, that's false. That's wrong.

20 A. Wrong.

21 Q. Right. And, I take it you agree
22 with me now that you missed notes from 2011 and 2012,
23 because you wouldn't have said that if you had seen
24 them?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-193

1 Q. Okay. And, can I ask you to turn
2 with me, please, to the next page. Sorry, let me
3 start at the bottom, actually, of page 4. At the very
4 last line on page 4, "Such a patient would normally be
5 managed"; do you see that, at the very bottom?

6 A. Yes.

7 Q. The last line on page 4. "Such a
8 patient would normally be managed in an
9 interdisciplinary fashion." Let me just stop there.
10 You now accept she was managed in an interdisciplinary
11 fashion?

12 A. In a fragmented sort of way, yes.

13 Q. Well, you haven't had time to read
14 through these notes.

15 A. But, I've just been going through
16 these notes.

17 Q. And, you're read them verbatim,
18 every single one ---

19 A. Most of it ---

20 Q. --- as I've flipped through them?

21 A. --- yes, I have.

22 Q. All right. Do you accept that
23 she's being seen by a thyroid specialist, by a
24 neurologist, all those people?

25 A. And, her family physician.

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Cr-Ex
(Henein)

R. Tozer - 6-194

1 Q. Right. And, you say "fractured";
2 you don't have those notes.

3 A. But, I don't know -- when I say
4 "fractured", I see the notes, I know he's referred to
5 Dr. Kis.

6 Q. Right.

7 A. I know he's referred to the
8 endocrinologist.

9 Q. Right.

10 A. Has he communicated with Dr.
11 Petrella, the oncologist? I don't know.

12 Q. That's right.

13 A. Has he been in contact with the
14 patient's family medicine physician?

15 Q. You don't ---

16 A. I don't know.

17 Q. You don't know. So, first of all,
18 when you say that she should have been managed in an
19 interdisciplinary fashion, I gather now you would say
20 you don't know whether she's been managed in an
21 interdisciplinary fashion, because it appears that she
22 is seeing a number of doctors, including being treated
23 at Sunnybrook.

24 A. So, I would say she is being
25 treated in a multidisciplinary, but it's not really

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Cr-Ex
(Henein)

R. Tozer - 6-195

1 inter. What I'm getting at is I don't see the
2 connections between all of the players. When I think
3 of interdisciplinary, I see a team that is
4 communicating back and forth.

5 Q. You don't know what their
6 communications are.

7 A. I don't know.

8 Q. Right. So, you can't make this
9 statement. You don't know.

10 A. I don't know.

11 Q. Right. And, now, what you do know,
12 in fairness, having reviewed 70 notes that you did not
13 look at, and did not know existed, that you minimally
14 would say there appears to be, at it's most ---

15 A. What I would say is she is being
16 seen by several physicians.

17 Q. That give conventional treatments?

18 A. Yes.

19 Q. And, that she appears to be taking
20 some conventional treatment?

21 **MS. HENEIN:** All right. I wonder
22 whether this is an appropriate time for the afternoon
23 break?

24 **THE CHAIRPERSON:** I think we'd be
25 delighted. So, I have 2:33. Let's come back at 2:50.

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Cr-Ex
(Henein)

R. Tozer - 6-196

1 --- Whereupon the hearing is in recess
2 from 2:33 p.m. to 2:49 p.m.
3

4 **THE CHAIRPERSON:** Please be seated.
5 Please proceed.

6 **MS. HENEIN:** Thank you.
7

8 BY MS. HENEIN:

9 Q. Before we took the break, Dr.
10 Tozer, you indicated that a patient such as this, you
11 now know that she was being managed by a number of ---

12 A. Physicians.

13 Q. --- different doctors?

14 A. Yes.

15 Q. And, in terms of it being an
16 interdisciplinary fashion, you say you don't know
17 whether they communicated or not; right?

18 A. Correct.

19 Q. So, I'd like you to take a look at
20 the joint book of documents, which is Exhibit 50, and
21 can you turn up Tab 13? No, I'm looking at the wrong
22 thing. Oh, sorry. Can you look at our book, which is
23 Exhibit 53, and can you look at page 17?

24 A. Seventeen?

25 Q. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-197

1 **MR. ROSENBAUM:** Sorry, was that 1-7?

2 **MS. HENEIN:** 1-7, yes.

3
4 BY MS. HENEIN:

5 Q. Now, if you go back to page 5, you
6 will see that this is the medical questionnaire
7 that ---

8 A. Yes.

9 Q. --- the patient filled out; right?
10 And, if you look at page 17, do you see there where it
11 says, "Please provide the following information about
12 your health providers"?

13 A. Correct.

14 Q. So, her family doctor is Dr.
15 Peschisolido, P-E-S-C-H-I-S-O-L-I-D-O; the oncologist
16 is Dr. Petrella at Sunnybrook; the radiation
17 oncologist is Dr. Balogh at Sunnybrook; the surgeon is
18 Dr. Higgins at Sunnybrook.

19 So, in terms of it being
20 interdisciplinary, at least based on this document,
21 the oncologist, the radiation oncologist, and the
22 surgeon, are all at Sunnybrook; right?

23 A. Right.

24 Q. Okay. And, in terms of the
25 disciplinary approach, the interdisciplinary approach,

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Cr-Ex
(Henein)

R. Tozer - 6-198

1 can you please look at Exhibit 50, Tab 4? This is a
2 note, an oncology note, dated August 1, 2012 from Dr.
3 Gandhi.

4 A. Yes.

5 Q. All right. And, do you see there
6 that in the third paragraph, the second line, it says:

7 "I told the mother about the new
8 liver lesions, and in the interim
9 have also liaised with both Dr.
10 Sahgal and Dr. William Chu about
11 whether or not there may be utility
12 to evaluating these liver lesions
13 for stereotactic radiation."

14 (as read)

15 A. Yes.

16 Q. All right. And then Dr. Chu makes
17 a comment; right?

18 A. Right.

19 Q. And then, keep going down, it talks
20 about Dr. Petrella, and when that doctor will be
21 seeing the patient; right?

22 A. Right.

23 Q. Okay. So, that would be an example
24 of the doctors communicating with each other?

25 A. Yes, those doctors are

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Cr-Ex
(Henein)

R. Tozer - 6-199

1 communicating with each other.

2 Q. Well, in the notes that you were
3 looking at earlier, that you had not read before, you
4 noted -- I took you to sections where it said that
5 there is no contraindication with DCA, and there was a
6 reference to the doctor knowing that she is on DCA.
7 That would be communicating with each other; right?
8 Doctors.

9 A. Or, the patient communicating with
10 the doctor.

11 Q. But, you don't know.

12 A. I don't know.

13 Q. Right. So, for you to assert ---

14 A. No, what I'm saying is I haven't
15 seen any letter from Dr. Khan going to Dr. Petrella
16 saying that this patient is on DCA.

17 Q. But, you don't know one way or the
18 other; right? So, I'm going to suggest to you, if
19 you're being fair, you would concede now that it's
20 possible. You just don't know. And, there appear to
21 be notes that would suggest there are communications
22 amongst these doctors; right?

23 A. Right.

24 Q. Okay.

25 A. Among these doctors.

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Cr-Ex
(Henein)

R. Tozer - 6-200

1 Q. Well, and, also, I'm going to
2 suggest to you, among Dr. Khan and the other doctors
3 that are involved?

4 A. Yes. Certainly, with the
5 endocrinologist and Dr. Kis.

6 Q. Right. Okay. So, that would be
7 interdisciplinary?

8 A. Yes. But, again, normally I would
9 expect communication between Dr. Khan and the
10 oncologist.

11 Q. You don't know if there has or
12 hasn't been. You didn't read 70 pages of notes;
13 right?

14 A. Right.

15 Q. Okay. So, I'm going to suggest to
16 you following your obligation as an expert, what you
17 would concede now is you don't know, one way or
18 another. You can't assert, with certainty, the way
19 you did with your report, that a) she was not seen
20 before 2013, and b) that this was not an
21 interdisciplinary approach. You don't know. Are you
22 prepared to admit that?

23 A. Yes, I'm prepared to accept that
24 the absence of evidence doesn't constitute proof.

25 Q. Well, that's just being too cute by

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Cr-Ex
(Henein)

R. Tozer - 6-201

1 half. I'm going to suggest to you that you don't have
2 an absence. You actually have evidence that doctors
3 are communicating with each other about this patient's
4 treatment.

5 A. Yes.

6 Q. Right. Can you look at Tab 5?
7 This is a note from the endocrinologist.

8 A. Right.

9 Q. Right? And, the endocrinologist
10 here, I'm going to suggest to you, refers to -- your
11 indulgence, please. Right at the top, Dr. Petrella,
12 that's the referring MD; right?

13 A. Right.

14 Q. Yes?

15 A. Yes.

16 Q. That's an oncologist?

17 A. Yes.

18 Q. The family MD is Dr. Vince
19 Peschisolido; right?

20 A. Yes.

21 Q. Read after what's the next line.

22 A. Dr. Arjun Sahgal, radiation
23 oncologist ---

24 Q. No, c.c.; right? So, we're copying
25 the report to Dr. Sahgal.

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Cr-Ex
(Henein)

R. Tozer - 6-202

1 A. Right.

2 Q. Right?

3 A. Yes.

4 Q. And, who is the next person who is
5 copied?

6 A. Dr. Khan.

7 Q. Okay. Now, I'm going to suggest to
8 you that that would suggest that all of these doctors
9 are involved in dealing with the patient together;
10 right? That would suggest there is some
11 interdisciplinary activity?

12 A. Yes.

13 Q. Thank you. I'm going to show you
14 another document that was in the medical records. We
15 didn't include it in the book. And, it is medical
16 imaging related to this patient, Ms. [REDACTED] on the
17 brain, and it appears to be ordered by Dr. Sahgal.

18 So, this is a report in relation to [REDACTED]
19 [REDACTED] as I indicated. And, it appears that on July
20 21st, the radiation oncologist, Dr. Sahgal, is ordering
21 this report, right, the medical imaging report?

22 A. Yes.

23 **MR. ROSENBAUM:** Excuse me, are you
24 marking this?

25 **MS. HENEIN:** Yes, could that be marked

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Cr-Ex
(Henein)

R. Tozer - 6-203

1 as the next exhibit?

2 **THE CHAIRPERSON:** Yes, indeed. So,
3 Exhibit 67 is the medical imaging report from
4 Sunnybrook Health Sciences Centre, dated the 25th of
5 July 2013.

6
7 --- EXHIBIT NO. 67: Medical Imaging Report from
8 Sunnybrook Hospital, dated July
9 25, 2013

10
11 BY MS. HENEIN:

12 Q. And, the next page, if you could
13 please look at that, you will see there that there is
14 an order by Dr. Petrella, the oncologist?

15 A. Yes.

16 Q. All right. And, that is also for
17 medical imaging; right?

18 A. Yes.

19 Q. Okay. And, are you aware that
20 these are the files, or found in the files of Dr.
21 Khan?

22 A. No.

23 Q. All right. And, is it common to
24 forward medical reports to other physicians when
25 you're conducting an interdisciplinary ---

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Cr-Ex
(Henein)

R. Tozer - 6-204

1 A. Yes.

2 Q. --- approach? Right. And, I think
3 the College will agree that these documents, there is
4 no issue. These are the files that were found in the
5 patient charts in Dr. Khan's files. The College
6 agrees to that.

7 So, there is no issue, I'm going to
8 suggest to you, Dr. Tozer, that these medical imaging
9 reports that are ordered by the oncologist and the
10 radiologist, are ordered. And, these records, these
11 reports, are found in Dr. Khan's file for Ms. [REDACTED]
12 Okay?

13 A. Okay.

14 Q. Now, one of the things that you
15 noted in your report regarding Ms. [REDACTED] or your
16 testimony, is you were uncertain about why Ms. [REDACTED]
17 ever had an oophorectomy, the removal of both of her
18 ovaries.

19 A. Correct.

20 Q. And, that was confusing to you?

21 A. Yes.

22 Q. All right. But, I'm going to
23 suggest to you, if you had reviewed the chart that you
24 were given, Dr. Khan's chart, you would have found in
25 it a report from MyChart that is a gynaecological

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Cr-Ex
(Henein)

R. Tozer - 6-205

1 oncologist who assessed her by the name of Dr. Tanner,
2 and that was the person who recommended the
3 oophorectomy. So, let me just show you that document.

4 Oh, sorry, that's the anaesthesiologist
5 reporting to Dr. Vikas. Why don't you take a moment
6 to read through that?

7 **MS. HENEIN:** Could this be marked as the
8 next exhibit, Dr. King?

9 **THE CHAIRPERSON:** Yes. Exhibit 68 would
10 be the MyChart report on [REDACTED] and it is dated
11 February 25, 2014.

12
13 --- EXHIBIT NO. 68: MyChart Report on [REDACTED]
14 dated February 25, 2014

15
16 BY MS. HENEIN:

17 Q. Have you had a chance to review
18 that, Dr. Tozer?

19 A. Yes.

20 Q. So, when you testified under oath
21 that you were uncertain about why it was that Ms.
22 [REDACTED] had an oophorectomy, I gather you now, having
23 reviewed this document, know why she had an
24 oophorectomy?

25 A. No.

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Cr-Ex
(Henein)

R. Tozer - 6-206

1 Q. This doesn't tell you?

2 A. No.

3 Q. So, what would be the reasons that
4 a person would have ---

5 A. I don't know. All it states is,
6 "In advance of her proposed laparoscopic oophorectomy,
7 and possible hysterectomy, scheduled for February 20,
8 2014." It doesn't give a reason.

9 Q. I see. Is it concerning to you, or
10 would it give you a clue if the person managing her is
11 a gynaecological oncologist?

12 A. Yes, that would be helpful.

13 Q. That would be helpful. So, if you
14 look at the very top of that page, do you see that the
15 person getting the report is a gynaecological
16 oncologist?

17 A. Right. But, I'm still puzzled as
18 to why it happened.

19 Q. Well, what would your guess be?

20 A. I don't know.

21 Q. Just an oophorectomy for no reason?

22 A. What I'm saying -- no, that's not
23 what he said. I don't know what the goal of this
24 operation could be.

25 Q. If you're seeing a gynaecologic

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Cr-Ex
(Henein)

R. Tozer - 6-207

1 oncologist, why would you be seeing a gynaecologic
2 oncologist?

3 A. Well, usually for a gynaecological
4 malignancy.

5 Q. Right.

6 A. It's usually not metastatic disease
7 to the ovaries.

8 Q. Right.

9 A. So, I'm still puzzled.

10 Q. Okay. But, you hadn't seen that
11 note.

12 A. No.

13 Q. And, that's another note that was
14 found in Dr. Khan's chart. Now, in terms of the
15 multidisciplinary and interdisciplinary approach, can
16 I just take you back to Exhibit 53, please?

17 A. Yes.

18 Q. And, can you look with me at page
19 32?

20 A. Yes.

21 Q. This is the note for April 19,
22 2011. And, if you look at page 32, four lines down,
23 do you see there, "May 2 to 5, booked for a Gamma
24 Knife"?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-208

1 Q. What is that?

2 A. Stereotactic radio surgery.

3 Q. And, who would conduct that?

4 A. A radiation oncologist.

5 Q. Okay. And, can you please look
6 with me at page 44? Can you look at, approximately,
7 at page 44, five lines down, do you see there where it
8 says, "reviewed with surgeon, Dr. Hanna, plan for
9 resection of liver met"?

10 A. Yes.

11 Q. Okay. So, it looks like she is
12 seeing a surgeon, Dr. Hanna?

13 A. Yes.

14 Q. All right. Can I ask you to look
15 at page 66, please? And, at page 66, July 9, 2012,
16 the first two lines, could you read those for us,
17 please?

18 A. "Had" -- I can't read what that is.

19 Q. Hepatectomy?

20 A. It could be hepatectomy, and
21 axillary node dissection.

22 Q. What is that?

23 A. Removal of lymph nodes from under
24 the armpit.

25 Q. That's what hepatectomy is?

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Cr-Ex
(Henein)

R. Tozer - 6-209

1 A. No. Oh, hepatectomy? Liver
2 resection.

3 Q. Hepatectomy is a liver resection,
4 and axillary dissection?

5 A. Is removal of lymph nodes under the
6 axilla.

7 Q. Okay. And then the next line?

8 A. "Liver tumour removed with clear
9 margins."

10 Q. Okay. So, that would be conducted
11 by a surgeon; right?

12 A. So, one would be done by a
13 hepatobiliary surgeon, and the other one would be done
14 by a general surgeon, or surgical oncologist.

15 Q. So, two different surgeons?

16 A. Yes.

17 Q. All right. And so, she's being
18 seen there by two different surgeons ---

19 A. Yes.

20 Q. --- in July 2012? All right.
21 August 8, 2012, can you look at that note, at page 82?
22 And, if you take a look at five lines down from page
23 82, can you read that sentence for me, where it says
24 "saw"?

25 A. "Dietician, little help."

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Cr-Ex
(Henein)

R. Tozer - 6-210

1 Q. Okay. So, it looks like she's seen
2 a dietician?

3 A. Yes.

4 Q. All right. And, can I ask you to
5 look at "Med Review", the first sentence?

6 A. "Spoke to specialist re: his new
7 liver findings."

8 Q. All right. And, that was the line
9 where it says, "Doctor is also suspicious of
10 misdiagnosis"?

11 A. Yes.

12 Q. "Of rapid CA growth post-op"?

13 A. Yes.

14 Q. Okay. So, it looks like there is a
15 specialist and a dietician she's being ---

16 A. Yes.

17 Q. She's seeing? All right. Can you
18 look at page 77, please? And, on the left-hand side
19 there, under "Problem list Number 2", can you tell me
20 what it reads?

21 A. "Meeting doctor today about liver
22 masses."

23 Q. So, that would suggest that there
24 is an oncologist dealing with her liver metastases?

25 A. Or a surgeon.

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Cr-Ex
(Henein)

R. Tozer - 6-211

1 Q. Can you -- that's August 13, 2012.
2 Can you take a look at page 74, please? And, at page
3 74, beginning about five lines down, could you read
4 that for us?

5 A. Missed something due to something.

6 Q. "Metastases reviewed with
7 specialist."

8 A. Oh, that's line six. "Metastases
9 reviewed with specialist."

10 Q. Yes. "Feel there are two small
11 tumours in liver. Offered RFA." What is RFA?

12 A. Radio frequency ablation.

13 Q. Okay. And, that's a surgical
14 procedure?

15 A. No, it's an interventional
16 radiology procedure.

17 Q. Okay. And then, what's the next
18 line? Started ---

19 A. "Nine-centimetre tumour on CT.
20 Report misprint." It was only 9 millimetres.

21 Q. Mm-hmm. Keep reading.

22 A. "Patient good spirits."

23 Q. Mm-hmm. And?

24 A. I can't read the first word, of Dr.
25 something in Germany.

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Cr-Ex
(Henein)

R. Tozer - 6-212

1 Q. Okay. And, can I ask you, on the
2 left-hand side there, number 3, it says started what?

3 A. Ipilimumab.

4 Q. So, when I ask you to, if you don't
5 mind just going back to your report, Exhibit 30, where
6 you say, at page 4, "I see no consultation note and
7 can only infer that she had been treated with
8 ipilimumab", that's wrong?

9 A. Yes, she has been treated with
10 ipilimumab.

11 Q. Yes, but your note is wrong?

12 A. Right.

13 Q. Can I ask you to look with me at
14 page 77, please? And, under "Problem list", can you
15 read what it says there?

16 A. "Metastatic melanoma, meeting
17 doctor today about liver masses."

18 Q. Okay.

19 A. Unlikely metastases.

20 Q. Can I ask you to look at page 112?
21 And, we've gone through this, where she says she is
22 remaining on YERVOY.

23 A. Yes.

24 Q. And, who would be prescribing
25 YERVOY?

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Cr-Ex
(Henein)

R. Tozer - 6-213

1 A. Dr. Petrella?

2 Q. An oncologist?

3 A. A medical oncologist.

4 Q. Correct. Okay. Can I ask you to
5 look at page 131? And, that's the note there to the
6 -- at the bottom, under "Plan Number 2", it says,
7 "Note endocrinologist."

8 A. Yes.

9 Q. And then on 127, Dr. Khan has
10 noted, "Note to endocrinologist" ---

11 A. "Patient to see as soon as
12 possible.

13 Q. As soon as possible. And then,
14 again, four days later, at page 126, right at the top
15 there, do you see it says, "To see endocrinologist
16 next week"?

17 A. Yes.

18 Q. All right. Can I ask you to look
19 at 139? And, at the bottom of 139, under "Plan Number
20 1", "appointment to see Dr. Kis"?

21 A. Yes.

22 Q. And, that's a neurosurgeon?

23 A. Yes.

24 Q. Okay. Can I ask you to look at
25 page 142? Do you see there, at the second line, it

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Cr-Ex
(Henein)

R. Tozer - 6-214

1 says, "Saw Dr. Kis"?

2 A. Yes.

3 Q. Okay. And then on the next page,
4 under "Plan 1", "follow Dr. Kis' advice"?

5 A. Yes.

6 Q. Can I ask you to look at 146? And,
7 we referred to this before, which is "Have increased
8 L-thyroxin per Dr. Kis"?

9 A. Yes.

10 Q. So, that's the neurosurgeon again?

11 A. Yes.

12 Q. All right. Page 151, do you see
13 there on the left-hand side, under "Number 3", under
14 "Problem list", "Specialist advised patient to re-
15 start YERVOY now". So, she's restarting YERVOY?

16 A. Yes.

17 Q. Okay. Can I ask you to look at
18 155? Do you see under "Plan Number 2", "Patient to
19 discuss" ---

20 A. Yes.

21 Q. --- "with neurologist about
22 decreasing" ---

23 A. Antiepileptics.

24 Q. What are those? Antiseizure
25 medications?

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Cr-Ex
(Henein)

R. Tozer - 6-215

1 A. Correct.

2 Q. And, page 164, under the fourth
3 line, do you see there, "Last visit at Sunnybrook", is
4 that right?

5 A. Yes.

6 Q. "Where blood work is done"?

7 A. Yes.

8 Q. All right. So, just on these notes
9 alone, it appears that in addition to Dr. Khan, and
10 him having a number of these records, she is seeing a
11 radiation oncologist, a surgeon, a dietician, a liver
12 specialist, and endocrinologist, a neurosurgeon?

13 A. Yes. You left out gynae ---

14 Q. And the gynaecological oncologist.

15 A. Right.

16 Q. Right?

17 A. And, the anaesthetist, and the
18 interventional radiologist. She's seen a lot of
19 doctors.

20 Q. A lot of doctors who are treating
21 this woman?

22 A. Yes.

23 Q. In terms of when she commences the
24 ipilimumab, can I take you to page 74 of Exhibit 53?
25 And, if you take a look at that note, the third line

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Cr-Ex
(Henein)

R. Tozer - 6-216

1 down, you'll see that, in fact, she commences this
2 medication August 27, 2012?

3 A. We can't say that, though.

4 Q. Started ---

5 A. Before August 27th, unless she was
6 seen on the same day.

7 Q. Right.

8 A. We don't know that.

9 Q. So, she would have started it
10 before. All right. And so, when you say that you can
11 only infer, originally, in your note, because there is
12 no notation of her being on this medication; in fact,
13 there are three occasions where the medication is
14 explicitly referred to.

15 A. And, as I've conceded before, yes.

16 Q. Okay. Let me move to -- just
17 before I move from this patient, what was this
18 patient's prognosis?

19 A. With metastatic melanoma.

20 Q. Yes.

21 A. Untreated?

22 Q. Well, she was ---

23 A. So, untreated, it would be around
24 less than six months. And, she was treated very, very
25 aggressively.

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Cr-Ex
(Henein)

R. Tozer - 6-217

1 Q. And so, what was her life
2 expectancy there?

3 A. With the treatments that were
4 offered?

5 Q. Mm-hmm.

6 A. So, I'm assuming, and I can only --
7 I don't have all the notes ---

8 Q. Right.

9 A. Right? And, I don't have the notes
10 from the gynae oncologist, but I would assume that if
11 they were being so aggressive in their surgical
12 resections, that they were hoping that they would
13 render her disease free. And, if they were able to
14 render her disease free, she probably would have about
15 a maybe 10 to 20 percent chance of cure.

16 Q. Which would mean what?

17 A. That she would lead a normal
18 lifespan.

19 Q. You criticized Dr. Khan for
20 discussing with this patient the possibility of
21 potentially saving eggs and having some sort of future
22 child. You found that problematic?

23 A. I think the discussion, because I
24 have those discussions regularly with my young breast
25 cancer patients, has to do with getting pregnant in

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Cr-Ex
(Henein)

R. Tozer - 6-218

1 the setting of very much a life-threatening disease.

2 So, what I'm saying is her chance of recurrence is 80
3 percent.

4 Q. So, can I just go to your report
5 there, where you criticize Dr. Khan? You say -- this
6 is Exhibit 30.

7 "The patient was demonstrated to
8 have bilateral ovarian metastases,
9 and yet, there was a discussion
10 about fertility preservation. Dr.
11 Khan does not appear to have a
12 realistic understanding of the
13 prognosis of metastatic melanoma.
14 Moreover, were the patient to be
15 come pregnant, melanoma is one of
16 two cancers that can cross the
17 placenta and colonize the fetus."

18 (as read)

19 A. That is correct.

20 Q. Now, you expressed that before, I
21 gather, knowing and seeing all these notes, where she
22 is getting all these sorts of treatments?

23 A. It's still true.

24 Q. It's still true?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-219

1 Q. That ---

2 A. Her prognosis is very guarded, even
3 with all of this aggressive therapy.

4 Q. Right. And ---

5 A. And, I think the driving thing is,
6 if you look at what her age is, she's 22.

7 Q. Right. And so, would it change
8 your opinion to know she is alive today?

9 A. I would be happy, but this can
10 happen in melanoma.

11 Q. But, it is possible?

12 A. It's possible.

13 Q. And, in fact, she is. Does that
14 come as a surprise to you?

15 A. Yes, it does.

16 Q. Notwithstanding that Dr. Khan wrote
17 and indicated that she was alive in his response to
18 the College? You didn't read that?

19 A. No.

20 Q. And so, it's a surprise to you that
21 in 2020, this young lady is still alive ---

22 A. Yes.

23 Q. --- and disease free? Can I ask
24 you to take a look at the next patient I want to talk
25 to you about, which is [REDACTED]? And, I'm

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Cr-Ex
(Henein)

R. Tozer - 6-220

1 going to ask you to pull up what's been marked as
2 Exhibit 54.

3 So, can I ask you to look at your
4 report, which is Exhibit 30, where you discuss [REDACTED]
5 [REDACTED]? That is patient MG.

6 A. Yes.

7 Q. So, let's take a look at what you
8 say about your analysis of this patient. You say,
9 "This is a 55-year-old woman, metastatic lung cancer
10 to brain, bone, liver." And then you say, "There is a
11 paucity of information." Right?

12 A. Right.

13 Q. And, you then go on to the discuss
14 the information. You say:

15 "There are letters to Dr. Kis, in
16 which Dr. Khan is stating that
17 carboplatin penetrates the blood-
18 brain barrier, and with the mesna,
19 can result in a significant
20 immunological response, and thus,
21 is worried that there could be
22 temporary swelling. There is no
23 evidence that carboplatin
24 penetrates the blood-brain barrier
25 to any extent, and there is no

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Cr-Ex
(Henein)


R. Tozer - 6-221

1 evidence that mesna is protective
2 of carboplatin side effects, nor
3 has an immunological effect."
4 (as read)

5 Then you go on to talk about your
6 concerns about the patient developing intercranial
7 pressure. Then you say:

8 "There is evidence of ordering an
9 ultrasound and chest x-ray at the
10 beginning of treatment. The
11 patient was assessed in an
12 emergency department in November
13 due to dyspnea. Her symptoms were
14 attributed to extensive lung
15 metastases. Interestingly, Dr.
16 Khan acknowledges evidence of
17 progression, but decides to
18 continue on with chemotherapy
19 anyway." (as read)

20 That's all you write about patient

21 ; right?

22 A. Yes.

23 Q. And, that's because, as you say, to
24 use your words, "there is a paucity of information,
25 there's a letter, and it appears that he's ordered an

Graham's Reporting - Toronto, Ontario

Cr-Ex
(Henein)

R. Tozer - 6-222

1 ultrasound and chest x-ray at the beginning of
2 treatment", and that's it. That's all you've got.
3 Right?

4 A. Yes.

5 Q. And, I'm going to suggest to you
6 that, in fact, once again, in the provision of your
7 expert opinion, you missed extensive documentation
8 dealing with Dr. Khan and the treatment of [REDACTED]

9 [REDACTED] Are you prepared to accept that?

10 A. Yes.

11 Q. And so, if we look at Exhibit 54,
12 this is the documents that we filed. These are all,
13 I'm going to suggest to you, documents that you did
14 not consider in expressing your one-paragraph opinion,
15 where you say there is a paucity of information.

16 So, let's go through what you didn't
17 look at. Can you take a look with me, please, at Tab
18 3? So, this is an ultrasound, dated September 27,
19 2003. It's an abdomen ultrasound; is that right?

20 A. Yes.

21 Q. All right. So, that is a record
22 that is sent to Dr. Khan; right?

23 A. Yes.

24 Q. Can you look at page 2 of Tab 3?
25 This is a report that is dated July of 2013, July 15,

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Cr-Ex
(Henein)

R. Tozer - 6-223

1 2013. That's a chest x-ray; right?

2 A. Sorry, which page?

3 Q. Sorry. Page 2 of Tab 3. Just turn
4 the page over.

5 A. You mean the CT scan?

6 Q. Yes, sorry.

7 A. Chest/abdomen?

8 Q. Yes.

9 A. Sorry, that's why I was confused.

10 Q. I'm sorry. It's a CT scan dated
11 July 15, 2013?

12 A. Yes.

13 Q. Okay. And then if you turn to page
14 4, August 8, 2013, it looks like a head MRI; is that
15 right?

16 A. Yes, an MRI of the brain.

17 Q. And, if you can look at page 5,
18 this is dated November 5, 2013 or November 6, is that
19 an abdomen ultrasound?

20 A. It's a chest x-ray and an abdominal
21 ultrasound.

22 Q. Okay. Can you take a look, please,
23 at the next page, page 6? That's a CT angiogram,
24 dated November 26, 2013?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-224

1 Q. Okay. Can you take a look, please,
2 at page 8? This is a lateral chest x-ray, dated
3 November 26, 2013?

4 A. It's actually a PA and lateral.

5 Q. PA and lateral x-ray, dated
6 November 26, 2013?

7 A. Yes.

8 Q. Right. So, in terms of paucity of
9 information, if we can just stop there, in November of
10 2013 alone, there is a chest x-ray, an abdomen
11 ultrasound, a pulmonary chest CT, and a chest x-ray?

12 A. Yes.

13 Q. Right? And, in September, there is
14 an abdomen ultrasound, and in August, there is a head
15 MRI; right?

16 A. Yes.

17 Q. Okay. Can we please look at page
18 10?

19 A. Yes.

20 Q. And, this is an abdomen ultrasound,
21 dated September 27th?

22 A. Yes.

23 Q. Okay. Can I ask you to look at
24 page 11?

25 A. Yes.

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Cr-Ex
(Henein)

R. Tozer - 6-225

1 Q. All right. And, that's a report,
2 dated November 1st --

3 A. I'm sorry, what page?

4 Q. I'm sorry. Page 11.

5 A. It's a request.

6 Q. And, this is a request, right, the
7 request for diagnostic imaging by Dr. Khan?

8 A. Yes.

9 Q. All right. And, can I ask you to
10 turn to page 12, request for abdominal ultrasound with
11 Doppler of liver metastases?

12 A. Yes.

13 Q. And, there is, at page 13, a
14 request for the abdominal ultrasound; right?

15 A. Yes.

16 Q. Now, I'm going to suggest to you --
17 sorry, your indulgence, please, because there are six
18 others that I just am not locating.

19 There are, in this book, and I'm going
20 to take you to them, additional scans and chest x-
21 rays, and MRIs. But, before we do that, let's move on
22 to the blood tests. I take it you would agree with me
23 that 26 blood tests would not be a paucity of medical
24 information?

25 A. No.

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Cr-Ex
(Henein)

R. Tozer - 6-226

1 Q. Okay. So, can you look with me,
2 please, at Tab 1?

3 A. Yes.

4 Q. And, Tab 1, which is page 22 of
5 this book, you are going to see that, if we just flip
6 through, these are blood tests, platelet counts,
7 haemoglobin, dated December 4, 2013; right?

8 A. Yes.

9 Q. And then on page 3, it's December
10 9th. So, she's being followed five days later?

11 A. Yes.

12 Q. Okay. And, look at page 5 with me.
13 It's December 18th.

14 A. Yes.

15 Q. Okay. And, if you turn to page 7
16 -- sorry, that's also December 18th. If you can turn
17 to page 9, it's December 23rd?

18 A. Yes.

19 Q. And, if you turn to page 10, it's
20 December 30th?

21 A. Yes.

22 Q. Okay. So, it appears that Dr. Khan
23 is doing blood monitoring, December 4th, 9th, 18th, 23rd
24 and 30th. That is frequent monitoring?

25 A. It's very frequent blood work.

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Cr-Ex
(Henein)

R. Tozer - 6-227

1 Q. Okay. Can I ask you to continue
2 on? January 6, 2014, there is a blood test?

3 A. What page?

4 Q. Sorry. Page 11.

5 A. Yes.

6 Q. Okay. And then if you continue on
7 to -- sorry, these are the requisitions. Can you move
8 forward to page 18, please, April 9, 2013; right?

9 A. Yes.

10 Q. Okay. And, if you can move on to
11 page 23, it's August 26, 2013?

12 A. Why is he ordering vitamin D?

13 Q. I think the way it goes is I ask
14 you the questions.

15 A. Okay.

16 Q. So, do you see that there is a
17 blood report of August 27, 2013?

18 A. Yes.

19 Q. Okay. And, can we look at page 25,
20 August 6, 2013?

21 A. Yes.

22 Q. And then page 27, August 12, 2013?

23 A. Yes.

24 Q. August 19th, if you look at page 28
25 and 29?

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Cr-Ex
(Henein)

R. Tozer - 6-228

1 A. Yes.

2 Q. Okay. And then August 30th, if you
3 look at page 31?

4 A. Yes.

5 Q. Okay. And then if we continue on
6 to page 39 in this tab, you will see that there are
7 reports for July 2, 2013, right, running from page ---

8 A. Yes.

9 Q. --- 39, 40, 41, 42?

10 A. Yes.

11 Q. Okay. And then we'll skip over the
12 requisitions, but page 47, there is June 5, 2013.

13 A. Yes.

14 Q. Okay. And, can you turn to page 50
15 with me? It is the report on May 13, 2013?

16 A. Yes.

17 Q. Okay. And then let's turn to page
18 54. Do you see the blood work there from October 9,
19 2013, and that runs for two pages?

20 A. Yes.

21 Q. Okay. And then if you look at page
22 56 and 57, that's October 16th?

23 A. Yes.

24 Q. Okay. And, if you look at page 59,
25 it's October 23rd blood work?

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Cr-Ex
(Henein)

R. Tozer - 6-229

1 A. Yes.

2 Q. Okay. And, look at page 61, it's
3 October 28th?

4 A. Yes.

5 Q. Okay. And, that continues on
6 through to page 63 and 64?

7 A. Yes.

8 Q. Okay. And then we have reports for
9 September. You've got, on page 67, September 9th;
10 right?

11 A. Yes.

12 Q. September 16th on page 69?

13 A. Yes.

14 Q. Okay. September 23rd, on page 71?

15 A. Yes.

16 Q. Page 73 it is September 30th?

17 A. Yes.

18 Q. Okay. Can you turn to page 75 with
19 me, please, November 11, 2013?

20 A. Yes.

21 Q. Okay. And, page 77 is November 6,
22 2013?

23 A. Yes.

24 Q. Okay. And, page 81 is still
25 November 11, 2013; that runs to page 83?

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Cr-Ex
(Henein)

R. Tozer - 6-230

1 A. So, she has the blood work repeated
2 on the same day.

3 Q. I'm sorry?

4 A. The same blood work on the same
5 day.

6 Q. Well, I don't know if it was
7 repeated or if it's the same report.

8 A. No, it's -- let's see. No, it's
9 the same report.

10 Q. So, why would you assume she had
11 the blood work repeated on the same day?

12 A. It looked quite different. Never
13 mind.

14 Q. It's the same?

15 A. Yes, it's the same.

16 Q. And, can I ask you to look at page
17 85, it's November 18th?

18 A. Yes.

19 Q. Okay. And then if you look at page
20 89, it's November 25?

21 A. Yes.

22 Q. Okay. And, there are further
23 requisitions in this tab. So, there are 26 blood
24 tests that are ordered.

25 A. Yes. That's a lot of blood tests.

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Cr-Ex
(Henein)

R. Tozer - 6-231

1 Q. It's a lot of blood tests.

2 A. Correct.

3 Q. That would not be a paucity of
4 information?

5 A. No, it's a lot of blood tests.

6 Q. All right. And, having MRIs and
7 chest x-rays, and abdomen ultrasounds, those are not
8 what you would call a paucity of information?

9 A. No.

10 Q. Okay. So, you didn't review any of
11 these?

12 A. I don't remember seeing them.

13 Q. No. Before you expressed your
14 opinion?

15 A. Yes.

16 Q. Okay. Can I ask you to look with
17 me at Tab 6? And, what I'm going to suggest to you --
18 sorry. I'm in the wrong section. One minute, please.

19 Sorry. If you can take a look at Tab 7,
20 actually, do you see there it says, [REDACTED]
21 October 18, 1960"? So, this would be her patient
22 chart?

23 A. Yes.

24 Q. All right. And, if you just do a
25 flip through there -- I'm not going to take you

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Cr-Ex
(Henein)

R. Tozer - 6-232

1 through each page, but why don't you just do a flip
2 through?

3 A. Yes.

4 Q. I take it you will agree with me
5 that in it are the medical intake form, doctor's
6 notes?

7 A. Yes.

8 Q. There are letters by Dr. Khan to
9 other physicians, and there are hospital records from
10 the initial diagnosis?

11 A. Yes.

12 Q. All right. And, you didn't look at
13 any of that in concluding, in your expert opinion,
14 that there was a paucity of information, and that he
15 fell below the standards in dealing with this patient?

16 A. So, I can see there is no paucity
17 of information.

18 Q. Okay. And, in terms of your
19 opinion that there was -- that he fell below the
20 standards, and whether or not she was consulting with
21 other doctors, and had conventional therapy that she
22 had declined, all of that, I take it, to be fair to
23 you, would be informed if you had reviewed the
24 entirety of her chart?

25 A. Perhaps.

Graham's Reporting - Toronto, Ontario

Cr-Ex
(Henein)

R. Tozer - 6-233

1 Q. Well, that makes sense; right?

2 A. Yes.

3 Q. Right. Did you take a look at the
4 prescriptions that she was being prescribed, at Tab 4?

5 A. So, GCSF?

6 Q. Well, there's a series of them.

7 A. Yes.

8 Q. So, why don't we look at all the
9 things you didn't look at? Let's take a look, just
10 quickly here. So, at Tab 1 are all of the blood work
11 that we discussed; right?

12 A. Yes.

13 Q. Okay. And then if you look at Tab
14 2, these are some detailed notes from Dr. Khan about
15 the DCA?

16 A. Yes.

17 Q. Right? And, the carboplatin and
18 mesna?

19 A. Yes.

20 Q. And, do you see there, at page 2 of
21 Tab 2, he notes an urgent brain MRI to be booked?

22 A. Yes.

23 Q. What is Glumetza?

24 A. I don't know.

25 Q. And ---

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Cr-Ex
(Henein)

R. Tozer - 6-234

1 A. Unless it's another name or
2 metformin.

3 Q. Right. Okay. And so, you see
4 there on page 3 are further notes by Dr. Khan? These
5 are the ---

6 A. Yes.

7 Q. Okay. And, I'm just going to skip
8 over the DCA consent forms. We'll come back to them
9 at another time, but you see there that there is an
10 information form about DCA?

11 A. Yes.

12 Q. Okay. And then if you look at page
13 10, there is a page on DCA side effect management?

14 A. Yes.

15 Q. Okay. And, can I ask you to look
16 at page 17?

17 A. Yes.

18 Q. And, the date of this note is
19 November 26, 2013; she is admitted to hospital?

20 A. Yes.

21 Q. All right. And, she's admitted at
22 the request of ---

23 A. She was sent ---

24 Q. --- Dr. Blicker?

25 A. Yes, because she was referred to

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Cr-Ex
(Henein)

R. Tozer - 6-235

1 the Emergency department by Dr. Khan.

2 Q. Okay. So, up at the top, it says
3 the family MD is Dr. Khan, and he refers her to
4 Emergency, and she is seen by a Dr. Blicher; right?

5 A. Right.

6 Q. Okay. Those are not notes you
7 reviewed?

8 A. Actually yes, these are.

9 Q. This note ---

10 A. I've seen this, for sure.

11 Q. This note you've reviewed?

12 A. Yes.

13 Q. Okay. And then you've got the rest
14 of the notes here about the SEF chemo; right?

15 A. Okay. And, can I ask you to look
16 at page 39?

17 Q. Do you see there that at page 39,
18 Dr. Khan appears to be requesting a referral to Dr.
19 Kis?

20 A. Yes.

21 Q. And, who is Dr. Kis? Because we've
22 referred to him moments ago in dealing with [REDACTED] ---

23 A. He's a neurosurgeon.

24 Q. He's a neurosurgeon?

25 A. We think.

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Cr-Ex
(Henein)

R. Tozer - 6-236

1 Q. So, that would be an
2 interdisciplinary approach, where you ---

3 A. He's made a referral, yes.

4 Q. Yes. And, can I ask you to look at
5 page 41?

6 A. Yes.

7 Q. So, that is the MRI, the brain MRI?

8 A. Yes.

9 Q. That's ordered?

10 A. Yes.

11 Q. Okay. Can you take a look at page
12 46 and 47?

13 A. Yes.

14 Q. These are notes of a letter sent
15 from Dr. Khan to Ms. [REDACTED]?

16 A. Yes.

17 Q. About the treatment ---

18 A. Yes.

19 Q. --- of DCA? Okay. And, can I ask
20 you to look, please, at page 51?

21 A. Yes.

22 Q. And, this is about low-dose
23 naltrexone. So, there's an information sheet there?

24 A. Yes.

25 Q. Can I ask you, when you are giving

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Cr-Ex
(Henein)

R. Tozer - 6-237

1 a patient who is being offered palliative chemotherapy
2 options, do you also give them the information sheets?

3 A. Absolutely.

4 Q. Okay. So, this is the sort of
5 thing you would expect a doctor to do?

6 A. Yes.

7 Q. And, he appears to do it?

8 A. Yes.

9 Q. Okay. And, there is a notation
10 about metformin at page 53; right? And, it appears
11 that the client is also given an article about
12 chemotherapy using metformin as an adjuvant.

13 A. Yes.

14 Q. An exploratory study. Okay. So,
15 if can ask you now to look with me at Tab 3, we've
16 gone through a number of the ultrasounds there. Those
17 are all things that Dr. Khan did in dealing with this
18 patient; right?

19 A. Yes.

20 Q. And then if we can go to Tab 4,
21 those were the prescriptions; right?

22 A. Yes.

23 Q. Okay. And then if I can ask you to
24 look at Tab 7, as I said, we went through that
25 relatively quickly. Those are all documents about his

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Cr-Ex
(Henein)

R. Tozer - 6-238

1 treatment of Ms. [REDACTED]?

2 A. Right.

3 Q. Okay. Now, I take it you agree
4 with me now, that if you had a chance to review all of
5 those documents, that would have impacted your opinion
6 on Ms. [REDACTED]?

7 A. I'm not sure.

8 Q. Well, it would have informed it,
9 certainly?

10 A. It would have informed it.

11 Q. Okay.

12 **MS. HENEIN:** I'm going to move to
13 another patient, Dr. King. I don't know if you want
14 me to keep going for another 15 minutes or stop. I'm
15 in your hands.

16 **THE CHAIRPERSON:** Well, I'm assuming you
17 couldn't complete it in 15 minutes?

18 **MS. HENEIN:** There is -- no, I will not
19 be completing in 15 minutes.

20 **THE CHAIRPERSON:** No. Well, I meant the
21 next patient.

22 **MS. HENEIN:** No, I wouldn't be able to.

23 **THE CHAIRPERSON:** I would think that
24 this might be a better breaking spot ---

25 **MS. HENEIN:** Okay.